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The UK triggers the process of leaving the European Union

It's Brexit!

In spite of the surprising results of the 8 June UK General Election, the Brexit process will go on, perhaps not exactly as planned, but go on nevertheless. The thick red line placed around ending the EU principle of freedom of movement of people vastly increases the certainty of the outcome being either a free trade agreement (FTA) or World Trade Organization (WTO) relationship between the EU and the UK. Our view is that this is greater than a 90% chance.

Critically, whether a FTA or WTO, it means a "border" between the EU and the UK as soon as March 2019. This has not been the case since the EU single market launched on 1 January 1993. Companies need to be acting now to protect against supply chain disruption caused by this change and not be distracted by the *will-they-won't-they* FTA soap opera.

Is the government ready?

Her Majesty's Revenue and Customs (HMRC) itself estimates customs entries will increase from approximately 70 million today to 300 million post-Brexit. Even before the UK's EU membership referendum was announced, HMRC had identified that the current system it operates, the Customs Handling of Import and Export Freight (CHIEF), was inadequate for EU membership levels of flows, and launched a program to develop a new system, the Customs Declaration Services (CDS) program.

CDS was originally planned to come on line in Q1 2019, i.e., just as Brexit may hit. This timing would be inconvenient at best. As recent as Q4 2016, CDS was rated "green" and on track. However, it was recently regraded as "amber/red" with the launch delayed to 2020 and will have functionality phased in. Few governments have strong records of delivering such complex IT projects in an orderly fashion and CHIEF will be required to fill any gap in the meantime. Expect further status changes.

There are more localized concerns. The port of Dover is one of the closest points of the British mainland to the European continent. It represents 17% of UK cross-border goods trade flows and an estimate HMRC has presented is that 95% or more of those flows are EU-UK. Due to the customs union, Dover has not needed the infrastructure to manage high volumes of third-country imports and exports. Will it be able to develop what it needs in this crowded corner of England in the next 20 months? The Ireland-Northern Ireland land border takes this point to a different level of complexity. See *Brexit: Significant disruption for companies operating in Ireland*, in this issue of *TradeWatch*.

This all points to the heightened risk of disruption at the border, especially with a March 2019 start date.

Are businesses ready?

Enterprises themselves may struggle to meet a March 2019 timeline. This challenge is irrespective of whether they face high duty rates and is more simply whether they move tangible goods across the UK border.

There are triggers for when enterprises may need to be concerned with the advent of a formal border:

- **High volumes of UK imports and exports** — seemingly an obvious point. Equally, given the fluid nature of EU-UK flows, some companies have a reasonably good grasp on the dollar values, but not necessarily the physical volumes or frequency. Importantly, it is not just EU-UK flows, i.e., if the ports are facing problems it will be for all flows, not just EU flows.
- **High EU-UK flow volumes** — this can present a risk as until Brexit there would have been no historic need for the business to maintain substantial trade compliance skills and infrastructure. Things as simple as having HS classification for the all their imports may not be in place.
- **Fragile supply chains that are sensitive to delay** — this category may range from just-in-time in auto to consumer goods that need to be in retail stores and perishable produce.
- **Fragmented supply chains that have many small transactions** — again a diverse spread from e-commerce to warranty and parts repair centers. Retailers also fall into this category with many having to spread SKUs and vendors across the EU.
- **Use of higher risk ports** — as explained above, some ports will be more ready than others, which do you use?

What can businesses do?

Understanding their current state at sufficient detail is an activity that all companies should take, i.e., at the transactional level. This can be done by utilizing HRMC data, called Management Support System (MSS) data, on current third-country imports and EU statistical reporting data, i.e., intrastat. Using analytical tools businesses can quickly map physical supply chains to identify points of risk and assess the book-end duty and compliance costs of FTA versus WTO outcomes.

If identifying risk and wanting to manage that, HMRC is itself promoting traders seeking Authorised Economic Operator (AEO) status. It is recognized that if there are clearance challenges it will be those with AEO status that will get preferential treatment.

While we share that viewpoint, it is not without its challenges. UK businesses have not historically pursued AEO, with only around 500 in the UK compared to more than 6,000 in Germany at the close of 2016. This points to a potential application queue and extended lead time companies need to factor into their Brexit planning. Our estimate is that a typical AEO readiness and qualification process has increased from 6 months to 12 months. That's in the context of 20 months before there's potentially a border.

There are other long lead items that businesses need to consider when facing an EU-UK border, these include:

- Understanding potential customer and supplier contractual changes. Incoterms is a clear example, current contracts may be silent given the customs union or may include a term that the company may not want to use if there is a formal border. *Should you be requiring suppliers to also be AEO?*
- Review and assessment of the Brexit readiness of services providers in the supply chain, such as brokers and freight companies. You can only be as good as the other links in your chain.
- Ensuring master data exists to support the clearance of goods, in particular Harmonized System (HS) codes for goods that have never previously been subject to formal customs clearance.
- For some there may be network changes, such as diversifying ports or establishing satellite distribution facilities.
- Developing customs capabilities and processes. The talent pool in the UK is small and so do you in-source or out-source that?

Focus on what you know, rather than what you don't

Significant uncertainty remains around many aspects of Brexit. It is our view that in recent weeks there has been a significant shift toward the likelihood that it will be an FTA or WTO outcome. That means a border. The timing is far less clear, but it would seem sensible to prepare for March 2019 for March 2019 worst-case scenario.

Debating FTA versus WTO is somewhat of a sport. In due course, that outcome will shape how businesses operate. However, that will be unknowable for some time. In the meantime, are you ready for a UK border?

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Trump administration issues NAFTA renegotiation notice letters, requests public input

US Trade Representative (USTR) Robert Lighthizer has notified Congress of the Trump administration's intent to renegotiate the North American Free Trade Agreement (NAFTA). The 18 May 2017 letters to majority and minority leaders of Congress mark the start of a 90-day period before formal NAFTA renegotiations may begin in accordance with the provisions of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). Given the 90-day notice requirement, formal negotiations with Canada and Mexico could begin as early as August.

The case for renegotiation

In the letters, the administration notes that "NAFTA was negotiated 25 years ago, and while our economy and businesses have changed considerably over that period, NAFTA has not."

The 18 May letters emphasize the need to modernize NAFTA by including "new provisions" on the following topics:

- Digital trade
- Intellectual property rights
- Regulatory practices
- State-owned enterprises
- Services
- Customs procedures
- Sanitary and phytosanitary measures
- Labor
- Environment
- Small and medium enterprises

The 18 May letters also call for stricter enforcement, stating that "establishing effective implementation and aggressive enforcement of commitments made by our trading partners under our trade agreements is vital to the success of those agreements and should be improved in the context of NAFTA." The letters assert that the administration is "committed to concluding these negotiations with timely and substantive results for U.S. consumers, businesses, farmers, ranchers, and workers."

Notably, the 18 May letters are much shorter and less detailed than the eight-page draft letter circulated to Members of Congress last month, and do not detail negotiation objectives. More detailed objectives are expected to be provided following additional consultation with Congress and the public.

Requests for comments and notice of public hearing

On 23 May 2017, the USTR published a notice in the Federal Register seeking public input to assist the USTR as it develops negotiating objectives and positions. (82 Fed. Reg. 23,699.) Comments are due by 12 June 2017, and a public hearing is set for 27 June 2017. Comments and requests to testify orally at the hearing may be submitted at www.regulations.gov, using the docket number USTR-2017-0006.

Comments on "any matter relevant to the modernization of NAFTA" are invited. In particular, comments are invited on specific items (see below). Notably, the list is significantly longer than the list of "new" provisions contained in the 18 May Congressional notification letter. The list includes:

- General and product-specific negotiation objectives
- Economic costs and benefits removal of remaining tariff and non-tariff barriers
- Treatment of specific goods
- Customs and trade facilitation issues
- Rules of origin and origin procedures
- Unwarranted sanitary and phytosanitary measures and technical barriers to trade imposed by Canada or Mexico
- Barriers to trade in services
- Digital trade issues
- Intellectual property issues
- Competition- related matters
- Government procurement
- Environmental issues
- Labor issues
- Issues of particular relevance to small and medium-sized businesses
- Trade remedies
- State-owned enterprises

Comments will be open to public inspection, with the exception of information that is properly marked as business confidential.

Actions for businesses

NAFTA has set the rules for trade and investment among the US, Canada and Mexico for 23 years, leading to integrated supply chains with an expectation of NAFTA benefits under the current rules. Many companies have not reviewed their "NAFTA profile," understanding the benefits tied to specific provisions, in quite some time. Consequently, establishing a NAFTA profile is critical to assessing the effect of possible changes. Consistent with the USTR request for public input, topics to be addressed will likely be very expansive. Businesses will want to identify those aspects of NAFTA that currently benefit the business, as well as those specified for modernization that could provide additional benefit. With a greater emphasis on compliance enforcement, importers and exporters would be well-served to assess their NAFTA procedures and internal controls.

Rules of origin

Changes to NAFTA's rules of origin could significantly affect many businesses trading in North America. Rules of origin determine when a product qualifies for duty-free treatment when exported from one NAFTA country and imported into another. For manufactured items, the rules typically evaluate the regional value added, or the type of processing, that occurs in North America. Rules of origin are product-specific, and vary.

It is widely expected that the US will wish to "tighten" the rules of origin so that more North American "content," for example the value of North American components used to manufacture an item, will be required in order to qualify goods for preferential treatment. This in turn is intended to encourage the use of more North American, and especially US, content when manufacturing products in order for those products to receive NAFTA benefits. The NAFTA partners may be amenable to the changes; the question is how "strict" any particular rule may become. Consequently, for businesses that currently rely on NAFTA duty-free treatment, it will be important to determine how products currently qualify, and model scenarios that impose stricter rules.

For example, if current rules require 50% North American regional value content in order to qualify a good for NAFTA duty-free treatment, what happens if the requirement goes to 60%? What about 62.5%? If the current rule of origin evaluates the amount of processing done in North America by measuring the change in tariff classification of the imported component parts when assembled into the finished product (a "tariff shift" rule), what is the effect of also requiring a specific percentage of North American value? Would the product continue to qualify for NAFTA duty-free treatment if both a tariff shift and specified regional value content are required? Understanding the effect of possible changes will allow a business to develop a strategy to "preserve or improve" current treatment. With this understood, businesses can plan how best to communicate with any or all of the three NAFTA countries, keeping in mind the negotiating objectives of each.

Participating in the process

Each NAFTA country will be seeking input from businesses on potential changes. In addition to the USTR request for comments, Mexico began public consultations in February in anticipation of the US request to revise NAFTA.

Input can be provided throughout the process, but the input provided during the development of negotiating positions could have the most impact. As part of the TPA process, for example, the USTR will release more detailed negotiation objectives 30 days before negotiations begin. This in turn drives the very short timeframe for public comments specified in the 23 May Federal Register notice.

Businesses will want to use this window of opportunity to express their points of view on whether specific changes are beneficial, problematic or acceptable. At the same time, they will want to establish lines of communications so they can continue to provide input as the negotiations progress. In other free trade agreement negotiations, the US, Mexico and Canada have engaged with stakeholders throughout the process. Businesses that have a firm understanding of their NAFTA profile, and remain engaged during the process, may have an opportunity to have their concerns heard.

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Potential benefits for importers and exporters of multi-component integrated circuits from the WCO modification of the HS nomenclature

WCO modification of the HS nomenclature

On 28 October 2016, the World Customs Organization (WCO) published 233 amendments to the Harmonized System (HS) of Tariff Nomenclature and these changes came into effect on 1 January 2017.[1] The changes to the classification of electronic integrated circuits and multi-component integrated circuits (MCOs) are of particular significance as they are intended to provide greater clarity and consistency to importers, exporters and customs authorities.

Electronic integrated circuits, also known "chips" or "microchips," are tiny electronic devices, often smaller than a thumbnail, made up of billions of components that store, move and process data. Chips are commonly used as amplifiers, oscillators, timers, computer memory and microprocessors. One of the fastest growing segments within the semiconductor/chip industry is the MCO market. MCOs combine one or more integrated circuits with a semiconductor device, such as sensors or oscillators, into a single integrated unit. An MCO is capable of performing complex and/or multiple functions, and is commonly incorporated into, for example, smartphones, tablets, automotive braking, steering and air bag systems. Recent advances in semiconductor, chip and MCO miniaturization has resulted in smaller and more energy-efficient finished products and is a key driver of the Internet of Things (IoT) revolution.[2]

Crucial to importers and exporters of chips and MCOs is the amended Note 9 to Chapter 85 of the HS 2017, which not only defines electronic integrated circuits (monolithic, hybrid and multichip), but delineates MCOs as:

> [A] combination of one or more monolithic, hybrid, or multi-chip integrated circuits with at least one of the following components: silicon-based sensors, actuators, oscillators, resonators or combinations thereof, or components performing the functions of articles classifiable under heading 8532, 8533, 8541, or inductors classifiable under heading 8504, formed to all intents and purposes indivisibly into a single body like an integrated circuit, as a component of a kind used for assembly onto a printed

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[1] See World Customs Organization, *Amendments to the HS Nomenclature Effective from 1 January, 2017:* available at www.wcoomd.org/

[2] See Congressional Research Service, *U.S. Semiconductor Manufacturing: Industry Trends, Global Competition, Federal Policy* (27 June 2016) available at www.everycrsreport.com/reports/R44544.html.

circuit board (PCB) or other carrier, through the connecting of pins, leads, balls, lands, bumps, or pads.[3]

Note 9 contains the operative language that changes the classification of such devices under the new HS nomenclature: "[f]or the classification of the articles defined in this note, *headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature,* except in the case of heading 8523,[4] which might cover them by reference to, in particular, their function" (*emphasis added*). This dramatically simplifies how chips and MCOs are classified under the new HS, as discussed below.

