Yellow card. Red Card. Suspension.

The practical landscape of penalties in ASEAN

Trade Intelligence Asia Pacific
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Key intelligence

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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.

Yellow card. Red Card. Suspension.

The practical landscape of penalties in ASEAN

There are quite a few updates coming out of ASEAN countries in this Trade Intelligence that relate to assertive revenue collection. For quite a while now we have been alerting our readers to two risks: the growing disparity between increasing revenue budgets and decreasing duty rates, and the increased trade facilitation during COVID-19 - both leaving customs authorities short of meeting revenue targets and probably driving them to be more focused on compliance enforcement. This appears to be an emerging trend across ASEAN that companies need to be aware of if they want to be successful in managing their customs and trade risks and costs successfully.

A good place to start is what we are seeing in the Philippines. Philippines Customs, or the Bureau of Customs (BOC), as they are formally known, has been very assertive in 2022. Their audit statistics, such as the number of audits performed and amount of additional revenues collected, have skyrocketed. The recent decision to implement a monetary incentive program for 'informants' suggests revenue collection will continue to be a key priority in the foreseeable future. How this will work in practice is quite simple. If you inform the BOC of a company's non-compliance that results in them collecting additional revenue, you will get a cut of the revenue collected. As the incentive reward can be significant (20% of the additional revenue collected!) companies need to understand and appreciate the potential risk triggered by this. It is also worth noting the recent announcement that export shipments of controlled products will be stopped if they do not have the necessary authorisation from the Strategic Trade Management Office, starting from January 2023. This will likely shock many exporters in 2023 and, again, give the BOC another avenue to collect additional revenues.

In Thailand and Vietnam, already known as strict on compliance, we are seeing even stronger enforcement and more frequent challenges on origin and preferential duty claims under Free Trade Agreements (FTAs). Increasingly do companies encounter challenges that appear to be more driven by revenue considerations than technical argumentation, let alone applying the spirit and intention of an FTA legal text rather than the letter. The fine of USD 272 million imposed on Toyota that we report on in the Thailand territory report is a clear example of not holding back when it comes to revenue collection through penalties.

Staying with preferential origin challenges, it is worth highlighting a probably unexpected newsflash of Singapore Customs recently fining a company close to USD 400,000 for making falsified origin claims to take advantage of tariff benefits under FTAs. Seeing Singapore Customs imposing a fine of this amount on a relatively small trader highlights the importance of treating origin compliance seriously and making sure companies do not issue FTA certificates or declarations unless certain they are entitled to the benefit. This will continue to be a hot topic in the customs world for many years to come.

While these are just some recent examples, it is important to understand that they truly are a reflection of the emerging trade compliance environment we are seeing across ASEAN. We would always encourage companies to be proactive in their trade compliance management, but now is a greater time than ever to take action to be in full control and protect your company from unpleasant dealings with customs authorities.

So, what is the practical likelihood of penalties being imposed? Well, in short, the answer is high. Bearing in mind that it is increasingly a question of when you will get audited rather than if you will get audited, pretty much every importer should expect any non-compliance to be uncovered by the authorities. Not only that - the customs authorities have many channels of communication, so that non-compliance uncovered in one ASEAN territory may well trigger audits on the same issue in others. If you don't have your house in order for the first of such audits, you should really take the opportunity to put it in order before the next one comes knocking on your door, lest you will struggle and be on the back foot again.

So, you may not be in a position to avoid that yellow card. But you should make sure you do not get red carded for a second offence, let alone get suspended from doing business.

FTA focus

Headline	New development
Bangladesh moves towards joining RCEP in 2026	Bangladesh's Ministry of Commerce has announced after an inter-ministerial meeting on 28 July 2022 that Bangladesh will be taking steps to join the Regional Comprehensive Economic Partnership (RCEP) once it makes the United Nations status graduation from a least developed country to a developing one, expected in 2026.
FTA between Thailand and EFTA expected in 2 years	On 4th July 2022, Thailand's Ministry of Commerce announced that Thailand expects to conclude an FTA with the European Free Trade Association (EFTA) members within two years after negotiations were launched at talks from June 28 to 30, 2022. EFTA members are Switzerland, Norway, Iceland and Liechtenstein.
China and Uruguay to start formal negotiations for an FTA	On 13 July 2022, China and Uruguay entered formal negotiations for an FTA. If the deal can be agreed, Uruguay would join its neighbours Chile and Peru in signing bilateral FTAs with China.
China and Sri Lanka's FTA negotiations at a standstill	On 19 July 2022, Sri Lanka called for the resumption of FTA negotiations with China. However, negotiations between the two territories were halted due to wider economic and political issues in Sri Lanka as well as certain trade specific issues including the timeline for duty reduction.
China to sign an FTA with Ecuador in 2022	On 17 August 2022, Ecuador's Production, Trade, and Investments Minister Julio Jose Prado announced that Ecuador seeks to conclude an FTA with China within 2022.
India and Australia may begin comprehensive FTA talks from September 2022	Negotiations between India and Australia towards a comprehensive trade agreement are expected to begin from September 2022; with focus on chapters such as digital trade, government procurement among other areas.
Malaysia and Turkey to expedite negotiations on FTA expansion	After a bilateral meeting between Malaysia's International Trade and Industry Minister Mohamed Azmin Ali and Turkey's Trade Minister Mehmet Mus in Istanbul on 6 July 2022, both countries appear committed to accelerate the completion of negotiations on the expansion of the Malaysia-Turkey FTA as soon as possible.
Philippines ready to sign FTA deal with South Korea	It was reported on 6 July 2022 that the FTA between the Philippines and South Korea is inching closer to formalisation.This comes after 2 years of discussions that ended in October 2021. More details can be found in our Philippines section updates on Page 18.
Pakistan and Turkey sign Preferential Trade Agreement	On 12 August 2022, Pakistan and Turkey signed an FTA aimed at boosting trade in goods between the two countries.

Australia

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Anti-dumping duties on certain aluminium extrusions imported from China

In the recent case of *Electracom Pty Ltd and Comptroller-General of Customs [2022] AATA 2539*, the Administrative Appeals Tribunal (AAT) confirmed that certain aluminium extrusions that were exported to Australia from China are subjected to dumping duties as they were within the scope of the anti-dumping measures that were imposed by the Anti-Dumping Commission.

The case examined the tariff classification of two shipments of aluminium extrusions from China that were designed for use in offices to manage computer and power cables. The AAT examined whether the goods were, at the time of import:

- classified in headings 7604 (*aluminium bars, rods and profiles*), 7608 (aluminium tubes and pipes), 7610 (*aluminium structures and parts of structures; aluminium plates, rods, profiles, tubes and the like, prepared for use in structures*) or as "like goods" to which the anti-dumping notices applied, and thus subject to dumping duties; or
- classified in heading 8538 (*parts suitable for use solely or principally with certain apparatuses*) or heading 7616 (*other articles of aluminium*), and thus excluded from the scope of the anti-dumping notices and not subject to the dumping duties.

The AAT held that the aluminium extrusions were within the description of the goods in the notices as they were plainly aluminium extrusions and therefore anti-dumping duties must be applied. The AAT clarified that, notwithstanding that the goods have a complex design, no further processes have been undertaken such that the extrusions became a different product, they were not considered as "parts" ("parts" typically would not be subjected to the anti-dumping duties) as they were not components of a complete good, and they did not have features that made them more than an aluminium profile.

