

**Intergovernmental Group of Experts on
E-Commerce and the Digital Economy**
First session

4-6 October 2017
Geneva

Contribution by

GTC NEW COMMERCE INC.

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

Trade Facilitation and Customs Compliance for Cost-saving and Efficiency: Policies, Practices and Proposals: A China Case Study

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Abstract: *Under WTO and WCO obligations and its own initiatives, Chinese government, like other governments, especially China customs, in the recent years has been making great efforts to modernize trade and customs process to facilitate legitimate trade of efficiency and protect public interest for compliance. The recent developments, especially the nationally integrated customs clearance process, are welcomed by the international trade community though, uncertainties and concerns remain, particularly on non-tariff technical barriers, transparency, consistency, performance, and stability for ruling-making and implementation. **With all the pilot programs and reform initiatives on informed customs and trade facilitation and compliance, we propose that a new round Customs Law and regulation review, modernization and revision is timely demanded for rule of law, legitimacy, consistency of the reforms.** We encourage the trade community, at the same time of enjoying the trade facilitation advantages, to invest and implement in customs and trade compliance program, including promise, policy, process, procedure and people, to avoid costs arising from customs and trade compliance crisis.*

I. Recent Customs Modernization and Trade Facilitation in China

In year 2016, despite slow global trade growth of 1.3%, and uncertainty with respect to the years to come, China still witnessed a continuing growth of international trade—reportedly rising 6.8% percent, with total imports and exports of 3,685.00 billion US dollars; although a slowdown is inevitable due to China’s heavy dependence on exportation and slow growth in other regions. For the first six-month of the year of 2017, China’s trade in goods growth rate reached 19.6%, a good recovery from last year.² International trade is one of the most important facets of the Chinese economy and the business of multinationals in China.

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² China Customs Statistics, July 13th, 2017.

With the global customs modernization and trade facilitation movement sponsored by the customs administrations, the trade community, and international organizations such as the World Customs Organization (“WCO”), the World Trade Organization (“WTO”) especially the Trade Facilitation Agreement (“TFA”), and the World Bank (“WB”) initiatives; and also with customs, trade, and supply chain compliance requirements such as those pertaining to Free Trade Agreement (FTA) status eligibility, export control, product safety, environment protection, and labor standards, the trade community increasingly recognizes the importance of implementing compliance programs aimed at trade facilitation.

Meanwhile, China Customs (“CGA”), the border enforcement and service agency in China, although burdened with limited human resources and expanded missions and tasks, still managed to improve transparency, consistency, and uniformity of enforcement; facilitate international trade efficiency; and encourage informed compliance of customs and trade laws and regulations by the trade community. In addition, as a leading border agency, China Customs continued to work with other agencies and departments, the Ministry of Commerce, the State Administration for Quarantine, Inspection and Quality (“AQSIQ”), the State Taxation General Administration, the Administration for Foreign Exchange, and other agencies to regulate international trade and capital flows, ensure security and safety of international trade, and facilitate legitimate trade into and out of China.³

In these difficult times, trade facilitation, security, product safety, and other trade and supply chain compliance issues for both imports and exports are even more critical to the economic and social development of a nation and its industries as well. We recognize that transparency, consistency of enforcement, and advancements in information technology, including the gradual implementation of paperless customs clearance and partial centralization of customs clearance and full centralization of customs clearance, are being made to further enhance trade facilitation and compliance; and that the Customs authority is challenging various competing objectives with limited resources — i.e., strict and fair enforcement of customs law and regulations, securing international trade and supply chains, and facilitating the legitimate movement of goods across China’s borders. Rule of law, customs automation, transparency, informed compliance, and closer customs-trade consultation and partnership, are the key answers for meeting these challenges. It is important that customs reform and modernization pick up pace to prevent any customs policies possibly deemed to be regressive to trade facilitation and to China’s commitments under the WTO and WCO.

1. SIGNIFICANT DEVELOPMENTS

³ The Chinese government in 2006 established its National Port Administration, which reports to China Customs at the working level, for planning the establishment of the ports of entry and coordinating the activities of the border agencies.

The past several years witnessed numerous significant regulatory, policy, and technical developments in the customs and trade areas, including but not limited to:

- Implementation of the enterprise classification and Authorized Economic Operator (AEO) programs for customs and trade compliance, facilitation, and security;⁴
- Update of Customs valuation rules to acknowledge technical methods such as review and acceptance of circumstances surrounding the transactions for customs valuation and transfer pricing,⁵ but still it lacks more detailed rules and procedures for fair and consistent treatment of the customs value and transfer pricing matters;
- Adoption of new Customs regulations regrading outward processing procedure making the program legislatively permitted practically possible,⁶ but the rules are still very general and demand further interpretations for operations;
- Implementation of Customs and trade rules regarding Cross-Border Ecommerce Retailing⁷ based on the central government policies, but the pilot implementation is limited to certain ports and mainly for certain big platforms and leaves significant loopholes⁸;
- Free Trade Zone Pilot Program of Customs process for periodical entry of customs clearance to provide efficient and cost-saving customs and trade facilitation assistance to compliant companies;
- Free Trade Zone Pilot Program of paperless customs entry process;
- Free Trade Zone Pilot Program of Customs Account Manager for business and group businesses;
- Free Trade Zone Pilot Program of Report-after-Entry;
- Free Trade Zone Pilot Program of Informed Compliance;⁹
- Strengthening of Customs enforcement of intellectual property rights to enjoin exportation of infringing commodities from China into countries of destination;
- Further enhancement of Customs Automation and Trade Facilitation by integrating more agencies such as the Ministry of Commerce, the State

⁴ China Customs Order [2014] 225, China Customs Regulation Regrading Enterprise Grading Management, issued on October 8th, 2014, effective of December 1, 2014;

⁵ China Customs Regulations on Determination of Customs Valuation, China Customs Order [2013] 213, Dec. 25th, 2013;

⁶ China Customs Announcement Regarding Customs Issues of Outward Processing, China Customs Announcement [2016] 69, November 28, 2016;

⁷ China Customs Supervision Rules Regarding Cross-Border Ecommerce Retailing, China Customs Announcement 26 [2016], April 6th, 2016;

For trade facilitation, the more effective approach is to lower the barriers for both new commerce and conventional trade with a level playing field, not just to establish special programs for certain industries such as eCommerce, certain ports and certain businesses;

⁸ The European Union Chamber of Commerce in China is very much concerned about the fair competition and the food safety issues for that program for cross-border eCommerce channel, *see* The European Business in China Position Paper 2016/2017, page 180; we also argue, instead of facilitating only cross-border eCommerce at certain ports for certain businesses, the trade barriers for all channels of commerce shall be reduced;

⁹ China Customs Shanghai District Announcement 34 [2014], August 15th, 2014; China Customs Shanghai District Announcement 39 [2014], September 15th, 2014;

