

TradeWatch



EY Global Trade

Issue 1 2024

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Welcome

Welcome to Issue 1 2024 of *TradeWatch*



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Welcome to Issue 1 2024 of *TradeWatch*, the global EY organization's global trade magazine.

In this first issue of the year, we set out [Top seven trade trends](#) that, in our view, will have a significant impact on international trade over the course of 2024. We assess the outcomes from the recent [World Trade Organization's 13th Ministerial Conference \(MC13\)](#), and we explore some key themes impacting global trade, including hot topics that we have dealt with in previous issues of this publication.

Trade disruption

Sadly, the war in Ukraine and other conflicts continue to contribute to high levels of supply chain disruption. Trade functions must keep abreast of these events and closely monitor any sanctions or export controls that may be imposed, which are often introduced at short notice. In this issue, we recap measures taken by the European Union (EU) and the United States (US) in 2023 in response to these conflicts.

Customs valuation and transfer pricing

Customs valuation and the interplay with transfer pricing is a hot topic around the world. In *TradeWatch* Issue 3 2023, we focused on the Asia-Pacific region in the [Interplay between transfer pricing and customs valuation in Asia-Pacific](#) and [Trends in Customs Valuation in Vietnam](#). These articles provided insights into some of the different approaches and practices adopted by customs authorities in the region and outlined

possible strategies for businesses. In this issue, we link to the recent [EY Transfer Pricing Survey](#) and feature the first part of a three-part article looking at this topic on a global scale: [Transfer pricing and customs valuation – a conflict for eternity?](#) We also feature valuation matters in New Zealand in [Customs agency loses valuation case on the treatment of royalties for valuation purposes](#) and outline [proposed transfer pricing adjustment rules in South Africa](#).

Trade and sustainability

Sustainability also continues to be an important theme for global trade executives. In this issue, we feature updates on the [Carbon Border Adjustment Mechanisms \(CBAMs\) in the EU](#) and [United Kingdom \(UK\)](#). The EU's CBAM is now in force, with the impact of this new reporting regime on businesses beginning to be realized.

Carbon and packaging measures are not the whole trade story. We also report on incentives in [Thailand for production of battery-powered electric vehicles](#) and [excise tax developments related to packaging and meat products in Germany](#).

Increasingly, regulators are turning their attention to how goods are produced, leading to a proliferation in environmental, social and governance (ESG) measures around the world that requires businesses to look deep into their supply chains and collect and report new data. On 5 March 2024, negotiators from the European Parliament and the European Council reached a provisional agreement on new rules that

would ban products made with forced labor from the EU market. The new regulation would create a framework for enforcing this ban, including through investigations, new IT solutions, and cooperation with other authorities and countries.

Tax and customs reform

Tax legislation is always evolving, often in ways that has a knock-on effect for cross-border trade in goods and services. In this issue, we feature two articles dealing with significant legislative reforms in [Brazil](#) and [Japan](#) and their impact on customs and international trade. We also report on the [first vote on the EU customs reform](#).

Trade function transformation

The past decade has seen a wealth of technology innovations that are penetrating all aspects of the global supply chain. Businesses need to directly engage with these innovations and the challenges and opportunities they offer. In [Transforming customs and trade functions: how trade technologies and automation can release potential](#), we explore how global trade executives can benefit from new technologies to achieve steep changes in productivity and control.

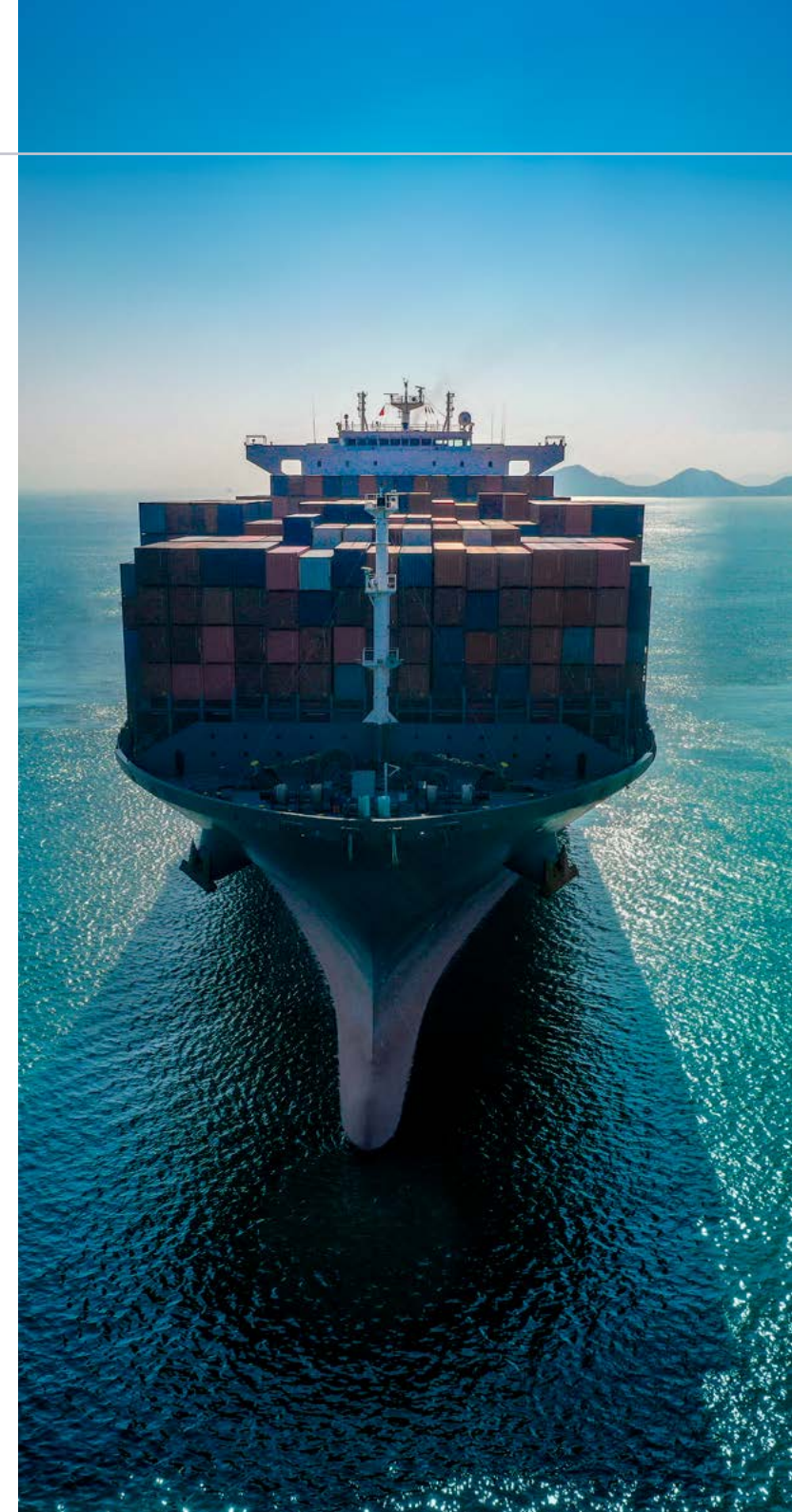
Keeping up to date with developments in trade

We hope you enjoy this edition of *TradeWatch*. We aim to reflect the key trends affecting international businesses and provide news and insights you can use to inform your trade strategy and improve your trade operations.

We will be exploring many of these topics in depth at the upcoming **EY Indirect Tax Symposium in Frankfurt** from **21 to 23 May 2024**, and we will be focusing on the EU CBAM in future webcasts. You can subscribe to future webcasts and access replays of past webcasts via the [Global Trade webcasts and podcasts](#) section of this publication.

You can also keep up-to-date with developments in global trade by subscribing to EY Tax Alerts and reading future editions of our *TradeWatch* and *TradeFlash* publications by visiting ey.com/globaltrade.

If you would like more information on any of the topics covered in this issue or how they may impact your business, please reach out to the authors listed with the articles or any of the EY Global Trade professionals listed in the [contacts](#) section of the magazine. We also welcome your feedback and suggestions for future editions. ■





Top seven trade trends in 2024

At the start of 2023, we set out our expectations of what the year would bring for international trade and how seven trends that we identified would affect the UK.¹ 2023 – as predicted – was an up-and-down year around the globe, and we’re predicting another busy year for international trade in 2024. This year, we have seven trends in international trade that we will be watching through the coming year, this time considering a global perspective.

1. Elections, elections, elections

2024 is set to be one of the most consequential years for elections ever, with more people going to the polls in a single year than ever before.² This will have profound consequences for international trade. These are some of the main elections taking place this year:

- ▶ The European Parliament elections in July 2024 will see a new European Commission installed and will determine whether the EU can reinvigorate its track record on passing bilateral trade agreements. Several important elections will also take place in EU Member States, including Austria, Belgium, Croatia, Finland, Lithuania, Portugal, Romania and Slovakia.

- ▶ The US presidential election will take place in November 2024. In November 2023, the Republican nominee expressed hard-line positions on trade, with proposals ranging from removing normalized trade relations with China, to implementing a flat tariff on all imports and withdrawing from the Indo-Pacific Economic Framework for Prosperity.³ The Biden Administration has indicated that it continues to prioritise a “worker-centric trade policy” as part of its 2024 Trade Policy Agenda⁴ which has highlighted progress in trade talks with Taiwan, Kenya, IPEF and the Americas Partnership for Economic Prosperity.
- ▶ In the UK, speculation abounds about when Prime Minister Rishi Sunak will call an election. The opposition Labour Party (which may form the next government) has set out its own vision for trade policy.⁵

1 'UK: Top seven trade trends in 2023,' *TradeWatch* Issue 1 2023, page 52.

[Find it here](#)

2 2024 is a record year for elections. Here's what you need to know, *World Economic Forum*, 15 December 2023. [Find it here](#)

3 Following Donald Trump, GOP Candidates Talk Tough on Trade, *The Wall Street Journal*, 30 August 2023. [Find it here](#)

4 USTR Releases President Biden's 2024 Trade Policy Agenda and 2023 Annual Report, *US Trade Representative website*, March 2024. [Find it here](#)

5 Boosting Trade for Economic Growth, *Labour and Co-operative website*, 15 November 2023. [Find it here](#)

2. Challenging Ministerial Conference for the World Trade Organization (WTO)

In February 2024, the attention of trade watchers shifted to Abu Dhabi, where the WTO held its 13th Ministerial Conference (MC13).⁶

A number of measures were agreed including the extension of the e-commerce moratorium for another two years and the easing of rules for least developed countries.

Agreement could not however be reached on a number of important topics where intensive work was undertaken prior to MC13, including dispute settlement, fisheries subsidies, agriculture and Trade Related Aspects of Intellectual Property Rights (TRIPS) Waiver.

Failure to deliver meaningful outcomes and a realistic way forward on the dispute settlement mechanism and other topics will undermine the credibility of the organization, where some members are starting to question the size of the WTO's budget.

3. Green supply chain regulations will start to impact

At the start of 2023, we predicted that “green trade” would be one of many geopolitical flashpoints, and the introduction of the EU's Carbon Border Adjustment Mechanism (CBAM)⁷ proved to be just that. As one of the largest shifts in the EU's trade regime over the past 30 years, CBAM has been met with international challenges about the perceived protectionist design and operation of the regulation, particularly from developing nations.

Over the course of the year, we saw more governments explore implementing similar policies to address the issue of carbon leakage, including the UK government's consultation on adopting its own version of CBAM.⁸ Separately, several related bills have been put forward in the US Congress, and Australia and New Zealand are conducting their own reviews of policies to address carbon leakage.⁹

The EU's CBAM is now in force, with the first declarations originally due on 31 January 2024 for all importers of certain covered goods (steel, iron, aluminum, concrete, fertilizer, hydrogen and electricity) imported into the EU in Q4 2023. This deadline was slightly pushed back, but businesses are realizing the impact of this new reporting regime nonetheless.

Further changes to the regime will be implemented throughout 2024 and beyond, with businesses having to account for actual greenhouse gas (GHG) emissions embedded in products from 31 July 2024.

Other countries will increase their consultations as to whether to implement similar measures, with the UK and Australia most likely to adopt similar regimes next.

Companies will also have to contend with the entry into force of the EU's Deforestation Regulation¹⁰ that takes full effect from 30 December 2024.¹¹ Other EU regulations to watch out for are the Corporate Sustainability Due Diligence Directive¹² and potential progress on an EU forced labor regulation.¹³

4. More sanctions and export controls

As we predicted in our 2023 article,¹⁴ last year the US government continued its focus on updating and expanding the Export Administration Regulations¹⁵ developed in 2022. In October 2023, the US announced an expansion of the regime to cover a broader range of semiconductor manufacturing equipment and reduce the de minimis threshold.¹⁶ Similarly, with export controls, the US, EU and UK have continued to impose an escalating series of coordinated economic sanctions, targeted primarily at Russia.¹⁷

We predict that in 2024 the modernization and expansion of sanctions and export control regimes will accelerate across much of the West with a focus on compliance and expansion of coverage.

6 'World Trade Organization's 13th Ministerial Conference – assessing the outcomes,' article on page 13 of this issue. [Find it here](#)

7 'CBAM: EU update on the Carbon Border Adjustment Mechanism,' article on page 59 of this issue. [Find it here](#)

8 'CBAM: UK Government announces Carbon Border Adjustment Mechanism,' article on page 62 of this issue. [Find it here](#)

9 Previous articles on CBAM are included in earlier editions of *TradeWatch*, available [here](#).

10 Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, 31 May 2023. [Find it here](#)

11 'EU: Fight against global deforestation,' *TradeWatch* Issue 2, 2023, page 33. [Find it here](#)

12 'Proposal for a Directive on corporate sustainability due diligence and annex,' *European Commission website*, 23 February 2023. [Find it here](#)

13 'Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market,' *European Commission website*, 14 September 2023. [Find it here](#)

14 'UK: Top seven trade trends in 2023,' *TradeWatch* Issue 1 2023, page 52. [Find it here](#)

15 U.S. Export Regulations, *US International Trade Administration website*. [Find it here](#)

16 Commerce Strengthens Restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern, *US Department of Commerce Bureau of Industry and Security website*, 17 October 2023. [Find it here](#)

17 'EU and US: Export control and sanctions 2023 year in review,' article on page 18 of this issue. [Find it here](#)

In the US, for example, the ongoing development of US export controls and bipartisan support for strengthening the US export control regime are anticipated. Focus will be on what can be achieved in the context of the wider US government budget negotiations with Congress and the development of new US export control rules and procedures.

Whether countries will be able to increase cooperation and alignment on export controls will remain a key discussion point.

5. Strained US-EU relations to continue

The list of outstanding trade negotiation issues between the EU and US continues to grow, leaving a narrow window for progress on some discrete issues.

First on the agenda is the Global Arrangement on Sustainable Steel and Aluminum,¹⁸ designed to remove the threat of US tariffs on steel and aluminum resuming (and the inevitable EU retaliatory measures if they do). The talks have also involved the treatment of US steel and aluminum under the EU's CBAM regime. With the talks faltering, the EU may resume its WTO dispute against the US.

The possibility of a critical minerals agreement,¹⁹ which would allow European producers to be eligible for certain incentive programs under the US Inflation Reduction Act, is also one to watch.

The US-EU Trade and Technology Council missed its meeting in December, with substantive progress stalled. The next meeting has not been scheduled but is due in the first half of 2024. One of the key issues will be the US position on data flows, which has been called into question following its unexpected withdrawal of support for certain provisions in the WTO e-commerce negotiations.

6. Accelerating customs modernization

Digitalization of trade processes will continue in 2024, driven by customs agencies wanting enhanced trade facilitation coupled with better risk management procedures and compliance requirements. For companies, better quality data will deliver greater visibility of their supply chains while giving them the ability to better manage their compliance obligations.²⁰

The UK's Electronic Trade Documents Act passed in 2023,²¹ enabling digital versions of international trade documents such as bills of lading to have the same legal recognition under English law as traditional paper-based documents. We expect that 2024 will see more countries following suit and commencing their own digital trade legislative processes. Cross-industry standards will emerge, unlocking new forms of data that can enhance product allocation and risk decisioning.

7. Trade finance

In 2023, we saw the global trade finance gap expand to US\$2.5t.²² While there was no shortage of liquidity in the market, an increasingly volatile geopolitical and macroeconomic landscape has made access to trade finance more difficult.²³ In 2024, we expect increased engagement with regulators.

Implications for business

In our view, these seven trends will have a significant impact on international trade over the course of 2024. This year's lineup features several trends that we featured in 2023²⁴ that continue to be influential, such as the importance of green trade and the expanded use of sanctions and export controls. But some new themes have also emerged and will continue to do so as the year progresses. Businesses that trade internationally must monitor how these trends develop and be ready to adapt their trade strategies in response to changing events. ■

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18 Global Arrangement on Sustainable Steel and Aluminium, *European Aluminium website*, November 2023. [Find it here](#)

19 EU-US critical minerals agreement: Building stronger supply chains together, *European Parliament website*, 28 November 2023. [Find it here](#)

20 'Transforming customs and trade functions: how trade technologies and automation can release potential,' article on page 6 of this issue. [Find it here](#)

21 'UK: An overview of the Electronic Trade Documents Act,' *TradeWatch* Issue 3 2023, page 37. [Find it here](#)

22 "2023 Trade Finance Gaps, Growth, and Jobs Survey," *Asian Development Bank website*, September 2023. [Find it here](#)

23 Sibos 2023: five key trade finance takeaways, *flow*, 19 October 2023. [Find it here](#)

24 'UK: Top seven trade trends in 2023,' *TradeWatch* Issue 1 2023, page 52. [Find it here](#)

Transforming customs and trade functions: how trade technologies and automation can release potential

The past decade has seen a wealth of incredible technology innovations. Many of these advancements are epoch defining, pushing beyond what was imaginable only a few years ago. And we are expecting to see even more progress in the next decade – probably more than in the past 100 years.¹

The tectonic shift in technology innovation is penetrating all aspects of the global supply chain, and businesses need to directly engage with these innovations. For global trade executives, trade technologies and automation offer steep changes in productivity and control. They are asking questions such as:

- ▶ How do we navigate this change?
- ▶ How do we determine the right solution?
- ▶ How do we use new technology in the global trade function?

In our experience, applying some basic principles helps in answering these questions.

The role of technology in customs and trade functions

The term “trade technologies” can refer to several areas when it comes to the cross-border movement of goods, including:

▶ **Global trade management (GTM) solutions**

These solutions seek to automate specific trade processes, such as bonded processing. They typically have trade content that allows businesses to stay abreast of changing regulations.

▶ **Analytics solutions**

These solutions seek to produce summarized snapshots and visibility for an organization's customs function and identify potential risks and opportunities. They are usually deployed based on a set of existing data, including, although not limited to, post-clearance data.

▶ **New technologies (such as blockchain, machine learning and generative AI)**

These advanced technologies seek to fundamentally change processes based on how humans interact with them.

¹ Peter Diamandis and Steven Kotler, *The Future Is Faster Than You Think* (Simon & Schuster, 2020).



For most trade functions, the term “trade technologies and solutions” usually refers to technologies in the first two categories above, and this article will focus on these two categories. The technologies in the third category do not currently have a high adoption rate, but it is easy to see how they will likely change the trade landscape and the role of the trade function in the near future.

Why pursue and adopt these solutions?

GTM and analytics solutions are generally developed and adopted to address specific objectives, including:

- ▶ **Improve compliance** via automatically updated content, by reducing human errors that typically arise from manual processes.
- ▶ **Increase visibility** and create better governance (e.g., classification solutions), with the greatest benefit often seen where the solution is deployed across multiple territories or through harmonization of global trade data.
- ▶ **Reduce cost and increase operational efficiency** (e.g., free trade agreement (FTA) management, free trade zone (FTZ) management), especially in regions that use special trade programs.
- ▶ **Optimize the use of third parties** (e.g., for declarations and filings), which can include digital transmission of information or coded communication protocols that enhance control.

Challenges to adopting trade technologies and solutions

The possibilities for these trade technologies and solutions are truly vast. Yet we sometimes see a gap between what these solutions are capable of doing and what trade functions actually use. In a recent EY survey, global trade executives cited the “inability to leverage technology” as one of the greatest challenges impacting their trade functions.² Adoption rates for GTM and analytics solutions are low in comparison to their broad capabilities.

Below are some reasons behind these challenges:

- ▶ The technical details behind how solutions work can be daunting to trade specialists. With backgrounds typically in tax, law or operations, trade specialists may view trade technologies as outside their comfort zone, posing a conceptual block to their adoption.
- ▶ Unrealistic expectations exist before implementation of a solution. The outcomes may fall short of high expectations, sometimes due to how a business adopts and uses technology rather than because of shortcomings in the solution itself.
- ▶ Implementation can be costly, long and messy, and can include disruptions to business as usual and uncertainty for the people and processes affected.

How to release the potential of trade technologies

1. Fix the right issues in the right places.

It's crucial to identify the right issues and where they arise before jumping in to adopting a solution. We recommend that all global trade executives ask themselves two questions before embarking on adopting a solution:

- ▶ Why do we need a technology solution?
- ▶ What problem are we trying to fix?

A problem may manifest itself in a customs process, but the fix may exist elsewhere in the business. For example, many trade functions are challenged with accurate and efficient management of preferential origin. When taking a closer look at the process, it is common to see bills of materials (BOMs) stored as PDFs or spreadsheets and that are manually maintained. This means that information such as the value of the components is not regularly updated with supplier price changes. As a result, the trade team cannot stay on top of its BOM analysis, missing opportunities to qualify the items or stating a qualification when it should not have been used. In this example, better master data governance and digitalization of a business process is far more important and effective than making changes to the trade process on its own.

Trade functions need to have a clear diagnosis of their current operations, be diligent on the root causes of issues and rigorously assess the options for resolution of these issues. One beneficial practice might be to conduct a baseline assessment as a first step. This is not only important for identifying the location of any gaps but also for the potential stakeholders and owners of any solution.

² “How trade functions are transforming the ‘new normal’,” *EY website*, chapter 9, 11 September 2023. [Find it here](#)

Some of the typical gaps we have seen and their causes include:

- ▶ **Poor-quality master data:** This includes trade-specific data, such as commodity codes, but also business data, such as BOM components, or business partners' information. The governance and stewardship of different data means that it may not just be the trade function, or IT that can provide the necessary checks.
- ▶ **Enterprise resource planning (ERP) issues:** Having entities and sites not operating on ERP systems or operating on different instances of the ERP system is not necessarily a problem in itself, but it can sometimes pose challenges to a business's trade function's endeavor to harmonize trade data and trade processes.
- ▶ **Manual business as usual processes:** Examples of these gaps include having to manually create an intercompany sales invoice or having to manually screen a customer against sanctions lists and block a shipment after a positive hit. The former is an example of gaps in the core ERP process, whereas the latter is related to a trade-specific process and the integration between that and the core ERP process.
- ▶ **Manual changes and updates:** An example of this would be having to manually review and update the country of origin based on rules of origin changes or BOM changes. This is usually due to a lack of regularly updated trade content and certain trade processes being technically advanced and complex.

- ▶ **Manual interfaces between internal systems or with external parties:** This includes clearance instructions to customs brokers being provided via email or requesting long-term supplier declarations with large volumes of suppliers by email. Many of these gaps can and should be automated with a targeted GTM solution.
- ▶ **Lack of governance – of data or processes:** Examples of this include unlogged exceptions or unauthorized systems overrides. These issues go beyond user access and find their root causes in organizational accountabilities and governance.

2. Compare tech and solutions and choose the right ones.

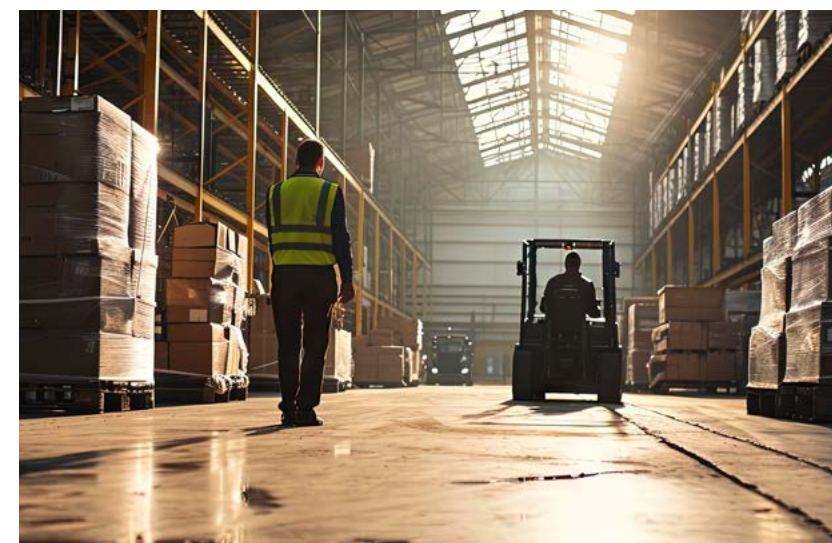
Once an enterprise has established where the gaps are and the cause of these pain points, the next step is to be clear and realistic as to what a solution can and cannot deliver, which solution can deliver with the best outcome, and when that outcome can be delivered.

