

Choosing lanes

Trade Intelligence Asia Pacific
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Worldtrade
Management Services



Key intelligence

*Customs implications of
China's updated foreign
investment regime*

P.14

*Indonesia
revises import
duty rates*

P.17

*Malaysia introduces
regulation of
Medical Devices Bill*

P.19

*Philippines to
audit preferential
origin claims*

P.20

Index

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.

Feature story

Choosing lanes	4
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ASEAN

ASEAN and Japan accelerate cooperation in trade facilitation	8
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Export controls

Australia – Defence Trade Controls Bill introduced	9
Malaysia – updates on Strategic Trade Act	9

FTA focus

European Union–Colombia–Peru FTA initialled	10
EU–India FTA negotiations progress	10
Mexico–Peru FTA signed	10
Peru–South Korea FTA signed	10
South Korea–US FTA ratification pushed back	11
Trans-Pacific Partnership negotiations progress	11
US–Brazil Trade and Economic Cooperation Agreement signed	11

Country reports

Australia	12
China	14
Hong Kong	16
Indonesia	17
Malaysia	19
Philippines	20
Singapore	21
Taiwan	22
Thailand	23
Vietnam	24

Around the world

WTO	25
WTO disputes	26

Feature story

Choosing lanes

Most airline passengers, after making their way through immigration and collecting their baggage, head directly for the Customs green lane without much more than perhaps a slightly worried passing glance at the red lane.

Once in the green lane, there may be an officer or two collecting forms, at times directing a select few to a baggage scanner; but in most cases passengers pass through in a matter of seconds or minutes and are free to carry on their business or enjoy their holiday.

But what about cargo? For many importers, their cargo in Asia seems destined to always get caught up in the paperwork and delays of the red lane. Many countries throughout the region have introduced programmes whereby certain eligible importers are promised a “green lane” for cargo in return for certain compliance commitments. Increasingly, these preference programmes are tied to global cargo security Authorised Economic Operator (AEO) initiatives. But do the benefits these programmes promise outweigh the costs, in terms of time and money, of compliance?

For many years, Customs authorities throughout Asia Pacific have worked to develop trade facilitation programmes intended to offer preferential policies to select importers, exporters and other participants in the international trade process (e.g. brokers). From the Enterprise Classification system of China, the “Super Green Lane” programme of the Philippines, to the MITA lanes scheme of Indonesia, Asian countries have recognised the legitimate need to seek a balance between their compliance expectations and the business requirements of the trading community. However, in many cases these programmes have been limited to only the largest traders, and the true benefits enjoyed by programme participants have been unclear. Over the past several years as governments have become increasingly concerned about cargo security, they began to either design new, or layer cargo security programmes onto existing preference programmes. In some countries (e.g. Singapore) the result can be a unified programme that clearly delineates compliance expectations in return for specified benefits. In others, the addition of cargo security programmes adds a new layer of complexity with little clear additional benefit to participants.

Trade facilitation in Asia

A review of the Asia trade landscape reveals that many countries have designed and implemented trade facilitation programmes of some kind. Many of these programmes involve an application process whereby Customs reviews the trade compliance processes

in place within an importer/exporter and then either assigns a classification band to the applicant or denies programme entry until certain criteria are met. In most countries, participation in these programmes is voluntary. However, in the case of both China and Singapore, all importers/exporters are assigned a classification level.

Country	Name of programme	Classification method	Quantitative or qualitative assessment ¹	Primary benefits promised
China	Enterprise Classification Scheme	Customs divides import/export enterprises into five classifications (AA, A, B, C ,D) based upon 35 criteria	Both	<ul style="list-style-type: none"> • Expedited transactions² • Cost savings³ • Customs partnership⁴ • Reduced inspections
Indonesia	MITA (Mitra Utama) lanes	Importers are classified into one of four bands: green, yellow, red, and priority	Both	<ul style="list-style-type: none"> • Expedited transactions • Reduced inspections
Japan	AEO programme	Only successful applicants receive a priority classification	Qualitative	<ul style="list-style-type: none"> • Expedited transactions • Reduced inspections • Mutual Recognition Agreement (MRA)⁵
South Korea	AEO programme	3 classifications: A, B and S	Both	<ul style="list-style-type: none"> • Reduced inspections • Expedited transactions • Cost savings • MRA • Customs partnership
Malaysia	Golden Client Scheme / AEO scheme	Only successful applicants receive a priority classification	Both	<ul style="list-style-type: none"> • Customs partnership • Expedited transactions • Cost savings
Singapore	TradeFirst programme	Customs divides importers/exporters into 5 categories; Premium, Enhanced, Intermediate, Standard, Basic	Qualitative	<ul style="list-style-type: none"> • Expedited transactions • Cost savings • Customs partnership • MRA
Thailand	Golden card scheme / AEO scheme	Only successful applicants receive a priority classification	Both	<ul style="list-style-type: none"> • Expedited transactions • Reduced inspections

1. Quantitative evaluation criteria refer to an eligibility requirement based upon a certain number of import/export transactions, value, error rate, etc. Qualitative evaluation criteria involve Customs assessment of an import/exporter's internal compliance procedures.
2. "Expedited transactions" refers to benefits involving a speeding up of transaction processing time. "Declaration prior to arrival" for example.
3. "Cost savings" refers to benefits that can result in reduced import/export transaction cost such as exemption from guarantee requirements.
4. "Customs partnership" refers to benefits such as assigning a designated Customs account manager to assist importers/exporters in their interaction with Customs.
5. MRA refers to Mutual Recognition Agreement, a bilateral arrangement whereby two countries agree that participation in one country confers benefits in the other country as well.

Authorised Economic Operators (AEOs)

In an attempt to create minimum cargo security standards, the World Customs Organization (WCO) introduced the *SAFE Framework of Standards* in 2005. The Framework includes the somewhat awkwardly named concept of the Authorised Economic Operator (AEO). The AEO term is intended to capture all potential parties to an international movement of goods that a Customs authority may wish to control including importers, exporters, brokers, carriers, ports, terminal operators, etc. An AEO can be any one of these parties that has gone through a screening process and been granted an “authorised” status. Many countries have now begun to name their cargo security programmes “AEO programmes”.

