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ASIA TRADE UPDATE

SEPTEMBER TO OCTOBER 2014

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FTA Developments

CHINA-KOREA FTA NEGOTIATIONS

The leaders of China and Korea have strongly affirmed their intention to conclude the FTA by the end of 2014. However, negotiations have been difficult as there are differences of opinion over market access for agricultural and industrial products. The two parties have been unable to resolve their differences, and the hope of concluding the agreement by the end of the year appears remote.

Korea is requesting that China liberalise tariffs on petrochemical, machinery and steel products, while China is requesting that Korea open its market for agricultural products. Notably, Korea is pushing very hard for China to remove/eliminate import duties on petrochemical products from Korea. However, China is proposing to put petrochemical products under the Sensitive Track and Highly Sensitive Track. Given that China has recently been very active in initiating anti-dumping investigations on chemical products, it is a clear indication that China is taking a protective stance over its domestic chemical industry.

Both parties are apparently not budging over these requests.

STATUS UPDATE ON TRANS-PACIFIC PARTNERSHIP

The 12 parties to the Trans-Pacific Partnership ("TPP") held a negotiation round at chief negotiator-level in Hanoi on 1–10 September 2014. However, the parties involved continued to hold onto their respective positions on sensitive issues, especially with regard to intellectual property rights, the environment and reform of state-owned firms. Vietnam, in particular, is apparently opposed to setting unified rules to ensure fair competition.

The lack of progress in the bilateral talks between Japan and the US dealt a further blow to concluding the TPP by this year. The talks have stalled on the issues of automotive and farm trade.

Officially, the TPP parties have voiced their commitment to reach a broad agreement by the end of 2014. However, privately, many of the officials engaged in the TPP talks hold the group's two biggest economies responsible for the failure to progress talks. Observers are skeptical that the two parties, Japan and the US, are willing to make the sacrifices needed to conclude the TPP.

There will be another negotiation round at chief negotiator-level in November 2014.

Regulatory Developments

Indonesia

MOT ISSUES NEW REGULATION ON INTEGRATED SERVICE SYSTEM

The Ministry of Trade ("MOT") will require submissions and approvals for permits or licences related to domestic and/or foreign trade affairs to be done via the integrated service system, pursuant to new regulation No. 53/MDAG/PER/9/2014 ("MOT-53").

MOT-53 prescribes the licence/approval procedures for the following:

- Unit for Integrated Service ("UPT") 1 – Includes domestic trade affairs, foreign trade affairs, standards and consumer protection;
- UPT 2 – For futures trading that also includes warehouse receipt;
- UPT 3 – For quality product certification; and
- UPT 4 – For calibration and metrology.

The new system will be implemented at the end of 2014 or early 2015.

The Indonesian government will likely need a longer timeframe to implement the new regulation. This would largely depend on the readiness of supporting infrastructure for the online submission policy. Furthermore, applicants would likely continue to submit supporting documentation in hardcopy, even though the new regulation requires online submissions.

Philippines

CONGRESS SEEKS TO BAN MINERAL ORE EXPORTS

Since July 2014, two bills have been filed in Congress urging a halt to the export of unprocessed mineral ores, along the lines of a ban instituted by Indonesia in 2009. House Bill ("HB") No. 4728 authored by Congressman Eripe John Amante and Senate Bill ("SB") No. 4728 by Senator Benigno Aquino are similar. Both bills seek to revise three provisions of Republic Act ("RA") No 7942, otherwise known as the Philippine Mining Act of 1995, as follows:

- To add a definition of mineral processing as "the process of separating commercially valuable minerals from their mineral ores" (Section 3 (y) of Section 1).
- To include a new phrase "and destination within the Philippines" under Section 53 (Ore Transport Permit).
- To insert two new paragraphs under Section 55, explicitly providing that mineral ores extracted shall be processed within the Philippines and imposing sanctions/penalties for violations.

As expected, the proposals elicited negative reactions from private stakeholders, including Philex Mining Corp., the Australia-New Zealand Chamber of Commerce in the Philippines, the Joint Foreign Chambers in the Philippines, the Canadian Chamber of Commerce in the Philippines and the Chamber of Mines of the Philippines.

The two bills are coming at a time when the local mining industry is facing an uncertain future as the government aims for new tax legislation to boost its share of mining revenues.

Environment and Natural Resources Secretary Ramon Paje said that the government would support the two bills filed in both chambers, on the condition that there will be a support system for the establishment of processing plants in the draft bills. Unfortunately, the bills as currently drafted do not contain such provisions. Secretary Paje will submit the government's position paper on the matter.

According to a Mines and Geosciences Bureau ("MGB") report, the Philippines currently has five processing plants: two for nickel, two for gold and one for copper. The MGB report also shows that the Philippines has 46 operating metallic mines and 55 non-metallic mines.

