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Value? What value?

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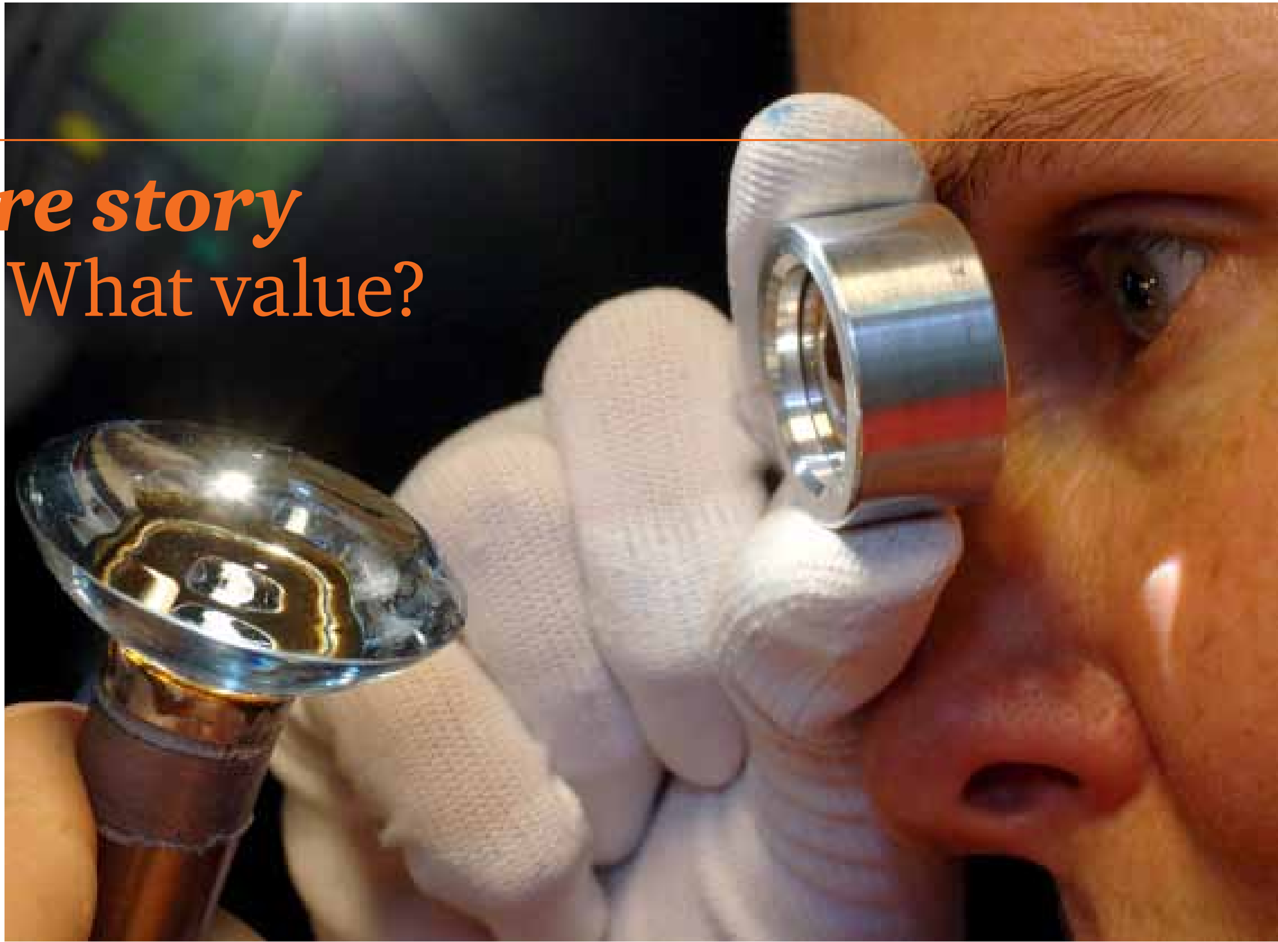

Feature story
Value? What value?

A landmark World Trade Organization (WTO) Dispute Panel report sheds light on its views of proper implementation of the GATT Customs Valuation Agreement

When it comes to international trade disputes relating to customs valuation of imported goods, customs authorities of WTO member states should follow the rules set out in the WTO Customs Valuation Agreement (CVA). However, not all customs authorities appear to have the same interpretation and implementation of the requirements of the CVA, and often national customs duty revenue objectives take precedence. Nevertheless, WTO Members are responsible for the actions of their government officials, where their actions are inconsistent with WTO covered agreements.

A recent customs valuation dispute between the Philippines and Thailand was referred to the WTO, the first of its kind. It has required the WTO to provide in significant detail its views on the interpretation of the letter and spirit of many articles of the CVA. Its conclusions show that importers familiar with the CVA customs valuation requirements should not necessarily simply accept a customs authority's approach to customs valuation, and can push such authorities to abide by the WTO rules.

The Philippines authorities initiated the case on the basis of numerous Thai customs measures affecting the import of cigarettes. The measures included Thai Customs' practices imposed on customs valuation of cigarette importers. The Philippines claimed that Thailand implemented these measures in a partial manner, thus violating GATT 1994 .

On 15 November, 2010, the WTO Panel released its report requesting Thailand to bring measures that were deemed inconsistent with its WTO obligations relating to customs valuation into conformity. It is impossible to provide a comprehensive analysis of the Panel's deliberations and conclusions in this publication. However, below is a summary of the pertinent issues discussed in the WTO Panel report.

Communication requirements

Grounds for considering a relationship may have influenced a price

The WTO reconfirmed that in determining whether a transaction value is acceptable, the fact that the buyer and seller are related should not in itself be grounds for regarding the transaction value as unacceptable.

When Customs has doubts about the relationship influencing the transaction value, Customs may question the reasonableness of the transaction value. In that case, Customs should communicate its grounds to the importer, and the importer should be given the chance to respond (Art.1.2(a)). The fact that a seller and buyer and related is insufficient ground for doubt.

Taken together with the Interpretative Notes (to Article 1.2), Customs has the obligation to "examine" all the circumstances of a sale, not just whether there is a relationship. If following this examination Customs has continuing doubts, the grounds regarding its consideration need to be communicated to the importer.

Adequate written explanation on determination of customs value

Upon written request, the importer has the right to an explanation in writing from Customs of the country of importation as to how the customs value of the importer's goods was determined (Art. 16 of the CVA).

Article 16 sets forth two elements:

1. A written request from an importer for an explanation in writing.
2. Customs' obligation to provide a written explanation as to how the customs value of the importer's goods was determined.

The explanation to be provided requires Customs to "make clear" and "give details" of the manner and means in which Customs determined the customs value of imported goods.

The Panel concludes that explanation under Article 16 must be understood to include in its scope the reason for rejecting the transaction value as well as the basis for and details of the alternative valuation method used.

A sufficient explanation could include, for example, the basis for rejecting the transaction value, the type of the method used and an illustration of why the method was selected and how the method was applied in calculating the final customs value.

A mere statement that the importer could not prove whether its relationship with the exporter did not influence the price, does not fulfill Customs' obligation to explain the reason for rejecting the transaction value.

Consultation requirements

Provision of information

Customs must ensure that importers are given a reasonable opportunity to provide information that would indicate that the relationship did not influence the price.

At the same time, importers are responsible for providing information that would enable Customs to examine and assess the circumstances of sale between related parties so as to determine the acceptability of the transaction value. Nevertheless, Customs cannot expect an importer to provide any information to which they have no access. If such information is held by a party related to the importer, this does not make it necessarily accessible to the importer.

The process of examining the circumstances of the sale therefore resembles that of consultation as both the importer and the customs administration respectively need to make a good faith effort.

The customs authorities must ensure that importers be given a reasonable opportunity to provide information that would indicate that the relationship did not influence the price. Importers are responsible for providing information that would enable the customs authority to examine and assess the circumstances of sale so as to determine the acceptability of the transaction value. Provided with such information, the customs authorities must conduct an "examination" of the circumstance of sale, which would require an active, critical review and consideration of the information before them.

Determination of a customs value

Paragraph 2 of the General Introductory Commentary to the CVA states that "Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes."

Although the first sentence of paragraph 2 refers to the "value under the provisions of Article 2 or 3", the Panel's view of the spirit of the WTO CVA envisaged under this paragraph is that determination of customs value to be made through a process of consultation between the customs administration and importer equally applies to other valuation methods.

The Panel opines that an importer's request for expeditious assessments of the customs value of imported goods cannot justify Customs' failure to respect the due process principle inherent in a process of consultations between the administration and the importer.

Procedure to determine the acceptability of a transaction value as the customs value in a related-party situation

The Panel Report confirms that, based on Article 1.2(a) of the CVA, the following procedure should be followed when determining whether the transaction value may be accepted as the customs value in a related-party situation.

1. **The importer declares a transaction value for the goods imported and declares the fact that it is related, for customs purposes, to the seller.**

2. **The customs authority determines and communicates its doubts to the validity of the transaction value of the imported goods, and requests for further information.**

   As mentioned above, the mere fact that the buyer and seller are related should not in itself be grounds for regarding the transaction value as unacceptable.