- Administration for Quarantine, Inspection and Quality (AQSIQ), the State Taxation Administration, and the Administration for Foreign Exchange into the E-Port customs and trade automation platform;¹⁰
- Implementation of more Free Trade Agreements and upgrade of rules of origin for the FTA and other customs duty preferential programs;¹¹
 - Implementation of Customs Transparency Regulations based on the State Council's Regulations regarding Public Information;¹²
 - Implementation of the WTO Trade Facilitation Agreement;
 - Implementation of 2017 Edition of Foreign Investment Industry Policy Guideline;¹³
 - Based on the Free Trade Zone Pilot Programs, other initiatives and international best practices such as the US CBP Centers for Excellence and Expertise, China Customs announced its Customs Clearance Integration and Comprehensive Reform to promote nation-wide centralized customs clearance and procedure for customs and trade efficiency and compliance;¹⁴

2. Key Issues:

The developments in supply chain compliance and trade facilitation programs initiated and implemented by the Chinese government and trade community also invite further considerations:

- ***Uniformity, consistency, and transparency of customs laws, regulations, rules, and implementation across the customs districts***

While uniformity, consistency, and transparency of customs laws, regulations, rules, and implementation across the customs districts have been improved dramatically over the past decade, there are still issues in terms of different processes that result in unfair treatments and compliance concerns for businesses operating in different customs districts, for example:

- (1) Annual Reconciliation program for customs duty recovery or refund;
- (2) Voluntary disclosure program;
- (3) The customs valuation rule for importing commodities from customs bonded zone or free trade zone into domestic commerce;

¹⁰ For instance, Notice on the Work Plan on Consolidating and Streamlining Mandatory Standards, State Council, February 15th, 2016

¹¹ www.fta.mofcom.gov.cn;

¹² China Customs Order [2014] 215, Feb. 26th, 2014;

¹³ China Customs Announcement [2017] 30, July 18th, 2017;

¹⁴ China Customs Announcement [2017] 25, June 25th, 2017; However, the detailed implementation rules were not announced, legal rules are not updated, leaving uncertainties to issues such as time limitation for center review, time of liquidation, reconciliation, open;

- (4) The customs process for exchanging documents and information between the customs audit team and the importer of record during an audit;
- (5) The customs process for paying underpaid customs duties and taxes and refunding overpaid customs duties and taxes;
- (6) The customs process for classification and valuation ruling programs;
- (7) Customs does not have a process to notify the party in writing when the investigation is closed without a charge;
- (8) Insufficient transparency and the lack of formal Customs/trade consultative bodies to allow sufficient and advanced discussion of changes in impending rules and regulations;
- (9) Despite the promulgation of effective laws and regulations at the central level, there is inconsistent or inadequate enforcement at the local level;
- (10) Unclear implementing regulations of national legislation, resulting in varying local practices at the provincial level.

- ***Customs valuation: related party transactions, royalties and license fees and warranty***

Since customs revenue in China is the critical portion of the Chinese central government's dispensable revenue, particularly with the current global emphasis on transfer pricing and its relationship with customs valuation, it is understandable that revenue collection and protection is one of the priorities for China Customs. Technical issues such as customs valuation of related party transactions and customs valuation of royalties and license fees have increasingly become the key customs valuation and revenue collection issues; and different interpretations of these issues often time occur in different districts and at different levels. Sometimes, the customs valuation consultations on these rules and issues lead to negotiations between the customs officials and the importers of record on the amount of customs duties and taxes payable by the importer of record to the Customs agency, as opposed to following the rules of customs valuation for related party transactions and customs dutiability of payments made by the importer of record to the sellers. Even so, arbitrary or fictitious values are still used from time to time to find an acceptable temporary deal for duty payments, instead of a long-term solution for compliance.

- ***Customs audit vs. Customs investigation***

Customs audit is a program initiated by developed customs administrations and adopted by China Customs as a component of the customs modernization program to encourage informed customs and trade compliance and facilitate efficient trade flow. The primary purpose of a customs audit is to help the enterprise that is being audited to identify the weaknesses in its compliance process and propose improvements to facilitate trade flow and compliance. However, the sole objective for some customs offices to utilize a customs audit as a derivative of a customs investigation is to collect revenue and reach their goal in terms of customs duties and taxes recovered and civil penalties assessed. This approach leads to the phenomenon that at the end of a customs audit some customs audit team will usually insist on a collection of customs duties and taxes.

- ***Customs automation: a nationwide system for trade facilitation***

The E-port customs automation platform has contributed tremendously to China's customs automation and trade facilitation, and has cut customs clearance and other customs processing times to a great extent. However, the system basically remains a customs district-based gateway, even though there are some developments into regional levels, which segregates customs business from district to district, and restricts the efficient centralization of nationwide customs operations for companies doing business across China. If the Chinese government can enhance the system and the platform into a nationwide centralized system, it can not only promote efficiency of trade, but consistency of enforcement as well.

- ***Customs duty treatment for R&D samples***

Chinese research and development projects invested in by both foreign and domestic investors are very crucial for China's technological innovation and sustained economic and social development. The Chinese government has issued rules granting duty-free treatment for importation of research and development samples and articles by domestic-invested technical research and development centers recognized by competent government agencies. However, for foreign-invested technical research and development centers, importation of research and development samples and prototype products is subject to import customs duties and taxes, which raises the costs for those multinational companies conducting research and development in China. The Chinese government needs to provide equal treatment to foreign-invested businesses in China.

- ***Remanufacturing and repair service***

Due to understandable concerns with respect to environmental protection and customs control difficulties, the Chinese government keeps heavy access restrictions on repair and remanufacturing operations in China. Nevertheless, these concerns can be addressed in reasonable approaches and strict enforcement of effective and efficient regulations and rules. Without reasonable market access to repair and remanufacturing services with reasonable, environmentally- friendly trade compliance regulations, business demands cannot be met, and environmental protection goals can be jeopardized.

- ***Drawback program for processing trade***

Most of the inward processing trade manufacturers utilize customs bond programs to import materials and components with import customs duties and taxes deferred, and then re-export the processed commodities. Some of the inward processing trade manufacturers would like to utilize the customs duty drawback provided in the Customs law to import materials and components with customs duties and taxes paid, and then refund them when the processed goods are exported. With the Customs law provision but lack of implementing regulations and rules, local customs offices are not able to implement the customs duty drawback program, which is needed as an option to the customs bonded processing trade program.

- ***VAT export rebate policy***

In recent years, the Chinese government has used the VAT rebate for exports as a policy tool to encourage or discourage exportation. The constant changes of the VAT rebate rates for industry and trade considerations have created uncertainties for the business community in terms of forecasting the feasibility of transactions, and have sometimes even stalled the fulfillment of some business transactions.

