



# Asia Trade

## Update on Trade Agreements

### China, Taiwan Sign Economic Cooperation Framework Agreement

On June 29, 2010, China and Taiwan signed the landmark Economic Cooperation Framework Agreement (“ECFA”), which further promotes cross-strait economic cooperation. China has been providing preferential tariffs on fruits products originating from Taiwan since August 2005. The ECFA was signed by China’s Association for Relations Across the Taiwan Straits (“ARATS”) and Taiwan’s Straits Exchange Foundation (“SEF”).

#### Special Preferential Import Tariffs under ECFA

According to the “Trade in Goods” chapter of the ECFA, China and Taiwan will gradually reduce and remove tariffs on originating bilateral trade. Furthermore, both parties have agreed to an “early harvest program” which provides accelerated duty reduction and preferential treatment.

The “early harvest program” shall be implemented within 6 months of the ECFA taking effect. Tariff concessions under the “early harvest program” are summarized as follows:

CHINA				
MFN Rate for WTO member in 2009 (X%)	ECFA Early Harvest Schedule			Items
	First Year (expected Jan 1, 2011)	Second Year (expect Jan 1, 2012)	Third Year (expected Jan 1, 2013)	
0<X≤5	0%			Plastic machine Tools, petrochemical products, textile products, metal products, etc.
5<X≤15	5%	0%		Agricultural / fish products, cement, petrochemical material, plastic/ rubber products, textile products, footwear and relative components, metal products, house used appliances, machine tools, machinery and electronic products, auto parts, bicycles, etc.
X>15	10%	5%	0%	Suitcase, iron, underwear, etc.

- Strategic Business Planning
- Supply Chain Planning
- Customs Advisory
- Export Control
- Tax & Transfer Pricing
- WTO & FTA Advisory
- Labor & Employment
- Anti-Illicit Trade

- Cambodia
- China
- India
- Indonesia
- Japan
- Lao PDR
- Malaysia
- Philippines
- Singapore
- South Korea
- Taiwan
- Thailand
- Vietnam

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Taiwan				
MFN Rate for WTO member in 2009 (X%)	ECFA Early Harvest Schedule			Items
	First Year (expected Jan 1, 2011)	Second Year (expect Jan 1, 2012)	Third Year (expected Jan 1, 2013)	
0<X ≤ 2.5	0%			Petrochemical materials, machinery and electronic products, etc.
2.5<X ≤ 7.5	2.5%	0%		Plastic materials, weaving, machinery, electronic products, bicycles and related parts, etc.
X>7.5	5%	2.5%	0%	Rubber tire, silk knitwear, etc.



Under the “early harvest program”, China will offer preferential tariffs for 539 goods originating from Taiwan, enabling Taiwanese exporters to save over NTD 26 billion in duties. In return, Taiwan will offer reduced tariffs on 267 goods.

China and Taiwan will further discuss the tariff reduction and elimination schedule for other goods.

#### Rule of Origin for Early Harvest Program

Under Annex 2 of ECFA “Temporarily Rule of Origin for Early Harvest Program” (“Temporarily ROO”), goods shall satisfy the conditions of origin if:

- i. They are wholly obtained or produced in the Parties;
- ii. They meet the Regional Value Content (“RVC”) calculated as follows:

$$RVC = \frac{FOB - VNM}{FOB} \times 100\%$$

FOB

However, the RVC threshold has not yet been agreed upon.

- iii. Non-originating materials used in the production of the goods have undergone a change in tariff classification. However, the level of tariff change has not yet been determined;
- iv. The processing criterion stipulated in the list of Temporarily ROO is satisfied. However, such a criterion still needs to be further negotiated by the two parties.

Reports on the latest ROO negotiations indicated that the origin rules for the Early Harvest Program are almost completed. Most agricultural products must be entirely produced and processed in China or Taiwan in order to enjoy Early Harvest privileges. The RVC threshold agreed on some goods is 40-50%; the RVC threshold for automobile parts and tool and machine products is apparently agreed at 50%.

## Early Harvest Program for Services

ARATS and SEF will continue to discuss “Trade in Services” chapter, focusing on gradually reducing and removing restrictive measures. In the meantime, the two sides agreed to an Early Harvest Program, opening up certain sectors immediately upon entry into force of ECFA.