According to the SAFE Framework, all AEOs should be subject to a minimum set of security provisions contained within the national cargo security programmes. A fundamental aspect of the SAFE Framework is its understanding that the support and participation of private sector business is crucial to the success of any AEO programme. The Framework explicitly recognises the need for Customs authorities to offer tangible benefits to AEO participants above and beyond non-participants in order to encourage active participation in these programmes.

The SAFE Framework contains 13 core elements expected to be contained in any national AEO programme. Each national jurisdiction may expand these elements or add on its own as it so chooses.

Core elements of the SAFE Framework

- History of Customs compliance
- Satisfactory management of commercial records
- Financial viability
- Consultation, cooperation and communication with Customs
- Education, training and awareness programme
- Information exchange, access and confidentiality controls
- Cargo security procedures
- Conveyance security
- Premises security
- Personnel security
- Trading partner security
- Crisis management and incident recovery
- Measurement, analysis and improvement methods

The SAFE Framework also recommends certain benefits that Customs authorities may offer AEO programme participants, including:

- Expedited cargo clearance, reduced transit times, and lower storage costs
- Access to information of value to AEO participants
- Special priority treatments related to periods of trade disruption or elevated threat level

- First consideration for participation in any new facilitation schemes
- Mutual recognition of AEO programmes allowing traders to enjoy benefits worldwide

Do the AEO programmes being designed and implemented in Asia follow the SAFE Framework and deliver the recommended benefits?

The Asia AEO landscape

Japan and South Korea have both implemented stand-alone AEO programmes while Singapore, Malaysia and Thailand have tied their version of AEO onto existing trade facilitation programmes. On the surface, the benefits promised by many of these programmes appear very attractive.

However, importers and exporters have quite mixed experience with the actual application process and the realisation of promised benefits.

Practical benefits and challenges of trade facilitation / AEO programmes

China	Designation as an AA or A enterprise allows application to certain Customs programmes that can convey real benefit such as the “release against guarantee” programme.
Indonesia	Priority lane importers are able to enjoy benefits with regards to reduced inspections and faster clearance time.
Japan	AEO programme applicants can find it difficult to meet Japan Customs expectations. Programme participants often report finding few tangible benefits
South Korea	AEO participants that qualify for the higher bands can realise real benefits with regards to improved transaction time and to pay duties on a monthly consolidated basis.
Malaysia	Customs Golden Clients (CGC) enjoy the privileges of a single contact point in liaison with Customs. Cargos are usually subject to minimum random inspection which is a real benefit. Smaller businesses find it hard to qualify as their turnover is less than RM50 million per annum (for Licensed Manufacturing Warehouse - RM25 million). CGC also needs to provide a bond/bank guarantee in an amount determined by Customs, and must use Electronic Fund Transfer (EFT) for payment to Customs.
Singapore	An enterprise's classification designation as assigned by Singapore Customs determines which of the many trade facilitation schemes available in Singapore an importer/exporter is eligible for. For example, to be eligible for bulk export licenses of strategic goods, an exporter should be classified in at least the Enhanced band.

Intangible benefits

In addition to the tangible benefits promised (if not fully delivered) by various trade facilitation and AEO programmes, there are also less tangible benefits that companies may enjoy, including:

- collaboration with Customs: in some countries, Customs may be reluctant to strongly challenge a company that they have awarded a priority status to.
- supply chain improvements: by forcing companies to take a fresh look at often long-standing practices around cargo handling and logistics, efficiency opportunities may be identified as well as new procedures that can reduce cargo loss.
- intellectual property protection: robust IT security expectations contained in many AEO programmes can help protect intellectual property.

Evaluate and apply

Importers in Asia should make an assessment on the tangible and intangible benefits which trade facilitation and AEO programmes may have upon their business, and perform a gap analysis to understand how difficult it may be to attain priority certification. If the perceived benefits are high and the gap between current practice and the programme's expectations can be bridged, importers may find it well worth the time and expense involved in the process.

ASEAN



ASEAN and Japan accelerate cooperation in trade facilitation

Following the implementation of the ASEAN Japan Comprehensive Economic Partnership (AJCEP) in 2009, ASEAN and Japan trade and customs representatives as well as the World Customs Organisation recently met up to further streamline trade facilitation measures between the two parties.

Currently, the customs procedures of the various countries are diverse and pose administrative challenges to the custom declaration process.

Japan operates a National Single Window system, under which companies submit key data for all import and export procedures only once. Japan has promised to provide assistance to ASEAN nations to establish similar systems and connect them with Japan's system so that governments can have a common platform to share information such as export permits and certificates of origin in real time. Companies would benefit from these streamlined measures, one of which is to avoid preparing large amount of documents for cross-border clearance of their shipments.

There are also plans to discuss the implementation of the AEO programme in each country if they do not have any. The AEO programme seeks to strengthen the security level of supply chain whilst not unnecessarily impeding trade facilitation. Provided that the companies on AEO programmes meet the criteria of internal security and compliance controls, they may enjoy a faster clearance of its cargo due overseas. There may also be scope in future for countries with national AEO programmes to have mutual recognition arrangements between one another, so that companies would enjoy faster cargo clearance through these countries with a single qualification for a national AEO programme in one of the countries.

Japan has targeted to assist ASEAN countries to introduce AEO systems by 2018, starting first with Vietnam, Indonesia and the Philippines.

Export controls



Australia – Defence Trade Controls Bill introduced

The Defence Trade Controls Bill, outlined in the November/December 2010 issue of Trade Intelligence, was slated to be introduced into the Australian House of Representatives in the Winter Sitting commencing 10 May 2011. [Note: We understand that this bill has yet to be introduced at time of publication.]

The purpose of this bill is to implement the Australia–United States (US) Defence Trade Cooperation Treaty and strengthen Australia’s controls over the export, transfer and brokering of defence and dual-use goods, technology and services.

Malaysia – updates on Strategic Trade Act

In the January/February 2011 edition of Trade Intelligence, we highlighted that Internal Compliance Programme (ICP) may be made mandatory for companies that wish to take advantage of bulk and multiple-use permits.

The Strategic Trade Secretariat (STS) has since released an ICP Guide and ICP Checklist, confirming that ICP is indeed a prerequisite for bulk and multiple-use permits. This is available at Ministry of International Trade and Industry’s website (<http://www.miti.gov.my>).

These official documents stressed that the steps set out in the Checklist are the “minimum requirement” to merit consideration for bulk or multi-use permit. The application process requires applicant companies to complete and submit the Checklist accompanied with a letter bearing the company letterhead signed by the designated person identified as the overall in-charge of export control in the online registration system (i.e. DagangNet).

