EY analysis on the Tariff Law of the People's Republic of China

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Promulgated by Order of the President of the People's Republic of China No. 23, the Tariff Law of the People's Republic of China (hereinafter referred to as the "Tariff Law"), the first of its kind in China, was adopted at the ninth session of the Standing Committee of the 14th National People's Congress on 26 April 2024 and will take effect on 1 December 2024, marking a milestone in the evolution of China's tariff regime.

The Tariff Law implements the principle of "taxation by law", grounded upon provisions stated in a series of tariff regulations, rules and normative documents, including the Regulations of the People's Republic of China on Import and Export Duties (hereinafter referred to as the "Regulations of Tariff"). With optimizing adjustment to the existing tariff system and policies, the Tariff Law enables China's tariff system of law to be improved, while the tariff regime is kept stable and overall tax liabilities remain unchanged.

The Tariff Law consists of seven chapters and 72 articles while the Regulations of Tariff contain six chapters and 67 articles.

Regulations of Tariff (67 articles)	Tariff Law (72 articles)
Chapter I: General provisions	Chapter I: General provisions
Chapter II: Composition and application of duty rates on import and export goods	Chapter II: Tariff items and rates
Chapter III: Determination of Customs value of import and export goods	Chapter III: Tariffs payable
Chapter IV: Duty Collection on import and export goods	Chapter IV: Tariff concession and tariff collection on special case
	Chapter V: Tariff collection and administration
Chapter V: Collection of flat duty on inward articles	
	Chapter VI: Legal liabilities
Chapter VI: Supplementary provisions	Chapter VII: Supplementary provisions

We compared the Tariff Law with the Regulations of Tariff and identified key differences in the following six respects.

1. Consolidating the outcomes of deepened reform for customs clearance integration

Customs clearance facilitation is one of the important measures to promote China's high-level opening up. The Tariff Law aims to further facilitate duty collection, which serves as one of the major principles for the legislation. Pursuant to provisions, we have observed that certain experience from effective practices in the reform of customs clearance integration has been replicated in the Tariff Law and the administration of duty collection has been further improved.

Separating goods release from duty validation places higher requirements for businesses to comply with their obligations

As specified in Article 41, the practice of separating goods release from duty validation can be applied into duty collection and administration, which shall adapt to the needs of the development of new forms and models of foreign trade, and improve informatization, intelligence, standardization and facilitation. This is the first time that such provisions are stated explicitly in the law, that is, goods can be released prior to the validation of duty liability from customs office, facilitating the clearance for businesses caught in duty declaration.

It is worth noting that under the practice of separating goods release from the duty validation, the release of goods does not mean that duty declaration has been validated by the customs office. Businesses may face increasing uncertainties during the acceleration of customs clearance. According to Article 45, the Customs office has the right to validate the duties owed by a duty payer or withholding agent within three years of when the duties were paid or the goods were released. If the validated duties owed are different from what the duty payer or withholding agent declared, the Customs office will issue a letter of validation payable to the duty payer or withholding agent. The duty payer or withholding agent shall make up the unpaid or missed duties or go through the refund formalities within a certain time frame as specified in the letter of validation. In case of a failure to makeup within a certain time frame subject to validation by the Customs office, a late fee of 0.05% of the amount of underpaid or missed duties per day from the date of expiration of the specified period shall be charged, indicating explicitly that the Customs office shall have the right to review and validate the duty declaration filed within three years as of the day when the goods are released. As for duty payers, the entry declaration is made on their own without being reviewed by the Customs office. The accuracy and authenticity of the declaration remain in an uncertain state for up to three years. In case of inaccuracy, which is not addressed on a timely basis, there may be cumulative misconduct contributing to more compliance risks. As such, we believe separating goods release from duty validation places higher requirements for duty payers to comply with obligations.

For the first time, the Tariff Law has introduced the system of Customs issuing the letter of duty validation. However, details and procedures of the system have not yet been defined, including whether the letter will state the basis and reasons for the duty determination and whether duty payers will have the right to make an explanation and provide supporting documents. It is reported that supporting rules and regulations are under development, and it is expected that the customs will take into account impacts of duty validation letter on rights and obligations of duty payers, clarify what the letter of validation is grounded by, standardize procedures to issue the letter of validation to further enhance the transparency in enforcement, and protect the right to be informed and other legitimate rights and interests of duty payers.