- Taiwan will allow Chinese investments in research and development services, conference services, exhibition services, specialized product design services and commission agent services. It undertakes that Chinese banks may, upon approval, establish a branch in Taiwan after 1 year of setting up a representative office there.
- China will allow Taiwanese investments in software application services, data processing services, scientific and engineering research and development services, exhibition services, professional design services, hospital services, aircraft repair and maintenance services. It undertakes that Taiwanese insurance companies may, subject to certain conditions, apply to enter the Chinese market 2 years after setting up a representative office there. Taiwanese banks may also apply to set up a branch or wholly-owned bank 1 year after establishing a representative office in China. They may also, subject to certain conditions, apply to offer certain types of services, including RMB services.

## Investment

The two parties agreed that, within 6 months of entry into force of the ECFA, they will start negotiations on investment protection, transparency, reducing restrictions on investment, and investment facilitation.

Separately, China and Taiwan also signed a cooperation agreement on intellectual property protection.

## **Philippines Implements Tariff Commitments under AJCEP**

On December 23, 2009, President Macapagal-Arroyo signed Executive Order (“EO”) No. 852 implementing the Philippine tariff commitments under the ASEAN-Japan Closer Economic Partnership (“AJCEP”). The publication of the said EO, however, was held in abeyance in view of the technical errors relating to 35 automotive items. The Philippines and Japan had conducted intensive bilateral negotiations on these items since early 2009. With both sides reaching an agreement on these items in May 2010, EO 852 was published on June 15, 2010, in time for its implementation on July 1, 2010.

Salient provisions of the EO are as follows:

- Section 4 – The Philippines maintains its right of recourse to all remedy measures provided for in its law, the AJCEP and relevant international agreements as effective devices against import surges;



- Section 6 – EO 767, which contains Philippine tariff concessions under the bilateral Japan-Philippines Economic Partnership Agreement (“JPEPA”), remains in force and effect; and
- Period covered – 10 years from April 1, 2009 to April 1, 2018.



EO 852 reflects the Philippine trade policy that, with regard to Japan, the bilateral free trade agreement (i.e., JPEPA) should be more preferential.



### Singapore Implements ATIGA

Following the entry into force of the ASEAN Trade in Goods Agreement (“ATIGA”) on May 17, 2010, Singapore Customs issued Circular No. 09/2010 outlining the changes to the current ASEAN Free Trade Area-Common Effective Preferential Tariff (“AFTA-CEPT”) Scheme on June 21, 2010.



The changes and impact to traders and manufacturers under the ATIGA are summarized as follows:

- Exporters – Singapore Customs will issue the new ATIGA Form D from July 1, 2010 for submission to overseas importer to claim for preferential tariff treatment.
- Importers – The new ATIGA Form D is accepted by Singapore Customs from May 17, 2010.



With effect from May 17, 2010, an importer may claim for preferential tariff on imports of stout/porter, beer (including ale), medicated samsu and other samsu originating from eligible ASEAN Member States by submitting the new ATIGA Form D. There is no change to the other procedures for claiming preferential imports.

- Manufacturers with existing cost statement – No further action is required.
- Manufacturers preparing cost statements for new products or renewing previously approved cost statements – Manufacturers need to prepare their cost statements using the new template for submission to Singapore Customs for verification.

The Circular provides as annexes the templates for the new ATIGA Form D and cost statements for exports under the ATIGA.

The Circular also states that ASEAN Member States will accept preferential tariff claims based on both the current CEPT Form D and the new ATIGA Form D formats until November 17, 2010. From November 18, 2010 onwards, ASEAN Member States will only accept the new ATIGA Form D for preferential tariff claims.

### Thai Cabinet Approves 2<sup>nd</sup> Protocol for Amendment of OCP for ROO under ACFTA

The second protocol for the amendment of trade in goods agreement under the ASEAN-China Free Trade Area (“ACFTA”) was issued to facilitate and reduce obstacles in the use of ACFTA

privileges by easing and revising the Operational Certification Procedures (“OCP”) for ACFTA rules of origin (“ROO”) as follows:

- The importer will be eligible to use ‘Back-to-Back Form D’ (or Movement Certificate as called by China), which was not allowed previously under the ACFTA;
- Goods purchased via third country (Third Party Invoicing) will be eligible for ACFTA privileges;
- Enable Form E to be issued prior to or at the time the goods are loaded onto the truck (previously Form E must be issued at the time of export or after export);
- Specify clearer methods for customs inspection and clearance of goods in case origin of goods is questioned so as to enable faster customs clearance;
- The number of copies of Form E to be submitted to Customs are reduced from 3 copies to 2 copies;
- The number of goods per copy of Form E is limited to 25 items; and
- Extend the duration for the retention of application for Form E and related documents by the issuing authority from 2 years to 3 years.