It has also been reported that the permit application/processing module of the online system (Dagang-Net) is not fully functional as anticipated at this point in time. STS has advised license applicants to submit their application manually (by hand) in the interim. . We understand that processing time is estimated to take no more than two weeks, assuming information and supporting documents are complete.

We also understand that to date, the STS has already issued multiple use permits to several qualified applicants, reflecting its position that trade facilitation remains a top priority for eligible parties.

FTA focus

Agreements concluded	
EU–Colombia–Peru FTA	24 March 2011
Agreements signed	
South Korea–Peru FTA	21 March 2011
Peru –Mexico FTA	06 April 2011
Agreements entered into force	
ASEAN–India FTA (implemented by Philippines)	17 May 2011

European Union–Colombia–Peru FTA initialled

The text of the European Union (EU) –Colombia–Peru FTA was initialled by the chief negotiators of the European Commission, Colombia and Peru on 24 March 2011.

This FTA is a comprehensive one covering areas of trade in goods, trade in services, movement of capital, government procurement, intellectual property and competition, among others.

Under the trade in goods chapter, tariffs will be eliminated in all industrial and fisheries products and there will be substantial tariff cuts in the agricultural markets. In addition to the trade in goods, the FTA will also improve access to the services sectors and reduce technical barriers to trade. The FTA also deals with intellectual property rights and anti-competition rules.

The EU–Colombia–Peru FTA will undergo the process of translation, then officially signed and ratified by all parties before it can formally enter into force.

EU–India FTA negotiations progress

The tenth round of the EU–India FTA negotiations took place in March 2011. There was significant progress and the remaining unresolved issues included the opening up of the automotive and wines sectors, and EU visas to be granted to Indian professionals. Under the agreement, both sides aim to have import tariffs eliminated for most industrial and agricultural goods, opening up the services market and have more liberal rules on investment.

The next round of meeting of the officials is expected to take place in May 2011 in New Delhi.

Mexico–Peru FTA signed

The Mexico–Peru FTA was signed on 6 April 2011. Both countries are looking forward to having Chile and Colombia to join the agreement with the aim of jointly reaching out to the Asian market.

Peru and Mexico already have in place an Economic Complementation Agreement that was signed in 1987. However, the number of products accorded tariff concessions was very limited. With the new Mexico–Peru FTA, the number of product lines granted tariff concessions have been increased from 700 to 12,000 lines. Ratification of the FTA is required by both sides after their respective internal procedures have been completed. It is expected that the FTA will enter into force in July this year.

Peru–South Korea FTA signed

South Korea and Peru signed the South Korea–Peru Free Trade Agreement (FTA) on 21 March 2011 after five rounds of negotiations over two years.

Under the agreement, tariffs will be eliminated within 10 years from the date of entry into force. According to press releases, this FTA is expected to boost bilateral trade by around 50%.

Bilateral trade between the two countries has hit the record high of US\$1.98 billion in 2010, doubling the amount recorded in 2006. For South Korea, the FTA will not only open up access to Peru, but also to the Andean Community consisting of Bolivia, Colombia, Ecuador and Peru.

Once implemented, both sides will benefit from immediate tariff cuts on certain products. For example, televisions and certain types of South Korean cars can enter Peru duty free and Peruvian coffee will enter South Korea with no tariffs imposed.



South Korea–US FTA ratification pushed back

The South Korean Cabinet has agreed to revoke a ratification bill for the South Korea–US Free Trade Agreement (KORUS FTA) on 28 April 2011 as errors have been found in the Korean text of the Agreement.

South Korea will rectify it before submitting a new bill to the National Assembly in May. The KORUS FTA was renegotiated in December 2010, three years after the original agreement was signed in June 2007. On the other hand, the Obama Administration had reiterated that it will soon submit the KORUS FTA to Congress for ratification.

The KORUS FTA is the second FTA that has been blocked due to translation errors in the Korean version. The EU–South Korea FTA has also met with the same situation where the Korean version of the FTA was found to contain many translation errors. In March this year, more errors were found in the second submission of the translated Korean text of the agreement to the Cabinet.

South Korea has not placed any timeline for the ratification of the KORUS FTA yet but the EU–South Korea FTA is set to enter into force 1 July this year. The translation issue will definitely stall the ratification process for both agreements until all errors are fixed.

Trans-Pacific Partnership negotiations progress

The sixth Trans-Pacific Partnership (TPP) negotiating round was held in Singapore from 27 March to 1 April 2011. Nine countries were involved in this negotiating round – Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, US and Vietnam. More than 400 negotiators participated in this negotiating round, covering discussions in goods, services, investment, intellectual property, e-commerce, environment and governmental procurement.

For the trade in goods chapter, countries discussed the initial market access offers and product-specific rules of origin. The concept of cumulation was also discussed among the negotiating groups with the aim of creating a regional FTA that could cater to the supply chain models of modern businesses. The negotiators also discussed proposals that would make the agreement flexible for new members beyond the nine current participating countries to join.

Besides the negotiators from the nine participating countries, a Stakeholders' Forum was held on 27 March where stakeholders were invited to exchange views with the negotiators. Another similar session was held for labour unions, employers' federations and chambers of commerce on 20 March.

The next round of negotiations will be held in Vietnam from 20 to 24 June 2011.

US–Brazil Trade and Economic Cooperation Agreement signed

The US and Brazil signed a Trade and Economic Cooperation Agreement (TECA) on 19 March 2011. The agreement provides a platform for both countries to further discuss areas of trade and economic cooperation. Under the agreement, the Brazil–US Commission on Economic and Trade Relations is established.

The commission is tasked with, among other responsibilities, identifying opportunities for expanding bilateral trade and investment flows. The commission is also due to organise meetings and establish working groups where appropriate.

As per the agreement, some issues that the commission will consider are:

- Facilitation and liberalisation of bilateral trade and investment
- Cooperation on shared objectives in the World Trade Organisation
- Cooperation in the US–Brazil Consultative Committee on Agriculture
- Sanitary and phytosanitary measures
- Intellectual property rights
- Trade in services; etc.

Country reports

Australia

Australia's trade policy released

Australia's Federal Government has recently released a document titled "Trading our way to more jobs and prosperity" which outlines their new approach and continued commitment to trade liberalisation.

