

Facts and Issues in the Tariff and Clearance Systems in the ASEAN Countries

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**Overseas Research Department
Japan External Trade Organization (JETRO)**

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Introduction

ASEAN has started initiatives to establish ASEAN Economic Community (AEC) and willing to conclude free trade agreements (FTAs) with non-member partner countries such as China, India, and Japan. Expedited talks for bilateral FTAs are also pursued mainly by Singapore and Thailand. Economic integration by FTA is often cited as efforts to reduce or abolish tariffs. However, FTAs will be ineffective without abolishing non-tariff barriers and liberalization of other border controls at the same time.

Under the circumstances, Japanese companies in Asian countries often point out clearance issues as a major problem. Some of them report adverse effect in production plans due to procedural complexity and delays, and troubles concerning customs valuation and classification to certain extent corresponding to the situations of each country. There are international rules in customs valuation and classification, which however are not uniformly applied.

This report therefore tries to reveal the present status of tariff and clearance systems of each country and issues in operating the systems based on interviews with customs officers, clearance agents and Japanese companies in Asia, and other information. We, then, conduct a cross-sectional comparison of the survey results and point out pending issues which we hope to be found informative for government officers and businessman in each country. This survey focuses on import procedures as export procedures generally involve less problems. We conducted the survey mainly in 5 major countries in ASEAN: Thailand, Indonesia, Malaysia, the Philippines and Vietnam.

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Summary

Chapter 1. The Tariff and Clearance System in Thailand

- Many Japanese companies point out the differing judgment of customs officers in customs valuation and classification as a problem, which may result in a large amount of additional taxation by post-audit of the Customs Department.
- The country is preparing introduction of advanced classification ruling system to define tariff codes before clearance. We hope early introduction of it.
- The government announced start of “One Day Clearance” to expedite the procedures.

Chapter 2. The Tariff and Clearance System in Indonesia

- A major risk of exporter/importer and customs broker is the block system (declaration denial)..
- Many companies concerned call for improvement of Port handling capacity, infrastructure such as expressways and arbitrary evaluation and classification by officers (low product knowledge), insufficient information sharing, short notice of systems, etc..
- Jakarta Japan Club (JJC) Panel of Customs and Clearance Issues points out issues for the customs offices, monitoring the progress of the customs responses. It is important to continue these efforts...

Chapter 3. The Tariff and Clearance System in Malaysia

- Many of the Japanese companies in Malaysia operate in export processing zones or licensed manufacturer warehouses and there are few complaints concerning the tariff and clearance system.
- Many companies concerned strongly call for expedited procedures and improvement of import license system for steel and automobiles.
- A pilot project of “Customs Golden Client (CGC)” system to connect online manufacturers and the customs is started and hoped to be successful.

Chapter 4. The Tariff and Clearance System in the Philippines

- Delays in clearance sometimes occur due to system failure of customs computers, which is a problem.
- Many companies concerned call for improvement of infrastructure such as port facilities.
- A monthly meeting between the commissioner of the Bureau of Customs and representatives of Japanese companies has been effective in problem solution.

Chapter 5. The Tariff and Clearance System in Vietnam

- Vietnam has extensively introduced international rules to join WTO, which are not fully implemented yet. The country is in a transitional period.

- Many companies concerned complain that the procedures, including submission of import plans and import licensing, are complex and lack transparency.
- The Joint Initiative between Japan and Vietnam which was signed in December 2003 includes 10 items for transparent and speedy customs practice, for many of which improvements have been made.

Chapter 5. Customs Cooperation in ASEAN

- ASEAN has been active in customs cooperation. In April 2004, all member countries introduced common tariff codes (AHTN: ASEAN Harmonized Tariff Nomenclature).
- Initiatives have been taken to harmonize customs valuation and clearance. What is noteworthy is the ASEAN Single Window. It is a grand concept to computerize clearance procedures of the member countries with common formats in accordance with the international rules of WCO (World Customs Organization) and WTO. We hope this will materialize soon.

Chapter 7. Conclusion: Summary and Recommendation for More Competitive ASEAN

- The member countries of ASEAN have adopted AHTN for tariff classification and the WTO system for customs evaluation. The import clearance procedures differ in detail among the member countries.
- Computerized clearance (EDI) has been only utilized in import declaration. It is not interconnected with other entities such as port authorities and has not contributed much to promptness and energy saving.
- As questionnaire survey of the Japanese companies in ASEAN by JETRO revealed that they complain about “complex clearance and other procedures” and “the time required for clearance” as trade system issues. Based on these discussions, we recommend that officers of each government take the following measures:
 1. Simplified clearance and other procedures;
 2. Effective announcement and disclosure of systems and rules;
 3. Improved advanced classification ruling system;
 4. Promotion of computerized clearance procedures (to make ASEAN Single Window come true);
 5. Human resources development and training for the customs;
 6. Prevention of smuggling;
 7. Promotion of EPA (Economic Partnership Agreement).

Chapter 1. Thailand

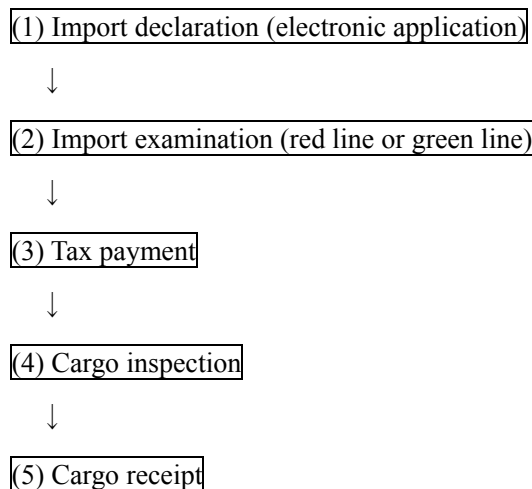
1. Tariff and Clearance System

1) Flow of clearance procedure—Commencement of One Day Clearance

The flow of import clearance procedure in Thailand is as follows: (1) import declaration (electronic application by EDI); (2) import examinations: green line needs no tariff classification or evaluation of declared amount and imports are made as declared; red line requires documentary examination for tariff classification and calculation of tariff amount; (3) payment upon definition of tax amount; direct payment to the Customs Department or electronic payment through Krung Thai Bank which is not utilized much; (4) cargo inspection by customs officers to see if it coincides with the declaration; and (5) receipt of the cargo.

The import clearance system in Thailand is unique in that cargos are inspected after payment of tariffs. Generally, tax payment is made after cargo inspection in other countries.

Figure 1. Flow of Import Clearance



Source: JETRO material based on the materials of Thai Customs Department

It takes a day or two from import declaration to cargo receipt in clearance, depending on the types of cargo or whether they arrive by air or sea. The government announced in November 11, 2004 that it would start “One Day Clearance” to speed up the procedure. The Customs Department will complete its procedure within 7 hours and importers will be able to receive cargos within 24 hours including the time needed for remaining work at ports or otherwise. The Customs Department therefore have closer relations with the Port Authority, Thai Airways, and Airports Authority of Thailand in operations.

2) Customs valuation system

Since January 1, 2000, the country introduced customs valuation system of WTO (Article 7 of GATT). The customs law was amended to apply customs evaluation to either of the items below in the following order;

- (1) The Transaction value of imported goods
- (2) The Transaction value of identical goods
- (3) The Transaction value of similar goods
- (4) The deductive value
- (5) The computed value
- (6) The fall-back value

The notification of the Finance Ministry issued on March 9, 2000 following amendment of the customs law elaborates the details of items above. Under the notification, the transaction value of imported goods is “the amount actually paid for imported goods” and includes any royalty, license fee, brokerage charge, container charge, packing cost related to imported goods, and goods and services provided free of charge.

3) Tariff classification system and advanced classification ruling system

Thailand is a party to the HS Convention and the tariff classification has been conducted on the basis of HS codes since 1988. To imports from other ASEAN countries, common ASEAN tariff codes (AHTN) have been applied since February 2004. AHTN with 8 digits is based on the globally common HS classification for the upper 6 digits and the lower 2 digits are unique classification of ASEAN. There are 10,689 tariff items.

The advanced classification ruling system has been introduced only for the countries with which Thailand concluded bilateral free trade agreements through the notification of the customs department dated on December 30, 2004. Therefore, at this moment, this system is only effective with the imports from Australia with which the FTA has been implemented. The customs department is now planning to introduce the general advanced classification ruling system as well. Details of the system are unknown but, according to the local press reporting, importers need to submit inquiries to the Customs Department one month before shipment of cargos. The ruling thereby is effective for only 1 year. Importers need to pay an examination cost of 2,000 bahts per item.

Even now, the Customs Department designate applicable tariff numbers in response to questions of importers. The judgments, however, do not bind all customs offices throughout Thailand. Some Japanese trade companies say, “We rarely get the response in writing.”

4) Conciliation (objection procedure)

The customs law as amended in 2000 created Customs Valuation Appeal Committee (under Article

112.7). If an importer or exporter has an objection to a ruling for tariff classification or customs valuation in the import examination or otherwise, he or she can file the objection to the committee within 30 days after the ruling. The committee, chaired by the Director General of Customs Department, is composed of representatives of Finance Ministry and 5~7 knowledgeable persons appointed by the Director General.

