



Asia Trade

Update on Trade Agreements

Thailand Ratifies ATIGA

The Ministry of Finance ("MOF") issued the Notification dated April 26, 2010 implementing the tariff reduction and exemption privileges under the ASEAN Trade in Goods Agreement ("ATIGA"), prior to the date of entry into force of the ATIGA. The MOF Notification announced the reduced duty rates under the ATIGA, which took effect on May 1, 2010. Thailand could not fully implement the ATIGA since the 2009 revised product specific rules of origin ("2009 Revised PSR") have not been approved by the Parliament. Thailand could only implement the ATIGA when the Customs Department issues the notification stipulating the relevant procedure relating to the import formalities under ATIGA. Such Customs Notification will be issued after the Parliament approves the 2009 PSR.

To facilitate trade and comply with the MOF Notification, the Customs Department issued a Customs Notification dated April 30, 2010, stipulating the following:

- Any importer who wishes to claim the duty reduction and exemption privileges under the ATIGA after May 1, 2010 shall initially pay duty at the normal tariff rate and indicate in the "Remark" portion of the Import Declaration the phrase "reserve the right of utilizing ATIGA privileges and to request for a refund of their paid duty afterwards".
- Once the Customs Notification regarding the criteria and procedures for the use of the ATIGA privileges is issued, importers who have reserved their ATIGA rights can then use the ATIGA Form D to request for duty refund.

In the meantime, since the reduced duty rates under the Common Effective Preferential Tariff ("CEPT") regime are still applicable and the CEPT Form D is still accepted during the 180-day transitional period until 13 November 2010, importers may choose to utilize duty privileges under CEPT instead. Please note that a CEPT Form D, instead of the ATIGA Form D, shall be used in this case.

This is a special occasion where the MOF Notification, which effects the implementation of ATIGA, is effective (on May 1, 2010) prior to the ratification (which took place on May 17, 2010). This is due to the political instability in Thailand resulting in the delay in the ratification process. Along with several ASEAN countries which will be starting the issuance and acceptance of the ATIGA Form D at a later date, the Thai Customs Department announced that it expects to start accepting

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ATIGA Form D on July 1, 2010. In this regard, the Parliamentary approval of the 2009 Revised PSR is expected before July 1, 2010 in order to allow the Customs Department to issue the relevant implementing regulations in time. Thus, prior to July 1, 2010, importers should utilize CEPT Form D when importing to Thailand in order to avoid the uncertainty that may arise with the issuance of the Customs Department Notification regarding the acceptance of ATIGA Form D.



Vietnam Offers AJCEP Preferential Tariff Rates on Goods Imported from Indonesia and Cambodia

On April 28, 2010, the Ministry of Finance ("MOF") issued Official Letter No. 5371/BTC-HTQT notifying the inclusion of Indonesia and Cambodia into the list of member countries entitled to the preferential tariff schedule under the ASEAN-Japan Closer Economic Partnership ("AJCEP"). These two countries have already completed the legal procedures on the implementation of the AJCEP and the application of AJCEP preferential tariff schedule for Vietnam. The AJCEP preferential tariff schedule shall be applied on goods imported from Indonesia and Cambodia into Vietnam starting June 1, 2010, subject to compliance with the qualification criteria set forth in Circular No. 83/2009/TT-BTC.



Vietnam MOF Drafts Preferential Import Tariff Schedule under AKFTA

The draft tariff schedule to implement the ASEAN-Korea Free Trade Area ("AKFTA") for the period 2010-2011 includes tariff adjustments for air conditioners, power generators, and lightning equipment. The applied tariff rates for these items will be 5%, 10% and 15%, respectively. The tariff rates for other items including cars, specific vehicles and airplanes remain unchanged.



The AKFTA took effect in early June 2007. Under AKFTA, import duties for about 8,000 tariff lines will be reduced to 0% for products imported by South Korea from ASEAN member countries. ASEAN also cut down tariff to 0-5% for 45% of goods to be imported from South Korea.

