Do we have an accord? How important is the WTO Agreement approved in Bali?

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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.

Do we have an Accord? How important is the WTO Agreement approved in Bali?

History was made on 6 December 2013 in Bali, Indonesia where ministers from the World Trade Organization ("WTO")'s 159-member countries collectively approved an agreement on global trade at the end of the ninth WTO Ministerial Conference. The legal text adopted in Bali is not final but is not likely to be amended substantially. The General Council should adopt the new Agreement by 31 July 2014. It is the first successful set of negotiations of the Doha Development Round and breaks 12 years of gridlock. Economists have forecasted global benefits of the trade deal ranging from $400 billion to $1 trillion, but how this will ever be measured is anyone's guess.

"Bali magic", what went right after years of gridlock?

The meeting in Bali was considered a "make or break" event for the future status of the WTO. Previous multiple rounds of failed negotiations had led many to believe that governments would turn their back on the WTO and its ambitions for a holistic global trade agreement. Economic benefits would be more readily gained through focusing on securing further bi-lateral, regional and plurilateral trade agreements, for example the Trans-Pacific Partnership which appears to be making slow but steady progress towards conclusion.

Much of the success of the negotiations has been credited to Roberto Azevêdo, who was appointed as the sixth Director-General of the WTO on 1 September 2013. Prior to Bali Azevêdo delivered a strong message to the members of G20 and APEC that the success of the trade negotiations would rely heavily on their support and that whilst G20 and APEC member countries account for over 80% of global trade there would still be significant trade benefits to be gained from signing a new agreement.

"For the first time in our history, the WTO has truly delivered," WTO director-general Roberto Azevedo told a closing ceremony. "We have put the 'World' back into the World Trade Organization."

Azevêdo has also been commended for taking a more prominent leadership role during the negotiations, inviting comments from interested parties at all stages but avoiding lengthy debate on terms that would, at this stage, not reach conclusion. This allowed a focus on the "low hanging fruit" and breaking the previous "all or nothing" approach. Further, rather than allowing governments to group together in side-line meetings, delegates were kept within one room and were asked to comment and approve pre-drafted terms (many of which were drafted by Azevêdo) in the presence of all delegates.

There were other factors too that may have progressed the negotiations. Caution on the part of the developing and least developed countries for the trend for expansive regional and bilateral trade agreements in which they are typically not included meant that they did not want to block a successful outcome. These categories of WTO members were keen to influence the WTO agenda in a way that they would not be able to under other agreements.

Previously sceptical countries began to understand that trade facilitation could be beneficial, particularly for developing countries and Least Developed Countries.

The WTO pushed an agenda that accepted that trade facilitation measures had an impact for business rather than government and sought to bring businesses on to the side of the WTO to influence government in this respect. It was recognised that the biggest non-tariff barrier to trade was delays at the border and that businesses had to be convinced that the WTO would deal with this with practical trade facilitation terms that would provide more transparency and predictability at the customs border.

Upgraded trade facilitation measures, enough bite to be effective?

The trade facilitation measures drafted and agreed in Bali will update Articles V, VII and X of the General Agreement on Tariff and Trade. The new Agreement covers a wide spectrum of trade facilitation measures, and the key provisions are located within Section I of the Agreement. These measures, once implemented, should help to ensure greater consistency and transparency in customs procedures and interpretations. Below we have picked those trade facilitation measures which we consider have the most interest for the business community and share our views on the potential impact.

PwC surveyed businesses in mid-2013 to benchmark best customs and trade practices, the number one priority cited was reduction in costs through improvement in lead times. The new WTO trade facilitation measures should be positively received by the business community, albeit with some reservations over the level of effectiveness.

"The WTO has re-established its credibility as an indispensable forum for trade negotiations," the US Chamber of Commerce said in a statement. "Nor is this a paper victory: streamlining the passage of goods across borders by cutting red tape and bureaucracy could boost the world economy."

Key trade facilitative measures	Scope	Impact assessment for the trading community
Publication of Laws, Regulations and Procedures (Article 1)	Countries will be required to publish and make available information on Customs laws, regulations and procedures in an easily accessible manner. In particular, they are required to make available specific information relating to import, export and transit procedures via the internet. This includes: • A description of the said procedures; • Practical steps needed to import, export and transit; • Documentary requirements; and • Enquiry points	*Many countries lack a comprehensive database of customs regulations and procedures. Traders often struggle to plan or improve their supply chains due to this lack of transparency. This requirement may greatly assist the trading community in understanding and preparing for the trade environment and complying with customs regulations.* *However…* *Procedures and information are not required to be published in English or one of the other official languages of the WTO.* *Countries are not restricted from charging fees for responding to questions posted via the enquiry points. This could leave traders facing additional costs for asking routine questions of the authorities.*
Opportunity to comment and receive prior information on new/ amended laws and regulations (Article 2)	Countries will be required to allow interested parties to receive information and comment prior to the implementation of new/amended laws and regulations pertaining to the movement, release and clearance of goods.	*In many countries regulators do not appear to cater for modern international supply chains and do not solicit public commentary on new trade related regulations. This provision may allow the business community to better communicate its needs and desires.* *However…* *Countries need only implement to the extent that it is "practical and in a manner consistent with its domestic law and legal system." This allows countries to opt out where, for example, they lack resources or do not have a culture of open dialogue with the business community. Also, there is nothing to prevent an authority to solicit the business community's views, only to then ignore them.*
Provision for Advanced Rulings (Article 3)	Countries will be required to make a provision for Advanced Rulings in accordance with a set of prescribed requirements. Should an Advance Ruling application be rejected/revoked/modified, notification in writing, setting out the relevant facts and basis for the rejection will have to be issued.	*The presence of a well-defined Advanced Ruling mechanism, particularly in developing countries, may greatly enhance certainty to traders about the treatment of goods at the point of import, thereby allowing them to better plan future business operations.* *However…* *Countries are encouraged to make public information relating to advanced rulings which is of significant interest to other interested parties. Whilst this provision is caveated with a requirement to take into account confidential information, this could lead to pro-active traders that successfully secure rulings to lose a competitive advantage.*