Classification rules prior to 1 January 2017

Before 1 January 2017, chips and MCOs could be classified under various headings based on the primary function of the device/machine, into which the item was incorporated. This resulted in classification based on subjective interpretation and created ambiguity and inconsistency for importers with global operations because customs authorities across WCO member states did not have a unified standard and often took different approaches from one another. There were also instances where customs authorities at separate ports within the same country classified MCOs differently from one another. The various potential HS headings and subheadings subjected importers to several different rates of duty.

New rules after 1 January 2017 and implications for importers

As of 1 January 2017, chips and MCO devices are consolidated under two headings: HS 8541 and HS 8542. This not only eliminates the previous ambiguity around classification, such as interpreting competing legal notes within the HS nomenclature and analyzing the functions of the finished device/machine, but more importantly, removes the various duty rates that plagued importers under previous versions of the HS. For example, under the new rules, any product that falls within the broad definition of "electronic integrated circuit," including MCOs, as noted in Note 9 to Chapter 85, is duty free in the US and EU.[5] The new rules also assist customs authorities across and within jurisdictions by providing a single unified standard.

Closing thoughts

Importers of MCOs and electronic integrated circuits as well as customs authorities are likely to benefit from the new rules, and therefore, should plan accordingly. Importers and exporters of products affected by the HS changes from industries such as the automotive, consumer devices and electronics (tablets, mobile phones, computers, etc.), security, communications, networking, aerospace, defense, machinery, testing and sensing, are advised to review their existing classifications to help ensure compliance with the new rules and to understand duty impacts globally.

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[3] Harmonized Schedule Nomenclature 2017 Edition, Note 9(b)(iv) to Chapter 85 available at www.wcoomd.org

[4] Heading 8523 covers solid-state storage devices, smart cards and the like.

[5] See Amendments to the HS Nomenclature, *supra* note 1.

Technical Committee on Customs Valuation finalizes franchise fees advisory opinion

As reported in the December 2016 issue of *TradeWatch*, at its October 2016 meeting the Technical Committee on Customs Valuation (TCCV) completed its review of a fact pattern involving the proper customs value of goods imported by a franchisee, which may only be purchased from the franchisor, or a party authorized by the franchisor. The TCCV determined that a franchise fee payable by the franchisee based on the net sales of the franchise are not related to the imported goods, and consequently are not additions to the transaction value of the imported goods. Final language has now been adopted. Following approval by the World Customs Organization Council, it is expected to be issued as Advisory Opinion 4.17.

The TCCV is a committee of customs authorities created by the World Trade Organization (WTO) Valuation Agreement and tasked with providing interpretation and guidance on the Valuation Agreement. It is administered by the World Customs Organization (WCO), an intergovernmental organization of 180 customs authorities. While its guidance is not binding on any jurisdiction, customs authorities worldwide regularly cite its pronouncements.

Fact pattern

While the specific scenario under review involved a bakery franchise, the Advisory Opinion text does not reference the type of franchise or product involved. The Advisory Opinion simply states that the franchise agreement allows the franchisee to operate stores in the country of import, and also requires that certain specified inputs used by the franchisee in manufacturing items to be sold in the stores must be purchased from the franchisor, or a party authorized by the franchisor. The franchise agreement also provides that the franchisee pay the franchisor a franchise fee based on a percentage of gross sales generated at each store location. The franchise fee is compensation for the use of the franchised brands and systems. Brands are defined as the "registered brands, service marks and other commercial symbols" used in the operation of the store. Systems refers to the "business systems and processes connected with the operation of the stores." This type of payment is standard for most types of franchises.

Applicable rules

Article 1 of the WTO Valuation Agreement defines transaction value as the price actually paid or payable for goods when sold for export to the country of importation. The Interpretive Notes to Article 1 make clear that any payment made directly or indirectly by the buyer to the seller is part of the transaction value, provided the payment is for the imported goods.

In addition, Article 8 of the WTO Valuation Agreement requires that transaction value be adjusted to include specified additions to value. One of the required additions, specified in Article 8.1(c), is for royalties paid by the importer of product to someone other than the seller of the product. The royalty is an addition to value when the royalty:

1. Is related to the imported product

And

2. Must be paid as a condition of the sale of the product to the importer

As a result, if the franchise fee is determined to be related to the imported inputs, there would be basis to include the franchise fee, or a portion of it, as part of the transaction value for the inputs regardless of whether the inputs were sold by the franchisor, or by an authorized third party.

TCCV conclusion

The TCCV concluded that the franchise fee is not related to the imported ingredients. Instead, the franchise fee is consideration paid for the "use of the brands and systems of the franchisor," intellectual property rights to operate the franchised stores. The fact that the ingredients are used to make products that are sold at the stores does not create the relationship between the imported ingredient the franchise fee.

Implications for importers

The decision by the TCCV is welcome news for importers, who have seen many customs authorities take increasingly aggressive views on additions to value, and have also seen recent TCCV decisions on additions concluding that a fact pattern describes a dutiable addition to value. Importers are well advised, however, to closely examine the detailed language of the Advisory Opinion. The TCCV was careful to note that the imported inputs, while essential to the manufacture of the finished product, are themselves not branded or patented goods, or manufactured under a patented process for which payments are made. Consequently, this decision does not directly address situations in which the franchisee imports finished, branded products for direct sale in the store, or imports manufacturing inputs that are manufactured under a patented process or otherwise protected by intellectual property rights. In these situations, franchise (or royalty) agreements will have to be carefully crafted to avoid attributing franchise fee payments to the imports.

In the current environment, where many customs authorities are looking for revenue, and have expressed expansive views on the types of payments that constitute dutiable additions to value, close adherence to the specific language in the TCCV analysis may provide a "safe harbor" for importers with similar fact patterns. Franchise companies in particular may find it timely to re-examine the text of current franchise agreements with the TCCV instrument serving as a model to avoid additions to value.

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Argentina

Interest on unpaid customs duties

Interest rates applicable to unpaid import and export duties has concerned international trade operators in Argentina for many years. In this regard, when the customs authorities assess unpaid import duties and taxes, such claims accrue an interest of 3% per month of the total assessment starting ten business days from the date of notification.

The Argentine customs authorities assess import and export duties in United States dollars (USD), not in Argentine pesos (ARS) and they remain expressed in USD until the day of the effective payment, when they are converted into ARS (Law 23.905, Article 20).

In the past, different interest rates existed and were applicable depending on the currency of the claim. Claims issued in ARS had a certain interest rate and claims issued in USD had a special interest rate that was lower than the one applicable to claims in ARS. In 1998, interest rates were unified at 3% per month.

Recently, the Administrative Chamber of Appeal (the appellate court) set a precedent in a case involving an Argentine exporter, "*Procesadora de Boratos Argentinos S.A. (TF 28.208-A) y otro c/DGA y otro*" regarding the interest rate applicable to unpaid export duties.

The appellate court confirmed that an interest rate of 1% should be applied to duty claims expressed in dollars given that "*… it is clear that the interest rate applied to transactions carried out in foreign currencies and the interest rate applied to transactions carried out in pesos are substantially different; considering that the latter cannot be applied to debts in foreign currency.*"

In this case, the court concluded that it would be unreasonable to apply the same interest rate for debts expressed in ARS and USD, considering that the local currency is subject to devaluations.

The decision departs from established case law on the matter, according to which, an interest rate of 3% should be levied even on debts expressed in USD. Importantly, this recent decision applies only to this specific case. It remains to be seen how the courts will rule in other similar cases, or potentially, how the regulations in force may be changed to address this issue.

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Canada

CBSA announces significant changes to the Blanket B2 Adjustment Authorization requests and preparation process

The Canada Border Services Agency (CBSA or Agency) has published a new D-memorandum, *17-2-4, Preparation and Presentation of Blanket B2 Adjustment Requests* (D-Memo or D17-2-4).[6] As explained in more detail below, a B2 adjustment is used to correct a previously filed customs declaration.

Released in January 2017, the publication provides importers and their agents some welcome administrative guidance. Previously, the blanket B2 adjustment process could vary in important ways depending on the reviewing CBSA office's local practices and the agent's discretion. The new published guidance should help standardize the process across Canada and should eliminate the need to determine how the process will work and what the submission will need to consist of when dealing with a different region for the first time. Procedural consistency improves overall efficiency for both applicants and the Agency — and greater efficiency is always a positive development.

However, the new directives include an important, and for certain taxpayers/importers who are striving to submit blanket B2 adjustments within a tight timeframe, a rather significant change in protocol. What is very different about the new procedures is the level of work involved in preparing a Blanket B2 Authorization request and the amount of detailed information the agency now requires before it will grant an authorization to submit Blanket B2 Adjustment Request. The new application requirements will require much more effort and time in compiling the authorization application and it seems that the substantial and detailed application submissions will require longer processing time on the CBSA side.

Effectively, the process is now so "front-end loaded" that the work involved in finalizing the blanket B2 adjustment after receiving the agency's authorization to proceed with blanket format B2 adjustments is relatively modest; the burdensome entry data aggregation, data analysis, blanket submission user-case justification work, and submission presentation and formatting work actually needs to be performed at the authorization application stage.

In addition to significantly re-ordering the sequence of the work involved in such files and the likelihood of new procedural delays that may adversely impact importers, the new directives also create an opportunity for the CBSA to perform a technical review of the proposed adjustment at the time the authorization is being requested and, therefore, before the actual self-corrections are submitted. Under the new rules, it is at least possible that the Agency's decision to grant or deny an applicant's authorization

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[6] Available at www.cbsa-asfc.gc.ca.

could be influenced by the detailed data and the anticipated results of the proposed adjustment included in the authorization request. This is very different from an authorization decision reached primarily on the administrative savings potential of authorizing the submission of blanket format B2s as opposed to individual Form B2 adjustments.

Filing blanket format B2s is a privilege. There is no legal provision that requires the CBSA to administer a Blanket B2 program. When the authorization is granted, importers gain valuable time, and in many cases, the practical ability to propose valuation, classification or origin data re-determinations across dozens, hundreds or even thousands of individual import transaction lines in a given period. If not for the Blanket B2 program, each import transaction requiring a correction would need to be amended by preparing individual Form B2 amendments or refund claims.

Customs adjustments background

In Canada, *Form B3 — Canada Customs Coding Form* (Form B3) is submitted to CBSA to account for commercial goods that have been imported into Canada. In the event that Form B3 needs to be corrected or adjusted, *Form B2 — Canada Customs Adjustment Request* (Form B2) is used to make the actual adjustment to the commercial accounting declaration. Administrative guidance on how to prepare and submit Form B2 can be found in D-memorandum D17-2-1, *The Coding, Submission and Processing of Form B2 Canada Customs Adjustment Request*.

Importers may have various reasons for submitting an adjustment request to the CBSA to correct the original commercial accounting declaration, Form B3.

An importer could be making a voluntary amendment (self-adjusting) to a declaration due to errors or omissions discovered that relate to the imported goods' origin, value for duty, tariff classification, or even due to diversion related to the end-use or the end-user of the imported goods (i.e., any time the original criteria that qualified the import for duty relief are no longer met). Alternatively, the importer may be obligated to file B2 adjustments to correct declarations in a given period following a compliance verification audit. In both cases, the amendments are filed in order to bring the importer into compliance with the Customs Act or other legal requirements.

Import duty refund claims are also requested by filing Form B2 re-determination requests. Lastly, importers will also file Form B2 Adjustment Requests when they opt to contest CBSA decisions by filing further re-determination appeals under *Section 60* of the *Customs Act*.

As indicated, filing Blanket B2 Adjustments Requests is only possible when an authorization is secured in advance. If an authorization is not granted, the importer's only option is to file individual Form B2 adjustments for each of the Form B3 declarations that are identified as erroneous.

What is a Blanket B2 Adjustment Request?

Blanket B2 adjustments provide administrative savings for both the importer and the Agency. Instead of filing individual Form B2 Adjustment Requests, importers who secure the CBSA's authorization can submit blanket B2 adjustments that allow the importer to correct numerous Form B3 transactions in a single submission. Blanket B2 adjustment submissions significantly reduce the volume of supporting paperwork that needs to be prepared by the filer and reviewed and filed by the Agency.

