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Customs and Global Trade Update

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CHINA FREE TRADE AGREEMENT – WHAT'S CRUCIAL FOR CUSTOMS BROKERS?

With the announcement that negotiations over the Australia China free trade agreement have concluded, your clients will be interested to discover how this new FTA will affect them.

Here, we provide guidance on common importer/exporter questions, and detail the steps you can take to help clients maximise the benefits of the FTA.

WHEN WILL IT COMMENCE?

The actual commencement date of the FTA will remain unknown until shortly before it comes into force.

Following conclusion of negotiations, a number of steps need to be taken before the FTA can commence. Initially, the wording of the agreement needs to be finalised, approved and signed. The FTA will then be reviewed by a senate committee. Following this, enabling legislation will need to be introduced and passed by parliament.

Simultaneously, China will be undertaking its own treaty making process.

When both countries have completed their domestic processes there will be a diplomatic exchange of notes following which the FTA will come into force on a nominated date.

We recommend informing clients that a period of 9 – 12 months is usual for the implementation of an FTA. For example, negotiations over the Korea FTA concluded in December 2013 and the FTA has not yet commenced. Similarly, there was nine months between the end of negotiations over the Malaysia FTA and its eventual commencement.

WILL IT AFFECT THE PARTICULAR GOODS THE CLIENT IMPORTS?

While we do not have duty rates for each tariff line, we generally know that the majority of qualifying Chinese imports will be duty free.

By undertaking a review of your clients' past import data you can model the likely impact of the FTA. It may be that through the use of tariff concessions and duty free headings, little duty is currently paid on your client's Chinese imports.

If this modelling reveals significant duty currently being paid on Chinese goods, rather than waiting for the FTA to come into force, you should consider what steps you can take now to reduce that duty, such as tariff concession orders (TCO).

FTA OR TCO – WHICH SHOULD BE USED?

Many exports from China are already duty free through the use of TCOs. Where there is a high level of certainty that a TCO applies, it is often better to rely on the TCO than the FTA. We say this because with a TCO you are in possession of the knowledge to determine eligibility.

With FTAs you are relying on the information provided by the manufacturer. Further, using FTAs involves the red tape of having to obtain origin documentation.

An individual assessment must be undertaken in each case.

Australian Customs is currently being particularly strict regarding the use of TCOs. Depending on the breadth of the TCO and the nature of the imported goods, it may be safer to rely on the FTA. If there is doubt, please contact us to discuss.

DO THE CLIENT'S GOODS QUALIFY?

Your clients may not understand that qualifying for the FTA requires more than just exporting goods from Australia or China. Your clients need to appreciate that the rules of origin can be complex. This is one of the main reasons that FTAs are underutilised by Australian importers and exporters.

While product specific rules are not yet known, our view is that the rules under the Japan and Korean FTAs are good guides. If your client's goods clearly exceed the requirements of those FTAs, it is very likely that they will qualify under the China FTA.

Where there is a local content test, now is a good time to work with the Chinese supplier or Australian producer to assess the qualifying content level. If the qualification is on the borderline, your client can use the next 6-9 months to look at the possibility of increasing local content.

Australian importers often report that foreign suppliers (usually related parties) will not prioritise the assessment of whether goods qualify for an FTA to which Australia is a party.

To help with that discussion we recommend using past import data to estimate annual savings that could be achieved through utilising the FTA. This will often present a more compelling case than by reviewing the saving on an import by import basis.

INDIRECT SHIPMENTS

As you are aware, all FTAs include provisions regarding whether indirect shipments will lose their preferential status.

For some clients it will be immediately apparent that this is an issue. For others, we recommend reviewing the port of loading for goods stated to be of Chinese origin. Where shipments are not direct you should be discussing this with your client now.

It may be the case that the supply chain cannot be altered; however, this should not be assumed. Modelling the costs of losing preferential treatment under the FTA will help your client to determine whether direct shipment should be considered.

CLEARANCE TIMES, NOT DUTY, IS THE PROBLEM

For some exporters, navigating Chinese Customs is a more significant barrier to trade than customs duties. The FTA will include a chapter on customs procedures, the effectiveness of which will depend on the attitude of the individual Chinese ports.

Our view is that mutual recognition under the proposed Trusted Trader Program is likely to have a bigger trade facilitation impact than the FTA.

In Customs' recent annual report they noted that they are undertaking a Chinese mutual recognition feasibility study. If Chinese clearance is an issue, we recommend that you assist your exporting clients to now start preparing for the proposed Trusted Trader Program. This involves self-assessing customs compliance and security of the supply chain.

WILL DUMPING DUTIES APPLY?

Dumping duties can have a far greater impact on some importers than customs duties. Unfortunately for those importers there will be no relief with the introduction of the FTA.

Almost all FTAs provide that each country can still impose dumping duties.

Your clients who are affected by dumping duties should be regularly assessing whether there is still an Australian industry producing the imported goods, or encouraging the Chinese exporter to seek a current assessment of whether the dumping margin is still correct.

STAY UP TO DATE

A lot will happen between now and implementation of the FTA. By staying on top of these developments you will continue to be able to provide the best assistance to your clients.

Authors:
Russell Wiese, Partner | Lynne Grant, Special Counsel | Fran Smyth, Lawyer

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