When it comes to choosing the right solution, it is standard practice to conduct a cost-benefit analysis. The below two considerations might be helpful:

1. Remember that cost and benefit can go beyond license and duty savings.
2. Consider the impact of adopting the solution (e.g., change effort), prerequisites and dependencies as part of the evaluation.

Below is an inexhaustive list of elements to evaluate:

Aspects for evaluation	What it includes
Cost	License, trade content, cost of implementation, cost of maintenance and future cost of upgrade
Benefit	Operational efficiency, reduction of penalties, reduction of human errors, improved duty optimization and reduction of third-party costs
Impact	Impact on existing processes, impact on people, and impact on trade teams and other business functions
Pre-requisites	System (e.g., architect) prerequisites and business organizational prerequisites
Dependencies	Other in-flight projects and planned systems changes, and wider (i.e., non-system-related) business transformation initiatives (e.g., operating model, human capital)



The evaluation needs to be considered in the specific context of the business itself. As advisors who frequently support businesses with evaluating solutions, our view is always that there is no such thing as the perfect solution in all circumstances – only what is right for the individual business.

Naturally, not all elements in the cost-benefit analysis exist in explicit numbers. However, we find that quantifying the various cost and benefit elements into figures to the extent possible can facilitate direct comparisons between possible solutions. It also helps to strengthen the credibility of the analysis and, eventually, the business case where a solution is recommended for adoption.

Where it makes sense, the evaluation should also be given a long-term lens. For example, an urgent gap usually requires a quick fix, but a quick fix may not align with the long-term strategic objectives of the business.

It is common to see localized and customized fixes and patches as a result of evolving requirements from the trade team, either directly on their ERP systems or built as a solution outside the ERP. For example, a bespoke solution related to commodity codes gets built, and a different customized solution for BOM analysis is implemented at a later stage. When new patches are added, ensuring they integrate (or are at least compatible) with the existing patches can be a challenging and costly task.

Another major downside can arise when the business goes through enterprise-wide systems migration or transformation (e.g., to SAP S/4HANA), where

significant additional effort may be required to capture all these customizations. Multiple localized customizations, each taking a shorter time to implement, can present different cost-benefit dynamics compared to one comprehensive suite of solutions that takes longer to adopt.

3. Understand that technology implementation is never simple or fast.

Looking at wider enterprise transformations in the technology and digital space, it could be said, empirically, that these major transformations have not always been successful. There can be many reasons for this, but a few common lessons learned include:

- ▶ **A lack of a clear vision – the "why":** Why the technology is being implemented is often not clearly identified or not clearly communicated to the people and processes that are going to be affected by the transformation. The transformation leaders need to be able to articulate what the outcome will be for the business and directly identify the correlation between the transformation and such business outcomes.
- ▶ **Unclear roles and responsibilities:** Digital transformation is by no means just an IT transformation. Many business users or business process owners do not understand what is required of them in the process. The consequence is often a gap in communication that could lead to missing key design requirements.

- ▶ **Underestimating the change impact on people:** While the use of technologies may reduce the need for manpower in the long term, the implementation process can often mean taking human resources out of their day-to-day responsibilities.

When it comes to adopting trade technologies and automation solutions, these general transformation lessons can help enterprises.

As we have said, it is critical to clearly articulate the why, which is not only what it means for the trade team but also for the wider organization. This is an important first step that should not be skipped. The successful implementation and subsequent use of trade technologies heavily depend on the rest of the business. Experience has shown that trade solutions implemented independently of the wider organization simply cannot be sustained in the long term. Instead, we typically find the most successful implementation and adoption of a trade technology preceded by the trade team's ability to translate the benefit from customs language into business language, for example, by explaining the direct correlation between an automated trade process such as broker instruction with reduced shipment delays and demurrage costs.

Technology is an essential part of the three pillars of a trade function together with people and process. These pillars supplement and influence each other. Understanding the impact of technology on people and process, and the dependency of each pillar on the others, is essential to making holistic decisions. For example, when a systems implementation is adopted at large scale, how does that impact the



organizational structure of the trade team in the short term and the long term? If certain trade processes are automated, does that pose a risk to the job security of existing talent? Or does it free up the team to focus on other trade areas?

Organizations can expect these questions from the trade team and senior management, and it is important that trade function leaders have answers that can provide clarity. Given a natural inclination in many people to resist change, we have seen the most successful technology transformations in trade functions underpinned by cultural change. Especially for the large-scale transformations, having a number of change champions getting behind a common vision and anchoring it in the culture of the team can accelerate the transformation journey and significantly reduce potential challenges.

Where to start

Much as many global trade executives would love to have a blank check and automate all customs processes, it can be hard to know where to start. Here are our suggestions, based on the projects we have helped our clients undertake.

First, start with the baseline assessment, followed by a rigorous needs analysis. Making sure you have a watertight business case, with measurable benefits and key performance indicators, will benefit the business and reduce issues later in the process.

Secondly, connect with the business. This includes getting buy-in from stakeholders and even leveraging wider transformation initiatives, a common one being SAP S/4 transformation. Despite the obvious upsides of trade technologies and automation, their adoption is not always a top priority for the enterprise as a whole. Sometimes this is due to conflicting agendas, where resources such as budget and staff are constrained. Being part of a bigger transformation where organization-wide changes are expected can deliver economies of scale and make the project more feasible.

And, above all, understand your people and bring them along on the journey. Transformation can only be successful if the people transform with it. ■

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[Back to Welcome](#)

Thirteenth Ministerial Conference: Functioning of the multilateral trading system and future work of the World Trade Organization

Trade ministers from 164 states and territories attended the World Trade Organization's 13th Ministerial Conference (MC13) in Abu Dhabi, United Arab Emirates (UAE), from 26 to 29 February 2024. Ministers managed to agree on modest outcomes, avoiding a failed ministerial meeting but not making any significant breakthroughs on important issues, such as agriculture, fisheries subsidies and dispute resolution.

What was agreed

In the final MC13 Ministerial Declaration,¹ World Trade Organization (WTO) members agreed to a number of measures, including:

- ▶ **Extending the e-commerce moratorium:** WTO members agreed to extend the moratorium on imposing customs duties on cross-border electronic transmissions for another two years. Given the challenges in extending the moratorium at MC13 and the inclusion of language assuming the expiration of the moratorium, there is a likelihood it ends in 2026 at MC14.
- ▶ **Easing rules for least developed countries (LDCs):** One of the challenges LDCs report as they graduate from preferential trade regimes is eligibility to access special funding. The new measures agree that graduated LDCs retain their access to WTO technical assistance programs and special dispute procedures for three years after graduation.
- ▶ **Welcoming two new WTO members:** Comoros and Timor-Leste formally joined the WTO at MC13. Companies operating in or with these economies are likely to have expanded growth opportunities in the years ahead.



¹ 13th WTO Ministerial Conference, WTO website. [Find it here](#)

What wasn't agreed

WTO members did not reach consensus on some important topics where members had undertaken intensive work prior to the ministerial meeting. These included:

- ▶ **Dispute settlement:** Many delegations were focused on WTO reform and re-establishing a functioning dispute settlement system, as these efforts are seen as necessary to maintain the WTO as a core pillar for the functioning of the global economy. Unfortunately, WTO members were only able to agree to continue talking and reiterated the commitment to restoring the dispute settlement pillar of the organization in 2024.
- ▶ **Fisheries subsidies:** Some WTO members submitted their notice of ratification to the WTO's 2022 Agreement on Fisheries Subsidies, bringing the total to 71 members (at the time of writing) that have agreed to eliminate harmful fisheries subsidies contributing to the collapse in global fish stocks. Unfortunately, 109 members are required to ratify the agreement, so the agreement has not yet taken effect. Similarly, there was no agreement to extend this to phase out subsidies that have contributed to fishing fleet overcapacity.
- ▶ **Agriculture:** Recent WTO negotiations on agriculture have focused on:
 - ▶ Tackling export restrictions on food
 - ▶ Agricultural production and trade in net food importing developing countries and LDCs
 - ▶ Domestic support to the agricultural sectorAgain, agreement was not reached, and it will remain difficult due to domestic political considerations in many markets.
- ▶ **TRIPS waiver:** The determination not to expand the waiver on Trade-Related Aspects of Intellectual Property Rights (TRIPS) related to COVID-19 vaccines to therapeutics and diagnostics was decided prior to ministers arriving in Abu Dhabi. Future negotiations on this issue are uncertain at this time.

What happened in the margins

Increasingly, progress at the WTO no longer happens at the multilateral level involving all WTO members. Rather, a varying subset of WTO members pursue negotiations plurilaterally. Significant advancements include:

- ▶ **Domestic Regulation for Services:** India and South Africa dropped their objections to the entry into force of the WTO Agreement on Domestic Regulation for Services, which is a plurilateral agreement among 67 WTO members that seeks to bring increased predictability and transparency to the technical standards, licensing and qualification requirements governing services provision, and procedures that affect service providers operating across borders.
- ▶ **Investment Facilitation for Development:** Ministers representing 123 WTO members issued a Joint Ministerial Declaration² marking the finalization of the Investment Facilitation for Development (IFD) Agreement. Ministers also issued a submission asking for MC13 to incorporate the IFD Agreement into the WTO rulebook. Unfortunately, some WTO members blocked this integration, so it will require ongoing discussions.
- ▶ **E-commerce:** Resuming negotiations among the 90 WTO members involved in the Joint Initiative on E-commerce continues to be a priority. The Joint Initiative aims to codify new obligations on facilitating electronic transactions and digital trade, strengthening consumer protection and improving cross-border telecommunications. The withdrawal of US support from several ambitious digital trade and data flow provisions will be considered at future negotiating rounds.

² Three-quarters of members mark finalization of IFD Agreement, request incorporation into WTO, *WTO website*, 25 February 2024. [Find it here](#)

- ▶ **Trade and environment:** Trade and environment was one of the most popular topics to be discussed in the margins of MC13, with four groups of WTO members highlighting the progress that has been made, which included the Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (DPP)³; the Trade and Environmental Sustainability Structured Discussions (TESSD)⁴; Fossil Fuel Subsidies Reform (FFSR)⁵; and the Coalition of Trade Ministers on Climate,⁶ which launched its menu of voluntary actions. MC13 was also an opportunity for a group of developing country WTO members to criticize the imposition of what they deem to be protectionist unilateral trade-related environmental measures, such as the EU's CBAM.⁷
- ▶ **Micro-, small- and medium-sized enterprises:** The MSMEs presented their ongoing work concerning the integration of MSMEs into Authorized Economic Operator (AEO) programs and MC13, including the official launch of the Compendium of Financial Inclusion Initiatives to support women-led small businesses.

What's next?

In many ways, the hard work starts again after the ministerial conference. WTO members will return to Geneva, Switzerland, where the organization is headquartered, tasked with fulfilling the forward-looking reform agenda for the organization set out in the MC13 Ministerial Declaration, picking up where their ministers left off.

WTO ministers are set to hold the next Ministerial Conference in 2026 in Cameroon.

Action for businesses

Experience shows that a well-informed business community can play a significant part in influencing its government's position on trade issues. By including the WTO on the agenda when engaging the government, businesses have a real opportunity to shape the course of WTO negotiations, which will have a direct impact on their operations.

The WTO is also a rich source of information that can help businesses to build a trade strategy that meets their objectives. There are numerous trade databases filled with information ranging from the tariffs in a particular country to lists of the most recent trade-related standards and regulations being implemented by WTO members. Having access to the right advice and support is critical to navigating the global trade landscape. ■

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3 Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade, *WTO website*. [Find it here](#)
4 Trade and Environmental Sustainability Structured Discussion (TESSD), *WTO website*. [Find it here](#)
5 "Fossil Fuel Subsidy Reform (FFSR) Initiative," *WTO website*. [Find it here](#)
6 *Coalition of Trade Ministers on Climate website*. [Find it here](#)
7 "Ministerial Declaration on the Contribution of the Multilateral Trading System To Tackle Environmental Challenges," *WTO website*. [Find it here](#)

Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict at a global scale

This is the first in a series of three articles relating to retrospective transfer pricing (TP) adjustments and customs valuation.

Out of the blue, John, the Head of Global Trade of our fictional client, Simply Make It Ltd, was approached by his colleague Susie, the Head of Tax. “John,” Susie said with a relaxed tone in her voice, “Just to let you know that our sales teams in China, Brazil and Germany did a tremendous job last year and that profits went through the roof. Therefore, we will issue debit notes accordingly to bring local profits back to the accepted range. If there is anything to do from your customs standpoint, please take it up with the local team.”

Many professionals working in a trade and tax environment will be familiar with this or similar situations. Retrospective TP adjustments are performed predominantly at year-end but also at other times, such as with the closing of a quarter and sometimes even on an ad hoc basis. The question of the interdependency between the transfer price and the customs value and the potential implications on each of any adjustments therefore comes up on a regular basis.¹

However, the right course of action is often unclear, especially on the question of whether and how the customs value should be adjusted to take into account adjustments to the transfer price. The matter certainly has not been clarified by the various discussions and ambiguous interpretations of customs authorities driven by the Hamamatsu decision of the European Court of Justice (CJEU),² nor by the interpretation of the case by the German Federal Fiscal Court, as expressed in its decision published on 17 May 2022.³

As consultants, the interface between transfer pricing and customs valuation has become a big part of our trade advisory business, and the increasing controversy and court cases on this topic prove that it is a major concern for businesses and professionals alike. Therefore, we decided to conduct a survey of 40+ jurisdictions within the EY network to better understand the wider impact of transfer pricing adjustments for related party transactions and attempt to view this conflict on a global scale.



¹ For the purpose of this article, we have assessed the question of the impact of adjustments for the customs value for retrospective TP adjustments only. Prospective adjustments are not a focus area, since typically new prices are accepted by customs authorities, if they fall within a certain range. Nonetheless, the question remains and holds great potential for discussion, whether such prospective TP adjustments need to be split into the area of pre- and post-adjustment.

² CJEU Hamamatsu Photonics, case C-539/16, 20.12.2017. See also ‘Germany: Hamamatsu – the journey nears its end,’ *TradeWatch* Issue 2 2022, page 43. [Find it here](#)

³ BFH Ruling, VII R 2/19 V, 17 May 2022. See also ‘Hamamatsu – a long journey about to end?,’ *TradeWatch* Issue 3 2022, page 63. [Find it here](#)

Given the wide scope of the analysis, we have split our comments into three parts, which will be published in three separate articles:

Part 1 summarizes the case law in connection with the impact of retrospective TP adjustments on the customs value and the subsequent and most recent developments in Germany. This is what triggered the international survey and outlined the parameters and areas of focus for it. It is interesting to note that following the Hamamatsu decision, which denied a refund for downward adjustments, German importers and lawyers have also challenged the treatment of uplift adjustments. While the local fiscal court has published its decisions on this matter in favor of the taxpayer, the German customs authorities have appealed the ruling and the case is now with the German Federal Fiscal Court to ultimately decide.

Part 2 will elaborate on the analysis of the country inputs as part of the survey and shed light on selected areas by pointing out what we consider to be the most surprising and relevant facts and attempts to rate the outcomes in an overall overview of the country specifics. In addition, as this may add value not only for global trade experts, but also for transfer price practitioners, we will group and bundle the countries into clusters.

Part 3 summarizes the results as a type of overview and lists the EY customs professionals taking part in this survey who may provide more in-depth review of the local details and specifics on request.

The Hamamatsu Court Case – a recap of the most relevant facts

In the *Hamamatsu Photonics Case*, the CJEU elaborated on the question raised by the local German Fiscal Court in Munich, on the impact of retrospective (downward) TP adjustments as per TP guidelines for the customs value in related party transactions.

Summarizing the decision, the CJEU concluded that a lump-sum adjustment made after the end of the accounting period prevents the use of the transaction value method to calculate the customs value, since it is not possible to know whether an adjustment at the end of the accounting period would be made up or down. With this decision, the highest court of the European Union (EU) went in the opposite direction to the position taken over the years by the World Customs Organization (WCO), which has tried to establish a practical solution for related party transactions by aligning TP and customs valuation considerations and accepting transfer prices as the basis for the transaction value for customs valuation purposes under certain conditions.⁴

The German Federal Fiscal Court decided, on the basis of the CJEU ruling, that a subsequent adjustment of the transfer price is not suitable to prove a lower transaction value applies to the import for customs duty purposes, and does not entitle Hamamatsu for a refund.⁵ The court argued that the transaction value is regarded as the price actually paid or payable for the goods *at the time of acceptance of the customs declaration*. Changes in factual or legal circumstances that occur only after

payment of the customs duty as the customs value relates to a specific transaction are not to be taken into account for the transaction value *at the time of acceptance of the customs declaration* and therefore cannot be subject to refund.⁶

As a consequence, according to the German court, it should be noted that the importing party is not eligible for a refund if the adjustment to the price is not known *“at the relevant point in time.”*⁷ The court goes so far as to say⁸ that *“such a transfer price adjustment, which serves as an income tax instrument to avoid disputes and to reduce transfer price risks, remains without influence on the relevant customs value within the framework of all customs valuation methods – because of the product- and date-related nature of customs valuation.”*⁹

Therefore, according to the CJEU and the German Federal Fiscal Court, the customs valuation determination with the transaction value method relates strictly to a product- and date-related transaction.

4 Refer for instance to the WCO Guide to customs valuation and transfer pricing, publicly available at the website of the World Customs Organization ([wcoomd.org](https://www.wcoomd.org)).

5 BFH Ruling, VII R 2/19 V, 17 May 2022. The questions were initially raised by the local fiscal court in Munich and subject to its ruling, 14 K 2028/18, 15 November 2018. This ruling has been appealed to the Federal Fiscal Court in Germany (BFH). See detailed discussion in ‘Hamamatsu – a long journey about to end?’, *TradeWatch* Issue 3 2022, page 63. [Find it here](#)

6 BFH Ruling, VII R 2/19 V 17 May 2022, para. 42.

7 The relevant point in time as part of this article is always referring to the time of acceptance of the customs declaration.

8 Note from the authors: We consider it to be remarkable that there was no need to assess this for other valuation methods, which nonetheless were included in this statement.

9 BFH Ruling, VII R 2/19 V 17 May 2022, para. 59.

Recent update in German case law – How are the German customs administration and courts applying the Hamamatsu Case reasoning for uplift adjustments?

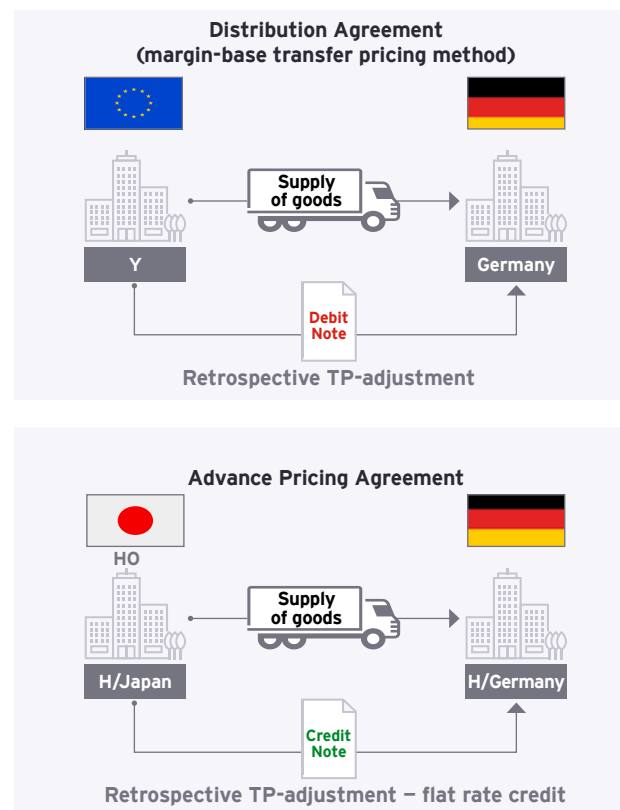
Following this landmark decision by the highest fiscal court in Germany that downward adjustments of the intercompany price do not result in a duty refund, uplift adjustments, which in the past would typically result in a retrospective payment to the customs authorities, have been open to challenge by businesses.

The German customs authorities still uphold the opinion that in the case of uplift TP adjustments, the customs value needs to be corrected retrospectively as an uplift adjustment indicates that the initial price did not reflect an arm's-length price.^{10/11} However, meeting the arm's-length principle substitutes the requirement that enables the importer to refer to the transfer price to take it as a basis for the customs value within the transaction value method.

This set of facts has been brought to court and was subject to a local fiscal court decision by the German local fiscal court in Munich.¹² Similar to the Hamamatsu case, in this situation, an intercompany price had been established following a margin-based transfer pricing methodology between two related parties, which had been retrospectively adjusted as per the applicable TP provisions to reach the agreed margin. Therefore, the actual turnover achieved by the importer was higher than that which was expected and agreed. Consequently, the initially agreed transfer price was too low for the purposes of profit allocation and corporate income tax (following OECD-approved TP Methodology) and needed to be

retrospectively adjusted upward. For this purpose, a debit note had been issued.

A visualization of the fact patterns in both cases aims to facilitate the comparison:



The German customs authorities decided as the outcome of a customs audit that the importer was required to adjust the previously declared and assessed customs value to a higher customs value due to the debit note, which would result in a

retrospective uplift adjustment of the customs value. A case was then filed to the local fiscal court against this decision by German Customs.

The plaintiff brought forward arguments mainly driven and inspired by the reasoning in the CJEU the Hamamatsu Photonics court case and the following German court cases based on this. Based on this, they argued that retrospective adjustments to the customs value due a TP adjustment driven by a margin-based methodology to establish the adequate profit for corporate income tax purposes are not possible, as it cannot be known at the relevant point in time whether at the end of the accounting period there will be an adjustment to the price and whether any adjustment would be made up or down.

The German customs authorities on the other hand argued that the declared customs value can always be subject to a subsequent review by the customs authority within the three-year limitation period from the time of importation (under Article 78, German Customs Code), by taking into account all factual and economic circumstances relevant for the determination of the customs value and the associated data. As part of such a review, the declared customs value has been found to have been established incorrectly. One main reason for this is that the customs administration argued that

¹⁰ As such the HZA argues also in the FG München, 14 K 588/20 27 October 2022 case, Rn. 36. and brings forward justification by referencing Section 31 of their internal customs valuation service provision.

¹¹ The German customs authorities usually justify this view with section 31 of their internal customs valuation service provisions, which notes that performed TP adjustments may be seen as an indication that the price has been influenced by the relationship of the parties.

¹² FG München, 14 K 588/20 27 October 2022.

the transaction value method is not applicable in cases where the relationship between both parties influenced the price and, in such cases, new circumstances are to be considered for the assessment of the customs value.

The German fiscal court in Munich followed the principles brought forward for the Hamamatsu decision for downward adjustments and the question of whether uplift adjustments are permissible and upheld the action by the plaintiff.

This matter is currently pending with the highest fiscal court in Germany.

Wrap-up of the German status of the conflict

Imports into Germany

The current status of these cases in Germany has created a confusing state for all parties. In the jungle of ambiguity, importers in Germany do not have a reliable guidance on how to deal with retrospective TP-driven pricing adjustments from a customs perspective.

For downward adjustments, the highest fiscal court in Germany decided in its Hamamatsu decision that a subsequent adjustment of the transfer price is not suitable to prove lower transaction and customs values and does not entitle an importer for a refund. At the same time, German Customs authorities still grant refunds of assessed and paid customs duties in cases where credit notes have been issued, provided there is a clear link to a sales contract, which enables a calculation of the adjustment payment. This practice by the German Customs authorities is remarkable as the Federal Fiscal Court following

the ECJ Hamamatsu decision does not leave any room for interpretation that could give rise to granting refunds.

For uplift adjustments, the German Customs authorities generally take the position that the price has been influenced by the relationship of the parties unless the importer can prove that the initial value contained every decisive aspect to value the goods in the decisive moment of importation (to prove that the price at the relevant point in time was adequate and reflects the true economic value). The local fiscal court in this case followed the reasoning of the Hamamatsu case law but the customs authorities' appeal is still pending with the highest fiscal court and a final court decision is still to be awaited.

To sum up, importers are left with uncertainty that also impacts TP. This is due to the lack of clear consequences for the calculation of a retrospective TP adjustment, which is necessary to calculating the adequate profit. From a practical standpoint, this has become almost impossible, as it cannot be foreseen, whether the knock-on effect due to any potential customs duty aspects is relevant or not. This holds true for debit and credit notes (i.e., for uplift and downward adjustments).

Exports from Germany and imports into other jurisdictions

Looking beyond the German status of the conflict, this topic opens up a variety of local interpretations. The landscape is heterogenous on how to deal with transfer prices as the basis for the transaction value

method and subsequent adjustments. Considering the general agreement on tariffs and trade (GATT-Valuation agreement) is a global legal source for customs valuation matters, it is remarkable that no clear approach can be seen on a global basis or even throughout regions (such as the EU or APAC¹³). In fact, this issue presents a global challenge.

