New Year’s resolution

Document my customs valuation compliance

Trade Intelligence Asia Pacific

December 2019/January 2020

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

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New Year's resolution:

document my customs valuation compliance

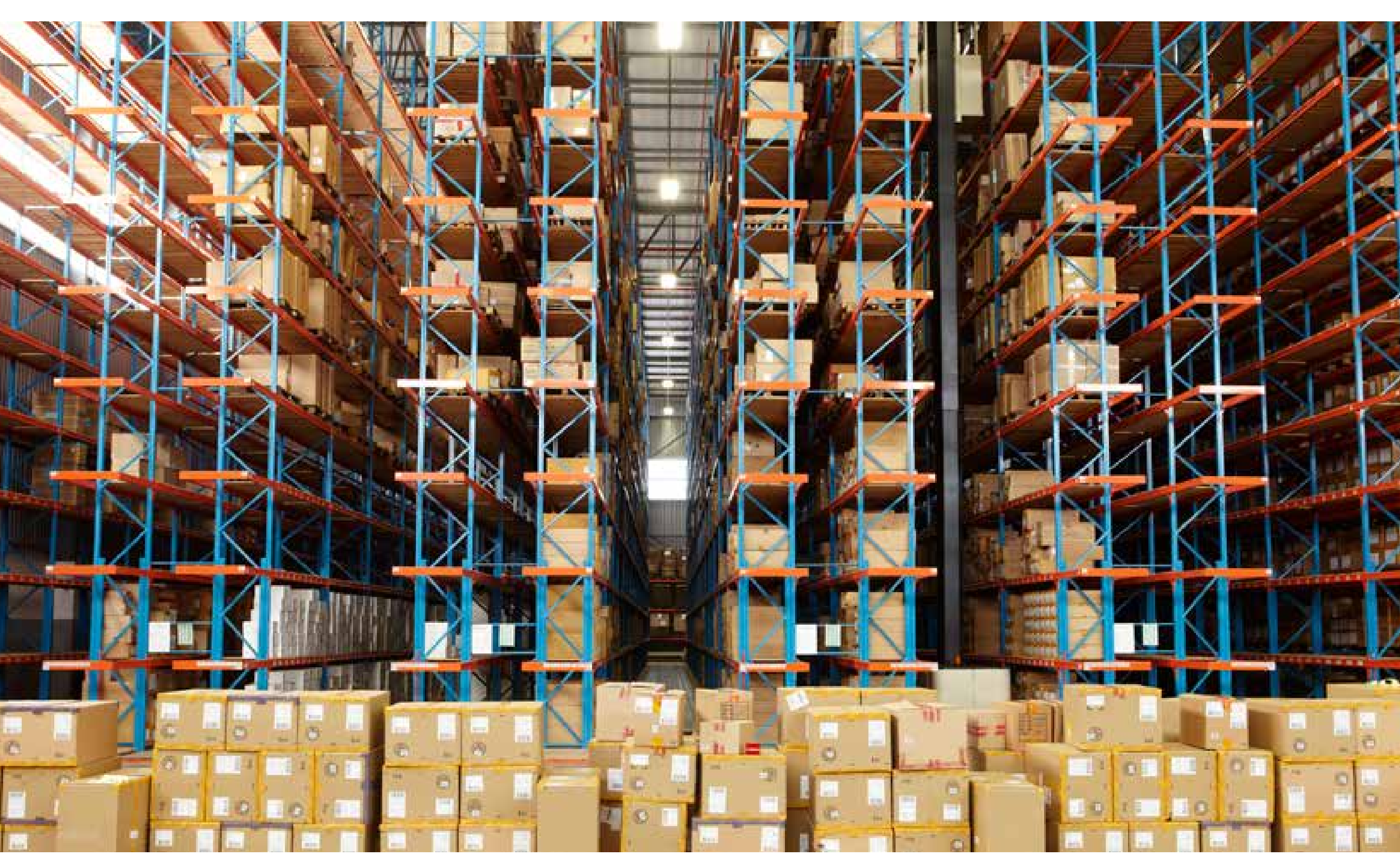
In the second article in our mini-series on customs valuation, we bring you our thoughts on how to be better placed to survive an audit.

When it comes to customs valuation compliance, our customs specialist peers in industries often find themselves in a very difficult situation. Intercompany prices that are used for import declarations, as well as intangible payment arrangements, were never determined or reviewed by them. In many cases they would not even have been notified prior to their implementation or adjustment. Meanwhile, any documented evidence of the arms' length nature of such prices or charges is almost always exclusively based on transfer pricing principles. This - in a world lacking with significant differences between customs valuation and transfer pricing rules - understandably is unsatisfactory for Customs. As a result, most in-house customs specialists will be on the back-foot when challenged by the authorities, and scrambling to put together coherent and cohesive responses to such challenges.

What's wrong with Transfer Pricing?

Customs auditors often seek to speak directly with representatives from departments with pricing decision power, typically Finance or Tax. In such eventuality, the knowledge and experience of such representatives of their company's finance and transfer pricing may not only be 'not helpful', but even create more trouble as their views and comments could well be out of line with customs valuation rules and expectations. A commonly known and straightforward example would be that high margin retained by importer generally indicates a 'green light' from an in-country transfer pricing perspective, but very much a 'red light' from a customs valuation perspective. Unguarded comments around "assists", "pricing determination at HQ", "trademarks" and so on and so forth can be just as damaging.

Having spent the best part of two decades trying to convince the various international organisations and national authorities on both sides of the spectrum to converge, we are clear that there is little chance of a 'one solution for all' for managing transfer



pricing and customs valuation. This is not just a simple matter of a high profit versus low profit battle, which is often presented as the main underlying reason of the tension between transfer pricing and customs valuation. It is more to do with a completely different view of the commercial world: one which is concerned with who is entitled to how much of the profit that sits in a value chain (or should take on the required loss) and one which is concerned with how much the price of a(ny) specific product should be. In the former world, the entitlement to profit drives all decisions on intercompany pricing, both looking forward and looking back. In the latter, the price of a product is paramount, determined not by how much profit anyone in its value chain should make, but by how much the market is willing to pay for it. As we mentioned in the last lead article, the OECD is looking to award a greater share of the value chain profits to distributors which will cause more concern to customs administrations.

It should be obvious, therefore, that any documentation that explains the direct tax position will be of very limited use to explain correct customs position. Not only is the objective different, but the wording will usually not reflect the appropriate regulatory requirements. Increasingly, we even see the customs authorities take an approach where they try to use such shortcomings in transfer pricing documentation to challenge declared customs values. As a (blunt) example, use of the Transactional Net Margin Method is often interpreted by the customs authorities as a profit split approach that is covered by the "proceeds of a subsequent resale" provisions of customs legislation.

What I want for Christmas: clear customs valuation rules

All of this leads to the nearly inevitable conclusion that multinationals should go beyond relying on transfer pricing documentation to support the customs values declared by the importing affiliates. Creating some level of documentation that does just that, being cognizant of transfer pricing policies yet ensuring that they are framed within the requirements and language of customs value compliance.

To some extent that sounds much easier than it is. One of the major challenges is the often subjective and occasionally outdated wording of customs valuation regulations. This leads to ambiguous and constantly changing interpretations and implementation of the World Trade Organization's agreement on customs valuation (let's call it the 'CVA', although formally it is the "Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade") across territories or even among different ports in one territory. This however does not mean customs and other relevant authorities have not endeavoured to improve clarity. On the contrary, new guidance on interpretation arises very often.

A recent Supreme Court decision in South Korea (case number: 2018Du38697) stipulates that failure to consider the time when goods are imported when selecting comparable companies for purpose of determining profit and general expenses applicable in a Deductive Value Test, which is often the case for transfer pricing benchmarks using multiple year weighted average

financial results, is not compliant with customs valuation regulation requirements. The Supreme Court, however, did not provide a 'white list' guidance on how to factor in time of import consideration or how to select comparable companies. This is typical for such rulings – they determine whether a specific action or approach is ok, rather than opining on what would be ok in general. Oh, for some practical guidance!

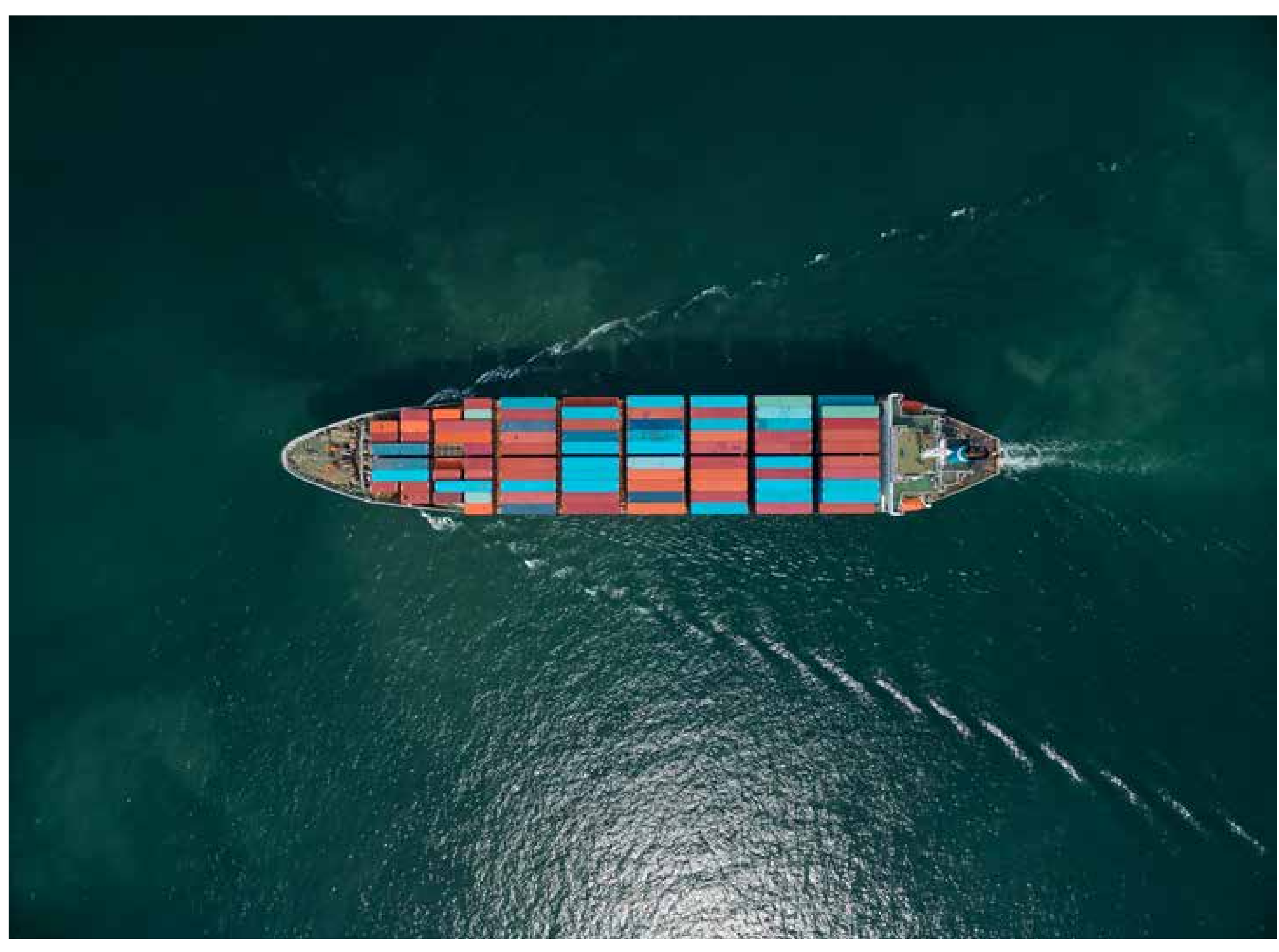
Many similar examples of guidance exist, even around Asia. Yet even that is not necessarily sufficient for importers to know where they stand. They may also conflict from territory to territory, which of course makes life harder for multinationals. Many matters tabled for discussion and resolution at the World Customs Organization's Technical Committee on Customs Valuation end up in Part III of the Conspectus of Technical Valuation Questions. In essence this means that territories can't agree and are left to decide on appropriate treatment for themselves. Exclusive distribution fees are considered dutiable in some territories, but not others. Certain buying commissions, which seem to be explicitly excluded form dutiable values by the CVA, are still considered dutiable by some territories, yet not by most others. Let alone the value of pre-loaded software that may be accessed long after importation by means of some kind of a digital key.

What customs valuation documentation could look like

While some companies may rest with their fingers crossed, hoping Customs either don't knock on their door or – if they do – don't ask the difficult questions, others have started creating some kind of Customs Valuation Documentation ('CVD') in response to increasing attention from Customs on valuation matters. Customs officers across Asia are becoming much more aware of related party pricing issues. They are being trained by various developed nations as well as the World Customs Organization. It is becoming significantly riskier to rely on not being asked those questions.

Companies may still regard CVD as an alien idea, but in this case its counterpart in transfer pricing area, Transfer Pricing Documentation ('TPD'), may provide some very useful guidance. Prior to the existence of mandatory TPD requirements, many MNCs, with the help of transfer pricing specialists, started TPD preparation as a response to growing tax audits around the world. This followed in-country transfer pricing regulations and guidance from the Organisation for Economic Co-operation and Development ('OECD'). The lack of a standard format or unified regulatory requirements proved not to be an obstacle to TPD preparation. The documentation gradually matured with accumulating experiences. Regulatory TPD requirements developed subsequently, leveraging on and borrowing ideas from these early TPD versions. Tax officials also consulted experienced TP specialists' opinion on appropriate legislation.

Though customs valuation regulations have yet to develop a similarly comprehensive level of documentation requirements as transfer pricing, we do not see any reason why it would not follow a similar path. Therefore, we believe it is imperative for industry to be at forefront of these developments, if not ahead of the game, in order to shape and guide the evolution of inevitable regulatory requirements.



For now, being an "unofficial" document, the scope and format of CVD can be tailored depending on a company's supply chain arrangement and compliance needs. CVD can be created purely for the purpose of addressing the non-dutiable nature of an intangible payment. It can also be aimed purely or predominantly at justifying arms' length pricing with an overseas related party seller. Or it can look to support the import price review and adjustment process from a customs valuation perspective. Of course, it can also seek to comprehensively do all of the above and more.

The form of CVD can also vary, depending on a company's needs. It can be in the form of a Masterfile, applying CVA rules to demonstrate valuation compliance in multiple territories. It can also be in the form of a county-specific report, illustrating compliance under domestic valuation regulations and practices, possibly even using appropriate in-country comparables. Nevertheless, just as different industries and territories share similar TPD templates, the pattern for CVD would be more or less the same. A typical CVD starts with an introduction to the company's business from the perspective of cross-border trade in goods (e.g. characteristics of goods, supply chain flow, customs value determination policy). Customs valuation principles and methods will then be applied to test and demonstrate the reasonableness and compliance of the customs value declared or to be declared by the importer.

At this point, it would be worthwhile to dwell on some of the key components of CVD that vary from their equivalent in TPD, and would need special attention.

- "goods of the same class or kind": For customs purposes, any analysis that compares wildly different products on the basis that the roles, risk and responsibilities of their importer are similar are not going to be very relevant for customs purposes. The language, and as appropriate comparability, of the CVD needs to reflect this, focusing on the nature of products and what other companies that import similar products may be doing. If a company imports tractors and shoes, and makes most of its profits on the former, applying an average margin mark-up to the latter, which may be subject to much higher duties, is unlikely to fly. Instead, the importer should compartmentalize the two products and compare the latter with other shoe importers.
- "circumstances of sale": By and large, CVD will be looking to support the use of inter-company invoice values as a basis on which to declare customs values. A crucial component of demonstrating that such invoice values are appropriate is to demonstrate that they would be similar if the seller would be selling the products to unrelated buyers. Unrelated buyers would not simply accept any price determined by the seller or any other third party, but fight their own corner. Customs authorities will expect related party buyers to do the same. Hence the CVD needs to demonstrate the process of such negotiation happening. The average TP documentation is usually silent on this process, focusing instead on the outcome only. If anything, TPD will demonstrate that the seller or a global HQ determines intercompany prices, which are accepted by an importing Affiliate without so much as a whisper. That is not helpful for customs valuation support, to say the least.
- "Deductive and computed values": Where CVD goes as far as reflecting quantitative analysis, it is important that it recognises and reflects that the calculation of deductive and computed values is different to the calculation of its TP counterparts, "resale minus" and "cost plus". Even the way calculations are presented are different, with TP calculations looking to result in a target profit, and customs calculations looking to result in a target import price. In many TP calculations the Cost of Goods Sold (COGS) is inappropriately treated as if it were the import value, whereas in reality it may include or exclude components that from a customs perspective could be excluded or should be included in a customs value.

