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WTS Customs Newsletter

Editorial

Dear Reader,

We are more than happy to share with you our first global customs newsletter. We have compiled news on trade and customs developments from all over the world and we believe that these will be of interest for you.

Not only COVID-19 has a huge impact on global trade. The political situations in countries around the globe also influence companies´ lives.

Free Trade Agreements become increasingly more important in order to simplify trade and save costs by eliminating customs duties. RCEP is the largest FTA that has ever been signed. We inform you about it in our article.

Whilst FTAs create open markets, controls, at the same time, become increasingly more important. Export control is a topic of growing importance. In China, a new export control regime has gone live. Our colleagues from Asia give an overview.

In the US, the new President will change many of the things that Donald Trump decided upon. This situation will certainly be part of our newsletter in the future. A first article is contained in this newsletter.

In Europe, we also have some interesting developments. During times when shops have closed down, e-commerce has become even more important than ever. For customs declarations, the question of low-value consignments has always been very important. The upcoming changes for e-commerce changes are explained in our newsletter.

Depending on changes in the world of trade and customs, we intend to publish our newsletter 3-4 times a year. We look forward to providing you with global news. Our experts will be happy to answer any questions you may have.

Kind regards,

Kay Masorsky

Global Head of Customs at WTS Global

wts global

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Asia-Pacific

Regional Comprehensive Economic Partnership (RCEP): the world's largest Free Trade Area and business opportunities in the Asia Pacific region

On 15 November 2020, all ASEAN Member States (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam), Australia, China, Japan, New Zealand and the Republic of Korea (each a "**Member State**" and, collectively, "**Member States**") signed the Regional Comprehensive Economic Partnership Agreement ("**RCEP**" or "**Agreement**") during a virtual summit hosted by Vietnam. Once ratified, Member States will begin their respective domestic implementation processes to bring the Agreement into force.

Background

Following the official launch of the RCEP at the 2012 ASEAN Summit in Cambodia, the RCEP was finally concluded after eight years of negotiations. The RCEP has 15 signatories, with India having withdrawn from negotiations in early 2020. Nonetheless, India has been granted observer status to the RCEP should it wish to engage in further negotiations at a later stage.

The RCEP is the world's largest free trade agreement to date, with its constituent members comprising US$ 26.2 trillion, or approximately 30% of global GDP, nearly 28% of global trade and about a third of the world's population based on 2019 figures.
The RCEP is a comprehensive free trade agreement. It will eliminate over 90 per cent of tariffs on imports between its signatories. It builds on the existing ASEAN Plus One framework and establishes common rules to address issues such as intellectual property rights, e-commerce, competition and government procurement.

The Agreement is more comprehensive and in-depth when compared with the existing ASEAN Plus One FTAs. It comprises a total of 20 chapters such as, inter alia, Trade in Goods, Rules of Origin ("ROO"), Trade in Services, Investment, Intellectual Property, Electronic Commerce, Competition, Small and Medium Enterprises, Government Procurement and Dispute Settlement.

An analysis of some of the key features of the RCEP is set out as follows.

Key Features of the RCEP

Trade in Goods and Rules of Origin

One key element of the RCEP is the introduction of key elements for the reduction or elimination of customs duties across multiple key tariff classification codes over a 24-year phase-in period. Each Member State has its own schedule of tariff commitments which states the base rates (or the most-favoured nation applied rate of customs duty of each Member State as of 1 January 2014) as well as the timeframe for elimination of tariffs. The schedule also states which tariff lines are excluded by the tariff reduction commitments by each Member.

The RCEP ROO chapter introduces the following ROOs: (a) wholly obtained or produced in a Member State; (b) produced in a Member State exclusively from originating materials from one or more Member States; and (c) product-specific rules for products which are produced in a Member State using non-originating materials. Many of the concepts are similar to the ROOs in the ASEAN Plus One FTAs.

The product-specific ROOs are extensive and comprise the following rules: (a) 40% regional value content; (b) change in tariff classification at the 2-digit, 4-digit and 6-digit levels; and (c) chemical reaction. Where tariff lines have more than one applicable ROO, the exporter shall have the right to choose which rule to use for purposes of origin determination.

The ROO chapter also provides rules on, *inter alia*, (a) cumulation; (b) minimal operations and processes; (c) *de minimis;* (d) treatment of packing and packaging materials and containers; (e) treatment of accessories, spare parts and tools; (f) treatment of indirect materials; (f) fungible goods or materials where originating and non-originating goods are commingled; and (g) direct consignment.

Of significance in the direct consignment rule is that where qualifying goods are transported through one or more Member States or non-Member States, the goods will only continue to qualify for preferential treatment under the RCEP if: (a) they have not undergone any further processing in that intermediate location except for logistic activities; and (b) they remain under the control of the customs authorities in the intermediate location.

The ROO chapter also includes Operational Certification Procedures ("**OCP**") which set out the processes for issuing and validating Certificates of Origin ("**COOs**"). The OCP includes rules for, inter alia, back-to-back proof of origin, third-party invoicing, verification, denial of preferential treatment and record-keeping requirements.

The verification provisions in the OCP enable the competent authority of an importing Member State to conduct a verification of the origin of imported goods claiming preferential treatment. This can be carried out: (a) by issuing a written request for additional information from the importer, exporter, producer, or the exporting Member State's issuing body or competent authority; (b) by making a verification visit to the premises of the exporter or producer of the exporting Member State; or (c) by any other procedures to which the concerned Member States may agree upon.

Trade in Services

The RCEP introduces a negative list approach to service commitments which requires Member States to schedule their service commitments and provide service suppliers information on their existing measures and regulations. There is a six (6)-year transition period from the existing positive list approach for some Member States (i.e. Cambodia, China, Lao PDR, Myanmar, New Zealand, the Philippines, Thailand and Vietnam) to the negative list approach.

The RCEP also provides for specific commitments in the annexes on financial services, telecommunication services and professional services.

Investment

The Investment chapter includes a broad range of investment protection rules such as: (a) National Treatment; (b) Most-Favoured-Nation Treatment; (c) fair and equitable treatment and full protection and security; (d) prohibition on performance requirements; (e) transfers; (f) compensation for losses; (g) subrogation; (h) expropriation; and (i) denial of benefits.

The range of covered investments in the Investment chapter is also very broad. For an investment to be considered a covered investment, the investment must: (a) be made by an investor of a Member State in the territory of the host Member State; (b) be admitted by the host member (where applicable); and (c) be in existence as at the date of the RCEP or thereafter.

