

TradeWatch



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**Building a better
working world**

Spotlight on Authorized Economic Operator



Authorized Economic Operator (AEO) has become a flagship program for customs administrations worldwide to enhance supply chain security and trade facilitation through a customs-business

partnership. AEO is premised on a risk-based approach whereby companies that are certified pursuant to criteria based on standards set out in the World Customs Organization (WCO) Standards to Secure and Facilitate Global Trade (SAFE Framework) are rewarded with a number of trade facilitation benefits, such as reduced levels of control, periodic reporting, deferred payment and reputational benefits.

As new AEO programs are launched and existing programs enhanced, businesses that commit to AEO standards are realizing tangible supply chain benefits that translate into greater business certainty, economic efficiencies and competitive advantages. In this issue of *TradeWatch*, we highlight AEO developments in the US, Turkey and the East Africa Community.

US CBP continues adoption of AEO concept with announcement of two new programs

Recent years have seen U.S. Customs and Border Protection (CBP) build significantly on the traditional customs authority role of duty collection with a host of new programs to improve inbound trade security and importer compliance capabilities. Among the most significant has been the continued implementation of the risk management principles advanced by the AEO concept.

The U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) is an example of an established AEO-type program. While C-TPAT has provided CBP with better oversight of imports and eligible importers with improved border efficiencies for many years, US AEO-type programs remain fragmented and do not currently include exporters. CBP's recent announcement of two programs – Trusted Trader Program and C-TPAT Exporter pilot program – are designed to remedy these issues and open the door for traders with comprehensive supply chain security programs to increase efficiency at ports of entry around the globe.

New Trusted Trader Program

CBP announced the Trusted Trader Program on 16 June 2014, seeking to unify the C-TPAT and Importer Self-Assessment (ISA) programs. CBP's goals are to achieve integrated US Government collaborations that result in enhanced efficiencies and reduced government expenditures; enhance information sharing between government agencies; lower administrative costs of participants by streamlining the application and validation process; and increase efficiencies in existing trade programs.

Program eligibility

CBP set forth a number of applicant eligibility requirements, but perhaps the most notable is that the Trusted Trader Program is not open to current ISA members. Additionally, applicants must meet the following requirements:

- ▶ Be an active US importer or Non-Resident Canadian Importer
- ▶ Have written policies and procedures pertaining to its import process
- ▶ Have at least two years of importing history prior to the date of application
- ▶ Conduct a C-TPAT-level security review of the applicant's supply chain



Key program incentives

Some of the notable incentives extended to Trusted Trader Program participants include:

- ▶ All incentives currently provided under C-TPAT and ISA
- ▶ Penalty mitigation, which allows importers to request a penalty credit toward penalty liability if approved
- ▶ Trusted Trader Program members who are in the Reconciliation program will be able to flag and unflag entries for reconciliation retroactively after filing the entry summary up to 60 days prior to the expected liquidation date – this also applies to blanket flagging as long as filers are in both Reconciliation and Trusted Trader and file through ACS
- ▶ Reduction of foreign trade zone on-site inspections exemption from on-site visits from drawback specialists for drawback claimants
- ▶ Processing of Post-Entry Amendments within 90 days

The Trusted Trader Program is initially limited to fewer than 10 participants. CBP has indicated that it would like these participants to include one or more importers currently in C-TPAT, one or more importers not currently participating in any CBP partnership program and one or two participants who have imports monitored by CBP's collaborators on the program, the U.S. Consumer Product Safety Commission and the U.S. Food and Drug Administration (FDA). The test will last at least 18 months, at which time CBP will assess its effectiveness in meeting the goals for the program.

C-TPAT Exporter pilot program

A second step toward a comprehensive AEO-type system in the US is CBP's announcement of a C-TPAT Exporter pilot program.² Historically, participation in the C-TPAT program has been limited to importers. With the planned inclusion of exporters in the program, CBP is not only taking steps to facilitate increased security at all points of the global supply chain, but also toward enhanced recognition between the AEO programs in the US and those of other major global customs authorities. This may bring further benefits for traders at an increased number of global ports.

Anticipated incentives

With this new program, certain exporters will have access to the incentives of the C-TPAT program for the first time. While a full list of potentially export-specific incentives has not been released by CBP, US exporters that meet the criteria should expect to benefit from fewer inspections and reduced border wait time; a dedicated C-TPAT supply chain specialist to serve as a liaison with CBP on licensing, validations and other matters; and reduced selection for compliance audits.

1. "Customs-Trade Partnership Against Terrorism Export Eligibility Requirements," U.S. Customs and Border Protection, 9 July 2014, available at <http://www.ctpat.com/ctpat/Exporter-CTPAT-Eligibility-Requirements-and-Minimum-Security-Criteria.pdf>.

Program eligibility

Access to the program will be limited to entities that meet CBP's definition of an exporter, which is "a person or company who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States." Exporters in the program will be required to conduct comprehensive risk assessment of their international supply chains, ensure adequate physical security requirements and work with existing and new business partners to maintain that level of security. On this last point, the current draft of the C-TPAT Exporter program requires that participants screen all service providers, manufacturers, product suppliers and vendors against prohibited party lists and report any listed entities to their CBP liaison within 24 hours. For traders that regularly conduct export business with listed parties, it will be important – as more details on the program emerge – to assess how those transactions will affect eligibility.

Gauging the benefits

The C-TPAT Exporter pilot program has not been given a start date, nor has any information been released on how many participants CBP will initially allow. As CBP has not yet issued a Federal Register Notice for comment on the program, there is likely time for exporters to begin to gauge the appropriateness of their participation before the pilot program opens. Key items to watch for in the coming months will be how this program is incorporated with or affected by the newly announced Trusted Trader Program, what effect current C-TPAT participation will have on the eligibility of entities wishing to participate, and what reaction or incentives there may be from global trading partners such as the EU and Japan that maintain more comprehensive AEO programs.

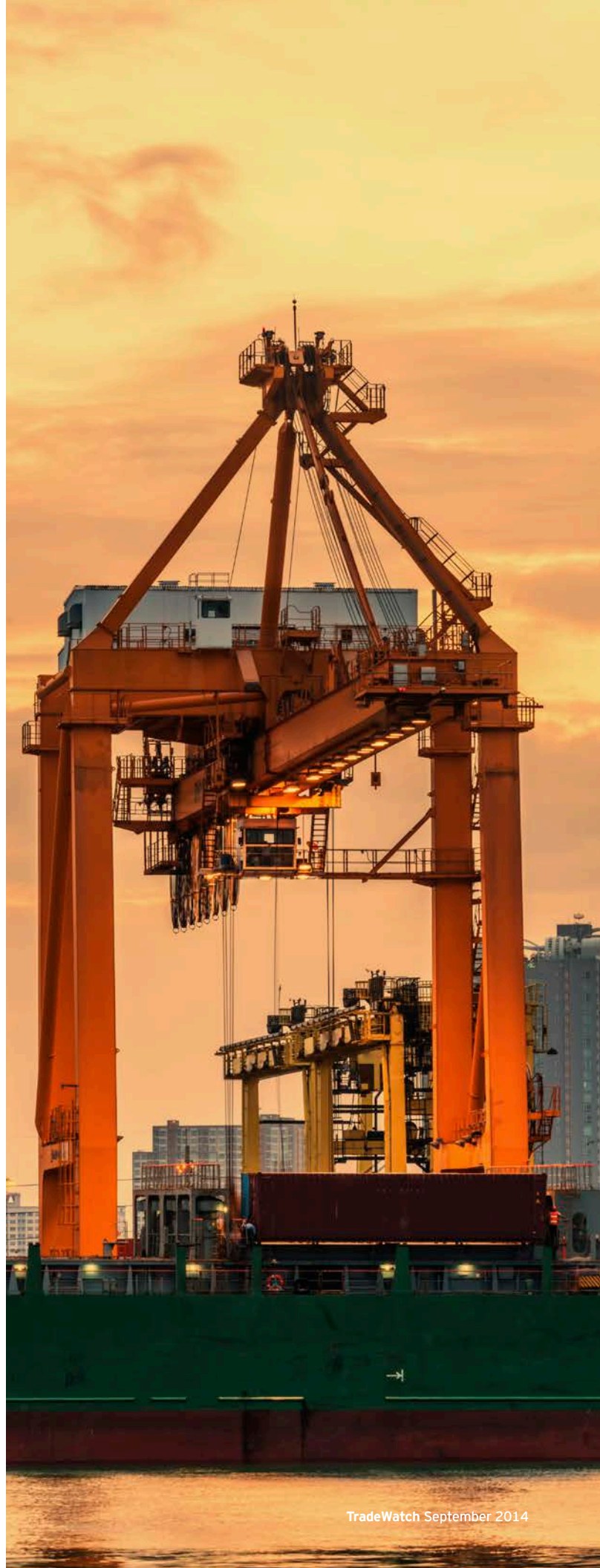
For additional information, contact:

Ernst & Young LLP (United States)

Michael Leightman, *Houston*
+1 713 750 1335
michael.leightman@ey.com

Jay Swamidass, *San Francisco*
+1 415 894 8755
jay.swamidass@ey.com

Seamus Flaherty, *New York*
+1 212 773 2527
seamus.flaherty@ey.com



AEO in Turkey: each factory to act like a customs administration



Turkey has now implemented simplified and facilitated procedures for imports as part of its AEO regime pursuant to the Regulation on the Facilitation of Customs Procedures, published in the *Official Gazette* on 21 May 2014. The regime has provided trade facilitations for exports since 2013.

Turkey's AEO program particularly benefits manufacturers with the opportunity for on-site customs clearance for imports and exports, allowing each factory to essentially act like a customs administration.

AEO now a significant advantage for manufacturers

The AEO benefits offered to approved companies can be summarized under two headings as follows:

Simplified customs procedures	Facilitation in safety and security procedures
<ul style="list-style-type: none"> ▶ On-site customs clearance for imports and exports ▶ Partial guarantee ▶ Lump sum guarantee ▶ Admission Temporaire Roulette (A.TR) issuance ▶ Incomplete declaration ▶ Invoice declaration ▶ Euro-Mediterranean movement certificate (EUR.MED) issuance ▶ Authorized consignor-authorized consignee 	<ul style="list-style-type: none"> ▶ Summary declaration with reduced data ▶ No additional documents in "green line" ▶ "On-vehicle" plus "green line" ▶ Fewer customs controls at the border ▶ Priority treatment if selected for customs control at the border

Without exception, the most outstanding advantage is the on-site customs clearance. AEO companies approved for this privilege can import goods via the "green line" directly to the business premises without document checks or inspections at the border. The import transactions and any customs controls will be completed at the business premises.

This benefit allows manufacturers more certainty and less delay with respect to imported inputs and raw materials necessary for the production process. Additionally, costs related to customs administration at the border, such as storage, loading, transportation, container opening and closing, etc. are eliminated.

