

# eBook on East Asia Customs Procedures

***An EABC Publication***

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# **eBook on East Asia Customs Procedures**

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Brunei Darussalam





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengji  
EABC Chairman 2019

## **ACKNOWLEDGEMENTS**

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AEO	Authorized Economic Operators
AHTN	ASEAN Harmonized Tariff Nomenclature
AITI	Authority for Info-communications Technology Industry
APEC	Asia and Pacific Economic Cooperation
APTA	Asia Pacific Trade Agreement
ASW	ASEAN Single Window
ATIGA OCP	ASEAN Trade in Goods Agreement, Operational Certification Procedures
BDNSW	Brunei Darussalam National Single Window
BJEPA	Brunei-Japan Economic Partnership Agreement
CITES	Convention on International Trade in Endangered Species
e-SPS	electronic Sanitary and Phytosanitary
CO	Certificate of Origin
FTA	Free Trade Agreement
FTZ	Free Trade Zone
GATT	General Agreement on Tariff and Trade
GSP	Generalized System of Preferences
HS	Harmonized Commodity Description and Coding System
MFN	Most Favored Nations
MOFE	Ministry of Finance and Economy
P4	Trans Pacific Strategic Economic Partnership

PCA	Post-Clearance Audit
RCED	Royal Customs and Excise Department
RCEP	Regional Comprehensive Economic Partnership
SLMS	Sutera Lane Merchant Scheme
TFA	Trade Facilitation Agreement
TPP	Trans-Pacific Partnership
TPSEP	Trans-Pacific Strategic Economic Agreement
UNCITRAL	United Nations Commission on International Trade Law
VAT	Value-Added Tax
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## Brunei Darussalam

### 1. INTRODUCTION OF BRUNEI CUSTOMS

Royal Customs and Excise Department (RCED) is a department under the Ministry of Finance and Economy (MOFE) and it was established in April 1906. The role and responsibility of RCED is not only focused on collection of duties and controlling the smuggling activities, but also on financial matters. During its 100th anniversary in 2006, RCED has launched newly introduced vision and mission.

#### 1.1 Vision

- Strengthen Peace, Welfare and Prosperity of the Nation

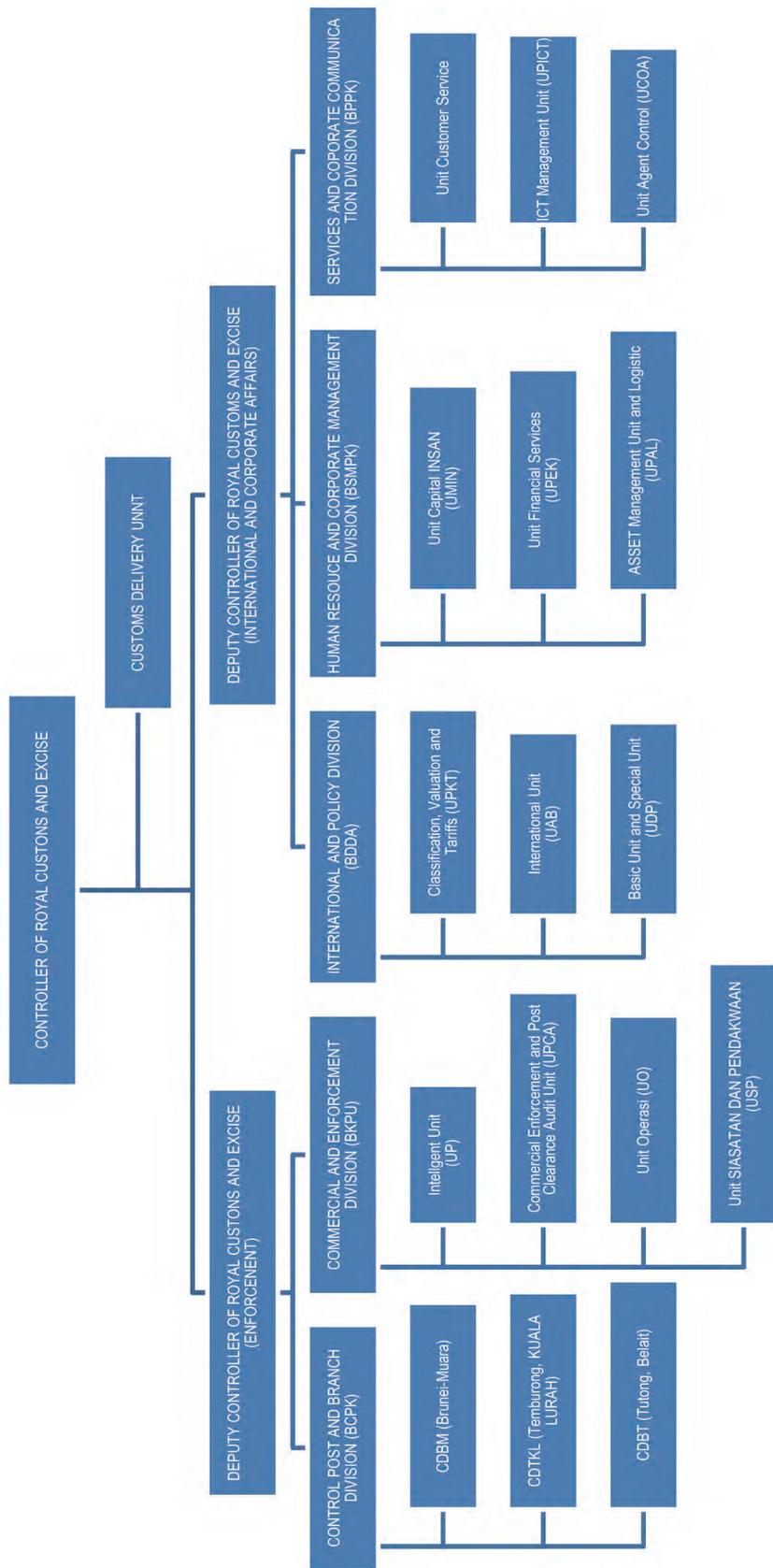
#### 1.2 Mission

- Helping to Preserve National Security, Facilitate Trade and Increase Revenue Collection

#### 1.3 Organization

The organizational structure of RECD is shown by the following chart and other Customs related agencies in the government system are shown by Table 1.

Figure 1 Organizational Chart of RECD



Source: RECD website.

Table 1 Other Related Agencies in the Government System

Agencies	Website
Ministry of Foreign Affairs and Trade	<a href="http://www.mofat.gov.bn/site/Home.aspx">http://www.mofat.gov.bn/site/Home.aspx</a>
Ministry of Health	<a href="http://www.moh.gov.bn/Theme/Home.aspx">http://www.moh.gov.bn/Theme/Home.aspx</a>
MOH - Food Safety and Quality Unit	<a href="http://www.moh.gov.bn/SitePages/Food%20Safety%20and%20Quality%20Control%20Division.aspx">http://www.moh.gov.bn/SitePages/Food%20Safety%20and%20Quality%20Control%20Division.aspx</a>
Ministry of Finance	<a href="http://www.mof.gov.bn/">http://www.mof.gov.bn/</a>
MOF - Department of Supply and State Store	<a href="http://www.mof.gov.bn/index.php/departments/supply-and-state-stores">http://www.mof.gov.bn/index.php/departments/supply-and-state-stores</a>
MOF - Royal Customs and Excise Department	<a href="http://www.mof.gov.bn/index.php/departments/royal-custom-a-excise-department">http://www.mof.gov.bn/index.php/departments/royal-custom-a-excise-department</a>
MOF - Registry of Companies and Business Names Division	<a href="http://www.mof.gov.bn/index.php/divisions/registry-of-companies-and-business-names">http://www.mof.gov.bn/index.php/divisions/registry-of-companies-and-business-names</a>
Ministry of Development	<a href="http://www.mod.gov.bn/Theme/Home.aspx">http://www.mod.gov.bn/Theme/Home.aspx</a>
MOD - Department of Environment, Parks and Recreational	<a href="http://www.env.gov.bn/Theme/Home.aspx">http://www.env.gov.bn/Theme/Home.aspx</a>
Ministry of Communication	<a href="http://www.mincom.gov.bn/Theme/Home.aspx">http://www.mincom.gov.bn/Theme/Home.aspx</a>
MOC - Civil Aviation Department	<a href="http://www.civil-aviation.gov.bn/SitePages/Home.aspx">http://www.civil-aviation.gov.bn/SitePages/Home.aspx</a>
MOC - Land Transport Department	<a href="http://www.land-transport.gov.bn/Theme/Home.aspx">http://www.land-transport.gov.bn/Theme/Home.aspx</a>
MOC - Marine Department	<a href="http://www.marine.gov.bn/">http://www.marine.gov.bn/</a>
MOC - Ports Department	<a href="http://www.ports.gov.bn/en/index.html">http://www.ports.gov.bn/en/index.html</a>
MOC - Postal Services Department	<a href="http://www.post.gov.bn/">http://www.post.gov.bn/</a>
MOC – Authority of Info-communication and Technology Industry	<a href="http://www.aiti.gov.bn/Pages/Home.aspx">http://www.aiti.gov.bn/Pages/Home.aspx</a>
Prime Minister Office	<a href="http://www.pmo.gov.bn/Theme/Home.aspx">http://www.pmo.gov.bn/Theme/Home.aspx</a>
PMO - Internal Security Department	<a href="http://www.kdn.gov.bn/">http://www.kdn.gov.bn/</a>
PMO - Royal Custom and Tradition	<a href="http://www.adat-istiadat.gov.bn/Theme/Home.aspx">http://www.adat-istiadat.gov.bn/Theme/Home.aspx</a>
PMO - Royal Brunei Police Force	<a href="http://www.police.gov.bn/Pages/Home.aspx">http://www.police.gov.bn/Pages/Home.aspx</a>
Ministry of Culture, Youth and Sport	<a href="http://www.kkbs.gov.bn/">http://www.kkbs.gov.bn/</a>

Source: RECD website.

## 2. CUSTOMS ACT

Brunei's legal system is based on British common law, with a parallel Syariah law system for Muslims, which supersedes the common law system in areas such as family and property law. In 2014 Brunei Darussalam became the first Southeast Asian country to adopt strict Syariah law, which applies to Muslims and non-Muslims, with the enactment of the Syariah Penal Code Order 2013.

The current Customs Act of Brunei Darussalam was enacted in 2006 and has been amended several times. It is divided into fifteen parts, defining some Customs terms and providing a concise introduction to the Customs import and export process. In this act, the powers and responsibilities of Customs officers, Customs duties and related legal procedures are clarified in details. Brunei encourages importers and exporters to use agents to complete the Customs procedures and has stated the detailed regulations regarding the agent licenses. The structure of the Customs Act of Brunei is following:

- PART 1 Preliminary
- PART 2 Administration and Powers of Officers
- PART 3 Levying of Customs Duties
- PART 4 and Exportation
- PART 5 Clearance
- PART 6 General Provisions Affecting Vessels in Territorial Waters
- PART 7 Manifests
- PART 8 Warehousing
- PART 9 Declaration of Goods
  - A - Dutiable Goods
  - B - Non-dutiable Goods
  - C - General Provisions
- PART 10 Drawback
- PART 11 Miscellaneous Provisions
- PART 12 Search, Seizure and Arrest
- PART 13 Provisions as to Trials and Proceedings

- PART 14 Offences and Penalties
- PART 15 General

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## 3. CUSTOMS CLEARANCE PROCEDURES

### 3.1 Normal Import Clearance Procedures

According to the introduction at the official website of “Trading across Borders Brunei”, five steps to import goods in Brunei Darussalam are as follows:

#### 3.1.1 Register with RCED

Any company who wishes to engage in imports or transit goods in Brunei Darussalam or appoint a Customs Agent (Forwarder) must register with the RCED.

Any individual who wishes to engage in imports or exports or transit goods in Brunei Darussalam is not compulsory to register with the RCED. However, the importer is advised to make use of the services of Customs Agents (Forwarders). The list of Customs Registered Forwarding Agents could be downloaded at [website](#). Customs Agents (Forwarders) must register with the RCED and go through the approval process in order to obtain a license to operate as a Customs Agents (Forwarder).

An applicant can submit a one-time registration form online through the [Brunei Darussalam National Single Window \(BDNSW\)](#). Alternatively, an applicant may also submit a completed [Registration Form](#) and [Declarant Form](#) via email: [coa.renew@customs.gov.bn](mailto:coa.renew@customs.gov.bn).

If an applicant wants to appoint a Customs Agent (Forwarder), the importer must also submit an [Authorization Form](#). An applicant who wants to submit their application by themselves may also submit the Forms directly to the Customer Services Counter of RCED Headquarters. Once the application is approved, the applicant has to register and will be given User ID and Password to access the BDNSW.

Registration is free of charge. The documents needed for registration are a copy of Business Certificate of Registration or Certificate of Incorporation, a copy of Business Owner's Smart Identity Card, and a copy of each Company Partnership's Smart Identity Card (for Company).

### 3.1.2 Apply Permit for Controlled Goods

All goods may be imported except for those prohibited goods under Section 31 of the Customs Order, 2006. If the goods to be imported are controlled goods or goods subject to restriction from the competent agency in Brunei Darussalam, the necessary license or permit before importation shall be required for restricted and controlled goods.

The details of how to apply permit for controlled goods can be obtained from Table 1. The importer may also check with his appointed Customs Agents (Forwarders) or check directly with the competent agency for their licensing requirements.

The importer may appoint a Customs Agents (Forwarders) to apply for permit on his behalf; or apply for permits for his own or on behalf of his clients. To do so, the importer will need to register as a declarant and apply for a BDNSW user ID. However, a manual application for permit is still required for some controlled or restricted goods.

Most licenses and permits are free of charge. The importer may wish to check with appointed Customs Agents (Forwarders) or to check directly with the respective responsible agency on the charges involved.

### 3.1.3 Online Import Declaration

Before arrival of imported goods, the importer is required to fill out a Customs Import Declaration. All Customs Import Declaration must be submitted via BDNSW.

The importer may appoint a Customs Agents (Forwarders) to submit Customs Import Declaration on his behalf; or submit Customs Import Declaration for his own or on behalf of his clients. To do so, the importer will need to register as a declarant and apply for a BDNSW user ID.

Customs Import Declarations are free of charge. If the importer is engaging a Customs Agents (Forwarders) for assistance in the declaration, they may charge the service fees. The importer may also check with his appointed Customs Agents (Forwarders) on the charges involved.

Customs Import Declaration will not be required for certain goods, unless they are dutiable, controlled and requested by Customs officers to do so. These goods include, but are not limited to:

- Personal or household effects accompanied by the passengers as hand-luggage or check-in luggage;
- Parcel Post;
- Documents;
- Goods imported by Courier Services registered under De Minimis Scheme (non-controlled goods which are not exceeding BND400 CIF);
- Locally obtained stores loaded for use on board the vessel and aircraft.

#### **3.1.4 Payment of Duty**

All goods imported into Brunei Darussalam are subject to the current Customs Import Duties Order and Excise Duties Order. If the goods are dutiable, the importer shall pay the Customs import duties either via Customs Payment Counter or via i-Banking (BIBD and Baiduri).

Duty rates will be applicable on the basis of the CIF (cost, insurance and freight) value, which includes other charges, costs and expenses accrued from the sale and delivery of the goods into Brunei Darussalam, whether or not shown on the invoice.

Determination of classification of imported goods whether dutiable or not are based on [Brunei Darussalam Tariff and Trade Classification 2017](#) derived from ASEAN Harmonized Tariff Nomenclature (AHTN 2017). The importer may search at the [website](#) using the description of the goods or Harmonized System (HS) code.

Duties can be paid at:

- Customs Payment Counter (at Headquarters or any Entry Points); or
- [Bill Payment Over Bank's Channel](#)

#### **3.1.5 Inspection and Clearance**

The importer or agent must report to Customs officers at the Checkpoint for inspection and clearance of

goods. All restricted and controlled goods imported into Brunei Darussalam will be subject to Customs inspection prior to the clearance of the goods. Under certain circumstances, all goods will be subject to Customs inspection.

For all shipment of goods by sea, air or land, the importer or agent is required to submit:

- The Approved Customs Import Declaration; and
- Supporting Documents such as the Invoice, Bill of Lading/Air Waybill and License/Permit from the competent agencies for any controlled goods (for manual permit).

These documents shall be submitted to the Customs officers at the point of entry for verification.

For importation via Post Office and importation of any personal goods or household effects accompanied by the passengers as hand-luggage or check-in luggage, the importer is not required to submit the Customs Import Declaration unless he/she is asked to do so on some occasions.

Some controlled goods require pre-scheduled inspection by the respective responsible agencies, except under certain circumstance, when the importer or agent is asked not to do so.

Example of goods requires pre-scheduled inspection is as follows:

- Firearms, explosives, fire crackers, and dangerous weapons;
- Timber and product thereof.

Generally, the importer or agent is required to retain the relevant supporting documents relating to the purchase, import, sale of the goods for a period of 7 years from:

- the date of the Customs Import Declaration has been approved; or
- from the date of purchase, import, sale or export (for goods imported via Post Office and for personal goods or household effects accompanied by the passengers as hand-luggage or check-in luggage).

These documents can be stored as physical hardcopies or softcopies or as images. The importer is required to produce these supporting documents to Royal Customs and Excise Department upon request.

## 3.2 Normal Export Clearance Procedures

According to the introduction at the official website of “Trading across Borders Brunei”, five steps to export goods in Brunei Darussalam are as follows:

### 3.2.1 Register with RCED

Any company who wishes to engage in exports or transit goods in Brunei Darussalam or appoint a Customs Agent (Forwarder) must register with the RCED.

Individual person who wishes to engage in imports or exports or transit goods in Brunei Darussalam is not compulsory to register with the RCED. However, the importer is advised to make use of the services of Customs Agents (Forwarders). The list of Customs Registered Forwarding Agents could be downloaded at the [website](#).

Customs Agents (Forwarders) must register with the RCED and go through the approval process in order to obtain a license to operate as a Customs Agents (Forwarder).

An applicant can submit a one-time registration form online through the [Brunei Darussalam National Single Window \(BDNSW\)](#). Alternatively, an applicant may also submit a completed [Registration Form](#) and [Declarant Form](#) via email [coa.renew@customs.gov.bn](mailto:coa.renew@customs.gov.bn).

If the applicant wants to appoint a Customs Agent (Forwarder), the importer must also submit an [Authorization Form](#).

An applicant who wants to submit their application by themselves may also submit the Forms directly to the Customer Services Counter of RCED Headquarters, Jalan Menteri Besar. Once the application is approved, the applicant has to register and will be given User ID and Password to access the BDNSW.

Registration is free of charge. The documents needed for registration are a copy of Business Certificate of Registration or Certificate of Incorporation, a copy of Business Owner’s Smart Identity Card, and a copy of each Company Partnership’s Smart Identity Card (for Company).

### 3.2.2 Apply Permit for Controlled Goods

All goods may be exported except for those prohibited goods under Section 31 of the Customs Order, 2006.

If the goods to be exported are controlled goods or goods subject to restriction from the competent agency in Brunei Darussalam, the necessary license or permit before importation shall be required for restricted and controlled goods.

The details of how to apply permit for controlled goods can be obtained from Table 1. The importer may also check with his appointed Customs Agents (Forwarders) or check directly with the competent agency for their licensing requirements.

The exporter may appoint a Customs Agents (Forwarders) to apply for permit on his behalf; or apply for permits for his own or on behalf of his clients. To do so, the exporter will need to register as a declarant and apply for a BDNSW user ID. However, a manual application for permit is still required for some controlled or restricted goods.

Most licenses and permits are free of charge. The exporter may check with appointed Customs Agents (Forwarders) or to check directly with the respective responsible agency on the charges involved.

### **3.2.3 Online Export Declaration**

Before departure of exported goods, the exporter is required to obtain a Customs Export Declaration. All Customs Export Declaration must be submitted via BDNSW.

The exporter may appoint a Customs Agents (Forwarders) to submit Customs Export Declaration on his behalf; or submit Customs Export Declaration for his own or on behalf of his clients. To do so, the exporter will need to register as a declarant and apply for a BDNSW user ID.

Customs Export Declarations are free of charge. If the exporter is engaging a Customs Agents (Forwarders) for assistance in the declaration, they may charge service fees. The exporter may check with his appointed Customs Agents (Forwarders) on the charges involved.

Certain goods, unless they are dutiable, controlled and requested by Customs officers to do so, do not require a Customs Export Declaration. These include, but are not limited to:

- Personal or household effects accompanied by the passengers as hand-luggage or check-in luggage;
- Parcel Post;

- Documents;
- Locally obtained stores loaded for use on board the vessel and aircraft.

### **3.2.4 Payment of Duty**

Since 1973, Brunei has not imposed any duties on the exported goods to promote local entrepreneurship.

### **3.2.5 Inspections and Clearance**

The exporter or agent must report to Customs officers at the Checkpoint for inspection and clearance of goods. All restricted and controlled goods exported from Brunei Darussalam will be subject to Customs inspection prior to the clearance of the goods. Under certain circumstances, all goods will be subject to Customs inspection.

For every exportation of goods by sea, air or land, the exporter or agent is required to submit the following documents to the Customs officers at the exit points for verification.

- The Approved Customs Export Declaration; and
- Supporting Documents such as License or Permit from responsible agency for controlled goods.

For exportation via Post Office and exportation of any personal goods or household effects accompanied by the passengers as hand-luggage or check-in luggage, the exporter is not required to submit the Customs Export Declaration unless he/she is asked to do so on some occasions.

Some controlled goods require pre-scheduled inspection by the respective responsible agencies, except under certain circumstance, when the exporter or agent is asked not to do so.

Example of goods requires pre-scheduled inspection is as follows:

- Firearms, explosives, fire crackers, and dangerous weapons;
- Timber and product thereof.

Generally, the exporter or agent is required to retain the relevant supporting documents relating to export of the goods for a period of 7 years from:

- the date of the Customs Export Declaration has been approved; or
- the date of purchase, import, sale or export (for goods imported via Post Office and for personal goods or household effects accompanied by the passengers as hand-luggage or check-in luggage).

These documents can be stored as physical hardcopies or softcopies or as images. The importer is required to produce these supporting documents to Royal Customs and Excise Department upon request.

### 3.3 Special Customs Clearance Procedures

#### 3.3.1 Temporary Importation

Goods for show and exhibition and for trade samples (no commercial value) can be imported duty-free, but a deposit is required for the samples with commercial value. If the samples leave the country within 3 months, such a deposit will be refunded.

Approval or verification documents requirements:

- In the case of goods for the exhibitions/show for the public, the approval documents from the Ministry of Home Affairs must first be obtained;
- In the case of goods for the show for the Government Agencies or private companies, the supporting letters from competent Government Agencies or private companies must first be obtained;
- The application for temporary importation together with verification documents from the competent agencies/companies should be sent to RCED.

The valid time limit allowed for temporary importation of goods is 3 months from the date of importation and it may be extended to not more than 6 months from the initial date of importation subject to the decision of Controller of Customs and Excise.

Based on Section 146 Customs Order 2006, if the goods for temporary importation could not be exported within the given period, fines will be imposed not exceeding B\$16,000 or the sentence of imprisonment for a term not exceeding 8 months.

For dutiable goods, security or deposits in the form of cash or bank cheque or banker's guarantee is

required equivalent to the amount of import duty payment of the temporary imported goods, in accordance with Section 90 Customs Order 2006. Security or deposits will be refunded at the re-exportation of the goods, subject to the terms and conditions. The duty will be imposed on the dutiable goods imported for the kind of projects based on rental and are not refundable.

### 3.3.2 Temporary Exportation

Goods permitted for temporary exportation are the goods for the show and exhibition, for trade samples, and for repairs and maintenance. The application for temporary exportation together with verification documents from the competent agencies/companies should be sent to RCED.

### 3.3.3 Customs Transit

All goods can be in transit except those controlled (restricted) and prohibited goods. Transit goods must be declared at the Customs Control Post upon its first arrival at the country and be supported by evidence of inward manifest that the recipient (consignee) is specified to transit goods and not for other purposes. Destination of goods shall be stated in the manifest and must be specifically reserved for overseas (non-domestic) use.

The inward manifest shall be required for the transit goods and clearly states the destination of goods in the manifest, and must specifically mark such transit goods for overseas (non-domestic) use. The original invoice and other related information / documents are also needed.

There is no any security or guarantee for goods in transit. However, transit charges must be paid based on those as follows:

*Table 2 Transit Charges Criteria*

Type of goods	Charge per Transportation Unit (BND)
Rice	10
Egg	10
Sugar	10
Vegetables	10
Fruits	10

Type of goods	Charge per Transportation Unit (BND)
Fish	10
Salt	10
Petroleum	50
LPG Gas	50

Source: BDNSW.

### 3.4 Declaration Documents

#### 3.4.1 Auto Approval Application

Three types of application will be processed with auto-approval via BDNSW system, such as:

- The permit application for importation of the controlled food by the Security Control and Food Quality, Ministry of Health;
- Permit application for the importation of goods regarding the info-telecommunication, which is controlled by Authority of Info-communication Technology Industry;
- Application for Customs Declaration for importation and exportation of dutiable goods and non-controlled good.

#### 3.4.2 Other Required Documents

Customs Declaration Form must be submitted in triplicate and attached together with the following supporting documents:

- Invoice or Purchase Bill;
- Freight and Insurance Payment documents;
- Delivery Order or Air Waybill;
- Packing List.

Other than the above documents, the importer should also provide other documents related to the

imported goods required by Customs consistent with the declaration of goods such as:

- Certificate of Origin;
- Certificate of Analysis;
- A.P (Approval Permit) of the RCED;
- Import license issued by the competent Government Departments/Agencies;
- Verification Certificate of a recognized foreign agency;
- Other relevant documents;
- Individual qualified to declare.

### **3.4.3 Certificate of Origin**

Ordinary Certificate of Origin is a type of document that can be used to satisfy your buyers that the products exported are wholly obtained or produced or manufactured in Brunei, depending on the Rules of Origin.

Preferential Certificate of Origin is a document in a designated format, which is used to claim preferential treatment at lower or no tariff on trade between the signatory parties of a trading arrangement in connection with a free trade area. It can also help improve the competitiveness of your exports under one of the available Schemes of Preference and Free Trade Agreements listed below:

- Form D (ASEAN FREE TRADE AREA);
- Form E (ASEAN– China Free Trade Area);
- Form AK (ASEAN-Korea Free Trade Area);
- Form AANZ (ASEAN-Australia-New Zealand Free Trade Area);
- Form AJ (ASEAN-Japan Free Trade Area);
- Trans-Pacific Strategic Economic Agreement (TPSEP);
- ASEAN-India Free Trade Area;
- Brunei-Japan Economic Partnership Agreement (Bilateral Agreement);
- Form A (Generalized System of Preferences (GSP)).

#### Procedures for Applying Certificate of Origin for Exporter:

- A new company/manufacturer must be registered, which can be made through an application form available from the Department of Trade Development, Ministry of Foreign Affairs and Trade;
- The manufacturer has to submit a complete application form and manufacturing cost statement of their products to the Department of the Trade Development for verification that such goods meet the necessary rules of origin. The submission shall be made in the respective formats for the application of a CO under the various schemes of Preference and Free Trade Agreements. Usually, the manufacturing cost statement will be valid only for 1 year but if there is any change, the exporter/manufacturer shall notify the Department of Trade Development of the new changes;
- An inspection of the exporter's/manufacturer's factory will be arranged to check that it has the machinery and manpower to manufacture the products and keeps proper books and records of its operations;
- Upon successful application, the exporter/manufacturer will receive a document of Company Registration with a reference number.

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## 4. AUTOMATED CLEARANCE SYSTEM

### 4.1 ASEAN Single Window (ASW)

The ASEAN Single Window (ASW) is a regional initiative that connects and integrates national Single Window of ASEAN member states. The ASW's objective is to expedite cargo clearance and promote ASEAN economic integration by enabling the electronic exchange of trade-related documents among ASEAN member states.

Following the completion of the ratification of the Protocol on the Legal Framework to Implement the ASW and the endorsement of the amended ATIGA OCP (The ASEAN Trade in Goods Agreement, Operational Certification Procedures) to allow acceptance of e-ATIGA Form D by all AMS in 2017, Live Operation of the ASW has begun since January 1, 2018 among five exchange-ready member states, namely

Indonesia, Malaysia, Singapore, Thailand and Vietnam, where the granting of preferential tariff duties under ATIGA will be based on the exchange of electronic Certificate of Origin (e-ATIGA Form D) received through the ASW gateway.

The remaining Member States are intensifying efforts to be on-board for live operation of the ASW. Brunei Darussalam, Cambodia and the Philippines had completed the development of NSW and begun the End-to-End Test; and are now devoting their resources to resolve the outstanding technical problems prior exchange of live data of the e-ATIGA Form D. BCP are expected to join the ASW live operation by 2019. Meanwhile, Laos PDR and Myanmar exert their effort in developing their NSW to join the ASW system.

Member States are working to expand the ASW to support the exchange of export declaration information through the ASEAN Customs Declaration Document to support their risk management and the exchange of electronic Sanitary and Phytosanitary (e-SPS) Certificates. In the future, the ASW may also be used to exchange other documents such as cargo documentation, shipping manifests and other port or transport documents.

## **4.2 E-Customs and BDNSW**

The Brunei AITI (Authority for Info-communications Technology Industry of Brunei Darussalam, also known as E-Government National Centre) is responsible for promoting e-business opportunities under both the country's 2000 Electronic Transactions Order and its E-Business and Market Creation Unit.

In 2000, Brunei enacted a commercial code for electronic transactions. The Electronic Transactions Act (Chapter 196) is based on the United Nations Commission on International Trade Law (UNCITRAL), Model Law on Electronic Commerce and the Singapore Electronic Transactions Act and draws heavily from the U.S. Uniform Electronic Transactions Act and aims to encourage business and consumer confidence in e-commerce and provide legal protection for both the buyer and seller.

The Government of Brunei Darussalam has committed to ASEAN to develop and implement its National Single Window for the establishment of the ASEAN Single Window. The RCED has commissioned the delivery of e-Customs as the foundation platform of BDNSW to transform the current business functions to an integrated electronic process. The BDNSW involved various government agencies in controlling import and export.

BDNSW is a common online platform for electronic exchange and submission of trade information and

documents by the business firms and the individuals to the controlling agencies. Multiple trade application is consolidated into the single application and will be submitted electronically to multiple agencies for approval and decision-making automatically.

Please visit the [website](#) for more information on BDNSW.

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## 5. CUSTOMS AGENTS (FORWARDERS)

Customs Agents (Forwarders) must register with the RCED and undergo approval process in order to be given a license to operate as a Customs Agents (Forwarder). Importers and exporters can see the list of registered Customs agents and their performance on the Customs official website.

### 5.1 Requirements for Registration

No person shall act as an agent for transacting business related to the import or export of any goods or luggage, including Customs transit operations, or the entry or clearance of any vessel, except with the permission of a senior Customs officer.

When any individual applies to a senior officer Customs for permission to act as an agent, such officer may require the applicant to produce a written authorization from the person/company on whose behalf he is to act and without the production of such authorization, such officer may refuse such permission.

Before granting such permission, a senior Customs officer may require the agent to provide a security as he may consider adequate for the faithful and incorrupt conduct of the agent and of his clerks acting for him both as regards the Customs and his employers.

### 5.2 Offense and Penalty

A senior Customs officer may suspend or cancel any permission granted if the agent commits any breach of related Order or if he fails to comply with any direction given by an officer Customs with regard to the

business transacted by the agent.

Any individual aggrieved by the decision of a senior Customs officer, other than the Controller, in respect of any of the following matters,

- refusal to grant the permission;
- the nature or the amount of security required from the agent;
- suspension or cancellation of the permission,

may, within one month from the date on which the decision is notified to him, appeal to the Controller whose decision shall be final.

Any individual who acts as agent when permission has not been granted to him or while such permission is cancelled or suspended, or who makes or causes to be made a declaration of any goods without being duly authorized for such a purpose by the proprietor or consignee of such goods, shall be guilty of an offence and subject to a fine not exceeding \$ 16,000.

The clerk or servant of any individual who deposits with a senior officer of Customs a signed authorization authorizing him to do so may transact business generally at any Customs office on behalf of such person.

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## 6. CUSTOMS SECURITY

According to the Customs Act of Brunei, the Controller of Customs may, at his discretion, either generally or in a particular case or in respect of a particular area, require security to be given by any person moving dutiable goods within Brunei and where any such security has been required to be given no person shall move such goods unless such security has been given. Such security shall not exceed the amount of duty leviable on such goods.

According to international Customs practice, for dutiable commodities, the security or deposits in the form

of cash or bank cheque or banker's guarantee is required in accordance with the amount of import duty of the temporary imported commodities. The security or deposits will be refunded if the commodities have been re-exported, in compliance with all terms and conditions.

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## 7. PROHIBITION AND RESTRICTION

### 7.1 Prohibition for Exportation

- Prawn refuse and copra cake;
- Stone and Gravel.

### 7.2 Prohibition for Importation

- Opium and Chandu;
- Java Sparrow;
- The "SALK" Polio Vaccine;
- Prohibited publication by any order made under the Sedition Enactment or the Undesirable Publication Enactment;
- Fire crackers;
- Vaccines of Chinese Taipei origin;
- Cigarettes without health warning written on their package;
- Pencil-like syringe;
- Pigs bred in or exported from Thailand;
- Eggs for hatching purposes and fresh eggs unless such eggs are clearly stamped with non-erasable ink or such like substance with the word 'IMPORTED' on the shell;
- Fabrics of tissues consisting of any fabric whatsoever and any other article whatsoever which fabric

or tissue or other articles bear the imprint of any currency notes, bank note or coin which are or have at any time been issued or currency in any country whatsoever.

### 7.3 Restriction for Exportation

- Derris Species (Tuba);
- Elaesis Quineesis (Oil Palm);
- Rice Paddy and the products thereof;
- Timber Class 1A,1B,1C, Nibong Rattans;
- Alcoholic liquors;
- Sugar;
- Premium Gasoline, Regular Gasoline, Diesoline and Kerosene;
- Article of antique or historical nature made or discovered in Brunei Darussalam;
- Fireworks, Smoking Pipe, Tobacco, including tobacco product (as defined in the Tobacco Order,2005) and Vaporizers (vape) including e-liquid;
- Used Tires;
- Hydrofluorocarbons, whether as pure substance or in mixtures as specified in Customs (Prohibition and Restriction on Imports and Exports) (Amendment) Order, 2005.

In addition to controlling oil and gas exports, the export licenses are required for a small number of items such as animals, plants, timber, rice, sugar, salt, cultural relics, and arms.

### 7.4 Restriction for Importation

- Any living plants or planting materials (Except from Sarawak and North Borneo);
- Live cattle and birds (Except from Sarawak and North Borneo);
- Pin table, fruits machines, slot machines and any other tables or machines of a like nature whether involving an element of chance or not;
- Persian glue;
- Poisons and deleterious drugs;

- Rice paddy and the products thereof;
- Separated skimmed or filled milk;
- Sugar, salt and converted timber;
- Vehicles of the following categories which are three years old or more: motor cars, motor cycles, motor lorries, omnibuses, tractors and trailers;
- Alcoholics liquors;
- Any radioactive materials;
- Beef, meat (frozen, chilled or fresh), bones, hide, skin hooves, horn offal or any other part of the animal, or any other thereof, unless it has been slaughtered in an abattoir and also approved in proper letter authorization from the Minister of Religious Affairs, Brunei Darussalam;
- Poultry, meat (frozen, chilled or fresh), bones, skin or any other part of the animal, or any portion thereof, unless it has been slaughtered in an abattoir and also approved in proper letter authorization from the Minister of Religious Affairs, Brunei Darussalam;
- Fireworks, Smoking Pipe, Tobacco, including tobacco product (as defined in the Tobacco Order,2005) and Vaporizers(vape) including e-liquid;
- Used Tires;
- Rhinoceros horn and all other parts of or products derived from the carcass of a rhinoceros;
- Hydrofluorocarbons, whether as pure substance or in mixtures as specified in Customs (Prohibition and Restriction on Imports and Exports) (Amendment) Order, 2005.

In addition to the import licenses issued by the relevant departments, the relevant certificates of origin and inspection certificates shall also be required for the importation of motor vehicles, agricultural products, pharmaceuticals and pharmaceutical-related products. There are temporary bans on certain commodities, such as cement and zinc tile. The fireworks and firecrackers are allowed to be imported by the designated operators since 2008. However, imports of alcoholic beverages are strictly restricted.

## 7.5 Commodity Inspection and Quarantine Requirements

As regard to the import and export commodity inspection and quarantine, the Brunei Public Health Regulations stipulate that all foods, whether imported or local, must be safe and reliable, of good quality, in accordance with Islamic halal food requirements, and in particular for strict halal inspection of meat imports.

For certain animal and plant products, such as beef and poultry, a health and quarantine certificate are required. Imported edible oils should not have odors and contain no mineral oil. Animal fats should be from healthy animals that are slaughtered and suitable for human consumption. Animal fats and edible oils must be in a single form. Two or more fats and edible oils cannot be used. There should be no “unsaturated” words or similar words on the packaging labels for fats and edible oils. Non-edible animal fats must be certified without any infection. Imported live animals must have a veterinary certificate.

Soy milk should be a liquid food extracted from high-quality soybeans, which may include sugar, harmless plant matter, and must not contain other substances other than the allowed stabilizers, oxidants and chemical preservatives, and its protein content is not less than 2% weight.

In addition, the regulations also apply to food additives, packaging and meat products, fish products, condiments, animal fats and oils, dairy products, ice cream, sugar and dried fruits, fruits, tea, coffee, non-alcoholic beverages, spices, food, etc. The corresponding technical standards are specified. There are clear regulations on the date of production and expiry, maximum residue of food containers and pesticides, stabilizers, oxidants, and preservatives.

## **7.6 License and Permit**

License or Permit is a verification or approval given/issued by the relevant Government Department/ Agency responsible for the commodities before importation or exportation.

Written application or completed form subject to the requirements of the relevant Department/Agency must be submitted to the Government/Agency responsible for such prohibited and controlled commodities.

There are some prohibited or controlled commodities that require A.P (Approval Permit) issued by the RCED other than the license/permit issued by the relevant Government Agency before their importation or exportation.

Table 3 Types of Commodities and issuing Government Department/Agency

Types of Goods	List of Items	Responsible Agency	Hotlines / Email	Document Requirement	Application Via	Steps / Processes	Additional Info
Publication Materials/ Prints, Films, CD, LD, VCD, DVD, Cassette, Recital of Al-Quran, hadith, Religious books, Talisman commodities (such as textiles/ clothing etc.), bearing dubious chop/ photo	<a href="#">HS Codes</a>	Royal Brunei Police Force	+673-2459500 info@police.gov.bn	Invoice	<a href="#">BDNSW</a>	<a href="#">Steps</a>	
		Islamic Dakwah Centre	+673-2382525 info@pusat-dakwah.gov.bn				
		Internal Security Department	+673-2223225 info@internal-security.gov.bn				
Fresh, Cold, and Frozen Meat (Halal)	<a href="#">HS Codes</a>	Agriculture and Agri-food Department	+673-2380144 info@agriculture.gov.bn	<a href="#">List of Documents</a>	<a href="#">BDNSW</a>	<a href="#">Steps</a>	
		Food Safety and Quality Unit, Ministry of Health	+673-2381640 info@moh.gov.bn				
		Halal Import Permit Issuing Board	+673-2382525 info@religious-affairs.gov.bn				
		Royal Customs and Excise Department	+673-2382333 info@customs.gov.bn				

Types of Goods	List of Items	Responsible Agency	Hotlines / Email	Document Requirement	Application Via	Steps / Processes	Additional Info
Firearms, Explosives, Fire Crackers, Dangerous Weapons, and Scrap metals	<a href="#">HS Codes</a>	Royal Brunei Police Force	+673-2459500 info@police.gov.bn	Documents will be uploaded soon. Please refer to Agency.	<a href="#">e-Customs</a>	<a href="#">Steps</a>	Manual Application
		Royal Customs and Excise Department	+673-2382333 info@customs.gov.bn	<a href="#">List of Documents</a>			-
Rice/Sugar/Salt	<a href="#">HS Codes</a>	Supply and State Store Department	+673-2423151 info@itss.gov.bn	<a href="#">List of Documents</a>	<a href="#">BDNSW</a>	<a href="#">Steps</a>	-
		Royal Customs and Excise Department	+673-2382333 info@customs.gov.bn				-
Vehicles such as Cars, Motorcycles, Mini Buses, Pickups, Trucks and Trailers.	<a href="#">HS Codes</a>	Land Transport Department	+673-2451979 info@land-transport.gov.bn	<a href="#">List of Documents</a>	<a href="#">e-Customs</a>	<a href="#">Steps</a>	-
		Royal Customs and Excise Department	+673-2382333 info@customs.gov.bn				-
Alcoholic Beverages	<a href="#">HS Codes</a>	Ministry of Foreign Affairs and Trade (Protocol & Consular Department)	+673-2261177 dprocon@mfa.gov.bn	Documents will be uploaded soon. Please refer to Agency	Manual Application to Agency	Steps will be uploaded soon. Please refer to Agency.	Manual Application
		Prime Minister's Office	+673-2224645 info@jpm.gov.bn				

Types of Goods	List of Items	Responsible Agency	Hotlines / Email	Document Requirement	Application Via	Steps / Processes	Additional Info
Alcoholic Beverages	<a href="#">HS Codes</a>	Royal Customs and Excise Department	+673-2382333 info@customs.gov.bn	<a href="#">List of Documents</a>	e-Customs	<a href="#">Steps</a>	-
Radio Transmitter and Receiver; Communications Equipment such as Telephone, Fax machines, Walkie-Talkie etc; Broadcasting Equipments such as Parabola, Decoder, etc.	<a href="#">HS Codes</a>	Info-Communication Technology Industry (AITI)	+673-2333780 aiti@brunet.bn	<a href="#">List of Documents</a>	<a href="#">BDNSW</a>	<a href="#">Steps</a>	-
Plants, Crops, Live Animals, Vegetables, Fruits, Eggs, Soil	<a href="#">HS Codes</a>	Agriculture and Agri-food Department	+673-2380144 info@agriculture.gov.bn	<a href="#">List of Documents</a>	Manual Application to Agency	<a href="#">Steps</a>	Manual Application
Fishes, prawns, Shells, Water Organisms and Fishing Equipment etc	<a href="#">HS Codes</a>	Fisheries Department	+673-2382068 info@fisheries.gov.bn	Documents will be uploaded soon. Please refer to Agency.	Manual Application to Agency	<a href="#">Steps</a>	Manual Application
Timber and products thereof	<a href="#">HS Codes</a>	Forestry Department	+673-2381013 info@forestry.gov.bn	<a href="#">List of Documents</a>	Manual Application to Agency	<a href="#">Steps</a>	Manual Application

Types of Goods	List of Items	Responsible Agency	Hotlines / Email	Document Requirement	Application Via	Steps / Processes	Additional Info
Medicines, Herbal, Cosmetics	<a href="#">HS Codes</a>	Ministry of Health (Refer to the Pharmaceutical Services Department)	+673-2381640 info@moh.gov.bn	<a href="#">List of Documents</a>	<a href="#">BDNSW</a>	<a href="#">Steps</a>	-
Health Foods, Soft Drinks and Snacks	<a href="#">HS Codes</a>	Ministry of Health (Refer to the Food Safety and Quality Control Unit)	+673-2331100 fsqc@moh.gov.bn	<a href="#">List of Documents</a>	<a href="#">BDNSW</a>	<a href="#">Steps</a>	-
Tobacco Products	<a href="#">HS Codes</a>	Ministry of Health (Refer to the Tobacco Control Unit)	+673-2381640 prohealth@moh.gov.bn	Documents will be uploaded soon. Please refer to Agency.	Manual Application to Agency	Steps will be uploaded soon. Please refer to Agency.	Manual Application
		Royal Customs and Excise Department	+673-2382333 info@customs.gov.bn	<a href="#">List of Documents</a>	<a href="#">e-Customs</a>	<a href="#">Steps</a>	-
Poisons, chemicals and radioactive materials.	<a href="#">HS Codes</a>	Prime Minister's Office (Refer to Radiation Safety and Quality Unit)	+673-2384488 energy@ipm.gov.bn	<a href="#">List of Documents</a>	<a href="#">BDNSW</a>	<a href="#">Steps</a>	-

Types of Goods	List of Items	Responsible Agency	Hotlines / Email	Document Requirement	Application Via	Steps / Processes	Additional Info
Mineral water	<a href="#">HS Codes</a>	Ministry of Health (Refer to the Food Safety and Quality Control Unit)	+673-2331100 fsqc@moh.gov.bn	Documents will be uploaded soon. Please refer to Agency.	<a href="#">BDNSW</a>	<a href="#">Steps</a>	-
Badges, banners, Souvenirs comprising of Government Flags and emblems, Royals Regalia, Government flags and crests	-	Royal Custom and Tradition Department	+673-2243971 info@adat-istiadat.gov.bn	Documents will be uploaded soon. Please refer to Agency.	Manual Application to Agency	Steps will be uploaded soon. Please refer to Agency.	-
Historical Antiques made or found in Brunei	<a href="#">HS Codes</a>	Museums Department	+673-2244545 info@museums.gov.bn	Documents will be uploaded soon. Please refer to Agency.	Manual Application to Agency	Steps will be uploaded soon. Please refer to Agency.	-
Gases that are characterized as Ozone Depleting Substances (ODS), under the purview of the Montreal Protocol	<a href="#">HS Codes</a>	Environment, Parks and Recreation Department (JASTRE)	+673-2241262 jastre.brunei@env.gov.bn	List of Documents	BDNSW	Steps	-

Types of Goods	List of Items	Responsible Agency	Hotlines / Email	Document Requirement	Application Via	Steps / Processes	Additional Info
Gases that are characterized as Ozone Depleting Substances (ODS), under the purview of the Montreal Protocol	<a href="#">HS Codes</a>	Ministry of Health (Refer to Pharmaceutical Services Department)	+673-2381640 info@moh.gov.bn	<a href="#">List of Documents</a>	<a href="#">BDNSW</a>	<a href="#">Steps</a>	-

Source: *BDNSW website.*

## 8. CUSTOMS DUTIES

### 8.1 Summary of Import Tariffs

Table 4 Summary of Brunei Import Tariff

Summary	Total			Ag			Non-Ag		
	0.2			0.0			0.3		
Frequency distribution Tariff lines (in %)	free	0~5	5~10	10~15	15~25	25~50	50~100	> 100	NAV
Ag MFN applied	98.9	1.0	0.1	0	0	0.0	0	0	1.1
Non-ag MFN applied	95.3	4.0	0.7	0	0	0	0	0.0	0.1
Product groups	MFN applied duties								
	AVG			Duty-free in %			Max		
Animal products	0.0			100.0			0		
Dairy products	0.0			100.0			0		
Fruit, vegetables, plants	0.0			100.0			0		
Coffee, tea	0.6			66.7			6		
Cereals & preparations	0.1			99.7			50		
Oilseeds, fats & oils	0.0			100.0			0		
Sugars and confectionery	0.0			100.0			0		
Beverages & tobacco	0.0			100.0			0		
Cotton	0.0			100.0			0		
Other agricultural products	0.0			100.0			0		
Fish & fish products	0.0			100.0			0		
Minerals & metals	0.0			99.6			3		
Petroleum	0.4			81.1			5		
Chemicals	0.1			99.3			131		

Wood, paper, etc.	1.9	62.8	5
Textiles	0.5	91.4	10
Clothing	0.0	100.0	0
Leather, footwear, etc.	0.7	85.3	5
Non-electrical machinery	0.0	100.0	0
Electrical machinery	0.0	100.0	0
Transport equipment	0.0	100.0	0
Manufactures, n.e.s.	0.6	92.5	10

Source: WTO Statistics.

## 8.2 Cross-Border Duties

Dutiable goods imported to Brunei are subject to Customs Import Duties and Excise Duties. ASEAN Trade in Goods Agreement (ATIGA) could be given to the importer based on qualification granted by Ministry of Foreign Affairs and Trade. Most import duties are imposed based on Ad Valorem rate and only some taxes are based on specific rate. Ad Valorem is the percentage, for example, 20% of the price of good, while specific rate is calculated by the amount of weight or quantity such as \$60 per kg or \$220 per ton.

Since 1973 Brunei has not imposed duties on exported goods to promote local entrepreneurship.

Every person arriving in Brunei shall declare all dutiable goods in his possession, either on his person or in any baggage or in any vehicles to the proper officer of Customs for examination. If he/she fails to do so, such goods shall be deemed to be un-customed goods and the sentence of imprisonment or fine can be imposed.

According to Customs Import Duties Order 2007 where the total amount of import duty:

- Is less than \$1, no import duty shall be charged;
- Exceeds \$1 and includes a fraction of \$1, the fraction shall be treated as a complete dollar;
- The tax formula for the above categories of taxes:

Tax base = CIF price + Import duty + Excise Tax (if any) + other taxes and fees (if any)

Importer of Dutiable Goods shall:

- Declare his/her goods;
- Produce documents such as invoice, bill and etc.;
- Produce customs dutiable import declaration form no 5/C-16. (If necessary)

Table 5 Customs Import Duty and Excise Duty

DUTIABLE GOODS	RATE OF IMPORT DUTY	RATE OF EXCISE DUTY
Coffee (not roasted)	11 cents/kg	
Coffee(roasted)	22 cents/kg	
Tea	22 cents/kg	
Instant coffee/ tea (Extract, essences and concentrates)/ coffee mate	NIL	5%
Grease	11 cents/kg	
Lubricants	44 cents/kg	
Carpet and another textile floor covering	NIL	5%
Mat and matting (Rubber)	NIL	
Wood and articles of wood	5%	
Footware, slippers and the like	5%	
Headgear and parts thereof	NIL	10%
Cosmetic, perfumes, toilet waters, other preparations for use on the hair	NIL	5%
Soap, hair shampoo and other washing preparations	5%	
Electrical goods	NIL	5%
Auto parts	NIL	5%
Articles of apparel and clothing accessories, of leather OR of composition leather	NIL	5%
Jewelry including imitation jewelry	NIL	15%
Clocks and watches and parts thereof	NIL	105%
Musical instruments	10%	

### 8.3 Exemption

The Minister of MOFE may exempt any person from the payment of the whole or any part of the Customs duties or any other prescribed fees or charges; or direct the refund to any person of the whole or part of the Customs duties or any other prescribed fees or charges which have been paid by such person on any goods, and in granting such exemption or directing such a refund, the Minister may impose such conditions as he may think necessary.

Any goods in respect of which an exemption from the payment of Customs duties has been granted shall be deemed to be dutiable goods until the conditions if any, subject to which the exemption from Customs duty is granted, are fulfilled and shall be liable for all other charges excluding Customs duties, to which they would be subject if no such exemption has been granted.

### 8.4 Rebate and Compensation

When any goods upon which import duty has been paid, are re-exported, nine-tenths of the duties calculated may be repaid as drawback if:

- the goods are identified to the satisfaction of a senior Customs officer;
- the drawback claimed in respect of any one consignment of re-exported goods is not less than \$500;
- the goods are re-exported within one year from the date upon which import duty was paid or within such an extended period as may be approved by the Controller;
- the payment of drawback upon goods of a class to which the goods to be re-exported belong has not been prohibited by regulations;
- a written notice has been given to a senior Customs officer at or before the time of re-exportation that a claim for drawback will be made, and such claim is made and established to the satisfaction of a senior Customs officer within 3 months of the date of re-exportation.

### 8.5 Drawback on Destroyed Goods

The Controller may allow the drawback of import duty on goods which sustain deterioration or damage and are destroyed in the presence of a senior Customs officer.

## 8.6 Relief on Temporarily Imported Goods

The Controller may permit the goods to be delivered on importation without payment of duty subject to the payment of a deposit equivalent to not less than the amount of duty which will be payable if the goods are imported for home use or to a security being given to the satisfaction of the Controller for the payment of such duty, and such deposit shall be refunded or such security discharged if the goods are re-exported within 3 months from the date of importation or within further period as the Controller may allow.

## 8.7 Drawback on Imported Goods for Manufacturing

Where any goods are prescribed to be the goods in respect of which drawback may be allowed at re-exportation as part or ingredient of any goods manufactured in Brunei and such prescribed goods are so re-exported by the manufacturer as part or ingredient of any goods manufactured in Brunei, if import duty has been paid on such prescribed goods, the Controller may, at the re-exportation, allow the manufacturer a drawback of the duty.

Please visit the [website](#) for more details.

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## 9. TARIFF CLASSIFICATION

Determination of classification of imported goods whether dutiable or not are based on [Brunei Darussalam Tariff and Trade Classification 2017](#) derived from ASEAN Harmonized Tariff Nomenclature (AHTN 2017).

The ASEAN Harmonized Tariff Nomenclature (AHTN) was jointly developed by the ASEAN Member States to facilitate trade within ASEAN by having a common commodity classification system or nomenclature. All ASEAN Member States harmonize the HS codes in AHTN at the 8-digit level for use.

Brunei Darussalam added 10-digit level for national use only. The new commodity coding system not only provides a major step forward in trade facilitation among ASEAN Member States through consistent, predictable and uniform interpretation in the classification of goods but also marks an important milestone

in ASEAN regional economic cooperation.

Compared with HS developed by WCO, the Brunei Darussalam Tariff and Trade Classification 2017 adds the 98th chapter Postal packages and special transactions not classified according to the types of commodity.

Please visit the [website](#) using the description of the goods or Harmonized System (HS) code.

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## 10. CUSTOMS VALUATION

Brunei Darussalam has been a member of GATT since December 9, 1993. Brunei implemented the WTO Valuation Agreement in September, 2001 after the five-year delay permitted by the WTO.

The Customs Order, 2001 came into force on September 1, 2001 and inserted a new definition of Customs value into Customs Act and provided for the keeping of business record. The auditing and examination of records, conditions for entry into buildings, retention of documents obtained during a search and seized documents are subject to the court order and proceedings. At the same time the Customs Rules for Valuation of Imported Goods 2001 took effective. These Rules applied the WTO Valuation Agreement as the method for valuation of imported goods (on the CIF basis).

The imports are valued at CIF, that is, the value of goods at the frontier of the exporting country plus the cost of insurance and freight and any other charges when sold for export to Brunei Darussalam. Custom duties are not included in the value of the imports.

The exports are valued at FOB, that is, the value of goods to be purchased abroad up to the point where the goods are deposited on board the outgoing vessel, aircraft and/or vehicle. Goods on consignment are valued at the current import price for imports and the current export price for exports.

Customs Valuation in Brunei Darussalam is based on the provisions under the WTO Agreement on Customs Valuation for determination of valuation on imported goods where Customs duty is charged.

The WTO agreement on Customs Valuation aims for a fair, uniform and neutral system for the valuation of goods for Customs purposes. These methods of Customs valuation are to be applied in the prescribed hierarchical order.

### 10.1 First Method - Transaction Value

The first method is the principled method that determines the dutiable value of goods. Most dutiable values are determined by the first method that determines the dutiable value of imported goods based on their transaction price.

### 10.2 Second Method - Similar Goods

In case where the first method cannot be applied, the second method is used to determine the dutiable value of goods based on the transaction price of goods of the same kind and quality that has previously been recognized as a dutiable value and satisfies certain requirements.

### 10.3 Third Method - Identical Goods

In case where neither of the first and second methods can be applied, the third method is used to determine the dutiable value of goods based on the transaction price of similar goods that has previously been deemed as a dutiable value and satisfies certain requirements.

### 10.4 Forth Method - Deductive Value

In case where none of the first, second and third methods can be applied, the domestic sale price after import clearance minus certain costs, etc. is determined to be the dutiable value of the relevant goods.

### 10.5 Fifth Method - Computed Value

In case where none of the first to fourth methods can be applied, the dutiable value of imported goods is determined based on the price obtained by calculating the costs incurred in the production of such goods based on the cost statement of the product presented by the manufacturer of the exporting country.

### 10.6 Flexible and Reasonable Method

In case where none of the first to fifth methods can be applied, the dutiable value of goods is determined

based on the reasonable standards which conform to the principles of the first to fifth methods.

The applicant shall provide detailed information about the goods. This includes quotations and any other relevant documents which can be used to explain the details of goods and their pricing.

Goods are recorded at their market value. Values are reported in millions of Brunei dollars. Data reported in foreign currencies are converted into local currency at prevailing market exchange rate on the date of permitted clearance.

Please visit the [website](#) for more details.

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## 11. RULES OF ORIGIN

In determining whether a product is originating in Brunei, an Ordinary Certificate of Origin or a Preferential Certificate of Origin can be issued if the exporter/manufacturer meets the relevant criteria of being locally produced / manufactured under the various Schemes of Preference and Free Trade Agreement.

To qualify that a product is originating in Brunei Darussalam, it must be either:

- Wholly Obtained in Brunei Darussalam, i.e.,
- Wholly produced or obtained in Brunei Darussalam without any imported materials or,
- Manufactured in Brunei Darussalam from materials and parts, which are either wholly or partially imported, according to the appropriate rules of origin and must not be made through a simple or minimal operation as stipulated in the relevant Free Trade Agreement.

Depending on the Free Trade Agreement or preferential scheme, for the manufactured product, the rules of origin is either one or a combination of the following criteria:

## 11.1 Value-Added or Percentage Criterion

Under the value-added criterion, the origin is determined by the percentage of either the imported materials or the local materials plus the direct processing cost in relation to the ex-factory cost or ex-factory price of the product.

## 11.2 Process Criterion

For this criterion, the imported materials must have undergone substantial transformation and this will result in the final product qualifying to be classified under a different tariff classification, as distinct from those classified for the imported materials. There is, however, an exception to this rule.

The following guidelines provide a quick overview of the various Rules of Origin that exporters/manufacturers in Brunei Darussalam need to meet in order to qualify for an Ordinary CO and a Preferential CO under various schemes of preferences and Free Trade Agreements.

Ordinary CO (TRD 1) and Other Schemes (e.g. GSP)

Ordinary CO = Product must be wholly obtained or manufactured in Brunei with at least 25% of local content based on the ex-factory price of the finished product,

GSP = each preference-giving country has its own percentage rule, for example:

- Australia = 50 %
- Canada = 60 % local content,
- Japan/ EU = 50 % local content

Please visit the [website](#) and [website](#) for more details.

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## 12. CUSTOMS ADVANCE RULINGS

In accordance with the Regulation of Customs Ruling 2013, RCED issued advance rulings for the following affairs:

- The classification of goods;
- The application of a provision of the Customs Rules for Valuation of Imported Goods 2001.

Advance ruling will only be given upon the request submitted before the arrival of goods and not to be given to any request for goods arrived while waiting for Customs clearance.

Any person concerned at the importation of any goods may apply to Controller of Customs for advance ruling.

Where any goods are subject to any Free Trade Agreement to which Brunei is a party, and that FTA identifies the person who may apply for a ruling related to those goods, only that person may apply for a ruling related to those goods.

### 12.1 On Tariff and Classification

Advance rulings on tariff and classification are formal advices provided in writing by the RCED for any person concerned on the importation of any goods.

The applicant shall provide detailed information about the goods. This includes pamphlets, brochures, goods specification and any other relevant documents which can be used to explain the details of goods.

The issuance of advance ruling for tariff and classification is 9 days each, but not later than 30 days under normal circumstances. However, it can take longer on some occasions. The advance ruling is valid for 3 years under normal circumstances. However, it is invalid if the imported goods are not the same with the request being submitted and been given advance ruling and if there are amendments to the tariff structures.

## 12.2 On Customs Valuation

Advance rulings on Customs valuation will only be given on specific matters related to the appropriate method on Customs valuation, and will be given to the applicant upon the request submitted before the arrival of goods and not to be given to any request for goods arrived while waiting for Customs clearance. The issuance of advance ruling for Customs valuation is 6 days, but not later than 30 days under normal circumstances. However, it can take longer on some occasions.

Under normal circumstances, the validity of advance ruling is 3 years. However, it is invalid if the imported goods are not the same with the request being submitted and been given advance ruling.

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## 13. FREE TRADE AGREEMENTS

Brunei Darussalam has actively engaged in FTAs through its membership in ASEAN as well as on a bilateral basis. To date, Brunei Darussalam, through ASEAN, has concluded FTAs with Australia & New Zealand, China, India, Japan and South Korea.

Bilaterally, Brunei Darussalam has concluded an Economic Partnership Agreement with Japan (the Brunei-Japan Economic Partnership Agreement or “BJEPA”) and a plurilateral agreement with Chile, New Zealand and Singapore (the Trans Pacific Strategic Economic Partnership or more commonly referred to as the “P4”).

As the signatories to the Trans-Pacific Strategic Economic Partnership Agreement (P4), Brunei is involved in the negotiations for the Trans-Pacific Partnership (TPP) Agreement, together with Australia, Canada, Japan, Malaysia, Mexico, Peru, the United States of America and Vietnam.

Please visit the [website](#) for more details.

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## 14. FREE TRADE ZONE

Subject to the provisions of any other written laws, the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by the notifications published in the Gazette, declare any area in Brunei Darussalam to be a free trade zone and each notification shall define the limits of the free trade zone. Goods brought into a free trade zone for any purpose permitted shall be exempted from Customs duty and excise duty. Goods in a free trade zone may:

- be removed from the free trade zone, destroyed or sent into a Customs area or into another free trade zone in the original package or otherwise;
- be stored, sold, exhibited, unpacked, repacked, assembled, distributed, sorted, graded, cleaned, mixed or otherwise manipulated, or be manufactured;
- when any dutiable goods at entry into a Customs area, the goods shall be subject to the provisions of the Customs Order.

The goods which have been brought into a free trade zone from a Customs area shall be deemed to be exported for the purpose of drawback.

No manipulation or manufacture shall be carried out in a free trade zone without the approval of the Minister and the approval shall be published in the Gazette.

Any person in violation of the previous legal requirements is guilty of an offence and liable for a fine of not less than twenty times of the Customs duty or \$100,000, whichever is the greater amount, and for any subsequent offence leading to imprisonment for a term not exceeding 2 years or both: Provided that when the value of the goods cannot be ascertained, the penalty may amount to a fine not exceeding \$100,000.

Brunei Darussalam authorities operate one Free Trade Zone in Brunei - the Pulau Muara Besar Export Zone, which provides businesses with advantages including:

- subsidized warehousing space;
- subsidized industrial space;

- deep seawater port and,
- various tax incentives, including exemption from corporate tax for up to 15 years.

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## 15. CUSTOMS POST-CLEARANCE AUDIT

An officer of Customs may at all reasonable times enter any premises or places where business records are kept and conduct the auditing or examination of those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored.

For these purposes, the Customs officer shall have full and free access to all lands, buildings and places and to all books, records and documents, whether in the custody or under the control of the importer or exporter, or any other persons, for the purpose of inspecting any accounting books, records and documents and any property, process or matter on condition that he considers necessary. The Customs officer may also, free of charge, make copies of or of parts of any such books, records or documents. But the Customs officer shall not enter any dwelling house except with the consent of a resident or the owner thereof or pursuant to a warrant.

Every importer and exporter must keep or cause to be kept in Brunei Darussalam business records for a period of at least 7 years. The following records are required to be kept:

- (a) shipping, importation, exportation and transportation documentation;
- (b) ordering and purchase documentation;
- (c) manufacturing, stock and resale documentation;
- (d) banking and accounting information;
- (e) charts and codes of accounts, accounting instruction manuals and system and programmed documentation that describes the accounting system used by the importer or agent thereof;

- (f) papers, books, registers, discs, films, tapes, sound tracks and other devices or things in or on which information contained in the records described in paragraphs (a) to(e) are recorded or stored.

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## 16. CUSTOMS ENFORCEMENT AND APPEALS

### 16.1 Investigation of Customs Offences

Any magistrate, or any senior Customs officer not below the rank of Assistant Controller, if there is a reasonable cause to believe that in any dwelling house, shop or other building or place for likely concealment of any prohibited or un-customed goods or goods liable to forfeiture, or as to which any offence has been committed, or any accounting books, records, documents or other articles related to such goods, may issue a warrant authorizing any Customs officer named therein, by day or night and with or without assistance to:

- enter such a dwelling house, shop or other building or place to search for and seize any goods reasonably suspected of being prohibited or un-customed goods, or goods liable to forfeiture;
- arrest any person in such a dwelling house, shop, building or place, whose possession of such goods may be found, or whom such officer may reasonably suspect to have concealed such goods; and
- to make copies of and take any reasonable steps to preserve any accounting books, records, documents or other articles.

Any senior Customs officer shall, at all times, have access to any place or premises where an importer carries out his business or where any person who has dealings with such an importer. Any senior Customs officer also may:

- require the importer or the person who has dealings with such an importer to produce any accounting books, data, documents or other records, or others which such an importer or person is required;

- examine any accounting books, data, documents or other records, or others and make copies of or of parts of such books or documents;
- seize and detain any accounting books, data, documents or other records, or others if, in his opinion, it may afford evidence of any breaches;
- require the importer or the person who has dealings with such an importer or any person employed by such an importer or person to answer questions related to;
- require any container, envelope or other strongboxes in such premises to be opened; at the risk and expense of the importer or the person who has dealings with such an importer, to open and examine any packages, or any goods or materials in such premises.

## 16.2 Penalties of Customs offences

### Part One

The person shall be guilty of an offence and liable for a fine not exceeding \$8,000, or the sentence of imprisonment for a term not exceeding one year or both on refusing to answer questions or on providing false information or false documents.

In the case of un-customed goods which are dutiable or prohibited, the penalty shall be a fine not exceeding twice the value of the goods or \$8,000, whichever is the greater amount.

### Part Two

Any person shall be guilty and liable for a fine not exceeding \$40,000 or the equivalent to the amount of Customs duty payable, whichever is the greater, or the sentence of imprisonment for a term not exceeding one year or both, when he/she:

- makes, orally or in writing, or signs any declaration, certificate or other document which is untrue or incorrect;
- makes, orally or in writing, or signs any declaration or document, made for consideration of any Customs officer for any application presented to him, which is untrue or incorrect, or which is incomplete by omitting particular materials;
- counterfeits or falsifies, or uses, when counterfeited or falsified, any document used in the connection of any business or others related to the Customs;

- fraudulently alters any document, or counterfeits the seal, signature, or other mark of, any Customs officer for the verification of any document or for the security of any goods or any other purpose in the conduct of business related to the Customs;
- fails to make a declaration of dutiable goods imported, exported or transshipped, or
- fails or refuses to produce to the Customs officer any document required to be produced.

In the case of prohibited goods, the penalty shall be a fine of not less than twice the value of the goods or \$40,000, whichever is the lesser amount, but not more than 5 times the value of the goods or \$40,000, whichever is the greater amount.

In the case of un-customed goods which are dutiable, the penalty for the first-time offence shall be a fine of not less than 6 times the amount of the Customs duty or \$40,000, whichever is the lesser amount, but not more than 20 times the amount of Customs duty or \$40,000, whichever is the greater amount, and for a second or any subsequent conviction of offence, the penalty shall be the sentence of imprisonment for a term not exceeding 2 years or both.

### **Part Three**

The purpose of which is to reduce, avoid or evade any liability for the Customs duty imposed shall be guilty of the first-time offence and liable for a fine of not less than 10 times the amount of the Customs duty or \$5,000, whichever is the lesser amount, but not more than 20 times the amount of the Customs duty or \$5,000, whichever is the greater amount.

### **Part Four**

The person shall be guilty of an offence and liable for a fine not exceeding \$40,000, or the sentence of imprisonment for a term not exceeding 7 years or both, and any person who gives or offers, or promises to give or procures to be given, any bribery, compensation or rewards to, or makes any collusive agreement with, any such officers or person to induce him in any way to neglect his duty to do so.

[Online resources](#) can be achieved for further reference.

## 17. CUSTOMS IPR BORDER PROTECTION

Brunei became a signatory party to the Convention Establishing the World Intellectual Property Rights Organization (since 1994). It acceded to the Berne Convention for the Protection of Literary and Artistic Works on August 30, 2006. Brunei has not joined the Paris Convention for the Protection of Intellectual Property.

The authorities state that enforcement procedures and remedies are available under the various laws to enable effective action against infringement. The IP Section of the Registries Division of the Attorney General's Chambers (under the Prime Minister's Office) is responsible for all matters concerning intellectual property. The Head of Registries, who is also Assistant Solicitor General, is responsible for administering the Division. The Royal Brunei Police Force is responsible for general enforcement and investigation of criminal offences under the relevant laws, while the RCED enforces border control measures. The Criminal Justice Division of the Attorney General's Chambers initiates prosecution of IPR cases.

Border enforcement measures for infringements are undertaken by the RCED. Statutory authority for border enforcement is expressly provided for under the Copyright Order 1999, which enables the copyright holders to give notice to the Controller of Customs if they suspect that infringing copies are crossing the border. The authorities stated that such notice has not been received and therefore no seizures have been made. Border enforcement measures do not appear to be well received by rights holders, despite the advice from the authorities as to the effectiveness of this method.

However, the RCED can, under different grounds and laws, seize certain articles detrimental to public health and safety, provided that they have information to show that there exists a potential danger to the public or individuals.

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## 18. AUTHORIZED ECONOMIC OPERATORS

As a member of WTO and WCO, Brunei Darussalam is committed to fulfil its obligations to improve trade facilitation through transparent and efficient Customs procedures. The initiative will further improve the trading environment in Brunei Darussalam and support the business community. The least implemented measure in this area is TF measures for authorized operators.

The implementation of Customers accreditation program which was known as Sutera Lane Merchant Scheme (SLMS) facilitated trade in line with the concept of Authorized Economic Operator (AEO) as accredited by World Customs Organization (WCO). The main objective of the program is to enhance the business environment that is conducive to support the national vision and it took effect on September 2, 2017. The implementation of SLMS is one of the activities listed in the Ease of Doing Business Action Plan under Trading across Borders initiatives. It is a pro-business approach focusing on trade facilitation without compromising the country's security and safety. The implementation is also in accordance with the standards and best practices of international customs as recommended by the WCO in particular under the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework).

The program encourages the improvement of the level of compliance of importers, exporters or Customs agents to the procedures, regulations and legislation in force in the country, by offering facilities such as:

- Accelerated and given priority of the Customs declaration process;
- Accelerated and given the priority of the production and release process from Muara Port;
- It is permissible to conduct inspection of containers or cargo at SLMS Operator premises (if required);
- Given permission to defer the payment of Customs duties and excise taxes within the prescribed periods to increase the flow requirements and improve the efficiency of Customs clearance process.

Companies interested to join the scheme, must be registered under the Companies Act Chapter 39 as a Private Limited Company. Importers and exporters must also be registered with RCED as 'traders' in the Brunei Darussalam National Single Window (BDNSW). Usage of Freight Forwarders/ Forwarding Agents or Transporting Companies are also allowed, provided the importing and exporting companies include in the application, documents that prove that they are the designated Freight Forwarders/ Forwarding

Agents or transporting companies for the importing or exporting companies. The company must have been established for at least 5 years and handles import and export activities for not less than 3 years. If the application is forwarded by Multi-National Companies set up in the country less than five years, the application will be assessed on a case-by-case basis and is subject to the decision of the SLMS Evaluation Committee.

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## 19. INTERNATIONAL CUSTOMS COOPERATION

RCED has involved in international Customs affairs such as in ASEAN, BIMP-EAGA, APEC, ASEM, WCO and WTO. It became the 142nd members of WCO on 1st July 1996 and became the 150th members of WCO Harmonized System (HS) Convention on 20th June 2014.

Brunei Darussalam has been a member of the Asia Pacific Economic Cooperation (APEC), ASEAN, the Asia-Europe Meeting (ASEM). Brunei Darussalam has recently concluded negotiations for the Trans-Pacific Partnership (TPP).

Brunei Darussalam actively participated the negotiations of RCEP (The Regional Comprehensive Economic Partnership) which is a Free Trade Agreement (FTA) involving the ten ASEAN Member countries and their six ASEAN-FTA Partners (Australia, China, India, Japan, Republic of Korea and New Zealand).

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## 20. TRADE STATISTICS

The Department of Statistics under the Department of Economic Planning and Development (JKPE) is the only agency in Brunei empowered to publicly disseminate data on merchandise trade. The Customs statistics report is compiled by the Department of Statistics, Department of Economic Planning and Development and the prime minister's office. The department disseminates national statistics in a timely manner according to the internationally accepted release schedules.

The RCED is responsible for the collection and approval of imports and exports permits. However, controlled items are still subjected to approval by the relevant competent authorities. These data are submitted by the merchants to the Customs via e-Customs. Subsequently, these data would be transferred to Department of Statistics, Department of Economic Planning and Development for compilation and dissemination.

[Online resources](#) can be achieved for further reference.

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## 21. WORKING HOURS

Operation Hours for Brunei Customs are as follows.

Main Office

- 07:45am - 12:15pm
- 13:30pm - 16:30pm
- Monday to Thursday & Saturday

### **Customer Service Counter (Main Office Ground Floor)**

#### For Enquiry

- 08:00am - 12:00pm
- 13:45pm - 16:15pm
- Monday-Thursday & Saturday

#### For Payment

- 08:00am - 11:45am
- 13:45pm - 15:00pm, Monday-Thursday
- 08:00am -10:00am Saturday (cash),
- 08:00am-11:45am & 13:45pm-15:00pm (cheque)

### **Business Support Centre, DARE Building, Anggerek**

- 08:00am - 12:00pm & 14:00pm - 16:00pm, Monday to Thursday
- 08:00am - 12:00pm & 14:30pm - 16:00pm, Friday

### **Muara Container Terminal**

- 24 / 7 (daily)

### **Control Posts**

- 06:00am - 12:00am (daily)

## 22. OFFICIAL WEBSITE

- [The Prime Minister's Office](#)
- [Ministry of Finance](#)
- [Ministry of Development](#)
- [Ministry of Foreign Affairs and Trade](#)
- [Brunei Darussalam National Single Window](#)
- [Brunei e-customs](#)
- [Brunei Darussalam National Trade Repository](#)
- [Economic Planning and Development](#)

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# **eBook on East Asia Customs Procedures**

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## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## **ACKNOWLEDGEMENTS**

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACFTA	ASEAN-China Free Trade Agreement
AEO	Authorized Economic Operator
AHTN	ASEAN Harmonized Tariff Nomenclature
AIFTA	ASEAN-India Free Trade Agreement
AJCEP	ASEAN-Japan Comprehensive Economic Partnership Agreement
AKFTA	ASEAN-Korea Free Trade Agreement
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ASYCUDA	Automated System for Customs Data
ATIGA	ASEAN Trade in Goods Agreement
BTG	Best Trader Group
BTP	Best Traders Program
C/O	Certificate of Origin
CDC	The Council for the Development of Cambodia
CEPT	Common Effective Preferential Tariff
CNSW	Cambodia National Single Window
EMF	Export Management Fee
FTA	Free Trade Agreement
GDCE	The General Department of Customs and Excise of Cambodia
HS	Harmonized Commodity Description and Coding System

LDC	Least-Developed Countries
MEF	Ministry of Economy and Finance
MFN	Most Favored Nations
NSW	National Single Window
PCA	Post-clearance Audit
SAD	Single Administrative Document
SEZ	Special Economic Zone
SPS	Sanitary and Phytosanitary
TBT	Technical Barrier to Trade
TCMS	Trade Credibility Management System
VAT	Value-added Tax
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Kingdom of Cambodia

### 1. INTRODUCTION OF CAMBODIA CUSTOMS

The Cambodia Customs Administration was first established in 1951, the operations of which were suspended from 1975 to 1979 during the Khmer Rouge regime. The General Department of Customs and Excise of Cambodia (hereafter GDCE) falls under the Ministry of Economy and Finance.

The vision of the GDCE is to become a modern Customs administration that meets international standards and best practices and offers its administrative and operational efficiency and high quality of service to stakeholders domestically and internationally.

#### 1.1 Mission

The mission of GDCE is to boost legitimate trade and travel, to collect and increase government revenue, to ensure fair economic competition, to enhance social safety and national security, and to sustain economic development and viability of Cambodia.

#### 1.2 Objectives

The objectives of Cambodia Customs mainly include:

- to control and levy taxes and fares on any imported and exported goods;
- to curb and prevent Customs wrongdoing;
- to boost international trade.

### 1.3 Functions

Major functions of Cambodia Customs can be generalized as follows:

- to prepare, formulate, issue and enforce Customs procedures and relevant laws and regulations;
- to examine and monitor importation and exportation of goods;
- to control passengers entering or leaving Cambodia;
- to assess and levy duties and taxes;
- to involve with investigation and suppression of all kinds of smuggling activities, tax evasion, Customs frauds and other violations within Customs territory;
- to ensure that the goods entering or leaving the territory of Cambodia are correctly abided by the existing laws;
- to support free zones in the Kingdom of Cambodia especially all Special Economic Zones (SEZs);
- to cooperate with WCO, other Customs administrations and other organizations as well as international affairs.

### 1.4 Organization

Now GDCE has 7 departments and 1 secretariat including: Secretariat, Department of Administration and Management, Department of Planning, Technique and International Affairs, Department of Prevention and Suppression, Department of Law Affairs, Auditing and Public Relations, Department of Customs Procedures, Department of Excise at central and other local units. The organizational structure is as below.

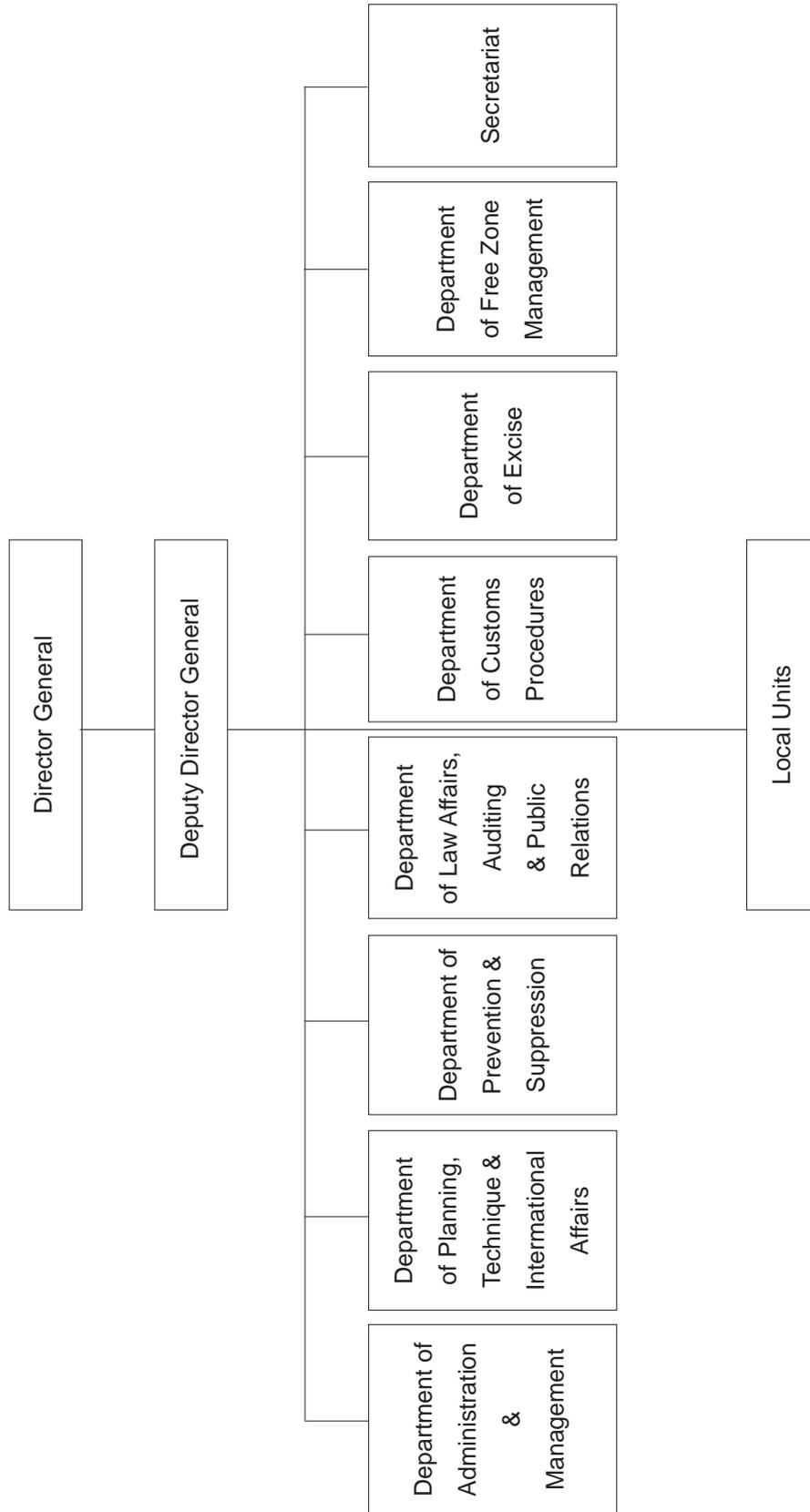


Figure 1 Organizational Chart of Cambodia Customs

## 1.5 International Memberships

After joining ASEAN in 1999, Cambodia became the first least-developed country (LDC) to join the World Trade Organization (WTO) in 2004. GDCE has also become the 155th member of World Customs Organization (WCO) in June 2011 on the 50th anniversary of the GDCE.

## 1.6 Resources for Importers and Exporters

This website of the National Trade Repository of the Kingdom of Cambodia (<https://cambodiantr.gov.kh>) provides all regulatory information relevant to traders who intend to import goods into Cambodia or export to other countries. Besides, the websites of Ministry of Commerce (<http://www.moc.gov.kh>) and GDCE (<http://www.customs.gov.kh>) can also offer information on trade and Customs both in English and Khmer.

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## 2. CUSTOMS LEGAL SYSTEM

In recent years, Cambodia has made continuous efforts to improve its Customs legal system and align them with international standards and best practice.

### 2.1 Customs Law

The Law on Customs of Cambodia, which was adopted by the National Assembly on June 22, 2007 during the 6th plenary session of its 3rd legislature and ratified by the Senate on July 10, 2007 during the 3rd plenary session of its 2nd legislature, consists of 13 chapters and 80 articles, covering the following topics:

- general provisions;
- import and export;
- tariff classification, origin and Customs value;
- exemptions, partial exemptions, and refund of duties and taxes;

- Customs declaration and liability for duties and taxes;
- payment of import and export duties and taxes, collection of debts, and security;
- Customs temporary storage and Customs bonded warehouses;
- documents, books, records and other information on exports and imports;
- unclaimed goods;
- powers and obligations;
- penalty provisions;
- transitional provisions;
- final provisions.

## 2.2 Other Related Laws and Regulations

Asides from the Law on Customs, Cambodia Customs also enforces other supporting regulations including 1 Sub-Decree (Anukret), 36 Ministerial Prakas, and 9 Guidelines, which are listed below:

### **A.Sub-Decree:**

- Anukret 209 on Enforcement of the List of Prohibited and Restricted Goods

### **B.Ministerial Prakas:**

- Prakas on the Legal Procedure in Export-Import of Foreign Currencies;
- Prakas on Exempt Goods Control Procedure;
- Prakas on use of Information Obtained by Customs Officers;
- Prakas on Settlement of Customs Offences;
- Prakas on Customs Tariff and Tariff Classification of Goods;
- Prakas on Reward Distribution;
- Prakas on Procedures on Payment of Duty and Taxes and other levies on Imported and Exported Goods;
- Prakas on Reporting of Imported Goods;

- Prakas on the implementation of Advance Ruling on Tariff Classification, Rule of Origin, and Customs Valuation;
- Inter-Ministerial Prakas No. 581 MEF on Procedures for the Application to Import Materials, Machinery, Vehicles and Petroleum of the Grant Aid with Duties and Taxes Borne by the Royal Government of Cambodia under Grant Aid Framework;
- Prakas No. 106 on Customs Temporary Storage;
- Prakas No. 107 on Reporting, Movement, Storage and Transport of Exported Goods;
- Prakas No. 108 on Refund of Customs Duty and Taxes;
- Prakas No. 109 on Management of Unclaimed Goods;
- Prakas No. 110 on Extension of Customs Zone;
- Prakas No. 111 on Authorization to Carry out Customs Formalities Outside Customs Offices;
- Prakas No. 112 on Security;
- Prakas No. 113 on Management of Documents Books Records and Other Information;
- Prakas No. 114 on Determination of Exempt Goods;
- Prakas No. 115 on Establishing and Functioning of Customs Brokers;
- Prakas No. 116 on Customs Bonded Warehouse;
- Prakas No. 117 on Temporary Export of Goods;
- Prakas No. 311 MEF on Implementation of Value-added Tax (VAT) for Supporting Industry or Contractor that Supplies Goods or Service for Serving the Export of the Garment Industry, Textile Industry, Footwear Industry, Carry-Bag and Hat Industry;
- Prakas No. 316 on the amendment of fee on inspection goods by scanning machine;
- Prakas No. 387 on Customs Valuation of Imported Goods;
- Prakas No. 388 on Post Clearance Audit by Customs and Excise Department;
- Prakas No. 389 on the Transportation Distribution and Possession of Imported Goods;
- Prakas No. 452 MEF on High Compliant Trader Incentive Mechanism;
- Prakas No. 508 on Customs Transit;
- Prakas No. 569 MEF on Inspection on Export, Import and Transportation Means;
- Prakas No. 570 MEF on Complaining Procedures against Customs Record;

- Prakas No. 734 on Special Customs Procedure for SEZ;
- Prakas No. 735 on Procedure for the Management of Specially-Designated Goods;
- Prakas No. 907 MEF on the Determination of Transition Fee on some Goods under Legislative Procedure of Customs Transit;
- Prakas No. 928 on Temporary Importation under the Temporary Admission;
- Prakas No. 1447 on Customs Declaration Provisions and Procedures.

**C.Guidelines:**

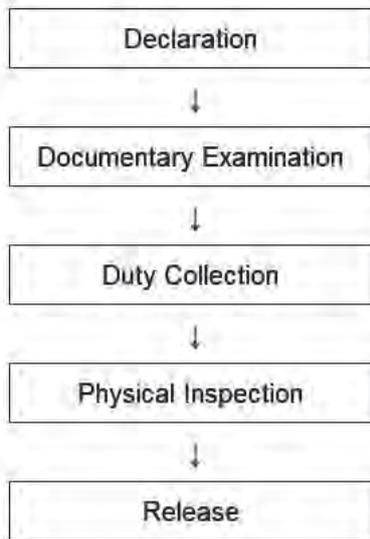
- Instruction No. 016 MEF.MOC Notification on Simplification of Export Procedures on Textile Products;
- Instruction No. 009 on the Management of Non-commercial Goods;
- Instruction No, 583 on the Implementation of Initial Post Clearance Audit Manual in the Customs and Excise Department;
- Instruction No. 790 Procedures for Customs Transit;
- Instruction No. 345 on the Implementation of Advance Rule on Tariff Classification;
- Instruction No. 346 on the Implementation of Advance Rule on Customs Valuation;
- Instruction No. 2175 on the Implementation of Advance Rule on Rule of Origin
- Instruction No. 1114 GDCE on Revision the Procedures and the Requirement of Documents for Customs Clearance of the Re-importation of the Textile and Garment Products after Exportation;
- Circular 004 MEF on the Procedures for Low Values Goods (de minimis).

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### **3. CUSTOMS CLEARANCE PROCESS FOR IMPORTS AND EXPORTS**

Import and export of cargo must undergo a 5-step Customs process, i.e. declaration, documentary examination, duty collection, physical inspection and release.

Figure 2 Customs Clearance Procedures by Cambodia Customs



### 3.1 Declaration

All exported or imported cargo, whether or not exempt from duties and taxes must be subject to Customs declaration. Customs declarations must be submitted at authorized Customs offices as determined by the Director of Customs via cargo owner or entrusted broker.

In Cambodia, a declaration is made by submitting a duly completed and signed Customs Declaration Form (also known as the Single Administrative Document-SAD) electronically through ASYCUDA World and in hardcopy at a Customs clearance office. It is the only authentic document that can be used to prove that cargo has been imported into or exported from Cambodia.

After the registration of Customs declaration, changes may only be made to the declaration on the same day of registration and before the physical inspection of goods. Changes to quantity and value information and changes after the registration day must be authorized by the Customs and Excise Department of GDCE.

In certain cases, verbal declaration instead of the written one may be authorized by the Director of Customs. In addition, other supportive documents are also required accordingly.

### 3.1.1 Declaration for Import

Import declarations consist of direct importation (IM 4), temporary importation (IM 5), re-importation (IM 6), import to bonded warehouse (IM 7), transit (IM 8) and special economic zone (IM 9). With automatic SAD system in service, there are mandatory and optional entries of information as listed in the table.

*Table 1 SAD for Import Declaration*

Mandatory Entries	type of declaration, Customs code of lodgement, Customs registration number and date, forms (the total number of pages in the declaration), total number of packages, declarant reference number, import/consignee code No.(with VAT/TIN number), value details (not included in the invoice, such as freight, insurance, handling and unloading charges, etc.), P.S.I., declarant/representative code No., country of export, country of export code (C.E. Code), country of origin, country of destination code (C.D. Code), country of destination, identity of means of transport at arrival / departure, delivery terms, currency & total amount of invoice, exchange rate, mode of transport at border, office of entry/exit, item No., commodity code, country of origin code, gross/net mass kg, procedure, supplementary units, item price, adjustment, Customs value, calculation of taxes, accounting details (mode of payment, assessment number, receipt number, guarantee, total fees, total declaration), signature and name of declarant/representative.
Optional Entries	Manifest, exporter/consignor code No., occasional consignee/exporter (with no VAT/TIN number), country of last consignment/country of first destination (LC/FD), nationality of means of transport at arrival/departure, container indicator, identity & nationality of means of transport crossing the border, nature of transaction, inland mode of transport, place of loading/unloading, financial and banking information, location of goods, packages information and description of goods, preference, transport doc./previous declaration, valuation method, additional information, deferred payment.

Other supporting documents are listed as below,

- Commercial Invoice or Contract of Sale document from the supplier of the goods;
- Transport documents such as Bill of Lading or Air Way Bill;
- Packing List.

and if necessary,

- Manifest;
- Import Licenses, Permits or Certificates as issued by Customs and other regulating agencies,

depending on the commodity being imported;

- Certificate of Insurance;
- Certificate of Origin;
- Document issued by Pre-Arrival Assessment authorization (for the import of all food, chemicals, drugs and electric and electronic equipment);
- Other related documents.

### 3.1.2 Declaration for Export

After receiving permit, exporter or authorized person shall conduct Customs declaration. Export declarations include exportation (EX 1), temporary export (EX 2), re-export (EX 3) and other export procedures (EX 9). With automatic SAD system in service, there are mandatory and optional entries of information as listed in the table.

*Table 2 SAD for Export Declaration*

Mandatory Entries	type of declaration, office code, Customs registration number & date, exporter/consignor code, forms, items, total number of packages, declarant reference number, value details, P.S.I, declarant/representative code, country of export, country of export code, country of origin, country of destination code, country of destination, identity of means of transport at arrival/departure, delivery terms, currency & total amount of invoice, exchange rate, mode of transport, inland mode of transport, office of entry/exit, packages information and description of goods (number & type, good description as per tariff, commercial description), item number, commodity code, country of origin code, gross/net mass kg, procedure, supplementary units, item price, value detail, adjustment, Customs value, calculation of taxes, accounting details, (mode of payment, assessment number, receipt number, guarantee, total fees, total declaration), signature and name of declarant/representative.
Optional Entries	manifest, importer/consignee code, occasional consignee/exporter, country of last consignment/fist destination, nationality of means of transport at arrival/departure, container indicator, identity & nationality of means of transport crossing the border, nature of transaction, place of loading/unloading, financial and banking information, location of goods, packages information and description of goods (marks on package, container identifier), transport doc./previous declaration, valuation method, additional information (such as production of certificates, authorization), deferred payment,

Other supporting documents are listed as below,

- Commercial Invoice or Contract of Sale document from the supplier of the goods;
- Transport documents such as Bill of Lading or Air Way Bill;
- Packing List.

and if necessary,

- Manifest;
- Export Licenses, Permits or Certificates as issued by Customs and other regulating agencies, depending on the commodity being exported;
- Certificate of Insurance;
- Certificate of Origin;
- Other related documents.

### **3.1.3 Declaration for Transit**

When it comes to transit goods, they must be declared to Customs. An import declaration (transit IM 8) under the transit regime must be submitted to Customs on arrival of the goods at the Cambodian border with the following documents:

- Commercial Invoice or Contract of Sale;
- Bill of Lading or Transport Waybill;
- Packing List.

and if necessary,

- Manifest;
- Any Licenses, Permits or Certificates as issued by Customs and other regulating agencies, depending on the commodity being imported;
- Certificate of Insurance;
- Certificate of Origin;
- Other related documents.

Providing that no duty is payable on transit goods, the declarant must provide a security in the form of a cheque or a letter of guarantee issued by a bank or financial institution in the amount equal to the Customs duties and other obligations to which the goods are liable.

### 3.2 Documentary Examination

After a Customs declaration is registered, Customs shall check it to verify completeness and correctness of the information declared, including origin, tariff classification, Customs value, Customs regime, and the duty and taxes payable. Also Customs shall check whether the goods are prohibited or restricted or not and the compliance with the corresponding requirements. It is conducted both manually and via Automated System for Customs Data (ASYCUDA).

### 3.3 Physical Inspection

After documentary examination of Customs declaration, Customs may carry out a complete or partial physical inspection of declared goods based on risk assessment. Scanning is widely used for inspection in Cambodia Customs. Scanning for all containerized cargo is mandatory except: finished product of garment sector; goods of ambassador or organization that has diplomatic immunity, for international organization, all non-government organizations officially recognized by government, grant aid goods, donation goods imported through credit loan of government as well as imported goods of government institution; goods of best traders groups (in case no specific requirement by GDCE), empty container as well as other goods with permission from the Ministry of Economy and Finance (MEF).

Besides, concerning scanning fee, it is USD32 for container with size from 40 feet up, and USD20 for container with size below 40 feet.

### 3.4 Duty Collection

Once a declaration has been submitted and registered by Customs and then assessed, the importer or owner of the goods shall be liable for import duties and taxes.

Import duties and taxes are paid in accordance with regulations in force. If payment is made via the National Bank of Cambodia or other authorized financial institutions, the receipt issued by these institutes shall be submitted to Customs as evidence of payment. At the major border posts payment can be made directly at the accounts section of the Customs office by certified cheque or for certain regimes by bank

guarantee.

After successful payment of import duties and taxes, Customs will issue a Customs receipt through ASYCUDA.

### 3.5 Release

After finishing the above-mentioned 4 steps (declaration, documentary examination, physical inspection and duty collection), the goods will be released by Cambodia Customs for importation, or exportation or other legitimate purposes.

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## 4. SPECIAL CUSTOMS CLEARANCE OVERSIGHT

### 4.1 Oversight on Transit

Cargo being carried under Customs transit is not subject to the payment of duties and taxes, but may be subject to charges and other fees related to the cost of processing transit operations as determined by Ministry of Economy and Finance. In general, GDCE has formulated Prakas No. 508 MEF.BRK on Customs Transit to ensure effective Customs transit operations and trade facilitation. It can be divided in to national transit and international transit.

In terms of national transit, it is the transport of cargo (A) from an office of entry to an inland Customs office, (B) from an inland Customs office to an office of exit, or (C) from one inland Customs office to another inland Customs office.

#### A. Imported goods transit to dry port

- Operator shall receive permission from GDCE in order to implement transit procedure;
- Customs broker lodges summary Customs declaration (Transit Declaration) at office of departure;

- Customs officer in charge of cargo manifest write off container from containerized cargo list;
- Container is to be scanned either at office of departure or at other Customs offices in Phnom Penh;
- If there is no irregularity, competent Customs officers shall stamp and certify Customs transit procedures by defining a number of conditions such as legal routes and duration of transit, as well as affix Customs seals;
- Chief of office of departure sign to finalize the process;
- Customs officer at office of departure allow container to be transited to dry port.

#### **B. Imported goods transit to Special Economic Zone (SEZ)**

- Operator submits to office of departure the application for transportation of goods under national transit to SEZ. This application shall be endorsed by representative of GDCE to SEZ in advance;
- Customs broker lodges summary Customs declaration (Transit Declaration) at office of departure;
- Customs officer in charge of cargo manifest write off container from containerized cargo list;
- Goods transited to SEZ are exempted from scanning process;
- If there is no irregularity, competent Customs officers shall stamp and certify Customs transit procedures by defining a number of conditions such as legal routes and duration of transit, as well as affix Customs seals;
- Chief of office of departure sign to finalize the process;
- Customs officer at office of departure allow container to be transited to SEZ.

#### **C. Exported goods cleared at inland Customs office transit to Customs office of exit**

- When exported goods cleared at inland Customs office arrive at Customs office of exit, competent Customs officer verifies regularity of Customs seal on transportation mean or container with transit documents. In case there is no irregularity, Customs officer remove Customs seal and release for export;
- Competent Customs officer at office of exit stamps and certifies the “removal of seal” and sign on joint-report on inspection of export goods that was signed by Customs and CAMCONTROL officer at inland office.

In terms of international transit, it is the transport of goods from a Customs office of entry into the Customs

territory to a Customs office of exit. Operator shall receive permission from GDCE in order to implement international transit and follows some procedures below.

#### **A. At Office of Entry**

- Customs broker lodges summary Customs declaration (Transit Declaration);
- Competent Customs officer shall fill in section A and C of declaration. In case necessary, competent Customs and excise officer can physically inspect eventually. If there is no irregularity, competent Customs officers shall stamp and certify Customs transit procedures by defining a number of conditions such as legal routes and duration of transit, as well as affix Customs seals.

#### **B. At Office of Exit**

- Operator or authorized person show summary Customs declaration to competent Customs officer;
- Competent Customs verifies the regularity of Customs stamp or seal on transportation mean or container with transit documents. In case there is no irregularity, Customs officer certifies in section D of Customs declaration, then removes Customs seal before releasing transit goods to the third country.

Besides, GDCE issued guiding procedures in case of loss or destruction of transit cargo, damage to the transit seals, tear of Customs stamp, transport vehicle and cargo container security standards, security guarantee, etc. It may apply appropriate monitoring measures to prevent substitution, removal, or addition of good.

## **4.2 Oversight on Temporary Importation (Re-export)**

Imported goods may be released by Customs for temporary importation under temporary admission if these goods will be re-exported. Such goods, imported for a specified purpose and for re-exportation within a specified duration without having undergone any change except for normal depreciation due to the use, shall be put under Customs control until such time as the conditions of their temporary admission have been fulfilled. The import duties and taxes may be conditionally relieved in total or in part.

There are 9 categories of imported good under the temporary admission in accordance with Prakas No. 928 MEF.CE on Temporary Importation under Temporary Admission Procedures as below:

- Goods for display or use at exhibitions, fairs, meetings or similar events with reasonable quantity. Such goods must not be loaned or used for hire or compensation, or to be removed from the place of the event;
- Professional equipment necessary for the exercise of the work of a tradesman technician or professional person visiting Cambodia for a specialized task or job which excludes machineries, earthmoving machine and specialized equipment to be used in the industrial manufacture, packaging of goods, for exploitation of natural resources, construction or repair of buildings, for earthmoving or similar projects;
- Containers, pallets, packings, samples and other goods imported with a link to a commercial operation, but they are not for sale;
- Goods imported exclusively for educational, scientific or cultural purposes;
- Goods imported for sports purposes for use by tourists, athletes, business travelers, in contests or demonstrations or for training;
- Tourism publicity material intended to promote visits to another country;
- Goods imported for humanitarian purposes, such as urgently needed medical surgical laboratory equipment and relief consignments for victims of natural disasters;
- Means of transport for commercial use that is used for international traffic for the transport of persons or for the industrial or commercial transport of goods.

Prior to the importation, a request for authorization from Customs is needed, stating in detail the type of goods, quantity, value, the purpose, the owner, duration of the temporary admission and date of exportation. Besides from Customs declaration, Customs may require the provision of security to ensure the duty and taxes on the basis of assessed risk. Security held for temporary imports shall be cancelled and returned upon confirmation of re-export of the goods. Seals, stickers, stamps or other measures may be used to identify the goods with high risk under temporary admission.

Besides, as for the duration of temporarily imported goods, it must be re-exported within one year. The time limit may be extended at the written request prior to the deadline.

Finally, machineries, earthmoving machine and specialized equipment to be used in the industrial manufacture, packaging of goods, for exploitation of natural resources, construction or repair of buildings, for earthmoving or similar projects may be temporarily imported for a specified period. Those goods shall be charged at the reduced rate of 20% of the duty and taxes for each year and the payment shall be

made immediately after temporary admission approval.

### 4.3 Oversight on Temporary Exportation

Temporary export of cargo may be authorized by Customs for the listed purposes as below:

- For repair, addition, manufacturing, or for additional work or testing;
- For exhibitions or trade fairs;
- To be operated or used outside the Customs territory and then re-imported;
- Other purposes approved by the Director of Customs.

It requires the submission of Customs export declaration. In terms of duty and tax, such goods are charged only on the foreign value of any repairs, additions, manufacturing, or additional work upon their re-importation. If the repair on temporarily exported cargo is under a warranty, it is exempt from duty and tax upon their re-importation.

The temporary exported goods may be granted a maximum period of one year from the date of registration of the Customs export declaration and extension to this limit upon receipt of a written request.

Besides, for such goods that are subject to export duty and tax or in case of temporary export of restricted or prohibited goods, Customs may require a security deposit.

### 4.4 Oversight on E-commerce

Up to now, a mounting number of online shopping websites and social media have emerged. Notwithstanding, e-commerce has remained relatively undeveloped in Cambodia owing to fundamental causes such as inadequate Internet infrastructure, and limited credit card use. As of 2017, a draft law on E-commerce was submitted to the Council of Minister for review and it is expected to be passed by 2019.

At present, no e-commerce-specific tax regime or Customs clearance measures are in place to affect imports and exports. In light of Instruction No. 004 MEF on Customs Procedure for De Minimis Export-import of Goods in Small Quantity Management, goods under express consignment, non-commercial import, and/or similar forms with FOB value not exceeding 50 USD are deemed as De Minimis which are exempted from duties and taxes.

Meanwhile, consignee or the representative shall lodge summary Customs declaration and attach various supporting documents such as Commercial Invoice, Packing List, VAT Certificate, transport documents, and other related documents if applicable.

## 4.5 Oversight on Duty Free Imports

According to two governmental regulations (Letter No. 005 on the Revised Form of Imports of Goods through Duty Free Shop and Letter No.1006 on the Management Form of Imports of Goods through Duty Free Shop), duty free imports shall meet the following requirements:

- Require import permit issued by GDCE on each importation;
- Have a warehouse for storage and duty free shop to run the business in accordance with the contract;
- In each importation, payment of fees is made at office of entry in accordance with laws and procedures in force;
- All transportation of all kind of duty free goods under transit procedure in Customs territory shall be attached with transport permit issued by GDCE. If necessary, at least two competent Customs officers accompany the goods until designated destination.

## 4.6 Oversight on Customs Bonded Warehouses

Please refer to 16. BONDED SYSTEM of this report for details.

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# 5. ASYCUDA - CAMBODIA AUTOMATED CLEARANCE SYSTEM

## 5.1 Snapshot of ASYCUDA World

At present, Cambodia uses one-stop mechanism, automated system for Customs data processing

(ASYCUDA), to facilitate trade and risk management at nearly all border posts throughout Cambodia, including at the Sihanoukville Port, Phnom Penh International Airport, inland dry ports and numerous land border locations. The objective is to streamline Customs procedures and reduce red tapes.

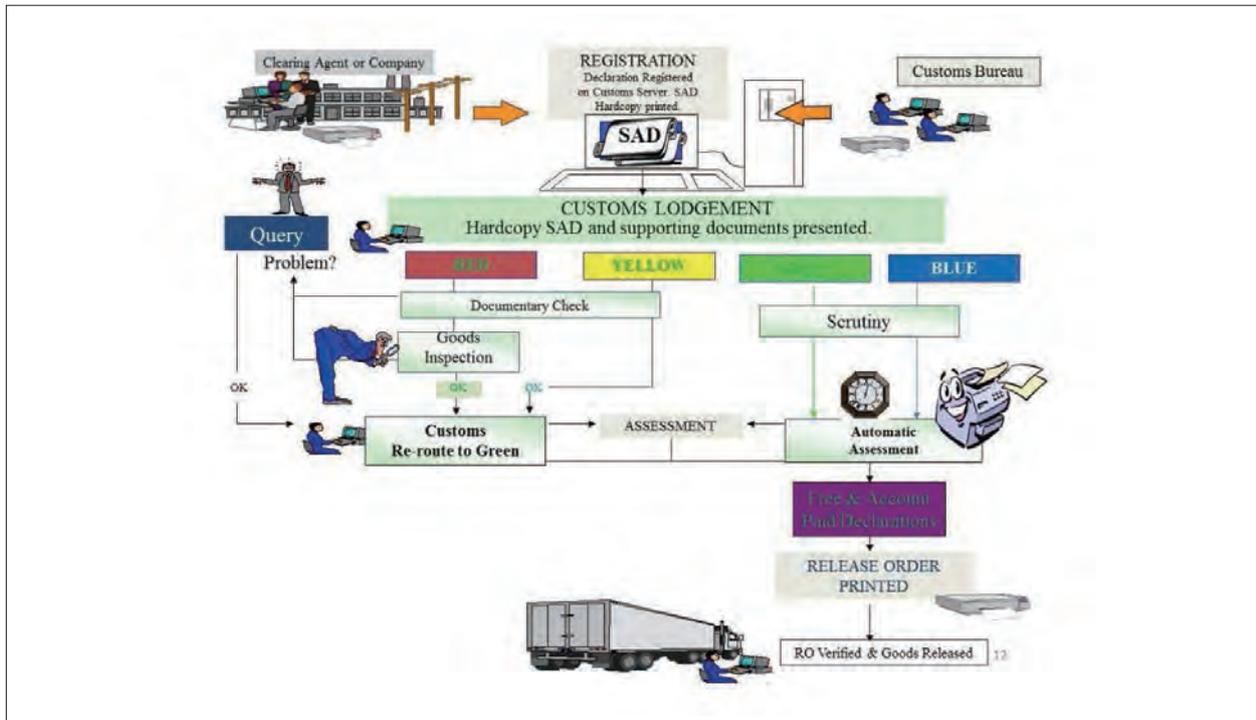
In brief, ASYCUDA offers the electronic submission of Customs declarations and related documents. Processing thereafter is tracked electronically and the declarant or Customs broker will be automatically notified about the declaration status. After assessing the SAD, ASYCUDA calculates the duties, taxes and fees payable.

## 5.2 Flowchart of ASYCUDA

With ASYCUDA in place, the importers, exporters, and brokers can follow the following steps to facilitate Customs declaration, namely,

- Preparation and printing of Customs declaration;
- Lodgment of the Customs declaration;
- SAD processing lanes (red/yellow/green/blue lane);
- Query desk;
- Container scanning;
- Assessment notice;
- Accounting, release of goods;
- Post-clearance audit (PCA).

Figure 3 Flowchart of ASYCUDA



## 6. CAMBODIA NATIONAL SINGLE WINDOW

International Trade Single Window is a one-stop automated IT facility to exchange information between traders and government agencies, thereby reducing the complexity, time and costs involved in international trade.

The ASEAN Single Window (ASW) is a regional initiative that connects and integrates National Single Window (NSW) of ASEAN Member States (AMS). The ASW's objective is to expedite cargo clearance and promote ASEAN economic integration by enabling the electronic exchange of border trade-related documents among AMS.

In April 2014, Cambodia completed the National Single Window Blueprint under the support of the World Bank. In March 2015, a National Single Window Steering Committee, along with a Policy and Legal

Advisory Group and a project team, has been set up to carry out the Cambodia National Single Window (CNSW) development. GDCE has led the project and will be the operator of the system, to ascertain the execution in accordance with the implementation plan of the ASEAN Economic Community 2015, and the ASEAN Single Window.

CNSW project is still in progress, and there are 3 phases of CNSW development and implementation including:

- Phase 1: connection of CNSW and ASYCUDA and part of electronic certificates of origin system to allow the limited exchange of ASEAN origin with other Member States;
- Phase 2: integration with other government agencies to CNSW, such as licensing and permit-issuing bodies;
- Phase 3: implementation of CNSW in line with the NSW Blueprint and its supporting documents.

Besides, Cambodia already submitted the request to install the ASW Gateway software to allow Cambodia' participating agencies to align the systems for the conduct of end-to-end testing with participating Member States. Cambodia has joined the ASW Live Operation in July 2019, where the granting of preferential tariff treatment would be based on the Electronic Certificate of Origin (ASEAN Trade in Goods Agreement (ATIGA) e-Form D) exchanged through the ASW. The ASW Live Operation will continue to include more documents, such as ASEAN Customs Declaration Document, electronic Phytosanitary Certificate (e-Phyto), electronic Animal Health Certificate (e-AH) and electronic Food Safety Certificate (e-FS) to be exchanged through the ASW in the future.

To put all into a nutshell, in the long run, CNSW will be merged into ASW for the sake of regional economic integration and trade facilitation.

## 7. CUSTOMS BROKERS

### 7.1 Customs Broker Practice

In Cambodia, importers, exporters and the owner of goods can clear Customs on their own with the company's VAT/TIN entered. If they don't have a VAT/TIN, they can still declare by themselves with declarant occasional code 999999999. Meanwhile, if the importer or exporter does not want to declare on their own, the alternative is to use the service of a licensed Customs broker. The brokers who are authorized by the owners of the goods to clear goods must enter the authorized Customs brokers VAT/TIN.

### 7.2 Legal Status of Customs Brokers

An application is required to be submitted to the Ministry of Economy and Finance to get a Customs broker license, with the information listed: name and address of the application; the locations where the Customs broker business will be conducted; name of qualified Customs brokers and locations where they will operate; financial statements; a certificate of non-conviction issued by the competent judicial authority; a valid VAT registration certificate; and other required documents. The broker license is issued individually to a natural or legal person and is valid for a fixed period of two years with clear compulsory terms and conditions.

The minimum specified subjects relating to Customs broker profession shall be defined by the Customs and Excise Department, which shall organize qualification examination for Customs brokers at least once every year.

The Customs broker license may be cancelled or suspended by the Ministry of Economy and Finance at the request of Director General of Customs and Excise Department if the following conditions appear: violation of Prakas on Establishment and Functioning of Customs Brokers or the provisions of the Law on Customs or regulation relating to the importation or exportation of goods; defrauding or dishonest conduct, bankruptcy or insolvency, failing to conduct duties and responsibilities as a broker and other unqualified performance. In addition, a 30-day notice will be given for the proposed cancellation or suspension by the Ministry of Economy and Finance and the broker can also present the reasons.

Besides, all licensed Customs brokers must pay an annual license fee of 2,000,000 Riels to the Customs

and Excise Department and deposit security to cover duty, taxes, and fees for its Customs clearance operations. In terms of a denial or temporary or permanent revocation of authorization as a Customs broker, no compensation or damages may be paid.

With regard to the license renewal, the application will be submitted at least 30 days prior to the expiration date. If the ownership of a business changes, a new Customs broker license must be applied.

Last but not the least, licensed Customs brokers must provide Customs written authorizations with time limit and locations for clearance and any other conditions set by the Customs and Excise Department from the importer, exporter or the owner of the goods who has entrusted the broker to conduct Customs clearance on their behalf.

### 7.3 Category and Qualifications of Customs Brokers

In Cambodia, a qualified Customs broker can be either a natural or legal person. The category and qualifications of Customs brokers are listed in the following table.

*Table 3 Qualifications of Customs Brokers*

Category and Qualifications of Customs Brokers	
Category	Qualifications
A natural person	<ul style="list-style-type: none"> <li>- a citizen or resident of Cambodia;</li> <li>- 18+ years old;</li> <li>- possessing a minimum of a high school certificate level;</li> <li>- Providing a certificate of non-conviction issued by competent judicial authority;</li> <li>- sufficient financial resources for broker business</li> <li>- having passed the Customs broker qualification examination</li> <li>- a good record of fiscal compliance.</li> </ul>

Category and Qualifications of Customs Brokers	
A legal person (company)	<ul style="list-style-type: none"> <li>- Incorporated in Cambodia with a commercial registration certificate issued by the Ministry of Commerce and a value added tax registration certificate issued by tax department;</li> <li>- sufficient financial resources for broker business;</li> <li>- a good record of fiscal compliance;</li> <li>- all members of board of directors having a certificate of non-conviction and a good record of fiscal compliance;</li> <li>- a majority of the members of board of directors being citizens or residents of Cambodia;</li> <li>- at least one employee as a qualified Customs broker.</li> </ul>

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## 8. CUSTOMS SECURITY

Customs security usually refers to an agreement, which ensures that importers will pay all relevant duties, taxes and fees and operate in accordance with all laws and regulations. Customs security will greatly facilitate the clearance and boost trade as a contract to ensure that importers oblige with duties, taxes and fees collected by the Customs and owed to the government.

### 8.1 Customs Security in Cambodia

In Cambodia, Customs may require that security to be provided to guarantee the payment of duties and taxes, or to ascertain that the relevant obligations must be fulfilled by the declarant or the responsible party in line with Customs procedures.

### 8.2 Scope of Customs Security

The scope of Customs security covers the following circumstances:

- The release of goods from Customs control before payment of duty and taxes;
- The movement of goods within or through the Customs territory under the transit regime;
- Authorized Customs brokers, operators of bonded warehouses, operators of temporary storage facilities;
- Temporary import and export of goods;
- Release of goods pending the decision on appeal, release of temporarily seized good;
- Other conditions required by Customs.

### 8.3 Related Customs Security Regulation

The Ministry of Economy and Finance has issued Prakas No. 112 on Provision of Security to guide the Customs security practice on Feb.15, 2008. The regulation stipulates the scope of security (mentioned above), the way of security payment, the amount of security, waiver of security, release of security, and measures in case of failure to meet the security conditions,.

In terms of the way of security payment, one the one hand, it can be in the form of cash or cheque certified by a bank, on the other hand, it can be the bond or security provided by an approved surety or other formed approved by the Director of Customs. The amount of security may be used once or continuously.

Generally speaking, the amount of security should be sufficient to cover outstanding duty and tax, but it could be reduced for people with a good Customs reputation or as regular and reliable users of security procedures following the assessment conducted by Customs. In some circumstances, the security may be waived by the director of Customs if all obligations have been fulfilled, or the revenue risk is very low, or it is operated by a governmental agency.

Once the obligations for which security is provided have been met, Customs shall release the security provided as soon as possible. Nevertheless, in cases of failure to meet the security conditions, Customs will take some measures to ensure obligation fulfillment according to different forms of security. For cash or cheque, it will keep a sufficient portion of security to cover the amount of duty and tax payable. For surety bonds or bank guarantee, it will submit a claim to the bond issuer or the concerned bank to collect the amount equal to the duty and tax payable if the principal refuses. For other forms, it shall request the guarantor to pay duty and tax payable if the principal fails.

## 9. PROHIBITIONS AND RESTRICTIONS

In Cambodia, goods are prohibited or restricted from import or export for the sake of the following purposes: the protection of national security; the protection of public order and standards of decency and morality; the protection of human, animal or plant life or health; the protection of national treasures of artistic, historic or archaeological value; the conservation of natural resources; the compliance with the provisions of any legislation of The Kingdom of Cambodia currently in force; and the fulfillment of obligations under the Charter of the United Nations.

### 9.1 Import Prohibitions, Restrictions, Quotas, and Licensing

No. 209 Anukret on the Enforcement of the List of Prohibited and Restricted Goods, which was issued on December 31, 2007, stipulates 1,537 tariff lines that are subject to prohibition or licensing. It stipulates import prohibition, including used computers and spare parts, metal waste, toxic waste, municipal waste, clinical waste, sewerage sludge and waste of animal hairs, commercial import of certain narcotics, psychotropic substances and their precursors, poisonous chemicals, and certain pesticides in accordance with toxicity classification by World Health Organization. The majority of this list is automatic and does not restrict import quantity or value except for narcotics and fish with restricted quantities.

In order to import the restricted goods, license, permit or certificates as well as other legal documents are required prior to its import or export. No. 209 Anukret states clearly about competent authorities or guiding regulations for license or permit as listed in the chart,

*Table 4 Licensing Bodies for Import*

Type of Goods	Government Authorities
Import of instruments or technical equipment for airplane	Civil Aviation Authority
All kinds of used equipment of cold, brand new equipment of cold consuming ozone depletion substance	Ministry of Environment
Animal health certificate, phytosanitary certificate, fishery health certificate, animal medicines, materials such as Pharmaceuticals, medical materials, narcotics and related substances for agricultural purposes	Ministry of Agriculture Forestry and Fishery

Type of Goods	Government Authorities
Chemicals	Institute of Standards of Cambodia, Ministry of Industry, Mines and Energy
Pharmaceuticals, medical materials, narcotics and related substances	Ministry of Health
All imported goods	Industrial Standard of Cambodia and Quality and Safety Standard

## 9.2 Export Prohibitions, Restrictions and Licensing

No. 209 Anukret on the Enforcement of the List of Prohibited and Restricted Goods, which was issued on December 31, 2007, stipulates 1,537 tariff lines that are subject to prohibition or licensing. It stipulates export prohibition or restrictions including antiques, certain narcotic and toxic materials, logs, precious metals and stones, and weapons. The products from natural forests which are prohibited consist of round logs, crude or rough sawn timber, squared logs with a thickness or width of more than 25 cm, oil extracted from yellow vine; yellow vine power; firewood and charcoal.

Regarding export licenses, permits and certificates in Cambodia, please see the table below.

*Table 5 Licensing Bodies for Export*

Type of Goods	Documentation	Government Authorities
Unprocessed rubber	Export License (valid 60 days)	Ministry of Commerce
Processed wood and non-timber forest products	Export License (valid 60 days), Permit Letter	Ministry of Commerce
Ministry of Agriculture, Forestry and Fisheries		
Sand	Export Permit	Council of Ministers
Raw fruit, vegetables, plants and agricultural materials (including pesticides, fertilizers, seed, and seedling materials, feed additives)	SPS Certification	Ministry of Agriculture, Forestry and Fisheries

Type of Goods	Documentation	Government Authorities
Garments	Certificate of Origin (valid 6 months)	Ministry of Commerce
Drugs and medicines	Certificate (valid 5 years)	Ministry of Health
Live animals	Animal Health or CITES Certificate (valid 5 years)	Ministry of Agriculture, Forestry and Fisheries
Art and cultural products	Authorization, Permit Letter (valid 1 year)	Ministry of Culture and Fine Arts
Fish, crustaceans,		
molluscs, and other aquatic products	Permit Letter (valid 1 year), Certificate of Origin, Customs Permit	Ministry of Commerce, Ministry of Agriculture, Forestry and Fisheries,
Customs and Excise House		
Jewellery, silverware and uncut or unprocessed precious stones	Permit Letter (valid 1 year)	National Bank of Cambodia

Source: *Export Procedure Guide Book for Cambodia SMEs (January 2009)*

Besides, there is no documentation requirement for new handicraft items and silk goods except if they are involved as silverware or an art or cultural heritage product.

### 9.3 Sanitary and Phytosanitary (SPS) Requirements

Cambodia has adopted SPS practice in order to protect human, animal and plant life and health from the risks such as entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms, which can be from all types of transportation method within, to and from Cambodia.

The list of goods which are subject to Phytosanitary check is decided by the joint sub-decree between the Minister of Agriculture, Forestry and Fisheries and the Minister of Health.

The goods subject to SPS check are as follows:

- Plant, piece of plant, forestry products and processed products;
- Plants that can be a shelter and/or allow entry of disease-carrying organisms or disease-causing

organisms;

- Packing materials such as wooden case, piece of wood or all type of transportation method and warehouse;
- Soil or soil attached to roots of plant or piece of plant; disease-carrying organisms or disease-causing organisms or live/or dead body;
- Non-plant product that can be shelter and/or allow entry of disease-carrying organisms or disease-causing organisms.

The SPS certificate procedure consists of 6 steps as shown below:

- Step 1: Submit Request Letter;
- Step 2: Follow compliance guidelines;
- Step 3: Determine importing country testing and inspection requirements;
- Step 4: Perform laboratory testing if necessary;
- Step 5: Fumigation on export products if necessary;
- Step 6: Export product.

Besides, the Individual or legal person who is the owner of goods must submit a request letter for Phytosanitary check at the nearest phytosanitary competent agency before 10 days prior to exporting goods and must offer convenience for Phytosanitary check. The payment for the above-mentioned phytosanitary measures is the responsibility of the owner of goods. Cambodia Pest Control Services is the company that was authorized to offer service of pest control and fumigation by Ministry of Agriculture, Forestry and Fisheries. Also, for further information of SPS measures, please contact General Department of Agriculture (Department of Sanitary and Phytosanitary Plants Protection).

Last but not the least, The Cambodia SPS Enquiry Point has been established under the Cambodia Import-Export Inspection and Fraud Repression Directorate-General (CAMCONTROL) within Ministry of Commerce. For more information, please refer to the official website (<http://www.camcontrol.gov.kh>).

## 9.4 Technical Barrier to Trade (TBT)

For certain types of products, it is required to obtain licenses to certify that these products conform to certain technical regulations/standards.

Since January 1, 2007, Cambodia has agreed that it would rely on the provisions of the TBT Agreement to regulate domestic and international trade in prohibited and restricted items.

The competent body in Cambodia for developing and issuing standards is the Institute of Cambodia (ISC). ISC has been assigned as the enquiry point for TBT and as the agency responsible for notifications and publications required by the WTO TBT Agreement. It is also responsible for assessing the conformity of imported product at the request of the competent authorities. The competent authorities have introduced some additional licensing requirements as allowed under GATT Article XX (b) for fisheries and live animals.

For more information, please refer to the official website (<http://www.isc.gov.kh>).

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## 10. DUTIES & TAXES

Cambodia Customs collects duties and taxes on any imported and exported goods except for some exemption conditions. The types of duties and taxes collected by Customs are Customs Duty, Additional Tax, Value-added Tax (VAT), Special Tax, and Export Tax.

### 10.1 For Importations

Cambodia import tax includes Import Duty, Additional Tax, Value-added Tax (VAT), and Special Tax.

#### 10.1.1 Import Duty

In terms of Import Duty, all tariff rates are MFN bound and uniform for all countries, except for lower rates for ASEAN Dialogue Partners under the Common Effective Preferential Tariff (CEPT). Ad valorem rates are levied on CIF basis and the rates are as follows:

- 0% for essential goods, seeds, and basic raw materials;

- 7% for intermediate goods;
- 15% for machinery and equipment;
- 35% for luxury goods including automobiles.

### **10.1.2 Additional Tax**

Additional Tax is only levied on gasoline and diesel oil. For gasoline, the rate is USD 0.02 per liter, while for diesel oil it is USD 0.04 per liter.

### **10.1.3 Value-added Tax (VAT)**

Value-added Tax covers goods and services through all stages of importation, production and distribution with uniform rate of 10%.

### **10.1.4 Special Tax**

Special tax is levied on selected products locally produced and imported. For domestically produced goods, special tax is calculated on “ex-factory selling price” defined as 65% of the selling price before VAT and any discount. For imported goods, it is calculated inclusively of Customs duty and CIF value. The rates are:

- 3% for telecom services;
- 10% for airline tickets;
- 15% or 45% for motor vehicles;
- 10% or 25% for spare parts for motor vehicles; 5% or 10% for motorcycles and spare parts;
- 10% for cigarettes; 25% for cigars;
- 25% for beers; 10% for wine and spirits and soft drinks;
- 33% for gasoline;
- 4.3% for diesel;
- 10% for kerosene.

## 10.2 For Exportations

In order to protect human health, facilitate local processing and boost the export of finished products, Cambodia levies export taxes on certain products which includes timber, unprocessed rubber, uncut precious stones, and fish and crustaceans, molluscs and other aquatic products.

For timber export, Ad valorem tax is levied on the value of processed woods with rates of 5% or 10%. All round logs are banned from export.

For rubber, it is subject to specific tax and relevant with the price of rubber. The taxes are:

- No tax if the rubber price is less than USD 1,000/tonne;
- USD 50/tonne if the price is USD 1,001-2,000/tonne;
- USD 100/tonne if the price is USD 2,001-3,000/tonne;
- USD 200/tonne if the price is USD 3,001-4,000/tonne;
- USD 300/tonne if the price is above USD 4,000/tonne.

For other products mentioned above (livestock and fishery products, sand, gravel, and granite), Ad valorem Export Tax rate is 10%.

## 10.3 Other Customs Fees and Charges

Aside from import and export duties and taxes, Cambodia Customs also collect necessary fees and charges. It covers the following categories:

- Customs processing fee;
- Container checking fee through TH-SCAN system;
- Provisional Customs check of merchandise license fee;
- Fee for keeping goods in provisional Customs stock of merchandise after expired date;
- Automobile stamp tax;
- Customs tax seal;
- Stamp duty (stick on cigarette box);

- Transportation of stock permission letter;
- Container seal.

The fees detail is listed in the following table:

*Table 6 Other Customs Fees and Charges*

Category		Fees (riel)	Service Fee (riel)
Customs processing fee	Container (>20 feet )	60,000	0
	Container (<20 feet)	40,000	0
	Customs declaration on certain petroleum products	60,000	0
Container checking fee through TH-SCAN system	Container (>40 feet )	US \$ 32	0
	Container (<40 feet)	US \$ 20	0
Provisional Customs check of merchandise license fee (1 year)		20,000,000	0
Fee for keeping goods in provisional Customs stock of merchandise after expired date (1 day)		0.1% of the cost for calculating Customs tax	0
Automobile stamp tax (1 edition)		0	30,000
Customs tax seal (1 page)		0	50
Stamp duty (stick on cigarette box) (1 page)		0	4.2
Transportation of stock permission letter (1 page)		0	500
Container seal		0	8,000

## 10.4 Tariff Bindings

Cambodia has bound its entire tariff at the HS 8-digit level with all bound rates as ad valorem. The average bound tariff is 20.9%, with 28.4% respectively for agricultural products and 19.8% for non-agricultural products. The applied MFN rate exceeded the bound rate for 60 lines with affected products such as machinery and parts, fireworks, live animals, gasoline and diesel.

## 10.5 Preferential Tariff

As ASEAN member, Cambodia has adopted the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area, by which tariffs on ASEAN products would be reduced to 0-5% over a ten-year period since January 1, 2000. Average preferential tariffs are less than half of the MFN rate for agricultural products and around one third of the MFN rate for non-agricultural products. The simple average (not weighted) applied MFN tariff in 2017 was 12.3%.

Cambodia is subject to tariff reduction agreed in ASEAN-China Free Trade Agreement (ACFTA). According to Prakas No 645 MEF on Promulgating the Schedule of the Kingdom of Cambodia for the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People Republics of China, there are 3 kinds of tracks for tariff reduction:

- Normal track: Cambodia at least 50% of tariff lines shall reduce to 0-5% by January 1st 2012. Cambodia shall eliminate its tariffs not later than January 1st 2015 with flexibility to 2018;
- Sensitive track: Cambodia shall be subsequently reduced to 500 tariff lines at the HS 6-digit level to 0-5% not later than January 1st 2020;
- Highly sensitive list: Cambodia shall keep not more than 40% of the total number of tariff lines in the sensitive track or 150 tariff lines at the HS 6-digit level, whichever is lower.

Except for China, Cambodia is also subject to tariff reductions in various Free Trade Agreements (FTAs) signed by ASEAN with Australia, India, Japan, Korea, and New Zealand.

## 10.6 Exemptions

In light of No. 105 MEF. BRK Prakas on Management of Goods that Exempt Duties and Taxes, import taxes are subject to exemption in some cases whereas export taxes are not exempted. Import duty exemptions are applicable to temporary import for re-export, good in transit, imports by diplomatic missions, for humanitarian or religious purposes, and for goods imported in connection with Qualified Investment Projects (QIP) approved by the Council for the Development of Cambodia (CDC). Export QIPs are allowed to import production equipment, construction materials, raw materials, and intermediate goods free from Customs duty, unless they operate under the Customs Bonded Warehouse mechanism.

### 10.6.1 Exemption of Customs Duty

In light of No.114 MEF. PRK Prakas on Determination of Exempted Goods, the details of Customs Duty exemptions are:

- Imports of productions materials, construction materials and production inputs for QIPs approved by CDC;
- Imports of unprocessed agricultural products, seedlings, insecticides, pesticides and agricultural machinery;
- Imports for embassies, international organizations providing humanitarian aid, and certain development projects.

### 10.6.2 Exemptions of Additional Tax

It is not applicable according to No. 114 Prakas on Determination of Exempted Goods.

### 10.6.3 Exemptions of Value-added Tax

According to No. 114 Prakas on Determination of Exempted Goods, the following imports are subject to VAT exemptions;

- Agricultural seeds and breeding animals;
- Certain kinds of agricultural equipment;
- On ad hoc basis supporting industries or contractors that supply products or services to export-oriented garment manufacturers.

### 10.6.4 Exemptions of Special Tax

According to No. 114 Prakas on Determination of Exempted Goods, Special Tax exemptions cover the import of limited quantities of cigarettes, wine, petroleum products and motor oil.

## 10.7 Refund

No. 108 MEF.BRK Praks on Refund of Customs Duties and Taxes (2008) stipulates clearly the full or

partial refund reasons as below:

- Any over-payment;
- Imported goods that, before releasing from Customs, are found to be short, defective, damaged or spoiled, of inferior quality, and goods being re-exported or destroyed under Customs supervision, even though they are already released from Customs, or there is a change in Customs regime;
- Excess payment due to a decision of the competent appeal authority as prescribed in Article 24 of the Law on Customs or by the competent court.

In addition, duties and taxes on import of raw materials may be refunded if they are directly used in the production or manufacture of goods in Cambodia that are exported.

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## 11. TARIFF CLASSIFICATION

### 11.1 Customs Tariff of Cambodia

The Harmonized System of Commodities Description and Coding System (HS), is an internationally standardized nomenclature for the description, classification and coding of goods. It is developed by WCO and widely used as basis for Customs tariffs and the international trade statistics. ASEAN has developed ASEAN Harmonized Tariff Nomenclature (AHTN) for its member states on the basis of WCO HS. WCO version is at 6-digit level, and ASEAN AHTN 2012 version is at 8-digit level.

HS is a coding system based on a hierarchical structure, with Section at the highest level, Chapter, Heading, and Subheading for more specific levels. They are coded in line with their positions in the hierarchy.

According to WCO, at the Section level, HS groups products mainly according to the economy sector, starting with agro-products, and ending with industrial and technological products. All goods of a single industry are grouped in a single Chapter or group of Chapters. Within the same Chapter, Headings and Subheadings are arranged by the stage of processing, starting with raw materials and ending with finished

products.

For the 6-digit code, it consists of three parts which offers information on its three different levels of detail. The first 2 digits represent the Chapter in which the goods are classified; the next 2 digits identify the Heading within the Chapter where the goods are described, and the last 2 digits stand for the most detailed Subdivisions of the HS.

However, in order to fulfill national needs, the HS Convention allows the contracting parties to subdivide the HS classification into even more specific levels by additional digits. These additional digits are used for tariff duties and/or trade statistics. They are all termed as national tariff lines or national breakouts.

In January 2014, Cambodia launched a new Customs Tariff Schedule that implements both HS and AHTN. Now Customs Tariff Schedule of Cambodia 2017 consists of 32 sections which are sub-divided into 98 chapters. Based on HS 2017 Nomenclature, it consists of 10,810 lines at 8-digit level. The details are listed as below.

*Table 7 Classification of HS Code in Cambodia*

<b>Section 1 (Chapter 1-5)</b>	<b>Section 2 (Chapter 6-14)</b>
Live animals & products	Vegetables products
<b>Section 3 (Chapter 15)</b>	<b>Section 4 (Chapter 16-24)</b>
Fats and oils	Prepared foods and, beverages
<b>Section 5 (Chapter 25-27)</b>	<b>Section 6 (Chapter 28-38)</b>
Mineral products	Chemicals & products
<b>Section 7 (Chapter 39-40)</b>	<b>Section 8 (Chapter 41-43)</b>
Plastic and rubber	Hides and skins
<b>Section 9 (Chapter 44-46)</b>	<b>Section 10 (Chapter 47-49)</b>
Wood and articles	Pulp, paper, etc.
<b>Section 11 (Chapter 50-63)</b>	<b>Section 12 (Chapter 64-67)</b>
Textiles & articles	Footwear, handgear
<b>Section 13 (Chapter 68-70)</b>	<b>Section 14 (Chapter 71)</b>
Articles of stones	precious stones, etc.

<b>Section 15 (Chapter 72-83)</b>	<b>Section 16 (Chapter 84-85)</b>
Base metals and products	Machinery
<b>Section 17 (Chapter 86-89)</b>	<b>Section 18 (Chapter 90-92)</b>
Transport equipment	Precision instrument
<b>Section 19 (Chapter 93)</b>	<b>Section 20 (Chapter 94-96)</b>
Arms and ammunition	Miscellaneous manufacturing
<b>Section 21 (Chapter 97)</b>	<b>Section 22 (Chapter 98)</b>
Works of art, etc.	Special transportations not classified according to kind

## 11.2 General Rules for the Interpretation of the HS

WCO's General Rules for the Interpretation of the Harmonized System are also applied by Cambodia Customs and these are the rules that govern the classification of goods under the HS and there are 6 General Rules in all, which must be applied in consecutive order including:

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.
2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides

the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.
5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein: (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character. (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.
6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

## 12. CUSTOMS VALUATION

At the time of WTO accession, Cambodia proposed to phase out Minimum Customs Values gradually over five years, with full compliance with the WTO Customs Valuation Agreement by the end of 2008. Since January 1, 2009 the first three methods of Customs valuation (transaction value, identical goods, and similar goods) have been implemented by Customs. Since January 1, 2011, Cambodia has fully implemented the WTO Customs Valuation Agreement.

As stated clearly in No.387 MEF.BK Prakas on Customs Valuation of Imported Goods (2008), there are 6 valuation methods in practice in Cambodia.

- **Valuation Method 1: Transaction Value**

The Customs value of imported goods shall be their transaction value (as primary basis of valuation), i.e. the price actually paid or payable for the goods when sold for export to Cambodia, adjusted in accordance with Chapter III of the No.387 Prakas.

With this method, the price actually paid or payable for the goods shall be adjusted in determining the transaction value of goods in the following conditions (as described in Chapter III of No.387 Prakas)

By adding amounts, to the extent that each such amount is not included in the price actually paid or payable for the goods, equal to:

*Table 8 Adding Elements for Transaction Value*

1	Commissions and brokerage.
2	The packing costs and charges (including the cost of cartons, cases, and other containers and coverings for Customs purposes).
3	The value of any of the following goods and services: materials, component parts, and other goods incorporated in the imported goods; tools, dies, moulds, and other goods utilized in the production of the imported goods ; materials consumed in the production of the imported goods; engineering, development work, artwork, design work, plans, and sketches undertaken elsewhere than in Cambodia and necessary for the production of the imported goods.
4	Royalties and license fees (including payments for patents, trademarks, and copyrights, exclusive of charges for the right to reproduce the imported goods in Cambodia).

5	The value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue to the seller directly or indirectly.
6	The cost of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses connected with the transportation of the imported goods until the goods have arrived in Cambodia.

- By deducting amounts, equal to:

*Table 9 Deducting Elements for Transaction Value*

1	Any reasonable cost, charge, or expense owing to construction, erection, assembly, or maintenance of, or technical assistance of the goods after import.
2	Any reasonable cost, charge, or expense due to the transportation or insurance of the goods within Cambodia.
3	Any reasonable cost, charge or expense linked with any Customs duties or taxes payable in Cambodia.

- **Valuation Method 2: Transaction Value of Identical Goods**

When the first method cannot be applied to determine the Customs value, the Customs value of the goods shall be the transaction value of identical goods if the identical goods were exported to Cambodia at the same or substantially the same time as the goods being valued were sold.

- **Valuation Method 3 : Transaction Value of Similar Goods**

When the second method cannot be applicable for Customs valuation, the third method shall be adopted as an alternative if the similar goods were exported to Cambodia at the same or substantially the same time as the goods being valued were sold.

- **Valuation Method 4 : Deductive Value**

Deductive value will be utilized if the previous-mentioned three methods cannot determine Customs value. The deductive value of the goods being valued shall be the price per unit in respect of sales described in Article 23 of No. 387 Prakas and adjusted in accordance with Article 24 of this Prakas, in which the greatest number of units of the goods being valued or identical or similar goods is sold. The following elements shall be subtracted from the price per unit.

*Table 10 Deducting Elements for Deductive Value*

1	Commission generally earned on a unit basis
2	Profit and general expenses, including all costs of marketing the goods as a whole and generally reflected on a unit basis
3	Reasonable costs charges and expenses incurred from transportation and insurance of the goods
4	Any Customs duties or other taxes payable in Cambodia
5	The value added to the goods due to the assembly, packaging, or further processing in Cambodia

**- Valuation Method 5 : Computed Value**

When the above-mentioned four methods are inapplicable, the Customs value of the goods shall be the computed value, which is the sum of amounts equal to:

*Table 11 Deducting Elements for Computed Value*

1	The cost of materials or processing in producing the goods
2	The cost, charges and expenses of engineering, development work, artwork, design work, plans, or sketches incurred by the producer
3	The amount for profit and general expenses linked with sales for export to Cambodia of goods of the same class or kind

**- Valuation Method 6: Residual Basis of Valuation**

When method 5 cannot determine the Customs value, a flexible and reasonable value derived from the above-mentioned five methods on the basis of available information in Cambodia.

## 13. RULES OF ORIGIN

### 13.1 Rules of Origin

Rules of origin are the criteria needed to determine the national source of a product. It is very essential for duties and restrictions in several cases which depend upon the source of imports.

A Certificate of Origin (C/O) is an official document to certify the products originated, wholly obtained, produced or manufactured in a country. It is generally an integral part of import documents required by the imported countries.

There are two types of C/O in Cambodia: non-preferential and preferential. The competent authorities of C/O is Ministry of Commerce in Cambodia.

- Non-preferential rules of origin includes a package of commercial policy instruments, such as MFN treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements and any discriminatory quantitative restrictions or tariff quotas, as well as those used for trade statistics and government procurement.
- Preferential rules of origin include the preferential arrangements to which they apply, judicial decisions, and administrative rulings of general application. For instance, as an ASEAN member, Cambodia participates in preferential trade agreements with Australia and New Zealand, China, India, Japan, and Korea.

### 13.2 Certificate of Origin (C/O)

In Cambodia, non-preferential and preferential Certificates of Origin are listed in below:

*Table 12 Preferential and Non-Preferential Certificates of Origin*

Preferential Tariff Certificate of Origin	
ASEAN-Australia- New Zealand	Form AANZ
China	Form AC
India	Form AI

Preferential Tariff Certificate of Origin	
Korea	Form AK
Japan	Form AJ
Vietnam	Form S
General System of Preferences (LDC and LLDC)	Form A
Non-Preferential Tariff Certificate of Origin	Form N

### 13.3 Application for C/O

The exporters need to apply for C/O at the Export-Import Department, Ministry of Commerce via automation system - The C/O Application Online. The procedures of the application for Certificate of Origin could be found in Prakas No. 112 MOC/SM 2013 on Revision of Certificate of Origin Issuance Procedures.

### 13.4 Payment for C/O Application

The fee for C/O application includes Export Management Fee (EMF), and Public Service Fee. The payment is illustrated as below:

Table 13 The Fee for C/O Application 1

C/O	Admin. Fee	EMF	Public Service
Form N	30 USD	EMF	8 USD
Form A	50 USD	EMF	8 USD
Other Form	50 USD	EMF	8 USD

For garment products under 2,000 PCS or Footwear under 200 PRS, the payment is as below:

Table 14 The Fee for C/O Application 2

C/O	Admin. Fee	EMF	Public Service
Form N	10 USD	EMF	18 USD
Form A	15 USD	EMF	23 USD
Other Form	15 USD	EMF	23 USD

Note: EMF is varied according to the products and exception for export of products at the value under 6,000 Euro for European countries and under 800 USD for other countries.

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## 14. ADVANCE RULINGS

Advance ruling was established and put into implementation in Cambodia on January 4, 2013 in order to enhance trade facilitation and to ensure the accuracy of completion of Customs declaration (SAD) according to the provision of Customs Law.

Advance ruling is a written statement issued by the GDCE to a person upon his/her written request on (a) the tariff classification, (b) the interpretation and application of the Law and regulations relating to the Customs valuation, or (c) the origin of the goods to be imported.

In Cambodia, the request forms of advance ruling include:

- AR-TC Form 1 for Tariff Classification;
- AR-CV Form 1 for Customs Valuation;
- AR-OG Form 1 for Determination of Origin of Goods.

In addition, the request forms for review of an advance ruling consist of:

- AR-TC Form 4 for advance ruling on Tariff Classification;
- AR-CV Form 4 for advance ruling on Customs Valuation;
- AR-OG Form 4 for Origin of the Goods.

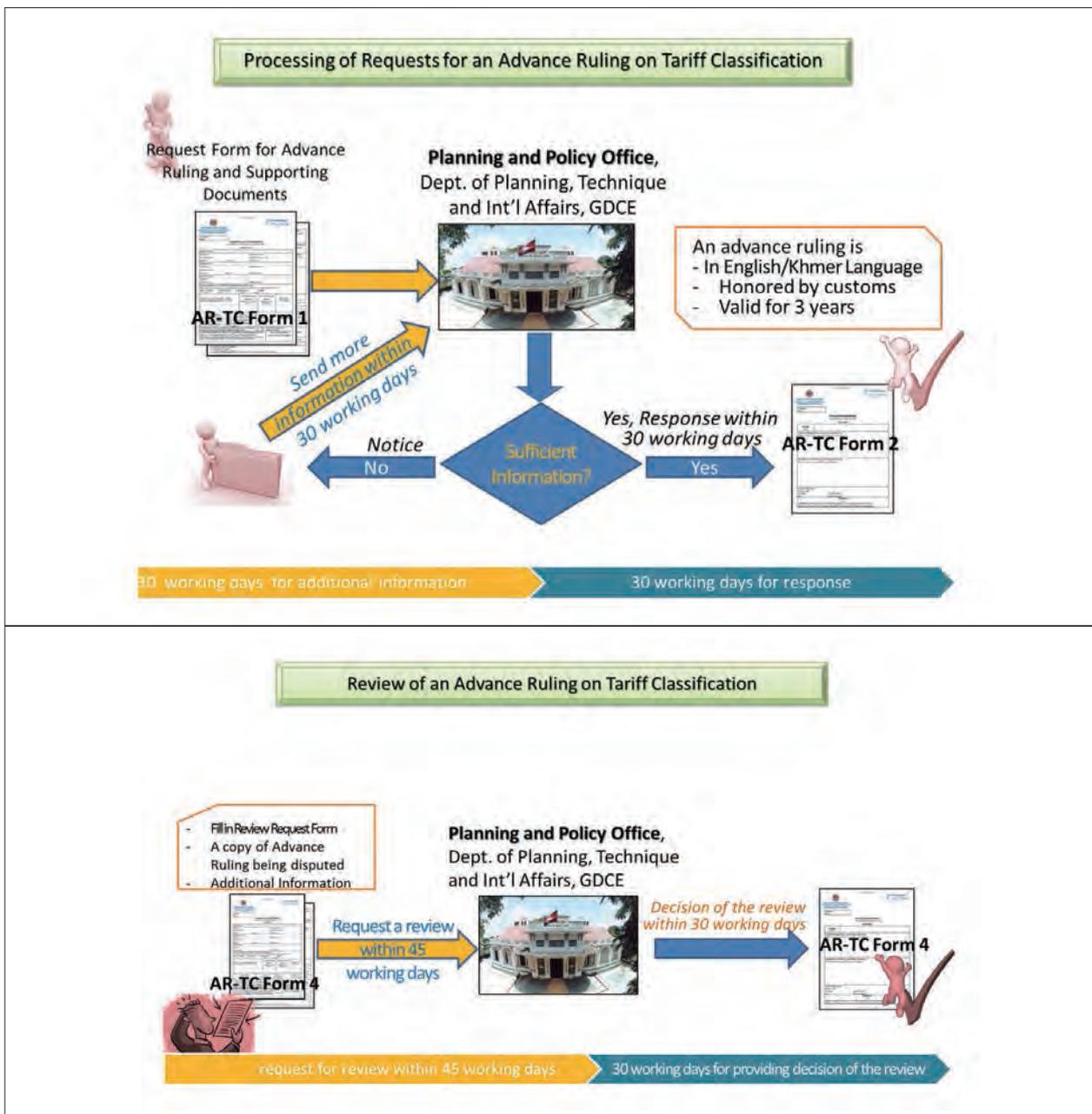
The advance rulings are binding on the Customs from the effective date of the ruling, and remain valid for 3 years from the date of issuance.

### 14.1 Advance Ruling on Tariff Classification

Advance ruling is applicable to tariff classification in Cambodia. The competent authority is office of Planning and Policy within GDCE.

The process is listed in the following figure.

Figure 4 Processing and Review for an Advance Ruling on Tariff Classification

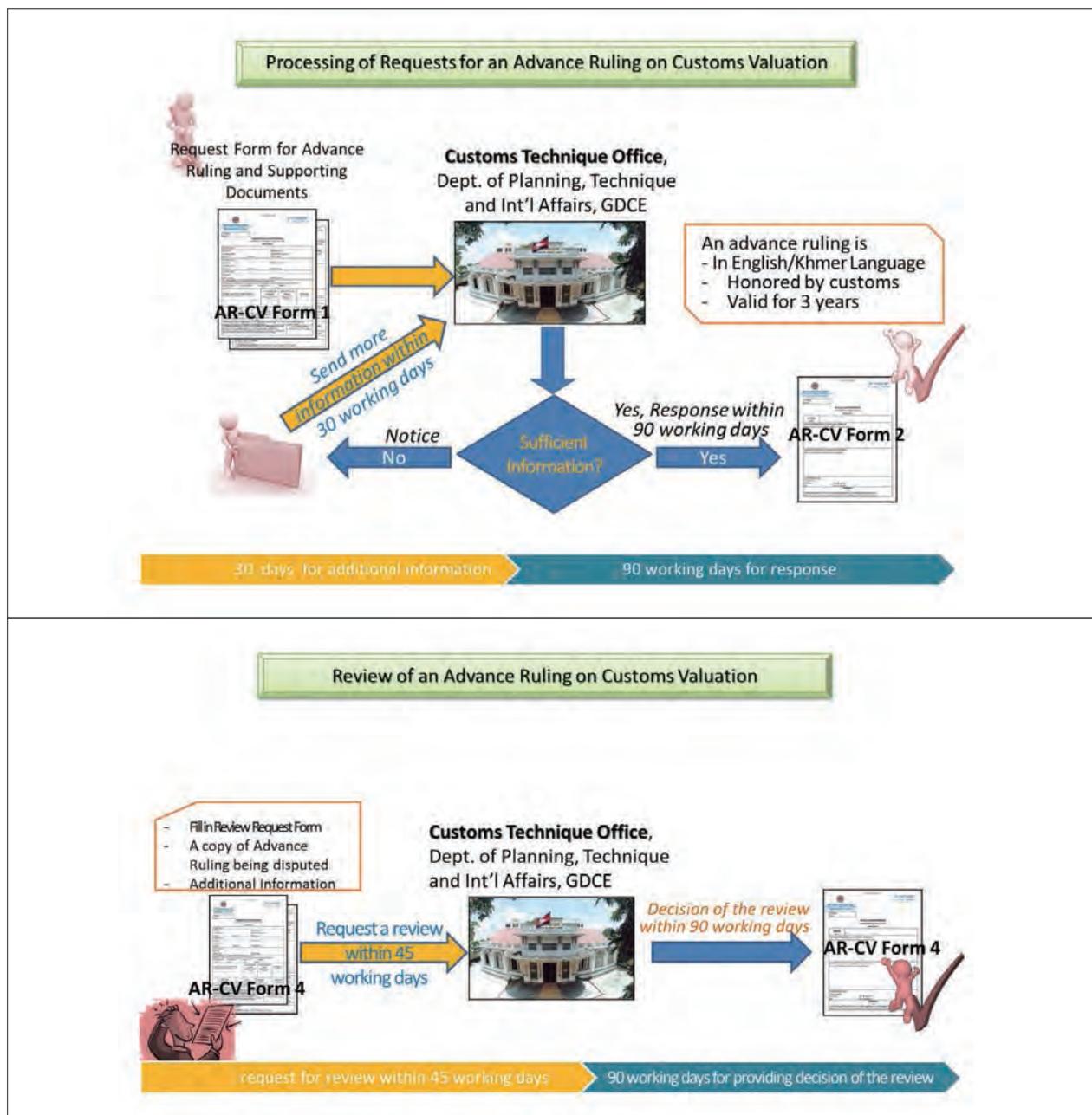


## 14.2 Advance Ruling on Customs Valuation

Advance ruling is applicable to Customs valuation in Cambodia, The competent authority is Office of Customs Technique within GDCE.

The process is listed in the following figure.