- ***Customs compliance program: risk management, self-assessment, and process control***

With the implementation of the new Customs regulations regarding enterprise grading, China Customs further upgrades its customs and trade compliance program; but the implementation of the assessment process and the criteria for the assessment miss a key element--the internal process control of an enterprise--which is vital for a customs, trade, and supply chain compliance program. Without the internal control process assessment, the government and the trade community may only focus on the results as opposed to the root-causes of the non-compliance incidents, the compliance mechanism for trade can not improved.

3. Recommendations:

The volume of cross-border trade in and out of China has increased significantly in the past decade, particularly in the period following WTO accession. In addition, the Customs authority, with traditional tasks such as revenue collection and new challenges such as customs border enforcement of intellectual property rights, product safety, and supply chain compliance and security, is increasingly using information technology, modern risk management techniques, and customs and trade compliance programs to enforce customs and trade laws and regulations, and facilitate the efficient flow of legitimate trade. With that in mind, and with the reasoning based rule of law approach, the following further changes need to be pursued:

- (1) Further initiate and improve central-based programs such as an administrative ruling for classification and valuation and detailed implementing rules for district/local Customs offices in order to facilitate uniformity and consistency of implementation and enforcement of laws and regulations across different points of entry;
- (2) Establish a mechanism under which enterprises can easily report cases of non-uniform or inconsistent application of rules or regulations to national or central governments;
- (3) Further pursue central-based customs automation, centralization of customs transaction processes, and trade facilitation which will enable businesses operating in China to centralize their customs and trade processes with efficient programs;
- (4) Enhance the construction and development of E-port with the aim of achieving full national single window and paperless clearance;

- (5) With the creation of detailed regulations and rules, establish a comprehensive compliance, facilitation, and security program for supply chains with a strong internal control process for the trade community, at the same time balanced against trade and business facilitation;
- (6) Take steps to ensure that enterprises that meet the specified compliance requirements are given a sufficient level of facilitation to allow them to offset the cost of meeting those compliance requirements, or ensure that those that have made inadvertent mistakes or oversights are not unfairly penalized;
- (7) Where guidelines are proposed to cover procedures, these procedures should be included in the legal provisions wherever possible;
- (8) Further enhance coordination between government agencies, especially for transfer pricing and customs valuation issues between customs and tax authorities; technical standards and product safety issues between customs and AQSIQ; foreign exchange payments for trade in goods and customs valuation issues between Customs and the Administration for Foreign Exchange;¹⁵
- (9) Advance customs and trade partnerships in order to foster mutual information exchanges, understanding, and trust;
- (10) Maintain a stable and standard VAT rebate for export policy;
- (11) Become a full partner in the ATA Carnet system for temporary imports by accepting carnets for commercial samples and professional equipment, which would improve the image of a modern Chinese Customs agency, streamline entries for importers (and re-importation for Chinese exporters), and simplify administrative procedures for Chinese Customs, for example, by centralizing all reimbursements through the ATA system;
- (12) Further strengthen policy study, rule-making, and capacity-building to come up with business and compliance- friendly rules and implementation for complicated technical issues such as
 - a) customs valuation for related party transaction, royalties, and license fees;
 - b) duty and import tax and customs process for R&D samples;
 - c) implementing rules for processing a trade drawback program;
 - d) development of remanufacturing and repair service processes for customs and trade administration;
 - e) detailed implementation process for outward processing;
 - f) establish reconciliation and voluntary disclosure programs;

In this environment, efforts to sustain confidence in the global trading system are crucial, and it is important to avoid new barriers to trade or measures that will increase costs and create additional delays at the border. We share the views of the World Trade

¹⁵ With the reduction of the tariff rates and enhancement of customs clearance efficiency over the past years, technical barriers constitute the key components for trade costs, sometime may cost 30% of the value of a shipment. *See also*, the European Union Chamber of Commerce in China: The European Business in China Position Paper 2016/2017, “Standards and Conformity Assessment”, pp149-175; “Trade in Goods”, pp176-300; “Logistics”, pp372-376;

Organization and the World Customs Organization that government and trade organizations should come together to contribute to these efforts by taking the following steps:

- developing a package of instruments and technical assistance that support risk management, audit-based control, compliance, and use of technology;
- streamlining customs and trade processes and compliance programs to provide government with accurate required trade information to avoid unnecessary government inspections and audits;
- continuing to support the World Trade Organization, the World Customs Organization and other international organizations in their trade facilitation efforts;
- strengthening customs modernization through expanded capacity building for both public and private sectors;
- continuing to work on the authorized economic operator system and mutual recognition arrangements;
- securing the enforcement of intellectual property rights, public health and safety laws;
- urging all customs administrations to seek ways of reducing administrative burdens and transactional costs on legitimate trade.

With all the pilot programs and reform initiatives on customs and trade facilitation and compliance, a new round Customs Law modernization and revision is timely wanted for the purposes of rule of law, consistency, streamlining, and effectiveness.

II. Customs, Trade, and Supply Chain Compliance Programs

While the trade community recognizes and utilizes the trade facilitation programs, imagine a multinational company with international manufacturing and distribution operations and sales companies around the world. One day the company's General Counsel for Asia in Hong Kong receives a call from her company's India operation, saying that the Customs and Excise Department wants to audit their EOU operation. Later, she gets a call from Japan, saying that the Ministry of Economy, Trade, and Industry wants to review exportation documents for export control inspections. Another call comes in from her legal manager in China, saying that Customs in China will not

release a used machinery shipment unless they produce the permit from AQSIQ; and following this a call comes in from the company's trading partner in Korea, informing the counsel that Korean Customs has initiated a customs audit on the company's related party transactions. With all of these calls and reports with respect to customs, trade, and supply chain issues, you could easily excuse the General Counsel for wanting to take a deep breath and reassess her stress levels at the workplace. However, imagine if she then spoke to the company's CEO, only to find out that the responsibilities for all of these issues did not lie with one particular person.

While the above event may not be true for many companies in the course of one day, such a scenario may well happen over the course of a week or a month. In China/Asia Pacific, this is an ongoing challenge for the legal profession, particularly those who focus on M&A, FDI, tax, and contract matters, as opposed to pure regulatory compliance matters.

Informed Compliance

Prior to December 8, 1993 when the *US Customs Modernization Act (Title VI of the North American Free Trade Agreement Implementation ACT [P.L. 103-182, 107 Stat. 2057])* became effective in the United States, customs and trade compliance was not a buzzword in the corporate and legal world. However, today the concept of "informed compliance" in the *Customs Modernization Act* has changed the mentality, behavior, and processes of the trade community, the customs and trade legal profession, and the government.

