2019 YEAR-END REVIEW
of Import/Export Developments

Customs and Import Compliance Developments

Thursday, November 14, 2019 | Santa Clara, CA & Webcast
Trade Wars
Agenda

Trade Wars

1. Trump Administration Trade Policy
2. United States Trade Actions: Status and Prospects
3. China's Responses to United States Section 301 Duties
4. European Union's Responses to United States Section 232 Duties
5. Trade Wars and Supply Chain Management
Presenters

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*In cooperation with Wong & Partners*
Trump Administration
Trade Policy
United States Trade Actions: Status and Prospects
US Trade Actions

Section 232 of the Trade Expansion Act of 1962

- Within 270 days after the date on which an investigation is initiated, the Secretary of Commerce shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, the recommendations for action or inaction.

- If the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.

- Cold war era tool – provides ability to increase tariffs, decrease tariffs, eliminate them, impose quotas, impose a combination of tariffs and quotas based on national security

- Predates WTO rules – last amended in 1988

- Not used since 2001
US Trade Actions

Status and Prospects

Presidential Actions Under Sec. 232 - Steel

• Secretary recommended global 24% duty to bring domestic steel to 80% capacity
• President imposed 25% additional tariff except from Canada and Mexico [Turkey was later doubled, then reduced]
• Exemptions for Australia, Argentina (Quota), S. Korea (Quota), Brazil (Quota)
• Requires Foreign Trade Zone admissions to be "privileged foreign status"
• Amended FTZ rule for products qualifying as "domestic status"
• Narrow exclusion process (product by product)
• Provided for retroactive exclusions (to the date the request for exclusion was posted for public comment)
• Prohibited drawback
US Trade Actions

Status and Prospects

Presidential Actions Under Sec. 232 - Aluminum

- Secretary recommended global 10% duty
- President imposed 10% additional tariff except from Canada and Mexico effective for covered articles entered or withdrawn from warehouse on/after March 23, 2018.
- Exemptions for Australia, Argentina (Quota),
- Requires Foreign Trade Zone admissions to be "privileged foreign status"
- Amended FTZ rule for products qualifying as "domestic status"
- Narrow exclusion process (product by product)
- Provided for retroactive exclusions (to the date the request for exclusion was posted for public comment)
- Prohibited drawback
Awaiting Presidential Actions Under Sec. 232 – Automotive industry

- Commerce investigation under sec. 232 on the automotive industry
- May 23, 2018 - President said "Core industries such as automobiles and automotive parts are critical to our strength as a nation" and directed Commerce to conduct an investigation
- Commerce agreed to conduct a "thorough, fair and transparent investigation into whether such imports are weakening our internal economy and may impair the national security"
- Covers passenger cars, SUVs, vans and light trucks as well as automotive parts
- On/about Feb. 18, 2019, Commerce completed investigation and sent report to the President [presumably with recommendations]
- President has 90 days to make a decision (tariffs, quotas, other action, no action)
- Opposed by US car manufacturers who believe it will disrupt complex global supply chain
US Trade Actions

Status and Prospects

WTO challenges to Section 232

- A number of countries have filed WTO Dispute Settlement Body cases alleging that despite the "national security" claim, the section 232 actions are safeguards which violate the WTO Safeguards Agreement.

- The US claims the WTO lacks jurisdiction because these are national security measures that are exempt from WTO agreements [In Ukraine/Russia case, WTO said it could consider claimed exemption].

- The US has filed cases with the WTO DSB alleging that the retaliatory tariffs imposed by the EU and other countries violates the WTO rules.
US Trade Actions

Status and Prospects

Section 301 – Trade Act of 1974

• Section 301 gives the US Trade Representative broad authority to respond to a foreign country's unfair trade practices.

• If USTR makes an affirmative determination of actionable conduct, it has the authority to take all appropriate and feasible action to obtain the elimination of the act, policy, or practice, subject to the direction of the President, if any.

• The statute includes authorization to take any actions that are within the President's power with respect to trade in goods or services, or any other area of pertinent relations with the foreign country.

• In the past, 301 was often used against countries with major IPR violations or unfair trade practices.
US Trade Actions

Status and Prospects

Section 301 – Trade Act of 1974

Presidential Statement of May 29, 2018 regarding "steps to protect domestic technology and intellectual property from China's discriminatory and burdensome trade practices"

- Concern over "Made in China 2025" program
- Investment restrictions and enhanced export controls related to industrially significant technology
- Pursue WTO dispute processes regarding Chinese IP practices (DS542)
- First 3 lists (tranches) impose an additional 25% tariff on Chinese goods
- Fourth list (in two parts) imposed a 10%, later raised to 15% additional duty
US Trade Actions

Status and Prospects

Section 301 – Trade Act of 1974

• However, the US and China have entered into negotiations and the fourth list (part B) and an increase has been delayed and is on hold for the negotiations. The President said it could be extended if negotiations are going well.

• The exclusion process for Section 301 (administered by USTR) is broader than under 232. If an exclusion is granted to one company, it will be applied to all importers importing goods under the same tariff subheading whether or not they requested an exclusion.

• Provided for retroactive exclusions (to the date the tariffs went into effect, not date of posting as 232) – good for one year or a specific date

• Unlike the 232 process, drawback will be allowed and Chapter 98 items will be exempt, with exceptions
Section 301 Duties on Imported Chinese Products

**Mitigation Strategies**

- **Product Classification Analysis**
  - Is the Product properly classified under one of the HTSUS categories: (i) that is not subject to section 301 duties; or (ii) for which a product exclusion has been granted?

- **Product Exclusion Petition Procedures**
  - The USTR opened the portal for product exclusion petitions for products on List 4(A) of Chinese products subject to section 301 duties (effective October 31, 2019 through January 31, 2020)
  - Exclusion Petition Criteria
    - Is China the sole source of the product
    - What efforts has the petitioner made to obtain the product from sources in the United States or in third countries
    - Will the imposition of the section 301 duties cause severe economic harm to the petitioner or other U.S. interests
    - Is the product a strategic item or included on the "made in China 2025" industrial development program

- **Alternative Sources of Supply of the Product**

- **Third Country Assembly**
  - Substantial Transformation/Country of Origin Analysis
Section 301 Duties on Imported Chinese Products

Mitigation Strategies (Cont’d)

- Disaggregation of Complex Products and Final Assembly in the United States
- Customs Valuation based on the First Sale for Export to the United States
  - Multi-Tiered Procurement Arrangements
  - Conditions for Reliance on First Sale Valuation: T.D. 96-87
    - Bona fide sale between the manufacturer and the intermediary
    - Manufacturer and intermediary must deal with each other at "arm's length"
    - At the time of the purchase and sale transaction between the manufacturer and the intermediary, the merchandise must be irrevocably committed to, and clearly destined for, exportation to the United States
- Customs Duty Preference for U.S. Fabricated Components Assembled Abroad (9802.00.80, HTSUS)
  - Application confirmed by CSMS #180000419
- Duty Drawback on Chinese Products Imported into the United States and then Subsequently Exported
US Trade Actions

Status and Prospects

Section 301 – Trade Act of 1974 – EU Large aircraft case

- On October 18, 2019, US imposed duties of 10% or 25% on certain products from the EU. Unlike prior Sec. 301 actions, this one is targeted by product and country.

- EU action was taken after WTO on Oct. 14 gave a green light to US based on WTO arbitrator's holding that the US was entitled to countermeasures equal to $7.5 billion because of EU subsidies on large aircraft.

- EU has asked for similar authority in its case against the US but that is not expected until next year.

- EU has suggested no tariffs for either side and wants negotiations – not a trade war.
China's Response to United States Section 301 Duties
China's Response to the United States Section 301 Duties

- **March 2018**: 25% tariffs on $3 billion in US origin imports
- **July 2018**: 25% tariffs on $34 billion in US origin imports
- **August 2018**: 25% tariffs on $16 billion in US origin imports
- **September 2018**: 10% and 5% tariffs on $60 billion in US origin imports
- **June 2019**: Tariffs increased to 25%, 20%, 10% and 5% on $60 billion in US origin imports
- **Sept & Dec 2019**: 10% and 5% tariffs imposed on $75 billion in US origin imports

Prospects for Resolution: A U.S. China Trade Deal?
Tariff Mitigation Strategies

How to remain competitive and stay ahead of the curve?

**CHANGE ORIGIN OF GOODS**
- Change supply source or key production location.
- Substantially transform product in a third jurisdiction unaffected by additional tariffs.

**DISAGGREGATE PRODUCTS**
- Execute a comprehensive tariff-ready supply chain strategy.
- Define and diversify critical production operations.

**OPTIMISE VALUATION**
- Explore structural changes that affect value of goods.
- Use "first sale for export" principle when multiple sales precede import into the US.
Tariff Mitigation Strategies

How to remain competitive and stay ahead of the curve?

**PRODUCT CLASSIFICATION**
- Design product to attract more favorable tariff classification.
- Defend classification through proper documentation.

**UTILISE TRADE FACILITIES**
- Use bonded manufacturing, free trade zones and duty drawback programs.
- Relocate distribution hubs to free trade zones.
Tariff Mitigation Strategies

How to remain competitive and stay ahead of the curve?

