

**Baker
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Asia Trade Update

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14:30-15:15



A photograph of a modern building's glass facade, featuring a grid of dark metal frames and reflective glass panels. The building is set against a clear blue sky. A red banner is overlaid at the bottom of the image, containing the text "Trade concepts relevant in Asia".

Trade concepts relevant in Asia

The three pillars

1 Tariff classification

- Tariff classification code
- Determines duty rate of product

2 Valuation

- Duty rate applies to the "value" of product
- Challenging areas: royalties and licence fees; assists; transfer pricing

3 Origin and preference

- Reduced duty or duty free imports for goods from Free Trade Agreement (FTA) country or Generalised System Preference (GSP) country
- Applicability of additional tariffs (US, China)

Customs risks – duty shortfall penalties

China	Indonesia	Japan	Malaysia	South Korea	Thailand
30% - 200% of the duty shortfall	100% to 1000% of the duty shortfall	10% of the duty shortfall (plus possible 35% as a "heavy penalty tax" for deficient declarations)	RM 5,000 to RM 500,000 per offense	Up to 500% of the duty shortfall or the value of the relevant goods (whichever is higher)	50% to 400% of the duty shortfall (up to 400% of the value of the relevant goods in smuggling cases)



Trends and updates

Globalization and APAC FTAs

- **TPP-11 / CPTPP**
 - In the process of being ratified
- **USMCA**
 - new template for bilaterals
 - restricts deals with China
- **Regional Comprehensive Economic Partnership (RCEP)**
- **Trade in Services Agreement (TiSA)**
- **ASEAN Economic Community**

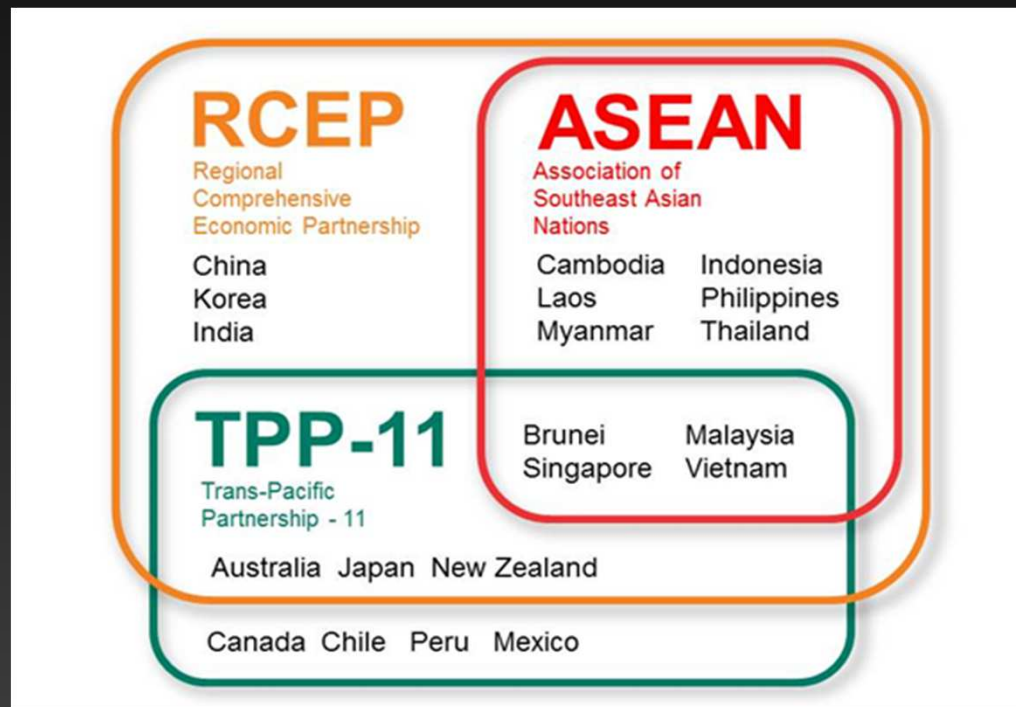


Globalization and APAC FTAs

- **WTO Trade Facilitation Agreement**
 - Entered into force in 2017
- **New trade agreements to be negotiated**
 - Between the UK and everyone
 - EU is active: Japan/EU, Singapore/EU, Vietnam/EU



