

TRADE FACILITATION ANNUAL REPORT OF CHINA

(2016 Edition)



Beijing Re-code Trade Security and Facilitation Research Center

Trade Facilitation Annual Report of China 2016 Edition



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Beijing Re-code Trade Security and Facilitation Research Center

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Readers' Guide

1. This report is structured according to Section I of Trade Facilitation Agreement (TFA) of the World Trade Organization (WTO). It reviews how China has implemented TFA, provision by provision.
2. On September 4, 2015, China ratified the protocol of WTO TFA, becoming the 16th member to accept it and contributing significantly to its implementation at an early date. China had reservations about Paragraph 6 of Article 7 'Establishment and Publication of Average Release Times', Paragraph 4 of Article 10 'Single Window', Paragraph 9 of Article 10 'Temporary Admission of Goods and Inward and Outward Processing', and Article 12 'Customs Cooperation'. This Report also reviews these provisions except Article 12.
3. Among the main body of the text, those parts listed by Arabic numbers or English letters, and spanning the full width of the content area, are the original articles of WTO TFA. The rest are comments made by Re-code.
4. The regulations, policies, and information sources contained in this Report are attached to the text with hyperlinks for the readers' reference.
5. This Report is for reference only. The research and comments in this Report are only for reference and are not necessarily exhaustive or completely accurate.
6. This Report is open-ended. Readers are welcome to make comments and suggestions to help us render it more thorough and accurate.
7. All the information, materials, and data in this Report are valid until June 30, 2016.

Preamble

Trade Facilitation Agreement of World Trade Organization will soon take effect and the release of Trade Facilitation Annual Report of China is particularly relevant.

The meanings and aims of compiling this Report are:

1. conducting objective and fair reviews of trade facilitation in China and the progress China has made;
2. communicating truthfully the expectations, concerns, suggestions, and appeals on trade facilitation in China from the business community;
3. providing hyperlinks of materials related to TFA (mostly laws and regulations) to facilitate the work of businesses and research institutes; and
4. providing an interesting topic for international interchange in this field by Chinese government and private agencies.

My career with a government agency of trade facilitation and now a Fortune 500 multinational enabled me to have gained a professional understanding of the issue and facilitated my information collecting efforts. The project was unique, for it was run on an open and voluntary basis. This method maintained participants' enthusiasm in the project and created necessary conditions for the project to be completed with high quality and at a low cost.

This Report will be published annually and rendered more inclusive and extensive going forward. Therefore, we sincerely invite all kinds of professionals who are interested in our project to take part via our website <http://www.re-code.org/>.

For various reasons, this Report is not without uncertainties and even errors. Therefore, we are open to any well-intended and constructive comment and suggestion.

Flex sites in China had contributed greatly to the accomplishment of this report. Apart from our team members, on behalf of Re-code, I would like to express my gratitude also to members of the Customs and Trade Compliance Club including Cindy from Intel, SHI Shunan from Shanghai Xingya Customs Brokers, WAN Li from Cummins, ZHOU Hemin from HaoLiWen Partners, ZHOU Yu and YU Hang from Siemens, MA Wanjie from Su-Soft Technology, LIU Dandan from Nissan, NIE Qing from Bayer, ZHAI Ming from Bondex Qingdao, and YANG Zetao from Dingrunda Technology for their firm support.

At last, I also want to take the chance to express my sincere thanks to the leaders from China Society for World Trade Organization Studies (CWTO), Chinese Academy of International Trade and Economic Cooperation, MOFCOM, and the University of International Business and Economics (UIBE) for their guidance and firm support to my research center and this project.



JIANG Xiaoping

Director, Beijing Re-code Trade Security and Facilitation Research Center

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Review According to TFA Text

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

Laws and Regulations

Customs and I&Q: In December 2001, China officially became a member of World Trade Organization.

In the 15 years since then, the Chinese government has attached great importance to the disclosure of government information.

In 2007, the State Council promulgated Regulations of the People's Republic of China on Government Information Disclosure (Link 1). In the following 9 years, the State Council issued 7 notices on the disclosure of government information via its General Office (Link 2), making substantial progress in disclosing government information including that of administration of cross-border trade.

According to Regulations of the People's Republic of China on Government Information Disclosure and the said notices, General Administration of Customs formulated and implemented Measures of the People's Republic of China on Customs Government Information Disclosure. (Link 3)

General Administration of Quality Supervision, Inspection and Quarantine ('AQSIQ') formulated and implemented Guide of AQSIQ on Government Information Disclosure. (Link 4)

Implementation

Customs and I&Q: The aforementioned government departments not only disclose information through traditional media including books, newspapers, magazines, and television and new media including the Internet and mobile apps, but also offer consultation to the public via hotlines and online platforms and provide information on public applications.

Meanwhile, businesses still hold higher expectations for the publication and availability of information on cross-border trade.

General Comment

Customs and I&Q: There has been substantial progress and the implementation is relatively adequate.

Links

1. Decree No.492 of the State Council Regulations of the People's Republic of China on Government Information Disclosure: <http://www.gov.cn/xxgk/pub/govpublic/tiaoli.html>
2. Measures of the People's Republic of China on Customs Government Information Disclosure: <http://sousuo.gov.cn/s.htm?t=paper&advance=true&title=%E6%94%BF%E5%BA%9C%E4%BF%A1%E6%81%AF%E5%85%AC%E5%BC%80&content=&pcodeJiguan=&pcodeYear=&pcodeNum=&filetype=&minime=&timetype=timeqb&maxtime=>
3. Decree No.492 of the GACC, method for government's information disclosure of Customs of People's Republic of China: <http://www.customs.gov.cn/publish/portal0/tab49564/info697587.htm>
4. Guide of AQSIQ on Government Information Disclosure: http://www.aqsiq.gov.cn/xxgk_13386/xxgkzn/201506/t20150608_441570.htm
5. Three official websites for public to conveniently obtain the cross-border trade management information:
 - A. China Customs Portal site: <http://www.customs.gov.cn/publish/portal0/>
 - B. AQSIQ site: <http://jyjgs.aqsiq.gov.cn/>
 - C. Ministry of Commerce: <http://sms.mofcom.gov.cn/>

1 Publication

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

(a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;

Implementation

Customs: In 'Service Guide' under 'Online Service' on its website, the GACC posted procedures for the following 12 items that require administrative and non-administrative licensing as well as required forms and documents. (Links 1 and 2)

In terms of many other items that require non-administrative approval in importation, exportation, and transit, as well as processes for importation, exportation, and transit, no procedures, forms, or

documents have ever been posted.

Service Guide	
Registration of Customs Declaration of Enterprises	Examination and Permission of Temporarily Imported/Exported Goods
Review and Approval of Establishment of Supervised Warehouses for Exports and Bonded Warehouses	Review and Approval of Establishment of Duty-free Stores
Review and Approval of Storage of Goods under Customs Supervision	Examination and Permission of Entry and Exit of Public and Private Goods of Resident Offices and Non-resident Travelers
Filing, Review and Approval of Small Vessels Carrying Cargos from and to Hong Kong and Macao	Registration of Transportation Businesses and Vehicles Carrying Domestic Goods under Customs Supervision
Review and Approval of Belongings of Travelers Admitted to China for Permanent Residence	Review and Approval of Import and Export Goods under Customs Supervision Transshipped by Vessels along the Yangtze River
Review and Approval of Establishment of Bonded Logistics Center (Type A)	Review and Approval of Establishment of Bonded Logistics Center (Type B)

Nanjing Customs published on its website a flow chart of procedures of importation and exportation by sea and air. (Links 3, 4 and 5)

Inspection and Quarantine: Procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents are not found on the website.

General Comment

Customs and I&Q: The information is not well-organized and the implementation is inadequate.

Recommendations

Customs and I&Q: Customs as well as Inspection and Quarantine agencies should classify import and export goods under different administration systems applied according to means of trade or transportation, types of products, etc. and provide detailed and instructive procedures and the required forms and documents for businesses.

Links

1. 'Service Guide' under 'Online Service' on website of the GACC: <http://www.customs.gov.cn/tabid/49564/Default.aspx>
2. Required forms and documents under above site: <http://www.customs.gov.cn/publish/portal0/tab49635/>; <http://www.customs.gov.cn/publish/portal0/tab49611/>

3. Flow chart of procedures of importation by sea and air published by Nanjing Customs on its website: <http://www.customs.gov.cn/publish/portal119/tab68279/info718730.htm>
4. Flow chart of procedures of exportation by sea (advance declaration) published by Nanjing Customs on its website: <http://www.customs.gov.cn/publish/portal119/tab68279/info718731.htm>
5. Flow chart of procedures of exportation by air (advance declaration) published by Nanjing Customs on its website: <http://www.customs.gov.cn/publish/portal119/tab68279/info718733.htm>

(b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

Implementation

The Chinese government adjusts rates of duties and taxes on Import and Export Goods once a year. The adjusted Import and Export Tariff of the People's Republic of China ('IET') is published by China Customs Press, China Commerce and Trade Press, the Economic Daily Press, China Financial and Economic Publishing House, etc. (Link 1) This publication on tariff has two defects: 1. it is paper-based and users have to pay; 2. it is updated once a year and therefore importers and exporters need to follow adjustments to rates of duties and taxes and provisional measures for duties through other media before the update is completed.

Users may search for a tariff by its tariff code at 'Tariff Search' under 'Online Service' on GACC's website, but its temporary rate is not present in the result. (Link 2)

General Comment

The implementation is relatively adequate but there is still room for improvement.

Recommendations

1. IET is a national regulation and should be published on the websites of GACC and Ministry of Finance;
2. As rate adjustments and provisional or regional measures for tariff are promulgated and implemented, they should also be updated in IET for the sake of importers and exporters.

Links

1. The adjusted Import and Export Tariff of the People's Republic of China ('IET'), such publication can be found in the online bookstore of Amazon: <http://www.amazon.cn>

2. 'Online Service' on GACC's website provides 'Tariff Search', 'Tariff Goods and Item Annotation Search', 'Classification Decision Search', 'Key Commodities Search' etc.: <http://www.customs.gov.cn/tabid/67735/default.aspx>
3. U.S. Customs releases the PDF version of Tariff Regulations in accordance with section on its website, which facilitates the business inquiries: <http://www.usitc.gov/tata/hts/bychapter/index.htm>

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

Implementation

- Customs: Customs of China has canceled all administrative charges. (Link 1)
- Inspection and Quarantine: AQSIQ has published on its website a detailed list of charges. (Link 2)

General Comment

- Customs and I&Q: The implementation is adequate.

Links

1. GACC's website provides List of administrative charges for national institutions, central departments and companies: <http://www.customs.gov.cn/publish/portal0/tab49588/>
2. Charging situation of AQSIQ system: <http://jhcws.aqsiq.gov.cn/sfgl/>

(d) rules for the classification or valuation of products for customs purposes;

Implementation

The customs has disclosed the following information to the public:

Commodity Classification:

Decree of GACC No. 158 Rules of GACC on Commodity Classification of Import and Export Goods (Link 1);

Announcement of GACC No.49 [2009] Issues on Additional Declaration of Import and Export Goods (Link 2);

GACC decides on classification of some products and publishes its decisions as announcements;

Users may access commodity classification at 'Decisions and Rulings on Classification' under 'Online Service' on GACC's website (Link 3).

Valuation:

Decree of GACC No. 213 Measures of the People's Republic of China on Reviewing and Determining Customs Value of Import and Export Goods (Link 4);

Decree of GACC No. 211 Measures of the People's Republic of China on Reviewing and Determining Customs Value of Bonded Goods Intended for Sale in the Domestic Market (Link 5).

General Comment

GACC's disclosure of rules for the classification and valuation of commodities is transparent. The implementation is adequate.

Recommendations

The legally binding or instructive decisions, guides, and rulings on commodity classification issued by GACC and customs directly subordinate to GACC should be gathered, systematized, classified and published promptly via a separate column. GACC should enable importers and exporters to pinpoint a tariff using the function 'Search for Tariff' under 'Online Service' on its website.

Links

1. Decree of GACC No. 158 Rules of GACC on Commodity Classification of Import and Export Goods:

<http://www.customs.gov.cn/publish/portal0/tab38320/info59255.htm>

2. Announcement of GACC No.49 [2009] Issues on Additional Declaration of Import and Export Goods:

<http://www.customs.gov.cn/publish/portal0/tab49576/info428675.htm>

3. Decisions and Rulings on Classification' under 'Online Service' on GACC website: http://www.customs.gov.cn/tabid/49564/Default.aspx?id=NTit02_con

4. Decree of GACC No. 213 Measures of the People's Republic of China on Reviewing and Determining Customs Value of Import and Export Goods:

<http://www.customs.gov.cn/publish/portal0/tab49564/info692855.htm>

5. Decree of GACC No. 211 Measures of the People's Republic of China on Reviewing and Determining Customs Value of Bonded Goods Intended for Sale in the Domestic Market:

<http://www.customs.gov.cn/publish/portal0/tab399/info692816.htm>

6. Decree of GACC No.13 in 2015 Announcement on the decision to publish and abolish some commodity classification: <http://www.customs.gov.cn/publish/portal0/tab65598/info737756.htm>

7. Decree of GACC No.31 in 2015 Announcement on the decision of commodity classification in the year of 2015: <http://www.customs.gov>.

cn/publish/portal0/tab49661/info761463.htm

8. Books published by Customs related departments, such as GACC's decision on commodity classification, Manual of classification and declaration of key import and export commodities, Explanatory and Application Guide for 'Specification declaration', Customs Regulations of Customs of People's Republic of China, Measures of Customs Valuation of People's Republic of China etc.. Some of those books have introduction and purchase channel on GACC's Website: <http://www.customs.gov.cn/publish/portal0/tab67263/>; <http://www.customs.gov.cn/publish/portal0/tab68233/>

(e) laws, regulations, and administrative rulings of general application relating to rules of origin;

Implementation

The State Council promulgated Regulations of People's Republic of China on the Place of Origin of Import and Export Goods; GACC and AQSIQ published rules about preferential places of origin on their websites. (Links 1 and 2)

General Comment

The laws and regulations of China Customs as well as China Inspection and Quarantine on rules of origin are open and transparent.

Links

1. Rules of origin for general goods:

Category	Doc	Link
Certificate of Origin	Decree of the State Council of the People's Republic of China, No. 416: Regulations of the People's Republic of China on the Place of Origin of Import and Export Goods	http://www.customs.gov.cn/publish/portal0/tab399/info3579.htm
	Regulations on Substantial Transformation in Rules of Non-preferential Origin	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/200701/t20070105_23785.htm
	AQSIQ Decree No.114: Measures of the People's Republic of China on Signing of Certificate of Non-preferential Origin	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/20092010/201210/t20121015_235242.htm

Gneralized System of Preferences	Notice of State Administration of Import and Export Commodities Inspection, No. 72, 1996: SACI Notice of Issuing the Implementation of Measures on Signing of Certificate of Non-manipulation (Trail)	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/fgs/glf/201210/t20121016_241668.htm
	Regulations of the People's Republic of China on Signing of Gneralized System of Preferences Certificate of Origin	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/fgs/glf/201210/t20121016_241748.htm
	Notice of State Administration of Import and Export Commodities Inspection, No. 317, 1990: SACI Notice of Issuing Rules of the People's Republic of China for the Implementation of Regulations on Signing of Gneralized System of Preferences Certificate of Origin	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/fgs/glf/201210/t20121016_241742.htm
	Notice of State Administration of Import and Export Commodities Inspection, No. 248, 1993: SACI Notice of Issuing “Advices on Enhancing Survey on Signing of Gneralized System of Preferences Certificate of Origin” and “Regulations on Qualification of Signing Officers of Certificate of Origin (Trail)”	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/fgs/glf/201210/t20121016_241717.htm

Origin Mark	Notice of State Administration of Import and Export Commodities Inspection, No. 51, 2001: SACI Notice of Issuing “Regulations on Origin Mark” and “Rules for the Implementation of Regulations on Origin Mark”	http://www.mofcom.gov.cn/article/bh/200301/20030100063308.shtml
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Kimberley Certificate	Joint Announcement No. 132, 2002: Joint Announcement on Kimberley Process Certificate Scheme	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/201210/t20121016_250854.htm
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FTA	Joint Announcement No.81, 2003: GACC, MOFCOM and AQSIQ Joint Announcement on Issuing Rules of Origin for the China-ASEAN Free Trade Area	http://www.customs.gov.cn/publish/portal0/tab399/info8535.htm
	Notice of Implementing Signing of Certificate of Origin Form E under Agreement on Commodity Trade for the China-ASEAN Free Trade Area	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/201210/t20121016_250862.htm
	Joint Announcement No.32, 2005: GACC, MOFCOM and AQSIQ Joint Announcement on Issuing Specific Origin Standards for Goods under Rules of Origin of the China-ASEAN Free Trade Area (1st Part)	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/201210/t20121016_250852.htm
	Notice of Issuing Certificate of Origin of China-Pakistan Free Trade Area	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/201210/t20121016_250865.htm
	Joint Announcement No.66, 2005: GACC and AQSIQ Joint Announcement on Implementing the Early Harvest Program of China-Pakistan Free Trade Area	http://www.customs.gov.cn/publish/portal0/tab399/info16616.htm
	Joint Announcement No.67, 2005: GACC and AQSIQ Joint Announcement on Issuing Rules of Origin of China-Pakistan Free Trade Area	http://www.customs.gov.cn/publish/portal0/tab399/info16620.htm
	Notice of Issuing Certificate of Origin Form F of China-Chile Free Trade Area	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/200610/t20061025_2722.htm
	Notification Letter of State Administration of Import and Export Commodities Inspection, No. 654 ,2008: Announcement on Related Issues of Signing of Preferential Certificates of Origin of China-New Zealand Free Trade Area	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/200809/t20080925_91219.htm
	AQSIQ Announcement No.139 ,2008: Announcement on Signing of Preferential Certificates of Origin of China-Singapore Free Trade Area	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2008/200901/t20090105_238205.htm
	Joint Announcement No.100, 2008: GACC, MOFCOM and AQSIQ Joint Announcement on Issuing Rules of Origin of the China-Singapore Free Trade Area	http://www.customs.gov.cn/publish/portal0/tab514/info155983.htm
	Notification Letter of State Administration of Import and Export Commodities Inspection, No. 604, 2008: Announcement on Related Issues of Signing of Preferential Certificates of Origin for China-Singapore Free Trade Area	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/200812/t20081231_102375.htm
	Notification Letter of State Administration of Import and Export Commodities Inspection, No. 90, 2010: Announcement on Related Issues of Signing of Preferential Certificates of Origin of China-Peru Free Trade Area	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/201003/t20100301_137691.htm
	AQSIQ Announcement No.72, 2014: Announcement on Edition-changing of Specific Rules of Origin for Commodities under China-ASEAN Free Trade Agreement and China-Singapore Free Trade Agreement	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2014/201407/t20140710_417386.htm

FTA	AQSIQ Announcement No.60, 2014: Announcement on Cross-references after Edition-changing of Specific Rules of Origin for Commodities under China-New Zealand Free Trade Agreement	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2014/201405/t20140528_413659.htm
	AQSIQ Announcement No.56, 2014: Announcement on Application Acceptance and Signing of Certificate of Origin under China-Iceland Free Trade Agreement	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2014/201405/t20140529_413802.htm
	AQSIQ Announcement No.54, 2014: Announcement on Application Acceptance and Signing of Certificate of Origin under China-Switzerland Free Trade Agreement	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2014/201405/t20140514_412472.htm
	AQSIQ Announcement No.147, 2015: Announcement on Application Acceptance and Signing of Certificate of Origin under China-Australia Free Trade Agreement	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2015/201512/t20151211_456282.htm
	AQSIQ Announcement No.146, 2015: Announcement on Application Acceptance and Signing of Certificate of Origin under China-Korea Free Trade Agreement	http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2015/201512/t20151211_456287.htm
	《Announcement on Manipulation Procedure for Signing of Certificate of Origin under China-ASEAN Free Trade Agreement	http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/201012/t20101231_174609.htm
	Joint Announcement No.77, 2007: GACC, MOFCOM and AQSIQ Joint Announcement on Manipulation Procedures for Signing and Check of Certificate of Origin under Asia-Pacific Trade Agreement	http://www.customs.gov.cn/publish/portal0/tab399/info94035.htm
	Announcement on Related Issues of Signing of Certificate of Origin under Early Harvest Program of Economic Cooperation Framework Agreement	http://www.aqsiq.gov.cn/xxgk_13386/xxgkztfl/tzdt/zztz/201012/t20101231_241122.htm
	GACC Announcement No. 83, 2011: Announcement on Specific Rules of Origin for Commodities under Early Harvest Program of Economic Cooperation Framework Agreement (2010 Version)	http://www.customs.gov.cn/publish/portal0/tab515/info353844.htm
	GACC Announcement No. 39, 2016: Announcement on Related Issues of Electronic Networking of Origin Information and Instructions for Filling the Declaration Forms of Import and Export Goods	http://www.customs.gov.cn/publish/portal0/tab49659/info806074.htm
General	GACC Announcement No. 73, 2015: GACC and AQSIQ Announcement on Information-sharing Related to Certificate of Origin	http://www.customs.gov.cn/publish/portal0/tab49661/info783339.htm
	Notice of State Administration of Import and Export Commodities Inspection, No. 72, 1996: SACI Notice of Issuing Regulations on Electronic Certificate of Origin	http://www.aqsiq.gov.cn/xxgkml/flfg/zhyw/200610/t20061027_16547.htm

2. Preferential Rules of Origin: <http://www.customs.gov.cn/publish/portal0/tab49619/>, Including:

FTA	China-Peru Free Trade Agreement
	China-Singapore Free Trade Agreement
	China-New Zealand Free Trade Agreement
	China-Chile Free Trade Agreement
	China-Pakistan Free Trade Agreement
	China-ASEAN Free Trade Agreement
	Regulations of the Customs of the People's Republic of China on the Import and Export Goods of Preferential Origin
	Early Harvest Program of Economic Cooperation Framework Agreement
Preferential Trade Arrangement	Zero Tariff Treatment for Agricultural Products from Taiwan
	Regulations of the Customs of the People's Republic of China on Rules of Origin for Import Goods under Special Preferential Tariff Program for Least-developed Countries
	Mainland and Macau Closer Economic Partnership Arrangement
	Mainland and Hong Kong Closer Economic Partnership Arrangement
Others	Asia-Pacific Trade Agreement

(f) import, export or transit restrictions or prohibitions;

Implementation

China Customs amends and publishes The Handbook of the Standardization of Customs Clearance every year. The Handbook provides relatively inclusive and detailed lists of products on which China imposes import/export prohibitions and restrictions. The Handbook can be bought on jd.com, from China Customs Press, etc. (Link 1)

The section 'Search by Clearance Parameters' on GACC's website provides importers and exporters a significant convenience on searching for import/export prohibitions and restrictions by commodity code. (Link 2)

Article 7 of Decree of GACC No.38 Measures of the People's Republic of China on Customs Supervision and Administration of Transit Goods stipulates specific transit prohibitions. (Link 3)

General Comment

The implementation is adequate.

Recommendations

Considering various import/export prohibitions and restrictions, we recommend that competent authorities consolidate them into a single catalog and publish the catalog on their websites. Competent authorities should endeavor to provide product codes for products that can be found whether prohibited or restricted by their codes.