Blanket B2 Authorization Application

The most significant guidance provided in the D-memo is that it obliges importers to submit a Blanket B2 Authorization Application to CBSA prior to submitting the actual Blanket Form B2, as well as requires a summary of transactions and relevant impact at the time the authorization application is submitted.

Critically, the CBSA's new procedure for requesting a Blanket B2 Authorization forces the applicant to obtain entry data and to perform analyses on the entry data before an application is submitted to the Agency. Effectively, applicants need to confirm the impact of the adjustment (whether a voluntary amendment or a refund claim) before they obtain the authorization to submit the actual Blanket B2 Adjustments.

An authorization application includes an application form, a workbook (electronic file) containing the transactional data impacted by the adjustment as well as an agency agreement (which is only required if the application is being submitted by an agent). The fact that CBSA requires a workbook containing the transactional data impacted by the adjustment to approve the Blanket B2 Authorization Application is a significant change for importers.

Time-sensitive adjustments

Importers and advisors alike know how important it is to understand liability periods and the "reason-to-believe" concept in the case of voluntary amendments, and how far back in terms of historical entries can potential refund claims for overpaid duties be filed. In all cases, monitoring key dates is critically important when managing customs adjustment projects.

To illustrate the point, we will walk through a voluntary amendment scenario where the importer has discovered systemic errors or omissions that affect a large volume of Form B3 import transactions that were filed in the four preceding calendar years.

If the adjustment is either revenue neutral or results in monies owed to the Agency, Section 32.2 of the Customs Act obliges the importer to self-adjust the declaration within 90 days of having reason to believe that an adjustment is required. This 90-day "reason-to-believe" timeline applies irrespective of whether the importer submits a blanket or a single Form B2 Adjustment. The 90-day countdown clock starts at the moment the importer has reason to believe that an adjustment to a customs declaration, Form B3, is required. Obviously, this is a tight timeline for compliant importers who strive to submit an adjustment to the Agency on time, especially if many transactions spanning multiple years are involved.

Assuming a large number of entries are at issue, the importer/agent either has to start the laborious task of preparing individual Form B2 adjustments and compile the supporting documentation that will need to be submitted with each Form B2, or they need to take a significant number of steps to submit a Blanket Format B2 Adjustment.

In the latter case, the importer first needs to obtain entry data. Once the data are in hand, an analysis needs to be completed, and then a full Blanket B2 Authorization Application, including all elements outlined previously, needs to be submitted to the Agency. Once the Agency has reviewed the application and presumably accepts it (provided it meets all required criteria), the CBSA will issue an authorization letter to the importer/agent.

After the CBSA authorizes the importer/agent to submit a Blanket B2 Adjustment Request, the importer may then package a full submission, including Blanket Form B2 as well as the workbook with the detailed transaction data to the Agency. All of this must take place within the 90-day period. D17-2-4 provides guidance to importers with regards to the Agency's expectations in terms of content and formatting of the electronic workbook to be submitted along with the Blanket Form B2, including specificities such as the requirement to have one workbook per calendar year that includes separate worksheets for each quarter.

The CBSA has outlined that it will not accept an adjustment whereby a Blanket Form B2 Authorization Application is submitted to the CBSA at the same time as the Blanket Form B2. Approval to submit a Blanket Form B2 must be obtained first. Without the authorization, the CBSA will not accept Blanket Form B2 Adjustments.

It's important to stress that filing a Blanket Form B2 Authorization Application does not constitute filing a Blanket Form B2 Adjustment Request, and therefore, has no impact on protecting the date when it comes to the deadline associated with the adjustment.

As mentioned above, the new procedures for requesting a Blanket Authorization and for filing Blanket Form B2s create a new sequence of steps that must be followed and will significantly push back the earliest time an importer can submit their actual B2 adjustments. It follows that it seems highly likely that even if the importer that discovers errors or omissions and immediately sets in motion a voluntary amendment project may not meet their

90-day "reason-to-believe" deadline. Not meeting this deadline will expose importers to Administrative Monetary Penalty System (AMPS) regime penalties for not filing the voluntary amendment before the 91st day.

Comparatively, under the old procedures, a Blanket Authorization Request was a straightforward task that did not require significant amounts of data aggregation and analysis. Moreover, importers and their advisors could request the blanket authorization and work on the B2 adjustments workbooks and related tasks while waiting for the authorization to be granted — thus making it possible to meet the 90-day "reason-to-believe" deadline even if the project was not started immediately after the importer's discovery that adjustments are required.

Note that a Blanket B2 Authorization Application is not required when an importer is submitting an adjustment following a trade verification (audit) within 90 days from the date of the final verification report, provided all adjustments being submitted fall within the scope of the verification and the reassessment period.

Qualifying as a "blanket" and submission guidelines

The new D-memo defines a "blanket" adjustment as "*an adjustment that corrects accounting information pertaining to one issue and up to three reasons, each having 25 or more B3 transactions.*"[7] The total of 25 or more transactions is considered a blanket only when the transactions occur within a 12-month period. Additionally, the D-memo further defines the term "issue" as the legislative authority that is associated with the specific adjustment request. For example, paragraph 74(1)(d) should be cited on Form B2 for a refund request whereby the calculation of duties owing was based on a clerical, typographical or similar error. In this example, only adjustments pertaining to paragraph 74(1)(d) legislative authority can be adjusted together under one blanket. The D-memo also defines the term "reason" as the description of the circumstances for which a correction is being requested (for example, due to a correction of tariff classification). CBSA reserves the right to accept or reject any or all reasons given for a correction request.

D17-2-4 should be consulted for an exhaustive listing of instances where a Blanket B2 Adjustment Request cannot be relied upon, which includes situations such as classifications subject to Tariff Rate Quotas (TRQ), or cases where licenses are applicable.

Another aspect of the submission process that is further clarified is how to establish the interest rate. The median date is to be considered as the date that the interest begins to accrue. An importer is to establish the median date by taking the first transaction and the last transaction in a respective quarter, and the date that falls exactly halfway between the two is considered the median date. In the event that there is an even number of days in a quarter, the date immediately after the median date is to be used. The end date of the interest is the date that payment is presented to the Agency. In the event that an importer is submitting payment along with their Blanket B2 Adjustment Request, the importer is responsible for calculating the interest.

Importers should be aware that Individual Trade Programs (for example, the Special Import Measures Act (SIMA) compliance program), may have additional requirements for Blanket B2 Adjustment Requests. SIMA adjustments cannot be combined with other legislative issues on a Blanket B2 Adjustment Request and an additional step must take place for these types of adjustments, whereby written approval must be obtained from the SIMA compliance unit manager prior to submitting any SIMA adjustments on a Blanket Form B2.

[7] Preparation and Presentation of Blanket B2 Adjustment Requests — Memorandum D17-2-4

Concluding remarks

Given the guidance provided in D17-2-4, it is evident that preparing B2 adjustments can be time-consuming for an importer. The "reason-to-believe" timelines must be monitored and tracked to ensure that the importer files the adjustment within the 90-day period (when applicable). If a payment to the Agency is required and is being submitted at the same time as Form B2, the importer is responsible for correctly calculating the interest that applies.

It is in the importer's best interest to submit accurate and complete Blanket B2 adjustment requests and it's reasonable to assume that adhering to the CBSA guidelines is paramount to ensuring a smooth and successful Blanket B2 adjustment project.

It seems inevitable that the new process will attract criticisms from the importing community if authorization applications are so slow in coming that importers lose the opportunity to file individual Form B2 voluntary amendments or refund claims on time (e.g., the 90-day "reason-to-believe" period expires, or a 4-year window to apply for import duty refund claims expires). Significant monies in the form of non-compliance penalties under the AMPS regime for amendments received after the "reason-to-believe" 90-day deadline, or overpaid import duty amounts the importer was otherwise entitled to recover, could well be at issue.

At this stage it is not clear what exactly will lead the CBSA to deny a Blanket B2 Authorization Request. Presumably, the Agency's chief preoccupation is identifying applicants that may not know how to compile a properly formatted Blanket B2 package, or those who have not made the effort to fully demonstrate they understand what constitutes a complete and justifiable Blanket B2 submission. One can appreciate the logic of adding rigor to an application process in order to filter out the less organized and less diligent applicants. Stopping unacceptable submissions from reaching the Agency in the first place will help ensure the Agency's resources are not wasted by assigning and processing poorly prepared submissions.

However, it remains to be seen which applications are, in fact, denied by the CBSA and for what reasons. The fact that the applications will now consist of virtually finalized Blanket B2 adjustment submissions, and the fact that a prolonged administrative process may adversely impact importers trying to submit time-sensitive adjustments, should motivate importers to revisit their internal trade compliance monitoring activities and self-correction policies. It will become especially important to make sure errors and omissions discovered are immediately reviewed by decision-makers and that Blanket B2 adjustment projects are launched where appropriate.

It is apparent that the procedural changes D17-2-4 introduces are significant and virtually all Canadian importers may be affected. The stakes are high and understanding the procedural ins and outs of the voluntary adjustments system in Canada has never been as important as it is right now.

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United States

Trump administration: trade and customs policies and developments

President Trump's National Trade Policy Agenda for 2017, released on 1 March 2017, states four "major priorities":

1. Defending US sovereignty over trade policy
2. Strictly enforcing US trade laws
3. Negotiating "new and better trade deals"
4. Using leverage to open foreign markets[8]

Actions have already been taken in line with these priorities, including withdrawal from the Trans-Pacific Partnership (TPP), Congressional notification of the intent to renegotiate the North American Free Trade Agreement (NAFTA) (see *Trump administration issues NAFTA renegotiation notice letters* in this edition of *TradeWatch*), and the imposition of countervailing duties on Canadian softwood lumber.[9]

In addition, President Trump has signed five Executive Orders and two Presidential Memoranda aimed at strengthening US trade and customs policies. The five Executive Orders (in chronological order) are:

1. 31 March Executive Order directing a report on countries with which the US has a trade deficit
2. 31 March Executive Order on ADD/CVD enforcement, which focuses on enhancing the ability of Customs and Border Protection (CBP) to collect antidumping duties (ADD) and countervailing duties (CVD)
3. 18 April Executive Order on Buy American and Hire American, aimed at strengthening the Buy American requirements and to promote agency policy that supports domestic production
4. 29 April Executive Order directing a review of trade-related agreements, in an effort to address violations and abuses
5. 29 April Executive Order establishing Office of Trade and Manufacturing Policy (OTMP)

The two Presidential Memoranda, one on steel and one on aluminum, direct investigations of whether imports threaten to impair US national security.

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8 https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2017/2017-trade-policy-agenda-and-2016

9 https://www.commerce.gov/news/press-releases/2017/04/us-department-commerce-issues-affirmative-preliminary-countervailing

"We're going to use American steel, we're going to use American labor, we are going to come first in all deals."[11]

– *President Donald J. Trump*

Four of the Executive Orders and the two Presidential Memoranda call for reports to be issued on the specified topics. Each is a precursor to further action that may significantly impact companies, as findings from these reports could be used as the basis for future Presidential action under a number of US statutes that provided for trade remedies or retaliatory duties.[10]

Companies will want to closely follow the process for the development of each of these reports, provide input where appropriate and assess potential impact of any actions that may develop from the reports. Each of the Executive Orders and Presidential Memoranda are summarized below.

I. Review of current trade deficits, agreements and laws

A. Executive Order regarding the Omnibus Report on Significant Trade Deficits

The 31 March Executive Order directed a broad and detailed report addressing each foreign trading partner, with which the US had a "significant trade deficit" in goods in 2016.[12] The Secretary of Commerce and the US Trade Representative (USTR), in consultation with the secretaries of State Department, Treasury, Defense, Agriculture and Homeland Security, must prepare this report by 29 June 2017. The report, titled the *Omnibus Report on Significant Trade Deficits,* is aimed at addressing the "unfair trade practices and the causes of United States trade deficits." "Significant trade deficit" is not further defined.

Where the US had a "significant trade deficit," the report must assess the following:

- The major causes of the trade deficit
- Whether the trading partner is imposing unequal burdens on, or unfairly discriminating against, US commerce and thereby placing US commerce at an unfair disadvantage
- The effects of the trade relationship on the production capacity and strength of US manufacturing and defense industrial bases
- The effects of the trade relationship on US employment and wage growth
- Imports and trade practices that may be impairing US national security

B. US to assess trade agreement violations and abuses

On 29 April 2017, following the Order to identify countries which contribute to the US trade deficit, the President signed an Executive Order to address violations and abuses existing under trade agreements with the US.[13] By 26 October 2017 the Administration must complete a "comprehensive performance review" of all trade agreements, trade preference agreements and investment agreements.

The Order dictates US trade agreements and policies "should enhance our economic growth, contribute favorably to our balance of trade, and strengthen the American manufacturing base." In addition to pinpointing cases of alleged violations or abuses, the report also calls for remediating recommendations.

