

Tax Analysis

Chinese Customs announced measures to implement the RCEP's rules of origin

On 24 November 2021, China's General Administration of Customs (GAC) announced two administrative measures (GAC Order Nos. 254 and 255) to implement the rules of origin (ROOs) in the Regional Comprehensive Economic Partnership agreement (RCEP¹), which are set to take effect on 1 January 2022.

GAC Order No. 255 (Order 255) provides, in part, the general rules in relation to the qualification of originating goods and the process to apply for the preferential tariff treatment, under the RCEP agreement. Order 255 will apply to trade in goods between China and other nine member countries that have completed the ratification procedures for the RCEP agreement (i.e., six ASEAN members: Brunei, Cambodia, Laos, Singapore, Thailand, and Vietnam; three non-ASEAN members: Japan, New Zealand, and Australia) as of 1 January 2022. The application scope of the rules will be further expanded after other member countries complete the ratification procedures for the RCEP agreement.²

GAC order No. 254 (Order 254) provides the administrative measures in relation to "approved exporters" who are allowed to issue self-declarations as acceptable proof of origin under the RCEP or other free trade agreements (FTAs) signed by China (e.g., the bilateral FTAs between China and Iceland, Mauritius, and Switzerland, respectively). Order 254 enters into effect on 1 January 2022.

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¹ The RCEP is a free trade agreement between 15 member countries in the Asia-Pacific region: the 10 ASEAN states (i.e., Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam), Australia, China, Japan, New Zealand, and South Korea.

² South Korea ratified the RCEP agreement on 2 December 2021 at the National Assembly. With the ratification, it is expected to enter into force in early February 2022.

Order 255

Application of ROOs

The application of the ROOs under the RCEP generally require two steps:

- Step 1 – to determine whether the goods in concern qualify as originating goods under the RCEP in accordance with the common criterion set out in the ROOs (i.e., wholly obtained, change in tariff classification, regional value content, and supplementary criterion);
- Step 2 – where the goods in concern qualify as originating goods, to further determine the member country from which the goods originate. In this step, special rules may apply for goods on the "special goods list" of the importing member country.

Step 2 is generally required because the same goods originating from different member countries may attract different import duty rates under the RCEP in the importing member country. However, Step 2 can be optional if the importing party chooses to apply for the highest member country duty rate without further determining the specific member country from which the good originates.

Application documents

To apply for the preferential duty rate under the RCEP, the following documents must be presented at the time of import declaration:

- Proof of origin;
- Commercial invoices; and
- Full set of transportation documents.

Where a valid proof of origin has not been obtained, the importing party may still apply for the preferential duty rate, if it can make a supplementary declaration with respect to the originating status and if it can provide guarantee for the relevant duty and import taxes. The proof of origin can be optional for originating goods for which the dutiable value does not exceed USD 200.

Proof of origin

The RCEP agreement allows the following two types of documents to be acceptable as proof of origin with the same effect, and a proof of origin is valid for one year from the date of issuance:

- *Certificate of origin*, which is issued by the relevant authority of the exporting member country and must bear the authorized signature and seal of the issuing authority. In China, the relevant customs authorities, the China Council for the Promotion of International Trade and its local branches, are the authorities to issue such certificates.

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- *Declaration of origin*, which is issued by an approved exporter and must bear the name and authorized signature of the issuer. The customs authority of the exporting member country should provide the information of approved exporters in its jurisdiction to the customs authorities of other member countries for the records.

Where the originating goods are transited through, or re-exported from, a member country (i.e., the intermediate member country) without changing the originating status, the relevant parties in the intermediate member country are allowed to issue a "back-to-back proof of origin" based on the proof of origin that was originally issued from the exporting member country. In essence, such a document is the endorsement of the originating status from the intermediate member country.

Compliance requirements

Relevant importers and exporters must be responsible for the authenticity, completeness, and accuracy of all the materials they submitted to Chinese Customs to support the determination of the goods' originating status.