Links

1. The Handbook of the Standardization of Customs Clearance:
 - A. <http://store.hgbookvip.com/store/goods/detail/1060>
 - B. <http://search.jd.com/Search?keyword=%E9%80%9A%E5%85%B3%E6%A0%87%E5%87%86%E5%8C%96%E6%89%8B%E5%86%8C&enc=utf-8&wq=%E9%80%9A%E5%85%B3%E6%A0%87%E5%87%86%E5%8C%96%E6%89%8B%E5%86%8C&pvid=pi19c3qi.xfn5w8>
2. Search by Clearance Parameters on GACC's website: <http://www.customs.gov.cn/publish/portal0/tab9410/>
3. Decree of GACC No.38 Measures of the People's Republic of China on Customs Supervision and Administration of Transit Goods: <http://www.customs.gov.cn/publish/portal0/tab38320/info4345.htm>
4. Decree of GACC No.38 List of prohibited and restricted items of entry and exit of People's Republic of China: <http://www.customs.gov.cn/publish/portal0/tab517/info10510.htm>
5. Q&A guide on prohibited and restricted items of entry and exit on GACC website: <http://www.customs.gov.cn/publish/portal0/tab3400/>

(g) penalty provisions for breaches of import, export, or transit formalities;

Implementation

State:	On March 17, 1996, Law of the People's Republic of China on Administrative Penalty was promulgated through Decree of President of the People's Republic of China No. 63 of 1996. (Link 1)
Customs:	Implementation Regulations of the People's Republic of China on Customs Administrative Penalty was promulgated through Decree of the State Council No. 420. (Link 2)
Inspection and Quarantine:	<p>Implementation Regulations of the Law of the People's Republic of China on Import and Export Commodity Inspection was promulgated through Decree of the State Council No. 447 (Link 3);</p> <p>Implementation Regulations of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine was promulgated through Decree of the State Council No. 206 (Link 4);</p> <p>Implementation Rules of Law of Frontier Health and Quarantine of the People's Republic of China was promulgated through Decree of the Ministry of Health No. 2 of 1989 (Link 5);</p> <p>Product Quality Law of the People's Republic of China (Link 6);</p>

Measures on Supervision and Administration of Inspection and Quarantine of Imported and Exported Dairy Products (Link 7);

Measures on Inspection, Supervision and Administration of Import Cotton (Link 8);

On June 29, 2013, Special Equipment Safety Law of the People's Republic of China was promulgated through Decree of President of People's Republic of China No.4 of 2013 (Link 9);

On April 24, 2015, the revised Food Safety Law of the People's Republic of China was promulgated through Decree of President of People's Republic of China No. 21 of 2015 (Link 10);

Regulations of the People's Republic of China on Certification and Accreditation was promulgated through Decree of the State Council No. 390 (Link 11).

General Comment

The implementation is adequate.

Links

1. Decree of President of the People's Republic of China No. 63 of 1996 Law of the People's Republic of China on Administrative Penalty: http://www.gov.cn/prohibitions/2005-08/21/content_25101.htm
2. Decree of the State Council No. 420 Implementation Regulations of the Law of the People's Republic of China on Import and Export Commodity Inspection: <http://www.customs.gov.cn/publish/portal0/tab399/info3485.htm>
3. Decree of the State Council No. 447 Implementation Regulations of the Law of the People's Republic of China on Import and Export Commodity Inspection: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/200711/t20071106_52208.htm
4. Decree of the State Council No. 206 Implementation Regulations of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/200711/t20071106_52202.htm
5. Decree of the Ministry of Health No. 2 of 1989 Implementation Rules of Law of Frontier Health and Quarantine of the People's Republic of China: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/200711/t20071106_52200.htm
6. Product Quality Law of the People's Republic of China: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/200701/t20070130_27668.htm
7. Measures on Supervision and Administration of Inspection and

Quarantine of Imported and Exported Dairy Products: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/201306/t20130613_361189.htm

8. Measures on Inspection, Supervision and Administration of Import Cotton: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/201306/t20130626_363127.htm

9. Decree of President of People's Republic of China No.4 of 2013 Special Equipment Safety Law of the People's Republic of China: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/201307/t20130710_366091.htm

10. Decree of President of People's Republic of China No. 21 of 2015 Food Safety Law of the People's Republic of China: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/201510/t20151021_452045.htm

11. Decree of the State Council No. 390 Regulations of the People's Republic of China on Certification and Accreditation: http://www.aqsiq.gov.cn/xxgk_13386/jgfl/zfdcs/zcfg/201210/t20121017_265705.htm

(h) procedures for appeal or review;

Implementation

Customs and I&Q: The following regulations are published and easily accessible by the Internet:

Administrative Procedure Law of the People's Republic of China (Link 1);

Decree of GACC No. 120 Provisional Regulations of the People's Republic of China on Customs Handling of Appellate Cases (Link 2);

Decree of GACC No. 166 Measures of the People's Republic of China on Customs Administrative Review (Link 3);

Decree of AQSIQ No. 7 [1999] Measures on Administrative Review of Entry-Exit Inspection and Quarantine (Link 4).

General Comment

Customs and I&Q: The implementation is adequate.

Links

1. Administrative Procedure Law of the People's Republic of China: http://www.spp.gov.cn/sscx/201502/t20150217_91466.shtml
2. Decree of GACC No. 120 Provisional Regulations of the People's

Republic of China on Customs Handling of Appellate Cases: <http://www.customs.gov.cn/publish/portal0/tab399/info4301.htm>

3. Decree of GACC No. 166 Measures of the People's Republic of China on Customs Administrative Review: <http://www.customs.gov.cn/publish/portal0/tab399/info83560.htm>

4. Decree of AQSIQ No. 7 [1999] Measures on Administrative Review of Entry-Exit Inspection and Quarantine: http://jyjgs.aqsiq.gov.cn/wjgg/sjwj/200610/t20061024_2339.htm

(i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit; and

Implementation

Information on free trade agreements with other countries is published in a timely manner.

However, information regarding agreements on mutual recognition of Authorized Economic Operators (AEOs) and mutual aid agreements as well as memorandums of understanding signed with some countries is only covered by news reports.

General Comment

The implementation is inadequate.

Recommendations

Details of agreements with other countries should be published in a timely manner.

(j) procedures relating to the administration of tariff quotas.

Implementation

Import tariff quotas for agricultural produce, sugar, cotton, wool, wool tops, etc. (Links 1, 2 and 3) are published on the websites of National Development and Reform Commission and Ministry of Commerce. The related information is easily accessible.

General Comment

The implementation is adequate.

Links

Import tariff quotas for agricultural produce and cotton:

1. Decree of National Development and Reform Commission No.22 of 2014: http://www.sdpc.gov.cn/gzdt/201412/t20141212_651980.html

Import tariff quotas for wools:

2. Decree of Ministry of Commerce and the GACC No. 92 of 2014

Implement the detailed rules of import tariff quota of wool and wool tops in the year of 2015: <http://www.customs.gov.cn/publish/portal106/tab65048/info734085.htm>

Import tariff quotas for sugar:

3. Decree of Ministry of Commerce No.66 of 2014 Tariff quota application and allocation rule of suger in the year of 2015: <http://www.mofcom.gov.cn/article/b/e/201410/20141000759139.shtml>

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

2 Information Available Through Internet

2.1 Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

Laws and Regulations

Customs: Measures of the People's Republic of China on Customs Government Information Disclosure provides:

‘Article 13 Customs shall proactively disclose customs government information by such easily accessible means as the customs’ websites, nationwide customs service hotline ‘12360’, press conferences, newspapers, magazines, radio and television broadcasting.’

Inspection and Quarantine: The AQSIQ Guide on Government Information Disclosure provides:

‘III. Means of access to government information

(1) Proactive disclosure of government information.

Citizens, legal persons and other organizations may access the proactively disclosed information that they need, via the AQSIQ Website Government Information Disclosure Catalog (the ‘Catalog’), or via the retrieval function of the AQSIQ Government Information Disclosure Catalog. Government information that should be proactively disclosed as per the Catalog shall be disclosed within 20 working days by relevant authorities starting from the day of generation of such information.

(2) Disclosure of government information as applied for.

2. Online Application.

.....

3. E-mail Application.

.....’

Implementation

Customs and I&Q: The Internet has become an important means for China Customs, Inspection and Quarantine, and commerce administration authorities to disclose information on administrative affairs. China Customs, apart from portals, also uses Wechat, Weibo, APPs, etc. to publish information.

General Comment

Customs and I&Q: The implementation is adequate.

(a) a description¹ of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested parties of the practical steps needed for importation, exportation, and transit;

Refer to 1.1 (a).

(b) the forms and documents required for importation into, exportation from, or transit through the territory of that Member;

Refer to 1.1 (a).

(c) contact information on its enquiry point(s).

Laws and Regulations

Customs: Measures of the People's Republic of China on Customs Government Information Disclosure provides that:

‘Article 15 Customs shall compile, publish and update in a timely manner Guide on Customs Government Information Disclosure, and Customs Government Information Disclosure Catalog.

Guide on Customs Government Information Disclosure shall include classifications, compilation systems of and means of access to customs government information, and the name, address, business hours, phone number, fax number, E-mail, etc. of the competent departments in charge of customs government information disclosure.’

Inspection and Quarantine: AQSIQ Guide on Government Information Disclosure provides:

‘III. Means of access to government information

.....

(2) Disclosure of government information as applied for.

1. Application review departments.

The AQSIQ Government Information Disclosure Office is the department that receives and reviews applications. Office hours: 8:00-17:30 (not on holidays);
Phone: 010-82261627;
Address: No. 9 Madiandong Road, Haidian District, Beijing;
Zip Code: 100088;
E-mail: zjxxgk@aqsiq.gov.cn.'

Implementation

Customs and I&Q: Via portal websites of customs and Inspection and Quarantine authorities, the addresses of customs and Inspection and Quarantine offices at each port, and the phone numbers thereof may be obtained. (Link 1)

General Comment

Customs and I&Q: The implementation is adequate.

Links

1. The sketch map of Customs distribution on GACC's portal websites (including websites and phone number): <http://www.customs.gov.cn/publish/portal0/>

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

Implementation

Customs: The WTO designates English, French and Spanish as the three official languages. The official website of GACC is available in English, but offers very little content. The majority of the content of this provision cannot be found on the official website.

Inspection and Quarantine: The AQSIQ website is available in English, but for nearly all laws and regulations, only a list of the English translations of the names of such laws and regulations is provided, while the links thereof all connect to Chinese texts.

General Comment

Customs and I&Q: The implementation is inadequate.

Recommendations

Customs and I&Q: Draw from the experience of Japanese and Korean customs, and offer

English translations of laws and regulations.

2.3 Members are encouraged to make available further trade-related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

Implementation

Customs and I&Q: Since China's accession into the WTO in 2001, competent authorities vested with managerial responsibilities for cross-border trade, including the Ministry of Commerce, customs and Inspection and Quarantine authorities, have provided, through the Internet, a vast amount of import and export trade-related information that encompasses legislation, import and export administration, taxation, classification, trade licenses, etc.

The China Customs portal website has attached notes of validity status to all policies and regulations, specifically classifying them into 'valid, invalid and partially revised', thereby significantly facilitating the search for and use of information.

The search engine embedded in the AQSIQ website performs badly, and the search results are not properly ranked, and certain important laws and regulations on inspection and quarantine cannot even be found.

General Comment

Customs and I&Q: The implementation by customs is relatively adequate, whereas there is substantial room for improvement for inspection and quarantine authorities.

3 Enquiry Points

3.1 Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).

Laws and Regulations

Customs: Measures of the People's Republic of China on Customs Government Information Disclosure provides:

'Article 15 Customs shall compile, publish and update in a timely manner Guide on Customs Government Information Disclosure, and

Customs Government Information Disclosure Catalog.

Guide on Customs Government Information Disclosure shall include the classification, compilation system of and means of access to customs government information, as well as the name, address, office hours, phone number, fax number, E-mail, etc. of the competent customs authority in charge of government information disclosure.

Article 18 Regarding customs government information requested to be disclosed by an applicant, customs shall, according to the following cases, reply in writing (including in electronic texts) respectively:

(9) Where the disclosure application should be processed via other channels including business consultation, complaint and report, petition letter, and statistical consultation, the applicant shall be guided to process the application via such other channels.'

Inspection and Quarantine: AQSIQ Guide on Government Information Disclosure provides:

'III. Means of access to government information

(1) Proactive disclosure of government information.

.....

(2) Disclosure of government information as applied for.

1. Application review department.

The AQSIQ Government Information Disclosure Office is the department that receives and reviews applications. Office hours: 8:00-17:30 (not on holidays);

Phone: 010-82261627;

Address: No. 9 Madiandong Road, Haidian District, Beijing

Zip Code: 100088;

E-mail: zjxxgk@aqsiq.gov.cn.

5. In-person submission of application.

After an applicant fills in Application Form for Government Information Disclosure, he or she may contact the AQSIQ Government Information Disclosure Office, and submit the application in person.'

Implementation

Customs and I&Q:

The windows, of China Customs and Inspection and Quarantine authorities, that handle external administrative affairs, are all open to public consultation.

The official websites of customs and Inspection and Quarantine authorities have all put in place online consultation windows.

Both GACC and customs authorities directly under it have opened a

free hotline service – ‘12360’.

General Comment

Customs and I&Q: The implementation is adequate.

Recommendations

Customs and I&Q: Customs and Inspection and Quarantine authorities shall consolidate and systematize forms and documents needed to be filled in and used by importers and exporters, and publish downloadable versions online.

3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

No such circumstances exist currently.

3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.

Laws and Regulations

Customs: Measures of the People’s Republic of China on Customs Government Information Disclosure provides:

‘Article 22 Where customs provides customs government information as requested by an applicant, other than fees charged for retrieval, copy, and postal delivery, no other fees may be charged. Customs may not, via other organizations and individuals, provide customs government information for a fee.

The standards that govern the cost fees charged by customs for retrieval, copy, postal delivery, etc. shall follow the standards jointly determined by the competent pricing department and the fiscal department under the State Council.

Article 23 In case of genuine economic difficulties of citizens applying for disclosure of customs government information, relevant fees may be reduced or exempted via the citizen’s own application and the review and approval by a person in charge at the competent customs authority responsible for government information disclosure.’

Inspection and Quarantine: AQSIQ Guide on Government Information Disclosure provides:

‘III. Means of access to government information

.....

7. Fee standards.

.....

(2) Disclosure of government information as applied for.

In cases where the applicant asks for electronic delivery of government information, such information may be delivered free of charge by the AQSIQ department in charge of government information disclosure; in cases where the application asks for provision of such information via postal delivery, the AQSIQ department may charge postal fees as per the standard jointly set by the competent pricing department and the fiscal department under the State Council.’

Implementation

Customs and I&Q: Generally speaking, the consulation services offered by customs and Inspection and Quarantine authorities do not provide forms or documents. In rare cases where such forms or documents are provided, they are provided free of charge.

General Comment

Customs and I&Q: The implementation is relatively adequate, but there remains room for improvement.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

Laws and Regulations

Customs: Measures of the People’s Republic of China on Customs Government Information Disclosure provides that:

‘Article 19 In cases where customs government information disclosure applications are received and customs are able to reply to such applications on site, customs shall do so.

In cases where they are not able to do so, customs shall reply within 15 working days starting from the date of receipt of application; in cases where the reply period needs to be extended, consent needs to be obtained from a person in charge at the competent customs government information disclosure department, and the applicant needs to be notified that the extension period shall be no longer than 15 working days.

In cases where the government information requested by an application to be disclosed involves the rights and interests of a third party, the time required for customs to consult the third party shall not be included in the time frame as provided for in Paragraph 2 of this provision.

Inspection and Quarantine: AQSIQ Guide on Government Information Disclosure provides:

‘III. Means of access to government information

.....

6. Handling of Applications.

After receiving Application Form for Government Information Disclosure, this authority will conduct a preliminary review. In cases where the content of application clearly goes beyond the working scope of disclosing requested government information, as provided for by Regulations of the People’s Republic of China on Government Information Disclosure, or this authority is clearly not in a position to disclose the information as requested, telephone (recording) communications shall be conducted with the applicant, requiring him or her to withdraw, correct or re-file the application to relevant departments (where the applicant insists on a written reply from this authority, such reply may be offered).

After a preliminary review, applications that meet the requirements will be registered and numbered, and the following reply shall be given within 15 working days since the date of receipt of application:

.....

In cases where the reply period needs to be extended for reasons including work procedures, the applicant shall be notified via telephone (recording) communications, and the maximum extension period shall be no longer than 15 working days.’

Implementation

Customs: Customs ‘12360’ Hotline provides immediate answers to simple inquiries.

For complicated inquiries, negotiations will be conducted for such inquiries to be addressed by professionals, and no timeframes are set for such purposes.

For online consultations, as of now no reply deadline has been set.

Inspection and Quarantine: Online consultations are available, but without a prescribed time limit on reply.

General Comment

Customs and I&Q: The implementation is inadequate.

Recommendations

Customs and I&Q: Consultations and replies of various types, including the reply time, shall be summarized and published on a periodic basis, thereby facilitating continuous improvements of the effectiveness and quality of consultation services.

4 Notification

Each Member shall notify the Committee on Trade Facilitation established under paragraph 1.1 of Article 23 (referred to in this Agreement as the "Committee") of:

The Committee on Trade Facilitation (the 'Committee) is yet to be officially established, and this provision has not been implemented.

(a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;

(b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and

(c) the contact information of the enquiry points referred to in paragraph 3.1.

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE, AND CONSULTATIONS

1 Opportunity to Comment and Information before Entry into Force

1.1 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.

Laws and Regulations

State: The State has put in place a relatively sound legal system.

Article 58 of Legislation Law of the People's Republic of China provides that the drafting process of administrative laws and regulations shall solicit extensively opinions from relevant authorities, organizations and citizens. The solicitation of such comments may be conducted in forms of symposiums, argumentations, hearings, etc. (Link 1)

In November 2001, Decrees of the State Council No. 321 and No. 322 respectively released Regulations on Formulation Procedures of Administrative Laws and Regulations, and Regulations on Formulation Procedures of Rules, detailing the formulation procedures for administrative laws and regulations, and rules, with a view to practicing the principle of legislative democracy as provided for in the Legislation Law. (Links 2 and 3)

Customs and I&Q: China Customs formulated and released relevant departmental rules and regulations.

In December 2008, Decree of GACC No. 180 revised and promulgated Administrative Regulations of the People's Republic of China on Customs Legislative Work, clarifying the principle of open and transparent customs legislative work, and encouraging and facilitating the involvement of administrative counterparties and the public in customs legislation; providing that after customs rules and regulations are drafted, comments from administrative counterparties shall be solicited via written forms, symposiums, argumentations, debates, etc., and that in cases where the content of the rules and regulations involves major interests of administrative counterparties, or where major differences exist during comment solicitation, the drafting authority may hold legislative hearings. (Link 4)

Decree of AQSIQ No. 15 promulgated Regulations on Formulation Procedures of Rules and Regulations. Article 24 thereof provides that for important drafts for approval, and for drafts for approval that involve differences of opinion over major issues, the Department of Legislation may convene symposiums, argumentations, hearings, etc., to fully collect opinions for research and argumentation. (Link 5)

Comparatively, the provisions regarding the involvement of administrative counterparties in legislative work, contained within Decree of GACC No. 180, Administrative Regulations on Legislative Work, are more explicit than those in Decree of AQSIQ No. 15 Procedures on Formulation of Rules and Regulations.

Implementation

Customs: The implementation is rather inadequate. Decree of GACC No. 180 was hardly implemented.

In 2015, China Customs released 93 announcements and decrees in total, among which 26 are highly relevant to administrative counterparties. However, none of these announcements and decrees provided drafts for comments via the official website during the formulation process.

It is said that some legislative drafts were solicited among the business community via symposiums convened by local customs authorities. However, improvements need to be made to the organization of such symposiums, in that a host of interested and capable businesses were barred from participation, did not have sufficient time to prepare for and research into the topics to be discussed, and that mandatory requirements were issued that prohibit the participation of employees below a certain level, hence significant decrease in effectiveness of the symposiums due to the absence of personnel who actually deal with in depth, and are thus familiar with, customs regulations.

During the 11 years from the promulgation of Administrative Regulations of the People's Republic of China on Customs Legislative Work in 2005 to June 2016, only one legislative hearing was held regarding Measures of the People's Republic of China on Customs Classified Administration of Enterprises in June 2010, Jinan, Shandong Province.

Inspection and Quarantine: Special columns were put in place on the AQSIQ official website dedicated to the collection of public comments and online

questionnaires; in 2015, altogether 25 calls for comments and 3 online questionnaires were released on the official website. But legislative hearings were rather rare.

General Comment

Customs:	Institutional arrangements were generally put in place, but poorly implemented.
Inspection and Quarantine:	Institutional arrangements are not as clear as those of customs, but better implemented.

Recommendations

Customs:	Take effective measures to ensure adequate implementation of relevant provisions of Decree of GACC No. 180.
Customs and I&Q:	<ol style="list-style-type: none"> 1. To solicit trade community's opinions in advance on legislation formulation, management procedures and even detail scripts for system development and take such opinions into account seriously; 2. For comments collected online, open communications and discussions should be allowed and encouraged, and legislative bodies should offer timely replies to the opinions and proposals offered by the public and the business community.

Links

1. The revised 'Legislation Law of the People's Republic of China' after The decision on amending the legislative law of the people's Republic of China on The third session of the Twelfth National People's Congress: http://www.npc.gov.cn/npc/dbdhhy/12_3/2015-03/18/content_1930713.htm
2. Decrees of the State Council No. 321 Regulations on Formulation Procedures of Administrative Law: http://www.gov.cn/gongbao/content/2002/content_61545.htm
3. Decrees of the State Council No. 321 Regulations on Formulation Procedures of Rules: http://www.gov.cn/gongbao/content/2002/content_61556.htm
4. Decree of GACC No. 180 revised and promulgated Administrative Regulations of the People's Republic of China on Customs Legislative Work: <http://www.customs.gov.cn/publish/portal0/tab38320/info157799.htm>
5. Decree of AQSIQ No. 15 Regulations on Formulation Procedures of Rules and Regulations: http://www.aqsiq.gov.cn/xxgk_13386/

jlgg_12538/zjl/20012002/200610/t20061027_239114.htm

6. AQSIQ official website dedicated to the collection of public comments and online questionnaires: <http://www.aqsiq.gov.cn/gzcypt/zjdc/cayjzj/>

1.2 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

Laws and Regulations

Customs: Measures of the People's Republic of China on Customs Government Information Disclosure provides:

‘Article 8 Customs shall disclose government information in a timely and accurate manner. In cases where customs finds false or incomplete information that affects or is likely to affect social stability and disrupt social management order, customs shall, within its scope of responsibilities, provide clarifications via disclosing accurate customs government information.

.....

Article 14 Government information within the scope of ‘proactive disclosure’, shall be disclosed within 20 working days from the date on which such information is generated, changed or obtained.’

Article 42, Section 5 (Review and Disclosure) of Decree of GACC No. 180 Administrative Regulations of the People's Republic of China on Customs Legislative Work provide, ‘except for exceptional circumstances, customs rules and regulations shall be implemented 30 days after the publication thereof, at the earliest.’

Inspection and Quarantine: AQSIQ Guide on Government Information Disclosure provides:

‘III. Means of access to government information

(1) Proactive disclosure of government information.

Citizens, legal persons and other organizations may access the proactively disclosed information that they need, via the AQSIQ Website Government Information Disclosure Catalog (the ‘Catalog’), or via the retrieval function of the AQSIQ Government Information Disclosure Catalog. Government information that should be proactively disclosed as per the Catalog shall be disclosed within 20 working days by relevant authorities starting from the day of generation of such information.’

Implementation

Customs:

Article 42, Section 5 (Review and Disclosure) of Decree of GACC No. 180 Administrative Regulations of the People's Republic of China on Customs Legislative Work provides, 'customs rules and regulations shall be implemented 30 days after the publication thereof, at the earliest.' However, a preliminary statistical analysis on the relevant regulations released by China Customs portal websites reveals that a multitude of regulations failed to meet this requirement. Therefore, it can be seen that in terms of the timeliness of the disclosure of laws and regulations, there is still significant room for improvement.