In particular, Vietnam will lower the tariff rates for about 200 goods. Under the AKFTA Tariff Band Reduction Commitment, the tariff rate of over 90% of total products from the 10 ASEAN-member countries will be reduced in 2010 and some in 2012. However, Vietnam will reduce the tariff in 6 years or by 2016 and 2018.

Accordingly, products with tariff rates of over 60% in 2006 was lowered to 50% in 2007; 40% in 2008 and down to 10% each year to 0% in 2016. Those with current tariff rates of 40-60% were reduced to 35% in 2008; 25% in 2009 and 20%, 15% and 10% in 2011, 2013 and 2015, respectively.

In 2015, Vietnam will lower most tariff rates under the AKFTA to 0-5%.

Vietnam MOF and MOIT Issue Circulars to Implement AIFTA

To implement the ASEAN-Indian Free Trade Area ("AIFTA") Agreement executed on August 13, 2009 and October 24, 2009, the following Circulars have been issued:

[Special Preferential Import Tariff Schedule of Vietnam Under AIFTA Agreement for the Period 2010 - 2012](#)

The Ministry of Finance ("MOF") issued Circular No. 58/2010/TT-BTC dated April 16, 2010 providing the special preferential import tariff schedule of Vietnam for the implementation of the AIFTA Agreement for the period 2010 – 2012.

According to MOF Circular No. 58/2010/TT-BTC, the Vietnam AIFTA Tariff Schedule shall be applicable to customs declarations made with customs office starting June 1, 2010. The Vietnam AIFTA Tariff Schedule provides different rates for each year from the period 2010-2012. The imported goods are eligible for preferential tariff under AIFTA if they satisfy the following:

- Must be included in the Vietnam AIFTA Tariff Schedule;
- Must be imported into Vietnam from the countries where the AIFTA Agreement has become effective. These countries include Malaysia, Singapore, Thailand and India, which shall implement the AIFTA Agreement by June 1, 2010.
- The Ministry of Finance will inform in writing the remaining member countries where the Vietnam AIFTA rates would be applicable.
- Must be transported directly from the exporting countries into Vietnam; and
- Must satisfy the conditions on rules of origin under the AIFTA Agreement and have obtained the Certificate of Origin ("C/O") Form AI.

Under Circular 58, majority of the import tax rates will be reduced between June 2010 and 2012.

Rules of Origin under AIFTA

The Ministry of Industry and Trade ("MOIT") issued Circular No. 15/2010/TT-BCT dated April 15, 2010 to implement the Rules of Origin under the AIFTA Agreement.

- i. Determination of Origin – Under Circular 15, goods which satisfy all the conditions on origin provided therein shall be eligible for issuance of C/O Form AI. Under the rules of origin issued together with Circular 15, goods are considered as originating from Malaysia, Singapore, Thailand and India ("Member Country") if such goods:
- Are wholly obtained from or produced in a Member Country;
 - Have a regional value content ("RVC") of not less than 35% of FOB value and the final process of production has been performed in a Member Country;
 - If non-originating materials used in the production of the goods have undergone a change in tariff classification ("CTC") at six-digit (6 digit) level of the Harmonized System; or
 - Are listed and satisfied the criteria set forth in the list of specific product rules.

Each Member Country shall permit exporters to decide whether to use the RVC criteria or CTC criteria in determining whether the goods originate from Member Countries.



For the purposes of determining origin, RVC is calculated either through direct or indirect formula.

Direct formula:

$$RVC = \frac{\text{AIFTA material cost} + \text{Direct labor cost} + \text{Direct overhead cost} + \text{Profit} + \text{Other cost}}{\text{FOB value}} \times 100\%$$

Indirect formula:

$$RVC = \frac{\text{Non-AIFTA materials, parts or goods} + \text{Value of non-originating materials, parts or goods}}{\text{FOB value}} \times 100\%$$

FOB value means free-on-board value of goods, inclusive of cost of transportation from manufacturer to the port or site of final shipment aboard. FOB will be the first purchase price payable to manufacturer by the purchaser if FOB value is available but unknown or cannot be determined. FOB value will be determined upon regulation on customs valuation in case of no FOB value.