   The ordinary meaning of the term “examine” signifies that Customs must carefully consider, investigate and inquire into the information provided by importers concerning the circumstances of the transaction.

   The importer and, in certain situations, its related seller in an exporting country are in possession of the facts relevant to the questions that Customs may have. The importer is responsible for providing Customs with sufficient information to enable them to assess the acceptability of the transaction value.

   To properly examine the circumstances of a given transaction, Customs must clearly indicate to the importer how it evaluates the information submitted by the importer, including any insufficiency of information submitted and, if necessary and feasible, any further particular type of information that may help them assess the validity of the transaction value.

3. **The customs authority examines the circumstances of the sale in light of the information provided by the importer.**

   If Customs fail to properly consult the importer on the information necessary to make appropriate adjustments, as provided for in the CVA, it renders any decisions on allowable deductions or required additions in the determination of a customs value inconsistent with the CVA.

   The importer is responsible for providing information relevant to the acceptability of the transaction value once it has been notified by Customs of the need to examine the circumstances of the sale in related party situations.

   Subsequently, Customs must carefully assess the information initially provided by the importer, requesting for further information or consultations as necessary.

4. **The Customs authority communicates to the importer the grounds for preliminarily considering the relationship influenced the price.**

   If based on the information provided and consultations undertaken, Customs reach a preliminary conclusion that the relationship between the importer and the seller has influenced the price and that therefore the transaction value is not appropriate, it must communicate its grounds for this to the importer.

5. **Customs gives the importer a reasonable opportunity to respond.**

   In order for the importer to have a reasonable opportunity to respond to Customs’ consideration(s), particularly if Customs considers there is insufficient information, the importer must not be left to guess the reasons for Customs’ consideration.

   Customs should, to the extent possible, inform the importer of the kind(s) of additional factual information that it considers may prove useful in further assessing the acceptability of the transaction value. It is difficult to conceive any other way in which the importer can have a reasonable opportunity to respond to Customs’ consideration that the relationship did influence the price.

   Article 1.2(a) of the CVA states that the fact that the buyer and the seller are related shall not in itself be accepted as grounds for regarding the acceptability of the transaction value. However, the Panel notes that if Customs have communicated its reasonable grounds for doubting the validity of a transaction value but the importer in a case were to provide no further evidence to the contrary, it would be impossible for Customs to communicate any other specific grounds than the fact that the importer did not demonstrate the acceptability of the transaction value.

6. **The Customs authority makes a final decision on whether to accept the transaction value.**

Specific comments on the use of a deductive method

Customs should be proactive in determining whether items listed in Article 5.1 should be deducted.

Article 5.1 of the CVA allows the deduction from an invoice value of items such as commission, transportation and insurance costs incurred in the country of importation, and customs duties and other national taxes payable in the country of importation, in order to arrive at an appropriate customs value.

In the disputed case, the importer may have mistakenly omitted to request deduction of transportation costs. Nevertheless, the WTO Panel states that Customs should have inquired whether such a deduction was needed because:

1. Deduction of "the usual costs of transport" is specifically mentioned in Article 5.1(a)(ii), and therefore a common item to be deducted.

2. From documents provided to the Panel Report, Customs was aware that the transportation costs had to be deducted when calculating a deductive value.

3. Customs was aware that the importer had included a deduction for internal transportation costs in annual filings covering the three year period from 2003 to 2005 for either "inland freight" or "domestic transportation".

Therefore, although the importer did not specifically request deduction of the transportation costs, Customs should have deducted these costs based on the total information put forward by the importer. If Customs considered this information to be insufficient, Customs could and should have communicated such views to the importer during the validation process.

This places more responsibility on Customs to check whether items listed in Article. 5.1 should be deducted, regardless of whether so requested by an importer. It can be concluded that when Customs deems an item as not deductible, it needs to provide support for its reasoning to the importer.

Items listed under Article 5.1 can be deducted irrespective of whether they are linked directly to the greatest aggregate quantity (GAQ) price.

The terms "usually" and "usual" can be found in Article 5.1, which states, for example, "the commissions usually paid or agreed to be paid", "the additions usually made for profit and general expenses" and "the usual costs of transport and insurance and associated costs".

A straightforward interpretation of these phrases therefore suggests that the deductions of the commissions or the additions or the costs of transport need not necessarily be tied to a particular unit price for the GAQ sale that is being used as a basis in the deductive value calculation. Also, if a Gross Margin is outside of a "normal" range, the Panel implies that it should not be used and may be substituted by a different Gross Margin, one that fits the bill.

The Technical Committee's commentary on Article 5.1 states that "in general, the application of the deductive valuation method under Article 5 of the CVA may differ on a set of circumstances from another and thus the practical application of Article 5 requires a flexible approach, having regard to the circumstances in each case".

Therefore, the Panel report states that the WTO Panel does not find a general requirement under Article 5.1 that deductions must be made only to the extent that they reflect documented expenses that are actually tied to a GAQ sale.

Further, there is no logical reason to require that deductions be tied to a particular GAQ sale, because the customs value to be determined using the deductive valuation method under Article 5 is not the customs value for that specific GAQ sale. It is rather the customs value for a particular import shipment.

Confidentiality of submitted information to Customs

The WTO Panel Report reiterates the confidentiality of information provided by the importer. Article 10 prohibits Customs from disclosing confidential information when an importer provided it for the purpose of customs valuation.

Conclusion

As stated, the above is a very brief summary of some of the pertinent points raised in the WTO Panel Report. For a comprehensive understanding a full reading of the report is recommended.

The WTO Panel was not expected to determine the customs values of the disputed imports. It does, however, reiterate the CVA requirements as well as its own interpretation of them. Its conclusions are generally that a customs authority has significant obligations in terms of communications, process, transparency and confidentiality when challenging a customs value declared by any importer. In practice, particularly around Asia, many importers find that officers they deal with often pay lip service to these obligations. Information requests and customs value determinations by the authorities tend to be in non-transparent, and importers feel they often have no choice but to accept the importing country's customs authorities demands if they want to continue doing business, even if such demands are not in line with a country's WTO commitments.

The Panel Report may help importers that are concerned with how their respective country's customs authority determines the customs value of imported goods. It shows that it can be to an importers' advantage if they are well versed with the concepts and rules of the CVA to strongly support their declared customs values against inappropriate challenges by Customs. If nothing else, the WTO Panel Report's interpretation of the CVA rules concerning customs valuation should make customs authorities think twice before inappropriately applying any discretionary power when assessing customs valuation cases.

Supplement:

Drafts for new World Customs Organization (WCO) Valuation commentaries

At the end of October 2010, the Technical Committee on Customs Valuation of the WCO agreed on the draft texts for two new Commentaries, No. 23.1 and No. 24.1. The purpose of these commentaries is to ensure the uniform interpretation of the rules regarding customs valuation as laid down in the WTO Customs Valuation Agreement (CVA).

Commentary No. 23.1

Commentary No. 23.1 regards the examination of the expression "circumstances surrounding the sale" under Article 1.2 (a) of the CVA. In cases where the price of a related party transaction is used as the basis for calculating the customs value, the "circumstances surrounding the sale" can be examined by the customs authorities in order to verify whether that price has not been influenced as a result of the relation between both the buyer and the seller, i.e. whether it is an arm's length price. The commentary provides an analysis on whether a transfer pricing study that is prepared in accordance with the OECD transfer pricing guidelines can be used for demonstrating the arm's length nature of a price under the circumstances surrounding the sale test for customs valuation. The conclusion of the analysis is that "the use of a transfer pricing study as a possible basis for examining the circumstances of the sale should be considered on a case by case basis. As a conclusion, any relevant information and documents provided by an importer may be utilised for examining the circumstances of the sale. A transfer pricing study could be one source of such information." Although it may not be the firm statement or instruction for using a transfer pricing study as hoped for, it certainly is a step on the path towards a more integrated application of transfer pricing and customs valuation regulations.

Commentary 24.1

Commentary 24.1 relates to the determination of the value of the tools, dies, moulds and similar products that are used for the production of imported products. The costs of these should be included in their customs value. When the buyer provides these tools, dies, moulds, etc. free of charge or at reduced costs, the (total) costs are therefore not included in the price paid to the seller and so, the costs of these assists must added under Article 8.1(b) of the CVA. For determining the value of such assists, the Interpretative Note to Article 8.1(b), provides some guidance and as such refers to "given costs" if the buyer acquires the assist from a seller not related to him. The Commentary explains the meaning of "a given cost" as mentioned in the Interpretative Note. Not surprisingly, the proposal is that this should be regarded to be "all the costs incurred by the importer in respect of acquiring the assist".

Please note that both are draft Commentaries that will need to be approved by the WCO Council and may, as such, be subject to modifications. The next WCO Council meeting is in June 2011.

ASEAN

Updates on the high level informal meeting among ASEAN Economic Ministers

The ASEAN Economic Ministers recently met up for an informal retreat and took stock of the progress made in the implementation of measures to realise the ASEAN Economic Community (AEC) by 2015.

