

QUARTERLY NEWSLETTER

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KEEPING UP WITH THE BEAT OF CHANGE

Here at Livingston, we're continuously monitoring changes in policies and practices that impact international trade. Our staff members, in twenty-four different countries, collaborate to share the latest information and analysis on such changes, taking full advantage of the local insights and expertise we collectively possess.

Our latest, third edition of Livingston Global Perspectives speaks to just a few of the many trade issues we're monitoring. Enclosed you'll find choice selections of our experts' reports on items relevant across the world of trade. We include insights on progress toward the implementation of international agreements, as well as analyses of the impact of new local regulations that may affect import or export activity.

We thank you for your interest in our latest Global Perspectives. Your feedback is important to us, please [send us an e-mail to LivingstonGlobalPerspectives@Livingstonintl.com](mailto:LivingstonGlobalPerspectives@Livingstonintl.com) to let us know what you think, and help us improve our future publications.

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WHEN A NAFTA REFUND CLAIM ISN'T A REFUND

By **Paul J. Diamond**, *GTM Governance, Canada*

Are you aware of the Bri-Chem decision and the steps you should be taking if you're filing similar refunds? This article provides a summary of the status of the case before the courts, and why the Canadian International Trade Tribunal has characterized the actions taken by the Canada Border Services Agency (CBSA) as an "abuse of judicial process".

The Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal (CITT) have been at odds dating back to December 2012 when the CITT issued its decision in a case, allowing importers to apply provisions of the North American Free Trade Agreement after the one-year statutory time limit had passed. This complex issue has come up again in recent CITT decisions and is still before the courts with no immediate resolution in sight. With some background and recommendations, importers can protect themselves from this disagreement between the two federal agencies.

The Canadian International Trade Tribunal is a quasi-judicial federal institution that, among other responsibilities, provides rulings on appeals of customs-related matters. It's the federal department that provides a subsequent level of appeal after the CBSA, and its decisions establish a legal precedent. The next levels of appeal beyond the CITT are the Federal Court of Appeals and the Supreme Court of Canada, respectively.

Under Section 74 of the Customs Act, importers can, in certain circumstances, claim a refund of duty within four years of accounting for those goods. However, under Section 74(1)(c.1) any refund claims under the North American Free Trade Agreement must be made within one year of the date that the goods were accounted for with CBSA. On the other hand, Section 32.2 of the Customs Act delineates the obligation of an importer to make any corrections (revenue neutral or revenue owing to the Crown) within 90 days of discovering the error. This legal obligation lasts up to four years after the goods were accounted for with CBSA.

In the event of an audit or review of an importer's records, CBSA can make a re-determination on the value, tariff classification or origin of the imported goods within four years of the date of accounting. This can provide a dilemma for importers in the case where goods were imported and accounted for duty-free without the benefit of NAFTA and then, re-assessed by CBSA under an alternate HS classification in the Customs Tariff which attracts duty. If this re-assessment by CBSA occurs after the one-year statutory time limit for claiming NAFTA tariff treatment, the importer can be left with duty and interest payments on goods that were likely entered into their supply chain under a previous fiscal period with no ability to recover the amounts.

After a compliance verification audit in which the CBSA made a re-determination of the classification of goods imported by Frito-Lay Canada, the importer submitted entry adjustments under Section 32 of the Customs Act for the purpose of correcting the HS classification as directed by the CBSA. In addition to the classification corrections, Frito-Lay Canada also changed the tariff treatment to reflect the duty free NAFTA tariff treatment under the premise that the entry adjustments were not refunds but rather revenue neutral adjustments. The CBSA initially rejected the entry adjustments and subsequently accepted the classification correction but not the application of the NAFTA Tariff Treatment, which resulted in duty plus interest owing to the Crown.

After exhausting their avenues of appeal to the CBSA, Frito-Lay Canada took their case to the CITT who in turn granted their appeal. While this should have been the end of the

story, the CBSA disregarded the legal precedent established by the CITT ruling and disallowed all similar claims. In a series of three decisions, with the first decision being the Bri-Chem decision, the Canadian International Trade Tribunal affirmed their earlier decision in the Frito-Lay Canada ruling and characterized the actions taken by the CBSA as an “abuse of judicial process”.

