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EY

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WTO Trade Facilitation Agreement enters into force



The World Trade Organization (WTO) Trade Facilitation Agreement (TFA), which concluded negotiations in December 2013, entered into force on 22 February 2017 after exceeding the 110-country requirement for two-thirds WTO member acceptance. Most recently ratified by Rwanda, Oman, Chad and Jordan, the TFA is the first multilateral WTO agreement in 21 years.¹

The TFA seeks to ease obstacles that are common in developing countries, such as high trade administration costs, lengthy clearing times, increased corruption and lack of transparency. The agreement aims to promote global trade through automated customs windows, availability of customs information online and expedited movement, release and clearance of goods, including goods in transit.

Looking ahead to implementation, each country that has accepted the agreement is expected to implement in accordance with the provided timelines and procedures, depending on their stage of development. Developed countries agreed to apply substantive portions at the date of entry into force, while developing countries were provided additional flexibility.

Automated customs window

One potential benefit of the agreement is a global increase in automated customs windows. As an example of potential impact, an automated customs window was recently implemented in Rwanda, reducing import wait times from 11 days in 2010 to 34 hours in 2014.²

¹ The TFA is effective only for the member countries that have accepted the "Protocol of Amendment," an amendment to add the TFA to Annex 1A of the WTO agreement. The following WTO members have accepted the TFA (in order of acceptance): Hong Kong China, Singapore, the United States, Mauritius, Malaysia, Japan, Australia, Botswana, Trinidad and Tobago, the Republic of Korea, Nicaragua, Niger, Belize, Switzerland, Chinese Taipei, China, Liechtenstein, Lao PDR, New Zealand, Togo, Thailand, the European Union (on behalf of its 28 member states), the former Yugoslav Republic of Macedonia, Pakistan, Panama, Guyana, Côte d'Ivoire, Grenada, Saint Lucia, Kenya, Myanmar, Norway, Vietnam, Brunei Darussalam, Ukraine, Zambia, Lesotho, Georgia, Seychelles, Jamaica, Mali, Cambodia, Paraguay, Turkey, Brazil, Macao China, the United Arab Emirates, Samoa, India, the Russian Federation, Montenegro, Albania, Kazakhstan, Sri Lanka, St. Kitts and Nevis, Madagascar, the Republic of Moldova, El Salvador, Honduras, Mexico, Peru, Saudi Arabia, Afghanistan, Senegal, Uruguay, Bahrain, Bangladesh, the Philippines, Iceland, Chile, Swaziland, Dominica, Mongolia, Gabon, the Kyrgyz Republic, Canada, Ghana, Mozambique, Saint Vincent & the Grenadines, Nigeria, Nepal, Rwanda, Oman, Chad and Jordan.

² *Major global agreement comes into force making trade cheaper, easier and faster*, United Nations Conference on Trade and Development, 22 Feb. 2017, available at unctad.org.



Shorter wait times particularly contribute to global trade of perishable goods, where lengthy clearance procedures and related corruption may cause product deterioration.

Efforts to help developing countries and least-developed countries

Throughout the ratification process, the WTO prepared developing countries (DCs) for implementation through training courses and a formal Trade Facilitation Agreement Facility (TFAF) to help WTO members obtain assistance as needed.

Particularly in DCs, importers face obstacles that slow the flow of trade. According to the WTO, the TFA will likely reduce time to market for imports by a day and a half, and two days for exports.³

Timeline of implementation

DCs have committed to apply substantive portions of the TFA from the effective date of the agreement. However, special and differential treatment provisions allow developing and least-developed countries (LDCs) to postpone implementation or request assistance and support in certain areas as TFA provisions range in scope. Some measures could be implemented rather quickly, such as increased transparency through online customs information. Other measures, such as the creation of automated customs windows, may require additional time or assistance.

To postpone implementation or request support, countries must notify the WTO of the categorization of each TFA provision under the below scheme. DCs must notify the WTO at the time of the TFA's entry into force.

- ▶ **Category A:** Implement upon entry into force (within one year of entry for least-developed countries)
- ▶ **Category B:** Implement after a transitional period of time
- ▶ **Category C:** Implement after a transitional period of time, requiring assistance and support for implementation capacity building

Considerations for future planning

Businesses engaging in global trade may face various non-tariff barriers and other practical obstacles when doing business abroad. TFA implementation could launch a new era of trade facilitation reforms worldwide, especially regarding trade to less developed countries. Small and medium-sized companies may look to benefit from the improved border efficiency and increasingly streamlined customs processes, such as automated customs windows.

Going forward, companies should keep in mind the upcoming TFA implementation in developing markets and its potential impact on business planning. Steps taken as a result of the TFA may enhance the trade environment of certain countries, which could be significant in business planning activities, such as those dealing with supply chains or new markets.

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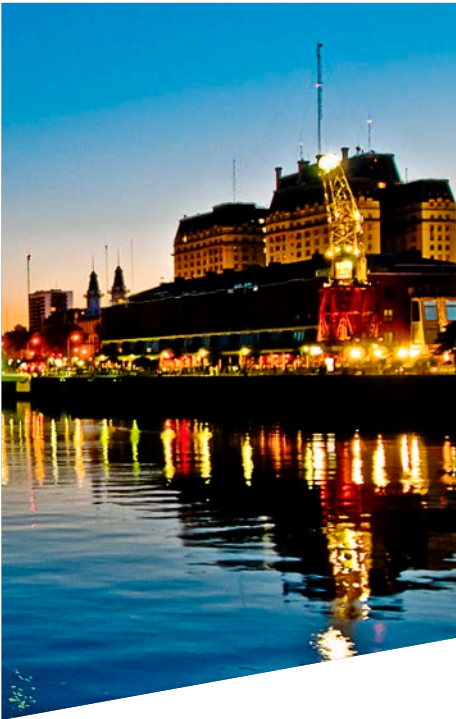
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³ World Trade Report 2015: *World Trade Report 2015: Speeding up Trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement*, (WTO) (2015).

Argentina

New mechanism for settlement of customs and other tax obligations



In December 2016, the Federal Tax Administration (*Administración Federal de Ingresos Públicos, AFIP*) issued General Resolution AFIP No. 3962/2016 regarding export benefits. This Resolution introduces a new mechanism for settling customs and other tax obligations.

In Argentina, exporters of unused goods manufactured in the country are entitled to the benefit of a total or partial reimbursement of the amounts paid as internal taxes in the different production and sale phases.

The applicable reimbursement percentage depends on the classification of the goods under the MERCOSUR Common Nomenclature, and currently ranges from 0% to 6%. To be eligible to receive rebates, the exporter must provide evidence of compliance with certain requirements, such as not registering any tax or social security debts.

The reimbursement percentage is determined on the basis of the FOB (free on board) value of the goods to be exported minus the sum of the CIF (cost, insurance and freight) value of any imported inputs and the amount paid as commissions and brokerage.

In this regard, General Resolution AFIP No. 3962/2016 establishes a “Customs Credit Disposition Request,” a system that allows the settlement of tax, social security and customs obligations through credits arising from export benefits (reimbursements) or overpaid export duties.

In essence, to use the application, exporters must provide evidence of liquid and enforceable payables from tax, social security and/or customs obligations and receivables, such as export reimbursements barred from collection due to tax or social security debts or overpaid export duties (for example, from nullified exports or with shipping differences).

In this sense, after cancelling the payables with the receivables, the remaining amount – if any – is transferred to the exporter’s bank account.

Exporters registering exports under USD2 million per year, who are entitled to a refund may choose one of the following alternatives:

1. Transfer the credit to the customs collection account to settle future customs obligations arising from import or export transactions
2. Issue an electronic bond (registered in the tax account system), which may be used to settle future tax obligations
3. Request the amount to be transferred to the exporter’s bank account

To conclude, exportation benefits generate “customs credits,” which the exporter may use to settle tax, social security and customs obligations instead of receiving currency.

