90-miles Is Only Half of a 100-mile Journey

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With the implementing process of zero tariff, according to General Administration of Customs of the People's Republic of China, 2004 witnessed an 40% of increase in bilateral trade, higher than the increase of total trade volume under the Early Harvest Plan which means to reach an agreement in the facilitation of trade, public health, intellectual property rights and implementation of the two least developed countries free access (tariff-free & quota-free) treatment etc. Besides, with the implementation of comprehensive tax cut policies since July 2005, China and ASEAN has reached a total trade volume of US$160.84 billion only in 2006, a year-on-year increase of 23.4%, a positive sign of stable upward trend.

Entrepreneurs' concern

As of January 1, for ASEAN-6 an additional 7,881 tariff lines will come down to zero tariffs, bringing the total tariff lines traded under the Common Effective Preferential Tariffs for ASEAN Free Trade Area (CEPT-AFTA) to 54,457 or 99.11%. Additionally, with the reduction, the average tariff rate for these countries is expected to further decrease from 0.79% in 2009 to just 0.05% in 2010. In 2008, intra-ASEAN import value of commodities for these 7,881 tariff lines amounted to US$22.66 billion, or 11.84% of ASEAN-6 import value within ASEAN.

The tariff lines include final consumer products such as air conditioners; chilli, fish and soya sauces; as well as intermediate materials such as motorcycle components and motor car cylinders. Other products include iron and steel, plastics, machinery and mechanical appliances, chemicals, prepared foodstuff, paper, cement, ceramic and glass sectors.

It is reported that as the main plantation for tropic fruits, ASEAN countries will benefit much from the favorable tariff policy, some edible fruit and nuts and peel Products will enjoy zero tariffs when the Sino-ASEAN Free Trade Agreement begins to go into force next year. However, it also raised the concern of many Chinese entrepreneurs who runs fruit business. Mr. Wang Yisheng, Thailand's Ambas-
Service of the Framework Agreement on Comprehensive Economic Co-operation between the ASEAN and China ("Agreement on Service Trade"), and Agreement on Investment of the Framework Agreement on Comprehensive Economic Co-operation between the ASEAN and China ("Agreement on Investment") were signed in 2004, 2007 and 2009 respectively.

Opportunities and challenges

For the enterprises and undertakings in China, the launch of the China-ASEAN FTA is a great opportunity. Apart from four new members of ASEAN, i.e., Cambodia, Laos, Myanmar, and Vietnam, which will be covered by zero-tariff by 2015, around ninety percent of products traded between China and the member states of ASEAN can enjoy zero tariffs upon 2010 according to the foregoing series of bilateral agreements. For the goods imported from China, the six original members of ASEAN decreased their average tariff rates to 0.6% from 12.8% upon January 1, 2010, the four new members of ASEAN will also follow in the six original members' footsteps upon 2015 to further open their domestic markets to the goods made in China.

Now the broad impact of the China-ASEAN FTA begins to be seen. On February 10, 2010, the General Administration of Customs of China ("GAC") published the statistical data of the first month of 2010 regarding China's foreign trade. Among others, it was said that China's exports to ASEAN increased by 52.8% to US$10.55 billion, and ASEAN became the third largest trade partner of China.

Although the tariff preference under China-ASEAN FTA is extraordinary, many Chinese enterprises engaged in exports have not fully taken advantage of the aforesaid tariff preference due to their ignorance of the details of the above agreements. In addition, we also notice that China's imports from ASEAN increased by around 120% to US$10.93 billion in the first month of 2010. In 2009, China enjoyed a trade surplus with ASEAN while China's trade deficit with ASEAN is widening now.

Tariff preference

According to the arrangement of the tariff reduction and elimination under the Agreement on Goods Trade, tariff of the goods shall be categorized into two tracks, i.e., normal track and sensitive track. The tariff rates in the two tracks shall be reduced and eliminated according to different schedules. In comparison with the tariff belonging to the normal track, the tariff falling within the sensitive track is reduced at a much slower speed. For example, in respect of the six original members of ASEAN, the tariff rates in normal track have to be reduced to zero by January 1, 2010, while the tariff rates in sensitive track are going to be decreased to 20% not later than 2012.

Generally speaking, the goods which are subject to the tariff in the sensitive track are important and vulnerable for the members of ASEAN. For instance, in consideration of the strong competitiveness of certain kinds of products made in China, Malaysia selected some products which are subject to the tariff in the sensitive track to protect its domestic industries, such as motor cars, four wheels drive vehicles, men's suits and cement clinkers. Meanwhile, it is worthy to note that the number of the tariff lines which can be placed in the sensitive track shall be subject to a maximum ceiling. In respect of the six original members of ASEAN, only less than 400 tariff lines and no more than 10% of the total import value can be placed in sensitive track.

Apart from the difference between goods in normal track and sensitive track, the Agreement on Goods Trade also made a difference regarding the pace of the tariff reduction among the members of ASEAN. Based on the time joining ASEAN, the members of ASEAN can be divided into two parts, i.e., six original members and four new members including Cambodia, Laos, Myanmar, and Vietnam which are less developed than the six original members. The six original members shall have their tariff placed in the normal track gradually reduced to zero by 2010. In the mean time, the four new members are permitted to achieve the aforementioned goal by 2015. In other words, compared with the six original members, the four new members have a five-year transition period to reach the goal of the zero tariff rates.

Therefore, the tariff preference is various instead of being unified according to the Agreement on Goods Trade. The tariff rates for different types of goods exported to different members of ASEAN vary dramatically. In view of the foregoing factors, the tariff rates of the members of ASEAN shall be calculated case by case. In summary, the six original members’ tariff rates in the normal track at present are zero, and their tariff rates in the sensitive track will be reduced to 0-5% not later than January 1, 2018. The four new members’ tariff rates in the normal track currently are less than 25%, and their tariff rates in the sensitive track will be reduced to 0-5% not later than January 1, 2020.