How to use customs valuation documentation

Regardless of how much thought and effort goes into the creation of CVD, as with TPD it would still be subject to questions and challenges from the authorities. They may not agree with the conclusions reached in the document, which by definition would be a status of compliance for the importer. This would beg the question of why a company would still put in efforts to prepare such documentation, given that it is not a regulatory requirement (yet!).

The answer lies in the usage of CVD. CVD does not only serve to prove compliant and accurate customs value declaration, though this remains the primary purpose for most companies to have it. By putting in place a dedicated document prepared with efforts from customs valuation specialists, an importer can demonstrate its reasonable care and diligence with regards to customs valuation compliance management. This echoes with the increasing expectations from customs authorities in the region for companies to take proactive initiatives in managing customs valuation compliance and maintaining corresponding records.

A circular issued by the Vietnam Ministry of Finance in late 2019 (Circular 60/2019/TT-BTC) puts a regulatory requirement in place on having supporting documents when applying the transaction value method. Some other countries, while not specifically requiring supporting documents on customs value declared, indicate an importers' responsibility for compliant value declaration and burden of proof via declaration or penalty treatments. For example, in 2016 China amended its customs declaration form, requiring importers' declaration on existence of any special relationship between buyer and seller, confirmation of any influence on the transaction price, and the existence of any dutiable royalty fees. Incorrect declaration can lead to not only import tax claw-back but also charges on false declaration and therefore financial penalties. This follows the principles of similar guidance that has been around in places like the EU and Australia for a long time.

As supply chain arrangements change over time, CVD needs to be reviewed and updated on a regular basis to reflect any changes. An obvious frequency would be once a year, with additional updates to be considered whenever there is a change in supply chain or pricing methodology. This of course does not mean CVD needs to be amended whenever there is an import price adjustment. Although customs valuation assessment goes down to the level of individual import transactions, testing the import price of each SKU against customs valuation rules is both impossible and unnecessary for most MNCs, considering the efforts needed. It is also impractical for Customs to review all related party transactions of an importer. As such, CVD provides an alternative approach that is generally acceptable and commonly used by Customs themselves is assessing risk of

non-compliance. Specifically, instead of proving the arms' length nature of each transaction price, it tests and demonstrates the reasonableness of price determination and review methodology. This in turn proves the customs arms' length nature of transaction prices calculated following such methodology.

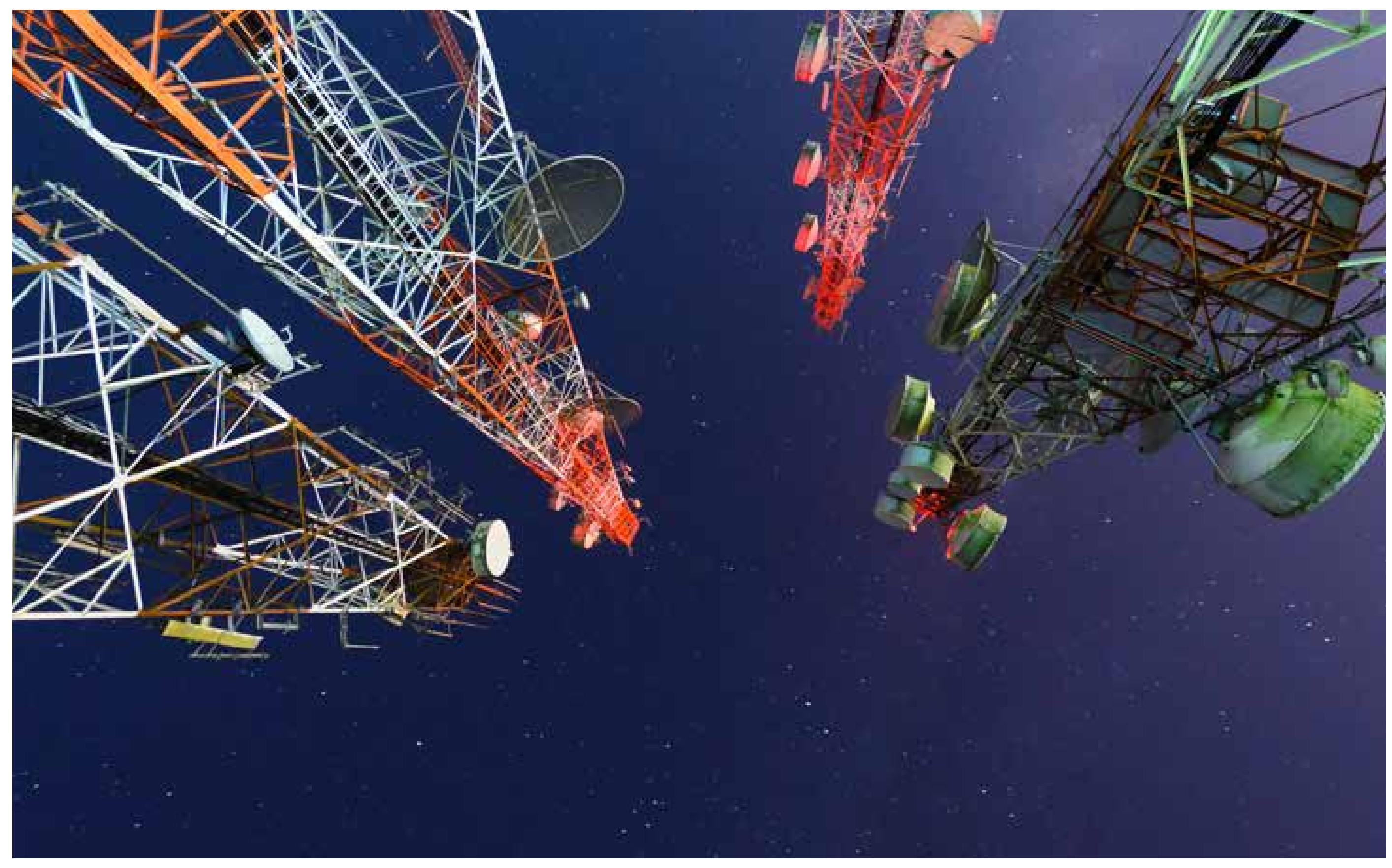
Because of this, CVD can also be leveraged by companies to support the customs treatment of transfer pricing adjustments ('TPA'). TPA, particularly retrospective TPA, have only recently hit the radar screen of many customs authorities. Taiwan has regulated the procedures for one-time retrospective TPA late last year, requesting companies to declare a provisional customs value upon the import of goods, and apply for final customs value assessments within one month after the fiscal year end. Documents requested by Taiwan Customs include not only import declaration information (e.g. final commercial invoice), but also an explanation on the reasonableness of the final customs value to be declared. Having a document ready that clearly outlines the company's price setting and review methodology and its approach to compliance with customs valuation rules will surely be a strong contributor to this, especially if such document has been put in place prior to and independent of any TPA. Taiwan is not the only territory adopting such practice. Australia is one territory that has had a similar regulatory system allowing for provisional value declaration and year-end adjustment for quite a while. Many other territories, though having no equivalent legislation as yet, are open for TPA discussions in practice. In such discussions, an explanation on the reasonableness of amended customs values is always expected.

Pandora's box?

The rationale for preparing CVD will always be to prove customs valuation compliance. However, in practice the outcome may not always be thus. Many companies, especially those that never have been subject to a customs valuation review or challenge before, are concerned about potential non-compliance being uncovered during CVD preparation.

However, such concerns have by and large proved to be unnecessary. Bear in mind that the main objective of CVD is to support the approach taken by a company to enable it to declare supportable customs values. It does not determine any specific import value to be declared. The outcome of CVD preparation usually goes beyond the expectations most people have upon commencement of the work. The involvement of multiple departments during the preparation process tends to bring a comprehensive understanding of the company's pricing policy and how it affects customs valuation determination and declaration. Its preparation process also typically includes the identification of practical improvement and optimisation opportunities to enhance compliance levels. It forms the basis for argumentation for customs valuation specialists, and in most cases leads to a better and clearer formulation of why current practices are compliant. Time and time again we have seen customs officers draw adverse conclusions from a company's inability to answer questions quickly and comprehensively. Sometimes the answers are difficult to explain, which is even more reason to spend an appropriate amount of time and resources preparing to do exactly that. The scrambling for answers to questions from assertive customs officers often is more problematic than the answers themselves.

It is never a good idea to go into battle without the appropriate arms in your possession. So if you have yet to make your new year resolutions list, now is the perfect time to consider having your own customs valuation documentation!



ASEAN member states commit to intra-regional trade and investment

On 10 January 2020, Vietnam hosted a high-level symposium in Hanoi as the 2020 ASEAN Chair, focused on promoting greater trade and investment in the region. Key topics discussed included institutional and policy barriers to trade and investments, maximising global value chain participation as well as improvements in trade and investment operations and related logistics.

Key speaker Dr Aladdin D. Rillo, Deputy Secretary General of ASEAN for the ASEAN Economic Community further touched on the need for ASEAN as a region to collectively build infrastructures supporting trade and investments such as regulatory reforms, digital infrastructure and continuous investment in the development of human capital and financial markets.

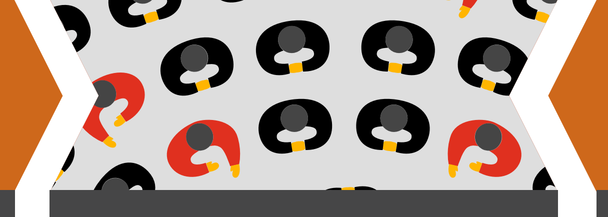
The high-level symposium was seen as a positive step forward in Vietnam's ASEAN 2020 Chairmanship, an important year for the conclusion of negotiations and ratification of RCEP.

Philippines' FDA to be included in list of ASEAN Inspection Services

On 20 December 2019, ASEAN member states agreed to endorse the Philippines' Food and Drug Administration (FDA) under the ASEAN Mutual Recognition Arrangement (MRA) on Good Manufacturing Practices (GMP). FDA joins the Singapore Health and Sciences Authority, Malaysia's National Pharmaceutical Regulatory Authority, Indonesia's National Agency of Drug and Food Control and Thailand's Food and Drug Administration as a trusted authority able to approve the registrations and inspections of new medicinal and pharmaceutical products.

The inclusion of Philippines' FDA in the ASEAN MRA on GMP will allow traders to verify the registration of medicinal and pharmaceutical products, which is a general import requirement around ASEAN, in the Philippines.

Export controls



Thailand new export controls law enters into force

The Ministry of Commerce issued a notification effective 1 January 2020 to cancel all previous Notifications on “Specifying dual-use items as goods requiring permission and being subject to export measures” B.E. 2558 (dated 22 September 2015) and its relevant amendments.

In its place, the new Trade Controls of Weapons of Mass Destruction Act (TCWMD Act) will be effective from 1 January 2020. A new control list is expected to be issued under the Act, together with relevant sub-regulations on procedures to obtain export licenses. As of the end of January 2020, it remains unclear when these sub-regulations will be issued. Companies are recommended to start preparing for the new Act to mitigate the risk of business disruptions.

Annual updates to the Wassenaar Arrangement

The Wassenaar Arrangement (WA) was established with the objective of maintaining regional and international security and stability, in particular in relation to the trade of conventional arms and dual-use goods and technologies.

The 25th WA Plenary meeting was held in Vienna, Austria from 4-5 December 2019. Key outcomes include:

- Continuing support for and commitment to robust international export controls from member territories ;
- Additional focus on proliferation risks related to the trade in Small Arms and Light Weapons (SALW) supplemented by the publication of Best Practice guidelines in the exports of SALW;
- New export controls in a multitude of areas including:
  - Cyber-warfare software
  - Communications monitoring
  - Digital investigative tools/forensic systems
  - Sub-orbital aerospace vehicles
  - Technology for the production of substrates for high-end integrated circuits
  - Hybrid machine tools
  - Lithography equipment and technology
  - Further clarified existing controls regarding ballistic protection
  - Optical sensors
  - Ball bearings
  - Inorganic fibrous and filamentary materials;
- Completion of the comprehensive and systematic review of the WA Control Lists, including updates to the summary of changes (2019) and the list of dual-use goods and technologies & munitions (2019)

The key publications for the year of 2019 can be found at: https://www.wassenaar.org/blog/

FTA focus

Agreements entered into force	Date
Agreement between New Zealand and Singapore on a closer Economic Partnership (ANZSCEP) – Upgrade Protocol	1 January 2020
China-Pakistan Free Trade Agreement – Phase II	1 January 2020
US-Japan Free Trade Agreement	1 January 2020
Australia-Hong Kong FTA	17 January 2020
Peru-Australia FTA	11 February 2020

RCEP keeping its doors open for India's possible return

In November 2019, the Regional Comprehensive Economic Partnership (RCEP) trade deal lost some traction when India decided not to sign the agreement at a summit in Bangkok, Thailand. India's reason for not pursuing the deal was mainly due to the "fairness and balance of the agreement" and the negative impact it would bring on Indian domestic industries. India was particularly concerned about the domestic market being flooded by overseas goods in the industrial and agricultural sectors.

India's foreign minister S. Jaishankar has however now signalled interest for the country to go back to the negotiating table and potentially re-join the trade deal. Since India has already expressed its concerns about the deal, it is up to the remaining partner countries to decide and take collective action. It is still unclear how the partner countries may close the gap with India's demands without compromising on the protocols that have already been agreed by the remaining 15 partner countries. This is especially so in light of the components of the latest Union budget (see our India country report) that look to make using FTAs for preferential access to the Indian market more difficult.

Thailand expresses interest in joining the CPTPP

The Thai government has previously suspended its application to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) after the 2019 general elections, but has now expressed interest to join the agreement.

Currently, the Thai government is examining the technical aspects of the agreement, which has already entered into effect for seven signatories. Should Thailand proceed with its intention to join the CPTPP, its application will have to be endorsed by at least half of the existing signatories (i.e. six currently), and the agreement will have to be ratified by the Thai parliament. Other countries that have voiced their interest in joining the CPTPP include South Korea, Indonesia, and Colombia.

Entry into force of the Australia-Hong Kong FTA

On 17 January 2020, the Australia-Hong Kong Free Trade Agreement (A-HKFTA) entered into force, removing customs duties on all Hong Kong originating goods imported into Australia, except for excise-equivalent goods. In Australia, excise-equivalent goods refer to alcohol, tobacco, fuel and petroleum products that are imported. Customs duty is imposed on these goods at a rate equivalent to excise duty. This is to ensure they are treated consistently with goods manufactured in Australia. The customs duties applied to Hong Kong originating excise-equivalent goods are listed in Schedule 13 of Australia's Customs Tariff Act 1995 and will be indexed consistent with the equivalent rates listed in Schedule 3 to the Customs Tariff Act. As Hong Kong is a free port, there are no customs duties on imported goods originating from Australia.

In addition, the FTA enables market access for the Australian services sector and improves conditions for two-way investment. A range of cutting-edge rules agreed under the A-HKFTA, such as rules on data flows and storage, will help to address obstacles to trade and are aimed at providing certainty and confidence for investors.

Entry into force of the Peru-Australia FTA

The Peru-Australia Free Trade Agreement (PAFTA) entered into force on 11 February 2020. PAFTA is a comprehensive free trade agreement that is expected to create new trade and investment opportunities and increase the integration of both economies. The PAFTA is slated to eliminate more than 99 percent of tariffs within five years of entry into force, provide further market access for Australian farmers (e.g. dairy and sugar products) and remove key barriers to trade for service suppliers. In return, 96% of Peru's export tariff lines will have their duties reduced to zero in Australia. Tariff on some of the remaining goods will be reduced on a staged basis, to be eliminated in a maximum of 4 years. With this agreement in place, Peruvian agricultural exports to Australia are expected to double by 2021. In addition, Peru is expected to benefit from Australia's agricultural technology such as the use of satellites and use of drones to improve farm productivity.