Release of GACC Decrees from 2010 to 2015

Status	Amount	Days	Proportion against the Total
Decree released and entered into force on the same date	10	0	22.73%
Decree released on a date preceding its date of entry into force	34	26	77.27%
<i>of which, date of release over 30 days in advance of date of entry into force</i>	21	42	47.73%
<i>Date of release 1-30 days in advance of date of entry into force</i>	13	2	29.55%
Decree released on a date succeeding its date of entry into force	0	0	0.00%
Total (No. 186-229)	44		

Inspection and Quarantine: AQSIQ does not have such time limits. However, taking the above standards into account, the situation is better than that of customs.

Release of AQSIQ Decrees from 2010 to 2015

Status	Amount	Days	Proportion against the Total
Decree released and entered into force on the same date	9	0	17.65%
Decree released on a date preceding its date of entry into force	42	78	82.35%
<i>of which, date of release over 30 days in advance of date of entry into force</i>	40	81	78.43%
<i>Date of release 1-30 days in advance of date of entry into force</i>	2	15	3.92%
Decree released on a date succeeding its date of entry into force	0	0	0.00%
Total (No. 125-176; No. 148 missing)	51		

General Comment

Customs and I&Q:

The implementation is inadequate.

Recommendations

Customs and I&Q: Release as soon as possible laws and regulations that are to be implemented, thereby leaving reasonable time for preparation for businesses to cooperate with the government's implementation efforts of laws and regulations.

1.3 Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1.1 or 1.2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1.1 and 1.2.

2 Consultations

Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

Laws and Regulations

Customs and I&Q: No specific provisions apply.

Implementation

Customs and I&Q: China Customs and Inspection and Quarantine authorities are open to consultations and negotiations with industry. Dialogs and consultations with businesses and chambers of commerce are organized on a periodic or an ad hoc basis, depending upon specific work needs.

However, to date, standardized periodic consultation mechanisms are yet to be formed for the consultation arrangements between Inspection and Quarantine authorities and the business community.

General Comment

Customs and I&Q: Implementation was proactive, but it is yet to be institutionalized and standardized.

Recommendations

Customs and I&Q: 1. China Customs and Inspection and Quarantine authorities should formulate and establish periodic consultation mechanisms with industry, adopt a more flexible and pragmatic approach to the determination of attendees, issues for consultation, etc., and extensively solicit and absorb feedback, complaints and recommendations from a wide range of business representatives;

2. There should be more accessible and effective information feedback channels and resolution mechanisms for issues that are of great importance, urgency, and that may cause extensive impact.

ARTICLE 3: ADVANCE RULINGS

Laws and Regulations

China Customs formulated and promulgated laws and regulations on administrative rulings, including:

Advance ruling: Decree of GACC No. 92 Provisional Administrative Measures of the People's Republic of China on Customs Administrative Rulings; (Link 1)

Advance classification: Decree of GACC No. 158 Regulations of Customs Classification of Import and Export Goods; (Link 2)

Advance price review: Article 10 of Decree of GACC No. 124 Administrative Measures of the People's Republic of China on Tax levied on Import and Export Goods by Customs provides that the tax payer, prior to actual import or export of goods, may apply to customs as per relevant regulations for advance classification, advance price review or advance determination of origin, of such goods. Customs, after review and determination, shall notify the taxpayer in writing, and provide acceptance of such written notification during actual import and export of goods; (Link 3)

Determination of Origin: Article 12 of Decree of the State Council No. 416 Regulations of the People's Republic of China on Place of Origin of Import and Export Goods provides that 'prior to the import of goods intended for importation, the consignee of, or other parties directly related to, such goods, with justified cause, may apply to customs via a written application for advance determination of the origin of goods intended for importation; (Link 5)

In addition, in 2011 and 2012 respectively, GACC issued notices that provide for matters related to advance price review and advance determination of origin by customs authorities directly subordinate to GACC:

1. Shu Shui Fa [2011] No. 419 Provisional Regulations on Administration of Advance Price Review of Import Goods set out provisions for businesses' applications for advance price review; (Link 4)

2. Advance determination of origin: Shu Shui Fa [2012] No. 129 Notice of GACC on Issuing Provisional Regulations on Advance Determination of Origin for Import Goods. (Link 6)

Most customs authorities that are directly subordinate to GACC in Beijing, Shanghai, Guangzhou, Qingdao, etc., have, pursuant to Shu Shui Fa [2011] No. 419, formulated administrative mechanisms for the concrete implementation procedures of advance price review for import goods that apply to their respective customs territories.

Some customs authorities that are directly subordinate to GACC in Shanghai, Haikou, Jiangmen, Fuzhou, etc., have, pursuant to Shu Shui Fa [2012] No. 129, formulated administrative mechanisms for the concrete implementation procedures of advance origin determination that apply to their respective customs territories. (Link 7)

Implementation

Within the 14 years from the release on 24 December, 2001, and the implementation on 1 January, 2002, of Decree of GACC No. 92 Provisional Measures of the People's Republic of China on Administration of Customs Administrative Rulings, to the end of May, 2016, only the following advance ruling cases were found via public channels:

1. On 3 June, 2015, GACC released Decree of GACC No. 28 [2015] Announcement on Publishing Administrative Rulings on Classification of Goods, issuing an administrative ruling on classification of goods named 'Polarizing Film'; (Link 8)
2. On 14 September, 2015, GACC released Decree of GACC No. 41 [2015] Announcement on Publishing Administrative Rulings (II) on Classification of Goods, issuing administrative rulings on classifications of three goods respectively named 'Intra-Park Tour Cart', 'Scanning Frame for Whole-body X-ray Computed Tomography (CT) System', and 'Tetrabromobisphenol A'; (Link 9)
3. On 6 May, 2016, GACC released Decree of GACC No. 31 Announcement on Publishing 2016 Administrative Rulings (III) on Classification of Goods, issuing an administrative ruling on classification of the good named 'Ranolazine'; (Link 10)
4. On 26 May, 2016, GACC released Decree of GACC No. 33 Announcement on Publishing 2016 Administrative Rulings (IV) on Classification of Goods, issuing administrative rulings on classifications of a few goods including 'PDS*II (Polydioxanone) Monofilament Synthetic Absorbable Suture', 'iPod nano7' and 'Component feeder unit'. (Link 11)

Regarding systems of determination of origin, and of advance price

review of import goods, information collected from official websites indicates fragmented implementation at only some local customs authorities, and cases can hardly be found.

General Comment

In general, regarding matters that importers and exporters are most concerned about, i.e. classification, prices, origin, etc., China Customs have formulated relevant laws and regulations on advance ruling. However, all things considered, the current framework of laws and regulations on advance ruling is yet to be streamlined, and overall coordination is lacking, especially among administrative measures on advance ruling, and rules and regulations on advance classification, advance price review and origin determination, and procedures and requirements are yet to be standardized and rendered consistent.

Laws and regulations have been formulated, but the legal framework per se is not perfect, and implementation thereof is not adequate.

Recommendations

1. Systematize the current administrative ruling and ‘three advances’ system, and formulate laws and regulations on advance ruling as per Trade Facilitation Agreement;
2. Take necessary measures to ensure adequate implementation of the advance ruling system.

Links

1. Decree of GACC No. 92 Provisional Administrative Measures of the People’s Republic of China on Customs Administrative Rulings: <http://www.customs.gov.cn/publish/portal0/tab514/info4205.htm>
2. Decree of GACC No. 158 Regulations of the People’s Republic of China on Customs Classified Administration of Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab38320/info59255.htm>
3. Decree of GACC No. 124 Administrative Measures of the People’s Republic of China on Tax levied on Import and Export Goods by Customs: <http://www.customs.gov.cn/publish/portal0/tab399/info4487.htm>
4. Shu Shui Fa [2011] No. 419 Provisional Regulations on Administration of Advance Price Review of Import Goods: <http://www.51wf.com/law/1177034.html>
5. Decree of the State Council No. 416 of Regulations of the People’s Republic of China on Origin of Import and Export Goods 2004: <http://www.customs.gov.cn/publish/portal0/tab399/info3579.htm>

6. Shu Shui Fa [2012] No. 129 Notice of GACC on Issuing Provisional Regulations on Advance Determination of Origin for Import Goods: <http://www.tzcpa.com/tZGJ/LawsRegulationsDocument.aspx?id=21967>
7. No.9 [2011] Notice of Haikou Customs on Price Pre auditon: <http://www.customs.gov.cn/publish/portal128/tab63588/info346289.htm>
8. Decree of GACC No. 28 [2015] Announcement on Publishing Administrative Rulings on Classification of Goods: <http://www.customs.gov.cn/publish/portal0/tab49661/module126388/info750529.htm>
9. Decree of GACC No. 41 [2015] Announcement on Publishing Administrative Rulings (II) on Classification of Goods: <http://www.customs.gov.cn/publish/portal0/tab49659/info773284.htm>
10. Decree of GACC No. 31 Announcement on Publishing 2016 Administrative Rulings (III) on Classification of Good: <http://www.customs.gov.cn/publish/portal0/tab49659/info797860.htm>
11. Decree of GACC No. 33 Announcement on Publishing 2016 Administrative Rulings (IV) on Classification of Goods: <http://www.customs.gov.cn/publish/portal0/tab49659/info801950.htm>

1. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

Laws and Regulations

Laws and regulations have put in place different time limits for different types of rulings (excluding determination of classification of goods).

	Advance ruling	Advance price review	Advance classification	Advance determination of place of origin
Document Number	Decree of GACC No. 92	Shu Shui Fa [2011] No. 419	Decree of GACC No. 158	Shu Shui Fa [2012] No. 129
Time limit for reply	60 days after official acceptance	10 working days	15 working days for decision on advance classification; no prescribed time limit for decision on classification	150 days

In cases where customs reject to issue advance rulings, some regulations require compulsory provision of grounds for rejection, while other regulations do not.

	Advance ruling	Advance price review	Advance classification	Advance determination of place of origin
Document Number	Decree of GACC No. 92	Shu Shui Fa [2011] No. 419	Decree of GACC No. 158	Shu Shui Fa [2012] No. 129
Rejection	Customs needs to provide grounds for rejection.	Not required by regulations.	Not required by regulations.	Provision of grounds for rejection in writing.

Implementation

The implementation is inadequate.

2. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:

The above scenarios do not apply to China.

(a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or

(b) has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.

Laws and Regulations

China Customs' advance ruling system provides the valid period for some rulings, but not for other rulings.

	Advance ruling	Advance price review	Advance classification	Advance determination of place of origin
Document Number	Decree of GACC No. 92	Shu Shui Fa [2011] No. 419	Decree of GACC No. 158	Shu Shui Fa [2012] No. 129
Conditions for revocation	Changes of laws, facts and circumstances	Changes of laws, facts and circumstances	Changes of laws, facts and circumstances	Changes of laws, facts and circumstances
Validity Period	No applicable provisions.	90 days (a 30-day extension is allowed under exceptional circumstances)	3 years	No explicit provisions. Validity continues as long as regulations/ conditions do not change.

Implementation

The implementation is inadequate.

4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

Laws and Regulations

Explicit requirements to notify the party of revocation of advance ruling exist in some advance ruling regulations of China Customs, but such explicit requirements do not exist in regulations on advance place of origin determination.

The advance ruling system of China Customs has explicit provisions for cases where advance rulings that have been issued may be revoked.

	Advance ruling	Advance price review	Advance classification	Advance determination of place of origin
Document Number	Decree of GACC No. 92	Shu Shui Fa [2011] No. 419	Decree of GACC No. 158	Shu Shui Fa [2012] No. 129
Whether or not the party should be notified of revocation of advance ruling	Written notification to the party	Timely notification to the enterprise applicant	Notification to the party via a Notification Letter	No applicable provisions
Definition of revocation scenarios for advance ruling	Clear definition	Clear definition	Clear definition	Clear definition

Implementation

The implementation is inadequate.

5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.

Laws and Regulations

The decisions issued by China Customs as per relevant regulations on advance ruling are binding for customs and advance ruling applicants.

Implementation

The implementation is adequate.

6. *Each Member shall publish, at a minimum:*

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

Regulations promulgated include the above content.

(b) the time period by which it will issue an advance ruling; and

Regulations promulgated include the above content.

(c) the length of time for which the advance ruling is valid.

Regulations promulgated include the above content.

7. *Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.*

Laws and Regulations

Article 20 of Decree of GACC No. 92 Provisional Administrative Measures of the People's Republic of China on Customs Administrative Ruling provides that in cases where a party to import and export activities does not accept a particular administrative action by customs, and objects to the administrative ruling on which such administrative action is based, then the party, while applying for review of such particular administrative action, may apply for review of the administrative ruling. After receiving the application for review, the customs authority processing the review shall transfer the application therein for review of administrative ruling to GACC, and GACC shall then issue a review decision.

Paragraph (7), Article 9 of Decree of GACC No. 166 Measures of the People's Republic of China on Customs Administrative Review provides that in cases where the party objects to a particular administrative action in connection with tax levying and collection, including customs determination of customs value, classification of goods, determination of place of origin, etc., may apply for administrative review.

Implementation

The administrative review system is adequately implemented, but regarding administrative rulings, given inadequate implementation thereof, no specific implementation cases have been found up to date.

8. *Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.*

Laws and Regulations

China's customs had publicized the advanced ruling it made and had provided for the protection of the related confidential commercial information.

9. Definitions and scope:

(a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:

(i) the good's tariff classification; and

(ii) the origin of the good.³

(b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:

(i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;

(ii) the applicability of the Member's requirements for relief or exemption from customs duties;

(iii) the application of the Member's requirements for quotas, including tariff quotas; and

(iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.

(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

(d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

ARTICLE 4: PROCEDURES FOR APPEAL OR REVIEW

Laws and Regulations

- State: China has already established a relatively sound legal system on administrative procedure and administrative review, mainly including:
- Administrative Procedure Law of the People's Republic of China (Link 1);
- Administrative Review Law of the People's Republic of China (Link 2).
- Customs and I&Q: As per Administrative Review Law, China Customs formulated and promulgated Measures on Customs Administrative Review (Link 3);
- As per Administrative Review Law, AQSIQ formulated and promulgated Measures on Administrative Review of Entry-Exit Inspection and Quarantine (Link 4).

Implementation

- Customs: In 2015, customs authorities across China received 143 administrative review applications in total, the types of cases including administrative penalty, tax dispute, administrative mandatory measures, administrative mandatory enforcement, goods ordered to be returned, and customs government information disclosure. 12% of the reviewed cases were corrected.
- In 2015, altogether 41 administrative procedure cases occurred involving customs authorities across the country. Of the 18 cases that have been concluded, the plaintiff withdrew the lawsuit in 11 cases, and the remaining 7 cases were won by customs.
- Inspection and Quarantine: In 2015, the inspection and quarantine system received 503 review cases, in regulatory areas involving import food regulation, recall of faulty vehicle products, metrology accreditation, special equipment regulation, inspection and quarantine accreditation, solid waste import license, and registration of export enterprises. The aggregate correction ratio for reviewed cases was 29%.

General Comment

- Customs and I&Q: Administrative procedure and review systems have been adequately implemented.

Links

1. Decree of President of the People's Republic of China No. 16 of 1989 Administrative Procedure Law of the People's Republic of China: http://www.spp.gov.cn/sscx/201502/t20150217_91466.shtml
2. Decree of President of the People's Republic of China No. 16 of 1999 Administrative Review Law of the People's Republic of China: http://www.gov.cn/banshi/2005-08/21/content_25100.htm
3. Decree of GACC No. 166 Measures on Customs Administrative Review: <http://www.customs.gov.cn/publish/portal0/tab514/info83560.htm>
4. Decree of AQSIQ No.7 Measures on Administrative Review of Entry-Exit Inspection and Quarantine: <http://www.heciq.gov.cn/cfd/zjl/201512/a7c9cb9986f44997aacd18aced8ea953.shtml>

1. Each Member shall provide that any person to whom customs issues an administrative decision⁴ has the right, within its territory, to:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;

Laws and Regulations

- Customs: Article 17 of Measures on Customs Administrative Review provides,
- ‘in cases of objections to a particular administrative action by a customs authority, application shall be filed to a higher customs authority for administrative review.
- In cases of objections to a particular administrative action of GACC, application shall be filed to GACC for administrative review.’
- Inspection and Quarantine: Article 10 of Measures on Administrative Review of Entry-Exit Inspection and Quarantine provides, ‘in cases of objections to a particular administrative action by an entry-exit inspection and quarantine authority, application shall be filed to a higher competent authority for review.’

Implementation

- Customs: In 2015, customs received 143 administrative review applications in total. The channel for administrative counterparties to apply for customs administrative review is relatively smooth.

General Comment

- Customs: The implementation is adequate.

Links

1. Decree of GACC No. 166 Measures on Customs Administrative Review: <http://www.customs.gov.cn/publish/portal0/tab514/info83560.htm>
2. Decree of AQSIQ No.7 Measures on Administrative Review of Entry-Exit Inspection and Quarantine: <http://www.heciq.gov.cn/cfd/zjl/201512/a7c9cb9986f44997aacd18aced8ea953.shtml>

and/or

(b) a judicial appeal or review of the decision.

Laws and Regulations

Customs:

Article 2 of Administrative Procedure Law of the People's Republic of China provides, 'in cases where citizens, legal persons or other organizations believe that the administrative actions of administrative authorities and of the staff thereof infringe upon their lawful rights and interests, they may bring lawsuits to the People's Court as per this Law.

The administrative actions referred to by the preceding paragraph are those conducted by organizations mandated by laws, regulations, and rules.' (Link 1)

Article 7 of Administrative Review Law of the People's Republic of China provides, 'in cases where citizens, legal persons or other organizations believe the particular administrative actions of administrative authorities are not based on legitimate regulations, they may, while applying for administrative review of such administrative actions, apply to administrative review authorities for review of such regulations.' (Link 2)

Article 31 of Measures of the People's Republic of China on Customs Administrative Review provides, 'in cases where an applicant believes that the particular administrative actions of customs are not based on legitimate regulations, as per provisions of Article 7 of Administrative Review Law, they may, while applying for administrative review of such administrative actions, apply for review of such regulations.' (Link 3)

Inspection and Quarantine:

Article 6 of Measures on Administrative Review of Entry-Exit Inspection and Quarantine provides, 'in cases where citizens, legal persons, or other organizations believe that the particular administrative actions of entry-exit inspection and quarantine authorities are not based upon legitimate regulatory documents, they

may, while applying for administrative review of such administrative actions, apply for review of such documents.’ (Link 4)

Implementation

Customs: In 2015, altogether 41 administrative procedure cases occurred involving customs authorities across the country.

General Comment

Customs: The implementation is relatively adequate.

Links

1. Decree of President of the People’s Republic of China No. 16 of 1989 Administrative Procedure Law of the People’s Republic of China: http://www.spp.gov.cn/sscx/201502/t20150217_91466.shtml
2. Decree of President of the People’s Republic of China No. 16 of 1999 Administrative Review Law of the People’s Republic of China: http://www.gov.cn/banshi/2005-08/21/content_25100.htm
3. Decree of GACC No.166 Measures of the People’s Republic of China on Customs Administrative Review: <http://www.customs.gov.cn/publish/portal0/tab514/info83560.htm>
4. Decree of AQSIQ No.7 Measures on Administrative Review of Entry-Exit Inspection and Quarantine: <http://www.heciq.gov.cn/cfd/zjl/201512/a7c9cb9986f44997aacd18aced8ea953.shtml>

2. The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

Laws and Regulations

Article 64 of Customs Law of the People’s Republic of China provides, ‘in cases of tax disputes between the taxpayer and customs, the tax payer shall pay the due tax, and may apply for administrative review according to law; in cases where objections still stand to the decision of the administrative review, the taxpayer may bring lawsuits to the People’s Court according to law.

Apart from the above cases involving tariff dispute, for other matters, administrative review may be applied for to customs, or administrative procedure may be directly brought to the People’s Court.’

General Comment

The regulations are clear, and the implementation is adequate.

Links

1. Customs Law of the People's Republic of China: <http://www.customs.gov.cn/publish/portal0/tab2747/info3420.htm>

3. Each Member shall ensure that its procedures for appeal or review are carried out in a nondiscriminatory manner.

General Comment

China has put in place non-discriminatory implementation of its appeal or review procedures.

4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:

(a) within set periods as specified in its laws or regulations; or

(b) without undue delay the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.

Laws and Regulations

State:

Article 46 of Administrative Procedure Law of the People's Republic of China provides, 'in cases where citizens, legal persons or other organizations apply to administrative authorities for review, the review authorities shall issue a decision within two months after receipt of the application letter, except otherwise provided for by laws and regulations.' (Link 1)

Customs:

Article 68 of Measures on Customs Administrative Review provides, 'customs administrative review authorities shall issue an administrative review decision within 60 days from the date of accepting the application. However, for any of the following scenarios, with the approval from a person in charge from the customs administrative review authority, an extension of 30 days may be given:

- (1) the administrative review case is of great importance, complex, and difficult to handle;
- (2) an administrative review hearing has been decided to be held;
- (3) consent has been obtained of the applicant;
- (4) a third party participates in the administrative review;
- (5) further investigation is needed for the new facts or evidence submitted by an applicant or a third party.

In cases where the customs administrative review authority extends the review period, a Notification Letter of Extension of Administrative Review shall be made and sent to the applicant, respondent or third party.’ (Link 2)

Inspection and Quarantine: Article 23 of Measures on Administrative Review of Entry-Exit Inspection and Quarantine provides, ‘the review authority shall issue a review decision within 60 days after the date of accepting the application; except cases where the review period shall be less than 60 days according to law.

In cases of complicated review decisions that cannot be made within the prescribed time limit, a reasonable extension may be given with the consent of the person in charge from the review authority, and notified to the applicant and respondent; but the extension period shall not be longer than 30 days.’ (Link 3)

General Comment

Customs and I&Q: The regulations are clear, and the implementation is adequate.

Links

1. Decree of President of the People’s Republic of China No. 16 of 1989 Administrative Procedure Law of the People’s Republic of China: http://www.gov.cn/banshi/2005-08/21/content_25100.htm
2. Decree of GACC No.166 Measures of the People’s Republic of China on Customs Administrative Review: <http://www.customs.gov.cn/publish/portal0/tab514/info83560.htm>
3. Decree of AQSIQ No.7 Measures on Administrative Review of Entry-Exit Inspection and Quarantine: <http://www.heciq.gov.cn/cfd/zjl/201512/a7c9cb9986f44997aacd18aced8ea953.shtml>

5. Each Member shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.

Laws and Regulations

State: Article 31 of Administrative Penalty Law of the People’s Republic of China provides that prior to issuing an administrative penalty decision, the administrative authority shall notify the facts, grounds and basis of the administrative penalty decision to the party, together with the party’s rights according to law.

Customs and I&Q: In cases where China Customs imposes administrative penalty upon

the party according to Implementation Regulations of the People's Republic of China on Customs Administrative Penalty, grounds for the penalty must be provided as per regulations.

Chinese Inspection and Quarantine authorities impose administrative penalties following different regulations (for detailed information refer to 1.1.g).

Implementation

Customs and I&Q: In cases where customs and Inspection and Quarantine authorities issue administrative decisions on other matters according to laws and regulations, if the party demands the basis of administrative law enforcement, such basis may be provided.

General Comment

Customs and I&Q: The implementation is relatively adequate.

Links

1. Decree of President of the People's Republic of China No. 36 of 1996 Administrative Penalty Law of the People's Republic of China: http://www.gov.cn/banshi/2005-08/21/content_25101.htm
2. Decree of the State Council No.420 Implementation Regulations of the People's Republic of China on Customs Administrative Penalty: <http://www.customs.gov.cn/publish/portal166/tab66206/info674232.htm>

6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

Implementation

Customs and I&Q: Apart from customs, the progress of implementation of this provision by Chinese Inspection and Quarantine authorities closely connected with import and export goods has been explained separately in relevant provisions.

Recommendations

Customs: Content of Article 17 of Customs Administrative Review Measures, relating to the administrative procedure and administrative review systems within the scope of trade facilitation, has been well implemented, but it is undeniable that when enterprises are exercising administrative rights, because 1) they are concerned about retaliation by the administrative authority; 2) remedy procedures are complex or inaccessible; 3) exercising the right to administrative remedy may result

in barriers to, or postponement of, release of import and export goods, quite a few enterprises gave up the exercise of such rights. Customs and Inspection and Quarantine authorities shall take pragmatic and effective measures to remove the barriers to the importer's application for administrative review.

ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

Laws and Regulations

Customs and I&Q: China has established a sound quarantine system on public health and on animals and plants, intended for the protection of the health of the country's residents and its animals and plants.

Explicit provisions have been set out by the State regarding the publication and revocation of information on epidemics, and designated ports for import and export.

In cases where China Customs and Inspection and Quarantine authorities decide to detain import goods, there are relevant detention procedures that shall be followed. Inspection and Quarantine authorities explicitly require notification to the party 'as soon as possible'; whereas such requirement is lacking in customs' regulations, but in practice a principle of 'as soon as possible' is followed.

China Customs and Inspection and Quarantine authorities explicitly provide that the parties may apply for re-inspection, the result of which may be accepted by the above authorities.

The Chinese government has published a list of laboratories, testing laboratories and certification agencies accredited by relevant authorities.

General Comment

Customs and I&Q: This provision has been adequately implemented in China.

1 Notifications for enhanced controls or inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages, or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination, or suspension:

(a) the Member may, as appropriate, issue the notification or guidance based on risk;

(b) the Member may issue the notification or guidance so that it applies uniformly only to those

points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply;

(c) the Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade-restrictive manner; and

(d) when the Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

Laws and Regulations

Public health inspection laws and regulations of the Chinese government explicitly provide that in cases of epidemics, specific ports of entry may be designated.

China released Law of the People's Republic of China on Frontier Public Health Quarantine. (Link 1)

Article 9 of Implementation Regulations of the Law of the People's Republic of China on Frontier Public Health Quarantine provides that 'at times when epidemics are prevalent at home or abroad, health administrators under the State Council shall immediately report to the State Council for approval of the adoption of some or all of the following quarantine measures:

- (1) order the blockade of relevant areas of the border and rivers within the border;
- (2) specify the goods that have to be sterilized or de-insectized before being transported into or out of China;
- (3) prohibit certain goods from being transported into or out of China;
- (4) designate the port and airport as the first choice for entry. For vessels or aircrafts which come from epidemic areas in foreign countries and regions and did not go through quarantine procedures at the port or airport as the first choice for entry, except for circumstances involving dangers or other exceptional circumstances, may not access other ports or airports.' (Link 2)

China's laws and regulations on quarantine of animals and plants intended for entry or exit explicitly provide that the State Council may adopt controls on the relevant border areas, and issue orders to prohibit, when necessary, transport vehicles from the area of animal and plant epidemic from entry, or to blockade relevant ports.

China released Law of the People's Republic of China on Quarantine

of Animals and plants Intended for Entry and Exit. (Link 3)

Article 4 of Implementation Regulations of Law of the People's Republic of China on Quarantine of Animals and plants Intended for Entry and Exit provides, 'when major animal and plant epidemics break out in areas outside China and are likely to be imported into China, the following emergency preventive measures shall be adopted based upon specific circumstances:

- (1) The State Council may control the relevant border areas, and issue orders, when necessary, to prohibit entry of transport vehicles from the area of animal and plant epidemic, or blockade relevant ports;
- (2) Competent agricultural administrative authorities under the State Council may release the list of animals and plants, animal and plant products and other goods subject to quarantine procedures that come from countries and regions where animal and plant epidemic prevails, and are thus prohibited from entry;
- (3) Animal and plant quarantine authorities of relevant ports may adopt emergency quarantine measures for goods intended for entry as listed in (2) of this provision that may be subject to pollution by diseases and insects;
- (4) The local governments in regions threatened by animal and plant epidemic may immediately convene relevant departments to formulate and implement emergency plans, and report to the superior People's Government and National Animal and Plant Quarantine Bureau.' (Link 4)

China has formulated an administrative system for food safety including the safety of import and export food. (Links 5 and 6)

In addition, Article 13 of Administrative Regulations on Risk Warning and Speedy Response by Entry-Exit Inspection and Quarantine Authorities provides, 'for goods and items that are intended for entry or exit and that are riskless or whose risk has been minimized, AQSIQ shall issue an announcement to revoke the warning.' (Link 7)

General Comment

The regulations are clear, and the implementation is adequate.

Links

1. Law of the People's Republic of China on Frontier Public Health Quarantine: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/200806/t20080625_80249.htm
2. Implementation Regulations of the Law of the People's Republic of China on Frontier Public Health Quarantine: http://www.aqsiq.gov.cn/xxgk_13386/zvfg/flfg/200711/t20071106_52200.htm

3. Law of the People's Republic of China on Quarantine of Animals and plants Intended for Entry and Exit: http://www.aqsiq.gov.cn/xxgk_13386/zvfq/flfg/200711/t20071106_52204.htm
4. Implementation Regulations of Law of the People's Republic of China on Quarantine of Animals and plants Intended for Entry and Exit: http://www.aqsiq.gov.cn/xxgk_13386/zvfq/flfg/200711/t20071106_52202.htm
5. Food safety law of the People's Republic of China: http://www.aqsiq.gov.cn/xxgk_13386/zvfq/flfg/201306/t20130603_360016.htm
6. Implementation regulations of Food safety law of the People's Republic of China: http://www.aqsiq.gov.cn/xxgk_13386/zvfq/flfg/201306/t20130603_360008.htm
7. Administrative Regulations on Risk Warning and Speedy Response by Entry-Exit Inspection and Quarantine Authorities: http://www.aqsiq.gov.cn/xxgk_13386/jlfg_12538/zjl/20012002/200610/t20061027_239128.htm

2 Detention

A Member shall promptly inform the carrier or importer in case of detention of goods declared for importation, for inspection by customs or any other competent authority.

Laws and Regulations

- | | |
|----------------------------|---|
| Customs: | <p>Customs will send a notification letter of detention of goods to the declarant, if customs detains the goods thereof.</p> <p>Article 42 of Implementation Regulations of the People's Republic of China on Customs Administrative Penalty provides, 'where customs detains, according to law, goods, items, transport vehicles, other property and files including account books or documents, customs shall write and issue a letter of customs detention of goods, which shall be signed or stamped by customs staff, the parties or the agent, custodian and witness thereof, and which may be marked by a customs seal. In cases where such customs seal is used, the parties or the agent and custodian thereof shall take proper of such customs seal.' (Link 1)</p> |
| Inspection and Quarantine: | <p>Article 41 of Implementation Regulations of Law of the People's Republic of China on Inspection of Commodities for Importation or Exportation provides, 'for commodities for importation or exportation that are believed by entry-exit inspection and quarantine authorities with proper cause to bear upon safety of life and that of property and health, and have substandard environmental protection projects, with the approval of the person in charge of this authority, such</p> |

commodities may be sealed or detained, except for goods under customs supervision.’ (Link 2)

Article 15 of Decree of AQSIQ No. 108 Administrative Regulations on Seal and Detention by Entry-Exit Inspection and Quarantine Authorities provides, ‘Letter of Decision of Sealing or Detention by Inspection and Quarantine Authorities’ shall be sent to the party in a timely manner, and the party shall sign or stamp Confirmation of Receipt, and mark the date of receipt.’ (Link 3)

General Comment

Customs and I&Q: The regulations are clear, and the implementation is adequate.

Links

1. Decree of the State Council No.420 Implementation Regulations of the People’s Republic of China on Customs Administrative Penalty: <http://www.customs.gov.cn/publish/portal166/tab66206/info674232.htm>
2. Decree of the State Council No.447 Implementation Regulations of Law of the People’s Republic of China on Inspection of Commodities for Importation or Exportation: <http://www.chinalaw.gov.cn/article/fgkd/xfg/xzfg/200510/20051000055629.shtml>
3. Decree of AQSIQ No. 108 Administrative Regulations on Seal and Detention by Entry-Exit Inspection and Quarantine Authorities: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/20072008/200807/t20080708_239305.htm

3 Test Procedures

Laws and Regulations

China Customs has a relatively complete set of regulations on test procedures, including Decree of GACC No. 176 Administrative Measures of the People’s Republic of China on Customs Testing, Work Regulations on Customs Testing, and Decree of GACC No. 79 [2014] Announcement of the People’s Republic of China on Publication of Customs Testing Methodologies. (Links 1, 2 and 3)

Links

1. Decree of GACC No. 176 Administrative Measures of the People’s Republic of China on Customs Testing: <http://www.customs.gov.cn/publish/portal128/tab41243/info277212.htm>
2. Work Regulations on Customs Testing: <http://www.customs.gov.cn/tabid/399/ctl/InfoDetail/InfoID/158338/mid/60432/Default.aspx?ContainerSrc=>

3. Decree of GACC No. 79 [2014] Announcement of the People's Republic of China on Publication of Customs Testing Methodologies: <http://www.customs.gov.cn/publish/portal0/tab49564/info723725.htm>
4. GACC's interpretation (five adjustments) on Customs Testing Methodologies of People's Republic of China: <http://www.customs.gov.cn/publish/portal0/tab1/info165509.htm>

3.1 A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

Laws and Regulations

Customs:

Customs may conduct second tests.

Article 11 of Decree of GACC No. 138 Administrative Measures of the People's Republic of China on Customs Test of Import and Export Goods provides, 'for any of the following cases, customs may conduct a re-test of goods that have been tested:

- (1) further confirmation of certain properties of the tested goods is required, for failure to confirm the genuine properties of the goods at issue during the first test;
- (2) the goods are suspected of breaches of regulations on trafficking and thus require a re-test;
- (3) the consignor/consignee of import or export goods objects to the conclusion of a customs test, requests a second test and obtains consent from customs;
- (4) other scenarios deemed necessary by customs.

Re-test shall be processed pursuant to Articles 6 to Articles 10 of the Measures, and re-test personnel shall mark 'Re-test' on the test record.' (Link 1)

Article 39, Chapter 8 'Re-test' of Work Regulations on Customs Testing provides, 'where a consignor/consignee or the agent thereof has objections to the conclusion of the test, he or she may apply within 15 days starting from the date of publication of the conclusion to customs for a re-test, and explain the reasons thereof. Within 3 days from the date of receiving the application for re-test, the customs authority shall transfer Application Form of the People's Republic of China for Customs Testing of Import and Export Goods (Re-test) (for the format of the text, refer to Attachment 7) to the Customs Testing Center via the 'China Customs Laboratory Information Management System'. In cases of objections from the customs authority to the conclusion of the test, it may apply to the Customs Testing Center

for re-test within 15 days since the date of receiving Letter of Test Result. The consignor/consignee or the agent thereof, and the customs authority may apply only once for re-test of the same good.

Article 40 Within 15 days since the date of receiving the application for re-test, the Customs Testing Center shall conduct re-test of the sample in question, issue Letter of Customs Test Result of the People's Republic of China of Import and Export Goods (Re-test) (for the format of the text, refer to Attachment 8), and publish the conclusion of the test according to provisions of Article 23 and Article 24 of this system. The testing personnel of the first test shall not undertake the re-test.

Article 41 An entrusted testing agency shall not undertake the re-test. In cases where the consignor/consignee or the agent thereof or the customs authority has objections to the conclusion of the entrusted test, application may be filed to the Customs Testing Center for re-test according to provisions of Article 39, and the customs authority shall promptly send the sample that it keeps to the Customs Testing Center.' (Link 2)

Inspection and Quarantine: Article 5 of Measures on Re-test of Commodities for Importation or Exportation provides, 'in cases where the inspection applicant has objections to the test result issued by the inspection and quarantine agency, he or she may apply to this agency or the superior agency thereof for re-test, or may apply to AQSIQ for re-test. The inspection and quarantine agency that handles re-test applications or AQSIQ shall be responsible for the implementation of the re-test.' (Link 3)

General Comment

Customs and I&Q: The regulations are clear, and the implementation is adequate.

Links

1. Decree of GACC No. 138 Administrative Measures of the People's Republic of China on Customs Test of Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab399/info265096.htm>
2. Shu Shui Fa No.511 [2008] Work Regulations on Customs Testing: <http://www.customs.gov.cn/tabid/399/ctl/InfoDetail/InfoID/158338/mid/60432/Default.aspx?ContainerSrc=>
3. Decree of AQSIQ No.77 Measures on Re-test of Commodities for Importation or Exportation: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/20052006/200610/t20061027_239290.htm

3.2 A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the

importer when it is granted the opportunity provided under paragraph 3.1.

Implementation

State & customs: The State has published the list of officially accredited laboratories and testing agencies; (Links 1, 2 and 3)

Customs published the list of testing centers under it. (Link 4)

General Comment

State & customs: The implementation is adequate.

Links

1. The list of officially accredited laboratories: <https://www.cnas.org.cn/rkcx/2013/03/728834.shtml>
2. The list of officially accredited testing agencies: <https://www.cnas.org.cn/rkcx/2013/03/728833.shtml>
3. The list of officially accredited inspection agencies: <https://www.cnas.org.cn/rkcx/2013/03/728835.shtml>
4. Testing information inquiry under GACC's portal website: <http://www3.customs.gov.cn/tabid/7090/Default.aspx>

3.3 A Member shall consider the result of the second test, if any, conducted under paragraph 3.1, for the release and clearance of goods and, if appropriate, may accept the results of such test.

Laws and Regulations

Customs and I&Q: As per regulations, both customs and Inspection and Quarantine authorities may accept the re-test result.

General Comment

Customs and I&Q: The regulations are clear, and the implementation is adequate.

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES

General Comment

1. In recent years, customs and Inspection and Quarantine authorities have made efforts and achieved marked progress in terms of reducing the number of fees and charges and the publication of information thereof;
2. The relevant requirements of this provision have been relatively adequately implemented by China Customs;
3. The general feedback from the business community is that the scope of fees and charges of Inspection and Quarantine authorities is too extensive;
4. The charges levied on public institutions by customs and Inspection and Quarantine authorities and the service charges collected via third-party agencies affiliated to the above authorities still have further room for regulation and standardization.

1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

1.1 The provisions of paragraph 1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.

1.2 Information on fees and charges shall be published in accordance with Article 1. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

Implementation

Customs and I&Q: Information related to fees and charges including the diversity, standards, bases and reasons thereof is published on the portal websites of China Customs and Inspection and Quarantine authorities. (Links 1, 2 and 3)

General Comment

Customs and I&Q: The implementation is adequate.

Links

1. China Customs' current list of administrative charges: <http://www.customs.gov.cn/publish/portal0/tab49588/info719580.htm>

2. Charge information published by Inspection and Quarantine authorities: <http://120.27.27.168/TSJ/ChargePublic/Html/html/yilan.html?id=78d8f889-f3e8-4d95-b4bd-f245b79909da>
3. Charging measures of Entry-Exit inspection and quarantine: http://www.aqsiq.gov.cn/xxgk_13386/jgfl/tgyws/zcfg/201210/t20121016_250849.htm

1.3 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

Implementation

Customs and I&Q: The levying of such fees and charges by China's entry-exit administrators usually leaves a gap between the publication and the entry into force of such fees and charges, and information publication also precedes the application of the regulations. (Links 1, 2 and 3)

Links

1. AQSIQ's relevant regulations and notices: <http://jhews.aqsiq.gov.cn/sfgl/>
2. Decree of AQSIQ No.311 [2014] Notice of AQSIQ on Conducting free of charges on paperless customs clearance form: <http://jhews.aqsiq.gov.cn/sfgl/sfyj/crjyjjy/2014/>
3. Document of Charge basis of Beijing Entry-Exit Inspection and Quarantine Bureau: http://www.bjciq.gov.cn/shoufei/Channel_2303/

1.4 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

Implementation

Customs: Starting from 2008, Ministry of Finance, National Development and Reform Commission and China Customs canceled and suspended all administrative fees and charges relating to import and export collected by customs, including:

In 2008, Ministry of Finance and National Development and Reform Commission's Notice on Publishing the Cancellation and Termination of Collection of 100 Administrative Fees and Charges canceled the fees and charges levied for the cost of customs certificate and document for import and export of goods;

In 2012, Ministry of Finance and National Development and Reform Commission's Notice on Publishing the Cancellation and Exemption of

Some Administrative Charges canceled the ATA document adjustment fee and goods, luggage and articles care fee levied by customs.

In 2012, Announcement of GACC No. 45 Several Measures of GACC on Promoting the Steady Growth of Foreign Trade provides for the cancellation of printing fee of the proof page of the paper declaration form for import and export goods (used for foreign exchange payment for import, and foreign exchange collection for export), printing fee of the tax drawback page of the export declaration form, declaration form barcode fee and customs regulatory fee; and provides for the acceleration of the cancellation of ATA document adjustment fee and goods, luggage, and articles care fee;

Announcement of GACC No. 45 [2012] referenced Ministry of Finance's Notice on Cancelling and Exempting Relevant Administrative Charges during Import and Export, which cancelled the customs regulatory fee and the inspection and quarantine fee for entry and exit;

In April 2015, GACC released Notice on Canceling Three Charges including Customs Advance Classification Service (Shu Cai Fa [2015] No. 86), requiring customs authorities across the country to cancel three operational service charges including customs advance classification service, paper and electronic Letter of Entrustment for Customs Declaration Brokerage, and safe product subsequent service (including re-issuance of card, alteration, extension and unlocking). (Links 1, 2, 3, 4, 5, 6 and 7)

Inspection and Quarantine: China's Inspection and Quarantine authorities consolidated a multitude of fees and charges, and canceled more than 10 fees and charges including inspection of export commodities. (Link 8)

General Comment

Customs and I&Q: The implementation is adequate.

Links

1. Ministry of Finance and National Development and Reform Commission's Notice on Publishing the Cancellation and Termination of Collection of 100 Administrative Fees and Charges: http://www.gov.cn/gongbao/content/2013/content_2371600.htm
2. Announcement of GACC No. 45 Several Measures of GACC on Promoting the Steady Growth of Foreign Trade: <http://www.customs.gov.cn/publish/portal0/tab49612/info624480.htm>
3. Ministry of Finance's Notice on Cancelling and Exempting Relevant

Administrative Charges during Import and Export: http://zhs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201209/t20120925_684764.html

4. Notice of Rectifying and standardizing operation services and charges in import and export link jointly released by National Reform Commission, GACC and other four ministries (Fa Gai Dian No.198 [2014]): http://www.sdpc.gov.cn/gzdt/201407/t20140730_620592.html

5. Several Measures of GACC on supporting the Steady Growth of Foreign Trade: <http://www.customs.gov.cn/publish/portal0/tab49564/info707366.htm>

6. Notice on Canceling Three Charges including Customs Advance Classification Service (Shu Cai Fa [2015] No. 86): <http://www.customs.gov.cn/publish/portal122/tab64478/info736252.htm>

7. Notice of further clean up and standardize the charges in import/export link jointly issued by National Reform Commission, GACC and other five ministries (Fa Gai Jia Ge No.1963 [2015]): http://jgs.ndrc.gov.cn/zcfg/201509/t20150902_750034.html

8. Fees and Charges cancelled and suspended by China's Inspection and Quarantine authorities: <http://120.27.27.168/TSJ/ChargePublic/Html/html/yilan.html?id=7b3f60db-3a1b-4cc9-b25f-6fefb5b0350f>

2 Specific disciplines on Fees and Charges for Customs Processing Imposed on or in Connection with Importation and Exportation

Fees and charges for customs processing:

(i) shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and

(ii) are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

Implementation

Customs: Currently, China Customs only levies charges for delayed declaration and delayed payment; collection of IPR recordation fee has been suspended.

General Comment

Customs and I&Q: Customs administrative charges have been largely removed, charges levied by public institutions have also been reduced or canceled. Enterprises do not harbor grievances for the charges imposed by customs.

Inspection and Quarantine authorities have made significant headway in reducing fees and charges, however, the current fees and charges are

still rather diverse and high.

Recommendations

- Customs: Further regulate the fees and charges levied for public services by customs data sub-centers of each port.
- Inspection and Quarantine: The collection of fees and charges by Inspection and Quarantine authorities needs to be further systematized and regulated.

3 Penalty Disciplines

3.1 For the purpose of paragraph 3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs laws, regulations, or procedural requirements.

3.2 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

General Comment

- Customs and I&Q: The regulations are clear, and the implementation is adequate. (Links 1 and 2)

Links

1. Decree of the State Council No. 420 Implementation Regulations of the People's Republic of China on Customs Administrative Penalty: <http://www.customs.gov.cn/publish/portal0/tab2748/info3485.htm>
2. Decree of AQSIQ No.85 Procedure regulation of administrative penalty on Entry-Exit Inspection and Quarantine: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/20052006/200610/t20061027_239282.htm

3.3 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

General Comment

- Customs and I&Q: The regulations are clear, and the implementation is adequate. (Links 1 and 2)

Recommendations

- Customs and I&Q: 1. Customs and Inspection and Quarantine authorities should summarize

the current internal administrative interpretations of administrative laws and regulations (e.g. customs internal standards on the exercise of discretion), and make publicly available the summarized information in a form similar to that of judicial interpretations, thereby providing guidance for enterprises to standardize operations and avert risks;

2. Publish administrative penalty cases after appropriate treatment measures.

3.4 Each Member shall ensure that it maintains measures to avoid:

(a) conflicts of interest in the assessment and collection of penalties and duties; and

(b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

General Comment

The implementation is adequate.

3.5 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

Laws and Regulations

Decree of the State Council No. 420 Implementation Rules of the People's Republic of China on Customs Administrative Penalty has set out explicit provisions regarding penalty procedures. (Link 1)

General Comment

The system is sound, and the implementation is adequate.

Links

1. Decree of the State Council No. 420 Implementation Rules of the People's Republic of China on Customs Administrative Penalty: <http://www.customs.gov.cn/publish/portal0/tab2748/info3485.htm>

3.6 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

Laws and Regulations

On 19 June, 2016, Decree of the State Council No. 670 published the revised Regulations of the People's Republic of China on Customs Audit. Article 26 therein provides, 'in cases where an enterprise or

entity directly connected with goods for importation and exportation reports to customs of its breach of customs regulatory requirements and accepts the treatment of the customs authority, the administrative penalty shall be mitigated or reduced.’ (Link 1)

Announcement of GACC No. 82 [2014] Notice on Releasing the Standards on Customs Accreditation of Enterprises provides, ‘in cases where non-brokerage enterprises conduct self-examination, detect breaches and report to customs, the warnings issued by customs and fines below 30,000 RMB shall not be included in the total number of breaches; in cases where brokerages conduct self-examination, detect breaches and report to customs, the warnings issued by customs and fines below 10,000 RMB shall not be included in the total number of breaches.’ (Link 2)

Implementation

China Customs is gradually promoting pilots on voluntary disclosure. Starting from July and August 2014, GACC began to roll out enterprise self-discipline management pilots at 10 customs authorities directly under it (each such customs authority then chooses some affiliated customs authorities), and expanded this pilot to Fujian, Tianjin and Guangdong Free Trade Zone. For instance, Notice on Conducting Enterprise Self-discipline Management Pilot, Notice of Shanghai Customs on Releasing Practical Guide on Enterprise Self-Discipline Management, Notice of Shanghai Customs on Implementing Self-Discipline Management for Enterprises within China’s (Shanghai) Free Trade Zone, and Several Measures of GACC on Supporting and Promoting the Construction and Development of China’s (Fujian) (Tianjin) (Guangdong) Free Trade Zones. (Links 3, 4, 5 and 6)

General Comment

Pilots have commenced, and are yet to be fully implemented.

Recommendations

Establish and implement voluntary disclosure-related systems as early as possible.