Figure 5 Processing and Review for an Advance Ruling on Customs Valuation

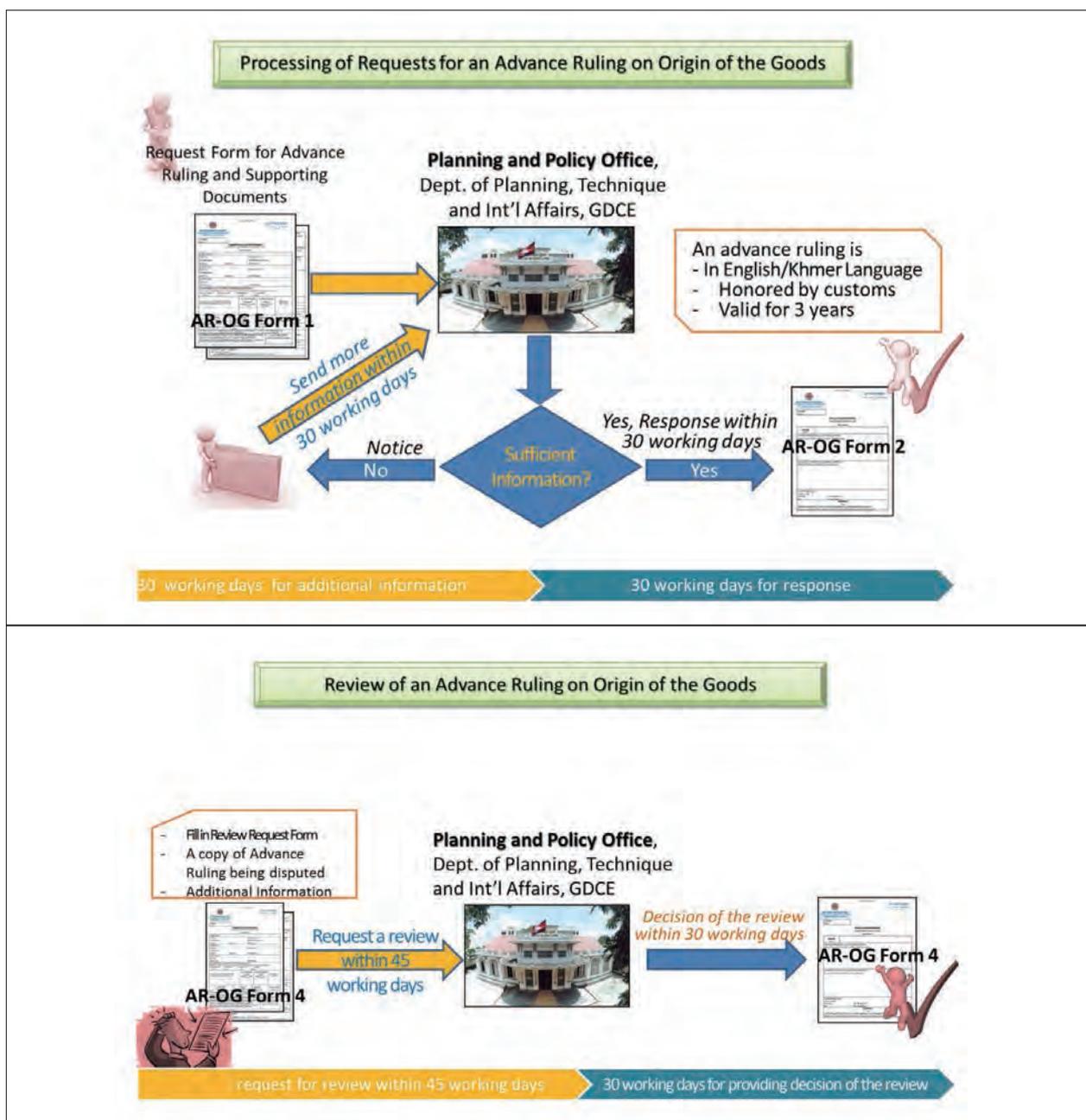


### 14.3 Advance Ruling on Origin

Advance ruling is applicable to origin in Cambodia; the competent authority is office of Planning and Policy within GDCE.

The process is listed in the following figure.

Figure 6 Processing and Review for an Advance Ruling on Origin of the Goods



## 15. FREE TRADE AGREEMENTS

As an ASEAN member state, Cambodia has joined the ASEAN Free Trade Area and the ASEAN Framework Agreement on Services, and it is also a signatory to ASEAN Agreements entered with other countries, which are listed as below.

- ASEAN Free Trade Area Agreement, signed on 12/08/1980, effective since 01/01/1993;
- ASEAN Trade in Goods Agreement (ATIGA), adopted on 26-02-2009, effective since 17-05-2010;
- ASEAN-China Free Trade Agreement(ACFTA), signed on 28/11/2004 (goods) and 14/01/2007 (services), effective since 01/01/2005 (goods) and 01/07/2007 (services);
- ASEAN-Korea Free Trade Agreement(AKFTA), signed on 24/08/2006 (goods) and 21/11/2008 (service), effective on 01/01/2010 (goods) and 14/10/2010 (services);
- ASEAN-Japan Comprehensive Economic Partnership Agreement(AJCEP), signed on 26/03/2008, effective since 01/12/2008;
- ASEAN –Australia –New Zealand Free Trade Agreement(AANZFTA), signed on 27/02/2009, effective since 01/01/2010;
- ASEAN-India Free Trade Agreement(AIFTA), signed on 13/08/2009 (goods) and 13/11/2004 (services), effective since 01/01/2010 (goods) and 01/07/2015 (services);
- ASEAN Framework Agreement in Services, effective since 01/07/2015.

Under such FTAs as guideline, Cambodia has promulgated internal regulations to implement preferential treatment on duties and taxes.

Meanwhile, Cambodia has also signed bilateral investment promotion and protection agreements with 24 countries or territories, which provide reciprocal national treatment to investors and settlement of investment disputes via arbitration.

## 16. BONDED SYSTEM

### 16.1 Customs Bonded Warehouses

A Customs Bonded Warehouse is a building, place or an area that is authorized to store goods for a specified duration under Customs control. When the imported or exported goods are stored in a Customs Bonded Warehouse, duties and taxes are suspended.

According to No. 116 MEF.BRK Prakas on Customs Bonded Warehouse, Cambodia has 3 types of Customs Bonded Warehouses as follows:

- **Public Bonded Warehouses**

They are authorized by MEF and may be operated by government agencies or by any approved person. The person who has the legal right to goods may store the goods in the public bonded warehouse, including importers, a person to whom the goods have been sold while in the warehouse or anyone who has the legal right to dispose of the goods.

- **Private Bonded Warehouses**

They are authorized by the Director of Customs and to be solely used by authorized persons for storage of specific goods for their own use, including operators of duty-free shops.

- **Special Bonded Warehouses**

They are authorized by the Director of Customs and are used for storing hazardous goods, goods that could affect the quality of other goods or goods requiring special storage facilities.

### 16.2 Customs Manufacturing Bonded Warehouses

Under some special circumstances, MEF may issue licenses for the operation of Customs Manufacturing Bonded Warehouses. The license shall specify the list of raw materials/components, machinery and equipment with suspended duties and taxes, to be directly used in the manufacturing or processing of goods.

The licensed Customs Manufacturing Bonded Warehouse operators are authorized to carry out processing and manufacturing of the approved products under the Customs control. In addition, MEF also issues licenses for the operation of Customs Manufacturing Bonded Warehouse for processing or refining of crude petroleum or bituminous minerals to obtain petroleum products.

As clearly stated in No. 116 MEF.BRK Prakas on Customs Bonded Warehouse and Article 49 of the Law on Customs, the requirements for the duties and taxes are:

- Imported goods that are removed from the Customs manufacturing bonded warehouse for domestic consumption shall be subject to the duties and taxes payable;
- Finished products removed from Customs manufacturing bonded warehouses for domestic consumption are subject to the payment of duties and taxes on the value of imported raw materials used in their manufacture upon which duties and taxes have been suspended;
- Duties and taxes shall be charged in line with the Customs tariff and the rates of duties and taxes in effect on the date of the registration of the Customs declaration for admission of the goods to the warehouse.

### 16.3 Special Economic Zones (SEZs)

Special Economic Zone refers to the special areas for the development of the economic sectors which brings together all industrial and other related activities and may include General Industrial Zones and/or Export Processing Zones.

To facilitate development, Cambodia has approved 46 Special Economic Zones (SEZs) to attract foreign direct investment, out of which 16 SEZs are operational. The Council for the Development of Cambodia (CDC) is the executive agency in charge of SEZs.

In Cambodia, according to Prakas No. 734 Special Customs Procedures Implemented in Special Economic Zones, the authorized Customs officer shall divide each Special Economic Zone into two different parts: national Customs territory and different Customs territory. Customs duties and taxes are paid and got the same treatment as normal procedure in the national Customs territory, which consists of supply trade service and other services such as transportation, tourism, living and residential construction which are the basis of trade activities and other needs. By contrast, different Customs territory is an area where export or import exits or enters the territory which is considered as temporary storage out of national Customs territory; especially, involved with the implementation of the different Customs procedure

in processing of quick Customs formality and getting the most favorite treatment as much as possible. It consists of general industry zone, export processing zone and free trade area.

Cambodia offers a number of incentives in SEZs, including profit tax holidays and rebates, special depreciation, exemption from import duties and taxes, zero-rate VAT on imports and special Customs procedures.

Specifically speaking, in SEZs, Cambodia Customs duties exemption covers:

- Import of production equipment;
- Import of construction materials;
- Import of production inputs;
- QIPs whose output is for export and for firms supplying the garment and footwear industries.

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## 17. CUSTOMS SUPERVISION AND CONTROL ON TRADE IN SERVICE

Services have taken up nearly 40% of the Cambodian economy after it adopts a liberal regime for trade in services as part of its accession to the WTO. Cambodia implemented market access commitments across the full range of services sectors.

Besides, regionally speaking, ASEAN leaders have committed to achieving free and open trade, including trade in services by 2015. The ASEAN Framework Agreement in Trade in Services (AFAS) was launched in 1995. Cambodia Customs is making utmost efforts to facilitate trade in service.

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## 18. POST-CLEARANCE AUDIT (PCA)

Post-clearance audit (PCA) is an audit, investigation, inspection or control in a systematic manner by competent Customs officers to verify the accuracy and authenticity of Customs declarations through the examination of the relevant documents, books, records and other business information systems about imports and exports.

### 18.1 Scope of PCA

According to No. 388 Prakas on Post-clearance Audit by General Department of Customs and Excise, PCA shall be conducted on persons involved or engaged in the importation, exportation of goods, including importers, exporters, Customs brokers, operators of the Customs temporary storage, operators of Customs bonded warehouses, transportation companies or other person who are involved in the importation or exportation of goods. They must disclose all information, invoices, and other documentation to enable Customs to verify and accurately determine the tariff classification, origin of goods and the Customs value of the imported goods.

### 18.2 Validity of PCA

Based on No. 388 Prakas, Customs may re-determine the declared tariff classification, the declared origin of goods and declared Customs value within 3 years of the date of registration of any Customs declaration, following an audit, investigation, inspection or examination of the imported goods.

Once any fraudulent activities are found via PCA, the Director of Customs will issue a notice for the goods under investigation, within a period no longer than ten years from the original date of registration of Customs declaration.

### 18.3 Requirements and Procedure of PCA

According to the No. 388 Prakas, the relevant information should be provided once required by a competent Customs officer: copies of the documents on management of documents, books, records and other information on import and export; response to questions of competent Customs officers on pertinent matters; and any relevant and necessary information recorded or stored by means of an electronic or other device.

The competent Customs officers are entitled to perform the following actions:

- They may enter any premises or places where the relevant information is kept at any time in accordance with No. 388 Prakas;
- They may inspect the relevant information or any necessary matters;
- They shall have full access to all lands, buildings, places and to all documents records;
- They may make extracts from or copies of any records or documents;
- They shall provide a true copy of the document or record certified by competent Customs officer at the request of the person in the possession of the document or record.

## 18.4 Consequences of PCA

There are two scenarios following the PCA. On the one hand, if PCA finds no irregularity or violation of existing laws or regulations, the Customs officer must immediately complete the audit report and terminate the audit. On the contrary, the officer must write down this violation and collect all information necessary and submit to the competent chief of office, branch or check point with the audit report and take further actions in line with the existing laws and regulations.

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## 19. ENFORCEMENT AND APPEALS

### 19.1 Offences and Penalties

In light of Law on Customs, anyone who is involved with goods import and export, in contravention of the law or regulations, shall be deemed as Customs offences. The violator may be punished by administrative fines imposed by Customs, and by judicial penalties imposed by the competent Court, or both.

Articles 73 - 76 of Law on Customs stipulate the violations and corresponding penalties in details.

For instance, any person who commits violations of regulations and provisions of this law, including the evasion of duty or taxes, is subject to administrative fines of between 1 time to 3 times the duty and tax evaded.

For more information, please refer to Chapter XI Penalty Provision of Law on Customs.

## 19.2 Appeals

Prakas No. 570 MEF.PR on Complaining Procedures against Customs Record gives legal basis for the violator to appeal.

Upon receiving the notification of the punishment or detention, the violator can appeal in writing to the GDCE within 30 days by providing the reasons of appeal and depositing security in accordance with the Article 41 of Law on Customs.

The appeal shall have information such as:

- name, address and signature of the person concerned;
- The details of Customs offense record or temporarily detention record including the copy of those records;
- The description of the reasons for appeal.

The appeal can be lodged at Customs units including:

- Offices issuing offence records or penalty;
- Related Customs and excise branches;
- Office of legal affairs and public relation;
- Secretariat of the GDCE.

After receiving the complaint, the relevant Customs units have to send the appeal to the GDCE without delay. The GDCE shall issue the written decision within 60 days from the date of receiving the appeal application. Otherwise, the appeal is considered to be agreeable. If the GDCE disagree with the appeal, the person concerned has right to appeal to the competent institutions including competent court against the decision of the GDCE. The complaint has to be done within 30 days after receiving the decision of the GDCE.

## 20. CUSTOMS IPR BORDER PROTECTION

Cambodia has been a member of the World Intellectual Property Organization (WIPO) since 1995 and the Paris Convention for the Protection of Industrial Property since 1998. Cambodia has been participating in the ASEAN Framework Agreement on Intellectual Property Cooperation since 1999 and joined the EC-ASEAN Intellectual Property Rights Cooperation Program.

In 2005, WTO granted Cambodia an extension until 2016 to fully implement IPR protection in line with the WTO TRIPs (Trade-related Intellectual Property Rights) Agreement, under which, Cambodia must introduce an IPR enforcement regime that includes remedies for the civil and criminal enforcement of IPRs, together with administrative measures for the border enforcement of IPRs.

The enquiry point for intellectual property is the IPR Department within MOC. It is responsible for the formulation and implementation of policy on trademarks, trade names, and acts of unfair competition. It also coordinates the drafting and implementation of IP laws and regulations and acts as the focal point for international cooperation.

The competent border authority – the General Department of Customs and Excise is entrusted with enforcement of IPR at the border to prevent the import/export/transit of counterfeit goods and pirated copyright goods. Customs protection of intellectual property is normally initiated by an application of the right-holder or by ex-officio action. The Ministry of Culture which is responsible for the protection of copyright works may be engaged in ex-officio actions. CAMCONTROL is responsible for enforcement of IPR at the border and is entitled to inspect and detain the infringing goods under the Consumer Protection Act and relevant IP provisions.

Besides, Cambodia has issued laws and regulations to allow Customs authorities to inform right holders about the possible importation or exportation of infringing goods.

## 21. AUTHORIZED ECONOMIC OPERATOR (AEO)

Cambodia has taken a preliminary step towards eventually implementing an Authorized Economic Operators program by improving its Best Traders Program (BTP) started in 2014. As of 2018, 17 companies have qualified under this program and received benefits including:

- Customs procedures priority (declaration, inspection, release, etc.);
- Exemption from pre-verification of Customs valuation and certificates of origin;
- Exclusion from the obligation of securing a transport permit for the import and export of goods.

In light of Prakas No 452 MEF on High Compliant Trader Incentive Mechanism, the criteria to become Best Traders in Cambodia are as below:

- Ranking first in Trade Credibility Management System (TCMS);
- Be legal person with its registered capital not less than 1 billion Riel;
- Having never committed serious Customs offence in the last 3 years;
- Be not in debt of Customs duties beyond the deadline or defaults on other debts;
- Having their books related to the import-export in accordance with existing regulations;
- A member of Authorized Business Community and must be certified on the financial situation and the compliance of the trader by its chairperson;
- Having an annual trade volume not less than US\$2 million;
- Being obliged to report in any forms as determined by the Best Trader Management Unit of the GDCE.

In addition, GDCE will increase members of Best Traders Group (BTG) and reach to the full implementation of Authorized Economic Operator (AEO) program in accordance with Customs strategy and work programs on reform and modernization (2014-2018).

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## 22. TRADE STATISTICS

In Cambodia, trade statistics is conducted by the Department of Planning, Trade, and Statistics Information of the Ministry of Commerce. It has weekly business roundup, import and export statistics, and business registration year book.

Import and export statistics is the yearly import-export statistics of Cambodia and it shows about the commodity and market of Cambodia's trade during the year. It consists of four categorized documents:

- Cambodia's exports by country, listing all countries with their imported products from Cambodia;
- Cambodia's export by product, listing all products with the imported countries from Cambodia;
- Cambodia's imports by country, listing all countries with their exported products to Cambodia;
- Cambodia's import by product, listing all products with the exported countries to Cambodia during the year.

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## 23. OFFICIAL BUSINESS HOURS

The service time of the General Department of Customs and Excise is from Monday to Friday and closes on weekends and official holidays.

---

## 24. CONTACT INFORMATION

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Facebook: [www.facebook.com/cambodiacustoms](http://www.facebook.com/cambodiacustoms)

Address: 6-8, Preah Norodom Blvd., Sangkat Phsar Thmei III, Khan Daun Penh, Phnom Penh, Cambodia

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## 25. OFFICIAL WEBSITES

- Cambodia Customs: <http://www.customs.gov.kh>
- Cambodia's Ministry of Commerce: <http://www.moc.gov.kh>
- Cambodia National Single Window: <http://www.nsw.gov.kh/>
- Council for the Development of Cambodia (CDC): <http://www.cdc-crdb.gov.kh/>
- Camcontrol: <http://www.camcontrol.gov.kh/>
- Cambodia National Trade Repository: <https://cambodiantr.gov.kh/>
- Ministry of Agriculture Forestry and Fisheries: <http://www.maff.gov.kh/>
- Ministry of Environment: <http://www.camnet.com.kh/moe/>
- National Institute of Statistics: <http://www.nis.gov.kh/>
- SPS Enquiry Points: <http://www.camcontrol.gov.kh>
- TBT Enquiry Points: <http://www.isc.gov.kh>

## REFERENCE

1. Cambodia Customs: <http://www.customs.gov.kh>.
2. Cambodia's Ministry of Commerce: <http://www.moc.gov.kh>.
3. Trade Policy Review Report by Cambodia (2018) .
4. ASEAN Single Window: <http://asw.asean.org/>.
5. World Customs Organization: <http://www.wcoomd.org/>.
6. World Trade Organization: <https://www.wto.org/>.

## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

All information, materials included and views, opinions expressed in this eBook are those of the editors and do not necessarily reflect those of EABC China (also CCPIT) and EABC. In this regard, EABC China (also CCPIT) and EABC would like to reaffirm that this eBook would not be used as any reference for judicial and administrative process.

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# **eBook on East Asia Customs Procedures**

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The Republic of Indonesia





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## **ACKNOWLEDGEMENTS**

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AANZFTA	ASEAN-Australia and New Zealand Free Trade Agreement
ACFTA	ASEAN-China Free Trade Agreement
AEO	Authorized Economic Operator
AHKFTA	ASEAN-Hong Kong, China FTA
AHTN	ASEAN Harmonized Tariff Nomenclature
AIFTA	ASEAN-India Free Trade Agreement
AJFTA	ASEAN-Japan Free Trade Agreement
AKFTA:	ASEAN-Korea Free Trade Agreement
APEC	Asia and Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
CEPT	Common Effective Preferential Tariff
FOB	Free On Board
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
GEL	General Exception List
GSP	Generalized System of Preferences
HS	Harmonized Commodity Description and Coding System
NSW	National Single Window
PSI	Post Clearance Audit
SL	Sensitive List

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SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
VAT	Value-added Tax
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Republic of Indonesia

### 1. INTRODUCTION OF INDONESIAN CUSTOMS

Indonesian Customs, headed by the Directorate General of Customs & Excise (in short DGCE), is a highly professional, modern, transparent, and effective Customs administration meeting requirements of actual situations and national economic development and now has about 155 offices in the territory, and more than 10 thousand officials.

As a government agency under the Ministry of Finance that serves the community in the field of Customs and excise, the Directorate General of Customs and Excise has the duty to organize the formulation and implementation of policies in the field of supervision, law enforcement, service and optimization of state revenue in accordance with the provisions of legislations.

#### 1.1 Missions

- Enforcing the effective management over imports & exports activities and international trade, providing favorable conditions to the trade and production development;
- Protecting and contributing to the facilitation of development of national economy;
- Protecting revenues;
- Fighting against smuggling, combat commercial fraud, protecting the interests of consumers;
- Contributing to the protection of economic sovereignty, national security and community security;
- Assisting in socio-economic management.

## 1.2 Objectives

- Enhancing the growth of domestic industry by ensuring appropriate implementation of Customs and excise facilitation;
- Creating a conducive business and investment climates by expediting logistics of export and import through simplification of Customs and excise procedures as well as implementation of robust risk management;
- Protecting the society, domestic industry, and national interests by controlling and/or preventing the importation and exportation of prohibited and restricted goods, that have negative and dangerous impact, in accordance with the prevailing laws and regulation;
- Controlling import, export and other Customs and excise activities effectively and efficiently through the implementation of a robust risk management system, a thorough intelligence and investigation, a strong enforcement, and an accurate Customs and excise audit;
- Restricting, controlling and/or regulating the production, circulation and consumption of certain goods that have specific nature and characteristics which can be harmful to health, environment, public order and security through excise instruments that consider the principle of fairness in equality in a sense of justice and balance;
- Optimizing government revenue from import duty, export duty, and excise in order to support national development.

## 1.3 Duties and Functions

Customs is an essential organization for a country, and this is reflected by Directorate General of Customs and Excise (DGCE) in its roles for Indonesia within its duties and functions to:

- Protect the community from the import of dangerous goods;
- Protect particular domestic industries from unfair competition with similar foreign industries;
- Carry out law enforcement at the borders related with restriction and prohibition regulation;
- Collect import duty and taxes for state revenue.

## 1.4 Organization

The Organization of Directorate General of Customs & Excise (DGCE) includes Director General, Expert

Staff, Secretary of Directorate General, Customs Technique Directorate, Customs Facility Directorate, Audit Directorate, Excise Directorate, International Affairs Directorate, Enforcement & Investigation Directorate, Revenue & Regulation Directorate and Customs & Excise Information Directorate.

Additionally Directorate General Customs & Excise (DGCE) also administers 17 Customs Regional Office, 2 Customs Main Service Office and 130 Customs Service & Inspection Office nationwide.

Figure 1 Organizational Chart of Directorate General of Customs and Excise



Source: Directorate General of Customs and Excise.

## 1.5 Resources for Importers and Exporters

The official website of Indonesia Directorate General of Customs and Excise (<http://www.beacukai.go.id>) is an informative source for clearance procedures and other Customs standards in English. The official websites of Ministry of Finance (<https://www.kemenkeu.go.id>) and Ministry of Trade (<https://www.kemendag.go.id>) can also provide some useful information on Customs clearance. The official website of Indonesia National Single Window (<https://www.insw.go.id>) also has some information in English.

## 2. CUSTOMS LEGAL SYSTEM

The Republic of Indonesia, as a constitutional state, wishes to establish a firm national legal system that serves the national interests, proposed the Customs Law No. 10/1995 as amended by Law No. 17/2006 and Excise Law No. 11/1995 as amended by Law No. 39/2007 as the fundamental legal basis for the operations of the Directorate General of Customs and Excise (DGCE).

Indonesian Customs also enforces other related laws and regulations which mainly include:

- Law of the Republic of Indonesia on Trade No. 7/2014;
- Regulation of the Minister of Finance No. 145/PMK.04/2007;
- Regulation No. 148/PMK.04/2011 and PMK No. 145/PMK.04/2014 on Customs Provisions in the Export Sector;
- Regulation of the Minister of Finance No. 214/PMK.04/2008 and PMK No. 146/PMK.04/2014;
- Regulation No. 86/PMK.04/2016 on Collection of Export Duty;
- Regulation of the Minister of Finance No. 224/PMK.04/2015 concerning Supervision of the Import or Export of Prohibited Items and/or Restrictions;
- Regulation of the Director General of Customs and Excise No. PER-32/BC/2014;
- Regulation PER-29/BC/2016 on Customs Procedures in the Export Sector;
- Regulation No. 20/M-DAG/PER/3/2017 on the Registration of Distributors of Basic Commodities;
- Regulation No. 36/M-DAG/PER/9/2007 on Trade Business License (SIUP);
- Regulation No. PM 13/2017 regarding Ship Registration and Nationality (New Regulation);
- Law No. 7/2014 concerning Trade (State Gazette of the Republic of Indonesia of 2014 No. 45 supplement to the State Gazette of the Republic of Indonesia No. 5512);
- .....

---

### 3. ROUTINE CUSTOMS CLEARANCE PROCEDURES

Routine Customs clearance procedures in Indonesia for imports and exports usually include the following six steps:

- Registration;
- Declaration;
- Documentary Examination;
- Duty Collection;
- Physical Inspection;
- Release.

Clearance time is varied depending on the clearance lane used (green, yellow or red).

- Green Line: to verify documents, the goods will be cleared;
- Yellow Line: to request for additional documents in order to release the imported goods;
- Red Line: to inspect physical goods for every shipment, one by one.

#### 3.1 Registration

A business intending to import and export goods in Indonesia must have Importer Identification Number (API). Only an Indonesian resident individual or entity can act as the importer or exporter of record. Additionally, a new company invested in Indonesia currently will only have the Tax Payer ID (NPWP) as their Customs Identity Number (NIK).

#### 3.2 Declaration

Import and export declarations are filed by using the Electronic Data Interchange (EDI) system.

### 3.2.1 Declaration for Imports

Duties and taxes must be paid prior to Customs clearance. All stakeholders involved in the import and export process have an access to the Indonesia National Single Window (INSW) portal to monitor import and export activities. If imported goods are held in the red channel due to the changes in regulations, taxes, HS codes, etc., contacting brokers with the Red Line Notification's response and the contacting of Customs officer who is in charge will help get goods out of the Indonesian Customs.

### 3.2.2 Declaration for Exports

When the availability of a buyer, the payment system (Consignment, L/C, etc.), and the eligibility of the goods have been confirmed, an exporter can proceed with the packaging and scheduling of the shipment. Next is to submit a notification of Export of Goods to the Customs and Excise Office. The notification along with several accompanying documents, including an invoice, packing list, and documents from the relevant technical bodies, are required in order to obtain the final export approval. A notification will contain information such as:

- Exporter;
- Recipient;
- Customs broker (if available);
- Means of transport;
- -Country of destination; and
- The goods (type, quantity, container number, relevant documents).

The notification must be submitted no earlier than seven days prior to the export schedule or no later than the moment the goods enter the Customs area.

## 3.3 Documentary Examination

Directorate General of Customs and Excise (DGBC) officer will then check Customs declaration and the Customs duties. If Customs declaration is complied with regulation, they will issue Customs release letter (surat pemberitahuan pengeluaran barang/SPPB) to the exporter/importer, if not then Customs declaration will be rejected and exporter/importer may revise and re-submit Customs declaration.

### 3.4 Physical Inspection

All new entities in Indonesia will have all imported goods physically inspected in the red channel. Indonesian entity has to be in operation for 5 years before getting upgraded to the yellow channel and another 3 more years before it gets upgraded to the green channel.

### 3.5 Duty Collection

The importer shall complete and submit the PIB, compute the Customs duty and import taxes, and make payment to the depository bank. The PIB and its attachments, such as commercial invoice, P/L, B/L / AWB, Customs duty and import taxes payment evidence, etc., are submitted to Customs for approval.

### 3.6 Release

Exported/Imported goods cannot leave Customs area before receiving Customs release letter (SPPB). All above processes are using online system to minimize interaction between exporter/importer and DGBC officer. The import goods can be released from the Customs area after approval by Customs.

---

## 4. SPECIAL CUSTOMS CLEARANCE PROCEDURES

### 4.1 Temporary Admission

Temporary Admission is stipulated by Article 9, Section 3, Part One, Chapter II of Customs Law as follows:

- (1) Imported goods may be released as temporary admission if at the time of importation it is clear that these goods will be re-exported.
- (2) Temporarily admitted goods shall be under Customs control until their re-exportation.
- (3) The provisions as referred to in paragraph (1) and (2) and the determination of duration of the

temporary admission shall be further regulated by the Minister.

(4) Any person who does not re-export the temporarily admitted goods within the period as referred to in paragraph (3) shall be subject to a penalty of one hundred percent of the Import duty that should be paid.

## 4.2 Transportation of Goods

Transportation of goods within the Customs territory shall be declared by using the Customs declaration, as long as it concerns with:

- imported goods from the Temporary Storage or the Bonded Storage destined to another Temporary Storage or Bonded Storage;
- imported goods transited and/or transshipped;
- exported goods in transited and/or transshipped;
- goods of the Customs territory transported through a location outside the Customs territory.

## 4.3 Temporary Import

On August 25, 2011, Minister of Finance has issued Minister of Finance Regulation No. 142/PMK.04/2011 on Temporary Imports and this regulation revoked and replaced previous Minister of Finance Regulation No. 140/PMK.04/2007 to improve services for stakeholders in the temporary import sector, and to provide legal certainty on temporary imports.

The Regulation has clearly describes several terms that used, such as Temporary Import is entry of imported goods into the Customs areas that intended to be re-export within a maximum period of 3 years. Temporary Imported Goods are imported goods that entered process using the Temporary Import mechanism; and Re-exports means sent the Temporary Good from the Customs area in accordance with the Customs on export.

### 4.3.1 Temporary Import Goods Requirements

Requirements for Temporary Imported Goods are described as: (i) the goods must be non-consumable; (ii) easy identification; (iii) the goods shall not having substantial change to the shape, except due to use;

(iv) certain purpose of the goods and (v) the goods must be accompanied by a document stating that the goods will be re-exported.

#### **4.3.2 Temporary Import Goods Free from Import Duties**

Certain Temporary Imported Goods may be excluded from import duties, the goods that may have this facility are, among others, goods for exhibition; seminar; sports and competition; demonstration; good for experts; educational, research, knowledge, and culture; personal yachts belonging to foreign tourists; livestock for sports, competition, and training; goods for disaster mitigation; container goods for military and police purposes, tools and equipment that using for following purpose; construction, reparation, and testing and others goods, ships that imported by national shipping company, airplane or airplane engine by the national air services company, goods that will be used for government project that funding or grant by international.

#### **4.3.3 Temporary Import License**

Before the importer import the Temporary Import Goods, the importer shall submit written application to Head of Customs and Exercise where the Temporary Goods will be arrived in Indonesia, in the event the Temporary Goods will be imported fulfill following requirements, the application shall be submitted to the Director General:

- The Temporary Goods will be used for international business scale;
- Customs and excise office is unable to use;
- The Temporary Goods will be used for purpose of oil and mining; or
- The Temporary Goods are needed for efficiency of temporary licenses service.

The information that shall be stated in the form of application includes:

- Type, amount, specification, identity, and estimate of the value of the goods;
- Name of the seaport where the temporary imported goods will arrive;
- Location of use;
- Purpose of goods; and validity period.

An importer who imports Temporary Imported Goods must give the head of the local Customs office a cash guarantee. The amount of the guarantee is equal to the amount of the import duty on the goods.

#### 4.3.4 Period of Temporary Goods Imported

The period for Temporary Goods is granted according to the purpose for maximum three years since the registration date of notification. For Temporary Import Goods that granted permission less than three years, may have be extended by submitting application to Director General of Customs and Exercise (maximum extended period is not lapse more than three years since the registration date).

#### 4.3.5 Documents for Temporary Imports

Before the commodities arrive to Indonesia, a formal notification of arrival must be submitted to the State Secretariat. A complete set of original shipping documents must be submitted with the PP19 Form, including;

- Bill of Loading for the port;
- Air Waybill for the airport;
- Certificate of Origin;
- Commercial Invoice;
- Packing List;
- Phytosanitary Certificate for foods.

The PP19 validation process takes at least 7 working days. It should normally be initiated before the vessel's arrival. In parallel, the proper ministries must be approached to issue Import Permits, which is the specific authorization applying to the respective commodities.

---

## 5. DECLARATION DOCUMENTS

Customs Declaration Form is the most fundamental document for Customs clearance process. Other supporting commercial documents, certificates and permits and etc. are also required to be submitted to the Customs.

### 5.1 For Importation

Besides Import Declaration Form, businesses importing into Indonesia must provide the following documents:

- Commercial Invoice, signed by the manufacturer or supplier as true and correct;
- Bill of Lading, in three endorsed originals and four non-negotiable copies;
- Certificate of Insurance;
- Packing List;
- Import Permits;
- .....

### 5.2 For Exportation

Besides Export Declaration Form, businesses exporting out of Indonesia must provide the following documents:

- Bill of Lading, Airway Bill or other transport documents such as Postal Receipt, Cargo Receipt;
- Commercial Invoice;
- Packing List;
- Insurance Certificate;
- Export Permit; and
- Certificate of Origin;
- .....

### 5.3 Other Documents

In some cases, it may also be necessary to provide the following documents:

- Insurance document;
- Taxpayer ID number (NPWP);
- Quality Statement or Quality Certificate; or
- Export LKP (Truth Examination Report), for products receiving Bapeksta facility or subject to PE or PET;
- .....

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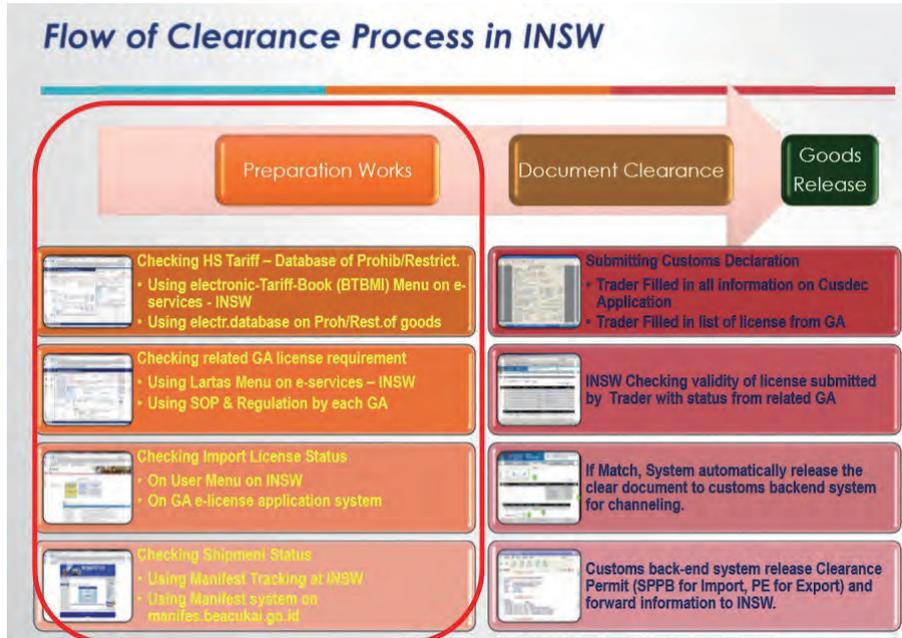
## 6. INSW - INDONESIA NATIONAL SINGLE WINDOW

Indonesia National Single Window (INSW) system is a nationally integrated electronic system, which can be accessed through the internet network, and will integrate information related to the process of handling Customs documents and other documents related to exports and imports. It guarantees information security, integrates information flow and processes between internal systems automatically, including Customs, licensing, port/airport systems, and other systems related to the service process and supervision of export/import activities.

### 6.1 Pre-clearance Service

Before doing import and export activities, traders can gather information on requirements of licenses or permits as well as tariff, and any other procedures to lodge the declaration to Customs in INSW.

Figure 2 Flow of Clearance Process in INSW



Source: INSW.

The functions of INSW before trading are as follows:

- Checking HS Tariff;
- Checking related GA license requirement;
- Checking Import License status;
- Checking shipment status;
- .....

## 6.2 INSW in Clearance Process

INSW help Customs clearance process from Customs declaration lodgment, commodity control and prohibition validation, permit and licenses auto verification to 18 Government Agencies' e-Permit system, duty rate and payment status validation to banks, Customs backend system risk profile endorsement, to auto release of Customs Clearance Permit (SPPB).

Types of permit/license used by INSW include:

- Final Import/Export Permit;
- Recommendation of Import/Export License;
- Certificate of Import/Export Inspection;
- Indonesia Product Quality Standardization;
- Quarantine Inspection Permit;
- Other FTA Documents (Certificate of Origin, SPS, etc.).

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## 7. CUSTOMS BROKERS

Customs brokers are professional and knowledgeable people who are ready and able to assist the importing/exporting community with Indonesian Customs inquiries and clearances and sourcing, production supervision, quality control and packing and shipping in a continuous liaison and feedback process.

As intermediary, Customs brokers enable to offer a wide range of opportunities to arrange import on FCL, LCL, break bulk and airfreight basis, including regular consolidation services. The Customs brokers also ensure that the client is notified prior to cargo arrival and with an on-line EDI connection with the Indonesian Customs office, consignments are cleared in a smooth and efficient manner.

Customs brokers also offer customers comprehensive import and export services which comprise of one or more of the following services:

- Consultancy on import tariff and regulations by its certified specialists;
- Electronic Customs entry processing;
- Import and export sea freight;
- Import and export airfreight;
- Warehousing and distribution.

If a Customs Broker commits an offense against Customs Law in performing business authorized by the importer or exporter, he/she is subject to the same penalty as maybe charged to the importer or exporter concerned. For instance if a Customs broker falsifies the value on an invoices received from an importer so that the value declared in the Customs declaration submitted on behalf of the importer is lower, he/she shall be subject to penalty mentioned under Article 48 (c) of Customs Law.

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## 8. CUSTOMS SECURITY

A Customs security is an agreement that ensures any importer will pay all fees and taxes as well as operate according to law and regulations. Businesses will also implement requirements on special check-ups after Customs clearance. Anyone importing goods or transporting them locally must buy a security from a surety company. If the importing company is unable to pay the fees or follow regulations, Customs authority can file a claim against the security. In that case, the surety company will be required to compensate to Customs and the importing company will be required to pay back to the surety company.

According to Customs Law, in Indonesia security required by Customs may be used once or continuously and may be in the forms of:

- Cash;
- Bank security;
- Customs or surety bonds; or
- Other securities.

## 9. BONDED SYSTEM

In Indonesia, the government established the legal framework for Bonded Storage Areas in order to incentivize industrial production and trade across the country.

Bonded Storage Areas, pursuant to Government Regulation No. 32/2009, as amended by Government Regulation No. 85/2015 (Bonded Storage Regulation), are areas that fulfill specific requirements which are used to store goods and receive certain facilities.

### 9.1 Bonded Storage Areas

A Bonded Storage Area is basically a building, site or area that meets certain requirements which is used to store goods for certain purposes and obtains import duty postponement. According to Bonded Storage Regulation, Bonded Storage Areas can be differentiated in the following 7 forms:

- Bonded Warehouse;
- Bonded Zone;
- Bonded Exhibition Place;
- Duty Free Shop;
- Bonded Auction Place;
- Bonded Recycling Zone;
- Bonded Logistics Center.

### 9.2 Facilities and Incentives

In order to understand the incentives granted to Bonded Warehouses, Bonded Zones and Bonded Logistics Centers, it is important to elaborate the treatment of duties and taxes on goods when they enter or exit Bonded Storage Areas.

#### 9.2.1 Entering

Upon entering a Bonded Warehouse or Bonded Zone, goods can be provided with one or more of the

following:

- Import Duty postponement;
- Excise waiver;
- Exemption from Import taxes (Pajak Dalam Rangka Impor - PDRI).

Only certain types of goods can receive these facilities for entering a Bonded Zone:

- Raw and production auxiliary materials for further processing;
- Capital goods to be used within the Bonded Zone;
- Produce of other Bonded Zones to be further processed or used in another Bonded Zone;
- Goods produced in a Bonded Zone to be processed further or turned into capital goods for production;
- Goods produced in a Bonded Zone returned from outside the Customs area or a Bonded Exhibition Location into a Bonded Zone;
- Finished goods from outside the Customs area to be combined with goods produced in a Bonded Zone specifically for export;
- Packaging or packaging equipment from outside the Customs area and/or another Bonded Zone that will be an integral part of the goods produced in a Bonded Zone.

For Bonded Zones, the following types of goods are granted with exemptions from VAT or Sales Tax on Luxury-goods (STLG):

- Goods from other Customs areas to be processed further in the Bonded Zone;
- Goods from another Bonded Zone or other Customs area to be processed further under a subcontract arrangement;
- Machinery and/or mouldings returned from another Bonded Zone or other Customs area that was loaned from the Bonded Zone;
- Semi-finished goods from another Bonded Zone or other Customs area to be further processed in the Bonded Zone;
- Goods produced in another Bonded Zone or other Customs area that will be combined with goods

produced by the Bonded Zone to be exported;

- Packaging or packaging equipment from other Customs areas to be used by the goods produced by the Bonded Zone.

There are various types of facilities for goods entering a Bonded Logistics Center, as elaborated in the following Table 1.

*Table 1 Facilities for Goods Entering a Bonded Logistics Center*

Type of Goods	Exemptions
Goods imported to a Bonded Logistics Center	<ol style="list-style-type: none"> <li>1. Import duty;</li> <li>2. Tax on import activities; and/or</li> <li>3. Excise.</li> </ol>
<ol style="list-style-type: none"> <li>1. Goods that are moved from a Bonded Logistics Center to another Bonded Logistics Center.</li> <li>2. Imported goods that are moved to a Bonded Logistics Center from another type of Bonded Storage Area.</li> <li>3. Imported goods that are moved to a Bonded Logistics Center from a Special Economic Zone, Free Zone, or other type of economic areas.</li> <li>4. Imported goods that are moved to a Bonded Logistics Center from another area in Indonesia for a specific purpose.</li> </ol>	<ol style="list-style-type: none"> <li>1. Import duty, PDRI, excise, and/or value-added tax; or</li> <li>2. Value-added tax and luxury goods tax.</li> </ol>
<ol style="list-style-type: none"> <li>1. Domestic goods that are moved to a Bonded Logistics Center from another type of bonded storage area.</li> <li>2. Domestic goods that are moved to a Bonded Logistics Center from a Special Economic Zone, Free Zone, or other type of economic area.</li> <li>3. Domestic goods that are moved to a Bonded Logistics Center from another place for the purpose of export consolidation or procurement of exported goods.</li> </ol>	<ol style="list-style-type: none"> <li>1. Value-added tax; or</li> <li>2. Value-added tax and luxury goods tax.</li> </ol>

Goods may only enter a Bonded Logistics Center for the following purposes:

- To support goods from non-Customs areas stored in the Bonded Logistics Center;

- Goods needed to carry out certain processes for the goods stored in the Bonded Logistics Center, such as packaging, sorting, standardization, kitting, packing, reassembling/repair, and labelling;
- Goods produced by small and medium scaled industrial companies;
- For export purposes;
- For specific purposes in another Customs area.

### 9.2.2 Exiting

Goods produced in a Bonded Warehouse or Bonded Zone to be transported to any other location in Indonesia are imposed with:

- Import Duty that had to be paid when the goods entered the Bonded Warehouse;
- Excise; and
- PDRI based on the tariff when the Import Customs Notification for the goods was registered and the value of the goods when the goods were imported into the Bonded Warehouse.

Because of these provisions, the costs are relatively lower when importing goods into a Bonded Warehouse or Bonded Zone and processing them there, as the import duty and taxes imposed are calculated based on when the goods were imported into the Bonded Warehouse or Bonded Zone, not the value of the finished products.

For goods exiting a Bonded Logistics Center, the goods will be granted with a deduction of import duty and PDRI. For goods that were processed in a Bonded Logistics Center, import duty and PDRI will only be imposed on components that were imported from overseas.

Moreover, goods may only exit a Bonded Logistics Center for specific purposes:

- To support the industrial activities in a Bonded Zone, Special Economic Zone or other economic area determined by the government;
- To support the industrial activities of a Customs area;
- For other Bonded Logistics Centers;
- To be exported;

- To support industrial activities that are granted with Import duty waivers, reductions or refunds;
- To support industrial activities that have acquired import duty facilities from the government;
- To support distribution of certain goods domestically;
- To support small and medium scaled industrial activities in other Customs areas.

### 9.3 Selections by Traders

Each type of Bonded Storage Area has its own advantages and disadvantages and traders need to select and take full advantages of them carefully based on their specific needs and the according facilities.

#### 9.3.1 Bonded Warehouses

Bonded Warehouses are suitable for export purposes or producing goods from imported materials and limited to three types of classification: (1) for distributing goods to manufacturing, mining heavy equipment or oil services companies, (2) distribution center for duty-free stores, or (3) for goods in transit that will be re-exported.

#### 9.3.2 Bonded Zones

Bonded Zones are suitable for export purposes or producing goods from imported materials and not subject to limitative classifications, but require a larger area than s Bonded Warehouse.

#### 9.3.3 Bonded Logistics Centers

Bonded Logistics Center are more appropriate for exporting goods or importing goods to support domestic industrial activities and may only carry out simple tasks, such as packaging, labelling and quality control, before the goods are exported or distributed to domestic industrial companies.

## 10. GOODS WITH PROHIBITIONS, CONTROL AND RESTRICTIONS

### 10.1 Goods Prohibited and Restricted

Goods which are prohibited and restricted from being imported or exported to or from Indonesian territory without the approval of respective authorities:

- Hazardous articles and substances such as narcotics and dangerous drugs, flammable, poisons, oxidators, radioactives etc.;
- Explosive goods/materials; all types and sizes of fireworks;
- Fire-arms and parts thereof and its ammunitions; airgun; spring-gun or gas-operated-gun;
- Imitation of firearms; light or signal/alarm pistols including parts thereof;
- Books and certain printed materials (such as books, magazines, leaflets, brochures, newspapers written in Chinese characters and languages; all kind of printed materials in Indonesian language/ dialects);
- Audio/video records in any medias; transceiver equipment; cordless telephone or telecommunication equipment; color photocopy machine and parts thereof;
- Certain plant species are prohibited for import, such as quinine, orchids; endangered species or their by-products; certain kind of fish are prohibited to export, such as Sidat breed (*Anguilla sp.*), Panacidæ shrimp (*Panasidae sp*) etc.
- Unregistered food & beverages; readymade medicines produced abroad;
- Products of certain goods which are prohibited for export, such as product rubber lumps, unprocessed hides and raw skin of cow; rattan & rattan core etc.;
- Pesticides such as DDT and penrachlorophenol and its salts;
- Dangerous waste, such as scraps & corrosive iron or steel;
- Goods of cultural, archaeological and or historical value;
- Other fauna – flora under CITES;
- Ozone depleting substance and goods containing ozone depleting substance such as freon for air conditioner or refrigerator with a chemical structure CFC-11, CFC-12 and CFC-13;

- Certain amount of Rupiah in cash.

## 10.2 Import License

Goods that are required specific Import Licenses in Indonesia are:

- Alcoholic beverages;
- Animal and animal products;
- Cements;
- Cosmetics;
- Chemicals;
- Children toys;
- Clothing and other textile products;
- Electronics;
- Food and beverages products;
- Food supplements;
- Footwear and other accessories;
- Lubricants;
- Medicines and pharmaceutical goods;
- Optical discs;
- Sugar;
- Steel;
- Telecommunication devices (cellular phones, handheld and tablet computers);
- Tobacco products.

There are three types of Import Licenses utilized in Indonesia including:

### A. API-U (General Import License)

It is given to general trading company, which conduct import activities of fully-made products to be sold

and/or distributed later in Indonesia. API-U license may be used to import finished products or to trade goods with a third party. Application for an API-U License will take around one month.

### **B. API-P (Producer Import License)**

It is given to manufacturing company, which conduct import activities for raw materials or manufacture support goods to be used in the manufacturing process in Indonesia. API-P doesn't allow importation for selling and/or distribution, and is only used for production/manufacturing use process.

### **C. API-T (Limited Import License)**

This license may be used as a limited importer identification number and is obtained through the Indonesian Investment Coordinating Board (BKPM). Goods imported under an API-T are subject to a reduced withholding tax of 2.5 % compared to the normal rate of 7.5%.

## **10.3 Export License**

To be able to conduct exporting activities, Indonesian exporters need to have Export Licenses (ET). Regulation of the Minister of Trade 13/M-DAG/PER/3/2012 on General Provisions in the Area of Export groups export of goods as follows:

- Exportable Goods Individual needs to have NPWP (Tax Payer Identification Number) and other documents specified by regulation to export; while business entities need to have SIUP (Trade Business License), TDP (Company Registration), NPWP and other documents specified by regulation.
- Restricted Goods Institution or business entities should have ET (Registered Exporter), SPE (Export Permit), LS (Surveyor's Report), COO (Certificate of Origin) and other documents specified by regulation to be able to export restricted goods. In most cases, ET requires SPE at times of actual export. Coffee, rubber, iron wood, cow or buffalo, fertilizer, gold, silver and mineral products exporter can only export after obtaining SPE.

Below is the list of export-related specific documents requirements:

Inspection Report: Inspection Report by the Export Verification and Monitoring Team of Swallow Nest.

Quota Certificate: Certificate that explains Exporter Identity, HS Code, Amount, Export Contract.

Statement Letter (for Urea Fertilizer): A letter from exporter to state that the exported urea fertilizer is not subsidized by the government.

## 10.4 Sanitary and Phytosanitary (SPS) Requirements

Indonesia government apply SPS requirement to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organism in their food; to protect human life from plant or animal-carried disease; to protect animal or plant life from pests, diseases, or disease-causing organisms; to prevent or limit other damage to a country from the entry.

### 10.4.1 Temporary Geographic Prohibitions for SPS Reason

This is a prohibition of imports of specific product from countries or regions due to infectious/contagious diseases. Example: Imports of poultry from areas affected by avian flu or cattle from foot and mouth diseased.

### 10.4.2 Geographical Restriction on Eligibility

Prohibition of imports of specific products from specific countries or region due to lack of evidence of sufficient safety conditions to avoid sanitary and phytosanitary hazard, however the restriction is imposed automatically until the country proves evidence of satisfactory SPS measures to provide a certain level of protection against hazards that is considered acceptable. Example: Imports of dairy products from countries that have not proven satisfactory sanitary conditions are prohibited

### 10.4.3 Product Registration Requirement

This is a product registration requirement in the importing country. Example: Requirements and guidelines for the registration of pesticide and its compounds, for minor crops/minor use and the maximum residue limit. The measure may include provisions describing types of pest control products that are exempt from registration and procedures detailing the registration process, including provisions relating to distribution, import, sampling and detention.

#### 10.4.4 Testing Requirement

A requirement for products to be tested against a given regulation, such as MRL: It includes sampling requirement. Example: A test on a sample of orange imports is required to check against the maximum residue level of pesticides.

#### 10.4.5 Certification Requirement

Certification of conformity with a given regulation: required by the importing country but may be issued in the exporting or the importing country. Example: Certificate of conformity for materials in contact with food (containers, papers, plastics, etc.) is required.

#### 10.4.6 Inspection Requirement

Requirement for product inspection in the importing country: may be performed by public or private entities. It is similar to testing, but it does not include laboratory testing. Example: Animals or plant parts must be inspected before entry is allowed. Once the NTB based on SPS become more restrictive, arbitrary and discriminatory, the importing country has right to request:

- Scientific prove that identified risk of imported product;
- A causal link between certain product properties and potential damages to health, where the SPS Agreement lays down rather detailed standards for the evaluation and management of health risk.

### 10.5 Technical Barriers to Trade (TBT) Requirements

Indonesia government uses technical regulation as a document to lay down product characteristic or their related process and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method. A "conformity assessment procedures" is any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled: it may include, inter alia, procedures for sampling, testing and inspection, evaluation, verification and assurance of conformity, registration, accreditation and approval as well as their combinations.

### 10.5.1 Prohibition on Import for TBT Reason

Imports are prohibited for hazardous substances including explosives, certain toxic substances covered by the Basel Convention such as aerosol sprays containing CFCs, a range of HCFCs and BFCs, halons, methyl chloroform and carbon tetrachloride.

### 10.5.2 Authorization Requirement for TBT Reasons

Requirement that the importer should receive authorization, permit or approval from a relevant government agency of the destination country, for reasons such as national security reasons, environment protection etc. Example: Imports must be authorized for drugs, waste and scrap, fire arms etc.

### 10.5.3 Registration Requirement for Importer for TBT Reasons

Importers should be registered in order to import product where importers need to comply with certain requirements, documentation and registration fees. Example: Importers of "sensitive product" such as medicines, drugs, explosives, firearms, alcohol, cigarettes, game machines, etc. may be required to be registered in the importing country.

## 10.6 Labeling Requirements

All imported consumer goods must identify the importing agents, typically accomplished by affixing a label after goods have cleared Customs. The GOI requires that information on product labels be distinctly and clearly written or printed or shown so that it can be seen easily and understood. The information on product labels should be written or printed in the Indonesian language, Arabic numbers, and Latin letters. The use of language, numbers, and letters other than the Indonesian language will only be permitted when there are no matching terms, or in the event of trading abroad.

Labeling should not contain the following: claims on the effect of the product on health, whether preventative and/or curative; incorrect or misleading information; comparisons to other products; promotion of certain similar products; and any additional information that has not yet been approved.

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## 11. CUSTOMS DUTIES AND TAXES

### 11.1 Major Duty and Taxes Collected

In addition to the Customs duties, imported goods from overseas may also be subject to payment of Value-added Tax (VAT), Sales Tax on Luxury Goods (STLG) and Corporate Income Tax.

Thus goods may be subject to the following duties and taxes upon importation and exportation:

- Import Duty;
- Export Duty;
- Value-added Tax (VAT);
- Excise Duty;
- Sales Tax on Luxury Goods (STLG);
- Corporate Income Tax.

#### 11.1.1 Import Duty

Import duties are imposed on items imported into Indonesia, generally on an ad valorem basis. Import duties in Indonesia vary from 0% to 170%. However, most imported items will attract duties in the range of 0% to 15%. Some products can be imported free of duty (e.g. books, laptops, and other electronic products).

Import duties are based on the cost, insurance and freight (CIF) value of the imported items and, in general, are imposed at rates of zero percent to 15 percent for most goods, 25 percent to 80 percent for cars, and 170 percent for alcoholic drinks.

#### 11.1.2 Export Duty

Exporters are exempted from export duties, VAT, and sales tax on luxury products for materials and intermediate products used in manufacturing goods produced from export. Exported goods subject to Export Duty are listed as follows:

- Leather and Woods;
- Cocoa beans;
- Palm oil, Crude Palm Oil (CPO), and its derivative products;
- Products of metal mineral processing; and
- Products of metal mineral with certain criteria.

The calculation of Export Duty is as follows:

- In the case of Export Duty Tariff determined based on the percentage of Export Price (ad valorem), Export Duty is calculated as follows: Export Duty Tariff x Number of Goods x Currency;
- In the case of Export Duty Tariff determined specifically, Export Duty is calculated using the formula as follows: Export Duty of each Number of Goods x Number of Goods x Currency.

Export Duty rates are 5 percent, 15 percent, and 25 percent, respectively.

### 11.1.3 Value-added Tax (VAT)

With a few exceptions, VAT is applicable on deliveries (sales) of goods and services within Indonesia at a rate of 10%. VAT on export of goods is zero-rated while the import of goods is subject to VAT at a rate of 10%. Zero-rated VAT is also applicable on exported services, but subject to a MOF limitation. Currently, only certain exported services, i.e. toll manufacturing, repair and maintenance, and construction services, are subject to the 0% VAT rate. Inbound use or consumption of foreign services or intangible goods, with few exceptions, is also subject to a self-assessed VAT at a rate of 10%. The VAT law allows the government to change the VAT rate within the range of 5% to 15%. However, since the enactment of the VAT Law in 1984, the government has never changed the VAT rate.

### 11.1.4 Excise Duty

Excise Duty is levied on specific products whose consumption is restricted or controlled, namely ethyl alcoholic or ethanol, beverages containing ethyl alcohol and tobacco products.

Excise Duty is applicable to the above-mentioned products at a rate of 275% on the sum of the CIF value and import duty. Excise can also be applied per units of measure.

### 11.1.5 Sales Tax on Luxury-goods (STLG)

In addition to the VAT, some goods are subject to STLG upon import or delivery by the manufacturer to another party at rates ranging from 10% to 200%, applicable to specified imported goods including vehicles and categories of electronic goods;

STLG must be accounted for every month together with VAT. The importer or the manufacturer of the goods is responsible for the settlement of the STLG. The STLG rate may be increased up to 200%, however currently the STLG rates are between 10% and 125%.

### 11.1.6 Corporate Income Tax

Corporate Income Tax is charged at 2.5% for registered importers, and 7.5% for unregistered importers on the sum of the CIF value and Import Duty.

## 11.2 Preferential Rates

Preferential rates are applicable if the country has a Most Favored Nation (MFN) status with Indonesia. In 2014, Indonesia's average MFN applied tariff was 6.9% (World Trade Organization, 2016).

Indonesia grants preferential tariff treatment to certain products imported from other developing countries in the framework of the Global System of Trade Preferences (GSTP). Indonesia grants GSTP preferences for 31 tariff positions, the preferential margin being generally 10%.

In the framework of ASEAN, a common effective preferential tariff (CEPT) to create a free trade area (AFTA) has been established. In this framework, duties on the targeted products must be brought down to a level between 0 and 5% before the end of 2002 for the founder members and the Brunei Darussalam (ASEAN-6), 2006 for Vietnam, 2008 for Laos and Myanmar, and 2010 for Cambodia.

For other countries, the MFN tariff applies, varying from 0% to 30% (by brackets of 5%), with a few exceptions (spirits from 90% to 170%, motor vehicles from 65% to 80%).

## 11.3 Duty Exemption

Import duties shall not be imposed on goods brought into the Customs territory for transit or transshipment. In principle, goods from outside Customs territory are subject to the Import duties at the

time such good are brought into the Customs territory. Considering that these goods are not intended to be imported for home use, the Import duties are not imposed.

Exemption of the Import Duty shall be granted for import of:

- goods of foreign countries' representatives and their officials who work in Indonesia under reciprocal principles;
- goods for international bodies and their officials who work in Indonesia;
- goods and materials to be processed, assembled, or installed on other goods destined for export;
- scientific books;
- goods donated for public worship, charity, social, and cultural institutions;
- goods for museum, zoo, and other similar public places;
- goods for research and scientific purposes;
- goods for the blinds and other disables;
- weapons, ammunition, and other military equipment, including spare parts for the national defense and security;
- goods and materials used to produce other goods for the national defense and security;
- samples of no commercial value;
- coffins or other containers containing corpses or ashes of corpses;
- removal goods;
- goods brought by passengers, crews of means of transport, border crossers, and consignments of a certain Customs value and/or a certain amount.

Exemption or relief of the Import Duty may also be granted for import of:

- machinery for the establishment and development of industry;
- goods and materials for the establishment and development of industry for a specified period of time;
- equipment and substances used to prevent environmental pollution;
- seeds and stocks for the establishment and development of agricultural industry, animal husbandry,

- or fishery;
- marine products caught by licensed hauling vessels;
- goods exported to undergo repair, processing, or testing;
- goods re-imported in the same state;
- goods which are naturally damaged, decreased in quality, destroyed, or decreased in volume or weight occurred between the time of transportations to the Customs Territory and the time of import approval for home use;
- materials for human therapy, blood group, and tissue typing reagents;
- goods by the Government for public purpose;
- goods for temporary admission.

#### 11.4 Duty Refund / Drawback

A partial or full Import Duty refund can be made to the importer in case of the following situations:

- Excess payment of import duty due to the stipulation of import duty tariff and/or Customs value by the Customs and Excise officer;
- Excess payment of import duty due to re-stipulation of import duty tariff and/or Customs value by the Director General of Customs and Excise;
- Overpayment of Import Duty due to a mistake in administration (writing error, calculation error, etc.);
- Import of goods subject to exemption or relief of import duty;
- Import of goods which for some reason must be re-exported or destroyed under the supervision of the Customs and Excise Officer;
- Import of goods before being given import approval to be used to find actual quantities smaller than those paid by import duty, defects, not goods ordered, or of lower quality;
- Objection decision;
- Overpayment of Import Duty as a result of the Appeals, Court decision;

Application for refunds is submitted to the relevant Customs office attached with relevant supporting document, such as:

- Objection or Appeal Decision;
- Commercial Invoice;
- Packing List;
- Arrival Notice/Freight Notification or Delivery Order;
- Bill of Lading/Airway Bill;
- Any other documents required by Indonesian Customs to verify the claim.

All successful refunds will be credited directly to the company account.

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## 12. TARIFF CLASSIFICATION

The Harmonized Commodity Description and Coding System generally referred to as "Harmonized System" or simply "HS" is a multipurpose international product nomenclature developed by the World Customs Organization (WCO).

For goods classification purposes, since January 1, 1989 Indonesian has introduced and implemented a Tariff Schedule which is based on the Harmonized Commodity Description and Coding System (HS) and is called Indonesian Customs Tariff Book - BTKI.

### 12.1 BTKI

HS has a 6-digit number for the classification, each country that signed the HS convention or contracting party can develop a classification of 6-digit number to be more specific in accordance with respective government policy while remains under the provisions of the HS 6-digit.

In Indonesia alone, the classification system used to use 10-digit numbering system in Indonesian Customs Tariff Book (BTKI) which is a further elaboration of the sub-headings in the HS 6-digit. After the issuance of Regulation No. 6/PMK.010/2017 regarding Classification of Commodity and Import Duty Rate

on January 27, 2017 by the Ministry of Finance, now the new BTKI, effective for March 1, 2017 consists of an 8-digit commodity nomenclature.

Currently, BTKI code are categorized into 21 Sections, which are further divided into 97 Chapters with 5,387 6-digit level Subheadings and 10,826 8-digit level Subheadings.

## 12.2 General Rules for the Interpretation of the HS

WCO's General Rules for the Interpretation of the Harmonized System are also applied by Indonesian Customs and these are the rules that govern the classification of goods under the HS and there are 6 General Rules in all, which must be applied in consecutive order including:

- 1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.
- 2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
- 3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in

sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

- 4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.
- 5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein: (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character. (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.
- 6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

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## 13. CUSTOMS VALUATION

According to the WTO Valuation Agreement, Customs value should include the transaction value of imported goods (FOB), plus Insurance (I) and freight (F), constituting value of CIF (any other trade term) Incoterm. If using term other than CIF, CIF equivalent value should be calculated by adding or excluding

some cost components to and from your invoice value.

According to WTO Valuation Agreement, there are six approaches utilized in Customs Valuation, Methods I - Method VI. The approach that transaction value establishes Customs value is the Method I. But if there are some factors that could affect fairness and accuracy of the transaction value i.e. special relationship between importer and exporter, then Method I can no longer be used. Instead, Customs will be using the rest of the Methods in hierarchical order.

The Customs valuation methods stipulated by the Customs Law in Indonesia are as follows:

- (1) The Customs value of imported goods shall be the transaction value;
- (2) If the Customs value of the imported goods cannot be determined under the provision of paragraph (1), the Customs value shall be the transaction value of identical goods;
- (3) If the Customs value of the imported goods cannot be determined under the provisions of paragraph (1) and (2), the Customs value shall be the transaction value of similar goods;
- (4) If the Customs value of the imported goods cannot be determined under the provisions of paragraph (1), (2), and (3), the Customs value of the imported goods shall be based on a deductive method;
- (5) If the Customs value of the imported goods cannot be determined under the provisions of paragraph (1), (2), (3), and (4), the Customs value of the imported goods shall be based on a computed method;
- (6) If the Customs value of the imported goods cannot be determined under the provisions of paragraph (1) to (5), inclusive, the Customs value shall be determined by using reasonable means consistent with the principles and the provisions as referred to in paragraph (1) to (5) on the basis of data available in the Customs Territory subject to certain limitations;
- (7) The provisions on Customs value for the Import Duty calculation shall be further regulated by the Minister.

Table 2 Methods of Customs Valuation

<p>Method 1: Transaction Value</p>	<p>The price actually paid is the total payment made by the buyer for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation.</p>
<p>Method 2: Transaction Value of Identical Goods</p>	<p>The transaction value is calculated in the same manner on identical goods if the goods are:</p> <ul style="list-style-type: none"> <li>- the same in all respects including physical characteristics, quality, and reputation,</li> <li>- produced in the same country as the goods being valued,</li> <li>- and produced by the producer of the goods being valued.</li> </ul> <p>For this method to be used, the goods must be sold for export to the same country of importation as the goods being valued. The goods must also be exported at or about the same time as the goods being valued.</p>
<p>Method 3: Transaction Value of Similar Goods</p>	<p>The transaction value is calculated in the same manner on similar goods if:</p> <ul style="list-style-type: none"> <li>- goods closely resembling the goods being valued in terms of component materials and characteristics,</li> <li>- goods which are capable of performing the same functions and are commercially interchangeable with the goods being valued,</li> <li>- goods which are produced in the same country as and by the producer of the goods being valued.</li> </ul> <p>For this method to be used, the goods must be sold to the same country of importation as the goods being valued. The goods must be exported at or about the same time as the goods being valued.</p>

<p>Method 4: Deductive Value</p>	<p>When Customs value cannot be determined on the basis of the transaction value of the imported goods or identical or similar goods, it will be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in the country of importation. The buyer and the seller in the importing country must not be related and the sale must take place at or about the time of importation of the goods being valued. If no sale took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued. The greatest aggregate quantity is the price at which the greatest number of units is sold to unrelated persons at the first commercial level after importation at which such sales take place.</p>
<p>Method 5: Computed Value</p>	<p>Computed value, the most difficult and rarely used method, determines the Customs value on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind. Computed value is the sum of the following elements: production cost (value of materials and fabrication), profit and general expenses, and other expenses to be added.</p>
<p>Method 6: Fall-back Method</p>	<p>When the Customs value cannot be determined under any of the previous methods, it may be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of GATT, and on the basis of data available in the country of importation. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application.</p>

## 14. RULES OF ORIGIN

In Indonesia, origin related issues are governed by Regulation of the Minister of Trade of Indonesia No. 77/M-DAG/PER/10/2014 Concerning Rules of Origin of Indonesia.

### 14.1 Rules of Origin

The Rules of Origin of Indonesia cover the Preference Rules of Origin of Indonesia and Non Preference Rules of Origin of Indonesia.

#### Preference Rules of Origin

Preference Rules of Origin in Indonesia are only used to obtain the facilities of import duty tariff reduction or exemption provided by a Country or group of Countries based on the provisions in the agreed international agreement or based on the unilateral determination by a Country or group of Countries of export destination.

The Preference Rules of Origin of Indonesia covers:

- a. Preference Rules of Origin of Indonesia, which are regulated in the agreed international agreement; and
- b. Preference Rules of Origin of Indonesia, which are determined by the preference providing country.

#### Preference Rules of Origin

Non Preference Rules of Origin in Indonesia are only used to comply with the request of a country, importer and/or exporter toward Indonesian export goods, without obtaining the facilities of import duty tariff reduction or exemption.

The Non Preference Rules of Origin of Indonesia covers:

- a. Non Preference Rules of Origin of Indonesia, which are regulated in the agreed international agreement; and

- b. Non Preference Rules of Origin of Indonesia, which are not regulated in the international agreement.

## 14.2 Origin Criteria

The Preference Rules of Origin of Indonesia and the Non Preference Rules of Origin of Indonesia, as stipulated in Article of Regulation of the Minister of Trade of the Republic of Indonesia No. 77/M-DAG/PER/10/2014 contain:

- a. Origin criteria;
- b. Consignment criteria; and
- c. Procedural provision on the SKA issuance process.

The origin criteria in Indonesia contain: (a) Wholly Obtained; (b) Value Added Contents; (c) Change in Tariff Classification; and (d) Specific Process.

## 14.3 Preference Rules of Origin

Preference Rules of Origin in Indonesia are the provisions concerning the origin of Indonesian goods that are used to obtain the facilities of import duty tariff reduction or exemption in the country of export destination.

The products satisfy the following criteria are considered wholly obtained from sources in Indonesia:

- a. Mine commodities and other substances that emerge naturally and taken from the territory of Indonesia;
- b. Agricultural and forestry products that are harvested or collected in Indonesia;
- c. Living animals that are born and raised in Indonesia;
- d. Products that are produced from living animals in Indonesia;
- e. Products that are obtained from hunting or fishing/captured fishery in the territory of Indonesia;
- f. Products of fishing or catching at sea and other products taken from the sea by Indonesian flag carrying ships, either inside or outside the territory of Indonesia;
- g. Products that are directly processed on the Indonesian flag carrying ships, either inside or

outside the territory of Indonesia, that are produced by using raw materials as meant in letter f;

- h. Products that are taken from the bottom of the sea or from the underground layer at the bottom of the sea outside the territory of Indonesia, with the provision that Indonesia has the right to exploit the such bottom of the sea or underground layer at the bottom of the sea;
- i. Remainders and waste produced by the factory operation or processing or from consumption in Indonesia and are only suitable to be disposed or for reutilization as raw materials; and
- j. Products that are produced in Indonesia by using raw materials from products as meant in letter a to letter i, which are all originating from Indonesia.

#### 14.4 Certificate of Origin

The Minister of Trade has recently released Regulation No. 22/M-DAG/PER/3/2015 on Provisions and Procedures to Issue Indonesian Certificates of Origin. This regulation mainly amends the provisions and procedures to obtain a Certificate of Origin, and includes the establishment of a new electronic application system.

A Certificate of Origin is a document which proves that goods for export are goods originating from Indonesia. There are two variants of Certificates subject to Regulation No. 22/M-DAG/PER/3/2015, namely: preferential Certificates (to obtain a reduction of, or exemption from import duty by the importing country); and non-preferential Certificates (without obtaining a reduction of, or exemption from import duty by the importing country).

In Indonesia, Certificates of Origin used by each FTA are categorized as follows:

- ASEAN Trade in Goods Agreement(ATIGA): Form D or e-Form D;
- ASEAN-Japan Comprehensive Economic Partnership (AJCEP): Form AJ;
- ASEAN-Australia-New Zealand Free Trade Area (AANZFTA): Form AANZ;
- ASEAN-China Free Trade Area (ACFTA): Form E;
- ASEAN-Korea Free Trade Area (AKFTA): Form AK;
- ASEAN-India Free Trade Area(AIFTA): Form AI;
- Indonesia-Japan Economic Partnership Agreement (IJEPA):Form IJEPA/ JIEPA;
- Indonesia-Pakistan Preferential Trade Agreement (IPPTA): Form IP.

## 14.5 Application Process

To obtain a Certificate of Origin, an exporter must first obtain an access right through the electronic Certificate of Origin system (e-SKA) by uploading scanned copies of the following documents to be submitted to the relevant Issuing Authority.

After activation of the access right, an individual exporter must file an application with a Issuing Authority at any location. A corporate exporter must file an application with the Issuing Authority at the place or area where the goods were retrieved or produced. If there is no Issuing Authority in the area where the goods were retrieved or produced, then the exporter may file an application with the Issuing Authority located:

- where the access right is registered;
- at the goods dispatch zone;
- closest to the exporter's domicile; or
- nearest to the area to where the goods were retrieved or produced.

Third, after successfully activating the access right, the exporter may request the Issuing Authority to issue the Certificate of Origin by completing an application form electronically, and uploading scanned copies of the following documents:

- for an individual exporter: evidence of the purchase of the goods, a statement from the goods' manufacturer and other documents explaining the purpose of exporting the goods;
- for a corporate exporter: Export Declaration (PEB), Export Services Note (NPE), original copy or Bill of Lading/Airway Bill/Cargo Receipt, Taxpayer Identification Number, Packing List and cost structure assessment for exported goods which contain imported raw materials and/or auxiliary materials.

Fourth, an official of the Issuing Authority will examine the submitted documents based on compliance with the Indonesian Rules of Origin or the relevant international agreements, the accuracy of the data and/or information contained in the application form, and the completeness and validity of the attached documents. In addition, the official may carry out a site visit for a first-time applicant and/or an applicant whose goods origin is uncertain.

Finally, if the application form and the attached documents are deemed complete and accurate, the

official will give approval to print the application form. The exporter must print out the Certificate over the approved and printed application form. The exporter must subsequently present the original approved and printed application form to the competent official. The regulation seems to imply that the Certificate will be valid upon it being signed by the official. The Issuing Authority must issue (i.e. sign) the Certificate of Origin within 1 day if the application is complete and accurate.

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## 15. FREE TRADE AGREEMENTS

### 15.1 Introduction

Indonesia is a member of Association of Southeast Asian Nations (ASEAN) which nowadays has developed ASEAN Free Trade Area (AFTA) in pursue of lowering intra-regional tariff between the members through Common Effective Preferential Tariff (CEPT) Scheme. The tariff requires the members to set the tariff between 0% and 5% and more than 99% products in CEPT Inclusion List (IL) of ASEAN-6, consisting of Countries such as Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand have already implement 0-5% tariffs, while in other countries such as Cambodia, Laos, Myanmar and Vietnam, the tariff is still in the stage of further development.

Major FTAs followed by Indonesia include:

- ASEAN Trade in Goods Agreement (ATIGA);
- ASEAN-Japan Comprehensive Economic Partnership (AJCEP);
- ASEAN-Australia-New Zealand Free Trade Area (AANZFTA);
- ASEAN-China Free Trade Area (ACFTA);
- ASEAN-Korea Free Trade Area (AKFTA);
- ASEAN-India Free Trade Area (AIFTA);
- Indonesia-Japan Comprehensive Economic Partnership Agreement (IJEPA);

- Indonesia-Pakistan Preferential Trade Agreement (IPPTA).

## 15.2 Advantages of FTAs

The FTAs grant preferential tariff treatment that can be beneficial for operator to press the production costs and increase the industrial competitiveness. Preferential tariff is import duty based on the international agreement which its rate is set out in Regulation of the Finance Minister (PMK). The preferential tariff rate can be different from import duty which applied in general (MFN).

Preferential tariff can be granted to:

- Import for home use;
- Import for home use from the bonded storage (TPB), when it is entered to the TPB it has been approved to utilize Preferential Tariff;
- Import for home use from Bonded Logistics Center (PLB) that has been granted the Preferential Tariff treatment when it is entered to the PLB;
- Releasing goods from Free Trade Zone to another place in the area of Customs (TLDDP), as long as: (a) The raw material is from outside of Customs territory; (b) when it is entered to the free area it has been approved for Preferential Tariff treatment; and (c) done by operator in the Free Trade Zone which has complied the requirements as an operator who can enjoy the preferential tariff treatment.

## 15.3 Preferential Tariff Provided by Each FTA

In Indonesia, preferential tariff provided by each FTA is specifically stipulated by related Regulation of the Minister of Finance (PMK) as follows:

- ASEAN Trade in Goods Agreement (ATIGA): PMK No. 25/PMK.010/2017 about the determination of import duty tariff in ASEAN Trade in Goods Agreement;
- Indonesia-Japan Economic Partnership Agreement (IJEPA): PMK No. 30/PMK.010/2017 regarding the determination of import duty tariff in the agreement of Economic Partnership between Indonesia and Japan of and PMK No. 31/PMK.010/2017 regarding the determination of import duty tariff with User Specific Duty Free Scheme in the Agreement of Economic Partnership between Indonesia and Japan;

- ASEAN-Australia-New Zealand Free Trade Area (AANZFTA): PMK No. 28/PMK.010/2017 about the determination of import duty tariff in ASEAN-Australia-New Zealand Free Trade Area;
- ASEAN-China Free Trade Area (ACFTA): PMK No. 26/PMK.010/2017 about the determination of import duty tariff in ASEAN-China Free Trade Area;
- ASEAN-Korea Free Trade Area (AKFTA): PMK No. 24/PMK.010/2017 about the determination of import duty tariff in ASEAN-KOREA Free Trade Area;
- ASEAN-India Free Trade Area (AIFTA): PMK No. 27/PMK.010/2017 about the determination of import duty tariff in ASEAN-India Free Trade Area;
- ASEAN-Japan Comprehensive Economic Partnership (AJCEP): there is no PMK about tariff in AJCEP;
- Indonesia-Pakistan Preferential Trade Agreement (IPPTA): PMK No. 29/PMK.010/2017 about the determination of import duty tariff in the Preferential Tariff Agreement (PTA) between Indonesia and Pakistan.

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## 16. SPECIAL ECONOMIC ZONES AND INDUSTRIAL PARKS

### 16.1 Special Economic Zones (SEZs)

Over the last decade, Indonesia's economic clusters – Special Economic Zones (SEZs) and industrial estates have grown multi-fold, both in terms of number and breadth. In 2014, there were approximately 74 industrial estates with an area of 36,300 hectares in the country. By 2017, the number of industrial estates expanded to 87 with an area of 59,700 hectares. Similarly, the number of SEZs in the country has increased to 12; out of these, four are currently operational, representing economic activities across various industrial sectors.

The SEZs in Indonesia are open to foreign investment and offer investors access to preferential regulatory infrastructure and taxation in an attempt to channel investment into specific locations.

As its main purpose is to boost the investment and business activities in the area, SEZ offers various administrative incentives, such as easier licensing process, taxation incentives and availability of complete infrastructure to support the businesses and industries in the field of trading, services, industry, energy and mining, transportation, fishery, tourism etc.

The incentives are designed to improve the competitiveness of SEZ and attract further investment in the designated area or business sector. Incentives that can be granted in a SEZ vary and in the field of Customs can consist of:

- Import Duty deferment;
- Excise exemption for raw and supporting materials for production;
- Non-collection of Value-added Tax (VAT) and Sales Tax on Luxury-goods (STLG);
- Non-collection of Corporate Income Tax on importation.

Figure 3 SEZs and Industrial Parks in Indonesia

Special Economic Zones and Industrial Parks in Indonesia



LEGEND

INDUSTRIAL PARKS

**A NORTH SUMATRA**

- Kawasan Industri Medan
- Medan Star Industrial Estate
- Pulahan Seruai Industrial Estate

**B WEST SUMATRA**

- Padang Industrial Park

**C RIAU**

- Kawasan Industri Dumai
- Kawasan Industri Tanjung Buton

**D BATAM**

- Batamindo Industrial Park
- Bintang Industrial Park
- Kabil Integrated Industrial Estate
- Panbil Industrial Estate
- Puri Industrial Park 2000
- Tunas Industrial Park
- Union Industrial Park
- West Point Maritime Industrial Park

**E BINTAN**

- Bintan Industrial Park

**F JAKARTA**

- Cilandak Commercial Estate
- Jakarta Industrial Estate Pulogadung
- Kawasan Berikat Nusantara

**G BANTEN – CILEGON**

- Jababeka Industrial Estate-Cilegon
- Krakatau Industrial Estate Cilegon

**H BANTEN – SERANG**

- Kawasan Industri Terpadu MGM Cikande
- Modern Cikande Industrial Estate

**I BANTEN – TANGERANG**

- Kawasan Industri & Pergudangan Cikupamas
- Millenium Industrial Estate
- Taman Tekno BSD

**J WEST JAVA – BOGOR**

- Kawasan Industri Sentul
- Cibinong Center Industrial Estate

**K WEST JAVA**

- Kawasan Industri Rancaekek

**L WEST JAVA – KARAWANG**

- Artha Industrial Hill
- Bukit Indah Industrial Park
- GT Tech Park @Karawang
- Karawang International Industrial City
- Kawasan Industri Mitrakarawang
- Kujang Industrial Estate
- Suryacipta City of Industry
- Podomoro Industrial Park

**M WEST JAVA – BEKASI**

- Bekasi International Industrial Estate
- East Jakarta Industrial Park
- Greenland International Industrial City
- Jababeka Industrial Estate-Cikarang
- Kawasan Industri Gobel
- Kawasan Industri Terpadu Indonesia China
- Lippo Cikarang
- Marunda Center
- MM2100 Industrial Town
- MM2100 Industrial Town

**N WEST JAVA – PURWAKARTA**

- Kota Bukit Indah Industrial City
- Kawasan Industri Lion

**O CENTRAL JAVA**

- Candi Industrial Estate
- Jawatengahland Industrial Park Sayung
- Kawasan Industri Turboyo Semarang
- Kawasan Industri Wijayakusuma
- Kawasan Industri Wonogiri
- LIK Bugangan Baru Semarang
- Taman Industri BSB
- Tanjung Emas Export Processing Zone

**P EAST JAVA**

- Java Integrated Industrial & Port Estate
- Kawasan Industri Gresik
- Kawasan Industri Tuban
- Ngoro Industrial Park
- Surabaya Industrial Estate Rungkut
- Kawasan Industri Maspion
- Pergudangan dan Industri Safe N Lock

**Q EAST KALIMANTAN**

- Kaltim Industrial Estate
- Kawasan Industri Kariangau Balikpapan
- Delma Industrial Park
- Muara Wahau Industrial Estate

**R SOUTH SULAWESI**

- Kawasan Industri Makassar
- Kawasan Kota Industri Terpadu Takalar

**S CENTRAL SULAWESI**

- Kawasan Industri Palu

SPECIAL ECONOMIC ZONES

- Industry
- Tourism

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## 16.2 Industrial Parks

Industrial parks offer a cost-effective way to increase access to basic infrastructure and ensure that production can be carried out in an efficient and effective manner.

Located throughout the country, these investment options have become more targeted in recent years, often specializing in select industries and providing investors with the resources, utilities, and connections to transport networks required to optimize production chains.

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## 17. POST CLEARANCE AUDIT (PCA)

Traditionally Customs documentary checking and physical examination connected with importations and exportations takes place before the goods are released. The concept of post clearance audit allows for speedier clearance of the goods with the audit examination being performed subsequently at the importers' premises. Such clearance should only be afforded to reputable importers who should be made aware that their records may be the subject of audit. The amount of importations selected for audit will depend on the Customs resources available with the main effort directed at known areas of risk. The aim would be to cover the activities of all major importers over a reasonable period of time. Where irregularities are discovered the audit can be extended to include all the importations made by the particular importer under examination.

Post clearance audit (PCA) is a new and important area for Indonesian Customs. The successful implementation of PCA in Indonesia will help strengthen enforcement and provide the necessary support and confidence in the implementation of trade facilitating measures and simplified procedures in cargo processing and valuation specifically.

Indonesian Customs may assess the level of traders' compliance with the Customs Law through a post clearance audit. Post clearance audit includes activities to examine financial statements, bookkeeping, notes and documentations that serve as the source documents for bookkeeping, documents related to the

company's activity (including electronic data), documents related to Customs activities and/or inventories of goods, to verify compliance with the Customs Law.

Post clearance audit is conducted by the Customs officials for control purposes, as a consequence of the implementation of:

- The self-assessment system;
- The provision on Customs valuation based on the transaction value; and
- Facilities granted to permit the non-collection, non-imposition, exemption, relief, refund or postponement of import duty under certain circumstances, which only may be monitored and evaluated after imported goods are released from the Customs areas.

Post clearance audit is only intended to examine the level of compliance with the provisions of the Customs Law. The request to submit financial statement during post clearance audit is intended to ensure that the bookkeeping presented to the Customs officials is the same actual bookkeeping that is used to record business activities as summarized in the financial statements at the end of the period concerned. The Customs auditor is prohibited to disclose the information collected in the post clearance audit to any unauthorized parties.

## 17.1 PCA Procedures

In Indonesia, general steps of a Customs post clearance audit are generalized as follows:

- Issuance of an assignment letter;
- Issuance of a data request letter, under which seven business days are provided for the auditee to provide all the requested data, although the auditee may request an extension of the period for an additional three business days;
- Fieldwork, carried out for a maximum period of 30 days;
- Issuance of an audit report;
- Closing; and
- Issuance of a provisional finding list (DTS) to the auditee within seven business days of closing, which may be extended for another seven business days.

## 17.2 Findings and Risks

Areas of findings targeted by post clearance audit are usually in the fields of (1) Customs valuation, (2) tariff and classification, (3) unreported/unmatched type and quantity of imported goods and (5) improper Customs, trade and/or Industry Facilities management.

Traders are facing the risks of administrative fine at a minimum of 100% up to a maximum of 1000% of the underpayment of import duty or to settle the underpaid import duty.

For example failure to keep proper records is subject to a fine of Rp.25 million and companies with no record keeping procedures are subject to a fine of Rp.50 million.

Penalties for underpayment of import duty due to incorrect Customs value and quantity or type of goods discrepancy are charges as a percentage of the underpaid duty amount as follows:

up to 25%	100%
>25 % - 50%	200%
>50% - 75%	400%
>75% - 100%	700%
above 100%	1000%

Where the rate of import duty is 0% there is an administrative penalty applicable of Rp.5 million per import document.

## 17.3 Voluntary Disclosure

Voluntary disclosure may mitigate the Customs penalty risks arising from an incorrect Customs valuation due to futures prices (commodities), royalty, and proceeds.

## 17.4 Statute of Limitations

For general post clearance audit, the statute of limitations is ten years, except for matters related to Customs value and tariff classification, where the statute of limitations is two years.

## 18. PENALTIES, OBJECTIONS AND APPEALS

### 18.1 Penalties

Penalties for Customs related offences are stipulated in various Articles of the Customs Law 1995 as follows:

**Article 7:** *Carrier not complying with the provisions as referred to in paragraph (1) or (2) shall be subject to a penalty of minimum Rp2,500,000.00 (twenty five million rupiah) up to maximum Rp25,000,000.00 (twenty five million rupiah). The carrier complying with the provisions as referred to in paragraph (1) or (2) shall pay import duties on goods in short in case the number of unloaded goods does not conform with the number notified in the Customs Declaration and be subject to a penalty of minimum Rp5,000,000.00 (five million rupiah) up to maximum Rp50,000,000.00 (fifty million rupiah) unless the shortage can be proven accordingly. The carrier complying with the provisions as referred to in paragraph (1) or (2) shall be subject to a penalty of minimum Rp5,000,000.00 (five million rupiah) up to maximum Rp50,000,000.00 (fifty million rupiah) whenever the number of goods unloaded is in excess of the number notified in the Customs Declaration. Any person who releases goods from the Customs Area before obtaining an approval of the Customs official shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 8:** *Importers who do not pay the Import Duties on imported goods as referred to in paragraph (2)(b) or (2)(c) within the period designated by this law shall be subject to a penalty of ten percent of the Import Duties that should be paid.*

**Article 10:** *The exporter who does not notify the export cancellation as referred to in paragraph (4) shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 11:** *The carrier, who does not declare the transported goods as referred to in paragraph (1) or (2), shall be subject to a penalty of Rp5,000,000.00 (five million rupiah). The carrier complying with the provisions as referred to in paragraph (2)(a) or (2)(b), shall pay the Import Duties on goods transported which do not reach the destination or in which the number does not conform with the number notified in the Customs Declaration and be subject to a penalty of minimum Rp5,000,000.00 (five million rupiah) up to maximum Rp50,000,000.00 (fifty million rupiah) unless they can be proven accordingly.*

**Article 16:** *The importer who has erroneously notified the Customs value for the calculation of the Import*

*Duty, hence the shortage of payment of the Import Duty occurs, shall be subject to a penalty of minimum of one hundred percent up to maximum five hundred percent of the Import Duty in short.*

**Article 25:** *Any person who does not comply with the provisions of the exemption of the Import Duties by virtue of this law, whenever causing loss of the government revenue, shall be subject to a penalty of one hundred percent of the Import Duty that should be paid.*

**Article 26:** *Any person who does not comply with the provisions of the exemption and relief of the Import Duty by virtue of this law, whenever causing loss to the government revenue, shall be subject to a penalty of one hundred percent of the Import Duty that should be paid.*

**Article 43:** *The operator of the Temporary Storage who cannot be accounted for the goods stored shall be subject to a penalty of twenty five percent of the Import Duty that should be paid.*

**Article 45:** *Any person who removes goods from the Bonded Storage prior to the approval of the Customs official shall be subject to a penalty of Rp5,000,000.00 (five million rupiah). The operator of the Bonded Storage who cannot be accounted for the goods stored shall be subject to a penalty of one hundred percent of the Import Duty that should be paid.*

**Article 52:** *Any person who does not comply with the provisions as referred to in Article 49 or 51 and whose act does not cause financial losses to the State shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 81:** *The carrier or the company who does not render appropriate assistance shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 82:** *Any person who does not fulfil the request enabling such an official to conduct the examination as referred to in paragraph (2) shall be subject to a penalty of Rp5,000,000.00 (five million rupiah). Any person who mistakenly declares the type and/or number of imported goods in the Customs Declaration causing shortage of payment of the Import Duty shall be subject to a penalty of minimum of 100% (one hundred percent) up to maximum 500% (five hundred percent) of the Import Duty in short. Any person who mistakenly declares the type and/or number of exported goods in the Customs Declaration shall be subject to a penalty of minimum Rp1,000,000.00 (one million rupiah) up to maximum Rp10,000,000.00 (ten million rupiah).*

**Article 86:** *The person as referred to in article 49 who fails to meet the request of the Customs official as referred to in article 50, or refuses the request of the Customs official to examine his/her inventory, shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 89:** *Any person who causes the Customs official unable to apply the provisions as referred to in Article 87 and 88, shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 90:** *Any person who refuses to stop the discharge as referred to in paragraph (3) shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 91:** *The carrier who refuses to fulfil the request as referred to in paragraph (1), (2), and/or (3) shall be subject to a penalty of Rp5,000,000.00 (five million rupiah).*

**Article 107:** *A Customs broker who handles the Customs Declaration, acting on behalf of an importer or exporter, shall also be subject to the same penalty when committing the same crime.*

**Article 113:** *The termination of the investigation of the Customs crime as referred to in paragraph (1), shall only be done after the party concerned has paid the Import Duty in short or due, and added with a penalty of four times as much the Import Duty in short or due.*

**Article 114:** *All violations that is subject to a penalty calculated from the percentage of the Import Duty, if tariff or final tariff of Import Duty on the goods concerned is zero percent, then the offender shall be punished with a penalty of Rp5,000,000.00 (five million rupiah).*

## 18.2 Objections

Objections are stipulated in Article 93, 94, Part One, Chapter XIII of the Customs Law 1995 as follows:

(1) *Person who has objections against the assessment of tariff classification and/or Customs value determined by the Customs official or subject to penalty, may file a written objection only to the Director General in thirty days as of the date of the assessment by depositing a security as much the Import duty due.*

(2) *The Director General shall make decision on the objection, as referred to in paragraph (1) within a period of sixty days after the objection is received.*

*(3) Whenever the objection as referred to in paragraph (1) is rejected by the Director General, the security shall be cashed or transferred and the Import Duty due shall be deemed paid and if the objections are accepted, such a security shall be returned.*

*(4) If within the period of sixty days as referred to in paragraph (2), the Director General has not come to any decision, the objection shall be deemed accepted and the security shall be returned.*

*(5) If the security as referred to in paragraph (1) is in the form of cash and the security returned as referred to in paragraph (3) and (4) is refunded after the sixty-day period has passed, two percent of monthly interest for twenty four months maximum shall be granted by the Government.*

### **18.3 Appeals**

Appeals are stipulated in Article 95, 96, Part One, Chapter XIII of the Customs Law 1995 as follows:

*(1) Person who has objections against the assessment of tariff classification and/or Customs value determined by the Customs official as referred to in Article 17 paragraph (2) or the decision of Director General as referred to in Article 93 paragraph (2) or Article 94 paragraph (2), may file a written appeal to the Tax Judicatory Institution in thirty days as of the date of the assessment or decision, after the Import Duty has been paid.*

*(2) Body sebagaimana tax court referred to in paragraph (10) is the tax judicial bodies referred to in Law No. 6/1983 concerning General Provisions and Tax Procedures as amended by Law No. 9/1994.*

*(3) Prior to the establishment of the Tax Judicatory Institution as referred to in Article 95 paragraph (2), an appeal application shall be filed to the appeal institution which decision shall not be regarded as the decision of the State Administration Court.*

*(4) The appeal as referred to in paragraph (1) shall be written in Indonesian with clear reasons within a period of sixty days after the receipt of the decision or assessment enclosed with copies of such a decision or assessment.*

*(5) The decision of the Tax Judicatory Institution shall be final.*

### 18.3.1 Appeal Institution

Appeal Institution is stipulated in Article 97, 98, 99, 100 and 101, Part One, Chapter XIII of the Customs Law 1995 as follows:

**Article 97:** *To examine and decide on the appeal as referred to in Article 96 paragraph (1), an appeal institution shall be established under the name of the Customs and Excise Appeal Institution. The Customs and Excise Appeal Institution shall be located in Jakarta and the Customs and Excise Appeal Institution shall be led by a chairman and have members coming from the government, private entrepreneurs, and experts.*

**Article 98:** *The chairman of the Customs and Excise Appeal Institution shall appoint a committee to process the appeal.*

**Article 99:** *The session of the committee shall be closed for public. The decision of the committee shall be drawn upon deliberation for agreement. In case the agreement as referred to in paragraph (2) fails to be reached, the decision shall be made by voting. The decision of the committee shall be informed to the appellant and the Director General in fourteen days at the most after the date of the decision.*

**Article 100:** *Committee members, that have personal interest in the case examined shall resign from the committee.*

**Article 101:** *The organizational structure and work procedure and any matter concerning administration, allowances, expenses, and the code of conduct of the Customs and Excise Appeal Institution shall be stipulated by the Government Regulation.*

---

## 19. CUSTOMS IPR BORDER PROTECTION

Indonesia has taken its first steps towards an effective and efficient Customs IPR border protection

system. After Government Regulation No. 20 of 2017 on Controls of Import and Export Goods under 2006 Customs Law came into effect on August 2, 2017, the Ministry of Finance has finally passed Implementing Regulation No. 40 of 2018 which sets out the procedures for Customs recordal and seizures. The Implementing Regulation takes effect on 16 June 2018.

### **19.1 Recordal for Trademarks and Copyrights**

Trademark and copyright owners with a local business entity domiciled in Indonesia can now file Customs recordal applications. In addition to the usual proof of trade mark certificates or copyright and information on genuine goods, the application must include documents relating to the local business entity, importer/exporter information and a statement of liability from the IPR owner. The IPR owner must also appoint an examiner who can verify genuine products as well as understand the distribution and marketing of the products.

Once the application is submitted, Customs will review the application and approve or reject the application within 30 days. Recordals are valid for one year and are renewable.

### **19.2 Restraint Confirmation by IPR Owners**

Restraint of goods occurs first for trademarks and copyrights that have been recorded at the Customs. Once Customs notifies the IPR owner of a restraint, the IPR owner will need to send confirmation of its decision to either apply for Court detention order or otherwise to Customs within two days.

### **19.3 Examination of Detained Goods**

Upon receipt of the Court detention order, Customs will detain the goods for ten business days. Within two business days of Customs' receipt of the Court detention order, the IPR owner will need to send its request to Customs who will arrange a time for all parties including the appointed examiner to examine the detained goods.

If more time is required, the IPR owner can apply to Court for an extension of ten business days but there will be an additional security of another IDR 100 million (USD 7,200).

## 19.4 Legal Action and Settlement

After the ten-day detention period, if the goods are confirmed as infringing and if there is no settlement, the IPR owner can take legal action. The 2017 Regulation provides that this means civil or criminal action or settlement.

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## 20. AUTHORIZED ECONOMIC OPERATORS (AEOS)

AEO based on WCO SAFE is an economic operator involved in the movement of goods in the supply chain internationally in any function that has been recognized by or on behalf of the national Customs administration because it meets WCO standards or supply chain security standards. Economic operators who can participate in the AEO include: producers, importers, exporters, PPJK, transporters, consolidators, intermediaries, port authorities, terminal managers, warehousing entrepreneurs, and distributors.

The objectives of Indonesia's AEO program are:

- Secure and safe supply chain;
- Active participation of AEO participants in securing trade chain;
- Efficient business practices for AEO participants;
- Simplification of Customs procedures;
- Compliance and recognition of international standards.

### 20.1 AEO Regulations

In 2005, the Republic of Indonesia signed a letter of intent for WCO SAFE, for the implementation of AEO in Indonesia. Following this up the President issued Presidential Instruction No. 1 of 2010 instructing the implementation of AEO and information technology to support the investment climate. Then the Minister

of Finance followed up by issuing Minister of Finance Regulation No. PMK 219/PMK04/2010 concerning Customs Treatment of Authorized Economic Operators. In 2014 the Minister of Finance issued Regulation No. PMK 227/PMK04/2014 concerning Authorized Economic Operators that revoked Minister of Finance Regulation No. PMK 219/PMK04/2010 concerning Customs Treatment of Authorized Economic Operators.

## 20.2 Types of AEOs

In Indonesia, types of AEOs mainly include the following entities:

- Importer;
- Exporter;
- PPJK;
- TPS entrepreneur;
- TPB entrepreneurs;
- Carrier;
- Other parties (consolidators, postal operators)

## 20.3 AEO Requirements

Conditions and requirements for AEOs in Indonesia are as follows:

- Compliance with Customs regulations;
- Trade data management system;
- Financial ability;
- Consultation, collaboration and communication systems;
- Education, training and care;
- Exchange of information, access and confidentiality;
- Cargo security;
- Safety of movement of goods;
- Location security;

- Employee safety;
- Security of trading partners;
- Crisis management and incident recovery; and
- System planning and implementation of monitoring, measuring, analyzing, and improving the system

## 20.4 Benefits of AEO Implementation

Benefits for AEO operators include accelerating the process of releasing goods with a minimum of document examination and/or physical inspection, so that it is expected to reduce logistics costs.

Benefits for DGCE include increasing the effectiveness of supervision, service and efficiency of resource allocation.

Benefits for Indonesia include being recognized as a trustworthy country in international trade because it has implemented safety and security measures in the logistics supply chain while facilitated trade, so that it will further have a positive impact on the national economy.

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## 21. TRADE STATISTICS

The Ministry of Trade has continuously made effort to enhance its services in providing information, statistics to the public through the website of the Ministry of Trade. This website is designed to serve the needs of the public, particularly the stakeholders in the trade sector, by providing current information on trade policies, updated data on Indonesia's trade sector, activities related to the trade sector, the profile of the Ministry of Trade and other important information.

Trade statistics in Indonesia is released by the Trade Policy Analysis and Development Agency under the Ministry of Trade (MOT) and are available for reach at the following website: <https://www.kemendag.go.id/en/economic-profile>.

The official website of the Directorate General of Customs and Excise (DGCE) also has a special page for statistics at: <http://www.beacukai.go.id/statistik.html>.

---

## 22. CONTACT INFORMATION

For further and detailed information relating to Customs clearance procedures, enquiries should be addressed to the following official contacts:

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Customs and Excise, Ministry of Finance

Address: Jl. Jend. A. Yani 108, 2nd Floor, Jakarta 13230, Indonesia

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Fax: +62 021 4897512

Website: [www.beacukai.go.id](http://www.beacukai.go.id)

Email: [info@customs.go.id](mailto:info@customs.go.id)

### **Ministry of Trade, Republic of Indonesia**

Address: M. I. Ridwan Rais Road, No. 5, Central Jakarta 10110

Phone: +62 021 3858171

Website: <https://www.kemendag.go.id>

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10. Minister Finance Regulation No. 34/PMK.04/2016 regarding Amendment of Regulation No. 160/PMK.04/2010.

## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

All information, materials included and views, opinions expressed in this eBook are those of the editors and do not necessarily reflect those of EABC China (also CCPIT) and EABC. In this regard, EABC China (also CCPIT) and EABC would like to reaffirm that this eBook would not be used as any reference for judicial and administrative process.

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## **eBook on East Asia Customs Procedures**

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Lao People's Democratic Republic





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## ACKNOWLEDGEMENTS

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AANZFTA	ASEAN-Australia and New Zealand Free Trade Agreement
ACFTA	ASEAN-China Free Trade Agreement
AEO	Authorized Economic Operator
AHKFTA	ASEAN-Hong Kong, China FTA
AHTN	ASEAN Harmonized Tariff Nomenclature
AIFTA	ASEAN-India Free Trade Agreement
AJFTA	ASEAN-Japan Free Trade Agreement
AKFTA	ASEAN-Korea Free Trade Agreement
APTA	Asia Pacific Trade Agreement
APEC	Asia and Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ATIGA	ASEAN Trade in Goods Agreement
CEPT	Common Effective Preferential Tariff
CTC	Change in Tariff Classification
GATT	General Agreement on Tariff and Trade
GEL	General Exception List
GSP	Generalized System of Preferences
HS	Harmonized Commodity Description and Coding System
IFC	International Finance Corporation
LDCS	Least Developed Countries
RKC	Revised Kyoto Convention

RVC	Regional Value Content
SAFE	WCO Framework of Standards to Secure and Facilitate Trade
SL	Sensitive List
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
VAT	Value Added Tax
WBG	World Bank Group
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## Lao People's Democratic Republic

### 1. INTRODUCTION OF LAO CUSTOMS

Lao Customs, headed by the Department of Customs under the Ministry of Finance, is a first-level organization affiliated to the Ministry of Finance and is responsible for managing and supervising the exportation, importation, transit and movement of goods, personnel and vehicles from Lao Customs; operating Customs offices; collecting import and export duties and other fees.

The Customs territory covers all territory of Lao PDR where the scope of functions of Customs is determined. Lao Customs is allowed to exercise their functions outside the Customs territory in accordance with agreements or protocols in which the government of Lao PDR has signed.

#### 1.1 Mission

Lao Customs is a law enforcement agency with the responsibility to:

- Be responsible for timely, accurate import and export duty collection;
- Duty professional services;
- Trade and investment facilitation;
- Regional and international integration;
- Protect social safety.

Lao Customs can exercise the following rights:

- Propose the development of policies, strategies, laws, legislation and measures in line with the roles and responsibilities of the Department from time to time;
- Comment on, agree on issues and certify the validity of the documents in his / her responsibility in accordance with the laws and regulations;
- Propose to the Minister of Finance for consideration, amendment, suspension, implementation, abolition of resolutions, orders and regulations that are not in compliance with the Customs Law;
- Inspect persons, vehicles, legal and regulatory agencies;
- Issue an order to open an investigation - to investigate, issue a summons, invite or inform a person, legal entity or organization in accordance with law and regulation;
- Propose the Minister of Finance to issue orders for confiscation, confiscation, bribery, illegal goods and regulations;
- Propose the establishment, amendment, annulment, incorporation, separation of the organization, appointment, transfer or removal of the Chief and Deputy Chief of General Customs at each level; Rotating technical staff; Propose praise, implement policies (promotion, promotion etc.) and discipline staff and civil servants in their responsibilities according to regulations;
- Manage and use budgets, technical facilities, vehicles, facilities, equipment as per the Ministry of Finance's divisions and regulations;
- To exercise other rights in accordance with the laws, regulations and directions of the Minister of Finance.

## 1.2 Organization

The organizational structure of Lao Customs includes:

- Customs Department;
  - Department of Organization, Administration and Finance;
  - Planning and Information Division;
  - Legislative Division;

- Excise and tax administration department;
  - Department of International Tax Cooperation;
  - Tax Return Review Division;
  - Anti-smuggling Department;
  - Internal Audit Department.
- Regional Customs;
  - Customs Border Checkpoints consisting of international Customs border checkpoints, local Customs checkpoints and traditional Customs checkpoints.

The Government centrally and uniformly supervises Customs activities nationwide by assigning the Ministry of Finance to be the focal point for collaboration with other ministries and relevant local administration.

## 1.3 Functions

The Lao Customs Administration is a department under the Ministry of Finance that is responsible for managing Customs operations based on a vertical line of command from central to local levels; acts as the advisory body to the Minister of Finance in managing Customs operations at the macro level; and, carries out internal Customs inspections and audits, investigations and implementation of the Customs Law and other concerned laws and regulations in order to implement its assigned duties effectively. Customs Administration at each level has the following functions:

### 1.3.1 Customs Department

- Act as an advisory body to the Ministry of Finance regarding Customs policy, laws and regulations, strategic plans, and Customs development plans;
- Revise laws and regulations, and issue detailed implementation instructions;
- Implement and disseminate laws, orders, and various policies relating to Customs;
- Consider and propose the establishment of a warehouse regime to the Ministry of Finance for consideration;
- Manage, supervise, monitor and control the organization, profession and activities of the Customs Administration at each level nationwide;

- Collect and provide export and import data about Customs activities;
- Develop plans for capacity building, training, allocation, appointment, dismissal and reassignment of personnel; implement promotion policy regarding Customs personnel based on the laws and regulations.
- Coordinate and cooperate with sectors at the central level and local administrations with regard to Customs activities;
- Conduct post clearance audit, inspection and anti-smuggling activities, proceed and settle Customs related cases;
- Consider, study and address complaints of the declarant based on its scope of responsibility;
- Investigate Customs cases and file Customs cases to People's Prosecutor to litigate cases in court;
- Coordinate and cooperate with other countries and fulfill commitments under regional and international agreements, treaties and conventions for Customs activities that Government of Lao PDR is a Party to;
- Summarize and report the outcomes of Customs activities to Ministry of Finance regularly;
- Implement other rights and duties as defined in the laws and regulations.

### 1.3.2 Regional Customs

- Act as an advisory body to the Customs Department to strictly implement strategy, policy and Customs management mechanism within its mandates according to the Customs Law and regulations and other relevant laws and regulations;
- Disseminate policies, laws and regulations regarding Customs activities to individuals, legal entities and organizations in the society so that they can be informed and be aware of the compliance of the laws and regulations;
- Supervise, manage, inspect and control the implementation of Customs activities, the professionalism and performance of Customs Authorities within the region and border Customs checkpoints under their jurisdiction;
- Develop a plan for revenue collection from Customs duties and other obligations for the fiscal year within their jurisdiction to report to the Customs Department;
- Consider and settle complaints of the declarant under their jurisdiction;
- Conduct post clearance audits, inspections and anti-smuggling activities, and conduct Customs

cases proceedings;

- Investigate Customs cases and submit case files to the People's Prosecutor to take cases to court;
- Coordinate with local administrations and other government offices with regard to Customs activities within their region;
- Develop plans for capacity building, training, allocation, appointment, dismissal, reassignment, and rotation of Customs personnel under its jurisdiction to the Department of Customs to consider according to regulations;
- Supervise and evaluate the Customs declaration activities of individuals, legal entities and organizations in accordance with the Customs Law and regulations in order to reward traders with good records of Customs compliance as appropriate;
- Implement international coordination and liaison with regard to Customs activities as assigned by the Customs Department;
- Summarize and report the outcomes of Customs activities to the Customs Department and the Vientiane Capital/Provincial Administrations regularly;
- Implement other rights and duties as defined in the laws and regulations.

### **1.3.3 Border Customs Checkpoints**

- Implement plans, policies and the Customs Law and regulations within their jurisdiction strictly;
- Collect Customs duties and other obligations accurately, fully in accordance with the budget plan on a timely basis;
- Manage and use equipment and tools in Customs activities effectively;
- Serve, manage, monitor, inspect and facilitate the export, import and transit of goods through checkpoints quickly and accurately as defined in the laws and regulations;
- Inspect and suppress any violations of Customs laws and regulations and other concerned regulations within their checkpoints and prosecute violators;
- Coordinate with other government offices within the checkpoint while performing their duties;
- Summarize and report Customs activities to Regional Customs and Municipality/District Administration regularly;
- Implement other rights and duties as assigned by Regional Customs.

## 1.4 Staffing

After significant extensions in new organization structure in recent years, Lao Customs has offices in many towns and urban areas, covering Attapeu, Bokeo, Bolikhamsai, Champassack, Huaphanh, Khammuane, Louangnamtha, Louang Prabang, Oudomxay, Phongsaly, Saravanne, Savannakhet, Sekhong, Vientiane, Vientiane Municipality, Xayaboury, Xaysomboune zone and Xiengkhuang.

The personnel structure of the Customs Administration is as follows:

- Director General, Deputy Director Generals;
- Director of Divisions, Deputy Directors of Divisions; Head and Deputy Head of Regional Customs;
- Heads and Deputy Heads of Units within the Divisions; Head and Deputy Heads of Units of Regional Customs, Head and Deputy Heads of International Customs Checkpoints;
- Head, Deputy Heads of Units of International Customs Checkpoints, Head and Deputy Heads of Local Customs Checkpoint and Traditional Customs Checkpoints;
- Customs Staffs and Authorities;
- Some supporting staff.

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## 2. CUSTOMS LEGAL SYSTEM

### 2.1 Customs Law

The current [Customs](#) Law of the Lao People's Democratic Republic was adopted by the National Assembly in Resolution No. 04 of December 20, 2011. This law replaces the Customs Law No.05/NA dated May 20, 2005, which provides principles, policies, rules and measures on export-import, transit and movement of goods within the Lao People's Democratic Republic with a view to encouraging investments, protecting legitimate benefits in the fields of social, economic and national security, international integration, ensuring more effective revenue collection for the state budget and contributing to national

social and economic development. The Customs Law has made relevant provisions on import and export commodity restrictions, prohibited types, Customs declaration, tax payment, joint storage, delivery, Customs clearance, tariff document management and Customs review.

## 2.2 Decree on Import and Export of Goods

Furthermore, [Decree on Import and Export of Goods](#) No.114/Gol dated April 6, 2011, which determines principles, rules and measures on import and export of goods in order to facilitate, promote and administer the import and export, aiming at developing and strengthening socio-economy and contributing to the improvement of people's standard of living.

## 2.3 Other Related Laws and Regulations

Lao Customs also carries out other related laws administered by other government departments and agencies including:

- Investment Promotion Law, 2016;
- Enterprise Law, 2005;
- Labor Law, 2006;
- Tax Law, 2011;
- .....

Article 4 of the Decree on Import and Export of Goods No. 114/GoL dated April 6, 2003 set up the principles of the administration of import and export as follows:

- Trade facilitation;
- Non-discrimination;
- Transparency; and
- Compliance with laws and treaties to which Lao PDR is a party.

## 3. CUSTOMS CLEARANCE PROCEDURES

### 3.1 Import and Export Clearance Procedures

Customs Declaration Process in Lao includes the following steps: goods enter the warehouse → overweight → do temporary warehouse declarations → make temporary Customs declarations → report Customs inspections → report Customs leadership signatures → taxation on tax bills → Customs inspection of goods → payment of warehouse fees → Customs records, Customs clearance.

#### 3.1.1 Import

##### A. General Procedures and Required Documents

All goods before imported into Lao PDR, the importer has to apply for import license from the Ministry of Commerce. When the goods stored in warehouse, importer or his agent has to present any relevant documents and complete Customs Declaration Form present to Customs authority within 10 days. The information shall be declared consist of: kind of goods, amount, weight, price, and country of origin. Customs declaration enables to declare at the Customs office where the goods entered.

##### B. Import Procedures before Clearance

All goods conveyed into Lao PDR, carrier must report to Customs at the first Customs check point of arrival. Carrier shall be allowed transport to the designated routes by Customs office and prohibited to transport other routes, and prohibited to run away the first Customs station before the goods brief report to Customs.

##### C. Payment of Duties and Taxes

Importer shall be allowed to paid duty and tax and must complete Customs Declaration Form and present relevant supporting documents to Customs. Payment of duties and taxes can be paid by cash or cheque guaranteed by bank issued, at the treasury office during official working hours.

##### D. Examination and Release of Goods

All imported goods must be examined by Customs at the goods placed during the official working hours. Examination is carried out in the presence of the importer or agent who is responsible for opening, depend on Customs order. There are five main points for the examination of Customs: kind of goods, amount, price, weight, and Certificate of Origin and total amount of duties and taxes. Examination can be carried out outside if importer or his agent required and the head of Customs office considered reasonable. For the goods lay out CEPT Scheme for AFTA, green lane are designated in the eight Customs check points throughout country for facilitate to CEPT products. Examination in green lane quite easily and spend a short time.

### **3.1.2 Export**

#### **A. Time and Place of Lodging of Goods**

Export declaration can be carried out at the common Customs checking border during the official working hours. If an exporter or his agent requests his goods to be examined outside the official working hours Customs workers compromise to him.

#### **B. Declaration of Export and Documents**

All goods for export, exporter or agent must complete Customs Declaration Form three issues attached with Bill of Lading and Invoice (FOB) and supporting documents submit to Customs for registration or export duty paid.

#### **C. Payment of Export Duty**

Exporter shall be allowed to pay export duty, and must complete Customs Declaration Form and present relevant supporting documents to Customs. Payment of export duty can be paid by cash or cheque guaranteed by bank, at the treasury office during the official working hours.

#### **D. Examination and Release of Goods**

Goods to be exported must be completed on the Customs Declaration Form and be examined in the presence of exporter/declarant or his/her representative after goods registered or export duty paid. There are five main points for the examination of Customs: description of goods, amount, weight, price and country of origin.

## 3.2 Other Clearance Procedures

### 3.2.1 Temporary Import

According to the Article 42 of Customs Law, temporary importation of goods in Lao includes:

- (1) Goods imported for manufacturing, processing, assembling, modifying or repairing;
- (2) Vehicles to be used for project survey and design;
- (3) Vehicles to be used for tourist visits;
- (4) Equipment to be used for project survey and design;
- (5) Goods for exhibition;
- (6) Goods for study and experiment.

Goods that are classified under clauses (1) to (6) above are suspended from the application of Customs duties and other obligations and when it is re-exported, it is subject to Customs duties exemption as specified in the regulations.

Temporarily imported goods are prohibited from ownership transfer, pawning, exchange, being bought or sold or misused. If these conditions are violated, measures shall be taken according to laws and regulations. In case it is necessary to use imported goods domestically, they shall be authorized by the Customs administration.

### 3.2.2 Temporary Export

Temporary exportation of goods out of the country and when bringing goods into the country again, if there are some modification, change or adding some equipment to the goods, the goods shall be subject to Customs duties and other obligations based on the laws and regulations, with the cost of the modification, change or adding of some equipment used as the basis for Customs duty calculation. Exportation of goods for the purpose of exhibition, experiment, research, analysis and etc. in foreign countries are subject to declaration of the detailed Customs duty, to insurance for the exported goods and to follow relevant regulations. For controlled goods, it must be approved by relevant sectors. Temporary exported goods shall be suspended from Customs duties and other obligations.

### 3.2.3 Transshipment

The transshipment through Lao PDR shall strictly follow the determined routes, entry and departure checkpoints, and timeframe. The transit goods shall be in the same amounts and conditions upon entry and exit from the Lao PDR under the surveillance by Customs officers of Lao PDR.

Transit of goods through Lao requires the same documents normally needed for import and export and a check or letter of guarantee from a bank. However, the Ministry of Finance of Lao is working on revising the existing regulations to ensure they align with international standards, particularly the ASEAN Customs Transit System.

The transit shipment through Lao PDR shall strictly follow the determined routes, entry and departure checkpoints, and timeframe. The transit goods shall be in the same amounts and conditions upon entry and exit from the Lao PDR under the surveillance by Customs officers of Lao PDR.

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## 4. ASUCUDA AND LNSW

### 4.1 ASYCUDA

Lao PDR has selected UNCTAD's ASYCUDA (Automated Systems for Customs Data system) for the computerization of its Customs and allows importers and exporters to benefit from a digitized, single-window clearance system revenue collection and statistics gathering process.

ASYCUDA is a computerized Customs management system which covers most foreign trade procedures. The system handles manifests and Customs declarations, accounting procedures, transit and suspense procedures. It also generates trade data that can be used for statistical economic analysis. ASYCUDA takes into account the international codes and standards developed by ISO, WCO and the United Nations and can be configured to suit the national characteristics of individual Customs regimes, national tariff & legislation. ASYCUDA provides Electronic Data Interchange (EDI) between traders and Customs using prevailing standards such as XML.

At present, the ASYCUDA system has been used at all border crossings throughout Lao to enable importers and exporters to self-pay tariff functions. Importers and exporters can complete the Customs payment process in 15 to 30 minutes. In addition, in order to improve work efficiency, a one-stop service window for Customs declaration has also been established. Currently, and has been piloted at the Friendship Bridge Pass No. 1, with various modes of transportation as a pilot tool to establish a Customs information database to ensure fast and convenient Customs clearance.

The National Taxation Department has also cooperated with the Lao Foreign Trade Bank to start using Smart TAX for Customs clearance automation. Smart TAX will establish a more extensive and convenient working network. It will further facilitate Customs clearance at various Customs points in Lao, especially the four friendship bridges in the country.

#### 4.2 Lao National Single Window (LNSW)

Within the course of its trade facilitation program, the Ministry of Finance and the Lao Customs Department are currently implemented a new tool – the Lao National Single Window ([LNSW](#)), which is a web platform, dedicated to simply trade regulations formalities. Using cloud computing, this secure interactive portal covers all the processes between government entities and the trade community, relative to trade regulations formalities in LPDR.

Interfaced with dedicated banks and ASYCUDA World, LNSW offers fostering Customs clearance operations and facilitates international trade in Lao and open gate to ASEAN regional single window.

Main objectives of LNSW include:

- Improve the supply chain efficiency;
- Reduce risk and processing times;
- Enhance transparency in Business to Government relations;
- Simplification of procedures and formalities;
- Cut down costs;
- Create a conducive environment to traders' competitiveness with possibility of working "just in time";
- Increase local logistic competitiveness (International Trade and Investments) in Cross-Border Trade;

- -Improve visibility for Authorities: statistics and reports.

### 4.3 Current Focuses

At present, the focuses of Lao Customs are as follows:

- Improving duty notification and tax administration with electronic system (ASYCUDA, SMART TAX, SMART VAT);
- Improve modern tools in the inventory risk management and management (SCANNER, D53, E-Meter, CCTV, E-Seal, E-Gate);
- Implementation of National Single Window Tax Reporting;
- Implementation of the ASEAN Single Window Customs;
- Implementation of the Authorized Economic Operator Program.

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## 5. DECLARATION DOCUMENTS

### 5.1 Import Declaration

Customs Declaration Form must be done three issued with relevant supporting documents consist of:

- Import License from Ministry of Commerce;
- Purchasing Order, Invoice and Packing List;
- Certificate of Origin Form D (import on CEPT Scheme);
- Import License from relevant Ministries (if require);
- Exemption Customs Declaration Form issued by Customs Department or Customs office Province (consistent with Article 56, 57 of Customs Law);
- License of duty paid one percent (for investment).

## 5.2 Export Declaration

All goods for export, exporter or agent must complete Customs Declaration Form three issues attached with Bill of Lading and invoice (FOB) and supporting documents submit to Customs for registration or export duty paid. Required documents for export include:

- Export License from relevant ministries (if required);
- Diplomatic goods;
- Commerce Invoice and Packing List;
- Payment of export duty.

## 5.3 Other Documents

Trade contracts, order cards, and Certificates of Origin should be submitted when deemed necessary. For certain technical products, importers must obtain a permit that these products adhere to technical standards from the Ministry of Science and Technology. Similarly, imported food items must attain a phytosanitary certificate from the Ministry of Agriculture and Forestry. Importers and exporters bringing pharmaceuticals or chemical products in or out of Lao must obtain a permit from the Food and Drug Department of the Ministry of Public Health.

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# 6. CUSTOMS CLEARANCE BROKERS

## 6.1 Customs Clearance Brokers

Customs clearance brokers generally act as an intermediary between traders and Customs in Customs clearance processes. Customs clearance brokers' knowledge of Customs laws and processes in addition to their work experience in the trade supply chain can be useful for both traders and Customs. While Customs clearance brokers support traders by providing all necessary documentation or electronic transmission and undertaking formalities related to cargo clearance, Customs clearance brokers are also

expected to maintain government interests by ensuring compliance with Customs and other regulatory requirements and the collection of appropriate duties, taxes, and fees.

According to Article 14, Chapter 3, Part I of Customs Law, Customs clearance brokers have the duty to declare Customs duties on behalf of owners of goods or transporters. The Ministry of Finance shall issue regulations with respect to standards, requirements and the scope of operations of Customs clearance brokers.

## 6.2 Responsibilities of Customs Clearance Brokers

To further enhance their service delivery, some Customs brokers are transitioning towards a more comprehensive consultancy and advisory role, rather than being confined to merely filing declarations/documents for Customs release and clearance. They also collaborate with other actors in the supply chain on behalf of traders, such as freight forwarders, carriers/agents, warehouse operators and transporters. In some cases, brokers have even expanded to provide many other services in the supply chain, such as cargo handling, warehousing, multi-modal transport carriage, packaging, consolidation, insurance coverage, delivery services, as well as providing consultancy in compliance and dispute resolution.

According to Article 14, Chapter 3, Part I of Customs Law, Customs clearance brokers in Lao have the following responsibilities:

- Conducting transaction with the Customs Administration for goods declaration procedures; completing Customs documentation, Customs clearance, payment of duty and other obligations; and removal of goods from a warehouse or checkpoint on behalf of the goods owner;
- Contacting the Customs Administration to register their electronic declaration system;
- Declaring goods correctly to the Customs Administration and submitting supporting documents in accordance with Customs protocols and procedures;
- Signing detailed Customs declarations in electronic format and/or other formats on behalf of the goods owner when authorized;
- Paying Customs duty and other obligations on behalf of the goods owner;
- Participating in the inspection of goods with Customs Officer, for instance, opening containers and boxes of goods, counting the quantity of goods, weighing and measuring goods;
- Representing owners of goods, transporters or other clients in dealing with the Customs Authority

for any breach of the Customs Law and regulations and other relevant laws and regulations;

- Being responsible for the costs of transportation, unloading, warehousing and other expenses occurring during the inspection of goods.

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## 7. CUSTOMS SECURITY

According to Article 27, Chapter 6, Part II of Customs Law, security for releasing goods from the Customs checkpoint or warehouse before the detailed Customs declaration shall proceed according to the following requirements:

- The declarant shall make a request for the deposit of security with the Customs administration;
- The security shall be equal to Customs duties and other obligations with an additional twenty percent (20%) in cash or guarantee letter from a financial institution or bank or individual, legal entity or organization that has a reliable financial status;
- After releasing goods from the warehouse, within fifteen (15) working days, a detailed Customs declaration shall be made. Money or the guarantee letter shall be returned;
- If the declaration is made later than the specified time, the declarant shall be fined zero point ten percent (0.10%) of the value of goods;
- If the declarant fails to comply with the security contract, the violator shall be prosecuted based on the laws and regulations.

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## 8. PROHIBITIONS & RESTRICTIONS

### 8.1 Major Trade Control Measures

In order to develop the domestic economy and protect the economic interests of the country, some trade control measures are implemented. The administration of import-export shall include the following measures:

#### 8.1.1 Prohibition of Import or Export

In Lao, the Import and Export Administration Authorities have the rights to prohibit the import or export of goods. Goods in the list of prohibited import or export may be imported or exported only if authorized by the Government of Lao PDR. Importers and exporters can secure these licenses from the Department of Imports and Exports (DIMEX). The procedures of such authorization are set out in a separate regulation.

To determine the criteria for license requirements, three categories based on the products for import or export are used. These are:

- Products which do not require a license;
- Products requiring a license under the automatic route; and
- Products requiring a license under the non-automatic route.

Products under the automatic route are licensed for the purpose of collecting statistical information whereas products under the non-automatic route require permission from DIMEX to be either imported or exported.

Export goods subject to automatic licensing include:

- Logs, timber, and wood products;
- Rice; and
- Minerals and mineral products.

Export goods subject to non-automatic licensing include:

- Logs, timber, and wood products sourced from natural forests; and
- Gold bars.

Import goods subject to automatic licensing include:

- Road vehicles;
- Petroleum and gas;
- Logs, timber, and wood products;
- Rice;
- Steel bars and transformed steel;
- Cement, mortar, concrete;
- Printing products;
- Mineral and mineral products; and
- Timber and logging machines.

Import goods subject to non-automatic licensing include:

- Guns and bullets used for sporting purposes;
- Explosives used for industrial purposes; and
- Gold bars.

### **8.1.2 Licensing Requirements for Import and Export**

The Import and Export Administration Authorities have the rights to require importer or exporter to obtain import or export license prior to import or export of goods. All importers and exporters must first register with the Ministry of Industry and Commerce's Department of Enterprise Registration and Management. The import licensing procedures are set out in a separate regulation and the export licensing procedures shall be applied the same as the import licensing procedures.

### **8.1.3 Requirements on Sanitary and Phytosanitary**

The Import and Export Administration Authorities have the rights to require importer and exporter to provide certificates on sanitary and phytosanitary (SPS) measures or to comply with technical regulations (TBT) prior to import and export of such goods in accordance with relevant regulations.

### **8.1.4 Application of Trade Remedy Measures**

The Import and Export Administration Authorities have the rights to introduce trade remedy measures such as anti-dumping measures, countervailing measures and safeguard measures in accordance with cases and conditions under treaties to which Lao PDR is a party.

## **8.2 Prohibition and Restriction of Types of Goods**

Prohibited products and products under control for import and export in Lao PDR are based on Notification of the Cabinet of Ministry of Information and Culture, No.2411/C.MIC of 10 September 1997, according to Decree of Minister of Information and Culture No 1213/MIC of 23 November 1996.

### **8.2.1 Prohibited for Import**

- Illegal drugs;
- Weapons, Explosives and ammunition;
- Chemicals and fertilizers;
- Fuel Oil;
- Plant and plant products;
- Knives and deadly weapons;
- Live Animals;
- Right driving cars;
- Medicine;
- Any written or recorded material which could be judged to be against the public interest;
- Household materials older than 50 years;
- Counterfeit money and goods;

- Images of God and Buddha – unless permission has been obtained;
- Pornographic material.

### **8.2.2 Restricted for Import**

- All weapons and ammunition are restricted unless permission has been obtained from the Ministry of Commerce beforehand;
- Any receivers or transmitters through satellites, internet, equipment for radio broadcasting and television stations are restricted unless permission has been granted from the ministry of Information and Culture;
- Any games or material which is judged to negatively affect the morality and wellbeing of the children and teenagers inside the country could be removed by the Customs department;
- Images of Buddha and god made from copper, glass, wooden, bone, ivory, stone and other materials will also require permission from the Ministry of Information and Culture to be granted entry to enter or leave the country.

### **8.2.3 Prohibited for Export**

- Illegal drugs;
- Weapons, Explosives and ammunition;
- Chemicals and fertilizers;
- Fuel Oil;
- Plant and plant products;
- Knives and deadly weapons;
- Live Animals;
- Right driving cars;
- Medicine;
- Any written or recorded material which could be judged to be against the public interest;
- Household materials older than 50 years;
- Counterfeit money and goods;

- Images of God and Buddha – unless permission has been obtained;
- Pornographic material.

## 8.3 License Management Products

### 8.3.1 Import License Management Products

For live animals, fish, aquatic organisms; edible meat and its products; dairy products; rice, rice; edible food, vegetables and their products; beverages, wine, vinegar; farmed feed; cement and its products; fuel oil; natural gas; ozone-depleting chemicals and their products; bio-chemicals; pharmaceuticals and medical devices; fertilizers; some cosmetics; insecticides, poisonous rodents, bacteria; sawn timber; logs and saplings; books, textbooks; silver blocks, gold bars; steel; vehicles and their accessories (except bicycles and hand-held ploughs); game machines; explosives and other 25 categories of goods, import licenses are required.

### 8.3.2 Export License Management Products

For live animals (including fish and aquatic organisms); rice, rice; shellac, resin, forest products; mineral products; wood and its products; unprocessed gemstones; gold bars, silver blocks and other seven categories of goods, exports licenses are required.

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## 9. DUTIES AND TAXES

### 9.1 Customs Duty

All categories of goods exported from and imported to Lao PDR are subject to Customs duty and other obligations according to the rates defined in the Customs tariff nomenclature, except for cases where Customs duty and other obligations are exempted or suspended. Individuals, legal entities and organizations that export and import goods shall pay Customs duties and other obligations as set out in the laws and regulations.

Duties are levied on all types of imported and exported commodities at varying rates from 5 percent to 40 percent. Administrative fees are also levied at 5 percent ad valorem on equipment and materials.

The tariff nomenclature of Lao PDR, which is based on ASEAN Harmonized Tariff Nomenclature (AHTN 2012), observes standard ASEAN import tariff rates varying from zero to 40 percent, excluding non-ASEAN countries. Tariffs in Lao are divided into independent tariff rate, agreed tariff rate, preferential tariff rate, and reduction tariff rate and zero tariff rate.

### 9.1.1 Import Duty

The applicable rates can be found on [Lao Trade Portal](#). The tariffs are detailed in the [Tariff Nomenclature 2012 \(revised in 2016\)](#) with rates varying between 5% and 40%. The applicable rates are subject to the origin of the goods and a Certificate of Origin will need to be presented.

### 9.1.2 Export Duty

Export duties are only payable on some commodities. These include gems, electricity, gas, crude oil, timber and conversions. Full detail is provided in the [Edict on the List of Goods and Exported Tariff No. 002/OP](#).

## 9.2 Value Added Tax (VAT)

VAT applies to all imported products, unless they receive an exemption from the Government of Lao. The standard rate of VAT in Lao is 10 percent.

## 9.3 Excise Tax

The excise tax is an indirect tax, which shall be collected from some products imported or manufactured by domestic producers for sales the country.

Imports of equipment, means of production, spare parts, and other materials used in the operation of foreign investors' projects or in their productive enterprises are taxed at a uniform flat rate of one percent of the imported value. Raw materials and intermediate components, imported for the purpose of processing and then exported, are exempt from such import duties with approval from relevant ministries.

The excise tax calculation shall be based on the import cost for import goods or factory cost for domestic

products. The import cost includes the import amount declared plus import duty and other fees if exist. The importers shall produce the Customs declaring documents to the Customs offices at the import Customs checkpoints in order to pay tax. The tax shall be fully paid before removing the goods out of the Customs checkpoint. Excise Tax rates range from 5 to 90 percent on many goods.

## 9.4 Duty and Tax Rates

### 9.4.1 Import Duty Rates

The applicable import duty rates can be found on [Lao Trade Portal](#) and the tariffs are detailed in the [Tariff Nomenclature 2012](#) (revised in 2016) with rates varying between 5% and 40%.

Currently there are three import tariff categories in Lao:

1. Special Preferential Rates – applicable if there is a trade arrangement between Lao and another country or region (e.g. ASEAN member states).
2. Preferential Rates – applicable if the country is a WTO member and thus entitled to Most Favored Nation (MFN) status. In 2016 Lao' average MFN applied tariff was 8.5% (WTO).
3. Ordinary Rates – applicable for any other countries.

Currently, Lao PDR has seven import duty levels: 5%, 10%, 15%, 20%, 25%, 30% and 40%. Examples of import duty rates are shown in following Table 1.

*Table 1 Examples of Import Duty Rates*

For alcohol	40%
For cigarette	40%
For processed food	10%
For motorbikes with power of a cylinder capacity not exceeding 50cc	30%
For motorbikes with power of a cylinder capacity exceeding 50cc.	40%
For motor vehicles for transport of goods not exceeding 5 tons	30%
For motor vehicles for transport of goods exceeding 5 tons	40%

For car	40%
For machine	10%
For car	40%
For electric equipment	10%-20%

### 9.4.2 Export Duty Rates

Currently, Lao PDR has four export duty levels: 5%, 10%, 15% and 40%.

### 9.4.3 Excise Tax Rates

Excise tax rates range from 5 to 90 percent on many goods in Lao. And examples of excise tax rates are shown in following Table 2.

Table 2 Examples of Excise Tax Rates

1- Fuel	Gasoline (super)	23%
	Gasoline (Normal)	20%
	Diesel	10%
	Aviation gasoline	10%
	Lubricant, hydraulic oil, grease, brake oil	2%
2- Alcohol or other alcohol drinks	Alcohol or alcoholic drinks (above 15 degree)	40%
	Beer, wine and other drinks (below 15 degree)	30%
3- Bottled soft drinks and other vitamin drink		20%
4- Packed and unpacked cigarettes, cigars		30%
5- Perfume and cosmetic		10%
6- Play-cards and other similar play		50%

## 9.5 Preferences

Trade preference which Lao benefits from can be grouped into 3 categories: A. Generalized System of Preferences (GSP); B. preferences of developing countries; and C. preferences under free trade

agreements (FTAs).

A. The GSP is tariff exemption or reduction treatment extended by developed countries to developing countries and least developed countries (LDCs) with an aim to encourage their trade and economic development.

B. The second regime is the trade preference of developing countries or economies who voluntarily grant non-reciprocal preferential access to exports from LDCs.

C. The third preferential regime is mainly the preference carried out under the framework of free trade agreements, in which most importance to Lao is the ASEAN Trade in Goods Agreement (ATIGA).

## 9.6 Exemption, Suspension or Reduction of Customs Duties and Other Obligations

### 9.6.1 Exemption, Suspension of Customs Duties and Other Obligations

Exemption, Suspension of Customs duties and other obligations are stipulated in Article 50, 51, 52 of Chapter 1 and Article 53, 54, 55, 56, 57 58 of Chapter 2 of Part VIII of Customs Law 2011. Except importation of goods and vehicles for diplomatic missions, importation of goods and vehicles for international organizations, which still need to be re-exported after completion of the mission in Lao PDR and if be used domestically shall be subject to Customs duties and other obligations, general exemption from Customs duties and other obligations include:

- Personal belongings of passengers;
- Certain kinds of household items when changing a residency (moving house);
- Gifts of a delegation from overseas official visits;
- Goods obtained from government aids and borrowings;
- Essential items used for education, health, scientific study, samples and religious purposes;
- Special items used for national defense and public security.

### 9.6.2 General Customs Export Duty Exemption

General export Customs duty exemption is stipulated in Article 59 of Chapter 2 of Part VIII of Customs

Las as follows: exportation of agricultural products derived from production, plantation and breeding, and industrial products that have been manufactured or processed, and handicraft products, are exempted from export Customs duties, except for some items of goods that require an export duty.

### 9.6.3 Exemption, Suspension or Reductions of Customs Duties and other Obligations

Article 60, 61, 62, 63 of Part IX of Customs Law stipulate exemption, suspension or reduction of Customs duties and other obligations as follows:

**Investment Promotion Policy:** In order to promote investment and support production according to Government policy, the exportation and importation of goods are subject to exemption or reduction of Customs duties and other obligations based on the Law on Investment Promotion.

**Exportation-Importation under the Policy of Special Economic Zones and Specific Economic Zones:** The export and import of goods into and out of special economic zones and specific economic zones are exempted, suspended or reduced from Customs duties and other obligations according to relevant and specific regulations.

**Duty Free Shops:** The Ministry of Finance shall authorize the establishment of duty free shops to distribute goods to outbound travelers. Those goods are suspended from Customs duties and other obligations according to regulations.

**Management of the Utilization of Goods, Vehicles or Equipment:** Goods imported or exported under exemption, suspension or reduction regulations for Customs duties and other obligations shall be under the control of the Customs Administration. Goods from a special economic zone and specific economic zone intended for distribution or consumption in the territory of Lao PDR shall pay Customs duties and other obligations according to regulations. Vehicles or equipment authorized for import under the investment promotion policy shall be used for intended purposes and are prohibited to be distributed or sold in general. If a violation occurs, Customs measures shall be taken according to the laws and regulations.

## 9.7 Refund or Delayed Payment

Customs Law of Lao does not provide refund or delayed payment of duties.

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## 10. HS CLASSIFICATION

### 10.1 Tariff Nomenclature

The Harmonized Commodity Description and Coding System, also known as the Harmonized System (HS) is an international standardized system of names and numbers to classify traded products. The determination of the correct HS Code for tariff classification purposes is important since the applicable Customs tariff rates and import licenses/certificates for specific imported goods are determined according to their HS Codes.

At present, Lao PDR is using the Tariff Nomenclature 2017, which commodities are classified based on ASEAN Harmonized Tariff Nomenclature (AHTN) and Harmonized Commodity Description and Coding System (HS) of World Customs Organization (WCO) and WCO version is at 6 digit level, the ASEAN AHTN 2012 version is at 8 digits level while Lao 2017 national version at 10 digits level.

All categories of goods that are exported and imported shall be declared according to the code of each category of goods as specified in the Tariff Nomenclature 2017.

### 10.2 Rules of Classification

Lao Customs follows WCO's General Rules for the Interpretation of the Harmonized System. There are six principles, which should be followed, to determine the classification of goods:

- **Rule 1:** The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.
- **Rule 2:** (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of

that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

- **Rule 3:** When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows : (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
- **Rule 4:** Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.
- **Rule 5:** In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to there in: (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character; (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.
- **Rule 6:** For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

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## 11. CUSTOMS VALUATION

The Customs value of imported goods is determined mainly for the purposes of applying ad valorem rates of Customs duties. It constitutes the dutiable basis for Customs duties. It is also an essential element for compiling trade statistics, monitoring quantitative restrictions, applying tariff preferences, and collecting national taxes.

Lao Customs administrations value imported goods in terms of the provisions of the WTO Agreement on Customs Valuation (adopted in 1994). This Agreement establishes a Customs valuation system that primarily bases the Customs value on the transaction value of imported goods, which is the price actually paid or payable for the goods when sold for export to the country of importation, plus, certain adjustments of costs and charges.

Where the Customs value cannot be determined on the basis of the transaction value, it will be determined using one of the following methods:

- Transaction Value of Identical Goods;
- Transaction Value of Similar Goods;
- Deductive Value Method;
- Computed Value Method;
- Fall-back Method.

According to WCO Guide to Customs Valuation and Transfer Pricing, the above-mentioned valuation methods must be used in hierarchical order and these methods are introduced as follows in detailed manner:

### ***Valuation Method 1: Transaction Value***

The WTO Valuation Agreement defines the transaction value as “the price actually paid or payable for the goods when sold for export to the county of importation adjusted in accordance with the provisions of Article 8”.

In effect, this means that the commercial arrangement between the buyer and seller of imported goods determines their Customs value. Article 8 provisions further refine this value by outlining value elements which must be added to the transaction value; or elements which can be subtracted from it; thus arriving at a fair and transparent Customs valuation.

Under the terms of the Agreement, some value elements can be subtracted from the transaction value including: (1) delivery costs after importation. If the seller's or carrier's charge covers delivery beyond the Lao border, the importer may deduct the additional charges for such delivery, providing they are shown separately from the price paid or payable for the goods, (2) Lao duties or taxes - an importer can deduct from the price paid any included Customs duty or other taxes which are payable in Lao because of the importation or sale of the goods, (3) dividends - an importer can leave out dividend payments made to the seller, (4) marketing activities related to the imported goods. An importer is not required to include in the Customs value the cost of the following activities which it carries out at its own expense including advertising and guarantee or warranty services, (5) buying commission. An importer may leave out fees or brokerage paid to an agent for representing a buyer outside Lao in buying imported goods, providing the commission is shown separately from the price paid or payable for the goods, (6) interest charges. These may be left out if they are payable under a financing arrangement for buying the imported goods, providing the charges are shown separately from the price paid or payable for the goods.

Elements that must be added to the transaction value unless they are already included in the invoice including: (1) Delivery costs. The costs of transport, insurance, loading or handling connected with delivering the goods to the Lao border must be included, (2) Commissions. Certain payments of commission and brokerage, including selling commission, must be included. Buying commission, where an importer pays someone to act for them in the supplier country in connection with a purchase is not dutiable, (3) Royalties and license fees. An importer must include these payments when they relate to the imported goods and are paid by the importer as a condition of the sale of those goods, (4) Goods and services provided free of charge or at reduced cost by the buyer. If the importer provides, directly or indirectly, any of the following, there must be included in the Customs value any part of the cost or value not included in the price charged to the importer by the seller - sometimes known as "assists" including:

- (a) Materials, components, parts and similar items incorporated in the imported goods including price tags, labels etc.;
- (b) Tools, dies, moulds and similar items used in producing the imported goods, for example, tooling charges. There are various ways of apportioning these Charges;

- (c) Materials consumed in producing the imported goods, for example, abrasives, lubricants, catalysts, reagents etc. which are used up in the manufacture of the goods but are not incorporated in them; or
- (d) Engineering, development, artwork, design work and plans and sketches carried out outside the country and necessary for producing the imported goods. The cost of research and preliminary design sketches is not to be included.

(5) Containers and packing including the cost of containers which are treated for Customs purposes as being one with the goods being valued (that is not freight containers the hire-cost of which forms part of the transport costs) and the cost of packing whether for labor or materials. Where containers are for repeated use, for example reusable bottles, an importer can spread their cost over the expected number of imports. If a number of the containers may not be re-exported, this must be allowed for. (6) Proceeds of resale. If an importer is to share with the seller (whether directly or indirectly) the profit on resale, use or disposal of the imported goods it must add the seller's share to the price paid. For example, if the seller is to have a share of the profit which you receive, this is to be added to the price paid or payable, (7) Export duty & taxes paid in the country of origin or export. When these taxes are incurred by the buyer they are dutiable. However, if you benefit from tax relief or repayment of these taxes they may be left out of the Customs value.

It is expected that, under the Agreement, the transaction value will form the basis for the Customs value in most of the imports. In some circumstances, however, the transaction value cannot be used - therefore Method 1 is inappropriate and importers must seek an alternative method. The following 5 additional methods must be attempted in number order (i.e. Method 1, then Method 2, etc.) until an appropriate method is found.

### ***Valuation Method 2: Transaction Value of Identical Goods***

This is the second method an importer must try, and it involves using the value of identical goods, imported into Lao at or about the same time, on which to base the Customs value of an import where the transaction value cannot be used. Identical goods are goods produced in the same country as those being valued.

If no identical goods can be found, the importer must proceed to Method 3.

**Valuation Method 3: Transaction Value of Similar Goods**

This is based on the Customs value of similar goods imported into Lao at or about the same time as the goods to be valued. Similar goods are goods which differ in some respects from the goods being valued, but they (1) are produced in the same country, (2) can carry out the same tasks, and (3) are commercially interchangeable.

If no similar goods can be found, the importer must proceed to Method 4.

**Valuation Method 4: Deductive Value**

This method takes the evidenced normal selling price of goods with the same characteristics to unrelated persons in Lao and subtracts the following elements: (1) either the commissions usually paid or agreed to be paid, or (2) the addition usually made for profit and general expenses in connection with sales in Lao of imported goods of the same class or kind, (3) the usual costs of transport, insurance and associated costs incurred within Lao, and (4) Customs duties and internal taxes payable in the country of importation.

Customs will reasonably expect evidence to support the figures submitted, particularly with reference to the importer's profit.

If the goods are not sold on in Myanmar as they were imported for example they have undergone significant processing or other elements are unknown or cannot be evidenced, the importer must proceed to Method 5.

**Valuation Method 5: Computed Value**

This is based on the costs involved in producing the imported goods. Because this method relies on suppliers revealing sensitive information, it is most often used where seller and buyer are related, and the price is influenced by the relationship.

The Customs value is a built-up value. It is based on the sum of the following: (1) the cost or value of materials and fabrication or other processing used in producing the imported goods including any assists provided by the buyer, and containers and packing, (2) an amount for the producer's profit and general expense, plus (3) the cost of transport, insurance and loading or handling connected with delivering the goods to the Myanmar border.

Same as Valuation Method 4, Valuation Method 5 will reasonably expect evidence to support the figures submitted, particularly with reference to the supplier's profit.

If an importer cannot use Valuation Method 5, then he/ she must move on to Valuation Method 6.

### ***Valuation Method 6: Fall-back Method***

In the rare event that an importer cannot find an alternative valuation method by applying principles involved in Valuation Methods 1 to Valuation Method 5, then Method 6 must be used.

Using this method, an importer must arrive at the Customs value by using reasonable means consistent with the WTO Valuation principles.

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## **12. RULES OF ORIGIN**

### **12.1 Rules of Origin**

The WCO, in the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, RKC), defines rules of origin as “the specific provisions, developed from principles established by national legislation or international agreements (“origin criteria”), applied by a country to determine the origin of goods.

The Decree on the Origin of Import and Export Goods No. 228/PM dated April 22, 2010 stipulates the principles and rules on the origin of import and export goods aiming at promoting both domestic and foreign trade and investment, benefiting from trade preferences, and protecting the environment, which will contribute to the strengthened development and growth of the national economy and improved livelihoods of the people in Lao PDR.

According to this Decree, there are two systems: preferential and non-preferential rules of origin.

### 12.1.1 Preferential Rules of Origin

#### A. Preferential Rules of Origin under International Agreements

The determination of the origin of goods under preferences shall be made in accordance with the rules of origin under international agreements of which Lao PDR is a party.

#### B. Preferential Rules of Origin under Unilateral Preferences

The determination of the origin of export goods under unilateral preferences shall be made in accordance with the rules of origin of importing countries.

### 12.1.2 Non-preferential Rules of Origin

The determination of the origin of goods shall be made under the following provisions:

#### A. Wholly Obtained or Produced Goods

The following goods are to be considered as being wholly obtained or produced in one country:

- (1) Plant and plant products grown and harvested, picked or gathered in that country;
- (2) Live animals born and raised in that country;
- (3) Products obtained from live animals referred to in sub-paragraph (2) above;
- (4) Products obtained by hunting, trapping, fishing, aquaculture, gathering or capturing conducted in that country;
- (5) Minerals and other naturally occurring substances, not included in subparagraphs (1) to (4), extracted or taken from its soil, waters, seabed or beneath its seabed;
- (6) Products of sea-fishing and other marine products taken from the high sea by vessels registered in the country concerned and flying the flag of that country;
- (7) Products obtained or produced on board factory ships exclusively from products referred to in sub-paragraph (6) above, provided that such factory ships are registered in that country and fly its flag;
- (8) Products taken from the waters, seabed or beneath the seabed outside the territorial waters,

provided that that country has the rights to exploit such waters, seabed and beneath the seabed in accordance with the international law;

- (9) Waste and scrap products derived from manufacturing operations and used articles, if they are collected therein and are fit only for the recovery of raw materials; and
- (10) Goods which are produced in that country exclusively from goods referred to in subparagraphs (1) to (9) above.

## **B. Substantial Transformation Criteria**

Where many countries were involved in the production of goods, the country carrying out the last substantial transformation shall be regarded as the country of origin of that good.

The determination whether the last substantial transformation occurs as specified in clause above shall be only based on the change in tariff heading criteria.

## **C. Minimal Operations and Processes**

The goods with the following minimal operations and processes shall be deemed not qualified for the origin of goods:

- 1. Operations to ensure the preservation of products in good condition for transportation or storage such as drying, chilling, adding salt, etc.;
- 2. Simple operations such as sifting, sorting, classifying or matching, washing, painting or cutting up;
- 3. Changes of packing and breaking up and assembling of consignment;
- 4. Simple slicing, cutting, and repacking or placing in bottle, flasks, bags, boxes and all other simple packing operations;
- 5. The affixing of marks, labels or other like distinguishing signs on products or their packaging;
- 6. Simple mixing of products;
- 7. Simple assembly of parts of products to constitute a complete product;
- 8. Combination of two or more operations specified in 1 to 7 above; and
- 9. Slaughter of animals.

#### D. Indirect Materials

When determining the origin of goods, indirect materials are not considered even though they might be used in the production process or not:

- Energy and fuel;
- Machine and tools;
- Plant, equipment, including safety equipment;
- Lubricants, greases and compounding materials;
- Gloves, glasses, footwear and clothing;
- Catalyst and solvents.

#### E. Determination of Origin of Packaging, Accessories, Spare Parts, Tools and Goods not yet Assembled or Dismantled

Packaging materials, accessories, spare parts, tools and instructional or other information materials which accompany goods are considered to have the same origin with such goods.

With respect to goods which have not yet been assembled or which are in a state of being dismantled and which are imported via a number of journeys due to transportation or manufacturing conditions, the origin of the goods on each journey shall be deemed to be the same origin.

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## 13. ADVANCED RULINGS

Advance rulings are binding decisions by Customs at the request of the person concerned on specific particulars in relation to the intended importation or exportation of goods and facilitate the declaration and consequently the release and clearance process, as critical assessments in relation with the goods have already been made in the advance ruling. Advance rulings are binding throughout the Customs territory at

all Customs offices and valid for a specific period of time.

Article 28, Chapter 7, Part II of Customs Law lays down the legal foundation for Customs advance ruling.

In case the declarant is not sure about identifying the Customs classification code and country of origin of goods needed to prepare for a detailed Customs declaration, the declarant is allowed to request for advice and to apply for an advance ruling from the Customs Administration by following the procedures below:

- 1. The documents and/or samples of goods shall be submitted in writing to the Customs Administration;
- 2. The Customs Administration shall consider the request in order to issue an official certified document certificate of approval within fifteen (15) working days from the date the Customs authority receives full documentation;
- 3. In case the Customs Administration needs additional information, the declarant shall provide relevant information within fifteen (15) working days from the date of receipt of a notice from the Customs Administration. If it is beyond the deadline, the Customs Administration may not consider the application;
- 4. The certificate of approval from the Customs Administration is valid for not more than one (1) year as long as the specifications regarding the imported goods do not change. If there is strong evidence or information that the goods have changed, the certificate of approval shall be cancelled;
- 5. When there is information or evidence that a good has changed, the declarant must request to the Customs Administration to consider and issue a new certificate of approval.

## 14. FREE TRADE AGREEMENTS (FTAS)

### 14.1 Trade Preferences

Trade preference is a special and differential treatment mainly in terms of tariff reduction or exemption which may be in either non-reciprocal or reciprocal nature. A typical example of non-reciprocal preference is the generalized system of preferences whereby developed countries apply zero duties to imports from least developed countries. Reciprocal preference refers to an exchange of preferential treatment undertaken under various free trade agreements.

Trade preference which Lao benefits from can be grouped into 3 categories:

- Generalized System of Preferences (GSP);
- Preferences of developing countries; and
- Preferences under Free Trade Agreements (FTAs).

The GSP is tariff exemption or reduction treatment extended by developed countries to developing countries and least developed countries (LDCs) with an aim to encourage their trade and economic development. Lao a beneficiary of 38 GSP-granting countries: Australia, Belarus, Canada, European Union (EU 28), Japan, Kazakhstan, New Zealand, Norway, Russia, Switzerland and Turkey.

The second preferential regime is the trade preference of developing countries or economies who voluntarily grant non-reciprocal preferential access to exports from LDCs. This regime includes trade preferences of China, India, South Korea, and Chinese Taipei.

The third preferential regime is the preference carried out under the framework of free trade agreements, in which most importance to Lao is the ASEAN Trade in Goods Agreement (ATIGA). In addition, Lao also benefits from preferential access to ASEAN dialogue partners (China, India, Japan, and South Korea) as well as other trade arrangements (Lao-Vietnam and Asia Pacific Trade Agreement: APTA).

### 14.2 Lao' Major FTAs

Laos acceded to the WTO in 2013, and continues to integrate with ASEAN neighbors through the ASEAN

Economic Community. As a member of ASEAN, Lao PDR participates in all intra-ASEAN agreements as well as multilateral Free Trade Agreements with ASEAN dialogue countries including Closer Economic Relations (Australia and New Zealand), China, India, Japan, and Korea. Lao has also signed bilateral trade agreements with Argentina, Belarus, Cambodia, China, India, Kuwait, Malaysia, Mongolia, Myanmar, North Korea, Russia, Thailand, Turkey, and Vietnam.