There are 140 measures to be implemented under the AEC Blueprint for the second phase covering the period of 2010-2011. Two more phases are scheduled to be completed before the target realisation date in 2015.

It is understood that the agenda for the ASEAN Economic Ministers (AEM) Retreat was broad, covering trade-in goods, services and investment issues. Specifically for trade in goods related issues, the Ministers were reported to have discussed measures to further enhance the economic cooperation and reduce the non-tariff barriers now that tariff liberalisation has largely been achieved.

The actual on-the-ground operational implementation issues regarding the rules of origin remain to be a significant non-tariff barrier for traders who wish to utilise the ASEAN Free Trade Agreements (FTA) and the various ASEAN Plus FTAs. For instance, importers have provided feedback of inconsistent interpretations of the concept of third-party invoicing by different customs authorities and sometimes even by different customs officers in the same customs authority. For such cases, it is not uncommon for importers to be disqualified from preferential tariff treatment even though they might have technically met all relevant rules of origin.

Another key initiative brought up by the ASEAN members as part of the agenda was to facilitate trade through the development of effective customs procedures, tariff systems and technology under the ASEAN Single Window Scheme. There were also discussions on a possible green lane to facilitate transportation in order to reduce production costs.

The ASEAN Single Window Scheme also is intended to facilitate the set up of an ASEAN trade repository which has been envisaged to be a one-stop reference point for all tariff and non-tariff measures to be applied to goods entering, exiting and transiting a member state, including all governmental requirements regarding specific commodities. It is expected to help both importers, exporters and government authorities alike to gain clarity, certainty and transparency of the respective national trade regulations such as national licensing requirements, labels and product standards. The ASEAN Trade Repository has been earmarked to be fully operational by 2015.

Going forward, it is expected that progress in further trade facilitation and removal of non-tariff barriers is expected to be challenging, given the different practices of the various customs jurisdictions and trade regulatory bodies and the varying economic development levels of the ASEAN member states.

Further results and action points of the meeting will be reported in the coming 18th ASEAN Summit in May 2011.

Export controls

China: 2011 Import and Export Control List of Dual-use Items and Technologies

The Ministry of Commerce (MOFCOM) issued the 2011 Import and Export Control List of Dual-use Items and Technologies on 30 December 2010. There were no changes to the number or descriptions of the dual-use items according to MOFCOM. Due to HS code changes, the HS codes of four items were impacted as below:

Line	Description	2010 HS code	2011 HS code
117	Automatic pellets examining table (全自動芯塊檢查台)	9022.2900.10	9022.2990.10
503	Chlorine trifluoride (三氟化氯)	2812.9000.10	2812.9019.10
1211	Combustion adjusting device for combind jet engine (組合噴氣發動機的燃燒調節裝置)	9032.8900.20	9032.8990.20
1313	Cerium and its alloys with granulity <500μm and Cerium content ≥ 97% (顆粒<500μm的鈰及其合金含量≥97%)	2805.3019.21	2805.3015.10

Malaysia: Strategic Trade Act 2010 – regulations, embargoed list and implementation timeline

The Strategic Trade Regulations 2010 (Regulation) and the Strategic Trade (Restricted end-users and prohibited end-users) Order 2010 (Order) was released on 15 January 2011.

Both the Regulation and the Order take effect on 1 January 2011, setting out further details in implementation of the Strategic Trade Act 2010 (STA) enacted.

The Regulation sets out the various forms and formats in relation to permits, end-user statement, delivery verification statement, broker registration and certificates, mandatory record keeping/ reporting requirements, penalties for infringement and approving authorities, amongst others. However, specific operational and administrative processes with regards to both application and maintenance of STA compliance have, in many cases, not yet been made clear. It is anticipated that further regulations and/or notices clarifying these points will be released over the coming months.

The four types of permits are as follows:

Permit	Valid for
Single-use Permit	One time export, transshipment or bringing in transit of strategic or unlisted items for a single country/destination (valid for six months)
Bulk Permit	Multiple exports or transshipment of only strategic items for a single country/destination (valid for two years)
Multiple-use Permit	Multiple exports or transshipment of only strategic items for different countries/ destinations (valid for two years)
Special Permit	One time export, transshipment or bringing in transit permit for a single country/ destination for which the end-user is a restricted end-user (valid for one year)

The Order sets out the restricted end-users and prohibited end-users lists including the embargoed countries, entities, and individuals. It also defines military items and restricted military items.

Restricted end-users (countries and destinations) include:

- Islamic Republic of Iran ("Iran") and Democratic People's Republic of Korea ("DPRK") – both designated as embargoed with no exception for transit
- Democratic Republic of Congo, Ivory Coast (Cote d'Ivoire), Lebanon and Sudan – designated as embargoed countries. Transit permits will be required for Military Items
- military items in transit to Afghanistan, Iraq, Liberia, Rwanda and Somalia as well as restricted military items in transit to Eritrea are subject to transit permit

Prohibited end-users include:

- five individuals from DPRK, 34 individuals from Iran and seven key persons of the Iranian Revolutionary Guard Corps (IRGC)
- eight entities from DPRK, 54 entities from Iran, three IRGC entities including 15 entities owned, controlled or acting on behalf of IRGC, and three entities owned, controlled or acting on behalf of the Islamic Republic of Iran Shipping Lines (IRISL)

A copy of the Regulation and Order can be obtained from the National Printer.

It is also important to note that the Malaysian authorities are considering making the export controls internal compliance program (ICP) mandatory for any company wishing to take advantage of either Bulk or multiple-use permits.

According to the implementation roadmap introduced by MITI, full implementation of the STA compliance regime is expected on 1 July 2011 for all categories of controlled items. Permit requirements on products under category 0 take effect earlier on 1 April 2011.

Businesses with either operations or outsourced operations in Malaysia should take note of this. Implementing a Malaysia specific ICP takes time and it may not be possible to simply use an ICP that a company currently has in place in another territory. Given the current implementation date, there is limited time to get an ICP in place and approved by the Malaysian authorities.

European Union: publication of new UK Open General Export Licence (OGEL) for international non-proliferation regime decontrols

The UK export licensing authority, BIS, has published a new OGEL for items which have been decontrolled by international regimes. This OGEL is a temporary measure designed to facilitate exports until such time as both

EU and national legislation has been updated to reflect international amendments.

Schedule 1 of this OGEL includes a list of items for which the OGEL can be used. This list contains a number of items, including certain:

- electronic equipment, software and technology
- computer equipment, software and technology
- telecommunication equipment, software and technology
- cryptographic equipment, software and technology
- scanning cameras and systems and related technology
- air traffic control software
- lasers, software and technology

The OGEL includes items covered by the existing OGEL (Cryptography), which came into force on 22 October 2010. As OGEL (Cryptography) expires on 31 December 2011, BIS advises exporters to register for OGEL (International Non-Proliferation Regime Decontrols: Dual-Use Items), which has no expiry date.

As with all OGELs, there are certain conditions to be met to use the OGEL, for example registration requirements, and specific destinations for which the OGEL cannot be used.

This is of particular relevance to companies exporting dual-use items from the UK. Such exporters should check the coverage and specified terms and conditions of this OGEL.

FTA focus

Agreements signed	
South Korea–US FTA	10 February 2011
Japan–India CEPA	16 February 2011
India–Malaysia CECA	18 February 2011
Agreements entered into force	
ASEAN–India FTA (implemented by Laos)	2 February 2011

Changes and updates on Australia's FTAs

The start of 2011 has seen changes or proposed changes to a number of Australia's FTAs, including those highlighted below.

Changes to ANCERTA rules of origin

The Customs Amendment (New Zealand Rules of Origin) bill is set to be introduced to the Australian Parliament shortly proposing changes to the Australia–New Zealand Closer Economic Relations Trade Agreement (ANCERTA) Rules of Origin.

The amendments will move all Product Specific Rules from a value-based approach to a change in a tariff classification and/or a process method.

Product Specific Rules outline the requirements that specific goods must comply with the Rules of Origin to be qualified for preferential treatment under the FTA.

Product Specific Rules, based on such approaches, are deemed to be simpler for administration by both government and business. They also provide greater consistency of treatment for exporters across Australia's various FTAs.

Phased duty reduction on imports under the US and Chilean FTAs

1 January 2011 saw the latest round of reduction of duty rates on a range of imports into Australia under the US and Chilean FTAs. Further reduction is due to occur on an annual basis until imports tariff rates reach 0% under respective FTAs.

Australia and Thailand to review the TAFTA

Australia and Thailand are looking to review the Australia–Thailand Free Trade Agreement (TAFTA). TAFTA entered into force on 1 January 2005.

Under the agreement, both sides have committed to undertake inbuilt agenda negotiations on services, investment, government procurement, business mobility and competition. There are also provisions to review the general operation of the agreement. Both countries have agreed to commence these processes.

With the exception of some products (e.g. milk products), all tariffs will be phased to zero by 2020 under the current agreement. As such, the review will thus be focused on eliminating any non-tariff barriers and increasing cooperation in promoting trade and service growth.

It is expected that Thailand will be asking for greater market access for fresh foods and reviewing the high sanitary standards currently in place. Australia has also begun seeking stakeholder input on priorities to be negotiated with Thailand.