ACCESS PREFERENTIAL RATES

- Adopt controls and procedures to increase free trade agreement use.
- Reduce tariffs on materials and intermediary goods.

FILE FOR EXCLUSION

- Apply to formally exclude product from additional tariffs.
- Advocate for favourable tariff treatment.
Identifying Key Risk Areas

How can supply chain changes impact a company's risk profile?

- SCRUTINY ON PAST PRACTICES
- RISK OF AUDIT
- DISPUTE WITH SUPPLIERS / VENDORS
Risk Management Strategies

How to manage risks arising from the evolving trade landscape?

CONDUCT HEALTHCHECKS
- Identify compliance risks and strategic opportunities.
- Strengthen internal controls and procedures to target vulnerabilities.

PREPARE DEFENSE DOCUMENTS
- Understand big picture implication arising from supply chain changes.
- Prepare supporting documents to defend tariff mitigation strategies.

DEVELOP AUDIT STRATEGY
- Understand risk profile and plan ahead of audits.
- Manage audit timelines and communications with authorities.
Key Trends in Asia Pacific

How is the tariff war changing the trade regulatory landscape in the Asia Pacific region?

Perception that countries in the Asia Pacific region are used as transshipment hubs

Increasing G2G verifications on validity of certificates of origin issued by local authorities in the region

Local authorities are becoming more circumspect in issuance of origin certificates

Relative active number of origin audits in the region

Increasing focus on use of "Made in …" origin labels

Lack of harmonization in non-preferential rules of origin draws into sharper focus
## Race to Attract Foreign Investors

Asia Pacific countries are competing to attract foreign investments

<table>
<thead>
<tr>
<th>Country</th>
<th>Measures</th>
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<tbody>
<tr>
<td>Malaysia</td>
<td>Establishment of a National Committee of Investments to fast track approvals for investments</td>
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<td>Introduction of a &quot;special channel&quot; to accelerate FDI from China</td>
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<td></td>
<td>Incentives for the E&amp;E sectors and exporters announced in recent Budget 2020</td>
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<tr>
<td>Thailand</td>
<td>Introduction of a &quot;relocation package&quot; for companies seeking to shift production to Thailand</td>
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<td></td>
<td>Establishment of a &quot;one stop service&quot; committee to facilitate foreign investments</td>
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<tr>
<td>Taiwan</td>
<td>Launch of the &quot;Invest Taiwan&quot; campaign to lure companies with operations in mainland China to return to Taiwan</td>
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<td></td>
<td>Incentives in the form of rental concessions, soft loans, employment subsidies and streamlining of administrative procedures etc.</td>
</tr>
<tr>
<td>Vietnam</td>
<td>Provision of location-based incentives</td>
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<td>The areas that the government selects for incentives are consistently located near Vietnam's borders with China and Laos as well as the southern Mekong region</td>
</tr>
<tr>
<td>India</td>
<td>Significant reduction of base corporate tax rate from 30% to 22%</td>
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<td></td>
<td>Potential setting up of affordable industrial zones across India's coastline</td>
</tr>
<tr>
<td></td>
<td>Incentives to attract companies moving out of China</td>
</tr>
</tbody>
</table>
Deciding on a new manufacturing location?
Priority considerations to future-proof your production.

- Ease of market access
- Availability of materials
- Proximity to markets
- Investment protection and preferential treatment
- Reliable access to labor
- Good infrastructure and technological capability
Market entry due diligence 101

1 'The open house'
Regulatory green light
- No restrictions on forms of foreign investment
- Ease of doing business
- Regulatory predictability

2 'The welcome basket'
Preferential Access
- Free trade agreements
- Tax incentives
- Investment protection
- Bonded warehouses, free trade zones

3 'The ghost in the attic'
In market risks
- Import/export issues
- Imposition of new tariffs
- Commercially unviable market
- US Foreign Corrupt Practices Act concerns

4 'Getting to know the neighbors'
External risks
- Dependency on source markets
- Sanctions
- Export controls

5 'The resale value'
Exiting
- Free transfers out of jurisdiction
- Termination clauses in commercial agreements
- Dissolving a business entity
European Union's Responses to United States Section 232 Duties
### EU Response to US Trade Measures

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<tr>
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<th>Description</th>
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<td>1</td>
<td>Introduction of retaliatory duties under the WTO Safeguards Agreement</td>
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<td>2</td>
<td>Imposition of 'safeguard' measures on steel</td>
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<td>3</td>
<td>Launch of a WTO dispute challenging US steel and aluminum tariffs</td>
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<td>4</td>
<td>Consultation on further retaliatory duties against US</td>
</tr>
</tbody>
</table>
Introduction of Retaliatory Duties

22 JUNE 2018

- On 22 June 2018 the EU imposed 25% ad valorem additional duty against a range of US steel, agricultural and industrial products.

- New tariffs affect all relevant goods of US origin that are imported into the EU from 22 June, except for goods:
  - exported from the US before 22 June; and
  - for which an import licence exempting or reducing duty on the goods has been obtained before 22 June.

The EU is planning to introduce additional ad valorem duties on US exports ranging from 10% to 50% at a later date (no set date as yet, but additional duties will come in play by 1 June 2021 latest).
Investigation into 'Safeguard' Measures on Steel

In **March 2018** EU launched investigation towards possible imposition of 'safeguard' measures on steel in response to the US restrictions on steel and aluminum (26 steel product categories)

In **July 2018** EU approved provisional safeguard measures targeting imports of steel products into the EU

In **February 2019** EU imposed definitive safeguard measures on imports of steel products
- Will remain in place until 30 June 2021, but can be reviewed in case of changed circumstances

In **April 2019** EU initiated action to ensure that a combination of anti-dumping or anti-subsidy measures with safeguard measures on the same product does not place an undesirably onerous burden on certain exporting producers seeking to export in the EU

In **October 2019** EU adopted adjustments to the existing safeguards for steel, following consultations with affected WTO Members and EU Member States
On 1 June 2018, the EU launched a WTO dispute challenging US steel and aluminium tariffs.

WTO has, in principle, one year from 1 June 2018 to adopt a ruling.

In practice, adoption of the ruling could take up to two years.

On 25 January 2019, the Panel was confirmed with Mr. Elbio Rosselli as Chairperson.

The Panel communicated on 4 September 2019 that it expects to issue its final report no earlier than autumn 2020.
## Consultation for Further Retaliatory Tariffs on US Origin Products

1. **17 April 2019** – EU released preliminary list of £15 billion worth of US-origin products to be subject to retaliatory duties

2. **31 May 2019** – Consultation process on published list closed

3. Retaliatory duties are in response to dispute over subsidies for aircraft manufacturers

4. Preliminary list covers breadth of consumable and non-consumable products

5. Exact amounts of the duties yet to be determined
Trade Wars and Supply Chain Management
Strategic Customs & Trade Planning

Cost-efficiency

Trade Compliance, Export Controls & Sanctions

Minimizing risks

Redrawing the Supply Chain

Maximizing opportunities
Trade War

Prepare for uncertainty

Unpredictable
No country, region, or industry is immune

Complex
Trade deficit is not the only focus:
- Injuries to domestic industry
- National security
- Forced technology transfer
- Intellectual property
- Illegal immigration
- Public policy

Volatile
Tariffs up to 30%
Applicable to goods valued at over US$ 1 trillion
Growing list of blacklisted companies and restricted products

What's at stake?
- Financial hardship
- Criminal penalties
- Ruptures in supply
- Blacklisting
- Access to currency
Trade Wars SWOT Analysis

**Strengths**
- Diverse and tariff-ready supply chain
- Compliant operations
- Thorough record keeping and defense documentation

**Priorities:**
- Identify new markets
- Harmonize existing operations

**Weaknesses**
- Operations in vulnerable markets
- Non-compliance
- Lack of diversity in your supply

**Priorities:**
- Prepare a back-up plan now
- Complete a risk assessment

**Opportunity**
- Get ahead of your competitors
- Optimize your supply chain

**Priorities:**
- Due diligence on emerging opportunities
- Prioritize a smart and sustainable supply chain

**Threats**
- Increased costs of doing business
- Loss of customers or suppliers

**Priorities:**
- Health check
- Diversify your commercial arrangements
- Prepare tariff mitigation strategies
Trade Wars
COFFEE BREAK
Trade Agreements Developments
## Agenda

### Trade Agreements Developments

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<td>United States – Mexico – Canada Agreement (USMCA)</td>
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<td>2</td>
<td>United States – Japan Trade Agreement</td>
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<td>3</td>
<td>Prospects for a Brexit US-UK Free Trade Agreement</td>
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<td>4</td>
<td>Brexit and the Future of Trade Relations between the UK, and the EU-27 countries</td>
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United States – Mexico – Canada Agreement (USMCA)
Overview

- NAFTA provisions had not been amended since 1994

- New Generation Agreements: New agreements entered into by the United States, Canada and Mexico (with other countries) include new disciplines and a more social and progressive focus

- NAFTA needed to be modernized and the supply chains within the North American Region to be strengthened
Key Changes from NAFTA

- Rules of Origin
- Term
- MFN Duty Rates & Deemed Origination
- Agriculture
- Intellectual Property
- Labor & Environmental
- Non-Market Country FTA
- Dispute Resolution
Prospects for Ratification in the USA, Canada and Mexico

• Where we are…

• Political Challenges

• Different Goals

• US and the President's *Trade Promotion Authority*
United States – Japan Trade Agreement
US – Japan Trade Agreements

Not your average FTAs!