These covered investments include the following forms of investments such as: (a) shares, stocks and other forms of equity participation; (b) bonds, debentures, loans and other debt instruments; (c) rights under contracts; (d) intellectual property rights and goodwill; (e) claims to money or to contract performance related to a business; (f) concessions, licences, authorisations and permits, including those for the exploration and exploitation of natural resources; and (g) movable and immovable property and other property rights.

However, the RCEP notably does not contain an investor-state dispute settlement mechanism ("**ISDS**") and instead provides that parties should discuss this topic within two years after the date of entry into force of the RCEP. It also excludes access to ISDS in other investment agreements that the RCEP members may have through the RCEP's MFN clause.

Intellectual Property

The RCEP provides for the protection of intellectual property rights beyond the level of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("**TRIPS**") Agreement, in areas such as technological protection measures and enforcement in the digital environment.

Electronic Commerce

Notably, the RCEP has introduced an Electronic Commerce chapter which aims to promote e-commerce amongst the Member States, the wider use of e-commerce globally and enhance cooperation among the Members in this regard through the adoption of e-commerce-friendly legal frameworks. Member States have also agreed to maintain the current practice of not imposing customs duties on electronic transmissions, which is in line with the WTO Ministerial Decision on Digital Goods.

RCEP VS CPTPP

Aside from the new RCEP Agreement and ASEAN's FTAs, some other major Asia-Pacific trade deals include the recently proposed New Supply Chain Pact initiated by India, Japan and Australia, a relatively newer agreement that aims to diversify and build stronger supply chains in an attempt to reduce supply chain dependence on China and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**").

The CPTPP has 11 members, with 7 of them also being RCEP Participating Countries. The other members of the CPTPP include Canada, Mexico, Peru and Chile. The CPTPP is the successor to the Trans-Pacific Partnership ("**TPP**"), from which the United States withdrew in 2017 under the Trump Administration. All original TPP parties, except the U.S., agreed in May 2017 to revive the agreement and the CPTPP was signed in January 2018 with effect from 30 December 2018. In January 2018, the government of the United Kingdom expressed its interest in joining the CPTPP to stimulate exports after Brexit.

Compared with the RCEP, CPTPP provides for a greater elimination of tariffs (approximately 99%) on imports between member countries. Furthermore, whilst the RCEP does not focus on labour rights, environmental protections, and dispute resolution mechanisms, the CPTPP emphasises higher-level labour and environmental standards and attempts to place some restrictions on state-owned enterprises.

Our Observations

Businesses should take a close look at the RCEP and capitalise on the following benefits of the Agreement:

a. Businesses with existing global value chains in the Asia Pacific region or which intend to set up Asian supply chains should review the RCEP to consider whether there are factors (e.g. duty savings opportunities) that may impact their decisions on structuring their manufacturing, sourcing and distribution operations in the region.

b. Businesses should also consider the interaction between the RCEP and other FTAs in the region (e.g. CPTPP, Asia Pacific Trade Agreement, other bilateral FTAs with Member States and other FTA parties) to determine whether existing global value chain arrangements can be further optimised to increase the efficiency of supply chain operations with non-Member State jurisdictions.

c. Value chain optimisation should be reviewed and planned holistically. Apart from the RCEP and FTAs, businesses will also need to consider double tax agreements, mutual recognition agreements, transfer pricing, import and export licensing, tax incentives, government grants, Authorised Economic Operator programmes and other trade, tax and regulatory considerations when structuring global value chain arrangements.

d. Where the RCEP or other FTAs provide preferential market access for the same goods or services, businesses will need to be very careful when electing which preferential arrangement to rely on. In many cases, once an election is made to rely on preferential access under a specific FTA, that decision cannot be changed subsequently during a verification audit.

e. Market access commitments in the Trade in Services chapter and country schedules should also be reviewed to ascertain whether existing foreign investment restrictions and market access barriers can be overcome through the use of the RCEP.

f. The investment protection measures should be reviewed to ensure that investments are able to enjoy the legal protections under the RCEP as well as other FTAs and investment treaties.

g. Entrepreneurs and small and medium enterprise owners should also review the RCEP to ensure that they are able to benefit from the enhanced market access under the agreement. Used carefully, the RCEP could go some way to enable better access for their goods and services to foreign markets in a manner which is safe and enjoys investment safeguards.

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European Union

E-commerce and new provisions on low-value consignments

Introduction

E-commerce has grown exponentially over the last couple of years, leading to a substantial increase in the sale, import and export of low-value consignments. The existing VAT provisions created price disadvantages for EU-based sellers and encouraged fraud by under-declaring the value of imports. Furthermore, the existing customs provisions relating to the declaration requirements for low-value consignments are scattered and unclear.

This has prompted the European Commission to review the EU provisions regarding import VAT and to review certain customs declaration requirements.

The new VAT rules[1] are intended to combat fraud and to create a level playing field between EU-based and non-EU-based sellers. The amendments and additions in the customs declaration provisions aim at facilitating the levy of import VAT on low-value consignments, clarifying existing simplifications, reducing additional administrative costs for operators as much as possible and creating a level playing field between postal operators and express fast parcel operators.

Imports

Currently, consignments with an intrinsic value of ≤ EUR 150 and not consisting of alcohol products, perfumes, "eau de toilette" (grooming water) or tobacco products are exempt from import duties[2]. If the value of these consignments is ≤ EUR 22, they are currently also exempt from import VAT[3].

In addition to the import duty and VAT exemptions, certain simplifications exist for removing the requirement to lodge a (full) customs declaration. Specifically, the following simplifications apply:

1. Goods with an intrinsic value of ≤ EUR 22 are deemed to be declared for release for free circulation by simply presenting them to customs[4];
2. Goods imported via postal consignment[5] and with an intrinsic value of ≤ EUR 150 are deemed to be declared for release for free circulation by simply presenting them to customs;[6]
3. Goods imported via postal consignment and with an intrinsic value of ≤ EUR 1000 can (generally) be declared for free circulation using a simplified declaration ('reduced dataset') or by means of the international CN22 or CN23 declaration[7].[8]

On 1 July 2021,[9] the import VAT exemption for consignments with a value of ≤ EUR 22 will be removed[10].

1 2021 EU e-commerce VAT package – Council Directive (EU) 2017/2455

2 Article 23 and 24 of Regulation (EC) no. 1186/2009.

3 Title IV of Council Directive 2009/132/EC.

4 Article 138 (2) under b and Article 141 (5) of Commission Delegated Regulation (EU) 2015/244.

5 'Goods in postal consignment' means goods other than items of correspondence, contained in a postal parcel or package and conveyed under the responsibility of or by a postal operator in accordance with the provisions of the Universal Postal Union Convention adopted on 10 July 1984 under the aegis of the United Nations Organisation; 'Postal operator' means an operator established in and designated by a Member State to provide the international services governed by the Universal Postal Convention.

