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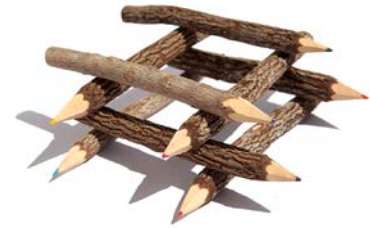
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## Americas

### **United States: U.S. to begin negotiations on transatlantic trade and investment partnership with EU**

On 20 March 2013, Acting U.S. Trade Representative (USTR) Demetrios Marantis officially informed the U.S. Congress of President Obama's intention to begin negotiations with the EU for a new trade and investment agreement, the Transatlantic Trade and Investment Partnership (TTIP). In a related development, on 12 March 2013, the European Commission requested that the EU member states green light the opening of negotiations for the TTIP and released an impact assessment on the future of U.S.-EU trade relations, as well as an in-depth independent study on the potential effects of the TTIP.

The objectives of the TTIP communicated by the USTR to Congress are as follows:

- Eliminate all tariffs and other duties and charges on trade in agricultural, industrial and consumer products between the U.S. and the EU

- Obtain fully reciprocal access to the EU market for U.S. textile and apparel products
- Reduce or eliminate non-tariff barriers
- Achieve meaningful market access that adheres to the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures to protect human, animal and plant life or health
- Achieve meaningful market access, building on strong cross cutting disciplines based on the WTO Agreement on Technical Barriers to Trade

Negotiations are expected to begin as early as June 2013.

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**Asia Pacific**

**Australia: Customs valuation advice (VA) relating to transfer pricing – evidence burden increased**

Australian Customs has revised its Practice Statement (PS) about transfer pricing-related customs valuation advice. The PS is relevant to importers who import goods from related parties. While it is recommended that a VA be sought from Customs when importing from a related party, a VA must be obtained if a retrospective transfer pricing adjustment affects the customs value of previous imports (even if there is no customs duty impact).

The revised PS increases the evidentiary burden on importers who request a VA by requiring them to demonstrate that the price is “arm’s length” under the customs valuation rules (i.e., that the transfer price is a valid customs value). Specifically, importers must demonstrate that the relationship between the purchaser and the vendor of the goods has not influenced the price, by means of either a ‘test values’ test or a ‘circumstances surrounding the sale’ test.

The revised PS applies to all transfer pricing-related VAs issued by Customs from April 2013.

**Australia: Mandatory Australian Industry Participation (AIP) plans and Enhanced Project By-law Scheme (EPBS) changes proposed**

The Government is planning to mandate AIP Plans for projects that establish, expand, improve, or upgrade a facility and involve capital expenditure of AUD500 million+ (major project) from 1 January 2014. AIP Plans are intended to ensure that Australian entities get adequate opportunity to bid to supply goods and services to major projects. It is also proposed that major project proponents would be required

to submit an AIP Plan for evaluation at the start of the project, and later report on its implementation. Major projects in all sectors would be affected, unlike the sector-specific application of the AIP Plan requirements of the EPBS - a customs duty concession scheme. It is understood that the significance of and resource commitment required for AIP Plans are substantial.

It is also expected that the EPBS will be modified to require proponents of projects worth AUD 2 billion and above to embed 'Australian Industry Opportunity officers' in their procurement teams or global supply offices to ensure that Australian suppliers have access to and can win work on global supply chains. Any non-compliance could result in project proponents being denied concessional customs duty treatment.

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#### **India: Highlights of annual supplement to Foreign Trade Policy (FTP)**

The Government of India published the annual supplement (2013-14) to FTP and some of the significant amendments are as follows:

- Zero duty "Export Promotion Capital Goods" (EPCG) scheduled to expire on 31 March 2013 has been extended and scope widened to cover all sectors
- Minimum land area requirement for setting up of Special Economic Zones (SEZ) has been reduced
- Exit from SEZ permitted by way of sale or transfer of SEZ units
- Benefit under "Served from India Scheme" shall now be available based on net free foreign exchange earned as opposed to gross foreign earnings previously.

#### **India: India- European Union (EU) Free Trade Agreement (FTA) update**

Fresh round of negotiations on FTA between India and the EU have commenced. The agenda points for EU include significant import duty cuts in automobiles, wines and spirits and dairy products, in addition to a hike in foreign direct investment cap in the insurance sector and a strong intellectual property regime. India is pushing for liberalized visa norms for its professionals; data secure status and market access in services and pharmaceutical products.

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#### **Japan: Newly amended customs tariff act states importer should be resident in Japan**

The Law to revise part of the Customs Tariff Law and other laws became effective

on 1 April 2013. As reported earlier, the provision of the revised law and circular states that a buyer of an import transaction should be a Japanese resident (i.e., a person who has “domicile, residence, head office, branch, office, business establishment or any other facilities in Japan”).

