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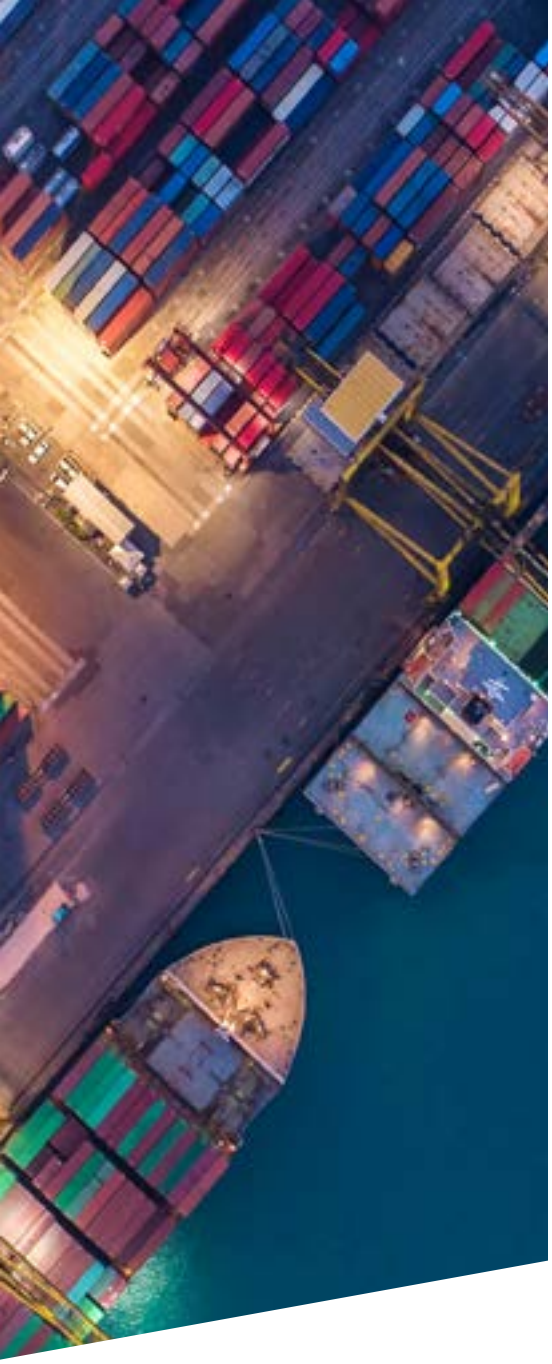

Global

HS 2.0?

Overhaul of the Harmonized Tariff System is under consideration

The Harmonized Commodity Description and Coding System (or the Harmonized Tariff System), more popularly known as the Harmonized System (HS), is one of the success stories of international trade. Now more than 30 years old, the HS is the taxonomy that is used virtually worldwide to provide a common numeric classification for goods. The HS is governed by the International Convention on the Harmonized Commodity Description and Coding System, which has 157 contracting parties. The World Customs Organization (WCO) manages the maintenance of the HS through the HS Committee, which examines policy matters, decides contested classification matters, settles disputes, prepares Explanatory Notes and prepares updates every five years, most recently in 2017.

The WCO Policy Commission discussed the possibility of a rewrite of the HS at its December meeting and agreed that the matter should be investigated in more detail. WCO staff members have told us that they think a complete rewrite of the HS could be accomplished to coincide with the 2027 scheduled HS update.

More than tariff rates

Significant changes to the HS taxonomy would have wide-ranging impact. Countries generally determine tariff rates by HS code. But, the HS is used for more than tariff determination, including:

- International trade statistics
- Rules of origin for bilateral and multilateral free trade agreements (FTAs)
- World Trade Organization (WTO) multilateral agreements, such as the WTO Information Technology Agreement
- Quotas and other trade restrictions
- Application of remedial trade measures, such as antidumping and countervailing duties, retaliatory duties for WTO violations and country-specific measures, such as recent US Section 301 and Section 232 duties
- Identifying controlled goods, such as hazardous wastes, ozone-depleting chemicals, endangered species, and nuclear materials and precursors
- Internal customs controls and procedures for risk assessments and compliance

HS complexity

Despite being an extremely effective facilitator of international trade, the HS is complex. At the six-digit level, there are more than 5,000 separate classifications, many of these requiring detailed product knowledge to apply. Interpretive aids are also needed, including General Rules of Interpretation and Explanatory Notes. The complexity of the system is illustrated by the work of the HS Committee, which meets twice a year. The WCO reports that during the life of the HS, there have been 60 meetings of the HS Committee where 4,144 agenda items were discussed, 10 Recommendations were produced concerning the application of the HS Convention, 2,280 classification decisions were made and 871 Classification Opinions were adopted to ensure the harmonization of classification. In addition, at a country level, thousands of tariff classification decisions have been made by individual customs administrations and courts.

Even with the guidance, actual application of the rules can be complicated. Businesses devote significant resources to classification but still consider it a significant challenge. In a survey conducted at the EY 2018 Trade Symposium, Is Trade the Disruptor or Disrupted?, close to 80% of global trade executives reported current challenges due to an inconsistency in the application of classification rules in different jurisdictions.[1] Even within a single country, the rules can be difficult to apply. A 2017 report from the Auditor General of Canada states that Canada Border Services Agency compliance reviews over a 15-year period show that importers misclassified goods more than 20% of the time.[2]

Furthermore, the taxonomy is dated. The primary taxonomy of the HS was adopted in 1988, but much of the format was borrowed from the four-digit Brussels Tariff Nomenclature that dates to 1955. The term "computers" is not present in the HS; for example, computers are classified as "automated data processing machines." The dated framework for finished products makes it difficult to classify multifunctional products that are enabled by technology, such as wearable electronics or web-enabled appliances.

[1] Available at www.ey.com/globaltrade.

[2] Auditor General of Canada 2017, "2017 Spring Reports of the Auditor General of Canada to the Parliament of Canada: Report 2—Customs Duties."

Business implications

There could be a lot to like about a revised HS 2.0. It could be simpler, with fewer classifications, better plain language descriptions that can be more readily applied and a taxonomy developed to accommodate new and emerging technologies.

But there is no doubt that transition will be complicated and expensive for importers that have invested in and are dependent on systems to manage trade compliance. With the use of developing technologies, such as artificial intelligence that is increasingly used to assist in the classification process, importers will need significant time to plan for system changes.

And, of course, new classifications will have to be assigned new duty rates in each of the more than 200 countries that use the HS. Many products will undoubtedly be transitioned to codes with equivalent rates; but, with many individual country HS schedules currently having upwards of 10,000 separate codes for rate determination, there will be situations, perhaps many of them, where rates will not be equivalent. Debate about rate applicability across the new HS 2.0 will occur in many locations. FTA preferential origin determinations that are HS dependent, such as tariff shift rules prevalent in US FTAs, will need to be renegotiated. The list of potential implications and attendant costs are wide ranging.

While investigation of HS 2.0 is in the early stages, with 2027 as a possible target, businesses are well advised to carefully monitor progress. We will be reporting updates in future editions of *TradeWatch*.

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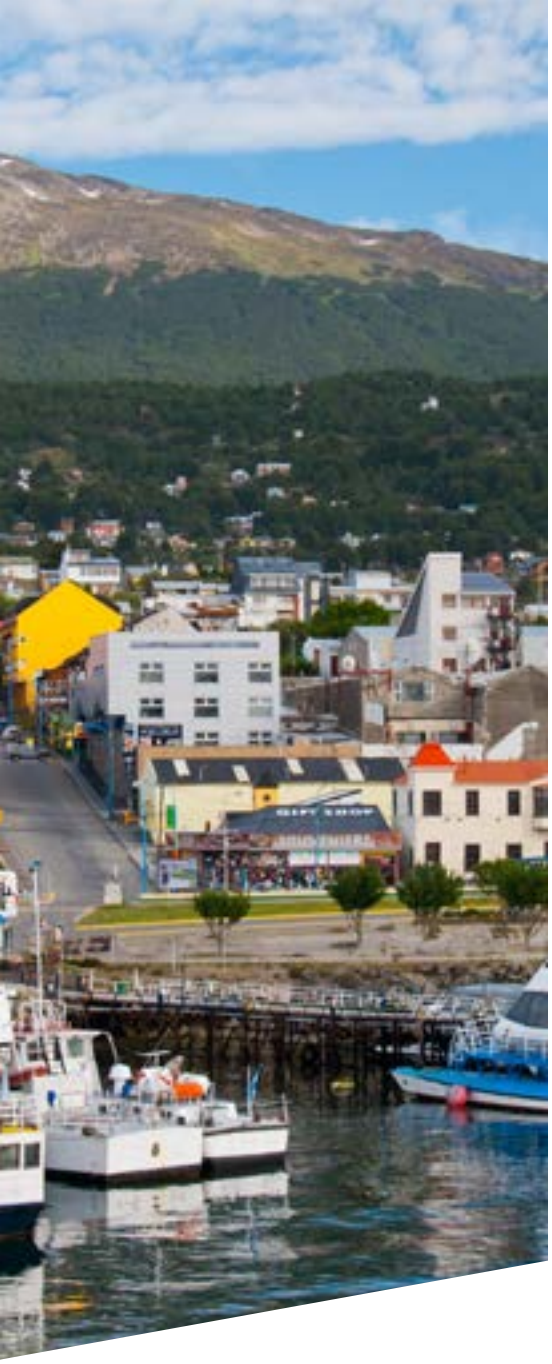

Argentina

Argentina establishes temporary duties on exports of services

Exports of services have not been previously subject to export duties in Argentina. Presidential Decree No. 1201/2018 (the Decree) issued on 2 January 2019 and corresponding regulations issued on 23 January 2019 have changed this, and companies exporting services from Argentina will be subject to an export duty capped at ARS4 (approximately USD0.11) per US dollar from 1 January 2019 until 31 December 2020.

Background

On 4 September 2018, export duties were imposed on the export of goods until 31 December 2020.

Law 27,467, published in the Official Gazette on 4 December 2018, amended the Argentine Customs Code to include the export of services within the scope of exports under the authority of the Customs Code. In turn, the law directed the president to impose duties on exports of services until 31 December 2020.

According to the Treasury Secretary's press conference and the "whereas" section of the Decree, the government introduced these new duties on service exports as a temporary measure, considering the need to increase tax revenue and deal with the significant increase in the exchange rate of the US dollar with regard to the Argentine peso during 2018.

On 23 January 2019, Argentina's Federal Administration of Public Revenues (*Administración Federal de Ingresos Públicos, AFIP*) issued General Resolution No. 4,400, which establishes the procedure for paying temporary duties on exported services.

Decree No. 1201/2018

The Decree imposes duty on service exports at a rate of 12% with a maximum limit of ARS4 per USD of the invoiced amount (or from an equivalent document). Considering an exchange rate of approximately ARS40 per USD, this limit would currently represent approximately 10% of the value of the service export. For future increases of the foreign exchange rate, the burden of the export duties will decrease in terms of effective percentage.

The Decree defines exports of services as services generated in Argentina that are used abroad.

The duty applies to exported services rendered and invoiced as of 1 January 2019, including services originated in contracts or transactions initiated before that date, but rendered after that date.

Taxpayers must file a return and pay the export duties on services within 15 business days of the month following the month in which the exported services are invoiced. Companies that exported services valued at less than USD2 million in the previous calendar year, however, will have an additional 45 days to pay the duties, counted from the due date of the return (i.e., the 15th business day).

Micro and small enterprises (as defined in Law No. 24,467) that export services will pay duties on the value of service exports that exceeds USD600,000 in a calendar year.

General Resolution No. 4,400

The Resolution establishes that exporters subject to the new duties will have to use AFIP's website application, the Tax Accounts System (*Sistema de Cuentas Tributarias*). The Resolution also clarifies several issues.

Specifically, the Resolution clarifies that if type "E" invoices are issued by exporters of services in a currency other than USD, the amount of the transaction must be converted to USD at the exchange rate in force at the end of the business day before the invoice (or anticipated request of such invoice) was issued. In this scenario, the amount invoiced in foreign currency must be first converted into ARS, at the seller exchange rate of the Bank of the Argentine Nation (*Banco de la Nación Argentina*), and then the amount in ARS must be converted into USD at the seller exchange rate of the same bank.

To file the monthly return, exporters must use the Tax Accounts System (*Sistema de Cuentas Tributarias*) website. A draft return that the tax authorities calculate based on the exporter-issued electronic invoices will be available the last day of each month on this website. The taxpayer must file this return from the 10th to 15th business days of the following month by either approving the draft return issued by the tax authorities or amending it.

Exporters must make duty payments within 15 business days of the following month in which the tax authorities made available the monthly draft return for the taxpayer's approval. Entities that exported services for less than USD2 million in the previous calendar year, however, will have an additional 45 days to pay the duties, counted from the due date of the return (i.e., the 15th business day). The payment must be made through the federal tax application called AFIP Electronic Wallet (*Billetera Electrónica AFIP*). Through that application, the exporters will be issued an electronic payment voucher (*Volante Electrónico de Pago*).