Moreover, the reform in consolidated tax collection was carried out in an all-round way in 2015 for trade facilitation and clearance cost reduction. As specified in the Tariff Law, duty payers and withholding agents shall be allowed to pay duties on a consolidated basis. Article 43 provides that duty payers and withholding agents of import and export goods shall pay duties within 15 days as of the day when an entry declaration is filed; eligible duty payers who have provided a bond shall be permitted to pay duties on a consolidated basis by the end of the fifth day of the following month. Where a duty payer or a withholding agent fails to pay the duties because of force majeure or the change of duty policies by the State, it may, upon approval of the customs office, extend the time limit for the payment of the duties, but the extended period shall not exceed six months. Amid consolidated duty collections, duty payers can take delivery of the goods and pay duties on the goods released in a concentrated manner within a specified period. Duty payers have more autonomy in choosing the tax payment timing, which is conducive to improving the efficiency of customs clearance and capital utilization.

Upon application or ex officio system allows import and export activities to be more predictable

In practice, dutiable value, classification of goods and place of origin are major considerations in duty amount validation, while valuation, classification and place of origin are the most challenging technical issues faced by customs worldwide. Article 31 provides that the Customs may, upon application or ex officio, determine the dutiable value, classification and place of origin of imports and exports and inbound articles in accordance with laws, indicating that the customs office shall have the authority and right to review and validate the dutiable value, classification and place of origin while duty payers shall have the right to apply for such validation. We have observed that duty payers are already empowered to submit applications to the Customs office for such validation as specified in the existing advance ruling system. Pursuant to the Interim Administrative Measures on Advance Rulings of Customs of the People's Republic of China (Decree of the General Administration of Customs of the People's Republic of China No.236), and its amendment (Decree No. 262 issued in 2023), applicants can apply for advance ruling prior to actual import and export of goods, which encompasses (1) classification of import and export goods; (2) place of origin or certificate of origin of import and export goods; (3) Elements related to dutiable value of import and export goods and valuation method; and (4) other Customs issues specified by the General Administration of Customs. It remains to be seen whether the provisions of Article 31 of Tariff Law are intended to grant legal status to advance ruling system or serve as extended regulations. We expect the upon application system for validation of dutiable value, classification and place of origin will be improved through the subsequent establishment of supporting rules. For example, in terms of content, businesses are allowed to apply for the validation of what shall be included into the dutiable value and valuation method from a qualitative perspective, as well as specific value from a quantitative perspective. In terms of application time, businesses are allowed to apply for advance ruling prior to importing goods or apply for validation after making the declaration and goods are released. Thus, the Customs office will be able to strengthen the administration over import and export activities, address uncertainties in duty declaration to make import and export more predictable and provide a more stable business environment.

Using the date of completion of the declaration as the applicable date of the duty rate is more compatible with the two-step declaration procedures

Before the Tariff Law, the applicable date of the tax rate was based on Article 15 of the Regulations of Tariff, which states that "For any import or export goods, the duty rates implemented on the date when the Customs accepts the declaration for import or export of such goods shall apply". However, with the promotion of the "two-step declaration" for customs clearance mode since 2020, the original mode of requiring enterprises to complete a one-off declaration of the full caliber has been changed to: firstly, make a summary declaration and take delivery of goods by only submitting the bill of lading; and secondly, submit all other information documents and make declaration as required within 14 days after declared entry of transport means. Therefore, the original "date when the Customs accepts the declaration" is no longer applicable for the "two-step declaration" reform. The provision of the Tariff Law "the date of completion of the declaration" can be interpreted as referring to the date of completion for the second step of the "two-step declaration", which is more reasonable compared to the original provision "the date when the Customs accepts the declaration", the former matches the actual import declaration process of enterprises under the "two-step declaration" mode. However, due to declaration data errors and other factors leading to the need to modify or withdraw the customs declaration, in practice, "the date of completion of the declaration" may still lead to uncertainties. With the implementation of the Tariff Law and the improvement of relevant supporting regulations, Customs may make further detailed provisions on the "date of completion of declaration".