The CBSA is appealing the Bri-Chem and other related CITT decisions to the Federal court of Appeals with an outcome

expected by early 2017. If the CBSA's appeal is unsuccessful, an appeal to the Supreme Court of Canada is expected. In the meantime, any importers who find themselves in a similar position have been instructed to submit their claims, which will be held in abeyance until this issue reaches its final resolution. Due to the complexity of this issue, consulting a customs expert is the best approach to ensure compliance and minimization of duty payment. ▸

IN THE ZONE: A LOOK AT FOREIGN TRADE ZONES IN THE U.S. AND CANADA

Part 1

By **John Moccia**, *Regulatory Affairs, Canada*

Foreign Trade Zones (FTZ) can provide, key advantages and benefits for businesses with upfront relief of duties and taxes, refunds of duties for exported goods, and deferment of duties and taxes. In addition, this article provides an overview of the various types of FTZs that exist and some of the differences between FTZ in Canada and the U.S.

It has been nearly a century since the Foreign Trade Zone Act of 1934 was enacted, which established the first modern foreign trade zones (FTZ) in the United States. Born from the Great Depression these initial FTZs provided a duty exemption when foreign merchandise entered into them.

The concept of the foreign trade zone has evolved significantly since those initial days, and there are approximately 4,300 various types of zones worldwide today. In an era of international competition and globalization, countries around the world are eager to attract foreign direct investment and seize the potential of these foreign trade zones.

While there is no precise definition of what constitutes a foreign trade zone, the term generally refers to a specific location within a country that is officially designated for eligibility for tariff and tax exemption with respect to the purchase or importation of raw materials, components or finished goods.

In the United States, foreign trade zones are secure areas under supervision of U.S. Customs and Border Protection (CBP). Foreign and domestic merchandise may be moved into zones for operations, assembly, manufacturing, and processing. While in the FTZ, merchandise is not subject to duty or excise tax until the merchandise enters the United States territory for domestic consumption.

There are two types of foreign trade zones in the United States: General-Purpose and Special-Purpose Subzones:

1. General-Purpose Zones operate as public utilities proving a variety of services to many users. They are usually located in industrial parks or in seaport and

airport complexes with facilities available for the general public.

2. Special-Purpose Subzones are sites ancillary to the general-purpose zone, and typically a part of a single company's operation used for their exclusive use.

Sub-zones are single-use facilities, which cannot be accommodated within the general-purpose zone (i.e. manufacturing or distribution).

In Canada, the benefits of a foreign trade zone extend beyond those found in site-specific FTZs (like in the United States). Essentially, Canada has implemented FTZ policies that are available nationally and while businesses may enjoy this benefit anywhere in Canada, this degree of flexibility becomes a double-edged sword since the lack of "designated" FTZs makes it more difficult to market and promote to businesses and prospective foreign investors who have traditionally viewed FTZ as a specific local area.

Currently, there are three main FTZ-like programs in Canada; the Duty Deferral Program, the Export Distribution Program, and the Exporters of Processing Services Program. Each of these programs offers key advantages and benefits for businesses such as upfront relief of duties and taxes, refunds of duties for exported goods and deferment of duties and taxes.

Look for Part 2 of this article in our next newsletter, where I'll review in further detail the above Canadian programs exploring their advantages and disadvantages. As is the case with all Customs-related programs, a comprehensive understanding of the relevant facts, serves to determine which program best suits the needs of the business community. ◀

MEXICO CATEGORIZED FOUR NEW PRODUCTS AS PRECURSOR CHEMICALS

By **Luis Cano GTM**, Governance, Mexico

In an effort to prevent the illicit use of precursor chemicals, many countries are now monitoring domestic and international movement of these items. In order to support the Drug Enforcement Administration (DEA), four new products have been added to the import and export controlled lists in Mexico.

The increase of synthetic drug production and distribution has become a serious problem in the last few years. According with the Drug Enforcement Administration (DEA), the primary foreign source of methamphetamine for the U.S. market is Mexico.

How are Mexican cartels synthetizing, producing and supplying these products?

The manufacturing of synthetic drugs uses an extensive variety of legal precursor chemicals and essential chemicals, which provides law enforcement agencies with one more way to combat the illegal drug problem. In order to prevent the illicit use of precursor chemicals, many countries, including Mexico, are now monitoring domestic and international movement of these items.

However, a lot of these chemicals have numerous uses in legitimate industries such as pharmaceutical, cosmetic and plastic manufacturing. For this reason, essential chemicals are categorized as “controlled products” and are followed for adequate controls requirements.

In Mexico, the General Health Law and the Federal Law for the Control of Chemical Precursors, Essential Chemical Substances and Machinery to Manufacture Tablets, Capsules and/or Pills and their Regulations establish these controls and implemented international initiatives and recommendations of the Model Regulations of the Inter-American Drug Abuse Control Commission on this matter. On February 5, 2016 four new products were added

as control precursor chemicals to export/import to or from Mexico: benzyl chloride (chloromethylbenzene), benzaldehyde, nitroethane and nitromethane. These products must now comply with the following correspondent permits:

Sanitary Import Permit for the specific quantity of product.

