Outsourcing, In-sourcing and Off-shoring

What classification strategy works for you?

Trade Intelligence Asia Pacific
September/October 2013
## On the horizon

<table>
<thead>
<tr>
<th>Territory</th>
<th>Issue</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>Deadline for permit applications for businesses handling chemicals</td>
<td>25 November 2013</td>
<td>16</td>
</tr>
<tr>
<td>Japan</td>
<td>Consumption Tax increase to 8%</td>
<td>1 April 2014</td>
<td>21</td>
</tr>
<tr>
<td>Japan</td>
<td>Pre-notification of inbound cargo</td>
<td>1 March 2014</td>
<td>21</td>
</tr>
<tr>
<td>Multi territory</td>
<td>EU to terminate GSP benefits for many territories</td>
<td>1 January 2014</td>
<td>31</td>
</tr>
</tbody>
</table>
Key intelligence

- Highlights of the negotiated text of the EU-Singapore FTA
  P.12

- Inflated penalties for customs infringements in Australia introduced
  P.13

- New rules concerning bonded zones in Indonesia
  P.19

- Japan Customs introduces e-filing for import/export documentation
  P.21

- Revised Vietnam Customs procedures, including tightened controls on bonded warehousing and advance rulings
  P.29

- Duty rate increases in Vietnam for the chemicals industry
  P.30

- Thailand debates a cut on duties on luxury goods
  P.26

- Vietnam publishes detailed processes for advanced rulings for classification, valuation and origin
  P.28
Trad 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 Trad Intelligence Asia Pacific.

**Index**

**Feature article**
- Outsourcing, In-sourcing and Off-shoring
- What classification strategy works for you?

**FTA focus**
- China and South Korea wrap up the first phase of FTA negotiations
- European Union and Japan begin the third round of FTA negotiations
- European Union-Singapore Free Trade Agreement moves closer to ratification
- Indonesia and Japan agree to renegotiate their Economic Partnership Agreement (EPA)
- Thailand signs FTA with Chile

**Country reports**
- Australia
- China
- Hong Kong
- India
- Indonesia
- Japan
- Malaysia
- New Zealand
- Taiwan
- Thailand
- Vietnam

**Around the world**
- EU: New General System of Preferences

**WMS in action**
Outsourcing, In-sourcing and Off-shoring
What classification strategy works for you?

Defining classification

Classification is the process of review, evaluation and assignment of a tariff number, as detailed in the International Convention on the Harmonized System (HS Convention). The HS Convention and its Nomenclature is an international identification methodology specifically crafted to facilitate international trade, duty collection and trade statistics collection.

All items imported into nearly all territories must be assigned a classification code from the HS Nomenclature. In addition, in many territories, products exported may also require a classification either based on the HS Nomenclature or an export control classification.

The HS Convention was originally developed in 1988 by the World Customs Organization (WCO). Initially it was driven by the major trading countries in an effort to create some level of standardised trade flow reporting and tracking mechanism to facilitate global trade. The HS Nomenclature classification is a six digit number that, generally speaking, should be common across all countries. Individual countries add additional digits for duty rate and statistical purposes to create individual tariff codes.

Whilst it was ultimately the goal of the WCO to create a standardised tariff schedule, no individual country is required to (nor in practice does) cede the right to interpret and apply the HS nomenclature based upon local country standards. Understandably, domestic interpretation of the “Harmonized” nomenclature leads to a great deal of confusion for importers and differences of opinion across customs authorities, corporations and classification professionals.
**Customs concerns**

Classification is a key tool or resource for government agencies to manage and monitor their trade activity as it drives or facilitates the management of:

- duty rates and collection
- admissibility
- Free Trade Agreement eligibility and management
- import quotas
- licensing
- Anti-Dumping, Countervailing & “Other” Sanctions

Further, classification is the core tool used by governments to collect and analyse trade statistics that they rely on when negotiating Free Trade Agreements, sanctions, retaliatory actions and development programmes.

**Importers’ concerns**

**Costs:** In today's world of just in time inventory (JIT), rapid order fulfilment (ROF) and global supply chains, incorrect tariff classification can lead to significant delays to the supply chain which can in turn result in material operating costs that are unrelated to and may exceed customs duty. Customs delays routinely lead to production slowdowns or shutdowns, increased transportation costs and customs fines and penalties.

**Opportunities:** Duty savings and total landed cost reductions are routinely achieved when companies: a) Deploy a classification programme that supports a robust classification procedure with a process that provides a documented, and reasonable classification process and, b) Link the classification process to their sourcing decisions and Free Trade programme management so as to minimise the total landed cost.

Customs authorities around the world understand that not only is classification complex but it is also something that does not generally receive the appropriate attention and resources from importers. Customs authorities are well aware that many companies devote minimal or low level support to classification. As such, we routinely see clients that are creating an operational environment that is ripe for customs investigations and supply chain disruptions. As such, when looking at customs enforcement it is no surprise that classification is the number one basis for investigation and the starting point for the majority of customs authorities.

Customs audit teams walk in the door knowing that more often than not they will have material findings and collections as a result of weak or non-existent classification processes and quality control. These findings not only result in immediate fines and penalties, but they also result in increased shipment inspections as Customs seeks to monitor the companies’ improvement process.

**Reasonable care**

In some import jurisdictions, customs regulations stipulate that the importer is responsible for the accuracy of their classification and Customs is responsible for reviewing the importers work and enforce proper procedures, controls and ultimately the accuracy of the classifications themselves. This requirement is often referred to as “reasonable care”. Essentially what this means to the importer is that Customs will review the classification process and outcome and if it appears to be both a reasonable process and outcome they will generally accept and acknowledge the classification programme as being compliant.

The concept of “reasonable care” is relatively common across the world. Whilst many countries have not codified this approach, it is nearly always beneficial when dealing with local Customs to be able to demonstrate a level of effort, care and reasonableness.

**Common challenges**

On the face of it classification should be a relatively simple process, and it can be, if a company’s classification approach is set up to properly capture all of the information necessary to identify an appropriate and reasonable classification. In practice only a limited number of companies take the necessary steps to enhance their approach (e.g. through an “item master description and part information system) to this level. This however, is not surprising as this information consolidation and management effort will only benefit the customs function and does not really add value for the groups that tend to own or control this information such as engineering, IT, sales or procurement.

Additionally a number of other factors can and routinely does conspire to complicate matters for an importers’ classification team, including:

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**Case Study**

**CompanyOne is a global machinery and equipment manufacturer.**

As an evaluation effort CompanyOne provided a data file to an India based third party classification provider. This company utilised trained classification staff that all spoke excellent English and had advanced degrees. During the review of service provider’s work product CompanyOne noted a rather high disagreement rate with their own internally produced classifications. A closer investigation indicated that the team was attempting to utilise Indian centric classification interpretations, as well as their reading of the tariff schedule versus utilising US Customs rulings. If they disagreed with customs ruling on a classification they simply ignored it as “wrong.” When this was challenged by CompanyOne the service provider actually refused to revise their work product.
**Case Study**

CompanyTwo is a global automotive manufacturer.

The parent company built an item master driven automated classification system based upon their internal needs in Europe. The US company, looking to cut costs, adopted the output as provided by this automated system. Apparently this system worked very well for all parties for the first two years. Due to staffing and priority changes at the parent company, the item master documentation process was then modified, to better fit the parent company’s European needs. Five years later during a US Customs audit the US company was found to have a classification compliance rate of less than 30 percent.

*Black boxes can work, but only if the importer recognises that this approach requires a permanent dedicated team of IT, engineering and customs professionals to keep it on track.*

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- **Truncated descriptions**: Many descriptions are simply too short or abbreviated to have value or to be accurate.
- **Translation**: Often the meaning of a part description is lost when that description is translated.
- **Word usage**: Even between countries that speak the same language, people do not always use that language in the same manner.
- **Description reliability**: The person that describes and builds a product’s profile may not always describe that product in the best, most accurate way or even in the same manner as the individual sitting next to them.
- **Human error**: People will make mistakes with the information that they provide.
- **Part number logic is not always consistent or reliable**: Companies do not maintain this as well as needed for the part number logic to be a reliable source.
- **Access to information**: Information is the most important and difficult component of any classification programme. Without access to information such as application, material, dimensions, usage, output, size, wattage, or other technical specification, it is often impossible to accurately or reasonably classify a product.