6 Article 138 (1) under f and Article 141 (3) of Commission Delegated Regulation (EU) 2015/2446.

7 CN22 /CN 23 are postal customs declarations based on the Universal Postal Union Convention.

8 Article 144 of Commission Delegated Regulation (EU) 2015/2446.

9 Initially the new rules were supposed to enter into force on 1 January 2021. However, due to the COVID-19 pandemic, the EU Commission decided to postpone the date to 1 July 2021.

10 Article 3 of Council Directive (EU) 2017/2455.

The customs declaration simplification mentioned under 1 above will also be removed as of 1 July 2021.

Lastly, the customs declaration simplification for postal consignments mentioned under 2 above and the possibility to use the CN22 and CN23 declaration under 3 above will be removed once the UCC import control system 2 (ICS2) is implemented[11].

From that day, all operators, including postal operators, will be required to submit (at least a simplified) customs declarations and will no longer be able to declare the goods by simply presenting them to customs and/or using the CN22 or CN23 declaration.

To reduce the administrative burden, the European Commission created the so-called 'super reduced dataset'[12] for consignments with an intrinsic value of ≤ EUR 150. This simplified declaration requires significantly less data than a full declaration[13] (or even the already existing simplified declaration for some postal consignments) and can be applied by anyone insofar as the goods are not subject to any restrictions and the VAT exemption for import followed by an intra-Community supply is not applied.

Exports

Similar to imports, customs declaration simplifications also exist for exports. The current simplifications for e-commerce relate to export consignments with an intrinsic value of ≤ EUR 1000.

Insofar as these types of consignments are not subject to export duty and they are exported via a postal service, they are deemed to be declared for export by their simple exit from the customs territory of the Union. No export declaration or presentation at the customs office of exit is required.[14]

An important question is whether similar consignments that are exported via express/fast parcel operators can already benefit from this simplification too. Although the customs provisions[15] always suggested so, the European Commission indicated that this was earlier not the case, as it assumed in its Delegated Regulation (EU) 2020/877 of 3 April 2020 that these types of consignments, according to the rules before the amendment, had to be declared either by means of a full declaration or orally, which required the presentation of the goods at the customs office where the goods exit the EU[16].

Because the European Commission identified the negative effects of this distinction between postal operators and express/fast parcel operators, it aimed to remove the requirement for express/fast parcel operators to lodge an oral declaration at the customs office

11 This system is due to be deployed between 15 March 2021 and 1 October 2021. It is not yet deployed at the time of writing this article.

12 Article 1 (2) of Commission Delegated Regulation (EU) 2019/1143 amending Commission Delegated Regulation (EU) 2015/2446 and introducing Column H7 of Annex B of the Commission Delegated Regulation (EU) 2015/2446.

13 Annex B - Column H7 of Annex B of the Commission Delegated Regulation (EU) 2015/2446.

14 Article 141 (1) (d) (iii) and Article 140 (1) d of the Commission Delegated Regulation (EU) 2015/2446 (as amended by Commission Delegated Regulation (EU) 2020/877 of 3 April 2020) as well as Article 141 (4) of the Commission Delegated Regulation (EU) 2015/2446.

15 It could be argued that this has always followed from the combined reading of Article 141 (1) (d) (iii), Article 140 (1) and Article 137 (1) (b) of the Commission Delegated Regulation (EU) 2015/2446 even before the amendments that were applied by Commission Delegated Regulation (EU) 2020/877 of 3 April 2020.

16 Preamble 19 of Commission Delegated Regulation (EU) 2020/877 of 3 April 2020.

where the goods exit the EU and aimed to move this to an inland customs office. The customs office competent for the place of exit may only request to examine the goods on an ad hoc basis.

To that effect, Commission Delegated Regulation (EU) 2020/877 changed some provisions. Under the amended rules, goods in postal or express consignments with a value of ≤ EUR 1000 and which are not liable for export duty will (automatically) be deemed to be declared for export, without the need for a(n) (oral) customs declaration.[17]

However, if it is a postal consignment, the sole act of crossing the frontier suffices, whereas, according to the new provisions, express consignments would still need to be presented at the customs office of exit and the data in the transport document and/or invoice must be available to and accepted by the customs authorities.[18]

Conclusion

The new import VAT provisions create a more level playing field between EU-based and non-EU-based sellers. How effective it will be to combat fraud remains to be seen.

The requirement to submit customs declarations for low-value consignments – albeit with very limited data – provides the customs and tax authorities with additional information allowing them to identify and, where appropriate, question imports.

The introduction of the 'super reduced dataset' for low-value consignments facilitates e-commerce, but still requires a customs declaration to be lodged and therefore administrative costs. In addition, the implementation date of some customs declaration provisions is a moving target and actual implementation timing may differ from country to country, potentially creating confusion within the sector.

Once all provisions are fully implemented, the distinction for imports of low-value consignments between postal operators and express/fast parcel operators should be removed, creating a level playing field between international express/fast parcel operators and the local postal operator that provides similar services.

Whether the distinction between postal operators and express/fast parcel operators will also be removed for exports of low-value consignments is not completely clear.

The new rules align express/fast parcel operators insofar as consignments are automatically deemed to be declared for export and no (oral) declaration is needed. However, the new rules also suggest that express/fast parcel operators would still be required to present the goods to the customs office of exit and to ensure that the data in the transport document and/or invoice are available to and accepted by the customs authorities.

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17 Article 141 (1) under d (iii) of the Commission Delegated Regulation (EU) 2015/2446 (as amended by Commission Delegated Regulation (EU) 2020/877 of 3 April 2020).

18 Article 141 (4a) of Commission Delegated Regulation (EU) 2015/2446 (as introduced by Commission Delegated Regulation (EU) 2020/877 of 3 April 2020).

wts global

China I

China Export Controls 2.0

China's rise as a global technology leader and its recent experiences and tensions with the U.S. has transformed its approach to export controls. In this article, export controls are broadly defined to include China's controls on dual-use technology, encryption, cybersecurity and unreliable entities. The authors are of the view that there has been a shift in China's approach to export controls since the mid-2010s. In this context, this article seeks to provide a brief overview of the evolution of China's export control regulations, the current regulatory construct and implications for companies doing business in and with China.