Independently choosing customs for declaration and tax payment procedures enhances trade facilitation

After the full implementation of the national customs clearance integration, companies can independently choose their place of declaration, tax payment, examination, release and the mode of customs clearance based on their actual needs. They can complete customs clearance procedures at any customs office in China. The Tariff Law formalizes this reform legislatively, allowing taxpayers and withholding agents of imported and exported goods to select either the customs office in charge of the place of clearance or the customs office at the port of entry for declaring and paying taxes, as stipulated by law. This reform enhances enterprise autonomy, providing them with greater flexibility to declare taxes according to their business needs and improves trade facilitation.

2. Incorporation of the results of sectoral legislation on the customs regime

Considering the previous enforcement practice, the Tariff Law incorporates some mature sectoral legislations, for example:

Clarifying the Customs Duty withholding obligations of cross-border e-commerce-related operators in response to the trend of e-commerce

In the Regulations of Tariff, the duty payers of customs duties include the consignee of imported goods, the consignor of exported goods and the owner of inward articles. With the development of cross-border e-commerce, the concept of "withholding agent" has emerged in law enforcement. In 2018, the General Administration of Customs, together with the Ministry of Commerce and other departments, jointly issued the Circular on Improving the Oversight of Retail Imports in Cross-Border E-Commerce (Shang Cai Fa No. 486 [2018]), which stipulates that relevant platforms responsible for the aggregation of e-commerce enterprises, logistics enterprises, or customs brokers are the agents to withhold and pay the taxes on the cross-border e-commerce retail imports of commodities.

This Tariff Law further standardizes the bearer of the duty withholding obligation in cross-border e-commerce business scenarios, and puts the concept of withholding agent into the Tariff Law, which is in line with the trend of e-commerce.

Improve customs duty collection methods, summarize practical experience in customs duty collection, and add compound collection method

Regulations of Tariff stipulate that the duty on import or export goods shall be collected in the form of ad valorem duty, specific duty or other forms. In practice, due to the existence of compound duty collection methods, such as according to the Circular of the General Administration of Customs on the Trial Implementation of Ad Valorem Duties and Compound Duties (Department Tax [1997] No. 481), the compound collection methods are implemented on a trial basis for the broadcasting-grade tape recorders and tape players. The Tariff Law specifies three types of tariffs collection methods from legislation dimension, i.e., ad valorem, specific duty and compound method (both ad valorem and specific duty), in order to synchronize with the current duty collection and administration in China.

Clarify that warranty costs are included in the dutiable price and improve the valuation system from legislation dimension

The Tariff Law makes it clear that the warranty cost is not an item excluded from the dutiable price, i.e., the warranty cost is part of the dutiable value of the goods, which is in line with Article 15 of the current Rules for Determination of the Dutiable Value of Import and Export Goods (Decree No. 213 of the General Administration of Customs). Therefore, companies should pay attention to the treatment of warranty costs when making a declaration of the dutiable value to the Customs.

Clarify the three-year time limit for the imported goods offered at no cost as compensation or replacement and further improve the duty collection system

The Rules of the General Administration of Customs of the People's Republic of China on the Levying of Duties and Taxes on Imported and Exported Goods (Decree No. 124 of the GACC of 2005, amended in 2018) imposes a three-year time limit for taxpayers to declare goods offered at no cost as compensation or replacement. This time, the Tariff Law incorporated the Rules, requiring that the taxpayer shall, within the period of requesting compensation agreed in the original import and export contract and not exceeding three years from the date of release of the original import and export, declare to the Customs that the import and export procedures for free compensation or replacement of the goods shall be carried out.

3. Significant adjustments to tax recovery and refund time limit to reflect consistency of power and responsibility

A three-year time limit for pursue and recover unpaid duties, no time limit for smuggling

Compared with the Regulations of Tariff, the change from "one year to recover the duties" to "three years to confirm" in the Tariff Law is one of the most notable changes in this amendment. We understand that, after the Tariff Law is carried out, for the short-collected or non-collected duties not caused by the taxpayer's violation of customs provisions, the provision of the Customs to recover duties within one year will be repealed, and replaced by a three-year confirmation, that is, from the perspective of the time limit, the Customs will no longer differentiate between one-year recovering duties and three-years pursuing duties, both time limit will be set as three years.