**What are importers doing?**

Whether the result of increased trade compliance efforts by Customs, greater reliance on cross border supply chains, FTA qualification or a global customer base, more and more companies are focusing efforts on their classification programmes. Over the past several years more companies have migrated from a “my broker, forwarder, shipping clerk or logistics manager does it” model to dedicated internal or outsourced expert classification models.

**Dedicated internal low cost country based classification expertise**

This can often be a viable solution for high volume importers of relatively straightforward products. This option allows the importer to take advantage of lower labour costs available to their internal operations elsewhere in the world, but it also is often easier to get “in house” staff access to critical engineering systems and other information resources than it would be to obtain the same information for an outside party.

From a general compliance and classification quality perspective, this option still leaves a bit to be desired for more complex importers and products. For companies pursuing this option, it is vital that they recognise that language issues, depth of classification knowledge, internal accountability and perhaps most importantly, staff training and retention, all remain critical challenges to be overcome. From a compliance perspective, Customs will expect the same level of quality of work product and management oversight as if the classification teams were located in the same territory. Hence, whilst a company may be successful in moving some of the
less technical work to a lower cost region, the more technical quality control and project management aspects will need to remain with the parent/importing company.

**Third party service providers**

A growing trend in the past five years has been for large companies to outsource their classification operations to third party classification experts. As a result, there are currently a number of service providers around the globe offering outsourced classification services. The benefits, as marketed, generally include lower cost resources, dedicated classification professionals, the ability to eliminate headcount, workload volume flexibility and relief from staff training, retention and management issues.

From a compliance perspective, the importer should be aware that no matter whom they hire, or how much they pay a service provider, the importer remains responsible for all errors or omissions identified by Customs. This means that the importer cannot cite “my expert service provider did this for me”, as a defence. The importer is responsible for the ultimate quality and accuracy/reasonableness of classification and as such must be confident that the service provider has the experience, stature and commitment to properly represent the importer and their work product when interacting with Customs or responding to Customs challenges.

When compared to in-house resources, service providers offer some significant advantages, including:

- **cost:** With the right staffing mix and location, it’s possible for third party providers to deliver top quality work at less than the “in-house” cost.
- **extensive experience:** These service providers work across a large and diverse classification base. This broader exposure to tariff codes and the simple fact that they work with thousands of unique SKUs every month help them bring a new and deeper view and skill set to a project.
- **focus:** Classification is their full time day job; meetings and special projects do not interrupt their day, as a result it is easier for them to stay focused and productive.
- **reputational accountability:**
  - Larger service providers cannot have their reputation sullied in the market place; hence they will often do whatever is necessary to find the solution.
  - Larger service providers do not wish their reputation with Customs to be tarnished; hence they will generally be very responsive and directly interactive with Customs on classification issues.
- **staffing flexibility:** The reality is that classification projects tend to run in cycles that often resemble fire drills, it’s all hands on deck as you rush toward a deadline and then suddenly things slow down and you have extra staff on hand. Outsourced service providers can be there when needed and are gone when not.
- **project management:** For larger “projects”, project management, issue resolution and quality control/review can take up a significant amount of time. All of this can be handed to a quality service provider.
A successful outsourcing relationship should evolve to such a point that the outsource services team (and the client) view themselves as more than just a service provider. Rather, they should become a dedicated part of the company’s customs team, delivering not only defendable, documented classifications but also timely advice on other matters, as well as a continued focus on how to improve the process and reduce overall classification costs. A good team relationship delivers value beyond the simple scope of the project they were retained for.

Common hurdles that importers face in seeking to utilise third party service providers include:

- budget: Often when a classification outsource program is first proposed, procurement or finance teams will work with the trade compliance operations team to “spec and bid out” the classification services programme. Often initial RFPs include complete wishlists, and as such, initial proposals from service providers generally include everything and tend to come in at a price higher than expected or acceptable.

- information access A common hurdle that all classification professionals (internal and external) face is obtaining access to the necessary information resources (for example, drawings, databases, product experts, engineers) that will allow the service provider to properly classify the item and excel at their job of supporting the company with accurate and reasonable classifications. When security and confidentiality issues arise it is important to work with a prospective service provider to define key items such as specifically who will have access to the data, how will the data be protected, non-disclosure agreements, what foreign nationals will be involved or have access to the data (for export control purposes) and how will data and the project be shielded from other clients.

**Case Study**

CompanyThree is a global manufacturer of medical goods.

The company moved the classification of their finished goods from their broker who was doing a description based process to a third party that focused their approach on verifying “what is this product?” This approach led to a number of revised classifications and a more compliant operation. As an added bonus the outsourced classification team was able to add “other country” classifications to the client’s core deliverable of “US Classifications for all finished goods”. A win for both parties and a relationship designed to last for years rather than months.
FTA focus

Agreements signed

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>Thailand – Chile</td>
<td>4 October 2013</td>
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<tr>
<td>Colombia-Israel</td>
<td>30 September 2013</td>
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<td>Colombia - Panama</td>
<td>20 September 2013</td>
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Agreements entered into force

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Date</th>
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<tbody>
<tr>
<td>Guatemala - Mexico</td>
<td>1 September 2013</td>
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<tr>
<td>Gulf Cooperation Council (GCC) – Singapore</td>
<td>1 September 2013</td>
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China and South Korea wrap up the first phase of FTA negotiations

After holding a three day talk in Beijing in early September, China and South Korea concluded the first phase of negotiations of a bilateral FTA. The first phase of the negotiations have been held over seven rounds and started in May last year.

The highlight of the conclusion of the first phase of the negotiations was the agreement on tariff liberalisation of trade in goods. Once the agreement enters into force, the two countries have agreed to remove import tariffs on 90% of all products in terms of tariff lines, representing 85% of all imports between the two countries in terms of monetary value. Typically the decision on tariff liberalisation is a sensitive issue in FTA negotiations and the early agreement on this matter signifies the negotiations are progressing well. It was also announced that further tariff liberalisation may be negotiated during the second stage of the negotiations.

In addition to agreeing on tariff liberalisation, China and South Korea also reached separate agreements on basic guidelines for other trade areas such as trade in goods, services, investments and economic cooperation. Phase two of the negotiations is expected to be launched at the end of this year.

European Union and Japan begin the third round of FTA negotiations

On October 21, 2013, Japan and the EU began their third round of FTA negotiations in Brussels to discuss tariffs and other trade barriers.

So far the negotiation process between the two parties have been slow moving. In particular, the EU has raised concerns regarding Japan's effort in eliminating non-tariff barriers through various deregulation measures that the EU deems necessary to consider an FTA deal. As a result, the EU is now monitoring Japan's progress and will conduct a review in April 2014, a year after launching the negotiations, to make a decision on whether sufficient progress has been made to continue negotiation talks.

Both Japan and the EU are hoping to reaffirm their commitment to conclude a deal during a summit to be held in late November in Tokyo. However, some Japanese officials are less optimistic and claim that even if they do decide to continue, the negotiations may take several years before an agreement can be concluded.
European Union-Singapore Free Trade Agreement moves closer to ratification

The European Union (EU)-Singapore Free Trade Agreement (EUSFTA) has taken another step closer towards ratification. After negotiations were concluded on 16 December 2012, the legal text was finalised on 20 September 2013.

The EUSFTA is a comprehensive agreement that provides even greater access to both Singapore and EU markets in terms of tariff-free access for goods, improved market access for services, intellectual property protection, reduced technical barriers to trade and further opening of government procurement.

This is the first bilateral Agreement concluded by the EU with an ASEAN country and the second Agreement between the EU and an Asian country, after South Korea.

Key highlights:

- Certain processed food products made in Singapore will be allowed to enter the EU tariff free within an annual quota.

- Singaporean manufacturers who produce goods from components and parts sourced from other ASEAN member countries can include these raw materials and parts to determine whether their exports qualify as originating in Singapore under the agreement, making it the first bilateral FTA with such an ASEAN cumulation concept.