Cambodia loses preferential access to EU market

On 12 February 2020, the European Commission partially withdrew tariff preferences granted to Cambodia under its 'Everything But Arms' (EBA) trade scheme. Provided the European Parliament and Council do not object, the withdrawal will take effect on 12 August 2020. The preferential rates for affected products will be replaced with 'Most Favoured Nation' rates.

Tariff preferences will be withdrawn for garments, footwear, travel goods and sugar. Refer to the EU Delegated Regulation for details on the specific HS codes affected.

The EBA scheme is one preferential trading arrangement under the EU's Generalised Scheme of Preferences (GSP). Its objective is to support the economic development of Least Developed Countries by granting all products originating in Cambodia, except for arms and ammunition, duty-free, quota-free access to the EU market. These preferences come with the obligation to respect human rights and labour rights. The withdrawal of tariff preferences in this case follows what the European Commission sees as serious and systematic violations of human rights principles. It drew its conclusion from various fact-finding missions to Cambodia and meetings with Cambodian authorities.

The Commission Delegated Regulation (EU) can be accessed here:
https://ec.europa.eu/transparency/regdoc/rep/3/2020/EN/C-2020-673-F1-EN-MAIN-PART-1.PDF

China-Pakistan FTA Phase II enters into effect

On 1 January 2020, Phase II of China-Pakistan Free Trade Agreement came into effect after it was concluded in April 2019. This upgrade is expected to strengthen the bilateral relationship between the two countries as well as improve the balance of trade between the parties.

The Phase II upgrade will gradually increase the number of zero-rated tariff lines between China and Pakistan from 35% to 75% within a period of 10 years for China, and 15 years for Pakistan. Both parties agreed to implement a 20% tariff reduction on 5% of their respective tariff items. In addition, China has agreed to eliminate tariffs on 313 major export items from Pakistan. In return Pakistan has offered increased market access for China on raw materials, intermediate goods, and machinery.

Included in the protocol are safeguard measures that will protect the domestic industries of both parties. For instance, reduced tariff rates can be easily suspended without needing to first prove the injury caused by imported products.

US-Japan FTA enters into force

On 1 January 2020, the United States and Japan's limited Free Trade Agreement entered into force. Compared to other trade deals, this agreement was concluded and entered into force within a few months of negotiations between the two parties. The expedited timeline was believed to be possible due to the limited range and commitments requiring only tariff elimination or reduction on certain goods, and rules relating to digital trade. This, of course, makes this agreement non-compliant with WTO rules. In addition, the speed of conclusion could also be attributed to the looming 2020 US elections, as well as the pressure on the Japanese government to steer clear from the US threat of imposing punitive tariffs onits car and auto part products.

USD 7.2 billion worth of US originating products, including beef, pork and agricultural products, will enjoy reduced tariff rates from Japan, similar to what Japan has granted to the signatories of the CPTPP agreement. This puts the US farming industry on a level playing field to that of CPTPP members' Australia and Canada, which are also exporters of agricultural products to Japan.

In turn, the US has granted lower tariff rates on some Japanese goods such as manufacturing equipment and components for air conditioning units. It has also increased the low-tariff quota on Japanese wagyu beef from 200 tons a year to a shared quota with other countries of 65,000 tons a year.

Although the Japanese government was not able to secure reduced duties on its cars and auto parts, it was able to – at least temporarily - dodge the punitive tariffs that the US has previously expressed desire to implement. The two parties have yet to agree on the timeline and schedule for the next rounds of talks for a more comprehensive trade agreement.

The full text of the agreement can be accessed in the link below:
https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-trade-agreement-text

Singapore-EU FTA will to continue to include the UK during Brexit transition

The Singapore Ministry of Trade and Industry announced on 31 January 2020 that the Singapore-EU FTA will continue to apply to the UK during the Brexit transition period of 1 February 2020 to 31 December 2020. The UK officially left the EU on 31 January 2020.

This means that Singapore originating goods will continue to be eligible for preferential access to the EU when imported into the UK, and that UK content of goods exported from the EU, be that from the UK or any other EU Member State, will continue to count as EU content. In addition, UK based exporters can continue to self-certify origin under the Singapore-EU FTA.

Singapore and the UK are simultaneously working on a separate trade deal to prepare for the end of the transition period. Companies that are currently benefiting from the Singapore-EU FTA but rely on the UK for import, export or qualifying content should closely monitor the negotiations between the EU and the UK, as well as those between Singapore and the UK, so that they are ready to respond accordingly when the UK formally leaves the EU customs union.

Singapore-New Zealand upgraded trade agreement enters into force

Following the ratification of the upgraded Agreement between New Zealand and Singapore on a Closer Economic Partnership (ANZSCEP), the modernised agreement entered into force on 1 January 2020. The negotiations for this upgrade started in June 2017. The updated agreement was signed in May 2019

Key changes and additions to the trade deal include:

- Goods under the chemicals, electronics, pharmaceuticals and processed food industry may now enjoy zero-duty under a more flexible origin criterion.
- Enhanced customs procedures and trade facilitation. Goods can be expected to be released within 24 hours upon arrival while express consignments are to be released within four hours following submission of pertinent documents to the customs authorities.
- A new framework for Mutual Recognition Agreements (MRAs) has been agreed upon by the two parties to serve as the basis for drafting MRAs on a variety of sectors.
- Additional chapters covering Regulatory Cooperation and E-Commerce.
- Three Implementing Arrangements (IAs) under the Sanitary and Phytosanitary measures that will allow food exporters to have improved market access, faster clearances, and enhanced transparency of regulations.

Exporters who are currently utilising or wish to export under this FTA are advised to review the upgraded text which can accessed through the link below.
https://www.enterprisesg.gov.sg/non-financial-assistance/for-singapore-companies/free-trade-agreements/ftas/singapore-ftas/-/media/esg/files/non-financial-assistance/for-companies/free-trade-agreements/ANZSCEP/ANZSCEP_Legal_Text.pdf

India-Mauritius CEPA nearing finalisation

Recently, India's Ministry of Commerce announced that the India and Mauritius Comprehensive Economic Partnership Agreement (IMCEPA) is near finalisation with all negotiations concluded. No estimated timeframe nor further details were provided.

The areas covered in the trade deal include trade in goods and services, rules of origin, technical barriers, trade remedies and dispute settlement.

India primarily exports petroleum products, pharmaceuticals, cereals and machinery to Mauritius. Reversely, India imports iron and steel, pearls and stones, and other technical instruments from Mauritius.

EU-Vietnam Free Trade Agreement is ratified by European Parliament

The European Parliament ratified the EU-Vietnam Free Trade Agreement (EVFTA) on 12 February 2020. The EVFTA will enter into force upon ratification by the Vietnam National Assembly. This is expected to happen in May 2020.

Many of Vietnam's products already enjoy preferential tariff treatment upon import into the EU under the General Scheme of Preferences. The agreement ensures that Vietnamese exporters will continue to be able to rely on preferential tariffs even if Vietnam 'graduates' from the scheme. In return, EU exporters of pharmaceuticals, chemicals, dairy, wine, chocolates, and machinery and appliances will be able to enjoy duty free access to the Vietnamese market upon the agreement's entry into force. There are also specific provisions aimed at addressing non-tariff barriers in the automotive industry.

The text of the EVFTA can be accessed here:
http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437

Australia

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Australia implements new industrial chemicals law

Trade ministers from Australia and Singapore have agreed on the scope for a landmark digital trade agreement. The agreement aims to leverage digital transformation and technology to deepen bilateral economic relations and further expand trade.

The scope of the Australia-Singapore Digital Economy Agreement is expected to cover a range of areas, including digital trade facilitation, e-invoicing, e-payments, FinTech and cooperation on the digitisation of trade documents, artificial intelligence, digital identities, and e-certification for exports. The Agreement will seek to establish modern digital trade rules that regulate the cross-border flow of data, promote trust and confidence in digital trade and establish benchmarks for improving digital trade across the region.

Official negotiations for the Agreement are expected to be launched soon, with an expected conclusion in the first half of 2020. The Australian Government's Department of Foreign Affairs and Trade has called for interested parties to lodge submissions about Australia's cooperation with Singapore on the digital trade agreement.

Increase in biosecurity cost recovery charges

As of 1 January 2020, biosecurity cost recovery charges collected on imported goods with a customs value over AUD 1,000 and all vessels arriving in Australia have increased. The Australian Government has implemented these changes to cover costs relating to activities administered by the Department of Agriculture, including biosecurity assurance and risk mitigation.

The changes are aimed at managing the risk of pest and disease incursions posed by goods and vessels entering Australia and addressing rising departmental costs, increased passenger and mail volumes, and expected doubling of cargo volumes by 2030.

China

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Various trade facilitation measures in China

Regulations on Optimizing the Business Environment (State Council Order No. 722) became effective on 1 January 2020. The Order is part of the Chinese government's effort to create a stable, fair, transparent, and predictable business environment. We have categorised the various trade facilitation measures below.

1. Measures to improve customs clearance process and improve efficiency

The General Administration of Customs (GAC) and other relevant authorities have issued a number of measures to simplify import and export procedures in order to improve customs clearance efficiency.

- On 12 December 2019, the GAC together with the Ministry of Transport and National Immigration Administration issued Announcement No. 197 of 2019 (Announcement on Managing Major Declaration Businesses through the China International Trade Single Window). It allows import and export goods, manifest and transportation means to be declared via the '**single window**' which integrates the declaration systems of different government authorities.
- On 17 December 2019, the State Drug Administration issued Announcement No. 107 of 2019 (Announcement on the Implementation of the Import Filing System of Drugs and Pharmaceutical Materials). It implemented the management system for the filing of imported drugs and pharmaceutical materials. The new system is based on the '**single window**' which enables the filing and customs declaration to be done in the same window.

- On 26 December 2019, the GAC issued Announcement No. 216 of 2019 (Announcement on the Overall Promotion of the "**Two-Step Declaration**" Reform). It allows for goods release prior to completion of declaration and tax payment procedures, on the condition that their general information has been declared.
- On 27 December 2019, the GAC issued Announcement No. 219 of 2019 (Announcement on the Promotion of Measures for Facilitating the Inspection and Supervision of Imported Auto Parts). It stipulates that Customs will accept relevant certificates when inspecting imported auto parts involving 3C certification in the pilot areas. The **on-site verification** takes an average of 5 minutes, which is significantly less than the 8-15 working days required for original on-site inspection, sampling, and lab test procedures.

2. Tariff Adjustment Plan to reduce import tariffs

On 18 December 2019, the Customs Tariff Commission of the State Council issued the Tariff Adjustment Plan of 2020. The Plan became effective on 1 January 2020. Key points to note are summarised in the table below.

Provisional tariff rate adjustment	For 859 commodities listed, their provisional import tariff rate is now lower than the MFN rate. Some pharmaceutical materials and drugs now enjoy zero import duties, while daily consumer goods, advanced technology equipment and parts, and wood and paper products enjoy tariff rate reductions. In view of environmental concerns, earlier provisional tariff rates extended to two types of solid waste products have been revoked such that the MFN rate applies.
FTA tariff rate adjustment	China has FTAs with 17 partner countries or regions, covering commodities originating in 25 countries or regions. FTA tariff rates will continue to be adjusted according to the tariff reduction schedules in these FTAs. Specifically, tariff reductions will be implemented for FTAs with New Zealand, Peru, Costa Rica, Switzerland, Iceland, Singapore, Australia, Korea, Georgia, Chile, Pakistan and the Asia-Pacific Trade Agreement.

3. Facilitation for processing trade enterprises

Processing trade enterprises often incur higher compliance costs due to complex business regulatory requirements. On 26 December 2019, the GAC issued Announcement No. 218 of 2019 (Announcement on Simplifying and Standardizing Operation Procedures, and Promoting the Facilitation of Processing Trade). The provisions simplify and optimise procedures for processing trade businesses. Examples include:

- Processing trade manual/book set up;
- Declaration of outward processing, further processing and transfer of left-over import materials;
- Tax collection procedure for domestic sales; and
- Administration of free-of-charge import equipment (formally known as 'non-priced import equipment' or 不作价设备) and supplementary materials.

4. Improved import and export credit management system

On 27 December 2019, the GAC issued Announcement No. 229 of 2019 (Announcement on the Promulgation of Customs Certified Enterprise Standard). It published evaluation standards of cross-border e-commerce enterprises and import/export express operators under its credit management system. A separate standard was released for emerging and special business groups. The improved system can be expected to promote trade security and facilitation.

5. Help enterprises minimize loss via issuance of Force Majeure Certificate

The China Council for the Promotion of International Trade (CCPIT) is offering a Force Majeure Certificate to enterprises that are unable to fulfil their international contractual obligations as a result of the coronavirus outbreak. The announcement was issued on 30 January 2020.

It highlights that the CCPIT has developed an online system to facilitate online applications for such certificates. No face-to-face meetings are required. Enterprises will have to prepare supporting materials which include relevant certificates/announcements issued by local government and authorities, cancellations or postpone announcements of transportation, international trade contracts and other relevant documents.

6. Halving of additional punitive tariffs levied on 1,717 goods originating from the US

On 6 February 2020, the Customs Tariff Commission of the State Council issued Announcement No. 1 of 2020. The announcement cut additional punitive tariffs levied on 916 US goods from 10% to 5%, and lowered extra tariffs on 801 goods from 5% to 2.5%. These changes are effective from 14 February 2020. This follows the US' move to reduce its Section 301 tariff of 15% on List 4A Chinese goods from 15% to 7.5% as reported in our Around the World section.

Overall, the simplification of administrative procedures and delegation of powers should not be seen as a lowering of compliance standards or acceptance of lax supervision. Instead, it shifts the responsibility to enterprises. For instance, the new policy for processing trade facilitation states that enterprises no longer need to declare the corresponding relation between 'material number' managed by the ERP system and the 'item number' recorded by customs electronic books. However, enterprises are still required to manage that information for future reference.

Companies are advised to examine the impacts of the above trade facilitation measures. Some examples are as follows:

- Manufacturers under processing trade should re-evaluate their business management costs, bonded goods management costs, and the benefits afforded by processing trade against the lower tariff rates mentioned above.
- Companies who benefit from the tariff adjustment plan should strengthen their HS code and origin information management to ensure ongoing accuracy in order to safeguard their enjoyment of preferential tax policies.

As new policies are implemented, companies are also advised to share their experiences or further suggestions for improvement with the relevant authorities. This includes any suggestions with respect to introducing or removing taxed items, lowering or increasing tentative tax rates, adjusting export tax refund rates, or commodities covered.

India

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Customs aspects of the Union Budget 2020

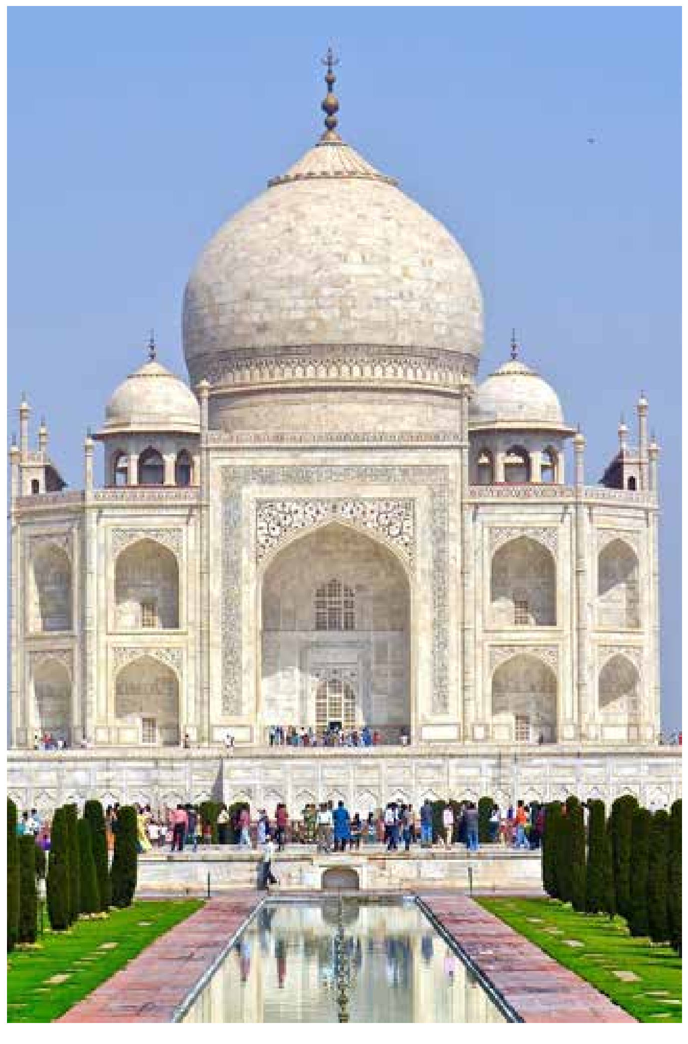
India's Union Budget 2020-2021 has been released. We have highlighted the key customs and trade related proposals of the Union Budget below.

