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China/Switzerland FTA: A Short Update and Practical Tips

Introduction:

The Free Trade Agreement between the People's Republic of China and the Swiss Confederation (the "FTA")[1] entered into force on 1 July 2014. In January 2017, the Ministry of Commerce of China and the Federal Department of Economic Affairs, Education and Research of Switzerland took further steps towards the intensification and promotion of Sino-Swiss economic and trade cooperation, signing a Memorandum of Understanding on the Upgrading of the China-Switzerland FTA.[2]

According to the last FTA survey prepared by Swisscham in cooperation with Swiss Business Hub China and Urs Mattes of Cendres+Métaux SA, 43 percent of the 91 survey participants had encountered problems with the FTA, stating "red tape/increased administrative expenditure", "more time needed to import goods than without the FTA" and "customs officers not informed about the FTA" as the biggest issues.[3] A new survey is currently open for participation.[4] A recent roundtable in February 2017, organized by the Swiss Center Shanghai with Swisscham Shanghai and Swissnex China further shows that the satisfaction rate on the implementation of the FTA is lukewarm, with Swiss companies being "slightly satisfied" with the implementation process for both imports and exports.

The aim of this article is to briefly reintroduce the implications of the FTA, highlight common mistakes by importers and to give a few practical tips to help Swiss companies achieve a better understanding of the agreement.

Scope of the FTA:

The FTA has set a comprehensive and reciprocal framework for economic and trade cooperation between the two countries, and still proves to bolster trade between them. The FTA provides for a reduction or abolishment of import customs tariffs for Swiss and Chinese products originating in one country and to be imported directly into the other country. It covers the Swiss customs territory,

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[1] Text can be found here: https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Freihandelsabkommen/Partner_weltweit/china/Abkommenstexte.html
[2] http://fta.mofcom.gov.cn/enarticle/enrelease/ 201701/34081_1.html
[3] Survey Analysis, Sino-Swiss Free Trade Agreement, Shanghai, January 2016 (http://cn.swisscham.org/sites/default/files/Sino-Swiss%20FTA%20Survey%202016.pdf)
[4] https://publicrelations.formstack.com/forms/fta_survey_2017

including the Principality of Liechtenstein, and the Chinese customs territory, excluding Hong Kong, Macau and Taiwan (Article 2.1. FTA). While the customs tariff reduction and abolition for Chinese products imported into Switzerland was effective without any transitional period as of 1 July 2014[5], only very few Swiss products can now be imported tariff-free into China. For almost all other Swiss products, customs tariffs are being dismantled gradually during transitional periods of five to 15 years.

Practical Tips:

Handling of imports into China:

1. **Before you import into China**, it is important to get familiar with the export and import framework of the FTA related to your industry, the **HS Codes** and the **applicable import tax rate(s)**[6] regarding your product/equipment at the time of import. Compare the FTA's preferential rates to the normal customs rates to see if they are in your favor.

2. **Registration of your company** under the Swiss Customs System as **"Approved Exporter"** is a **precondition to be qualified** as an exporter to China, and then later benefit from the tax rates according to the FTA.

   a. Information of the Federal Customs Administration in Switzerland on the Approved Exporter Application **can be found here**.
   b. **The application takes approximately one month**. Once approved, you will be assigned a five-digit number. This number then needs to be affixed to each export invoice.

3. **Check the HS code(s) of your products in both Switzerland and China** to make sure that the FTA preferential rates apply. When an Approved Exporter is facing difficulties identifying the HS Codes applied by the Chinese customs authorities for goods and equipment entering China, it is suggested to do a **pre-classification of the codes and get pre-approval from Chinese customs authorities before arranging transport to China**. Stamped pre-classification is valid for one year and officially confirms that all the features of your product/equipment (as stated in the pre-classification) will be accepted by Customs. In case of product or equipment changes (i.e. change of material) a new pre-classification needs to be arranged.

4. An Approved Exporter shall then prepare the following information for the export documents (list not conclusive):
   a. **Air freight-only consignment:**
      - **Export invoice** with the 23-digit serial number (number can be applied for when applying for shipment on your account) and the Approved Exporter Number. The following standard statement (for which the exporter is accountable for) needs to be added to the export invoice:

[5] "Entry into force of the bilateral Switzerland-China free trade agreement on 1 July 2014", Circular No. 323.0.2.2014 issued by the Federal Customs Administration, Section 3

[6] The FTA's Annex 1 contains the Tariff Schedules.

"The exporter of the products covered by this document declares that, except where otherwise clearly indicated, these products are of Swiss preferential origin according to the FTA."

- **Air waybill** (to be provided by forwarder on demand): Direct shipment report from Swiss airport to Chinese airport or airline route report if non-direct shipment.
- **Standard documents**: Invoice, packing list, import contract or purchase order, and any other additional document if requested.

b. **Consignment by sea:**

- **Export invoice** as mentioned above.
- The "**MOVEMENT CERTIFICATE EUR.1**" **(original)** document, issued by Swiss Customs, is used to support claims for preferential rates of duty in the country of importation. The specific requirements of this document, which is recognized as a certificate of origin, can be found in the FTA's Appendix 2 to Annex III. It is important to pay attention to the notes on page 3 of this Annex.
- **"T1" sheet (copy):** Issued by the European forwarder to evidence the supervised cargo route from Switzerland to the departure port in Europe and further on to the arrival port.
- **Shipping route report**: Provided by forwarder.
- **Standard documents**: Bill of lading, invoice, packing list, import contract or purchase order, any other additional document if requested.

c. **Consignment by train**:
No tariff reduction applies if transportation is handled by train.

5. **Watch out for these common mistakes or issues that importers face:**
   a. Often Chinese Customs reject documents because they show mistakes/discrepancies. The packing list, air waybill, export invoice or any other required documents shall be filled out carefully; any mistake in the documents can later cause problems with the Chinese authorities.
   b. Not all seaports/airports handle imports in the same manner. Check which one is the most suitable for your products to be cleared under the FTA.
   c. Direct communication with Chinese customs instead of a broker, if possible, may help you understand where the problems occur and to solve them quickly.
   d. When shipping by air, Chinese Customs has the right to require a certificate of origin.

Additional information:

1. If a warehouse or distribution center is located outside of Switzerland, the preferential tax rates under the FTA do not apply.
2. A non-manipulation certificate is no longer required when your cargo is forwarded through a third country in Europe, provided there is a single transport document covering the entire route from the port in Europe to the destination in China.[7]

[7] "Switzerland-China free trade agreement: direct transport (update, 28.2.2016)" Circular No. 323.0.1.2015 issued by the FTA, Section 2.2.2

About the authors:

Eiger:

Eiger is a full-service law firm with Asia-Pacific and Greater China practice strengths providing counseling and assistance in corporate, commercial, M&A, dispute-resolution and intellectual property matters. Corporate matters extend to the full spectrum of business-related concerns, including business crime, due diligence, and employment issues. Eiger's name reflects the firm's Swiss historical connection and its lawyers' willingness to take on difficult challenges. The firm has offices in Shanghai and Taipei. For more information, kindly visit: www.eiger.law.

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Useful links:

- Swisscham Shanghai Information on FTA
- Circulars of the Federal Customs Administration
- Eiger Publications
- Swiss Centers China