Final thoughts

In principle, it is unlikely that the imposition of the export duty will be extended beyond 2020. In the meantime, exporters need to review the impact of this new tax and ensure compliance, as well as monitor any changes in the rates or caps that may be imposed during this term.

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Brazil

Brazil introduces the single window product database and other improvements to the single window program

The Brazilian Government has introduced the single window product database in line with its commitment to facilitate foreign trade by reformulating and unifying the data entry processes required for import and export operations, aiming to eliminate redundancy and streamline public costs.

The product database is the repository of information about raw materials, intermediate products or finished goods that are imported or exported by a company. The database uses technical folders where the manufacturer information, complete description of goods and corresponding tariff codes are stored.

The process of reformulation and bureaucracy reduction started with the creation of the single window program (*Portal Único*) in 2014.[3] The single window made possible electronic attachment of documents and significantly reduced the amount of paper and time needed for both import and export transactions. The government launched the Single Export Declaration (*Declaração Única de Exportação,* DU-E) for export operations in December 2017 and the Single Import Declaration (*Declaração Única de Importação,* DUIMP) on 1 October 2018[4] under Ordinance Number 77 (the ordinance), dated 26 September 2018.

The ordinance provides the rules for a pilot phase of the project that is initially restricted to importers certified as an Authorized Economic Operator (AEO), at the Compliance level or above.

The General-Coordination of Customs Administration (*Coordenação-Geral de Administração Aduaneira,* COANA) of the Brazilian tax authority will define the implementation schedule of the single window modules and its functionalities in the future. In its initial version, the requirement for preparing a DUIMP is as follows:

- The importer must be AEO certified at the Compliance or Full Scope level.
- The imported goods must be shipped by ocean freight.
- Import for consumption and clearance must take place at a seaport or airport.
- The importer must be up to date on tax payments.

[3] See "'Single window' for Brazil's Foreign Trade Program" in the June 2014 issue of *TradeWatch*.

[4] See "Brazil to reduce bureaucracy in the customs clearance process" in the December 2018 issue of *TradeWatch*.

- The imported goods must not be subject to benefits other than those under the Mercosur free trade agreement and not be subject to antidumping duties, Contribution on Economic Activities (*Contribuições de Intervenção no Domínio Econômico,* CIDE) taxes or benefit under the *Ex-Tarifário* regime (reduction of import duty rates for capital and telecommunication goods where no such goods are produced locally).
- The imported goods must not be subject to an import license requirement.

The DUIMP will be the main document of the import process. It will replace the current import declaration and will be directly integrated with the import license module into the single window.

The necessary information in the system will be analyzed by the competent authorities and will be stored in the single window system to be made available to all government agencies and others involved with the transaction according to law.

The major challenge for the importer will likely be the single window product database requirements. The importer is required to upload into the single window all the data to register DUIMP. The information provided will be used for customs analysis and evaluations and is uploaded into the Product Catalog module of the database.

The importer alone will manage this database by updating it periodically with information about new products or new information on the products already registered. Prompted by the DUIMP filing process, the importer will select whether the product has already been imported via DUIMP or if the product needs to be registered in the Product Catalog. The query can be initiated by using filters, such as, among others, the product code, the description or the manufacturer.

By selecting a product that has already been registered, the system will automatically populate the DUIMP with the data that is already in the database.

According to the Brazilian tax authorities,[5] the new import process follows the gradual development and implementation of the Siscomex[6] Portal. This strategy adds value to operations, as well as allows increased participation of the private sector and frequent updating of the tool in line with new needs and technologies.

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[5] See text of customs news article "Pilot Project of the New Import Process Starts," 10 May 2018, available at: http://idg.receita.fazenda.gov.br/noticias/ascom/2018/outubro/projeto-piloto-do-novo-processo-de-importacao-entra-em-operacao-2.

[6] Integrated Foreign Trade System (*Sistema Integrado de Comércio Exterior,* Siscomex).

Canada

Canada Border Services Agency 2019 customs compliance verification list update

The Canada Border Services Agency (CBSA) released its semiannual list of trade compliance verification (audit) priorities in January 2019. The list is designed to update the importing community on ongoing verification priorities and set the stage for new priorities for the upcoming calendar year.

The CBSA continues to focus on tariff classification as a priority audit area, with the introduction of two new rounds to the list of tariff classification priorities and one new round to the list of valuation verification priorities.

Background

The (per document presentation) CBSA manages trade compliance within three program categories – tariff classification, valuation and origin – using two verification processes: random verifications and targeted verification priorities. The CBSA uses trade compliance verifications to ensure that importers comply with customs legal requirements and programs. To do so, the CBSA verifies trade data by initiating post-import verifications. The risk and liability for inaccurate declarations extend well past the fiscal year in which the goods entered Canada; in fact, liability extends up to four years from the date of accounting of the importation.

The objectives of conducting verifications are to:

- Assess an importer's compliance with CBSA-administrated legislation
- Determine compliance within industry sectors
- Conduct a review of an importer's liabilities and entitlements
- Assess the integrity of trade data received from importers

The CBSA manages trade compliance within three program categories – tariff classification, valuation and origin – using two verification processes: random statistical-based verifications and targeted verification priorities.

Random statistical-based verifications

Verifications, which are selected using a statistical model, are designed to measure compliance rates and revenue loss. The results are used by the CBSA for many proposes, including risk assessment (which may lead to targeted verification priorities – see below), revenue assessment and the promotion of voluntary compliance.

Targeted verification priorities

Targeted verification priorities are established using a risk-based, evergreen process. New targets are added throughout the year. Verification priorities may also be carried over from previous years.

Importers that deal in products or industries that are outside the targeted verification priorities should not presume that they will avoid a verification this year. Through the random statistical-based verifications, the CBSA continues to verify importers in sectors and industries not included in the list of verification targets.

Verification priorities: updated targets

The first release of verification priorities for 2019 encompasses 34 tariff classification verification priorities, two valuation verification priorities and two origin verification priorities.

The continued focus on tariff classification may be due to the relative ease of verifying that goods have been classified correctly for customs purposes. Increased audit activity in this program may also lead to higher revenues for the CBSA.

The following chart lists all current tariff classification priority items:

Verification priority: tariff classification		
Curling irons (Round 3)	Parts of lamps (Round 2)	Safety headgear (Round 3)
Furniture for non-domestic purposes (Round 2)	Pasta (Round 2)	Bags
Seaweed (Round 4)	Hair dryers and electric smoothing irons	Import permit numbers
Dextrins and other modified starches (Round 4)	Cell phone cases	Mountings and fittings, suitable for furniture
Batteries (Round 3)	Mountings, fittings and similar articles	Air heaters and hot air distributors
Footwear (CAD30.00 or more per pair) (approximately USD22.74 per pair) (Round 3)	Olive oil (Round 2)	Flashlights and miners' safety lamps
Hair extensions (Round 3)	Stone blocks and slabs (Round 2)	Stone table and counter tops (Round 2 – new)
Parts for power trains (Round 2)	Nails and similar articles of iron and steel	Disposable and protective gloves (Round 4 – new)
Articles of apparel and clothing accessories (Round 3)	Castors with mountings of base metal	
Articles of plastics (Round 2)	Pickled vegetables (Round 4)	
Vices and clamps (Round 2)	Mineral waters and aerated waters	
Parts of ruse with machinery of Chapter 84 (Round 2)	Gloves	
Tubes, pipes and hoses (Round 2)	Spent fowl	

The CBSA has opened two additional rounds of tariff classification verification for two product categories: stone table and counter tops (Round 2) and disposable and protective gloves (Round 4).

Verification priority: valuation

Current CBSA valuation priority targets are focused on two types of goods: apparel and footwear. Importers of these types of goods should assess whether they are prepared for a valuation verification audit. CBSA valuation audits targeting these imports have revealed that importers are omitting statutory additions to the price paid or payable of goods, such as design "assists," not taking into account transfer price adjustments made for tax purposes, or not putting proper documentation in place to account for non-dutiable agent commissions, where applicable.

In addition, importers that purchase goods from related parties and use transfer pricing as the basis for customs values should consider their record-keeping obligations and whether the documentary support on record is sufficient to defend the use of a transfer price as the basis for customs value.

All Canadian importers that avail themselves of the transaction value method, and nonresident importers in particular, should be mindful of Canada's unique "Purchaser in Canada" requirement (CBSA Memorandum D13-1-3, 4 July 2014). It is quite common for importers to misunderstand the rule and its significance. Repercussions for noncompliance can include redeterminations of the value for duty, new import duty and import Goods and Services Tax (GST) outlays, as well as corresponding interest charges, mandatory corrections and the need to apply an alternative valuation method.

Taxpayers that also import goods in the US sometimes implement trading structures designed to achieve US-style "first sale rule" for customs valuation duty-savings benefits. Under the first sale rule, which derives from court interpretations of the customs valuation provisions in the US, the dutiable value of merchandise that is sold to a middleman before being imported into the US in some circumstances may be based on the lower price paid by the first purchaser — the middleman. In Canada, and largely because of the Purchaser in Canada rule, first sale rule planning does not exist as it does in the US.

Verification priority: origin

Only two origin verification priorities are ongoing, and both are remnants of the last listing of verification priorities. These priorities relate to the North American Free Trade Agreement (NAFTA), specifically T-shirts and, bedding and drapery. The purpose of a NAFTA origin verification is to determine whether goods imported into Canada are entitled to the NAFTA preferential rate of duty.

A review of manufacturing locations and sourcing patterns could require an origin analysis to be incorporated into supply chain decisions to determine eligibility of preferential duty treatments and to ensure that these are being utilized correctly. Due to current geopolitical conditions between the world's largest trading partners, and the degree of flux in applicable tariffs, surtaxes, safeguards and even non-tariff barriers, re-sourcing decisions for manufacturing and/or assembly need to be made very carefully.

Takeaway for importers

It is recommended that importers have a process in place to review each of the three critical data elements related to tariff classification, origin and valuation targeted by CBSA verifications. Record-keeping procedures should be incorporated to include customs data and document retention requirements, as CBSA verifications can be time-consuming and administratively costly for importers.

Furthermore, including customs operations and duty planning data into enterprise resource planning (ERP) business process management software is encouraged. Importers should consider establishing a customs compliance manual, reviewed and updated annually, to demonstrate adherence to CBSA "Reason to Believe" requirements (CBSA Memorandum D11-6-6, 12 April 2013). Companies must be proactive and adopt an informed compliance mindset. Leading practices for companies include implementing programs, frameworks and methodologies to help monitor, maintain and continuously improve their customs and trade compliance profile.

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Costa Rica

Costa Rica's Customs General Directorate publishes draft Resolution regulating inclusion of royalty payments in an import's customs value

On 4 December 2018, Costa Rica's Customs General Directorate published in the Official Gazette a draft Resolution that regulates the incorporation of estimated royalty payments and license fees in the customs value of an import when the royalty and license fee amount is not known by the importer.

Currently, the law does not provide a procedure for importers to follow when they do not know the royalty and license fee amount to include in the import's customs value. The lack of a procedure has created uncertainty for importers about how to include the royalty payments and license fees in the customs value. The Resolution would establish a rule for when the importer or buyer, at the time of the importation of goods, does not know the amount or percentage of royalties or license fees that must be added to the price actually paid or payable for the goods because it depends on circumstances or events that occur after the importation. The regulation would require the importer to file a provisional customs return with an estimated royalty and license fee amount.

Businesses that import goods into Costa Rica need to review their operations as a wide variety of imports is subject to payment of royalty and license fees.

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ASEAN

Update on strategic goods in ASEAN: growing complexity from inconsistent regimes

A recent flurry of changes has been taking place in the Association of Southeast Asian Nations (ASEAN) in terms of strategic goods control regimes. Singapore was the forerunner setting up its Strategic Goods (Control) Act in 2003, with Malaysia doing so in 2010. Malaysia is currently undergoing a review of its act, and strategic goods control regimes in the Philippines and Thailand are pending.

With the proliferation of new regimes, the complexities of keeping track of strategic goods regimes in ASEAN with respect to the differences in regime treatment of similar products will become an area requiring more attention from companies. This is important given potentially severe penalties from some of these countries.

This article provides an update and comparison on the regimes in Malaysia, the Philippines and Thailand. Companies with regional supply chains and producing or providing services related to strategic goods should seriously consider reviewing operation procedures in light of these new developments.

Malaysia strategic goods control regime

Malaysia put into force its Strategic Trade Act (STA) in 2010. The STA covers export, transit, transshipment, brokering and other activities relating to strategic goods and related technology. To perform the covered activities, a person or entity would need to obtain a permit or a broker registration certification from the relevant authorities.[7]

There are four types of permits available: single, bulk, multiple and special. Single permits are for one-time shipments to a single country or destination. Bulk permits are for multiple items shipped to a single country or destination. Multiple permits are for multiple items shipped to multiple countries or destinations. Special permits are permits where the end user has been identified as a restricted end user. Applications for bulk and multiple permits require the person or entity to have in place an internal compliance program.[8]

[7] "Strategic Trade Act (STA) 2010," *Malaysia Ministry of International Trade and Industry website,* http://www.miti.gov.my/index.php/pages/view/3446?mid=280, accessed 20 January 2019.