Rules of origin

Technically, whether a product is eligible for the preferential tariff under the Agreement on Goods Trade is conditional upon the origin of the product which is determined according to the rules of origin. The rules of origin play a very important role during the process of implementation of the China-ASEAN FTA. For the Chinese enterprises proposing to enjoy the tariff preference under the Agreement on Goods Trade, it is necessary to analyze the rules of origin thereof and evaluate their products designed to export to ASEAN in order to ensure that their products can comply with the rules of origin. Chinese products exported to ASEAN shall be deemed to be originated from the China-ASEAN FTA and then eligible for preferential tariff if the products conform to the origin requirements.

In accordance with the Rules of Origin for the China-ASEAN FTA ("Rules of Origin"), the products can be divided into wholly obtained products and non-wholly obtained products. Wholly obtained products refer to the products which are wholly obtained or produced within the members of ASEAN or China. The wholly obtained products generally include agricultural products, forest products, minerals and other natural products, such as the plant and plant products harvested, picked or gathered in the foregoing countries, live animals born and raised there, and products obtained from hunting, fishing or gathering there. For the wholly obtained products, it is easy to determine their origin according to their natural characters and it is also straightforward to decide whether the preferential tariff can be applicable to the products.

Non-wholly obtained products mean the products which are not wholly obtained or produced within the members of ASEAN or China, i.e., the China-ASEAN FTA. A product shall be deemed to be originated from the China-ASEAN FTA and then can enjoy the tariff preference under the Agreement on Goods Trade provided that its content originated from the China-ASEAN FTA shall be more than 40% or its content which is not originated from the China-ASEAN FTA shall be evidently less than 60%. For example, a motor car with 50% content from China, 50% content from Australia can be
deemed as the product originated from the China-ASEAN FTA and can be exported to ASEAN from China at the preferential tariff rate. With respect of the foregoing requirements regarding the 40% content, all of the product content from the China-ASEAN FTA can be calculated cumulatively. In other words, if the foregoing motor car has 25% content from China, 25% from Singapore and 50% content from Australia, the car can also enjoy the preferential tariff when it is exported to ASEAN from China.

In practice, most of the products made in China are consigned directly from China to ASEAN. Nevertheless, certain products are some times transported passing through the territory of any other countries which have not joined in the China-ASEAN FTA. In general, the goods transported passing through a country other than China or the ASEAN shall not be considered as the products originated from the China-ASEAN FTA. However, there is an exception to the aforesaid principle if the following requirements can be met: (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements; (ii) the products have not entered into trade or consumption there; and (iii) the products have not undergone any operation other than unloading and reloading or any operation required to keep them in good condition.

Certificate of origin procedures

Chinese enterprises planning to apply for preferential tariff rates on exports to ASEAN shall bear in mind that they have to obtain the Certificate of Origin ("Form E") issued by designated government agencies of China and submit the Form E to the customs of ASEAN. If the Form E is not issued by the foregoing agencies or the format of the FORM E is not proper, the goods declared shall not be qualified for preferential tariffs. According to the Rules of Origin, the Form E shall be issued by the government authorities of the exporting state. In China, General Administration of Quality Supervision, Inspection and Quarantine of China and its local counterparts ("QSIQ") are the competent authorities to issue the Form E for the goods which are made in China and designed to export to ASEAN.

In order to apply for the Form E, the exporters in China shall reach the following thresholds: (i) the goods are exported to any of the members of ASEAN; (ii) the goods are currently deemed as the goods which can enjoy the tariff preference in the destination country; and (iii) the goods must meet the requirements stipulated in the Rules of Origin. The qualified exporters who have reached the thresholds are entitled to commence the procedures of the application of the Form E. First, the exporters shall conduct registration formalities with the QSIQ. The Business licence of the exporters and other documents required by the QSIQ shall be submitted to the QSIQ. At this stage, the review conducted by the QSIQ is focused on the qualification of the exporters. Second, the exporters shall apply for Form E with the QSIQ for each batch of goods before the goods are shipped out. The application form of the Form E and copy of the commercial invoice of the goods and other required documents shall be submitted to the QSIQ. For the purpose of ensuring the authenticity and the accuracy of the origin of the goods, QSIQ has the right to initiate investigation regarding the origin on or upon the issuance of the Form E.

According to announcements promulgated by the GAC, any goods exported to ASEAN under the preferential treatment of the China-ASEAN FTA shall be endorsed by China Inspection Company Limited or its Macao branch with "Certification of Non-manipulation" in the event that the goods are transported from China to ASEAN passing through Hong Kong or Macao. The foregoing no-processing documentation can convince the customs of the importing state that the goods are not further processed in Hong Kong or Macao.

Conclusion

In some industries, such as textiles, automobiles, steel and precision meters, Chinese enterprises have an edge over the undertakings of ASEAN in the past. Recently, the implementation of the China-ASEAN FTA has greatly reduced tariffs and helped Chinese enterprises cut their export cost and further increase their competitiveness. It also facilitates the goods made in China to enhance their performance in the market of ASEAN. At present, it is advisable and urgent for the relevant enterprises in China to get a complete and deep understanding of the rules of the China-ASEAN FTA in order to fully enjoy the tariff preference thereof.

After the long-run multilateral negotiation, the central government of China has finally established a wonderful legal framework for domestic enterprises which are eager to enhance their exports to the countries of ASEAN. However, the last part of an endeavor is the hardest to finish. Establishment of the China-ASEAN FTA is just a new start for the enterprises and government of China to facilitate China's business in ASEAN.

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