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[10] See *Trade-related impacts of the United States presidential election* in the December 2016 *TradeWatch.*

[11] https://www.whitehouse.gov/the-press-office/2017/04/20/president-donald-j-trump-standing-unfair-steel-trade-practices

[12] https://www.whitehouse.gov/the-press-office/2017/03/31/presidential-executive-order-regarding-omnibus-report-significant-trade

[13] https://www.whitehouse.gov/the-press-office/2017/05/01/presidential-executive-order-addressing-trade-agreement-violations-and

C. Office of Trade and Manufacturing Policy

President Trump signed a second Executive Order on 29 April establishing the Office of Trade and Manufacturing Policy (OTMP)[14] within the White House. At the signing of these orders, President Trump said that the mission of the new trade office "will be to defend American workers and companies from those who would steal our jobs and threaten our manufacturing base."[15] The OTMP will also focus on advising the President on economic growth, the trade deficit and strengthening the US manufacturing and defense industrial bases. Peter Navarro, previously Director of the White House National Trade Council, will serve as OTMP Director.

D. Executive Order on Buy American and Hire American

President Trump signed an Executive Order on 18 April 2017 entitled *Buy American and Hire American,* to promote the American Industry.[16] The Order directs the Secretary of Commerce and the Office of Management and Budget Director within 60 days of the Order (i.e., 17 June 2017), to issue guidance for agency policymaking. Then, agencies will have 150 days to assess enforcement of and compliance with Buy American Laws and the use of waivers, as well as propose policies to facilitate federal domestic procurement preferences. Finally, the U.S. Commerce Department will have 220 days to report on "specific recommendations to strengthen implementation of Buy American Laws, including domestic procurement preference policies and programs."

The "Hire American" part of the order requires agencies to review and administratively strengthen the rules around work visas. The "Buy American" portion directs executive agencies to maximize the use of domestic goods, products and materials under federal contracts and federal grants, and minimize the use of waivers. The Order directs the executive branch to maximize the use of goods, products and materials produced in the US through federal financial assistance awards and Federal procurements. To strengthen the government procurement laws, the Order also directs agencies to assess the impacts of US free trade agreements and the World Trade Organization Agreement on Government Procurement on Buy American Laws.[17] The Order specifically references steel, iron, aluminum and cement.

II. Heightened trade enforcement efforts

A. Increased efforts to enforce antidumping and countervailing duties orders and trade and customs laws

The 31 March Executive Order focuses on enhancing CBP's ability to collect ADD and CVD, as well as enforcement of laws protecting intellectual property rights (IPR) holders. The Executive Order calls for CBP, the US Trade Representative and the Departments of Commerce, Homeland Security, Justice and Treasury to increase efforts to collect on and enforce ADD and CVD orders and U.S. Customs laws.[18]

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[14] https://www.whitehouse.gov/the-press-office/2017/05/01/presidential-executive-order-establishment-office-trade-and

[15] https://www.whitehouse.gov/the-press-office/2017/04/29/remarks-president-trump-signing-executive-orders-trade

[16] https://www.whitehouse.gov/the-press-office/2017/04/18/presidential-executive-order-buy-american-and-hire-american

[17] The Buy American laws are several provisions of federal legislation that require the US Government to prefer US produced products over foreign products. They were first instated in 1933 through the Buy American Act, 41 U.S.C. §§ 8301 – 8305, which established the rule that materials used to build federal products must be domestically produced. Similarly, the Surface Transportation Assistance Act of 1982, 23 U.S.C. § 103 (3)(4) and 49 U.S.C. § 5323(j), restricted the use of 100% American-made steel for all civil construction and transportation projects. The Trade Agreements Act of 1979, 19 U.S.C. §§ 2501 – 2581, created a carve out by approving and implementing the policy that products made in countries that have a US trade agreement in place may receive the same preferential treatment as domestic products in some government procurement. Other examples of Buy American laws can be seen in the Berry Amendment, 10 U.S.C. § 2533a, infrastructure-related Buy America rules (see, e.g., Rural Electrification Act of 1936), the Federal Public Transportation Act of 2015, 49 U.S.C. § 5323(j), the Passenger Rail Investment and Improvement Act of 2008, 49 U.S.C. §§ 24305(f), 24405(a), and the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 50101.

[18] https://www.whitehouse.gov/the-press-office/2017/03/31/presidential-executive-order-establishing-enhanced-collection-and

The Executive Order has three main components:

First, to improve duty collection, CBP is to develop a plan by 29 June 2017 that would require covered importers that pose a risk to US revenue to provide security for ADD and CVD liability through bonds and other legal measures. A "covered importer" under this directive is defined as a new importer or an importer that has a prior record of late payments or failure to pay required ADD/CVDs.

Second, the Executive Order provides for a 90-day period to develop and implement a plan for combating US trade and customs violations and take measures to protect IPR holders from the importation of counterfeit goods.

Third, the Attorney General, in consultation with Department of Homeland Security, is directed to develop prosecution practices and allocate resources to prioritize the prosecution of significant trade violations.

B. Presidential Memorandum initiating steel and aluminum investigation

On 20 April 2017, the President signed a Presidential Memorandum prioritizing an investigation into whether steel imports threaten to impair US national security.[19] One week later, on 27 April 2017, the President signed another Presidential Memorandum to determine the effects of rising aluminum imports on national security.[20] Both investigations were initiated by the Secretary of Commerce and are being conducted under Section 232 of the Trade Expansion Act of 1962. Findings and recommendations for next steps must be submitted within 270 days of the Orders. The Department of Commerce will hold public hearings, and the investigations will include formal requests for public comment to be published in the *Federal Register*.

If the report concludes steel or aluminum imports threaten to impair the national security, and the President concurs, the President has broad authority under Section 232 to take action, including through the imposition of tariffs.[21] Section 232 of the Trade Expansion Act of 1962, was last used in 2001, when President Bush investigated the effect of iron ore and semi-finished steel imports.

Implications

Over the coming months, reports will be issued in response to four of the Executive Orders and the two Presidential Memoranda. Findings and recommendations in these reports may provide the basis for trade remedies, retaliatory duties or other Trump administration action.

Where specific aspects of one of these reports may impact a company, the company may wish to take advantage of the opportunities to provide public input, whether through comments, hearings or informal discussions with policymakers. As the reports are completed, companies should carefully review the findings and recommendations for any indication of future remedial actions by the Trump administration.

Once the reports are completed, further actions by the Trump administration may occur quickly, and businesses may have to act nimbly to position themselves for a variety of potential outcomes. In this environment, it is particularly important for companies to have data readily available to model impacts as they develop. Understanding the end-to-end supply chain, and assessing options to diversify supply base and prioritize supply chain lanes, could prove very cost-effective if prompt change is needed to avoid increased costs or restrictions on imports.

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[19] https://www.whitehouse.gov/the-press-office/2017/04/20/presidential-memorandum-secretary-commerce

[20] https://www.whitehouse.gov/the-press-office/2017/04/27/presidential-memorandum-secretary-commerce

[21] https://www.whitehouse.gov/the-press-office/2017/04/20/president-donald-j-trump-standing-unfair-steel-trade-practices

Recent FTZ Board decision gives guidance on the 'convenience of commerce' test and the Alternative Site Framework

The Foreign Trade Zones Board (FTZB) issued a decision involving the "convenience of commerce" test.[22] The decision is the first of its type since the FTZB initiated the Alternative Site Framework (ASF) in 2009, and offers perspective on how the FTZB views the test, the legal standards to be met for approval and what companies and grantees can expect in these types of cases in the future.

Foreign trade zones

A wide range of manufacturing and warehousing businesses use foreign trade zones (FTZs) to defer, reduce or eliminate customs duties and fees, improve supply chain efficiency and in some states, reduce state and local taxes. The FTZB, a federal interagency board, administers the FTZ program and grants authority to "grantees" who have geographic oversight to serve a local area. Under the FTZ Act,[23] each U.S. Customs port of entry is entitled to one grantee/FTZ; the primary FTZ is referred to as the "entitlement zone." Additional grantees may be approved if the applicant demonstrates that the additional grant would serve "the convenience of commerce."[24] The term "convenience of commerce" pertains to whether the needs of businesses engaged in international trade in the community are adequately served by the entitlement zone.

Alternative Site Framework

In 2009, the FTZB announced a new, optional, organizational framework for FTZ grantees, the Alternative Site Framework (ASF). If approved for ASF, a grantee may request that the FTZB pre-designate significant geographic areas, such as one or more counties, as FTZ ready. This geographic area is referred to as the FTZ's Service Area. Then, a short-form application may be submitted for property within the Service Area, which will be used by a business as a FTZ, and the FTZB will act on the application for this "Usage-Driven Site" within 30 days. The approval is specific to the business and the property, and remains in effect as long as zone use continues (if the zone site is not used for 3 years, it terminates).

The purpose of the ASF program is to focus FTZ approvals on actual use of the FTZ by a business. Prior to the ASF program, with FTZ grants often taking a year or longer and requiring lengthy (and costly) applications, the general approach to be able to accommodate business within a

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[22] Foreign-Trade Zones Board, Order 2025, Foreign-Trade Zone 168; Application Requesting Expansion/Reorganization; Dallas/Fort Worth, Texas Area, 82 Fed. Reg. 6490, 19 January 2017.

[23] 19 U.S.C. 81a-81u.

[24] 19 USC § 81(b).

region was to request FTZ status for one or more specific industrial parks in anticipation that businesses needing FTZ status would locate to those industrial parks. This practice tended to favor one industrial park over another, and inevitably as regions developed, caused grantees to regularly ask that FTZ boundaries be "modified" by taking a few acres from one approved industrial park and moving it to another, not previously approved industrial park, to accommodate the FTZ needs of a specific business. With a Usage-Driven Site approval taking only 30 days and having little cost, these types of industrial park approvals are no longer necessary.

The ASF program has been widely adopted by FTZs, with 161 of the current 296 grantees approved for ASF. With the January decision, the FTZB has clearly demonstrated that the direction of the FTZ program is consistent with the FTZ user-driven philosophy of ASF. The decision, and a companion decision on a request for a boundary modification, give direction on two important issues:

1. How is the convenience of commerce test applied when one FTZ applies for a traditional industrial park expansion within the ASF-approved Service Area of another FTZ?
2. Should a similar standard be applied to boundary modifications of an existing FTZ industrial park site when the modified boundaries will result in a FTZ project within the ASF-approved Service Area of another FTZ?

Background

The FTZB has approved multiple FTZs for the Dallas-Fort Worth Port of Entry. The entitlement zone grant, FTZ 39, has been issued to the Dallas/Fort Worth International Airport Board. FTZ 39 was one of the first FTZs approved into the ASF program and has a seven-county Service Area encompassing 5,660 square miles (14,659 square kilometers). FTZ 168 was approved by the FTZB at the Dallas-Fort Worth Port of Entry in 1990, at a point in time when state law restricted the ability of FTZ 39 to expand (the restriction has since been removed), and thus met the convenience of commerce test. FTZ 168 has not been approved for ASF.

The grantee of FTZ 168 (a non-profit corporation) filed an application in 2013 to expand FTZ 168 to include a 101.2-acre (40.95-hectare) industrial park in the City of Coppell, Texas. FTZ 168 had previously obtained a 2009 temporary minor boundary modification approval from the FTZB for a portion of that industrial park to accommodate a specific mobile phone business located in the park. The Coppell industrial park is within the Service Area of FTZ 39, the entitlement zone for the Dallas-Fort Worth Port of Entry, which required that the FTZB evaluate the FTZ 168 request under the convenience of commerce test.

Application of convenience of commerce test

The grantee of FTZ 168 argued in its application that allowing zone users the choice of grantees satisfied the convenience of commerce test. The FTZB disagreed noting that it was the industrial park developer that was selecting the grantee, not a FTZ user. In effect, granting the Coppell site to FTZ 168 would deny any business that may wish to locate in the Coppell industrial park and become an actual FTZ user a chance to select the grantee of their choice. The FTZB approach is clearly aligned with the ASF philosophy of focusing the FTZ program on FTZ users.

Because the portion of the Coppell industrial park occupied by the mobile phone company had already been approved by the FTZB as a part of FTZ 168 on a temporary basis prior to the Dallas-Fort Worth Airport ASF approval, the FTZB decided, on its own review, that the facility of the mobile phones provider could be designated a subzone (a subzone is a FTZ site that is dedicated to a single company for a specific activity or purpose). As the mobile phone company had a pre-existing, 9-year relationship with FTZ 168, the FTZB

found the convenience of commerce test met because the FTZ user (the mobile phone company), had already expressed a desire to continue the relationship.