[8] "Updates to Malaysian Strategic Controls," *Joint Industry Outreach Seminar on Strategic Trade Management,* 13 December 2018.

Penalties for STA violation can be severe. For an offense committed under the STA with the intent to unlawfully export, transship or bring into transit strategic items that are arms or related materials without a permit, or with knowledge that such transactions are without a permit, and that results in death, the most severe penalty could be death or imprisonment for life. If the offense is committed by a corporate entity, there could be a minimum fine of USD7 million.[9] That said, in November 2018, Malaysia's Government announced that the death penalty under the STA would be abolished.[10]

The Malaysian Government is currently in the process of implementing a review of the STA 2010. Key elements include review of penalties and the definition of brokering.[11] Malaysian Ministry of International Trade and Industry (MITI) officers have shared that the fine penalty may be revised to that of a maximum of USD2.4 million and the definition of brokering may be clarified as excluding ancillary services, such as finance support services, general advertising, insurance or general transport services. Further, special permits may be allowed that could be applied for without being accompanied by an end-use statement.[12]

Philippines strategic goods control regime

The Philippines is in the process of implementing its strategic goods control regime through the Strategic Trade Management Act (STMA). The STMA is expected to cover both individuals and companies engaging or intending to engage in the activities covered by the STMA in the Philippines. The STMA also covers all Filipino persons providing activities covered under the STMA regardless of location. In short, the STMA has both territorial and extraterritorial jurisdiction. These activities include export, transit, transshipment, import, reexport, reassignment and provision of related services, such as brokering, financing, transportation and technical assistance.

The Strategic Trade Management Office (STMO) will initially regulate items under the dual-use goods list. The STMO or the Philippines National Police, Firearms and Explosives Office will issue the permits for control of these items with respect to exports.

[9] "Strategic Trade Act (STA) 2010," *Malaysia Ministry of International Trade and Industry website,* http://www.miti.gov.my/index.php/pages/view/3446?mid=280, accessed 20 January 2019.

[10] "Malaysia to abolish death penalty for 32 offences, including murder," *Channel NewsAsia,* 13 November 2018.

[11] "Strategic Trade Act (STA) 2010, Facilitating Trade in a Secure Trading Environment PTP Community Outreach," *Malaysia Ministry of International Trade and Industry website,* http://www.miti.gov.my/miti/resources/STA%20Folder/PDF%20file/PTP_outreach_overview_STA_011018.pdf, accessed 1 October 2018.

[12] "Updates to Malaysian Strategic Controls," *Joint Industry Outreach Seminar on Strategic Trade Management,* 13 December 2018.

There are three types of authorization: individual, global and general. Individual authorization is granted with respect to one end user/consignee covering one or more strategic goods. Global authorization is granted with respect to several end users/consignees covering one or more strategic goods. General authorization is granted with respect to destination countries under certain conditions.

The administrative penalties for violating the STMA include warnings; limitation, revocation or annulment of authorization and/or registration; maximum fines of USD4,700 or twice the value of the strategic good or related service, whichever is higher; and cancellation or suspension of registration and authorization to operate the juridical entity. Criminal penalties for violating the STMA include imprisonment ranging from 6 months to 12 years and a fine of USD1,900 to USD95,000.[13]

Thai strategic goods control regime

Thailand is also in the process of putting into place a strategic goods control regime. Initially planned for 1 January 2018, the regime implementation has been delayed and now seems likely to be implemented in 2020. This regime, based on the 2015 Ministry of Commerce Notification on export control of Dual Use Items (DUIs), covers dual-use items under two schedules or lists, as well as items that fall under the catch-all provisions. The government estimates that about 1,200 items will fall under this control. Thailand exports of dual-use items totaled USD63 billion in 2017.

Exporters of the products covered under the regime would need to seek permission from the government before export. Exporters will be able to obtain assistance through use of an electronic system named e-Trade Management of Dual-Use Items (e-TMD). The trial system has been placed online for exporters to try out. This system can help exporters determine whether goods are dual use. Upon verifying the product, the exporter will then be able to obtain a DUI license, if goods fall under List 1; self-certification, if goods fall under List 2; and proceed to the usual export procedures, if goods do not fall under List 1 or 2.

Concurrently, the Thai Government has drafted a law on export controls for weapons of mass destruction (WMD), which is to be approved by the National Legislative Assembly. This bill will cover a larger scope, including export, transshipment and cross-border trade for items subject to WMD controls.[14] It is expected that this law will replace the 2015 Notification. Given that, currently, the implementation of the dual-use regime has been delayed to 2020, if the new WMD law is passed before the implementation of the dual-use regime, then the new WMD law would likely take effect instead of the previously planned dual-use regime. Companies that have interest in exporting strategic goods from Thailand should take initiative in monitoring and managing their supply chains to take this possible development into account.

[13] "Philippine Strategic Trade Management Overview and Updates," *Joint Industry Outreach Seminar on Strategic Trade Management*, 13 December 2018.

[14] "Export controls to combat terrorism," *The Nation*, 7 July 2017.

Impact: inconsistency of classification and controls

Table 1 below provides a short summary of the three aforementioned export control regimes in ASEAN at present.

Table 1: Summary comparison table of the three ASEAN regimes

	Malaysia	Thailand	Philippines
Status	Implemented	Pending	Pending
Activities	STA covers export, transit, transshipment, brokering and other activities of strategic goods and related technology	STMA covers export, transit, transshipment, import, reexport, reassignment and provision of related services, such as brokering, financing, transportation and technical assistance	The 2015 Notification covers only exports of tangible items. The new WMD law covers a wider scope, including export, transshipment and cross-border trade for WMD items.
Permit types	Four types: single, bulk, multiple and special permits	Three types: individual, global and general authorization	DUI license under e-TMD system for goods under List 1; self-certification for goods under List 2
Based on	EU List	EU List	Likely EU regulations

The key takeaway is that these regimes are not the same. For example, controlled activities are different for different regimes: Malaysia's brokering controls do not include ancillary services, but the Philippines' controls would likely cover ancillary services as well. Even the lists of controlled products may be different. Philippine officials have shared that it takes time to extract the list of controlled products from the EU strategic goods controls list, translate and subsequently gazette them before implementation. This time lag may mean that the currently implemented controlled items list is different from the EU list. This would also mean that the Philippine list may be different from the Malaysian or Thai lists even if they are based on the EU list, as their translation and gazette time lags may differ. Further, the EU updates its list based on discussions at forums, such as the Wassenaar Arrangement, whose control lists are updated every year. This may result in continuous staggering unless further harmonization actions are taken.

Given the increased complexity in the different and inconsistent strategic goods control regimes in the region and the need for close monitoring, companies may wish to review their operations and take steps to improve trade compliance for relevant supply chains.

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Japan

New trade agreements to change Japan's trade dynamics

In the September 2018 issue of *TradeWatch*, we discussed two free trade agreements (FTAs) involving Japan, the Trans-Pacific Partnership (TPP) and the EU-Japan Economic Partnership Agreement (EPA).[15] These two FTAs have recently come into force and, along with other agreements pending negotiation, are likely to bring about a change in Japan's trade dynamics.

Two new FTAs come into effect

The TPP went into effect on 30 December 2018 for Japan, New Zealand, Mexico, Singapore, Canada and Australia following ratification of the agreement in these countries. For Vietnam, which completed its internal approval procedures after the other six countries, the TPP went into effect on 14 January 2019. For the remaining signatories, Malaysia, Brunei, Peru and Chile, the agreement will become effective 60 days after notifying the depositary, New Zealand, that ratification procedures have been completed. Additionally, the EU-Japan EPA, described as the world's largest bilateral trade deal, came into effect on 1 February 2019.

As these agreements add Canada, New Zealand and the EU to Japan's FTA network for the first time, businesses can expect substantial benefits. At the same time, importers and exporters should also be aware of the risks involved with these FTAs. Both agreements contain a self-certification clause allowing exporters, producers and importers to certify originating status of goods on their own, which removes the administrative burden of requesting a certificate of origin from the relevant authority, such as the chamber of commerce. On the other hand, importers using these FTAs will need to be prepared for requests by the customs authorities to verify status of origin. If goods are found to have been improperly certified as originating, the importer of the goods may face penalties in addition to being assessed duties at the non-preferential duty rate.

[15] See "The EU and Japan sign Economic Partnership Agreement" and "EU-Japan EPA and TPP change trade landscape for Japan" in the September 2018 issue of *TradeWatch*.

In addition, Japanese importers planning to utilize the EU-Japan EPA and TPP should note that they will be required to complete and submit a form outlining how the origin criteria were met. This form is required, unless the importer has obtained an advance ruling on origin, including in cases where the importer will rely on a Statement on Origin issued by the exporter. In addressing situations where the importer cannot obtain information from the exporter, Japan Customs has indicated that the importer should note this on the form. The importer will still be able to claim EPA benefits, but the possibility of being selected for verification will be higher than for importers that are able to provide the requisite detailed information at the time of importation.

Other agreements underway

Two other potential FTAs lie on the horizon for Japan. On 26 September 2018, Japanese Prime Minister Shinzo Abe and US President Donald Trump issued a joint statement announcing that they intend to negotiate a US-Japan Trade Agreement on goods (US-Japan TAG). In the statement, the two countries agreed to respect each other's core positions when conducting negotiations, as provided below:

- "For the United States, market access outcomes in the motor vehicle sector will be designed to increase production and jobs in the United States in the motor vehicle industries; and
- For Japan, with regard to agricultural, forestry, and fishery products, outcomes related to market access as reflected in Japan's previous economic partnership agreements constitute the maximum level."[16]

On 16 October 2018, US Trade Representative Robert Lighthizer notified the US Congress of the Trump administration's intention to formally initiate negotiations for the TAG. However, under US law, official negotiations can only begin at least 30 days after the US has published its objectives for them, which has not yet happened.

In addition to the TAG discussions, Japan continues to participate in talks for the Regional Comprehensive Economic Partnership (RCEP). At a summit held on 14 November 2018, representatives from the RCEP participating countries, including Japan, Australia, China, India, South Korea, New Zealand and the Association of Southeast Asian Nations (ASEAN) member states, met and reconfirmed their commitment to conclude an agreement in 2019. While Japan has separate preexisting trade agreements with most of these countries, the RCEP would represent the addition of China and South Korea to Japan's FTA network.

[16] The White House press release: "Joint Statement of the United States and Japan," dated 26 September 2018, at https://www.whitehouse.gov/briefings-statements/joint-statement-united-states-japan/.

Actions for businesses

The two newly effective FTAs, as well as the potential for future agreements with the world's two largest economies, present many opportunities for businesses in Japan. To take advantage of the potential benefits from the EU-Japan EPA and the TPP, businesses should be aware of each agreement's tariff reduction schedules and special regulations. In addition, importers utilizing FTAs should ensure that they have internal processes in place for obtaining the necessary data on originating status from suppliers. They should also take care to ensure that goods are classified under appropriate Harmonized System (HS) codes. Businesses may also wish to consider potential IT solutions to automate some of these processes to help manage the associated costs.

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Annual report on post-entry customs audits for July 2017 to June 2018

Japan's Ministry of Finance recently released data on post-entry audits conducted during its fiscal year ending in June 2018. The number of importers subject to audits decreased slightly, from 4,325 to 4,266, and 78.9% were found to be in violation of the Customs Tariff Act, a 2.4% increase over the previous fiscal year. The total value under-declared by importers subject to audit was JPY148.37 billion[17] (approximately USD1.35 billion), a 5.5% increase from the previous year.

The top five Harmonized System (HS) chapters of goods subject to assessments are listed below. Together, these chapters account for about 60% of the total. Compared to the previous year, when Chapter 2 (meat) led the list and Chapter 64 (footwear) ranked third, the leading categories for this audit period consist mainly of goods not subject to customs duties. As a result, the total value of assessments decreased even as the under-declaration value went up over the prior year.

Major examples of customs violations

The Ministry of Finance's report cited seven major examples of importers being subject to additional duties. The first three cases concern importers incurring additional penalties for fraud or gross negligence, while the latter four cases involve assessments for other violations.

HS Chapter	Duty/tax shortfall (JPY, billions)
85 (electrical equipment)	2.49
90 (optical instruments and apparatus)	2.20
87 (vehicles and parts)	1.32
30 (pharmaceutical products)	1.09
84 (machinery and mechanical appliances)	0.96

[17] One billion is defined as one thousand million.

Cases involving fraud or gross negligence

Case 1: Import declaration based on falsified invoice created by the importer

An importer of bags from the United Kingdom created invoices with improperly low prices for declaration purposes despite being aware of the proper price of the bags before importation. This led to the bags being undervalued by a cumulative JPY41.67 million. The importer was assessed a total of JPY10.40 million, of which JPY2.58 million was in penalties for fraud.