In addition, the Tariff Law also adds the provision that there is no time limit on the recovery of taxes by the Customs for smuggling, according to Article 47, "For smuggling, the Customs shall not be subject to the time limit stipulated in the preceding article for the recovery of taxes and late payment fees, and shall have the right to verify the amount of tax payable."

Regulations of Tariff	Tariff Law	Changes
Article 51: Where the Customs finds that duties are short-collected or not collected on a consignment of import or export goods after the release, the Customs shall recover the duties payable from the duty payer within one year from the date of the duty payment or the release…	Article 45: Within three years from the date of the duty payment of tax by the taxpayer or withholding agent or the release of goods, the Customs shall have the right to validate the amount of duty payable by the taxpayer or withholding agent…	The change from "one year to recover the duties" to "three years to validate duties" can be interpreted as "one year to recover the duties" to "three years to recover the duties".
Article 51: If the short-collected or non-collected duties are attributable to the duty payer's violation of the provisions, the Customs may pursue the payment of the unpaid duties within three years from the date of the duty payment or the release, and impose a fine for late payment of 0.05% of the short-collected or non-collected duties per day from the date of the duty payment or the release. Where the Customs finds that the short-collection or non-collection of duties on goods under Customs control is attributable to the duty payer's violation of the provisions, the Customs shall pursue the payment of the unpaid duties within three years from the date of the duty payment or the release, and impose a fine for late payment of 0.05% of the short-collected or non-collected duties per day from the date of the duty payment or the release.	Article 46: If the short-collected or non-collected duties are attributable to the duty payer or withholding agent's violation of the provisions, the Customs may pursue the payment of the unpaid duties within three years from the date of the duty payment or the release, and impose a fine for late payment of 0.05% of the short-collected or non-collected duties per day from the date of the duty payment or the release. Article 47: For smuggling, the Customs recovery of duties and, late fees are, not subject to the time limitations set out in the preceding article and the Customs has the right to verify the amount of duty payable. Article 48: Where the Customs finds that the short-collection or non-collection of duties on goods under Customs control is attributable to the duty payer's violation of the provisions, the Customs shall pursue the payment of the unpaid duties within three years from the date of the duty payment or the release, and impose a fine for late payment of 0.05% of the short-collected or non-collected duties per day from the date of the duty payment or the release.	There is no change in the "three-year pursue" due to violation of the regulations by the taxpayer. A new provision has been added on the unlimited duration of customs recovery for smuggling.

The time limit for taxpayers to apply for tax refunds is extended to three years, matching the deadline for recovery taxes

Compared with the Regulations of Tariff, the Tariff Law has also been revised considerably with respect to the circumstances in which a taxpayer may discover an overpayment of tax. The extension of the time limit for taxpayers to apply for refund of overpaid taxes from "one year" to "three years" is in line with the time limit of "three-year confirmation" for the recovery tax in the Tariff Law. This is a manifestation of reciprocity in the Tariff Law, giving taxpayers and Customs more time to identify and correct possible underpayment or overpayment of duties.

Expanding the scope of duty-exemption re-shipment in its original condition, and incorporating force majeure within its ambit, provides a beneficial outcome for taxpayers

Article 43 of the Regulations of Tariff states that no import or export duty shall be collected on export or import goods re-transported into or out of the Customs territory in the same state within one year from the date of exportation or importation due to problems with quality or specifications. Article 50 allows taxpayers, within one year from the date of duty payment, to apply for a refund of duties if they have already been paid on goods that are re-transported out of/into the Customs territory in the original state due to problems with quality or specifications. The application must state the reasons therefor in writing to the Customs and providing the original duty-memo and the relevant information and data. In cases where goods need to be re-exported due to natural disasters or changes in national policies, which do not fall under quality or specification reasons, customs duty is still required upon importation, resulting in an additional tax burden for the enterprise. To address this issue, the Tariff Law includes "force majeure" circumstances, allowing enterprises to be exempt from import and export tariffs or to receive a refund upon application if they need to reship goods in their original condition within one year due to force majeure. Furthermore, in situations where import tariffs are not levied and goods need to be re-exported in their original state within one year, the Tariff Law allows for an extension of the one-year period under special circumstances with the approval of Customs departments. These amendments demonstrate a commitment to supporting taxpayers and protecting their legitimate rights and interests.