Export Controls 1.0 - International obligations and Internal Security Interests

International obligations – a focus on controlled items using HS code-based catalogues

It is important to recognise that China is a member of a few non-proliferation regimes – namely: the Non-Proliferation of Nuclear Weapons (**NPT**), the Biological Weapons Convention (**BWC**) and the Chemical Weapons Convention (**CWC**). China is notably not a member of the Wassenaar Arrangement and had previously failed to gain admission to the Missile Technology Control Regime (**MTCR**). Nevertheless, China has implemented regulations over the years that reflect its international non-proliferation commitments. These can be seen from the various amendments to the dual use goods and technology regime[1] over the years.

Whilst the previous Chinese regulations purport to regulate both the export of dual use technologies in tangible and intangible form, the reality is that the controls were focussed on regulating the export of controlled technologies in tangible form. Given that Customs was the main authority in China responsible for policing the export of goods, many previous versions of the dual use goods and technologies catalogues[2] (**Catalogues**) had controls that were based on correlated HS codes and did not adopt *Wassenaar Arrangement* classifications.

This made matters more complex for exporters, as it was difficult to correlate controlled technologies with the HS code-based catalogues – these controls suffered from the weaknesses of trying to fit square pegs into round holes since controlled technology in tangible form did not neatly fit into the HS classifications provided for in the published Catalogues.

Internal security interests

Apart from non-proliferation concerns, China's export control regime (most notably, the commercial encryption regulations) was aimed at ensuring that foreign encryption was not widely available to the public in China, as easy access to foreign encryption would compromise the ability of the Chinese authorities to maintain internal security within China.

It is important to note that, when the *Regulations on Administration of Commercial Encryption*[3] were first promulgated in 1999, encryption technology was not quite as pervasive in

1 China's dual use goods and technology regime is based on a series of related regulations including: *Regulations on Export Control of Nuclear (Order of the State Council No. 480 of 2006), Regulations on Export Control of Nuclear-related Dual Use Items and Technologies (Order of the State Council No. 484 of 2007), Regulations on Export Control of Missiles and Missile-related Items and Technologies (Order of the State Council No. 361 of 2002), Regulations on Export Control of Dual Use Biological Items and Related Equipment and Technologies (Order of the State Council, No. 365 of 2002), Regulations on Administration of Chemicals Subjected to Supervision and Control (Order of the State Council No. 588 of 2011), Administrative Regulations on Precursor Chemicals (Order of the State Council No. 703 of 2018), Measures on the Export Control of Certain Chemicals and Related Equipment and Technologies (Order of the Ministry of Foreign Trade And Economic Cooperation, National Economic and Trade Commission and General Administration of Customs No.33 of 2002).* The scope of products and technologies subject to the dual use controls are set out in various catalogues promulgated by the relevant government agencies that are updated from time to time.

2 *Catalogue of Dual Use Items and Technologies Subject to Import and Export Licence Administration (Notice of the Ministry of Commerce, General Administration of Customs No. 68 of 2019) (superseding prior catalogues listed in various notices such as the Notice of the Ministry of Commerce, General Administration of Customs No. 104 of 2018 and Notice of the Ministry of Commerce, General Administration of Customs No. 93 of 2017).*

3 Promulgated by the State Council on 7 October 1999.

ordinary life. Then, the regulations were primarily aimed at ensuring that: (a) foreign encryption was not available in China – there were strict controls on the import, production and sale of foreign encryption products and technologies in China[4]; and (b) foreign parties did not have access to Chinese encryption[5].

Integral to the regulations was the "core function" test which is set out in a notice issued by the State Encryption Management Commission (the predecessor of the SCA) in 2000, which was designed as the main tool to ascertain whether a product or technology would fall within the scope of the commercial encryption regime. However, this test had limited effectiveness as it did not provide companies with sufficient guidance on whether a product or technology was subject to these rules.

Further limiting the effectiveness of the commercial encryption regime was the fact that the regulations lacked an effective enforcement mechanism. This made it difficult for China to provide teeth to these regulations, blunting the application of the regulations. For example, whilst Customs and the Administration for Industry and Commerce (now reconstituted as the State Administration for Market Regulation) were the main agencies that dealt with enforcement issues under the commercial encryption regime, these agencies often lacked the familiarity to properly administer the commercial encryption rules.

Additionally, the imprecise and theoretically broad reach of the regulations also led some to believe that there were mechantilistic objectives behind these regulations to limit market access to foreign technology companies in China.

In any case, notwithstanding the historical limitations of the commercial encryption regime, the exponential growth and adoption of technology in everyday living as well as the critical role of encryption technology soon made it clear that the existing regime was inadequate to regulate the use of commercial encryption in China.

Creating China technology standards

Over the past few decades of China's technology journey, China has, on various occasions, sought to create technology standards that could be controlled and forcibly adopted in China. These included the WLAN Authentication and Privacy Infrastructure (**WAPI**), Green Dam Youth Escort (**Green Dam**) and Trusted Cryptography Module (**TCM**) standards.

Attempts were made to have companies operating in China adopt these technology standards through the use of the Chinese commercial encryption regime, the introduction of standards, or other regulatory mechanisms. However, such attempts to force the adoption of these standards within China would often have little success, largely due to the pushback from foreign technology companies. These foreign technology companies raised potential WTO national treatment breaches and foreign governments were often lobbied to push back against China's adoption and imposition of the use of such standards.

Drivers for China export control 2.0

The survey of the historical developments above serves to provide some context for the development of China's export control regime. However, in recent years, the developments in China's export control regime have increasingly been driven by various new initiatives

4 Article 13 and 14 of *Regulations on Administration of Commercial Encryption.*

5 Article 15 of *Regulations on Administration of Commercial Encryption.*

and challenges, such as the *Made in China 2025* policy, cybersecurity concerns and the U.S.-China trade war. We elaborate on some of these drivers for the development of China's export control regime below.

Made in China 2025

The *Made in China 2025* policy was introduced on 8 May 2015 to promote domestic innovation and technology advancement in China. At the time of its introduction, certain aspects of the *Made in China 2025* policy were aimed at promoting the use of domestic goods and services over those from foreign sources. However, over time, the *Made in China 2025* policy has evolved around the following themes, including:

- promoting the development of an indigenous semi-conductor manufacturing industry – this has been centred around the Central and Western region of China and has the ability to remove China's reliance on foreign wafer fabricators to supply China's technology industry;
- promoting (and at times mandating) the adoption of indigenous technology in critical infrastructure and information technology systems to minimise the vulnerability of such systems to intrusion by foreign parties.