- Import duties on approximately 80% of all EU tariff lines will be eliminated with the remaining 20% qualifying three or five years after the agreement enters into force. Major sectors that are expected to benefit are the electronics, chemicals, pharmaceuticals, machinery and processed food products sectors.

- Singapore in turn will eliminate any import duties on goods of EU origin (i.e. beer!) immediately once the EUSFTA enters into force.

- Elimination of non-tariff barriers, by reducing additional testing or certification requirements on goods such as consumer electronics and telecommunication products amongst others.

The Agreement is expected to enter into force in 2015 at the latest, maybe even towards the end of 2014. The somewhat complex ratification process in the EU will be the main determinant of how quickly implementation can be achieved.

Indonesia and Japan agree to renegotiate their Economic Partnership Agreement (EPA)

During a bilateral meeting held on the side-lines of APEC Summit in Bali on October 8 2013, Indonesia and Japan agreed to start renegotiate their EPA as result of growing concerns that the current agreement has failed to result in equal benefit for both parties.

The concerns are mainly driven by Indonesia as their export growth rate to Japan lags behind its imports, a trend suggesting that Indonesia may receive less than expected benefits from the EPA. These results are also backed by a number of Indonesian economic analysts who claim the overall benefits are in favour of Japanese companies.

In order to conduct a proper review, an economic cooperation team has been selected to evaluate the impact of the agreement since it entered into force five years ago. The results of the evaluation will form the basis for the renegotiation process.

The evaluation process is expected to be concluded by this year.

Thailand signs FTA with Chile

Thailand and Chile signed a FTA in Bangkok on October 4, 2013, in an attempt to liberalise trade in goods and services and to open up bilateral investments.

Once the agreement enters into force, tariffs on 90% of goods traded will be eliminated for both parties. The two countries have agreed to further bring down tariffs over a five year period from when the agreement enters into force.

The Deputy Director General of the Thai Department of Trade Negotiations stated that for Thailand, this agreement is a “strategic tool” to enter and expand relations in the Latin American region. The new agreement will also help Thailand to be on a levelled playing field with other Asia markets, such as Singapore, Vietnam, Malaysia, Japan and China, who already have FTAs with Chile.

Products of Thai origin likely to benefit from this FTA include, amongst others, automobiles and auto parts, electric appliances, processed food, rubber products, cement, jewellery and apparel.

The agreement is expected to come into effect in the early part of 2014.
Country reports

Australia

Changes to the Infringement Notice Scheme

On 18 October 2013 the Australian Customs and Border Protection Service (Customs) announced the release of an exposure draft of the Custom Amendment (Infringement Notices) Regulation 2013 (the Regulation) and the associated draft Infringement Notice Scheme Guide (the Guide). 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 Guide includes details of penalty amounts potentially available to Customs under the Infringement Notice Scheme. The amount payable by a body corporate is set at three times the amount payable by a natural person. However, Customs has the power to further increase the body corporate penalty up to five times that of a natural person. This significantly increases the penalty imposed on a body corporate, which was previously subject to the same penalty amount as a natural person.

The following table demonstrates the inflated penalty imposed upon a body corporate under the Guidelines:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Natural Person</th>
<th>Body Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td>False or misleading statements resulting in</td>
<td>$2,550 (15 penalty units)</td>
<td>$7,650 (45 penalty units)</td>
</tr>
<tr>
<td>a loss of duty</td>
<td>Or 25% of duty short paid, whichever is greater</td>
<td>Or 75% of duty short paid, whichever is greater</td>
</tr>
<tr>
<td>False or misleading statements not resulting</td>
<td>$2,550 (15 penalty units)</td>
<td>$7,650 (45 penalty units)</td>
</tr>
<tr>
<td>in a loss of duty</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.
Cargo Terminal Operator record keeping requirements

The Australian Customs and Border Protection Service (Customs) has released an exposure draft of the Customs Amendment (Record Keeping Requirements) Regulation 2013 (Cth) (the Regulation). The Regulation implements the Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Act 2013 (Cth) (the Act), which received Royal Assent on 28 May 2013. The Act amends the Customs Act 1901 (Cth) and the Auscheck Act 2007 (Cth) and is designed to tackle organised crime by strengthening the cargo supply chain against criminal infiltration.

The Act places an obligation on terminal operators to keep records of each person who enters a cargo terminal. The Regulation stipulates the details a cargo terminal operator must keep to satisfy this obligation. Details include the person’s full name, address and identification, the time and date of entry and departure from the terminal and the purpose of their visit and whom they are visiting.

Guidelines relating to supply of supporting documents to Customs

On 6 September 2013 the Australian Customs and Border Protection Service (Customs) released a notice providing guidance regarding documents that should be available for presentation to Customs upon request. The notice discusses what constitutes sufficient commercial documentation and evidence of monies paid to support customs values declared on import declarations.

The notice specifies that when a request for production of documents is made, full commercial invoices and supporting commercial documentation must be produced. This includes transport details, order details/records, evidence of payment, permissions (where applicable) and evidence to support eligibility for any claimed concessions. In particular, the notice highlights that pro-forma documents should not be relied upon in evidencing the value of goods. Further verification should be provided to ensure the documents reflect the true sales transaction. Failing to provide accurate and sufficient supporting evidence on request may result in cargo processing delays and sanctions.

Anti-dumping developments

A number of key developments have emerged in respect to Australian anti-dumping reform and cases in the past few months, these include:

• As part of the Machinery of Government changes announced on 18 September 2013, the Anti-Dumping Commission will be transferred from within the Australian and Customs and Border Protection Service to the newly established Department of Industry. The Anti-Dumping Commission has advised that the transition will not impact any on-going investigations and inquiries and will not result in increased investigation timeframes. Furthermore, there will be no changes to Operations teams or Delegates and Case Managers involved in on-going investigations and inquiries.

• On 28 August 2013 the Anti-Dumping Commission announced the initiation of an investigation into the alleged dumping of wind towers exported to Australia from China and Korea.

• On 10 October 2013 the Anti-Dumping Commission announced the initiation of an investigation into the alleged dumping of A3 and A4 copy paper exported to Australia from China.

Indonesia raises dispute against Australia over tobacco plain packaging

On 20 September 2013, the WTO Secretariat received a consultation request from Indonesia regarding Australia’s plain packaging requirements on tobacco products. This made Indonesia the fifth WTO member to lodge a complaint regarding this issue.
China

New CIQ measures on imported milk powder for infants and children

The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) Announcement [2013] No. 133 tightens the repackaging, labelling and expiration requirements for imported milk powder for infants and children.

The key points include:

1. Products produced by overseas manufacturers who are not registered with AQSIQ are prohibited from being imported.

2. The re-packaging of milk powder for infants and children in China is prohibited.

3. Labels in Chinese should be printed and attached to the goods prior to their arrival in China. Preparation of labelling in China post-import is prohibited. If there is no labelling or the label is not consistent with National Standards, the goods must be returned or destroyed.

4. The date of CIQ declaration should be at least three months earlier than the expiration of the quality guarantee period.

New procedures for imports of New Zealand goods into China

New procedures allow for the clearance of New Zealand goods held in Special Customs Controlled Areas and Bonded Warehouses in China.

These procedures are effective from 8 July 2013 and will apply to the six ports of Tianjin, Shanghai, Nanjing, Qingdao, Guangzhou, and Shenzhen.

Satisfaction of the import clearance procedures will enable New Zealand importers to take full advantage of the China-New Zealand Free Trade Agreement, including preferential tariff rates for the imported goods.

More information can be found via the following link: http://www.customs.govt.nz/news/resources/listsandguides/Documents/china-customs-bonded-warehouse-procedures.pdf
Air Transhipment Cargo Exemption Scheme Registration for 2014

The Hong Kong Trade and Industry Department (TID) has released a circular informing any interested parties to register for the Air Transhipment Cargo Exemption Scheme for Specified Strategic Commodities (the Scheme).

Generally registered applicants are exempted from any licensing requirements under the Import and Export Ordinance, Cap. 60 and the Import and Export (Strategic Commodities) Regulations, Cap 60, sub leg G, in respect of air transhipment cargo of specified strategic commodities. Air transhipment is defined in the Ordinance as “transhipment cargo that is both imported and consigned for export in an aircraft and which, during the period between its import and export, remains within the cargo transhipment area of Hong Kong International Airport”.