Case 2: Import declaration based on falsified invoice obtained from the exporter

An importer of aluminum products from China instructed the exporter to create invoices with lower prices for declaration purposes (despite being aware of the proper value) and then used these to undervalue the products by a total of JPY21.40 million. The importer was assessed a total of JPY3.41 million, including JPY0.86 million in penalties for fraud.

Case 3: Import declaration based on invoice known to be falsified

An importer of apparel products from China declared the artificially low prices listed on an exporter's invoices despite being aware of the proper value of the goods, leading to a total under-declaration of JPY13.60 million. As a result, the importer was assessed a total of JPY3.15 million, of which JPY0.76 million was in penalties for gross negligence.

Cases not involving fraud or gross negligence

Case 4: Failure to report retroactive transfer pricing adjustments

An importer of automobiles from Germany agreed with the exporter to retroactively review the price of imported goods, which led to additional payments as a transfer pricing adjustment. However, the importer failed to file amended declarations reflecting that these additional payments should have been part of the original declarations. Due to this oversight, the importer was found to have under-declared by a total of JPY10.37 billion and was assessed a total of JPY831.66 million in underpaid taxes, administrative penalties and delinquent duties.

Case 5: Failure to report costs of raw materials provided free of charge by the importer

An importer of medical supplies from Taiwan had Japanese end customers provide the exporters with free raw materials and equipment to use for manufacturing the supplies. However, the importer did not declare the values of these assists to customs. As a result, the importer was found to have under-declared by a total of JPY2.33 billion and was assessed with JPY188.69 million in underpaid taxes, administrative penalties and delinquent duties.

Case 6: Underreporting due to difference between invoice price and actual price paid

The finance department of an importer of bags from China paid the amount printed on the invoice issued by the seller in France, but the exporter issued an invoice with a different value that the logistics personnel handling the import declaration then used to declare. As a result of this lack of communication between the finance and logistics departments, the importer failed to declare the seller's invoice price as required. Because of this, the importer was found to have under-declared by JPY719.92 million and was assessed JPY124.97 million in underpaid taxes, administrative penalties and delinquent duties.

Case 7: Inappropriate use of EPA tariff rate

An importer of dried vegetables from Vietnam declared imports based on the preferential tariff rate stipulated in the economic partnership agreement (EPA) between Japan and the Association of Southeast Asian Nations (ASEAN).[18] However, as the vegetables used in the dehydrating process came from China, the imported products did not meet the criteria to be considered ASEAN originating. Hence, they should have been declared to the most favored nation (MFN) duty rate rather than the preferential rate. This resulted in a 9% duty assessment on declarations worth JPY1.46 billion, which created a total liability of JPY150.32 million in underpaid taxes, administrative penalties and delinquent duties.

Implications for importers

While the cases highlighted above reinforce the continued importance of declaring customs value in line with Japanese law, the last case also underscores the challenges of following EPA rules properly. Since the Ministry of Finance issued its report, both TPP-11[19] and the EU-Japan EPA have come into force, allowing Japanese importers to enjoy preferential duty rates for goods from most European countries, as well as Canada and New Zealand for the first time ever. Considering that both agreements allow self-certification of originating status, it is more crucial than ever that importers have a solid grasp of EPA rules so that their use of preferential tariff rates can withstand scrutiny by Japan Customs in post-entry audits and verifications. As the range of tools available to importers expands, both internal compliance mechanisms and processes for responding to post-entry audits will emerge as top priorities.

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[18] Association of Southeast Asian Nations (ASEAN): (current members) Indonesia, Thailand, Singapore, Malaysia, Philippines, Vietnam, Cambodia, Myanmar (Burma), Brunei and Laos.

[19] Comprehensive and Progressive Agreement for Trans-Pacific Partnership: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

The Philippines

Philippine Government issues new rules on post clearance audit and Prior Disclosure Program

The Philippine Government recently issued Customs Administrative Order (CAO) No. 01-2019, which covers the conduct of the post clearance audit (PCA) by the Post Clearance Audit Group (PCAG) of the Bureau of Customs (BOC) and the implementation of the Prior Disclosure Program (PDP) pursuant to the related provisions of the Customs Modernization and Tariff Act (CMTA).

CAO No. 01-2019 was approved by the Department of Finance (DOF) on 9 January 2019 and is effective as of 15 February 2019.

According to CAO No. 01-2019, the prescribed deadlines to respond to demand letters for unpaid taxes on importation and to submit documents to contest the audit findings appear quite challenging for importers. Hence, importers should prepare for the PCA and closely monitor the receipt of the Audit Notification Letter (ANL).

This article summarizes the key features of CAO No. 01-2019.

Post clearance audit

Period to conduct PCA: In the absence of fraud, the BOC has three years from the date of final payment of duties and taxes or customs clearance, whichever the case may be, to conduct a PCA and determine whether any duties, taxes and other charges (including any fine or penalty for which an importer may be liable) have not been paid.

Selection criteria: Importers that are subjected to PCA are selected based on any of, but not limited to, the following criteria:

- Relative magnitude of customs revenue to be generated from the firm
- Duty rates of the firm's imports
- The firm's compliance track record
- A risk to revenue assessment of the firm's import activities
- The trade sector's compliance level
- Nonrenewal of an importer's customs accreditation

PCA process: The PCA is conducted as follows:

- **Profiling/information analysis** – Risk profiling and analysis on the importers shall be performed by the PCAG to identify importers that will be subjected to a PCA.
- **Issuance of the ANL** – The Commissioner issues the ANL, which contains the names of authorized personnel to perform the audit. The ANL is valid for 30 calendar days subject to revalidation for another 30 days. This is served to the importer personally, by registered mail or through electronic notice.
- **Preparation of the audit plan**
- **Audit procedure** – The audit should commence within 60 calendar days and should be completed within 120 days (per year of audit) from the service of the ANL. This may be deferred if the importer manifests intent to avail of the PDP.

Upon completion of the audit, the team issues either a Final Audit Report (FAR) with a demand letter if there are findings that duties, taxes and other charges have not been paid, or a Clean Report of Findings (CRF) if there are no such findings. The CRF is endorsed by the Assistant Commissioner and approved and signed by the Commissioner.

Service of demand letter for payment amounts due – If the audit results in findings that duties, taxes and other charges have not been paid, the demand letter is served to the importer personally, through registered mail or electronic notice. The importer must make payment within 15 days from receipt of the demand letter.

The BOC issues an acknowledgement letter with a statement that the audit is completed if the importer opts to pay the amount per the demand letter.

The following remedies are available to the importer if the importer wishes to contest the audit findings:

- The importer may file a request for reconsideration or reinvestigation with the Commissioner *within 15 days from receipt of the demand letter.* In the case of a request for reinvestigation, *the importer has 30 days from the submission of the request to submit all relevant supporting documents.*
- If the Commissioner denies the request for reconsideration or reinvestigation, the importer may appeal to the Court of Tax Appeals within 30 days from the receipt of the denial.

Applicable penalties for failure to pay correct duties and taxes on imported goods determined through a PCA – Importers are penalized according to the two degrees of culpability below, subject to any available mitigating, aggravating or other extraordinary factors:

- **Negligence** – 125% of the revenue loss. In the case of an inadvertent error amounting to simple negligence, a penalty of 25% is applicable.
- **Fraud** – 600% of the revenue loss and/or imprisonment of not less than two years, but not more than eight years.

Benefit of the Prior Disclosure Program

Under the PDP, the Commissioner may accept prior disclosure of errors and omissions in goods declaration resulting in unpaid duties and taxes.

Goods declarations may be disqualified for the PDP if they:

- Are subject to pending cases with any other customs office
- Are covered by cases already filed and pending in the courts
- Involve fraud

Benefits of the PDP:

- An importer that has not yet received an ANL is subject to payment of the unpaid duties and taxes plus 20% interest per annum.
- An importer that has received an ANL may file a PDP application within 90 calendar days from receipt of the ANL. In this case, the importer must pay any duties and taxes owed plus a reduced penalty of 10% of the amount owed and 20% interest per annum. PDP applications may be amended within 30 days of filing.
- A PDP application covering disclosures on royalties; other proceeds of any subsequent resale, disposal or use of the imported goods that accrue directly or indirectly to the seller; or any subsequent adjustment to the price paid or payable is free from interest and penalty if filed within 30 calendar days from the date of payment or accrual of subsequent proceeds to the seller, or from the date that the adjustment to the price paid or payable is made.

Interest on unpaid duties, taxes and other charges plus fine and penalty. An interest of 20% per annum, counted from the date of the final assessment, is imposed on:

- Basic taxes due on goods covered by the PDP
- Any unpaid duties, taxes and other charges
- Fine or penalty, if any

Record-keeping requirements

Importers, customs brokers and other parties engaged in the customs clearance, and locators are required to keep all records pertaining to the ordinary course of business and importations at their principal place of business for a period of three years from the date of final payment of duties and taxes or customs clearance, whichever is later.

Turnover of records — The DOF Financial Analytics and Intelligence Unit is required to turn over all files and documents, including any pending PCA, to the BOC PCAG.

The CAO also provides for the applicable penalties for failure or refusal to give full and free access to records. Record-keeping requirements are discussed in more detail in the following article, "Philippine Customs imposes significant penalties for failure to keep import documents."

Final thoughts

Given that the importer is only granted 15 days from receipt of the demand letter to contest the deficiency assessment and 30 days to submit all supporting documents from the filing of request for reinvestigation, early preparation (i.e., through the conduct of an internal review or a customs compliance review) is crucial for an importer to become audit ready.

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Philippine Customs imposes significant penalties for failure to keep import documents

The Philippine Government recently issued Customs Administrative Order (CAO) No. 01-2019, which covers the conduct of the post clearance audit (PCA) of all records required to be kept by all importers, beneficial or true owners of imported goods, customs brokers and those authorized to bring imported goods to special economic zones and free ports. The CAO provides guidance for record-keeping and imposes adverse consequences for noncompliance. The proper retention of import documents is key during a PCA and is often overlooked by importers.

Customs record-keeping requirements

The Customs Modernization and Tariff Act (CMTA) imposes the requirement to keep records of importation and provides that all importers are required to keep at their principal place of business for a period of three years from the date of final payment of duties and taxes or customs clearance, all records of their importations, books of accounts, business and computer systems, and all customs commercial data, including payment records.

Customs brokers and parties involved in the process of clearing imported goods are covered by this requirement with respect to the transactions that they handle. Locators (persons/entities authorized to bring imported goods into special economic zones and free ports) are also required to keep records of importation even if they benefit from tax and duty-free incentives on qualified importations.

The rationale for keeping records of importation is primarily to ascertain that the goods declaration filed by the importer is correct and the taxes and duties paid on said importation are accurate.

Additional consideration, however, should be given to the requirement of the Philippine tax authorities, the Bureau of Internal Revenue (BIR), to retain and preserve books of accounts and other accounting records for a period of 10 years.

Furthermore, if a taxpayer has an ongoing tax audit investigation, relevant copies of documents, books of accounts and other accounting records necessary for the tax authorities to conduct and complete the investigation should likewise be retained and preserved. Importers must comply with these requirements and align them with the record-keeping requirements for customs purposes.

Documents that should be kept by importers

CAO No. 01-2019 provides for the specific documents that must be kept by all importers for PCA purposes. The list is quite exhaustive and effectively covers all records related to the imported goods and the entity's import activities.

In addition to the typical import documents, such as product description or specifications and shipping documents (goods declarations, commercial invoices, import licenses or permits, bills of lading, shipping instructions, certificates of origin, etc.), the CAO also requires importers to keep documents on the entity organization and structure, documents on orders and purchases, documents on manufacturing, stock and resale records, financial documents, chart and codes of accounts, and information or records that are electronically recorded or stored.

Moreover, locators are required to maintain documents proving their entitlement to tax incentives on importation, as well as records of all transactions and activities relating to the admission and withdrawal of goods from free zones into the customs territory.

Penalties for failure to keep documents

The CAO highlights the importance of keeping records of importation and provides the following penalties for noncompliance:

- **20% surcharge** — Importers that fail to keep the prescribed records will be subject to a 20% surcharge on the dutiable value of the goods for which no records were kept and maintained. Thus, even though there are no findings of unpaid duties and taxes, importers may still be required to pay this 20% surcharge if the authorities discover record-keeping violations during a PCA.
- **Suspension or cancellation of importers' accreditation** — All importers must be accredited with the Bureau of Customs (BOC) to allow them to register in the Client Profile Registration System (CPRS), an internet-enabled application that automates various transactions with the BOC, which includes the filing of import entries. Importers whose accreditation is canceled or suspended will not be able to import and/or file import entries within the period required by law, which may lead to the implied abandonment and forfeiture of their imported goods. Pursuant to CMO No. 23-2018 dated 26 November 2018, applications for accreditation, suspension, revocation, cancellation and reactivation of importers' accreditation are subject to the approval by the Commissioner of Customs.