Key trade facilitative measures	Scope	Impact assessment for the trading community
Appeal or review procedures (Article 4)	Countries will be required to provide for the right of administrative and judicial appeal on Customs related matters (e.g. Customs Rulings and decisions).	*A fair and effective appeals system on import/export related matters will assist in protecting traders from potential non-legislated practices (e.g. corruption) from customs and other officials.* *However…* *The requirement appears to stop at decisions made by the customs authority of the country. Countries are encouraged to extend the provisions to other border agencies but without an absolute requirement this may still lead traders to be frustrated in appealing non-tariff barriers, which often have greater impact on lead times and cost.*
Fees and charges imposed on or in connection with importation and exportation (Article 6)	Fees and charges that are imposed on or in connection with the import/export process are required to be limited to only the approximate costs of the services rendered by Customs. In addition, information such as the rationale, responsible authority, payment mode and quantum of the applicable fees and charges shall also be provided.	*A reasonable and uniformly administered customs fee schedule will facilitate business planning.* *However…* *There are a number of "grey" areas within the text that may leave scope for countries to impose high fees. For example, fees and charges for customs processing "are not required to be linked to a specific import or export operation provided that they are levied for services that are closely connected to the customs processing of goods". In addition, it is a public secret that many government bodies will be reluctant to give up their ability to charge arbitrary fees for their services, hence the practical implementation of this article may meet with a lot of resistance.*
Tighter measures on customs penalties (Article 6)	Penalties should only be imposed on the person(s) who are legally responsible for a breach in Customs law, regulation or procedural requirement. Countries should also have measures to avoid conflicts of interest and refrain from the creation of incentive programme for the collection/assessment of penalties.	*Loose or misaligned customs penalty systems in many countries often result in inappropriate targeting and corruption risks. The tightened measures will assist in reducing the incentives and opportunities for corruption activities.* *This provision should be seen as one of the big successes of the WTO negotiations. It should prove an important step in removing corruption and bribery from the supply chain.* *However…* *Many a customs regulation around the region leaves the definition of who is legally responsible wide open to interpretation, hence this article may not help to create certainty on who may be liable.*

Key trade facilitative measures	Scope	Impact assessment for the trading community
Adoption of measures relating to the release and clearance of goods (Article 7)	Countries are required to adopt and maintain a series of measures that may facilitate customs clearance processes. Including: • Pre-arrival processing of import documentation and required information • Maintain a risk management system for customs control to expedite the release of low risk consignments4 • Electronic payment facilities • Release of goods prior to determination of customs duties, taxes, fees and charges • Provide additional trade facilitation measures for authorized operators ("AEO")	*Long customs clearance times remain a burden for importers and exporters in many countries. Concrete improvements based on international best practices should improve supply chain efficiency.* *However…* *The trade facilitation measures to be afforded to authorized operators can be restricted to a minimum of three measures out of a list of seven. This may limit the benefits of authorized operator status in countries which apply the minimum.*
Customs brokers (Article 10)	From the date of entry into force of the Agreement countries will be prohibited from mandating the compulsory use of customs brokers.	*While customs brokers generally provide valuable assistance in dealing with complex customs procedures and requirements, the restriction on mandatory use of such commercial services may result in fewer opportunities for corruption and collusion activities between brokers and customs officials.*

Aside from the provisions noted above, there are many others around reducing the formalities and documentation for customs clearance and transit, and promoting co-operation between the customs and border authorities of the member authorities. All these should further enhance the efficiency of the global trading environment and be of encouragement to the trading community.

It should be noted that Section II of the Agreement allows developing and least developed a generous implementation schedule. They may designate certain parts of the Agreement to only take effect at a specified later date, and others at a date that will only be specified once sufficient implementation support has been obtained (usually from more developed WTO members). All this leaves at best some question marks on how effective the new Agreement will be in developing and least developed countries. Having said that, the business community participating in global trade may well be able to live with this for some time, while the volumes and values of trade into and out of those countries is relatively low.

Questions are also raised over whether the WTO Agreement will offer developed countries a real alternative to Free Trade Agreements ("FTAs"). However the biggest concern for businesses is non-tariff barriers which are not typically the focus of FTAs and unlike customs duties are not typically easy to plan for.

In a report entitled "Enabling Trade Valuing Growth Opportunities" published by the 2013 World Economic Forum it was touted that "Reducing Supply Chain barriers could increase GDP 6 times more than merely eliminating tariffs". The WTO, which even in light of the progress made continues to be criticised over the failure to successfully tackle tariff barriers, will be hoping that this statement proves correct even to some extent, since it will no doubt want to continue riding the tide of relative goodwill amongst its members and make further progress with the Doha Round. It is expected that Azevêdo has already been set a 12 month deadline to establish a working programme to revive interest and commitment to completing the Doha Round in full.

FTA focus

Agreements concluded	
Australia – South Korea	5 December 2013

Agreements signed	
Canada – Honduras	5 November 2013
Singapore – Taiwan	7 November 2013

Agreements entered into force	
Taiwan – New Zealand	1 December 2013

Australia and South Korea conclude FTA negotiations

On 5 December 2013, following four years of negotiations, Australia and South Korea announced the conclusion of an FTA to further liberalise bilateral trade and promote market access.

In addition to the elimination and reduction of tariffs on trade in goods, the agreement will offer bilateral opportunities in the service and investment sectors.

The FTA awaits the approval of the governments of South Korea and Australia.

European Union and Vietnam hold fifth round of FTA negotiations

The European Union (EU) and Vietnam completed their fifth round of FTA negotiations during a meeting in Hanoi from 4 to 8 November 2013.

Similar to the other agreements the EU is currently negotiating in the South East Asia region, the aim is to conclude an ambitious agreement on trade in goods, services and investments, tariff elimination and non-tariff barriers and to cover other trade related topics such as procurement, regulatory issues, competition and sustainable development. The fifth round of negotiations covered all aspects of the FTA, with a more detailed focus on market access for goods and government procurement and the approach for tackling non-tariff barriers.

Vietnam is the fourth ASEAN country to commence FTA negotiations with the EU after Singapore, Malaysia and Thailand.

The next round of negotiations will be held in Brussels in January 2014.

New Zealand and Taiwan FTA ("ANZTEC") enters into force

With effect from 1 December 2013, for goods originating in New Zealand, Taiwan will immediately eliminate customs duties on 94.51% of tariff codes. Customs duties on the remaining tariff codes will be eliminated within 12 years.

For goods of Taiwanese origin, New Zealand will immediately eliminate customs duty on 99.61% of tariff codes. The remaining 29 tariff codes relating to industrial products will enjoy zero customs duty within four years from the effective date of the Agreement.

Singapore and Taiwan sign free trade pact

On 7 November 2013, Taiwan and Singapore signed the "Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership" ("ASTEP"), which is a comprehensive economic agreement that offers tariff-free access for the trade of goods, as well as improved market access, removal of technical barriers to trade, and intellectual property protection. ASTEP will come into effect 30 days after both parties complete administrative procedures and document exchange.

