

## Update on Trade Agreements

### Thailand Implements ASEAN-Australia-New Zealand FTA; Offers Preferential Tariffs Starting March 13, 2010

On February 8, 2010, the Ministry of Finance (“MOF”) published a notification implementing the tariff reduction program under the ASEAN-Australia-New Zealand Free Trade Agreement (“AANZFTA”). The MOF Notification provides the table for the tariff reduction and exemption schedule under the AANZFTA. However, Thailand would offer preferential tariffs only to members who have completed their internal procedures. These countries include Australia, New Zealand, Malaysia, Myanmar, the Philippines, Vietnam, and Singapore.

The Notification will take effect from March 13, 2010.

### Singapore Concludes FTA Negotiations with Costa Rica

After launching free trade agreement (“FTA”) negotiations in December 2008, the first round of negotiations between Singapore and Costa Rica was held in April 2009. After four rounds of negotiations, both parties finalized the agreement and will sign the FTA once domestic processes are completed.

Under the agreement, Singapore and Costa Rica have committed to full product coverage for tariff elimination. Singapore will grant immediate duty free access for all imports from Costa Rica while Costa Rica will eliminate tariffs for 90.6% of its tariff lines upon entry into force of the agreement. Tariffs on the remaining products would be eliminated over a period of 10 years with possibility of accelerated tariff elimination.

The FTA also covers services and investments chapters in key areas of interest for Singaporean companies, including hotel and restaurant services, private education services, and construction services.

### Philippines to Defer Implementation of Commitments on Sugar under CEPT-AFTA

Under the Common Effective Preferential Tariffs Scheme of the ASEAN Free Trade Area (“CEPT-AFTA”), the Philippines has committed to lower tariff on sugar to 28% by 2009 and to 0-5% by 2010. However, the sugar industry had requested for more time to adjust to trade liberalization. As a result of the bilateral negotiations between Thailand and the Philippines, the revised tariff

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reduction schedule of the Philippines on sugar shall be 38% by 2010 to 2011; 28% by 2012; 18% by 2013; 10% by 2014; and 5% by 2015.

The original request of the Philippines was to re-classify sugar in the highly sensitive list ("HSL") so that the Philippines will not need to reduce sugar tariff to 0-5%. According to Undersecretary of Agriculture, F. Serrano, Thailand has agreed to a "stepladder approach" on sugar without compensation from the Philippines.

## REGULATORY DEVELOPMENTS IN ASIA

### CHINA

#### China Issues New Implementing Regulations on Auditing Entities Using Public Funds

On February 2, 2010, the State Council of the People's Republic of China issued a new auditing regulation to improve the auditing of fiscal funds and prevent financial corruption. The regulation is entitled *Implementing Rules of the Audit Law* ("Implementing Rules") and will take effect on May 1, 2010.

The new Implementing Rules stipulate that securities illegally acquired/accepted by entities will be considered by auditors as illegal assets. This is the first time that China has included this provision in the *Audit Law*.

#### Auditors' Pre-trial Issues and Things to Avoid

Under the new Implementing Rules, auditors must avoid being placed in audit units that deal with auditing matters in which they have a vested interest. An entity or organization subject to an audit may provide a list of auditors that they deem inappropriate to participate in the audit for any of the following reasons:

- Spousal relationship, direct blood relations, collateral consanguinity within three generations, or close affinity with the managers or competent persons in the entity being audited;
- A relationship of financial interest exists between the entity being audited and the auditor; or
- Other types of relationships or interests exist between the auditor and the entity being audited or relevant executive officers in audit unit, which may affect an objective and fair auditing process from happening.

#### Powers and Responsibilities of Auditing Institutions

Pursuant to the Implementing Rules, auditing authorities in government institutions shall have the power to carry out investigations into the financial accounts of an entity being audited with official approval and assistance by the audit institutions at or above the county level.



The auditing authorities shall have the responsibility of maintaining the confidentiality of any documents related to the entity being audited that were provided by relevant financial institutions.

