

# The battle continues

The war between transfer pricing and customs is far from over

Trade Intelligence Asia Pacific  
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Trade Intelligence Asia Pacific seeks to capture the essence of selected issues that are of particular interest to clients of PwC. Our regional network of customs and international trade consultants routinely gather, analyse and disseminate information and knowledge to our clients. Based on studies as well as meetings and discussions that take place across the region with various trade and customs officials, we consolidate our findings into Trade Intelligence Asia Pacific.

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## The battle continues

*The war between transfer pricing and customs is far from over*

"Are transfer pricing adjustments or changes acceptable for customs purposes?" is one of the most frequent questions we have received over the past decade. Our loyal readers may recall that exactly ten years ago we published a groundbreaking document in the sidelines of PwC's Global Transfer Pricing Conference entitled "[The cold war between Transfer Pricing and customs valuation](#)", which has been much referred to, elaborated on and even copied.

The battle, or perhaps conflict of interest is a better phrase to use, between transfer pricing and customs valuation is therefore nothing new. The value declared for customs valuation purposes has always been top of mind of customs authorities and this will not change anytime soon. Not only because there are very specific rules and compliance requirements on how a value should be declared and determined upon import, but also because the value declared determines the import duty and taxes collected by customs authorities. In our experience, customs valuation, and particularly related party transactions, is the area that consistently over the years has resulted in the most frequent challenges during customs audits (closely followed by tariff classification and preferential origin issues, in case your experience suggests otherwise!).

Again, this is nothing new, but we are noticing some interesting trends on this topic. When gazing into our crystal ball, we expect many companies to run into (in some cases big!) trouble with customs authorities as a result of not appropriately assessing and addressing the risks that their transfer pricing approach, policies and documentation is creating in their customs compliance.

In this article we are sharing our experiences on how customs authorities are viewing transfer pricing, how companies are responding and what you can do to be more proactive in managing risk.

### **What we are seeing from the customs authorities**

With almost daily interactions with customs authorities around the region over a long period of time has allowed us to make some interesting observations. One of which is that there has been a shift in how customs authorities look at and assess related party transactions.

Up until just a couple of years ago we would see a number of customs officials in Asia struggling to understand the link between customs valuation and transfer pricing. This was followed by a lot of companies experiencing customs authorities challenging their intra-company pricing simply on the basis that it was a related-party transaction and therefore the relationship must have influenced the price, despite customs valuation

rules clearly stating otherwise. In some extreme cases customs officials genuinely believed the use of a transfer price was equivalent to fraud, which in many cases would result in a not so pleasant penalty assessment. This still happens today, but fortunately less frequently.

The good news is that more recently we see that most customs authorities have realised they need to learn more about how companies within a group transact with one another. As a result, customs officials across Asia have become more aware of related party pricing issues, what transfer pricing is and what impact it can have on customs valuation. We have also seen them being trained by various developed nations as well as the World Customs Organization on this topic (for example, the WCO Train-the-Trainer Workshop on Customs Valuation for the benefit of ASEAN Members in 2020). While this is positive in the sense that customs authorities are more broadly starting to understand and accept how multinationals operate, we are also seeing an upward trend in challenges. Recent examples we have seen include customs authorities using TP documentation to proactively challenge declared customs values on the basis that the TP documentation fails to demonstrate fundamental customs valuation principles have been considered.



For us customs professionals that have been in the game for some time, this is actually quite refreshing. A customs authority showing signs of applying the underlying rules and fundamentals of customs valuation more consistently beats a challenge for the sake of a challenge any day. This change in mindset is also reflected in many of the interactions we are having with customs officials across the region on a daily basis.

Having said that, there is no doubt that this shift in mindset and uptick in scrutiny is also driven by revenue shortfalls, making additional duty and penalty collection a top priority for the authorities. We know many authorities are significantly behind on their revenue targets on the back of COVID-19. In fact we have been told by one authority that they came in 90% behind budget in 2020 and are expected to recover the shortfall as borders open up more and more.

These are of course only some generic observations, but they do touch on very real and practical issues companies are facing or will have to deal with in the near future if it hasn't hit their radar screen yet. For example, economic difficulties putting pressure on margins, TP benchmarks changing, overcapacity leading to products being sold at much lower margins or losses, changes to global tax regimes leading to product price changes - all of these have an impact on customs valuation and customs value testing that we can expect the authorities to be applying in upcoming audits. What may be acceptable for TP purposes may well increasingly not be for customs purposes.

So, what can we make of all this? To us it is pretty clear. Customs authorities will continue to focus a lot of their attention in the coming years on related party transactions and the lack of support companies have in place to justify a price from a customs perspective. Based on what we are seeing at the moment, we can almost assure you that if you are operating in Asia and most of your cross border trade transactions are between related parties, at some point soon you will likely receive difficult questions or an audit notice somewhere in the region.

## What are companies doing in response?

Nothing.

Well, that may be a little harsh. Very little, then.

Based on what we are seeing, most companies are unfortunately continuing to be reactive in this space. They underestimate the potential risk of not assessing and documenting why their related party transactions reflect an appropriate import value based on solid customs valuation fundamentals and rules.

Of course there are companies that do take this seriously and develop robust support documentation to complement their transfer pricing policy. But they represent a small minority of importers. Oftentimes these companies learnt the consequence the hard way, i.e. experienced an audit that resulted in large financial exposure and/or disruptions to operations.

The majority of importers are however reactive. Some believe their transfer pricing policy is sufficient. Others are not aware of the customs risk. Yet others, like in so many aspects of our lives, tend to make decisions based on recent history and experiences only. For example, if you have not had any customs valuation issues or challenges in the recent past, and your products are routinely cleared by Customs, it is easy to make the assumption that what you are doing today must be good enough. Other common barriers we encounter is that it is not always clear who within an organisation should take on the responsibility to assess

or manage the risk. Therefore it is "somebody else's problem". The fact that there is no regulatory requirement to maintain adequate support is another barrier that tends to result in a "wait and see" approach.

There is also a category of companies that claim they review customs values on a periodic basis, identify no issues and therefore conclude there is unlikely to be any risk. However, in most such cases when we dig deeper we find that these are quite perfunctory checks which are not documented and therefore unlikely to be very helpful against a future Customs challenge.

Our conclusion of all this, which is very much based on what we see in practice, is that there are many companies out there that will regret not taking action earlier to mitigate risk.

So what can and should you as a company do? We are glad you asked!

## A best practice approach

While some companies may rest with their fingers crossed, hoping Customs either don't knock on their door or – if they do – don't ask the difficult questions, others, as we mentioned above, take a more proactive approach. What we are seeing being extremely effective when dealing with customs authorities is companies that create some kind of Customs Valuation Documentation ('CVD') in response to increasing attention from Customs on valuation matters.



Companies may still regard CVD as an alien idea, but in this case its counterpart in transfer pricing, Transfer Pricing Documentation ('TPD'), may provide some very useful guidance. Prior to the existence of mandatory TPD requirements, many MNCs, with the help of transfer pricing specialists, started TPD preparation as a response to growing tax audits around the world. The lack of a standard format or unified regulatory requirements proved not to be an obstacle to TPD preparation. The documentation gradually matured with accumulating experiences. Regulatory TPD requirements developed subsequently.