Any person who cannot agree with the judgment of the committee may further file a claim in a court within 30 days after receipt of the judgment (Article 112.18).

5) Post-audit system

Post-audit is a tax investigation by the customs after import clearance. It is aimed at confirming appropriateness of tax payments for imported cargos and securing proper taxation. Post-audit is conducted in two ways: (1) post-audit for the goods without extensive examination when imported (for example, green-line imports); and (2) policing of wrongdoings based on some confirmed information. The Customs Department says, "Post-audit is not necessary to be conducted with every imports."

According to a major international accounting firm, "different tariff codes" are often identified in post-audit. They say, "Undervaluing is often pointed out as well. Although an invoice price may represent actually paid price (CIF), handling charges may be separately charged later. Such incidental expenses should also be included in the taxable amount. Royalties, rebates, commissions and other additional elements may be taxable, too."

According to Article 113.2 of the Customs Law, the documents pertaining to clearance should be kept for a period up to 5 years. Article 10 of the law, however, provides that the power of the Customs Department to collect any insufficiency of tariffs will be extinguished 10 years from the date of import.

6) Other (penalties)

In the case of undervaluing, the applicable importer will pay twice as much the insufficiency of the tariff as a penalty (additional tax). Further, a delinquency tax of 1% on the insufficiency of the tariff must be paid as much as the number of delayed months. Concerning value added tax, a delinquency tax of 1.5% on the insufficiency of VAT should be paid as much as the number of delayed months, in addition to the insufficiency.

Failure of declaration results in 2~4 times more than the transaction value of the goods plus the amounts of import tariff and VAT.

2. Facts and Issues in Operation of the System (cases of Japanese companies)

Many issues were pointed out in connection with the tariff and clearance system in responses of Japanese companies to the questionnaire (27 respondents, Nov.~Dec. 2004) and interviews conducted

by JETRO. We organize below some facts and issues in the system operation by topics of customs valuation, tariff classification, conciliation system, post-audit and others.

1) Valuation issues

Many companies point out that some officers collect high tariffs in customs valuation. An international accounting firm however considers that “some of the customs valuation issues are attributable to incorrect declarations of importers (in this case, further attributable to incorrect declarations of the exporters in Japan).” The fact that taxable “transaction value of imported goods” include various additional elements such as royalties and license fees is sometimes not fully understood among Japanese firms.

Valuation issues (voices of Japanese companies)

★ If price of a product is increased or decreased, the tariff is levied on the higher price.
★ There are apparent differences in the tariffs levied by individual officers of Customs Department.
★ Our company imports main materials from Japan. The customs pointed out that a deemed commission of 3% payable to the agent in Thailand should be declared and collected the corresponding amounts retroactively. Our agent deals with handling after clearance and we insisted that the commission is not required to be included in the customs declaration. Our case was not allowed after all.
★ The customs levied tariffs on a tax basis based on the past data of imports to Thailand instead of invoiced prices.
★ The customs often points out undervaluing with respect to commissions, royalties and patent fees in valuation.

Source: A questionnaire survey (Nov.~Dec. 2004) and interviews by JETRO

2) Tariff classification issues

Japanese companies also believe that tariff classification is not uniform among officers. They also desire more speedy classification procedure.

Tariff classification issues (voices of Japanese companies)

★ Too much time for clearance. Even for previously imported goods, the customs takes time and we may have to explain again with the previous documents.
★ Too much time for definition of tariff rates for initial import products. We have to wait a week or more if the judgment of the Customs Department (headquarters) is needed.
★ Unclear provisions of applicable tariffs frequently cause delayed assessment of tariffs.
★ For classification of initially imported items, we often disagree with the customs concerning the

classification ruling.
★ The complex product classification should be extensively simplified.
★ Frequently delayed clearance due to questions and request for documents in addition to specifications and test results in importing products and materials (chemicals).
★ Despite a decreased tariff in the last year, a customs officer decided to raise it this year. Our objection was not answered by the Customs Department.
★ The tariff codes are not fixed for a same import item.

Source: A questionnaire survey (Nov.~Dec. 2004) and interviews by JETRO

3) Conciliation (objection system) issues

Despite awareness of the conciliation system, some companies continue importing without raising objection due to time limitation. However, the objection procedure would be necessary for large quantity items resulting in great difference in payable tariffs. It is possible to discuss applicable tariff rates with the Customs Department after depositing a security and receiving the cargo.

Conciliation (objection system) issues (voices of Japanese companies)

★ We have to import items even at a unacceptable tariff rate in order not to delay production.
★ We have no time to raise objection when we should install equipment and start up production as soon as possible.

Source: A questionnaire survey (Nov.~Dec. 2004) and interviews by JETRO

4) Post-audit issues

Post-audit involves customs valuation and tariff classification issues as mentioned above. A post-audit may result in an additional collection of levies over the past 10 years at maximum with certain penalty, which is a great burden for an enterprise. Some Japanese companies received claims for huge additional tariff payment that could bring operations to a standstill. As post-audit targets cargos cleared without examination in the green line, some companies intentionally avoid use of the green line. A Japanese trade company said, "The green line may result in a trouble after post-audit. We dare to use the red line with ordinary clearance examinations, even if we can use the green line." The green line for speedy clearance is disliked for fear of any trouble after the post-audit.

Post-audit issues (voices of Japanese companies)

★ The customs pointed out after a post-audit that the design fee for the equipment imported in the past should be included, and it demanded to pay 18 times more than the normal rate as a penalty for a smuggling.

★ Post-audit may result in a large amount of additional levy.
★ The customs pointed out that the tariff rate for the past imports was wrong.
★ Being assessed that the tariff for already imported items was wrong, we were imposed a levy for the past transactions.

Source: A questionnaire survey (Nov.~Dec. 2004) and interviews by JETRO

5) Other issues

Time needed for clearance was another issue. We are interested in to what extent the “One Day Clearance” mentioned above will be effective. Some complained that system changes were made without sufficient periods for fully informing the public. Insufficient information has caused problems as well. Some companies consider that computerized procedure (EDI) has not contributed to simplified procedure. We hope that the entire procedures, including import licensing and permits of the Port Authority and other government agencies, will be computerized and made paperless.

Other issues (voices of Japanese companies)

★ Delayed payment of refund tax.
★ We appreciate the policy for actively introducing tax reduction system but the systems are too many (automobile parts tax cuts, tax cuts for components of home electronic appliances, BOI system, Article 19 of the Customs Law, EPZ, DFZ, etc.). Our company as a trading firm is endeavoring to offer inexpensive products to customers by reduction of overall logistics cost. Too many tax cuts systems complicate our administration and push up our administration cost.
★ It takes time even for a small lot of samples to clear ordinary customs procedure.
★ Our company is in Rayong Prefecture and must go to the Map Ta Phut Customs Office. We are more close to the Laem Chabang Customs Office.
★ Delayed clearance operation.
★ Red tapes. Time-taking procedure.
★ Changes of systems may be announced suddenly or unclearly.
★ A new system will be implemented the day after announcement. Need time for full information.
★ It is difficult to collect exact information concerning any doubt in tariff or clearance.
★ For replacement of wrong invoices upon clearance, they accept documents for tax payment but do not accept documents for tax refund, saying they have to check various things.
★ We import mainly from Japan the materials (nonferrous metals) which are not produced in Thailand. These materials are exempt from import tariffs with the BOI privilege. To get this exemption, we have to certify that the final products made by our customer, the customer of our customer or the ultimate customer are exported from Thailand. It is also necessary for us to prove that scraps of materials generated in all manufacturing processes up to the final products (our customer, the customer of our customer or the ultimate customer) are exported from Thailand. The customs are saying that they will tax the scraps if this cannot be proved.

★ Problems occur in cargo inspection after payment of tariffs.
★ Data are transmitted to the customs via EDI but the actual clearance is based on hard copies even now. The labor needed for making declarations has not been lessened.
★ Great arbitrariness power of customs officers.
★ No correction of declarations is allowed. Any correction result in a penalty.

Source: A questionnaire survey (Nov.~Dec. 2004) and interviews by JETRO

<Decreasing tea moneys>

The fact that customs officers request tea moneys (bribes) upon clearance procedure is openly admitted by the government. The government announced in August 2004 that it would collect the tea money as official clearance service fee, considering it was attributable to the low pay level of customs officers. They collect a procedure fee of 200 bahts and an EDI system input fee of 70 bahts per declaration or 270 bahts in total across the board for welfare and additional salary of customs officers. A clearance agent says, “Nothing has changed. Tea moneys corresponding to the amount of cargo or imports are requested. Sometimes, we have to pay tens of thousand bahts.”

A survey showed that the average amount of tea moneys was decreasing. A team led by Associate Professor Dr.Nualnoi Treerat, Faculty of Economics of Chulalongkorn University published in November 2004 the results of the survey of bribes taken by the officers of Thai Customs Department. The survey, commissioned by an advisory committee of National Economic and Social Development Board (NESDB), involved a questionnaire to 200 companies in total including importers, exporters, clearing agents and manufacturers. The survey showed that, for 60% of the responding firms, tea money accounts for less than 1% of the total transportation costs. For 18% of them, it was 1~3% of the cost, for 4% of them, it was 3~5% of the cost and, for 2% of them, it was 5~10% of the cost. In an earlier survey in 1998 or 5 years before, tea money accounted for less than 1% of the total cost for only 18.3% of the firms. For 20.1%, 14.0% and 19.5% of them, the share of tea money in the cost were 1~3%, 3~5% and 5~10%, respectively. It seems that these results show the burden of tea money on companies is being lessened.