We are, therefore, of the opinion that it would be short-sighted to limit our commentary on this topic to Germany; instead, we should view this conflict on a global scale. This is why we have decided to conduct a study taking into account various perspectives in different regions and areas globally with the aim of establishing a framework that helps to set out and compare regional differences and similarities and summarize areas of controversy. ■

We are excited to share our insights in our study in the second article in this series, to be published in *TradeWatch* Issue 2 2024. ■

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13 'Asia-Pacific: Interplay between transfer pricing and customs valuation,' *TradeWatch* Issue 3 2023, page 18. [Find it here](#)

EU and US: Export control and sanctions 2023 year in review

The United States (US) and European Union (EU) have deepened their partnership to address critical global challenges involving Russia, Belarus and China. This includes coordinating export control efforts through multilateral channels, such as the Wassenaar Arrangement, the Australia Group, and the Missile Technology Control Regime, as well as the Global Export Controls Coalition (GECC) and the US-EU Trade and Technology Council (TTC). Throughout 2023, the national governments of the US and EU Member States implemented these measures and enforced new provisions.

This article highlights the key export control and sanctions rules implemented by the US and EU in 2023, as well as major enforcement activities relevant to multinational businesses, including key sectors impacted by these measures. We also outline ways companies can improve their export control and sanctions compliance programs to help prevent costly violations and to adapt to future rule changes.



Export controls and sanctions related to Russia and Belarus

US export controls

In response to Russia's invasion of Ukraine in February 2022, the US and many other countries, including EU Member States, imposed highly restrictive licensing requirements for exports of tangible and intangible goods (e.g., software, technology) destined for Russia, Belarus, and occupied regions of Ukraine, and entities connected to those destinations.¹ These extensive controls build on pre-existing restrictions related to Russia's occupation of Crimea in 2014, among others.² A peak was reached in these measures in April 2022 when the U.S. Commerce Department's Bureau of Industry and Security (BIS) implemented a strict license requirement for all items described on the Export Administration Regulation's (EAR) Commerce Control List (CCL) when destined for Russia.³

In response to these comprehensive licensing requirements, many multinational corporations decided to cut off business with Russia, Belarus, occupied territories of Ukraine,⁴ and entities connected to those destinations, or severely limited such transactions. As a result, exports of goods to Russia and Belarus declined significantly during this period. Between 1 January

1 "US takes more trade actions against Russia," *EY website*. [Find it here](#)

2 For example, Federal Register: Russian Sanctions: Licensing Policy for the Crimea Region of Ukraine. [Find it here](#)

3 See [Implementation of Sanctions Against Russia Under the Export Administration Regulations \(EAR\)](#) and [Expansion of Sanctions Against Russia and Belarus Under the Export Administration Regulations \(EAR\)](#). BIS carved out very narrow license exceptions for certain mass market items classified under 5A992 or 5D992. BIS implemented several other notable restrictions on business with Russia and Belarus in 2022, including new foreign direct product rules, in-country transfer restrictions, a general policy of denial for license applications with few exceptions, and new license requirements for items not described on the CCL (e.g., luxury goods). A summary of its actions can be found at: [Russia-Belarus-Press-Releases-2022 \(doc.gov\)](#). The US also imposed import restrictions on Russian energy products (e.g., oil, liquified nature gas, coal), seafood, alcohol, and, and suspended normal trade relations with Russia and Belarus in 2022 resulting in the levy of a 35% ad valorem tariff on all Russian and Belarus imports. "US bans imports of Russia energy products; bans exports of oil refinery equipment to Russia," *EY website*. [Find it here](#)

4 Occupied regions of Ukraine subject to export controls are Crimea and the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR).

2021 and 31 December 2022, exports of goods to Russia declined 74% from USD6,386,000,000 in 2021 to USD1,663,000 in 2022.⁵ Similarly, exports of goods to Belarus fell 82% from USD218,000,000 in 2021 to USD40,000,000 in 2022.⁶

Throughout 2023, the BIS continued to implement new export control restrictions on transactions with Russia and Belarus and to strengthen certain rules previously implemented in 2022. BIS implemented a narrowly targeted rule in January 2023 restricting exports of US-origin parts and components to drone manufacturers outside of the US that historically have supplied the Russian military.⁷

In February 2023, the BIS implemented a series of license restrictions applicable to a variety of commercial items (e.g., low technology items) not previously described on the CCL but subject to the EAR (i.e., EAR99⁸). The rule expanded the scope of items requiring export licenses under previously implemented Russian and Belarusian industry sector sanctions and “luxury goods” sanctions to align those rules with controls implemented by US allies and partners. Below is a summary of the key changes:⁹

- ▶ Expansion and clarification of scope for the “Oil and Gas Sector Sanctions” of Supplement No. 2 to 15 Code of Federal Regulations (CFR) Part 746
 - ▶ Among other technical updates, the BIS redefined the scope of items requiring a license to include parts, components, accessories, and attachments, regardless of their Harmonized Tariff Schedule of the United States (HTSUS) Code or HTSUS Description.
- ▶ Addition of 322 HTSUS sub-heading entries to the “Industrial and Commercial Sector Sanctions” of Supplement No. 4 to 15 CFR pt. 746
 - ▶ Three HTSUS Chapters represent 87% of the entries added, including HTSUS Chapter 72 (iron and steel, 21%), Chapter 84 (machinery/parts, 42%), and Chapter 85 (electrical machinery/parts, 24%).
 - ▶ The remaining 13% of entries reside in HTSUS Chapter 73 (articles of iron and steel), Chapter 76 (aluminum and articles thereof), Chapter 87 (vehicles and parts), and Chapter 90 (optical, measuring, checking, precision, medical/surgical instruments and apparatus, and parts).

- ▶ The addition of 276 HTSUS sub-heading entries to the “Luxury Goods Sector Sanctions” of Supplement No 5 to 15 CFR pt. 746
 - ▶ Entries listed in HTSUS Chapter 84 account for 65% of the entries added, and entries listed in HTSUS Chapter 85 account for the remaining 35% of entries added.
- ▶ Expansion and clarification of scope of the “Chemicals/Biologics/Advanced Manufacturing Sector Sanctions” of Supplement No. 6 to 15 CFR pt. 746

In May 2023, the BIS extended export license controls to additional commercial items and expanded other restrictions by:¹⁰

- ▶ Adding all remaining HTSUS sub-heading entries of Chapters 84, 85, and 90 – totaling an addition of 1,200 HTSUS sub-headings – to the “Industrial and Commercial Sector Sanctions” of Supplement No. 4 to 15 CFR pt. 746, resulting in over 2,000 HTSUS sub-headings that now require an export license
- ▶ Adding chemicals to the “Chemicals/Biologics/Advanced Manufacturing Sector Sanctions” of Supplement No. 6 to 15 CFR pt. 746
- ▶ Expanding the list of foreign-produced items in Supplement No. 7 (Iran UAV controls) to 15 CFR pt. 746
- ▶ Expanding the scope of the Russia/Belarus Foreign Direct Product rule to include destinations in Crimea

⁵ “Trade in Goods with Russia,” U.S. Census Bureau website. [Find it here](#)

⁶ Ibid. Similarly, US exports of services to Russia significantly declined by 33% during this period, from USD4,200,000,000 in 2021 to USD2,800,000,000 in 2022.

⁷ “Commerce Restricts Foreign-Made Components to Seven Iranian Entities Supplying Drones Used by Russia to Attack Ukraine,” Bureau of Industry and Security website. 31 January 2023. [Find it here](#)

⁸ CFR 734.3(c): “items subject to the EAR which are not listed on the CCL are designated as ‘EAR99’”.

⁹ “Commerce Imposes Additional Export Restrictions in Response to Russia’s Brutal War on Ukraine,” Bureau of Industry and Security website. 24 February 2023. [Find it here](#)

¹⁰ “Commerce Expands and Aligns Restrictions with Allies and Partners and Adds 71 Entities to Entity List in Latest Response to Russia’s Invasion of Ukraine,” Bureau of Industry and Security website. 19 May 2023. [Find it here](#)

It is worth noting that the BIS further strengthened restrictions on 25 January 2024 through:¹¹

- ▶ Adding all remaining 94 HTSUS sub-headings of Chapter 88 (generally, industrial materials and certain aircraft-related items) to the “Industrial and Commercial Sector Sanctions” of Supplement No. 4 to 15 CFR pt. 746
- ▶ Adding antennas, antenna reflectors, and parts thereof classified in HTSUS 8529.10 to the “Iran UAV controls” of Supplement No. 7 to 15 CFR pt. 746
- ▶ Prohibiting the use of *de minimis* treatment for foreign-produced EAR-controlled munitions entries and spacecraft-related items destined for Russia or Belarus

Concurrently with the new rules, the BIS engaged the trade community through direct outreach such as speeches, press releases, and publication of several guidance and “best practice” documents.

By February 2024, BIS license controls on commercial, dual use, and defense items and technologies had become significant and are summarized below:

	Type of export		
	Defense*	Dual-use*	Commercial*
Items controlled when destined for Russia, Belarus, or occupied areas of Ukraine	All defense articles, technical data (including software), and US defense services * As described in the USML	Virtually all dual-use items (hardware, software, technology) with few exceptions for certain food, medicine, and civil telecommunications * As described in the CCL	Virtually all items of strategic military/ industrial significance (e.g., HTSUS Chapters 84, 85, 88, 90, oil, gas, steel, aluminum, chemicals, biologics) plus additional luxury items * As described in the HTSUS

11 [Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations \(EAR\) and Refinements](#). The new rules also clarified that “medicines” are excluded from the scope of Supplement No. 6 to 15 CFR pt 746; that fasteners (and similar items) are released from the scope of Supplement No. 2, 4, 5, and 7 to 15 CFR pt 746 but retain license requirements under 15 CFR pt 744.21 (military end users/uses) and other 15 CFR pt 744 requirements; and that luxury goods of Supplement No. 5 to 15 CFR pt 746 will not be considered US-controlled content for purposes of calculating *de minimis* to determine whether items manufactured abroad are subject to the EAR.

12 “Trade in Goods with Russia,” *U.S. Census Bureau website*. [Find it here](#)

US exports to Russia and Belarus further plummeted as a result of the new rules. From 2021 (pre-invasion) through the end of November 2023 (implementation of comprehensive export controls), US exports of goods to Russia declined 92% from USD6.366 billion in 2021 to USD538 million in 2023, and US exports of goods to Belarus declined 93% from USD218 million to USD16 million in 2023.¹²

While certain sectors are either not subject to the strict license requirements discussed above or can utilize license exceptions allowing for continued sales to Russia and Belarus of items such as food, medicine, and consumer telecommunications (for private sector end users), other considerations complicate such transactions (e.g., sanctions, payment, and logistics restrictions). For non-US-based companies or those with operations outside the US, the new rules also create challenging restrictions and licensing scenarios for items made outside of the US destined for Russia or Belarus when manufacturing involves US-origin parts, components or technology.



US sanctions

Sanctions imposed on Russia, Belarus, and occupied regions of Ukraine have been swift, widespread and voluminous.¹³ The economic sanctions implemented by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) complement the export controls imposed by the BIS and the U.S. Department of State's Directorate of Defense Trade Controls (DDTC), which enforces export controls under the International Traffic in Arms Regulations (ITAR) on items listed on the US Munitions List (USML). By the end of 2023, the OFAC had named nearly 3,400 individuals, entities and vessels on its restrictive List of Specially Designated Nationals and Blocked Persons (SDN List).

Beyond the SDN List, the OFAC also has:

- ▶ Maintained embargoes on Crimea and the DNR and LNR regions of Ukraine
- ▶ Imposed a ban on imports into the US of Russian oil, gas, energy products, seafood, diamonds, gold, and other items
- ▶ Restricted the ability of US persons to provide certain professional services and services involving certain key sectors
- ▶ Restricted financial institutions and certain financial transactions involving Russia¹⁴
- ▶ Issued approximately 10 general licenses to allow businesses to wind down transactions with newly designated SDNs

Any business contemplating transactions involving Russia, Belarus, occupied regions of Ukraine, or individuals and entities connected to those geographies should conduct restricted party screening prior to engagement. The US Government maintains a free tool that can be used to identify whether prospective business partners are restricted parties under various denied party lists (e.g., SDN, Entity List).¹⁵

EU sanctions packages

In 2023, the EU enacted three further sanctions packages against Russia, taking the total number of EU packages to 12.¹⁶

Apart from goods and technologies with a potential military use (e.g., cutting-edge technology), a wide range of luxury, commercial and industrial goods, as well as goods from other sectors such as energy and aviation, are banned for trade with Russia. Currently, there are numerous lists extending to thousands of goods that are prohibited to be sold or exported to Russia while other lists specify a vast number of goods of Russian origin that are subject to purchase and import restrictions. In some cases, even goods manufactured in countries outside Russia but using specific pre-materials with Russian origin are subject to the trade prohibitions unless specific documentary evidence can be provided at the time of their importation into the EU.

With the latest sanctions package enacted at the end of 2023, the sale and supply of software for the management of enterprises and software for industrial design and manufacture, as well as accompanying services, updates and upgrades have been prohibited. The scope of software is broad since the measure provides a non-exhaustive list. Operators might consider the generic descriptions provided rather than focusing more narrowly on the examples listed.

This measure includes the provision of software, therefore covering the provision of Software as a Service (SaaS), whereas that was previously more debatable in the context of export controls.

As of 20 June 2024, the sale, supply, transfer, export, or provision of such software intra-group, for subsidiaries of EU or partner countries located in Russia, will be subject to the obtention of an authorization, while this was previously covered by an exception provided for in the regulation.

In addition, the scope of items for which transit through Russia is prohibited was widened. Furthermore, specific restricted intra-group services (e.g., accounting, auditing, bookkeeping, legal advisory, IT consultancy services, market research and public opinion polling services, technical testing and analysis services, and advertising services) will require a license by the export control authorities if these services are rendered from the EU to subsidiaries in Russia after 20 June

13 "Sanctions Programs and Country Information," *Office of Foreign Assets Control website*; and specifically for recent sanctions, Russian Harmful Foreign Activities Sanctions, Ukraine-/Russia-related Sanctions, and Belarus Sanctions. [Find it here](#)

14 EY coverage of OFAC's ban on investment in Russia can be found at: 'US: Developments in export controls and sanctions,' *TradeWatch Issue 2 2022*, page 24. [Find it here](#)

15 "CSL Search," *International Trade Administration website*. [Find it here](#)

16 EY coverage of the EU's 2022 sanctions packages can be found [here](#).

2024. The current “group privilege” for services rendered to subsidiaries of EU-based companies will no longer apply from that date.

The 12th sanctions package introduced a new requirement for EU exporters when selling or exporting specific goods to a third country to contractually prohibit their re-exportation to Russia or their use in Russia, with the exception of several partner countries (currently, US, UK, Japan, Switzerland, South Korea, New Zealand, Australia, Canada and Norway). Moreover, additional comprehensive trade restrictions continue to apply to specific Russia-controlled regions of Ukraine.

To avoid circumvention of these sanctions, the 11th sanctions package also introduced a prohibition to sell, supply or export certain goods to third countries

considered to be facilitating the circumvention of EU restrictive measures. The corresponding lists of goods and countries has not been published. It will be completed when it is considered necessary to do so as a last resort measure, and it will be regularly reviewed.

Other prohibitions include, among other things, an oil ban and price cap, as well as transportation and banking restrictions.

According to information published on the EU website,¹⁷ EU restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, or independence of Ukraine now directly apply to over 2,000 individuals and entities. In December 2023, the EU sanctioned an additional 61 individuals and 86 entities, leading to travel bans, freezing of assets located in the EU, as well as a comprehensive trade ban. Considering that the trade ban extends to entities owned or controlled by sanctioned persons or entities, the number of sanctioned targets in Russia is likely much higher than the above figures might suggest.

Due to the sanctions, the value of EU imports from Russia fell by 81% between February 2022 and September 2023, while the value of exports from the EU to Russia fell by 62% in this period.¹⁸

While the initial sanctions packages against Russia and Belarus were somewhat harmonized, the trade restrictions against Russia have become much more comprehensive compared with those issued against Belarus.

In 2023, an export ban against Belarus on goods and technology suited for use in aviation and the space industry was introduced, along with further export restrictions on goods used by Russia for its war against Ukraine. These include semiconductor devices, electronic integrated circuits, manufacturing and testing equipment, photographic cameras, optical components, as well as specific machinery and tobacco products. In addition, specific products are subject to an import ban, including petroleum products, potassium chloride products, wood products, and iron and steel products.

With respect to Belarus, 233 individuals and 37 entities have been designated under the EU sanctions regime as of February 2024.

17 “EU restrictive measures against Russia over Ukraine,” *European Council website*. [Find it here](#)

18 “EU trade with Russia – latest developments,” *Statistics Explained website*. [Find it here](#)

Export controls targeting China

US

In October 2022, the US imposed precisely targeted license restrictions for exports of advanced technology semiconductor chips and computing items containing such chips, certain semiconductor chip production equipment, and related software and technologies, when destined for China.¹⁹ The rules target major Chinese semiconductor and artificial intelligence manufacturers with the objective of “restricting China’s ability to obtain critical technologies to modernize its military capabilities in ways that threaten the national security interests of the United States and its allies.”²⁰ Those rules, which span nearly 140 pages, were significantly updated and expanded by the BIS one year later in October 2023.²¹

The restrictions on China were implemented through a series of Export Control Classification Number-based (ECCN) license and end-use controls (15 CFR § 744.23), as well as restrictions on “US Person” services (15 CFR § 744.6), and the October 2023 changes were intended to simplify, clarify, and strategically expand those restrictions. Key changes, among others, include:

- ▶ Adding destinations subject to export license requirements including several Middle Eastern countries and Russia
- ▶ Adding chips that require a license for export by lowering the criteria triggering a license requirement (i.e., performance capabilities)
 - ▶ New license exceptions were introduced for some of these chips.
- ▶ Adding chip-making equipment that requires a license for export

- ▶ Adding license controls on certain advanced chip-making equipment produced outside the US when it incorporates any US-origin content
 - ▶ Japan has a limited exception.
- ▶ Lowering certain end-use controls by replacing the license requirement for *all items subject to the EAR* used in production of *any* chip-making equipment listed on the CCL with *all items described on the CCL* used in production of *certain “front-end”* chip-making equipment
- ▶ Narrowing of the license requirements for US Person activities

When the US implemented these export controls on China, it did so on a unilateral basis. By July 2023, both the Netherlands and Japan had implemented similar but not identical export restrictions. Other countries, including key US partners and allies, have not elected to follow suit. While the US is expected to continue to refine its controls in consultation with industry stakeholders, enforcement of the new rules has become a priority.

EU

There were no notable developments on an EU level in 2023 in the area of export controls and sanctions toward China. Export licenses for military items are generally not issued by the Member States.

For dual-use items, an export license requirement continues to apply as is the case for any third country outside the EU. On a national level, the Netherlands has introduced additional export control measures for advanced semiconductor manufacturing equipment. Starting from 1 September 2023, these items are subject to a national authorization requirement.

Other key export control and sanctions changes

US export controls

The BIS made other important export control modifications in 2023, including updates to the CCL to align US export controls with previous decisions of the Missile Technology Control Regime, Nuclear Group, and Australia Group. Three rules issued on 8 December 2023 generally liberalize the export licensing

19 “Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification,” *Federal Register* website. [Find it here](#). EY coverage of the October 2022 rules is available at [US Implements new technology export controls on China](#) and *TradeWatch* Issue 3 2022, page 34. [Find it here](#)

20 *Ibid.*, describing China’s use of advanced computers for its military modernization efforts, military decision making, planning, and logistics, cognitive electronic warfare, radar, signals intelligence, and jamming, as well as China’s use of supercomputers to improve calculations in weapons design and testing including for WMD such as nuclear weapons and hypersonics and other advanced missile systems.

21 “Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections,” *Federal Register* website. [Find it here](#)

requirements for items relevant to companies in the life science, aerospace, defense, and nuclear sectors, and include:

- ▶ Removal of export license requirements for certain pathogens, toxins, and related genetic materials when destined for Australia Group countries²²
- ▶ Removal of export license requirements for several "Crime Control" items when destined for Austria, Finland, Ireland, Liechtenstein, South Korea, Sweden, or Switzerland²³
- ▶ Alignment of ECCN-based license controls with recent Missile Technology Control Regime control list changes impacting six ECCNs (1C111, 2A101, 2B119, 6A107, 9A101, 9E515)²⁴
- ▶ Addition of license exception eligibility for additional countries for certain missile technology items²⁵
- ▶ Proposal to revise License Exception Strategic Trade Authorization (STA) to expand use by the trade community²⁶

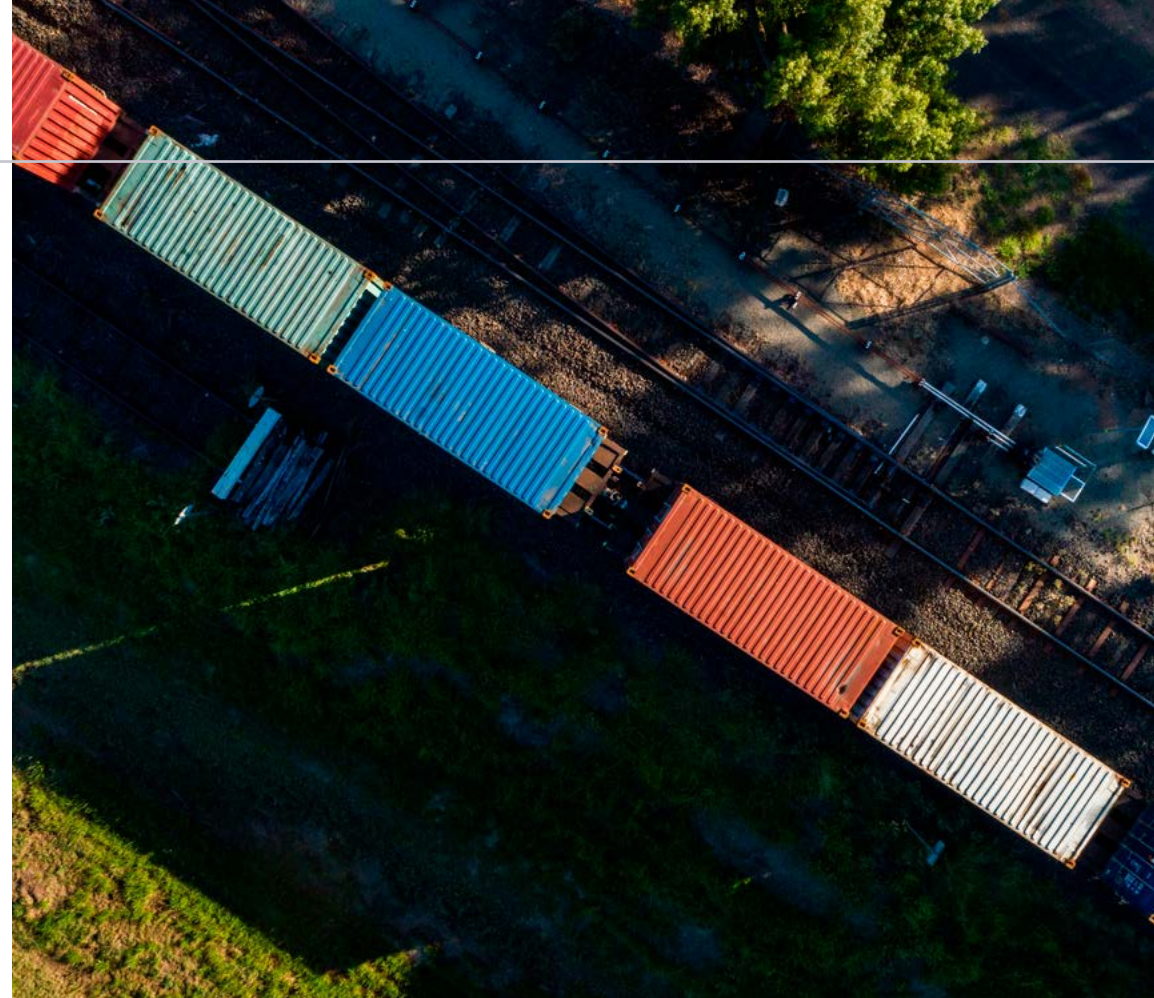
Companies in the life sciences sector should also be aware that the BIS proposed a change to ECCN 2B352 to impose export license controls on certain automated peptide synthesizers used in biotechnology research and development²⁷ and issued an Advisory Opinion to clarify the scope of export license controls applicable to genetic elements classified under ECCN 1C353.²⁸

Key changes in 2023 impacting aerospace and defense companies include the DDTC's removal of certain high-energy storage capacitors from Category XI(c) (5) of the USML,²⁹ and a consolidation and restructuring of the purposes and definitions section of the ITAR.³⁰

US sanctions

Similar to the OFAC's SDN List, the BIS imposes end-user restrictions through the designation of individuals and organizations on the Entity List. During 2023, the BIS added over 800 new entries to the Entity List with Russia and China accounting for approximately 75% of all new entries.³¹

An Executive Order (EO) issued in August 2023 directed the U.S. Department of the Treasury to issue rules restricting outbound US investments in Mainland



22 "Allied Governments Favorable Treatment: Revisions to Certain Australia Group Controls; Revisions to Certain Crime Control and Detection Controls," *Federal Register website*. [Find it here](#). The AG currently has 43 members.