The new Implementing Rules cover all state-owned companies as well as any private firms using public funds. This also includes projects with 50% of the whole budget sourced from government funds or under government control. The auditing authorities are also empowered to launch special investigations into government departments or organizations that deal with budget management or financial management and utilization of state assets.

To ensure accuracy and impartiality in auditing, the Implementing Rules provide that organizations being audited can apply for government adjudication or administrative review and can even lodge a lawsuit if they disagree with the audit results.

## INDONESIA

### Customs and Tax Incentives for Industries Utilizing Renewable Energy

On January 29, 2010, to attain sustainable energy and attract investment in renewable energy sector, the Ministry of Finance ("MOF") issued Regulation No. 24/PMK.011/2010 regarding Customs and Tax Incentive Given to Industry that Utilize Renewable Energy ("MOF-24").

MOF-24 provides 4 incentives as follows:

#### Income Tax Facility

An industry which conducts business in the renewable energy sector ("Industry") may enjoy income tax facility of the following kind:

- i. Deduction of 30% of net income from capital investment within 6 consecutive years (5% deduction each year);
- ii. Accelerate amortization;
- iii. Income tax of 10% imposed on dividend of foreign tax subject or even lower rate of tax based on tax treaty to avoid double taxation;
- iv. Additional 1 year compensation shall be given to entities which incurred losses of more than 5 years but not exceeding 10 years, with the following conditions:
  - New investment in certain sectors at industrial zone or bonded zone;
  - Company with a minimum of 500 local employees within 5 consecutive years;
  - Company that allocates minimum 10 billion IDR (US\$1 million) for economic and social infrastructure program;
  - Company that allocates at least 5% of total investment for Research and Development ("R&D") within 5 years;



- Company that utilizes a minimum of 70% local goods and/or components in their manufacturing activities.

Any importation conducted by the Industry of machinery and equipment (excluding spare parts) is exempted from income tax at importation (Article 22 Import)<sup>1</sup> and this facility does not require the Surat Keterangan Bebas/Letter of Exemption (“SKB”).

#### Value-Added Tax (“VAT”) Facility

MOF-24 also provides VAT exemption to Industry for importation of machinery and equipment (excluding spare parts) required in its manufacturing process. However, the mechanism for obtaining the VAT facility is governed by other government regulation.

#### Import Duty Facility

The Government gives assurance of import duty exemption for importation of machinery and equipment (excluding spare parts) as governed by MOF regulations:

- 176/PMK.011/2009 regarding import duty exemption for importation of goods and raw materials for investment; and
- 154/PMK.011/2008 regarding import duty exemption for development of power plant.

#### Tax to Government Facility

The Government will bear the tax costs incurred by Industry under this program. This is further governed under the *Government Budget Law* (“Undang undang APBN”) and MOF regulations.

This policy regulation took effect on January 28, 2010.

#### **Government Allows Tax Deduction for Promotional Costs**

On January 25, 2010, the Ministry of Finance (“MOF”) announced the allowance of promotion costs for tax deduction purposes in MOF regulation No. 02/PMK.03/2010 (“MOF-02”) dated January 8, 2010.

MOF-02 determines that promotion costs include the following:

- Advertising cost for electronic media, printed media and other media;
- Product exhibition cost;
- Cost for introduction of said new product; and
- Sponsorship cost that relates to promotion of the product.



<sup>1</sup> Article 22 Import stipulates a tax of 2.5% of import value for importers who hold API (Importer Registered Number) and 7.5% of import value for those with no API.

In the event that the promotion is in the form of sample product, the cost to be deducted is equal to the value of the said sample products, as long as the cost of sample product has yet to be considered as the basic selling price of the product.

The following are however excluded from allowable deductions from gross income:

- Giving retainer in the form of money and/or facility to the other party that is not related to promotion activities; and
- Promotion costs collected from taxed income.