Our take: Similar to the AAT's decision in *Solu Pty Ltd and Comptroller-General of Customs [2019] AATA 2584*, this decision has particular importance for importers of aluminium products from China that are subjected to anti-dumping and countervailing measures when they consider the tariff classification of their goods and how the goods will be used post importation. Traders may consider studying and planning their supply chain to reduce the impact of anti dumping and countervailing measures for aluminium products when importing into Australia.

“Free” rate of customs duty for electric cars

As part of the Australian Government’s commitment to increasing the affordability of electric cars, the Australian Border Force announced that certain low-emission vehicles will be able to apply a “free” rate of duty from 1 July 2022 onwards. The “free” rate of duty applies to low-emissions vehicles with a customs value that is less than the luxury car tax threshold for fuel efficient vehicles ($84,916 in 2022-23). The new duty rate applies to low-emissions vehicles including battery electric cars, hydrogen fuel cell electric cars, and hybrid electric cars that are capable of being charged by plugging into an external source of power which fall under new tariff classifications 8703.60.12, 8703.70.12, 8703.80.12 and 8703.90.12. The removal of customs duty on these vehicles does not apply to electric cars from Russia or Belarus, which are currently subject to an additional duty rate of 35%.

Our take: Importers should assess whether imported vehicles fall under the new tariff classifications and are thus subject to a “free” rate of duty. As the new tariff classifications will commence retrospectively from 1 July 2022 onwards, any vehicles imported on or after 1 July 2022 but before the new tariff classifications are available in the Integrated Cargo System are eligible for a refund of customs duty paid.

Certain medical and hygiene products permanently free from import duty

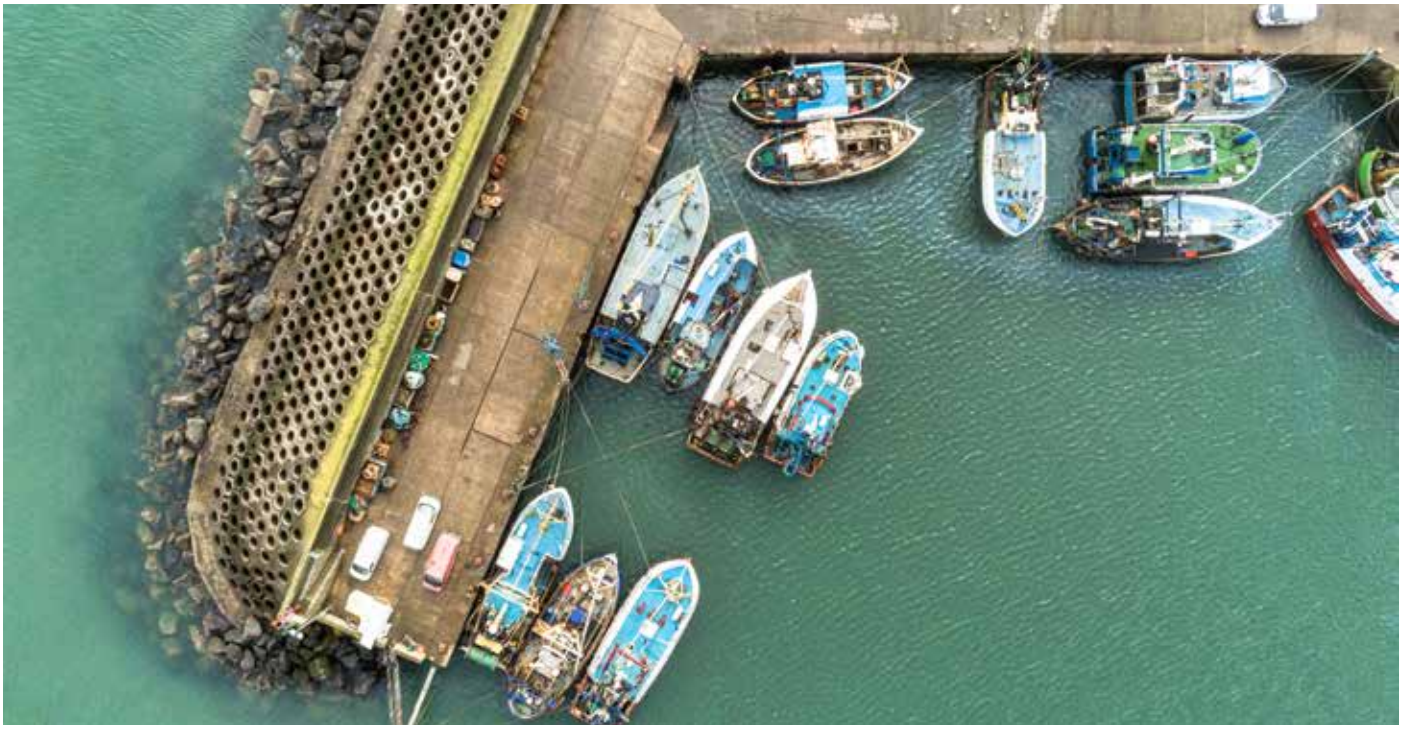
Following a proposed change to the Customs Tariff Act 1995 announced earlier this year, the Australian Border Force has confirmed that the required by-laws have been enacted to allow various medical and hygiene products to be permanently free from import duty from 1 July 2022 onwards. Goods covered by the revised by-laws include:

- active ingredients for the manufacture of medicaments, vaccines and other goods used in the treatment, prevention or to limit the severity of COVID-19;
- goods capable of limiting the transmission of pathogens or viruses to humans (e.g. face masks, shields, gloves, gowns, certain disinfectant preparations, soaps, test kits, reagents and viral transport media); and
- the primary receptacle for medicaments, vaccines and other goods used in the treatment, prevention or to limit the severity of COVID-19.

Temporary duty reduction on Ukraine originating goods

The Australian Border Force has announced that goods which are produced or manufactured in Ukraine are afforded a “free” rate of customs duty for a 12 month period commencing 4 July 2022. The arrangement builds on previously announced trade measures by the Australian Government in response to Russia’s invasion of Ukraine, including bans on certain exports from Australia to Russia and additional tariffs on imports of Russian origin goods into Australia.

The rules for determining whether goods will be able to access the temporary duty concession are the same as the rules applicable to duty concessions for developing countries. Excise-equivalent goods (EEGs) with customs duty payable on alcohol, fuel and tobacco, however, are not eligible for the concession.



China

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Updates on the voluntary disclosure process for tax-related violations

On 30 June 2022, the General Administration of Customs issued the "Announcement on Issues Related to the Voluntary Disclosure of Tax-related Violations" under Announcement No. 54 [2022] of the General Administration of Customs, New Announcement No. 54). The new announcement replaces and repeals the former Announcement No. 161 [2019] of the General Administration of Customs.