Canada and Japan resume joint study on bilateral FTA

Canada and Japan have agreed to resume a joint study on the feasibility of a bilateral FTA between the two countries. Previously, the two countries had conducted a joint study between 2005 and 2006. However, no trade negotiations were launched as they could not reach common ground on certain issues such as sensitive agricultural products.

Resuming a feasibility study for an FTA is in line with Japan's policy to push for FTAs to boost its current economy. It will also help both countries to leverage on each other's economies by opening up market access for goods and services.

In addition to this bilateral agreement, both Japan and Canada have shown interest in joining the negotiations for the Trans-Pacific Partnership that is currently being negotiated by countries such as Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the US and Vietnam.

EU–South Korea FTA on track for implementation

The EU has ratified the EU–South Korea FTA on 17 February 2011.

The text of the agreement was initialled between the European Commission and South Korea on 15 October 2009 and was signed on 6 October last year.

In accordance with the agreement, both parties will eliminate duties on 98.7% of bilateral trade for both industrial and agricultural products within five years from the entry into force of the agreement. The tariffs on other product lines will be eliminated over a longer period, except for certain products in the agricultural sector.

The agreement will also make major advances in the areas of intellectual property rights, government procurement, competition policy and trade and sustainable development. It will also increase market access in both countries in the areas of services and investment.

South Korea had previously submitted the Korean legal text to the National Assembly for ratification in March 2010. However, because of certain translation errors found in the document, it has to be resubmitted. According to the Korean law, to correct the error in the agreement will require withdrawing the ratification motion, creating a revised motion and re-start reviewing procedures with the cabinet. Korea is expected to ratify the agreement in March 2011. If this happens, the agreement will formally enter into force on 1 July this year as planned.

India–South Korea CEPA to be reviewed

South Korea and India have agreed to improve the South Korea–India Comprehensive Economic Partnership Agreement (CEPA) that entered into force in January last year. This was agreed during the first meeting of the Joint Committee at the Ministerial Level held to discuss the implementation of the South Korea–India CEPA in New Delhi.

Both sides had extensive discussions on bilateral trade and economic relations, trade policy and progress in the Doha Round of WTO negotiations. The progress of trade between the two countries was reviewed and both sides expressed satisfaction at the increased two-way trade by approximately 40% last year since the agreement entered into force.

On tariff commitments, both countries are looking to further reduce tariffs on certain products to boost their bilateral trade. Both sides also recognised the issues faced by the business communities of both countries in the areas of visa procedures and acknowledged that more work should be done to encourage mutual investment.

The next Joint Committee at the Ministerial level will be held next year in Seoul.

Malaysia enters FTA discussions with Gulf Cooperation Council (GCC)

Malaysia and the Gulf Cooperation Council (GCC) have agreed to begin negotiations on an FTA with the signing of the Malaysia-GCC Framework Agreement on 31 January 2011 in Abu Dhabi, United Arab Emirates (UAE).

Malaysia is optimistic that the negotiations will pick up pace, paving the way for expansion and liberalisation of trade relations between the two parties moving forward.

Malaysia's main exports to the GCC include vegetable oils, wood products, machinery and equipment, chemical, rubber and plastic products and electronic equipment.

Malaysia–India Comprehensive Economic Cooperation Agreement (MICECA) signed

Malaysia and India signed the Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) on 18 February 2011. This agreement is expected to enter into force on 1 July 2011 upon the completion of relevant domestic processes by both countries.

The MICECA was signed following a joint study which was completed on 11 August 2007, which found that there was huge potential for trade in goods, services, investment and all other areas to be tapped by developing the existing bilateral economic relationship between the two countries.

We noted from the schedules of tariff commitments of the two countries that, in comparison to the ASEAN–India FTA (AIFTA) that both India and Malaysia are signatories to, the MICECA covers more products for tariff concessions. Timelines for tariff reduction are also accelerated under the MICECA compared to the AIFTA. Duties for goods are projected to be eliminated by 30 June 2016 under the normal track and to be reduced to 5% under the sensitive track.

While it was anticipated that the Rules of Origin will be liberalised significantly in comparison to the AIFTA, it appears however that they are equally as tight as if not tighter than those in the AIFTA. For goods that are not wholly obtained or produced, the requirement is that:

i) all non-originating materials used in the production of the goods have undergone a change in tariff classification in a sub-heading **at the six-digit level** of the HS

ii) qualifying value content of the goods is not less than 35% of the FOB value

In some cases, product specific rules of origin may apply.

The MICECA also contains provisions for joint ventures between Malaysian and Indian services companies in addition to the provisions to encourage strategic partnerships and enhance collaborative ventures in areas such as infrastructure development, human capital and technology amongst other things.

South Korea–US FTA signed

The "supplemental agreements" to the South Korea–US Free Trade Agreement (KORUS FTA) were signed on 10 February 2011 by the US Trade Representative Ron Kirk and Korean Trade Minister Kim Jong-Hoon.

The signed legal texts consist of three documents:

- The exchange of letters between Ambassador Kirk and Minister Kim containing the new commitments for pork and the automotive sector.
- Agreed meetings on regulations pertaining to automotive fuel economy and greenhouse gas emissions.
- Agreed minutes on intra-company transferee (L-1) visas.

The new agreements will enter into force on the same day that the KORUS FTA enters into force. The agreement will still have to be ratified by both countries before it becomes official.

Country reports

Australia

Introduction of product stewardship requirements for computers and televisions

The Australian Government is currently developing legislation that will require commercial importers of televisions and computers to organise and fund the collection and recycling of television and computer waste.

The National Waste Policy ("*Less waste, more resources*") sets the agenda for national action on waste and resource recovery. A key element is industry taking responsibility for the collection and recycling of television and computer waste (at the end of the product life cycle), through Product Stewardship Schemes. These Schemes are expected to commence in late 2011.

Under the proposed arrangements, the Australian Customs and Border Protection Service will provide data to the Department of Sustainability, Environment, Water, Population and Communities, to support the operation of the Schemes.

A consultation paper on the design of the television and computer Schemes will be released for public consultation in early 2011.

Report on the Enhanced Project By-law Scheme (EPBS)

The release of a report by Access Economics detailing its findings following a six months review of the Enhanced Project By-law Scheme (EPBS) has marked the completion of the exercise.

The EPBS is a federal government incentive scheme which encourages major project proponents to consider Australian suppliers in exchange for duty concessions on imported capital equipment.

Access Economics was asked by the Department of Innovation, Industry, Science and Research to undertake an evaluation of the operation and effectiveness of the EPBS.

Following the consultation period, Access Economics has delivered the following key findings:

- The scheme has broader benefits which include the promotion of relationships amongst stakeholders. However, it was also recognised that these relationships can be jeopardised should the scheme become too administratively complex.
- The scheme should be positioned as "the scheme of choice" for major projects, against other available mechanisms including the Tariff Concession System.
- A number of pressure points have been identified of which the following reform options were presented:
  - a more flexible approach towards Australian Industry Participation (AIP) lodgement should be adopted (on a project-by-project basis, where milestones are agreed up front)
  - pre-qualification of AIP credentials should be considered (i.e. to cover numerous projects)
  - a formal case manager to guide users through the process should be provided
  - a "dual-stream" approach to fast track smaller projects in order to reduce costs and enhance attractiveness of the scheme should be introduced
  - a new functional unit guide to reduce uncertainty on parameters should be prioritised
  - a regular user group should be introduced to discuss issues within aligned sectors
- Long term improvements will be achieved by:
  - reducing the complexity of the scheme;
  - streamlining the process for its users
  - enhancing stakeholder relationships

Access Economics considers that EPBS forms an important part of the government's tariff policy framework, and there would be benefits in ensuring the scheme's core policy compliments that of Australia's trade policy agenda and does not work against it.

The release of this report has triggered a response from the Minister's office stating that the findings will be reviewed and assessed over the next 12 months. Implementation therefore may be seen in 2012 and its effect will depend on the level of 'streamlining' introduced.

Should AusIndustry accept the general position taken by Access Economics, applicants could benefit from a less administratively burdensome scheme where the benefits to participants remain high.

China

Implementation measures of the 2011 customs tariff

The Customs Tariff Commission (CTC) of the State Council of China promulgated the **Announcement CTC [2010] No. 26** on 2 December 2010 regarding the implementation measures of the 2011 Customs Tariff.

According to the announcement, the tariff system of China in 2011 remains the same, with only minor changes. We also note that:

- the number of China tariff line items has been increased from 7,932 in 2010 to 7,977 in 2011
- as China has already met its WTO tariff commitments in 2010, only the interim duty rates for certain tariff lines are decreased
- export duty rates have increased for some Rare Earth Element products

Further clarification to the supervision on processing trade

Further to the recent changes on Processing Trade rulings, the General Administration of Customs (GAC) released **Announcement [2010] No. 93** on 5 January 2011 to further clarify the following issues in relation to Processing Trade operations in China:

- The requirement, relevant documentation and negative conditions of the goods mortgage procedure
- Clarification regarding bonded and non-bonded segregation. Generally, the basic principle is physical segregation but enterprises may also segregate the materials in their ERP system
- Definition of outsourced processing issues
- Reiteration of the requirement for enterprise registration under Processing Trade

Goods catalogue for 2011 export restrictions

This **Joint Announcement [2010] No.108** by GAC and China Ministry of Commerce came into effect on 1 January 2011. It defines the 49 listed products which will be subject to export quota restrictions, export quota bidding procedures and export licenses.