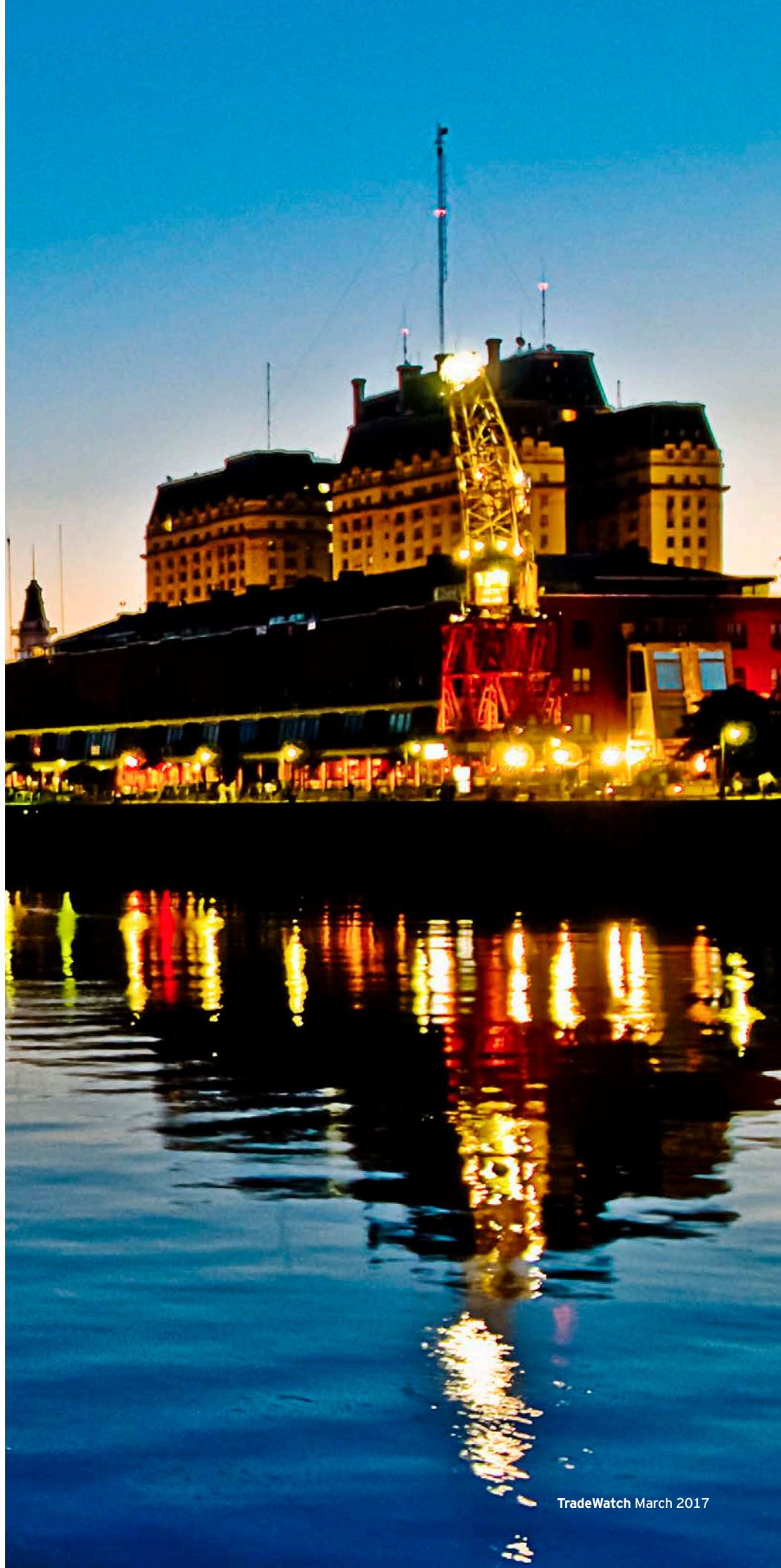
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Costa Rica

Costa Rica amends its Free Trade Zone Regime regulations



Costa Rica has made significant modifications to the Free Trade Zone Regime (FTZR) regulations through Executive Decree No. 40141-COMEX-H (the Decree). The Decree is effective as of 25 January 2017.

New definitions

The Decree adds the following definitions to the FTZR regulations:

Permanent termination of operations is where a FTZR beneficiary that has already started operations stops all of its activities under the regime, without notice and without carrying out:

- ▶ Imports of machinery, equipment and inputs
- ▶ Local sales
- ▶ Re-exportations

Start of operations is the moment when a FTZR beneficiary carries out pre-operative activities related to employment creation, infrastructure, operating plant conditioning and other activities related to the FTZR establishment process.

Start of production operations is the moment when a FTZR beneficiary starts its production process and/or the supply of services under the FTZR.

National added value (*Valor Agregado Nacional*) is the total sales ratio of an FTZR beneficiary during a tax period; it measures the company's contribution to the national economy.

The Decree also adds current Classification of Costa Rican Economic Activities (*CAECR: Clasificación de Actividades Económicas de Costa Rica vigente*). It is based on the International Standard Industrial Classification of All Economic Activities (ISIC).

FTZR request

FTZR applicants must submit their request with the Costa Rican Foreign Trade Promotion Agency (*PROCOMER: Promotora del Comercio Exterior de Costa Rica*), using the digital form available on PROCOMER's website. PROCOMER is the institution responsible for the promotion of the exportation of Costa Rican goods and services and it is in charge of the Free Trade Zone Regime application and compliance processes.

The applicant's legal representative must digitally sign the application form and include the required sworn statements. The application requires three sworn statements from the applicant – one provided by a notary public and two ordinary sworn statements (i.e., not before a notary public).



The Decree now only requires an environmental impact assessment and information on pollution and waste caused by the production process when the contemplated activity is among those, for which the Costa Rican Technical Environmental Secretariat (*Secretaría Técnica Nacional Ambiental*) requires an environmental impact assessment.

Free trade zone park administrator companies, companies located outside of a free trade zone park and logistic services companies must provide a sketch (map) of the area requested to be under the FTZR. A free trade zone park is an area that hosts free trade zone companies and is managed by park administrator companies.

The Decree requires copies of the identification cards (IDs) of the legal representative and personnel interacting with the customs authorities. The Decree does not require a notary public to certify the copies of the IDs.

PROCOMER's assessment

In addition to the analysis carried out by PROCOMER, the Decree requires PROCOMER to confirm that the activities to be performed under the FTZR fall within the Costa Rican economic activities classification.

FTZR executive agreement

The Executive Branch grants FTZR status through an executive agreement. The executive agreement must contain the following:

- ▶ Express reference to the company's obligation to register as a taxpayer with the tax authorities before the commencement of operations to obtain the FTZR benefits
- ▶ Express reference to the company's obligation to be registered with the Social Security Administration (*Caja Costarricense del Seguro Social*) at the start of operations

Minimum infrastructure

For free trade zone parks with processing industries or mixed activities, the minimum infrastructure requirements are now as follows:

- ▶ If within the greater metropolitan area, the park must be able to host at least six FTZR beneficiaries or have an area available for construction of not less than 1,000 square meters.
- ▶ If beyond the greater metropolitan area, the park must be able to host at least three FTZR beneficiaries or have an area available for construction of not less than 1,000 square meters.

Previously, these free trade zone parks had to hold at least 12 FTZR beneficiaries or have an available area of not less than 10,000 square meters.

Free trade zone parks with services companies, trading companies and those dedicated to scientific research must meet a new minimum infrastructure requirement of 1,000 square meters for FTZR beneficiaries. The previous requirement was a minimum of 4,000 square meters.