The "New Announcement No. 54" updates various parts of the voluntary disclosure process, including the the scope of application, the disclosure procedure, the condition for exemption from administrative penalties, the reduction or exemption of late payment surcharges, and the exemption from affecting the customs credit rating of enterprises. Details are as follows:

- **Scope of application**: Voluntary disclosure refers to the situation in which traders voluntarily report their violations of customs supervision regulations to Customs in writing and accept Customs' response. However, the new scheme specifies certain conditions to qualify for a voluntary disclosure. The conditions are:
  - **Tax-related violations:** the voluntary disclosure scheme is intended for violation of Customs supervision regulations that affect tax collection and management, such as the behaviours of underpaying taxes and affecting the management of national export tax rebates.
  - **Timely corrections have been made in accordance with customs requirements:** Customs has specified that timely correction means within six months after the occurence of a violation.
  - **The same tax-related violation cannot be applied repeatedly:** The voluntary disclosure scheme cannot be applied for a tax-related violation if it has been previously disclosed to Customs. In this case, preferential policies would not apply to subsequent disclosures of the same tax-related violation.
- **Disclosure Procedures:** The "New Announcement No. 54" clarifies that enterprises can only apply for a voluntary disclosure at the "Customs where the declaration, actual import and export or registration is located". Based on our experience, this would be a more efficient process for both traders and the authorities. Previously, it was an option to disclose to "Customs where the original tax is collected or the customs where the enterprise is located".
- **The effective period of the announcement:** 1 July 2022 to 31 December 2023.
- **Benefits for enrolling in the voluntary disclosure scheme:**
  - Exemption from administrative penalties: the "New Announcement No. 54" has adjusted the conditions for exemption from administrative penalties to be as follows:
    * No administrative penalty will be imposed if the tax-related violation is voluntarily disclosed to the customs within six months from the date of occurrence (note the time limit for voluntary disclosure has now been adjusted from 3 months to 6 months).
    * **For disclosures made after 6 months from the date of the occurrence but within one year,** no administrative penalty will be imposed if the tax underpaid accounts for less than 30% of the tax payable or the underpaid tax is less than RMB 1 million.
  - Reduction of or exemption from late payment surcharges: if Customs determines that the disclosure is not subject to administrative penalties, the trader may apply for a reduction of or exemption from late payment surcharges.
  - Customs enterprise credit rating management measures: voluntary disclosures will not affect the customs credit rating and management measures for advanced authorised enterprises:
    * Traders who voluntarily disclose to Customs and are given a warning or an administrative penalty of less than RMB 1 million are not included in the record of the Customs' determination of the trader's credit status.
    * If an advanced authorised enterprise voluntarily discloses tax-related violations, Customs will not suspend the application of corresponding management measures to the enterprise during the investigation period.

Our take: The "New Announcement No. 54" not only clarifies the conditions for exemption from administrative penalties and affecting the credit rating of enterprises, but also explains its scope of application, such as the emphasis that the same tax-related violation cannot be repeatedly disclosed to enjoy the preferential policies under the "New Announcement No. 54".

Companies looking to voluntarily disclose to Customs should study the potential risks and determine how to best approach Customs. Incomprehensive review of disclosure strategies may lead to risks in areas that companies did not account for. Therefore, we recommend companies have a full picture of the potential risks and mitigation strategies before making use of the preferential policies, and deal with compliance issues accordingly.

New facilitation measures for Advanced Authorised Enterprises

On 15 July 2022, the General Administration of Customs issued the "Agreement on Increasing the Facilitation Measures for Advanced Authorised Enterprises to Promote the Stability and Quality of Foreign Trade" (Shu Qi Fa [2022] No. 73).

On the basis of the original management measures, the following 6 facilitation measures have been added to the advanced authorised enterprises management measures:

1. **Priority to laboratory testing:** authorised enterprises will be able to select an "expedited" option in the laboratory management system when sending samples of imported and exported goods for laboratory testing, and the test report will be issued immediately upon test completion
2. **Optimise risk management measures:** Further optimise the risk management measures to assist advanced authorised enterprises.
3. **Optimise processing trade supervision:** For advanced authorised enterprises that use processing trade account book management, Customs can determine whether to carry out full or partial inventory inspection based on the actual situation.
4. **Optimise inspection:** For the same advanced authorised enterprise, various management inspection operations to be conducted should be settled together.
5. **Priority to port inspections:** Priority will be given to port inspection operations for advanced authorised enterprises
6. **Priority to registration place inspections:** Priority will be given to advanced authorised enterprises for registration place inspections for their imported and exported goods.

Our take: This announcement continues to expand the scope of preferential measures available for advanced authorised enterprises to entice more enterprises to enrol into the program. Companies who currently do not qualify as an Advanced Authorised Enterprise should consider doing so to streamline their import and export operations in China.

India

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Updates to initiatives to enable functions through digitisation

Below is a summary of the June and August 2022 updates from India's Directorate General of Foreign Trade on digitisation initiatives.

Initiative	Details
Migration of e-BRC portal to a new IT platform Trade Notice No. 13/2022-2023 dated 30 June 2022	• A new IT platform has been introduced to replace the old electronic Bank Reconciliation Certificate (e-BRC) portal. The existing e-BRC platform has been enabled to capture realisation of export proceeds directly from the banks and facilitated the implementation of various export promotion schemes in an IT environment. • The upgraded platform is available on www.dgft.gov.in starting from August 2022. Authorised Dealer banks have been directed to migrate to the new platform on an urgent basis to ensure the continuity of services to the exporting community.
Mandatory electronic filing of Non-Preferential Certificate of Origin ('COO') Trade Notice No. 15/2022-2023 dated 1 August 2022	The transition period for mandatory filing of applications for Non-Preferential Certificates of Origin through the e-COO platform has been further extended till 31 March 2023.

Indefinite extension of IGST and Compensation Cess exemption under AA, EPCG' Scheme, and EOU

Based on Notification No. 16/2015-20 dated 1 July 2022, the period of exemption granted to Export Oriented Units (EOU), exporters importing under the Export Promotion Capital Goods (EPCG) scheme or Advance Authorization (AA) scheme from payment of Integrated Goods and Services Tax (IGST) and compensation cess for imports was earlier extended to 30 June 2022. It has been announced that these exemptions under the above-mentioned schemes would continue indefinitely. No time limit for the availability of such exemptions has been prescribed.

Revision of timeline for registration under Steel Import Monitoring System ('SIMS')

The timelines for registration under the SIMS for import of specified steel products classifiable under Chapters 72, 73 and 86 of the Customs Tariff Act, 1975 have been revised. The previous requirement of advance registration of a minimum of 15 days from the expected date of arrival of an import consignment under SIMS has now been abolished. Now, the importer may apply for registration no earlier than the 60th day before the expected date of arrival of an import consignment.

Refer to Notification No. 19/2015-20 dated 7 July 2022 for further details.

Revision of timeline for registration under Non-Ferrous Metal Import Monitoring System ('NFMIMS')

The timelines for registration under the NFMIMS for import of specified metals classifiable under Chapters 74 and 76 of the Customs Tariff Act, 1975 have been revised. The previous requirement of advance registration of at least 5 days from the expected date of the arrival of an import consignment under NFMIMS has now been abolished. Now, the importer may apply for registration not earlier than the 60th day before the expected date of arrival of an import consignment.

Refer to Notification No. 26/2015-20 dated 10 August 2022 for further details.

Changes to India Customs advance ruling provisions

India Customs announced Notification No. 63/2022-Customs (Non-Tariff) dated 20 July 2022. The notification specifies changes to the provisions related to the Customs Authority for Advance Rulings Regulations (CAAR). Notable changes include the following:

- All application outcomes for advance rulings will be filed on a common portal. However, the portal is not operational yet and needs to be finalised. For now, all applications for advance rulings will continue to be filed physically till this feature is operationalised.
- Applications will not be physically scrutinised by India Customs anymore. Personal hearings that were physically conducted in-person may now be held through any other mediums as well.
- An advance ruling application can be withdrawn at any time before it is pronounced; and
- Confidential information may be prevented from publication on request of the applicant.