To enjoy this tax deduction, the applicant shall have the following:

- The applicant shall have the nominative list of promotion cost that is given to other party;
- The nominative list should at least contain information: (i) list of recipient; (ii) NPWP of recipient; (iii) address; (iv) date, model and type of cost; (v) cost amount; (vi) receipt and value amount of tax deductive;
- The nominative list shall be provided in the standard format prescribed by MOF-02 which is an integral part of regulation;
- The nominative list shall be attached to the Annual Tax Report; and
- Any failure to comply with the above steps would lead to rejection of the promotion cost for deductions from gross income.

MOF-02 is effective retroactively from January 1, 2009.

## JAPAN

### Enhancement of Penalties in Customs Compliance Violation

On February 9, 2010, the Ministry of Finance ("MOF") announced that it will amend the *Customs Law* to reflect the proposed increase in the amount of penalties on customs compliance violation.

In February 2010, the draft amendments to the *Customs Law* passed through the Cabinet Decision and endorsed to the National Diet. The amendments to the *Customs Law* shall take effect on April 1, 2010. In a public seminar, an MOF Officer opined that the actual implementation of the penalty provisions may likely to take place sometime in June 2010 considering the period required for public announcement.

The following are the penalty enhancement provisions.

#### Evasion of Customs Duty (Article 110 of the *Customs Law*)

- **Current penalty provision:** Imprisonment with work for not more than 5 years or a fine of not more than 5 million yen, or both.



- **Amendments:** Imprisonment with work for not more than 10 years or a fine of not more than 10 million yen, or both. The act of “attempting” to evade customs duty will also be penalized in the same manner as an accomplished offense. The act of “preparation” will also be subject to penalty of imprisonment with work for not more than 5 years or a fine of not more than 5 million yen or both.
- **Reasons:** Given the growing complexity of global trade, and with more vicious and skillful method of evading duty payments, the MOF decided to increase the penalty amount. This will also strike a balance with the penalty amount of other economic crimes and domestic tax evasion penalties.



#### Violation of Prohibited Export/Import Items (Article 108-4, and 109 of the *Customs Law*)

This covers exports and imports of prohibited items such as Narcotics, marijuana, etc.

- **Current penalty provision:** Imprisonment with work for not more than 7 years or a fine of not more than 30 million yen, or both.
- **Amendment:** Imprisonment with work for not more than 10 years or a fine of not more than 30 million yen, or both.
- **Reasons:** This is in response to an increase in illegal imports of Narcotic, as well as to have reasonable balance with other relevant crime related laws, and with customs duty evasion.



#### Violation of prohibited Export/Import Items (Article 108-4 of the *Customs Law* and Article 109 for Intellectual Property Infringement Items, etc.)

This covers imports and exports of items infringing intellectual property rights.

- **Current penalty provision:** Imprisonment with work for not more than 7 years or a fine of not more than 7 million yen, or both
- **Amendment:** Imprisonment with work for not more than 10 years or a fine of not more than 10 million yen, or both
- **Reasons:** This is in response to an increase in illegal imports of infringed intellectual property items, as well as to have reasonable balance with other relevant crime related laws, and with customs duty evasion.

In November 2009, the *Foreign Exchange and Foreign Trade Law* (“FEFTL”) was amended to reflect the enhancement of penalty on export control compliance violation. A violation relating to proliferation of weapons of massive destruction carries a penalty of imprisonment with work for not more than 10 years or a fine of not more than 10 million yen, or both. The level of penalty is the same as that for the amended penalty on customs duty evasion. Both penalty enhancements in the export control area and customs duty area may be an indication that the Japanese government is committed to maintaining a solid and conducive trading environment. The Japanese government is focusing on requiring traders to become more trade compliant.

## PHILIPPINES

### Philippine Senate Ratifies Revised Kyoto Convention

On February 1, 2010, the Senate unanimously ratified Philippine accession to the Revised Kyoto Convention ("RKC"). In an interview on February 3, 2010, this was confirmed by the Chairman of the Senate Committee on Foreign Relations Senator, M. Santiago.