Proposed amendments to provisions in the customs law

These proposed changes are in relation to the Finance Bill 2020 and will become effective if and once they receive the assent of the President of India.

a. The Central government will be empowered to **prohibit uncontrolled importation of any good which causes injury** to India's economy. This prohibition was earlier limited to the import of gold and silver.
b. An Electronic Duty Credit Ledger will be created in the Customs system to allow **duty credit** to be given **in respect of exports** (e.g., for duty drawback scheme) and other cases of financial benefit. This is in place of duty remission. The ledger can be used by the person to whom it is issued or can be transferred to another individual subject to conditions.
c. Last year, the Government introduced provisions to enable **recovery of duty and interest** from and imposition of penalties on a person who has fraudulently obtained instruments such as SEIS and MEIS duty credit scrips etc. issued under the Foreign Trade (Development and Regulation) Act 1992 (FTDR). In this budget, the Government has proposed to extend these provisions to cover any other law or under any scheme of the Central Government in addition to the FTDR.
d. In order to **curb misuse of FTAs** and non-compliance with value-add requirements, the Government has proposed the incorporation of the following measures under the framework of the Customs Act:

    - An importer needs to declare goods origin and compliance with value-add requirements by an overseas manufacturer;
    - The legal onus of declarations made in respect of Certificates of Origin and FTAs is on the importer of goods in India;
    - The importer must possess value-add or costing-related data in respect of goods being imported under an FTA. This means that prior to making use of an FTA, companies will have to obtain costing-related information from their overseas suppliers regardless of the fact that customs authorities will ask for such information on a needs basis;
    - Inability to share requisite information with the customs authorities may lead to:
        - The temporary suspension of benefits till completion of verification by customs authorities;
        - In the interim, goods can be released upon furnishing of a security amount equal to the duty differential (i.e., benefit under an FTA);
        - Confiscation of goods.
    - In cases of proven non-compliance, Customs will deny all future FTA benefits for the import of the same goods from the same supplier, unless the importer can prove that the goods meet the origin and value-add criteria;
    - Customs authorities may outrightly deny preferential duty benefits in the following circumstances:
        - misclassification or misdeclaration for the purpose of claiming FTA benefits in respect of goods that are otherwise not covered in the FTA;
        - incomplete description of goods in the certificate of origin;
        - any unauthorized alteration in the certificate of origin not made by the issuing authority in the exporting country;
        - an expired certificate of origin
    - Retrospective verification of costing data, value-add compliance and Certificates of Origin can be conducted by customs authorities within five years from the date of import, unless there is a specific time-limit prescribed in the FTA text.



Key changes to the Indian Customs Tariff

The major changes pertaining to customs duty rates and exemptions are summarized as follows. They became effective on 2 February 2020.

1. **General**

Category of goods	Existing Basic Customs Duty (BCD) rate	New BCD rate
Footwear	25%	35%
Parts of footwear	15%	20%
Specified category of furnitures	20%	25%

- The exemption from Social Welfare Surcharge has been extended to specified items like cheese, whey in specified form, orange juice, etc.
- There has been a withdrawal of BCD exemption on imports of specified goods for use in the construction of roads.

2. **Automobiles (effective from 1 April 2020)**

Category of goods	Existing BCD rate	New BCD rate
Completely Built Unit (CBU) of commercial electric vehicle	25%	40%
Semi-knocked Down (SKD) forms of electric passanger vehicles and three wheeler	15%	30%
SKD forms of electric vehicles viz. bus, truck and 2 wheelers	15%	30%
Completely-knocked Down (CKD) forms of electric vehicles	10%	15%
CBU of commercial vehicles other than electric vehicles	30%	40%

- Exemption from Social Welfare Surcharge on all commercial vehicles (including electric vehicles) imported as CBU from 1 April 2020 onwards.

3. **Electronics**

Category of goods	Existing BCD rate	New BCD rate
Specified compressors of refrigerators and air conditioners	10%	12.5%
Freezers, refrigerating equipment, etc.	7.5 or 10%	15%
Charger or power adapter (except covered in ITA 1 agreement)	Nil or 10% or 15%	20%
Electromechanical applicanes like grinders, mixers, etc.	10%	20%
PCBA of cellular mobile phones – from 1 April 2020	10%	20%
Vibrator motor (from 1 April 2020) display assembly and touch panel/ cover glass assembly (1 October 2020) – phased manufacturing plan	Nil	10%
Headphones and earphones	10%	15%
Colour Television Picture tubes for use in manufacture of cathode ray television	Nil	10%

- Multiple changes to the exemption statuses of BCD or Social Welfare Surcharges for fingerprint readers, scanners for use in the manufacture of mobile phones, MP3, MP4 or MPEG 4 player with or without radio or video reception, and other specified electronic and IT items.
- The open cell of TVs will be classified under a new tariff 8529.90.30.

4. **Healthcare**

- A Health Cess of 5% has been imposed on the import value of medical devices. However, it does not apply to:
  - devices which are exempt from BCD, including those imported under FTAs; and
  - inputs or parts used in the manufacture of medical devices.
- The cess cannot be paid using duty credit scrips.

In addition to above, the Government has also introduced numerous other changes with respect to specific HS codes which may impact certain sectors.

Detailed changes can be found in the Finance Bill 2020 presented on 1 February 2020.

Refer to Notification No. 01/2020-Customs to 12/2020-Customs dated 2 February 2020 for further details

Changes to Indian Customs Tariff from 1 January 2020

The Finance (No. 2) Act 2019 proposed changes to the First Schedule of the Customs Tariff Act 1975. The changes relate primarily to the classification of goods and took effect from 1 January 2020.

Some of the key changes as proposed in the Fifth Schedule pertain to Chapters 85 and 90. They are summarised in the table below. Note that certain notifications have also been issued to align the changes in tariff lines with various exemption notifications.

Chapter Heading	Tariff item	Description of goods	Rate of Basic Customs Duty	PwC comments
8517	---Telephones for cellular networks or for other wireless networks:			Previous classifications for telephones (8517.12.10 and 8517.12.90) have been replaced with these three new tariff lines. The BCD of 20% remains the same.
	8517.12.11	Mobile phones, other than push button type	20%	
	8517.12.19	Mobile phones, push button type	20%	
	8517.12.90	Telephones for other wireless networks	20%	
	8517.69.30	Routers	Free	
8525	8525.60	-Transmission apparatus incorporating reception apparatus:		Multiple tariff items classifying transmission apparatus which incorporates reception apparatus grouped under a single tariff heading 8525.60.00
	---Two-way radio communication equipment:			
	8525.60.00	Transmission apparatus incorporating reception apparatus	Free	
8527	8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:		Classification of radio communication receivers under different tariff i.e. 8527.99.11 to 8527.99.90 to be grouped under single tariff heading 8527.99.00
	-Radio-broadcast receivers capable of operating without an external source of Power:			
	8527.99	--Others		
	---Radio communication receivers:			
	8527.99.00	Other	10%	
9018	Instrument and appliances used in medical, surgical, dental or veterinary Sciences, including scient graphic apparatus, other electromedical apparatus and sight-testing instruments:			Changes made in the description of certain tariff headings
	9018.90.29	----Other	10%	
	---Artificial kidney (dialysis) apparatus, blood transfusion apparatus:			
	9018.90.31	----Artificial kidney (dialysis) apparatus	10%	
	9018.90.32	---- Blood transfusion apparatus	10%	

Refer to Notification No. 89/2019 -Customs (NT) dated 10 December 2019 and Notification No. 36/2019-Customs to 42/2019-Customs dated 30 December 2019 for further details.

Initiation of anti-dumping investigation on viscose spun yarn

India initiated an anti-dumping investigation on imports of viscose spun yarn originating in or exported from China, Indonesia and Vietnam on 14 January 2020. The investigation was initiated based on an application by the Indian Manmade Yarn Manufacturers Association, claiming that the imports are causing material injury to the domestic industry.

Viscose spun yarn is primarily used for weaving or knitting for production of fabric for eventual use in garments. The relevant tariff codes identified are 5510.11.10 and 5510.12.10. However, the notification states that the same products have also been imported under 5510.11.90, 5510.12.90, 5510.90.10 and 5510.90.90.

The injury investigation period is from 2016-2019. Affected exporters from China, Indonesia and Vietnam are encouraged to supply the required information to the Directorate General of Trade Remedies of the Ministry of Commerce by 19 February 2020.

Further details can be accessed here:
http://www.dgtr.gov.in/sites/default/files/VSY%20INITIATION.pdf

Social Welfare Surcharge on imports under export incentive schemes

The Social Welfare Surcharge (SWS) is a surcharge levied and collected on goods imported into India as a duty of Customs. The Merchandise Exports from India Scheme (MEIS) and Services Exports from India Scheme (SEIS) are export incentive schemes in India. Under these schemes, rewards in the form of duty scrips are given to exporters and can be used for payment of Basic Customs Duty (BCD) and Additional Duties of Customs (ADD). Payment of SWS through scrips has not been specifically allowed through any notification.

The Supreme Court of India recently held that the SWS is not automatically exempted where Basic Customs Duty (BCD) and Additional Duties of Customs (ADD) are exempted. On the basis of the ruling, the Central Board of Indirect Taxes (CBIC) announced that as there is no exemption from SWS in the Foreign Trade Policy 2015-20 (FTP)/ Customs, SWS is not exempted on the basis that Customs Duties are exempted. It further clarified that SWS cannot be debited through duty credit scrips and needs to be paid by the importer in cash.

Refer to Circular No. 02/2020-Customs dated 10 January 2020 for further details.

Tightening of rules around importation of gifts

As a result of e-commerce platforms sending large volumes of goods to India as ‘gifts’, the law has been revised to prohibit the free importation of gifts subject to certain exceptions.

The revised provision prohibits the importation of goods as gifts. This includes gifts purchased from e-commerce portals through post or courier. Life-saving drugs or medicines and rakhi (and not gifts related to rakhi) are freely importable. This prohibition does not extend to importation of goods as gifts if full payment of applicable customs duties is made.

Refer to Notification No. 35/2015-20 dated 12 December 2019 for further details.

Compulsory registration for procurement of steel products

In an earlier announcement, the DGFT specified that certain steel products would be subject to compulsory registration under the Steel Import Monitoring System (SIMS). This registration requirement is applicable to imports made on or after 21 November 2019.

As goods procured by a Domestic Tariff Area (DTA) unit from the Special Economic Zone (SEZ) or Free Trade and Warehousing Zone (FTWZ) are generally treated similarly to imports, the DGFT was asked to clarify whether the mandatory SIMS registration likewise applied to:

- the importation of goods into the SEZ/FTWZ premises; and
- at the time of procurement by the DTA unit from the SEZ/FTWZ unit.

On 8 January 2020, the DGFT clarified that where goods imported under SIMS by SEZ/ FTWZ are supplied into DTA without any processing, the DTA unit does not need to register under the SIMS. However, if the goods imported are subject to manufacturing by the SEZ/ FTWZ unit such that the HS code of the good changes, the DTA importer must register under the SIMS.

Refer to Circular No. 30/2015-20 dated 8 January 2020 for further details.

Mandatory upload of documentation under e-Sanchit initiative

The CBIC mandated the upload of the following documents with each Bill of Entry from 2 December 2019. This is in relation to the e-Sanchit initiative which seeks to increase the ease of doing business. The documents are:

- Invoice and packing list;
- Airway Bill/ Bill of Lading with declaration of document code and Image Reference Number; and
- All other supporting documents e.g. Certificate of Origin, licence or permission from a participating government agency in relation to the eligibility for import clearance or claim of duty exemption

This helps ensure all relevant documentation is submitted electronically via e-Sanchit and no physical copies are required.

Refer to Circular No. 42/2019-Customs dated 29 November 2019 for further details.

Online Preferential Certificates of Origin for exports to Nepal

A trade notice was issued on 12 December 2019. It directed that with effect from 18 December 2019, all applications for and issuance of Preferential Certificates of Origin (PCOs) for exports to Nepal under the South Asian Free Trade Area (SAFTA) and SAARC Preferential Trade Agreement (SAPTA) will be done through the online platform.

The online platform issues PCOs and has been live since 19 September 2019. It provides access to all FTAs and Preferential Trade Agreements (PTAs), as well as to the COO issuing agencies. All exporters exporting under FTAs or PTAs are required to register on the platform using their Import Export Code (IEC).

Refer to Trade Notice No. 41/2019-20 dated 12 December 2019 for further details.

Indonesia

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Stricter foreign exchange controls for exports and imports

The Bank of Indonesia (BI) issued a new regulation i.e. 21/14/PBI/2019. This new regulation covers Foreign Exchange on Export Proceeds (Devisa Hasil Ekspor/DHE) and on Import Payment (Devisa Pembayaran Impor/DPI) and is aimed at increasing the effectiveness and efficiency of foreign exchange monitoring in Indonesia.

Reporting requirements on the DHE were previously regulated by Regulation No. 16/10/PBI/2014 for the export of non-natural resources (non-SDA), and by Regulation No. 21/3/PBI/2019 for the export of natural resources (SDA). The reporting requirement on DPI is a new introduction under the new regulation.

We have highlighted some key features of the new regulation as follows:

An exporters' obligation to retrieve and report the DHE

Exporters of both SDA and non-SDA goods are obligated to receive their DHE through banks within 3 months of the registration date. The registration number and date will be provided by the customs authorities once the Export Declaration (Pemberitahuan Ekspor Barang/PEB) is submitted. If the DHEs are received in cash, they must be deposited in the bank. However, DHEs from exporting SDA must specifically be transferred from a special account called Rekening Khusus (Reksus) DHE SDA.

An importer's obligation to report the DPI

Importers must report their DPI to BI by the end of the third month after the registration date. The registration number and date will be provided by the customs authorities upon submission of the Import Declaration (Pemberitahuan Impor Barang/PIB). The reported amount should be equal to the import value, but an allowance of 5% of the imported value is permitted.

Information about the transaction number, invoice number and invoice value need to be reported to the relevant bank to be included in the Financial Transaction Messaging System (FTMS) for Telegraphic Transfer (TT) transactions and to be forwarded to BI for non-TT transactions.

Other than TT and non-TT transactions, importers are required submit an online report to BI. If the import value exceeds USD 10,000, this submission must be made by the fifth month after the PIB's registration date or within the month the payment is done. This includes any changes to information in the PIB affecting the payment, changes to any information regarding the payment, and related information of the payment that is processed through any bank (e.g., cash transaction).

Banks' obligation with respect to DHE and DPI

In relation to DHE, banks are obliged to ensure that exporters have submitted the export information for TT transactions in the FTMS before crediting the DHE received by exporters. In addition, banks should also forward the non-TT transaction report and the relevant export information online to BI by the fifth day of the month following the PEB's registration date, or within the month of DHE retrieval.

As for DPI, banks must ensure that they only accept import payments for which the importers have included the relevant information in the FTMS for TT transactions. Similar to their obligation in relation to DHE, banks must also forward the import information of non-TT transactions to BI by the fifth day of the month following the PIB's registration date or within the month that payment is done.

Administrative sanctions

Administrative sanctions (i.e. suspension of the export/import services) will be imposed for any noncompliance with the DHE and the DPI reporting requirements. Noncompliance includes late submissions and variances in reported value that are greater than 5% for which no explanation is provided. If a transfer pricing adjustment is carried out which requires the company to make overseas transfers of more than USD 10,000, this information should be reported to BI within 5 months of the adjustment.

Timelines

This regulation was issued on 29 November 2019. Due to the broad nature of this regulation, the effective date for each section is different. The provision regarding the reporting requirements of the DHE and the DPI are effective as of 1 January 2020. Sections on the imposition of sanctions come into effect starting 1 January 2021.