Carriers and parties involved in handling air transhipment cargo in the Hong Kong International Airport, including airlines, ground handling agents and freight forwarders, who wish to obtain exemptions from licensing requirements for air transhipment cargo of specified strategic commodities in 2014, can now start registering under the Scheme.

Successful applicants will be issued with a Certificate of Exemption which will be valid up to 31 December 2014. Existing registrants should note that they are also required to renew their registration and obtain a new Certificate of Exemption to enjoy exemption in the next year.

All applications are to be submitted to the Licensing Section of the Strategic Trade Controls Branch of the TID on or before 6 November 2013. Under the Scheme, relevant supporting documents should be prepared for any further verification by the Hong Kong Customs and Excise Department.

Permit requirement for 2014 and report on past activities in 2013 for Scheduled Chemicals and Unscheduled Discrete Organic Chemicals (UDOC)

The Chemical Weapons (Convention) Ordinance, Cap. 578 (the Ordinance) came into effect on 18 June 2004 to enable Hong Kong to fulfill its obligations as a signatory party to the Chemical Weapons Convention.

The Ordinance specifies the circumstances under which a permit to operate a facility is required. In summary, an operator of a facility engaged in specified activities involving Scheduled chemicals in quantities over the respective thresholds is required to obtain a permit from Hong Kong’s Trade and Industry Department (TID) in order to operate the facility.

A permit holder whose facility will, in 2014, be engaged in any of the activities related to Scheduled Chemicals should lodge application for a permit by 25 November 2013.

TID will send a circular to operators who may, according to their knowledge, be engaged in specified activities involving Scheduled Chemicals and/or UDOC. Operators who receive this circular must complete the reply slip and return it by 16 December 2013 to indicate activities in 2013 which are required to be reported, and, where applicable and upon further request by the TID, to provide final and full details of such activities by 6 January 2014.
India

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**Customs notifications and circulars**

- The Central Government has clarified that Bluetooth Wireless Headsets for mobile phones/ cell phones are classifiable under Custom Tariff Heading (CTH) 8517, as the communication function for mobile telephones is the principal function of the product.

  *(Circular No. 36/2013-Customs dated 5 September, 2013)*

- The Central Government has advised that the revised All India Rates (AIR) of Duty Drawback are effective from 21 September 2013.

  *(Notification No. 98/2013-NT and Circular No. 37/2013-Customs dated 14 September, 2013)*

- The Central Government has advised that the importer shall pay an amount equal to the safeguard duty and anti-dumping duty exempted at the time of import under Duty Free Import Authorisation Scheme (DFIA) along with interest, if such material is transferred with the permission of the regional authority.

  *(Notification No. 45/2013-Customs dated 17 September, 2013)*

- The Central Government has increased the Basic Custom Duty (BCD) rate on the import of specified articles of jewellery from 10 percent to 15 percent.

  *(Notification No. 44/2013-Customs dated 17 September, 2013)*

- The Central Government has clarified that there is no interest on Customs bonded goods for a period of 90 days from the date of deposit of the goods in the warehouse.

  *(Circular No. 39/2013-Customs dated 1 October, 2013)*

- The Central Government has notified that a bona fide default in export obligation (EO) under export incentive schemes such as Advance Authorization/Duty Free Advance Authorization (DFIA) and Export Promotion Capital Goods (EPCG) can be regularised by payment of applicable customs duty corresponding to the shortfall in the EO along with interest. In such cases, the interest amount shall not exceed the duty amount. However, cases where EO period is not yet over are not covered under this option.

  *(Notification No. 46/2013-Customs dated 26 September, 2013 and Circular No. 40/2013 dated 9 October, 2013)*

**Case law - valuation**

- In Volkswagen Group Sales India Pvt Ltd v CC (2013-TIOL-1289-CESTAT-MUM), the Mumbai Tribunal held that a lump sum fee payable to the overseas supplier for sole distribution rights regardless of profit/ loss on sale in India, cannot be added to the value of imported goods as the fee does not relate to the subsequent sale of goods in India.

- In Arushi Exports v CC (2013-TIOL-1445-CESTAT-MUM), the Mumbai Tribunal held that transaction value declared by the importer cannot be rejected by the authorities on the ground that an international cartel determines the price, without any corroborative evidence or significantly higher value of contemporaneous imports in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR).

- In Maruti Udyog Ltd v CC (2013 (295) ELT 628), held that technical-know how and licence fees paid in relation to post-importation activities of design, manufacture, quality control, etc. for production of cars in India is not included in the value of goods imported as there is no nexus of such fees with the import of goods.

- The Mumbai Tribunal, in Maruti Udyog Ltd v CC (2013 (295) ELT 628), held that technical-know how and licence fees paid in relation to post-importation activities of design, manufacture, quality control, etc. for production of cars in India is not included in the value of goods imported as there is no nexus of such fees with the import of goods.
Case law – classification

• The Mumbai Tribunal, in PSL Ltd v CC (2013-TIOL-1271-CESTAT-MUM), held that the Customs Tariff Act, 1975 (CTA) is based on the Harmonized System of Nomenclature (HSN) and in case of doubt, HSN is a safe guide for ascertaining the meaning of any expression used in the CTA.

Foreign Trade Policy

• The Central Government has made following changes in Incremental Export Incentivisation Scheme (IEIS):
  
  • benefits of the scheme for incremental export during last quarter of 2012-13 compared to exports made during last quarter of 2011-12 will be limited to 25% growth or INR 100 Mn in value, whichever is less;
  
  • benefits of the scheme for incremental export during FY 2013-14 compared to exports made during FY 2012-13 will be limited to a scrip of value not exceeding INR 10 Mn per Importer-Exporter Code (IEC); and
  
  • claims in excess of value mentioned above will be subject to greater scrutiny such as evidence of manufacture/export and evidence to justify export growth

(Notification No. 43(RE 2013)/2009-14, Notification No. 44(RE 2013)/2009-14 and Public Notice No. 28 (RE-2013)/2009-2014 all dated 25 September, 2013)
**Bonded Zones, regulatory update**

As part of the efforts to support export-oriented sectors in Bonded Zone areas, the Minister of Finance (MoF) issued Regulation No.120/PMK.04/2013 (PMK-120) as the third amendment of Regulation No.147/PMK.04/2011 (PMK-147) regarding Bonded Zones. Highlighted below are some of the changes resulting from PMK-120. The regulation is effective from 26 August 2013.

1. **Risk profile based service.** Bonded Zone companies will be serviced and monitored based on their risk profiling (green, yellow or red category).

2. **Other Economic Areas.** The government will stipulate Other Economic Areas that can be used for the release of Bonded Zone goods. PMK-120 does not provide detail on these Areas.

3. **Approving authority.** The approval to import capital goods in the form of factory equipment and/or spare parts will now be granted by the Head of Customs Service Office rather than the Head of Regional Office or Main Service Office.

4. **Change in sanctions.** Bonded Zone goods that are released to a Bonded Exhibition Organizing Site (“Tempat Penyelenggaraan Pameran Berikat”/TPPB) must re-enter to the Bonded Zone within 30 days from when the exhibition is completed. Previously, failure to meet this time limit was only penalised by a restriction to release Bonded Zone goods to the TPPB. Now, in addition to the existing penalty, there is a sanction for the Bonded Zone company to pay the import duty and/or excise and all import taxes due, plus an additional administrative penalty of 100% of the import duty due.

5. **Increase to domestic sales quota.** The amount of domestic sales that are permitted from a Bonded Zone has increased from 25% to 50% of re-exports. Re-exports includes export sales, sales to other Bonded Zones, sales to free trade zones and sales to other economic areas. The quota is based on the amount of re-exports made in the current year. The quota may exceed 50% with special approval from the Directorate General of Customs and Excise (DGCE).

6. **Subcontracting.** In subcontracting work to other Bonded Zone companies or other companies within the customs area, subcontractor companies can now add goods during manufacturing as part of the subcontracting process. The additions must be reported using the relevant customs declaration and must be stated in the subcontract agreement. In addition, a Bonded Zone company can subcontract work at multiple levels. This means a Bonded Zone company can subcontract to a first subcontractor and subsequently continue to subcontract activities to a second subcontractor for further processing so long as all those companies involved are in the green or yellow category.