Some of the key highlights of ASTEP are as follows:

- Elimination of import duties

Goods originating from Taiwan or Singapore will be subject to nil customs duty upon entry to each other's market. Taiwan will liberalise 99.48% of its tariff codes (excluding 40 products, such as rice, mangos, garlic, shiitake mushrooms, red bean, shelled groundnuts, and liquid milk), and Singapore 100%. Customs duties that have not been immediately reduced will be eliminated within 15 years (maximum) after ASTEP enters into force.

- Market access for trade in services and establishment

ASTEP will adopt international best practices to set out clear rules and protection for investments.

Both parties have agreed to make additional commitments beyond the WTO General Agreement on Trade in Services ("GATS") and expand the coverage of committed sectors. These additional sectors include maritime transport, construction, environmental services, etc.

- Elimination of Technical and Non-Tariff Barriers

Measures will be implemented to facilitate the flow of goods between both parties through the simplification of customs procedures, such as paperless trading, recognition of electronic signatures, and harmonisation of inspection standards for animal and agricultural goods.

- Other trade protection measures

ASTEP provides guidelines for dispute settlements and promotes intellectual property rights and fair competition.

Trans-Pacific Partnership meeting ends with no conclusion

The 12 countries involved in the Trans-Pacific Partnership ("TPP") talks failed to wrap up the highly anticipated free trade deal during a four-day Ministerial meeting in Singapore at the start of December. The target of reaching an agreement by year-end has now officially been abandoned. The key remaining areas of disagreement appear to be on tariff elimination and market liberalisation.

Japan rejected the United States' call for full tariff elimination on agricultural products leading to a deepening of the rift between the two countries on this issue. It was reported that Japan proposed to raise its tariff liberalisation rate to 95% but this was rejected by the United States.

Other areas for agreement such as intellectual property rights and the reform of state-owned firms have also been carried over to next year's discussions. In a joint statement issued after the meeting, it was said that intensive discussions to reach an agreement will continue again in January 2014.

If the TPP can be successfully concluded, the agreement would encompass an estimated 40% of world GDP and one-third of global trade.

The 12 members included in the current TPP negotiations are: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam.

Country reports

Australia

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Verification of import transactions using commercial documents

The Australian Customs and Border Protection Service ("Customs") recently released a fact sheet regarding the use of commercial documents to verify import transactions ("the Fact Sheet"). This follows the release of a notice by Customs on 6 September 2013 ("the Notice") regarding documents that should be available for presentation to Customs upon request. Specifically, the Notice discusses commercial documentation required to sufficiently evidence the actual price paid for the imported goods.

Specifically, the Fact Sheet reiterates that pro forma invoices should not be relied upon in evidencing the actual price paid for the imported goods. In addition, the Fact Sheet extends this caution to electronic invoices. As such, further verification should be provided to ensure these documents reflect the true sales transaction. The Fact Sheet contains a non-exhaustive list of commercial documents that may be used as supporting evidence of the actual price paid for the goods. Examples include purchase orders, contracts of sale, order confirmations, letters of credit and credit card statements. Failing to provide accurate and sufficient supporting evidence on request may result in cargo processing delays and sanctions.

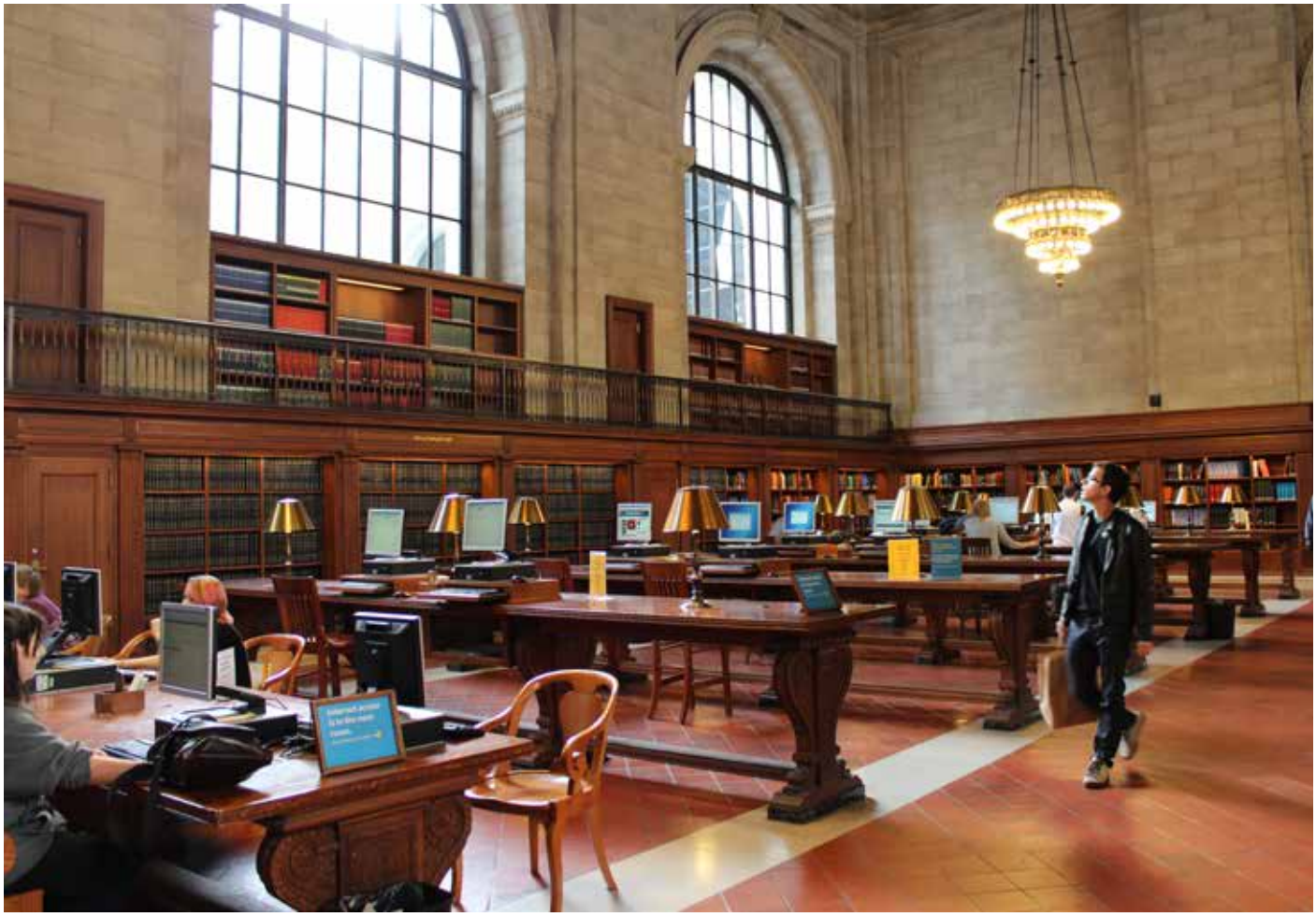
The Import Processing Charges Amendment Bill 2013

The Import Processing Charges Amendment Bill 2013 ("the Bill") received Royal Assent on 13 December 2013. The Bill amends the *Import Processing Charges Act 2001* (Cth), increasing the import processing charges for air, sea and post consignments worth AU$10,000 or more. Charges relating to consignments worth less than AU$10,000 will remain unchanged.