In addition, Lao is a party to other FTAs including Lao-Vietnam Trade Agreement and the Asia-Pacific Trade Agreement (APTA). Laos and the United States signed a Trade and Investment Framework Agreement in 2016.

Lao has also signed various bilateral agreements with Vietnam, China, Cambodia, Burma, Thailand, North Korea, Mongolia, Malaysia, Russia, India, Belarus, Argentina, Kuwait, and Turkey.

Among them, preferences that Lao benefits from free trade agreements which is most important to Lao is the ASEAN Trade in Goods Agreement (ATIGA). ASEAN Free Trade Area (AFTA) was established in Lao in 1997 with an objective to eliminate tariffs for all tariff lines by 2018.

Examples of major Lao-related FTAs are as follows:

- **ASEAN Trade in Goods Agreement (ATIGA)**

Lao benefits from trade preference in the form of tariff exemption or reduction under the ATIGA from 9 other ASEAN members: Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Exports from Lao destined to these markets are subject 0% tariff rates for most agricultural and industrial products since 2010, except for those under the General Exception List (GEL) as well as under the Sensitive List (SL) exporting to newer ASEAN members (Cambodia, Myanmar and Vietnam) which will be cut to 0% rate by 2018. The document required for preference under this regime is the Certificate of Origin Form D.

- **ASEAN-Australia and New Zealand Free Trade Agreement (AANZFTA)**

Lao can export with reduced or exempted tariff rates under the AANZ free trade area from 11 countries: Australia, Brunei, Cambodia, Indonesia, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand and Vietnam. The document required is the Certificate of Origin Form AANZ.

- **ASEAN-China Free Trade Agreement (ACFTA)**

The trade preference in terms of tariff exemption or reduction under the ACFTA covers 10 countries (9 other ASEAN members and China). The document required for preferential treatment is the Certificate of Origin Form E.

- **ASEAN-India Free Trade Agreement (AIFTA)**

The trade preference in terms of tariff exemption or reduction under the AIFTA covers 10 countries (9 other ASEAN members and India). The document required is the Certificate of Origin Form AI.

- **ASEAN-Japan Free Trade Agreement (AJFTA)**

The trade preference (tariff exemption or reduction) under the AJFTA covers 10 countries (9 other ASEAN members and Japan). The document required for preferential treatment is the Certificate of Origin Form AJ.

- **ASEAN-Korea Free Trade Agreement (AKFTA)**

Lao is subject to exempted or reduced tariffs under the AKFTA from 10 countries which includes 9 other ASEAM members and Korea. The document required for preferential treatment is the Certificate of Origin Form AK.

- **Asia Pacific Trade Agreement (APTA)**

Lao benefits from trade preference in terms of tariff exemption or reduction under the APTA from countries: Bangladesh, China, India, Korea and Sri Lanka. The document required for preferential treatment is the Certificate of Origin Form APTA.

- **ASEAN-Hong Kong, China FTA (AHKFTA)**

The trade preference (tariff exemption or reduction) under the AHKFTA covers 10 countries (9 other ASEAN members and Hong Kong, China). The document required for preferential treatment is the Certificate of Origin Form AHK.

- **Lao-Vietnam Trade Agreement**

Apart from ASEAN, Lao also benefits from reciprocal access under the trade agreement between Lao and Vietnam for 32 tariff lines with 50% of the AFTA/CEPT rate, while all other products are 0% rate, except for 155 tariff lines which fall under the GEL of Vietnam. The document required for

preferential treatment is the Certificate of Origin Form S.

Detailed information regarding the above-mentioned FTAs can be reached from the official website of [Lao PDR Trade Portal](#).

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## 15. WAREHOUSE REGIME AND SEZS

### 15.1 Warehouse Regime

The warehouse is a place to temporarily store goods and is located within the Customs territory and under the control of Customs officers while waiting for Customs clearance. A warehouse system is the warehouses storing goods that are intended to be exported and imported within a certain period of time with Customs duty suspension and under the control of the Customs Administration while waiting for Customs clearance.

According to Article 38, Part VI of Customs Law, warehouse system consists of 4 types as follows:

- **1. Bonded Warehouse** is a place used to store general goods with normal characteristics, excluding goods that are classified for warehouse types 2, 3 and 4 of this Article;
- **2. Temporary Warehouse** is a place used to store goods destined for duty free shops with a guarantee contract that the goods shall be sold to travelers who are going to other countries and shall be sold in accordance with specific regulations;
- **3. Industrial Warehouse** is a place used to store goods intended for temporary export and import for assembly, modification, processing or repair and then re-export;
- **4. Special warehouse** is a place used to store certain types of goods, such as: live animals; controlled goods or goods that are under special control; goods which have high risks and are dangerous and that are not appropriate to store in other types of warehouse.

Under Lao' Warehouse regime, imported goods not going into immediate circulation can delay paying tariffs until said goods are brought into the market. Importers must submit an import declaration under the Warehouse regime in order to delay tariffs.

## 15.2 Special Economic Zones (SEZs)

Lao has two principle Special Economic Zones (SEZs): the Savan-Seno SEZ in Central Lao' Savannakhet Province and the Golden Triangle SEZ in the sub-Mekong region near the borders with Myanmar, Thailand, and China.

According to Article 6, Part IV, Chapter 2 of Customs Law, the export and import of goods into and out of Special Economic Zones and specific economic zones are exempted, suspended or reduced from Customs duties and other obligations according to relevant and specific regulations.

For example, under Lao' Law on Investment Promotion, 2016, businesses operation inside these SEZs can import raw material and production equipment without paying import duties and are exempt from VAT on both imports and exports.

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## 16. CUSTOMS SUPERVISION & CONTROL ON SERVICE TRADE

Lao' foreign trade is mainly trade in goods, and trade in services is relatively small. The Lao trade in services is mainly represented by tourism trade. Tourism revenues in Lao increased to 785.90 USD Million in 2018. Foreign Direct Investment in Lao increased by 169.25 USD Million in the first quarter of 2019. The Lao government, including Lao Customs, is stepping up efforts to promote trade in services and increase its level of facilitation.

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## 17. POST CLEARANCE AUDIT

Detailed Customs declaration forms shall be subject to post clearance audit by the Customs Administration within a period of three (3) years from the date the detailed Customs declaration document has been registered or the date on that goods were released from a Customs warehouse or Customs checkpoint.

### 17.1 Principles for Conducting Post Clearance Audit

As stipulated by Article 66, Chapter 1, Part X of Customs Law, principles for conducting post clearance audit on the export, import and transit of goods by the Customs officers shall be implemented as follows:

- Re-examine all information related to Customs clearance including goods in the stock of business operators;
- Examine reference documents on the export and import of goods such as the Customs declaration value, country of origin, coding, payment information, financial and accounting records and books and other information of business operators;
- Keep or retain on a temporary basis all or part of evidence from business operators while the inspection or investigation is being carried out;
- Shall report audit results to business operators;

Relevant sectors shall cooperate to provide information on business operators on the request of the Customs officers.

### 17.2 Duration of Time for Post Clearance Audit

Article 65, Chapter 1, Part X of Customs Law stipulates the duration of time for post clearance audit as detailed Customs declaration forms shall be subject to post clearance audit by the Customs Administration within a period of three (3) years from the date the detailed Customs declaration documents have been registered or the date on that goods were released from a Customs warehouse or Customs checkpoint.

### 17.3 Post Clearance Audit Procedures

As stipulated by Article 67, Chapter 1, Part X of Customs Law, post clearance audit procedures of Lao Customs officers shall be implemented according to the following steps:

- Collect and analyze information on the detailed Customs declaration forms;
- Send a written notice to a business operator in advance to prepare information and evidence for audit;
- Visit business premises to conduct the audit activities according to regulations;
- Conclude the audit results and implement remedies;
- Inform the results of the post clearance audit to the business operators.

The Ministry of Finance shall issue detailed regulations related to post clearance audit.

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## 18. CUSTOMS OFFENCES AND PENALTIES

### 18.1 Rights of Customs

Customs control is an application of procedures, methods, regulations and measures by Customs administration according to the Customs Law and other relevant laws to control the exportation, importation, transit and movement of goods. In all, Lao Customs officers have the following rights as stipulated by Article 79, Chapter 2, Part XII of Customs Law:

- To conduct investigations as defined in Customs Law and the Law on Criminal Procedure;
- To stop and seize goods and retain evidence that are related to Customs offenses as defined in the Customs Law and the Law on Criminal Procedure;
- To inspect the premises and other locations, vehicles and individuals as defined in the Customs Law and the Law on Criminal Procedure and other relevant laws;

- To enter business premises and warehouses to inspect goods and relevant documents on export and import transactions as defined in the Customs Law and regulations;
- To use weapons, technical equipment and tools in performing their duties;
- To collaborate in seeking cooperation and requests for assistance if needed from local administrations at all levels, national defense and public security forces, the general public and other relevant sectors;
- To implement rights as defined in the laws and regulations and as per assignment.

## 18.2 Measures against Violators

Article 118, Chapter 2, Part XVI stipulates measures against violators as follows: any declarant who violates the Customs Law and regulations and other relevant laws and regulations, apart from education, warning, fine or prosecuted Customs case proceedings, shall be subject to compensation for civil damages resulting from their actions; and shall be criminally prosecuted based on the severity of the case.

Article 119, Chapter 2, Part XVI stipulates measures against Customs officers and Customs Administration as follows:

- At the same time, any Customs official who violates the Customs Law and regulations but does not cause any damage to Customs revenues and other obligations will be educated and warned.
- Any person who intentionally violates the laws and regulations and their action results in some damage to Customs revenue and other obligations will be subject to disciplinary measures in accordance with the regulations and must pay compensation for damages.
- Any person who violates the Customs Law and regulations and cause substantial damage to the interests of the State, the collectives or individuals, such as abuse of position, power and duty for personal interests, taking actions exceeding their authority, falsifying documents, or taking bribes, shall be subject to criminal prosecution depending on the severity of the offence and in accordance with the laws and regulations.

### Civil and Criminal Responsibility

Article 95, Chapter 1, Part XIV of the Customs Law also stipulates the civil and criminal responsibilities as follows:

- The owner of goods shall be responsible for any civil offense on behalf of a person who is assigned by the owner to carry out the Customs declaration, payment of Customs duties and other obligations that are not according to the laws and regulations, and shall be responsible for the seized goods.
- The guarantor shall be responsible for the payment of Customs duties and other obligations according to the laws and regulations that are under the responsibility of the person being guaranteed by the guarantor.
- The colluders for a Customs offense shall be prosecuted based on Law on Criminal Procedure and the measures of Customs Law shall be taken.

### 18.3 Types of Customs Offenses

Customs offenses are violations of the Customs Law and regulations with respect to the export- import, transit and movement of goods and all kinds of smuggling activities. In Lao PDR, Customs offenses are classified into two types: minor offenses and serious offenses.

According to Article 87, 88, 89, 90, 91 and 92, Chapter 1, Part XIV of Customs Law, minor offenses have three degrees: minor offenses at the first degree; minor offenses at the second degree; minor offenses at the third degree while serious offences have two degrees: serious offenses at the first degree and serious offenses at the second degree.

#### **Minor Offences at the First Degree:**

- Incorrectly and incompletely declaring detailed information that did not cause a significant impact on Customs duties and other obligations;
- Hiding or refusing to provide necessary documents to Customs authority as defined in Article 64 of this Law;
- Disturbing or creating difficulties to Customs authority to implement their duties;
- Goods are not imported into and/or exported from Lao PDR through the checkpoint as specified in the license;
- Using vehicles to commit Customs offenses;
- Other offenses, if they are not included in other types of Customs offenses.

**Minor Offenses at the Second Degree:**

- Declaring incorrect information that affects Customs duties and other obligations such as: tariff classification, country of origin, tariff, tax rates, declared Customs values, and other information;
- Declaring the incorrect number of boxes of goods or combining many units or many types of goods into one unit or one type, and thereafter submitting to the Customs authority, thereby intentionally evading the Customs duties and other obligations;
- Declaring the incorrect number of boxes of goods that are under Customs duty and other obligations [that are] suspended, exempted or reduced;
- The export-import of goods without permission from relevant sectors;
- Decreasing or increasing the number of goods and not declaring the number of goods in a warehouse regime;
- Violating regulations on export, import, movement and transit of goods;
- Using vehicles or goods that are under temporary Customs duty and other obligations that are suspended, exempted and reduced outside their purposes.

**Minor Offense at the Third Degree:**

- Minor offenses at the second degree committed for the third time;
- Exporting or importing of non-controlled and non-prohibited goods out of or into the Lao PDR without making detailed Customs declaration;
- Concealing goods through the use of vehicles or materials in order to intentionally avoid Customs duties;
- Storing or possessing non-controlled or non-prohibited goods over the needs of household consumption without holding detailed Customs declaration documents according to the laws and regulations.

**Serious Offense at the First Degree:**

A serious offense at the first degree is the act of exporting-importing or moving of controlled goods without holding a detailed Customs declaration or without an authorization from relevant sectors or if a minor offense at the third degree was committed on a repeated basis.

**Serious Offense at the Second Degree:**

A serious offense at the second degree is a serious offense at the first degree that occurs for the second time, and the violation of intellectual property rights and falsification of Customs documents.

**18.4 Penalties for Customs Offences**

According to Article 88, 89, 90, 91 and 92, Chapter 1, Part XIV of Customs Law, penalties are enforced according in corresponding to types of offences.

- Anyone who commits a minor offense at the first degree shall be fined as follows: For a value of goods lower than 5,000,000 Kip, they shall be educated and warned. For a value of goods from 5,000,001 kip to 10,000,000 Kip, they shall be fined five percent (5%) of the value of goods. For a value of goods above 10,000,001 Kip, they shall be fined ten percent (10%) of the value.
- Any person who has committed minor offences at the second degree shall fully pay Customs duties and other obligations as defined in the laws and regulations. In these cases, they are also subject to a fine of 30 percent (30%) of the value of goods. If the offense occurs a second time, the violator shall pay Customs duties and other obligations in full amount and also a fine of fifty percent (50%) of the value of goods. The seized goods, materials and objects used for concealing and vehicles used for committing the offence, that are not controlled by the State shall be returned to the owner after the case is solved.
- Any person who has committed a minor offence at the third degree will be considered as intentionally avoiding Customs and shall pay full Customs duties and other obligations and a fine at seventy percent (70%) of the value of the smuggled goods. If an offense at the third degree was committed for the second time, Customs duties and other obligations shall be paid in full amount according to the laws and regulations together with a fine at one hundred percent (100%) of the value of the goods. The seized goods, materials and objects used for concealing, and vehicles used for committing the offence, that are not controlled by the State shall be returned to the owner after the case is solved.
- Any person committing a serious offense at the first degree shall pay a fine at thirty percent (30%) of the value of goods. The seized goods shall belong to the State.
- Any person committing a serious offense at the second degree shall pay a fine of fifty percent (50%) of the value of goods. The seized goods shall belong to the State. A serious offense at the

second degree is a criminal offense, in which the violators shall be prosecuted based on the Law on Criminal Procedure and other relevant laws.

---

## 19. APPEAL AND SETTLEMENT

### 19.1 Appeal

According to Article 68, Chapter 2, Part X of Customs Law, declarants have the right to appeal when finding out that they are not treated fairly based on the agreements or decisions made by the Customs Administration on Customs declaration valuation, the classification of goods and the country of origin of goods. The appeal of the declarant shall be implemented as follows:

- A declarant shall submit an appeal with supporting documents and evidence to the Appeal Settlement Committee as identified in Article 69 of this Law;
- The time frame for submitting an appeal is thirty (30) days from the date the contested agreement or decision was made.

### 19.2 Appeal Settlement Committee

According to Article 69, Chapter 2, Part X of Customs Law, an Appeal Settlement Committee shall be appointed by Minister of Finance, consisting of two levels, as follows:

- The Regional Appeal Settlement Committee, with membership consisting of the Director of Regional Customs as the chairman, representatives from Provincial/Vientiane Capital Finance Department, relevant sectors and Customs experts from where the Regional Customs is located;
- The Central Appeal Settlement Committee, with membership consisting of the Director General of the Customs Department as the chairman, representatives from other Departments under the Ministry of Finance, other concerned ministries and Customs experts.

### 19.3 Procedures for Settling Appeals

According to Article 70, Chapter 2, Part X of Customs Law, procedures for settling appeals shall be implemented as follows:

- After receiving an appeal, within thirty (30) working days, the Regional Appeal Settlement Committee shall finalize the settlement of the appeal and notify the decisions to the applicant;
- If the applicant disagrees with the decision made by the Regional Appeal Settlement Committee, the applicant may submit his/her appeal to the Central Appeal Settlement Committee within fifteen (15) days from the date of receiving such decision;
- In case there is an objection to the decision of the Central Appeal Settlement Committee, the applicant has the right to further submit the appeal to the People's Court within thirty (30) days from the date of receiving such decision. The People's Court decision is effectively enforceable.

---

## 20. CUSTOMS IPR BORDER PROTECTION

Intellectual property protection in Lao is steadily improving. In 2011 the National Assembly passed a comprehensive revision of the Law on Intellectual Property, and an amended version in 2017 (though changes are not thought to be significant). The Ministry of Science and Technology now controls the issuance of patents, copyrights, and trademarks. The consolidation of responsibility for IPR under the Ministry of Science and Technology is a positive development.

According to Article 32, Part IV of Customs Law, if the owner of intellectual property rights has reliable information that imported, exported or transited goods infringe his or her trademarks or copyrights, the owner of the intellectual property right is entitled to prepare a request and submit it to the Customs Administration to inspect and seize such goods temporarily.

Also according to Article 33, Part IV of Customs Law, the Customs Administration shall issue detailed regulations to implement the protection measures as defined in Article 32 of Lao Customs Law, in which it

must be consistent with the Intellectual Property Law and agreements and conventions that Lao PDR are parties to.

Where the intellectual property right holder requests the Customs to take intellectual property protection measures or handle the intellectual property Customs protection filing with the Lao Customs, the domestic intellectual property right holder may directly or entrust the domestic agent to apply, and the foreign intellectual property right holder shall establish it in the territory. The office or the entrusted domestic agent submits an application and supporting documents for Customs' review and approval.

---

## 21. AUTHORIZED ECONOMIC OPERATOR (AEO)

AEO is a new concept under the World Customs Organization (WCO) SAFE Framework (Framework of Standards to Secure and Facilitate Global Trade). It represents a Customs-to-Business partnership to enhance international supply chain security and facilitate movement of legitimate goods.

The Customs Department of Lao PDR started work on establishing an AEO program in 2017, which is being supported by the International Finance Corporation (IFC), World Bank Group. In April 2019, a Ministerial Instruction No. 1159 has been issued, detailing AEO criteria, requirements, benefits, and associated procedure on the management of the program. As Lao PDR is planning to launch its AEO program, related training courses provided by WCO, IFC and other donor organizations have helped Customs officials to gain insights into AEO examination, validation and authorization procedures and the acquired knowledge and skills have significantly assisted Lao Customs to create a more favorable conditions for compliant businesses and secure and facilitate legitimate trade at the same time.

Lao PDR commits to implement an AEO program by the end of 2019, inviting importers and exporters to join the program that will be expanded to include other economic operators in the future.

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## 22. TRADE STATISTICS

Lao Statistics Bureau and Ministry of Industry and Commerce Lao People's Democratic Republic are the agencies for the compilation and dissemination of trade statistics while Lao Customs has been playing an important supporting role by collecting data based on Import and Export Declaration Forms, which constitute the major source of information and data in compiling international trade statistics.

The websites of Lao Statistics Bureau and Ministry of Industry and Commerce Lao People's Democratic Republic are listed as follows:

Lao Statistics Bureau: [www.nsc.gov.la](http://www.nsc.gov.la)

Ministry of Industry and Commerce Lao PDR: <http://www.moic.gov.la>

---

## 23. CONTACT INFORMATION

For further and detailed information relating to Lao Customs, enquiries should be addressed to the following official contact point:

### **Ministry of Finance, Lao PDR**

23 Singha Road Vientiane Capital, Lao

Tel/Fax: 856-21-911336

Email: [webmaster@mof.gov.la](mailto:webmaster@mof.gov.la)

Email: [ict@mof.gov.la](mailto:ict@mof.gov.la)

### **Customs Department, Lao PDR**

Tel/Fax: 856-21-213810

Lao National Single Window (LNSW)

Tel: 856 30 777 66 99

Email: helpdesk@laonsw.net

---

## 24. OFFICIAL WEBSITE

- Customs Department of Lao PDR: <http://www.customs.gov.la>
- Government of Lao PDR: <http://laogov.gov.la/pages/Home.aspx>
- Ministry of Finance: <https://www.mof.gov.la>
- Ministry of Industry and Commerce Lao PDR: <http://www.moic.gov.la>
- Ministry of Foreign Affairs of Lao PDR: <http://www.mofa.gov.la>
- International Law Project Lao PDR: <http://www.ilp.gov.la>
- Lao PDR Trade Portal: <https://laotradeportal.gov.la>
- Lao Statistics Bureau: [www.nsc.gov.la](http://www.nsc.gov.la)
- Lao National Single Window: <https://laonsw.net/>

## REFERENCE

1. Decree on Import and Export of Goods, No. 114/GoL, Government of Lao PDR, Vientiane Capital, date 6 April 2011.
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5. <https://www.export.gov>.
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7. <http://www.ilp.gov.la>.

## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

All information, materials included and views, opinions expressed in this eBook are those of the editors and do not necessarily reflect those of EABC China (also CCPIT) and EABC. In this regard, EABC China (also CCPIT) and EABC would like to reaffirm that this eBook would not be used as any reference for judicial and administrative process.

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# **eBook on East Asia Customs Procedures**

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Malaysia





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

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Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACFTA	ASEAN-China Free Trade Agreement
ACTS	ASEAN Customs Transit System
AELB	Atomic Energy Licensing Board
AEO	Authorized Economic Operator
AHTN	ASEAN Harmonized Tariff Nomenclature
AIFTA	ASEAN-India Free Trade Agreement
AJCEP	ASEAN-Japan Comprehensive Economic Partnership
AKFTA	ASEAN-Korea Free Trade Agreement
AKMAL	Royal Malaysian Customs Academy
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ATIGA	ASEAN Trade in Goods Agreement
CA	Cost of Analysis
CCC	Customs Consultation Center
CEA	Customs Examination Area
CIDB	Construction Industry Development Board
CO	Certificate of Origin
D8 PTA	Developing Eight Preferential Tariff Agreement
DOA	Department of Agriculture
DSM	Department of Standards

FCZ	Free Commercial Zone
FIZ	Free Industrial Zone
FTA	Free Trade Agreement
GST	Goods and Services Tax
HS	Harmonized Commodity Description and Coding System
IEC	International Electrotechnical Commission
IPPC	International Plant Protection Convention
ISO	International Organization for Standardization
ITU	International Telecommunications Union
LMW	Licensed Manufacturing Warehouses
MAFTA	Malaysia Australia Free Trade Agreement
MAQIS	Malaysian Quarantine and Inspection Services
MCFTA	Malaysia-Chile Free Trade Agreement
MCMC	Malaysia Communication and Multimedia Commission
MDTCC	Ministry of Domestic Trade, Cooperatives and Consumerism
MICECA	Malaysia-India Comprehensive Economic Cooperation Agreement
MICECA	Malaysia-India Comprehensive Economic Cooperation Agreement
MITI	Ministry of International Trade and Industry
MJEPA	Malaysia-Japan Economic Partnership Agreement
MNZFTA	Malaysia-New Zealand Free Trade Agreement
MPCEPA	Malaysia-Pakistan Closer Economic Partnership Agreement
MTFTA	Malaysia-Turkey Free Trade Agreement
NCC	National Clearance Center
NSW	National Single Window
NTC	National Targeting Center
PCA	Post-clearance Audit
PCO	Preferential Certificate of Origin

PIA	Permit Issuing Agencies
POS	Point of Sales System
RMCD	Royal Malaysian Customs Department
SIAT	Special Inter Agency Taskforce
SPS	Sanitary and Phytosanitary
TAD	Transit Accompanying Document
TBT	Technical Barrier to Trade
TRIP	Trade-related Intellectual Property
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## Malaysia

### 1. INTRODUCTION OF MALAYSIA CUSTOMS

The Malaysia Customs Administration was firstly established in 1948 with the formation of the Federation of Malaya. Following independence of Malaysia in 1957, the Royal Malaysian Customs Department (RMCD) has gone through a few rounds of reshuffling and fallen under the Ministry of Finance.

The vision of RMCD is to be a world class Customs Administration from improving rating on trading across borders, improving world ratings and standards, exhibiting transparency and surging RMCD integrity.

#### 1.1 Mission

The mission of RMCD is to collect revenue and provide trade facilitation through enforcement of and compliance with applicable law to spur economic growth, maintain national security and public welfare.

#### 1.2 Objectives

The objectives of Malaysia Customs mainly include:

- to collect duties and taxes on any imported and exported goods;
- to ensure compliance with legislation to safeguard economic, security and social interests;
- to boost international trade through Customs facilitation.

### 1.3 Functions

Major functions of Malaysia Customs can be generalized as follows:

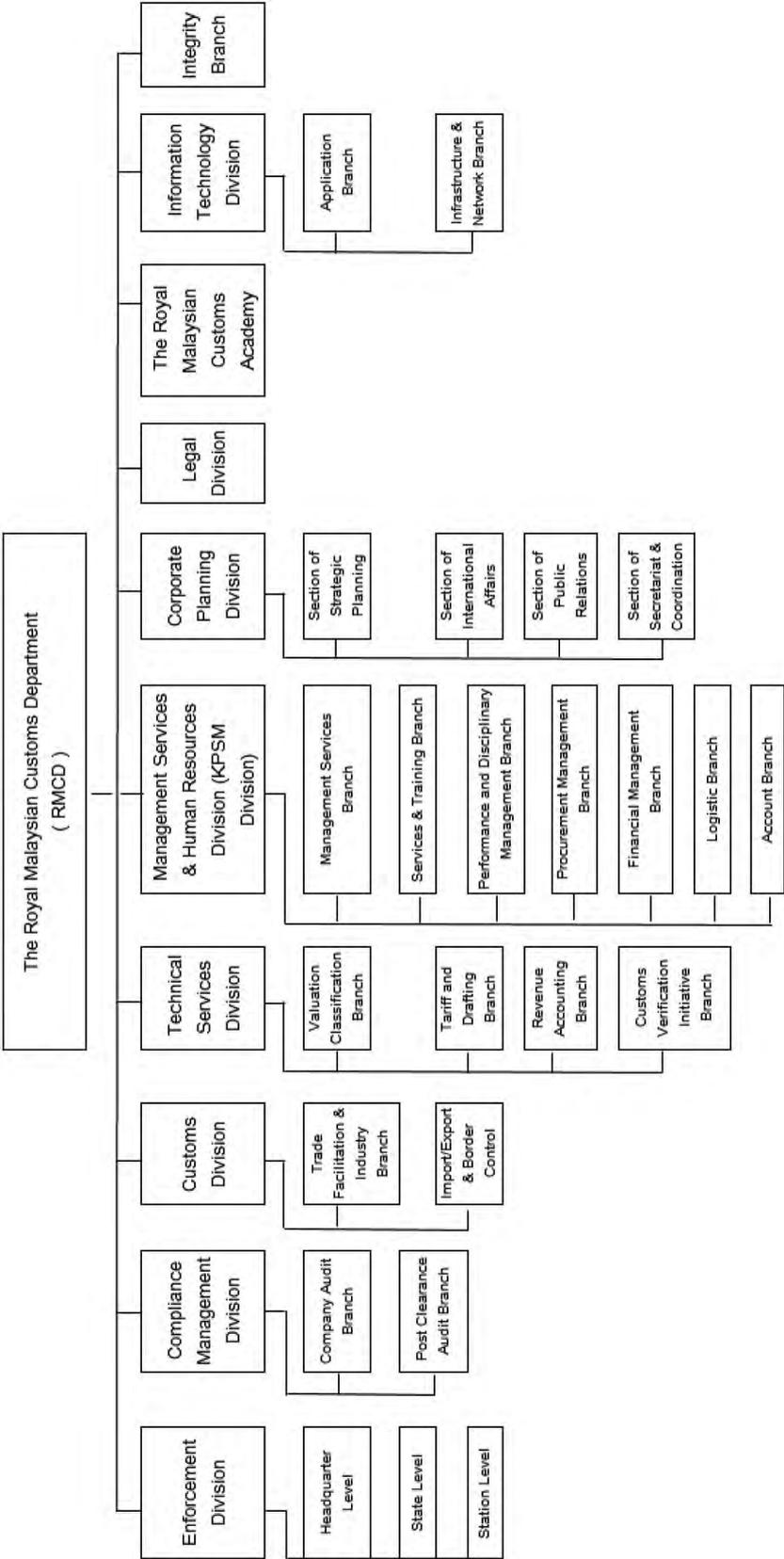
- to establish, implement policies and procedures pertaining to industries, import, export and border control;
- to plan and conduct audits on the licensees / importers to ensure the tax/Customs duties collection;
- to offer technical services including valuation, classification, tariff and drafting, revenue accounting, and Customs verification initiatives;
- to combat all forms of smuggling and fraud to ensure compliance with all Customs laws and regulations
- to conduct civil/criminal trial, appeal and judicial reviews in courts and give legal advice;
- to cooperate with World Customs Organization (WCO), Association of Southeast Asian Nations (ASEAN), World Trade Organization (WTO) and Asia-Pacific Economic Cooperation (APEC) as well as to implement Free Trade Agreements with other countries.

### 1.4 Organizations

Now RMCD has 8 divisions, 1 academy and 1 branch including: Enforcement Division, Compliance Management Division, Customs Division, Technical Services Division, Management Services & Human Resources Division (KPSM Division), Corporate Planning Division, Legal Division, Information Technology Division, the Royal Malaysian Customs Academy (AKMAL) and Integrity Branch. The number of RMCD staffs is about 13,000.

The organizational structure of RMCD is as below:

Figure 1 Organizational Chart of Malaysia Customs



## 1.5 International Memberships

Malaysia joined ASEAN and WTO in 1967 and in 1995 as one of the founding and originating members. RMCD has become a member of World Customs Organization (WCO) in June 1964.

## 1.6 Resources for Importers and Exporters

This website of the National Trade Promotion Agency (<http://www.matrade.gov.my/en>) provides all regulatory information relevant to traders who intend to import goods into Malaysia or export to other countries.

Asides from it, the official websites of Ministry of International Trade and Industry (<https://www.miti.gov.my>) and RMCD (<http://www.customs.gov.my>) can also offer information on trade and Customs both in English and Malay.

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## 2. CUSTOMS LEGAL SYSTEM

In recent years, Malaysia has made continuous efforts to improve its Customs legal system and align them with international standards and best practice. In total RMCD implements 7 major laws and 39 subsidiary laws, as well as 18 laws for other government agencies.

### 2.1 Customs Act

The [Customs Act 1967](#) of Malaysia, which was first enacted in 1967 as Act No.62 and was then revised in 1980 as Act 235, consists of 21 parts and 169 sections, covering the following topics:

- preliminary;
- appointment and powers of officers;
- levying of Customs duties;

- importation and exportation;
- port clearances;
- general provisions affecting vessels in territorial waters;
- manifests;
- warehousing;
- declaration of goods;
- drawback;
- miscellaneous provisions;
- inspection, investigation, search, seizure and arrest;
- provisions as to trials and procedures;
- offences and penalties;
- regulations;
- general;
- special provisions dealing with Labuan;
- special provisions dealing with Sabah and Sarawak;
- special provisions dealing with Langkawi;
- special provision dealing with the joint development area;
- special provisions dealing with Tioman;
- Singapore preventive vessels;
- repeal.

## 2.2 Other Related Acts and Regulations

Asides from Customs Act 1967, other relevant Acts and regulations are listed below:

- Countervailing and Anti-dumping Duties Act 1993;
- Countervailing and Anti-dumping Regulations 1994;
- Free Zone Act 1990;

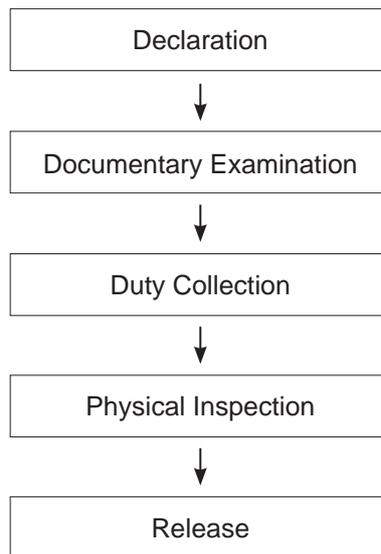
- Free Zone Regulations 1991;
- Excise Act 1976;
- Customs Duties (Exemption) Order 1988;
- Excise Duties (Exemption) Order 1977;
- Sales Tax (Exemption) Order 2008;
- Customs (Prohibition of Exports) Order 2017;
- Customs (Prohibition of Imports) Order 2017;
- Standards of Malaysia Act 1996;
- Plant Quarantine Act 1976;
- Rules of Plant Quarantine 1981;
- Animal Act 1953 (revised 2006);
- Fisheries Act 1953;
- Food Act 1953;
- Food Regulations 1985;
- Food Hygiene Regulations 2009;
- Malaysian Quarantine and Inspection Services Act 2011;
- Strategic Trade Act 2010;
- Biosafety Act 2007.

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### 3. CUSTOMS CLEARANCE PROCESS

Import and export of cargo must undergo a 5-step Customs operation, i.e. declaration, documentary examination, duty collection, physical inspection and release.

Figure 2 Customs Clearance Procedures by Malaysia Customs



### 3.1 Declaration

All exported or imported cargo by air, sea or rail, whether or not exempt from duties and taxes must be subject to Customs declaration. In Malaysia, authorities have developed a web-based portal named uCustoms to integrate Customs-related business. Customs declaration can be made via uCustoms by importers, exporters, or their agents.

#### 3.1.1 Declaration for Import

In Malaysia, import includes final import, provisional import, temporary import, re-import and under special regimes (inward processing). Import declaration can be made via uCustoms online or Customs Form No.1 (K1) in writing.

Following registration at uCustoms, the trader or agent fills in declaration list accordingly. It mainly consists of creating import declaration, filling up invoice and invoice items, calculating duty and submitting to Customs.

Firstly, in terms of final import-normal import declaration, the steps at uCustoms are:

- View declaration dates;
- Associate warehouse out forms;

- Associate free zone declaration;
- View BL/AWB/WB information;
- View consignee details;
- View transaction history;
- Upload required documents;
- View rulings;
- Create invoice information and item details;
- Associate exemptions;
- Create value declaration form (K1A);
- Calculate duty for declaration;
- Submit declaration to Customs.

Secondly, with regard to provisional import declaration, the steps at uCustoms are:

- View declaration dates;
- View consignee details;
- View transaction history;
- Upload required documents;
- View rulings;
- Create invoice information and item details;
- Associate exemptions;
- Calculate duty for declaration;
- Submit declaration to Customs.

Thirdly, when it comes to final import-Sub declaration, the steps at uCustoms are:

- View declaration dates;
- View BL/AWB/WB information;
- View consignee details;

- View transaction history;
- Upload required documents;
- View rulings;
- Associate tax stamp;
- Associate invoice information and item details;
- Calculate duty for declaration;
- Submit declaration to Customs.

Asides from fulfilling those steps at uCustoms, other supporting documents for imports are listed as below:

- Certificate of Origin if applicable;
- Invoice;
- Packing List;
- Delivery Order;
- Catalogue/Technical Specification;
- Bill of Lading/Air Way Bill;
- Letter of Credit;
- Permits.

Last but not the least, for temporary import, supporting documents are listed as follows:

- Invoice;
- Packing list;
- Bill of Lading/Air Way Bill;
- Verification Certificate by end user (for non-driven-in motor vehicle and motor cycle);
- Sanction Letter issued by MATRADE or other relevant agencies and also a letter by the organizer (for international exhibition);
- Permit/License (if applicable).

### 3.1.2 Declaration for Export

Exports include final export, provisional export, temporary export, and re-export. For goods to be exported, Customs declaration is also necessary. Export declaration can be made via uCustoms online or Customs Form No.2 (K2) in writing. Following registration at uCustoms, the trader or agent fills in declaration list accordingly.

Firstly, in terms of final export-normal export declaration, the steps at uCustoms are:

- View declaration dates;
- View consignee details;
- View transaction history;
- Upload required documents;
- View rulings;
- Associate/view shipment note;
- Create invoice information and item details;
- Associate exemptions;
- Calculate duty for declaration;
- Submit declaration to Customs.

Secondly, in terms of export provisional declaration, the steps at uCustoms are:

- View declaration dates;
- View consignee details;
- View transaction history;
- Upload required documents;
- View rulings;
- Create invoice information and item details;
- Associate exemptions;
- Calculate duty for declaration;

- Submit declaration to Customs.

Besides, for temporary export, supporting documents are:

- Letter of appointment for agent;
- Goods Invoice;
- Catalogue/Photograph of goods;
- Detail/Full description of goods (Name of goods/Model/Brand and measurement etc.);
- Other relevant documents.

Asides from fulfilling those steps at uCustoms, other supporting documents are listed as below:

- Invoice;
- Purchase Order;
- Letter of Credit;
- Permits;
- Shipping Instruction;
- Loading Instruction.

Last but not the least, in terms of temporary export, supporting documents are listed as follows:

- Letter of appointment for agent;
- Goods Invoice;
- Catalogue/Photograph of goods;
- Detail/Full description of goods (Name of goods/Model/Brand and measurement etc.);
- Other relevant documents.

### **3.1.3 Declaration for Transit**

The ASEAN Framework Agreement on Facilitation of Goods in Transit (AFAFGIT) was reached in Hanoi in 1998. In line with AFAFGIT, the ASEAN Customs Transit System (ACTS), as an electronic Customs

transit management system, offers benefit to good movement across Customs territories outside the normal import and export Customs regimes. Malaysia has joined AFAFGIT and ACTS project. Designated transit transport routes are ASEAN Highway 2 and ASEAN Highway 150; and designated frontier posts are Bukit Kayu Hitam, Tanjong Kupang, Tebedu, Sungai Tujuh and Johor Bahru.

For transit declaration, all traders must submit an electronic ACTS transit declaration to Customs. A single transit barcoded document would be produced by the system known as Transit Accompanying Document (TAD).

Additional documents include licenses or permits in the country of departure, transit and destination. Documents in vehicle for inspection during transit operation are:

- Vehicle Registration Certificate;
- Vehicle Inspection Certificate;
- Third Party Liability Insurance Cover for Vehicle;
- Consignment Note/Waybill;
- Customs Transit Document for the Goods (Transit Accompanying Documents (TAD));
- Carrier's License/Transport Operator's License/Business Registration Certificate;
- Any other documents required by your Customs Administration;
- ASEAN goods vehicle cross-border permit.

### 3.2 Documentary Examination

After a Customs declaration is submitted, Customs shall review it to verify completeness and correctness of the information declared, including origin, tariff classification, Customs value, Customs regime, and the duty and taxes payable. Also Customs shall check whether the goods are prohibited or restricted or not and the compliance with the corresponding requirements. It is conducted both manually and electronically via uCustoms.

### 3.3 Physical Inspection

After documentary examination of Customs declaration, Customs will carry out physical inspection of declared goods based on risk management system in Malaysia.

Scanning, as non-intrusive inspection means, is widely applied at Malaysia Customs. Besides, radiation portal monitor is equipped at the port to detect the presence of radioactive materials by sending Gamma alarm/Neutron alarm/Neutron Gamma alarm. It is also equipped with camera/OCR to identify containers. With all these in place, it can scan hundreds of vehicle every hour and cause minimum impact on operation.

Special Inter Agency Taskforce (SIAT) will get involved for further actions if irregularities have been identified at Customs Examination Area (CEA).

### **3.4 Duty Collection**

Once a declaration has been submitted and reviewed smoothly, the system calculates the collections and generates bill and the trader or agent of the goods shall be liable for duties, taxes and other charges.

In Malaysia, there are two payment channels: online payment and Customs counter (passengers). Online payment transaction types include FPX (B2C/B2B), Jom Pay, Auto Debit and payment through RMCD payment gateway. Customs counter payment channel through Point of Sales System (POS) includes cash, cheque, Credit Card and Debit Card.

After successful online duty payment, RMCD will issue a Customs receipt through uCustoms.

### **3.5 Release**

Following the above-mentioned 4 steps (declaration, documentary examination, physical inspection and duty collection), the goods will be released by Malaysia Customs for importation, or exportation or other legitimate purposes. In practice, Gate Pass with QR code will be issued via uCustoms, and then printed and scanned at Customs auto-gate for release.

## 4. SPECIAL CUSTOMS CLEARANCE OVERSIGHT

### 4.1 Oversight on Transit

In terms of transit, the principal must first lodge the required guarantee undertaking with the Customs office of guarantee in the country of departure for duties and taxes potentially liable for the declared transit goods.

The guarantee is an amount held by or available to Customs if the terms of the transit approval are not met, such as the loss or improper diversion of the goods. The amount of guarantee is a calculation of the highest rates of duty/taxes potentially payable on those goods (with rates based on AHTN commodity code) in the countries of intended transit.

### 4.2 Oversight on Temporary Import

Based on section 97 of Customs Act 1967, goods may be temporarily imported for re-export without payment of Customs duty or tax with a sufficient security being given. It is subject to specific conditions stipulated in the Customs Legislation and/or as determined by the Director General of Customs.

In this regard, the goods must be re-exported within 3 months from the date of import. For the extension of this temporary import until 12 months from the date of import, application can be submitted to the Customs office where the first approval of temporary import was issued. If further extension is needed, approval from the Director General of Customs (Customs Division) must be obtained. Besides, for extension, the application must be submitted 2 weeks prior to the date of expiration.

In case of failure to re-export the imported goods within the stipulated period, the Customs duty/tax due must be paid to the relevant state office of Customs.

The temporarily imported goods for re-export cover:

- Research and demonstration;
- Exhibition, drama, music and circus;
- Carnival, sports, meeting, conventions;

- Evaluation and testing;
- Repair;
- Implementation of government projects;
- Cars driven/imported by bona fide traveler;
- Goods from Free Zone/License Warehouse.

Apart from application form, other supporting documents are required as below:

- Invoice;
- Packing List;
- Bill of Lading/Air Way Bill;
- Verification Certificate by end user (for non-driven-in motor vehicle and motor cycle).
- Sanction Letter issued by MATRADE or other relevant agencies and also a letter by the organizer (for international exhibition).
- Permit/License (if applicable).

For more conditions on temporary import, the requirements are:

- Imported within an approved duration and re-exported before the expiry date;
- Goods identified by permanent marks, e.g. serial numbers, Customs label;
- The imported quantity of goods must be reasonable;
- Imported goods cannot be leased, sold, transferred ownership or disposed without the consent of the State Director of Customs;
- Submitting a permit or license for goods subject to the Customs (Prohibition of Imports) Order 2008 and Customs (Prohibition of Exports) Order 2008;
- Additional documents for international exhibitions, such as, approval from MITI or other competent bodies, schedule of exhibition and confirmation letter from organizer;
- International exhibitions must be held in approved or licensed premises;
- Other conditions required by Customs.

### 4.3 Oversight on Temporary Export

Temporary export of goods may be authorized by Customs for the listed purposes as below:

- For repair;
- For propaganda;
- For research and demonstration;
- Other purposes approved by the Director of Customs.

Apart from application form, the other supporting documents are required as below,

- Letter of Appointment for agent;
- Invoice;
- Catalogue/Photograph of goods
- Detail/Full Description of goods (Name of goods/Model/Brand and measurement etc.)
- Other relevant documents:
  - a) Propaganda/Demonstration: Letter from organizer/host schedule of propaganda/demonstration to be submitted at the time of export;
  - b) Research: Confirmation Letter from research organization/institution abroad to be submitted at the time of export;
  - c) Repair: Confirmation from repairer in the form of report to be submitted at the time of re-import.

The approved period for temporary export is 1 year. For extension of temporary export, the application must be submitted to the Customs office where the approval of temporary export was issued before the expiry date of the existing approval.

It is required to submit written application with relevant supporting documents to the State Director of Customs where the goods will be exported, for the approval of duty/tax exemption under the provision of Item 58 Customs Duty (Exemption) Order 1988 and Item 53 Sales Tax (Exemption) Order 2008. However, duty/tax has to be paid at the time of import if the goods are reimported more than 1 year from the date of export. For repair-related temporary export, if there is new part added, duty/tax on the new part has to be paid to Customs.

In addition, temporary exported goods have to be re-imported via the same route where it was exported. If re-import takes a different route, the endorsed Customs No. 2 declaration is required to submit to the Customs office of import.

#### **4.4 Oversight on Duty Free Shops**

In Malaysia, there are 5 types of duty free shops: International Airport Duty Free Shops, Port Duty Free Shops, Downtown Duty Free Shops, Border Duty Free Shops and Domestic Duty Free Shops.

For application to set up duty free shops, Form JKED 1 and the following documents are required to submit to the State Director of Customs:

- Shop/business premise plan (including floor plan) approved by a Chartered Architect;
- Company Registration Certificate/Memorandum and Articles of Association;
- Form 24 and Form 49 endorsed by the Company Registrar;
- Working paper that states the company's 5 year project/plan, sources of finance, target sales turnover etcetera to support the company's application; and
- Premise site ownership or tenancy agreement letter.

In terms of the license for duty free shop, it is issued by the State Director of Customs of the state where the shop will be operated with the payment rate at RM 1200 for 2 years or part thereof.

Besides, a bank guarantee is required to cover the duties of goods kept in their premises. If goods are missing, the licensee shall pay the relevant Customs duty/tax to the Customs Department.

#### **4.5 Oversight on Customs Bonded Warehouses**

Please refer to 16. BONDED SYSTEM of this report for details.

#### **4.6 Incentive Treatment for AEOs**

Currently, RMCD has approved 57 companies as AEOs, which will be given convenience in terms of Customs clearance. According to Malaysia authorities, AEO may receive a few benefits. For details, please refer to 21. AUTHORIZED ECONOMIC OPERATOR (AEO) of this report for details.

## 5. UCUSTOMS AND NATIONAL SINGLE WINDOW

### 5.1 Snapshot of uCustoms

At present, in Malaysia a fully integrated & automatic system for Customs modernized solution (uCustoms) has been put into service, which delivers one single window for end-to-end Customs related processes. The “u” stands for “ubiquitous”, which means “present, accessible and, or found everywhere”. The objective is to improve the efficiency of the highly competitive services and trade facilitation through the secure, customer friendly and promote single access portal.

The scope of uCustoms covers 8 main clusters of Customs operations, namely, registration & licensing, clearance, audit & enforcement, control & prevention, revenue & accounting, knowledge management, system management, and technology. uCustoms has 4 strategic centers: National Targeting Center (NTC), National Clearance Center (NCC), Customs Examination Area (CEA) and Customs Consultation Center (CCC).

In a nutshell, uCustoms offers the electronic processing of Customs declarations and related documents. Processing thereafter is tracked electronically and the declarant or Customs broker will be automatically notified about the declaration status. After reviewing documents, uCustoms calculates the duties, taxes and fees payable.

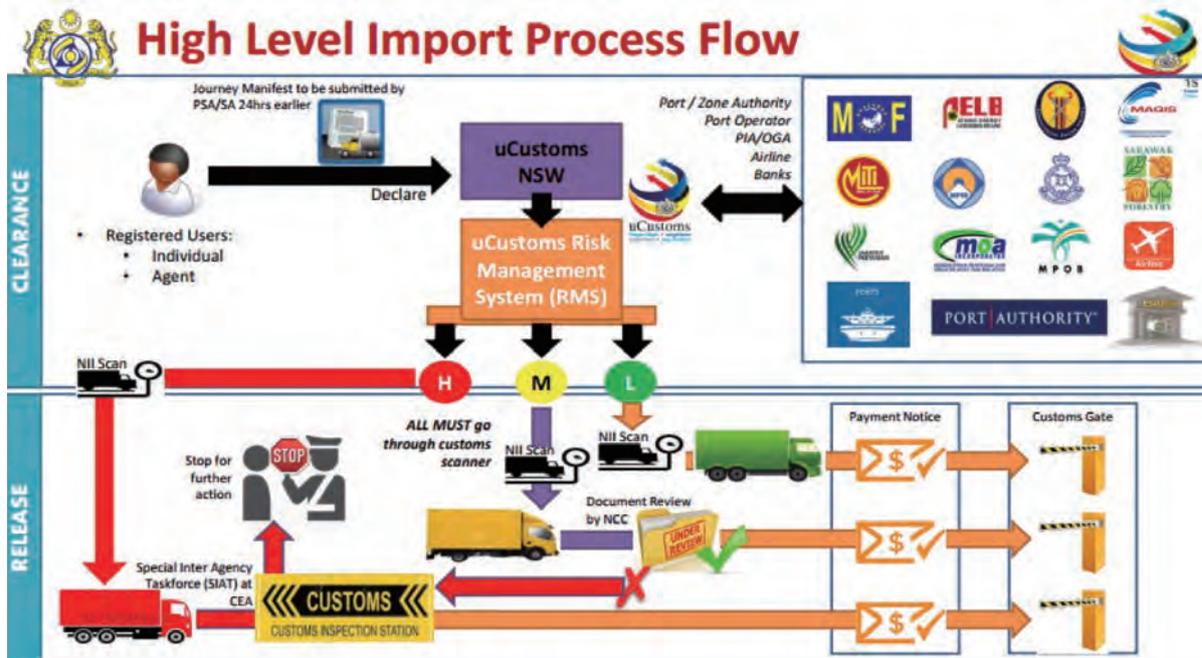
### 5.2 uCustoms Process

With uCustoms in place, the traders and agents can follow the following steps to facilitate Customs declaration, namely,

- Self-declaration;
- Risk assessment;
- Physical inspection;
- Duty payment;
- Release.

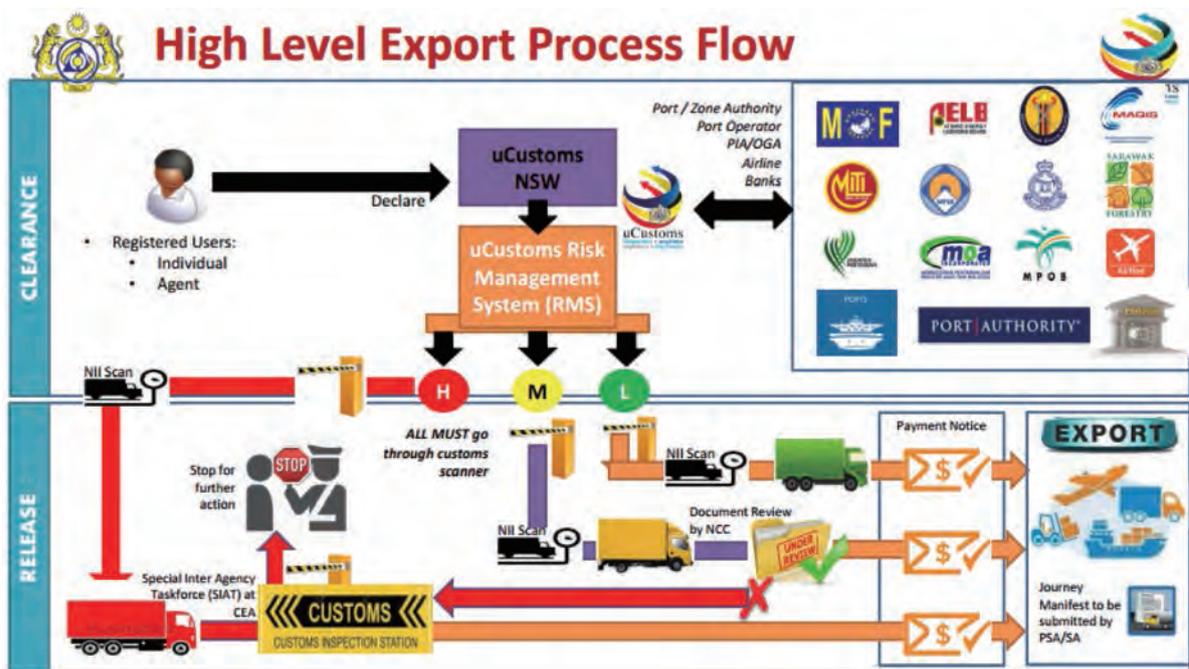
The details of import and export workflow process can be found as below:

Figure 3 Flowchart of uCustoms for Import



Source: Cargo&Journey, Malaysian authorities.

Figure 4 Flowchart of uCustoms for Export



Source: Cargo & Journey, Malaysian authorities.

### 5.3 Benefit of uCustoms

With the new tool in place, the tangible benefits have been observed from many aspects. Firstly, it shortens process time required; secondly, it requires minimum human intervention and eases business; lastly, it integrates with over 100 other governmental agencies/ports and serves as information sharing and collaboration.

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## 6. MALAYSIA NATIONAL SINGLE WINDOW

### 6.1 Briefing

International Trade Single Window is a one-stop automated IT facility to exchange information between traders and government agencies, thereby reducing the complexity, time and costs involved in international trade.

On December 9, 2005, ASEAN agreed to establish the ASEAN Single Window (ASW) to expedite Customs procedures within ASEAN, and promote ASEAN economic integration by enabling the electronic exchange of border trade-related documents among AMS. To date,

A National Single Window (NSW) is an electronic system to facilitate trade, increase efficiency of the government delivery system and provide benefits to all members of the trading community, including government agencies. On September 4, 2012, Malaysia launched its own national single window portal (myTRADELINK). Malaysia's NSW, similar to NSW initiatives in the region and globally, aims to simplify Customs clearance procedures, facilitate the electronic exchange of trade-related data, reducing the cost of doing business as well as enhancing trade efficiency and national competitiveness.

### 6.2 Services of Malaysia NSW

Malaysia NSW covers 6 services through myTRADELINK, which provides a single point of referral for all related parties in the trade community to exchange documents required to fulfil regulatory trade processes

for import, export or transit - anytime, anywhere via the Internet.

### **6.2.1 e-Preferential Certificate of Origin (e-PCO)**

A Preferential Certificate of Origin (PCO) is required by Customs authority in deciding whether the imports should benefit from preferential treatment based on the country of origin of a product.

e-PCO has replaced manual application of Certificate of Origin (CO) from January 1, 2013 and is applied nationwide and offers 14 online schemes to manufactures and exporters. Currently, a total of 3 schemes Malaysia-Australia Free Trade Agreement (MAFTA), Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) and Malaysia-Chile Free Trade Agreement (MCFTA) are offered on the e-PCO platform with the remaining schemes soon on board.

e-PCO has 3 main functions:

- Online application of Cost Analysis and Certificate of Origin forms;
- Online approval by authorized party e.g. Ministry of International Trade and Industry (MITI);
- Online enquiry of application status.

The benefits are apparent to stakeholders, such as:

- User-friendly;
- Faster process;
- Smoother transactions.

### **6.2.2 e-Manifest**

e-Manifest is a comprehensive system for port users such as principal shipping agents, shipping agents, freight forwarders to submit cargo manifest and vessel arrival information to the respective authorities for validation and approval via internet. It has been in service since 2007 with over 500 company subscribers nationwide. Up to now, it is available in 11 ports in Malaysia and handles more than 6 million transactions a year and according to the schedule of Malaysian authorities, more ports will be implementing e-Manifest in the future.

The stakeholders of e-Manifest include government bodies and trade & industry players. On the one hand, government bodies are Ministry of Finance, MITI, Ministry of Transport, RCDM, Maritime Department of

Malaysia, Port Authorities and other government agencies. On the other hand, the second category refers to port authority/free zone authority, port operator, ship's call number issuing authority, shipping agent, freight forwarders and key national associations.

The benefits of e-Manifest are:

- Easy access via the Internet;
- Faster response time through smooth cargo data transfer;
- Convenience of retrieving data when required;
- Cohesive and single-filing to implementing ports.

### **6.2.3 e-Declare**

e-Declare is an electronic application that allows users to prepare and submit Customs related documentation to RMCD. It covers the importation, exportation, transshipment, domestic movement between east and west Malaysia, bonded movement and partial release of cargo from Customs' control. About 166 out of 167 Customs stations are implementing e-Declare nationwide.

### **6.2.4 e-Permit**

e-Permit is an electronic permit application system to apply for permits and approval from multiple Permit Issuing Agencies (PIA). There are currently 26 agencies participating in e-Permit and 19 of which reach paperless practice.

### **6.2.5 e-PermitSTA**

e-PermitSTA is an electronic permit application for products that fall under Strategic Trade Act 2010. It incorporates digital signature in the application to ensure data security. The stakeholders are:

- Strategic Trade Secretariat, MITI;
- Atomic Energy Licensing Board (AELB);
- Malaysia Communication and Multimedia Commission (MCMC);
- Pharmaceutical Services Division, Ministry of Health.

### **6.2.6 e-Payment**

e-Payment is an online payment facility that allows users to prepare and submit duty payment to RMCD. There are 3 modes of e-Payment available, namely, Electronic Fund Transfer, DutyNet and Financial Services Payment Gateway. Currently 8 local banks have participated in this initiative.

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## **7. CUSTOMS AGENTS**

### **7.1 Customs Agent Practice**

In Malaysia, importers, exporters and the owner of goods can clear Customs on their own. Meanwhile, the alternative is to use the service of legal Customs agents with the condition that the agents have been approved by the Customs Director General for Customs clearance duties. Section 90 of Customs Act 1967 stipulates the approval of forwarding/shipping agents to become an import or export Customs agent.

### **7.2 Qualifications of Customs Agents**

The qualifications of Customs agents are different for forwarding/shipping companies. For forwarding agent company at least 51% bumiputera participation on share capital, management and employees while for shipping agent company that figure is at least 30%.

### **7.3 Application of Customs Agents**

An application form is required to submit the completed document to the State Director of Customs where it will be reviewed in tandem with other supporting documents, such as:

- Business Registration Certification;
- A copy of Share Certificate;
- Form 24 & Form 49;

- Letter of appointment from customers and a list of represented customers.

Besides, applicants also have to state the address of operating branches. In case a branch is established after approval to become an agent is obtained, companies have to notify the State Director of Customs where the parent company operates and forward a copy to the State Director of Customs where the branch will operate.

## 7.4 Approval and Renewal of Customs Agents

Agent approval is valid for 2 years and is subject to the conditions stated that could be added to or changed when necessary. Some of the main conditions are:

- Not allowed to transfer ownership, change name, sell or handover to any party without Customs permission;
- Prepare General Bond according to the amount fixed by Customs;
- Be legally liable on acts of workers;
- Comply with all the provisions under the Customs Act 1967 and its Regulations as well as other instructions released by the Customs.

Agent approval in one state also covers company branches in other states. However, the approval will be revoked upon impingement of provisions under the Customs Act 1967 and related regulations.

Besides, renewal application has to be submitted 2 months prior to the approval's expiry. Supporting documents are EPF Statement, annual report and audited financial statement, Form 24, Form 49, list of lower-level management and employees as well as represented customers. Approval of renewal will be given 2 years subject to the conditions stated.

## 7.5 Identity Pass for Approved Agents

For the approved Customs agents working in the Customs area, identity pass is issued to the staff of the agents as a form of security measure. It is for not more than 2 years in line with the agent's endorsement. The identity pass for forwarding agents is marked yellow, while for shipping agents it is marked red.

Besides, it will be revoked by default when the holder resigns and has to be subject to Customs authorities for cancellation.

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## 8. CUSTOMS SECURITY

Customs security usually refers to an agreement, which ensures that importers will pay all relevant duties, taxes and fees and operate in accordance with all laws and regulations will greatly facilitate the clearance and boost trade as a contract to ensure that importers oblige with duties, taxes and fees collected by the Customs and owed to the government.

### 8.1 Customs Security in Malaysia

In Malaysia, Customs may require that security to be provided to guarantee the payment of duties and taxes, or to ascertain that the relevant obligations must be fulfilled by the declarant or the responsible party in line with Customs procedures.

### 8.2 Scope of Customs Security

The scope of Customs guarantee covers the following circumstances:

- The release of goods from Customs control prior to payment of duty and taxes;
- The movement of goods within or through the Customs territory under the transit regime;
- The movement of goods from/to free zone under some conditions;
- Authorized Customs agents, operators of bonded warehouses, licensee of duty free shop, operators of temporary storage facilities;
- Temporary import and export of goods;
- Release of goods pending the decision on appeal, release of temporarily seized good under Customs Act 1976;
- Other conditions required by Customs.

### 8.3 Related Customs Security Regulation

The Customs Act 1976 has granted the power of Director General to require security. Section 34 stipulates “The Director General may, at his discretion, either generally or in a particular case or in respect of a particular are, require security to be given by any person moving dutiable goods within Malaysia and

where any such security has been required to be given no person shall move such goods unless such security has been given”.

In terms of the amount of security, it shall not exceed the amount of duty leviable on such goods or services. Besides, there are a variety of security forms, the details are:

- The bank guarantee;
- Guarantee letter;
- General bond.

For further details, Section 17A, Section 27, Section 32, Section 41, and Section 75 of Customs Code 1976 elaborate the security requirement as required by Customs.

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## 9. PROHIBITIONS AND RESTRICTIONS

### 9.1 Import Prohibitions, Restrictions, and Licensing

In Malaysia, it prohibits imports of some products due to religious, security, health, and environmental protection and safety grounds. Customs (prohibition of imports) Order 2017, which stipulates import prohibitions, restriction and licensing, covers 4 schedules as listed below:

#### A.First Schedule

It refers to goods absolutely prohibited from importation. There are 15 major product categories.

Briefly, 1 category is for Indonesia in terms of import prohibition of logs, wood in the rough, wood roughly squared or half squared but not further manufactured, and baulks. The other 14 categories are for all countries in terms of import prohibition of some broadcast receivers, comb or comb chunk (high pest risk), lightning arrestor containing radioactive materials, liquid-filled type electric heating bags, cushions,

pillows, pouches or pads using AC or AC and DC, new pneumatic snow types and new retreaded snow types for all types of vehicles, poisonous chemicals and minerals, certain animal feed, sodium arsenite, and substances covered under the Montreal Protocol.

## B. Second Schedule

- Conditional prohibition except under import license (Part I);
- Conditional prohibition except under import license, and does not apply to specified free zones (Part II);
- Conditional prohibition except under import license, and shall not apply to Labuan, Langkawi, Tioman and specified free zones (Part III).

In light of Customs (prohibition of imports) Order 2017, there are two conditions for import license in terms of second schedule part I list, one is for all goods originating from Israel are subject to import license, the other is for all countries for certain goods.

The details of goods and licensing bodies are listed in the table below,

*Table 1 Import Licensing*

Product Description	Auto-Licensing	Licensing Bodies
All goods from Israel	No	MITI
Sugar	Yes	Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC)
Radar apparatus, radio navigation aid apparatus, parabolic antenna	Yes	SIRIM Berhad
Chassis fitted with engines, for motor vehicles of heading 87.02,87.03,87.04,or 87.05	Yes	MITI
Bodies (including cabs) for motor vehicles falling within heading 87.02,87.03,87.04,or 87.05	Yes	MITI

Product Description	Auto-Licensing	Licensing Bodies
Motorcycles, auto-cycles (including mopeds), electric powered motorcycles, motorized bicycles and cycles fitted with an auxiliary motor (excluding side cars)	Yes	MITI
Road tractors for semi-trailers (including prime movers), completely built-up, old	Yes	MITI
Special purpose motor vehicles, other than principally designed for the transport of persons or goods, excluding fire fighting vehicles	Yes	MITI
Used brakes and servo-brakes including used brake pad, and brake lining, for motor vehicles of headings 87.01,87.02,87.03, 87.04,87.05,87.09, and 87.11; All kinds of reusable batteries (accumulators) for motor vehicles of headings 87.01,87.02, 87.03,87.04,87.05,87.09,and 87.11	No	MITI
Unmanufactured tobacco, tobacco refuse	No	National Kenaf, Tobacco Board, and Department of Agriculture (Psninsular Malaysia, Labuan, Sabah and Sarawak)
Trichloroethane (Mythyl chloroform)	Yes	MITI
Optical disc mastering and replicating machines and parts thereof	No	MDTCC
Toxic chemicals and their precursors covered under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical weapons and on their destruction 1993 (CWC)	Yes	MITI
Substances structurally derived from Phenethylamine and their salts	No	Pharmaceutical Services Division, Ministry of Health

Product Description	Auto-Licensing	Licensing Bodies
Hydrochlorofluorocarbons (HCFCs) covered under the Montreal protocol, Annex C-Group 1	Yes	Department of Environment
Falt-rolled products of other alloy steel, of a width of 600 mm or more	Yes	MITI

Source: Customs (prohibition of imports) Order 2017.

With regard to the second schedule part II list, it is currently the same with part II list. On part III list, some iron and steel products are prohibited from importation except under import license from MITI, but it is not applied to Labuan, Langkawi, Tioman, and specified free zones. Besides, since Aug.1, 2017, 181 tariff lines of iron and steel products will not require import license.

### C.Third Schedule

- Conditional prohibition except in the manner provided for (Part I);
- Conditional prohibition except in the manner provided for; and shall not apply to the free commercial zones (Part II);
- Conditional prohibition except in the manner provided for, for goods controlled under the International Trade in Endangered Species Act 2008 (Part III).

Firstly, part I list is mainly subject to SPS licensing requirements. The product categories are animals and animal products, plant and plant products, agro-products such as pasta, rice, flour, vegetables, coffee, soil, food products, solid waste, radio-materials and irradiating apparatus, baby feeding bottles, ceramic tableware and kitchenware, tobacco and manufactured tobacco, alcohol, stones and water.

The license issuing bodies could be Malaysian Quarantine and Inspection Services (MAQIS), Department of Agriculture (DOA), Department of Wildlife and National Park, Food Safety and Quality Division of the Ministry of Health, Department of National Solid Waste Management, Ministry of Home Affairs, Pesticide Board under the DOA, and Atomic Energy Licensing Board.

Secondly, part I list also addresses import license as below,

Table 2 Imports Licensing

Product Description	License	Licensing Bodies
Bullet-proof suits, pepper spray, arms and ammunition, fireworks	Import Permit or Approval Letter	Chief Police Officer
Toxic and hazardous waste	Letter of Approval	Director General of Environmental Quality
Second-hand materials, such as used household electronics	Letter of Approval	Environmental Quality
Amusement machines	Letter of Approval	Ministry of Finance
Rough diamonds	Kimberley Process Certificate	Exporting party
Substances covered under the Rotterdam Convention	Letter of Consent	Department of Environment
Second-hand materials, such as used pneumatic tyres and used retreaded pneumatic tyres of rubber	Letter of Approval	SIRIM Berhad

Source: Customs (prohibition of imports) Order 2017.

In addition, part II list include cigarette meeting packaging requirements, apparatus or equipment for the brewing of beer at home, beer, wine, vermouth and other wine of grapes, other fermented beverages, ethyl alcohol, spirits and liqueurs, etc. Those containers must be affixed with a tax stamp.

Lastly, part III list includes any terrestrial animals, any marine animals, any terrestrial plant excluding timber species, and any timber species as specified in the appendices of the International Trade in Endangered Species Act 2008. For those goods in transit, a valid export/re-export permit/license/certificates in line with the CITES must be accompanied,

#### D.Fourth Schedule

- Conditional prohibition except conforming to the Malaysian standards or other standards approved by the Malaysian authorities and in the manner provided for (Part I);
- Conditional prohibition except conforming to the Malaysian standards or other standards approved by the Malaysian authorities and in the manner provided for, and does not apply to the free

commercial zones (Part II).

In terms of part I list, it covers cement, ceramic products, and plastic flushing cisterns equipped with mechanism. The license body is the Construction Industry Development Board (CIDB).

Concerning part II list, it is subject to TBT requirement, which do not apply to free commercial zones in this regard.

*Table 3 Imports Subject to TBT Requirements*

Product Description	Import Requirement
Iron & steel product, aluminum product	CIDB or SIRIM Berhad (non-construction)
Electrical apparatus or accessories	Suruhanjaya Tenaga, or the equivalent counterpart in the case of certain states (Sarawak)
New pneumatic tyres and new retreaded pneumatic tyres, of rubber	In line with the standards under the Motor Vehicles (Construction and Use) Rules 1959; E-mark and certificate, or DOT mark and certificate, or MS mark and certificate
Toys, games and children's bicycles	Certificate of conformance issued under the Consumer Protection Act 1999 notification form or a letter of clarification
Apparatus or equipment to be attached to or connected to a public communication network of system	A certificate of approval issued by SIRIM QAS International Sdn. Bhd.
Radio communication apparatus or equipment in the frequency band up to 420 Thz	A certificate of approval issued by SIRIM QAS International Sdn. Bhd.
Apparatus or equipment to integrated with a communication module for connecting to a public network or for radio communications utilizing the frequency band up to 420 Thz	A certificate of approval issued by SIRIM QAS International Sdn. Bhd.
Flowers, vegetables, coconuts, fruits, coffee, spices, groundnuts, sugar cane	A certificate of conformity of agricultural produce, issued by MAQIS and inspection and approval by MAQIS (SPS measures)

Product Description	Import Requirement
Construction products	A certificate of approval, a letter of exemption, by the Chief Executive Officer of CIDB
Non-rechargeable cells and primary batteries	A certificate of conformance, a notification form, or a letter of clarification, issued by the Controller of Consumer Affairs, under the Consumer Protection Act 1999
Liquid-filled type electric heating bag, cushion, pillow, punch or pad filled with liquid, using 3-pin inlet AC or AC and DC	A certificate of approval issued by the Suruhanjaya Tenaga, or the equivalent counterpart in the case of certain states (Sarawak)
Motorcyclists safety helmets	In line with the standards under the Motor Vehicles (Construction and Use) Rules 1959; E-mark and certificate, or MS mark and certificate
Some wheat flour	A letter of consent, by MDTCC
Gas discharge headlamp including gas discharge bulb for motor vehicles	In line with the standards under the Motor Vehicles (Construction and Use) Rules 1959; E-mark and certificate
New brake lining or brake pad, vehicle alarm system & immobilizer & new seat & speed monitoring device for motor vehicles	In line with the standards under the Motor Vehicles (Construction and Use) Rules 1959; E-mark and certificate, or MS mark and certificate
Wheat flour for human consumption	A certificate of approval issued by SIRIM QAS International Sdn. Bhd.

Source: Customs (prohibition of imports) Order 2017.

## 9.2 Export Prohibitions, Restrictions and Licensing

In Malaysia, Customs (prohibition of exports) Order 2017, which stipulates import prohibitions, restriction and licensing, covers 3 schedules as listed below,

### A. First Schedule

It refers to goods absolutely prohibited from exportation, which are poisonous chemicals and minerals, and substances covered under the Montreal Protocol.

### B. Second Schedule

It refers to conditional prohibition except under export license. The details are listed in the table,

*Table 4 Exports Licensing*

Product Description	Licensing Bodies
All good to Israel	MITI
Unrooted cuttings, budwood, budded stumps, seedlings and seeds, of rubber, for sowing or planting	Ministry of Plantation Industries and Commodities
Oil palm living tissues/fruits/seeds or nuts/pollens	Ministry of Plantation Industries and Commodities
Oils and fats of palm oil	Malaysian Palm Oil Board
Pineapple slips, pineapple, fresh, chilled and preserved by freezing	Malaysian Pineapple Industries Board
Bamboo, rattans, wood, logs, charcoal, timber, etc.	Malaysian Timber Industry Board and corresponding agencies in Sabah and Sarawak
Minerals, ores, coal, lignite, peat, coke, etc. all kinds of natural sands, slag and hardhead of tin	Ministry of Natural Resources and Environment
Military clothing, headgear, footwear, and other textile articles	Ministry of Defense, MITI
Sugar, cement clinker, Portland cement	MDTCC

Product Description	Licensing Bodies
Waste and scrap, recovered (waste and scrap) paper or paperboard, toxic chemicals and their precursors covered under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction 1993 (CWC)	MITI
Acetyl bromide, acetyl chloride, chemicals/ substances covered under the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	Pharmaceutical Services Division, Ministry of Health
Hydrochlorofluorocarbons (HCFCs) covered under the Montreal protocol, Annex C-Group 1	Department of Environment
Mercury (Hg) and mercury compounds covered under the Minamata Convention on Mercury	Pharmaceutical Services Division, Ministry of Health

Source: Customs (prohibition of exports) Order 2017

### C.Third Schedule

- Conditional prohibition except in the manner provided for (Part I);
- Conditional prohibition except in the manner provided for; for goods controlled under the International Trade in Endangered Species Act 2008 (Part II);

In terms of part I, it covers 3 categories, including:

- Products subject to SPS requirements;
- Arms and ammunition, antiquities or heritage items, toxic and/or hazardous waste, pesticides, radioactive chemical elements and others, rough diamonds, tributyltin compounds including preparation, diesel fuel, petrol, LPG;
- Used household electronics.

The licensing bodies are Malaysian Quarantine and Inspection Services (MAQIS), Department of Agriculture (DOA), Department of Wildlife and National Park, MDTCC, Chief Police Officer, Commissioner of Heritage, Pesticide Board under the DOA, and Atomic Energy Licensing Board.

Besides, in terms of part II, it includes any terrestrial animals, any marine animals, any terrestrial plant excluding timber species, and any timber species as specified in the appendices of the International Trade in Endangered Species Act 2008. An export license is required for exportation from peninsula Malaysia and Labuan. The issuing bodies are Department of Wildlife and National Parks Peninsular Malaysia, Department of Fisheries Malaysia, Department of Agriculture Malaysia, and the Malaysian Timber Industry Board.

### 9.3 Sanitary and Phytosanitary (SPS) Requirements

Malaysia is a member of the Codes Alimentarius Commission, the World Organization for Animal Health (OIE) and a contracting party to the International Plant Protection Convention (IPPC). As an active member of those international organizations, Malaysia has adopted SPS measures on trade in plants, forest products, foods, animals and seafood products.

The SPS related laws and regulations are the Malaysian Quarantine and Inspection Services Act 2011, the Plant Quarantine Act 1976, the Plant Quarantine Regulations 1981, the Animal Act 1953, the Fisheries Act 1985, the Biosafety Act 2007, the Food Act 1983, the Food Regulations 1985, and the Food Hygiene Regulations 2009.

The relevant governmental bodies for permit or license include Department of Agriculture (plants), Department of Veterinary Services (animal and animal product), Department of Fisheries (fisheries), Food Safety and Quality Division under the Ministry of Health (food safety matters), National Biosafety Board (living modified organism) and MAQIS (quarantine services and certification for imports and exports).

Besides, for food and its ingredients obtained by modern biotechnology, mandatory labelling is required in accordance with the Food Regulations 1985.

Last but not the least, Malaysia has established 3 SPS enquiry points, the Macro and Strategic Planning Division of the Ministry of Agriculture and Agro-based Industry (plants, livestock, fisheries), the Food Quality Control Division of Ministry of Health (food safety matters), and Department of Veterinary Services (animal and animal products). For more information, please refer to the official websites (Ministry of

Agriculture and Agro-based Industry: <http://www.moa.gov.my/>), (Ministry of Health: <http://www.moh.gov.my>).

## 9.4 Technical Barrier to Trade (TBT)

Malaysia is a member of the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), and International Telecommunications Union (ITU). Malaysia has made continuous efforts to align with international standards in accordance with WTO obligations under TBT Agreement.

As of June 30, 2017, 60% of Malaysian standards amounting to 5,284 were aligned with international standards. The main categories are chemicals and materials, power generation, transmission and distribution, electrical and electronics equipment and accessories, food and food products, buildings, construction and civil engineering, and medical devices and facilities for healthcare.

The competent body in Malaysia for developing and issuing standards is the Department of Standards Malaysia (DSM) under the Ministry of Science, Technology and Innovation. DSM appoints SIRIM Berhad, a wholly government-owned company, as the sole national standards development agency under the Standards of Malaysia Act. SIRIM Berhad acts as the enquiry point for TBT and as the agency responsible for notifications and publications required by the WTO TBT Agreement. For more information, please refer to the official website (<http://www.sirim.my>).

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## 10. CUSTOMS DUTIES & TAXES

Malaysia Customs collects duties and taxes on any imported and exported goods except for some exemption conditions. The types of duties and taxes are Import Duty, Export Duty, Excise Duty, Sales and Services Tax (SST) and others.

## 10.1 Import Duty

Import duty is subject to the Customs Duties Order 2012. Malaysia's import duties are typically imposed on an ad valorem basis, with a simple average applied tariff of 6.1 percent for industrial goods.

For certain goods, such as alcohol, wine, poultry, and pork, Malaysia charges specific duties that represent extremely high effective tariff rates.

## 10.2 Export Duty

Malaysia has levied export duties to safeguard sufficient supply of raw materials for domestic industries and for food security. Export duties are based on the FOB value of the goods.

In 2017, only 217 out of total 11,690 tariff lines at the HS 10-digit level were subject to export duties. The rates ranged from 4.5% to 20% in terms of different lines. The export duties are listed as below,

- Live plant, certain seeds, rattans (10 lines): specific rate;
- Crude oil: 10%;
- Crude palm oil (5 lines): 4.5%-8.5%;
- Palm nuts and kernels suitable for sowing: 5%;
- Palm nuts and kernels not suitable for sowing: 20%;
- Wood in the rough (108 lines), certain unwrought lead & lead waste and scarp (2 lines): 15%;
- Palm kernel oil, crude petroleum oil, ferrous waste and scrap, copper waste and scrap, master alloys of copper, nickel mattes, nickel oxide sinters, not alloyed nickel, nickel alloys, aluminum waste and scrap (21 lines): 10%;
- Certain live animals, palm nuts, palm kernel oil (refined, bleached, deodorized (RBD)), slag, ash and residues, silver, platinum, refined copper, unwrought zinc (69 lines): 5%.

In terms of rubber products export, 0.2% of the export value is applied to the manufacturers.

## 10.3 Excise Duty

In Malaysia, excise duty is applied to both locally produced and imported goods. The rates are identical to

locally produced and imported goods. The details are:

- Motorcars and electric cars: 10%-105%;
- Four-wheel-drive vehicles: 75%-105%;
- Motorcycles and electric motorcycles: 10%-30%;
- Intoxicating liquor: RM 22.50 per 100% volume per liter, and 15% ad valorem to RM 450 per 100% volume per liter;
- Cigarettes: RM 0.40 per stick.

#### 10.4 Sales and Services Tax (SST)

Since September 1, 2018, a significant tax reform was brought into Malaysia and the goods and services tax (GST) has been replaced by the sales and services tax (SST) administered by the Royal Malaysian Customs Department (RMCD).

The SST has two elements: a service tax that is charged and levied on taxable services provided by any taxable person in Malaysia in the course and furtherance of business, and a single stage sales tax levied on imported and locally manufactured goods, either at the time of importation or at the time the goods are sold or otherwise disposed of by the manufacturer.

#### 10.5 Tariff Quota

Malaysia has adopted tariff quota to cater to the request from domestic small producers and follows a principle of first-come-first-served to importers. It is applied to 27 tariff lines at the HS 10-digit level in 2017.

The goods include live swine and poultry, poultry and pork meat, liquid milk and cream, and round cabbages. The tariff rates within the quota range from zero (round cabbages) to 25% (pork).

#### 10.6 Tariff Bindings

Malaysia has fully achieved the practice of Uruguay Round Tariff binding in 2005. According to WTO trade policy review issued in December 2017, 20% of Malaysian tariff lines were unbound, and the simple average bound rate was 11.0% for agro-products and 16.5% for non-agro-product.

In 2017, Malaysia's tariff schedule was based on HS 2017 nomenclature with 10-digit level covering 11,690 lines, 99% of which are ad valorem.

## 10.7 Preferential Tariff

As an ASEAN member, Malaysia adopts preferential tariff for trade within ASEAN member states under the ASEAN Harmonized Tariff Nomenclature (AHTN) 2017. It covers 11,690 lines.

Malaysia is also subject to tariff preferences in ASEAN Trade in Goods Agreement (ATIGA), various Free Trade Agreements (FTAs) signed by ASEAN with Australia, China, India, Japan, Korea, and New Zealand, multiple bilateral FTAs entered with Australia, Chile, India, Japan, New Zealand, Pakistan and Turkey, as well as in PTA-D8 (HS12) with Bangladesh, Egypt, Indonesia, Iran, Nigeria, Pakistan and Turkey.

From the statistics of WTO Secretariat in 2017, the average tariff rate of the above-mentioned preferences is lower than the simple MFN rate (7.5%), ranging from 0.1% to 7.4%.

## 10.8 Tariff Exemptions

### 10.8.1 Exemption of Import Duty

General speaking, import duty exemptions are applied to companies involved with manufacturing, agriculture and listed services. The details are:

- Raw materials and components that are not locally manufactured, regardless of whether the finished products are for export or domestic market;
- Machinery and equipment locally unavailable, but directly used in the manufacturing process;
- Raw materials, components, machinery and equipment, spares and consumables for aerospace companies to conduct maintenance, repair and overhaul;
- Medical devices that are imported for the purpose of kitting or producing complete procedural sets, provided that these medical devices are not locally produced.

### 10.8.2 Exemption of Export Duty

Malaysia authorities have tax incentives to stimulate trade and economy by reducing or exempting export duties. For instance, in terms of oil produced from marginal fields, export duty exemption is applied.

### 10.8.3 Exemption of Sales Tax

Overall, the Sales Tax (Exemption) Order 1980 has listed exemptions in 3 Schedules as follows,

- Schedule A: goods exempted from sales tax are not taxable goods;
- Schedule B: list of persons or class of persons exempted from payment of sales tax;
- Schedule C: exemption of sales tax is extended manufactured, not being licensed manufacturers, in respect of goods acquired by such manufacturers for use in production of certain products.

Some goods manufactured in Malaysia (except Labuan, Langkawi and Tioman) or imported could be specifically exempted from sales tax by order of the Minister of Finance. In addition, all goods produced and subsequently exported by a licensed manufacturer are exempted from payment of sales tax under Item 16, Schedule B of the Sales Tax (Exemption) Order 1980.

Furthermore, if a person exports purchased from licensed manufacturer within 6 months from date of purchase, under Item 91, Schedule B, Sales Tax (Exemption) Order 1980 on the condition that the approval from the Director General of Customs is granted prior to the purchase.

## 10.9 Tariff Drawback

According to Part X of Customs Act 1967, there are some conditions allowing tariff drawback. First, duties and taxes on import of raw materials in manufacturing or in packing can be refunded if they are directly used in the production or manufacture of goods in Malaysia for export within 12 months upon the day of import tariff payment.

Besides, relief from duty on goods temporarily imported may be applied if the goods are for home use or security is paid. The security will be returned if the goods are re-exported within 3 months of the date of importation or within extended period as Director General allows.

In addition, if any dutiable goods which have been imported suffer deterioration, or damage, and are destroyed at any time after their arrival within Malaysia and before removal from Customs control, the Customs duty payable may be partially or wholly remitted by the Director General of RMCD.

Then, according to Section 16, Part III of Customs Act 1967, if the duty or other charges are overpaid or erroneously paid, it could be refunded unless a claim is made within 1 year after overpayment or

erroneous payment. The section 32 of the Sales Tax Act 1972 also states the refund of sales tax which is overpaid or erroneously paid.

In particular, section 29 of the Sales Tax Act 1972 describes the drawback of sale tax,

- Tax-paid finished goods, either imported or purchased from a licensed manufacturer, which are for re-exported;
- Tax-paid raw material and components that are used in the production of finished goods for export.

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## 11. TARIFF CLASSIFICATION

### 11.1 Tariff Schedule in Malaysia

The Harmonized System of Commodities Description and Coding System (HS), is an internationally standardized nomenclature for the description, classification and coding of goods. It is developed by WCO and widely used as basis for Customs tariffs and the international trade statistics. ASEAN has developed ASEAN Harmonized Tariff Nomenclature (AHTN) for its member states on the basis of WCO HS.

AHTN is used for trade transaction between Malaysia and the other ASEAN countries, while the HS Code applies for trade with non-ASEAN countries. WCO version is at 6-digit level, ASEAN AHTN 2012 version is at 8-digit level, and Malaysia version is now at 10-digit level.

Customs Duties Order 2017, which brings about the latest revisions of HS 2017, has taken effect from April 1, 2017 and included key changes as follows:

- Goods are identified by a 10-digit code instead of 6-digit codes, e.g. the current HS code for trade samples 9800.00 600 will be changed to 9800.00.00 60.
- It is envisaged the current HS codes for zero-rated goods under the GST (Zero Rated Supply) Order would be amended accordingly to reflect the new 10-digit HS codes and/or products description.

- To enhance the monitoring of particular fish species for global food security purposes, the scope of the fish species has been expanded to include other main species identified by the Food and Agriculture Organization of the United Nations, e.g. new subheading 1604.18 on shark fins has been introduced in the Order.
- To facilitate the monitoring and control of narcotic drugs and psychotropic substances, new subheading 1302.14.00 has been introduced in the Order to cover vegetable saps and extracts of ephedra.
- To enhance the coverage of wood species for a clearer picture of trade patterns, definition of “tropical wood” has been expanded and included as Appendix C to the Order.
- The HS 2017 amendments include new subheadings to provide detailed information for several categories of goods that are used as antimalarial products, e.g. new subheading 3003.60.00 has been inserted in the Order to provide separately for antimalarial medicaments.
- New subheadings are being inserted for specific chemicals controlled under the Chemical Weapons (CWC), e.g. new HS code 2918.17 0000 benzilic acid has been inserted to facilitate the collection and comparison of data on the international movement of substances controlled under the CWC.

HS code for every product or raw materials used can be referred to Division of Classification, Royal Customs of Malaysia and can also be searched by using the Search Tariff function on the official website of Malaysia Customs Department.

Now Malaysia’s tariff schedule was based on HS 2017 nomenclature with 10-digit level covering 11,690 lines, while 99% of which are ad valorem. Current tariff schedule in Malaysia are also classified into 21 sections which are further sub-divided into 97 chapters listed below:

*Table 5 Classification of Tariff Schedule in Malaysia*

<b>Section 1 (Chapter 1-5)</b>	<b>Section 2 (Chapter 6-14)</b>
Live animals & animal products	Vegetables products
<b>Section 3 (Chapter 15)</b>	<b>Section 4 (Chapter 16-24)</b>
fats, oils, waxes, etc.	Prepared foodstuffs, beverages, spirits and vinegar, tobacco and manufactured tobacco substitutes

<b>Section 5 (Chapter 25-27)</b>	<b>Section 6 (Chapter 28-38)</b>
Mineral products	Products of the chemical or allied industries
<b>Section 7 (Chapter 39-40)</b>	<b>Section 8 (Chapter 41-43)</b>
Plastics and rubber	Raw hides and skins, leather, furskins, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut
<b>Section 9 (Chapter 44-46)</b>	<b>Section 10 (Chapter 47-49)</b>
Wood and articles	Pulp, paper, etc.
<b>Section 11 (Chapter 50-63)</b>	<b>Section 12 (Chapter 64-67)</b>
Textiles & articles	Footwear, handgear, umbrellas, walking sticks, seat-sticks, whips, artificial flowers, articles of human hair
<b>Section 13 (Chapter 68-70)</b>	<b>Section 14 (Chapter 71)</b>
Articles of stone, plaster, cement, asbestos, mica or similar products, ceramic products, glass and glassware	Natural or cultured pearls, precious or semi-precious stones, precious metals, imitation jewelry, coin, etc.
<b>Section 15 (Chapter 72-83)</b>	<b>Section 16 (Chapter 84-85)</b>
Base metals and products	Machinery, electrical equipment, etc.
<b>Section 17 (Chapter 86-89)</b>	<b>Section 18 (Chapter 90-92)</b>
Vehicles, aircraft, transport equipment	Precision instrument (optical, photographic, cinematographic, measuring, medical or surgical, etc.)

Section 19 (Chapter 93)	Section 20 (Chapter 94-96)
Arms and ammunition	Miscellaneous manufacturing
Section 21 (Chapter 97)	
Works of art, etc.	

## 11.2 General Rules for the Interpretation of HS

WCO's General Rules for the Interpretation of the Harmonized System are also applied by Malaysia Customs and these are the rules that govern the classification of goods under the HS and there are 6 General Rules in all, which must be applied in consecutive order including:

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.
2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.
5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein: (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character. (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.
6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

## 12. CUSTOMS VALUATION

Following WTO accession, Malaysia has gradually adopted WTO Customs Valuation Agreement. As stated clearly in Customs (Rules of Valuation) Regulations 1999, there are 6 valuation methods in practice in Malaysia.

### - Valuation Method 1: Transaction Value

The Customs value of imported goods shall be their transaction value (as primary basis of valuation), i.e. the price actually paid or payable for the goods when sold for export to Malaysia, adjusted in accordance with regulation 5.

With this method, the price actually paid or payable for the goods shall be adjusted in determining the transaction value of goods in the following conditions (as described in regulation 4).

By adding amounts, to the extent that each such amount is not included in the price actually paid or payable for the goods, equal to:

*Table 6 Adding Elements for Transaction Value*

1	Commissions and brokerage.
2	The packing costs and charges (including the cost of cartons, cases, and other containers and coverings for Customs purposes).
3	The value of any of the following goods and services: materials, component, parts, and other items incorporated in the goods; tools, dies, moulds, and other items utilized in the production of the goods ; materials consumed in the production of the goods; engineering, development work, artwork, design work, plans, and sketches undertaken elsewhere than in Malaysia and necessary for the production of the goods.
4	Royalties and license fees (including payments for patents, trademarks, and copyrights, exclusive of charges for the right to reproduce the goods in Malaysia).
5	The value of any part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer that accrues or is to accrue, directly or indirectly, to the seller.

6	the value of any materials, component, parts and other incorporated in the goods for the purpose of repair to, or refurbishment of, those goods prior to importation of the goods to Malaysia, and the price paid for the service or repair or refurbishment, as the case maybe; or
7	The cost of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses connected with the transportation of the goods until the goods have arrived in Malaysia.

By deducting amounts, equal to:

*Table 7 Deducting Elements for Transaction Value*

1	Any reasonable cost, charge, or expense owing to construction, erection, assembly, or maintenance of, or technical assistance of the goods after import.
2	Any reasonable cost, charge, or expense due to the transportation or insurance of the goods within Malaysia and any reasonable cost, charge or expense linked with.
3	Any Customs duties or taxes payable in Malaysia by reason of importation or sale of the goods.

- **Valuation Method 2: Transaction Value of Identical Goods**

When the first method cannot be applied to determine the Customs value, the Customs value of the goods shall be the transaction value of identical goods if the identical goods were exported to Malaysia at the same or substantially the same time as the goods being valued were sold.

- **Valuation Method 3 : Transaction Value of Similar Goods**

When the second method cannot be used to determine Customs value, the third method shall be adopted as an alternative if the similar goods were exported to Malaysia at the same or substantially the same time as the goods being valued were sold.

- **Valuation Method 4 : Deductive Value**

Deductive value will be utilized if the previous-mentioned three methods cannot be applicable. The Customs value of the goods being valued shall be the deductive value of the goods, which shall be the price per unit in the respect of sales described in the regulation 5 and 6, at which the greatest number of units of the goods being valued or identical or similar goods is sold. The following elements shall be subtracted from the price per unit.

*Table 8 Deducting Elements for Deductive Value*

1	Commission generally earned on a unit basis
2	Profit and general expenses, including all costs of marketing the goods as a whole and generally reflected on a unit basis
3	Reasonable costs charges and expenses incurred from transportation and insurance of the goods
4	Any Customs duties or other taxes payable in Malaysia
5	The value added to the goods due to the assembly, packaging, or further processing in Malaysia

- Valuation Method 5 : Computed Value

When the above-mentioned four methods are inapplicable, the Customs value of the goods shall be the computed value, which is the sum of amounts equal to:

*Table 9 Deducting Elements for Computed Value*

1	The cost of materials or processing in producing the goods
2	The amount for profit and general expenses linked with sales for export to Malaysia of goods of the same class or kind

- Valuation Method 6: Flexible Valuation

When method 1-5 cannot determine the Customs value, a flexible and reasonable value derived from the above-mentioned five methods on the basis of available information in Malaysia.

- Minimum Value

A minimum value on imported goods may be fixed by minister upon written request by importer.

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## 13. RULES OF ORIGIN

### 13.1 Rules of Origin

Rules of origin are used to determine the national source of a product. It is very essential for duties and restrictions in several cases which depend upon the source of imports.

A Certificate of Origin (CO) is a certificate issued by a competent authority of the exporting country that certifies the origin of the goods. It is generally an integral part of import documents required by the imported countries.

There are two types of CO in Malaysia: non-preferential (non FTA member countries) and preferential (FTA member countries).

### 13.2 Non-Preferential Certificate of Origin (NPCO)

#### 13.2.1 Eligibility for NPCO Application

In Malaysia, prior to application of NPCO, there are two requirements; first, manufacturers or traders must register with the Companies Commission of Malaysia (SSM). Second, product is required to meet rules of origin:

- Manufactured in Malaysia and used 100% local materials; or
- Manufactured in Malaysia through transformation process which alters tariff code classification at six (6) digit level; or
- Contains at least 25% local materials.

#### 13.2.2 Application and Endorsement of NPCO

With regard to NPCO application, manufacturers or traders are required to submit Statutory Declaration Letter yearly to chambers/ trade associations, with other supporting documents,

- **Manufacturer:**

Company's registration certificate, business license/ manufacturer's license;

Sample/picture/catalogue (if necessary).

- **Exporter/trader:**

Company's registration certificate;

Certification from manufacturer for its manufactured product;

Sample/picture/catalogue (if necessary).

In addition, in terms of application for endorsement of NPCO, a complete NPCO form is required to submit to the chambers of commerce/trade associations and with following supporting documents:

- **Documents required (before exporting):**

Sales Invoice;

Packing List.

- **Documents required (after exporting):**

Sales Invoice;

Packing List;

Bill of Lading;

Customs Declaration Form (K2).

Last but not the least, NPCO is issued by Chambers and Associations authorized by MITI. The list of Chambers and Associations can be found on the following official website of MITI (<https://www.miti.gov.my/index.php/pages/view/3919?mid=533>)

### 13.3 Preferential Certificate of Origin (PCO)

Preferential Certificate of Origin (PCO) is an important official international trade document to prove the origin of a product. It is essential for traders to enjoy tariff preferences.

In Malaysia, in terms of signed Free Trade Agreements, PCO Forms are listed as below,

Table 10 Preferential Certificates of Origin in Malaysia

Preferential Tariff Certificate of Origin	
ATIGA	Form D
ASEAN-Australia-New Zealand	Form AANZ
ASEAN-China	Form E
ASEAN-India	Form AI
ASEAN-Korea	Form AK
ASEAN-Japan	Form AJ
Malaysia-Japan	Form MJEPA
Malaysia-Pakistan	Form MPCEPA
Malaysia-New Zealand	Form MNZFTA
Malaysia-Chile	Form MCFTA
Malaysia-India	Form MICECA
Malaysia-Australia	Form MAFTA
Malaysia-Turkey	Form MTFTA

### 13.3.1 Eligibility for PCO Application

In Malaysia, there are eligibility requirements for PCO application. First, it must be a Malaysia registered company under SSM as a local entity. Second, the manufacturer of the product must be a locally registered and licensed manufacturer operating locally in Malaysia (for PCO normal and TCI). Last, the product must be manufactured in Malaysia and fulfill the requirements under the Rules of Origin (for PCO normal and TCI).

### 13.3.2 Application of Preferential Certificate of Origin (PCO)

In Malaysia, there are 3 types of PCOs: normal, third country/party invoicing, and back-to-back. All application must be made online through the electronic Preferential Certificate of Origin (e-PCO) system operated by DagangNet Technologies Sdn Bhd (DNT). The system can be accessed at [www.newepco.dagangnet.com.my](http://www.newepco.dagangnet.com.my).

First, according to the requirement of Malaysian authorities, except for back-to-back PCO, application for Cost of Analysis (CA) is required at e-PCO system for the other two PCOs. All documents need to be uploaded online (in pdf. format), including:

- Identified HS code slips (finished product and raw material);
- Manufacturing/operation license;
- Invoice for raw material;
- Catalogue of product;
- Production flow chart;
- Letter of appointment (from manufacturer to trader).

Normally, MITI will process CA application within 5 working days.

Second, upon CA application approval, application for PCO can be actuated, the documents (in pdf. format) to be uploaded are listed as below,

- **Application of PCO before export:**

Invoice;

Packing List.

- **Application of PCO after export:**

Invoice;

Packing List;

Bill of Lading;

Customs Form K2.

Normally, MITI will process PCO application within 24 working hours.

### **13.3.3 Endorsement of Preferential Certificate of Origin (PCO)**

The certifying authority for all PCOs is the Trade and Industry Cooperation Section under MITI. Once PCO is approved, the following documents are needed for endorsement:

- Printed Certificate of Origin;
- Original copy of Invoices;
- Original Packing List;
- Original Bill of Lading;
- Original Customs Form K2.

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## **14. ADVANCE RULING**

In Malaysia, advance ruling is established to enhance trade facilitation and to ensure the accuracy of completion of Customs declaration according to the section 10B of Customs Act 1967.

Advance ruling is a written statement issued by the RMCD upon the written application by an applicant concerning on import or export of goods, production or manufacture of goods and taxable services.

In Malaysia, the issuance of advance ruling includes:

- Goods classification;
- Goods valuation;
- Determination of taxable person related to the production or manufacture of goods;
- Determination of taxable services.

To issue the ruling, some requirements are:

- RM200.00 processing fees;
- Submitting prescribed Form (Schedule A);
- Additional documents, information and samples (if necessary).

Upon the receipt of the prescribed Form (Schedule A), the period for issuing a Customs ruling is 90 days or 60 days from the receipt of the analysis report conducted by any other third party. Besides, the issuance of Customs ruling (Schedule B) is valid for 3 years and can be extended for another 2 years. For more information, please consult Technical Services Division/Classification Section at State level and Secretariat Customs Ruling Unit, RMCD.

In a nutshell, with advance ruling in place, a lot of tangible benefits have been delivered, first, faster Customs clearance brought by in advance knowledge of Customs duty liability, second, both traders and the Customs can save cost, third, and improved legal compliance of traders will reduce delays, complaints and appeals.

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## 15. FREE TRADE AGREEMENTS

Given Malaysia's reliance on international trade, Malaysia has adopted liberal trade policies and puts a high emphasis on regional and bilateral trade agreements.

As an ASEAN member state, Malaysia has joined the ASEAN Free Trade Area (AFTA) which is a trade bloc agreement to support local manufacturing in all ASEAN countries with the primary goal to increase ASEAN's competitive edge as a production base in the world market and to attract more foreign direct investment to ASEAN. The Common Effective Preferential Tariff and elimination of tariffs and non-tariff barriers among ASEAN members are the main instruments in achieving its goals.

Through ASEAN, Malaysia has regional FTAs with: China, Japan, Korea, India, Australia and New Zealand, and also participates in the ASEAN Trade in Goods Agreement (ATIGA).

Besides, currently Malaysia has also entered bilateral Free Trade Agreements (FTAs) with the following countries including Australia, Chile, India, Japan, New Zealand, Pakistan and Turkey.

To date, there are altogether 7 multilateral and 7 bilateral FTAs in total enforced in Malaysia, which are listed as below:

*Table 11 FTAs by Malaysia*

No.	Free Trade Agreements	M/B
1	ASEAN Trade In Goods Agreement (ATIGA)	Multilateral Agreements
2	ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA)	
3	ASEAN-China Free Trade Agreement (ACFTA)	
4	ASEAN-India Free Trade Agreement (AIFTA)	
5	ASEAN-Korea Free Trade Agreement (AKFTA)	
6	ASEAN-Japan Comprehensive Economic Partnership (AJCEP)	
7	Developing Eight Preferential Tariff Agreement (D8 PTA)	
8	Malaysia-Australia Free Trade Agreement (MAFTA)	Bilateral Agreements
9	Malaysia-Chile Free Trade Agreement (MCFTA)	
10	Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA)	
11	Malaysia-Japan Economic Partnership Agreement (MJEPA)	
12	Malaysia-New Zealand Free Trade Agreement (MNZFTA)	
13	Malaysia-Pakistan Closer Economic Partnership Agreement (MPCEPA)	
14	Malaysia-Turkey Free Trade Agreement (MTFTA)	

Guided by the above-listed FTAs, Malaysia has put internal regulations in place to apply preferential treatment on duties and taxes.

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## 16. BONDED SYSTEM

### 16.1 Licensed Manufacturing Warehouses (LMW)

According to Part VIII of Customs Act 1967, a Customs warehouse is a building, place or an area that is authorized to keep goods for a specified period under Customs control. When the imported or exported goods are stored in a Customs warehouse, duties and taxes are suspended.

Under some special circumstances, RMCD may issue licenses for the operation of Customs manufacturing warehouses, which is subject to minimal Customs procedures to attract export oriented industries

Regarding the period of license, it is valid for 2 years and subject for renewal. The renewal application must be made at least 2 months prior to expiry date of the existing license. To date, the payment of license fees is RM 2,402.

In terms of exemption of Customs duty in LMW, there are two major categories. On the one hand, it refers to raw materials/components directly used in the manufacturing or processing of goods. On the other hand, the second category is machinery equipment it is required for direct producing of approved final products under Item 88 Customs Duties (Exemption) Order 1988.

Besides, subcontract work/farming out are allowed and subject to approval from the state Customs. The movement scope of subcontract covers from one LMW to another LMW, from LMW to a company in a Free Industrial Zone, or from a LMW to a factory in the principal Customs area.

Last but not the least, the finished subcontracted products can be directly exported on behalf of their principals with the approval of state Customs. Meanwhile, less than 50% of raw materials and components can also be directly sent to subcontractor from the entry point of import.

### 16.2 Free Zones

In Malaysia, in order to facilitate trade and manufacturing industries, the Free Zones Act 1990 and Free Zone Regulations 1991 were enacted as the legal basis for free zones, which is essential to promote operations of export-oriented companies.

### 16.2.1 Types of Free Zones

There are 2 types of free zones in Malaysia: Free Industrial Zone (FIZ) and Free Commercial Zone (FCZ). Briefly, FIZ focus on manufacturing while FCZ is for commercial activities, such as trading, breaking bulk, grading, repacking, relabeling and transit. As of 2017, there were 21 FIZs and 18 FCZs in Malaysia.

### 16.2.2 Application for Approval to Operate within Free Zones

First, in terms of eligibility, only when manufacturers produce for export can they be located in the FIZ. In some cases, manufacturers with 80% export may be allowed for location in the FIZ by MITI.

Second, the candidate shall fill in Form FZ No.4 and submit to the authority. The approval will be in Form FZ No.6 and subject to the relating terms and conditions imposed by the Zone Authority. Besides, a copy of the authority is required to send to the Director General of Customs.

### 16.2.3 Responsibility of Operator in the Free Zones

For the operators in the Free Zones, full and proper records of all activities are required to be maintained in accordance with the requirement of Zone Authority. It cover:

- All goods received at the place or premises where the activities are carried out;
- All goods taken into any part of a Principal Customs Area from a Free Zone;
- All goods released for consumption, sale or manufacture within the Free Zone, or for export;
- Waste stocks and its manner or disposal;
- Losses through spillage, evaporation and other causes;
- The balance of all goods stocked at the place or premises where the activities are carried out.

For these records, they can only be destroyed with the approval of the Zone Authority after consulting the Customs.

Furthermore, a monthly return is required to submit to the Zone Authority prior to the 10th of each month. Any goods shall not be destroyed without the approval of the Authority.

#### 16.2.4 Exemption of Customs Duty, Excise Duty or Sales Tax in Free Zones

In FIZs, Customs duty, excise duty or sales tax could be exempted unless the following conditions are met,

- Goods must be used directly for the production of other goods and approved by the Minister; or
- A company is located in a FIZ and must export at least 80% of its output; a company may obtain approval from Customs and the National Investment Committee within MITI to reduced its export performance requirement to 60%; or
- FIZ companies reach 40% of local content value, or they can prove that the non-originating raw materials have been substantively transformed for end products.

In FCZs, the exemption of payment of Customs duty, excise duty or sales is applied to goods of any description for retail trade, breaking bulk, grading, repacking, relabeling and transit.

However, in free zones, the following goods are not eligible for duty or tax exemption,

- Fuel oil;
- Materials for machinery and factory cleaning purposes;
- Wearing apparel for factory workers;
- Forklifts;
- Construction/building equipment;
- Office equipment;
- Furniture;
- Firefighting and pollution control equipment;
- Foodstuff and drinks
- Building materials.

#### 16.2.5 Farming out/Subcontract Work

In free zones, farming out or subcontract is allowed. The semi-finished goods and raw materials can be moved from one factory to another one for further processing within approved duration at the approval of

Sate Director of Customs. The condition is the submission of bankers guarantee and monthly return.

Besides, when the period is due, the manufactured goods and the waste must be returned to the originate factory.

### 16.2.6 Movements of Goods to/from Free Zones

In terms of movement of goods from and to free zones, the corresponding application form and supporting documents are required as follow,

*Table 12 Documents for Movement of Goods from/to Free Zones*

No.	Types of Movement	Forms	Supporting Documents
1	Goods entering free zone from outside Malaysia	FZ.1	Import manifest / License
2	Goods leaving free zone	FZ.2	Outward manifest; KPWX; Export license
3	Goods on transshipment at free zone	FZ.3	
4	Goods entering Principal Customs Area from free zone	Customs No.1	Export related documents
5	Goods entering free zone from Principal Customs Area	Customs No.2	Import related documents
6	Import of goods into Principal Customs Area through free zone without intending to deposit such goods in the free zone	Customs No.1	Export related documents
7	Export of goods from Principal Customs Area through a free zone without intending to deposit such goods in the free zone	Customs No.2	Export related documents

No.	Types of Movement	Forms	Supporting Documents
8	Goods exported from free zone through Principal Customs Area	Customs No.8	Movement in approved vehicles; Bank guarantee; Export License; KPWX
9	Removal of goods from licensed warehouse, license manufacturing warehouse or licensed inland clearance depot to a free zone through Principal Customs Area and vice versa	Customs No.8	Movement in transit; Transported in approved vehicles; Bank guarantee
10	Movement of goods from a free zone to another free zone through the Principal Customs Area	Customs No.8	Movement in transit; Transported in approved vehicles; Bank guarantee
11	Goods originating from abroad taken to the free zone through Principal Customs Area	Customs No.8	Movement in transit; Transported in approved vehicles; Bank guarantee

## 17. CUSTOMS SUPERVISION AND CONTROL ON TRADE IN SERVICE

Besides, regionally speaking, ASEAN leaders have committed to achieving free and open trade, including trade in services by 2015. The ASEAN Framework Agreement in Trade in Services (AFAS) was launched in 1995. As a member of ASEAN, Malaysia is a signatory to free trade agreements with services commitments including Australia, New Zealand, China, India, Korea, Japan, and Pakistan. Malaysia Customs is making utmost efforts to facilitate service trade.

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## 18. POST-CLEARANCE AUDIT (PCA)

Traditionally, Customs audit documents and goods submitted for import clearance before the release of goods.

Post-clearance audit (PCA) is an audit, investigation, inspection or control in a systematic manner by competent Customs officers to verify the accuracy and authenticity of Customs declarations through the examination of the relevant documents, books, records and other business information systems about imports and exports after release of goods. In this way, faster clearance is provided by PCA to facilitate trade.

In Malaysia, the PCA branch is under the Compliance Management Division since August 16, 2008. The function is to plan and conduct a systematic audit of licensees and importers to ensure tax and duty collection and enable them in line with laws and regulations.

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## 19. ENFORCEMENT AND APPEALS

### 19.1 Offences and Penalties

Part XIV of [Customs Act 1967](#) has clearly stated offences and penalties. Anyone who is involved with goods import and export, in contravention of the law or regulations, shall be deemed as Customs offences. The penalties could be administrative fines imposed by Customs, and by judicial penalties imposed by the competent Court, or both.

For example, Section 135 (1) a states that: whoever is concerned in importing or exporting any uncustomed goods or any prohibited goods contrary to such prohibition whether such uncustomed or prohibited goods be shipped, unshipped, delivered or not; shall be guilty of an offence and shall, on conviction - (i) in the case of goods included in a class of goods appearing in an order made under

subsection 11 (1) - (aa) be liable for the first offence to a fine of not less than ten times the amount of the Customs duty or fifty thousand ringgit, whichever is the lesser amount, and of not more than twenty times the amount of the Customs duty or one hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding three years or to both.

In 2018, Customs Act 1967 has been amended twice and brought about changes to various aspects of the Act, including enhanced powers of enforcement, increased penalties for offences under the Act, heftier penalties for smuggling offences relating to cigarettes containing tobacco and intoxicating liquor, and revamp to the review and appeal process.

## 19.2 Appeals

Stipulated in Section 124 of Part XIII, and Part XVI of Customs Act 1976, appeal is entitled to stakeholders. The scope of appeal covers but is not limited to:

- tariff code/classification of goods;
- valuation of goods;
- drawback/refund/exemptions;
- Bill of Demand;
- Customs license;
- Conditions of licenses;
- refusal to grant permission, suspension or cancellation of the permission;
- the nature or the amount of security required from the agent, seizure of goods;
- Disputed decision of the Director General of Customs on or after June 1, 2007.

In terms of appeal to the Customs Appeal Tribunal, Form A is required to submit at the Tribunal's office with the following documents,

- 4 copies of Form A;
- A copy of Appellant's identity card/passport;
- A copy of Certificate of Registration of Company/Business/Association/Society;
- Letter of authorization from Company/Business/Association/Society;

- Document containing the disputed decision of the Director General of Customs.

Besides, appeal can also be filed online. As stated in section 143 of Customs Act 1967, be it offline or online, appeal must be submitted within 30 days from the date of notification in writing of the decision of the Director General of Customs. In accordance with Regulation 2(2) Customs (Appeal Tribunal) Regulations 2007, each appeal must charge filing fee of RM100.00.

### **Customs Appeal Tribunal (CAT)**

The Customs Appeal Tribunal (CAT) is an independent judicial body to hear and decide appeals filed against the decision of the Director General of Customs under the Customs Act 1967, the Excise Act 1976, Sales Tax Act 1972 and the Service Tax Act 1975. All decisions of the Director General of Customs except in any matter relating to compound and seizure of goods can be appealed to the CAT.

The hearing of an appeal may be held in any place other than the CAT's office in Putrajaya based on a formal application by the appellant. In exercising its jurisdiction, CAT can assist the parties to negotiate an agreed settlement before the hearing of an appeal.

The hearing of every appeal will be completed within 60 days from the first day of the hearing before the Tribunal commences as provided under section 141T(1) of the Customs Act 1967. The appeal proceeding before the Tribunal shall be closed from the public unless agreed otherwise by the parties to the appeal.

### **New Changes in 2018 and 2019**

With the two new amendments made in 2018 to Customs Code 1967, key changes to the review and appeal process under the Act are summarized as follows:

- Review of decision of the Director General of Customs - under the old Act, any person aggrieved by the decision of the DG may appeal to the Customs Appeal Tribunal (CAT) within 30 days from the date of notification of decision in writing and the Amending Acts introduce an additional layer of recourse by allowing an aggrieved person to apply to the DG to review any of his decision within the similar 30-day timeline;
- Representation at appeal hearing - under the old Act, advocates and solicitors are not allowed to represent an appellant at the hearing of an appeal before the CAT. Following the entry into force of the Amending Acts, the above restriction against legal representation has been removed and

appellants can now appoint legal counsel to represent them before the CAT.

## 20. CUSTOMS IPR BORDER PROTECTION

### 20.1 Background in Malaysia

Malaysia is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention, Berne Convention, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) under WTO, and the ASEAN Framework Agreement on Intellectual Property Cooperation. Furthermore, Malaysia has signed a number of IPR treaties as listed below:

*Table 13 IPR related Treaties Signed by Malaysia*

No.	IPR-related Treaties	Effective Date for Malaysia
1	WIPO Copyright Treaty	December 2012
2	WIPO Performance and Phonograms Treaty	December 2012
3	Nice Agreement Concerning the Intellectual Classification of Goods and Services for the Purposes of the Registration of Marks	September 2007
4	Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	September 2007
5	Patent Cooperation Treaty	August 2006
6	Berne Convention for the Protection of Literary and Artistic Works	October 1990
7	Convention Establishing the World Intellectual Property Organization	January 1989

No.	IPR-related Treaties	Effective Date for Malaysia
8	Paris Convention for the Protection of Industrial Property	January 1989
9	Comprehensive Economic Cooperation Agreement between India and Malaysia	2011
10	Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations	2009
11	Agreement between Malaysia and Chile on the Promotion and Protection of Investment	1995

Intellectual Property Corporation of Malaysia (MyIPO) is responsible for IPR policy development and administration, with functions covering industrial property examination (patents, trademarks, industrial designs and geographical indications), and copyright protection. The laws and regulations pertaining to IPR are:

- Copyright Act 1987 (amended in 2012);
- Patents Act 1983 (amended in 2006);
- Patents Regulations (amended in 2011);
- Trade Marks Act 1976 (amended in 2002);
- Trade Marks Regulations (amended in 2011);
- Geographical Indications Act 2000 (amended in 2002);
- Geographical Indications Regulations (amended in 2013);
- Industrial Designs Act 1996 (amended in 2013);
- Trade Description Act 2011;
- Protection of New Plant Varieties Act 2004;
- Layout-Designs of Integrated Circuits Act 2000.

## 20.2 IPR Border Enforcement in Malaysia

In Malaysia, Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) is in charge of IPR

enforcement. If goods are detained at borders by Customs, they will be handed over to MDTCC. In order to combat and curb IPR infringement, MDTCC has made utmost efforts in enhancing cooperation with RMCD for an improved enforcement at the border.

There is no system available for registering IP with Malaysia Customs for detaining counterfeit products. Instead, a complaint must be lodged to MyIPO, an agency under the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) oversees the IP framework in the country, to invoke a seizure.

Specifically speaking, Customs officers have an ex officio duty to detain or suspend the release of the importation or exportation of infringing goods. The Customs Intelligence Center collects data on seizures by the Enforcement Division of Customs. In recent years, the main confiscated goods at the border cover clothes, leather goods, liquor and beer, and mobile phones and accessories.

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## 21. AUTHORIZED ECONOMIC OPERATOR (AEO)

The Authorized Economic Operator (AEO) is introduced by the WCO SAFE referring to operators involved in the movement of goods along the international trade supply chain who have achieved the required security standards and are accredited by the member country.

### 21.1 Benefits of AEO

Economic operators with high compliance level and high security management are encouraged to apply for the AEO scheme from RMCD. An AEO company is entitled with the following benefits,

- Lodgment of declaration with minimum data;
- Not subject to physical inspection on the cargo;
- Automated and fast approval of declaration;
- Self-accounting for movements between bonded premises;

- Simplified drawback claims based on self-accounting principles;
- Control by post clearance auditing;
- Deferred payment of duty;
- Other benefits.

## 21.2 Application for AEO

In order to become an AEO, a company must be eligible for the following requirements,

- In operation for the last 3 years;
- High level of compliance to law and regulations of Customs;
- No tax arrears;
- Company and directors have security clearance from the relevant government bodies (e.g. enforcement division of RMCD);
- Proper internal control of all imports, exports and movement of goods;
- Be in line with the requirements under AEO guidelines and with an internal security compliance program;
- Have facilities to pay duties via Electronic Funds Transfer;
- Must engage forwarding agents/brokers who have finished Customs procedures training and have been approved by the authorities.

Regarding AEO application, following supporting documents are required,

- Company profile;
- Copy of company registration certificate;
- Copy of Form 24 and Form 49;
- Audited annual report;
- Relevant security/standards certificates;
- Self-assessed compliance checklist

Besides, RCMD has compiled information Guideline on AEO Program which is accessible on the website

([http://customsgc.gov.my/index\\_aeo.html](http://customsgc.gov.my/index_aeo.html)) to guide application as well as other AEO business. For more information, please also refer to AEO Secretariat under RMCD.

### 21.3 List of AEOs in Malaysia

Since 2004, Malaysia has approved 57 AEOs and details are available at the official website of RMCD: [http://customsgc.gov.my/index\\_aeo.html](http://customsgc.gov.my/index_aeo.html).

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## 22. TRADE STATISTICS

In Malaysia, trade statistics is compiled and released by the Department of Statistics (DOSM). It consists of trade statistics in goods and service. The interactive statistics includes imports and exports by sectors and country of origin and destination. For more details of the publications of trade statistics, it can be accessed through the free download of publications at the official website of DOSM: <https://www.dosm.gov.my>.

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## 23. CONTACT INFORMATION

For further and detailed information relating to Customs affairs, enquiries should be addressed to the following contact:

Royal Malaysia Customs Department

Tel: +60 03 8882 2100/2300

E-mail: [ccc@customs.gov.my](mailto:ccc@customs.gov.my)

Address: Jabatan Kastam Diraja Malaysia, Kompleks Kementerian Kewangan No 3 Persiaran Perdana, Presint 2, 62596, Putrajaya

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## 24. OFFICIAL WEBSITES

- Malaysia Customs: <http://www.customs.gov.my>
- Malaysia's Ministry of International Trade and Industry: <https://www.miti.gov.my>
- National Trade Promotion Agency of Malaysia: <http://www.matrade.gov.my/en>
- Malaysia's National Single Window: <http://www.mytradelink.gov.my>
- Malaysia's Department of Statistics: <https://www.dosm.gov.my>
- Ministry of Agriculture and Agro-based Industry: <http://www.moa.gov.my>
- Ministry of Health: <http://www.moh.gov.my>
- Enquiry point for TBT: <http://www.sirim.my>
- Enquiry point for SPS: <http://www.moa.gov.my>; <http://www.moh.gov.my>

## REFERENCE

1. Malaysia Customs: <http://www.customs.gov.my>.
2. Malaysia's Ministry of International Trade and Industry: <https://www.miti.gov.my>.
3. Trade Policy Review Report (Malaysia) (2017).
4. ASEAN Single Window: <http://asw.asean.org>.
5. World Customs Organization: <http://www.wcoomd.org>.
6. World Trade Organization: <https://www.wto.org>.

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The Republic of the Union of Myanmar





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## ACKNOWLEDGEMENTS

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AEO	Authorized Economic Operator
APEC	Asia and Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ATIGA	ASEAN Trade in Goods Agreement
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
HS	Harmonized Commodity Description and Coding System
MACCS	Myanmar Automated Cargo Clearance System
MFN	Most Favored Nation
NSW	National Single Window
PSI	Post-clearance Audit
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Republic of the Union of Myanmar

### 1. INTRODUCTION OF MYANMAR CUSTOMS

After Myanmar's independence on January 4, 1948, the Imperial Customs was placed under the control of Ministry of Finance and Revenue. And now it has become one of the responsible bodies for revenue collection and law enforcement under the Ministry of Planning and Finance.

Led by Director General and headquartered in Yangon, the economic center and former capital city of the Union of Myanmar, Myanmar Customs Department has the vision to create a Customs Service which generates the security and facilitation of international trade, production of social well-being and trade partnership with stakeholders.

#### 1.1 Mission

The mission of Myanmar Customs Department is to achieve trade facilitation through simplification of Customs procedures, while ensuring Customs control objectives to maintain proper collection of revenue.

#### 1.2 Objectives

The objectives of Myanmar Customs Department mainly include:

- to enhance revenue through trade promotion,
- to prevent evasion and loss of revenue by implementing effective control measures,
- to collect data for compilation of statistics on foreign trade,

- to modernize and standardize Customs procedures to be in line with international standards and practices,
- to cooperate and coordinate with other allied law enforcement agencies,
- to promote public image by enhancing integrity of Customs personnel.

### 1.3 Functions

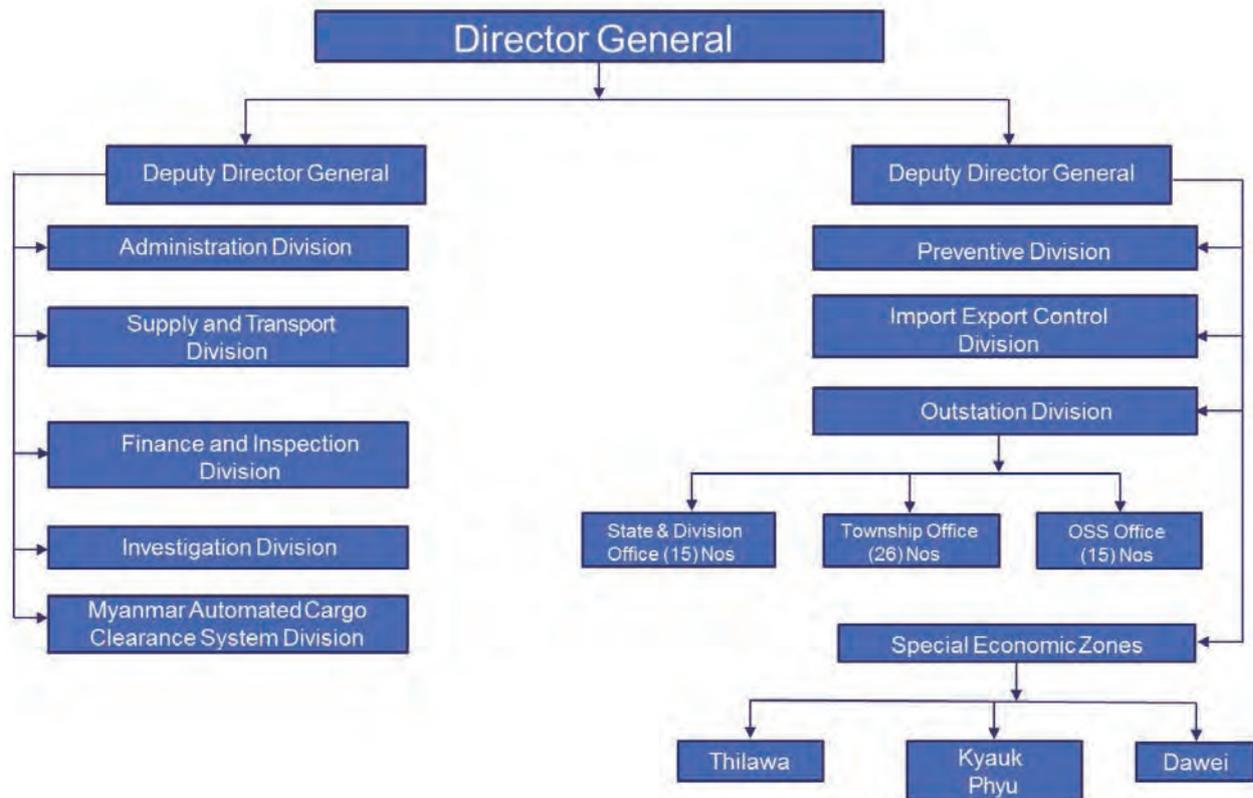
Major functions of Myanmar Customs Department include:

- to examine and monitor importation and exportation of goods,
- to control passengers entering or leaving Myanmar,
- to assess and levy duties and taxes,
- to enforce the provisions of the Sea Customs Act, Land Customs Act, Tariff Act and other relating laws,
- to combat commercial fraud,
- to ensure that the goods entering or leaving the territory of Myanmar are correctly abided by the existing laws.

### 1.4 Organizations

After significant extensions in new organization structure in recent years including the establishment of new Division for MACCS, new Customs offices for 3 Special Economic Zones, new regional offices for 14 regional states and Naypyitaw Council, Now nation-widely Myanmar Customs Department, with a staff force of more than 3200, has 8 internal divisions, 59 offices shown in the following Figure 1.

Figure 1 Organizational Chart of Myanmar Customs Department



Source: [www.customs.gov.mm](http://www.customs.gov.mm)

## 1.5 International Memberships

After joining the General Agreement on Tariff and Trade (GATT) on January 1, 1948, the Republic of the Union of Myanmar has become a founding member of World Trade Organization (WTO) on January 1, 1995 and has been formally admitted to the ASEAN as the 9th country on the July 23, 1997. Myanmar Customs Department becomes 109th member administration of the World Customs Organization on March 25, 1991.

## 1.6 Sources for Importers and Exporters

The official website of Myanmar Trade Portal ([www.myanmartradeportal.gov.mm](http://www.myanmartradeportal.gov.mm)) hosted by the Ministry of Commerce has been discovered to be the most comprehensive and informative source for

clearance procedures in English while the official websites of Myanmar Customs Department ([www.myanmarcustoms.gov.mm](http://www.myanmarcustoms.gov.mm)), and Myanmar Automated Customs Clearance System ([www.maccs.gov.mm](http://www.maccs.gov.mm)) can only provide limited information in English instead of Burmese language.

## 2. CUSTOMS LEGAL SYSTEM

### 2.1 Customs Laws

In Myanmar, Customs Laws mainly include Sea Customs Act (1878) amended by the Pyidaungsu Hluttaw Law No.13/2015, Land Customs Act (1924) amended by the Pyidaungsu Hluttaw Law No.14/2015 and Tariffs Law (1992) updated in 2017. The above-mentioned Sea Customs Act (2015), Land Customs Act (2015) and Tariffs Law (1992) have established the most important and most fundamental legal foundation for Myanmar Customs with a view to assisting the development of market economic system through facilitation of international trade.

### 2.2 Other Related Laws Enforced by Myanmar Customs

Myanmar Customs Department also enforces other related laws administered by other government departments and agencies including:

- Arms Act, 1878,
- Explosives Act, 1884,
- Myanmar Merchandise Marks Act 1889,
- Myanmar Post Office Act, 1898,
- Yangon Port Act, 1905,
- Myanmar Excise Act, 1917,
- Poisons Act, 1919,
- Myanmar Merchant Shipping Act, 1923,

- Myanmar Aircraft Act, 1934,
- Petroleum Act, 1934,
- Myanmar Lighthouse Act, 1937,
- Imports and Exports Act, 2012,
- Foreign Exchange Management Act, 1947,
- Antique Object Act, 1957,
- Foreign Investment Law, 1988,
- Fishing Right of Foreign Fishing Vessels Law, 1989,
- Aquaculture Law, 1989,
- Commercial Tax Law, 1990,
- Pesticide Law, 1990,
- Forest Law, 1992,
- National Drugs Law, 1992,
- Salt Enterprise Law, 1992,
- Narcotic Drugs and Psychotropic Substances Law, 1993,
- Plant Pests Quarantine Law, 1993,
- Animal Health and Development Law, 1993,
- Citizens Investment Law, 1994,
- Protection of Wild Life, Wild Plants and Conservation of Natural Areas Law, 1994,
- Myanmar Gemstones Law, 1995,
- Myanmar Television and Video Law, 1996,
- Motion Picture Law, 1996,
- Computer Science Development Law, 1996,
- National Food Law, 1997,
- Atomic Energy Law, 1998,
- Fertilizer Law, 2002,
- Control of Money Laundering Law, 2002,

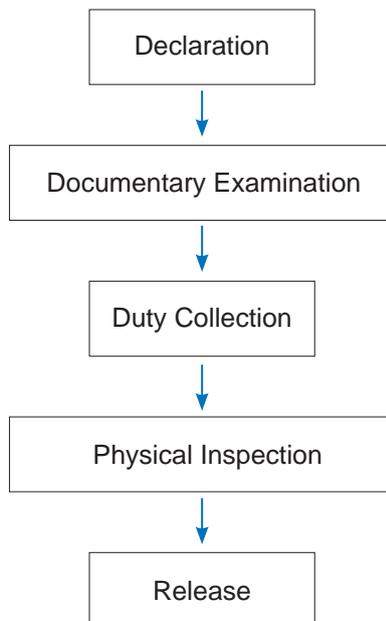
- Control of Money Laundering Rules, 2003,
- Rules Relating to the Supervision of Controlled Precursor Chemicals, 2004,
- .....

### 3. ROUTINE CUSTOMS CLEARANCE PROCEDURES

Routine Customs clearance procedures for imports and exports usually include the following five steps:

- Declaration,
- Documentary Examination,
- Duty Collection,
- Physical Inspection,
- Release.

Figure 2 Customs Clearance Procedures by Myanmar Customs



## 3.1 Declaration

Importers, exporters or their Customs Clearance Agents are required to file declaration to Customs upon arrival or departure of consignments. Besides Declaration Form, other supporting documents are also required to be submitted.

### 3.1.1 Declaration for Import

Under the existing rules and regulations all incoming consignments must be cleared through the Customs Department under an Import Declaration Form (CUSDEC-1) accompanied by the following documents:

- Import License / Import Permit / Non License, Form VI, XXVI,
- Invoice,
- Bill of Lading or Air Consignment Note,
- Packing List,
- Sale Contract,
- Import Company Registration Certificate,
- Other certificates and permits issued by the relevant Government Departments as a condition for import include:
  - Food: Food and Drug Admission
  - Drugs and Medicines: Drug Registration Certificate
  - Pesticides: Pesticide Registration Department`s Recommendation
  - Agricultural Equipment: Minister of Department of Agriculture and Irrigation`s Recommendation
  - Animals & Products (meat, eggs, etc.): Health Certificate
  - Plants: Phytosanitary Certificate
  - Essential Oil: Chemical & Beer Industry`s Recommendation
  - Dangerous Cargo: Storage Control Department`s Recommendation

### 3.1.2 Declaration for Export

On the shipment of export commodities an Export Declaration Form (CUSDEC-2) must be submitted to

the Customs Department together with the following supporting documents if needed:

- Export license / Export Permit / Non License, Form VI, XXVI,
- Invoice,
- Packing List,
- Sales Contract,
- Shipping Instruction / Booking Note,
- Letter of Credit or General Remittance Exemption Certificate,
- Payment Advice referring Inward Telegraphic Transfer Private No. / Inward Telegraphic Transfer Government No.,
- Sample of goods,
- Forest Pass for the shipment of forestry produce,
- Health Certificate for the export of live animals,
- Forest Permit for the export of wild live animals,
- Other certificates and permits as required by the government agencies concerned.

### 3.1.3 Declaration for Transit Trade

All commodities, not for domestic consumption and imported for transit trade, are required to produce the Customs Declaration Form for Transit Trade (CUSDEC-3), attached with the following documents:

- Bill of Lading or Air Consignment Note or Truck Note,
- Transit Trade License or Permit issued by the Ministry of Trade,
- Commercial Invoice,
- Sales Contract between seller and buyer or contract between seller and authorized agent,
- Guarantee Bond, undertaken in strict compliance with regulations: failure to export will be dealt with according to the existing law.

## 3.2 Documentary Examination

After accepting declarations, Customs officials conduct documentary examination to check the accuracy, authenticity and completeness of both Declaration Forms and attached supporting documents, by both

manual and more importantly by advanced automated clearance system.

### 3.3 Physical Inspection

Myanmar Customs examines goods imported or exported physically to assure that they have been properly declared. After examining all declaration documents, physical inspections can be conducted by Customs competent officers based on assessment of risk. Imported goods are divided into three categories: green, yellow and red. Green denotes the least risk, yellow denotes intermediate risk, and red denotes high risk.

In Myanmar, private inspection companies may also conduct pre-shipment inspections (PSIs) of certain commodities, such as rice, fishery products, plant and plant products.

At present, joint inspections are also carried out by Myanmar Customs and other competent authorities at border check points like Mayanchaung checkpoint and Yay Pu checkpoint.

### 3.4 Duty Collection

Once a declaration has been submitted and accepted by the Customs, the importers will be required to pay the duties.

**A.** Customs duties assessed on imports are usually determined based upon three main factors:

- The origin of goods. Country of origin is determined mainly for the application preferential duty rates, such as rates established by the ASEAN Trade in Goods Agreement (ATIGA). Under ATIGA, over 8800 tariff lines are duty free. ASEAN has specific rules for determining ASEAN origin. Myanmar, through ASEAN, also has preferential tariff agreements with China, Korea, India, Japan, Australia and New Zealand and etc.
- The Customs valuation of goods. Myanmar Customs has implemented the WTO Agreement on Customs Valuation in 2016. The WTO Agreement requires the use of the “price paid or payable” (contract price) as the primary valuation methodology. Myanmar’s current and main valuation approach is to use 5 methods: the CIF invoice price of the goods, sales contracts, insurance information, internet prices and other recorded prices.
- The Customs classification of the imported goods.
- The classification, or legal description, is based upon the goods classification under an international

tariff nomenclature, the Harmonized Commodity Description and Coding System (2017), or “HS”, an international agreement administered by the World Customs Organization (WCO) that categorizes all goods into about 5000 commodity groups, each identified by a six-digit code.

- Myanmar applies the ASEAN 8 Customs code, which is based on the HS (2017), which is comprised of 10816 tariff items at the 8-digit level and an additional 351 items at the 10-digit level.
- Based upon tariff classification and country of origin, either a Most Favored Nation (MFN) tariff rate or preferential tariff rate is applied.
- MFN tariff rates in Myanmar are arranged in 15 tariff bands ranging from zero to 40%. Most ASEAN FTA rates (93% or about 8800 lines) are duty free.

**B.** After Customs has assessed the duty payable, the importer may pay the duty either in cash, or by a payment order (a bank money order) or online payment. Cash payments are only permitted for payments less than K5000. The weekly exchange rate as determined by the Central Bank of Myanmar is used for duty assessment.

**C.** A commercial tax and/or an excise tax may be applied to imports, depending on the import’s “classification”. Importers may check applicable commercial and excise tax schedule and in Myanmar the Union Tax Law is revised on an annual basis with new provisions taking effect on October 1.

**D.** Special Goods Tax law was enacted on July 26, 2017.

**E.** Customs also collects a 2% advance income tax on imports for the Internal Revenue Department. The importation of garment raw materials (CMP), by government agencies, re-export products are exempted from advance income tax.

### 3.5 Release

After declaration, documentary examination, physical inspection and duty collection, release usually is the final step for Customs field operations allowing the consignments to be used for domestic consumption, or to be transported for exportation, or for other allowed purposes.

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## 4. SPECIAL CUSTOMS CLEARANCE PROCEDURES

### 4.1 Transit and Transshipment

Customs transit is the procedure where goods are transported under Customs control from one Customs office to another without the payment of duties and taxes.

In Myanmar, the ASEAN Transit Agreement has not yet been implemented and Customs applies limited trade transit procedures, permitting the movement of cargo from one vessel to another in port or the movement of goods to the port and then to another vessel (also known as “retention procedures”). In addition, transit is permitted between Customs offices and through Myanmar to another country. For all transit procedures Customs assesses a fee of 2.5% of the value of the cargo.

Traders that wish to transship should submit a transshipment declaration to Customs by using Customs Transshipment Form (CUSDEC-3).

### 4.2 Temporary Admission

Temporary Admission is the procedure where goods are brought into the Customs territory conditionally relieved from the payment of duties and taxes if they are intended for a specific purpose and are re-exported within a specified time frame without change in condition. Temporary Admission is useful for trade shows, visiting musicians traveling with their instruments, etc.

Internationally, ATA carnets, serving as both a Customs declaration and financial guarantee, are used to effect temporary admission in most countries. Myanmar has not adopted ATA carnets but does have a temporary admission procedure.

In Myanmar, commodities, imported temporarily for inward processing, such as industrial raw materials and packing materials are exempted from Customs duty for a period of two years under bond to re-export within a time limit.

### 4.3 Special Order Procedure for Duty Free Imports

A Special Order is the power of the Director General, Customs and the Minister of Planning and Finance

to permit imports including highly perishable goods, the goods of diplomats, dangerous cargo, and certain other products to enter without the payment of duties and taxes at the time of entry. Importers must post a financial guarantee (deposit) to be permitted to use this procedure.

#### 4.4 Customs Bonded Warehouses (Duty Free Store)

Please see 16.1 of this report for detailed information.

#### 4.5 Inward Processing & Outward Processing

Please see 16.2 and 16.3 of this report for detailed information.

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## 5. MACCS - MYANMAR AUTOMATED CARGO CLEARANCE SYSTEM

### 5.1 Introduction of MACCS

On November 12, 2016, Myanmar Customs Department introduced and launched the automated cargo clearance system known as MACCS - Myanmar Automated Cargo Clearance System (MACCS) which have been designed to automate a number of areas of Customs operations including user registration, clearance of goods, cargo management, payment, information technology and a helpdesk.

MACCS system was firstly launched on November 12, 2016 in Yangon Area (including Thilawa SEZ). Since MACCS system has been successfully operated in Yangon Area, it was extended to Myawaddy Border Trade Zone and materialized on June 5, 2018. Myanmar Customs is considering extending widely the outreach of MACCS System to other border areas to make MACCS a nationwide system.

MACCS has replaced a host of headache-inducing manual processes and time and costs for Customs clearance procedure has been reduced and thus trade efficiency and competitiveness are enhanced significantly. Since exporters, importers and Customs and other government agency representatives all can be able to access MACCS online, this means the system can run 24 hours a day – rather than

leaving traders at the mercy of the Customs department's opening hours.

Generally speaking, the core benefits by the introduction and development of MACCS include:

- Reduced transaction time during declaration process,
- Increased clarity about duties, taxes and requirements of clearance procedures,
- Increased reliability of trade data.

MACCS is connected with the Ministry of Commerce's licensing system (TradeNet) and the Myanmar Port Authority's system. To provide a recommendation or an endorsement as part of the import declaration process, the MACCS has access: a) to the Food and Drug Administration under the Ministry of Health and Sports; b) to the Department of Agriculture, the Livestock Breeding and Veterinary Department, and the Fishery Department under the Ministry of Agriculture, Livestock and Irrigation; and c) Myanmar Economic Bank under the Ministry of Planning and Finance. In the future, MACCS will connect with shipping, airlines, warehouse operators, brokers and importer/exporters and also with other government agencies.

## 5.2 Development of MACCS

Myanmar is now reforming and modernizing Customs administration by introducing e-Customs and National Single Window and establishing new Automated Cargo Clearance System (MACCS/MCIS) which are based on the technology of Japan's Nippon Automated Cargo and Port Consolidated System (NACCS) and Customs Intelligence Database System (CIS).

As a result of the introduction of MACCS/MCIS, it is expected that time and costs for Customs clearance procedure will be further reduced and thus trade efficiency and competitiveness will be continuously enhanced. Especially, National Single Window will be designed to contribute to ASEAN Single Window implementation.

## 5.3 Import Procedures by using MACCS

The importer submits electronically an Import Declaration (IDC) along with supporting documents via the MACCS. For the complete and correct application, the Customs inspector will examine the cargo as categorized by the authorized officer (CKO). Once done, the next authorized officer (CEA) will register the completion of examination. Myanmar Customs has created three channels to inspect the clearance of the imported cargos or consignments. Some cargo going through the green channel will not require

an inspection. If the tax amount is “0”, Myanmar Customs will release the consignment. If a tax is applied to the imported consignment, the importer will be required to proceed for the registration of tax payment and wait for the registration of tax payment receipt confirmation (RCC). Once the RCC is submitted, the authorized officer will release the consignment. Imported consignments, involving banned, high-risk, sensitive items along with those where valuation rulings are not applied would be processed through yellow and red channels. The Customs inspectors will conduct the physical examination of the imported consignments. Once done, the authorized officer (CEA) will register the completion of examination. If the tax is applied to an imported consignment, the importer will be required to proceed for the registration of tax payment and wait for the registration of tax payment receipt confirmation (RCC). Once the RCC is submitted, the authorized officer will release the consignment. If information must be corrected after the declaration, or if the consignment is cancelled, or if the manual application of the declaration process is changed, the Customs inspector (CKO) will modify the examination classification and specification of physical examination classification. The authorized officer (CEA) will record the physical examination. If the physical examination is incomplete, the authorized officer (CEA) will inform the Customs inspector (CKO) to conduct the physical examination again.

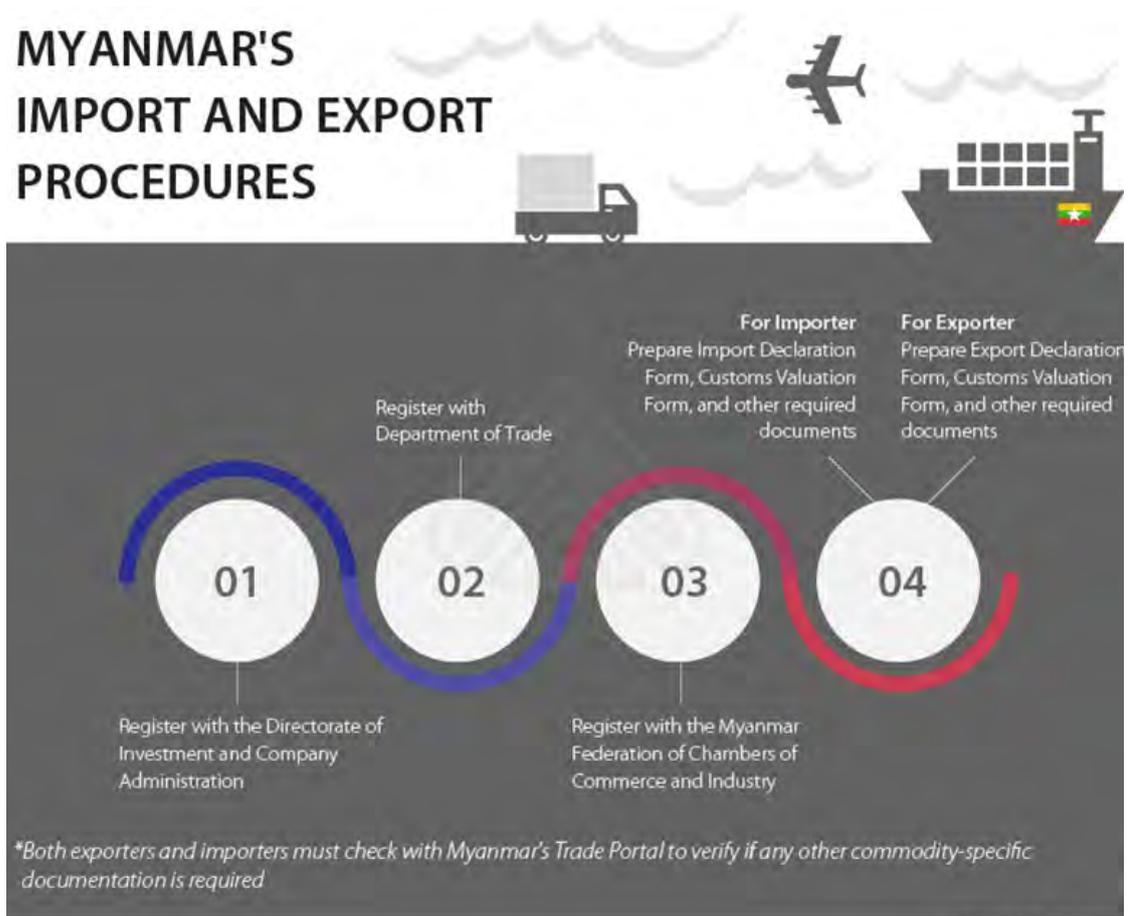
#### 5.4 Export Procedures by using MACCS

The user submits electronically the export declaration (EDC) along with supporting documents via the MACCS. For the complete and correct application, the authorized officer will examine the cargo as categorized by the Customs inspector (CKO). Once done, the Customs officer (CEE) will register the completion of examination. According to Customs’ procedures, Myanmar Customs has three channels to inspect the clearance of exported cargos or consignments. Some cargo that goes through the green channel will not require a physical inspection. If the tax amount is “0”, Myanmar Customs will allow the shipment. If a tax is applied to the exported consignment, the user will be required to proceed for the registration of tax payment and wait for the registration of tax payment receipt confirmation (RCC). Once the user submits the RCC, the authorized officer will allow the shipment.

For export consignments, banned, high-risk or otherwise sensitive items along with those where valuation rulings are not applied can be processed through yellow and red channels. The Customs Inspectors will conduct the physical examination to the export consignments. Once done, the authorized officer (CEE) will register the completion of examination. If a tax is applied to the exported consignment, the user will be required to proceed for the registration of tax payment and wait for the registration of tax payment receipt confirmation (RCC). Once the user submits the RCC, the authorized officer will allow the shipment.

In the case where information must be corrected after the declaration, or in the case of the cancellation of the consignment, or in the case of changing to the manual application of the declaration process, the Customs inspector (CKO) will modify the examination classification and specification of physical examination classification. The authorized officer (CEE) will record the physical examination. If the physical examination is incomplete, the authorized officer (CEE) will inform the Customs Inspectors (CKO) to conduct the physical examination again.

Figure 3 Myanmar's Import and Export Procedures for FDI



Source: [www.customs.gov.mm](http://www.customs.gov.mm)

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## 6. NATIONAL TRADE SINGLE WINDOW

International Trade Single Window is a one-stop automated IT facility to exchange information between traders and government agencies, thereby reducing the complexity, time and costs involved in international trade

Myanmar has introduced a National Single Window (NSW) since 2016 in line with the country's integration into the ASEAN Economic Community (AEC) to meet the requirements of the Association of Southeast Asian Nations (ASEAN) initiative – ASEAN Single Window (ASW).

The ASW aims to integrate the NSWs from member states throughout Southeast Asia to expedite cargo and foster economic integration in the region. By allowing Myanmar to join the regional network, the NSW will help local traders secure papers, permits and clearances required to ship cargo across national borders in one platform, while the current trade procedures require traders to deal with the different systems of Ministry of Commerce, Customs Department, banks and etc.

The National Single Window works in parallel with the country's newly proposed automated cargo clearance system – Myanmar Automatic Cargo Clearance System (MACCS).

As MACCS is supportive to the National Single Window implementation, it has been linked up with other governmental associations (OGAs) including the Ministry of Commerce, Myanmar Port Authority, Food and Drug Administration, Plant Quarantine, Livestock and Veterinary Department, Fisheries Department and the Myanmar Economic Bank and etc.

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## 7. CUSTOMS AGENTS

Section 4 of Sea Customs Act (2015) has laid down the legal representation status of Customs Broker as "When any person is expressly or impliedly authorized by the owner of any goods to be his agent in

respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Competent Customs Official, such person shall, for such purposes, be deemed to be the owner of such goods”.

In Myanmar, the Customs agent's aim is assisting importers and exporters in meeting several requirements governing imports and exports and their duty is to submit necessary information and appropriate payments to Government Offices on behalf of their clients and charge them a fee for this service.

Since its inauguration in 1997 and 1998, CCAAM (Customs Clearing Agents Association of Myanmar) has been registered and recognized by Ministry of Commerce, Ministry of Finance & Revenue c/o Myanmar Customs Department & Organization Chamber of Commerce & Industry. CCAAM is a leading non-profit organization in Myanmar to work with relevant government agencies and other international organizations to re-kindle overall performance of authorized Customs Clearing Agencies and timely informing the changes regarding Customs regulations, process and procedures in domestic and international arenas.

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## 8. CUSTOMS BOND

Customs bond usually refers to an agreement, which ensures that importers will pay all relevant duties, taxes and fees and operate in accordance with all laws and regulations. Customs bonds will significantly save the clearance time for importers and exporters and act as a contract to ensure that importers oblige with duties, taxes and fees collected by the Customs and owed to the government. Additionally Customs bond it will help to lead to an increase in trade volumes, government revenues, and overall economic growth.

In Myanmar, Sea Customs Act (2015) has mainly stipulated various kinds of applications of bonds and in its annex three kinds of forms of bond or warranty have been included.

## 8.1 Form of Bond for Import-Duty

Section 92, Chapter XI of Sea Customs Act (2015) stipulates the application of bond to warehousing and the form of bond as follow:

92. When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods, (a) to observe all rules prescribed by this Act in respect of such goods; (b) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand at such rate not exceeding six percent per annum as is for the time, being fixed by the Director-General of Customs and (c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Every such bond shall be in the form marked A hereto annexed or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Director-General of Customs and shall relate to the cargo or portion of the cargo of one conveyance only.

## 8.2 Form of Bonded Warehouse Warrant

Section 96, Chapter XI of Sea Customs Act (2015) stipulates the application of Form of Bonded Warehouse Warrant and the form of warrant as follow:

96. Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper shall deliver a warrant signed by him as such to the person lodging the goods. Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorse shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

## 8.3 Form of Bond for the Removal of Spirit from a Licensed Distillery

Sections 144 and 152, Chapter XIV of Sea Customs Act (2015) stipulate the application of Form of Bond for the Removal of Spirit from a Licensed Distillery without payment of duty for exportation as follows:

144. The Union Minister of Finance may from time to time make rules prescribing the conditions on which spirit manufactured in the Republic of the Union of Myanmar may be removed from any licensed distillery

for exportation without payment of excise-duty. The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is (a) not exported within four months from the date of the bond, or (b) exported to a Customs-port, unless either the payment of excise-duty as provided by this Chapter in respect thereof at the port of destination or the delivery of the spirit into a warehouse appointed in this behalf by the Union Minister of Finance is within six months from the date of the bond proved to the satisfaction of the proper officer. The Competent Customs Official of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, or for the production of such proof that duty has been so paid or the spirit so delivered.

152. Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer. The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor.

#### **8.4 Other Possible Applications of Customs Bond**

There are some other Sections of various Chapters of Sea Customs Act (2015) also stipulating the possible application of Customs bond, for example:

1. Section 20, Chapter V of Sea Customs Act (2015) stipulates “Except as hereinafter provided, Customs-duties shall be levied at such rates as may be prescribed by or under any law for the time being in force, on (a) goods imported or exported by sea into or from any Customs-port from or to any foreign port; (b) [x x x]1; (c) goods brought from any foreign port to any Customs-port, and, without payment of duty, there transhipped for, or thence carried; to, and imported at, any other Customs-port; and (d) goods brought in bond from one Customs-port to another”.

2. Section 138, Chapter XIII of Sea Customs Act (2015) stipulates the application of bond required in certain cases before exportation as “Before any warehoused goods or goods subject to excise-duties, or goods entitled to drawback of Customs-duties on exportation, or goods exportable only under particular rules or restrictions, are permitted to be exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the [Competent Customs Official]1 directs, with one sufficient surety, that such goods shall be duly shipped, exported and landed

at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer”.

Importers and exporters are encouraged to get familiar with related sections of related chapters of Sea Customs Act (2015) or consult to the competent officers.