After the Ministry of Commerce (“MOC”) signs the protocol and upon approval by the Parliament, the Ministry of Finance (“MOF”) will issue the relevant notification and Customs Notification to implement the revised OCP.

Meanwhile, the MOC will inform the Ministry of Foreign Affairs to notify ASEAN members and China that Thailand has completed its internal procedures and is ready to implement the revised OCP in Thailand. According to the Thai Cabinet’s Summary of Meeting, the ASEAN members and China are expected to sign the relevant protocol at the Senior Economic Officials Meeting (“SEOM”) in August 2010.

The revised OCP shall take effect on November 1, 2010.

#### **Vietnam MOIT Issues ROO under ATIGA**

The Ministry of Industry and Trade (“MOIT”) issued Circular No. 01/2010/TT-BCT (“Circular 01”) on the implementation of the rules of origin (“ROO”) under the Common Effective Preferential Tariff Agreement. On May 17, 2010, the MOIT issued Circular No. 21/2010/TT-BCT (“Circular 21”) on the implementation of ROO under the ASEAN Trade in Goods Agreement (“ATIGA”) which will take effect on July 1, 2010. Circular 21 has superseded Circular 01.

Circular 21 makes certain changes in the determination of origin, certificate of origin (“C/O”) and C/O issuing body to Circular 01:

#### **Determination of Origin**

Both Circular 21 and Circular 01 provide that goods which satisfy all the conditions on origin shall be eligible for issuance of C/O. Circular 21 adds “goods listed in the list of information technology products (“ITA”)” as another criterion for determination of origin. As such, there are now 5 criteria for determining whether the goods are considered as originating from a member country:

- Must be purely/wholly originated or produced in a member country;
- Must have a total or partial cumulative regional value content (“RVC”) of no less than 40%;
- All non-originating materials used in the production of the goods have undergone a change in tariff classification at four-digit level (“CTC”) of the Harmonized System;
- Must be listed and satisfy the criteria in the list of specific product rules issued by the MOIT; or
- The goods must be covered by the Ministerial Declaration on Trade in Information Technology Products adopted in the Ministerial Conference of the WTO on December 13, 1996, and set out in the list of information technology products (“ITA”), if assembled from materials indicated in the list of information technology products.

#### C/O Issuing-Body

Under Circular 21, the Kon Tum Economic Zones Authority is added into the list of C/O Form D issuing-body of Vietnam and the Bo Y International Border Gate Economic Zone Authority is removed from this list.

There are no changes to the procedures and time-limit for the issuance of C/O.

#### **Vietnam MOF Issues AKFTA Tariff Schedule for 2010-2011**

On May 18, 2010, the Ministry of Finance (“MOF”) issued Circular 77 promulgating Vietnam's ASEAN-Korea Free Trade Area (“AKFTA”) Tariff Schedule for the period 2010-2011. Circular 77 superseded MOF Decision No. 112/2008/QD-BTC dated December 1, 2008. Circular 77 has taken effect on July 3, 2010.

Under Circular 77, the AKFTA rates are applicable on importations subject to the following conditions:

- Must be included in the Vietnam's AKFTA Tariff Schedule promulgated in conjunction with Circular 77;
- Must be imported into Vietnam from the following countries: Brunei (BN); Cambodia (KH); Indonesia (ID); Laos (LA); Malaysia (MY); Myanmar (MM); Philippines (PH); Singapore (SG); Thailand (TH); and Korea (KR).

However, certain goods imported from the above-mentioned countries are not subject to AKFTA rates.