Compared with the product licenses promulgated in the previous year, the 2011 list introduced several tariff codes for Rare Earth Element (REE) Oxide/Chloride under the export restriction regime. The announcement reflects the recent stringent control on REE exportation from China, not only in form of ore but also in downstream products.

Release of new ASEAN–China FTA implementation rule by the issuance authority

On 30 December 2011, the General Administration of Quality Supervision, Inspection and Quarantine of P.R.C. (AQSIQ), which is the issuance authority for preferential Certificate of Origin in China, released "The Amendment of Certificate Procedure (Form E)" under the RoO of the ASEAN – China Free Trade Agreement (ACFTA). The implementation ruling covers:

- new issuance procedures under the ACFTA
- clarification on the issuance/acceptance of Form E for triangular invoicing and Movement Certificate
- transition period for the acceptance of the old format of Form E

Hong Kong

Budget 2011: Significant increase in tobacco duty rate

On 23 February 2011, the Financial Secretary of Hong Kong has delivered the Budget Speech in respect of the financial year 2011/12 (1 April 2011 to 31 March 2012) amidst an economic recovery at a faster pace than expected. Amongst multiple new measures to be implemented with a general vision to sooth financial pressure of the poor and ease the burden of inflation, the Hong Kong Government has introduced an aggressive increase in tobacco duty by 41.5% (0r HK$0.5 per stick for cigarettes). The increase in duty was proclaimed by the Financial Secretary to be necessary for controlling tobacco consumption and protecting public health. The adjustment has been put into effect immediately on 23 February 2011 by way of a Public Revenue Protection Order with the Hong Kong Customs and Excise Department to continue to be responsible for stringent law enforcement.

A summary and comparison for the financial year 2010/11 and 2011/12 is provided below for your immediate reference:

Duty on tobacco	2010/11	2011/12
Cigarettes	HK$1,206/ 1,000 sticks	HK$1,706/ 1,000 sticks
Cigars	HK$1,553/kg	HK$2,197/kg
Chinese prepared tobacco	HK$296/kg	HK$419/kg
All other manufactured tobacco except those intended for the manufacture of cigarettes	HK$1,461/kg	HK$2,067/kg

Proposed adjustments to textiles control arrangements for non-sensitive markets and transshipment cargoes

Textile traders are currently subject to licensing arrangements, unless exempted, for importing and exporting textiles into or from Hong Kong as prescribed in the Import and Export Ordinance (IEO).

The prevailing textiles control arrangements apply different licensing requirements on shipments involving “sensitive markets” and “non-sensitive markets”. In general, sensitive markets include China and the US, and non-sensitive markets are those other than these two countries.

Prior to the proposed adjustments, textile shipments between non-sensitive markets may be required to apply for (i) consignment-specific import/export licenses; or (ii) comprehensive import/ export licenses which usually cover a 12-month validity period.

As for textile transshipments, textile traders registered under the Textiles Trader Registration Scheme (TTRS) may either (i) lodge transshipment notifications to cover the entire transshipment; (ii) lodge import/export notifications under the TTRS; or (iii) apply for import/export licenses as appropriate to cover the respective inbound/outbound transshipments.

The proposed adjustments in connection with the above-mentioned textile control arrangements between non-sensitive markets are as follows:

- Removal of the licensing requirement for textiles imported from or exported to non-sensitive markets
- Removal of the licensing requirement for all textile transshipments

Since these proposed adjustments require amendments to the subsidiary legislation of the IEO, the above changes are expected to come into effect in mid-2011.

Textile traders should continue to comply with existing textile control arrangements until enactment of new legislations. Those who contravene or fail to comply with the licensing requirements or to fulfill conditions of exemption under TTRS commit an offense and are liable to a maximum fine of HKD500,000 and imprisonment of two years, irrespective of any upcoming adjustments to the textiles licensing arrangements that have been/will be announced.

Meanwhile, textile traders are reminded that no adjustments are proposed to existing textile control arrangements in relation to shipments between sensitive markets (i.e. shipments between China and the US).

India

Highlights of the Union Budget: 2011-12

On 28 February 2011, the Finance Minister presented the Union Budget 2011-12 before the parliament. Keeping in mind the imminent roll out of the Goods and Services Tax (GST), significant changes have been made to all indirect tax legislations, including the Customs Act.

While no specific deadline has been indicated for introduction of the GST, the Constitution Amendment Bill for inclusion of GST-related changes is proposed to be submitted to the legislative house in the current parliamentary session. This is in addition to the ongoing work on the model legislations at the central and state levels.

Customs

Budget 2011 has maintained the peak rate of basic customs duty (BCD) on all non-agricultural products at 10%. As a measure towards uniformity, existing BCD rates of 2%, 2.5% and 3% have been fused and all goods chargeable to BCD at these rates are now subject to 2.5% BCD.

The import tariff schedule is also proposed to be amended so as to achieve alignment with the international Harmonized System of Nomenclature (HSN) effective on 1 January 2012.

Details of proposals

Basic customs duty

The rate of BCD on the following goods has been reduced to 0%:

- specified raw material such as toughened glass, silver paste and polyester insulation tapes for use in manufacture of excisable products
- specified goods for use in manufacture of handicrafts for export
- specified materials and equipment for construction of roads based in bio-based asphalt
- PC connectivity cables and sub-parts and components required for manufacture of PC connectivity cables, battery charges, head phones for cellular phones
- de-oiled rice bran oil cake, fin fish feed, cotton waste, stainless steel scrap
- specified accessories for use in manufacture of textile or leather garments or leather/synthetic footwear or leather products
- value of gold and silver content in copper concentrate
- specified parts such as batteries for use in manufacture of electrically operated and hybrid vehicles
- tunnel boring machines, parts and components for assembly of tunnel boring machines used for highway projects
- cash dispensers and parts and components of cash dispensers
- endovascular stents
- spares and consumables for repair of ocean going vessels registered in India

The following goods are chargeable to a concessional rate of 2.5% BCD:

- aircraft imported by non-scheduled category operators for passenger or chartered use
- specified agricultural machinery and parts and components thereof
- ferro nickel, rayon grade wood pulp, acrylonitrile, petroleum coke, carbon black feedstock and gypsum
- all goods used in, or supplied to units for the manufacture of paper, paper board and news print
- new pneumatic tyres used on aircraft
- propellers, rotors and other parts of aircraft
- vanadium pentaoxide or vanadium sludge

A concessional rate of 5% BCD is applicable on the following goods:

- four life saving drugs along with the bulk drugs used for their manufacture
- specified raw material for manufacture of syringes, needles, catheters and cannulae
- mailroom equipment such as overhead conveyors, stackers and strappers for use with high speed printing machines
- parts and components for manufacture of high voltage transmission equipment subject to actual user condition
- micro irrigation equipment falling under chapter 84
- raw silk (not thrown)
- sodium polyacrylate
- PT MEG and MDI for the manufacture of spandex yarn
- specified machinery for the manufacture of gems and jewellery
- solar lanterns and lamps
- all ferro alloys other than ferro nickel

BCD on the following goods has been reduced from 10% to 7.5%:

- caprolactumnylon chips, nylon yarn and nylon tow

BCD on the following goods has been reduced from 30% to 10%:

- cranberry products
- raw pistachios
- live SPF L. Vannamei broodstock
- bamboo for use in manufacture of agarbatti
- lactose used in manufacture of homeopathic medicine

Additional customs duty/ countervailing duty

The following goods have been specifically exempted from levy of additional customs duty in lieu of excise duty (countervailing duty (CVD)):

- specified accessories for use in manufacture of textile/leather garments, leather/synthetic footwear or leather products
- packaged software, not subject to retail sale price (RSP) affixation requirements, to the extent of value of right to use.

The current exemption from ADC has been extended to goods traded by a Special Economic Zone (SEZ) into domestic tariff area (DTA) which is not exempted from VAT/sales tax.

The following goods have been exempted from levy of additional duty of customs (ADC) in lieu of sales tax/ VAT:

- copper dross, copper residues, copper oxide mill scale, brass dross and zinc ash
- specified raw material for manufacture of syringes, needles, catherters and cannulae
- parts of ink jet and laser jet printers
- light emitting diodes for use in manufacture of LED lights and fixtures
- solar lanterns and lamps
- parts and components required for high voltage power transmission projects
- specified mailroom equipment
- parts of DVD drives and DVD writers, combo drives and CD-rom drivespatent and proprietary medicine

Concessional rate of 5% CVD has been imposed on the following goods:

- specified mailroom equipment
- specified raw material for manufacture of syringes, needles, catherters and cannulae
- parts and components required for high voltage power transmission projects
- batteries imported for electrically operated vehicles

Education cess

The exemption from education cess as well as Secondary and Higher Education Cess on aeroplanes and other aircraft has been withdrawn.