These, as will be shown later, form the backdrop to many of the key regulations and features of China's new export control regime.

Cybersecurity

Since the late-2000s, China started paying more attention to cybersecurity and the protection of critical technology infrastructure from cybersecurity vulnerabilities. This can most prominently be seen from the formation of the Cyberspace Administration of China (**CAC**) in 2014, which functions as China's central internet regulator, censor, oversight and control agency. Crucially, the CAC reports directly to the Office of the Central Cybersecurity Affairs Commission, which has the President of China at its helm. This clearly shows the importance that China has placed on cybersecurity.

More recently, the *Cybersecurity Law of the People's Republic of China* (**Cybersecurity Law**) came into effect on 1 June 2017. The *Cybersecurity Law* defines the roles of different parties in China's cybersecurity ecosystem, including government bodies, network operators and individual users and places great emphasis on personal information security, network product and service security.

It does this through imposing security requirements upon various network operators, including network owners, network product providers, network service providers and network administrators, with stringent provisions in place for "critical information infrastructure operators" – a specialist group that includes financial institutions such as banks due to the fact that they collect personal information and provide online services.

These special provisions are expected to result in businesses in these industries facing more stringent privacy and cybersecurity requirements, such as additional compliance requirements which enable Chinese government bodies to scrutinise and conduct security assessments on the cross-border data flows of these operators from China to overseas. Should the

operators fail to pass the security assessment conducted, personal information and important data would be subject to transfer restrictions and have to be stored within China.

Use of U.S. export control and sanctions regulations on Chinese companies

China's most recent export control regulations and licensing regimes also seem to have been shaped by the use of U.S.-denied and restricted party designations on Chinese technology companies.

In the last few years, there have been high-profile cases of Chinese telecommunications companies such as ZTE[6] and Huawei[7] being sanctioned by the U.S. due to alleged breaches of U.S. export control and sanctions regulations.

More recently, the latest U.S. sanctions in response to the passing of the Hong Kong National Security Law as well as the human-rights related sanctions aimed at China's actions in Tibet have also created greater impetus for the development of Chinese mechanisms to counteract U.S. laws and their impact on Chinese companies.

China Export Control 2.0 – key regulations and features

In light of the driving factors above, China's export control regime has developed from one that was primarily focussed on non-proliferation and internal security concerns into one that aims at counteracting U.S. extraterritorial application of sanctions and export control laws on Chinese companies and persons and developing domestic technology capabilities in areas such as semi-conductor manufacturing and cybersecurity. This resulted in the promulgation of some of the following regulations.

China's new Export Control Law

China's new *Export Control Law* was promulgated in October 2020 following a fairly lengthy passage through the legislative process. Essentially, the *Export Control Law* consolidates controls over the export of dual use, military and nuclear technologies and notably contains several provisions which reflect the various driving factors described above. A brief summary of the new *Export Control Law* is provided below, please see our client alerts on *China passes new Export Control Law*[8] and *China Export Control Law – 2020 Draft*[9] for a more in-depth discussion of this law.

→ National security controls

Apart from consolidating controls over the export of dual use, military and nuclear technologies, the *Export Control Law* also provides China with the ability to control the export of other goods, technologies and services that China deems necessary for the protection of national security. This includes a mechanism for China to adopt autonomous controls over technologies which China deems to be in its national security interest to control.

6 See: https://www.commerce.gov/news/press-releases/2018/07/commerce-department-lifts-ban-after-zte-deposits-final-tranche-14 (last accessed: 30 November 2020).

7 See: https://www.commerce.gov/news/press-releases/2020/08/commerce-department-further-restricts-huawei-access-us-technology-and (last accessed: 30 November 2020).

8 See: https://irp-cdn.multiscreensite.com/e5d993c5/files/uploaded/20201022%20-%20Client%20Alert%20on%20China%20Export%20Control%20Law.pdf (last accessed: 30 November 2020).

9 See: https://irp-cdn.multiscreensite.com/e5d993c5/files/uploaded/20200708%20-%20Client%20Alert%20v7%20%28002%29.pdf (last accessed: 30 November 2020).

With regard to the HS-based catalogues previously used by China, it remains to be seen whether China will move towards international harmonisation and adopt the Wassenaar Arrangement classifications in the catalogue to be issued with the implementing regulations.

→ Deemed export controls

The **Export Control Law** includes deemed export controls. Essentially, these controls prevent the provisions of controlled items by Chinese citizens, legal persons or non-legal person organisations to foreign organisations or individuals. These are in addition to export, re-export, transit and transhipment controls.

→ Entity lists

The *Export Control Law* also provides for entity lists which will be maintained for importers and end-users who are designated as denied parties or restricted parties. Exporters are prohibited and restricted from entering into any transactions with parties on these entity lists without approval from the national export control authorities (**NECA**).

→ Extraterritorial application

It is worth noting that the new *Export Control Law* has provisions which apply extraterritorially, meaning that organisations and individuals outside China may also be liable for Chinese export control breaches.

→ Reciprocal measures

Another notable development under the *Export Control Law* is the introduction of a provision regarding reciprocal measures. This provision enables China to take reciprocal measures against specific countries or regions that abuse their domestic export control measures to endanger the security and interests of China.

Encryption Law

The *Encryption Law of the People's Republic of China* (**Encryption Law**) is another landmark law which came into effect on 1 January 2020. The primary aim of the *Encryption Law* is to update the regulatory framework for the control of encryption to reflect the developments since the *Commercial Encryption Regulations* were first promulgated in the late 1990s.

The *Encryption Law* applies to all encryption technologies, products and services regardless of whether they are for commercial or non-commercial purposes and introduces different types of controls, including export controls. Any commercial encryption involving national security, public interest or international obligations will also be covered under the export licensing regime within the *Encryption Law.*

Similar to the *Export Control Law*, the *Encryption Law* will also manage the controlled encryption items via a control list system. A Commercial Encryption Export Control List will be formulated and announced by the Ministry of Commerce (**MOFCOM**), the State Cryptography Administration (**SCA**) (also known as the State Encryption Management Bureau) and the General Administration of Customs.

Whilst it remains unclear how the two listing systems will interact, businesses subject to the *Encryption Law* should be aware of the control measures and requirements under both the *Encryption Law* and the *Export Control Law*.

Commercial Encryption

The *Regulations on Administration of Commercial Encryption (Draft for Comment)* was issued on 21 August 2020 for public comment. It is noteworthy in the draft that the former "core function" test is no longer being used. Instead, there are provisions that provide for the development and adoption of standards.