It is important to note that the relationship between the mobile phones provider and the FTZ 168 grantee developed because FTZ 168 obtained a "temporary" boundary modification to create the relationship. A temporary boundary modification does not require public notice and does not have the same regulatory considerations as a subzone or general purpose zone expansion application and is, therefore, easier to obtain. Prior to the ASF concept, this kind of temporary approval was common, and the FTZB seemed to view it as necessary to allow FTZ users ready access to the FTZ program. With ASF in place, with regard to a business that is in a Service Area, this practice would seem unneeded, and in fact, could lead grantees to use the non-public temporary approval process to develop "relationships" with zone users that would then bolster an argument for expanding into another grantee's Service Area.

A second decision denying a minor modification application by FTZ 168, which requested removal of 15.65 acres (6.33 hectares) from an approved FTZ 168 location on a temporary basis to create a new FTZ site in another city within FTZ 39's Service Area, seems to address that issue.[25] The FTZB cited the frequent use of the minor modification procedures by FTZ 168 (17 since the last Board Order for FTZ 168 in 1998) and noted that too many modifications were divergent from FTZ 168's zone plan. A change in zone plan would require that the applicant meet the convenience of commerce test, making these FTZB decisions work in tandem. Taken together, the FTZB decisions reinforce the user-oriented direction of the FTZ program set in motion by the ASF introduction in 2009.

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[25] Decision S-14-2017; available at http://ita-web.ita.doc.gov/FTZ/OFISLogin.nsf; http://ia.ita.doc.gov/ftzpage/letters/TSFMBM.pdf

Japan

Amendments to Japan's Generalized System of Preferences program

The following changes to the Japanese Generalized System of Preferences (GSP) program were implemented effective 1 April 2017.

- **Graduation of certain beneficiary countries from the GSP program:** Uruguay, Saint Christopher and Nevis, and Chile were classified as high-income countries in World Bank statistics for three consecutive years, and are no longer eligible for GSP beneficiary status effective 1 April 2017. The MFN rate (import customs duty rate applicable to WTO countries) will apply thereafter for all goods imported into Japan from these countries.
- **Exclusion of certain products originating in China and Thailand:** Seventeen agricultural/fishery items and 380 industrial products originating from China and two items classified under HS 3505 (dextrins and other modified starches and glues) originating from Thailand were excluded from the GSP program effective 1 April 2017, because they have been deemed as highly competitive in the Japanese market. Importers currently utilizing the GSP program to import these goods will see an increase in landed cost due to the higher duty rate.

Examples of items originating in China that are excluded from 1 April 2017 to 31 March 2020

Description	GSP rate 31 Mar. 2017	MFN rate 1 April 2017
Certain vegetables of Chapter 7 (e.g., certain burdock, matsutake mushrooms, bamboo shoots)	0%-7.5%	2.5%-9%
Certain spices of Chapter 8 (e.g., ginger roots)	0%	2.5%
Certain prepared foodstuffs of Chapter 16 (e.g., certain mackerel, eel, shark fins, caviar substitutes, crab, octopus, clams, scallops)	4.8%-7.2%	6.4%-9.6%
Certain mineral fuels of Chapter 27 (e.g., briquettes, ovoids and similar solid fuels manufactured from coal, coke and semi-coke)	0%	3.2%-3.9%
Certain inorganic chemicals of Chapter 28 (e.g., phosphoric acid, hydrazine, chlorides, nitrates, phosphonates, silicates, carbides)	0%-4.4%	3.2%-5.5%
Certain textile articles of Chapter 63 (e.g., blankets, bed linen, curtain, sunblinds, sacks and bags for packing)	0%-7.2%	3.3%-9%
Certain ceramic products of Chapter 69 (e.g., certain tiles, tables and kitchen wares)	0%	1.5%-2.3%
Certain base metals and articles of base metals classified under Chapters 74, 76, 79, 81and 83 (e.g., certain copper powders and pipes, aluminum foil and structures, articles of zinc, magnesium and manganese articles; scissors and knives, locks, brackets)	0%-1.8%	2.1%-3.7%
Frames and parts for eyeglasses of Chapter 90	0%	3.3%-4.7%

Furthermore, China and Thailand are expected to graduate entirely from GSP in April 2019, due to a relaxation of the graduation criteria.

For a complete list of products to be excluded from the GSP program, please see the following link (Japanese only): http://www.customs.go.jp/shiryo/tokkeikanzei/hinmoku-jogai.pdf

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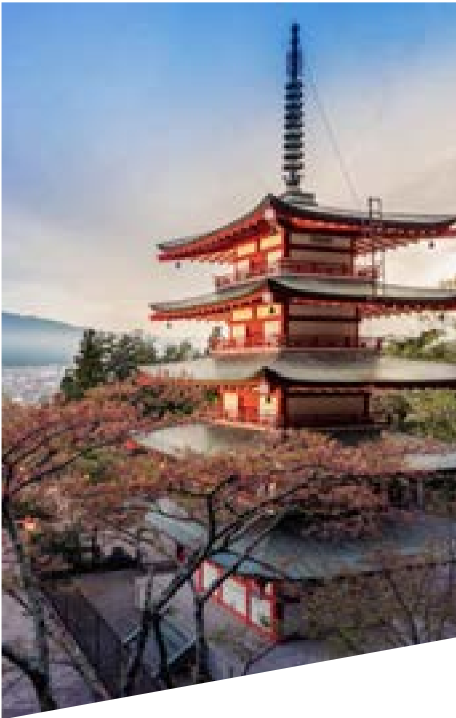
Update on the liberalization of customs declaration policy



In previous issues of *TradeWatch*, we introduced the upcoming liberalization of Japan's customs declaration policy.[26] Under the current policy, customs declarations have to be filed with the Customs Office with jurisdiction over the bonded area in which the goods will be placed. Under the new policy, Authorized Economic Operators (AEOs) will have the choice to file customs declarations with a Customs Office different from the Customs Office overseeing the bonded area in which the goods will be placed.

On 7 April 2017, a draft of a Cabinet Order stipulating that the new policy will become effective on 8 October 2017 was released. Further details are expected to be announced shortly. As the new policy could provide opportunities to reduce the number of customs brokers used, simplify the filing of amended declarations, increase supply chain efficiency, reduce logistics costs, and others, companies without AEO certification may wish to consider becoming certified in order to take advantage of this new policy.

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[26] See previous articles on this topic in the September 2015, June 2016, September 2016 and December 2016 issues of *TradeWatch*.

Expanded ITA is in effect in Japan as of 16 May 2017

Outline of the expanded ITA

The World Trade Organization (WTO) Information Technology Agreement (ITA) aims to abolish tariffs on IT equipment. It entered into force in 1997 and currently has 82 members and covers 140 products, including personal computers and mobile phones.

In the face of rapid innovation in the information technology sector, in 2012, WTO members started negotiations on expanding the ITA product coverage. In 2015, certain members agreed to expand the ITA, eliminating duties on an additional 201 products.

Products covered under the expanded ITA include certain optical films for flat panel displays, semiconductor wafer manufacturing equipment, GPS navigation systems and medical equipment such as CT and MRI scanners.

According to the WTO, trade of relevant products globally is estimated at USD1.3 trillion or JPY150 trillion per year, which is equivalent to approximately 10% of global trade. More than 50 members[27] participated in the negotiations on the expanded ITA. With the exception of certain sensitive products, the members agreed to abolish tariffs on covered products by 1 July 2019.

How was the expanded ITA implemented in Japan?

Following the Cabinet decision of 9 May 2017, Japan eliminated tariffs on all 201 covered products effective 16 May 2017.

[27] Member countries include Japan, US, EU (28 countries), Taiwan, South Korea, Costa Rica, Malaysia, Australia, Canada, Thailand, Norway, China, Switzerland, Lichtenstein, Singapore, Hong Kong, Philippines, New Zealand, Israeli, Mauritius, Montenegro, Guatemala, Iceland, Albania and, Colombia.

However, since the MFN rate on most of the covered products were already 0%, only the following items were affected:

Product description	Previous duty rates	Duty rates as of 16 May 2017
Ex 3215.11 Solid ink in engineered shapes for insertion into apparatus of HS subheadings 8443.31, 8443.32 or 8443.39*	3.9%	0%**
Ex 3215.19 Solid ink in engineered shapes for insertion into apparatus of HS subheadings 8443.31, 8443.32 or 8443.39	3.9%	0%**
3506.91 Adhesives based on polymers of headings 3901 to 3913 or on rubber	3.9%	0%
3907.99.090 Thermoplastic liquid crystal aromatic polyester copolymers	3.1%	0%**
Products of **5911.90.090** (except products of cotton)	2.8%	0%

*Printers other than printing machines used for printing with plates, cylinders or other printing components (e.g., inkjet printers, laser printers, multifunction machines with fax and copy functions, etc.).

**Where only specific products under a certain HS code are subject to duty elimination, 0% is applied on products that meet the ITA criteria from 16 May 2017, even though the customs tariff schedules of Japan as of 16 May 2017 only indicates the duty rate for non-ITA products.

Similar to the original ITA in 1997, the benefits of this tariff elimination are not limited to the expanded ITA member countries; instead, the 0% rate is extended to all WTO member countries.

What is next?

Although Japan has eliminated tariffs on covered products with immediate effect, the agreement provides that tariffs on 90% of covered products be eliminated by 1 July 2019.

Members of the expanded ITA include the US, EU, China, South Korea, Thailand and Malaysia, and these countries are expected to gradually eliminate tariffs on a majority of covered products by 1 July 2019. This presents a huge opportunity for exporters of such products to enter these markets and expand their market share.

Furthermore, expanded ITA member countries also agreed to continue discussions on non-tariff barriers and review product coverage in order to reflect future technological innovation in the agreement.

Look for updates in future issues of *TradeWatch*.

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Thailand

New customs law

On 17 May 2017, Thailand's new Customs Act B.E. 2560 was published in the *Royal Gazette* and will enter into force on 13 November 2017 (i.e., 180 days after its publication date). The main objective of the new Act is to reform customs administration and procedures to facilitate trade and enhance the efficiency, fairness and transparency of duty collection.

Some of the key provisions in the new Act include:

- Customs officers have the right to enter premises and audit documents and/or data relating to imports and exports for up to 5 years from the date of import or export.
- Time period for duty assessment:
  - Duty assessment is to be processed within 3 years from the date of submission of the shipment entry.
  - If circumstances prevent duty assessment from being processed within 3 years, the Customs officer may request the Director-General for an extension of up to 2 years.
  - However, if there are reasonable grounds for the Director-General to believe that a taxpayer intended to evade duty, duty may be assessed for up to 5 years after the end of the extension period above.
  - Penalties vary depending on the nature of the offence as described in the table below.

Category of offence	Penalties
1) Smuggling	▸ Fine of 4 times the duty-paid value of goods or imprisonment for a term not exceeding 10 years or both ▸ Seizure of the goods
2) Duty evasion with intention to avoid duty payment	▸ Fine of 0.5 to 4 times the duty short payment or imprisonment for a term not exceeding 10 years or both ▸ Goods may also be seized
3) Evasion of restrictions or prohibitions on controlled goods	▸ Fine not exceeding THB500,000 (approximately USD14,548) or imprisonment for a term not exceeding 10 years or both ▸ Goods may also be seized
4) False or incomplete declaration	▸ Fine not exceeding THB500,000 (approximately USD14,548)

- The offences under categories (1), (3) and (4) above are deemed to be offences regardless of the existence of intent.
- Reforms to the reward and incentive sharing for Customs officials and informants as described in the table below.

Category of offence	Reward and/or incentive sharing
1) Smuggling 2) Evasion of prohibitions on controlled goods	▸ Reward and incentive sharing reduced to 40% of the sales proceeds from the seized goods. If the goods are not seized or the seized goods cannot be sold, the reward and incentive is to be deducted from the fine. ▸ The amount of reward and incentive sharing is to be capped at THB5 million (approximately USD145,476) each for Customs officials and informants, respectively.
3) Duty evasion with intention to avoid duty payment 4) Evasion of restrictions on controlled goods 5) False or incomplete declaration	▸ Reward sharing reduced to 20% of the sales proceeds from the seized goods. If the goods are not seized or the seized goods cannot be sold, the reward is to be deducted from the fine. ▸ The amount of reward sharing is to be capped at THB5 million for Customs officials.

- Duty surcharge of 1% per month will be capped at the amount of the duty shortfall.
- The period for making duty refund claims is extended from 2 to 3 years from the date of import or export.
- A 180-day period is introduced for the Customs Appeal Commission to complete its adjudication of appeal cases. If the appeal is not completed within the prescribed period, the taxpayer has the right to bring the case to the courts.
- Transitional provisions:
  - All existing emergency decrees, ministerial regulations, rules, notifications and orders issued pursuant to the powers granted under the current Customs law shall continue in force provided they do not conflict with the provisions of the new Customs law.
  - The process for issuing necessary emergency decrees, ministerial regulations, rules, notifications and orders under the new Customs law is to be completed by 11 May 2018 (i.e., 180 days from the date the new Customs law enters into force).