Regulations of Tariff	The Tariff Law	Changes
Article 52……Upon finding any over-collection of duties, the duty payer may, within one year from the date of duty payment, request in writing the Customs to refund the over-collected duties together with the interest for the corresponding period computed at the current deposit interest rate of the bank. The Customs shall, within 30 days from the date of accepting the application for duty refund, ascertain the relevant facts and notify the duty payer to go through the refund formalities..	Article 51: Upon finding any over-collection of duties, the duty payer may, within three years from the date of duty payment, request in writing the Customs to refund the over-collected duties. The Customs shall, within 30 days from the date of accepting the application for duty refund, ascertain the relevant facts and notify the duty payer to go through the refund formalities..	The span of time extends from one year to three years.

Regulations of Tariff	The Tariff Law	Changes
Article 43: No import duty shall be collected on export goods re-transported into the Customs territory in the same state within one year from the date of exportation due to problems with quality or specifications. No export duty shall be collected on import goods re-transported out of the Customs territory in the same state within one year from the date of importation due to problems with quality or specifications.	Article 39: No import duty shall be collected on export goods re-transported into the Customs territory in the same state within one year from the date of exportation due to problems with quality or specifications or force majeure. No export duty shall be collected on import goods re-transported out of the Customs territory in the same state within one year from the date of importation due to problems with quality or specifications or force majeure. However, under special circumstances, the Customs may grant an extension to this one-year period with their approval. The specific measures for such extensions will be determined by the General Administration of Customs.	► Addition of "force majeure". ► Added the provision that the time limit may be appropriately extended in special cases.
Article 50: Under any of the following circumstances, the duty payer may, within one year from the date of duty payment, apply for a refund of duties by stating the reasons therefor in writing to the Customs and providing the original duty-memo and the relevant information and data: ► where any goods, on which the import duty has been collected, are re-transported out of the Customs territory in the original state due to problems with quality or specifications ► where any goods, on which the export duty has been collected, are re-transported into the Customs territory in the original state due to problems with quality or specifications and all internal taxes refunded for export have been repaid ► where any goods, on which the export duty has been paid, are re-declared to the Customs as shut-out cargo because they are not loaded for export due to certain reasons……. Article 52: Upon finding any over-collection of duties, the Customs shall immediately notify the duty payer to go through the refund formalities. Upon finding any over-collection of duties, the duty payer may, within one year from the date of duty payment, request in writing the Customs to refund the over-collected duties together with the interest for the corresponding period computed at the current deposit interest rate of the bank…	Article 52: Under any of the following circumstances, the duty payer may, within one year from the date of duty payment, apply for a refund of duties by stating the reasons therefor in writing to the Customs and providing the original duty-memo and the relevant information and data: ► where any goods, on which the import duty has been collected, are re-transported out of the Customs territory in the original state due to problems with quality or specifications or force majeure within one year ► where any goods, on which the export duty has been collected, are re-transported into the Customs territory in the original state due to problems with quality or specifications or force majeure and all internal taxes refunded for export have been repaid within one year ► where any goods, on which the export duty has been paid, are re-declared to the Customs as shut-out cargo because they are not loaded for export due to certain reasons…… Article 53: Where Customs duties are refunded in accordance with the provisions, interest for the corresponding period computed at the current deposit interest rate of the bank shall be added.	► Addition of the cause of "force majeure". ► In cases of overpayment found by Customs and in specific cases, the Customs duty is refunded plus bank interest.

4. Resolving long-standing controversial issues in law enforcement practices

The Tariff Law has addressed certain contentious matters that have long been present in law enforcement practices by emphasizing the importance of supporting taxpayers, showcasing advancements in legislation.