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## 9. PROHIBITIONS AND RESTRICTIONS

### 9.1 Prohibitions

The Government of Myanmar prohibits the importation and exportation of certain goods and prohibited goods cannot be imported, exported, transited, sold or circulated in Myanmar. Article XX and XXI of WTO's GATT, permit WTO members to prohibit the exportation and importation of certain articles that endanger public morals, threaten human, plant or animal life, involve the importation and exportation of arms and ammunition, and similar items. The Department of Trade of the Ministry of Commerce has exercised its rights to prohibit the following importations and exportations:

**Importations prohibited include:**

- Counterfeit currency and coins,
- Pornographic material,
- All kinds of narcotic drugs and psychotropic substances,
- Playing cards,
- Goods bearing the emblem of Buddha and pagodas of Myanmar,
- Arms and ammunition,
- Antiques and archeologically valuable items,
- Wildlife endangered species,
- Other prohibited commodities in accord with existing law.

**Exportations prohibited include:**

- Counterfeit currency and coins
- Pornographic material
- All kinds of narcotic drugs and psychotropic substances
- Antique objects
- Arms and ammunition
- Wild animals and rare species
- Ivory
- Minerals and metals that are prohibited in accord with existing laws and regulations
- Crude oil
- Forestry products that are prohibited in accord with existing laws and regulations

Section 18, Chapter IV of the Sea Customs Act also stipulates no goods specified in the following clauses shall be brought, whether by land or sea, into the Republic of the Union of Myanmar:

- Counterfeit coin; or coin which purports to be current coin but which is not of the established standard in weight or fineness;
- Any obscene book, pamphlet, paper, drawing, painting, representation, figure or article;
- Goods applied to counterfeit trade-mark or any other existing laws, goods which import a false trade description;
- Goods made or produced beyond the limits of the Republic of the Union of Myanmar and having applied thereto any name or trade-mark being, or purporting to be, the name or trade-mark of any person who is a manufacturer, dealer or trader in the Republic of the Union of Myanmar unless (1) the name or trade-mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the Republic of the Union of Myanmar and (2) the country in which that place is situated is in that indication indicated in letters as large and conspicuous as any letter in the name or trademark, and in the same language and character as the name or trade-mark.

Any Union Ministry or Ministry of Finance assigned by the Union Government may from time to time, by notification in the Gazette, prohibit or restrict the bringing or taking by any means of transport for those goods of any specified description into or out of the Republic of the Union of Myanmar, or any specified

region thereof, either generally or from or to any specified country, region, port or place beyond the limits of the Republic of the Union of Myanmar. Any person who imports or exports any illegal goods which have prohibited or restricted shall be taken action by existing Laws.

## 9.2 Import License

All goods which are not prohibited by the respective government departments can be imported under the import licenses issued by the Ministry of Trade. The validity period of import license is normally 6 months. However, if requested, this period may be extended by the Ministry of Trade.

The Government of Myanmar is currently liberalizing requirements for the products that require an import license as a precondition to importing goods. As of October, 2018, 4818 tariff (HS code) items require an import license (out of 10816 tariff items at the 8-digit level and an additional 351 items at the 10-digit level).

Applications for import licenses have been automated for 81 tariff (HS code) items at the 10-digit level according to the Bulletin 4/2018 issued by the Ministry of Commerce through the TRADENET online website (<https://eservice.myanmartradenet.com/Login/>) and however, manual (hard copy) applications are also accepted.

Some are automatically issued but, in many cases, import licenses are issued based upon a recommendation by the relevant ministry or agency. There are 27 main ministries and agencies providing recommendations for import licenses listed in Table 1 of Appendix attached.

Import license fees are payable on all imports from abroad, it includes those imports for which import permits are not required, those imported by means of a permit, an import license or open general license; imports through the border and those imported for general trading purposes by the State Economic Enterprises (SEEs), government departments, co-operatives and private enterprises. License fees must be paid according to the specified rate for import of goods on consignment basis either by SEEs or private enterprises and entrepreneurs. With a view to reducing the cost of living and to being competitive under the market economy, the Ministry of Trade has issued an Import License Fees Order on June 28, 1991, revising the license fees payable on commodities imported from abroad effective from July 1, 1991. The import license fees payable on the C.I.F. (Yangon) value of goods imported from abroad ranges from a minimum fee of K 250 to a maximum of K 50,000. License fees must be paid before the date prescribed in the import license/permit. Import license/permit for which license fees have been paid may be extended by another three months, if such extension is necessary.

Exemption from license fee has been granted to organizations, companies and joint venture corporations permitted by the Union of Myanmar Foreign Investment Law on the import of such goods as machinery, equipment, instruments, machinery components, spare parts and materials used in the enterprise and imported as they are actually required for use during the period of construction, with foreign capital prescribed by the Union of Myanmar Foreign Investment Commission. Such exemption also includes raw materials and packing materials imported for the first 3 years commercial production in order to export finished goods following the completion of construction.

Exemption of import license fee on imported raw materials for the production of finished goods for general trading within the Union of Myanmar, which is not covered by the permit of the Union of Myanmar Foreign Investment Commission, will not be granted. With effect from February 1993, fertilizers, agricultural machinery and implements and pesticides have been exempted from license fees.

In July 2015 the Ministry of Commerce announced the creation of a negative list for import licenses. With this announcement, around 5,600 products (HS Codes) out of a total of over 9,600 were automatically exempted from licenses. This resulted in annual cost compliance savings to business of USD 3.8 million for the period of July 1, 2015 to June 30, 2016.

### 9.3 Export License

Myanmar products can be exported with the exception of some selected items like teak, rice and etc. under the export license issued by the Ministry of Trade and generally there is no export license fee with the exception of hardwoods being exported in log form. The validity period of export license is normally 3 months. After three months, the exporter can apply for an extension of the license for 2 additional months. On further application, a second extension for another 1 month is also provided for. After six months the applicant must apply for a new license. The charge to extend the license is 5000 Kyat.

The Government of Myanmar is currently liberalizing requirements for obtaining an export license as a precondition to exporting goods. However, 3345 tariff items still require an export license (out of 10816 tariff items at the 8-digit level and an additional 351 items at the 10-digit level).

Applications for export licenses have been automated through the TRADENET online website ([eservice.myanmartradenet.com](http://eservice.myanmartradenet.com)) and manual applications (hard copy) are also accepted.

The Department of Trade of the Ministry of Commerce issues export licenses. No license fee is charged

for exports. Export licenses are issued based upon the recommendations of relevant ministries, agencies and business associations listed in Table 2 of Appendix attached.

#### 9.4 Sanitary and Phytosanitary (SPS) Requirements

If the goods imported are subject to sanitary and phytosanitary (SPS) measures, the importers will have to comply with the regulations relating to those products.

The Ministry of Agriculture, Livestock and Irrigation and the Ministry of Health and Sports are responsible for SPS measures in Myanmar. SPS measures adopted by Myanmar follow those of CODEX, ASEAN, and the OIE. Myanmar has established a SPS Enquiry Point as required by the WTO SPS Agreement for questions regarding SPS measures and processes.

Commodities subject to SPS requirements can be found by using the search facilities on the Commodity Search page and detailed description of the procedures and documentation requirement can also be found on the Procedures page of the following website: <https://www.myanmartradeportal.gov.mm/en/commodity-search>.

#### 9.5 Technical Barriers to Trade (TBT) Requirements

For certain types of products, it may be necessary to obtain a permit that certifies that these products conform to certain technical regulations/standards.

In Myanmar, with the Department of Research and Innovation (DRI), Ministry of Education responsible for the uniform and consistent process for developing and implementing TBT measures.

Myanmar has established a TBT Enquiry Point as required by the WTO TBT Agreement for questions regarding technical regulations and standards.

Commodities subject to TBT requirements can be found by using the search facilities on the Commodity Search page and detailed description of the procedures and documentation required can also be found on the Procedures page of the following website: <https://www.myanmartradeportal.gov.mm/en/commodity-search>.

## 9.6 Labeling Requirements

In Myanmar, labeling regulations apply to imported goods. Under the National Food Law (1997) and the National Drug Law (1992), food and pharmaceutical products must be labeled. Food labels must clearly state the name of the product, content including names and net weight, the manufacturer's name and address, batch number, manufacturing date, expiry date, and required storage conditions. Pharmaceutical labels must clearly state the brand name, generic name, active pharmaceutical ingredients (API), and contents, including name and amount, batch number, date of manufacture, expiry date, and manufacturer's name and address, in English.

Commodities subject to these labeling requirements can be found by using the search facilities on the Commodity Search page and detailed description of the procedures and documentation required can also be found on the Procedures page of the following website: <https://www.myanmartradeportal.gov.mm/en/commodity-search>.

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## 10. CUSTOMS DUTY AND TAXES

Myanmar Customs Department mainly collects (1) Import Duty, (2) Commercial Tax, (3) Special Goods Tax, and (4) Advance Income Tax for the Internal Revenue Department. Additionally Myanmar Customs Department may also collect other following duty, tax, fines and fees:

- Transit Duty,
- Advanced Income Tax,
- MACCS Service Fees,
- Security Free (for X-ray) Redemption Deposit or Post Value Revenue Deposit (RD or PVRD),
- Redemption Fine (RF),
- Direct Penalty (DP),
- License Fee.

## 10.1 Major Duty and Taxes Collected by Myanmar Customs

### 10.1.1 Import Duty

Import Duty means the duties to be paid in respect of goods imported into Myanmar and is levied under the Customs Tariff of Myanmar (2007) at rates ranging from 0% to 40%.

Most imported goods are subject to Import Duty. Import Duty will be levied according to the type of the goods unless the imported goods are exempted. Import Duty is levied on the base of assessable value, which usually is the CIF value (sum of cost, insurance and freight) and landing charges of 0.5% of CIF value.

### 10.1.2 Commercial Tax

There is no VAT system in Myanmar and Commercial Tax is imposed on a wide range of goods, imported into or produced in Myanmar, trading sales, and services. The rates of Commercial Tax are set out in various schedules to the Commercial Tax Law introduced on 31 March 1990. Myanmar Government has indicated that it intends to replace the current Commercial Tax regime with a VAT or GST based model by 2018 and 2019.

Commercial Tax on imports is also collected by the Myanmar Customs Department at the point of importation in the same manner that Customs duties are collected. Together with Customs Duty, Commercial Tax is levied on the imported goods basing on the landed cost which is the sum of assessable value and import duty. These taxes are collected at the point of entry and the time of clearance.

There is no Commercial Tax on the export of goods with very few exceptions such as raw gems (15%), finished gems (5%), electricity (8%), gas (8%); crude oil (5%); teak and processed wood (50%); and timber and processed wood (50%).

### 10.1.3 Special Goods Tax

Special Goods Tax for Exceptional Commodities has to be paid accordingly if goods such as alcohol, beer, wine, oil, tobacco and etc. are imported into Myanmar.

#### 10.1.4 Advance Income Tax

Customs also collects a 2% Advance Income Tax on imports and exports for the Internal Revenue Department. The importations of garment raw materials (CMP), government agencies, re-export products are exempted from Advance Income Tax.

### 10.2 Duty Exemption

In the interest of the state the Minister of Revenue and Finance may by notification exempt partially or wholly from levy of Customs duties in respect of any of the following cases:

- Nature and type of goods exported from Myanmar or imported into Myanmar,
- Nature and type of goods exported from Myanmar or imported into Myanmar by any government department or any organization.

### 10.3 Duty Refund / Drawback

Seventh-eighth of the Customs duty paid on goods that could be easily identified will be refunded when such goods are withdrawn from the country again under the drawback facility in accordance with the following conditions:

- The re-export goods must be identical with those imported on payment of duty,
- Two years must not have elapsed since their importation in cases where the port of re-export is the same as that of import. The time may be extended up to three years on application,
- The re-export goods must not be included among the articles declared to be incapable of being identified,
- The goods must not be re-exported to a port to which shipment under claim for drawback is prohibited,
- The goods exported must not be of less value than the amount of drawback claimed,
- The claim for drawback should not ordinarily be less than 5 kyats in respect of any single shipment,
- The goods must not be included among the articles declared to be prohibited or restricted.

## 11. TARIFF CLASSIFICATION

### 11.1 Tariff

In accordance with the Tariff Law (1992), a notification was issued to regulate the classification of imported goods. Based on and fully in line with the World Customs Organization (WCO) Harmonized Commodity Description and Coding System (HS) 2012 version, 2017 Customs Tariff of Myanmar (the sixth-edition) has been released in October 2017. WCO version is at 6 digit level, the ASEAN AHTN 2012 version is at 8 digits level while Myanmar's 2017 national version at 10 digits level.

The 2017 Myanmar Customs Tariff (MCT) is organized in 21 Sections, which are divide into 98 chapters of as usual but bearing 10 tariff rate bands which is reduced from previous 15 tariff rate bands as follows.

Table 1 Classification of HS CODE in Myanmar

Table 1: Classification of HS CODE in Myanmar					
HS Group 1 (Chapter 1-49)		HS Group 2 (Chapter 50-83)		HS Group 3 (Chapter 84-98)	
1	Live animal	1	Textile	1	Heavy machines
2	Foodstuff	2	Footwear, headwear	2	Electrical goods
3	Chemical	3	Ceramic products	3	Medical appliance
4	Medicines	4	Glassware	4	Vehicles
5	Plastic	5	Hardware (Base metal & articles)	5	Furniture
6	Paper			6	Special Classification Provisions
7	Rubber				

Source: [www.customs.gov.mm](http://www.customs.gov.mm)

Table 2 2017 MCT by MFN Rate, No. of Headings and Goods

Table 2: 2017 MCT by MFN Rate, No. of Headings and Goods			
No.	MFN Rate	MCT 2017	Goods
1	0	530	Live animals, fertilizers, pesticides, agricultural and livestock breeding machinery, etc.
2	1.5	376	Medicines, medical equipment, kerosene, printing ink, paper, paperboard, etc.
3	3	5126	Condensed milk, butter, sugar, cement, asbestos, wads of textiles, calculator, computer, recording tape, video tape, medical equipment, sports equipment, laminated sheets, newsprint, laundry soap, chemical preparations, typewriter, ballpoint pens, pencils, etc.
4	5	1100	Motor car spare parts, toothbrushes, Yarns of different colors,
5	7.5	741	Paints, linoleum, Electrical appliances for household uses-fans, vacuum flasks, passenger car (truck), etc.
6	10	963	Refrigerators, washing machines, video players, watches, musical instruments, soft drinks, passenger car (bus, pick-up), etc.
7	15	1175	Vegetables, television sets, radio, camera, canned foods, etc.
8	20	486	Sound recording and reproducing apparatus, furniture, citrus fruits, etc.
9	30	208	Vans and saloons under engine power 2000 CC, cigarettes, etc.
10	40	108	Vans and saloons above engine power 2000 CC, all kind of alcoholic drinks, etc.

Source: [www.customs.gov.mm](http://www.customs.gov.mm)

## 11.2 General Rules for the Interpretation of the HS

WCO's General Rules for the Interpretation of the Harmonized System are also applied by Myanmar Customs and these are the rules that govern the classification of goods under the HS and there are 6 General Rules in all, which must be applied in consecutive order including:

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal

purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

2. Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein: (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers

which give the whole its essential character. (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

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## 12. CUSTOMS VALUATION

Customs Duties are usually calculated on an *ad valorem* basis, which means Customs Duty will be applied as a percentage of a declared value, which usually is the actual transaction value of the goods (as evidenced by the commercial invoice or other contract of sale documents).

The WTO Valuation Agreement forms the basis for establishing the Customs value of all goods imported into Myanmar. As a member of the WTO, and the fact that Myanmar is a signatory to the Valuation Agreement in 1995, make the provisions of that Agreement binding. Myanmar shall inevitably have to apply the Customs Valuation methods prescribed in GATT article VII in due course and has taken measures to do so - even if national legislation, regulations, and procedures do not yet fully reflect the Agreement.

At the heart of the Agreement is the principle that the WTO standard customs valuation method shall be based on the transaction value - that is, the price actually paid or payable as a result of the sale which causes the importation of goods into a Customs territory.

## - Valuation Method 1: Transaction Value

The WTO Valuation Agreement defines the transaction value as “the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8”.

In effect, this means that the commercial arrangement between the buyer and seller of imported goods determines their Customs value. Article 8 provisions further refine this value by outlining value elements which must be added to the transaction value; or elements which can be subtracted from it; thus arriving at a fair and transparent Customs valuation.

Under the terms of the Agreement, some value elements can be subtracted from the transaction value including: (1) delivery costs after importation. If the seller's or carrier's charge covers delivery beyond the Myanmar border, the importer may deduct the additional charges for such delivery, providing they are shown separately from the price paid or payable for the goods, (2) Myanmar duties or taxes - an importer can deduct from the price paid any included Customs duty or other taxes which are payable in Myanmar because of the importation or sale of the goods, (3) dividends - an importer can leave out dividend payments made to the seller, (4) marketing activities related to the imported goods. An importer is not required to include in the Customs value the cost of the following activities which it carries out at its own expense including advertising and guarantee or warranty services, (5) buying commission. An importer may leave out fees or brokerage paid to an agent for representing a buyer outside Myanmar in buying imported goods, providing the commission is shown separately from the price paid or payable for the goods, (6) interest charges. These may be left out if they are payable under a financing arrangement for buying the imported goods, providing the charges are shown separately from the price paid or payable for the goods.

Elements that must be added to the transaction value unless they are already included in the invoice including: (1) Delivery costs. The costs of transport, insurance, loading or handling connected with delivering the goods to the Myanmar border must be included, (2) Commissions. Certain payments of commission and brokerage, including selling commission, must be included. Buying commission, where an importer pays someone to act for them in the supplier country in connection with a purchase is not dutiable, (3) Royalties and license fees. An importer must include these payments when they relate to the imported goods and are paid by the importer as a condition of the sale of those goods, (4) Goods and services provided free of charge or at reduced cost by the buyer. If the importer provides, directly or indirectly, any of the following, there must be included in the Customs value any part of the cost or value not included in the price charged to the importer

by the seller - sometimes known as “assists” including:

(a) Materials, components, parts and similar items incorporated in the imported goods including price tags, labels etc.;

(b) Tools, dies, moulds and similar items used in producing the imported goods, for example, tooling charges. There are various ways of apportioning these Charges;

(c) Materials consumed in producing the imported goods, for example, abrasives, lubricants, catalysts, reagents etc. which are used up in the manufacture of the goods but are not incorporated in them; or

(d) Engineering, development, artwork, design work and plans and sketches carried out outside the country and necessary for producing the imported goods. The cost of research and preliminary design sketches is not to be included.

(5) Containers and packing including the cost of containers which are treated for Customs purposes as being one with the goods being valued (that is not freight containers the hire-cost of which forms part of the transport costs) and the cost of packing whether for labor or materials. Where containers are for repeated use, for example reusable bottles, an importer can spread their cost over the expected number of imports. If a number of the containers may not be re-exported, this must be allowed for. (6) Proceeds of resale. If an importer is to share with the seller (whether directly or indirectly) the profit on resale, use or disposal of the imported goods it must add the seller's share to the price paid. For example, if the seller is to have sob of the profit which you receive, this is to be added to the price paid or payable, (7) Export duty & taxes paid in the country of origin or export. When these taxes are incurred by the buyer they are dutiable. However, if you benefit from tax relief or repayment of these taxes they may be left out of the Customs value.

It is expected that, under the Agreement, the transaction value will form the basis for the Customs value in most of the imports. In some circumstances, however, the transaction value cannot be used - therefore Method 1 is inappropriate and importers must seek an alternative method. The following 5 additional methods must be attempted in number order (i.e. Method 1, then Method 2, etc.) until an appropriate method is found.

#### - **Valuation Method 2: Identical Goods**

This is the second method an importer must try, and it involves using the value of identical goods, imported into Myanmar at or about the same time, on which to base the Customs value of an import where the transaction value cannot be used. Identical goods are goods produced in the same

country as those being valued.

If no identical goods can be found, the importer must proceed to Method 3.

- **Valuation Method 3: Similar Goods**

This is based on the Customs value of similar goods imported into Myanmar at or about the same time as the goods to be valued. Similar goods are goods which differ in some respects from the goods being valued, but they (1) are produced in the same country, (2) can carry out the same tasks, and (3) are commercially interchangeable.

If no similar goods can be found, the importer must proceed to Method 4.

- **Valuation Method 4: Deductive Value**

This method takes the evidenced normal selling price of goods with the same characteristics to unrelated persons in Myanmar and subtracts the following elements: (1) either the commissions usually paid or agreed to be paid, or (2) the addition usually made for profit and general expenses in connection with sales in Myanmar of imported goods of the same class or kind, (3) the usual costs of transport, insurance and associated costs incurred within Myanmar, and (4) Customs duties and internal taxes payable in the country of importation.

Customs will reasonably expect evidence to support the figures submitted, particularly with reference to the importer's profit.

If the goods are not sold on in Myanmar as they were imported for example they have undergone significant processing or other elements are unknown or cannot be evidenced, the importer must proceed to Method 5.

- **Valuation Method 5: Computed Value**

This is based on the costs involved in producing the imported goods. Because this method relies on suppliers revealing sensitive information, it is most often used where seller and buyer are related, and the price is influenced by the relationship.

The Customs value is a built-up value. It is based on the sum of the following: (1) the cost or value of materials and fabrication or other processing used in producing the imported goods including any

assists provided by the buyer, and containers and packing, (2) an amount for the producer's profit and general expense, plus (3) the cost of transport, insurance and loading or handling connected with delivering the goods to the Myanmar border.

Same as Valuation Method 4, Valuation Method 5 will reasonably expect evidence to support the figures submitted, particularly with reference to the supplier's profit.

If an importer cannot use Valuation Method 5, then he/ she must move on to Valuation Method 6.

#### - **Valuation Method 6: the Fall-back Method**

In the rare event that an importer cannot find an alternative valuation method by applying the principles involved in Valuation Methods 1 to Valuation Method 5, Method 6 must be used.

Using this method, an importer must arrive at the Customs value by using reasonable means consistent with the WTO Valuation principles.

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## 13. RULES OF ORIGIN

### 13.1 Rules of Origin

Rules of Origin are the criteria applied to determine the national source of a specific product.

There are two types of rules of origin used in Myanmar - non-preferential Rules of Origin and preferential Rules of Origin.

- **Non-preferential Rules of Origin** are used for all kinds of commercial policy measures, for example trade embargoes, safeguard and retaliation measures, anti-dumping duties and countervailing duties, quantitative restrictions, but also for some tariff quotas, for trade statistics, for public tenders, for origin marking, and so.

There are no recognized international standards regarding non-preferential Rules of Origin. Criteria such as “wholly obtained”, “substantially transformed” and “tariff shifts at the four-digit level” have been variously used to determine origin.

- **Preferential Rules of Origin** are necessary in order to determine whether imports qualify for preferential treatment (no or reduced tariffs) under ATIGA and other trade agreements entered into by Myanmar. ATIGA sets forth specific rules of origin in Chapter 3, Articles 25 – 39 and the annexes to ATIGA. As an ASEAN member, Myanmar participates in preferential trade agreements with Australia and New Zealand, China, India, Japan, and Korea. Myanmar is also a signatory of the Global System of Trade Preferences (GSTP) among developing countries and the Bay of Bengal Initiative for Multi-Sectorial Technical and Economic Cooperation (BIMSTEC).

### 13.2 Certificate of Origin

Certificates of Origin are used to document the origin of goods for the purposes of preferential tariff treatment. ATIGA, Article 38, requires that for ASEAN preference to be claimed goods must be accompanied by an ASEAN Certificate of Origin (Form D) issued by a government authority designated by the exporting member state and notified to the other ASEAN member states as required in Annex 8 to ATIGA.

**Other preferential Certificates of Origin issued by Myanmar government authority are listed as follow:**

- Form E (For ACFTA),
- Form AK (For AKFTA),
- Form AJ (Japan) (For AJFTA),
- Form AJ (ASEAN) (For AJCEP),
- Form AI (For AIFTA),
- Form AANZFTA (For AANZFTA),
- Form A (For Developed Countries under GSP Scheme),
- Form Korea (For Korea),
- Form DFTP (For India),
- Form China (For China).

Non-Preferential Certificates of Origin are issued by the Union of Myanmar Federation of Chamber of Commerce and Industry (UMFCCI) and other relevant organizations. Myanmar has introduced an application system since April 1, 2019, which allows full electronic processing of Certificates of Origin.

The receiving authority for both preferential and non-preferential Certificate of Origin is Myanmar Customs Department which has legislative rights to accept or deny preferential tariff concessions.

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## 14. ADVANCE RULINGS

Advance Rulings enhance certainty and predictability of cross-border trade transactions and are binding decisions by Customs at the request of the person concerned on specific particulars in relation to the intended importation or exportation of goods. Advance Rulings can be requested with regard to HS classification, origin or Customs value of the goods in preparation for importation or exportation.

Advance Rulings facilitate the declaration and consequently the release and clearance process, as critical assessments in relation with the goods have already been made in the Advance Rulings. Advance Rulings are binding throughout the Customs territory at all Customs offices and valid for a specific period of time, e.g. 3 months or 1 year.

In Myanmar, Advance Rulings, which are important tools for importers and exporters to help to increase certainty during the clearance process, have been provided and recommended on HS classification and valuation by Myanmar Customs Department since 2016.

- Advance Ruling on HS Classification which enables the goods to be classified prior to the cargo arrival is also implemented as the concerning Notification Order had been enacted on October 14, 2016
- Notification Order of Advance Ruling on Valuation had also been completed and issued on October 15, 2016 which the traders can have benefits of greater certainty regarding the duty liabilities.

## 14.1 Procedure for Advance Ruling on Customs Valuation

Applicant may file an application for Advance Ruling on Customs Valuation to either the Customs Department (Head Office) or the relevant Local Customs Office 30 days in advance before the arrival of goods with all requested selling documents. Then the officer in charge, who may request further information, scrutinizes the completeness, sufficiency and correctness of the documents. The Advance Ruling on Customs Valuation shall be made only if information relating to the imported goods which are stated in the application is fully received in order to evaluate the value correctly by the Customs Department (Head Office) and shall be made within 14 days after sufficient documents have been received. The Advance Ruling on Customs Valuation shall be referred and applied within six months from the issuing date.

The applicant also has the right to have the advance valuation reviewed by the Customs Department if it is different from actual purchase value with sufficient evidence within 14 days commencing from the date of reply for Advance Ruling on Customs Valuation. The Director General may, after scrutinizing the application for reviewing the Advance Ruling on Customs Valuation, amend or confirm the Advance Ruling on Customs Valuation. The decision of the Director General shall be final and binding. The Director General shall revoke the Advance Ruling on Customs Valuation and shall re-specify it if it is found that the Customs Valuation is made based on the incorrect information as to Customs value made by the Customs Officer or the insufficient or incorrect information submitted by the applicant.

It is also stated the application for advance valuation for the goods prohibited or restricted by the Sections 18 and 19 of the Sea Customs Act and other goods restricted by any other existing law shall be refused.

## 14.2 Procedure for Advance Ruling on Classification

The theory, legal basis, practice, procedure, time arrangement, range of utilization and etc. for the Advance Ruling on Classification are basically similar as those for Advance Ruling on Customs Valuation.

## 15. FREE TRADE AGREEMENTS

As a member of ASEAN, Myanmar participates in all intra-ASEAN agreements as well as multilateral free trade agreements with Australia, New Zealand, China, India, Japan, and South Korea. ASEAN Free Trade Area (AFTA) was established in Myanmar in 1998 with an objective to eliminate tariffs for all tariff lines by 2018.

- ASEAN Free Trade Agreement (AFTA), which has been established on 1-1-1998 and agreed to eliminate (0%) the tariffs as the commitment time schedule,
- ASEAN-China Free Trade Agreement (ACFTA), which has established on 1-1-2004 and under this agreement, Myanmar will reduce tariff rates in the year of 2010,2015,2018,2020,
- ASEAN-Korea Free Trade Agreement (AKFTA), which has been established on 24-8-2006 and under this agreement, Myanmar will reduce tariff rates in the year of 2008, 2009, 2012, 2015, 2018,
- ASEAN-Japan Free Trade Agreement (AJFTA), which has been put into effect on 1-12-2008 and under this agreement, Myanmar will need to reduce tariff rates in the year of 2014, 2017, 2019, 2021, 2023, 2026,
- ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), which has been put into effect on 1-1-2010 and under this agreement, Myanmar will need to reduce tariff rates in the year of 2011, 2013, 2015, 2017, 2019, 2021,
- ASEAN-India Tariff Reduction Schedule.

Myanmar also has bilateral trade agreements with Bangladesh, Sri Lanka, China, South Korea, Laos, Malaysia, the Philippines, Thailand, and Vietnam in the Asian region, as well as with a number of Eastern European countries.

Myanmar has border trade agreements with China, India, Bangladesh, Thailand, and Laos. The Government of Myanmar has signed a number of Memoranda of Understanding to expand bilateral trade with those countries.

Myanmar is a member of WTO and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC). The United States and Myanmar also signed a Trade and Investment Framework Agreement in May 2013.

Most Favored Nations Tariffs and Preferential Tariff Schedule of FTA have been utilized within the framework of various FTAs to reduce tariffs, increase trade and promote investment.

## 16. BONDED SYSTEMS

Myanmar has making continuous efforts to introduce bonded system to encourage export trade and processing industry for years.

### 16.1 Customs Bonded Warehouses

Customs warehousing procedure is the procedure where goods are stored under Customs control without the payment of duties and taxes. Myanmar has currently implemented this only for Duty Free Stores but is in the process of adopting this procedure generally.

Myanmar currently has only an airport warehouse. Duty Free Stores at airports and land borders are a special form of Customs warehouse where international travelers can purchase goods without the imposition of duties and taxes. Warehouse operators must provide a financial guarantee to Customs.

### 16.2 Inward Processing

Inward Processing is the procedure where goods can be brought into the customs territory conditionally relieved from the payment of duty and taxes, on the basis that they are intended for manufacturing, processing or repair and they will then be exported.

Myanmar currently has an inward processing procedure known as importation by “cutting, making and packaging” (CMP) in the garment industry and “contract, manufacturing, practices” in certain other industries (industrial and fishery enterprises).

Manufacturers using this procedure must provide a financial guarantee to Customs and normally export the finished product within one year.

### 16.3 Outward Processing

Outward Processing is the procedure where goods that are in free circulation in the Customs territory may be temporarily exported for manufacture, processing or repair and then returned with a total or partial exemption from duties and taxes.

Myanmar has a Customs procedure called “repair and return” (RR) that is equivalent to outward processing.

A repair and return license is required from the Ministry of Commerce.

### 16.4 Special Economic Zones (SEZs)

Myanmar has established Special Economic Zones (SEZs) to encourage foreign direct investments and the export of manufactured goods. SEZs are areas that are geographically within a nation but are outside a nation’s Customs territory for the purpose of the collection of Customs duties and other indirect taxes (such as excise and sales taxes). Businesses operating in SEZs frequently conduct export processing operations, taking advantage of duty and indirect tax exemptions.

In 2014, Myanmar revised its legislation to encourage foreign direct investments through Special Economic Zones (SEZs).

Under the Special Economic Zone Law (2014), businesses operating in SEZs can take advantage of a five year tax exemption on Custom duties on approved exported goods. Special Economic Zone Law (2014) also exempts businesses operating in SEZs from Customs duties and taxes when importing material and equipment which services their own production. This includes:

- raw material,
- machinery and spare parts,
- construction materials and motor vehicles for building a factory, warehouse, or office and,
- trading goods and materials necessary in wholesale trading.

Myanmar currently has three SEZs in Dawei, Kyaukphyu and Thilawa in operation or in preparation to operate.

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## 17. CUSTOMS SUPERVISION AND CONTROL ON TRADE IN SERVICE

Services are very important to Myanmar and currently represent around 40% of the total economy. Myanmar is currently a net importer of tradable services and generally encourages trade in services.

As trade in services mainly involves foreign investment and the movement of people to undertake trade in services, Myanmar Customs has been making continuous efforts to facilitate and promote FDI and trade in services.

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## 18. POST-CLEARANCE AUDIT (PCA)

Post-clearance Audit (PCA) is defined by the Revised Kyoto Convention as measures by which the Customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial data held by persons concerned. It is conducted after the release of the goods from Customs control. It can take place at the traders' premises or at Customs' premises, and may take into account specific transactions, or cover imports and/or exports undertaken over a certain period of time.

Myanmar Customs conducts Post-clearance Audit based on a Notification issued by the Ministry of Planning and Finance issued on January 17, 2017.

According to the Notification, Director General of Customs Department can organize audit team to verify the accuracy and authenticity of declarations and other returns made to Customs. Auditees can be importers, exporters, Customs brokers, transportation operators and other concerned parties.

### **Priorities of PCA**

The priorities of PCA included the trade transactions which have connections with (1) duty or tax

collections, (2) application of duty or tax rates, (3) duty or tax amount and etc.

### **Methods of PCA**

Customs auditor may combine the following methods including: (1) physical examination, (2) confirmation, (3) vouching, (4) re-computing, (5) tracing, (6) scanning, (7) Enquiring, (8) observing, (9) analyzing, (10) reconciling and (11) flow charting to conduct audits.

### **Consequences of PCA**

The amount of duties and taxes underpaid within three years after release discovered during the PCA will be request to be paid. Overpayment discovered during the PCA may be refunded within one year since the date the payment was made.

### **Duration of PCA**

The duration of PCA varies on a case-by-case basis depending on the scope covered and the auditee's level of cooperation.

### **Obligations of Auditees**

Auditees are required to retain all the business documents for 7 years and provide PCA officers with necessary assistance and cooperation to conduct the audit, especially the submission of all required trade documents in a timely fashion and the duty to ensure that all information provided is true and accurate.

### **Right of Auditees**

Auditees have the right to see the Customs officers' identification and authorization at any time. They also have the right to enquiry once having questions during the audit process and the right to expect Customs to maintain the confidentiality of the company's information.

Auditees also have the right to appeal to the Director General of the Customs Department within one month upon the issuance of the PCA notice or PCA decision if they believe the interests have been negatively affected.

## 19. CUSTOMS ENFORCEMENT AND APPEALS

### 19.1 Offences and Penalties

In Myanmar, any violation of the Customs Law or regulations constitutes an offence which may attract a fine or legal proceedings according to the degree of severity.

Section 167 of Sea Customs Act (2015), which has become the most fundamental basis for Customs enforcement, has listed 79 different kinds of offence, Section of Act to which offence has reference and its penalty respectively and in very detailed manners.

For example, the violation of “If any person, without the approval of the Competent Customs Official under section 202, acts as an agent for the transaction of business as therein mentioned” has reference to Section 202 of Act, and the penalty could be “Such person shall be liable to a penalty not exceeding ten hundred thousand kyats”.

Please check Section 167 of Sea Customs Act (2015) for detailed offences and penalties information.

### 19.2 Appeals

According to Section 10 of Tariff Law (1992) and Section 188, Section 191 of Sea Customs Act (2015), imports and exporters have the right of appeals and usually there are three categories of appeals relating to Customs affairs in Myanmar:

#### 19.2.1 Appeals under section 188 of the Sea Customs Act

Any person deeming aggrieved by any decision or order passed by an officer of Customs, may appeal to the Revenue Appellant Tribunal, within one month from the date of such decision or order. The Tribunal may thereupon make such further inquiry, giving the appellant, on his request, permission to make an oral statement and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against within one month from the date of the decision or order made by the officer of Customs. The Tribunal may extend such period to three months on sufficient cause being shown by the appellant. It is required that the appealing letter, on which the 15 kyat revenue stamp is stuck, along with four copies

of the official documents on the decision or order taken by the officer of Customs should be submitted to the following address:

Revenue Appellant Tribunal

253, Mahabandoola Road

Yangon

Union of Myanmar

### **19.2.2 Review and revision under section 191 of the Sea Customs Act**

Those persons who do not wish to appeal to the Revenue Appellant Tribunal may also apply to the Direction General of Customs for review and revision of the order made by any officer of Customs. On the application of any party interested, made within two years from the making of the order, the Direction making of the order, the Director General of Customs may review and on so revenue notify, revise or confirms such order. Application for revision should be addressed to:

Director General

Customs Department

132, Strand Road

Yangon

Fax: 055-01-291897/296744

### **19.2.3 Appeals relating to the tariff classification, Customs valuation and origin of the goods under the Tariff law**

Any order or decision, made by the Director General of Customs, may be appealed by the aggrieved person to the Minister for Finance and Revenue, within 60 days from the date of receiving such order or decision. The decision of the Minister is final and conclusive. Appealing letter should be submitted to the following address:

Minister

Ministry of Finance and Revenue

26/A, Sethmu Road, Yankin Township

Yangon

Union of Myanmar.

Fax: 095-01-543677/543632

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## 20. CUSTOMS IPR BORDER PROTECTION

Myanmar's long awaited Trade Mark Act (TM Act) has finally received the President's assent at the end of January 2019. This has made the Myanmar market more attractive for foreign brands to enter. The TM Act is intended to harmonize Myanmar's trade mark laws and trade mark registration process with the rest of the world. The current first-to-use system will be replaced with a first-to-file system. Aside from the TM Act, Myanmar's Industrial Designs Act was also passed in February 2019. As with the TM Act, it has yet to come into effect and no implementing regulations are currently available. However, with these latest developments and the expected introduction of the Patents Act and the new Copyright Act, Myanmar's intellectual property regime looks to be on the cusp of a major overhaul and is expected to see significant changes to the legal landscape in the coming years.

Customs administrations are in the frontline to enforce intellectual property rights at the borders. In order to strengthen the IPR border enforcement, the Myanmar Customs has strived for reviewing its current practices and establishing administrative regulations to implement WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Myanmar Customs has newly established IPR Section and reaffirmed the importance of robust IPR border enforcement while keeping in mind that the procedures themselves should not become barriers to trade.

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## 21. AUTHORIZED ECONOMIC OPERATORS (AEO)

Myanmar Customs Department has making efforts in developing its Authorized Economic Operator (AEO) scheme, a new system that will simplify and expedite the release of imported and exported goods and help the country catch up with its ASEAN and global counterparts.

The AEO scheme developed by Myanmar Customs Department will allow compliant and voluntary accredited traders with a good record of Customs compliance and a solid commercial-records management system to receive a range of trade-facilitation benefits, including quicker customs processing.

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## 22. TRADE STATISTICS

Since 1974, CSO (Central Statistical Organization) becomes the responsible agency for the compilation and dissemination of trade statistics while Myanmar Customs Department has been playing an important supporting role by collecting data based on Export and Import Declaration Forms, which constitute the major source of information in compiling foreign trade statistics.

The Statistical Compilation Section of Customs Department compiles the data of each and every inward and outward consignment and sends the data weekly and monthly to CSO for further data processing electronically.

Now CSO has been presenting weekly, monthly and yearly reports of foreign trade statistics.

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## 23. OFFICIAL BUSINESS HOURS

The service time of Myanmar Customs Department is as follows:

09:30 am to 16:30 pm (Mon-Fri)

Close Sat & Sun and official holidays

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## 24. CONTACT INFORMATION

For further and detailed information relating to Customs clearance procedures, enquiries should be addressed to the following contact:

Customs Department

132, Strand Road, Yangon

Union of Myanmar

Telephone: 095-01-284955

Fax: 095-01-281847 / 296744

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## 25. OFFICIAL WEBSITES

- Myanmar Customs Department: <http://www.myanmarcustoms.gov.mm>
- Myanmar Trade Net: <http://www.myanmartradenet.com>

- Myanmar Trade Portal: [www.myanmartradeportal.gov.mm](http://www.myanmartradeportal.gov.mm)
- Myanmar's Ministry of Commerce: <https://www.commerce.gov.mm>
- Federation of Chambers of Commerce and Industry: <http://www.umfcci.com.mm>
- Directorate of Investment and Company Administration: <https://www.dica.gov.mm>
- Central Statistic Organization: <http://www.csostat.gov.mm>
- Myanmar Customs Brokers Association: <http://www.myanmarcba.org>
- Myanmar International Freight Forwarders' Association: <http://www.miffa.org>

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6. <http://tfig.unece.org/contents/post-clearance-audit.htm>.
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8. <http://www.charltonsmyanmar.com/myanmar-law/tax-in-myanmar/>.

## APPENDIX:

Table 3 Recommendations for Import Licenses

Table 3: Recommendations for Import Licenses		
No	Agencies Name	Recommendation
1.	Food and Drug Administration, Ministry of Health and Sports	Various types of food products, soft drink, drugs, medical devices, and cosmetic products
2.	Livestock Breeding and Veterinary Department, Ministry of Agriculture Livestock and Irrigation	Various types of animal meat, livestock and animal products, animal feeds and veterinary medicine/pharmaceuticals
3.	Department of Fisheries, Ministry of Agriculture, Livestock and Irrigation	Prawns / Fry (baby fish), shrimp brans, Fish
4.	Department of Agriculture, Ministry of Agriculture, Livestock and Irrigation	Various types of fertilizers, seeds, plants and plant products
5.	Pesticide Registration Board, Ministry of Agriculture, Livestock and Irrigation	Pesticide for agriculture use, mosquito coil (mosquito-repelling incense) and other pesticide products
6.	Department of Technology Promotion and Coordination, Ministry of Education	X-Ray machine, ultrasound machine
7.	Information and Public Relations Department, Ministry of Information	Film, foreign movies
8.	Printing and Publishing Department, Ministry of Information	Offset printing machine
9.	Myanmar Radio and Television, Ministry of Information	Satellite products, set top box, satellite dish antenna & receiver
10.	Myanmar Petrochemical Enterprise, Ministry of Electricity and Energy	Various type of fuel, motor oil and gas
11.	Minister Office, Ministry of Natural Resources and Environmental Conservation	Alabaster, petrified wood, mining products
12.	Environmental Conservation Department, Ministry of Natural Resources and Environmental Conservation	Ozone depleting substances, various gas (including refrigerator gas - Tetrafluoroethane)

**Table 3: Recommendations for Import Licenses**

No	Agencies Name	Recommendation
13.	Mining Department, Ministry of Natural Resources and Environmental Conservation	Salt, sodium nitrate
14.	Myanmar Pearl Enterprise, Ministry of Natural Resources and Environmental Conservation	Products made with Mother of Pearl
15.	Forestry Department, Ministry of Natural Resources and Environmental Conservation	Wood and forest products, wood cutting saw, circular saws
16.	Myanmar Jewelry Enterprise, Ministry of Natural Resources and Environmental Conservation	Gold and jewelry
17.	Myanmar Timber Enterprise, Ministry of Natural Resources and Environmental Conservation	Wood and forest products, wood cutting saw, circular saws
18.	Union Registration Board, Ministry of Home Affairs	Permit for associations- Local Association Board Registration
19.	Central Committee for Drug Abuse Control, Ministry of Home Affairs	Importation of Controlled Substances and 26 kinds of Precursors, exportation of sulfur rich tree barks
20.	Department Posts and Telegraph, Ministry of Transport and Telecommunications	Importing phones, communication equipment and devices
21.	Department of Marine Administration, Ministry of Transport and Communications	Importing vessels/ships and marine spare parts, safety & navigation equipment
22.	Department of Civil Aviation, Ministry of Transport and Communications	Importing Aircrafts
23.	Myanmar Investment Commission,	Imports/exports that conducted by the foreign investment companies
24.	Department of Religious Affairs, Ministry of Religion and Culture	Buddha statues, other religious idols, religious statues and products; and vehicles for religious purposes
25.	Department of Historical Research and National Library, Ministry of Religion and Culture	Buddha statues, other religious idols, religious statues and products
26.	Department of Industrial Collaboration, Ministry of Industry	Chemical raw materials

**Table 3: Recommendations for Import Licenses**

No	Agencies Name	Recommendation
27.	Myanmar Garment Manufacturers Association	Export of Cut-Make-Packing (CMP) garments

*Table 4 Recommendations for Export Licenses*
**Table 4: Recommendations for Export Licenses**

No	Agencies Name	Recommendation
1.	Food and Drug Administration, Ministry of Health and Sports	Various types of food products, soft drink, drugs, medical devices, and cosmetic products
2.	Livestock Breeding and Veterinary Department, Ministry of Agriculture Livestock and Irrigation	Various types of animal meat, livestock and animal products, animal feeds and veterinary medicine/pharmaceuticals
3.	Department of Fisheries, Ministry of Agriculture, Livestock and Irrigation	Prawns / Fry (baby fish), shrimp brans, Fish
4.	Department of Agriculture, Ministry of Agriculture, Livestock and Irrigation	Various types of fertilizers, seeds, plants and plant products
5.	Pesticide Registration Board, Ministry of Agriculture, Livestock and Irrigation	Pesticide for agriculture use, mosquito coil (mosquito-repelling incense) and other pesticide products
6.	Department of Technology Promotion and Coordination, Ministry of Education	X-Ray machine, ultrasound machine
7.	Information and Public Relations Department, Ministry of Information	Film, foreign movies
8.	Printing and Publishing Department, Ministry of Information	Offset printing machine
9.	Myanmar Radio and Television, Ministry of Information	Satellite products, set top box, satellite dish antenna & receiver
10.	Myanmar Petrochemical Enterprise, Ministry of Electricity and Energy	Various type of fuel, motor oil and gas

**Table 4: Recommendations for Export Licenses**

No	Agencies Name	Recommendation
11.	Minister Office, Ministry of Natural Resources and Environmental Conservation	Alabaster, petrified wood, mining products
12.	Environmental Conservation Department, Ministry of Natural Resources and Environmental Conservation	Ozone depleting substances, various gas (including refrigerator gas - Tetrafluoroethane)
13.	Mining Department, Ministry of Natural Resources and Environmental Conservation	Salt, sodium nitrate
14.	Myanmar Pearl Enterprise, Ministry of Natural Resources and Environmental Conservation	Products made with Mother of Pearl
15.	Forestry Department, Ministry of Natural Resources and Environmental Conservation	Wood and forest products, wood cutting saw, circular saws
16.	Myanmar Jewelry Enterprise, Ministry of Natural Resources and Environmental Conservation	Gold and jewelry
17.	Myanmar Timber Enterprise, Ministry of Natural Resources and Environmental Conservation	Wood and forest products, wood cutting saw, circular saws
18.	Union Registration Board, Ministry of Home Affairs	Permit for associations- Local Association Board Registration
19.	Central Committee for Drug Abuse Control, Ministry of Home Affairs	Importation of Controlled Substances and 26 kinds of Precursors, exportation of sulfur rich tree barks
20.	Department Posts and Telegraph, Ministry of Transport and Telecommunications	Importing phones, communication equipment and devices
21.	Department of Marine Administration, Ministry of Transport and Communications	Importing vessels/ships and marine spare parts, safety & navigation equipment
22.	Department of Civil Aviation, Ministry of Transport and Communications	Importing Aircrafts
23.	Myanmar Investment Commission,	Imports/exports that conducted by the foreign investment companies

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# **eBook on East Asia Customs Procedures**

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The Republic of Philippines





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## ACKNOWLEDGEMENTS

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AANZFTA	ASEAN - Australia - New Zealand Free Trade Area Agreement
AEO	Authorized Economic Operator
AFTA	ASEAN Free Trade Area
AHTN	ASEAN Harmonized Tariff Nomenclature
AIFTA	ASEAN-India Free Trade Area
APEC	Asia and Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ATIGA	ASEAN Trade in Goods Agreement
BOC	The Bureau of Customs
CAO	Customs Administrative Order
CBW	Customs Bonded Warehouses
CFW	Customs Facilities and Warehouses
CMTA	Customs Modernization and Tariff Act
CPRS	Client Profile Registration System
EPZ	Export Processing Zone
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
HS	Harmonized Commodity Description and Coding System

---

JPEPA	Japan, Philippine Economic Partnership Agreement
MFN	Most Favored Nation
NSW	National Single Window
OGAs	Other Government Agencies
ROO	Rule of Origin
SEZ	Special Economic Zone
TCCP	Tariff and Customs Code of the Philippines
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Republic Of Philippines

### 1. INTRODUCTION OF PHILIPPINES CUSTOMS

The Bureau of Customs (BOC) under the Department of Finance was organized on July 1, 1947 in Manila and has been reorganized for several times. The last major reorganization of the Bureau took place in 1986 with the issuance of Executive Order which expanded the organization umbrella of the Central Office by providing offices that will monitor and coordinate assessment and operations of the Bureau and provided for a staff of about 5,500 Customs personnel and 14 District Offices.

Today, the BOC is mandated to facilitating trade according to international standards, protect the country from smuggling and Customs fraud, increase the revenues of the government, and bring a sense of professionalism to commerce in the country. The Bureau also covers activities in the functional areas of revenue collection, trade facilitation and border protection.

#### 1.1 Missions and Values

The BOC is focused on fulfilling the mandate from the President as follows:

- To eradicate graft and corruption;
- To collect duties and taxes;
- To apprehend illegal drugs and other prohibited goods;
- To enhance trade facilitation;
- To keep our borders secure.

As a Customs Administration, the Bureau is committed to the following values:

- Professionalism and Integrity;
- Transparency and Accountability;
- Consistency and Simplicity;
- Vigilance and Dynamism;
- Be responsive to the needs of the community and industry.

## 1.2 Functions of BOC

In detail, the major functions of the BOC include the following aspects:

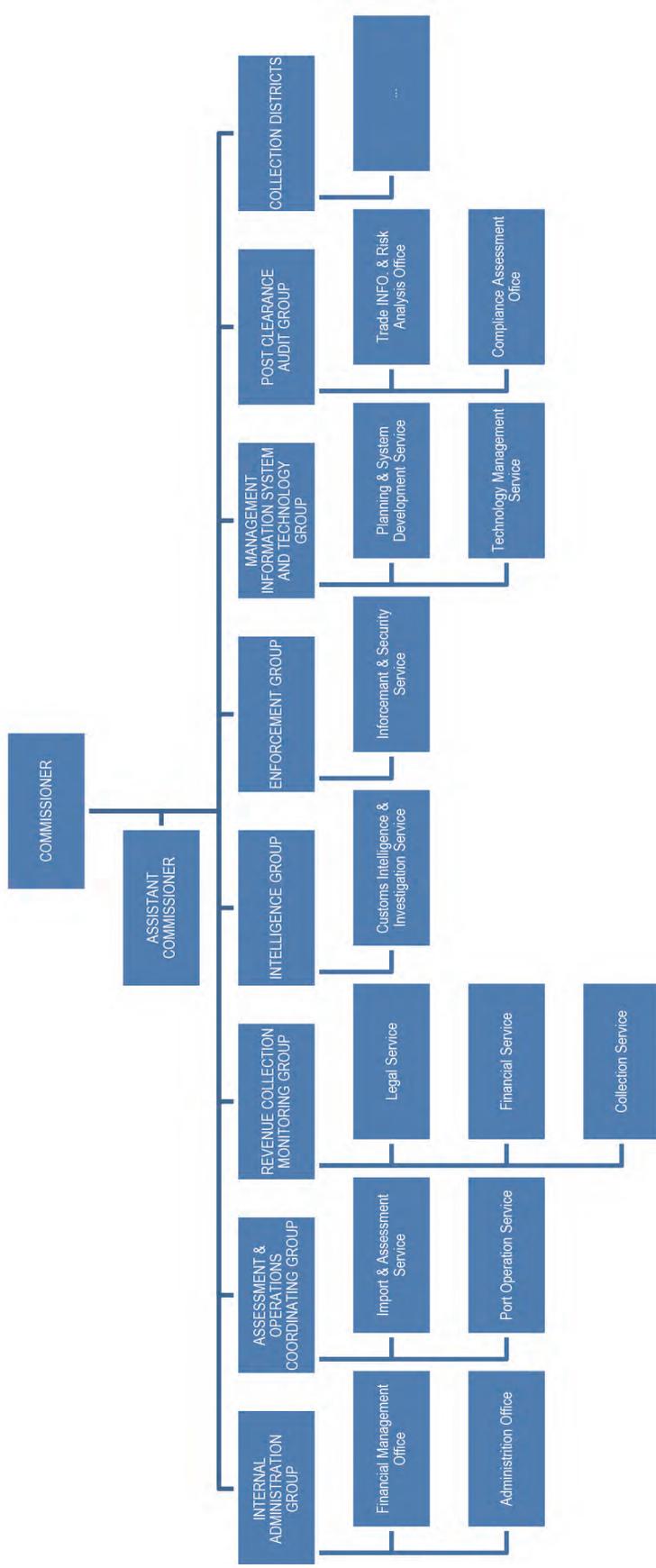
- The assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and Customs laws;
- The prevention and suppression of smuggling and other frauds upon the Customs;
- The supervision and control over the entrance and clearance of vessels and aircraft engaged in foreign commerce;
- The general supervision, control and regulation of vessels engaged in the carrying of passengers and freight or in towage in coastwise trade and in the bays and rivers of the Philippines;
- The prohibition and suppression of unnecessary noises, such as explosion of gasoline engines, the excessive blowing of whistles or sirens, and other needless and disturbing sounds made by water craft in the ports of the Philippines or in parts of rivers included in such ports;
- The exclusion, if the conditions of traffic should at any time so require, of vessels of more than one hundred and fifty tons from entering, berthing or mooring in the Pasig River;
- The admeasurement, registration, documenting and licensing of vessels built or owned in the Philippines, the recording of sales, transfers and encumbrances of such vessels, and the performance of all the duties pertaining to marine registry;
- The inspection of Philippine vessels, and supervision over the safety and sanitation of such vessels;
- The enforcement of the lawful quarantine regulations for vessels entering Philippine ports;
- The enforcement of the tariff and Customs laws and all other laws, rules and regulations relating to the tariff and Customs administration;

- The licensing of marine officers who have qualified in the examination required by law to be carried on Philippine vessels, the determination of the qualifications of pilots, the regulation of this service, and the fixing of the fees which they may charge;
- The supervision and control over the handling of foreign mails arriving in the Philippines, for the purpose of the collection of the lawful duty on dutiable articles thus imported and the prevention of smuggling through the medium of such mails.

### **1.3 Organization of BOC**

The Bureau of Customs shall have one chief and one assistant chief, to be known respectively at the Commissioner and Assistant Commissioner of Customs, who shall each receive an annual compensation in accordance with the rates prescribed by existing laws. The Assistant Commissioner of Customs shall be appointed by the proper department head. Now, the BOC employed about 5500 officers and employees at the Central Office and 14 District Offices. There are also 7 departments under the Commissioner of Customs as shown by Figure 1.

4 Figure 1 Organizational Chart of the Bureau of Customs



Source: [www.customs.gov.ph](http://www.customs.gov.ph)

---

## 2. CUSTOMS LEGAL SYSTEM

The Philippines Bureau of Customs (BOC) is the governmental agency under the authority of the Ministry of Finance that is responsible for the enforcement of the Tariff and Customs Code and other related regulations.

### 2.1 TCCP

In 1957, Philippines enacted the Tariff and Customs Code of the Philippines (TCCP) known as Republic Act No. 1937, otherwise known as the “Tariff Law of the Republic of the Philippines”, the first official expression of an autonomous Philippine tariff act. In 1978, the president of the Republic of the Philippines at that time did hereby order and decree as follows to infuse flexibility, keep pace with the changing needs and demands of trade and commerce as well as strengthen the punitive force of the law against smuggling and other forms of Customs fraud. All tariff and Customs laws embodied in the Tariff and Customs Code and various laws, presidential decrees and executive orders including new amendments were consolidated into a single Code to be known as the Tariff and Customs Code of 1978 which shall form an integral part of the Decree.

According to Tariff and Customs Code of the Philippines (As Amended by Executive Orders Nos. 1, 2, 5, 8, 61, 94, 115, 116 & 148, Series of 1994), the main contents of the Tariff and Customs Code of Philippines are as follows:

#### **BOOK I**

- **Tariff Law**

  - Title I - Import Tariff

  - Title II - Administrative Provisions

- **Customs Law**

  - Title I - The Bureau of Customs

  - Title II - Registration of Vessels, Coastwise Trade and Licensing of Marine Officers

  - Title III - Vessels and Aircraft in Foreign Trade

Title IV - Ascertainment, Collection and Recovery of Import Duty

Title V - Warehousing of Imported Articles

## BOOK II

Title VI - Administrative and Judicial Proceedings

Title VII - Fees, Dues and Charges Collectible by the Bureau of Customs

Title VIII - General Provisions

Please click [here](#) for more details about TCCP.

## 2.2 CMTA

Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), was signed into law on May 30, 2016. CMTA amended the Tariff and Customs Code of the Philippines (TCCP) with the aim of modernizing Customs rules and procedures for faster trade, reduce opportunities for corruption, improve Customs service delivery and improve supply chain.

Main contents of CMTA are shown below:

- **Title I Preliminary Provisions**
  - Chapter 1 Shot Title
  - Chapter 2 General and Common Provision
  - Chapter 3 Types of Importation
  - Chapter 4 Relief Consignment
- **Title II Bureau of Customs**
  - Chapter 1 General Administration
  - Chapter 2 Customs Districts and Ports of Entry
  - Chapter 3 Exercise of Police Authority
- **Title III Customs Jurisdiction and Customs Control**
  - Chapter 1 Customs Jurisdiction

Chapter 2 Customs Control

- **Title IV Import Clearance and Formalities**

Chapter 1 Goods Declaration

Chapter 2 Examination of Goods

Chapter 3 Assessment and Release

Chapter 4 Special Procedures

- **Title V Export Clearance and Formalities**

Chapter 1 Export Clearance and Declaration

- **Title VI Customs Transit and Transshipment**

Chapter 1 Customs Transit

- **Title VII Import Duty and Tax**

Chapter 1 Basis of Valuation

Chapter 2 Special Duties and Trade Remedy Measures

- **Title VIII Tax and Duty Deferment, Preference and Exemption**

Chapter 1 Conditionally Tax and/or Duty-exempt Importation

Chapter 2 Customs Warehouses

Chapter 3 Free Zones

Chapter 4 Stores

- **Title IX Duty Drawback and Refund**

Chapter 1 Duty Drawback

Chapter 2 Refund and Abatement

- **Title X Post Clearance Audit**

- **Title XI Administrative and Judicial Procedures**

- Chapter 1 Advance Ruling and Dispute Settlement
- Chapter 2 Protest
- Chapter 3 Alert Orders
- Chapter 4 Seizure and Forfeiture
- Chapter 5 Appeal in Protest and Forfeiture Cases
- Chapter 6 Abandonment
- Chapter 7 Other Administrative Proceedings
- Chapter 8 Civil Remedies for the Collection of Duties and Taxes
- Chapter 9 Judicial Proceedings
- Chapter 10 Disposition of Property in Customs Custody

- **Title XII Third Parties**

- Chapter 1 Customs Service Providers
- Chapter 2 Carriers, Vessels, and Aircrafts
- Chapter 3 Other Third Parties
- Chapter 4 Authorized Economic Operators (AEOs)

- **Title XIII Customs Fees and Charges**

- **Title XIV Offenses and Penalties**

- Chapter 1 Crimes and Other Offenses
- Chapter 2 Penalties Imposed Upon Bureau Employees

- **Title XV Miscellaneous Provisions**

- **Title XVI Tariff Administration and Policy**

- Chapter 1 Tariff Commission
- Chapter 2 Flexible Tariff
- Chapter 3 Tariff Nomenclature and Rate of Duty

- **Title XVII Congressional Oversight Committee**
- **Title XVIII Final Provisions**

Please click [here](#) for more details about CMTA.

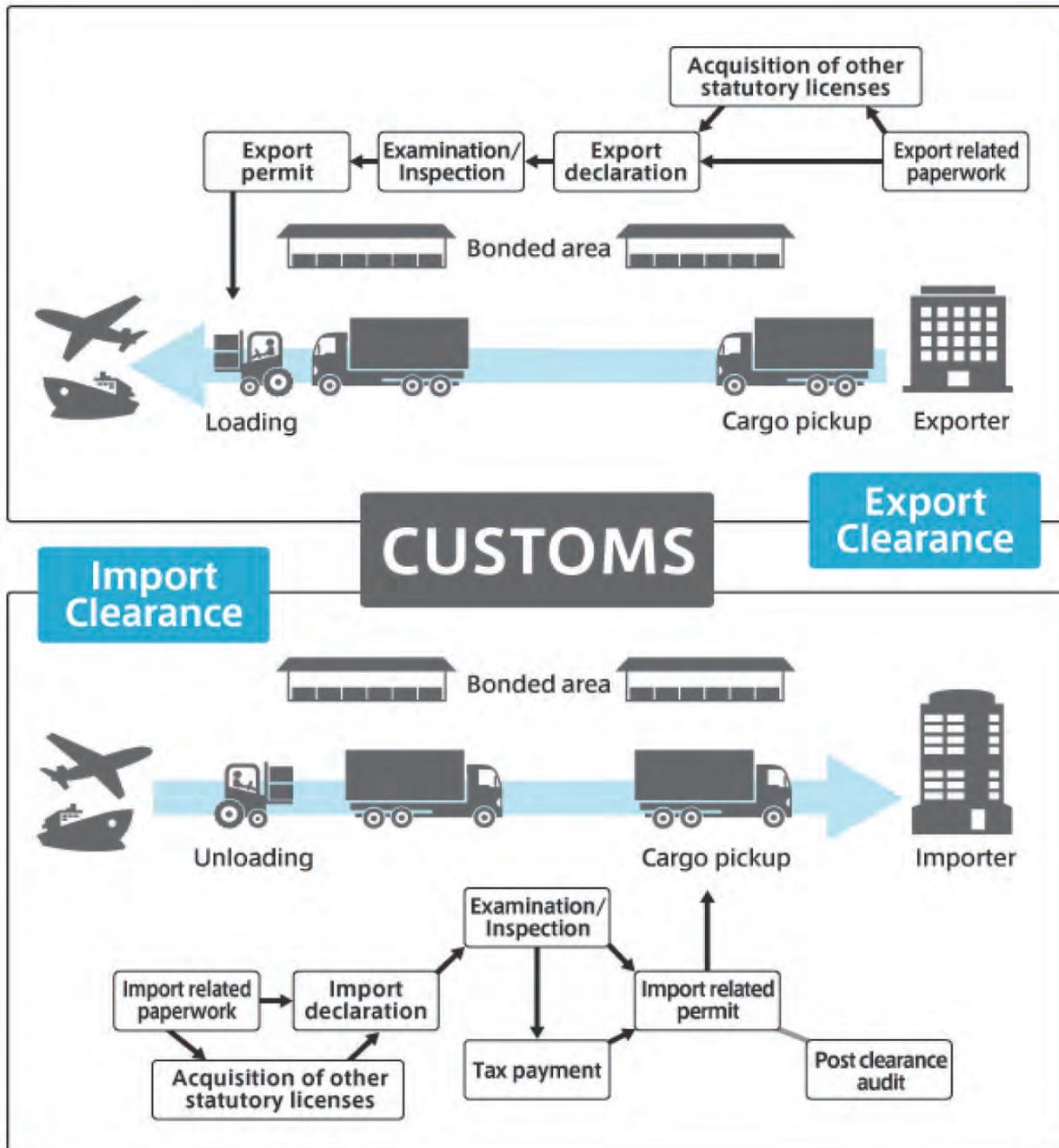
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## **3. CUSTOMS CLEARANCE PROCEDURES**

### **3.1 Normal Customs Clearance Procedures**

As shown in Figure 2, the general Customs clearance procedures of importing and exporting in the Philippines are: Accept the declaration → Review the documents → Check the goods → Apply for taxation → Customs clearance.

Figure 2 Customs Clearance Process



Source: <https://siam-relocation.com/moving-to-philippines/>

### 3.1.1 Declarations

Importers, exporters or their Customs clearance agents are required to file declaration to Customs upon

arrival or departure of consignments. Besides Declaration Form, other supporting documents are also required to be submitted.

### **A. Declaration for Import**

To register as an importer, businesses first need an Import Clearance Certificate from the Bureau of Internal Revenue. Importers then register with the Bureau of Customs (BOC) and set up an account with the Client Profile Registration System (CPRS). The Import Clearance Certificate is valid for three years while the Customs Client Profile Accreditation must be updated annually. The CPRS accreditation costs P1000 (US\$20) and typically takes 15 working days to process.

Businesses importing into the Philippines must provide the following documents when their goods arrive:

- Packing List;
- Invoice;
- Bill of Lading;
- Import Permit;
- Customs Import Declaration; and
- Certificate of Origin.

Other Documents for certain Imports such as bringing in animals, plants, foodstuff, medicine or chemicals must additionally obtain a Certificate of Product Registration from the Philippines' Food and Drug Administration.

### **B. Declaration for Export**

For certain types of exporters, additional registrations are required in the Philippines. For instance, coffee exporters must register with the Export Marketing Bureau. Exporters operating out of a special economic zone (SEZ) must register with the Philippine Economic Zone Authority (SEZA) while companies exporting out of free port zones must register with the specific free port. Once registered, exporters will receive a Unique Registration Number, necessary for all export activity.

Businesses exporting out of the Philippines must provide the following documents before their goods depart:

- Packing List;
- Invoice;
- Bill of Lading;
- Export License;
- Customs Export Declaration; and
- Certificate of Origin.

Additional government permission documents for certain exports are also required. Below is a brief list of products requiring additional permissions as well as the concerned government authorities:

- Endangered species of flora and fauna (Bureau of Biodiversity Management);
- Animals and animal products (Bureau of Animal Industry);
- Fish and fish products (Bureau of Fisheries and Aquatic Resources);
- Plants (Bureau of Plant Industry);
- Rice (National Food Authority);
- Radioactive materials (Philippine Nuclear Research Institute) and;
- Sugar and molasses (Sugar Regulatory Administration);
- Tariff-Rate Quotas (TRQs) still remain on a number of sensitive products such as corn, poultry meat, pork, sugar and coffee. Minimum Access Volumes (MAVs) have also been established for these commodities.

### **C. Declaration for Transit Trade**

All commodities, not for domestic consumption and imported for transit trade, are required to produce the Customs Declaration Form for Transit Trade, attached with the following documents:

- Bill of Lading or Air Consignment Note or Truck Note;
- Transit Trade License or Permit issued by the Ministry of Trade;
- Commercial Invoice;
- Sales Contract between seller and buyer or contract between seller and authorized agent;

- Guarantee Bond, undertaken in strict compliance with regulations: failure to export will be dealt with according to the existing law.

### **3.1.2 Documentary Examination**

After accepting declarations, Customs officials conduct documentary examination to check the accuracy, authenticity and completeness of both Declaration Forms and attached supporting documents, by both manual and more importantly by advanced automated clearance system.

### **3.1.3 Physical Inspection**

BOC officers examine goods imported or exported physically to assure that they have been properly declared. After examining all declaration documents, physical inspections can be conducted by Customs competent officers based on assessment of risk. Imported goods are divided into three categories: green, yellow and red. Green denotes the least risk, yellow denotes intermediate risk, and red denotes high risk.

### **3.1.4 Duty Collection for Import**

Once a declaration has been submitted and accepted by the Customs, the importers will be required to pay the duties. Customs duties assessed on imports are usually determined based upon three main factors:

#### **A. Origin of Goods**

Country of Origin is determined mainly for the application preferential duty rates, such as rates established by the ASEAN Trade in Goods Agreement (ATIGA). Under ATIGA, over 8800 tariff lines are duty free and ASEAN has its specific rules for determining ASEAN origin.

#### **B. Customs Valuation of Goods**

Philippine Customs uses an internationally accepted Customs valuation method to verify the duty-paying value of imported goods.

#### **C. Customs Classification of Goods**

The classification, or legal description, is based upon the goods classification under an international

tariff nomenclature, the Harmonized Commodity Description and Coding System (2017), or “HS”, an international agreement administered by the World Customs Organization (WCO) that categorizes all goods into about 5000 commodity groups, each identified by an eight-digit code.

### 3.1.5 Release

Goods declared shall be released when taxes, duties and other lawful charges have paid or secured and all the pertinent law, rules and regulations have been complied with. After declaration, documentary examination, physical inspection and duty collection, release usually is the final step for Customs field operations allowing the consignments to be used for domestic consumption, or to be transported for exportation, or for other allowed purposes.

## 3.2 Special Customs Clearance Procedures

### 3.2.1 Transit and Transshipment

Customs transit within the Customs territory shall be allowed for goods except those intended for consumption. A transit permit is required for goods transported under Customs transit. Goods admitted for transshipment shall not be subject to the payment of duties and taxes. The goods declared for Customs transshipment, duly commercial or transport documents or evidences are required by the Bureau.

Goods for transshipment must be exported from the Philippines within thirty days from arrival thereof. The Commissioner may allow an extension of such period after the establishment of valid reasons.

#### **A. Documents for Transit and Transshipment**

All commodities, not for domestic consumption and imported for transit trade, are required to produce the Customs Declaration Form for Transit, attached with the following documents:

- Bill of Lading or Air Consignment Note or Truck Note;
- Transit Trade License or Permit issued by the Ministry of Trade;
- Commercial Invoice;
- Sales Contract between seller and buyer or contract between seller and authorized agent;
- Guarantee Bond, undertaken in strict compliance with regulations: failure to export will be dealt with

according to the existing law.

## **B. Security for Transit and Transshipment**

Where an intent of re-exportation of the goods is shown by the Bill of Lading, invoice, manifest, or other satisfactory evidence, the whole or a part of a bill comprising not less than one package may be entered for immediate re-exportation under security. The District Collector shall designate the vessel or aircraft in which the goods are loaded constructively as a warehouse to facilitate the direct transfer of the goods to the exporting vessel or aircraft.

Unless it shall appear in the Bill of Lading, Airway Bill, invoice, manifest, or other satisfactory evidence, that goods arriving in the Philippines are destined for transshipment, no exportation thereof will be permitted except under entry for immediate re-exportation under sufficient security in an amount equal to the ascertained duties, taxes and other charges. Upon the re-exportation of the goods, and the production of proof of landing beyond the limits of the Philippines, the security shall be released.

### **3.2.2 Temporary Entry**

Following products entering the Philippines temporarily are exempted from the payment of import duties subject to conditions as defined in the Tariff and Customs Code of Philippines (TCCP):

- equipment for use in the salvage of vessels or aircraft;
- articles brought into the Philippines for repair, processing or reconditioning to be re-exported upon completion of the repair, processing, or reconditioning;
- articles used exclusively for public entertainment, and for display in public expositions, or for exhibition or competition for prizes, and devices for projecting pictures and parts;
- articles brought by foreign film producers directly and exclusively used for making or recording motion picture films on location in the Philippines

Certain cases wherein an intent to export is shown in the covering commercial documents of imported articles where the Collector of Customs may authorize the filing of an entry for immediate exportation, under bond.

For warranty and non-warranty items entering the Philippines for repair, the Department of Finance

requires the following additional documents:

- letter from the importer or consignee with information on the purpose of importation;
- notarized affidavit of undertaking;
- commercial invoice and shipping documents;
- scope of work;
- contract;
- bond.

### 3.2.3 Cross Border E-Commerce

In Philippines, any person or entities who in the course of trade or business, sells, exchanges, or leases goods or properties, or renders services, and any person who imports goods is liable to VAT. For E-commerce taxation, the 12% VAT on total value of online transactions came into effect in 2016 and is applicable to store owners as well. For transactions lower than the threshold, a 3% VAT is levied instead on online transactions. Recently, BOC is drafting its rules on Cross-Border E-Commerce, but BOC has still its own challenges enforcing supervision on different online business models.

## 3.3 Document Requirements for Customs Clearance

### 3.3.1 Written Declaration for Entry

Except in case of informal entry, no entry of imported and exported goods shall be affected until there shall have been submitted to the Collector a written Declaration Form, in such form as shall be prescribed by the Commissioner, containing statements of substance as follows:

- a full and true statement of all the articles which are the subject of the entry;
- the invoice and entry contain a just and faithful account of the actual cost of said articles, including and specifying the value of all containers or coverings, and that nothing has been omitted therefrom or concealed whereby the government might be defrauded of any part of the duties lawfully due on the articles;
- the invoice and all Bills of Lading relating to the articles are the only ones in existence relating to the importation in question;

- the invoice and Bill of Lading, and the declaration thereon are in all respects genuine and true, and were made by the person by whom the same purport to have been made respectively.

### 3.3.2 Commercial Invoice or Pro-Forma Invoice

Invoice of articles imported into the Philippines shall set forth:

- The place where, the date when, and the person by whom and the person to whom the articles are sold, or the place from which shipped, the date when, and the person to whom and the person by whom they are shipped;
- The port of entry to which the articles are destined;
- The detailed description of the articles, including the grade or quality, numbers, marks or symbols, together with the marks and numbers of the packages in which the articles are packed;
- The quantities in the weights and measures of the country or place from which the articles are shipped, or in the weights and measures of the Philippines;
- The purchase price of each item in the currency of the purchase and in the unit of the quantity;
- The kind of currency; whether gold, silver or paper;
- All charges upon the articles itemized by name and amount; or all charges by name (e.g., commission, insurance, freight, cases, containers, coverings and cost of packing) included in invoice prices;
- All discounts, rebates, drawbacks and bounties separately itemized, allowed upon the exportation of the articles, all internal and excise taxes applicable to the home market;
- Any other facts deemed necessary to a proper examination, appraisalment and classification of the articles which the Commissioner may require.

The value indicated must be correct. If the shipment consists of more than one item, the importer must provide a value breakdown and ensure that the total amount tally to the total value of the shipment. The value must be transaction value – the price paid or payable - for the item/s in case the item has been provided free of charge or as a gift. Putting “No Commercial Value” will lead to Customs asking the consignee to provide value evidence such as proof of payment, purchase order, or telegraphic transfer. The invoice should also include the country of origin.

### 3.2.3 Bill of Lading or Air Waybill

Bill of Lading for sea freight should be filled out completely and accurately. Make sure all the information is consistent with the commercial invoice. A revision in the declared value once a shipment reaches the destination port is subject to Customs approval. Air Waybill for air freight should also be filled and submitted in the same manners.

Make sure to include a reachable consignee contact so the destination port can easily inform them about the shipment's arrival and advise them of any necessary clearance paperwork.

### 3.2.4 Packing List

Packing List should detail the merchandise in the shipment, along with information on how it was packed, how the items are numbered, the serial numbers, and the weight and dimensions of each item.

### 3.2.5 Letter of Credit (L/C)

For a Letter of Credit (L/C) transaction, a duly accomplished L/C, including a Pro-Forma Invoice and Import Entry Declaration for Advance Customs Import Duty is required. A Pro-Forma Invoice is required for non-L/C transactions (e.g., Draft Documents against Acceptance, Documents against Payment, Open Account or self-funded documentation).

### 3.2.6 Applicable Special Certificates/Import Clearance/Permit

Applicable special certificates/import clearance/permit depending on the nature of goods being shipped and/or requested by the importer/bank/letter of credit clause, e.g., Food and Drug Administration (FDA) license.

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## 4. ACOS AND SINGLE WINDOW

### 4.1 Automated Customs Operating System (ACOS)

In 2004, an automated Customs clearance solution - Automated Customs Operating System (ACOS) has been introduced by the Philippines Bureau of Customs in Manila. Under such automated clearance system, the Customs will no longer examine import or export declaration documents or determine whether or not a given declaration is accepted or declined. Once the declaration filing is done on-line, the system will automatically accept it without further need to review manually the hard copies, and the declarant will have no chance to rectify any errors or mistakes. Upon submission, Customs declaration is deemed done, and the importer/exporter will bear the relevant legal consequences for any improper or untruthful declaration it has made to the system of automated clearance.

ACOS, delivered through Inter Commerce Network Services, enables high-tech industry manufacturers, along with their freight forwarders and Customs brokers, to send secure Internet-based Customs transactions directly to the Bureau of Customs, reducing both clearance cycle times and transaction costs.

### 4.2 Electronic to Mobile (E2M) System

Accredited importers or Customs brokers can access the BOC's Electronic to Mobile system to lodge import entries electronically. The system allows Customs officers and traders to electronically process most Customs transactions, although importers are still required to submit hard copies of import documents and attachments to the Entry Processing Unit for verification. Customs procedures have been automated through the Electronic to Mobile system to streamline the payment and clearance processes at the Bureau of Customs.

Shipments are classified according to their risk. A low-risk shipment passes through the "Green Lane" without documentary review or physical inspection. A moderate-risk shipment passes through the "Yellow Lane" and is subject to document review. A high-risk shipment passes through the "Red Lane" and is subject to both document review and physical inspection. A shipment considered for post clearance audit passes through the "Blue Lane".

The Electronic to Mobile system does not deal with permits and/or licenses issued by other government

agencies and must be applied for separately.

### 4.3 Philippine National Single Window

The Philippines National Single Window will facilitate trade through efficiencies in the Customs and authorization processes. Strongly supported by the Office of the President, the NSW will allow single submission and accelerated processing of applications for licenses, permits and other authorizations required prior to undertaking a trade transaction. The success of national single window will be measured by the reduction of the time taken by importers and exporters in doing business with government.

Under the national single window, the BOC processes applications for permits, licenses and clearances from traders. The system allows stakeholders to transact with government agencies through a single internet-based window. The centralized system provides any agency information at the click of a button.

Government agencies and traders are linked via the internet through PCs or mobile devices. Traders can create their application entries and verify before sending them to the agency. On the other hand, the national single window will provide a single source of trade data for analytical purposes. It also calls for a government-wide rationalization, standardization and harmonization of all trade-related data.

The Philippines has connected the NSW trade portal to the ASEAN Single Window by the end of 2018.

### 4.4 ASEAN Single Window

The ASEAN Single Window (ASW) is a regional initiative that connects and integrates National Single Window (NSW) of ASEAN Member States. The ASW's objective is to expedite cargo clearance and promote ASEAN economic integration by enabling the electronic exchange of border trade-related documents among ASEAN Member States.

With a view to expediting Customs clearance, ASEAN had adopted an action plan to establish the ASEAN Single Window. Information parameters for Customs purposes and particularly for a common Customs declaration document for imports, exports and goods in transit had been standardized. The Steering Committee for the ASEAN Single Window meets regularly to discuss ways forward to speed up the establishment of a regional-wide ASEAN Single Window. At the same time, efforts with regard to technical aspects of the initiative were made by the Technical Working Group on ASEAN Single Window whilst the Legal Working Group on the ASEAN Single Window had accomplished its task with the signing of the

Protocol on the Legal Framework to Implement the ASEAN Single Window.

For further information on ASEAN Single Window, please visit the [website](#).

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## 5. CUSTOMS BROKERAGE SERVICER

In the Philippines, Customs Broker is any person who is bona fide holder of a valid Certificate of Registration/Professional Identification Card issued by the Professional Regulatory Board and Professional Regulation Commission. Customs Brokers' knowledge on import and export guidelines in the Philippines simply helps the Customs clearance process. They know the prohibited products, local shipping requirements, and other relevant information to expedite shipments. They are also familiar with tariff laws and trade agreements between countries in the ASEAN and AMEA regions.

The Government in seeking the need to ensure a world class Customs brokerage industry in the Philippines has enacted into the Customs Brokers Act of 2004. This important legislation is aimed to give priority attention and support in professionalizing the code of conduct and practice of Customs Broker profession in the Philippines which will be beneficial to the fast-growing trade and logistics business in the country towards a more sustainable economic growth of the Philippine Economy. Please click [here](#) for more details about the Customs Brokers Act of 2004.

To modernize the fast-growing Customs broker and logistics business in the Philippines, the Government has also passed the Customs Modernization and Tariff Act (CMTA). This landmark legislation is envisioned to regulate the Customs brokerage business as well as protect and enhance government revenue, institute fair and transparent Customs, and tariff management that will efficiently facilitate international trade. This act will also develop the logistics business and prevent and curtail any form of fraud and illegal acts, and modernize Customs Broker business and tariff administration at par with the international standards.

## 6. CUSTOMS SECURITY

Philippines Customs Administrative Order (CAO) - Security to Guarantee of Payment of Duties and Taxes and other Obligations, applies to all forms of security required to guarantee payment of duties and taxes and other obligations provided for under the Customs Modernization and Tariff Act (CMTA) and other existing rules and regulations.

### 6.1 Forms of Security

Unless specifically prescribed, any party required providing securities to guaranty the payment of duties and taxes and other obligations shall have the option to choose from any of the following forms of security:

- Surety Bond;
- Cash Bond;
- Standby Letter of Credit or irrevocable Letter of Credit;
- Any other acceptable forms of security.

### 6.2 Circumstances Using Security

To guarantee the payment of duties and taxes and other obligations to the BOC, the District Collector shall require the posting of security under the following circumstances:

- **A. Release of Shipment under Provisional Declaration**

Goods under provisional goods declaration may be released upon posting of the required security equivalent to the amount ascertained to the applicable duties and taxes.

- **B. Release of Goods subject to Dispute Settlement**

The District Collector may allow the release of the shipment under tentative assessment upon posting of security equivalent to the duties and taxes due on goods.

- **C. Release of Shipment pending Laboratory Analysis**

When the Bureau requires laboratory analysis of samples, detailed technical documents or expert advice, it may release the goods before the results of such examination are known after posting of sufficient security by the importer. Provided, that the goods are not prohibited or restricted.

- **D. Express Consignment**

Express shipments of accredited air express cargo operators may be released prior to the payment of the duty, tax and other charges upon posting of a sufficient security.

- **E. Shipment under Warehousing Entries**

For goods declared in the entry for warehousing, the District Collector shall require the importer to post a sufficient security equivalent to the computed duties and taxes and other charges conditioned upon the withdrawal of the goods within the period prescribed under CMTA or the payment of the duties and taxes and other charges and compliance with all the importation requirements.

- **F. Transit of Goods to Free Zone Locator**

For goods intended for transit to Free Zones, the District Collector of the port of discharge shall require Free Zone Locators to post a General Transportation Surety Bond (GTSB) for the immediate and faithful delivery of the goods covered by the Goods Declaration for transit to its destination.

- **G. Carrier's Security**

Carriers that transport imported goods that shall be placed under Customs transit from a port of entry to other ports, shall post a general transportation security amounting to at least fifty thousand pesos. Such security shall ensure the complete and immediate delivery of goods to the Customs officer at the port of destination and the payment of pertinent Customs charges and expenses and other transfer costs. The amount of the security may be adjusted by the Commissioner, upon approval of the Secretary of Finance.

- **H. Transit of Goods under Co-loading Act**

Goods intended for transit covered by Republic Act No. 10668, otherwise known as "An Act Allowing Foreign Vessels to Transport and Co-Load Foreign Cargoes for Domestic Transshipment

and for Other Purposes”, shall not be subject to the payment of duties and taxes at the port of entry. Provided, that any conditions and security required by the Bureau are complied with.

- **I. Release of Goods pending Ascertainment of the Accuracy of the Declared Value**

If in the course of determining the dutiable value of imported goods, it becomes necessary to delay the final determination of such dutiable value, the importer shall nevertheless be able to secure the release of the imported goods upon posting of a sufficient security to forfeit the bond to answer for the payment of the duties and taxes due thereon. The same procedure may be availed of for accompanied baggage or those arriving after the date of return if the clearance is not yet secured from the Commissioner.

- **J. Posting of Performance Bond with the Bureau**

To protect the interest of the government the District Collector may require any party to post security for the faithful compliance of their obligations with the Bureau under existing laws, rules and regulations.

Please click [here](#) for more details about the Customs security.

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## 7. PROHIBITIONS AND RESTRICTIONS

According to CMTA, importation of certain commodities into the Philippines and exportation of certain commodities from Philippines are regulated, restricted or prohibited for reasons of public health and safety, national security, international commitments, and development/rationalization of local industry.

The type of importation whether freely importable, regulated, restricted or prohibited may be checked or verified with the BOC and also the Bureau of Import Services (BIS) of the Department of [Trade and Industry](#). [The Department of Agriculture](#) can verify the importation status of agricultural products, as well as indicate whether a Minimum Access Volume Import Certificate is required, such as for the importation of swine, chicken, etc.

## 7.1 Free Importation and Exportation

Free Importation and Exportation - goods that may be freely imported into and exported from the Philippines without the need for import and export permits, clearances or licenses, unless otherwise provided by law or regulation. (Chapter 3, Section 116 CMTA).

## 7.2 Regulated Importation and Exportation

Goods which are subject to regulation shall be imported or exported only after securing the necessary goods declaration, clearances, licenses, and any other requirements, prior to importation. In case of importation, submission of requirements after arrival of the goods, but prior to release from Customs custody shall be allowed, but only in cases provided for by governing laws or regulations.

## 7.3 Restricted Importation and Exportation

Except when authorized by law or regulation, the importation and exportation of the following restricted goods are prohibited:

- Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, or parts thereof;
- Roulette wheels, gambling outfits, loaded dice, marked cards, machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other goods when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof;
- Lottery and sweepstakes tickets, except advertisements thereof, and lists of drawings therein;
- Marijuana, opium, poppies, coca leaves, heroin or other narcotics or synthetic drugs which are or may hereafter be declared habit forming by the President of the Philippines, or any compound, manufactured salt, derivative, or preparation thereof, except when imported by the government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medicinal purposes;
- Opium pipes or parts thereof, of whatever material;
- Any other goods whose importation and exportation are restricted;
- Weapons of mass destruction and goods included in the national Strategic Goods list as provided under the Strategic Trade Management Act;

- Toxic and hazardous goods under the Toxic Substances and hazardous and Nuclear Wastes Control Act of 1990.

The restriction to import or export the above stated goods shall include the restriction on their transit.

## 7.4 Prohibited Importation and Exportation

The importation and exportation of the following goods are prohibited:

- Written or printed goods in any form containing any matter advocating or inciting treason, rebellion, insurrection, sedition against the government of the Philippines, or forcible resistance to any law of the Philippines, or written or printed goods containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines;
- Goods, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises, describes or gives direct or indirect information where, how or by whom unlawful abortion is committed;
- Written or printed goods, negatives or cinematographic films, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character;
- Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloy;
- Any adulterated or misbranded food or goods for human consumption or any adulterated or misbranded drug in violation of relevant laws and regulations;
- Infringing goods as defined under the Intellectual Property Code and related laws;
- All other goods or parts thereof which importation are explicitly prohibited by law or rules and regulations issued by the competent authority.

Since the regulations change from time to time, regulated imports list will be updated when there are any changes in regulations, such that the version accessible from the Bureau of Customs website will always be up-to-date, and will always be the basis for clearance of regulated products by Customs staff. Regulating agencies are requested to inform the Bureau of Customs when regulations on imports change, at least one month in advance before their implementation.

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## 8. TARIFFS, DUTIES, TAXES AND FEES COLLECTED

### 8.1 Brief Introduction

The Bureau of Customs mainly collects following Customs tariffs, taxes, duties, charges and fees:

- Import Tariff;
- Export Tariff;
- Value-Added Tax;
- Consumption Tax;
- Stamp Duty;
- Warehouse Processing Charges;
- Bulk and Break Bulk Cargo Fee.

#### **A. Import Tariff**

The Philippines imposes ad valorem Import Tariffs on most imported products, but imposes specific Import Tariffs on alcoholic beverages, fireworks, tobacco products, watches, fossil fuels, cartoons, saccharin, and poker.

#### **B. Export Tariff**

The only exported good which incur an Export Tariff is log at 20 percent.

#### **C. Value-added Tax**

Imported products should also pay a 12% VAT to the Philippine Customs, based on the value of the Customs valuation plus the import tariffs and excise tax imposed.

#### **D. Excise Duty - Consumption Tax**

The Philippines imposes an Excise Duty - Consumption Tax on alcohol products, tobacco products,

petroleum products, miscellaneous products (automobiles and non-essential goods) and mineral products.

### **E. Stamp Duty**

The Philippines also imposes Stamp Duty on imported goods, which is generally used for bills of lading, receipts, bills of exchange, other transaction orders, insurance policies, mortgage deeds, power of attorney and other documents.

### **F. Warehouse Processing Charges (WPC)**

There are two types of Warehouse Processing Charges (WPC) will be facing in the Philippines in case of handling shipments: storage charges and warehouse handling charges.

### **G. Bulk and Break Bulk Cargo Fee**

The Philippines has embraced a cargo clearance enhancement program for the bulk and break bulk cargo fees. These commodities include: liquids; chemicals; petroleum products; dry cargoes (grain) and all other cargoes shipped in bulk or break-bulk (such as wood, steel, etc.).

## **8.2 Import Tariff Rates**

Import Tariff rates mainly include the following categories:

- ASEAN Trade in Goods Agreement (ATIGA);

Importing to the Philippines is now easier as the tariffs have been removed on approximately 99% of all goods from ASEAN trading partners due to the ASEAN Trade and Goods Agreement (ATIGA).

- Most-Favored Nation (MFN) rates;
- Free Trade Agreements rates;

Products from China, India, Japan, Korea, Australia and New Zealand, FTA rates shall be applied.

- Preferential duty rates.

The highest Customs tariff rates apply to products derived from sugar and cereal products. However, a rule of thumb is that higher tariffs are overall implemented on imported manufactured goods if they are in

competition with locally produced items, especially when in comparison to those without any or low local competition.

*Table 1 Import Tariff of the Philippines 2018*

Summary	Total			Ag			Non-Ag		
	6.2			9.8			5.6		
Frequency distribution	Free	0~5	5~10	10~15	15~25	25~50	50~100	> 100	NAV
	Tariff lines and import values (in %)								
Ag MFN applied	3.8	45.6	28.0	9.4	3.4	9.3	0.4	0	0
Non-ag MFN applied	12.6	49.6	23.6	12.5	1.0	0.7	0	0	0
Product groups	MFN applied duties								
	AVG			Duty-free in %			Max		
Animal products	20.2			6.5			45		
Dairy products	3.4			8.7			7		
Fruit, vegetables, plants	9.6			1.6			40		
Coffee, tea	15.7			0			45		
Cereals & preparations	10.1			10.0			50		
Oilseeds, fats & oils	5.3			4.8			15		
Sugars and confectionery	19.1			0			65		
Beverages & tobacco	8.2			0			15		
Cotton	2.6			0			3		
Other agricultural products	3.6			2.4			35		
Fish & fish products	8.8			0.8			15		
Minerals & metals	4.5			7.7			20		
Petroleum	1.0			66.7			3		
Chemicals	3.6			2.3			30		
Wood, paper, etc.	6.3			10.7			30		
Textiles	9.1			0.3			20		
Clothing	14.8			0			15		
Leather, footwear, etc.	6.7			1.3			20		
Non-electrical machinery	1.7			56.9			15		
Electrical machinery	3.4			36.3			30		

Transport equipment	9.8	7.4	30
Manufactures, n.e.s.	4.5	14.2	15

Source: WTO Statistics.

## 8.3 Special Import Duties

Special import duties are levied in addition to the ordinary import duties, taxes and charges imposed by law on the imported product under the following circumstances:

### 8.3.1 Anti-Dumping Duty

Anti-Dumping Duty is imposed by the Secretary of Trade and Industry, in the case of non-agricultural products, commodities or articles, or the Secretary of Agriculture, in the case of agricultural products, commodities or articles, after formal investigation and affirmative finding of the Tariff Commission. The duty is equal to the margin of dumping on such product, commodity or article and on like product, commodity or article thereafter imported into the Philippines under similar circumstances.

### 8.3.2 Countervailing Duty

Countervailing Duty is a special duty charged whenever any imported goods is granted directly or indirectly by the government in the country of origin or exportation, any kind or form of specific subsidy upon the production, manufacture or exportation of such goods, and the importation of such subsidized goods has caused or threatens to cause material injury to a domestic industry or has materially retarded the growth or prevents the establishment of a domestic industry.

After formal investigation and affirmative finding by the Tariff Commission of such threat, the Countervailing Duty which is equal to the ascertained amount of the subsidy, may be imposed by the Secretary of Trade and Industry, in the case of non-agricultural goods, or the Secretary of Agriculture, in the case of agricultural goods thereafter imported into the Philippines.

### 8.3.3 Marking Duty

The marking of articles (or its containers) is a prerequisite for every article or container of foreign origin which is imported into the Philippines. The marking shall be done in any official language of the Philippines and in a conspicuous place as legibly, indelibly and permanently as the nature of article (or

container) may permit to indicate to an ultimate purchaser in the Philippines the country of origin of the article. In case of failure to mark an article or its container at the time of importation, unless otherwise exempted from the requirements of marking, there shall be levied upon such article a Marking Duty of 5% ad valorem.

#### **8.3.4 Discriminatory Duty**

As stipulated under the TCCP, Discriminatory Duty is a new or additional duty in an amount not exceeding 100% ad valorem, imposed by the President by proclamation upon articles of a foreign country which discriminates against Philippine commerce or against goods coming from the Philippines in such manner as to place the commerce of the Philippines at a disadvantage compared with the commerce of any foreign country.

#### **8.3.5 General Safeguard Measure**

A general safeguard measure is applied by the Secretary of Trade and Industry (for non-agricultural products) or the Secretary of Agriculture (for agricultural products) upon positive final determination of the Tariff Commission that a product is being imported into the country in increased quantities, whether absolute or relative to domestic production, as to cause or threaten to cause serious injury to the domestic industry.

### **8.4 Import Tariff Exemption**

The following goods shall be exempt from the payment of import tariffs upon compliance with the formalities prescribed in the regulations:

- goods sold, bartered, hired or used for purposes other than what they were intended for and without prior payment of the duty, tax or other charges which would have been due and payable at the time of entry if the goods had been entered without the benefit;
- a sale pursuant to a judicial order or in liquidation of the estate of a deceased person shall not be subject to the preceding proviso, without prejudice to the payment of duties, taxes and other charges;
- the President may, upon the recommendation of the Secretary of Finance, suspend, disallow or completely withdraw, in whole or in part, any conditionally free importation under listed in CMTA.

## 8.5 Drawbacks

In the Philippines, basis of Duty drawback includes:

### **A. On Fuel Used for Propulsion of Vessels**

On all fuel imported into the Philippines which is afterwards used for the propulsion of vessels of Philippine registry engaged in trade with foreign countries, or in the coastwise trade, a refund shall be allowed equal to the duty imposed by law upon such fuel, less one per cent thereof, which shall be paid under such rules and regulations as may be prescribed by the Commissioner of Customs with the approval of the department head.

### **B. On Articles Made from Imported Materials or Similar Domestic Materials and Wastes**

Upon the exportation of articles manufactured or produced in the Philippines, including the packing, covering, putting up, marking or labeling thereof, either in whole or in part of imported materials, or from similar domestic materials of equal quantity and productive manufacturing quality and value, such question to be determined by the Collector of Customs, there shall be allowed a drawback equal in amount to the duties paid on the imported materials so used, or where similar domestic materials are used, to the duties paid on the equivalent imported similar materials, less one per cent.

### **C. On Goods Made from Imported Materials**

A refund or tax credit shall be allowed for the duties paid on the imported materials so used including the packing, covering, putting up, marking or labeling.

## 8.6 Refund

Refund shall be granted where it is established that duties and taxes have been overcharged as a result of an error in the assessment or goods declaration.

When goods have not yet been released for consumption or have been placed under another Customs procedures, provided that no other offense or violation has been committed, the declarant shall neither be required to pay the duties and taxes nor be entitled to refund in the cases specified by the CMTA.

All claims and application for refund of duties and taxes shall be made in writing and filed with the Bureau within twelve (12) months from the date of payment of duties and taxes.

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## 9. HS CLASSIFICATION

### 9.1 ASEAN Harmonized Tariff Nomenclature (AHTN)

The Philippines has implemented the 2017 version of the ASEAN Harmonized Tariff Nomenclature (AHTN).

To further facilitate trade, the Protocol Governing the Implementation of the ASEAN Harmonized Tariff Nomenclature (AHTN) was signed by the ASEAN Finance Ministers in Manila on August 7 2003. The Protocol aims to establish clear rules to govern the implementation of the AHTN, its explanatory notes and their amendments; establish uniformity of application in the classification of goods in ASEAN; enhance transparency in the classification process for goods in the region; simplify the AHTN; and create a nomenclature which conforms to international standards.

The AHTN is an 8-digit commodity nomenclature based on the Harmonized System (HS) of the World Customs Organization (WCO) and was first adopted in 2004. WCO version is at 6 digit level and the ASEAN AHTN 2017 version is at 8 digits level while Philippines' national version at 8 digits level as well.

There is a free online facility hosted on the Tariff Commission's website that houses all eight existing tariff schedules of the Philippines and incorporates a search engine that permits tariff searching by keyword or by ASEAN Harmonized Tariff Nomenclature (AHTN) product Code. The facility can be reached at the [website](#).

### 9.2 Customs Classification

All products can be classified in the Customs Modernization and Tariff Act (CMTA), specifically Section 1611 entitled "Tariff Nomenclature and Rates of Import Duty", which lists all products and their corresponding tariff rates.

### 9.3 General Rules for Classification

WCO's General Rules for the Interpretation of the Harmonized System are also applied by the Bureau of Customs. Rules that govern the classification of goods under the HS including:

#### Rule 1

The titles of schedules, chapters and subchapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings or subheadings and any relative schedule or chapter notes and, provided such headings, subheadings or notes do not otherwise require, according to the succeeding rules.

#### Rule 2

Any reference in a heading or subheading to a material or substance shall include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to articles of a given material or substance shall include a reference to articles consisting wholly or partly of such material or substance. The classification of articles consisting of more than one material or substance shall be according to the principles of Rule 3.

#### Rule 3

When articles are, prima facie, classifiable under two or more headings or subheadings, classification shall be effected as follows:

The heading or subheading which provides the most specific description shall be preferred to any other heading or subheading providing a more general description.

Mixtures and composite articles which consist of different materials or are made up of different components and which cannot be classified by reference to "a" shall be classified as if they consisted of the material or component which give the articles their essential character, insofar as this criterion is applicable.

When articles cannot be classified by reference to "a" or "b" they shall be classified under the heading or subheading which provides the highest rate of duty.

**Rule 4**

Where in a note to a schedule or chapter it is provided that certain articles are not covered by that schedule or chapter a reference being made to another schedule or chapter or to a particular heading or subheading, the note shall, unless the context requires otherwise, refer to all the articles falling within that other schedule or chapter or heading or subheading notwithstanding that only certain of those articles are referred to by description in the note.

**Rule 5**

When dutiable and duty-free articles or those dutiable at different rates are packed together or mingled in such manner that the value of each class of such article cannot be readily determined by the officials of the Bureau of Customs, all such articles shall pay duty at the rate applicable to that article in the package which is subject to the highest rate of duty, unless the importer or consignee segregates such article at his own risk and on his account, under the supervision of Customs officials, within fifteen days after the acceptance of import entry covering same, and before delivery, in order that the value of each article may be determined.

**Rule 6**

In classifying manufactured products, no account shall be taken of the following:

- Insignificant parts of composite goods, in particular such as are used solely for mounting or connecting separate parts (e.g., nails, rivets, screws, washers, gaskets, locks, clamps, eyelets, clasps, hinges, bolts, cornerpieces, bands, threads, strings, beltings, straps, ropes);
- Negligible processing, refinement and decorations;
- Manufacturers' marks or names or trademarks, indications of the country of origin of the types of articles, their sizes or capacities, calibration marks, indications of graduation and the like, not of an ornamental character.

**Rule 7**

Unless otherwise provided for, unfinished and incomplete articles shall be classified as the finished and complete articles, provided their intended use is recognizable.

**Rule 8**

Unless otherwise provided for, the separate parts and unassembled pieces of articles which normally consist of various component parts, shall be classified as complete articles, when imported together by the same importer, owner or consignee from the same seller or shipper on the same vessel or vehicle. The absence of certain non-essential parts does not affect the application of this provision.

**Rule 9**

Accessories and spare parts shall be classified with the articles with which they are imported, when, by their character and quantity, they correspond to such articles and when they are usually sold together with them and are included in the price of such article.

**Rule 10**

Cases, boxes, caskets, sheaths and the like, of normal type (e.g., such as are used for cutlery, binoculars, microscopes, watches, musical instruments, weapons, sport goods) imported with the corresponding articles, shall be classified as such articles; if imported separately, they shall be classified under the corresponding heading or subheading of this Code.

**Rule 11**

No duties shall be assessed on account of the usual coverings or holdings of articles dutiable otherwise than ad valorem, nor those free of duty, except as in this Code expressly provided, but if there be used for covering or holding imported articles, whether dutiable or free, any unusual article, form or material adapted for use otherwise than in the bona fide preservation or transportation of such article to the Philippines, such covering or holding shall be classified under the corresponding heading or subheading of this Code.

**Rule 12**

When the interior container or packing of any article dutiable by weight is of an unusual character, such container or packing shall be classified under the corresponding heading or subheading of this Code.

**Rule 13**

When an article falling within a heading or subheading is subject to ad valorem or specific rate of duty, it shall be subject to either the ad valorem or the specific rate of duty whichever is higher.

**Rule 14**

Unless otherwise provided for, the term “used” or any provision indicating designation by use, for the purpose of classification and taxation of articles shall mean the chief or predominant use of such articles notwithstanding any fugitive or incidental use to which such articles may be subjected.

**Rule 15**

Articles not falling within any heading or subheading of this Code shall be classified under the heading or subheading appropriate to articles to which they are most akin.

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## 10. CUSTOMS VALUATION

### 10.1 Transaction Value (TV) System

The Philippine Customs valuation system presently being implemented at the BOC is the Transaction Value system, which is based on the WTO Agreement on Customs Valuation.

Transaction Value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the Philippines. Transaction Values also incorporate the other expenses necessary in making, exporting and bringing the merchandise into the territory of the importing country, which are not yet included in the price. Such expenses may include commissions and brokerage fees; cost of containers; and the cost of packing, whether for labor or materials; the cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines; loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to

the port of entry in the Philippines; and the cost of insurance.

## 10.2 Other Alternative Valuation Methods

Only if Customs finds that the first standard Transaction Value cannot be used should the value be determined on the basis of the succeeding standards.

### **A. Transaction Value of Identical Goods**

Where value cannot be determined on the basis of the transaction value, it should be established by using an already determined transaction value for identical goods.

### **B. Transaction Value of Similar Goods**

Where it is not possible to determine value on the basis of the above method, it should be determined on the basis of the transaction value of similar goods.

### **C. Deductive Value**

Deductive value is determined on the basis of the unit sales price in the domestic market of the imported goods being valued or of identical or similar goods after making deductions for such elements as profits, Customs duties and taxes, transport and insurance, and other expenses incurred in the country of importation.

### **D. Computed Value**

The computed value is determined by adding to the cost of producing the goods being valued “an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.”

### **E. Fall-back Value**

Where Customs value cannot be determined by any of the four methods described above, it can be determined by using any of the previous methods in a flexible manner. A derived (Fall-back) method reasonably adjusted to circumstances.

### 10.3 Reference Values

The Bureau of Customs provides the Reference Values for various Tariff Headings under the ASEAN Harmonized Tariff Nomenclature (AHTN). Through the Statistical Management System database, import data covering the ninety-day period are extracted. These data are evaluated wherein the outliers such as but not limited to the misclassified goods, goods with extremely high and low values are eliminated.

Table 2 Example of Calculating Reference Value

HS CODE	SUPPLIER	DESCRIPTION	ENTRY NO.	IMPORTER	REG. DATE	BROKER	NET MASS	VALUE F.C./UNIT (NET)
3701.3000	XXXX	XXXX	P02B C-XXX	XXXX	6/19/2017	XXXX	7,069	\$3.43
3701.3000	XXXX	XXXX	P02B C-XXX	XXXX	6/28/2017	XXXX	6,862	\$3.68
3701.3000	XXXX	XXXX	P02B C-XXX	XXXX	6/30/2017	XXXX	9,417	\$3.68
3701.3000	XXXX	XXXX	P02B C-XXX	XXXX	7/14/2017	XXXX	10,190	\$3.99
3701.3000	XXXX	XXXX	P02B C-XXX	XXXX	8/31/2017	XXXX	13,075	\$4.66
3701.3000	XXXX	XXXX	P02B C-XXX	XXXX	6/19/2017	XXXX	23,943	\$4.68
3701.3000	XXXX	XXXX	P02B C-XXX	XXXX	6/22/2017	XXXX	16,654	\$4.68

Source: [customs.gov.ph/guide-to-understanding-the-reference-values/](http://customs.gov.ph/guide-to-understanding-the-reference-values/)

After the thorough evaluation, the three (3) types of averages i.e., Mean, Median and Mode, are computed.

- Mean=4.114
- Median=3.99
- Mode=3.68

Among the three averages, the second to the lowest value will be considered. This will become the

Reference Value of a certain 8-digit AHTN code.

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## 11. RULES OF ORIGIN

Rules of Origin (ROO) are sets of principles to determine the economic content and nationality of a product. They are used to ascertain the origin of a good, i.e., not where the good has been shipped from, but where the good has been deemed to have been produced or manufactured.

There are two types of Rules of Origin in the Philippines:

- **Non-preferential Rules of Origin**

Used to implement measures and instruments of commercial policy, such as quotas, anti-dumping, safeguards, subsidy, anti-circumvention, trade statistics, origin labelling, and marking;

- **Preferential Rules of Origin**

Used to establish whether a product is qualified for preferential tariff treatment and they are an integral component of international trading arrangements, whether regional or bilateral, under specific Free Trade Areas (FTAs), in order to avoid transshipment.

In particular, as a member country, the Philippines apply the ASEAN Common Effective Preferential Tariff (CEPT) Scheme. In determining the origin of products eligible for the CEPT Scheme under the Agreement on the CEPT, the following rules shall be noted:

### Rule 1 Originating Products

Products which are consigned directly within the meaning of Rules 5 hereof, shall be eligible for preferential concessions if they conform to the origin requirements under any one of the following conditions:

- (A) Products wholly produced or obtained in the exporting Member State as defined in Rule 2; or
- (B) Products not wholly produced or obtained in the exporting Member State, provided that the said products are eligible under Rule 3 or Rule 4.

## Rule 2 Wholly Produced or Obtained

Products shall be considered as wholly produced or obtained in the exporting ASEAN Member State if they are:

- (A) Mineral products extracted from its soil, its water or its seabeds;
- (B) Agricultural products harvested there;
- (C) Animals born and raised there;
- (D) Products obtained from animals referred to in paragraph (c) above;
- (E) Products obtained by hunting or fishing conducted there;
- (F) Products of sea fishing and other marine products taken from the sea by its vessels;
- (G) Products processed and/or made on board its factory ships exclusively from products referred to in paragraph (f) above;
- (H) Used articles collected there, fit only for the recovery of raw materials;
- (I) Waste and scrap resulting from manufacturing operations conducted there;
- (J) Goods produced there exclusively from the products referred to in paragraph (A) to (I) above.

## Rule 3 Not Wholly Produced or Obtained

A product shall be deemed to be originating from ASEAN Member States, if at least 40 percent of the contents originate from any Member States. Subject to above, for the purpose of implementing the provisions of products not wholly produced or obtained, products worked on and processed as a result of which the total value of the materials, parts or produce originating from non-ASEAN countries or of undetermined origin used does not exceed 60 percent of the FOB value of the product produced or obtained and the final process of the manufacture is performed within the territory of the exporting Member State.

The value of the non-originating materials, parts or produce shall be:

- (1) The CIF value at the time of importation of the products or when importation can be proven; or
- (2) The earliest ascertained price paid for the products of undetermined origin in the territory of the Member State where the working or processing takes place.

## Rule 4 Cumulative Rule of Origin

Products which comply with origin requirements provided for in Rule 1 and which are used in a Member State as inputs for a finished product eligible for preferential treatment in another Member States shall be considered as products originating in the Member State where working or processing of the finished product has taken place provided that the aggregate ASEAN content of the final product is not less than 40%.

## Rule 5 Direct Consignment

The following shall be considered as consigned directly from the exporting Member State to the importing Member State:

- (A) If the products are transported passing through the territory of any other ASEAN country;
- (B) If the products are transported without passing through the territory of any other non-ASEAN country;
- (C) The products whose transport involves transit through one or more intermediate non-ASEAN countries with or without transshipment or temporary storage in such countries, provided that:
  - (i) The transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
  - (ii) The products have not entered into trade or consumption there; and
  - (iii) The products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

## Rule 6 Treatment of Packing

Where for purposes of assessing Customs duties a Member State treats products separately from their packing, it may also, in respect of its imports consigned from another Member State, determine separately the origin of such packing. If not, packing shall be considered as forming a whole with the products and no part of any packing required for their transport or storage shall be considered as having been imported from outside the ASEAN region when determining the origin of the products as a whole.

## Rule 7 Certificate of Origin

A claim that products shall be accepted as eligible for preferential concession shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Member State and

notified to the other Member States in accordance with the Certification Procedures.

## **Rule 8 Review Procedures**

These rules may be reviewed as and when necessary upon request of a Member State and may be open to such modifications as may be agreed upon by the Council of Ministers.

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## **12. ADVANCE RULING**

Advance Ruling system in Philippines was introduced under the CMTA, and passed into law in 2016. Importers and exporters can now request an official, written and legally binding ruling from the Tariff Commission or the BOC on matters involving commodity classification, on the proper application of a specific method on Customs valuation of specific goods or whether the goods qualify under rules of origin of an applicable preferential trade agreement.

### **12.1 Applicants**

Importer or foreign exporter or its authorized agent may request an Advance Ruling. An applicant for the advance ruling can be a natural or juridical person who is an importer, foreign exporter, or its authorized agent. A foreign exporter is defined as a natural or juridical person intending to export any goods or commodities from a foreign country to the Philippines.

### **12.2 Requirements**

To ensure that an Advance Ruling request does not relate to any ongoing trade transaction, a request for Advance Ruling should be submitted to the Bureau at least ninety days before the date of the importation in question, which is the date of lodgment of goods declaration.

A request for Advance Ruling must be made in writing to be submitted to the BOC, and must relate only to one good or product. The Bureau specified the information to be provided, the format to be used and the

documentary requirements for the request.

Requests for Advance Rulings concerning the tariff classification of goods shall be filed with the Tariff Commission for determination.

### 12.3 On Tariff Classification

An applicant means an importer or exporter who is applying for an advance ruling on tariff classification on a good that will be imported into or exported from the Philippines. The procedures in applying for advance ruling on tariff classification include:

*Table 3 Steps in Applying for Advance Ruling on Tariff Classification*

Step	Activities	Fees	Unit/Person-in-Charge
1	Present TC Form 1 (three copies), plus supporting documents, for evaluation	---	Commodity Specialist – to assess completeness of document
2	Proceed to Cashier to pay fees	P1500.00 per article (CAO 03-2016)	Cashier
3	Proceed to Records Unit for submission of TC Form 1, issuance of a copy of TC Form 1, and assignment of TC Reference Number	---	Records Officer
4	Submission of additional information	---	Commodity Specialist
5	Check status of application on TC website	---	Commodities Studies Division/ Planning, Management and Information Systems Division
6	Issuance of advance ruling	---	Records Officer / Planning, Management and Information Systems Division

Source: [www.formphilippines.com](http://www.formphilippines.com).

An application for advance ruling on tariff classification can be initiated by accomplishing TC Form No. 1, which is available and downloadable at the Tariff Commission [website](#). It must be submitted for pre-clearing together with the supporting documents to the Commodity Specialist of the Tariff Commission. The application also can be initiated by the submission of the accomplished application forms which are also available online at the BOC website with the supporting documents.

Once issued, the ruling is valid for three calendar years from issuance, or from the date specified in the ruling. Before the three-year period expires, the ruling may be revalidated by filing a request for revalidation at least 90 calendar days before expiration. The rules allow for a motion for reconsideration of a denial, or a modification/revocation/invalidation of a ruling, within 15 calendar days from receipt of the ruling or decision. If still unsuccessful, the applicant may file an appeal.

## 12.4 On Valuation and Preferential Rules of Origin

In 2016, the BOC issued Customs Memorandum Order which establishes an advance ruling system on Customs valuation method and Rules of Origin of goods. The BOC has been accepting applications through the Office of the Customs Commissioner since the beginning of 2017. A Technical Support Team for Advance Ruling for Valuation and ROO was formed specifically to ensure the smooth implementation of the Advance Ruling system and establish a monitoring plan to guide the implementation and evaluation of the effectiveness of any such advance ruling. In addition to the General Requirements provided in CAO 03-2016, a request regarding origin shall also include the following information:

- The country of origin envisioned for the goods;
- The applicable basis for claiming origin, standing that the request for Advance Ruling is to claim preferential tariff treatment;
- Any samples as necessary, photographs, plans, catalogues, copies of technical literature, brochures, laboratory analysis results, or other documents available on the composition of goods and their component materials which may assist in physical samples may be sent in though courier or personal delivery indicating in the package the Unique Reference Number.

The applicants need to complete the form and submit it to the BOC through [tst.advanceruling.roo@customs.gov.ph](mailto:tst.advanceruling.roo@customs.gov.ph).

## 12.5 Modification of Advance Rulings

Advance Rulings may be modified based on the following grounds:

- Clerical error;
- Change of material facts and circumstances after issuance of the Ruling;
- Misleading information based on excusable neglect or honest mistake; and
- Change in applicable law.

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## 13. FREE TRADE AGREEMENTS

### 13.1 Multilateral and Bilateral FTAs

As a member of the ASEAN, the Philippines is naturally a participant in the ATIGA. The country enjoys significantly reduced tariff rates within ASEAN though some tariff lines on sensitive food products still remain. The Philippines, by virtue of its membership in ASEAN, is also a party to the six FTAs that ASEAN has signed with the following countries or groups of countries:

- ASEAN Free Trade Area (AFTA);
- ASEAN-China Comprehensive Economic Cooperation Framework Agreement (ACFTA);
- ASEAN-South Korea Comprehensive Economic Cooperation Framework Agreement (AKFTA);
- ASEAN-Japan Free Trade Zone (ACJEPA);
- ASEAN-Australia-New Zealand Free Trade Area Agreement (AANZFTA);
- ASEAN-India Free Trade Area (AIFTA);
- Japan, Philippine Economic Partnership Agreement (JPEPA).

## 13.2 Fundamental Contents of FTAs

### 13.2.1 AFTA

- Tariff concessions: fast tax cuts, normal tax cuts, general exception lists, sensitive product lists, temporary exception lists;
- MFN status;
- Cancel quantitative restrictions and non-tariff barriers;
- Principle of origin;
- Open service;
- Establishing an ASEAN Investment Zone;
- ASEAN Industrial Cooperation Program;
- ASEAN Integrated Preferential System;
- ASEAN transportation convenience;
- Standard and quality uniform measures;
- E-ASEAN and trade liberalization of information and communication products.

### 13.2.2 ACFTA

Tax reduction model for sensitive products: The old members of China and ASEAN should be reduced to 20% on January 1, 2012, and further reduced to less than 5% on January 1, 2018; new members of China and ASEAN should be in January 1, 2015. The daily cut was reduced to 20%, and it was further reduced to 5% or less on January 1, 2020. Tax reduction model for highly sensitive products: China and ASEAN members should cut tariffs on highly sensitive products to less than 50% on January 1, 2015, and new ASEAN members should achieve this target on January 1, 2018.

### 13.2.3 AKFTA

South Korea and ASEAN member countries will waive tariffs on 90% of imported projects by 2010; for the remaining 7% of sensitive products, tariffs should be reduced to 20%, and then to 0-5% in 2016; high sensitivity to 3% remaining. The product will allow certain measures to be taken for protection.

#### 13.2.4 ACJPEA

Japan imposed zero tariffs on 90% of products imported from ASEAN, and gradually eliminates tariffs on another 3% of products within 10 years, while reducing tariffs on another 7% of products.

#### 13.2.5 AANZFTA

From 2010, Australia's 96.4% tariff line and New Zealand's 84.7% tariff line imposed zero tariffs. The Philippines' advantageous exports, such as automotive parts, including ignition harnesses, batteries, wheels and tires, yacht and vessel transportation, mineral products, and agricultural products such as pineapple and canned tuna, enjoy zero-tariff treatment in Australia and new markets. By 2020, Australia and New Zealand will eliminate tariffs on almost all products.

#### 13.2.6 JPEPA

Ninety-five percent of the Philippines' exports to Japan are subject to zero tariffs, and the agreement allows a certain number of Filipino caregivers to travel to Japan for employment. Japan's tariffs on exports of industrial products such as electronics and automobiles to the Philippines will also be phased out within 10 years, and Japan's capital will enjoy preferential treatment in direct investment in the Philippine auto and electronics industries.

#### 13.2.7 AIFTA

The Philippines provides its schedule of tariff commitments from 2010 until 2022. Tariff reduction/elimination is composed of two tracks:

##### **A. Normal Track**

Products listed in the Normal Track by a Party on its own accord shall have their respective applied MFN tariff rates gradually reduced or eliminated in accordance with specified schedules and rates.

##### **B. Sensitive Track**

Products listed in the Sensitive Track by a Party on its own accord shall, where applicable, have their respective applied MFN tariff rates progressively reduced/eliminated within timeframes to be mutually agreed between the Parties.

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## 14. BONDED SYSTEM AND SPECIAL ZONES

In the Philippines, Customs Bonded Warehouses (CBWs) are approved and supervised by Customs. Except CBWs, Customs Facilities and Warehouses (CFWs) are also supervised by Customs.

Special treatments are also provided to operations inside the Export Processing Zones and the Special Economic Zones to promote trade and production.

### 14.1 Customs Bonded Warehouses (CBWs)

When the business of the port requires such facilities, the District Collector, subject to the approval of the Commissioner, shall designate and establish warehouses for use as public and private bonded warehouses, yards, or for other special purposes. All such warehouses and premises shall be subject to the supervision of the District Collector.

#### 14.1.1 Customs Bonded Manufacturing Warehouse

It is a facility established for the manufacture of products utilizing raw materials or components that are imported duty and tax-free conditioned on the exportation of the finished products within the period prescribed herein. A Customs Bonded Manufacturing Warehouse shall include:

- Miscellaneous Customs Bonded Warehouse. It is a warehouse facility established and authorized by the Bureau to import, receive, and store, duty free and under bond, raw materials, accessories and packing materials for products and commodities not covered under any specific industry, for manufacture into finished products for export.
- Customs Common Bonded Warehouse. It is a warehouse facility established and authorized by the Bureau to import, receive, and store, duty free and under bond, raw materials, accessories, and packing materials for the account of its accredited members classified as micro or small-scale enterprise, for manufacture into finished products for export.
- Industry Specific Bonded Warehouse. It is a warehouse facility established and authorized by the Bureau to import, receive, and store, duty free and under bond, raw materials, accessories, and packing materials for products that fall under a specific industry, for manufacture into finished products for export.

### 14.1.2 Bonded Non-Manufacturing Warehouse

It is a facility where goods are stored duty-free and tax-free conditioned on the eventual withdrawal of the goods for consumption, or for export, or for transit, or for any other clearance regime, within the period prescribed herein, such as:

- Public Bonded Warehouse. It is a warehouse facility authorized by the Bureau to receive and store general cargoes for exportation, transfer to another CBW, free zones, or for local consumption, in the same state when the cargoes were imported. Articles for local consumption shall only be withdrawn upon payment of the assessed duties, taxes and other charges.
- Private Bonded Warehouse. It is a warehouse facility authorized by the Bureau to import, receive and store articles for its production intended for domestic consumption, withdrawal of which shall be made only upon payment of the corresponding duties, taxes and other charges.

## 14.2 Customs Facilities and Warehouses (CFWs)

- Container Yard. It is a facility authorized by the Bureau to accept and store container vans, laden or empty, intended for international shipping for storage within the period allowed under Customs laws, rules and regulations. A container yard may be established either within the Customs zone or off dock, as may be allowed under Customs laws, rules, and regulations.
- Container Freight Station. It is a facility authorized by the Bureau to accept and store container vans intended for international cargo, for temporary storage, examination, stripping, stuffing, and other related activities as may be allowed under Customs laws, rules, and regulations. A container freight station may be established either within the Customs zone or off dock, as may be allowed under Customs laws, rules, and regulations.
- Seaport Temporary Storage Warehouse. It is a Customs facility established at the seaport for purposes of storage, examination, stripping, stuffing, and safekeeping of imported cargoes.
- Airport Temporary Storage Warehouse. It is a Customs facility established at the airport for purposes of storage, examination, stripping, stuffing, and safekeeping of imported cargoes.

## 14.3 Export Processing Zones (EPZs)

Export Processing Zone (EPZ) is a specialized industrial estate located physically and/or administratively outside Customs territory, predominantly oriented to export production. Enterprises located in export

processing zones are allowed to import capital equipment and raw materials free from duties, taxes and other import restrictions. Currently there are four export processing zones in the Philippines including:

- the Bataan Export Processing Zone;
- the Macton Export Processing Zone;
- the Krabi Export Processing Zone;
- the Baguio Export Processing Zone.

These four export processing zones have become isolated small areas that use imported raw materials and semi-finished products to process, assemble and manufacture a variety of export commodities. In the above four export processing zones, investors can enjoy a series of preferential treatment including:

- the first batch of enterprises entering the zone are exempt from income tax for 6 years, other enterprises are exempt from income tax for 4 years;
- the machinery and equipment imported from the district enterprises, raw materials and goods necessary for the operation of the enterprise are exempt from Customs duties;
- exemption from import and export tax of enterprises in the zone with various expenses;
- enterprises in the zone are not bound by local government regulations;
- 15% tax exempted from repatriating profits from foreign companies;
- machinery, equipment, raw materials, etc. are exempt from import duties;
- accelerated depreciation of fixed assets;
- preferential allocation of foreign exchange, etc.

In addition to the above four export processing zones, the Philippines has also established the Clark and Subic Special Economic Zones in the former US military bases in recent years. The relevant preferential policies refer to the four export processing zones.

#### **14.4 Special Economic Zones (SEZs)**

Businesses operating in Special Economic Zones (SEZs) or free port zones are exempt from paying taxes and tariffs on imported raw material and manufacturing equipment. As stipulated in the CMTA, the main SEZs in the Philippines include:

- Clark Freeport Zone;
- Poro Point Freeport Zone;
- Subic bay Freeport Zone;
- Cagayan Special Economic Zone;
- Zamboanga City Special Economic Zone;
- Freeport area of Bataan.

Exporters and importers operating in SEZs or free port zones must register with PEZA or the specific free port regulator.

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## 15. CUSTOMS AUDIT

Customs Audit is one of the most critical parts of the importation process. In May 2001, the Philippine Congress passed the act to establish the Port Entry Audit (PEA) System. This was shortly followed by the Customs Administrative Order which allows for the system to be fully implemented all over the country. The procedure was strengthened by the CMTA.

The audit shall be undertaken when firms are selected by a computer-aided risk management system, the parameters of which are to be based on objective and quantifiable data. The criteria for selecting firms to be audited shall include, but not be limited to, the following:

- Relative magnitude of Customs revenue from the firm;
- The rates of duties of the firm's imports;
- The compliance tract record of the firm;
- An assessment of the risk to revenue of the firm's import activities.

The audit shall be undertaken also when errors in the import declaration are detected and when firms

voluntarily request to be audited.

Customs audit means that the importer is obliged to open its import and business records and give full & free access to Customs officer for purpose of authenticating the accuracy of the information declared in the corresponding import entries covered by the audit period. Brokers shall be audited to validate audits of their importer clients and/or fill in information gaps revealed during an audit of their importer clients. Some of the import and business documents that are reviewed by Customs in an audit include:

- Customs entry records (both manual records and electronic records);
- General ledger accounts;
- Foreign vendor payments;
- Inventory and disbursement records;
- Correspondence with foreign suppliers.

Noncompliance with laws and regulations may result in very stiff penalties. Any person who, after being subjected to post clearance audit and examination is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to two degrees of culpability:

- First when negligence committed and found guilty for deficiency results from an offender's failure to exercise reasonable care and competence in ensuring that a statement/declaration made is correct, shall be penalized with a fine equivalent to 125% of the revenue loss;
- Worst, when the Customs officers found out that there is fraud involved (committed knowingly, voluntarily and intentionally) the auditee if found guilty is subject to a separate investigation and may further be liable to criminal prosecution aside from the penalty of not more than six times the revenue loss.

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## 16. CUSTOMS ENFORCEMENT AND APPEALS

### 16.1 Protection of Customs Revenue and Prevention of Smuggling

In order to prevent smuggling and to secure the collection of the legal duties, taxes and other charges, the Customs service shall exercise surveillance over the coast, beginning when a vessel or aircraft enters Philippine territory and concluding when the article imported therein has been legally passed through the Customs.

#### 16.1.1 General Violations

Any person who violates any Customs and tariff laws, for which delinquency no specific penalty is provided, shall be punished by a fine of not more than four hundred pesos or by imprisonment for not more than six months, or both. The violations could be:

- Unlawful Importation;
- Various Fraudulent Practices Against Customs Revenue;
- Failure to Report Fraud;
- Statutory Offense of Officials and Employees;
- Concealment or Destruction of Evidence of Fraud;
- Breaking of Seal on Car or Conveyance by Land, Sea or Air;
- Alteration of Marks on Any Package of Warehoused Articles;
- Fraudulent Opening or Entering of Warehouse;
- Fraudulent Removal or Concealment of Warehoused Articles;
- Violation of Tariff and Customs Laws and Regulations in General; and other Miscellaneous Offenses.

#### 16.1.2 Seizure and Arrest

It shall be within the power of a Customs official or person authorized as aforesaid, and it shall be his duty, to make seizure of any vessel, aircraft, cargo, articles, animal or other movable property when the same

is subject to forfeiture or liable for any fine imposed under Customs and tariff laws, and also to arrest any person subject to arrest for violation of any Customs and tariff laws, such power to be exercised.

### **16.1.3 Administrative Proceedings**

Administrative proceedings by Customs include:

- Warrant for Detention of Property;
- Report of Seizure to Commissioner and Auditor
- Notification to Owner or Importer;
- Description and Appraisal and Classification of Seized Property;
- Settlement of Case by Payment of Fine or Redemption of Forfeited.

### **16.1.4 Judicial Proceedings**

In the absence of special provision, judicial action and proceedings instituted on behalf of the Government pursuant to the provisions of this Code shall be subject to the supervision and control of the Commissioner.

Review by Court of Tax Appeals: The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling in any case of seizure may appeal to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.

Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

### **16.1.5 Enforcement of Administrative Fines and Forfeitures**

Administrative fines and forfeitures shall be enforced by the seizure of the vessel or aircraft or other property subject to the fine or forfeiture and by subsequent proceedings in conformity with the provisions of Parts 2 and 3, Title VI, Book II, of Customs Law.

## 16.2 Seizure and Forfeiture Proceedings

### 16.2.1 Seizure of Misdeclaration, Misclassification, Undervaluation

When the misdeclaration, misclassification or undervaluation is intentional or fraudulent, such as when a false or altered document is submitted or when false statements or information are knowingly made, the goods shall be seized, forfeited and an administrative fine in a form of surcharge equivalent to five hundred percent (500%) of the duty and tax due regardless of the amount of the discrepancy shall be imposed.

The payment of surcharge shall be without prejudice to the criminal liability of the importer and other person or persons who willfully participated in the fraudulent act. Provided, however that a discrepancy in duty and tax to be paid between what is legally determined and what is declared amounting to more than thirty percent (30%) shall constitute a prima facie evidence of fraud.

### 16.2.2 Fines of Misdeclaration, Misclassification, Undervaluation

#### **A. Misdeclaration and Misclassification**

When the misdeclaration and misclassification results to a discrepancy in duty and tax to be paid does not exceed thirty percent (30%) between what is legally determined upon assessment and what is declared, a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due shall be imposed.

No surcharge shall be imposed and the goods shall not be subject to seizure under the following circumstances:

- When the discrepancy in duty is less than ten percent (10%);
- When the declared tariff heading is rejected in a formal Customs dispute settlement process involving difficult or highly technical question of tariff classification;
- When the tariff classification declaration relied on an official government ruling.

#### **B. Undervaluation**

When the undervaluation is established without the need to go through the formal dispute settlement process, and the discrepancy in duty and tax to be paid does not exceed thirty percent (30%) between

what is legally determined upon assessment and what is declared a surcharge shall be imposed equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed under the following circumstance and the goods shall not be subject to seizure:

- When the discrepancy in duty is less than ten percent (10%);
- The declared value is rejected as a result of an official ruling or decision under the Customs dispute settlement process involving difficult or highly technical question relating to the application of Customs valuation rules.

### **16.2.3 Forfeiture Proceedings**

Notice of Hearing shall be sent if the subject goods are perishable by registered mail or electronic mail. Upon notice to all the parties, forfeiture proceedings shall be conducted by the District Collector or duly designated hearing officer of the concerned port. In the formal hearing, uncontroverted facts shall be stipulated on and issues to be heard shall be agreed upon in order to abbreviate the proceedings. The determination shall be made whether or not there is a violation of law from the facts and evidence presented. The District Collector of Customs shall then render a Decision.

The owner, importer, exporter, or consignee or agent, may during the course of the proceedings, or pending appeal, offer settlement of the forfeiture case. The offer of settlement shall be made in writing and addressed to the District Collector or office of the Commissioner. Offer of settlement may either be through payment of fine or payment of redemption value. Unless otherwise expressly withdrawn or impliedly abandoned, the offer of settlement made before the District Collector shall be considered and resolved until final disposition by the Commissioner.

When the District Collector renders a Decision of forfeiture on the main case and no offer of settlement was made by the claimant or owner (either by payment of fine or payment of redemption value) before the District Collector, the offer of settlement during appeal before the Commissioner may be allowed only through payment of redemption value.

### **16.2.4 Settlement by Payment of Fine**

The District Collector may accept the settlement by payment of fine during the pendency of the forfeiture case, under any of the following circumstances:

- For regulated goods, when the release of the same through payment of fine is allowed even without required permits or licenses;
- For vessels or aircrafts, when the owner, agent, master, pilot-in-command or other responsible officer is found liable for fine or penalty for any violation of the CMTA;
- For sea stores or aircraft stores when adjudged by the District Collector to be excessive, and when the duties and taxes assessed thereon are not paid;
- Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of goods;
- Any vehicle, vessel or aircraft used in conveying or transporting smuggled goods in commercial quantities within the Philippines;
- Any vessel engaging in the coastwise trade which shall have on board goods of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such goods having been properly entered or legally imported;
- Any vessel or aircraft into which shall be transferred cargo unloaded contrary to law prior to the arrival of the importing vessel or aircraft at the port of destination; Any other valid grounds, as may be determined by the District Collector.

In case of settlement by fine, the owner, importer, exporter, or consignee or agent shall pay the amount of fine equivalent to thirty percent (30%) of the landed cost.

### 16.3 Appeal

The person may, within fifteen days or five days in case of perishable goods, from receipt of the decision of the District Collector, file a written Notice of Appeal with proof of payment of the required appeal fee amounting to 1500 Pesos to the District Collector, furnishing a copy to the Commissioner.

Upon receipt of the Notice of Appeal, the District Collector shall immediately transmit all the records of the proceedings to the Commissioner, who shall review and decide on the appeal within thirty days or fifteen days in case of perishable goods from receipt of the records of the case.

An appeal filed beyond the prescribed period or an appeal filed without the payment of the required appeal fee shall be dismissed.

## 17. CUSTOMS IPR BORDER PROTECTION

The Bureau of Customs (BOC) accepts filing applications for intellectual property-related goods, but currently the Philippine Customs regulations only regulate this for imported goods. The commodity filing period is valid for 2 years.

By authority of TCCP in relation to the Trademark Law, the Patent Law and the Intellectual Property Law, the BOC:

- Prevents the importation of goods or products that infringe upon the property rights of patent holders, trademark and copyright owners;
- Prevents the entry of merchandise into the country in line with the provisions of the foregoing legal provisions;
- Drive to combat piracy and counterfeiting of intellectual properties.

The BOC accepts filing applications for intellectual property-related goods, but currently the Philippine Customs regulations only regulate this for imported goods.

### 17.1 Prohibited Imports

Without the authorization or consent of the registrant or its duly authorized agent, the following imports are related to intellectual property-related goods prohibited in the Philippines:

- which copy or simulate any mark or trade name registered with the Intellectual Property Office in accordance with the IP Code,
- which copy or simulate any well-known mark as determined by competent authority;
- which are judicially determined to be unfairly competing with products bearing marks whether registered or not;
- which constitute as a piratical copy or likeness of any work, whether published or unpublished, on which a copyright subsists;
- which present themselves as a substantial simulation of any machine, article, product, or substance duly patented under the IP Code;

- which use false or misleading description, symbol, or label that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of the imported goods with another person's goods; or those which misrepresent their nature, characteristics, qualities, or geographic origin.

## 17.2 Operational Procedures

### 17.2.1 Application

A patent holder, trademark or copyright owner, his assignee, or his duly authorized agent or representative, desiring to prevent or prohibit the entry or importation of any cargo or shipment that may infringe upon his property rights, shall file a written request to the Commissioner of Customs attaching thereto duly authenticated copies of the certificate of patent, trademark or copyright registration and facsimiles of his name, name of the locality in which his goods are manufactured, or of this registered mark or tradename. The right owner shall also furnish the Commissioner with the following information:

- Name and address of the patent holder, trademark, or copyright owner;
- Name of the locality in which his goods or products are manufactured;
- Name and address of agent or representative;
- Sufficiently detailed description of the goods, product or services of the patent holder, trademark or copyright owners to make them readily recognizable by the Customs Authorities.

### 17.2.2 Informing Collectors of Customs

Upon receipt of the written request, the Commissioner of Customs shall direct the Legal Service to record the patent, trademark or copyright certificate and the foregoing information in the books kept for such purpose.

After proper evaluation and due recording in the registry, the Commissioner of Customs shall then issue a Memorandum Circular addressed to all Collectors of Customs, Customs Examiners / Appraisers and Hearing Officers of the Law Division, informing them of the request, directing them to strictly monitor and enforce the prohibition and attaching to such circular a copy of the request, the patent, trademark or copyright certificates of registration, the facsimiles and all the pertinent information thereto.

The recordation of IPRs and product or products covered therein shall be valid for two years from date of

the recording and renewable every two years thereafter.

On the basis of the recordation, the Bureau shall monitor and inspect on its own initiative suspect imports to determine whether or not they are liable to seizure and forfeiture pursuant to law. However, the exercise of such power shall be governed and circumscribed by existing rules and regulations on the issuance of alert or hold orders.

### **17.2.3 Monitoring and Prohibiting**

Upon receipt of the Memorandum Circular, all Collectors of Customs, Customs Examiners/Appraisers and Hearing Officers, on their parts, shall maintain and keep their own file of all such requests that will provide basis for monitoring and prohibiting the entry or importation of any incoming cargo or shipment that may infringe upon the property rights of the patent, trademark or copyright owners, and for notifying such owners or their authorized agent or representative to witness the examination of the said cargo or shipment.

### **17.2.4 Examination and Seizure**

In the performance of their duties, the Customs Examiners / Appraisers shall conduct an actual examination of the suspected cargo or shipment and shall immediately submit a recommendation to the Collector of Customs for the issuance of Warrant of Seizure and Detention against such cargo or shipment if there is prima facie case of infringement. The IPR Holder/Owner or his representative shall be notified of the time and place of examination.

During the seizure proceeding of such goods, the patent, trademark or copyright owners or their duly authorized agents shall be notified so that they may participate as intervener and present evidence to prove infringement on its patent, trademark or copyright.

Goods finally found in seizure proceedings to be infringing shall be forfeited in favor of the government and shall be destroyed, unless used as evidence in court proceedings.

## **17.3 Documentary Requirements**

In the case of IPR registered with the IPO, three certified true copies of the Certificate of Registration issued by the said Office are required to be submitted.

In the case of IPR not registered with the IPO, three certified true copies of a decision or resolution of a court or other competent authority declaring or recognizing the claim to an IPR.

In the case of copyright and related rights, an Affidavit executed by the IPR Holder / Owner or his duly authorized representative stating that:

- At the time specified therein, copyright subsists in the work or other subject matter;
- The person named therein is the owner of the copyright; and
- The copy of the work or other subject matter annexed thereto is a true copy thereof.

Payment of recordation fee of PHP Two Thousand (P2,000.00) per product but in no case to exceed PHP Twenty Thousand (P20,000) per IPR Holder / Owner.

The foregoing documentary requirements are solely for the purpose of identifying the IPR Holder/Owner and providing the Bureau with minimum information that will help its officers in effectively monitoring and evaluating infringing goods at the border. Such requirements therefore may in certain meritorious circumstances be liberalized for as long as the basic purposes for which the above requirements are imposed are achieved.

---

## 18. AUTHORIZED ECONOMIC OPERATOR (AEO)

In 2012, the Philippine BOC established an Authorized Economic Operator (AEO) program for exporters through Customs Administrative Order.

The AEO program has three components:

- Cargo Security System

It is a system that ensures the integrity and security of imported goods in accordance with the principles of the WCO SAFE Framework.

- Trade Clearance Facility

It is a system that enables highly compliant stakeholders to clear their goods with minimum or zero Customs border intervention.

- Mutual Recognition Arrangement (MRA)

It refers to a formal document between two or more Customs administrations outlining the circumstances and conditions in which AEO programs are recognized and accepted between the signing parties. The MRA sets out the process to implement, evaluate, monitor and maintain mutual recognition. In addition, the MRA defines the benefits mutually provided to the AEOs by the participating Customs administrations and lays down the practical arrangements enabling the participating Customs administrations to provide those benefits.

## 18.1 Application and Approval

The BOC established a simplified system of processing, evaluation and action on applications for AEO accreditation.

The AEO program shall be administered by the port concerned under the direct supervision by a committee headed by the Deputy Commissioner for Assessment and Operations Coordinating Group (see 1.3). The committee shall be in charge of accrediting AEOs, gathering and evaluating relevant data for the implementation of the AEO program in the country, conducting consultations with the private sector/stakeholders, establishing and enhancing benefits and incentives of the AEO program and to review, revised and draft rules and regulations for the program. It shall perform such other functions necessary for the implementation of the AEO program.

## 18.2 Benefits of AEO

Aside from the consequent benefits resulting from the implementation of robust security measures in the forms of increased visibility of goods in the supply chain, reduction in pilferages and greater efficiency in their supply chain management, companies accredited under the AEO program shall be recognized as trusted allies by the BOC and shall be entitled to the flowing benefits:

- Dedicated processing lanes for AEO accredited exporters resulting in reduced processing period;
- Renewal of accreditation as exporter not on an annual basis but for a longer period;-Last priority on post-entry audit;

- Recognition as a low risk company i.e. enhanced branding;
- Reduced inspection or expedited clearance by other Customs authorities should be certified status be also recognized by overseas countries under a mutual recognition program established by bilateral or multilateral arrangement;
- Such other trade facilitation benefits that may be afforded by BOC under existing laws and regulations.

---

## 19. INTERNATIONAL CUSTOMS COOPERATION

The international Customs cooperation in the Philippines is mainly carried out with the ASEAN and neighboring countries. At the same time, more Customs cooperation have been implemented in several Multilateral and Bilateral FTAs such as APEC, AFTA, ASEM, JPEPA, AANZFTA and the ACFTA and so on. The Philippines Customs has also signed Customs Mutual Assistance Agreement (CMAA) with the United States, Russia, Japan and other countries.

As a member administration of the World Customs Organization (WCO), the Philippines Customs also adopts related agreements, instructions, standards and best practices of WCO.

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## 20. TRADE STATISTICS

Foreign trade statistics are compiled by the National Statistics Office from copies of import and export documents submitted by importers and exporters or their authorized representatives to the BOC as required by law.

Preliminary monthly export and import statistics are released in the form of Press Releases 40 days and 55 days after the reference month respectively. The Foreign Trade Statistics of the Philippines publications comes out annually in two volumes, Volume I for Imports and Volume II for Exports.

There are other unpublished statistical tables that are available at the Foreign Trade Statistics Section, such as those requested by private entities both in the Philippines and abroad. They could be in computer printouts, diskettes and CD's depending on the needs of the researchers. Other special tabulations may also be made available upon request, addressed to the Administrator, National Statistics Office.

Monthly CIF Value of Philippine Import and Monthly FOB Value (in USD) of Philippine Export are released through "Open STAT" from "Customs Dashboard" at BOC's website.

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## 21. OFFICE HOURS

The regular working hours in all offices, including offices under the Office of the Commissioner at all ports and sub-ports, will be from 8:00 a.m. to 5:00 p.m., Monday to Friday.

The District Collectors may also consider providing frontline service from 7:00 a.m. to 7:00 p.m., depending on the end needs of the transacting public.

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## 22. OFFICIAL WEBSITE

Official websites of Bureau of Customs, Tariff Commission and other related departments and chambers have been listed below for further reference:

- [Bureau of Customs \(BOC\)](#)
- [Tariff Commission \(TC\)](#)
- [Department of Trade and Industry \(DTI\)](#)
- [Department of Agriculture \(DA\)](#)
- [Chamber of Philippine Commerce and Industry](#)

---

## 23. CONTACT INFORMATION

For further and detailed information, enquiries can be made to the following BOC contact:

Legal Service

Revenue Collection and Monitoring Group (RCMG)

Accounts Management Office, Bureau of Customs

South Harbor, Gate 3

Port Area, Manila

Tel: (632) 527-8402

E-mail: [amo\\_boc@yahoo.com.ph](mailto:amo_boc@yahoo.com.ph)

## REFERENCE

1. [www.customs.gov.ph/](http://www.customs.gov.ph/).
2. [www.tariffcommission.gov.ph/](http://www.tariffcommission.gov.ph/).
3. [www.dti.gov.ph/resources/laws-and-policies#trade](http://www.dti.gov.ph/resources/laws-and-policies#trade).
4. [www.asean.org/](http://www.asean.org/).
5. [www.customsdutyfree.com](http://www.customsdutyfree.com).

## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

All information, materials included and views, opinions expressed in this eBook are those of the editors and do not necessarily reflect those of EABC China (also CCPIT) and EABC. In this regard, EABC China (also CCPIT) and EABC would like to reaffirm that this eBook would not be used as any reference for judicial and administrative process.

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# **eBook on East Asia Customs Procedures**

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The Republic of Singapore





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## ACKNOWLEDGEMENTS

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AEO	Authorized Economic Operator
APEC	Asia and Pacific Economic Cooperation
ACRA	Accounting and Corporate Regulatory Authority
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ATIGA	ASEAN Trade in Goods Agreement
CAs	Competent Authorities
CO	Certificate of Origin
CWC	Chemical Weapons Convention
GSP	Generalized System of Preferences
FTA	Free Trade Agreement
FTZ	Free Trade Zone
GATT	General Agreement on Tariff and Trade
GIR	General Interpretative Rules
GST	Goods and Services Tax
GSTP	Global System of Trade Preferences
HS	Harmonized Commodity Description and Coding System
IBG	Inter-Bank GIRO
IRAS	Inland Revenue Authority of Singapore
MFN	Most Favored Nation
NSW	National Single Window

NTP	Networked Trade Platform
OPCW	Organization for the Prohibition of Chemical Weapons
PSI	Post-clearance Audit
SGCA	Strategic Goods (Control) Act
STCCED	Singapore Trade Classification, Customs and Excise Duties
UEN	Unique Entity Number
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Republic of Singapore

### 1. INTRODUCTION OF SINGAPORE CUSTOMS

Singapore Customs is a department under the Ministry of Finance which is the lead agency for trade facilitation and revenue enforcement. It is reconstituted on April 1, 2003 to bring together revenue collection and enforcement, trade documentation, trade facilitation and security functions under one agency. Singapore Customs also upholds Customs and trade laws to build trust in Singapore's external trading system, facilitate trade, and protect revenue through collaboration with government agencies and businesses, robust regulations and effective enforcement.

#### 1.1 Mission

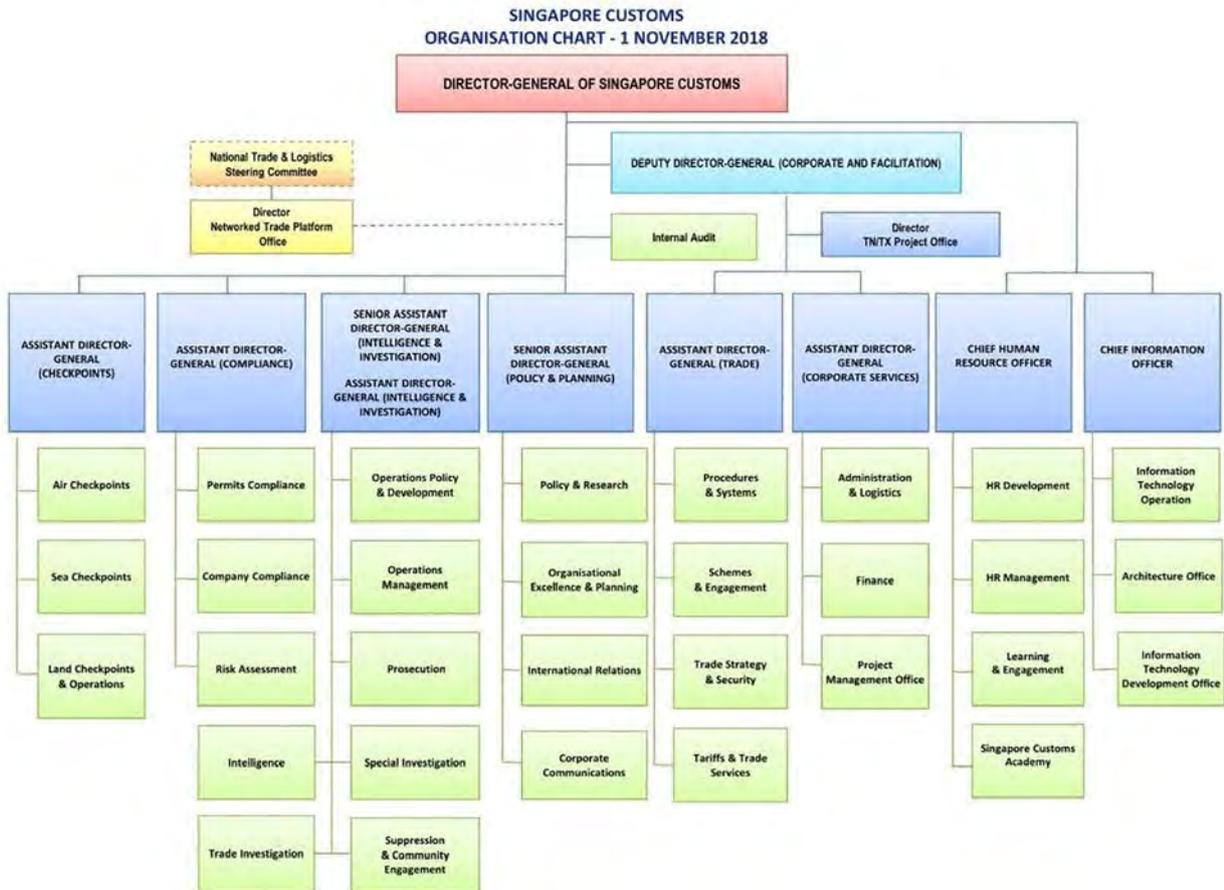
Just as Singapore Customs has announced, it plays a proactive role in balancing the intricate requirements of trade facilitation, security, and regulatory compliance to strengthen Singapore's position as a global trade hub trusted by foreign trading partners and businesses operating in Singapore. Based on above, the mission of Singapore Customs is "We protect revenue, and make trade easy, fair and secure".

#### 1.2 Structure

Singapore Customs is consisting of the Trade Division, Compliance Division, Human Resource Directorate, Policy & Planning Division, Checkpoints Division, Intelligence & Investigation Division, Corporate Services Division, and the Information Technology Directorate.

The Director-General of Customs is the highest leader of Singapore Customs.

Figure 1 Organization Chart of Singapore Customs



Source: [www.customs.gov.sg](http://www.customs.gov.sg)

### 1.3 Service Committed by Singapore Customs

Singapore Customs is committed to provide excellent service as outlined in their Service Charter, and they serve in the principle of 4F - Fast, Friendly, Firm and Fair.

For traders, they try to reply emails and letters within 3 working days except some complex queries. If they cannot fully answer a query on time, an interim response will be sent. The concrete time limits are as follows:

Table 1 Business Processing Time Limit by Singapore Customs

Business Processing Time Limit for Traders	
Process TradeNet Declarations (and Amendments)	<ul style="list-style-type: none"> <li>99% within 10 minutes</li> </ul>
Process Warehouse License and Zero-GST Warehouse (Type I) License Applications	<ul style="list-style-type: none"> <li>Within 7 working days</li> </ul>
Issue Customs Duty/Goods and Services Tax (GST) Refund	<ul style="list-style-type: none"> <li>Within 5 working days (if supporting documents are not required)</li> <li>Within 12 working days (upon receipt of all supporting documents)</li> </ul>
Process Certificates of Origin Online Applications	<ul style="list-style-type: none"> <li>Certificates of Origin for goods of Singapore origin applications within 2 hours</li> <li>Back-to-back Certificates of Origin applications within 2 working days</li> </ul>
Issue Import Certificates and Delivery Verifications	<ul style="list-style-type: none"> <li>100% within 2 working days upon receipt of complete application with all the relevant supporting documents</li> </ul>
Issue Customs Rulings	<ul style="list-style-type: none"> <li>Within 30 days upon receipt of full supporting documents</li> </ul>

Source: [www.customs.gov.sg](http://www.customs.gov.sg)

## 1.4 The Customs Advisory Council

Established in March 2000, the Customs Advisory Council is chaired by Permanent Secretary (Finance) and consists of key representatives from the trade associations, the industry and the public sector to advise on strategic directions to advance Singapore Customs as a world-class Customs organization. The Council also functions as an active platform for Singapore Customs to solicit feedback and advice on industry trends, government policies and other matters that may affect Singapore Customs.

## 2. CUSTOMS LEGAL SYSTEM

The current Customs legal system in Singapore include Customs Act and other major Acts which are also enforced by Singapore Customs including Goods and Services Tax Act, Regulation of Imports and Exports Act, Free Trade Zones Act, Strategic Goods (Control) Act and Chemical Weapons (Prohibition) Act and etc..

### 2.1 Customs Act

The Customs Act is an act relating to Customs and excise duties. Its subsidiary Customs legislation includes Customs (Duties) (Exemption) Order, Customs (Fuel Tank - Minimum Amount) Order 2011, Customs (Permits To Remove Goods) Order, Customs (Authorized Piers and Places) Regulations 2011, Customs (Composition of Offences) Regulations, Customs (Container) Regulations, Customs (Customs Airports) Regulations and so on.

### 2.2 Goods and Services Tax Act

The Goods and Services Tax Act is an act to provide for the imposition and collection of goods and services tax and for matters connected therewith. Goods and Services Tax (Imports Relief) Order and Goods and Services Tax (General) Regulations are the main subsidiary legislation of this Act.

### 2.3 Regulation of Imports and Exports Act

The Regulation of Imports and Exports Act is an act to provide for the regulation, registration and control of imports and exports and to make provisions for matters connected there with. The other legislations like Regulation of Imports and Exports Regulations, Regulation of Imports and Exports (Chewing Gum) Regulations, Regulation of Imports and Exports (Kimberley Process) Regulations, Regulation of Imports and Exports (Prescribed Fees) Regulations, Regulation of Imports and Exports (Composition of Offences) Regulations help the implementation of this Act.