Two separate agreements:

1. Market access for certain agriculture and industrial goods
   • Main text
   • 2 annexes setting up reduction/elimination of tariffs
   • 6 side letters (whey, rice, beef, alcoholic beverages, skimmed milk powder, safeguards)

2. Digital trade agreement
   • Main text with 22 articles
   • Interactive Computer Services side agreement
US – Japan Trade Agreements

Certain Achievements!

Overview
1. Final Agreement and Signature
   • US and Japan negotiated based on the US-Japan co-statement last year and finally agreed on September 25, 2019 and signed on October 8, 2019.

2. Trade Agreement – Market Access
   • Cover around 30% of world GDP ($25.5 billion). Trade agreement on goods.
   • Agreed in five months.

3. Digital trade agreement
   • Establish rules in order to improve smooth and trustworthy free digital trade between US and Japan
   • Further improve e-commerce provisions of TPP 11.
US – Japan Digital Trade Agreement

Not your average FTA!

Digital Trade Agreement

- Prohibits imposing customs duties on digital products transmitted electronically such as videos, music, e-books, software, and games.
- Ensures non-discriminatory treatment of digital products, including coverage of tax measures.
- Ensures barrier-free cross-border data transfers in all sectors.
- Prohibits data localization requirements, including for financial service suppliers.
Digital Trade Agreement

- Prohibiting arbitrary access to computer source code and algorithms.
- Ensuring firms' flexibility to use innovative encryption technology in their products.
- USTR says that it meets the "gold standard" on digital trade rules set by the USMCA.
US – Japan Digital Trade Agreement

Certain Achievements!

Digital Trade Agreement

• Prohibiting member States rejecting legal validity of the electronic signature just because it is electronic.
• Prohibiting requiring establishment of domestic computer related facilities as a condition of doing business in its territory.
• Each member State should regulate consumer protection laws and keep them in order to prohibit a fraudulent commercial activities on-line.
• Each member State should adopt a legal framework of protecting personal information.
US – Japan Digital Trade Agreement

Certain Achievements!

Digital Trade Agreement

• Each member State should adopt and maintain spam mail prevention system.
• Prohibiting member States requiring transfer of software source code and algorithms as a condition for an import or domestic distribution, with exception of measures of restriction authority and judicial authority.
• Prohibiting member States treating an information provider as a sender of the information in the determination of liability for damages related with information exchange in interactive computer services including SNS.
• Providing general exception clause and national security exception clause. Providing non-application of this Agreement to measures taken to maintain orderly financial system.
US – Japan Trade Agreements

Not your average FTAs!

Market Access Agreement

- Customs duties on automobile and auto parts will be subject to further negotiations with respect to the elimination of customs duties.
- Rules of Origin: Wholly obtained, produced entirely in Parties, produced entirely from originating goods, product specific rules in Paragraphs 17-19 and table; 10% *de minimus* non originating with exceptions; fungible goods rules allowing inventory control; rules for sets, transshipment,
- Simplified documentation rules but backup to be produced if needed
- Product specific rules are based on tariff shift (no RVC requirement)
- Japan only has product specific rules through Chap 38
US – Japan Trade Agreement

Not your average FTA!

Trade - Market Access:

• US to reduce/eliminate tariffs on 42 agricultural tariff lines (plants, flowers, tea, soy sauce)

• US to eliminate/reduce tariffs on certain industrial goods (machine tools, fasteners, steam turbines, bicycles and parts, musical instruments)

• Japan to eliminate or lower tariffs on certain agricultural products (fresh and frozen beef and pork)
US – Japan Trade Agreement

Not your average FTA!

• Japan to set up quotas for wheat and wheat products
• Japan to eliminate tariffs on certain nuts, berries, corn, grain, more
• Japan to stage elimination of tariffs for cheese, processed pork, wine, ethanol, eggs, tomatoes, oranges, certain vegetables.
• Japan to use limited safeguards for certain agricultural products
• When fully implemented US farmers/ranchers to have same access as CP-TPP countries
US – Japan Trade Agreement

Certain Achievements!

**Agricultural products**

**Japan side**

- Customs duties are within the scope of TPP 11 (CPTPP).
- Rice – wholly out of scope
- Forest and fishery products: no concession
- TPP-wide customs quota: no further US quota
- Alcohol: exclusion of customs duties on wine – same as TPP 11.
  No concession on other alcohol.
US – Japan Trade Agreement

Certain Achievements!

Agricultural products

US side

• Japanese beef export: secure an access to 65,005 ton quota for multiple countries
• Alcohol: improve US non-tariff barrier including capacity restriction
• 42 items of Japan's concern: reduce or eliminate tariffs
US – Japan Trade Agreement

Certain Achievements!

Industrial products

Japan side

- No further concession. Most industrial products with zero or minimal duties.
US – Japan Trade Agreement

Certain Achievements!

Industrial products

US side

• Customs duties on automobile and auto parts will be subject to further negotiations with respect to the elimination of customs duties.

• Measures taken based on Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) are likely to be refrained while both parties are implementing the Agreement faithfully.
Prospects for a post-Brexit US-UK Free Trade Agreement, and the Future of Trade Relations between the UK and the EU-27 countries
What has happened?

EU and UK agree revised Withdrawal Agreement and Political Declaration (the "Deal")

UK Parliament votes for General Election on 12 December 2019

EU grants third extension to 31 January 2020

Key Dates
- 18 October 2019
- 28 October 2019
- 29 October 2019
Looking forward: What can we expect?

UK General Election
12 December 2019

Dec/Jan 2019/20

UK and EU Parliament ratify the Deal?

31 January 2020

UK leaves the EU?
(and start of Transition Period in case of Deal)
### UK-EU27 relationship-timeline

<table>
<thead>
<tr>
<th>Current Position</th>
<th>Article 50 Negotiating Period</th>
<th>Transition Period</th>
<th>N. Ireland backstop</th>
<th>Future Relationship</th>
</tr>
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<tbody>
<tr>
<td>▪ UK remains in Customs Union and Single Market</td>
<td>▪ 31 January 2020? BREXIT</td>
<td>▪ 31 December 2020 (Extended up to 31 December 2022?)</td>
<td>▪ NI effectively remains in Customs Union with EU, with added considerations for goods entering NI from outside the EU</td>
<td>▪ (likely) FTA</td>
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<tr>
<td>▪ UK will lose benefits of EU FTAs</td>
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**BREXIT**
- 31 January 2020?

**Transition Period**
- 31 December 2020 (Extended up to 31 December 2022?)

**N. Ireland backstop**
- Open ended

**Future Relationship**
- (Likely) FTA
The revised protocol on Ireland / Northern Ireland

**Product Regulation**
An all-island single regulatory zone, aligned to EU Single Market

- EU duties paid by firm receiving goods in N. Ireland
- Goods stay in N. Ireland, firm gets refund

**Consent**
N. Ireland Assembly to be given option to give/withhold "democratic consent" to Protocol in a vote to take place 4 years after the end of transition period

**Customs**
N. Ireland remains part of UK customs territory

- No customs checks between N. Ireland and Ireland; these will take place at "points of entry" in N. Ireland
- GB to N. Ireland: No duty unless "at risk" of subsequently being moved into the EU
- Non-EU/non-GB to N. Ireland: duty payable at UK rates, unless "at risk" of subsequently being moved into EU
| Trade | Customs controls reintroduced between UK and EU-27 (e.g. customs declarations will need to be submitted on import and export) |
| Customs | Imports into the EU-27 will need to be done by an EU-27 established "importer of record" / declarant (and vice-versa) |
| Import VAT | UK EORI number becomes invalid for imports into EU-27, so EU-27 EORI number needs to be obtained (and vice versa) |
| Import VAT | For imports into the UK, registering for Transitional Simplified Procedures (TSP) will simplify import declaration process and allow deferral of customs duty payment |

- **UK and EU-27 to trade on WTO terms**, which means there is no preferential treatment
- Tariffs reintroduced, though UK intends to apply 0% tariffs on majority of imports (including from EU) for 12-months
- UK to lose benefit of EU FTAs, except where Continuity Agreements have been agreed (e.g. Chile, Switzerland and South Korea)
- Customs controls reintroduced between UK and EU-27 (e.g. customs declarations will need to be submitted on import and export)
- Imports into the EU-27 will need to be done by an EU-27 established "importer of record" / declarant (and vice-versa)
- UK EORI number becomes invalid for imports into EU-27, so EU-27 EORI number needs to be obtained (and vice versa)
- For imports into the UK, registering for Transitional Simplified Procedures (TSP) will simplify import declaration process and allow deferral of customs duty payment
- UK-issued customs decisions will no longer be valid for imports into EU-27 (e.g., authorisations, binding tariff information, binding origin information) (and vice versa)
- Import VAT will be levied twice: for imports into the UK and for imports into the EU-27
- Import VAT payable although UK to introduce a VAT deferral scheme similar to NL
- UK mitigation of import VAT possible by setting up customs procedures (e.g. transit, bonded warehouse, inward processing relief) in the UK