The average amount of tea money per an import declaration is decreasing from 1,480 bahts in 1996 to 550 bahts in 1998 and 320 bahts in 2003.

3. Recommendation

Based on these discussions on the issues faced by Japanese companies, we would like to make a recommendation for improvement, considering opinions of them. First, it is important to introduce advanced classification ruling system for tariff classification. The system is under consideration and it will be introduced soon and we are interest in the effect of its actual implementation. If a classification

ruling is effective for only a year, there will be a risk that, by post-audit for past 10 years at maximum, errors in tariff numbering will be identified and companies may have to pay additional tax. The advanced classification ruling should be effective for a same period covered by post-audit.

Many companies call for improved training and expertise of customs officers. That will improve differences in interpretation among officers. Reinforcement of the system including expanded workforce was also requested by many. As for reinforcement of the system, we are hoping for promotion of computerization. This will simplify and improve transparency of procedures. Others request data management by each company and item in clearance and accumulation of clearance data.

It is strongly desired to simplify the system as well. “Complex system creates many errors. We desire simple system to avoid errors.” Others said, “Various tax cut systems complicate administration and increase administration cost.” JETRO received a specific proposal that, for example for a multipurpose material, the tax should be imposed by weight and the tax refund should be made on a automatic formula based on a calculation of weight in the exported products. Further, there were many opinions calling for simpler tariff classification.

Important system changes should be made with periods for full information and sufficient public relations. Announcement of such change should allow a period for full information.

In the current import procedure, cargo inspection is conducted after payment of tariffs, which is a system not seen in the neighboring countries. Cargo inspection may result in identification of an error in declaration and imposition of penalties without room for modified declaration. We hope that the system will be changed to pay tariffs after cargo inspection. Others requested that penalties should not be imposed for voluntary correction of declarations.

The Japan-Thailand Economic Partnership Agreement under negotiations seeks information exchange for, smoothing and harmonization of customs procedures and paperless trading. According to a questionnaire survey by the Japanese Chamber of Commerce in Bangkok (JCCB) of member companies (Nov.~Dec. 2004, 1,208 companies, a response ratio of 28.7%), 60% of the companies (202) desire “reduction of costs of imported components and materials from Japan” as the greatest effect of the Economic Partnership Agreement. Their second request was “reduced lead time and better predictability by simpler, more transparent customs procedure” (41%, 138 companies), showing high expectation of Japanese companies. The Japan-Thailand Economic Partnership Agreement has reached the agreement in principle by the ministerial level negotiation on August 1, 2005 and its earlier implementation is desirable.

Reference

Masaaki Tsuno, “Hello Thailand—Business (& Survival) Report: Customs Card & Customs Law,” November 2004, COMM Pte, Ltd (Japanese).

Chapter 2. Indonesia

1. Tariff and Clearance System

1) Flow of clearance procedure

Import clearance is done by the following flows: (1) Importers prepay tariffs (pay precalculated tariffs to a bank and get seal of receipt on the import declaration); (2) Credit advice from a bank to a Customs Service Office; (3) import declaration (EDI), (4) examination of customs declaration documents and classification of imported cargos (10-15 minutes are required for this process according to a Japanese logistics company; (5) Cargo inspection; (6) Cargo receipt.

Cargos pertaining to import declaration go to (1) Priority lane (mandatory check only, 45 good importers as of June 2004; (2) Green lane (paper examination only but random X-ray check and cargo inspection as necessary; (3) Red lane (paper examination and cargo inspection. Other than priority lane cargos, about 70% are green lane cargos and about 30% are red lane cargos. A local expert says, however, “red lane cargos in reality may have reached 40-50% of all cargos.”

EDI import declarations are judged by a computer controlled by a section called Intelligent Unit. The judgment criteria is a matrix of importer risk (high, middle, low and excellent importers) and risk of cargos (high or low; cargos designated by the government are treated separately). High risk importers must undergo inspection of all imported items even if they are low risk cargos. On the other hand, middle and low risk importers must undergo certain extent of cargo inspection for high risk cargos. Priority lane cargos are exempt from both high risk and low risk cargos.

2) Customs valuation system

The country has WTO customs valuation system under Article 7 of GATT. Tariff taxation is based on declaration of list price, instead of transaction price of imported cargo. The customs check rightfulness of declared price but cannot automatically analyze it due to lack of price database.

3) Tariff classification system

Indonesia has ratified the HS convention. Further, from January 1, 2004, the country introduced AHTN based on the decision No.545 (545/KMK.01/2003) of the Financial Minister. In addition to the upper 8 digit AHTN, the lower 2 digits are unique classification, thereby constituting 10 digit classification.

Advanced classification ruling system has been introduced. Product samples together with related material must be submitted to the customs procedure bureau but there is no legal basis for the response deadline. The customs give written response but, as they are filed (off-line) at the customs headquarters, customs branches cannot share the information.

4) Conciliation (objection procedure)

Objection to customs valuation, cancellation of excise tax account and fines are provided for in Articles 93 through 95 of the customs law. Objecting person (importer, transporter, customs broker, plant

manager, bonded warehouse operator, and temporary storage operator) shall submit to Director General of the customs (1) receipt of deposit, (2) copy of Duty Arrears Certificate and (3) other related data. The Head of Customs Service Office will submit the documents to Director General within 3 days after confirming absence of incompleteness in documents and error of deposited amount. Director General will examine the content of the objection and make a decision as to (1) acceptance, (2) partial acceptance, (3) additional collection of tariffs, (4) deduction, or (5) dismissal, and the judgment is finalized in Tax Arbitrary. If the days needed for the Director General's judgment exceed 60 days, the objection is deemed to be "received."

5) Post-audit system

Article 17 of the customs law provides that customs can investigate retroactively up to two years from the date of customs declaration but there are no provisions in storing clearance documents. A local expert says "domestic tax investigation may have provisions to obligate filing of clearance documents."

6) Other

There is no modified declaration system. If an importer or customs broker receives a notice of correction from a customs office as to erroneous content of declaration, they will have the opportunity to submit defenses.

2. Facts and Issues in Operation of the System (cases of Japanese companies)

<Commenting by Japanese companies>

Japanese companies in Indonesia recognize customs and clearance as one of the major issues to be improved in the business/investment environment. In September 2001, President Megawati received a recommendation for better investment environment from the Jakarta Japan Club (JJC) and proposed to establish panels of both countries, which enabled Japanese companies to directly convey opinions to the Government of Indonesia. At the panel for customs and clearance, JJC pointed out 30 items of issues concerning customs operation and clearance systems for discussion with the customs authority. Both parties agreed on 21 items, and 5 other items are pending and they failed to agree on 4 items (as of March 2004). JJC is monitoring improvement in agreed 21 items.

Many of the Japanese logistics company welcome the mechanism of expressing opinions to government but some concerns, despite higher official admitting issues and give directions, awareness of the directions has not reached to the ends of the organization. In fact, the logistics companies that were interviewed in February 2005 commented that no improvement is seen in many areas concerning the items of agreement with the customs authority as of March 2004.

We are going to describe below some of the problems in customs and clearance in Indonesia as a result of interview of Japanese companies (logistics company, manufacturers).

<Correction notice and block system>

A major risk of exporter/importer and customs broker is the block system (declaration denial). If a customs office judges that declaration data was erroneous at post-audit such as “improper HS code,” it gives a correction notice to the importer or customs broker and demands payment of fines. As to correction notice, you will have a chance of defense within 30 days if you have objection to the pointed out matters. A Japanese logistics company said, however, that they received a correction notice just before the deadline of response and lost the chance of defense. If you neither defend yourself by the deadline nor pay the fines, the customs office can deny all declarations thereafter. This system is applied to both exporters/importers and customs brokers. For customs brokers, they have to give up clearance procedure for third party cargos which are unrelated to the matters pointed out in the correction notice. A representative of a logistics company said if the block disposition is attributable to us then we can swiftly prepare necessary documents to get a release from the block disposition (release within a half day). If it is attributable to a customer, we only have to wait for their preparing necessary documents and getting a release from the block disposition (3-4 days suspension of customs clearance). The logistics company recommends that customers maintain certain amount of inventories to cope with such and unexpected matters.

<Differing opinions of the customs authority as to classification and valuation>

“There are fewer cases where laws and systems are torn up” said a Japanese logistics company. However, the conventional interpretations and operating methods may be changed as a result of reshuffling heads and officers of the customs. Further, customs officers misunderstand the products due to lack of product knowledge. In this way, the customs may have differing opinions as to classification and valuation. Some points out the great discretion among customs officers. On-site interview can be summarized as follows:

- By an advanced consultation with customs officers, we defined the HS codes for imports and stated the results in writing. A new officer doubted the document. Advanced classification ruling should be binding.
- When importing components used for particular electronic appliances, we declared the products as “the name of the components for the electronic appliance” but the customs office issued a correction notice that it is a steel product.
- We received correction notice because of differing opinion on classification after clearance. Some indications are unreasonable based on lack of product knowledge. Even if we confirm the classification by producing samples, change of officer may void the past practice.
- They say second hand equipment or machinery is priced low in declaration but we try to convince them by saying these items are very old type and almost valueless.
- We discuss with the customs under the advanced classification ruling system but past rulings are not publicly disclosed.