The transport of the goods must be conducted by an "authorized consignor," defined as the shipper that is authorized to transfer goods to the on-site customs clearance area on the business premises. Shippers with "authorized consignee" status (available as of 14 May 2014 pursuant to the regulation) can complete transit transactions for imports at their own facility or at the business premises of AEO companies that hold the right for on-site clearance.

In order to ensure expedited release of the goods for production, the following conveniences are provided by the regulation:

- ▶ Customs procedures can be conducted "on-vehicle" on the business premises within 48 hours at the latest
- ▶ Two-hour notification time for customs control of the imported goods
- ▶ Unloading permit granted within 15 minutes following the delivery notification
- ▶ Customs procedures may be conducted out of working hours provided that notification is sent beforehand
- ▶ Import declarations are registered electronically by the owner of the goods or representative with the customs administration that will perform the procedures
- ▶ Authorized recipient has authorization for unsealing
- ▶ Customs procedures can be conducted from safe warehousing site or safe parking site
- ▶ Containers and large volume goods can be preserved on the business premises without requiring closing area



Should the goods be subject to inspection, customs inspection begins within three hours from notification that the goods are ready for importation. Goods identified for inspection are preserved in a safe warehousing site on the business premises, and are allowed to exit the safe warehousing site by payment of the import taxes or a provision of guarantee.

Overall, on-site customs clearance provides significant advantages for manufacturing operations. The reduction in input costs and better supply chain efficiency serves to lower product costs, thus making the finished goods more competitive in the local market as well as export markets abroad.

AEO conditions and requirements

In order to obtain the AEO certificate, companies must fulfill specified conditions and requirements under the following areas:

- ▶ Requirement of being a resident
- ▶ Reliability requirement
- ▶ Reliability and traceability of commercial records
- ▶ Financial capability requirement
- ▶ Safety and security requirement

Basically, the company needs to have procedures and processes in place so that the customs authorities can track the goods; have the necessary infrastructure to establish areas allocated to customs administration in order to prevent goods from exiting safe areas prior to completion of the procedures; and be transparent, accountable and subject to internal audits of the customs procedures.

In order to receive authorization for on-site customs clearance of imports, the following requirements must be met:

- ▶ Be a manufacturer (exception for group importers in the automotive industry)
- ▶ Exports of at least USD5 million or exports and imports totaling at least USD20 million
- ▶ Letter of guarantee or cash guarantee in the amount of EUR500,000 submitted to the customs authority
- ▶ Possess the necessary equipment and hardware for storing, unloading, examining and taking samples of the goods subject to AEO authorization

AEO to replace ASC

The regulation also stipulates that the Approved Status Certificate (ASC), which is the more limited form of Turkey's reliable trader practice, shall be revoked as of 1 January 2017. The ASC regime offers "blue line" or fast-lane customs inspection at the border for manufacturing companies. As AEO is basically replacing ASC, it is important that ASC companies complete the requirements to obtain the AEO certificate promptly.

For additional information, contact:

Kuzey Yeminli Mali Musavirlik A.S.

Sercan Bahadır, *Istanbul*
+90 212 368 4341
sercan.bahadir@tr.ey.com

AEO in the East Africa Community



As part of the on-going reforms and modernization initiatives and greater reliance on modern risk management techniques, the tax authorities in the East Africa Community (EAC) adopted the AEO regime pursuant to global standards as set out under the WCO SAFE Framework. The program grants special status and customs benefits to importers, exporters and their agents that have proven to be reliable and compliant partners with the tax authorities.

Beneficiaries

The AEO program is targeted at compliant operators that meet certain criteria that will benefit from the use of customs simplifications and other advantages as provided under the customs rules. The program is open to all entities, regardless of their size, that are involved in trade operations. In addition to importers and exporters, this includes, but is not limited to, logistics operators, warehouse operators, carriers, freight forwarders and customs agents.

Benefits

With AEO status, the company can enjoy a variety of benefits that vary depending on the type of AEO. Authorized Importers and Authorized Exporters benefit from reduced examinations and inspections at border checkpoints. Furthermore, Authorized Importers are allowed:

- ▶ Pre-arrival lodgment of import declaration and permission
- ▶ Release of cargo before duty/tax payment declaration
- ▶ Periodical lodgment of duty/tax payment declaration

For Authorized Exporters, the requirement to deposit cargo in the customs area before the export declaration is waived.

Authorized Warehouse Operators are allowed to establish additional new bonded warehouses simply by notifying the customs authorities, while permission is required for non-authorized warehouse operators. Additional benefits include compliance-reflected reduction of customs audits of warehouses, and waiver of the monthly fee for customs warehouses.

For Authorized Logistics Operators, such as forwarders, shipping companies, airlines and transportation companies, processes for customs transit are simplified. For example, AEO carriers and forwarders are not required to obtain permission for each and every customs transit.

For Authorized Customs Brokers, their importer clients enjoy release of goods prior to the duty/tax declaration and payment – even for non-authorized importers. Additionally, their exporter clients are allowed to file the export declaration prior to placing goods into the customs area where an Authorized Logistics Operator transports the goods to the customs area.

Additional benefits for all AEO companies include reputation – locally and worldwide – as a more compliant and security-oriented company, which can promote more business opportunities as well as favorable consideration and better relations with the customs authorities.

While the customs benefits for AEO operators are significant, there are some barriers to realizing the full benefits of AEO. For instance, goods subject to other quality and phytosanitary checks are still experiencing delays in clearing the goods. However, efforts are being made to integrate other government agencies into recognizing AEO status.

Preparing for AEO

Before applying for AEO status, it is important that the company is prepared. All standard operating procedures should be clearly documented and available for inspection by the related tax authority. In this regard, a clearly tabulated folder of all the company's procedures cross-referencing the relevant questions in the self-assessment questionnaire should be readily available. An impact assessment is advisable prior to submitting the application to clearly identify any compliance and security gaps in the company's operations so that the company can close such gaps and improve existing procedures to meet AEO standards.

The importance of preparing for AEO cannot be underestimated. The accreditation process can be lengthy, taking four to eight months to complete. If the application is unsuccessful, the company may not be allowed to reapply for two to three years.

Once approved, the AEO certificate has no expiration; however, AEO companies must continue to maintain the high standards. The related tax authority will assess whether the company remains in compliance with AEO requirements through periodic verifications of internal controls and site visits. The failure to remain in compliance with AEO requirements could lead to the withdrawal of AEO status.

We note that for multinational companies, the local subsidiary must apply for AEO even where the parent already has AEO status in their home country.

For additional information, contact:

Edwin Njagi, *Nairobi*
+254 20 271 5300
edwin.njagi@ke.ey.com

Clifford Otieno, *Nairobi*
+254 20 271 5300
clifford.otieno@ke.ey.com



Announcement of negotiations for the Environmental Goods Agreement



Fourteen members of the World Trade Organization (WTO) have announced the opening of negotiations for an Environmental Goods Agreement (EGA). Successful completion of the EGA would create opportunities and open new markets for green technology firms by reducing the cost to import environmental goods. For participating WTO members, the EGA could reduce the tariffs on environmental goods to 5% or less and bring about the elimination of other barriers to trade.

Negotiating countries are currently considering a list of 54 environmental goods for inclusion under the EGA and will explore additional products as negotiations progress. The current list includes wind turbines, solar panels, wastewater treatment equipment, waste incinerators and environmental monitoring equipment. Once completed, the EGA could allow green technology firms to enjoy trade liberalization similar to that which the information technology (IT) industry has enjoyed under the WTO Information Technology Agreement.

Among the currently negotiating countries are the US, EU, Canada, Japan and Hong Kong. Also taking part in the negotiations is China – a country known for its trade barriers that have made it difficult for foreign green technology firms to establish themselves in its market. The first round of negotiations was completed in Geneva on 10 July 2014 and covered the general negotiation structure and discussions of how to attract additional WTO members to participate. The second round is expected to be held in Geneva in September.

Watch for further developments in future issues of *TradeWatch*.

For additional information, contact:

Ernst & Young LLP (United States)

Jay Swamidass, *San Francisco*
+1 415 894 8755
jay.swamidass@ey.com

Expansion of Information Technology Agreement – negotiations halted (again)



Negotiations among WTO members on an expanded Information Technology Agreement (ITA) have stalled and been suspended for the third time in just over one year. Previous talks to expand the scope of the ITA were suspended in July and November of 2013 due to China's sensitivity to several of the proposed tariff lines (as reported in the September 2013 issue of *TradeWatch*). Despite agreeing to nearly 150 tariff lines out of the proposed 200, ITA expansion talks were called off and not revisited until recently.

The latest round of ITA expansion negotiations have also stalled, with both the US and China pointing at each other as the cause. China maintains that the US has set unreasonable demands and has refused to make any necessary concessions. The Chinese delegation continues to push for an exclusion of around 50 new product categories from the ITA, including medical devices and next-generation silicon chips in order to protect its nascent IT industry from global competition. On the other hand, the US has asserted that China is not specific enough in its requisite list of exempted products and accused the Chinese delegation for lacking ambition to otherwise expand a 17-year-old agreement.

We will continue to monitor the progress of the negotiations.

For additional information, contact:

Ernst & Young LLP (United States)

Lynlee Brown, *San Diego*
+1 858 535 7357
lynlee.brown@ey.com

James Lessard-Templin, *San Francisco*
+1 312 879 2679
james.lessardtemplin@ey.com

Argentina

Additional controls for import authorizations



New controls for import authorizations have been added to the Early/Advance Import Declaration System (in Spanish, *Declaración Jurada Anticipada de Importación* or DJAI). These new controls that relate to tax requirements add to the potential for significant border delays for goods imported to Argentina.

DJAI was implemented in Argentina in 2012. The system has been controversial as it requires importers to file certain information related to goods to be imported with the customs authorities prior to the issuance of the purchase order (or similar document) to the foreign supplier. The required data includes shipping and arrival dates, the importer's tax identification number, currency and the description, type, quantity, country of origin and value of the goods, among other information.

Additionally, approval of the DJAI application is subject to review by various government organizations that participate in the program, any of which can reject or stall the application. Without approval, the goods will be blocked in the customs IT system and will not be allowed entry into Argentina.

Pursuant to General Instruction (IG) No. 959/2014 recently issued by the Argentine Federal Tax Authorities (AFIP), additional controls related to tax requirements must be met prior to DJAI approval. In this regard, all DJAIs filed as of the issuance of the IG will be automatically blocked under code "BI39-AFIP" to control the following aspects of the importer's tax situation:

- ▶ Time during which the importer has been registered with AFIP
- ▶ Relation between tax debits and credits
- ▶ Payments for goods prior to import
- ▶ Relation between sales and payments

As a consequence of the above mentioned controls, if the tax authorities identify any issue, they will proceed to "observe" the filed DJAIs, which will remain blocked until the Research Area of the Regional Tax Bureau carries out further review. Otherwise, if no issues are identified, the DJAIs will remain blocked for 10 calendar days. After this period, the block will automatically be lifted.