- **Suspension of the delivery and release of subsequent imported goods** — The BOC is likewise authorized to hold the delivery and release of subsequent imported articles to answer for the fine and any revised assessment if an importer is found in violation of the CMTA record-keeping requirements. For the importer, this will entail costly storage fees, fines and other charges, as well as lost business opportunities and business disruption due to the delay in the release of its imported goods.
- **Waiver of the right to contest the results of the audit** — To further emphasize the importance of record-keeping, the CAO provides that the failure to keep documents constitutes a waiver of the right to contest the results of the audit based on records kept by the BOC. Accordingly, even though the assessed duties and taxes on a particular importation are patently erroneous, the importer loses the right to dispute the same if it could not produce the records pertaining to the import transaction being assessed. Consequently, the importer may be required to pay the basic duties and taxes as assessed plus the administrative penalties, which range from 125% to 600% of the revenue loss, and 20% legal interest per annum on top of the 20% surcharge for failure to keep records.
- **Criminal prosecution and fine** — Finally, importers should keep in mind that the law provides for criminal prosecution for violations of the customs record-keeping requirements that is punished with imprisonment of not less than three years and one day, but not more than six years, and/or a fine of PHP1 million (approximately USD 19,108).

Implications

In view of the recent issuance of CAO No. 1-2019 on the conduct of the PCA, the BOC is expected to intensify the audit of all importers, including locators. Ensuring compliance with the record-keeping requirements can make a significant difference to the outcome of a PCA.

The importance of keeping and maintaining complete importation records cannot be overstated because the consequences of noncompliance have an adverse impact on business. Therefore, importers should constantly check and ensure that their records of importation are complete and compliant with the prescribed rules, not only to avoid unnecessary penalties but also to ensure the uninterrupted right to import goods into the Philippines.

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Singapore

Upcoming FTAs with the European Union and China

With 21 free trade agreements (FTAs) in force, Singapore has one of the largest FTA networks in the world. Expanding her network continuously, particularly in the second half of 2018, Singapore signed two trade agreements and entered into force a third. These are, respectively, the upgrade of the China-Singapore Free Trade Agreement (CSFTA), the European Union-Singapore Free Trade Agreement (EUSFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Companies interested in utilizing FTAs in Asia and beyond may wish to note the new opportunities that will arise in 2019 from the addition of these new FTAs into the international arena, such as:

- Entry into new markets
- Increased efficiency in supply chain networks
- Heightened certainty in physical goods movements amid trade disruptions
- Smoother cross-border trade flows

European Union-Singapore Free Trade Agreement

The EUSFTA is the first bilateral FTA concluded and signed by the EU and an ASEAN country in October 2018. The EUSFTA is a comprehensive agreement covering market access for goods, trade remedies, customs and trade facilitation, trade in services and establishment, intellectual property rights, technical barriers to trade, sanitary and phytosanitary measures, government procurement, competition policy, sustainable development and a dispute settlement mechanism.[20]

The impact of the EUSFTA is expected to be positive. A European Parliament study indicates that the EUSFTA will result in an increase of around 10% in EU-Singapore trade volumes, a 0.06% increase to the GDP of EU and a 0.35% increase to the GDP of Singapore.[21]

[20] "EUSFTA – A guide for Singapore-based companies to understanding the EUSFTA," *Singapore Ministry of Trade and Industry website*, https://www.mti.gov.sg/-/media/MTI/Microsites/EUSFTA/EUSFTA-Guide-for-SG-Businesses-v2.pdf, accessed 17 January 2019.

[21] "Free Trade Agreement between the EU and the Republic of Singapore – Analysis," *European Parliament Directorate-General for External Policies website*, http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603864/EXPO_STU(2018)603864_EN.pdf, accessed 17 January 2019.

In terms of trade in goods, tariffs on 84% of Singapore exports into the EU will be eliminated immediately upon entry into force of the EUSFTA, while the remaining 16% will be eliminated, at the latest, in five years. Singapore grants immediate tariff elimination on all EU exports, including beer and stout, and will be bound to maintain this treatment under the EUSFTA.[22] This will benefit the 50,000 EU companies[23] currently exporting to Singapore and is encouraging to those that intend to do so in the future.

A unique aspect of the EUSFTA is the concept of ASEAN cumulation. Singapore manufacturers may include use of raw materials and parts sourced from ASEAN member states as originating content in their Singapore processed products for export to the EU.[24] This is subjected to the completion of cross-country administrative procedures and observation of certain criteria. If the EU were to conclude additional FTAs with other ASEAN member states, regional cumulation will be further facilitated under specific conditions that will be updated accordingly.[25] Companies with an interest in manufacturing in ASEAN for the EU market may find these provisions a useful pathfinder and early initiative for setting up such a regional supply chain while awaiting the EU-ASEAN FTA, as negotiations are being restarted.

Enhanced market access is also allowed under the EUSFTA for Asian food products made in Singapore, such as dried Chinese sausage and Indian flatbread. These can enter the EU duty free under flexible rules of origin, but within a combined quota of 1,250 metric tons annually.[26] With this unique EUSFTA commitment, Asian food producers may then find Singapore a more palatable operating location and EU entry point. Interestingly, Singapore has accepted EU tested/approved vehicles as compliant with its own vehicle regulations.[27] This means that EU vehicle producers covered under the commitment would find entry into the Singapore market faster and easier.

[22] "EUSFTA — A guide for Singapore-based companies to understanding the EUSFTA," *Singapore Ministry of Trade and Industry website*, https://www.mti.gov.sg/-/media/MTI/Microsites/EUSFTA/EUSFTA-Guide-for-SG-Businesses-v2.pdf, accessed 17 January 2019.

[23] "EU Singapore Free Trade Agreement, Investment Protection Agreement," *European Commission website*, http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156712.pdf, April 2018.

[24] "EUSFTA — A guide for Singapore-based companies to understanding the EUSFTA," *Singapore Ministry of Trade and Industry website*, https://www.mti.gov.sg/-/media/MTI/Microsites/EUSFTA/EUSFTA-Guide-for-SG-Businesses-v2.pdf, accessed 17 January 2019.

[25] "EU-Singapore trade and investment agreements closer to conclusion," *European Parliament website*, http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628256/EPRS_BRI(2018)628256_EN.pdf, October 2018.

[26] "European Union and Singapore sign Free Trade and Investment Protection Agreements," *Singapore Ministry of Trade and Industry website*, https://www.mti.gov.sg/-/media/MTI/Microsites/EUSFTA/Press-Release-on-Signing-of-EUSFTA--EUSIPA-on-19-Oct-18--v2.pdf, 19 October 2018.

[27] "Free Trade Agreement between the EU and the Republic of Singapore - Analysis," *European Parliament Directorate-General for External Policies website*, http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603864/EXPO_STU(2018)603864_EN.pdf , accessed 17 January 2019.

In terms of services, Singapore and the EU opened up more service sectors to each other's service providers, particularly in sectors such as computer services, postal services, telecoms, financial services, maritime services and e-commerce. One specific example is in commercial banking where qualifying EU banks will be allowed to establish some additional 25 customer service locations above the current limit of 25 locations provided for in the World Trade Organization General Agreement on Trade in Services (WTO GATS).[28] This is an area that the over 10,000 EU companies[29] established in Singapore for Asia-Pacific hub purposes may wish to explore for opportunity identification purposes.

Last but not least, the EUSFTA also includes provisions on government procurement. The EU has the largest government procurement market in the world and will grant Singapore enhanced access to city-level and municipal-level government procurement opportunities. Companies that will benefit include computer-related services, telecommunications services, land transport services, maintenance and repair services, sewage and refuse disposal, and architecture and engineering services.[30] Singapore also granted EU access to tenders from more government entities, particularly in the utilities sector, such as the Public Utilities Board.[31] With Singapore Government contracts worth USD16.6 billion in 2016,[32] the Singapore market may provide new opportunities for European companies as well.

The FTA will be sent to the European Parliament for approval early in 2019. After approval is granted, the EU and Singapore Governments would need to ratify the FTA for it to enter into force. It is hoped that this will occur before the end of the current European Commission mandate in 2019. It is also expected that if the EU-Singapore FTA is ratified before Brexit on 29 March 2019 or during the transitional period, the FTA would remain applicable to the UK until the transition period ends as of 31 December 2020.[33]

[28] "Free Trade Agreement between the EU and the Republic of Singapore — Analysis," *European Parliament Directorate-General for External Policies website*, http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603864/EXPO_STU(2018)603864_EN.pdf, accessed 17 January 2019.

[29] "EU and Singapore forge closer economic and political ties," *European Commission website*, http://trade.ec.europa.eu/doclib/press/index.cfm?id=1926, 19 October 2018.

[30] "European Union and Singapore sign Free Trade and Investment Protection Agreements," *Singapore Ministry of Trade and Industry website*, https://www.mti.gov.sg/-/media/MTI/Microsites/EUSFTA/Press-Release-on-Signing-of-EUSFTA--EUSIPA-on-19-Oct-18--v2.pdf, 19 October 2018.

[31] "EU-Singapore trade and investment agreements closer to conclusion," *European Parliament website*, http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628256/EPRS_BRI(2018)628256_EN.pdf, October 2018.

[32] "Over 80% of govt contracts go to SMES; more help on the way," *Business Times*, 8 March 2017.

[33] "EU-Singapore trade and investment agreements closer to conclusion," *European Parliament website*, http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628256/EPRS_BRI(2018)628256_EN.pdf, October 2018.

Upgrade of the China-Singapore Free Trade Agreement

The CSFTA entered into force on 1 January 2009. Since then, China and Singapore bilateral trade has grown, reaching USD100 billion in 2017. Upgrade negotiations were launched in 2015, culminating in the CSFTA Upgrade Protocol that was signed on 12 November 2018. Both China and Singapore will work to ratify the protocol and implement the agreement.

For trade in goods, the focus is more on easing trader burden in terms of customs and documentation than on market access. This could be due to the already significant market access commitments provided under the original CSFTA. Under the upgrade, there is only one highlighted improvement in the rules of origin for a list of petrochemical goods.

What may be of greater interest and benefit to traders of both sides is the agreement to establish the Electronic Origin Data Exchange System (EODES), as well as improved customs procedures and trade facilitation.

Under the EODES, Chinese and Singapore traders would no longer need to submit hard copies of the certificate of origin, with the relevant documents transmitted through the system. It is scheduled to be implemented from July 2019 onward. This benefits both companies and governments through supporting more efficient trade flows while ensuring comprehensive and effective bilateral customs verification.

Further, the CSFTA also increases certainty and clarity in terms of customs procedures and would surpass existing commitments under the WTO Trade Facilitation Agreement. Singapore exporters will now be able to obtain advance rulings from China for origin of goods, tariff classification and customs valuation method within 60 days of application, and these rulings would be valid for up to three years. China will also release all goods within 48 hours of arrival, and express shipments will be released within six hours where possible upon arrival.[34]

These changes are strong indications of both the Chinese and Singapore Governments' commitments to boost bilateral supply chain integration and trade flows, increasing the attractiveness of Singapore as a gateway to China versus other regional competitors. In terms of trade in services, the upgraded CSFTA improves Singapore businesses' access to China's legal, maritime and construction services, while Chinese businesses gain access to Singapore's air transport, courier and environment sectors.[35] Specifically, the opening of courier services to Chinese companies in Singapore will benefit Chinese e-commerce platforms, as well as Chinese small and medium enterprises (SMEs) selling goods and services on these platforms.

[34] "China and Singapore sign upgraded agreement," *Singapore Ministry of Trade and Industry website*, https://www.mti.gov.sg/-/media/MTI/Newsroom/Press-Releases/2018/11/Press-Release---China-and-Singapore-Sign-Upgraded-Agreement_12-Nov.pdf, 12 November 2018.

[35] Ibid.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

With effect from 30 December 2018, the CPTPP has come into force. Details of the implications for the CPTPP can be found in "The Comprehensive and Progressive Agreement for Trans-Pacific Partnership comes into effect on 30 December 2018" in the December 2018 issue of *TradeWatch*.

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Côte d'Ivoire

Customs procedure for export

Unlike third-party importation of goods, the export process of goods to another country is not well-defined in the Republic of Côte d'Ivoire.

Notwithstanding, certain specific rules apply:

1. When the goods to be exported are subject to a specific regulation, such as export authorization, weighing report, packaging and labeling requirements, health certificate, among others, the exporter must be in possession of all the required documentation before submitting a customs declaration. For example, this applies to certain strategic products, such as coffee, cocoa, cashews and others.
2. When the goods to be exported have been manufactured under certain customs regimes, the export customs declaration must allow for the clearance procedure specified in the temporary admission for manufacturing agreement.
3. Goods that are exported in containers by sea must be scanned in either the Abidjan or San Pedro Port. This does not apply to goods exported by air; however, exporters must meet air carriers' packing requirements.
4. In other cases, the export is not subject to the above rules. However, in all cases, the exporter must comply with the regulatory standard imposed by Côte d'Ivoire for the type of goods exported.

Customs guarantee

The requirement for customs bank guarantee for exported goods is different from that for imported goods.