Though customs valuation regulations have yet to develop a similarly comprehensive level of documentation requirements as transfer pricing, our recent experiences suggest that over time challenges will become more sophisticated, and that being prepared will mean significantly less time defending pricing and a substantially reduced risk of penalties. The companies that have already taken these proactive steps will know that it makes a massive difference when Customs start asking difficult questions or send a notice for an audit.

If you are still not convinced there is sufficient value in creating robust support documentation, the minimum you should do is to make sure you take the time to review how your company sets its transfer prices and assess what risks this created from a customs valuation perspective. For example, if all intercompany pricing is determined at a central level without active involvement from and decisions by importing affiliates, a key customs "arm's length" requirement will not be met, and the door is open for an easy challenge by a customs authority.

### **Performing a risk assessment - a great first step**

We recognise that for many companies and professionals out there, the sound of creating customs valuation documentation may seem a bit over the top. Especially if you are convinced what you are doing is sufficient.

In our experience, doing a holistic risk assessment does not have to be complex or require too much effort, despite what you may think. And to illustrate how this can be done, we want to share more about a 'Customs Valuation Scorecard Assessment' that we have developed and are implementing for companies on the back of receiving more and more questions on how to proactively manage transfer pricing risks on customs valuation compliance.

#### **What is a customs valuation scorecard assessment?**

**Objective** to take a holistic look at how transfer prices are set to help companies assess what the risks are and get a better sense of potential exposure.

**Purpose** to provide management an overview on potential customs valuation risks and available compliance management measures for the purpose of deciding the most efficient approach in maintaining customs valuation compliance.

**Approach** taken to complete the scorecard includes a review of Transfer Pricing Documentation information and interviews with key personnel to understand knowledge and consideration taken of customs valuation.

**Content** of the scorecard covers preliminary evaluation of common customs valuation risks and exposures against a pre-agreed set of criteria, as well as recommendations for next steps.

Based on our experience, we know that this type of assessment needs to be created and graded not just based on solid knowledge of customs valuation rules and regulations, but perhaps more importantly on a good understanding of customs valuation declaration practices. Our assessment therefore take into consideration:

- what are the usual challenges from the authorities?;
- what are companies likely to overlook?; and
- how are written policies implemented?



## Why should you be interested?

This is quite simple. A risk assessment will give you an indication of how your company is doing. More specifically it will give you the following:

- Quick understanding of the weak points in your customs valuation management;
- An independent view from customs specialists on your customs valuation compliance status.
- Clear indication of risk levels to help you prioritise your action points.
- Best practice benchmarking and recommendations on available tools and approaches for managing customs valuation risks.
- Robust basis to determine whether customs valuation support documentation or other risk mitigation measures are needed.

## Takeaways

At some point you will receive questions from a customs authority or be audited, and when that happens, you want to make sure you have your house in order, or at least you know and are prepared for what Customs may challenge when they come knocking. Companies that do this properly will more likely than not win this battle in the war between transfer pricing and customs valuation. It will likely also make you sleep better at night if this happens to be your responsibility within an organisation.

At the very least you should have a clear and documented assessment of risk, which is also shared with the relevant higher echelons in your company. That in itself will make it clear whether and where further customs valuation support documentation should be created, to mitigate the risk of successful challenges by Customs, as well as probably reducing the resources and time needed to deal with the next audit.





## ASEAN to expand list of tariff lines protected under COVID MOU

In view of the COVID-19 pandemic, on 16 September 2021 the ASEAN bloc endorsed an additional 107 tariff lines of mostly agricultural and food products to support the flow of essential goods in the region.

The tariff lines have been added to the Memorandum of Understanding (MOU) signed by ASEAN Economic Ministers on 13 November 2020. Under the MOU, ASEAN Member States will refrain from implementing trade restrictive measures (e.g., non-tariff measures) on these essential goods to support intra ASEAN-trade. The MOU earlier included 152 tariff lines of mostly medical goods, such as face masks, disinfectants, test kits and equipment.

The additional list of tariff lines can be found [here](#). Further information can be found [here](#).

## ASEAN and the UK sign Joint Ministerial Declaration

On 15 September 2021, the ASEAN and the UK held their first ASEAN Economic Ministers (AEM)-UK consultation. Both sides endorsed the Joint Ministerial Declaration on Future Economic Cooperation between ASEAN and the UK, which extends across 11 areas of cooperation, including UK-ASEAN supply chains and open markets, regulatory excellence, digital innovation, and COVID-19. Notably, this will see the UK channeling its expertise to improve trade facilitation in ASEAN, including cooperating on digital transformation, digital technical standards, and digital tools in areas like regulation, e-payments and digitisation of supply chains.

Refer to the joint media statement [here](#).

## Two reports on ASEAN logistics industry

On 9 September 2021, ASEAN and the OECD launched two reports on ASEAN logistics. They are the [OECD Competition Assessment Reviews: Logistics Sector in ASEAN](#), and the [OECD Competitive Neutrality Reviews: Small-Package Delivery Services in ASEAN](#). These reports highlight the regulatory issues faced by the logistics services sector, and put forward policy recommendations to overcome existing obstacles.

More details on findings of the reports can be accessed [here](#).

## 53rd ASEAN Economic Ministers' Meeting

From 8 to 9 September 2021, the 53rd ASEAN Economic Ministers' Meeting was held. Key updates are as follows:

- Ministers endorsed the Bandar Seri Begawan Roadmap: An ASEAN Digital Transformation Agenda to Accelerate ASEAN's Economic Recovery and Digital Economy Integration (BSBR). Under the BSBR, the ASEAN Member States have agreed to conduct a study on establishing an ASEAN Digital Economy Framework Agreement (DEFA) by 2023. Negotiations on DEFA are slated to commence by 2025.
- Ministers endorsed the Work Plan on the Implementation of the ASEAN Agreement on e-Commerce 2021-2025. The work plan seeks to establish a harmonised approach to operationalising commitments under the ASEAN Agreement on e-Commerce. It will focus on identifying priority areas, both technical and policy, for promoting implementation of the Agreement and ensuring development of e-commerce in the region. The Agreement is expected to be fully ratified and to enter into force in October 2021.
- Ministers noted the completion of the Mid-Term Review of the AEC Blueprint 2025. The report has been circulated to AEC sectoral bodies, who will now deliberate and are supposed to act on recommendations made.
- Ongoing efforts on developing the ASEAN Harmonised Tariff Nomenclature 2022 which is targeted for implementation in January 2022.

Details are available [here](#).

## ASEAN finalises trade initiatives with the US

On 25 August 2021, the ASEAN bloc finalised two trade initiatives with the US, namely the ASEAN-US Trade and Investment Framework Agreement (TIFA) and the US-ASEAN Expanded Economic Engagement (E3). These initiatives are expected to aid the region's economic recovery thrusts in different fields such as digital economy, micro, small and medium enterprises (MSMEs), sustainable development and labor.

Further information can be found [here](#).

# Export Control

## Hong Kong's amended export control list

On 17 September 2021, Hong Kong implemented its amended list of chemical and strategic commodities under the Import and Export (Strategic Commodities) Regulations (IESCR), and the Chemical Weapons (Convention) Ordinance (CWCO). The amendments were made to align the control list with international non-proliferation guidelines, including the Wassenaar Arrangement.