Overall, these additional controls mean more requirements for importers that now must meet certain tax standards in order that their import authorizations are approved. Accordingly, importers need to assess their tax situation based on these controls and be prepared to present this information to the tax authorities upon request to reduce the risk of further border delays.

For additional information, contact:

Pistrelli Henry Martin y Asociados S.R.L. (Argentina)

Gustavo Scravaglieri, *Buenos Aires*
+54 11 4510 2224
gustavo.scravaglieri@ar.ey.com

Sergio I. Stepanenko, *Buenos Aires*
+54 11 4318 1648
sergio.stepanenko@ar.ey.com

Brazil

REINTEGRA regime is reestablished permanently for export companies in Brazil



Recently, the Brazilian Government reinstituted the Special Regime for Reintegration of Tax Values for Exporting Companies (in Portuguese, *Regime Especial de Reintegração de Valores Tributários para as Empresas Exportadoras* or REINTEGRA). The regime aims to encourage exports by granting federal tax credits that are retained throughout the production chain.

REINTEGRA was created in 2011 and covered the period up until December 2013. It is estimated that during this period, the regime granted approximately USD1.5 billion in tax credits for exporters of products manufactured in Brazil.

Originally, the Brazilian Government was not intending to extend the regime to additional periods due to budget constraints. However, considering the current unfavorable economic environment for exporters, the Brazilian Government decided to make the incentive permanent, as a long-term means to incentivize local industry and export activities in Brazil.

The regime allows exporters to register federal credits that can be used to offset debits of the same taxes. The credit is calculated as a percentage of the export revenue from goods manufactured in Brazil according to specific manufacturing requirements, and exported abroad.

Under the original regime, the applicable rate was 3%. Going forward, however, the rate may vary between 0.1% to 3% to give the government more flexibility to adjust the regime – i.e., increase or decrease the benefit rate in accordance with the economic environment.

It is expected that the Brazilian Government will issue additional regulations in the near future, specifying the list of products that can benefit from the regime and at what rate the credits shall be accrued.

Many exporting companies have taken advantage of the original REINTEGRA regime, and now have the opportunity to benefit from the regime's tax savings for the long term, although likely at a lower benefit rate. In this respect, changes to the program and program requirements need to be reviewed to assess feasibility of participating in the program going forward based on the company's operations and residual tax scenario.

For additional information, contact:

Ernst & Young Serviços Tributários S.P. Ltda.

Frank de Meijer, *São Paulo*
+55 11 2573 3413
frank-de.meijer@br.ey.com

Gabriel Martins, *São Paulo*
+55 11 2573 4213
gabriel.martins@br.ey.com

Vinicius Martins, *São Paulo*
+55 11 2573 5359
vinicius.martins@br.ey.com

Recent Superior Court decision may reduce tax burden on resale of imported goods in Brazil



Brazil's federal value-added tax (in Portuguese, *Imposto sobre Produtos Industrializados* or IPI), which stands for "tax on manufactured products," is charged not only on the sales of goods manufactured in Brazil, but also upon the importation of goods and resale of these goods in the local market, even if the importer did not perform any manufacturing activity with these goods. A recent decision by the Brazilian Superior Court of Justice (STJ) may change this scenario.

The current legislation equates the importer of record to a manufacturing establishment for IPI purposes. Therefore, goods sold by an importer of record should have the same treatment as goods sold by the manufacturer, i.e., subject to IPI. The STJ decision focused on the analysis of this particular issue, and the Court ruled in favor of the importer. According to the STJ, imported products that are not subject to manufacturing processes in Brazil can be sold to the local market without the payment of the IPI.

This is a significant precedent because if the IPI is not due on top of the local sales of imported goods, importers can exclude their local mark-up from the tax basis of the IPI and significantly reduce the tax burden of its operations. At the same time, the implications of the decision in terms of recoverability of the IPI paid at the moment of importation and the possible increase in the amount of tax credits of other related taxes (e.g., social contributions for PIS and COFINS) need to be assessed.

Although the precedent creates new planning opportunities for imports into Brazil, the decision is very recent and it is still unknown how the tax authorities will react to that decision. The STJ decision binds only the parties involved in the lawsuit. For the waiver to become available to all importers, the Brazilian Government would have to issue a normative clearly exempting the tax from the resale of imported goods.

At this point there is no clear path forward. Companies with a significant IPI liability should carefully review options, including considering filing a lawsuit seeking refunds or authorization to stop paying IPI on future transactions. Companies who choose not to take immediate action should carefully monitor developments.

Watch for further developments in future issues of *TradeWatch*.

For additional information, contact:

Ernst & Young Serviços Tributários S.P. Ltda.

Frank de Meijer, *São Paulo*
+55 11 2573 3413
frank-de.meijer@br.ey.com

Gabriel Martins, *São Paulo*
+55 11 2573 4213
gabriel.martins@br.ey.com

Vinicius Martins, *São Paulo*
+55 11 2573 5359
vinicius.martins@br.ey.com

Mexico-Panama FTA

Mexico-Panama FTA increases attractiveness of Panama free trade zones for preferential inbound trade to Mexico



On 3 April 2014, the Economy and Commerce Ministers for Mexico and Panama signed a free trade agreement (FTA) that will bring tariff reductions and new opportunities for trade and investment between the two countries. Of particular significance is an innovative “third-party goods” provision that will benefit Mexican importers that take advantage of Panama’s free trade zones (FTZs) as a logistical hub for preferential trade with Mexico’s vast network of FTA partner countries.

“Third-party goods” provision

Most FTAs provide that originating goods may lose their originating status (and thus, preferential tariff benefits) if they are not directly shipped between the parties of the agreement. However, specific exceptions (i.e., transshipment provisions) allow goods to be transshipped or subject to temporary warehousing in the territory of a third-party country (i.e., non-party country to the FTA) under certain conditions. These conditions generally require that the goods remain under the control or supervision of the customs authorities of the third-party country and do not undergo any operations other than unloading, reloading or those necessary to preserve them in good condition.

FTZs in third-party countries can provide logistical benefits for preferential trade between FTA partner countries. However, the customs authorities of the importing country may be skeptical as to whether the FTA’s transshipment provisions were met in a third-party country’s FTZ, and thus may require extensive documentary support, such as information on the processes that are performed on products while in the FTZ, “traceability” of the products from their origin country up to the point of importation and even logistical or geographical reasons that would justify the transshipment or temporary warehousing in the third-party country.

The “third-party goods” provision established in the Mexico-Panama FTA clearly establishes that goods that are originating in any country that has an FTA with Mexico can be transshipped or temporarily warehoused in a Panama FTZ and will maintain their originating status for preferential duty treatment upon importation into Mexico, subject to certain conditions.

While such goods cannot be subject to any manufacturing operations while in the FTZ, the following operations can be performed:

- ▶ Transshipment
- ▶ Warehousing
- ▶ Deconsolidation or separation of shipments
- ▶ Sales
- ▶ Packaging or bottling
- ▶ Assembly of promotional sets or kits
- ▶ Labeling

As evidence that the goods remained under customs control or supervision, and were subject only to allowable operations in the FTZ, the “third-party goods” provision provides for the “Certificate of Re-exportation,” issued by Panama’s Customs and FTZ authorities. Previously, Mexican importers operating through a Panama FTZ had to file ruling requests in order to validate whether their proposed operations and the available documentation complied with the applicable transshipment and temporary warehousing rules established under each of the specific FTAs being applied, depending on the country of origin of the goods. The Certificate of Re-exportation is already successfully being used under Panama’s FTA with Taiwan, and has resulted in a significant increase in trade operations following its implementation in 2003.



Additionally, the “third-party goods” provision also states that the invoice related to the originating goods that will be imported into Mexico and which are transshipped or subject to temporary warehousing in an FTZ may be issued by a logistical operator in the FTZ. This administrative flexibility with respect to invoicing further increases the efficiency of the transshipment or temporary warehousing operation since it does not require the seller to issue the corresponding invoice when the goods are shipped from the corresponding country of origin.

Increased attractiveness of Panama FTZ as logistical hub for inbound trade into Mexico

The use of Panama’s FTZs as a transshipment or temporary warehousing hub has been on the rise for several years; however, some countries are still skeptical as to whether Panama’s FTZs have sufficient security and recordkeeping processes to ensure the transshipment provisions are met so that the goods maintain their preferential origin status. With the Mexico-Panama FTA, it is clear that the Mexican authorities now accept the use of Panama’s FTZ as an important role in the inbound trade of goods originating from the countries with which Mexico has entered into FTAs. Considering the vast network of Mexico’s FTA partner countries, including many South American and Central American countries as well as the US, EU, Canada and Japan, the Panama FTZ is an attractive logistical hub for inbound trade into Mexico.

It is important to point out that the specific FTA’s rules of origin and other requirements still have to be met and if there are any conflicts between the transshipment provision of the applicable FTA depending on the country of origin of the goods and the “third party goods” provision of the Mexico-Panama FTA, the provisions of the applicable FTA will supersede those of the Mexico-Panama FTA.

Finally, while the Mexico-Panama FTA has been signed, it still requires further approval from the legislative authorities in both countries to enter into force. For now, companies currently operating in a Panama FTZ for inventory consolidation or other activities, as well as companies looking to begin operations in a Panama FTZ, should review the “third party goods” provision in further detail in order to ensure that they will take full benefit of Mexico’s extensive network of FTAs.

Watch for further developments in future issues of *TradeWatch*.

For additional information, contact:

Ernst & Young LLP (United States)

Armando F. Beteta, *Dallas*
+1 214 969 8596
armando.beteta@ey.com

Sergio Moreno, *Dallas*
+1 214 969 9718
sergio.moreno@ey.com

Ernst & Young Limited Corp. (Panama)

Luis Ocando, *Panama City*
+1 507 208 0144
luis.ocando@pa.ey.com

United States

CBP issues, rethinks, draft Informed Compliance Publication on 'first sale rule'



U.S. Customs and Border Protection (CBP) took the unusual step of releasing a draft of an *Informed Compliance Publication* (ICP) on the "first sale rule," Bona Fide Sales & Sales for Exportation to the United States on 9 July 2014, and asking a select group of trade associations to provide comments for consideration.

An ICP is intended to provide guidance to the trade community on the position of CBP on particular interpretations of the law or matters of interest. It has neither the weight nor authority of law or regulation, but instead is a summary of how CBP views and interprets the relevant authority. A revised ICP on the first sale topic has been rumored since January, and in response to intense interest, and concern of the trade community as to content, CBP agreed to provide a draft for comment prior to release.

The "first sale rule" provides that a US importer that purchases product subject to multiple sales before importation may use the value of an earlier, or "first sale," as transaction value provided three criteria are met:

1. The first sale is a bona fide sale of the merchandise for exportation to the US
2. The merchandise is clearly destined for the US at the time of the first sale
3. The first sale is conducted at arm's length

The ICP provides guidance on what evidence CBP believes necessary to meet these three requirements.