Favoring the lower rate upholds the fairness and rationality of tax laws

The Tariff Law provides clear guidelines on the utilization of various duty rates such as most-favored-nation (MFN) duty rates, conventional duty rates, special preferential duty rates, general duty rates, tariff quota duty rates and anti-dumping duty rates in specific circumstances when contrasted with the Regulations of Tariff.

The duty rates are typically arranged in descending order as follows: general duty rates, MFN duty rates, conventional or special preferential duty rates, and temporary duty rates. According to the principle of utilizing the lower rate, the Tariff Law outlines specific scenarios. For instance, if the MFN rate is lower than the conventional duty rate, Article 13 of the Tariff Law dictates that the MFN rate should be applied to imported goods subject to the conventional duty rate in the absence of a temporary duty rate. In situations where tariff quota duty rates and temporary duty rates coexist, Article 14 clarifies that tariff quota duty rates are applicable to goods within tariff quotas, while temporary duty rates are applied to goods with temporary duty rates. This approach of favoring the lower rate upholds the fairness and rationality of tax laws, eases the burden on taxpayers and enhances tax compliance within society.

Improving regulations for applicable duty rates in cases where the origin of goods subject to punitive measures is unclear, ensuring alignment between national tax revenues and business tax responsibilities

The determination of tariffs heavily relies on the origin of goods, which is crucial in deciding the applicable duty rates for goods, determining eligibility for tax preferences and imposing trade sanctions. The Tariff Law contains provisions that specifically address the issue of origin. According to Article 11, paragraph one, duty rates should be applied based on the corresponding rules of origin. Furthermore, paragraph two of Article 11 states that if goods are entirely produced in one country or region, that country or region will be considered the origin. However, if the production involves two or more countries or regions, the country or region where the last significant change occurred will be considered the origin. In cases where the determination of origin is governed by international treaties or agreements in which China is a party, shall adhere to the provisions outlined in those agreements. Our interpretation of this provision is that it encompasses the non-preferential rules of origin as outlined in the Regulations of the People's Republic of China on the Origin of Import and Export Goods (Decree No. 416 of the State Council, as amended in 2019). Furthermore, it also includes and summarizes the rules for determining the origin under preferential trade measures. Additionally, considering the intricate nature of the rules of origin, the third paragraph of the Article states that the specific determination of the origin of imported goods should be conducted in accordance with this Law, the provisions of the State Council and the relevant departments. This refers to the regulations on origin, as well as the related regulations and normative documents that govern the specific determination of origin.

In the realm of import and export trade, the complexity of supply chains and product compositions can lead to situations where enterprises are unable to provide certificates of origin, or where the authenticity of such certificates is in question. In such instances, the goods may be deemed of unknown origin by the customs authorities. According to Article 10 of the Regulations of Tariff and Article 12 of the Tariff Law, goods of unknown origin are typically subject to the general duty rate. However, when cases involve anti-dumping, countervailing, safeguard measures, retaliatory tariffs or other such measures, there is often debate on how duty rates should be applied. In accordance with Customs regulations on anti-dumping (such as Announcement No.9, 2001 issued by the General Administration of Customs of the People's Republic of China), if the origin of goods cannot be determined even after inspection, anti-dumping duties may be imposed based on the highest rate applicable to similar products. The final duty rate in such cases may include the anti-dumping duty rate along with the general or MFN rate, a practice that remains contentious. There are views that since the country of origin cannot be determined, according to the provisions of Article 10 of the Regulations of Tariff, the general duty rate should be attached on top of the rate applied by the relevant measures, and there are also views that due to the application of the rate of tariff of the relevant measures, the country of origin is presumed to be the country of origin of the corresponding rate of tariff of the applicable measures, and therefore the duty rate added is the same as the rate of tariff of the accused dumped products. The duty rate added should be the MFN rate. The current legislation of the Tariff Law clarifies this situation by providing in Article 19 that:

"If the imported goods involved in the measures outlined in Articles 16, 17, and 18 of this Law do not have supporting documents provided by the taxpayer, or if the provided supporting documents do not exclude the possibility that the goods originated in the country or region where the prescribed measures were taken after examination by the Customs, then the goods in question shall be subject to the higher of the two tax rates:

(a) The tax rate obtained by adding the highest tax rate imposed on the goods due to the adoption of the prescribed measures and the tax rate applicable as per the provisions of Articles 12, 13, and 14 of this Law.