<Interpretation of trivial mistake>

JJC pointed out “response to trivial mistake” is an important issue. Other than such mistake as address on declaration documents, i.e. “a mistake other than that affects national revenue shall be corrected by a letter of undertaking to realize a smooth customs clearance. The customs said they would not call for much work for trivial mistakes. However, what is trivial, they say, should be judged case by case for proper clearance procedure.

According to a person belonging to a Japanese logistics company says that wrong input of B/L number or invoice number on the EDI system does not affect calculation of tariff rate and this is a trivial mistake. The EDI system in Indonesia is susceptible to human errors because everything should be input as compared to Japanese EDI system whereby tax rate and amount are automatically calculated just by inputting tariff number.

<Absence of responsible officers>

JJC requests that if an authorizing officer or inspector is absent at a customs office, acting officer should be secured to act in their stead. The customs does not operate on Saturday afternoons and Sundays but their work become stagnant on Fridays because of some religious reason and the clearance procedure may delay to the next week. The customs promised to have secondary authority, increase inspectors and to rotate employees. Frequently, the customs say “wait as the officer will return soon” but eventually he or she does not come back. To get earlier clearance, some companies have to get their employees stand by at a customs office.

Other things being called for are development and redevelopment of port infrastructure (container yard at the port of Tanjung Priok, port capacity for larger vessels, reinforcement of port processing ability, development of expressways and highways accessing the port, and parking space of transporting vehicles) and extraordinary office open days.

Some points out that unnecessary costs are incurred in all processes of clearance. The government seems to have issued orders to improve morals of employees and eliminate unnecessary payment. We hope the situation will improve in the near future.

3. Recommendation

As a result of hearing in Indonesia, there are problems arising from the customs and clearance systems and personal responses in operating and interpreting the systems. It will be an advantage for flexible practice in operation and interpretation to hold individual consultation between exporters/importers (or customs brokers). However, replacement of a customs officer has a risk of damaging conventional operation and interpretation. For better or worse, some human factors seem to be involved. To ensure universal and fair operation and interpretation under the same system, customs officers must be trained and a system for information sharing between customs and other government agencies should be

established soon.

On the other hand, the customs should have a department which can provide all customs information at one stop and a home page, such as past rulings in advanced classification ruling system, and systems and laws changed or amended without sufficient information period. We request an information infrastructure by which importers and customs brokers can collect and share correct information. Japanese logistics companies point out the necessity of integration of related laws like Japanese “Kanzei Roppo (Customs Laws).”

JJC Panel of Customs and Clearance Issues points out issues for the customs offices, monitoring the progress of the customs responses. It is important to continue these efforts.

Reference:

Jakarta Japan Club, “JJC Panel of Customs and Clearance Issues: A result report”

Chapter 3. Malaysia

1. Tariff and Clearance System

1) Flow of clearance procedure—Minimum cargo inspection by direct release system

Import clearance steps are declaration, examination, cargo inspection, tariff payment and release of cargo. They minimize cargo inspection to speed up clearance procedure.

Specifically, a direct release system has been introduced since 1987. Low risk cargos with complete import declaration documents and no past records of falsification can be cleared without inspection. Malaysian customs say, “We actually inspect 2~3% of all cargos. About 97% of the cargos are directly released based on paper examination only.”

Also, a pre-clearance system has been introduced for speedy clearance. For a cargo for which a manifesto can be submitted and the time of arrival of a vessel is specified, import declaration can be made 14 days prior to the expected arrival date of the vessel.

Since September 2002, the customs have not reinspected cargos which were already inspected by other organizations under the single inspection system. Specifically, the cargos include agricultural products and foods.

For imports from ASEAN countries, green lanes or exclusive clearance counters are available for convenience.

EDI is used for import declarations. However, a Japanese customs broker said, “It’s only for obtaining a reference number and we have to bring papers to undergo examination.” Many others are of the same opinion that the system has not contributed to speedy and simple procedure.

<Speedy procedure by the Customs Golden Client (CGC) system>

Since September 2004, the CGC system has been introduced on a trial basis in connection with EDI. The system, directly connecting the customs with manufacturers or trading companies for clearance on line, was introduced by the Malaysian government based on a research into the similar systems in Singapore and Australia.

An approval of the Malaysian customs is needed to use the system. The criteria are 25 million ringgit or more of sales for a licensed manufacturer warehouse (LMW) and 50 million ringgit or more for a trading company or procurement center. As of July 2005, the following four companies were using the system.

- 1) Panasonic Trading Malaysia
- 2) Kenwood Electronics Technologies
- 3) Bridgestone Armstrong
- 4) DIC Compounds

“The CGC system enables completion of import examination before arrival of cargos. Cargos can be delivered to the factory upon arrival of cargos. The system is now used on a trial basis, but we hope to use it for all cargos soon,” a company explained.

2) Customs evaluation system

A customs evaluation system compatible with Article 7 of GATT has been introduced since January 1, 2000.

3) Tariff classification system and advanced classification ruling system

Tariff classification is based on the HS codes. The common ASEAN tariff codes (AHTN) have been applied to imports from ASEAN countries since January 1, 2004.

An advanced classification ruling system has been introduced in the country. According to the Malaysian customs, tariff classification ruling is available before or after importing. Basically, a Customs Director of each state has the power of classification ruling, which is normally given within about two weeks. The ruling is effective in other states. According to the customs website, applications under the system must provide the following information:

- (1) Product name (including trademark);
- (2) Explanation of the product;
- (3) Manufacturing method (if applicable);
- (4) Product functions;
- (5) Past import records (if any);
- (6) Registered number in Clearance Form 1;
The HS code in the exporting country;
Import location; and
- (7) Proposed HS code (if known).

4) Conciliation (objection procedure)

If you have any objection to a tariff classification or valuation by customs, you can import with duty under protest and request reexamination by an appeal to a State Customs Director. If you cannot agree with its decision, you can make a further appeal to the committee chaired by the Director General of Customs. You have an option to go to a court, if you are still dissatisfied. The Malaysian customs say, “We refer the matter to WCO if we cannot make a judgment. It is difficult for an importer to win a case in an action against the ruling.”

5) Post-audit system

A post-audit covers past 3 years after import (Article 17 of the Customs Act).

6) Other (penalties)

The penalties against false declarations are specified in Article 133 of the Customs Act. A false declaration or falsifying documents is subject to a fine of 500,000 ringgit or less, or an imprisonment of 5 years or less, or both. The Malaysian customs say, “A voluntary correction of declaration is considered on a case-by-case basis but not basically subject to fines.”

2. Facts and Issues in Operation of the System (cases of Japanese companies)

We interviewed and sent questionnaires to the Japanese companies in Malaysia (80 companies, December 2004) but they had few complaints on the clearance system. This may be because they are often in the export processing zones or licensed manufacturer warehouses. “The many licensed manufacturer warehouses are often exempt from import tariffs in Malaysia. That’s why there are few troubles,” a Japanese customs broker said. “Most of our customers are Japanese companies which are often in the export processing zones or licensed manufacturer warehouses. No tariffs and few problems.”

Some details are however problems. Interviews with Japanese customs brokers revealed the problems listed below.

- The HS codes as applied and as judged by the customs sometimes do not coincide upon import clearance.
- We should submit original packing lists and invoices upon import. In general, many other countries accept copies in clearance.
- Items of the same HS code can normally be totaled in the same declaration. Malaysia requires a separate declaration for the same HS code items if the item names are different ,resulting in more documents.
- Examination is stopped in the praying hours in the Friday afternoon. Sundays and every other Saturday are holidays. Prior request is needed for procedure on holidays.
- When a company selling products mainly in domestic market applies for refund of the tariff for imported materials, all exports are inspected, which takes time for the export procedure.
- If reduced tariff rates apply retroactively, the tariffs may be refunded but it sometimes takes a year or so.
- Tariffs can be paid online from bank accounts of customs brokers. Cargos cannot be received until

a customs office confirms a notice of payment of tariffs from a bank. It takes a half day at least but up to two days sometimes.

<Dissatisfaction with the speed of clearance>

A Japanese home electric appliance maker said, “The flow of goods is smooth but slow.” Many companies are dissatisfied with the time needed for clearance.

As discussed above, cargos are cleared without examination but it seems two days are necessary for clearance procedure. This may be due to the fact that EDI is used for import declarations only and the procedures are mainly paper-based. It also takes time to confirm payment of tariffs.

<Import license is more difficult than clearance>

Rather than clearance problems, some companies in Malaysia pointed out import licensing and other issues. When you import steel sheets, a coil center is obliged to buy 40% of the demand from domestic companies if 60% is imported. Steel products are subject to import licenses and you must declare how much and to whom you will import every three months. It takes about two weeks to get the license.

Automobiles are also subject to import licenses and a Japanese automaker pointed out, “Bumiputra Firms have much import quotas.”