- Authorities will deliver, if approved, three equal copies of the permit. One of those, along with the invoice and certificate of analysis, must be submitted to the Mexican Embassy in the origin country to obtain the Certificate for import.
- Both Sanitary Permit and Certificate for Import must be presented at Customs for clearance.

Sanitary Export Permit.

- A copy of the permit must be submitted to the Sanitary Ministry.
- A Sanitary Officer must visit the exporter facilities to verify that the goods are the same physically and documental in name, presentation and quantities. The officer must wax and seal the product so that it can be exported.
- The import and export process for these goods is going to take around two or three months longer than before, affecting not only the availability of the goods for production, but the administrative work and cost implications as well. ◀

NORTH KOREA AND UN SANCTIONS - WHAT'S NEW THIS TIME?

By **George Reed**, *GTM Governance*

A new and tougher sanctions are being put into place to target the rogue regime of Kim Jong-un. Yet sanctions against the Democratic Peoples' Republic of Korea (DPRK), as it's officially called, have been in-place for a number of years. What will be different this time around?

In the aftermath of the February 2016 North Korean missile launch, a tougher set of sanctions is being brought into effect to target the rogue regime of Kim Jong-un. Yet sanctions against the Democratic Peoples' Republic of Korea (DPRK) have been in-place for a number of years. What's different this time around?

First, some background:

North Korea has a very long history of regional military provocations: proliferation of military-related items; long-range missile development; weapons of mass destruction programs including tests of nuclear devices, (in 2006, 2009, 2013, and January 2016); and maintaining very large military forces – all factors of major concern to the international community. In 2013, the current regime announced a new policy calling for the simultaneous development of its nuclear weapons program and its economy. And it appears that the economic development is meant to prioritize their weapons program over improving life for their citizens. Since 1950, when the U.S., along with 15 other United Nations member countries, came to the defense of South Korea following an invasion from the North, various sanctions against North Korea have been put in place through the intervening years. The international community has tried to negotiate an end to North Korea's nuclear and missile development and its export of ballistic missile technology. Those efforts have oscillated through times of great tension and frequent impasse, yielding virtually no progress towards denuclearization.

The United Nations Security Council (UNSC), has enacted a series of resolutions concerning North Korea. Those mentioned here focus on the imposition of specific sanctions during the period of 2006 through to 2015.

Resolution 1695 banned all UN member states from selling materials or technology for missiles or weapons of mass destruction to North Korea, and from receiving missiles, banned weapons or technology from Pyongyang. It also called on North Korea to refrain from conducting further missile and nuclear tests.

Next, resolution 1718 provided that shipments of cargo going to and from North Korea may be stopped and inspected for weapons of mass destruction or associated items. A ban was placed on imports and exports of battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems, related materials including spare parts and any other items identified by the UN sanctions committee. UN member states were to freeze the overseas assets of individuals and companies involved with the DPRK's weapons programs. An international travel ban was also placed on program employees and their families. Interestingly, UN member nations were banned from exporting luxury goods to North Korea.

Then in 2009 resolution 1874 authorized member states to inspect and destroy North Korean cargo on land, sea, and air, in accordance with their national authorities and legislation, and consistent with international law, if suspected of being connected to the DPRK's nuclear program. This was meant to preclude financial services that could contribute to the nuclear or ballistic missile-related programs. Member states were enjoined not to provide financial assistance to the DPRK nuclear program, or provide loans to the country, except for humanitarian or civil developmental reasons. This resolution expanded the arms embargo on North Korea by banning all weapons exports from this country and most

imports (excluding small arms, light weapons and related materials – though requiring member states to notify the Security Council five days prior to selling such weapons). In 2013 resolutions 2087 and 2094 called for stronger enforcement of previously enacted sanctions and added annexes listing North Korean persons and organizations subject to a travel ban and asset freeze. Further, financial restrictions were enacted to impact banking and funding for proliferation-related activities of North Korea.

Yet after all these years and increasingly stringent UN sanctions resolutions, the practical reality is that North Korea has continued developing nuclear weapons and the missiles to deliver them. The accumulation of UN sanctions has not changed the behavior of this rogue state, evidenced earlier this year by a fourth nuclear test and another missile launch. Now, on March 2nd, the United Nations has acted again. Resolution 2270 has just been approved by the UN Security Council. If fully implemented, it will strangle North Korea's economic means to carry out the nuclear and missile development program.

Here are some important elements that are different about these latest UN sanctions:

1. Resolution 2270 was carefully negotiated in advance with China, and thus carries greater support from this key country, more than ever before.
2. All member countries must inspect all cargo transiting through their ports on the way to or from North Korea to eliminate the flow of banned items. (This was only optional in the past).

