

Client Alert

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Free Trade Agreement between China and Switzerland

Switzerland - Ahead of the Curve

Recent Developments

On 6 July 2013, the People's Republic of China ("China") and Switzerland signed a free trade agreement (the "FTA") after nine rounds of negotiations, which took place between January 2011 and July 2013, as well as other discussions between the two countries that began in 2007. The FTA will improve mutual market access for goods and services, enhance legal security for the protection of intellectual property and bilateral economic exchange in general, and deepen bilateral cooperation. The FTA is expected to come into effect in 2014 after ratification by either Party in accordance with the requirements of their respective internal legal system. The FTA and its Annexes are 1152 pages long (<http://www.seco.admin.ch/themen/00513/00515/01330/05115/index.html?lang=f>r).

Implications

The FTA covers: trade in goods (industrial and agricultural products), rules of origin, customs procedures and trade facilitation, trade remedies, technical regulations, sanitary and phytosanitary measures, trade in services, protection of intellectual property, competition, investment promotion, transparency in government procurement, trade-related environmental and labour issues, economic and technical cooperation and institutional provisions (Joint Committee, consultation process, dispute settlement). With such a comprehensive coverage, the FTA will improve market access for Swiss exports of goods and services to the large and fast-growing Chinese market, facilitate two-way trade, strengthen the protection of intellectual property, generally improve legal certainty for economic exchange, promote bilateral cooperation between Switzerland and China and contribute to sustainable development. The FTA creates a competitive advantage for the Swiss economy over countries that have not concluded an FTA with China, including namely the EU.

The FTA is expected to increase the trade volume between the two countries (trade volume 2012: CHF 18.1 billion) and lead to new investment opportunities both in China and in Switzerland.

www.bakermckenzie.com

Contacts

Geneva

Serge Pannatier

Attorney at law
International Trade and Customs
+41 22 707 98 00
serge.pannatier@bakermckenzie.com

Jingjin Guo

Attorney at law
Corporate, M&A, Banking and Finance
+41 22 707 98 34
jingjin.guo@bakermckenzie.com

Baker&McKenzie, Geneva
Rue Pedro-Meylan 5
1208 Geneva

Zurich

Philippe M. Reich

Attorney at law
International Trade and Customs,
Competition
+41 44 384 13 82
philippe.reich@bakermckenzie.com

Baker&McKenzie, Zurich
Holbeinstrasse 30
8008 Zürich

Beijing

Jon Eichelberger

T: +86 10 6535 3868

jon.eichelberger@bakermckenzie.com

Baker & McKenzie
Suite 3401, China World Office 2
China World Trade Centre
1 Jianguomenwai Dajie
Beijing 100004, PRC

Hong Kong

Eugene Lim

+852 2846 2413

eugene.lim@bakermckenzie.com

William Marshall

+852 2846 2154

william_marshall@bakermckenzie.com

Baker & McKenzie
14/F Hutchison House
10 Harcourt Road
Central, Hong Kong
23rd Floor, One Pacific Place
88 Queensway, Hong Kong

Shanghai

Danian Zhang

T: +86 21 6105 8585

danian.zhang@bakermckenzie.com

Baker & McKenzie
Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, PRC

What the Free Trade Agreement says - A Brief Overview

Territory

The FTA applies to the customs territory of China and to the territory of Switzerland. For trade in goods, the FTA also applies to the Principality of Liechtenstein due to the Customs Union between Switzerland and Liechtenstein. Within the framework of EFTA, in 2011, Switzerland concluded a free trade agreement with the Hong Kong Special Administrative Region of China (which constitutes a separate customs territory).

Trade in Goods

Regarding trade in goods (e.g. industrial products, processed and unprocessed agricultural products), the FTA confirms various rules of the General Agreement on Tariffs and Trade (GATT) (e.g. regarding internal taxation and national treatment, import and export restrictions, state trading enterprises, exceptions).

Products exported from Switzerland to China

The vast majority of Switzerland's industrial exports to China will enjoy full or partial tariff dismantling, either from the entry into force of the FTA or in accordance with phasing out periods of 5 or 10 (and in a few cases 12 or 15) years. Transitional periods and partial dismantling apply to products for which China has claimed to have a specific need for adjustment given the sometimes substantially higher level of tariffs (e.g. selected products in the watchmaking, machinery, chemical and pharmaceutical sectors). Exceptions from tariff dismantling are available for particularly sensitive, individual tariff lines (notably in the latter two sectors).

Products exported from China to Switzerland

With the coming into force of the FTA, the remaining Swiss tariffs on Chinese industrial products will be removed. This means that textiles and shoes will be granted free access to the Swiss market in addition to the products that currently may be imported free of customs duties into Switzerland on the basis of the autonomous Generalised System of Preferences for developing countries.

Further improvements of market access conditions will be discussed at the biennial review of tariff concessions provided for under a review clause.

Trade in Services

In comparison with the General Agreement on Trade in Services (GATS), legal security has been enhanced as a result of the adoption of better defined horizontal rules on transparency and approval processes.

As in the GATS, the specific commitments regarding market access and national treatment are recorded in positive lists. Compared with the GATS, China's commitments include additional sectors and improvements in areas such as environmental services (waste water treatment, emission and noise control services), financial services (in particular trading in securities), air transport

services (aircraft maintenance and repair, ground handling), logistics services (customs clearance services) and for providers of short-term contractual services (in particular installation and repair of machinery, architects and engineers).