Seen as a way to diversify an economy too heavily reliant on the mining boom, the Government considers growth in export trade to be a path to a high-skill, high-wage future.

Although immensely beneficial to the continued resilience of the Australian economy, the mining boom has entrenched a two-speed economy characterised by the prosperity of mining-based industries and regions while other industries and regions are hampered by the redistribution of capital, labour and skills which has accompanied the boom.

While the recent Doha Round of multilateral trade negotiations was characterised by international fear that increased exposure to trade might hamper the ongoing recovery of domestic industries affected by the recession, the Australian Government sees liberalisation as a path to new jobs and opportunities. For this reason the Government intends to support and protect the multilateral system while also negotiating high-quality truly liberalising bilateral and regional trade deals. This policy of trade liberalisation will be guided by the following five key principles:

- Unilateralism – future trade negotiations will be assessed in terms of whether Australia will derive a net benefit rather than whether the outcome is suitably quid pro quo;
- Non-discrimination – inefficient trade diversion will be avoided as the government pursues trade agreements offering equal rather than preferential treatment compared with other nations;
- Separation – trade policy will no longer be influenced by politics with all countries willing to negotiate considered suitable trade partners;
- Transparency – negotiations will no longer be "sold" on the basis of hypothetical and unrealistic "best case scenario" modelling; and the
- Indivisibility of Trade Policy and Economic Reform – trade policy will be strongly aligned with domestic economic reform objectives of reviving productivity growth and enhancing competitiveness.

This new policy is reflected in the Government's current priorities, notably the ongoing negotiation of the Trans-Pacific Partnership Agreement as well as the pursuit of FTAs with Korea, Japan and China and the newly announced commencement of negotiations for a FTA with India.

Minimal impact on Japanese imports following earthquake and tsunami

Australian Customs Notice 2011/13, released on 25 March 2011, outlines the Australian response to potential health concerns associated with passengers and cargo arriving from Japan in the wake of recent natural disasters.

The Australian Customs and Border Protection Service (Customs) have been advised by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and the Chief Medical Officer that health risks to Australians returning from Japan are very low.

The Japanese Government, International Atomic Energy Agency (IAEA) and ARPANSA have however advised that there is a small chance that food from affected prefectures have been exposed to a very low level of radiation.

Advice from Food Standards Australia and New Zealand (FSANZ) indicates that the risk to consumers from Japanese food is negligible. The goods considered most likely to be effected include milk, leeks and spinach, none of which Australia imports from Japan. Australian food imports from Japan are generally limited to unaffected specialty products.

Nevertheless, as a precautionary measure FSANZ has requested that the Australian Quarantine and Inspection Service (AQIS) test fresh or frozen food originating from Fukushima, Gunma, Ibraki and Tochigi for unacceptable levels of radionuclides. As a further precautionary measure, passengers and importers have been advised to avoid fish, shellfish, seaweed and milk products from these areas as well as others likely to have been grown or marketed outdoors. As yet there has been no need for non-food imports to be afforded any special treatment.

The current Australian approach is consistent with countries sharing similar import profiles such as the UK, Canada and New Zealand. ARPANSA and the Department of Health and Ageing will continue to closely monitor and assess the situation.

Customs compliance update

The Australian Customs and Border Protection Service have recently released the latest quarterly Compliance Update publication. The headline issues within the update were:

- The introduction of a new three-month campaign being conducted by Customs with a view to establishing the level of non-compliance with the customs duty concessions for low value imports. Currently, goods valued under AU\$1,000 can be imported free of customs duty or goods and services tax. This campaign will run parallel to a productivity commission inquiry into the implications of globalisation for the Australian retail industry. Customs intends to use the information gathered through this campaign to inform future policy considerations regarding the concession.

- The update also restated the focus first outlined in the October 2010 Compliance Update on the importation of goods containing asbestos. Having implemented an initial response to this issue, Customs have developed profiles to identify other potential asbestos importers and engaged directly with clients as part of an outreach programme. These processes have resulted in an increase in the number of asbestos products being intercepted at the border.
- Customs' compliance monitoring programme has observed no significant difference in compliance error rates between the second quarter of 2010/11 and the same quarter of 2009/10. Of the errors observed in the fourth quarter, over 60% of these were attributable to four error types, namely invoice terms, the related transaction indicator, valuation date and currency.

Other areas of interest mentioned in the update include a 2011 focus on improving the quality of cargo reporting and cargo control, and decreasing the number of import declarations which are invalidly withdrawn.



China

Issuance procedures for new ACFTA Movement Certificate

Further to the enforcement of new ACFTA Operational Certificate Procedures earlier this year, the GAC released [2011] Announcement No.11 on 3 March 2011 regarding the issuance procedures of the Movement Certificate (MC). The Announcement covers:

- Define the qualifying criteria that Customs would apply to issue the MC
- Stipulate document requirements for the application of MC
- Clarify the application procedure, effective period, number of copies, retrospective issuance etc.
- In case the destination in ASEAN changes after the issuance of MC, a new MC may be re-issued against the original one



Revised investment catalogue brings changes to China's foreign investment regime

China released the draft of the revised Catalogue Guiding Foreign Investment in Industry ("2011 Catalogue") for comment on 1 April 2011. The current Catalogue in force was released in 2007. Specifically, the catalogue retains restrictions on investment in many services sectors and imposes new constraints on manufacturing processes in various sectors such as new energy and agriculture. The draft is open for comment for 30 days, and PRC regulators may make further revisions to the final version.

The catalogue aims to support China's overall economic and industry policy goals, as outlined in the 12th Five-Year Plan (FYP, 2011-15) and other major policy documents. The revised catalogue directs more foreign investment toward high-tech and environmental protection sectors. This is in line with the government's plans to move its industrial capacity up the value chain, creating a more energy-efficient industrial base, and foster the development of advanced technologies.

In particular, many investments added to the encouraged category appear to fit within China's strategic emerging industries that the government expects will drive economic growth over the next decade. For example, the revised catalogue adds under the encouraged category resource recycling, pollution treatment and waste processing technologies, the key subsectors in the energy efficiency and environmental conservation industry.

Once qualified under the "Encouraged List", foreign investors will be able to enjoy customs duty exemption on imported capital equipment, more corporate income tax incentives as well as more "green lights" on government approvals (e.g. Interim Duty Rate approvals).

