Incentivising manufacturing: The customs duty implications for manufacturing entities in Dubai

Omer Khan
o.khan@tamimi.com

Panagiotis Dermatis
p.dermatis@tamimi.com

May 2015

This article seeks to provide a high level outline of the current customs implications applicable to manufacturing entities in Dubai's mainland and free zone jurisdictions.

Customs Regime Applicable in the UAE's Mainland Jurisdiction

A limited liability company ("LLC") incorporated in the UAE's mainland jurisdiction, under the commercial companies law, Federal Law No.8 of 1984, is required to be owned at least 51% by UAE natural person or a corporate entity which is wholly owned by UAE nationals. The new federal commercial companies law, expected to come into force in mid-July 2015, maintains this requirement.

Importing into the UAE

In order to be able to manufacture goods, a mainland LLC will require an industrial production licence. Having an industrial production licence entitles mainland LLCs to import raw materials and machinery into the UAE (for the purposes of being used by the importer to manufacture products) without paying customs duty at the point of entry into the UAE (typically 5% ad valorem although this may vary depending on the type of goods) In the UAE, no customs duty is levied upon the exportation of goods outside of the UAE.

Exporting out of the UAE

The products manufactured by such mainland LLCs will be subject to customs duties, upon their importation into another country, which will vary depending on the respective customs regulations of such country.

Exporting from the UAE to GCC or GAFTA states

Customs duty exemptions may be secured by a mainland LLC with an industrial production licence manufacturing goods in the UAE when importing such goods into:

- any GCC country, pursuant to the Common Customs Law of GCC States ("GCC Customs Law"); or
- any of the countries that are a party to the Greater Arab Free Trade Area Agreement ("GAFTA"). GAFTA includes all the GCC countries.

Such exemptions are subject to obtaining a certificate of origin and a value added certificate for such goods from the UAE Ministry of Economy ("MoE").

In order to obtain a certificate of origin and value added certificate from the MoE, there are two prerequisites:

- the share capital of the mainland LLC should be at least 51% owned by a UAE national or a corporate entity which is wholly owned by UAE nationals; and
- at least 40% value should be added to the goods during the manufacturing process (for which the customs duty exemption is being sought) by the mainland LLC locally (electricity costs, rent costs and employees' salaries will also be considered for the purposes of added value).

Customs Regime Applicable in the UAE's Free Zones:

Unlike mainland LLCs, free zone companies are licensed by the free zone itself rather than the Dubai department of economic development. A free zone company can be owned 100% by foreign investors and still be eligible for an industrial licence to manufacture goods in the free zone.

Importing into a free zone

Free zone companies can import raw materials and machinery into the free zone without having to pay customs duty upon importation of such goods into the free zone. Likewise, in free zones, no customs duty is levied upon the exportation of goods outside of the free zones.

Exporting outside of a free zone (including GCC and GAFTA states)

Customs duties will be levied on such goods upon importation into other countries (including the GCC countries and GAFTA members), depending on the customs regulations of the specific destination country. Free zone companies with an industrial licence are not eligible to obtain certificates of origin and value added certificates from the MoE for their goods and, therefore, such entities are by default not eligible for the customs duty exemptions under the GCC Customs Law and the GAFTA.

The Unique Case in Jebel Ali Free Zone

Pursuant to Jebel Ali Free Zone's ("JAFZ") Rules & Regulations Law No.999 of 2005, a corporate entity set up in JAFZ can obtain a national industrial licence subject to having 51% of its share capital owned by GCC nationals and satisfying the criterion of 40% local value addition to the goods. This is different from the abovementioned mainland industrial production licence and the free zone industrial licence.

Subject to MoE's approval, such an entity may also secure certificates of origin and value added certificates from the MoE. Such certificates may enable a manufacturing entity to import products manufactured in JAFZ from JAFZ into the UAE mainland without the payment of customs duty (subject to Dubai Customs approval). However, in practice, such certificates are unlikely to entitle the holder to secure any of the above-mentioned customs duty exemptions under the GCC Customs Law or the GAFTA (pursuant to Article 88 of the GCC Customs Law, free zone goods are explicitly treated as foreign goods and, although the GAFTA does not make reference to free zones or free zone goods, it is implemented to exclude free zones).

Conclusions

Under the existing customs regime, the practice is as follows:

- Mainland LLCs with an industrial production licence may benefit from a custom duty exemption for their manufactured goods, from the importation of raw materials and machinery into to the UAE as well as to the exportation of their manufactured goods outside the UAE and the importation into any GCC country or GAFTA member state;
- Free Zone companies are eligible for an industrial licence to manufacture goods in the free zone, however are not eligible for any customs duty exemptions upon importation into any GCC country or GAFTA member state; and

- JAFZ provides the option of a national industrial licence; however in practice such JAFZ entities will not be eligible for customs duty exemptions under the GCC Customs Law or the GAFTA, though it may enable the importation of products manufactured in JAFZ, from JAFZ into the UAE mainland without the payment of customs duty.

Therefore, it is safe to say that if the objective is to set up a manufacturing entity to serve customers based in the GCC or in any GAFTA member state, a good business strategy would be to set up a UAE mainland LLC in order to avail itself of the customs duty exemptions described above. It is anticipated that such customs duty exemptions will in future also extend to manufacturing entities set up in the UAE’s free zones, however, until such time a UAE mainland LLC is the optimal choice.