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Gulf Cooperation Council

Gulf States to introduce VAT in 2018

The member states of the Gulf Cooperation Council (GCC: Bahrain, Kuwait, Qatar, Saudi Arabia, Oman and the United Arab Emirates) have been discussing the introduction of value-added tax (VAT) for about a decade. With the fall of oil prices, the GCC governments are hoping VAT will help to diversify and increase their revenue base, and reduce reliance on oil. This represents a significant tax reform for countries where taxation has been largely non-existent.

The GCC member states have developed the GCC VAT Framework Agreement (the Framework Agreement), a broad framework instrument modeled after the EU VAT Directive[28] for the introduction of VAT. Each GCC member state has signed this Framework Agreement and is currently in the process of adopting the internal procedures necessary for enacting a national law that implements the provisions of this Agreement.

So far, Saudi Arabia and the United Arab Emirates (UAE) have ratified the Framework Agreement and are determined to implement VAT with effect from 1 January 2018. On 29 May 2017, Saudi Arabia released its draft domestic legislation, which will be open for public consultation and feedback until 29 June 2017. The UAE domestic legislation is expected to be released in the coming weeks.

Categories of VAT

Under the Framework Agreement, there are three categories of products and services for purposes of levying tax under the VAT regime:

1. **Standard rated** – The 5% standard rate will be imposed on taxable supplies and imports unless there is a provision of exemption or imposing a zero (0%) rate. Generally, the taxable person (includes both individuals and legal entities) will have the right to recover the input VAT imposed on the goods and services supplied to him or her.
2. **Zero-rated** – Zero-rated supplies will be taxable but at a rate of 0%. A person making zero-rated supplies will have the right to recover the input VAT incurred in respect of those supplies, unless restricted by a specific provision.
3. **Exempt** – Certain supplies will be exempt from VAT. A person making exempt supplies may not charge VAT and will not be allowed to recover the input VAT imposed on the goods and services in relation to the exempt supplies.

[28] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, p 1, 11 December 2006.

VAT treatment of certain sectors

According to the Framework Agreement, each member state has the right to subject the following sectors to a zero rate or exemption:

- Education sector
- Health sector
- Real estate sector
- Local transport sector

Food products are subject to VAT. However, each member state may impose a zero rate on the goods mentioned in a standard list of products to be approved by the Ministerial Committee.

Likewise, the oil and gas sector, including oil and petroleum derivatives, may be subject to VAT at a standard rate or zero rate, at the discretion of each member state and in accordance with the modalities and conditions set out by each state.

Import of goods

The Framework Agreement provides that the VAT due on imported goods will become payable at the first point of entry in the GCC Customs Union.

Each member state may allow the person subject to import VAT to defer the payment of the VAT due on commercially imported goods and declare it in the following VAT return (so-called "reverse charge mechanism"[29]). This means that import VAT will not have to be physically paid at the point of entry.

At this time, it is apparent that Saudi Arabia will most likely collect import VAT at the point of entry of the goods into the GCC.

On the other hand, instead of collecting VAT at the point of entry, the UAE has announced that taxable persons will be allowed to defer the payment of import VAT and declare it in the VAT return following the importation of the goods. However, goods Imported into GCC member states, and transshipped through the UAE, will not be eligible for the reverse charge mechanism, and import VAT will be due on such imports at the first point of entry into the GCC Customs Union. In this case, there will be no entitlement to recover the import VAT paid as input VAT in the UAE. The input VAT will have to be sought from the final destination member state.

The remaining GCC member states have not yet indicated their potential mechanism for collecting VAT on imported goods.

Recovery of input VAT

A taxable person has the right to recover most of (some exceptions exist) the VAT that he or she has paid in the country on carrying out supplies of goods and services subject to VAT (5% or 0%).

To exercise its right of VAT deduction, the taxable person must have a valid VAT invoice and, in case of imports, the customs documents that prove he or she is the importer of record.

VAT registrations

VAT registration is mandatory for a person independently engaged in an economic activity and carrying out taxable supplies of goods and services with an annual turnover of SAR375,000 (approximately USD100,000) or its equivalent in any other GCC member state currency.

A person may apply to register for VAT voluntarily if the value of its taxable supplies is not less than 50% of the mandatory threshold. Exempt supplies and supplies outside the scope of VAT are not considered for the calculation of the threshold.

VAT registered persons will be expected to submit VAT returns on a periodic basis. The tax period may differ from country to country.

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[29] A mechanism by which the person subject to VAT becomes liable to pay the VAT due on behalf of the supplier.

Dispute resolution

The Framework Agreement does not provide for a GCC court or any dispute resolution mechanism to handle intra-GCC dispute.

Taxable persons in each member state will have the right to challenge decisions of the national tax authority in specialized local courts. The lack of an intra-GCC dispute resolution mechanism might lead to national differences in interpretation of the Framework Agreement.

Free trade zones

The treatment of GCC free zones is not addressed in the Framework Agreement and is left at the discretion of each member state, but is expected to be in line with the European Model.

VAT go-live date

The actual VAT go-live date might differ from country to country. The governments of the UAE and Saudi Arabia are expected to implement VAT with effect from 1 January 2018. Both countries have commenced active engagement with business groups on the need to be VAT-ready in 2018.

Companies doing business in the GCC will secure a competitive advantage if they take steps to assess the implication of VAT on their operations and take immediate steps to become VAT-compliant.

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European Union

Belgium extends EORI identification to import operations

As of 7 January 2017, the use of Economic Operators Registration and Identification (EORI) numbers in Belgian customs declarations has been extended to import declarations. Belgian Customs officials have made the necessary modifications to the electronic clearance system, PLDA (Paperless Douanes et Accises). Until recently, the use of EORI numbers in Belgium was limited to exporters, declarants and transit principals. Since the above date, importers are also required to provide their EORI number on an import declaration (in box 8), whereas they were previously required to provide their Belgian value-added tax (VAT) number (or Belgian global fiscal representative's number) in that same box.

The proper identification for VAT purposes remains in box 44, which concerns the identification of the addressee for VAT purposes (VAT taxable event of importation) and - where applicable – the identification of the subsequent addressee of the goods in another European Union (EU) Member State (VAT exemption for the subsequent intracommunity supply of the imported goods).

EORI overview

An EORI number is a unique registration number that is valid throughout the EU and used in customs operations. In principle, a company may only have one EORI number in the EU.

Any economic operator established in the EU that is involved in customs operations needs to have an EORI number. Economic operators established outside the EU have to be assigned an EORI number if they file a customs declaration, an Entry or an Exit Summary Declaration.

Companies established in the EU need to register in their country of establishment. Companies established outside the EU need to register where they first file a declaration or apply for a decision.

In Belgium, the EORI number of a legal entity takes the form of the Belgian enterprise register number, BCI/KBO (Banque-Carrefour des Entreprises/ Kruispuntbank van Ondernemingen).

The formalities of the application can differ depending on the country in which the economic operator should file the application.

Linking EORI and VAT numbers

As of the 1 July 2010, VAT numbers have to be uploaded to the EORI central system. When performing taxable activities in several Member States, different VAT numbers will co-exist. The competent authorities in the Member State of registration will have to upload all VAT numbers and link these to the EORI number.

When a taxpayer applies for an EORI number, the VAT number(s) should be indicated on the EORI application form. This information will enable the Member State of EORI registration to link the assigned EORI number to the existing VAT number(s). It is not a prerequisite to have a VAT number in order to obtain an EORI number.

It is important to note that if the VAT number was not yet assigned at the time of EORI application or if the applicant does not mention its VAT number(s) on the EORI application form, no link will exist between the VAT number(s) and the EORI number. Applicants may request cross-reference of the VAT number(s) and EORI number by contacting the competent authorities in the Member State of EORI registration. In Belgium, an economic operator may thus request to link VAT number(s) to a Belgian EORI number. If a link between the VAT number(s) and the EORI number is not properly established, there is a risk that a customs declaration will fail validation.

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Application of the Registered Exporter system in the context of CETA and other bilateral and multilateral FTAs between the EU and third parties

In the March 2017 issue of *TradeWatch* we discussed the introduction of the Registered Exporter system (REX) for origin certification under the EU's Generalised Scheme of Preferences (GSP). The REX system replaces the FORM-A procedure and allows registered exporters to self-certify the preferential origin of goods under the GSP arrangement.

While REX was initially limited to GSP, the system will also be gradually applied in the context of bi- and multilateral free trade agreements, starting with the EU-Canada Comprehensive Economic and Trade Agreement (CETA). The system will gradually replace the system of EUR.1 movement certificates as well as the "origin statement" procedure, which currently allows authorized exporters to self-certify the preferential origin by providing statements on invoices or shipment-related documents.

In view of future agreements that the EU is currently negotiating (Vietnam, Japan and others), REX will also be considered as a standard practice.

Who should register?

Companies exporting goods (except low value shipments) out of the EU and/or Canada who wish to benefit from tariff preferences under CETA, should complete and file a REX application form with the competent customs authorities. If the company is already registered for GSP purposes, no additional registration is required.

Once authorized, the exporter will receive a unique registration number, which the exporter needs to mention when completing the origin declaration. Similar to the "approved exporter" procedure, the origin declaration may be indicated on the invoice or any other commercial document that describes the originating product in sufficient detail to enable its identification.

If an exporter currently holds an approved exporter authorization, CETA provides for a transitional period and the exporter may use the approved exporter authorization number until 31 December 2017. As of 1 January 2018, the exporter must be REX registered to help ensure that the importer might benefit from tariff preferences under the CETA agreement.

Before claiming any preferential origin and respectively benefiting from tariff preferences, the importer of record should always verify whether the exporter of record is authorized to self-certify that the imported goods are of preferential origin. To validate the exporter's registration number, the contracting parties have made available databases that the importer of record may consult. Any irregularities are to be notified immediately to the Customs Authority of the country of import.

In light of the foregoing, economic operators will have a greater autonomy and responsibility with respect to origin certification.

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The EU adopts new rules imposing supply chain due diligence obligations on EU importers of minerals and metals

On 17 May 2017, the European Union adopted a Regulation (published in the *Official Journal of the EU* on 19 May 2017)[30] that imposes supply chain due diligence obligations on EU importers of tin, tantalum, tungsten and gold (minerals or processed metals) originating in conflict areas.

The Regulation applies to all imports of minerals, which are defined by the Regulation as ores and concentrates containing tin, tantalum, tungsten and gold (minerals), as well as metals containing or consisting of tin, tantalum, tungsten and gold (metals). Tin, tantalum, tungsten and gold are used in consumer products such as jewelry, mobile phones and automobiles. In conflict affected and high-risk areas,[31] such as Western and Central Africa, armed groups can use these products to finance conflicts and human rights abuses. By ensuring product traceability, the Regulation aims at reducing a major source of their income.

The Regulation builds upon the 2011 Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflicted-Affected and High-Risk Areas (the OECD guidance), which provides the international framework for supply chain due diligence.

The Regulation will cover at least 95% of all EU imports of metals and minerals, while small volume importers will be exempted. The EU Member States will be responsible for ensuring the implementation of the Regulation in cooperation with the European Commission (the Commission).

New obligations for EU importers

As of 1 January 2021, EU importers of minerals and metals, including smelters and refiners processing minerals inside the EU, will have to implement four types of obligations set by the Regulation. The regime is stricter for importers of minerals than for importers of metals.

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[30] Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, OJ L130/1, 19 May 2017.

[31] The Regulation defines Conflict-affected and high-risk areas as areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.

Management system obligations

The Regulation will require EU importers of minerals and metals to adopt a supply chain policy that is consistent with the standards provided in Annex II of the OECD guidance. In particular, they will have to commit not to directly or indirectly contribute to the financing of conflicts through the extraction, transport, trade, handling or export of minerals. The Regulation will also require EU importers of minerals and metals to incorporate their supply chain policy into contracts and agreements with suppliers. In addition, they will have to implement a supply chain traceability system by keeping records of certain information, such as the name and address of the suppliers, the country of origin of the minerals and metals and the volumes purchased.

Risk management obligations

EU importers of minerals will have to identify and assess whether there are any risks of "adverse impacts" associated with their activities or sourcing decisions. In line with the OECD guidelines, such "adverse impacts" may include human rights abuses as well as financing conflict or fueling, facilitating or exacerbating conditions of conflict. When such risks are identified, EU importers of minerals will have to implement risk mitigation efforts, and if this does not work, stop purchasing from problematic suppliers. Similar rules will apply to importers of metals, except that they will have to rely primarily on the third-party audit reports from the smelters and refiners (whether located inside or outside the EU) in their supply chain drawn up in line with the OECD guidelines. In the absence of such reports, they will have to carry out audits of their own supply chain through independent third parties.

Third-party audit obligations

The Regulation will require EU importers of minerals to have all of their activities, processes and systems audited by an independent third party. The objective of the audit will be to assess the compatibility of the importer's supply chain due diligence practices and make recommendations. EU importers of metals will be exempted from the obligation to carry out third-party audits provided that they can demonstrate that all smelters and refiners in their supply chain comply with the Regulation.

