
Must go Myanmar

Navigating Southeast Asia's final frontier

It appears that the turbulent global economic climate is pushing the world to become more protective and nationalistic focused. Consequently, Foreign Direct Investment (FDI) and Gross Domestic Product (GDP) growth have both declined in many economies. In addition, unstable currencies – mostly from emerging economies – contribute to an unfavourable business climate.

Myanmar has suffered from all of this – more challenging export markets, lower FDI and GDP growth, and an unpredictable currency. The possible withdrawal of Myanmar from the European Union's Generalised Scheme of Preferences (GSP) programme is just one example that has caused uncertainty among investors and other industry players.

In light of such bad news, it would be easy to overlook how much Myanmar has achieved in the past few years, especially in comparison with other developing economies. Myanmar started re-opening its economy in 2011 and underwent significant economic, legislative, and political reforms. The country ranks amongst the fastest growing economies in Southeast Asia with consistently strong average GDP growth.

Since 2011, Myanmar started introducing a number of investment-friendly frameworks. Crucially, the government of Myanmar introduced a foreign investment law in 2012 to promote, facilitate, and regulate foreign direct investments. The Myanmar Investment Law (MIL) was enacted in 2016 to unite various foreign direct investment laws under a single set of laws. Also in 2016, many international economic sanctions were lifted as a result of continuous political reforms in Myanmar.

With Myanmar continuously liberalising the regulatory and supervisory landscape, new opportunities arise for cross-border trade and investment, most notably with China and India, which share borders with Myanmar and have the highest populations in the world. Although Myanmar became a member of the World Customs Organization (WCO) in 1991 and the World Trade Organisation (WTO) in 1995, only its more recent economic opening is starting to create some real opportunities for businesses and allowing the countries to reap benefits from its membership of those organisations. Being a member of WTO, continuous aid for trade and trade-related technical assistance is important for Myanmar's integration into the multilateral trading system.

For example, an e-Customs system was first introduced in 2011 with modules for export and import, and the ASEAN e-Customs National Single Window was implemented in 2014.

In line with the WTO's Trade Facilitation Agreement (TFA), Myanmar has implemented an online customs clearance system: the Myanmar Automated Cargo Clearance System (MACCS). This was introduced in 2016. The MACCS has been implemented in both the Seaport and Airport of Yangon and in Myawaddy (Kayin State) at the Thai-Myanmar border. The MACCS also helps Myanmar achieve its ASEAN Economic Community (AEC) commitments, as Myanmar is required to



implement ASEAN Single Window Access for faster import and export customs clearance.

Myanmar is a member of the Association of Southeast Asian Nations (ASEAN). Consequently, it is also a party to various Free Trade Agreements (FTAs) that have been concluded between ASEAN as a bloc and third party countries and territories. Increasingly Myanmar businesses are utilizing these FTAs, either inbound (utilising preferential duty rates) or outbound (obtaining Myanmar origin certifications for preferential access to overseas markets) to grow and further expand their business operations.

The remainder of this article looks in a little more detail at the current state of Myanmar in terms of achievements through its various agreements, governmental bodies, and import/export practices in order to develop and promote international trade.

What has already happened?

International organisations and agreements

It may surprise many readers that Myanmar is a member or signatory party of many international organisations and agreements relevant to the governance and regulation of import and export transactions, notably:

- World Trade Organization (formerly General Agreement on Tariffs and Trade);
- World Customs Organization;
- International Convention on the Harmonized System (HS Convention);

- ASEAN Harmonized Tariff Nomenclature;
- Chemical Weapons Convention;
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- Basel Convention, concerning import/export of hazardous waste;
- Trade Facilitation Agreement (TFA) (Myanmar ratified in 2015).

Myanmar Customs implemented the WTO Agreement on Customs Valuation in 2017, which prescribes the use of the “price actually paid or payable” as a primary valuation methodology. Myanmar Customs is in the process of changing its customs valuation approach from its prior approach, where it used five sources of information to help assess customs values: the CIF invoice price of the goods, sales contracts, insurance information, internet prices and other recorded prices.

Indirect Tax regime

There is no value added tax (VAT) in Myanmar. Commercial tax is levied as a turnover tax on certain goods (including imported goods) and services.

Myanmar Customs – import and export windows

Since its political and economic reforms, Myanmar Customs has been undergoing significant developments in tariff policy, customs clearance processes, and administrative procedures to align it with international standards and to cope with the developments of trade globalisation.

All products for import into Myanmar need to be declared to Myanmar Customs at the time of arrival at the port of entry. Myanmar Customs will check on the accuracy of the import declaration both in terms of physical characteristics of the shipment (type of goods, volumes, etc.) and their customs characteristics for duty assessment purposes (tariff classification, customs value, country of origin, etc.). Having MACCS in place helps shorten import and export processing and therefore clearance timelines.

Goods will also generally require an import and export license from the Ministry of Commerce before they are allowed to enter the customs territory of Myanmar or obtain export clearance. Once all documents are deemed to be in order, and after import duties are collected based on the above criteria, goods are released for import.