Intent unclear

CBP has indicated that the new draft is not intended to change anything related to the 'first sale rule,' but instead is intended to provide both business and customs auditors with clear guidance on the audit trail expected in first sale situations. Based on comments made by the various trade organizations, many in the trade community see this very differently. Comments have been uniformly critical, and in some cases, scathing, suggesting that documentary requirements stated by customs go well beyond both law and practice, and if adopted will substantially curtail the ability to use first sale going forward.

One of the most controversial changes to the ICP proposed by customs is the addition of an annex of "documents that CBP may request when evaluating first sale." The trade community has expressed concern that this annex will become a "default," or "cut and paste" list for CBP auditors or officials to request in any first sale situation, despite the fact that in any given situation it is highly unlikely that most of the documents would be relevant. Placing this burden on importers to produce unneeded documents, they content, would have a chilling effect.

Next steps

After reviewing the comments, in late August, CBP Acting Assistant Commissioner Rich DiNucci stated that plans to revise the ICP are "off the table." Nevertheless, CBP continues to believe there is a need for more clarity in the area, and has additionally informed a number of the trade organizations that it intends to form a working group of industry and CBP representatives to review the comments and put together a revised plan for a path forward. It is promising that CBP seems committed to trying to work out a mutually agreeable approach with impacted business. With the draft as prepared, however, there does not seem to be much common ground.

Ernst & Young LLP provided input for comments by a number of the trade organizations, and expects to be actively involved in the process going forward. We will report on developments in future issues of *TradeWatch*.

For additional information, contact:

Ernst & Young LLP (United States)

Bill Methenitis, *Dallas*

+1 214 969 8585

william.methenitis@ey.com

Expanded US sanctions and export controls targeting Russia



Along with many other countries, the US has been expanding sanctions and export controls targeting Russia. President Barack Obama has issued Executive Orders (EO) 13660, 13661 and 13662 that have placed additional Russian individuals and entities on the Specially Designated Nationals (SDN) List and the Sectoral Sanctions Identification List (SSIL). Additionally, the Bureau of Industry and Security (BIS) has applied additional export control restrictions to further expand the scope of products that are prohibited for export to Russia and/or that require new export license authorizations. We briefly discuss these developments below and highlight some important considerations for companies as they navigate through the new rules.

Specially Designated Nationals

SDNs are entities or individuals that the Office of Foreign Assets Controls (OFAC) has determined meet the parameters set out in a particular EO or statute and are therefore identified as being “blocked” as it relates to US persons. US persons, wherever located, are prohibited from engaging in or facilitating transactions with SDNs. As a result, the EOs issued pursuant to recent events in Crimea and Ukraine have provided a basis for a rapidly growing list of Russian entities and individuals that US persons must now ensure they do not, directly or indirectly, conduct business with.

Since EO 13660 was issued on 6 March 2014, the number of entities that have been added to the SDN list as a result of these orders total 31 while the number of individuals added to the SDN list total 61 (as of the date of this publication).

These numbers do not take into account unlisted entities who become SDNs by operation of law because the entity is owned, directly or indirectly, 50% or more by an SDN. Many of the listed SDNs have significant business holdings.

Before new guidance issued on 13 August 2014, OFAC, in applying the 50% ownership rule considered only whether any one SDN had a 50% or greater interest in a particular entity and did not consider aggregation of interests among multiple SDNs. The new guidance expands the breadth of potentially unlisted blocked entities by providing for the aggregation of interests, indicating that, “any entity owned in the aggregate, directly or indirectly, 50% or more by one more blocked persons is itself considered to be a blocked person.”² This guidance is particularly relevant for the Ukraine-related sanctions as many listed individuals, such as the Rotenberg brothers, have significant joint holdings in Russian businesses.

Sectoral Sanctions Identification List (SSIL)

In addition to the growing list of SDNs as a result of the recent EOs, the most recent EO, 13662, authorized sanctions against companies operating within particular sectors of Russia’s economy. Pursuant to these sectoral sanctions, OFAC issued two Directives aimed at the financial services sector and the energy sector, respectively. Each of these Directives restricted specific types of transaction with entities enumerated on the new SSIL. The specifically proscribed transactions involve, “transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity for these persons, their property, or their interests in property.”³

2. U.S. Department of the Treasury, Office of Foreign Asset Controls, Revised Guidance On Entities Owned By Persons Whose Property And Interests In Property Are Blocked, 13 August 2014.

3. U.S. Treasury Department, Office of Foreign Asset Controls, Directive 1 Pursuant to EO 13662.



While the entities identified on the SSIL are not blocked entities, as an SDN is, US persons are restricted from engaging with the entities on the list in the specifically proscribed transactions involving debt and equity.

Export controls

Effective 6 August 2014, the Bureau of Industry and Security (BIS) placed new restrictions on exports of certain goods, software and technology intended for use in Russia's energy sector, specifically for use in deepwater, Arctic offshore or shale projects. A new section of the Export Administration Regulations (EAR), 15 C.F.R. § 746.5, has been added to impose a new licensing policy on these kinds of exports to Russia.

The new licensing policy requires exporters to obtain an export license when: (1) the exporter, "knows or is informed that the item will be used directly or indirectly in Russia's energy sector for exploration or production from deepwater (greater than 500 feet), Arctic offshore or shale projects in Russia that have the potential to produce oil or gas; or (2) is unable to determine whether the item will be used in such projects in Russia."⁴ In addition, the final rule notes that BIS' review policy for items falling within this section face a presumption of denial and that no license exceptions, other than License Exception GOV § 740.11(b), may be used for shipments falling within the new licensing policy.

The final rule also established two new Export Control Classification Numbers (ECCN) specific to Russia. ECCN 0A998 has been "added to control specific oil and gas exploration items, including software and data,"⁵ while ECCN 8D999, has been added "to control software specially designed for the operation of unmanned vessels used in the oil and gas industry in Russia."⁶ Along with these two additions, the ECCNs affected by the new licensing policy include 1C992, 3A229, 3A231, 3A232, 6A991 and 8A992.⁷

What to consider

The scope of Russian entities subject to these new rules is wide, particularly considering the 50% ownership rule for the SDN list and the sector-based sanctions. Below, we highlight some important considerations for complying with the new rules.

1. Are you considering whether potential customers or vendors, although not listed as an SDN under the new sanctions list, are owned or controlled 50% or more by an SDN or an aggregate of SDNs? Have you reviewed all your Russian-related business relationships? Have you updated your own screening lists to prevent business with listed and unlisted blocked entities?
2. Whether you are screening manually or utilizing a service provider, are your lists taking into consideration the new SSIL? In particular, are you considering joint ventures with companies on the SSIL?
3. Have you reviewed the listing of new ECCNs against your products, even if you do not operate in the oil and gas industry, to determine if any of your products are potentially restricted to Russia? Have you reviewed your business in Russia to determine that your products are not intended for use in a Russian deepwater, Arctic or shale oil and gas project? (A license is required if unable to determine.)

For additional information, contact:

Ernst & Young LLP (United States)

Nathan Gollaher, *Chicago*
+1 312 879 2055
nathan.gollaher@ey.com

Josh Gelula, *Chicago*
+1 312 879 3887
josh.gelula@ey.com

4. 79 Federal Register 45675, 45677 (6 August 2014).

5. Ibid.

6. Ibid.

7. Ibid.

China

Recent experiences on interaction between transfer pricing and customs valuation



If your company imports goods into China from related parties then you may have already, or likely will in the future, receive a request from China Customs to provide information in support of the declared import prices. There are new developments in the China customs valuation regulations (i.e., Decree No. 211 and 213) and continued discussions at a global level between the World Customs Organization⁸ (WCO) and the Organisation for Economic Co-operation and Development (OECD) about the relevance of how/whether a transfer pricing documentation report (TPD Report) could be used by importers to support the arm's length nature of the import prices through the "circumstances surrounding the sale" test.⁹ Although it is still early days for this topic in China, the China authorities are starting to evaluate whether the TPD Report contents can be used to support declared import prices.

Companies need to be ready to respond to requests for information from China Customs. When doing so, it is important to understand that any submitted information, such as a TPD Report, can either support a position or may result in additional questions about the pricing that can lead to potential assessments of import taxes and penalties. Ernst & Young (China) has seen an increase in such risks during the last few months.

A majority of China import taxes (i.e., customs duty, import VAT, import consumption tax, anti-dumping and others) are based upon ad-valorem rates and the tax revenue collected by China Customs is directly affected by the declared customs values. China Customs are concerned that related parties may have declared lower import prices and as a result underpaid related import taxes. Consequently, China Customs has the authority and right to ask importers to explain and defend why their import prices should be acceptable and in compliance with the customs valuation regulations. How can the import prices be supported?

One question frequently asked of late is: "Can a TPD Report prepared for corporate income tax purposes be used in front of China Customs to support import prices?" While WCO Commentary 23.1 points out that "the TPD Report submitted by an importer may be a good source of information," it also goes on to state it "may not be relevant or adequate in examining the circumstances surrounding the sale because of the substantial and significant differences which exist between the methods in the agreement to determine the value of the imported goods and those of the OECD Transfer Pricing Guidelines." So what should a company do if requested to submit their TPD Report?

First of all, it is important to note that a TPD Report is prepared under the arm's length principle under the Implementation Measures for Special Tax Adjustments (Trial) (Circular 2), and the China Customs applies a different regulatory frame of mind when reviewing the same document. For example, China Customs will review the import prices by applying the new customs valuation regulations, which are fundamentally different. Since the basic regulatory framework for transfer pricing and customs valuation is not the same, there may be differing views by the China authorities when interpreting the same TPD Report information. The conclusion in WCO Commentary 23.1 states that the use of a TPD Report "as a possible basis for examining the circumstances of the sale should be considered on a case-by-case basis" and "could be one source of such information." Hence, companies need to be particularly sensitive to the implications of providing a TPD Report in an attempt to support the import prices in front of China Customs.

8. See WCO Commentary 23.1 on: Examination of the expression "circumstances surrounding the sale" under Article 12.(a) in relation to the use of transfer pricing studies.

9. This is a customs valuation related concept for companies to help them support that the relationship did not influence the price and that the prices are "arm's length."