- ii. C/O Form AI Issuing-Body – The government offices issuing the C/O Form AI are as follows:

No.	Name	Code
1.	Import and Export Management Office for Area of Hanoi	01
2.	Import and Export Management Office for Area of Ho Chi Minh City	02
3.	Import and Export Management Office for Area of Da Nang	03
4.	Import and Export Management Office for Area of Dong Nai	04
5.	Import and Export Management Office for Area of Hai Phong	05
6.	Import and Export Management Office for Area of Binh Duong	06
7.	Import and Export Management Office for Area of Vung Tau	07
8.	Import and Export Management Office for Area of Lang Son	08
9.	Import and Export Management Office for Area of Quang Ninh	09
10.	Import and Export Management Office for Area of Lao Cai	71



No.	Name	Code
11.	Import and Export Management Office for Area of Thai Binh	72
12.	Import and Export Management Office for Area of Thanh Hoa	73
13.	Import and Export Management Office for Area of Nghe An	74
14.	Import and Export Management Office for Area of Tien Giang	75
15.	Import and Export Management Office for Area of Can Tho	76
16.	Import and Export Management Office for Area of Hai Duong	77
17.	Import and Export Management Office for Area of Binh Tri Thien	78
18.	Import and Export Management Office for Area of Khanh Hoa	80



- iii. Issuance of C/O Form AI – Exporters, producers or representatives with a legal power of attorney from exporters or producers (“enterprises”) have the right to request the issuing body to issue the C/O Form AI. There are two steps for obtaining C/O Form AI as follows:

Step 1: Enterprises must have completed the procedures for registration of its business entity file. The business entity file includes:

- Registration of the specimen signature of the representative authorized to sign applications for C/Os Form AI and registration of the specimen seal of the enterprise;
- Business Registration Certificate of the enterprise (certified true copy);
- Tax Code Registration Certificate (certified true copy); and
- List of production establishments of enterprise (if any) (in the form provided by the MOIT).

Any change in a business entity file must be shared with the C/O Form AI issuing body where registration has been conducted prior to applying for a new C/O Form AI. The business entity file must be updated at least once every 2 years.

Step 2: Upon completion of registration procedure as mentioned in Step 1, enterprises must complete the application for issuance of C/O Form AI. The application documents include:

- Application for requesting of C/O issuance (in form provided by the MOIT) in which all items have been fully and validly declared;
- Sample form C/O on which all items have been completed;

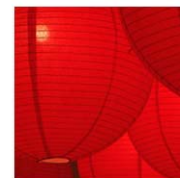
- Completed customs export declaration;
- Commercial invoice;
- Bill of lading or document equivalent to bill of lading, however, in case of issuing back-to-back C/O of the whole batch or a portion of batch delivered from a non-tariff area into a State, the same may not required if it does not exist; and
- Other documents requested by the issuing-body as it may find necessary.

If at the time of applying for a C/O Form AI, either (A) the completed customs export declaration (item (iii) above) and/or (B) the bill of lading are not available, then the enterprise may lodge these documents later, but no later than 15 working days from the date on which the C/O Form AI is issued.

With respect to enterprises joining the electronic customs operating system ("eCOSys"), the authorized person signing the application for requesting of C/O issuance shall make declaration through eCOSys and execute the e-signature and transfer information to the C/O issuing-body. If the C/O issuing-body approves the declaration, it shall notify the enterprise through eCOSys to request the submission of physical application for its examination for issuance of C/O.

- iv. Time-limit for Issuance of C/O Form AI – A C/O Form AI must be issued as soon as possible and no later than 3 working days from the time the proper and valid application documents are submitted by the enterprise under the normal case. This time-limit may be extended for up to five working days if the C/O issuing body physically inspects the production or manufacturing location, if the data in the file is insufficient to issue a C/O or it suspects a breach of law with respect to previously issued C/Os.

Any C/O Form AI issuing body must update information through eCOSys on a daily basis, namely information on the status of issuance of C/O Form.



