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Free Trade Agreement Developments

China and Korea Initial Bilateral FTA

On February 25, 2015, senior officials from China and Korea initialed the legal document of the bilateral free trade agreement ("FTA") after concluding substantive negotiations in late 2014. The document will now be translated from English into the respective national languages, and undergo a domestic ratification process.

Analysts have suggested that the deal is less complete than Korea's existing FTAs, such as those with the EU and the US. According to reports, China will eliminate tariffs on about 71 percent of imports from Korea, while Korea will remove tariffs from 79 percent of goods imported from China over a period of 10 years. These figures will raise to 91 percent and 92 percent, respectively, after 20 years.

Key elements of the FTA relating to trade in goods are highlighted below.[1]

Tariff Concessions

The China-Korea FTA employs a variety of tariff reduction/elimination modalities, including:

i. Full tariff elimination over a period of time:
   - Immediate upon entry into force of the FTA;
   - Reduction in equal annual stages over of a period of five, 10, 15 or 20 years, beginning on the date of entry into force of the FTA, duty-free at the end of the staging period; and
   - Standstill at base rates during an initial period of eight or 10 years, reduction in equal annual stages thereafter over of a period of two, five, 10 or 12 years, duty-free at the end of the staging period.

ii. Tariff reduction to margin of preference of the base rate over a period of time:
   - Reduction by one percent of the base rate on the date of entry into force of the FTA, and the duty will remain at this margin of preference thereafter;
   - Reduction by eight, 10, 15, 20, 30, 35 or 50 percent of the base rate in five equal annual stages beginning on the date of entry into force of the FTA, and the duty will remain at the margin of preference at the end of the staging period; and
   - Reduction to 130 percent in 10 equal annual stages beginning on the date of entry into force of the FTA, and the duty will remain at 130 percent at the end of the staging period.

iii. Standstill at base rates.

[1] It should be noted that our assessment is based on an unofficial text.

Outside of the above modalities, Korea has specifically carved out rice and rice-related products from the FTA. In other words, Korea does not even bind rice tariffs at the base rates.

China has scheduled HS 9013.80.30 Liquid crystal display panel, including LCD module, in staging category "10-A" of the FTA. Interestingly, China has refused to include LCDs in its tariff concessions, as per Korea's request, in the on-going talks to expand the Information Technology Agreement ("ITA") at the World Trade Organization ("WTO").

Rules of Origin ("ROO")

Key ROO provisions include:

i. The China-Korea FTA uses product-specific rules ("PSRs"), based on a change in tariff classification ("CTH") and/or regional value content ("RVC"), to determine whether the goods are eligible for FTA preferences.

ii. The FTA allows outward processing for 310 tariff subheadings, subject to certain conditions, in an existing industrial complex located and operated in the Korean Peninsula (an oblique reference to the Gaesong Industrial Complex).

iii. Originating goods can be temporarily stored in a non-FTA Party for a period not exceeding three months, provided that the goods are under customs control with supporting documents. The FTA also provides that a Party may designate certain agencies in a non-FTA Party to issue such supporting documents.

This provision is similar to those found in China's other FTAs. China has appointed China Inspection Co., Ltd, located in Hong Kong, to issue certificates of non-manipulation for goods traded between China and its FTA Partners transiting via Hong Kong. It is likely that China will extend this practice to the China-Korea FTA.

iv. Originating goods may be imported with a third-party invoice. Notably, the value of goods (whether of the exporter/manufacturer or the third-party invoice) is not required to be stated in the authorized certificate of origin ("CO").

The respective ASEAN FTAs with China and Korea both require the value of goods to be stated in the authorized CO. While there is little rationale in requiring the value of goods to be stated on the CO (which is to certify goods' origin, and not authenticate goods' value), certain ASEAN countries continue to resist removing it. It would be interesting to see how this issue would be resolved under the on-going Regional Comprehensive Economic Partnershipment ("RCEP") negotiations involving, among others, ASEAN, China and Korea.

Trade Remedies

The China-Korea FTA does not explicitly recognize China as a market economy, unlike the ASEAN-China FTA. However, the implicit acknowledgement is laid out by the anti-dumping provisions, which confirm that "there shall be no practice between the two Parties to use a methodology based on surrogate value of a third country, including the use of surrogate price or surrogate cost in determining normal value and export price when determining dumping margin during an anti-dumping procedure."

The two countries specifically repudiate the practice of "zeroing" under the FTA. "Zeroing" is most controversially applied by the United States, which disregards or puts a value of zero on instances when the export price is higher than the home market price when calculating the dumping margin.

The China-Korea FTA also covers other areas, including sanitary and phytosanitary measures, technical barriers to trade, trade in services, investment, intellectual property rights, e-commerce and dispute settlement.

Policy Developments

CHINA

AQSIQ Issues New Administrative Provisions on Importing and Exporting Blood and Biological Products

The General Administration of Quality Supervision, Inspection and Quarantine ("AQSIQ") issued the Administrative Provisions on the Quarantine of Inbound and Outbound Special Items (AQSIQ Order No.160, hereinafter referred to as the "New Administrative Provisions"). New Administrative Provisions stipulate specific quarantine requirements on the import and export of microorganisms, human tissues, biological products, blood and its products, and other special items ("biological products").