### 2.4 Free Trade Zones Act

The Free Trade Zones Act (Chapter 114) is an act to provide for the establishment of Free Trade Zones in Singapore and for matters incidental thereto. Singapore Customs also enforce the other legislations on

the regulation of Declared Areas, Manufacture and Prescribed Goods.

## 2.5 Strategic Goods (Control) Act and Chemical Weapons (Prohibition) Act

The Strategic Goods (Control) Act is an act to control the transfer and brokering of strategic goods, strategic goods technology, goods and technology capable of being used to develop, produce, operate, stockpile or acquire weapons capable of causing mass destruction, and missiles capable of delivering such weapons; and for purposes connected therewith.

And the Chemical Weapons (Prohibition) Act (Chapter 37B) is an act to give effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction concluded at Paris on January 13, 1993.

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## 3. CUSTOMS CLEARANCE PROCEDURES

### 3.1 Import into Singapore

In Singapore Customs, the definition of import is that goods being brought into Customs territory from an entry point or a Free Trade Zone (FTZ), or overseas goods being brought into a Free Trade Zone for storage and pending re-export. If anyone wants to import goods into Singapore, it is required to make a declaration to Singapore Customs. Goods and Services Tax (GST) is payable on non-dutiable goods. Both GST and duty are payable for dutiable goods if these goods are imported for local consumption.

Mainly there are 7 steps for a fresh trader who is going to import goods into Singapore as follows:

#### **STEP 1: Register for UEN**

Register with the Accounting and Corporate Regulatory Authority (ACRA) or the relevant Unique Entity Number (UEN) issuance agency to obtain a UEN and activate its Customs Account.

**STEP 2: Check if Goods are Controlled**

Check if the goods are controlled goods or goods subject to restrictions by Competent Authorities (CAs) in Singapore, which can be proved through the description of the goods, Harmonized System (HS) code or CA product code. If the item is subject to control, the name of the CA will be indicated next to its HS code. Their licensing requirements can be checked directly with the respective CAs.

**STEP 3: Apply for Inter-Bank GIRO**

Anyone must maintain an Inter-Bank GIRO (IBG) with Singapore Customs to make payment of duties, taxes, fees, penalties and other charges on services offered by Singapore Custom from traders' bank account to Singapore Customs directly.

**STEP 4: Furnish Security**

It is necessary to furnish security for transactions involving dutiable goods, temporary import of goods for approved purposes, and for the operation of licensed premises such as licensed warehouses and excise factories.

**STEP 5: Apply for Customs Import Permit**

Register as a Declaring Agent and apply for a TradeNet user ID. All permit applications must be submitted via TradeNet, which is accessible through TradeNet front-end software from an approved software vendor or Government Front-End module.

**STEP 6: Prepare Documents for Cargo Clearance**

Approved permits applications are issued with a validity period. The traders should ensure the validity of the permit presented for goods clearance. For imports of containerized cargo, the container number and shipper seal number are required when applying for a permit.

**- Documents Required for Containerized Cargo**

For import of containerized cargo by sea, it is not required to present the printed copy of the Customs permit and supporting documents to the checkpoint officers at the entry points. For import of containerized cargo by air or land, it is required to produce the Customs permit and supporting

documents such as invoice, Packing List and Bill of Lading/Air Waybill, to the checkpoint officers for verification.

- **Documents Required for Conventional Cargo**

For conventional cargo, it is required to present the goods, printed copy of the Customs permit, and supporting documents such as invoice, Packing List and Bill of Lading/Air Waybill, to the checkpoint officers at the time of cargo clearance for verification.

### **STEP 7: Retain Trade Documents**

It is often required to retain the relevant supporting documents relating to the purchase, import, sale or export of the goods for a period of 5 years from the date of the permit application approval. These documents can be stored as physical hardcopies or as images. Upon request, such documents shall be submitted to Singapore Customs.

## **3.2 Export from Singapore**

Goods exported from Singapore are regulated under the Customs Act, the Regulation of Imports and Exports Act, the Strategic Goods (Control) Act, and other legislations by the relevant Competent Authorities (CAs). To export goods from Singapore, it is required to declare the goods to Singapore Customs. Goods and Services Tax (GST) and duty are not levied on goods exported from Singapore.

Mainly there are 5 steps for a fresh trader who is going to import goods into Singapore as follows:

### **STEP 1: Register for UEN**

Register with the Accounting and Corporate Regulatory Authority (ACRA) or the relevant Unique Entity Number (UEN) issuance agency to obtain a UEN and activate its Customs Account.

### **STEP 2: Check if Goods are Controlled**

Check if the goods are controlled goods or goods subject to restrictions by Competent Authorities (CAs) in Singapore, which can be proved through the description of the goods, Harmonized System (HS) code or CA product code. If the item is subject to control, the name of the CA will be indicated next to its HS code. Their licensing requirements can be checked directly with the respective CAs.

### **STEP 3: Apply for Customs Export Permit**

Register as a Declaring Agent and apply for a TradeNet user ID. All permit applications must be submitted via TradeNet, which is accessible through TradeNet front-end software from an approved software vendor or Government Front-End module.

### **STEP 4: Prepare Documents for Cargo Clearance**

Approved permits are issued with a validity period. The validity of the permit presented for goods clearance shall be ensured.

- **Documents Required for Containerized Cargo**

For containerized cargo, please produce the cargo with the approved Customs export permit and supporting documents such as invoice, Packing List, Bill of Lading/Airway Bill, to the checkpoint officers if it is specified in the permit conditions or if the cargo is dutiable or controlled. Permit number is required to have at the point of cargo lodgement for verification purposes. A Customs export permit is required to cover for export of dutiable goods from licensed warehouses, export of goods from bonded warehouses, export of goods under the Temporary Export Scheme, re-export of goods previously imported under the Temporary Import Scheme.

- **Documents Required for Conventional Cargo**

For conventional cargo, produce the approved Customs export permit and supporting documents such as invoice, Packing List, Bill of Lading/Airway Bill, to the checkpoint officers if it is specified in the permit conditions or if the items are dutiable or controlled. Permit number is required to have at the point of cargo lodgement for verification purposes. A Customs export permit is required for export of dutiable goods from licensed warehouses, export of goods from bonded warehouse, export of goods under the Temporary Export Scheme, re-export of goods previously imported under the Temporary Import Scheme.

### **STEP 5: Retain Trade Documents**

It is often required to retain the relevant supporting documents relating to the purchase, import, sale or export of the goods for a period of 5 years from the date of the permit application approval. These documents can be stored as physical hardcopies or as images. Upon request, such documents shall be submitted to Singapore Customs.

### 3.3 Transshipping Via Singapore

The procedures of transshipment for those who wish to transship goods via Singapore is similar to import/export while the transshipment of all goods is not subject to duty or Goods and Services Tax (GST). There are also 6 main steps for this procedure.

#### **STEP 1: Register for UEN**

Register with the Accounting and Corporate Regulatory Authority (ACRA) or the relevant Unique Entity Number (UEN) issuance agency to obtain a UEN and activate its Customs Account.

#### **STEP 2: Check if Goods are Controlled**

Check if the goods are controlled goods or goods subject to restrictions by Competent Authorities (CAs) in Singapore, which can be proved through the description of the goods, Harmonized System (HS) code or CA product code. If the item is subject to control, the name of the CA will be indicated next to its HS code. Their licensing requirements can be checked directly with the respective CAs.

#### **STEP 3: Furnish Security**

For the transshipment of dutiable goods such as tobacco, liquor or motor vehicles under “through” or “non-through” Bill of Lading or Airway Bill through Customs territory, it is required to furnish security in the form of a Banker’s Guarantee or an Insurance Bond.

#### **STEP 4: Apply for Customs Transshipping Permit**

Register as a Declaring Agent and apply for a TradeNet user ID. All permit applications must be submitted via TradeNet, which is accessible through TradeNet front-end software from an approved software vendor or Government Front-End module.

#### **STEP 5: Prepare Documents for Cargo Clearance**

Present the goods with the printed copy of the Customs permit, and supporting documents such as invoice, Packing List, Bill of Lading or Air Waybill to the checkpoint officers at the entry and exit checkpoints for clearance.

## STEP 6: Retain Trade Documents

It is often required to retain the relevant supporting documents relating to the purchase, import, sale or export of the goods for a period of 5 years from the date of the permit application approval. These documents can be stored as physical hard copies or as images. Upon request, such documents shall be submitted to Singapore Customs.

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## 4. TRADENET AND NTP

### 4.1 TradeNet

TradeNet is Singapore's National Single Window for trade declaration and is a global example of excellence for other countries. Launched on January 1, 1989, it allows various parties from the public and private sectors to exchange trade information electronically. It integrates import, export and transshipment documentation processing procedures and enables the trade and logistics communities to fulfil their trade formalities. Through TradeNet, Singapore Customs and other Competent Authorities monitor the movement of goods and enforce health, safety and other regulatory requirements. TradeNet reduces the cost and time to prepare, submit and process trade documents and expedites the clearance of cargo and allows fees and taxes to be deducted electronically.

### 4.2 Networked Trade Platform (NTP)

The Networked Trade Platform (NTP) is a national trade information management platform which provides the foundation for Singapore to be the world's leading trade, supply chain and trade financing hub. At its core, NTP represents a concerted effort to drive an industry-wide digital transformation to build a trade and logistics IT ecosystem that connects businesses, community systems and platforms and government systems.

Replacing TradeNet for trade-related applications and trade exchange for connecting the trade and logistics community, the NTP is designed to provide beyond the service offerings of the incumbent

systems. Specifically, it aims to be a one-stop trade information management system linked to other platforms, a next-generation platform offering a wide range of trade-related services, an open innovation platform allowing development of insights & new services with cross-industry data and a document hub for digitization at source that enables reuse of data to cut costs and streamline processes.

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## 5. CUSTOMS AGENT

In Singapore, the agent or employee of any person or firm may transact business generally at any Customs office on behalf of the person or firm if the person or a member of the firm identifies the agent or employee to the officer as empowered to transact such business and deposits with that officer a signed authority authorizing the agent or employee to transact such business on behalf of that person or firm. However, a senior officer of Customs in Singapore may in addition require that person or firm to give such security as he may consider adequate for the faithful and in-corrupt conduct of the agent or employee acting on behalf of that person or firm.

The day after the approval of Inter-Bank GIRO (IBG) application or successful registration of security with Singapore Customs, the Key Personnel of one entity whose particulars are registered with a Unique Entity Number (UEN) Issuance Agency such as Accounting and Corporate Regulatory Authority, Registry of Societies etc. or the Authorized Personnel of the entity may authorize the Declaring Agent to use the registers' IBG for the payment of duties and Goods and Services Tax for Customs permit and Security for permit applications. Any person or legal person can authorize up to 20 Declaring Agents.

## 6. PROHIBITIONS AND RESTRICTIONS

### 6.1 Controlled & Prohibited Goods for Import

Controlled goods require proper authorization (advance notification, license or certificate approval) from Competent Authorities (CA) before they may be imported into Singapore. It is advised to check if the goods are controlled using the description of the goods, Harmonized System (HS) code or CA product code. If the item is subject to control, importer may check directly with the respective CAs on their licensing requirements.

The prohibited list is as follows:

- Chewing gum (excluding Health Sciences Authority approved oral dental and medicinal chewing gum);
- Pistol or revolver - shaped cigarette lighters;
- Fire crackers;
- Rhinoceros horn (worked, unworked or prepared and the any part, power or waste of such horn);  
Endangered species of wildlife and products derived from the body of such animals;
- Telecommunication equipment;
  - Scanning receivers;
  - Military communication equipment;
  - Telephone voice changing equipment;
  - Radio-communication equipment operating in frequency bands 880-915 MHz, 925-960 MHz, 1900-1980 MHz and 2110-2170 MHz except cellular mobile phones or such other equipment approved by Info-communications Media Development Authority of Singapore;
  - Radio-communication jamming devices operating in any frequency band;
  - Obscene articles, publications and video tapes or discs;
  - Seditious and treasonable materials;
- Chewing tobacco (loose leaf chewing tobacco, plug chewing tobacco, twist chewing tobacco, tobacco bits intended for chewing);

- Imitation tobacco products (electronic cigarettes, vaporisers) and components of imitation tobacco products;
- Shisha;
- Smokeless cigars, smokeless cigarillos or smokeless cigarettes;
- Dissolvable tobacco or nicotine;
- Any product containing nicotine or tobacco that may be used topically for application, by implant or injected into any parts of the body;
- Any solution or substance, of which tobacco or nicotine is a constituent that is intended to be used with an electronic nicotine delivery system or vaporizers;
- Nasal snuff;
- Oral snuff;
- Gutkha, khaini and zarda.

## 6.2 Controlled & Prohibited Goods for Export

Controlled goods require proper authorization (advance notification, license or certificate approval) from Competent Authorities (CA) before they may be exported from Singapore. It is advised to check if the goods are controlled using the description of the product, Harmonized System (HS) code or CA product code here. If the item is subject to control, exporter may check directly with the respective CAs on their requirements. The items of this part is same as the Strategically Controlled Goods except the Rhinoceros horn (worked, unworked or prepared and any part, powder or waste of such horn).

## 6.3 Strategic Goods Control

Strategic goods refer to items and their related technology that can be used to produce weapons of mass destruction, and missiles capable of delivering such weapons. This includes arms and military equipment, and commercial items that can be used to develop weapons of mass destruction.

Singapore implemented the Strategic Goods (Control) Act or SGCA on January 1, 2003 to regulate the trade in strategic goods and strategic goods technology for avoiding the proliferation of weapons of mass destruction and against the illicit movement of items through its ports that can contribute to such proliferation.

Singapore Customs is the National Authority to administer the SGCA. There are 5 main functions carried out by Singapore Customs such as processing of strategic goods permit applications, registering and auditing of arms brokers, conducting industry outreach and public awareness programs, enforcing the SGCA and its regulations, serving as the focal point for local and international enquiries.

With effect from October 1, 2019, Singapore is implementing the updated list of strategic goods and technology which are subject to controls under the SGCA, in the Strategic Goods (Control) Order 2019.

## 6.4 Chemical Weapons Convention (CWC)

The Chemical Weapons Convention (CWC) is an international treaty which prohibits the development, production, stockpiling, transfer and use of chemical weapons and stipulates their timely destruction. It entered into force in 1997. The Organization for the Prohibition of Chemical Weapons (OPCW) is the implementing body for the CWC. Its activities include monitoring the implementation status of Member States, conducting on-site verification measures and providing a forum for consultation and co-operation amongst Member States. Singapore ratified the CWC in May 1997 and Singapore Customs is the designated National Authority (NA) for the CWC (NA-CWC)). The NA-CWC is the national focal point and liaison with the Organization for the Prohibition of Chemical Weapons (the implementing body of the CWC), and other Member States of the Convention. The NA-CWC administers the Chemical Weapons (Prohibition) Act and its subsidiary legislations to fulfill Singapore's obligations under the Convention.

The Chemical Weapons Convention lists 3 schedules of toxic chemicals, their precursors and an additional category of chemicals known as unscheduled discrete organic chemicals (DOCs). Schedule 1 covers chemicals that possess lethal or incapacitating toxicity and other properties that would enable it to be used as a chemical weapon (Schedule 1A), and their final stage precursors (Schedule 1B). They pose a high risk to the objectives of the Convention and have little or no commercial application. Schedule 2 covers chemicals which are potential chemical warfare agents (Schedule 2A and 2A\*), and other chemical weapons precursors (Schedule 2B). They pose a significant risk to the objectives of the Convention and have moderate level of commercial application. Schedule 3 covers chemicals which had previously been produced, stockpiled or used as a chemical weapon. They pose a risk to the objectives of the Convention by virtue of its importance in the production of one or more chemicals listed in Schedule 1 or Schedule 2B. Schedule 3 chemicals have widespread commercial application.

The schedules are organized to reflect the risk posed by the chemical to the objectives of the Convention, with decreasing risk across the schedules. Although DOCs are not directly related to making chemical

agents, the facilities built for their production (with quantity exceeding threshold limits) can potentially be converted to chemical weapons production facilities.

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## 7. DUTIES AND TAXES COLLECTIONS

### 7.1 Import Duty, Excise Duty, Good and Service Tax (GST)

In Singapore only import goods are required to pay duties and taxes and there are three types of duties and taxes levied on import goods:

- Import Duty: Import Duty is the Customs duty levied on goods imported into Singapore;
- Excise Duty: Excise Duty is the duty levied on goods manufactured in, or imported into Singapore;
- Good and Service Tax (GST): GST is the acronym for Goods and Services Tax, which is levied on all goods imported into Singapore.

### 7.2 Dutiable Goods

There are 4 categories of dutiable goods in Singapore listed below and all other products are non-dutiable.

- Intoxicating liquors;
- Tobacco products;
- Motor vehicles;
- Petroleum products and biodiesel blends.

For their respective duty rates, please refer to the list of dutiable goods of Singapore on the following website:

<https://www.customs.gov.sg/businesses/valuation-duties-taxes--fees/duties-and-dutiable-goods/list-of-dutiable-goods>

## 7.2.1 Import Duty

Only intoxicating liquors are required to pay Import Duty. The duties of the intoxicating liquors are based on specific rates, which is a specified amount per unit of weight or other quantity (for example, S\$100.00 per litre or per kilogramme).

a) For alcoholic products with duty rates on per litre of alcohol

Duties payable = Total quantity in litres x Customs duty rate x Percentage of alcoholic strength

Example: Company A imports 100 litres of porter of alcoholic strength of 6% vol. Assuming the Customs duties for porter is S\$16 per litre of alcohol, so the Customs duties payable =  $100 \times \text{S\$}16 \times 6\%$   
= S\$96

b) For alcoholic products with duty rates based on dutiable content (weight/volume)

Duties payable = Total dutiable quantity in kilogrammes x Customs duty rate

Example: If 1 kilogramme of alcoholic composite concentrates contains 0.2 kilogramme of powdered alcohol, duties payable =  $0.2\text{kg} \times \text{S\$}113 = \text{S\$}22.60$

## 7.2.2 Excise Duty

Some intoxicating liquors, all tobacco products, motor vehicles and petroleum and biodiesel blends are required to pay Excise Duty.

### 7.2.2.1 Intoxicating Liquors

The duties of the intoxicating liquors are based on specific rates.

For alcoholic products with duty rates on per litre of alcohol,

Duties payable = Total quantity in litres x Excise duty rate x Percentage of alcoholic strength

Example: Company A imports 100 litres of porter of alcoholic strength of 6% vol. Assuming the excise duties for porter is S\$60 per litre of alcohol, so the excise duties payable =  $100 \times \text{S\$}60 \times 6\% = \text{S\$}360$

### 7.2.2.2 Tobacco Products

The duties of the tobacco products are based on specific rates.

**a) All Tobacco Products Except Cigarettes**

Duties payable = Total weight (in kilogrammes) x Excise duty rate

Example: Company A imports 50 kilogrammes (kgm) of tobacco (unmanufactured not stemmed). Assuming the excise duty for this is S\$388 per kilogramme, duties payable = 50 x S\$388 = S\$19400.

**b) Cigarettes**

Duties payable = Total number of sticks x Weight of individual sticks (every gramme or part thereof) x Excise duty rate

Example: Company A imports 100 sticks of cigarettes weighing 2 grammes each. Assuming the excise duty for cigarettes is 42.7 cents for every gramme or part thereof of each stick. Hence, duties payable = 100 x 2 x S\$0.427 = S\$85.40.

**7.2.2.3 Motor Vehicles**

The duties of motor vehicles are based on ad valorem, which is a percentage of the goods' Customs value (for example, 25% of the Customs value).

Duties payable = Customs value x Excise duty rate

Example: Company A imports a motor car that was bought at S\$110,000 on CIF incoterms. Assuming the excise duty for motor cars is 20% of the Customs value, duties payable = S\$110,000 x 20% = S\$22000.

**7.2.2.4 Petroleum and Biodiesel Blends**

Duties of petroleum and biodiesel blends are based on specific rates.

**a) Petroleum Products**

Duties payable = Total volume x Excise duty rate

Example: Company A imports 100 litres of unleaded and unblended Motor spirit of RON 90. Assuming the excise duty for this is S\$5.60 per dal (1 dal = 10 litres), duties payable = S\$5.60 x 100/10 = S\$56

**b) Compressed Natural Gas (Cng)**

Duties payable = Total weight x Excise duty rate

Example: Company A imports 50 kilogrammes of compressed natural gas. Assuming the excise duty for compressed natural gas is S\$0.20 per kgm, duties payable = S\$0.20 x 50 = S\$10.

### c) Biodiesel Blend

Duties payable = Volume of diesel x Excise duty rate

Example: Company A imports 1,000 litres of biodiesel blend, comprising 100 litres of diesel. Assuming the excise duty for diesel is S\$2.00 per dal (1 dal = 10 litres), duties payable = S\$2 x 10 = S\$20.

## 7.2.3 GST

GST is calculated based on Customs value of the goods, plus all duties, or value of the last selling price plus all duties (if there has been more than one sale, then the value is the amount that the last buyer pay for the goods) and the specific rates. The current GST rate is 7%. Please check the GST rate on the official website in case it changes.

### 7.2.3.1 Non-dutiable Goods

GST payable = 7% x Customs value or Last Selling Price (LSP)

Example: Company A bought 100 boxes of vitamins at S\$1000 on CIF incoterms. Company A sold the vitamins to Company B before the vitamins reached Singapore for S\$1,200. GST payable by Company B = 7% x S\$1,200 = S\$84

### 7.2.3.2 Dutiable Goods

GST payable = 7% x (Customs value or Last Selling Price (LSP) + duties payable)

Example: Company A imported a motor car that was bought at S\$101,000 on CIF incoterms. Assuming the excise duty for motor cars is 20% of the Customs value and Duties payable = S\$101,000 x 20% = S\$20,200, thus, GST payable = 7% x (S\$101,000 + 20,200) = S\$8,484

## 7.3 Preferential Tariff

Preferential tariff treatment allows goods imported into Singapore to pay lower or no Customs duty under a Free Trade Agreement or Scheme of Preferences. To check whether the goods are covered under the Free Trade Agreement or Scheme of Preferences and the preferential tariffs, please refer to Enterprise Singapore's Tariff Finder Tool.

## 7.4 Duty Exemptions

### 7.4.1 Be Exempted from Duties

Some imports can be exempted from duties. Please refer to Customs (Duties) (Exemption) Order and Section 2 (1A) of Customs (Duties) Order on the following websites:

<https://sso.agc.gov.sg/SL/CA1960-OR5#pr2->

<https://sso.agc.gov.sg/SL/CA1960-OR4#pr2->

### 7.4.2 Be Exempted from GST

Some imports can be exempted from GST. Please refer to Goods and Services Tax (Imports Relief) Order on the following website:

<https://sso.agc.gov.sg/SL/GSTA1993-OR3>.

In addition, there's a GST Exemption for Investment Precious Metals. Individuals or businesses importing Investment Precious Metals (IPM) into Singapore are exempted from paying Goods and Services Tax (GST) if the IPMs meet the IPM Qualifying Criteria. Please read more about the GST exemption for IPMs on the following website:

<https://www.iras.gov.sg/irashome/GST/GST-registered-businesses/Working-out-your-taxes/When-is-GST-not-charged/Supplies-Exempt-from-GST/#title5>.

### 7.4.3 Temporary Export Re-imported

GST and/or duty-paid goods temporarily exported for approved purposes under the Temporary Import/Export Scheme under Singapore Customs can be re-imported without GST and duty (where applicable). Please refer to the following website for more details:

<https://www.customs.gov.sg/businesses/importing-goods/temporary-import-scheme>.

## 7.5 Refund or Delayed Payment

### 7.5.1 Refund of Duties & GST

#### 7.5.1.1 Reasons for Refund

Common reasons for refund in Singapore include:

- Double declaration;
- Double payment;
- Exemption/GST relief granted;
- Importer under the Major Exporter Scheme;
- Shipment cancelled;
- Shipment for re-export/transship;
- Shipment under personal efforts;
- Shipment under temporary import;
- Wrong declaration of Harmonized Systems code;
- Wrong declaration of value;
- Wrong importer's name/Unique Entity Number.

#### **7.5.1.2 Deadline for Refunds**

- Within 5 years from the date of payment of duty;
- Within 5 years from the date of payment of GST.

#### **7.5.1.3 Application for Refund**

Apply for an online refund and be notified of the outcome through the Refund Module in TradeNet.

#### **7.5.1.4 Possible Outcomes for Refund**

- Rejection: This could include requiring the taxable importer to claim from the Inland Revenue Authority of Singapore (IRAS).
- Approval: All successful refunds will be credited directly into the Inter-Bank GIRO (IBG) accounts of the payers who maintained IBG accounts with Singapore Customs.
- Pending supporting documents: The applicant will receive a notification to submit the following supporting documents:
  - a) Refund Permit;

- b) Replacement Permit (if applicable);
- c) Commercial Invoice;
- d) Packing List;
- e) Arrival Notice/Freight Notification or Delivery Order;
- f) Bill of Lading/Airway Bill;
- g) GST/Duty Computation;
- h) Bank Slip and Bank Statement (for payment made at the bank);
- i) Any other documents required by Singapore Customs to verify the claim.

If the GST was deducted via IBG from the taxable importer's bank account registered with Singapore Customs, (i.e. payment permits with the permit conditions "GF" & "TX"), the importer is advised to claim the GST as input tax from IRAS during the company's accounting period. The same applies if the GST was paid by the taxable importer at the bank.

However, if the claim for refund is due to stating the wrong importer's name or UEN, the importer can apply for a GST refund from Singapore Customs. Applicant may log in to TradeNet to check the status of related refund application.

### 7.5.2 Delayed Payment

There are 4 scenarios that payment of duty and/or GST can be delayed:

- Duty and/or GST are suspended when goods remain inside a FTZ.
- When goods are moved from a FTZ or entry point into a Customs licensed premises (such as zero-GST warehouses or licensed warehouses), duty and /or GST will be suspended as long as the goods are stored in the licensed premises.
- Goods temporarily imported for approved purposes, duty and /or GST will be suspended up to a maximum of 6 months (where applicable). Please refer to the following website for more details in Temporary Import Scheme under Singapore Customs: <https://www.customs.gov.sg/businesses/importing-goods/temporary-import-scheme>.
- Goods imported under the relevant Inland Revenue Authority of Singapore (IRAS) Schemes:
  - a) Major Exporter Scheme (MES), companies approved under the MES can enjoy GST suspension

for non-dutiable goods imported in to Singapore, and on goods removed from a zero-GST warehouse. Please refer to the following website for more details:

<https://www.customs.gov.sg/businesses/customs-schemes-licences-framework/iras-schemes/major-exporter-scheme>.

b) Approved Import GST Suspension Scheme (AISS), this scheme will allow approved Goods and Tax (GST)-registered businesses in the aerospace industry to import goods into Singapore with GST suspended and remove qualifying aircraft parts from the Airport Logistics Park of Singapore (ALPS) or other Free Trade Zones with GST Suspended. Please refer to the following website for more details:

<https://www.customs.gov.sg/businesses/customs-schemes-licences-framework/iras-schemes/approved-import-gst-suspension-scheme>.

c) Import GST Deferment Scheme (IGDS), companies approved under the IGDS can defer the imports' Goods and Services Tax (GST) payment at the point of import. Please refer to the following website for more details:

<https://www.customs.gov.sg/businesses/customs-schemes-licences-framework/iras-schemes/import-gst-deferment-scheme-igds>.

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## 8. CUSTOMS SECURITY

### 8.1 Scenarios to Furnish Security

Declaring Entities, or their appointed Declaring Agents, are required to furnish security for various scenarios, such as:

- Temporary importation of goods for approved purposes;
- Movements involving dutiable goods not under temporary import;

- Operation of licensed premises such as licensed warehouses and excise factories;
- Compliance with the regulatory requirements of Singapore Customs;
- Revenue protection purposes;
- Liquor and tobacco products (see circular on the following webpage for more information: [https://www.customs.gov.sg/-/media/cus/files/circulars/corp/2016/circular\\_01\\_2016v3.pdf](https://www.customs.gov.sg/-/media/cus/files/circulars/corp/2016/circular_01_2016v3.pdf)).

Singapore Customs may also require security to be furnished for situations not mentioned above, or vary the security amount on a case-by-case assessment.

## 8.2 Amount of Security Required

The amount of security required for a permit application is dependent on the movement type and goods type.

- For Temporary Importation of Goods for Approved Purposes, the amount of security required can be found in the following website:  
<https://www.customs.gov.sg/businesses/registering-to-trade/registration-procedures/security-lodgement>.
- For Movements Involving Dutiable Goods not under Temporary Import, the amount of security required can be found in the following website:  
<https://www.customs.gov.sg/businesses/registering-to-trade/registration-procedures/security-lodgement>.

### Security is not required for:

- Transactions where the security amount required for a permit application is S\$2,000 or less, please see Circular No. 19/2010 on the following website for more information:  
[https://www.customs.gov.sg/~/\\_media/cus/files/circulars/corp/2010/cir19201015nov2010.pdf](https://www.customs.gov.sg/~/_media/cus/files/circulars/corp/2010/cir19201015nov2010.pdf).
- All movement of unmanufactured tobacco.
- Outward movement of undenatured ethyl alcohol (of alcoholic strength by volume of 80% or more) by road.

For first-time security lodgement for permit applications, companies need to compute and lodge the amount of security required. The amount of security lodged should be sufficient to meet operational needs and a buffer amount should be included to avoid any possible disruption to the transactions, as a permit application will be rejected if the amount of security required for the permit application exceeds the amount of security lodged with Singapore Customs.

### **Operation of Licensed Premises and Other Purposes**

For first-time security lodgement for the operation of licensed premises and other purposes, Singapore Customs will inform the amount of security required to be lodged.

## **8.3 Lodgement of Security**

Three forms of security are acceptable to Singapore Customs: Banker's Guarantee, Finance Company Guarantee, or an Insurance Bond.

The Security Application Form can be downloaded and brought to the bank, finance company or insurance company for lodgement of the Banker's Guarantee/Finance Company Guarantee/Insurance Bond at the following website:

<https://www.customs.gov.sg/eservices/customs-forms-and-service-links#Registration>.

### **Further points to note:**

- Except for securities that are lodged for an ad-hoc basis (e.g. temporary importation of an ad-hoc shipment), the security lodged should be valid for at least one year, with the expiry date set to December 31 of the following year.
- The bank, finance company or insurance company must be registered with the Monetary Authority of Singapore (MAS).
- The insurance company must be a Direct Insurer (General) or Direct Insurer (Composite) listed under MAS's Financial Institutions Directory at the MAS's official website of <https://eservices.mas.gov.sg/fid>.

Original security needs to be submitted to the Registration Unit, Procedures & Systems Branch of Singapore Customs. Once the security is received, Singapore Customs will register the security within 3 working days. Upon successful registration, a notification will be sent by email or fax to the Primary

Contact (or the Secondary Contact should transmission to the company's Primary Contact fails) registered in the company's Customs Account. Please ensure that the particulars of the Primary Contact and Secondary Contact registered in the company's Customs Account are updated for them to receive the notifications.

## 8.4 Renewal of Security

If the security lodged with Singapore Customs expiring in the month of December, Singapore Customs will inform the company of the recommended security amount to lodge for the following year in November of the current year.

The recommended security amount is computed based on the entity's past transaction and its TradeFIRST (TF) band, Declaring Agent (DA) band and the entity's compliance records with Singapore Customs. Entities that have been accorded a better TF band or DA band, or have maintained exemplary compliance records can expect lower or waiver of security requirements for most types of transactions.

If the security lodged does not expire in the month of December, Singapore Customs will notify the company on the expiry of the security two months before the expiry date.

## 8.5 Extension of Security

A new security can be lodged using the Security Application Form or extend the expiry date of the existing security using the Security Extension Form. Submit the new security or security extension to Customs at least two weeks before the expiry of the existing security to allow sufficient time for processing and amendments in case of discrepancies. Both Forms can be downed from the following website:

<https://www.customs.gov.sg/eservices/customs-forms-and-service-links#Registration>.

## 8.6 Withdrawal of Security

Companies can write in to Singapore Customs to withdraw a valid security. Singapore Customs will return the original security once they have confirmed that the company does not have any outstanding matters with them.

## 8.7 Expiration of Security

Customs will retain all expired securities. All liabilities of the bank, finance company or insurance company will be fully discharged after the claim period as stated in the security.

## 8.8 Forfeiture of Security

Entities, in particular Declaring Agents, should exercise due diligence before allowing their security to be used for permit applications by another party. Customs may forfeit the security if there is non-compliance with any regulatory requirements.

## 8.9 Authorize a Declaring Agent

Companies may authorize a Declaring Agent to use their security for their permit applications. More Information about authorizing Declaring Agents can be learned from the following website:

[https://www.tradenet.gov.sg/TN41EFORM/tdsui/authdeclaringagent/addanddelete.do?doAction=INITIALIZE&APPLICATION\\_ID=TXWP](https://www.tradenet.gov.sg/TN41EFORM/tdsui/authdeclaringagent/addanddelete.do?doAction=INITIALIZE&APPLICATION_ID=TXWP)

After companies have authorized their Declaring Agent to use their security, their authorized Declaring Agent may select "I" (for importer/exporter) under the "BG Indicator" field to make use of their security for their permit applications. If the "BG Indicator" field is "D" or left blank, the Declaring Agent's security will be used.

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# 9. TARIFF CLASSIFICATION

## 9.1 Tariff

The Singapore Trade Classification, Customs and Excise Duties (STCCED) 2018 adopts the ASEAN Harmonized Tariff Nomenclature (AHTN) 2017. The HS codes in STCCED 2018 is harmonized at the 8-digit code, which is based on the Harmonized System developed by the World Customs Organization.

## 9.2 STCCED 2018

The STCCED 2018 comprised 21 Sections covering 98 Chapters. Chapter 98 (Postal Packages and Special Transactions not classified according to kind) is added by Singapore to make the STCCED 2018 more suitable for its national conditions.

The STCCED 2018 can be reached on the following website:

<https://www.customs.gov.sg/-/media/cus/files/business/harmonized-system-classification-of-goods/resources/stcced/stcced-2018-march-2019-version/index.html> .

## 9.3 General Interpretative Rules (GIR)

The General Rules for the Interpretation of the Harmonized System, also known as the General Interpretative Rules (GIR) are also applied in Singapore and the following is a complete version of GIR.

The General Interpretative Rules (GIR) is a set of 6 rules for classification of goods. The rules are provided to ensure uniform legal interpretation of the Harmonized System Nomenclature for proper classification of goods and these 6 rules have to be applied in sequential order.

### Rule 1

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

### Rule 2

a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures

or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

### Rule 3

When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to Rule 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable. (c) When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

### Rule 4

Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

### Rule 5

In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein:

a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles

when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character.

b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

## **Rule 6**

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purpose of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

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# **10. CUSTOMS VALUATION**

## **10.1 Introduction**

Imported merchandise must be appraised for purposes of determining duty, taxes and fees. For importers, the process of estimating the value of a product at Customs is important. The WTO Agreement on Customs Valuation adopts the transaction value as the Customs value of imported goods, aiming for a fair, uniform and neutral system for the valuation of goods for Customs purposes. Coverage of the Agreement sets forth a number of principles which must be implemented by the Customs administrations of WTO Member countries. Six Customs valuation methods are described in the Agreement. When determining Customs value, national administrations must begin by applying the first method described (transaction value). Where Customs administrations have reason to doubt the accuracy of the declared value of imported goods, the agreement provides the right to request further information from importers. If the administration maintains a reasonable doubt and the value cannot be determined by this method, or

the price has been distorted as a result of certain conditions, or where no transaction value is available, Customs must apply the second and subsequent methods in the order provided for in the Agreement.

Based on the principles of the WTO Agreement on Customs Valuation, Singapore Customs adopts five of the six valuation methods listed on the WTO Agreement on Customs valuation and made its own Customs Valuation Regulations, which can be seen on the following website: <https://sso.agc.gov.sg/SL/CA1960-RG8?DocDate=20020930>.

## 10.2 Valuation Methods

### 10.2.1 Transaction Value Method

The Transaction Value Method is first considered in establishing the Customs value, which is the Cost, Insurance and Freight (CIF) value under International Commercial Terms (incoterms).

To establish the Customs value using this method, all other charges incidental to the sale and delivery of the imports must be added to the transaction value or the price paid or payable for the imports. Examples of these charges include selling commissions, assists (materials supplied by the importer), packing costs, proceeds of resale accruing to the seller, royalties and license fees, freight and insurance charges.

If any component of the Customs value is settled in a foreign currency, that value should be converted to Singapore dollars using the prevailing Customs exchange rate at the time of import.

Using the transaction value method by Singapore Customs is subject to the following conditions:

- a) There must be evidence of a sale. Such evidence may be in the form of commercial invoices, sale contracts, purchase orders, etc.
- b) There must not be restrictions on the use of the goods by the buyer,
- c) The sale or price is not subject to conditions for which a value cannot be determined with respect to the goods being valued. Examples include:
  - Seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities,
  - Price of semi-finished goods is established by the seller on condition that the buyer will give the

seller a specified quantity of the finished goods,

d) It must be shown that the transaction value has not been affected by any relationship between the importer and supplier.

### 10.2.2 Other Valuation Methods

If the Transaction Value Method cannot be used, the following alternatives will be used to determine the Customs value:

- Identical or Similar Goods Value - the transaction value of identical or similar goods sold for export to Singapore,
- Deductive Value - the sale price of the goods in Singapore, adjusted for costs incurred after shipment,
- Computed Value - the value based on cost of production, general expenses and profits in the country of origin of the imported goods,
- Residual Valuation - the value determined by Singapore Customs, based on flexible interpretation of all the previous methods.

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## 11. RULES OF ORIGIN

There are two different systems of rules of origin used in Singapore, one is for ordinary or non-preferential Certificate of Origin, and the other is for preferential Certificate of Origin.

### 11.1 Rules of Origin for Non-preferential Certificate

Rules of origin for non-preferential Certificate of Origin are covered by WTO Agreement on Rules of Origin, which elaborates 3 criteria: “the criterion of change of tariff classification”, “the ad valorem percentage criterion” and “the criterion of manufacturing or processing operation” without giving specific

requirements on details. Singapore has created its own Rules of Origin for ordinary Certificate of Origin under the general spirits of the WTO document.

And the criteria include:

- a) Wholly Obtained (i.e. wholly grown or produced, refer to Annex I);
- b) Manufactured in Singapore with minimum 25% of Local Content based on the exactor price of the finished product;
- c) Attained a Change in Tariff Classification at 6 digit level (i.e. Change in Tariff Subheading); or
- d) Undergone a Chemical Reaction (only for products under HS Chapters 27 to 40).

Products which have only undergone minimal processes as indicated in Annex II will not qualify for Ordinary Certificates of Origin. Please refer to the following website for a related handbook:

<https://www.customs.gov.sg/businesses/certificates-of-origin/certificates-of-origin>.

## 11.2 Rules of Origin for Preferential Certificate

The Rules of Origin for preferential COs issued under Free Trade Agreements and Schemes of Preferences in Singapore.

### A. Rules of Origin for Preferential Certificates of Origin

The Rules of Origin for preferential COs are the ones applied under the various Free Trade Agreements (FTAs). A good is considered to be originated from Singapore if it is:

- Wholly Obtained (WO) in Singapore;
- Undergone substantial transformation in Singapore including (a) Change in Tariff Classification (CTC), (b) Regional Value Content (RVC) and (c) Process Rule.

Please refer to the following website for a related handbook:

<https://www.customs.gov.sg/businesses/certificates-of-origin/certificates-of-origin>.

## **B. Rules of Origin for Schemes of Preference**

The Rules of Origin for preferential COs are the ones applied under Generalized System of Preferences (GSP) and Global System of Trade Preferences (GSTP).

To qualify for GSP, the products must either be: a) Wholly Obtained (i.e. wholly grown or produced) in the beneficiary country; or b) Manufactured wholly or partly from materials, parts or components imported into the country or of unknown origin according to the appropriate rules of origin (substantial transformation).

To qualify for GSTP, the products must either be: a) wholly obtained (wholly grown or produced) in a participant country; or b) manufactured wholly or partly from materials, parts or components imported into the participant country or of unknown origin. Products which have undergone minimal processes as indicated in Annex I will not qualify for GSTP.

Please refer to the following website for a related handbook:

<https://www.customs.gov.sg/businesses/certificates-of-origin/certificates-of-origin>.

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## **12. FREE TRADE AGREEMENTS (FTAS)**

### **12.1 FTAs signed by Singapore**

Singapore has signed 24 Free Trade Agreements (FTAs), and is currently working with the European parliament to promote the EU-Singapore FTA signed in February 2019 Into effect at the end of 2019, actively participating in the regional comprehensive Economic partnership agreement (RCEP) negotiations, and working with Eurasian Economic Union (Eurasian Economic Union, the South American Common Market (MERCOSUR) and Pacific Alliance (Pacific Alliance) on the discussion of economic and trade liberalization.

24 FTAs Singapore participates till now are as follows:

- ASEAN - Australia - New Zealand Free Trade Area (AANZFTA);
- ASEAN - China Free Trade Area (ACFTA);
- ASEAN - Hong Kong, China Free Trade Area (AHKFTA);
- ASEAN - India Free Trade Area (AIFTA);
- ASEAN - Japan Comprehensive Economic Partnership (AJCEP);
- ASEAN - Korea Free Trade Area (AKFTA);
- ASEAN Free Trade Area (AFTA);
- China - Singapore Free Trade Agreement (CSFTA);
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP);
- EFTA - Singapore Free Trade Agreement (ESFTA);
- GCC - Singapore Free Trade Agreement (GSFTA);
- India - Singapore Comprehensive Economic Cooperation Agreement (CECA);
- Japan - Singapore Economic Partnership Agreement (JSEPA);
- Korea - Singapore Free Trade Agreement (KSFTA);
- Agreement Between New Zealand And Singapore On A Closer Economic Partnership (ANZSCEP);
- Panama - Singapore Free Trade Agreement (PSFTA);
- Peru - Singapore Free Trade Agreement (PeSFTA);
- Singapore - Australia Free Trade Agreement (SAFTA);
- Singapore - Costa Rica Free Trade Agreement (SCRFTA);
- Singapore - Jordan Free Trade Agreement (SJFTA);
- Sri Lanka - Singapore Free Trade Agreement (SLSFTA);
- Trans - Pacific Strategic Economic Partnership (TPSEP);
- Turkey - Singapore Free Trade Agreement (TRSFTA);
- US - Singapore Free Trade Agreement (USSFTA).

More information regarding related FTAs can be found on the following webpage:

<https://www.enterprisesg.gov.sg/non-financial-assistance/for-singapore-companies/free-trade-agreements/ftas/overview>.

## 12.2 Benefits of FTAs

The benefits of each FTA can be generalized as complement each other's economic advantages, boost win-win cooperation, bring mutual benefits and promote the in-depth development of bilateral economic and trade ties.

For example, the benefits of US - Singapore Free Trade Agreement (USSFTA) include: (1) Elimination of all tariffs for Singapore's exports to the US, (2) Waiver of the Merchandise Processing Fee for Singapore originating products, (3) Tariff preference given based on importer's declaration, no application required, (4) Safeguards market access and ensures a more predictable operating environment for service suppliers, (5) Protection for Singapore investors and investments in the US.

Again for example, the benefits of Trans-Pacific Strategic Economic Partnership include: (1) Elimination of all tariffs for Singapore's exports to TPSEP markets, (2) Tariff preference given based on exporter's declaration, no application required, (3) Safeguards market access and ensures a more predictable operating environment for service suppliers.

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## 13. Advance Rulings

Same as other advanced Customs administration in the world, Singapore Customs also issues advance rulings for Customs affairs.

Section 29 of Customs Act stipulates "(1) The Director-General may, on an application made in accordance with the Schedule, make a ruling on any of the matters specified in the Schedule in accordance with the Schedule. (2) The Schedule shall apply to and in connection with an application under subsection and any ruling made by the Director-General under that subsection. (3) The Minister may, by order published in the Gazette, amend, add to or revoke the whole or any part of the Schedule."

Section 29 of Customs Act also has detailed regulations regarding necessary aspects of Customs rulings including:

**Application for Customs rulings:** (1) Subject to sub-paragraph (3), any person concerned in the importation of any goods may apply to the Director-General for a ruling on one or more of the following matters: (a) the classification of the goods; (b) the country of origin of the goods; (c) the application of a provision of the Customs (Valuation) Regulations (Rg 8) to the goods. (2) Subject to sub-paragraph (3), any person concerned in the local manufacture of any goods may apply to the Director-General for a ruling on one or more of the following matters: (a) the classification of the goods; (b) the application of a provision of the Customs (Valuation) Regulations to the goods. (3) Where any goods are the subject of any Free Trade Agreement to which Singapore is a party, and that Free Trade Agreement identifies the person who may apply for a ruling in relation to those goods, only that person may apply under sub-paragraph (1) or (2) for a ruling in relation to those goods. (4) An application for a ruling shall (a) be made in such form as the Director-General may determine; (b) comply with the disclosure requirements of paragraph 4; and (c) be made at such time as the Director-General may determine.

**Director-General may Decline to Make a Ruling if:** (a) the application for the ruling would require the Director-General to determine any question of fact; (b) the Director-General considers that the correctness of the ruling would depend on the making of assumptions, whether in respect of a future event or any other matter; (c) the application is frivolous or vexatious; (d) the matter on which the ruling is sought involves the interpretation of any foreign law; or (e) after the Director-General has requested further information, (i) the applicant fails to provide the information within the time specified by the Director-General for the provision of the information; or (ii) in the Director-General's opinion, the applicant has not provided sufficient information in relation to the application. The Director-General shall, where he has declined to make a ruling, notify the applicant in writing of his decision and the reasons therefor.

**Duration of Ruling:** A ruling shall apply in relation to a matter only for such period as may be stated in the ruling.

**Information to be Provided to Director-General:** (1) An application for a ruling shall, (a) identify the applicant; and (b) disclose all relevant facts and documents relating to the matter in respect of which the ruling is sought. (2) The Director-General may, at any time, request further relevant information from an applicant for the purpose of making a ruling. (3) An applicant for a ruling shall provide the Director-General with the information referred to in sub-paragraph (2) within such time as the Director-General may determine.

**Director-General may Make Assumptions:** If the Director-General considers that the correctness of a ruling would depend on assumptions being made about any future event or other matter, the Director-

General may make the assumptions that he considers to be most appropriate.

**Making of Ruling:** (1) A ruling made by the Director-General shall state (a) that it is a ruling made under section 29; (b) the identity of the person or class of persons to whom, and the particulars of the matter to which, the ruling applies; (c) any material assumptions about future events or other matters made by the Director-General; and (d) the conditions (if any) applicable to the ruling. (2) The Director-General shall notify the person to whom the ruling applies of the making of the ruling by sending him a copy of the ruling. (3) Where there is any Free Trade Agreement applicable to the matter to which a ruling applies, and the Free Trade Agreement specifies the period within which the ruling shall be made, the Director-General shall make the ruling within that period. (4) The Director-General may make a ruling notwithstanding that no application has been made under paragraph 1.

**Modification or Withdrawal of Ruling:** (1) The Director-General may, at any time, modify or withdraw a ruling by notifying the person to whom the ruling applies in such manner as the Director-General may determine of the modification or withdrawal and the reasons therefor. (2) Subject to sub-paragraphs (3) and (4), a ruling is modified or withdrawn from the date specified in the notice of modification or withdrawal, as the case may be. (3) The Director-General may, on the application of a person to whom a ruling applies, postpone the date the ruling is modified or withdrawn to such later date as the Director-General may determine, if that person shows that (a) he had relied in good faith on the ruling; and (b) the modification or withdrawal, as the case may be, of the ruling would be detrimental to him. (4) The Director-General may postpone the date the ruling is modified or withdrawn to such later date as he may determine notwithstanding that no application has been made under sub-paragraph (3). (5) If the Director-General withdraws a ruling, the ruling shall not apply in relation to any goods, the subject-matter of the ruling, which are imported or manufactured locally, on or after the date of the withdrawal. (6) If (a) the Director-General withdraws a ruling made pursuant to an application by a person under paragraph 1; and (b) the person to whom the ruling applies has not acted in accordance with any condition applicable to the ruling, the ruling shall cease to apply to that person in relation to any goods, the subject-matter of the ruling, which are imported or manufactured locally, before the date of the withdrawal. (7) If the Director-General modifies a ruling, the modified ruling shall apply in relation to any goods, the subject-matter of the modified ruling, which are imported or manufactured locally, on or after the date of the modification. (8) If (a) the Director-General modifies a ruling made pursuant to an application by a person under paragraph 1; and (b) the person to whom the original ruling applies has not acted in accordance with any condition applicable to the original ruling, the modified ruling shall apply to that person in relation to any goods, the subject-matter of the modified ruling, which are imported or manufactured locally, before the date of the modification. (9) The Director-General may modify or withdraw a ruling if (a) the ruling is based on

an error of fact; (b) there is a change in the circumstances after the ruling was made; (c) any information provided by the applicant in support of his application for the ruling is false, inaccurate or misleading; (d) there is a change in the basis of the classification of the goods after the ruling was made; (e) there is a change in the circumstances relating to the sale and import or local manufacture of goods after the ruling was made; (f) an offence is suspected to have been committed in relation to the goods; or (g) it is one of the grounds of modification or withdrawal provided under any Free Trade Agreement applicable to the matter to which the ruling applies.

**Typographical or Minor Error in Ruling:** The Director-General does not have to withdraw and re-issue a ruling to correct any typographical or minor error, if the correction does not change the meaning of the ruling.

**Amendment of Act:** A ruling does not apply from the date a provision of this Act is repealed or amended to the extent that the repeal or amendment changes the way the provision applies in the ruling.

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## 14. BONDED SYSTEM

### 14.1 Free Trade Zones (FTZs)

Throughout the country, Singapore now has altogether 9 Free Trade Zones (FTZs) including (1) TanjongPagar Terminal and Keppel Terminal FTZ, (2) Jurong Port (including PulauDamarLaut) FTZ, (3) Sembawang Wharves FTZ, (4) Changi Airport Cargo Terminal Complex FTZ, (5) Brani Terminal FTZ, (6) Keppel Distripark FTZ, (7) Keppel Distripark Linkbridge FTZ, (8) Pasir Panjang Terminal FTZ and (9) Airport Logistics Park of Singapore FTZ.

Singapore's Free Trade Zones (FTZs) has been playing a critical role in building Singapore's position as a trading hub. To maintain the competitiveness of all FTZs, Singapore Customs ensure that they remain secure. A robust regulatory regime of the FTZs has been put in place to govern the security of FTZs. Strict controls and limits are imposed on activities permissible within the FTZs. Transactions and activities within the FTZs must comply with all related laws and regulations in Singapore, which empower government

authorities to impose controls on the FTZs and undertake enforcement action such as routine checks and operations against illicit trading activities. There are no other exemptions or special treatment for FTZs operators.

Singapore companies operating in one of these FTZs are not required to pay Customs duties until their goods exit the free zones. These companies also benefit from streamlined Customs procedures when importing goods in the city-state.

In order to operate in one of Singapore's free zones, local companies must obtain a permit from TradeNet which allows them to import, export and transport their goods overseas. Local companies must also obtain permission from the Singapore Customs in order to keep their goods in the FTZs. Foreign companies operating in Singapore must work with local transporters and traders.

Foreign investors seeking to open a company in one of Singapore's FTZs can do so without any restrictions. The minimum share capital for setting up a business in FTZs depends on whether the company needs a warehouse or office spaces and it must be deposited within the first year of the registration. The company must also obtain a permit from the free zone's authority in order to obtain a license.

## 14.2 Bonded Schemes

### (1) Air Store Bond Scheme

An air store bond is a designated area licensed by Singapore Customs for storing dutiable goods, namely liquor, with the duty and Goods and Services Tax (GST) suspended. These dutiable goods are meant for supply to the various airlines operating out of Changi Airport terminals. The designated area is also termed as licensed premises. The licensed premises must be physically demarcated and separated from other areas, while the non-licensed premises may be used for other purposes.

### (2) Bonded Truck Scheme

The Bonded Truck Scheme allows air express companies to handle time-sensitive transshipments from the land checkpoints to Changi Free Trade Zone for subsequent re-export or release into Customs territory under a simplified Customs permit. Similarly, the scheme also facilitates transshipments from Changi Free Trade Zone to the land checkpoints.

### **(3) Container Freight Warehouse License**

A Container Freight Warehouse License allows approved logistics operators to conduct bulk breaking and consolidation operations on cargoes with less than full container load outside a Free Trade Zone. Only non-dutiable, non-controlled and non-strategic goods can be brought into a container freight warehouse.

### **(4) Duty Free Shop Scheme**

The Duty Free Shop (DFS) Scheme is designed for companies who wish to sell dutiable goods, such as liquor, at prices free of duty to travelers departing from or returning to Singapore. The areas where duty free goods are sold must be designated and licensed by Singapore Customs as licensed premises.

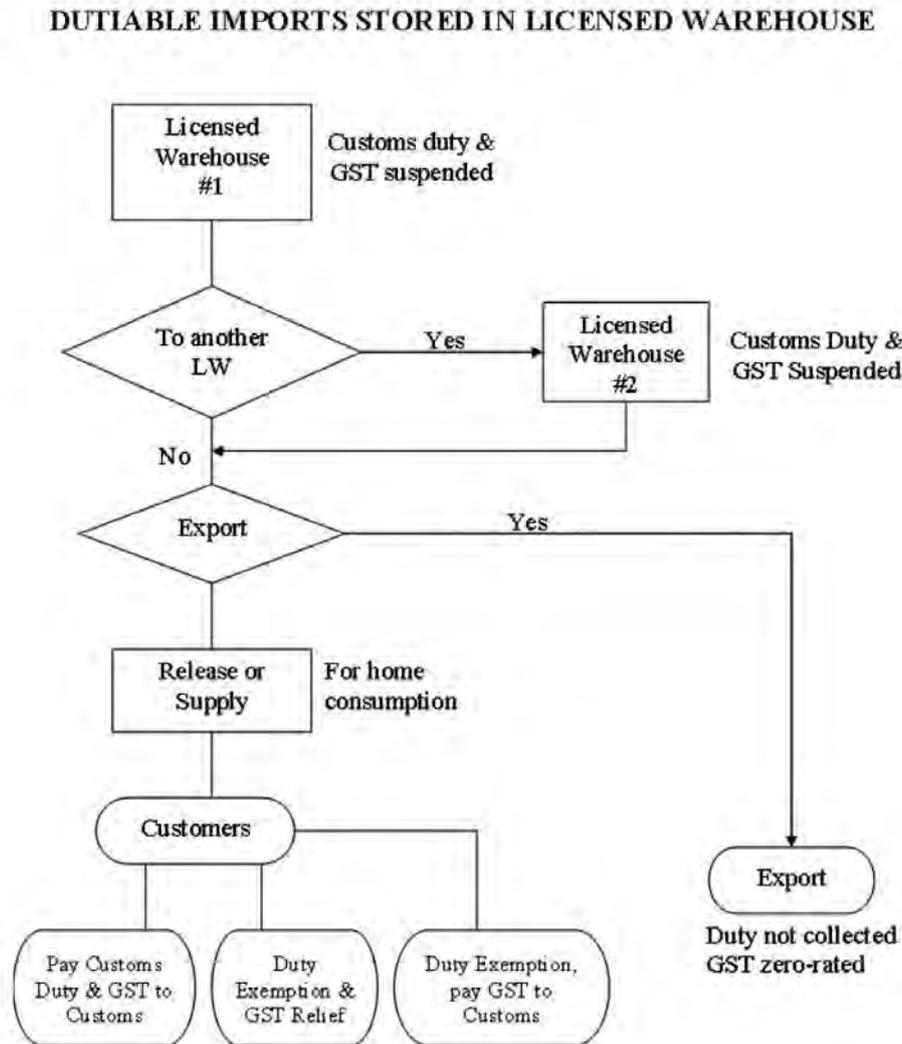
### **(5) Industrial Exemption Factory Scheme**

The Industrial Exemption Factory Scheme is a duty exemption scheme for industries that use dutiable goods (except diesel products and bio-diesel blends) as raw materials solely to manufacture non-dutiable finished goods. Under this scheme, dutiable goods (except diesel products and bio-diesel blends) would be duty exempted as long as they are used solely for the manufacture of non-dutiable finished goods and stored at the place of manufacture approved by Singapore Customs. The duty-exempted raw materials must not be sold, transferred or disposed of in any way without permission from Singapore Customs.

### **(6) Licensed Warehouse Scheme**

The Licensed Warehouse (LW) Scheme allows approved companies to store imported dutiable goods, namely liquor, tobacco, motor vehicles, petroleum and biodiesel blends, for an indefinite period of time in a designated area licensed by Singapore Customs, with the duty and Goods and Services Tax (GST) suspended. This designated area is termed as licensed premises. Duty and GST will be payable when these goods are removed from the licensed warehouse for local use or consumption. Duty and GST are not payable when these goods are removed for export, or when supply or sale of these goods takes place while they are in the warehouse.

Figure 2 Process for Dutiable Imports Stored in Licensed Warehouse



Source: Singapore Customs Official Website

### (7) Zero-GST Warehouse Scheme

The Zero-GST Warehouse Scheme (ZGS) allows approved companies to store imported non-dutiable goods for an indefinite period of time in a designated area licensed by Singapore Customs, with the Goods and Services Tax (GST) suspended. This designated area is termed as licensed premises. GST is payable when these goods are removed from the zero-GST warehouse for local use or consumption. GST is not payable when these goods are removed for export, or when supply or sale of these goods takes place while they are in the warehouse.

### 14.3 Bonded Processing

Any person who intends to assemble, mix or otherwise manipulate any goods or to carry out such manufacture as is permitted for entry into Customs territory, where either the manufactured goods or the materials used in the manufacture of the goods are dutiable, shall give the Director-General notice in writing of his intention and obtain his prior written permission to do so.

An application for the approval for the manufacture of goods in a FTZ shall be made in writing to the Director-General specifying:

- the name and address of the applicant;
- the name and address of every director if the applicant is a company and every partner if the applicant is a firm;
- the registration number assigned to the applicant;
- the exact place or premises in the free trade zone where it is proposed to carry on the manufacturing operation;
- a full description of the manufacturing operation, including the nature of the goods to be manufactured, the estimated output and the quantities to be manufactured for local consumption or for export or both;
- the estimated annual duty which may be exempted or paid on the raw materials to be used for the purpose of manufacture or on the semi-finished and finished products, as the case may be;
- the means of identification of the raw materials, semi-finished or finished products.

The Director-General may inspect the place or premises where the goods are to be manufactured and may require an applicant to submit a plan setting out in detail the layout or construction of the factory.

The Director-General may also require an applicant to make the following provisions in respect of the place or premises to be used for manufacturing operation:

- separate storage space for raw materials and semi-finished and finished products;
- identification marks for semi-finished and finished products;
- security for the due payment of all Customs duties and fees and for the proper conduct of the business;

- any other requirement the Director-General considers necessary in order to ensure adequate protection of the revenue.

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## 15. CUSTOMS SUPERVISION ON CROSS-BOEDER ECOMMERCE

### 15.1 Introduction

According to Forrester Research, 60% of Singapore's ecommerce sales come from cross-border orders, a significant percentage compared to countries such as Malaysia (40%), Japan (18%) and South Korea (25%). The Financial Study Association of Amsterdam also highlighted Singapore's suitability as an ecommerce test-bed, given the fact that a high share of cross-border trade offers businesses unique insights into Asia Pacific's online shopping behavior.

Currently, any online purchase in Singapore under SGD\$400 (USD\$290.17) is exempt from GST. But the B2B imported services will be taxed via a reverse charge mechanism, while B2C imported services will be taxed through an overseas vendor registration model.

Starting January 1, 2020, consumers will pay GST when buying online services from overseas, which includes music, video streaming, apps, online subscriptions, and digital B2B services such as marketing/accounting.

### 15.2 Customs Processing Procedures

Goods (e.g. new or used articles, online purchases, gifts) imported by post or courier services are subject to payment of Goods and Services Tax (GST) and/or duty. GST relief is granted on goods imported by post or air, excluding intoxicating liquors and tobacco, with a total Cost, Insurance and Freight (CIF) value not exceeding S\$400. It is also shall be noted that GST relief is not granted for goods imported by other transport modes e.g. sea freight and land unless specified condition.

To determine the total CIF value, all goods consigned to the same importer and arriving in Singapore

on the same flight are treated as a whole, even if the goods are covered by different freight documents. The importer is the party indicated as the consignee in the freight documents such as the House Airway Bill (HAWB) or consignment note. In cases where end buyers are named as the consignees in different consignment notes and the courier service company or freight forwarder is named as the consignee in the HAWB, each of the end buyers may be considered as an importer.

Where the insurance and freight charges are excluded from the value of the goods, importers may use the flat rates for freight and insurance provided by Singapore Customs to compute the Customs value of the goods and determine the GST and/or duty payable. For goods imported by post, if the insurance and freight charges are excluded from the value of the goods, the postage charge paid shall be taken as the insurance and freight charges to be included in the CIF value of the goods and determination of the GST and/or duty payable.

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## 16. POST-CLEARANCE AUDIT

### 16.1 Introduction

Post-clearance Audit is a structured examination of a trader's relevant commercial systems and processes, financial and non-financial records, physical stock and other assets, as a means to measure and improve compliance. It is conducted after the release of the goods from Customs control. It can take place at the traders' premises or at Customs' premises, and may take into account specific transactions, or cover imports and/or exports undertaken over a certain period of time. The purpose of the Post-clearance Audit is to verify the accuracy and authenticity of declarations and other returns made to Singapore Customs.

All traders and declaring agents who deal with Singapore Customs may be subjected to Post-clearance Audits and are selected in accordance with risk management framework of Singapore Customs. The duration of audit will vary on a case-by-case basis depending on the scope covered and the level of cooperation on auditee.

## 16.2 Steps of Post-clearance Audit

Commonly Customs competent officers in Singapore conduct Post-clearance Audits in the following 4 steps by consequence:

**Step 1:** Customs audit team will contact the company to be audited (“auditee”) to arrange for an interview with relevant personnel of the auditee. At the point of contact, the audit team will inform the auditee of the purpose, location, scope and requirements of the audit.

**Step 2:** During the interview, the audit team will be interested to find out more about the auditee’s business model, operations, systems and accounting practices. Auditees are encouraged to take the opportunity to seek clarification on any issues about legislation and procedures administered by Singapore Customs.

**Step 3:** After the interview, the audit team will verify the accuracy of the trade declarations and/or other returns made to Customs against the relevant trade documents to be provided by the auditee. Depending on the circumstances, this may be conducted at either Customs or the auditee’s premises. Examples of relevant trade documents include TradeNet permits, invoices, packing lists, Bills of Lading, Air Waybills, Certificates of Origin, payment records and product specifications.

**Step 4:** Upon completion of the audit, the audit team will inform the auditee of the audit outcome and when applicable, discuss any errors detected and provide suggestions to improve the compliance level of auditee.

## 16.3 Obligations and Rights of Auditee

Auditees are required under the relevant laws to provide Customs officers with reasonable assistance and cooperation to conduct the audit. This includes the submission of all required trade documents in a timely fashion and the duty to ensure that all information provided is true and accurate. Traders are required to retain for 5 years documents pertaining to import, export and transshipment of goods.

Auditees have the right to see the Customs officers’ identification and authorization at any time. They also have the right to expect professional and ethical behavior from all Customs officers, and the right to expect Customs to maintain the confidentiality of the company’s information.

## 17. INVESTIGATION, VIOLATION AND PENALTY

### 17.1 Investigation

Where it appears to any Magistrate, or any senior officer of Customs not below the rank of Assistant Director-General of Customs, upon information and after any inquiry which he may think necessary, that there is reasonable cause to believe that in any dwelling-house, shop or other building or place, there are concealed or deposited any dutiable or uncustomed goods, goods liable to forfeiture under the Customs Act, goods as to which any offence under this Act has been committed as well as books, records, documents or other articles, directly or indirectly, relating to any transaction or dealing in any of the goods mentioned in this subsection, the Magistrate or the senior officer of Customs may issue a warrant authorizing any officer of Customs, named therein, by day or by night and with or without assistance to enter the dwelling-house, shop or other building or place and there to search for and seize any goods reasonably suspected of being dutiable or uncustomed goods, or goods liable to forfeiture under the Customs Act, or goods as to which any offence under the Customs Act is suspected to have been committed, or any books, records, documents or other articles which may reasonably be believed to be, directly or indirectly, relating to any transaction or dealing in any of the goods mentioned in this subsection; to arrest any person or persons being in such dwelling-house, shop, building or place, in whose possession the goods, books, records, documents or other articles may be found, or whom the officer may reasonably suspect to have concealed or deposited the goods, books, records, documents or other articles as well as to make copies of and take any reasonable steps to preserve any books, records, documents or other articles referred to in sub-paragraph.

### 17.2 Power of Customs

The power of Singapore Customs includes having the access to, inspecting and checking operation of computer and other apparatus; to search vessels and aircraft; senior officers' exercising powers of search; setting road barrier; to open packages and examine goods; searching of persons arriving in Singapore; releasing of vehicle, vessel or aircraft under bond as well as arrest.

### 17.3 Type of Offences

According to Customs Act of Singapore, types of Customs offences include the following 7 categories:

**A. Offences in relation to making and signing untrue or incorrect or incomplete declarations, certificates and documents**

Any person makes or causes to be made, orally or in writing, or signs or causes to be signed any declaration, certificate or other document required by this Act, which is untrue or incorrect in any particular or which is incomplete by omitting any material particular therefrom;

**B. Offences in relation to falsifying documents**

Any person counterfeits or falsifies, or uses, when counterfeited or falsified; fraudulently alters any document, or counterfeits the seal, signature, initials or other mark of, or used by, any officer of Customs for the verification of any such document or for the security of any goods or any other purpose in the conduct of business relating to Customs.

**C. Offences in relation to failure to make declarations**

Any person, being required by Customs Act to do so, fails to make a declaration of dutiable goods which are imported into, exported from or transhipped in Singapore; or fails to make a declaration of the value of dutiable goods imported into or manufactured in Singapore for the purpose of the assessment of Customs duty or excise duty.

**D. Offences in relation to failure to produce trade documents**

Any person fails or refuses to produce to a proper officer of Customs any document required to be produced.

**E. Offences in relation to fraudulent evasion**

Any person is in any way concerned in any fraudulent evasion of, or attempt to fraudulently evade, any Customs duty or excise duty.

**F. Offences in relation to importation or exportation of uncustomed or prohibited goods**

Any person is in any way concerned in importing or exporting any uncustomed or prohibited goods.

## G. Offences in relation to duty-free allowances

Any person who sells, exchanges or gives away, or offers to sell, exchange or give away, to any person in Singapore goods which are his duty-free allowances in Singapore.

### 17.4 Penalties

According to the Customs Act of Singapore, depending on the nature and seriousness the violations, possible penalties are as follows:

(1) Any person who is guilty of an offence under section 128(1), 128A(1), 128B(1) or 128C shall be liable on conviction to a fine not exceeding \$10,000, or the equivalent of the amount of the Customs duty, excise duty or tax payable, whichever is the greater amount, or to imprisonment for a term not exceeding 12 months, or to both.

Subject to subsection (3), any person who is guilty of a specified offence shall be liable on conviction to a fine of (a) not less than 10 times the amount of the Customs duty, excise duty or tax the payment of which would have been evaded by the commission of the offence or \$5,000, whichever is the lesser amount, subject to a minimum of \$1,000 where the specified offence involves goods consisting wholly or partly of relevant tobacco products; and (b) not more than 20 times the amount of the Customs duty, excise duty or tax the payment of which would have been so evaded or \$5,000, whichever is the greater amount, except that where the amount of Customs duty or excise duty cannot be ascertained, the penalty may amount to a fine not exceeding \$5,000, subject to a minimum of \$1,000 where the specified offence involves goods consisting wholly or partly of relevant tobacco products.

(2) Any person who is convicted of any specified offence and who has been convicted on a previous occasion of (a) that or any other specified offence; or (b) any offence under the repealed section 130(1) in force immediately before the date of commencement of the Customs (Amendment) Act 2008, shall be liable on conviction to a fine referred to in subsection (2), or to imprisonment for a term not exceeding 2 years, or to both.

(3) Any person who is guilty of any specified offence involving goods consisting wholly or partly of relevant tobacco products shall, if such tobacco products exceed 2 kilogrammes in weight, be liable on conviction (a) to a fine of (i) not less than 15 times the amount of the Customs duty, excise duty or tax the payment of which would have been evaded by the commission of the offence, subject to a

minimum of \$1,000; and(ii) not more than 20 times the amount of the Customs duty, excise duty or tax the payment of which would have been so evaded or \$10,000, whichever is the greater amount; or to imprisonment for a term not exceeding 3 years, or to both.

- (4)Where any person is convicted of a specified offence committed by him on or after the date of commencement of section 17(d) of the Customs (Amendment) Act 2011 involving goods consisting wholly or partly of relevant tobacco products and he has been convicted on a previous occasion of (a) that or any other specified offence involving such goods; or (b) any offence under the repealed section 130(1) in force immediately before 4th April 2008 involving such goods, then he shall be liable to (i) a fine of not less than 30 times the amount of the Customs duty, excise duty or tax the payment of which would have been evaded by the commission of the first-mentioned specified offence, subject to a minimum of \$2,000; and not more than 40 times the amount of the Customs duty, excise duty or tax the payment of which would have been so evaded or \$20,000, whichever is the greater amount; or imprisonment for a term not exceeding 6 years, or to both.
- (5)Penalty on refusing to answer questions or on giving false information or false document shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.
- (6)Knowingly advancing or furnishing money for business comprising sale, purchase, etc., of uncustomed goods shall be liable on conviction to a fine of not less than \$100,000 and not more than \$1 million and shall also be liable to imprisonment for a term not exceeding 6 years.
- (7)Penalty for adding deleterious substances to intoxicating liquor, or storing, keeping, etc., such liquor shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.
- (8)Penalty for assaulting or obstructing officers of Customs, rescuing goods, resisting arrest and escaping from custody shall be guilty of an offence and shall be liable(i) on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 18 months or to both; and(ii) in the case of a second or subsequent conviction to a fine not exceeding \$20,000 and to imprisonment for a term not exceeding 3 years.
- (9)Penalty for offences not otherwise provided for every omission or neglect to comply with, and every act done or attempted to be done contrary to, the provisions of the Customs Act, or any breach of

the conditions and restrictions subject to, or upon which, any license or permit is granted under the Customs Act, shall be an offence and in respect of any such offence for which no penalty is expressly provided the offender shall be liable to a fine not exceeding \$5,000.

## 17.5 Appeals

Generally speaking, related articles of the Customs Act have laid down the legal foundations for appeals regarding Customs issues in Singapore as follows:

Section 100 of Customs Act stipulates “Where it is provided in this Act that the decision on any matter rests with the Director-General then unless it is specifically provided that the decision is at the discretion of the Director-General, any person aggrieved by his decision may appeal to the Minister whose decision shall be final”.

Relating to manner of seizure not to be inquired into on trial before court or on appeal to Supreme Court, Section 120 of Customs Act stipulates “On any trial before any court and in any proceedings on appeal in the Supreme Court, relating to the seizure of goods subject to forfeiture under this Act, the court shall proceed to the trial or hear the appeal on the merits of the case only, without inquiring into the manner or form of making any seizure, except in so far as the manner and form of seizure may be evidence on such merits.”

Regarding objection and appeal on valuation, Section 22B of Customs Act also stipulates “(1) If any person disagrees with any determination by the proper officer of Customs of the value of any goods under section 22 or 22A, he may object to that value by making an application to the Director-General, stating the grounds of his objection and the amount that he considers should be the value of the goods. (2) An objection under this section shall be given in writing to the Director-General within 14 days after any determination made under section 22 or 22A or within such further time as the Director-General may allow. (3) The Director-General shall consider the objection and inform the importer in writing of his decision. (4) Where a proper officer of Customs amends his determination of the value of any goods pursuant to this Act otherwise than as a result of an objection received from the importer of the goods, he shall give notice to the importer of the amended determination. (5) If any person is dissatisfied with the decision of the Director-General in respect of his objection under subsection (1), he may appeal to the High Court against that decision. (6) Every appeal under subsection (5) shall be made by giving notice of appeal within 28 days after the date on which the importer is notified in writing under subsection (3) of the decision or within such further period as the High Court may allow. (7) On any appeal under subsection

(5), the High Court may confirm, vary or set aside the decision of the Director-General and make such further or other order on such appeal, whether as to costs or otherwise, as the High Court may think fit. (8) Notwithstanding anything to the contrary in this section, where, in the course of determining any appeal, it becomes necessary to delay the final determination of the appeal, the importer shall be given delivery of his goods from Customs control subject to the Director-General receiving such security as he thinks sufficient to cover the full amount of Customs duty or excise duty on the goods.”

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## 18. CUSTOMS IPR BORDER PROTECTION

The owner or licensee of a copyright or a registered trademark (the “objector”) may give the Director-General of Singapore Customs a written notice stating that he objects to the impending importation of infringing copies of copyright material or trademark-infringing goods. The objector has to provide sufficient information:

- to identify the infringing copies or goods;
- to enable the Director-General to ascertain the time and place where the infringing copies or goods are expected to be imported; and
- to satisfy the Director-General that the copies or goods are infringing copies or goods.

The objector is required to furnish a security that is sufficient (a) to reimburse the Government for any liability or expense it is likely to incur in relation to the seizure, storage and disposal of the infringing copies or goods, and (b) to pay such compensation as ordered by the court for loss suffered by the defendant if the infringement action is dismissed or discontinued. The security may be given to cover (a) the current shipment only, or (b) the current shipment and any future shipments to be seized by Singapore Customs (an “annual security”). An annual security can cover up to 5 outstanding shipments (i.e. shipments detained by Customs for which the civil proceedings have not been concluded). If at any time the Director-General of Singapore Customs is of the opinion that the security given is insufficient, the objector shall top up the security accordingly.

A notice given to the Director-General is valid for 60 days. Within this period, Singapore Customs will seize the infringing copies or goods if they are being imported into Singapore. The objector and the importer or consignee will be informed of the seizure.

The objector has to institute an action for copyright or trademark infringement and notify the Director-General accordingly within 10 working days after issuance of the notice of seizure by the Director-General. The time limit for initiating infringement action may be extended by a further 10 working days upon request of the objector.

Procedures for the lodgement of Notice include the completion of the notice by using the template of “Notice under Section 82 (1) of the Trade Marks Act” or “Notice under Section 140B (1) of the Copyright Act”.

Upon submission, the Notice shall be accompanied by (a) statutory declaration that the particulars in the notice are true, (b) a fee of S\$200, (3) a security in the form of deposit of money or a guarantee issued by a bank, finance company or insurance company in Singapore. A guarantee shall remain in force (a) until December 31 of the following year in the case of an annual security; or (b) for 1 year in the case of a one-time security.

At the same time, a Letter of Undertaking separately entitled “Letter of Undertaking under Trade Marks Act” or “Letter of Undertaking under Copyright Act” to bear all costs relating to the seizure, transportation, storage and disposal of the infringing copies or goods need to be submitted to Operations Management Branch, Singapore Customs.

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## 19. AUTHORIZED ECONOMIC OPERATOR (AEO)

### 19.1 Secure Trade Partnership Plus Programme

In Singapore’s context, an AEO refers to companies under the Secure Trade Partnership Plus Programme.

The Secure Trade Partnership Plus (STP Plus) Programme is a voluntary certification programme consistent with the World Customs Organization (WCO) SAFE Framework of Standards to secure and facilitate global trade. The programme encourages companies to adopt robust security measures using a risk-based approach in their trading operations to improve global supply chain security and by participating in the programme, a company demonstrates commitment and willingness in keeping the supply chain secure.

This programme is open to all supply chain stakeholders, including importers, exporters, manufacturers, freight forwarders, warehouse operators, transporters and terminal operators. It allows flexibility and customization of security measures based on the company's business model and its role in the supply chain.

To attain the STP certification, a company has to meet most of the requirements in the STP guidelines and criteria, and achieve at least an "Intermediate" band under the TradeFIRST assessment. For the STP-Plus certification, a company must meet all the stipulated requirements in the STP guidelines and criteria, and achieve the "Premium" band under the TradeFIRST assessment. The STP-Plus certification will last for 3 years.

Benefits: Companies with robust security measures will benefit from increased visibility of goods in the supply chain, reduction in pilferages and greater efficiency in their supply chain management.

In addition, STP-certified companies will enjoy the following advantages:

- Cargo is less likely to be inspected locally;
- Recognized as a lower risk company;
- Reduced inspection or expedited clearance if its certified status is also recognized by other partners through a mutual recognition arrangement;
- A dedicated account manager assigned as a single contact point to Singapore Customs;
- Recognized as a known consignor under the Regulated Air Cargo Agent Regime.

## 19.2 MRA Partners

To expand the benefits of Singapore Customs has signed and operationalized Mutual Recognition Agreements (MRAs) with the Customs administrations in the following countries:

- Canada (2010);
- Republic of Korea (2010);
- Japan (2011);
- People's Republic of China (2012);
- Chinese Taipei (2013);
- Hong Kong Special Administrative Region of the People's Republic of China (2014);
- United States (2014);
- Australia (2019);
- New Zealand (2019);
- Thailand (2019).

Exports from an STP-Plus certified company to these MRA partners will be recognized as being of lower risk and can enjoy a higher level of facilitation. Singapore Customs continues to engage like-minded Customs administrations to expand list of MRA partners, and bring about greater benefits to the trading community.

More information can be found in Handbook on Secure Trade Partnership in the following website: <https://www.customs.gov.sg/-/media/stp-handbook-may-2019.pdf>.

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## 20. TRADE STATISTICS

There are publications on trade statistics produced by Singapore Customs, which consists of three parts:

- Revenue Statistics includes: (a) Customs and excise duties collection for liquor, tobacco, motor vehicles and petroleum products and duty-paid releases for these products on different time scales including year and month. (b) Goods and Services Tax (GST) collection for locally manufactured and import goods. (c) Annual cost per dollar collected by Singapore Customs.

- Trade Facilitation Statistics includes: (a) Number of TradeNet permits of Singapore Customs each year. (b) Number of Customs licenses as at March 31 issued for licensed premises each year.
- Enforcement Statistics includes: Yearly enforcement figures for Customs offences - cigarettes, liquor, motor vehicles and fuel-gauge tampering (3/4 tank rule).

Also, Singapore Customs runs an online statistics service called Statlink. Statlink is a subscription-based online service that allows customers to obtain the latest figures on Singapore's bilateral trade or generate reports based on their specific research requirements. It is a comprehensive, detailed search in both HS and SITC classifications with the ability to consolidate data in a single report available in excel and pdf formats.

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## 21. OFFICIAL BUSINESS HOURS

The operating hours of Singapore Customs Department are from 8 am to 6 pm (from Monday to Friday) and 8 am to 12 pm (Saturday). Closed on Sunday and public holidays.

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## 22. OFFICIAL WEBSITE

Official website of Singapore Customs Department is as follows:

<https://www.customs.gov.sg>

Other Useful websites include:

Singapore Government: <https://www.gov.sg>

Ministry of Finance: <http://www.mof.gov.sg>

Ministry of Trade and Industry: <http://www.mti.gov.sg>

Ministry of Transportation: <https://www.mot.gov.sg>

Immigration & Checkpoints Authority: <https://www.ica.gov.sg>

Inland Revenue Authority of Singapore: <https://www.iras.gov.sg>

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## 23. CONTACT INFORMATION

The contact information of Singapore Customs Department is listed as follows:

Singapore Customs

Address: 55 Newton Road #10-01

Revenue House

Singapore 307987

Fax: (65) 6250 8663

For enquiries regarding Singapore Customs Procedures, please contact Phone: (65) 6355 2000.

For enquiries related to TradeNet / Networked Trade Platform System, please contact Phone: (65) 6887 7888 and (65) 6263 1061.

For queries on Customs Offences, please contact Phone: (65) 6355 2183, (65) 6325 9819 and (65) 6325 9806.

For feedback regarding Quality Service, please contact Phone: (65) 6355 2000.

Alternatively, query can be submitted via online feedback form.

## REFERENCE

1. <https://www.customs.gov.sg>.
2. <http://www.wcoomd.org/>.
3. <https://www.asean.org/>.

## DISCLAIMER

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# **eBook on East Asia Customs Procedures**

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The Kingdom of Thailand





## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## ACKNOWLEDGEMENTS

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AEO	Authorized Economic Operator
APEC	Asia and Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BOI	Board of Investment
BOT	Bank of Thailand
CCCN	Customs Cooperation Council Nomenclature
CEP	Closer Economic Partnership
CIF	Cost, Insurance and Freight
CLMV	Cambodia, Laos PDR, Myanmar and Vietnam
CO	Certification of Origin
DIP	Department of Intellectual Property
EDI	Electronic Data Interchange
EFT	Electronic Fund Transfer
EPA	Economic Partnership Agreement
EPZ	Export Processing Zone
FOB	Free on Board
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
HS	Harmonized Commodity Description and Coding System
IPR	Intellectual Property Right
MFN	Most Favored Nations
MRA	Mutual Recognition Agreement

NSW	National Single Window
PCT	Patent Cooperation Treaty
PWL	Priority Watch List
SBT	Specific Business Tax
TPP	Trans-Pacific Partnership
USTR	United States Trade Representative
VAP	Voluntary Audit Program
VAT	Value-added Tax
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WITS	World Integrated Trade Solution
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Kingdom of Thailand

### 1. INTRODUCTION OF THAI CUSTOMS

The history of Thai Customs dates back to the 12th century BC and the new era of Thai Customs commenced in 19th century with the foundation of Customs Department in tax collection. Then the Customs business has expanded rapidly by establishing Customs central office and Customs regional houses. At present, Thai Customs administration is responsible for more than increasing national revenue by collecting tax and governing Thai international trade business.

Thai Customs serve to maintain sustainable development of Thailand's economy and international trade with Asian partners and worldwide countries. As a modern Customs system, Thai Customs aims to facilitate trade and promote national logistic system through its rudimentary management construction, as well as promoting national economy by Customs-related measures and international trade information enhancing border trade and global trade connectivity. Besides, Thai Customs protects and secures society through Customs control system with developing and applying sophisticated work process and ICT (Information and communication technology) facilitation. Furthermore, it acts to collect revenue in a fair, transparent and efficient manner based on good governance principle.

To fully serve above responsibilities, Thai Customs strictly follows the spirit of Integrity, Self-Esteem, Modernization, Innovation, Learning and Expert, strategizes its mission and targets, and develops human resources capacity and organizational management to achieve a comprehensive and effective Customs operation system.

## 1.1 Missions and Values

To become an excellent Customs service to achieve sustainable development of Thailand economy and global trade connectivity, the missions of Thai Customs are:

- Facilitate trade and promote national logistics system;
- Promote national economy by Customs-related measures and international trade information;
- Protect and secure society based on Customs control system;
- Collect revenue in a fair, transparent and efficient manner.

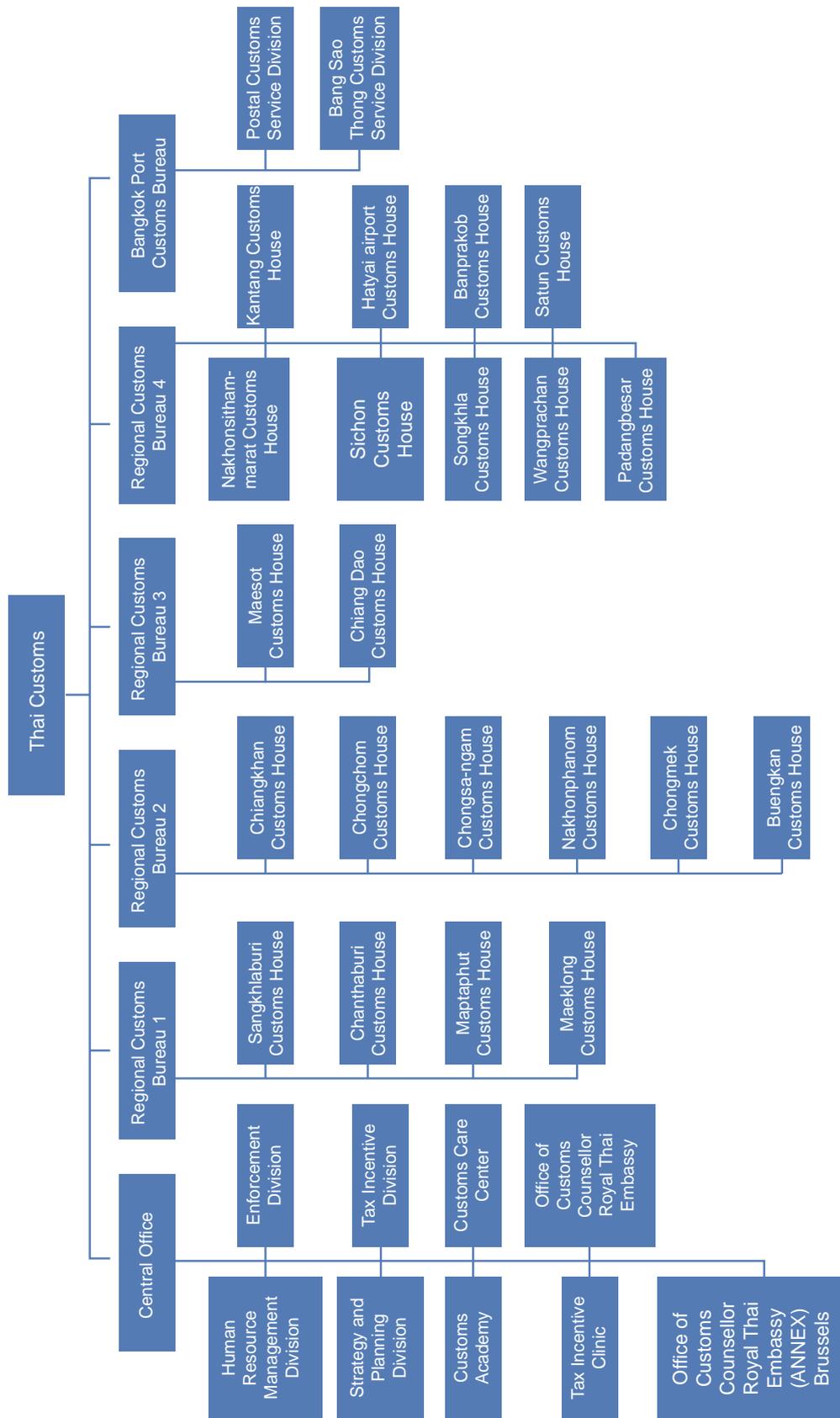
The Values of Thai Customs are as follows:

- I - Integrity;
- S - Service Mind/Self-Esteem;
- M - Modernization;
- I - Innovation;
- L - Learning;
- E - Expert.

## 1.2 Organization

Thai Customs current role is well run by a 4-dimensional Customs organization system in particular relating to global trade facilitation, control of the movement of goods and supply chain security. The Central Office provides general administrative support and services to the entire system, and there are 4 Regional Customs Bureaus acting as the divisions and supporting departments which are attached by local Customs Houses. There are totally 35 office headers leading each department with three officers based overseas respectively in Belgium and China. The main houses and departments are specifically figured as follows:

Figure 1 Thai Customs Organizational Chart



## 2. CUSTOMS LEGAL SYSTEM

In 2017, the government of Thailand published a new Customs Act 2017, repealing the outdated and controversial Customs Act 1926. This key act has heralded a new era in Customs and excise control in Thailand. With an aim to modernize Thailand's Customs law, the revised Act has significantly eased Customs procedure and brought transparency in the country's Customs law. The changes also included removing ambiguities present in the existing law and bringing it closer to the international best practices in line with Thailand's current free trade agreements. The agents and businesses involved in importing, exporting and the manufacturing of excisable goods in Thailand greatly benefited from the new Customs Act.

### 2.1 Customs Act

Customs Act 2017 is similar to the old one in terms of the basic commitments, while some changes and modifications will remove barriers for a smooth process of international trade. It contains 262 sections belonging to 9 chapters, respectively defining and regulating the general requirements for goods importation into and exportation out of Thailand. It is a guideline providing details to control the Customs process and guarantees to create a legible trade environment in Thailand. The main contents of the act are as follows:

- Chapter I General Provision
- Chapter II Collection of Duty
- Chapter III Importation and Exportation of Goods
- Chapter IV Transit, Transshipment and Un-Clearance Goods
- Chapter V Bonded Warehouse. Place of Security and Permitted Port
- Chapter VI Duty Free Zone
- Chapter VII Customs Office
- Chapter VIII Authorities of the Customs in Specific Areas
- Chapter IX Sanctions

Customs Act 2017 demonstrates notable changes in requirements for shipping marks, incentives and

rewards reductions to whistleblowers, clarification of Customs offenses and reduction of statutory penalties, elimination of liability presumptions, and the imposition of deadlines for post-clearance audits and appeals among others.

## 2.2 Other Related Laws and Regulations

In addition to the Customs Act 2017, specific Customs regulations are listed and stipulated in related Acts and regulations from authorities, which are included but not restrict to:

- The Ancient Monuments, Antiques, Objects of Art and National Museum Act stipulates that Buddha images, religious or ancient arts and antiques or objects of art, whether registered or not, must not be delivered without permission from the Director-General of Department of Fine Arts;
- Armament, Ammunition, Explosives, Fireworks and Imitation Firearms Act prohibits all persons from producing, buying, possessing, using, ordering or importing military hardware, Ammunition, or explosive devices unless with a license from the Ministry of Interior;
- Plant Quarantine Act prohibits certain items of importation, exceptions are permitted only for cases approved in advance by the Department of Agriculture for the purpose of experimentation or research only;
- Animal Epidemics Act stipulates no one may trade in elephants, horses, buffaloes, sheep, goats, pigs or other animals as prescribed in Ministerial Regulations or trade in carcasses as prescribed in Ministerial Regulations except upon obtaining a license from the registrar;
- Drug Act stipulates that in order to import a modern drug, one must obtain a license from the Food and Drug Administration. Ministry of Public Health and the application for and grant of a license shall be in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulation;
- Tobacco Products Control Act stipulates manufacturers and importers of tobacco products for sale in the Kingdom are required to report the quantity of such products manufactured or imported into the Kingdom annually and such reporting shall comply with rules, procedures, and conditions set out by the Minister;
- Minerals Act stipulates that types, conditions and quantities of minerals in respect of which a notification of the import into the Kingdom or a continental shelf zone or the export from the Kingdom or a continental shelf zone is required to be given;
- Cosmetics Act stipulates manufacture or import of cosmetics intended for export must provide the

Regulatory Body with complete details and must comply with the rules, procedures and conditions stipulated by the Secretary-General, approved by the Committee. and published in the Royal Thai Government Gazette.

Customs laws and regulations related to specific field have been launched and renewed by the Thai Government over decades, and the Acts contribute to controlling importation and exportation of special goods as well as easing international trade between Thailand and other trade partners.

Please click [here](#) for more details about Customs Act and the related Laws and Regulations.

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### 3. CUSTOMS CLEARANCE PROCEDURES

Importation or exportation by land, sea, air and post must be under strict clearance procedures before any of the above goods from a Customs custody allowed into, out of Thailand. Importers and exporters should follow the Customs Act 2017 and other related regulations to process clearance procedure. The time and cost of both importing and exporting in Thailand is significantly lower than the average for neighboring countries in the East Asia and Pacific region. In recent years, import/export procedures have been streamlined further through the implementation of the online e-Customs system. This electronic system provides a one-stop service for all stakeholders in cross-border trade. Procedures such as issuing licenses and paying duties and taxes have been made paperless and can be completed using the central e-Customs system.

#### 3.1 General Importing Procedures

General import Customs clearance procedures in Thailand require the submission of a Customs Declaration Form, which should be accompanied by standard shipping documents.

##### 3.1.1 E-Customs Registration

As above mentioned, the procedures for importing goods into Thailand have been centralized into the

online e-Customs system. In order to register for the system, the importer must already possess a digital certificate. The digital certificate is an electronic signature file used to confirm the identity and authenticity of the documents.

Once a digital certificate is in place, the importer may proceed to register for the e-Customs system. Companies can choose to either register with the system directly or through an agent. For the latter option, the agent will handle the registration. When registering to use the e-Customs system directly, the following tasks are required:

- e-Customs software must be installed on the company IT system and digital certificates verified;
- the importer must register with Thai Customs at the Registration and Customs Privileges Sub-Division; Customs Procedures and Valuation Standard Bureau; or the General Administration Division at each Customs office;
- the accuracy and readiness of message exchange with e-Customs system must be tested.

Once tests are completed successfully, the Communication and IT Bureau will issue e-Customs registration ID.

### **3.1.2 Import Declaration**

Before goods are declared, the importer or agent should identify that if goods require an import permit. A range of goods require import permits issued by different agencies prior to their arrival. A rundown of goods that require a permit can be found on the Customs website such as food products, pharmaceuticals, medical devices, healthcare products, cosmetics, hazardous substances, animals and some agricultural products. More, Thailand has already eliminated its requirement of a certificate of origin for information technology imports based on the WTO Information Technology Agreement. The government is working to integrate the permit application process into the e-Customs system; currently, around half of Thailand's government agencies allow electronic permit applications.

The first stage of import clearance procedure is to submit an Import Declaration Form manually or through the e-Customs. Besides, some more supporting documents should be attached to the Declaration Form to process the importation procedures:

- Bill of Lading or Air Waybill;

- Duplicates of Invoice;
- Packing List;
- Insurance Premium Invoice;
- Customs Release Form;
- Foreign Transaction Form if the import value exceeds 500.000 Baht;
- Import License (if applicable);
- Certificates of Origin (if applicable);
- Other relevant documents such as catalogues, product specifications, list of ingredients, technical standards certificates, etc.

### 3.1.3 Verification

Once all documentation is in order, an import declaration can be submitted to the e-Customs system along with an arrival report with the information of the carrying vessel. The e-Customs system will then automatically check and verify the submission, identifying any discrepancies and specifying whether the shipment is green line or red line. In addition, Customs tariff, tax and duty calculation, valuation of goods shall be examined at this stage.

### 3.1.4 Payment

The Customs Act and the Thai Customs Tariff Decree states that goods imported or brought into, exported, or taken out of the Kingdom shall be chargeable with and liable to duty. A number of items are exempt from import duties; a list can be found on the [Integrated Tariff Database](#). For dutiable goods, payment can be made at the Customs Department of the port of entry or via the e-Payment section of the e-Customs system. In Thailand, there currently are 4 means for payment of duties:

#### **A. Payment at the Customs Department**

Importers make payment at the Cashier Division at the port of entry. Payment could be made either in cash or cheque. In case of cheque payment, it must be issued by:

- the Bank of Thailand (BOT);
- Cashier cheque;

- Cheque with banks' surety bond;
- Draft or Bill of Exchange.

### **B. Electronic Fund Transfer via the BOT's BAHTNET**

Importers have been allowed to instruct their commercial banks to transfer payment through the BAHTNET system to the Customs Department since January 1, 1998.

### **C. Electronic Payment at Krung Thai Bank (Teller Payment System)**

The Customs Department and Krung Thai Bank have been interfaced since September 1, 2000.

### **D. Electronic Fund Transfer (EFT) via EDI**

Under this automated system, the electronic payment is made among tax/duty payers, broker banks, Customs Banks and the Customs Department.

## **3.1.5 Cargo Release**

Importers submit the verified declaration together with the payment receipt at appropriate warehouses. Customs inspectors then inspect the imported cargo against the declaration made. If the cargo inspected corresponds to the declaration made, the Customs inspectors will record the inspection result to the computer system and release cargo to importers. If there is a reasonable doubt, a Customs officer may detain the goods until it is proven no prohibited, restricted or unpaid goods are inside the cargo.

## **3.2 General Exporting Procedures**

All goods exported from Thailand require reporting to Customs and are subject to Customs controls. Due to the automated nature of the e-Customs system, the export procedures are very similar to the outlined steps for importing goods.

### **3.2.1 E-Customs Registration**

If companies are both importing and exporting goods from Thailand, only one registration on the e-Customs system is needed. See above 3.1.1 for the registration process.

### 3.2.2 Export Declaration

As with exports, checks need to be made for goods requiring an export permit and potential red line shipments. Currently, around 50 goods categories require an export permit. These include goods such as sugar and rice, which require a permit to maintain quality, and others including trees and seeds that require permits under other laws. Thai Customs provides a detailed overview of restricted goods.

The export procedures are very similar to the outlined steps for importing goods. The first stage of export clearance procedures is to file an Export Declaration Form as prescribed by the Customs manually or through the EDI system. Some other required attached documents are as follows:

- Duplicates of Invoice;
- Packing List;
- Foreign Transaction Form if the export value exceeds Baht 500.000;
- Export License (if applicable);
- Other relevant documents such as catalogues, product specifications, Food and Drug Administration approval, destination information, etc.

### 3.2.3 Verification

The exporter should submit an export declaration, along with an invoice and cargo data to the e-Customs system. Again, provided no errors exist, the system will issue declaration and payment numbers and define whether the shipment is green or red line.

### 3.2.4 Payment

Export duties can be paid by three methods: payment at Customs Department of port of exit; e-Payment via the e-Customs system; and payment at a bank.

### 3.2.5 Cargo Release

The freight forwarder should send a cargo control report to the e-Customs system, which will automatically generate a report and alert the Customs officials. As with imports, some goods require a physical inspection and extra document checks before they can be cleared. Finally, once the shipment arrives, it is

the responsibility of the shipping company or agent to submit the manifest information to the e-Customs system.

## **3.3 Special Procedures**

### **3.3.1 Transit Procedures**

According to Customs Act 2017, any person bringing in goods for transit or transshipment out of Thailand shall submit a declaration pursuant to forms and rules, procedures and conditions, to declare transit or transshipment goods, similar documents as importation or exportation are necessary to process the declaration. The goods for transit are not subject to a duty payment while such goods must be brought out Thailand within 30 days from their entry into Thailand. If the time period is not complied with the Act, such goods shall become properties of the state, or a Customs officer shall have a power to inspect or search such goods without a warrant.

### **3.3.2 ATA Carnet Imports**

Thailand is a subscriber of the ATA Carnet System. Exhibitors participating in international trade fairs/ exhibitions in Thailand can use ATA Carnet for temporary admission of their exhibition goods into Thailand. Exhibition goods can be temporary imported into Thailand but must be re-exported within 2 months after the arrival date of exhibits. Any no-return items are subject to import duty and tax. In order to arrange Customs clearance, exhibitors or holders of ATA Carnet are requested to send a full set of ATA Carnet together with other shipping documents such as commercial invoice, packing list, catalogues of exhibits and letter of power of attorney.

### **3.3.3 Privileged Imports**

Privileged goods are exempted from duty, in accordance with Thailand's obligations to the United Nations (UN) or international laws or contracts made with other countries or diplomatic practices. Documents required for privilege goods include:

- Invoice;
- Bill of Lading of Air Waybill;
- D.P.I. (entry form for diplomatic clearance of goods imported by diplomatic missions international organizations) issued by the Ministry of Foreign Affairs;

- Other documents (if any).

Customs clearance procedures are as follows:

- An importer should submit an application for duty exemption along with supporting documents at Duty Exemption and Investment Promotion Sub-Division, Central Service Division of Bangkok Port Customs Office or the port of entry;
- Customs officers consider the eligibility for the privilege of such goods and examine the documents submitted. If the documents are all correct, they will be returned to the importer;
- Importer or his/her agent prepares and submits import declaration data. Then, he or she presents the declaration form and the supporting documents at Customs Service Sub-division in order to pick up the imported goods.

For the goods under the Florence Agreement, the importer must submit an application for duty exemption at the Office of the Secretariat of the Thai National Commission for UNESCO, Ministry of Education for approval prior to the importation of such goods. Once the exemption is approved, Thai Customs will circulate the letter issued by the Thai National Commission for UNESCO to the port of entry to complete duty exemption for the importer.

### 3.3.4 Donation Imports

Donations goods are imported or exported for donation, public charity, which are carried out by public sector or charitable organizations or the goods imported to be given to the public sector, in accordance with the Administrative Law or that for charitable organizations, given that that they are in accordance with the rules and regulations. However, the “donations” do not include the following:

- Motor cars and motor vehicles for the transport of no more than nine persons including the driver, except for ambulances;
- Trucks in the type of van and pickup and similar motor vehicles with g.v.w. not exceeding five tons and such motor cars with g.v.w. exceeding five tons and compression-ignition internal combustion piston engine (diesel or semi-diesel) or those ignition with spark.

Government agencies or charitable organizations must submit an application for duty exemption to the Thai Customs prior to retrieving their goods from Customs custody. For the government agencies, eligible

organizations are those of the Department level or equivalent or higher level. The person signed in the application form must be Head of the organization or the authorized person. For the eligible charitable organizations are those specified under Revenue Code on VAT Exemption. The person who signed in the application form for duty exemption must be a person with the authority to sign as indicated in the Terms of Reference for the establishment of such charitable organization.

The government agencies/charitable organizations must submit an application form for duty exemption along with the following documents:

- A letter signed by the donor expressing his/her intention to donate the goods to a government agency or charitable organization (original copy);
- A response letter to the donation;
- Documents relating to the importation of goods such as AIR WAYBILL.

Once the Thai Customs Department has approved the duty exemption for the goods, the government agencies/charitable organizations must present the document indicating the grant of duty exemption to Duty Exemption and Investment Promotion Sub-Division at the port of entry to proceed with Customs procedure involved.

Documents required for the importation of the donation are as follows:

- Invoice;
- Bill of Lading of Air Waybill;
- Application Letter for Duty Exemption for the Donation as stated above;
- Other documents (if any) such as Power of Attorney.

Customs procedures for the importation of the donation are as follows:

- An importer presents an application form/request form for processing Customs formalities for the imported donation as well as the letter of the grant of Duty Exemption along with documents relating to the importation of such goods at Duty Exemption and Investment Promotion Sub-Division, Central Service Division of Bangkok Port Customs Office or the port of entry;
- Customs officers examine and return the documents to the importer;

- The importer or his/her agent submit import declaration data and present the import declaration form to Customs Service Sub-Division in order to retrieve the goods from Customs custody.

It is noted that the donation requiring an import permit for food prior to the importation and other donations may also require permits in accordance with their related laws.

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## 4. ECUSTOMS AND NATIONAL SINGLE WINDOW

### 4.1 eCustoms

Thailand started implementing the electronic data interchange or EDI system for Customs clearance in 1998 and entered full operation nationwide in 2000. Migration from EDI service to electronic Customs service or e-Customs paperless service has been introduced since 2006 and has entered full operation nationwide since July 2008.

With the positive development of EDI, Thailand proceeds to the new generation of the Customs procedure, namely paperless system or e-Customs. As the name suggest, e-Customs is an Internet-based application and is now implemented into the ordinary import and export process. E-Customs contributes to re-engineering each system in the Customs Department by making it fully electronic, developing operation management and reducing many sophisticated processes. E-Customs system is more integrated and simplified. Under the e-Import system, there is no need for relevant parties to submit paper documents as all data is transmitted electronically from an importer computer system to a Customs computer system.

### 4.2 National Single Window

The government of Thailand assigned the Customs Department, Ministry of Finance to be a leading agency for the establishment of the National Single Window system with strong supports by relevant agencies in relation to import, export and logistics. This is in line with the ASEAN Agreement to establish and implement the ASEAN Single Window. Enhancement of e-Customs service for import and export as

well as improvement of relevant government agencies operation and services significantly enhance the international trade transaction.

The National Single Window of Thailand is in line with international organizations and recommendations such as UN, WCO and ASEAN Agreement for the ASEAN Single Window. Thailand National Single Window is the facilitator to enable electronic data and information sharing and integration between government to government partnerships (G2G), government to business partnerships (G2B) and business to business partnerships (B2B) for import, export and logistics. It also facilitates international cross-border data and information sharing between government and business sectors in Thailand and other countries. National Single Window system enables a single submission of electronic document by the trader such as a single data preparation and submission of Customs declaration and duty payment for Customs release and clearance.

Core components of Thailand National Single Window are as follows:

- National gateways for electronic document exchanged among government and business sectors in relation to import, export and logistics including international cross-border data and information sharing between Thailand and other countries;
- National standard data set for import, export and logistics sectors;
- Steering Committee on Quality Assurance for Thailand National Single Window;
- Registration system for electronic document sharing, single window entry, tracking and security service accessed by 35 government authorities and 125,000 Thai companies;
- Architectures of the National Single Window system, technical standards and relevant legal frameworks;
- Single window entry point for data capture of Customs declaration and permit required for import and export of goods;
- International cross-border data exchanged facilitator between Thai government authorities and other countries, such as the Customs Department, Live-Stock Department, Department of Agriculture, Department of Foreign Trade, Department of Industrial Work and Thai Chamber of Commerce;
- International cross-border data exchanged facilitator between Thai businesses and their business partners in oversea;
- Call center available 24x7;

- National Action Plan for Thailand National Single Window enhancement.

Currently, by data linking, agencies are able to reduce the cost for secured data linkage of relevant agencies, enable all transaction monitoring through NSW, harmonized the standard of data linkage for relevant agencies and exchange any data between any agencies through NSW. With incentives to drive the development of NSW at the policy level, management level and operational level, magnificent progress has been achieved in recent years. E-payment and electronic goods transition via NSW have been widely promoted and single entry for special trade goods has been implemented. To further the development of Thailand NSW, strategic plans have been brought by the government, the 3rd plan for Thailand logistics from 2017 to 2021 is in practice.

According to the cabinet resolution on December 6, 2005, the establishment of National Single Window or the centralized national data linkage system is under the administration of the Thai Customs Department as the leading government agency. The cooperation of other relevant agencies involving in the import, export and logistics are important to achieve the ultimate goal of National Single Window implementation in order to strengthen the competitiveness on international trade. Since 2014, the government agencies and business communities are collaborating to conduct the permit and license-issuing procedure in order to purposefully facilitate the import, export and logistics.

The status of the data linkage through NSW for the participating agencies is given below and 27 agencies are having the completed data linkage electronically for any kinds of goods or any types of documents in order to use for the Customs formalities, namely:

- Thai Customs Department;
- Department of Industrial Works;
- Department of Mineral Resources;
- Department of Disease Control;
- Royal Forest Department;
- The Board of Investment of Thailand;
- Department of Medical Sciences;
- Office of The National Broadcasting and Telecommunications Commission;
- Department of Primary Industries and Mines;

- Department of Mineral Fuels;
- Department of National Parks, Wildlife and Plant Conservation;
- Department of Land Transport;
- Marine Department;
- Rubber Authority of Thailand;
- Port Authority of Thailand;
- Industrial Estate Authority of Thailand;
- Electrical and Electronics Institute;
- Office of The Cane and Sugar Board;
- National Bureau of Agricultural Commodity and Food Standards;
- Department of Internal Trade;
- Excise Department;
- Thai Industrial Standards Institute;
- Food and Drug Administration;
- Office of Atoms for Peace;
- Department of Energy Business;
- Fine Arts Department;
- Department of Fisheries.

5 agencies are having the data linkage electronically for some kinds of goods in order to use for the Customs formalities, namely:

- Defense Industry Department;
- Department of Agriculture;
- Department of Provincial Administration;
- Department of Foreign trade;
- Department of Livestock Development.

1 agency is having the data linkage electronically with paper-based documents in order to use for the Customs formalities, namely:

- Thai Chamber of Commerce and Board of Trade of Thailand.

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## 5. CUSTOMS BROKERAGE SERVICE

Any person wishing to be authorized agent/broker of an importer, an exporter or a transit or transshipment operator shall be granted a permission, which means the licensed Customs broker system is a measure to facilitate import and export procedures. Under this particular system, experienced and knowledgeable licensed Customs broker is allowed to involve in verifying the operation of Customs procedures.

There are altogether three Customs broker license categories: corporate, sole trader, and nominee.

**Corporate:** a company or a partnership licensed to act on behalf of owners of imported goods. A corporate Customs broker must employ nominee Customs brokers to lodge Customs declarations.

**Sole Trader:** a sole proprietor of a business operating in its own right and not through a company or partnership or trust. A sole trader may employ one or more nominee Customs brokers. A sole trader cannot be employed by a corporate Customs broker but can be affiliated with other businesses such as freight forwarders.

**Nominee:** a natural person licensed to act as a Customs broker but only as an employee of a corporate or a sole trader Customs brokerage. A nominee may be employed by more than one corporate or sole trader brokerage at any time.

In Thailand, the Customs Broker companies enable to serve the imports and exporter regardless the type of transport, commodity, personal belongings or vehicles within rich logistics services, including air freight, trucking, rail freight, warehousing, etc.

An eligible broker should be:

- A legal person with a paid register capital of not less than 1 Million Baht;
- A member of Customs broker association which is certified by Customs for not less than 3 years;
- No past record of any offence against the Customs or any other related laws for a period of 3 years from the date of filing an application;
- A Customs broker license has never revoked by Customs;
- Be able to process Customs procedures via an automated system;
- Employ at least 1 Customs broker who attends the training course on expert Customs broker organized by Thai Customs.

The licensed Customs brokers have their duties as follows:

- Strictly comply with the Customs law and other laws, notifications and regulations;
- Undertake Customs procedure in clearance of goods with transparent manner and shall inform of the expenses paid by laws or notifications or regulations together with brokerage charges;
- Perform task in clearance of goods in skillful and professional manner by recruiting persons having knowledge, ability and skill in clearance of goods to undertake their Customs brokers' tasks;
- Improve their knowledge, ability and skill by taking the training courses, concerning the clearance of goods organized by Customs Training Institute or other Customs-certified institutes, not less than 3 days/year;
- Submit, within five months after the date of closing account of juristic person, a copy of the financial statement to the Customs in every accounting year;
- Store and maintain the accounts, documents, evidences and information in relation to import and/or export and in regardless of forms of media, not less than five years;
- Cooperate and facilitate the competent officers' operation in examining the workplace or any other relevant places with the aim to verify the accounts, evidences and information in regardless of forms of media in relation to import and/or export.

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## 6. CUSTOMS SECURITY OR GUARANTEE

### 6.1 Security for Payment of Duty

Before the release of any goods from the custody of the Customs, the importer or exporter may offer the full amount of duty or deposited cash security. The application for depositing cash security shall be in accordance with the laws and regulations. Thus, it means cash or other securities shall be required as a guarantee for the payment of duty.

In case where a competent official considers that there is a question on the amount of duty of any goods which are clearing through Customs, such goods shall be taken to the Customs House or placed in any secure place, unless the competent official and the owner of the goods or his agent agree that only a sample shall be taken for determination of the question. In order to safeguard the revenue of the State, the amount of duty declared in the shipment entry by the importer or exporter, as the case may be, shall be paid and an additional sum of money covering the maximum duty payable on such goods shall be deposited as security.

Where a security is given, as the case may be, the importer or exporter shall pay the duty in the amount notified within thirty days as from the date of receiving the notice. In the case of the cash security given is sufficient to cover the amount of duty assessed by the competent official, such cash security shall immediately be applicable to the payment of the assessed amount of duty, and the importer or exporter shall be deemed to have paid the notified amount or duty within the period specified.

### 6.2 Guarantee of ASEAN Customs Transit System (ACTS)

To initiate a transit declaration, the principal must first lodge the required guarantee undertaking with the Customs office of guarantee in the country of departure for duties and taxes potentially liable for the declared transit goods. The guarantee is an amount held by or available to Customs if the terms of the transit approval are not met, such as the loss or improper diversion of the goods. The amount of guarantee is a calculation of the highest rates of duty/taxes potentially payable on those goods (with rates based on AHTN commodity code) in the countries of intended transit.

The amount of guarantee for the transit operation is held by Customs in the country of departure until released upon notice of discharge (satisfactory termination) of the transit movement. The guarantee

undertaking letter will have to be issued by a legal person, such as a bank, which undertakes to pay the duties and taxes that will be due if a transit document is not discharged properly and the principal trader is not able to pay for the duties and taxes due to Customs. For the purposes of the implementation of the ACTS Pilot only guarantees issued by a bank will be recognized.

Guarantors must be established in and approved by the Customs in the country where the guarantee is furnished. Depending on the need of the registered traders, the trader can use single or multiple journey guarantees to support the transit movement. In Thailand, Krungthai Bank, Krungsri Bank, Kasikorn Bank, and TMB Bank are the banks issuing Guarantee Undertaking Letter for transit operations. Please see [Quick Guide to the ASEAN Customs Transit System \(ACTS\) for Banks acting as Guarantors](#) for more details.

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## 7. PROHIBITIONS AND RESTRICTIONS

The Thai Customs regulates the importation and exportation of goods coming into and exiting Thailand. Within these regulations there are classes of goods which are heavily scrutinized. One class of products are prohibited from entering Thailand under any circumstances and another class of products are restricted from entering Thailand without permission.

### 7.1 Prohibited Goods

The following are some examples of prohibited goods listed by the Thai Customs:

- Narcotics;
- Pornographic materials;
- Counterfeit trademark goods and IPR infringing goods;
- Fake notes or coins;
- Reserved animals or CITES-listed wildlife;

- Obscene objects/literature/pictures;
- Obscene literature and pornographic materials;
- Goods with an improper Thai flag design;
- Any habits forming narcotics such as marijuana, opium, cocaine, morphine, heroin, and other drugs are considered banned even if they have been prescribed by a doctor.

In addition, imports of used motorcycles and parts, household refrigerators using CFCs, refurbished medical devices, gaming machines, and computer peripherals are prohibited.

## 7.2 Restricted Goods

Restricted goods are restricted by law from related government or agencies. The permits must be presented during Customs formalities. Examples of Restricted goods listed by the Thai Customs are as follows:

*Table 1 Restricted Goods and Its Issuing Authorities*

Types of Goods	Issuing Authorities
Buddha image, artifact/objects, antique	Fine Arts Department
Guns, bullets, explosives, and the equivalents to guns	Department of Provincial Administration. Ministry of Interior
Plants and their parts	Department of Agriculture
Living animals and carcass	Department of Livestock Development
Food, medicine, cosmetics and food supplement	Food and Drug Administration
Vehicle parts	Ministry of Industry
Cigarettes, tobacco and alcoholic beverages	Excise Department
Communication Radio Devices and telecommunications equipment	Office of The National Broadcasting and Telecommunications Commission

*Source: Thai Customs.*

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## 8. CUSTOMS DUTIES AND TAXES

In Thailand, Customs duty is levied in accordance with the Harmonized Commodity Description and Coding System or Harmonized System (HS). Thailand has adopted the Protocol Governing the Implementation of the ASEAN Harmonized Tariff Nomenclature (the AHTN Protocol) to harmonize the tariff nomenclature at the eight-digit level. Most tariffs are ad valorem, which is a duty laid upon goods at a certain rate of their value, which means the follow values:

- For importation, means a transaction value, or a transaction value of identical goods, or a transaction value of similar goods, or a deductive value, or a computed value, or a reversed value;
- For exportation, means the wholesale cash value for the sale of goods of the same category and type without loss at the time and place of the exportation without any deduction or reduction in the price;
- For releasing goods out of a duty free zone or a free trade area or any other similar area to be sued or sold in Thailand.

In certain cases, however, both ad valorem and a specific rate (e.g. a rate charged on a unit of goods) are given, and the tariff that gives the most revenue will apply. In general, the invoice price is the basis for computation of duty and normally applied to cost, insurance and freight (CIF) value for import and free on board (FOB) for export.

### 8.1 Import Duty

Generally, these duties levied on any imported goods before releasing them from the custody of Customs, except for goods receiving specific privilege that qualifies according to the law, whereby their duties are reduced or waived. There are three types of duties that any importer has to pay before the imported goods are released from the custody of Customs: Customs Import Duties with an ad valorem rate, Excise Tax and Value Added Tax (VAT).

#### 8.1.1 Import Duties and Taxes

The applicable rates are dependent on the origin of the goods and a Certificate of Origin will need to be presented. There are three applicable categories of import tariffs:

- Special preferential rates – applicable if there is a trade arrangement in place (e.g. ASEAN member states). Thailand has eliminated intra-ASEAN import duties on 99.65% of their tariff lines;
- Preferential rates – applicable if the country has a Most Favored Nation (MFN) status with Thailand;
- Ordinary rates – applicable for any other country. There are six duty rates for imported goods, excluding vehicles which have special rates:

0% for goods that government policy provides not to collect duties

1% for raw materials

5% for primary products and capital goods

10% for intermediate products

20% for finished products

30% for government protected goods

Thailand's average applied Most Favored Nation (MFN) tariff rate was 9.6% ad valorem in 2018. Approximately two-third of Thailand's MFN tariff schedule involves duties of less than 5%, and 40% of tariff lines are MFN duty free, including chemicals, electronics, industrial machinery, and paper. Thailand has bound all tariffs on agricultural products in the WTO, but only around 70% of its tariff lines on industrial products are bound.

Thailand has bound its agricultural tariffs at an average of 39.5% ad valorem, compared with its average applied MFN tariff on agricultural products of 25.1%. MFN duties on imported processed food products range from 30% to 50%. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (such as dry peas, lentils, and chickpeas) are similarly high.

Thailand's average bound tariff for non-agricultural products is approximately 25.6%. Thailand levies high tariffs on goods such as: 80% on motor vehicles, 60% on motorcycles and certain clothing products, 54% to 60% on distilled spirits, and 30% on certain articles of plastic and restaurant equipment. Further, the country charges tariffs of 10% to 30% on certain audiovisual products, and applies a 10% tariff on most pharmaceutical products, including products on the World Health Organization list of essential medicines.

Thailand maintains the same list of tariff-rate-quota (TRQ) from its commitments under WTO agreement on agriculture since 2004. Thailand imposes domestic purchase requirements for several tariff-rate quota products, including nonfat dry milk, soybeans, soybean meal, and fresh potatoes.

Table 2 Import Tariff of Thailand 2018

Summary	Total			Ag			Non-Ag		
	9.6			24.0			7.3		
Frequency distribution	free	0~5	5~10	10~ 15	15~ 25	25~50	50~100	> 100	NAV
	Tariff lines and import values (in %)								
Ag MFN applied	12.4	14.4	9.9	0.7	11.5	42.1	8.0	0.6	31.8
Non-ag MFN applied	40.5	27.2	17.3	0.1	5.0	9.4	0.5	0.1	6.4
Product groups	MFN applied duties								
	AVG			Duty-free in %			Max		
Animal products	29.0			9.2			50		
Dairy products	27.3			0			40		
Fruit, vegetables, plants	34.1			4.3			163		
Coffee, tea	29.4			12.5			60		
Cereals & preparations	17.8			12.2			60		
Oilseeds, fats & oils	13.4			0.2			30		
Sugars and confectionery	17.4			5.9			65		
Beverages & tobacco	44.8			2.0			181		
Cotton	0.0			100.0			0		
Other agricultural products	7.8			38.4			30		
Fish & fish products	9.2			36.9			116		
Minerals & metals	4.9			47.2			30		
Petroleum	5.6			19.8			10		
Chemicals	2.6			67.3			30		
Wood, paper, etc.	5.8			32.8			20		
Textiles	8.4			2.9			30		
Clothing	29.6			0			60		
Leather, footwear, etc.	11.3			10.9			30		
Non-electrical machinery	3.0			65.2			30		
Electrical machinery	7.0			38.1			30		
Transport equipment	22.8			32.2			80		
Manufactures, n.e.s.	9.2			30.6			549		

Source: WTO Statistics.

### 8.1.2 Value Added Tax (VAT)

An importer is subject to VAT in Thailand no matter whether one is a registered person or not, VAT will be collected by the Customs at the time goods are imported. Currently, the rate is 7 percent. Under VAT, taxable goods mean all types of property, tangible or intangible, whether they are available for sales, for own use, or for any other purposes. It also includes any types of articles imported into Thailand. Services refer to any activities conducted for the benefits of a person or an entity, which are not the supply in terms of goods.

The following imports are exempted from VAT:

- Import of unprocessed agricultural products and related goods such as fertilizers, animal feeds, pesticides, etc.;
- Import of newspapers, magazines, and textbooks;
- Goods imported into an Export Processing Zones (EPZs);
- Imported goods that are kept under the supervision of the Customs which will be re-exported and be entitled to a refund for import duties.

### 8.1.3 Excise Tax

Excise tax is a form of consumption tax that is imposed on the sales of a selected range of services and goods that are considered luxuries. The tax liability arises on locally manufactured goods when leaving the factory and at the time of importation for imported goods.

- Excise tax payable =  $(CIF+ID) \times ((ETR) / (1 - (1.1 \times ETR)))$

ETR: Excise tax rate %

ID: Amount of imported duty

*Table 3 Excise Tax in Thailand*

Product	Excise Tax Rate (%. except where stated)
Petroleum and petroleum products	0 to 36
Certain non-alcoholic beverages	0 to 25

Product	Excise Tax Rate (%. except where stated)
Certain electrical appliances	0 to 15
Perfume products and cosmetics	0 to 15
Alcoholic beverages	0 to 48 ad valorem rate and specific rate at BAHT 0 to BAHT 1.000 per liter per 100 degree or BAHT 0 to BAHT 225 per liter (whichever is higher) and Baht 3 per each excess degree
Cigarettes containing tobacco	10 to 87
Woolen carpets	0 to 20
Batteries	5 to 10
Playing cards	BAHT 2/100 cards or BAHT 30/100 cards
Ozone depleting substances, chlorofluorocarbons	0 to 30

Source: Thailand Customs.

## 8.2 Export Duty

There are only two items of exported goods that have to pay duties: raw hide; wood, sawn wood, and articles made of wood:

- 5 baht/kg for raw hide;
- 40% for wood, sawn wood, and articles made of wood.

## 8.3 Duty Refund

Under the new Customs Act 2017, the importers or exporters may claim a duty refund within three years from the date of shipment. If criteria listed below are fulfilled, the import duty shall be returned as drawback to the importer:

- A duty has been exceedingly paid, an importer or an exporter shall claim a request within 3 years from the date of importation or exportation;
- A duty had been paid for goods to be exported out of Thailand, but the goods were not exported yet;

- A paid duty or a cash security is to be refunded due to an excess collection of either full or additional amount payable, a refund shall be made together with an interest at the rate of 0.625% per month;
- Goods are re-exported out of Thailand or are departing from Thailand, the importer shall have a right to request for a duty refund at the amount of 9/10 or the excess of 1000 Baht;
- Imported or transferred goods for the purpose of production, mix, assembly, packing, or processing of goods are paid a duty, if the goods are exported out of Thailand.

## 8.4 Duty Exemption

### 8.4.1 Criteria for Duty Exemption

Only goods under the following agreement or laws are subject to duty exemption, and restrict criteria are as follows:

- Agreements with the United Nations and Diplomatic Missions;
- Agreements under Technical Assistance Cooperation Programs between Foreign Donors and the Thai Government;
- Laws of which certain provisions require that tax and duty free allowance is applied to imports;
- Tax and duty free granted for privileged goods is exclusively for the agencies or staff members of the entitled organizations only;
- The importation of personal motor cars under the diplomatic missions. Agreements with international organizations and technical assistance cooperation programs.
- F. some other circumstances.

### 8.4.2 Documents Required for Duty Exemption

The following documents are required by for duty exemption application:

- A. Invoice;
- Bill of Lading of Air Waybill;
- D.P.I. (Entry Form for Diplomatic Clearance of Goods Imported by Diplomatic Missions International

Organizations) issued by the Ministry of Foreign Affairs, or agreement(s) on Technical Assistance Cooperation Programs between Foreign Donors and the Thai Government, or result of consideration indicating duty exemption for such goods;

- Other documents (if any).

### **8.4.3 Procedures for Duty Exemption**

An importer submits an application for duty exemption along with supporting documents at Duty Exemption and Investment Promotion Sub-Division, Central Service Division of Bangkok Port Customs Office or the port of entry.

Customs officers consider the eligibility for the privilege of such goods and examine the documents submitted. If the documents are all correct, they will be returned to the importer.

The importer or his/her agent prepares and submits import declaration data. Then, he or she presents the declaration form and the supporting documents at Customs Service Sub-division in order to pick up the imported goods. For goods under the Florence Agreement, the importer must submit an application for duty exemption at the Office of the Secretariat of the Thai National Commission for UNESCO, Ministry of Education for approval prior to the importation of such goods. Once the exemption is approved, Thai Customs will circulate the letter issued by the Thai National Commission for UNESCO to the port of entry to complete duty exemption for the importer.

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## **9. TARIFF CLASSIFICATION**

The current Customs Tariff of Thailand is based on the WCO's HS Convention. In implementing its obligations, Thailand has adopted and incorporated into its national tariff system of the core Harmonized System. The harmonized tariff schedule of Thailand is enforced under the Customs Tariff Decree that came into force on January 1, 1988. It replaced the Customs Co-operation Council Nomenclature (CCCN) which had been adopted since 1960.

As one of the ASEAN member countries, Thailand has also adopted the Protocol Governing the Implementation of the ASEAN Harmonized Tariff Nomenclature (the AHTN Protocol) to harmonize the tariff nomenclature at the eight-digit level. It adheres to the six-digit commodity classification code of the HS Code of WCO but adds two digits or level codes that represent ASEAN subheadings.

The HS code of goods in Thailand is an 11-digit code. The first 8-digits are known as the ASEAN Harmonized Tariff Nomenclature (AHTN) code. The AHTN is harmonized at the 8-digit level across all ASEAN member countries. The final 3-digits are used in Thailand to further define specific types of goods that are subject to import/export controls, such as permits or licenses.

Under the new Customs Act, the Customs Department also offers the following facilities to operators with:

- **HS Codes Verification**

The Thai Customs Department has created a mobile application HS Check, which makes available precedent rulings on HS codes verification to operators for preliminary reference when determining HS codes for their products;

- **HS Codes Consultation**

The option to request for HS codes confirmation prior to importation is still available.

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## 10. CUSTOMS VALUATION

As international trade in goods grows rapidly and the transaction becomes more complex both in terms of production and parties involving in supply chain, the Customs Valuation has also grown in importance in order to secure revenues with predicable and transparent manner. A Ministerial Regulation No.132 B.E. 2543, which is based on the principles of the Agreement on the Implementation of Article VII of the WTO, provides six methods for the valuation of imports and exports.

### Transaction Value Method

The primary basis for valuation is the Transaction Value which means the price actually paid or payable for the goods when sold for export to Thailand, adjusted in accordance with the Ministerial Regulation.

- Transaction Value = Price Actually Paid or Payable + Adjustment

#### **Transaction Value of Identical Goods Method**

If the Transaction Value Method cannot be applied, the Customs Value of the imported goods is determined with the Transaction Value of identical goods that meets following requirements. When it comes to Identical Goods, it means Identical in all respects, to the imported goods being valued:

- Physical characteristics;
- Quality and reputation;
- Produced in the same country.

Identical goods should be sold to export to Thailand at or the approximate time, have been accepted as the Customs Value at the same commercial level and quantity. If more than one Transaction Value of identical goods is found, the lowest such value shall be used. Identical Goods do not include the Transaction Value which includes the value of engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Thailand.

#### **Transaction Value of Similar Goods Method**

Similar goods are not identical in all respects but, they:

- have like characteristics and like component materials;
- perform same functions and commercially interchangeable;
- are produced in the same country.

Similar goods are sold to export to Thailand at or the approximate time as the imported goods, has been accepted as the Customs Value at the same commercial level and quantity. If more than one Transaction Value of similar goods is found, the lowest such value shall be used. Similar Goods do not include the Transaction Value, which includes the value of engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Thailand.

### **Deductive Value Method**

The Deductive Value starts from the resale price of the imported goods or identical goods or similar goods in Thailand and deducts the following elements. If the importer requests a reversal and Customs approves, the Computed Value Method comes first.

To use the unit price of imported goods at which the goods are sold in the greatest aggregate quantity at or about the same time of importation. If the unit price for resale of the imported goods is not available, the resale price of identical or similar goods shall be used.

### **Computed Value Method**

The value is applied to determine the Customs value based on the sum of production:

- The cost or value of materials and fabrication or other processing employed in producing the imported goods;
- An amount for profit and general expenses usually reflected in sales of goods of the same class or kind as the goods being valued;
- The cost of containers;
- The cost of packing whether for labor or materials for the imported goods;
- The cost of materials and components specified as the assist;
- The cost of insurance and transportation of the imported goods;
- Engineering, development, artwork, design work, and plans and sketches undertaken in Thailand necessary for production of the imported goods where these elements are charged to the producers.

### **Fallback Method**

The value is applied to determine Customs value based on the reasonable and flexible interpretation of all the previous methods.

## 11. RULES OF ORIGIN

Rules of origin (ROO) are used to implement measures and instruments of commercial policy such as anti-dumping duties and safeguard measures, and to determine whether imported products shall receive MFN treatment or preferential treatment. The rules of origin are also for the purpose of trade statistics, the application of labeling and marking requirements for government procurement.

### 11.1 Preferential Rules of Origin

Thailand does not formulate preferential rules of origin (ROO) for exports but merely implements the rules as applicable (GSP, GSTP, ASEAN PTA and CEPT). As it is not necessary to include ROO relating to the GSP as these are part of the UNCTAD booklet on GSP, the information on ROO of GSTP and ASEAN PTA and CEPT can be expressed in brief and simple terms as follows.

First, the value-added criterion is employed as the basis of the substantial transformation test under the preferential system of GSTP and ASEAN PTA and CEPT. The GSTP (Global System of Trade Preferences) is employed among developing countries and least developed countries of the Group of 77. ASEAN PTA (Preferential Trading Arrangements) and CEPT (Common Effective Preferential Tariff) are employed among ASEAN member countries.

Second, the same value-added basis is applied in GSTP and ASEAN PTA and CEPT. There are a few minor differences as follows:

- GSTP is employed among developing countries and least developed countries of the Group of 77, while ASEAN PTA and CEPT are employed among ASEAN member countries;
- Under the GSTP, a product is deemed to originate from the exporting country of the Group of 77 if at least 50 percent of its content originates from that exporting country. The 50 percent local content requirement refers to a single country and 60 percent local content requirement refers to cumulative GSTP content;
- Under ASEAN PTA and CEPT, a product is considered to originate from ASEAN member countries if at least 40 percent of its contents originates from any ASEAN member countries. The 40 percent local content requirement refers to both single country and cumulative ASEAN content.

Thailand's preferential rates of duty are applied for GSTP and ASEAN PTA and CEPT imports. Thus, goods imported and not entitled to preference will pay the normal or general rate of duty. The Department of Foreign Trade, Ministry of Commerce is responsible for the issue of Certificates of Origin for a product exported under GSP, GSTP, ASEAN PTA and CEPT and is responsible for the assessment of the origin of that product before exporting. Invoice together with other documents of exportation such as Air Waybill and Bill of Lading, are used for the application of Certificates of Origin for the exports.

## 11.2 General Rules of Origin

Goods originating in a preference country may be divided into two categories as follows.

### 11.2.1 Wholly Obtained Goods

These goods are entirely grown, extracted from the soil or harvested within the exporting country or manufactured there exclusively from any of these products.

### 11.2.2 Goods Partly Manufactured

There are two conditions to preference entitlement for goods partly manufactured in the preference country as follows:

- The last process of manufacture must be performed by the manufacturer in the preference receiving country and;
- Not less than 50 percent of the value of the exported product must be made up of local content for single country content and not less than 60 percent for cumulative content under the GSTP scheme and not less than 40 percent of the value of the exported product must be made up of local content for both single country and cumulative content under ASEAN PTA and CEPT schemes.

### 11.2.3 Direct Shipment Provisions

Direct shipment is required by GSTP, ASEAN PTA and CEPT.

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## 12. ADVANCE RULING

When making business decisions about future imports, the advance ruling service provided by Thai Customs may be of assistance. The advance ruling is an advice provided by Thai Customs upon the written application by a business operator. The ruling outlines how Customs applies provision of existing laws and regulations concerning national tariff nomenclature to a specific commodity.

### 12.1 Types of Advance Ruling

Any person desiring to know a Customs value, an origin of goods, or a Customs tariff may submit a request for an advance ruling on the following matters:

- **Customs Valuation**

Advance Ruling on Customs value will be issued within 60 official days or 30 official days if applicants have any documents representing that goods are planned to be imported such as a purchase order, a sales contract, an invoice, a letter of credit (L/C) or a pro forma invoice, the advance ruling will be valid for 2 years.

- **Origin of Goods**

Advance Ruling on origin of goods to be imported into Thailand under the rules of origin prescribed in a treaty or an international agreement is provided for ones who want to know Customs price criteria of goods before importing into Thailand, to be issued within 30 official days, the advance ruling will be valid for 2 years.

- **Tariff Classification**

Advance Ruling on tariff classification is the Interpretation of a Customs tariff under the law on Customs tariff in order to categorize goods by a corresponding Customs tariff and will be issued within 30 official days and will be valid for 2 years.

### 12.2 Application for Advance Ruling

An application for an advance ruling must be submitted in prescribed form at least 30 official days

before the proposed date of importation of the goods. In addition, the application should contain all the information required by Thai Customs. Failure to provide all the necessary information may result in a delay or inability to issue or nullification of the advance tariff ruling.

Each application shall be restricted to a single product and accompanied by the documents listed below:

- Supporting documents which indicate the intention to import the inquired product;
- A full description of goods as necessary for making tariff decision together with other supporting documents such as trade name/brand, specific characteristics of goods, composition of goods, etc.

The application submitted must be in Thai and must be signed by a managing director or an authorized person. If the information provided is inadequate for advance ruling, the applicants shall submit additional information within 15 official days from the date that the applicants receive a letter from Thai Customs. When additional information is requested by Thai Customs, the standard time of 30 official days or 60 official days for issuing the advance ruling will commence after the receipt of addition information.

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## 13. FREE TRADE AGREEMENTS

Thailand joined WTO in 1995 and has implemented bilateral trade agreements with various countries. Thailand is also a member of ASEAN which was established in 1967 and the ASEAN also implemented a number of FTAs with its trading partners. The latest and the largest FTA, the Regional Comprehensive Economic Partnership (RCEP) is now being negotiated between the 10 ASEAN members and its 6 trading partners, namely Australia, China, India, Korea, Japan and New Zealand with a view to expand the economic cooperation.

In addition, several FTAs among Thailand and other countries or regions are listed as follows:

### **ASEAN-Australia and New Zealand Free Trade Agreement (AANZFTA)**

Thailand is the original member state of the AANZFTA. The AANZFTA is a comprehensive and single-

undertaking free trade agreement that opens up and creates new opportunities for approximately 663 million peoples of ASEAN, Australia and New Zealand - a region with a combined Gross Domestic Product of approximately USD 4 trillion as of 2016. In line with the ASEAN Community Vision 2025, the AANZFTA aims for sustainable economic growth in the region by providing a more liberal, facilitative and transparent market and investment regimes among the twelve signatories to the Agreement.

#### **ASEAN- China Free Trade Agreement (ACFTA)**

Thailand is the original member state of the ACFTA. The ASEAN–China Free Trade Area, also known as China–ASEAN Free Trade Area is a free trade area among the ten member states of ASEAN and the People's Republic of China.

#### **ASEAN-Hong Kong, China Free Trade Agreement (AHKFTA)**

Under the AHKFTA, Hong Kong will grant tariff free access and will bind Customs duties at zero upon entry into force of the agreement. Brunei Darussalam, Malaysia, the Philippines and Thailand will eliminate Customs duties on 85% of products traded with Hong Kong within ten years and reduce another 10% of tariff lines within 14 years. Indonesia and Vietnam will eliminate Customs duties for 75% of their products within ten years and reduce another 10% of tariff lines within 14 years. Meanwhile, Cambodia, Lao PDR and Myanmar will eliminate Customs duties for 65% of their products within 15 years and reduce another 20% of tariff lines within 20 years.

#### **ASEAN-India Free Trade Agreement (AIFTA)**

Thailand is the original member state of the AIFTA. The ASEAN–India Free Trade Agreement (AIFTA) is a free trade area among the ten member states of the Association of Southeast Asian Nations (ASEAN) and India. In the financial year 2017-18, Indo-ASEAN bilateral trade grew by almost 14%.

#### **ASEAN-Japan Comprehensive Economic Partnership (AJCEP)**

Thailand is the original member state of the AJCEP. The Initiative for Japan-ASEAN Comprehensive Economic Partnership can be materialized only if the trade creation can be significantly achieved among Japan-ASEAN.

#### **ASEAN-Republic of Korea Comprehensive Economic Cooperation Agreement**

The ASEAN member states and the Republic of Korea signed the framework agreement on Comprehensive Economic Cooperation on December 13, 2005 in Kuala Lumpur, Malaysia to strengthen and enhance economic, trade and investment cooperation among ASEAN member states and the Republic of Korea.

### **ASEAN Free Trade Area (AFTA)**

The AFTA agreement was signed on January 28, 1992 in Singapore. When the AFTA agreement was originally signed, ASEAN had six members, namely Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand. Vietnam joined in 1995, Laos and Myanmar in 1997 and Cambodia in 1999. AFTA now comprises the ten countries of ASEAN. All the four latecomers were required to sign the AFTA agreement to join ASEAN, but were given longer time frames in which to meet AFTA's tariff reduction obligations.

### **China-Thailand Free Trade Agreement**

The China-Thailand FTA was signed in June 2003 and came into effect four months later in October 2003. It is an "early harvest agreement" on farm trade alone, whereby both countries opened their agricultural markets before the broader China-ASEAN FTA comes into force in 2010.

### **India-Thailand Free Trade Area**

Thailand benefits from the India-Thai FTA, which covers as many as 84 items and several areas in the first phase including services, investment, economic cooperation and goods like food items, tourism, auto parts and electronic goods.

### **Japan-Thailand Economic Partnership Agreement (JTEPA)**

JTEPA is a free trade agreement between Thailand and Japan. The agreement was a deal that would eliminate tariffs on more than 90 percent of bilateral trade within 10 years. It was signed on April 3, 2007 in Tokyo.

### **Thailand - Australia Free Trade Agreement (TAFTA)**

TAFTA has eliminated the majority of Thai tariffs on goods imported from Australia. The reduction of Thailand's previously high tariff barriers (for some goods, up to 200 per cent) is a significant win for

Australian businesses, opening up a range of export opportunities in Southeast Asia's second-largest economy. TAFTA also improves the environment for bilateral services trade and investment. The agreement entered into force on January 1, 2005 and was Australia's third free trade agreement. It was Thailand's first comprehensive free trade agreement and also the first with a developed country.

### **Thailand - New Zealand Closer Economic Partnership Agreement**

New Zealand and Thailand are complementary economies, with Thailand exporting mainly manufactured goods to New Zealand, and New Zealand exporting agricultural goods and wood. Although the value of New Zealand exports to Thailand fluctuates from year to year, since the Closer Economic Partnership came into force in 2005, total exports have almost doubled. In November 2011, a joint general review of the CEP found the agreement had created significant trade and economic benefits for both countries. Since then the two countries have been working together to modernize the agreement under a CEP Refresh Plan. This includes extending the CEP to include services and government procurement, and a review of the Special Agricultural Safeguards that allow tariffs to be re-imposed in certain circumstances.

### **Thailand-Peru Free Trade Agreement**

Trade between Thailand and Peru has been increasing exponentially since the enactment of the free trade agreement in December 2011. Thailand mainly imports minerals (zinc, copper) and food such as flour, fish meal, fish pellets, fresh grapes, and cuttlefish from Peru. There are still positive effects emanating from this agreement to be seen in Peru as many Thai businesses are considering investing in Peru. As a result of this agreement, more and more Thai companies are opening their doors in Peru.

### **Thailand-Chile Free Trade Agreement**

The Free Trade Agreement entered into force on November 5, 2015. This bilateral agreement is Thailand's second FTA with a Latin American country. The FTA immediately reduces tariffs to zero on over 90 percent items of products traded between the two countries. On the remaining products, the tariffs will be reduced to zero over periods ranging from three years up to eight years (for the most sensitive products).

## 14. BONDED SYSTEM

In Thailand, two main Customs areas, bonded warehouse and duty free zone, are established for bonded purpose. The Thai Customs provided in its national legislations for Customs warehousing procedures allowing the importers to store the goods for more or less long period without payment of taxes and duties until the goods are actually taken for domestic consumption.

### 14.1 Bonded Warehouse

The bonded warehouse could be present a warehouse or a place of security or a permitted port, which is allowed for importation, exportation, transit or transshipment. Anyone wishing to establish a bonded warehouse shall submit a request for a license in accordance with the Ministerial Regulation. Accordingly, the licensee will pay the annual fee when it is due. A bonded warehouse will be operated for the following purposes:

- Storage of goods therein;
- Display and sale of goods stored therein;
- Production, mix, assembly, packing or processing in any manner of goods stored therein.

An inspection of goods stored in the bonded warehouse will be conducted at any places other than the warehouse. Uninspected goods should not be moved, bulked, sorted, categorized, packed at a permitted port or other places unless a Customs officer grant a permission to do so. An import and an export duty shall be exempted for goods released from a bonded warehouse to be exported out of Thailand. Various types of bonded warehouses are stipulated in the Customs Act as follows:

- Bonded Warehouse of Manufacturing Type;
- Bonded Warehouse for Vessel Repair or Construction;
- Bonded Warehouse of General Type;
- Bonded Warehouse of General Type for Goods Demonstration or Exhibition;
- Bonded Warehouse of General Type for Oil Storage;
- Bonded Warehouse of Duty Free Zone for Free Trade;

- Bonded Warehouse for Storage of Duty Free Goods.

Generally, at the time of importation, imported raw materials brought into production in a manufacturing bonded warehouse will be granted duty and tax exemption, but a bank guarantee amounted to 25% of the maximum amount duties and taxes calculated on such imported raw materials will be required. After the goods have been produced and exported, such security will be released. The time period allowed for the retention of the raw materials in the bonded warehouse of this type is one year, but this period can be waived as needed and agreed by the authorities.

## 14.2 Duty Free Zone

Duty Free Zone is an indicated area for industrial, logistics, and other business activities operations with no Customs duty and VAT on purchase or importation of raw materials, components or finished goods. Since Duty Free Zone is superintended by Customs Department, then, there are certain criteria for a company who wishes to set up its operation there, as follows:

- The company must mainly involve with import and export;
- The company must be registered in Thailand with capital of at least 5 Million Baht;
- The company should install WMS (Warehouse Management System), or other similar software application, to support warehouse operations;
- The company is also required to report on inventory available of merchandise or raw materials to Customs Office of every six month for checks and balances purpose;
- The company must install CCTV in the warehouse or factory with record kept up to 2 months.

After the company is approved to set up its operation in Free Zone, the Customs will grant a free zone license which costs 10,000 Baht for issuing it and the operation cost is 5,000 Baht for each annually. For a benefit of a Customs duty in an industrial operation, both import duty and export duty shall be exempted for imported goods to the Duty Free Zone as follows:

- Goods that are machinery, accessories, tools and implements including the components thereof for the industrial, commercial or any other activities use for the benefit of the country economy;
- Imported goods to the Duty Free Zone for the industrial, commercial or any other activities use for the benefit of the country economy;

- Goods that are removed from another Duty Free Zone.

An export duty shall be exempted for goods released from a Duty Free Zone to be exported out of Thailand.

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## 15. CUSTOMS POST CLEARANCE AUDIT

Post Clearance Audit is a retrospective examination which takes place after release of imported or exported goods according to the principle of trade facilitation and Customs control by using risk management, the standardization of Customs procedures.

Within Thai Customs, Post Clearance Audit Bureau is responsible for auditing whether tariff nomenclature, tax and duty incentive and import/export formalities applied are compliant with relevant laws and regulations, maintaining post clearance documents and conducting post clearance review auditing records, accounts, and documents on imports and exports at the importer's/exporter's premises or related parties. Besides, the Bureau analyzes risks on imports, exports, and tax and duty incentives, including establishing and updating the Central Profile.

The competent officials shall examine various documents and evidences at the place of business of importer, exporter agent of vessel, agent of such persons or related persons or at the other places relating to the mentioned person. The entrepreneurs or the related person who may be under the examination shall have the duty to keep and maintain accounts, documents, evidences and data in any form not less than 5 years from the date of the importation or the exportation.

### **Voluntary Audit Program (VAP)**

In 2016, Thai Customs officially announced to reopen the VAP allowing companies to review operations and disclose underpayments of duty and taxes to Thai Customs. In 2019, the Thai Customs authorities announced that this program has been extended to April 30, 2020.

The key advantages of the VAP include a simplified declaration process and the potential waiver of penalties and surcharges for cases where it has been proved to Customs' satisfaction that the offenders did not have any fraudulent intent when committing the offences. Historically, offences related to non-declaration of goods, evasion of import/export restrictions, and counterfeit trading are not being considered under the program.

Under the program, eligible business operators can submit a voluntary disclosure to the Thai Customs authorities to correct unintentional underpayments of Customs duties and taxes. If the voluntary disclosure is accepted, the Thai Customs authorities will consider granting an exemption from Customs penalties and reducing the monthly Customs surcharge rate. Business operators, however, will not be exempt from VAT surcharges and penalties under the program.

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## 16. CUSTOMS ENFORCEMENT AND APPEALS

### 16.1 Changes in New Customs Act

Among the most notable changes, the reduction in incentives and rewards to whistleblowers, clarification of Customs offenses and reduction of statutory penalties, elimination of liability presumptions, and the imposition of deadlines for post clearance audits and appeals, are the key changes introduced in the new Customs Act 2017.

#### **Reduction in Incentives and Rewards**

One of the significant changes introduced by the new act is the reduction in incentives and reward amount.

The repealed law allowed Thai Customs to reward officials and third-party whistleblowers for reporting instances of Customs evasion and Customs avoidance. Though helpful in identifying avoidance and evasion, the excessively generous rewards system facilitated wrongdoings in Customs procedure and

introduced biased audits and investigations. Under the new law, the commission paid to a Customs officer and a whistleblower will be limited to Baht 5 million (US\$150,875) per case, thereby eliminating any possibility of bias or wrongdoing.

### **Clarification of Customs Offenses and Relaxation of Penalties for Evasion Offenses**

Under the previous law, Customs offenses – smuggling, evasion and non-compliance in respect of restricted or prohibited goods, and the related criminal penalties were classified together. This often failed to account for the considerable differences in the range of wrongdoing by an offender and charged penalties that were significantly out of proportion to the alleged wrongdoing.

The new Act makes the distinction in degree of Customs offenses clearer. It also prescribes new methods for calculating the related penalties for evasion offenses - between 0.5 to 4 times the amounts of duty evaded only. Previously, such fines were calculated as four times the combined price of the good plus duty. The penalty rate for smuggling offenses, however, continues to remain at four times the duty-paid value of the goods, while non-compliance offenses are punishable at up to Baht 500,000.

#### **A. Under Section 242 – 244 of new Customs Act, the penalties are relaxed as follows:**

Smuggling will be subject to: (1) a penalty equal to 4 times the price of the goods (which includes the duty); (2) imprisonment not exceeding 10 years; or (3) both. In addition, the smuggled goods shall be forfeited.

Duty evasion will be subject to: (1) a penalty of 0.5 to 4 times the amount of the duty shortfall; (2) imprisonment not exceeding 10 years; or (3) both. In addition, the goods may be forfeited.

Non-compliance in respect of restricted or prohibited goods will be subject to: (1) a penalty not exceeding 500,000 baht; (2) imprisonment not exceeding 10 years; or (3) both. In addition, the goods may be forfeited.

#### **B. Under Section 202 – 204 of new Customs Act, the penalties are amended as follows:**

A false document declaration will be subject to: a penalty not exceeding 500,000 baht.

Provision of false information will be subject to: (1) a penalty not exceeding 500,000 baht; (2) imprisonment not exceeding 6 months; or (3) both.

Making or using fake or counterfeit Customs documents, stamps, signatures and labels will be subject to: (1) a penalty not exceeding 500,000 baht; (2) imprisonment not exceeding 6 months; or (3) both.

### **Presumed Liability**

The new Act also brings in a significant change to the principle of presumed liability for directors and officers. The previous act did not clearly define managing director, managing partner, and the person responsible for the operation of a juristic person.

### **Import License**

The previous law required importers to have their import license at the time of import, that is, the time the vessel carrying the shipment enters the port. The new Act changes the time of import for restricted goods to the time when the goods are taken out of Customs control.

## **16.2 Investigation**

A Customs officer entrusted by the Director-General shall have the following powers for a benefit of an investigation:

- Enter into a place of business or other places related to a business of an importer, as necessary;
- Arrest an alleged offender without a warrant when a flagrant offence is committed, or there are other grounds under the Criminal Procedure Code in order to deliver the alleged offender to an inquiry officer;
- Seize or sequester an account, a document, an evidence, information or any other article that may be used to prove the offence;
- Issue a summon to an importer, an exporter, a transporter, an agent of such person or a person related to an importation or an exportation of goods to give an oral or a written statement, or submit an account, a document, evidences or other necessary articles.

## **16.3 Appeal**

As the Customs Act 2017 states that a limitation of 180 days has been imposed for the Appeal Commission to conclude on a matter brought before it. The 180 days will run from the date the receipt of the appeal and the complete evidence is received by the Appeal Commission. An extension not exceeding

90 days may be granted. The appealing processes in Thailand Customs are as follows:

- In order to appeal the assessment of the duties of the competent officer, the appellant must file an appeal in writing in the form, stating the reason, the import declaration number, the Evaluation Form, the tax amount and other important things to mention;
- Applicants for appeal must appeal to the Board of Appeal within 30 days from the date of receipt of the assessment form, which will consider the form of postal response as a basis for counting the time;
- Appeal against objection to the assessment of the duties of the competent official needs to submit an original one set on one entry;
- Documents for submission of the appeal: a copy of assessment, a copy of the receipt, a copy of the coupon, a copy of ID card of the appellant, a Copy of other documents (if any).
- If the appeals and objections to the tax assessment have sufficient evidence to consider, Appeals Committee will consider and resolve the dispute;
- Appeal must be completed within 45 days from the date of the first Appeal Committee meeting, unless there are other necessities. Once completed, a written notice of appeal will be issued to the appellant in the manner specified;
- In case of disagreement with the Appeal Judgment of the Appeals Board, appellant who disagrees with the appeal decision of the Appeals Board, the appeal is filed by the court within 30 days of receipt.