- iii. Must be shipped directly from exporting countries as listed in item (ii) above to Vietnam;
- iv. Must obtain C/O - Form AK issued by one of the following competent authorities:
- The Ministry of Foreign Affairs and Foreign Commerce (Brunei);
  - The Ministry of Trade (Cambodia);
  - The Ministry of Trade (Indonesia);
  - The Ministry of Industry and Trade (Laos);
  - The Ministry of Trade (Malaysia);
  - The Ministry of Trade (Myanmar);
  - The Ministry of Finance (Philippines);
  - The Customs Office (Singapore);
  - The Ministry of Trade (Thailand); and
  - The Industrial and Commerce Office or Customs office (Korea).



In addition, Circular 77 provides that goods manufactured in Khai Thanh Industrial Park within the territory of North Korea (GIC goods) are eligible for Vietnam's AKFTA rates if they satisfy the following conditions:

- Must be included in the column named "GIC" of the Vietnam's AKFTA List;
- Must be directly shipped from Korea to Vietnam;
- Must have C/O Form AK with wording "Rule 6" in box 8 issued by the competent authority of Korea in accordance with the regulations of the Ministry of Industry and Trade; and
- Must satisfy all the requirements on ASEAN-Korea origin for goods applicable to Rule 6 of AKFTA ROO.

### Japan, Mongolia Launch EPA Study

On June 21, 2010, the Ministry of Foreign Affairs of Japan ("MOFA") announced that the governments of Japan and Mongolia have agreed to start a joint public-private research on an economic partnership agreement ("EPA") between the two countries.

The first meeting for the EPA Study was held on from June 24 to 25, 2010 in Ulan-Bator, Mongolia. The experts from industry, government, and academia of both countries attended the meeting. During the first meeting, the experts exchanged views on topics including bilateral economic relations and items to be included in the possible EPA.

Mongolia does not have any FTA or EPA with other countries. The EPA with Japan is a trial FTA negotiation for them. Mongolia's economy is centered on agriculture and mining. Mongolia has rich mineral resources. Copper, coal, molybdenum, tin, tungsten, and gold account for a large part of industrial production. The mining industry consists of approximately 80% of Mongolia's value of exports. Japan's trade interest in Mongolia is in its rich natural resources.



## REGULATORY DEVELOPMENTS IN ASIA

### China



#### Customs Revises Import Management of Samples and Advertising Products



The General Administration of Customs ("GAC") issued GAC Announcement No. 33 [2010] to strengthen the administration of samples and advertising products. The GAC Announcement 33 has come into effect on July 1, 2010. The Announcements replaces the Supervisory and Administrative Measures of the Customs of the People's Republic of China for Import or Export of Sample and Advertisement Articles ("Administrative Measures") which was in effect since 1990.



#### Definition of Samples and Advertising Products

GAC Announcement defines the following:

- "Sample of import and export" refers to specimens of goods that provide reference for goods ordering in import and export;
- "Advertising products of import and export" refers to advertising products that are used to promote the products in import and export.

These two definitions are the same those stipulated under the Administrative Measures.

#### Import Management of Samples and Advertising Products

From July 1, 2010, samples of goods and advertising articles, whether provided free of charge or not, shall be declared to Customs by the consignee or its agent, and verified by Customs in accordance with the relevant provisions. In comparison, the Administrative Measures required the enterprises which sent or accept such samples and advertising articles, or its agent (or individuals who carried with such sample), whether provided free of charge or not, to make the declaration.

Samples of goods or advertisement articles which are prohibited from importation or are subject to license control, consignees must undertake the relevant procedures in accordance with China's regulations on imports.

Samples of goods or advertisement articles that are only used as samples and have no commercial value or for advertising purposes, such products are exempted from applicable duties and taxes. Other samples of goods or advertisement articles with commercial value shall be taxed according to the Customs regulations.

# INDONESIA

## Indonesia Issues New Foreign Investment Policy

In early June 2010, Indonesia issued Presidential Regulation No. 36/2010 ("PR-36") amending the current Negative Investment List ("DNI"). PR-36 superseded Presidential Regulation No. 77/2007 which was amended by Presidential Regulation No. 111/2007 ("PR-111") regarding the list of business sectors which are closed and conditionally open for investment.