**Impact on customs**
UK: Post Brexit trade agreements

- Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama)
- Andean countries (Colombia, Ecuador and Peru)
- Caribbean countries (Barbados, Belize, The Commonwealth of Dominica, Grenada, The Republic of Guyana, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines)
- Eastern and Southern Africa (Madagascar, Mauritius, Seychelles, Zimbabwe)
- SACU+M (Botswana, Eswatini, Lesotho, Mozambique, Namibia, South Africa)
- Iceland
- Norway
- Liechtenstein
- Georgia
- Lebanon
- Palestinian Authority
- The Faroe Islands
- Switzerland
- Morocco
- Tunisia
- Israel
- Pacific Islands (Fiji and Papua New Guinea)
- Australia
- New Zealand
- United States
- Chile
- United Kingdom
- Central America
- Andean countries
- Caribbean countries
- Eastern and Southern Africa
- SACU+M
- Free Trade Agreement secured
- Mutual Recognition Agreement secured
Prospects of a UK/ US FTA

• President Donald Trump stated that PM Boris Johnson's Brexit deal would prevent the UK from striking a trade agreement with the US

• Mr Johnson had previously promised to negotiate a FTA with the US after delivering Brexit

• President Trump's comments now threaten to jeopardise Mr Johnson's election campaign

"To be honest with you, this deal, under certain aspects of the deal, you can't do it. You can't trade. We can't make a trade deal with the U.K."

Source: LBC Radio
Supply chain assessment

1. Understand your sales and supply chains into and out of the EU and the involvement of any UK entity.

2. Understand the financial and compliance impact (due to customs duties, cash flow disadvantages, VAT registrations, change in invoicing system, loss of EU origin etc.).

3. Review mitigation structures and implement same.
Trade Agreements Developments
Customs and Import Developments: An Overview
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*In cooperation with Trench, Rossi e Watanabe Advogados
United States Customs Developments
Drawback - TFTEA

All drawback claims will be entry "Type 47"

- Direct identification and substitution manufacturing
- Rejected merchandise: non-conforming to sample or specs.
  - shipped without consent of consignee
  - defective at time of importation
  - ultimately sold at retail
- Direct identification and substitution: unused merchandise
- Direct identification, substitution, rejected: unused packaging material
Drawback - TFTEA

- Direct identification and substitute manufacturing: packaging
- Petroleum derivatives (substitution of finished, manufactured, vessel and aircraft supplies)
- Flavoring extracts, medicinal, toilet preparations, bottled distilled spirits and wines [+ special drawback on IRC tax]
- Distilled spirits, wines and beer which are unmerchantable, etc.
- Wine: substitution unused merchandise
- NAFTA exemptions
- Substitution manufacturing drawback: sought chemicals
Drawback - TFTEA

- 99% of duties, taxes and fees
- Claims must be filed 5 years from date of importation [3 yrs. for 1313(d) without associated imports]
- Certificates of Delivery & Certificate of Manufacture no longer required
- Recordkeeping: 3 years from date of liquidation
- Electronic filing is mandatory as of 2/24/2019
- Built in system validations
- Integrated with post release processes
- Line level reporting
- Substitution based on 8 digit HTS or Schedule B [except certain basket provisions]
What information will a filer be required to provide when filing a claim?

- Drawback Entry Number (all drawback entries are now Type 47")
- Filing Port Code
- Claimant ID Number
- Drawback Provision
- Drawback Claim Date
- Total drawback claim amount requested
- Import Entry Summary/HTS Data
- Information on Exportation or Destruction
- Notice of Intent to Export or Destroy (if applicable)
- Supporting documents will be uploaded via the ACE Document Image System

Waivers of prior notice and requests for accelerated payment must be filed manually
Drawback - TFTEA

Drawback Center Locations

- Chicago: Drawback Chief: (847)928-8070
  U.S. Customs and Border Protection
  5600 Pearl Street
  Rosemont, IL 60018

- Houston: Drawback Chief: (281)985-6890
  U.S. Customs and Border Protection
  2350 N. Sam Houston Parkway East, Suite 1000
  Houston, TX 77032

- New York/Newark: Drawback Chief:(973)368-6950
  U.S. Customs and Border Protection
  1100 Raymond Boulevard, Room 310
  Newark, NJ 07102

- San Francisco: Drawback Chief:(415)782-9245
  U.S. Customs and Border Protection
  555 Battery Street, Room 109
  San Francisco, CA 94111

Note: File proposals (statements) with any of the above Port Directors or Directors of Field Operations.
US Customs Valuation and Transfer Pricing: Retroactive Price Adjustments
US Retroactive Price Adjustments

Customs valuation using the Reconciliation Program

- Related parties price setting with year-end adjustments
- Until May 2012, CBP did not permit transaction value where post importation adjustments were made in the price. (HQ 547654, 11/8/2001)
- HQ W548314 (5/16/2012) revoked HQ 547654 and allowed them, if:
  - Pursuant to formal transfer pricing policies and specifically related (directly or indirectly) to the declared value of the merchandise;
  - Written "Intercompany Transfer Pricing Determination Policy" is in place prior to importation and the policy is prepared taking IRS Code section 482 into account;
  - US taxpayer uses its transfer pricing policy in filing its income tax return, and any adjustments resulting from the transfer pricing policy are reported or used by the taxpayer in filing its income tax return;
US Retroactive Price Adjustments

Customs valuation using the Reconciliation Program ("Recon")

• The company's transfer pricing policy specifies how the transfer price and any adjustments are determined with respect to all products covered by the transfer pricing policy for which the value is to be adjusted;

• The company maintains and provides accounting details from its books and/or financial statements to support the claimed adjustments in the US; and

• No other conditions exist that may affect the acceptance of the transfer price by CBP.

• In addition to the above factors, the importer must meet the normal requirements for related party transactions and show that the relationship has not influenced the price.

• Support validity of transfer price with Customs Transfer Pricing valuation study, not just tax transfer pricing study.

• Declare intercompany transfer prices upon importation and flag the entries under the ACE Reconciliation Prototype ("CBP Reconciliation Program") in order to account for any post-importation adjustments (either upward or downward) that arose due to retroactive transfer pricing adjustments.
US Retroactive Price Adjustments

Customs valuation using the Reconciliation Program

- Recon (19 U.S.C. 1484(b)) allows filing with best available information.
- Certain flagged elements (like value) remain open while other issues (like classification) are liquidated.
- Importers have 21 months to file Recon Entry and provide final value information (except certain FTAs).
- Recon entries are liquidated and flagged issues may be protested (un-flagged issues liquidate as normal).
- Recon can be used for entry types "01," "02" or "06"
Canadian Customs Valuation and Transfer Pricing – Retroactive Transfer Price Adjustments
Purchaser In Canada Requirements

Canada - Retroactive Transfer Price Adjustments – Increase in Transfer Price

- Customs Act Corrections
  - Within 90 days of "Reason to Believe" (Section 32.2)
  - Blanket Amending Entries
- Voluntary Disclosures
  - Memorandum D11-6-4, "Relief of Interest and/or Penalties Including Voluntary Disclosure" (November 25, 2015)
Purchaser In Canada Requirements

Canada - Retroactive Transfer Price Adjustments – Decrease in Transfer Price

- No refunds for reduction of transfer price?
- Paragraph 48(5)(c) Customs Act
  - Disregard "any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported"
- CBSA's historical position → not allowed
Purchaser In Canada Requirements

Canada - Retroactive Transfer Price Adjustments – Decrease in Transfer Price

- Customs Memorandum D13-4-5, "Transaction Value Method for Related Persons" (September 17, 2015)
- Retroactive downward price adjustments can be taken into account if
  - agreement in writing at time of importation to later reduce price paid for the imported goods
  - price reduction subsequently occurs
  - arm's length price supported by transfer price study, report or APA
    - the agreement need not be signed
    - value for duty based on the agreement
Purchaser In Canada Requirements

Canada - Retroactive Transfer Price Adjustments – Decrease in Transfer Price

Opportunity

- Optional to claim refund where duties previously paid back 4 years (Customs Act, 74(1)(e))

Obligation

- Required to file correcting entries on revenue neutral entries as of January 19, 2015 (Customs Act, 32.2(2)) – must be done within 90 days of "reason to believe"
European Union Customs
Valuation and Transfer Pricing
Transfer pricing framework

- Transfer pricing and customs follow the same basic principle: transactions between related parties have to stand an arm's length comparison;
- Motives for reviews are different, though: customs administration is after a high transfer price whereas the tax administration is after a low transfer price;
- Retroactive transfer pricing adjustments (TP adjustments) shall adjust the profit earned during a year to the arm's length profit;
- Customs duties are generally calculated on the (transfer) price paid by the importer.
Developments in the EU

Customs related questions

1) Do retroactive TP adjustments have an impact on the customs value of imported products?