7. **Bonded Zone license**
   a. Change of status to a Bonded Zone company
      - Under the previous regulation, companies receiving an import duty exemption on goods and materials to be processed, assembled, or attached to export oriented goods could change their status to that of a Bonded Zone company by fulfilling the normal Bonded Zone application requirements, which include some location requirements.
      - Under the new regulation, companies that have Company Identification Numbers (Nomor Induk Perusahaan/NIPER) with active status that are located outside of an industrial zone or in an industrial-designated
cultivation zone, can be granted a Bonded Zone license without fulfilling the location requirements. This treatment is applicable for requests submitted within six months from the effective date of PMK-120 as long as the applicant fulfils the following criteria:

(i) Having a good or very good reputation
(ii) Having an IT Inventory system that can be accessed on a real time and online basis as needed and that reflects the connection with customs documents
(iii) No outstanding customs liabilities
(iv) Having Closed Circuit Television that can be accessed by the Customs Office on a real time, online basis and having archived records that can provide information on the inflow and outflow of goods.

b. License extension

- The Bonded Zone license extension clause for Bonded Zone companies located outside of an industrial zone or industrial-designated cultivation zone that was issued prior to the issue of PMK-147 was previously applicable until 31 December 2016. Now, the license can be extended even if the Bonded Zone companies are not located in an industrial area or designated cultivation zone provided that they are: (i) green or yellow risk profile for the last six months and fulfil criteria (ii),(iii), and (iv) listed under the preceding bullet point.

**Smartphones to be subject to LST**

Smartphones will be classified as luxury goods and will be subject to LST upon import or on delivery by the domestic manufacturer to another party. The rate of LST will be based on the level of sophistication of the technology. This policy will be incorporated into a new government regulation concerning LST. Cellular phones were subject to LST in 2001 and in 2009 it was subsequently revoked.

**LST to be revoked for medical devices?**

The Government has been lobbied to revoke LST and Value Added Tax (VAT) for medical devices and associated products. A double rate tax deduction incentive for research and development has also been requested to reduce the costs of medical research.

Vice Chairman of the Chamber of Commerce and Industry (Kadin) for Education and Health, James T Riady, also criticised the LST on hospital devices. Hospitals should not be treated as solely profit making enterprises, but also as institutions which provide services to the public. He stated that it is time to revoke LST for medical devices in order to attract investment in Indonesian hospitals. The Chamber of Commerce and Industry will write a letter to the Coordinating Minister for the Economy and to the Minister of Trade to suggest a change in policy in order to support the national health industry.

**Goods other than motor vehicles subject to Luxury Goods Sales Tax (LST)**

In August 2013, the MoF published Regulation No. 121/PMK.011/2013 (PMK-121) regarding the type of goods other than motor vehicles subject to LST upon import or on delivery by the domestic manufacturer to another party. This regulation revokes several regulations relating to this issue including:

- MoF Regulation No. 620/PMK.03/2004 (PMK-620)
- MoF Regulation No. 137/PMK.011/2008 – 1st amendment of PMK-620
- MoF Regulation No. 35/PMK.03/2008 – 2nd amendment of PMK-620
- MoF Regulation No. 103/PMK.03/2009 – 3rd amendment of PMK-620

The LST rates under PMK-121 remain the same, i.e. 10%, 20%, 30%, 40%, 50%, and 75%. The goods categorisation also remains the same. The changes only affect the specification of goods subject to each LST rate as follows:

- Certain goods are no longer subject to LST due to a change in the size or capacity threshold, for example, televisions of a size of up to 40 inches and a price below IDR 10 million are no longer subject to LST, while previously TVs with a size of 29-43 inches were subject to LST at 10%.

- Certain goods are subject to LST depending on the price, for example, previously all air conditioner units with a capacity of 1-2 PK were subject to 10% LST. Now, the 10% LST is only applicable for this category when the import value or sales price is above IDR 8 million.

The changes may lead to a lower market price for some household goods. A complete list of the new LST rates is available on request.
**Japan**

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**Consumption Tax to be increased in April 2014**

On 1 October 2013, the Cabinet Office announced its formal decision to proceed with the consumption tax increase from the current 5% rate to 8%, with effect from 1 April 2014. The formal decision comes over a year after the amendments to the “Tax Hike Bill” was approved in the upper house of the Japanese Diet. According to these amendments, another increase to 10% is expected to apply from 1 October 2015.

In Japan import consumption tax is levied on all imported goods. The increase will have an impact on cash flow for importers, and may be an additional cost burden for companies who are unable to recover this cost.

The Cabinet Office also announced the new “Economic Policy Package” aimed to soften the negative impact of the tax increase by offering new investment incentives, in particular towards manufacturing industries. The details of the “Economic Policy Package” will be drafted by the Government in the beginning of December, and will be incorporate into the 2013 amended budget and the 2014 draft budget.

**Advance filing rules on maritime cargo information**

With effect from 1 March 2014, cargo destined for Japan requires pre-notification information to be submitted to Japan Customs prior to arrival.

Under the new Advance Filing Rules, consignors and operators of foreign trading vessels carrying container cargo are required to electronically file detailed cargo information to Japan Customs before the foreign trading vessels leave the port of loading. In principle, the information on maritime container cargo should be submitted to Japan Customs no later than 24 hours before departure.

The implementation of these new rules to increase supply chain security follows after a bill to amend the Customs Tariff Law and other relevant laws was passed in March 2012.

**Japan Customs facilitate paperless operations**

Starting from 12 October 2013, documents required to be submitted to Japan Customs upon import and export may now be submitted electronically, for example in PDF format. This is a step forward by Japan Customs to make the import/export process more facilitative and efficient, as previously only paper documents were acceptable.

Upon receiving documents in electronic format, Japan Customs will examine the information on the import/export declaration and the submitted documents. If no further confirmation is necessary the import/export will be permitted. However, if any confirmation such as proof that the submitted document is the original copy or information on the back of a document is required, such documents must be submitted or presented to Customs in paper format within three days of the request.

Other documents to be submitted or presented to Customs upon import and export as specified under laws and regulations other than the Customs Law (Article 70 of the Customs Law), remain to be required in original paper copy.
**Approximately 14% increase in excise duties on tobacco products.**

The Excise Duties (Amendment) Order 2013 has introduced an approximately 14% increase in excise duties applicable on tobacco and manufactured tobacco substitutes.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>HS Heading/Subheading</th>
<th>Description of goods</th>
<th>Rate of Excise Duty prior to amendment</th>
<th>Rate of excise duty post amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2402.10 000</td>
<td>Cigars, cheroots and cigarillos, containing tobacco</td>
<td>RM 220.00 per kg and 20%</td>
<td>RM 250.00 per kg and 20%</td>
</tr>
<tr>
<td>2</td>
<td>2402.90 100</td>
<td>Cigars, cheroots and cigarillos of tobacco substitutes, other than those containing tobacco</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>2402.20 200</td>
<td>Clove cigarettes containing tobacco</td>
<td>RM 0.22 per stk and 20%</td>
<td>RM 0.25 per stk and 20%</td>
</tr>
<tr>
<td>4</td>
<td>2402.20 900</td>
<td>Other cigarettes containing tobacco, other than beedies and clove cigarettes</td>
<td>RM 0.22 per stk and 20%</td>
<td>RM 0.25 per stk and 20%</td>
</tr>
<tr>
<td>5</td>
<td>2402.90 200</td>
<td>Cigarettes of tobacco substitutes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The revised rates took effect on 27 September 2013.