Preferential policy on R&D equipment imported by foreign invested R&D centre

A circular was issued by the GAC internally [Shushuifa 2011/69] in late March 2011 to provide implementation guidelines for assessment of import duties / VAT exemption / refund for R&D equipment imported by foreign R&D centres. The circular outlines the following:

- Customs will get involved in the process of reviewing and approving the foreign R&D centre qualification.
- Import of duty free equipment by qualified foreign R&D centre will be administered by Customs under the current duty preferential import administration system.
- Some trade mode for the duty-free R&D equipment may change upon equipment clearance.
- Provisions on qualified R&D centre duty refund allowed under specific conditions.

Second amendment of WCO Explanatory Notes

On 27 April 2011, the GAC released *Announcement [2011] No. 25* to promulgate the revised Explanatory Notes in Chinese. This is the second amendment of the 2007 version of Chinese Explanatory Notes before the anticipated 2012 new version of WCO Explanatory Notes. The amendment covers:

- General Rules of Interpretations One (GRI 1)
- Terms of heading 0210, 0902, 1401, 1701, 2805, 2814, 2823, 2852, 2909, 2922, 2923, 2927, 2928, 2931, 3002, 3003, 3206, 3214, 3301, 3824, 3907, 4101, 4202, 4412, 4814, 5702, 7107, 8415, 8419, 8424, 8428, 8433, 8436, 8451, 8472, 8479, 8508, 8509, 8536, 8541, 8711, 9006, 9021, 9025, 9027, 9028, 9504, 9605.
- Notes to Chapter 12, 28, 29, 38, 39, 84.



2011 Commodity Classification Rulings (II)

The GAC published the second batch of 2011 commodity classification rulings, including LCD display for mobile phones, LCD monitor, motor-yacht and etc. The ruling will come into effect from 1 May 2011.

Duty exemption scheme for travellers leaving Hainan Island

The GAC published "Interim Implementation on Supervision of the Duty Exemption Scheme upon Travellers Leaving Hainan Island" *GAC Announcement [2011] No. 20* on 30 March 2011. The ruling stipulates that the duty exemption quota for travellers is RMB5,000. The value of duty free goods is assessed based on the retail price.

Hong Kong

Implementation details for textiles licensing requirements

Further to the *Circular No. 1/2011* issued by the Hong Kong Trade and Industry Department (TID) on 17 January, 2011 regarding relaxation of textile licensing requirements, the TID has now outlined the implementation details for the same under *Circular No. 2/2011*.

Textile traders are reminded that the liberalised licensing arrangements will be taken into effect from *20 May 2011* onwards, subject to completion of legislative process. For the scope of adjustments made to existing textile licensing requirements, please refer to our Trade Intelligence Asia Pacific January/ February 2011 issue.

We have highlighted below some of the implementation details:

1. Textiles imports and exports involving “non-sensitive markets”

Comprehensive licenses (CL)

- CL will become invalid upon implementation of the liberalised licensing arrangements
- TID will cease accepting CL applications three working days before the liberalisation arrangements are taken into effect (tentatively after 13 May 2011)
- Requests for amendment or cancellation of CL will continue to be accepted until new arrangements take place
- Consignment-specific textile licenses (CSTL)
- Upon announcement of the implementation date of the liberalised licensing arrangements, TID will cease from accepting applications for CSTL (i.e. Export License (Textiles) Form 4 and Import License (Textiles) Form 7) for shipments involving “non-sensitive markets” to be made after the new arrangements come into effect

- Post-shipment amendments to approved CSTL for shipments involving “non-sensitive markets” or requests for cancellation of licenses will continue to be accepted
- Unused approved licenses for shipments involving “non-sensitive markets” will automatically lapse/ expire upon commencement of the new arrangements

2. Textiles transshipments

- Licensing requirements for all textile trans-shipments will be abolished after the new arrangements take effect
- Electronic Textile Trader Registration Scheme (TTRS) service will reject any lodgement of fresh Transshipment Notification (TN) after the new arrangements take effect
- Textile transshipments brought into Hong Kong prior to licensing liberalisation but to be exported after licensing liberalisation will not require TN (outbound) under TTRS for the outbound shipment
- A new set of exemption conditions under the TTRS will be put into effect along with the new arrangements

3. Textiles re-exports

- Upon removal of licensing requirements for “non-sensitive markets”, relevant back-to-back import license/ notification number(s) need not be provided if the goods are imported from places other than China
- For further details, please refer to the full Circular available at TID’s official website (www.tid.gov.hk).

Indonesia

Revision of import duty rate for 190 HS Codes

The Ministry of Finance has revised the import duty rate of 190 HS (Harmonized System) codes. This revision is set out in Ministry of Finance regulation *No. 80/PMK.011/2011* on the stipulation of classification of goods and the imposition of import duty. This regulation was dated 13 April 2011 and has become effective from 18 April 2011.

The revision affects import duties on capital goods imported for use in certain industries, raw materials, certain vessels and film equipment.

The regulation contains three attachments: attachments one and two include the 25 HS codes that cover machinery (HS Code 8442, 8445, and 8453) and certain vessels (HS code 8901, 8904, and 8905). The third attachment regulates the revision of 157 HS codes for industry raw materials and 8 HS codes for packed fish products, candies and chocolate.

The effective dates of the changes of import duty rate under this regulation are:

- Attachment 1 is effective from 18 April 2011 to 31 December 2011 (some machinery and vessels attract no import duty).
- Attachment 2 is effective from 1 January 2012 (those machinery and vessels in attachment 1 will become liable to 5% import duty).
- Attachment 3 was effective from 18 April 2011 (this covers some raw materials, food products, capital goods for certain industry, materials and film equipment).

ASEAN–China FTA (ACFTA) rules on triangular invoicing not ratified

The Indonesian Ministry of Trade has confirmed that the updated ACFTA rules recognising triangular invoicing transactions have not been ratified.

It is confirmed that even though Hong Kong is geographically a part of China, they are separate territories for purposes of the FTA. In this situation, triangular invoicing via a Hong Kong entity can only benefit from the revised ACFTA rules after Indonesia has ratified it.

Hence, companies importing electronic products should be aware of circular letter *SE-05/BC/2010 jo. SE-16/BC/2010*, which emphasises that ACFTA preferential certificate of origin (Form E) cannot be used for exports originating from Hong Kong. Exports from Hong Kong will be subject to full import duty rate.

Safeguard duty on certain products imported

Indonesia is imposing safeguard duty on five types of imported goods.