2) If yes, are retroactive TP debits and retroactive TP credits treated the same?

3) What methodology can be used to allocate the TP debits and credits to individual imports?
Developments in the EU

Handling in the EU

- No clear regulations in the Union Customs Code and its implementing regulations.
- EU Member States handle retroactive transfer price adjustments differently.
- Thumb rule:
  - Duty refund for retroactive TP credits
  - Additional duties for retroactive TP debits
## Developments in the EU

### Hamamatsu

Recent (unclear) judgment by ECJ; C-529/16 Hamamatsu Photonics Deutschland

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>According to ECJ, companies cannot use a TP subject to possible retroactive adjustments as the transaction value at the time of import.</td>
<td>Implications for companies currently depend on how the various EU Member States apply this judgment.</td>
</tr>
<tr>
<td>Application of alternative valuation method? ECJ not clear on this point (possible interpretation: retroactive TP adjustments do not have an impact at all!).</td>
<td>The case is currently under review by the EU Commission. The EU Commission is expected to provide local tax authorities with guidance on how to interpret the judgment, but EU Commission is first awaiting the final Court decision in Germany.</td>
</tr>
<tr>
<td>ECJ also not clear about the declaration of &quot;provisional/incomplete&quot; declarations.</td>
<td>Impact on customs valuation practice in different EU Member States is currently unclear. For the time being: no chance in current practice.</td>
</tr>
</tbody>
</table>
Developments in the EU

Hamamatsu ECJ judgement (continued)

- The referring Finance Court in Munich has already released its subsequent decision.
- The judge expressly stated that he feels bound by the mere wording of the ECJ decision (i.e. no refund for retroactive TP credits), but that he strongly disagrees with such conclusion since it infringes GATT valuation principles as well as prior European case law.
- The case is currently pending at the German Federal Finance Court.
- Latest information re EU Commission guidance: EU Commission is awaiting the final decision of the German Federal Finance Court.
Canadian Customs Developments
Customs Valuation - Transaction Value – Purchaser in Canada

- Value for duty is the transaction value if "goods are sold for export to Canada to a purchaser in Canada"

- Value for Duty Regulations define "Purchaser in Canada"
  - a "resident"
  - a non-resident who has a "permanent establishment" in Canada
  - if neither (i) nor (ii) apply, a person who imports goods for own use and not for sale, or
  - for sale if before goods purchased, the person has not entered into an agreement to sell goods to a resident
"Resident"

- individual who ordinarily resides in Canada
- corporation which carries on business in Canada and management and control of which is in Canada
- partnership which carries on business in Canada and member that controls partnership or majority of such members reside in Canada
"Permanent Establishment"

- fixed place of business of the person
- "through which the person carries on business"
  - Foster Grant (Federal Court of Appeal)
    - it is "axiomatic that a corporation that buys and sells goods on its own account for a profit is carrying on business"
Customs Valuation - Transaction Value – Purchaser in Canada

Purchase in Anticipation of a Sale

- A person who imports goods
  - for own use and not for sale, or
  - for sale if before goods purchased, the person has not entered into an agreement to sell goods to a resident

- Cherry Stix Ltd. (CITT) (AP-2004-009) (October, 2005)
  - CITT distinguished between a "sale" of goods, and an "agreement to sell" goods
  - "a sale is a contract for the sale of goods that is performed presently, and an agreement to sell goods is a contract for the sale of goods that is to be performed in the future and, if fulfilled, results in a sale"
What is the CLVS Program?


"We found that the Canada Border Services Agency poorly managed the Courier Low Value Shipment Program data. The Agency relied on the good faith of courier companies to declare and remit the sales taxes they collected from consumers. Even though the Agency had indications that courier companies did not declare the full taxes owing to the government, officials did nothing to resolve the issue. In addition, we found that the Agency could not ensure that the amount of provincial sales taxes and the provincial portion of the HST were accurate."
Low Value Shipment Program

CBSA response

- Review processes with the CLVS Program to improve the validation of taxes collected
- Participate in WCO Working Group to identify revenue collection models and evaluate other countries best practices by September 2019
- Refine e-commerce strategy with a focus on trade facilitation, safety, security and revenue collection
- Seek authority and funding to regulate shipment data in advance and develop a reconciliation process by December 2019
- Focus on compliance activities in the CLVS Program by conducting statistically valid courier compliance activities based on courier data to ensure revenue-related requirements are met by March 2020
Canadian Customs Audits

Customs Audits in Canada - Types of Audits

- Program Verifications (Audits)
  - Tariff Classification, Valuation, Origin

- Origin Verification (Audit)
  - Review of the exporter's origin analysis
  - Negative determination will affect multiple importers

- Duties Relief Program Verifications (Audits)
  - Verification that importers who have claimed duty relief under various programs (including those with end use requirements) are eligible for the duty relief

- Special Import Measures Act Verifications (Audits)
  - Determination that all applicable anti-dumping and countervailing duty paid
Canadian Customs Audits

Customs Audits

• Audits typically take the form of single-program verification (valuation, tariff classification, or origin)
  ✓ Random (selection based on statistical model)
  ✓ Targeted (risk-based; tip-based; carry-over from prior years; evergreening process)
    o CBSA Targeted Priorities - published January and in June/July
• Can be in the form of a desk audit (typical for tariff classification or origin audit) or on-site audit (typical for valuation audit)
Audit Priorities: Tariff Classification – July 2019

- Furniture for Non-Domestic Purposes (Round 3 – new)
- Batteries (Round 3)
- Footwear ($30 or more per pair) (Round 4 – new)
- Articles of Apparel and Clothing Accessories (Round 3)
- Articles of Plastics (Round 3 – new)
- Vices and Clamps (Round 2)
- Parts for Use with Machinery of Chapter 84 (Round 2)
- Parts of Lamps (Round 3 – new)
- Pasta (Round 2)
- Cell Phone Cases (Round 2)
- Olive Oil (Round 2)
Canadian Customs Audits

Audit Priorities: Tariff Classification (cont’d.) – July 2019

- Castors with Mountings of Base Metal
- Pickled Vegetables (Round 4)
- Gloves
- Spent Fowl
- Safety Headgear (Round 4 – new)
- Bags
- Import Permit Numbers (Round 2 – new)
- Other Mountings and Fittings, Suitable for Furniture
- Air Heaters and Hot Air Distributors
Audit Priorities: Tariff Classification (cont'd.) – July 2019

- Flashlights and Miners' Safety Lamps
- Stone Table and Counter Tops (Round 2)
- Disposable and Protective Gloves (Round 4)
- Parts of Machines
- Other Chemical Products (new)
Canadian Customs Audits

Audit Priorities: Valuation – July 2019

➢ Apparel (Round 3)

➢ Footwear (Round 2)
Canadian Customs Audits

Audit Priorities: Origin – July 2019

➤ Bedding and Drapery (Round 2)
European Customs Developments: Beyond Brexit
The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation...

Art. 1(1) WTO Valuation Agreement
Position in the EU under the UCC

Customs valuation in sales chains

The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory.

Art. 128(1) UCC Implementing Act
Current guidance under the UCC

Customs valuation in sales chains

…the relevant sale for goods brought into the Union is the **sale when crossing the border**, i.e., the ultimate sale taking place at that time.

…A **domestic sale** (buyer and seller in EU) **does not qualify** as a sale for export to the EU.

Article 128 (1) IA stipulates that the relevant sale to determine the value of goods is:

**the sale for export that brings the goods into the Union**. This is the sale occurring immediately before the introduction of the goods into the customs territory of the EU …
Implementation in sales chains

Customs valuation in sales chains
Upcoming changes to EU guidance

Customs valuation in sales chains

EU Customs Expert Group, Valuation Section considered updates to the EU’s valuation guidance in October 2018

Key change - "domestic sale" principle to be deleted

Guidance not yet available, and no clear timetable for adoption
What does the new guidance mean in practice?

Customs valuation in sales chains
Exporter of Record: historic definition

Exporter of Record

Exporter of Record has to meet the following three conditions:

(1) Establishment in the EU,

(2) Holder of contract with a consignee in a non-EU country,

(3) Power to determine that the goods are to be brought outside the customs territory of the Union.
Exporter of Record: new definition

Exporter of Record

Exporter of Record has to meet the following two conditions (as of August 2018):

(1) Establishment in the EU,

(2) Power to determine that the goods are to be brought outside the customs territory of the Union OR

(3) Is a party to the contract under which goods are to be taken out of that customs territory.
Exporter of Record: new definition

"Power to determine that the goods are to be brought outside the customs territory of the Union":

- Parties can contractually designate a person to have such power!
- Creates more flexibility for designation of EoR
- However: establishment in EU still required!
What does this mean for non-EU established "exporters"?

Exporter of Record

- During a transitional period, non-EU established exporters are still accepted, if they appointed an indirect representative for the submission of the export declaration.
- Indirect representative has to be established in the EU.
- Transitional period until end of 2025.
- Practical challenge: individual EU Member States start to enforce new definition prior to end of transitional period.
- Action required to contractually designate an EU-established exporter!
The Continuing Challenges of Brazilian Trade Regulations
Updates on RADAR licensing procedure

- RADAR is the authorization granted by the IRS to allow companies to perform import/export transactions in Brazil.