While the Swiss banking sector did not see many of its wishes fulfilled, a separate Agreement on Financial Dialogue signed a month ago raised hopes for Switzerland to become one of the central trading places for the Chinese currency Renminbi-Yuan in future.

Trade Remedies

The agreement allows the Parties to apply bilateral safeguard measures subject to certain conditions. If tariff concessions under the FTA lead to an increase in imports to such an extent as to cause or to threaten to cause serious damage to a domestic industry, tariff concessions may be temporarily suspended.

Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS)

The provisions on TBT and SPS include various rules over and above those of the WTO, particularly with regards to basing national regulations on standards and guidelines of recognised international standardisation organisations, including for marking of textiles. The high standard of health and safety protection in Switzerland remains unaffected.

In conjunction with the FTA, Switzerland and China have signed five sector-specific cooperation agreements that aim to resolve issues of concern in the areas of TBT and SPS.

Rules of Origin

The relevant processing in the various product categories that has to take place in the country of origin for a product to benefit as an "originating product" from the FTA's tariff concessions is defined in so-called list rules. The list rules agreed with China take account of modern production methods, allowing for effective utilization of preferential market access. For industrial products, in most cases a change in the four-digit tariff heading or domestic value added of 40% (in relation to the ex-factory price) confers origin status. As in previous Swiss FTAs, the list rules for basic agricultural products and processed agricultural products take the specific needs of the sector into account. Originating products of both Parties can be cumulated. The direct shipping rule allows for the splitting up of consignments in third countries under customs control, which will not result in the products losing country of origin status.

Proof of origin is provided by either the standard movement certificate EUR. 1 or the declaration of origin on the invoice or delivery note ("self-declaration"). Compared to other FTAs, the EUR. 1 form requires additional information. The declaration of origin, which enables proof of origin without additional forms, is reserved for authorized exporters. Declarations of origin must be numbered consecutively. Requests for review must be answered within a period of six months.

Protection of Intellectual Property

Compared to the multilateral standards provided by the TRIPS agreement, the level of protection has been enhanced. For instance, the import of goods is considered exercising a patent. Moreover, documents for biotechnological products are protected for 6 years.

With regard to the legal enforcement of IP rights, the FTA provides that measures taken by customs authorities to combat counterfeiting and piracy are to be applied not only on the import of goods but also on their export. The seizure of suspect products (on an ex officio basis or at the request of the rights holder), as well as the possibility to analyse samples and specimens of retained goods, are foreseen. These measures shall apply in the event of the infringement of trademarks and copyrights, as well as of patents and protected designs. In addition, the FTA requires civil and criminal proceedings to be available to prosecute breaches of the laws and to claim compensation. It must also be possible to order precautionary measures and immediate provisional measures (interim relief). In civil proceedings, measures against both infringing goods and materials and tools that were used for the production of such goods must be available (including confiscation and destruction). Finally, the FTA contains general and specific review clauses (e.g. in the case of protection for plant varieties) with a view to further improvements concerning protection.

Additional Provisions

Further provisions relating to investment promotion, competition, environmental issues, economic and technical cooperation have been included in the FTA with the overall objective of promoting sustainable development.

In parallel to the FTA, China and Switzerland concluded an agreement providing for cooperation on labour and employment issues in which they inter alia committed to effectively implement their respective labour legislation.

A Joint Committee taking decisions by consensus will supervise and monitor the implementation and further development of the FTA. A specific inter-governmental arbitration procedure will be established. Disputes arising from the application of the FTA must be settled by way of consultation. Should such consultation fail, an intergovernmental arbitration procedure will be convened and the decision of the arbitration panel will be final and binding on the Parties.

Conclusions

Importance of the FTA for Switzerland:

China is the world's second largest economy after the United States and one of Switzerland's most important foreign trade partners. China is also the largest buyer of Swiss industrial products in Asia and the third largest worldwide (after the EU and the United States). In 2012, Switzerland exported goods to the value of CHF 7.8 billion to China (3.7% of all Swiss exports) and imports from China totalled CHF 10.3 billion (5.5% of total imports). The main products exported by Switzerland to China include machines and instruments, watches, as well as

chemicals and pharmaceuticals. Imports include machinery, textiles and clothing, as well as watchmaking components and chemical products. Also trade in services is of importance. Many Swiss service providers operate in China (including banks, insurance companies, logistics companies, goods and quality inspection companies, corporate consultants) and conversely Chinese service providers show increasing interest in Switzerland as a business location.

Importance of the FTA for China:

China and Switzerland are both geographically and economically complementary. China will thus also benefit from these highly complementary cooperation modes. Tariff free imports of high end technology from Switzerland will satisfy the growing needs and demands of Chinese consumers and help accelerate the country's industrial transformation. As of today, almost a hundred Chinese enterprises already developed their European business model by setting up subsidiaries or branches in Switzerland in order to expand in the European market given Switzerland's unique position with a free trade treaty network with the European Union and the European Economic Area while, among European countries, only Switzerland and Iceland have free trade agreements with China yet. The number of Chinese companies is expected to grow substantially following the FTA.

Switzerland was the first European country recognizing China's full market economy status in 2007. The China-Switzerland FTA reinforces this position and is viewed by China as a big step forward in its pursuit of its trade partners recognition of market economy status. Moreover, the ground-breaking FTA serves as a model for economic cooperation with great timing amid the flaring anti-dumping tensions between Beijing and Brussels.