There are numerous fundamental differences between the transfer pricing arm's length principle and the customs valuation principle, and China Customs' perspective on circumstances of sale makes some of these differences difficult to reconcile. For the purpose of this article, we have listed a few key comparisons important to China Customs:

Issue	Transfer pricing	Customs valuation
General basis	Typically, this is conducted on an entity-level basis for a year or other period of time. ¹⁰	Typically, this is conducted on a transaction level for each good or service; China Customs gathers a range of detailed transactional level prices that can be used to compare against the importer's declared prices.
Concerns	There are concerns that import prices are overstated to erode China profits.	There are concerns that import prices are understated to avoid import taxes.
Characterization	For transfer pricing purposes, a company is characterized as limited risk, full-fledged, etc. according to their functions, risks and assets. The analysis and characterization is a pre-step to identify comparable companies and benchmark profit levels.	Customs valuation principles do not characterize companies in a similar manner. Nevertheless, these are still important factors in trying to assess how the import prices were determined and what level of margins or profits are reasonable.
Comparables	There is a need to identify a set of companies that have similar functions, risks and assets; the search process requires comparable companies with significant related party transactions to be eliminated, since their results will likely distort the benchmark profit levels. The sample of comparable companies could include companies from outside China.	It is not necessary to remove related parties with significant related party transactions from comparable analysis. Companies selected from countries outside China are not considered by China Customs for customs valuation purposes.
Profit-level indicators	TPD Reports are usually focused on testing the net margins of the China subsidiary and less frequently at the gross margin level.	China Customs tends to focus more on gross margin, believing it is where the import price is most relevant in the financial statements. The use of a net operating margin makes connecting the TPD Report analysis to transactional level import prices quite challenging.

10. Some TPD Reports may analyze prices of goods and services at the transactional level. A majority focus the TPD Report analysis on the profit performance of the entire entity.

Companies are now encountering the risk where China Customs is reaching conclusions on customs valuation matters directly from data/information contained in the TPD Report. Such conclusions can be confusing to importers that are not familiar with the different principles applying to transfer pricing and customs valuation. It is not straightforward and unlikely that a transfer pricing analysis will adequately satisfy the customs valuation regulatory criteria.

We would recommend importers consider the following four actions to prepare for China Customs challenges in relation to the transfer pricing analysis:

1. Review your existing TPD Reports from a customs valuation perspective to identify whether certain customs valuation related risks may already be imbedded.
2. Research, document and be prepared to explain and support the actual pricing methodology utilized to calculate the import prices of individual goods from a customs valuation perspective and using customs language.
3. Conduct an additional comparable search, or revisit the initial search conducted during preparation of the TPD Report, to make it more relevant to the customs valuation regulations.
4. Prepare an "off-the-shelf" document that explains the company background, transaction flows, import pricing mechanism and other relevant matters related to customs valuation. This type of document can be the first line of response when an importer receives a valuation query from China Customs.

Conclusion

China Customs has succeeded in the past to make a case for customs valuation using transfer pricing analysis and we are seeing an increasing trend recently. We believe this is a concern to importers and the risks should be managed proactively. If a request to submit the TPD Report has been received from China Customs, then consider involving knowledgeable and experienced internal resources or external advisors who are able to address the situation from both a transfer pricing and a customs valuation perspective. What importers should not do is to simply provide the TPD Report to China Customs hoping, or assuming, that it would be a sufficient response to satisfy all their import price questions.

For additional information, contact:

Ernst & Young, (China)

Robert Smith, *Shanghai*
+8621 2228 2328
robert.smith@cn.ey.com

Bryan Tang, *Shanghai*
+8621 2228 2294
bryan.tang@cn.ey.com



Japan-Australia FTA

Japan-Australia Economic Partnership Agreement signed



On 8 July 2014, the Prime Minister of Japan, Shinzo Abe and the Prime Minister of Australia, Tony Abbott, signed the Japan-Australia Economic Partnership Agreement (JAEPA) and its implementing agreement. The countries are working to complete their domestic treaty processes this year; the agreement will enter into effect 30 days after they exchange diplomatic notes. The significant tariff reductions are expected to increase market access and trade opportunities between the countries.

Tariff benefits for Japanese exports

Overall, customs duty will be eliminated for approximately 99.8% of Japanese exports to Australia under the JAEPA, including agricultural and food products (also alcoholic beverages) and industrial goods.

A significant beneficiary of the JAEPA will be the Japanese auto industry. Vehicles, parts and accessories represented approximately 50% of Japan's export to Australia in year 2013. The customs duty imposed on new passenger motor vehicles and certain parts will be eliminated upon implementation or within three years. In particular, about 75% of the completed gasoline vehicles, (including an engine size exceeding 1,500 c.c. but not exceeding 3,000 c.c.), are listed as goods benefitting from customs duty elimination – i.e., entirely duty-free, on the date of entry into force of this Economic Partnership Agreement (EPA).

In addition, customs duty for most machinery (general and electric) will be eliminated upon implementation. Some iron and steel will be duty-free upon implementation, while the remainder will phase to duty-free on the fifth year. Most goods of other industries, such as chemical, pharmaceutical, cosmetic or sanitary are also duty-free upon implementation.

Tariff benefits for Australian exports

The primary Australian exports to Japan are coal, liquefied natural gas, iron ore and food. The customs duty rates for most natural resources imported into Japan are already subject to zero duty rates; accordingly, the EPA will have a limited impact on imports of these natural resources from customs tariff perspective.

However, Japan has opened up its market to Australian agricultural products. While rice is generally excluded from any reduced tariff commitments, beef will benefit from progressive duty reductions. For instance, the duty rate of frozen beef will be reduced from the current tariff of 38.5% to 19.5% for the 18th year, and chilled beef will be reduced to 23.5% for the 15th year.

Additionally, duty rates for goods including wine and a large number of agricultural products, including certain fish, will be eliminated at commencement, or have tariffs gradually reduced over time.

Tariffs on almost all industrial products will be eliminated upon implementation, or reduced to zero over 10 years.

Method for origin certification

As a procedure to be eligible for the preferential tariffs of the JAEPA, a trader will have two options for origin certification at importation:

1. Certificate of origin issued by an authorized representative (in Japan, the Chamber of Commerce and Industry)
2. Origin certification document (i.e., self-declaration)



While not new in Australia, self-declaration is a new method in Japan, whereby the origin of the good declared at importation is certified by submitting an “origin certification document” prepared by the importer, exporter or producer of the good. The origin certification document may be completed on the basis of 1) information demonstrating that the good is an originating good, or 2) declaration or statement by the exporter or producer that the good is an originating good. The required data elements are set out in Annex 3 of the agreement. The submission to the customs authority can be done either through hard copy or electronic statement.

While the origin self-declaration is expected to reduce some of the administrative burden and cost for preferential origin certification, it is important that traders understand that the origin certification document may be subject to a post-clearance review up to five years after importation. In this respect, the importer remains accountable for the declaration and the preparer of the certification (i.e., importer, exporter or producer) must provide full cooperation and maintain documentation for the five-year period in the event of a customs review to verify the origin of the good. Otherwise, the importer could lose the preferential tariff benefits and face penalties.

Implications for Trans-Pacific Partnership negotiations

Obviously, this EPA aims to strengthen economic ties and trade between Japan and Australia. At the same time, the agreement has potential to influence the on-going negotiations for the Trans-Pacific Partnership agreement (TPP), a regional trade agreement involving 12 countries, including Japan, Australia and the US. From the Japanese perspective, the agreement could help Japan as it demonstrates to the US that the country is open to tariff elimination and trade liberalization. From the Australian perspective, agricultural exports can benefit from a more favorable position in Japan compared to the other TPP countries – at least until the TPP is implemented. The interplay of existing FTA benefits between TPP parties and ultimate TPP benefits will be complex, with importers likely being able to elect the set of rules they wish to use. As a result, it is possible that Australia will seek further tariff reductions if TPP rules are more liberal in order to provide Australian exporters maximum flexibility.

For additional information, contact:

Ernst & Young Shinnihon Tax (Japan)

Yoichi Ohira, *Tokyo*
+81 3 3506 2678
yoichi.ohira@jp.ey.com

Ernst & Young (Australia)

David Wilson, *Brisbane*
+61 7 3011 3346
david.wilson@au.ey.com

Japan

Amendments to Japan's Generalized System of Preferences program affecting Chinese goods



Generalized System of Preferences (GSP) is a trade program that aims to assist the economic development of developing countries by providing preferential access to Japanese markets through the application of reduced duty rates on certain products from such developing countries. China is designated as a developing country under Japan's GSP program; however, certain products deemed highly competitive in the Japanese market can be excluded from the program and thus remain subject to Japan's most favored nation (MFN) rates.

In applying the criteria for product exclusion, the following changes to the GSP program are planned:

Certain excluded products originating in China to become eligible

The following article originating in China was excluded from the GSP program for the period 1 April 2012 to 31 March 2015, because it was deemed as highly competitive in the Japanese market. However, this article will be reinstated and will be eligible for GSP treatment from 1 April 2015.

Harmonized System Code	Description	MFN rate Until 31 March 2015	GSP rate From 1 April 2015
28.11	Other inorganic acids and other inorganic oxygen compounds of non-metals	0%-3.6%	Free

Importers who import goods classified under this Harmonized System Code from China into Japan may find new opportunities to benefit from GSP from 1 April 2015.

Exclusion of certain products originating in China

The following products originating from China are currently eligible for GSP treatment, but will be excluded from the GSP program as of 1 April 2015 because they have been deemed as highly competitive in the Japanese market. Importers currently utilizing the GSP program to import the goods below from China will see an increase in landed cost due to the higher duty rate.



Harmonized System Code	Description	GSP rate Until 31 March 2015	MFN rate From 1 April 2015
0511.91-2	Products of fish or crustaceans, mollusks or other aquatic invertebrates; dead animals of Chapter 3, other than fish waste, fertile fish eggs for hatching and artemia salina eggs	0%	1.7%
58.02	Terry toweling and similar woven terry fabrics, other than narrow fabrics of heading 58.06; tufted textile fabrics, other than products of heading 57.03	0%-3.6%	3.5%-8.0%
69.13	Statuettes and other ornamental ceramic articles	0%	2.3%
82.15	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware	0%	3.9%-4.6%
94.05	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included	0%	0%-4.8%

For a complete list of products to be excluded from GSP program, [click here](#) (Japanese only).

For additional information, contact:

Ernst & Young Shinnihon Tax (Japan)

Yoichi Ohira, Tokyo
+81 3 3506 2678
yoichi.ohira@jp.ey.com

Thailand

Customs 'amnesty' – Voluntary Audit Program



An opportunity to minimize customs liabilities

In Thailand, the customs clearance of goods is based on the principle of self-assessment where companies are responsible for correctly and completely declaring their goods to Customs and for accurately assessing their customs duty and other related indirect tax liabilities. While this may result in the majority of import/export shipments being cleared with minimal intervention, at some time in the future Customs will scrutinize the level of compliance with the various regulations – perhaps many years after the goods were imported/exported and sold. Implications can be serious with high liabilities in the event a company inadvertently gets something wrong given:

- ▶ Penalties can be up to four times the value of goods plus the underpaid duty thereon
- ▶ Customs can go back 10 years to recover underpaid duty and impose penalties up to 15 years after the date of import

Thai Customs has recently launched the third round of the amnesty Voluntary Audit Program (VAP), which is available until 30 September 2014. Similar to the last VAP in 2010, the amnesty program invites companies to undertake a self-examination, disclose any inadvertently underpaid duties and value-added tax (VAT), and settle such liabilities. Under VAP, any duty surcharge and duty/VAT penalties that would normally apply will be waived. The VAT surcharge (1.5% per month but capped at one-time of the VAT liability) will continue to apply.