**Termination of anti-dumping duties on imports of newsprint from Canada, Indonesia, Korea, Philippines and the United States of America**

Anti-dumping duties (ADD) imposed on the following goods are due to expire on 18 March 2014.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Subject Merchandise</th>
<th>Originating or Exporting Country</th>
<th>Anti-Dumping Duty (% of export price)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Newsprint in rolls 4801.00 100 (4801.00 10.10)</td>
<td>Canada</td>
<td>33.55%</td>
</tr>
<tr>
<td>2</td>
<td>Indonesia</td>
<td></td>
<td>5.59% to 33.14%</td>
</tr>
<tr>
<td>3</td>
<td>Korea</td>
<td></td>
<td>43.24%</td>
</tr>
<tr>
<td>4</td>
<td>Philippines</td>
<td></td>
<td>31.74%</td>
</tr>
<tr>
<td>5</td>
<td>The United States of America</td>
<td></td>
<td>39.20%</td>
</tr>
</tbody>
</table>

Interested parties are invited to present their views in writing and submit the required supporting documents or evidence to the Ministry of International Trade and Industry (MITI) no later than 18 November 2013 to address:

- whether the continued imposition of the ADD is necessary; and
- whether the injury would be likely to continue or recur if the duty were removed.
Preliminary determination of anti-dumping investigation on stranded wire from China

In the July/August 2013 edition of Trade Intelligence we reported that MITI had extended the period of the preliminary determination on the anti-dumping investigation from 8 August 2013 to 6 September 2013.

MITI has now completed the preliminary investigation and announced that the findings indicate that a dumping margin exists and injury is found:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Subject Merchandise</th>
<th>Country</th>
<th>Exporter/Producer</th>
<th>Dumping Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Stranded wires, ropes and cables</td>
<td>People’s Republic of China</td>
<td>Silvery Dragon PC Steel Products Group Co. Ltd, Tianjin</td>
<td>-10.26%</td>
</tr>
<tr>
<td>2</td>
<td>Stranded wires, ropes and cables</td>
<td>People’s Republic of China</td>
<td>Chongqing Longtai Rare Earth &amp; New Materials Co. Ltd</td>
<td>-8.98%</td>
</tr>
<tr>
<td>3</td>
<td>7312.10 000</td>
<td>Hunan Xianghui Metal Products Co. Ltd</td>
<td>12.39%</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Maanshan Dingtai Rare Earth &amp; New Materials Co. Ltd</td>
<td>-5.27%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Others</td>
<td></td>
<td>Others</td>
<td>12.39%</td>
</tr>
</tbody>
</table>

However, Malaysia will not impose provisional anti-dumping duties pending further analysis of the pertinent information. The final determination will be made 120 days from 7 September 2013 i.e. 5 January 2014.

Interested parties (i.e. importers, foreign producers/exporters and associations related to the investigation) may request for a copy of the non-confidential version of the public report on the preliminary determination by submitting a written request to MITI.

European Union and Turkey Generalised System of Preferences (GSP) for Malaysia terminating 1 January 2014

Malaysia is granted special treatment according to its GSP status by the following territories on selected products:

– European Union (EU) – Japan
– Turkey – Belarus
– Norway – Russian Federation
– Switzerland

With effect from 1 January 2014, Malaysia will no longer enjoy GSP treatment by the EU and Turkey. However GSP treatment for Malaysia by Norway, Switzerland, Russia Federation, Japan and Belarus is not affected. Manufacturers and exporters are therefore advised to plan ahead and make necessary arrangements to optimise the benefits under the EU and Turkey GSP schemes whilst still available.

Further details can be found at the following link: [http://www.dagangnet.com/epcosite/document/MITI%20Announcement%20GSP.pdf](http://www.dagangnet.com/epcosite/document/MITI%20Announcement%20GSP.pdf)

Amendment of Safeguard Act 2006

On 1 September 2013, the Safeguard Act 2006 was amended to allow Malaysia to take safeguard measures to prevent or remedy serious injuries caused by a surge in imports of certain products. These regulations are based on the provisions in its bilateral or regional Free Trade Agreements (FTA).

Section 40A has been added to the Safeguard Act 2006, allowing insertion of the entire Article 9 “Safeguard Measures” provisions of the ASEAN-China Free Trade Agreement (ACFTA) into the law, which will allow a safeguard duty or quota or both to be imposed on specific tariff lines under the ACFTA in future.

First Customs case reaches the Supreme Court

The Terminals (NZ) Ltd v The Comptroller of Customs appeal was heard by the Supreme Court. The issue reviewed was whether the Court of Appeal had been correct in finding that 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 and the motor spirit. In the first proceeding, the High Court had found in favour of the taxpayer.

Excise is generally payable upon the importation or “manufacture” of excisable goods. The case will decide whether the addition of butane to motor spirit constitutes “manufacturing” and whether Terminals (NZ) Ltd is required to pay excise tax of 48c/Litre on the resulting mixed motor spirit, rather than 48c/Litre on the motor spirit component and 10c/Litre on the butane component.

Unlike other recent tax avoidance cases that have reached the Supreme Court, this case raises pure statutory interpretation issues. The case was well argued by both sides. We eagerly await the Supreme Court’s decision and expect that it will contain some useful guidance on statutory interpretation.

The latest annual report from New Zealand Customs has been released

The report can be found at the following link:

The highlights are:

• In the 2012/13 year, the New Zealand Customs Service has focused on streamlining and simplifying trade facilitation to promote secure and efficient trade, and to protect and maintain the Crown revenue base through revenue compliance and efficiencies.

• The number of import transactions processed by Customs in 2012/13 jumped by 12.5% from the previous record total in 2011/12. Most of the increase has been in the number of low-value imports, reflecting the increasing volume of goods purchased online from overseas, partly driven by the strong New Zealand dollar. In the same period, the number of export transactions decreased by 4.1% from the record total in 2011/12.

• The total Crown revenue collected by Customs in 2012/13 was NZ$11.2 billion, which was a slight decrease from the record total of NZ$11.3 billion collected in 2011/12. 16.3% of the NZ$11.2 billion collected in the 2012/13 year came from excise duties, while customs duty accounted for 18.3% and GST made up the remaining 65.4%.
Taiwan

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Imports of hand-held video recorders subject to 13% commodity tax

According to Article 11 of Taiwan’s Commodity Tax Act (CTA), a variety of electronic appliances such as refrigerators, air conditioners and electric ovens are subject to commodity tax. The Customs Administration recently announced that imports of high-quality hand-held video recorders are under the scope of Article 11 and should be subject to 13% commodity tax.

More specifically, video recorders that are taxable under Article 11 are defined as machines that are equipped with video and audio playing functions, or can be directly connected to a TV to play video/audio footage, or those with a main function of recording and saving video/audio footage from video cameras, TV, cable TV, set-top boxes, etc.

Machines that do not have video playing functions and require external devices and software systems to connect to computers (in order to play video) are categorised as information technology products, and are not liable to commodity tax.

Further, if a function of the machine is listed under Article 11, commodity tax may apply. The criteria for whether such products are subject to commodity tax are as follows:

1. If the main function of the product is under the taxable items stated in Article 11 then the product will be subject to commodity tax.

2. If the main function of the product cannot be determined, or is subject to different tax rates, the product should be taxed at the higher tax rate based on the total taxable value (as specified in Article 11.2).

To expedite the customs clearance procedure, importers should provide a certificate of main function (issued by the Industrial Development Bureau, Ministry of Economic Affairs) during customs clearance. In addition, importers should mark “8” in the “examine method” box on the import declaration for customs to conduct a documental review.

New one-stop company registration system available

With effect from 28 October 2013, the Ministry of Economic Affairs offers a new one-stop registration system available for applicants who want to establish an entity in Taiwan and register as an importer and exporter.

Applicants may now simultaneously complete the registration for both processes through the new website http://onestop.nat.gov.tw/.
Duties on luxury goods to be cut in Thailand?

In order to boost its domestic economy and promote the tourism sector, the Thai government is planning to scrap or reduce import duty on luxury goods to increase Thailand’s competitiveness against its regional neighbours Hong Kong and Singapore.

Initially, the Thai government considered cutting import duties on popular luxury products e.g. perfumes, cosmetics, eyes glasses and watches tentatively by the end of this year. These items currently attract import duties as high as 30% compared to those which are duty free in Hong Kong and Singapore.

However, after the initial announcement concerns were raised from domestic industries on the proposed plan. As a result, the Thai government announced that domestic consultation is required to ensure domestic industries will not be adversely affected by the proposed measure.

At this stage, the extent to which duties will be proposed to be cut and when these consultations will take place is not clear. However, given that the target implementation date is the end of this year, it is expected that these consultations will be carried out soon.