The safeguard duty is an additional duty levied on top of the Most Favoured Nation (MFN) import duties or preferential duties. The safeguard duty applies to all importing countries except those countries which are listed in the Ministry regulations (i.e. Brunei, Cambodia, etc.)

The safeguard duty applies for Import Declarations dated 23 March 2011 or later. The list of goods is as follows:

Products	HS Code	1st Period*	2nd Period**	3rd Period***
Steel wire ropes – Stranded wire, ropes and cables	7312.10.90.00	Rp. 24.080/kg	Rp. 21.464/kg	Rp. 18.849/kg
Steel wire ropes – Locked foil, flattened strands and non-rotating wire ropes not plated nor coated with brass	7312.10.10.00	Rp. 18.620/kg	Rp. 17.326/kg	Rp. 16.858/kg
Wire of iron or non-alloy steel plated or coated with zinc containing by weight less than 0,25% of carbon	7217.20.10.00	Rp. 6.658/kg	Rp. 5.648/kg	Rp. 4.629/kg
Wire of iron or non-alloy steel not plated or coated, whether or not polished, containing by weight less than 0,25% of carbon	7217.10.10.00	Rp. 7.767/kg	Rp. 7.216/kg	Rp. 6.665/kg
Woven fabrics of cotton	5208, 5209, 5210, 5211, 5212 (certain HS Codes, not all)	Rp. 116.800/kg	Rp. 109.500/kg	Rp. 102.200/kg

* First year, within 1 year period from the regulation date

** Second year, within 1 year period from the end of period 1

*** Third year, within 1 year period from the end of period 2

Companies importing goods on the above list may need to read the relevant regulations in detail to comply with this new arrangement.

New regulations:

- 63/PMK.04/2011: Ministry of Finance regulation on Customs registration. The regulation letter was issued on 30 March 2011 and will become effective on 27 June 2011.
- 787 /KM.4/2011: Ministry of Finance decree on stipulation of export price to determine export duty. The regulation was issued on 27 April 2011 and will be effective from 1 May 2011 until 31 May 2011.

Malaysia

Medical Device Bill introduced

The Medical Device Bill will be introduced in June 2011's Parliament sitting. The proposed legislation is aimed at preventing sub-standard and unsafe medical tools and machines from reaching the Malaysian market. The regulated devices range from radiology machines to stethoscopes and surgical gloves.

It is anticipated that devices regulated under the proposed law will need to comply with licensing and permit requirements before being imported, sold or distributed in the country once it is enforced.

At present, Malaysia implements the Voluntary Registration Scheme for Establishments Dealing with Medical Devices (MeDVER) which was launched in early 2006. MeDVER was introduced to prepare the industry for a smooth transition into full enforcement of medical device regulation. MeDVER will continue until the draft Bill is approved by Parliament. It was reported that more than 500 establishments have already voluntarily registered with MeDVER, including distributors, importers, exporters and manufacturers, involving more than 4,000 medical devices.

Certification for Japan originating food

In response to radioactive contamination following the nuclear crisis in Japan, the Ministry of Health (MOH) has imposed a condition requiring imports of Japanese food and agriculture produce to be accompanied by a certificate of radioactivity effective from 15 April 2011.

With effect from 27 April 2011, all food imported from Japan have to be accompanied with declarations of the Competent Authorities in certifying one of the following:

- The food is harvested and/or processed before 11 March 2011; or
- The food originates from a prefecture other than Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamagata, Niigata, Kanagawa, Saitama, Tokyo and Chiba; or
- The food originating from Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamagata, Niigata, Kanagawa, Saitama, Tokyo and Chiba has been sampled and tested to determine the level of radionuclides Iodine-131, Cesium-134 and Cesium-137, and is found to be in compliance with the Codex standard as in the Certificate of Analysis provided.

During the interim period from 27 April to 22 May 2011, any food from Japan without the declaration from the Competent Authority in Japan will be subject to Hold, Test and Release (HTR) at the entry point. Under this HTR procedure, samples will be taken by MOH enforcement officers at the entry point. The analytical cost will be borne by the importers. Further information on compliance procedures and costs are available on the website of the Food Safety and Quality division of the Ministry of Health. (<http://fsq.moh.gov.my>)

Philippines

The Bureau of Customs on drive to audit preferential origin claims

The Bureau of Customs (BOC) in the Philippines has issued an order to launch post import-clearance audits of import shipments in 2010 that were erroneously granted preferential tariff.

According to the estimated figures from BOC, more than 118,000 import entries were granted preferential tariff in 2010. Amongst them, there were tens of thousands of import shipments last year that did not actually qualify for preferential tariff but had claimed them. This cost the BOC about 600 million Pesos (~US\$14 million) in revenue.

Preliminary investigations by BOC have narrowed down to shipments that were imported from China, Korea and Vietnam under preferential tariff treatment granted by the ASEAN-China FTA, the ASEAN-Korean FTA and the ASEAN FTA.

The BOC has also highlighted some specific cases where certain commodities originating from China had been wrongly declared to enjoy preferential treatment. They included corn, flour, sweet corn powder, diammonium phosphate, x-ray film, plywood veneer, cotton fibre and colour television.

Given the pressure on BOC to meet their annual revenue collection targets, companies that have previously enjoyed or are enjoying preferential tariff treatment granted under the above mentioned FTAs are recommended to conduct an internal review of their operations and reconfirm that they do comply with the respective rules of origin.

Robust recordkeeping practices are an essential component for companies to conduct such an internal review and to prove to the BOC that they do indeed meet the rules of origin. In the event that the rules of origin are not met, it would be prudent for companies to actively manage the risks of non-compliance and to lodge voluntary disclosures where necessary.



Singapore

Import license requirement for sand and granite

The Building and Construction Authority (BCA) of Singapore has implemented an Import License Scheme for the importation of sand and granite. The license requirements took effect 15 April 2011 and require importers to apply for a license from the BCA prior importation of the following materials which are suitable for use in any building works, street works or railway works in Singapore:

- Granite – whereby aggregate gravel, stone or overburden which size shall not be more than 75 millimetres at its widest part.

- Sand – excludes any unwashed or unprocessed marine-dredged sand or gravel.

The following imports of sand and granite is exempted from the Scheme:

- Any consignment of not more than 50kg
- Any consignment solely for use in land reclamation works along the coast of Singapore and in any ship or vessel without landing in Singapore

The below table lists the applicable HS codes and Product codes for essential construction materials (sand and granite) for which the licence requirement may be applicable.