- Until July, 2019, RADAR requests had to be filed in person by the legal representative or someone empowered to do so.

- "Portal Habilita"
  - No more paperwork - Online applications.
  - Depending on the modality applied, the authorization can be granted instantly (e.g., express).
  - For the unlimited modality (which is the one needed for Companies importing in value of more than USD 150k per semester), the timeline for analysis is expected to be reduced.
  - It is further expected that only in exceptional cases the legal representative of the applicant will be required to be in person at the Brazilian Customs Office.
Changes on the "ex-tarifário" – Temporary reduction of Import Duty Rate

- **Ex-tarifário**: Temporary reduction of the Import Duty to 0% or 2% over importation of Capital Goods (BK) or Information Technology Products (BIT) that have no similar products manufactured in Brazil

- Former Regulation did not specify the meaning of "similar products manufactured in Brazil" - analysis generally made from a technical standpoint

- New Regulation – Ordinances No. 309/19 and 324/19 – among other changes, provides for additional criteria to define when a local product will be deemed to be similar to the imported one (when no ex-tarifário would be granted):
  - **Supply** of the products within the last five years by the manufacturer in Brazil;
  - **Performance** or **productivity** equal to or higher than the imported products;
  - **Time of delivery** equal to or lower than the imported products;
  - **EXW price** of the local products, without taxes, not higher than the CIF value of the imported products in BRL

- If the local product does not comply with one of the requirements => no local manufacturing => ex-tarifário may be granted
New FTAs entered by Brazil

- After 20 years of negotiation, Mercosur signed a FTA with the European Union
  - The Agreement is expected to enter into force within 2 years - 4 years
  - Exports from Brazil to EU: 92% to become free of import duty
    - Most benefited sector: agricultural (fruits, soy, coffee)
    - Importation quotas: meet, rice, sugar
  - Exports from EU to Brazil: 91% to become free of import duty
    - Most concerned sector: automotive (vehicles and autoparts subject to a 15% to 35% Import Duty)
- Challenges for Brazil
  - Comply with sustainable development standards / Paris Climate Agreement
  - Improve and develop local industry to gain efficiency and competitiveness
- Other FTAs: Mercosur – EFTA (already signed); On Brazil's radar: Mexico; USA; Canada; South Korea; Singapore
Tax Reform

Current Scenario

- Today - Several taxes:
  - Corporate Income Taxes: IRPJ and CSLL;
  - Indirect Taxes: ICMS, ISS, IPI, PIS/COFINS, IOF, CIDE, etc.
- Taxation based on "consumption"
- Conflicts of jurisdiction between the federal government, states and municipalities on the tax levied on a great number of transactions
- Excessive bureaucracy: ancillary obligations + operating costs to comply with tax obligations
- Litigation: Expensive + "Endless" (15 to 20 years)
Tax Reform

Potential changes

- General proposal: the simplification and combination of all current taxes imposed on consumption into one single tax ("unified VAT")
- Potential additional proposals:
  - IBS (IPI + PIS/COFINS);
  - Return of Financial Transactions Tax (CPMF): taxation on withdrawals and cash deposits at an initial rate of 0.4 percent. For debit and credit payments, the initial rate currently studied is 0.2 percent.
Mexican Trade Policy and Developments Beyond NAFTA
Mexican Trade Policy

- The new Administration
  - December 1, 2018 – November 30, 2024

- The so-called "Fourth Transformation"

- Focus on Eradication of Corruption

- Republican Austerity

- Projects
  - The Mexico City Airport
  - The Mayan Train
Mexican Trade Policy

Effects on day-to-day operation

- Reduction of Government Officials
  - An example: Requesting an IMMEX Program
  - Inspection visits vs. Notarization of facts

- Positive Opinions of Compliance with Tax Operations

- Outsourcing and non-existing operations

- Certifications (VAT / AEO)
Mexican Trade Policy

Effects on day-to-day operation

- Elimination of NOM-Exemption Letters
  - Technical NOMs vs. Labeling NOMs
  - Protection of Individuals vs. Consumers
  - Suspension of Registration in the Importers' Registry

- The new procedure

- Criteria issued by the Ministry of Economy
Mexican Trade Policy

Post-Entry Verifications

- Customs Valuation
  - Undervaluation in sensitive sectors
  - Royalties

- IMMEX Companies
  - Temporary imports / Annex 24 and 31

- Origin Verifications
NAFTA Verifications (2009 – 2014)

- Positive Resolution: 26%
- Pending Resolution: 21%
- Negative Resolution: 53%

Pending Resolution or Positive Resolution

- 60%
- 40%

Negative Resolution
Customs and Import Developments: An Overview
COFFEE BREAK
Update on Foreign Import Regulations and Developments
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<td>FSTEC Certification for Information Technology Products for Russian Government Procurement</td>
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<td>China Import Developments</td>
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Russian Encryption
Import Regulation
Update on Russian encryption regulations

Recent Trends on Import Encryption Regulations in Russia/EAEU (1)

Trend 1 – The notification procedure remains to be the simplest and easiest one

- The notification procedure is the fastest and simplest type of import encryption clearance in Russia (compared with an import license / import permit)
- The notifications are registered by the Federal Security Service ("FSS")
- "Heavy" encryption-based products require an import license/permit subject to much more complicated procedure and longer time lines (3 – 6 months)

Trend 2 – Authorization documents for submission of notifications must be specifically and properly certified

- Notifications can be registered by Russian authorized representatives of foreign manufacturers
- Authorization document (PoA or Agreement) must be certified by a local notary and legalized (apostilled) in the country of issue – complication for countries that do not apply apostil (e.g., Taiwan)
- Notary certification must specifically confirm the position and authority of the signor

For example

"This Power of Attorney was signed on behalf of the company within his/her authorized capacity"

- Authorization documents must fully be translated into the Russian language and notarized in Russia
Update on Russian encryption regulations

Recent Trends on Russian Encryption Regulations (1)

Trend 3 – Alternative options for obtaining of an import encryption license
- temporary import encryption permit
- ATA carnet – valid for 1 year, however, it is questionable whether ATA carnet exempts from import encryption permit

Trend 4 – Import encryption licensing (for "heavy" encryption-based products)
- IOR must have a local encryption license
- end-users must provide guarantee letter per each product (IOR cannot stock such products)
- end-user must have a local encryption license or must prove that the product is for internal use only (license exemption)

Trend 5 – Local encryption licensing requirements
- servicing of "heavy" encryption-based products can be performed only by local companies that have local license
- when issuing approvals for import encryption permits/licenses the FSS specifically checks whether the end-user's business activity should be covered by a local encryption license
- the FSS requires the Russian legal entities to get local encryption licenses much more often (special focus on IT companies and financial sector)
Update on Russian encryption regulations

Recent Trends on Russian Encryption Regulations (2)

Trend 6 – Alternative options for importing "Heavy" Encrypted Products in Russia / the EAEU

- hardware without heavy encrypted functions can be imported under a registered notification
- "heavy" encryption-based software can be freely downloaded (cross-border electronic transfer of software is not controlled by the import encryption regulations)
- downloaded software is preloaded on the imported hardware
- But: (i) local preloading of software on hardware and/or (ii) subsequent distribution could be subject to local encryption licensing requirements (iii) this approach is not risk free

Trend 7 – Law enforcement practice remains to be low

- Violation of import encryption regulations is subject to administrative penalties in the form of a fine of up to RUB 300,000 (USD 5,000) with possible confiscation of goods (confiscation almost never applies)
- Even if the FSS discovers that a company must have a local encryption license that is not in place, the FSS informs about that, however, does not impose penalties
- No court practice on criminal penalties for violation of import/local encryption regulations
Update on Russian encryption regulations

Import Encryption Clearance Rules for Individuals in Russia and the Eurasian Economic Union ("EAEU")

- Before 2018 gadgets carried by individuals across the Russian/EAEU customs border could be stopped by the customs and required to import/export encryption clearance formalities.
- In 2018 the EAEU adopted the List of "Mass Market" products designated for personal use by individuals that can be freely imported and exported in Russia and the EAEU:
  1. publicly available software (OS, browsers, messengers, anti-viruses, etc.)
  2. equipment/software designated for electronic signature
  3. PCs (laptops, tablet PCs, play stations, etc., with/without preloaded software listed in sections 1 or 2 above)
  4. bank cards, sim-cards, other electronic/access cards
  5. broadcasting radio/TV receivers (with communication functions)
  6. smartphones (except from professional end-to-end encryption equipment)
  7. printers and other ordinary office equipment with Wi-Fi range of 400 m
  8. radio-navigation / distant management equipment
- The List does not provide HS codes, however provides examples of exempted goods.
- If any imported gadgets do not fall under the List, the individuals should be ready to provide information on the registered notification (or the importation could be prohibited and gadgets could be ceased).
Update on Russian encryption regulations