This requirement will be considered as fulfilled if EU importers of metals can demonstrate that they are sourcing exclusively from suppliers that are on the list of "responsible" smelters and refiners established by the Commission.

Disclosure obligations

EU importers of minerals and metals will have to disclose the audit reports carried out under the Regulation to the competent national authorities. They will also have to disclose non-confidential versions of these reports to their customers.

Possible exemptions

EU importers of minerals or metals will be exempted from the obligations set in the Regulation when their annual import volume of each of the minerals or metals is below the volume thresholds set out in Annex I to the Regulation. For instance, operators importing less than 5,000 kg of tin ores into the EU per year will be exempted from the application of the Regulation. In addition, the Regulation does not apply to recycled metals, and stocks existing prior to 1 February 2013.

Enforcement

The EU Member States will be responsible for ensuring the effective and uniform implementation of the Regulation in cooperation with the Commission. In particular, Member States' competent authorities will be in charge of carrying out ex-post checks in order to ensure that EU importers of minerals or metals comply with the obligations set in the Regulation. Such ex-post checks will include on-the-spot inspections at the EU importers' premises.

In case of an infringement of the Regulation, Member States' competent authorities will be required to issue a notice of remedial action to be taken by the EU importer. Such notices will be submitted to the Commission. The Commission will publish a list of "responsible" smelters and refiners (whether located inside or outside the EU) and remove from the list those that are no longer recognized as "responsible" on the basis of the information provided by the Member States.

By 1 January 2023 and every three years thereafter, the Commission will review the functioning and effectiveness of the Regulation. In particular, the Commission will assess whether Member States' competent authorities should have competence to impose penalties on EU importers in the event of a persistent failure to comply the obligations set out in the Regulation. Therefore, before the Commission allows the EU Member States do so, no penalties may be imposed in case of an infringement of the Regulation.

What's next?

The Regulation was published in the *Official Journal of the EU* on 19 May 2017. However, most provisions will only apply from 1 January 2021, which will give EU importers time to adapt to the new rules. Nonetheless, the Commission encourages companies to start carrying out due diligence well before this date.

Furthermore, by the end of 2017, the Commission will publish non-binding guidelines to help companies, especially small and medium-size enterprises (SMEs), with the identification of conflict-affected and high-risks areas. The Commission will also provide an indicative list of such conflict-affected and high-risk areas. The objective is to help EU importers comply with their due diligence obligations before they become binding in 2021.

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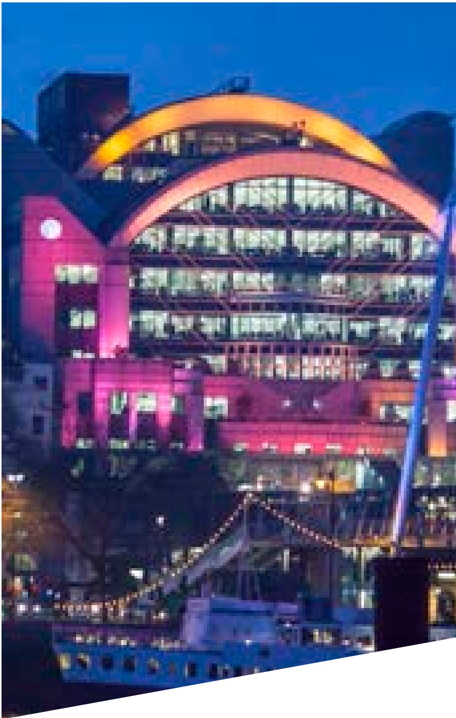
Increased customs scrutiny in relation to the customs tariff classification of aromatic heavy fuel oil



The EU customs authorities have recently intensified their audit activities in relation to the customs tariff classification of energy products such as aromatic heavy fuel oil. This has led to significant challenges for companies doing business with energy products in the EU.

Background

The Energy Tax Directive 2003/96/EC (Energy Tax Directive)[32] provides the general provisions for the excise duty treatment of energy products (including heavy fuel oil). Among others, the Energy Tax Directive aims to provide clear direction on what type of energy products are subject to the Excise Movement and Control System (EMCS) provisions within the EU.

Energy products classified under the Harmonized Schedule (HS) subheadings 2710.19.51 to 2710.19.68 (or 2710.20.31 to 2710.20.39 if containing biodiesel) are subject to the EMCS provision.

For energy products to be classified under the aforementioned subheadings, the weight of the non-aromatic constituents needs to exceed that of the aromatic constituents.[33] Accordingly, where the aromatic constituents exceed the non-aromatic constituents, the correct classification would be under the residual subheading 2707.99.99.

This latter subheading (unlike heading 2710 HS) is excluded from the list of energy products covered by EMCS requirements and consequently, oils classified under subheading 2707 99.99 are unable to move under excise duty-suspension to consignee or warehouse keepers in other EU Member States.

Business challenges

Some EU consignors have reportedly classified their energy products under heading 2710 on EMCS irrespective of the weight of aromatic constituents in order to facilitate movement to other EU Member States. This has led to a situation in which some EU customs authorities are conducting further examinations where customs audits on receipt indicate that the product should be classified under subheading 2707 99.99.

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[32] Council Directive 2003 /96/ EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

[33] See general considerations in the Explanatory Notes to HS, Chapter 27: "aromatic constituents" are to be interpreted as "entire molecules with an aromatic part irrespective of the numbers and length of side chains and not to the aromatic portions of such molecules only." See also European Court of Justice (ECJ) Case C-330/13 dated 12 June 2014 where the ECJ addresses the classification of aromatic heavy fuel oil.

This issue is causing significant tension across the EU and there is evidence of increased scrutiny from the customs authorities in relation to energy products in some EU Member States, such as Germany, the Netherlands, Italy and the UK, where the authorities challenge on a regular basis the accuracy of the tariff code used by importers. The burden is on the importers to show appropriate evidence to support the tariff classification of their energy products.

Companies that trade in energy products in the EU will need to review the accuracy of the customs tariff classification of their products to be able to manage proactively these practical challenges as a similar situation could conceivably arise in any combination of EU Member States.

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Brexit: Significant disruption for companies operating in Ireland

A recent survey conducted by the Chartered Accountants of Ireland reports that Brexit will disrupt many businesses that manufacture or process goods in Ireland. With Brexit, the UK will become a third country for the purposes of EU customs transactions. Movements between the UK and EU Member States will be subject to (some form) of customs controls as the UK will exit the single market.

While Brexit will impact each EU Member State, it will impact Ireland most of all since Ireland is the only EU Member State that shares a land border with the UK (the Republic of Ireland (Ireland) is part of the EU, while Northern Ireland is part of the UK). Additionally, Ireland is the only EU Member State with which the UK has a trade surplus (including services). For example, exports of Irish goods to the UK were valued at approximately EUR15.6 billion[34] in 2015, while at the same time imports from the UK were valued at approximately EUR18 billion.

In terms of disruption, the specific Brexit-related issues facing clients who manufacture, process or transport goods in Ireland are summarized below.

Delays

Delays will arise as businesses move goods between the UK and Ireland due to the return of a customs regime after Brexit. In addition, delays will be increased due to:

- The lack of a sufficient information technology (IT) infrastructure in Ireland to process customs entries and declarations from the UK
- Lack of customs knowledge that is likely to result in errors on customs declarations and hold-ups at the border

The survey emphasised that delays are a particular concern to businesses in the food sector and businesses where ingredients or raw materials are sourced in one territory, processed in the other territory and returned. It is also common practice for goods that are imported into Ireland for processing or sales to be transported via the UK so increased delays in these circumstances would be harmful.

Increased costs

Increased costs will arise for businesses operating in Ireland from the introduction of tariffs, administrative costs (additional staff and customs agents), commercial costs associated with freight delays, developing IT infrastructures and the cash flow implications of tariffs and Import VAT, which did not exist previously.

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

Lack of knowledge

The survey demonstrated that many businesses operating in Ireland lack customs knowledge because for many years customs entry and related procedures have not been a requirement. The survey found that these businesses would require education and resourcing for Brexit, with the suggestion that the EU should consider funding such initiatives to help businesses in Ireland handle compliance for movements between the UK and Ireland. For example, few respondents to the survey understood that border controls (in whatever form) are separate from the future proposals for an EU–UK FTA. Additionally, the survey demonstrated that certain respondents are more preoccupied with currency volatility, rather than the impact of customs and customs-related obligations.

Uncertainty

The survey demonstrated that there is much uncertainty for businesses operating in Ireland ahead of Brexit due to:

- Little clarity of the customs requirements after the Brexit period ends
- Doubts whether Irish Revenue may be able to put effective border controls and customs checking systems in place in a short period of time
- Doubts that the Irish Government and the EU will recognize the need for new arrangements and duty funding requirements
- No clarity on whether or when a UK-EU FTA may become available
- Doubts whether businesses operating in Ireland may be in a position to develop new EU customers who would otherwise have used UK-based suppliers

Closing thoughts

Brexit brings new challenges for companies doing business in Ireland that will require careful evaluation of the trade implications and significant adjustments. For example, a business that becomes an Authorised Economic Operator (AEO) certified is likely to benefit from reduced waiting times, particularly if there are mutual recognition provisions included in the ultimate Brexit agreement between the EU and the UK. There are many ways to plan effectively for the transition, such as by mapping and assessing logistics and landed costs, performing detailed customs and VAT calculations, and evaluating other business practices for the purpose of developing effective Brexit strategies.

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Nigeria

2016 Fiscal Policy Measures: highlights of interest to importers

Nigeria's office of the Minister of Finance has published a circular confirming the President's approval of the 2016 Fiscal Policy Measures (FPM) made up of Supplementary Protection Measures (SPM) for implementation together with the Economic Community of West African States (ECOWAS) Common External Tariff (CET) 2015–2019, in effect as of 21 November 2016.

The approved FPM include the following annexes:

- An Import Adjustment Tax (IAT) list with additional taxes on 173 tariff lines of the ECOWAS CET as provided on Annex I
- A National List consisting of items with reduced import duty rates to promote and encourage development in critical sectors of the economy as provided on Annex II
- An import Prohibition List (Trade), applicable only to certain goods originating from non-ECOWAS member states

It is worthy to note that although the effective date for implementation of the 2016 FPM was 21 November 2016, the Circular approving the measures came into circulation in January 2017.

Highlights

Import Adjustment Tax (IAT)

The IAT is one of the supplementary protection measures which allows ECOWAS member states to charge additional national rates for up to 5 years from the date of entry into force of the ECOWAS CET in 2015. Nigeria published the first IAT list as part of the FPM in 2015. The IAT list essentially comprises tariff lines on which the duty rate has been increased above the ECOWAS CET rates. An analysis of the 2016 IAT list shows that in comparison with the 2015 list, the tariff rate (i.e., the IAT) has been reduced on 26 items while four new items have been included in the list. The 2016 list also removed eight items. For the items removed from the list, the applicable tariff rate will be the rate specified in the ECOWAS CET itself. Overall, there was a reduction by four items from the 2015 list of 177 tariff lines to 173 in the 2016 list. The IAT remains unchanged on 143 items.

The four items added to the list are highlighted in the table below.

S/N	Item	CET 2015-2019 HS Codes	ECOWAS CET %	2015 FPM %	2016 FPM %	Difference %
1	Containing other antibiotics	3004.20.00.00	0	-	20	+20
2	Containing alkaloids or derivatives thereof but not containing hormones, other products of heading 29.37 or antibiotics	3004.40.00.00	0	-	20	+20
3	Other medicaments containing vitamins or other products of heading 29.36	3004.50.00.00	0	-	20	+20
4	Anti-malarial	3004.90.10.00	0	-	20	+20

Items removed from the list (extract)

S/N	Item	ECOWAS 2015-2019 HS Codes	ECOWAS CET %	2015 FPM (IAT)%	2016 FPM (IAT)%	Difference %
1	Equipment for scaffolding, shuttering, propping or pit propping of iron and steel	7308.40.00.00	5	15	-	-15
2	Poles with or without lighting fittings of a height of not exceeding 8 meters	7308.90.10.00	5	15	-	-15
3	Electric transformers, static converters (for example, rectifiers) and inductors having a power handling capacity not exceeding 650kVA	8504.21.00.00	5	20	-	-20
4	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus – Other	8528.72.90.00	20	15	-	-15

National list

The 2016 National list consists of items with reduced import duty rates intended to promote and encourage development in critical sectors of the economy. The number of items increased from 85 in the 2015 list to 91 in the current list with the addition of seven items. For most of the items in the 2016 list, the reduced rates remain the same as in the 2015 list.

The additional items are as follows:

S/N	ITEMS DESCRIPTION	ECOWAS 2015-2019 HS Codes	ECOWAS CET %	2016 FPM %
1.	Fish heads for feed production	0305.59.00.00	20	10
2.	Of a kind used for winding textile yarn	4822.10.00.00	10	5
3.	Synthetic filament tow: of polyesters	5501.20.00.00	10	5
4.	Synthetic filament tow: of polyesters	5503.20.00.00	10	5
5.	Synthetic filament tow: of polyesters	5506.20.00.00	10	5
6.	Presented completely knocked down (CKD) or unassembled for the assembly industry	7321.11.11.00	10	5
7.	Presented completely knocked down (CKD) or unassembled for the assembly industry	7321.11.91.00	10	5

Import prohibition list

The import prohibition list was reduced from 25 items in 2015 to 23 items in the 2016 list. Two items were removed from the 2016 list namely: sanitary wares and furniture.