In the past, some non-resident importers were declaring the transaction value based on the “first-sale” (i.e. between non-residents of Japan), as the customs value of goods imported to Japan. However, with the revision in law, Customs will now be able to reject sales prices (between non- resident entities of Japan) as transaction values for customs valuation purposes, based on the amended law that precisely defines the import transaction as “the transaction that brings the goods to Japan” (i.e., “Last-Sale”).

Non-resident importers are encouraged to review their valuation methodology, and restructure their business model appropriately, to remain compliant with the law and to avoid any possible issues with the customs authorities.

#### **Japan: Japan is in the final stage of EPA negotiations with Australia**

Japan and Australia appear to have reached a general agreement on the Economic Partnership Agreement (EPA). While Japan maintains high customs duty rates on agricultural products including beef, they are likely to agree to accept lower tariff rates for import of certain products under this agreement. It is expected that both Country governments will hold a 17th meeting during the month April to take the discussions forward and finalize the terms of agreement in the coming months.

EPA negotiations started in 2007, but the pace of the negotiations has been very slow. While Australia has required that Japan abolish customs duties on wheat, beef, milk products, and sugar, the Japanese position has been to maintain them.

This EPA, when finalized, will allow companies in the agricultural sectors of both countries to take advantage of the preferential duty rates. Deloitte Japan will continue to monitor and report on the developments on this EPA negotiations with Australia.

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#### **New Zealand: Increased customs revenue from New Zealand customs audits**

The New Zealand Customs service has reported a significant increase in customs revenue (an additional \$48 million) being collected from customs audits.

These Customs audits are being carried out to verify the accuracy of import and

export data as to ensure that correct revenue is collected (i.e., royalty wash up calculations).

Any short paid revenue identified by Customs from these audits can potentially be subject to penalties and in more serious situations prosecution if there is evidence of fraudulent activity.

New Zealand importers are actively encouraged to perform internal reviews on their declaration processes to ensure that the correct information has been provided to Customs. Where underpayments are identified companies should consider making voluntary declarations to Customs to minimize the penalty exposure.

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**Singapore: Implementation of the Advance Export Declaration (AED) from April 2013**

Prior to April, export permits for non-controlled and non-dutiable goods, by sea and air, could be obtained within three days of export from Singapore. With the implementation of the AED, export permits for these goods must now be obtained before they are exported by sea and air. In addition, companies that are exporting strategic goods under the Strategic Trade Scheme (including Tier two and Tier three permits) will need to submit their export declarations before the actual shipment. To help companies fine tune their processes and procedures for AED compliance, Singapore Customs is providing an 18-month adjustment period until 30 September 2014. Companies are encouraged to review existing internal processes and procedures and make the necessary adjustments to ensure that AEDs are submitted before export from Singapore.

**Singapore: Manufacturers and exporters encouraged to proactively check that their goods meet applicable origin rules under Free Trade Agreements (FTA)**

Customs authorities in the ASEAN region are stepping up their audit activities to confirm that manufacturers and exporters of goods are continuing to meet the required origin criteria under the FTAs they are utilizing. These audits are primarily focused on ensuring that the value-add criteria is being satisfied and that locally sourced materials and components are supported by the appropriate evidence.

Not being able to issue valid Certificates of Origin will impact the product's landed cost value, thereby affecting product competitiveness in the importing country; this may result in possible claims of breach of contract and payment issues due to non-fulfillment of Letter of Credits terms.

Companies are encouraged to take proactive steps to periodically review their Manufacturing Costs Statements and ensure they have appropriate documents from their local suppliers to support the application for preferential Certificates of Origin.

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**CIS**

**Russia: Increase of import customs duty rates with respect to dairy products**

The Eurasian Economic Commission Collegium Resolution No. 10 of 27 February 2013 increases the import customs duty rates of the Customs Union Unified Customs Tariff with regard to certain types of butter, dairy spreads, other fats and oils derived from milk, cottage cheese, and some types of cheese. The combined import customs duty rates increased on average from 15 percent of the customs value but not less than 0.25 EUR per kg up to 18.2 percent from the customs value but not less than 0.27 EUR per kg. The increased customs duty rates will be valid from 1 April to 30 June 2013 inclusive.

**Russia: Increase of import customs duty rates with respect to certain types of reception apparatuses for television**

The Eurasian Economic Commission Collegium Resolution No. 20 of 14 March 2013 increases the import customs duty rates of the Customs Union Unified Customs Tariff with regard to the reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus with LCD or plasma display (8528 72 200 1 classification code according to the Combined Nomenclature of the Customs Union) and with displays made with LCD technology (8528 72 400 0 classification code according to the Combined Nomenclature of the Customs Union). The import customs duty rate is increased from 10 percent of the customs value up to 16 percent of the customs value and from 15 percent of the customs value up to 16 percent of the customs value respectively. The increased customs duty rate will be valid from 8 May 2013.