3. Severe restrictions are placed upon chartering or operating vessels and aircraft in order to limit the ability of North Korea to transfer UN-prohibited items.
4. There are new measures to specifically target the ability of North Korea to evade or circumvent sanctions (to preclude methods used in the past).
5. Imposition of new industry-sector sanctions, cutting off exports of coal, iron, iron ore, gold, titanium ore, vanadium ore, and rare earth minerals and suspending the supply of aviation fuel and rocket fuel to this country.
6. Greatly expanded financial sanctions target North Korea banking institutions globally and more thoroughly, accompanied by freezing of more assets in order to place a much tighter squeeze upon funding for proliferation-related activities.
7. Prohibiting nations from providing training to North Korean nationals in fields that could advance the nation's missile and nuclear programs, such as aerospace engineering and advanced computer simulation, plus directing the expulsion of North Korean diplomats and citizens engaged in illicit activities.

As North Korea's closest ally, if China more closely adheres to this new resolution, then perhaps it will move Kim Jon-un to change course. His first response was to fire off some short range missiles into the ocean. Time will tell. ↴

TURKEY-RUSSIA TENSIONS: A RECAP

By **Marek Drabik**, GTM Governance - EMEA

Following the downing of a Russian bomber in November 2015, Russia imposed economic restrictions against Turkey that have already caused significant losses for Turkey's economy. Trade between the two is falling steadily, from \$30 billion in 2014 to \$23 billion in 2015. The numbers are expected to get even worse in 2016.

The crisis in relations between Russia and Turkey started with an incident on November 24, 2015 in the skies over Syria, near the border with Turkey. A Russian Su-24 tactical bomber was shot down by the Turkish Air Force. Earlier on September 30, Russia began airstrikes in support of Syrian President Bashar al-Assad, over a year after a U.S.-led coalition began strikes in the country against the ISIS groups.

Turkey's position remains unchanged: according to Turkish representatives the Russian aircraft had violated Turkish airspace after being warned repeatedly to change its heading. Moscow maintains that the Su-24 aircraft stayed exclusively over Syrian territory.

This incident has split the former economic partners and bilateral economic relations have worsened considerably, with Russia introducing a package of sanctions against Turkey. These restrictive measures were implemented by two legislative acts adopted at the end of 2015.

On November 28, 2015 Russian President Vladimir Putin signed Executive Order No. 583, "On Measures to Ensure State Security and Protection of Russian Citizens from Criminal and Other Unlawful Actions and on Application of Special Economic Measures in relation to the Republic of Turkey". Presidential Decree 583 announced the following restrictive measures:

- An import ban on certain Turkish-origin goods (except the goods for personal use imported by individual travelers within the limits allowed by the legislation of the Eurasian Economic Union) from January 1, 2016;
- A provision of certain services and performance of certain works by Turkish companies is prohibited or restricted on the territory of the Russian Federation;
- From January 1, 2016, Russian employers (other than those included on a special list adopted by the Russian

Government) are prohibited from hiring and engaging Turkish citizens, unless they have already been hired or engaged by such an employer as of 31 December 2015;

- Visa-free entry of Turkish citizens into Russia has been suspended as of January 1, 2016;
- Travel operators and tourist agencies are recommended to refrain from selling Russian citizens tours and related services for visits to Turkey.

The validity of these sanctions has not been determined.

On November 30, 2015, Regulation No. 1269 was adopted to enforce Presidential Decree No. 583. The resolution approves a list of agricultural produce, raw materials and food products originating from Turkey that cannot be imported into Russia, effective January 01, 2016.

Thus, import of fruits (oranges, tangerines, grapes, apples, pears, apricots, peaches and nectarines, plums, wild strawberries and strawberries) and vegetables (tomatoes, cucumbers, cauliflower, broccoli, yellow onions), as well as supplies of frozen turkey, chicken and salt has been banned. Additionally, a ban on charter air flights between Russia and Turkey has been introduced. The resolution also provides a number of other measures to implement: tightened control over Turkish road transport carriers operating in Russia, safety control in Russian waters and seaports in the Azov-Black-Sea basin and reduction of Russian permits for international road transportation issued for Turkish carriers down to 2,000 for 2016.