Extension and reduction of FTZR areas

Park administrators are able to extend or reduce FTZR areas by adding to or excluding from a building complete floors or parts thereof.



New FTZR areas approval request

FTZR applicants must submit requests for approval of new FTZR areas to PROCOMER using the digital form available on PROCOCOMER's website. FTZR applicants must provide the following information:

- ▶ A description and nature of the area submitted for approval
- ▶ The area's exact address
- ▶ Identification of the relevant customs authority
- ▶ The square meters to be added to the area
- ▶ For processing industries: current area, additional area and total production area after the increase
- ▶ A sworn statement (not certified by a notary public)
- ▶ The digital signature of the company's legal representative

FTZR areas removal request

To remove an area from a FTZR, the applicant must submit the request to PROCOMER using the digital form available on PROCOCOMER's website. The applicant must provide the following information:

- ▶ A description and nature of the area that is to be removed
- ▶ The area's exact address
- ▶ A statement as to whether the area is located within or outside a free trade zone park and the name of the park, if applicable
- ▶ Identification of the relevant customs authority
- ▶ For processing industries: current area and total production area after the removal
- ▶ The size of the area in square meters
- ▶ The property registration number for the area

- ▶ The entire inventory of goods corresponding to the area and their new destination
- ▶ An indication of whether the area to be removed was built upon and whether tax incentives were used
- ▶ A sworn statement (not certified by a notary public)
- ▶ The digital signature of the company's legal representative

The customs authorities must make a decision regarding the removal of the requested areas within five business days.

Verification of FTZR beneficiaries' tax and customs obligations

To ensure that FTZR beneficiaries are current with their tax and customs obligations, PROCOMER will consult the customs authorities and the tax authorities, which will have five business days to issue the corresponding certifications.

FTZR warehouses

FTZR beneficiaries may process goods for inward customs clearance, import goods, donate goods, sell goods to the local market and export goods from an FTZR warehouse, as long as the warehouse is adequate to receive, inspect and dispatch goods before the customs authorities' authorization. Likewise, FTZR beneficiaries may recycle and destroy goods in warehouses.

Temporary storage of goods in bonded warehouses

At customs bonded warehouse facilities, FTZR beneficiaries may process goods for inward customs clearance, donate goods, export goods, sell goods to the local market and carry out repackaging and distribution of goods, as long as the bonded warehouse is authorized for such activities. Likewise, FTZR beneficiaries may recycle and destroy goods in bonded warehouses.



Modification of the executive agreement

PROCOMER may now authorize the following requests without approval from the Executive Branch:

- ▶ Modification of the national added value percentage
- ▶ Expansion or reduction of the area of a free trade zone park

Goods to be excluded from the FTZR

All goods acquired on the local market under the FTZR and excluded from the FTZR are subject to all taxes applicable to ordinary transactions.

FTZR beneficiaries' obligations

All FTZR beneficiaries must be current with their tax and social security reporting and payment obligations with the tax and customs authorities.

Annual Report of Operations

The Decree establishes that in the event a FTZR beneficiary fails to submit the Annual Report of Operations, or submits it with errors or omissions, PROCOMER will automatically suspend the company's benefits and activities under the FTZR until a comprehensive and precise report is submitted or corrected, whichever the case may be.

Nonpayment of the FTZR fees

When a FTZR beneficiary is more than 45 calendar days late with the mandatory payments to use the FTZR, PROCOMER will give beneficiaries 15 business days to make the payment. Failure to comply with this payment obligation will trigger the imposition of penalties and the suspension of all benefits with PROCOMER until payment is made.

Local purchases

FTZR beneficiaries must retain the supporting documents and information on local purchases during the entire tax exemption period granted to the FTZR beneficiaries.

Payment for the right to use the FTZR

The Decree adds a new section to the FTZR regulations establishing that the following rules apply to payments for the right to use the FTZR:

- ▶ FTZR beneficiaries must make payments within the first 10 business days of the month
- ▶ Interest on late payments applies after the 10th business day
- ▶ In cases where fees are determined according to monthly sales, companies must submit their monthly sales report within the first 10 business days of the following month and PROCOMER will invoice the company based on that data

Depreciation rules

The new FTZR regulations establish that goods listed in Annex 2 of the regulations to the Income Tax Law are subject to depreciation. Depreciation is not allowed if the constructed or remodeled areas are not property of the FTZR beneficiary. For goods depreciated at 100% of their economic value, the base for calculating applicable taxes is their residual value.



Closing thoughts

This article outlines only a selection of the recent changes in Costa Rica's FTZR application procedures. Companies that review the new procedures and ensure they satisfy all of the application requirements will be able to secure a competitive advantage.

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United States

U.S. Customs and Border Protection issues guidance regarding documentation requirements for HTSUS 9801.00.10 claims under the Trade Facilitation and Trade Enforcement Act



In the December issue of *TradeWatch*, we discussed a provision within the Trade Facilitation and Trade Enforcement Act that expands the definition of Harmonized Tariff Schedule of the United States (HTSUS) subheading 9801.00.10.⁴ Specifically, we discussed how record-keeping requirements may have changed under the new law. On 31 January 2017, U.S. Customs and Border Protection (CBP) issued Cargo Systems Messaging Service (CSMS) #17-000046 to provide guidance for what documents CBP may request to support 9801.00.10 claims under the new law.

HTSUS 9801.00.10 allows for the duty-free importation of goods that were previously exported from the United States and had not been advanced in value or condition through further manufacturing or processing. Previously, the provision applied only to products of the United States. Under the Trade Facilitation and Trade Enforcement Act, the provision now includes “any other products when returned within three years after having been exported.”

The CSMS describes the documents that CBP may request from the importer to determine whether the duty-free exemption for US (no time limit for return) or foreign-origin goods (returned within three years) applies:

- ▶ For formal entries of any origin, the importer may be asked to provide a declaration from the foreign shipper that the products were not advanced in value outside the United States. A certificate from the master of a vessel stating the products were returned without being unladen may be accepted in lieu of this declaration.
- ▶ For formal entries of US-origin goods not clearly marked with the name and address of the manufacturer, CBP may require a manufacturer’s affidavit confirming the articles were made in the US.
- ▶ For all goods entered under HTSUS 9801.00.10, the importer must provide proof of export. Any one of the following documents will suffice: a copy of the entry into the foreign country, US export invoice, bill of lading/airway bill, or electronic export information (EEI) filing.

⁴ Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, 130 Stat. 224, available at congress.gov.

- ▶ Additional documentation is required for exported aircraft and components, or other items exported under a Department of State license.

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

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Eurasian Economic Union Update on the new EEU Customs Code



On 26 December 2016, a meeting took place in Saint Petersburg to review and sign the new Customs Code of the Eurasian Economic Union⁵ (EEU Customs Code). The heads of four out of the five EEU Member States signed the Code. The President of the Republic of Belarus is expected to sign the EEU Customs Code in the very near future as supported by Regulation 19 of the Eurasian Intergovernmental Council, issued on 16 November 2016. Regulation 19 states that EEU Customs Code had been approved by all EEU Member States and was to be sent out to the respective Member States for completion of the internal procedures required prior to signing the Agreement.

The EEU Customs Code is scheduled to enter into force not earlier than 1 July 2017. However, it is possible that the process of relevant notifications exchange by the EEU Member States will delay this date.

The new EEU Customs Code supercedes a number of international agreements that will be annulled after the Code enters into force. For example, the Agreement on the "Determination of the Customs Value of Goods Moved Across the Border of the Customs Union" of 25 January 2008 and a number of other agreements and protocols will cease to have force.

The EEU Customs Code contains new provisions regarding electronic declarations, automatic clearance of goods, declaration without supporting documents and much more. The most significant changes relate to the institution of authorized economic operator (AEO). In particular, importers and exporters will be able to obtain three types of AEO certificates, each of which will include a particular set of special simplifications. The EEU Customs Code also allows interested parties to obtain advance rulings on customs valuation.