The New Administrative Provisions came into force on March 1, 2015, replacing the old provisions stipulated under AQSIQ Order No. 83-2005.

Key facilitative changes in the New Administrative Provisions are as follows:

- All inbound and outbound biological products must obtain Quarantine Approval from the local China Inspection and Quarantine bureaus ("CIQ") prior to the products entering or exiting the country. Under the New Administrative Provisions, the validity period of the Approval can be three months, six months and 12 months, depending on the risk assessment of the products. In addition, an Approval is allowed to be used for multiple shipments within the validity period. In comparison, under the old provisions, the Quarantine Approval is only applicable for one shipment, and is valid for 90 days.
- Under the old provisions, the biological products could only be imported or exported via AQSIQ specially designated ports. This restriction is removed under the New Administrative Provisions, making it more convenient and efficient for businesses.

However, the New Administrative Provisions have tightened regulatory controls in certain areas, including:

- The list of biological products prohibited from importation into / exportation from China has expanded. Items such as "medical microbiology bacteria (viruses) and sample and parasites, environmental microbial agents", "genetic materials in bone marrow, human genome, genes and their products", etc., have been added under the New Administrative Provisions.
- The penalties stipulated under the New Administrative Provisions are heavier. For example, the AQSIQ may impose a fine less than RMB 30,000 in case of any severe violation, such as deceiving, bribing to obtain the Approval, or moving, selling or using the special items without the approval, etc. The AQSIQ can also impose a fine less than RMB 30,000 in case anyone who does not establish sound records for manufacturing, using and selling the special items.

Companies often overlook proper management and record-keeping in relation to biological products after importation/exportation. We expect the AQSIQ and local CIQ offices to vigorously enforce the new provisions. Companies are advised to review their operations to ensure compliance.

INDONESIA

MOI Preparing Policy Requiring Mobile Phones To Have 40% Local Content

On February 23, 2015, the Ministry of Industry ("MOI") revealed the government's plan to require mobile phones traded in the Indonesian domestic market to have a minimum 40 percent local content. Mobile phones selling through distributorships should also meet the 40 percent local content requirement.

The MOI is still preparing the regulation to implement the new policy. The new policy is expected to be effective by 2017.

While there is no technical definition of "40 percent local content" (or Total Kandungan Dalam Negeri, "TKDN"), it generally refers to product manufactured in Indonesia. However, if the government is serious about ensuring compliance of the 40 percent local content requirement, the Ministry of Trade and other government agencies would need to prepare inspection procedures and guidance.

PHILIPPINES

EITI to Push for Mandatory Reporting of Tax Payments of Mining and Gas Firms

In September 2014, the Philippine government and civil society proposed mandatory reporting of tax payments of Philippine Extractive Industries ("PEI").

On February 15, 2015, Department of Finance ("DOF") Assistant Secretary Teresa Habitan confirmed that the Philippine chapter of the Extractive Industry Transparency Initiatives ("PH-EITI") will be advocating to institutionalize the initiative through legislation. Asst. Sec. Habitan explained that due to the voluntary nature of the current reporting requirements, compliance among firms has been low. Of the 52 companies targeted for coverage of the report, only 36 submitted their reporting templates as of September 2014.

As such, the PH-EITI is seeking to impose mandatory reporting of tax payments of mining and gas firms, and particularly to amend non-disclosure clauses in the National Internal Revenue Code ("NIRC") and the Omnibus Investments Code, thereby allowing the Bureau of Internal Revenue ("BIR") to disclose to the government the taxes paid by these firms.

Although the PH-EITI is optimistic about enactment of the new law by the current 16th Congress, a check with both houses of Congress revealed that, thus far, the draft law has not yet been endorsed to either chamber.

BOC to Release List of Regulated Imports in April 2015

The Bureau of Customs ("BOC") will be releasing online the final version of the first master list of all regulated import products and their corresponding import requirements by April 6, 2015. The BOC will strictly implement all the requirements on the master list starting from April 20, 2015.

Customs Commissioner John Philipp Sevilla clarified that the list does not contain new sets of requirements, but is a written codified version of all existing import requirements and procedures of the relevant government agencies. The Commissioner noted that the BOC has made great effort to eliminate duplications in the requirements but acknowledged that overlaps remain with a few agencies.

The list and the documents containing detailed information may be downloaded from http://repository.gov.ph/customs/ and through the links provided on the BOC's website.

To further disseminate information about the list, the BOC will soon call for meetings with industry stakeholders. This is especially critical as, by April 20, 2015, the BOC will strictly implement all the requirements on the master list. Commisioner Sevilla pointed out that shipments that will not follow the list will be seized. Any customs personnel who allows a non-compliant shipment through or one that requires additional document/s not specified in the list will be charged administratively.

SINGAPORE

Singapore Budget 2015

On February 23, 2015, Deputy Prime Minister and Minister for Finance, Tharman Shanmugaratnam, delivered the 2015 Budget Statement.