Our take: Companies looking to obtain an advance ruling should be aware of the risks associated with advance ruling applications. Advance rulings can be a double edged sword as they bind both the company and Customs to the result. Therefore, it is essential to assess the risks and mitigating factors to reduce the chance of having to deal with a negative outcome for the company.

Simplified framework for e-commerce exports of jewellery through courier

India Customs announced Circular No. 09/2022-Customs dated 30 June 2022 which specifies the simplified regulatory framework for e-commerce exports of jewellery through courier mode. This framework has been implemented through a Standard Operating Procedure ('SOP') to bring uniformity and certainty to the process and steps to be followed to facilitate such export through International Courier Terminals ('ICTs'). The SOP details the handling, movement and procedural aspects for such exports based on electronic declarations, through ICTs.

The SOP is applicable to e-commerce export of jewellery made of precious metals failing under Customs Tariff Heading 7113 and imitation jewellery falling under Customs Tariff Heading 7117 of the first schedule to the CTA, 1975.

Refer to Circular No. 09/2022-Customs dated 30 June 2022 for further details.

Health certificate requirements for import of certain food categories

India Customs announced Instruction No. 18/2022-Customs dated on 12 August 2022 which specifies that the Food Safety and Standards Authority of India ('FSSAI') requires imported food consignments of certain food categories as specified in Food Product Standards & Food Additives ('FSS') must be accompanied by a health certificate issued by the competent authority of the exporting country. This requirement will come into effect on 1 November 2022. The food categories specified are the following:

- Milk and its products
- Pork and its products
- Fish and its products

Indonesia

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New export duty collection regulation

The Indonesian Ministry of Finance issued Regulation no. 106/PMK.04/2022 on export duty collection. This regulation replaces ("MoF") Regulation number 214/PMK.04/2008 and its amendments. The regulation makes the following changes:

- Removal of the provisions on export tariffs for sample mineral products;
- Affirmation regarding the export duty rate and export price used as basis to calculate export duty;
- Simplification of the processes to export goods that are exempted from export duties;
- Removal of independent physical examination requirements for export of goods with specified characteristics;
- Requirements for AEO exporters to conduct physical examination of exported goods that are subjected to export duty;
- Exporters are allowed to voluntarily revise export data and avoid administrative fines if there is underpayment of export duty.

The regulation became effective starting from 22 July 2022.

Our take: Exporters should take note of the changing requirements for exports from Indonesia. In light of increased protectionism across the region, exporters may experience more roadblocks to distribute their products overseas. To avoid disruptions to supply chains, it is important to stay informed of requirements so when there are any roadblocks, companies can make sure their supply chains are less disrupted.

Japan

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Japan Customs effectively ban imports of gold originating from Russia

To strengthen Japan's measures against Russia, the Japan Ministry of Finance added requirements to import precious metals, including gold ingots and gold coins, originating from Russia (note: notification in Japanese). The notification became effective on 1 August 2022.

In order to import precious metals from Russia, importers are required to obtain permission from the Minister of Finance prior to importation. In practice, this is essentially a ban on the importation of precious metals that originate from Russia as the Japanese Government decided to ban the importation of precious metals in order to be aligned with other G7 countries.

With this new policy, the following measures are implemented by Japan Customs:

1. Japan Customs will more carefully examine the country of origin in the customs clearance documents for precious metals and confirm this with the case marks on the cargo at physical inspection, if deemed necessary.
2. Regarding the administrative processing of import permits for precious metals, Japan Customs will consult with the Customs and Tariff Bureau of the Ministry of Finance to handle them appropriatel. In practice, it would be extremely difficult to obtain such permits.
3. In addition to ensuring proper customs clearance as described above, Japan Customs will conduct post clearance audits more frequently on imports of precious metals, and take strict action if illegal activities are discovered. Also, Japan Customs will exchange information and cooperate with related ministries and agencies closely, and collect information from related businesses operators such as customs brokers and warehouse operators.

Our take: In response to the above measures, it is likely that Japan Customs will conduct a rigorous check on the country of origin of imports of precious metals. For smooth customs clearance, it is recommended to confirm the country of origin with suppliers. Any imports supplied from territories neighbouring to Russia would be subjected to greater scrutiny. Therefore, it is essential to maintain appropriate proof of origin for imports.

Export licences must be applied electronically through the NACCS

Japan's Ministry of Economy, Trade and Industry ("METI") announced that applications for export licences can only be made electronically. This requirement began on 1 July 2022.

Exporters must apply for an export licence through the Nippon Automated Cargo And Port Consolidated System (NACCS). The NACCS is Japan's core system for comprehensively carrying out various procedures related to imports and exports. The move brings various advantages to both exporters and regulators, such as reduced application and approval timelines, records and document trails are kept within the system, applications can be made consistently across various customs ports, etc.

Our take: By utilising the NACCS system, the application procedures with METI and Customs can reduce administrative burden on both sides. Going digital will be the trend for authorities all around the world in the future. To prepare for such changes, businesses should equip themselves with the right capability to smoothly change their processes to cope with rising digitalisation.

Malaysia

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Customs, Excise, Free Zone and Sales Tax Amendment bills for 2022

On 3 and 4 August 2022, the Parliament of Malaysia passed four amendment bills in relation to customs, excise, free zone and sales tax. The effective date of these Amendment Acts will be announced by way of the gazette.

- Customs (Amendment) Bill 2022
- Excise (Amendment) Bill 2022
- Free Zones (Amendment) Bill 2022
- Sales Tax (Amendment) Bill 2022

The general theme of the amendments is to allow the Ministry of Finance (MOF) to:

1. Extend the deadlines to perform an act which is required to be completed within a certain period under the legislation in the event of any public emergency or public health crisis.
2. Modify any terms and conditions imposed under the legislation provided that reasonable notice is given to the person bound by the terms and conditions before modifying the terms and conditions. However, it is not specified what time period is determined to be a "reasonable notice".

Key points of the amendments in the above bills are detailed below.

Duties and other charges payment timeline

Customs duties and other charges leviable on imported dutiable goods will need to be paid within 14 days from the date of arrival of such goods, instead of 14 days from the date that the declaration was approved by the Customs officer.

Our take: Importers should note the change in timeline to pay duties and other charges for dutiable goods. If and when it is implemented, businesses should clearly inform relevant staff of the change in the timeline to reduce chances of miscalculation.

Specification of forms relating to Customs Act and Excise Act

The Director General of Customs ("Customs DG") may determine and issue applicable forms under the Customs Act 1967 and Excise Act 1976. The applicable forms in this context are forms in relation to a claim for refund, a claim for drawback, an application for a customs ruling, etc,.

Treatment of low value goods

The Sales Tax (Amendment) Bill 2022 introduces the imposition of sales tax on low value goods (LVG) sold on online marketplaces and imported into Malaysia. LVG is defined in the bill as "any **prescribed goods or class of goods** outside Malaysia which are sold at a price not more than a **prescribed amount** and brought into Malaysia in the **manner as prescribed**".