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## 17. CUSTOMS IPR BORDER PROTECTION

In view of Thailand's geographic and strategic position for transportation and transition of goods in Southeast Asia as well as the establishment of a "Single Window" for importation of goods into ASEAN, strong and effective Customs procedures have never been so crucial. Whilst there are many ways to enforce IPR, border measures enforcement is indubitably one that should not be put aside by IPR holders.

The new system under the Intellectual Property Rights Coordination Center (IPR Center) requires IPP holders to file for recordation with the Department of Intellectual Property (DIP) if they would like Customs to continue monitoring their trademarks.

### **Record with the Thai Department of Intellectual Property (DIP)**

Following documentary evidence should be submitted together with application:

- A certified copy of the trademark registration certificate or certified copy of the trademark registration official record, which can be obtained from the DIP;
- An original/ certified true copy of the power of attorney when authorizing a person to act on behalf of the trademark owner;
- An original/ certified true copy of the juristic person certificate, issued not more than 6 months from the date of issuance of the certificate, when the owner of the trademark is a juristic person;
- A letter of consent to bear liability from the trademark owner assuming responsibility for any damages that may arise due to the application for protection;
- A sample of the actual trademark label used with the trademark owner's product.

The entire process of recordation will take around 20-30 days to complete and a software program has also been developed by the IPR Center to facilitate the filing of the recordation. The DIP will forward the request to prohibit the importation/exportation of products bearing the counterfeit mark/infringing copyrighted works and all supporting documents to Thai Customs for its records and follow up.

### **Record with Thai Customs**

After 2017, since the Customs procedures are available against counterfeit trademark, pirated copyright goods, and infringement of other IP rights such as designs and patents, filing a copyright or trademark notice and actively cooperating with Thai Customs will help the trademark owners to distinguish counterfeit from genuine goods and increase the chances of IP infringing goods being blocked at the borders.

Even though renewals are not required, it is recommended to regularly update Customs and/or the DIP of any new trademark registrations/copyright works.

### **Detention of Suspected Infringing Goods**

According to Customs Regulations, IP owners must confirm to Customs that the alleged infringing goods are counterfeit/pirated (or not) within 24 hours from the date of detention, failure to which the said goods shall be released to the importer/exporter.

In case the seized goods are counterfeit or pirated, the Customs officers may file a petition against the importer/exporter to the Police on the grounds of violation of the Customs and Trademark/Copyright Act for further investigation and prosecution.

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## **18. AUTHORIZED ECONOMIC OPERATORS (AEO)**

In 1999, Thai Customs launched the Gold Card Scheme for importers/exporters who are with a good record and reliable background, to facilitate import and export procedures. Thai Customs is replacing the Gold Card License with the Authorized Economic Operator (AEO) license effective in 2013, by completing the AEO pilot project for exporter and importer respectively in 2009 and 2012. In January 2014, the AEO Standard Division was established belonging to the Customs Standard Procedures and Valuation Bureau. Since then, MRA in Thailand has been rapidly developed, the number of AEO members in Thailand has soared in a short time and according programs and activities are growing greatly.

### **18.1 General Requirements**

In Thailand, the general requirements to become AEOs are as follows:

- Be a juristic person with paid-up capital of 5 Million Baht for an importer-exporter and 1 million Baht for a Customs broker;
- Have stable financial status based on the profit shown in the financial statement certified by an auditor and submitted to the Ministry of Commerce. In that regard, the applicant's business must

have been profitable for the past 3 accounting years, retrospectively;

- Operate in the import/export or Customs broker business for over 3 years;
- No serious violation of Customs law and Customs-related laws within 3 years.

## 18.2 Application Process

To apply for the AEO status, applicant submits an application form with supporting documents and the completed self-assessment checklist:

- The submitted application form and security profile will be examined to see whether or not they meet AEO requirements;
- Thai Customs conducts an on-site validation visit;
- Thai Customs will notify the applicant of the approval or non-approval of the application within 90 days after the submission of the application form.

## 18.3 AEO Benefits

For those with AEO status, privileges are as follows:

- Privileges for Customs procedures;
- More speedy tax refund and compensation;
- Using a guarantee as a standardized AEO with respect;
- Privileges for legal cases under the conditions specified;
- Exports will be recognized by other Customs administrations upon on MRA;
- Expedited processing for duty drawback, bonded warehouse, Customs Free Zone, etc.;
- Privileges concerning the reduction of time-consuming administrative procedures for minor Customs offences concerning false declarations.

In reference to the department's policy in negotiating the Mutual Recognition Agreement (MRA) with the foreign countries in order to enhance national competitiveness in the international trade and encouraging business units and trading communities in the logistic supply chain to pay their attention to the security measures in the business practice, the Customs, hereby, grant the AEO status to the qualified Customs

brokers so that such Customs brokers can undertake the Customs clearance expeditiously and gain more Customs privileges.

#### 18.4 Monitoring and Evaluation Process

AEO members are required to send financial statements and balance sheets to the AEO Standard Division every year in order to monitor their ability in running the business and ability to pay Customs debt. Re-validations process in every three years to review AEO status of members has been in place.

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### 19. TRADE STATISTICS

Very detailed trade statistics of Thailand could be found at the [website](#) of Ministry of Commerce, which takes charge of collecting and announcing the Foreign Trade Statistics of Thailand based on the processing of original trade data provided by the Thai Customs Department.

Trade statistics of Thailand can also be found at the [website](#) of Thai Customs Department.

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### 20. CONTACT INFORMATION

For further and detailed information relating to Customs clearance procedures, enquiries shall be addressed to the following official contact:

Thai Customs Department

Address: 1, Sunton Kosa Road, Klong Toey, Bangkok, 10110

Tel: +66-2667-6000 / +66 2667 7000

Customs Care Center Tel: 1164 QY

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## 21. OFFICIAL WEBSITES

- [Thai Customs Department](#)
- [Thai Authorized Customs Brokers Association](#)
- [Thailand Ministry of Commerce](#)
- [Fine Arts Department](#)
- [Department of Provincial Administration. Ministry of Ministry of Interior](#)
- [Department of Agriculture](#)
- [Department of Livestock Development](#)
- [Food and Drug Administration](#)
- [Ministry of Industry](#)
- [Excise Department](#)
- [Office of the National Broadcasting and Telecommunications Commission](#)

## REFERENCE

1. <http://www.customs.go.th>.
2. <http://aeo.customs.go.th>.
3. <http://www.oic.go.th>.
4. [www.asean.org](http://www.asean.org).
5. [www.customsdutyfree.com](http://www.customsdutyfree.com).

## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

All information, materials included and views, opinions expressed in this eBook are those of the editors and do not necessarily reflect those of EABC China (also CCPIT) and EABC. In this regard, EABC China (also CCPIT) and EABC would like to reaffirm that this eBook would not be used as any reference for judicial and administrative process.

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# **eBook on East Asia Customs Procedures**

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The Socialist Republic of Vietnam



An EABC Publication



## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## **ACKNOWLEDGEMENTS**

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AEO	Authorized Economic Operator
APEC	Asia and Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASW	ASEAN Single Window
ATIGA	ASEAN Trade in Goods Agreement
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
HS	Harmonized Commodity Description and Coding System
VACCS	Vietnam Automated Cargo Clearance System
MFN	Most Favored Nation
NTSW	National Trade Single Window
PSI	Post-clearance Audit
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Socialist Republic of Vietnam

### 1. INTRODUCTION OF VIETNAM CUSTOMS

Vietnam Customs with the first name as "Department of Tariffs and Indirect Tax" was established under the Ministry of Finance on October 3, 1945. On December 14, 1954, the Minister of Industry and Trade established the Customs Department. From April 16 to 29, 1958, the 8th Session of the first National Assembly decided to separate the Ministry of Trade into two Ministries: Ministry of Internal Trade and the Ministry of Foreign Trade. Central Customs Department was under the Ministry of Foreign Trade. On September 4, 2002, Central Customs Department changed name to the General Department of Vietnam Customs under the governance of Ministry of Finance.

#### 1.1 Missions, Objectives & Functions

Vietnam Customs' missions are as follows:

- Enforcing the effective management over imports & exports activities and international trade, providing favorable conditions to the trade and production development;
- Protecting and contributing to the facilitation of development of national economy;
- Protecting revenues;
- Fighting against smuggling, combat commercial fraud, protecting the interests of consumers;
- Contributing to the protection of economic sovereignty, national security and community security;
- Assisting in socio-economic management.

Vietnam Customs has four major objectives:

- Customs Business Modernization;
- Automation and Computerization;
- Building regular Customs forces;
- Modernization of business equipment and material of the Customs.

Functions of Vietnam Custom are as follows:

- Collection of Customs taxes and duties;
- Collection of other import and export taxes on behalf of other government agencies such as value added tax (VAT), excise tax, and municipal tax;
- Supervision of imports and exports to ensure compliance with relevant laws and regulations;
- Prevention and suppression of smuggling, tax and duty evasion including other Customs offences;
- Promotion of manufacturing and export through tax measures;
- Facilitation of international trade;
- Providing recommendations on tariff policies to the Ministry of Finance by taking into consideration the current economic situation;
- Compilation and publication of export-import statistics and other Customs-related information.

## 1.2 Organizations

Departments under the General Department of Vietnam Customs include the Legal Department, the Personnel and Organization Department, the Inspectorate-Supervise Department and the International Cooperation Department. There are 12 divisions under the General Department of Vietnam Customs as follows:

- Office;
- Personnel and Organization Division;
- Finance and Administration Division;
- Customs Supervision Division;

- Anti-smuggling and Violation Handling Division;
- Import-export Duty Division;
- Customs IT and Statistics Division;
- Inspectorate Division;
- Customs Control Division;
- Anti-drugs Control Division;
- Risk Management Division;
- Post-clearance Audit Sub-department.

### 1.3 Specific Commitments

In recent year, Vietnam Customs has tried to improve their efficiency and made some specific commitments as follows:

#### A. Deadline for Receiving and Registering Declarations

- After 30 minutes at the latest from the time of receiving a declaration, Customs officers are to complete receiving, checking and registering the declaration;
- Except for complicated cases (with more than 10 items of goods); or to respond by producing a technical requirement note for unaccepted declarations or those that need modifying or adding information.

#### B. Deadline for Dealing with Duty Exemption Documents

- Within 10 working days after receiving a sufficient and legitimate duty exemption document, the Customs authority is to solve the document for organizations, individuals.

#### C. Deadline to Solve Difficulties of Clients

- After 5 working days at the latest from the date of receiving clients' written request concerning their difficulties, the Customs authority is to respond in writing;
- In case of over Customs' competence, within 5 working days, the Customs authority is to collect

competent agencies' opinions in writing and inform clients simultaneously. Within 3 working days from the date of receiving the feedback from the relevant agencies, the Customs authority is to answer clients in writing.

#### D. Deadline to Solve Clients' Appeals

- Conforming to the provisions stipulated in the Law on Appeal.

### 1.4 International Memberships

Vietnam is a member and/or signatory party of the following major international organizations and agreements relevant to the governance and regulation of import and export transactions:

- World Trade Organization;
- World Customs Organization;
- International Convention on Harmonized Commodity Description and Coding System (HS Convention);
- ASEAN Harmonized Tariff Nomenclature;
- The International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention);
- The Chemical Weapons Convention (CWC);
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- WTO Trade Facilitation Agreement;
- .....

### 1.5 Resources for Importers and Exporters

The official website of Vietnam Customs (<https://www.customs.gov.vn>) hosted by Vietnam General Department of Customs has been discovered to be the most comprehensive and informative source for clearance procedures in English. While the official websites of Vietnam Ministry of Industry and Trade (<https://moit.gov.vn>) has some information on trade in English, and that of Vietnam National Single Window (<https://vnsw.gov.vn>) has no English version.

---

## 2. CUSTOMS LEGAL SYSTEM

### 2.1 Principal Customs Laws

Law on Customs No. 54/2014/QH13 dated June 23, 2014 and Law on Export and Import Duty No. 107/2016/QH13 dated April 06, 2016, are the principal legislations for the administration of Vietnam Customs.

Especially Law on Customs No. 54/2014/QH13, regulating the state administration of Customs with regard to goods being imported, exported or in transit, and means of transport of domestic and foreign organizations and individuals on exit, entry or in transit within the Customs territory; and regulates the organization and operation of Customs, comprises of 8 Chapters, 104 Articles and comes into effect on 1st January 2015.

The new 2014 Vietnam Customs Law is focusing on Customs procedure reform, modernization of Customs administration, codify international laws on international commitment in order to meet the requirements and facilitate integration beneficial for import and export activities; improve the effectiveness and efficiency of Customs operations management.

### 2.2 Related Laws and Regulations

Vietnam government also proposed a number of implementing Decrees and Circulars that set out Customs Law including:

- Law 05/2017/QH1 on Foreign Trade Management;
- Decree 08/2015/ND-CP on Customs Procedures and Customs Valuation;
- Decree 127/2013 and 45/2016 on Customs Penalties;
- Decree 134/2016/ND-CP on Import and Export Duties;
- Circular 14/2015/TT-BTC on Classification;
- Circular 38/2015/TT-BTC on Customs Procedures, Duty Exemption, Duty Refund, Toll Manufacturing etc.;

- Circular 39/2015/TT-BTC on Customs Valuation;
- .....

Further laws concerning the regulation of trade also includes:

- Law on Commerce;
- Law on Tax Administration;
- Law on Value Added Tax (VAT);
- Law on Special Excise Duty;
- Law on Environmental Protection Tax;
- .....

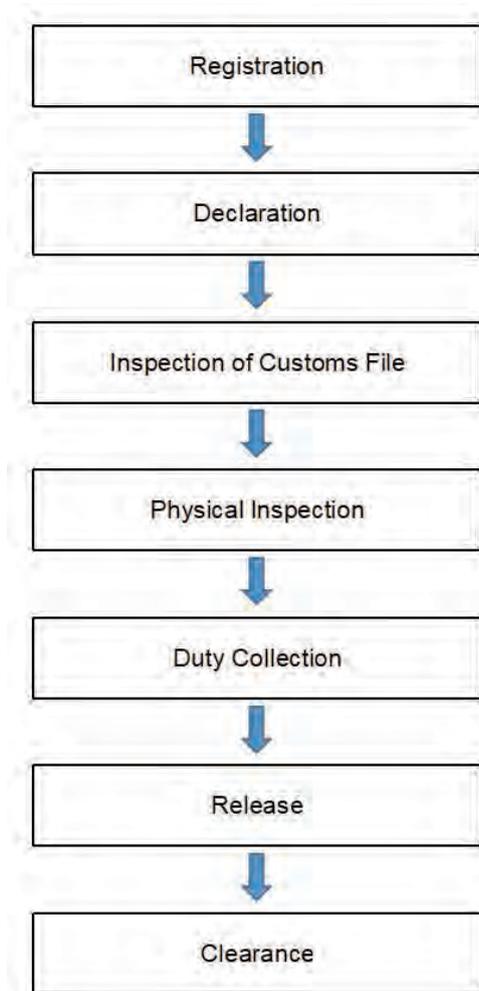
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### 3. CUSTOMS CLEARANCE PROCEDURES

Customs clearance procedures for imports and exports in Vietnam usually include the following 7 steps:

- Registration;
- Declaration;
- Inspection of Customs File;
- Duty Collection;
- Physical Inspection;
- Release;
- Clearance

Figure 1 Customs Clearance Procedures in Vietnam



### 3.1 Registration

A locally established company must register its tax code with a local Department of Tax prior to carrying out any Customs procedures for the import and/or export of goods. A non-resident business may apply to the Ministry of Industry and Trade for a certificate of registration of export and import rights to conduct import or export activities in Vietnam. The application documents must be certified and legalized by an authorized body, this includes overseas diplomatic agencies. A Foreign Direct Investment (FDI) company may import and export machinery, equipment, materials and other goods relevant to its business scope. For the conduct of trading activity and associated import and export transactions, the applicable HS codes of the traded goods must be stated on the investment certificate of the FDI Company.

## 3.2 Declaration

### 3.2.1 Import Declaration

For imports, Customs declaration shall be made before or within 30 days after the date of goods arrival to a border gate. The date of goods arrival to a border gate is the date indicated on the Customs office's stamp appended to the goods declaration (manifest). It is included in the document of means of transport on entry (by sea, air or rail) or the date written on the declaration of means of transport running through the border gate or the mean of transport-monitoring book. The following documents are required to be submitted for import declaration:

- Import Declaration Form (E-Form/HQ / 2015 / NK);
- Bill of Lading;
- Import Permit (for restricted goods);
- Certificate of Origin;
- Cargo Release Order;
- Sales Invoice;
- Inspection Report;
- Packing List;
- Delivery Order (for goods imported through seaports);
- Technical Standard / Health Certificate;
- Terminal Handling Receipts.

### 3.2.2 Export Declaration

When carrying out the declaration of export, since Vietnam Custom promotes to use automatic declaration, the following documents are required to be submitted for export declaration:

- Electronic Export Customs Declaration (E-Form HQ/2015/XK);
- Bill of Lading;
- Contract;

- Certificate of Origin;
- Sales Invoice;
- Export Permit;
- Packing List;
- Technical Standard / Health Certificate.

### **3.2.3 Priority Customs Treatment**

For some emergent import or export Vietnam Customs provides some standards for priority Customs treatment. The standards are as follows:

- Compliance with the law on Customs and taxation from the date on which the enterprise files a priority application for a period of two years;
- Compliance with the law on accounting and auditing and subsequent compliance with Vietnamese Accounting Standards (VAS);
- Maintenance of a system and process for managing, monitoring and controlling import and export supply chains;
- Maintenance of specific export and import turnover requirements. For those importing and exporting, an annual turnover of US\$100 million is required. For those exporting goods made in Vietnam, an annual turnover of just US\$40 million has been set while Vietnamese exporters of agricultural goods are only required to show turnover of US\$30 million.

### **3.2.4 Transit Declaration**

When the goods come to transit, it should follow Customs supervision. Customs procedures of good in transit shall be performed at the Customs office, which manages the temporarily imported Customs branch.

Customs inspection and supervision of goods in transit are as follows:

1. Goods in transit shall be stored in areas of Customs branches or areas which are subject to Customs inspection and supervision in compliance with the provisions of the law.

2. Goods in transit are subject to Customs inspection and supervision from the time that Customs procedures are performed until they are re-exported from the territory of Vietnam; the declarant shall be responsible for maintaining the original state of goods during the process of storage in Vietnam. Besides the declaration form, the declarant for imports for transit should provide the following documents:
  - Commercial Invoice or Contract of Re-export;
  - Bill of Lading or Transport Waybill;
  - Packing List.
  
3. Goods in transit must be re-exported within stipulated time limit. Where temporarily imported goods without re-export are transferred for local consumption, such goods shall be subject to Customs procedures applicable to imported goods; if such goods are included in the list of prohibited goods or goods imported with conditions, the provisions on of the law on such goods shall apply.

### 3.3 Inspection of Customs File

After declaration, the Customs will conduct two inspections, the first one is to inspect Customs file and the second one is duty and tax examination. Customs will verify accuracy, completion and conformity between the information declared in Customs declaration and those in accompanying documents in Customs file, inspect the compliance of the management policies regarding import, export goods, duty and tax, and other regulation of legislation. The inspection of Customs file will be conducted via the electronic database processing systems of Customs or directed by Customs official.

#### 3.3.1 Examination of Customs File

The examination of Customs file should follow the following procedures:

- Examining goods appellations and codes as prescribed in the Vietnam Finance Ministry's circular guiding the classification of imports and exports;
- Examination of goods quality;
- Examination of origin of goods based on the actual state of goods.

### 3.3.2 Duty and Tax Examination

After document inspection, the Customs will implement following duty and tax examination:

- Conditions for application of coercive measures and duty and tax payment time limit as prescribed;
- Grounds used to determine that goods are not liable to duty and tax;
- Grounds used to determine that goods are eligible for duty and/or tax exemption;
- Tax bases used for determining payable duty and tax amounts and calculating payable duty and tax amounts.

## 3.4 Physical Inspection

After document inspection, the Customs will launch the physical inspection for import and export goods. Priority will be given to inspection of such items of goods as which are live animals and plants, perishable or other special goods. The physical inspection of goods will be carried out by Customs officials by using machinery, technical equipment or other technical measures in the presence of the Customs declarant or his legal representative after the Customs file has been registered and the goods have been taken to the site of inspection.

### 3.4.1 Physical Inspections with the Absence of the Declarant

The Head of Customs branch where storing goods shall decide to carry out a physical inspection without the presence of Customs declarant in the following cases:

- For protection of security;
- For protection of hygiene or of the environment;
- There are indications of a breach of the law having been committed;
- Beyond the time limit stipulated for Customs procedures to be completed by Customs declarant;
- Other cases as stipulated by legislations.

### 3.4.2 Exemption of Physical Inspections

Goods to be imported, exported in one of the following categories shall be exempt from physical

inspection:

- Goods of urgent relief;
- Goods of national defense and security;
- Goods of other special categories as decided by Prime Minister of the Government.

### 3.5 Duty Collection

Once a declaration and inspection have been accepted by the Customs, the importers or exporters will be required to pay the duties.

Customs duties assessed on imports are usually determined based upon three main factors:

- The origin of goods;
- The Customs valuation of goods;
- The Customs classification of the imported goods.

After Customs has assessed the duty payable, the importer may pay the duty either in cash, or by a payment order (a bank money order) or online payment. Currency paying duties is Vietnamese Dong; in case foreign currency is permitted to pay duties, foreign currency used must be converted easily. The exchange rates between Vietnamese Dong and foreign currencies used to determine dutiable price shall be the exchange rate published by the State Bank of Vietnam at the time of calculation.

For exports, time-limit for duty payment shall be 30 days from the date the duty payers lodge their Customs declaration. For imported consumer goods, duty payers must pay taxes before receiving their goods; in cases where the payable duty amounts are guaranteed the duty payment time limit shall be guarantee period, but not exceeding 30 days since the duty payers lodge registration of Customs declaration.

### 3.6 Release

Goods permitted to be imported or exported but request of value determination, appraisalment, analysis, classification to define the payable duties shall be released after the duties amount determined by Customs administration being paid by Customs declarant or guaranteed by credit institutions

### 3.7 Clearance

Customs clearance of goods shall be granted after release and the instructions are as follows:

- Customs procedures are completed;
- Exported or imported goods which are applying the time limit for paying tax and guaranteed by a credit institution;
- One of the document of the Customs document is missing but the Director of Sub-department of Customs extends the deadline for submission of the original copy;
- Goods subject to inspection by a specialized agency shall be granted Customs clearance when tax liabilities are fulfilled or a conclusion of the specialized agency or a decision issued by a competent authority with regard to the permitted shipment of imported goods.

---

## 4. SPECIAL CUSTOMS CLEARANCE PROCEDURES

### 4.1 Procedure for Temporary Import for Re-export

Customs procedures for temporary import to re-export are all done electronically, and should follow the following steps:

- The declarant registers, declares the import Customs declaration (temporary import) and presents the Customs dossier, actual goods (when required) to the Customs authority. The Customs office conducts the document inspection, actual inspection of goods (if any) and Customs clearance of goods;
- The declarant registers, declares the export Customs declaration (re-export) and presents the Customs dossier, actual goods (when required) to the Customs office. The Customs office conducts the document inspection, physical inspection of goods (if any) and Customs clearance of goods.

The temporary importer should provide the following documents:

- Declaration Form of imported goods;
- Commercial Invoice in case the buyer has to pay the seller;
- Bill of Lading or other transport documents of equivalent value for goods transported by sea, air, rail, multimodal transport as prescribed by law;
- Import Permit for goods requiring an import license;
- Value declaration: The Customs declarant declares the value of the standard form, sends it to the system in the form of electronic data or submits to the Customs authority;
- Documents certifying the origin of goods;
- Contract of purchase and sale of imported goods;
- For goods of the conditional form of temporary import for re-export according to the Government's regulations: a) The certificate of business code of temporary import for re-export granted by the Ministry of Industry and Trade, b) License for temporary import for re-export granted by the Ministry of Industry and Trade for goods which must be licensed by the Ministry of Industry and Trade.

## 4.2 Procedure for Temporary Admission

Customs requirements for temporary admission are as follows:

- Temporarily imported goods shall be stored in areas of Customs branches or areas which are subject to Customs inspection and supervision in compliance with the provisions of the law;
- Goods temporarily imported for re-export are subject to Customs inspection and supervision from the time that Customs procedures are performed until they are re-export from the territory of Vietnam; the declarant shall be responsible for maintaining the original state of goods during the process of storage in Vietnam;
- Goods temporarily-imported must be re-exported within stipulated time limit. Where temporarily imported goods without re-report are transferred for local consumption, such goods shall be subject to Customs procedures applicable to imported goods; if such goods are included in the list of prohibited goods or goods imported with conditions, the provisions on of the law on such goods shall apply.

### 4.3 Special Order Procedure for Duty-free Shops

Customs procedures for imported goods sold at duty-free shops are all done electronically and follow these steps:

- Traders trading in duty-free goods shall prepare a liquidity file to submit to the Customs office;
- The Customs office receives the dossier and examines it in accordance with regulations;
- The Customs confirms the liquidity of the documents to be paid to traders selling duty-free goods;
- Store documents as prescribed.

The documents for special order procedure for Duty-free Shops are as follows:

- Contract of goods purchase and sale or papers of equivalent legal value;
- Import consignment contract; the goods sale and purchase contract must be in Vietnamese or English version; if it is in another language, the Customs declarer must submit a Vietnamese translation and take responsibility before law for the translation;
- Commercial Invoice;
- Bill of Lading, for goods imported by international post without a Bill of Lading, the Customs declarant shall write the code of the parcel, parcel on the Customs declaration or submit the list of parcels and matters made by the post office;
- A detailed list of goods for goods of many categories or heterogeneous packaging;
- An examination registration certificate or a notice of exemption from inspection or a notice of inspection results issued by a designated technical organization;
- The value declaration of imported goods for goods subject to value declaration according to the Finance Minister's Decision;
- Import permit for goods must have an import license as prescribed by law.

Currently, the Customs processing time for special order procedure for Duty-free Shops is 8 hours after receiving the dossier and related fees and charges is VND 20,000 per declaration.

## 5. VNACCS AND NTSW

### 5.1 Introduction of VNACCS/VCIS

In order to enhance the management and supervision capacity in Customs, in 2014, the Ministry of Finance launched the electronic Customs clearance system - VNACCS/VCIS. The digitalization in Customs has facilitated businesses in goods declaration, helped reduce the time in Customs clearance as well as made Customs management, monitoring and statistics more convenient, transparent and effective.

**VNACCS** standing for Vietnam Automated Cargo and Port Consolidated System is an automated cargo clearance system of Vietnam Customs. VNACCS has become the core system of the Customs sector in implementing import and export goods clearance in Vietnam. Since being put into use, VNACCS has been operated stably with very high performance 99.9%.

**VCIS** standing for Vietnam Customs Intelligence Information System is an automation system of Customs intelligence for risk management and supervision of the operations of Vietnam Customs.

### 5.2 Development of VNACCS

According to the General Department of Customs of Vietnam, VNACCS/VCIS is deployed at the General Department of Customs and local Customs Office (applies nationwide). VNACCS is built on the principle of maximum applicable standards, with introduction of Japanese Customs' experiences to Vietnam. VCIS system built to serve the management of the Customs office (risk management activities) and the import and export of goods.

The process of VNACCS management, business software applications including:

- Software for electronic declarations (e-Declaration);
- Electronic manifest (e-Manifest);
- Electronic invoicing (e-Invoice);
- Electronic payment (e-Payment);
- Electronic Certification of origin (EC/O);

- Electronic Packing List (EP/L);
- Streamline (selectivity);
- Manage risk profiles / risk criteria;
- Export management companies;
- Customs clearance and release of goods, monitoring and control; checking system operation, training people to use the system, technical support and system maintenance.

### 5.3 Procedures by Using VNACCS

#### 5.3.1 Import Procedures

An import declaration must be submitted in advance or within 30 days of arrival, and should be submitted to VNACCS/VCIS. Further supporting documents may also be required to be submitted through VNACCS/VCIS and usually include commercial invoice, inspection reports, value declarations and certificate of origin.

ECUS5VNACCS, a user-end software designed as standardized modern electronic Customs system, fully meets the requirements in Customs processes of the system VNACCS/VCIS funded by Japanese Customs, while remains the typical features of ECUS has been used by agencies.

The system includes a full range of modules:

- Automatic Customs clearance e-Declaration;
- Electronic Payment Transactions e-Payment;
- Invoice Transactions report e-Invoice;
- National Single Window Systems;
- Ship declaration System e-Manifest;
- Shipping declaration System OLA.

#### 5.3.2 Export Procedures

ECUS5VNACCS system also allows businesses to create a new export declaration from the data on goods declared to the Customs by the following operations:

- Declare Invoice (IVA);
- Declare shipping (Manifest);
- Temporary declarations (IDA).
- Enter Goods on declarations;
- Declare the returns in advance;
- Register the official declaration to the Customs (IDC);
- Print declarations and other documents;
- Edit the registered declarations (IDD).

If goods are declared to the Customs by the operations above, one can use the system function with IDB code to get the information of declared goods into the new export declaration paper and receive feedback from the Customs to get flow report and clearance status.

## 5.4 National Trade Single Window (NTSW)

Vietnam introduced its implementation of the National Trade Single Window (NTSW) and presented the status of its connection with ASEAN Single Window. Internally, 11 of 16 Ministries have been connected through NTSW in 2017. Vietnam made a target to fully connect with all other Government agencies and ASEAN members. More importantly, Vietnam expects to establish a legal framework to enable the exchange of electronic documents among APEC Member Economies for the purpose of Customs clearance and release.

Major functions of Vietnam National Single Window (VNSW) can be generalized as follows:

- Customs declarants will make their Customs declaration and submit electronic documents in order to follow Customs and administrative procedures that regulatory agencies stipulate in relation to exports or imports through an integrated information system (hereinafter referred to as national single-window portal);
- Regulatory agencies will receive and handle information provided by Customs declarants; respond with the handling result to Customs declarants; exchange the declared information under administrative procedures and the result of such information with other regulatory agencies through the national single-window portal;

- Customs declarants will receive the handling results from regulatory agencies through the national single-window portal;
- Customs authorities will take a look at the handling result from regulatory agencies to make a final decision about export, import clearance, Customs transit, and respond with their handling result to Customs declarants through national single-window portal.

Vietnam introduced its implementation of the National Trade Single Window (NTSW) and presented the status of its connection with ASEAN Single Window. Internally, 11 of 16 Ministries have been connected through NSW in 2017. Vietnam made a target to fully connect with all other Government agencies and ASEAN members. More importantly, Vietnam expects to establish a legal framework to enable the exchange of electronic documents among APEC Member Economies for the purpose of Customs clearance and release.

Detailed information can be reached from the official website of Vietnam National Single Window (VNSW): <https://vnsw.gov.vn>.

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## 6. CUSTOMS BROKERAGE SERVICE

A Customs broker is the person who makes a Customs declaration under the authorization of another person who is entitled and obliged in performance of Customs procedures in respect of imported or exported goods.

Customs brokerage services are part of the logistics service supply chain, making an important contribution to the chain of cross-border transportation activities. The policy of developing Customs brokers is to create more favorable conditions for the logistics service to grow strongly when the Customs declaration service is professionalized, to shorten time of Customs clearance, and to reduce violations due to the lack of sufficient conditions to study Customs laws and policies on management of import and export goods, thereby reducing the costs related to import and export goods.

According to Article 20 of Customs Law, Customs brokers in Vietnam should fully meet the following conditions:

- To have the business registration certificate which specifies the business in export and import freight forwarding or Customs broker service;
- To have Customs broker staff;
- To have infrastructure of information technology to make online declaration and other conditions as provided by the government.

Article 20 of the Customs Law also stipulates “The Director General of the General Department of Customs shall decide on the recognition, suspension or termination of Customs brokerage activities; the grant of certificates of operation of Customs declaration and the grant and withdrawal of Customs broker identity codes” and “Customs brokers and their staffs shall exercise the rights and perform the obligations of the Customs declarant provided in Article 18 of this Law”.

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## 7. CUSTOMS BOND

A Customs bond is an agreement that ensures any importer will pay all fees and taxes as well as operate according to law and regulations. Businesses will also implement requirements on special check-ups after Customs clearance.

A Customs bond system is also designed to streamline importers’ process for bringing goods into the country. Anyone that is importing goods or transporting them locally is required by the Customs agency to purchase a bond from a surety company. If an importing company fails to pay fees or follow regulations, Customs can file a claim against the bond. The surety company would then pay to make restitution, but in the end the importing company is required to reimburse the surety company.

In Vietnam, Customs bond has not yet been utilized and a new Customs bond model for speeding up clearance of goods is required to deal with Vietnam’s complicated administrative procedures and boost its competitiveness has been suggested and expected for years. In 2018, the Ministry of Finance collaborated with relevant ministries and agencies to review legal regulations to establish a Customs bond

system to facilitate Customs clearance in Vietnam in the period of 2018 and 2019. The pilot project on applying the bond system is expected to be implemented by 2020.

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## 8. PROHIBITION AND RESTRICTION

### 8.1 Prohibitions

According to Decree No.187/2013/ND-CP and Circular No. 34/2013/TT-BCT of the Ministry of Industry and Trade, Vietnam currently prohibits the importation of some products, including weaponry, ammunition, explosive materials, military technical equipment, firecrackers, second-hand consumer goods, types of publications, and cultural products in the category prohibited from dissemination and circulation in Vietnam, right-hand-drive motor vehicles, materials and transport facilities, chemicals, plant protection agents prohibited from use in Vietnam, scrap and waste, refrigerating equipment using C.F.C., products, raw material containing asbestos of the group of amphibole, chemicals on list of prohibited chemicals.

#### 8.1.1 Goods Prohibited to Export

- Arms, ammunition, explosive materials, military techniques equipment and effects;
- Antiquities;
- Drug of all kinds;
- Toxic chemicals;
- Wood logs, timber, preliminarily processed wood of all kinds, rattan materials;
- Wild animals and precious and rare animals and plants.

#### 8.1.2 Goods Prohibited to Import

- Arms, ammunition, explosive materials, military techniques equipment and effects;
- Drug of all kinds;

- Toxic chemicals;
- Reactionary and depraved cultural products;
- Fireworks and children's toy that detrimentally influence personality education, social order and safety;
- Cigarettes (except personal quantitative luggage);
- Used consumer goods (including tailoring products, textile articles, automobile with fewer than 12 seats, two wheel and three - wheel vehicles with motor engine or without motor engine, electrical and electronic house hold appliances), except mobile property and personal quantitative luggage. Some goods that may cause environmental damages and other disadvantages (such as second hand spare parts, used tires, wastes, disposable materials etc.) are also classified as one that prohibited to import;
- Automobiles and other self-moving vehicles with reverse - steering wheel (including detached components and spare parts) except some special types of vehicles and self-moving transportation means subject to limited circulation.

## 8.2 Major Non-tariff Measures

### 8.2.1 Sanitary and Phytosanitary (SPS) Requirements

Vietnam SPS Office, under the Ministry of Agriculture and Rural Development was established under Decision 99/2005 / QD-TTg dated May 5, 2005 by the Prime Minister and acts as a focal point to fulfill the transparency obligations required by the Agreement on the Application of Sanitary and Phytosanitary Measures of WTO.

Vietnam SPS Office is the national focal point for the notification and inquiry on sanitary and phytosanitary measures.

Vietnam SPS Office has a network of technical supports from departments under the Ministry of Agriculture and Rural Development, Ministry of Health, Ministry of Science and Technology, Ministry of Industry and Trade.

Further and detailed SPS requirements can be reached from the official website of Vietnam SPS Office at: [www.spsvietnam.gov.vn](http://www.spsvietnam.gov.vn).

## 8.2.2 Technical Barriers to Trade (TBT) Requirements

Vietnam TBT Office under the General Department of Standards, Metrology and Quality, Ministry of Science and Technology, was established under the Decision No. 365/2003/QD-BKHCH dated March 25, 2003 of the Minister of Science and Technology and its tasks are clearly specified in Decision No. 114/2005/QD-TTg of 26 May 2005 On Establishing and Promulgating the Regulation on Organization and Operation of Vietnam's Network of Notification Authorities and Enquiry Points on Technical Barrier to Trade.

Vietnam TBT Office is the national focal point for the notification and inquiry on standards, technical regulations, conformity assessment procedures and other issues related to technical barriers in trade of Vietnam.

Vietnam TBT Office has a network of technical supports from departments under the Ministry of Industry and Trade, the Ministry of Transport, the Ministry of Agriculture and Rural Development, the Ministry of Labor, War Invalids and Social Affairs, the Ministry of Natural Resources and Environment, the Ministry of Information and Communications, the Ministry of Construction, the Ministry of Health and the Ministry of Culture, Sports and Tourism.

Further and detailed TBT requirements can be reached from the official website of Vietnam TBT Office at: [www.tbt.gov.vn](http://www.tbt.gov.vn).

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## 9. DUTIES AND TAXES

### 9.1 Major Duties and Taxes

Most goods imported into Vietnam are subject to Import Duty and other taxes. Duty rates vary, depending on the type of the product imported and consumer goods, especially luxury goods such as cars, alcohol, and cigarettes face higher import duties than raw materials, equipment, and machinery that are used for manufacturing. Export Duty is only charged on a few commodity items.

Major duties and taxes collected by Vietnam Customs include:

- Import Duty;
- Export Duty;
- Value-added Tax (VAT);
- Special Consumption Tax (SCT);
- Environmental Protection Tax (EPT).

Also Customs clearance fees are chargeable at import and export. The average cost is US\$1 per declaration form.

### 9.1.1 Import Duty

Import duties are to be paid before Customs clearance as goods won't be released otherwise. The rates applicable are dependent on the origin of the goods (certificate of origin will need to be presented) and there are three categories:

- Preferential rates – applicable if the country has a Most-favored Nation (MFN) status with Vietnam;
- Special preferential rates – applicable if there is a special preferential trade arrangement (e.g. ASEAN member states);
- Ordinary rates – for any other country.

Calculation formula for Import Duty is:

*Import Duty = [Total value of imported products + SCT (if any) + EPT (if any)] x Import Duty rate.*

The rates applicable can be identified on the tariff database on the website of Vietnam Customs, and import duties must be paid before receipt of goods.

### 9.1.2 Export Duty

Export duties are charged only on a few items, basically natural resources such as sand, chalk, marble, granite, ore, crude oil, forest products, and scrap metal. Rates range from 0% to 40%. The duty base for computation of export duties is the FOB/Delivered at Frontier price, i.e. the selling price at the port

of departure as stated in the contract, excluding freight and insurance costs. Export duties must be paid within 30 days of registration of Customs declarations.

Calculation formula for Export Duty is:

$$\text{Export Duty} = \text{Total value of exported products} \times \text{Export Duty rate.}$$

### 9.1.3 Value-added Tax

In addition to Import Duty, goods brought to Vietnam are also subject to Value-added Tax (VAT). VAT rates are either 0%, or 5% or 10%, with 10% being the most common rate. Certain products, e.g. goods that are necessary but cannot be produced in Vietnam can even enjoy VAT exemption.

The calculation formula of VAT is:

$$\text{VAT} = (\text{Total value of the imported products} + \text{Import Duty}) \times \text{VAT rate}$$

### 9.1.4 Special Consumption Tax (SCT)

Other than Value-added Tax, Vietnam also levies a Special Consumption Tax (SCT) which is applicable to goods and services classified as luxury. Special Consumption Tax, or also known as the “Luxury Tax” applies to certain imported goods, e.g. alcoholic beverages, tobacco products, and petroleum products. Special Consumption Tax rates range from 10% to 75%. Goods and services subject to the Special Consumption Tax are also subject to the VAT. Special Consumption Tax on imports is calculated on the basis of price of taxable import plus import duties plus VAT.

The calculation formula of SCT is:

$$\text{SCT} = \text{Value of Special Consumption Goods} \times \text{SCT rate.}$$

Below are the Special Consumption Tax rates in Vietnam:

*Table 1 SCT Rates in Vietnam*

Product	Rate
Cigar/cigarette	70%
Spirit/wine With ABV $\geq$ 20°	55%

Product	Rate
Spirit/wine With ABV < 20°	30%
Beer	55%
Petrol	7 to 10%
Playing cards	40%
Golf	20%
Lottery	15%
Votive paper	70%

### 9.1.5 Environmental Protection Tax (EPT)

Environment Protection Tax (EPT) is applicable to the production and importation of certain goods deemed detrimental to the environment, the most significant of which are petroleum and coal. According to the Law No. 57/2010/QH12, goods such as plastic bags, gasoline, coal, etc. are subject to the Environmental Protection Tax. EPT rates are calculated based on specific basis.

The calculation formula of EPT is:

$$EPT = \text{Quantity of taxable goods} \times EPT \text{ rate}$$

Specified rates for EPT are listed in the following Table.

Table 2 Specified rates for EPT.

No	Goods	Calculation Unit	Tax Rate
I	Gasoline, oil, grease		
1	Gasoline, except ethanol	Liter	1.000-4.000
2	Aircraft fuel	Liter	1.000-3.000
3	Diesel oil;	Liter	500-2.000
4	Petroleum	Liter	300-2.000

No	Goods	Calculation Unit	Tax Rate
5	Fuel oil	Liter	300-2.000
6	Lubricants	Liter	300-2.000
7	Grease	kg	300-2.000
II	Coal		
1	Lignite	Ton	10.000-30.000
2	Anthracite Coal (anthracite)	Ton	20.000-30.000
3	Fat coal	Ton	10.000-30.000
4	Other coal	Ton	10.000-30.000
III	Hydrogen-chlorofluorocarbon liquid (HCFC).	Ton	1.000-5.000
IV	Taxable-plastic bag	Ton	30.000-50.000
V	Herbicide which is restricted from use	Ton	500-2.000
VI	Pesticide which is restricted from use	Ton	1.000-3.000
VII	Forest product preservative which is restricted from use	kg	1.000-3.000
VIII	Warehouse disinfectant which is restricted from use	kg	1.000-3.000

### 9.1.6 Preferential Duty Rates

Import duty rates are classified into 3 categories: ordinary rates, preferential rates and special preferential rates.

Preferential rates are applicable to imported goods from countries that have Most Favored Nation (MFN, also known as Normal Trade Relations) status with Vietnam. The MFN rates are in accordance with Vietnam's WTO commitments and are applicable to goods imported from other member countries of the WTO.

Special preferential rates are applicable to imported goods from countries that have a special preferential trade agreement with Vietnam. Currently effective free trade agreements (FTA) to which Vietnam is a party include FTAs between ASEAN member states, between ASEAN members and Japan, ASEAN and China, ASEAN and India, ASEAN and Korea, ASEAN and Australia - New Zealand, Vietnam and Japan, Vietnam and Chile, Vietnam and Korea, Vietnam and Eurasian Economic Union (Vietnam and the Customs Union of Russia, Belarus, Kazakhstan).

Vietnam has also concluded two important agreements, the European Union FTA (EFTA) and Trans-Pacific Partnership (TPP – although its future is uncertain given the US withdrawal). In addition, Vietnam is negotiating other agreements including the Regional Comprehensive Economic Partnership (RCEP), and FTAs between ASEAN and Hong Kong, and with Israel.

To be eligible for preferential rates or special preferential rates, the imported goods must be accompanied by an appropriate Certificate of Origin. When goods are sourced from non-preferential treatment/non-favored countries, the ordinary rate (being the MFN rate with a 50% surcharge) is imposed.

### 9.1.7 Calculation Method for Import Duty and Export Duty

According to practical quantity of each article on the Customs declaration, their dutiable values, and duty rates, the amount of Import Duty, Export Duty payable shall be calculated as follows:

$$\text{Import Duty, Export Duty payable} = \text{Quantity of each article written on the Customs declaration} \times \text{Dutiable value of a unit of goods} \times \text{Duty rate on each article}$$

Import Duty on crude oil or natural gases shall be calculated in accordance with instructions of the Ministry of Finance on taxes incurred by entities engaged in petroleum exploration and extraction as prescribed by the Law on Petroleum;

If the practical quantity of exported or imported goods is different from the commercial invoice because of their nature and such difference is conformable with the delivery terms and payment terms of the sale contract, the export duty, import duty payable shall be calculated according to the practical payment for the goods and tax rate on each article.

## 9.2 Duty Exemption

Exports or imports in the following cases may be considered for export duty or import duty exemption in Vietnam:

### 9.2.1 Import Duty Exemption

Import Duty can be exempted in Vietnam when:

- Imports being special-use goods directly used for security and defense which are on specific lists approved by line ministries and registered with the Ministry of Finance right from the beginning of the year (the deadline for annual registration of import plans by line ministries is March 31);
- Imports being special-use goods directly used for scientific research which are on a specific list approved by the line ministry;
- Imports being special-use goods directly used for education and training which are on a specific list approved by the line-managing ministry;
- Goods valued at up to VND 30 million which are given as gifts or donated by overseas organizations and individuals to Vietnamese organizations;
- Goods given as gifts or donated by overseas organizations and individuals to Vietnamese individuals, which are valued at up to VND 1 million or at more than VND 1 million but their total payable tax amount is less than VND 50,000;
- Goods permitted to be imported into Vietnam by overseas organizations and individuals as prizes for sport, cultural or artistic competitions, and valued at up to VND 2 million each (for individuals) or VND 30 million (for organizations);
- Sample goods sent by overseas organizations and individuals to Vietnamese organizations and individuals valued at up to VND 30 million for organizations or VND 1 million, for individuals.

### 9.2.2 Export Duty Exemption

Export Duty can be exempted in Vietnam when:

- Goods of domestic organizations and individuals allowed for export as gifts or donations for overseas organizations and individuals;

- Goods allowed for export of overseas organizations and individuals which are given as gifts or donations by domestic organizations and individuals during the former's working periods, tourist stays or visits to their relatives in Vietnam;
- Goods of domestic organizations and individuals allowed for export to participate in trade fairs or exhibitions or for advertisement, then to be used as gifts or donations for overseas organizations and individuals;
- Organizations and individuals sent by the State to work or study overseas or Vietnamese tourists on foreign tours may enjoy, apart from personal luggage quotas applicable to persons on exit, export duty -exempt quotas for goods they carry along for use as gifts or donations for foreign organizations and individuals;
- Sample goods sent by domestic organizations and individuals to overseas organizations and individuals.
- Goods being gifts, donations or sample goods valued at up to VND 30 million, for organizations considered for export duty exemption;
- Goods being gifts, donations or sample goods valued at up to VND 1 million, for individuals, or valued at more than VND 1 million with their total payable tax amount of less than VND 50,000 are exempt from export duty (exempt from procedures for export duty exemption consideration).

### 9.3 Duty Refund

Duty refund shall be considered in Vietnam in the following cases:

- An entity imports materials/supplies for manufacturing of goods for export or hires domestic contract manufacturers in manufacturing goods to be exported and receive products for export;
- An entity imports materials/supplies to manufacture goods for sale in Vietnam, but then uses them to manufacture goods to be exported;
- An entity actively imports materials/supplies to perform a processing contract for manufacturing goods to be exported;
- An entity imports materials/supplies to manufacture certain products, then sell such products (whether finished products or unfinished products) to another entity for further processing;
- The products made of imported materials/supplies are parts, components of exported knock-down kits;

- In case an entity imports materials/supplies to manufacture products that are sold to a foreign trader who requires that goods be delivered to another entity in Vietnam, the import tax on materials/supplies used for manufacturing of goods for export shall be refunded.

## 10. HS CLASSIFICATION

### 10.1 Tariff

In accordance with the Law on Customs, a notification was issued to regulate the classification of imported goods in Vietnam. The classification, or legal description, is based upon the goods classification under an international tariff nomenclature, the Harmonized Commodity Description and Coding System (2017), or “HS”, an international agreement administered by WCO version is at 6 digit level, the ASEAN AHTN 2017 version is at 8 digits level while VIETNAM's 2017 national version at 10 digits level.

The 2017 Vietnam Customs Tariff is organized in 21 Sections, which are divide into 98 chapters of as usual but bearing 10 tariff rate bands which is reduced from previous 15 tariff rate bands as follows.

*Table 3 Classification of HS Code in VIETNAM*

HS Group 1 (Chapter 1-49)		HS Group 2 (Chapter 50-83)		HS Group 3 (Chapter 84-98)	
1	Live animal	1	Textile	1	Heavy machines
2	Foodstuff	2	Footwear, headwear	2	Electrical goods
3	Chemical	3	Ceramic products	3	Medical appliance
4	Medicines	4	Glassware	4	Vehicles
5	Plastic	5	Hardware (Base metal & articles)	5	Furniture

HS Group 1 (Chapter 1-49)		HS Group 2 (Chapter 50-83)		HS Group 3 (Chapter 84-98)	
6	Paper			6	Special Classification Provisions
7	Rubber				

## 10.2 General Rules for the Interpretation of the HS

One commodity item must have a single code according to Vietnam's List of Exports and Imports. The classification of exports and imports must comply with:

- Harmonized Commodity Description and Coding Nomenclature of the World Customs Organization (HS Nomenclature) comprises headings (with a four-digit code), subheadings (with a six-digit code) and legal notes of Sections, Chapters and subheadings which are systematically corresponding to names, description and codes of goods;
- ASEAN Harmonized Tariff Nomenclature (AHTN) is a commodity nomenclature adopted by ASEAN countries based on the HS of the World Customs Organization.

If it is impossible to identify a single code according to Vietnam's List of Exports and Imports, the following documents shall be used:

- Explanatory notes of the HS Nomenclature;
- Compendium of classification opinions of WCO;
- Supplementary explanatory notes of the AHTN;
- Database on Vietnam's List of Exports and Imports.

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## 11. CUSTOMS VALUATION

Vietnam Customs has implemented the WTO Agreement on Customs Valuation in 2016. The WTO Agreement requires the use of the “price paid or payable” (contract price) as the primary valuation methodology. Vietnam’s current and main valuation approach is to use 6 methods: the CIF invoice price of the goods, sales contracts, insurance information, internet prices, similar prices and other recorded prices. On April 18, 2019, Vietnam Customs held the first meeting on the revised contents of the draft Circular amending and supplementing Circular 39/2015/TT-BTC on Customs value of imported and exported goods.

Customs valuation should be made at the same time the Customs declaration for imported goods is registered with the Customs agencies. The Customs valuation shall be computed in Vietnamese Dong. The exchange rate for determining the Customs value of imported goods is an average exchange rate of the inter-banks foreign currency market announced by the State Bank of Vietnam.

The primary basis for Customs value under the regulations is “transaction value”, which is defined as the price actually paid or payable for the goods when sold to export to Vietnam adjusted compulsorily including (or excluding) certain payments specified in the regulations in (or from) such price.

The following methods of determining the Customs value will be alternately applied where the Customs value cannot be determined on the basis of the transaction value of imported goods:

- Transaction value method with identical goods: Comparison with the price of identical goods imported into Vietnam within 60 days before or after the date of delivery.
- Transaction value method with similar goods: Comparison with the price of similar goods imported into Vietnam within 60 days before or after the date of delivery.
- Deductive value method: Calculation of the price of imported goods based on the resale price of similar products after the deduction of reasonable expenses.
- Computed value method: Calculation of the price of imported goods based on material costs, production expenses and profits.
- Fall-back method: Combined or modified version of the above methods.

## 12. RULES OF ORIGIN

Rules of Origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

In Vietnam, Rules of Origin are stipulated in Decree No. 19/2006/ND-CP providing detailed guidelines on the Law on Commerce on Origin of goods, Circular No. 07/2006/TT-BTM guiding the procedures for issuance and management of the Certificate of Origin and some other sub-law documents.

### 12.1 Origin of Goods

According to Decree No. 19-2006-ND-CP, Origin of Goods means the country or territory where goods were entirely manufactured, or in the case of goods for which a number of countries or territories participated in the manufacturing process where the final, fundamental processing stage was implemented.

### 12.2 Rules of Origin

In Vietnam, rules of origin are categorized into preferential rules of origin and non-preferential rules of origin.

#### 12.2.1 Preferential Rules of Origin

Preferential rules of origin means rules of origin applicable to goods the subject of an agreement granting them preferential tariff or non-tariff treatment, mainly including preferential rules of origin pursuant to international treaties and preferential rules of origin pursuant to a regime on common tariff preferences and other unilateral preferences.

- Preferential rules of origin pursuant to international treaties: A determination of the origin of import or export goods for the purposes of entitlement to the regime granting them preferential tariff or non-tariff treatment shall be made in accordance with international treaties of which Vietnam is a member and related legal instruments providing regulations for detailed implementation of such treaties.
- Preferential rules of origin pursuant to a regime on common tariff preferences and other unilateral

preferences: A determination of the origin of export goods for the purposes of entitlement to a regime granting them common tariff preferences and other unilateral preferences shall be made in accordance with the rules of origin of the importing country which grants such preferences.

### **12.2.2 Non-preferential Rules of Origin**

Non-preferential rules of origin means rules of origin applicable to goods outside those stipulated in clause 2 of this article and to which non-preferential commercial measures apply regarding most favored nation treatment; or to which anti-dumping, anti-subsidy or self-protective measures apply; or to which restrictions on quantity or volume apply; or to which tariff quotas apply; and means rules of origin used for Government procurement and trade statistics.

For non-preferential rules of origin, goods shall be deemed to have a country of origin when they belong to one of the following categories:

- Having a single country of origin;
- Having multiple countries of origin.

#### **A. Single Country of Origin**

According to Article 7 of Decree No. 19-2006-ND-CP, goods having a single country of origin as stipulated in article 6.1 of this Decree shall be recognized as originating from one country or territory when they fall into one of the following categories:

- Plants and products of plants harvested in that country or territory.
- Living Animals which were born and raised in such country or territory.
- Products from the living animals stipulated in clause 2 of this article.
- Products obtained by shooting, laying snares, catching, cultivating, gathering or hunting in such country or territory.
- Minerals and other natural objects which are generated, which are not listed in clauses 1 to 4 inclusive of this article, and which are extracted or taken from the land, water, ocean floor or sea of such country or territory.
- Products taken from water, ocean floor or sea outside the territorial waters of a country or territory

when such country or territory has the right pursuant to international law to exploit such water, ocean floor or sea.

- Products caught and other aquaculture products taken on the high seas by a vessel which is registered with such country and which is permitted to fly the national flag of such country.
- Products which are immediately processed or made on board vessels from the products stipulated in clause 7 of this article when such vessels are registered with such country or territory and when such vessels are permitted to fly the national flag of such country or territory.
- Objects which are in such country or territory but which are not able to perform their initial function, are unable to be repaired or restored, and are only able to be discarded or used as raw materials or recycled.
- Goods made or produced from the items stipulated in clauses 1 to 9 inclusive of this article in such country or territory.

## **B. Multiple Countries of Origin**

According to Article 8 of Decree No. 19-2006-ND-CP, goods having a multiple country of origin as stipulated in article 6.2 of this Decree shall be recognized as originating from multiple countries or territories when they fall into one of the following categories:

- Goods having multiple countries of origin as stipulated in article 6.2 of this Decree shall be recognized as having one country or territory of origin namely the country or territory which carried out the final, fundamental processing stage which fundamentally changed such goods.
- The "change of goods' code number" criterion shall be the main criterion to determine whether there has been a fundamental change of goods as stipulated in clause 1 of this article.
- The "ad valorem" criterion and the "goods manufacturing or processing operation" criterion shall be taken as additional criteria or replacement criteria when verifying a fundamental change of goods.
- The Ministry of Trade shall promulgate a list of goods using the ad valorem criterion and a list of goods using the goods manufacturing or processing operation criterion as stipulated in clause 2 of this article.

## **C. Simple Manufacturing or Processing Operations**

According to Article 9 of Decree No. 19-2006-ND-CP, the following manufacturing and processing

operations, when they are carried out individually or in combination with each other, shall be deemed to be simple and shall not be taken into consideration when making a determination of country of origin of goods:

- Work of preserving goods during the process of transportation and storage (ventilating, unwinding, drying, refrigerating, pickling in salt, steaming in sulphur or other additives, extracting damaged parts and other similar work).
- Work such as dusting, screening, selecting, classifying (including grading into sets), wiping, painting and separating each item.
- Changing packaging and wrapping, and dismantling or assembling a consignment; bottling, wrapping, placing in cans or tins and other simple work of packing or wrapping.
- Affixing onto products or wrapping products with trademarks, labels or other similar distinguishing signs.
- Simple blending of a product, including blending different components of the product if one or more of such components making up the overall structure of the product do not satisfy the stipulated conditions to be deemed as originating from the country where such work was carried out.
- Simple work of assembling sections of a product in order to create the one final product.
- A combination of two or more of the work stages listed in clauses 1 to 6 inclusive of this article.
- Slaughtering animals.

#### **D. Determination of Country of Origin of Packaging, Peripheral Parts, Accessories, Tools, and Goods not yet Assembled or Dismantled**

Article 10 of Decree No. 19-2006-ND-CP stipulates the determination of country of origin of packaging, peripheral parts, accessories, tools, and goods not yet assembled or dismantled as follows:

- Materials used to wrap and pack and the wrapping and packaging raw materials of goods shall be deemed to have the same country of origin as the goods contained in such wrapping and packaging where such materials are commonly used at the retail stage.
- Documents introducing goods and instructions on use; peripheral parts, accessories and tools which accompany goods in appropriate quantities shall also be deemed to have the same country of origin as such goods.

- With respect to goods which have not yet been assembled or which are in a state of being dismantled and which are imported via a number of journeys due to transportation or manufacturing conditions which do not allow them to be imported in the one journey, the country of origin of the goods on each journey shall be deemed to be the same country of origin if the importer so requests.

### 12.3 Certificate of Origin (C/O)

According to Decree No. 19-2006-ND-CP, Certificate of Origin (C/O) of goods means the written document specifying the origin of goods issued by an organization belonging to the country or territory which exported such goods and issued on the basis of regulations and requirements relating to origin of goods.

The importer must submit the C/O to Customs authority by the time he makes registration procedures for the Customs declaration form in the following circumstances:

- Goods originating in countries or groups of countries offered preferential import tariff and non – tariff treatment by Vietnam pursuant to the Vietnamese laws or relevant international treaties that Vietnam is a member which importers desire to enjoy such preferences.
- Goods originate from those countries to which Vietnam has granted the most favored nation (MFN) treatment on a reciprocal or unilateral basis. In case of not having C/O, the importing trader must commit that the goods originate from such countries and the importing trader must be responsible before the law for the accuracy and truthfulness of their commitments.
- Goods under import management regimes pursuant to the Vietnamese laws or bilateral or multilateral international treaties which Vietnam and foreign countries, groups of countries are members.
- Goods that are likely to cause harm to the community health or environmental hygiene, as the Vietnamese Government or international organizations announced at a specific time.
- Goods imported from the countries that are being imposed anti-dumping duties, anti-subsidizing duties, and other safeguard measures, Customs quotas and quantitative restrictions, as the Vietnamese Government announced at a specific time.

## 13. CUSTOMS PRIOR DETERMINATION

According to Circular No. 128/2013/TT-BTC of Ministry of Finance of Vietnam, Customs' prior determination on tariff classification, origin of import, export goods and Customs valuation in Vietnam are as follows:

### 13.1 Prior Determination on HS Codes

Prior determination on HS codes of exported goods and imported goods shall be carried out before the Customs procedure is initiated at the request of the applicants.

#### 13.1.1 Application Materials for Prior Determination on HS Codes

Application materials for prior determination on HS code include:

- Written request for prior determination of HS codes (the form No. 01/XDTMS/2013): 1 original copy;
- Contract with the foreign party to sell the goods being applied for prior determination of HS codes: 1 photocopy;
- Technical document describing in details the composition, properties, structure, features, and operation of the goods: 1 original copy;
- Catalogue or image of the goods: 1 photocopy;
- Goods samples if requested by the Customs authority;
- Manifest of documents in the application for prior determination of HS codes: 1 original copy.

#### 13.1.2 Procedure for Prior Determination on HS codes

The applicant for prior determination of HS codes shall:

- Complete the form of application for prior determination on HS codes (the form No. 01/XDTMS/2013);
- Submit the sufficient application for prior determination on HS codes specified in Clause 2 of this Article to the Customs Department of the province or city where Customs procedures are follow at

least 90 days before the date of export or import;

- Provide information and documents to clarify the application for prior determination of HS codes to the Customs Department of the province (hereinafter referred to as Customs Department) or the General Department of Customs at their request;
- Notice the Customs Department within 10 days if any change in the goods is made, specifying the reasons and date of such change;
- Request the General Department of Customs to grant an extension of the notification of result of prior determination of HS codes when it expires, provided the information, documents, goods samples and laws related to prior determination of HS codes are not changed.

### 13.2 Prior Determination on Valuation

The method for determining the dutiable prices, additions, deductions of exported goods and imported goods shall be determined in advance in Vietnam if the applicant that requests the prior determination on valuation has not exported or imported the exact same goods.

The applicant for prior determination on valuation shall:

- Fill the application form for prior determination on valuation (the form No. 04/XDTTG/2013);
- Submit the sufficient application for prior determination of value to the Customs Department where they intend to follow the Customs procedures at least 90 days before the export or import; the documents are follows:
  - 1 original copy of the written request for prior determination on value (the form No. 04XDTMS/2013);
  - 1 photocopy of the sale contract that is directly executed by the applicant;
  - 1 photocopy of every technical documents, image or catalogue;
  - 1 photocopy of every document appropriate for the application for prior determination of value: 1 photocopy, such as:

For imported goods:

- Documents proving that special relationships do not affect the value;

- Documents related to the amounts paid by the buyers that are not included in purchase prices on the invoice;
- Documents related to the additions;
- Documents related to the deductions;
- Other documents related to the goods applied for prior determination of value (if any).

For exported goods:

- Relevant documents when the actual sale prices that are not FOB or DAF prices at the checkpoint of export;
- Other documents related to the goods applied for prior determination of value (if any).

### 13.3 Prior Determination on Origins

The prior determination on origins is applicable to imported goods and an application for prior certification of origins consists of:

- 1 original copy of the written request for prior certification on origins (the form No. 07/XDXX/2013);
- 1 original copy of manifest of raw materials used for the manufactures of goods including the information such as names, codes of goods, origins of raw materials, composition of the products, CIF prices or equivalent prices of raw materials based on the information provided by the manufacturer or exporter;
- 1 photocopy of the description of the production process or the certificate of composition analysis issued by the manufacturer;
- 1 copy of the catalogue or image of the goods;
- Goods samples if requested by the General Department of Customs.

## 14. FREE TRADE AGREEMENTS

Vietnam is a member of ASEAN and subsequently, a member of ASEAN Free Trade Area (AFTA). As part of AFTA, ASEAN members are committed to making this region a competitive trading area.

Together with the ASEAN countries, Vietnam has also signed trade agreements with China - ASEAN-China Free Trade Agreement (ACFTA), the Republic of Korea - ASEAN-Korea Free Trade Agreement (AKETA), Australia and New Zealand - ASEAN-Australia and New Zealand Free Trade Agreement (AANZFTA), India - ASEAN-India Free Trade Area (AIFTA) and Japan - The ASEAN-Japan Comprehensive Economic Partnership (AJCEP).

Vietnam has signed a bilateral trade agreement with Korea, Chile and Japan, as well as a trade agreement with the Russian-led Customs Union block. Vietnam has also signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) on March 8, 2018 and the European Union Vietnam Free Trade Agreement (EVFTA) was signed on June 30, 2019.

Vietnam is currently negotiating a Free Trade Agreement with the EFTA countries including Norway, Iceland, Liechtenstein, and Switzerland.

### 14.1 AFTA

Vietnam is a member of the ASEAN Free Trade Area (AFTA) which aims to support local production within ASEAN member states, which means that import duties for certain products imported from other ASEAN countries vary between 0%-5%. However, most of these goods are free from import duty.

### 14.2 AANZFTA

ASEAN, Australia and New Zealand signed the ASEAN-Australia and New Zealand Free Trade Agreement (AANZFTA) on February 2, 2009, and it was enforced on January 1, 2010.

AANZFTA aims to facilitate economic and trade activities between Australian and New Zealand investors and Vietnam. The current tariff schedule, detailed in Decree 158/2017/ND-CP, is effective from 2018-2022.

By 2018, 86% of the tariff lines were exempt from tax, including confectionery, garment and garment accessories, computers, electronic products and accessories, corn, machines and equipment. Moreover, the goal is to abolish import tax on 92% of the products imported to Vietnam under AANZFTA by 2022.

### 14.3 AIFTA

AIFTA stands for ASEAN-India Free Trade Area. In 2003, ASEAN and the Republic of India signed the Framework of Comprehensive Economic Cooperation Agreement (CECA) and the final agreement in 2009. The AIFTA took effect on January 1, 2010.

Consequently, Vietnam has set specific import duty schedule for India for the period of 2018-2022, as stated in Decree 159/2017/ND-CP. In 2018, 59% of the tariffs were eliminated and by 2024, Vietnam aims to cut import taxes on 80% of the products imported from India.

### 14.4 AJCEP

The ASEAN-Japan Comprehensive Economic Partnership (AJCEP) was signed and enforced in 2008. This Partnership covers trade in goods and services, investment, and economic cooperation.

Vietnam announced the special preferential import tariff schedule 2018-2023 for Japanese exporters in Decree 160/2017/ND-CP. By 2018, Vietnam abolished taxes on 62.2% of the total product lines, including plastic materials and chemicals, machinery and equipment, tools and spare parts, computers and electronic products, various textile materials, medicine. Furthermore, the percentage will rise to 88.6% of the whole tariff list by 2025.

### 14.5 ACFTA

ACFTA stands for ASEAN-China Free Trade Area. The initial framework was signed in 2002 and the Comprehensive Economic Cooperation Agreement (CECA) of ASEAN and China came into effect on January 1, 2006.

ACFTA allows investors from China to engage in trade with Vietnamese partners and benefit from favorable import tariffs stated in the import tariff schedule. As per Decree 153/2017/ND-CP, the current special preferential tax schedule applies for the period of 2018-2022. In addition to duty eliminations,

Vietnam will also reduce import duty on sensitive products imported from China such as electric appliances and processed agricultural products to 5% by 2020.

## 14.6 AKFTA

AKFTA stand for ASEAN-Korea Free Trade Area. Vietnam, as a member of ASEAN, also entered Free Trade Agreement with Korea in 2005. Vietnam released the import tariff schedule for AKFTA in Decree 157/2017/ND-CP, effective from January 1, 2018. The current tariff table applies for the period of 2018-2022. By 2018, Vietnam eliminated import taxes on 86% of all the products in the list and the new tariff schedule lifted import taxes on over 700 additional products.

## 14.7 VCFTA

Vietnam and Chile have signed a Free Trade Agreement (VCFTA), which took effect in January 2014. Unlike other Vietnam trade agreements that also target other economic activities, VCFTA only includes the trade of goods. In accordance with the VCFTA, Vietnam will eliminate around 88% of tariff rates for 15 years starting from 2016, creating excellent opportunities for Chilean investors to explore and conduct business in the Vietnamese market.

## 14.8 VJEPA

Vietnam and Japan signed the Vietnam-Japan Economic Partnership Agreement (VJEPA) in 2008, and it took effect in 2009. Currently, the special preferential import tariff schedule for 2015-2019 is in force. It was announced in Circular No.25/2015/TT-BCT on February 14, 2015, and states tariff rates for each year separately, ultimately aiming to cut taxes on 90% of the products.

## 14.9 VKFTA

In addition to AKFTA, Vietnam and the Republic of Korea have also signed a Vietnam-Korea Free Trade Agreement (VKFTA). The latter one provides more preferences on goods, services, and investments than AKFTA, including duty eliminations on products such as electronic components and automotive parts, textile and garment and electrical appliances.

The VKFTA does not replace the AKFTA and these two agreements are in effect simultaneously.

Therefore, Korean investors have the advantage of choosing the preferable agreement to take the maximum benefit from duty reductions.

#### **14.10 VEEUFTA**

In May 2015, Vietnam and the Eurasian Economic Union (EAEU) including Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia signed the Vietnam-Eurasian Economic Union Free Trade Agreement. The agreement took effect in 2016, and Vietnam aims to reduce import tariffs on 90% of products. This agreement eliminates tax on products such as agricultural commodities (immediately), electrical and agricultural machinery (after 3-5 years from the enforcement of the agreement), pork and chicken (after five years), alcoholic beverages and cars (after ten years from the enforcement of the agreement).

#### **14.11 CPTPP**

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) was signed on March 8, 2018, and it took effect on January 14, 2019. The agreement includes 11 members: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

Participating countries agreed to remove almost all import duties according to schedule, creating more opportunities for small start-up businesses and more benefits for consumers and customers.

The CPTPP also concerns tariff reductions for goods, service market opening, intellectual property, trade-related technical barriers, labor, environment, government procurement, state enterprises, telecommunication and finance services.

#### **14.12 EVFTA**

The European Union Vietnam Free Trade Agreement (EVFTA) was signed on June 30, 2019 to increased trade with the EU and Vietnam.

The EVFTA is an ambitious pact providing almost 99 percent of elimination of Customs duties between the EU and Vietnam. 65 percent of duties on EU exports to Vietnam will be eliminated while the remaining will be gradually phased out over a period of 10 years. 71 percent of duties will be eliminated on Vietnam exports to the EU, with the remaining being eliminated over a period of seven years.

## 15. BONDED WAREHOUSES AND DEVELOPMENT ZONES

### 15.1 Bonded Warehouses

Vietnam Customs has been making continuous efforts to introduce Bonded System to encourage export trade and processing industry for years.

In Vietnam, Customs bonded warehouses are facilities where imported merchandise can be stored for up to two years duty-free. The proprietor is liable for the bonded cargo until it is exported, destroyed under Vietnam Customs supervision, withdrawn for use on an international aircraft or vessel, or withdrawn for commercial use in Vietnam territory after the duty is paid.

#### 15.1.1 Services Available in Bonded Warehouses

When the owner of the goods conducts the shipment to the bonded warehouse, he/she will directly perform or authorize the bonded warehouse owner, or agents to carry out Customs procedures to perform the following services for goods stored in bonded warehouses:

- Reinforcement, package division, packaging; grafting goods;
- Classification of products for goods and goods maintenance;
- Taking samples of goods to serve management or Customs procedures;
- Transfer of ownership of goods.

#### 15.1.2 Customs Procedure for Goods in Bonded Warehouse

##### A. Order of Implementation

- Declare the imported goods to Custom;
- Submit and produce the dossier the Customs managing the bonded warehouse;
- Update the information about bonded goods into the bonded warehouse management software of the bonded warehouse owner and send it to the Customs Branch managing the bonded warehouse.

The declarant can implement on the electronic clearance system or at the offices of the administrative agencies.

### **B. Composition, Number of Goods Records**

- Import goods declaration;
- Transport documents with equivalent value as prescribed by law;
- Certificate of code number of temporary import for re-export by the Ministry of Industry and Trade for goods trading in temporary import for re-export with conditions as prescribed by the Ministry of Industry and Trade when bringing from abroad into bonded warehouses for export;
- The notice of inspection exemption or the notice of inspection result issued by a specialized inspection agency in accordance with law.

### **C. Charges and Fees**

Customs clearance fees will be collected on goods deposited in bonded warehouses one time when carrying out warehousing procedures instead of at delivery. The collection standard is VND 20,000 per declaration.

## **15.2 Development Zones**

Development zones started in Vietnam about 20 years ago when the United States lifted its trade embargo on the country. Manufacturing zones include industrial zones (IZs), economic zones (EZs), export processing zones (EPZs) and high-tech zones (HTZs). Firms investing in these zones enjoy preferential governmental policies and advantages like modern infrastructure and greater access to utility services.

### **15.2.1 Industrial Zones (IZs)**

IZs specialize in manufacturing industrial products and providing services for them. They are established within defined geographical boundaries in accordance with government regulations and provide investment incentives such as land rental exemptions or reductions.

If an IZ is located in an area with “difficult socio-economic conditions”, newly established investment

projects in the zone are entitled to a 20 percent corporate income tax (CIT) rate for 10 years, tax exemptions for up to two years and a 50 percent reduction in taxes for up to four subsequent years. In an IZ located in an area with “especially difficult socio-economic conditions”, newly-established investment projects within the zone enjoy a 10 percent CIT rate for 15 years following their operation date, CIT exemption for the first four years after they generate taxable income and a 50 percent reduction in taxes for the next nine years.

### **15.2.2 Economic Zones (EZs)**

Investors in EZs enjoy the same preferential CIT incentives that exist within IZs that are located in areas with “especially difficult socio-economic conditions”. EZs offer a highly favorable environment for foreign businesses and individuals – in particular, a 50 percent reduction in personal income tax (PIT) is applicable to both foreign and local individuals that earn a taxable income within the zone. Furthermore, foreigners who work, invest and do business in EZs are granted visas in accordance with their working time within the EZ. Other investment incentives are available, but these differ from zone to zone.

### **15.2.3 Export Processing Zones (EPZs)**

EPZs are IZs which focus on manufacturing goods for export and providing services for the former. EPZs provide tax incentives, lower land rentals and reduced regulatory oversight in administration and Customs procedures.

EPZs are also non-tariff areas, so enterprises are exempt from export duties when exporting their products and materials, and do not pay import duties or value-added taxes. As a result, EPZ enterprises face fewer hurdles and are more investor-friendly. They are also conveniently connected to seaports and airports, making export more efficient.

There are four EPZs in Vietnam, three of which (Tan Thuan and Linh Trung I, II) are in Ho Chi Minh City; the newest EPZ, Linh Trung III, is in Tay Ninh Province.

### **15.2.4 High-tech Zones (HTZs)**

HTZs specialize in high-tech manufacturing such as bio-technology, IT and green technology. They also specialize in research and development, personnel training and high-tech trade. Enterprises in HTZs enjoy the same CIT incentives as within IZs and EZs located in areas with “especially difficult socio-

economic conditions”.

Import duties are also exempted for machinery, equipment, components and raw materials imported in order to create fixed assets. Export duties may also be exempted, but this varies zone by zone.

There are currently three HTZs in Vietnam: Hoa Lac HTZ in Hanoi, Da Nang HTZ in Danang and Saigon HTZ in Ho Chi Minh City.

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## 16. POST-CLEARANCE AUDIT (PCA)

It is one of the guiding contents of the General Department of Vietnam Customs to strengthen the post-clearance audit in 2019.

Accordingly, the work of post-clearance audit should be based on resources, on the basis of collecting and analyzing risk information from high to low toward checking and evaluating the compliance of not more than 5% of the total number of post clearance audit cases. The works involves making detailed inspection plans, specific for each inspection, specifying the enterprise name, tax code, import and export turnover for at least 2 years, type of enterprise, tax, suspicious signs, reason for selection, expected amount of tax arrears (if any).

In the case of the post-clearance audits following signs of violation and conducting post clearance audit on the basis of the principles of applying risk management, the units propose plans on the number of enterprises needing to be inspected or a list of enterprises that need to be examined (if necessary). Signs of violation include illegal or invalid Customs declarations, unreasonable tariff duties, commercial and tax fraud and invalid import and export permits for those goods that fall into the sector management.

In particular, selecting special cases to conduct post-clearance audit once a year; cases of high-risk need to be conducted every 2 years and cases of average risk need to be conducted every 3 years; Low risk cases need to be conducted every 3-5 years.

Where merchandise has been released to the importer and Customs comes to believe that the merchandise has been entered in violation of the laws, they may decide to carry out post-clearance audit. Customs has the right to do so within five years after the date of registration of the Customs declaration.

Post-clearance audit may be conducted:

- At the Customs office to compare declarations with information, analysis and related Customs law or;
- At the enterprises to compare Customs declarations with accounting records of the importer;
- Actual examination of the cleared goods will be conducted if necessary.

The General Department of Customs has also directed Provincial Customs Departments to conduct post-clearance audit in Customs valuation for the purpose of strengthening valuation management in cases passed to post-clearance audit units. The General Department of Customs has asked its units to carry out post-clearance audit in terms of valuation within 30 days from the date of receiving price consultation results forwarded by the Customs clearance units in cases prescribed at item of the Article 25 under Circular No. 38/2015/TT-BTC.

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## 17. PENALTIES AND APPEALS

### 17.1 Measures against Violations

Anyone that violates the provisions of the Law on Customs of Vietnam shall be handled as follows:

1. If they pay duties, taxes or fines later than the payment deadline or the deadline inscribed in the decisions on handling of duty and tax related violations, they have to pay a fine equal to 0.1% of the late paid amounts for each day of delayed payment. If the delayed payment prolongs for more than ninety days, they shall be coerced to pay them according to the provisions of Clause 4 of this Article;
2. If they fail to declare and pay taxes in strict accordance with the provisions of Customs Law, they

shall, depending on the nature and seriousness of their violations, be administratively handled for tax-related violations;

3. If they falsely declare or evade taxes, they shall, apart from having to fully pay taxes according to the provisions of this Law, depending on the nature and seriousness of their violations, be subject to a fine equal to one or five times the evaded tax amounts;
4. If they fail to pay taxes or fines according to the decisions on handling of tax-related violations, they shall be forced to do so through the following measures:
  - a) Their deposits at banks, other credit institutions or State treasuries are deducted for payment of taxes or fines.
  - b) Customs offices where Customs declarations are registered may temporarily seize goods or distrain property according to the provisions of law in order to ensure the full collection of deficit tax or fine amounts.
  - c) Customs offices shall not carry out import procedures for the next goods shipment of taxpayers until they fully pay taxes or fines;
5. If detecting that there is a tax fraud or evasion, Customs offices shall have to collect all tax and fine arrears incurred within five years back from the date of inspecting and detecting the tax fraud or tax evasion;
6. Those who commit acts of tax evasion in large amounts or have been administratively sanctioned for tax evasion but still commit violations shall be examined for penal liability according the provisions of law.

## 17.2 Customs Appeals

### 17.2.1 Appeal Application

Individuals, organizations or their legal representatives have the right to appeal to the direct senior management level of the officer who issued the decision on use of preventing measures in accordance with regulations in Articles 18, 19, 20, 21, 22, of the Decree No16/CP issued on March 20 1996. In cases of rejecting the code declared by Customs declarant, Customs has right to request Customs declarant to provide documents related to import, export goods; or taking sample of import, export goods with the

witness of Customs declarant to use other technical equipment for analysis, classification and making decision on the code of that import, export goods; if Customs declarant disagrees with the result given by Customs, he has right to appeal. The appeal shall be executed in line with legislations.

### 17.2.2 Authority to Settle the Appeal

**First Level of Appeal:** the authority to settle the appeal is the person who issued the decision on punishment imposed on administrative offense in Customs.

**Second Level of Appeal:** the authority to settle at second level against the decision on punishment issued by the Head of the Technical Customs Team is Chief of Technical Bureaus or Chief of Customs Checkpoints. The authority to settle the appeal at second level against the decision issued by the Chief of Customs Checkpoints or Chief of Technical Bureau is Directors of Provincial or City Customs Departments or Director of Investigation and Anti-smuggling Department (in case the decision is issued by the Enforcement Team of the Investigation and Anti-smuggling Department). The authority to settle the appeal at second level against decision made by the Directors of Provincial of Cities Customs Department or Director of Investigation and Anti-smuggling Department is Director General of Customs.

**Higher levels of appeal:** Authority to settle the appeal against the decision the Director General of Customs is the State Inspector General, and if the decision made by the Director General of Customs is related to the Laws and Taxes and Duties, the authority to settle the appeal is Minister of Finance and the decision of Minister of Finance is the final decision.

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## 18. CUSTOMS IPR BORDER PROTECTION

Vietnam Customs Law prohibits the import of goods which infringe intellectual property rights registered within Vietnam. To this end, Customs authorities have the power to impose fines and confiscate infringing goods which have been stopped at the border. Customs authorities can also arrange for criminal proceedings to be brought against infringers for cases involving copyright or trade mark infringement. So

far these powers extend only to imports and as such, Customs authorities have no power to check and hold infringing products being exported.

Registration with Customs authorities in Vietnam is not a mandatory requirement, however it is often advisable to register as doing so will enable Customs officers to recognize counterfeit versions of the products, and improve the chances of suspect shipments being stopped at the border. Furthermore, if shipments are known to be en-route, rights holders can work with Customs to ensure they are detained before being released onto the market. In theory, all IPRs can be registered with the Vietnam Customs authority, in practice however, only trademarks, geographical indications, and copyrights and related rights are picked up.

In order to register with Customs, a Customs recordal must be filed with the General Department of Customs in Vietnam, containing the following documents:

- Certified copies of IP certificates of registration, e.g. a trade mark registration certificate;
- Documents relevant to the goods wish to register with Customs, including; a list of authorized importers/exporters, mode of import/export of genuine goods, descriptions of how to distinguish genuine goods from infringing copies, documents on the origin of genuine goods, and pictures of genuine goods;
- A notarized and legalized power of attorney, where the application is filed by a local IP agent;
- Any supporting documents, e.g. information on estimated times and location of import and export, expert opinions on known infringing goods, any sanctioning decisions made by enforcement agencies in previous cases of infringement of the goods you are registering, where applicable.

Confirmation is usually given by the Customs office within 20 days of application. Once registered, IPRs remain in the database for one year, extendable for a further year upon request. After this 2 year period the rights must be filed anew to continue monitoring operations.

The owners of intellectual property rights, who are protected in accordance with the provisions of the laws of Vietnam, shall be entitled to make a request on a long-term basis or in a particular case, to the Customs for suspension of Customs procedures in respect of imported or exported goods, which infringe intellectual property rights. The Customs may make a decision on temporary suspension of Customs procedures in respect of imported or exported goods when all conditions stipulated are satisfied. On temporary suspension of Customs procedures in respect of imported or exported goods with whose

intellectual property rights have been infringed, shall not apply to non-commercial goods or to goods in transit.

When making a request for temporary suspension of Customs procedures, the owner of intellectual property rights shall be obliged to:

- Submit an application for such a request, together with evidence of the lawful intellectual property rights and evidence of the infringement of his or her intellectual property rights to the Customs;
- Deposit in advance a certain amount of money or submit a letter of guarantee issued by a credit institution or another organization authorized to conduct banking activities in order to secure, in accordance with the provisions of the law, compensation for any damages and expenses caused by such an improper request.

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## 19. AUTHORIZED ECONOMIC OPERATOR (AEO)

An AEO is defined as an economic operator that is reliable or compliant in the context of Customs-related operations and is therefore entitled to benefits provided under the AEO program. According to the General Department of Vietnam Customs, the implementation of the AEO regime is one of the important solutions made by the Vietnamese administration to promote trade facilitation in the business community.

Related legislations regarding AEO implementation by Vietnam Customs include:

- Customs Law No. 54/2014/QH13 dated 23/6/2014 (Articles: 42, 43, 44, 45);
- Import and Export Tax Law No. 107/2016/QH13 dated 6/4/2016 (Articles: 9);
- Decree No. 08/2015/ND-CP dated 21/1/2015 (Articles: 9, 10, 11, 12);
- Circular No. 72/2015/TT-BTC dated 12/5/2015;
- Decision No. 2659 / QD - GDC dated 14/9/2015.

In Vietnam, AEOs are divided into 5 groups: import-export enterprises, agricultural product export

enterprises, seafood export enterprises and high-tech enterprises and Customs brokers. Each enterprise group must meet the conditions for being recognized as an AEO. For example, for a high-tech enterprise to be recognized as an AEO, they must have a certificate from the Ministry of Science and Technology as a high-tech enterprise. For import-export enterprises to be recognized, the enterprise must achieve a turnover of \$US 100 million per year or more.

AEO program by Vietnam Customs has attracted the attention of the business community. Under Vietnam's Customs Law, Law on Import-Export Duty, and related regulations, AEOs enjoy special benefits such as freedom from inspection of Customs documents, and from physical inspection during Customs procedures, except in cases of violation of Customs laws, or in cases of random inspections to assess compliance with the law. Besides the facilitation of cargo clearance procedures, helping to reduce time and cost, enterprises recognized as AEOs would affirm their prestige and would enhance their position in the market. AEOs can help to create a strong shift from strict control mode to trust mode, to enable the right to self-declare and take responsibility before law in order to change the Customs inspection method from pre-audit to post-audit.

According to statistics from the General Department of Vietnam Customs, in 2018, AEOs accounted for 34.4% of the total import-export turnover nationwide (\$US 165 billion).

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## 20. TRADE STATISTICS

Compilation of Customs statistics in general and compilation of international merchandise trade statistics of Vietnam in particular is one of the main tasks of General Department of Vietnam Customs.

Since 1996, foreign merchandise trade data has been collected, processed, provided and disseminated by Vietnam Customs as an independent data producer in Vietnam. Trade statistics plays an important role in policy-making, macroeconomic management and other purposes and currently, changes, developments and trends of the external merchandise trade activities of Vietnam have increasingly getting more attention of many domestic as well as foreign users.

For the purposes of disseminating the latest and up-to-date foreign merchandise trade statistics of Vietnam to the public users, the General Department of Vietnam Customs has compiled and produced various publications on statistics on exported and imported goods.

Trade statistics will be updated monthly on Vietnam Customs' website at "Vietnam International Merchandise Trade Statistics" page at the following official website of Vietnam Customs: <https://www.customs.gov.vn/Lists/EnglishStatistics/Default.aspx>.

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## 21. CONTACT INFORMATION

For further and detailed information relating to Customs clearance procedures, enquiries shall be addressed to the following official contacts:

### **General Department of Vietnam Customs**

Address: Block E3 - Duong Dinh Nghe Street, Yen Hoa, Cau Giay, Hanoi, Vietnam

Phone: (+8424) 39440833 (ext: 8613)

Hotline: 1900 96 96 47 (ext: 2)

Email: [tongcuchoiquan@customs.gov.vn](mailto:tongcuchoiquan@customs.gov.vn)

[bophanhotrotchq@customs.gov.vn](mailto:bophanhotrotchq@customs.gov.vn)

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## 22. OFFICIAL WEBSITE

The official website hosted and maintained by the General Department of Vietnam Customs for references is as follows: <https://www.customs.gov.vn/>.

### REFERENCE

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## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

All information, materials included and views, opinions expressed in this eBook are those of the editors and do not necessarily reflect those of EABC China (also CCPIT) and EABC. In this regard, EABC China (also CCPIT) and EABC would like to reaffirm that this eBook would not be used as any reference for judicial and administrative process.

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# **eBook on East Asia Customs Procedures**

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The People's Republic of China



An EABC Publication



## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

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Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

ACE	Advanced Certified Enterprise
AEO	Authorized Economic Operators
AJI	AEO Joint Incentive
APEC	Asia and Pacific Economic Cooperation
APTA	Asia Pacific Trade Agreement
ASEAN	Association of Southeast Asian Nations
ATA	A Combination of the Initial Letters of the French Words “Admission Temporaire” and the English Words “Temporary Admission”
CBZ	Comprehensive Bonded Zone
CCC	China Compulsory Certification
CCCN	Customs Cooperation Committee Nomenclature
CEPA	Closer Economic Partnership Arrangement
CIQ	China Inspection and Quarantine
CITES	Convention on International Trade in Endangered Species
CMAA	Customs Mutual Assistance Agreement
CNCA	China National Committee of Certification and Accreditation
ECFA	Economic Cooperation Framework Agreement
EU	European Union
FTA	Free Trade Agreement
GACC	General Administration of Customs of China
GATT	General Agreement on Tariff and Trade
GCE	General Certified Enterprise

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HS	Harmonized Commodity Description and Coding System
IMECM	Interim Measures for Enterprise Credit Management
ITA	Information Technology Agreement
LDC	Least Developed Country
MECM	Measures for Enterprise Credit Management
MFN	Most Favored Nations
NDRC	National Development and Reform Commission
PCA	Post-clearance Audit
PFTZ	Pilot Free Trade Zone
SAR	Special Administrative Region
SCSZ	Special Customs Supervision Zone
SMEs	Small and Medium Enterprises
SSM	Special Safeguard Mechanism
TFA	Trade Facilitation Agreement
VAT	Value-added Tax
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The People's Republic of China

### 1. INTRODUCTION OF CHINA CUSTOMS

As the whole nation's economic gate, China Customs is a rapidly reforming and technology-driven administrative agency that responsible for not only trade facilitation and supervision, duty collection, anti-smuggling and trade statistics, but also port management, bonded business, Customs PCA, Customs IPR protection, and international Customs cooperation and so on.

#### 1.1 Missions & Guidelines

China Customs' missions are:

- safeguarding the border;
- providing quality service;
- preventing potential risks;
- building a qualified workforce.

Its work guidelines are:

- exercising law-based administration;
- serving the economic interests;
- promoting social development.

Its workforce building principles to ensure that Customs officers are:

- politically committed;
- professionally qualified;
- fully accountable.

China Customs' spirit is loyal, impartial, revitalizing Customs and rejuvenating China. Its core values are patriotism, virtue, integrity, innovation and dedication.

## 1.2 Organization

The organization of China Customs is structured by the General Administration of Customs of China (GACC), the regional Customs, and subordinate Customs under the regional Customs. GACC, the General Administration of Customs of China, which is a ministerial-level government agency that directly reports to the State Council, is the headquarters of China Customs and manages all the Customs administrations nationwide.

After the institutional restructuring of China Customs and China Inspection and Quarantine (CIQ) in 2018, China Customs has absorbed the responsibility and staffs of the CIQ. Now, under the leadership of the GACC, the sub-level system of GACC is consisting of 1 sub-administration in Guangdong, 2 supervising office in Shanghai and Tianjin, 21 internal departments, 11 directly subordinated institutions and 45 regional Customs. China Customs also established 3 oversea representative offices in the EU, the Russian Federation and the United States of America, and 1 liaison office of the central government in the Hong Kong SAR. It should be noted that China Customs is not a law enforcement agency for Customs affairs in Hong Kong SAR, Macau SRA and Taiwan province of China.

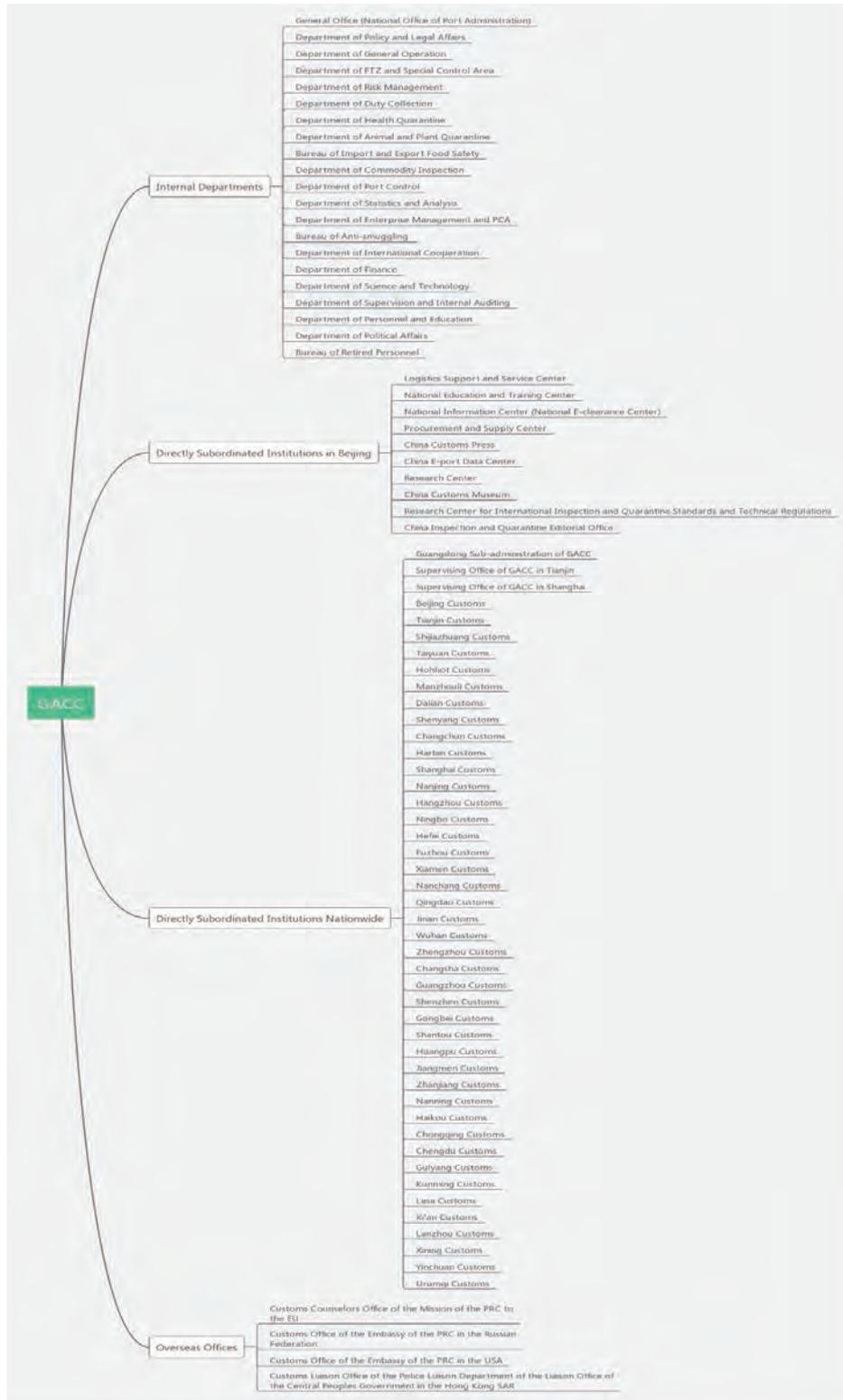
As the main local branch of China Customs, there are 46 regional Customs in China which is characterized by "Customs directly under the GACC" and their jurisdictions are not classified according to China's provincial jurisdiction. For example, 7 regional Customs are located in Guangdong Province and they are specifically organized by the sub-administration of GACC in Guangdong to coordinate their responsibilities. In 2019, there are 678 subordinate Customs under the regional Customs.

In the future, China Customs will continue to improve control and revenue collection, crack down on smuggling. Cooperation with Customs administrations of countries along "the Belt and Road" will be strengthened and support domestic enterprises "going global". Innovative regulatory measures for the

pilot free trade zones will be promoted on a larger scale and new measures to support newly established pilot free trade zones will be rolled out. China Customs will continue to upgrade Customs special control areas and push forward regulatory reforms on processing trade and bonded operations. Clearance efficiency will be further raised and time needed for the release of goods will be cut by one-third. China Customs aims to achieve nation-wide integrated clearance, push forward coordinated control at ports, promote the nation-wide adoption of a standard version of "Single Window" for international trade, and ensure full coverage of random inspection and public release oversight model.

In 2019, China Customs has a total staff force of more than 100,000 including Customs Anti-smuggling Police.

Figure 1 Organizational Structure of China Customs



Source: [www.customs.gov.cn](http://www.customs.gov.cn)

## 2. CUSTOMS LEGAL SYSTEM

The characteristics of the Customs related legal regime can be traced back to political and historical factors which occurred in China's history leading, up to now, to a division of three main periods. The first period covers the time between the founding of the PRC until 1979; this date also functions as the starting date of the second period of reform and opening up until 2001 when China entered the WTO. As such the WTO entrance date marks the start of the third period.

### 2.1 Customs Law

After the founding of the PRC, the first Customs Law of New China was enacted in 1951. The current Customs Law of China was completely reworked and enacted in 1987 firstly and wholly amended in the year of 2000. Being amended several times, the newest amendment of the Customs Law has taken effective as of 2017.

Divided into 9 Chapters and 102 Articles, this Law provides not only the regulatory details on the imposition and collection of Customs, but also the matters concerning the overall Customs administrative details, such as the taxpayer's right, bonded areas, clearance procedures, and punishment of Customs criminals, etc. The Customs Law is very likely to be revised in the near future.

The titles of the Chapters of Customs Law are as follows:

- Chapter I                      General Provisions
- Chapter II                     Inward and Outward Means of Transport
- Chapter III                    Inward and Outward Goods
- Chapter IV                    Inward and Outward Articles
- Chapter V                     Customs Duties
- Chapter VI                    Customs Security
- Chapter VII                  Enforcement Supervision
- Chapter VIII                 Legal Responsibilities
- Chapter IX                    Supplementary Provisions

Please click [here](#) for more details of the Customs Law of China in English.

## 2.2 Related Laws

The following are the laws and regulations related to cargo clearance for reference.

### 2.2.1 Foreign Trade Law

With a booming economy, the current Foreign Trade Law took effective as of 1994, when China was still negotiating its way to get into the predecessor of the WTO, the GATT. In 2004, China enacted the new Foreign Trade Law which had been effective as of July 1, 2004 after the foundation of the Ministry of Commerce. With its 70 Articles and 11 Chapters the new Foreign Trade Law is 26 Articles and 3 Chapters larger than its 1994 version. The newest version was revised on November 7, 2016.

The titles of the Chapters of Foreign Trade Law are as follows:

- Chapter I                      General Provisions
- Chapter II                     Foreign Trade Dealers
- Chapter III                    Import and Export of Goods and Technologies
- Chapter IV                    International Trade in Services
- Chapter V                     Protection of Trade-Related Intellectual Property Rights
- Chapter VI                    Foreign Trade Order
- Chapter VII                   Foreign Trade Investigation
- Chapter VIII                 Foreign Trade Remedies
- Chapter IX                    Foreign Trade Promotion
- Chapter X                    Legal Liabilities
- Chapter XI                    Supplementary Provisions

The revision of the Foreign Trade Law lives up to its main aim of implementing China's WTO commitments and promotes the healthy development of foreign trade according to WTO rules. As such the Foreign Trade Law, which is general legislation, provides a good and rather complete framework. However, the State Council and the administrative agencies must promulgate implementing rules and regulations.

Please click [here](#) for more details of the Foreign Trade Law of China in English.

### **2.2.2 Tonnage Tax Law**

The newest amendment of the Tonnage Tax Law took effect as of 2018. Divided into 22 Articles, this Law has provided that the tonnage tax is collected by China Customs.

Please click [here](#) (only in Chinese) for more details of the Tonnage Tax Law of China.

### **2.2.3 Import and Export Commodity Inspection Law**

As the Import and Export Commodity Inspection Law had been effective as of February 1989, the newest amendment of this Law took effect at the end of 2018. Divided into 6 Chapters and 41 Articles, this Law has become an important basis for China Customs after the integrated reform with CIQ.

The titles of the Chapters of Import and Export Commodity Inspection Law are as follows:

- Chapter I                      General Provisions
- Chapter II                     Inspection for Import Commodity
- Chapter III                    Inspection for Export Commodity
- Chapter IV                    Supervision and Management
- Chapter V                     Legal Liabilities
- Chapter VI                    Supplementary Provisions

The core content of the Law is the establishment of a statutory inspection system for commodities. According to the Law, the import and export goods covered by the list of statutory inspection must be filed to China Customs (the commodity inspection authority) for commodity inspection to finish the clearance procedures.

Please click [here](#) (only in Chinese) for more details of the Import and Export Commodity Inspection Law of China.

#### 2.2.4 Frontier Health and Quarantine Law

The Frontier Health and Quarantine Law is also one of the fundamental laws of CIQ before. The newest amendment of this Law took effect at the end of 2018. Divided into 6 Chapters and 27 Articles, this Law has become an important basis for China Customs after the integrated reform with CIQ.

The titles of the Chapters of Frontier Health and Quarantine Law are as follows:

- Chapter I            General Provisions
- Chapter II            Quarantine
- Chapter III            Infectious Disease Surveillance
- Chapter IV            Health Supervision
- Chapter V            Legal Liabilities
- Chapter VI            Supplementary Provisions

Please click [here](#) (only in Chinese) for more details of the Frontier Health and Quarantine Law of China.

#### 2.2.5 Inward and Outward Animal and Plant Quarantine Law

The Inward and Outward Animal and Plant Quarantine Law is also one of the fundamental laws of CIQ before. The newest amendment of this Law took effect in 2009. Divided into 8 Chapters and 50 Articles, this Law became an important basis for China Customs after the integrated reform with CIQ.

The titles of the Chapters of Inward and Outward Animal and Plant Quarantine Law are as follows:

- Chapter I            General Provisions
- Chapter II            Inward Quarantine
- Chapter III            Outward Quarantine
- Chapter IV            Transit Quarantine
- Chapter V            Quarantine for Carrying and Mailing Articles
- Chapter VI            Quarantine for Transportation Means
- Chapter VII            Legal Liabilities

- Chapter VIII                      Supplementary Provisions

Please click [here](#) (only in Chinese) for more details of the Inward and Outward Animal and Plant Quarantine Law of China.

### **2.2.6 Law on Prevention and Control of Environmental Pollution by Solid Waste**

The Law on Prevention and Control of Environmental Pollution by Solid Waste is one of the most important environmental laws. The newest amendment of this Law took effect in 2005. Divided into 6 Chapters and 91 Articles, the titles of the Chapters of Law on Prevention and Control of Environmental Pollution by Solid Waste are as follows:

- Chapter I                              General Provisions
- Chapter II                             Supervision and Management
- Chapter III                            Prevention
  - Section 1    General Provisions
  - Section 2    Industrial Solid Waste
  - Section 3    Domestic Waste
- Chapter IV                            Special Provisions on Hazardous Wastes
- Chapter V                             Legal Liabilities
- Chapter VI                            Supplementary Provisions

Please click [here](#) (only in Chinese) for more details of the Law on Prevention and Control of Environmental Pollution by Solid Waste.

### **2.2.7 Food Safety Law**

For the purpose of restructuring of China Customs and CIQ in 2018, China revised the [Food Safety Law](#) (only in Chinese) so that this Law became one of the important bases for China Customs to perform its functions. The Food Safety Law has imposed broader and stricter controls on food production and management including the importation and it contains 10 Chapters with 154 articles. It is noted that 50 new articles were added to the version in 2015.

The titles of the Chapters of Food Safety Law are as follows:

- Chapter I                      General Provisions
- Chapter II                     Food Safety Risk Monitoring and Evaluation
- Chapter III                    Food Safety Standards
- Chapter IV                    Food Production and Management
  - Section 1    General Provisions
  - Section 2    Production and Operation Process Control
  - Section 3    Labels, Brochures and Advertisements
  - Section 4    Special Foods
- Chapter V                     Food Inspection
- Chapter VI                    Food Import and Export
- Chapter VII                  Disposal of Food Safety Accidents
- Chapter VIII                Supervision and Management
- Chapter IX                    Legal Liability
- Chapter X                    Supplementary Provisions

### 2.2.8 Laws related to IPR Customs Protection

The [Trademark Law](#), the [Copyright Law](#), and the [Patent Law](#) of China are basic laws related to IPR Customs Protection. Please click the link for more details.

## 2.3 Customs Regulations

In recent years, China Customs further strengthened its legal system by pushing forward the legislation of Customs, establishing a long-term mechanism in reviewing and sorting out Customs regulations. The following are the main regulations related to China Customs:

- Import and Export Tariff Regulations (revised in 2017);
- Customs Audit Regulations (revised in 2016);
- Regulations on Customs Guarantee (revised in 2018);

- Customs Statistics Regulations (enacted in 2005);
- Regulations on Intellectual Property Customs Protection (revised in 2018);
- Regulations on Customs Administrative Penalties (enacted in 2004);
- Implementation Rules of the Frontier Health and Quarantine (revised in 2019);
- Implementation Regulations on Import and Export Commodity Inspection (revised in 2019);
- Implementation Regulations on Entry and Exit Animal and Plant Quarantine (enacted in 1996);
- Regulations on Technology Import and Export (enacted in 2001);
- Regulations on the Administration of Import and Export of Goods (enacted in 2002);
- Regulations on Safeguards (revised in 2004);
- Anti-dumping Regulations (revised in 2004);
- Anti-Subsidy Regulation (revised in 2004);
- Regulations on the Export Control of Biological Dual-Use Products and Related Equipment and Technologies (enacted in 2002);
- Regulations on Export Control of Nuclear Dual-Use Products and Related Technologies (revised in 2007);
- Regulations on Nuclear Export Control (revised in 2006);
- Regulations on Export Control of Missiles and Related Items and Technologies (enacted in 2002);
- Regulations on the Administration of Military Products Export (revised in 2002);
- Certification and Accreditation Regulations (revised in 2016);
- Implementation Regulations of the Food Safety Law (revised in 2016);
- Implementation Regulations of the Administrative Reconsideration Law (enacted in 2007);
- Government Information Disclosure Regulations (enacted in 2007);
- Implementation Regulations of the Trademark Law (enacted in 2002);
- Regulations for the Implementation of the Copyright Law (enacted in 2002);
- Implementation Rules of the Patent Law (revised in 2002);
- World Expo Logo Protection Regulations (enacted in 2004);
- Olympic Symbol Protection Regulations (enacted in 2002);

- Computer Software Protection Regulations (enacted in 2002);
- Regulations for ozone depleting substances (enacted in 2010);
- Decision of the State Council on the establishment of an administrative license for administrative approval projects that need to be retained (enacted in 2004).

And please visit the GACC's English website of [laws and regulations](#), [Decree of GACC](#), and [Announcement of GACC](#) for details.

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### 3. CUSTOMS CLEARANCE PROCEDURES

Being the largest country in global commodity trade, China's Customs clearance efficiency is always one of the most concerned issues in the trade field. According to the Doing Business Report 2019 released by the World Bank in 2018, China's ranking for trading across borders moved from 97 to 65, up 32 spots year-on-year.

By May 2019, China had met its annual target of cutting overall imports and exports Customs clearance time by half from 2017. The State Council decided to further facilitate Customs clearance and continue to optimize the business environment at ports in June. It means that China will continue to streamline the integrated Customs clearance procedures by implementing a Two-Step Customs declaration mode, a simplified declaration before Customs release, and then a complete declaration within a time frame. The Two-Step Customs Declaration mode is being tested at Huangpu Customs, Shenzhen Customs in Guangdong, and Qingdao Customs in Shandong, starting on August 2019.

At the same time, the for International Trade Single Window system enables 25 ministries to share information, operates online cooperation projects among 68 departments, and provides 495 services for enterprises at all ports so far. It will be applicable to all major businesses by the end of the year. Please refer to 6. International Trade Single Window.

In addition, import and export supervision certificates and documents will be simplified further, and all

certificates except for those involving security or confidentiality and other special circumstances should be submitted and processed online by the end of 2019, one year ahead of schedule.

Local governments in China are asked to announce time limit standards for enterprises providing port operation services in a timely manner, to improve port efficiency. Control on the list of port charges will be strengthened, fee reductions will be implemented, and monopoly charges will be investigated according to law.

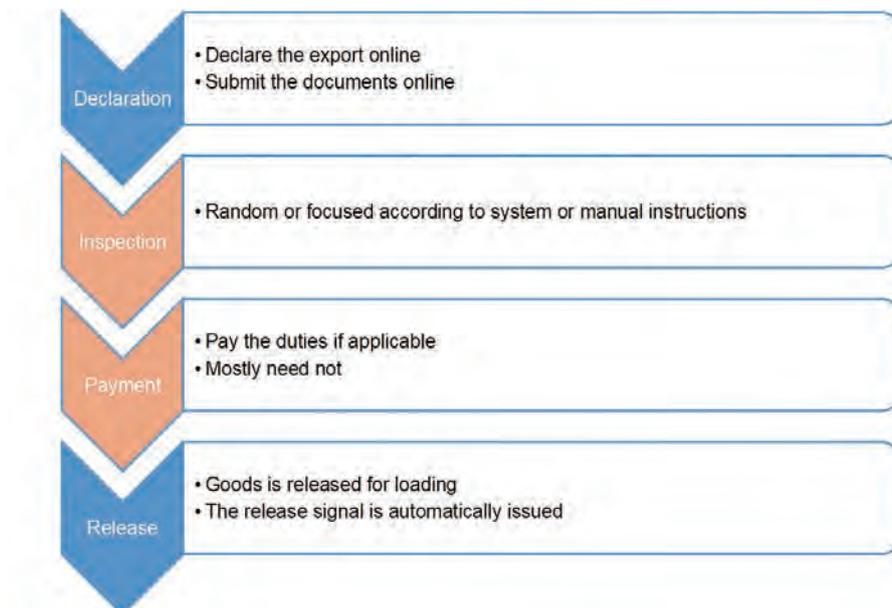
Please watch the [video](#) in English to learn the profile.

### 3.1 Qualification

According to the “Foreign Trade Law” (enacted from July 1, 1994, revised from July 1, 2004, revised from November 7, 2016), the qualifications of import and export had changed from permit system to filing system before China joined the WTO. The filing procedures are subject to local commerce supervision departments (a total of 59 locations nationwide, each province, autonomous region, municipality, special planning cities) after 2006. In the latest facilitated measures of the New District of Shanghai FTZ, the filing process is no longer required.

### 3.2 Export

Figure 2 Flow of Export Clearance Procedures



The Customs clearance procedures for goods, in terms of exporters, can be divided into four steps: declaration, inspection (if applicable), payment of taxes (if applicable), and release. Please refer to the above Figure 2.

### 3.2.1 Online Declaration

When exporting, the consignor or its agent shall declare to China Customs within the time frame specified by Customs Law. Specifically, after the export goods arrive at the designated place or area which stipulated by the Customs such as the seaport, railway station, airport, post office, etc., they should be declared to the China Customs in 24 hours before the loading<sup>1</sup>. When exporting, export licenses and other documents such as commercial invoices, packing lists and other documents, should be submitted.

It is noted that after the implementation of the national all-in-one clearance reform, the online declared data can be transmitted to any Customs agency within the country, and processed by the e-Customs system. The exporter can also track the Customs clearance status online.

### 3.2.2 Inspection

To determine whether the status, quantity, and value of the exported goods are consistent with the contents of Customs declaration, the Customs officials may inspect the goods. Inspection can prevent counterfeit and shoddy products, illegal export and smuggling, and violations.

The following requirements should be noted:

- (1) when the Customs officials inspect the goods, the consignor/shipper or his agent shall be present and shall deliver, unpack and repackage the goods following the requirements of the Customs officials. If the consignor/shipper or his agent is not present, the cargo storage staff can be a witness at the site;
- (2) when the Customs officials deems it necessary, they may conduct inspections without notifying the consignor/shipper, re-inspect the goods or obtain samples;
- (3) when the Customs officials inspects the goods causing damage, the consignor/shipper can ask for compensation.

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<sup>1</sup> The pre-declaration will be introduced later.

### 3.2.3 Duty Payment

At present, except for a small number of goods, most of the goods are exported without tariffs. For details, please refer to 10. CUSTOMS DUTIES AND TAXES.

### 3.2.4 Release

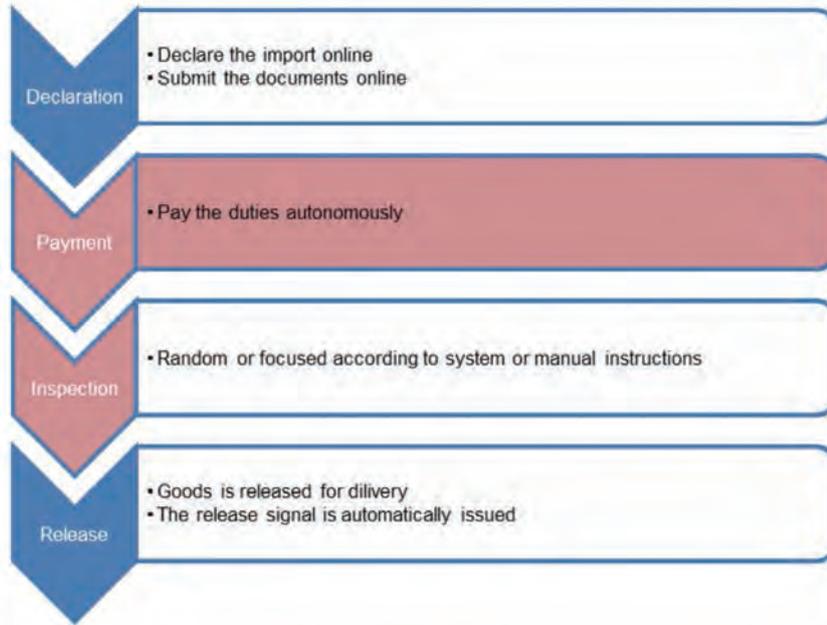
Release means ending Customs control. After the Customs release, the exporter can handle the shipment.

## 3.3 Import

If the importer is already registered with China Customs, the importer can handle the Customs clearance directly or entrust the Customs broker (forwarder); if not, the importer needs to entrust a Chinese Customs broker or forwarder to handle the Customs clearance process. After get the filing record number or ID, then can login the Single Window for Customs declaration.

If necessary, the importer shall apply to the competent Chinese official authorities for the import license or permit, which requires the importer or its agent in China to provide relevant information for such application. In most cases, the hard copy of the import license is not required since electronic network verification is commonly conducted. The relevant information is available at the [website](#). The forwarder or the Customs broker may be entrusted to apply for the import license and the cost incurred shall be borne by the importer.

Figure 3 Flow of Import Clearance Procedures



### 3.3.1 Online Declaration

When importing, the consignee or its agent shall declare to the China Customs within the time frame specified by Customs Code. Specifically, after the day that the vessel, train, vehicle and aircraft have declared to China Customs for its arrival, the imported goods should be declared to the China Customs within 14 days<sup>2</sup>.

When importing goods, import licenses or other documents such as commercial invoices, Packing Lists, Bill of Lading/Airway Bill and other documents should be submitted. The declaration may be rejected automatically by the e-Customs system because the documental requirements are not fulfilled. The documental requirements are listed by HS code at the [website](#).

The importers registered can declare to China Customs by themselves, but in general, more than 80% of the Customs declarations have been made by Customs brokers or the freight forwarders. The importer with qualified declaration, the entrusted freight forwarder or the Customs broker must ensure the completeness and accuracy of the import documents and timely declare the electronic data of the imported goods to the China Customs. The requirements of China Customs declaration are available at

<sup>2</sup> The pre-declaration and two-step declaration will be introduced later.

the [website](#).

Automatic data verification can be completed in less than 0.5 working days. But if there's no convincing reason, any mistake will cause the delay of the Customs clearance, which will lead to further auditing. Moreover, a penalty will be imposed on the importer and the agent according to the seriousness of the case.

It is noted that after the implementation of the national all-in-one clearance reform, the online declared data can be transmitted to any Customs agency within the country, and processed by the e-Customs system. The importer can also track the Customs clearance status online.

### **3.3.2 Duty Payment**

The International Trade Single Window system calculates the amount of duties automatically based on the HS code and applicable tariff rates that the importer or the Customs brokers declared. After that, they can pay the duties online autonomously.

For details, please refer to 10. CUSTOMS DUTIES AND EXCISES.

The import duties shall be paid within 15 days from the date of issuance of the tax bill. At present, China Customs encourages importers to pay the first day or the day after the issuance of the tax bill.

### **3.3.3 Inspection**

Only a fairly low percentage of the goods are currently inspected by China Customs. The purpose of the inspection is to ensure that the declaration is consistent with the actual goods. The basic requirements for import inspection are similar to those for export inspection. Please also refer to 3.2.2 Inspection.

The marine cargo is generally inspected on the following day after being scheduled. Fresh, perishable and rotten goods can be prioritized for inspection. Air cargo usually completes the inspection on the same day. The importer needs to pay the service fee of CNY 300-500 to the operator of the inspection site, and the Customs does not charge any fees.

### **3.3.4 Release**

The importer or their agent will receive the electronic release notice of the Customs since the Single

Window service is provided. The importer or their agent can check if the goods have been released at the [website](#).

## 3.4 Temporary Inward or Outward

### 3.4.1 General Requirements

Goods imported in China or exported from China for display or demonstration are exempted from Customs duty when they import or re-import, provided they are re-exported or re-imported within six months. The time limitation may be extended for another six months with 3 times. The exhibition organizer must obtain advance approval from China Customs and provide a guarantee.

Some exhibits imported under the temporary admission may be sold after the trade event is completed, in which case the duties owed on these items are levied by Customs.

### 3.4.2 ATA Carnet

ATA Carnet is an international Customs document for temporary export/import that is accepted in 87 countries, and is also utilized to simplify the process of bringing commercial samples, professional equipment, and many goods for exhibitions into China. According to the Corporation for International Business, the ATA Carnet issuing authority in China no longer requires a cover letter along with the carnet presented to China Customs officials.

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## 4. DECLARATION DOCUMENTS

When making declarations to China Customs, Import Export Declaration Form and Export Declaration Form must be submitted online together with other supporting commercial documents and necessary licenses and certificates.

## 4.1 Commercial Documents

Necessary documents vary by products but may include standard documents such as a Bill of Lading, invoice, Packing List, Customs Declaration Form, and sales contract as well as more specialized documents such as import license (where applicable), an import quota certificate for general commodities (where applicable), inspection certificate issued by the Customs (where applicable), and other safety or quality licenses.

*Table 1 Documental Requirements for Customs Clearance*

No.	Documentations Name	Documents Provider
1	Authorization letter for Customs declaration (where applicable)	Consignee
2	Customs Declaration Form (not required with paperless declaration)	Customs Broker
3	Contract (where applicable)	Consignee
4	Commercial invoice	Consignee
5	Bill of Landing	Consignor
6	Packing List	Consignor
7	Preferential Certificate of Origin (where applicable)	Country of origin Authority

For the restrictive imported products, there are about several tens of different kinds of Customs declaration documents applicable for different kinds of commodities. Please refer to 9. PROHIBITIONS AND RESTRICTIONS.

## 4.2 Licenses and Certificates

The following are the types of import and export licenses and certificates that can be verified online by China Customs.

*Table 2 Import and Export Licenses and Certificates*

Code	Titles	Verified Online
1	Import permit	√
2	Dual-use item and technology import license	√

Code	Titles	Verified Online
3	Dual-use item and technology export license	√
4	Export license	√
7	Automatic import license	√
E	Endangered species permit export certificate	√
F	Endangered species permit import certificate	√
G	Dual-use item and technology export license (Specific countries)	√
I	Import and export permit for anesthetic psychotropic drugs	√
J	Gold and gold products import and export permit	√
L	Drug import and export permit	√
M	Password product and equipment import license	√
O	Automatic import license (new and old mechanical and electrical products)	√
P	Solid waste import license	√
Q	Import drug Customs clearance	√
R	Imported veterinary drug clearance form	√
S	Import and export pesticide registration certificate	√
U	Proof of Customs clearance of legal fishing products	√
V	Human genetic resources materials export, exit certificate	√
W	Import and export permit for narcotic drugs - abolition	√
X	Notice of Environmental Management Release of Toxic Chemicals	√
Z	Proof of importing CDs for overseas processing	√
b	Imported radio, film, and television programs (slices)	√
d	Foreign aid project task notification letter	√
f	Audiovisual products (finished products) import approval form	√
g	Technology export contract license	√
i	Technology export license	√
k	Import and export approval form for civil explosives	√
z	Paleontology fossil outbound approval	√
no code	Seed quarantine approval form	√

Code	Titles	Verified Online
no code	Introduction of forest seed and seedling quarantine approval form	√
no code	Agricultural Genetically Modified Organism Safety Certificate (Import)	√
no code	Special medical use formula registration certificate	√
no code	Health food registration certificate or health food record certificate	√
no code	Infant Formula Milk Powder Product Formula Registration Certificate	√
no code	Compulsory product certification or certification document	√
no code	Special equipment manufacturing license and type test certificate	√
no code	New food ingredients license	√
no code	Imported foods that do not yet have food safety national standards	√
no code	Medical device registration certificate	√
no code	The first type of medical device filing certificate	√
no code	Imported special purpose cosmetics hygiene permit approval	√
no code	Imported non-special use cosmetics hygiene permit approval	√

## 5. RECENT CLEARANCE FACILITATION MEASURES

In recent years, China Customs has initiated many significant reform measures to facilitate international trade by reducing clearance time and reducing clearance costs with the final goal to optimize cross-border business environment.

### 5.1 Pre-declaration

According to [Regulations on Import and Export Goods Declaration](#) and [Regulations on Duty Collection for Import and Export Goods](#), Pre-declaration means the consignee of the imported goods and the entrusted

Customs broker can declare in advance on the premise of the advance transmission of the manifest data.

For goods using paperless declaration, electronic payment of duties, and not involving inspection and quarantine, importer can use the Bill of Lading or Waybill or manifest to complete declaration procedures, so as to greatly improve the efficiency of Customs clearance.

### **A. Relevant Application**

According to the provisions of Article 18 of the Regulations on Import and Export Goods Declaration, the validity period of the import and export licenses for Pre-declaration shall be subject to the date of declaration acceptance by the Customs.

According to the provisions of Article 13 of Regulations on Duty Collection for Import and Export Goods, before the arrival of the imported goods, if the declaration is approved by Customs, the rate when the means of transport entry into the country shall apply to.

In addition, except for enterprises that enjoy convenient Customs clearance measures, goods that implement temporary safeguard measures are not allowed to be pre-declared.

### **B. Time Limit**

The imported goods may be pre-declared to the Customs after the goods have been shipped, before the arrival of the goods, and the manifest has been transferred to the Customs and confirmed.

The exported goods must be pre-declared within 3 days after being transported to the Customs supervision site.

## **5.2 Aggregate Declaration**

In cross-border e-commerce, the Customs implemented a new Customs clearance mode of “manifest release and aggregate declaration”. “Aggregate Declaration” means that the e-commerce enterprise regularly reorganizes the manifest according to the prescribed rules, and aggregates the data in the Declaration Form according to the import and export.

## **Operating Procedures**

Taking the general export mode of cross-border e-commerce as an example:

- (1) foreign buyers order online, which generate “three lists” (orders, logistics and payment);
- (2) Customs Platform transmit the “three list” data automatically and the filing information of the e-commerce enterprises and commodities to the Customs clearance system;
- (3) at the same time, the e-commerce enterprises hand over the sold goods to the logistics company, and under the supervision of the Customs on-site, the goods will be released automatically;
- (4) after the goods leave the country, the e-commerce enterprises can regularly aggregate the lists to a Customs declaration;
- (5) the e-commerce enterprises handle the tax refund and foreign exchange with the Customs declaration, and the Customs can conduct trade statistics according to the declaration.

### **5.3 Release First and Taxation Later**

According to the provisions of the Customs Law, import and export goods can be released after paying taxes, or can be paid after the goods are released under the premise of providing guarantees. “Release First and Taxation Later” refers to a facilitated measure that the Customs may release the goods after the tax memo is issued under the condition that the taxpayer guarantees to pay the tax within the statutory time limit. It enables the importer to significantly shorten the Customs clearance time which is especially suitable for bulk goods.

### **5.4 Aggregate Taxation**

“Aggregate Taxation” is a follow-up facilitated measure to “Release First and Taxation Later”. It means that the importers and their agents can pay the duties in aggregate manners before the 5th of the following month.

#### **Application**

- tariff electronic payment system user;
- the Customs credit management category is general certification and above;

- the average monthly tax payment for the previous natural year is not less than 4 times;
- the declaration meets the requirements, provides the necessary information for the Customs document review, complies with the Customs duty collection regulations, and pays taxes in a timely manner.

### **Guarantor**

The banks and other guarantors that provide aggregate guarantee for the taxation shall meet the following conditions:

- good credit and large asset scale;
- no stagnation or delay in the Customs duties;
- commitment to pay the full amount of the taxable payment of the import and export goods within the time limit of the guarantee;
- establish a verification mechanism for the authenticity of the letter of guarantee with the Customs.

### **Procedures**

- submit the aggregate guarantee to the Customs, which is a deposit or a letter of guarantee, and the beneficiaries of the guarantee are the Customs;
- complete the payment of aggregate taxation of the previous month before the end of the fifth working day of each month, and shall not select the electronic payment guarantee method;
- In principle, taxes cannot be paid in years.

## **5.5 Tariff Guarantee Insurance**

Tariff Guaranteed Insurance has taken effective in 2018 and it is a newly developed insurance product. The Tariff Guaranteed Insurance is the written document issued by insurance companies to China Customs at the request of the applicant (importer) to guarantee that the applicant will fulfill the obligation of paying Customs duties.

### **Functions**

Reduce capital occupation, accelerate Customs clearance and decrease trivialness of tax rebate

formalities caused by temporary import articles.

### **Features**

- avoid capital occupation caused by paying margin of Customs duties to improve fund turnover rate;
- accelerate Customs clearance to avoid increasing costs caused by detaining goods at ports;
- avoid repeated formalities of Customs clearance;
- simplify tax rebate formalities for temporary entry of goods;
- facilitate duty deferral.

### **Scope of Application**

- import and export commodities related to duty deduction or exemption policies on the state import and export commodities;
- the person who temporarily need to import and export equipment and machineries in the process of foreign engineering contract, exhibition and sales;
- processing trade enterprises import materials and parts;
- situations that the Customs implement "Release First and Taxation Later" for some goods.

### **Application Qualifications**

- the applicant shall have the qualification to engage in underlying transactions;
- the applicant shall maintain good credit standing without any bad credit record;
- the applicant shall have sufficient credit line or be able to pay sufficient margin necessary for issuing the letter of guarantee;
- the applicant shall possess real relationship of transactions that meets requirements on business compliance of the banks;
- the applicant shall provide complete and valid business information.

### **Process of Insurance Company (Insurer)**

- receive application for letter of guarantee and relevant documents;

- reviews the documents and issues the letter of guarantee;
- charges guarantee fees;
- amends the letter of guarantee;
- if applicable, makes compensation against the letter of guarantee or cancels the letter of guarantee.

From January 1, 2019, “Tariff Guaranteed Insurance” can be used to Aggregate Taxation.

## 5.6 Two-Step Customs Declaration

According to an official announcement (No. 127 of 2019) of the GACC, from August 24, 2019, China will start to test run the Two-Step Customs Declaration in designated regional Customs branches, which aims to further optimize business environment and facilitate trade.

After the merger of the China Customs and CIQ, the combined merger Customs declaration was also completed in August 2018. There are more than 100 blocks on Customs Declaration Form to populate them with the required information until now. However, errors whether accidentally or intentionally made are all captured and recorded by Customs and will trigger penalties in various forms. Under traditional mode, the process of revising/modifying a declaration after submission is difficult and cumbersome.

The Two-Step Customs Declaration will allow the importer to make a Brief Declaration upon the arrival of shipment, and make a Complete Declaration a few days after release of the goods. It is quite similar to the Customs Clearance process of US Customs, where there are two steps in typical consumption entries - declaration on Customs Form 3461 and declaration summary on Customs Form 7501.

To be specific, the eligible importer under Brief Declaration only needs to provide 13 pieces of information to Customs:

- domestic consignee;
- mode of transportation;
- vehicle name and No. ;
- B/L No. ;
- control code;
- HS code (6 digits);

- commodity description;
- quantity & unit of measurement;
- total value;
- country of origin;
- gross weight;
- container No. ;
- license ID (if applicable).

Please note that the Two-Step Customs Declaration applies to imports only and when making import declarations, importers have discretion over whether to use the new mode or not. If they want to use, their eligibility depends on the following criteria:

- the credit rating of the importer shall be equal to or higher than “General Certified”;
- the shipments are physically imported through one of the designated Customs houses;
- the licenses required for the importation are available for Customs online verification.

It is noted that the currently Customs authorities are able to verify 44 kinds of licenses online.

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## 6. INTERNATIONAL TRADE SINGLE WINDOW

The Single Window system is a trade facilitation tool. As such, the implementation of a Single Window system enables international (cross-border) traders to submit regulatory documents at a single website and/or single entity in which the declaration data is processed.

China has more than 300 international trade ports of diversified categories which had been approved by the State Council. In recent years, a series of important policies in the field of economic development

issued by the State Council emphasize the construction of Single Window based on e-Port and the promotion of trade facilitation. International Trade Single Window has been written into the Central Government Work Report for three consecutive years (2016-2018). As the competent port authority, the GACC duly performs its duty in port management and promotes International Trade Single Window in line with the general requirements of Integrated Customs Clearance proposed by the State Council.

Since 2017, the standardized International Trade Single Window has been promoted all around China. China Customs also improved the Customs clearance efficiency and overall Customs clearance environment by reducing the Customs clearance time of imports and exports by one third.

At present, the standard version of China's International Trade Single Window has 12 basic functions, realized docking and information sharing with 25 ministries and commissions, and operated online cooperation projects between 68 departments, providing 495 online service items covering sea, air, railway, and road transportation. Various types of Customs and trade affairs such as special Customs control areas, pilot FTZs, cross-border e-commerce, and various types of enterprises, such as Customs brokers, logistics, business, financial insurance, etc., are organized together by Single Window all over the country. "One-stop" operation has basically realized since 2018.

At present, the cumulative number of registered users for China's International Trade Single Window has reached more than 2.2 million, and the total amount of declared business exceeds 270 million votes. The application rate of the main reporting business (goods, manifests and ship declarations) is over 90%, and the application rate of goods declaration is 100%.

The 11 regulatory documents of 8 departments have implemented online declaration and online processing on the Single Window system and the export certificate of origin has also been online and self-printed through it. Single Window has also strengthened cooperation with some banks and insurance institutions, and played a crucial role in the cross-border trade big data platform to help solve the financing difficulties and financing problems of SMEs.

In the next step, GACC will continue to make efforts to carry out two key tasks before the end of the year: firstly, to speed up cooperation and cooperation with civil aviation, ports and railways, and provide full support for market players; and second is to focus on the "Belt and Road" and the construction of new international land and sea trade routes, promote international exchange and cooperation and information exchange, and actively carry out interconnection outside the country.

The goals of Single Window include:

- one entry point and one submission; standardized documents and electronic information; data sharing between relevant authorities;
- through continuing optimization and integration to cover all major aspects of the international trade supply chain and gradually become the major access point for enterprises;
- to improve the interoperability among the systems of domestic stakeholders in the international trade supply chain, optimize the business process of Customs clearance, improve the efficiency of declaration, shorten the clearance time, and reduce the cost of enterprises and promote trade facilitation.

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## 7. CUSTOMS BROKERAGE SERVICE

China Customs has the administrative right to approve domestic enterprise legal persons to be registered as Customs brokers to conduct Customs declaration business and provide Customs related services as entrusted by consignees and consignors of imported and exported goods.

### 7.1 Registration

The following requirements shall be met by Customs brokers applying for registration license:

- having the qualifications as a domestic enterprise legal person;
- having registered capital of no less than CNY 1.5 million;
- having sound organizational structure and financial management system;
- being staffed with no less than 5 Customs declarers;
- the investors, person in charge of the Customs declaration business and Customs declarers have no record of smuggling;

- person in charge of the Customs declaration business has more than 5 years' working experience in foreign trade or Customs declaration;
- the license for registration has never been revoked by Customs due to unlawful acts such as smuggling;
- fixed site and facilities for business operation necessary for providing Customs declaration services are available; and
- other conditions as required by Customs supervision.

Documents to be submitted upon application for registration license include:

- Application for Registration License of Customs Brokers;
- duplicates of the Enterprise Business License or copy of the Notice on Pre-approval of Enterprise Name;
- Articles of Association;
- copy of Capital Contribution Certificate;
- feasibility study report on conducting Customs declaration business;
- CV of the person in charge of the Customs declaration business;
- certificate of ownership or leasing of the site for business operation of Customs declaration services; and
- other materials related to the application for registration.

The Customs directly under the GACC that make the decision on approval of the license of registration may revoke the said license in any of the following circumstances:

- Customs officers make the decision on approval of the license of registration by means of abuse of power or neglect of duty;
- decision on approval of the license of registration is made beyond legal capacity;
- decision on approval of the license of registration is made in violation of legal procedures;
- license of registration is granted to an applicant who is ineligible for application or fails to meet the legal conditions; or
- other circumstances where the license of registration can be revoked according to the law.

In the event that the lawful rights and interests of the licensee are damaged by the revocation, the Customs will compensate for the direct loss borne by the licensee according to the law. License of registration shall be revoked if it is obtained by the licensee through illegal means such as fraud and bribery. The interests obtained by the licensee on the basis of the license of registration are not under protection. The license will not be revoked if the revocation may significantly damage the public interest.

The Customs shall cancel the license of registration according to the law in any of the following circumstances:

- license of registration is not extended upon expiration;
- license of registration is legally terminated by Customs broker or its cross-Customs district branch;
- license of registration is revoked or withdrawn, or certificate of registration licensing is revoked according to the law;
- it is impossible to implement items under the license of registration as a result of force majeure; or
- other circumstances provided by laws and administrative regulations where the license of registration shall be cancelled.

## 7.2 Cross-Customs District Branches

The following requirements shall be met by cross-Customs district branches of Customs brokers applying for registration license:

- the conditions for establishment of branches of domestic enterprise legal person are met;
- number of Customs declarers is no less than 3;
- fixed site and facilities for business operation necessary for providing Customs declaration services are available;
- person in charge of the branch has more than 5 years' working experience in foreign trade or Customs declaration; and
- person in charge of the Customs declaration business and Customs declarers have no record of smuggling;
- the Customs broker shall increase its registered capital by CNY 500,000 for application of each license for registration of cross-Customs district branch.

- Documents to be submitted upon application for a cross-Customs district branch of a Customs broker include:
- application for Registration License of Cross-Customs District Branches of Customs brokers;
- feasibility study report on conducting Customs declaration business by the branch;
- CV of the person in charge of the branch and the person in charge of the Customs declaration business;
- certificate of ownership or leasing of the site for business operation of Customs declaration services;
- the evidential materials issued by the Customs directly under the GACC at the place of registration of the Customs broker, which proves that the Customs broker meets the conditions to apply for registration of a branch; and
- other materials related to application for registration license on establishment of a branch of the Customs broker.

The following requirements shall be met by Customs brokers applying for registration license for the normal branches:

- it has been 2 years since the day when the Customs broker obtained the Certificate of Registration of Customs Brokers of the Customs of the PRC approved and issued by the Customs;
- the Customs broker has not been punished due to smuggling within the most recent 2 years from the date of application.

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## 8. CUSTOMS GUARANTEES

Chapter 6 of the Customs Law stipulates that before the consignee or consignor requests to release the goods before determining the classification, valuation, and provision of valid Customs declaration

documents or other Customs procedures, China Customs shall release the goods after the corresponding guarantees are provided. Besides, some exceptions for the guarantees are also stipulated by laws and administrative regulations. However, if there are restrictions on import and export goods and articles, which means the importer and exporter should provide licenses but they cannot provide, as well as other circumstances that cannot be guaranteed by laws and administrative regulations, China Customs may not conduct any guarantee release.

## 8.1 Basic Rules

The importer or exporter can apply for a guaranteed release to China Customs under the following circumstances:

- (1) Customs classification or Customs valuation is not determined, and therefore the relevant import and export procedures have not been completed, and the consignor or consignee requires Customs to release the goods first;
- (2) import and export documents cannot be inspected at the time of Customs declaration (such as invoices, contracts, Packing Lists, etc.), and the goods have been delivered to the port, waiting for withdrawal or shipment, and the consignor or consignee requires Customs to release the goods first and supplement the relevant documents later;
- (3) it is applying to Customs for tariff reduction and exemption procedures, and the goods have been delivered to the port, waiting for withdrawal or shipment, and the consignor requests Customs to delay the import and export tax payment procedures;
- (4) for goods that should be taxed, the consignor or consignee requests to delay the payment of taxes;
- (5) goods with Temporary Admission (including goods under the ATA Carnet);
- (6) with the consent of Customs, temporarily store the goods that have not been released in a place outside Customs control area;
- (7) imported bonded processing trade goods;
- (8) except for prescribed by other law, regulations, and administrative regulations, the import or export goods and articles are illegal but are not suspected of being confiscated according to, and the goods are requested to be released first.

## 8.2 Special Rules

The general principle of the guarantee is if the Customs formalities are not settled for various reasons, and the consignee or consignor requests Customs to release the goods, the goods shall be guaranteed to Customs. However, Customs will not allow the guaranteed release in the following special cases:

- (1) the taxpayer has transfer or hiding the taxable goods and other property obviously within the prescribed tax period;
- (2) applying for the detention or release of goods suspected of infringing intellectual property rights;
- (3) imports are initially determined to be dumped, established subsidies and the official authorities announce the requirements for guarantee;
- (4) there are suspected violations of the laws, but they cannot be detained or inconveniently detained;
- (5) the party that has no permanent residence in the territory subject to Customs administrative punishment, but he/she are not satisfied with the penalty decision of Customs, or shall not be able to pay the fine before the departure;
- (6) import and export of gold and silver, endangered animals and plants, cultural relics, Chinese and Western medicines, food, sports and hunting firearms and ammunition and civil explosive equipment, radio equipment, security machines and other import and export goods subject to relevant state regulations, cannot be guaranteed.

## 8.3 Collateral

The guarantor can provide the following guarantees of property and rights:

- (1) CNY, freely convertible currency;
- (2) money order, promissory note, cheque, bond, certificate of deposit;
- (3) letter of guarantee from the bank or non-bank financial institution;
- (4) other property and rights recognized by Customs in accordance with the law.

## 8.4 Total Guarantee

China Customs accept the total guarantee for the whole year so that the consignee or consignor don't

need to apply for Customs guarantee repeatedly when duty amount does not exceed the guarantee amount within the time limit of the guarantee.

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## 9. PROHIBITIONS AND RESTRICTIONS

In principle, Foreign Trade Law (please refer to 2.2.1) lists the circumstances under which the state may impose restrictions or prohibit the import or export of goods and technology and such is allowed under the WTO rules. This law also provides for the adoption of any necessary measures to protect the national security. Most goods prohibited from importing and exporting are subject to the obligations of international conventions. Prohibition and restriction are implemented according to the code of the tariff code.

### 9.1 Import Prohibitions

There are many catalogues of prohibited imports is officially announced and may be adjusted occasionally. It is noted that the prohibition on imported goods is not actually limited to the categories. The principles are as follows:

- imports will be prohibited in order to preserve national security, public interests and public morals;
- imports will be prohibited to protect the life or health of humans, animals and plants, to protect the environment;
- imports will be prohibited in accordance with laws and administrative regulations;
- imports will be prohibited in accordance with the provisions of international treaties and agreements concluded or joined by China.

Prohibited imports are as follows:

- animal and plant pathogens (including bacterial and toxic species, etc.), pests and harmful organism;

- animals, plants, foods and other articles coming from disease-stricken areas;
- animal corpse;
- tiger bone, rhino horn, ivory and its products;
- soil;
- weapons, ammunition, explosives and military supplies;
- poisons and narcotics such as anesthetics, opium, morphine, heroin, cocaine;
- some used boilers, machines and equipment;
- some used machine electrical products, equipment, unsorted parts, dismantling parts, damaged parts, crushing parts;
- counterfeit currencies and counterfeit negotiable securities;
- food containing certain prohibited food colorings and prohibited additions;
- printed matter, magnetic media, films or photographs which are determined to be detrimental to the political, economic, cultural and moral interests of China;
- cargo in countries/regions where trade with China is suspended or prohibited.

### **Solid Wastes**

It is noted 14 major categories of 125 commodities description with ten-digital HS code of imported solid wastes are banned:

- waste animal and plant products, such as waste human and animal hair;
- ashes and soot of metallic minerals, vanadium slag, ore and residue, such as mica waste, copper containing 10% copper smelting furnace slag;
- aluminum waste and scrap, there are 2 kinds of commodities, polysilicon waste materials and silicon waste;
- waste drug (1 ten-digital HS code, only for reference);
- miscellaneous chemical waste, such as municipal waste, chemical waste, etc.;
- waste plastics from non-industrial sources, such as waste and scrap of ethylene polymers, waste and vinyl waste of vinyl chloride polymer (8 ten-digital HS code, only for reference);
- waste rubber, leather, such as waste tires and their cuts, finished leather trim, etc.;

- recycling (waste) paper and cardboard, waste wallpaper, waxed paper, dipped wax paper, carbon paper and other waste paper (2 ten-digital HS code, only for reference);
- waste textile raw materials and products, such as waste cotton yarn, old clothes, etc. (11 ten-digital HS code, only for reference);
- waste glass (1 ten-digital HS code, only for reference);
- wastes of metals and metal compounds, such as deposited copper, aluminum waste and the like;
- waste battery, only one product;
- dispose of electromechanical calculators and equipment and their unsorted parts, such as waste printers, waste gaming machines, etc.;
- others, such as waste fishing nets, other unlisted solid wastes, etc.

### **In addition**

At the end of December 2018, 16 kinds of solid wastes have been added, mainly including metal wastes containing manganese and iron produced by melting, smelting and refining of metals; waste plastics from industrial sources; and mixed metal wastes.

At the end of December 2019, 16 new types of solid waste will be added, mainly wood and cork waste; metal and alloy waste and scrap.

For more details, please visit:

- [1<sup>st</sup> List of Import Prohibition](#), effective as of December 20, 2001;
- 2<sup>nd</sup> List of Import Prohibition was mainly for used machine electrical products and effective as of January 1, 2002. [The new list \(2019\)](#) was effective as of January 1, 2019;
- 4<sup>th</sup> and 5<sup>th</sup> Lists of Import Prohibition are revised because of the imported solid wastes, as mentioned above;
- 3<sup>rd</sup> and 6<sup>th</sup> Lists of Import Prohibition are mainly for chemical substances that destroy the ozone layer.

### Others to be Noted

- China has banned the production, sales, import and export of home appliances using chlorofluorocarbon as coolant or foaming agent based on the [announcement](#) from September 1, 2007;
- based on the [announcement](#), the import and export of ractopamine and ractopamine hydrochloride is prohibited;
- the import of alkaline manganese batteries with mercury content exceeds 0.0001% of the battery weight is prohibited;
- trade with North Korean suspend;

## 9.2 Import Restrictions

There are many catalogues of controlled imports is officially announced and may be adjusted occasionally. It is noted that the restriction on imported goods is not actually limited to the categories. The principles are following:

- imports should be restricted in order to maintain national security, public interests and public morals;
- imports must be restricted to protect the lives or health of humans and animals and plants, and to protect the environment;
- imports should be restricted to nurture and promote specific industries in China if necessary;
- imports should be restricted for all products in the agriculture, livestock and fisheries industries if necessary;
- imports should be restricted to ensure China's international financial balance if necessary;
- other import restrictions in accordance with laws and administrative regulations;
- other import restrictions in accordance with the provisions of international treaties and agreements concluded or participated by China.

### 9.2.1 Import Tariff Quota

Import quota is formulated by the State Council in the Regulations on Import and Export Control of Goods.

The number of import quotas is issued once every year, and importers need to obtain quotas in advance when importing these items and submit import quota license to China Customs. In 2019, China adopts import quota management for the following imported products:

- agricultural products such as wheat, cotton, etc.;
- sugar;
- wool;
- fertilizer.

### 9.2.2 Import License

#### **Used Mechanical and Electrical Products, Ozone Depleting Substances**

Import license is also formulated by the State Council in the Regulations on Import and Export Control of Goods. Import license is a kind of non-quantity management for imported goods and the list of import license is issued each year.

According to [Import Restricted Machinery and Electrical Product List 2008](#), import of some metal products, machinery and equipment, electrical and electronic products, vehicles, instrument is limiting.

According to the [announcement](#), used mechanical and electrical products (13 categories with 69 10-digital HS code in the 90th chapter of Chinese Tariff Schedule) and ozone depleting substances (49 10-digital HS code of Chinese Tariff Schedule) are subject to import licensing control.

It is noted based on the [announcement](#), the import of specific type of used mechanical and electrical products is prohibited. From January 1, 2019, 2nd List of Import Prohibition was mainly for used machine electrical products and effective as of January 1, 2002. [The new list \(2019\)](#) was effective as of January 1, 2019.

#### **Sensitive Materials and Technologies**

With sensitive materials and technologies such as nuclear, biological, chemical, missile and radioisotopes, the substances [listed](#) in 2019 including:

- monitoring chemicals (69 categories);

- chemicals that can be converted into stimulants or other illegal drugs (48 categories);
- the radioactive isotopes (10 categories).

### **Products and devices with cryptographic technology**

All products and devices listed in the [list](#) are subject to import license management.

### **Solid Waste Used as Raw Materials**

Based on the [announcement](#) in 2017, Import of certain types of solid waste that can be used as raw materials is restricted and subject to import licensing control:

- metal-containing waste generated by melting, refining and refining metals;
- plastic scrap and scrap;
- used paper and cardboard;
- metal and alloy scraps (in a form that is not strongly metallized);
- solid waste containing powdery, mud, dusty or dangerous liquids;
- mixed metal waste (including die-casting of discarded vehicles and mixed metal waste of scrap ships).

Please note the importation of solid waste that can be used as raw materials will be stricter at the end of 2019.

- from December 31, 2018, waste metal, waste car die-casting and waste ship mixed metal waste, gold metal-containing waste, plastic scrap generated from genus melting, refining and refining and 16 types of waste, such as Millwood, are prohibited from importing;
- from December 31, 2019, 16 kinds of scraps such as alloy scrap, scrap titanium scrap, scrap wood scrap, etc. are prohibited from importing;
- In addition, from July 1, 2019, eight types of disposal such as iron scrap, copper scrap, aluminum scrap, etc. goods are recorded are restricted.

### 9.2.3 Automatic Import License

In order to monitor imports, a system of import license automatically issued for certain mechanical and electronic products has been established. To import mechanical and electronic products subject to automatic import licensing, the importer should apply to Ministry of Commerce or its authorized agencies for an Automatic Import License before completing Customs formalities. Please visit [website](#) for the list.

It is noted that since April 2018, the automatic import license of some automobile products and parts has been cancelled; since January 1, 2019, the automatic import license management of engines and main parts, food machinery, spinning machinery, etc. has been cancelled.

### 9.2.4 Reporting System

China implements reporting system for some imported bulk agricultural products and imported foods.

## 9.3 Export Prohibitions

There are catalogues of prohibited exports is officially announced and may be adjusted occasionally. It is noted that the prohibition on exported goods is not actually limited to the categories. The principles are as follows:

- exports will be prohibited in order to preserve national security, public interests and public morals;
- exports will be prohibited to protect the life or health of humans, animals and plants, to protect the environment;
- exports from China should be banned to protect resources that may be in short supply or exhausted;
- imports will be prohibited in accordance with laws and administrative regulations;
- imports will be prohibited in accordance with the provisions of international treaties and agreements concluded or joined by China.

Prohibited exports are as follows:

- weapons, ammunition, explosives and military supplies;
- counterfeit currencies and counterfeit negotiable securities;

- printed matter, magnetic media, films or photographs which are determined to be detrimental to the political, economic, cultural and moral interests of China;
- poisons and narcotics such as anesthetics, opium, morphine, heroin, cocaine;
- animal and plant pathogens (including bacterial and toxic species, etc.), pests and harmful organism;
- food/drugs that threaten the health of human, and where epidemics are occurring/endemic, and food/drugs that spread other diseases;
- cultural relics and heritage;
- precious animals and plants (including specimens), endangered animals and plants (including specimens) and their species and breeding materials;
- cargos in countries/regions where trade with China is suspended or prohibited.

It is particularly noted that the following export are prohibited in China:

- tiger bone;
- musk;
- rhinoceros' horn;
- natural bezoar;
- logs (crude wood);
- platinum, precious metals and their products;
- carbon tetrachloride used as a cleaning agent;
- 1.1.1-trichloroethane;
- charcoal;
- forest litter, peat (grass).

Please click the link for all the 5 lists: [list 1](#), [list 2](#), [list 3](#), [list 4](#), [list 5](#).

#### **Others to be Noted**

- China has banned the production, sales, import and export of home appliances using

chlorofluorocarbon as coolant or foaming agent based on the [announcement](#) from September 1, 2007;

- based on the [announcement](#), the import and export of ractopamine and ractopamine hydrochloride is prohibited;
- trade with North Korean suspend;

## 9.4 Export Restrictions

There are many catalogues of controlled exports is officially announced and may be adjusted occasionally. It is noted that the restriction on exported goods is not actually limited to the categories. The principles are as follow:

- exports should be restricted in order to maintain national security, public interests and public morals;
- exports must be restricted to protect the lives or health of humans and animals and plants, and to protect the environment;
- market size of export destination is limited and should be restricted if necessary;
- exports should be restricted because it can seriously harm to export order;
- other export restrictions in accordance with laws and administrative regulations;
- other export restrictions in accordance with the provisions of international treaties and agreements concluded or participated by China.

The main control measures for export restriction are export quota and export license. Export License List is promulgated every year and each target is determined by HS code.

### 9.4.1 Export Quota

Export quota is formulated by the State Council in the Regulations on Import and Export Control of Goods. A limited number of export quotas are issued annually, and exporters need to obtain quotas in advance when exporting these items and submit export quota license to China Customs. In 2019, China adopts export quota management for the following imported products:

- licorice and its products (Quota Bidding);

- valerian and its products (Quota Bidding);
- artificially planted ephedra;
- live pig;
- live cattle;
- live chicken;
- wheat;
- corn;
- rice;
- wheat flour;
- corn flour;
- rice flour;
- coal;
- crude oil;
- oil (excluding lubricating oil, grease, lubricating base oil);
- sawn timber;
- cotton.

#### 9.4.2 Export License

The main contents of export license management in 2019 are as follows:

##### **Export License Based on the Quota**

- live cattle (for Hong Kong and Macao);
- live pigs (for Hong Kong and Macao);
- live chickens (for Hong Kong);
- wheat;
- corn;
- rice;

- wheat flour;
- corn flour;
- rice flour;
- artificially planted ephedra;
- coal;
- crude oil;
- oil (excluding lubricating oil, grease, lubricating base oil);
- sawn timber;
- cotton;
- licorice and its products (Quota Bidding);
- valerian and its products (Quota Bidding);

It is noted that exporting the listed goods by processing trade should apply for export licenses with quota documents and export contracts for goods.

#### **Export License Based on Application**

The following are the list to apply for an export license (processing trade also needs to apply for):

- live cattle (outside Hong Kong and Macau);
- live pigs (outside Hong Kong and Macau);
- live chicken (outside Hong Kong);
- beef;
- pork;
- chicken;
- bauxite;
- phosphate rock;
- magnesia;
- talc (powder);

- fluorite;
- rare earth;
- tin and its products;
- tungsten and its products;
- molybdenum and its products;
- antimony and its products;
- coke;
- refined oil (lubricating oil, grease, lubricating base oil);
- paraffin;
- some metal and its products;
- disodium sulfate;
- silicon carbide;
- ozone depleting substances;
- citric acid;
- Vitamin C;
- penicillin industrial salt;
- silver;
- platinum (exported by processing trade);
- indium and its products;
- motorcycle (including all-terrain vehicles) with its engine and frame;
- automobile (including complete sets of parts) and its chassis.