The list of strategic commodities under IESCR include dual-use items – civilian goods and technologies with possible military or security use. The amended dual-use goods list includes “Commonly Not-Controlled Items” such as:

1. Integrated Circuits, Electronic Components and Equipment;
2. Computers, Computer Related Equipment and Software; and
3. Telecommunications Equipment, Computer Networking Equipment and Related Accessories

Commodities falling into these lists are required to obtain licenses from the Trade and Industry Department before any import, export, and/or transshipment is allowed. The same licensing/permit controls are required for acquisition, retention, or transfer of chemicals listed in the CWCO.

To support affected companies, the Trade and Industry Department has issued guidance on these amendments under the [Strategic Trade Controls Circular No. 8/2021](#). Businesses are encouraged to evaluate their products to understand if they are affected by the amended regulations, and implement procedures where needed to ensure compliance.

## Updates to Singapore's Strategic Goods Control List

A new Strategic Goods (Control) Order (SGCO) 2021 will come into effect from 1 October 2021. The SGCO 2021 will incorporate revisions such as new controls, as well as editorial changes for consistency and clarity of controls. Refer [here](#) for more details.

## Thailand issues new guidelines on export control management

The Thailand Department of Foreign Trade issued a notification on 6 September 2021 setting out the Internal Compliance Programme (ICP) criteria and guidelines for exporters to follow when dealing with products subject to export controls. It highlights six areas of focus:

1. Management responsibility and commitment
2. Trade screening processes for end uses and end users
3. Internal training on export control practices
4. Record-keeping
5. Internal auditing
6. Reporting

Entities will be granted the following levels of certification: Basic (B), Intermediate (I) and Total (T).

- Basic (B) - Passes in at least two areas.
- Intermediate (I) - Passes in at least four areas.
- Total (T) - Passes in all areas.

Note that the ICP is not mandatory at present, but should help companies improve their risk management in relation to export controls.



# FTA focus

Headline	New development
Bangladesh aims to join the RCEP	Bangladesh has decided to attempt to join the RCEP. Its commerce Ministry is expected to send a formal proposal to convey its interest. This is allegedly prompted by Bangladesh's graduation from a Least Developed Country status to Developing Nation status in 2026.
Cambodia ratifies RCEP and FTA with China	On 9 September 2021, Cambodia ratified the Regional Comprehensive Economic Partnership (RCEP) and a bilateral FTA with China.
Negotiations for India - UK FTA to begin on 1 November 2021	India and the UK have committed to formally launch FTA negotiations by November this year and reach an Interim Agreement by March 2022.
Indonesia-EFTA CEPA took effect on 13 October 2021	The Indonesia-EFTA CEPA entered into force on 13 October 2021. The agreement can be accessed via this link. Details on preferential tariff claims in Indonesia can be found in the <a href="#">Indonesia territory report</a> .
South Korea to sign up for the Digital Economy Partnership Agreement	South Korea is set to accede to the Digital Economy Partnership Agreement concluded by Singapore, New Zealand and Chile, aimed at establishing rules on digital trade and strengthening cooperation.



# Territory reports

## Australia

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### AAT decision on TCO application

In the recent case of Ceramic Oxide Fabricators Pty Limited and Comptroller-General of Customs [2021], the Administrative Appeals Tribunal (ATT) has affirmed the decision of the Australian Border Force (ABF). The ABF refused a tariff concession order (TCO) application on the basis that the applicant had not undertaken the necessary enquiries to establish that there were no Australian producers of substitutable goods, and the goods subject to the application were not fully described as required by the law.

TCOs are concessions offered to reduce the duty rates on certain goods to zero if it can be demonstrated that there are no known Australian manufacturers of goods that are substitutable for imported goods.

The AAT held that it is the responsibility of the applicant before lodgement of an application for a TCO to ensure that there are no Australian manufacturers that can produce either the goods covered by the TCO or substitutable goods. Furthermore, the TCO application must contain a complete description of the goods in their imported state and not by reference to their intended end use, to enable an objective wharf-side identification of the goods at the time of import. Moreover, the TCO wording in the present case was found not to contain a complete description of the goods, with the AAT finding that the applicant limited the description of the TCO goods.

This case reinforces the intricacies involved in the TCO application process and also serves as a timely reminder of the standard of obligations placed on TCO applicants.

### Assessment of GST on low-value imports

The Australian Government has asked the Board of Taxation to review the collection of Goods and Services Tax (GST) on Low Value Imported Goods (LVIG) in order to assess the regime's effectiveness, ensure the system is operating as intended, and provide advice regarding its ongoing operation. LVIG refer to imported goods with a customs value of no more than AUD 1,000.

The Australian government introduced GST on LVIG on 1 July 2018 to ensure that low value goods imported into Australia are subject to the same tax regime as goods that are sourced domestically. Before this, goods imported directly by consumers costing AUD 1,000 or less did not attract GST. Only higher value goods with a customs value over AUD 1,000 were assessed and charged GST at the border.

The Board of Taxation's review will include consultation with stakeholders and will specifically consider:

- the effectiveness of the LVIG regime to efficiently collect GST;
- the effectiveness of the administration;
- industry compliance; and
- any relevant international developments and experiences regarding the collection of GST and other consumption taxes on LVIG.

### Australia and Singapore's blockchain trial involving digital Certificates of Origin

The ABF, the Infocomm Media Development Authority of Singapore (IMDA), and Singapore Customs have conducted a blockchain trial as a part of the Australia-Singapore Digital Economy Agreement (DEA). The DEA entered into force on 8 December 2020 and is aimed at establishing modern digital trade rules that regulate the cross-border flow of data, promote trust and confidence in digital trade, and establish benchmarks for improving digital trade across the region.

The trial involved inserting QR-codes embedded with unique proofs into digital Certificates of Origin that were then digitally scanned or machine read, allowing for instant verification of authenticity and integrity of the document. By digitising the trade documents, the successful trial proved that trade documents can be issued and verified digitally across two independent systems - in this instance, the ABF's Intergovernmental Ledger and IMDA's TradeTrust.

The trial highlighted the value of paperless trading both in terms of reducing cross-border transaction costs and increasing trade efficiency. At present, necessary approvals cannot be obtained until hard-copy couriered trade documents arrive, consequently impacting trade flows and slowing down supply chains.

## **Bill banning imports made with forced labour passes**

The Australian Senate has passed The Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2021 (the Bill) which seeks to amend the Customs Act 1901 to introduce a global ban on the importation of goods produced in whole or part by forced labour, regardless of their geographic origin. The Bill was initially scoped to prohibit the importation of goods made with forced labour from the Xinjiang region of China but was extended to impose a global ban on such imports following a unanimous recommendation made by the Senate Standing Committee on Foreign Affairs, Defence and Trade.

Goods imported into Australia which breach the new provision will be subject to the penalties that apply to the importation of other goods designated as prohibited imports. For the Bill to come into effect, it must pass through the House of Representatives. Should this Bill be passed, it will become applicable the day after it receives assent.

## **New restrictions on nicotine vaping products**

The ABF has announced that from 1 October 2021 all nicotine for human use, including nicotine vaping products such as nicotine e-cigarettes, nicotine pods and liquid nicotine, will be contained within Schedule 4 of The Poisons Standard, with imports and export of these goods regulated at the border by the Therapeutic Goods Administration (TGA). The purpose of the new restrictions is to align Commonwealth law with existing Australian state and territory laws which regulate the sale of nicotine vaping products to consumers without a valid prescription.