Given that all EEU Member States will soon have signed the EEU Customs Code, foreign trade companies need to consider the EEU Customs Code's provisions and evaluate the impact on their operations.

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⁵ Member States of the Eurasian Economic Union are Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia.

Developments in the rules governing the inclusion of royalties in the customs value of goods



On 15 November 2016, the Board of the Eurasian Economic Commission (EEC Board) adopted Recommendation No. 20 “On the Statute Concerning the Adding of Royalties and Other Similar Payments for the Use of Intellectual Property to the Price Actually Paid or Payable for Imported Goods” (the Statute). The Statute is in force as of 17 November 2016. Some notable provisions are as follows:

- ▶ The decision whether to include royalties in the customs value of goods does not depend on whether the rights owner is a person of an Eurasian Economic Union (EEU) Member State or a foreign person. The EEC Board clarifies that even when royalties are paid within the EEU, the obligation to include the payments in the customs value of goods must be met.
- ▶ The Statute provides a list of factors indicating that the payment of royalties is a condition of the sale of the imported goods. For example, one such factor is a provision in the license agreement allowing the rights owner to monitor the manufacture or the sale of the goods where such monitoring goes beyond quality control.

- ▶ The Statute provides examples of situations involving royalties paid for trademark use. The EEC Board sets out a number of examples of the inclusion of royalties in the value of imported raw materials for the manufacture of end products within the EEU, including situations in which royalties for the use of trademarks on end products need not be included in the customs value of imported raw materials. These scenarios have prompted a great deal of discussion among professionals.

Unfortunately, the examples do not cover situations where royalties are paid for the use of know-how. This may be because the EEC Board has not encountered the use of this type of intellectual property in practice.

In addition to the Statute, Decision No. 133 of the EEC Board of 1 November 2016 “Concerning the Introduction of Amendments to the Procedure for the Application of the Deferred Determination of the Customs Value of Goods” came into force on 2 December 2016. Decision No. 133 deals with the practical aspects, including royalties in the customs value.

For example, the customs value determination for goods in relation to which royalties are paid may be deferred if at the time the goods are imported the amount of royalties is unknown, but the method of calculating them has been established.



Previously, the practical aspects of including royalties in customs value were always discussed and agreed upon with customs at the clearance point on a case-by-case basis. However, customs at the clearance point could change its position on the agreed approach, for example, under pressure from a higher customs authority.

The new procedure expressly allows importing companies to determine an approximate amount of royalties to be included in the customs value, which is calculated on the basis of planned volumes of imports or sales of goods or other projection figures. In this case, the EEC Board expects the highest values of those figures to be used in the calculation.

The exact amount of royalties may be determined up to 15 months after importation. The information used to calculate the preliminary and exact amounts of the customs value of goods must be supported by documents.

The exact amount of the customs value of goods is declared by submitting to the customs authority a completed customs value declaration. Overpayments will be refunded in the appropriate manner and importers will have to make up any shortfalls.

In light of these new rules, importers should re-assess their approach to the inclusion of royalties in the customs value. It is important to consider both whether royalties need to be included in the customs value as well as the mechanism for doing so. Timely development or review of the methodology for inclusion of royalties in the customs value of goods and for dealing with the associated practical and technical aspects for calculating the respective customs payments will be of benefit.

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European Union

The EU introduces the REX system for proof of origin under the GSP



The European Union (EU) has introduced the Registered Exporter system (REX system) as of 1 January 2017.⁶ To prove eligibility for preferential treatment under the EU's Generalised System of Preferences (Generalised Scheme of Preferences in some EU documents) (GSP), importers will soon no longer be able to obtain proof of origin from the competent authorities in the beneficiary country. Instead, exporters who are registered in the REX system will self-certify the origin of the exported goods and provide importers with the needed proof of origin. These changes might have a considerable impact on businesses, both from a financial and an operational perspective.

Proof of preferential origin under GSP

As of 1 January 2017, the REX system is introduced in the EU, Switzerland⁷ and Norway. This is a system of self-certification of goods, introduced for the purpose supporting preferential trade arrangements. The REX system is initially applied in the GSP, through which the EU unilaterally grants tariff preferences to developing

countries. Under the REX system, economic operators that are registered (Registered Exporter) will make a prescribed "statement on origin" of the goods on their invoice (or other commercial document containing all required data). This means that the method to prove GSP preferential origin of goods changes significantly. The proof of origin will no longer be issued by the competent authorities in the beneficiary (exporting) country by way of a certificate of origin (e.g., Form-A), but can only be issued by Registered Exporters by way of an origin statement, which is typically printed on the commercial invoice.

Countries involved

The new REX system is introduced in phases. As of 1 January 2017, the following countries apply the REX system:

- ▶ EU, Switzerland, Norway
- ▶ Congo, Comoro Islands, Guinea-Bissau, India, Kenya, Laos, Niue Islands, Solomon Islands and Zambia (beneficiary countries)

⁶ In the EU, the REX system was introduced by "Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code."

⁷ See "Switzerland introduces Registered Exporter for Generalised System Preferences" on page 29 of this issue.



For these beneficiary countries it will be possible to use Form-A certificates during a transitional period applicable until 31 December 2017. Starting 1 January 2018 only the REX system procedure will apply.

Other beneficiary countries will follow with the introduction of this system over the next years. In 2018, the following countries will introduce the REX system as well:

- ▶ Afghanistan, Armenia, Bolivia, Ivory Coast, Eritrea, Gambia, Guinea, Malawi, Mozambique, Myanmar, Niger, Rwanda, Sri Lanka, Sudan, Swaziland, Syria, Tanzania

In 2019, 22 more countries will follow:

- ▶ Bangladesh, Benin, Burkina Faso, Cabo Verde, Cambodia, Haiti, Indonesia, Kyrgyz Republic, Lesotho, Madagascar, Mauritania, Mongolia, Nigeria, Paraguay, Philippines, Samoa, Senegal, Tajikistan, Uganda, Uzbekistan, Vanuatu, Vietnam

Please note that the following GSP countries have not yet announced as of which date they will apply the REX system:

- ▶ Angola, Bhutan, Burundi, Cameroon, Central African Republic, Chad, Cook Islands, Djibouti, East Timor Equatorial Guinea, Ethiopia, Fiji, Georgia, Ghana, Iraq, Kiribati, Liberia, Mali, Marshall Islands, Micronesia, Nauru, Nepal, Pakistan, São Tomé and Príncipe, Sierra Leone, Somalia, South Sudan, Sudan, Togo, Tonga, Tuvalu, Ukraine, Yemen

As of 2020, all beneficiary countries must have introduced the REX system. By then, the Form-A will be abolished. Progressively, the EUR.1 certificate will be replaced by the “statement on origin” as proof of origin in cases in which the EU has a free trade agreement (FTA) with a country applying the REX system. Currently, no FTA applies to the REX system.

Who should register

The following economic operators should already register in the REX system database to continue availing the benefits of GSP origin:

- ▶ Exporters in the GSP beneficiary countries.
- ▶ EU operators exporting raw materials and/or components to GSP beneficiary countries for the purpose of bilateral cumulation of origin.
- ▶ EU operators replacing proofs of origin initially made out in GSP beneficiary countries. For example, if a business splits a shipment of goods with preferential origin, new statements on origin should be issued by that business. Please note that even if the shipment is not split, it can still be essential for an EU trader to issue new statements on origin, as the original statement on origin is printed on the commercial invoice that the EU trader receives and which contains information regarding their purchase price.
- ▶ In anticipation of the expansion of the REX system, EU operators exporting to third countries with which the EU has a FTA and where the REX system is to be applied.