Following on the heels of a number of measures to ease financial pressures on lower income households and the elderly, the 2015 Budget focuses mainly on social and economic development of Singaporeans and Singapore small and medium enterprises.

2015 Budget focuses on four main areas.

i. Skills Development and Upgrading

ii. Innovation and Internationalization

iii. Economic and Social Infrastructure Development

iv. Middle-Income Families and Retirement Support

While Budget 2015 has introduced a number of tax measures affecting SMEs, a significant incentive program targeted at multinational companies ("MNCs"), the Approved Headquarters Incentive, will be terminated. Starting from October 1, 2015, companies performing qualifying headquarters activities or services in Singapore to network companies may instead apply for the Development and Expansion Incentive.

VIETNAM

Government Issues New Regulations on Customs Procedures, Customs Audit and Customs Supervision

After the new Law on Customs was adopted on June 23, 2014 and took effect on January 1, 2015, the Government issued Decree No. 08/2015/ND-CP ("Decree 08") dated January 21, 2015 on customs procedures, customs audit and supervision. Decree 08 took effect on March 15, 2015, replacing existing regulations relating to such matters, such as Decree No. 154/2005/ND-CP dated December 15, 2005, Decree No. 87/2012/ND-CP dated October 23, 2012, and several other relevant Decrees.

Key provisions of Decree 08 cover the following:

Mandatory E-customs Declaration Requirement

Vietnam launched the Vietnam Automated Cargo Clearance System ("VNACCS") in April 2014. To date, almost all customs declaration procedures are done electronically via the VNACCS.

Decree 08 makes it compulsory for customs declarations to be handled electronically. However, paper-based customs declaration may be used under certain exceptional circumstances, such as: (i) for goods exchanged between people living near the border gates; (ii) for goods carried by immigrants, which exceed the duty free quota; (iii) for goods for emergency rescue and humanitarian charity purposes; (iv) for gifts and properties of individuals; (v) for containers used to carry temporarily imported goods for re-export or temporarily exported goods for re-import; and (vi) when the e-customs system is out of order.

Decree 08 also requires the relevant customs authority to announce, on its respective website, the down time or problems of the e-customs system within one hour from their occurrence.

Priority Enterprise ("PE") Regime

Enterprises that are eligible for the PE regime may enjoy the privileges provided under Article 43 of the new Law on Customs. For instance, a PE may be exempted from customs documentation inspection and goods inspection or may be allowed to clear customs even with an incomplete customs declaration dossier. An enterprise may apply for PE status if it meets the following conditions:

i. It must not have committed any breach of customs and tax regulations within the two preceding years prior to the date of PE application;

ii. It must employ the accounting standards as stipulated by the Ministry of Finance, i.e., the Vietnam accounting system ("VAS"); and

iii. It has a minimum export and import volume of USD100 million per year, or a minimum export volume of made-in-Vietnam goods of USD40 million per year. Enterprises exporting agriculture or aquaculture products must have a minimum annual export volume of USD30 million.

Once granted, PE status will be valid for three years and will be automatically extended for another three years provided that the PE holder remains in compliance with the applicable requirements.

Revised Definition of "First Entry Border Gate"

The First Entry Border Gate ("FEBG") serves as the basis for customs valuation. Specifically, Decree 08 provides that customs valuation shall be calculated based on the price actually paid for goods up to the FEBG.

The FEBG was first defined under Decree No. 40/2007/ND-CP dated March 16, 2007 as the port of discharge stated in the underlying bill of lading or, in cases of transport by international road, rail or river, the destination port stated in the underlying sale contract. However, this definition has led to different interpretations. One interpretation is that the value of imported goods must be determined up to the first port of discharge in Vietnam regardless of the place for customs clearance. This effectively excludes transportation costs incurred locally from the value of imported goods. Another plausible interpretation is that the value of imported goods must include all costs up to the customs clearance location. Thus, all costs incurred locally on imported goods, including transportation costs, must be included.

Decree 08 provides details and clarity as to what would be considered an FEBG. Article 20.2(a) of Decree 08 defines FEBG as: (i) the port of discharge as indicated in the bill of lading for sea or air transportation; (ii) the railway station at the border gate for railway transportation; or (iii) the border gate where goods first enter the territory of Vietnam for road or river transportation. In other words, Decree 08 excludes costs incurred locally from the value of imported goods for determination of applicable duty.

The Ministry of Finance is tasked with issuing detailed guidance on the determination of the customs value for imported and exported goods.

Goods Not Allowed in Bonded Warehouses

Under Decree 08, the following goods may not be stored in bonded warehouses:

i. Goods with fake trademark or fake origin;

ii. Goods that are dangerous to human and the environment; and

iii. Goods that are banned or suspended from import/export.

It is notable that a proposal to prohibit storage of goods subject to excise tax and import conditions in bonded warehouses has been removed from Decree 08. Businesses had opposed the proposed restriction, especially since goods subject to excise tax, such as alcohol, cigarettes and cigars, account for as much as 90 percent of the total volume of goods stored in a number of bonded warehouses.

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