Please visit [websitefor](#) details.

### **Sensitive Materials and Technologies**

Please refer to 9.2.2 Import License.

**Noted**

- the goods in the catalogue provided under the foreign aid of the Chinese government are not subject to the export quota and license management;
- Customs declarations for the export of licorice are designated to Tianjin Customs, Shanghai Customs and Dalian Customs;
- Customs declarations for the export of licorice products are designated to Tianjin Customs and Shanghai Customs;
- Customs declarations for the export of natural sand to Taiwan, Hong Kong and Macao are designated to regional Customs where the exporter is located.

**9.5 Commodity Inspection**

After the institutional restructuring of China Customs and China Inspection and Quarantine (CIQ) in 2018, China Customs has absorbed the responsibility and staffs of the CIQ. Referring to 2.2.3 Import and Export Commodity Inspection Law, China Customs conducts inspection on import and export commodities according to related laws and regulations. [The Statutory Catalogue](#) subject to inspection is issued by China Customs every year. In addition, with the reform of China Customs and the development of trade facilitation, this system is changing and the scope of the catalogue is shrinking. The main commodities in the catalogue are:

- lignite;
- ferrosilicon;
- some hazardous chemicals;
- medical diagnosis and blood type determination reagent;
- electrocardiograph;
- some electronic product;
- some food;
- veterinary vaccine;
- child safety seat;
- vehicles parts;

- oxygen equipment.

All other imported and exported products may be sampled to inspection. In order to alleviate the burden on exporters, all export goods, transportation vehicles, containers and other statutory inspection goods are exempt from fees.

## 9.6 China Compulsory Certification

China implemented a new domestic system of compulsory certification since 2002. Safety and other regulatory requirements also apply to imports of medicines, foodstuffs, animal and plant products, and mechanical and electronic products. China National Committee of Certification and Accreditation (CNCA) is responsible for the quality standards.

Under this system, a unified catalogue, standard, mark and fee schedule were put in place and the CCC (China Compulsory Certification) mark system replaced the old system. The CCC mark is the certification mark for products which are allowed to be imported, sold or used in China. Catalogues of products requiring the CCC mark have been drawn up and published. Details can be found on the CNCA website.

## 9.7 Other Related Requirements

### 9.7.1 Commodity Description and Labelling

All goods sold in China must be labelled in the Chinese language with a required description of their contents, grades and specifications as to quantities where applicable, the production date and expiration date (in particular for food-related items and pre-packaged foods), and explanatory warnings of any potential hazard associated with the products.

China also adopted a labelling system for the management of GM (Genetically Modified) agricultural bioproducts and publishes a catalogue accordingly. All GM agricultural bioproducts listed in the catalogue must be properly labelled if they are to be sold in the Chinese market.

In addition, fumigation is required for all wooden packing materials, in accordance with IPPC standards, and must bear the IPPC (International Plant Protection Convention) symbol.

### 9.7.2 Overseas Manufacturer Registration

Overseas manufactures of specific commodities (such as drugs) are required to register with the competent Chinese official authorities (not China Customs), but the exporters are disqualified for this registration. Please be noted that overseas manufacturers shall be recommended by the official authorities of exporting country (region) to conduct the registration in the competent Chinese official authorities. For example, the registration/confirmation for dairy, aquatic and meat products will be conducted at the following [website](#).

### 9.7.3 Overseas Exporter Filing

Overseas exporters and their agents of food, cosmetics and medicines shall file their information with China Customs at the [website](#).

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## 10. CUSTOMS DUTIES AND TAXES

Currently, the revenue collected by China Customs mainly includes import duty, export duty, import VAT, consumption tax and vessel tonnage tax.

### 10.1 Duty Structure

From a legal perspective, there are many different types of duties in China.

#### Based on freight logistics

- Import duty, refer to 10.2;
- Export duty, refer to 10.3.

### According to dutiable calculation standards

- Ad valorem Duty:

$$\text{Duty Payable} = \text{Dutiable Value} \times \text{Tariff rate}$$

- Quantity-based Duty:

$$\text{Duty payable} = \text{Quantity of imported goods} \times \text{Amount of duty per unit}$$

- Compound Formula Duty:

$$\text{Duty payable} = \text{Dutiable Value} \times \text{Tariff rate} + \text{Quantity of imported goods} \times \text{Amount of duty per unit}$$

- Sliding Duty; (It is currently only for cotton without import quota.)
- Alternative Duty.

Dutiable Value and duty payable should be calculated in CNY using the benchmark exchange rate published by the People's Bank of China.

## 10.2 Import Duty

The State Customs Tariff Commission of the State Council announces the annual implementation plan each year. For more information, please refer to the [2019 Customs Tariff Adjustment Plan](#) (effective from January 1, 2019). China's import duty is divided into:

### 10.2.1 MFN Duty

MFN (Most Favored Nation) Duties are applicable to:

- imported goods from WTO members with the common application of MFN clauses;
- imported from countries/regions that have bilateral trade agreements with China granting MFN clauses to;
- imported goods that China is the country of origin.

The MFN Duty Rate has gradually decreased with the entry of the WTO. By 2010, China had fulfilled all its duty reduction obligations, reducing its average arithmetic duty rate to 9.8%. According to the WTO,

China's average MFN Duty Rate has been progressively lowered from 15.3% in 2001 to 7.5% in 2019.

According to the 2019 Customs Tariff Adjustment Plan, the ITA (Information Technology Agreement of WTO) duty rate has been integrated into the MFN Duty Rates and the fourth tariff reduction has implemented on information technology products from July 1, 2019.

*Table 3 Weighted Average MFN Duty Rate and Comparison 2018*

	Total	Agricultural products	Non-agricultural products
Japan	2.1	11.1	1.2
USA	2.4	3.8	2.3
EU	3.0	7.8	2.6
Australia	4.0	2.4	4.1
Korea	6.9	55.4	4.0
India	7.6	38	5.6
China	4.4	9.7	4.0

Source: WCO Statistics.

*Table 4 Import Duty of China 2018*

Summary	Total			Ag			Non-Ag		
	4.4			9.7			4.0		
Frequency Distribution	free	0~5	5~10	10~15	15~25	25~50	50~100	>100	NAV
	MFN applied duties								
Ag MFN applied	7.2	6.8	26.4	24.6	25.7	6.7	2.7	0	0.3
Non-Ag MFN applied	7.2	19.3	47.0	14.5	10.7	1.2	0	0	0.3
Product groups	MFN applied duties								
	AVG			Duty-free in %			Max		
Animal products	14.2			13.4			25		
Dairy products	12.3			0			20		
Fruit, vegetables, plants	14.8			4.9			30		
Coffee, tea	14.9			0			32		
Cereals & preparations	23.0			8.8			65		

Oilseeds, fats & oils	10.9	9.1	30
Sugars and confectionery	28.7	0	50
Beverages & tobacco	23.7	2.0	65
Cotton	18.0	10.0	40
Other agricultural products	11.8	8.5	38
Fish & fish products	10.9	4.1	23
Minerals & metals	7.8	5.9	50
Petroleum	5.3	16.7	9
Chemicals	6.7	0.4	47
Wood, paper, etc.	4.1	41.0	20
Textiles	9.6	0	38
Clothing	16.0	0	25
Leather, footwear, etc.	13.2	0.6	25
Non-electrical machinery	8.1	9.1	35
Electrical machinery	8.4	24.2	35
Transport equipment	12.3	0.8	45
Manufactures	11.6	10.2	35

Source: WTO Statistics.

### 10.2.2 Conventional Duty

According to the kinds of trade agreements concluded between China and the relevant countries/regions, goods imported from the relevant countries/regions and complied with relevant Rules of Origin will be subject to Conventional Duty. The current implementation is as follows:

Table 5 Conventional Duty of China

Countries/Regions	Agreement Backgrounds
Korea, India, Sri Lanka, Bangladesh, Laos	Asia-Pacific Trade Agreement

Countries/Regions	Agreement Backgrounds
ASEAN	Sino-ASEAN Comprehensive Framework Agreement
Chile	Sino-Chile Free Trade Agreement
Pakistan	Sino-Pakistan Free Trade Agreement
New Zealand	Sino-New Zealand Free Trade Agreement
Singapore	Sino-Singapore Free Trade Agreement
Peru	Sino-Peru Free Trade Agreement
Costa Rica	Sino-Costa Rica Free Trade Agreement
Switzerland.	Sino-Swiss Free Trade Agreement
Iceland	Sino-Iceland Free Trade Agreement
Australia	Sino-Australia Free Trade Agreement
Korea	Sino-Korea Free Trade Agreement
Maldives	Sino-Maldives Free Trade Agreement
Georgia	Sino-Georgia Free Trade Agreement
Hong Kong SAR, China	CEPA (Closer Economic Partnership Arrangement) Hong Kong
Macau SAR, China	CEPA (Closer Economic Partnership Arrangement) Macau
Taiwan, China	ECFA (Economic Cooperation Framework Agreement)

It is noted that according to the 2019 Customs Tariff Adjustment Plan, the following treatment will be implemented from January 1, 2019:

- the import duty rates for goods imported from New Zealand, Peru, Costa Rica, Switzerland, Iceland, Korea, Australia, Georgia and countries participating in the Asia-Pacific Trade Agreement have been further reduced;
- In addition, according to the agreement between China and Hong Kong/Macau, the CEPA Hong Kong/Macau import duty rate will fully be imposed to zero.

### 10.2.3 Preferential Duty

According to the trade or tariff preferential agreement signed by China and relevant countries/regions,

bilateral official exchange of documents and decisions of the State Council, Preferential Duty is applicable to specific goods from the following countries or regions (refer to the tariff columns of Tariff Schedule of PRC 2019):

*Table 6 Preferential Tariff of China*

Countries/Regions	Agreement or Documents Backgrounds
Bangladesh, Laos	Asia-Pacific Trade Agreement
Myanmar, Laos, Cambodia	Sino-ASEAN Comprehensive Framework Agreement
Ethiopia, Burundi, Equatorial Guinea, Congo, Djibouti, Guinea, Guinea-Bissau, Lesotho, Madagascar, Malawi, Mali, Mozambique, South Sudan, Sierra Leone, Senegal, Sudan, Somalia, Tanzania, Uganda, Chad, Central Africa, Afghanistan Yemen, Vanuatu, Comoros Union, Mauritania, Togo, Liberia, Rwanda, Angola, Zambia, Nepal, Niger, Eritrea, Cambodia. (35)	zero-tariffs treatment according to the trade or tariff preferential agreement signed by China and relevant countries/regions, bilateral official exchange of documents and decisions of the State Council
Benin, East Timor, Myanmar (3)	
Bangladesh (1)	

#### 10.2.4 Tariff Quota

The Tariff Quota is applicable to goods imported within the import quota.

#### 10.2.5 Temporary Duty

Based on the 2019 Customs Tariff Adjustment Plan, the Temporary Duty will apply to imported products for 706 HS codes. The Temporary Duty is targeting specific imported products:

- if the import goods that are subject to the MFN Duty are also applicable to the Temporary Duty, the Temporary Duty shall apply to;
- If the imported goods that are subject to the Conventional Duty or Preferential Duty are also applicable to the Temporary Duty, then the Temporary Duty shall apply to.

### **10.2.6 General Duty**

General Duty is applicable to imported goods from countries/regions that are not applicable to MFN Duty, Conventional Duty, Preferential Duty, and imported goods from unknown country of origin.

## **10.3 Export Duty**

Export Duties are classified into temporary and general. In 2019, only 108 HS codes are within the scope of taxation, and the rate remained as 2018. Please visit the [website](#) for details.

## **10.4 Special Import Duties**

### **10.4.1 Anti-Dumping Duty**

When imported products enter the Chinese market by dumping and seriously damage China's existing industries or cause major obstacles to the growth of China's domestic industry, Anti-Dumping Duty will be imposed after the investigation. The Anti-Dumping Duties collection period shall not exceed 5 years.

### **10.4.2 Countervailing Duty**

When imported products are subsidized by the government and seriously damage China's existing industries or cause major obstacles to China's industrial development. In addition, Countervailing Duties will be imposed after the investigation. The period of countervailing duty collection shall not exceed 5 years.

### **10.4.3 Safeguards Measures**

If the number of imported products increases and seriously damages the Chinese industry, Safeguards Measures (not more than 200 days) will be imposed on the investigation that usually indicate the temporary special duties. According to the final ruling of the investigation, special duties or quantitative restrictions may be imposed. The period of protection must not exceed 4 years.

### **10.4.4 Special Safeguard Mechanism**

Special Safeguard Mechanism (SSM) is only a temporary emergency measure for developing countries that have implemented tariff management for agricultural imports. It is applicable only to agricultural

products specified in the agreement and it can be activated automatically when the import volume increases rapidly or the import price is lower than the specified standard.

#### 10.4.5 Retaliatory Duty

Over the course of the US-China trade disputes, China has imposed retaliatory Duties on US goods, including beef, lamb, pork, vegetables, juice, cooking oil, tea, coffee, refrigerators, and furniture, among many others.

### 10.5 VAT for Imported Goods

From April 1, 2019, all goods imported into China are subject to the Value-added Tax (VAT) of either 9% or 13 %. The 9% tax is available for certain goods that fall mainly within the categories of agricultural and utility items, while the 13% tax applies to other goods subject to the VAT.

The VAT rates were originally 11 percent or 17 percent but were decreased to 10 percent or 16 percent in May 2018, then to 9% or 13% in April 2019.

### 10.6 Consumption Tax for Imported Goods

Consumption Tax is imposed on importers who import taxable products. Imported products taxable under China's consumption tax regime include:

- tobacco or alcohol;
- firecrackers and fireworks;
- luxury goods like fine jewelry, precious stones and cosmetics
- high-end products, such as passenger cars and motorcycles, golf balls and equipment, high-end watches, yachts;
- disposable wooden chopsticks;
- hardwood floorboards;
- batteries and coatings.

For imported goods, the consumption tax rate varies depending on the type of product being brought into the country. Calculating consumption tax can be done by using either the ad valorem or quantity-based

method.

## 10.7 Cross-Border E-Commerce Import Tariff

There are two circumstances that can apply Cross-Border E-Commerce import tariff:

- goods purchased from merchants registered in China's cross-border e-commerce network; or
- goods purchased from any overseas merchant and shipped by a courier company that is able to present three required documents (commercial invoice, airway bill, and proof of payment), and who can take legal responsibility for the import.

Personal imports of these types, with a Customs value (CIF value) up to CNY 5,000, and where the accumulated transaction value has not surpassed the personal annual limit of CNY 26,000, are exempt from import duty, and subject to 70% of the applicable VAT and Consumption Tax rate.

Imports which exceed these limits will be subject to all duties and taxes. It is noted only products in the positive list (i.e. a list of products approved by China's Ministry of Finance) can be imported under this regime.

## 10.8 Reduction, Exemption and Refund

### 10.8.1 Reductions and Exemptions

#### General

The following goods imported and exported may be exempt from Customs Duties by-law:

- the goods of one receipt of duty amount under CNY 50;
- advertising articles and trade samples of no commercial value;
- materials gifted by international organizations or foreign governments free from charge;
- the fuels, materials, and beverage needed for the entry and exit transportation tools on the route of loading;
- the goods damaged or lost before releasing by Customs;
- other goods free from or reduced on Customs Duties by-laws (such as the goods, articles free

from or reduced of Customs Duties as stipulated in the international conventions that China has concluded or participated).

At the same time when the duty is reduced, exempt for the above imported goods, the VAT and Consumption Tax on the stage of importation may be reduced or exempted.

### **Special**

Duty exemption or reduction and temporary exemption or reduction of duty to special area, specific enterprise or for special use may be granted in line with the regulations of the State Council. The Customs Duties on the following imported for self-use may be exempted:

- imported equipment and parts by the foreign and domestic investment projects and research centers, encouraged, listed and approved by official authorities (including China Customs);
- Importing certain key components and raw materials or exporting certain key technical equipment and products listed in the catalogue to eligible Chinese domestic enterprises is exempt from import VAT and Customs duties (the Catalogue of State-supported Key Technical Equipment and Products, the Catalogue of Imported Key Components and Raw Materials of Key Technical Equipment and Products took effect on January 1st, 2019), encouraged, listed and approved by official authorities (including China Customs);
- imported equipment and parts by integrated circuit manufacturing enterprises (projects), software enterprises (projects) and anime enterprises (projects), encouraged, listed and approved by official authorities (including China Customs);
- imported articles for science, research, and teaching, encouraged, listed and approved by official authorities (including China Customs);
- imported articles specially for the use of the disabled, encouraged, listed and approved by official authorities (including China Customs);
- oversea donated, poverty support or charity goods approved by official authorities (including China Customs);
- the commodities imported by the border residents by mutual market trade with a limit.

It is noted that the duties on the bonded components and raw materials for processing trade are also exempted.

### 10.8.2 Duty Refund

The duty payers may apply for the refund of the duty within one year after the date of payment by written form:

- if the duty-paid goods are re-exported out of China due to quality or specification reasons;
- if the duty-paid goods are re-imported into China due to quality or specification reasons;
- if the duty-paid goods are not loaded or exported;
- if there is any damage, bad quality, wrong specification or other shortage of the duty-paid goods.

China Customs may examine the goods or ask for the qualified proof, such as an inspection report.

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## 11. HS CLASSIFICATION

The Harmonized Commodity Description and Coding System, also known as the Harmonized System (HS) of tariff nomenclature is an international standardized system of names and numbers to classify traded products. The determination of the correct HS Code for tariff classification purposes is important since the applicable Customs tariff rates and import licenses/certificates for specific imported goods are determined according to their HS Codes.

From August 1, 2018, the HS Code system of China has been changed from the original 10-digital HS code to the new 13-digital HS code. The first 6 digits of these codes are the same to those used by other members of the WCO, the 7-8 digit are the commodity code of China, 9-10 digit are Customs additional control codes, and 11-13 digit are additional numbers for inspection and quarantine. The 8-digital Tariff Schedule published by the Customs Tariff Commission of the State Council includes 8,549 8-digital codes. The following is the structure of a 13-digital code:

- 1-2 digit Chapter;
- 1-4 digit Heading;
- 1-6 digit Sub-heading
- 1-8 digit Article
- 9-10 digit Customs additional control code
- 11-13 digit Additional numbers for inspection and quarantine

To gain more certainty on the HS classification of a product to be imported into China, the importer may apply to China Customs for a Advanced Ruling on the HS code.

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## 12. CUSTOMS VALUATION

According to the important decree of GACC, the Measure for Customs Valuation of Imported and Exported Goods, China Customs uses the globally accepted methodology to assess the dutiable value. Based on the measure, the dutiable value of imported goods should be assessed based on the transaction value, which is defined as the complete actual price of the goods, including both direct and indirect payments made by the buyer to the seller, with certain required adjustments. The dutiable value also includes transportation-related expenses and insurance premiums on the goods prior to unloading at the place of arrival in China. Import duties and taxes collected by Customs are excluded from the dutiable value.

To assess a dutiable value, e-Customs may automatically access to a valuation database that lists appropriate valuations for various imports, based on international market prices, foreign market prices, and domestic prices. Normally, the price on the Invoice will be accepted. However, if the reported value is too far out of line with the database, China Customs officer may inspect the goods and evaluate the goods based on the following methods with certain required adjustments in order:

- (1) Transaction Value Method;

- (2) Identical Goods Method;
- (3) Similar Goods Method;
- (4) Domestic Sale Price Method;
- (5) Calculating-costs Method;
- (6) Reasonable Standards Method.

These methods must be applied sequentially starting with the first method, and any evaluation method of lower priority can be applied only when the dutiable value determined by the method of higher priority cannot be applied. However, the fifth method may be applied in advance of the fourth method in case where the person liable for duty payment makes a request for it.

In recent years, both Chinese Tax Administration and Customs administrations have placed their focus on transfer pricing, particularly of multinational enterprises. Some new requirements and regulations provide Customs authorities with more information and an approach to evaluate declared dutiable values. Since March 2016 the GACC has announced several adjustments to the Customs Declaration requirements, requiring importers to disclose related party transactions and to confirm whether import prices have been influenced by the relationship between the buyer and seller.

China Customs, by leveraging the newly established Customs National Center for Duty Collection and Management for national all-in-one clearance reform, have increased their supervision and monitoring of import transactions between related parties and have instructed the audit division and port clearance division to carry out focused inspections.

However, from China Customs' standpoint, if the company's profit margin is higher than the upper quantile established by the benchmark comparable companies, the Customs authorities would tend to consider whether the high profit rate is caused by the low import price.

As part of group transfer pricing policies, many MNEs set up licensing arrangement for local Chinese subsidiaries to pay royalties relating to the right to use certain intangibles (i.e. trademark fees, technology fees) to relevant intangibles owners. Currently, procedure-wise the MNEs could remit the outbound royalties without preapproval from the Chinese tax or Customs authorities. However, both authorities could still look into royalty payments closely even after the outbound royalty payments are made. Customs valuation rules focus on whether the royalties are connected to the imported goods, such that the royalty payment constitutes the condition to sales to China, to assess whether the royalty payment

should be dutiable and additional duties and import VAT should be levied. MNEs may also consider available mechanisms such as Customs Advance Rulings and China Customs has introduced the Customs Advance Ruling mechanism from February 1, 2018.

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### 13. RULES OF ORIGIN

Rules of origin are technical content that is closely related to the collection of cross-border taxes in international trade. Usually, Rules of Origin are used:

- to implement measures and instruments of commercial policy such as anti-dumping duties and safeguard measures;
- to determine whether imported products shall receive most-favored-nation (MFN) treatment or preferential treatment;
- for the purpose of trade statistics;
- for the application of labelling and marking requirements; and
- for government procurement.

Being the criteria needed to determine the “nationality” of a product, there is wide variation in the practice of different governments with regard to it especially with the growth of bilateral and multilateral regional free trade agreements. While the requirement of substantial transformation is universally recognized, governments apply the criterion of change of tariff classification, others the ad valorem percentage criterion and yet others the criterion of manufacturing or processing operation.

China has offered special preferential tariff treatment to the Least Developed Countries (LDCs). For example, China began providing special preferential tariff treatment to selected products imported from Laos, Cambodia and Burma from November 2001. So far, importation from more than 40 countries to China can enjoy the special preferential tariff treatment.

GACC issued Administrative Measures of the PRC Customs on Rules of Origin of Imported Goods from the Least Developed Countries Entitled to Special Preferential Tariff Treatment in 2017. With this publication, the previous decrees regarding the rules of origin of goods imported from the LDCs are abolished. The Decree applies to the administration on country of origin for importations from the LDCs that enjoy special preferential tariff treatment, which represents the new requirements of China Customs regarding administration on country of origin.

The rules of origin for special preferential tariff treatment have been further improved with the issuance of the Decree, becoming more similar to the rules of origin in the newly signed free trade agreements between China and beneficiary countries. The newly introduced rules in the Decree make it easier for goods to be regarded as originating from beneficiary countries. The introduction of Advanced Ruling and Declaration of Origin gives importers more choices when applying for the beneficiary tariff rate.

It is noted that besides offering special preferential tariff treatment to LDCs, China has already signed bilateral FTAs with many countries/regions, as well as 2 regional FTAs. Goods imported from contracting parties can enjoy the agreed preferential tariff treatment with the support of specific Rules of Origin. Rules of Origin are different among different FTAs, which were determined based on the negotiation between China and the contracting countries. For example, although “wholly obtained” and “substantially transformed” are two basic standards in the rules of origin, different FTAs have different rules in details.

In addition, some specific provisions regarding cumulation, minimal operations or processes, direct consignment, de minimis, neutral elements, packaging materials and containers, fungible materials and sets of articles may not be included in all FTAs, and each specific rule may not be same in different FTAs.

### **Originating Goods**

Aside from products that are “wholly obtained or manufactured in beneficiary countries” and “not wholly obtained or manufactured but are substantially transformed in beneficiary countries”, products that are completely manufactured in beneficiary countries with originating materials regulated by the Decree will be treated as originating products from beneficiary countries.

### **Advanced Ruling and Declaration of Origin**

A Declaration of Origin can be accepted in place of a Certificate of Origin for any consignment of goods covered by an advance ruling issued by China Customs that deems the goods to be qualified as

originating from beneficiary countries, so long as the facts and circumstances on which the ruling was based remain unchanged and the ruling remains valid.

### **Electronic Data Exchange System**

If China Customs has already acquired the electronic data of a Certificate of Origin or Declaration of Origin from beneficiary countries through the electronic data exchange system, the consignees or their agents of imported goods do not need to submit hard copies of the documents.

### **De Minimis Rule**

A good that does not satisfy change in tariff classification requirements will nonetheless be an originating good if:

- (a) the value of all non-originating materials used in the production of the good in question does not exceed 10% of the value of the good as determined in accordance with WTO GATT Customs Valuation Agreement; and
- (b) the good meets all other applicable provisions of the Decree.

### **Cumulation**

Where originating goods or materials of China are for producing into a product in the beneficiary country, the goods or materials so incorporated should be regarded as originating materials.

If the beneficiary country is a member of a specific regional group where originating goods or materials of other beneficiary countries within the group are incorporated for producing into a product, the goods or materials so incorporated should be regarded as originating materials.

### **Clarification on the Calculation of Regional Value Content**

$$RVC = (Value\ of\ the\ good - Value\ of\ non-originating\ material) / Value\ of\ the\ good \times 100\%$$

While value of the good should be determined in accordance with the provisions of the Measure for Customs Valuation of Imported and Exported Goods, adjusted on an FOB basis.

### **Direct Consignment**

If an originating good of a beneficiary country is transported through other country or region before arriving in China, the maximum duration of staying in the country or district has been extended from 3 months to 6 months.

### **Waiver of Certificate of Origin or Declaration of Origin**

The requirements for the presentation of a Certificate of Origin or Declaration of Origin have been waived for any consignment of originating goods of a Customs value not exceeding CNY 6,000.

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## **14. CUSTOMS ADVANCED RULINGS**

In 2017, GACC released the Interim Administrative Procedure for Customs Advance Rulings, which comes into effect on February 1, 2018. The new provisions permit importers and exporters to request advance rulings from China Customs in advance of the actual importation or exportation of the goods online.

### **Eligibility for Advance Ruling Applications**

Applicants shall be foreign trade operators (importers and exporters) registered with China Customs. In addition, applicants shall only apply for advance ruling on Customs affairs in relation to their own foreign trade activities.

### **Scope of Advance Rulings**

- HS Classification;
- Country (region) of Origins or qualifications as original products;
- dutiable value and valuation methods for imported goods;

- other Customs affairs prescribed by the GACC.

### **Time Limit and In-charge Customs Office**

An applicant shall apply to the Customs directly under the GACC at the place where it is registered in three months before the scheduled importation and exportation.

Under exceptional circumstances, an applicant that has valid reasons may apply for advance rulings within three months before the scheduled importation or exportation.

### **Advance Ruling Decision**

After the submission of an application for advance ruling, the in-charge Customs shall review and make a decision on whether or not to accept the application within 10 days. Once the application is accepted, an advance ruling decision shall be issued within 60 days. Except for those involving business secrets, the Customs office reserves the right to publish the rulings letters.

An advance ruling decision is valid for three years. In case of any changes to the relevant laws, administrative regulations, Customs regulations and announcements of the GACC on which the advance ruling decision is based, the advance ruling decision shall be null and void automatically.

Advance ruling decisions have no retroactive effect on goods imported or exported before these decisions come into force.

Any applicant that has objections to an advance ruling decision may apply to the GACC for administrative review, and may further institute administrative proceedings with the people's court in accordance with the law if it still has objections to the review decision.

## 15. FREE TRADE AGREEMENTS

In 1982, China was recognized as an observer of the GATT and applied to join in 1986 (restoring the status of the GATT signatories). On December 11, 2001, PR China joined the WTO officially.

Currently, China has signed and implemented 17 Free Trade Agreements (FTAs), while 13 FTAs are in negotiations and another 10 are under considerations. China has FTAs in force with countries and economic blocs such as ASEAN, New Zealand, Singapore, Switzerland, Korea and Australia. It is currently negotiating FTAs with countries and organizations including the Regional Comprehensive Economic Partnership (RCEP), the Gulf Cooperation Council (GCC) countries, Norway, Japan-Korea, Sri Lanka, and Maldives.

*Table 7 FTAs Status of China in 2019*

In Force	Negotiating	Preparing
APTA	RCEP	Colombia
ASEAN	GCC	Mongolia
Australia	China, Japan and Korea	Bangladesh
CEPA	Sri Lanka	Canada
Chile	Israel	Papua New Guinea
Costa Rica	Norway	Nepal
ECFA	Mauritius	Fiji
Georgia	Moldova	
Iceland	Panama	
Korea	Palestine	
Maldives		
New Zealand		
Pakistan		
Peru		
Singapore		
Switzerland		

*Source: The Ministry of Commerce, China.*

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## 16. BONDED TRADE

### 16.1 Bonded Processing Trade

China has a bonded system on processing trade which refers to the business activity of importing all, or part of, the raw and auxiliary materials, parts and components, accessories, and packaging materials from abroad in bond, and re-exporting the finished products after processing or assembly by enterprises within China. Under this system, the amount of materials and components imported for the purpose of processing trade is exempt from tariffs. There are normally two kinds of processing trade that can be adopted.

#### 16.1.1 Categories of Bonded Processing Trade

##### **Processing with Supplied Materials**

In terms of processing with supplied materials, which is also named contract processing, raw materials and components are supplied by a foreign company and processed by a Chinese enterprise. Ownership of raw materials and components remains that of the foreign customer. The Chinese company does not have to make foreign exchange payments, and is paid through charging a processing fee. Finished products are owned and distributed by the foreign customer. If any of the bonded materials under processing trade are diverted for domestic consumption, China Customs would collect the corresponding amount of duties and VAT.

##### **Processing with Imported Materials**

Processing with imported materials means that a Chinese corporation purchases raw materials and components (either from the ultimate foreign purchaser or a third party) and it is also named as import processing. Therefore, it has to make foreign currency payments. The ownership of those imported commodities remains that of the Chinese enterprise. The Chinese enterprise exports the finished products to any foreign customer after processing and assembling. The Chinese manufacturer is allowed to purchase raw materials from overseas suppliers free of import duty and VAT.

### 16.1.2 Advantage of Bonded Processing Trade

China has a bonded system on processing trade that includes bonded zones and bonded factories. Under the bonded system, processing companies are entitled to defer payment of duties and import-related taxes on all imported materials and components. However, if the finished products are intended to be sold on the Chinese market, China Customs will levy duties and interest on deferred payments subject to valid approval documents for sale on the Chinese market issued by the relevant authorities.

Furthermore, the imported machines provided by a foreign party for the purpose of processing trade will also be exempt from Customs duties and import value-added tax, except for a few non-duty-exempt commodities as specified by China Customs.

### 16.1.3 Prohibitions and Restrictions

In the case of processing trade, imported or export goods are classified into prohibited, restricted and permitted.

#### **Prohibitions for Processing Trade**

According to the national industrial policy, processing trade with high energy consumption and high pollution are prohibited. The list was adjusted several times and has a total of 1862 10-digital HS. Please click [List of Trade Prohibited Products](#) for details. It is noted that the following products are also prohibited in accordance with the processing trade:

- imported seeds, seedlings, seed materials, fertilizers, feeds, additives, antibiotics, etc., for export farming and aquaculture products, etc.;
- imitation gun production and export;
- imported smelting slag and other waste;
- imported scrapped cars and scrap metal products to recycle metals;
- imported smelting copper;
- imported waste motors for recycling copper (including discarded game consoles);
- imported waste aluminum recycling;
- disassembly and other variable structure ships;

- ore and soot containing 10% or more of vanadium pentoxide;
- imported raw hides are directly processed into leather products and then exported;
- imported raw leather is processed into semi-finished leather or finished leather, which is then directly processed or processed through the special supervision and management area of the Customs, and further processed into leather products, which are then re-exported by the endothelium leather products company;
- imported raw leather is processed into semi-finished leather or finished leather, which is exported to special Customs supervision areas such as bonded areas and export processing zones, and then processed into leather products, which are then re-exported by local companies.

### **Restrictions for Processing Trade**

According to the national industrial policy, some specific processing trade are restricted. The list was adjusted several times and has a total of 356 10-digital HS codes for import and 95 10-digital HS codes for export. Please click [list](#) for details.

It is noted that enterprise engaging in processing trade can voluntarily carry out the import which are subject to import license.

#### **16.1.4 Customs Procedures**

Since August 1, 2019, the e-account-book management and e-Customs clearance procedures for processing trade have been carried out through the Golden Gate II System, and the procedures for handling enterprises are easier and faster.

### **16.2 Bonded Logistics**

#### **16.2.1 Bonded Warehouse**

##### **A. Public Bonded Warehouses**

Operated by the independent domestic enterprise legal persons, public bonded warehouses provide bonded storage services to the public.

**B. Self-use Bonded Warehouses**

Self-use bonded warehouses are operated by specific independent domestic enterprises legal persons in China, and only store the bonded goods of such enterprises of its self-use.

**C. Special Bonded Warehouses**

Special bonded warehouses comprise bonded warehouses for liquid dangerous goods, for stock materials, for consignment and maintenance, and other special bonded warehouses.

Scope of goods that may be stored in bonded warehouses:

- imported goods for processing trade;
- transit goods;
- oil, materials and maintenance spare parts for vessels and aircrafts used for international voyages or flights;
- imported consignments of spare parts for maintenance of foreign products;
- goods temporarily stored by foreign merchant;
- ordinary trade goods that have not gone through Customs clearance;
- other goods that are approved by the Customs but have not gone through Customs clearance.

**16.2.2 Bonded Logistics Center - Type A**

Bonded Logistics Center - Type A means a Customs-supervised self-use logistics center operated by a domestic enterprise legal person in China, and only provides bonded warehousing/logistics services to the enterprise itself or its internal members.

Goods that may be stored in logistics centers:

- domestic export goods;
- transit goods and international transshipment goods;
- goods temporarily stored by foreign merchants;
- imported and exported goods for processing trade;

- materials and maintenance spare parts for vessels and aircrafts used for international voyages or flights;
- imported consignments of spare parts for maintenance of foreign products;
- ordinary trade imported goods that have not gone through Customs clearance;
- other goods that are approved by the Customs but have not gone through Customs clearance.

### 16.2.3 Bonded Logistics Center - Type B

Bonded Logistics Center - Type B means a centralized Customs-supervised place that operated by a domestic enterprise legal person in China, where many enterprises are located and specialized in bonded warehousing/logistics business.

Goods that may be stored in logistics centers are same to Type A.

## 16.3 Special Customs Supervision Zone

Special Customs Supervision Zone (SCSZ) is a type of economic development zone in China, which is empowered for bonded processing trade, bonded logistics, and bonded related service such as cross-border e-commerce. Upon approval by the State Council, SCSZ is set up under the supervision of Customs authorities. SCSZ is usually surrounded by an iron mesh enclosure, making them segregated areas. Thus, while the SCSZ is in the territory of China, enterprises in the SCSZ are treated as “overseas”.

Goods entering SCSZ from abroad are not categorized as imports and enjoy preferential bonded policies. Similarly, goods from domestic out-zone areas entering some SCSZ may enjoy export rebates. In fact, while SCSZs occupy only 1/20,000th of China’s land, they generated around one-sixth of the country’s total foreign trade in 2018. In recent years, Comprehensive Bonded Zone (CBZ) is becoming the dominant type of SCSZ attributed to current policy trends.

### 16.3.1 Types of SCSZ

Currently, there are six types of SCSZs existing in China:

Table 8 Six Types of SCSZs in China

SCSZ	Functions
Bonded Zone	Bonded warehousing, transit trade, export processing, etc.
Bonded Logistics Park	Bonded warehousing, international transfer, international procurement, international distribution, product exhibition, international enter pot trade, etc.
Export Processing Zone	Export processing, etc.
Bonded Port	Bonded warehousing, logistics, international transfer, international procurement and distribution, testing and after-sales maintenance service, product exhibition, R&D processing, manufacturing, port operations, etc.
Cross-border Industrial Park	Manufacturing, logistics, transit trade, product exhibition, etc.
Comprehensive Bonded Zone (CBZ)	Bonded warehousing, logistics, International transfer international procurement and distribution, testing and after-sales maintenance service, product exhibition, R&D processing, manufacturing, etc.

After 2015, all existing SCSZs will be integrated into CBZs. Further, except for some Bonded Zones, most SCSZs will transition or are currently transitioning into becoming CBZs.

### 16.3.2 Comprehensive Bonded Zone (CBZ)

The Guidelines on Projects Suitable for Entry into CBZ, issued by the GACC in April 2019, offers a list of preferential policies in CBZ, the categories of enterprises highly encouraged to do business in CBZ, and sample cases of entry projects for reference for potential investors.

#### **Preferential Tax Policy**

- goods entering CBZ from abroad are bonded in the zone;
- goods from Chinese non-zone areas entering CBZ can enjoy export rebates;
- in-zone goods sold to domestic markets can be declared to Customs, according to the relevant provisions on the import of goods, and be taxed, according to the actual state of the goods;
- goods transactions between in-zone enterprises are exempted from VAT and consumption tax;

- imported materials and equipment of capital construction will be exempted from tariffs and import-related taxes; and
- other approved or authorized tax policies.

### **Trade Control Policy**

No import and export quota or license administration shall be required for goods entering or leaving the country, unless specifically required.

### **Bonded Supervision Policy**

No storage period for bonded goods stored in the area; and bonded goods can be transferred freely among enterprises in the zone.

### **Foreign Exchange Policy**

Goods entering or leaving the zone (within the territory and outside the zone) may be settled in foreign currency or CNY.

### **Future Policy Trends**

In January 2019, the State Council issued the Opinions on Promoting High-level Opening and High-quality Development of CBZ (New 21 Articles), aiming to promote CBZ to become five centers – processing and manufacturing centers, R&D centers, logistics distribution centers, testing and maintenance centers, and sales and service centers. The opinion announced 21 measures to facilitate in-zone enterprises to expand their business scope. As of January 2019, China has a total of 140 SCSZ and 96 CBZ.

## **16.4 Pilot FTZ**

The establishment of Pilot FTZ (Free Trade Zone) represents China's major move to adopt a more proactive strategy of opening up in line with the new trend of global economic development. The State Council has so far approved 18 Pilot FTZs. The Pilot FTZs has made considerable progress in trade facilitation and institutional innovation. In line with this, it is now expected that the new Customs system that comply will Pilot FTZs practices will be put in place across China within the next years.

The FTZ have implemented a Customs reform of “open the first line, control the second line, free move in the zone”. In addition, there are more than 100 facilitation measures utilized such as:

- enter first and declare later;
- aggregate declaration;
- paperless clearance; and
- intelligent E-gate.

These facilitation measures have significantly improved the efficiency of Customs clearance and reduced the logistics costs.

In the latest development, the adoption of:

- third-party test results;
- global repairs industry supervision;
- risk management for incoming and outgoing biological products;
- management of certificate of origin for goods in transit;
- reform of paperless inspection, quarantine, and Customs clearance;
- pre-inspection of import goods;
- separate supervision and management of inspection and quarantine;
- a negative list for the examination and approval of quarantine of animals and plants and their products;

have been copied and promoted.

*Table 9 FTZs in China*

Time of establishment	Pilot FTZs
September 2013	Shanghai
April 2015	Guangdong
	Tianjin
	Fujian

Time of establishment	Pilot FTZs
March 2017	Liaoning
	Zhejiang
	Henan
	Hubei
	Chongqing
	Sichuan
	Shaanxi
October 2018	Hainan
August 2019	Shandong
	Jiangsu
	Guangxi
	Hebei
	Yunnan
	Heilongjiang

## 17. CUSTOMS POST-CLEARANCE AUDIT

As one of the risk management measures, China Customs Post-clearance Audit (PCA) aims at identifying non-compliances. The Customs PCA can be a randomly pre-determined audit or routine audit by the local Customs.

### 17.1 Scope of PCA

According to the PRC Customs Audit Regulations, the scope of Customs audit is to examine the “truthfulness and legality” of import and export activities. At any time within 3 years after imported or exported goods are released, China Customs is entitled to audit these goods as well as all related import

and export documents and accounting books and records.

The scope of audit will be indicated on the audit notice. Most likely Customs audit may focus on HS codes, value, royalties, origin, export control and so forth. In the audit, the Customs auditors or their authorized third party may request to review all documents related to import and export activities. Such documents include three-year accounting books, Customs declaration documents, import and export records, resale records and so forth. It is the company's legal duty to properly compile and retain these documents and records.

## 17.2 Procedure of PCA

### **Notice of Audit**

A Customs audit must start with a formal notification to the company 3 days before the audit. In urgent cases where the documents or goods may be transferred, hidden or destroyed by the company, no advance notice is necessary and notice of audit can be served on the day when the dawn-raid audit starts.

### **On-site Audit**

Customs must dispatch at least two auditors to conduct the on-site audit. These auditors must show the company their Customs Audit Certificate before they start the audit.

When conducting audit, the audit team can visit and enter office, workshop and warehouse to examine goods, review and copy accounting books and other documents, inquire the legal representative and personnel.

Sometimes the audit team may request all routine works suspended until the on-site audit finished. Audit team may also examine the bank accounts of the company. In the circumstances where the Customs suspects that the documents may be hidden or destroyed by the company, the Customs may seal up or seize the documents or goods during audit.

### **Pre-decision Notice**

If any non-compliance is identified through the audit, before a formal audit conclusion is made, the auditor

will send the pre-decision notice to the company soliciting views from the company on the facts found and conclusions to be made.

### **Comment on Pre-decision Notice**

The company may submit written comment on the pre-decision notice to the Customs auditor within 7 days after receiving the same notice. The company must avoid imprudent admission of any allegation if it is not a fact.

### **Audit Decision**

If the Customs audit does not identify any non-compliance, the auditor may directly make a decision without a need to issue the pre-decision notice.

If the audit team identifies underpaid import taxes, it will make decision of tax compensation.

In case that non-compliance is found out, the auditor will make a decision to transfer this case to Anti-Smuggling Bureau of Customs who has the authority to investigate illegal activities and make administrative punishments.

## **17.3 Obligations of Auditees**

The company has a legal duty to cooperate with the Customs, provide necessary space to the audit team and submit documents as requested by the Customs auditors.

The company is not supposed to refuse or delay in providing the Customs with the accounting books, documents and other related materials as well as related electronic data, nor to transfer, conceal, falsify or destroy accounting books, provide false information to the Customs auditors, or conceal important facts. Any violation of this duty may result in administrative or criminal punishment to the company or the responsible personnel.

There must be reasonableness in a request of the Customs for any data or information. If any data or information is obviously not relevant to truthfulness or legality of imported or exported goods, the company could raise an objection to refuse provision of such data or documents.

## 17.4 Voluntary Disclosure

The New Customs Audit Regulations provide a "voluntary disclosure mechanism" where companies, directly related to the importation/exportation of goods, voluntarily report their violations to Customs and accept the corresponding Customs consequences should be subject to lenient treatment or reduced administrative penalties.

Through voluntary disclosures, companies should be subject to lenient treatments or reduced penalties on their disclosed violations. Therefore, one of the aims of voluntary disclosure is to encourage companies to make use of their routine internal control processes to improve compliance.

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## 18. CUSTOMS ADMINISTRATIVE LICENSING

Administrative licensing refers to the act of China Customs that, according to the application of a citizen, legal person or other organization, is subject to legal review and is permitted to engage in specific activities. After the governmental reform in recent years, administrative licensing matters have been greatly reduced and strictly controlled.

The contents and jurisdiction of the Administrative Licensing of China Customs are as follows:

### **Approval by GACC**

- Registration of Tax-free store;
- Registration of oversea institution engaged in production, processing and storage of imported animal or plant products (including which involved in after entering China);
- Registration of foreign suppliers of solid waste used as raw materials;
- Registration of overseas manufacturer for imported food;
- Permit of inspection for import and export commodity inspection and appraisal business.

### **Approval by GACC and other Ministries and Commissions**

- Bonded Logistics Center - Type B registration.

### **Approval by GACC or Authorized Regional Customs**

- Quarantine of inward, outward, and transit animals and plants and their products.

### **Approval by Regional Customs**

- Export supervision warehouse, bonded warehouse establishment;
- Bonded Logistics Center - Type A registration;
- Registration of institution and personnel engaged in import and export quarantine business;
- Registration of oversea institution engaged in production, processing and storage of exported animal or plant products;
- Registration of domestic consignee of solid waste used as raw materials;
- Health and quarantine for inward and outward special items.

### **Approval by Authorized Subordinate Customs under the Regional Customs**

- Customs brokers registration;
- Customs supervision cargo warehousing;

### **Approval by Customs in Charge for**

- Port health permit issuing;
- Filing of domestic manufacturer for exported food.

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## 19. CUSTOMS ENFORCEMENT AND APPEALS

### 19.1 Smuggling Violations

#### 19.1.1 Smuggling

Breach of Customs Law and relevant laws and administrative regulations, evasion of Customs control, defraud payable impost, elusion of national inward and outward prohibition or restriction in any of the situations listed below shall be deemed as smuggling:

- (a) to transport, carry or mail goods and articles prohibited or restricted by the State from entering or leaving the territory or goods and articles subject to render duties and taxes;
- (b) to sell bonded goods, goods under specific duty reduction or exemption and other goods, articles or inward foreign means of transport under Customs control, within the territory, without Customs permission, and without having paid the payable duties and taxes or producing relevant licensing document;
- (c) to have other acts evading Customs supervision and control that constitute smuggling;

If any of the acts listed above does not constitute the crime of smuggling, the Customs may impose a fine; goods or articles that are used for smuggling, means of transport that are used for smuggling shall be confiscated, equipment specially made for concealing smuggled goods or articles shall be demolished or confiscated.

Where any of the acts listed above that constitutes a crime, the person or persons concerned shall be investigated for criminal liability.

#### 19.1.2 Deemed as Smuggling

The following acts shall be deemed as smuggling and punished:

- (a) to purchases the imported goods or articles by smuggling directly and illegally from the smugglers;
- (b) crew members which transport, purchase or sell goods or articles prohibited or restricted by the

State from being imported or exported, or transport, purchase or sell goods subject to duties and taxes without legal certificates in inland sea, territorial waters, boundary rivers and boundary lakes.

### 19.1.3 Accomplice of Smuggling

Whoever:

- counterfeits, falsifies, purchases or sells Customs documents,
- conspires with smugglers and provides loans, funds, account numbers, invoices, certificates or Customs documents,
- conspires with smugglers and provides transport, storage, mailing or other conveniences,

where the case constitutes a crime, he shall be investigated for criminal liability; where the case does not yet constitute a crime, the Customs may impose a fine.

## 19.2 Administrative Penalty

### 19.2.1 Violating Customs Control Provisions

A fine may be imposed for any of the following acts which violate Customs control provisions and the illegal proceeds obtained therefrom shall be confiscated:

- (a) for a means of transport, to enter or leave the territory at a place without a Customs office;
- (b) fail to inform the Customs of the arrival or departure time, the place of stay or any change of the place of a means of transport;
- (c) fail to declare truthfully to the Customs the goods or articles or the transit, transshipment and through goods;
- (d) fail to accept the check and inspection by Customs of the means of transport, goods or articles;
- (e) for a means of transport to load or unload goods or articles or embark or disembark passengers without Customs approval;
- (f) for a means of transport staying at a place with Customs office to leave without Customs approval;
- (g) for a means of transport, on the way from a place with Customs office to another, failing to

complete the Customs formalities and without Customs approval, to move out of the territory or to a place within the territory without Customs office;

- (h) for a means of transport to engage concurrently or change to engage in domestic transport without Customs approval;
- (i) for a vessel or aircraft which, due to force majeure, being forced to anchor or descend at a place without Customs office, or chuck or unload goods or articles within the territory, to fail to report to Customs nearby without reasonable excuse;
- (j) to open and dismantle, collect, deliver, forward, transpose, refit, mortgage, impawn, keep, transfer, replace label, shift to other use or conduct other treatment on goods under Customs control without Customs permission;
- (k) to open or break Customs seals without permission;
- (l) while engaging in such operations as transportation, storage and process of goods under Customs control, the records of loss of goods or related records are untrue without reasonable excuse; or
- (m) to have any other acts violating Customs control.

### 19.2.2 Other Violations

- to an enterprise approved by Customs engaging in related operations, Customs may order it to correct, render it a warning, suspend it from engaging or revoke its registration;
- anyone engages in declaration business without Customs registration or occupation qualification shall be banned, the illegal proceeds obtained therefrom shall be confiscated, and a fine shall be imposed concurrently;
- to a Customs clearing agent or its staff declares illegally, Customs may order it to correct, impose a fine on it or suspend it from operating;
- to anyone bribes Customs personnel, Customs may revoke its declaration registration or its occupation qualification and concurrently impose a fine;
- anyone imports or exports goods which constitute infringement on the intellectual property rights under protection by Customs, the infringing goods shall be confiscated and a fine shall be imposed thereof; where the case constitutes a crime the person or persons concerned shall be investigated for criminal liability according to law;

- goods, articles or means of transport detained by Customs according to law shall not be disposed of before the People's Court makes a judgement or Customs makes a decision of punishment. However, hazard goods or such goods and articles not suitable for storage for a long time as fresh and live ones, perishable ones or easy to be expired ones and goods or articles that the owner applies to sell off in advance may be sold off, and Customs shall keep the money thus obtained and inform the owner;
- the smuggled goods or articles, illegal proceeds obtained therefrom, means of transport or equipment specially made for smuggling being confiscated by judgment of the People's Court or punishment decision of Customs shall be disposed by Customs, the money thus obtained and the fine imposed by Customs shall be turned over to the State Treasury;
- Where a person concerned refuses to carry out punishment decision of Customs overdue nor apply for reviewing or file a lawsuit to the People's Court, the Customs giving the punishment decision may hand over his security or, sell off the detained goods, articles or means of transport of the party and hand over the money thus obtained, or apply to the People's Court for a compulsory execution.

### 19.3 Administrative Review

Customs administrative review means that citizens, legal persons or other organizations believe that the specific administrative actions of Customs and their staff infringe upon their lawful rights and interests, and apply to the legal agency, and the Customs legal agency will review the specific administrative actions in accordance with legal procedures and requirements, and then making a decision.

In China, it is noted that the Customs administrative review must:

- (1) applied by a citizen, legal person or other organization of China;
- (2) applied that the respondent of the administrative review is the Customs agency that made the specific administrative action;
- (3) applied that the citizens, legal person or other organization believe that their legal rights and interests are violated;
- (4) applied that the review agency is Customs.

#### **Pretage of Administrative Review for Duty Disputes**

When the specific administrative action is involved in duty collection such as the taxpayer, taxable

price, classification of the goods, the country of origin, applicable tax rate or exchange rate, reduction or exemption, refund, forfeit penalty, etc. The specific administrative action must be administratively reviewed before they can be sued again in the people's court.

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## 20. CUSTOMS IPR BORDER PROTECTION

The Customs Law of the PRC prohibits the export or import of goods from or to China that infringe IPR. Whereas most countries' Customs only examine imported goods, China differs in that China Customs examine goods being imported and exported. China Customs have the authority to protect IPR by confiscating infringing goods and imposing fines on infringers. If the infringement of IPR exceeds a certain threshold, then the Customs authorities will also arrange for criminal proceedings to be brought against the infringing party.

According to the Regulations of the PRC on Customs Protection of Intellectual Property Rights promulgated by the State Council, the IPR protected by China Customs shall refer to exclusive right to use trademark, copyrights and copyright-associated rights, and patent rights relating to import and export goods and protected by PRC laws and administrative regulations. In addition, China Customs shall also protect the Olympic symbols and World Exposition symbols in accordance with the Regulations on the Protection of Olympic Symbols and the Regulations on the Protection of the World Exposition Symbols.

### 20.1 Enforcement Proceedings

The IPR protection by China Customs can be divided into the two ways of "Protection on Request" and "Protection Ex Officio".

#### 20.1.1 Customs Protection on Request

The Protection on Request refers to the measures taken by Customs to detain the goods that are suspected of infringement at the request of an IPR holder who applies according to the Regulations on Customs Protection of Intellectual Property Rights when such goods are found to be imported or exported.

Because Customs will not investigate the suspected infringing goods that are detained on request, and the IPR holder will therefore have to file a lawsuit with the people's court for relevant infringement dispute, the Protection on Request is also called Customs "Passive Protection" of the IPR.

### 20.1.2 Customs Protection Ex Officio

The term "Ex Officio" comes from the Agreement on Trade-Related Aspects of Intellectual Property Rights. The Protection Ex Officio refers to the measures taken by the Customs during their supervision, when they find any import/export goods suspected of infringing any IPR that is registered, to proactively suspend the Customs clearance procedures, inform relevant IPR holders and detain the suspected goods on the request of the IPR holders according to the Regulations on Customs Protection of Intellectual Property Rights. Because the Customs will proactively use their power of office to deter suspected infringing goods from import and export and have the power to investigate the IPR infringement and impose penalty on the infringers, the Ex-officio protection is also called Customs "proactive protection" of the IPR.

## 20.2 IPR Record with Customs

The types of IPR that can be recorded with the GACC are trademarks, patents (including patents for invention, utility model and design patents) and copyrights and separate applications need to be filed for separate IPR. In the case of trademarks, for example, holders must submit a separate application for Customs record for each trademark in each class. To record IPR, the applicant must submit:

- a copy of business registration certificate (including a Chinese translation);
- a copy of the trademark certificate (China registration);
- information regarding related licenses, photos of the goods and their packaging;
- a power of attorney in the name of the agent responsible for the registration process, if it is used;
- the fee is suspended of collection.

In addition, IPR holders can also register information about infringers that they may have collected independently, such as names, company names, contact details etc.

Within 30 days of receipt of all relevant documents, the GACC will make a decision whether to record the IPR in question. If the GACC approves the submission, the record of IPR is valid for the duration of the IPR or for a maximum period of ten years. Renewal of Customs record can be filed six months prior to

expiration.

The Regulations provide that IPR can be recorded with the GACC in Beijing. Although it is not compulsory to record IPR in order to apply to local Customs for enforcement proceedings, it is beneficial for a company moving goods in and out of China, because if IPR are registered with Customs, then Customs have the power to detain at will any suspected infringing consignment of goods. In addition, local Customs offices are more pro-active when IPR are recorded mainly because the record provides Customs officials with easy access to internal IP databases and makes it easier for them to determine whether goods passing through Customs are genuine or counterfeit.

---

## 21. AUTHORIZED ECONOMIC OPERATOR (AEO)

Known as AEO, “Authorized Economic Operator” is a global institutional foundation of Customs management. The WCO definition of AEO is a party that participates in the international circulation of goods in any way and is determined by the Customs authorities to meet the World Customs Organization or the corresponding supply chain security criteria.

AEO System of China Customs was first launched in June 2005. On December 1, 2014, Decree No 225 of GACC, Interim Measures for Enterprise Credit Management by the Customs Administration of the PRC (referred to as IMECM) and the Criteria of Certified Enterprises of Customs Administration took effect. On May 1, 2018, Decree No 237 of GACC Measures for Enterprise Credit Management by the Customs Administration of the PRC (referred to as MECM) replaced the old one and the revised regulations brought China’s system into closer alignment with AEO legislations outlined in the WCO framework leading to greater mutual recognition.

### 21.1 MECM

MECM is a mechanism to determine the status of an enterprise from three broad categories:

### **Certified Enterprise**

A certified enterprise is an Authorized Economic Operator (AEO) recognized by China Customs. There are two levels of Certified Enterprises:

- Advanced Certified Enterprise (ACE);
- General Certified Enterprise (GCE).

### **General Credit Enterprise**

- An enterprise registered for the first time;
- and a certified enterprise that is no longer in compliance with the requirements of Article 9 of the decree and does not fall in any of the circumstances set out in Article 10 of the decree; or
- an enterprise that has been identified as discredited for one full year and no longer falls in any of the circumstances set out in Article 10 of the decree.

### **Discredited Enterprise**

The following management principles and measures shall apply to discredited enterprises:

- A high inspection rate of import and export goods;
- Focused review of documents for import and export goods;
- Heightened supervision over processing trade; and
- Other management principles and measures prescribed by the GACC.

## **21.2 Criteria of Credit Rating and Supervision**

The criterion for ACE contains 18 categories and 32 items; for GCE contains 18 categories and 29 items. The process for determining the enterprise classification is based on impartial evaluation of areas of the enterprise's operations, management, internal controls, compliance and other objective indicators indicative of the credit status of the enterprise. Certified enterprises and its foreign counterparts with mutual recognition will enjoy the clearance facilitation, while the discredited enterprise will be subject to stricter Customs controls.

The following are the basic criteria and other considerations for each credit rating level as provided for under Chapter 3 of Order 237.

*Table 10 Criteria and Considerations for Credit Rating*

Certified Enterprise	ACE	<ul style="list-style-type: none"> <li>- As with General Certified Companies, this credit rating may only be obtained by affirmative application and verification.</li> <li>- Companies that have obtained Advanced Certification status must re-certify once in every 3 years period.</li> <li>- China Customs will send notification to the Advanced Certified Company prior to initiating the recertification review.</li> <li>- Should the company be downgraded as a result of the review, Customs will issue a formal determination of the adjustment of the credit rating, which downgrade will become effective on the date of service of such notice.</li> <li>- If a company applies to abandon the re-certification review, it is deemed to have failed the review and a downgrade will be issued.</li> </ul>
	GCE	<ul style="list-style-type: none"> <li>- An enterprise must affirmatively make application to China Customs in order to be a Certified Enterprise.</li> <li>- Within 90 days of receiving the application and extendable by an additional 30 days, China Customs will make its final determination on the enterprise's credit status.</li> <li>- Those companies that fail to pass the certification may not reapply for one year.</li> <li>- During the period of applying for certification, if the enterprise is involved in an investigation or an investigation of an alleged smuggling offense, China Customs will terminate the certification application.</li> <li>- Similarly, where a company that has made application for certification is under review for a violation of Customs supervision conditions shall have its application suspended for up to 3 months, at which point the company is either cleared in the investigation or its application will also be terminated.</li> <li>- A General Credit Enterprise that was previously a General Certified Company can reapply for Certified status after one year.</li> <li>- Likewise, if an Advanced Certified Company is downgraded to a General Certified Company, it may not reapply for an upgrade for one year.</li> </ul>

<p>General Credit Enterprise</p>	<ul style="list-style-type: none"> <li>- A newly-established enterprise or companies first registered with Customs will be considered General Credit Enterprises;</li> <li>- Enterprises that do not meet the requirements of certification or re-certification as Certified Enterprises but have not had smuggling or administrative penalties sufficient for a rating as a Dishonest Enterprise will also be considered as General Credit Enterprises.</li> <li>- Enterprises that were previously rated as Dishonest Enterprises but have since been operating in a compliant fashion for two consecutive years.</li> </ul>
<p>Discredited Enterprise</p>	<ul style="list-style-type: none"> <li>- Enterprises that have committed smuggling or engaged in smuggling activities, which are defined as:             <ul style="list-style-type: none"> <li>- Enterprises that have violated Customs supervision and have been assessed administrative penalties of more than CNY 1 million;</li> <li>- Inaccurate declarations in excess of those discovered in the previous year and for which the accumulated Customs penalties within that year exceed CNY 300,000.</li> <li>- Underpayment of duties or fines and penalties. In such circumstances where the arrearages exceed 90 days, China Customs will also list the company on its public Credit Information Management System on the Abnormal Credit list.</li> </ul> </li> <li>- Taking unfair advantage on the guise of the Customs or other enterprises;</li> <li>- Making false or misleading submissions to Customs in order to influence the enterprise credit rating;</li> <li>- In serious cases where the enterprise fails to cooperate with China Customs</li> <li>- A criminal violation determined by another government agency that impacts the China Customs credit rating under the “3 Mutuals” concept; and</li> <li>- Any other circumstances as prescribed by China Customs.</li> </ul>

The criteria state an enterprise must conduct a self-assessment in advance to rectify any practice that fails to meet the criteria. Authority has been delegated to regional Customs and the processing time shortened to less than 90 days.

MECM further strengthened the supervision of certified enterprises. It will conduct recertification every 3 years for ACE and conduct irregular recertification for GCE. Third-party certification agencies have been authorized to get a more comprehensive understanding of the production, operation and the integrity of enterprises. If the enterprise fails to pass the recertification, they will downgrade to GCE and forbidden to apply for the status of ACE for one year.

In addition, China Customs established a business credit information management platform to collect information to reflect import and export credit status. On the condition that state secrets, trade secrets and personal privacy are protected, the Customs administration publicly discloses 4 kinds of credit information of an enterprise:

- Business registration filed with Customs;
- Corporate credit status;
- Corporate administrative sanctions information;
- Other information.

Of significance in Decree No 237 is the provision that enterprises submit an annual report of relevant Customs credit information. This so called “Corporate Credit Information Annual Report” will be submitted through a yet to be established information management system and these reports will be filed between 1 January and 30 June each year.

### **21.3 AEO Benefits**

GCEs will receive a relatively low inspection rate for import and export shipments with simplified examination of documentation. In addition to the management principles for GCE and ACE companies can go through the inspection and release formalities before the commodity classification, Customs valuation and origin of import and export shipments are determined.

By promoting corporate integrity, simplifying certification procedures, and creating greater benefits internationally, the MECM has significant advantages over the preceding enterprise program by driving significant efficiencies in Customs clearance for companies that have implemented robust systems and processes in their import/export operations.

### **21.4 AEO Joint Incentive (AJI)**

In October 2016, a pan-governmental initiative called the AEO Joint Incentive (AJI) program was launched in China. Under the new scheme, companies which have met pre-determined standards under the existing AEO program and have been certified by China Customs as ACE will be entitled to enjoy as many as 49 facilitation measures provided by China Customs and other government departments. At present, there are about 3,000 ACEs, accounting for more than 30% of national import and export volumes in China.

This program involves some 40 government departments. These include border agencies such as Customs, civil aviation and port authorities, and non-border agencies such as the National Development and Reform Commission (NDRC) and the China Council for the Promotion of International Trade (CCPIT), as well as agencies in charge of taxation, finance, environmental protection, market supervision and banking supervision.

The AJI facilitation measures can be divided into six major categories:

- Category 1 - **“Green Lane”** (for example, the tax authority has set up a green channel for AEOs to expedite formalities such as duty declaration);
- Category 2 - **“Less Inspection”** (includes provisions to carry out fewer inspections at ports);
- Category 3 - **“Priority Treatment”** (includes measures giving priority to companies requiring intellectual property protection related services);
- Category 4 - **“Simplified Procedure”** (comprises measures reducing the number of documents required by participating agencies to the minimum);
- Category 5 - **“Major Reference Benchmark”** (includes measures aimed at ensuring that the accredited AEO status of a company is taken into account when inspected by other participating AJI agencies);
- Category 6 - **“Pilot Reform Project”** (includes measures giving priority rights to AJI companies to participate in pilot projects implemented by Customs and other government departments).

## 21.5 MRAs

At present, China Customs has signed and implemented AEO Mutual Recognition Arrangements (MRAs) with 36 countries/regions such as:

- Australia;
- Singapore;
- Israel;
- South Korea;
- EU (28 member states);
- Switzerland;

- New Zealand;
- Japan;
- Hang Kong SAR of China.

Among them, 13 "One Belt One Road" countries have been covered. The countries and regions that currently under negotiations are:

- Malaysia (signed action plan);
- Taiwan province of China (scheduled);
- the United States;
- Canada;
- Kazakhstan;
- Brazil;
- Mexico;
- Belarus;
- Serbia.

Countries and regions that are actively promoting AEO mutual recognition cooperation include:

- Thailand;
- Russia;
- South Africa
- Mongolia;
- Saudi Arabia;
- Egypt;
- Uganda.

Benefits for AEO Mutual Recognition:

- Reduced documentation check;

- Lower inspection rate;
- Priorities in physical inspection of goods;
- Customs coordinators responsible for solving problems during clearance;
- Priorities in Customs clearance if encountering with the interruption of international trade.

---

## 22. INTERNATIONAL CUSTOMS COOPERATION

Since 2014, China Customs has signed Customs cooperation documents with Russia, the European Union, Mongolia, Kazakhstan, Belarus, Armenia, Poland, Iran, Singapore, Laos and other Customs to provide legal basis and institutional guarantee for Customs clearance.

In 2019, China Customs has made the following progress in international cooperation:

- China Customs initiated the establishment of the "Belt and Road" Customs information exchange and sharing platform, and established electronic distribution of origin information with Chile, Pakistan, Singapore, Georgia and other countries;
- China Customs signed an inspection and quarantine cooperation document with the United Nations Industrial Development Organization, Cambodia Customs;
- 33 transportation and Customs agencies, port companies, port authority and terminal operations in 13 countries including China, Egypt, Sri Lanka, United Arab Emirates, Latvia, Slovenia, Belgium, Spain, Fiji, Italy, Netherlands, Denmark, Romania, Singapore founded the "Marine Meridian Road" Port-Cooperation Mechanism;
- China Customs has put forward the initiative of "Customs-Railway Operators to Promote China-European Train Safety and Rapid Customs Clearance Partnership Program".

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## 23. TRADE STATISTICS

The statistics of China Customs are statistics of trade in goods imported into and exported out of China, which represent an important component of the national economy statistics and are the most important macroeconomic decision-making references. Following the working principle of making the statistics “accurate, timely, scientific, complete and internationally comparable”, and comprehensively applying the statistical standards recommended by the United Nations, China Customs surveys on and produces statistics about import and export trade in goods of China.

China Customs produces monthly, quarterly and yearly statistics in both Chinese and English.

---

## 24. CONTACT INFORMATION

General Administration of Customs of the PRC

Address: No.6 Jianguomennei Avenue, Dongcheng District, Beijing, China

Postcode: 100730

Tel: 86 10 65195114

Nationwide Customs Hotline: 86 + (Area Code) + 12360

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## 25. OFFICIAL WEBSITE

- [GACC](#)
- [National Development and Reform Commission](#)
- [Ministry of Commerce, PRC](#)
- [State Administration for Market Regulation](#)
- [State Administration of Foreign Exchange](#)
- [State Taxation Administration](#)
- [China Council for the Promotion of International Trade](#)
- [China International Trade Single Window](#)

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## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

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# **eBook on East Asia Customs Procedures**

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Japan





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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## **ACKNOWLEDGEMENTS**

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AEO	Authorized Economic Operators
APEC	Asia and Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATA	A Combination of the Initial Letters of the French Words “Admission Temporaire” and the English Words “Temporary Admission”
CCCN	Customs Cooperation Committee Nomenclature
CITES	Convention on International Trade in Endangered Species
CMAA	Customs Mutual Assistance Agreement
COCOM	Coordinating Committee for Multilateral Export Controls
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CTB	Customs and Tariff Bureau
EPA	Economic Partnership Agreements
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
GSP	Generalized System of Preferences
HS	Harmonized Commodity Description and Coding System
JAS	Japan Agricultural Standards
JETRO	Japan External Trade Organization
JISC	Japan Industrial Standards Committee
MFN	Most Favored Nations
NACCS	Nippon Automated Cargo and Port Consolidated System

PSR	Product-Specific Rules
RVC	Regional Value Content
QVC	Qualifying Value Content
RKC	Revised Kyoto Convention
SAFE	WCO Framework of Standards to Secure and Facilitate Trade
TPP	Trans-Pacific Partnership
WCO	World Customs Organization
WTO	World Trade Organization
WTO TFA	World Trade Organization - Trade Facilitation Agreement

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# eBook on East Asia Customs Procedures

## Japan

### 1. INTRODUCTION OF JAPAN CUSTOMS

Japan Customs originated in the mid-19th century and after World War II, Japan re-established Customs administration under the supervision of the Allies. With the development of the economy, Japan joined the GATT, the predecessor of the WTO in 1955. In 1961, Japan introduced the CCCN (Customs Cooperation Committee Nomenclature) as a framework for tariff classification that represents the Japan Customs accepted the international Customs standards. In 1964, Japan became the 38th member of the CCC (Customs Cooperation Committee), the predecessor of the WCO. Today, Japan Customs is one of the high-ranking Customs in the world.

#### 1.1 Goals & Guidelines

Japan Customs has three major goals as their missions:

- Help to ensure the safety and security of society;
- Collect fair and proper Customs duties;
- Facilitate international trade.

The action guidelines for Japan Customs staffs are:

- Integrity;
- Commitment;

- Teamwork;
- Kaizen;<sup>1</sup>
- Professionalism.

## 1.2 Customs and Tariff Bureau (CTB)

The Customs and Tariff Bureau (CTB) is Japan's highest-level Customs administration and a sub-bureau of the Ministry of Finance. It is headed by the Director General, assisted by two Deputy Directors-Generals. In CTB, there are six divisions and several offices (See Figure 1). Regarding international matters, there are two Counselor Offices and an Office of Economic Partnership. 191 Customs officials are working in the Bureau as of April 2019.

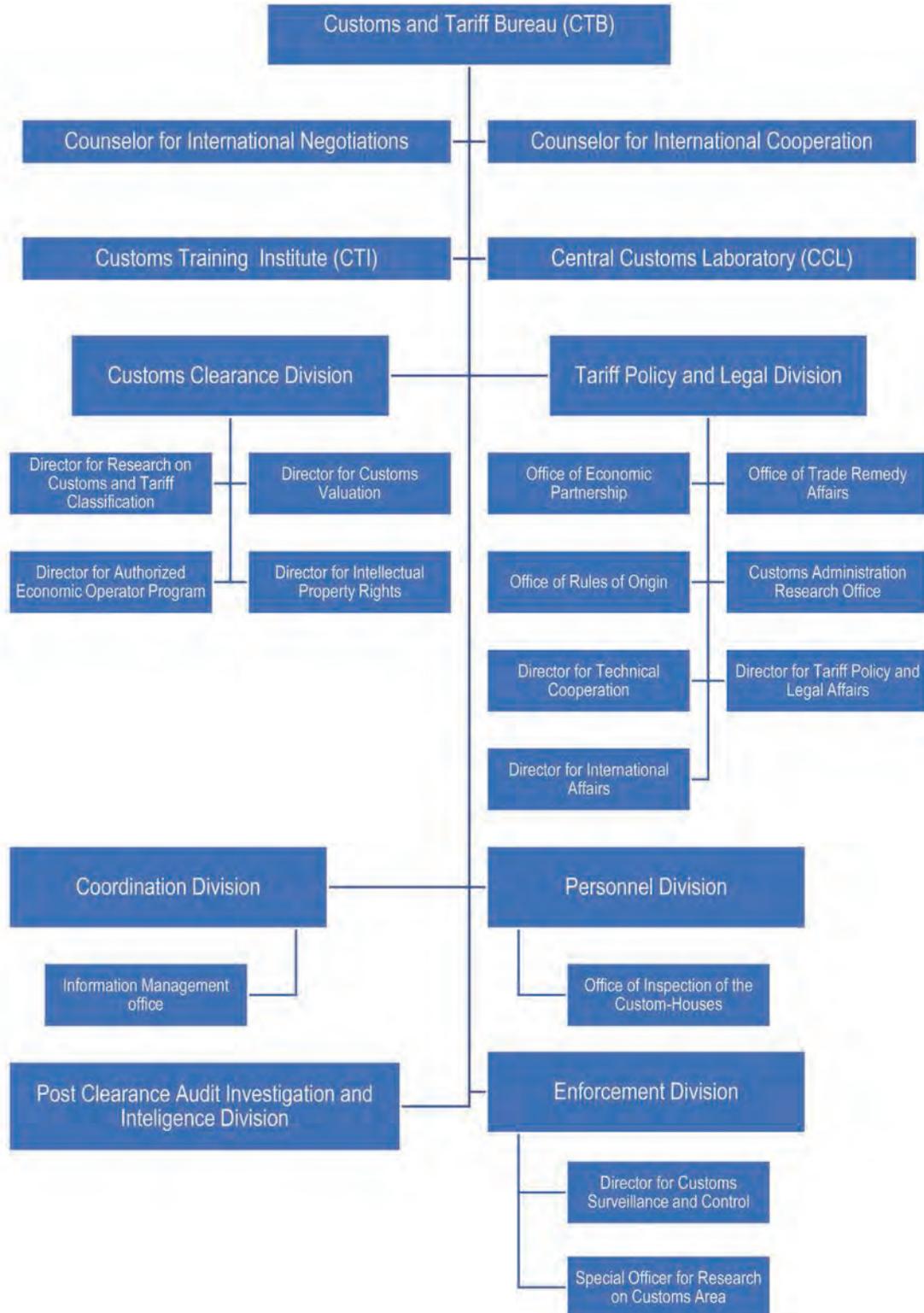
As an important official apartment, the responsibilities of CTB are as follows:

- Research and planning of Customs duties and Customs administration;
- Imposition and collection of Customs duties and other taxes;
- Surveillance and control of exporting and importing goods, vessels, aircraft, and passengers;
- Operation of Customs areas;
- Supervision of Customs brokers and registered Customs specialists;
- Process of sea and air cargo by NACCS;
- Trade statistics;
- Education and training of Customs officers;
- Support for the Tariff Branch of the Council on Customs, Tariff, Foreign Exchange and Other Transactions.

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<sup>1</sup> Kaizen is a Japanese business philosophy of continuous improvement of working practices, personal efficiency, etc.

Figure 1 Organization of CTB



Source: Japan Customs website.

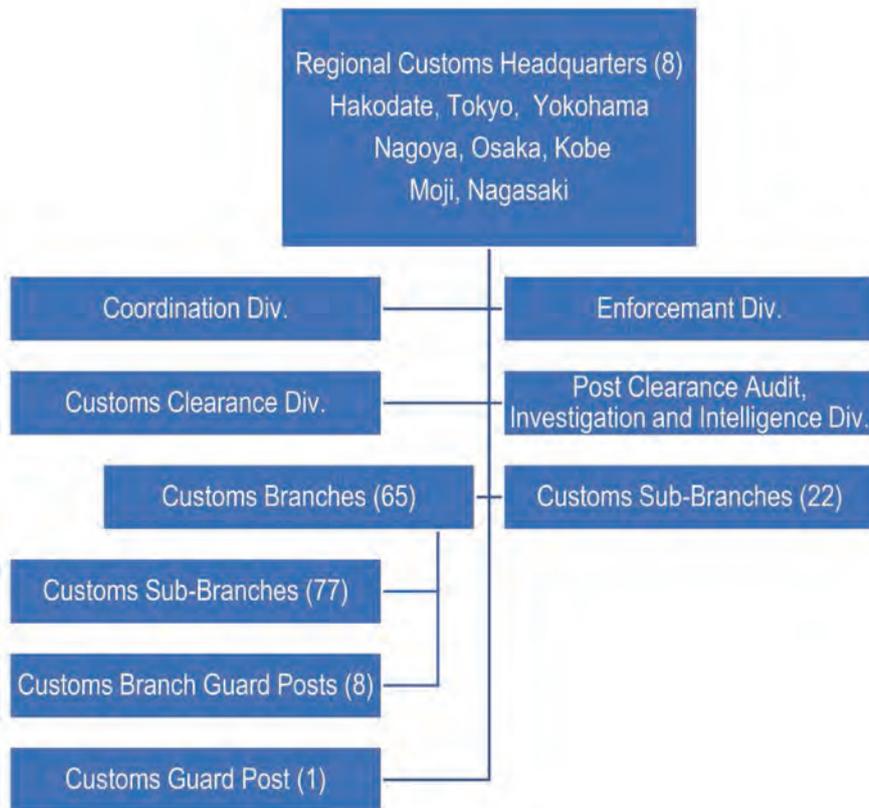
### 1.3 Regional Customs

There are nine regional Customs in Japan. The number of Customs officials in 2019 is 9,617.

#### 1.3.1 Headquarters

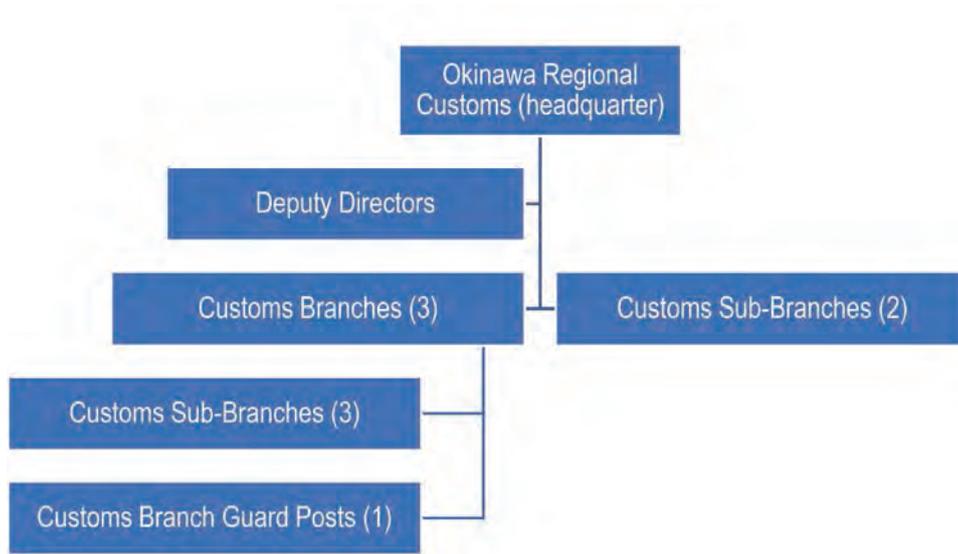
In each regional area, one Customs headquarter is responsible for a regional Customs administration and leads several branches, sub-branch offices, and guard posts. Except for Okinawa, each Customs headquarter has 4 Divisions (Coordination, Enforcement, Customs Clearance, and Post Clearance Audit, Investigation and Intelligence).

Figure 2 Organization of Regional Customs - 1



Source: Japan Customs website.

Figure 3 Organization of Regional Customs - 2



Source: Japan Customs Website.

### 1.3.2 Branch Offices

There are 68 Customs branch offices throughout the nation as of July 2019.

### 1.3.3 Sub-branches

The difference between sub-branches of Customs and sub-branches of Customs branches is determined by whether the location and jurisdictional area belong directly to Customs or branches. There is no substantial difference between them. As of July 2019, there are 104 sub-branches of Customs and Customs branches.

### 1.3.4 Guard Posts and Branch Guard Posts

There are 10 Customs guard posts throughout Japan as of July 2019. The jurisdiction of Regional Customs is following:

- [Hakodate](#): Hokkaido, Aomori, Iwate, and Akita;
- [Tokyo](#): Yamagata, Gunma, Saitama, Chiba (Part), Tokyo, Niigata, and Yamanashi;
- [Yokohama](#): Miyagi, Fukushima, Ibaraki, Tochigi, Chiba (Part), and Kanagawa;

- [Nagoya](#): Nagano, Gifu, Shizuoka, Aichi, Mie;
- [Osaka](#): Toyama, Ishikawa, Fukui, Shiga, Kyoto, Osaka, Nara, and Wakayama;
- [Kobe](#): Hyogo, Tottori, Shimane, Okayama, Hiroshima, Tokushima, Kagawa, Ehime, and Kochi;
- [Moji](#): Yamaguchi, Fukuoka (Part), Saga (Part), Nagasaki (Part), Oita, and Miyazaki;
- [Nagasaki](#): Fukuoka (Part), Saga (Part), Nagasaki (Part), Kumamoto, and Kagoshima;
- [Okinawa](#): Okinawa.

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## 2. CUSTOMS LEGAL SYSTEM

Japan's Customs legal system can be divided into two parts: principal Customs laws and other related laws and regulations<sup>2</sup>. Please find the list and Japanese version of laws and regulations related to Customs [here](#). For laws not listed, please use the [e-Gov Law Search](#). In addition, the following links also provide English version for convenience.

### 2.1 Principal Customs Laws

Customs Act, Tariff Act and Temporary Tariff Measures Act are the three main laws concerning Customs affairs in Japan. Customs Act covers all aspects of Customs work, with only the principle of the tariff system. The specific tariff system is constructed through Tariff Act and the Temporary Tariff Measures Act.

#### 2.1.1 Customs Act

The Customs Act is divided into 11 chapters and 149 Articles and updated in 2018. Click [here](#) to view the full English text for reference.

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<sup>2</sup> The following are unofficial English translations. Only the original Japanese texts of the laws and regulations have legal effects, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations. Most translations are selected from Japanese Law Translation Database System ([Ministry of Justice](#)).

### **2.1.2 Tariff Act**

The Tariff Act is divided into 21 Articles and updated in 2018. Click [here](#) to view the full English text for reference.

### **2.1.3 Temporary Tariff Measures Act**

The Temporary Tariff Measures Act is divided into 19 Articles and updated in 2018. Click [here](#) to view the full English text for reference.

In addition, lots of administrative orders for enforcement of Customs Act, Tariff Act, and Temporary Tariff Measures Act have been formulated and update simultaneously.

## **2.2 Related Laws and Regulations**

The following are the laws and regulations related to cargo clearance for reference.

Table 1 Related Laws and Regulations

Name of the laws	Key Words	Supervising Government Agencies
1. Foreign Exchange and Foreign Trade Law		
(1) Foreign Exchange Order	Means of payment (cash)	Legal Office, Research Division, International Bureau, Ministry of Finance
(2) Import Trade Order	Import quota items (herring, etc.)	Trade Control Policy Division, Trade Control Department, Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry
	Para. 2 approved items (whale, etc.)	
	Prior confirmed items (Frozen Bluefin tuna, etc.)	
	Confirmation at Clearance (Fresh Bluefin tuna, etc.)	
	Washington Convention (ivory, etc.)	
2. Law concerning Wildlife Protection and Hunting	Bird species and their by-products, animals and their by-products, bird eggs	Wildlife Division, Nature Conservation Bureau, Ministry of the Environment
3. Firearms and Swords Possessive Control Law	Pistol, imitation pistol, rifle, machine gun, shotgun, air gun; Sword with over a 15cm blade length, spear, halberd, sword with over a 5.5cm blade length, dagger and switch knife, etc.	Safety Division, Community Safety Bureau, National Police Agency
4. Regulation of Revenue Stamps and Counterfeiting Law	Object that could be mistaken for Revenue Stamps	Consumption Tax Office, Taxation Management Division, National Tax Agency
5. Cannabis Control Law	Cannabis plant and articles thereof	Compliance and Narcotics Division, Pharmaceutical Safety and Environmental Health Bureau, Ministry of Health, Labour and Welfare

Name of the laws	Key Words	Supervising Government Agencies
6. Poisonous and Deleterious Substance Control Law	Poisonous and deleterious substances	Evaluation and Licensing Division, Pharmaceutical Safety and Environmental Health Bureau, Ministry of Health, Labour and Welfare
7. Stimulant Drug Control Law	Stimulant drugs, raw materials for producing stimulant drugs	Compliance and Narcotics Division, Pharmaceutical Safety and Environmental Health Bureau, Ministry of Health, Labour and Welfare
8. Narcotics and Psychotropics Control Law	Narcotics, psychotropic substances	Compliance and Narcotics Division, Pharmaceutical Safety and Environmental Health Bureau, Ministry of Health, Labour and Welfare
9. Opium Law	Opium, poppy straw	Compliance and Narcotics Division, Pharmaceutical Safety and Environmental Health Bureau, Ministry of Health, Labour and Welfare
10. Act on Securing Quality, Efficacy and Safety of Pharmaceuticals, Medical Devices, Regenerative and Cellular Therapy Products, Gene Therapy Products, and Cosmetic Law	Pharmaceutical, pharmaceutical-related items, cosmetics, medical equipment, designated substance; Pharmaceutical, pharmaceutical-related items, medical devices for animal treatment/diagnosis, in vitro diagnostic and Cellular and Tissue-based Products	Compliance and Narcotics Division, Pharmaceutical Safety and Environmental Health Bureau, Ministry of Health, Labour and Welfare Animal Products Safety Division Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries
11. Fertilizer Control Law	Fertilizer	Plant Products Safety Division, Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries

Name of the laws	Key Words	Supervising Government Agencies
12. Fisheries Resources Conservation Law	Koi (Carp), goldfish and other Crassus, silver carp, big head carp, grass carp, black Chinese roach, salmon eyed egg and fry, and Penaeus fry	Fish and Fishery Products Safety Office, Animal Health and Animal Products Safety Division, Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries
13. Law Concerning Sugar and Starch Price Stabilization	Sugar and Starch	Regional Agricultural Production Division, Crop Production Bureau, Ministry of Agriculture, Forestry and Fisheries
14. Provisional Measures Law for Processed Raw Milk Producer Subsidies	Butter, non-fat powdered milk and condensed milk	Milk and Dairy Products Division, Livestock Industry Department, Agricultural Production Bureau, Ministry of Agriculture, Forestry and Fisheries
15. Law for Stabilization of Supply-Demand and Price of Staple Food	Rice grains (rice, rice flour, rice cake, etc.), wheat and barley (products processed/regulated wheat, barley, or rye)	Grain Trade and Operation Division, Staple Food Department, Crop Production Bureau, Ministry of Agriculture, Forestry and Fisheries
16. Explosives Control Law	Explosives, explosive compounds, articles processed by heat (fuse, etc.)	Industrial Safety Division, Agency for Nuclear and Industrial Safety, Ministry of Economy, Trade and Industry
17. Law Concerning Screening of Chemical Substances and Regulations on their Manufacture, etc.	Chemical substance	Chemical Management Policy Division, Manufacturing Industries Bureau, Ministry of Economy, Trade and Industry

Name of the laws	Key Words	Supervising Government Agencies
18. Regulation of Postal Stamps and Counterfeiting Law	Objects that could be mistaken for postal stamps	Postal Policy Planning Division, Postal Services Policy Planning Bureau, Posts and Telecommunications, Ministry of Internal Affairs and Communications
19. Alcohol Business Law	Alcohol with alcoholic content of 90 percent and above	Alcohol Division, Manufacturing Industries Bureau, Ministry of Economy, Trade and Industry
20. Law of the Quality Control of Gasoline and Other Fuels	Volatile oil, kerosene, and light oil	Petroleum Refining and Reserve Division, Natural Resources and Fuel Department, Agency for Natural Resources and Energy
21. Agricultural Chemicals Regulation Law	Agricultural chemicals	Plant Products Safety Division, Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries
22. Enforcement of Invasive Alien Species Act	Black bass, Snapping Turtle, etc.	Wildlife Division, Nature Conservation Bureau, Ministry of the Environment
23. Laws Concerning the Prevention of Infections and Medical Treatment for Infected Persons	Ebola virus, Bacillus anthracis, Botulinum toxin	Tuberculosis and Infectious Diseases Control Division, Health Service Bureau, Ministry of Health, Labour and Welfare
	Monkey, prairie dogs, etc.	Tuberculosis and Infectious Diseases Control Division, Health Service Bureau, Ministry of Health, Labour and Welfare Animal Health Division, Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries

Name of the laws	Key Words	Supervising Government Agencies
24. Industrial Safety and Health Law	Harmful substances (asbestos, etc.)	Chemical Hazards Control Division, Occupational Safety and Health Department, Labour Standards Bureau, Ministry of Health, Labour and Welfare
25. Food Sanitation Law	All food and drink, food additives, tableware, containers/wrapping, and toys	Quarantine Center Administration Office, Planning Information Division, Safety Department, Pharmaceutical and Food Safety Bureau, Ministry of Health, Labour and Welfare
26. Plant Quarantine Law	Flowering (phanerogams) plant, pteridophyte, bryophyte, harmful plants (bacillus, parasite, etc.), harmful animals (various insects and mites, etc.)	Plant Protection Division, Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries
27. Rabies Prevention Law	Dogs, cats, raccoons, foxes, and skunks	Animal Health Division, Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries
28. Domestic Animal Infectious Disease Control Law	Even-toed ungulate, horses, poultry (chickens, ducks), rabbits, bees and these meats, sausage, ham and rice straw	Animal Health Division, Food Safety and Consumer Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries
29. High Pressure Gas Safety Law	High pressure gas	Industrial Safety Division, Agency for Nuclear and Industrial Safety, Ministry of Economy, Trade and Industry

Source: Japan Customs website.

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## 3. CUSTOMS CLEARANCE PROCEDURES

The Cabinet Order for Enforcement of the Customs Law formulated legal provisions related to Customs clearance procedures typically. With the supports of trade facilitation measures and technologies, the Customs clearance of Japan is very convenient and efficient. Formalities of exports and imports are normally processed by the information processing system called NACCS. More than 90 percent of import procedures are currently computerized. Moreover, goods information can be accessed in real time.

### 3.1 Export Clearance

According to the Customs Law, export goods are tax-free and the export process is relatively simple in Japan.

As shown in Figure 4, after the freight forwarding procedures, the exporter or its Customs broker prepares an export declaration indicating the nature, quantity and value of the exported goods and any other necessary information. Usually, the exported goods shall be stored in the bonded area<sup>3</sup> until the Customs clearance is completed.

The declaration needs to be accompanied by invoices and other supporting documents. If required by laws and regulations other than Customs Law, other documents such as licenses and approvals should be attached. At the time of export declaration, the exporter is required to submit two export reports. One is used for statistics and the other is used to meet requirements such as export certification.

Customs will review the submitted export declarations based on invoices and other supporting documents. The review includes whether the statistical classification is performed correctly. When reviewing documents, the Customs also decides whether it is necessary to conduct a physical inspection of the goods to determine the correctness of the declaration and to determine whether the inspections required by laws and regulations other than Customs Law have been completed.

In addition, depending on the type of goods, some export goods need to be licensed or approved prior to export declaration. These must be issued by other competent authorities, such as the Ministry of

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<sup>3</sup> For details that do not have to enter the bonded area under special conditions, please refer to 3.3.

Economy, Trade and Industry and the Ministry of Health, Labor and Welfare, in accordance with other laws and regulations. Customs are not allowed to export goods unless they are confirmed.

It is noted that all document submission and information exchange procedures can be completed online through NACCS.

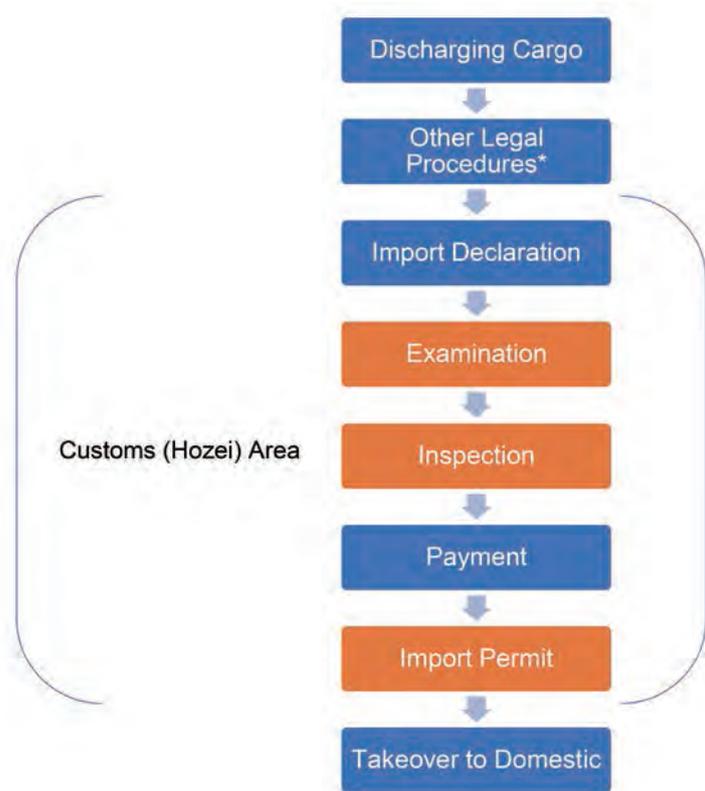
Figure 4 Flow of Export Clearance Procedures



\*Other legal procedures Some goods to be exported require permits or approvals according to the laws and regulations other than the Customs Law such as food sanitation law plant quarantine law, and so on.

### 3.2 Import Clearance

Figure 5 Flow of Import Clearance Procedures



*\*Other legal procedures* Some goods to be imported require permits or approvals according to the laws and regulations other than the Customs Law such as food sanitation law plant quarantine law, and so on.

Foreign goods arriving in Japan by air or by sea shall be stored in the bonded area<sup>4</sup> until the Customs clearance is completed. When the goods arrive at the port of entry, the transportation company or airline will issue an arrival notification to the importer. The importer should then go to the airline or transport company to obtain the necessary documents for the transport agreement.

It is noted that all document submission and information exchange procedures can be completed online through NACCS.

<sup>4</sup> For details that do not have to enter the bonded area under special conditions, please refer to 3.3.

### 3.2.1 Import Declaration

Usually, after the goods have been transported to the bonded area, the goods are declared to the Customs by submitting the necessary documents. Please see the detailed instructions on how to fill out the import declaration form [here](#) and 5.1 Customs Declaration Form for reference. It is noted that more than 90 percent of import procedures is currently computerized so the filling is not prerequisite.

### 3.2.2 Examination and Inspection

The Customs will review documents and decides whether it is necessary to conduct a physical inspection of the goods. The purpose of the Customs inspection is to make sure the declaration matches with the actual goods, from the following perspectives:

- To make sure no illegal goods are imported. For example, illicit drugs and firearms;
- To make sure necessary permit and approval based on various domestic laws and regulations are received if the goods require a permit and approval under laws and regulations other than the Customs Law;
- To make sure the origin of goods is not falsely or mistakenly indicated;
- To make sure duty payment is declared appropriately.

#### **A. Sample Examination**

When Customs initiates an identification procedure on suspected goods based on the application, applicant may take apart samples of suspected goods if they are unable to substantiate their claims without dismantling suspected goods in identification procedures, on condition that all the requirements for approval for “Sample Examination” are satisfied and the security is provided. When the approval for “Sample Examination” is given, nonetheless, it does not imply an extension of the limited period for a release of suspended goods.

#### **B. Pre-arrival Examination**

The Pre-arrival Examination System allows the importer to submit import-related documents to Customs before the cargo arrives in Japan or before import related procedures, such as import licenses issued by

the Ministry of Economy, Trade and Industry, are complete. By completing the examination before the cargo arrives, Customs can notify the importer whether an inspection is necessary.

### **3.2.3 Payment of Customs Duties**

The import duties can be paid by the importer, but it can also be handled by a licensed Customs broker. If the import goods are subject to Customs duties or consumption tax, the payment instructions must be submitted at the time of import declaration. After the Customs inspection is completed, the statement will be returned to the importer.

Tariffs should be paid at the bank or post office. If the Customs declaration process is carried out through NACCS, payment can be made through the real-time account transfer method.

After that, the import will be approved and the receipt will be presented as proof of payment. If the payment is not paid via a multi-payment network or directly, the import will be approved immediately after payment.

In addition, the payment period can be extended by the importer providing the Customs with a guarantee equivalent to the tax rate. In principle, the import of goods is approved after confirmation of duties. The goods should be handed over to the importer after the importer present an import permit.

The locations and telephone numbers of Customs counselors are [here](#).

## **3.3 Special Clearance**

According to the provisions of the Customs Law, special Clearance procedures for export and import are as follows:

### **3.3.1 Special Clearance Procedures for Export**

According to the special clearance system, the “specific exporters” that have passed the safety management and compliance risk control mechanism and approved by the Customs, may apply directly to the Director General where the goods are stored (including the warehouse of the factory) or where the

goods will be exported (including during transportation). After approval, the goods can be released without being transported into the bonded area.

### 3.3.2 Special Clearance Procedures for Import

Under normal circumstances, import goods should be transported to the bonded area and then declared to the Customs. After receiving the import declaration, Customs will carry out the document review and the necessary inspection of the goods. In principle, after the duties are paid, the Customs will release the goods and the importer can pick up the goods. The following are some exceptions:

#### **A. Without Entering the Bonded Area**

- Bulk goods, etc. may not be transported into the bonded area;
- Air cargo that needs to be quickly transported away, such as vegetables and fish;
- Authorized enterprise recognized by risk management.

#### **B. Picking-up Goods First**

After the Customs guarantee is submitted to the Customs and the consent of the Director General is obtained, the following goods can be picked up first: (A) Valuables, dangerous goods, goods possible to deteriorating and damage; (B) Goods subject to time restrictions due to participation in the exhibition; (C) Goods subject to the Special Preferential Tariff Rate waiting for the certificate of origin.

The contract stipulates that the quantity needs to be verified after unloading, and the quantity that has not been determined at the time of declaration.

#### **C. Release First and Payment Later**

If it meets the requirements of the special clearance system, the goods can be released first without the payment of the duties. This is mainly for the “specific importers” who have passed the safety management and compliance risk control mechanism and approved by the Director General.

In addition, importers must file a preliminary declaration on NACCS.

### 3.4 Temporary Import/Export

The ATA Carnet is an international, unified Customs document under an international system and concluded among major countries. Goods imported from contracting countries and territories can generally be subject to a procedure on the basis of the ATA Convention.

In cases where articles for use at exhibitions, expositions, etc., with an ATA Carnet issued by authorized foreign or Japan organizations, the articles can be facilitated a quicken export/import clearance procedures for duty-free.

In using the ATA Carnet, the following are noted:

- The nation into/out which must be a member of the ATA Conventions;
- The term of validity (one year) is the term recorded in the ATA Carnet;
- The major goods covered by the ATA Carnet are professional equipment, samples of goods, goods for use at exhibitions;
- The holder has an obligation to re-import or re-export the goods.

In addition to professional equipment, samples of goods, goods for use at exhibitions, and others which are covered by the ATA Convention, the following goods are examples of goods eligible for temporary import/export.

- Goods to be processed specifically;
- Goods to be repaired;
- Articles for scientific research;
- Articles for testing;
- Articles to be used by any person exporting or importing goods, for testing the capacity or performance of, or for examining the quality of, the goods so exported or imported;
- Automobiles, vessels, aircrafts, or any other goods, which are brought into Japan by any person with him or her, or imported separately by him or her as unaccompanied goods, which enter Japan for a purpose other than for the removal of his or her residence to Japan and which are intended for his or her own personal use.

Samples are eligible for duty-free entry, provided they meet the following criteria:

- the total Customs value should be JPY 5,000 or less;
- the words “sample, not for resale” should be written on the commercial invoice;
- the goods should be marked or otherwise impaired so that they can only be used as samples and not be sold.

Please refer to 15. BONDED AREAS.

### 3.5 Simple Clearance

For goods whose value is less than or equal to JPY100,000, a simplified declaration system applies. The importer who has approved by a chief of any Customs previously can apply the simple declaration that separates the import declaration and the tax return on the designated types of freight with the condition of securing the observation of laws and ordinances and makes it possible to take the freight back before the tax return.

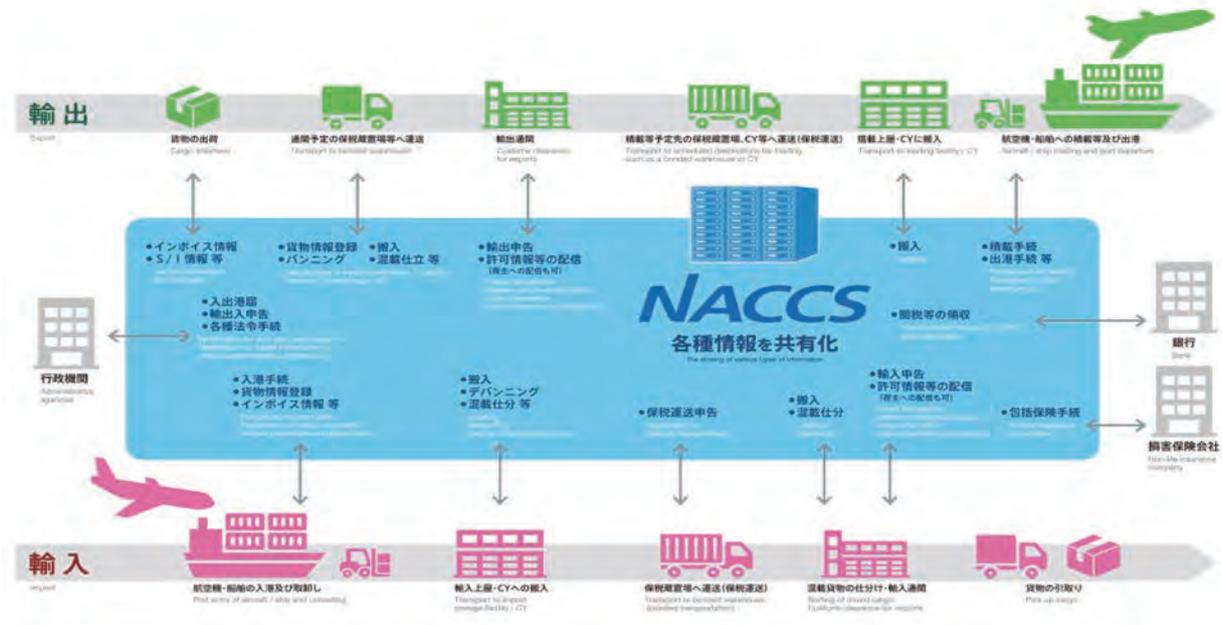
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## 4. AUTOMATED CLEARANCE SYSTEM

Nippon Automated Cargo and Port Consolidated System (NACCS) is the Single Window platform of Japan that handles procedures for Customs and other related administrative agencies and related private businesses for ships and aircraft, and goods that are imported and exported. It is also a national system for electronic processing of import/export related services. Information sharing is the most important advantage of NACCS with participating parties with international trade.

With the privatization, NACCS was expected to increase the efficiency of international logistics and to enhance the competitiveness of Japan’s ports and airports by taking such measures as streamlining its operations through the improved corporate management and providing better services to users by enlarging its scope of business.

Figure 6 Information Sharing of NACCS



Source: NACCS's website.

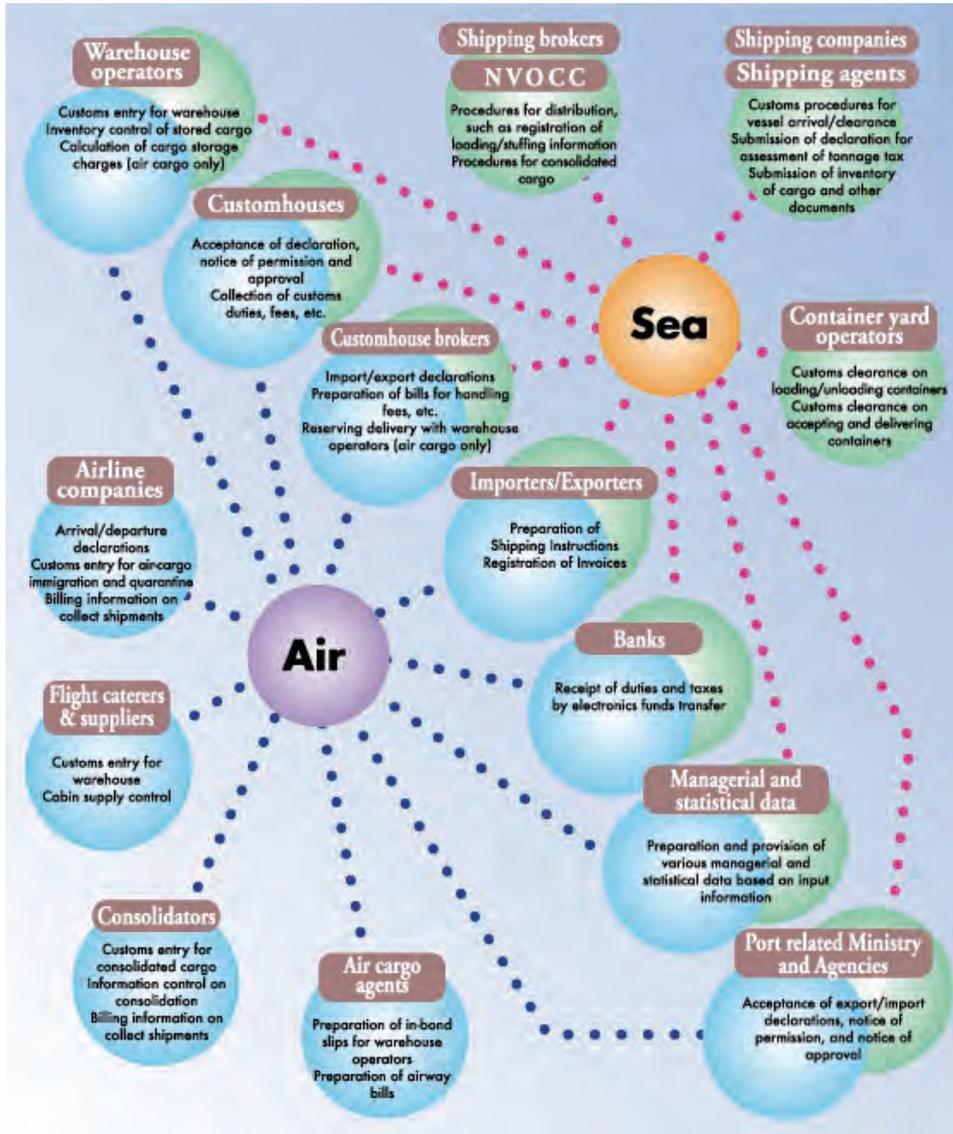
## 4.1 Air-NACCS

Air-NACCS is a sub-system for online processing of the series of Customs procedures and related private-sector services, ranging from the point of aircraft arrival at the airport to unloading of air cargo, import declaration, import permission and domestic delivery in the case of imports, and ranging from the point air cargo is carried to the “Hozei” bonded area to export declaration, export permission, loading onto aircraft and aircraft departure in the case of exports.

## 4.2 Sea-NACCS

Sea-NACCS is another sub-system for online processing of the series of Customs procedures and related private-sector services, ranging from the point of ship arrival at the port to unloading of sea cargo, import declaration, import permission and domestic delivery in the case of imports, and ranging from the point sea cargo is carried to the “Hozei” bonded area to export declaration, export permission, loading onto ship and ship departure in the case of exports.

Figure 7 Functions of NACCS



Source: NACCS's website.

With the former NACCS, the Air-NACCS and the Sea-NACCS were each operated as an independent system. However, the system underwent an upgrade of Sea-NACCS and Air-NACCS. The review led to Air-NACCS and Sea-NACCS being integrated, along with the Port EDI System managed and operated by the Ministry of Land, Infrastructure, Transport and Tourism, JETRAS managed and operated by the Ministry of Economy, Trade and Industry, and other related ministry/agency systems also being integrated with NACCS. Subsequently, Nippon Automated Cargo and Port Consolidated System, Inc. (NACCS Center) set out anew under its current name on October 1, 2008 based on the "Act for Partial Revision of

the Act on Special Provisions for Customs Procedure by Means of Electronic Data Processing System” (Act No. 46 of 2008).

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## 5. DECLARATION DOCUMENTS

### 5.1 Customs Declaration Form

#### 5.1.1 Customs Declaration Form – Export

In general, the export needs to be reported with the C5010 Form for Customs declaration. The declarant can complete the form by typing or using a pen in black ink, in either Japanese or English, and follow the filling requirements below:

- (1) Enter the name of the Customs office;
- (2) When an exporter is the declarant, enter the name and address of the declarant with affixed seal (in general the consignor provided in the invoice);
- (3) Enter the name and address of the receiver of goods (the person who receives the goods from an exporter) (in general, the consignee provided in the invoice);
- (4) Enter the date of declaration;
- (5) Enter the name of the port (airport) of departure;
- (6) Enter the name of the vessel (the airline company and Airway Bill No.) that carries the goods;
- (7) Enter the date of departure of the vessel (aircraft) that carries the goods;
- (8) Enter the destination and the country of the goods;
- (9) Enter the name of the location where the goods are stored;
- (10) Fill in this column when approval is granted;
- (11) Fill in the form after confirmation is made by a Customs counselor or the relevant Customs officer;

- (12) Enter the general product name (for example, use the product name provided in the invoice);
- (13) Enter the tariff schedule code (six digits) and statistical code (three digits) of the Export Statistical Schedule;
- (14) Enter the statistical unit(s) listed on the Export Statistical Schedule. If two statistical units are listed, enter both;
- (15) Enter the quantity expressed by the “unit” given in (14). If the total quantity is less than the given unit, enter “0” in the non-colored section at the left of the form, and fill in the amount less than the unit in the colored section at the right of the form;
- (16) Enter the FOB price (at the point of origin) indicating in a Japanese yen denomination;
- (17) When the settlement other than the FOB price exceeds ¥1,000,000, enter the offered price and settled price with underlines;
- (18) Enter the total number of cargoes, package marks and numbers. When the cargo is loaded into a container, indicate this and enter the point of loading;
- (19) If the good falls under paragraphs 1 to 15, Annex 1 of the Export Trade Control Ordinance, such as in the case of weapon-related goods, enter the number of the applicable paragraph, and mark “X” in the box of “Applicable”;
- (20) If the good falls under Annex 2 of the Export Trade Control Ordinance, such as in the case of ingredients of narcotics, specified toxic waste materials, or rare species of wild animals and plants, etc., enter the number of the applicable paragraph, and mark “X” in the box of “Applicable”. When not applicable, mark “X” in the box of “Not Applicable”;
- (21) When the goods do not require permission or approval under Article 4 of the Export Trade Control Ordinance among those goods applicable to (19) or (29), mark “X” in the box of the “Applicable”;
- (22) Enter “16” as the number of the Paragraph. If the good falls under Paragraph 16, Annex 1 of the Export Trade Control Ordinance and yet is not used for the production of weapons, etc., mark “X” in the box, “Permit Required”. If the article does not fall under Paragraph 16, Annex 1 of the Export Trade Control Ordinance and is not used for the production of weapons, mark “X” in the box of “Permit Not Required”;
- (23) Enter the number assigned to the Import Permit, etc. (If you are unsure how to fill in the sections from (19) to (23), enter the sections after consulting a Customs counselor or the relevant Customs officer;

- (24) If you wish to receive approval for bonded transportation at the time of export declaration, enter the corresponding classification and transportation period; and
- (25) Enter the number of declaration forms and the number of columns;
- (26) Check “Yes” at the right of the form if there are any attached documents.

According to Article 67 of the Customs Law, Article 58 and Article 59-2 of the Cabinet Order for Enforcement of the Customs Law, the declaration items are the items the declarant should responsible for the accuracy and consistency of goods as following:

- Code number, name, quantity and price of goods;
- Destination of cargo and name or appellation and address or place of residence of consignor;
- Name and registration number of the carrier (vessel or aircraft) of the cargo;
- Location of the storage of goods.

Figure 8 Customs Declaration Form – Export C5010

Japan

税関様式C第5010号

## 輸出申告書

先 **①** 東京税関 長殿 申告年月日 **④** 平成16年4月1日  
 届出先 **②** 東京都千代田区霞ヶ関3-1-1 税関 三郎  
 輸出者住所氏名印  
 代理人住所氏名印  
 代理人住所氏名 **③** 〇-〇〇 〇〇〇〇〇 THAILAND XYZ Co., Ltd.  
 届出場所 **⑧** 〇〇 H/W  
 本船部 **⑩** 〇 中報

(11) 申告番号  
999-0000-(D)  
 船名 船(機)種 船(機)番号  
 船(機)種 船(機)番号  
 貿易形態別番号 518  
 仕向地(地)番号 111  
 輸出番号 99999  
 (原産地番号)

品名	統計品目番号	単位	数量	申告価格 (F.O.B)	備考
<b>⑫</b> USED MOTOR VEHICLE	<b>⑬</b> 8703.22-910	<b>⑭</b> NO	<b>⑮</b> 10	<b>⑯</b> 2,500,000	
				<b>⑰</b> CIF US\$ 23,809	

**⑱** 10UNITS BANGKOK IN DIA 1-10  
**⑲** CARGOS TO BE CONTAINERISED VIA 〇〇 HOZEI WAREHOUSE  
**⑳** 輸出貿易管理令第2条第1項第2号  
**㉑** 輸出貿易管理令第4条第1項第2号  
**㉒** 輸出貿易管理令第1条第1項第1号  
**㉓** 輸出許可証又は輸出承認証の番号  
**㉔** 保付通関 必承認 船名、船種、年、月、日、日

**㉕** 申告書 1枚  
**㉖** 添付書類 (輸出貿易管理令関係を除く)  
 仕入書  
 輸出取引承認書  
 その他輸出法第70条関係許可・承認書類 (法令名)  
 関税定率法、關稅暫定措置法 第 条第 項第 号関係  
 内國消費稅 輸出免稅(還付金)関係

通関士記名押印  
 (規格A4)

Source: Japan Customs website.

### 5.1.2 Customs Declaration Form – Import

In general, the import needs to be reported with the C5020 Form for Customs declaration. The declarant can complete the form by typing or using a pen in black ink, in either Japanese or English, and follow the filling requirements below:

- (1) Enter the date of declaration;
- (2) Enter the name of the Customs office;
- (3) When the importer is the declarant, enter the name and address of the declarant and affix your seal (in general, the consignee listed on the invoice);
- (4) Enter the name and address of the sender of goods (the person who sends the goods to an importer) (in general, the sender listed on the invoice);
- (5) Mark "X" in the IC box for regular importation;
- (6) Enter the name of the port (airport) of entry of the goods;
- (7) Enter the name of the ship (aircraft) that carries the goods;
- (8) Enter the date of entry of the ship (aircraft) that carries the goods;
- (9) Enter the country of origin of the goods;
- (10) Enter the name of the country and city where the goods are loaded on a ship (aircraft);
- (11) Enter the number of B/L (Air Way Bill for air cargo). If the goods have already been brought into to the bonded area, write the license number;
- (12) Enter the name of the location where the goods are stored;
- (13) Enter the form after confirmation is made by a Customs counselor or the relevant officer of the Customs office;
- (14) Enter the general product name (for example, use the product name listed on the invoice);
- (15) Using the Effective Tariff Schedule as a reference, enter the appropriate tariff schedule code (six digits) for imported goods in the "Number" column, the appropriate statistical code (three digits) in the "Statistic Subdivision" column, and the appropriate subdivision code in the "Tariff Schedule Subdivision" column;
- (16) Enter the statistic unit(s) listed on the Effective Tariff Schedule (If two statistic units are listed, enter both);

- (17) Enter the quantity expressed by the "unit" in (16). If the total quantity is less than the given unit, enter "0" in the non-colored section at the left of the form, and fill in the amount less than the unit in the colored section at the right of the form;
- (18) Enter the CIF price (the cost including the freight charges and the insurance to the destination: in other words, the actual landed cost of goods at the port of entry);
- (19) Using the Effective Tariff Schedule as a reference, enter the tariff rate applied to the goods and mark "X" in the section below according to the application classification. In the case of tax exemption, write "Free";
- (20) Enter the amount of duties by multiplying the Customs value (rounded to the nearest multiple of 1000) by the tariff rate in the smallest yen value. In this case, use the non-colored section at the left if the amount is 1,000 yen or more, and use the colored section at the right if the amount is less than 1,000 yen;
- (21) Mark "X" in the box of "Applicable Law" for articles subject to excise tax (both national and local) such as consumption tax and liquor tax;
- (22) Enter the amount obtained by adding the amount of duty levied by Customs (rounded to the nearest multiple of 100) to the declared value;
- (23) Enter the duty rate of the consumption tax;
- (24) Calculate the amount in the same way as (20) and enter the amount obtained to the smallest yen value;
- (25) Enter the amount by rounding the consumption tax amount entered in (24) to the nearest multiple of 100;
- (26) Enter the duty rate of the local consumption tax;
- (27) Enter the amount to the smallest yen value by multiplying the amount entered in (25) by the duty rate;
- (28) Calculate the amount of tax of each item and enter the total amount of each tax item (rounded to the nearest multiple of 100) and the number of columns of tax items;
- (29) Enter the total number, codes and assigned numbers of external packages;
- (30) Enter the Import License number, if any;
- (31) Check "Yes" at the right of the form if there are attached documents; and
- (32) If valuation declaration is required depending on the type of trade, mark "X" in the appropriate box.

According to Article 7 and Article 67 of the Customs Law, Article 59 and Article 59-2 of the Cabinet Order for Enforcement of the Customs Law, the declaration items are the items the declarant should responsible for the accuracy and consistency of goods as following:

- Code number, name, quantity and price of goods;
- Country of origin and shipping location of goods and name and address of sender;
- Name and registration number of carrier (aircraft or ship);
- Location of the storage of goods.

Figure 9 Customs Declaration Form – Import C5020

Japan

別紙 3-1

税関様式 第 6050 号

### 輸入(納税)申告書

(1) 内国消費税等課税標準額等申告書兼用  
申告年月日 平成26年4月1日

(2) 先 東京税関 長崎 国(英)記号 TOKYO

(3) 輸入者 東京都千代田区霞が関3-1-1  
住所及び印 税関三郎 (印)  
電話番号 00-0000-0000

(4) 仕出先 東京都江東区青海2-7-11  
住所及び印 東京通商株式会社 (印)  
電話番号 11-1111-1111

(5) 船名 AMERICA MARU  
輸入年月日 平成26年3月30日  
船種 U.S.A  
積出地 NEW YORK U.S.A  
船荷証券番号 N/Y-0403  
船名(高知呼称名) 東京都  
商号・番号 0000

税関様式 第 6050 号  
申告番号 9999-0000-(B)  
船(艇)調出番号  
船(艇)積荷番号 2  
荷見号照付番号 518  
荷重量(噸)符号 3047  
輸入番号 99999  
号 (調査用符号)

品名	品番	数量	単位	品名	申告価格 (C.I.F.) △内国消費税等課税標準額	税率	課税額 △内国消費税等	課税標準額 △内国消費税等
9105.21	000	1	NO	320 750	FREE	0		
		2	KG					
				320,750	6.3%	20,160		
BALL CLOCK				20,100	17/63	5,423		

28 1 CARTON  
SABURO ZEIKAN  
1-1, 3 CHOME, KASUMIGASEKI,  
CHIYODA-KU, TOKYO, JAPAN

29 1 CARTON  
SABURO ZEIKAN  
1-1, 3 CHOME, KASUMIGASEKI,  
CHIYODA-KU, TOKYO, JAPAN

30 納税額の区分に按ずる  
申告価格 (C.I.F.)  
税率  
課税額  
課税標準額

31 輸入者基本情報  
申告書・2番  
税関印  
電話・郵便・電報・電報・化審

山田 一夫 印

(規格A4)

Source: Japan Customs website

## 5.2 Accompanying Documents

### 5.2.1 Exports

- Purchase Order from Buyer;
- Sales Invoice (The commercial invoice should include names of the shipper and consignee and detail of each commodity in the shipment.);
- Packing List (The packing list should include the contents of each container, its gross and net weights in metric measurements.);
- Shipping Bill;
- Bill of Lading or Airway Bill;
- Certificate of Origin and any other specific documentation as specified by the buyer, or as required by financial institutions or LC terms or as per importing country regulations.

### 5.2.2 Imports

- Purchase Order from Buyer;
- Sales Invoice (The commercial invoice should include names of the shipper and consignee and detail of each commodity in the shipment.);
- Packing List (The packing list should include the contents of each container, its gross and net weights in metric measurements.);
- Bill of Lading or Seaway Bill or Airway Bill;
- Insurance Certificate;
- Freight Account;
- Certificate of Origin, and any other specific documentation required by the buyer, or financial institution or the importing country regulation;
- GSP Certificates of Origin (Form A) (where a preferential rate is applicable);
- Permit or Approval, etc. required by laws and regulations other than the Customs Law (where the import of certain goods is restricted under such laws and regulations);
- Detailed statement on reductions of, or exemption from Customs duty and excise tax (where such reduction or exemption is applicable to the goods).

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## 6. CUSTOMS BROKERAGE SERVICE

The Japanese Customs broker regime has the following characteristics: the use of a broker is optional; brokers require a license to operate; brokers must employ qualified staff; and brokers may apply to join the authorized economic operator (AEO) program.

The use of Customs broker's services is optional. Even though their service is optional and is an additional cost for traders, about 98% of all Customs clearances in Japan are done by Customs brokers. Following the amendment of the Customs Brokerage Law, which taken effect in 2017, Customs brokers began to service nationwide with a single license.

The Customs Broker List is available [here](#) at the website of Japan Customs Brokers Association.

### 6.1 Customs Brokers

Customs brokers shall responsible for the formulation of the Customs clearance documents and declaration, request, protest forms, which includes the processing of electromagnetic records, in place of formulation of the above documents. Electromagnetic record means an electronic, magnetic, or other method of record which is imperceptible to human senses and is used in operation of a computer. Besides Customs operations, Customs brokers are licensed to conduct Customs related services prior to or following the Customs operations, upon the request of the client.

To engage in Customs brokerage in Japan, a company or an individual must obtain a license and be registered or employ people registered as Customs specialists – a status which is granted to professionals who have passed a specific examination. In companies offering brokerage services, only these professionals may examine and process documents relating to a Customs clearance. Currently, there are about 9,000 registered Customs specialists nationwide. All of them have passed a qualifying examination which is held once a year.

### 6.2 Customs Brokerage Fees

According to Article 18 of the Customs Brokerage Law, 18-1 and 18-2 of the Basic Notice of the Customs Brokerage Law, maximum charges for Customs clearance are listed below.

Table 2 Customs Brokerage Fees

Types of Customs Service	Unit	Yen
(1) Export (Reshipment) Declaration	one	5,900
Simplified Customs Clearance for small amount cargo	"	4,200
(2) Import Declaration		
Payment of duty by self-assessment (including pre-arrival examination)	"	11,800
Simplified Customs Clearance for small volume cargo	"	8,600
Payment of duty by official assessment	"	10,500
Simplified Customs Clearance for small volume cargo	"	7,800
Withdrawal from Bonded warehouse and integrated Bonded area (excluding processed, manufactured or displayed goods)	"	7,000
Simplified Customs Clearance for small volume cargo	"	5,100
(3) Application for storage of goods in the Bonded area	"	7,000
(4) Application for bringing goods into the Bonded manufacturing warehouse	"	7,000
(5) Application for storage of goods in Bonded display area	"	7,000
(6) Application for storage of goods in the integrated Bonded area	"	7,000
(7) Application for receipt of goods prior to import permit	"	5,100
(8) Declaration for loading of ship's (aircrafts) stores of foreign goods	"	5,100
(9) Declaration for transportation of foreign goods	"	5,100
(10) Other declarations, applications and reports	"	1,300
(11) Issuing transcripts of declarations, permits and approvals	"	200
(12) Additional charges	"	50%

Source: Japan Customs website.

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## 7. CUSTOMS GUARANTEE

There are two types of Customs guarantees involved in Customs clearance of imported goods in Japan. The first is the Customs guarantee related to Customs clearance facilitation, and the second is the Customs guarantee in the Customs protection of intellectual property rights (also refer to 18. CUSTOMS IPR BORDER PROTECTION).

In Japan, the most typical Customs guarantee provided is cash. According to the relevant domestic tax laws, guarantees can also be offered as national bonds, local bonds, corporate bonds and other securities. Treasury bonds and local bonds must be submitted to the Customs with the original copy. If it is a registered treasury bond, a registration notice is required. Corporate bonds and other securities are required to provide the original copy.

Real estate is also common. Land, buildings, etc. can use the copy of the register or the original book of registration to handle the Customs guarantees affairs.

The guarantee can also be in the form of a Letter of Guarantee. That is, a legally binding guarantee document (tax guarantee related to imported goods) is submitted to the Customs. The guarantor is in principle a bank or an insurance company.

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## 8. PROHIBITIONS AND RESTRICTIONS

### 8.1 Prohibited Imports/Exports

Japan strictly prohibits imports and exports of narcotics and related utensils, firearms, firearm parts and ammunition, explosives and gunpowder, precursor materials for chemical weapons, germs which are likely to be used for bioterrorism, counterfeit goods or imitation coins or currency, obscene materials, or goods that violate intellectual property rights. For more information on prohibited goods, click [here](#).

Other restricted items include but are not limited to certain agricultural and meat products, endangered species and products such as ivory, animal parts, and fur where trade is banned by international treaties. Also, there are articles prohibited for import not only under the Customs Law but also under other laws such as the Plant Protection Act and the Act on Domestic Animal Infectious Diseases Control, etc.

## 8.2 Imports Restrictions

Some imported goods may have a negative effect on Japan industry, economy, and hygiene, or on public safety and morals. Such goods fall under "import restrictions" as provided by various domestic laws and regulations. Restricted items include but are not limited to certain agricultural and meat products, endangered species and products such as ivory, animal parts and fur whose international trade is banned by international treaty, and more than two months' supply of medicines for personal use and more than 24 items of cosmetics.

For these restricted products, Japanese Customs reviews and evaluates the product for import suitability before shipment to Japan. The use of certain chemicals and other additives in foods and cosmetics is severely regulated and follow a "positive list" approach. Under the ATA Carnet System, commercial and exhibition samples, professional equipment, can be admitted without paying duties in the country.

In the case of restricted imports for which the importer must have a permit and approval relating to the import of goods under the Customs Law, requirements for inspection or other requisites (hereinafter referred to as a permit and approval) must be met. Therefore, when goods for import require a permit and approval under laws and regulations other than the Customs Law, a certificate of application for a permit and approval under other laws and regulations must be submitted.

According to "[Import Trade Control Order](#)" (Cabinet Order No. 414 of 1949, amended by Cabinet Order No. 248 of 2003), in accordance with the provisions of the [Foreign Exchange and Foreign Trade Control Act](#), the items of goods subject to import quotas, the places of origin or places of shipment of goods requiring import approval, and other necessary matters concerning import of goods should be provided for. So, according to "[Public Announcement on the Items of Goods Subject to Import Quotas, the Places of Origin or Places of Shipment of Goods Requiring Approval for Import, and Other Necessary Matters Concerning Import of Goods](#)" (Amended by Public Notice No. 94 of the Ministry of Economy, Trade and Industry of 2015), imports licenses are required for certain goods, including hazardous materials (e.g.), animals, plants, perishables, and in some cases articles of high value. Licenses are also required for products subject to import quotas, including certain fish products and controlled substances listed in the

## Montreal Protocol on Substances that Deplete the Ozone Layer.

- Goods subject to import quotas are listed in the Section I Appended Table 1;
- Controlled Substances under Annexes to Montreal Protocol. See the Section I Appended Table 2;
- Goods originating in or shipped from the regions listed. See the Section II Appended Table 1;
- CITES fauna and flora and derivatives thereof, substances and products prescribed in the annexes of the Montreal Protocol, and Class I designated chemicals prescribed in the act on prohibition of chemical weapons and control, etc. of specific chemicals, etc. See the Section II Appended Table 2;
- Goods limited to approval pertaining to import of goods for which all regions are designated as the place of origin or the place of shipment that are listed in Section II-2 Appended Table 1 and 2.

According to “[Public Announcement on the Items of Goods Subject to Import Quotas, the Places of Origin or Places of Shipment of Goods Requiring Approval for Import, and Other Necessary Matters Concerning Import of Goods](#)” (Amended by Public Notice No. 94 of the Ministry of Economy, Trade and Industry of 2015), other goods that must be imported with confirmation including:

- the vaccine of microbial origin for experimental use;
- any specified foreign cultural property;
- goods for testing and research purposes;
- etching agents (limited to those used in the manufacture of compound semiconductors that enable piezoelectric filters or wireless devices that transmit/receive electrical waves of a frequency of 3 megahertz or more.) resist for semiconductor use or professional-use photographic film;
- by vessel, tunas (excluding albacore or long finned tunas, bluefin tunas, southern bluefin tunas and bigeye tuna, and limited to those that are fresh, chilled or frozen) or marlin (excluding swordfish, and limited to those that are fresh, chilled or frozen);
- frozen bluefin tunas, southern bluefin tunas, bigeye tuna or swordfish;
- mero;
- the whale or preparations thereof to be imported originate in and are shipped from the countries listed;
- listed animals or plants originating in the countries listed, click [here](#) see Article 3-7-(6) for the list;
- live animals belonging to the species listed in CITES Appendix II and III;

- animals and plants, etc. belonging to nationally endangered species of wild fauna and flora listed;
- substances listed in the Montreal Protocol, all of which are used as raw materials in the manufacturing process of any substance other than the substance;
- substances listed in the Montreal Protocol, used for testing, research or analysis;
- substances listed in the Montreal Protocol, used for quarantine upon import and export of goods;
- countries or regions limit, click [here](#) see Article 3-7-(12) for the list;
- others, e.g. alcohol, certain textiles, chemicals, compressed gases and their containers, food, food additives, motor vehicles, electric & telecommunication equipment, radios, telephones, and modems, high pressure gas, meat and meat products, medical equipment, medicine, radioactive isotopes, rice, wheat and their products, sugar, toys for babies.

In addition, Japan imposes restrictions on the sale or use of certain products including those related to health such as medical products, pharmaceuticals, agricultural products and chemicals. For these products, Japan Customs reviews and evaluates the product for import suitability before shipment to Japan. Licenses from relevant regulatory bodies may also be required for the importation and sale of those products. The use of certain chemicals and other additives in foods and cosmetics is severely regulated and follows a “positive list” approach.

- Please visit <https://www.mhlw.go.jp/english/> for more details of the Pharmaceutical Safety and Environmental Health Bureau.
- Please visit <http://www.maff.go.jp/aqs/languages/info.html> for more details of the Animal Quarantine Stations.
- Please visit [http://www.maff.go.jp/ppsj/information/language\\_top.html](http://www.maff.go.jp/ppsj/information/language_top.html) for more details of the Plant Protection Stations.

In addition, the Japanese Measurement Law requires that all imported products and shipping documents show metric weights and measures. Japanese law requires labels for textiles, electrical appliances and apparatus, plastic products and miscellaneous household and consumer goods. Generally labeling for most imported products is not required at the Customs but at the point of sale. For most products country of origin labelling is not required, except some beverages and foods which do require labelling and marking of true information. False or misleading labels displaying names of countries or flags other than the country of origin, and/or names of manufacturers or designers outside the country of origin are not permissible. Japanese laws requiring product certification and labelling are numerous. Reference

for information on these requirements is available in [JETRO's Handbook](#) for Industrial Product Import Regulations.

In addition, imported products are subject to product testing and cannot be sold in Japan without certification of compliance with prescribed standards, falling into two categories: technical regulations (or mandatory standards) and non-mandatory voluntary standards. Compliance with regulations and standards is also governed by a certification system in which inspection results determine whether approval (certification/quality mark) is granted. It is important that a Japanese agent or partner be fully aware of the wide variety of legislation that could affect the sale of the product in Japan. Major laws stipulating standards that apply to products in Japan include the following:

- [Electrical Appliance and Material Safety Law](#);
- [Consumer Product Safety Law](#);
- [Food Sanitation Law](#);
- [Pharmaceutical Affairs Law](#);
- [Road Vehicles Law](#);
- [Building Standard Law](#).

In addition, the Japan Industrial Standards Committee (JISC) plays a central role in the standards setting activities in Japan. See the [JISC](#) for further details of the JIS Mark Certification Scheme.

In addition, the Japan Agricultural Standards (JAS) mark is another "voluntary" but widely used product quality and labelling mark. JAS applies to beverages, processed foods, forest products, agricultural commodities, livestock products, oils and fats, products of the fishing industry, and processed goods made from agricultural, forestry, and fishing industry raw materials. Greater details on the list of JAS products and how to export JAS products to Japan can be found on [the Ministry of Agriculture, Forestry and Fisheries](#) website.

Private importation is permitted without the said license requirement provided that those products to be imported are for their personal use or consumption and that the import volume is within a permitted scope:

- No more than one month's supply of medicines that are toxicants, dangerous or prescription drugs;
- No more than two month's supply of medicines that are non-prescription drugs or quasi-drugs; or

- No more than 24 units (normal size) of similar cosmetic products.

### 8.3 Exports Restrictions

As stated in the import part, [the Foreign Exchange and Foreign Trade Control Act](#) is the basic law governing Japanese import and export controls. During the Cold War, in 1952, Japan joined the Coordinating Committee for Multilateral Export Controls (COCOM), and began to implement a multilateral export control system. In 1987, after the Toshiba mechanical incident, the Japanese government greatly strengthened its control by modifying the policy. In April 2014, the government re-established an export control policy framework. Today, Japan is a signatory and a member of the main non-proliferation treaty and the existing international export control system is implementing strong export controls in line with international standards and norms.

According to "[Export Trade Control Order](#)" (Cabinet Order No. 378 of 1949, amended by Extra Cabinet Order No. 19 of 2018) and "[Export Trade Control Ordinance](#)" (Ordinance of the Ministry of International Trade and Industry No. 64 of 1949, amended by Ordinance of the Ministry of Economy, Trade and Industry No. 6 of 2010), in accordance with the provisions of the Foreign Exchange and Foreign Trade Control Act, Japan has imposed export controls on many types of goods including strategically sensitive materials. These are mainly controlled by region depending on the usage of the goods so that strategic considerations are the key factor. Due to the space limitations, please click [here](#) and [here](#) for more details of export trade control of Japan)

Regions specified by Cabinet Order corresponding to Article 4 (white list) are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Republic of Korea (recently deleted), Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America.

Regions specified by Cabinet Order corresponding to Article 4 (black list) are: Afghanistan, Central African Republic, Democratic Republic of the Congo, Eritrea, Iraq, Iran, Lebanon, Libya, North Korea, Somalia and Sudan.

## 9. CUSTOM DUTIES AND TAXES

Products imported into Japan are subject to Customs duty (Tariff) in principle. In addition to Customs duties, a consumption tax is levied on a wide range of goods and services. The consumption tax rate is scheduled to increase to 10% from October 2019. Additional taxes are levied on imported liquors and tobacco products.

### 9.1 Tariff Rate Column

The duty rates are roughly classified as follows and complete tariff schedule can be found [here](#).

Table 3 Rate Column of Tariff

Statutory Tariff	General Rate	
	Temporary Rate	
	Preferential Rate	GSP (Generalized System of Preferences) LDC (Least Developed Country)
Tariff Enacted by Treaties	WTO Bound Rate	MFN Rate
	EPA Rates	Singapore
		Mexico
		Malaysia
		Chile
		Thailand
		Indonesia
		Brunei
		ASEAN
		Philippines
		Switzerland
		Vietnam
		India
		Peru
		Australia
Mongolia		
TPP11 (CPTPP)		
EU		

### 9.1.1 Statutory Tariff Rates

#### **A. General Rate**

General rates are set, taking the difference between domestic and foreign prices and the truly necessary protection standard into account with a long-term viewpoint based upon conditions of domestic industries and other things.

#### **B. Temporary Rate**

Temporary rates are applicable only for a certain period in order to modify general rates to meet policy needs or for other reasons. They are always applied in preference to general rates.

#### **C. Preferential Rate**

Preferential rates, aiming to support developing countries/territories, are applicable to products originating from designated developing countries/territories which satisfy certain conditions, such as the country of origin status, etc. They are set not greater than the MFN (Most-Favored-Nations) applied tariff (either statutory tariff (excluding preferential tariff and simplified tariff) or WTO bound tariff (whichever lower)) as an exception of the MFN principle. Goods that are covered by preferential tariffs are divided into agricultural and fishery products, and industrial products. The preferential tariff rates for agricultural and fishery products vary from one goods to another. Industrial products are almost tax-free, with a few exceptions. In addition, almost all products imported from least developed countries (LDCs) are tax-free. This is called a special preferential tariff. In order to impose preferential tariffs or special preferential tariffs, in principle, the “GSP Certificate of Origin (Form A)” is required. For countries and regions where preferential tariffs or special preferential tariffs apply, please refer to the offer country [list](#).

### 9.1.2 Tariff Rates Enacted by Treaties

#### **A. WTO Bound Rate**

Any Customs duty rate in excess of WTO bound one set forth in the schedule of concessions under the WTO Agreement is not applicable to products from all the WTO member countries and regions. Hence, MFN applied rate, whichever of WTO bound rate and statutory rate is lower, is applicable to products from all the WTO member countries or regions as well as non-WTO member countries with the MFN status

provided under the bilateral trade agreements with Japan (excluding Economic Partnership Agreements).

## **B. Rates Based on Economic Partnership Agreements (EPA Rates)**

EPA rates are applied to goods imported from a Party of EPA if the goods satisfy the conditions provided in each EPA such as Rules of Origin.

### **9.2. Special Tariff**

Special tariff is a unified system composed of several tariff measures for protecting and relieving domestic industries. It imposes surcharges in addition to normal tariffs by designating freight/supplier/supplier countries, etc. in the case of extraordinary circumstances such as unfair trade transactions or rapid increase in imports.

Special tariff system is adopted not only in Japan but also in many countries as a system to protect and rescue domestic industries. However, if the special tariff system is arbitrarily operated, trade transactions will be distorted. Therefore, the main requirements and procedures for special tariff activation are formed in international agreements (WTO agreements, etc.).

#### **9.2.1 Countervailing Duty**

The countervailing Duty is a duty of imposing additional tariffs on imported goods that are subsidized by the exporting country in order to protect the relevant industries. Japan has stipulated the “Customs Tariff Act” ([Article 7](#)) to levy countervailing duties in recognition of WTO rules.

In order to collect countervailing duties, the government conducts investigations to ensure compliance with tax requirements. The investigation will be completed in principle within one year and will determine whether countervailing duties are applicable. For details, please refer to the “[Guidelines on Countervailing Tariff Procedures](#)”.

If the amount of countervailing duty paid exceeds the actual amount of the subsidy, the importer can propose a tariff refund.

#### **9.2.2 Anti-dumping Duty**

Anti-dumping Duty is a duty that imposes surcharges on imported goods within the margin of the

difference between the normal price and the dumping price. According to the WTO Agreement, it is also recognized under certain rules. Japan has established the “Customs Tariff Act” ([Article 8](#)) as the basis.

The government conducts investigations to ensure that duty requirements are met. The applicants for the survey were domestic producers of the same type of goods as the surveyed goods, and the output accounted for 25% or more of it. At the same time, the total output of domestic producers (including applicants) supporting the application exceeded the domestic production against the application.

Within two months after the application for investigation is filed, it is decided whether to start the investigation. The investigation will be completed in principle within one year and will be decided to levy or not. If the amount of anti-dumping tariff paid exceeds the actual amount of dumping, the importer can propose a tariff refund.

For details, please refer to the “[Guidelines for Anti-dumping Tariff Procedures](#)”, “[Guidelines for the Documents for Anti-Dumping Tariff](#)” and the [Anti-Dumping Tariff Guide](#).

### **9.2.3 Safeguard Measure**

According to the WTO Agreement, the Safeguard measure is an emergency measure designed to prevent serious damage to domestic industries due to the rapid increase in imports. In Japan, it is regulated by Article 9 of the Customs Tariff Act.

As a result of increased imports, surcharges (Safe Guard) can be imposed within the range of domestic and foreign price differences to prevent and remedy serious damage in domestic industries that produce similar and competitive goods.

### **9.2.4 Retaliatory Duty**

When it is necessary to protect Japan’s interests and achieve its objectives under the WTO Agreement, when a country treats Japanese ships, aircraft, exported goods or transported goods in a discriminatory manner, Japan will impose retaliatory duties according to the Customs Tariff Act (Article 6).

## **9.3 Duty Rates for Major Products**

Japan’s import duty is on average one of the lowest in the world, approximately 2% for non-agricultural

products on overall arithmetic average. Japan's duty rates for major products as of April 1, 2019, are shown in the following:

Table 4 Rates for Major Products

Category	Items	Duty rate
Clothing	Fur coats (Chapter 43)	20%
	Fabric coats, jackets, trousers, skirts (Chapter 61, 62)	8.4--12.8%
	Shirts, vests (Chapter 61, 62)	7.4--10.9%
	Swimwear (Chapter 61, 62)	8.4--10.9%
	Ties (fabric) (Chapter 62)	8.4--13.4%
	Scarves (fabric) (Chapter 61, 62)	4.4--9.1%
Handbags	Leather or composition leather handbags (Chapter 42)	8--16%
Accessories	Articles of gold, silver, platinum and precious stones (Chapter 71)	5.2--5.4%
Watches	Watches and other clocks (Chapter 91)	Free
Machinery and electrical equipment	Personal computers (Chapter 84)	Free
	Digital cameras and video camera recorders (Chapter 85)	Free
Musical instruments	Pianos, string instruments and wind instruments (Chapter 92)	Free
Recorded materials	Blu-ray Disc, CD (Chapter 85)	Free
	Books and magazines (Chapter 49)	Free
Printed matters	Music, posters, reproduction paintings and catalogues (Chapter 49)	Free
Works of art	Paintings by hand, engravings and sculptures (Chapter 97)	Free
Cosmetics	Perfumes, cologne, lipsticks, manicure preparations, skin lotions (Chapter 33)	Free
	Bath soaps (Chapter 34)	Free
Toys	Toys, including dolls (Chapter 95)	Free
Sporting goods Leisure goods	Motor cars, motorcycles (Chapter 87)	Free
	Motorboats, yachts, canoes (Chapter 89)	Free
	Snow-ski equipment, golf clubs (Chapter 95)	Free
	Fishing tackle (Chapter 95)	3.2%

Source: Japan Customs website.

## 9.4 Reduction, Exemption and Refund

Specific import goods which satisfy certain conditions may be granted duty reduction, exemption or repayment. Duty reduction/exemption/refund system can be roughly divided into two types: a permanent system and a temporary system.

### 9.4.1 By Customs Tariff Law

- Reduction or refund for deterioration and damage;
- Reduction for goods exported for processing or repair;
- Reduction and exemption for commodities, pork, sugar, etc.;

The duty may be reduced or exempted in cases where the prices of imported daily necessities have increased to prevent price increase of daily necessities such as food and clothing, for the purpose of maintaining stability in people's everyday lives.

- Reduction and exemption for raw materials for manufacturing use;

The duty of imported raw materials (corn, etc.) may be reduced or exempted to develop domestic industries manufacturing specific products (formula feed, etc.) or to maintain stability in people's everyday lives.

- Unconditional exemption;

The duty of the following articles may be exempted: 1) articles for the use of the Imperial House, 2) articles belonging to the head of any foreign country, etc. 3) articles under the state monopoly, and 4) re-imported articles.

- Reduction and exemption for re-importation;

In cases where the amount of Customs duty chargeable upon any goods as provided for in any of the following products, which are re-imported without changes in quality and shape after exportation, exceeds the following amount of Customs duty, the Customs duty shall be reduced by an amount equal to the difference between the previous and the current amounts: 1) Products carried out under Bonded work: the amount of Customs duty chargeable upon said products which was not actually levied under Bonded work; 2) Products reduced, exempted, refunded or deducted previously: the amount of Customs duty reduction/exemption/refund newly chargeable upon said product.

- Reduction and exemption for marine products, etc., collected or caught in foreign countries;
- Exemption for special use;

The duty of special goods (articles used for scientific research or education, etc.) may be exempted conditionally in terms of promotion of science in Japan.

- Exemption for goods for diplomats;
- Exemption for re-exportation;

In terms of the promotion of processing trade and the advancement of cultural/academic levels, the duty of the goods which do not have an influence on domestic industries and are not consumed in Japan may be exempted when the said goods will be re-exported within a year of the date of import permit.

- Reduction for re-exportation;

With regard to those goods which can be used for long periods of time and are imported for the purpose of being used temporarily in Japan, normally in accordance with a lease contract, and are re-exported, the duty of said goods chargeable in re-exporting (excluding the value when the goods was used) may be reduced.

- Reduction and exemption on raw materials for use in production of export goods;
- Refund and exemption for exportation of goods manufactured from duty-paid raw materials;
- Refund on export of goods whose nature and form are unchanged the times of their importation;
- Refund for claimed merchandise.

In cases where claimed merchandise is re-exported or destroyed, the Customs duty paid may be refunded to help the importers who do not realize any economic benefits.

#### 9.4.2 By Temporary Tariff Measures Law

- Exemption for parts of aircrafts, etc.;
- Reduction for products manufactured from goods exported for processing or assembling;
- Exemption for goods exported for processing or repair under Economic Partnership Agreement.

### 9.4.3 Reduction, Exemption and Refund for Domestic Excises

Japan has in place programs of exemption, reduction, refund and repayment of Customs duties. The purposes of these programs are as follows:

- to develop and protect domestic industries;
- to promote trade and science;
- to meet requirements associated with social welfare;
- to eliminate double taxation; and
- to stabilize commodity prices.

#### **A. Exemption or Reduction**

"Exemption or Reduction" here refers to a situation in which an importer is exempt from all or part of Customs duty payment, in accordance with requirements set out in the Customs Tariff Law (for permanent programs) or the Temporary Tariff Measures Law (for temporary programs).

The Exemption or Reduction Programs are categorized into two types, namely, unconditional programs and conditional programs. The unconditional programs require that the goods meet certain conditions only at the time of importation whereas the conditional programs require conditions to be met both at the time of importation and thereafter. Under conditional programs, the importer must pay the normal amount of Customs duties and, in some programs, penalties as well when the conditions are violated or cease to be met after importation.

Application procedures to obtain reduction or exemption of Customs duties are stipulated in the above-mentioned laws. They include limitation of importers, procedures for reduction and exemption, special use after importation, approval of manufacturing plants, and procedures for use after importation.

#### **B. Refund**

"Refund" here means that a Customs duty that has been paid is returned all or in part to the person who paid it, provided conditions in the Customs Tariff Law are satisfied.

A Customs duty is refunded when the goods are spoiled or damaged, or when the goods are raw

materials for the manufacture of export goods, or raw materials used in the production of export goods at Bonded Manufacturing Warehouses, or claimed merchandise, or to be exported without any change in their nature and form after their importation.

### **C. Repayment**

The "Repayment" program is provided for in the Temporary Tariff Measures Law and is the same as the "Refund" program in that all or part of the duty is returned. As distinct from the "Refund" program, however, the party receiving the returned duty is not necessarily the one who paid the duty but rather the one who is legally stipulated as such.

This is because the "Repayment" program is designed to nurture petroleum industries and to lower distribution costs, and applicable entities are technically unable to apply for the "Exemption or Reduction", or "Refund" program.

The "Repayment" program applies to petroleum products, such as naphtha, which is produced domestically from imported oil on which duty has already been paid and will be used in the process of manufacturing petrochemical products. It also applies to petroleum asphalt, which is produced domestically from imported oil on which duty has already been paid and is either issued from the factory or consumed in the factory as fuel.

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## **10. HS CLASSIFICATION**

The Customs Tariff Schedules of Japan is based on the Harmonized Commodity Description and Coding System (HS System) which is developed by WCO. The Customs Tariff Schedules of Japan further divides the HS Nomenclature when necessary so that imported goods are classified based on the Customs Tariff Schedules and are systematically classified into chapters, headings, subheadings and subdivisions of the tariff schedule, by further dividing each category. Furthermore, Japan adopts statistical codes with the three-digit subdivision codes of the tariff schedules to the six-digit subheadings. The number of digits of

the statistical code is different in each country.

Importers are required to indicate the tariff code in line with the Customs Tariff Schedule of Annex of the Customs Tariff Law in an import declaration.

“The Explanatory Notes” is published by the WCO in order to assist HS classification. The Explanatory Notes provide a commentary on the scope of each heading, together with technical descriptions of the goods concerned and practical guidance for their identification.

“The Compendium of Classification Opinions” is also published by the WCO as a reference for classification. Classification decisions taken by the Harmonized System Committee of WCO are compiled in this publication.

In order to enhance transparency and predictability for importers, Japan Customs also discloses the Advance Rulings on Classification which have been issued in writing (see also 13.1 ADVANCE RULING ON CLASSIFICATION). The information is available on the [website](#). As a general rule, an Advance Ruling issued in writing would be disclosed and applicants for Advance Rulings may request a postponement of disclosure for a maximum period of 180 days.

Classification examples of imported goods are also published on [website](#).

Interpretations, tariff rates and other information on specific commodity classification can be searched by a tariff schedule code of the Customs Tariff Schedule.

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## 11. CUSTOMS VALUATION

Japan has adopted a Customs valuation system based on the WTO Valuation Agreement and stipulates provisions regarding the system in the Customs Tariff Law.

## 11.1 Primary Method

Customs Tariff Law (Article 4) stipulates that, when the import transaction of the imported goods (excluding ones whose buyer does not have its domicile, residence, principal office, branch office, other offices, place of business or equivalent places thereto in Japan) has been made, the Customs value of imported goods shall be the transaction value, that is the price actually paid or payable by the buyer to or for the benefit of the seller for the imported goods relating to the import transaction, adjusted to take into account certain additional costs such as the cost of transport, to the extent that they are not included in the price actually paid or payable for the goods.

There are five possible adjustments to be considered when applying the primary method:

- (1) The cost of transport, the cost of insurance and other expenses associated with the transport of the imported goods to the port of importation.
- (2) The following, to the extent that they are incurred by the buyer related to the import transaction of the imported goods: (i) commissions and brokerage, except buying commissions; (ii) the cost of containers of the imported goods; (iii) the cost of packing of the imported goods.
- (3) The value of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and the import transaction of the imported goods: (i) materials, parts and similar items incorporated in the imported goods; (ii) tools and similar items used in the production of the imported goods; (iii) materials consumed in the production of the imported goods; engineering, plans and other services for the production of the imported goods.
- (4) Royalties and license fees including payments in respect to patents, designs or trademarks and such similar rights related to the imported goods that the buyer must pay, either directly or indirectly, as a condition of the import transaction of the imported goods.
- (5) The proceeds of any subsequent disposition or use of the imported goods by the buyer that accrue directly or indirectly to the seller.

## 11.2 Alternative Methods

Since the primary method cannot be used in the following cases, alternative methods will apply to determine the Customs value of the imported goods.

**A. When there are any special circumstances with respect to the import transaction as follows:**

- There are restrictions as to the disposition or use of the goods by the buyer;
- The import transaction is subject to the condition which makes it difficult to determine the Customs value of the imported goods;
- The amount of proceeds of any subsequent disposition or use of the imported goods by the buyer which accrue directly or indirectly to the seller is not clear;
- The relationship between the seller and the buyer influences the transaction value of the imported goods.

**B. When the goods being valued are not imported by import transactions**

- “Import transaction” is defined as a sale made by the buyer, either individual or corporate body, who has its domicile, residence, principal office, branch office, other offices, place of business or other equivalent places in Japan with the seller in order to have goods arrived in Japan. Therefore, the following goods are considered not to be imported by import transactions;
- Free consignment;
- Goods imported on consignment;
- Goods imported by the seller’s agent for sale in an importing country on account and at the risk of the seller;
- Goods imported under a hire or leasing contract;
- Goods supplied on loan, which remain the property of the sender;
- Goods imported by branches which are not separate legal entities;
- Goods imported for destruction in country of importation, with the sender paying the importer for his services.