Lower thresholds for goods imported through courier companies

The Indonesian Ministry of Finance (MOF) recently issued a new regulation, number 199/ PMK.010/2019, regarding the Provision on Customs, Excise, and Import Tax Collection for Importing Goods through Courier Service Companies. This regulation came into effect on 30 January 2020.

A major change is the significant decrease in import duty exemption threshold as well as decrease in the Prepaid Income Tax Article 22. We have summarised the change in the table below.

	Before 30 January 2020	After 30 January 2020
Import duty exemption threshold value	FOB USD 75 per shipment per day	FOB USD 3 per shipment per day
Prepaid Income Tax Article 22	10% with Tax ID number, or 20% without Tax ID number	0%
Value Added Tax	10%	

Under this regulation, the general rule is that consigned goods with a value of USD 3 to USD 1,500 will be subject to 7.5% import duty, 10% VAT, and 10% luxury good tax (if applicable). However, certain goods are also subject to an Income Tax Article 22 of 7.5 to 10%. These goods are:

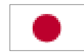
Goods with import duty exemptions	Import duty, after 30 January 2020
Goods in the form of books (HS Headings 4901, 4902, 4903, 4904)	0%
Bags, luggage, and similar goods (HS Heading 4202)	15-20%
Textiles, garments, and similar goods (HS Chapter 61, 62, 63)	25-30%
Footwear, shoes, and similar goods (HS Chapter 64)	15-25%

There are also some changes regarding the volume of excisable goods that can be given exemption from import duty andexcise. The maximum amount remains unchanged, with the exception of a decrease of 10 to 5 sticks of cigars. Other than that, the regulation specifies the volume and type of 'other tobacco products' as follows:

- 20 sticks;
- 5 capsules;
- 30 milliliters;
- 4 cartridges; or
- 50 grams/milliliters.

Note that the new rates as well as clearance process under the new regulation also applied to goods that were imported prior to 30 January 2020 but not set for release until after 30 January 2020. We have not reported on changes to the clearance process as the changes are not significant for the owners of such goods.

Japan



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US-Japan Trade Agreement now in effect

On 1 January 2020, the US-Japan Trade Agreement took effect. The agreement covers a set number of tariff lines for which duty concessions and product-specific rules of origin are provided. Businesses should be aware that unlike many other FTAs, the tariff lines covered and applicable product-specific rules of origin differ between the two signatory parties.

In order to provide more details regarding the new agreement, Japan Customs and the Ministry of Finance conducted a seminar and released a Q&A in December 2019. In addition to explaining previously released details of the agreement, the authorities offered clarifications around certain operational aspects of using the agreement. These include:

- For imports into Japan, origin can only be declared by the importer of the goods or its broker. It cannot be declared by the goods' producer or exporter;
- Japanese importers must submit documents proving that the goods are originating (e.g., bill of materials, HS code chart, price list); and
- Notwithstanding the first point, if documents proving origin cannot be released to the importer for reasons of confidentiality, Japan Customs will accept affidavits by exporters providing a rational explanation of how their goods meet the origin criteria. This is consistent with Japan Customs approach under the CPTPP and the EU-Japan EPA.

The text of the US-Japan Trade Agreement can be accessed here:
https://www.mofa.go.jp/mofaj/files/000527401.pdf

Guidance on Japan-EU EPA and AEO status, post-Brexit

On 31 January 2020, Japan Customs released a guidance on the application of the Japan-EU EPA during the transition period following the UK's exit from the EU.

The guidance clarified that during the Brexit transition period lasting through to 31 December 2020, Japan will continue to treat the UK as if it were an EU member for the application of the Japan-EU EPA. This means that UK content of goods exported from the EU, whether that is the UK or any other EU member state, will continue to count as EU content. EU-originating goods meeting origin criteria will continue to be eligible for preferential duty rates under the Japan-EU EPA upon import to Japan. Similarly, Japan-originating goods meeting the requisite origin criteria will continue to receive preferential duty treatment on import into the UK.

Japan Customs also issued a notice regarding mutual recognition of Authorised Economic Operators (AEOs). As with the Japan-EU EPA, the Mutual Recognition Agreement between Japan and the EU will apply through the transition period. Hence, Japanese AEOs will have their certification recognised in the UK and vice versa.

Malaysia

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Amendments to Customs, Excise and Free Zone Acts effective from 1 January 2020

On 31 December 2019, the Minister of Finance announced that the Customs (Amendment) Act 2019, Excise (Amendment) Act 2019 and Free Zone (Amendment) Act will enter into force from 1 January 2020. Companies should ensure compliance with the new requirements under the various Acts in order to mitigate any risks of customs challenges and audits.

The details on the specific amendments to these Acts were reported in the Malaysia country report in our April-May 2019 and June – July 2019 issue of Trade Intelligence.

https://customs.pwc.com/en/publications/assets/pdf/trade-intelligence-201905.pdf

https://customs.pwc.com/en/publications/assets/pdf/trade-intelligence-201907.pdf

New Customs and Excise and Free Zone Regulations

To align with amendments to the Customs, Excise and Free Zones Acts, Malaysia Customs issued a new Customs Regulations 2019 on 31 December 2019 to replace Customs Regulations 1977. Subsidiary regulations under the Excise Act and Free Zone Act were also amended respectively under Excise (Amendment) (No.2) Regulations 2019 and Free Zone (Amendment) Regulations 2019. These regulations entered into force on 1 January 2020.

The key changes and amendments to the Regulations are outlined below. These new regulations will introduce changes to various aspects of customs and trade related procedures, including stricter fines and penalties for non-compliance.

(A) Customs Regulations 2019

1. New **definitions** for terms such as 'duty free island' and 'regional transit'

Term	Definition
'duty free island'	means Labuan, Langkawi, Tilman or Pangkor
'regional transit'	means movement of goods by land across the territory of one or more contracting parties under ASEAN Framework Agreement on Facilitation of Goods in Transit (AFAFGIT): 1. from a customs office in Malaysia to a customs office in another country; or 2. from a customs office in another country through Malaysia to a customs office in another country.

2. New regulations on '**regional transit**'

   Importers and exporters, and their agents are required to register with the Director General of Customs (DG) prior to movement of goods in regional transit and comply with the conditions imposed for regional transit. Malaysia Customs has yet to publish or release any guidelines or detailed information in relation to rules on regional transit.

   Based on the AFAFGIT, the objective of regional transit is to minimise customs procedures at borders and to facilitate the movement of goods by road from a point of departure to a point of destination within AFAFGIT member countries without intermediate unloading. This provides an administratively simpler and cost advantageous procedure for transport of goods between member customs territories outside of regular import and export Customs regimes.

3. Increase in **fines and penalties** for non-compliance

   Any person who contravenes or commits an offence under the following regulations will be liable to a fine not exceeding MYR 50,000 or to imprisonment for a term not exceeding one year or both. Previously, it was a fine of MYR 5,000 for any person who contravenes or fails to comply with any of the provisions of these Regulations.

Regulation 41- Licensee to record particulars when receiving goods, etc.
Licensee of a warehouse or duty-free shop or petroleum supply base is required to record particulars of receipt and sale of dutiable goods at the time of each receipt and sale of dutiable goods, not later than the same day before the close of business.

Regulation 42 - Requirement for license
All importation of intoxicating liquor, tobacco or denatured spirit must be accompanied by a license granted by Malaysia Customs, unless otherwise stated or allowed.

Regulation 44 – Inventory record
Importers of intoxicating liquor, tobacco or denatured spirit are required to keep inventory records in the national or English language. The records must contain the following details:

1. the import quantity of the intoxicating liquor, tobacco or denatured spirit;
2. the date of importation; and
3. the manner of disposal whether transfer to retail stock or by sale, together with the names of the wholesale purchases.

The inventory record shall be balanced at the close of business on the last day of each month.

4. Clearer **warehouse, duty free shop, inland clearance depot or petroleum supply base** license requirements in terms of license applications and approval processes, duties of a licensee and record keeping requirement.

5. The master of a vessel, the pilot of an aircraft or his appointed agent is required to immediately inform the customs officer in writing on any change of information in the port or airport clearance prior to **departure of the vessel or aircraft**. Any breach of the requirement will, on conviction, be liable to a fine not exceeding MYR 50,000 or to imprisonment for a term not exceeding one year or both.

6. **Goods under transhipment** are not allowed to remain under customs control for more than thirty days from the date of first arrival and cannot be split unless prior approval or permission is obtained from the DG and subject to compliance with all conditions that the DG may impose. Anyone who fails to comply will, on conviction, be liable to a fine not exceeding MYR 50,000 or to imprisonment for a term not exceeding one year or both. This appears to be an initiative indicating that Malaysia Customs is more actively combatting smuggling activities.

The full Customs Regulations 2019 can be accessed at the following link:
http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA397_2019.pdf

<u>(B) Free Zone (Amendment) Regulations 2019</u>

The key amendments under the Free Zone (Amendment) Regulations 2019 are as follows:

1. A fine not exceeding MYR 50,000 or to imprisonment for a term not exceeding 1 year or both will be imposed on a breach of regulations on any of the following activities:

    - restrictions on entry into, and departure from, free zones;
    - failure to maintain record of free zone activities by the free zone operators;
    - goods entering free zones from outside Malaysia;
    - goods leaving free zones for export to countries outside Malaysia;
    - goods in transhipment at free zones;
    - removal of duty-paid goods from free zones to the principal customs area (PCA);
    - prohibited goods taken into, or transhipped at, free zones; and
    - any other contraventions.

2. The master of a vessel or its appointed agent is required to immediately inform the customs officer in writing in the event if there is any change of information in the port or airport clearance.

3. For transshipment of goods, the master or agent of every vessel and aircraft, including appointed freight forwarders, needs to:

    - Produce a through bill of lading or a through airway bill which covers the goods transhipped;
    - Prove that the port of discharge or airport of discharge is outside Malaysia; and
    - Prove that no local consignee or local notify party in the through bill of lading or through airway bill, except a shipping agent.

4. Upon discharge of cargo, the following details must be included in a submission of certified statement:

    - the name, address and identification number of the master or agent of the vessel, or the pilot or agent of the aircraft;
    - the name and registration number of the vessel or aircraft;
    - the date of the arrival of the vessel or aircraft;
    - the port or airport of arrival
    - the last port or airport of call;
    - the manifest registration number;
    - the ship call number;
    - the quantity, description and value of goods that have not been unshipped due to short shipment or short landing or any other cause; and
    - the quantity, description and value of goods that have been overshipped or overlanded.

The complete amendment order can be accessed at the following link:
http://www.federalgazette.agc.gov.my/outputp/pua_20200101_PUA 416.pdf

<u>(C) Excise (Amendment) (No.2) Regulations 2019</u>

No substantive changes have been made under the Excise (Amendment) (No.2) Regulations 2019. All changes are phrasing, terminology and wording changes to align with the Excise (Amendment) Act.

The full regulations can be accessed at the following link:
http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA%20411.pdf

Determination of value of locally manufactured excise goods

On 31 December 2019, the Ministry of Finance (MOF) issued the Excise (Determination of value of locally manufactured goods for the purpose of levying excise duty) Regulations 2019, which took effect from 1 January 2020.

The new regulations require all manufacturers of excisable goods, such as those of passenger vehicles, alcoholic beverages, tobacco products and certain sugar sweetened beverages, to determine the excisable value of goods locally manufactured using the Computed Value Method (CVM). If the CVM cannot be applied, then the Flexible Value Method (FVM) should be applied. It is worth noting that calculations using the CVM do not only include direct manufacturing costs up to ex-factory level, they also include other indirect costs and general expenses incurred for both the manufacture and sale of the locally manufactured excisable goods.

Manufacturers of such goods should therefore take steps to review and ascertain whether the current value declared for locally manufactured excisable goods meets Customs' requirements.

Multiple amendments to Sales Tax Orders and Regulations

On 26 December 2019 and 31 December 2019, the Ministry of Finance (MOF) issued five (5) amendment orders related to sales tax which took effect on 1 January 2020. The key amendments are outlined below:

- Inclusion of the following HS headings under First Schedule which are now subject to 5% sales tax:
  - 39.26 (other articles of plastics and articles of other materials of HS Headings 39.01 to 39.14),
  - 70.07 (safety glass, consisting of toughened (tempered) or laminated glass) and
  - 94.01 ((seat other than those of HS Heading 94.02), whether or not convertible into beds, and parts thereof)
- The Director General of Customs has been given the power to extend the period of offer to compound an offence beyond the standard 14 days. Compoundable offences have also been expanded to include the following:
  - Evasion of sales tax on taxable goods imported;
  - Improperly obtaining deduction of sales tax; and
  - Failure by a registered manufacturer to notify and pay sales tax on goods previously claimed sales tax deduction were disposed of by other or not used in the manufacturing of his taxable goods.
- Payment of compound using banker's cheque or through electronic banking is no longer allowed. Payment of compound must be made only in bank draft.
- Sales tax will still be charged and levied on motor vehicles imported into Pangkor despite being gazetted as a designated area.
- Sales tax will also be charged and levied on all petroleum imported into designated areas.
- Sales tax deduction is allowed on taxable goods purchased by registered manufacturer has been expanded to include packing materials used solely in the manufacturing of his taxable goods.
- A new regulation 16D has been introduced to allow the Director General of Customs to refuse an application of sales tax deduction if he is satisfied that the registered manufacturer has provided any false, misleading or inaccurate information in the application or has at any time ceased to manufacture taxable goods.
- For claiming of sales tax drawback, the period within which the taxable goods have been exported has been shortened from 6 months to 3 months. However, any taxable goods imported or purchased before 1 January 2020 with their sales tax paid before 1 January 2020 will be excluded from the above change.
- The minimum amount in the application for drawback of sales tax paid in respect of any one consignment of exported taxable goods is MYR 200.

The complete amendment orders and regulations can be accessed at the following links:

- Sales Tax (Persons Exempted from payment of tax) (Amendment) (No. 2) Order 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191226_P.U.%20(A)%20371.pdf
- Sales Tax (Rates of tax) (Amendment) Order 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191226_P.U.%20(A)%20370.pdf
- Sales Tax (Compounding of offences) (Amendment) Regulations 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA%20392.pdf
- Sales Tax (Imposition of sales tax in respect of designated areas) (Amendment) (No. 2) Order 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA%20391.pdf
- Sales Tax (Amendment) Regulations 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA%20390.pdf

New Customs ruling application forms effective from 1 January 2020

New revised customs ruling application forms for customs, excise, sales and service tax were published under Customs (Customs Ruling) (Amendment) Regulations 2019 on 31 December 2019 and took effect from 1 January 2020. They are:

Schedule A	Application form for customs ruling
Schedule B	Customs Ruling (i.e. for the issuance of the customs ruling result or decision)
Schedule C	Application form for renewal of customs ruling

These regulations were issued to harmonise existing customs ruling applications forms used for customs, excise, sales and service tax. In other words, applicants can now use the same form to apply for a ruling from Malaysia Customs. Currently, Malaysia Customs is still accepting new customs ruling applications using existing customs ruling application forms.

The new customs ruling forms can be accessed at the following links:

- Customs (Customs Ruling) (Amendment) Regulations 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA405.pdf
- Excise (Customs Ruling) (Amendment) Regulations 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA%20401.pdf
- Sales Tax (Customs Ruling) (Amendment) Regulations 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA%20400.pdf
- Service Tax (Customs Ruling) (Amendment) Regulations 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA406.pdf

New imposition of import and excise duties on motor vehicles into Pangkor

Prior to 1 January 2020, motor vehicles imported or delivered from the principal customs area (PCA) into Pangkor were not subject to import duties and excise duties. PCA refers to the customs territory of Malaysia, exclusive of duty-free islands such as Tioman, Pangkor, Langkawi and Labuan.

However, on 31 December 2019, Malaysia Customs announced that importers are now required to pay import and excise duties on imported vehicles and excise duties on vehicles transported from the PCA to Pangkor, commencing 1 January 2020.
The rates of import duties and excise duties will be levied in accordance with the rates stipulated under the Customs Duties Order 2017 and Excise Duties Order 2017.