Impact on businesses importing into the EU, Switzerland and Norway:

- ▶ Businesses importing goods into the EU should verify whether they need to register in the REX system database (e.g., in cases where cumulation of preferential origin is applied).
- ▶ Businesses importing goods (and especially those businesses that are AEO certified) need to ensure that there are processes in place to verify the preferential origin of the goods and to regularly monitor the registration of the exporter in the REX system database.



- ▶ If the exporter is not registered, the statement on origin cannot be used to prove the preferential origin of the goods, resulting in a higher customs duty cost.
- ▶ Note that not only exporting companies may be required to register in the REX system database, but also EU-based businesses replacing proofs of origin (in case a shipment is split in the EU into several parcels).

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The EU proposes changes to its methodology for calculating dumping margins



On 9 November 2016, the European Commission (the Commission) adopted a proposal⁸ for a new methodology for calculating the dumping margin when the product under investigation is the object of significant price distortions caused by government interventions.

The Commission's proposal has been adopted in the context of the European Council's call, in October 2016, for an urgent modernization of the EU trade defense instruments by the end of 2016. Reforming the calculation methodology for anti-dumping (AD) duties would be an important part of the envisioned reform, in addition to the modernization of the EU trade defense instruments proposed by the Commission back in 2013.⁹

This article provides comments and criticism of the new methodology especially as it applies to imports from China.

Background

Dumping occurs when the export price of a product is lower than its normal value. Under the current AD rules, the EU uses different methodologies to calculate the normal value depending on whether the exporting country is a market economy or a non-market economy.

When the exporting country is a market economy, the normal value is in principle calculated on the basis of the price or the cost of production of the product on the exporter's domestic market. This is the standard methodology.

In contrast, in AD cases involving non-market economies, the normal value is in principle established by reference to prices or costs of production in a third-market economy country, the so-called "analogue country." The EU basic AD Regulation¹⁰ lists non-market economies, such as China, that do not fully operate under normal market economy conditions. In such cases, because

⁸ COM (2016) 721 final, 9 November 2016: *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union.*

⁹ COM (2013) 192 final of 10 April 2013: *Proposal for a Regulation amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) No 597/2009 on protection against subsidised imports from countries not members of the European Community.*

¹⁰ Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union.



of State interventions, domestic prices and costs may be artificially low and do not necessarily reflect market forces. Such prices and costs are, therefore, considered as unreliable.

As a result, when calculating the normal value, the Commission normally disregards domestic prices and costs and replaces them with surrogate data from a third country that is considered a market economy. This usually results in higher AD duties than under the standard methodology applied to market economies. The “analogue country methodology” has proven to be an effective tool in protecting the EU industry from low priced imports from, in particular, China.

The trigger for the proposal was the expiration of certain provisions of China’s Protocol of Accession to the World Trade Organization (WTO) on 11 December 2016.¹¹ The Chinese authorities contend that, because of this expiration, the EU must stop labeling China as a non-market economy in AD cases and should now use a standard methodology when calculating the AD duties on Chinese imports.

However, the involvement of the Chinese Government in its economy continues to be significant. Thus, according to the Commission,¹² calculating dumping margins in accordance with the standard methodology would lower the actual level of AD duties imposed on Chinese imports and undermine the purpose of the AD instrument, which is to allow a duty to be imposed at a level that is sufficiently high to offset the dumping.

The new proposed methodology thus aims at ensuring that the EU complies with its international obligations, while maintaining the possibility to impose a high level of AD duties against Chinese imports to protect the EU industry.

New methodology for calculating the normal value in AD cases involving WTO members

The proposal abandons the distinction between market economies and non-market economies for the calculation of the normal value. In its place, a new distinction is established between WTO members and non-WTO members.

Under the proposed amendments, WTO members, such as China, would no longer be subject to the analogue country methodology. This methodology would be reserved to countries that are not members of the WTO, such as Belarus, North Korea and Turkmenistan.

For WTO members, the normal value would in principle be calculated in accordance with the standard methodology. However, the proposal introduces a new provision of the basic AD Regulation that would entitle the Commission to take into account the price distortions in certain WTO member states when calculating the normal value. Under this new methodology, when it is shown that domestic prices and costs of the product under investigation are not the result of free market forces due to the existence of significant distortions caused by State interventions, the normal value would be constructed on the basis of costs of production and sales reflecting undistorted prices. In such circumstances, the Commission may disregard domestic prices and replace them with undistorted international prices, costs or benchmarks, or corresponding costs of production and sale in an appropriate representative country with a similar level of economic development as the exporting country. The proposal also provides clarification on the notion of “significant distortions.” According to the proposal, “significant distortions” exist when reported prices or costs, including the costs of the raw materials, are not the result of free market forces because they are affected by government interventions.

¹¹ Section 15 a) ii) of China’s Protocol of Accession to the WTO.

¹² SWD (2016) 370 final – 9 November 2016, Commission Staff Working document – *Impact Assessment, Possible change in the calculation methodology of dumping regarding the People’s Republic of China (and other non-market economies)*, p. 8.



This can be the case, in particular, when the market in question is to a significant extent served by businesses that operate under the ownership, control or guidance of the exporting country's authorities. Another possibility is that the government of the exporting country discriminates against exporters or importers in favor of suppliers to the domestic market, or otherwise influences free market forces.

The proposal also entitles the Commission to issue public reports identifying countries or sectors where significant distortions exist. The EU industry would be able to rely on these reports in complaints, to support that the domestic prices and costs in the exporting country are unsuitable to determine the normal value. This would lower the burden of proving the existence of price distortions for the EU industry.

The proposed methodology could be used against any WTO member, as long as the EU can demonstrate that the product under investigation is the object of significant price distortions caused by government interventions.

Comments and criticism

The new proposed methodology, which is in fact very similar to the analogue country methodology, raises doubts about its compatibility with WTO law. In effect, as suggested by the WTO Appellate Body in the Argentinian Biodiesel case,¹³ there is no provision in the WTO anti-dumping agreement that allows WTO members to deviate from the standard calculation methodology to eliminate price distortions caused by government interventions when calculating the normal value in AD proceedings involving other WTO members.

Certain observers maintain that there are only two legal bases allowing WTO members to apply a nonstandard methodology for the calculation of the normal value. One is when the WTO accession documents of the countries under investigation expressly allow it (as it was the case for China before 11 December 2016). The second basis is under Paragraph 1 of Article VI of the General Agreement on Tariffs and Trade (GATT) 1947 in cases where the country under investigation has a substantially complete monopoly of its trade.

A complete monopoly is where the government fixes all domestic prices, which in practice, should not apply to WTO members.

China claims that there is no longer any legal basis for the EU to continue applying a nonstandard methodology to Chinese products. The Commission's proposal might not be sustainable if the WTO were to support China's position, following China's complaint lodged with the WTO on 12 December 2016 against the EU's continuing application of a nonstandard methodology to China. As indicated by the Chinese authorities, after the 11 December 2016 deadline set by the WTO, the EU can no longer ignore Chinese costs and prices when calculating dumping levels.

Transition from the current system to the proposed new system

If adopted by the EU, the new AD methodology would only apply to cases initiated after the amended provisions go into effect. Any ongoing investigation at the time the Regulation enters into force, would thus remain governed by the current AD basic Regulation.

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¹³ Dispute Settlement – Dispute DS473, European Union – Anti-Dumping Measures on Biodiesel from Argentina.