A customs guarantee is required for imports (including where financial transactions are carried out by an authorized agent) only when the value of imported goods exceeds XOF10,000,000 (approximately USD17,498).

A customs guarantee is required for all exports, regardless of the value of the exported goods.

In practice, the customs guarantee is obtained as follows.

The exporter provides:

- Four copies of one "foreign exchange commitment" certificate and attaches to each copy a certified copy of the commercial contract (or another document that may be used in its place)
- Four copies of one "export certificate" for each shipment

The exporter submits these certificates to the bank providing the customs guarantee. After the bank confirms that the information in the documents is correct, the number of the customs guarantee file, the bank's stamp and the signature of an agent authorized to engage the bank are entered on the certificates.

The exporter receives the four copies of the completed certificates and submits them to the Customs Services at the same time as the exported goods.

Export certificate control and transmission procedure

The customs inspector who receives the export declaration ensures that the information entered on the export certificate matches the information relating to the nature, destination, quantity, customs value and invoiced value of the goods that is entered on the export declaration. The customs inspector then enters in the box reserved for this purpose the declaration number and date of customs clearance and affixes his or her stamp and signature.

The customs office gives the exporter one copy of the export certificate and forwards one copy to each of the following:

- The customs guarantee bank
- The Central Bank of West African States
- The Foreign Finances Department

Transmissions to the Central Bank of West African States and the Foreign Finances Department are made weekly or monthly on a form that shows the number of declarations, the customs guarantee number and name of the bank that is indicated on the certificates.

Exporter obligations

Under Article 11, Annex II of Regulation N° 09/2010/CM/UEMOA relating to the external financial relations of the West African Economic and Monetary Union (WAEMU), the exporter is required to cash and repatriate to the home country, through the bank providing the customs guarantee, all proceeds from sales of goods abroad within one month from the payment due date, as provided in the commercial contract. In principle, the payment due date must be within a maximum of 120 days following the exportation of the goods.

The bank must process the actual repatriation of export earnings proceeds through the Central Bank of West African States.

Penalties for noncompliance

Section 46 of Law No 2014-134 of 24 March 2014 on the adjudication of noncompliance with the regulations of the WAEMU member states provides penalties for noncompliance.

According to this section, any individual who has not repatriated export proceeds as required by law is subject to a minimum fine equal to the amount of the customs value and a maximum fine equal to twice the customs value of the exported goods.

Under Section 5 of Law No 2014-134 of 24 March 2014, the Customs Investigation Services has the authority to handle cases of noncompliance.

Companies doing business in Côte d'Ivoire and the region are advised to map and assess their processes to ensure compliance with the export requirements.

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Cyprus

Cyprus Administrative Court rules customs officials are authorized to investigate IP rights infringements

Recently, in Case 281/2017, the Cyprus Administrative Court held that customs authorities are entitled to seize and/or confiscate counterfeit goods, or goods deemed counterfeit, and initiate proceedings for intellectual property (IP) rights infringements. This also applies to goods that have already cleared customs and have been placed on the market.

This article summarizes the court's decision.

Facts of the case

The defendant is a market leader in the domestic toy retailing industry, and its principal activities relate to the distribution and retailing of children's toys, baby items, and stationery as well as home goods.

Further, to a complaint by an IP rights holder, the defendant was subject to a customs inspection at its premises and the customs authorities seized a number of toys as they were deemed counterfeit and in violation of IP rights.

The defendant appealed to the Administrative Court, claiming that the customs inspection and subsequent seizure of the goods constituted an unauthorized administrative act, and therefore, the goods should not have been seized from the appellant's premises. One of the arguments put forward was that the defendant was not aware that the goods were counterfeit and the customs authorities should not have confiscated the goods when they were placed in free circulation, but rather any issues should have been identified and dealt with at the point of entry in Cyprus.

The court's decision

The Administrative Court affirmed that the Customs Department is duly authorized and has the power to seize and/or confiscate goods based on suspicion of IP rights infringement.

The court held that the seizure and/or confiscation of goods after customs clearance and prior to the judicial declaration regarding confiscation is of a civil nature, not administrative, and therefore, it is outside the jurisdiction of the Administrative Court. The appeal was therefore dismissed at this level.

Implications for businesses

The decision clarifies the importance of IP rights, including royalties, copyrights and trademarks, and the IP rights enforcement powers of customs officials that go beyond the customs clearance stage and can extend to the stage where the goods are placed for consumption on the market.

IP rights are also important for customs valuation purposes. Under the law, the determination of the customs value of imported goods, royalties and license fees that the buyer pays must be added to the actual price paid or payable for the imported goods.

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European Union

The European Commission removes "domestic sale" principle from guidance document on customs valuation

The minutes of the fifth meeting of the European Commission's Customs Expert Group, Valuation Section (CEG) were published on 30 October 2018. The CEG removed all references to the so-called "domestic sales" in the Guidance Document on Customs Valuation.[36] This removal is expected to substantially affect the customs valuation of goods for export to the European Union (EU) that are subject to transactions between two EU-residing parties.

Background

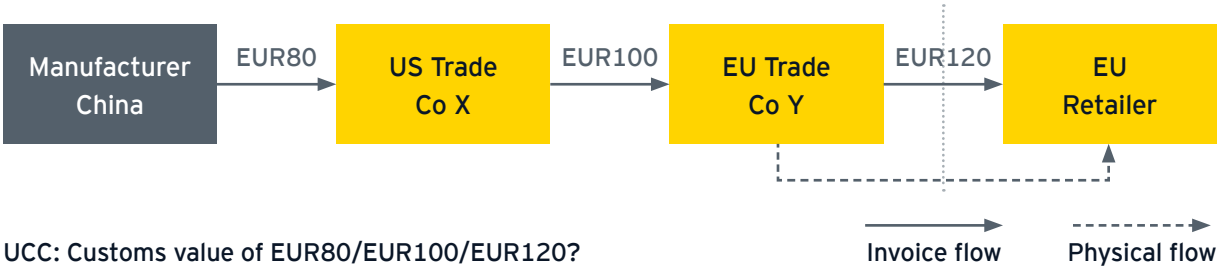
On 29 December 2015, the Implementing Act to the Union Customs Code[37] was published introducing the last-sale principle to determine the customs value of goods sold for export to the EU customs territory. As a result, the customs value is determined based on the sale that brings the goods into the EU, or in other words, the sale that occurs immediately before the goods are introduced into the EU customs territory. The legal package of the Union Customs Code[38] that included the last-sale principle became effective on 1 May 2016.

On 28 April 2016, the European Commission published the *Guidance Document on Customs Valuation* (the guidance document). This legally nonbinding document provided additional guidelines for applying the last-sale principle and, at the same time, introduced the "domestic sale" principle. A transaction qualifies as a "domestic sale" if the sale is concluded between two EU-residing parties. The European Commission also provided that a domestic sale cannot constitute a sale for export.

[36] *Guidance Document on Customs Valuation Implementing Act* Article 128 and 136 UCC IA and Article 347 UCC IA.

[37] Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558–893.

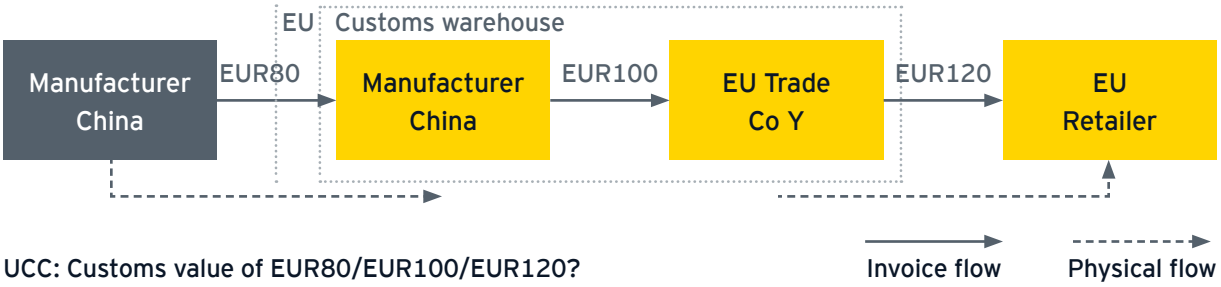
[38] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1–101.



UCC: Customs value of EUR80/EUR100/EUR120?

Example 1

In the above example, the sale occurring immediately before the introduction of the goods into the EU customs territory – the last sale – is the sale between EU Trade Company Y and EU Retailer (EUR120, approximately USD137). However, based on the guidance document, this sale is to be treated as a domestic sale. Hence, this sale cannot constitute a sale for export, and subsequently, the customs value should be based on the transaction between US Trade Company X and EU Trade Company Y, provided that this transaction constitutes a sale for export to the EU customs territory.



UCC: Customs value of EUR80/EUR100/EUR120?

Example 2

This same domestic sale principle is applied to a situation where the goods were sold for export in a customs warehouse in the European Union, where there was no sale that involved the goods on arrival into the EU. In those situations, the customs value should have been based on the transaction value of a sale "taking place in/from the customs warehouse"[39] within the EU customs territory, provided that such sale does not qualify as a domestic sale.

[39] *Guidance Document on Customs Valuation Implementing Act* Article 128 and 136 UCC IA and Article 347 UCC IA, page 9.

Following the principle in the above example, the customs value should be based on the transaction between Manufacturer X China and EU Trade Company Y (EUR100, approximately USD114).

Domestic sale removed from the EU guidance document

On 30 October 2018, the minutes of the CEG meeting were published. The CEG accepted the proposal to delete all references to domestic sales (a concept that does not exist in the customs legislation) from the chapter on sale for export in the guidance document. The guidance document has not been updated so far following this decision, but it is apparent from the minutes that the domestic sale principle will be removed.

For the first example described above, this would mean that the customs value should be based on the transaction between EU Trade Company Y and EU Retailer (EUR120), provided that this transaction constitutes a sale for export. For the second example, the customs value may also be based on the transaction between EU Trade Company Y and EU Retailer (EUR120). It seems that the European Commission in the current guidance document is providing importers the option to base the customs value on the transaction value of the sale from the customs warehouse. It is not yet clear whether the option to choose between these transactions will remain part of the guidance document or whether it will also be revised. The meeting minutes of the CEG mention that this will be further examined at the next CEG meeting given that some member states appear to have a preference for taking as the relevant sale "the one involving the EU buyer who finally declares the goods for free circulation." However, so far, the CEG has not taken a final position on this issue.

Implications

Taxpayers should evaluate their supply chains to ascertain whether the removal of the domestic sale principle impacts the customs value of their goods that are imported into the EU customs territory, especially where a transaction between two EU-residing parties in a company's supply chain currently qualifies as a "last-sale-for-export." This could mean that going forward the customs value may be determined on a later sale within the supply chain that may result in higher customs duties.

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Iraq

Iraqi customs authorities to enforce laws on customs duties and import taxes

The Iraqi customs authorities have announced that, effective 1 January 2019, they will start enforcing the levy and collection of customs duties and import taxes that are applicable to goods imported by state departments, the public sector, the mixed sector, civil organizations and private parties.

The Iraqi customs authorities also clarified that imports made by ministries and state bodies for investment contracts listed in the Federal Government's draft 2018 Budget Act are excluded from customs duties and import taxes, if the exclusion is supported by an official letter from the Iraqi Ministry of Planning.

Historically, the application of the customs duty law in Iraq has been inconsistent and subject to postponement on many occasions. Importers should review their operations planning and assess the implications of this announcement by the Iraqi customs authorities.

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Kenya

Kenya adjusts excise duty rates

Kenya recently increased certain excise duty rates by up to 5.2% (the average inflation rate for the 2017/2018 financial year) via Legal Notice 239 (LN 239). LN 239 has no specified effective date. However, it was dated 11 December 2018 and published in the Official Gazette on 21 December 2018. At the same time, Legal Notice 240 (LN 240), effective as of 12 December 2018, reduced the excise duty rates on petroleum products, which in effect nullified the increase imposed by LN 239, i.e., the excise duty rates for petroleum products remain at their previous levels.

Pursuant to Kenya's Excise Duty Act 2015, both the Cabinet Secretary and the Commissioner General of the Kenya Revenue Authority are empowered to adjust excise duty rates.

The Cabinet Secretary may adjust (by increasing or decreasing) the rate of excise duty on excisable goods or services by an amount not exceeding 10%. Further, the act empowers the Commissioner General to adjust specific excise duty rates annually because of inflation.

The first inflation adjustments were introduced on 1 August 2018 by the Commissioner General via Legal Notice 164, which was later annulled in September 2018 by the National Assembly due to insufficient public participation.

In December 2018, both the Commissioner General and the Cabinet Secretary exercised their powers and introduced new excise duty dates via LN 239 and LN 240.

LN 239 adjusted excise duty rates for all excisable goods with specific excise duty rates, including petroleum products. As value-added tax was imposed on petroleum products in 2018 that resulted in an increased cost of living. It appears that LN 240 was introduced to counter the increased excise duty on petroleum products by reducing the rates by up to 4.9% effective 12 December 2018. The resultant net of the two notices is that the excise rates on petroleum products remain unchanged.