**Russia: The customs authorities compiling a list of manufacturing companies that may import/export goods with the minimal control from the customs authorities**

The Federal Customs Service of the Russian Federation (the FCS) issued the Order No. 202 of 4 February 2013. This order is aimed at minimizing customs control with respect to manufacturing companies that comply with certain requirements established by the order. In particular, according to this Order the customs authorities may not apply such measures of customs control as customs examination, customs expertise of goods and documents with respect to such

companies. However, in order to be included on the respective list the company should comply with 13 criteria established by the Order, for example, the in-charter capital of the company should not be less than RUB 10 million, the number of customs declarations during the preceding year should not be less than fifty, etc.

The manufacturing company may on its own behalf apply to the customs authority to be included into the list. Currently according to available information the Russian customs authorities collect information to issue a list of companies with respect to which a so-called “green corridor” may be applied.

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**Europe/Middle East**

**Hungary: Hungarian case in the EU customs law**

The European Court of Justice (ECJ) has recently interpreted the provisions of the Communities Customs Code on the applied import duty exemptions during the import of means of transportation in the case represented by the attorney of the correspondent law firm of Deloitte Hungary, Szarvas, Falcsik and Partners Law Firm. According to the fact pattern, a passenger car from a third country was imported to Hungary under temporary customs procedures and exempt from customs duty. The vehicle was used by a person in Hungary for private purposes who – according to the viewpoint of the customs authority – has not been in an employment relation of any form with the owner of the car. Therefore, the customs authority claimed that the complete exemption from the import duties could not be applied and it obliged the user of the vehicle to pay public duties.

In the emerged legal dispute, the Court of Székesfehérvár referred the case to the ECJ which had to decide whether in the present case an employment contract is a requirement for the exemption from customs duty or it is sufficient if the owner of the vehicle authorizes the user in any other way to use the car for private purposes. In its decision, the ECJ concluded that in accordance with the custom regulations of the European Union the complete exemption from customs can only be granted if an employment contract between the private person and the owner of the vehicle who is resident outside of the territory of the Community is concluded in relation to the private use of the vehicle.

In the case of companies concerned with passenger car import similar to the above, it seems necessary to review the employment contract of the user and the reason for the usage of the vehicle from a duty exemption point of view.

**Hungary: Changes with regard to the excise duty status of certain mineral oil**



## **products**

According to 2012/209/EU Commission Implementing Decision concerning the application of the control and movement provisions of Council Directive 2008/118/EC to certain additives, in accordance with Article 20(2) of Council Directive 2003/96/EC, as of 1 January 2013 additive fuels are falling within controlled category.

Consequently, in the Hungarian Law on Excise Duty the observed status of the mineral oil products fall within the affected tariff numbers and the additive fuel category is terminated.

The tax level with regard to the above mineral oil products is identical with the fuel to which they are added. In the case of any other kind of use – if they are not added to fuel – the tax level is HUF 0 per thousand liters.

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### **Italy: Guidelines for exporting goods under suspension of excise duty in EMCS**

With Note no 40194 RU dated 29 March 2013, the Italian Customs Authorities have issued operative guidelines with reference to the export procedures of goods from Italy to non EU countries under suspension of excise duties. With these guidelines the authorities want to integrate the ECS system (Export Control System) and the EMCS system (Excise Movements Control System) for the automatic issuing of the report of export.

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### **Netherlands: Changes in REACH legislation**

On 21 March 2013 the European Commission published a Commission Implementing Regulation amending the REACH regulation on fees. This amendment should also reduce the administrative burden of micro, small and medium-sized enterprises. For legal certainty, the European Commission clarifies the consequences of late payments to the REACH agency. It is stated that payments made to the agency before rejection of a submission cannot be refunded. Fees paid after a rejection should be refunded as undue payments by the Agency.

For updates of registrations concerning confidentiality claims however, the fees should be applied consistently regardless of when the request is made. With respect to updates of registration other than tonnage bands, it is possible for registrants to request an extension of the second deadline for payment of the corresponding fee.

Micro, small and medium sized enterprises experience administrative burden and practical challenges to comply with REACH legislation. Therefore the European

Commission has decided to further reduce fees and charges applicable to these enterprises. The REACH agency may request evidence that enterprises comply with the conditions for a reduction of fees or charges in order to verify if these conditions are met.

This adjustment applies for companies which need to register their chemicals/substances with the European Chemicals Agency. Submissions of registration of chemicals after 22 March 2013 will have to take into account the new fees and charges.

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