Benefits of VAP

The VAP offers greater benefits than the standard voluntary disclosure process as the latter does not shelter the companies from the duty surcharge (1% per month without cap) on any past duty underpayment and such surcharge costs could be significant given the 10-year statute of limitation period under customs laws. In addition, VAP also offers the added convenience to companies of centrally self-disclosing their past customs non-compliances and settling past duty and VAT liabilities with the Customs Audit Bureau, instead of having to deal with each of the Customs offices at the entry/exit points.

Under VAP, the Customs Audit Bureau may independently send a letter to selected companies to participate in the program. However, based on past VAPs, in practice, companies may request such an invitation letter from the Customs Audit Bureau. In both cases, a formal and clear acceptance of VAP from the company is required.

All companies are qualified to participate in the VAP except under any of these circumstances:

- ▶ Companies seeking to disclose the same issues already disclosed under a previous VAP
- ▶ Issues relating to smuggling or bad faith (with clear evidence) in order to avoid duty
- ▶ Issues relating to import of prohibited/restricted goods or goods that infringed intellectual property rights
- ▶ Companies subject to ongoing post-importation audit/investigation or prosecution in respect of customs offences by relevant government authorities, e.g., Department of Special Investigation (DSI)



- ▶ Subject to the exclusions above, companies are recommended to proactively consider utilizing this amnesty VAP process and to take the following steps:
 - Undertake a self-review of their import/export activities, especially in relation to verifying the correctness of duty and indirect tax payments
 - Identify problems, assess the risks and determine appropriate strategy to manage such risks
 - Consider using the VAP to minimize overall duty liabilities by applying to the Customs Audit Division to join the program before 30 September 2014

Clock is ticking – 30 September 2014 deadline

Any interested company that has yet to receive an invitation letter from the Customs Audit Division to participate in this VAP program should consider applying to secure participation before 30 September 2014. This opportunity to proactively manage customs compliance and minimize customs liabilities should not be overlooked.

For additional information, contact:

EY Corporate Services Limited (Thailand)

William Chea, *Bangkok*
+66 2264 9090 ext. 77056
william.chea@th.ey.com

Phil Bell, *Bangkok*
+66 2264 9090 ext. 77035
phil.bell@th.ey.com

Aschara Toopsuwan, *Bangkok*
+66 2264 9090 ext. 21046
aschara.toopsuwan@th.ey.com

Philippines

Implications of the Customs Reform Program



Importers in the Philippines have been subject to significant changes to customs processes and procedures since the government launched the Customs Reform Program in 2013. With a new accreditation process and post-entry audit rules, importers must adapt to the higher standards or risk losing the ability to import.

Background

The Customs Reform Program, coined “Uproot Corruption, Reboot Customs,” is a response to the wide corruption and weak performance of the Bureau of Customs (BOC), as openly denounced by President Benigno Aquino III in July 2013. Executive Orders were issued that laid down the framework of customs reforms and created the Customs Policy Research Office (CPRO), which was mandated to update the Tariff and Customs Code; and the Office of Revenue Agency Modernization (ORAM), which was tasked to review existing customs procedures and systems and formulate changes and improvements. As part of the reforms, two significant changes in customs systems and processes were introduced: (1) the revamp of the accreditation system for brokers and importers and (2) modification of the post-entry audit rules.

New accreditation process

Accreditation for importers has become an extensive administrative process to ensure that only legitimate importers are accredited, which is a requirement to import goods. Previously, the importer applied for accreditation directly with the BOC. Since the issuance of the Department of Finance (DOF) Department Order (DO) No. 12-2014 in February 2014, importers are subject to a two-phase process for accreditation. Basically, the importer must first apply for and secure an Importer Clearance Certificate (BIR-ICC) from the Bureau of Internal Revenue. Then, the importer presents the BIR-ICC to the BOC as part of the application for Importer Accreditation (BOC-IA).

The accreditation guidelines for the issuance of the BIR-ICC are set out in Revenue Memorandum Order (RMO) 10-2014 (10 February 2014) with a long list of criteria that aim to establish whether the importer is a legitimate entity that is compliant in terms of the tax laws and the payment of taxes. For corporations, there is a long list of documentary requirements, which must be provided by “certified true copies” (CTC), such as the BIR Certificate of Registration, annual income tax return, among many others. The BIR-ICC is valid for three years, unless revoked sooner.

The accreditation guidelines for the issuance of the BOC-IA are provided in Customs Memorandum Order (CMO) No. 4-2004 (21 February 2014). Under the CMO, the original or CTC of a long list of documents must be submitted by the importer as part of the application. The documents aim to establish whether the importer is a legitimate importing entity and includes information regarding the imported products, volumes and the importer’s status with the BOC in terms of payment of taxes and various corporate information, as applicable. The BOC must review and act upon the application and corresponding documentation within 15 days of receipt. The BOC-IA is valid for three years (a welcome change as previously, the certification was only valid for one year).

For more detailed information regarding the list of criteria and documents necessary for the BIR-ICC and the BOC-IA, see our February 2014 [Tax Bulletin](#).

To refresh the list of accredited importers, DO No. 12-2014 required that all importers re-accredit pursuant to these new criteria and guidelines by 22 May 2014; this deadline was then extended to 31 July 2014. All taxpayers who failed to satisfy the criteria for accreditation, including those that had submitted incomplete documents, were issued Notices of Denial, which precluded them from enjoying the benefits of uninterrupted processing and release of importations by the BOC until the accreditation criteria were met (pursuant to BIR Memorandum dated 23 July 2014).



Importers that succeeded in accreditation under the new rules need to expect that the BIR will conduct periodic compliance verifications. In the case of findings of non-compliance, the BIR may cancel and revoke an importer's BIR-ICC, which has the effect of also cancelling the BIR-IA considering that it is a requirement of the latter. In this case, the importer may file a request for reconsideration or file a new application for accreditation once the compliance issues have been rectified – but only one year after the effective date of the disaccreditation. This means that the disaccredited importer will not be able to import goods into the Philippines for an entire year, which may cause severe supply shortages, slowdowns and even the cessation of operations.

New post-entry audit rules

The post-entry audit (PEA) was introduced in the Philippines in 2001 and was carried out by the BOC Post-Entry Audit Group (PEAG). Toward the end of 2013, the PEAG was dissolved and its functions were transferred to the Fiscal Intelligence Unit (FIU) under the Department of Finance with a clear mandate to intensify the post-entry audit of importers and increase customs revenue.

To guide the FIU in the discharge of its post-entry audit functions, the DOF issued two DOs to-date. The first, DO No. 11-2014, includes guidelines for the selection of importers to be audited and for the issuance of audit notification letters (ANLs). The second, DO No. 44-2014, covers the guidelines for the issuance of the post-entry audit findings (PEAF), the final audit report and recommendation and the assessment/collection notice. This DO also provides the remedies available to an importer to contest the PEAF. For additional detail, see our February 2014 [Tax Bulletin](#).

For importers, one of the most significant changes is that DO No. 11-2014 implements new recordkeeping requirements whereby all records of importations relevant for the verification of the accuracy of the transaction value declared on the import entries must be maintained for a period of 10 years (compared to the previous requirement of three years) from the import declaration date.

The DO enumerates a long list of documents subject to recordkeeping by the importer, and customs brokers are likewise mandated to keep copies of the import records covering transactions they handle. Failure to comply subjects the importer to one or more of the following:

- ▶ An administrative fine of 20% ad valorem on the imported article(s) for which no records were maintained
- ▶ Cancellation of accreditation privileges
- ▶ Criminal prosecution punishable with a fine of not less than PHP100,000, but not more than PHP200,000 and/or imprisonment of not less than two years and one day, but not more than six years

Implications for importers

The Customs Reform Program has heightened the focus on importers and ensuring that they are acting in a legitimate and compliant manner. The importance of doing things “right” cannot be underestimated considering the consequences – including large fines and the potential cancellation of accreditation privileges – for non-compliance.

Even for importers that have already obtained reaccreditation under the new rules, it is important that existing customs practices and procedures are reviewed and periodic internal reviews conducted to identify any compliance gaps prior to discovery of non-compliance by the various government agencies, particularly the BIR and the BOC, that now have the ability to review the company's import transactions.

For additional information, contact:

SyCip Gorres Velayo & Co.

Mark Anthony P. Tamayo, *Makati City*
+2 894 8319
mark.anthony.p.tamayo@ph.ey.com

Lucil Q. Vicerra, *Makati City*
+2 894 8254
lucil.q.vicerra@ph.ey.com

Europe, Middle East and Africa

European Union

Changes in classification for blends of petroleum and ethyl alcohol

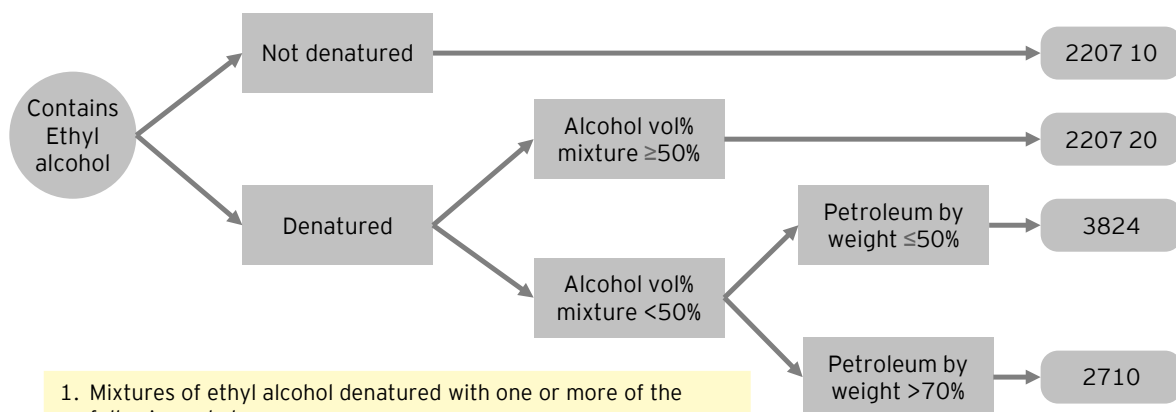


The European Commission (EC) recently adopted tariff classification changes for blends of petroleum and ethyl alcohol. Affected importers may be subject to increased duty rates.

Regulation 626/2014 (July 2014) implemented an additional Explanatory Note for subheading 2207.20 (denatured ethyl alcohol and other spirits, denatured, of any strength) of the Combined Nomenclature (CN). Of particular significance, the new Explanatory Note classifies goods based on alcohol strength by volume, compared to the previous classification regulation 211/2013 that distinguished goods based on percentages by weight.

Previously, blends of petroleum and ethyl alcohol were classified either under CN 2207 20 when containing by weight no more than 30% petroleum (E70 and up) or under CN 3824 when containing by weight more than 30% petroleum (E30 to E70).