The trade sanctions against Turkey were further supplemented by another Presidential Decree, No. 669, that extends the ban on performance of works and rendering of services to organizations controlled by Turkish citizens or

companies. For the purposes of fulfillment of the Decree, the Russian Government adopted two Regulations, No. 1457 and No. 1458, which stipulate the list of specific works that cannot be performed in Russia by organizations under Turkish jurisdiction, as well as by organizations controlled by Turkish citizens and (or) organizations under Turkish jurisdiction. The list includes the following:

- Construction of buildings and engineering structures and specialized construction works;
- Architectural projects and engineering-technical designs, technical tests, research and analysis;
- The activities of travel agencies and other organizations providing services in the area of tourism;
- Hotel activities and those of other temporary residences;
- The execution of works and the provision of services for state and municipal needs;
- Timber processing.

The regulations also approved the list of 53 employers and companies that are exempt from the January 1, 2016 ban to hire nationals of the Republic of Turkey who were not providing services under employment or service contracts as of December 31, 2015. These are companies working in construction, car making industry, production of construction materials, plastic pipes and fittings, plumbing equipment, flooring; these companies are working on unique projects, including the stadiums for the 2018 FIFA World Cup in Russia.

Implications of worsening relations and growth of political tension between the countries

These restrictions have already caused significant losses for the Turkish economy. The trade turnover between Russia and Turkey is falling steadily; according to Russia's

Ambassador to Turkey, trade totaled \$30 billion in 2014, but in 2015 it fell to \$23 billion. The numbers are expected decline further in 2016.

The main sectors that have been affected by Russian sanctions are food and agriculture; overall the sanctions caused major problems and bankruptcy in the tourism, construction, food and textile industries. According to the Assembly of Turkish Exporters, in the period from December 2015 to January 2016, exports to Russia fell 56% compared to the same period a year earlier. Turkey may lose \$3.5 billion annually in income from Russian tourists, and another \$4.5 billion annually through the cancellation of construction projects. Russian visitors are crucial for Turkey's tourism industry. Around 4.5 million Russians visited the country in 2014, and official Turkish data shows that more than 12% of all visitors were Russian, making them the second biggest group after Germans.

The crisis may also lead building contractors to lose their largest market, as there are approximately 300 Turkish construction companies operating in Russia.

As Russia restricted the number of bilateral permissions for truck shipments from Turkey for 2016 to 2,000, Turkey retaliated by halting the movement of Russian trucks to Turkey. Until February 1, the road accord between Turkey and Russia was being automatically extended every year; as the Turkish side hasn't accorded the quota of agreements for 2016, all commercial road transport between the two countries and via Russia to Central Asia and other regions halted entirely. ▸

UNDERSTANDING MARITIME WEIGHT REQUIREMENTS UNDER THE SOLAS CONVENTION

By *Nancy Torres*, GTM Governance Mexico

Maritime shippers need to be aware of new Safety of Life at Sea (SOLAS) amendments requiring marine freight to be weighed, and the potential impact these amendments may have. The amendments have been approved, and are expected to come into force July 1, 2016.

During the Maritime Safety Committee (MSC) session that took place in November 2014, a new amendment to the International Convention for the Safety of Life at Sea, or SOLAS Convention, was approved and adopted. Among the many updates, chapter 6 of the Convention now requires mandatory weight verification and outlines two methods to perform it:

1. The shippers must load and seal the container. Once finished, they must proceed to weigh the loaded container.
2. The shippers must weigh the cargo including all the packing materials and add it to the tare mass of the container.

Both methods require that the weighing equipment meets the national certification and calibration requirements; it is necessary to perform a calibration procedure on the weighing equipment often and obtain the paperwork to prove the results of the procedure.

The amendment is expected to come into force by July 1, 2016. The methods described above will be mandatory and shippers will not be allowed to provide an estimated weight.

What the new amendment means to shippers

For sure, not all shippers will have the resources to perform the verification under the above standards. Therefore, the Convention allows hiring a third party to complete the requirement. If this is not done, containers will not be loaded onto the vessel. If a container is loaded without verification, it will be considered to be in violation of the Convention. There are no exceptions to this requirement.

To prove that the weight verification has been performed, the shipper must issue a signed manifest to confirm verified gross mass. Since the Convention does not establish a specific format, this manifest can be part of the shipping instructions given to the shipping company or another separate document.

If the shipper has no provisions to weigh the container before its arrival to the port, the weight verification can be completed at the terminal if there is calibrated and certified equipment. The shipper should receive a document stating the verified weight.

Ultimately, the responsibility to provide the weight verification is with the shipper, as named on the bill of lading. Hence, the international carriers do not have an obligation to perform weight verification; they may simply trust the shipper.

Due to current practices, it is expected that there will be many implications. It is highly recommended that all shippers be aware of their responsibilities to prevent any possible risk of violations. Cargo recipients should also confirm with their shippers that they are ready to comply with the new requirements.