23 Ibid.

24 "Export Administration Regulations for Missile Technology Items: 2018, 2019, and 2021 Missile Technology Control Regime Plenary Agreements; and License Exception Eligibility," *Federal Register website*. [Find it here](#)

25 Ibid.

26 "Proposed Enhancements and Simplification of License Exception Strategic Trade Authorization (STA)," *Federal Register website*. [Find it here](#)

27 "Section 1758 Technology Export Controls on Instruments for the Automated Chemical Synthesis of Peptides," *Federal Register website*. [Find it here](#)

28 Letter, *Bureau of Industry and Security website*, 25 September 2023. [Find it here](#)

29 "International Traffic in Arms Regulations: U.S. Munitions List Targeted Revisions," *Federal Register website*. [Find it here](#)

30 "International Traffic in Arms Regulations: Consolidation and Restructuring of Purposes and Definitions-Final," *Federal Register website*. [Find it here](#)

31 See [eCFR: Supplement No. 4 to Part 744, Title 15 – Entity List](#) and [Consolidated Entity List \(doc.gov\)](#). Counts reflect new Entity List "entries" in 2023 (i.e., a new entity, or new alias or new address for an existing entity). BIS stated that the number of new entities added to the Entity List in 2023 was 465 parties. [file \(doc.gov\)](#).

China, Hong Kong, and Macao involving sensitive technologies and products including semiconductors and microelectronics, quantum information technologies, and artificial intelligence.³² Concurrent with the EO, The Treasury issued an Advance Notice of Proposed Rulemaking in the Federal Register but as of 1 February 2024 it had not released or implemented restrictions.

Under EO 14115, issued in February 2024, the Department of State imposed financial sanctions against individuals directing or participating in violent actions in the West Bank. The prohibitions include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of the blocked persons. All entities that are owned, directly or indirectly, by the blocked persons are also in scope.

EU

Through the publication of a first compilation of EU Member States' national export control lists on 20 October 2023, the EU has strengthened new "autonomous" controls at the EU level.³³ The publication of the list means that individual Member States are now able to impose authorization requirements on exports of items included in other Member States' national control lists, as long as these are included in the EU Commission's own compilation. The first list includes controls by the Netherlands on machines to make semiconductors, as well as Spanish controls on quantum computing, additive manufacturing and other emerging technologies. As a result, it can be expected that national controls of goods that are not included in the EU list of dual-use controlled items will increase in the future.

In December 2023, the EU Council and the European Parliament concluded negotiations for EU legislation introducing criminal offenses and penalties for the violation of EU sanctions.³⁴ The provisional agreement has been submitted to the Member States' representatives for endorsement. Should it be approved, the legislation will then be formally adopted by the Council and European

Parliament. The proposed legislation stipulates that Member States must define certain actions as criminal offenses, such as trading sanctioned goods, providing prohibited financial services, or performing transactions with sanctioned states or entities. It is the obligation of Member States to ensure that violating EU sanctions is punishable by effective, proportionate, and dissuasive criminal penalties. The maximum penalty for intentional violations must provide for a prison sentence with liability and sanctions also provided for legal persons.

Recently, the EU Commission published a White Paper on Export Controls outlining how to make EU export controls more effective at safeguarding the EU's security interests.³⁵ Among other things, the aim is to address the risk of having a patchwork of export controls in the EU by strengthening the EU's uniform controls. One suggested measure is to include on the list of EU controlled items those items that were not adopted by the multilateral export control regimes due to the blockage by certain Member States, but that were supported by Member States within those regimes. Moreover, better political coordination on export controls is desired.

Several EU Member States support the adoption of sanctions against extremist Israeli settlers. While no unanimity on this topic among the EU Member States has been reached so far, France, Belgium, Spain, Ireland and Germany announced they are ready to adopt restrictive measures unilaterally. On 13 February 2024, France adopted sanctions against 28 individuals, including an administrative ban on entering French territory.

Former EU Member State the United Kingdom (UK) has also adopted sanctions against settlers who have committed human rights abuses against Palestinian communities in the West Bank. The measure currently includes travel and visa bans and an asset freeze.

Enforcement activities

US

Civil enforcement actions by the BIS and OFAC during 2023 were numerous and large compared with prior years. The OFAC issued 17 penalties for a total of USD1.54 billion in 2023 – a sharp increase from the penalties issued in 2022 (USD42 million), 2021 (USD21 million), and 2020 (USD24 million).³⁶ The

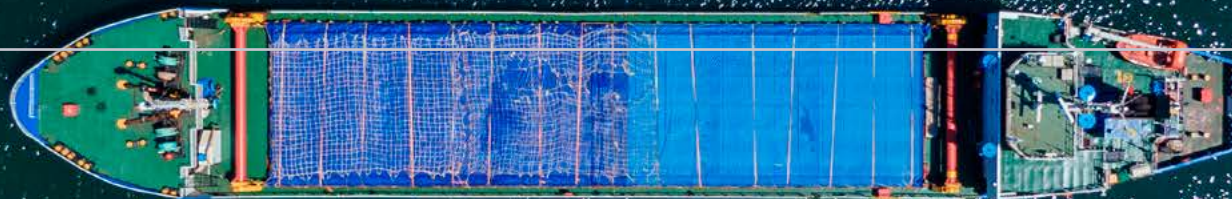
32 "Executive Order 14105 of August 9, 2023," *Federal Register website*. [Find it here](#)

33 "EU enables coordinated export controls by compiling national lists," *European Commission website*. [Find it here](#)

34 "Council and Parliament Reach Political Agreement to Criminalise Violation of EU Sanctions," *European Council website*, 12 December 2023. [Find it here](#)

35 "White Paper on Export Controls," *Circabc website*. [Find it here](#)

36 "Civil Penalties and Enforcement Information," *Office of Foreign Assets Control website*. [Find it here](#)



BIS announced that its 2023 enforcement actions led to a record number of convictions and increased anti-boycott enforcement.³⁷

In February 2023, the BIS announced the launch of the Disruptive Technology Strike Force (DTSF) targeting unlawful exports involving China, Russia and Iran.³⁸ The interagency effort brings together the National Security Division, the BIS, the FBI, the Department of Homeland Security, and officials from designated US Attorneys' Offices throughout the US with an objective of rigorous criminal and administrative enforcement of US export controls. Within a few months, the BIS announced its first two DTSF actions involving aid to the Russian military.³⁹

In April 2023, the BIS announced the largest standalone civil penalty in its history, (totaling USD300 million), for the shipment of electronic hardware to a major Chinese telecommunications company designated on the Entity List.⁴⁰ Several other BIS actions and investigations during the year involved shipments of electronics hardware to restricted parties in China. The BIS and DDTC also announced penalties stemming from exports of controlled intangibles (and materials) to China (and other countries) without a license; specifically, defense and dual-use software and blueprints requiring a license under either the ITAR as controlled technical data or EAR as controlled software or technology.

Lastly, civil monetary penalties increased for violations of dual-use controls to the greater of USD353,534 or twice the value of the transaction.⁴¹ For violations of defense controls, civil penalties increased to the greater of USD1,238,892 or twice the value of the transaction.⁴²

EU

The enforcement actions within the EU in 2023 focused primarily on violations against export controls and sanctions imposed on Russia. Due to the lack of jurisdiction of the EU itself, the enforcement of sanctions is the obligation of each Member State.

While details on enforcement activities are not published by the authorities, our experience suggests that the underlying causes for such violations may be categorized as follows:

- ▶ A lack of experience with goods-related restrictions: Many businesses outside the industrial or high-technology sectors (such as food and fashion) have been impacted by goods-related restrictions for the first time and do not have the required expertise or processes in place to ensure compliance. This can lead to unintentional violations.
- ▶ Mistakes in manual processes: Compared with the area of list-based sanctions screening, there is only limited automated support available on the market to check the numerous goods-related restrictions that have been successively imposed on Russia within the different sanctions' packages. Manual processes are more prone to mistakes compared with automated controls, especially in the period when a new sanctions package has been introduced.

37 "Export Enforcement:2023 Year in Review," *Department of Commerce website*. [Find it here](#)

38 Press Release. The strike force will operate in 12 metropolitan regions across the United States, with oversight and support from the local U.S. Attorneys' Offices in Atlanta, Boston, Chicago, Dallas, Houston, Los Angeles, Miami, New York City, San Jose (CA), Phoenix, Portland (OR), and Washington, D.C.

39 "BIS issues temporary denial order in support of strike force case against defense conglomerate allegedly providing support to Russian intelligence services," *Bureau of Industry and Security website*, 9 June 2023. [Find it here](#); "BIS issues temporary denial order in support of strike force case against Russian national for illegally exporting sensitive U.S.-sourced micro-electronics with military applications to Russia," *Bureau of Industry and Security website*, 31 August 2023. [Find it here](#)

40 "BIS imposes \$300 million penalty against Seagate Technology LLC related to shipments to Huawei," *Bureau of Industry and Security website*, 19 April 2023. [Find it here](#)

41 Federal Register: Civil Monetary Penalty Adjustments for Inflation. [Find it here](#)

42 Federal Register: Department of State 2023 Civil Monetary Penalties Inflationary Adjustment. [Find it here](#)

- ▶ Exceeding the timeline of available wind-down periods: Sometimes an unintentional violation occurs if there is a delay in the shipment of goods with no efficient end-control in place and the applicable wind-down period has expired.
- ▶ A lack of clarity in legal language: Differences in the translation of lists of restricted items can lead to ambiguities as to whether or not an item is covered by the restriction.
- ▶ A lack of understanding on the part of authorities: In some cases, the authorities have alleged there was a violation when at the time of the sale or export the respective sanctions package had not yet been enacted. Sometimes an allegation has been raised looking only at the date of the invoice, which does not necessarily correspond with the date of the sales contract. This shows that even the authorities that administer the sanctions are struggling with the sheer number of cases, as well as the many sanctions packages enacted consecutively.

In most enforcement cases the exported items did not land in Russia but were stopped by customs, and the criminal case was based on the allegation of violating a sales prohibition.

Actions for multinationals

Companies saw major changes to export control and sanctions rules and strong enforcement actions by government regulators during 2023.

The significant changes and regulatory priorities in the US and EU remain in place as of March 2024. It is therefore critical for companies to assess the impact of recent rules on global operations and to have processes in place to monitor upcoming and future proposed changes to export control, sanctions, and outbound investment rules. Companies should consider reevaluating their existing export compliance program in the light of the recent changes, including:

- ▶ Mapping and assessing current state operations, export processes, and export compliance controls including policies, procedures, work instructions and training

- ▶ Reviewing organizational structure and design, resourcing, and the use of technology against a maturity model and/or industry benchmarks
- ▶ Building or updating an export compliance risk register

A company's detailed review of its export compliance program is critical to identify risk exposure and to define the organization's risk appetite. These factors in turn should inform how a company tailors its internal controls.

Lastly, companies should ensure that they conduct routine audits, self-assessments, pre-export reviews and post-export reviews to prevent or limit violations, especially when there are regulatory or operational changes that impact a company's risk profile. In view of the changes enacted in 2023, this could include testing of internal controls related to:

- ▶ Classification changes
- ▶ Licensing and license exception changes
- ▶ Additional restricted parties
- ▶ Additional restricted end-uses
- ▶ Expanded US extraterritorial export controls (e.g., foreign direct product rules)
- ▶ Changes to *de minimis* rules
- ▶ US person restrictions
- ▶ Enhanced sanctions including restrictions on US services, financial transactions, and other business activities ■

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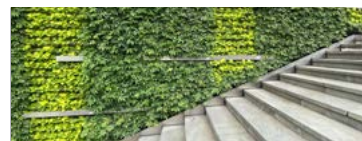
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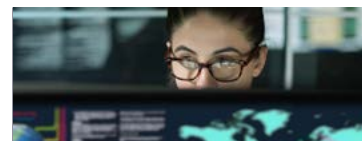
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Brazil: Implications of the tax reform on global trade

Tax reform is often seen and used as an instrument to improve the domestic economy, but what are the main impacts on global trade?

The Brazilian tax system has long been recognized as one of the most complex and burdensome in the world.¹ With over 1,500 hours spent annually on tax compliance,² navigating through its fragmented structure, characterized by numerous taxes and myriad regulatory requirements, has been a significant challenge for businesses. In addition, compounded by a plethora of exceptions, special regimes and fiscal incentives, this convoluted system has undermined the competitiveness of enterprises, since, despite operating in the same sector, companies often find themselves subject to vastly different tax treatments.

However, at the close of December 2023, a pivotal moment arrived as the much-anticipated Tax Reform was enacted in the form of Constitutional Amendment No. 132/2023,³ supplanting the previous proposal, PEC No. 45/2019.⁴ This reform marks a watershed moment in Brazil's

fiscal landscape, signaling a decisive shift toward simplification and harmonization.

At its core, the reform aims to streamline the Brazilian tax framework by introducing a dual value-added tax (VAT) system applicable nationwide. With a single tax rate and significant reductions in fiscal incentives, the objective is clear: to create a more uniform and equitable tax environment. By curtailing the multitude of tax exemptions and special regimes, the reform endeavors to foster a level playing field for businesses, promoting fairness and efficiency in the marketplace.

The implementation of the reform will take place gradually, as outlined here:

- ▶ State and municipal taxes, namely the Circulation of Goods and Services Tax (ICMS) and Tax over Services (ISS), will remain unchanged until 2028. After this point, they will decrease annually by 10% until 2032, with their complete phasing out anticipated by 2033.
- ▶ The Industrialized Product Tax (IPI) will be set to a zero-rate (0%) by 2027, which also marks the year when this tax will be applied to operations within the Manaus Free Trade Zone.

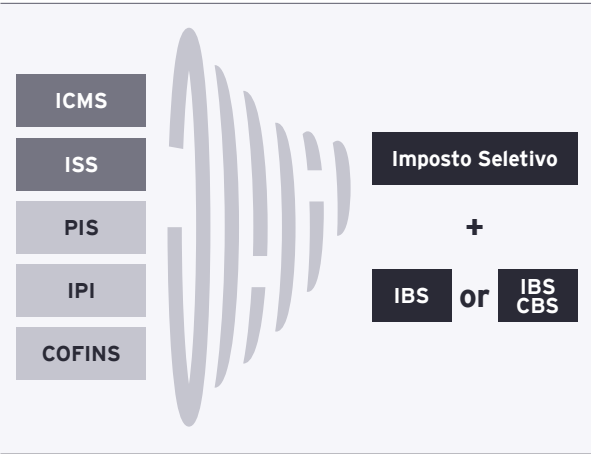
1 "The Tax Complexity Index – A Survey-Based Country Measure of Tax Code and Framework Complexity," *European Accounting Review*, 2023. [Find it here](#)

2 "Doing Business Subnacional Brasil 2021," *The World Bank*, 2021. [Find it here](#)

3 "Constitutional Amendment No. 132," *Presidência da República*, 20 December 2023. [Find it here](#)

4 "PEC No. 45/2019," *Senado Federal*, 20 December 2023. [Find it here](#)

► Likewise, social contributions PIS and COFINS will be discontinued by 2027. Initial test rates for the Tax on Goods and Services (IBS) and Contribution on Goods and Services (CBS) will be implemented as 0.1% and 0.9% respectively, pending final rate determination, and will apply in conjunction with the Selective Tax, as the illustration below shows.



This process aims to facilitate a smooth transition in the reform, enabling companies to adjust to the new tax environment in a phased and systematic manner rather than enduring abrupt change.

The Selective Tax

The Selective Tax (*Imposto Seletivo* or IS) will serve as an additional tax to the dual VAT IBS and CBS. It will be applied to products that have negative effects on health and the environment. In this context, it resembles the various “sin taxes” and green excise

taxes that apply around the world. In Brazil, although there is no clear distinction of a sin tax or an excise tax, the current national system effectively uses the IPI to perform this function. In the new tax system, the role of the excise tax will migrate fully from IPI to the IS. However, uncertainty remains regarding the tax rate and the specific products to which it will apply – a topic that will likely be a focal point of the future Complementary Laws that will regulate the tax reform.

Impact on exports and imports

This transition toward a simpler tax regime is particularly relevant for the country’s import and export sectors and the reform is expected to foster their integration into the international trade system, as tax complexity for both exports and imports will be reduced. The aforementioned taxes undoubtedly have an impact on imports, and both

Details of the transition period								
	2026 (a)	2027 (b)	2028	2029 (c)	2030	2031	2032	2033
ICMS	No changes			90%	80%	70%	60%	Extinction
ISS		No changes		90%	80%	70%	60%	Extinction
IPI	No changes	Zero rate + IPI ZFM	IPI ZFM					
PIS	No changes	Extinction						
COFINS	No changes	Extinction						
IBS	0.1%			Rate to be defined by the TCU and Senate				
IS		Rate to be defined by the TCU and Senate						
CBS	0.9%	Rate to be defined by the TCU and Senate						

(a) In 2026, the amount collected of IBS and CBS can be deducted from the amount of PIS and COFINS due. If there is no tax due, it can be offset against other federal taxes or be refunded in up to 60 days.

(b) In 2027, the 0.1% IBS rate shall be subtracted from the CBS rate to be defined by the Federal Court of Accounts (TCU) and the Senate. At the same time, IPI rates will drop to 0%, with the exception for products that have similar ones manufactured at the Free Economic Zone of Manaus (ZFM) aiming at keeping ZFM differentiated.

(c) From 2029, the progressive reduction will be also apply to the tax benefits related to ICMS.

the IBS and CBS will continue to apply to imported goods, although the single rate will make it easier to ascertain the tax burden levied on traded goods. However, it is essential to emphasize that some taxes related to imports do not fall within the scope of this tax reform, including customs duties, such as Import Tax (II), Foreign Exchange Rate (IOF), the contribution for intervention on economic domain (CIDE), Export Tax (IE), Additional Freight for the Renewal of the Merchant Navy (AFRMM), and Sistema Integrado de Comércio Exterior (Siscomex)⁵ fees.

Consequently, we do not predict that this reform will generate substantive modifications in relation to customs duties. However, it is undeniable that the reform will generate wide-ranging implications in numerous other ways for both importers and exporters, bringing potential advantages for businesses involved in international trade.

Export exemptions, including ICMS, PIS, COFINS, IPI and ISS taxes, and the privilege for exporters to claim tax credits, will be sustained in conjunction with ICMS tax benefits on imports until 2032. After the migration to the new system, IBS and CBS will also be exempted for exports.

Another great concern for exporters in the current system is the successive accumulation of credit balances, generated by the exemption on exports that prevents companies from having sufficient debits to offset their credits. The accumulation of credit balances is a significant issue because the current system provides very few possibilities for monetization of these credits, especially for credits related to ICMS. The new system, promises to

solve this issue with a fast and efficient tax refund system that will allow exporters to reimburse their accumulated credits, reducing the need to manage such credits for long periods, which will improve cash flow and working capital for exporting companies.

Special customs regimes

In special customs regimes, typically, products are untaxed when entering or exiting the country. Brazil has a number of special customs regimes to lessen high tax burdens and reduce tax credits, like many of its competitors. They include exports, logistics, and sectoral benefits and large investments.

Exports

The main objective of customs regimes designed to stimulate exports, such as Duty Drawback and RECOF (Special Customs Regime for Industrial Warehouses under Computerized Customs Control), is exemption from the AFRMM on maritime shipments and from Import Tax on raw materials that will be consumed in the production of exported goods, as established in the Common External Tariff (TEC).⁶ It is important to note that these regimes seem unlikely to be affected by the tax reform, considering that these regimes are provided for by international agreements⁷ to which Brazil is a signatory and the fact that they provide macroeconomic benefits for Brazil.

Logistics

The tax simplification envisioned in the reform should decrease bureaucracy, potentially leading to more efficient customs procedures, in line with other international commitments made by Brazil. Prime examples of regimes in this category include Customs Transit and Temporary Admission. While the former allows goods to enter the country tax-free for transit or transport under customs control to a bonded duty location within Brazil, the latter enables the temporary admission of goods with full or partial import tax suspension before re-exportation in their original or processed state. As these systems already afford operational flexibility by facilitating inbound and outbound logistics, it seems unlikely that this area would be significantly impacted by the tax reform.

Sectoral benefits and large investments

This category encompasses special customs regimes that have been uniquely tailored to meet the needs of specific sectors within the Brazilian economy. Notable cases include the REPETRO regime, designed expressly for the oil and gas industry; the REPEX regime, which is intended for the import and subsequent export of crude oil and its derivatives; and the REPORTO regime, which caters to the port sector. There are also incentive programs that allow for the purchase of both imported and domestic goods with a reduction of the taxes due upon import. These benefits typically correspond with certain product characteristics, the company's economic activity or the intended use of the goods. These programs predominantly reward export-oriented companies, such as the RECAP and REPES schemes.

⁵ Siscomex is a system, originally created in 1992, that allows the government to have full supervision of international trading in Brazil. Through Siscomex, the government can enforce current and new laws that are applicable to international trading.

⁶ "Nomenclatura Común del MERCOSUR," *MERCOSUR website*. [Find it here](#)

⁷ Such as the *Revised Kyoto Convention* and *Istanbul Convention*. [Find it here](#)

Another key initiative is the Special Incentive Regime for Infrastructure Development, or REIDI, which promotes infrastructural expansion in the country.

A Complementary Law will dictate the application of deferral for these special customs regimes and Export Processing Zones, providing ways to alleviate the tax burden on capital goods. Nevertheless, potential significant impacts from the reform concerning the importation of goods and services for capital projects and specific sectors are not to be ruled out.

Manaus Free Trade Zone (ZFM)

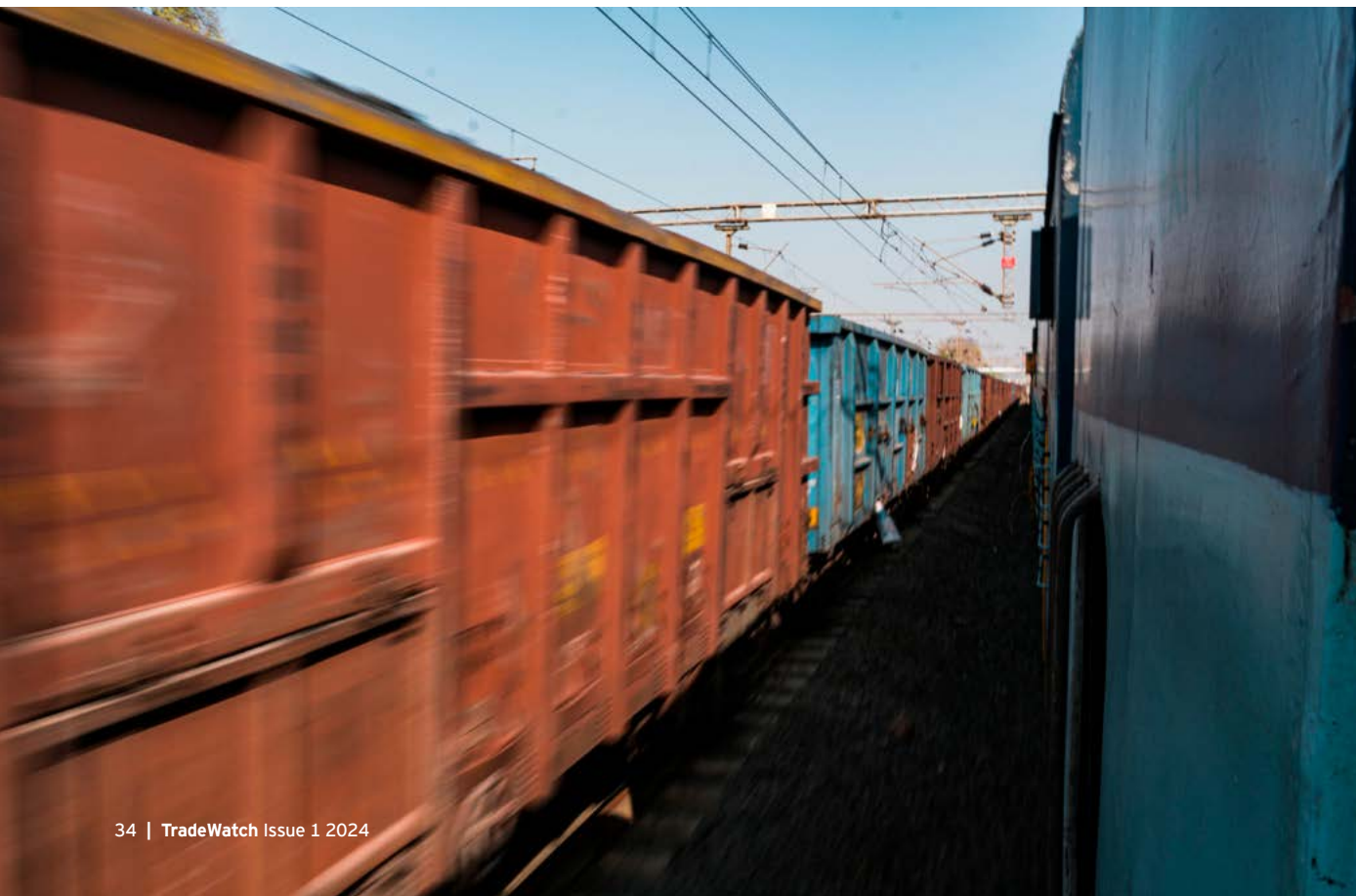
The ZFM serves as a beacon of economic development and competition in Brazil's Amazon region by promoting industrialization from several sectors, including consumer electronics, two-wheelers, chemicals, metals and mechanics. One primary objective of maintaining areas such as ZFM is to attract investments, both domestic and foreign, by offering financial incentives, tax breaks and infrastructural benefits. The zone operates under a special tax regime, wherein resident companies

enjoy lower tax rates, fostering a conducive environment for business growth and expansion. Companies operating within the ZFM benefit from reductions or exemptions on federal taxes, creating an attractive locale for businesses and boosting their competitiveness in the national and international markets.