Update: The customs authorities of the European Union Member States are now required to pay interest on refunded anti-dumping duties



In the December 2016 issue of *TradeWatch* we discussed the possible outcome of a case (C-365/15) before the European Court of Justice (ECJ) arising from a reference for a preliminary ruling by the German Finance Court. As expected, on 18 January 2017, the ECJ ruled in line with the opinion delivered by Advocate General Campos Sánchez-Bordona on 8 September 2016. As a result of the ECJ's ruling where import duties, including anti-dumping duties, are reimbursed on the ground that they were levied in breach of EU law, the Member State must now also pay interest on the sums refunded.¹⁴

Background

The ECJ's ruling stems from a dispute before the German Finance Court between German shoe retailer Wortmann and the German customs authorities about the anti-dumping duties imposed on imports of footwear from China and Vietnam.

After the ECJ annulled the EU Regulation that imposed definitive anti-dumping duties on imports of footwear from China and Vietnam,¹⁵ Wortmann applied to the German customs authorities for reimbursement of the duties and requested payment of interest on the sums refunded. The German customs authorities reimbursed the duties, but, on the basis of Article 241 of the Community Customs Code (Article 241), refused to pay the requested interest.

In principle, under Article 241, the reimbursement of customs duties does not give rise to an obligation on customs to pay interest. However, this provision allows the Member States to provide for this possibility in their national legislation. Under German law, payment of interest on refunded customs duties is possible, but only when claimed before German courts. In the case at issue, Wortmann had filed no such claim. As a result, the German Finance Court considered that the payment of interest on the refunded anti-dumping duties was precluded under Article 241.

¹⁴ Case C-365/15, *Wortmann KG Internationale Schuhproduktionen v. Hauptzollamt Bielefeld*.

¹⁵ Council Regulation (EC) No 1472/2006 of 5 October 2006 *imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam*, See Case C-249/10 P, *Brosmann Footwear (HK) and Others v. Council*, 2 February 2012.



Nonetheless, the German Finance Court had doubts as to whether this approach was compatible with the general principle of EU law where Member States must repay with interest amounts of tax levied in infringement of EU law.

The German Finance Court requested a preliminary ruling from the ECJ. It asked, in essence, whether in light of the general EU law principle of effectiveness, Article 241 should not be interpreted as meaning that the national law of the Member States should provide for the payment of interest on reimbursed import duties, even in cases where payment of interest had not been claimed before a national court.

The ECJ ruling

The ECJ held, in line with the Advocate General's opinion, that Article 241 is not applicable to situations where the reimbursement of anti-dumping duties is required as a result of a ruling from the EU Courts declaring those duties invalid.

Settled ECJ case law provides that interest must be paid on refunded taxes or duties levied in infringement of EU law. On this basis, the ECJ ruling establishes that the national customs authorities have the obligation to pay interest on the refunded duties from the date those duties were paid, where import duties, including anti-dumping duties, are reimbursed on the ground that the EU regulation imposing them is illegal.

Implications

The ECJ's ruling is an important and welcome development, as it obliges all Member States' customs authorities to reimburse any future anti-dumping duties declared invalid by the EU Courts along with interest from the date the duties were paid.

The ECJ ruling is likely to have a positive outcome for EU importers seeking reimbursement of anti-dumping duties declared invalid by EU Courts. In effect, the ruling will entitle them to receive interest on refunded duties without having to engage in legal proceedings before national courts. This ruling could also require EU Member States to adapt their legislation in order to guarantee that in future cases, customs authorities comply with their obligation to pay interest on refunded duties.

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Gabon

Gabon's temporary admission regime



During customs clearance, importers are required to assign an appropriate customs regime. To do so and optimize the financial impact, companies need to properly identify the economic reason for each import or export transaction. Certain customs regimes, such as temporary admission, a subcategory of the suspensive customs regime, provide many advantages, such as total or partial suspension of duties and taxes. Because of these advantages, the temporary admission regime is associated with a high risk of fraud.

The Gabonese customs authorities have recently increased scrutiny of any transactions with a suspension arrangement. In this article, we discuss the customs regime of temporary admission.

The temporary admission regime allows the importation of certain goods for temporary use, such as for exhibition, demonstration, testing, research and others. This regime allows total or partial suspension of customs duties and taxes as long as they meet certain conditions, for example, re-exportation within a specified period in the same condition as when they were imported.

There are two types of temporary admission regimes:

1. Normal temporary admission is for total suspension of customs duties and taxes
2. Special temporary admission is for partial suspension of customs duties and taxes

While these two categories of temporary admission are subject to certain common rules, each has a well-defined scope of application. Importers choose the appropriate customs regime based on the nature and intended use of the goods.

To benefit from the temporary admission regime, importers must meet the following requirements:

- ▶ Satisfy any obligations imposed by the current text of the regime
- ▶ Transport goods in temporary admission in the appointed locations specified in the customs declaration
- ▶ Use the goods for authorized transactions
- ▶ Re-export the goods within 12 months. The Customs Administration may extend the deadline upon request and proper justification



The law provides a list of goods and materials that may be imported under the temporary admission regime, which include, among others:

- ▶ Samples of goods for testing and research
- ▶ Certain packaging to be re-exported empty
- ▶ Technical materials temporarily imported by mining and oil companies for research and forecast
- ▶ Raw materials and manufactured goods for the construction and repair of ships

Note that the Director of Customs has discretionary power to permit the importation or disposal of goods under the normal temporary admission regime.

The special temporary admission regime applies to appliances, devices and machines, including transportation vehicles used in certain projects and for specified periods of time.

The normal temporary admission regime applies to public or private companies that are located overseas or in the Central African Economic and Monetary Community (CEMAC) zone.

The normal temporary admission regime provides for total exemption of duties and taxes when goods are re-exported within a given deadline.

Duties and taxes are calculated pro rata of the time in use on Gabonese territory.

Given the increased scrutiny associated with goods imported into Gabon under temporary admission, importers are advised to acquaint themselves with the applicable rules.

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Saudi Arabia

Customs Tariff revised upon termination of subsidies



The Kingdom of Saudi Arabia (KSA) Government has recently terminated certain subsidies, (originally introduced in 2008 and renewed periodically) for fast-moving consumer products in the KSA.

The termination of subsidies has resulted in an increase in the customs duty rates from 5% up to 25% for 193 products.

The higher import duty is intended to increase government revenue and to help local industries to compete with multinational companies. Local industries now have the opportunity to enhance

production to meet the potential increase in demand due to any possible decrease in the volume of imported goods.

The KSA Government has not specified the exact effective date for the new customs duty rates. However, there is evidence that Saudi Customs has been applying the new rates since the last week of December 2016.

New duty rates

The following product categories are subject to increased customs duty rates:

Product category	Old rate	New rate
Food and beverages (e.g., meat, poultry, dairy products)	5%	6%-25%
Fertilizers	5%	12%
Chemicals	5%	20%
Consumer products	5%	10%-20%
Building and electrical materials	5%	12%-15%

The exact customs duty rate depends on the classification of each product according to the current Saudi Integrated Customs Tariff.

Implications for importers

The revised customs duties will likely affect contract prices. Specifically, current fixed-price contracts may be adversely affected, especially contracts without adequate provisions for price adjustment in the event of changes in the law. Bids submitted for fixed-price contracts prior to the tariff increase, as well as any planned future fixed-rate contracts, will be similarly affected. Importers may need to revise their contracts to take into consideration the recent tariff revisions.

In general, companies doing business in the KSA need to review whether the duty rates have changed for their goods and assess the impact on their business operations. This includes ensuring that goods are classified correctly and that the correct duty is applied. Additionally, companies may consider reviewing and restructuring their supply chains to take advantage of free trade agreements and other duty-reduction programs.