SOLAS: A background

The International Convention for the Safety of Life at Sea, most commonly referred to as the SOLAS Convention, is an international maritime treaty created under the International Maritime Organization framework in response to ships sinking and to address the worries regarding the safety of merchant vessels.

The SOLAS Convention was first adopted in 1914 after the Titanic sinking; this first release included many important aspects of the safe maritime transportation, however, over the years it would prove that the amendment process was very slow and was not allowing the treaty to respond to new necessities on this matter in a timely manner..

In 1974 a new Convention was adopted; it included a tacit acceptance process that solved the issue of the slow

amendments. This last Convention is still current even though it has been updated several times.

At the moment, the treaty provides the minimum standards that all parties involved in maritime transit operation must meet regarding safety, from the construction of vessels to the operation in specific environments; this is distributed in the 12 chapters. ▾

THE TPP: COMPLEXITIES OF HAVING THE CORRECT PREFERENTIAL DUTY

By **Brad Lehigh**, GTM Governance, Canada

The proposed Trans-Pacific Partnership (TPP) agreement offers benefits for importers and exporters, but with its complicated Tariff Rate Quota (TRQ) system, an intricate process for origin qualification and over 20 side letters to the agreement for Canada alone, it's important all aspects are understood. For example, this article explains why an incorrect preferential duty rate could be sought.

When the text of the Trans-Pacific Partnership was released to the public on November 5th 2015, industry experts scrambled to begin analyzing the massive agreement and the implications it would have on duty rates. Complete schedules were released, which allowed companies to see the preferential duty rates of their goods under TPP, should they qualify. This was completed by identifying the particular staging category that applied to their products, and then applying the given methodology in order to determine the duty rate for any time period after TPP comes into force. Complex rounding-down rules were found in the 'National Treatment and Market Access' chapter and each country's schedule also needed to be considered, which added another step into the process of determining the proposed duty rate.

While interested parties were left to their own devices for nearly three months, the legally scrubbed version of the TPP text was released in late January. This version of the text provided much more enhanced Tariff Elimination Schedules for each country that showed actual duty rates for all goods covering the span of the agreement, rather than just a method of calculating said duty. No longer would staging categories and rounding rules need to be applied, as anyone could simply look up the preferential duty rate for any good being imported into any country that is a signatory of the TPP, for any year after the agreement potentially comes into force. However, before importers take any future duty rate found in these schedules as final, there are a few other factors to consider.

Historical analysis of Canada's Free Trade Agreements show they will implement lower duty rates than what was agreed to

In the new and improved Canada Tariff Elimination Schedule, you can find a dizzying array of future duty rates for all products being imported into Canada. Whether a good has a 5.4% duty rate upon implementation or a 14.4% duty rate in year 5, there is reason to be skeptical that these rates are final.

Looking at the Canada Customs Tariff, it may be surprising to realize that outside of chapter 87, all duty rates end in either a ".0" or a ".5". The reason for this is that Canada usually applies this rule to staged duty rates once a free trade agreement comes into force:

"If a reduction results in a rate of customs duty that includes a fraction of one per cent other than 0.5, the resulting percentage shall be rounded down to the nearest percentage that divides evenly by 0.5."

This rule results in all duty rates getting rounded down even further than what was agreed to at the negotiating table. So while the tariff elimination schedule may say the duty rate of a good will be 14.4%, it is a possibility that it would actually be only 14% once the new preferential duty rates become a reality.

This not only makes it difficult to forecast future customs duties, but could also make sourcing and supply chain decisions difficult, particularly because there is no way of

knowing whether Canada will apply this rounding rule to the TPP agreement.

A change in base duty rate could nullify certain TPP benefits

When the Trans-Pacific Partnership was negotiated, it was done so using the 2010 Customs Tariff. While there are rules in the TPP text that prevent members from raising duty rates after the agreement was finalized, there is no provision that prevents these nations from lowering the duty rate. If a good with a duty rate of 10% was agreed to be eliminated in four equal stages, this would mean it would receive a preferential tariff rate of 7.5% for the first year once the agreement came into force. If Canada decided to lower the Most Favoured Nation (MFN) duty rate to 5% instead of 10%, then it would result in a situation where the regular duty rate would be more beneficial than the preferential duty rate offered under the TPP agreement, especially when you consider the time and effort of actually qualifying goods using the Product-Specific Rules of Origin that would allow an importer to use the TPP duty rate.

When TPP comes into force, it will be important for companies to ensure they are not automatically going through an origin qualification process if there is no actual cost-savings benefit to doing so.