These tax incentives include exemptions or reductions in II, IPI, PIS and COFINS on operations undertaken within the region. As a result, products produced in the ZFM can gain a price advantage over goods manufactured in other areas, thus stimulating their competitiveness. Another advantage enjoyed by the companies based in the ZFM is the assured preservation of their preferred treatment for the Amazon region. For example, the current Brazilian tax reform text, while seeking to simplify the complex tax system nationally, makes provisions specifically to maintain the ZFM's preferential status. In this context, the IPI will continue to be upheld, functioning as an instrument to safeguard the preferential treatment for the ZFM, as IPI will be levied on companies located outside the ZFM that are producing the same goods as those made by companies within the ZFM.

Fiscal war

The term “fiscal war” refers to the extensive set of tax strategies that Brazilian states use to attract private sector investment into their territories. The specifics often involve providing various tax incentives to companies as a motivation for setting up their operations within a particular state's jurisdiction. This practice, while beneficial to



individual states, has led to a competitive imbalance, hence the term fiscal war was coined.

With Brazil's tax reform underway, the potential impact on this fiscal war comes under scrutiny. The much-anticipated tax reform proposes to standardize the tax rates across various sectors, minimizing the competitive variations across different states, as standardizing tax rates would restrict individual states' ability to leverage lower tax rates to attract investments, leading to an equitable distribution of resources. While the reform might discourage competition between individual states in terms of tax incentives, it aims to foster fair competition based on infrastructure, workforce skill sets, utilities and other non-fiscal factors.

Furthermore, the tax reform has implications for businesses as well. Companies might need to reassess decisions regarding site location, operational structures and investment allocations, as tax incentives that currently entice them to certain jurisdictions may no longer be a deciding factor.

Challenges for the future

Navigating the future of global trade under the Brazilian tax reform presents some significant challenges that need to be addressed moving forward.

For example, the tax liability of imports remains variable depending on the product's tariff code, which necessitates strict controls and administrative treatments by importers to ensure they have a thorough understanding of the tariff codes that apply to their products and that these are correctly

applied in any customs documentation, providing accurate tax calculations and ensuring compliance with importing regulations.

The need for tariff classification of goods and subsequent discussions about classification are, therefore, likely to persist following the reform, as they continue to have a profound impact on taxation, customs control and statistical studies for the country's economic policies. Moreover, there is currently no rule prohibiting the inclusion of customs duty, Siscomex fees, AFRMM and other customs expenses in the calculation base for the new taxes, IS, IBS and CBS.

Another potential challenge lies in the shifting dynamics of IBS and CBS collection, switching from an origin-based model to a destination-based one. This shift could have implications for indirect import models, such as "on behalf of" and "by order" modalities, potentially disrupting existing trade procedures.

Lastly, while the IS is expected to apply on imports, it remains uncertain whether this tax will solely encompass imports or also extend to subsequent sales. This ambiguity calls for clarity and stability in the tax legislation to enable efficient preparation and compliance by companies.

While Brazil's tax reform could bring an end to the fiscal war, it is the execution of the reform that will determine its success. The policymakers' challenge lies in creating an environment that continues to attract investment and stimulate economic growth while promoting fairness across the country's various

regions. If successful, the tax reform could not only end the fiscal war but could also set an example for other nations facing similar challenges to follow.

In conclusion, these challenges present opportunities for businesses and policymakers alike to streamline procedures, foster transparency and create a more conducive environment for global trade. Therefore, the adoption of a more simplified and effective tax system in Brazil should alleviate the complexity of bureaucratic processes and the incidence of certain internal taxes that affect the production chain of goods destined for international trade. This marks a significant stride forward for the country as the new tax system could strengthen its position in global trade. ■

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Mexico: IMMEX Program – the competitive edge for global trade and nearshoring dynamics

Innovation and strategic alliances continually redefine global trade. In this context, Mexico's Initiative for the Manufacturing, Maquiladora and Export Services Industry (IMMEX) program distinguishes itself as a cornerstone of the country's economic strategy. Designed to spur foreign investment and enhance manufacturing capabilities, IMMEX has significantly bolstered Mexico's position as a leading destination for nearshoring, especially for the automotive industry and for emerging Asian investments. This program not only attracts businesses with its incentives and logistical benefits but also serves to help streamline global supply chains. By facilitating the temporary importation of materials for export production, IMMEX provides a strategic advantage, underscoring Mexico's role as a nearshoring destination.

Understanding the intricacies of IMMEX is crucial for businesses aiming to navigate the complexities of global customs and leverage nearshoring opportunities effectively. The program not only offers opportunities to achieve operational excellence and cost savings but also represents Mexico's proactive approach to integrating into the

global economy, making it an essential element for strategic consideration for companies looking to optimize their global manufacturing and distribution networks.



Historical context

Launched in 1965, the maquiladora program aimed to combat unemployment along Mexico's borders. The IMMEX program marked Mexico's strategic entry into global manufacturing and trade. Initially aimed at using Mexico's geographic advantage for export-oriented manufacturing, the program quickly evolved, becoming a vital source of foreign exchange by the mid-1980s, significantly bolstering Mexico's economic landscape.

The transformative moment for IMMEX came in 1994, with the signing of the North American Free Trade Agreement (NAFTA), which liberalized trade across North America. NAFTA greatly enhanced the program's attractiveness by eliminating many duties and trade barriers, thereby catalyzing a manufacturing boom and deeper economic integration between Mexico, the US and Canada. This era of accelerated growth showcased the program's capacity to adapt and thrive amid global trade shifts, diversifying Mexico's industrial base and reinforcing its status as a prime location for foreign investment and manufacturing.

Today, the IMMEX program continues to be a cornerstone in Mexico's economic strategy, representing the nation's commitment to leveraging its strategic position for industrial growth and international trade. It stands as an indication of Mexico's adaptability and forward-looking approach to global economic engagement, ready to meet future challenges and opportunities in the evolving landscape of international manufacturing.



Operational modalities

IMMEX is characterized by its diverse modalities, each tailored to different business needs:

- ▶ The Industrial Program supports manufacturers using temporarily imported goods to create or transform products for export.
- ▶ The Services Program has adapted to contemporary demands, focusing on companies offering shared services and call centers worldwide.
- ▶ The Shelter Program provides a low-risk entry for nonresident manufacturers into Mexico's market.
- ▶ The Holding Company Program and Outsourcing Program offer integrated management and production process outsourcing, respectively.

Modality	Number of IMMEX-registered companies per modality
Holding company	3
Industrial	5,078
Services	1,014
Shelter	56
Outsourcing	5

Strategic benefits and compliance

The IMMEX program affords companies significant operational advantages, including the deferral of import duties on the raw materials used in manufacturing processes for goods that are destined for export. It is essential to distinguish between the benefits directly provided by IMMEX and those related to VAT on imports.

IMMEX facilitates the deferred payment of import duties. However, the ability to receive a full credit for the 16% VAT due at importation is not a direct benefit of the IMMEX program itself. Instead, this import VAT waiver can be achieved through obtaining VAT certification from the Mexican tax authorities or by posting a bond.

To qualify for this VAT credit, companies must demonstrate compliance with the exportation requirements of the IMMEX program and meet the criteria established for VAT certification. They

include proving that the imported goods are indeed being used in the production of exported items. The option of posting a bond is an alternative measure that companies can use to manage VAT obligations while awaiting VAT certification or in lieu of it.

Understanding these distinctions is crucial for businesses operating under the IMMEX program to ensure they navigate the compliance landscape effectively and capitalize on the financial incentives available to support their export manufacturing activities in Mexico.

However, exceptions apply for importing machinery, equipment and tools used in manufacturing processes. Duties must be paid for these items upon entry into Mexico. Companies may explore alternative mechanisms to mitigate duties on fixed assets, such as using duty preferences under free trade agreements or Mexico's PROSEC program.¹

Considerations for successful implementation

For companies expanding production capacities in Mexico, it is essential to:

- ▶ Analyze the impact of duty payments on the importation of machinery and equipment.
- ▶ Seek duty preferences under free trade agreements and ensure compliance with customs valuation rules for used machinery and related-party transactions.
- ▶ Verify that the IMMEX subsidiary in Mexico has all the necessary import permits to avoid customs delays.

¹ PROSEC (Programa de Promoción Sectorial) is a program established by the Mexican government to facilitate trade and provide benefits to companies engaged in manufacturing in Mexico.

- ▶ Maintain adherence to all customs obligations associated with IMMEX and VAT certification.
- ▶ Consider the benefits of the Authorized Economic Operator (AEO) status for expedited customs clearance.

Strategies for new entrants to the IMMEX program

For companies newly establishing their presence in Mexico, the IMMEX program offers a gateway to significant operational advantages. However, the path to leveraging these benefits is nuanced, requiring a strategic approach to overcome initial hurdles and to achieve long-term success.

New IMMEX companies face the challenge of importing machinery and equipment without the immediate benefit of duty deferral available under IMMEX for these assets. This necessitates a thorough analysis of the potential duty impacts and exploring options to manage these costs effectively. Issues to consider include:

- ▶ **Analyzing duty impacts and reviewing strategies.** Companies should conduct an in-depth review of the duties applicable to the importation of machinery and equipment, considering the lack of IMMEX deferment for these goods.
- ▶ **Customs valuation and compliance for machinery imports.** Companies should ensure accurate valuation of imported machinery, especially for used equipment or where there are transactions between related parties. Adhering to the World Trade Organization (WTO) customs valuation standards is crucial to avoid disputes and penalties in these circumstances.
- ▶ **Import permits and customs clearance.** Companies should prioritize obtaining all necessary import permits for machinery, equipment and components well in advance of shipping to Mexico. This proactive approach may prevent delays and facilitate smoother customs clearance.
- ▶ **VAT planning and recovery.** Given the initial requirement to pay duties and the 16% import VAT, effective VAT planning is critical. Companies should understand the processes for VAT recovery in Mexico, including the documentation and timelines required to claim refunds from the Mexican government.
- ▶ **Planning for AEO status.** From the outset, companies should consider the infrastructure and security standards required for AEO status as part of their initial planning and project building phase. Implementing these standards early can streamline the process of obtaining AEO status, which offers significant advantages, including expedited customs procedures. While AEO status can typically be accessed after two years of conducting customs transactions in Mexico, exceptions may apply for companies with related parties within the country. Early integration of these standards not only prepares the company for a smoother transition to AEO status but also enhances overall operational security and efficiency from the beginning.
- ▶ **Long-term compliance and strategic growth.** Maintaining compliance with IMMEX and VAT certification requirements is an ongoing process that demands attention to detail and an understanding of Mexican customs regulations.

Conclusion

By streamlining operational efficiency, reducing costs and ensuring regulatory compliance, IMMEX elevates Mexico's status as a prime destination for nearshoring. This alignment with the increasing global shift toward nearshoring as part of global trade trends – prompted by the need for more resilient and adaptable supply chains – underscores the program's critical importance in attracting foreign investment and fostering industrial growth across key sectors.

As the world economy seeks stability and innovation in the wake of unprecedented challenges, Mexico's IMMEX program will undoubtedly play a pivotal role in helping to define the future landscape of global manufacturing and trade.

In essence, the IMMEX program is more than a policy mechanism; it reflects Mexico's broader vision for leveraging nearshoring as a catalyst for economic development and global integration, promising a vibrant future for international manufacturing cooperation. ■

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US: Latest CBP ruling addresses limitations surrounding customs business

In a recent ruling, US Customs and Border Protection (CBP) held that an unlicensed company would impermissibly be conducting customs business by extrapolating entry-related data from shipping documents and keying that data into a customs broker's Automated Broker Interface (ABI) software system.

Ruling H326926,¹ dated 19 December 2023, addresses an inquiry from a US licensed customs broker regarding the use of an unlicensed offshore data entry company to review shipping documents, extract specific data elements necessary for filing entry for imported goods, and key that data into the broker's ABI system. Based on the facts, the foreign unlicensed company would be responsible for reviewing shipping documents, such as bills of lading and commercial invoices, and extrapolating that data into the broker's ABI system. Granted a limited access role to the broker's ABI, the unlicensed company would be prevented from transmitting entry data to CBP directly, generating customs documents or viewing importer files.

CBP also cites a prior ruling that addresses whether certain activities conducted by an unlicensed contractor would constitute customs business. In H068278,² dated 28 September 2009, CBP held that an unlicensed contractor would impermissibly be conducting customs business by scanning shipping documents to identify and extract entry-related data. Through that process, the unlicensed contractor would be determining what valuation, classification and other entry-

¹ Ruling H326926, CBP website. [Find it here](#)

² Ruling H068278, CBP website. [Find it here](#)

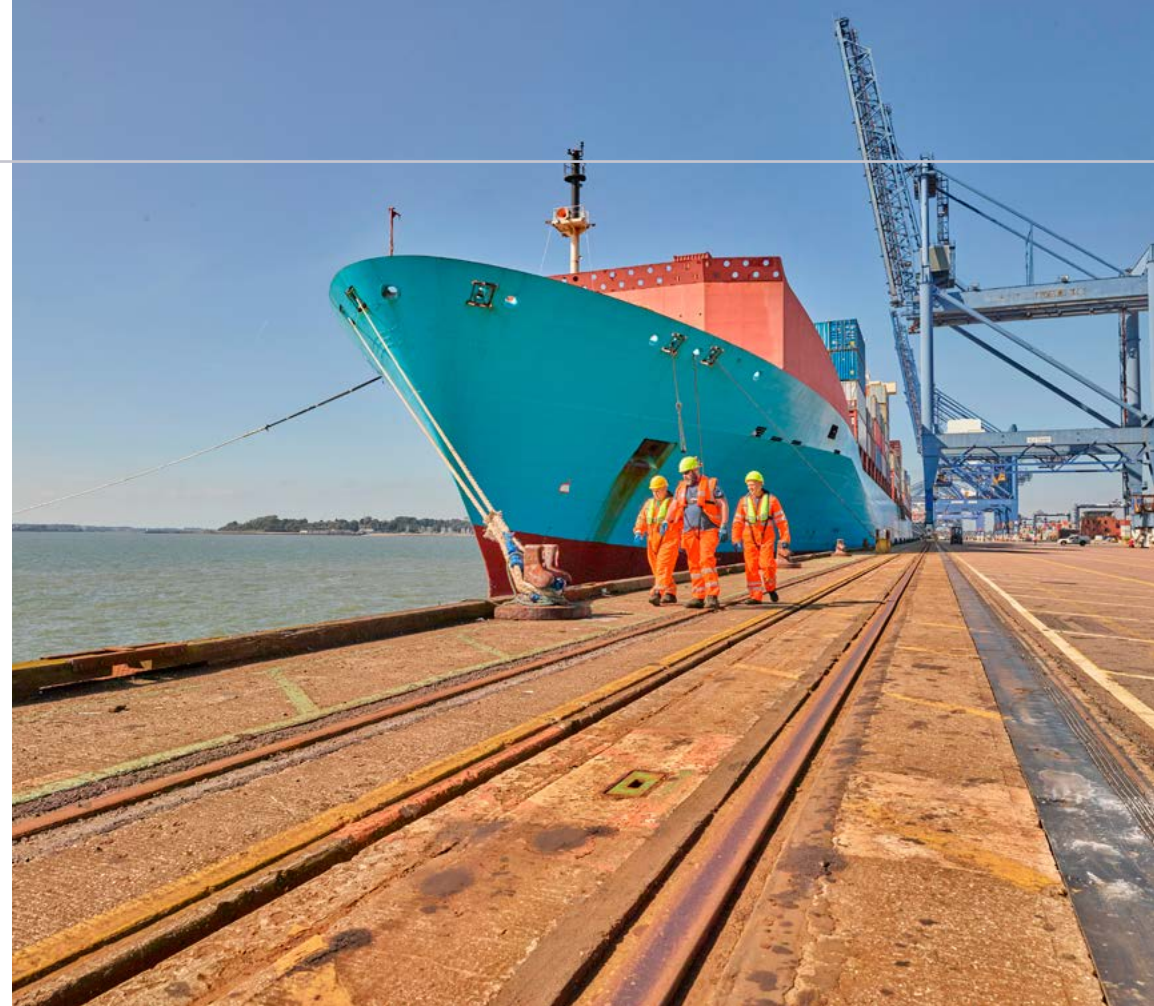
related data would be transmitted to CBP as part of an entry filing. Similar to H326926, CBP explained that identifying entry-related data and keying it into an ABI system falls squarely within the scope of “preparing parts of an entry intended to be filed with CBP,” as is explicitly stated within the definition of “customs business,” which must be conducted by a person holding a valid customs broker’s license.³

Broker implications

CBP highlights additional implications that may arise from activities undertaken by an offshore unlicensed company.

- ▶ The first implication pertains to the access to ABI. CBP emphasizes that only customs brokers, importers and ABI service bureaus are eligible to access ABI for entry and entry summary purposes.⁴ Individuals or entities falling outside these categories are not eligible to access ABI for such purposes.
- ▶ CBP also explains that to be granted permission to access ABI, an applicant must be specifically approved by CBP.⁵ Consequently, a company that has neither applied for nor received approval for ABI access is not authorized to use a broker’s account for accessing ABI.
- ▶ Further, the ruling elaborates on potential confidentiality issues, as permitting a third party to access client records could breach a broker’s obligation to client confidentiality.⁶
- ▶ Lastly, CBP underscores that “all customs business must be conducted within the US customs territory,” which includes the states, the District of Columbia and Puerto Rico.⁷ Therefore, a foreign unlicensed company should not be conducting customs business on behalf of a licensed customs broker.

Given the broad definition of customs business and the scarcity of rulings on this matter, this ruling provides important guidance to brokers and importers regarding activities that constitute customs business. It is essential for brokers to understand what activities are considered customs business to avoid potential legal implications and for importers to understand their limitations. ■



3 Title 19 USC § 1641(a)(2), *Customs brokers*, United States Code.

4 Title 19 CFR § 143.1(a), *Eligibility*, Code of Federal Regulations.

5 Title 19 CFR §§ 143.2 and 143.3(a), *Eligibility*, Code of Federal Regulations.

6 Title 19 CFR § 111.24, *Definitions*, Code of Federal Regulations.

7 Title 19 CFR § 111.3(a), *Definitions*, Code of Federal Regulations.

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Australia accelerates its transition towards paperless trade

The Australian government recently reaffirmed its commitment to Australia's trade modernization journey by increasing investments to key agencies to implement several trade reform initiatives. This article provides an overview of these investments and how the digitalization of trade processes and documentation is increasingly seen as a new driver for enhancing the productivity of Australia's trade ecosystem, with substantial sustainability and supply chain benefits.

Australia's actions follow recent successes in the digitalization of trade documentation in the UK and Singapore. The Australian government will now explore domestic implementation of the United Nations' Model Law on Electronic Transferable Records (MLETR) to provide the legal framework for promoting trade digitalization and paperless trade.

Recent disruptions to the global trading landscape have revealed the importance – and the fragility – of trade as a driver for global economic prosperity. The COVID-19 pandemic placed unprecedented pressures on supply chains, which, along with the conflation of economics and security, have seen a rise in economic decoupling, the resurfacing of interventionist industrial policy agendas and greater friction at our borders. We are also seeing governments and consumers become more discerning, with stringent product specifications and regulations challenging global traders and regulators alike. In the face of a more dynamic risk environment, digitalizing trade processes and documents has the potential to be the next leap in the productivity of Australia's trade ecosystem and drive sustainable growth.



Australia has been steadily making progress toward modernizing its trade systems, led by the Australian government's Simplified Trade System Implementation Taskforce (STS Taskforce),¹ which has a "whole-of-government" mandate, and bipartisan support, to lead regulatory reform efforts. The STS Taskforce was established in July 2021 under the former government as part of a suite of economic reforms to enhance productivity of Australia's post-pandemic recovery. Its work has recently been boosted through additional investments announced by the Australian government in its 2023-24 Mid-Year Economic and Fiscal Outlook (MYEFO) in December 2023.²

As part of this, the government allocated AUD53.5 million over four years beginning in 2023-24 to digitalize trade procedures, support paperless trade, reduce regulatory burdens, trial new cargo inspection technologies and procedures, and streamline business-to-business interactions. Specifically, the STS Taskforce has committed to exploring options to implement the MLETR³ in Australia as a means of accelerating the adoption and exchange of electronic

¹ "Simplifying trade for Australia," *Australian government website*. [Find it here](#)

² "Budget 2023-24: Mid-Year Economic and Fiscal Outlook," *Australian government website*. [Find it here](#)

³ "UNCITRAL Model Law on Electronic Transferable Records (2017)," *United Nations website*. [Find it here](#)

trade documents and moving away from paper-based systems and processes. Adoption of MLETR and introduction of legislative amendments to modernize and strengthen existing customs regimes and digitalizing processes would bring Australia in-step with its trading partners, including the UK and Singapore.

This additional funding will also build on existing initiatives being implemented by Australia's key border agencies, including the Australian Border Force and the Department of Agriculture, Fisheries and Forestry, to upgrade their legacy systems, improve data-sharing, and strengthen border and biosecurity protection.

Challenges of the paper-based system

Paperless trade refers to the digitalization of information flows that are used to support and facilitate cross-border transactions. While not a new initiative, there continues to be a strong reliance globally on paper-based trade documentation by regulators and businesses alike. There are currently over 4 billion documents circulating in the trade system⁴, with an inadequate degree of standardized information, processes and systems, along with outdated national laws. Paper-based trade in the current environment creates inefficiencies and delays across the supply chain, hindering the efficiency and cost-effectiveness of global commerce. It also limits the ability to respond swiftly to market demands, quality issues or safety concerns. The value of costs incurred can be claimed back through the digitization of global trade processes, which is estimated to bring total benefits to nearly USD1.2 trillion by 2026.⁵ Reliance on paper also increases the risks of errors, fraud and loss of valuable information.

These issues are often seen in the provision of trade finance, a critical enabler of global trade and an area that stands to benefit most from trade digitalization. In the Australian context, there are still several regulatory obligations that impose strict requirements to produce and retain paper documents. For example, the Australian Transaction Reports and Analysis Centre (AUSTRAC) requires all reporting entities to create, store and manage transaction records

for seven years as part of its core anti-money laundering obligations. While such requirements play an important part in broader anti-money laundering and counter-terrorism financing prevention efforts, they are some of the few remaining obligations preventing companies from fully transitioning to paperless systems. There is an emerging consensus that the commercial and regulatory risks such paper-based measures seek to address could be effectively managed through an agreed and trusted approach to the use of electronic data exchange and e-documentation.

International consensus on trade digitalization

The MLETR offers a practical mechanism for accelerating the pace of digitalization in Australia – at a modest cost for government and using a proven reform path that is gaining traction globally. The MLETR creates an enabling legal framework for paperless trade, providing an international benchmark to align national laws and enable the legal use of electronic transferrable records, both domestically and across borders. By being technology and systems neutral, the MLETR allows users to comply as they see fit (through the use of tools such as registries, tokens and distributed ledgers), enabling digital information to move seamlessly across borders.

There are some powerful examples among our international peers, including the UK and Singapore, that have successfully amended their domestic legal regimes to implement the MLETR. The UK's Electronic Trade Documents Act (EDT Act),⁶ implemented in September 2023, made the UK the first G7 country to place electronic trade documents on an equal footing with their paper counterparts. The UK government has estimated that domestic implementation would add GBP1.14 billion to the British economy over the next decade.