3. Recommendation

The clearance procedures in Malaysia as a whole are not a great problem for Japanese companies operating there. Speedy procedures are strongly desired and the whole procedure, in addition to declarations, should be further computerized. The Customs Golden Client system currently introduced on a trial basis will be a model case of an integrated computerization, results of which we are interested in.

The Japan-Malaysia Economic Partnership agreement has reached the basic agreement in May, 2005, which including the exchange of information, smoothing and harmonization of customs procedures just like the case in Thailand. We hope the Malaysian customs will speed up its operations and the trade procedures between Japan and Malaysia will be more efficient.

Chapter 4. The Philippines

1. Tariff and Clearance System

1) Flow of clearance procedure—With super green lane

Import clearance takes place in the order of advanced payment of tariffs (deposit precalculated tariffs at a bank to get a receipt stamp on the import declaration), import declaration, paper examination, cargo inspection, payment of procedural fees and receipt of cargo. Cargos at the stage of declaration are classified into red (paper examination and cargo inspection), yellow (paper examination only) and green (no paper examination and inspection). The classification is based on the imported items and past records of importers. The Philippine Bureau of Customs says, “Many items go through red lanes and there are not many green items, although we have no specific data.”

The super green lane (SGL) has been introduced since March 2000. You can immediately receive cargos after payment of tariffs without the lane categorization above. SGL is available for cargos for domestic consumption. Importers can use SGL on the following conditions:

- One year or more records of imports;
- Constant import of the cargos to which SGL is applicable;
- Import declaration by EDI to the customs; and
- Undergo post-audit by the customs.

In the past, “top 1,000 companies in terms of tariff and VAT amounts paid to the customs” could use SGL. This condition was abolished in November 2003 for wider use. The Philippine Bureau of Customs says, “About 100 companies, mainly foreign firms, are using it now.”

Import declaration by EDI has been already introduced but the Bureau of Customs says, “There are not many firms actually taking import procedure by EDI because investment in computers and other infrastructure is needed. Within the customs, Automated Customs Operations Systems (ACOS) to automatically process the clearance procedure including the lane categorization have been introduced.

According to a March 2003 survey by the Philippine Bureau of Customs in cooperation with JICA, it takes 5.2 days on average from arrival to a port to receipt of cargos in case of seaborne cargos for domestic consumption.

2) Customs valuation system

The WTO customs valuation system based on Article 7 of GATT has been introduced since January 1, 2000. In principle, the transaction value of an import cargo (actually payable price plus additional elements) is taxed.

3) Tariff classification system

The Philippines is a party to the HS Convention and has been classifying items by HS codes since 1988. Further, it has introduced AHTN since March 2004 to apply it to trades in ASEAN and with other countries.

Advanced classification ruling system is already introduced. The customs committee is in charge of the affairs and responds in writing within 30 days after receiving samples. The information is communicated to all customs offices throughout the country.

4) Conciliation (objection procedure)

Any objection to classification or valuation will be examined by VCRC or Valuation and Classification Review Committee chaired by the Commissioner of the Bureau of Customs. The judgment is made within 20 days. You can receive cargos tentatively by depositing a bond. If you are dissatisfied with the judgment of VCRC, you can appeal your objection to a committee of the Finance Ministry and then file an action to a court, if you are still dissatisfied.

5) Post-audit system

Importers must keep customs documents for 3 years. The post-audit, which was launched in January 2004, has a retroactive effect of 3 years as well. The Bureau of Customs says, "Our experience is limited and we have begun learning from Japan."

6) Other (penalties)

If you fail to keep import records, you will be subject to a fine of 100,000~200,000 pesos and/or imprisonment of 2 years and a day~6 years pursuant to Article 3610 of the Customs Code.

The penalty for underpayment of tariffs as revealed by a post-audit is classified as follows pursuant to Article 3611 of the Customs Code.

- (1) Negligence: If the act is due to neglect (insufficiency) of importers in reasonable care or the ability to confirm correctness of declaration, it will be subject to a fine equivalent to a 1/2~twice as much as the underpaid tariff;
- (2) Gross negligence: If you make underpayment due to neglect of or indifference to tax obligations despite knowing the relevant facts, you will be subject to a fine of 2+1/2~4 times more than the underpayment; or
- (3) Falsehood: If you make a false declaration intentionally, voluntarily or willfully and that is supported by clear evidences, you will be subject to a fine of 5~8 times more than the underpayment and an imprisonment of 2~8 years.

2. Facts and Issues in Operation of the System (cases of Japanese companies)

<Frequent computer troubles>

Many of the Japanese companies in the Philippines operate in the export processing zones (PEZA) and are often free from tariffs, which means relatively few clearance troubles. Interview with them revealed that “clearance takes time.” In the questionnaire survey for Japanese manufacturers by JETRO, more than 40% (41.3%) of the respondents considered “time needed for clearance” to be a major trade issue(see page 37). A Japanese customs broker says, “You can receive the cargo in one or two days after import declaration if you are a PEZA firm. But it takes 2~5 days or more for other imports.”

Delays in clearance are said to be attributable to troubles in the customs computers. The ultimate causes seem to be power failure and old equipment. A Japanese company says, “Failures of computer systems cause suspension until recovery. It takes about 3 hours before recovery.” A Japanese manufacturer points out, “A customs office in a port suspended operation for one or two days because of computer system troubles, delaying clearance.”

Also, it was pointed out that it takes time to issue ATRIG (Authority to Release Imported Goods) needed for importing items which are exempt from tariffs and VAT under the national tax laws. An ATRIG can be obtained from the revenue bureau after application. A Japanese manufacturer said, “You cannot receive cargos unless you submit an ATRIG at Batangus Port, which is issued about 3 days later.”

<Extensive facilitation fee>

Tariff classification and valuation vary among customs officers in the Philippines as well. A Japanese manufacturer complains, “Customs officers may give different tariff classifications.” Another manufacturer says, “Clearance procedures by some customs officers are not fair.”

Because of the arbitrary rulings of officers, obscure money called facilitation fee seemed to be claimed in each stage of clearance. A Japanese customs broker complains, “Facilitation fee is demanded for almost all procedures. When you want to get a machine imported and cleared, facilitation fee is demanded one after another together with requests for performance data, manuals, catalogs, etc. It looks everything must be negotiated. Cargo inspection is done for every case and facilitation fee is demanded each time.”

Although not directly related with clearance, 57 companies (54.8%) which responded to the questionnaire by JETRO felt the “underdeveloped logistic infrastructure” is a major problem. A company pointed out, “Cargo receipt can delay due to problems or failure of port facilities such as cranes.”

3. Recommendation

As mentioned above, many Japanese companies in the Philippines operate in PEZA and are often free from tariffs, which means relatively few troubles in clearance. As compared to other ASEAN countries (excluding new members), customs computers, logistics and other infrastructure are not developed enough, which results in the extra time needed for clearance. The Philippine government should make haste in developing such infrastructure.

We highly evaluate the monthly meeting between the Commissioner of the Bureau of Customs and representatives of Japanese Chamber of Commerce which has been held almost every month since February 2004. A Japanese customs broker is very impressed because, “You can quickly get a conclusion from the Commissioner. Anything he is unfamiliar can be addressed by his officers.” Other Japanese companies evaluate it high as well. This type of direct dialogue between the top of the customs and Japanese companies cannot be seen in other ASEAN countries and we hope it will be continued.

Reference

The Tariff & Customs Code of the Philippines

Mr. Shigetoshi Aoyama, JICA Customs expert, “General information on Philippines Bureau of Customs”, October 2003

Chapter 5. Vietnam

1. Tariff and Clearance System

1) Flow of clearance procedure

You have to obtain importer/exporter codes in Vietnam in import/export. You file an application to the customs office to get the codes in about 5 days.

Import clearance steps are: import declaration, registration of customs papers, cargo inspection, tariff assessment, tariff payment and cargo receipt. Vietnamese customs commented, “We examined all cargos in the past but now only 10% of them. We consider various information such as applicant profiles, the government’s import policy and the destination to export to decide whether we check or not.”

In Vietnam, you get a moratorium on tariff payment for import of materials for export processing. You are exempt from paying tariffs for 9 months (275 days) after importing. In other ASEAN countries, for example in Thailand, companies are dissatisfied with the complicated procedure for getting refund of import tariffs for materials for export, because it takes time. The tariff moratorium is an advantage. If materials remain in Vietnam beyond the 9 months period, you have to be careful because you will be charged delinquency tax up to the date of actual payment and no longer enjoy benefit of the system.

You have to pay tariffs to receive the imported cargos for domestic consumption but you can get a moratorium of 30 days if you submit a payment guarantee. In other words, you can receive cargos without paying tariffs.

A Japanese customs broker A said, “Normally, it takes a day and a half or two days after arrival of a cargo to receive it. Paper examination is possible before arrival of the cargo and you can receive it within a half day after arrival, if you take early steps.” This is an excellent point of the system.

EDI has been introduced initially in import declaration on a trial basis in clearance procedures. Still, paper declarations are major means.

2) Customs valuation system

The country is not a member of WTO (preparing for getting the membership in December 2005) and has not formally accepted the WTO Customs Valuation Agreement (Article 7 of GATT). It has however started application of the agreement to imported products since September 1, 2003. Yet, Vietnam is in a transitional period for fully applying the agreement.