The proposed amendment can be summarised as follows:

- the prescribed amount for LVG would be RM500;
- the prescribed manner for LVG of import would include air, sea and land mode;
- the rate of sales tax for LVG will be at a flat rate of 10%;
- the prescribed goods to be defined as LVG are yet to be finalised; it is likely to consist of a wide class of goods;
- both local and foreign sellers of LVG on any online marketplace as well as operators of an online marketplace are required to register for sales tax and charge sales tax on LVG if their total sales value for a 12-month period exceeds the registration threshold. Though this is yet to be confirmed, we expect that it is likely to be RM500,000; and
- LVG sellers who are liable for sales tax registration may apply to Customs before the effective date of imposition of sales tax on LVG. LVG which are purchased before the imposition of sales tax on LVG are not subject to sales tax, even if they are delivered to Malaysia after the effective date.

Although the Budget 2022 proposed 1 January 2023 as the effective date, the bill has not provided the implementation/ effective date of the imposition of sales tax on LVG.

Our take: Many traders will be affected by these changes resulting from the imposition of sales tax on LVG goods. Importers should check whether their import transactions will fall into the criteria of LVG and continue monitoring the developments on the imposition of sales tax on LVG goods. LVG is an area that many governments are exploring to collect duties and taxes. However, they will need to find the right balance between duty and tax collection and clearance timelines and cost. If the process becomes too complicated, it might hinder clearance timelines, which would not be desirable. It seems that the Malaysian government is looking to achieve this balance by implementing a flat 10% rate to avoid any disputes of tax rates.

Treatment of quantity deficiencies in Special Areas

Another key amendment to the Sales Tax Act is in relation to any deficiency in the quantity of taxable goods in a Special Area. A Special Area means any Free Zone, Licensed Warehouse, Licensed Manufacturing Warehouse and Joint Development Area under the relevant Free Zones Act, Customs Act, and Joint Authority Act.

The Customs DG may presume the owner, agent or person in possession of the goods to have illegally transported such goods out from the Special Area, if it appears that there is a deficiency in the approved quantity of taxable goods. Sales tax on the deficient quantity of goods may then be levied unless it is proved to DG's satisfaction that the deficiency is caused by unavoidable leakages, breakage or other accident.

Our take: Companies should take note of the amendments to avoid potential non-compliance due to discrepancies in inventory records and ensure that proper inventory control is in place to monitor the movement of goods in Special Areas. Companies should consider reviewing their current standard of procedures to identify any potential gaps to reduce chances of any discrepancies in inventories.

Amendments to Sales Tax Regulations - drawback

On 12 August 2022, the Ministry of Finance published an amendment to the Sales Tax Regulations 2018 which took effect on 15 August 2022. The amendments are in relation to the responsibility of a sales tax registered manufacturer to furnish the sales tax returns and make payment to Customs based on the latest requirements, as well as the conditions of sales tax drawback.

Particularly on the conditions for claiming sales tax drawback under Regulation 17 of the Sales Tax Regulations 2018, they have been amended to be more specific such that:

- the 3-month period for export of goods is from the date of issuance of the invoice for the purchase of taxable goods from registered manufacturer (previously, the issuer of the invoice was not mentioned); and
- the taxable goods are not used after importation or purchase (instead of after payment of sales tax).

Amendments to the regulations on prohibited imports

On 10 August 2022, the Ministry of Finance published an amendment to the Customs (Prohibition of Imports) Order 2017. Effective 15 August 2022, the prohibition of imports into Malaysia will not be applicable to items in Part 1 of the Third Schedule (such as coffee (not roasted), ice cream of dairy base). This is on the condition that it is a full container load for transhipment at free zone status ports and regulated by certain government agencies such as Department of Malaysian Quarantine and Inspection Services, Department of Veterinary Services and Department of Agriculture.

Amendments to the Order for customs duties on ASEAN originating goods

On 4 August 2022, the Ministry of Finance published an amendment to the Customs Duties (Goods of ASEAN Countries Origin) (ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement) Order 2022 by reflecting the preferential duty rates to the respective tariff codes in the Order which were previously unintentionally blank.

Philippines

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The BOC introduces a new reward mechanism for informants

The Bureau of Customs (BOC) has introduced a new rewards mechanism to reward informants and/or whistleblowers who provide information that leads to collection of additional revenue for the BOC. The intention of the reward program is to encourage public cooperation in the effort to reduce smuggling and tax avoidance activities.

The reward mechanism applies to all goods that are under BOC custody, goods that have undergone customs clearance, and goods that did not pass customs formalities (i.e. smuggled goods). Such information may be related to smuggling, incorrect goods declaration and/or supporting documents that result in avoidance or underpayment of import taxes.

Cash rewards given to informants will be equivalent to 20% of the additional revenue (import taxes and penalties/fines) collected by the BOC. In the event of smuggling, the reward will be 20% of the proceeds from the sale of the smuggled and confiscated goods. There is no cap on the amount of reward that can be given to eligible recipients.

As penalties for customs offences can result in fines ranging from 125% to 600% of the assessment or underpaid import taxes, plus a 20% annual interest, the reward can be significant.

The new mechanism will protect the identity of the informants or whistleblowers, except when required during judicial proceedings. Excluded in the reward program are BOC and other government personnels who are performing the functions of enforcement, or assessment, as well as those who belong to departments that are responsible for monitoring and post-clearance audit activities. Excluded are also those who were involved in the illegal or noncompliant activities.

Our take: Based on our experience, these types of reward programs tend to drastically increase overall revenue collection and the number of audits and investigations conducted by the local customs authorities. As employees and third party-service providers who have insight to a company's operation will now have an incentive to act as an informant to the BOC, the risk exposure for many companies will increase considerably. Typical compliance issues that we expect will trigger more customs investigations are related to transfer pricing adjustments, royalty payments, document retention, preferential duty claims, and compliance with different types of customs schemes.

To reduce risk, companies should be more proactive in ensuring they are in-control of general customs compliance. This can be achieved by implementing effective standard operating procedures and conducting a customs compliance review/ healthcheck to identify any compliance gaps or lapses early and implement corrective measures.

No authorisation, no export of strategic goods

Starting in January 2023, the export of strategic products without the necessary authorisation from the Strategic Trade Management Office (STMO) will no longer be allowed.

Strategic goods are products and technologies that fall into the National Strategic Goods List (NSGL), which can be used as, or for the development of, weapons of mass destruction. Such goods are controlled under the export control law of the Philippines, known as the Strategic Trade Management Act (STMA) to prevent its proliferation. The Act covers the movement of goods and technologies (i.e. export, import, transshipment, transfer, reassignment), and provision of services. The implementation of the STMA law is done in phases and is currently focusing on export activities.

The Bureau of Customs (BOC) is responsible for ensuring outbound strategic goods have the appropriate authorizations before they will be allowed for export. With stronger enforcement starting in January 2023, the BOC is expected to begin to hold shipments identified to fall under the NSGL if no authorization has been obtained.

Failure to comply with the authorization requirement can result in imposition of administrative and/or criminal penalties. Monetary fines imposed by the STMO can amount to 250,000 pesos or twice the value of the strategic goods.

For goods that do not meet the technical specifications in the NSGL but are similar to controlled strategic goods, an exporter can secure a Non-Strategic Goods Certificates from the STMO to avoid unnecessary inquiries and delays at clearance.

The issuance of STMO authorizations began in 2020 and the related administrative penalties were made effective in January 2022. However, the enforcement has not been strict. So far very few companies have complied with the STMO's registration and authorization requirements, despite the fact that there are thousands of companies listed as export-oriented companies.