"'Informed compliance' is a shared responsibility between government and the trade community wherein the government effectively communicates its requirements to those dealing with trade, who then address their own activities in accordance with the laws and regulations. The key component of 'informed compliance' is that the traders are expected to establish internal controls and exercise reasonable care in their trade operations. 'Informed compliance' benefits both parties -- when voluntary compliance is achieved, government resources need not be expended on redundant examinations or entry reviews for cargo. From a trade perspective, when voluntary compliance is attained, the shipments of the compliant cargo are less likely to be examined and reviewed, and the other supply chain costs and even government fines will be reduced or avoided."¹⁶

Thanks to the trade facilitation movement sponsored by the world's customs administrations, the trade community, and international organizations such as the World Customs Organization (WCO), the World Trade Organization (WTO), and the World Bank (WB), progress has been made with respect to these programs. The result has been a range of trade and supply chain compliance measures such as the trade security initiative of The Framework of Standards to Secure and Facilitate Global Trade, export control, product safety, IPR customs enforcement, environmental protection, and labor standards. Particularly, the customs administrations and other government agencies

¹⁶ United States Customs Service: *Importing into the United States*, page 44 (2002).

regulating international trade in Asia have made great strides with respect to implementing compliance programs for trade facilitation.

These concepts, process and programs have been widely accepted and adopted by the Customs administrations, other government agencies and trade communities in other regions, including Asia and China. After establishing their customs, trade, and supply chain compliance programs in North America and Europe, more and more companies are establishing customs, trade, and supply chain compliance programs throughout the rest of the world, especially Asia. These customs, trade, and supply chain compliance programs must share certain features, which include:

- Commitment: delivering guidance to employees to encourage compliance commitment and dedication;
- Function: indentifying team and contact points for trade and supply chain compliance;
- Policy: preparing customs, trade, and supply chain compliance policies, procedures, and processes;
- Bookkeeping: maintaining and improving bookkeeping requirements for customs, trade, and supply chain compliance and preferential programs for cost-saving;
- Internal Control and Audit: using internal audits both as a method for discovering customs and trade management opportunities and as a tool for enforcing internal compliance;
- Security and Risk Management: applying secure process and risk management to ensure the supply chain safety and compliance;
- Training: providing training and orientation programs to relevant employees and team members of the company and government officials;
- Efficient Process and Management: designing efficient trade and supply chain processes country by country, under guidance from global policy;
- Information Automation: participating in the government's customs automation programs, and also establishing business information databases, customs, and trade databases for compliance, valuation, classification, documentation images, and other subjects.
- Quality Professional Service: ensuring that quality service be procured from service providers such as lawyers with professional knowledge and communication capacity, sufficient due diligence and care.
- Advocacy: promoting a company's interest in compliance programs through various projects such as conferences, seminars, workshops, government consultations, media interviews, reports, comments, advice, and non-profit organization activities.

While compliance programs will improve the overall outcome of international trade, customs, and supply chain activities, the basics need to be addressed in the workplace on an almost daily basis. Commitment, team knowledge, and proper systems will lead to proper compliance and cost-savings, and also result in a more stress-free in-house counsel.

Since December 1, 2014 China Customs has implemented new regulations (updated from the customs regulation of 2010) that will make it easier and less costly to import goods into and export goods from China for companies that have good trade compliance programs and records. These regulations are intended to encourage informed trade compliance, improve the customs-trade partnership, continue China Customs' modernization efforts, and bring its policies and practices concerning trade compliance and facilitation and supply chain security more into line with those embodied by the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade and the authorized economic operator programs being developed around the world based on that framework. China Customs is now working on the rules, standards, systems, and processes that will be used to implement the new regulations, including an importer compliance assessment system and internal control standards that incorporate best practices from the Importer Self-Assessment Program used by the U.S. and the AEO programs of other countries.

The major feature of the new regulations is the provision of specific trade facilitation benefits for importers/exporters (referred to herein as importers of record, or IORs) that meet certain criteria. Based on their compliance records, internal controls, business performance, and other information, IORs will be classified by China Customs into one of the following categories: AA (Advanced Certified Enterprise), A (Certified Enterprise), B (Normal Enterprise), C (Failed Enterprise). IORs in class B will continue to experience routine inspections and audits and slow customs release of their goods, while those in classes C will be subject to increased inspections and audits. IORs classified in classes A or AA, however, will receive the following benefits:

Authorized Enterprise. A (Certified Enterprise) IORs will be eligible for (a) inter-district remote filing and goods release at the port of entry; (b) customs inspection at the IOR facility if necessary; (c) privileged rapid inspection and release; (d) advance customs entry and release before the goods arrive at the port of entry; (e) 24/7 urgent customs clearance; and (f) waiver of customs bond or cash deposit requirements for processing trade operations. Eligibility requirements include a customs entry error rate lower than three percent; operating as a Class B IOR for at least a year; and a clean record over the past 12 months concerning customs, trade, and other relevant laws and regulations.

Advanced Authorized Enterprise. AA (Advanced Certified Enterprise) IORs will receive all of the Class A benefits, plus (a) rapid customs release for trusted clients; (b) a customs account manager to answer customs and trade questions; (c) direct customs release after the entry passes electronic review; and (d) no cargo inspections under normal circumstances. Qualifications for Class AA include passing a customs audit and verification; meeting internal control, trade compliance, and trade security requirements; submitting biannual import/export business reports; and operating as a Class A IOR for at least a year.

Benefits Available for Active IORs with Good Trade Compliance Programs: The regulations are expected to reduce the costs and burdens associated with importing into and exporting from China for IORs with good trade compliance programs. As a result, multinational companies doing business in China are advised to act as IORs and to centralize their trade activities in that country if possible in order to more effectively and efficiently deal with China Customs and other trade-related Chinese government agencies. Although foreign-invested companies have been allowed to conduct international trade activities in China since it joined the WTO in 2001, many still hire local trading companies to act as IORs to avoid technical issues and compliance problems, which can increase the cost of doing business. In addition, by acting only as consignees for import shipments, these companies increase their potential customs and trade compliance risk and lose out on the benefits of government trade compliance and facilitation programs, which only IORs can legally participate in.

III. Major Customs and Trade Compliance Technical Issues

1. Customs Valuation, Related Party Transactions and Royalties and License Fees

For the corporate world, a different customs value report by the importer of record results in different customs revenue and internal tax liabilities and capital flow. On the other hand, governments may take advantage of customs valuation to increase importer's duty liabilities for revenue purposes. In developing countries, understanding and supporting procedures for customs valuation are technical and legal challenges for both the government and trade community. This is particularly true if customs valuation involves related party transactions or other technical issues such as royalties and license fees, which are the focus issues for customs valuation in Asian countries.

The WTO rules emphasize that customs value should be real and based on the actual value of the imported goods or like goods. Generally, the customs value of all merchandise exported to a country of importation will be the transaction value--i.e., price actually paid or payable--for the goods. If the transaction value cannot be used, then certain secondary bases are considered in order of precedence: transaction value of identical merchandise; transaction value of similar merchandise; deductive value; computed value. The order of precedence of the last two values can be reversed if the importer so requests in writing at the time of filing the entry.