REGULATORY DEVELOPMENTS IN ASIA

CHINA

SAIC Issues Opinions to Encourage Foreign Investments in China

The China State Council promulgated *Several Opinions of the State Council on Doing a Good Job in Utilization of Foreign Capital* ("State Council Opinions"). In order to encourage foreign investments and improve the overall investment environment for foreign-invested enterprises in China and further implement the State Council Opinions, the State Administration for Industry and Commerce ("SAIC") released an updated official document *Several Opinions on Fully Playing the Role on Industrial and Commercial Administration and Providing Services for Foreign-invested Enterprises* ("SAIC Opinions"). The SAIC Opinions further encourage foreign investors to increase

their investment in China and enhance the quality of foreign capital utilization in technological innovation, upgrading of industrial structure.

Encourage Foreign Enterprises to Increase Investments

- Parent companies and subsidiaries of foreign-invested enterprises can be allowed to use the term “group” in the company title when such companies increase their investments, i.e., upgrade into foreign enterprise groups.
- Relevant authorities shall assist foreign-invested enterprises with capital contribution difficulties. Enterprises without illegal records in China, which have made initial registration capital but are unable to contribute further to comply with the full investment requirements due to lack of capital funds can be eligible to apply for postponement of capital contribution.

Promote Upgrading of Industrial Structure

- A wholly foreign-funded enterprise, which adopts a brand from foreign countries and controlled by foreign person, with registered capital exceeding RMB 30 million and recognized as a modern service industry and/or high-tech enterprise, can be allowed to use “China” and such characters in the name of such an enterprise.
- Multinational corporations, such as regional headquarters, research and development centers, procurement centers, financial management centers, settlement centers, and cost and profit accounting centers, are encouraged to establish functional organizations and business outsourcing services in China.
- With regard to foreign-invested enterprises transferring to eastern region or to central and western regions, the State shall complete relevant policies related to the transfer, strengthen transfer register procedures, facilitate formalities on administrative, industrial and commercial, tax, foreign exchange, and social insurance services.

According to the SAIC Opinions, examination and approval procedures will also be adjusted. Examination and approval procedures, scope and transparency will be simplified and enhanced. Examination and approval issues relating to foreign investments will be thoroughly reviewed. The procedure and time for examination and approval will be shortened and improved. Based on the China's intellectual property (“IP”) rights legal system, SAIC will shorten the time of IP registration procedures and further strengthen IPR protection for foreign trademarks.

INDONESIA

Government Sets Alternative Plans to Manage Fuel Subsidy Policy

On May 5, 2010, the Director General of Oil and Gas of Ministry of Energy and Mineral Sources announced the Government plan to set a limit on fuel subsidy. In line with the approved Revised Government Budget of 2010, the quota for fuel subsidy was set at 36.5 million kilo liters. However, Badan Pengelola Hilir (“BPH”) (oil and gas regulating body) estimated that the fuel subsidy would reach 40.1 million kilo liters.



The Parliament requested the Government not to exceed the quota for fuel subsidy. Hence, considering the pressure from the Parliament, the Government identified alternative actions to manage the fuel subsidy quota:

- Subsidized fuel is prohibited to be sold in retail for new types of motor vehicles manufactured from year 2005 onwards;
- All types of sedan vehicles, regardless of year of manufacture, are prohibited from enjoying subsidized fuel;
- Only public transportation are allowed to buy subsidized fuel;
- Pertamina, the state oil company, will reduce the number of outlets that serve subsidized fuel and increase the dispensers for non-subsidized fuel;
- Pertamina will increase the supply of non-subsidized fuel with an octane range between 88 – 92%; and
- Regional Police will issue a sticker. The sticker indicates the appropriate fuel that a motor vehicle should consume. The sole/brand holder agent (“ATPM”) is committed to deliver to the motor vehicle owner the message in the sticker to consume the appropriate fuel. The ATPM shall not be held liable of any damage caused in the vehicles for failure to follow the message in the sticker.



The above alternative plans to limit the consumption of subsidized fuel will be considered if the Government will not increase the oil price for subsidized fuel.