To understand whether a business will be affected by the tighter implementation, companies must first make an assessment on whether their products fall into any of the categories of the NSGL (i.e. military, dual-use, and nationally-controlled goods). Once confirmed, the company will need to process its registration with the STMO. After registration, the company will be able to apply for the appropriate type of authorization for each product.

Our take: There will be many companies that will either struggle to understand whether they require an authorisation prior to export, or even realise this is a requirement. With January 2023 only a few months away, companies engaged in export activities are strongly recommended to get familiar with requirements and determine as soon as possible if their products are subject to an authorisation to avoid disruption to their supply chain and/or potential fines/penalties.

Based on our experience, strategic goods management can be quite overwhelming, as performing the necessary assessment can be technical and require a detailed understanding of products and their capabilities. These difficulties should therefore be identified early, so appropriate assistance can be sought if needed and sufficient time to get authorisations approved is buffered. Exporters should also take note that the new reward mechanism for informants would also apply to monetary fines for strategic goods non-compliance.

Philippines and South Korea to sign Free Trade Agreement

The Philippines and South Korea are set to sign a bilateral free trade agreement (FTA) after successfully concluding negotiations last year.

The FTA removes tariffs on most products from both countries and aims to boost bilateral trade. The FTA will help the Philippines to improve market access for agricultural products to South Korea, whereas South Korea is eager to expand its automotive exports to the Philippines market.

The Philippines-South Korea FTA is expected to be signed in November 2022. Before it will enter into force it will need to be ratified by both parties. This will hopefully take place early in 2023. Based on our experience, timelines are still subject to change. Traders who are keen to utilise the Philippines-South Korea FTA should keep an eye out for any further updates.

Our take: With the existence of the ASEAN - Korea FTA and the Regional Comprehensive Economic Partnership (RCEP), you may wonder if another FTA between the Philippines and Korea is even necessary. Bilateral and multilateral FTAs are often different in nature and have different priorities. Both types of FTAs bring their own unique opportunities and challenges to the table. In this case, the Philippines-South Korea FTA will add greater coverage and duty savings to key imports for both parties, such as agricultural products into South Korea and auto parts into the Philippines. Hence, it will become more attractive for certain industries and help to boost trade between the two countries.

Of course, bilateral FTAs can also bring certain challenges that traders need to be aware of. A key challenge is the reduced flexibility in sourcing of raw materials. Multilateral FTAs such as RCEP and the ASEAN agreements allow for cumulation of originating content from many more territories, which provides much greater flexibility for companies to source their raw materials. In these uncertain times of supply chain disruptions, benefits to potentially continue utilising FTA privileges even with changes to raw material sourcing cannot be ignored.

Traders must be prudent in their execution of their FTA strategy to find the right balance between maintaining their supply chain flexibility, compliance, and optimising their overall duty footprint which in practice can be very challenging based on our experience.

Singapore

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Company Director fined S$558,000 for making false origin statements

On 31 August 2022, Singapore Customs published a media release on a case of a director of a Singaporean company being fined SGD 558,000 for falsely claiming Singapore origin to issue preferential certificates of origin for scrap metals exported to India. The aim of the setup was to claim Singapore origin on scrap metals imported from China in order to enjoy preferential duty privileges under the ASEAN-India FTA and the India-Singapore FTA. As the scrap metal did not undergo any further processing or manufacturing in Singapore, the exported products did not qualify as Singapore origin and therefore should not have been entitled to FTA benefits. From late 2017 to early 2019, the company exported the scrap metals valued around SGD 9.72 million to India.

Under the Regulation of Imports and Exports Regulations, anyone found guilty of furnishing false statements to obtain a preferential certificates of origin, will be liable on the first conviction to a fine not exceeding SGD 100,000 or three times the value of the goods in respect of which the offence was committed, whichever is the greater, or imprisonment for up to two years, or both.

Our take: It is a common belief that Singapore, a territory that promotes and wants to facilitate free trade, does not impose tough penalties for customs offences since most imports are duty free. Hence, it is a belief that customs compliance can be something that companies can overlook for other more "pressing" issues. This case is a prime example on how Singapore Customs expects companies to take compliance seriously. While Singapore Customs will continue to be facilitative, companies must be aware that compliance is important and should ensure their customs and trade operations are in order.

Ceasing of temporary duty exemption on samsu products

On 27 June 2022, Singapore Customs announced the ceasing of temporary duty exemption on samsu products classified under sub heading 2208.90. The exemption was introduced on 15 April 2020 during the onset of the Covid-19 Pandemic under notification on the Declaration on Trade in Essential Goods for Combating the Covid-19 Pandemic. The new duty rate will be increased from an exemption of duty to SGD 8 per litre of alcohol.

The duty revision took effect on 1 July 2022. The Customs Circular No. 03/2020 which was dated on 15 April 2020 will be rescinded accordingly.

Availability of customs e-services on the Networked Trade Platform

On 1 July 2022, Singapore Customs published a notice on the availability of customs e-services on the Networked Trade Platform (NTP). The NTP is a one-stop trade and logistics ecosystem which connects players across the trade value chain. Some of the features of the NTP include: connecting with Competent Authorities (i.e. licence issuing authorities) in Singapore, an online marketplace for value added service, monitoring of trade activities, and engagement with other members of the business and trade community.

The 50 E-Services that are available on the "Customs Forms & Service Links" page on Singapore Customs' website are now available on the NTP. Some notable categories of the e-services are certificate of origin application, voluntary disclosures, customs schemes, permits and licences, and strategic goods control.

Our take: This system aims to better integrate traders to connect with each other. However, it is still unclear yet whether the system would be a mainstay for traders in Singapore. It is certainly helpful for traders to access all customs related data and forms on the system and potentially connect with other traders. But whether it would create enough value for traders to shift their processes to the NTP platform is still yet to be seen.

Export control regulations updated to be aligned with international standards

On 1 August 2022, Singapore Customs announced the Strategic Goods (Control) (Amendment) Order 2022 which updates the Strategic Goods Control List. The changes are as follows:

- Update to the Strategic Goods (Control) Order 2021 (SGCO 2021) to be in line with the 2021 Wassenaar Arrangement's Munitions List, and the 2021 European Union's List of Dual-Use Items (EUDL). Most changes are for clarity of control and consistency.
- Corresponding updates to the category codes under the Fourth and Fifth Schedules of the Strategic Goods (Control) Regulations (SGCR). The updated category codes are available in Annex A of the notification.

The Strategic Goods (Control) (Amendment) Order 2022 was announced on 1 August 2022 and will come into effect on 1 October 2022.

Our take: All in all we do not expect that these changes to have any major impacts for traders in Singapore. Companies who are not sure should also assess to what extent they may be subject to these controls. Export control can be a challenging area for companies to keep under control as it requires exporters to be proactive in determining licence requirements. Exporters must note that export control extends to the type transaction done regardless of the nature of the goods being exported. Any transaction that is suspect to or known to be used in manufacturing of a weapon of mass destruction would also be subjected to such controls.

Taiwan, R.O.C.

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Tariff system updates to align with HS 2022

On 11 August 2022, Taiwan Customs updated Taiwan's tariff system to align with the Harmonised System 2022 (HS 2022). Some notable changes to HS 2022 are as follows:

- In response to the recommendations of the Food and Agriculture Organisation of the United Nations, edible insects or prepared products, trees and their products are added.
- In accordance with the Montreal Protocol, a special item on ozone-depleting substances has been added to strengthen monitoring.
- In accordance with the provisions of the Chemical Weapons Convention and the Rotterdam Convention, a special item on hazardous chemicals has been added to facilitate the collection of international trends and data comparison.
- In accordance with the provisions of the Basel Convention, special sections and items on electrical and electronic waste have been added to strengthen the monitoring of the transit and transfer of hazardous wastes.