Implementation of Special Economic Zones

The Special Economic Law was enacted in 2015, which laid the foundation for the development of Special Economic Zones (SEZs). The development of SEZs continues to attract attention from foreign investors. There are currently three SEZs: Thilawa, Dawei, and Kyaukphyu. There are free zones and promotion zones planned in each SEZ, intended to be export oriented or domestic market focused respectively. Free zones essentially provide exemption from customs duties and other taxation on imports of raw materials, machinery and equipment. Promotion zones provide various exemption facilities related to customs duties and other taxation levied on imported machinery and equipment that is required for business operations. Under the MIL, additional exemptions and reliefs from customs duties and other internal taxes may be granted.

In addition to the SEZs, Myanmar Customs announced the suspension of duties and commercial taxes levied on customs bonded warehouse activities. In 2017, Thilawa

SEZ already introduced bonded warehouses and SEZ warehouse services for domestic and foreign companies. Customs bonded warehouses would allow storage of foreign goods owned by locally registered domestic companies prior to paying duties, whereas SEZ warehouses also allow storage of product owned by foreign companies.

Non-tariff measures

Non-tariff measures (NTMs) can negatively impact and restrict the flow of international trade if they are not managed and implemented correctly. Multilateral trade negotiations helped reduce tariff rates. Most regulations for Myanmar's NTMs are related to ratifications of international conventions. There is no systematic collection of official regulations that could be deemed NTMs in Myanmar. A recent study by the Yangon University of Economics estimated that there are around 170 NTMs in Myanmar, which affect more than 4,000 products (based on their tariff code). However, this number does not necessarily reflect the level of protectionism of Myanmar's trading policies, as Myanmar already made significant progress in lowering tariffs.

The pattern of Myanmar's NTMs is similar to most ASEAN countries and territories, with requirements on quality standards and/or technical specifications play the most important role in NTMs.

Post clearance audit practices

The Myanmar Ministry of Planning and Finance introduced customs post-clearance audit practices in Myanmar in 2017. The Director-General of Myanmar Customs assigned audit teams to carry out reviews or inspections at companies' premises as well as at relevant warehouses or storage areas after importations. As part of the TFA, the post-audit aims to shorten inspection processes at Myanmar Customs ports at the time of import, to reduce processing and clearance timelines.



An audit team has an authority to request for relevant documentation, either in hard copy or in electronic format, concerning the import or export of goods. In doing so, it can go back seven years. Requested information includes import or export documents, and accounting records that provide an insight into the flow of goods and their corresponding financial transactions. Companies are obliged to fully cooperate throughout the entire audit process and to surrender any document required.

Companies will be assessed any duty shortfall on historic imports. Penalties may also apply in cases of non-compliance. This means that importers are required to keep records of all relevant documentation for at least seven years from the date of importation and release and surrender it upon request by Myanmar Customs.

What should be the focus for further development?

Myanmar is attempting to modernise in terms of international trade and customs practices, in line with global trends. Even though Myanmar has followed the TFA and AEC frameworks and has implemented certain of its recommended practices, businesses should be aware and take into consideration the following areas for which we expect further development in the near future.

Bilateral free trade agreements

Having the ASEAN FTAs in place, Myanmar can place itself in a favourable position if it would be able to implement bilateral FTAs with its largest neighbours, China and India. Cross-border trade with these countries is increasing, but bureaucratic processing burdens at border areas remain critical. Creating favourable bilateral FTAs would boost the ease of doing business and increase trade and investment activities. In addition, other bilateral agreements can be considered, such as investment agreements and the integration of China's Belt and Road Initiative (also known as the New Silk Road programme).

Myanmar was part of trade negotiations launched between ASEAN and China's special administrative region of Hong Kong. There have been talks on a Myanmar-China bilateral agreement on border trade but this has not been finalised.

Implementation of post-clearance audit

Although the departmental notification has been issued on standard operational procedures in 2017, in practice, the audit procedures remain unclear for both Myanmar Customs and affected businesses. For example, no specific regulations indicating potential offences are in place. This leads to uncertainty around fines or penalties to be imposed.

Clear guidelines or regulations on dispute resolution and appeal channels in order for businesses to seek options to defend their positions are also lacking. Given the unclear procedures, businesses find it difficult to perform a self-assessment, quantify potential exposures or even to make any decision to settle a case. In addition, the requirement to keep records for seven years is long in comparison with other ASEAN countries and territories, e.g. the requirement in Thailand is only five years.

Advance rulings

Advance rulings for both customs valuation and tariff classification have been introduced recently. These aim to assist importers declare correct tariff codes and customs values and decrease potential non-compliance. To apply for a ruling, importers need to submit product details and samples for advance tariff classification rulings, and transaction flow details in combination with samples of import invoices for customs valuation rulings.

In practice, the process of applying for and receiving a ruling causes difficulties in terms of ambiguity of what process and documentation is required, and what is the processing time. Clearer guidelines on what steps to take and what timeline to expect would help applicants in managing the application process.

Conclusion

Overall, Myanmar has achieved steady progress since its “re-opening”. The transformation of its approach to customs and trade has been in a positive direction. The government is expressly favouring international trade and open to foreign investments. Compared to other developing countries, the pace at which Myanmar has made favourable changes to open up its economy has been distinctive.

With a population of more than 50 million people and plenty of natural resources, Myanmar is a market with great possibilities for importers and exporters. Its demography, strategic geography, and current state of geopolitics, favour it to grow substantially over the next few decades.

Nevertheless, jumping on the Myanmar international trade bandwagon remains daunting. Our dedicated WMS team stands ready to assist in any customs and trade opportunity or challenge.