TPP is the most complex multilateral Free Trade Agreement in history

It still remains to be seen whether the TPP will ever be ratified for Canada, or any other signatory, with a complicated Tariff Rate Quota (TRQ) system, an intricate process for origin qualification and over 20 side letters to the agreement for Canada alone; TPP will offer enormous benefits to Canadian importers and manufacturers.

Livingston is monitoring this agreement closely and our consultants are available for consultation should you wish to assess your products for potential future benefits. ◀

TRANS-PACIFIC PARTNERSHIP AGREEMENT COUNTRY FOCUS: MEXICO

The Trans-Pacific Partnership agreement is made up of twelve countries. In this edition of the Global Perspectives, we feature Mexico, a country rich with culture and history. In this article, we would like to share some tips should you be visiting and doing business in Mexico.

Mexico is a Spanish-speaking country bordering southern United States. It's well known for its Pacific and Gulf of Mexico beaches, its diverse landscape of mountains, deserts and jungles. Ancient Aztec and Mayan ruins, such as Teotihuacan and Chichen Itza, and Spanish colonial-era towns are scattered throughout the country. In the capital – Mexico City – upscale shops, renowned museums and gourmet restaurants cater to modern life.

Mexico City enjoys mild, pleasant weather nearly all year. Its winters, while cooler than the summers, are very mild and the temperature in winter averages, in the high 60s to low 70s Fahrenheit, with the average high peaking in the summer and early fall months in the low to mid 80s. October through May is the city's dry season, while June through September is considered the "rainy season". During the summer months, it rains on average once a day, though the rain rarely lasts longer than a few hours.

If doing business in Mexico you should be familiar with some of the cultural norms. Spanish is the official language of Mexico, but English is widely spoken in urban areas. The following are some tips and insights to assist you should be lucky enough to have a future business trip to this country which is rich in culture.

Titles and forms of address are very important in Mexico. A Professor or Doctor would be address by their title. First names are usually only used when on familiar terms so it would be better to wait for your counterpart to switch to first names before initiating this change.

Getting around in Mexico City can be a challenge and one should be patient as additional time should be added when traveling to and from the airport. If you are not being met by a local from Mexico, it is important to have knowledge of the transportation options. The airport has two Terminals. Terminal 1 is served by a Metro station, and travelers with baggage are advised to use one of the secure taxis to get to their destination within the city. Tickets can be purchased from booths in the arrival area when you leave Customs and should be marked "TAXI." Several companies offer this secure service for a fixed price and are paid in advance, depending upon the distance of travel. Metro Bus, which is part of the city's public bus system, now serves both Terminals and takes travelers into the city center.

When greeting a person for the first time in Mexico, a man will usually shake hands, while women will often pat each other on the right forearm or shoulder instead of shaking hands. Do not be offended if conversations take place at a much closer distance than what you might be used to in the United States or Europe. Pulling away from your counterpart might be considered unfriendly, it would also not be unusual for a Mexican to step forward and close the distance.

Regular business hours are from 9:00 a.m. to 6:00 p.m., with lunch between 1:00 p.m. and 3:00 p.m., Monday to Friday. The business atmosphere is friendly, gracious and easy-going with the pace often slower than in the United States and Europe, so be prepared to spend extra time.

Personal friendships are very important and vital when doing business in Mexico, Mexicans look for relationships built on trust and reliability. A business friendship can mean more than the prospect of doing business with a large named company. It is important to maintain this business friendship after your business trip.

Leave yourself a reasonable margin when negotiating prices. Decisions are always made at the top level so be sure to have the right level of leadership when negotiating deals. There could be a number of consultations so be patient and build this into your timeline. Mexicans like to build long-term relationships based on trust and reliability, so it is important to spend the time building these relationships. ◀

LIST OF SOME OF THE TRADE AGREEMENTS IN NEGOTIATION

Trans-Pacific Partnership Agreement (TPP)

Once ratified, the Trans-Pacific Partnership will create the world's largest free-trade zone. The countries within its scope account for 40% of the world's economic output. On February 4, 2016, Ministers from the twelve participating countries signed the TPP Agreement in Auckland, New Zealand. The twelve countries that make up the TPP are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. We now await the results of the U.S. election, as the United States is a key member of this agreement along with Japan, making up a combined 77% of the GDP. Six nations accounting for 85% of the 12 member nations GDP are required to ratify the agreement, in order to move TPP into force.

<https://ustr.gov/tpp/>

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-tp/index.aspx?lang=eng>

Comprehensive Economic and Trade Agreement (CETA)

On February 29, 2016, Canada's Minister of International Trade, Chrystia Freeland, and the European Union's Commissioner for Trade, Cecilia Malmström, announced the completion of the legal review of CETA. As part of the legal review, Canada and the EU agreed on modifications related to investment protection and investment dispute resolution provisions. The Agreement is currently undergoing translation into French, and the other 21 EU Treaty languages. Following the translations, the process of approval and the steps necessary to bring policies, regulations and legislation into conformity with the obligations of the CETA will begin. While there has been no date given when this agreement will be implemented, both the EU and Canada are anxious to move forward as soon as possible with the ratification process. The expected timeframe is to be end of 2016 or early 2017.