Trial run of "Customs IoT Full-time Monitoring Program" in bonded zones

Taiwan Customs has introduced a trial run of real time monitoring of containers in bonded zones using the Internet of Things. The aim of this scheme is to reduce potential smuggling of goods from and into Taiwan. Containers under this programme will require installation of E-seals for real-time tracking. The program plans to use real-time tracking devices (including Customs E-seals and vehicle seals) to enhance the safety of the movement of goods. The module is set to meet the needs of the public and private sectors for the management of different cargo movements. Though the program is now in trial and is only limited to the Taichung Port, it is scheduled to be applicable to other ports (Keelung-Kaohsiung-Taipei) soon.

Thailand

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Toyota Thailand fined THB 10 billion by the Thai Central Tax Supreme Court for misuse of FTA privileges

On 15 September 2022, the Thai Central Tax Supreme Court, which is Thailand's top court for tax litigation matters, ruled against Toyota Motor Thailand Co., Ltd. (Toyota Thailand) for the misuse of FTA privileges. As a result of this ruling, Toyota Thailand is ordered to pay a fine of approximately THB 10 billion (approximately USD 272 million) to Thai Customs. The court ruled in favour of the Thai Customs Department that the motor vehicles components imported by Toyota Thailand should be considered as import of near complete motor vehicles. Therefore, declaring those imported goods as components wasn't correct leading to invalidity of preferential duty privilege. After the ruling was issued, Toyota Thailand published a statement that it accepts and will comply with the ruling.

The issue began when Toyota Thailand assembled its Prius models in their Thai plant from 2010 to 2012. Most of the key components to assemble Prius were imported from Japan utilising preferential duties under the Japan - Thailand Economic Partnership Agreement (JTEPA). Thai Customs challenged Toyota Thailand that these imported components form an essential character of a Prius (as a completely knocked down vehicle [CKD]) under customs classification General Rules of Interpretation 2(a).

Thai Customs' main arguments were that the major components are all sourced from Japan and form the essential character of a motor vehicle. Hence not eligible for duty reduction under JTEPA. Motor vehicle components under JTEPA may be imported at 30% duty rate. However, a motor vehicle in Thailand would attract 80% at the normal duty rate. Apart from the import duty and VAT shortfall, the imports in question are also subjected to excise tax and interior tax shortfall applied to motor vehicles.

Our take: A single non compliance could lead to a domino effect affecting other aspects. Therefore, it is not sufficient for companies to only look at customs compliance key pillars, but should look at customs compliance as a jigsaw where all aspects are interconnected. This case is a good example of how a "misclassification" of an imported good can lead to significant consequences with regards to their FTA application and excisability of the motor vehicle.

Of course, the significant consequences are not limited to the scenarios above, there are other potential compliance issues affecting as a misclassification leading to the imported goods being potentially subjected to import licensing requirements which result in a much closer scrutiny of the goods by the authorities. There are many more scenarios where these non compliance issues may arise. Therefore, it is important for companies to maintain an overall view of its compliance to be aware of the implications from a customs perspective.

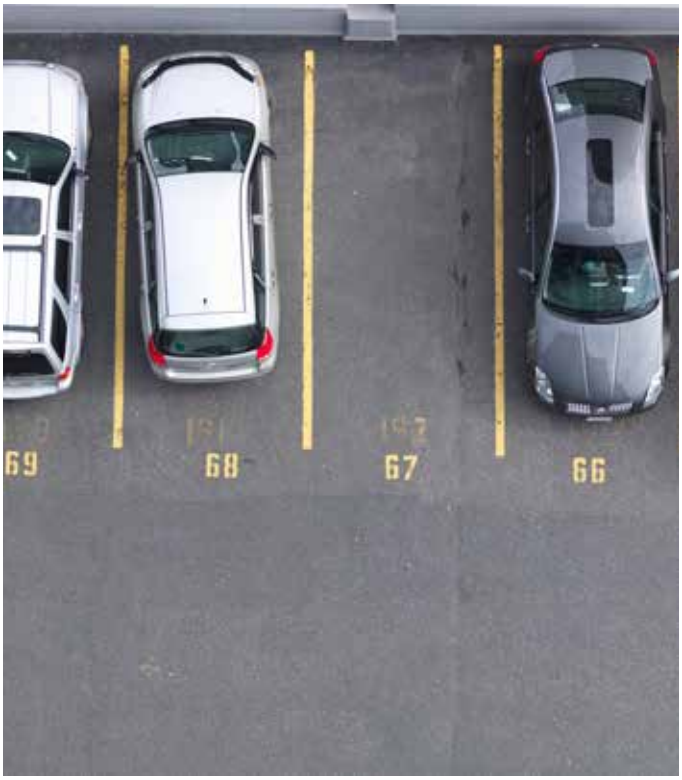
Duty surcharge for self-disclosure reduced until September 2022

A new Ministerial Regulation for reducing the duty surcharge (No. 4) was announced in June 2022 to extend a duty surcharge reduction scheme from 1 April to 30 September 2022. This reduced 0.25% per month rate is for importers and exporters who unintentionally paid incorrect duty and taxes and self-disclose this to Customs.

This regulation is an extension of the previous Ministerial Regulation (No. 3) which ended on 31 March 2022. The purpose of the reduction is to reduce the impact of COVID-19 pandemic on the business sector, so it remains unclear whether it will be extended again as most restrictions continue to be lifted in the country.

Our take: This regulation was intended to be announced earlier in 2022 but has been delayed until now. Since the regulation covers reduction from 1 April to 30 September 2022, any person who paid at the full rate during the period (i.e. 1 April 2022 to 24 June 2022) may be eligible for a refund from Thai Customs. However, without formal procedures for Thai Customs to refund duty surcharges, it is unclear whether it is possible to get a refund at this moment. Businesses that are affected by this may consider discussing with Thai Customs on any possibility.

Any businesses that was sitting on the fence on disclosing any non-compliance to Thai Customs should consider disclosing by 30 September 2022, as this presents a good opportunity to reduce your costs.



Inspection of goods under DFT's watchlist before issuing a non-preferential certificate of origin

The Department of Foreign Trade (DFT) announced a new notification on 27 July 2022 informing that from 1 August 2022 exporters who wish to obtain a non-preferential certificate of origin for goods on the watchlist must submit a request for origin inspection and provide supporting documents for verification. Due to increasing scrutiny for products of Thai origin exported to the US and EU, the DFT outlined stricter controls for goods deemed to be of high risk of a fraudulent origin claim. The watchlist covers various types of products, such as tires, pipes, aluminium foil, as well as electric motors and generators.

If the exporters are not producers of the goods, a sale certification letter from the producer must be submitted. If the DFT officer doubts the originating status of the goods, (s)he may visit the factory or request more information for further inspection. The result of the origin inspection will be valid for two years if there is no significant change causing product qualifications to not follow the rules of origin in the country of import.