On 15 November 2023, the EY Global Trade Advisory team in Sydney, Australia, co-hosted a trade digitalization event with the British Consulate General and the Business Council of Australia. The event brought together public and private sector representatives from Australia and the UK to share their views and exchange experiences on progressing reform agendas and best-practice industry-led initiatives to address regulatory and commercial barriers to paperless trade adoption. This event highlighted the need for continued dialogue and cooperation between Australia and the UK on paperless trade and

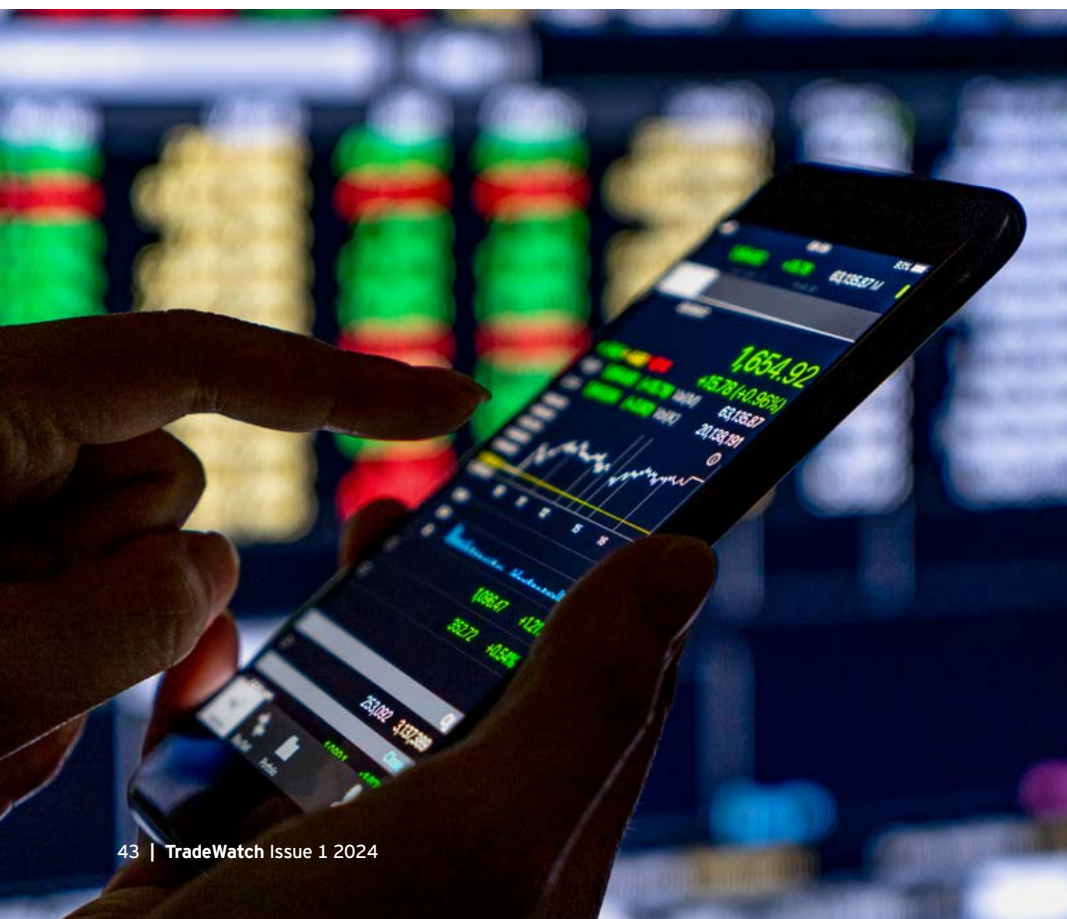
⁴ United Kingdom | Creating a Modern Digital Trade Ecosystem, *International Chamber of Commerce website*. [Find it here](#)

⁵ Quantitative Analysis of the Move to Paperless Trade, *The Commonwealth Website*, Quantitative Analysis of the Move to Paperless Trade. [Find it here](#)

⁶ 'UK: An overview of the Electronic Trade Documents Act,' *TradeWatch* Issue 3 2023, page 37. [Find it here](#)

demonstrated a strong appetite among regulators and businesses to cooperate on paperless trade. There was strong interest in exploring opportunities around trial shipments of completely paperless exchanges to help identify barriers to adoption and accelerate the transition.

In addition to the UK and Singapore, the MLETR has now been implemented by seven countries⁷ and three more countries⁸ are in the process of domestic implementation.⁹ This progress is set to continue off the back of senior political-level endorsement, including by G20 Trade Ministers, who last year issued their High Level Principles on Digitalization of Trade Documents,¹⁰ which highlighted the centrality of MLETR as a means of promoting neutrality, collaboration, security, reliability and trust.



Opportunities for collaboration between Australia's private sector and international partners

While there are many barriers to overcome, accelerating Australia's transition to paperless trade is not only a necessity but also an opportunity that could deliver an estimated \$1.7 billion in economic benefits.¹¹ Therefore, it is no surprise that the private sector and trading community have signaled strong support for the government's efforts.

Businesses should be positioned to embrace opportunities and positively contribute to trade digitalization and the reform agenda by sharing their own operational experiences and what they have learned. There are rich lessons from business attempts at adopting existing paperless trade solutions already in market, in particular the challenges associated with cultivating the required change across the end-to-end supply chain.

Sharing these insights with government stakeholders, participating in pilots of trial shipments and shifting toward paperless systems wherever possible will support the Australian government's efforts to implement the MLETR domestically and deliver its broader trade modernization agenda. ■

⁷ US, Belize, Paraguay, France, UK, Germany, and Papua New Guinea.

⁸ Thailand, Mexico and Japan.

⁹ 'MLTR Tracker' *United Nations Economic and Social Commission for Asia and the Pacific Website*, MLETR Tracker | Cross-Border Paperless Trade Database (digitalizetrade.org)

¹⁰ "Annex-C High Level Principles on Digitalization of Trade Documents," *G20 website*. [Find it here](#)

¹¹ Trade simplification aims to save \$4.3 billion in regulatory costs, *Australian Financial Review website*. [Find it here](#)

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Japan: 2024 tax reform changes to the customs law

On 15 December 2023, the Council on Customs, Tariff, Foreign Exchange and Other Transactions (the Council) under Japan's Ministry of Finance produced a proposal on the revision of customs duty rates and the taxation system, the contents of which were reflected in the 2024 Japan tax reform outline.¹ While some items that require changes to the laws still need to be deliberated in Japan's parliament (the Diet), it is expected that most of these proposed changes will enter into force.

Relaxation of security provision requirements for AEO importers

Under Japan's Authorized Economic Operator (AEO) certification program, Japan Customs grants AEO status to operators such as importers, exporters and customs brokers whose level of internal controls meets a required standard from a customs perspective. Among those certified AEOs, importers enjoy the benefit of duty deferral where they can defer the payment of customs duties and other import taxes due upon importation to the following month end. Under the current program, when such AEO importers would like to extend the duty deferral for a further two months, they could only do so after providing a security to Customs for the amount equivalent to two months' worth of customs duties and import taxes.

To further facilitate trade, the Council has proposed to abolish this requirement in principle, so that AEO importers may receive this additional two months' worth of deferral without paying the security. What this means for current AEO importers is that once the changes are enacted into law on 1 October 2024, they would be able to defer duty/import tax payment for the full three months without security, resulting in a cash flow benefit and a reduction in the cost of arranging the security.

Other revisions related to customs

The Council also proposed the following revisions with regard to customs:

Treatment of provisional duty rates

The Council has proposed that the provisional duty rates on 411 items that were due to expire at the end of March 2024 be extended for another full year.

It also proposed that the provisional duty rates for polyvinyl chloride (PVC) gloves be abolished and most favored nation rates be reinstated from 1 April 2024.

Expansion of the scope of penalty provision

Penalty provisions in the Customs Law are to be amended to clarify that when an importer applies for duty refunds by means of concealing or disguising the facts, they would be subject to penalties.

Actions for business

The changes to customs laws in this year's tax reform, such as the expansion of benefits under AEO and the extension of the provisional rates, demonstrate the Japanese government's commitment to trade facilitation and trade liberalization. Companies operating in Japan should be aware of these changes and other customs programs that are available to reduce cost and risk in relation to importing goods into Japan. ■

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¹ "2024 Japan tax reform outline," EY website, 16 January 2024. [Find it here](#)

New Zealand: Customs agency loses valuation case on the treatment of royalties for valuation purposes

A recent Customs Appeal Authority case¹ confirmed that royalties should not be included in the customs value of imported goods where there is no nexus between the payment of the royalty and the imported products. In addition, royalties should not be included in the customs value of the imported goods if they are not “proceeds of subsequent resale of the goods” in New Zealand.

This case is significant as it serves as a reminder that not all royalty payments are dutiable. It also highlights the risk of Customs simply identifying a payment as a royalty and assuming there is a nexus with the imported goods. The decision warns that this approach is not acceptable.

Background

The key facts relating to the case are as follows:

- ▶ The appellant is a clothing importer and retailer that operates shops in New Zealand. It is wholly owned by an Australian company (the parent company) and is part of a wider international group of companies.
- ▶ The appellant purchases goods from the parent company. The purchase price was calculated on a “cost plus” basis, taking into account duty, commission payments, freight sampling, design and a profit margin.
- ▶ The appellant pays the parent company a management fee for services based on the cost plus a markup of 7.5%. The appellant undertakes the day-to-day routine of the local retail stores, and the parent company provides the operational services (i.e., management, administration, HR, finance, IT, legal, advertising and marketing).
- ▶ The appellant pays a royalty to the parent company. The intellectual property (IP) was described as “a sophisticated retail formula, including know-how, trade secrets, confidential information, copyright in artistic works and marketing content, and brands.” It included product selection, locating products, presentation, customer service standards, product line retail strategies, marketing, location, and development of premises and store systems.
- ▶ There was one royalty payment and a two-step process to calculate it. No royalty is payable if the appellant’s net profit is the equivalent of a routine return or less. This was equivalent to a 5% return on sales. If the net profit exceeds the routine return, 75% of the excess is paid to the parent company as a royalty.

Customs had issued a decision that the royalties should be included in the value of the imported goods on the basis that the legislation² requires royalties to be included in the value of the imported goods where the royalties are in respect of imported



¹ XXXX v Chief Executive of the New Zealand Customs Service [2022] NZCAA 1 (28 February 2022). Please note the hearing was on 26 and 27 June 2019 and the decision was on 28 February 2022. However, the decision was only published and publicly available from late 2023, 2022-NZCAA-01-28-February-2022.pdf (justice.govt.nz). [Find it here](#)

² The current relevant legislation requiring royalties to be included in the customs value is Clause 7(b)(iv) of Schedule 4 of the Customs & Excise Act 2018. This is materially the same as the requirement in the Customs & Excise Act 1996.

goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to New Zealand. It was also on the basis that the legislation³ requires the value of proceeds of any subsequent resale by the buyer accrues, directly or indirectly, to the seller.

Customs' reasoning is summarized as follows:

- ▶ The appellant's primary activity was exclusively to retail goods that the parent company sold to it. Branded products are not available to other New Zealand retailers.
- ▶ The retail goods had trademarks branding them.
- ▶ The parent company directs the appellant's importing and sales operations.
- ▶ The appellant could not procure the products without paying the royalties.

Customs also rejected the appellant's claim that the royalty payments were for the use of the IP concerning the operation of the New Zealand business.

Comments on the decision

It is clear from the decision that Customs was concerned with the situation whereby a parent company has significant control over the conditions of importation and subsequent resale of the same goods. The concern relates to the risk of manipulation of the customs value and the ability to minimize duty payable – in other words, the ability to load costs into post-importation activities to reduce the customs value.

Customs relied on previous and established case law⁴ concerning the treatment of royalties that places emphasis on the commercial reality or substance of the arrangement. Customs argued that without the goods being imported for sale by the appellant, there would be no reason for the parent company's services (relating to the brands, know-how and commercial strategy) to exist. Customs took the position that on a "but for" analysis the true cost of the imports includes the post-importation support (including the commercial strategy of the New Zealand operations). Therefore, the royalties needed to be included because of the legislative requirements highlighted above.

To address this, it was noted in the decision that this is a mixed question of a fact and law: "It is necessary to determine what was supplied from the parent company to the appellant, and what was paid and the reasons for the payment. Then, apply the law....". In relation to the various supplies and payments, we note the following in respect of the decision:

- ▶ There was no evidence that there was any undervaluation of the imported goods. The decision notes that the pricing methodology adopted for the imported goods takes into account all the costs that are incorporated into the inherent and intrinsic qualities of the goods. The price includes a margin and an allowance for profit for the parent company: "The evidence is that the cost is as close to arm's length as possible (within a transfer pricing regime)."

- ▶ There was no quantifiable nexus between the royalties and the value of the imported goods. The quantification of the royalties is a profit-sharing formula with an intention for the parent company and appellant to share the profits. The decision noted the evidence for the appellant to be "plausible and unsurprising."
- ▶ There was no basis to reject the evidence that the royalties were entirely related to the services supplied by the parent company and the transaction value used was not influenced by the relationship between the parent company and the appellant.

Impact of the decision

Imports from related parties continue to draw controversy in New Zealand. This case shows that even with the use of transfer pricing to determine the price of imports into New Zealand, Customs was still prepared to challenge the importer to include royalties to derive an inflated value of the goods at the border. ■

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³ The current relevant legislation in relation to "proceeds of any subsequent resale" is Clause 7(b)(v) of Schedule 4 of the Customs & Excise Act 2018. This is materially the same as the requirement in the Customs & Excise Act 1996.

⁴ *Collector of Customs v Avon Cosmetics Limited* (2000) 1 NZCC 55,011 (CA) [Avon (CA)] [Find it here](#). *Adidas NZ Ltd v Collector of Customs* (Northern Region) [1999] 1 NZLR 558 (CA) [Adidas (CA)] [Find it here](#).

European Union: First vote on EU customs reform

On 22 February 2024, the EU's Internal Market Committee adopted its position on the EU Customs Code reform¹ that will restructure the way customs authorities work in the EU.² The proposed reforms include: (i) a new approach to e-commerce for goods coming from outside the EU,³ (ii) more efficient customs checks and targeted controls, and (iii) a new EU DataHub for the submission of information to EU customs authorities.

The EU Customs Code reform

The EU Commission presented the EU Customs Code reform proposal in May 2023. The package contains three separate legal acts:

1. The [main regulation](#), which establishes the EU Customs Code and the EU Customs Authority
2. A [Council regulation](#) on simplified tariff treatment for the distance sales and elimination of the customs duty relief threshold

1 'EU: Customs legislation reform,' *TradeWatch* Issue 2 2023, page 24. [Find it here](#)

2 "First vote on the biggest EU customs reform since 1968," *European Parliament website*. [Find it here](#)

3 'EU: Proposed customs reform – a modern approach to e-commerce,' *TradeWatch* Issue 3 2023, page 31. [Find it here](#)

3. A [Council directive](#) on a special scheme for distance sales of goods imported from third countries and import value-added tax (VAT)

The EU Parliament acts as a co-legislator on the first act.

The proposed reform aims to relieve customs authorities that have come under pressure due to the exponential growth of e-commerce and many new product standards, bans, obligations and sanctions that the EU has put in place in recent years.

The proposed reforms include:

- ▶ **A new approach to e-commerce and ordering goods from outside the EU:** Large platforms would be required to submit information about goods to be shipped to the EU within one day of the purchase.
- ▶ **More efficient customs checks and targeted controls:** A new multi-level system of trusted traders aims to ensure that authorities do not lose time checking legitimate businesses but focus on riskier businesses instead. Companies agreeing to go thorough preliminary checks and vetting would benefit from various simplified procedures. The most trustworthy and transparent companies would receive trusted trader status, which would enable them to undergo minimal checks and customs formalities.

- ▶ **New information technology platform:** The new law would establish an EU DataHub as the main platform for submitting information to EU customs authorities, replacing more than 111 systems currently used in the EU.

Members of the European Parliament endorsed the Commission's proposal while amending it to further simplify procedures,⁴ clarifying data processing and accessibility, creating a platform for whistleblowers, making the new EU DataHub available earlier than proposed, facilitating trade and lessening associated burdens, particularly for small and medium-sized enterprises.

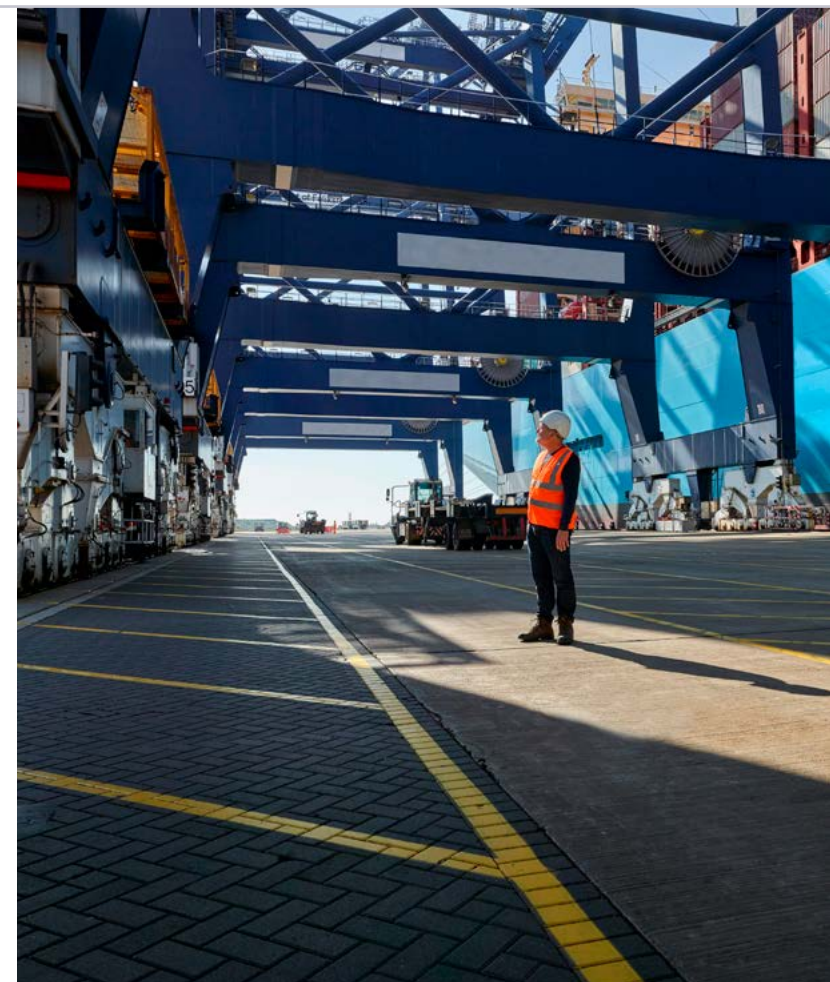
In a plenary session on 13 March 2024, the European Parliament reviewed and voted on the draft report. The Parliament's first reading position was adopted by a large majority, giving the first green light on the proposal to reform the EU Customs Union.⁵

Next steps

Now that the committee has adopted the draft report and the current European Parliament has given the first approval of the proposal, the file on the draft report will be followed up by the new Parliament after the European elections in early June 2024. ■

⁴ See the amended text [here](#).

⁵ "Parliament adopts its position on major reform of EU Customs Code," *European Parliament website*. [Find it here](#)



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India: Bureau of Indian Standards – an emerging compliance for trade



In the global marketplace, the importation of goods plays a pivotal role in meeting the diverse needs and demands of consumers. As one of the world's largest economies, India relies significantly on imports to supplement its domestic production and satisfy consumer preferences. However, with the influx of imported goods comes the crucial responsibility of ensuring their quality, safety and adherence to national standards. This is where the Bureau of Indian Standards (BIS), the central regulatory authority, plays a vital role in safeguarding consumer interests and promoting an increase in the trade of quality assured and BIS-licensed goods in India.

Background

The BIS consists of 25 members representing the Central and State governments. It was established on 1 April 1987 through the Bureau of Indian Standards Act, 1986.¹ There was a requirement to standardize the development and production of goods domestically by ensuring conformity with Indian Standards (IS).

Introduction to BIS

The BIS operates as India's national standards body entrusted to develop, maintain and promote standards for products, processes and services with the aim of enhancing the quality and competitiveness of Indian goods in both domestic and international markets.

Recognizing the dynamic landscape of global trade and the varied nature of goods introduced onto the Indian market, adherence to quality standards is paramount for ensuring consumer safety and promoting competitiveness within India. The BIS thus plays a pivotal role in establishing and enforcing standards across various sectors. In this article, we outline the significance of the BIS and its profound impact on imports into India.

Applicability of BIS regulations to goods introduced to the Indian market:

The BIS regulations are governed by the BIS Act, 2016, and various notifications and Quality Control Orders (QCO) issued by the relevant government ministries such as the Ministry of Steel, the Ministry of Consumer Affairs, Food and Public Distribution, and the Ministry of Electronics and Information Technology.

The process of aligning goods to the technical parameters established under the relevant ISs and obtaining licenses to ensure conformity with various ISs under the BIS regulations, is voluntary. However, certain categories of goods that impact the health and wellbeing of consumers (such as electronics, machinery, chemicals, and steel) are subject to mandatory BIS certification under the

¹ "Origin Of BIS," Bureau of Indian Standards website. [Find it here](#)

provisions of the BIS Act and relevant schemes established therein.

Further, the BIS Act, 2016, read in conjunction with the general provisions for import and export provided under the Foreign Trade Policy 2023 (FTP) states that the compliance rules applicable to goods produced and supplied domestically shall also be applicable to goods imported into India.²

Therefore, mandatory conformity with ISs as per notifications and QCOs issued by the Government for domestically produced goods are also applicable to imported goods.

Sectors impacted

Goods and articles associated with the following key sectors are covered under the mandatory BIS licensing requirement:

- a. **Cement:** sulphate resisting Portland cement, masonry cement, and oil well cement, etc.
- b. **Food and related products:** processed cereal-based complementary foods, milk powder, condensed milk, and plastic and glass feeding bottles, etc.
- c. **Steel and iron products:** indented wire for pre-stressed concrete, stainless steel plate, sheets and strips, tool and die steels, and steels for pneumatic tools, etc.
- d. **Chemicals and fertilizer:** caustic soda, boric acid, acetic acid, polyester spun gray and white yarn, and polyester continuous filament fully drawn yarn, etc.
- e. **Metal and alloys:** copper, nickel powder, and aluminum alloy ingots, etc.
- f. **Electronics and IT:** electronic games, laptops, notebooks, tablets, mobile phones, scanners, power adaptors for IT equipment, and symmetric multiprocessors (SMPS), etc.
- g. **Solar photovoltaics, systems and devices:** crystalline silicon terrestrial photovoltaic (PV) modules, power converters for use in photovoltaic power systems, and storage batteries, etc.

The BIS and the relevant government ministries recognize the complexities involved in obtaining licenses for products manufactured overseas and provide opportunities to ensure the seamless issuance of licenses by leveraging digital technologies, enhancing regulatory transparency, and fostering partnerships with industry associations.

Procedure for obtaining a BIS license:

As an increasing range of goods have an impact on consumers, the BIS has identified goods in the impacted sectors which must mandatorily comply with the ISs issued before being introduced onto the Indian market.

For ease of standardization and issuance of licenses, the BIS has categorized above goods in the impacted sectors into the following schemes:

ISI Mark Scheme: The ISI Mark Scheme (Scheme-I) is governed by the BIS (Conformity Assessment)



² Para 2.03 of FTP.

Regulations, 2018 and applies to 604 products³ categorized thereunder which includes steel and iron products, cement, chemicals, and aluminum and aluminum alloy products, etc. The application should be submitted in the prescribed format to the New Delhi office of the BIS. After inspection of the goods, the BIS grants a license under the ISI Mark scheme enabling the manufacturer to sell the goods bearing the ISI mark within India.

Compulsory Registration Scheme: The Compulsory Registration Scheme (CRS) is governed by Schedule-II of the BIS (Conformity Assessment) Regulations, 2018 and presently 74 electronics and information technology products⁴ are covered under the CRS, which includes laptops, adaptors, video monitors, etc. The notified products are issued a license by the BIS on the basis of an application submitted through its online portal, and inspection and test reports issued by accredited BIS labs. Based on the license issued by the BIS, the manufacturers are allowed to use the CRS mark for the sale of these products in India.

Foreign Manufacturers Certification Scheme (FMCS): The products subject to mandatory licensing requirement under this category when imported into India are required to be accompanied by a license issued by the BIS in terms of the Foreign Manufacturers Certification Scheme (FMCS). As these products are manufactured at a foreign manufacturer's premise, the license may be obtained through appointment of an Authorized Indian Representative (AIR) who is resident in India.

An application should be submitted to the BIS along with information with respect to the manufacturing facilities available at the overseas premises, with an on-site visit to the foreign manufacturer's premises for inspection, and withdrawal of samples for testing to ensure the conformity of the manufactured goods with the IS. The BIS then issues the license to the foreign manufacturer enabling entry of the goods with appropriate standard marks into India.

Penalty for noncompliance

Noncompliant goods are subject to re-export or destruction at the port of import. In addition, the importer may also face fines and penalties of up to 500,000 rupees and imprisonment which may extend up to one year under the terms of the BIS Act, 2016.⁵

Challenges and key takeaways

The quality and safety of goods introduced into the Indian market by way of domestic production or import into India is the foundation of the BIS and its regulations. However, these regulations also pose certain challenges for importers, including compliance costs, procedural complexities, technical barriers and the time involved in obtaining licenses for their products.

To reduce these complexities and time constraints, the following actions may be considered before importing goods into India:

- ▶ Undertake a detailed review of products to identify the applicability of any BIS regulations.
- ▶ If BIS regulations apply, ensure that such products are procured from a BIS-licensed foreign manufacturer.
- ▶ If the foreign manufacturer is not a BIS license holder, inform the foreign supplier or manufacturer about the requirement for obtaining the license and ensure compliance.

Conclusion

In essence, the BIS serves as a cornerstone institution, driving excellence and innovation in global trade while safeguarding the interests of consumers and industry stakeholders. As India continues to integrate into the global economy, adherence to BIS regulations and standards has become increasingly critical for importers seeking to access the Indian market. By upholding the principles of quality, safety, and reliability, the BIS contributes to fostering trust and confidence in Indian products, thereby bolstering the country's position as a destination for international trade. ■

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³ Scheme – I (ISI Mark Scheme) – Bureau of Indian Standards (bis.gov.in).
[Find it here](#)

⁴ Scheme – II (Registration Scheme) – Bureau of Indian Standards (bis.gov.in).
[Find it here](#)

⁵ Section 29 of the BIS Act, 2016.