Below are the new rates introduced under LN 239 dated 11 December 2018:

Description	Prior rate of excise duty (KES)	New rate of excise duty (KES)
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	10.00 per liter	10.50 per liter
Bottled or similarly packaged waters and other non-alcoholic beverages not including fruit or vegetable juice	5.00 per liter	5.20 per liter
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%	100.00 per liter	105.20 per liter
Powdered beer	100.00 per kg	105.20 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	150.00 per liter	157.80 per liter
Spirits of undenatured ethyl alcohol; spirits, liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	200.00 per liter	210.40 per liter
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	10,000.00 per kg	10,520.00 per kg
Electronic cigarettes	3,000.00 per unit	3,156.00 per unit
Cartridge for use in electronic cigarettes	2,000.00 per unit	2,104.00 per unit
Cigarette with filters (hinge lid and soft cap)	2,500.00 per 1,000	2,630.00 per 1,000
Cigarettes without filters (plain cigarettes)	1,800.00 per 1,000	1,893.00 per 1,000
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	7,000.00 per kg	7,364.00 per kg
Motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles	10,000.00 per unit	10,520.00 per unit
Condensates per 1,000 liters at 20°C	6,225.00	6,548.70
Motor spirit (gasoline) regular per 1,000 liters at 20°C	19,505.00	20,519.20
Motor spirit (gasoline) premium per 1,000 liters at 20°C	19,895.00	20,929.50
Aviation spirit per 1000 liters at 20°C	19,895.00	20,929.50
Spirit type jet fuel per 1,000 liters at 20°C	19,895.00	20,929.50
Special boiling point spirit and white spirit per 1,000 liters at 20°C	8,500.00	8,942.00
Other light oils and preparations per 1,000 liters at 20°C	8,500.00	8,942.00
Partly refined (including topped crude) per 1,000 liters at 20°C	1,450.00	1,525.40
Kerosene type jet fuel per 1,000 liters at 20°	5,755.00	6,054.20
Illuminating kerosene per 1,000 liters at 20°C	7,205.00	7,579.60
Other medium oils and preparations per 1,000 liters at 20°C	5,300.00	5,575.60
Gas oil (automotive, light, amber for high speed engines) per 1,000 liters at 20°C	10,305.00	10,840.80
Diesel oil (industrial, heavy, black for low speed marine and stationary engines) per 1,000 liters 20°C	3,700.00	3,892.40
Other gas oils per 1,000 liters at 20°C	6,300.00	6,627.60
Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 125 centistokes per 1,000 liters at 20°C	300.00	315.60
Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 180 centistokes per 1,000 liters at 20°C	600.00	631.20
Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 280 centistokes per 1,000 liters at 20°C	600.00	631.20
Other residual fuel oils per 1,000 liters at 20°C	600.00	631.20

Below are the excise duty rates applicable on petroleum products as per LN 240:

Tariff no.	Tariff description	Prior rate (KES)	Rate per LN 239 (KES)	Rate per LN 240 (KES)
2709.00.10	Condensates per 1,000 liters at 20°C	6,225.00	6,548.70	6,225.00
2710.12.10	Motor spirit (gasoline) regular per 1,000 liters at 20°C	19,505.00	20,519.20	19,505.00
2710.12.20	Motor spirit (gasoline) premium per 1,000 liters at 20°C	19,895.00	20,929.50	19,895.00
2710.12.30	Aviation spirit per 1,000 liters at 20°C	19,895.00	20,929.50	19,895.00
2710.12.40	Spirit type jet fuel per 1,000 liters at 20°C	19,895.00	20,929.50	19,895.00
2710.12.50	Special boiling point spirit and white spirit per 1,000 liters at 20°C	8,500.00	8,942.00	8,500.00
2710.12.90	Other light oils and preparations per 1,000 liters at 20°C	8,500.00	8,942.00	8,500.00
2710.19.10	Partly refined (including topped crude) per 1,000 liters at 20°C	1,450.00	1,525.40	1,450.00
2710.19.21	Kerosene type jet fuel per 1,000 liters at 20°	5,755.00	6,054.20	5,755.00
2710.19.22	Illuminating kerosene per 1,000 liters at 20°C	7,205.00	7,579.60	7,205.00
2710.19.29	Other medium oils and preparations per 1,000 liters at 20°C	5,300.00	5,575.60	5,300.00
2710.19.31	Gas oil (automotive, light, amber for high speed engines) per 1,000 liters at 20°C	10,305.00	10,840.80	10,305.00
2710.19.32	Diesel oil (industrial, heavy, black for low speed marine and stationary engines) per 1,000 liters at 20°C	3,700.00	3,892.40	3,700.00
2710.19.39	Other gas oils per 1,000 liters at 20°C	6,300.00	6,627.60	6,300.00
2710.19.41	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 125 centistokes per 1,000 liters at 20°C	300.00	315.60	300.00
2710.19.42	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 180 centistokes per 1,000 liters at 20°C	600.00	631.20	600.00
2710.19.43	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematic viscosity of 280 centistokes per 1,000 liters at 20°C	600.00	631.20	600.00
2710.19.49	Other residual fuel oils per 1,000 liters at 20°C	600.00	631.20	600.00

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Qatar

Excise tax goes live in Qatar; opening inventory on 1 January also taxable

Qatar has implemented excise tax on selected goods as of 1 January 2019. The taxable goods and rates are consistent with the other Gulf Cooperation Council (GCC) states that have implemented the tax, but with one addition: special commodities. The excisable goods and rates in Qatar are as follows:

Tobacco and its derivatives, including shisha	100%
Energy drinks	100%
Carbonated drinks, including carbonated water with sweeteners or flavor	50%
Special commodities	100%

The special commodities, as clarified by the Ministry of Finance, refer to alcoholic beverages and pork products. The inclusion of alcoholic beverages among the excisable goods comes as a surprise considering that in less than four years, Qatar will host World Cup 2022 and international guests will be expecting a full World Cup experience. A six-pack of beer now costs at least USD22.

Paying the tax

Excise tax is payable by importers, licensed tax warehouses or local producers of the excisable goods upon the release of the goods for consumption. The tax can also be demanded from whoever possesses the excisable goods if it can be determined that tax has not yet been paid. In the case of importers, the tax is paid on customs clearance or through the submission of an excise tax return. In the case of producers or tax warehouse operators, the tax is payable on the submission of an excise tax return.

There is no revenue threshold as to when importers or local producers should register and pay excise tax on these goods. Licensed tax warehouse operators are likewise required to register for this tax. An intention to perform these activities and a commercial registration are the minimum requirements.

The excise tax is based on the standard selling price set by the Ministry of Finance or the published retail price of the importer or producer, whichever is higher.

The excise tax return must be submitted and the tax paid within 15 days from the end of every tax period, which is quarterly in a calendar year. The excise tax return is now the third periodic tax return required by Qatar tax authorities, in addition to the annual income tax return and the monthly withholding tax return.

Exemptions

Diplomatic and consular corps accredited by Qatar, including their heads and members, and international organizations are exempt from paying the excise tax on import of excisable items, provided there is reciprocity. They are also given the right to seek a refund of any excise tax paid when purchasing excisable goods from suppliers.

Likewise, passengers arriving in Qatar will not be required to pay excise tax on excisable goods in their possession provided that these are not of a commercial nature and they comply with the terms and rules under the provisions of the Qatar Customs Law.

Excisable goods for sale in duty-free shops at the airport's departure area are also exempt from excise tax.

Transitional rules

A one-time transitional excise tax return was required to be filed by 31 January 2019 by any person or legal entity owning or holding excisable goods when the law became effective on 1 January 2019 and where these goods are held for business purposes. The requirement applies to, among others, supermarkets, retail shops, hotels and restaurants. The resulting excise tax must be paid to the General Tax Authority within 30 days from the date of filing of the return.

Fourth GCC state to implement the tax

Qatar is the fourth GCC state to implement the tax after the Kingdom of Saudi Arabia, the United Arab Emirates and Bahrain. Kuwait and Oman have yet to implement excise tax. The imposition of excise tax is in addition to the GCC Common Excise Tax Agreement approved by all GCC member states in 2016.

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Saudi Arabia

Saudi Arabia Customs Authority introduces audit initiative

Under the ambit of Vision 2030 economic reforms, the Saudi Arabia Customs Authority (Saudi Customs) is working to enhance trade facilitation and improve customs compliance as part of the government's vision for transforming Saudi Arabia into an international logistical hub.

To achieve this, Saudi Customs is implementing programs to facilitate trade, reduce clearance time, require fewer documents and, most importantly, increase the customs compliance culture through the introduction of an "audit-after-clearance initiative." This initiative aims to contact importers after goods have been cleared to confirm that the importers have satisfied their customs regulatory obligations and that all customs records are compliant and complete.

In connection with the audit-after-clearance initiative, Saudi Customs has recently contacted many multinational and local importers for customs audits. The audit visits have focused on a wide range of issues, including examining the transaction value, bank statements, sales contracts, inventory papers, financial statements, nonfinancial records, payment terms, total imports, tariff headings and customs duty payments.

Based on the audits, it appears that Saudi Customs expects importers to have these documents readily available and to be able to demonstrate a clear link between all documents in the transaction, from the commercial invoice to the customs *Bayan* (declaration) and payments. If Saudi Customs concludes that an importer is noncompliant, potential penalties under Saudi customs law range from SAR500 (approximately USD133) per offense up to twice the amount of the customs duties due on an imported consignment.

Saudi Customs may audit the operations of any Saudi-registered importer, irrespective of the size of the business and its customs transaction compliance in the future. Importers need to assess their readiness for a customs audit by considering the following questions:

- Has the importer conducted a pre-assessment of its customs activities to identify potential gaps and issues that could be challenged by Saudi Customs? How does the importer plan to handle any issues before a customs audit to avoid potential liabilities and penalties?

- How adequately is the importer prepared to manage a customs audit? Does the importer have a customs audit management strategy in place? How will the importer handle communications with Saudi Customs and the internal coordination between the various departments? Who in the importer's organization is going to lead the discussions with Saudi Customs?
- To what extent is the importer's company able to provide and explain, on a timely basis, a complete and organized set of customs transaction documents in response to any unexpected customs audit queries?
- Are there sufficient audit trails to link a Bayan number to the full set of import documentation, purchase order/contract and corresponding financial transactions?
- To what extent is the company in customs regulatory compliance from a documentary reconciliation, valuation, Harmonized Tariff Schedule (HTS) code, royalty and duty payment standpoint to avoid potential liability and penalties?

Businesses engaged in import and export operations in Saudi Arabia, including those experienced in customs practices, would benefit from reviewing the robustness of their documentation, processes and controls to ensure that they are ready for a potential customs audit.

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South Africa

South Africa's carbon tax to be effective 1 June 2019 and administered through Customs and Excise Act

On 20 November 2018, South Africa's Minister of Finance tabled the much-anticipated Carbon Tax Bill (the Bill) in Parliament. The Bill intends to ultimately lead South Africa to reduce greenhouse gas emissions based on the "polluter pays" principle. A phased approach to implementation will be employed, accompanied by generous tax incentives. The carbon tax will become effective from 1 June 2019, and it will be administered by the South African Revenue Service (SARS) through the Customs and Excise Act (the CEA).

Phased approach

The implementation of the carbon tax will be in a phased approach, starting with a modest initial effective tax rate that will be revised and increased over time. The first phase will run from 1 June 2019 to 31 December 2022 and the second phase from 2023 to 2030.

Tax incentives

The first phase of the carbon tax implementation will be accompanied by tax incentives to lessen the impact on energy-intensive sectors. For example, for the mining, iron and steel industries, the carbon tax will have an impact on the price of electricity for the first phase. This will be achieved through tax credits for the renewable energy premium (which is already built into the price of electricity) and the existing electricity generation levy.

A 60% tax-free emissions allowance is set for energy activities, and an allowance of up to 70% is set for industrial processes and product use (IPPU). In addition, other tax-free emissions allowances include:

- 10% for process and fugitive emissions
- 5% to 10% for companies that use carbon offsets to reduce their tax, depending on the activity and sector
- 5% for companies with an approved carbon budget
- 10% for companies that are trade exposed
- 5% for above-average performance

The maximum total tax-free emissions allowances are capped at 95%.

Administration: Customs and Excise Act

The carbon tax will be administered as if it were an environmental levy as contemplated under the CEA. This means that the tax will be collected and paid in terms of the provisions of the CEA.

Administrative actions, requirements and procedures for purposes of submission and verification of account, collection and payment of the carbon tax, and the exercise of any right in relation to the carbon tax, will be covered under the provisions of the CEA.

In essence, the entire administration and enforcement of the carbon tax will be done through CEA provisions.

Look for updates on South Africa's CEA in future issues of *TradeWatch*.