The import of prescription medicines, including nicotine vaping products, must be approved by the TGA. Affected products must be registered in the Australian Register of Therapeutic Goods (ARTG) prior to lawful importation into Australia for commercial supply. Given that there are currently no TGA approved nicotine vaping products included in the ARTG, imports of nicotine vaping products may be intercepted and destroyed by the ABF and the importer may be subject to penalties.

Australian consumers will be able to import nicotine vaping products from overseas for personal use, provided they comply with the conditions of the personal importation scheme and the importation is supported by a valid prescription from an Australian medical practitioner at time of import. Imports which do not satisfy these conditions may be assessed by the TGA to be unlawful and may be seized as prohibited imports.

With respect to nicotine vaping products intended for commercial export only, these must generally be listed in the ARTG prior to export. However, they are not subject to TGA assessment prior to listing in the ARTG.



# China



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## Changes to enterprise credit management system

On 13 September 2021, the General Administration of Customs (GAC) issued certain measures regarding the credit management of enterprises ([GAC Order No. 251](#)). These measures will be effective from 1 November 2021. Key changes include:

### 1. Changes to credit rating classification

The credit rating will be revised from the current four levels to three levels by cancelling the classification of "general certified enterprises". Ratings for "advanced certified enterprises" and "dishonest enterprises" will be retained. For all other registered and filing enterprises, regular customs management measures will be uniformly implemented.

### 2. Increased facilitation

Greater facilitation will be provided to advanced certified enterprises. This includes reducing the frequency of investigations and random inspections on the origin of exported goods; priority given during customs clearance of exported goods; and adjusting the periodical assessment for recertification from three to five years.

GAC will also support and clarify the ways in which qualified enterprises can become advanced certified enterprises.

### 3. Establish a credit restoration system

Establish a credit restoration system to clarify the standards and procedures for dishonest enterprises to improve their credit rating.

## Details on e-commerce returns center warehouses

On 10 September 2021, [GAC Announcement \[2021\] No.70](#) on cross-border e-commerce retail was issued. The GAC announced that it intends to encourage use of a return center warehouse model for e-commerce. Key content are as follows:

- The announcement relates to returns of cross-border e-commerce bonded retail imports (Codes for Customs Regulatory Means: 1210) in special customs supervision areas.
- A returns center warehouse enterprise (i.e., one that applies for setting up a return center warehouse and conducts return management business) must not be rated as a "dishonest enterprise" in GAC's credit rating system.
- The return center warehouse should have a special location for returns, a video surveillance system providing feed to Customs, and a computerised warehouse management system.
- The return center warehouse enterprise should establish a return process monitoring system, product traceability and related systems to ensure returned goods are the original products.



## New provisions on customs classification

On 22 September 2021, the GAC issued [Customs Decree No. 252](#) which introduces new administrative provisions governing the classification of imported and exported goods. The provisions will be effective from 1 November 2021. Key updates are as follows:

- Additional customs classification base and reference: Relevant national standards and industry standards, as well as Customs testing methods, can be used as technical references in classification. Where necessary, Customs can conduct testing regarding content, substance, structure and specification for commodity classification purposes. This is in addition to the Import and Export Tariff, explanatory notes, domestic sub-heading notes, and GAC classification decisions.
- Change in terminology: The mechanism of Customs pre-classification is replaced by and known as advance rulings.

## Commence of sampling inspections

On 12 August 2021, the GAC issued [GAC Announcement \[2021\] No.60](#) to announce the commencement of sampling inspections on certain import and export commodities that are not subject to mandatory inspections. The list of commodities are as follows:

<b>Import commodities</b>	Dishwashers, air purifiers, electronic toilets, food waste disposers, induction cookers, printers, stationery, imitation jewelry, car interior parts, clothing, helmets, child safety seats; plates, saucers, bowls, cups and other similar products made of paper or cardboard
<b>Export commodities</b>	Holiday string lights, LED lighting sources, children's bicycles, children's scooters, electric strollers, toys, plastic food contact products



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## Remission of duties and taxes on exported products

With effect from 1 January, the Government introduced the new Remission of Duties and Taxes on Exported Products (RoDTEP) scheme to replace the existing Merchandise Exports from India Scheme (MEIS). The RoDTEP scheme has now been notified and is available on exports made from 1 January 2021. The key features of the scheme are as follows:

- The RoDTEP scheme refunds to exporters the embedded Central, State and local duties/taxes incurred in the process of manufacture and distribution of exported products that were thus far not being rebated/refunded under any other mechanism.
- The rebate is claimed as a percentage of the Freight on Board (FOB) value of exports with a value cap per unit of the exported product. The list of eligible items (with 8-digit ITC HS code), rates and per unit value capping has been notified.
- The rebate amount can only be used to pay basic customs duty on imported goods.
- Benefits under the RoDTEP scheme are not available on restricted and prohibited goods, and to exporters who are already claiming duty exemptions or rebates (such as Advance Authorisation holders, Export Oriented Units, Special Economic Zones etc).
- Monitoring, audit and risk management systems will be used for physical verification of records on sample basis and for audits.

Refer to [Notification No. 19/2015-20](#) dated 17 August 2021 for further details.

Replacement of MEIS with RoDTEP is expected to lead to a change in the quantum of incentive that was available to exporters. As export benefits are factored into the pricing of products, it might lead to changes in product pricing. Companies should therefore evaluate the overall impact on the transfer price of goods from a related party valuation perspective, due to a variance in the amount of incentive available.

## Deactivations of Import Export Codes

An Import Export Code (IEC) holder must ensure that details in its IEC are updated electronically every year. If there are no changes, an online confirmation must still be provided. The due date falls on 30 June every year.

Following several extensions this year, the Government announced that IECs which are not updated by 5 October 2021 will be deactivated from 6 October 2021. Deactivated IECs can still be reactivated on the online portal. Refer to [Trade Notice No. 18/2015-2020](#) dated 20 September 2021 for further details.

## New import and export restrictions and relaxations

Measure	Details	Reference
Export restriction on COVID-19 Rapid Antigen testing kits	Due to the continued situation of Covid-19, the Government has imposed a restriction on export of Covid-19 Rapid Antigen testing kits (earlier freely exportable) falling under ITC HS codes 3822 and 3002.	<a href="#">Notification No. 18/2015-2020</a> dated 16 August 2021
Import restriction on mercury	Import of mercury falling under ITC HS code 28054000 is now restricted. It was previously freely importable.  Further, a new condition has been inserted for import and export of mercury. Prior Informed Consent (PIC) must be obtained from the National Focal Point of Minamata Convention in the Ministry of Environment, Forest and Climate Change (MoEF&CC).	<a href="#">Notification No. 24/2015-2020</a> dated 9 September 2021