The Thai government expects that this measure will stimulate tourist shopping and have a trickledown effect on corporate income tax and VAT from the prospective beneficiary industries e.g. tourism, hotel and restaurants as well as other service sectors.

New Notification on Hazardous Substance Control List released

As reported in the June-July 2013 edition of Trade Intelligence, the Hazardous Substance Control List in Thailand was repealed as a result of the Administrative Court ruling on 3 December 2012. Following the public consultations, the Ministry of Industry (MoI) issued a Notification and released a new consolidated control list of hazardous substances in the Royal Gazette on 27 September 2013 (entered into force on 28 September 2013).

Similar to the draft, the new Notification includes the addition of Thai pronunciations for each chemical substance with the English name in the parentheses, while each substance has an identification number for reference and in case of future amendments.

In addition, the categorisation of the substances is based on the six responsible institutes / agencies for issuing the relevant licenses or notifications, namely:

- Department of Agriculture (DOA)
- Department of Fisheries (DOF)
- Department of Livestock Development (DLD)
- Food and Drug Administration (FDA)
- Department of Industrial Works (DIW)
- Department of Energy Business (DOEB).
Further, certain substances have been added or re-categorised, and restricted concentrations (if any) are indicated in the “condition” column of the substances list. Essentially, there are changes to four substances, which are controlled by the DIW as follows:

<table>
<thead>
<tr>
<th>Substance</th>
<th>CAS No.</th>
<th>Previous Category</th>
<th>New Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,1,2-trichloroethylene</td>
<td>79-01-6</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>bis (2-methoxyethyl) ether; or diethylene glycol dimethyl ether</td>
<td>111-96-6</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>sodium tetraborate pentahydrate</td>
<td>12179-04-3</td>
<td>none</td>
<td>3</td>
</tr>
<tr>
<td>tributyl tin oxide</td>
<td>56-35-9</td>
<td>none</td>
<td>3</td>
</tr>
</tbody>
</table>

Groups of substances and products are listed separately from individual substances for more clarity and ease of retrieval.

It is important to note that the registration certificate, notification, license, and any other matter in relation to the same type of the substance prior to the effective date of this Notification will still be valid, with due regard to international conventions and obligations.

To ensure compliance with the new Notification, companies with activities relating to production, import, export or possessing of controlled substances should check whether there are changes to the categorisation including additional conditions (if any) to the latest released list. Companies should ensure they take any appropriate measures during the transition period of 30 days from the effective date of the new Notification.

Termination of paper approvals by Board of Investment (BOI) on machinery imports

The Board Of Investment (BOI) in Thailand has published BOI Notification no. Por 5/2556 on “Termination of paper BOI approval for customs clearance of imported machinery for import duty exemption and reduction.” This Notification follows the linkage between the BOI approval system and Thai Customs system via Thailand’s National Single Windows (NSW).

A BOI promoted company that would like to enjoy duty exemption or reduction for imported machinery will need to submit an online request to the BOI via the Electronic Machine Tracking system (eMT online). Once approved, the BOI will inform the company via the eMT online system, and will also notify Thai Customs via NSW. There will no longer be a paper approval delivered to Customs or companies. This new practice is effective from 1 November 2013.

Therefore, companies are recommended to respond to the change by implementing the eMT online system as soon as possible as well as working with their customs broker to determine the impact of the changes on import clearance procedures in order to avoid any disruption during the clearance processes of BOI exempted or duty reduced machinery.
The Vietnam Ministry of Finance (MoF) has released an Official Letter regarding the management of imported goods stored in a bonded warehouse. It increases the control that the local customs departments are expected to exercise over the goods and may have an impact on the lead times for clearance of the goods for re-export. The Official Letter covers controls in the following areas summarised below.

1. Procedures
   - imported goods must be physically inspected
   - records of goods exiting Vietnam must be reconciled with bonded warehouse release data

2. Bonded warehouse operations
   - the warehouse must be supervised by Customs at all times
   - goods must be separately stored according to the inward declaration

3. The General Department of Customs must increase the inspection rate and supervision of goods moving out of the bonded warehouse to the export border gate for export from Vietnam.

4. Imported goods subject to special sales tax including spirits, beers, cigars, tobacco, passenger cars under 24 seats and other goods under quota controls such as sugar, salt, and eggs can be entered into a bonded warehouse for subsequent export. The regulation replaces Point 2 of Official letter 8909/BTC- TCHQ dated 10 July 2013.

5. Temporarily imported goods moved into a bonded warehouse for subsequent export are not subject to import duty at the time of importation. This replaces Point 2 Section I of Official letter 8356/BTC- TCHQ dated 28 June 2013.

On 10 September 2013, the Ministry of Finance published Circular 128/2013/ TT-BTC (Circular 128) stipulating a number of new regulations on customs procedures, customs control and supervision, import and export duty and duty administration. The changes have been summarised below.

1. Advance rulings
   Circular 128 provides detailed provisions for applying for advance rulings in respect of classification, valuation and origin.

2. Timeline for duty payment
   Where goods are imported under an export production procedure, duty payers must meet the following requirements in order to enjoy import duty deferral for 275 days:
   - own a manufacturing plant that is appropriate for the imported materials
   - perform export/import activities for at least two years from the declared date of the imported materials with a good compliance record from both a customs and accounting perspective.
   If enterprises cannot meet the above requirements, they may still enjoy a duty deferral for 275 days if a bank guarantee is furnished to the Customs authorities.
   No late payment penalty shall apply where companies pay additional duties associated with a variance from the temporary import price.

3. Duty payment guarantee
   Customs accepts a payment guarantee where the duty payer meets the following conditions:
   - minimum of VND10 billion capital
• performs export/import activities for at least 365 days from the declaration date of the import/export of goods

• does not commit any violations including smuggling, transporting illegal goods, duty evasion/fraud or has been subject to a penalty no more than twice in relation to customs activities during the previous 365 days

• does not owe any outstanding duty payment including duty, penalties or interest on overdue payment at the time of declaration

The payment guarantee letter must be according to the Law on Credit Organizations and must indicate the guarantee duty amount including interest or penalties, if any, guarantee period and payment commitments.

4. Other new provisions

Circular 128 includes amendments to customs declaration forms, declaration amendment/supplements, payment currency, goods clearance, liquidation of imported materials for export production, requirements for setting up and managing a bonded warehouse, duty exemption application for priority enterprises, etc.

Some provisions have been deleted, including the taking and filing of samples of imported materials for toll manufacturing and export production.

Other procedures including liquidation, duty refunds, no duty payment on certain import/export procedures and consumption norm registration are also simplified.

Circular 128 takes effect from 1 November 2013, amends some articles of Circular 196/2012/TT-BTC and replaces various other legal documents.

WTO releases the first Trade Policy Review of Vietnam

On 17 and 19 September 2013, the Trade Policy Review of Vietnam was completed by the WTO for the first time since Vietnam’s WTO accession in 2006.

According to the report, Vietnam has been pursuing domestic economic reforms and trade liberalisation and has achieved an annual average growth rate of 6.3% from 2007 to 2012. Vietnam has been participating in the negotiation of Trans-Pacific Partnership Agreement since 2010 and is negotiating other bilateral FTAs including with the EU, the members of EFTA, the customs union of Belarus, Kazakhstan, and the Russian Federation, and Korea.

The simple average MFN tariff of Vietnam declined significantly from 18.5% in 2007 to 10.4% in 2013. However, differences between bound and applied rates have left scope for flexibility, allowing some protection for domestic industries. Some products including eggs, sugar, unmanufactured tobacco and tobacco refuse, and salt, are still subject to tariff rate quotas.