Business Sector	PR-111	PR-36
Studio for casting film	100% domestic	Foreign investments maximum of 49%
Film laboratory process	100% domestic	Foreign investments maximum of 49%
Sound facility for dubbing	100% domestic	Foreign investments maximum of 49%
Production film	100% domestic	Foreign investments maximum of 49%
Speciality hospital service	Foreign investments maximum of 65% (only in Surabaya and Medan)	Foreign investments maximum of 67% (in entire Indonesia)
Consultancy management and business of hospital	Foreign investments maximum of 65%	Foreign investments maximum of 67%
Supporting service of hospital	Foreign investments maximum of 65%	Foreign investments maximum of 67%
Nursery	Foreign investments maximum of 49% (only in Surabaya and Medan)	Foreign investments maximum of 51% (only in Surabaya and Medan) 49% in entire Indonesia
Business Sector	PR-111	PR-36
Elementary and secondary educative institution	Foreign investments in maximum of 49%	Special permit
University institution	Foreign investments in maximum of 49%	Special permit
Construction service for building tower of telecommunication	Open with conditions	100% domestic
Post service	Open with conditions	100% domestic investment

PR-36 also provides preferential treatment for ASEAN investors by allowing them to have a higher percentage of foreign ownership in certain sectors. The said preferential treatment afforded to ASEAN investors is a precursor to the creation of the ASEAN Economic Community ("AEC"), which will require national treatment to be granted to ASEAN-based investors. The issuance of PR-36 signifies the government's compliance with the commitment in the creation of the AEC.

Major differences between PR -36 and the previous investment regulation (PR-111) are as follows:

- i. PR-36 reduced the number of closed sectors for investment from 23 business sectors to 20. The sectors removed from closed investment list are as follows:
  - Liturgy, funeral;
  - Public broadcasting, radio and television; and



- Cyclamate, saccharine industry.
- ii. The number of sectors that will be opened subject to certain conditions increased from 268 to 274 business sectors.
  - iii. With regard to business sectors subject to condition on location of investments, PR-36 provides that any foreign investor who would like to extend their similar business in other location beyond the approved location must establish a new entity. Under the previous regulation (PR-111), investors extending similar investments in other locations are not required to set up a new entity.



## JAPAN

### Japan Signs Mutual Recognition of AEO with EU and Canada

The Ministry of Finance (“MOF”) announced that Japan has signed the mutual recognition of Authorized Economic Operator (“AEO”) with the European Union (“EU”) and Canada, on June 24 and 25, 2010, respectively. AEO status is provided by Customs to AEO traders. The AEO offers opportunity for trade facilitation to certified AEO traders. The AEO traders who sought Customs certification made additional investments in ensuring that their supply chain is secured.

The mutual recognition agreement with EU is the third for Japan. Japan signed its first mutual recognition agreement with New Zealand in May 2008 followed by the United States in June 2009. On the other hand, Japan is the first country outside Europe that the EU has entered into a mutual recognition on AEO. EU has mutual recognition on AEO with Switzerland and Norway only.

The mutual recognition with Canada is fourth one for Japan, following signature with EU. In Canada, the AEO program is called as Partners in Protection (“PIP”).

The main benefits of mutual recognition are as follows.

- i. Each customs authority will provide favorable treatment to AEO operators. These include, in particular:
  - On risk assessment, AEO operators may enjoy reduced inspections or controls and other security-related measures.
  - Priority cargoes shipped by AEO operators could be facilitated and expedited to the extent possible to ensure trade facilitation and continuity of business, especially in cases where there are disruptions in trade flows due to increases in security alert levels, border closures and/or natural disasters, hazardous emergencies or other major incidents.
- v. Each customs authority may review the trade facilitation procedure to provide further benefits and enhance trade facilitation for AEO operators.

In summary, AEO operators will be treated more favorably, subject to less inspection, and have priority with the Customs authority of a country with mutual recognition agreement. Companies

who have AEO status and operate a global supply chain are expected to benefit more as Japan continues entering into mutual recognition program with other countries.

Japan is currently studying mutual recognition of AEO with Singapore and Korea.

## MALAYSIA

### PM Announces 10<sup>th</sup> Malaysia Plan

During a speech on June 10, 2010, Prime Minister Najib unveiled the 10<sup>th</sup> Malaysia Plan (“10MP”) for the period 2011 to 2015. The 10MP has been formulated with various approaches towards becoming a high income and high productivity economy, in line with the New Economic Model. Under the 10MP, the gross national income per capita is targeted to increase to RM 38,850 (approximately USD 12,140) by 2015, which requires a real GDP growth of 6% per annum.