Asia-Pacific trading blocks



FTA Benefits/Country of origin

Identify the FTAs between trading countries and the duty saving opportunities

Determine the country of origin

Document to prove origin

Apply for preferential treatment

Claim the FTA benefits at the time of import and be prepared to defend them



Trade conflict

Trump trade agenda

- During the election campaign, candidate Trump promised to "Make America Great Again" and establish "America First" policies. He said:
 - He would bring back manufacturing and jobs allegedly lost to bad trade policies
 - He would review, re-negotiate or get out of trade agreements that were not in the best interest of the US
- A few key Trump principles to keep in mind
 - Trade deficits are bad (e.g., China, Germany, Mexico, etc.)
 - Reciprocity ("**free, fair and reciprocal trade**" for duty rates, market access, etc.)

Under President Trump the US has introduced several trade measures to increase tariffs relying on national security and similar reasons

Retaliatory actions

- **WTO cases against the US**
 - Several countries have filed WTO Dispute Settlement Body cases alleging that US new trade measures violate the WTO Safeguards Agreement
 - The US claims the WTO lacks jurisdiction because its measures are national security measures that are exempt from WTO agreements
- **Retaliatory tariffs imposed against the US**
 - Countries have been imposing or threatening to impose retaliatory tariffs against the US

Retaliatory actions

- **WTO cases brought by the US against the retaliatory tariffs**
 - The US has filed cases with the WTO DSB alleging that the retaliatory tariffs imposed by the EU, Canada, Mexico and other countries violates the WTO rules



Emerging export control regimes and sanctions

China

- On 16 June 2017, MOFCOM proposed a new Export Control Law
- Provides a new comprehensive and holistic approach to export control
- Consistent with international standards, such as the Wassenaar Arrangement
- Introduces new concepts to China's existing export control laws, such as "re-export" and "deemed export"
- Establishes a science-based export control listing system and a rigorous management system

India

- In December 2017, the Wassenaar Arrangement agreed to admit India
- India expects its membership will create the grounds for the realignment of India in the export control policy framework
- In January 2018 India was admitted to the Australia Group
- India joined the Missile Technology Control Regime in 2016
- Not a member of the Nuclear Suppliers Group

Hong Kong

- Hong Kong Trade and Industry Department review of strategic commodity pre-classification and import and export license applications
- Strategic commodity enforcement by Hong Kong Customs and Excise Department

Singapore

- On 4 September 2018 Singapore Customs updated the Strategic Goods Control Order (SGCO) containing the control list to be effective 1 November 2018
- SGCO 2018 brings Singapore's strategic goods control list up to date with the 2017 Wassenaar Arrangement and the 2017 EU Dual Use List

Malaysia

- Amendments to the Strategic Trade Act 2010, effective 8 September 2017
- Compound offences
- Limits brokering to transactions outside Malaysia and exclusion of ancillary services
- End-user statements in prescribed form no longer mandatory
- Limits on punishment for certain offences to provide for more trade-facilitative ex. con. laws

Philippines

- Strategic Trade Management Act, 2 December 2015
- No implementing rules and regulations yet
- Adopts EU control list, plus Nationally Controlled Goods
- Controls import, export, re-export and deemed exports
- Permits are required for export, import, re-export, reassignment, transit, transshipment, and provision of related services

Thailand

- New dual-use export control measures to take effect on 1 January 2019
- Test run of e-TMD system (Trade Management System of Dual-Use Items) since 2 April 2017 to facilitate the Self Classification, Self certification, and e-Licensing
- Still, however, there is no rule and regulation regarding export license and relevant requirements

Snapshot of some export control regimes

	Australia	China	Hong Kong	Malaysia	Philippines	Singapore	Thailand
Tangible	✓	✓	✓	✓	✓	✓	✓
Intangible	✓	✓	✗	✓	✓	✓	✗
Wassenaar Participant	✓	Proposed ECL is Wassenaar-like	✗ (follows Wassenaar)	✗ (based on EU list)	✗ (based on EU list)	✗ (adopts EU list)	✗ (follows Wassenaar)
Penalties (fines / imprisonment)	✓	✓	✓	✓ (criminal and death penalty)	✓	✓	✓