The changes came into effect on 1 January 2014.

The changes are summarised as follows:

Import Consignment Value	Electronic Import Declarations
Current charges for consignments worth AU$10,000 or more	Sea AU$50.00 Air/Post AU$40.20
New charges for consignments worth AU$10,000 or more (from 1 January 2014)	Sea AU$152.60 Air/Post AU$122.10



As demonstrated in the table on the previous page, this new legislation increases electronic import processing charges by more than 200% for consignments worth AU$10,000 and more. Customs has indicated it will be monitoring importer compliance in relation to the increased charges. Consequences of a finding that an importer has underpaid or avoided the charges may include receiving warnings, infringement notices or prosecution.

Changes to the Infringement Notice Scheme

The *Customs Amendment (Infringement Notices) Regulation 2013* (Cth) ("the Regulation") has been approved and will take effect on 1 February 2014. An exposure draft of the Regulation and associated draft Infringement Notice Scheme Guide ("the Guide") were previously released to industry.

An infringement notice is an administrative enforcement remedy that may be issued by Customs. Upon receiving an infringement notice, the recipient may resolve the matter by paying the specified penalty or by having the matter determined by the relevant court. Infringement notices may be applied in lieu of prosecution for a strict or absolute liability offence contained in the *Customs Act 1901* (Cth).

The Regulation covers key aspects of the Infringement Notice Scheme, including when an infringement notice can be issued, infringement notice offences, matters that must be included in an infringement notice and processes for seeking withdrawal or extension of payment of an infringement notice. The Guide contains penalty amounts available to Customs under the Infringement Notice Scheme. The Guide sets the penalty amount payable by a body corporate at three times the amount payable by a natural person. If accepted, this would significantly increase the penalty imposed on a body corporate, which was previously subject to the same penalty amount as a natural person.

China

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Interim Duty Rate applications for 2015

China's average most-favoured-nation ("MFN") customs duty rate in 2014 is approximately 9.5% and a very similar rate will likely continue to be applied in 2015. The Interim Import Duty Rate ("IDR") System aims to further lower the MFN duty rate so as to encourage importation of certain products from overseas, such as:

- Advanced technological equipment and key components and parts
- Energy products, resource saving and environment-friendly products
- Daily necessities and medical products
- Products related to farm produce.

Interim duty rates are reviewed and adjusted every year by the Customs Tariff Commission of State Council ("CTCSC"). The CTCSC is a coordination department which is managed by the Ministry of Finance (MoF). The members of the CTCSC include various relevant ministries such as MOFCOM, GAC, NDRC and SAT.

New IDR are decided and established on a case-by-case basis, but may be as low as 0% or 1%, and are typically effective for several years, therefore providing customs duty savings for an extended period of time.

In order to obtain an IDR effective 1 January 2015, enterprises should start to submit their application and supporting documents to Customs. Initial discussions and lodging of applications should take place between March and May 2014.

CIQ Credit Management System update

Original Pilot and New Measures

The State Administration for Sanitation, Inspection and Quarantine (AQSIQ) issued Tong Han [2009] No.118 (Measures and Operation Instruction for the Administration of Credit of Entry-exit Inspection and Quarantine Enterprises) that was applicable from 2009 through 2012. This pilot program represented the creation of a new Credit Management System for importers/exporters, agents, and other related parties.

AQSIQ then published on 16 July 2013 Announcement [2013] No.93 (Issuing the Measures for the Administration of Credit of Entry-exit Inspection and Quarantine Enterprises) which was effective 1 January 2014 and transforms the pilot program into a new risk-based ranking system for ensuring compliance with non-tariff measures at the Customs border.

Supervision and Affected Parties

AQSIQ is responsible for nationwide credit management and regional CIQ (provincial and municipal level) through the Clearance Department will be in charge of implementation and administration.

The new Credit Management System impacts the following:

1. Exporters/Importers;
2. Agents for inspection declaration, entry-exit inspection operators and quarantine processing entities;
3. Port food production and operation entities, storage entities, inspection and identification institutions;
4. Other inspection and quarantine supervision and administration objects for which credit management is necessary.

Enterprises across most industry sectors are subject to significant non-tariff measures in respect of product testing, quality, marking and labelling. Most of these measures are based on WTO principles and are associated with consumer health and safety and protection of other national security interests. Compliance with non-tariff measures is fundamental to ensuring market access and a smooth supply-chain at the customs border. Attaining good standing with CIQ under the new Credit Management System will aid in reducing intervention by CIQ in the import/export supply-chain.

Enterprise Evaluation and Ranking

What is my initial ranking?
No clear rules have been given in Announcement [2013] No.93 in respect of the initial ranking of enterprises. However, based on our consultation, the enterprise ranking obtained under Tong Han [2009] No.118 will be followed under the new rule. Category "B" applies for newly established enterprises.

What is the ranking evaluation period and methodology?
A ranking for Category "A" to "D" will generally be made based on a one-year rating cycle and according to AQSIQ enterprises do not need to apply for Category "A" to "D". The ranking will be granted by the in-charge CIQ and enterprises can consult with the in-charge CIQ thereafter.

What is the evaluation standard?
Announcement [2013] No.93 sets out the ranking standard from Category "A" to Category "D". The initial credit score for each company is 100 and deductions will be made thereafter based on any identified violations. The score range for each Category is tabled below:

Category	Score
A	89 – 100
B	77 – 88
C	65 – 76
D	0 – 64

Dynamic management rules apply and these refer to the immediate measures that CIQ will take against enterprises based on the deduction obtained within one evaluation period. Set out below is a table for deduction points and corresponding management measures:

Annual deduced points	Management measures
12 – 23	"Stake-out" (i.e. tightening the supervision)
24 – 35	"Immediate downgrading" and "Stake-out"
>36	Included in the list of serious and dishonest enterprises" (published) with tightened and supervision to downgrade to category "D"

The detailed deduction standard has yet to be issued; this is expected to be released during 2014. When multiple enterprises are involved, deduction will be determined on a case by case basis in terms of the corresponding enterprise 's responsibility.