Based on the new Explanatory Note, the weight of petroleum in a blend seems no longer leading for classification under either heading 2207 or 3824. Instead, alcohol strength by volume of the blend determines its classification. The following diagram illustrates the new classification of blends, which took effect on 4 July 2014:



1. Mixtures of ethyl alcohol denatured with one or more of the following substances:

- a) Automotive petrol (ethyl tert-butylether, ETBE)
- b) Tert-butyl ethyl ether (ethyl tert-butylether, ETBE)
- c) Methyl tert-butylether (MTBE)
- d) 2-methylpropan-2-ol (tert-butyl alcohol, tertiary butyl alcohol, TBA)
- e) 2-methylpropan-1-ol (2-methyl-1-propanol, isobutanol)
- f) Propan-2-ol (isopropyl alcohol, 2-propanol, isopropanol)

The denaturants referred to in points (e) and (f) of the first paragraph must be used in combination with at least one of the denaturants listed in points (a) and (d) of the first paragraph.



Practical impact

The classification of most blends used as final products for retail sale, such as E85, will most likely not be altered by this change in legislation. Changes may occur with respect to products having the following characteristics:

- ▶ E70 and higher blends, containing low-quality ethyl alcohol (alcohol volume percentages of 70% and lower)
- ▶ E50 to E70 blends, containing high-quality ethyl alcohol (alcohol volume percentages close to 99.9%)

For example, under the previous regulation, an E60 blend, consisting of 60% ethyl alcohol and 40% petroleum (by weight) should be classified under CN 3824 as it contains more than 30% petroleum (by weight). Applying the new Explanatory Note and assuming that the ethyl alcohol used for blending contains an alcohol volume percentage of 99%, the blend would (barring chemical contractions and density differences) contain an alcohol volume percentage of 59.4%. This blend will therefore comply with the requirements set for classification under CN 2207 20 and will attract a higher duty rate.

In practice, this new classification rule may result in the withdrawal of any Binding Tariff Information based on the previous classification regulation (211/2012) that does not comply with the new Explanatory Note for subheading 2207.

Closing thoughts

The customs treatment of petroleum and ethyl alcohol blends may remain under constant discussion. While the new regulation provides some clarity with respect to classification, the debate may continue as new products are developed. Additionally, country of origin is also under current debate for blends consisting of US ethyl alcohol, which is subject to anti-dumping duties in the EU, and Norwegian petroleum, which is blended in Norway. The petroleum industry and ethyl alcohol producers are closely watching these developments.

For additional information, contact:

Ernst & Young Belastingadviseurs LLP

Hans Winkels, *Rotterdam*
+31 (0) 88 407 8358
hans.winkels@nl.ey.com

Ilona van den Eijnde, *Rotterdam*
+31 (0) 88 407 0899
ilona.van.den.eijnde@nl.ey.com

Russia

Ban on acquisition of foreign goods for government and municipal needs



Pursuant to Resolution 656 of 14 July 2014, the Russian Government has established a prohibition against the acquisition of certain types of foreign goods for government and municipal needs. The resolution, intended to protect the internal market and domestic producers, applies to imports of a variety of transport vehicles (e.g., automobiles, trolleys) and special machinery (e.g., bulldozers, power shovels). The resolution takes effect on 1 January 2015 for an undetermined period.

The ban does not apply to goods manufactured in Russia, Belarus or Kazakhstan (i.e., the customs union). Such production can incorporate foreign parts as long as certain localization requirements are met.

The assumption is that foreign manufacturers, jointly with Russian companies, will develop their production sites in Russia in order to comply with the new requirement and to serve the local market. In this context, it is important that companies interested in new manufacturing projects in Russia, particularly with respect to the goods subject to the resolution, understand the allowable level of foreign parts and components that can be incorporated into the manufactured good to ensure that the product qualifies as originating under the local rules of origin. Additional customs considerations include planning opportunities to reduce customs taxes and related costs while maintaining compliance with applicable rules and restrictions.

For additional information, contact:

Ernst & Young (CIS) B.V.

Yuriy Volkov, *Moscow*
+7 495 641 2927
yuriy.volkov@ru.ey.com

Kenya

Kenya Budget 2014/15 – implications for importers and exporters



On 12 June 2014, the Cabinet Secretary presented the Budget Statement for 2014/15 with the highest budget in Kenya's history – KSh1.8 trillion (approximately USD20 billion). Much of the revenue raising measures to fund the budget are focused on taxation, particularly with respect to taxes on imports. At the same time, the budget includes many measures that will reduce import costs for some industry sectors to promote local development and economic growth. We highlight below some of the budget proposals and revenue measures that will affect importers and exporters:

Railway development levy

As an important revenue measure, traders should expect that the railway development levy, applied at a rate of 1.5% of the customs value of the goods, will continue being charged on imports into Kenya. When this levy was introduced in July 2013, it was expected to be short term to finance the construction of a standard gauge railway from Mombasa to Kenya's western border. The levy remains controversial as it is even applied on goods exempt from import duty; however, it is no longer being assessed on imports from within the East African Community (EAC).

Steel and iron imports

Effective 1 July 2014, import duty rates for certain steel and iron imports have significantly increased to raise revenues and to protect local industries producing the same products. Many of the affected imports (based on Harmonized System classification) are subject to a duty increase to 25% (up from 0% to 10%). Considering the major infrastructure products planned for this year, such as the standard gauge railway, airport expansion and various road and port projects, this measure is expected to encourage local investors to invest in the industry; however, at the same time, there are concerns as to whether enough can be sourced locally to meet the demand.

Rice imports

For a one-year period from 1 July 2014, imports of rice in the husk are subject to a reduced rate of duty of 35% (instead of 75%). This significant duty reduction was motivated by the lack of enough rice for food internally within the region. Importers and resellers of rice will therefore incur lower import costs, which the government hopes will translate into more affordable prices for imported rice.

Cement imports

For a long time, cement has been on the list of sensitive items (i.e., imports subject to more than the 25% highest rate of import duty). Effective 1 July 2014, Portland cement is no longer on the sensitive list and the import duty rate has been reduced from 35% to 25%.

Bond requirements for sugar and wheat imports

In the speech presenting the Budget Statement, the Cabinet Secretary proposed scrapping the security bond requirement that apply to importers of sugar for industrial use and wheat under the duty remission scheme. This requirement has been costly to importers and exporters in terms of both administrative requirements and financially in terms of bank and insurance costs. To date, however, no legal provision or notices have been published and thus the Kenya Revenue Authority continues to enforce the bond requirement. Watch for future developments on this measure.



Closing thoughts

Considering Kenya's relatively high duty rates assessed on imports, indirect taxation is expected to continue to be a primary means to fund this fiscal year's ambitious budget. At the same time, the government will be reviewing tax reform proposals with respect to the Income Tax Act, excise duties and value-added tax in an effort to expand the tax base and eliminate tax leakages.

We have highlighted only a selection of the changes implemented on 1 July 2014 that apply to imports into and exports from Kenya. It is important that Kenyan traders review whether the duty rates or customs requirements have changed for their goods that could have an impact on business operations or provide an opportunity to reduce costs.

For additional information, contact:

Ernst & Young (Kenya)

Hadijah Nannyomo, *Nairobi*
hadijah.nannyono@ke.ey.com
+254 20 27 153000

Uganda

Import duty exemption for goods from COMESA Member States



Effective 1 July 2014, goods originating from Member States of the Common Market of East and Southern Africa (COMESA) enjoy duty-free entry into Uganda. This duty exemption applies only for goods from COMESA countries that offer reciprocal benefits – i.e., duty-free treatment for Uganda-originating goods. Although specified “sensitive” items remain subject to import tariffs, this development is a positive step toward regional economic integration of the COMESA Member States.

COMESA is a regional trading bloc comprised of 19 Member States within Africa. Pursuant to the COMESA Agreement, the Member States are working to abolish tariff and non-tariff barriers to promote trade and economic integration among the countries. While the COMESA Agreement called for the Member States to reduce and ultimately eliminate import duties by the year 2000, Uganda had – until now – continued to impose tariffs, albeit at preferential rates. The following table illustrates the import tariff variations for goods imported into Uganda from COMESA Member States over the years.

East African Community (EAC) common external tariff	Uganda preferential tariff for COMESA (prior to 1 July 2014)	Uganda import duty exemption for COMESA (from 1 July 2014)
25%	6%	0%
10%	4%	0%

However, the import duty exemption does not apply to “sensitive” items (e.g., milk, maize, sugar, cigarettes) which continue to attract import tariff rates between 35% and 100%. Other excluded items are listed in Uganda’s Finance Bill (2014) (e.g., certain soaps, fruits and ready to drink juices). Additionally, the tariff exemption does not apply to goods originating from an EAC Member State (that doubles as a COMESA Member State) if such goods do not qualify as originating in the EAC and are not accorded duty-free treatment across EAC borders.

As the import duty exemption applies only to goods originating in a COMESA Member State, importers need to carefully review the criteria set out in the COMESA Protocol on the Rules of Origin. The five criteria are as follows:

1. Goods wholly produced or obtained in a member state (i.e., no materials from outside of COMESA have been used)
2. Goods produced in the Member State and the cost insurance and freight (CIF) value of any foreign (i.e., non-COMESA) materials used does not exceed 60% of the total cost of all materials used in their production
3. Goods produced in Member States whose value-added resulting from the process of production accounts for at least 35% of the ex-factory cost of the goods
4. Goods produced in Member States and are classified or become classified under a tariff heading other than the tariff heading under which they were imported
5. Goods of particular importance to the economic development of the Member States and containing not less than 25% value-added notwithstanding the provision in (3)



In summary, Uganda's import duty exemption regime for COMESA goods can reduce the cost of imports by up to 6%. In order to benefit, importers need to ensure that the rules of origin are met and produce a valid certificate of origin issued by the relevant country of origin. Additionally, the importer should confirm that the COMESA country of origin also offers duty-free benefits to Uganda exports, and that the subject goods are not considered as "sensitive" items for import into Uganda or included in the list of excluded items in the Finance Bill, 2014. Finally, imports from countries that are members of both COMESA and the EAC that are not eligible for duty-free entry into the EAC will not be considered under the COMESA exemption regime.

For additional information, contact:

Ernst & Young (Uganda)

Edward Balaba, *Kampala*
+256 414 343520/4
edward.balaba@ug.ey.com

Economic Community of West African States

ECOWAS to implement milestone Common External Tariff in 2015



After almost 10 years of internal negotiations, the Economic Community of West African States (ECOWAS) Ministers of Finance finally adopted the common external tariff (CET) in March 2013 as an important milestone on the road to an ECOWAS Customs Union.¹¹ The ECOWAS Common Customs Tariff will enter into force as of 1 January 2015. The appropriate method of initiating negotiations on the ECOWAS-CET was to use a prior CET, put in place already since 2000 by eight ECOWAS Member States which form the West African Economic and Monetary Union (WAEMU or UEMOA) – Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo, and extend it to the remaining non-WAEMU ECOWAS States – Cape Verde, Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone. Although in general, the tariff structure systems of the non-WAEMU States do not differ much from the WAEMU States, the average tariff rates vary widely, notably with regard to agricultural products.