## Digitisation initiatives

Initiative	Details	Reference
Online applications for export authorisations for SCOMET items	The Government has introduced a new online module for electronic and paperless applications in relation to import and export related services. Applications for issuance of export authorisations for Special Chemicals, Organism, Materials, Equipment and Technologies (SCOMET) items as well as subsequent amendment and revalidation must be submitted online with effect from 5 August 2021.	<a href="#">Trade Notice No. 11/2021-2022</a> dated 28 July 2021
Online transfer of authorisations in cases of amalgamation, mergers, etc	In December 2020, the Government announced that the export obligations and contingent liabilities are to be transferred to the new entity in cases of amalgamation, de-merger, acquisition, insolvency, etc. An online procedure has been introduced for online filing and transfer of Advance Authorisations and Export Promotion Capital Goods (EPCG) Authorisations.	<a href="#">Trade Notice No. 14/2021-2022</a> dated 4 August 2021
Online submission of import records by authorisation holders	Submission of accounting records for consumption and utilisation of duty free imported and domestically procured goods against Advance Authorization (AA) and Duty Free Import Authorisation (DFIA) can be made online.  With effect from 1 August 2021, Advance Authorisations issued on or after 15 August 2020 will be allowed one revalidation for a period of 12 months. This is in place of two revalidations of six months each, which was provided earlier. Public Notice No. 16/2021-2022 dated 22 July 2021	<a href="#">Public Notice No. 16/2021-2022</a> dated 22 July 2021
Online filing of applications for deemed exports benefits	The following applications can now be submitted online: <ul style="list-style-type: none"> <li>• Refund of Terminal Excise Duty</li> <li>• Grant of Duty Drawback as per All Industry Rates (AIR)</li> <li>• Fixation of Brand Rate for Duty Drawback</li> </ul>	<a href="#">Trade Notice No. 12/2021-2022</a> dated 28 July 2021

## Change in renewal process for AEO T-1 certificates

India's Authorised Economic Operator (AEO) scheme comprises a three-tier certification; namely Tier-1, Tier-2, Tier-3. The benefits available under the scheme increase with each tier level. The validity of AEO Tier-1 certificate is three years and must be renewed 30 days before the expiry of the certificate.

The Government now permits automatic renewal of the certificate. AEO Tier-1 entities are no longer required to apply for periodic renewals for their Tier-1 certification. Instead they will be required to perform a review and submit an annual self-declaration form. Refer to [Circular No. 18/2021-Customs](#) dated 31 July 2021 for further details.

## Tariff rate quotas and procedures under the India-Mauritius CEPA

The Government has specified tariff rate quotas that apply under its Comprehensive Economic Partnership Agreement (CEPA) with Mauritius. The procedure for undertaking such imports has also been detailed. Online applications for import authorisations for FY 2021-22 must be submitted online on or before 31 October 2021. Refer to [Public Notice No. 23/2015-20](#) dated 7 September 2021 and [Public Notice No. 24/2015-20](#) dated 17 September 2021 for further details.

## Chip Monitoring System trial extended, implementation delayed

In May 2021, the Chip Monitoring System (CHIMS) was introduced. It applied to specified electronic circuits and parts. It was on trial from 1 May 2021 and was scheduled for full implementation on 1 August 2021. This trial period has been extended by further two months. Registration on the CHIMS portal became available on 1 October 2021. Refer to [Notification No. 15/2015-2020](#) dated 9 August 2021 for further details.

## Duty credit scrips

The Government has extended the last date for filing online applications for scrip-based claims for exports effected between specified periods. This extends to several credit scrips such as MEIS, Service Exports from India Scheme (SEIS), Rebate of State and Central Taxes and Levies (RoSCT), Rebate of State Levies (ROSL) scheme, etc.

The last date of filing has been extended to 31 December 2021, after which no application will be accepted. Revised late cut entitlement for the application submitted up to 31 December 2021 has also been notified.

Further, the validity of scrips issued on or after 16 September 2021 has been received to 12 months from the date of issue of credit scrips under Chapter 3 (SEIS) and Chapter 4 (RoSCTL). Refer to [Notification No. 26/2015-20](#) dated 16 September 2021 for further details.





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## New rules on the sale or transfer of unused imported raw materials

The Ministry of Industry (MOI) issued MOI Regulation Number 22/2021 related to the sale and transfer of imported raw materials and auxiliary goods. The regulation entered into force on 26 August 2021.

The regulation permits industrial companies to sell or transfer leftover imported raw materials or auxiliary goods to other industrial companies or agencies tasked by the MOI. The following conditions apply:

- they are defective or are rejected;
- they were not used in production processes due to force majeure, and have been imported for use less than 1 year ago; or
- they are used to produce finished goods that have been discontinued.

In terms of procedures, these goods can only be sold or transferred following approval from the Director General of Industry. Applications must be made through SIINas. A letter stating the reason for the sale or transfer as well as documents consisting of information on material name, HS code, number and date of import declaration, quantities etc must be provided.

Once approval is granted and the sale or transfer is effected, the transaction must be recorded and reported to MOI via SIINas within 3 working days.

As the sales and transfer will be supervised by the MOI, the MOI will check the suitability of the materials being sold or transferred randomly once a year. A warning letter and administrative sanction (i.e., suspension or revocation of business license and/or penalty of 1% of the total investment amount) may be imposed as a result of non-compliance.

## VAT-free facilitation for machinery or factory equipment

The Ministry of Finance (MOF) issued MOF Regulation number 115/2021 to replace MOF Regulation Number 268/PMK.03/2015. The new regulation became effective on 20 September 2021 and relates to a VAT-free facilitation for the importation and/or delivery of certain strategic goods.

The VAT-free facility is granted through a VAT exemption certificate (Surat Keterangan Bebas PPN/SKB PPN) for certain goods. For other goods, a SKB PPN is not mandatory.

Under the new regulation, the VAT-free facilitation is applicable for goods imported by an Engineering Procurement Construction (EPC) company that is not the legal owner of the imported goods. Key points to note are:

- For some goods, the VAT-free facilitation must be utilised only after obtaining SKB-PPN;
- The EPC must comply with quantity limits for machine and factory equipment listed in the approved SKB-PPN;
- The EPC cannot transfer the machinery or factory equipment to any other party aside from the project owner;
- There is no replacement of SKB-PPN;
- Machinery and factory equipment must comply with the criteria listed in the SKB-PPN; and
- The EPC cannot utilise the facilitation if it has its taxable entrepreneur permit revoked.



## **Indonesia-EFTA CEPA enters into force**

The Indonesia-EFTA CEPA entered into force on 1 October 2021 by way of MOF regulation number 122/2021.

To take advantage of preferential import duty rates upon import into Indonesia, importers must obtain an origin declaration from the exporter. This origin declaration must be indicated in the import declaration using facility code 67.

Indonesia has not published its local regulation listing preferential import duty rates. However, the agreement including tariff commitments can be found [here](#).

## **Government to bear luxury sales tax on certain motor vehicles**

MOF Regulation Number 120/2021 has been issued to amend MOF Regulation Number 31/2021. The amendment came into force on 13 September 2021 and provides that the government will bear Luxury Sales Tax (LST) for the sales of certain motor vehicles from September to December 2021. The sales must be local purchases. Details are as follows:

No.	Specification	Percentage of LST borne by government
1	Sedan or station wagon with spark-ignition or compression-ignition (diesel or semi-diesel) with a cylinder capacity of up to 1,500 cc	100% of liable LST
2	Motor vehicle for less than 10 passengers including drivers, other than sedans or station wagon, with a spark-ignition or compression-ignition (diesel or semi-diesel) with 1 drive axle (4x2), with cylinder capacity of up to 1,500 cc	
3	Motor vehicle for less than 10 passengers including drivers, other than sedans or station wagon, with a spark-ignition or compression-ignition (diesel or semi-diesel) with 1 drive axle (4x2), with cylinder capacity above 1,500 cc up to 2,500 cc	50% of liable LST
4	Motor vehicle for less than 10 passengers including drivers, other than sedans or station wagon, with a spark-ignition or compression-ignition (diesel or semi-diesel) with 2 drive axles (4x2), with cylinder capacity above 1,500 cc up to 2,500 cc	25% of liable LST





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## Korea's Tax Reform Proposal for 2021

The Ministry of Economy and Finance (MOEF) released a tax reform proposal on 26 July 2021. If adopted by the National Assembly, the proposed amendments contained in the proposal will become effective in January 2022.