What preferential treatment is granted based on the ranking?
Detailed preferential treatment is likely to vary in different regions and local CIQ is to submit pilot plans on the preferential treatment for central AQSIQ review and approval. The preferential treatment will most likely be granted not only based on the ranking of an enterprise but also on the risk of the imported/exported products. In principle, the preferential treatment to be granted by the local in-charge CIQ to an enterprise should be as follows:

A Category "A" enterprise can apply for Category "AA" subject to meeting certain additional criteria.

Category	Preferential Treatment
AA	• Enjoy all preferential treatment as granted to Category "A" • Priority for inspection declaration, quarantine and release • Priority for appointment of inspection declaration • Priority for filing, registration and other procedures • Priority for trial of new trade facilitation measures
A	• Access to inspection and quarantine incentives • Priority for implementation of "class one" preferential inspection, quarantine, green channel and related trade facilitation measures
B	• Carry out daily supervision, inspection declaration, inspection and quarantine, release and other processes in conjunction with the relevant provisions
C	• Supervised in a strengthened manner
D	• Supervised with restricted administration measures • Reassess the obtained qualification

In order to enhance trade facilitation at the Customs border under the new CIQ Credit Management System, enterprises are encouraged to:

- Confirm the new ranking that has been assigned by CIQ
- Complete a compliance self-assessment against the new Measures
- Implement a new procedure so as to ensure ongoing compliance
- Validate the preferential treatment that will be implemented by the local in-charge CIQ
- Monitor for new more detailed regulations to be implemented in 2014 and beyond
- Seek an upgrade to a higher ranking if this will deliver benefits of enhanced trade facilitation

Hong Kong

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Hong Kong signs Authorized Economic Operator ("AEO") Mutual Recognition Agreements ("MRA") with Mainland China and India

MRA with Mainland China

On 29 October 2013, the Vice Minister of the General Administration of China Customs of the PRC ("GAC") and the Commissioner of the Hong Kong Customs and Excise Department ("CED") signed a MRA on the GAC's "Measures on Classified Management of Enterprises and Hong Kong Authorized Economic Operator Program". Under the MRA, the GAC and the CED will mutually facilitate the clearance of goods from AEO accredited companies. Benefits afforded to AEO companies under the MRA will include examination simplifications and prioritised clearance.

This MRA is not the first AEO type cooperation programme between Hong Kong and Mainland China. In 2010, at a provincial level, the GAC endorsed its Guangdong sub-administration to work with the CED to set up an AEO working unit which launched a cooperation programme on the mutual recognition of compliant enterprises.

MRA with India

On 28 November 2013, the Commissioner of the CED and the Chairperson of the Central Board of Excise and Customs of India ("CBEC") signed a MRA. Under the MRA, local companies accredited as AEO by the CED can enjoy clearance facilitations, such as reduced examination rates and prioritised clearance for goods imported from or exported to India. Indian enterprises accredited as AEOs by the CBEC are entitled to equivalent clearance facilitations provided by the CED.

The CED is taking active steps to develop and sign MRAs with other Customs administrations and the CED expects to enter into MRAs with Korea and Singapore Customs in the first half of 2014.

Hong Kong Imports and Exports Classification List (Harmonized System) ("HKIECL") 2014 amendments

The HKIECL is amended annually to take account of international requirements and significant changes in trade patterns and technology. With effect from 1 January 2014, 44 commodity codes for items including foodstuffs, chemical products, articles of stone, machinery, electrical equipment and some textile products are updated. Traders should be aware that import and export declarations for shipment on or after 1 January 2014 must be completed in accordance with the HKIECL 2014 edition.

Please refer to the website below for the details of the HKIECL 2014 amendments: *http://www.censtatd.gov.hk/FileManager/EN/Content_93/HKIECL2014_amendment_booklet_20131016.pdf*

Updates to the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA")

Additional codes

With effect from 1 January 2014 three Mainland tariff codes have been added to the list of goods eligible for preferential treatment under CEPA. The three tariff codes and their corresponding Rule of Origin ("ROO") are summarised on the following page:

2013 Mainland tariff code	Product description	CEPA ROO
3405 1000	Polishes, creams and similar preparations for footwear or leather	Change in tariff heading.
3905 9900	Polymers of other vinyl esters or other vinyl polymers, in primary forms	(1) Change in tariff heading. If manufactured from plastics wastes, the plastics wastes should be produced from manufacturing operations or consumption in the Mainland or Hong Kong; or (2) Fulfil the value-added content requirement.
8528 5990	Other monochrome monitor	Change in tariff heading and to fulfill the value-added content requirement.

Revised origin criteria

On 3 December 2013, the TID published Certificate of Origin Circular No. 8/ 2013 announcing the revision of origin criteria for five Mainland tariff codes under CEPA. The revised ROOs took effect on 1 January 2014.

2013 Mainland tariff code	Product description	Revised CEPA ROO
2204 2100	Wine of fresh grapes, in containers holding 2L or less	Manufactured from grapes. Fermentation and production have to be done in Hong Kong. If dark-coloured grapes are used to produce white wine, it can be manufactured from the grape juice originating from the Mainland, Hong Kong, or countries or territories which have signed and put into effect preferential trade agreements (*) with the Mainland prior to 1 January 2013; and its fermentation and production have to be done in Hong Kong.
3902 3090	Other propylene copolymers in primary forms	(1) Change in tariff heading; or (2) Fulfilling the value-added content requirement.
4002 1914	Styrene-butadiene rubber (SBR), oil-filled and thermo-plasticated, in primary forms	(1) Change in tariff heading; or (2) Manufactured from polymers, cross linkers and other chemical ingredients by chemical modification.
4002 9911	Other synthetic rubber, in primary forms	(1) Change in tariff heading; or (2) Manufactured from polymers, cross linker and other chemical ingredients by chemical modification.
7116 2000	Articles of precious or semi-precious stones	Change in tariff heading.

** The preferential trade agreements signed and in effect prior to 1 January 2013 include: Asia-Pacific Trade Agreement, Mainland and Hong Kong Closer Economic Partnership Arrangement, Mainland and Macao Closer Economic Partnership Arrangement, Framework Agreement on China-ASEAN Comprehensive Economic Cooperation, China-Chile Free Trade Agreement, China-Pakistan Free Trade Agreement, China-New Zealand Free Trade Agreement, China-Singapore Free Trade Agreement, China-Peru Free Trade Agreement, China-Costa Rica Free Trade Agreement and Cross-Straits Economic Cooperation Framework Agreement.*

Under CEPA Hong Kong manufacturers may apply for specific goods to be included in the biannual ROO consultations. The application form can be found at the following link:

http://www.tid.gov.hk/english/aboutus/form/publicform/cepa/files/tid144.pdf

India

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Notifications and circulars

The Central Government has clarified that exemption from Special Additional Duty ("SAD") of Customs is available to parts, components and accessories for the manufacture of mobile phones as these are exempt from levy of basic customs duty and countervailing duty in lieu of excise ("CVD"). This exemption is available under Notification No. 21/2012-Cus dated 17 March, 2012.