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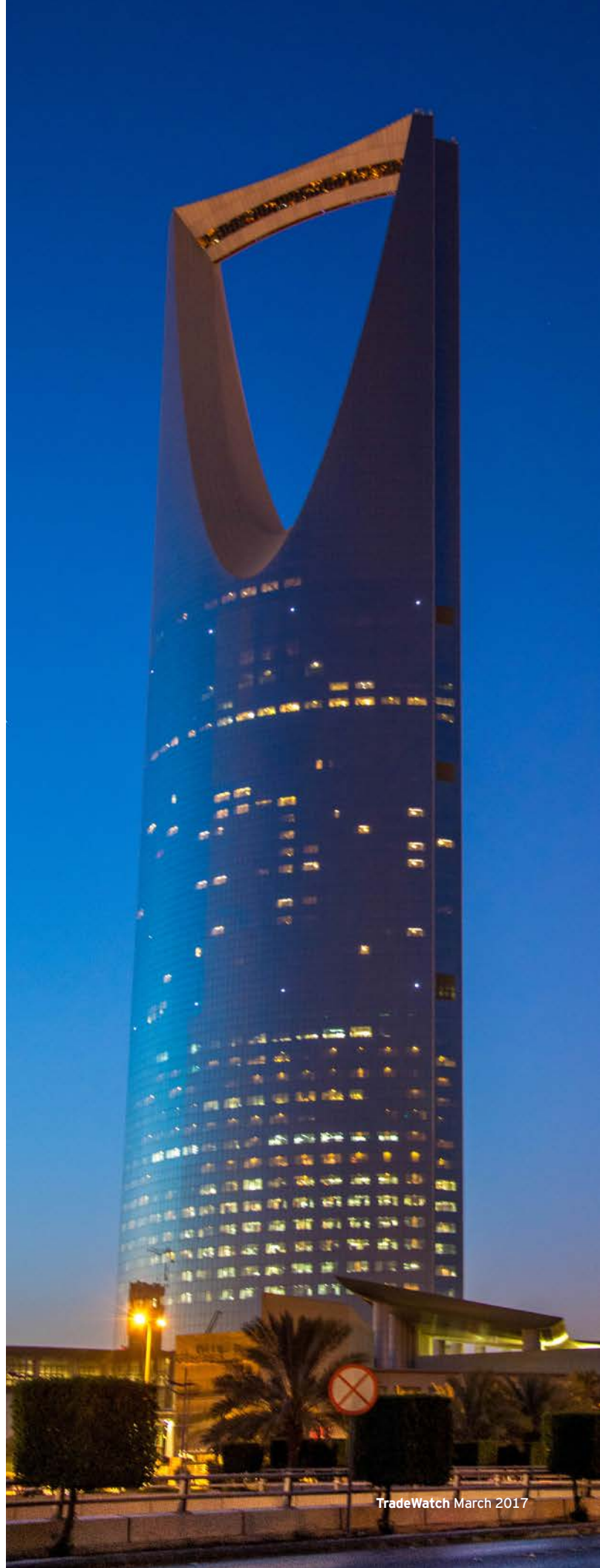
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Switzerland

Swissness – New legislation on protection of the Swiss brand



The Swiss origin of goods is closely associated with values such as exclusivity, tradition, innovation and quality. Businesses are thus increasingly inclined to use indications such as “Switzerland,” “Made in Switzerland” as well as the Swiss cross on their goods. With the increasing success of the Swiss brand, abuses have also increased in recent years, both domestically and abroad. This inevitably leads to reputational damage and jeopardizes the aforementioned values, for which Switzerland, as a production location, stands. To help maintain value of the Swiss brand over the long term, Switzerland has adopted the so-called “Swissness”¹⁶ legislation. The Trademark Protection Act (*Bundesgesetz über den Schutz von Marken und Herkunftsangaben*), which came into force on 1 January 2017, is the latest of a number of legislative acts, such as the Coat of Arms Protection Act and related Implementing Ordinances and Industry Ordinances, aimed at securing the Swiss brand and providing better protection against abuse.

Changes to the old legislation

The most important changes introduced by the Swissness legislation concern various topics, such as the use of the appellations of origin, or the Swiss cross or Swiss coat of arms, registration of geographical marks and others. The core of the new Trademark Protection Act sets precise rules and criteria under which a product or service may be labeled as being Swiss.

Different rules on the determination of origin apply to industrial and natural products as well as foodstuffs. For instance, an industrial product is of Swiss origin if at least 60% of the production costs are incurred in Switzerland. In addition, the activity that determines the essential characteristics of the product, along with at least one important stage of the manufacturing process, must take place in Switzerland. Finally, the law lays down special rules concerning the calculation of the Swiss content for certain categories of goods. For instance, under certain circumstances, raw materials for industrial products that cannot be extracted (sufficiently) in Switzerland may be excluded from the calculation of manufacturing costs.

¹⁶ “Swissness” is a neologism coined in the 1990s in Switzerland to denote the Swiss brand as it incorporates various Swiss values, such as exclusivity, tradition, innovation and quality.



Trade ordinances may be adopted in the future to set out in greater detail the statutory provisions governing the usage of the appellation of origin “Switzerland” for particular goods (i.e., watches), where there is a need for this in a specific sector of the economy.

Effects on local manufacturers and importers/exporters

The term “origin” in the Trademark Protection Act concerns the marking of products, whereas “origin” in relation to customs rules is used to determine preferential or non-preferential status. This means that a product that qualifies for Swiss preferential origin is not automatically regarded as Swiss origin under the Swissness legislation and vice versa.

Due to the clearer but stricter rules, manufacturers must review their products’ origin calculation to ensure that applied trademarks and labels are compliant. The penalty for abuse of the appellation of origin “Switzerland” is imprisonment of up to one year or a heavy fine. Persons who consider that their rights have been infringed are entitled to file a criminal complaint and/or to take civil action. Companies may consider possible measures to ensure compliance under the new law, such as change from foreign to domestic suppliers or adjustment of their production processes.

Goods that meet the requirements of the previous Swissness legislation and were produced before 2017, may be placed on the market (imported or exported) until the end of 2018. After the two-year transition period, all goods must meet the conditions of the new Swissness law, which also strengthens enforcement in Switzerland and abroad.

Since the beginning of 2017, Swiss customs authorities may impound goods with improper trademarks and labels. Therefore, importers as well as exporters would benefit by ensuring that goods shipped to or out of Switzerland are compliant with the new rules.

Closing thoughts

Alongside the more stringent requirements, the Swissness legislation has established clearer criteria for determining origin and has thus increased legal certainty. In addition, the tools for combatting abuses have been strengthened. An interesting question, which remains to be resolved, is how closely and consistently will the authorities interpret and enforce the new legislation? At any rate, affected companies are advised to acquaint themselves with the new legislation and take any necessary action promptly.

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Switzerland introduces Registered Exporter for Generalised System Preferences



Goods from developing countries can benefit from tariff reductions if the importer is able to present a valid certificate of origin when the import customs clearance takes place. Such a certificate of origin grants preferential origin treatment and reduction of customs duties. The certificate of origin is generally issued as a standard form (Form-A) or as a predefined declaration of origin/statement of origin on a commercial document with a value limit of CHF10,300 (approximately USD10,300).

The Registered Exporter (REX) regulations entered into force on 1 January 2017, and the goal is to replace the currently used certificates of origin by a standard statement of origin (SoO) on a commercial document without a value limit and prior approval by local authorities. To make this possible, exporters have to be registered in the REX database to issue valid SoOs with their assigned registration number. After the set implementation deadline on 1 January 2019, no other proofs of origin will be accepted.

Implementation of REX and changes in procedure

Developing countries are given a transition period until the end of 31 December 2018 to register concerned exporter companies and implement the REX system. During that period REX SoO, invoice declarations of origin or Form-A will be accepted for the import clearance of predefined countries until the set deadline. Currently, Brazil, India, Kenya, Kosovo, Laos, Zambia and Thailand have fulfilled the requirements for unrestricted issuance of SoOs for imports of goods into Switzerland at Generalised System of Preferences (GSP) preferential rates.