The inclusion of these provisions suggest that standards formulation will be a key aspect in regulating the development, adoption and use of commercial encryption in China and can be seen as a furtherance of China's broader international policy goals, such as the *Made in China 2025* policy.

Unreliable Entity List

Finally, the *Provisions on Unreliable Entity List* (**Provisions**) was promulgated by MOFCOM on 19 September 2020. This regulatory development is significant because it enables China to designate foreign entities as unreliable entities and subject them to sanctions. Such designation will be made if foreign entities carry out actions which result in serious damage to the legitimate rights and interests of Chinese enterprises.

It is widely believed that the Unreliable Entity List regime is China's response to the U.S. due to the intensified trade war between the two powers as well as the devastating impact of U.S. extraterritorial sanctions regulations on Chinese companies such as ZTE and Huawei.

It is important to note that the current version of the Provisions does not stipulate the type of sanctions that may be imposed upon foreign entities designated as unreliable entities, nor does it stipulate whether there are secondary sanctions (i.e. on third parties that transact with designated entities).

For further discussion on the Unreliable Entity regime, please see our client alert on *China's Unreliable Entity List – An overview and implications for businesses*[10].

Implications for doing business with and within China

In light of the recent developments in China's export control regulations, doing business with and within China will certainly be more challenging for international businesses. Businesses will need to be aware of these export control regulations and closely monitor any developments that occur. In that regard, we set out below some of the considerations that businesses operating in and with China should keep in mind that result from these developments.

Non-compliance is no longer an option

For a long time, companies operating in China paid little heed to the various export control regulations, often without incurring any sanctions. The new regulations, as well as the constitution of the new regulatory agencies, indicate new resolve by Chinese authorities to regulate this area.

Companies should ensure that they have reviewed the consequences of these regulations on their business activities and should implement the relevant policies and procedures to ensure compliance.

10 See: https://irp-cdn.multiscreensite.com/e5d993c5/files/uploaded/20201022%20-%20Client%20Alert%20on%20UEL.pdf (last accessed: 30 November 2020).

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Beware of autonomous controls and deemed export regulations

There are many aspects of the new export control regulations that mirror features that were previously only found in U.S. export controls. Hence, it is important for companies operating in China to note that, apart from the conventional regimes, there may now be China-specific controls for certain types of goods, technologies and services.

Indigenous technology requirements

Businesses operating in China will need to review their technology infrastructure to determine whether they comply with China's indigenous technology requirements. These may include requirements to procure and adopt Chinese technology for certain parts of their technology infrastructure. Such requirements may also vary based on the type of industry that businesses operate within in China (e.g. critical infrastructure such as banking, power production, etc.).

Screening for Chinese designations

Businesses will also now need to screen for entity designations under China's various regulations, such as the Provisions on Unreliable Entity List and the Export Control Law. It is unclear whether the screening services which companies currently use screen against China's various lists. This will be increasingly important as the Chinese designations could also carry secondary sanctions against companies that transact with designated entities.

Participating in industry groups

For companies that deal with controlled technologies, it is important to participate in industry groups that monitor the Chinese developments. Generally, most major technology industry groups will be monitoring such developments. However, there are also specific industry groups that monitor the Chinese developments. Such industry groups will often be able to provide companies with a heads-up on impending developments as well as give a forum to provide feedback to government agencies regarding the impact of these regulations on their business operations in China.

Note interaction with foreign legal regimes

It is important to note that some of these developments are in response to extra-territorial regulations of other countries, most notably the U.S. Therefore, when reviewing these regulations, it is also important to be aware that there may be other regulatory regimes that may require companies to take different courses of action. Companies operating internationally may find themselves in a difficult position of having to pick which regime to comply with. To illustrate, a company may be prohibited from transacting with a Chinese entity under the laws of Country A. However, complying with those laws could potentially result in the company running afoul of the unreliable entities regime and risk being designated under the Chinese list.

Conclusion

China's export control regimes have changed significantly over the last two decades. China has, in recent times, introduced new regulations to update the nature and scope of controls. Businesses operating in China will need to monitor these regulations and ensure that they adopt measures to comply with these requirements. Likewise, companies that do not operate in China but have significant exposure to China will need to monitor these regulations as they have extraterritorial effect.

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China II

China launches four free trade zones

On 21 September 2020, China unveiled a blueprint for four free trade zones (FTZs) to uplift economic openness and development.

Three new FTZs are launched in Beijing and the provinces of Hunan and Anhui. The forth, in Zhejiang province, will be expanded.

In Detail

On 21 September 2020, the State Council issued the blueprints for launching three new pilot free trade zones ("FTZs") in Beijing and the provinces of Anhui and Hunan and expanding one existing FTZ in Zhejiang province. To date, China has seen the total number of FTZs growing to twenty-one, initially in coastal areas and, more recently, inland.

Focus of the four FTZs

The new FTZs aim at enhancing liberalisation and facilitation in trade and investment via reforms and innovations. The blueprint has detailed the strategic position of each FTZ, as summarised below.

Beijing FTZ	Anhui FTZ	Hunan FTZ	Zhejiang FTZ
Innovation area Next-generation IT, biology and health, high-tech services, digital economy, investment centres, etc. **Service area** Digital trade, cultural trade, trade fairs, medical and health care, international shipping and logistics, cross-border financing. **Hi-tech areas** Business services, international financing, cultural and creative business, bio-tech and health.	**Hefei area** High-end manufacturing, integrated circuits, artificial intelligence, display devices, quantum information, fin-tech, cross-border e-commerce. **Wuhu area** Connected cars, smart household appliances, aviation, robotics, shipping services, cross-border e-commerce. **Bengbu area** Silicon materials, new bio-based materials, alternative energy.	**Changsha area** High-end manufacturing, next generation IT bio- medicine, e-commerce, agricultural technology, Sino-Africa cooperation. **Yueyang area** Shipping and logistics, e-commerce, next generation IT. **Chenzhou area** Non-ferrous metal processing, modern logistics, collaboration with Guangdong-Hong Kong-Macau Area.	Expansion from Zhoushan region to include: **Ningbo area** Oil and gas distribution centre, supply chain innovation, new materials, advance manufacturing. **Hangzhou area** Next-generation artificial intelligence, fin-tech, e-commerce, digital economy. **Jinhua-Yiwu area** Free trade centre for small commodities, e-trading, international logistics hub, platform for Belt-and-Road initiative.