Links

1. Decree of the State Council No. 670 the revised Regulations of the People’s Republic of China on Customs Audit: <http://www.customs.gov.cn/publish/portal0/tab49564/info807275.htm>
2. Announcement of GACC No. 82 [2014] Notice on Releasing the Standards on Customs Accreditation of Enterprises: <http://www.customs.gov.cn/publish/portal0/tab49659/info724460.htm>
3. Notice on Conducting Enterprise Self-discipline Management Pilot: <http://www.customs.gov.cn/publish/portal107/tab62194/info710375.htm>

4. Notice of Shanghai Customs on Releasing Practical Guide on Enterprise Self-Discipline Management: <http://shanghai.customs.gov.cn/publish/portal27/tab61724/info719656.htm>
5. Notice of Shanghai Customs on Implementing Self-Discipline Management for Enterprises within China's (Shanghai) Free Trade Zone: <http://www.customs.gov.cn/publish/portal27/tab61724/info712287.htm>
6. Several Measures of GACC on Supporting and Promoting the Construction and Development of China's (Fujian) (Tianjin) (Guangdong) Free Trade Zones: <http://www.customs.gov.cn/publish/portal0/tab1/info739938.htm>

3.7 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

Implementation

Customs and I&Q: Implementation rules on customs administrative penalty and regulations on administrative penalty procedures for entry-exit inspection and quarantine also apply to goods in transit. (Links 1 and 2)

General Comment

Customs and I&Q: The implementation is adequate.

Links

1. Decree of the State Council No. 420 Implementation Rules on Customs Administrative Penalty: <http://www.customs.gov.cn/publish/portal0/tab2748/info3485.htm>
2. Decree of AQSIQ No.85 Procedure regulations of administrative penalty on Entry-Exit Inspection and Quarantine: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/20052006/200610/t20061027_239282.htm

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1 Pre-arrival Processing

1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

Laws and Regulations

China Customs enforced Administrative Measures of the People's Republic of China on Manifests of Inbound and Outbound Means of Transport on 1 January, 2009. Article 9 therein provides, 'the manifest transferer shall transfer the original manifest data to customs prior to the arrival of inbound goods and items at the destination port. After customs receives the main data of the original manifest, the consignee and entrusted customs declarant may initiate the declaration procedures to customs for goods and items. (Link 1)

On 22 October 2014, GACC released Announcement No. 74 Announcement on Clarifying the Administrative Requirements on Advance Declaration of Import and Export Goods. Article 1 therein provides, 'in cases where the consignor or consignee or the entrusted customs broker declares in advance, he or she shall first obtain data of the bill of lading or the manifest.' (Link 2)

Paragraph (2) of Announcement of GACC No. 74 [2014] Announcement on Clarifying the Administrative Requirements on Advance Declaration of Import and Export Goods provides, 'in cases where the consignor or consignee or the entrusted customs broker declares in advance, he or she shall first obtain data of the bill of lading or the manifest.' Advance declaration of import goods to customs shall be conducted after the departure of the inbound transport vehicle carrying the goods in question and prior to the arrival thereof at the customs regulatory premises; advance declaration of export goods shall be conducted within the three days prior to the arrival of the goods in question at the customs regulatory premises.' (Link 3)

Implementation

The system is complete, but according to research, it is not fully implemented.

Recommendations

Advance declaration is conducive to accelerating port clearance and release, and it is recommended that research and investigation

be carried out on the cause for failure to implement the advance declaration system, with a view to facilitating the implementation of the advance declaration system.

Links

1. Decree of GACC No.172 [2009] Administrative Measures of the People's Republic of China on Manifests of Inbound and Outbound Transport Vehicles: <http://www.customs.gov.cn/publish/portal0/tab399/info106314.htm>
2. Decree of GACC No. 74 [2014] Announcement on Clarifying the Administrative Requirements on Advance Declaration of Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab49564/info721895.htm>
3. GACC No. 74 [2014] Annoucement on Clarifying the Administrative Requirements on Advance Declaration of Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab49564/info721895.htm>

1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

Implementation

China Customs has put in place a comprehensive automatic customs clearance system. Manifests and declaration documents of import and export goods may all be submitted in electronic format.

General Comment

The implementation is adequate.

2 Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

Laws and Regulations

In March 2011, China Customs released Announcement No. 17 Announcement on Conducting Electronic Payment Operations for Customs Duties, specifying that a third-party payment system will undertake the payment operation for customs duties at the enterprise end. (Link 1)

Implementation

The taxes that are electronicized by customs include: import and

export duties, anti-dumping tax, anti-subsidy tax, taxes collected during import on behalf of other authorities, interest on delayed tax, charge on delayed payment, surety, charge on delayed declaration, and fund of disposal of imported waste electric and electronic products.

According to preliminary estimations, electronically paid customs taxes already account for more than 90% against the total amount of tax payment. (Links 2 and 3)

As of now, third-party payment platforms that have been approved include Shanghai Orient Electronic Payment Co., Ltd; Shanghai ChinaPay Electronic Payment Co., Ltd; Tianjin ReaPal Electronic Payment Co., Ltd.; and Clearing Center for City Commercial Banks.

Recommendations

1. Tax payment via electronic payment platforms significantly facilitates the operations of importers and exporters, however, such platforms shall be an organic component of the customs clearance system and provided free of charge to businesses;
2. Publish the entry threshold for third-party payment platforms, and achieve adequate competition.

Links

The electronic payment operations at each regional customs that have been reported in some public news:

1. Decree of GACC No.17 [2011] Announcement on Conducting Electronic Payment Operations for Customs Duties: <http://www.customs.gov.cn/publish/portal0/tab399/info300880.htm>
2. From Jan to Jun 2015, the electronic payment of taxes (including electric warranty) in Tianjin Customs accounted for 94% of the total tax: <http://www.customs.gov.cn/publish/portal169/tab62564/info766184.htm>
3. Electronic payment ratio in Qingdao Customs has reached 97% in the first half of 2013: <http://www.customs.gov.cn/publish/portal0/tab65602/info622623.htm>

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

General Comment

Partial implementation.

Recommendations

1. Offer guarantee-free inspection for businesses that have been

accredited as high-level AEOs, with a view to incentivizing enterprises to implement the AEO system;

2. Allow the implementation of comprehensive guarantees on an enterprise by enterprise basis; cancel applications for guarantee on a consignment by consignment basis;

3. Allow a group company, under a customs authority, to implement comprehensive guarantees for its subordinate enterprises;

4. Allow a financial institution to provide comprehensive guarantees for any enterprise;

5. Specify the operational procedures for guarantee application and approval, and ensure that import and export guarantee applications that meet certain standards may secure approval smoothly.

3.1 Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

Implementation

Goods may be released prior to tax determination and collection via guarantees. In 2008, guarantee-free inspection was made available to AA enterprises (now known as enterprises accredited as high-level AEOs) in the form of internal documents. However, given that this system does not have corresponding implementation procedures, and implementation levels vary across ports, in general, only a very limited number of enterprises have benefited.

General Comment

Preliminary implementation. (For detailed information, refer to later reviews).

3.2 As a condition for such release, a Member may require:

(a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or

Laws and Regulations

Article 4 of Decree of the State Council No. 581 Regulations of the People's Republic of China on Guarantees for Customs Affairs provides, 'for any of the following scenarios, the person may apply to

customs for the provision of guarantee prior to completion of customs formalities, requesting advance release of goods:

- (1) Classification of goods, customs value and place of origin of the import and export goods are yet to be determined;
- (2) Valid declaration documentation is yet to be provided;
- (3) Tax has not been paid within the tax payment period;
- (4) Delayed declaration fee is yet to be paid;
- (5) Other customs formalities are yet to be completed.' (Link 1)

Article 49 of Decree of GACC No. 213 Measures of the People's Republic of China on Customs Review and Determination of Customs Value of Import and Export Goods, which entered into force in 2014, provides, 'while customs review and determination is being conducted of the customs value of import and export goods, the taxpayer may pick up goods in advance, after providing guarantee to customs according to law.' (Link 2)

At the institutional level, via provision of guarantee, customs may release goods prior to determination and payment of tax and charges for the goods at issue.

Implementation

In practice, the current guarantee-based release system is yet to be detailed in terms of guarantee forms, guarantee applications, and approval procedures; differences exist regarding customs implementation and enforcement levels at various ports, and the level of facilitation afforded falls short of expectations of the business community.

Links

1. Decree of the State Council No. 581 Regulations of the People's Republic of China on Guarantees for Customs Affairs: <http://www.customs.gov.cn/publish/portal0/tab399/info239909.htm>
2. Decree of GACC No. 213 Measures of the People's Republic of China on Customs Review and Determination of Customs Value of Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab49564/info692855.htm>

(b) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.

Laws and Regulations

Article 78 of Decree of GACC No. 124 Administrative Measures of the People's Republic of China on Tax Levied on Import and Export Goods provides, 'except as otherwise provided, the tax guarantee

period usually shall not be longer than six months, and under exceptional circumstances, an extension, as appropriate, may be given after permission is obtained from the director, or the person it authorizes, of the customs authority directly under GACC.

Tax guarantee usually shall be in forms of surety, or letter of guarantee by banks or non-banking financial institutions, except as otherwise provided.’ (Link 1)

Links

1. Decree of GACC No. 124 Administrative Measures of the People’s Republic of China on Tax Levied on Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab399/info4487.htm>

3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

Laws and Regulations

Article 14 of Regulations of the People’s Republic of China on Guarantee for Customs Affairs provides, ‘guarantee provided by the party shall be commensurate with his/her due legal obligations, and except for scenarios as provided for in Paragraph 2, Article 7 of the Regulations, the amount of guarantee shall be determined pursuant to the following standards:

(1) the amount of guarantee provided for advance release of goods shall not exceed the maximum tax amount that may be borne;’ (Link 1)

General Comment

This provision has been adequately implemented by China Customs.

Links

1. Decree of the State Council No. 581 Regulations of the People’s Republic of China on Guarantee for Customs Affairs: <http://www.customs.gov.cn/publish/portal0/tab399/info239909.htm>

3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

Laws and Regulations

Article 8 of Decree of the State Council No. 581 Regulations of the People’s Republic of China on Guarantee for Customs Affairs provides, ‘in cases where legal persons and other organizations are penalized by customs and the fines, illegal gains or the equivalent value of the goods, items, and trafficked transport vehicles that

should be collected according to law but are yet to be collected in full, the legal representative and the main personnel responsible for the above behaviors shall provide guarantee to customs before they exit the border; in case of failure to do so, customs may notify exit administrations to prevent the legal representative or the main personnel responsible for the above behaviors from exiting the border. This provision applies to the border crossing of natural persons penalized by customs.’ (Link 1)

General Comment

The implementation is adequate.

Links

1. Decree of the State Council No. 581 Regulations of the People’s Republic of China on Guarantee for Customs Affairs: <http://www.customs.gov.cn/publish/portal0/tab399/info239909.htm>

3.5 The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

Laws and Regulations

Article 20 of Regulations of the People’s Republic of China on Guarantee for Customs Affairs provides, ‘for any of the following cases, customs shall notify the party in writing to complete procedures for the return of guarantee assets and rights:

- (1) the party has fulfilled relevant legal obligations;
- (2) the party is no longer engaged in a particular customs business;
- (3) an excess amount exists of the guarantee asset and right after being used to pay the amount due by customs;
- (4) other scenarios where such assets and rights need to be returned.’ (Link 1)

General Comment

The implementation is adequate.

Links

1. Decree of the State Council No. 581 Regulations of the People’s Republic of China on Guarantee for Customs Affairs: <http://www.customs.gov.cn/publish/portal0/tab399/info239909.htm>

3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

Laws and Regulations

Article 18 of Regulations of the People's Republic of China on Guarantee for Customs Affairs provides, 'in cases where the guaranteed person fails to fulfill relevant legal obligations in a time-bound manner, customs may use the guarantee asset and right to pay the amount due. In cases where the party provides guarantee in the form of letter of guarantee, customs may directly require the guarantor who assumes joint liability to fulfill guarantee obligations.

Where the guarantor has fulfilled the guarantee responsibility, the guaranteed person is not thus freed of the obligation to complete relevant customs formalities. Customs shall process relevant customs formalities for the guaranteed person in a timely manner.' (Link 1)

General Comment

The implementation is adequate.

4 Risk Management

4.1 Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

Laws and Regulations

In April 2004, China Customs officially initiated the implementation of Strategic Plan on the Second Step of Development of the Modern Customs System 2004-2010, which puts the establishment and improvement of risk management mechanisms at its core, and aims to build smart customs with 'sharp ears and clear eyes'. Reforms and developments at various fronts continue to secure new achievements. (Link 1)

Decree of the State Council No. 670 revised Article 9 of Regulations of the People's Republic of China on Customs Audit as 'customs shall determine the focus of customs audits as per customs regulatory requirements, and according to the import and export credit and risks of enterprises and entities in direct connection with import and export goods as well as the specific circumstances of the import and export goods.' (Link 2)

Implementation

GACC and customs authorities at each port have all set up dedicated risk management departments, to assume risk analysis and management responsibilities.

General Comment

The implementation is relatively adequate.

Links

1. Strategic Plan on the Second Step of Development of the Modern Customs System (Revised in 2006) <http://www.customs.gov.cn/publish/portal0/tab7987/info720133.htm>
2. Decree of the State Council No.209 Regulations of the People's Republic of China on Customs audit: <http://www.customs.gov.cn/publish/portal0/tab2748/info3605.htm>

4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

Implementation

No arbitrary or unreasonable discrimination, or disguised restraints, have been detected.

4.3 Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.

Implementation

China Customs employed systematic big data analysis on enterprises, goods, importing countries, customs duty rates, trade regulation, etc., and completed a preliminary determination of regulatory focus and the application of administrative means.

General Comment

Preliminary implementation.

4.4 Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

General Comment

The implementation has been largely completed.

5 Post-clearance Audit

5.1 With a view to expediting the release of goods, each Member shall adopt or maintain postclearance audit to ensure compliance with customs and other related laws and regulations.

Laws and Regulations

On 17 June, 2016, Decree of the State Council No. 670 (Decision on Amending Regulations of the People's Republic of China on Customs Audit)

On 28 August, 2005, GACC released Decree No. 79 Implementation Measures on Regulations of the People's Republic of China on Customs Audit. (Links 1 and 2)

General Comment

The implementation is adequate.

Recommendations

The amended customs audit regulations have been promulgated, and the implementation measures thereof shall be amended as soon as possible.

Links

1. Decree of the State Council No. 670 (Decision on Amending Regulations of the People's Republic of China on Customs Audit): <http://www.customs.gov.cn/publish/portal0/tab49564/info807275.htm>
2. Decree of GACC No. 79 Implementation Measures on Regulations of the People's Republic of China on Customs Audit: <http://www.customs.gov.cn/publish/portal0/tab399/info4346.htm>

5.2 Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct postclearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.

Laws and Regulations

Customs Audit Regulations and Implementation Measures on Audit Regulations have provided for the relevant procedures of customs audit, including advance notification, subsequent issuance of Customs Audit Conclusion, etc.

Implementation

Certain enterprises respond that customs audit schedules are unpredictable, and a single audit may take, on-and-off, up to several months or even a year, causing difficulties for enterprises to co-operate with customs audit efforts.

General Comment

The implementation is largely completed, and there is still room for

improvement.

Recommendations

Formulate procedural requirements regarding the schedule of audits, thereby facilitating the cooperation of enterprises.

5.3 The information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

General Comment

The implementation is adequate.

5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

General Comment

The implementation is adequate.

6 Establishment and Publication of Average Release Times

Laws and Regulations

Article 18 of the State Council's Reform Plan on Promoting the Development of Big Customs Clearance via Implementing Mutual Information Exchange, Mutual Regulatory Recognition and Mutual Law Enforcement Assistance provides, 'establish an evaluation system of the import and export ports' release time of goods, uniformly evaluate and publish the average release efficiency of ports across the country.' (Link 1)

Implementation

Yet to be implemented.

Links

1. State Council's Reform Plan No.68 [2014] on Promoting the Development of Big Customs Clearance via Implementing Mutual Information Exchange, Mutual Regulatory Recognition and Mutual Law Enforcement Assistance: http://www.gov.cn/zhengce/content/2015-02/03/content_9448.htm

6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, inter alia, the Time Release Study of the World Customs Organization (referred to in this Agreement as the "WCO").

General Comment

Yet to be implemented.

6.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

General Comment

Yet to be implemented.

7 Trade Facilitation Measures for Authorized Operators

Laws and Regulations

In 2014, China Customs announced the implementation of Decree of GACC No. 225 Provisional Measures of the People's Republic of China on Customs Administration of Enterprise Credit and No. 82 Standards on Customs Accreditation of Enterprises.

General Comment

The implementation is adequate.

Links

1. Decree of GACC No. 225 Provisional Measures of the People's Republic of China on Customs Administration of Enterprise Credit: <http://www.customs.gov.cn/publish/portal127/tab62473/info724709.htm>
2. Notice of GACC No. 82 Standards on Customs Accreditation of Enterprises: <http://www.customs.gov.cn/publish/portal0/tab65598/info724300.htm>

7.1 Each Member shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

Laws and Regulations

Article 16, Decree of GACC No. 225 Provisional Measures of the People's Republic of China on Customs Administration of Enterprise Credit provides, 'the following management principles and measures apply to generally accredited enterprises:

- (1) a relatively low rate of inspection of import and export goods;
- (2) simplified documentation review of import and export goods;

- (3) prioritized processing of customs clearance formalities of import and export goods;
- (4) other management principles and measures as provided for by GACC.

Article 17 For enterprises with high-level accreditations, apart from the application of management principles and measures for generally accredited enterprises, the following management measures also apply:

- (1) Handling the inspection and release formalities prior to determination of classification of goods, customs valuation and place of origin regarding import and export goods, or prior to completion of other customs formalities;
- (2) customs appoints a coordinator for an enterprise;
- (3) for enterprises engaged in processing trade, the system of bank surety account is not implemented;
- (4) clearance facilitation measures offered by AEO mutually-recognized countries or local customs.’

General Comment

The implementation is relatively adequate.

7.2 The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

Laws and Regulations

Standards on Customs Accreditation of Enterprises that has been published contains the above content.

General Comment

The implementation is adequate.

(i) an appropriate record of compliance with customs and other related laws and regulations;

Laws and Regulations

Article 3 of Standards on Customs Accreditation of Enterprises sets out clear requirements on the four aspects of ‘compliance with laws and regulations, regulations on import and export business, compliance with customs administrative requirements, no previous adverse records’.

General Comment

The implementation is adequate.

(ii) a system of managing records to allow for necessary internal controls;

Laws and Regulations

Article 1 of Standards on Customs Accreditation of Enterprises specifies requirements of the four aspects of ‘control of the organization institution, control of the import and export business, internal auditing, and information system control’.

General Comment

The implementation is adequate.

(iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

Laws and Regulations

Both the general and high-level enterprise accreditation standards contained within Standards on Customs Accreditation of Enterprises have provided for the solvency capacity and tax payment capacity of enterprises:

Solvency capacity: (1) the quick ratio shall be within a safe or normal range. (2) the asset/liability ratio shall be within a safe or normal range.

Tax payment capacity: for productive consignors/consignees of import and export goods, the net value thereof of fixed assets by the end of the preceding month shall not be lower than the maximum of single tax payment to customs within the last three years. For non-productive consignors/consignees of import and export goods, the net operational cash flows of the preceding year shall not be negative.

General Comment

The implementation is adequate.

(iv) supply chain security.

Laws and Regulations

Article 24 ‘Safety of Business Partners’ and Article 25 ‘Safety of Goods’ of the standards on general enterprise accreditation both contain such requirements. Article 26 ‘Safety of Personnel’, Article 27 ‘Safety of Business Partners’, and Article 28 ‘Safety of Goods’ of the standards on high-level enterprise accreditation all contain similar requirements.

General Comment

The implementation is adequate.

(b) Such criteria shall not:

(i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

General Comment

Enterprises with the same level of creditworthiness are subject to the same customs administrative measures, therefore China Customs is not discriminatory in this regard.

(ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

Laws and Regulations

Provisional Measures of the People's Republic of China on Customs Administration of Enterprise Credit canceled the standards on size, i.e. in the preceding year, total import and export value shall be more than 500,000 USD, total numbers of brokered import and export declaration forms and of entry and exit recordation lists shall be more than 20,000 and 30,000 consignments, and canceled the requirement that the current credit rating of newly-registered enterprises shall have been kept for one year.

General Comment

The implementation is adequate.

7.3 The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least three of the following measures:

Implementation

Regarding facilitations for AEOs, measures as listed in (b), (c), (d), (e) and (g) have been implemented, and the measures as listed in the other items are yet to be implemented.

General Comment

The implementation is relatively adequate.

(a) low documentary and data requirements, as appropriate;

(b) low rate of physical inspections and examinations, as appropriate;

(c) rapid release time, as appropriate;

(d) deferred payment of duties, taxes, fees, and charges;

(e) use of comprehensive guarantees or reduced guarantees;

(f) a single customs declaration for all imports or exports in a given period; and

(g) clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

Laws and Regulations

Provisional Measures of the People's Republic of China on Customs Administration of Enterprise Credit has fully integrated the advanced concepts of the 'Authorized Economic Operators (AEO)' system contained within the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade, and specifies that 'authorized enterprises' by China Customs are equivalent to AEOs, and are eligible for the preferential treatment and customs clearance facilitation measures afforded by customs authorities of China and of countries (regions) with which China has entered into mutual recognition agreements.

General Comment

The implementation is adequate.

7.5 In order to enhance the trade facilitation measures provided to operators, Members shall afford to other Members the possibility of negotiating mutual recognition of authorized operator schemes.

Implementation

In March 2013, China and Singapore achieved mutual recognition of AEOs (referred to as STP-Plus in Singapore);

In April 2014, China and Korea achieved mutual recognition of AEOs;
In May 2014, the Chinese Mainland and Hong Kong SAR achieved mutual recognition of AEOs;

In November 2015, China and the European Union achieved mutual recognition of AEOs.

In 2008, China and the US commenced joint inspection efforts under the Customs-Trade Partnership Against Terrorism (C-TPAT), Sino-US negotiations on AEO mutual recognition has secured important achievements, general consensus on mutual recognition pilots has been obtained from the two parties, and AEO mutual recognition arrangements are expected to be officially signed in 2016.

General Comment

Implementation is still in progress.

7.6 Members shall exchange relevant information within the Committee about authorized operator schemes in force.

Implementation

China Customs actively participates in the annual AEO communications facilitated by the World Customs Organization, and shares its implementation experience regarding AEOs.

General Comment

The implementation is adequate.

8 Expedited Shipments

Laws and Regulations

Regarding expedited shipments, China Customs released Measures of the People's Republic of China on Customs Supervision and Administration of Entry-Exit Expedited Shipments, which provides for the implementation of different types of customs clearance declaration approaches for different types of expedited shipments, and contributes positively to the acceleration of turnover of expedited shipments. (Link 1)

General Comment

The implementation is adequate.

Links

1. Decree of GACC No.147 [2006] Decision on Amending Measures of the People's Republic of China on Customs Supervision of Entry-Exit Expedited Shipments: <http://www.customs.gov.cn/publish/portal0/tab517/info265077.htm>

8.1 Each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control. If a Member employs criteria limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 8.2 to its expedited shipments:

(a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;

Laws and Regulations

Article 14 of Measures of the People's Republic of China on Customs Supervision and Administration of Entry-Exit Expedited Shipments provides, 'customs clearance for expedited shipments intended for entry into or exit out of the border shall be conducted in dedicated regulatory premises approved by customs; where exceptional circumstances warrant such customs clearance outside the aforementioned premises, consent shall be obtained in advance from the customs authority in the relevant jurisdiction. The operator shall set up dedicated premises, warehouses and facilities in accordance with customs regulatory requirements, within the customs regulatory premises dedicated to expedited shipments intended for entry into or exit out of the border.'

General Comment

The implementation is adequate.

(b) submit in advance of the arrival of an expedited shipment the information necessary for the release;

Laws and Regulations

Article 18 of Measures of the People's Republic of China on Customs Supervision and Administration of the Entry and Exit of Expedited Shipments provides that in cases where an operator needs to declare to customs in advance, he or she shall notify customs in writing of the transport and arrival status of expedited shipments intended to enter or exit the country, and transfer or submit to customs the manifest or list. After ascertaining the truthfulness and accuracy of the provided information, customs may accept advance declaration.