Comparison to the WAEMU-CET

During the previous years, various stakeholders raised their concerns on the negative effects, including the loss of protection that may occur when implementing an ECOWAS-CET that is entirely similar to the WAEMU-CET. Among others, Nigeria has argued that the four tariff bands system applicable in the WAEMU-CET could not cover the need for protecting agricultural products, as well as any infant industries.

In response to these concerns, an agreement was reached to complement the WAEMU-CET with a fifth tariff band of 35% duty rate in relation to specific goods for economic development (130 tariff lines). These goods are to be local products that the ECOWAS region intends to protect with a view of stimulating economic growth through diversification. The eligibility criteria for this category were defined as follows: product vulnerability; economic diversification; integration; sector promotion; and high potential of production. An overview of the future applicable tariff bands is provided in the table below. With the introduction of the ECOWAS-CET, the Harmonized System (HS) 2012 version will be implemented in the nomenclature. In addition, the ECOWAS-CET nomenclature moves from 8 to 10 digits to facilitate the separation of tariff codes where ambiguity exists.

Future structure of the ECOWAS-CET

Category	Description	Duty tariff band	Number of tariff lines
0	Essential social goods	0%	85
1	Goods of primary necessity, raw materials and specific inputs	5%	2,146
2	Inputs and intermediate goods	10%	1,373
3	Final consumption good	20%	2,165
4	Specific goods for economic development	35%	130

11. ECOWAS, formally established in May 1975, revised its founding ECOWAS Treaty in 1993 to accelerate the process of integration and establish an economic and monetary union to stimulate economic growth and development in West Africa with, among others, the objective to introduce a CET. Therefore, in an effort to smooth the negotiations, a Joint WAEMU-ECOWAS technical CET Committee was created in 2006.



The first discussions that related to the categorization into the five tariff bands resulted in a higher number of goods falling in the higher tariff bands. The average duty tariff rate therefore was initially too high and in violation with Article XXIV of the WTO Agreement. The categorization for the ECOWAS-CET was reviewed with the final structure as presented in the table above.

Supplementary measures

Due to the high variety in applicable duty rates among ECOWAS Member States, the Members have been given some margin to maintain higher national rates compared to the CET for a number of years (up to five years after the CET implementation date) by means of two supplementary measures: the Import Adjustment Tax and the Complementary Protection Tax (CPT), which become operative at the start of 2015. Each Member State may deviate from the CET but only with the use of these two supplementary measures being limited to a basket of goods not exceeding 3% of the total tariff lines in the CET.

The Import Adjustment Tax is basically a national provisional tax set on imports from external countries for a maximum duration of five years. Applying this measure, an ECOWAS Member State has the possibility to set an additional rate in the case where the specific Member State's Most-Favored Nation (MFN) tariff rate is above the duty rate set by the ECOWAS-CET. However, when applying the Import Adjustment Tax, these rates may not exceed the difference and there is a maximum limit of 20%. In general, this tax is to be seen as a component of the implementation program rather than a countervailing duty or safeguard measure.

The CPT is a characteristic safeguard measure that intends to anticipate and moderate any import waves on goods coming from outside the ECOWAS block under MFN terms. This latter condition also excludes the application of the tax on any import volumes entering under ad hoc and regulatory exemptions. This tax can be imposed in the following two situations:

- 1 When the prices of the imported goods fall by at least 80% of the three-year average unit price of import so as to make its domestically-produced substitutes uncompetitive. In this situation the tax may be applied for a maximum period of two years.
- 2 When the import volumes in a given year rise by 25% or more against the prior three-year average. In this situation the tax may be applied for a maximum period of one year.

In both cases, the CPT may be set at a maximum of 70% of the respective ECOWAS Member States' WTO bound MFN rate for the relevant product.

In addition to the two "new" measures mentioned above, the ECOWAS Council of Ministers also highlighted the importance of harmonizing the ECOWAS and UEMOA existing import levies. The two existing community levy regimes in the region comprising the ECOWAS Community levy (0.5%) and the counterpart Community Solidarity levy for the UEMOA (1%) will be maintained for the upcoming five years, but a study will be undertaken to assess their feasibility. Depending on the outcome of this assessment, a 1.5 % Community Integration Levy to cover the operating expenses of both Commissions may replace the two currently existing levies.



Affected products and industry sectors

Several research bodies such as the World Bank and the European Centre for Development Policy Management (ECDPM) investigated the effect of the forthcoming ECOWAS-CET. Even though many aspects of the actual implementation remain unclear, the ECDPM believes "with regard to agricultural products, there is an averaged slight increase compared to the UEMOA CET. The highest increases are for meat and cocoa (HS Chapters 2 and 18), with an average tariff increase of 7.25 percentage points; these are followed by oils (Chapter 15); meat and fish preparations (Chapter 16); and cereal preparations (Chapter 19), where average tariffs have risen by 3 to 5 percentage points. But there have been some partially offsetting falls as well: Chapter 1 (live animals) and Chapter 9 (coffee, tea and spices) experience a decrease in average protection of about 7.5% and 4.5% respectively."

Certain substantial goods that will be subject to relatively high tariffs are wheat flour (20%) and coffee beans, canned turkey and pork, fresh and frozen pork and yoghurt (35%). Rice, by contrast, will be subject to a tariff of only 10%, though the ECDPM also states that this "could gradually climb through the 20% band and reach the 35% band."

The table below provides an overview of the changes in categories when comparing the WAEMU-CET with the ECOWAS-CET. On the one hand, 251 tariff lines will fall under a higher tariff rate, of which 130 will be covered by the fifth tariff band (35%). On the other hand, 361 tariff lines will benefit from a tariff reduction. The products that will face a higher tariff rate include among others: Meat and offal (canned or prepared); oils (except partly refined petroleum); cacao powder and chocolate; soap; packaging (plastic, rubber, carton); fabrics and mineral or sparkling water.

The products that will benefit from a lower tariff rate include among others: specific components for automotive assembly; refrigerators; specific components for suitcases, shoes and clothing; vegetable seeds; concentrated orange juices; living animals; and fried and frozen fish.

Nigeria

Being the largest and most industrialized economy in the ECOWAS region, Nigeria can be seen as the most important Member State for looking at potential pitfalls and opportunities. In the background of the unknown future proceedings, the World Bank assessed the potential effect on Nigeria of implementing the ECOWAS-CET in three possible scenarios:

1. A fully implemented CET
2. A CET maintaining additional levies
3. A CET maintaining both the current import bans as well as the additional levies

		ECOWAS CET				
		0%	5%	10%	20%	35%
WAEMU-CET	0%	66	7	1		
	5%	16	2,013	28	26	
	10%	2	58	1,128	59	6
	20%	1	68	216	2,080	124
	Total tariff lines	85	2,146	1,373	2,165	130
		Total tariff lines				
		74	2,083	1,253	2,489	5,899



The study in itself gives a clear indication that ECOWAS Member States still have many positions to take before the official starting date of 1 January 2015. The main outstanding discussions the Member States are now facing include to what extent CET will be implemented, notably with regard to existing import bans and additional levies currently applicable in certain Member States. The impact of the ECOWAS-CET will further largely depend on the products that will be subject of an Import Adjustment Tax in the various Member States.

Nevertheless, importers and traders in the region should prepare for the CET implementation by updating the duty rates for their products in ERP systems and duty cost forecasts. Careful monitoring over the next months will be required with regard to the supplementary measures and the list of products in each ECOWAS Member State subject to the Import Adjustment Tax. The potential abolishment of existing import bans and additional levies in some countries, especially in Nigeria, may open the door for new investment opportunities in the region.

Benefits and challenges

The introduction of the CET is a milestone for the consolidation of the internal free trade area and the development of a common trade policy, and forms the basis for further integration. Expectations are that the ECOWAS-CET will thrive a higher economic growth, discourage smuggling and stimulate regional trade by allowing companies to plan for the long term without any fear of sudden tariff changes.

Critics refer to the loss of national trade policy instruments and the potential industries to be affected most by a (substantial) negative change in tariff rates. Moreover, as long as the ECOWAS Trade Liberalization Scheme (ETLS), which is to be ECOWAS's internal Free Trade Area, is not harmonized and horizontally applied in all ECOWAS States, the scheduled CET will not reach its full potential. So far, the implementation of the ETLS has been very limited due to obvious lack of legal backing at the national level, hence the charging of full duties or the application of import bans by customs authorities in disregard of the regional laws and policies.

In addition, customs clearance processes in ECOWAS States are still characterized by their inefficiency and complexity, which is making certain import/export procedures very time-consuming and burdensome. Furthermore, a lack of a credible legal redress mechanism has even empowered corruption along several border routes as border officials continue to erect illegal road blocks and harass traders at such points.

Closely linked with the abovementioned challenges related to the ETLS, it remains to be seen if all ECOWAS Member States will get their customs information technology systems, updated and integrated in time.

Another clear challenge lies with the Member States individual WTO commitments as well as the CET in general. The implementation of the concluded ECOWAS tariff may possibly put some Member States in violation of their agreed WTO tariff ceilings, with ECOWAS as a group being obligated to provide rectifications to those WTO members adversely affected. Given the fact that most Member States have high bound tariff rates, whereas the applied tariff rates on average are substantially lower, the future challenge for ECOWAS will be to maintain the implementation of the concluded CET.

ECOWAS – EU Economic Partnership Agreement (EPA)

According to the latest press releases from both ECOWAS Council of Ministers, as well as statements made by EU officials, the official conclusion of an ECOWAS – EU EPA is pending and is expected soon. In the light of the 1 October 2014 deadline set by the European Commission, the slacking negotiations have been a source of pressure for the ECOWAS Member States if they aspire not to lose duty-free and quota-free market access to the EU under the temporary Market Access Regulation 1528.

For additional information, contact:

Ernst & Young Tax Consultants BCVBA

Wynn Van Aerschot, *Brussels*
+32 2 774 6489
wynn.van.aerschot@be.ey.com

Christina Horckmans, *Brussels*
+32 2 774 9322
christina.horckmans@be.ey.com

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ED None

Americas

Bill Methenitis, Dallas
Ernst & Young LLP
+1 214 969 8585
william.methenitis@ey.com

Asia-Pacific

Robert Smith, Shanghai
Ernst & Young (China) Advisory Limited
+86 21 228 2328
robert.smith@cn.ey.com

Europe, Middle East and Africa

Neil Byrne, Dublin
Ernst & Young (Ireland)
+353 1 221 2370
neil.byrne@ie.ey.com

TradeWatch Editor

Shelley Lugon-Moulin
Ernst & Young LLP
+41 79 916 1435
shelley.lugonmoulin@ey.com