In addition, the Government will review the current distribution system of subsidized fuel pursuant to its roadmap. The Government will implement a Closed Distribution System for subsidized fuel, where distribution system would strictly prohibit non-appropriate customers to avail of subsidized fuel. The Closed Distribution System is expected to be implemented by early 2011. To support this system, Pertamina plans to establish 250 outlets (“SPBU”) that will mainly serve non-subsidized fuel to fill in the demand outside the main cities. Pertamina expects the outlets to be completed by end of this year.

JAPAN

METI Updates Proliferation End-User List of Entities Engaged in WMD

On May 26, 2010, the Ministry of Economy, Trade and Industry (“METI”) updated the End User List in their website. The End User List is a list of entities that may be involved in the development, manufacturing, use and storage of weapon of mass destruction (“WMD”) such as nuclear, chemical, bacteriological weapons, and missiles. The updating of the list is usually undertaken once a year.

The number of entities in the updated list increased to 272 from 247 last year. The updated list consists of 34 new entities, while 9 entities were deleted. The net increase is therefore 25 entities. The new entities added are mostly from Iran and North Korea. There are no Japanese entities in

the list. Hence, this list is also known as "Foreign User List". The updated list can be downloaded from METI web site as shown below:

http://www.meti.go.jp/policy/anpo/hp/law_document/tutatu/t08kaisei/t08kaisei_kaiteikasho.pdf

The Foreign User list is not an embargo list but an indicative list for METI to determine whether an export license is necessary or not under the Catch-All export control regulation. The entities listed may have or previously had concerns regarding WMD or proliferation activities. Export items which are apparently used for purposes other than the WMD related activities may not be required to have an export license. Businesses are encouraged to closely check the end-use purpose of their goods when exporting to these entities to determine whether an export license is needed.

PHILIPPINES

DTI Simplifies Registration Rules for Young Entrepreneurs

Secretary of Trade and Industry J. Lapus recently signed DTI Administer Order ("DA") 10-04, Series of 2010, also known as the Revised Implementing Rules and Regulations of RA 3993 or the Business Name Law. Under DA 10-14, the minimum age required for a person to apply for a business name has been reduced to 18 from 21 years old.

The new rules also give business registrants a 6-month window within which to start business operations, from the previous requirement of just 1 month. Failure to operate within 6 months will lead to the revocation of the business name.

The new rules are expected to hasten economic growth in the Philippines by liberalizing restrictions and encouraging more people to engage in business.

WTO Panel to Examine US Complaint on Philippine Taxes on Distilled Spirits

On April 20, 2010, the World Trade Organization ("WTO") Dispute Settlement Body ("DSB") agreed to refer the US' complaint on Philippine taxes on spirits to the panel which is examining a similar complaint by the EU. This was the second request of the US for the establishment of the panel after the DSB at its meeting on April 8, 2010 deferred the first request filed by the US on March 26, 2010. The US is of the opinion that the Philippines' taxes on distilled spirits discriminate against imported distilled spirits by taxing them at a substantially higher rate than domestic spirits. The US cited a number of specific measures in its request and indicated that these measures are inconsistent with Article III:2 of the GATT 1994.

During the DSB meeting on April 20, 2010, in addition to the establishment of a panel, the DSB agreed that as provided in Article 9.1 of the DSU in respect of multiple complainants, the panel established on January 19, 2010 to examine the complaint by the European Union would also examine the US complaint. Australia, China, the European Union, India, Mexico and Chinese Taipei reserved their third party rights. Subsequently, Colombia also reserved its third party rights.



THAILAND

Customs Re-Launches Voluntary Disclosure Program in May 2010

The Director General of Thai Customs Department has recently approved the Post-Clearance Audit Bureau's proposal to re-launch a voluntary disclosure program from May 15, 2010 to September 30, 2010. During this period, importers, exporters and related parties can audit themselves and voluntarily disclose to the Customs Department any potential customs risks or customs offences found from their self-audit.