Due to changes in the transportation regulations, importers may now split up consignments or store them not only in the EU and Norway, but also in other transit countries. Furthermore, the affixing of labels, seals, printing marks or adding of documentation are allowed if necessary to meet requirements in the country of destination. Additional processing or working is permitted if needed to preserve the condition of the products. During transportation and storage, the shipment must remain under customs supervision to prevent loss of GSP status.

Mandatory registration

Switzerland, the EU¹⁷ and Norway have already implemented the changes while other countries have been given a transition period. Therefore, Swiss companies that need to issue REX SoOs need to register for REX and obtain the assigned number if replacement proofs of origin are needed (i.e., when removing goods from a bonded warehouse), or Swiss origin materials with a value greater than CHF10,300 will be shipped to a GSP country for outward processing.

Implications for importers

Changed transportation regulations give additional opportunities to importers to save costs when labeling products in a third country.

Importers are advised to keep in mind that the registration and implementation process in some GSP countries may take longer than expected and the supplier might not be able to issue the REX SoO in time, which might lead to not having the GSP preferential proofs ready upon importation to benefit from duty reductions.

Swiss importers are advised to encourage their suppliers to register for REX and, if necessary, offer assistance.

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¹⁷ See "The EU introduces the REX system for proof of origin under the GSP" on page 15 of this issue.



Stricter requirements on description of goods on customs declarations



The Swiss ordinance governing statistics on foreign trade (*Verordnung über die Statistik des Aussenhandels*) dated 12 October 2011 requires that the technical or customary commercial description of goods (item name) submitted on the import or export declaration must be as precise as possible.

Although this is not a new requirement, the quality of information in customs declarations has steadily deteriorated in recent times according to the Swiss Federal Customs Administration (FCA). Among others, the FCA criticizes descriptions of goods that have been too loosely formulated (e.g., “other plastic goods” under Customs Tariff Number 3926.9000), failure to describe the product’s use to obtain customs relief or omitted information related to regulations other than customs (e.g., excise tax). Inadequate descriptions create a number of problems and prevent the proper identification of goods.

With the publication of circular no. D210-2 of 28 September 2016, the FCA has again clarified the description of goods requirements and at the same time announced that the FCA will subject such descriptions to greater scrutiny as of 1 January 2017.

New FCA procedures

Currently, importers define standardized descriptions for customs tariff numbers in their IT systems so that the description of goods is automatically added to the customs declaration when a customs tariff number is selected. If the information is not stored in the system, importers rely on information in the supporting documents (e.g., commercial invoice, delivery note, certificate of origin). Because use of the IT system speeds up the declaration process it is widely used by importers.

In light of the more stringent requirements, as of 1 January 2017, the FCA has been rejecting customs declarations that contain inadequate descriptions of goods and sending them back to the importer for amendment.

To meet the new stricter regulations importers will need to update their IT systems. The FCA grants affected companies a deadline extension until 31 December 2017 to complete the update. After the deadline, the customs authorities will reject all noncomplaint declarations and will not release the goods for free circulation until the importer presents a valid declaration.



Implications for importers

Globally operating companies that import into Switzerland are affected either directly or indirectly due to the outsourcing of their customs declaration activities to a service provider. Failure to meet the requirements or adjust systems in a timely manner will delay the Swiss customs clearance process, causing delays in the delivery of goods. The customs authorities are already enforcing the more stringent requirements for the description of goods and companies are advised to review their product master data and communicate any adjustments to suppliers, customs agents, customers and others as soon as possible.

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Turkey

Protectionism in foreign trade is on the rise



The recent increase of additional customs duties (ACDs) applied to ready-made clothing (by 30%), and to perfumes and cosmetics (by 25%) has warned of the resurgence of trade protectionism.

In fact, red flags signaling the possible proliferation of ACDs are found in the Medium Term Plans issued for 2015-2017 and 2017-2019 periods by the latest two governments. The Medium Term Plans suggest that the main objective for importing is to support investments that reduce dependence on high-tech products and to use effectively protectionism measures for the greater good of the local producer. Nevertheless, there are "tariff" (increase in customs tax rates) and "non-tariff" barriers in place for this purpose. The tendency to increase tariffs, however, has recently introduced a new term: ACDs.

In an effort to protect the local producer, ACDs are not only levied on types of goods that could be produced locally, but also on types of goods that cannot be produced locally. It is then possible to claim that ACDs applied to imported goods are in place merely for financial reasons, and not for the sake of adopting a protectionist approach.

What are additional customs duties?

Article 2 of the Law on Customs Entry Schedules No. 474, in accordance with the Decision of the Council of Ministers (the Decision) provides the rules governing ACDs. This Decision gives the Council the authority to increase import customs duties by up to 50%.

ACDs are also determined on product- and country-basis. The common feature between the ACDs implemented previously and the ACDs implemented now is ACDs do not apply to EU products imported into Turkey with an A.TR Movement Certificate¹⁸ from the European Union. However, goods that are in free circulation that are imported with this certificate are subject to ACDs if they originate from a country other than an EU Member State. For this reason, customs authorities need to determine whether the goods in question are of EU origin. The most important problem that arises in practice is establishing which document may serve as proof of origin for EU products. Since the main tenet of the Customs Union Agreement between Turkey and the EU is based on the principle of free movement of goods, there is no document for the proof of origin.

¹⁸ An A.TR.1 (*Admission Temporaire Roulette*) certificate is a customs status document indicating that the goods to be imported are eligible for preferential treatment under the EU-Turkey Customs Union.



New legislation is needed to provide how importers are to substantiate the origin of their goods.

Rate of increase in ACDs for the last two years

ACDs made their debut to the customs world with the provisional guarantee applied to textile products in 2011. In the beginning, this provisional application was applied as an absolute measure. However, in the past two years a 25% increase in ACDs has been applied to a wider range of products.

Date published	Product name/description	ACDs (%)
6 February 2015	Hand tools and hand carts of iron and steel	25%
18 February 2015	Hand-knotted carpet	50%
23 May 2015	Furniture and furniture fitting	25%-50%
7 June 2015	Electrical illuminator	20%
7 June 2015	Vacuum cleaner and water heaters	10%-30%
20 June 2015	Bags, suitcases, covers and boxes	30%
5 July 2015	Wire and rod made of iron and steel	25%
1 September 2016	Some shoe parts	20%
7 September 2016	New outer-tires made of rubber	21.8%
11 November 2016	All kinds of toilet articles, tableware and kitchenware; clocks and decorative panels	6%-25%
11 November 2016	Stationery equipment, catalog	11%-25%
8 December 2016	Carpets, floor covering, home textile products, artificial flowers, umbrellas, inflatable beds, tents and various other products	8%-20%
31 December 2016	Leather and saddlery goods and knitted and woven garments products	30%
11 January 2017	Perfumery, cosmetics, cleaning and care preparations	17%-25%



The burden is on the customer, in the end

New ACDs are being adopted every day. As a tool designed to protect the local producer, ACDs will not be subject to criticism if they solely serve to reduce unemployment and to transform short-term demand for imports into a longer one. However, the rise in additional customs duties for one category of products does not necessarily mean that the demand for these imported products will decrease per se. Even though ACDs on apparel and textile products are in effect and the burden of this additional cost is put on the shoulders of the consumer, these products continue to be among the “top 20” of the most imported goods.

An economic impact analysis is in order to determine whether the target rate for imports has successfully been achieved and that demand incites the need for an ISI (import substitution industrialization) policy that promotes substituting foreign imports with local production. If a decrease in imports is not observed despite the rise in ACDs, then the increased cost of imports is simply passed on to the consumer. The direct impact of the latest ACDs on perfumes and cosmetics products on the consumer highlights the situation. Even though duty rates on these products have increased 17%-25% over the last two years, no increases in domestic production have been observed.

Look for further insight of the effect of ACDs in future issues of *TradeWatch*.

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