(b) General duty rates."

In conclusion, when dealing with goods of unknown origin, if the first mentioned duty rate is applied, it is assumed that the goods originated from the country implementing the prescribed measure. Therefore, the total duty rate will be the sum of the relevant prescribed measure's duty rate (e.g., the duty rate added on the U.S.) and the applicable duty rate of that country (e.g., the MFN rate, temporary duty rate or conventional duty rate, etc.). On the other hand, if the second mentioned duty rate is applied, it is presumed that the goods originated from the country implementing the general duty rate, therefore measures such as anti-dumping duties and countervailing duties do not apply. This provision of the Tariff Law has effectively rationalized the application of duty rates, ensuring that the higher rate is imposed in both cases to collect the full amount of revenue without excessively burdening taxpayers.

Applicable scenarios:

Suppose that country A is dumping product X to China, and the Ministry of Commerce of China has issued a notice stating that anti-dumping duties will be imposed on product X originating from country A. The maximum anti-dumping duty rate for product X is 18.7%. In accordance with China's current Regulations of Tariff, product X is subject to an ad valorem tariff, with a general tariff rate of 30% and an MFN tariff rate of 6.3%. During customs inspection, it was discovered that Company A imported product X, which had the words "Made in country A" printed on its inner packaging. However, the certificate of origin provided by the company indicated that the product originated from country B. Despite further examination, the origin of the goods could not be determined, resulting in a situation of unknown origin. Therefore, based on Article 19 of the Tariff Law, the applicable tariff rate for Company A's imports of product X will be the higher of the following: a) the general duty rate of 30%, or b) the combined duty rate, which includes the anti-dumping duty rate of 18.7% and the MFN duty rate of 6.3%, resulting in a total of 25%. Consequently, the import duty rate for Company A should be the higher general rate of 30%.

To safeguard the lawful rights and interests of taxpayers, the condition of customs refund bank interests with overpaid taxes is removed

Previously in the Regulations of Tariff, two prerequisites were necessary for the Customs to initiate the bank interests refund process. Firstly, the taxpayer had to identify the overpayment of taxes, and secondly, the taxpayer had to submit a written request to the Customs within one year of the tax payment. However, the Tariff Law has eliminated these prerequisites and now explicitly states that the interest for the corresponding period computed at the current deposit interest rate of the bank will be refunded together with the over collected duties, as per the regulations. This amendment signifies a certain level of protection for taxpayers' legitimate rights and interests.

5. Coordination with the tax administration system

The Tariff Law has placed great importance on aligning certain terminologies and regulations with the tax administration system, in order to ensure effective coordination.

Incorporating the legislative objective of safeguarding the lawful rights and interests of taxpayers to ensure a fair equilibrium between the rights of tax authorities and taxpayers

Article 1 of the Tariff Law clearly outlines the objective of "safeguarding the lawful rights and interests of taxpayers", aligning with Article 1 of the Tax Collection Administration Law of the People's Republic of China (Presidential Decree No. 60 of 1992, as amended in 2015) (The Tax Collection Administration Law). This demonstrates that the legal provisions are not solely focused on overseeing tax collection and payments, but also on maintaining a balance between the rights of tax authorities and taxpayers. The Tariff Law further emphasizes the protection of taxpayers' legitimate rights and interests.

Adjustment of the expression "tax-paid price" to "dutiable price" to align with the Chinese tax administration system

Considering the semantic aspect, "tax-paid price" may be interpreted as "the price that has already included the tax", potentially leading to legal conflicts. The expression of "dutiable price" in the Tariff Law is consistent with the expression in the second draft of the PRC VAT Law issued in 2023, to be in line with the Chinese tax collection and management system.