General Comment

The implementation is adequate.

(c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2;

Implementation

China Customs does not levy charges on its services for the customs clearance of expedited shipments.

General Comment

The implementation is adequate.

(d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;

Implementation

International expedited shipment enterprises generally apply advanced tracking and control of expedited shipments during the entire process prior to release.

General Comment

The implementation is adequate.

(e) provide expedited shipment from pick-up to delivery;

General Comment

The implementation is adequate.

(f) assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods;

Laws and Regulations

Article 20 of Measures of the People's Republic of China on Customs Supervision and Administration of Entry-Exit Expedited Shipments provides, 'except as otherwise provided, when an operator goes through the declaration formalities for expedited shipments intended to enter or exit the country, he or she shall, pursuant to the classification requirements of Articles 11, 12 and 13 of the Measures, submit to customs respective declaration documents and completes the required declaration and tax payment formalities.'

General Comment

The implementation is adequate.

(g) have a good record of compliance with customs and other related laws and regulations;

Laws and Regulations

For enterprises (including international expedited shipment enterprises) with good credit records, Provisional Measures of the People's Republic of China on Customs Administration of Enterprise Credit offers facilitations for customs clearance.

General Comment

The implementation is adequate.

(h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations, and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

Implementation

The Chinese government has set a high entry threshold for enterprises undertaking international expedited shipment services, and in general, compliance level is high.

General Comment

The implementation is adequate.

8.2 Subject to paragraphs 8.1 and 8.3, Members shall:

(a) minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments;

Laws and Regulations

As per Measures of the People's Republic of China on Customs Supervision and Administration of Entry-Exit Expedited Shipments, operators of expedited shipments shall, as per the classification of the expedited shipment (documents, personal items, goods), submit respective declaration documentations to customs. For declaration documentation per se:

For expedited shipments belonging to the classification of 'documents', KJ1 declaration form shall be submitted;

For the classification of 'personal items', Customs Declaration Form of the People's Republic of China for Expedited Shipment of Personal Items Intended for Entry into or Exit of the Country, shall be submitted;

For the classification of 'inbound goods': specifically, for goods whose customs duty upon entry is below the 50 RMB customs duty threshold, and samples of goods and advertisement articles exempted from customs duty as provided for by customs, KJ2 declaration form shall be submitted; for samples of goods and advertisement articles that are taxable, KJ3 declaration form shall be submitted; for import goods in other scenarios, respective declaration documents shall be submitted as per customs regulations on customs clearance of import goods;

For the classification of 'outbound goods': specifically, for samples of goods and advertisement articles, KJ2 declaration form shall be submitted; for export goods in other scenarios, respective declaration documents shall be submitted as per customs regulations on customs clearance of export goods.

Aside from declaration form, house air waybill of the expedited shipment and invoice are also necessary documentation for customs declaration.

Implementation

KJ1, KJ2 and KJ3 are all simplified declaration forms with special formats, and expedited shipment enterprises complete customs declaration via the exchange of electronic data, thus the customs approval and release procedures are relatively efficient.

General Comment

The implementation is relatively adequate.

(b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;

Implementation

Expedited shipment enterprises submit different declaration documentation as per the aforementioned classifications, and provided that the information submitted is accurate, customs will release the shipments as rapidly as possible.

General Comment

The implementation is relatively adequate.

(c) endeavour to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and

Laws and Regulations

The current valid customs system for expedited shipments differentiates shipments as per value and use, but does not have requirements on the weight of the shipment. But high-value goods (expedited shipments of over 5,000 RMB, as per current regulations) need to be declared via formal declaration formalities.

General Comment

The implementation is relatively adequate.

(d) provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

Laws and Regulations

Article 45 of Regulations of the People's Republic of China on Import and Export Tariff provides, 'the following import and export goods are exempted from customs duties:

- (1) a consignment of goods whose customs duty is below 50 RMB;
- (2) advertisement articles and samples of goods without commercial value;' (Link 1)

General Comment

The implementation is relatively adequate.

Links

1. Decree of the State Council No.392 Regulations of the People's Republic of China on Import and Export Tariff: <http://www.customs.gov.cn/publish/portal0/tab49659/info3487.htm>

8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

Laws and Regulations

Article 19 of Measures of the People's Republic of China on Customs Supervision and Administration of Entry-Exit Expedited Shipments provides, 'customs may directly open up the inbound or outbound expedited shipment for inspection, re-inspection, or collection of samples, where customs deems such action necessary.'

Implementation Rules on Customs Administrative Penalty provides that breaches of regulations involving import and export goods or items for expedited shipment may be penalized according to law.

General Comment

The implementation is adequate.

9 Perishable Goods

Laws and Regulations

Customs:

Article 13 of Decree of GACC No. 138 Administrative Measures of the People's Republic of China on Customs Inspection of Import and Export Goods, provides, 'for dangerous articles or goods not fit for

long-term storage including those that are fresh and alive, perishable and that easily rot, lose efficacy or go bad, and for goods that require urgent inspection and release due to other exceptional circumstances, after the consignor/consignee or the broker thereof of import and export goods submits an application, customs may prioritize the arrangement of inspection for such goods.’ (Link 1)

Article 5 of Directive Rules of the People’s Republic of China on Customs Inspection of Import and Export Goods provides, ‘for dangerous articles or goods not fit for long-term storage including those that are fresh and alive, perishable and that easily rot, lose efficacy or go bad, and for goods that require urgent inspection and release due to other exceptional circumstances, after the consignor/consignee or the broker thereof of import and export goods submits an application, customs may prioritize the arrangement of inspection for such goods.’ (Link 2)

Implementation

Customs: In practice, for perishable or fresh and alive goods, China Customs offers 24/7 customs clearance appointment services.

General Comment

Customs and I&Q: In practice, customs and Inspection and Quarantine authorities provide customs clearance facilitations for perishable or fresh and alive import and export goods, but due to a lack of specific system requirements and operational procedures, such facilitation measures are yet to be standardized.

Recommendations

Customs and I&Q: Establish a customs clearance system dedicated to import and export goods that have exceedingly strict time requirements including those that are perishable, fresh and alive, dangerous, used for disaster relief purposes, extremely valuable, and intended for first-aid purposes.

Links

1. Decree of GACC No. 138 Administrative Measures of the People’s Republic of China on Customs Inspection of Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab399/info265096.htm>
2. Directive Rules of the People’s Republic of China on Customs Inspection of Import and Export Goods: <http://www.customs.gov.cn/publish/portal166/tab68701/info724251.htm>

9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

(a) under normal circumstances within the shortest possible time; and

Laws and Regulations

Customs: China Customs is yet to put in place import and export management measures dedicated to perishable goods.

Implementation

Customs: In practice, if import and export goods are perishable or fresh and alive, customs authorities across localities have facilitation measures to provide protection. For instance, establishment of ‘green channel’ for fresh and alive goods, 24-hour customs clearance appointment, ‘inspection upon arrival, and release upon inspection’, ‘review first, submission of documentation later, and guarantee-based release’, ‘advance declaration, and appointment for overtime’, and other preferential and facilitation measures have provided guarantee for the rapid customs clearance of such goods.

Customs and I&Q: In addition, China Customs, via the ‘three together(declaration together, Inspection together, and release together)’, enhances cooperation with inspection and quarantine authorities, to increase the customs clearance efficiency of perishable or fresh and alive goods and reduce inspection costs. The ‘three singles’ model of cooperation between customs and inspection and quarantine authorities was first implemented in Nansha, Guangdong Province in 2012, and expanded to seven provinces and municipalities including Tianjin and Shanghai in 2013. In July 2014, GACC and AQSIQ issued a joint document, requiring that the ‘three singles’ cooperation model be rolled out nationwide starting from 1 August. On 17 April, 2015, GACC and AQSIQ jointly released the 2015 Work Plan on Proceeding with the Comprehensive Promotion of the ‘Three Singles’ Model of Cooperation between Customs and Inspection Authorities, launching a multitude of measures to comprehensively implement the ‘three singles’ model to all of China Customs and inspection and quarantine authorities directly subordinate to GACC and AQSIQ, all customs clearance premises, and all goods and items requiring declaration and inspection according to law; and ensuring that the uniform ‘single declaration system’ will be operated nationwide starting from 30 April; and demanding, in addition, that ‘single inspection’ and ‘single release’-related work be accelerated. At the end of May 2014, GACC

and AQSIQ conducted research and investigations on the possible approaches to implementing ‘single inspection’ and ‘single release’, reviewed information on the inspection premises of the customs clearance site of the ‘three singles’ model of cooperation, specifies the principle of sharing and mutual use of inspection premises, and offers directive opinions. By the end of May, GACC and AQSIQ comprehensively reviewed the operational procedures and specific directive rules on implementation regarding the ‘three singles’ cooperation model, specified the operational requirements and specific standards of each stage of the operation, optimized work processes, and strengthened the coordination and cooperation between the on-site law enforcement personnel from customs and inspection authorities.

General Comment

Customs and I&Q:

It is reasonable to expect that with the improvement of the ‘three together’ model, the cooperation and coordination between customs and commodity inspection authorities will be more efficient, and the aggregate customs clearance efficiency of perishable or fresh and alive goods will be increased even further.

(b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

General Comment

The implementation is largely completed.

9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

Laws and Regulations

Article 13 of Decree of GACC No. 138 Administrative Measures of the People’s Republic of China on Customs Inspection of Import and Export Goods, which entered into force on 1 February, 2006, provides, ‘for dangerous articles or goods not fit for long-term storage including those that are fresh and alive, perishable and that easily rot, lose efficacy or go bad, and for goods that require urgent inspection and release due to other exceptional circumstances, after the consignor/consignee or the broker thereof of import and export goods submits an application, customs may prioritize the arrangement of inspection for such goods.’

General Comment

The implementation is adequate.

Links

Reports with regard to the rapid clearance of perishable goods:

1. http://news.xinhuanet.com/local/2014-01/18/c_119027993.htm
2. http://www.shm.com.cn/ytrb/html/2014-07/25/content_3033390.htm
3. <http://roll.sohu.com/20150810/n418583619.shtml>
4. <http://yunnan.mofcom.gov.cn/aarticle/sjdixiansw/201001/20100106766334.html>

9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Implementation

Entry-exit terminal operators (ports, airports, etc.) may establish cold-chain storage facilities within the customs regulatory area, and other enterprises may apply to customs for the establishment of cold-chain bonded warehouses, intended for the storage of fresh and alive, or perishable goods.

General Comment

The implementation is adequate.

9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

Implementation

No cases have been found involving enterprises' grievances due to restricted release of perishable goods.

General Comment

The implementation is adequate.

ARTICLE 8: BORDER AGENCY COOPERATION

1. Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

Laws and Regulations

At the end of 2014, the State Council released the Reform Plan on Promoting the Development of Big Customs Clearance via Mutual Information Exchange, Mutual Inspection Findings Recognition, Mutual Law Enforcement Assistance, setting the objective of further facilitating and securing trade via Mutual Information Exchange, Mutual Inspection Findings Recognition, Mutual Law. (Link 1)

Implementation

Projects in progress include:

1. 'Single window';
2. 'One-stop operation', i.e. in cases where customs, Inspection and Quarantine, border inspection, transport (land), and maritime agencies need to conduct inspections on the same transport vehicle and the same import and export good, the aforementioned agencies may conduct joint inspections;
3. Promote 'One Computer, Two Screens' for customs and inspection agencies;
4. Establish information sharing and mutual use mechanisms;
5. Sharing of premises and facilities.

General Comment

Cooperation among domestic border agencies is being increasingly enhanced.

Recommendations

Conduct research, from the perspective of institutional arrangements, into the respective implementation of independent customs clearance operation systems by customs and Inspection and Quarantine authorities; draw from the experience of relevant institutional reforms of developed countries, and initiate China's institutional reform of border administration agencies.

Links

1. Decree of the State Council No.68 [2014] The Reform Plan on Promoting the Development of Big Customs Clearance via Mutual Information Exchange, Mutual Inspection Findings Recognition,

2. Each Member shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

Laws and Regulations

Countries and regions bordering the Chinese Mainland include 14 countries, i.e. North Korea, Russia, Mongolia, Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, India, Nepal, Bhutan, Myanmar, Laos and Vietnam; and two Special Administrative Regions, i.e. Hong Kong and Macao.

Implementation

Information on the overall situation of cargo transport routes, and mutual coordination and cooperation between the customs authorities of China and those of its bordering countries cannot be accessed via public channels, therefore no objective evaluation of the implementation thereof can be conducted.

Recommendations

China Customs and inspection and quarantine authorities shall disclose, when appropriate, the status of cooperation and coordination on relevant provisions of Trade Facilitation Agreement with countries that border on China.

- (a) alignment of working days and hours;*
- (b) alignment of procedures and formalities;*
- (c) development and sharing of common facilities;*
- (d) joint controls;*
- (e) establishment of one stop border post control.*

ARTICLE 9: MOVEMENT OF GOODS INTENDED FOR IMPORT UNDER CUSTOMS CONTROL

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Implementation

China Customs allows goods intended for import to be moved within its territory and under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared. (Links 1 and 2)

General Comment

The implementation is adequate.

Links

1. Decree of GACC No.89 on Implementing the Regulatory approaches of transit goods in People's Republic of China: [http://gkml.customs.gov.cn/tabid/106/ctl/InfoDetail/InfoID/2528/mid/445/Default.aspx?ContainerSrc=\[G\]Containers%2f_default%2fNo+Container](http://gkml.customs.gov.cn/tabid/106/ctl/InfoDetail/InfoID/2528/mid/445/Default.aspx?ContainerSrc=[G]Containers%2f_default%2fNo+Container)
GACC No.218 made some modifications to it: <http://www.customs.gov.cn/publish/portal0/tab49564/info700509.htm>
2. The clearance of transit goods: <http://www.customs.gov.cn/publish/portal151/tab63904/info274399.htm>

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

1 Formalities and Documentation Requirements

Laws and Regulations

China Customs has relatively complete and clear formalities connected with importation, exportation and transit.

Chapter 2 Declaration Requirements and Chapter 4 Declaration Documentation of Decree of GACC No. 103 Regulations of the People's Republic of China on Customs Administration of Declaration of Import and Export Goods, set out explicit provisions on the declaration formalities and documentation requirements for import and export goods. (Link 2)

Article 24 of Decree of GACC No. 103 Regulations of the People's Republic of China on Customs Administration of Declaration of Import and Export Goods provides, 'provisions on declaration of transshipped, through- and transit goods and on expedited shipments shall be formulated separately by GACC.' (Link 2)

Article 8 of Decree of GACC No. 38 Measures of the People's Republic of China on Customs Supervision and Administration of Transit Goods provides that transit goods shall be declared upon entry into the border, and specifies the documentation that should be submitted. (Link 3)

Links

1. The Catalogue of Customs administrative authority under Decree of GACC No.24 Notice of GACC on issuing Customs power list has detailed description of it: <http://www.customs.gov.cn/publish/portal106/tab65048/module173081/info705440.htm>

2. Import and Export Goods:

Decree of GACC No. 103 Regulations of the People's Republic of China on Customs Administration of Declaration of Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab399/info265127.htm>

Decree of GACC No. 218 Decision of the GACC on Amending Some Regulations made some modifications to the Decree of GACC No.103: <http://www.customs.gov.cn/publish/portal0/tab49659/info701048.htm>

Decree of GACC No.19 of 2013 Announcement on promoting paperless clearance operation in reform pilot: <http://www.customs.gov.cn/publish/portal0/tab49576/info428372.htm>

Decree of GACC No.29 of 2013 ‘Format standard of electronic scanning file of declaration documents in paperless clearance operation’ and ‘Access Standards for Enterprise Certificate of Deposit in Paperless Clearance Operation’: <http://www.customs.gov.cn/publish/portal0/tab49659/info623226.htm>

Decree of GACC No.56 of 2010 Announcement on Promoting Reform of Classified Customs Clearance: <http://www.customs.gov.cn/publish/portal0/tab49576/info428578.htm>

3. Transit Goods:

Decree of GACC No. 38 Measures of the People’s Republic of China on Customs Supervision and Administration of Transit Goods: <http://www.customs.gov.cn/publish/portal0/tab38320/info4345.htm>

Decree of GACC (84) No.1089 Administrative regulations of China Customs on transshipment of import and export goods of lighterage on Yangtze River: <http://www.customs.gov.cn/publish/portal0/tab399/info4309.htm>

4. Express delivery:

Decree of GACC No.147 on Amending Regulatory approaches for inward and outward express of Customs of People’s Republic of China: <http://www.customs.gov.cn/publish/portal0/tab399/info265077.htm>

Decree of GACC No.43 of 2010 Announcement on adjust management measures for inward and outward personal postal articles: <http://www.customs.gov.cn/publish/portal0/tab49576/info428591.htm>

Decree of GACC No.41 of 2010 Announcement on adjusting the contents of inward and outward express declaration form of China Customs: <http://www.customs.gov.cn/publish/portal0/tab49576/info428593.htm>

Decree of GACC No.33 of 2010 Announcement on regulations of import-export samples and advertising articles: <http://www.customs.gov.cn/publish/portal0/tab49576/info428601.htm>

Decree of GACC No.39 of 2009 Announcement on declaration standard of KJ3 import express, the supervision of inward and outward personal articles: <http://www.customs.gov.cn/publish/portal0/tab49576/info428685.htm>

1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:

Implementation

China Customs has been continuously deepening reform, but there is

still room for simplification of documentation and formalities.

In addition, the duplicate inputting of documentation data is not a small problem among port departments of joint inspection, and has received serious attention from relevant departments including China Customs. However, this issue involves multiple departments, thus relying on the National Port Office only for coordination would be unrealistic. With the progress of reforms including the ‘three together’, ‘three mutuals’, etc., such issues are likely to be improved gradually.

Announcement of GACC No. 20 [2016] Announcement on Revising Specifications of the Customs of the People’s Republic of China on Filling in Declaration Form for Import and Export Goods proposes a new format of declaration form, in which the three input fields related to prices, to some extent, add to the declaration burden for enterprises, and affect the efficiency of customs clearance. (Link 1)

General Comment

Reform has been commenced, and there is still room for improvement.

Recommendations

1. Implement a paperless customs clearance system that adopts digital format in lieu of scanned copies, thereby decreasing cost of customs clearance;
2. Reduce the number of required documents and files enclosed, e.g. contracts.

Links

1. GACC No. 20 [2016] Announcement on Revising Specifications of the Customs of the People’s Republic of China on Filling in Declaration Form for Import and Export Goods: <http://www.customs.gov.cn/publish/portal0/tab49659/info790150.htm>

(a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;

Implementation

China Customs attaches great importance to the rapid release and clearance of goods. (Links 1 and 2)

In recent years, China Customs employed a series of measures to facilitate the rapid release of goods (particularly perishable goods), and such measures mainly include:

Reform on integrating customs clearance procedures and formalities;
H2010 system upgrade and the function expansion thereof;
Expansion of the scope of paperless customs clearance;
Implementation and promotion of Mutual Information Exchange,
Mutual Inspection Findings Recognition, Mutual Law Enforcement
Assistance (the 'three mutuals') with other border agencies;
Establishment and implementation of enterprise credit administration
system;
Adoption of post-clearance audit and risk management measures
.....

General Comment

Customs clearance efficiency is being increasingly improved via simplification and coordination regarding documentation and formalities.

Links

1. GACC introduced 20 measures to support steady growth of foreign trade: <http://www.customs.gov.cn/publish/portal0/tab49564/info707366.htm>
2. Decree of GACC No.138 Measures for the administration of inspection of import and export goods: <http://www.customs.gov.cn/publish/portal0/tab399/info265096.htm>

(b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;

Implementation

In recent years, while China Customs was working towards continuous increase of clearance speed, it also canceled, suspended and reduced multiple administrative charges, including:

Information transfer charge. GACC canceled the information transfer charge of the data center, and local customs data sub-centers canceled or reduced the information transfer charge;
Cancellation of charges on regulatory formalities;
Cancellation of charges on examination and certificate costs for customs declarants;
Suspension of Intellectual Property Right recordation charge;
Cancellation of customs inspection charge.

Inspection and quarantine authorities significantly reduced the scope of export goods subject to legally-required commodity inspection, and consolidated and canceled some unreasonable charges.

General Comment

Customs and inspection and quarantine authorities have made efforts to reduce the time and cost of customs clearance and achieved fairly positive results, but there is still room for improvement.

(c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

General Comment

The implementation is adequate.

(d) not maintained, including parts thereof, if no longer required.

General Comment

The implementation is adequate.

1.2 The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate.

2 Acceptance of Copies

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.

Implementation

In regulatory practice, China Customs does accept paper or electronic copies.

General Comment

The implementation is adequate.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

General Comment

The implementation is adequate.

2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.

Implementation

Both in regulations and in practice, China Customs does not require importers to submit an original or copy of an export Member's export

declarations.

General Comment

The implementation is adequate.

3 Use of International Standards

General Comment

The Customs of China is eager to keep in tandem with international policies.

3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.

Implementation

The Customs of China has already adopted the following international standards:

The Harmonized Commodity Description and Coding System (HS codes);
International Convention on the Simplification and Harmonization of Customs Procedures (The Kyoto Convention);
The WTO Agreement on Customs Valuation;
Authorized Economic Operator (AEO) programs;
The ATA Carnet.

3.2 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

Implementation

China is a member of both WTO and WCO, but it remains unclear how well the Chinese government has participated in the preparation and periodic review of relevant international standards by the above-said ‘appropriate international organizations’.

3.3 The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

4 Single Window

Laws and Regulations

According to Circular Guo Fa [2014] No. 68 Notice of the State Council on Issuing and Implementing the Reform Plan to Promote the Development of Big Customs Clearance via Mutual Information Exchange, Mutual Regulatory Recognition, and Mutual Law Enforcement Assistance, ‘single window’ will be established at coastal ports from 2014 to 2015. From 2016 to 2017, ‘single window’ will be established at all ports in China. (Link 1)

Paragraph 6 of Circular Guo Fa No. 16 [2015] Several Opinions of the State Council on Improving Port Operations and Supporting the Development of Foreign Trade makes it clear: China will be active in establishing ‘single window’ for international trade; and China aims to establish ‘single window’ at its coastal ports by the end of 2015 and at all its ports by 2017. (Link 2)

Implementation

In June 2014, China Customs started a pilot ‘single window’ program at Shanghai Yangshan Bonded Port. By the end of 2015, ‘single window’ in Tianjin, Fujian, Guangdong, Zhejiang, Jiangsu, Liaoning, and Shandong had already been functioning. Hebei, Hainan, and Guangxi have started building their ‘single window’. (Links 3 and 4)

General Comment

The central government has set a clear aim of establishing ‘single window’;

Some major ports adopt a positive attitude towards single windows and take prompt actions to establish them;

A nationwide single window is in the pipeline.

Recommendations

1. The establishment of a nationwide single window should speed up;
2. The participating authorities and agencies should keep an open mind about single windows built by third parties and provide them with relevant entry points.

Links

1. Circular Guo Fa [2014] No. 68 Notice of the State Council on Issuing and Implementing the Reform Plan to Promote the Development of Big Customs Clearance via Mutual Information

Exchange, Mutual Regulatory Recognition, and Mutual Law Enforcement Assistance: http://www.gov.cn/zhengce/content/2015-02/03/content_9448.htm

2. Circular Guo Fa No. 16 [2015] Several Opinions of the State Council on Improving Port Operations and Supporting the Development of Foreign Trade: http://www.gov.cn/zhengce/content/2015-04/17/content_9617.htm

3. GACC Spokesman answers reporters' questions on pilot 'Single Window' program: <http://www.customs.gov.cn/publish/portal0/tab49564/info702014.htm>

4. Single Window programs that have already been built:

Shanghai international trade single window: <http://www.singlewindow.sh.cn/winxportal/>

Tianjin international trade single window: <http://www.singlewindow.tj.cn/>

Guangzhou international trade single window: <http://www.singlewindow.gz.cn/>

Fujian international trade single window: <http://www.china-fjftz.gov.cn/>

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

Implementation

Some functioning regional single windows have already 'enabled traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies'.