Malaysia foresees that growth will be led by the services and manufacturing sectors, as well as revitalization of the agriculture sector towards higher value added, the adoption of Information and communications technology (“ICT”), biotechnology and other relevant technologies.

Highlights of some of the key economic measures under the 10MP are as follows:

#### National Key Economic Areas

The main approach in transforming to a high income economy will be to specialize and focus on 12 national key economic areas (“NKEAs”) which have the potential to generate high income. Apart from 11 sectors, Greater Kuala Lumpur is selected as an NKEA as it has the potential to become a world-class city that can be a driver of economic growth.

Details of the NKEAs will be finalized in the Economic Transformation Program, which will be announced in October:

- Oil and gas;
- Palm oil and related products;
- Financial services;
- Wholesale and retail;
- Tourism;
- ICT;
- Education services;
- Electrical and electronics;



- Business services;
- Private healthcare;
- Agriculture; and
- Greater Kuala Lumpur.

An Economic Transformation Unit will be established to plan and coordinate the implementation and development of the NKEAs. In the development of NKEAs, the application of high technology platforms, such as biotechnology, nanotechnology and high-end engineering, will be emphasized to further increase the impact of the NKEAs on economic growth.

For economic sectors which are not listed as NKEAs, such as green technology, automotive, aerospace and logistics, the development of these sectors will continue to be driven by the relevant ministries, agencies and councils.

### Competition Law

As healthy competition is needed to make the economy more efficient and dynamic, Malaysia will introduce a Competition Law to provide a regulatory framework against market manipulation and cartel practices that may affect market efficiency.

A Competition Commission and Appeal Tribunal will be established to ensure more orderly and effective implementation of the law.

### New Energy Policy

The New Energy Policy has identified the following 5 approaches to strengthen energy supply, create a more competitive market and reduce energy subsidy in stages:

- Rationalizing energy pricing gradually to match market price, taking into account current economic condition and affordability to the *rakyat* (people);
- Undertaking a more strategic development of energy supply by diversifying energy resources, including renewable energy resources. Nuclear energy will also be considered as an alternative source of energy;
- Accelerating the implementation of energy efficiency initiatives in the industrial, commercial, residential and transport sectors;
- Improving governance to support the transition to market pricing, while providing assistance to mitigate impact on the low income group; and
- Ensuring that the New Energy Policy is implemented based on an integrated approach and according to schedule to achieve energy supply security.



## PHILIPPINES

## BOI Publishes IRR for the 2010 IPP

On June 5, 2010, the Board of Investments (“BOI”) published the General Policies and Specific Guidelines (“IRR”) to implement the 2010 Investment Priorities Plan (“IPP”). The General Policies basically cover the same policies in the 2009 IPP with the inclusion of support to climate change.

The specific guidelines are sector-specific, including disaster prevention, mitigation and recovery projects, as well as green projects.

The following are among the new and interesting provisions under general policies implementing the 2010 IPP:

### i. Corporate Social Responsibility (“CSR”) Pursuant to Social Objectives of EO 226

- Non-pioneer registered enterprises are encouraged to undertake CSR activities, to the extent possible, in accordance with the development plan of the community where they are located;
- Pioneer registered enterprises must undertake CSR activities, to the extent possible, in accordance with the development plan of the community where they are located. The grant of the last 2 years of income tax holiday (“ITH”) incentive shall be subject to submission of proof that the company has undertaken CSR activities not later than the fourth year of ITH entitlement.

### ii. Support to the National Framework Strategy for Climate Change

In pursuit of the National Framework Strategy for Climate Change, projects seeking BOI registration are encouraged to contribute to any of the following in their respective activities. Among the activities mentioned are as follow:

- Intensification of the development and utilization of renewable and environment-friendly alternative energy resources/technologies;
- Promotion of models to improve the transport sector’s efficiency and modal shifts;
- Conversion of public utility vehicles to LPG and renewable energy sources and the expansion of/shift to more efficient mass transport systems;
- Promotion of green infrastructure practices through climate-smart technologies, climate-proofing processes, and construction of energy-efficient buildings;

### iii. Projects with Revenues Derived from Carbon Credits Pursuant to the Kyoto Protocol

Revenues from the sale of carbon credits through certified emission reduction (“CER”) units generated from registered activity may be considered as part of the income entitled to ITH, provided that the enterprise made representation at the time of application for registration that such projects would earn CER units. Projects with foreign exchange earnings generated from CER units of at least more than 50% of their total revenues may be registered as export-oriented projects.