Changes to exemptions in relation to Pangkor and public or beer houses

The Customs Duties (Exemption) (Amendment) (No.4) Order 2019 entered into effect on 1 January 2020 with the following amendments:

- A person entering Malaysia from Pangkor will be exempted from payment of customs duty for liquor products (not exceeding 1 litre in all), tobacco products (not exceeding 200 sticks of cigarettes), new apparel (not exceeding 3 pieces), new footwear (not exceeding one pair) and others. This is provided the conditions stipulated in the Order are met.
- Any person licensed as a public house or beer house in Labuan, Langkawi or Tioman will not be exempted from customs duty.

Public house licenses are required for the sale by retail of intoxicating liquors, excluding toddy, for consumption on premises or at the place where they are sold. Beer house licenses are required for the sale by retail of beer for consumption on premises or place of sale, provided holders of public house licenses are exempted from beer house licenses.

The complete Customs Duties (Exemption) (Amendment) (No. 4) Order 2019 can be accessed at the following link: http://www.federalgazette.agc.gov.my/outputp/pua_20191231_PUA%20403.pdf

Customs import licence fee for motor vehicle regulations

On 26 November 2019, the MOF published new amendments to the Customs (Import Licence Fee for Motor Vehicle) Regulation 2016.

The amended Regulations, Customs (Import Licence Fee for Motor Vehicle) (Amendment) Regulations 2019 deemed to have entered into effect on 1 January 2017 with the following amendments:

Before amendment	After amendment
Customs (Prohibition of Imports) Order 2012	Customs (Prohibition of Imports) Order 2017 Note: This amendment to the Regulations 2016 is deemed to have entered into effect on 1 April 2017.
For the first 35,000 import licences approved, ten thousand ringgit each unit of the motor vehicle imported by open Approved Permit (AP) company; and	In relation to the first 35,000 import licences approved for the whole of the open AP companies during the validity period of the current year's AP allocation, ten thousand ringgit for each unit of the motor vehicle imported by the open AP company.
The payment of the import licence fee imposed under sub regulation 2(1) shall be made in the form of a banker's draft.	The payment of the import licence fee imposed under sub regulation 2(1) shall be made in a manner to be determined by the Secretary General of the Ministry of International Trade and Industry.

Imposition of anti-dumping duties on cold-rolled coils from China, Japan, Korea and Vietnam

On 24 December 2019, the Ministry of International Trade and Industry (MITI) concluded after the investigation period of 120 days that dumping margin exists on the imports of cold-rolled coils from China, Japan, Korea and Vietnam. As a result, the domestic cold-rolled coils industry had suffered material injury by the importation of products that are available locally.

As a result, MITI has imposed anti-dumping duties on cold-rolled coils of iron or non-alloy steel, of width more than 130mm excluding tin mill black plate from China, Japan, Korea and Vietnam. The anti-dumping duties will be imposed for a period of five years from 25 December 2019 till 24 December 2024:

Affected tariff codes	Country of export	Range of anti-dumping duties
7209.15.00 00, 7209.16.90 00, 7209.17.90 00 and 7209.18.99 00 (excluding 7225.50.90 00)	China	4.82% - 26.38%
	Japan	26.39%
	Korea	0% - 3.84%
	Vietnam	7.70% - 20.13%

The list of affected producers or exporters and the corresponding dumping margin rates can be found at the following link:

- Customs (Anti-Dumping Duties) (No. 2) Order 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191224_PUA362.pdf
- Notice of negative final determination of an anti-dumping duty investigation: http://www.federalgazette.agc.gov.my/outputp/pub_20191224_PUB641.pdf
- Notice of affirmative final determination of anti-dumping duty investigation: http://www.federalgazette.agc.gov.my/outputp/pub_20191224_PUB642.pdf

Provisional anti-dumping duties on cellulose fibre reinforced cement flat and pattern sheets

On 22 November 2019, MITI made a preliminary determination to impose provisional anti-dumping duties on cellulose fibre reinforced cement flat and pattern sheets, specifically excluding external roofing, originating or exported from Indonesia into Malaysia.

The affected tariff codes and corresponding anti-dumping duties by country of export/origin are as follows:

Affected tariff codes	Country of export/ origin	Range of anti-dumping duties
6811.82.20 00 6811.82.90 00	Indonesia	35.43% - 108.10%

These provisional anti-dumping duties rates are effective from 22 November 2019 until 20 March 2020. The MITI will conduct a final determination of the anti-dumping duties rates within a period of 120 days from 22 November 2019.

The complete Orders can be accessed at the following links:

- Notice of Affirmative Preliminary Determination of an Anti-Dumping Duty Investigation with regard to the imports of Cellulose Fibre Reinforced Cement Flat and Pattern Sheet originating or exported from The Republic of Indonesia: http://www.federalgazette.agc.gov.my/outputp/pub_20191122_P.U.%20(B)%20606.pdf
- Customs (Provisional Anti-Dumping Duties) (No. 2) Order 2019: http://www.federalgazette.agc.gov.my/outputp/pua_20191125_PUA324_2019.pdf

Myanmar

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New law to prevent increased imports

On 24 December 2019, the government announced the approval of the 'Law to Prevent an Increased Quantity of Imports'. Under the new law, a committee under the Ministry of Commerce (MOC) will be formed to prevent an increased quantity of imports.

The aim of the new law is to enable a systematic investigation of serious injury to domestic producers or serious threat to domestic producers due to the increase in quantity of any kind of imports into Myanmar, and to support the competitiveness of domestic manufacturers during a certain period.

The new law defines an "increased quantity of imports" as "a quantity of any kind of imports into Myanmar significantly higher than the amount of domestically produced goods that are similar or directly competitive". Remedies under the new law include tariffs and restrictions on import quantities. The draft did not clearly specify which industries are key focuses at this stage.

New registration requirements for import/export companies

Effective from 1 January 2020, the MOC announced it will remove companies that have not applied for new importer/exporter registration numbers from the registry list and forbid these companies to trade.

According to a provision in the Myanmar Companies Law 2017, the Directorate of Investment and Company Administration (DICA) requires companies to re-register with the Myanmar Companies Online (MyCo) registry system. MOC also amended its procedures for importer/exporter registration numbers to be in line with the company registration procedures.

Companies that have re-registered with the MyCo registry system and would like to continue carrying out an import/export business had to apply for a new nine-digit Taxation Identification Number to replace their existing number in importer/exporter registry by 31 December 2019.

The Department of Trade is also upgrading its system of issuing export licences to the Myanmar Tradenet 2.0 system. Starting from 5 January 2020, relevant departments such as DICA, Customs, Internal Revenue Department, Department of Trade, and Central Accounts Office can share company information.

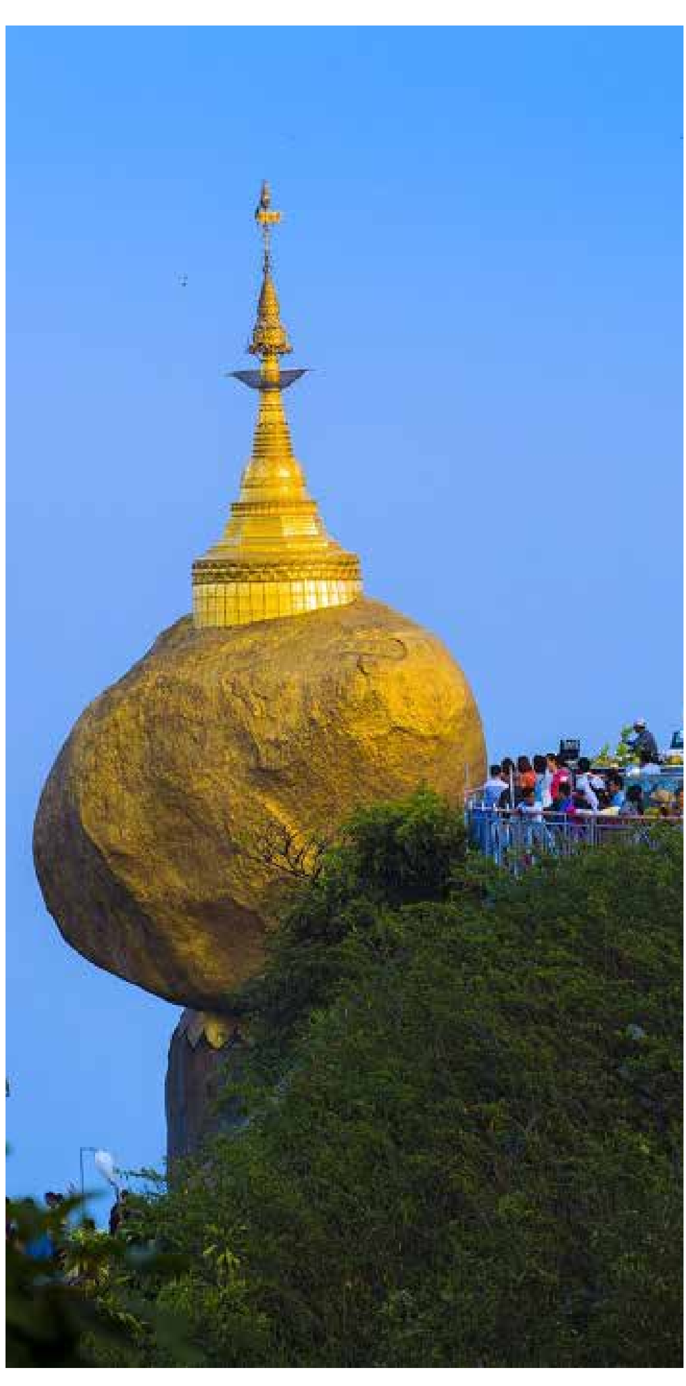
Draft laws on alcohol imports

The draft law on regulation for alcohol importation intended to relax Myanmar's existing ban has moved to the Attorney General for approval. Once the draft is approved, it will be presented to the Cabinet. The latest version of the draft law has not been made public.

Separately, the General Administration Department (GAD) is drafting an Excise Law which will also regulate the flow of foreign liquors. It would need both the Cabinet and Parliament's approval to become law.

Companies that would like to import, distribute or sell any kinds of liquor would need approval from the Ministry of Home Affairs, the GAD and a new Excise Policy Committee.

The GAD would have the authority to issue licences in relation to production, storage, transport and distribution. It is unclear which authority would be responsible for import licences.



Philippines

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Philippines joins ASEAN Single Window live operation

The Philippines successfully joined the ASEAN Single Window (ASW) live operation on 30 December 2019 and started the exchange of ASEAN Trade in Goods Agreement (ATIGA) electronic Certificates of Origin (e-CO) with Indonesia and Malaysia.

Note that the e-CO process for export is currently on pilot testing with only a limited number of participants. These participants currently secure their e-CO via Tradenet (the Philippines national single window platform) which is now connected to the ASW. Certificates of origin for import transactions must still be submitted on manual forms.

Companies not on the pilot testing project should take note that finance and customs authorities are preparing for wider implementation of e-CO via Tradenet for both export and import transactions to effectively exchange trade documents with the ASW. The eventual shift to e-CO will allow companies to improve processing time and reduce cost.

Additional trade documents are targeted to be exchanged through the ASW within the year. This includes sanitary and phytosanitary certificates, animal health certificates, self-certification of product origin and other shipping documents.

Authorities are expected to release guidance on Tradenet registration, e-CO and ASW implementation soon.

REX registration available under EU-GSP

The Bureau of Customs (BOC) issued a guideline on self-certification of origin under the European Union – Generalized System of Preferences (EU-GSP).

Philippine exporters (producers, manufacturers, or traders) looking to self-certify goods origin are advised to apply to be a "Registered Exporter" in EU's Registered Exporter System (REX) on or before 30 June 2020. Once the Philippines completes the requisites with the EU, "Registered Exporters" will be able to self-certify goods origin.

Under the EU-GSP, self-certification refers to the completion of a statement of origin on an invoice or any commercial document. The statement of origin will serve as proof of origin for import into the EU and will replace the manual certificate of origin (Form A). The format for self-certification is as follows:

> "The exporter __(Registered Exporter Number)__ of the products covered by this document declares that, except where otherwise clearly indicated, these products are of Philippine preferential origin according to the rules of origin of the Generalized System of Preferences of the European Union and that the origin criterion met is _______."

The application process to be a "Registered Exporter" in EU's REX is as follows:

1. Complete and electronically submit the application form which is available at https://customs.ec.europa.eu/rex-pa-ui/#/create-preapplication/

   Note that exporter-traders who are registering must have sufficient knowledge of how the goods were produced and must possess the necessary documentation (i.e. supplier's declaration in BOC's prescribed format) in order to declare and prove the origin of the goods.

2. Print the form and forward a copy to the export division of the BOC. The following documents must be attached:

   a. Unique reference number from the Philippine Economic Zone Authority (PEZA) for PEZA-registered companies, or certificate of registration on the BOC's client profile registration system for non-PEZA companies
   b. Product evaluation report, if applicable

3. Customs will evaluate the application and issue a REX number within seven working days to successful applicants. Applicants whose application have been denied will also be notified.

For more details, refer to Customs Memorandum Order 50-2019: http://customs.gov.ph/wp-content/uploads/2019/12/cmo-50-2019-Guidelines_on_the_Implementation_of_the_Registered_Exporter_System.pdf

New excise tax rates and VAT-exempt transactions

Republic Act (RA) 11467 amended certain provisions of the Philippine tax code, effectively widening the list of Value-Add Taxes (VAT) exemptions as well as new excise rates for liquor products, heated tobacco and vapor products. RA 11467 was signed on 22 January 2020 but was made effective on 1 January 2020. Affected tax payers are expected to make corrections on the transactions where taxes paid were based on previous rates.

The salient provisions are as follows:

I. VAT-exempt transactions - includes the sale and importation of the prescription drugs and medicines of the following illness:

   - Diabetes, high cholesterol, and hypertension beginning 1 January 2020
   - Cancer, mental illness, tuberculosis, and kidney diseases beginning 1 January 2023

   The Department of Health will issue a list of approved drugs and medicines to be exempted from VAT within two-months.

II. New excise taxes

A. Alcohol products

1. Distilled spirits – defined as substance known as ethyl alcohol, ethanol or spirits of wine, including dilutions, purifications and mixtures thereof…; and shall include whisky, brandy, rum, gin, and vodka, and other similar products and mixtures.

Effective date	New excise rate		Previous excise rate
	Ad valorem tax per proof	Specific tax per proof liter	
1 January 2020	22% of the net retail price (NRP, exclusive of excise and VAT)	PHP 42.00	20% ad valorem tax of NRP, plus PHP 24.35 specific tax
1 January 2021		PHP 47.00	
1 January 2022		PHP 52.00	
1 January 2023		PHP 59.00	
1 January 2024		PHP 66.00	
1 January 2025 and onwards		6% increase every year	

2. Wines

Effective date	Specific tax per guage liter	Previous excise rate	
1 January 2020	PHP 50.00	Sparkling wine with NRP of ≤ PHP 500	PHP 329
		Sparkling wine with NRP of > PHP 500	PHP 921.16
1 January 2021 and onwards	6% increase every year	Still wine with alcohol content of ≤ 14%	PHP 39.48
		Still wine with alcohol content of > 14%-25%	PHP 78.97

3. Fermented Liquor - includes beer, ale, porter, and other fermented liquors regardless if manufactured in factories or sold and brewed at micro-breweries or small establishments, except tuba, basi, tapuy, and similar fermented liquors.

Effective date	Specific tax per liter	Previous excise rate	
1 January 2020	PHP 35.00	Manufactured in factories	PHP 26.44
1 January 2021	PHP 37.00		
1 January 2022	PHP 39.00		
1 January 2023	PHP 41.00	Brewed in microbreweries	PHP 36.85
1 January 2024	PHP 43.00		
1 January 2025 and onwards	6% increase every year		

B. Tobacco Products, heated tobacco products, and vapor products

1. Heated tobacco products

Effective date	Specific tax (per pack of 20 units or packaging combination of not more than 20 units)
1 January 2020	PHP 25.00
1 January 2021	PHP 27.50
1 January 2022	PHP 30.00
1 January 2023	PHP 32.50
1 January 2024 and onwards	5% increase every year

2. Vapor products - defined as electronic nicotine and non-nicotine delivery systems (ENDS/ENNDS), which are combination of (i) liquid solution or gel that transforms into an aerosol without combustion through the employment of a mechanical or electronic heating element, battery, or circuit that can be used to heat such solution or gel, and includes, but is not limited to (ii) a cartridge, (iii) tank, and (iv) the device without a cartridge or tank.

a. Nicotine salt or salt nicotine – excise tax applies to liquid substances, regardless of nicotine content, including nicotine free liquids or any similar products, further classified as nicotine salt or salt nicotine.