According to Senator Santiago, from a commercial angle, this will help to promote foreign direct investment and international trade, and from a policy angle, it will signify an advance in public governance. Among the governing principles under the RKC, which the Philippines has to strictly adhere to, Customs agency has to provide transparency and predictability for all those involved in aspects of international trade. For businesses, increased transparency and automation will eliminate discretionary treatment and application of rules and regulations and reduce opportunities for extortion and corruption.

As some provisions of the RKC run counter to certain provisions of the *Philippine Tariff and Customs Code*, the next Congress will have to act on a proposed Customs Modernization Act filed in both Houses of Congress which did not pass the legislative mill of the 14<sup>th</sup> Congress.

### Wharfage Fee Discount Scrapped

In an interview on January 7, 2010, Philippine Ports Authority ("PPA") General Manager, Oscar Sevilla, stated that the 50% discount on wharfage fees for a 20-foot container and 40-foot container has been discontinued; the fees are now back to PhP 259.70/container and PhP 952.22/container respectively with effect from January 1, 2010. The discount, which was first implemented in September 2008, was principally meant to address exporters' complaints about the adverse impact of the global economic downturn on their competitiveness.

However, in view of slower movement of domestic and international cargoes and the pressure to generate more revenues to fund upgrading of port/cargo facilities, the PPA decided to scrap the 50% discount on wharfage fees. The PPA estimates a revenue loss of about PhP 100 million in the 2 years that the agency applied the discount.

Thus far, there has been no adverse reaction from the export sector.

## THAILAND

### Customs Department Regulates Fee Charged for Customs Activities

To regulate the fee charged for customs services, the Customs Department issued *Customs Announcement Regarding Fees Charged for Activities Relating to Customs Procedures, B.E. 2553* on January 27, 2010, which took effect on February 1, 2010. The fees for related customs activities are summarized as follows:

- **Fees charged for shipping commodities into/out of Customs Units:** The fee is THB 200 per unit of import/export declaration, and special import/export declaration with the commodity value not exceeding THB 20,000. Transshipment documents,



declaration of shipping commodities in/out free zones, etc., will be charged the same amount.

- **Fees charged for entering data into the E-Customs system:** The charge is THB 70 per time. The data consist of import/ export declaration, transshipment documents, among others.

Fees will be exempted in the case that the importers/exporters work for government sectors and in the case of import/ export declaration relevant to duty exemption.

For payment, Customs Department would issue an invoice to those who obtain customs services once a month, which will reach the payers within the first week of the following month. This however does not include data-entry fees, which users have to pay fees to the officers before obtaining the services.

### **Customs Department Offers Advance Tariff Classification Services to Importers**

On February 22, 2010, the Customs Department issued *Customs Announcement No. 13/ B.E. 2553, Regarding the Services of Advance Tariff Classification*. The Customs Department will offer the service of providing advance tariff classification to importers. This service will guide importers in calculating the budget for the import transaction as well as for budget planning. In order to get such services, importers have to submit the application form for advance tariff classification together with the copy of the Announcement and other necessary documents, such as details of products to be imported, and evidence of importation (i.e., Sales Contract, Invoices, Letter of Contract, etc.) to the Customs Department for consideration.

The importer should file the request for advance tariff classification along with the required documents to the Customs Department at least 30 days before importation.

However, this service does not include goods that are under review for tariff-rate change.

## **VIETNAM**

### **General Department of Customs Announced Expiry of Policy on VAT Reduction**

The Ministry of Finance ("MOF") had previously implemented a measure to alleviate the burden of economic downturn through a 50% reduction of value-added tax ("VAT") rate applicable to a number of goods (including automobiles) and services. The VAT reduction scheme expired on December 31, 2009.

On January 25, 2010, the General Department of Customs ("GDC") sent Official Letter No. 466/TCHQ-KTTT to all its local customs to officially notify them about the expiration of the VAT reduction scheme. From January 1, 2010 onwards, the regular VAT rates, i.e., 0%, 5% or 10%, shall be applied on all relevant goods and services pursuant to the current *VAT Law* and its implementing guidelines.



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