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the country of importation, plus amounts for the following items if they are not included in the price: the packing costs incurred by the buyer; any selling commission incurred by the buyer; the value of any assist; any royalty or license fee that the buyer is required to pay as a condition of the sale; and the proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported merchandise. The cost of insurance and freight for shipping the goods from the export

seller to the first port of entry of the country of importation shall be included if the country of importation requires that CIF shall be the transaction value term for customs valuation purposes. However, the amounts for the following items shall be excluded from the price actually paid or payable: the cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation if the country of importation requires that FOB shall be the transaction value term for customs valuation purpose; any reasonable cost or charges incurred for constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods after importation into the country of importation; transporting the goods after importation; and the customs duties and other taxes, including any excise tax, for which sellers in the country of importation are ordinarily liable.

If any of the following limitations are present, then the transaction value cannot be used as the customs value, and the next basis of value will be considered: restrictions on the disposition or use of the merchandise; conditions for which a value cannot be determined; proceeds of any subsequent resale, disposal, or use of the merchandise, accruing to the seller, for which an appropriate adjustment to transaction value cannot be made; and related-party transactions where the transaction value is not acceptable.

Related Party Transactions: Importers must establish and declare the value of imported goods on an entry-by-entry basis, and there are detailed legislative rules for establishing that value. The transaction value between related parties is only conditionally acceptable. If the relationship between the buyer and seller did not influence the price actually paid or payable, the transaction value is “acceptable.” Examining the circumstances of the sale will help make this determination. Alternatively, “acceptable” can also mean that the transaction value of the imported merchandise closely approximates one of the following test values, provided these values relate to merchandise exported to the country of importation at or about the same time as the imported merchandise: the transaction value of identical merchandise or of similar merchandise in sales to unrelated buyers in the country of importation; and the deductive value or computed value for identical merchandise or similar merchandise. The test values are used for comparison only; they do not form a substitute of valuation. The importer's dilemma is to demonstrate the absence of influence or that the price meets a particular test value. Many customs authorities have made it clear that transfer price studies for income tax purposes, or even APAs, are not determinative of the acceptability of transfer prices for customs purposes. China Customs recently acknowledged the technical methods such as review and acceptance of circumstances surrounding the transactions for customs valuation and transfer pricing, which makes business easier to communicate the technical issues if the businesses are prepared.

Royalties or License Fees: According to the international agreement and the national laws, any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the country of importation shall be adjusted and added to

the transaction value. While the general rules are simple and typically the same, the implementation of these rules varies in different countries, especially with respect to “as a condition of the sale,” and “related to the imported merchandise;” and it is even more difficult to argue the case when it involves a related party transaction.

On January 8, 2009, the State Administration for Taxation (SAT) issued the Implementation Measures for Special Tax Adjustments. These implementation measures explain how taxpayers should comply with and how tax administrators should enforce the provisions contained in Chapter 6, the Special Tax Adjustments section, of the Corporate Income Tax Law (CITL) governing transfer pricing, advance pricing arrangements (APA), cost-sharing agreements, controlled foreign corporations, thin capitalization, and the general anti-avoidance rule.

With the issuance of these implementation measures, China’s transfer pricing administration is now based on a comprehensive set of rules and regulations that is largely on par with its major trading partners. The Measures not only set forth the tax filing disclosure and contemporaneous documentation requirements, but also clarify the definition of related-party, guide the selection and application of transfer pricing methods, and outline the due processes for transfer pricing investigation and assessment. The Measures detail the rules for APA negotiations and double taxation relief through Mutual Agreement Measures; provide guidelines on thin capitalization-related calculations; and set out parameters for qualified cost-sharing agreements. These measures will:

- (1) Highlight the criteria for transfer pricing audits;
- (2) Effectively demand detailed supporting transfer pricing documentation before submission of a tax return;
- (3) Increase the scrutiny of related party transactions for tax purposes; and
- (4) Encourage the use of Advance Pricing Agreements, or APAs.

SAT is increasing scrutiny of related party transactions, and the China Customs service, with customs revenue amounting to about one-fourth of government revenue, is also increasingly looking to ensure compliance with the valuation of related party transactions for customs purposes. Moreover, from the revenue perspective, the objective of Customs may be totally different from the one of the tax authority, since lower import value generally means higher internal tax, and greater import value usually means greater tariff revenue. The proposed SAT regulations and rules can only increase the level of review in this area; therefore, a number of major U.S. companies have engaged our firm to minimize their tariff liability in China in coordination with their corporate tax-planning policies.

Both customs valuation and transfer pricing regulations in China were drafted to ascertain “arm’s length” transaction valuation between related parties. However, the rules established to determine “arm’s length” valuation oftentimes differ greatly under tax transfer pricing rules and customs valuation laws. While tax authorities are more focused on the process, methods, and comparability analysis, Customs is more focused on the

individual transactions and the circumstances of the sales. These consequences can also be inadvertently shielded from exposure until they come to light during a tax audit and/or China Customs audit or review.

For example, with the opening up of trading rights after China's accession into the WTO, more Chinese operations of multinational companies became "buyers" of commodities into China for consumption or resale, and "importers of record" for customs transactions. A mere related party transaction may trigger customs valuation scrutiny. What is more relevant is that often times the values for related party transactions are lower than the ones for independent transactions, due to factors such as commercial level, quantity, costs, and so forth. These types of changes of business arrangements deserve complete planning and an effective explanation to customs and tax authorities.

As another example, most companies operating in China focus upon the valuation of tangible goods only for China Customs purposes while devoting substantial attention to both tangible and intangible property (royalties and so forth), in determining their tax liability. This can sometimes lead to major issues when Customs officials look to the potential dutiability of intangible property.

Consequently, the present environment is viewed by many multinational companies as an especially critical time to review their tax and customs positions in light of the issuance of the draft transfer pricing Administrative Regulations.

2. Customs HTS Code Classification

To promote the consistency and uniformity of customs classification decisions and to facilitate trade efficiency and customs compliance, China Customs has implemented the Customs Classification Administration Regulations to maintain a unified customs classification mechanism which highlights the major regulatory provisions that have a beneficiary impact on the business processes and compliance programs of traders in China.

Burden of Classification: As part of China Customs' informed compliance program, Article 6 of the regulations now requires importers and exporters of record to truthfully and accurately report the description, model, and other information regarding their product, and then determine its classification. Previously, China Customs determined the classification of imported and exported goods.

However, under Article 9 of the regulations, China Customs reserves the authority to review the truthfulness and accuracy of the reported information and classification. If Customs determines that a classification is erroneous, the regulations on revision and cancellation of customs entry outline a burdensome process for changing the classification that could significantly delay the customs clearance process.