The Philippines has vast but largely untapped mineral resources. Last year, the Philippines produced PhP 99.3 billion (USD 2.3 billion) of precious and base metals, including nickel (nearly PhP 30 billion). The proposed measure is seeking to generate more domestic income, attract more investments and lead to more jobs and livelihood for

the Filipino people. Congressman Amante estimates that the Philippines could triple its revenues from mineral exports if such a bill is passed.

According to Congressman Amante, the proposed ban is unlikely to be implemented in the next seven years. Enactment will take two years and there will be a five-year grace period extended to miners before mandatory domestic processing takes effect. Note that both bills do not contain a time frame to impose the ban on mineral ore exports.

The Committee on Environment and Natural Resources approved HB No. 4728 in the first week of September 2014. The next step is elevation of the draft bill to a full session for voting. Thus far, there are about 20 congressmen who have expressed their interest to co-sponsor the House bill. The Senate counterpart bill has not yet been scheduled for Committee hearing.

GOVERNMENT AND CIVIL SOCIETY PROPOSE MANDATORY REPORTING FOR PHILIPPINE EXTRACTIVE INDUSTRIES

Natural resources are important to national development. Aside from ensuring a fair share in the natural resources of a country, translating natural resource wealth into assets requires strong regulatory capacity, established transparency and accountability mechanisms and sound macroeconomic policies when windfall revenues from extractive industries start coming in. The Philippines is nowhere near accomplishing any of these. The weak regulatory capacity of the government over mining and oil companies has been discussed repeatedly. However, the Philippine government has initiated some measures to address the issues. The Aquino government adopted the Extractive Industry Transparency Initiatives ("EITI"), and issued Executive Order ("EO") Nos. 79 and 147 on 6 July 2012 and 26 November 2013, respectively.

The EITI is a policy adopted by the Philippine government to improve transparency and accountability in the extractive industry sector. The policy requires government agencies and companies to disclose the taxes and fees companies actually paid to the government and the social expenditure programs companies actually delivered to communities. Participation requires the signing of a waiver to allow the Bureau of Internal Revenue ("BIR") to disclose the taxes paid to the government. Currently, oil and mining companies have the right not to disclose their revenue, tax and royalty reports to the government, aside from the BIR, unless they sign an EITI waiver.

The Philippines is one of 16 countries trying to comply with the standards set by the Norway-based EITI. One of the requirements is for the Philippines to produce a country report that will be released in December 2014. To date however, only 40 out of 51 companies engaged in the extractive industries have agreed to full disclosure to the PH-EITI.

At a forum of PH-EITI on 3 September 2014, the government, as well as some advocacy groups, expressed concerns that if they are not able to get information from all 51 companies, the Philippine country report would only reveal a partial picture of the situation. Three companies have categorically said that they will not cooperate with the EITI. Thus, to address the situation, the PH-EITI is keen to propose a bill that would mandate mining and oil companies to disclose their revenue, tax and royalty reports. The Civil Society Organization – Multi-Sectoral Group ("CSO-MSG") has been tasked to draft the bill.

Finance Secretary Cesar Purisima has been relentless in his appeal to the remaining companies that have not signed a waiver, as well as companies that have not engaged with the EITI, to cooperate with the government.

Aside from drafting the bill, the PH-EITI has to look for a legislator who will be willing to sponsor the bill in Congress. Thus far, they have not yet identified such a legislator. Should the PH-EITI fail to file a bill or get a sponsor by the end of 2014, it is unlikely that the current 16th Congress will be able to enact a law. By early 2015, members of Congress will be busy preparing for the national elections in July 2016.

Singapore

SINGAPORE HOLDS COMPANIES RESPONSIBLE FOR CROSS-BORDER HAZE

On 25 September 2014, the Transboundary Haze Pollution Act came into effect, following its passage in Parliament on 5 August 2014. Companies, based either in Singapore or overseas, which are found to have caused haze pollution (defined as Pollutant Standards Index "PSI" of 101 or higher, over a continuous period of 24 hours or longer), affecting Singapore will be held accountable under this new Act.

Offences

Under the Act, companies have a statutory duty to ensure that they are not causing, contributing to or condoning activities which lead to transboundary haze. They would be held liable if they:

- Engage in conduct, or engage in conduct that condones the conduct of another entity, which causes or contributes to haze pollution in Singapore.
- Participate in the management of another entity which owns or occupies land overseas, and that other entity engages in conduct, or engages in conduct that condones the conduct of another, which causes or contributes to haze pollution in Singapore.

Minister for the Environment and Water Resources Vivian Balakrishnan opined during the parliamentary debates, that simple insertion of a few clauses into a contract would not be a sufficient defence.

Penalties

The Act provides for both criminal and civil liabilities.