HS code	HS Code description	Product code	Product code description
25051000	Silica and quartz sands (TNE)	BCASWM	Washed or processed marine sand
		BCASPS	Processed land / river sand
		BCASLS	Land sand
		BCASRS	River sand
		BCASUM	Unwashed or unprocessed marine sand
25059000	Other natural sands (TNE)	BCASWM	Washed or processed marine sand
		BCASPS	Processed land / river sand
		BCASLS	Land sand
		BCASRS	River sand
		BCASUM	Unwashed or unprocessed marine sand
		BCAOTHERS1	Clayey, felsphatic, kaolinic sand (not for construction use)
25161100	Granite crude or roughly trimmed (TNE)	BCAGO4	Granite dust / granite fine aggregates
		BCAG10	Granite, 5-10MM
		BCAG14	Granite, 12,5-14MM
		BCAG20	Granite, 20MM
		BCAG50	Granite, graded stones (max 50mm)
		BCAG75	Granite, crushed run (max 75mm)
		BCAGQW	Quarry waste
		BCAOTHERG1	Granite (more than 75mm)
25171000	Pebbles gravel broken stone for concrete aggregates road and railway or other ballast (TNE)	BCAOTHERG2	Gravel, pebbles, Shingles and stone excluding granite materials
25174900	Granules chippings and powder of other stones of heading 2515 or 2516 (TNE)	BCAGO4	Granite dust / granite fine aggregates
		BCAG10	Granite, 5-10mm
		BCAG14	Granite, 12.5-14mm
		BCAGQW	Quarry waste
		BCAOTHERG3	Sandstone or mable (chippings, granules and powder)

New regulations for safer consumer goods

The Singapore government have introduced new consumer protection regulations to enhance the safety of consumer goods on the Singapore market. The new regulations entered into effect on 1 April 2011 with the aim to protect users from unsafe consumer goods. Goods covered under the regulations include toys, children's products, apparels, sports and recreation products, furniture, etc.

SPRING Singapore has been appointed by the Ministry of Trade and Industry (MTI) as the Safety Authority to administer the new regulations. As a result, Spring Singapore has the power to investigate, stop the supply / sale of, or ban unsafe consumer goods that do not meet applicable safety standards from entering the Singapore market. In addition to performing regulatory and enforcement functions, SPRING Singapore will also be able to direct suppliers to inform users of the potential danger of such goods.

Upon implementation, the new regulations will contribute to bringing the safety of consumer goods in Singapore in line with international standards as published by bodies such as the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC), or the European Committee for Standardisation or ASTM International (US).

The following list of consumer goods does not fall under the new regulations as they are separately regulated under other existing regulations:

- Food products and utensils containing/contacting food or beverages
- Cosmetics, medical devices, pharmaceuticals and Chinese proprietary medicines
- Motor vehicles

- Motorcycle helmets and children car seats
- 45 categories of household electrical, electronic and gas products (Controlled Goods)

Retailers who do not comply with SPRING Singapore's directions will face a maximum fine of SG\$10,000 and /or two-year imprisonment.

Taiwan

Luxury tax passed by Legislative Yuan

On 15 April 2011, Taiwan's Legislative Yuan passed the Regulations on Certain Luxury Items and Services Tax. The Executive Yuan is currently in the process of finalising the date and details for implementation. A high level overview of the regulations is as follows:

The following categories will be subject to luxury tax ranging from 10% to 15% depending on the type of goods/services:

- Real estate, including houses and lands, sold within two years after acquirement.
- Vehicles which carry nine seats or less sold for the retail price or imported at customs value over NT 3,000,000 per item.

- Yachts sold for the retail price or imported at customs value over NT\$3,000,000 per item.
- Airplanes, helicopters, or ultra-light vehicles sold for the retail price or imported at customs value over NT 3,000,000 per item.
- Tortoise shell, coral, ivory, fur, and wildlife products that are sold for the retail price or imported at customs value over NT 500,000 per item. However, wildlife and their products that are not listed as Protected Species in the Wildlife Conservation Act shall not be included.
- Furniture sold for the retail price or imported at customs value over NT 500,000 per item.
- Certain services that require membership fee over NT 500,000 per transaction. However, guarantee money that can be reimbursed shall not be included.

Thailand

Excise tax exemption on imported batteries

In the November/December 2010 issue of the *Trade Intelligence*, we highlighted that 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 the manufacturing of exports. The Excise Department has now implemented the Notification Pertaining to the Terms and Conditions for the *Excise Tax Exemption B.E. 2554 (2011)*.

To be eligible for the exemption, manufacturers are required to provide the imported batteries to battery users listed in the exemption. The application must be submitted prior to import clearance. Moreover, the battery users must also register with the Excise Department for the excise tax exemption prior to the purchase of imported batteries.

Non-compliance with the terms and conditions in the Notification may lead to rejection of the excise tax exemption. This may also include the re-assessment of outstanding excise tax, tax penalty and tax fine for the imported batteries.

Proposal on automobile tariff restructuring in the works

An automobile tariff restructuring which aims to reduce pollution and improve safety standards is slated to be proposed to the Cabinet. The Excise Department recently proposed the restructuring to the Ministry of Finance to disentangle the complexity of the automobile tariff collection.

The principle of the automobile tariff restructuring will be based on safety standards and pollution emission of the automobiles instead of the size of the engine which may affect the price of automobiles depending on the type of the automobiles.

Currently, the excise tax rate for automobiles using renewable energy with engine size less than 3,000 cc is 20% and automobiles using hybrid fuel and electric energy with engine size less than 3,000 cc is 10%. The proposed rates for the new tariff have not been announced yet.

New excise tax regime for cigarettes and other products

A new excise tax regime for cigarettes is slated to be implemented by applying retail prices as the tax basis, irrespective of whether the cigarettes have been locally produced or imported.

According to the Cabinet Resolution dated 12 April 2011, the cabinet agreed on a proposal for an amendment of the Tobacco Act where the tobacco taxes would be based on retail prices instead of the current “ex-factory price” for locally produced cigarettes and CIF price for imported cigarettes.

In addition to the new tax base of cigarettes, this amendment also includes definitions for “retail price”, “excise tax liability”, “excise tax refund” and “excise tax surcharge” which are not stipulated in the current Tobacco Act.