Confidentiality of Commodity Information: China Customs will only protect the

confidentiality of commodity information for which such treatment is specifically requested by importers or exporters. Traders may not use confidentiality as an excuse for refusing to provide commodity information, and China Customs will review classifications based on the limited information provided by traders if they decline to provide further details.

Release under Bond: Importers or exporters of record may file a request for release under bond if they wish to have their goods released before China Customs' classification review is finished, provided that the goods are not restricted or subject to licensing for importation or exportation.

Unfinished Goods: If parts, components, or subassemblies of a finished product to which they impart the essential character are carried by the same means of transportation and arrive at the same port of entry at the same time, and are specifically intended to be used in the manufacture of that product, the importer of record must classify them under the subheading applicable to that finished product and report this classification to China Customs.

Advance Classification Decision: Forty-five days before the date of the planned importation or exportation, the importer or exporter of record may request an advance decision from the customs district where the goods are to enter or leave. Where the customs district finds the request involves a commodity that can be properly classified without controversy under the HS rules and notes, and the Customs HQ decisions and rulings, the district should issue a Classification Advance Decision within 15 days from the date of acceptance of the request. An Advance Classification Decision shall be repealed or changed by the issuing district when error is found or change is demanded.

Customs Rulings: In addition to the procedure provided in the Administrative Ruling Regulations ("the Ruling Regulations") that became effective January 1, 2002, to encourage the utilization of the ruling program and increase the ruling pool, the new regulations provide that where the customs district finds the request involves a commodity cannot be properly classified without controversy under the HS rules and notes, and the existing Customs HQ decisions and rulings, the customs district shall, within seven days from the date of the acceptance of the advance classification decision request, advise the applicant a ruling should be requested pursuant to the Administrative Ruling Regulations.

Under the Ruling Regulations, any individual who has a customs identification number may request a ruling on classification, valuation, origin, and other issues concerning merchandise he/she intends to import or export. Once issued, a ruling has the same authority as a regulation and will be applied consistently to any party in any customs district who is operating under the same fact pattern as described in the ruling.

Ruling requests may be filed at either the China Customs Office of Legal Affairs in Beijing or a similar office in the customs district that has jurisdiction over the applicant. Each request must contain a statement of all relevant facts related to the transaction, including name, address, and customs code of the requesting enterprise; description of the

merchandise and transaction; anticipated date and port of importation or exportation; and other information China Customs deems necessary. Rulings may only be requested for specific prospective transactions.

Applicants should file ruling requests three months prior to the date of anticipated importation or exportation. China Customs will determine whether or not to accept the request within 15 days of receiving it. The agency will then issue a ruling within 60 days following the acceptance date.

Rulings will remain in effect until overturned by a new ruling, law, or regulation. If a party to an actual transaction involving the goods covered by a specific ruling is dissatisfied with a customs decision based on that ruling, it can petition for administrative review to challenge both the decision and the underlying ruling. Rulings cannot be challenged without the existence of an actual transaction or a customs decision.

HQ Classification Advisory Decision: The new regulations also provide that, on an *ex officio* basis, China Customs HQ can issue HQ Classification Advisory Decisions which have the same legal effect with respect to rulings wherever they find it to be necessary.

In addition to the announced rules, in order to administer the classification system, China Customs will establish and internally maintain a database and automatic system to prevent the districts from issuing contradicting advance decisions.

Traders in China should take advantage of the benefits from the compliance and efficiency effects of the classification programs to make sure they have the correct customs classification prior to the importation and exportation of the goods and avoid customs clearance delay and dispute.

3. Customs Border Enforcement of Intellectual Property Rights

With WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), WCO's action plan, the national legislations and the unique position of the customs administrations of the governments for control import and export of commodities and articles carrying by travelers, customs border enforcement has become one of the most effective measures to protect intellectual property, especially trademarks. For example, in year of 2016 along, China Customs seized 19,500 shipments and confiscated 42.06 millions pieces of infringing articles.

In September 1994, China started border enforcement of IPR with the authorization of an ordinance from the State Council. In October 1995, China promulgated and implemented its first ever "Regulations on the Customs Protection of Intellectual Property Rights," and began to establish its system of IPR customs border enforcement protection in accordance with WTO rules. In 2000, the NPC Standing Committee amended the "Customs Law of

the People's Republic of China," defining the functions of IPR customs protection from the legal perspective. In December 2003, the Chinese revised "Regulations on the Protection of Intellectual Property Rights by the Customs," which strengthened the customs authority in investigating and dealing with right-infringing goods, reduced the burden on the owners of intellectual properties in seeking customs protection. Following the administrative regulations, the General Administration of Customs issued the "Measures for Implementation" of the revised regulations, which clearly provided for rules for such as keeping business secrets, filing of international registered trademarks, collecting and returning of security deposit, and the payment of relevant fees by the right owners. In September 2004, the Chinese government promulgated the "Regulations on Implementation of Administrative Penalties of the Customs Law," which clearly provided administrative penalties for infringements on IPR in importation and exportation.

1. Customs Recordation of IPR. Pursuit to the IPR Customs enforcement rules, the intellectual property rights (IPR) owners (including copyright owners and their licensees, trademark owners and patentees) or their agents may request Customs to protect their IPR related to imports and exports. Although customs will accept the detention request from the right holder before the IPR owner files customs recordation, the IPR owners still should record their rights with the General Administration of Customs with the following information: (1) Name, place of registration or nationality, address, legal representative, and principal place of business of the IPR owner; (2) For registered trademark, the registration number, details and validity period; for patents, patent number, details and validity period; for copyrights, the copyright details; (3) Name of the product relating to the IPR and its place of origin; (4) Licensee(s) or person(s) authorized to use the IPR; (5) Customs of entry/exit, importer/exporter, major characteristics and price of the product relating to the IPR; (6) Manufacturer, importer/exporter, customs of entry/exit, major characteristics and price of the right-infringing product; (7) Other information as required by the General Administration of Customs.

2. Detention of Suspected Infringing Goods. *Protection Measure pursuant to Application:* Where discovering the suspected infringing goods pending importation or exportation, the holder of the intellectual property right may present an application with the Customs at the port of entry or exit for detaining such goods, and the Customs will detain the relevant goods upon application. Whenever the right holder or its agent request a detention, the request should contain the following information and intelligence, the more the better: (1) the name of the IPR and the place and nation of registration; (2) the name and content of the IPR and relevant information; (3) the names of the shipper and consignee of the suspected shipment; (4) the description and specification of the suspected goods; (5) the port, date of entry or exit and vessel and flight numbers or even container numbers, if any, which can be effectively used by customs for risk assessment purpose and seize the suspected shipment.

Ex Officio enforcement: Where the Customs discovers, when performing supervision and control over import or export goods, any import or export goods suspected of infringing a recorded intellectual property right recorded with the General Administration of Customs, they are empowered to suspend of Customs clearance, notify the right owner

for further actions such as detention of the suspected infringing goods and initiate an investigation.