Effective date	Specific tax per millilitre or fraction thereof
1 January 2020	PHP 37.00
1 January 2021	PHP 42.00
1 January 2022	PHP 47.00
1 January 2023	PHP 52.00
1 January 2024 and onwards	5% increase every year

b) Conventional 'Freebase' or 'Classic' Nicotine – excise tax applies to liquid substances, regardless of nicotine content, including nicotine free liquids or any similar products, further classified as 'freebase' or 'classic'.

Note that manufacturing, importation, selling, and distribution of vapor products with flavoring other than plain tobacco or plain menthol is prohibited.

Effective date	Specific tax per 10 millilitres or a fraction thereof
1 January 2020	PHP 45.00
1 January 2021	PHP 50.00
1 January 2022	PHP 55.00
1 January 2023	PHP 60.00
1 January 2024 and onwards	5% increase every year

The law requires manufacturers, distributors, and importers of the above liquor and tobacco products to submit to the Bureau of Internal Revenue (BIR) a sworn statement of the volume of sales and removals of each brand of products in the three preceding months.

The BIR has yet to issue a revenue regulation to implement the new excise tax rates, as well as the floor prices of heated tobacco products and vapor products.

The Food and Drug Administration will continue to regulate the manufacture, importation, sale, packaging, advertising, and distribution of liquor, tobacco products, heated tobacco, and vapor products.

RA 11467 also contains amendments on provisions of supervision of taxable establishments, penalties on tax and stamps offenses, as well as the allocation of funds generated from excise taxes. The provision seeking to limit the search and seizure powers of the BIR was rejected by the President.

A copy of the law may be accessed through the following link: https://www.officialgazette.gov.ph/2020/01/22/republic-act-no-11467/

Rules on goods abandonment

Customs Administrative Order 17-2019 details the kinds, effects, and treatment of abandoned imported goods. Under the CAO, imported goods are deemed abandoned in the following circumstances:

1. Expressed abandonment - When the owner, importer, or consignee of the imported goods submits an affidavit to Customs stating intention to renounce claim and abandon ownership of the goods in favour of the government.
2. Implied abandonment – When the owner, importer, or consignee of the imported goods fails to:

   a. Lodge or file goods declaration within the prescribed period of filing.
   b. Pay assessed duties and taxes within 15 days from final assessment.
   c. Submit required permit or license for regulated imported goods within 45 days from date of lodgement, or 15 days from finals assessment, whichever comes first.
   d. Claim imported goods from Customs within 30 days from payment of duties and taxes.
   e. Place appropriate markings on imported goods within 30 days from receipt of notice from customs.

In all cases of abandonment, the Bureau of Customs will issue a corresponding decree of abandonment. The BOC will send notices to the owner, importer, or consignee to notify them of pending obligations to file and lodge, pay, mark, or submit clearances or permit to prevent the imported goods from abandonment. Notices will be sent via electronic notice for accredited importers, registered mail or personal service for non-accredited importers, and public notice on bulletin boards or other conspicuous places within customs houses for unknown consignees.

Abandoned goods will be disposed by Customs in accordance to applicable laws and regulations. Expressly abandoned goods will be deemed property of the government, so all interest and property rights will belong to the government. Imported goods that have been impliedly abandoned may still be reclaimed by their owner, importer, or consignee by lodging and filing a goods declaration subject to the following conditions:

a. The goods have not been disposed by Customs.
b. The goods declaration is filed within 30 calendar days after the lapse of 15 calendar days period to file.
c. The duties, taxes, and other charges have been paid in full.
d. The charges and fees due to port terminal operator have been paid in full.
e. The expenses incurred before the release of goods from customs custody have been paid in full.
f. Compliance with all other legal documents required.

The owner, importer, or consignee of imported goods that have been impliedly abandoned are entitled to receive proceeds of the sale of such goods, after deduction of taxes and all incurred expenses. When this is not possible, proceeds of the sale will go to the forfeiture funds of the BOC.

Companies are advised to take note of instances of abandonment to avoid inconvenience on import transactions.

For more details please visit the following link: http://customs.gov.ph/wp-content/uploads/2020/01/CAO-17-2019-Abandonment_Kinds_Effects_and_Treatment.pdf

Freedom of information requests

Customs memorandum order 53-2019 published the Freedom of Information (FOI) manual which enables public access to non-confidential and unpublished information held by the BOC. This includes records, documents, papers, reports, letters, contracts, or minutes of meetings.

A request can be made by a Filipino. He/she will need to complete a request form in writing, which can be submitted electronically or manually to the BOC. The request must include the name and contact details of the requesting party with valid proof of identification. A reasonable description of the information requested along with the reason and purpose of request must be provided. Requests made by a representative or a firm hired by a private person or requests made on behalf of a juridical entity may be subject to additional requirements and proof of authorisation.

Online information requests	Manual information requests
A request may be lodged through any of the following websites: • data.gov.ph • eFOI.gov.ph • piad@customs.gov.ph	A request may be lodged through the Public Information and Assistance Division (PIAD) of the BOC. • Public Information and Assistance Division (PIAD) Bureau of Customs, Office if Commissioner Building Gate 3, South Harbor, Port Area, Manila • +63 (2) 8705 6000 • piad@customs.gov.ph

All requests will be acknowledged. BOC will respond within 3-7 working days. This timeframe may be extended if the information requires extensive search of records, examination of records, or where operations are halted or disrupted by unforeseen circumstances (e.g., natural disasters). In such cases, the BOC will notify the requesting party of the extension.

The FOI manual can be accessed at:
http://customs.gov.ph/wp-content/uploads/2019/12/cmo-53-2019-Freedom_of_Information_Manual.pdf

Singapore

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Update on Singapore Customs' correspondence method and MCS submission procedure

Starting from 15 February 2020, documents and communications from Singapore Customs relating to Certificates of Origin will be sent via email. Communications will include manufacturer registration or renewal letters, verification of cost statements and letters of acknowledgement. Manufacturers should ensure that their latest contact details and email addresses are registered and updated with Customs.

Additionally, Customs will stop accepting hardcopies of Manufacturing Cost Statements (MCS) with effect from 1 March 2020. All MCSs must be submitted by email to customs_mcs@customs.gov.sg using the correct format.

The MCS template can be found in the link below:
https://www.customs.gov.sg/eservices/customs-forms-and-service-links#Manufacturing

Chile-New Zealand-Singapore concludes talks on Digital Economy Partnership Agreement (DEPA)

On 21 January 2020, Chile, New Zealand and Singapore concluded negotiations on the Digital Economy Partnership Agreement (DEPA) in Singapore. The target finalisation and signing of the agreement is targeted to take place during the APEC meeting in April.

DEPA is a common set of rules, standards and guidelines on digital trade and e-commerce agreed-upon by the three countries. Additionally, DEPA is expected to complement the current network of FTAs available and will also aid in the WTO's Joint Statement Initiative on E-Commerce as it further develops rules on digital trade.

DEPA facilitates cooperation in key digital areas such as:

- Consumer and data protection
- Digital inclusion and inclusive trade
- Adaptations to new technologies and varying digital trade methodologies
- Treatment of digital products
- Business and consumer trust
- Small and Medium Enterprises cooperation
- Transparency and dispute settlement
- Government procurement

Singapore and Australia are also currently in negotiations for a potential Singapore-Australia Digital Economy Agreement. In addition, Singapore, together with the International Chamber of Commerce and 17 other major businesses signed a deal during the World Economic Forum annual meetings in Davos to drive global digitalization in trade and commerce via the TradeTrust platform. More information on DEPA and the TradeTrust platform will be released to the public in due time.

Taiwan, R.O.C.

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New rules for managing Transfer Pricing adjustments

Following the issuance of Tax ruling No. 10804629000 dated 15 November 2019 regarding the handling of retroactive one-time Transfer Pricing (TP) adjustments, the Customs Administration released "Guidelines on assessing one-time TP adjustment to determine the dutiable value" (the "Guidelines") on 31 December 2019 outlining procedures to assist companies who have imported or are importing goods from related parties and would like to adopt the abovementioned ruling.

Specifically, the requirements for importers to follow are:

- Upon goods importation, the importer should declare a provisional customs value with a pro-forma invoice, provide a customs value declaration form, and apply for release of goods with deposit.
- On the import declaration form, importers are required to:
  - Fill in Code 136 in the "special relationship field" of the import declaration, which indicates the existence of a special relationship that may affect the declared value;
  - Fill in Code 65 (which indicates that the payment method is duty estimated) in the "duty treatment" field; and
- Indicate in the "other declared items" field that the declared item(s) in the import declaration is subject to one-time TP adjustment in the fiscal year.
- Within one month after the fiscal year end, importers must apply with the customs authority for a final customs value assessment for the goods imported with provisional values under the mechanism described above. As part of the final customs value assessment, importers will need to provide supporting documents such as the underlying agreements of the transactions, official commercial invoices, proof of payment (or explanations), and any other documents necessary for assessment of the customs value. Upon request for further documents, importers will need to provide these documents accordingly within 15 days from the date of notification.
- If importers fail to submit the application within one month from fiscal year end or fail to provide required documents within 15 days of notification, Customs can assess the customs values on its sole discretion in accordance with the prevailing laws and regulations. Customs will complete the assessment within four months from the date of receipt of the application, which can be extended once for up to two months depending on case complexity.

Following the introduction of the tax ruling and Customs Guidelines, it is now possible for an importer in Taiwan to report adjustments to customs values of imported goods as a result of voluntary retroactive TP adjustments. However, if importers are (overly) confident that they will meet the relevant requirements and fail to notice and prepare in advance for the hidden complications within Customs Guidelines, they may find it difficult to get the intended results despite the efforts invested. Some of the difficulties that companies should be mindful of are:

1. **Determining the (number of) items subject to TP adjustments**

   Companies need to determine which import declarations may be subject to the one-time TP adjustment as only these selected import declarations are required to comply with the procedures stipulated in the Guidelines.

   Where the TP adjustment amount is large, but only a few import transactions are identified as subject to adjustment, the reported final customs values of these goods or shipments may look abnormal, and thus not be accepted by the customs authorities. Consequently, as declared import transactions to be subject to TP adjustments can only be cleared after document review or inspection by authorities, the large values can trigger scrutiny from authorities and reduce clearance efficiency.

2. **Specifying the reasons for one-time TP adjustment and the pricing methodologies in the underlying agreement**

   TP adjustments for the purpose of corporate income tax compliance are often made towards the overall profit level of a company or its business unit. Since customs values are assessed on a transactional basis, the related parties need to agree in the underlying agreement on the reasons/criteria

that would trigger the adjustments, the identification of the affected products, and the calculation and allocation method of the adjusted amount to each individual item.

Where an importer fails to reasonably explain how the adjusted amount is apportioned to each item and provide relevant agreements to the customs authorities for assessment, there is a risk that customs authorities can determine the appropriate customs value via their own assessment and discretion.

3. **Simultaneously assessing the acceptability of the TP adjusted result from income tax and customs perspectives**

   It is often seen in practice that the importer's self-review of whether a proposed TP adjustment is appropriate is only done from a corporate income tax (CIT) or TP perspective. However, the appropriateness of a TP adjusted result on controlled import transactions is to be reviewed not only by income tax authorities based on the CIT/TP assessment rules, but also by customs authorities based on the valuation rules set forth in Customs Act. Considering that these rules are different, importers are advised to simultaneously assess the acceptability of the TP adjusted result from a customs valuation perspective.

4. **Prepare and submit necessary documents and information before stipulated deadlines**

   The prescribed documents and information that an importer is required to provide to customs authorities when applying for a final assessment of customs values can be extensive, complex and difficult to prepare. However, importers are required to provide them within a very short period of time (i.e. the application package must be submitted within one month from its fiscal year end, and where additional documents are requested, they will need to provide this within 15 days of notification).

   The time pressure for preparing the required documents and information should not be underestimated. In practice, most companies often only make a decision on whether to effect a TP adjustment in the 3rd or 4th quarter, by comparing their actual and forecasted financial performance. Determining the TP adjustment amount may then usually require a benchmarking result for reference, based on updated financials of comparable companies which are sometimes available only close to fiscal year end.

To conclude, meeting the requirements prescribed in the Customs Guidelines is a challenging task. It is recommended for importers, in particular those considering applying for customs value adjustments of their imported goods due to TP adjustments, to plan ahead and have a comprehensive understanding of the work required. Resources should also be considered to derive an effective plan for meeting the above requirements to ensure compliance from a customs perspective and mitigate the risk of challenge.

Thailand

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E-Form D now also covering Laos and Myanmar

On 20 January 2020, the Department of Foreign Trade (DFT) announced that the E-Form D system's implementation has been expanded to cover two additional countries, Laos and Myanmar. At present, Thailand has already implemented the E-Form D system with six ASEAN member countries (i.e. Singapore, Indonesia, Malaysia, Vietnam, Brunei, and Cambodia).

This E-Form D facilitates electronic requests between Thai enterprises and participating countries via the ASW network. By submitting the E-Form D electronically, customs authorities will not need to physically issue and approve a paper certificate of origin, which will be electronically delivered to the importing country's customs' system directly.

The Philippines is still in the testing phase of data interchange (see the relevant article in the Philippines country report). The DFT aims to continue efforts towards implementation of the E-Form D system with all ASEAN member countries in the near future.

Extension of the Single-point additional duty payment programme put on hold

On 18 April 2018, Thai Customs launched the Single-point additional duty payment programme (SPPP), intended to help importers and exporters with the self-disclosure process for cases of non-compliance with customs regulations. This benefits companies because they can submit self-disclosure letters to the Post-Clearance Audit Division (PCAD) for further consideration and pay for owed duties and taxes etc. at the PCAB instead of the specific Customs at the port of discharge as in the case of a general self-disclosure. If there is no evidence of fraud, potential fines and penalties could also be waived.

The SPPP was initially implemented in April 2018 for a one year period, but was subsequently extended to 30 April 2020. Despite discussions on another possible one-year extension, there is no further confirmation as yet from Customs of any possible extension. Importers or exporters who wish to join under the current programme will need to submit a request to the PCAD together with all relevant documents. We would recommend companies to review its import and export operations before making a final decision on whether to enrol.

Vietnam

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Tax refunds available under ASEAN-Hong Kong Free Trade Agreement

On 5 January 2020, the Vietnam Government issued Decree 07/2020/ND-CP. Decree 07 regulates the special preferential import tariff schedule under the ASEAN-Hong Kong Free Trade Agreement (A-HKFTA). It applies for the period of 2019 to 2022 and will take effect on 20 February 2020.

Businesses should take note that tax refunds are available for goods imported between 15 September 2019 till 20 February 2020. This is conditioned on the goods meeting the applicable origin criteria under the A-HKFTA and having an accompanying Certificate of Origin Form AHK.

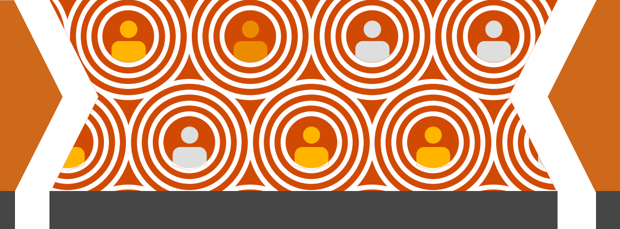
Labelling of goods at time of importation

On 27 December 2019, the Directorate for Standards, Metrology and Quality sent Official Letter 4241/TDC-QLCL to the General Department of Customs. The letter provided clarification on imported goods that violate labelling rules. It clarified that goods must be labelled before they are circulated or sold in the local market. Circulation of goods in the local market is defined as displaying, promoting, transporting and storing of goods, except for the transport of goods from a border gate to warehouse. Therefore, according to this letter, failure to complete the label with required information in Vietnamese, at importation, is not considered a violation of labelling provisions.

However, on 11 February 2020, the General Department of Customs issued Official Letter 763/TCHQ-PC. It provided further guidance to Customs departments and sub-departments on labelling rules for imported goods. According to this letter, imported goods that are not labelled in accordance with current regulations must be exported out of Vietnam within 30 days of receipt of the penalty decision. Where the label lacks the requisite information as regulated by Decree 43/2017/ND-CP, an administrative penalty will be applied. Official letter 763 does not refer to the requirement on use of Vietnamnese langauge at the point of importation.

