

# Commercial law of USA



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### Trade Policy

The US trade regime consists of a complex web of diverse regulatory and policy objectives. These goals are often inter-related and mutually reinforcing. Trade objectives must also co-exist with US foreign and domestic policy goals that address multiple political, economic, security and social considerations. These multi-layered objectives often require US legislators and Administration officials to balance conflicting goals, especially in the areas of international trade and homeland security.

US import policy is also characterized by a balancing act between trade and security concerns. In essence, the US government seeks to facilitate and expedite the inward flow of international goods and services while maintaining national security and ensuring that all pertinent laws and regulations are being observed. The US government is also tasked with ensuring that domestic industries and jobs are safeguarded against unfair trade practices, such as unfairly priced imports, illegally subsidized imports, or surging imports. Additionally, the US administers a range of uni-lateral, bi-lateral, regional and multi-lateral preferential trade arrangements; enforces a number of trade restrictions and restraints; and undertakes various other trade-related functions.

### Quotas and Import Licensing

US import quotas may be divided into two types: absolute and tariff rate. Tariff rate quotas (TRQs) provide for the entry of a specified quantity of the product at a reduced rate of duty during a given period. There is no limitation on the amount of the product that may be entered during the quota period, but quantities entered in excess of the quota for that period are subject to higher duty rates. The US did not have in place any absolute import quotas or associated visa or licensing requirements as of 1 February 2015. The quotas that were previously in place on certain Chinese mainland apparel expired on 1 January 2009.

As provided in the Harmonized Tariff Schedule of the United States (HTSUS), some commodities such as beef, cocoa powder and cotton are subject to TRQ limitations in effect as of the date of publication of Guide to Doing Business with the US. Additionally, CBP administers a considerable number of TRQs that have been included in US trade preference programs such as AGOA, ATPDEA, CBTPA and HOPE as well as in FTAs negotiated by the US.

Certain dairy products are subject to annual TRQs administered by the USDA and may be imported at the in quota rate only under import licenses issued by that department. These products may be imported at the over quota rate without an import license.

### Import Tariff

All goods imported into the US are either subject to duty or duty free, depending on their classification under the applicable items in the HTSUS. When goods are dutiable, ad valorem, specific or compound rates may be assessed.

The country of origin of merchandise imported into the customs territory of the US can affect, among other things, the rate of duty, eligibility for special programs, admissibility, quota, procurement by government agencies and marking requirements.

Rates of duty for imported merchandise may also vary depending upon the country of origin. Most merchandise is dutiable under the most favored nation (MFN) — now referred to as normal trade relations (NTR). Duty-free status is available under various exemptions (e.g., GSP, FTA partners, preference programme beneficiaries, and other exemptions listed in HTSUS Chapter 98).

### Customs Procedures

The Customs and Border Protection (CBP) is the unified border agency within the Department of Homeland Security (DHS). Although the primary focus of CBP has shifted heavily towards security since 11 September 2001, CBP has the twin goals of guarding and securing US borders while facilitating the legitimate flow of goods and people. CBP uses multiple strategies and employs the latest technology to accomplish these goals. For example, CBP has developed several collaborative programs designed to enhance the security of cargo entering the US by eliminating or minimizing vulnerabilities throughout the supply chain. These programs include the Customs-Trade Partnership against Terrorism (C-TPAT) and the Container Security Initiative (CSI).

Goods brought into the US are subject to import duties except from some preference-beneficiary countries. Import licenses are generally not required. Imports are usually subject ad valorem and/or specific import duties. Regular rates are applied on imports from countries enjoying NTR or formerly MFN status, including Hong Kong and China. CBP has the authority on tariff classification for duty rates purposes.

### Product Safety

Any consumer product offered for importation will be refused admission if it (a) fails to comply with an applicable product safety standard or regulation or with a specified labelling or certification requirement, or (b) is determined to present a substantial product hazard. These requirements are administered by the CPSC.