The specific guidelines cover the following:

i. Contingency List (Job savings/Creation Projects)

The specific guidelines are similar to last year's IPP. This is a temporary inclusion in the IPP until the National Economic Development Authority ("NEDA") officially declares that the crisis no longer exists.

ii. Regular List

This specifies policies for the following sectors:

- Agriculture/Agribusiness and Fishery – This includes Commercial Production; Commercial Processing; Biofuels; Feed Milling; Fertilizer; and Biotechnological Products and Services.
- Infrastructure – This covers transport (air, water and mass rail transport), water (water supply and/or distribution), logistics, energy (power generation projects, projects/activities under the PSALM privatization plan, power generation projects located in missionary areas, and rehabilitation of power plants), waste management facilities, mass housing, physical infrastructure, pipeline projects for oil and gas, and projects under the Build-Operate-Transfer ("BOT") Law.
- Manufactured Products – This covers shipbuilding and the manufacture of machinery and equipment including their parts and components, other transport equipment (air, water and land) including their parts and components, cement, modular housing components (for mass housing projects) and iron and steel products. This also covers manufacture of chemical compounds or biological substances, other than food, intended for use in the treatment, prevention or diagnosis of disease in humans or animals.
- Business Process Outsourcing ("BPO") – This covers voice and non-voice IT-enabled services including procurement and sourcing services, contact center, business/knowledge processing, software development, animation, data transcription, engineering design, and ICT support services.
- Creative Industries – This covers non-BPO IT-enabled services and film, TV and theater arts production. Non-BPO IT-enabled services include development of original digital content for video games or game development.
- Strategic Activities – This covers projects that exhibit high social economic returns and require large investments that will significantly contribute to the country's economic development taking into consideration any 2 of the following:
  - Minimum project investment cost of the peso equivalent of US\$ 300 Million
  - Employment generation of at least 1,000



- Use of new, emerging and technologically advanced products/services involving breakthrough processes and innovation

This also covers major projects of global companies intended to be located only in one country as a regional hub where the Philippines is one of the short-listed investment locations.

- Green Projects – This covers the production of goods (such as but not limited to capital equipment, lighting, and construction materials), the utilization of which would lead to either the efficient use of energy, natural resources, raw materials, or minimize/prevent pollution.

This also covers systems/processes that would involve the application of cleaner and more efficient technologies on carbon and/or other greenhouse gases emission reduction.

- Disaster Prevention, Mitigation and Recovery Projects – This covers projects that will prevent or mitigate adverse impacts of calamities and disasters, which may include installation of flood control systems; installation of early warning systems for typhoons, earthquake occurrences, tsunami and volcanic eruptions; manufacture of goods critical to disaster management; construction of dikes; salvaging operations; and installation of power generating and auxiliary equipment.
- Research and Development and Innovation – This covers commercial and in-house R&D activities, establishment of Centers of Excellence (“COE”), innovation, and skills development training institutions.

### iii. Mandatory List

This covers sectors which are governed by Law and inclusion in the IPP is mandated by that particular law, including the following:

- Revised Forestry Code of the Philippines (P.D. No. 705)
- Philippine Mining Act of 1995 (R.A. No. 7942)
- Printing, Publication and Content Development of Books or Textbooks (R.A. No. 8047)
- Downstream Oil Industry Deregulation Act of 1998 (R.A. No. 8479)
- Ecological Solid Waste Management Act of 2000 (R.A. No. 9003)
- Philippine Clean Water Act of 2004 (R.A. No. 9275)
- Magna Carta for Disabled Persons (R.A. No. 7277)
- Renewable Energy (RE) Act of 2008 (R.A. No. 9513)
- The Tourism Act of 2009 (R.A. No. 9593)



#### iv. Export Activities

This covers the production/manufacture of non-traditional export products, export services and activities in support of exporters.