Export duty

The following goods have been exempted from levy of export duty:

- iron ore pellets
- chromium ores and concentrates, all sorts
- raw cotton and cotton waste

Export duty has been levied on the following products:

- 10% on de-oiled rice bran cakes
- 20% on agglomerate and non-agglomerate iron ore and concentrates except iron ore pellets

Non-tariff measures

The ambit of “water supply projects” for import benefit has been expanded to include water pumping stations, water storage and reservoir.

The definition of the term “Completely Knocked Down” (CKD) with regard to classification of motor vehicles for BCD exemption has been provided.

The definition of “coking coal” for the purposes of BCD exemption has been provided.

The exemption to Ultra Mega Power Projects (UMPP) has been expanded to include ash handling system and water handling system.

The Customs Act, 1962 is proposed to be amended to introduce the following changes:

- self-assessment of imported goods subject to verification and re-assessment, as necessary by the revenue authorities
- uniform applicability of a time limit of one year for filing of refund claim and issuance of show cause notice (other than in cases of collusion and wilful mis-statement)
- creation of first charge on the property of defaulters under customs recovery proceedings subject to charges already created under specific other legislations
- monetary restrictions amended in line with the National Litigation Policy
- electronic filing of import Bills of Entry unless specifically permitted otherwise

The rates of interest chargeable in cases of delay in payment of duty or, interest on such duty in all cases has been enhanced to 18%.

The requirement of cash security under Project Imports Scheme has been abolished.

Indonesia

New change in KITE exemption concession

The KITE (also known as the Import Facility for Export Purpose) exemption concession grants exemption of customs duties, excise duties, VAT and sales tax on luxury goods (STLG) upon importation of raw materials used in the production of goods for exports.

The calculation of VAT recovery and STLG for domestic sales of such goods originally destined for exports was previously based on the import value of the raw materials used in the production. With the new regulation, it will be based on the selling price of these goods to the Indonesia domestic market. This VAT is regarded as an input tax credit of the company using the KITE concession.

The updated regulation also requires companies using the KITE concession to pay 5% customs duty on the selling price of the finished products, if the import duty rate of the raw materials is 5% or higher. If the import duty rate of raw materials is less than 5%, the amount of customs duty payable will be the prevailing import duty tariff of the finished goods. For the residual or rejected goods that are categorised as "excisable goods", the company must also pay excise duty in accordance with applicable regulations.

In addition, a company under the KITE facility should issue a VAT invoice upon delivery of those goods to the domestic market which is based on the selling price. The VAT will be treated as an output tax credit. In such cases, the input and output tax credit for VAT purposes will be the same value.

Companies using the KITE concession are advised to study this regulation carefully to control and report their remaining exported goods, residual goods, and side products properly to minimise the risk of a penalty up to 100%, plus interest on import duty and/or excise.

Imposition of customs duties on royalties of imported film

The customs duty on imported cinematographic film (generally classified under HS Code 3706) is 10% of the Cost, Insurance & Freight (CIF) value of the goods. In addition, there is also a 10% import VAT and 2.5% Prepaid Income Tax based on the CIF plus Import Duty payable on such imports. In previous practice, the CIF value is determined based on a certain value of goods per metre of film (i.e. US$ 0.43/metre).

Due to recent discussions and correspondence amongst the National Film Consideration Body ("Badan Pertimbangan Perfilman Nasional"), the Fiscal Policy Body, Director General of Foreign Trade and Director General of Customs & Excise, Customs has reached a decision to conduct a re-assessment of the customs value of imported films to include the royalty payment due to the use of copy rights for the distribution or exploitation of the films in Indonesia.

According to Customs, this imposition of import duty and import taxes on royalties of imported film is compliant with the WTO valuation rules.

Companies in the film industry are advised to review their royalty agreements and to refer to the customs valuation rules to assess if such payments may be dutiable.

Changes of customs duty rates

From 22 December 2010, the Indonesian government, through the Ministry of Finance, has imposed a 5-10% customs duty for imported vessels. The previous customs duty rate was in the range of 0 – 5%.

The type of vessels affected by the increase in customs duty to 5% include cruise ships, excursion boats, ferry boats, cargo ships, barges, tugs and pusher craft, light vessels, dredgers, floating cranes, floating docks, and other floating or submersible drilling or production platforms.

The regulation also sets out a change of customs duty rates for 2165 tariff lines out of a total of 8751 tariff lines which came into effect on 22 December 2010. The changes include the imposition of customs duty on certain goods, including agricultural products, fisheries, pharmaceuticals, industrial manufacturing, agro-industry, high technology based industries, and small and medium industries.

Companies that import such products are advised to study regulation no. 241/PMK.011/2010 regarding the changes in customs duties for the imported goods.

New regulations:

- 259/PMK.04/2010: Ministry of Finance regulation on customs guarantee. The regulation letter was issued on 31 December 2010 and became effective on 31 January 2011.
- 217/PMK.04/2010: Ministry of Finance regulation on customs objection. The regulation letter was issued on 3 December 2010 and became effective on 3 January 2011.
- PER-4/BC/2011: Director General of Customs and Excise regulation on amendment Director General of Customs and Excise regulation No. P-13/BC/2008 about customs audit and excise procedures. The regulation was issued on 31 January 2011 and became effective on 2 March 2011.

Japan

Proposed amendments to Customs Tariff Law

On 28 January 2011, a bill for partial amendment to the Customs Tariff Law was submitted to the Diet. Notable changes, if the bill is passed, will be as follows:

- The statute of limitation for refund request by an importer will be revised from one year to five years for customs duties and import consumption tax paid at the time of import declaration. This is expected to be implemented on 1 April 2011. The change will be effective prospectively. In other words, the revised statute of limitation will be applicable only for imports permitted on and after 1 April 2011.
- The statute of limitation for correction by customs will be revised from three years to five years. This is expected to be implemented on 1 April 2011.
- Japan's tariff schedule will be revised in accordance with the amendments to the Harmonized System (HS) nomenclature 2012 which will enter into force on 1 January 2012.

Malaysia

Service tax rates increase to 6%

Following the Budget announcement on 15 October 2010, service tax has been increased from 5% to 6% effective 1 January 2011.

While this has no direct impact on the import of goods into Malaysia, it may impact on services provided by various service providers, e.g. customs brokers, forwarding agents etc.

Singapore

Highlights of Budget 2011

Increased excise duties for tobacco products

Excise duties on the following classes of tobacco products were raised with effect from 18 February 2011:

HS code	Description	Excise duties (in SGD)	
		Old	New
24011010	Tobacco leaf, not stemmed /stripped, Virginia type, flue-cured	$300 per kgm	$315 per kgm
24011020	Tobacco leaf, not stemmed /stripped, Virginia type, not flue-cured	$300 per kgm	$315 per kgm
24011030	Tobacco leaf, not stemmed /stripped, other type, flue-cured	$300 per kgm	$315 per kgm
24011090	Tobacco leaf, not stemmed /stripped, other type, not flue-cured	$300 per kgm	$315 per kgm
24012010	Tobacco leaf, partly or wholly stemmed / stripped, Virginia type, flue-cured	$300 per kgm	$315 per kgm
24012020	Tobacco leaf, partly or wholly stemmed / stripped, Virginia type, not flue-cured	$300 per kgm	$315 per kgm
24012030	Tobacco leaf, partly or wholly stemmed / stripped, Oriental type	$300 per kgm	$315 per kgm
24012040	Tobacco leaf, partly or wholly stemmed / stripped, Burley type	$300 per kgm	$315 per kgm
24012050	Tobacco leaf, partly or wholly stemmed / stripped, other type, flue-cured	$300 per kgm	$315 per kgm
24012090	Tobacco leaf, partly or wholly stemmed / stripped, other type, not flue-cured	$300 per kgm	$315 per kgm
24013010	Tobacco stems	$300 per kgm	$315 per kgm
24013090	Tobacco refuse	$300 per kgm	$315 per kgm
24022010	Beedies	$181 per kgm	$199 per kgm
24031021	Blended tobacco, for cigarette making	$300 per kgm	$315 per kgm
24031029	Other smoking tobacco, for cigarette making	$300 per kgm	$315 per kgm
24039950	Other smokeless tobacco, including chewing and sucking tobacco	$181 per kgm	$199 per kgm
24039960	Ang Hoon	$181 per kgm	$199 per kgm

Extension of Green Vehicle Rebate Scheme

The Green Vehicle Rebate Scheme is extended for another year to 31 December 2012, as follows:

Item	Rebate
• Hybrid and electric passenger vehicles	40% of the Open Market Values (OMV) of the vehicle at registrations
• Hybrid and electric buses • Commercial vehicles	5% of OMV at registration
• Electric motorcycles	10% of OMV at registration

Of note is that the Annex to the Budget Speech mentioned that a comprehensive review on the measures to boost the adoption of green vehicles will be undertaken soon.

Import relief for clinical trial materials

A waiver of the 7% import GST will be granted for all clinical trial materials (CTM) imported into Singapore, regardless of whether the CTMs are for local testing, re-export or for disposal in Singapore.