3. Surety for Customs Detention. While customs requires that the petitioner for the detention provide customs with a surety to cover the warehousing and other cost and damages due to the detention, annual multiple detention surety is acceptable and can be used to facilitate the detention process.

To protect the intellectual property rights effectively at the border, the right owners shall diligently work together with their lawyers to:

- (1) register their intellectual property rights in China;
- (2) record their intellectual property rights with China Customs;
- (3) establish good working relationship with customs;
- (4) provide genuine product training to customs officials;
- (5) collect more and accurate intelligence and request targeted detention;
- (6) mobilize your internal team and respond quickly to the customs action;
- (7) work with the customs attachés at the embassies in China who play a significant role for customs border enforcement of IPR;

So long as the IPR right owner work diligently with specialized lawyers to fight the infringement at the border effectively, it is possible to leash infringements in the international trade.

4. Product Standard, Conformity, Safety, Testing, Certification and Labeling

As many countries do, the Chinese government implements various complicated and sometime opaque regulations to ensure product standard, conformity, safety, testing and certification, and labeling, some of them may constitute as unfair technical barriers.

The Standardization Administration of China (SAC) is the central accrediting body for all activity related to developing and promulgating national standards in China. The China National Certification and Accreditation Administration (CNCA) coordinate compulsory certification and testing, including the China Compulsory Certification (CCC) system. CNCA is administratively under the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ). Standards in China fall into at least one of four broad categories: national standards, industry standards, local or regional standards, and enterprise standards for individual companies. National standards can be either mandatory (technical regulations) or voluntary. In any case, they take precedence over all other types of standards. The importers into China shall be aware of three broad regulatory requirements in the standards and testing area. First, SAC maintains more than 27,000 national standards (known as GB standards), of which slightly less than 13

percent are mandatory. It is also important to note that laws and regulations can reference voluntary standards, thereby making the voluntary standard, in effect, mandatory. Second, for products in 23 categories that include some 254 items and 489 HS codes , such as certain electrical products, information technology products, consumer appliances, fire safety equipment and auto parts), China's CNCA requires that a safety and quality certification mark, the aforementioned CCC mark, be obtained by a manufacturer before selling in or importing to China. Third, numerous government agencies in China mandate industry-specific standards or testing requirements for products under their jurisdiction in addition to the GB standards and the CCC mark described above.

Standards Organizations Technical Committees (TC) developing national or GB standards must be accredited by SAC. These TCs are comprised of members from government agencies, private industry associations, companies (sometimes local branches of foreign companies but often with limited voting rights), and academia. Other government agencies, such as the National Development and Reform Commission, Ministry of Industry and Information Technology, can approve and promulgate technical regulations that may reference voluntary standards, rendering them mandatory.

Conformity Assessment CNCA is the primary government agency responsible for supervision of China's conformity assessment policies, including its primary safety and quality mark, the CCC mark. CNCA supervises the work of the China National Accreditation Service for Conformity Assessment (CNAS), which accredits certification bodies and laboratory and inspection facilities. The China Compulsory Certification (CCC) mark is China's national safety and quality mark. The mark is required for 23 categories including 254 products, ranging from electrical fuses to toaster ovens to automobile parts to information technology equipment.

Based on the Food Safety Law which went into effect June 1, 2009 (Revised on April 24th, 2015), imported pre-packed food shall have labels and instructions in Chinese. The labels and instructions shall conform to this law, other relevant laws, administrative regulations and national food safety standards of China, and state content, nutrition facts, the place of origin as well as the name, address and contact information of the domestic agent. All products sold in China must be marked in the Chinese language. The State Administration for Quality Supervision, Inspection, and Quarantine (AQSIQ) requires imported and exported (but not domestic) food items such as candy, wine, nuts, canned food, and cheese to have labels verified and products tested for quality before a good can be imported or exported.

The trade community shall monitor and comply these and other requirements to ensure smooth and efficient movement of the supply chain.

5. Global trade compliance and corporate social responsibility

For many decades, businesses in China and Asia have been benefiting from the globalization of international trade and investment. Today, due to the globalization of the supply chain, new challenges have been raised regarding how to develop trading relationships that support the global goals of increasing human dignity, reducing poverty, promoting environmental safety, and ensuring domestic harmony and international peace; i.e., issues related to health and safety, environmental protection, human rights, human resource management practices, corporate governance, community development, consumer protection, labor protection, supplier relations, and business ethics.

Corporate social responsibility (CSR) is a response to the imbalances resulting from globalization: imbalance between the rapid process of liberalization and the time necessary to elaborate the international regulatory framework for these exchanges; and imbalance between the advanced governance systems in industrialized countries and the lack of such governance and rule of law in developing countries as well as at an international level.

At the same time, CSR must not be detrimental to the public authorities' task of establishing binding rules, at a domestic and/or international level, for the respect of certain minimum standards, particularly for manufacturing businesses in the international trade process and supply chain.

Companies are aware that they can contribute to sustainable development by managing their operations in such a way as to enhance economic growth and increase competitiveness, while at the same time ensuring environmental protection and promoting social rights in interaction with their stakeholders on a voluntary and regulatory basis.

In today's global economy, outsourcing business operations does not mean outsourcing responsibilities or risks. Leading companies understand that sustainable supply chain management is key to the integrity of their brand and seamlessness of their supply chain.

The new administrations in the U.S. and Europe will increase the significance of issues related to international labor and corporate social responsibility, as it emphasizes labor rights, environmental protection, and fair and free trade. Such issues have become an even more important business priority for many companies in the international trade and supply chain process.

A successful CSR program in relation to the international trade and supply chain which couples economic effectiveness and international development objectives needs to contain the following elements:

- **Understanding impact:** CSR initiatives will be judged on their social and environmental outcomes.
- **Stakeholder engagement:** Stakeholder dialogue is critical to ensure a company's future operations are developed in recognition of its impacts and reflect the

concerns of its stakeholders.

- **Balancing commercial and social considerations in supply chain and trade compliance management:** For CSR initiatives to be taken seriously, social issues need to be considered at the heart of the company's corporate governance and management approach.
- **Managing global supply chain relationships:** All businesses are dependent on their supply chains to deliver products and services. Businesses in the international trade and supply chain need to establish transparent and long-term trading relations with their suppliers and consider social factors that lie beyond the normal visible process.

Businesses in the international trade and supply chain also need to be prepared, along with their service providers, for:

- **Country and sector risk assessments:** Assessing labor and environmental laws and regulations, as well as actual practices, in order to assist clients with sourcing decisions.
- **Codes of conduct and compliance:** Developing effective strategies and implementation of codes of conduct and compliance programs, taking into account issues such as international standards on basic labor rights; local labor laws and regulations; compliance with compensation and overtime requirements; and appropriate health and safety standards.
- **Association and accreditation programs:** Participating in voluntary initiatives and labeling programs to address labor and CSR concerns.
- **Information and training:** Obtaining timely information, analyses, and late-breaking updates on international labor and CSR issues that affect international trade and business decisions.
- **Problem-solving strategies:** Understanding the interests and concerns of advocates who are raising labor and CSR issues to the public, and solving such problems in order to minimize further risk to a firm's consumer brand image and reputation in the investment community.
- **Government developments:** Monitoring information on labor and trade developments in governments worldwide that may influence a firm's business strategy.