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/index.aspx?lang=eng>
<http://ec.europa.eu/trade/policy/in-focus/ceta/>

Transatlantic Trade Investment Partnership (TTIP)

The EU is negotiating a trade and investment deal with the U.S. – the Transatlantic Trade and Investment Partnership (TTIP). The 12th round of negotiations took place in Brussels in February 2016, with further rounds scheduled for April and July. This year, there's an expected push to conclude an agreement before the end of the Obama presidency. Both sides will have to intensify the pace of the negotiations to meet this goal. If an agreement is reached in 2016, it's believed U.S. congressional consideration will not come about until sometime in 2018, as the agreement will still have to be scrubbed, translated and that will take an additional 12 months.

<http://ec.europa.eu/trade/policy/in-focus/ttip/>

<https://ustr.gov/ttip>

Trade Facilitation Agreement (TFA)

On December 15-18, 2015, representatives from the WTO's 162 members met in Nairobi, the Kenyan capital. Since that meeting, additional countries have ratified the agreement. Turkey, for example, recently ratified the TFA, becoming the 71st WTO member to do so. The TFA will enter into force once two-thirds of the WTO membership has formally accepted the Agreement. The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between Customs and other appropriate authorities on trade facilitation and Customs compliance issues. It further contains provisions for technical assistance and capacity building in this area.

https://www.wto.org/english/news_e/news15_e/fac_10dec15_e.htm

Australia-India (CECA)

India and Australia missed the expected December 2015 date to reach an agreement. Sources say they have some differences that need to be resolved in the tariff reductions before the agreement can be concluded. While the

conclusion of the agreement is delayed, it's expected that an agreement will be reached in 2016. Bilateral trade between the countries is pegged at around AUD\$15 billion, which is just 10% of the value of Australia's trade with its largest trading partner, China.

<http://dfat.gov.au/trade/agreements/aifta/Pages/australia-india-comprehensive-economic-cooperation-agreement.aspx> ↵

Additional websites

Europe

European Commission link that provides additional information on Free Trade Agreements

<http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>

Canada

Canada's link that provides additional information on Free Trade Agreements

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fta-ale.aspx?lang=eng>

United States

United States link that provides additional information on Free Trade Agreements

<https://ustr.gov/trade-agreements/free-trade-agreements>

Asia

Asia link that provides additional information on Free Trade Agreements

<http://aric.adb.org/fta>

PUBLIC HOLIDAYS

Country	Date	Weekday	Holiday name
United States	30-May	Monday	Memorial Day
United States	04-Jul	Monday	Independence Day
United States	05-Sep	Monday	Labor Day
United States	10-Oct	Monday	Columbus Day
United States	11-Nov	Friday	Veterans Day
United States	24-Nov	Thursday	Thanksgiving Day
United States	25-Dec	Sunday	Christmas Day
United States	26-Dec	Monday	Christmas Day observed
Canada	01-Jan	Thursday	New Year's Day
Canada	03-Apr	Friday	Good Friday
Canada	01-Jul	Wednesday	Canada Day
Canada	07-Sep	Monday	Labour Day
Canada	12-Oct	Monday	Thanksgiving Day
Canada	11-Nov	Wednesday	Remembrance Day
Canada	25-Dec	Friday	Christmas
Belgium	01-Jan	Thursday	New Year's Day
Belgium	05-Apr	Sunday	Easter Day
Belgium	06-Apr	Monday	Easter Monday
Belgium	01-May	Friday	Labor Day / May Day
Belgium	14-May	Thursday	Ascension Day
Belgium	24-May	Sunday	Whit Sunday
Belgium	25-May	Monday	Whit Monday
Belgium	21-Jul	Tuesday	Belgian National Day
Belgium	15-Aug	Saturday	Assumption of Mary
Belgium	01-Nov	Sunday	All Saints' Day
Belgium	11-Nov	Wednesday	Armistice Day
Belgium	25-Dec	Friday	Christmas Day
China	01-Jan	Thursday	New Year's Day
China	02-Jan	Friday	New Year's weekend
China	03-Jan	Saturday	New Year's weekend
China	18-Feb	Wednesday	Spring Festival Eve
China	19-Feb	Thursday	Chinese New Year
China	20-Feb	Friday	Spring Festival Golden Week holiday