This overcomes a technical constraint in the current GST legislation which does not allow a local intermediary or research organisation to recover the import GST that is payable when the CTMs are brought into Singapore for local testing in a clinical testing facility.

The changes will be effective from 1 October 2011 but businesses will have to wait until September 2011 for the International Revenue Authority of Singapore (IRAS) and Singapore customs to publish circulars to explain the operational details.

Import relief for goods brought on board qualifying ships

To further ease compliance for ships that visit Singapore for short periods, the need for documentary proof for GST relief is to be removed for a qualifying ship engaged in pleasure, recreation, sports or similar events. Import GST relief (without the need for documentary evidence) is also granted to goods brought on, and remaining on board qualifying ships.

The IRAS and Singapore Customs will be publishing circulars on the operational details by 1 September 2011.

Singapore Customs introduce TradeFIRST

Singapore Customs have introduced a new trade facilitation and engagement framework (TradeFIRST), "to better integrate compliance, trade facilitation and risk management elements for businesses operating in Singapore".

This new framework provides a single system intended to make trade easy, fair and secure, by introducing a more streamlined application process for all customs facilitation and schemes available. As a result, this allows Singapore Customs to offer companies more comprehensive engagement and facilitation services in a systematic and consistent manner.

When a company applies for the TradeFIRST system, Singapore Customs assesses areas such as the company's customs compliance level, its internal control systems and supply chain security measures and in turn places the company in one of five bands; **basic, standard, intermediate, enhanced and premium**.

Each band provides different benefits and as companies improve their internal control systems and supply chain security measures, they are able to move up the scale.

Some of the benefits under standard or intermediate schemes allow for tax suspensions of goods stored in certain customs-designated warehouses. The premium scheme allows a company to have a single permit for the trading of multiple types of goods and to qualify for waiver of post-importation documentation checks and factory inspections.

Import, export and transhipment of products containing explosive precursors

Due to its potential dual-use in making improvised explosive devices, the Singapore Arms and Explosive Act regulates 15 chemicals that are considered as explosive precursors. Products commonly containing these explosive precursors may include daily use products such as cleaning products, fertilisers, pharmaceuticals, etc.

In a circular released on 11 January 2011, the Singapore Police Force advised companies who wish to import, export, tranship, deal in or store products containing any explosive precursors to apply for a licence from the Arms and Explosive Branch of the Singapore Police Force. The full responsibility to ensure compliance with the Arms and Explosive Act falls on traders of the products. It is considered an offence for any person to have in his possession or under his control, import, export, manufacture or deal with any explosive precursors without a licence.

The following table lists the 15 regulated explosive precursors under the Singapore Arms and Explosive Act.

Explosive precursors	Exclusions
Ammonium nitrate	Aqueous solutions containing less than 60% weight in weight of ammonium nitrate Any mixture, including a fertiliser, which contains ammonium nitrate and in which any part of the nitrogen content having a chemically determined ammonium equivalent constitutes, together with that equivalent, less than 28%, by weight of the said mixture
Ammonium perchlorate	-
Barium nitrate	Preparations and solutions containing less than 10%, weight in weight, of barium nitrate
Guanidine nitrate	-
Hydrogen peroxide	Preparations and solutions containing not more than 20%, weight in weight, of hydrogen peroxide
Potassium chlorate	-
Potassium nitrate	Preparations and solutions containing less than 5%, weight in weight, of potassium nitrate or a combination of both potassium nitrate and sodium nitrate
Potassium nitrite	Aqueous solutions containing less than 5% weight in weight, of potassium nitrite
Potassium perchlorate	-
Sodium chlorate	-
Sodium nitrate	Preparations and solutions containing less than 5%, weight in weight, of sodium nitrate or a combination of both sodium nitrate and potassium nitrate
Sodium nitrite	Aqueous solutions containing less than 5%, weight in weight, of sodium nitrite
Sodium perchlorate	-
Perchloric acid	-
Tetranitromethane	-

New air cargo express hub

The Civil Aviation Authority of Singapore and Changi Airport Group have announced the development of a new Air Cargo Express (ACE) Hub. The ACE Hub is expected to be operational in the first half of 2012.

The ACE Hub will provide direct airside access to ensure the smooth flow of cargo to and from the aircraft, thus shortening the processing time for cargo transport. The ACE Hub will also have special on-site facilitation by the Immigration and Checkpoint Authority and Singapore Customs for a more efficient cargo clearance process.

GST guide for Free Trade Zones, bonded warehouses and excise factories

In January 2011, the Inland Revenue Authority of Singapore released a new e-guide on GST related matters with regard to Free Trade Zones (FTZs), bonded warehouses and excise factories, specifying the GST treatments and reporting requirements applicable to goods stored there.

The guide is useful for companies that import and export goods through the use of FTZs, or those who store or trade goods inside the FTZs, zero-GST/licensed/bonded warehouses and excise factories in Singapore.

Taiwan

Penalties of incorrect application of ECFA Certificate of Origin

The Economic Cooperation Framework Agreement (ECFA) between China and Taiwan is a precursor agreement setting in place the discussion for a full-fledged FTA between the two economies in the future.

According to the ECFA, companies exporting commodities listed on the Early Harvest List (effective from 1 January 2011) may apply for the ECFTA Certificate of Origin (CoO) prior to export to enjoy preferential tariff treatment upon import in to China.

As the CoO is one of the key elements to obtain the preferential tariff rate, the governments on both sides will seek to verifythe authenticity of the ECFA CoO. Penalties have also been put in place with regard to any false declaration, refusal of providing relevant documents, failure of documentation retention etc. Please see below for details:

Foreign trade penalty for breach of ECFA CoO Rules

Fact of breach	Initial breach	Subsequent offences	
		Second breach	Third breach
The ECFA CoO applicant or related import /export manufacturer refuses to provide relevant documents.	Warning	Warning	TWD30,000 fine (about USD1,000)
False declaration of the country of origin, manufacturer, quantity, or product name.	Warning, but should be viewed as a re-offence if three or more violations are determined at one time.	TWD30,000 to 60,000 fine (about USD1,000 to 2,000), but should be viewed as the third breach if three or more violations are determined at one time.	TWD150,000 fine (about USD 5,000).
False declaration of the country of origin, manufacturer, quantity, or product name, causing other countries to initiate trade relief on account of mistrust of Taiwan exportations.	TWD30,000 to 60,000 fine (about USD1,000 to 2,000).	TWD150,000 fine (about USD 5,000). Suspension of exporting goods for one to three month(s).	TWD200,000 to 300,000 fine (about USD6,700 to USD 10,000). Suspension of exporting goods for six to 12 months.

Customs anti-smuggling penalty for breach on ECFA CoO rules

Fact of breach	Penalty
False declaration of the CoO that violates this and/or relevant laws.	According to the nature of the case, Customs may impose a fine equivalent to two to five times the duties evaded together with the confiscation of the cargoes in question.

Thailand

Limitation of number of items declared on Certificate of Origin under ACFTA

Following our report in November/December 2010 regarding the amendments to the ASEAN-China FTA under Customs Notification No. 106/2553, Thai Customs has determined that no more than 20 items should be declared on each Certification of Origin under ACFTA (Form E).

The Customs Tariff Bureau (CTB) has provided guidelines under Notification No. 3/2554 dated 4 February 2011. In cases where the number of items in the Form E exceeds 20, the importer may still be entitled to the preferential tariff rate under ACFTA by placing a deposit at the normal duty rate with the Customs Authority at the time of importation and reserve the right to claim the preferential duty rate.

Customs would then send the Form E for consideration to the CTB to determine if the items may be entitled to the preferential tariff rate under the ACFTA. The CTB in such case could request the issuing authorities in China for more information with respect to the origin of the goods to ascertain that the goods are eligible for the ACFTA duty rate.

It is important to note that Thai Customs is currently challenging a number of third-party invoicing arrangements. As such, where importers are claiming the ACFTA duty rate and are ticking the box "3rd party invoicing" it is suggested to clarify whether the transaction can be considered as third-party invoicing based on Thai Customs' current interpretation.

Provisional anti-dumping duty on ring binder mechanism from Thailand

The European Commission announced Commission Regulation No 118/2011, dated 10 February 2011 regarding the implementation of a provisional anti-dumping duty applied to ring binder mechanisms originating in Thailand.

This Regulation followed the anti-dumping investigation which was initiated on 20 May 2010 by the European Commission and which covered the period 1 April 2009 to 31 March 2010.

The product concerned is a ring binder mechanism which consists of at least two steel sheets or wires with at least four half-rings made of steel wire fixed on them which are kept together by a steel cover.

The investigation by the European Commission demonstrated that the volume of imports of the concerned products from Thailand increased by almost 20% during the investigation period and that they undercut the price of ring binder mechanisms produced in the EU by more than 30%, causing material injury to the concerned industry in the EU.

Consequently, The European Commission implemented a provisional anti-dumping duty rate of 17.2% of the ring binder mechanisms originating in Thailand which are classified in the EU under the following tariff codes:

- 8305.10.00.11
- 8305.10.00.13
- 8305.10.00.19
- 8305.10.00.21
- 8305.10.00.23
- 8305.10.00.29
- 8305.10.00.34
- 8305.10.00.35
- 8305.10.00.36

This measurement became effective from 12 February 2011 and will apply for a period of six months.