**C. When the doubts about the Customs value have not been resolved**

- The case where the further explanation and information from the importer do not resolve the doubts about the documents provided to calculate the Customs value of the imported goods, and the case where the price actually paid by the buyer to or for the benefit of the seller cannot be confirmed as the further explanation and information are not presented, are the examples of this category.

If the primary method cannot be used, one of the following alternative methods will be used to determine the Customs value.

#### 11.2.1 Identical or Similar Goods Value Method

If the transaction value of identical or similar goods exported from the same country of production to Japan at or about the same time of importation is found, the Customs value of the imported goods shall be determined based on the said value.

In applying this method, the necessary adjustments shall be made to take into account of differences in commercial level, quantity, distances and modes of transport between the imported goods and the identical or similar goods in question.

#### 11.2.2 Deductive Value or Computed Value Method

If the Customs value of the imported goods cannot be determined under the method (1) above, the Customs value shall be determined under the either of the followings.

- (i) The price at which the imported goods or identical or similar imported goods are sold in Japan, subject to deductions for either the usual commissions or the usual profit and general expenses in connection with sales in Japan, the usual costs of transport and insurance and associated costs incurred within Japan, and the Customs duties and other national taxes payable in Japan.
- (ii) The cost of production of the imported goods added by the amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Japan, and the cost of transport and other expenses associated with the transport of the imported goods to the port of importation.

This method shall be used when the Customs value cannot be determined under the method (i) above except that, at the request of the importer to the Director General of regional Customs, the order of application of (i) and (ii) shall be reversed.

#### 11.2.3 Fall-back Value Method

If the Customs value of the imported goods still cannot be determined under the method of (1) or (2),

the Customs value shall be determined using reasonable means of the primary method or alternative methods with flexible interpretation of each requirement.

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## 12. RULES OF ORIGIN

The rules of origin are rules for determining the country of origin (i.e. “nationality”) of goods. Determination of the country of origin of goods is necessary in application of various Customs and trade policy measures, because the application of such measures may depend on the origin of a good. The relevant policies include the preferential tariff treatment under GSP (Generalized System of Preferences) and EPAs (Economic Partnership Agreements), WTO tariff rates, and anti-dumping duties.

Rules of origin are categorized into preferential rules of origin and non-preferential rules of origin. Preferential rules of origin include the rules for the application of the preferential tariff rates under the Generalized System of Preferences (GSP) and the rules for the application of the preferential tariff rates under Economic Partnership Agreements (EPA). Non-preferential rules of origin are applied to determine the country of origin for the purposes other than granting of preferential tariff treatment (such as the application of WTO tariff rates, the application of anti-dumping duties, trade statistics, etc.).

Japan is a party to 15 Economic Partnership Agreements (EPA). Under the Customs Act of Japan, the provisions on rules of origin in each agreement are directly applied. In general, originating goods are either: “wholly obtained goods”, “goods produced exclusively from originating materials”, or “goods satisfying the product-specific rules (PSR)”. Rules of origin of each EPA reflect the result of negotiations with the partner countries, thus there are slight differences from one agreement to another.

### **A. Wholly obtained or produced goods**

Wholly obtained goods are the goods whose production is completed in one country.

### **B. Goods produced exclusively from originating materials**

Goods produced exclusively from originating materials are the goods produced using originating materials only. Because all the materials used in the production are originating materials, the production is seemingly completed in one country. However, there is the case where materials from a third country (i.e. no originating materials) are used in the production of the originating materials.

### **C. Goods satisfying the product-specific rules (PSR)**

Even if the materials from third countries (non-originating materials) are used in the production, goods are considered as originating when the goods satisfy the requirement set out in the product-specific rules (PSR). PSR is generally provided as an annex to each EPA. In most of the EPAs that Japan is a party to, PSR is stipulated in the form of either: “change in tariff classification”, “qualifying/regional value content”, “specific manufacturing or processing”, or a combination of these.

### **D. Change in tariff classification criterion**

Goods are considered as originating if there is a certain change between the tariff classification of the no originating materials and the tariff classification of the (final) goods.

### **E. Qualifying Value Content (QVC)/Regional Value Content (RVC)**

Goods are considered as originating if a certain value (%) is added through the production undertaken in the territory of a party/country, and the value added exceeds the prescribed threshold (%).

### **F. Specific manufacturing or processing**

Goods are considered as originating if the goods undergo a specific manufacturing or processing such as chemical reaction, distillation, purification, etc. in the territory of a party/country.

Please refer to the [website](#) for details.

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## 13. CUSTOMS ADVANCED RULINGS

Japan Customs issues the Advance Rulings upon requests from importers. The Advance Ruling allows importers to receive information regarding the applied tariff to goods before they lodge import declarations. It makes Customs clearance procedures much more prompt and problem-free, thus benefiting importers in their preparation of cost estimates and sales plans. “Advance Ruling” is also an internationally accepted Customs facilitation measure and the WTO TFA requires contracting parties to adopt it. There are three kinds of Advance Rulings in Japan as following:

### 13.1 Advance Ruling on Classification

The Advance Ruling on Classification allows the importers and other related parties to inquire about the tariff classification, tariff code and duty rate of the goods prior to importation and receive a response from Customs. Although the prior instruction can be provided either orally or in writing, written inquiries are recommended. In addition, inquiries by e-mail may be regarded as oral inquiries.

Qualified formal written enquiries and emails will be responded by Customs in the form of a response paper. The importer can attach it at the time of import declaration. Customs will respect with the tariff schedules, tax rates and statistical codes listed in the attached form when verifying imports.

If the content of the inquiries does not match the actual items, or expires (3 years.), and if the laws and regulations change, and the application of laws and regulations is not correct, it is invalid.

Objections to the Advance Classification Rulings can be filed within two months from the date of issuance of the response.

Refer to the “Inquiry Document concerning Advance Classification Ruling” ([Customs Form C-1000](#)) for inquiries in writing.

### 13.2 Advance Ruling on Valuation

The Advance Ruling on Valuation is a recommendation will be construed or applied to the imported goods in question for the purpose of Customs valuation. The rulings are issued in writing in response to a document submitted by an importer or other relevant person.

Qualified formal written enquiries (“Customs Valuation Advance Request”, Customs Form C1000-6) and emails will be responded by Customs in the form of a response paper. It is noted that some supporting documents such as the facts of the transaction and the sales contract of the applicable goods should be submitted.

Requested regional Customs will examine the submitted forms and related documents and issue the ruling in the form of “Reply to the Customs Valuation Response” within 90 days. The ruling is valid for three years.

Any request for review of the rulings must be posted within two months.

All issued rulings will be made available on the Customs website. Any information identifying the party included in the ruling was not disclosed. Those who receive the ruling may require for an embargo period not exceeding 180 days.

### 13.3 Advance Ruling on Origin

Importers and other interested parties can request to Customs before the import of the Country of Origin of the goods. The ruling determines the applicable tariff rate, which increases the predictability of traders. The advance ruling is issued in writing at the request of the applicant.

However, if the content of the inquiries does not match the actual items or expires (3 years), and if the laws and regulations change, and the application of laws and regulations is not correct, it is invalid.

For the sake of transparency, all written advance rulings were available at the [website](#).

It is recommended that traders conduct an inquiry in writing. To file an application for a written advance ruling, please submit the “Request for Advance Ruling (Rules of Origin)” ([Customs Form C-1000-2](#)).

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## 14. FREE TRADE AGREEMENTS

Japan has concluded 17 free trade agreements (FTAs) and economic partnership agreements (EPAs). Japan is also negotiating FTA-EPAs with Canada, Colombia, Korea and Turkey, and regional FTA-EPAs with China-Korea, the Gulf Cooperation Council (GCC, namely Bahrain, Oman, Qatar, Saudi Arabia, the UAE and Kuwait), and the Regional Comprehensive Economic Partnership (RCEP, involving the 10 ASEAN member countries and the six countries that the bloc has FTAs, namely, China, Japan, Korea, India, Australia and New Zealand).

In October 2015, the Trans-Pacific Partnership (TPP) agreement was concluded with Japan among the 12 Pacific-Rim signatory countries. Following the withdrawal of the US, the remaining 11 countries signed the pact and renamed it the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in March 2018.

### 14.1 FTA-EPAs in Force or Signed

- [Japan-Singapore](#)
- [Japan-Mexico](#)
- [Japan-Malaysia](#)
- [Japan-Chile](#)
- [Japan-Thailand](#)
- [Japan-Indonesia](#)
- [Japan-Brunei](#)
- [ASEAN-Japan](#)
- [Japan-Philippines](#)
- [Japan-Switzerland](#)
- [Japan-Vietnam](#)
- [Japan-India](#)
- [Japan-Peru](#)
- [Japan-Australia](#)

- [Japan-Mongolia](#)
- [Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(TPP11\)](#)
- [Japan-EU](#)

## 14.2 FTA-EPAs under Negotiation

- [Japan-Canada](#)
- [Japan-Colombia](#)
- [Japan-China-Republic of Korea](#)
- [Regional Comprehensive Economic Partnership \(RCEP\)](#)
- [Japan-GCC](#)
- [Japan-Republic of Korea](#)

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## 15. BONDED AREAS

The purpose of the bonded area is to maintain an orderly trade by ensuring that import and export cargo is regulated by law, and to ensure collection of Customs duties, etc., as well as to promote trade and cultural exchange.

There are five types of bonded areas: designated bonded area, bonded warehouse, bonded factory, bonded exhibition area, and Integrated bonded areas. In the bonded area, foreign cargo can be unloaded, transported, stored, processed / manufactured, displayed, etc., but in order to ensure tariff collection and appropriate control, foreign cargo in the bonded area are under Customs supervision.

Table 5 Types and Main Functions of Bonded Areas

Types	Principal features	Length of storage
Designated Bonded Area	Loading/unloading, transport and temporary storage of foreign goods	1 month
Bonded Warehouse	Loading/unloading, transport and long-term storage of foreign goods	2 years (may be extended)
Bonded Factory	Processing and manufacturing using foreign goods as material	2 years (may be extended)
Bonded Exhibition Area	Display and use of foreign goods	Length of time designated by the head of Customs office
Integrated Bonded Area	Loading/unloading, transport long-term storage, processing & manufacturing and exhibition of foreign goods	2 years (may be extended)

Source: Japan Customs website.

## 15.1 Designated Bonded Area

The Designated Bonded Area is designated by the Minister of Finance for public facilities such as land and buildings owned or managed by local governments. It is provided for the quick and easy processing of Customs procedures.

In this area, cargo that has not yet been imported, cargo that has been licensed for export, cargo that passes through Japan (collectively referred to as “foreign cargo”) is unloaded, transported, or temporarily (in principle 1 Months) can be stored.

The Designated Bonded Area is originally intended for anyone to use freely and cheaply for the Customs procedures and handling of cargo, so it is not allowed to place cargo for a long period of time or to be used exclusively by designated contractors. In addition, complex processing and manufacturing within this region cannot change the nature of the cargo.

The Designated Bonded Area is mainly located near the Customs office because it is a place where cargo is placed for Customs procedures.

## 15.2 Bonded Warehouse

The Bonded Warehouse is a warehouse approved by the Director General of Customs. Foreign cargo can be loaded and unloaded or stored here (in principle 2 years, can be extended). In the meantime, taxes such as Customs duties are not applied. Bonded warehouses were established to facilitate transactions and develop relay trade.

## 15.3 Bonded Factory

The Bonded Factory is approved by the Director General of Customs as a place where foreign cargo can be processed and manufactured without imposing Customs duties.

It is established for the promotion of processing trade, and the processing or manufacturing period is two years in principle. However, depending on the circumstances of work, it is also possible to extend the period. During this period, there will be no Customs duties, so during this time, foreign cargo can be processed and manufactured, and the product sent out abroad.

The Bonded Factories are usually installed at a convenient location for importing foreign materials and exporting products, but there are also cases where export products are processed and manufactured together with domestic sales products. Depending on the location of the factory for sale, it may be remote from the port.

In Japan, the main products processed and manufactured in the factory are canned seafood, confectionery, steel, electric wires, ships, automobiles, precision machinery, civil engineering machinery, machine tools, petroleum products, textiles, agricultural chemicals, chemical products, films and so on.

## 15.4 Bonded Exhibition Area

The Bonded Exhibition Area is authorized by the Director General of Customs as a venue for exhibiting foreign cargo. In order to facilitate the operation of international exhibitions and exhibitions of foreign products conducted by public institutions, the Customs procedure of Bonded Exhibition Area is simple without imposing tariffs on foreign cargo.

## 15.5 Integrated Bonded Area

The Integrated Bonded Area is approved by the Director General of Customs as an area where the Bonded Warehouse, the Bonded Factory and the Bonded Exhibition Area can be used in a comprehensive manner such as storage, processing, manufacturing, and exhibition of foreign cargo.

An Integrated Bonded Area was created as a bonded system corresponding to the area where such facilities are concentrated in order to promote the benefits of aggregating various import infrastructures against the backdrop of the promotion of imports and the facilitation of inward investment business.

In this area, various facilities with various functions can be flexibly arranged in the area, and foreign cargo can be moved between the facilities without requiring Customs procedures so that simplification will be achieved.

See the list of Japan's Bonded Areas [here](#).

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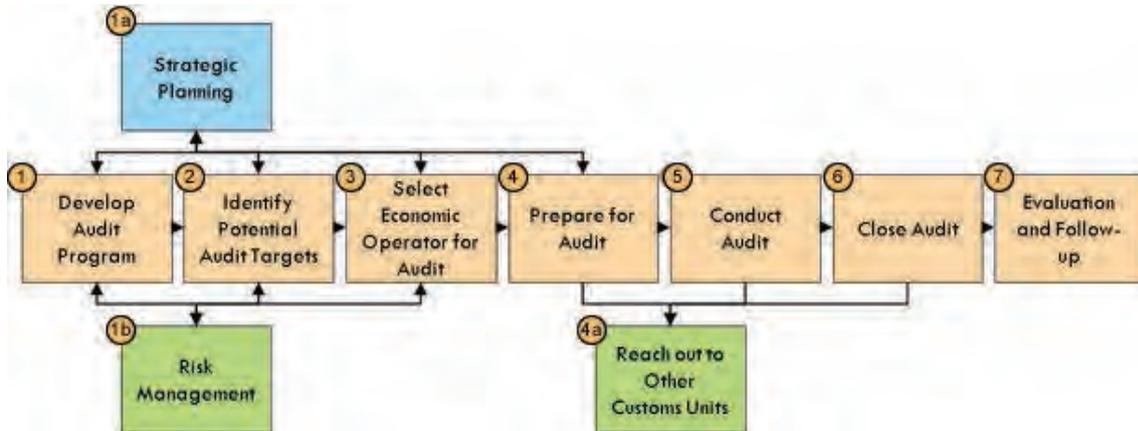
## 16. CUSTOMS POST-CLEARANCE AUDIT

From 1968, the Japan Customs began to implement the Post-Clearance Audit. The purpose of the Post-Clearance Audit is to check whether the transaction and Customs clearance of the goods meet the legal requirements of relevant laws and regulations, and achieve the purpose of correct and fair taxation. In 1973, Post-Clearance Audit (PCA) was defined by the Revised Kyoto Convention as measures by which the Customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of the relevant records, business systems and commercial data held by persons concerned. Now, Post-Clearance Audit is a critical control methodology for Customs in various countries as it enables them to apply a multi-layered risk-based control approach.

The regional Customs in Japan have their dedicated Post-Clearance Audit (PCA) department and the Customs officers working there need to be trained after a long period of professional training. In general,

the audit department develops an annual audit plan, which is generally implemented from June of each year.

Figure 10 Post-clearance Audit Process



Source: WCO website.

For the purpose to carry out their official duties, Article 105 of the Customs Act endows Japan Customs officials to:

- examine books and documents concerning goods, including electromagnetic records, if such records are prepared or preserved in lieu of preparing or preserving books or documents;
- question an exporter of exported goods, customs broker who concerned to examine books and documents concerning such goods and any other materials, or to request to produce or submit such books, documents and other materials (including their copies);
- examine goods for which Customs duty is reduced or exempted, goods pertaining to refund of Customs duty, goods pertaining to deduction of Customs duty, products manufactured from such goods, machines and instruments used for such manufacture, or books and documents relating thereto;
- to question an importer of imported goods, a customs broker who provided customs Clearance services pertaining to the importation, a person who entrusted an importer with importation of goods, or a person who sold in Japan goods that have been dumped, to examine such goods, books, documents or other materials concerning such goods, or to request production or submission of, such books, documents or materials;
- seal such goods or the place where they are stored.

If Customs officials find it necessary for the purpose of carrying out their official duties, Article 105-3 of the Customs Act endows Japan Customs officials to:

- request the Government agencies or Government-affiliated agencies to enable them to inspect, or to provide them with books, documents or other materials that may for reference purposes, be used for carrying out their duties or to extend other forms of cooperation. (Authority of the Director General of Customs in special cases).

In addition, if the audit finds that the import duty needs to be adjusted, the collection of import duty should be processed and corrected in accordance with Article 7-4 of the Customs Act.

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## 17. CUSTOMS ENFORCEMENT AND APPEALS

### 17.1 Enforcement of the Laws

The main provisions addressing the issue of penalties and offences in a general way are provided for in Customs Act, Customs Brokerage Act and Temporary Tariff Measures Act, and Foreign Exchange and Foreign Trade Law. No detailed procedures with offenses are set out in Tariff Act. Since that Japan Customs Act predates the Revised Kyoto Convention (RKC) and other similar international Customs instruments dealing with modern Customs formalities such as the World Trade Organization Trade Facilitation Agreement (WTO-TFA). The main provisions in Customs Act and other related laws are consistent with international rules.

There is no single source listing all Customs offences and penalties and the various Customs offences and their related penalties are incorporated in various provisions of the Customs Laws. Likewise, the quantum of penalties varies from provision to provision.

## 17.2 Offence and Penalties in Customs Act

### 17.2.1 Smuggling

- Persons who export and import prohibited items shall be punished by imprisonment or a fine, or both;
- Persons who provide prohibited items for export or import shall also be sentenced to fixed-term imprisonment or a fine, or both;
- Persons who deliberately export or import prohibited items will be aggravated;
- Persons who illegally store prohibited items, bonded goods, transit goods, bulk goods, etc., shall be punished by fixed-term imprisonment or a fine, or both;
- The above provisions also apply to the clients of Customs brokers and Customs brokers.

### 17.2.2 Duty Evasion

- Persons who evade tariff payments or obtain Customs refund duties by cheating or other illegal acts, or through Customs brokers, will be punishable by a fixed-term imprisonment or a fine, or both;
- The above provisions also apply to the clients of Customs brokers and Customs brokers.

### 17.2.3 Forged Declarations with False Certificates

- Persons who exports or imports goods by making a forged statement or false certificate or submitting a forged or false document will be punished with a fixed-term imprisonment or a fine, or both;
- If the statement / certificate / document is submitted to the Customs by the Customs broker after his review, the punishment shall also apply to the Customs broker.

### 17.2.4 Import or Export without the Permit of Customs

- Persons who export goods from Japan to a foreign country without permit will be punished with a fixed-term imprisonment or a fine, or both;
- Persons who import goods from a foreign country to Japan without permit will be punished with a

fixed-term imprisonment or a fine, or both;

- Persons who export or import the goods as a sample without permit shall be punished with a fixed-term imprisonment or a fine, or both;
- The above provisions also apply to the clients of Customs brokers, Customs brokers and the staff of international transport vehicles.

#### **17.2.5 Failure to Provide Supporting Documents as Required**

- In the absence of a valid reason, a person (mainly the person in charge of international transport, the person in charge of domestic transport, the Customs broker, the postal operator) who has not submitted a written special statement within the time limit shall be punished with a fixed-term imprisonment or a fine;
- In the absence of a valid reason, a person (mainly the person engaged in bonded warehouse, bonded exhibition, bonded storage, bonded processing) who fail to report within the time limit or as required shall be punished with a fixed-term imprisonment or a fine, or both;
- However, he may be excused from his sentence if necessary.

#### **17.2.6 Failure to Record or Save Documents as Required**

- Persons such as the person in charge of international transport, the person in charge of domestic transport, the Customs broker, the postal operator, the person engaged in bonded warehouse, bonded exhibition, bonded storage, bonded processing fail to record or save documents as required shall be punished with a fixed-term imprisonment or a fine, or both;
- However, he may be excused from his sentence if necessary.

#### **17.2.7 Supplementary Provisions**

- A representative of a juridical person or a juridical person stands as the accused or suspect apply *mutatis mutandis*;
- Goods related to the above crimes and illegal behavior should be confiscated. The exception can be made under special circumstances.

### 17.3 Offence and Penalties in Temporary Tariff Measures Act

- Some goods imported from Australia can only be used as raw materials or used for the intended purpose, and those who violate related provision will be punished with a fixed-term imprisonment or a fine, or both;
- In the investigation of the above violations, those who refuse, interfere or evade the prescribed inspections will be punished with a fixed-term imprisonment or a fine, or both.

### 17.4 Offence and Penalties in Customs Brokerage Act

A person who falls under any of the following items shall be punished by imprisonment or a fine:

- Obtain the permission of Customs brokers clearance or establish business office by deception or other wrongful means;
- Provide false information to Customs about Customs brokers and registered Customs specialists;
- Conduct the Customs brokerage business in violation of the provisions;
- Conduct the Customs brokerage business after it is suspended;
- Conduct the Customs brokerage business in the period of one year that the business is temporarily prohibited.

A person who divulges or misappropriates any confidential information which he has learned in connection with Customs brokerage shall be prosecuted only upon complaint.

A person who falls under any of the following items shall be punished by a fine:

- improper operate;
- fail to make a report or make a false report;
- fail to respond or make a false response to inquiries made by a Customs official;
- refuse, interfere with, or avoid the examination;
- permit any other person to use his name in violation of the act;
- use the title of Customs broker or registered Customs specialist in violation of the act.

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## 18. CUSTOMS IPR BORDER PROTECTION

The application for Japan Customs protection of IPRs covers patent rights, utility model rights, design rights, trademark rights, copyright & neighboring rights, plant breeder's rights, unfair competition relating to famous indication of goods, configuration of goods and access/copy control of restricted material. The exportation, importation, and transit of goods infringing IPRs are prohibited under Articles of the Customs Law. Any person who has transported or attempted to transport such goods into/from Japan shall be punished. Layout-design rights are exempted from the procedures, however "Information Recordation" can be made at Customs for suspension.

### 18.1 Penal Provisions

The purpose of the penal provision is to prevent crime and reinforce border enforcement by imposing liabilities on juridical persons to supervise their employees not to commit such an offense. The goods infringing IPRs may be confiscated and destroyed by Customs.

Any person who has exported, imported, or attempted to export or import goods infringing IPRs shall be punished by imprisonment with work for not more than ten years and/or a fine not more than ten million yen. Any person who has transported or attempted to transport goods infringing IPRs, or has transferred or attempted to transfer goods infringing IPRs from the importing means of transport to the exporting means of transport, shall be punished by imprisonment with work for not more than ten years, and/or a fine not more than seven million yen. Where an employee or any other workers of a juridical person or an association or a foundation without juridical personality has committed an offence described above with regard to the business of the said juridical person, etc., such juridical person, etc. shall be punished by a fine as provided in the respective corresponding Articles.

### 18.2 Application for Suspension

Application for Suspension is the procedure that IPR holders request Customs to initiate Identification Procedures in the case Customs detects goods suspected of infringing their IPR in imports or exports.

To apply for Suspension at Headquarters of regional Customs, a right holder must fulfill following conditions.

- Ownership of the right must be proved;
- The IPR must be valid<sup>5</sup>;
- The IPR has been infringed or is likely to be infringed;
- Evidence must be provided to satisfy Customs that there is Prima Facie an infringement of the IPR;
- Information concerning the goods must be provided to enable Customs to identify infringing goods.

If all the conditions are fully satisfied, the application is approved with a validity period of not more than four years. Existing applications are renewable and the application form is required to be filled out in Japanese.

In cases where an application for suspension has been lodged with Customs or for the purposes of identification procedures, if Customs faces difficulties in determining whether goods subject to either procedure are infringing or not, Customs may designate three persons with sufficient knowledge and experience in the area of IPR from 45 candidates (lawyers, patent attorneys, scholars) for seeking opinions.

### 18.3 Identification Procedures

Identification Procedures are the procedures in which Customs decides as to whether the suspected goods are infringing IPRs or not.

#### 18.3.1 Identification Procedures for Imports

**STEP 1** When Customs detects suspected goods in the course of physical inspection on imports of general cargoes (sea and air) or postal items, Identification Procedures are initiated unless the case is subject to Investigation Procedures for Offences.

**STEP 2** When suspected goods are detected, Customs notifies both importers and right holders of the initiation of Identification Procedures by providing them respectively with relevant information such as names and addresses of parties concerned. The producer's names and addresses are also notified to right holders if they are obvious in the import declaration form, etc. which has been submitted to Customs.

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<sup>5</sup> In the case of unfair competition, submission of the Written Opinion of the Minister of Economy, Trade and Industry is required.

**STEP 3** Both right holders and importers are provided with equal opportunities to submit their opinions and evidence to Customs within 10 working days (3 working days for perishable items) from the day following the date of the “Notification of Initiation” letter.

In the cases based on approved applications for suspension, each party may inspect goods during Identification Procedures.

Applicants may also conduct “Sample Examination” (i.e. dismantlement, analysis), on the condition that all the requirements for approval for “Sample Examination” are satisfied and the security is provided.

Importers may take a measure of “Voluntary Disposal” (e.g. destruction, abandonment, reshipment, obtaining consent from the right holder, removal of infringing parts.) In the case of either consent from right holders or removal of infringing parts, Customs makes a decision of no infringement. In the other cases, Customs discontinues Identification Procedures.

**STEP 4** Opinions and evidence from one party are disclosed to the other party for submitting additional opinions, etc. Based on opinions and evidence from both parties, Customs makes a decision as to whether the suspected goods are infringing IPRs or not (decisions are expected to be made within one month).

**STEP 5** To notify the result of the Identification Procedure, “Notification of Decision” letter is sent to both right holders and importers. If it is decided that the goods are not infringing IPRs, an import permit is granted.

If it is decided that the goods are infringing IPRs and no measures of voluntary disposal have been taken during the period for protest (for two months), Customs may confiscate and destroy the infringing goods.

### **18.3.2 Simplified Identification Procedures**

**STEP 1** When Customs detects suspected goods in the course of physical inspection on imports of general cargoes (sea and air) or postal items, Identification Procedures are initiated unless the case is subject to investigation for offence.

**STEP 2** When suspected goods are detected, Customs notifies both importers and right holders of the initiation of Identification Procedures by providing them respectively with relevant information such as

names and addresses of parties concerned.

“The Notification of Initiation (Confirmation of Importer’s Objection)” to importers also explains that objections from importers may be submitted in writing within 10 working days from the day following the date of receipt of such notification.

The producer’s names and addresses are also notified to right holders if they are obvious in the import declaration form, etc. which has been submitted to Customs.

**STEP 3** Cases where no objections have been filed by importers Customs decides as to whether the suspected goods are infringing IPRs or not based on the approved applications for suspension from right holders (i.e. the application form and the attached documents). If it is decided that the goods are not infringing IPRs, an import permit is granted. If it is decided that the goods are infringing IPRs, Customs sends a “Notification of Decision” to right holders, and a “Notification of Decision (Confiscation)” to importers for notification. Neither protests nor contact has been made by importers within two months from the day following the date of receipt of such notification Customs may confiscate and destroy the infringing goods unless no measures of voluntary disposal have been taken. Cases where objections are filed by importers Customs notifies both importers and right holders of the deadline to submit opinions and evidence. Each party should submit opinions and evidence with respect to the suspected goods to Customs within 10 working days (3 working days for perishable items) from the day following the date of the Notification.

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## 19. AUTHORIZED ECONOMIC OPERATOR (AEO)

Figure 11 Japan's AEO LOGO



Ensuring the safety and smoothness of international logistics has become crucial after 911. In response to this trend, WCO recognizes companies that have established Customs security management and legal compliance systems and provides benefits such as streamlining Customs procedures. Japan Customs has developed AEO program for importers, exporters, warehouse operators, Customs brokers, logistics operators and manufacturers which is consistent with the “SAFE Framework” developed by the WCO. As of July 2019, the number of AEO entities in Japan exceeded 700. For different types of AEO entities, the system offers different facilitation treatments.

### 19.1 Beneficial Measures of AEO System

#### 19.1.1 For AEO Exporters

- Use of specific export declaration;
- Open office;
- Simplification of correcting export license;
- Simplification of tax exemption for returnable containers;
- Reduction of examination and inspection;

- Mutual Recognition Arrangement (MRA);
- Cooperation with procedures for determining the total weight of maritime containers;
- Cooperation with KS / RA system;
- Cooperation with trade security management.

#### 19.1.2 For AEO Importers

- Use of special statements;
- Open office;
- Simplify re-export tax reduction;
- Simple handling and maintenance tax exemption based on the CPTPP and Japan-EU EPA;
- Simplification of tax exemption for returnable containers;
- Relaxation of the inspection of imported goods under the Washington Convention;
- Reduce inspections and inspections;
- Mutual Recognition Arrangement (MRA).

#### 19.1.3 For AEO Warehouse Operator

- Establish a bonded warehouse, etc. by notification;
- Shorten the documents storage limitation;
- Reduce inspection;
- Free license fee;
- Mutual Recognition Arrangement (MRA).

#### 19.1.4 For AEO Customs Brokers

- Open office;
- Use of the specified consignment;
- Use of special import declaration;
- Simplify re-export tax reduction;

- Simple handling and maintenance tax exemption based on the CPTPP and Japan-EU EPA;
- Relaxation of the inspection of imported goods under the Washington Convention;
- Mutual Recognition Arrangement (MRA).

#### **19.1.5 For AEO Logistics Operators**

- No approval is required for any bonded shipment;
- Carry out the transportation related to the specified export declaration;
- Mutual Recognition Arrangement (MRA).

#### **19.1.6 For AEO Manufacturers**

- Use specific manufactured export declarations;
- Open office;
- Mutual Recognition Arrangement (MRA).

### **19.2 Mutual Recognition Arrangement**

Mutual recognition of the AEO system means that the two countries with the AEO system mutually recognize each AEO system (AEO operator), improve the safety level of bilateral logistics, and be consistent across the country. Worldwide, more than 70 AEOs have been approved for mutual approval, 11 of which are related to Japan. Japan is the only country that has signed and implemented AEO mutual recognition with the United States and the European Union.

Japan Customs has also signed mutual recognition of AEO programs with:

- New Zealand (May 2008);
- United States (June 2009);
- EU and Canada (June 2010);
- Korea (May 2011);
- Singapore (June 2011);
- Malaysia (June 2014);

- Chinese Hong Kong (August 2016);
- China (Oct 2018);
- Chinese Taipei (Nov 2018);
- Australia (Jun 2019).

Please visit the [website](#) for details.

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## 20. INTERNATIONAL CUSTOMS COOPERATION

The Customs Mutual Assistance Agreement (CMAA) is an international agreement between national Customs authorities that provides mutual support to prevent the smuggling of evil things in society, access to goods infringing intellectual property rights, and cooperation to simplify and harmonize Customs clearance procedures. Through the conclusion of the Customs Mutual Assistance Agreement, Japan Customs has actively promoted the establishment of a mutual tariff support framework with countries and regions around the world.

### **A. Customs Mutual Assistance Agreement**

- United States (1997);
- Republic of Korea (2004);
- People's Republic of China (2006);
- European Union (2008);
- Russia (2009);
- Netherlands (2010);
- Italy (2012);
- South Africa (2012);

- Germany (2014);
- Spain (2015);
- Norway (2016);
- Mexico (2018);
- Brazil (2017).

### **B. Customs Clearance Arrangement**

- Australian Customs (2003);
- New Zealand Customs (2004);
- Canadian Customs (2005);
- Hong Kong Customs (2008);
- Macau Customs (2008);
- French Customs (2012);
- British Customs (2013);
- New Zealand Customs (2014);
- Belgian Customs (2017);
- Austrian Customs (2019).

---

## **21. TRADE STATISTICS**

### **A. Online**

The Trade Statistics of Japan are made and published by the Ministry of Finance and the Customs under the provision of the Customs Law and the relevant international conventions. Please visit website [here](#)

for more details. Useful information such as glossary, code lists, corrigendum and official notice of Japan Customs are also available.

### **B. Trade Statistics Reference Room, etc. in Tokyo and Osaka**

- Trade Statistics Reference Room, CTB  
Address: 2F, 4th Bldg., Central Common Government Office  
3-1-1, Kasumigaseki, Chiyoda-ku, Tokyo  
Opening time: Monday to Friday, 9:30-12:00, 13:15-17:00
  
- Trade Statistics Reading Center, Ohtemae Sub-branch, Osaka Customs  
Address: 4F, 4th Bldg., Osaka Common Government Office  
4-1-76, Ohtemae, Chuo-ku, Osaka  
Telephone: 06-6966-5385  
Opening time: Monday to Friday, 9:00-17:00

### **C. Statistics Data Reference Room in each Customs**

Please visit individual websites for more details and please note that no telephone inquiries are accepted about statistical figures.

---

## **22. BUSINESS HOURS**

Starting in April 2008, the head of each Customs office has established “Business Hours for Customs Offices”, which are announced on their own websites, etc.

Business hours for most Customs offices and branches are from 8:30 AM to 5:15 PM (or 5:45 PM) on weekdays. However, there are Customs offices that are open on a 24/7 basis, such as the Customs office at the Tokyo international Airport in Narita. For details, please check the website of each Customs office or contact each office.

---

## 23. OFFICIAL WEBSITE

### **A. Official Agencies**

- [Japan Customs](#)
- [Ministry of Finance](#)
- [Ministry of Foreign Affairs](#)
- [Ministry of the Environment](#)
- [Ministry of Health, Labour and Welfare](#)
- [Ministry of Land, Infrastructure and Transport](#)
- [Ministry of Agriculture, Forestry, and Fisheries](#)
- [Ministry of Economy, Trade and Industry](#)
- [Ministry of Education, Culture, Sports, Science and Technology](#)
- [Statistics Bureau & Statistics Center](#)
- [Small and Medium Size Enterprise Agency](#)
- [Public Information about the Japanese Government](#)
- [National Institute of Advanced Industrial Science and Technology](#)

### **B. Business Organizations**

- [Bank of Japan](#)
- [Development Bank of Japan](#)
- [Japan Bank for International Cooperation](#)
- [Japan International Cooperation Agency](#)
- [Institute for Monetary and Economic Studies, Bank of Japan](#)
- [Japan Chamber of Commerce and Industry](#)
- [Tokyo Chamber of Commerce and Industry](#)
- [Manufactured Imports & Investment Promotion Organization](#)

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## DISCLAIMER

This eBook on East Asia Customs Procedures is edited to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea without any profit-making purposes.

All information, materials included and views, opinions expressed in this eBook are those of the editors and do not necessarily reflect those of EABC China (also CCPIT) and EABC. In this regard, EABC China (also CCPIT) and EABC would like to reaffirm that this eBook would not be used as any reference for judicial and administrative process.

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# **eBook on East Asia Customs Procedures**

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The Republic of Korea



An EABC Publication



## eBook on East Asia Customs Procedures

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## MESSAGE FROM CHAIRMAN

Blessed with geographical proximity, cultural affinity, close business ties and natural advantages for trade and economic cooperation, East Asia is one of the regions in the world with the most potential and development prospects. Since its establishment in 2004, East Asia Business Council (EABC) has always held the belief that cross-border trade, investment liberalization and facilitation are the prerequisites and foundations for East Asian countries to



promote industrial advancement, reduce unemployment and improve the quality of economic development. EABC has long been devoting to reducing trade and investment barriers and facilitating enterprises to carry out cross-border trade and investment.

In 2018, EABC agreed to compile eBook on East Asia Customs Procedures and listed it as a top priority in the Council's annual work in 2019. Today, the eBook is officially launched, with the expectation to strengthen regional economic and trade information sharing and further improve trade facilitation and connectivity among East Asian countries.

The eBook on East Asia Customs Procedures covers the guides of Customs procedures in 13 countries in East Asia, with 24 major items related to the Customs clearance of goods such as legal system, clearance procedures,

prohibitions and restrictions, duty collection (including classification, valuation, rules of origin), trade statistics, violations and sanctions, FTAs, AEOs and etc. The eBook is published electronically in English, providing companies with practical reference for international trade.

I believe that the eBook will help enterprises in the region, especially small and medium-sized enterprises, improve their capabilities in business management, investment and financing, and international market development. We hope that enterprises will take full advantage of the eBook to actively explore the regional market and achieve development goals.

Lu Pengqi  
EABC Chairman 2019

## **ACKNOWLEDGEMENTS**

Heartfelt gratitude and sincere respects should be addressed to China Committee, East Asia Business Council (in short EABC China, also China Council for the Promotion of International Trade - CCPIT), to organize, support and sponsor the edition and publication of the eBook on East Asia Customs Procedures to provide manufactures, trader and related service-providers with comprehensive information and elaborate references on Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea, which is a unique, innovative and significant contribution to regional and even international trade community.

Cordial appreciations should be extended to the Trilateral Cooperation Secretariat (TCS) for supporting and partially sponsoring the eBook of China, Japan and the Republic of Korea and CCPIT Guangxi Sub-council for supporting the project.

Dedicated gratitude should also be expressed to all members of the editing team, proofreading team, project team for their arduous and continuous efforts during the process.

## EDITOR'S STATEMENT

Customs procedures in almost every country are usually very professional, diverse, technical, abstruse, ambiguous, and even trapped for cross-border manufactures, traders and related service-providers, sometimes even cause significant invisible “barriers” to trade. Thus all the stakeholders imminently need information, materials and references as comprehensive, elaborate and concrete as possible in different countries to enhance the effectiveness and efficiency of cross-border trade.

This eBook on East Asia Customs Procedures aiming to provide a general picture involves in almost all aspects of Customs procedures in 10 ASEAN member countries and China, Japan and the Republic of Korea. For each eBook, a framework of 24 parts of contents is basically followed with certain flexibility of adjustments according to specific situation of each individual country.

It is not an easy task to edit this panorama-type of eBook and during the process the editors are facing significant challenges including English language proficiency, professional competence and most importantly very limited information and materials in English for references.

The contents of each eBook are based on current publicly available information and materials in English, mainly contained in the publications and on the websites of related Customs administrations, government departments and agencies, international organizations and private professional institutions. The editors believe the selection and use of publicly available information will not affect the interests of the above-mentioned organizations and sincerely appreciate those organizations having their information and publications publicly available.

During the editing process, the biggest and greatest challenge is the lack of information and materials in English, which are very limited in almost all countries and even very deficient, very scarce in some countries. Therefore some citations from the official websites and excerpts from legal documents do exist in the eBook.

As a first remarkable pilot project in the fields, this eBook on East Asia Customs Procedures are not perfect and flawless and we are satisfied with the qualities of the majority and will keep on improving the rest.

## ABBREVIATIONS

AEO	Authorized Economic Operator
APEC	Asia and Pacific Economic Cooperation
APTA	Asia Pacific Trade Agreement
ASEAN	Association of Southeast Asian Nations
ASEM	Asia–Europe Meeting
ATA	A Combination of the Initial Letters of the French Words “Admission Temporaire” and the English Words “Temporary Admission”
CCCN	Customs Cooperation Committee Nomenclature
CITES	Convention on International Trade in Endangered Species
CMAA	Customs Mutual Assistance Agreement
EDI	Electronic Data Interchange
EU	European Union
FEZ	Free Economic Zone
FTA	Free Trade Agreement
FTZ	Free Trade Zone
GATT	General Agreement on Tariff and Trade
HS	Harmonized Commodity Description and Coding System
KCS	Korea Customs Service
MFN	Most Favored Nations
MOTIE	The Ministry Trade, industry and Energy
PCA	Post-Clearance Audit
TIR	Transport International Routier

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TFA	Trade Facilitation Agreement
VAT	Value-Added Tax
WCO	World Customs Organization
WTO	World Trade Organization

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# eBook on East Asia Customs Procedures

## The Republic of Korea

### 1. INTRODUCTION OF KOREA CUSTOMS

Korea Customs Service (KCS) is a governmental agency under the Ministry of Economy and Finance, Korea. The KCS was inaugurated in 1970 and ranked first in the World Bank's assessment of Customs clearance environments for three consecutive years from 2011. In recent years, the KCS adjusted the director-level in the headquarters and the agencies, reorganized the organizational system of Customs offices nationwide.

#### 1.1 Functions

With its goal of realizing the first-rate Customs administration in the world, the key functions of the KCS are:

- Customs clearance control of cargoes and passengers;
- Securing government revenue through collection of tariff and internal tax;
- Suppression of smuggling;
- Crackdown on illegal bring-ins of hazardous food, toxic chemicals and wild fauna and flora for protection of national health, safety and environment;
- Control of false origin marking and infringement of Intellectual Property Right.

## 1.2 Mission

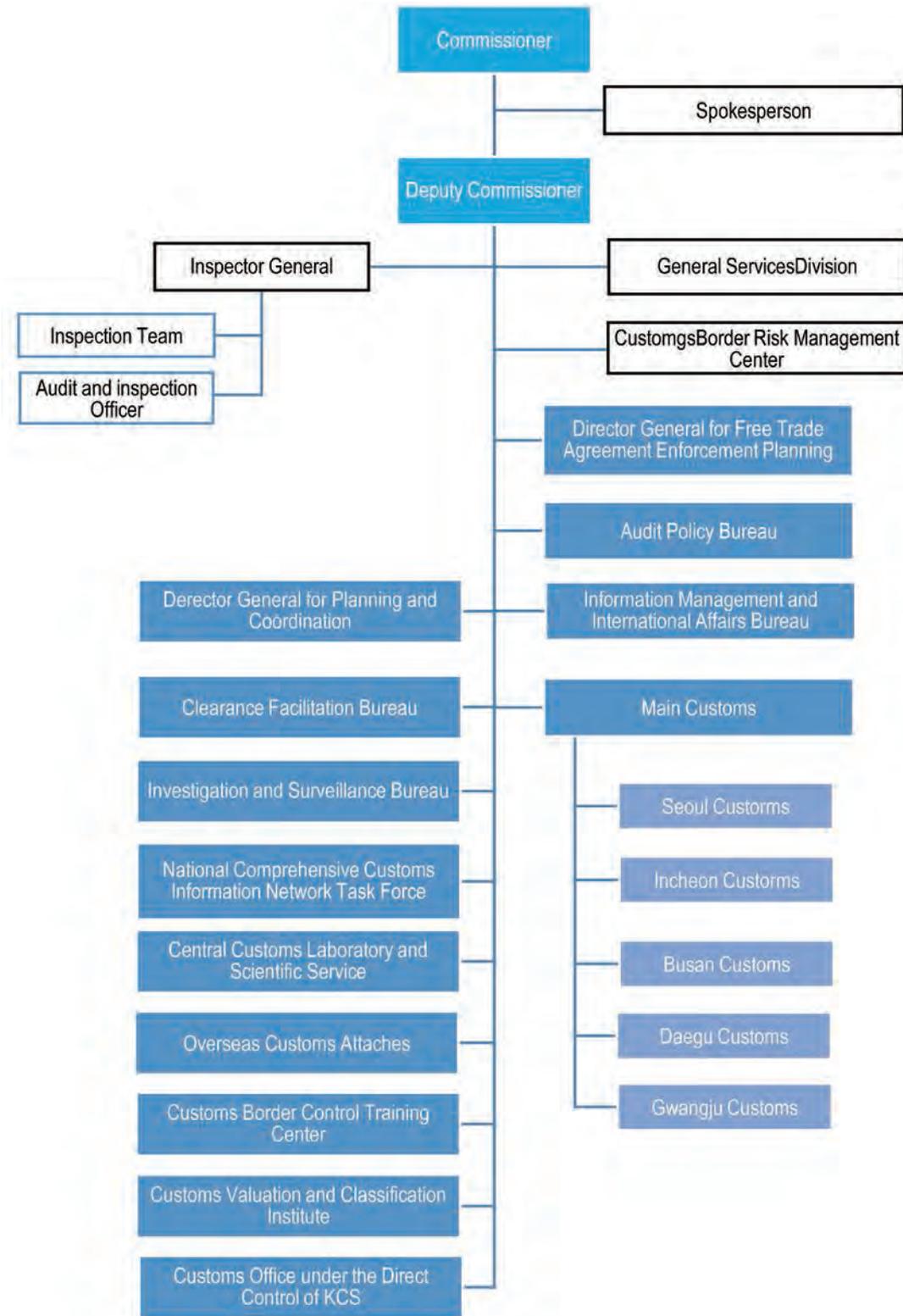
The mission of KCS is expressed as “Management of Customs border for strong economy and safe society”.

## 1.3 Organizational Structure

There are 7 Bureaus, 24 divisions, 1 spokesperson, and 321 staffs in KCS Headquarter and the KCS subsidiaries include 6 main Customs, 3 directly controlled agencies, 1 directly controlled Customs and 47 Customs houses with 4,204 staffs.

KCS is taking a persistent interest in future changes, assuming an active role to prepare for the Fourth Industrial Revolution era and is carrying out a wide spectrum of pilot projects and research development with an aim to incorporate new technologies of the Fourth Industrial Revolution such as big data, AI, and block chain into Customs areas.

Figure 1 Organizational Chart of KCS



Source: KCS website.

The Tax & Customs Office of the Ministry of Finance and Economy also takes part in the Customs affairs of Korea. The office covers policies in the categories of national tax sources including personal taxes, corporate-related taxes, consumer-related taxes, property-related taxes, and Customs taxes on imports. The office is also in charge of revenue budgeting and monthly planning for identifying and collecting tax revenue and coordinating Customs tariffs with regard to FTAs and multilateral tariff cooperation.

The Ministry Trade, industry and Energy (MOTIE) is also the government department in charge of trade in Korea, and is mainly responsible for the Korean industry and energy, trade and investment policies and economic and trade negotiations.

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## 2. CUSTOMS LEGAL SYSTEM

### 2.1 Customs Act

Korea has formulated a very comprehensive Customs legal system. The current [Customs Act of Korea](#) was enacted in 1996 firstly and has been amended several times. The newest amendment of the act was taken into force from July 2017. It is divided into 13 Chapters and 330 Articles.

The purpose of this Act is to properly administer the imposition and collection of Customs duties and the Customs clearance of exported and imported goods, and to secure revenues from Customs duties, with the aim of contributing to the development of the national economy. This Act provides not only the regulatory details on the imposition and collection of Customs, but also the matters concerning the overall Customs administrative details, such as the taxpayer's right and procedure for filing objections, bonded area, clearance procedures, and punishment of Customs criminals, etc.

The structure of the Customs Act of Korea is as follows:

- Chapter 1            General Provisions
- Chapter 2            Dutiable Value and Imposition, Collection, Etc. of Customs Duties

- Chapter 3           Tariff Rates and Tariff Classifications
- Chapter 4           Duty Reduction or Exemption, Refund, Installment Payment, etc.
- Chapter 5           Rights of Duty Payers and Procedures for Filing Objections
- Chapter 6           Means of Transportation
- Chapter 7           Bonded Areas
- Chapter 8           Transportation
- Chapter 9           Customs Clearance
- Chapter 10          Request, etc. for Presentation of Data by Customs Officers
- Chapter 11          Penalty Provisions
- Chapter 12          Investigations and Disposition
- Chapter 13          Supplementary Provisions

## 2.2 Related Laws

The Foreign Trade Act is the basic law for the Korean government to manage and revitalize foreign trade, and foreign exchange. This Act and the Customs Act, including some “revitalization laws” for specific trades, and individual administrative regulations related to trade constitute the basic framework of the Korean foreign trade legal system.

Relevant content can be found on the [Korean Legal Affairs](#) and the Legal Affairs Department's special legal inquiry [website](#).

The related laws and regulations also administered by KCS include:

- Foreign Trade Act;
- Quarantine Act;
- Trademark Act;
- Trade Insurance Act;
- Trade Infrastructure Development Act;
- Korea Trade Investment Promotion Agency Act;

- Act on Designation and Management of Free Trade Zones;
- Act on Revitalization of Direct Trade in Agricultural Products, Including Promotion of Use of Local Agricultural Products;
- Act on Special Cases of the Customs Act for the Implementation of Free Trade Agreements;
- Act on the Investigation of Unfair International Trade Practices and Remedy Against Injury to Industry;
- Monopoly Regulation and Fair-Trade Act;
- Special Act on Assistance to Farmers, Fishermen, Etc. Following the Conclusion of Free Trade Agreements;
- Special Act on the Implementation of the Agreement Establishing the World Trade Organization;
- Unfair Competition Prevention and Trade Secret Protection Act.

---

## 3. CUSTOMS CLEARANCE PROCEDURES

### 3.1 Normal Procedures for Importations

Import means shipping foreign goods into Korea or consuming and using them, including the consumption and use of foreign goods within the means of transportation but excluding the consumption and use of foreign goods falling under the Customs Act.

Import Customs clearance is a series of processes where a person intending to import foreign goods files a declaration of the goods to be imported into Korea, who then checks to ascertain whether the import declaration has legally and justly been filed in accordance with the Customs Act and other laws and ordinances and, after accepting the declaration, issues an import declaration completion certificate to the import declarant to allow the release of the imported goods.

### 3.1.1 Shipping into Storage Area

After the arrival from a foreign country, the goods are stored in a bonded area.

### 3.1.2 Meeting Requirements

The owner of imported goods meets the clearance requirements and prepares a tariff rate recommendation and a Customs duty exemption recommendation in advance before filing an import declaration.

The institution responsible for ascertaining the clearance requirements and making a tariff rate recommendation and a Customs duty exemption recommendation sends the electronic documents to the Customs through the connected network.

### 3.1.3 Import Declaration

A declaration shall be filed in the name of the owner of goods or a licensed Customs broker. The import declarant completes an import declaration form and sends it to the clearance system electronically. The clearance system automatically selects goods subject to inspection and goods subject to submission of required documents and notifies the import declarant thereof.

Anyone who intends to import, export, or return goods shall declare the names, standards, quantities and prices of the relevant goods, and other matters prescribed by laws. With respect to any of the following goods, a declaration thereon required may be omitted or filed in a simplified manner:

- Personal effects, consignments or unaccompanied goods;
- Postal items;
- Goods exempted from Customs duties in accordance with the Customs Act;
- Containers used for international transportation (limited to those the basic tariff rates of which are zero in accordance with the attached Schedules of Tariff Rates).

It is noted that each person, who has shipped goods intended for import or return into a designated storage place or a bonded warehouse, or stored such goods in a place, other than a bonded area, shall file a declaration within 30 days from the date on which he/she shipped such goods into such place or

stored them in such place.

When any declaration is filed in conformity with the Customs Act, the Customs office shall accept, without delay, such declaration and issue a declaration completion certificate to the relevant declarant. If any declaration is received using the electronic data-processing system such as UNI-PASS, the relevant declarant may directly receive a declaration completion certificate.

Goods on which a declaration has been filed shall not be shipped out of any means of transportation, any Customs route, any loading and unloading passage or a storage place.

### 3.1.4 Processing Declaration

The import declaration form is examined using such methods as a screen-based audit, a documentary audit, goods inspection, etc. If the import declaration has been filed legally, it will be accepted immediately.

The inspection of imported goods means to ascertain through physical inspection whether the goods on which an import declaration has been filed match the declared matters of import exactly, whether they violate the provisions of relevant laws or regulations, etc. Differential inspection ratios may be applied by allowing for the legal compliance degree, any actual offense detection record by inspection, the country of origin of goods, etc. in relation to each importer. The inspection method to be used may be sampling inspection, whole inspection or inspection for analysis according to the goods subject to inspection.

The relevant Customs office may require the presence of the declarant during goods inspection and request the manager of the place of inspection or the owner of imported goods to make preparations for inspection, such as by securing a place and equipment needed for inspection, placing workers for opening the packaged goods unpackaging and packaging. In case it is impossible to perform an inspection because sufficient preparations have not been made for inspection, the priority of inspection will be adjusted so that an inspection may be performed when sufficient preparations have been made for inspection. The required expenses for inspection of imported goods should be paid by the owner of imported goods.

However, the Customs office may request the declarant to supplement the import declaration form or withhold the Customs clearance in any of the following cases:

### **Request for Supplementation of the Declaration Form**

- Where matters entered or to be entered in the declaration form are incomplete or missing;
- Where any accompanying documents have been omitted or the proof data need to be supplemented according to the declaration form examination results;
- Where the declarant intends to change the import declaration method from declaration in a paperless way to declaration through submission of documents.

### **Withholding of Customs Clearance**

- Where there are any incomplete or missing things that need to be supplemented, such as matters written or to be written in the declaration form or required documents submitted or to be submitted;
- Where obligations provided for by law are violated or the public health, etc. is feared to be harmed;
- Where any accusation has been filed or any investigation is being conducted on suspicion of a Customs fraud;
- Where there are any goods with a false or misleading label on their quality, etc.;
- Where it takes a long period of time to fulfill the requirements for the acceptance of the import declaration according to the results of examination for Customs clearance.

The Customs may reject a filed declaration, or the declarant may cancel the filed declaration after obtaining approval in any of the following cases:

### **Rejection**

- Where the declaration has been filed in a false way or any other illegal manner;
- Where abandonment, discard, public sale, successful auction or definite seizure of the goods, or their reversion to the National Treasury has been determined;
- Where the requirements for import declaration before departure or arrival have not been fulfilled;
- Where the goods declared before departure or arrival have not arrived;
- Where the other formal requirements for import declaration have not been fulfilled.

## Cancellation

- Where a decision has been made to return goods being different from the content of the import contract, deteriorated or damaged goods, etc. to the foreign supplier, etc.;
- Where the imported goods have been destroyed or lost or are intended to be discarded after obtaining approval from the relevant Customs office due to a disaster or for any other unavoidable causes;
- Where the imported goods are intended to be returned or discarded for such reasons as withholding of Customs clearance, failure to satisfy the clearance requirements, prohibited goods for import, etc.;
- Where it is recognized that there is any justifiable reason or reasons equivalent to any case mentioned above.

## Cases which cannot be any Justifiable Reasons for Canceling a Declaration

- The company's financial situation due to an economic recession, etc.;
- Omission of submission of an application for Customs duty exemption, a tariff rate quota recommendation, or a specific use tariff rate recommendation;
- Cancellation of a declaration in order to achieve the application of a lower tariff rate;
- Failure to secure a market in Korea, etc. due to cancellation of a contract for sales in Korea, etc.

Having accepted an import declaration, the relevant Customs office issues an import declaration completion certificate electronically stamped with the special agency seal of the Customs office for the declarant (Customs broker, etc.). In order to prevent any forgery or alteration, each import declaration certificate is equipped with various devices such as the special agency seal of the Customs office, a watermark (KCS logo), the serial number of issuances, a two-dimensional barcode, and a copy mark.

In the case of inspection, an examination for Customs clearance is performed through documents after physical inspection of the goods. In the case of submission of required documents, an examination for clearance is performed through documents. In the case of paperless declaration, an examination for clearance is performed through the computer screen. In the case of goods found without any problem as a result of examination, approval thereof is registered.

### **3.1.5 Security or Payment in Advance**

The collection of Customs duties on dutiable goods shall take precedence over the collection of other taxes, public charges and claims thereon. If Customs duties are collected in the same manner as national taxes are collected and the object of a disposition taken for recovery of arrears is property other than dutiable goods, the same priority order as national taxes shall be given to such Customs duties.

The owner of imported goods can provide the Customs with security for duty payment (or pay the Customs duty in advance) in order to receive the goods delivered from the bonded area. The financial institution notifies the Customs that it has received the duty payment through the connected computer network (in the case of payment of the duty in advance).

Where other act on taxes is conflict with the Customs Act with respect to the imposition, collection, refund, etc. of an internal tax and inclusive of surcharges, additional duties, and expenses for disposition on default, that are imposed and collected by the Customs office, the Customs Act shall prevail.

### **3.1.6 Declaration Acceptance**

If the Customs duty payment has been received or security has been put up, the clearance system automatically accepts the import declaration.

The clearance system notifies the import declarant and the cargo system (storage place) of the details of the acceptance of the import declaration.

### **3.1.7 Goods Delivery**

In response to the request of the owner of imported goods for delivery of the goods, the storage place checks to ascertain whether the import declaration has been accepted, etc. and then delivers the goods to the owner.

### **3.1.8 Post-Clearance Duty Payment**

After finished the delivery of goods, the owner of imported goods shall pay the Customs duty within 15 days after the import declaration is accepted. The financial institution notifies the Customs that it has received the duty payment through the connected computer network (in the case of Post-Clearance

payment of the Customs duty).

In the calculation of the duty payment, if approval is granted for shipping imported goods into Korea prior to the acceptance of an import declaration filed, the date of approval shall be deemed the date on which such import declaration is accepted. If the time limit provided for in the Customs Act falls on a holiday or a day prescribed by Presidential Decree, the next day shall be such time limit.

A person liable to pay duties may pay the relevant Customs duties even before his/her import declaration is accepted. Where a bona fide duty payer, who satisfies the requirements determined based on the tax payment records, etc., the Customs office may permit him/her to make en bloc payment of duties whose time limit for payment falls in the same month by the last day of the month in which the said time limit falls. In such cases, the Customs office may require him/her to provide security equivalent to the amount of Customs duties, if deemed necessary.

Where deemed impracticable to file a declaration, an application or a request; submit other documents; give notice; or make payment or collection pursuant to the Customs Act by the specified time limit due to natural disasters and other grounds, the Customs office may extend such time limit for a specified period of up to one year. In such cases, the Customs office may require him/her to provide security equivalent to the amount of Customs duties, if deemed necessary.

Figure 2 Flow Chart of the Import Procedures



## 3.2 Simplified Procedures for Importations

### 3.2.1 Declaration before Departure or Arrival

When the prompt Customs clearance is required for the goods which a person intends to import, an import declaration thereon may be filed before a vessel or an aircraft loaded with the relevant goods enters a port or an airport. In such cases, any goods on which an import declaration prior to an entry to the port is filed shall be considered as arrival in Korea.

When the head of a Customs office decides to inspect any goods on which an import declaration prior to an entry to the port, he/she shall serve a notice thereon on a person who has filed such import declaration. The goods which are made subject to an inspection shall be shipped into a bonded area (including any place, other than a bonded area, where such goods are stored) under jurisdiction over the Customs office at which an import declaration has been filed. Provided that if an inspection of goods in a vessel or an aircraft is deemed possible, such inspection may be conducted in such vessel or such aircraft loaded with the relevant goods.

### 3.2.2 Other Simplified Procedures

Import Customs clearance is possible by submitting only an import declaration form without submission of any attached documents in the case of goods which fall under any of the following categories:

- Duty-free goods recognized as articles for personal use as the goods to be received by a domestic resident with a total dutiable value of not more than 150,000 won;
- Duty-free commercial samples as goods with a total dutiable value of not more than US\$ 250;
- Goods among design drawings which are exempt from import approval;
- Means of payment which a financial institution imports in order to engage in a foreign exchange business;

Any good which is exempted from Customs duty or subject to a zero tariff among the goods which fall under any of the following categories requires presentation of only a Bill of Lading (B/L) in order to be delivered immediately from the storage place:

- Duty-free goods which are carried in through diplomatic pouches;

- Duty-free goods which belong to the head of a foreign country visiting Korea, his or her family and entourage;
- Human remains (ashes) or corpses for funerals;
- Goods used for news reporting by organs of public opinion registered with the Ministry of Culture, Sports and Tourism, such as newspapers, films or recording tapes containing news stories;
- Data and materials sent by diplomatic missions abroad, etc.;
- Goods for official business returned from military forces stationed overseas. This applies only in cases where they have arrived in Korea after being loaded in a warship or military aircraft.

Table 1 Types of Import Declaration

Classification	Declaration before Departure from the Port	Declaration before Arrival at the Port	Declaration before Arrival at the Bonded Area	Declaration after Storage in the Bonded Area
Time of declaration	Before the vessel (aircraft) loaded with goods departs from the port of lading five days before arrival (one day before arrival in the case of an airplane) in Korea	Before arrival at the port (declaration of unloading or discharging cargo declaration) after the vessel (aircraft) departs from the port of lading five days before arrival (one day before arrival in the case of an aircraft) in Korea	Before arrival at the bonded area in which the goods will be shipped	After storing the goods in the bonded area
Goods subject to import declaration	Goods imported in an aircraft Goods imported from Japan, China, Taiwan or Hong Kong	Not limited	Not limited	Not limited
Customs office for import declaration	Customs office in charge of the place of scheduled arrival	Customs office in charge of the place of scheduled arrival	Customs office having jurisdiction over the bonded area of scheduled arrival	Customs office having jurisdiction over the bonded area for the stored goods
Time of notification of whether there are any goods subject to inspection	At the time of submitting data (a declaration of departure and a cargo manifest) which prove that the vessel (aircraft) has departed from the port of lading	Date of import declaration	Date of import declaration	Date of import declaration



Time of acceptance of import declaration	Inspection omitted	After submission of the cargo manifest	After submission of the cargo manifest	After reporting the arrival of goods at the bonded area	After import declaration
	Goods subject to inspection	After the end of goods inspection	After the end of goods inspection	After the end of goods inspection	After the end of goods inspection

Source: KCS website.

### 3.3 Normal Procedures for Exportations

Export means shipping domestic goods out of Korea to foreign countries. The exporter must first of all check to ascertain whether the goods intended for export can be exported or not under the Foreign Trade Act, relevant laws and ordinances, etc. It is also necessary to check to ascertain whether the method of receiving payments is restricted or not under the Foreign Trade Act, relevant laws and ordinances, etc.

All the goods intended for export must undergo the export clearance procedures of the Customs. Normal Customs clearance procedures for exportation are simpler than the procedures for importation. The export clearance procedures refer to the procedures from declaring the goods intended for export to the Customs, getting the export declaration accepted by the Customs to loading the goods in a means of transportation which comes and goes between Korea and the importing foreign country.

#### 3.3.1 Export Declaration

Any person who intends to export goods must file an export declaration with and have it accepted by the head of the Customs office having jurisdiction over the area where the goods intended for export are stored.

To file an export declaration, the owner of goods for export or a state-certified qualified specialist (licensed Customs broker, Customs brokers' corporation, or juristic person for handling clearance) needs only to complete and send an export declaration form to the KCS e-Clearance System electronically by means of the Electronic Data Interchange (EDI) system for export clearance or the data processing equipment of the Export Declaration Assistance Center.

If the export declarant has electronically received a notice of any errors regarding the contents of the sent export declaration or intends to correct the declared contents, he/she needs only to re-send the declaration data including the corrected contents under the original submission number. If any matters requiring correction have appeared after a submission number was granted, it is necessary to complete an export declaration correction approval application form and then electronically send it and submit evidential data to the Customs office having jurisdiction over the place of Customs clearance or the Customs office having jurisdiction over the applicant's location area. However, if such declaration contents are subject to autonomous correction or if the correction details can be verified through the export declaration correction approval application only, submission of evidential data may be omitted.

A filed export declaration takes effect when a declaration number is granted to it by the KCS e-Clearance System.

Depending on the relevant case, the methods of accepting a filed export declaration are classified into automatic acceptance, acceptance after examination by Customs officials, and acceptance after inspection. If the filed export declaration is accepted, the relevant Customs office will issue an export declaration completion certificate.

In addition, if the contents of the electronic documents kept in the KCS e-Clearance System are different from the contents of the issued export declaration completion certificate, the contents of the electronic documents kept in the KCS e-Clearance System are deemed as the original.

### **3.3.2 Declaration Acceptance**

An export declaration must be prepared by completing a declaration form prescribed by KCS in accordance with the guidelines for export declaration form completion.

There are three methods of processing the declaration form for the goods on which an export declaration has been filed: automatic acceptance, acceptance after examination, and acceptance after inspection.

#### **A. Automatic Acceptance**

This means that an export declaration is automatically accepted by data processing. An export declaration filed on goods not subject to inspection or submission of documents is also automatically accepted by the KCS e-Clearance System.

Goods for which an export declaration form must be submitted to the Customs when filing an export declaration (goods subject to submission of documents) are as follows:

- goods which need certification of the requirements satisfied before acceptance of the filed export declaration;
- re-export of goods which are different from the contents of the contract or export of goods cleared through Customs for import on condition of re-export;
- goods on which the exporter files an export declaration by submitting required documents or makes a request for Customs inspection for the sake of reduction or exemption of Customs duties, etc.,

refund of paid Customs duties or post management when re-importing such goods;

- goods which have been notified to the declarant by the export clearance system as goods subject to submission of documents.

## **B. Acceptance after Examination**

This method applies to goods inspection of which is omitted among the goods the declaration of which is not subject to automatic acceptance. Customs officials accept the filed declaration after examining the declared contents.

## **C. Acceptance after Inspection**

Although inspection of goods for export is generally omitted in principle, the filed export declaration is accepted after performing actual inspection of the goods for export judged to need inspection by the head of a Customs office among the goods which need to be verified as actual articles and the goods which have been sorted out as high-risk articles.

The goods whose export declaration has been accepted must be loaded in a means of transportation which comes and go between Korea and the importing foreign country within 30 days from the date of export declaration acceptance. However, in the event of any unavoidable reasons such as changes in the loading schedule, etc., the loading period may be extended after obtaining approval thereof from the head of the relevant Customs office. In addition, caution is required because unless the relevant goods are loaded in the means of transportation within the loading period, the acceptance of the export declaration may be revoked and refund of Customs duties may also be impossible.

On the other hand, there are separate procedures prescribed for the loading management of postal items or portable consignments. In addition, foreign goods shipped into a bonded area in Korea may be returned to the exporting foreign country, and in this case, the return declaration procedures must be undergone for the Customs clearance of such goods.

Figure 3 Flow Chart of the Export Procedure



Source: KCS website.

### 3.4 Documentation Requirements

A person that files an export or import declaration shall present documents in addition to the data for determination of a dutiable value. After presenting and confirming the relevant documents to a licensed Customs broker, etc., the submission of the documents may be omitted or such documents may be presented after an import declaration is accepted. Where the submission of documents is omitted or such documents are presented after an import declaration is accepted, if the Customs office requests a declarant to present documents and provide other related data determined as he/she deems it necessary to submit or present such documents and other related data, the declarant shall comply therewith.

#### 3.4.1 Customs Declaration Form

Import Declaration Form

Figure 4 Import Declaration Form

## Import Declaration

(Customs Importation Certificate)

① Declaration No.		② Date of Declaration		③ Customhouse/Section		④ Date of Arrival					
④ B/L(AWB) No.			⑤ Cargo Control No.			⑦ Date of Warehousing		⑧ Type of Tax Collection			
⑨ Declarant ⑩ Importer ⑪ Taxpayer (Address) (Company Name) (Name) ⑫ Trade agent ⑬ Supplier				⑭ Type of Entry		⑮ Origin Certificate		⑯ Total Weight			
				⑰ Type of Entry-filing		⑱ Price Statement		⑲ Total Package No.			
				⑳ Type of Transaction		㉑ Port of Arrival		㉒ Transport Mode			
				㉓ Purpose of Import		㉔ Country of Loading		㉕ Vessel/Aircraft Name			
				㉖ MASTER B/L No.				㉗ Vessel/Aircraft Code			
				㉘ Examination(Warehousing) Site							
● Description and Specification of Goods (Line No/Total Line No.: 999/999)											
㉙ General Description of Goods						㉚ Trademarks					
㉛ Description of Goods as in Transaction Documentations											
㉜ Model and Specification			㉝ Composition			㉞ Quantity		㉟ Unit Price	㊱ Value (XXX)		
㊲ HS Code		9999.99-9999		㊳ Net Weight		㊴ C/S Inspection		㊵ Post Check Agency			
㊶ Value (CIF)				㊷ Quantity		㊸ Exam. Decision					
				㊹ Qty. for Drawback		㊺ Origin Marks		㊻ Tax amount specially calculated			
㊼ Check for Import Requirements (Name of Certificate)											
㊽ Type of Tax	㊾ Tariff (Type)	㊿ Abatement Rate	㋀ Tax Amount	㋁ Abatement/Instalment Tax Payment Code	Tax Abatement	㋂ Internal Tax code					
㋃ Total Negotiated Payment for Goods (Delivery Condition-Currency-Value-Type of Payment)						㋄ Exchange rate					
㋅ Total Customs Value		㋆ Freight		㋇ Addition		㋈ Payment code					
		㋉ Insurance		㋊ Deduction		㋋ VAT Value					
㋌ Type of Tax	㋍ Tax Amount	㋎ Remarks by Customs Brokers			㋏ Remarks by Customhouse						
Customs											
Special Consumption Tax											
Transportation tax											
Liquor tax											
Education tax											
Agricultural Special Tax											
VAT											
Penalty Tax for Import Entry Delay											
㋐ Total Tax Amount Due		㋑ Customs Officer		㋒ Date of Entry-filing		㋓ Date of Customs Acceptance					

\* Authenticity of this Customs certificate can be verified by visit to <http://kcis.ktnet.co.kr>.  
 \* In case of any divergence of importation data between the Certificate and the actual transaction data, a declarant or importer/owner will be held accountable.

Source: KCS website.

## Export Declaration Form

Figure 5 Export Declaration Form

### EXPORT DECLARATION CERTIFICATE

※ Processing Period: Immediate

Number of Submission		⑦ Declaration Number		⑧ Declaration Date		⑨ Declaration Type		⑩ C/S Type		
① Name of Declarant		Code								
② Name of Exporter										
Address of Exporter/Consignor		⑪ Transaction Type		⑫ Type		⑬ Payment Type				
Name of Consignor		Name		⑭ Country of Destination		⑮ Port of Lading				
Clearance Code		Business License Number		⑯ Transportation Type		⑰ Preferred Date of Inspection				
⑳ Name of Manufacturer										
Clearance Code				⑱ Location of Goods						
㉑ Name of Buyer		Code								
㉒ Drawback Applicant		Exporter/Consignor		Manufacturer		㉓ L/C Number				
㉔ Drawback Agency		Place of Manufacture		㉕ Goods Status		㉖ Advance Crduty Notice				
㉗ Item Description				㉘ Reason of Return						
				㉙ H.S.Code						
				㉚ Product Code						
				㉛ Declared Value(FOB)		\				
				㉜ Actual Weight						
				㉝ Quantity						
				㉞ Packaging Quantity/Type						
				H.S.Code						
				Product Code						
				Declared Value(FOB)		\				
				Actual Weight						
				Quantity						
				Packaging Quantity/Type						
㉟ Total Lines		㊱ Total Weight		㊲ Total Packages		㊳ Total Declared Value(FOB)		\		
( ) Lines						\$				
R e l e v a n t D o c	㊴ Export Permit License				㊵ Transaction Price					
	㊶ Export Recommendation				㊷ Freight(\)		㊸ Insurance(\)			
	㊹ Inspection Certificate				㊺ Customs Only Write					
	㊻ Quarantine Certificate									
	㊼ Strategic Goods Export Permit									
B / T	㊽ Import Cargo Management Number									
	㊾ Bonded Transportation Declarant									
	㊿ Period		/ / From / / To		㋀ Date of Declaration Processing( / / )		㋁ Term of Loading Obligation( / / )			

Source: KCS website.

### 3.4.2 Basic Documents

Basic documents are mainly commercial documents listed below:

- an Invoice;
- a Bill of Lading;
- a Packing List;
- a Certificate of Origin.

### 3.4.3 Import Ascertaining

The following documents shall be submitted if applicable:

- a value declaration form;
- required documents for import such as inspection, quarantine, permit and recommendation documents issued by relevant institutions;
- an application form for exemption from Customs duty;
- an application form for applying the agreed tariff, a confirmation of security for local tax payment, a Kimberley Process Certificate, and a tariff recommendation certificate;
- .....

There is a confirmation system which requires that the head of every Customs office should ascertain whether the obligations prescribed by 34 individual laws and ordinances in relation to importation are fulfilled in order to achieve the national policy goals, such as environmental protection, social security and national health protection, and accordingly this is intended to make it necessary to submit documents issued as import requirements by the relevant institutions, such as documents of inspection, quarantine, recommendation, permission and/or confirmation prescribed for pertinent goods to the relevant Customs office.

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## 4. UNI-PASS SYSTEM

The UNI-PASS system is not just a fully automated Customs administration system utilizing up-to-date IT technology, but has embedded 20 years of know-how and experience including full transfer of the technology and cumulated knowledge. Since the year 2011, the UNI-PASS system is in its 4th Generation adapting mobile concept with the goal to create an Intelligent Customs administration system based on Smart Clearance. The UNI-PASS system has been implemented partially or fully in several countries and more countries are showing interests in introducing the UNI-PASS as their Customs administration solution.

### 4.1 System Structure

The UNI-PASS system is composed of various components and modules that interact and operate as one living organism to provide an efficient Customs administration.

#### **Business Processing Component**

Composed of the Single Window portal, the Procedural business modules (i.e. Clearance Management, Cargo Management, Duty Collection, etc.) and Non-procedural business modules (i.e. Investigation, Surveillance, Audit etc.) these form the most basic Customs modules for the automation of the Customs administration.

#### **Support to the Business Processing Component**

Provides support to the Business Processing Components such as the Integrated Risk Management System, the Customs Data Warehouse, the Knowledge Management System, the Performance Management System and the Law Compliance System.

#### **Infrastructure Component**

Provides tools for an administration and control of the Customs administration system, such as the Early Warning and Control System that provides a monitoring on hardware, software, application and network; and the IT Governance, that allows management of information based on Enterprise Architecture.

## **Application of International Standards**

Considering the rise in need for interconnectivity with neighboring countries or with foreign Customs in achieving Global Single Window, the UNI-PASS system applies international standards such as the WCO DM3.0, UN codes, etc. and open technology standards.

## **4.2 Support Services**

### **Diagnosis on Current Status**

Perform a feasibility study like analysis of a Customs administration in areas of environmental analysis and current status of the business procedures, laws, documentations and IT systems.

### **Design Future Model**

Perform a Business Process Re-engineering & Information Strategy Planning for Customs modernization including detailed blueprints on future business procedures, law reform recommendations, document standardization and a new tailored IT system.

### **Development**

Perform an analysis and design of a new system and develop a tailored IT system based on the BPR/ISP results, including installation of required hardware and commercial software, testing, and deployment.

### **Knowledge Transfer**

Perform knowledge transfer in the form of documentation (deliverables) and capacity building (onsite training by sending experts and training through invitation to Korea) including the transfer of program source codes to the Customs administration.

### **Operation & Maintenance**

Provide post-development one year warranty service (maintenance) and additional operation & maintenance services of the newly built Customs administration system is provided upon request of the interested country.

## 4.3 Achievements of UNI-PASS

### Time Saving

Thanks to the development of the UNI-PASS system, the Korea Customs now spends less than 1.5 minutes for export clearance and less than 1.5 hours for import clearance.

### Cost Saving

UNI-PASS development created 3.5 billion USD in economic effect in the public and private sector while maintaining the same number of Customs staff for the past 30 years in contrast to 18 times increase in trade amount.

### Integrity in Customs Service

Work processing in 100% e-Document, clearance procedure information made public in real time leads to enhancement of transparency in the work process as well as public confidence in administration.

Please visit [here](#) for more information of UNI-PASS.

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## 5. CUSTOMS BROKERAGE SERVICE

In Korea, a licensed Customs broker is a person who has been granted a license to file import declarations after being entrusted with Customs clearance by others in accordance with the Licensed Customs Broker Act. Licensed Customs brokers are classified into following categories according to the types of practice:

- Customs service corporations;
- Customs clearance handling corporations;

- joint Customs brokers;
- individual Customs brokers.

## 5.1 Licensed Customs Brokers

Each licensed Customs broker shall perform the following services commissioned by clients:

- Classification of HS codes and tariff rates, ascertainment of dutiable values and calculation of Customs duties on imports or exports;
- Voluntary review and preparation of the report thereon;
- Declarations, etc. of exportation, importation or return of goods or transportation and implementation of the procedures related thereto;
- Applications for certification or confirmation to certify that goods to be exported or imported are permitted, approved or labeled or that other conditions are met;
- Raising objections and applying for review and trial on behalf of clients;
- Counseling or advice on Customs;
- Counseling or advice on declarations of exportation or importation;
- Requesting refunds on behalf of clients;
- Providing opinions on investigations, dispositions, etc. by Customs houses for and on behalf of shippers;
- Declarations, reporting, applications, etc. and implementation of the procedures related thereto under the Customs Act.

The following are noted that:

- No person, other than a licensed Customs broker or Customs service corporation may perform services commissioned by clients;
- No person shall recommend or assist a licensed Customs broker and/or any other entity to perform the services in order to receive or request payment for such recommendation or assistance;
- No person, other than a licensed Customs broker, shall share in any remuneration or other profit derived from rendering services which may be performed only by the licensed Customs broker.

## 5.2 Qualifications and Examination

A person who passes the examination for licensed Customs brokers shall be qualified as a licensed Customs broker. None of the following persons may serve as a licensed Customs broker:

- A minor;
- A person under adult guardianship or a person under limited guardianship;
- A person declared bankrupt who has not been reinstated;
- A person in whose case three years have not elapsed since his/her imprisonment with labor declared by a court for any violation of the Customs Brokers Act or the Customs Act was completely executed or he/she was exempted from such sentence;
- A person who is under suspension of execution of his/her imprisonment with labor declared by a court for any violation of the Customs Brokers Act or the Customs Act;
- A person who has been punished by a fine or subject to a disposition of notification under the Customs Act and for whom two years have not elapsed since he/she was punished by such fine or complied with such disposition of notification;
- A person in whose case two years have not elapsed since he/she was removed or dismissed from office by disciplinary action.

The examination for licensed Customs brokers shall be classified into a first-stage examination and a second-stage examination. A person who passes a first-stage examination shall be exempted from the first-stage examination in the next round, only once. Each person who has been engaged in Customs administration shall be exempted from some subjects of the examination for licensed Customs brokers.

A Committee for Licensed Customs Broker Qualification Deliberation and Disciplinary Action was established under the Korea Customs Service to deliberate and resolve on qualifications, disciplinary action and registration.

## 5.3 Registration and Commencement

After receiving in-service training for at least six months, any person qualified as a licensed Customs broker may be registered with KCS. The registration may be renewed at least three years.

- A licensed Customs broker shall establish a single office to provide his/her services. When a licensed Customs broker suspends or discontinues providing services or relocates or closes his/her office, he/she shall report this to the head of the relevant Customs office without delay;
- Licensed Customs brokers may establish a joint office in order to provide services on a systematic basis as well as to enhance public confidence. In such cases, a single joint office shall be established;
- A licensed Customs broker may employ any other licensed Customs broker or have an assistant;
- A licensed Customs broker shall be responsible for guiding and supervising other licensed Customs brokers employed by him/her, as well as his/her assistants.

A licensed Customs broker who intends to commence providing services shall file a report thereon to the Customs office.

## 5.4 Obligations

A licensed Customs broker shall comply with the Customs Broker Act and the Customs Act and shall provide Customs clearance services in good faith and in a fair manner.

If any licensed Customs broker prepares a declaration, application, request, report or any other document (including any electronic document) in connection with his/her provision of services and submits it to a relevant institution, he/she shall affix his/her name and seal thereto or sign it (referring to electronic signature, in cases of electronic documents).

- Any licensed Customs broker shall be prohibited from allowing any other person to provide Customs clearance services using his/her name or office name, or from lending his/her qualification or registration certificate;
- No licensed Customs broker shall engage in offering money, valuables, or entertainments, or promising to offer such to public officials;
- No person who is or has been a licensed Customs broker, nor his/her assistant shall disclose any confidential information which comes to his/her knowledge in the course of providing services to a third party.

Where a licensed Customs broker (excluding any licensed Customs broker who belongs to a Customs service corporation or a Customs clearance handling corporation, etc.) causes damage to a client by

intention or negligence while providing his/her services, he/she shall take necessary measures such as subscription to insurance in order to indemnify against liability for such damage.

## 5.5 Customs Service Corporations

Licensed Customs brokers may establish a Customs service corporation in order to provide their services systematically and professionally as well as to enhance public confidence. If a Customs service corporation intends to provide its services, it shall be registered with KCS. A Customs service corporation which desires to be registered shall meet the requirements for membership and for capital:

- Each member of a Customs service corporation shall be a licensed Customs broker;
- A Customs service corporation shall have at least three directors;
- Each Customs service corporation shall have at least five licensed Customs brokers, including directors;
- A Customs service corporation shall have a chief executive officer.

A Customs service corporation shall have a starting capital of at least 200 million won. If an amount determined by subtracting total liabilities from total assets on the balance sheet as at the end of the immediately preceding year of service is less than the capital requirement, a Customs service corporation shall compensate for the shortfall with donations from members or increase its capital, within six months after the end of each service year. Any donation shall be included in extraordinary income.

- In order to indemnify against liability for any damage caused to a client in the course of performing its services, a Customs service corporation shall accumulate a damage reserve or take out damage liability insurance for each year of service;
- No Customs service corporation shall invest in any other corporation nor guarantee the obligations of another person in excess of an amount determined by multiplying equity capital by a ratio;

A Customs service corporation shall use the expression "Customs service corporation" as its name or part thereof.

A Customs service corporation may have a branch in addition to its main office.

- At least two licensed Customs brokers who are directors shall work full-time in the main office of a

Customs service corporation, and at least one licensed Customs broker who is a director shall work full-time in a branch office thereof;

- A director and an affiliated licensed Customs broker of a Customs service corporation may not have any office, other than the Customs service corporation.

## 5.6 Customs Clearance Handling Corporation

Any of the following persons, registered with KCS may provide Customs clearance services:

- A corporation that engages in the business of providing transportation, storage, or loading and unloading services;
- A corporation, at least 50/100 of the capital of which is invested by a corporation;
- A general logistics company certified under the Framework Act on Logistics Policies.

A Customs clearance handling corporation, etc. may provide clearance services only for the goods for which transportation services, etc. are entrusted by a third party to a Customs clearance handling corporation, etc. or a corporation that has invested in a Customs clearance handling corporation.

When a Customs clearance handling corporation, etc. provides Customs clearance services for the goods, it shall directly provide transportation services, etc. for the goods with its own facilities or equipment. A Customs clearance handling corporation, etc. shall have at least one licensed Customs broker in each office in which it intends to provide Customs clearance services.

## 5.7 Customs Brokers Association

Licensed Customs brokers have established the Korea Customs Brokers Association in order to enhance their dignity and capability, to foster their professional ethics and to establish order for sound Customs clearance. The Korea Customs Brokers Association is under the supervision of the Commissioner of the Korea Customs Service.

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## 6. CUSTOMS SECURITY

When the Customs office accepts a declaration on any dutiable goods, a security equivalent to the relevant duty may be requested if:

- A person who was punished by imprisonment with labor for violation of the Customs Act on Special Cases concerning the Refund of Customs Duties, etc. Levied on Raw Materials for Export and for whom two years have not elapsed since the execution was terminated (including cases where the execution deems to be terminated) or exempted;
- A person under the suspension of the sentence of imprisonment with labor, in violation of the Customs Act on Special Cases concerning the Refund of Customs Duties, etc. Levied on Raw Materials for Export;
- A person who has been punished by a fine or who received a notification of a disposition under the Customs Act on Special Cases concerning the Refund of Customs Duties, etc. Levied on Raw Materials for Export and for whom two years have not lapsed since the fine was sentenced or the notification of disposition was imposed;
- A person who has any record of delinquent taxes, such as Customs duties, etc. for the latest two years, as of the date on which an import declaration was filed;
- A person who has difficulty in securing claims on Customs duties, taking into consideration the results of importation, tariff rate of imported goods, etc.

### 6.1 Types of Security

Types of security offered pursuant to the Customs Act shall be as follows:

- Money;
- Government bonds or municipal bonds;
- Securities approved by the head of a Customs office;
- Guarantee insurance policy on duty payment;
- Land;
- Registered or recorded buildings, factory foundations, mining foundations, vessels, aircraft or

construction machinery which have been covered by insurance;

- Letters of guarantee for payment of Customs duties by guarantors approved by the head of a Customs office.

Securities approved by the Customs office shall be as follows:

- Bonds issued by corporations established in accordance with Special Acts;
- Convertible bonds or guaranteed bond among debentures of corporations listed in Korea Exchange;
- Securities with trade records among securities listed in Korea Exchange;
- Certificate of deposit;
- Profit-making securities, which are possible to claim for redemption, to supply or transfer security for tax payment, among profit-making securities in accordance with the Financial Investment Services and Capital Markets Act.

Letters of guarantee for payment of Customs duties by guarantors approved by the Customs office shall be as follows:

- A letter of guarantee issued by a bank established with the authorization of banking business in accordance with the Banking Act;
- A letter of guarantee issued by Korea Credit Guarantee Fund in accordance with the Credit Guarantee Fund Act;
- A letter of guarantee issued by Korean Federation of Credit Guarantee Foundations in accordance with the Regional Credit Guarantee Foundation Act;
- A letter of guarantee issued by Korea Technology Finance Corporation in accordance with regulations of the Korea Technology Credit Guarantee Fund Act;
- ATA Carnet;
- International Road Transport Bond under Cover of TIR Carnets;
- A letter of guarantee a person who registered in accordance with subparagraph 5 of paragraph 1 of Article 222 of the Customs Act;
- A letter of guarantee by a person who the customs office approves to have sufficient ability to carry

out a guaranteed obligation.

## 6.2 Comprehensive Security

Any person who intends to furnish a comprehensive security shall file an application for furnishing of security and a security with a regional competent Customs house.

As for a comprehensive security, only the collaterals that fall under any of the following headings can be furnished:

- Money;
- Bonds and stocks a country or a local government has issued;
- Bank guarantee;
- Guarantee Insurance Policy on duty Payment;
- Korea Credit Guarantee Fund or a letter of guarantee issued by Korean Federation of Credit Guarantee Foundations;
- A letter of guarantee issued by Korea Technology Finance Corporation.

The comprehensive collaterals to be used for an integrated payment of tariff and etc. shall be in comparable amount as the tax amount to be paid in lump sum. The same collaterals can be furnished by each business unit or can be lumped and furnished by a major office. However, refund of tariff and etc., shall be furnished by corporate units.

When Customs duties, surcharges and expenses for disposition on default for which security for payment was offered have been paid, the Customs office shall take procedures for the cancellation of security without delay.

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## 7. PROHIBITIONS AND RESTRICTIONS

According to the Foreign Trade Act and its enforcement decree, the Minister of Trade, Industry and Energy may restrict or ban exportation or importation of goods, etc. designated and publicly notified, as deemed necessary for the implementation, etc. of any of the following matters:

- Fulfilling the obligations under treaties signed and promulgated pursuant to the Constitution of the Republic of Korea and generally accepted international laws and regulations;
- Protecting biological resources;
- Promoting economic cooperation with trading partner countries;
- Seamless supply and demand of materials for national defense;
- Development of science and technology;
- Strategic items;
- Any other matters prescribed by Presidential Decree as necessary for trade and industrial policies.

In the process of examining the submitted export or import declaration data, the relevant Customs office must confirm whether the relevant goods for export or import meet the conditions of permission, approval, labeling and others (required conditions for export and import).

### 7.1 Export Control

#### 7.1.1 Export License

An exporter needs to obtain an export license if a product and/or technology involved in the transaction is classified as strategic. All export control-related tasks, including applying for export licenses, can be processed online.

#### 7.1.2 Compliance Program Application

The Compliance Program application service allows a company to submit a request to MOTIE to be certified as a CP participant, and to submit regular reports after the designation. MOTIE certifies companies that incorporate a compliance program into their business operations to abide by export

control regulations, and those companies are entitled to apply for comprehensive export licenses and other benefits.

### **CP Participant (Voluntarily Compliant Traders)**

A Compliance Program (CP) participant is a trader with the capacity to comply with export control by classifying their own items, checking the validity of end-user, thoroughly reviewing transaction details and conducting regular audits.

#### **Application Documents**

- CP application;
- Company profile;
- Structure of compliance personnel;
- Internal compliance policies, etc.

#### **Benefits**

- Qualification for comprehensive export license;
- Ex-post submission of supplementary documents for individual export license;
- Reduction of administrative sanctions considered for unintentional violation of export control regulations;
- Partial or full exemption from the need for supplementary documents when submitting an individual and/or comprehensive export license application with the same end-user to which an export license was granted in a previous transaction or with an end-user that is a subsidiary residing overseas.

Please visit [Compliance Program Guidance, Korea Strategic Trade Institute](#), and [Yestrade](#) for more details.

#### **7.1.3 Self-classification**

The self-classification service enables companies to determine by themselves whether the company's products or services are subject to control. It should be noted that self-classification for strategic technologies does not hold legal force. Therefore, when applying for export licenses for technologies,

only the results of classification conducted by a classification agency can be verified as a supplementary document.

#### **7.1.4 Classification**

When companies have difficulty determining if their items are controlled or not, they can submit a request for classification service to the Korea Strategic Trade Institute.

#### **7.1.5 Import Certificate**

When a foreign exporter requires a certificate proving the credibility of an end-use/user from an importing party, the importer can apply for an Import Certificate issued by the Korean Government. The government issues Korea Import Certificates to confirm that the supply in question is imported and used by Korea as declared in the contract.

### **7.2 Import Control**

According to the Korean Foreign Trade Act, since 2000, the foreign trade has been completely liberalized, and any individual or enterprise can freely engage in foreign trade activities. Just to facilitate Customs clearance and Customs statistics, KCS and MOTIE encourage the implementation of the “numbering system”, that is, encourage foreign trade enterprises to apply for a fixed number corresponding to the enterprise to the Korea Trade Association, and fill in the Customs clearance. However, the import of special commodities such as drugs, pesticides, hazardous chemicals, petroleum, cigarettes, ginseng, designated agricultural and aquatic products, and foreign periodicals and films must still be licensed in accordance with relevant laws.

In accordance with WTO rules, Korea has basically eliminated hard controls on agricultural imports. At the same time, Korea has effectively established a quality and safety management system for agricultural products using quarantine and health standards.

For imported industrial products, Korea mainly implements safety certification according to domestic laws. Among them, some textiles, chemicals, machinery, civil works and daily necessities must be submitted to the certification body for the Compliance Program application after passing the inspection by the inspection agency, and Korea also enforces compulsory certification for imported industrial products.

### 7.3 Protection of Wild Animals and Plants

KCS is contributing to international protection of wild animals and plants in danger of extinction by confirming whether the relevant exporter or importer has obtained an export certificate or a permit certificate when exporting or importing endangered wild animals and plants and also comparing and checking them against actual goods, thereby detecting and punishing smuggling disguised under the cloak of legality, etc.

Table 2 Export and/or Import Restrictions subject to CITES in Korea

Classification	Animals and Plants Subject to CITES Restrictions	Export and/or Import Restrictions of Korea
Annex I species	Internationally endangered animals and plants; 556 species including lions, tigers and agaves	International trade in such animals for commercial purposes is prohibited. Obtainment of an export certificate or an import permit is required.
Annex II species	Animals and plants which are not in danger of extinction now but are feared to fall in danger of extinction in future; 262 species including deer, owls and cactuses	International trade in such animals and plants for commercial purposes is permitted. However, obtainment of an export certificate or an import permit is required.
Annex III species	Animals and plants designated by individual countries concerned in order to protect their own animals and plants; 241 species including Indian vipers and Nepal poppies	International trade in such animals and plants for commercial purposes is permitted. Obtainment of an export certificate, an import permit or a certificate of origin is required.

Source: KCS website.

Major endangered animals and plants illegally shipped or carried into Korea and detected by the Customs:

- Tiger bones and flesh;
- Tiger skins;
- Ivories;
- Bear gallbladders;

- Pangolins.

Any person who ships CITES species into or out of Korea without filing an import or export declaration will be punished. Any person who prepares false required documents for Customs clearance of species subject to CITES restrictions and gets them cleared through Customs by fraudulent means or any other illegal means will be punished.

## 8. CUSTOMS DUTIES AND TAXES

### 8.1 Summary of Import Duties

According to the WTO, the overview of import Duty in Korea is shown in the table below.

Table 3 Summary of Korea Tariffs

Summary	Total			Ag			Non-Ag		
	13.7			56.9			6.8		
Frequency Distribution	free	0~5	5~10	10~15	15~25	25~50	50~100	>100	NAV
	Tariff lines (in %)								
Ag MFN applied	5.5	17.7	22.4	1.2	12.9	28.1	2.0	10.0	3.2
Non-Ag MFN applied	16.6	12.1	61.1	6.4	3.8	0.0	0.0	0	0.0
Product groups	MFN applied duties								
	AVG			Duty-free in %			Max		
Animal products	21.5			3.1			89		
Dairy products	66.0			0			176		
Fruit, vegetables, plants	59.3			0.2			887		
Coffee, tea	56.4			0			514		
Cereals & preparations	187.1			0.2			800		

Oilseeds, fats & oils	40.7	3.6	630
Sugars and confectionery	15.7	0	243
Beverages & tobacco	31.4	0	270
Cotton	0.0	100.0	0
Other agricultural products	20.4	21.5	754
Fish & fish products	16.7	0.4	32
Minerals & metals	4.6	27.0	8
Petroleum	4.5	3.3	8
Chemicals	5.6	6.4	59
Wood, paper, etc.	2.4	64.5	13
Textiles	9.0	1.5	13
Clothing	12.5	0	13
Leather, footwear, etc.	7.6	2.7	16
Non-electrical machinery	5.9	22.6	13
Electrical machinery	6.0	21.2	13
Transport equipment	5.7	24.9	10
Manufactures	6.1	16.8	13

Source: WTO Statistics.

## 8.2 Duty Rates

The rates of Customs duties imposed on imported goods shall be as follows:

- Basic duty rates;
- Provisional duty rates;
- Other duty rates prescribed by Presidential Decree or Ordinance of the Ministry of Economy and Finance.

Basic duty rates and provisional duty rates shall be governed by Schedules of Tariff Rates and provisional duty rates shall take priority over the basic duty rates in the application thereof. Other duty rates

prescribed by Presidential Decree or Ordinance of the Ministry of Economy and Finance shall take priority over any other duty rates.

Duty rates shall be preferentially applied only if such duty rates are lower than basic duty rates, provisional duty rates and other duty rates. Provided that, the rates of tariff concessions made at a rate equivalent to the difference between domestic and foreign prices in tariff negotiations with an international organization and the rates of tariff concessions (including the rates of tariff concessions made to the market access quota) made to goods prescribed by Presidential Decree among agricultural, forest and livestock products to which a tariff concession was made at a rate higher than basic tariff rates in the process of opening the domestic market shall take priority over basic tariff rates and provisional tariff rates in the application thereof.

### **Adjustment of Duty Rates**

- Anti-Dumping Duties;
- Countervailing Duties;
- Retaliatory Duties;
- Emergency Duties and Provisional Emergency Duties;
- Special Emergency Duties on Agricultural, Forest and Livestock Products;
- Adjusted Duties;
- Quota Duties;
- Seasonal Duties.

### **International Cooperation Tariffs**

- Beneficial Tariffs  
With respect to goods imported to Korea from any country which does not enjoy benefits granted under any tariff treaty, benefits regarding tariffs within the limit of the benefits granted under any treaty already concluded with a foreign country may be granted to such goods.
- General Preferential Duties  
With respect to goods from developing countries, Customs duties may be imposed on such goods at a rate lower than the basic tariff rate.

## Application of Tariff Rates

Notwithstanding other statutes, simplified tariff rates may be applied to goods prescribed by Presidential Decree among the following goods:

- Goods imported by travelers or crew of any means of transportation navigating overseas as their personal effects;
- Postal items;
- Goods used to repair or replace part of any vessel and aircraft overseas;
- Consignments or unaccompanied goods.

Where goods, on which an import declaration is filed en block, are different from each other in tariff rate by item, the highest tariff rate may be imposed upon request from a person who files such import declaration.

## 8.3 Exemption or Reduction

In Korea, import duties may be exempted and reduced on following goods:

### A. Goods for Diplomats

### B. Goods subject to Uneven Duty Rates

Goods mainly include the parts and raw materials (including re-imported parts that are repaired or manufactured in a foreign country after having been exported and raw materials that are processed and repaired) used by a small or medium enterprise under the Restriction of Special Taxation Act to manufacture or repair any of the following goods at a factory designated by the head of a Customs office: aircraft (including parts); equipment used to manufacture semiconductors (including accessory machinery thereof).

### C. Goods Used for Scientific Research

If Customs duties are reduced or exempted, the reduction and exemption rate thereof shall be determined by Ordinance of the Ministry of Economy and Finance.

#### **D. Goods for Religion, Charity and Disabled**

Customs duties may be exempted on any of the imported goods, which had been:

- donated by foreign countries to churches, temples and religious organizations, and for the purposes of charity and relief;
- donated to charity and relief establishments or social welfare establishments;
- donated by the International Foundation of the Red Cross, foreign Red Cross associations and international organizations for the purposes of international peace service activities or international amity activities;
- specially made or manufactured for the use by the hearing, visually or speech impaired, physically disabled, chronic renal failure patients, patients with rare or incurable diseases, etc.

#### **E. Goods Used by Government**

- goods donated to the State agencies or local governments for official use;
- military goods imported by the Government;
- goods used for the security service for the head of the State; goods returned from military forces stationed overseas or overseas diplomatic missions, which were used for official business;
- goods imported for the purposes of emergency communications and radio wave controls that such goods are critically necessary for national security;
- publications, records, recorded tapes, recorded slides, exposed films and other goods and materials similar thereto which have been imported directly by the government;
- goods from among machinery, appliances, etc. imported by the State or local governments to measure or analyze environmental pollution (including noise and vibration);
- goods imported by the State and local governments (including corporations established, invested or contributed by the State or local governments) to measure, conserve or improve the quality of drinking water;
- goods imported by the Director of the National Intelligence Service or a person entrusted by the Director of the National Intelligence Service determined as critically necessary for national security.

## F. Specific Goods

- used for breeding animals and plants and improving seeds;
- imported by participants for the exhibitions at fairs, international sports competitions and other events similar thereto;
- goods which are donated by foreign countries for the purposes of restoration support and rescues in cases of nuclear accidents or radioactive emergencies;
- fish and marine life (including fishery products processed or manufactured using such fish and marine life in Korean fishing boats) collected or caught by Korean fishing boats in the territorial waters of any foreign country by obtaining permission from the government of such foreign country;
- fish and marine life which are collected or caught by any Korean fishing boat in cooperation with foreign fishing boat;
- fish and marine life that a person collects or catches through a joint venture with any foreigner by obtaining permission and conforming with the requirements;
- non-recyclable goods which are used to pack fish and marine life collected or caught by Korean fishing boats, etc.;
- goods which are used as raw materials for a pilot production to verify whether machinery and appliances manufactured by a domestic small and medium enterprise, upon a request by a foreign vendee, are in conformity with specifications and functions specified by such foreign vendee;
- goods which belong to the head of a foreign country, his/her family and entourage members who visit Korea;
- parts and equipment of a dismantled Korean ship or means of transportation which has been wrecked;
- goods necessary to construct or repair bridges, communications facilities, undersea tunnels and other facilities corresponding thereto, to link Korea and foreign countries;
- goods as certificates to be placed on exported goods, indicating that such exported goods are in conformity with conditions, including but not limited to the quality, standard and safety specified by the competent agency of any importing country;
- goods used for restoring damage caused by an accident to any Korean ship or aircraft overseas at the expense of any foreign insurance company or foreign offender;
- goods imported as parts used to repair the breakdown of any Korean ship or aircraft, which is

caused by an accident overseas during a warranty period at the expense of any foreign vendor, which is specified in a sales contract;

- goods which are imported as sporting goods (including their components) for the Olympic Games, Paralympics, Deaflympics, Asian Games and Disabled Asian Games;
- materials necessary to construct, maintain and ornament national cemeteries and funeral goods used to make coffins of those who are buried in national cemeteries and the boxes of remains;
- personal belongings of any predecessor that are inherited to any person residing in Korea following the death of such predecessor.

### **G. Small-sum Goods**

- medals, testimonials or citations and awards corresponding thereto which have been granted to residents in Korea;
- records and other documents;
- goods determined by Ordinance of the Ministry of Economy and Finance as commercial samples or advertising materials;
- goods determined by Ordinance of the Ministry of Economy and Finance as small-sum goods received by residents in Korea.

### **H. Goods Used to Prevent Environmental Pollution**

Customs duties may be reduced or exempted on any of the following imported goods, which are difficult to be manufactured in Korea:

- machinery, appliances, facilities and equipment as goods used to prevent emissions of pollutants (including noise and vibration) or treat pollutants;
- machinery and appliances as goods used to treat wastes (including recycling);
- factory automation machines, appliances, facilities and equipment (including its component appliances) and their key parts as machinery or electronic technology-applied goods or data-processing technology-applied goods.

### **I. Goods for Re-exportation**

Customs duties may be exempted on goods re-exported within particular periods from the date on which an import declaration thereon has been accepted.

### **J. Goods for Re-importation**

Customs duties may be exempted on goods exported from Korea (including bonded processing exports) that are reimported without being manufactured, processed, repaired or used in any foreign country within two years from the date on which an export declaration was approved.

### **K. Reduction due to Deterioration**

When goods are deteriorated or damaged before an import declaration thereon is accepted, Customs duties thereon may be reduced.

Where Customs duties are additionally collected on goods, whose Customs duties have been reduced or exempted, if such goods are deteriorated or used, thereby diminishing their value, such additional Customs duties may be reduced.

### **L. Overseas Trusted and Processed Goods**

Goods which are manufactured or processed overseas using domestic raw materials and components exported for such purpose such as processing or repairing.

## **8.4 Additional Duties**

When the head of a Customs office collects underpaid Customs duties, he/she shall collect the aggregate of the following amounts as additional duties:

- 10/100 of the relevant shortage of Customs duties;
- The amount calculated by applying the following formula:
- Relevant shortage of Customs duties × period from the date following the time limit for payment to the date on which a revised return is filed or a duty payment notice is served × interest rate.

Where a duty payer has under-reported Customs duties by an unjustifiable means, the Customs shall collect the aggregate of the amount equivalent to 40/100 of the relevant shortage of Customs duties and the amount as additional duties.

In imposing and collecting Customs duties on goods imported without filing an import declaration thereon, the Customs shall collect the aggregate of the following amounts as additional duties:

- 20/100 of the relevant amount of Customs duties (40/100, if the duty payer has been punished for committing an offense or received a disposition by notice);
- The amount calculated by applying the following calculation formula:
- Relevant amount of Customs duties × Period from the date of import to the date on which a duty payment notice was served × Interest rate.

## 8.5 VAT and Special Excise Tax

Korea has a flat 10 percent Value Added Tax (VAT) on all imports and domestically manufactured goods.

A Special Excise Tax of 10-20 percent is also levied on the importation of certain luxury items and durable consumer goods.

Duties and taxes must be paid in Korean Won within 15 days after goods have cleared Customs.

## 8.6 Customs Fees and Surcharges

If Customs duties are not fully paid by the specified time limit, a surcharge equivalent to 3/100 of such Customs duties in arrears shall be collected from the date on which the said time limit expires.

If Customs duties in arrears are not paid, a surcharge equivalent to 12/1000 of such Customs duties in arrears plus the surcharge imposed shall apply per month elapsed from the date on which the time limit for payment expires. In such cases, the period for which the increased surcharge is additionally collected shall not exceed 60 months.

The surcharge of Customs duties in arrears (including an internal tax collected by the Customs, if any) shall less than one million won. The surcharge shall not apply to any goods directly imported by the State or local governments.

When the Customs pays or appropriates Customs refunds, an amount calculated according to the interest rate accruing for a period from the initial date in calculating on the refund of Customs duties, to the date a determination of refund or determination of appropriation is made, shall be added as a surcharge to such Customs refunds.

The collection of Customs duties in cases of absence of security shall apply mutatis mutandis to the collection of a penalty surcharge where a person liable to pay a penalty surcharge by the payment deadline.

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## 9. HS CLASSIFICATION

Korea is a contracting party of the international convention on the WCO Harmonized System and follows the rules of commodity classification of the Harmonized System.

The Minister of Strategy and Finance may establish standards necessary for applying tariff classifications. A Tariff Classification Committee was established in the Korea Customs Service to deliberate on the matters with new establishment or modification of standards for the application of the tariff classifications.

Please visit the [website](#) using the description of the goods or Harmonized System (HS) code for more details and visit the [website](#) where HS System of Korea can be downloaded in an excel format and only available in Korean.

## 10. CUSTOMS VALUATION

### 10.1 First Method

The first method is the principled method that determines the dutiable value of goods. Most dutiable values are determined by the first method that determines the dutiable value of imported goods based on their transaction price.

The dutiable value of imported goods shall be the transaction price adjusted by adding up the following amount to the price of goods sold for export to Korea that has been actually paid or is to be paid by a vendee provided that the following amount shall be added based on the objective and quantifiable data, and if such data are unavailable, the dutiable value shall be determined by other methods instead of:

- Commissions and brokerage fees to be borne by a vendee except the buying commissions shall be excluded;
- Cost involved in containers handled in the same manner as the relevant imported goods, labor cost and material cost incurred in packing the relevant imported goods, all of which to be borne by a vendee;
- The amount calculated by appropriately allocating the price or the balance of the discount for the goods and services in consideration of factors, such as the total production of the relevant imported goods, if a vendee supplies directly or indirectly, the goods and services, free of charge or at a discounted price, for the production and exportation of the relevant imported goods;
- The amount computed, which is paid for the patent right, the utility model right, the design right, the trademark right and other rights similar thereto;
- The amount which, directly or indirectly, is paid to a vendor, among the proceeds accruing from the resale, disposal or use of the relevant imported goods;
- The amount determined, which are freight, insurance bill and other costs involved in transportation to the port of entry.

"The price that has been actually paid or is to be paid by a vendee" means the total amount paid or to be paid by the vendee for the relevant imported goods, including the amount offsetting the debt of a vendor by the price of the relevant imported goods, the amount of a vendor's debt to be repaid by the vendee,

and other indirect payment

If any of the following amount is clearly separated from the total amount paid or to be paid by a vendee, the amount computed shall be deducted from the dutiable value:

- Costs involved in the construction, installation, assembling, repair and maintenance of the relevant imported goods, which are undertaken after importation thereof, or costs involved in providing the technical support for the relevant imported goods;
- Freight and insurance fees necessary for transporting the relevant imported goods after their arrival at the port of entry and other costs involved in their transportation;
- Customs duties and public charges imposed on the relevant imported goods in Korea;
- If the relevant goods are imported on a deferred payment basis, the interest rate on such deferred payment.

In any of the following cases, the dutiable value of the relevant imported goods shall not be the transaction price but shall be determined by the methods provided for in the Customs Act. In such cases, the head of a Customs office shall give a prior written notice to a person liable for duty payment of the grounds that give rise to the occurrence of any of the following cases, and provide them with an opportunity to propose their opinion:

- Where the disposal or use of the relevant goods is restricted except that cases, such as where there is a restriction deemed by the Customs office as not practically affecting the transaction price;
- Where the effectuation of transaction or the determination of price of the relevant goods is affected by conditions or circumstances which cannot be counted in terms of money;
- Where some of the proceeds accruing from the resale, disposal or use of the relevant goods after importation thereof is paid, directly or indirectly, to a vendor except that this shall not apply where a proper adjustment can be made;
- Where a special relationship between a vendee and a vendor affects the determination of the price of the relevant goods except that cases, such as where it is determined in the manner consistent with a normal pricing practice in the relevant industry sector.

The head of a Customs office may request the person liable for duty payment to provide data attesting that the relevant declared dutiable value is correct. The head of the Customs office shall endeavor to

achieve appropriate cooperation, such as information exchange, with a person liable for duty payment in order to determine the dutiable value as soon as possible and notify the relevant person liable for duty payment of the reason why it is impractical to recognize the declared value as the dutiable value, along with the dutiable value determined.

## **10.2 Second Method**

In case where the first method cannot be applied, the second method is used to determine the dutiable value of goods based on the transaction price of goods of the same kind and quality that has previously been recognized as a dutiable value and satisfies certain requirements.

## **10.3 Third Method**

In case where neither of the first and second methods can be applied, the third method is used to determine the dutiable value of goods based on the transaction price of similar goods that has previously been deemed as a dutiable value and satisfies certain requirements.

## **10.4 Fourth Method**

In case where none of the first, second and third methods can be applied, the domestic sale price after import clearance minus certain costs, etc. is determined to be the dutiable value of the relevant goods.

## **10.5 Fifth Method**

In case where none of the first to fourth methods can be applied, the dutiable value of imported goods is determined based on the price obtained by calculating the costs incurred in the production of such goods based on the cost statement of the product presented by the manufacturer of the exporting country.

## **10.6 Sixth Method**

In case where none of the first to fifth methods can be applied, the dutiable value of goods is determined based on the reasonable standards which conform to the principles of the first to fifth methods.

Above methods must be applied sequentially starting with the first method, and any evaluation method of lower priority can be applied only when the dutiable value determined by the method of higher priority cannot be applied. However, the fifth method may be applied in advance of the fourth method in case

where the person liable for duty payment makes a request for it.

## 10.7 Value Disapproval

- In case where any dutiable value declared by any person liable for duty payment is substantially different from the dutiable value of the goods of the same kind and quality or the similar goods;
- In case where dutiable values declared by a person liable for duty payment have substantially fluctuated although such person has continued to import goods from the same supplier;
- In case where declared goods are crude oil, minerals, grains, etc., the international market prices of which are published, and the declared values are substantially different from their published international market prices;
- In case where there is a substantial difference between the previously declared value and the newly declared value after the relevant person liable for duty payment changes his/her customer;
- In case where a person liable for duty payment fails to submit any related data or in case where it is difficult to recognize the declared value as the dutiable value, the head of the relevant Customs office shall not apply the first method but determine the dutiable value by means of one of the second to sixth methods.

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## 11. RULES OF ORIGIN

In general, a country of origin refers to the country or region where all of the relevant goods are produced, processed or manufactured; where the relevant goods are produced, processed or manufactured in at least two countries, a country where the final process of producing, processing and manufacturing the relevant goods is practically undertaken to the extent that such goods are fully given with their essential characteristics. Under the Foreign Trade Act of Korea, most of the changes are based on HS change standards, and some process items or value-added standards may be applied.

Imported goods to Korea are required to carry the country of origin labels in accordance with statutes.

If a violation is insignificant, the goods in question may be permitted to undergo the Customs clearance procedure after having such insignificant violation supplemented or corrected.

In Korea, the criteria for determining the country of origin include Preferential Rules of Origin, which provides tariff benefits over Customs goods in other countries. It is a binary system that defines Non-Preferential Rules of Origin which refers to purposes other than those for the application of preferential tariffs, such as the purpose of indicating the country of origin for protection of consumers and the exclusion of anti-dumping tariffs.

## 11.1 Determination Criterion

### A. Wholly Produced Criterion

When a product is fully acquired, produced, reared, or propagated in one country, this system recognizes the country of origin.

### B. Substantial Transformation Criterion

If the goods are produced in more than one country, this is the criterion to recognize the country of origin where more important processes have been performed.

The specific judgment on the substantial transformation is mainly based on the HS code change, but for the goods defined by the value-added criterion or the processing criterion, the country of origin is determined by applying those criteria. However, a country that has only performed simple processes such as packaging, labeling, cutting, assembly and screening for transportation and preservation is not recognized as origin.

### C. Value-added Criterion (or Value Ratio of Parts)

It recognizes the country of origin in a country that occupies value added above a certain ratio after calculating the price ratio (value added rate) of raw materials and components in the goods. The Foreign Trade Act gives origin to countries that produce more than 35% of the value-added rate.

## D. Processing Criterion

Using this criterion, the country of origin is a country that processes important textiles, livestock and meat (such as clothes, towels, socks and ties).

Please visit the [website](#) for more details.

## 11.2 Certificate of Origin

### 11.2.1 Types of Certificate of Origin

#### A. Certificate of Origin of Form (Form A)

Certificate issued when it is proved to conform to the origin standard of the country (arrangement) that grants preferential tariff benefits to certain goods produced in a particular country, in accordance with the GSP or agreement of the preferential donor country. Issued by an authority having the right to issue preferential certificates, such as national agencies, and symbols that prove that they conform to the standards of origin, such as agreements (A, B, C, D, etc.), although the forms vary somewhat depending on each agreement. And value added (%) are listed.

#### B. General Certificate of Origin

Generally used for purposes other than the application of preferential tariffs, such as labeling of origin, issued by the Chamber of Commerce and Industry, the shape, nature, form or use of natural products or raw materials used in the manufacturing process of a particular country is permanent in any particular country. In the event of a substantial change, a certificate will be issued by recognizing that the goods are domestic.

#### C. Certificate of Origin / Processing

This certificate is issued when the manufacturing process performed in a particular country is insufficient and cannot be made in that country, which means that it has been processed in that country.

## **D. Certificate of Origin / Re-Export**

This is a certificate issued when imported goods from other countries are re-exported without separate processing.

### **11.2.2 Usage of Certificate of Origin**

A certificate of origin shall be submitted under the following to cases:

- Firstly, anyone who intends to receive bound tariffs subject to the legal regulations or agreement shall submit a Certificate of Origin for Preferential Cases.
- Secondly, for items that fall under the following paragraph shall submit the general Certificate of Origin.

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## **12. CUSTOMS ADVANCE RULINGS**

### **12.1 Tariff Classification**

A person who intends to import or export goods, a manufacturer of goods to be exported, a licensed Customs broker, a Customs brokers' corporation, or a corporation for handling clearance may file an application for a prior examination on the tariff classification prior to filing an export or import declaration.

Upon receipt of an application for examination, the Commissioner of KCS shall examine the tariff classification and notify the applicant of the results thereof. If it is impracticable to examine such tariff classification due to the insufficiency, etc. of documents presented, a notice of such fact shall be given to the applicant.

KCS shall publicly announce or publish the tariff classification to be applied to the goods for which the tariff classification is examined and the goods for which the applicable tariff classification is modified. The

Customs may choose not to publicly announce or publish the tariff classification to be applicable to the relevant goods if he/she deems it inappropriate to publicly announce or publish the tariff classification for such reason that it contains trade secret of the applicant.

## 12.2 Customs Valuation

### 12.2.1 Prior Examination of Methods for Determining Dutiable Value

A person who intends to import or export goods, a manufacturer of goods to be exported, a licensed Customs broker, a Customs brokers' corporation, or a corporation for handling clearance may apply for a prior examination before he/she files a value report.

Upon receipt of a written request, the Customs shall examine the method for determining the dutiable value and notify the applicant of the result within the period.

### 12.2.2 Advance Pricing Arrangement

A person, who files an application for advance pricing arrangement because of his/her inquiry about the matter may simultaneously file an application for the prior approval of the method of calculating the arm's length price prescribed in the Adjustment of International Taxes Act. In such cases, the Customs shall arrange in advance the dutiable value of Customs duties and the arm's length price for a national tax in consultation with the National Tax Service.

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## 13. FREE TRADE AGREEMENTS

Traditionally, Korea has prioritized multilateral trade negotiations under the WTO system. However, with the rise of regional FTAs, Korea has developed rapidly in this field and achieved remarkable results.

Table 4 Current Status of FTAs

Classification	Countries Having Concluded or Expected to Conclude FTAs with Korea	Progress Situation
FTAs having become effective (15 FTAs, 52 countries)	Chile	Became effective (April 1, 2004)
	Singapore	Became effective (March 2, 2006)
	EFTA (4)	Became effective (September 1, 2006)
	ASEAN (10)	Became effective (June 1, 2007)
	India	Became effective (January 1, 2010)
	EU (28)	Became effective (July 1, 2011)
	Peru	Became effective (August 1, 2011)
	USA	Became effective (March 15, 2012)
	Turkey	Became effective (May 1, 2013)
	Australia	Became effective (December 12, 2014)
	Canada	Became effective (January 1, 2015)
	China	Became effective (December 20, 2015)
	New Zealand	Became effective (December 20, 2015)
	Vietnam	Became effective (December 20, 2015)
Colombia	Became effective (July 15, 2016)	
Agreement reached (1 FTAs, 6 countries)	*Central America (6)	Declaration of a substantial agreement reached (November 16, 2016)
Negotiation in progress	Korea-China-Japan	10th working-level negotiation (April 2016)
	*RCEP	17th negotiation (February 2017)
	Ecuador	5th negotiation (November 2016)
	Israel	2nd negotiation (December 2016)
Creation of conditions for resuming negotiations	Indonesia	7th negotiation (February 2014)
	Japan	6th negotiation (November 2004)
	Mexico	2nd negotiation (June 2008)
	*GCC	3rd negotiation (July 2009)

\* RCEP (Regional Comprehensive Economic Partnership): 10 countries including ASEAN, Republic of Korea, China, Japan, India, New Zealand, and Australia

\* Central America: 6 countries including Panama, Costa Rica, Guatemala, Honduras, El Salvador, and Nicaragua

\* GCC (Gulf Cooperation Council): Saudi Arabia, Kuwait, UAE, Bahrain, Oman, and Qatar

Source: KCS website.

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## 14. BONDED SYSTEM

### 14.1 Bonded Area

A bonded area is a place designated or licensed by the Customs because of the necessity of efficient cargo management and Customs administration. It is a place used for the storage of exported, imported or returned foreign goods intended for Customs clearance; manufacturing, processing or other similar work using foreign goods or foreign and domestic goods as raw materials; exhibition of foreign goods; construction works using foreign goods; sale of foreign goods; inspection of exported or imported goods, etc.

#### Types of Bonded Areas

Bonded areas are classified into designated bonded areas, licensed bonded areas and general bonded areas. The designated bonded areas are further categorized into the designated storage places and the Customs inspection places; the licensed bonded areas are categorized into the bonded warehouse, the bonded factory, the bonded exhibition, the bonded construction work site and the bonded store.

In order to ensure the smooth distribution and swift clearance of bonded goods for the owner, a period of storing the goods is set and operated in a bonded area. In order to secure duty claims, maintain order, etc. in the bonded area, the cargo manager is responsible for keeping goods in custody in a designated bonded area and the operator is responsible for keeping goods in custody in a licensed bonded area.

When shipping goods into or out of a bonded area, if its cargo manager or operator intends to file a shipment declaration or carry out the bonded work, he or she must fulfill the required Customs formalities including obtainment of permission from the Customs office.

In addition, in the case of a bonded area recognized as free from any impediment to Customs monitoring and the control of goods, direct Customs restrictions are eased, thus making it possible to carry out Customs administration duties efficiently and maintain order, by implementing the self-managed bonded area system which entrusts the management of goods to the operator or cargo manager so that he or she may manage goods autonomously.

The self-managed bonded area must by all means employ a bonded goods caretaker as a professional cargo manager in charge of managing goods stored in the bonded area.

A bonded goods caretaker performs such duties as monitoring and confirming bonded cargos and domestic goods shipped into or out of a bonded area, etc. To qualify as a bonded goods caretaker, one must be a person who has served as a general public official in charge of Customs administration affairs for five years or more or a person who has passed a qualification examination in the management of bonded goods. Any person who has passed the test will be issued with a bonded goods caretaker certificate.

The bonded goods caretaker qualification examination covers five subjects: export and import clearance procedures, management of bonded areas, management of bonded goods, self-management and Customs penal provisions, and export and import security management.

Table 5 Classification of Bonded Areas

Classification	Concept	Type	Purposes of Establishment	Feature
Designated	<ul style="list-style-type: none"> <li>- Designating any land, building or other facilities owned or managed by the State, a local government or a corporation in charge of administering airport (harbor) facilities as a bonded area</li> <li>- Designator: Head of a Customs office</li> </ul>	<ul style="list-style-type: none"> <li>- Designated storage place</li> <li>- Customs inspection place</li> </ul>	<ul style="list-style-type: none"> <li>- For the convenience of Customs clearance, temporary storage, and inspection</li> <li>- For the public purposes of administration</li> </ul>	Passive
	<ul style="list-style-type: none"> <li>- Applying for a license for establishing and operating a licensed bonded area on any privately-owned land or building</li> <li>- Licensor: Head of a Customs office</li> </ul>	<ul style="list-style-type: none"> <li>- Bonded warehouse</li> <li>- Bonded factory</li> <li>- Bonded construction site</li> <li>- Bonded exhibition place</li> <li>- Bonded store</li> </ul>	<ul style="list-style-type: none"> <li>- For storage, manufacture, exhibition, construction, and sale</li> <li>- Pursuit of private profits</li> </ul>	Active
General	<ul style="list-style-type: none"> <li>- Designating a general bonded area from among particular areas</li> <li>- Licensor: Commissioner of the Korea Customs Service</li> </ul>	<ul style="list-style-type: none"> <li>- General bonded area</li> </ul>	<ul style="list-style-type: none"> <li>- Exportation and promotion of logistics</li> <li>- Private and public profits (harmonization through investment promotion, etc.)</li> </ul>	Active

## 14.2 Bonded Transportation

Bonded transportation means transporting cargos imported from a foreign country into another bonded area in the original form of foreign goods after filing a declaration with or obtaining approval from the relevant Customs office without clearing them through Customs in the port of entry. Such bonded transportation is accompanied by constraints because goods are transported under the condition of deferment of payment of Customs duties.

For example, an owner of goods who has a factory in Seoul has two methods to clear goods which have arrived in Busan through Customs. One is to transport such goods to Seoul after clearing them through Customs in Busan, and the other method is to file a bonded transportation declaration or apply for approval, carry out bonded transportation from Busan to Seoul, and then clear the goods through Customs.

Table 6 Bonded Transportation Declaration and Approval

Bonded transportation declarant / approval applicant	Owner of the goods, a licensed Customs broker, a bonded transportation operator
Declaration on bonded transportation (in principle)	Any person who intends to carry out bonded transportation shall file a declaration.
Approval of bonded transportation	<p>Approval shall be obtained in any of the following cases where such approval is deemed necessary for monitoring goods, etc.: Provided, That with respect to goods whose bonded transportation is not deemed an impediment to the control of cargoes and the prevention of illegal export and import even if they are not subjected to approval, from among the goods described below, such goods may be transported in a bonded manner upon a report:</p> <ol style="list-style-type: none"> <li>1) Goods intended to be again transported in a bonded manner into other bonded area from among goods which are transported in a bonded manner</li> <li>2) Goods subject to quarantine provided for in the Quarantine Act, the Plant Protection Act and the Act on the Prevention of Livestock Epidemics</li> <li>3) Dangerous substances provided for in the Safety Control of Dangerous Substances Act, and toxic chemicals provided for in the Toxic Chemicals Control Act</li> <li>4) Non-metallic elements</li> <li>5) Goods for which 30 days have elapsed from the day on which they were shipped into a bonded area for the first time after arriving in Korea</li> <li>6) Goods whose Customs clearance is withheld or whose import declaration cannot be accepted</li> <li>7) Goods which are under transportation into a non-bonded area upon approval for storing them therein under Article 156 of the Customs Act</li> <li>8) Non-bulky and high-priced goods such as rare stones, semi-rare stones, precious metals, oriental medicines, medicines and perfumes, etc.</li> <li>9) Goods which the owner or the title holder of the cargo directly transports in a bonded manner</li> <li>10) Goods whose place for Customs clearance is limited under Article 236 of the Customs Act</li> <li>11) Goods which are transported in a bonded manner by dividing up the goods on the basis of the Bill of Lading of the same owner on the cargo manifest</li> <li>12) Goods designated by the head of the relevant Customs office for the purpose of preventing illegal export and import</li> <li>13) Goods transported by the operator of a bonded transportation business who is under investigation or is waiting for a final judgment after being charged with violating the Act or any order given by the head of a Customs office in accordance with the Act</li> </ol>

Source: KCS website.

### **Carried-in Declaration**

Moving such goods through bonded transportation and then clearing them through Customs just as in the case mentioned above provides some conveniences for the owner of the goods, but it is necessary for him/her to file a declaration on the goods subject to bonded transportation (an application for approval) with the relevant Customs office, carry out bonded transportation of them, ship them into the bonded area, etc. of the Customs office in charge of the destination, and then submit a report of arrival.

### **Bonded Transportation Declaration**

In principle, a bonded transportation declaration or an application for approval should be filed after a cargo manifest of imported goods is submitted and the goods is shipped into the place of unloading, but it can be filed even before the vessel or the aircraft arrives at the port (airport).

In principle, all the foreign goods can be transported only by bonded transportation in Korea. However, the bonded transportation procedure is not required in the case of goods which are transported under the control of a postal service office in accordance with the Postal Service Act, goods subject to quarantine which are transported to the mooring or quarantine facility of the quarantine station after being taken over by a quarantine service office in accordance with the Quarantine Act, and the seized goods which are transported by a national agency.

### **Means of Bonded Transportation**

Any bonded transportation operator who intends to carry out bonded transportation of imported goods may use his/her own means of transportation or another bonded transportation operator's means of transportation. Any owner of goods can also use not only his/her own vehicle but also any other means of transportation without limitation if he/she carries out bonded transportation of his/her cargos directly. In this case, the owner of goods can perform the bonded transportation to the bonded area of the destination under his/her own responsibility after offering security equivalent to the relevant Customs duties.

### **Simplified Bonded Transportation**

The Customs may take any of the following measures by designating a bonded transportation business entity or goods, in consideration of the nature and form of goods subject to the bonded transportation and the credit rating, etc. of a bonded transportation business entity: the simplification of procedures for filing

any report, the omission of inspections, and the exemption from providing security.

### 14.3 Bonded Processing

In any bonded factory, manufacturing, processing or similar work thereto may be performed using foreign goods as raw materials or materials, or using foreign goods and domestic goods as raw materials or materials. No manufacturing, processing and similar work thereto may be performed using only domestic goods as raw materials or materials in any bonded factory without obtaining approval.

The business types of bonded factories in which imported goods are manufactured and processed, from among bonded factories, may be limited. The Customs may permit an import declaration on goods to be used in a bonded factory after undergoing Customs clearance to be filed after the goods are shipped into the bonded factory.

An operator shall file a report on the use of goods shipped into his/her bonded factory before the goods are used. In such cases, a Customs officer may inspect such goods. When foreign goods, the use of which shall be reported are determined and publicly notified as those that need to meet the requirements for permission, approval, labels and other requirements pursuant to any other Act and subordinate statutes, such as narcotics and firearms, the fulfillment of such requirements shall be verified.

When it is deemed necessary to develop processing trade or the domestic industry, the Customs may permit the work to be conducted outside the relevant bonded factory by determining a period, a place, goods, etc. A Customs officer may inspect the relevant goods when they are shipped out of the bonded factory. Foreign goods shipped into a designated place with permission granted shall be deemed to exist in a bonded factory until a designated period expires.

The Customs may permit the shipment of goods to be used for the bonded work directly to a workplace, other than a bonded factory. Where foreign goods or other goods manufactured using such foreign goods remain at the workplace, other than a bonded factory after the designated period expires, Customs duties on such goods shall be promptly collected from the operator of the relevant bonded factory who has been granted with permission for the relevant goods.

Where the work is done using foreign goods or using foreign goods and domestic goods as raw materials or materials, any goods therefrom shall be deemed goods which arrive in Korea from a foreign country. Any goods corresponding to the quantity and price of the foreign goods from among the goods therefrom

shall be deemed goods which arrive in Korea from a foreign country.

When any goods manufactured in a bonded factory are imported and an application for taxation on the foreign goods, which are raw materials of the relevant goods, has been filed in advance before a use report, Customs duties shall be imposed in accordance with the nature and quantity of the raw materials at the time the use report is filed. The Customs may permit the bonded factory satisfying the standards to file an application by raw material or goods, or for the entire bonded factory within the extent of one year.

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## 15. FEZS AND FTZS

### 15.1 FEZs

The Korean Government adopted the "Special Act on Designation and Management of Free Economic Zones" in December 2002 in order to create a more business-friendly environment by upgrading the country's industrial and economic systems to a world-class level and eliminating unnecessary regulations. The government has since led a nationwide expansion of FEZs by designating Incheon (2003), Busan-Jinhae, Gwangyang Bay Area (2003), Yellow Sea, Saemangeum-Gunsan, Daegu/Gyeongbuk (2008), East Coast and Chungbuk (2013) as FEZs.

FEZs guarantee freer and more extensive enterprise activities through a variety of tax benefits as well as relaxed regulations, favorable living environments, and swift administrative services.

#### **Tax Benefits**

For manufacturing firms (investing \$10 million or more), logistics businesses (investing \$5 million or more), tourism companies (investing \$10 million or more), project developers (investing \$50 million or more) and medical institutions (investing \$5 million or more), income tax and corporate tax are exempted for three years from the date of operating revenue generation and reduced 50% for two years thereafter.

Tariffs on imported capital goods are exempted, and local taxes such as acquisition tax and registration

tax are exempted for the first three years and 50% reduced for the following two years. The period of exemption can be extended up to 15 years and the reduction amount can also be increased in accordance with local government regulations.

### Financial Supports

Up to 50% of the construction costs for infrastructure facilities (e.g. provincial roads, utility conduits) within FEZs are borne by the government. In the case of anchor universities and research facilities established to attract foreign educational and research institutions, the central government provides local governments with financial support through a matching fund scheme during the preparation period and for up to five years after completion in order to cover rent costs, installation costs, labor costs, travel and settlement expenses for foreigners, and operating costs.

Please visit the [website](#) of MOTIE for more publications and the following FEZs official website:

- [Korean Free Economic Zones](#)
- [Incheon Free Economic Zone](#)
- [Busan-Jinhae Free Economic Zone](#)
- [Gwangyang Bay Area Free Economic Zone](#)
- [Yeallow Sea Free Economic Zone](#)
- [Daegul-Gyeongbuk Free Economic Zone](#)
- [Chungbuk Free Economic Zone](#)
- [East Coast Free Economic Zone](#)

## 15.2 FTZs

Free Trade Zones (FTZs) refer to local areas designated for the promotion of trade, global logistics and regional development. The Korean Government supports manufacturing, logistics, distribution, and trade activities within FTZs by using various measures such as tariff exemption and tax reduction. There are 13 FTZs in Korea, including seven industrial complexes, five seaports and one airport.

**Industrial Complex-type FTZs**

- Masan;
- Gunsan;
- Daebul;
- Donghae;
- Yulchon;
- Ulsan;
- Gimjae.

**Industrial Complex-type FTZs (seaports and airport)**

- Busan Port;
- Gwangyang Port;
- Incheon Port;
- Pohang Port;
- Pyeongtaek-Dangjin Port;
- Incheon International Airport.

**Incentives**

- **Tariff Exemption**  
Foreign goods brought into an FTZ are tariff-free, and tariffs are imposed when they leave the FTZ. No VAT is charged on foreign goods and services exchanged among tenants or on raw materials for export.
- **Low Rent**  
Rent is around 1% of land price (versus 2.5% set by the State Property Act) and qualifying foreign-invested companies are also offered rent-free leases.
- **Tax Breaks for Foreign-invested Firms**  
Eligible industries are entitled to a reduction of national and local taxes for up to seven and 15 years, respectively, in accordance with the size of investment.

- Ease of Regulations

Tenants have no obligation to employ the physically challenged, “persons of national merit” and senior citizens. They are also entitled to lease extensions (50 years → 100 years) and exemption from the Traffic Inducement Charge.

Please visit the [website](#) for brochure of FTZs and the following some FTZs official website:

- [Masan Free Trade Zone](#)
- [Gunsan Free Trade Zone](#)
- [Daebul Free Trade Zone](#)
- [Donghae Free Trade Zone](#)
- [Yulchon Free Trade Zone](#)
- [Ulsan Free Trade Zone](#)
- [Gimje Free Trade Zone](#)

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## 16. CUSTOMS POST-CLEARANCE AUDIT

In July 1996, KCS introduced the Post-Clearance Audit to deal with the rapid increase in the volume of imports and exports, and to expedite Customs clearance procedures. Within 90 days after acceptance of import declaration, KCS examines, on case-by-case basis, correctness of payment of duties and taxes on selected import cases, which are electronically selected by risk management methods. This is mainly a paper-based audit. As a consequence, there was a sharp decline in the time taken for Customs clearance, which has also contributed to cost savings for businesses as well as for the government. The scope of the audit covers all import/export/drawback activities including HS classification and Customs valuation for the past 5 years. KCS aims to screen each and every transaction over that 5 years period rather than only sampling some transactions so that additional duties can be maximized.

There are three main types of Customs Post-Clearance Audits in Korea:

- Corporate Audit: Regularly conducted (typically every 4 years);
- Planned Audit: Irregularly conducted (normally targeting an industry);
- Comprehensive Audit: Regularly conducted for AEO licensed companies (typically every 5 years).

### **Common Errors**

KCS has identified some of the more common reasons for reduced compliance:

- Failure to retain adequate records  
All relevant commercial documents must be retained for five years from the date of the transaction with Customs.
- Imports incorrectly entered  
All imported goods must be declared to Customs in accordance with the approved form, be accurately described and correctly classified using the Harmonized Tariff, and any surplus goods reported. Items not ordered, samples and promotional merchandise must also be entered.
- Customs value does not include all associated costs  
All costs associated with the goods are legally required to be considered when determining the dutiable value. These may include costs relating to advertising, assists, commissions, credits, escalation charges, indirect payments, rebates, research and development or royalties.
- Origin incorrectly identified  
Confirmation of country of origin is required in order to claim preferential rates of duty.
- Failure to disclose related transactions  
The value of goods can be influenced by related party transactions. An adjustment for the value may be needed.
- Incomplete information passed to Customs Brokers  
Errors may occur if all relevant information is not passed on to the person selected to assist in clearance.

- Self-Assessment

Every person dealing with Customs has a chance of being audited.

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## 17. CUSTOMS OFFENCES AND APPEALS

### 17.1 Smuggling

Any person who exports or imports any goods referred to prohibition on export and import, shall be punished.

Each of the following persons shall be punished:

- who import goods without filing an import declaration;
- who import goods which are different from those on which an import declaration is filed.

Each of the following persons shall be punished:

- who export or returns goods without filing a declaration;
- who export or returns goods different from those on which a declaration is filed.

### 17.2 Falsifying and Altering Electronic Documents

Any person who falsifies or alters relevant information, including electronic documents, etc. stored in the electronic data-processing system or electronic document brokerage business entity, or a person who uses such falsified or altered information shall be punished.

Each of the following persons shall be punished:

- who operate the duties information network without having been designated;

- who conduct electronic document brokerage without having been designated;
- who harm relevant information, including electronic documents, etc. stored in the electronic equipment of the duty information network or any electronic document brokerage business entity or violates the confidentiality thereof;
- who disclose or steal the relevant confidential information, including electronic documents, etc. which he/she has learned while performing his/her business affairs.

### 17.3 Evading Customs Duties

Each of the following persons who have filed import declarations, shall be punished:

- who file a false dutiable value or a false tariff rate, etc. or fail to file a dutiable value or a tariff rate, etc. in order to exercise influence on the determination of the amount of duty;
- who apply for prior examination or reexamination on false documents in order to exercise an influence on the determination of the amount of duty;
- who import goods as components and other unfinished, incomplete or finished goods having major characteristics as partial components for the purpose of avoiding import restrictions imposed under statutes.

Each of the following persons shall be punished:

- who file an import declaration and imports goods without meeting requirements by any illegal means;
- who file an export declaration and exports goods without meeting requirements by any illegal means;
- who receive the reduction of, or is exempt from, Customs duties by any illegal means or evades the collection of the Customs duties reduced or exempted;
- who has Customs duties refunded by any illegal means;
- who forge the price of goods for the purpose of acquiring, or making a third party acquire, any property or proprietary interests.

## 17.4 Attempted Crime

A person who knowingly abets or aids any offense prohibited shall be punished as committing any principal offense. A person who commits any criminal attempt shall be punished as committing any principal offense. The punishment against a person who prepares to commit any offense shall be mitigated by half the punishment against a principal offender.

## 17.5 Appeals

The person who is subject to an illegal and unfair disposition, or whose rights or interests are infringed on by a lack of the necessary disposition may file a request for evaluation or a request for adjudication to cancel or modify such disposition, or for a necessary disposition.

The person may file an objection before he/she files a request for an evaluation or a request for adjudication, except where such disposition is investigated, determined or dealt with, or must be dealt with by the Customs.

According to the Customs Act, a Customs Appeal Committee is established in KCS to deliberate on the pre-assessment review, request and objections, respectively.

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## 18. CUSTOMS IPR BORDER PROTECTION

No goods which infringe on any of the following intellectual property rights may be imported or exported:

- Trademark rights, the enactment of which is registered;
- Copyrights and neighboring rights;
- Variety protection rights created and registered;
- Geographical indications rights or geographical indications registered under related acts or designated for the protection under treaties, agreements, etc.;

- Patent rights, the enactment of which is registered;
- Design rights, the enactment of which is registered.

The Customs may require the person, etc. who has registered the intellectual property right in question or the enactment thereof pursuant to the relevant statutes to file a report on the matters concerning the intellectual property right in question.

The Customs office shall notify the person who has reported that the export or import declaration on the relevant goods, the declaration on transshipment, combined transshipment, shipment into a bonded area, bonded transportation, or on temporary unloading has been filed.

In such cases, the person in receipt of a notification may provide security to the Customs office and request him/her to withhold a Customs clearance for the relevant goods or to keep them in custody. A person who intends to keep his/her intellectual property right under protection may also offer security to the Customs and request him/her to withhold Customs clearance for the relevant goods or to keep them in custody.

The Customs office in a receipt of a request shall withhold a Customs clearance for the relevant goods or keep them in custody unless special grounds exist that prevent him/her from doing so. The person who has filed an export or import declaration, etc. provides security and requests a Customs clearance, or release of custody, such Customs clearance or custody of the relevant goods may be permitted except for the following goods:

- Goods which bear a forged or similar trademark, thus infringing on a trademark right;
- Illegally reproduced goods that infringe on a copyright, etc.;
- Goods using the same or similar variety name, thus infringing on a variety protection right;
- Goods using a forged or similar geographical indication, thus infringing on a geographical indication right, etc.;
- Goods using the invention, the establishment of which is patented, thus infringing on a patent right;
- Goods using the same or similar design, thus infringing on a design right.

If it is obvious that goods have infringed on any intellectual property right, the Customs office may withhold Customs clearance for such goods or keep them in custody ex officio. In such cases, the head of

the Customs office shall promptly notify the person who has filed an import or export declaration, etc. on the goods in question.

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## 19. AUTHORIZED ECONOMIC OPERATOR (AEO)

AEO<sup>1</sup> stands for “Authorized Economic Operator”, and an AEO means a company that KCS has officially certified as an excellent business entity after examining its suitability as such in accordance with the authorization criteria of legal compliance, internal control system, financial solvency and security management.

In line with the changing global Customs environment, Korea also implemented a full-fledged AEO program in April 2009 after going through a process of preparations that included performing research on the system, enacting laws and ordinances, and conducting a pilot project. There are totally 9 categories of parties concerned: exporters, importers, Customs brokers, (bonded) warehouse operators, (bonded) transporters, freight forwarders, sea carriers, air carriers and ground handlers.

### 19.1 Authorization Criteria and Rating

The AEO authorization criteria consist of four areas: legal compliance, internal control system, financial

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<sup>1</sup> The World Customs Organization (WCO) had long discussed the security of international logistics flow, i.e. supply chain security, from producers to ultimate consumers. Meanwhile, the September 11 terrorist attacks hit the USA, thus claiming so many lives in 2001, which led the USA to implement a new logistics security system and regulations for trade security. As it focused on security intensively at the initial stage, this system started to work as a non-tariff barrier causing lead time delays. In order to improve this problem, WCO established the SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO SAFE Framework) in June 2005. The core concept of this international framework is the AEO program. Customs authorities certify companies as AEOs in accordance with the authorization criteria and perform risk management for AEOs differently from the way they do for non-AEOs. Among the World Customs Organization (WCO) members, over 170 countries have submitted letters of intent to implement the AEO system. This system is currently in operation in major advanced countries and regions such as the USA, Japan and the EU, and a growing number of countries are adopting it.

solvency and security management. The main points of each area are summarized as follows:

First, any company desiring to acquire the AEO status must be free from any reason for disqualification as specified by the Commissioner of the Korea Customs Service and maintain itself above a certain level in terms of legal compliance.

Second, a company's internal control system is a system of its own established to enhance its legal compliance and must be maintained above a certain level as prescribed in the Public Notification of AEO Authorization and Management Affairs.

Third, to be recognized as financially sound, a company must not be in arrears with any payment. If any debt does exist, it must reflect a debt ratio less than 200% of the average debt ratio for its corresponding industry, or the enterprise must be an investment-grade company.

Fourth, security management consists of 8 criteria: management of business partners, transportation means, etc.; access control; personnel management; handling procedure management; facilities & equipment management; information & technology management; and education & training. Any company desiring to acquire the AEO status must maintain itself above a certain level in each area as specified by the Commissioner of the Korea Customs Service.

AEO certificate classes are determined as follows by measuring the legal compliance of companies which meet the criteria of financial solvency and security management and have an assessment score of not less than 80 points in terms of their internal control systems. However, companies with an assessment score of less than 70 points in legal compliance are not eligible for AEO authorization.

- **CLASS "A"**: Companies with an assessment score of 80 or more points in legal compliance
- **CLASS "AA"**: Companies with an assessment score of 90 or more points in legal compliance
- **CLASS "AAA"**: Companies with an assessment score of 95 or more points in legal compliance which are recognized as having one or more exemplary cases that may be applied to other enterprises in relation to such areas as legal compliance, according to the results of a comprehensive audit among authorized economic operators (AEOs).

## 19.2 Necessity and Benefits

Necessity may be said to be the highest value of all systems. The necessity of AEO authorization is based

on the following requirements:

### **First: Terms and Conditions of Trade**

As the international society has recently been getting more and more interested in logistics security, the terms and conditions of trade are also becoming more and more complicated. In addition to requiring fulfillment of the existing trade conditions, a growing number of companies define AEO authorization as a prerequisite for trade. Therefore, companies failing to satisfy the AEO criteria may experience the scope of their trading partners or activities getting narrower or face unexpected disadvantages.

### **Second: Enhancement of Export Competitiveness**

Swift Customs clearance is a matter of greatest concern for exporters. A private company has limitations in its ability to solve the Customs clearance problems by itself because it is difficult for private companies to control these problems, they lack understanding of local laws and regulations or systems, and different countries implement different Customs administrations and have different logistics infrastructure environments. However, AEOs can solve these problems. Since AEO-certified companies are trusted by the Korea Customs Service and recognized by the international society, we can resolve trade barriers and enhance our export comprehensiveness through AEOs.

### **Third: Various Benefits for AEOs**

As AEOs are state-certified reliable companies, they can be guaranteed swifter and more simplified trade procedures when exporting or importing goods. In addition, once mutual recognition arrangements (MRA) are concluded with other countries implementing the AEO system, AEOs will be provided with diverse benefits including the convenience of swift Customs clearance such as reduced inspection rates also in the MRA counterpart countries. As a result, AEOs can reduce the lead times and various costs for international trade.

The Korea Customs Service provides AEO companies with a variety of benefits including simplified inspections and procedures, eased financial burdens and diverse conveniences. Through these benefits, KCS implements differentiated risk management for AEOs compared to non-AEO companies. In addition, KCS is exerting efforts to unearth further benefits for AEO companies. If you have any good ideas for unearthing additional benefits, suggesting them to KCS is a good method to unearth various new benefits.

### 19.3 Post Management

Post management is what AEO-certified companies should do after the AEO authorization in order to maintain its validity. More specifically, it means management of post-authorization acts such as reporting any changes, conducting regular self-inspections, performing comprehensive audits, etc.

And the validity of the AEO authorization granted to a company is three years from the date when the AEO certificate is issued by the Commissioner of the Korea Customs Service, and any company that wishes to maintain its AEO status even after the validity period must renew its AEO authorization.

### 19.4 AEO Mutual Recognition Arrangement

An AEO Mutual Recognition Arrangement (AEO MRA) means that each of the countries signing it accepts its counterpart country's as equal to its own AEO system. In other words, if a mutual recognition arrangement is concluded between two countries implementing the AEO system, each such country's AEO companies receive the same benefits from its counterpart country's Customs authorities as they receive from their own country's Customs authorities. Although the AEO system is based on the WCO SAFE Framework, since the Framework is not legally binding, each country introduces the AEO system in such a way as to make it suitable for its actual circumstances. Accordingly, different countries have more or less different AEO systems. As a result, difficulties arise in that in order to receive benefits related to Customs clearance in a foreign country with which they trade, export and/or import-related companies have to join the country's AEO system even if they have obtained the AEO authorization in their own country or countries. Therefore, MRAs were developed in order to connect the AEO systems implemented by the Customs authorities of different countries.

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## 20. INTERNATIONAL CUSTOMS COOPERATION

Joined WCO in 1968, Korea actively participates in various international organizations and activities related to Customs. KCS has involved in international Customs affairs such as in ASEAN+3, APEC,

ASEM, WCO and WTO. As an emerging economy, Korea joined the OECD in 1996. Korea joined WTO in 1997 and has decided to designate all provisions of the Agreement under Category A of WTO TFA agreement.

WCO adopted a model bilateral convention on mutual administrative assistance for countries to implement as part of a national Customs policy. KCS has used this model as a basis for negotiating Customs Mutual Assistance Agreements (CMAAs) with other foreign administrations.

Following are main International Conventions related to the Customs Administration that Korea took part in:

*Table 7 International Conventions related to the Customs Administration*

International Conventions related to the Customs Administration	Related agencies
General Agreement on Tariff and Trade (GATT)	WTO
Marrakech Agreement for the Establishment of World Trade Organization	"
1994 General Agreement on Tariff and Trade (GATT)	"
Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade	"
Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and the Protocol Thereto	"
Agreement on Subsidies and Countervailing Measures	"
Agreement on Trade-Related Aspects of Intellectual Property Rights	"
Agreement on Trade Facilitation	"
Convention establishing a Customs Co-operation Council	WCO
Customs Convention on the Temporary Importation of Packings	"
Customs Convention concerning Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events	"
Customs Convention concerning Welfare Material for Seafarers	"
Customs Convention on the Temporary Importation of Professional Equipment	"
Customs Convention on the A.T.A. Carnet for Temporary Admission of Goods (A.T.A. Convention)	"

International Conventions related to the Customs Administration	Related agencies
Customs Convention on the Temporary Importation of Scientific Equipment	"
Customs Convention on the Temporary Importation of Pedagogic Material	"
International Convention on the Simplification and Harmonization of Customs Procedures	"
Customs Convention on Containers, 1972	"
International Convention on the Harmonized Commodity Description and Coding System and Amending Protocol	"
Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures	"
Single Convention on Narcotic Drugs, 1961	UN and others
International Convention to Facilitate the Importation for Commercial Samples and Advertising Material	"
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	"
Convention on International Trade in Endangered Species of Wild Fauna and Flora	"
Protocol Amending the Single Convention on Narcotic Drugs, 1961	"
Convention on the Psychotropic Substances	"
Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention)	"
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	"
United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	"
Convention Establishing the World Intellectual Property Organization (WIPO)	WIPO
Paris Convention for the Protection of Industrial Property	"
Convention on International Civil Aviation	ICAO
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters	IMO

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## 21. TRADE STATISTICS

Every product which increases or reduces the physical resources of the country by being smuggled (imported) or carried out (exported) to the economic territory of another country is recorded. Items, which are simply passing (passing goods) and temporarily carried in and out, are not included in the trade statistics.

### 21.1 Common Trade Statistics

Common trade statistics is the statistics on all products which are physically relocating between Korea and foreign countries or are scheduled to be relocated, appropriated to the trade statistics.

National classification is based on the ISO code classification standard on the trade statistics, the export countries are the countries of final destination and the import countries are the country of origin.

The representation of the amount will be in U.S. dollar by principle and the export will be based on the price ex ship (FOB) and import, cost insurance and freight (CIF).

### 21.2 Special Trade Statistics

#### Merchandise Statistics

Merchandise statistics (import/export cargo statistics) is the statistics of the consignments leaving for the country by passing through Korea when they arrive (port entry) in Korea to be carried in (imported) or carried out (exported).

#### Transit Trade Statistics

Transit trade statistics refer to the statistics of the items which were originally carried in from the overseas, to be transported to other countries without going through Customs in Korea by temporarily landing in the bonded areas or the docks for loading or by being transferred to other means of transportation without landing. As for items for transit trades, it is a rule that the shipper is located overseas. Transit trade statistics are appropriated on the date of port entry or the departure date.

## Intermediate Trade Statistics

Intermediate trade statistics refer to the statistics of the items which were imported for the purpose going through the export Customs and exported to the third country without being carried into Korea outside the bonded areas and place permitted for storage outside the bonded areas. As for the intermediate trade items, it is a rule that the shipper is located in Korea.

## 21.3 Standards for Complementation and Methods

### Basic Principles

Korea also uses UN's concept and principles of international trade statistics used as the international index. Trade statistics include the movement of items which pass through the boundaries which increase the amount of resources for Korea.

### Commodities Classification

HSK is used to classify the items for import and export.

### Scope of Appropriation

The following transactions are exempted from the trade statistics:

- Items carried into and out of the bonded sales area;
- Returned items before the acceptance of the import declaration;
- Gold, silver, securities, monetary coins and paper money currently being used;
- ATA Carnet items;
- Items carried in or smuggled for inspection or repair purpose;
- Items temporarily imported and exported for the international events, competitions and exhibitions;
- Diplomat's items;
- Leased items for less than a year;
- Items for commercial samples or advertisements;
- Items generally unrelated to trade;

- Regional scope: Items carried in and out of North Korea are exempted from the trade statistics.

### Conversion of Currency

The currency of each country should be converted into won according to the exchange rate announced every week and the amount in won will be converted to US \$ and that amount will be applied for the import/export declaration.

### Error Correction

Checking the errors in the entered data are done using the average unit price per HSK. With this method, the data with errors are collected and checked. The data confirmed as errors are corrected before presenting the statistics by month/year through the error correction system.

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## 22. SCHEDULE AND WORKING TIME

Please visit the website for the Schedule of KCS.

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## 23. OFFICIAL WEBSITE

- KCS official website: <http://www.customs.go.kr>.

## REFERENCE

1. KCS: <http://www.customs.go.kr>.
2. WCO: <http://www.wcoomd.org>.
3. FTA KOREA: <http://fta.go.kr>.
4. ROK/WTO: [https://www.wto.org/english/thewto\\_e/countries\\_e/korea\\_republic\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/korea_republic_e.htm).
5. Ministry of Trade, Industry and Energy: <http://english.motie.go.kr>.

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