The Central Government has provided that export of prohibited items may be allowed under Advance Authorization subject to fulfillment of stipulated conditions. Further, the Board of Approval ("BoA") can consider requests for export of a prohibited item from an Export Oriented Unit ("EOU"). *(Notification No. 51 (RE-2013)/2009-14 dated 14 November 2013)*

The Central Government has exempted import of specified anti-tuberculosis drugs and specified diagnostics and equipment from levy of customs duty. The exemption is available upon production of a certificate from an officer of the rank of Deputy Secretary or above in the Ministry of Health and Family Welfare certifying that such goods are required for the Revised National Tuberculosis Control Programme. *(Notification No. 49/2013-Customs dated 29 November, 2013)*

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Regulatory update

The Indonesian Government has released three new Ministry of Finance ("MOF") regulations to implement Economic Policy Phase II. The three regulations are summarised below.

Prepaid Income Tax Article 22 on import of certain consumer products

On 6 December 2013 the MOF published regulation No. 175/PMK.011/2013 ("PMK-175"), the third amendment of MOF regulation No. 154/PMK.03/2010 regarding Prepaid Income Tax Article 22 ("PPh 22").

Prepaid Income Tax levied on the import of certain consumer products for all importers will be at a rate of 7.5%. Previously where an importer held an Importer Identification Number or *"Angka Pengenal Importir"*/ API" the Prepaid Income Tax rate was 2.5% and the rate of 7.5% was applied only to importers without an API.

The purpose of PMK-175 is to limit the import of consumer products such as motor vehicles, furniture, cellular phones, clothes, footwear, jewellery, etc. A complete list of the goods subject to Prepaid Income Tax at a rate of 7.5% is available upon request from your PwC Indonesia contact.

The regulation is effective from 5 January 2014.

Relaxation of the restrictions on KITE facilities

With the objective of boosting exports, investment and strengthening export oriented industries' competitiveness, the MOF has implemented measures to ease the cost of imported raw materials used in the production of finished goods destined for export. The following regulations have been published by MOF and will be effective from 4 February 2014:

1. MOF Regulation No. 176/PMK.04/2013 as an amendment of MOF Regulation No. 254/PMK/04/2011 regarding KITE Exemption facility.

2. MOF Regulation No. 177/PMK.04/2013 as amendment of MOF Regulation No. 253/PMK.04/2011 regarding KITE Drawback facility.

Both regulations revoke Article 17 (2) of MOF Regulation No. 147/PMNK.04/2011 regarding Bonded Zones as amended by Regulation No. 140/PMK.04/2013 and Article 13(3) MOF Regulation No. 143/PMK.04/2011 regarding Bonded Warehouses.

Under the revised exemption facility, companies will benefit from an exemption Value Added Tax ("VAT") and Luxury Sales Tax ("LST") (in addition to customs duty) on imported raw materials from outside the Customs Area and on purchased raw materials from Bonded Warehouses, Bonded Zones, Free Trade Zones, and/or other economic zones as determined by the Government. Companies wishing to enjoy the exemption will need to pay a guarantee to the value of the import duty, VAT, and/or LST of the imported raw materials and domestic VAT.

Please note that these VAT and LST exemptions are not available under the Drawback facility. However, the MOF Regulation No. 177/PMK.04/2013 does revoke the previous provision that prevented the drawback of duty on imported raw materials that are used during the production process but are not integrated into the finished exported product.

ASEAN Trade in Goods Agreement ("ATIGA") self-certification scheme

On 9 December 2013 the MOF published Regulation No. 178/PMK.04/2013 to implement a self-certification scheme for the purpose of applying for preference under ATIGA. Certified Exporters can issue an invoice declaration which includes self-certification, stating that the exported goods have satisfied the Rules of Origin and should be considered ASEAN Originating Products under ATIGA. This invoice declaration can act as a substitute for the Certificate of Origin from the issuing authority. The list of Certified Exporters is available from the ASEAN Secretariat. Certified Exporters cannot use an invoice declaration where there is a back-to-back or third country invoicing scenario.

Regulation No. 178/PMK.04/2013 takes effect on 8 January 2014.

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Japan files dispute against Ukraine over safeguard measures on motor vehicles

On 30 October the Government of Japan notified the World Trade Organization ("WTO") Secretariat of a request for consultation with Ukraine regarding safeguard measures imposed on motor vehicles.

The request is a consequence of Ukraine's decision to impose safeguard measures through additional duties of 6.46% on motor vehicles with 1,000-15,00cc displacement and 12.95% on those with 1,500-2,000cc displacement.

In its request, Japan claims these safeguard measures are inconsistent with the provisions of the General Agreement on Tariffs and Trade ("GATT") and the WTO Agreement on Safeguards. In particular, as Ukraine did not follow the protocol of immediately notifying the Committee on Safeguards and did not provide an adequate opportunity for prior consultation with other WTO members. Furthermore, Japan claims Ukraine has applied the safeguard measures beyond the extent necessary to prevent serious injury to the domestic industry.

The safeguard measures introduced by Ukraine took effect on 13 April 2013 and will be in place for a three year period.

Details of the schedule for consultation will be coordinated between the Government of Japan and the Government of Ukraine.

New Zealand

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Anti-dumping review

The Dumping and Countervailing Duties Act 1988 provides a mechanism to maintain fair levels of import competition for New Zealand producers, when the dumping or subsidisation of imported goods causes or threatens to cause material injury to the New Zealand industry.

The Associate Minister of Commerce has terminated anti-dumping duties imposed on certain bound stationery from Malaysia with effect from 11 September 2012 (gazette notice dated 11 October 2013).

Goods from the Asia-Pacific region which are still subject to anti-dumping action on importation into New Zealand are:

- Diaries from China and Malaysia;
- Galvanised wire from Malaysia;
- Hog bristle paintbrushes from China;
- Plasterboard from Thailand;
- Preserved peaches from China;
- Reinforcing steel bar and coil from Thailand; and
- Wire nails from China.

For more information: *http://gazette.govt.nz/notice/id/2013-go6691*

Customs and Excise Act to be reviewed

The Customs Minister has announced that the Customs and Excise Act 1996 will be reviewed.