Provided below is a brief summary of the notable tax reforms proposed from a customs perspective:

Headline	Current practice	Proposed amendment
<b>Lower interests for late or deficient customs payments</b>	Penalties for late or deficient customs payments include an interest payment based on a daily interest rate of 0.025% (9.125% per annum).	Proposed amendments include reduction in the interest rate to 0.019-0.022% daily (6.94-8.03% per annum). The specific interest rate will be decided based on the average overdue interest rate offered by banks.  The lower interest rate will be applied to penalties payable as of the effective date of the amendments.
<b>Fewer restrictions on issuance of revised tax invoices</b>	Issuance of revised tax invoices for corrections made following the notice of a customs audit is generally not permitted.  However, it is permitted on an exceptional basis if the duty correction follows 'slight negligence' by the importer or the importer can demonstrate that he is not at fault.	Proposed amendments to the VAT Law will permit revised tax invoices to be issued by the customs office, unless there is evidence of gross negligence by the importer. This includes: <ol style="list-style-type: none"><li>1. committing an offense in violation of the penalty provisions prescribed in the Customs Law (e.g., duty evasion, price manipulation, etc.) or underreporting of customs duties by an unjustifiable means (e.g., using fraudulent documentation, discarding data, etc.); or</li><li>2. repeatedly making the same errors during import declaration.</li></ol> Note that similar amendments were proposed but not passed by the National Assembly in the 2020 bill. If approved, we anticipate the removal of the current restrictions on issuing revised tax invoices will significantly reduce potential exposure that could be incurred during customs audits.

# Malaysia



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## Voluntary disclosure program for indirect taxes

On 31 August 2021, the Ministry of Finance published the [2022 Pre-Budget Statement](#). It announced that the Malaysia Government is considering implementing a Special Voluntary Disclosure Program (SVDP) for indirect taxes, administered by the Royal Malaysian Customs Department (RMCD).

The RMCD does not presently have a formal voluntary disclosure scheme for businesses to disclose underpayment or overpayment of customs duties and taxes, and to obtain waivers of penalties. There is therefore no prescribed timeframe for submission of a voluntary disclosure, and the approach and information required by each local customs office varies. The SVDP is expected to streamline these practices and is intended to encourage companies to make such disclosures. At present, most customs and trade related voluntary disclosures in Malaysia are due to import duty and sales tax adjustments due to transfer pricing adjustments, royalties, assists or commission payments, as well as incorrect declarations of import values or tariff classification which result in over/under declaration of customs duties and taxes.

With the announcement of the SVDP, companies and businesses should start assessing whether they have any unpaid, underestimated or erroneously reported indirect taxes administered by RMCD, to ensure they are ready to participate in the SVDP once it is implemented.

## Imposition of sales tax on special areas

On 2 September 2021, the MOF issued an amendment to the Sales Tax (Imposition of Sales Tax in respect of Special Areas) (Amendment) Order 2021. "Special Areas" refers to Free Zones, Licensed Warehouses, Licensed Manufacturing Warehouses and Joint Development Areas.

With effect from 3 September 2021, apart from a Free Zone, sales tax will be levied on goods imported or transported into other special areas (i.e., licensed warehouses, Licensed Manufacturing Warehouses to be used or consumed in a Free Zone, or Licensed Manufacturing Warehouses). The affected goods are specified in Schedule A of the Order such as forklifts, cranes, office equipment, or furniture.

In addition, sales tax will be imposed on the following goods imported or transported into a Free Zone, including goods imported or transported into a Free Zone for re-export purposes.

1. cigarettes;
2. tobacco products;
3. smoking pipes (including pipe bowls);
4. electronic cigarettes and similar personal electric vaporising devices; and
5. preparation of a kind used for smoking through electronic cigarettes and electric vaporising devices, in the form of liquid or gel, not containing nicotine.

The order can be accessed [here](#).



## Sales tax exemption for milk products

On 5 August 2021, the Ministry of Finance (MOF) issued an order in relation to persons exempted from payment of sales tax. The amendment order took effect on 6 August 2021.

This order exempts any manufacturer approved by the Director General of Customs from payment of sales tax on any goods used directly and solely for the manufacture of certain milk products. The goods must be imported, purchased from a registered manufacturer or transported from a licensed warehouse, a licensed manufacturing warehouse, or a free zone in order to enjoy the exemption.

Apart from certain milk products falling under Chapter 4 and Chapter 19, flavoured UHT milk-based drinks falling under the HS code 2202.99.10 00 are also exempted from Sales Tax.

Affected companies must comply with the requirements in order to enjoy the sale tax exemption. The order can be accessed via [Sales Tax \(Persons Exempted From Payment of Tax\) \(Amendment\) \(No. 3\) Order 2021](#).

## Final issuance of Form A under GSP

On 9 August 2021, the Ministry of International Trade and Industry (MITI) issued a notification in relation to the final issuance of Form A for exports to Russia, Belarus and Kazakhstan under the Generalised System of Preferences (GSP). This follows the Eurasian Economic Commission's decision to remove Malaysia from the category of users of the GSP.

Importers may obtain preferential treatment within 12 months from the date of importation for goods that have arrived and were registered with the customs authorities of Russia, Belarus or Kazakhstan on or before 11 October without a Form A. In such circumstances, Malaysian exporters may apply for a Form A by emailing the request to MITI.

The tariff preferences that will be granted are subject to the acceptance of Form A by the customs authorities, provided that goods have arrived and were registered with the customs authorities of Russia, Belarus or Kazakhstan on or before 11 October 2021.

Further details are available [here](#).

## Imposition of anti-dumping duties on stranded steel wires

On 27 August 2021, the Prime Minister announced the imposition of provisional anti-dumping duties on imports of stranded steel wires for prestressing concrete (HS 7312.10.91 00) from China with effect from 29 August 2021 to 26 December 2021. The anti-dumping duties range is from 4.46% to 21.72%.

A final determination in relation to the investigation will be made within 120 days. Refer to the [notice](#) and [order](#).



# New Zealand



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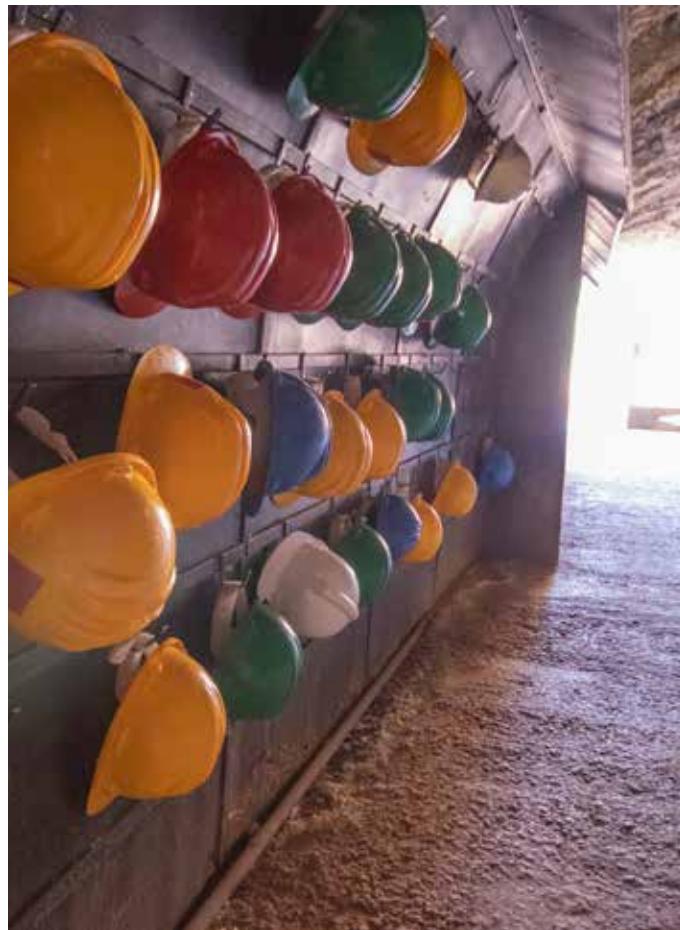
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## Importance of customs valuation