## VIETNAM

### MOIT Issues New Guidelines on Application for Automatic Import Permits on Certain Goods

On May 28, 2010, the Ministry of Industry and Trade (“MOIT”) issued Circular No. 24/2010/TT-BCT providing guidelines on the application for automatic import permit on certain goods. Circular 24 took effect on July 12, 2010 and replaces MOIT Circular No. 17/2008/TT-BCT dated December 12, 2008.

Enterprises importing goods subject to automatic import permit are required to present to the Customs office their application for registration of automatic permit certified by the MOIT. This is in addition to the usual filing of import permit application under the current regulation.

Most of the provisions under Circular 24 are the same as those stipulated in Circular 17, in particular:

- i. Goods requiring automatic import permit – Under Circular 24, any enterprise importing goods on the list must have an automatic import permit issued by the MOIT. Similar to Circular 17, Circular 24 shall also not apply to imported goods in the following cases:
  - Temporary import for export, temporary export for re-import, border gate transit and other transit;
  - Non-trade import;
  - Import for direct production purposes or for processing (including import for assembly, for repair or under warranty);
  - Goods imported from abroad into a non-tariff zone (including a bonded warehouse) and goods which are manufactured, processed or assembled in a non-tariff zone for import into inland of Vietnam;
  - Goods imported for business in duty-free shops; and
  - Goods imported to form fixed assets of investment projects under the Law on Investment.
- ii. Authority to issue automatic import permit – Both Circular 17 and Circular 24 stipulate that the issuance of an automatic import permit shall be in the form of certification issued by the MOIT, based on the import registration lodged by an enterprise for each consignment of goods.



On goods imported via a road border-gate or from a non-tariff zone into Vietnam, certification on the import registration shall be carried out within a time-limit as provided in that certification. In comparison with Circular 17, Circular 24 has an additional clause stipulating that the validity of an automatic import permit shall be within 30 days from the date on which the import registration is certified by the MOIT.



The following directors are assigned to sign the certification of automatic import registration:



- Director of the Import and Export Department under the MOIT;
- Director of the representative body of the MOIT in Ho Chi Minh City.

The above officials have the right to use the seal of the MOIT and the seal of the representative body of the MOIT in Ho Chi Minh City on their signatures, respectively.



iii. Registration of automatic import permit – The enterprise will file the application requesting registration for automatic import permit to either:

- The MOIT at 54 Hai Ba Trung Street, Hoan Kiem District, Hanoi, or
- Headquarter of the representative body of the MOIT at 45 Tran Cao Van, Ward 6, District 3, Ho Chi Minh City.



The application to be submitted should include:

- Request to register automatic import (2 copies in the form provided by the MOIT);
- Business registration certificate or investment certificate or investment license (a copy with the seal of enterprise certifying that it is a copy of the original);
- Import contract (a copy with the seal of enterprise certifying that it is a copy of the original);
- Letter of credit or payment voucher for each consignment of goods (a copy with the seal of enterprise certifying that it is a copy of the original);
- Bill of lading or transport voucher for each consignment of goods (a copy with the seal of enterprise certifying that it is a copy of the original).

Goods imported via a road border gate or from a non-tariff zone or bonded warehouse shall not be required a bill of lading or transport voucher, but must include a report on import status of previously certified registrations of import made in the form provided by the Ministry of Industry of Trade.

The time-limit for issuance of automatic import permit shall be 5 working days from receipt of a complete and valid application from the enterprise.

# BRYAN CAVE INTERNATIONAL TRADE

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If you have any comments or questions with regard to this Bulletin or any matters discussed herein, or if you are interested in finding out more about BCIT’s services, please contact any of the persons listed below:

Cecil Leong  
cecil.leong@bryancavetrade.com  
+65 6403 6388

Anthony Kerr  
tony.kerr@bryancavetrade.com  
+86 21 2308 3000

Wong Chian Voen  
chianvoen.wong@bryancavetrade.com  
+86 21 2308 3000

Stephanie Wong  
stephanie.wong@bryancavetrade.com  
+65 6403 6391

Malika Bhumivarn  
malika.bhumivarn@bryancavetrade.com  
+66 2 625 6399

Kittipong Jangkamolkulchai, PhD  
kittipong.jangkamolkulchai@bryancavetrade.com  
+66 2 625 6333

Tatsuya Kanemitsu  
tatsuya.kanemitsu@bryancavetrade.com  
+813 5532 7413