Local manufacturers and importers should study these proposed amendments carefully. This new system may apply to other excise products in the future.

ACFTA Form E — discrepancy in exporter information

The Customs Tariff Bureau issued *Notification No 6/2011* on 23 March 2011 for exporters which are eligible for preferential tariff in ASEAN–China Free Trade Area, providing additional guidance in the implementation of preferential tariff pursuant to the Notification of Thai Customs Department No. 106/3010.

Earlier the Customs Tariff Bureau received complaints from exporters that in the case where the name of an exporter in Section 1 of Form E and the invoice is different from the bill of lading (B/L), the exporter may not be eligible to apply for the Certificate of Origin. This is a result of the interpretation of Section 7(C) of the “Operational Certification Procedures”

(OCP) under ACFTA which prescribes that all declarations in the Certificate of Origin must be in conformity with other supporting documents submitted for the certification procedure.

Verification of Exporter in Section 1 of Form E, invoice and B/L (not in a case of sales through a third-party country) must be filled out in conformity as follows:

Section 1 of Form E	Invoice	B/L	Preferential tariff
A (Exporter)	A (Exporter)	A (Exporter)	Eligible
A (Exporter)	A (Exporter)	B O/B A (B=Broker, A=Exporter)	Eligible
A (Exporter)	A (Exporter)	B (by B as a broker for A (Exporter) and both are in the same country)	Eligible

Vietnam

Electronic manifest pilot

The Prime Minister signed *Decision 19/2011/QD-TTg* on 23 March 2011 which will come into effect on 15 May 2011, providing a pilot run for receiving manifests and relevant documents electronically for the arrival and departure of vessels, as well as for the import and export of vessels.

Both Vietnamese and foreign vessels, shipping lines, agencies and forwarders are eligible to participate in this pilot programme. Seaport customs offices and port authorities will be the main government agencies participating in this programme. The complete list is still being verified by the Ministry of Finance at the moment.

The pilot will be implemented in 2011 to 2012 in Hai Phong, Da Nang, Ho Chi Minh city and Ba Ria – Vung Tau.

From 2012, the pilot will be extended to Quang Ninh, Quang Ngai, Binh Dinh, Khanh Hoa and Can Tho.

New list of consumable goods subjected to import duty

The Ministry of Industry and Trade (MoIT) issued *Circular 07/2011/TT-BCT* on 24 March 2011 which will be effective on 17 May 2011. The new circular replaces *Circular 20/2010/TT-BCT* to provide a list of consumable goods subjected to import duties.

According to the Circular, companies which import goods that are listed on the Circular will have to pay import duty upon importation. However, customs would consider giving deferral on import duties if such goods are used as raw materials.

New regulations for foreign construction contractors

On 30 March 2011, the Ministry of Industry and Trade (MoIT) issued *Circular 15/2011/TT-BCT* to regulate the import of materials, equipment and machinery by foreign construction contractors on importing of. This Circular was effective on 15 May 2011 to replace *Decision 3806/QD-BCT* dated 29 July 2009.

In this new Circular, contractors including sub-contractors need to register the list of materials, equipment and machinery to be imported for the purpose of carrying out construction projects in Vietnam with the MoIT. This list may be registered for a whole project or by phases of construction. In addition, the list must be agreed by the project owners before being registered with the MoIT.

After the completion of the construction project, contractors need to reconcile the registered materials, equipment and machinery with the authorities. Reconciliation can take the form of such products being re-exported, being re-sold in the domestic market or being destroyed.

New circular on the issuance of certificate of origin

The Ministry of Industry and Trade (MoIT) issued *Circular 06/2011/TT-BCT* on 21 March 2011 providing instruction for the application and issuance of certificate of origin (C/O). This Circular came into effect on 4 May, replacing relevant provisions in previous C/O circulars.

Under this Circular, the authorities will issue a C/O within four working hours for air shipments or eight working hours for sea/road shipments from the time of receiving a complete dossier. This is a significant reduction from the currently legislated processing time of three working days. If the applicant had violated preferential origin regulations in the previous six months, the C/O will be assessed and issued within three working days.

The C/O application may be made online or via the traditional hardcopy paper method. The MoIT encourages C/O applications via the internet and will process these applications as a priority.

Reduction of import duties for sugar products

On 1 March 2011, the Ministry of Finance issued *Circular 29/2011/TT-BTC* providing new import duty rates for sugar products classified in heading 1701. This Circular became effective on 15 April 2011. The amendments are highlighted as follows:

Heading	Description	Old MFN rate	New MFN rate
1701.11.00.00	-- Cane sugar	25	15
1701.12.00.00	-- Beet sugar	25	15
1701.91.00.00	-- Containing added flavouring or colouring matter	40	15
1701.99.11.00	---- White	40	15
1701.99.19.00	---- Other	40	15
1701.99.90.00	--- Other	40	15

Around the world

WTO



Standards in food and animal-plant measures

On 31 March 2011, the Sanitary and Phytosanitary (SPS) Measures Committee of the WTO gave the nod to a report submitted by 30 WTO members containing five “actions” points on private standard defining and information sharing.

This will enhance the possibility of private sector players joining in food safety and animal-plant health examinations under internationally recognised standards.

The key action points to be undertaken by the SPS Measures Committee include:

- developing an effective definition of private standards related to SPS.
- sharing of work progress with the “sister committees”, i.e. the World Organization for Animal Health, the International Plant Protection Convention, and the Codex Alimentarius (under the Food and Agriculture Organisation of the World Health Organization).
- Cooperating with the three “sister committees” to develop information highlighting the importance of global standards.

WTO disputes

DS413: measures affecting electronic payment services

On 25 March 2011, the WTO Dispute Settlement Body (DSB) established a panel on the request of the US. The case was initially brought up by the US on 15 September 2010, claiming that China has implemented certain measures that hamper other WTO members to access China's electronic payment service market.

The US asserts that China favours a specific organisation as the only entity that holds permission to supply electronic payment services for payment card transactions designated and paid in renminbi (RMB). This organisation also handles all Chinese-issued payment card transactions executed in RMB in Hong Kong or Macau.

China, on the other hand, commented that the US had chosen to request for a panel when genuine consultations could have been made. China also advocated that it had, contradictory to US accusations, complied with its obligations under General Agreement on Trade in Services (GATS). Australia, the EU, Guatemala, Japan and Korea reserved their third-party rights.

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