Customs valuation issues continue to be high on New Zealand Customs Service's (NZCS) review list based on the heightened activity from NZCS and increase in audits and disputes in relation to this matter. In particular, NZCS have queried importers' post-import price adjustments, including transfer pricing adjustments, royalties and licence fees.

As this is often a risk area for importers with related party transactions, importers should ensure that any post-import price adjustments are accurate and provided to NZCS as soon as practically possible. If an importer knows that the customs value is likely to change after import, the importer may apply to use a provisional value in their import declaration as part of NZCS's provisional values scheme (PVS). The PVS will protect importers from compensatory interest on any additional duty owed if the final Customs value is more than the total provisional values.

NZCS is planning to release a Customs guide on transfer pricing, which should assist importers understand Customs valuation methods and how to deal with common Customs valuation situations.



## Additional deferment of customs charges

As NZCS understands the effect that COVID-19 has had on the business income of many importers, it has released further information on the deferment of customs charges (including import GST, duty and excise). Importers and exporters who are facing financial difficulty and are enrolled in the deferred payment scheme should be eligible for additional deferment.

We expect the following based on prior arrangements agreed with NZCS:

- NZCS have historically relied on wage subsidy criteria to determine eligibility for additional deferment. There must be a decline in revenue of at least 30% for the respective period as a result of the recent lockdowns;
- Historically, deferments of NZCS charges have been permitted for up to six months. This will be determined on a case-by-case basis; and
- Importers who obtain a deferral will remain entitled to claim import GST from the Inland Revenue. The deferment will represent an immediate cash injection given the ability to obtain the credit with Inland Revenue. NZCS and Inland Revenue are aware of this outcome.

In addition, to be eligible for a remission or refund on interest and penalties the duty payer must meet the following requirements:

- The due date of the unpaid customs duty is between 25 March 2020 and 25 March 2022;
- The duty payer's ability to make a duty payment, including associated levies, on time, have been significantly and adversely affected by the COVID-19 outbreak;
- The duty payer made contact with NZCS as soon as reasonably practicable; and
- The duty payer has agreed an instalment plan with NZCS or paid the duty in full (but the payment was late).

# Philippines



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## New AEO online portal

Philippine Customs has introduced a new web-based [AEO Online Portal System](#) for processing of Authorised Economic Operator (AEO) Program applications. AEO is an internationally recognised accreditation based on the concept of partnership between customs and businesses with secure and reliable supply chain operations. Currently, AEO applications are open for all importers and exporters.

The application starts with a pre-screening process, where documentary requirements are submitted electronically through the portal and manually to Customs' office. If the application is rejected, the applicant may undergo further training and consultation with Customs and re-file their application. Approved pre-screening applicants will be notified via email if further evaluation will be done or if they are immediately approved for AEO Level 1 membership.

AEO Level 1 benefits include simplified clearance procedures and exemption from renewing annual accreditation with Customs. Level 1 members will be revalidated within one year of accreditation to review if the company is eligible for level 2 membership, which comes with additional customs facilitation and benefits.

Guidance on the use of the AEO Online portal system is available on [CMO 26-2021](#).

## Electronic advance ruling system for valuation and origin

The [electronic advance ruling system](#) (e-ARS) is a web portal launched by Philippines Customs for online application of advance rulings on valuation and product origin. Advance rulings are binding decisions issued by Customs that provide the requesting party with an interpretation or treatment of transactions prior to importation or exportation of goods. Guidance for filing an application using e-ARS is available on [CMO 32-2021](#).

## Safeguard measures on vehicles recalled

On 6 August 2021, the Department of Trade and Industry formally recalled the imposition of safeguard duties on importation of completely built-up passenger (CBU) cars and light commercial vehicles. This order was made based on the recommendation contained in the investigation report by the Tariff Commission where it was found that there was no increase in imports of CBU vehicles detrimental to locally produced vehicles.

In January, payment of provisional safeguard duties in a form of cash bond was implemented on passenger car and light commercial vehicles amounting to P70,000 and P110,000 per unit, respectively. Previously collected cash bonds are to be returned to importers.





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## New export, transhipment and transit prohibition for nitroglycerin

With effect from 2 August 2021, any export, transhipment, and transit of nitroglycerin, mixtures containing nitroglycerin and technology required for the production or use of these items, will be prohibited under the Seventh Schedule of the Regulation of Imports and Exports Regulations.

More details can be accessed [here](#).

## Updates to the Strategic Goods Control List

The new Strategic Goods (Control) Order 2021 will come into effect from 1 October 2021. Refer to our [Export Controls section](#) for more details.

## Duty exemption on hearses in the industry for undertaking services

With effect from 3 September 2021, any business entity a) carrying on the business of providing funeral or undertaking services and b) which is incorporated or registered under an Accounting and Corporate Regulatory Authority (ACRA) administered Act with "Funeral and Related Activities" as its principal activity or one of its principal activities, will be exempted from the payment of excise duty on the importation of a hearse. Importation of hearses is typically subject to an excise duty of 20%.

More details are available [here](#).





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## Import tariff reductions on aquatic and dairy products

On 19 August 2021, the Executive Yuan adopted draft amendments affecting Taiwan import tariffs. These amendments were adopted to fulfil Taiwan's commitments under the 'Tariff Concession Commitment with Taiwan-Paraguay Economic Cooperation Agreement', 'Taiwan-Belize Economic Cooperation Agreement', and 'Taiwan-Honduras FTA'. Affected products include aquatic products, cocoa products, fruit juices, dairy products, fruits and vegetables.

## Tariffs on raw materials for medicinal alcohol halved

On 26 August 2021, the Department of Customs and Excise indicated that the Executive Yuan has approved the policy of halving tariffs on raw materials of medicinal alcohol. The tariff rate has been reduced from 20% to 10%. The Executive Yuan has also granted a 6 month extension for the policy, which means that the new deadline to introduce the reduced rate is 26 February 2022.

To enjoy the reduced tariff rate, entities are not permitted to use such imported raw materials to manufacture other products. The production of medicinal alcohol is also restricted for domestic use and cannot be manufactured for export.