As such, manufacturers of ring binder mechanisms in Thailand should take note of this decision by the EU as it will impact the overall duty burden for such products imported into the EU.

Duty reduction and exemption for green tax incentive

The government had recently approved plans to reduce and exempt customs duty (so-called "green tax incentive") for the importation of dual-fuel vehicles and their parts such as fuel tank, fuel injection, exhaust value and etc.

The import duty of imported vehicles will be reduced from 80% to 60% by 2012 whilst, the duty of qualifying imported parts will be reduced from between 10% and 30% to 0% by 2014.

To enhance domestic consumption of dual-fuel vehicles, the Ministry of Finance approved the duty incentive scheme by issuing the Customs Notification No. 7/2554, dated 31 January 2011.

The duty reduction and exemption scheme on the imported items are as follows:

Tariff code	Descriptions	Duty rate	
		Previous	New
8703	Dual-fuel complete vehicle of a cylinder capacity exceeding 1,780 cc but not exceeding 3,000 cc	80%	60%
8409, 8484	• Parts and accessories of dual-fuel vehicle of a cylinder capacity not exceeding 3,000 cc	10% – 30%	Exempted
8413, 8481, 8708, 9032	• Parts and accessories of dual-fuel vehicle's engines of a cylinder capacity not exceeding 3,000 cc		

To be eligible for this incentive, an importer is required to comply with requirements and procedures as stipulated in this Notification including

- obtaining certification from the Department of Energy
- obtaining certification from the Thai Automotive Institute
- submission of production formulas to the Customs Department

Vietnam

Further guidance on the acceptance of Certificate of Origin (CoO) Form E

The Ministry of Industry and Trade recently released **Circular 01/2011/ TT-BCT** on 14 January 2011 providing amendments to the implementation of revised rules of origin under the ASEAN-China Free Trade Agreement (ACFTA) which had been earlier stipulated in Circular 36/2010/TT-BCT (Circular 36). Some changes are highlighted below:

- Imported shipments from China, Brunei, Singapore, Malaysia, and Thailand must be accompanied by new Form Es in order to be eligible for preferential ACFTA tariff rate in accordance with Circular 36.
- Point 4 of Article 1 of Circular 36, which states that the old Form Es are no longer accepted for preferential tariff rates under ACFTA scheme has been cancelled. Hence, for shipments from Cambodia, Laos, Indonesia, Myanmar, and the Philippines, the old Form Es are still valid for FTA privileges in accordance with Decision 12/2007/QD-BTM until further notice.

The Circular took effect on 1 March 2011.

New regulation on Vietnam tobacco production and trade

The Ministry of Industry and Trade (MoIT) issued Circular **02/2011/ TT-BCT** on 28 January 2011 guiding Decree 119/2007/ND-CP on tobacco production and trade, particularly on the licensing requirements, importation of raw tobacco materials, machinery and equipment, etc. This new Circular replaces Circular 14/2008/TT-BCT dated 25 November 2008.

Below are some changes that took effect from 14 March 2011:

- Only enterprises with tobacco product manufacturing licenses or raw tobacco material processing eligibility certificates may perform contracts for export processing of raw tobacco materials. However, they are not permitted to import raw tobacco materials and cigarette paper for domestic sales or production for the Vietnamese market.
- Within 20 days (instead of 30 days as per the Old Circular), the MoIT will consider and grant a tobacco product manufacturing license, made according to a set form after the receipt of a complete and valid dossier. In cases where the application is rejection, it will reply in writing to the applicant, with the reasons for rejection clearly stated.

General Department of Vietnam Customs issues "Client Charter"

On 9 February 2011, the General Department of Customs (GDC) issued Decision 225/QD-TCHQ on "Client Charter". "Client Charter" is Vietnam Customs' commitment to the society for trade and investment facilitation.

Under the Client Charter, it seems that the GDC shows commitments to develop Vietnam Customs to meet international standards in professionalism, transparency and efficiency. The Charter also indicated that the GDC will be undertaking specific commitments on customs procedures, such as reducing the timeline for receiving and registering customs declarations to 10 minutes; the deadline for dealing with duty exemption dossiers to within 10 working days, and the deadline to reply to companies' official letters to within five working days.

This Charter is a positive development and hopefully will reduce the red tape for companies doing business in Vietnam. It became effective on 1 March 2011.

New procedure for customs valuation assessment procedure

On 24 January 2011, the General Department of Customs (GDC) issued Decision 103/QD-TCHQ providing detailed instructions for implementing Circular 205/20101/TT-BTC on customs valuation assessment.

The Decision provides detailed guidance for Customs on carrying out customs valuations assessment, i.e. specific steps and procedures that Customs should follow when inviting companies for assessment, conditions for the rejection or acceptance of customs value etc.

The Decision is effective from 29 January 2011 and replaces Decision 1636/QD-TCHQ dated 17 August 2008 and Annex I of Decision 2396/QD-TCHQ dated 9 December 2010.

New Decree on customs brokers

On 16 February 2011, the Vietnam government issued Decree 14/2100/ND-CP providing guidelines for companies in the customs brokerage business.

According to the Decree, a customs brokerage company must have a customs broker scope mentioned in its investment certificate. The company must have at least 1 staff qualified with a customs broker certificate and should be able to connect to Customs' computer network for completing the electronic customs procedure.

Being a customs broker, a company may sign on customs declarations on behalf of an importer or exporter, be responsible for such declarations and related documents, pay import or export duties and customs fees on behalf of its clients. In addition, a customs broker has the right to object or appeal against Customs according to Vietnam Customs regulations.

Customs brokers also have priorities in carrying out customs procedures, receive free training on customs regulations and technical support related to network connection from Vietnam Customs.

That said, it is important to note that, the owner of any imported or exported goods, as the importer-of-record, is still responsible for its customs broker's declaration.

The Decree will be effective on 1 April 2011 and will replace Decree 79/2005/ND-CP dated 16 June 2005.

Around the world

WTO

G-11 Talks: WTO's Doha Round hindered by Ag-NAMA discussions

In the long overdue Doha Round trade talks, the "exchange rate" issue remains the main barrier for reaching a breakthrough between trade-offs for farm subsidies and the scope of the future market access for manufacturers.

The G-11 talks, focusing on the agriculture versus non-agricultural market access (Ag-NAMA) issues — involving eleven key WTO members, including Argentina, Australia, Brazil, Canada, China, the EU, India, Japan, Mauritius, the US, and South Africa — were held in Geneva in mid-February 2011.

The blueprint of the Ag-NAMA gathering is to create a "horizontal process" which enables members to make tradeoffs across different sectors, such as giving some automotive access from one member in exchange for grain farm subsidy cuts from another.

Two broad approaches emerged from the G-11 discussion. The first, led by Brazil, suggested that an outer boundary of an eventual Doha outcome should be established in advance. Brazil puts "balance" as the overall top concern, claiming that greater market access for manufactures should be matched by even greater compromise on agriculture issues. The second, supported by the US, states that members should begin specific negotiations on sector-specific liberalisation initiatives for all types of goods.

Brazil nevertheless proposed an approach for more liberalisation for certain farm products. The EU praised this move to be a significant contribution to the agriculture negotiations.

The G-11 will continue to meet. Bilateral meetings between the G-11 members discussing more concrete and technical issues will also take place.

WTO disputes

DS420: South Korea requests consultation with the US on “zeroing” methodology

South Korea requested consultations with the US on 31 January 2011 concerning a number of anti-dumping measures imposed by the US on corrosion-resistant carbon steel flat products. South Korea argued that the use of the zeroing methodology is inconsistent with the obligations of the US under the WTO rules.

The “zeroing” methodology is the preferred method used by the US in determining dumping margins in administrative and sunset reviews, as well as in assessing the final anti-dumping duty liability for purposes of liquidation of entries. This method treats transactions with negative dumping margins as zero margins. According to South Korea, the effect of this calculation either artificially creates dumping margins where none would otherwise have been found or inflates the dumping margins.

This consultation request encompasses myriads of the US acts and precedents relevant to the implementation of the “zeroing” methodology while estimating anti-dumping margins. However, this is not the first time South Korea has pointed fingers at the methodology. On 24 November 2009, South Korea, in light of the US applying the formula at issue, requested and successfully obtained a consultation with the US. Merely two weeks before the current consultation request, the WTO Panel concluded on 18 January 2011 that the US acted inconsistently with the WTO Anti-dumping Agreement. So far, Mexico and Japan have requested to join the new consultation.

South Korea is currently waiting for the US to agree on the date of consultation.

European Union

New customs obligations for imports into the EU from 1 January 2011

The EU Commission has introduced new safety and security risk assessment requirements for all importations into the EU from 1 January 2011. Under these arrangements, advance notification of all imports from third countries will have to be made at the first point or port of arrival in the EU. Based on the information provided, Customs will make a risk assessment as to whether the goods can be loaded at the port of dispatch or will be intercepted for examination at the arrival point.

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