Exemption category 12 – how to achieve

- Exemption category [12]: is designated for so-called "mass market" products (i.e., goods designated primarily for household use by individuals, e.g., laptops, desktops, etc.) that do not fall under any other exemption categories
  - exemption category 12 can be applied only with respect to B2C products with encryption functions which do not fall under the other 11 exemption categories
- Registration of notifications under exemption category 12 is a rather specific and complicated procedure in Russia (different from the standard notification procedure)
- In order to use exemption category 12, the FSS requires the applicants to arrange the following:
  i. provide publicly available information on the products' encryption characteristics that should be specifically placed in the Russian domain and in the Russian language (i.e., on the Russian web-site of the manufacturer), and
  ii. the first shipment of products should be imported on the basis of an import license first, and only after that the applicants can file notifications for registration with the FSS
## Update on Russian encryption regulations

### Exemption category 12 – statistics

- Currently: 93 registered notifications
  - 40 notifications registered in Russia (compared with 28 notifications registered in 2018)
  - the other 53 notifications - in Kazakhstan and Belarus

- Examples of goods registered under exemption category [12]:

<table>
<thead>
<tr>
<th>Electronic key production equipment (CryptoPro, etc.) (RU)</th>
<th>Data storage drives (SD/SSD) cards (KZ, RU)</th>
<th>IoT - home monitoring systems, TVs, Monitors (KZ)</th>
<th>Remote control equipment (KZ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Video cameras, surveillance, video-registration equipment &amp; Software (KZ)</td>
<td>Wireless devices (KZ, RU)</td>
<td>LTO – storage tape drives (RU)</td>
<td>Power Adapters (?) (BY, RU)</td>
</tr>
<tr>
<td>Radio-stations, RF transmitters (KZ)</td>
<td>Payment terminal POS (KZ)</td>
<td>Connect Gateways, Controllers, Switches (KZ)</td>
<td>Radio-navigation receivers (KZ)</td>
</tr>
</tbody>
</table>

- Note: BL – Belarus; KZ – Kazakhstan, RU – Russia
FSTEC Certification for Information Technology Products for Russian Government Procurement
FSTEC Certification and Public Procurement

Cybersecurity – Increasing Role of FSTEC

- Apart from performing export control, FSTEC is responsible for technical data security policy and supervision.
- FSTEC established data security requirements for:
  - state authorities
  - private operators of personal data
  - objects of the critical information infrastructure
- FSTEC issued a number of data security certification standards for:
  - various types of non-encrypted IST (anti-viruses, firewalls, intrusion detection systems)
  - software operating systems (OS)
  - automated (management systems)
- FSTEC is expected to increase its supervising role and law enforcement over compliance with the personal data security and use of certified IST.
When the certification of information security tools (IST) is mandatory in Russia?

- All Russian governmental authorities, operators of personal data and financial institutions must use certified IST to protect their IT systems/networks.
- Localization of software: any SW with data security features can get "Made in Russia" status only if it is covered by FSTEC/FSS certificate.
- Corporate requirements of Russian customers (eg, major state-owned enterprises).

### 2 Types of Information security tools ("IST")

<table>
<thead>
<tr>
<th>Encryption &quot;free&quot; IST</th>
<th>Encryption-based IST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are certified by Federal Security Service for Technical and Export Controls (&quot;FSTEC&quot;)</td>
<td>Are certified by FSS</td>
</tr>
<tr>
<td>No statutory limitations for certification of foreign IST</td>
<td>Only Russian encryption technology can be certified = &quot;no-go&quot; for the majority of foreign vendors</td>
</tr>
<tr>
<td>But foreign vendors face certain specific requirements during the certification</td>
<td>1. GOST 28147-89 (Magma) (RFC 6986) – symmetric algorithm 256 bits; or утратил силу</td>
</tr>
<tr>
<td>Software updates are subject to FSTEC certification/special testing procedures</td>
<td>2. GOST R 34.11-2012 – hash function (RFC 6986)</td>
</tr>
</tbody>
</table>
FSTEC Certification and Public Procurement

New requirements on FSTEC certification of IST

- 3 main types of the FSTEC certification of IST:
  - FSTEC standards established for particular types of IST (AV, IDS, Firewalls, etc.)
  - so-called "TU" certification of particular data security features of IT product
  - so-called "NDF test" confirming of trustworthy of the product in terms of non-declared functions (NDF)

- New FSTEC Order No. 55 of April 3, 2018 "On System of Certification of IST" established the following new requirements for the FSTEC certification:
  - an applicant may be only a Russian legal entity and must have the status of manufacturer/developer/seller of an IST = a foreign vendor should grant certain IP rights to the applicant
  - the applicant must have a FSTEC license for the development of IST
  - all the certification procedures must be performed in Russia, in view of the FSTEC, absolutely all the FSTEC certification procedures must be performed in Russia (although, this is not set forth in the regulations):
    - in a "clean" room of the Russian applicant or testing lab
    - during the NDF tests the source codes must be physically present in Russia = new concern for foreign vendors
FSTEC Certification and Public Procurement

Objects of Critical Information Infrastructure ("CII") and Information Security Standards for CII

<table>
<thead>
<tr>
<th>IT systems and Telecom networks of the:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>defense industry</td>
<td>healthcare</td>
</tr>
<tr>
<td>transport</td>
<td>communications industry</td>
</tr>
<tr>
<td>financial system</td>
<td>energy industry</td>
</tr>
<tr>
<td>fuel industry</td>
<td>nuclear industry</td>
</tr>
<tr>
<td>aerospace industry</td>
<td>mining industry</td>
</tr>
<tr>
<td>metallurgy industry</td>
<td>chemicals sector</td>
</tr>
<tr>
<td>science</td>
<td>state authorities</td>
</tr>
</tbody>
</table>

+ IT/Telecom networks used to interconnect the above CII objects

2 types of CII Objects = (a) significant, (b) non-significant (self-categorization)

- operators of CII objects must self-determine the type and category (with assistance of the FSTEC)
- significant CII objects must be placed into the FSTEC Register of CII Objects
- data security issues of significant CII objects = state secret data
FSTEC Certification and Public Procurement

Requirements for Operators of IT Systems Related to CII

- Data security requirements established by the FSTEC/FSS:
  - CII operators should preferably use IST certified with the FSTEC/FSS, or approved by the FSTEC/FSS
  - CII objects related to governmental institutions are subject to mandatory FSTEC attestation that requires the use of certified data security tools

- Requirements established by the FSS:
  - CII objects must be protected with information security tools of detection, prevention and elimination of consequences of computer attacks
  - Encryption-based IST must be certified with the FSS
What Can Be Important for Foreign Vendors of SW and HW

- The logical perimeter of IT system of each CII object should be properly secured
- Operators of CII object may be legally required (or may voluntarily decide) to establish and apply certain particular level of data security
- The SW and HW products that integrated into the logical perimeter of such IT infrastructure must comply with the established set of data security requirements
- The distributors/vendors should demonstrate/prove that the offered SW/HW complies with the established level data security, which may include:
  - functional SW/HW testing with a local IT testing lab (on average - 1 month)
  - scanning of source codes in order to confirm that the SW/firmware does not include any non-disclosed functions (NDF) (such scanning must be performed in a "clean" room of the vendor or IT lab in the territory of Russia only, approx. 2 - 4 months)
  - FSTEC certification (on average 6 – 18 months)
China Import Developments
China Cybersecurity Law – Overview

Background

- The Cybersecurity Law of the People's Republic of China was enacted on 7 November 2016, and effective on 1 June 2017.
- Key provisions of the law:
  - Critical Network Products and Specialised Network Security products will need to comply with mandatory national standards and be certified and / or tested before being provided or sold in China
    - Cyberspace Administration of China (CAC) and relevant departments under the State Council has published a catalogue of Critical Network products and Specialised Network Security Products
  - Network products and services procured by Critical Information Infrastructure (CII) operators must undergo national security review by the CAC
  - Local data residency and cross border transfer of personal information and other important information
China Cybersecurity Law – Overview

Network Users
- Persons and organizations that use networks shall follow the law, observe public order, respect public morality, and abstain from certain harmful or disruptive activities

Network Operators
- Network operators shall perform a series of security protection duties to avoid network interference, damage or unauthorized intrusion, and to prevent data leaks, theft or falsification

Critical Information Infrastructure Operators
- Critical Information Infrastructure (CII) Operators are subject to heightened security requirements
- CII Operators are subject to heightened data protection restrictions
  - requirement to store all Personal Information and Important Data on servers located in China
  - requirement to perform security assessment prior to transferring any Personal Information and Important Data out of China
- Network products and services procured by CII Operators must undergo national security review by the CAC
Critical Network Products and Specialized Network Security Products

- Critical Network Products and Specialized Network Security Products shall comply with mandatory national standards and undergo certification and/or testing through designated authorities before being sold or provided in China.