A CSR program has the potential to improve international trade and supply chain management and bring benefits to a business, but a lack of understanding and initiative will cause problems, break the supply chain, and lead to a loss of reputation and ability to make profit for a global business.

6. Are you ready for a customs and trade audit or administrative and even criminal investigation?

For customs and trade compliance, in this complex business and regulatory environment, bad things happen from time to time to various companies, especially when an international business does not have a good customs and trade compliance program, procedure and policy which though do not guarantee to avoid crisis. One of the most stressful situations that the corporate lawyers do not want to confront but can still happen to any business is a customs audit or investigation on customs valuation, classification and other customs and trade matters.

It's believed that in the economic difficult times the governments are look for revenue and the auditors or investigators now have aggressive performance and targets to hit, with advanced information technologies, information database and risk analysis tools. Keep in mind, China Customs is a government agency which is granted by the Congress and the State Council the powers of audit, administrative investigation and criminal investigation.

We advise that things you should do to prepare your business now, and how to handle a customs audit and investigation when it happens:

- **Preparation:**

We estimate that for every 5 years in business, you should expect a customs audit or investigation of some kind. The most obvious step is to ensure your customs affairs are totally in order, which is not an easy and short-term task. You should employ suitably qualified legal professionals to help you establish customs and trade compliance policy and program and keep track of customs and trade compliance review. Particularly, a process how and who to respond to government auditor or investigation must be established, and internal training must be conducted. While cost-saving is a big excuse in these days, even if you feel competent and comfortable to do by yourself, it is a good investment to take an annual overview and sample internal audit for you by the outside legal professionals – they will ensure you stay within the law.

Ensure your team is aware the business is being investigated and that it is a routine event you are prepared for. There's nothing more worrying than seeing the boss stressed while a stranger looks through the paperwork. It's also worth telling your staff that if the auditors or investigators ask them any questions, they should only answer the questions truthfully that they clearly know and direct other questions to the corporate counsel rather than attempt to answer them in an inaccurate way.

- **First Response:**

The first you may know about an audit or investigation is when Customs phone to schedule a time for the auditor or investigator to visit and interview your employees and look at your books. If you need time to get your internal information and clearance, then politely ask them to contact the right corporate counsel or offer some alternative dates. You should schedule a date after all your staff is legally trained, and your counsel is available to attend, if possible.

- **Mistakes in the customs and trade transactions:**

In the vast volume of customs and trade transactions and filings of information, mistakes always exist. Even innocent mistakes can be viewed badly by auditors and investigators, so you must take professional advice immediately to work out the best course of action. The best option is that you seek advice from the law firms those which have specialized lawyers in assisting businesses disclose mistakes while reducing their liability.

- **Protection of legal rights:**

While you certainly need to cooperate with the government auditors and investigators, it is not the obligation of the importers of record or other businesses to turn in all information to the government and to self criminate. Strategies and actions shall be taken to protect the personnel and property of the business based on the legal rights and legal procedures.

- **Legal Analysis:**

It's critical for you or your representative take careful notes of what is said by auditors or investigators, which are the views of them in practice. In the meanwhile, retrieve their past interpretations in writing which will help you apply their ruling consistently and deal with the challenges. All these information are very important for the legal analysis of the conclusion based on the facts-findings, and debates and arguments.

- **Public relation and crisis management campaign:**

As long as you use quality professional advice, keep sound customs and trade compliance program and deal with any audits and investigations promptly and professionally, you will deserve a fair result on based on the legal rules and regulations, and you do have your rights, including the right of appeal. In some circumstances, you may also want to use public relation and crisis management campaign, but these customs and trade audits or investigations which involve mainly factual and legal issues as opposed to political issues, you must use it very delicately.

In conclusion, with the efforts by the government for rule of law, transparency, consistency and efforts by the trade community for due diligence, monitoring, control, compliance and advocacy, we are convinced that the informed customs and trade compliance for cost-saving and efficiency eventually can be well achieved.

Appendix

Customs and International Trade Policy (Sample) (China/ Asia Pacific Region)

1.0 INTRODUCTION

The Customs and Trade Compliance Staff (CTCS) of the company prepared this policy to assist the Business Units and operating entities in Asia Pacific Region whose procurement, product development, production, technologies, distribution and other activities give rise to the importation/exportation of any goods. This policy includes specific guidelines and procedures to be followed by all business units. It also includes procedures that describe not only the company's overall compliance strategy but also the specific day-to-day roles & responsibilities to be performed by either the CTCS or the respective Business Units. This policy provides the procedures in the region that facilitate trade flow and reduce the cost of transacting Customs business, and to promote the use of special tariff and trade laws to legally reduce, avoid, or recover duties and taxes assessed on imported merchandise. Moreover, this policy guides the Business Units in the region to comply with the regulatory requirements for customs classification, valuation, import requirements, special trade programs, etc.

Numerous and complicated tariff, trade, and other laws and regulations apply to import and export transactions. Often times, these laws and regulations change with little notice. In these situations, delays in clearing goods through Customs are not unusual, and unexpected costs may be incurred.

Further, in the case of goods subject to quotas, import prohibitions, restrictions, anti-dumping and Countervailing duties, our ability to affect customs clearance may be nil or may be affected only by incurring an unplanned cost. However, advance plan and compliance program help mitigate the cost. This policy formulates the general procedures of customs and trade compliance in the region.

1.1 GLOBAL CUSTOMS AND TRADE POLICY STATEMENT

The company is committed to complying with all laws and regulations of the countries in which it does business, acting with integrity and maintaining ethical standards in its dealings with all national and local governments and reducing Customs costs to their lowest amounts.

As a global company, the company's engineering, sales, production and distribution operations routinely involve the cross-border flow of materials and components, machinery and equipment, manufactured products and other articles. All cross-border flows involve two transactions, an export and an import, both of which must be properly administered and reported in compliance with the export and import laws of the countries involved. In addition, since the company is a U.S. corporation, some U.S. laws regulate cross-border flows with extraterritorial application to all U.S. corporations (e.g. aspects of U.S. export control laws).

The company's responsibilities for properly administering and reporting cross-border transactions are determined by the terms of delivery negotiated by the parties as part of each transaction. It is possible that, based on the terms of delivery, the company has no responsibility for administering or reporting of a cross-border transaction. Nevertheless, national laws or regulations may impose non-delegable.....

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