- The penalty for criminal offences is S$100,000 per day, up to a total of S$2 million.
- There is no limit to the civil liability except what the court decides to award.

The Act allows the authorities to act against errant foreign companies, including those with no assets in Singapore and no presence in Singapore. The National Environment Agency ("NEA") will work with the Immigration and Checkpoints Authority ("ICA") to serve notice personally on an officer of the company when he or she enters Singapore. Where necessary, the Public Prosecutor could apply for a court order to require the person to remain in Singapore to assist in investigations.

The Act was first proposed in 2013 after a huge rise in the number of forest fires on the neighboring Indonesian province of Riau spread smoke to Singapore.

Vietnam

SBV ISSUES NEW GUIDANCE ON REGISTRATION OF CONVENTIONAL FOREIGN LOANS

On 15 September, the State Bank of Vietnam ("SBV") issued Circular No. 25/2014/TT-NHNN ("Circular 25") on the procedures for registration of and the registration of changes to conventional foreign loans with the SBV. Circular 25 will take effect on 1 November 2014.

Under Vietnamese laws, foreign loans may be classified into two main categories based on their associated security levels:

- Government-backed foreign loans are loans provided by foreign lenders and guaranteed by the government; and
- Conventional foreign loans are loans provided by foreign lenders and not guaranteed by the government.

Foreign loans under both categories with tenure of more than 12 months must be registered with the SBV.

Previously, the registration procedures for both conventional foreign loans and government-backed foreign loans were provided under a single legal instrument—Circular 09/2004/TT-NHNN, dated 21 December 2004. However, in its aim to simplify administrative procedures in the banking sector, the

SBV has issued separate guidance applicable to conventional foreign loans and government-backed foreign loans.

Conventional Foreign Loans that Must be Registered with SBV

Circular 25 requires the following conventional foreign loans to be registered with the SBV prior to any drawdown:

- Medium-term and long-term loans (i.e., loans with tenure of more than 12 months);
- Short-term loans which are extended and as a result of the extension, the total tenure exceeds 12 months; and
- Short-term foreign loans which are not extended but there is associated outstanding debt as of 12 months from the date of the first drawdown and such outstanding debt is not cleared within 10 days thereon.

Registration Procedures

Within 30 days from either: (i) the execution of the loan; (ii) the date of extension of the loans; or (iii) 12 months from the date of the first drawdown, as the case may be, the borrower shall submit the registration dossier for the loans to the SBV.

The registration dossier shall include:

- Registration form;
- Corporate documents of the borrower;
- Documents evidencing the loan purposes;
- A copy and a Vietnamese translation of the loan agreement.

The SBV will have 20 days from the receipt of a full and complete registration dossier to confirm the registration.

Registration of Changes to Loans

Certain changes made to foreign loans after the first registration with the SBV must be registered. These changes may include, but are not limited to, any changes to lender/borrower, loan amount, drawdown and repayment schedules, interest rate and default interest rate.

Procedures for registration of changes are mostly similar to those that apply to the registration of foreign loans.

GOVERNMENT PROVIDES TAX SUPPORTIVE MEASURES FOR BUSINESS

As part of its regular meeting session held in July 2014, the government issued Resolution No. 63/NQ-CP ("RN 63") dated 25 August 2014, which provides a number of tax supportive measures for business.

Notable measures are outlined below:

Corporate Income Tax

- For investment projects with already-registered investment capital, investment stages, and detailed implementation schedule, each implementing stage shall be deemed an integral part of the whole project and as such, entitled to the same tax incentives originally granted for the project. For investment projects licensed before 1 January 2014, tax incentives for the remaining period shall commence from 1 January 2014 (i.e., no retrospective application for the period prior to 1 January 2014).
- Additional income from further investment in machinery and equipment by companies entitled to tax incentives during the 2009-2013 period, shall also be entitled to tax incentives (no retrospective application).
- Tax incentivised industrial parks now include those located in all central cities, and class 1 townships established from 1 January 2009.
- Staff welfare expenses will be deductible if these do not exceed one month's average salary and are sufficiently substantiated.
- Where the total tax provisional payment by quarter is short by 20 percent or above of the total annual tax payable, the shortfall shall be subject to late payment charges, counting from 31 December of the assessment year to the date of actual tax settlement.

Value Added Tax ("VAT")

- Extension of 60 days for payment of VAT on machinery and equipment imported to form fixed assets of investment projects, with total import value of at least VND 100 billion (approximately USD 5 million).
- Allow input VAT credit in the temporary absence of non-cash payment evidence since payment has not become due under contract.
- Companies with annual sales of up to VND 50 billion (approximately USD 2.5 million) may file VAT returns on a quarterly basis (previous limit was VND 20 billion).

The Ministry of Finance is tasked with issuing the relevant tax regulations to implement the above measures.

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