In order to improve consumer product safety compliance rates, the CPSC strongly recommends that manufacturers fully comply with both CPSC mandatory standards and private sector voluntary standards. Although private sector standards are conceived as voluntary requirements, products that fail to comply with them are nonetheless regarded as substandard in design and may be considered to present a “substantial product hazard” for that reason alone. Any product that presents a substantial product hazard will be refused entry into the US and, if the product is already in circulation, subject to a CPSC recall.

### Marking and Labelling Requirements

US customs laws require each imported article produced abroad to be marked in a conspicuous place, as legibly, indelibly and permanently as the nature of the article permits, with the English name of the country of origin to indicate to the ultimate purchaser in the US the name of the country in which the article was manufactured or produced. Articles specifically exempted from individual marking are an exception to this rule.

The research report titled Guide to Doing Business with the US contains special labelling and marking requirements for a wide range of consumer goods such as watch and apparel imported into the US.

### Anti-dumping Duties and Countervailing Duties

The US rigorously enforces laws on dumping. When the US Department of Commerce (DOC) determines that a class of foreign goods in the US at less than its fair value, an anti-dumping (AD) duty investigation may be conducted. If all the determinations are affirmative, the DOC will issue a duty order. On the other hand,

countervailing (CV) duty orders provide relief from the adverse price impacts of imports that receive foreign government subsidies. CV duty orders impose extra duties on those imports under Sections 701-709 of the Tariff Act.

A recent review of available US records does not show any AD or CV duty investigations of goods manufactured in Hong Kong. However, Hong Kong may be directly affected by investigations of goods made in the Chinese mainland and sold by a Hong Kong exporter.

If a petition is filed by a US company concerning the dumping or countervail able subsidization of a particular good manufactured in the Chinese mainland, the DOC will investigate the primary exporters of this product, some of whom may be located in Hong Kong. Hong Kong exporters are thus advised to stay as informed as possible of all AD and CV investigations of mainland goods.

### Documentary Requirements

Entry documents must be filed within 15 calendar days of the date that the shipment arrives at a US port of entry, unless an extension is granted. Entry documents include the following:

A bill of lading, airway bill, or carrier's certificate (naming the consignee for customs purposes) as evidence of the consignee's right to make entry.

A commercial invoice obtained from the seller, which shows the value and description of the merchandise. A pro forma invoice may be submitted when the commercial invoice cannot be produced (please see Section 6.3 on Invoices in Guide to Doing Business with the US for additional information).

Entry Manifest (CBP Form 7533) or Entry / Immediate Delivery (CBP Form 3461).

Packing lists, if appropriate and other documents necessary to determine whether the merchandise may be admitted.

### Hong Kong's Trade with the US

The US is Hong Kong's 2nd largest export market, behind only the Chinese mainland. Hong Kong's total exports to the US grew by 2% to US\$42.3 billion in 2017, after decreasing by 5% to US\$41.5 billion in 2016. Major export items in 2017 included telecommunications equipment & parts (shared 17% of the total), computers (7%), pearls, precious & semi-precious stones (6%), articles of apparel, of textile fabrics (5%), jewelry (5%), electrical apparatus for electrical circuits (4%), parts & accessories of office machines/computers (4%), toys, games & sporting goods (4%), semi-conductors and electronic valves & tubes (4%), electrical machinery & apparatus (4%), electric power machinery & parts (4%), women's or girl's wear of textile fabrics, not knitted (4%), watches and clocks (3%) and travel goods & handbags (3%).

On the other hand, the US is Hong Kong's 6th largest source of imports. Hong Kong's total imports from the US were up by 3% to US\$27.4 billion in 2017, after decreasing by 2% to US\$26.5 billion in 2016.

Leading import items in 2017 included telecommunications equipment & parts (shared 16% of the total), semi-conductors and electronic valves and tubes (13%), pearls, precious and semi-precious stones (9%), jewelry (7%), fresh or dried fruit and nuts (not including oil nuts) (6%), fresh, chilled or frozen meat & edible meat offal (4%), non-electric engines & motors & parts (3%), fresh, chilled or frozen meat of bovine animals (3%), works of art,

collectors' pieces and antiques (3%) and measuring, checking, analyzing & controlling instruments & apparatus (3%).

Sources

Hong-kong-economy-research.hktdc.com