The minimum price system was abolished on September 1, 2004. Before, the Finance Ministry and General Department of Vietnamese Customs set minimum prices for 200 items or more, which were the tax bases if declared prices were lower than them.

3) Tariff classification system

Vietnam joined the HS Convention in July 1998 and has been classifying products by HS codes. Since July 1, 2003, it has introduced AHTN or common ASEAN tariff codes, and been applying it for trade within ASEAN and to and from other countries.

Advanced classification ruling system has been introduced since August 2003. The ruling is made by each customs office. According to General Department of Vietnamese Customs, “The classification information is not entirely shared by the nationwide offices.” The system seems to be not fully functional yet. It may not be able to respond to increasing imports.

4) Conciliation (objection system)

General Department of Vietnamese Customs explains that an objection system is available if you have objection to tariff classification or valuation. If you are dissatisfied with a judgment of a local office, you can appeal to a prefectural office, the General Department and the Finance Ministry, in this order.

5) Post-audit system

Article 32 of the customs law (as amended, enforced from January 1, 2002) provides you can start audit if there is any “sign of violation.” This means the customs do not actively go out to post-audit. The period of audit is limited to 5 days. The General Department of Customs said, “We need technical assistance from Japan or other advanced countries as our experience is limited.” The retroactive effect of the audit is 5 years.

6) Other (penalties)

The governmental decree No. 138 of June 17, 2004 provides for penalties up to a maximum fine of 70 million VNDs. The retroactive effect is up to 5 years. According to the General Department of Customs, “Non-intentional documentary mistakes may be subject to penalties after inspection. You can correct simple mistakes in papers.”

2. Facts and Issues in Operation of the System (cases of Japanese companies)

As a rule, Vietnam has extensively introduced international rules but is in a transitional period before full implementation. A Japanese customs broker says, “In Vietnam, you cannot understand the clear rules and procedures in the clearance system. If there is a new system, you don’t know its specific procedures. It is difficult to follow the contents of frequently issued government notices.” A Japanese manufacturer complained about “the ambiguity of the systems in various aspects.”

A Japanese customs broker commented, “A customs officer may often change his judgment later in

tariff classification.” Another broker said, “The information is not shared between customs of the north and south. They may have different judgments.” A Japanese maker points out, “It takes much time for tariff classification of new products. They lack equipment for analysis sometimes.”

“We pay tea moneys all the time. We cannot get cargos moved without payment,” a Japanese customs broker said. A Japanese manufacturer said, “It is difficult to get refund once you overpay tariffs. Time and labor is needed.”

A Japanese customs broker explained, “There are many procedures before clearance, such as import plans and import licenses. If you are not ready of them, you cannot get cargos cleared.” This is something that should be improved in addition to clearance issues. Another customs broker suggests, “The customs officer should be trained to meet diversified and complex operations of companies. Development of their skills is an important task.”

3. Recommendation

In December 2003, Japan and Vietnam signed the Joint Initiative to review investment-related regulations, improve the abilities of government agencies and software infrastructure for investment and development of economic infrastructure. Both countries identified issues and formulate corresponding action plans in the initiative. There are 125 action items in 44 areas. In the area of “transparent, reliable, harmonized, expedited and simplified customs practice,” the 10 items below are listed. The requests of Japanese companies to the Vietnamese government concerning tariffs and clearance are fully reflected in the list.

- (1) Early ratification of the revised Kyoto Convention
- (2) Smooth implementation of new systems (simplification of procedure, product classification, cargo inspection and post-audit)
- (3) Thoroughgoing fair clearance
- (4) Development of the policing system and inspection methods for unfair transactions
- (5) Promotion of cooperation and collaboration among administrative agencies
- (6) Better quality of customs employees
- (7) Disclosure of customs procedure information
- (8) Phased establishment of customs valuation pursuant to GATT/WTO
- (9) Study and enactment of customs-related regulations for protection of intellectual property rights upon clearance
- (10) Introduction of advanced classification ruling system

Japanese negotiators for the initiatives say, “The Vietnamese customs, among other government agencies, fully deals with the tasks and we have seen improvements in most of the 10 items.” We hope the items will be quickly and steadily implemented.

Reference

JETRO ,“Manual for Investment in Vietnam,” November 2004

Mr.Shinji Urakawa, JICA Senior Expert to Vietnam Customs “ The customs procedures of Vietnam”,
December 2004

Supplement Cambodia

1. Tariff and Clearance System

Import proceeds with import declaration, examination, cargo inspection, tariff payment and cargo receipt in this order.

Cambodia joined WTO on October 13, 2004. As the condition, “it has to introduce about 15 new laws for tariff and clearance,” according to a JICA expert. The customs law is being discussed in the national assembly and not introduced yet. The only law in effect is the Import and Export Procedure Law.

The clearance procedure takes about 2~3 days for seaborne cargos and a half day for airborne cargos as far as the customs is concerned.

2. Facts and Issues in Operation of the System

You have to get permission of various agencies before import declaration in the clearance procedure in Cambodia: KAMSAB (ship-owner agent), CAMcontrol (Ministry of Commerce), Immigration, A/Z Xray and economic police, which do not exist in other countries.

Export involves permissions of the Ministry of Industry, Ministry of Commerce, PSI, KAMSAB, CAMcontrol, Immigration A/Z Xray and economic police, even more than import. According to a Japanese trade company, you have to pay about 1,000 dollars to move a 40 ft container.

A Japanese manufacturer points out that one of the greatest problems in Cambodia is “smuggling.” Another manufacturer says, “We see finished and semi-finished products from Thailand and Vietnam free of tariffs and VATs.” The details of legal systems are underdeveloped and bribe taking is everywhere amid obscure implementation.

Chapter 6. Customs Cooperation in ASEAN—for Formation of the ASEAN Economic Community

We have discussed tariff and clearance systems by country but we must note the active cooperation in customs in the framework of ASEAN.

<Smoother export/import procedures by common tariff codes>

As for tariff classification, all member states have introduced ASEAN Harmonized Nomenclature (AHTN) by April 2004. ASEAN member states agreed in 1997 and prepared for introduction of AHTN for the purpose of simplifying the trade procedure and expand trades within ASEAN. The conference of ASEAN finance ministers held in Manila in August 2003 led to signing of a protocol for implementing AHTN and agreed to introduce AHTN by January 1, 2004.

AHTN with 8 digits is based on the globally common HS classification for the upper 6 digits and the lower 2 digits are unique classification of ASEAN. There are 10,689 tariff items. Before, the tariff codes of ASEAN countries had common upper 6 digits of HS codes and lower 2~3 digits unique codes. The unified codes will raise transparency in tariff classification ruling and contribute to smoother export/import procedures.

Singapore, Vietnam, the Philippines and Indonesia are using AHTN for trade both in the ASEAN region (use of CEPT) and with other countries and uniformly use AHTN as tariff codes. Malaysia and Thailand use AHTN for regional trade in ASEAN only and conventional tariff codes for trades with non-ASEAN countries. As mentioned below, both countries will uniformly apply AHTN pursuant to the ASEAN Framework Agreement for the Integration of Priority Sectors, Vientiane, 29 November 2004.

<Promotion of ASEAN Single Window>

To ensure common interpretation and application of customs valuation according to the WTO Customs Valuation Agreement, a customs valuation guide of ASEAN was published in May 2004. It was translated to the languages of ASEAN and serves as a reference for customs officers. Concerning post-audit, they have conducted information exchange and prepared manuals for fuller implementation.

To simplify and harmonize customs procedure, the customs of ASEAN have agreed to make a common format of customs declaration. A taskforce has been studying since August 2004 introduction of the ASEAN Single Window to complete its work in the latter half of 2005.

The heads of customs of ASEAN have agreed on an action plan to establish ASEAN E-customs, which is a component of ASEAN Single Window. The aim is to equalize the technical differential among the member countries and provide customs practice of an international level. Their main activities are stronger management of customs practice and standardization of electronic forms.

ASEAN has been developing the human resources for customs. Between July 2003 and June 2004, 350 customs employees in total underwent specialized training courses such as tariff classification, post-audit and determination of country of origin.

<Commitment of 15 action items in the Vientiane Action Programme>

The direction of the ASEAN customs cooperation is indicated in the Vientiane Action Programme which the heads of ASEAN countries signed at the summit in November 2004. The programme, based on ASEAN Concord II (Bali Concord II) (signed in 2003) to organize ASEAN Community for three main areas of security, economy and society/culture by 2020, is a medium term action plan between 2005 and 2010. For smoother trades, the countries commit to the 15 action items below concerning customs.