South Africa: Proposed transfer pricing adjustment rules

The South African Revenue Service (SARS) recently published draft amendments to the rules under sections 40 and 41 of the Customs and Excise Act 91 of 1964 (Customs Act).¹ The amendments are intended to provide certainty for multinational enterprises regarding the impact of transfer pricing adjustments on their customs declarations.

The Customs Act has always required that importers declare post-importation changes to the price paid or payable for goods to SARS. However, no formal processes or rules existed for declaring transfer pricing adjustments. Before the proposed rules, importers commonly made these declarations to SARS based on a practice established over the last few years.

According to SARS, these rules are being introduced to make it simpler and easier for taxpayers to comply with their obligations voluntarily. It adds that the rules are intended to promote taxpayer compliance in unambiguous terms.

The draft amendment introduces rules related to:

1. The effect of transfer pricing on customs value
2. The administrative process for adjusting bills of entry
3. The documents and information required by SARS

Draft customs rules

The draft amendments include the insertion of two new rules: rule 40.03, which governs the adjustment of bills of entry affected by transfer pricing adjustments, and rule 41A.01, which outlines the submission requirements for notifying SARS of such adjustments.

At a high level, the proposed rules provide that importers must disclose transfer pricing adjustments, whether upward or downward, to SARS within one month. The disclosure must include a spreadsheet indicating the value of the adjustment, the affected bills of entry, and the changes in VAT and duty. The rule essentially allows importers to adjust the customs value of their imports in bulk. This rule removes the need to pass vouchers of correction for each affected bill of entry individually.

In addition to submitting the calculation mentioned above, the draft rule requires that various other documents be provided to SARS within one month. This includes purchase and sale agreements, distribution agreements, royalty and license fee agreements, signed annual financial statements, transfer pricing policies, and a summary of VAT returns for the adjustment period.

¹ "Draft amendments to the rules under sections 40(3)(a)(i)(C) and 41(4)(b) and 120," South Africa Revenue Service website. [Find it here](#)



The rule further requires that importers who have submitted the notification described above comply with any further instructions from SARS. Importers are required to comply with such instructions concerning further information to be supplied, the payment of VAT and duties, and steps to be followed to claim a refund.

VAT binding general ruling

In addition to publishing draft rules in terms of the Customs Act, SARS has also published a binding general ruling (BGR) in terms of the Value-Added Tax Act 89 of 1991.² BGR 66³ deals with the documentation required to substantiate an input tax deduction where an upward pricing adjustment with respect to goods previously imported has occurred.

The ruling provides that an importer is no longer required to be in possession of a voucher of correction for each affected bill of entry to claim the additional input VAT. The BGR states that the importer must have documents, including the adjustment invoice from its supplier, a letter disclosing the adjustment to SARS, a permission letter to make the adjustment, form CEB 01 (Customs and Excise Billing Declaration) and proof of payment of the additional import VAT.

Impact of the recent development

The publication of the draft rules and BGR shows SARS' intention to formalize the industry practice that has developed in relation to transfer pricing adjustments. It is further indicative of the revenue authority's focus on transfer pricing adjustments and customs valuation generally over the last few years.

Once made effective, the rules should aid multinational enterprises and their local affiliates in understanding their obligations regarding customs and transfer pricing adjustments.

The rules, if promulgated in the current form, require importers to submit substantial documents and information to SARS. The documents required by SARS appear to go far beyond those directly related to the impact of transfer pricing adjustments on customs valuation. The requirement to submit documents such as purchase and sale agreements, distribution agreements, and royalty and license fee agreements gives the impression that SARS will consider the importer's customs valuation more broadly.

Implications for businesses

The rule amendments are significant for multinational enterprises operating in South Africa. The rules introduce specific procedures and requirements related to transfer pricing adjustments and their impacts on customs valuation. The draft rules require detailed documentation and proactive communication with SARS to disclose and validate transfer pricing adjustments' impact on customs value, duties and VAT.

When submitting transfer pricing disclosures, importers should ensure their customs valuation affairs are generally in order. This is especially true when importers pay royalties, licenses or other fees in addition to the price of imported goods.

While the draft rules are not currently in force, the Customs Act still requires importers to declare transfer pricing adjustments to SARS as and when they occur. This is also true for adjustments that may have happened in the past but were not declared at the time. ■

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² "Binding General Ruling (VAT) 68," *South Africa Revenue Service website*.
[Find it here](#)

³ "Binding General Ruling (VAT) 66," *South Africa Revenue Service website*.
[Find it here](#)

Türkiye: Impact of removal of right to deduct import VAT

On 24 November 2023, Presidential Decree no. 7846 in the Official Gazette no. 32379 was published relating to the removal of right to deduct the value-added tax (VAT) calculated on imports due to certain trade policy measures. The Presidential Decree has entered into force as of the publication date, and its provisions are being implemented by the Ministry of Treasury and Finance.

In this article, we provide a brief overview to explain the scope of nondeductible VAT related to imports, details of the calculation, and the impact of this measure on businesses.

Scope and type of measures covered

As specified in Article 29-1(b) of the Value Added Tax Law No. 3065, taxpayers are entitled to deduct the VAT paid for imported goods and services related to their activities, from the VAT calculated on taxable transactions they carry out, unless otherwise stipulated in this law.

Presidential Decree no. 7846 provides that:

- ▶ Further to the relevant regulations regarding the implementation of surveillance on imports (discussed below), the right to deduct VAT has been abolished for any taxes, duties, and fees incurred due to amounts declared in customs declarations for goods subject to surveillance, which are declared but cannot be substantiated, and which are included in the VAT base.
- ▶ Further to the relevant regulations on the application of protective measures for imports, the right to deduct VAT has been abolished for any taxes, duties, and fees incurred due to protective measures applied as customs duties and/or additional financial obligations, as well as anti-dumping and countervailing

duties applied within the scope of relevant legislation to prevent unfair competition in imports, and for any taxes, duties, and fees incurred due to these amounts that are included in the VAT base.

Surveillance mechanism

“Surveillance on imports” is a protective trade policy specific to Turkish Customs Legislation whereby a “surveillance certificate” is required during the importation of certain goods.

Under the Decree on the Application of Surveillance on Imports, published in the Official Gazette of Turkey no. 25476 on 29 May 2004, for goods falling within the scope of the surveillance mechanism, the progress of these importations is closely monitored to consider developments, import conditions, and their impact on domestic producers.

The surveillance mechanism is divided into three categories:

1. Unit value-based surveillance

Products to be imported into Türkiye with a value below a certain threshold cannot be imported without a surveillance certificate. In practice, importers that do not want to wait to obtain a certificate may act contrary to the rules, by artificially increasing the value of the goods being imported, up to the point where the threshold is exceeded, and the certificate is not required. However, this additional “fictive” value that has been added to the goods also affects the tax base for VAT purposes (thus increasing the VAT payable at importation). Following this legislative amendment, the VAT arising from the increased value due to surveillance cannot be deducted.

As the most common type of surveillance, the unit value-based surveillance covers a wide range of products and industries, e.g., iron steel, electric machinery, and plastics.

2. Surveillance through certificate of registration

In this practice, a certificate of registration is required to track the import of the goods. If there is a difference between the determined unit reference value and the actual unit value of the goods, the unit value difference must be added to the customs value, according to the assessment made.

This type of surveillance mainly covers the textile industry.

3. Surveillance regardless of customs value

In this case, a surveillance certificate is required for an import without taking into account the customs value of the goods. It mainly applies to certain measuring devices used in the oil industry.

Protective measures

If the increased quantity and conditions of importing a product has a negative impact or poses a threat to domestic producers in Türkiye, protective measures taking the form of an “additional financial liability” may be taken to eliminate this situation.

The relevant protective measures (additional financial obligations) and the relevant product groups are listed below.

- ▶ Polyethylene terephthalate chips
- ▶ Toothbrushes
- ▶ Wallpaper and similar wall coverings
- ▶ Polyester fiber
- ▶ Flat glass
- ▶ Grinding ball
- ▶ Yarns made of nylon or other polyamides

Anti-dumping duties

Selling an exported product for a lower price in the country of exportation than its normal value (i.e., the domestic selling price in the exporter’s country or origin country) is referred to as “dumping.” Under international agreements, where this practice is suspected, an investigation may be initiated, and if dumping is determined to have taken place as a result of the investigation, protective measures can be taken in the country of import.

A number of anti-dumping regulations are in place in the Turkish customs legislation. These measures cover a broad scope of product ranges, such as iron and steel, glass, plastics, automotive parts, textiles, chemicals, etc.

Calculating the deductible VAT – details and sample VAT calculations

The recently promulgated Decree no. 7846 has abolished the right to deduct the VAT arising due to the trade policy measures specified above, related to the importation of products into Türkiye. This is because the tax base for calculating import VAT includes, among other things, both the anti-dumping duties and any additional financial liabilities levied as a protective measure as well as the artificial customs value added onto the goods for companies to eliminate the requirement to obtain a surveillance certificate.



Sample calculations

The following sample calculations illustrate the impact of this new regulation in practice.

Example 1: import pulleys from the European Union (EU)

Goods classified under CN 8483.50.20 (pulleys) are imported with an A.TR Movement Certificate¹ and originate in the EU and are thus subject to VAT only on importation into Türkiye. In this practical example, it can be seen that almost 40% of the total VAT declared is now nondeductible because of the surveillance mechanism.

Pulleys (8483.50.20)	USD value	Description
CIF value of goods	\$14,000	
Gross weight (kilograms)	1.500	
Threshold value for avoiding surveillance certificate requirement	\$24,000	Gross weight * surveillance value per kilogram
Artificial value declared to avoid surveillance certificate	\$10,000	Difference between threshold surveillance value and actual customs value
Final customs value	\$24,000	Actual value + artificial surveillance value
Deductible VAT	\$2,800	Actual value * 20% VAT rate
Non-deductible VAT	\$2,000	Actual surveillance value * 20% VAT rate
Total VAT	\$4,800	

¹ An A.TR Movement Certificate is a document that certifies that goods are in free circulation and can benefit from preferential regime under Customs Union. It is not for proof of origin.

Example 2: import TV receiver from China

Goods classified under CN 8528.71.19 (TV receivers) are imported from China to Türkiye.

These products are also covered by a surveillance requirement. However, in addition to this, the goods are also subject to the TRT Banderole Fee² and excise duty, for which the tax base, similarly to VAT, includes anti-dumping duties, additional

financial liabilities applied as a protective measure and the artificial customs value added onto the goods for surveillance, which makes it more complex to calculate the nondeductible VAT as part of the new regulation.

TV receiver (8528.71.19)	USD value	Description
CIF value	\$15,000	
Quantity (pieces)	500	
Threshold value for avoiding surveillance certificate requirement	\$20,000	Quantity * Surveillance Value per piece (40 USD * 500 Pieces)
Artificial value declared to avoid surveillance certificate	\$5,000	Difference between threshold surveillance value and actual customs value
Final customs value	\$20,000	Actual value + artificial surveillance value
Inbound expenses in Türkiye (without VAT)	\$350	
Customs value rate (14%)	\$2,800	Customs value * customs duty rate of 14%
TRT Banderole rate (12%)	\$2,778	(Customs value + customs duty amount + inbound expenses) * TRT Banderole rate of 12%
Excise rate (6.7%)	\$1,737.18	(Customs value + customs duty amount + inbound expenses + TRT Banderole fee) * excise rate of 6.7%
VAT base	\$27,665.18	Customs value + customs duty amount + inbound expenses + TRT Banderole + excise duty

TV receiver (8528.71.19)	USD value	Description
Total VAT declared	\$5,533.04	(Customs Value + customs duty amount + inbound expenses + TRT Banderole + excise duty) * VAT Rate of 20%
Customs duty amount for surveillance value (14%)	\$700	Surveillance value * customs duty rate of 14%
TRT Banderole amount for surveillance value (12%)	\$684	(Surveillance value+ customs duty amount) * TRT Banderole rate of 12%
Excise amount for surveillance value (6.7%)	\$427.73	(Surveillance value + customs duty amount + TRT Banderole fee) * excise rate of 6.7%
VAT base for surveillance value	\$6,811.73	Surveillance value + customs duty amount + TRT Banderole fee + excise duty
VAT amount for surveillance value (non-deductible)	\$1,362.35	(Surveillance value + customs duty amount + TRT Banderole fee + excise duty) * VAT rate of 20%
Total VAT declared	\$5,533.04	(Customs value + customs duty amount + inbound expenses + TRT Banderole + excise duty) * VAT rate of 20%
Non-deductible VAT	\$1,362.35	VAT declared due to surveillance
Deductible VAT	\$4,170.69	Difference between total VAT and non-deductible VAT

2 TRT Banderole Fee is a tax in Türkiye that applies to imports or domestic delivery of products such as televisions, radios, computers, passenger vehicles, etc., provided that these products can receive radio signals.

Exemptions to the regime

It should also be noted that with the transitional provision inserted in the Decree no. 7846, this regulation on non-deduction of VAT declared over trade policy measures will not apply for products which are imported on or before 1 April 2024 (inclusive) if it can be proven with a bank transfer document that payment for the goods was made abroad before 24 November 2023.

Retrospective declarations to customs administration

One key aspect to note is related to post-entry price adjustments. For goods that are subject to the above trade policy measures and for which the restriction on non-deduction of VAT applies, any price differences arising from retrospective declarations submitted to the customs administration (such as due to transfer pricing adjustments), will also be covered by the restriction.

Actions for businesses

This new regulation will potentially increase costs as well as increase the compliance reporting requirements for Turkish importers. It is recommended that:

- ▶ Because of the wide range of products covered by the surveillance mechanism and anti-dumping duties, importers into Türkiye should identify which of their goods are covered by these trade policy measures and what the likely impact may be.
- ▶ The trade policy measures covered by the Decree should be closely monitored and customs declarations should be carefully submitted when calculating surveillance values or declaring anti-dumping duties or additional financial liabilities; this is especially important as the surveillance and anti-dumping regulations are often dynamic and subject to change at short notice.
- ▶ Since VAT returns are filed monthly in Türkiye, companies should keep a systematic record of the data for their import transactions and be able to calculate the nondeductible VAT for each individual customs declaration. Data analytics tools may be particularly useful in calculating the nondeductible import VAT for each importation and to identify which imported products bear the highest cost as a result of the restrictions.
- ▶ Close attention should be paid to the possible impact of this regulation when submitting retrospective declarations to the customs administration in order not to miscalculate the nondeductible VAT and thus avoid the risk of penalties.

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CBAM: EU update on the Carbon Border Adjustment Mechanism

The EU Carbon Border Adjustment Mechanism (CBAM) is now in force. The CBAM currently applies to a wide range of imported products in the categories of cement, iron and steel, aluminum, fertilizers, electricity and hydrogen. In total, it currently covers the importation of goods covered in 749 tariff lines of the EU's Combined Nomenclature (the customs tariff).

CBAM and EU-ETS

The EU CBAM was introduced to establish a fair price for greenhouse gas (GHG) emissions emitted during the manufacture of certain carbon-intensive goods entering the EU. The logic behind the mechanism is to achieve a competitive level playing field in terms of carbon pricing for these goods, as manufacturers established in the EU have to pay for GHG emissions through the purchase of carbon certificates under the EU Emissions Trading System (EU-ETS).

The EU-ETS and EU CBAM systems are not fully congruent, but they aim for similar treatment. This factor will likely serve the European Commission as a key argument in expected discussions about the nature and legality of the measure at the level of the World Trade Organization (WTO).

Preparing for the first CBAM declaration

CBAM came into effect on 1 October 2023. A transitional period applies for the period from October 2023 until the end of 2025.

In December 2023, the European Commission unveiled default values for determining embedded emissions in imported goods, which can be used by the CBAM declarants in the transitional period, if the so-called “actual embedded emissions” information is not yet available.

The first CBAM report was due on 31 January 2024. Notably, during the transitional period, the emission standard values may only be used for the first three reports, i.e., until the submission of the report for the second quarter of 2024 at the end of July 2024. From then, according to the current law, the importers of CBAM goods must have the actual embedded emission information available starting with the CBAM declaration due on 31 October accounting for imports of CBAM products into the EU from 1 July to 30 September 2024.

Many importers are finding it a challenge to acquire, administer and efficiently report the required data.

The CBAM report in its full data set requires 225 data elements, and the number of sub-data sets multiplies with the number of different types of CBAM goods as well as the origin and manufacturing installation where the goods have been last produced.

In the first reporting cycle, most CBAM declarants have actually reported a minimum data set, i.e., the data elements that the CBAM reporting portal (the CBAM transitional registry), validated as a submission-ready report. As soon as all the missing data elements are available (e.g., about the manufacturing installation and the operators of the installations that produce the goods, the details about the production route of the goods), the number of data elements to be entered into the CBAM transitional registry will significantly increase and, therefore, so too will the administrative efforts connected to the process. In many cases, the challenge facing importers will be data availability, data quality and the sheer volume of information.

Technical challenges in registering as a CBAM declarant

In the first CBAM reporting cycle, one challenge facing declarants was that it appeared that the competent authorities were not ready on time. In many EU Member States, the possibility to register and gain access to the CBAM reporting portal was only possible during January 2024 (the month when the report was due). It also seemed that the CBAM reporting declarants (i.e., the individuals acting on their behalf) first need to apply for specific national certificates authenticating the operator and individual preparing and submitting the CBAM reports, which is an extra process that requires some time. Therefore, the European Commission and some national CBAM authorities acknowledged the situation was challenging and they communicated

that, depending on the EU Member State involved, the CBAM reporting declarants may request in the CBAM transitional registry up to a 30-day extension to submit their CBAM reports due to technical reasons or, more generously, in some cases, a late submission of the first report will not cause penalties.

When the data was entered into the CBAM report templates, in many cases it showed that the build of the CBAM transitional registry needed more user acceptance testing and system stability before release to the public. A number of error messages and unexpected system behavior caused frustration among users. The European Commission has been working hard to remediate these issues. It can be expected that the submission of subsequent CBAM reports should run more smoothly from a systems perspective.

Identifying the right entity for CBAM obligations

Another challenge for many operators was to identify which legal entities actually need to report the import of goods subject to CBAM. The identification of the relevant entities is best made based on customs import data; however, for most enterprises this information is not available completely and in good quality for all entities. The use of data from an enterprise's own systems (such as ERP systems) often has its limitations, too, given incompleteness or data quality issues (e.g., about the customs classification, origin and weight of goods).

Identifying the best quality sources of data on a product or product group-level basis can differ between data sources and can be a mixture of elements, including data from customs, ERP and suppliers. If data in the submitted CBAM reports has not been reported completely or accurately, declarants must provide corrections or supplementary declarations.

Preparing for future reporting

Now the focus of many CBAM declarants is to increase efficiency for future reporting. While filling in data manually was a reasonable option for the first report to learn about the process, declarants may now want to explore the option to create the CBAM data in a structured data file to upload to the CBAM transitional registry. This is especially the case for economic operators that have to declare a large number of items in the CBAM report. Many operators are considering a centralization of the CBAM reporting process for multiple entities across the EU using a dedicated person in the enterprise. Others are looking to outsource the administrative effort and these tasks to external service providers, such as EY member firms, to prepare and submit their CBAM reports.

Engaging with suppliers

At the same time, importers must contact their suppliers of CBAM goods to request details about the actual embedded emissions and the details of the operator and manufacturing installation. Practice suggests that efforts to engage with suppliers (e.g., by way of detailed explanations or instructions to suppliers, webinars, workshops) can help increase the response rate and quality of the emissions data needed to fill in the complex emissions communication template provided by the European Commission. Adjusting contracts with suppliers to consider CBAM requirements is also on the task list for many enterprises.

Still, the manufacturers and processors of CBAM goods outside the EU must determine the emissions information by themselves. This can be a complex undertaking, depending on the complexity of the local processes; sources of electricity, energy products, heat and cooling; and precursor materials. In many cases, specialist know-how from external resources is needed to conduct the emissions determination. The initial determination is likely to be the hardest part. But updating this data will need to be a continuous process for operators to supply their European customers with the data they require.

The real impact of CBAM is likely to be felt as non-EU manufacturers of CBAM goods learn about their emissions and become aware about the competitive impact of emissions when CBAM certificates have to be purchased from 2026 for imports into the EU. At that point, it seems likely that the question of

decarbonization strategy and the technical rules of acceptance of green energies will gain importance to plan improvements. The EU importers and the non-EU manufacturers will need to consider the strategic impact of carbon pricing for their future global manufacturing, procurement and supply chain planning to optimize their future cost burden to remain competitive. Also, CBAMs are spreading globally – the UK and Australia have both announced legislative action in this area. In fact, the whole topic of general carbon pricing by way of carbon taxes and emissions trading systems is very dynamic globally, with numerous countries planning to implement these types of measures, which need to be factored in to supply chain planning even if these carbon measures typically start at fairly low rates.

Next steps

With the initial CBAM reports filed, often in a firefighting mode, various issues now need to be considered to improve the process going forward. They include defining internal roles and responsibilities, budgetary questions, data improvement and process efficiency, consideration of centralized vs. decentralized report preparation, use of internal and external data resources for collection, and the preparation and plausibility of data. Given the complexity and multidisciplinary nature of CBAM, it is important to formalize governance structures, especially in larger enterprises, including establishing operating procedures, documentation of roles and responsibilities, process documentation and the like.

These measures can not only improve and streamline the processes, but they can also help to demonstrate a sufficient level of due diligence and reasonable care to provide arguments to better manage any eventual assessment of penalties by the national CBAM authorities if CBAM reports have been filed late, incomplete or are partly incorrect. ■



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CBAM: UK Government announces Carbon Border Adjustment Mechanism

On 18 December 2023, in its response to the consultation on policy measures to address the risks of carbon leakage, the UK government announced¹ that a UK Carbon Border Adjustment Mechanism (CBAM) will be implemented by 2027.²

Between March and June 2023, the UK government consulted on the adoption of policies to address carbon leakage risk to support decarbonization. The government sought views on the nature and extent of the risk of carbon leakage to UK industry and the potential design and implications of policies to address such risks.

In announcing a UK CBAM by 2027, the UK government has indicated that additional consultation will take place on the design and mechanics of the UK CBAM in 2024, but the following key details have been released about how the mechanism will be constructed:

¹ "UK Government announces adoption of Carbon Border Adjustment Mechanism (UK CBAM)," *EY website*. [Find it here](#)

² Further background is available in our article 'UK: CBAM developments,' *TradeWatch* Issue 2 2023, page 41. [Find it here](#)



Functioning of the UK CBAM

As with the equivalent EU CBAM (which is already in force), the UK CBAM will apply a tariff on imports of emission-intensive products, based on the embedded emissions of these imports. The UK CBAM will be a customs-orientated regime, with liability placed on the importer of record for products in scope.³

One key area where the UK CBAM will seemingly diverge from the EU CBAM is the use of emission certificates. While under the EU CBAM, reporters are required to purchase and surrender CBAM certificates, the UK government appears to have ruled this out for the UK regime.

Timing

The UK government has committed to implementing the UK CBAM “by 2027.” No further detail has been provided at this stage regarding any potential transitional periods or a phased introduction of the regime. The EU CBAM is currently in a transition phase until 1 January 2026 when it becomes fully operational.

Sector scope

The envisioned scope of the UK CBAM also diverges from its EU equivalent. While both CBAMs will cover iron and steel, aluminum, cement, hydrogen, and fertilizers, the UK CBAM will also include ceramics and glass. Notably, the UK CBAM is not expected to cover electricity. The exact goods covered under these sectors will remain unclear until a full list of products is published; however, we understand that the UK will aim for “comparative coverage” with the UK Emissions Trading Scheme (UK ETS).

Emissions scope

The UK CBAM will be applied to Scope 1⁴, Scope 2⁵ and select precursor product emissions in imported products. As with the EU CBAM, Scope 3 emissions⁶ will not be initially included in the UK CBAM.

Carbon prices paid outside the UK

In line with the EU CBAM, explicit carbon prices paid in other jurisdictions will be considered when calculating the price to be paid under the UK CBAM. However, as with the EU CBAM, it is not yet known which explicit carbon prices will be accepted under this mechanism.

Coordination with UK ETS

The application of the UK CBAM will be linked with the UK ETS. The UK ETS Authority is also seeking views on how to improve the UK ETS. One of these consultations focuses on free allocations under the UK ETS, which will have a direct impact on the cost impacts of the UK CBAM. It is expected that, as with the EU CBAM, the introduction of financial impacts under the UK CBAM will likely be aligned with the availability of free allowances under the UK ETS.

Next steps for businesses

While details of the UK CBAM have not been finalized and will be consulted on in 2024, businesses can take steps now to start their preparations, including engaging with the UK government and responding to the forthcoming consultations. ■

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³ See our ‘EU: Update on the Carbon Border Adjustment Mechanism’, article on page 59 of this issue. [Find it here](#)

⁴ Scope 1 emissions relate to direct activities owned or controlled by an organisation.

⁵ Scope 2 emissions relate to an organisation's consumption of purchased electricity, heat, steam and cooling.

⁶ Scope 3 relates to other emissions released as a consequence of an organisation's actions that occur at sources not owned or controlled by the organisation.

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Germany: Update on excise tax legislative developments related to packaging and meat products

Sustainability-related goals and budgetary constraints are driving two key developments with respect to local excise taxation in Germany: the planned introduction of a general federal plastic packaging tax and a possible tax on meat and meat products.¹

An overview about taxation of packaging in Germany

The following measures related to packaging are required when placing goods on the market in Germany, including the importation and intra-EU acquisition of packaging and local manufacture.



