

CUSTOMS e-Alert

JULY 2016

Implementation Of WTO Trade Facilitation Agreement

The WTO Agreement on Trade Facilitation (Agreement) is a product of the 9th WTO Ministerial Conference which was held in 2013. The Agreement has two sections, where Section 1 stipulates provisions for WTO members to provide information relating to customs procedures as well as to expedite the movement and release of goods. It also sets out provisions relating to measures for effective cooperation between customs, other appropriate authorities and traders on trade facilitation and customs compliance issues. Section 2 provides for special and differential treatment for developing and least-developed countries in order to help them implement the provisions of the Agreement. Each Section contains 12 provisions.

The concept of the Agreement was formulated since the 4th WTO Ministerial Conference in 2001, where the ultimate goal is to further enhance trade facilitation, reducing trade costs and supporting integration of all trading countries. As at 8.7.2016, 86 WTO members including Malaysia have committed to this Agreement. When the number reaches 108 members, which signifies two-thirds of WTO members, this Agreement will come into effect. It is widely anticipated that this Agreement will take effect by the end of 2016.

Key Provisions of the Agreement and Comments

Here are some of the key provisions that would have a far-reaching impact:

- *Article 1*

Member states must publish all procedures for importation, exportation, transit, rates of duties, fees and charges in connection with any importation and exportation, all forms and documents used, rules for classification or valuation, laws for rules of origin, import and export restrictions, procedures for appeal and penalty provisions for breaches of import and export.

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Article 1 aims to enable traders to easily adopt the procedures of the importing nation. Frequently, exporters without ground knowledge of the laws and conventions practised by the importing nation encounter difficulty in exporting their goods. WTO studies show that this will help decrease international trade expenses by 1% and potentially increase global trade volume by US\$40 billion. From a Malaysian perspective, this will not only help exporters gain access to the Customs procedures of other jurisdictions, local importers will also better understand Malaysian customs procedures. This initiative will promote transparency in respect of Royal Malaysian Customs (Customs) procedures and practices.

- *Article 3*

Member states are subject to advance ruling applications from any private applicant of a WTO member state. Among others, advance ruling is available for the determination of tariff classification of a particular good or its country of origin. Member states may only decline to issue an advance ruling if the question raised is already pending before a domestic court or if the question posed had been subjected to judicial determination.

The availability of advance ruling will enable businesses to seek advance clarification in potential contentious areas. From a Malaysian perspective, advance ruling is available under Section 10A of the Customs Act 1967, which allows the Customs to decline making a ruling if information provided by the applicant is insufficient. However, a similar clause is not stated in the Agreement. Whilst there is no time frame for the Customs to determine on a Customs ruling application, Article 3(6) of the Agreement makes providing a time frame mandatory. It is also anticipated that a designated department within the Customs or the Ministry of International Trade and Industry will attend to advance ruling applications.

- *Article 4*

Member states must provide an appeal avenue to any person aggrieved by an administrative decision. The appeal must be heard and decided within a prescribed time frame under domestic law or without undue delay.

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Under the Customs Act 1967, administrative appeals are available pursuant to a decision made by any Customs officer, namely Section 13B (Director General to determine questions on classification and valuation) and Section 143 (appeal to the Customs Appeal Tribunal). However, both administrative appeals do not provide a time frame for decisions to be made. The accession to the Agreement will now compel the Customs and the Customs Appeal Tribunal to make their decision without undue delay.

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Moving forward

Consequent to the commitment made by Malaysia, it is widely anticipated that amendments will be made to the Customs Act 1967. This is to accommodate the various provisions of the Agreement. Further, administrative decisions by the Customs may also be subjected to increased scrutiny from both local and international businesses.

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