These official letters were issued by different authorities and it remains unclear at this stage how Customs departments and sub-departments will interpret the differing rules.

Around the world



US-China trade war update

US and China sign 'Phase One' trade deal

A month after an agreement in principle was reached by both sides and two years into the trade war, the US and China have signed 'Phase One' of the Economic and Trade Agreement Between the United States of America and the People's Republic of China. The 'Phase One' agreement was signed on 15 January 2020 and entered into force on 14 February 2020.

We have summarised key provisions of the 'Phase One' agreement that are relevant to customs and trade:

- **Purchases of US goods and services**

  On top of the amounts imported in 2017, China has pledged to make additional purchases worth at least

Category of goods	Additional US exports to China (in USD billion)		
	By end of 2020	By end of 2021	Two-year total
US manufactured goods	32.9	44.8	77.7
US agricultural products	12.5	19.5	32.0
US energy products	18.5	33.9	52.4
US services	12.8	25.1	37.9
Total	**76.7**	**123.3**	**200.0**

  The agreement contains further details on specific products and their HS Headings.

- **Removal of food and agricultural trade barriers**

The agreement provides for the elimination of non-tariff structural barriers to US agricultural imports. This includes lifting of product bans and addressing the lack of acknowledgement of US regulatory certifications. For instance, the agreement has set deadlines for the implementation of sanitary and phytosanitary measures.

This is expected to impact the following product categories: dairy, infant formula, meat (beef, pork, poultry, processed meat), poultry, rice, potatoes, nectarines, blueberries, avocadoes, barley, alfalfa pellets, hay, feed additives, dried distillers' grains with solubles, seafood, and pet food.

- **US' Section 301 tariffs and China's retaliatory tariffs**

  The agreement does not touch on the issue of tariffs, but there has been progress on the side-lines:

  – The United States Trade Representative (USTR) released a Federal Register notice reducing the Section 301 tariff of 15% on List 4A Chinese goods to 7.5%. This took effect on 14 February 2020 and will impact products covered by Annex A of the 20 August 2019 notice.
  – As a result of the 'Phase One' negotiations, the USTR also suspended the application of additional 15% duty on List 4B products which was scheduled for 15 December 2019. This would have impacted consumer technology products (smartphones, laptops, apparel, toys, video game consoles etc.).
  – China has likewise suspended some of its retaliatory tariffs as part of the negotiations. As detailed in our China country report, the Customs Tariff Commission of the State Council have reduced additional punitive tariffs levied on 916 US goods from 10% to 5%, and lowered extra tariffs on 801 goods from 5% to 2.5%. These changes took effect onare effective from 14 February 2020.

  Therefore, while both sides appear to be addressing issues on the side-lines, it appears that many punitive tariffs will remain in effect for now. This means tariff pressures will continue for most companies.

In addition to the above, the 'Phase One' agreement has also seen China agreeing to

– implement measures to improve its protection of intellectual property (IP);
– enact regulations that prohibit technology transfers in exchange for market access and advantages; and
– remove restrictions on US financial institutions and insurance companies.

The agreement also contains a chapter on dispute resolution that creates a group to discuss high-level implementation issues and offices in each country to deal with low-level implementation issues.

The 'Phase One' deal may mark a key first-step towards a comprehensive agreement between US and China. It is expected to help ease tensions and shore up business confidence for now. How the ambitious commitments will be implemented and enforced is expected to impact negotiations for 'Phase Two', which is expected to address thornier issues of state subsidies and cybertheft, amongst others.

The full text of the agreement can be accessed here:
https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/text

Topic-specific factsheets are available here:
https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/fact-sheets

World Customs Organisation (WCO)

HS 2022 Amendments

The HS 2022, the seventh edition of the Harmonised System (HS) nomenclature has been officially accepted by all contracting parties to the HS Convention. The HS, which serves as the basis for classification of goods internationally, is currently applied by more than 200 countries and is updated every five years. The HS 2022 will supersede the existing HS 2017 and will enter into force on 1 January 2022. Note that as the HS is governed by an international convention, implementation is required for the HS 2022 to take effect on a national level. As detailed further below, national implementation timelines are expected to differ.

Compared to the 2017 edition, the new HS 2022 includes a total of 351 sets of amendments covering a wide range of goods, in order to better address and monitor environmental and social issues of global concern and keep pace with evolving product types and changing trade patterns. These amendments mainly affect goods in the agricultural, food and tobacco sector, as well as chemicals, textiles, machinery, base metals and electronic goods.

Some major changes include:

- New headings and / or explanatory notes for product streams with high trade value e.g. 3D printers, smartphones, unmanned aerial vehicles or drones, flat panel display modules and novel tobacco and nicotine-based products;
- Major reconfigurations of subheadings under Heading 70.19 for glass fibres and articles, and Heading 84.62 for metal forming machinery to be more representative of technological advancements in these sectors;
- New subheadings for certain products from an export control and dual-used goods perspective e.g. radioactive materials, biological safety cabinets and items required for construction of improvised explosive devices e.g. detonators;
- New subheadings for specific controlled chemicals under the Chemical Weapons Convention;
- New subheadings for certain hazardous chemicals controlled under the Rotterdam Convention, and specific types of persistent organic pollutants controlled under the Stockholm Convention;
- New headings for electrical and electronic waste (e-waste);
- New subheadings for fentanyl and their derivatives, and two fentanyl precursors;
- New headings and explanatory notes for controlled gases under the Kigali Amendment of the Montreal Protocol; and
- New and more specific provisions for placebos and clinical trial kits for medical research, cell cultures and cell therapy, as well as a range of dual-use items from toxins to laboratory equipment.

These amendments are intended to reduce classification ambiguities for new product types, improve monitoring of controlled products, and provide members with greater visibility when looking at trade statistics. Apart from the introduction of new headings, further clarification will also be provided for existing explanatory notes or text to ensure uniform understanding and application among all parties.

All national customs administrations of WCO Member countries are required under the HS Convention to ensure timely implementation of the HS 2022 in their respective territories. However, timely is not exactly defined, and implementation may take many years in some territories. The WCO has urged members to plan for implementation of HS 2022 in their national customs tariff or statistical nomenclatures. At a national and regional level, the WCO will continue to intensify capacity building efforts to assist Members with implementation.

To facilitate implementation, the WCO starts with the development of correlation tables between the current HS 2017 and the HS 2022. HS publications, such as the Explanatory Notes, the Classification Opinions, the Alphabetical Index and the HS online database will also be updated for final release prior to entry into force.

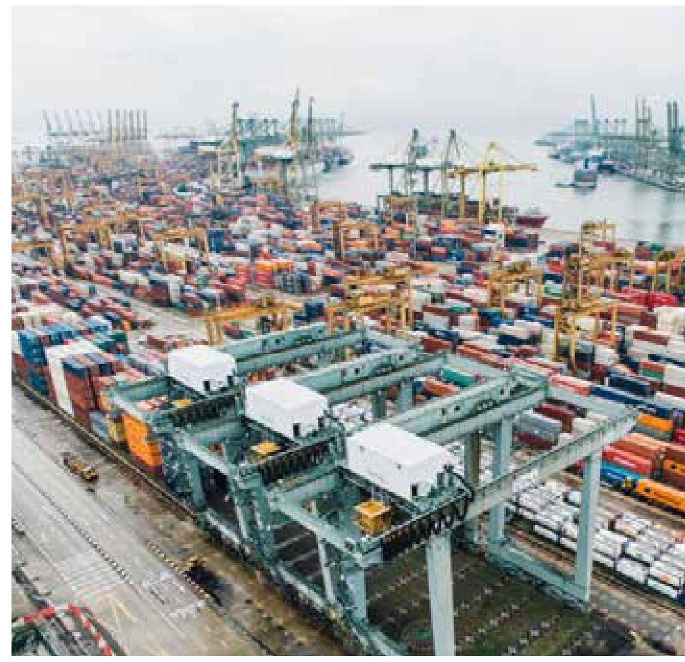
The full amendments have been published by the WCO and can be accessed at the following link:
http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/nomenclature/instruments-and-tools/hs-nomenclature-2022/ng0262b1.pdf?la=en

Process steps agreed for the comprehensive review of the Revised Kyoto Convention (RKC)

The seventh meeting of the Working Group on the Comprehensive Review of the Revised Kyoto Convention (WGRKC) concluded on 13 December 2019. During the meeting, representatives agreed on a "Four-step framework", which outlines process steps for conducting the RKC review. The process flow is as follows:

1. Submission of proposals and development of recommendations;
2. Assessment of recommendations against the RKC and existing WCO tools;
3. Consideration of recommendations against specific criteria; and
4. Development of amendment proposals.

The committee also finalised future work plans and agreed on working methodologies and criteria for prioritising proposals for consideration. On the side-lines of the WGRKC, informal meetings were also held to continue efforts to develop a joint proposal on Rules of Origin (referred to as the "Specific Annex K").



WCO publishes Illicit Trade Report 2018

Since 2012, the WCO has repeatedly urged members to intensify customs enforcement efforts to reduce illicit trade. The 2018 report, which is a joint effort between the WCO and its members, collates statistics from the enforcement efforts of 154 member customs administrations globally and covers six critical areas of customs enforcement:

- Illicit trafficking of stolen cultural objects that include both archaeological objects and works of art;
- Drug trafficking, including cultivation, manufacture, distribution and sale of substances subject to drug prohibition laws;
- Trafficking of endangered species, hazardous and toxic waste, ozone-depleting substances, and trading of indigenous or protected timber, etc.
- Trade in counterfeit or fake goods, particularly products which pose a serious threat to health and safety, such as pharmaceuticals, food, toys and sub-standard items (such as electrical components and spare parts);
- Revenue risks, including revenue leakage, through smuggling of highly taxed goods such as tobacco, alcohol and motor spirits, including commercial fraud activities such as under-valuation, misuse of origin and preferential duties, misclassification and drawback fraud; and
- Security risks, including terrorism, proliferation of weapons of mass destruction, trafficking of small arms and explosives, and diversion of dual-use goods.

The report is intended to facilitate policymakers and customs administrations in policy implementation and law enforcement planning, to enhance response to threats. The 2018 illicit trade report can be accessed here:
http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2018_en.pdf?db=web

World Trade Organisation (WTO)

Extension of moratorium on electronic transmissions

On 10 December 2019, WTO members agreed to extend the existing moratorium related to customs duties on electronic transmissions till early June 2020. This means members have agreed to maintain the status quo and not impose customs duties on electronic transmissions till at least the 12th Ministerial Conference in Nur-Sultan, Kazakhstan, currently scheduled for 8-11 June 2020.

WTO Implications of the UK's departure from the EU

On 31 January 2020, the UK formally withdrew from the EU. There is an 11-month transition period afforded under the Withdrawal Agreement. This transition period ends on 31 December 2020. We have highlighted some key trade implications of this departure in the WTO:

- Good schedules and tariff data – The goods schedule of the EU will continue to apply during the transition period.
- Trade policy reviews – The UK will be included in the EU/ European Commission's trade policy review.
- Regional trade agreements – Provisions of the EU's regional trade agreements will continue to apply during the transition period.
- WTO dispute cases – The UK will be treated as a member state of the EU for purposes of ongoing WTO disputes to which the EU is a party.

More details can be accessed in document WT/GC/2.

Work of Appellate Body grinds to a halt

On 10 December 2019, the WTO Appellate Body (the highest court of appeal in the WTO) ground to a halt. It has not been able to hear new appeals by countries that object to a WTO ruling, as it is no longer able to meet the minimum three-member quorum of judges required to do so.

The Appellate Body is normally composed of seven members but is now left with a single member after the United States blocked new appointments to the body. The United States has accused the Appellate Body of judicial overreach and has criticised the lengthy delays in its process.

The Appellate Body is seen as a critical organ of the WTO dispute settlement system as its members review appeals from panel proceedings, thereby enforcing the rules of global trade.

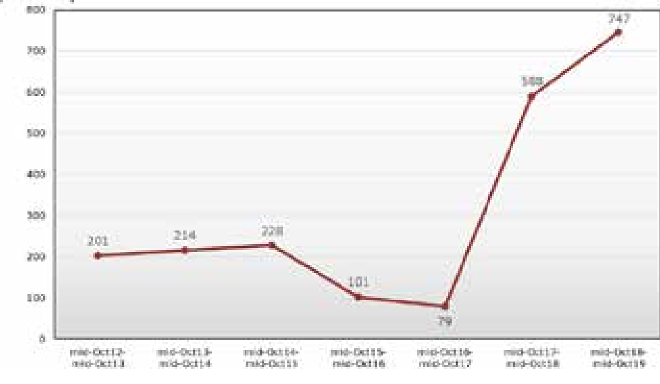
Trade restrictions at historic highs

In his annual review of trade-related developments released on 12 December 2019, the Director-General of the WTO stressed that trade restrictions continue to be at a historic high.

In the review period of mid-October 2018 to mid-October 2019, 102 new trade restrictive measures were introduced. This includes tariff hikes, quantitative restrictions, heightened customs procedures and imposition of import taxes and export duties. Key sectors affected by these measures were the mineral and fuel oils sectors, machinery and mechanical appliances, electrical machinery and its parts, as well as precious metals. Trade

coverage of these measures stood at USD 747 billion – a 27% increase from the last annual review.

The diagram below shows the estimated non-cumulative trade coverage of new import restrictive measures in each reporting period:



Source: WTO Secretariat

On the bright side, 120 new trade facilitative measures were implemented. These measures include tariff reductions and eliminations, as well as removal of export duties and import taxes. The trade coverage of these facilitative measures was estimated at USD 545 billion, which is an improvement from the last reporting period.

The diagram below shows the estimated non-cumulative trade coverage of new import facilitative measures across previous reporting periods:

Source: WTO Secretariat

Disputes initiated at the WTO

Over the period of December 2019 to January 2020, the following disputes involving territories in Asia were initiated via the WTO Dispute Settlement Mechanism against the following territories:

Dispute initiated by	Dispute initiated against	Affected products	Summary	Reference No.
EU	Indonesia	Raw materials necessary to produce stainless steel, including nickel, iron ore, chromium, coal, metal waste and scrap, and coke	The EU alleges that Indonesia's quantitative restrictions on exports, domestic processing requirements, domestic marketing requirements, and export licensing requirements that apply to certain raw materials are inconsistent with the WTO anti-dumping agreement. The EU further alleges that an import duty exemption scheme for companies engaged in the building or modernisation of factories and Industrial Development Areas makes subsidies contingent upon use of domestic goods over imported goods.	WT/DS592/1
Indonesia	EU	Palm oil and oil palm crop-based biofuels	On 9 December 2019, Indonesia initiated dispute consultations with the EU over the EU's measures relating to biofuels. Specifically, Indonesia alleges that EU's renewable energy targets and related support schemes such as investment funding, tax exemptions or reductions, tax refunds, and direct price support schemes are contrary to the General Agreement on Tariffs and Trade 1994 (GATT 1994), Technical Barriers to Trade Agreement (TBT Agreement), and Subsidies and Countervailing Measures Agreement (SCM Agreement).	WT/DS593/1
India	United States	Certain hot-rolled carbon steel flat products	The US notified the Dispute Settlement Body of its intention to appeal issues of law and legal interpretation on a WTO panel report on 18 December 2019. The case was brought by India in relation to US' countervailing measures on certain hot-rolled carbon steel flat products from India. No notice of appeal or appellant submission was filed since there was no division of the Appellate Body to hear the appeal. On 14 January 2020, India and the US informed WTO members that they are engaging in discussions to seek a resolution to this dispute.	WT/DS436/21
Indonesia	Australia	A4 copy paper	On 27 January 2020, the WTO Dispute Settlement Body adopted the Panel report on Australia's anti-dumping measures on A4 copy paper. Australia has agreed not to appeal the panel ruling.	WT/DS529/14

Contacts details

Worldtrade Management Services (WMS) is the global customs and international trade consulting practice of PwC. WMS has been in Asia since 1992 and is a regionallyintegrated team of full-time specialists operating in every location. Our team is a blend of Asian nationals and expatriates with a variety of backgrounds, including ex-senior government officials, customs officers, international trade.

PwC Globally

PwC firms provide industry-focused assurance, tax andadvisory services to enhance value for their clients. More than 208,000 people in 157 territories in firms across the PwC network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

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