- 1) Uniform system of classification of goods and commodities
- 2) Full Technical implementation of WTO Agreement and ASEAN Customs Valuation Guide (by December 31, 2004).
- 3) Ensure smooth flow of CEPT goods (AFTA preferential tariff items). Familiarization of ASEAN customs officers with non-preferential rules of origin in line with WTO agreement on rules of origin
- 4) Establishment of the ASEAN customs environment assisted by ICT (information and communication technology) applications (by 31 December, 2005). In this respect, the following programmes need to be implemented.
 - a. ASEAN Single Window, ASEAN e-customs,
 - b. Creation of integrated ASEAN e-customs community
- 5) Simplification, accelerated harmonization of documents, formalities, procedures and practices related to customs clearance to enhance economic competitiveness of international transactions in ASEAN (by December 31, 2005). The target time required for customs release of any container (internationally standardized), at any ASEAN entry point, in the course of the next two years, to 30 minutes on average.
- 6) Free movement of means of transport and goods transiting ASEAN national territories and enhancement of customs control.
- 7) Establishment of a customs regime for free movement of goods temporarily entering ASEAN territories.
- 8) Harmonizing practices and procedures of PCA for trade facilitation and for efficient protection of customs revenues.
- 9) Protection of customs revenues, sharing experience, and close cooperation and mutual assistance.

- 10) Modernization of ASEAN customs administrations based on the following values: a) integrity, accountability and transparency, b) professionalism, c) innovation and services to the public, d) partnership with trading community, related stakeholders and the public.
- 11) Enhancement of credibility, of customs integrity and professional capacity of customs officers.
- 12) Enhancement of credibility , and reputation of ASEAN customs officers to the public and the international organizations and the international community.
- 13) Cooperation with stakeholders and promotion of voluntary compliance and partnership.
- 14) Assisting member customs administrations in catching up with development in customs techniques and reducing technical gap of new members (CLMV) to regional levels, and providing technical assistance to them.
- 15) Public security and protection of the society.
 - a) Protection of the society against illegal traffic of arms, drugs, antiques and cultural heritage.
 - b) Protection of endangered species and environment (eg. Combating illegal logging)
 - c) Tackling illegal traffic of dangerous wastes

<Simpler and harmonized procedure as part of the advanced integration of priority sectors>

Concurrently with the Vientiane Action Programme, the ASEAN Framework Agreement for the Integration of Priority Sectors was signed for formation of AEC. Article 8 of the agreement lists more specific agreements on customs procedure.

The agreement aims at advanced realization of AEC by 2010 through abolishment of tariffs and non-tariff barriers, harmonization of standards and liberalization of investment in the 11 priority sectors (wood products, automobiles, rubber products, textile, processing of agricultural products, fishery, electronics, e-ASEAN, healthcare, aviation and tourism).

(Article 8 of the Framework Agreement for the Integration of Priority Sectors: Customs Procedure)

- (a) Extend the application of the ASEAN Harmonised Tariff Nomenclature (AHTN) for extra-ASEAN trade on an on-going basis .
- (b) Simplify, improve and harmonise customs declaration forms by 31 December 2005.
- (c) Ensure full implementation of the Green Lane System for CEPT products or similar system at entry points of all Member States by 31 December 2004.
- (d) Develop common implementation guidelines, by 31 December 2004, to fulfill the obligations of the WTO Agreement on Customs Valuation.
- (e) Each ASEAN customs authority to adopt a service commitment (client charter) by 31 December

2004; and

(f) Develop the Single Window approach, including the electronic processing of trade documents at national and regional level by 31 December 2005.

Chapter 7. Conclusion: Summary and Recommendation for More Competitive ASEAN

1. The Tariff and Clearance Systems of ASEAN

We have discussed outlines and issues in operation of tariff and clearance systems by each country.

Table 1 gives a comparison of the facts by topics.

Table 1. The Tariff and Clearance Systems in ASEAN

	Thailand	Malaysia	Indonesia
Clearance procedure	Two categories of green line (no document examination) and red line (document examination). Cargo inspection after tariff payment.	Mainly document examination. Only 2~3 percent of cargos are inspected.	Categorization into priority status (excellent), green lane (document examination only) and red lane (physical check).
Computerization (EDI)	Widely used EDI declarations by customs brokers for green/red line categorization. Examination is document-based.	Customs brokers widely use EDI declarations. Examination is document-based. You can pay online tariffs from brokers accounts.	Widely used EDI declarations by customs brokers for green/red line categorization. Examination is document-based.
Customs valuation	Implementation in accordance with WTO customs valuation system (Article 7, GATT).	Implementation in accordance with WTO customs valuation system (Article 7, GATT).	Implementation in accordance with WTO customs valuation system (Article 7, GATT).
Tariff classification	Classification based on HS rules. AHTN applies in ASEAN. Different tariff codes between ASEAN and non-ASEAN (lower 2~3 digits).	Classification based on HS rules. AHTN applies in ASEAN. Different tariff codes between ASEAN and non-ASEAN (lower 2~3 digits).	Classification based on HS rules. Higher 8 digits are AHTN for ASEAN and non-ASEAN. Lower 2 digits are the original classification by Indonesia. Total 10 digits.
Advanced classification ruling	None. Preparing for introduction.	Implemented.	Implemented.
Conciliation	Valuation appeals committee is established. Application within 30 days.	Implemented.	Objection system is established under Articles 93~95 of the customs law. Judgment by arbitration tribunal.
Post-audit	Implemented. Papers must be kept for 5 years. Insufficient tariffs are collected for past 10 years.	Implemented for past 3 years.	Implemented. Two years from the date of declaration are subject to the audit. No express provision of document filing period.
Major issues	Arbitrariness of officers in valuation and classification. Large amounts of taxation by post-audit.	Slow clearance. Licenses must be obtained for import of automobiles and steel.	Port handling capacity, infrastructure such as expressways and EDI system, "block" system, arbitrary evaluation and classification by officers (low product knowledge), insufficient information sharing, short notice of systems, etc.
Other remarks		A pilot project of Customs Golden Client system has been started to connect online the consignees and customs since September 2004.	

Source: JETRO, based on customs laws of each country and interviews

Table 1. The Tariff and Clearance Systems in ASEAN (continued)

	The Philippines	Vietnam
Clearance procedure	Prepayment of tariffs before declaration. Declarations are categorized into red line (document /cargo check), yellow line (document only) and green line (no document /cargo check). Most are red items.	A moratorium of tariffs for 9 months (275 days) after importing materials for export processing. A moratorium of 30 days also applies to items for domestic consumption.
Computerization (EDI)	EDI declaration is possible but "not utilized often (the Bureau of Customs).	Just got started a pilot EDI declaration.
Customs valuation	Implementation in accordance with WTO customs valuation system (Article 7, GATT).	Implemented according to WTO customs valuation system (Article 7, GATT) before joining WTO.
Tariff classification	Classification based on HS rules. AHTN for ASEAN and non-ASEAN.	Classification based on HS rules. AHTN for ASEAN and non-ASEAN.
Advanced classification ruling	Implemented.	Implemented. But not fully effective.
Conciliation	Implemented by Valuation/ Classification Review Committee.	Implemented.
Post-audit	Just started in January 2004 for past 3 years.	Implemented. Inapplicable if there is no sign of violation under the current law. Investigate past 5 years.
Major issues	Slow clearance. Frequent failure of customs computers.	Many pre-clearance procedures such as import plans and permissions. Frequent changes by notices.
Other remarks	Monthly meeting between the customs commissioner and representatives of Japanese firms.	Committed to 10 items of improvement in tariff and clearance systems as part of the Japan-Vietnam Joint Initiative.

Source: JETRO, based on customs laws of each country and interviews

<Computerization limited to import declaration in clearance>

Clearance procedure (import) generally proceeds with declaration, paper examination, cargo inspection, tariff payment and cargo receipt with some country variations. In Thailand, for example, cargo inspection is conducted after tariff payment. In the Philippines, you can file a import declaration after depositing precalculated tariffs at a bank and obtaining the bank receipt.

Computerization of clearance (EDI: electronic data interchange) is delayed on the whole. It is only in Singapore that the whole clearance procedure is computerized. Thailand, Malaysia and Indonesia are relatively advanced in ASEAN in terms of computerization but only customs brokers input data on terminals upon import declaration. Because procedures in port authorities and other agencies giving permissions are not computerized, paper examination is still prevailing, not contributing to speed and labor conservation. In Malaysia, however, they started a pilot project to directly connect online the customs and manufacturers in September 2004. Electronic declaration is also available in the Philippines but majority procedures are paper-based. The electronic declaration in Vietnam is at an

experimental stage.

<Insufficient functions of advanced classification ruling system>

Customs valuation in ASEAN, including Vietnam which is not yet a WTO member, is implemented according to the WTO customs valuation system. Tariff classification there is based on the international HS codes. Unique common ASEAN tariff codes (AHTN) based on the HS codes have been introduced since early 2004. Malaysia, the Philippines, Indonesia and Vietnam have advanced classification ruling system in place. The results of advanced classification ruling are, however, not shared among customs officers in Indonesia and Vietnam and the implementation seems to be not fully effective. Thailand also informally gives advanced classification ruling, which, however, is not functioning.

<Expensive additional taxation after post-audit in Thailand>

Post-audit is conducted in each country. The implementation in the Philippines and Vietnam seems to be not full-fledged due to limited experience. In Thailand, they can apply additional tax to tax insufficiency for a long period of past 10 years as a result of post-audit. Insufficient tariffs plus penalties are great burdens for companies. The same issues are observed in other ASEAN countries as well but the cases in Thailand seem to be most serious.