- The CAC and relevant departments under the State Council published a catalogue of Critical Network Products and Specialized Network Security Products (First Batch)
China Cybersecurity Law – Penalties

Administrative and Criminal Penalties

- Warnings and orders to make corrections
- Monetary penalties
- Suspension of operations and business
- Closing down of websites
- Cancellation of permits and licenses
- Confiscation of illegal gains
- Detention
- Possible criminal prosecution and lifetime bans
China Cybersecurity – Recent Developments

- Provisions on the Supervision and Inspection of Internet Security by Public Security Organs ("PSO"), issued by the Ministry of Public Security on 15 Sep 2018, taking effect on 1 Nov 2018
  - The Provisions authorize PSO to exercise supervision and inspection to implement network security requirements and to take a wide range of measures to undertake such activities
    - PSO can perform both on-site and remote access supervision and inspection
  - "Internet service providers" and "units utilizing network" are subject to PSO supervision and inspection
- Draft Internet Security Review Measures ("Draft Measures"), issued by CAC on 21 May 2019
  - If enacted, will replace the Interim Measures on Security Review Measures for Network Products and Services
  - The Draft Measures provide more clear guidance on the circumstances that will trigger the obligation to perform internet security review procedures
  - The obligation is imposed on the CII Operators that procure network products and services
  - In principle, the security review is triggered by self-assessment, but it can also be initiated by CAC, if it believes necessary
China Commercial Encryption

Controlled Items

- Catalogue for the Administration of Import of Encryption Products and Equipment Containing Encryption Technology (First Batch) annexed to Notice 18
- Subsequently updated pursuant to Announcement No. 27 issued by State Encryption Management Bureau ("SEMB") and the General Administration of Customs ("GAC") and effective from 1 January 2014
- 2000 Notice: the "core function" test is used to determine whether products and technologies are subject to control under these commercial encryption regulations
- No specific guidance from SEMB as to what constitutes a "core function"
- Application of the standard is one of self-classification
## Tariff Code-Based Catalogue

<table>
<thead>
<tr>
<th>PRC Tariff Number</th>
<th>Product Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8443311010</td>
<td>Electrostatic-sensitive multifunctional encrypting fax machines (with ADP equipment or network connection)</td>
</tr>
<tr>
<td>8443319020</td>
<td>Other multifunctional integrated encrypting fax machines</td>
</tr>
<tr>
<td>8443329010</td>
<td>Fax machines (can be connected to ADP facilities or internet)</td>
</tr>
<tr>
<td>8517110010</td>
<td>Cordless encrypting telephones</td>
</tr>
<tr>
<td>8517180010</td>
<td>Other encrypting telephones</td>
</tr>
<tr>
<td>8517622910</td>
<td>Optical communication encrypted routers</td>
</tr>
<tr>
<td>8517623210</td>
<td>Non-Optical communication encrypting exchanges</td>
</tr>
<tr>
<td>8517623610</td>
<td>Non-Optical communication encrypted routers</td>
</tr>
<tr>
<td>8543709950</td>
<td>Password machines, password cards (excluding smart cards for digital TV, Bluetooth modules, dongles used for intellectual property protection purpose)</td>
</tr>
</tbody>
</table>
China Commercial Encryption Regulation

Nature of controls

- Import, sale, use, manufacturing, research & development, and export of commercial encryption products and technologies
- Distinction between foreign and domestic commercial encryption products and technologies (as determined by the origin of the encryption algorithm)
- Foreign commercial encryption products and technologies can only be imported by foreign-invested enterprises ("FIEs") with SEMB's approval.
- Foreign commercial encryption products and technologies cannot be imported for resale in China, they can only be imported and used by FIEs for purpose of intracompany communication
- Chinese domestic companies (including SOEs) are prohibited from purchasing foreign encryption products and use them in China
China Encryption Developments

Encryption Law – Background

- The Draft Encryption Law was submitted to the Standing Committee of the National People’s Congress ("Standing Committee") for the second deliberation on 21 Oct 2019.
- The Encryption Law was approved and issued on 26 October 2019, effective from 1 January 2020.
- The Encryption Law is the China’s first law to systematically address encryption.
- Not a replacement of China's Commercial Encryption Regulations.
  - Existing Commercial Encryption Regulations can be modified and other implementing rules would be released subsequently.
- Government authorities are prohibited from discriminating against foreign invested enterprises or products and services thereof, and would not become non-tariff barrier to foreign investment and trade.
China Encryption Developments

Key Highlights of the Encryption Law

- Interlinked with the security review scheme under the Cybersecurity Law
- Interlinked with the certification and testing requirements under the Cybersecurity Law
- Classification of encryption into three categories:
  - Core encryption
  - Ordinary encryption
  - Commercial encryption
- Core and ordinary encryptions are state secrets, and can only be utilized to protect information of state secrets
- The Encryption Law includes the provision of commercial encryption services into the controlled activities
China Encryption Developments

Key Highlights of the Encryption Law

- China promotes the internationalization of relevant standards of commercial encryption
- Import and export of commercial encryptions are subject to licensing / control requirement. SEMB and the General Administration of Customs will publish a catalogue of controlled commercial encryptions
  - Will this cover both tangible goods as well as intangible services?
  - Will this replace the "core / non-core" jurisdictional test?
  - Will this catalogue be informed by or based upon the "core / non-core" distinction?
- The Encryption Law provides that commercial encryptions for "mass consumption" are not subject to import licensing and export controls
Country of Origin Requirements for Products of Taiwan

- Current regulations provide limited guidance on permissible country of origin marking of Taiwanese products
  - Rules of Origin under the Cross-Straits Economic Cooperation Framework Agreement (GAC Circular [2010] No. 200) govern, however, they include no provisions on how origin of Taiwanese products shall be marked
  - "Made in ROC (Republic of China)" is explicitly prohibited under GAC Circular [1999] No. 792
  - Other non-customs-related circulars issued by MOFA ([2005] No. 598) and CCPIT prohibit the sole use of terms "Taiwan" or "Taipei"; but "Taiwan, China" and "Chinese Taiwan" are allowed on trade related documents
- Practical enforcement risk related to marking product as "made in Taiwan"
Global Trade from a Chinese Perspective

- "Global growth requires new drivers, development needs to be more inclusive and balanced, and the gap between the rich and the poor needs to be narrowed" — President Xi Jinping, speech at the opening ceremony of the Belt and Road Forum for International Cooperation

- **Overcapacity in Chinese industry** — mainly the result of easy loans and government subsidies — is having an "ever more destructive" effect on both China's domestic and the global economy - European Union Chamber of Commerce in China

- China's **new reforms** aim to move away from mass production of scale-based and low-skilled labour intensive goods and to place greater emphasis on services to consumers
The Belt and Road ("OBOR") Initiative

• A development strategy and framework, focusing on connectivity and cooperation along ancient maritime and overland trails in Eurasia, which consists of two main components
• Viewed as one of President Xi Jinping’s signature propositions

By numbers it is estimated that:

- **21 trillion** Aggregate economic value of involved countries in USD (representing around 29% of global GDP)
- **4.4 billion** People covered – accounting for 63% of the global population
- **900** Deals underway worth USD 890 billion (including a rail link between Beijing and Duisburg, Germany and a 3,000 kilometer high-speed rail from Kunming, China to Singapore)
- **65** The number of countries involved
OBOR Intertwined with Other Policy Initiatives

| Infrastructure Projects | • Infrastructure investment in OBOR countries estimated at USD 8 trillion in the next 10 years  
• Key projects include energy, transportation and telecom |
|-------------------------|------------------------------------------------------------------------------------------------|
| Project Financing       | • Asia Infrastructure Investment Bank  
• Sild Road Fund  
• Global adoption of RMB |
| Production Capacity Cooperation | • "Complementarity" between China and OBOR countries  
• Supply chain integration |
| FTA Negotiation and Upgrading | • RCEP  
• FTAs with OBOR countries  
• Upgrading existing FTAs |
| China's Import Policy   | • China International Import Expo from 2018  
• Commit to importing import goods worth USD 2 trillion from OBOR countries in 5 years |
Regional Comprehensive Economic Partnership

ASEAN-centered agreement

- ASEAN + 6 existing FTA partners (Australia, New Zealand, China, India, Japan, Korea)
- 45% world's population with combined GDP: approx. one-third of the world's GDP
- Key coverage: trade in goods, trade in services, IP, investment, competition, e-commerce
- RCEP helps
  - Upgrade existing 6 ASEAN + 1 FTAs
  - Complement AEC 2025
  - Harmonize/consolidate various ASEAN + 1 FTAs in one easy-to-navigate FTA
- Negotiation is expected to conclude within 2019
- 95% businesses believed that RCEP would enter into force in 3 to 5 years

Source: China-briefing.com
FTA Developments

- ASEAN - China Free Trade Area (ACFTA) upgrade
  - ASEAN and China signed the upgraded protocol in 2015 to improve the original Framework Agreement as well as their Agreements on Trade in Goods, Services and Investment
  - The upgraded protocol, in its entirety, entered into force on 22 August 2019
  - The upgraded Rules of Origin include new criteria for determining the origin of goods and to facilitate origin certification
- China - Singapore Free Trade Agreement (CSFTA) upgrade
  - Both parties signed the upgraded protocol on 12 November 2018 in Singapore, taking effect on 16 October 2019
  - Upgraded rules of origin, customs clearance and facilitation, trade remedies, trade in services, investment and economic cooperation
Update on Foreign Import Regulations and Developments