The examination and permission concerning regulated importation/exportation as well as the transfer of documents/certificates of the examination and permission still cannot be completed by such single windows.

General Comment

The present regional single windows remain substantially different from single windows in a real sense.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

Because China has not yet established a single window system, this provision does not apply.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

General Comment

China's E-port system has the capability and basic structure of a single window and can be used as the IT support for China's single window system.

Recommendations

China should refer to and learn from the best practices of establishing single windows from foreign customs. Based on the present E-port system, China should build a public platform, i.e. a single window that enables relevant functions of the participating agencies to interconnect.

5 Preshipment Inspection

5.1 Members shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.

Implementation

There is no 'preshipment inspection in relation to tariff classification and customs valuation' at China Customs.

General Comment

The implementation is adequate.

5.2 Without prejudice to the rights of Members to use other types of preshipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.

General Comment

The implementation is adequate.

6 Use of Customs Brokers

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not

introduce the mandatory use of customs brokers.

Implementation

The Customs of China does not ‘introduce the mandatory use of customs brokers’. Consignors and consignees can apply for customs clearance themselves (but they need to register as international traders and customs declaration businesses) or use customs brokers.

General Comment

The implementation is adequate.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

Laws and Regulations

The Customs of China has relatively transparent and objective rules on the licensing of customs brokers.

Decree of GACC No. 221 Provisions of the People's Republic of China on Customs Administration of Registration of Customs Declaration Entities stipulates conditions and procedures for the registration of customs declaration entities. (Link 1)

Announcement of GACC No. 26 [2014] Announcement on Publishing the Format for Legal Documents and Statements relevant to the ‘Provisions of GACC of the People's Republic of China on Administration of Registration of Declaration Entities provides samples of the required documents and statements. (Link 2)

In addition, users can download from GACC’s website ‘the required documents and forms for declaration entities’ and the administrative service guide on the ‘registration of declaration entities’. (Link 3)

General Comment

The implementation is adequate.

Links

1. Decree of GACC No. 221 Provisions of the People's Republic of China on Customs Administration of Registration of Customs Declaration Entities: <http://www.customs.gov.cn/publish/portal0/tab49659/info700322.htm>
2. Announcement of GACC No. 26 [2014] Announcement on

Publishing the Format for Legal Documents and Statements relevant to the ‘Provisions of GACC of the People's Republic of China on Administration of Registration of Declaration Entities: <http://www.customs.gov.cn/publish/portal0/tab49661/info702105.htm>

3. GACC’s website provides ‘the required documents and forms for declaration entities’: <http://www.customs.gov.cn/publish/portal0/tab49635/>

Administrative service guide on the ‘registration of declaration entities’: <http://www.customs.gov.cn/tabid/2433/InfoID/766146/frtid/70317/settingmoduleid/191384/Default.aspx>

7 Common Border Procedures and Uniform Documentation Requirements

7.1 Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

Implementation

The customs and Inspection and Quarantine authorities of China apply a uniform clearance system throughout the country.

General Comment

The implementation is adequate.

7.2 Nothing in this Article shall prevent a Member from:

(a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;

(b) differentiating its procedures and documentation requirements for goods based on risk management;

(c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;

(d) applying electronic filing or processing; or

(e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.

8 Rejected Goods

8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical

regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

Laws and Regulations

Customs:

Article 6 of Decree of GACC No. 217 Measures of the People's Republic of China on Customs Administration of Direct Return of Imported Goods provides, 'Under any of the following circumstances which occur after the goods have entered China and before the customs release formalities are completed, the customs office shall order the party (the consignee or consigner of imported goods or the person in charge of the original means of transport or the agent thereof) to return the goods directly abroad:

- (1) The goods are prohibited by the state from being imported and have been handled by the customs according to law;
- (2) There is violation of the state policies and regulations on inspection and quarantine; and the violation has been handled by the state administrations of inspection and quarantine, which produce Letter of Notification of Handling of Violation of Policies and Regulations on Inspection and Quarantine or other documentary evidence;
- (3) Solid waste that is under import restriction is imported without permission and has been handled by customs according to law;
- (4) Other circumstances where there is violation of laws and administrative regulations of the state and the party shall be ordered to directly return the goods.' (Link 1)

Links

1. Decree of GACC No. 217 Measures of the People's Republic of China on Customs Administration of Direct Return of Imported Goods: <http://www.customs.gov.cn/publish/portal0/tab49660/info700175.htm>

Inspection and Quarantine: • Regulations on Sanitary and Phytosanitary (SPS): Quarantine of Animals and Plants, Health Quarantine

Article 22, Administrative Measures on Inspection and Quarantine of Imported and Exported Aquatic Products, Decree of the AQSIQ No. 135, provides that: 'If any of the following occurs, the said product shall be returned or destroyed:

Failure to have a valid "License for Quarantine of Entry Animals and Plants" where verification for an entry product is required;

Failure to register in China where registration is required of an aquatic product producer;

Failure to have the inspection and quarantine certificate issued by the

authority of the exporting country or region;
Failure in inspections related to personal safety, health and environmental protection.’ (Link 1)

Article 21, Administrative Measures on Inspection and Quarantine of Imported or Exported Meat Products, Decree of the AQSIQ No. 136, provides that: ‘The inspection and quarantine body of the entry port shall, based on the results of laboratory testing of the imported meat product, handle the product in the following ways:

...

(2) If a product fails inspection and quarantine, issue the ‘Notice on Inspection and Quarantine Treatment’. If any of the following occurs, the said product shall be returned or destroyed:

1. Failure to have a valid ‘License for Quarantine of Entry Animals and Plants’;
2. Failure to have a relevant certificate issued by the authority of the exporting country or region;
3. An imported meat product is produced by an unregistered producer;
4. Failure in inspections related to personal safety, health and environmental protection.

...’ (Link 2)

Article 27, Administrative Measures on Inspection and Quarantine of Entry/Exit Non-edible Animal Products, Decree of the AQSIQ No. 159, provides that: ‘After a non-edible animal product passes the inspection and quarantine, and a ‘Certification of Inspection and Quarantine of Entry Goods’ is issued accordingly by the inspection and quarantine body, it may be sold, used or be processed at the designated producer.

If a product fails inspection and quarantine, a ‘Notice on Inspection and Quarantine Treatment’ will be issued by the inspection and quarantine body, and the product shall, under the supervision of the inspection and quarantine body, undergo treatment against harmful substances, be returned or destroyed by the consignor or its agent; entry is permitted if a product passes inspection and quarantine after treatment against harmful substances. If claims against a third party is needed, the inspection and quarantine body shall issue relevant certificates.

...’ (Link 3)

Article 21, Administrative Provisions on Health and Quarantine of Entry/Exit Special Articles, Decree of the AQSIQ No. 160, provides that: ‘The port inspection and quarantine body shall discharge an entry/exit special article that complies with the requirements after health quarantine. If any of the following occurs, a ‘Notice on Inspection and Quarantine Treatment’ will be issued by the port inspection and

quarantine body, and the said article shall be returned or destroyed:

- (1) One of these factors, including the name, batch number, specification, biologically active ingredient, etc., does not match the information in the verification;
- (2) The quantity exceeds the verified range;
- (3) The packaging does not meet safety requirements for special articles;
- (4) Failure to meet sanitation and quarantine requirements after verification;
- (5) Where the special article being mailed or carried is detained, the 'Approval of Special Article Verification' is not submitted within 7 days, or fails in inspection and quarantine after submitting the 'Approval of Special Article Verification'.

The port inspection and quarantine body shall properly record and file the eventual treatment.' (Link 4)

Article 25, Administrative Measures on Quarantine and Supervision of Imported and Exported Chinese Traditional Medicines, Decree of the AQSIQ No. 169, provides that: 'If a product fails the quarantine, a 'Notice on Quarantine Treatment' will be issued by the inspection and quarantine body, and the product shall, under the supervision of the inspection and quarantine body, undergo treatment against harmful substances, be returned or destroyed by the consignor or its agent; entry is permitted if a product passes inspection and quarantine after treatment against harmful substances.

If claims against a third party is needed, the inspection and quarantine body shall issue relevant certificates pursuant to regulations.' (Link 5)

Article 27, Administrative Measures on Quarantine of Articles Carried by Persons on Entry/Exit, Decree of the AQSIQ No. 146, provides that: 'Where the carried article is required to undergo laboratory quarantine or segregated quarantine, and it passes the quarantine conducted by the inspection and quarantine body when detained, its carrier shall collect the article within the specified time limit on the detention certificate; failure to collect shall be deemed as voluntary waiver. Where the article fails in the quarantine when detained and cannot be treated effectively, it shall be returned or destroyed within a specified time limit.' (Link 6)

Article 18 of Administrative Measures on Quarantine of Postal Articles on Entry/Exit provides that: 'If any of the following occurs, the entry postal article shall be returned or destroyed by the inspection and quarantine body:

- (1) Failure to undergo quarantine verification formalities pursuant to regulations or failure to comply with regulations on quarantine

- verification;
- (2) Incomplete documents;
 - (3) Fails in the quarantine and cannot be treated effectively;
 - (4) Other cases where return or destruction is required.’ (Link 7)

Links

1. Administrative Measures on Inspection and Quarantine of Imported and Exported Aquatic Products, Decree of the AQSIQ No. 135: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/2011/201210/t20121015_235110.htm
2. Administrative Measures on Inspection and Quarantine of Imported or Exported Meat Products, Decree of the AQSIQ No. 136: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/2011/201210/t20121015_235111.htm
3. Administrative Measures on Inspection and Quarantine of Entry/Exit Non-edible Animal Products, Decree of the AQSIQ No. 159: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/2014/201412/t20141216_428529.htm
4. Administrative Provisions on Health and Quarantine of Entry/Exit Special Articles, Decree of the AQSIQ No. 160: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/2015/201502/t20150203_431143.htm
5. Administrative Measures on Quarantine and Supervision of Imported and Exported Chinese Traditional Medicines, Decree of the AQSIQ No. 169: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/2015/201511/t20151113_454314.htm
6. Administrative Measures on Quarantine of Articles Carried by Persons on Entry/Exit, Decree of the AQSIQ No. 146: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/2012/201210/t20121015_235107.htm
7. AQSIQ and State Post Bureau Notice of Issuing Administrative Measures on Quarantine of Postal Articles on Entry/Exit, Joint Notice of the AQSIQ No. [2001] 34: http://www.fdi.gov.cn/1800000121_23_67887_0_7.html

- **Regulations on Technical Barriers to Trade (TBT): Goods (including food)**

Implementing Regulations of the Law of the People's Republic of China on Inspection of Imported and Exported Goods provides that: ‘Article 19 Unless otherwise specified by law or administrative regulation, if any imported goods subject to statutory inspection fail inspection in items concerning safety of persons and property, health and environmental protection, the entry-exit inspection and quarantine body shall order the importer to destroy it, or issue a ‘Notice on Return of Goods’ and inform the customs office in writing, and the customs

office shall return the goods upon the ‘Notice on Return of Goods’; if the goods fail in other items, technical treatment may be applied under the supervision of the entry-exit inspection and quarantine body, and once they pass re-inspection, the goods may be sold or used. In case an importer applies for a certificate to the entry-exit inspection and quarantine body, the entry-exit inspection and quarantine body shall issue the certificate in a timely manner.

Article 53 If an overseas supplier or domestic consignee fails to register or undergo pre-shipping inspection when it imports solid wastes that may be used as raw material, it shall be ordered to return the goods pursuant to relevant State provisions; where the case is serious, the entry-exit inspection and quarantine body shall also impose upon it a fine ranging from CNY100,000 to CNY1 million.

If an overseas supplier or domestic consignee, whose solid wastes that may be used as raw material are registered, seriously violates relevant State provisions, the entry-exit inspection and quarantine body shall revoke its registration. In case anyone fails to file or undergo pre-shipping inspection when importing an old electromechanical product permitted by the State, the product shall be returned pursuant to relevant State provisions; where the case is serious, the entry-exit inspection and quarantine body shall also impose upon it a fine of less than CNY1 million.’ (Link 1)

Administrative Measures on Inspection and Supervision of Imported and Exported Toys provides that: ‘Article 4 Imported toys shall be inspected pursuant to compulsory requirements of the State’s technical regulations.

Article 9 If an imported toy fails inspection, a ‘Notice on Inspection and Quarantine Treatment’ will be issued by the inspection and quarantine body. If the toy fails inspection in items concerning safety of persons and property, health and environmental protection, the inspection and quarantine body shall order the importer to return or destroy it; if it fails in other items, technical treatment may be applied under the supervision of the inspection and quarantine body, and once it passes re-inspection, it may be sold or used.’ (Link 2)

Article 18, Administrative Measures on Inspection, Quarantine and Supervision of Entry/Exit Grains, Decree of the AQSIQ No. 177, provides that: ‘If any of the following occurs, the entry grain shall be returned or destroyed:

(1) Not included in the entry list issued by the AQSIQ, or Phytosanitary Certificate or other certificates issued by food exporting countries or local competent departments cannot be provided, or there is no Quarantine Permit;

- (2) Test results for toxic and hazardous substances and other safety and sanitation items do not meet the mandatory state requirements for technical specifications, and the intended use cannot be changed or there is no effective dealing method;
- (3) Genetically modified ingredients are detected, no Bio-safety Certificate for Genetically Modified Food or other relevant approval documents, or does not match the provisions in the Certificate and approval documents;
- (4) Soil, quarantine pests and other substances prohibited from import are detected, and there is no effective dealing method for quarantine;
- (5) Decay and deteriorate due to water, mildew, etc. or suffer from chemical and radioactive contamination, and the intended use cannot be changed or there is no effective dealing method;
- (6) Food safety is seriously jeopardized due to other reasons. (Link 3)

It is provided in Article 39 of AQSIQ Decree No. 143 on the Measures for the Inspection, Quarantine, Supervision and Administration of Imported and Exported Cosmetics that ‘based on the types of risk and severity, AQSIQ may determine and publish the following quick response measures:

- (1) conditionally limit import and export, including close monitoring, stricter inspection and mandatory recall;
- (2) prohibit import and export by destroying on the spot or returning the products;
- (3) initiate a contingency plan on the safety of import and export cosmetics.

An inspection and quarantine institution shall be responsible for implementing quick response measures.’ (Link 4)

It is provided in Article 45 of AQSIQ Decree No. 144 on the Measures on the Administration of Import and Export Food Safety that ‘AQSIQ and inspection and quarantine institutions directly subordinate to AQSIQ shall issue risk warning based on food safety risk levels, and that AQSIQ may issue risk warning depending on the circumstances and determine the adoption of the following control measures:

- (1) conditionally limit import and export, including close monitoring, stricter inspection and mandatory recall;
- (2) prohibit import and export by destroying on the spot or returning the products;
- (3) initiate a contingency plan on the safety of import and export cosmetics.

An inspection and quarantine institution shall be responsible for risk warning and implementing quick response measures.’ (Link 5)

It is provided in Article 18 of AQSIQ Decree No. 152 on the Measures

for the Inspection, Quarantine, Supervision and Administration of Import and Export Dairy Products that ‘an inspection and quarantine institution shall issue an unqualified certificate if import and export dairy products prove to be unqualified after inspection and quarantine procedures. If the products fail the safety, health, environmental protection inspection and quarantine, the inspection and quarantine institution shall order the parties concerned to destroy the products, or issue a Notice for Return of Products, and the importer shall handle the formalities concerning the return. Other items that fail the inspection and quarantine may be treated technically under the supervision of the inspection and quarantine institution and products may be sold and used if they prove to be qualified after re-inspection.

Before import and export dairy products are destroyed and returned, the importer shall seal up the unqualified dairy products on their own and store them in a place designated or affirmed by the inspection and quarantine institution. Such products cannot be transferred without permission of the inspection and quarantine institution.

The importer shall finish destroying within three months, and report the result to the inspection and quarantine institution.’ (Link 6)

It is provided in Article 22 of AQSIQ Decree (2012 No. 200) on Provisions on the Administration of the Import and Export Industrial Products Risk Warning and Quick Response that ‘to effectively discourage, control and eliminate quality risks, AQSIQ or inspection and quarantine institutions directly subordinate to AQSIQ may, according to legal procedures, take quick response measures including: (1) conditionally limit, according to law, the import and export of products, seal up, distrain, stop selling and using, return and destroy import and export industrial products that do not conform to legal requirements;

(2) notify relevant departments and institutions;

(3) punish, according to law, production and operation companies that violate laws and administrative regulations, seal up unlawfully used materials, auxiliary materials and additives, tools and equipment that are unlawfully produced and seal up production and operation or storage places for export industrial products;

(4) organize an investigation into the quality of similar products, and the quality of products from relevant industries and associated regions within a specified time of period;

(5) take stricter measures to inspect and supervise relevant production and operation entities;

(6) order the recall of risky products that have already sold out.’ (Link 7)

It is provided in Article 12 of AQSIQ Decree No.1 on Provisions on the Administration of Import and Export Inspection and Quarantine

Risk Warning and Quick Response that ‘emergency control measures include the following:

- (1) refer to international practices when a dangerous situation occurs and there is no sufficient scientific basis, take temporary emergency measures on export and import cargo and goods, and proactively collect relevant information for risk assessment;
- (2) take emergency measures according to law on import and export cargo and goods where major risks have been defined and prohibit them from export and import; block ports if necessary.’ (Link 8)

It is provided in Article 24 of AQSIQ Decree No.3 on Measures for the Inspection, Quarantine, and Administration of Import and Export Express Consignment that ‘in case of any of the following circumstances, an inspection and quarantine institution shall return or destroy the import express consignments and issue relevant certificates:

- (1) no quarantine approval and failure to obtain quarantine approval when required to do so;
- (2) quarantine certificates or relevant announcements that must be officially issued by the exporting country are not acquired as regulated in laws and regulations, related international treaties or bilateral agreements;
- (3) not qualified after quarantine and there is no effective dealing method;
- (4) import express consignments as stated in this Article 22 cannot be treated technically, or are still unqualified after technical treatment and re-inspection;
- (5) other circumstances where import express consignments have to be returned or destroyed.’ (Link 9)

It is provided in Article 18 of AQSIQ Decree No.18 on Measures for Inspection, Supervision and Administration of Import Paint that ‘an inspection and quarantine institution shall issue an inspection and quarantine certificate to unqualified import paint according to Article 15 and 16, and report to AQSIQ, and that for import paint that fails specific tests, a consignee must return or handle the import paint properly as required by relevant departments.’ (Link 10)

Links

1. State Council Decree No.447 on the Implementing Regulations of the Law of the People's Republic of China on Inspection of Imported and Exported Goods
2. AQSIQ Decree No. 111 on the Administrative Measures on Inspection and Supervision of Imported and Exported Toys
3. AQSIQ Decree No. 177 on the Administrative Measures on

- Inspection, Quarantine and Supervision of Entry/Exit Grains,
4. AQSIQ Decree No. 143 on the Measures for the Inspection, Quarantine, Supervision and Administration of Imported and Exported Cosmetics
 5. AQSIQ Decree No. 144 on the Measures on the Administration of Import and Export Food Safety
 6. AQSIQ Decree No. 152 on the Measures for the Inspection, Quarantine, Supervision and Administration of Import and Export Dairy Products
 7. AQSIQ Decree (2012 No. 200) on Provisions on the Administration of the Import and Export Industrial Products Risk Warning and Quick Response
 8. AQSIQ Decree No.1 on Provisions on the Administration of Import and Export Inspection and Quarantine Risk Warning and Quick Response
 9. AQSIQ Decree No.3 on Measures for the Inspection, Quarantine, and Administration of Import and Export Express Consignment
 10. AQSIQ Decree No.18 on Measures for Inspection, Supervision and Administration of Import Paint

General Comment

Customs and I&Q: Fully implemented by China Customs and inspection and quarantine institutions.

8.2 When such an option under paragraph 8.1 is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

Laws and Regulations

China Customs does not stipulate specifically how the goods should be dealt with if the party does not return the goods as ordered. (Links 1, 2 and 3)

Implementation

In practice, no such circumstance ever occurred.

Links

1. Decree of GACC No. 217 Measures of the People's Republic of China on Customs Administration of Direct Return of Imported Goods: <http://www.customs.gov.cn/publish/portal0/tab49659/info700273.htm>
2. Decree of president of People's Republic of China No.35 Customs Law of the People's Republic of China: <http://www.customs.gov.cn/publish/portal99/tab62627/info770913.htm>

3. Decree of the State Council No.420 Regulations of the People's Republic of China on the implementation of customs administrative penalty: <http://www.customs.gov.cn/publish/portal0/tab399/info3485.htm>

9 Temporary Admission of Goods and Inward and Outward Processing

9.1 Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

Laws and Regulations

Administrative Measures of the Customs of the People's Republic of China for Goods Temporarily Imported or Exported has explicit provisions on goods temporarily imported for exhibitions, cultural or sports events, news reports, scientific research, teaching, medical treatment, charity activities, etc. and articles temporarily imported as samples. (Links 1 and 2)

General Comment

The implementation is adequate.

Links

1. Administrative Measures of the Customs of the People's Republic of China for Goods Temporarily Imported or Exported: <http://www.customs.gov.cn/publish/portal0/tab49564/info692820.htm>
2. Customs of People's Republic of China on Administrative examination and acceptance form (Administrative examination and approval for temporarily imported or exported goods): <http://www.customs.gov.cn/publish/portal150/tab64400/info786022.htm>

9.2 Inward and Outward Processing

(a) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be reimported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations.

- **Inward Manufacturing and Processing**

Laws and Regulations

China has been conducting inward processing for more than three

decades and has a relatively sound system of administrative measures on inward processing for which payment of duties and taxes is deferred. These measures include:

Decree of GACC No. 219 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Processing Trade; (Link 1)

Decree of GACC No. 155 Measures of the People's Republic of China on Customs Administration of Unit Consumption in Processing Trade; (Link 2)

Announcement of GACC No. 21 [2014] Announcement of the Customs of the People's Republic of China on Issues concerning Implementation of Measures of the Customs of the People's Republic of China on Control of Processing Trade Goods; (Link 3)

Decree of GACC No. 150 Measures of the Customs of the People's Republic of China on Cyber-based Supervision and Administration of Enterprises Engaging in Processing Trade; (Link 4)

Guo Ban Fa [1999] No. 35 Notice of Opinions on Further Improving the System of Bank Surety Account for Processing Trade. (Link 5)

General Comment

The system of inward processing is complete.

Recommendations

There are many unreasonable or negotiable contents in China's regulations on inward processing regime including the scope of products permitted for inward processing, lists of products on which China imposes prohibitions and restrictions for processing trade, unit consumption, verification, expendable materials, etc. We recommend that the customs and commerce authorities probe into and solve the problems.

Links

1. Decree of GACC No. 219 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Processing Trade: <http://www.customs.gov.cn/publish/portal0/tab49659/info700275.htm>
2. Decree of GACC No. 155 Measures of the People's Republic of China on Customs Administration of Unit Consumption in Processing Trade: <http://www.customs.gov.cn/publish/portal0/tab399/info54811.htm>

3. GACC No. 21 [2014] Announcement of the Customs of the People's Republic of China on Issues concerning Implementation of Measures of the Customs of the People's Republic of China on Control of Processing Trade Goods: <http://www.customs.gov.cn/publish/portal0/tab49661/info701081.htm>
4. Decree of GACC No. 150 Measures of the Customs of the People's Republic of China on Cyber-based Supervision and Administration of Enterprises Engaging in Processing Trade: <http://www.customs.gov.cn/publish/portal0/tab399/info27254.htm>
5. Guo Ban Fa [1999] No. 35 Notice of Opinions on Further Improving the System of Bank Surety Account for Processing Trade: <http://china.trade2cn.com/news/cmnews112940.html>

- **Inward Maintenance**

Laws and Regulations

So far, China has rather complex regulations on inward maintenance. (Links 1 and 2)

1. Most products made in China are allowed for inward maintenance except for those prohibited from processing trade, such as medical equipment and parts thereof and game consoles.
2. Some products made by enterprises outside China can be maintained in areas under special customs supervision, while enterprises outside such areas cannot engage in inward maintenance.