Non-tariff measures are applied to a range of imports. Furthermore, many consumer products and agricultural items are subject to automatic licensing requirements.
**Increased import duty rates for certain goods under tariff headings 2707, 2902 and 3902**

On 12 August 2013, the Ministry of Finance published Circular 107/2013/TT-BTC amending import duty rates for certain goods under headings 2707, 2902 and 3902 as follows:

<table>
<thead>
<tr>
<th>HS Codes</th>
<th>Goods description</th>
<th>Previous duty rates (%)</th>
<th>Revised duty rates 2013 (%)</th>
<th>Revised duty rates 2014 (%)</th>
<th>Revised duty rates 2015 (%)</th>
<th>Revised duty rates from 2016 (%)</th>
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<tr>
<td>27.07</td>
<td>Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents</td>
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<tr>
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<td>2</td>
<td>3</td>
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<td>2</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>29.02</td>
<td>Cyclic hydrocarbons</td>
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<td>1</td>
<td>2</td>
<td>2</td>
<td>3</td>
</tr>
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<td>3</td>
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<tr>
<td>2902.43.00</td>
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<tr>
<td>39.02</td>
<td>Polymers of propylene or of other olefins, in primary forms</td>
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<tr>
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<td>3</td>
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<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
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</table>

Circular 107 took effect on 26 September 2013 and amended Circular 193/2012/TT-BTC dated 15 November 2012 published by the Ministry of Finance.
Around the world

EU: New General System of Preferences

The new GSP and the impact on business

In October 2012, the EU Council adopted a regulation (Regulation 978/2012 of 25 October 2012) amending the European Unions’ (EU) Generalised Systems of Preferences (GSP). The revised GSP scheme will apply as of 1 January 2014.

As a rule, goods originating from the GSP beneficiary countries benefit from reduced (or nil) customs duty rates upon importation in the EU.

Considering both the financial as operational impact of the new GSP, it is of paramount of importance for economic operators to monitor the evolution of unilateral i.e. General system of preferences (GSP) as well as bilateral negotiations i.e. Free Trade Agreements (FTA).

But practically what will change?

The list of GSP beneficiary countries initially contained 176 countries and is now restricted to:

- The 49 least developed countries (LDCs, also known as Everything But Arms (EBA)):
  - Asia (10): Afghanistan, Bangladesh, Bhutan, Cambodia, Lao (People’s Democratic Republic), Maldives (until end 2013 as they have exited the LDC list), Myanmar/Burma (preferences currently withdrawn), Nepal, Timor-Leste, Yemen.
  - Caribbean (1): Haiti
- The 40 countries currently listed as low or lower middle income countries in the World Bank annual classification, based on gross national income (GNI) per capita:
  - Standard GSP countries (40): Armenia, Azerbaijan, Bolivia, China, Cape Verde, Colombia, Republic of Congo, Cook Islands, Costa Rica, Ecuador, Georgia, Guatemala, Honduras, India, Indonesia, Iran, Iraq, Kyrgyzstan, Marshall (islands), Micronesia (federate States of), Mongolia, Nauru, Nicaragua, Nigeria, Niue, Pakistan, Panama, Paraguay, Peru, the Philippines, El Salvador, Sri Lanka, Syria, Tajikistan, Thailand, Tonga, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

The Annex listing the beneficiaries will be reviewed on an annual basis.

As a consequence, any country listed as high income or upper middle income (UMICs) for three consecutive years and any country that already benefits from preferential access under other schemes will lose GSP.

In practice, this means that several countries that have been listed as UMICs for the past two years and which, if they are so classified for another year, will lose GSP in 2015.
The following exiting countries do not yet alternative market access arrangements and the loss of GSP status may have significant impact for many businesses.

- High income countries and territories (8) (according to World Bank): Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Brunei Darussalam, Macao.
- Upper middle income countries (UMI’s) (12): Latin America (5): Argentina, Brazil, Cuba, Uruguay, Venezuela; ex-USSR (3): Belarus, Russia, Kazakhstan; other (4): Gabon, Libya, Malaysia, Palau.

Does that mean that a business will no longer benefit from any preference?

The EU commission grants a transition period of 2 years (as from October 2012) to countries that are (were) currently in the process of negotiating a FTA with the EU. For those countries, the transition period will be completed by the end of 2014.

The purpose of the transition period is to enable those benefitting countries to bridge the preference gap and hence avoid that some countries, who are currently discussing with the EU, lose their preferences before they finally concluded the FTA with the EU.

Will all the products currently included in the GSP remain under the new scheme?

Besides the countries that will be excluded from the GSP, there will also be some countries that will remain under GSP but lose preference for sensitive products. In that respect, the Commission has recently published the list of products/country combinations that will be graduated out of the GSP scheme as of 1 January 2014 until 31 December 2016.

What may an importer in the EU wish to focus on with respect to unilateral (i.e. GSP) and bilateral trade agreements (i.e. FTAs)?

1. Monitor sourcing activities
   All importers in the EU should consider the origin of the goods as part of the sourcing decision making process in order to ensure the applicability of preferential treatments upon importation (e.g. preferential tariff treatments, cumulation etc.).

2. Consider the set-up of customs approved treatments
   Besides the preferential treatment of the goods, the importers should also consider the set-up of customs approved treatments in order to minimise the customs taxation impact on supply chain operations (i.e. Bonded warehousing, Processing under customs control, Inward Processing Relief etc.).

3. Optimise customs value at import
   Where no preferences are applicable this does not mean that there is no room for optimisation

   According to article 32 of the European Community Customs Code (CCC), the rules applicable on customs valuation provide for several possible deductions from the invoiced value, provided that these deductions are identified and itemised.

   Once these elements will have been identified and quantified, the latter could be taken out of the customs value which will result in a lower taxable basis upon importation and a reduction of customs duties and VAT pre-financing.

What should an exporter from the EU focus on with respect to bilateral trade agreements (i.e. FTAs)?

1. Manage the rules of origin determination
   All exporters of goods from EU territory should ensure that the produced goods fulfill the rules of origin as defined in the applicable protocol of the agreement with the EU.

   In this respect, it is strongly recommended to conduct a sourcing analysis, request and manage vendor declarations, intelligent sourcing for components used in production of goods etc.

2. Prove the origin of products correctly

   The origin of goods must be confirmed by certain documents of proof issued by the exporter (i.e. EUR1 or invoice declaration of origin).

   In practice, it is key to implement a specific procedure for the processing of EUR1 certificates/origin declarations on the invoices in view of ensuring the accuracy of the documents.

3. Monitor the classification of goods

   Finally, it is important to note that the preferential origin determination rules are assigned to goods classified with specific tariff codes.

   Therefore, performing a tariff classification review of exported goods can be of interest in order to verify whether the tariff classification is correctly applied and the appropriate rules of origin have been observed by the exporter, and ultimately, secure the fact that the imported goods can benefit from preferential tariff treatment upon arrival.

4. Secure the customs value of goods at export

   Changing the sales price of goods (ex-works price) could under certain circumstances affect the origin determination of your products and consequently impact your customs origin and preferential treatment towards your clients.
As to conclude and as far as global trade is concerned, what is the trend?

Looking at how the world is changing in terms of trade behavior and international cooperation, it becomes clear that customs is shifting from a purely operational topic towards a strategic component of managing global operations.
**WMS in action**

*Hong Kong: ASEAN-China Free Trade Agreement (ACFTA) implementation*

WMS is assisting a major multinational retailer in implementing ACFTA to claim preferential treatment for imports into China. The company has an Asia distribution hub in Malaysia and goods are sent to the hub prior to being distributed to various locations including China.

Where transactions give rise to 3rd party invoicing and indirect shipment claiming tariff preference is often a challenge. Our teams in Shanghai and Malaysia are working closely and have reached out to China Customs and other relevant authorities to identify the necessary documentation and specific requirements to improve compliance. We are also working with the company and other parties involved in the supply chain (e.g. the supplier and the logistic service provider) to set up a trial shipment to determine a standardised compliance process to utilise the ACFTA preferential duty benefit.

*Beijing: Strategic support for handling a valuation survey issued by China Customs*

A client in the automobile industry recently received a request from China Customs for input into an official valuation survey regarding the import price of complete vehicles and warranty arrangements. Customs required that the company submit an explanation letter with supporting financial data and documents within in a short period of time.

WMS worked closely with the company to respond to Customs’ questions and reviewed the “issue list” extracted from the survey. Upon the collection of relevant financial data, WMS further considered potential questions that could be asked by Customs and conducted a pre-submission rehearsal with the company. Assistance in follow-up communication with Customs after the first round submission will also be provided until Customs declares that the survey is completed.
## 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.

### Regional Partners

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