Those who voluntarily reports to the Customs Department the potential customs risks and/or customs offences that resulted in shortage of import duties and taxes, for example, false declaration of tariff code, undervalue declaration, misuse of customs privilege and BOI privilege, among others, shall not face any penalties on these offences but shall be required to pay the import duty shortage, VAT shortage and surcharge of 1.5% per month. The waiver on penalties shall be based on two conditions as follows:

- The customs risks and/or customs offences are not caused or made intentionally, and
- The companies have the right to participate in the Customs Voluntary Disclosure Program only once. Those who had previously utilized the right shall not be permitted to join this program.

However, importation of restricted goods without import licenses and hand-carrying or smuggling of goods into Thailand without undergoing customs formalities will be deemed as intentional customs offences and will not be eligible for a waiver of penalties under the Customs Voluntary Disclosure Scheme.

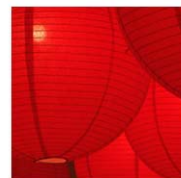
To minimize duty exposures and comply with customs regulations, importers as well as relevant entities are advised to take this golden opportunity by conducting self-audit and declaring any potential customs risks to the Customs Department within the May 15, 2010 to September 30, 2010 period.

VIETNAM

Vietnam Issues New Regulations on Registration of Enterprises

On April 15, 2010, the Government issued Decree No. 43/2010/ND-CP on enterprise registration ("Decree 43"). Decree 43 provides certain new provisions regarding the procedures, orders and documents relating to enterprise registration. Decree 43 superseded Decree No. 88/2006/ND-CP dated 29/8/2006 on business registration ("Decree 88"). The following are the major provisions of Decree 43:

- Upon the registration under Decree 43, the enterprise shall be granted the "Enterprise Registration Certificate" instead of the current Business Registration Certificate issued under Decree 88.



- Each line of business recorded in the Enterprise Registration Certificate is assigned with an equivalent 4-digit code in accordance with Vietnam Businesses System, except for the businesses that are prohibited.
- Each enterprise is granted with a single enterprise code that is treated as business registration code and tax code of such enterprise during the term of its operation. Such code will not be re-granted when the enterprise terminates its business operation. Pursuant to Decree 43, if an enterprise wishes to change its current business registration certificate or business registration and tax registration certificates to Enterprise Registration Certificate without changing the contents of business registration, the enterprise may carry out the procedures as stipulated in Decree 43.
- In addition to the submission of required documents to the relevant business registration authority, enterprise registration may be conducted electronically through the National Enterprises Registration Gate.
- In case of opening representative offices or branches in other countries, an enterprise must notify the business registration authority in writing within 30 days in order to obtain the Enterprise Registration Certificate.



Decree 43 also stipulates in detail the procedures for conversion of enterprises in each circumstance as specified in Decree No. 139/2007/ND-CP dated September 05, 2007 guiding the implementation of the Law on Enterprises.

Time limit for issuance of the business registration certificate, changes of contents of the business registration certificate, division, separation, merger, consolidation and conversion of enterprises is shortened to 5 working days in comparison with the time limit as stipulated in Decree 88.

Decree 43 took effect on June 1, 2010.

MOIT PROPOSES IMPOSITION OF SPECIAL CONSUMPTION TAX ON MOBILE PHONES

In an effort to reduce the trade deficit, the Ministry of Industry and Trade ("MOIT") coordinated with competent agencies to control imports. Mobile phones are included in the list of import commodities that may be controlled to curb trade deficits. In the first quarter of 2010, mobile phone imports surged by 38.6% annually and accounted for 9.5% of the country's import spending. To limit the importation of mobile phones, the MOIT proposed the inclusion of mobile phones into the list items that will be subject to special consumption tax.

The proposal aims to curb 2010 trade deficit at around 20% of targeted export turnover. Actually, the import tariff rate applicable to mobile phones has reached the ceiling level pursuant to Vietnam's WTO commitment and decreased to 0% under the ASEAN-China Free Trade Agreement.

The MOIT offered this particular measure to examine the demand for imported 3G equipment and 3G handsets, and supervise the promotion of enterprises targeting expensive handset buyers in 2010.

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