Recommendations

Considering the trend of economic globalization, the regime for inward maintenance of domestically-or foreign-made common products, electronic products, and medical equipment should be rendered more reasonable after in-depth research.

Links

1. Decree of GACC No.59 of 2015 Announcement of supervision on bonded repair business in special Customs supervision zone: <http://www.customs.gov.cn/publish/portal0/tab49659/info781274.htm>
2. Decree of GACC No.124 Administrative measures of Customs of People's Republic of China on taxation of import and export goods: <http://www.customs.gov.cn/publish/portal0/tab399/info4487.htm>

- **Outward Processing**

Laws and Regulations

Article 29 of Decree of GACC No. 213 provides for duties on the

goods that may be temporarily exported for processing and then re-imported. The Article stipulates that ‘when goods that are transported outside China are declared to the customs at the time of exit and are transported into China within the period as required by the customs, the customs valuation of the goods shall be based on costs of processing, raw materials and parts incurred abroad, costs of inward transportation and other expenses incurred thereof, and premiums.’ (Link 1)

Implementation

In December, 2012, GACC approved Changchun Customs’ application for ‘outward processing’. Since then, China Customs has embarked upon pilot programs of outward processing at some enterprises. (Link 2)

In 2015, GACC mentioned that it would encourage pilot programs of outward processing in such free trade zones as in the following measures: Several Measures for Supporting and Promoting the Construction and Development of China (Fujian) Pilot Free Trade Zone, Several Measures for Supporting and Promoting the Construction and Development of China (Tianjin) Pilot Free Trade Zone, and Several Measures for Supporting and Promoting the Construction and Development of China (Guangdong) Pilot Free Trade Zone. (Link 3)

Xiamen Customs, Dalian Customs, etc. have also started outward processing.

General Comment

In general, outward processing is still at an early stage.

Recommendations

Detailed regulations on outward processing should be formulated as soon as possible.

Links

1. Decree of GACC No. 213 Customs of People’s Republic of China on examine the dutiable value of import and export goods: <http://www.customs.gov.cn/publish/portal0/tab49564/info692855.htm>
2. China Customs magazine 2013 sixth, the Commissioner of Customs interview column, outward processing: <http://www.ccmag.cn/cusmMaganized!docMaganized.jsps?id=4183>
3. Several Measures for Supporting and Promoting the Construction and Development of China (Fujian) (Tianjin) (Guangdong) Pilot Free Trade Zone: <http://www.customs.gov.cn/publish/portal0/tab65602/info739938.htm>

- **Outward Maintenance**

General Comment

The present systems of outward maintenance of imported or domestic products are relatively well-developed. (Links 1 and 2)

Links

1. Decree of GACC No. 59 of 2015 Announcement of supervision on bonded repair business in special Customs supervision zone: <http://www.customs.gov.cn/publish/portal0/tab49659/info781274.htm>
2. Decree of GACC No. 124 Administrative Measures of the People's Republic of China on Tax levied on Import and Export Goods by Customs: <http://www.customs.gov.cn/publish/portal0/tab399/info4487.htm>

(b) For the purposes of this Article, the term "inward processing" means the customs procedure under which certain goods can be brought into a Member's customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing, or repair and subsequent exportation.

(c) For the purposes of this Article, the term "outward processing" means the customs procedure under which goods which are in free circulation in a Member's customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.

ARTICLE 11: FREEDOM OF TRANSIT

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not be:

Laws and Regulations

China has introduced customs and Inspection and Quarantine regulations on traffic in transit and has not imposed any disguised restriction on traffic in transit. (Links 1, 2, 3, 4 and 5)

Based on results of risk analysis, assessment and examination, Inspection and Quarantine agencies negotiate with the participating authorities of exporting countries or regions about the requirements for inspection and quarantine, and about signing bilateral agreements or determine the certificate of inspection and quarantine.

General Comment

The implementation is adequate.

Links

1. Decree of GACC No.38 Measures for the supervision and administration for transit goods in People's Republic of China: <http://www.customs.gov.cn/publish/portal0/tab38320/info4345.htm>
2. Decree of AQSIQ No.159 Measures for the inspection and supervision for the import-export of non edible animal products: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjl/2014/201412/t20141216_428529.htm
3. Decree of AQSIQ No.62 Measures for the administration of inspection and quarantine of import-export of genetically modified products: http://www.aqsiq.gov.cn/xxgkml/jlgg/zjl/20032004/200610/t20061027_12236.htm
4. Decree of AQSIQ No.136 Measures for the administration of inspection and quarantine of import-export of Meat products: http://bgt.aqsiq.gov.cn/11715/jlgg/zjl/2011/201101/t20110120_176231.htm
5. Decree of AQSIQ No.118 Measures for the administration of inspection and quarantine of import-export of feedstuff and feed additives: http://www.aqsiq.gov.cn/xxgk_13386/jgfl/dzwjyjgs/zcfg/201508/t20150811_446793.htm

(a) maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade-restrictive manner;

(b) applied in a manner that would constitute a disguised restriction on traffic in transit.

2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

Laws and Regulations

Article 13 of Decree of GACC No. 38 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Transit provides, '...Based on the actual situation, when the customs needs to dispatch personnel to guard the goods in transit, the operator or the carrier shall provide means of transportation and facilitate the mission of supervision and pay the charges according to regulations.'

Implementation

According to Decree of GACC No. 38 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Transit, administrative expenses may be incurred by the use of customs convoy. But the expenses will not be incurred because they are not included in the lists of administrative charges of national and central government departments, or the current list of administrative charges of the customs.

Inspection and Quarantine agencies have not levied additional fees or charges on goods in transit.

General Comment

The implementation is adequate.

Links

1. Decree of GACC No. 38 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Transit: <http://www.customs.gov.cn/publish/portal0/tab38320/info4345.htm>

3. Members shall not seek, take, or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport, consistent with WTO rules.

Implementation

The Chinese government has not taken any additional voluntary restraints or any other similar measures on traffic in transit.

General Comment

The implementation is adequate.

4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.

Implementation

The Chinese government has not imposed restraints on products that are in transit through the territory of any other Member.

General Comment

The implementation is adequate.

5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

Implementation

At present, some customs in China have opened green channels for goods in transit. (Links 1 and 2)

General Comment

The implementation is relatively adequate.

Links

1. Some customs in China have opened ‘green channels’ for goods in transit: <http://www.customs.gov.cn/publish/portal0/tab65602/info763321.htm>
2. Customs serve The Belt and Road Initiative, promoting the development of transit trade: <http://www.customs.gov.cn/publish/portal0/tab65602/info738362.htm>

6. Formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to:

Implementation

The present formalities, documentation requirements, and customs controls in connection with traffic in transit have not been more burdensome for enterprises.

General Comment

The implementation is adequate.

(a) identify the goods; and

(b) ensure fulfilment of transit requirements.

7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.

Implementation

According to Decree of GACC No. 38 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Transit, administrative expenses may be incurred by the use of customs convoys. But the expenses will not be incurred because they are not included in the lists of administrative charges of national and central government departments, or the current list of administrative charges of the customs. (Links 1, 2 and 3)

Goods in transit are not subject to any customs charges nor unnecessary delays or restrictions throughout the present process.

General Comment

The Customs of China meets such requirement.

Links

1. List of administrative charges for national institutions, central departments and companies does not include this charge item: <http://www.customs.gov.cn/publish/portal0/tab49588/info783698.htm>
2. The list of current administrative charges of China Customs: <http://www.customs.gov.cn/publish/portal0/tab49588/info719580.htm>
3. Cai Shui No.102 [2015] Notice on Publishing the Cancellation and Exemption of Some Administrative Charges: http://www.bjciq.gov.cn/shoufei/Channel_2303/

8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade to goods in transit.

Implementation

At present, China's authority of transit has not applied technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade to goods in transit.

General Comment

The implementation is adequate.

9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.

Implementation

The Customs of China allows advance filing and processing of transit documentation and data.

General Comment

The implementation is adequate.

10. Once traffic in transit has reached the customs office where it exits the territory of a Member, that office shall promptly terminate the transit operation if transit requirements have been met.

Implementation

Generally, once traffic in transit has reached the customs office where it exits the territory, the Customs of China will promptly terminate the transit operation if transit requirements have been met.

General Comment

The implementation is adequate.

11. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

Laws and Regulations

The Customs of China has such regulation. Article 5 of Decree of the State Council No. 581 Regulations of the People's Republic of China on Guarantee for Customs Affairs stipulates that 'where a party engages in goods and traffic in transit, he or she shall provide guarantee as required by the customs.' (Link 1)

General Comment

The implementation is adequate.

Links

1. Decree of the State Council No. 581 Regulations of the People's Republic of China on Guarantee for Customs Affairs: http://www.gov.cn/zwgk/2010-09/19/content_1705914.htm

12. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

Laws and Regulations

China Customs has such arrangement. Regulations of the People's Republic of China on Guarantee for Customs Affairs provides that 'when a party has fulfilled the relevant legal obligations or a party of the customs has ceased handling specific customs affairs, the party shall be notified in writing to complete formalities of the discharge of the guarantee and the restoration of the rights.'

General Comment

The implementation is adequate.

Links

1. Decree of the State Council No. 581 Regulations of the People's Republic of China on Guarantee for Customs Affairs: http://www.gov.cn/zwgk/2010-09/19/content_1705914.htm

13. Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

Laws and Regulations

China Customs allows comprehensive guarantees which include multiple transactions for same operators.

Article 5 of Decree of the State Council No. 581 Regulations of the People's Republic of China on Guarantee for Customs Affairs provides that 'where a party engages in goods and traffic in transit, he or she shall provide guarantee as required by the customs.'

Article 11 reads, 'The party that handles the same kind of customs affairs more than once within a specific period may apply to the customs for comprehensive guarantees. Where customs accepts the comprehensive guarantees, the party will no longer provide any separate guarantee when he or she handles the same kind of customs affairs.' (Link 1)

General Comment

The implementation is adequate.

Links

1. Decree of the State Council No. 581 Regulations of the People's Republic of China on Guarantee for Customs Affairs: http://www.gov.cn/zwgk/2010-09/19/content_1705914.htm

14. Each Member shall make publicly available the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

Laws and Regulations

China Customs has such arrangement.

Decree of GACC No. 88 provides, ‘A transportation enterprise undertaking goods under customs supervision, according to the provisions of Articles 67 and 68 of Customs Law, shall have the guarantee as provided by any legal person, other organization or citizen that has the ability of performing the guarantee for customs affairs.’

General Comment

The implementation is adequate.

Links

1. Decree of GACC No.88 Administrative measures of Customs of People’s Republic of China on vehicle (including driver) driving on domestic highway that responsible for the transport of goods, which are controlled by customs: <http://www.customs.gov.cn/publish/portal0/tab399/info4057.htm>

Decree of GACC No.121 The decision on amending GACC No.88: <http://www.customs.gov.cn/publish/portal0/tab49659/info11105.htm>

15. Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

Laws and Regulations

China Customs has such provision.

Article 13 of Decree of GACC No. 38 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Transit provides, ‘After the entry of and before the exit of goods in transit, they shall be transported along the route as planned by the authorities of transportation; if the authorities of transportation do not plan the route, customs shall designate a route instead.

Based on the actual situation, when customs needs to dispatch personnel to guard the goods in transit, the operator or the carrier shall provide means of transportation free of charge and facilitate the mission of supervision and pay the charges according to regulations.’

Implementation

In practice, it is rare that customs needs to dispatch personnel to guard the goods in transit.

General Comment

The implementation is adequate.

16. Members shall endeavour to cooperate and coordinate with one another with a view to enhancing freedom of transit. Such cooperation and coordination may include, but is not limited to, an understanding on:

Implementation

China has such arrangement. (Link 1) For example, China signed agreement with Russia on goods in transit through the territory of Kazakhstan. China also reinitiated the agreement with Pakistan, Kazakhstan, and Kyrgyzstan on traffic in transit.

Links

1. China and Russia signed an agreement on temporary transit of freight vehicles through the territory of Kazakhstan: http://www.moc.gov.cn/zhuzhan/jiaotongxinwen/xinwenredian/201512xinwen/201512/t20151217_1949322.html
2. Economic Corridor, the reset transit transport protocol signed jointly by China, Pakistan, Kazakhstan, Kyrgyzstan, is expected to speed up: <http://world.huanqiu.com/hot/2015-09/7449434.html>

(a) charges;

(b) formalities and legal requirements; and

(c) the practical operation of transit regimes.

17. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

Implementation

Departments of economy and trade and transportation of the state are national transit coordinators.

Article 3 of Decree of GACC No. 38 Measures of the People's Republic of China on Customs Supervision and Administration of Goods in Transit provides, 'Transit goods from countries which have

entered into agreements on transit goods with China or transit goods shipped from or to countries which have entered into agreements on international railroad through-transportation with China shall be allowed to pass through China pursuant to the provisions of the relevant agreements; and transit goods of countries which have not entered into the aforesaid agreements with China shall be allowed to pass through China upon approval from the economic and trade and the transport administrative departments of the state and recordation with the customs office at the place of entry.’

General Comment

The implementation is adequate.

ARTICLE 12: CUSTOMS COOPERATION

1 Measures Promoting Compliance and Cooperation

1.1 Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.

1.2 Members are encouraged to share information on best practices in managing customs compliance, including through the Committee. Members are encouraged to cooperate in technical guidance or assistance and support for capacity building for the purposes of administering compliance measures and enhancing their effectiveness.

2 Exchange of Information

2.1 Upon request and subject to the provisions of this Article, Members shall exchange the information set out in subparagraphs 6.1(b) and/or (c) for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2.2 Each Member shall notify the Committee of the details of its contact point for the exchange of this information.

3 Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4 Request

4.1 The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed official language of the WTO or other mutually agreed language, including:

- (a) the matter at issue including, where appropriate and available, the number identifying the export declaration corresponding to the import declaration in question;*
- (b) the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons to whom the request relates, if known;*
- (c) where required by the requested Member, confirmation of the verification where appropriate;*
- (d) the specific information or documents requested;*
- (e) the identity of the originating office making the request;*

(f) reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information and personal data.

4.2 If the requesting Member is not in a position to comply with any of the subparagraphs of paragraph 4.1, it shall specify this in the request.

5 Protection and Confidentiality

5.1 The requesting Member shall, subject to paragraph 5.2:

(a) hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under subparagraphs 6.1(b) or (c);

(b) provide information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;

(c) not disclose the information or documents without the specific written permission of the requested Member;

(d) not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;

(e) respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data;

and

(f) upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2 A requesting Member may be unable under its domestic law and legal system to comply with any of the subparagraphs of paragraph 5.1. If so, the requesting Member shall specify this in the request.

5.3 The requested Member shall treat any request and verification information received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested Member to its own similar information.

6 Provision of Information

6.1 Subject to the provisions of this Article, the requested Member shall promptly:

(a) respond in writing, through paper or electronic means;

(b) provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;

(c) if requested, provide the specific information as set out in the following documents, or the

documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;

(d) confirm that the documents provided are true copies;

(e) provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2 The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement, it should specify this to the requested Member.

7 Postponement or Refusal of a Request

7.1 A requested Member may postpone or refuse part or all of a request to provide information, and shall inform the requesting Member of the reasons for doing so, where:

(a) it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member;

(b) its domestic law and legal system prevents the release of the information. In such a case it shall provide the requesting Member with a copy of the relevant, specific reference;

(c) the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding;

(d) the consent of the importer or exporter is required by its domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information or personal data and that consent is not given; or

(e) the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2 In the circumstances of paragraphs 4.2, 5.2, or 6.2, execution of such a request shall be at the discretion of the requested Member.

8 Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request if it was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9 Administrative Burden

9.1 The requesting Member shall take into account the associated resource and cost implications for the requested Member in responding to requests for information. The requesting Member shall

consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2 If a requested Member receives an unmanageable number of requests for information or a request for information of unmanageable scope from one or more requesting Member(s) and is unable to meet such requests within a reasonable time, it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10 Limitations

A requested Member shall not be required to:

- (a) modify the format of its import or export declarations or procedures;*
- (b) call for documents other than those submitted with the import or export declaration as specified in subparagraph 6.1(c);*
- (c) initiate enquiries to obtain the information;*
- (d) modify the period of retention of such information;*
- (e) introduce paper documentation where electronic format has already been introduced;*
- (f) translate the information;*
- (g) verify the accuracy of the information; or*
- (h) provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.*

11 Unauthorized Use or Disclosure

11.1 In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information and:

- (a) take necessary measures to remedy the breach;*
- (b) take necessary measures to prevent any future breach; and*
- (c) notify the requested Member of the measures taken under subparagraphs (a) and (b).*

11.2 The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12 Bilateral and Regional Agreements

12.1 Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of

the consignment.

12.2 Nothing in this Article shall be construed as altering or affecting a Member's rights or obligations under such bilateral, plurilateral, or regional agreements, or as governing the exchange of customs information and data under such other agreements.

Appendix: List of Recommendations

FOR CUSTOMS & INSPECTION AND QUARANTINE

1. Customs as well as Inspection and Quarantine agencies should classify import and export goods under different administration systems applied according to means of trade or transportation, types of products, etc. and provide detailed and instructive procedures and the required forms and documents for businesses.
2. Considering various import/export prohibitions and restrictions, we recommend that competent authorities consolidate them into a single catalog and publish the catalog on their websites. Competent authorities should endeavor to provide product codes for products that can be found whether prohibited or restricted by their codes.
3. Details of agreements with other countries should be published in a timely manner.
4. Draw from the experience of Japanese and Korean customs, and offer English translations of laws and regulations.
5. Customs and Inspection and Quarantine authorities shall consolidate and systematize forms and documents needed to be filled in and used by importers and exporters, and publish downloadable versions online.
6. Consultations and replies of various types, including the reply time, shall be summarized and published on a periodic basis, thereby facilitating continuous improvements of the effectiveness and quality of consultation services.
7. To solicit trade community's opinions in advance on legislation formulation, management procedures and even detail scripts for system development and take such opinions into account seriously.

For comments collected online, open communications and discussions should be allowed and encouraged, and legislative bodies should offer timely replies to the opinions and proposals offered by the public and the business community.

8. Release as soon as possible laws and regulations that are to be implemented, thereby leaving reasonable time for preparation for businesses to cooperate with the government's implementation efforts of laws and regulations.

9. China Customs and Inspection and Quarantine authorities should formulate and establish periodic consultation mechanisms with industry, adopt a more flexible and pragmatic approach to the determination of attendees, issues for consultation, etc., and extensively solicit and absorb feedback, complaints and recommendations from a wide range of business representatives;

There should be more accessible and effective information feedback channels and resolution mechanisms for issues that are of great importance, urgency, and that may cause extensive impact.

10. Content of Article 17 of Customs Administrative Review Measures, relating to the administrative procedure and administrative review systems within the scope of trade facilitation, has been well implemented, but it is undeniable that when enterprises are exercising administrative rights, because 1) they are concerned about retaliation by the administrative authority; 2) remedy procedures are complex or inaccessible; 3) exercising the right to administrative remedy may result in barriers to, or postponement of, release of import and export goods, quite a few enterprises gave up the exercise of such rights. Customs and Inspection and Quarantine authorities shall take pragmatic and effective measures to remove the barriers to the importer's application for administrative review.

11. Customs and Inspection and Quarantine authorities should summarize the current internal administrative interpretations of administrative laws and regulations (e.g. customs internal standards on the exercise of discretion), and make publicly available the summarized information in a form similar to that of judicial interpretations, thereby providing guidance for enterprises to standardize operations and avert risks;

Publish administrative penalty cases after appropriate treatment measures.

12. Establish a customs clearance system dedicated to import and export goods that have exceedingly strict time requirements including those that are perishable, fresh and alive, dangerous, used for disaster relief purposes, extremely valuable, and intended for first-aid purposes.

13. Conduct research, from the perspective of institutional arrangements, into the respective implementation of independent customs clearance operation systems by customs and Inspection and Quarantine authorities; draw from the experience of relevant institutional reforms of developed countries, and initiate China's institutional reform of border administration agencies.

14. China Customs and inspection and quarantine authorities shall disclose, when appropriate, the status of cooperation and coordination on relevant provisions of Trade Facilitation Agreement with countries that border on China.

15. Implement a paperless customs clearance system that adopts digital format in lieu of scanned copies, thereby decreasing cost of customs clearance;

Reduce the number of required documents and files enclosed, e.g. contracts.

FOR CUSTOMS

16. The legally binding or instructive decisions, guides, and rulings on commodity classification issued by GACC and customs directly subordinate to GACC should be gathered, systematized, classified and published promptly via a separate column. GACC should enable importers and exporters to pinpoint a tariff using the function ‘Search for Tariff’ under ‘Online Service’ on its website.

17. Take effective measures to ensure adequate implementation of relevant provisions of Decree of GACC No. 180.

18. Systematize the current administrative ruling and ‘three advances’ system, and formulate laws and regulations on advance ruling as per Trade Facilitation Agreement;

Take necessary measures to ensure adequate implementation of the advance ruling system.

19. Further regulate the fees and charges levied for public services by customs data sub-centers of each port.

20. Establish and implement voluntary disclosure-related systems as early as possible.

21. Advance declaration is conducive to accelerating port clearance and release, and it is recommended that research and investigation be carried out on the cause for failure to implement the advance declaration system, with a view to facilitating the implementation of the advance declaration system.。

22. Tax payment via electronic payment platforms significantly

facilitates the operations of importers and exporters, however, such platforms shall be an organic component of the customs clearance system and provided free of charge to businesses;

Publish the entry threshold for third-party payment platforms, and achieve adequate competition.

23. Offer guarantee-free inspection and release for businesses that have been accredited as high-level AEOs, with a view to incentivizing enterprises to implement the AEO system;

Allow the implementation of comprehensive guarantees on an enterprise by enterprise basis; cancel applications for guarantee on a consignment by consignment basis;

Allow a group company, under a customs authority, to implement comprehensive guarantees for its subordinate enterprises;

Allow a financial institution to provide comprehensive guarantees for any enterprise;

Specify the operational procedures for guarantee application and approval, and ensure that import and export guarantee applications that meet certain standards may secure approval smoothly.

24. The amended customs audit regulations have been promulgated, and the implementation measures thereof shall be amended as soon as possible.

25. Formulate procedural requirements regarding the schedule of audits, thereby facilitating the cooperation of enterprises.

26. There are many unreasonable or negotiable contents in China's regulations on inward processing regime including the scope of products permitted for inward processing, lists of products on which China imposes prohibitions and restrictions for processing trade, unit consumption, verification, expendable materials, etc. We recommend that the customs and commerce authorities probe into and solve the problems.

27. Considering the trend of economic globalization, the regime for inward maintenance of domestically-or foreign-made common products, electronic products, and medical equipment should be rendered more reasonable after in-depth research.

28. Detailed regulations on outward processing should be formulated as soon as possible.

FOR INSPECTION AND QUARANTINE

29. Charges of Inspection and Quarantine authorities need to be classified and standardized.

FOR OTHERS

30. IET is a national regulation and should be published on the websites of GACC and Ministry of Finance; as rate adjustments and provisional or regional measures for tariff are promulgated and implemented, they should also be updated in IET for the sake of importers and exporters.

31. The establishment of a nationwide single window should speed up; the participating authorities and agencies should keep an open mind about single windows built by third parties and provide them with relevant entry points.

32. China should refer to and learn from the best practices of establishing single windows from foreign customs. Based on the present E-port system, China should build a public platform, i.e. a single window that enables relevant functions of the participating agencies to interconnect.

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