Affected parties (e.g., applicants of certificates of origin, approved exporters, and importers to apply for a preferential duty rate under the RCEP) must maintain adequate information and documents for a period of at least three years to support the goods' originating status and originating member country, and to cooperate with customs for any relevant inspections.

For any non-compliant activities, Chinese Customs is still empowered to impose administrative penalties, or even raise criminal charges in certain serious cases, according to the relevant customs laws and regulations, although Order 255 does not specify the legal consequences of non-compliant activities.

Order 254

Qualifications of "approved exporter"

An "approved exporter" is a Chinese exporter approved by Chinese Customs to be eligible to issue declarations of origin which can be accepted as proof of origin under the relevant FTAs signed by China. To qualify as an approved exporter, the exporter must satisfy all of the following three conditions:

- The exporter must understand the ROOs under relevant preferential trade agreements so that it is able to correctly apply the rules to determine the originating status;
- The exporter must have a robust management system of documents supporting the originating status so that the management records can be traced and tracked in customs inspections; and
- The exporter must be recognized as an advanced customs certified enterprise (i.e., Chinese version of "Authorized Economic Operator (AEO)").

Application of "approved exporter" status

To apply for "approved exporter" status, an exporter must submit a written application to the in-charge customs authorities. Within 30 days of the application submission, the customs authorities should review the applicant's status, decide whether to grant the "approved exporter" status, and notify the applicant of the decision in writing.

The "approved exporter" status is valid for three years. Within a three-month period prior to the status expiration, an approved exporter may apply for a renewal for another three years.

Chinese Customs has established a computerized system to manage approved exporters. All declarations of origin must be issued by an approved exporter through the system.

Miscellaneous

Approved exporters must be responsible for the authenticity and accuracy of all the declarations of origin they issued.

An approved exporter will be automatically removed from the list of "approved exporters" if it is no longer qualified as an advanced customs certified enterprise or fails to renew the status upon the status expiration.

In any of the following situations, customs may not only revoke the status of "approved exporter," but also reject any future status applications for two years:

- The exporter has provided fake information to apply for the status of "approved exporter;"
- The exporter has falsified declarations of origin; or
- The exporter has issued non-compliant declarations, where the number of such declarations has reached 1% of the total declarations issued in the last year, and such declarations are associated with goods of value more than RMB 1 million (roughly equivalent to USD 157,000).

Recommendations

Enhancement of ROO-related internal control program (ICP)

The application of the ROOs under the RCEP and other FTAs may be a complex area requiring knowledge about tariff classification, customs valuation, logistics, and supply chain management, and demands joint efforts from multiple functions (e.g., production, purchasing, sales, finance, etc.). Therefore, affected businesses are advised to enhance their ROO-related ICP with technology solutions and to develop an integrated and efficient approach. Meanwhile, relevant businesses may need to consider necessary action plans to manage their suppliers to effectively manage the originating status of the raw materials purchased from suppliers.

Given the anticipated expansion of China's FTA network, relevant businesses may consider establishing a compliance management system with respect to the application of ROOs on their goods. For businesses with large volume of imports or exports of various types of goods, and with diversified purchase sources or sales destinations, they can significantly benefit from a digitalized and end-to-end system that can help achieve the efficient management of the originating status of various goods and automated e-archiving of all the supporting materials for future inspections.

Application for approved exporter status

The introduction of the approved exporter status can reduce the administrative burden for exporters to obtain a valid proof of origin. Qualifying businesses should apply for the approved exporter status to enjoy the benefits.

It is worth noting that such status can only be granted to advanced customs certified enterprises (i.e. Chinese AEOs), which makes the AEO status more attractive. Businesses that wish to obtain the approved exporter status but have not been recognized as advanced customs certified enterprises may need to improve their customs management and compliance records first to qualify as advanced customs certified enterprises, before they apply for the approved exporter status.

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