2. Issues—cumbersome clearance and other procedures pose the greatest problem

Next, we would like to look at issues occurring as a result of implementation of the systems. JETRO surveyed in February 2005 the situations by sending questionnaires to Japanese manufacturers in 6 major ASEAN countries (Thailand, Malaysia, Singapore, Indonesia, the Philippines and Vietnam) and India to get 954 responses. The respondents could select multiple issues in the trade systems: (1) cumbersome clearance and other procedures, (2) time required for clearance, (3) underdeveloped logistics infrastructure, (4) unclear inspection system, (5) insufficient communication of notices and regulations, (6) unclear customs valuation, (7) unclear tariff classification, and (8) others (Table 2).

Table 2. Issues identified by Japanese companies in the trade systems (multiple selection)

Upper figure: Nos. of respondents Lower figure: Percentage in all respondents

		Effective responses	Cumbersome clearance and other procedures	Time required for clearance	Underdeveloped logistics infrastructure	Unclear inspection system	Insufficient communication of notices and regulations	Unclear customs valuation	Unclear tariff classification	Others
Country/region	Total number	760 100.0	374 49.2	293 38.6	250 32.9	191 25.1	269 35.4	225 29.6	187 24.6	93 12.2
	ASEAN total	712 100.0	339 47.6	266 37.4	223 31.3	181 25.4	258 36.2	213 29.9	182 25.6	90 12.6
	Thailand	151 100.0	79 52.3	45 29.8	13 8.6	23 15.2	50 33.1	59 39.1	55 36.4	11 7.3
	Malaysia	136 100.0	40 29.4	43 31.6	27 19.9	17 12.5	28 20.6	25 18.4	19 14.0	35 25.7
	Singapore	32 100.0	6 18.8	8 25.0	6 18.8	4 12.5	5 15.6	4 12.5	3 9.4	20 62.5
	Indonesia	207 100.0	116 56.0	91 44.0	83 40.1	88 42.5	102 49.3	80 38.6	55 26.6	13 6.3
	The Philippines	104 100.0	40 38.5	43 41.3	57 54.8	24 23.1	42 40.4	22 21.2	22 21.2	9 8.7
	Vietnam	82 100.0	58 70.7	36 43.9	37 45.1	25 30.5	31 37.8	23 28.0	28 34.1	2 2.4
	India	48 100.0	35 72.9	27 56.3	27 56.3	10 20.8	11 22.9	12 25.0	5 10.4	3 6.3

Source: Fiscal 2004 JETRO Survey of the Activities of Japanese Manufacturers, February 2005

Results of the questionnaire bring the following overall conclusions. First, the absolute percentage points of Singapore and Malaysia are low for all selections, which shows that fewer companies question the trade systems of the two countries. Second, there are variations among countries in the questioned issues. Yet, there were many companies which select “cumbersome clearance and other procedures” on the whole. We point out below some features of each country.

In Thailand, a majority or 52.3% of the company respondents selected “cumbersome clearance and other procedures” rather than any other issues. The procedures are considered to include tax exemption for materials used for producing export items as controlled by the Board of Investment(BOI). Many Japanese companies are dissatisfied with the system. The next issues are “unclear customs valuation” (39.1%) and “unclear standard of tariff classification” (36.5%). The percentages are higher than any other country, which is a feature of Thailand.

In Malaysia, as mentioned before, the ratio of response was lower than other countries on the whole

and not many companies have problems. Yet, they selected “time required for clearance” (31.6%) and “cumbersome clearance and other procedures” (29.4%) as more important issues than others. These issues may include import permits for steel and automobiles other than ordinary clearance procedures. In Singapore, there are fewer companies on the whole than those in Malaysia which feel problems with trade systems.

In Indonesia, 40~60% of the respondents selected most of the issues, reflecting their problems with many items. High percentages of respondents selected “cumbersome clearance and other procedures” (56.0%) and “insufficient communication of notices and regulations” (49.3%).

In the Philippines, more than 40% of the respondents selected most of the items. A majority or 54.8% of them selected “underdeveloped logistics infrastructure,” including, possibly, old port infrastructure and transportation roads. The next important issues are “time required for clearance” (41.3%) and “insufficient communication of notices and regulations” (40.4%).

In Vietnam, many companies or 70.7% of them selected “cumbersome clearance and other procedures.” They point out many pre-clearance procedures such as submission of import plans and obtainment of import permits. They also say that it is difficult to precisely follow the frequently issued ordinances and notices. In addition, many companies questioned “underdeveloped logistics infrastructure” (45.1%) and “time required for clearance” (43.9%).

3. Recommendation for speed and transparency

In addition to our recommendation to each country concerning tariff and clearance systems described in each chapter, we would like to give an overall recommendation to the government officials of each country. What are desired among the people concerned are, undoubtedly, speedy and transparent clearance procedures. The question is how to realize it.

1) Simpler procedures

As shown in the results of the questionnaire mentioned above, the greatest issue in the ASEAN tariff and clearance systems is their cumbersomeness. Complicated procedures take time and often cause minor mistakes and incomplete documents on the part of companies (customs brokers in many cases). This results in further delays of the procedures. They are documentary examination, cargo inspection and post-audit which increase the opportunity of tea money claims by customs officers which are unclear charges.

In addition to ordinary import procedure, each country has various systems to reduce or exempt import tariffs for increasing exports, promoting specific industries and other purposes. Thailand has a system to exempt tariffs for materials and components for export production administered by the Board of Investment (BOI). Other than BOI, Article 19 of the Customs Law provides for a system of refunding

tariffs for materials and components for export production. There is an additional system of tariff reduction and exemption for materials and components of home electric products. Further, AFTA and FTAs with external countries make preferential tariffs available. There are different procedures for each scheme and companies need considerable knowledge and preparation for successful procedures. Administrative costs are not negligible. Integration of the systems and simplifications of the procedures are desired.

2) Reinforced disclosure of systems and regulations

In connection with the issue of simplification mentioned above, many point out the ambiguity of systems and regulations of clearance procedure. Insufficient information on the part of companies often causes incompleteness and mistakes in the procedures. It is often the case that a new system or changed system is implemented just after announcement of a government, whose public relations are not sufficient. A changed system may frequently cause confusion in nationwide customs offices due to insufficient internal communication. It is necessary to have sufficient time before implementation, active disclosure of the government and full internal communication throughout customs offices. Companies should preferably monitor precise information of the systems.

3) Improved advanced classification ruling system

There are many Japanese firms which question interpretation of tariff classification. Advanced classification ruling which can define tariff codes before import clearance may greatly contribute to resolution of the issue. The system has been introduced in major ASEAN countries other than Thailand but is not fully functioning. There are cases where the judgment by classification ruling is not shared among customs offices and customs officers do not respect the judgment. We hope Thailand will introduce the system and other countries will further improve and steadily implement the system.

4) Further computerization of clearance procedure for ASEAN Single Window

Speedy clearance procedure is an indispensable initiative for more competitive ASEAN. Companies are increasingly pursuing global supply chain management and lead time reduction is an ever stronger requirement, for which simpler clearance procedure will be an effective instrument.

Further computerization will greatly contribute to speedy procedure as well. Computerization of the countries other than Singapore is at a primary stage. The ASEAN customs cooperation is a noteworthy initiative. The ASEAN Single Window is the leading project among others. It is a grand concept of computerizing clearance procedures of ASEAN countries by common formats in accordance with international rules of WCO and WTO. Computerization is expected to eliminate arbitrariness of customs officers by mechanical judgment. Meanwhile, the economic differentials among ASEAN countries may prevent implementation of the system. The Japanese government should actively assist

computerized customs procedure (including use of IC tags) through the economic partnership mentioned below or otherwise.

5) Education and training of customs officers

While simplification and computerization of procedures are important, many of the issues ultimately stem from the quality of human resources of the customs. Comprehensive computerization may take time with some country variations and cargo inspection and post-audit require manual involvement of officers. Many Japanese companies surveyed and interviewed pointed out necessity of human resources of high expertise. Improved expertise will help speed up procedures and unify arbitrary judgments of customs officers. Improvement of the ethical quality of customs officers is also indispensable.

6) Prevention of smuggling

Smuggling is often a great impediment of normal businesses, depending on country situations. Smuggled products without paying tariffs affect sound development of markets and discourage foreign investors. Government should strongly commit to prevention of smuggling to solve related problems as soon as possible.

7) Promotion of Economic Partnership

Japan is negotiating bilateral economic partnership agreements (EPA) with the Philippines, Thailand and Malaysia, Indonesia. A basic agreement was reached in November 2004 with the Philippines, May 2005 with Malaysia, August 2005 with Thailand. Japan and ASEAN has started talks on economic partnership from the middle of April 2005. The economic partnership will include simplification and harmonization of customs procedure, and computerization of trade documents. Early conclusion and implementation of the pacts is therefore awaited.

In addition to the customs aspects, the economic partnership agreements will include “Business Environment. Enhancement” This will provide a forum of government officers and industry representatives to discuss and resolve issues in business environment. It is desired that a formal route to resolve various issues in customs and other areas by discussions with related governments will be secured. In the Philippines, as already stated, the regular meetings between the Commissioner of the Bureau of Customs and the representatives of Japanese companies have successfully addressed various issues. It is greatly significant that a binding framework of economic partnership agreements assures direct dialogue with related governments and industries.

As high tariffs often cause more procedural tariff and clearance issues, reduction or abolition of tariffs by EPA itself will contribute to improvement of the issues.