Clarifying the priority of compensation to align with the Chinese tax administration system

Article 58 of the Tariff Law makes reference to Article 45 of the Tax Collection Administration Law, which states the following: 1) Tax payments take precedence over unsecured claims, unless otherwise specified by law; 2) In cases where a taxpayer's tax arrears occur before the taxpayer creates a mortgage or pledge on their property, the tax must be enforced before the mortgage or pledge, unless the mortgage or pledge has already been realized; and 3) In situations where the tax arrears are subject to fines, confiscation of illegal income, or the taxpayer's property is insufficient to cover the payment simultaneously, the tax must be paid first.

6. Introducing anti-circumvention measures for the first time within the legislative framework

Article 54 of the Tariff Law states that for the acts that circumvents the relevant provisions of Chapter II (Tax Items and Rates) and Chapter III (Dutiable Amounts) of the Tariff Law in order to decrease the duty amount while lack a valid commercial purpose, the government has the authority to implement anti-circumvention measures, such as adjusting tariffs.

The Tariff Law does not provide a specific explanation of the term "not having a reasonable commercial purpose" in this context. However, we can refer to the interpretation given in Article 120 of the Enterprise Income Tax Law and Implementation Rules of the People's Republic of China (Revised in 2019), Decree No. 512 of the State Council of the People's Republic of China. According to this interpretation, "not having a reasonable business purpose" as mentioned in Article 47 of the Enterprise Income Tax Law means having the primary intention of reducing, exempting, or delaying the payment of taxes.

The concept of "anti-circumvention measures" was initially introduced in the Customs legal framework, but it was already present in the import and export trade system:

- In accordance with WTO regulations, these measures are implemented when products from other countries or regions are sold in a country's market at prices below the normal value, resulting in or posing a threat of significant harm to the local industry. The importing country may take anti-dumping measures to eliminate or mitigate such injury. To avoid these anti-dumping measures, some companies might alter their production locations, make slight modifications to their products or adjust their trading practices in order to change the place of origin. These actions are aimed at circumventing anti-dumping measures and counteract the intended trade remedy effects. Consequently, countries that enforce anti-dumping measures establish legal obstacles to prevent circumvention through legislative means, known as anti-circumvention measures.
- As per Article 55 of the Anti-dumping Regulations of the People's Republic of China (Amended in 2004), the Ministry of Commerce is authorized to implement necessary measures to prevent the circumvention of anti-dumping measures.
- Article 10 of the Regulations of the People's Republic of China on the Origin of Import and Export Goods (Amended in 2019) states that any processing or treatment conducted on goods with the intention of bypassing China's regulations on anti-dumping, countervailing and safeguard measures may be disregarded by Customs when determining the origin of the goods.

The Tariff Law's Article 54 introduces the concept of "anti-circumvention measures," marking the first instance of their recognition at a legal level. While the law does not specify the department responsible for developing and enforcing these measures, it is anticipated that relevant departments may establish specific anti-circumvention measures in due course.

We acknowledge that minimizing tax liability is a crucial consideration for companies when engaging in supply chain planning and tax planning. However, the implementation of anti-circumvention measures has made it imperative to ensure that reasonable business planning is not mistaken for circumvention without a legitimate business purpose. This has become the primary concern in designing supply chain layouts, especially under the unpredictable international trade landscape, with the United States continuously imposing tariffs on goods of Chinese origin, escalating trade tensions. This uncertainty has further complicated supply chain planning for enterprises, requiring them to consider a multitude of factors and longer-term strategies. It is worth noting that "anti-circumvention measures" are widely adopted by customs administrations worldwide, and both importing and exporting enterprises are advised to carefully address this issue while formulating their supply chain plans.

Conclusion

Upon the implementation of the specific provisions of the Tariff Law, it is recommended for businesses to perform self-inspections and risk assessments of their import and export operations in alignment with the regulations. It is crucial to prioritize compliance management of import and export trade activities in daily operations, conduct routine audits of import and export activities, and maintain proper storage of customs clearance documents and records.

Furthermore, prior to the formal enforcement of the Tariff Law, the Chinese government may modify and enhance a range of related supporting policies. Enterprises should stay informed on the latest developments in regulations and proactively review and adjust their internal compliance management system to comply with the most recent regulations.

For more information, please contact us:

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