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FTZ highlights

→ Beijing FTZ: Digitalisation
- › Establishment of a central bank research centre for cryptocurrency, testing cryptocurrency's application as legal tender, and setting up block-chain standards;
- › Research and development on standards and systems for digital data exchanges, in terms of rights, assets, services, pricing, settlement and certification;
- › Application of block-chain technology to enhance cross-border cooperation and trading, improve compliance and simplify and standardise the customs procedures.

→ Anhui FTZ: High-tech
- › Development into a cultivator for innovation systems and mechanisms and construction of a state scientific centre;
- › Focusing on scientific infrastructure study (advance light sources, 3D monitoring of aerosphere, strong optics, super-conducting tokamak, and synchrotron radiation light source, etc.);
- › Promotion of high-tech (bio-medicine, intelligent equipment, alternative energy vehicles, silicon materials, and artificial intelligence, etc.);
- › Development of next-generation technology (quantum calculation and communication, advance nuclear power, gene testing, and next general artificial intelligence, etc.)

→ Hunan FTZ: Cooperation
- › Collaboration with other FTZs along the Yangtze River in customs clearance and certification for testing and inspection. Promotion of information exchange, mutual recognition and collaboration of regulations;
- › Connection with the Guangdong–Hong Kong–Macau Greater Bay Area as a smart logistics hub.
- › Promotion of integrated procedures in customs clearance and logistics;
- › Pioneering in Sino-Africa cooperation. Promoting authorised economic operators' (AEO) mutual recognition with African customs authority. Establishing a Sino-Africa trading hub for non-natural-resources products.

→ Zhejiang FTZ: Trade facilitation
- › Establishment of reserve bases for fuel and food resources;
- › Promotion of electronic world trading platform (eWTP) to explore international cooperation in data interaction, business exchange, mutual recognition of regulations and service sharing;
- › Facilitation of international trade and supply (cross-border e-commerce supply centres, settlement in RMB, integration of the trading platforms for small and bulk commodities);
- › Interaction and collaboration with airports, sea ports, inland ports and information ports within the Zhejiang province.

WTS observation

The new four-FTZ master plan heralds further opening up and reforms in a vast range of areas, not independently but in relation with other regions and FTZs. It bears significant economic implications in bringing about scientific and technological revolution and upgrading China's foreign trade and emerging next-generation industries. It is expected that more fiscal and tax incentives will be offered to support the plan.

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Malaysia

ASW – A game changer for ASEAN trade and Customs clearance

The ASEAN Single Window (ASW) is a regional platform that allows for the electronic exchange of shipment information between the ten South East Asian countries. The ASW is a regional initiative that connects and integrates National Single Windows (NSWs) of ASEAN member states. It is an initiative under the ASEAN Economic Blueprint (AEC), which was first proposed in 2005. The ASW provides the secure IT architecture and legal framework that will allow exchange of trade, transport and commercial data between the authorities and the trade community. Although it was mooted back in 2005, many member states were not ready as they were still developing their own national single windows. Over the past few years, member states have been involved in Pilot Testing, Parallel Testing and Live Implementation phases before finally launching their Live Operation of the ASW between 2017 and 2020.

The ASW aims at a speedier cargo clearance process, thus reducing the cost and time for businesses. It also enhances trade efficiency and competitiveness via electronic document-sharing. ASEAN countries are expected to greatly benefit from the interconnectivity and may be the game changer in the trade development across ASEAN and the broader world connecting Customs for effective clearance and risk management.

The ASW is currently limited to the granting of preferential tariff treatment via the **Certificate of Origin (CO) Form D** under the ASEAN Trade in Goods Agreement (ATIGA) that is electronically transmitted via the ASW (ATIGA e-Form D). However, the **ASEAN Customs Declaration Document (ACDD)** which is an electronic document to facilitate the exchange of export declaration information between ASEAN member states has not yet been fully embraced by all the member states. ACDD contains a specific set of export declarations data, which will be sent to the Customs authority in the importing ASEAN country for the purpose of facilitating risk management by the Customs authority in the importing country. Traders are expected to benefit greatly by using ACDD as Customs authorities would be able to perform risk management before the cargo arrives, thus reducing Customs clearance time for import consignments. Currently only three ASEAN member states, namely, Singapore, Myanmar and Cambodia are exchanging the ACDD. The other nations are currently testing end-to-end for the exchange before going live. It is expected to be rolled out fully in the next couple of months by several nations, including Malaysia and all ASEAN countries are expected to fully go live before the end of the year.

The ASW will be expanded to include the exchange of electronic documents **including e-Phyto, e-Animal Health Certificate, e-Food Safety and "Authorised Economic Operators" (AEO),** amongst others. Work is also being carried out to upgrade the communications architecture of the ASW. When fully operational, the ASW is poised to transform, not only intra-ASEAN trade, but will be well positioned to improve each country's trade performance indices, such as **Trading Across Border (TAB) and Logistic Performance Index (LPI),** by narrowing the existing "performance gap" between high and low performers.

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Philippines

The Philippines Implements its "Strategic Trade Management Act" (Republic Act No. 10697)

The Philippines kept to its commitment to the international community when it successfully legislated the management and regulation of trading strategic goods or technology that could potentially be used in the proliferation and manufacturing of harmful devices and prohibited weapons of mass destruction (WMD).

As early as in 2009, there were attempts to pass a trade and security legislation in the Philippines. However, it was not until 2015 that the country's Sixteenth Congress, after the failed bids of the two previous congresses, finally succeeded in enacting Republic Act (RA) No. 10697, otherwise known as the **"Strategic Trade Management Act" (STMA).** It seeks to prevent the proliferation of weapons of mass destruction by managing the trading of strategic goods. This is in line with the Philippines' binding commitment to U.N Security Council Resolution 1540, which it co-sponsored and was adopted unanimously by UN Member States in 2004. It imposes upon States to take and enforce measures to establish domestic controls preventing the proliferation of nuclear, chemical or biological weapons and their means of delivery. As per our Constitution, the Philippines adopts and pursues a policy of freedom from nuclear weapons in its territory. It thus seeks to prevent the Philippines from becoming a potential hub for illicit trafficking for proliferators.

But what are these **"strategic goods"** subject to trade management and regulation in the Philippine context?

They are products that, for security reasons or due to international agreements, are considered to be of military importance, therefore their **export** is either prohibited or **subject to specific conditions.** Under this law, there is a published **National Strategic Goods List** (NSGL), specifically describing the strategic goods to be subject to authorisation. It comprises:

(a) Military Goods (Appendix 1);
(b) Dual-Use Goods (Appendix 2); and
(3) Nationally Controlled Goods (Appendix 3).