APAC sanctions developments

- **Implementation of new measures relating to North Korea**
 - Implementation by APAC jurisdictions of United Nations Security Council additional measures for sanctioned conduct and individuals relating to North Korea. Will impact jurisdictions differently depending on trade with North Korea

APAC sanctions developments

- **Indonesia**
 - Government, specifically Ministry of Trade, now implement (unwritten) policy for importer and exporter to suspend/hold any trade with APAC Sanctioned Countries such as North Korea as well as Israel
 - Visa countermeasures for Israel as per June 2018 Indonesia denied visa for 53 Israel passport holders.
- **Singapore**
 - On 7 November 2017 Singapore prohibited **all** commercially traded goods with North Korea.
 - Singapore recently issued a second Circular on 10 August 2018 stating that there is a strict prohibition on commercially traded goods with North Korea.

APAC sanctions developments

- **Malaysia**
 - 2017 general trade embargo against products imported from / going to Israel
 - Financial countermeasures - no trade without approval with Israeli connected trading partners or using / involving Israeli currency



Tariff and supply chain management

General impact - why tariffs matter

- **Impact of tariffs on a company's financial performance**
 - Higher Costs of Goods Sold
 - Lower gross and operating profit margins
 - Increased consumer prices
 - Less product assortment and availability
 - Fewer resources for marketing, R&D and other competitive activities

How businesses can respond

Strategic Customs and Trade Planning

Order Management and Sourcing

- **Redirect shipments**
- Change and/or cancel orders
- Alternative sources of supply

Product and Supply Chain Restructuring

- **Tariff classification engineering and planning**
- **Country of Origin Management**
- Invest in new production capacity in diverse geographies

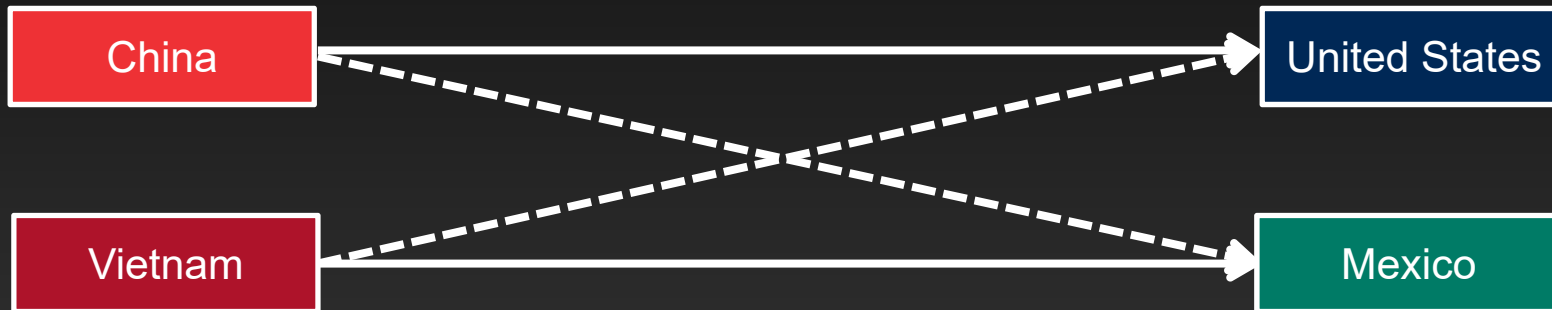
Process Changes

- Customs valuation planning
- Customs audit defense planning
- Improve trade compliance controls and procedures

Redirect shipments

Manufacturer

Importer



Notes

- May require product fungibility
- Possible legal restrictions
- Commercial documentation changes
- Complex logistics exercise

Original Shipment



Redirected Shipment



Tariff classification engineering and planning

- Additional tariffs and retaliatory tariffs apply to products based on their tariff classification
- Common tariff classification engineering and planning approaches
 - Change or add materials
 - Change functional features and characteristics
 - The use of retail sets

Tariff classification engineering and planning

- May require significant time depending on product design, order and production cycles
- Balance with commercial and marketing considerations
- Trade conflict escalation may reduce opportunities for tariff classification engineering and planning as more products are subject to additional and retaliatory tariffs
- Customs rulings and administrative considerations

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