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Nigeria's new tomato sector policy

On 11 April 2017, Nigeria's Federal Government announced a new tomato sector policy to take effect from 8 May 2017. The new policy is in line with the Government's objectives of boosting domestic tomato production, improving the value chain and attracting investment. By Government projections, implementation of the policy is expected to create at least 60,000 additional jobs in fresh tomato production and processing.

Key elements of the new policy include:

- Increase the tariff on imported tomato concentrate and other concentrates (Nigeria HS Code 2002.90.11000) from 5% to 50%
- Additional levy of USD1,500 on each metric ton of tomato concentrate imported into the country
- Restrictions on the importation of tomato concentrates to the seaports in order to address abuse of ECOWAS Trade Liberalization Scheme (ETLS)
- Inclusion of tomato production and processing on the list of industries eligible for investment incentives administered by the Nigeria Investment Promotion Commission (NIPC)

Stakeholders in the industry, while commending the new policy, have expressed concern that the policy may not be able meet local demand as the quantity of fresh tomatoes currently cultivated in the country is insufficient for local consumption. Furthermore, as local producers would need time to adjust to the policy, the inadequate local production may lead to price increases. This would make the product expensive and out of reach for many consumers in Nigeria, and may encourage smuggling. In this regard, stakeholders have asked the Government to allow for additional implementation time to enable local manufacturers to take measure to enhance local production.

Operators in the industry need to take the necessary steps to gain full understanding of the policy and the potential impact on their operations, so that they may put in place adequate plans to realize any accruable benefits.

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Recent measures aimed at creating a favorable environment for doing business in Nigeria

Nigeria's Federal Government has introduced a National Action Plan on Ease of Doing Business in Nigeria under the Presidential Enabling Business Environment Council (PEBEC). Some of the measures that have recently been introduced in line with this and other initiatives to improve the economy are outlined below.

Revised import guidelines

The Federal Government has revised Nigeria's import guidelines in a bid to streamline current procedures to help ensure the effectiveness and efficiency of the Destination Inspection Scheme (DIS). The revised guidelines, issued by the Federal Ministry of Finance, address some of the issues causing inefficiency and delays at the ports, and include additional responsibilities for the Nigerian Customs Service (NCS) and shipping lines, as follows:

- The NCS is now required to schedule and coordinate the mandatory joint examinations and sign-off form to ensure that there is only one point of contact between importers and officials. Before this intervention, the burden was on importers to reach out to all relevant agencies and the terminal operators to schedule a suitable time for the joint examination of cargo.
- The minimum cargo placement notice time for examination required by terminal operators has been reduced from 24 hours to a maximum of 12 hours. This means that after the NCS agrees with all parties on a suitable time for physical examination, terminal operators would now only require a 12-hour notice to place the cargo for examination.
- The Nigeria Integrated Customs Information System (NICIS) should be strengthened to accommodate more agencies.
- Shipping lines are now required to electronically transmit advance manifest of their cargoes to the NCS and the Nigerian Ports Authority (NPA) as soon as the vessel departs the last port of call. This is to ensure there is enough time for risk assessment, profiling and optimized placement of cargo. The NPA may deny berthing rights and pilotage to shipping lines that fail to transmit the advance cargo manifest.
- Shipping lines are now also required to ensure that goods imported into Nigeria are well arranged in pallets. Shipping lines that fail to "palletize" cargo will be subject to penalty and may be asked to take back onboard the non-palletized cargo.

Revised import and export documentation and timeline

The Federal Government of Nigeria, in an effort to create a favorable environment for doing business in Nigeria, has approved the reduction of documentation requirements and timeline for import and export trade transactions in the country. According to a circular issued by the Central Bank of Nigeria (CBN), the revised documentation requirements and timeline are as follows:

Revised import documentation includes:

- Bill of Lading, Certificate of Origin (formerly combined certificate of Value and Origin (CCVO))
- Commercial Invoice
- Exit Note (formerly Exit Gate)
- Form "M," packing list
- Packing list
- Single Goods Declaration (SGD)
- Product Certificate

Revised export documentation includes:

- Bill of Lading
- Certificate of Origin
- Commercial Invoice
- Single Goods Declaration (SGD)
- Nigerian Export Proceeds (NXP) Form
- Clean Certificate of Inspection (CCI)
- Packing list

Revised timeline for processing Export Proceeds (NXP) Form

- A maximum of 48 hours from the receipt of the application subject to appropriate documentations by CBN-authorized dealers

Duty-free bonded vehicles terminal License

The Nigerian Customs Service (NCS) recently announced that it is ready to start issuing licenses to motor vehicle dealers to operate bonded vehicle terminals in Nigeria. Under the new policy, operators will be allowed to take delivery of vehicles to their terminals under customs escort and pay duty within a 28-day grace period at the terminals.

According to the NCS, the essence of the vehicle terminal is to strengthen the business of vehicle sales, create job opportunities, ensure security and enhance revenue generation. Interested dealers and persons could apply to the Area Comptroller through the Area Command of the preferred location for processing.

Licensing requirements includes a bank bond of NGN50 million (approximately USD153,846). The NCS has indicated that a bond by any licensed commercial bank in Nigeria would be acceptable.

Closing thoughts

We have highlighted only a selection of the import-relevant measures introduced to implement the Government's overall initiative aimed at improving the economy by making it easier for companies to do business in Nigeria. It is important that importers assess whether these measures could have an impact on their operations, take advantage of opportunities to reduce costs or increase efficiency, and plan accordingly to secure a competitive advantage.

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Switzerland

The DaziT transformation program

Due to a vastly changing environment and increasing cross-border movements of goods and persons, the Federal Customs Administration (FCA) is facing more and more difficulties with meeting the demand for simplified customs formalities and appropriate technical solutions. For this reason, the FCA has launched the DaziT[35] program. By 2026, DaziT is expected to transform the administrative apparatus completely into digitalized customs procedures by renewing its outdated information technology (IT) infrastructure. The continuous digitalization and the use of new technologies will create more efficient and simplified procedures for cross-border transactions. For instance, one of the objectives is to provide stakeholders with an internet-based solution to access and track requests that were filed with the authorities.

In addition, a single IT application will be created to speed up import, export and transit procedures and provide for a smoother flow of goods during customs clearance. A similar project is planned to update and modernize the system for road traffic fees and excise taxes. From an administrative point of view, the new equipment and increased data collection will improve security. Consequently, resources that are currently tied up will be used for more intensive but risk-oriented controls and other tasks in the new environment.

FCA will no longer issue hardcopy assessment notes

To implement the e-government strategy and further saving measures driven by the Swiss Confederation, the FCA announced that as of 1 March 2018 no hardcopy assessment notes will be provided (except for exports in the New Computerised Transit System (NCTS)) and will be replaced by electronic assessment notes. These documents are considered as proof that the goods have been properly cleared by customs for importation or exportation. In contrast to paper-based assessments notes, electronic versions contain a so-called "digital signature." For this reason, electronic assessments notes are to be stored in an electronic archiving system that ensures the authenticity and integrity of the obtained documents during the retention period.

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[35] DaziT: from "Dazi," the Romansh word for customs and transformation, and "IT" (information technology).

The FCA allows for different ways to access the electronic database. Generally, such documents can be obtained online without any registration, but that process can be rather burdensome. If goods are imported or exported on a regular basis, companies can register themselves at the FCA and download assessment notes either manually over a platform or via an automated process by means of a software solution. Therefore, it is essential to analyze the volume of received assessment notes and evaluate appropriate automated IT solutions as early as possible to be able to obtain these documents before the set deadline.

Rectification period for assessment notes to be reduced as of 1 October 2017

The Federal Court and the Federal Administrative Court have ruled that the rectification procedures according to Art. 34 para. 3 and 4 of the Swiss Customs Act were improperly implemented. Accordingly, the FCA amended its current practice which will significantly tighten the process for future rectifications of assessment notes. Currently, the rectification period starts at the time the assessment note is issued and appeals against assessments notes may be filed within a period of up to 60 days. Starting 1 October 2017, under the new procedure, a request for rectification against an assessment note has to be filed within 30 days (without interruption of period) *after the goods have left customs supervision.* Thus, the new practice will shorten the aforementioned appeal period significantly. Furthermore, reasons for appeals will be limited to a few specific items and all appeals will have to be filed in writing (i.e., letter, email) along with an amended customs declaration.

In the future, all appeals that do not meet the set deadline and formalities will be rejected without exception. In order to avoid any workaround to file appeals after the rectification period has expired, it is not possible to file an appeal with reasons that were not previously submitted under the rectification procedure. In a nutshell, this means that once the rectification period expires, assessment notes may no longer be amended. This leads to new challenges for importing and exporting companies as well as customs brokers in connection with the whole settlement procedure and internal control processes. Considering the limited time remaining until the new practice comes into force, companies are advised to analyze their current customs clearing processes and take any necessary corrective actions immediately.

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Uganda

Implementation of the Centralised Document Processing Centre

Over the past years, the Uganda Revenue Authority has implemented several modernization reforms intended to facilitate international trade and enhance compliance. Currently, one such reform being implemented is the Customs' Centralised Document Processing Centre (DPC). The DPC's mandate is to ensure that the processing of all customs documentation relating to all imports is centrally done through a centralized electronic system by customs officials physically located within a single location. The facility is intended to ensure faster and efficient clearance of goods as well as standardize customs valuation methodologies and values used at different entry ports.

The DPC has already been established at Nakawa, Kampala and the processing of customs declarations within the DPC is being implemented on a rolling basis. It started on 6 February 2017 with processing goods cleared from the Kampala station and has since expanded to cover goods cleared from Entebbe, Malaba, Jinja and Busia. The expectation is that, in the near future, customs declarations of all imports into Uganda will be cleared from the single DPC.

How it works

The DPC as a central processing facility will effectively replace all the Customs Business Centres that are spread across the country.

Customs officers in a restricted area conduct the activity of customs clearance within the DPC by via the online ASYCUDAWorld[36] platform and without any physical interaction with the importers or their clearing agents.

The submission of customs declarations by clearing agents, queries raised by customs officers, any amendments to declarations as well as responses to queries are strictly made through the online ASYCUDAWorld system.

However, physical examination of imported goods, interviewing of importers (where applicable) and exiting of the imported cargo is not be performed by the DPC and remains the responsibility of the respective customs stations of clearance and the bonded warehouses.

[36] Automated SYstem for CUstoms DAta (ASYCUDA). ASYCUDAWorld is the latest version of this computerized system.

Benefits of the DPC

- The initiative is expected to reduce clearance time through elimination of use of manual forms and physical interactions with importers and clearing agents. For example, customs officers now raise any queries regarding the customs declarations electronically and any responses to such queries should also be made through the ASYCUDAWorld electronic system.
- Since customs declarations are processed centrally, the DPC helps to ensure that uniform and consistent valuation parameters and practices are applied to similar or identical imported goods regardless of their point of entry into Uganda.
- Under the DPC arrangement, there is improved work turnaround time as the customs officers concentrate on the singular activity of clearing customs declarations without undue disruption and distraction from the importers or clearing agents.
- Unlike the Customs Business Centres, the DPC is a 24-hour service center and this is likely to ensure faster and timely clearance of imported goods into the country.
- The absence of physical interaction between the importers or clearing agents and the customs officers is expected to curb corruption and related integrity issues that tend to compromise compliance levels.

Challenges to the DPC facility

- As a new initiative, there is need for a mind-set shift among customs officers and importers alike. Many importers and clearing agents are accustomed to and would prefer physical interaction with customs officers during the process of customs clearance.

To this end, the Revenue Authority continues to conduct awareness campaigns to educate traders and other users of the DPC facility about how the new initiative works and the intended benefits.

- Since the functioning of the facility is heavily reliant on internet connectivity, there have been reported delays in processing the customs declarations due to intermittent internet availability especially the band-width challenges to the ASYCUDAWorld system. This challenge has been acknowledged by the Uganda Revenue Authority.
- Delays have sometimes been reported after importers make queries and/or amendments to the customs declarations. Partly, the challenge has been that the technical teams (such as the legal, valuation and tariff classification teams) to whom the customs officers refer queries for guidance, are not necessarily located within the precincts of the DPC.

Conclusion

As a modernization reform built around the enhanced use of information technology in the processing of customs declarations, the DPC is a welcome initiative. Though some challenges exist, it is expected that the system, once fully implemented and fully embraced by the different players, will facilitate trade through faster and more efficient clearance of goods. The DPC is in effect eliminating the manual processes and physical interactions that tend to increase the clearance time.

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