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Tanzania

Tanzania issues new value-added tax regulations

The Government of Tanzania published the Value Added Tax (General) (Amendment) Regulations, 2018 (the Regulations) on 19 October 2018. The Regulations amend the Value Added Tax (General) Regulations, 2015.

This article summarizes the key changes introduced by the Regulations.

Deferment of value-added tax

The threshold for deferment of value-added tax (VAT) on imported capital goods has been reduced and can be applied for if the VAT payable for each unit of capital goods is TZS10 million (approximately USD4,325) or more. Previously, approval could only be granted if the VAT payable was at least TZS20 million.

Once benefitting from VAT deferment on imported capital goods, an importer may not enjoy the VAT exemptions for importation of machineries for manufacturing vegetable oil, textiles, and pharmaceutical and leather products.

Apportionment of input tax

A supplier of both taxable and exempt supplies is required to apportion input tax.

To determine the apportionment of input tax, a taxpayer needs to allocate the total input tax to different categories:

- Input tax directly attributable to taxable supplies
- Input tax attributable to exempt supplies
- Input tax attributable to both taxable and exempt supplies in a given tax period

A taxable person may claim the whole of input tax directly attributable to taxable supplies but is not allowed to claim input tax directly attributable to exempt supplies. The taxpayer must apportion input tax attributable to both exempt and taxable supplies in line with the formula provided under the Value Added Tax Act, 2014.

Where a taxable person has conducted an economic activity for less than 12 months, the accounting year may be adjusted for the purpose of the input tax credit annual adjustment.

Apportionment of input tax for a supplier of financial services

A supplier of financial services that makes both taxable and exempt supplies is required to apportion input tax in accordance with the formula (I x T)/A where:

- T= Total value of taxable supplies excluding VAT
- A= Total value of all supplies (standard rated + zero rated + exempt) excluding VAT
- I = Total input tax for which credit is claimed in the tax period

Previously, the value of service imports was excluded from the apportionment.

Supply of financial services

Financial services, for which no consideration is charged, are exempt from VAT. The Regulations have made long-awaited clarifications.

The following services are not considered financial services:

- Safe custody for money or documents
- Brokerage services
- Debt collection or factoring services
- Legal, accounting, record packaging services and tax agency services, including tax advisory services, in which accounting and record packaging services may include:
  - Services related to a financial clearing system
  - Posting of financial transactions or maintenance of the account of customers of a supplier of financial services
  - Services ancillary to the above

Goods transported to Zanzibar from mainland Tanzania

To enjoy zero rating for locally manufactured goods transported from mainland Tanzania to Zanzibar, the manufacturer must produce the following documents:

- Tax invoice generated by electronic fiscal device (EFD)
- Landing certificate
- Single Administrative Document
- Transire[40]
- Certified copy of VAT registration certificate of the customer

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[40] A customs permit for a coastal vessel.

United Kingdom

Exporting from the EU after Brexit: changing definitions and consequences for FTA eligibility

With a high likelihood of a border existing between the United Kingdom (UK) and European Union (EU) post Brexit, the subject of who can be an importer and exporter has been critical for businesses. This is amplified by the EU free trade agreements (FTAs) approved exporter status.

This article sets out the practical implications of the definition of "exporter" for UK businesses exporting from the EU and taking advantage of EU FTAs in a post-Brexit scenario.

The definition of exporter under the Union Customs Code (UCC) has been analyzed in previous *TradeWatch* issues from a technical perspective.[41] Since then, on 30 July 2018, the European Commission (EC) published amendments to the Delegated Act of the Union Customs Code (UCC DA) introducing a new definition of exporter in the EU. In addition, the EC revised its *Guidance Document on the Definition of Exporter* (the Guidance).

According to the amended definition mentioned in Art. 1(19) of the UCC DA, an exporter must fulfill certain conditions. The exporter must be established in the territory of the EU (i.e., have a fixed place of business, where both the necessary human and technical resources are permanently present through which the customs-related operations are carried out). It must also either:

1) Have the power to determine that the goods are to be taken out of the EU

Or

2) Be a party to a contract under which the goods are to be taken out of the EU

The Guidance stipulates that the determination of whether a person has the power to decide that the goods are to be taken outside the customs territory should be made based on the supply chain. If this condition is not met, an EU-established person or entity can be made party to the contractual arrangements to act as the exporter.

[41] See "Union Customs Code becomes fully applicable as of 1 May 2016" in the March 2016 issue of *TradeWatch*.

The latter condition is aimed at providing greater flexibility in designating an EU-based person as the exporter. In other words, it is no longer required to have the power to determine that goods are taken out of the EU or to hold the contract with the consignee. In practice, this means that companies or corporate groups with EU-established entities (from a customs perspective) seem to have greater flexibility in terms of designating the exporter role within their supply chains. These companies or corporate groups, therefore, in principle face diminished risk of not being able to export from the EU after the UK officially leaves the EU.

Considerations for UK companies post Brexit

Brexit triggers a supply chain review for some UK companies or corporate groups that may not have enough EU customs presence to designate an EU exporter within their supply chains. They could, therefore, be at greater risk in terms of exporting goods from the EU after Brexit.

The Guidance mentions that carriers, freight forwarders or any other party may act as an exporter, so long as that person meets the definition of exporter and agrees to take on this role. In practice, however, many of these entities appear to be reluctant to take on these roles and responsibilities.

The Guidance further mentions that during the UCC transitional period, a work-around should be available. In practice, this means it would be possible for a non-EU established entity to act as the exporter. This can be achieved by appointing an indirect customs representative (i.e., the non-EU exporter is mentioned in box 2 of the export declaration and the indirect customs representative is mentioned in box 14 of the export declaration). The UCC transitional period ends as soon as the Automated Export System (AES, one of the so-called "UCC IT systems") has been implemented. It is unlikely that this system will be implemented before the end of 2020.

Most EU member states seem to follow the Guidance, allowing a non-established entity to be named as the exporter (e.g., the Netherlands). However, other member states have a stricter stance and only allow EU-established entities to act as exporter (e.g., Italy and Belgium). In practice, this could result in clients having disparate supply chains across the EU, a situation that is generally undesirable. If this is the case, it may be preferable for businesses to preempt this change and move immediately to use of an EU-established exporter.

Similarly, it is possible that the UK would apply the same exporter definition as stated in the EU law post Brexit. As such, the analysis above is also relevant to non-UK established businesses exporting from the UK.

Evidencing EU preferential origin

Another aspect that non-established exporters from the EU will have to consider in the future is their ability to substantiate the preferential origin of their goods.

In general, current EU FTAs provide for two ways to prove origin:

1) Invoice declarations
2) Certificates of origin (typically in the EUR1 format).

The appropriate proof of origin depends on the text of the relevant FTA

Invoice declarations (i.e., a signed statement on the invoice indicating the origin of the goods) can be used by any exporters for consignments with a value under EUR6,000 (approximately USD6,758) and by approved exporters for all other consignments. These declarations are often favored by exporters as they can be certified internally and included in existing documents (i.e., the invoice). Conversely, a certificate of origin is a separate document issued by a chamber of commerce certifying the origin of the goods. There are several acceptable formats for these certificates; however, the standard EU format is the EUR1 document. Businesses tend to dislike these, however, as they are not always readily available and they entail per-transaction costs.

While the EUR1 document has long been the standard proof of origin, there is a growing trend within EU FTAs toward approved exporter status. For example, the EU-South Korea FTA only recognizes proof made by approved exporters (i.e., EUR1 is not valid). In practice, this means that for consignments worth more than EUR6,000, exporters must hold approved exporter status to prove EU origin. Similar provisions are in place for EU FTAs with Canada and Japan.

Actions businesses can take

There are several solutions to the issues outlined in this article, all of them requiring proactive, immediate to short-term action by non-established businesses.

The solution with the least lead time is setting up an indirect representation arrangement with a freight forwarder. As many traders already have long-standing relationships with freight agents, these new contacts should not be challenging to negotiate, although they may entail higher costs due to the increased liability for the freight forwarder. As explained above, however, this is a temporary solution due to the transitional nature of current EU legislation.

In the long run, to tackle the exporter and approved exporter challenges together, businesses can consider the same entity to be the exporter and hold the approved exporter status. Since the origin declaration does not necessarily need to be stated on the invoice, the approved exporter does not need to be the entity issuing the invoice.

It is apparent in EU law that an entity acting as an approved exporter must be established in the customs territory of the EU, mirroring the wider definition of exporter. The implication for a UK entity currently making origin declarations under its approved exporter authorization is that it would no longer be able to continue to do so. Businesses will need to consider alternative ways to evidence origin, such as obtaining EUR1. However, for the EU FTAs that only recognize origin declaration made by an approved exporter, EUR1 would not be an option. In this case, the business can consider whether another entity with approved exporter status may act as exporter of record instead. For example, in Germany, the process of getting approved exporter status (from filing until approval) is approximately three to six weeks, which can be extended if customs decides to perform an audit during the approval process.

Groups with existing EU-established entities could route transactions through these entities and have them act as Exporters of Record from the EU. Though this would not require exporters to set up additional entities, their current supply chains would have to be reorganized and there is a possibility of increased administrative burdens as well. Additionally, depending on individual corporate structures, restructuring exports in this way could require lengthy internal negotiations.

Furthermore, businesses could establish themselves (or a subsidiary) in the EU (or in the UK post Brexit) for customs purposes. Such an establishment would need the appropriate human and technical resources to qualify as an EU entity. However, such an arrangement may not be desirable as it may constitute a permanent establishment (PE) risk for direct tax purposes. The PE risk is an example of why it is key to have a holistic view when considering indirect tax developments, such as a change in the definition of exporter.

Often, new developments in EU law begin as customs or VAT conversations and end up as wider business discussions. The implications of Brexit and businesses' ability to evidence EU origin highlights just how important it is to address the indirect tax developments in a timely manner.

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UK tax authority announces transitional simplified procedures in event of a no-deal Brexit

On 4 February 2019, Her Majesty's Revenue & Customs (HMRC) announced transitional simplified procedures (TSPs) to make it easier for goods to be imported from the European Union (EU) if the United Kingdom (UK) leaves without a Brexit deal on 29 March 2019. The TSPs are limited to roll-on roll-off (Ro-Ro) transit port locations only[42] and exclude imports from Ireland to Northern Ireland with specific information on Irish movements still to come.

How will TSPs work?

In brief, the TSPs allow a registered importer to file a simplified frontier declaration (with reduced data sets) to clear goods from the EU arriving in the UK at a Ro-Ro location and defer payment of customs duties (where applicable). They also require the importer to make a supplementary declaration, with full import details, by the end of the fourth working day of the following month. This is very similar to Customs Freight Simplified Procedures (CFSP). However, it is limited to "home use" (i.e., duty paid) imports only, and the procedure differs slightly for controlled goods, such as excise goods and licensable goods.

A key difference to a CFSP frontier declaration is that commodity codes and customs values are required with a TSP simplified declaration.

How long will TSPs be used?

This is a short-term facilitation based on the assumption of a hard Brexit only (i.e., the UK leaving the EU with no deal on 29 March) and will initially run for three to six months, at which point HMRC will decide if it will cancel the arrangement or carry on for another interim period. If the arrangement is cancelled, HMRC has indicated that there will be a 12-month notice period to anyone registered for and using the scheme.

TSP registration criteria

- Be established in the UK
- Have an Economic Operator Registration and Identification (EORI) number
- Be importing goods from the EU into the UK, including goods traveling via the EU from the rest of the world providing they have cleared EU customs formalities

[42] HMRC's full list available at: https://www.gov.uk/guidance/list-of-roll-on-roll-off-ports.

Registrations opened on 7 February through an HMRC online portal. The registration process looks relatively simple.

Other requirements

TSPs have been introduced on short notice and are intended to be a short-term solution; there remains a number of outstanding issues, and our global trade team will be clarifying these with HMRC. These include:

- How any financial guarantee for deferred duty will work in practice
- What software is required to submit the declaration (presumably through the Customs Declaration Service (CDS), and how in practice the simplified frontier declaration and the more complex "supplementary declaration" will be completed and submitted
- How the simplified frontier declaration will be linked to the Entry Summary Declaration (ENS) that needs to be filed by the carrier/vessel operator

Implications

The TSP is a positive development, but the no-deal Brexit timing represents a challenge, both for HMRC to roll out the system and processes and for importers to mirror that work. Unless there is widespread adoption of TSPs in the limited time available, it is difficult to envisage that it will materially impact border delays.

Also, it only deals with one cause of border delay risks. Nevertheless, for those businesses using RoRo lanes and that do not operate or have access to CFSP, there seems little downside risk to registering as it does not commit the importer to the use of TSPs.

As it stands, businesses should continue to work with their forwarding agents to effect frontier clearance at transit ports in the case of a no-deal Brexit. Key aspects that may change this point of view would be the simplicity and rollout timing of the TSP process.

For those businesses sensitive to border delay, they should consider more sustainable long-term options for speedier frontier clearance, such as CFSP, or for their forwarders/carriers to utilize the Common Transit Convention by bringing border clearances to approved "inland" locations (temporary storage facilities).

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