Our take: With increasing tariff barriers (e.g. anti-dumping duties and safeguard measures) being imposed all around the world, non-preferential origin has become more and more pertinent in the past few years. Yet, non-preferential origin rules are not clearly defined and are arguably much more complex than those used for claiming of preferential origin. For preferential rules, the rules and processes to achieve origin are clearly defined by the respective binding agreements. As for non-preferential origin, there are guidelines at WTO level, but at country level rules are generally not clearly defined. As such, for companies without strong controls on its origin claims, determining non-preferential origin can sometimes feel like guesswork. There are many uncertain areas for companies to ponder on such as:

- How to determine origin if the product is produced in more than one country?
- Which rules of origin should the product follow and is there even a rule to follow?
- Will the product's origin be challenged even if we already have a non-preferential certificate of origin?
- Currently my product is being imported without any challenges from Customs authorities at the port, but is there a chance that they could conduct post clearance audits?

From reading the questions above, many businesses will feel uneasy and possibly overwhelmed, seeing all the things that seem to be out of their control and the uncertainty that comes with it. However, its not all doom and gloom. Yes, non-preferential origin management can be difficult, but it is certainly not impossible. To combat uncertainties, businesses should plan ahead, so they can clearly understand the rules of origin applicable or any local practices that are not written or clearly written in the countries of destination.

Vietnam

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Self certified origin declarations only accepted for applicable FTAs

On 14 June 2022, the General Department of Customs issued Official Letter 2307/TCHQ-GSQL on proof of origin for the list of goods in Appendix II, Circular No. 38/2018/TT-BTC (List of imported goods subject to submission of proofs of origin to Customs Authorities)

Currently, the Free Trade Agreements (FTAs) in Vietnam that allow for self certification are:

- ASEAN Trade in Goods Agreement (ATIGA)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
- European Union–Vietnam Free Trade Agreement (EVFTA)
- United Kingdom–Vietnam Free Trade Agreement (UKVFTA)
- Regional Comprehensive Economic Partnership (RCEP)

The FTAs listed above are on the list of goods specified in Appendix II of Circular 38/2018/TT-BTC; and the Customs Authority will accept a self-certification of origin issued by exporters providing that all the requirements of the respective FTAs are satisfied, such as the rules of origin, consignment criteria, third party invoicing, etc.

Our take: Many new FTAs and some upgraded FTAs allow origin declarations as proof of origin. An Origin Declaration (OD) is the equivalent of a certificate of origin under self-certification. However, the current norm in the Asia-Pacific region still is to use a certificate of origin instead of an OD. Many authorities tend to scrutinise self certified origin claims more than ones that have been certified by an authority in the exporting country. Therefore, any companies that are using or planning to use OD as proof of origin should be aware of the potential risks and ensure that their origin analysis is accurate to the specific FTAs. Minute differences in the FTA legal texts could cost companies significant penalties for non-compliance for FTA origin claims.

Duty collection on exported and reimported leased or lent machinery

On 29 June 2022, The General Department of Customs issued Official Letter No. 2633/TCHQ-TXNK regarding promulgating tax policies for machinery and equipment temporarily exported and reimported under lease and loan contracts.

The notable points are summarised as follows:

- Machinery and equipment that are temporarily exported under lease and loan contracts, which are not used for a certain period of time or for processing to serve overseas processing, are not exempted from import and export duty. The company is obliged to pay export duty (if any) when carrying out temporary export procedures and pay import duty when carrying out re-import procedures. The dutiable value is equal to all the costs that the borrower has to pay for the importation and this is in accordance with all supporting documents that are related to the borrowed goods.
- However, machinery and equipment that are temporarily exported for re-import under lease and loan contracts will still be exempted from VAT.

Customs declaration for exported goods with changes in means of transportation

On 12 July 2022, The General Department of Customs issued Official Letter No. 2846/TCHQ-GSQL; which provided guidance on the customs declaration procedure for exported goods where there are changes in means of transportation of goods.

Specifically:

1. In cases where the carrier changes the transport company's name only, the owner of the goods is not required to make any additional declaration.
2. In cases where the carrier changes the port of loading or other criteria, the owner of the goods must make an additional declaration to inform of the change as prescribed in Clause 4, Article 52b of Circular 38/2015/TT-BTC (amended in Clause 32, Article 1 of Circular 39/2018/TT-BTC)

More information can be found here.

Exemption of import duties for goods that are reimported

On 21 July 2022, The General Department of Customs issued Official Letter No. 2983/TCHQ-TXNK, which provides guidance on the exemption of import duties for goods that are re-imported into Vietnam. In cases where exported goods are subjected to export duty, this will be refunded when these goods are reimported. Note that Article 19 of the Law on Import Tax and Export Tax No. 107/2016/QH13 specifies the goods that are eligible for this scheme. Some examples are goods exported for a specified amount of time before reimportation, exported for exhibitions, or exported for repairs or replacement.

Notable points from the official letter are summarised as follows:

- The customs clearance documents must include a written request for tax exemption according to Form No. 02, Appendix IIa (for online submissions) or Form No. 05/CVĐNKTT/TXNK, Appendix VI (for hardcopy submissions according to Circular 39/2018/TT-BTC).
- The submitted form must specify the declaration number for reimportation, the declaration number for exportation, the contract and payment documents (if any) and the taxpayer's statement that the goods have not been used or processed overseas.

If an enterprise fails to submit a written request for tax exemption at the time of carrying out procedures for reimportation of the exported goods, the conditions for exemption from import duty will not be satisfied.

Refund request required to take advantage of tariff benefits under RCEP

On 28 July 2022, The General Department of Customs issued Official Letter No. 3103/TCHQ-GSQL on certificate of origin and preferential tariffs under the Regional Comprehensive Economic Partnership (RCEP). Although the RCEP has been effective in Vietnam since the start of 2022, the preferential rates under the RCEP in Vietnam are yet to be finalised for the period of 2022 to 2027, as they are pending final approval from the Vietnam Government. Once the relevant Decree is issued, Vietnam Customs will issue the corresponding regulations for implementation.

Currently, importers that would like to utilise RCEP duty privileges must pay import duties at the normal rate (i.e. Most Favoured Nation rate). Once RCEP preferential rates are finalised, they may request a refund from Vietnam Customs. Do note that Vietnam Customs reserves the right to reject the refund if the product does not meet the RCEP product origin criteria.

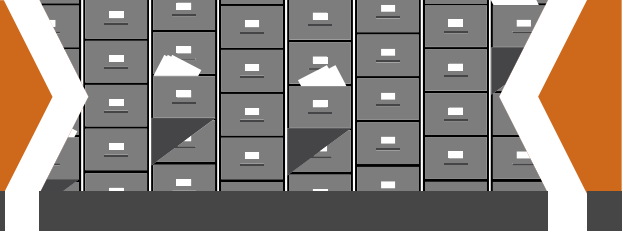
Our take: Companies should make sure that their supporting documents for an RCEP origin claim are well prepared before submitting any refund request to Vietnam Customs once the regulations are issued. Those who claim RCEP privileges are strongly recommended to keep an eye out for such an announcement from Vietnam Customs and plan to request a refund expeditiously.

Reduction in import duty rates for petroleum products

On 8 August, 2022, the Government issued Decree 51/2022/ND-CP reducing the import duty for petroleum products under heading 27.10.

The import duty rate for unleaded fuel under HS codes from 2710.12.21 to 2710.12.29 is reduced from 20% to 10%. The duty reduction has already taken effect since 8 August 2022.

Contact details



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