"Military goods" are items or technology developed for military-end use, whilst "nationally controlled goods" are those placed under control for reasons of national security, foreign policy, anti-terrorism and public safety. The complications may relate more to "dual-use goods", referring to items, software and technology that can be used for **both civil and military end-use** or in connection with the development, production, storage or dissemination of WMD or their means of delivery. Examples of these are aluminium alloy, machine tools, telecom systems, equipment, etc., which are ordinarily manufactured by companies for export or local use.

In addition to the above lists, Section 11 of the law provides for end-use controls to be imposed up on strategic goods NOT in the NSGL, i.e. **unlisted goods** or service, but where individual licence may still be required as they may be used in the acquisition, development or production of WMDs, amongst others, or their means of delivery. This is the "catch-all" provision of the law.

Under the STMA, the National Security Council – Strategic Trade Management Committee (NSC- STMCom) is the central authority on all matters relating to strategic trade management. The Executive Secretary serves as the Chairperson, whilst the Secretary of the Department of Trade and Industry (DTI) is the Deputy Chairperson with the Secretaries from the different departments (e.g. Foreign Affairs, Justice, National Defence, Finance, etc.) as members, plus the National Security Adviser. On the other hand, the Strategic Trade Management Office (STMO), an attached bureau of the DTI and headed by a Director, serves as the executive and technical agency to establish the management systems for the trade in strategic goods.

RA 10697 applies to and requires the authorisation, by the STMO, of any individuals or legal entities operating within the Philippines or Filipinos, wherever located, providing these services or activities:

- export, import, transit or trans-shipment;
- provision of related services (i.e. brokering, financing and transporting); and
- re-export or reassignment of goods.

Based on the DTI's Administrative Order 19-07, the STMO adopts a phased implementation of the above activities. It started with Registration, under Phase 1, in the latter part of 2019 and now with Export under Phase 2, up to Phase 6 for Importations. This is to give the stakeholders ample time to fully comply.

As of **1 July 2020,** the STMO began the authorisation for the export of strategic goods. Prior to applying for such authorisation, all persons engaged in the export of such strategic goods are required to register first with the STMO, as of 14 October 2019 (i.e. entering, into the STMO Register, those covered entities). Note that, aside from actual shipment of strategic goods out of the Philippines, regulated export activities also include the transmission of software and technology.

There are three (3) types of export authorisation or licences to be secured prior to exporting:

Type	Validity	End-User and Location
Individual	2 Years	One-end user/consignee
Global	5 Years	Two or more end-users and/or in one or more countries
General	Lifetime	Strategic goods to destination countries with specified conditions

Amongst those exempted from said authorisation, those made by the government for the use of the military or police forces or, if connected, with law enforcement activities would be included.

The Philippines has already taken the first step in having the legal framework for trade management to protect the nation's security, as well as the integrity of the international supply chain. This becomes more significant as Asia, including the Philippines, expands its

role in the global economy, particularly in the manufacturing and service sectors. For this, the Philippines needs an effective management regime of these strategic goods. Aside from a comprehensive legislative framework and rules, the other critical factors for success would be an effective enforcement and implementation, as well as local and global cooperation and coordination.

The law and the related rules should address the clear and tight controls on all trade activities by covered as well as unauthorised persons, but balancing it against excessive interference and complicating one's business transactions. During the registration phase, a solid database for companies and goods should be created for the effective monitoring and smooth processing of current and future transactions. The law, rules and policies should provide the implementing agencies involved (e.g. trade, customs, military, police authorities, etc.) with a clear mandate and authority, technical training and resources for effective and strict enforcement. Lastly, raising the awareness of and educating the stakeholders involved, both the business and industry sectors that would be covered (e.g. exporters and manufacturers or those registered under our investment laws, such as the Philippine Economic Zone Authority) and the implementing agencies, as well as reaching out to the international community for proper coordination and learning from their best practices that the Philippines could adopt, are all valuable and critical factors to achieve the objectives of this very important trade and security legislation. Its success could have far-reaching effects, not only within the territorial jurisdiction of the Philippines, but also with impacts on the stability and security of the whole ASEAN region and beyond.

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USA

America's New US President and International Trade: 5 Feb. 2021

The majority of Americans and many around the globe welcomed, on the 20th January, the arrival of US President Joseph R. Biden and the departure of Donald J. Trump and his "America First" policy. Since taking office, a barrage of Executive Orders has signalled Biden's agenda, one that includes strengthened health care, improved climate change planning, scientific support to combat COVID-19, economic stimuli to address the turmoil caused by the virus, reformed immigration policies and reengaged ties with America's global allies. Yet, a change some may have desired or expected in US trade policy could be less likely.

Notably, one of Biden's initial tariff-related measures occurred on 1 February with the reinstatement of 10% tariffs on aluminium from the United Arab Emirates: duties Trump had removed the day before leaving office. Biden proclaimed the duties *"necessary and appropriate in light of our national security interests....to help maintain or increase domestic production by reducing the United States' reliance on foreign producers."* Additionally, the administration is not expected to rescind Chinese tariffs in the absence of a wide-ranging analysis of their economic effects. Biden, a Democrat, may be trying to demonstrate trade toughness to avoid the kind of out-manoeuvring that the Republicans and Trump unleashed on their opponents. The UAE-related move is discouraging to US and European business sectors that hope Biden will rescind 25% tariffs on steel and 10% tariffs on aluminium imposed by Trump (under §232 of the 1962 Trade Expansion Act) to allegedly combat Chinese overproduction and protect national security.

Although US importers may seek US Commerce Department tariff waivers on products not available from domestic suppliers, Biden noted *"there have been 33 such exclusion requests for aluminium imported from the UAE…and the Secretary of Commerce has denied 32 of those requests. This indicates the large degree of overlap between imports from the UAE and what our domestic industry is capable of producing."* On 27 January, the EU ambassador to the US requested that Biden "immediately" lift tariffs on European steel and aluminium and offer, in return, the EU's removal of its retaliatory duties on the US. But American unions and steel workers, along with primary US aluminium producers, are urging Biden to maintain the duties. Those desires will be weighed against Biden's wish for better relations with Europe in order to combat climate change and unite in a common front against China's ascendance, particularly with Biden having criticised China's unfair practices and unchecked globalisation.

Considering America's substantial duties and trade policy fluctuations, exporters to and importers in the US must continue to proactively and advantageously plan to minimise cross-border trade costs, to mitigate risks of US government audits and other enforcement activities and to maintain a strategic advantage.

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About WTS Global

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