The review will look to ensure that the Customs legislation provides a flexible legislative framework that can adapt to changes in the trade environment and technology. A discussion paper for public consultation is expected to be available in 2014.

For more information: *http://www.beehive.govt.nz/release/customs-and-excise-act-be-reviewed*

Landmark case on statutory interpretation and tax delivered by Supreme Court

On 6 December 20013, the Supreme Court delivered its judgment in the *Terminals (NZ) Limited v Comptroller of Customs* [2013] NZSC 139 appeal. This case is significant as it is the first customs case to reach the Supreme Court, it is the first tax judgment to be handed down by Justice Glazebrook and the bench was unanimous in arriving at its conclusion. Furthermore, unlike recent tax avoidance cases that have reached the Supreme Court, this case is one of pure statutory interpretation and, as such, the judgment contains useful guidance on the principles relating to the interpretation of tax statutes.

Overview

Excise is generally payable upon the importation or "manufacture" of excisable goods. The issue in this case was whether the addition of small quantities of butane to imported motor spirit constituted "manufacture" for the purposes of the Customs and Excise Act 1996 despite the fact that excise duty had already been paid on the butane spirit separately.

In the first proceeding, the High Court found in favour of the taxpayer on the basis that blending is explicitly included in the definition of "manufacture" for goods that are neither tobacco nor fuel (i.e. alcohol) – as such the blending of fuels should not, in turn, be considered manufacturing.

The Court of Appeal overturned the High Court decision on the basis that the purpose and wording of the legislation showed Parliament had intended excise duty to be payable on the full volume of motor spirit imported or manufactured.

The Supreme Court ultimately upheld the Court of Appeal's decision, finding that the blending of the two components constituted manufacture as it was an "operation of process" resulting in a larger volume of motor spirit with different physical properties from the constituent components.

The Court also noted that excise duty on motor spirit is akin to a consumption tax, payable on the total volume of motor spirit without differentiation according to its constituent components. So, this outcome accords with the purpose of the duty.

What does this mean?

The Supreme Court provided some useful guidance on the interpretation of tax and excise statutes. Justice Glazebrook emphasises the importance of section 5 (1) of the Interpretation Act 1999, which requires that "the text of the provision is to be construed in light of its purpose. Her Honour went on to state that "[t]axation statutes are construed purposively in the same manner as any other statute" and that in tax cases, there is "no presumption in favour of either party."

In summarising the principles of interpretation from the Ben Nevis case, Justice Glazebrook held that, where a tax statute does not include a general anti-avoidance provision the proper approach is to "assess whether the legal substance of the relevant arrangement comes within the specific provisions of the statute construed purposively."

The Court was willing to consider evidence of legislative intent by reviewing Hansard reports on the relevant legislation. With respect to case law precedent, a cautionary message from the Court is that it is necessary to consider very carefully both the facts of those past cases and the relevant statutory framework. It held that the overseas cases cited "were decided in different legislative and factual contexts and are not directly relevant."

The Court rejected the High Court's view that because "blending" was expressly included in the definition of "manufacture" for the purposes of alcohol, but not for fuel, then blending should not be interpreted as manufacturing in relation to fuel. The Court held that given the "paucity of material" explaining the enactment of the relevant law "it would be unwise to draw conclusions about Parliament's intentions in electing only to expand the definition to include [blending as it relates] to alcohol."

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HS code update to version 2012

With effect from 29 November Taiwan has updated its Harmonised System codes ("HS codes") from HS 2007 to HS 2012. The revision of the HS particularly affects the import and export tariff classification codes for industrial products such as organic chemicals, photographic goods, electrical machinery and equipment.

The "Early Harvest List" ("EHL") under the Economic Cooperation Framework Agreement signed between Taiwan and China will incorporate HS code amendments to align with the change of HS version. However, the range of products under the EHL has not changed.

The conversion tables for HS 2007 and HS 2012 and the Early Harvest List can be found at the website of Taiwan Customs Administration: *http://web.customs.gov.tw/ct.asp?xItem=12270&ctNode=10496*

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Imminent changes to Free Zone regulations

In early December 2013, Thai Customs conducted a public hearing session and invited Free Zone stakeholders to provide their input into the proposed amendments of the relevant provisions particularly related to the Free Zone privilege for domestic sales.

It transpired from this meeting that Customs is proposing more stringent documentation requirements (e.g. additional documents such as copies of invoices, certificates and import entries would be required) as well as longer approval processes (up to 55 days from 15 days under the current regulations). Based on the proposed amendments, it is also clear that there may be more scrutiny on Free Zone companies once the proposed amendments will take effect, either at the approval stage or at enforcement level. This is likely to lead to lengthier and more burdensome approval processes as well as increased post clearance activities for Customs' enforcement units (such as the Post Clearance Audit Bureau or Investigation and Suppression Bureau) on the qualification of products.

The relevant authorities will be finalising the draft amendments in the next few months. More restrictive interpretations by Customs as well as introducing more stringent documentation requirements are expected then and this could impact companies operating in a Free Zone.

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New customs penalties regulation

On 15 October 2013 the Government published Decree 127/2013/ND-CP ("Decree 127") on the handling of administrative breaches and coercive implementation of administrative decisions in the customs sector.

Decree 127 details the breaches of customs inspection, customs audit, customs supervision, and customs control; breaches of management policy on import/export, transit goods; exit/enter, transit mean of transport as well as points out the penalty on duty evasion and duty fraud.

The penalty amounts will be increased as follows:

Offence	Previous penalty	Revised penalty under Decree 127
Failing to re-export/ re-import means of transport (car which has less than 24 seats) on time	VND 30 million	VND 50 million
Fraudulent export declaration – declaring goods for export but no actual export made	VND 20 million	VND 40 million
Under declared value		20% of the shortfall amount. If the customs declaration is subsequently corrected within 60 days of the original declaration and prior to any Customs audit the penalty is 10% of the shortfall amount.
Using electronic customs declaration software which is not compatible with Customs' system	VND 4 million	VND 10 million
Using an unauthorised digital signature to declare electronic customs documents	VND 20 million	VND 60 million

The Decree is effective from 5 December 2013 and replaces Decree 97/2007/ND-CP dated 7 June 2007 and Decree 18/2009/ND-CP dated 18 February 2009.