German Packaging Act

For many years, measures in Germany related to Extended Producer Responsibility (EPR) that relate to the European Packaging Directive have been implemented in the German Packaging Act (Verpackungsgesetz).

However, it seems that some enterprises have overlooked the latest legislative developments that require a broader scope of packaging to be registered with the competent body (Zentrale Stelle Verpackungsregister). This obligation now applies to all types of materials, all production and all sales levels. Given the increased attention on this topic, the waste authorities are ramping up their capacity to audit and investigate possible breaches of the regulations more intensively. Where there is noncompliance with the registration and reporting requirements, the authorities are increasingly active in issuing significant monetary fines and applying sanctions up to the prohibition of distribution of products due to compliance shortcomings.

German single-use plastics levy

In addition, effective 1 January 2024, Germany has implemented a new single-use plastics levy (EWK FondG), another measure in context of the EPR regulations. This levy aims to reduce plastic waste and encourage better use of resources, in line with circular-economy goals, specifically the aim that the pollution of community spaces should be minimized. The levy affects German producers of single-use plastic items by making them financially responsible for waste management, recycling, cleaning of public areas and consumer education. Businesses that place these products on the German market, including acquiring

¹ "Germany's early-stage legislative process commences for tax on meat products," EY website, 7 February 2024. [Find it here](#)

products via import or intra-EU acquisition, as well as e-commerce sellers, are subject to the measure. For businesses not established in Germany, a German representative must handle remitting the levy, in specific cases. The generated revenues will contribute to a new fund managed by the Federal Environmental Agency, supporting waste management and public awareness efforts.

The levy covers, among other items, food containers, packets, wrappers, beverage containers, cups, plastic bags, wet wipes, balloons (excluding those for industrial use) and tobacco products with filters. From 2027, it will also include fireworks containing plastic parts. The levy amounts, to be determined by a supplementary legal act, are planned to vary significantly based on the product type, with charges ranging from EUR0.06 to EUR8,945 per kilogram.

Local packaging tax in Tübingen

Furthermore, there is a local packaging tax in the city of Tübingen that has applied since 1 January 2022. The tax focuses on diverse types of packaging for drinks and food for immediate consumption in the widest sense, which also includes, for example, cutlery. The legitimacy of the tax is currently being considered at the constitutional court. If it passes successfully, many other cities and communities may also implement local taxes, and a number of cities and communities have already prepared similar legislative drafts.

Federal Plastic Packaging Tax

The German federal government has announced the implementation of a general Federal Plastic Packaging Tax. Currently there is no official legislative draft for the tax. However, the tax should be implemented as of 1 January 2025. It is possible that the technicalities and experiences gained from the plastic packaging taxes in the UK and Spain may influence the legislative process. In any case, aside from local production (making plastic packaging available to the market), it is likely that the intra-EU acquisition and importation of plastic packaging and packaged products will be covered by the tax.

Businesses should closely follow the legislative developments related to the Federal Plastic Packaging Tax, since the time for implementation will be rather short if the current 1 January 2025 deadline remains in place. Either way, businesses should consider the lessons learned from the implementation of

plastic packaging taxes in other jurisdictions, which means they should already kick off preparations for compliance, especially in relation to the availability and quality of their packaging-related data.

Excise tax on meat and meat products

German politicians are discussing the possible introduction of an excise tax on certain animal products, also known as an “animal welfare cent.” The revenue is planned to fund, among other things, incentives to farmers to support the restructuring of agricultural livestock farming. Based on recommendations and expert opinions, a non-harmonized excise tax is proposed, similar to the German coffee tax, to generate tax revenue for agricultural and food policy projects.

The drafting of a legislative proposal is now in process at the ministerial level. Generally, the excise tax may cover meat, meat products and edible offal as well as processed products containing a specified proportion of these animal products. Initially, the focus may be on pork meat, with a phased approach to cover other sources of meat (from different animals) in later stages.

The tax rate may have a quantity-based structure (i.e., euros per kilogram). There have also been discussions about differentiation of taxation depending on the quality level of meat product (i.e., whether it is of organic or conventional production). The level of the tax rate would be freely scalable and would be decided politically.

Currently there is no official plan as to when such a tax may be introduced, but, if the measure is approved at the political level, it could be implemented fairly quickly, given budgetary reasons. ■

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Thailand: Incentives for production of battery-powered electric vehicles

In early 2022, the Ministry of Finance (MOF) and the Excise Department announced rules, conditions and procedures outlined in the BEV 3.0 policy, which grants subsidies and duty and excise-tax incentives in Thailand from 2022 to 2025. Under this policy, businesses that imported battery-powered electric vehicles (BEVs) between 2022 and 2023 were eligible for these incentives if they committed to commencing BEV assembly in Thailand by 2024 or 2025. The key objective of this policy was to promote the development of the BEV manufacturing sector in Thailand and to assist in Thailand moving toward a carbon-neutral economy by 2050. In 2023, the Thai government announced changes to this policy, discussed below.

Subsequently, a new BEV 3.5 policy aims to further position Thailand as a production hub for BEVs in line with the Thai government's 30@30 plan (which aims for BEV production volumes to constitute 30% of annual vehicle production by 2030) and to encourage the adoption of zero-emission vehicles. The Thai Cabinet has approved the BEV 3.5 policy from 2024 to 2027.

Changes to the BEV 3.0 regime¹

In 2023, Thailand announced additional production process criteria to attract investment from new and existing automobile companies to develop BEV production in Thailand, where such production is undertaken within Thai Customs-approved Free Zones or designated Industrial Estate Authority of Thailand Free Zone areas. Battery localization criteria have been revised to add the option of battery pack assembly from cells.

¹ "Thailand announces additional criteria for battery powered electric vehicles produced in Free Zones," *EY website*, 12 February 2024. [Find it here](#)



In keeping with the Thai government's ongoing push to develop the BEV manufacturing sector in Thailand, the Office of Industrial Economics (OIE) has announced additional Essential Production Process (EPP) criteria aimed at facilitating the gradual transition of the existing vehicle manufacturers in the Customs Free Zone (CFZ) or an Industrial Estate Authority of Thailand-Free Zone (IEAT-FZ) for the domestic market.

The Notification of the MOF dated 28 December 2021 in relation to duty reduction and exemption under Section 12 of the Customs Tariff Decree 1987 states that goods produced within a Free Zone using imported raw materials and parts that are subsequently sold or consumed domestically are eligible for duty reduction or exemption, provided the following two tests are met:

1. Local content threshold: Goods produced must meet a minimum 40% local or ASEAN content threshold.
2. Process test: The production process undertaken in the CFZ or IEAT-FZ to produce the goods must meet the prescribed EPP criteria, as determined by the OIE.

Under the latest OIE Notification regarding the EPP criteria for vehicle manufacturers, the EPP criteria for batteries (under Category #30) have been revised. Moreover, two new EPP criteria (under Categories #35 and #36) have been introduced. Details of the revised and new EPP criteria are summarized below. They came into effect on 28 December 2023.

Category #30 for batteries (revised)

Original EPP criteria	Revised EPP criteria
Before 1 January 2025 ▶ Battery pack assembly ▶ Quality check After 1 January 2025 ▶ Module production ▶ Battery pack assembly ▶ Quality check	Before 1 January 2025 ▶ Battery pack assembly ▶ Quality check After 1 January 2025 Option 1 ▶ Module production ▶ Battery pack assembly ▶ Quality check Option 2 ▶ Battery pack assembled from cell ▶ Quality check
▶ Module production involves assembling battery cells by connecting them with cutouts and a management system. ▶ Battery pack assembly is the complete assembly of battery modules, along with other component parts, for further integration into a vehicle. ▶ Quality check involves assessing the usability features and safety of the battery packs.	▶ Module production involves assembling battery cells by connecting them with cutouts and a management system. ▶ Battery pack assembly is the complete assembly of battery modules, along with other component parts, for further integration into a vehicle. ▶ Quality check involves assessing the usability features and safety of the battery packs. ▶ Battery pack assembled from cell involves assembling battery cells by connecting them with cutouts and other component parts to create a complete battery pack that can be further integrated into a vehicle.

For BEV companies in the CFZ or IEAT-FZ that have signed up for the BEV 3.0 incentive program and have used the existing concessional local content calculation treatment on imported battery cells, local battery production must meet either Option 1 or Option 2 starting from 28 December 2023.

Category #35 for Internal Combustion Engines (ICEs) Hybrid Electric Vehicles (HEVs), Plug-in Hybrid Electric Vehicles (PHEVs) and BEVs (new)

Production volume	EPP criteria	
If ≤ 4,500 units per year	For ICEs and HEVs ▶ Body production ▶ Body painting ▶ Assembly ▶ Quality check	and/or ▶ For PHEVs and BEVs ▶ Battery production ▶ Assembly ▶ Quality check
If > 4,500 units per year	1. For 1-4,500 units, the EPP criteria are as follows: 1.1 For PHEVs and BEVs – battery production of at least 2,250 units year 1.2 Body production and painting for ICEs, HEVs, PHEVs and BEVs 1.3 Assembly 1.4 Quality check Only the EPPs outlined in Items 1.1 and 1.2 should be considered collectively. For example, if there are EPPs as outlined in Item 1.1, there should also be EPPs as outlined in Item 1.2 for the remaining units. This ensures the total quantity is at least 4,500 units per year. 2. For 4,501 units and beyond, the EPP criteria are as follows: 2.1 Assembly 2.2 Quality check Within the first year of production, manufacturers must produce BEV passenger cars. Starting from the second year, the production of BEV passenger cars must not be fewer than 500 units per year. The production of BEV passenger cars must undergo EPPs, especially assembly and quality checks.	Remarks: ▶ Body production involves the assembly of a body using unpainted body parts through methods such as welding. ▶ Body painting involves coloring the assembled body to prevent rusting or for decorative purposes, using methods such as electroplating and spraying. ▶ Assembly involves the process of assembling automotive parts onto the painted body, including the installation of the power unit (e.g., engine), power train system and wiring harness. ▶ Quality check refers to the final inspection of the vehicle's quality, which includes examining the safety devices and engine system. ▶ Battery production must undergo the essential production processes as outlined in Category 30 of the OIE's Notification.

Category #36 for BEVs produced from vehicle structures specifically designed for BEVs (new)

Production volume	EPP criteria	
If ≤ 10,000 units over a five-year period	▶ Vehicle structure production ▶ Body painting ▶ Assembly	▶ Battery pack assembly (at a minimum) ▶ Quality check
If > 10,000 units over a five-year period	For 1-10,000 units: ▶ Vehicle structure production ▶ Body painting ▶ Assembly ▶ Battery pack assembly (at a minimum) ▶ Quality check The EPPs must be conducted every year for the first five years of production. For 10,001 units and beyond: ▶ Assembly ▶ Quality check	Remarks: ▶ Vehicle structure production involves the manufacturing of an unpainted main vehicle structure through welding or fixing, excluding the attachment of additional automotive parts such as bumpers and headlights, which are subsequently assembled onto the body. ▶ The vehicle structure designed specifically for BEVs must differ significantly from the structure of other vehicle types. It can only be manufactured for BEVs and cannot be produced for other types of vehicles. ▶ Body painting involves coloring the assembled body to prevent rusting or for decorative purposes, using methods such as electroplating and spraying. ▶ Assembly involves the process of assembling automotive parts onto the painted body, including the installation of the power unit, power train system and wiring harness. ▶ Battery pack assembly is the complete assembly of the battery modules, along with other component parts, for further integration into a vehicle. ▶ Quality check refers to the final inspection of the vehicle's quality, which includes examining the safety devices and engine system.

The BEV 3.5 regime²

On 28 December 2023, the Excise Department unveiled rules, conditions and procedures outlined in the Thai government's BEV 3.5 policy, which will enable BEV importers and/or local BEV manufacturers to take advantage of a new set of subsidies and excise-tax reduction incentives for BEV passenger vehicles, pick-up trucks and motorcycles, whether imported or locally assembled. The BEV 3.5 policy aims to encourage the development and use of BEVs in Thailand from 2024 to 2027. Likewise, the MOF concurrently introduced a duty privilege policy and specified requirements for BEV imports from 2024 to 2025 under the updated policy.

The BEV 3.5 incentive policy represents the Thai government's continuing push to drive development and transition toward zero-emission vehicles and to promote Thailand as the BEV production hub for the ASEAN region. It offers a business operator subsidy. Reduced duty and excise-tax treatment on BEV imports during 2024 and 2025 is available, provided the operator commits to commencing local assembly of BEVs by 2026 or 2027. This policy is limited to BEV passenger vehicles, pick-ups and motorcycles.

² "Thailand: Subsidies, duties, excise-tax incentives to encourage development and use of battery electric vehicles," *EY Tax Alert*, 7 February 2024. [Find it here](#)



Key details of the BEV 3.5 policy, effective from 1 January 2024, are as follows:

a. For both imported and locally assembled passenger BEVs				
BEV type	Passenger BEVs			
Retail price and battery kWh	≤2m Thai bhat (THB) and ≥ 10 kWh		>THB 2m but ≤ THB 7m and ≤ 50 kWh	
BEV battery standards	Must comply with Thai Industrial Standards Institute (TISI) standards; pass Automotive and Tyre Testing, Research and Innovation Center (ATTRIC) testing; and adhere to quick charge standards, as specified by the Ministry of Industry (MOI).			
Subsidy amount (per unit) based on battery size	Year	≥ 10 kWh but < 50 kWh	≥ 50 kWh	No subsidy
	2024	50,000	100,000	
	2025	35,000	70,000	
	2026-27	25,000	50,000	
Subsidy claimant party and period	BEV importers: from 2024 to 2025 Local BEV assemblers: from 2024 to 2027			No subsidy
Import tariffs	Up to 40% reduction (for the first two years: 2024-25)			No subsidy
Reduced excise tax	2% (from 8%)			
BEV local assembly requirements	Under this policy, business operators importing BEVs must locally produce any type of BEV within either of the following volume thresholds: ▶ 1:2 ratio for every BEV unit imported if local BEV production is fulfilled by December 2026 ▶ 1:3 ratio for every BEV unit imported if local BEV production is only fulfilled by December 2027			
Battery local assembly requirements	Battery and its parts localization to commence from 2026.			

b. For BEV pick-up trucks and e-motorcycles (locally assembled ones only):

BEV type	BEV pick-ups ≤ 4,000 kg	Motorcycles
Retail price and battery kWh	≤ THB 2m and ≥ 50 kWh	≤ THB 150,000 and ≥ 3 kWh
Standards required	For locally assembled vehicles: Same as the passenger BEVs mentioned above	As specified by the Excise Department (refer to the note below)
Subsidy amount (per unit)	THB 100,000 (2024 to 2027)	THB 10,000 (2024 to 2027)
Reduced excise tax	2024-25: 0% (from 10%) 2026 onward: 2% (from 10%)	1% (from 5%)
Battery local assembly requirements	Battery and its parts localization to commence from 2026	Not applicable

Note: As per the memorandum of understanding, the Excise Department has established the following specifications for BEV motorcycles:

- ▶ The lithium-ion battery must be ≥ 48 volts and certified by the Thailand Automotive Institute (TAI).
- ▶ The battery must have a capacity of ≥ 3 kWh or a range of ≥ 75 km on a single charge. It must also pass the Worldwide Harmonized Motorcycle Emission Certification tests and procedures with Class 1 or above, as certified by TAI.

- ▶ The motorcycles must use pneumatic tires that meet one of the following standards:
 - ▶ TISI standard No. TIS. 2720 – 2017 “Pneumatic [tires] for motorcycles and mopeds” or higher
 - ▶ United Nations Regulation (UN Regulation) No.75 (00 series or higher).
- ▶ To qualify for approval, the motorcycles must meet one of the following BEV motorcycle safety standards:
 - ▶ TISI standard No. TIS. 2952 – 2018 “Vehicles of category L with regard to specific requirements for the electric power train”
 - ▶ UN Regulation No. 136 (00 series or higher)
- ▶ Obtain a certificate for a motorcycle electric-powered generator model as announced by the Department of Land Transport.

Business operators that have signed up for the BEV 3.0 policy may transfer unsold BEV units imported under the BEV 3.0 policy to the new BEV 3.5 policy. However, to do so, the operators must also sign a memorandum of understanding with the Excise Department to comply with the BEV 3.5 conditions. Once the transfer is completed, the business operators can then claim the BEV subsidy amount provided under the BEV 3.5 policy when these BEV units are subsequently sold and registered with the Department of Land Transport. ■

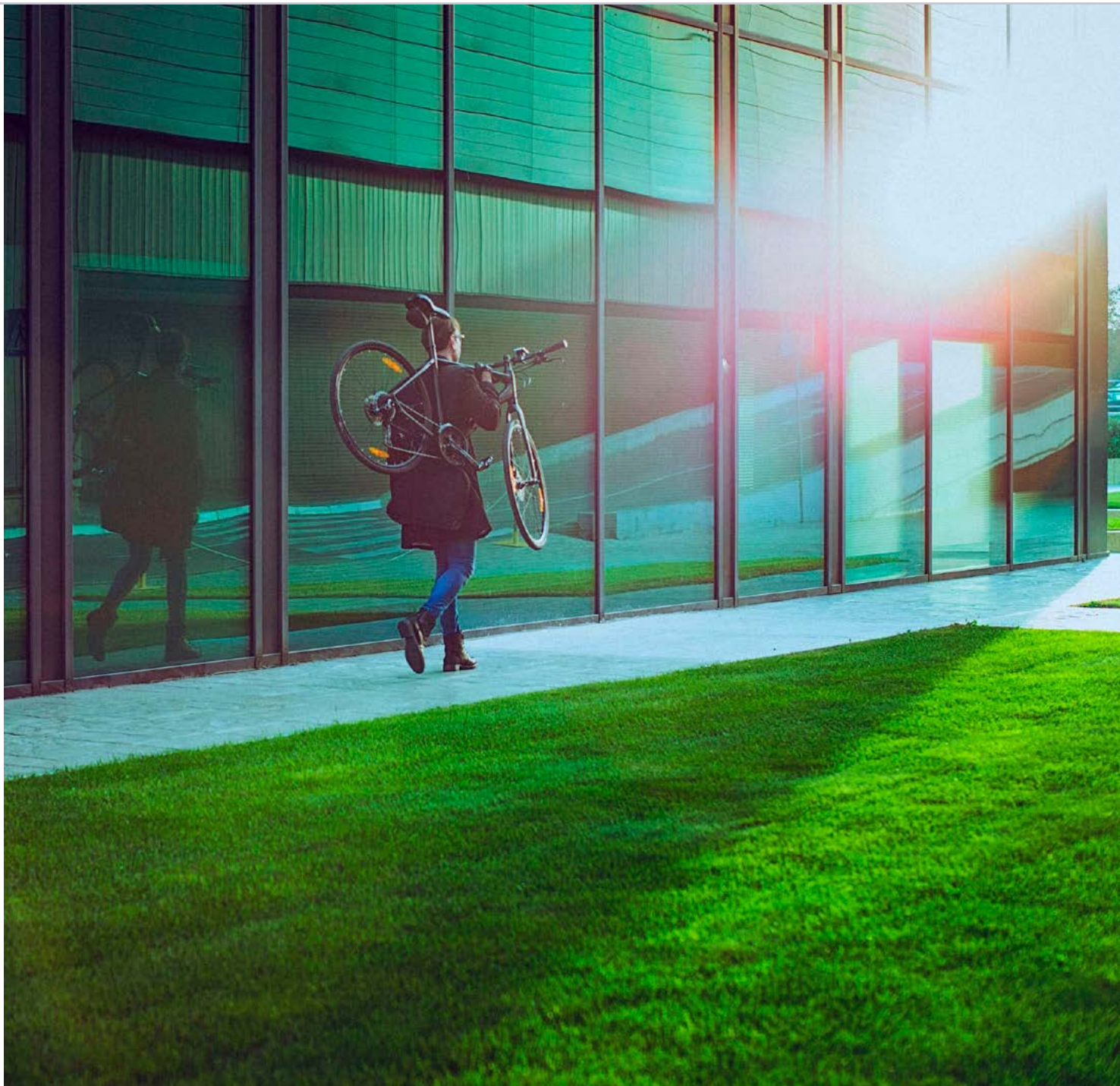
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Tax alerts

Tax alerts

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Argentina

- ▶ Argentine Executive Branch sending Fiscal Measures bill to Congress
(20 March 2024)
- ▶ Argentina eliminates the Economic Financial Capacity analysis for imports
(23 January 2024)
- ▶ Argentine Executive Branch sends bill to Congress that includes new tax measures
(11 January 2024)
- ▶ Argentina to issue 'Bonds for the Reconstruction for a Free Argentina'
(10 January 2024)
- ▶ Argentine Executive Branch sent bill to Congress that includes new Incentive Regime for Large Investments
(05 January 2024)
- ▶ Argentina implements new economic measures with impact on tax and foreign exchange matters
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Canada

- ▶ Ontario budget 2024-25 includes measures affecting businesses and individuals
(28 March 2024)
- ▶ New Brunswick budget 2024-25 holds tax rates steady, adds new credits and expands certain incentives
(22 March 2024)
- ▶ Quebec 2024-25 budget includes certain tax credit changes
(14 March 2024)
- ▶ Alberta budget 2024-25 discussed
(04 March 2024)
- ▶ Nunavut budget 2024-25 tabled
(29 February 2024)
- ▶ British Columbia budget 2024-25 includes several measures affecting businesses
(26 February 2024)
- ▶ Canada trade compliance verification list update – January 2024
(05 February 2024)
- ▶ Canada's Bill C-59 to implement outstanding indirect tax measures receives first reading
(22 December 2023)
- ▶ Canada's new reporting rules for digital platform operators take effect 1 January 2024
(01 December 2023)

Ecuador

- ▶ Ecuadorian President proposes new tax bill, expected to be effective by year-end
(06 December 2023)

Global

- ▶ The outlook for global tax policy and controversy in 2024
(26 March 2024)

Asia-Pacific

Asia-Pacific

- ▶ EY Global Tax Controversy Flash Newsletter (Issue 67): transfer pricing and customs valuation – a hot topic in Asia-Pacific (11 March 2024)

Global

- ▶ The outlook for global tax policy and controversy in 2024 (26 March 2024)

Europe, Middle East, India and Africa

Algeria

- ▶ Algeria enacts finance laws with key measures applicable to corporations (14 January 2024)

Belgium

- ▶ Belgium's mandatory e-invoicing to apply from 1 January 2026 (08 February 2024)

European Union

- ▶ European Commission issues binding valuation information rules and conditions for decisions on binding tariff and binding origin information (17 April 2024)
- ▶ EU Council approves Corporate Sustainability Due Diligence Directive (19 March 2024)
- ▶ European Parliament adopts new rules on green claims (14 March 2024)
- ▶ European Union: first vote on EU customs reform (27 February 2024)
- ▶ European Commission publishes 'default values' for CBAM transitional phase (05 January 2023)

France

- ▶ France revises schedule for adopting e-invoicing reform (23 January 2024)

Germany

- ▶ Germany's early-stage legislative process commences for tax on meat products (07 February 2024)

Ghana

- ▶ Ghana imposes emissions levy (13 February 2024)
- ▶ Ghana's 2024 Budget Statement tax proposals passed into law (23 January 2024)

Global

- ▶ The outlook for global tax policy and controversy in 2024 (26 March 2024)

Italy

- ▶ Italy's plastic tax will enter into force on 1 July 2024 (21 February 2024)

Poland

- ▶ Poland postpones implementation of mandatory National e-Invoicing System (23 January 2024)

Saudi Arabia

- ▶ Saudi Arabia further extends tax amnesty initiative through 30 June 2024 (03 January 2024)
- ▶ Saudi Arabia issues guideline for Special Integrated Logistics Zone (22 December 2023)

South Africa

- ▶ South Africa announces sustainability and energy tax measures as part of 2024 Budget Review (01 March 2024)
- ▶ South Africa commences preferential trade under the African Continental Free Trade Agreement (09 February 2024)

South Sudan

- ▶ South Sudan enacts Financial Act 2023/2024 (17 January 2023)

Thailand

- ▶ Thailand's nonbinding consultation discussion with Customs available for HS product classification (13 February 2024)
- ▶ Thailand announces additional criteria for battery powered electric vehicles produced in Free Zones (12 February 2024)
- ▶ Subsidies, duties, excise-tax incentives to encourage development and use of battery electric vehicles (07 February 2024)

United Kingdom

- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (01 April 2024)
- ▶ UK Trade Talking Points – latest insights from EY UK's Trade Strategy team (25 March 2024)
- ▶ Consultation launched on proposed UK Carbon Border Adjustment Mechanism (22 March 2024)
- ▶ UK Government announces adoption of Carbon Border Adjustment Mechanism (UK CBAM) (22 December 2023)

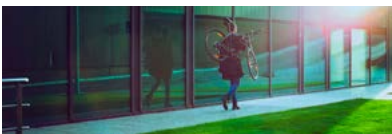
Additional resources



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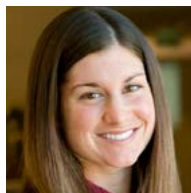
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