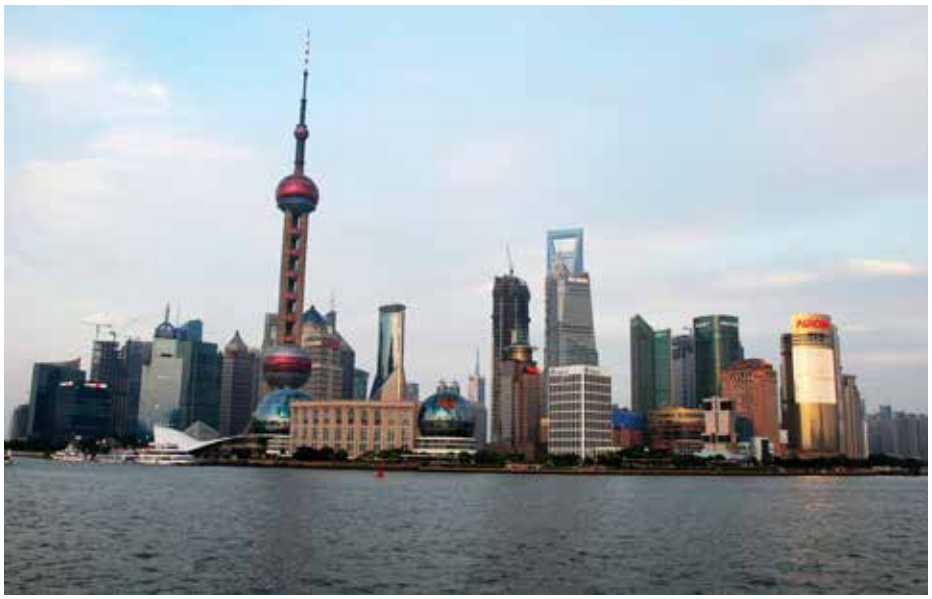
Around the world

Regional tariff book updates

The New Year typically heralds various updates to national tariff books and codes. Below is a summary of some of the changes across the region.

Country	Description
Australia	Tariff code and rate changes, updates available on-line at www.customs.gov.au/tariff
China	Publication of Customs Tariff for 2014, effective 1 January 2014
Japan	Publication of Customs Tariff for the year 2014
Malaysia	Amendment to Sales tax and Excise duty rates
New Zealand	Updates to the Working Tariff Document, updates available at www.customs.govt.nz
Taiwan	Adoption of HS 2012 nomenclature on 29 November 2013
Vietnam	Publication of Customs Tariff for the year 2014

Please note that the information above is not intended to be comprehensive. Should you require specific tariff code or rate information for a particular country, please contact the relevant territory leader.



Antidumping investigation launched by Brazil concerning acrylic sheets from Hong Kong and China

The Ministry of Development, Industry and Foreign Trade of Brazil ("MDIC") issued Circular No. 71/ 2013 on 18 November 2013 announcing the initiation of an antidumping investigation against acrylic sheets classified under Southern Common Market Common Classification ("NCM") code 3920.51.00 from China, Hong Kong and other economies.

Canada withdraws General Preferential Tariff ("GPT") entitlement for 72 countries

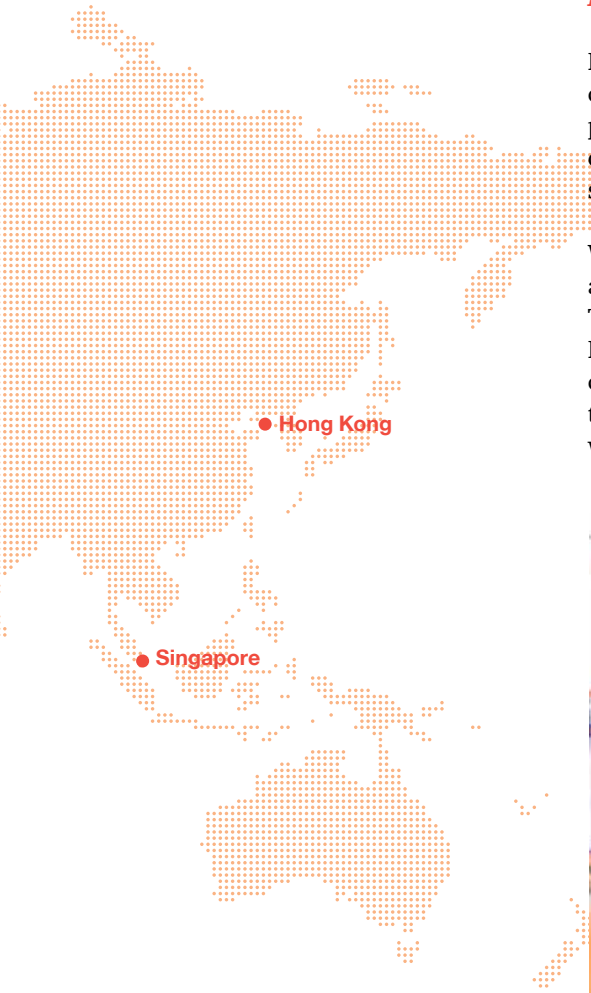
The Canadian Department of Finance has announced the withdrawal of GPT entitlement in respect of goods originating in 72 countries, with effect from 1 January 2015. Asian countries which will be affected include:

- China
- Hong Kong
- India
- Indonesia
- Macao
- Malaysia
- Singapore
- South Korea
- Thailand

The Canadian government has also confirmed that, in the future, withdrawal of tariff preferences will be applicable for any country classified as either

- high or upper-middle income by the World Bank for two years running; or
- having a 1% or greater share of world exports for two consecutive years according to figures from the World Trade Organization.

WMS in action



Hong Kong: Documenting trade controls requirements

Hong Kong imposes stringent controls on the import and export of strategic commodities including munitions, chemical and biological weapons and their precursors, nuclear materials and equipment, and dual-use goods that are capable of being developed into weapons of mass destruction in order to align with policies set forth under international export control regimes and conventions.

WMS has been requested by an aircraft manufacturer to assist in the preparation of a Trade Controls Requirements Document ("TCRD") for internal reference. The TCRD comprehensively summarises the Customs and trade environment of Hong Kong including licensing procedures pertaining to export controls on strategic commodities. The TCRD is intended to provide a legal and practical reference for traders who are engaged in the daily import and export of sensitive products and wish to ensure compliance with prevailing Customs rules and regulations.

Around the region: Regulatory affairs

WMS Singapore is assisting a multi-national company in the highly regulated motor vehicle industry to understand the current regulatory environment and future regulatory trends around its products throughout the Asia Pacific region and to develop a strategy to concentrate Government Affairs efforts on those countries and policies of greatest long-term impact.

The project includes developing regulatory issue and stakeholder maps and filtering current regulatory obstacles through a range of analytical lenses to identify those where the company should take action and where there exists reasonable level of likelihood of success.

Contact 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 regionally integrated team of fulltime 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 lawyers, accountants, and specialists from the private sector who have experience in logistics, customs and international trade.

PwC–Globally

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