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## Increased scrutiny on claiming preferential origin

Customs has announced notification no. 103/2564 on deferral. The Department of Foreign Trade (DFT) has reportedly received requests from customs authorities in destination countries of Thai exports to review preferential Certificates of Origin (PCOs) under FTAs. While various aspects have raised suspicions, one major trigger is the percentage of Thai Regional Value Content (RVC) identified in the PCOs. Specific scenarios that have been highlighted include:

- Specifying the same RVC percentage for all products in the PCO, even for different SKUs
- Specifying the same RVC percentage of one product across different time periods

The above occurs because Thai exporters often declare the RVC percentage listed in their cost statement approval on PCOs, which does not reflect actual costs at the time of export. Costs are expected to change for each export shipment (e.g., transportation costs and exchange rates). The DFT has therefore advised exporters to specify the actual percentage of RVC for each export shipment.

The DFT's approach may be more time consuming and costly as exporters will need to calculate the RVC of every export shipment. However, the important takeaway is that it highlights the importance of compliance when claiming preferences under an FTA. Importers and exporters must understand the value of being in control and having a compliant process in place for how to manage duty preference claims.

We recommend exporters identify changing factors (e.g., transportation costs and exchange rates) to ease the recalculation process. A sensitivity analysis should also be undertaken to ensure that any changing factors will not cause the RVC percentage to be below the minimum threshold. If it does, preferences should not be claimed for that particular shipment or time period.

## Cost statement sharing for issuance of PCOs

The DFT recently announced a change in the cost statement sharing process when issuing preferential certificates of origin (PCO). This applies to situations where the exporter and the manufacturer are different entities, and specifically for the export of industrial goods under HS Chapters 25-97.

Currently, a PCO request must be submitted along with a consent letter from the manufacturer to use a shared cost statement. Under the new process, the cost statement can be shared electronically between exporters and manufacturers. The manufacturer must provide consent via the system, to allow the exporter to use the same cost statement. Consent can be granted on two different bases:

- Timeframe basis: The manufacturer can specify the time that the exporter can use the cost statement (e.g., from 5 January 2022 until 5 February 2022); or
- Invoice basis: The manufacturer can specify that the exporter can use the cost statement for certain invoices for export.

From 5 January 2022, the sharing of cost statements can only be done electronically. Exporters and manufacturers should ensure that the necessary consents are provided prior to this deadline. The system is now up and running so exporters and manufacturers should familiarise themselves with the system.



## New guidelines on export control management

The DFT issued a notification on 6 September 2021 setting out the Internal Compliance Programme (ICP) criteria and guidelines for exporters to follow when dealing with products subject to export controls. Refer to our [Export Controls section](#) for more details.

## Return of guarantees by electronic bank transfer

Customs announced Notification 135/2564 on returning guarantees by electronic bank transfer. The notification informs businesses that previously placed guarantees (e.g., duty shortfall, a cash security, sale of the exhibits) have the right to claim it back to verify and update their bank account details to Customs. The minimum amount that can be claimed through the electronic system is THB 20. Any transfer fees must be borne by the business.

## Changes to the NSW system for restricted goods

Customs repealed Notification 2/2560 dated 10 January 2017 on the preparation of information and notification of fact through the National Single Window (NSW) system on import and export restricted goods and replaced it with [Notification No. 113/2564](#). The new notification aims to reduce the administrative burden on such restricted goods. Key amendments include:

- The NSW system can now be used for licences and certifications. Previously, it could only be used for notification of facts (ie, where a notification to the relevant government authority was sufficient).
- More transactions are allowed. This includes cases where restrictions apply on the transit and transhipment of goods.

Details on using the NSW system remain the same in terms of registration process and document retention requirements.

## Implementation of electronic tax coupons

A Ministerial Regulation dated 16 June 2021 suggested that all existing tax coupons (under the Tax Compensation Act) can be converted into electronic tax coupons. Customs has announced Customs Notification no. 148/2564 to clarify the operational details. This includes:

- registration process to enjoy the electronic tax coupons;
- process and supporting documents required to obtain electronic tax coupons;
- payment of other taxes associated with using the electronic tax coupons; and
- timeline to convert existing tax coupons into electronic ones by 20 November 2021.

The notification focuses on implementing the new electronic tax

coupons. There is no significant change in terms of principles, application process and supporting documents.

The notification indicates that the tax compensation will be based on FOB prices, which should align with payment receipts upon export. In case the tax compensation request is incorrect, the exporter is obliged to return the over-claimed amount to Customs together with surcharges at 3% per year (from the date of receiving the tax coupon to the returning date).

Exporters who wish to enjoy this tax compensation privilege should review the notification and start the registration process immediately as the old tax coupons in paper format are no longer applicable.

## New salt import requirements in Thailand

The DFT issued a new notification regarding import registration, reporting and the inspection process for salt. In July 2021, salt was declared to be a commodity requiring certification prior to import. The latest regulation has been in effect since 4 September 2021.

Salt importers should take note as the DFT notification details the eligibility and registration criteria. Notable criteria include:

- The importer must be a person or legal entity registered with the Department of Business Development (DBD);
- Importers must use a specific storage location for imported salt such that it is separate from domestically sourced salt; and
- The form and required supporting documents for application of import certificates. Supporting documents include a commercial registration certificate, address of storage location, proof of rights or ownership, and an acceptance form to assign a DFT officer as an inspector. The import certificate is valid for one year and can be renewed by the DFT.

The notification also details the reporting obligations of certificate holders. The amount of imported salt and its utilisation purposes must be recorded before the end of every month and reported to the DFT within 15 working days of the following month. Failure to submit the report for three consecutive months or where discrepancies are detected can result in the suspension of the import certificate until corrections are made.



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## Updated list of domestically manufactured goods

On 17 August 2021, the Ministry of Planning and Investment issued Circular 05/2021/TT-BKHTT setting out the machinery, equipment, spare-parts, means of transport for special usage, raw materials, supplies, and semi-finished products that can be produced domestically. Circular 05 replaces the previous list which was issued in 2018 under Circular 01/2018/TT-BKHTT.

This is a key reference document for many importers. This is because aside from stipulating goods that can be produced in Vietnam, goods not captured by the list (i.e., not manufactured in Vietnam) and that meet specific conditions (e.g., imported for specific purposes) can be imported under duty exemption and are not subject to VAT.

Numerous new items have been added, including construction materials, components, technology lines, and means of transport for special usage in various industries such as shipbuilding, oil and gas, automotive components and parts and telecommunications & information technology.

The Circular took effect from 2 October 2021.

## Draft decree on management of e-commerce import and export transactions

On 27 August 2021, the Ministry of Finance issued a Draft Decree on management of import-export for e-commerce transactions. Below are the notable points:

- Customs procedures will be carried out through the customs electronic data processing system for imports and exports exchanged via e-commerce platforms that are connected to the General Customs System.
- Imported goods with a customs value of less than or equal to 1,000,000 VND for each order; or more than 1,000,000 VND but has a total payable import duty amount of less than 100,000 VND, are exempted from import duty. These exemptions apply to 1 order per day and no more than 4 orders per month.
- Products with a customs value of less than or equal to 1,000,000 VND or less than 5,000,000 VND for single imported goods are exempted from specialised inspection management, which applies to 1 order per day and no more than 4 orders per month.

The Draft Decree is expected to take effect on 1 January 2023.

## Submission of customs documents during COVID-19

On 11 August 2021, the General Department of Customs issued Official Letter no. 3980/TCHQ-GSQL to introduce facilitation measures for the customs clearance of goods during the COVID-19 pandemic. Notable points includes:

- For documents that must be presented in paper format when carrying out customs procedures, a scanned copy (verified by digital signature) can be temporarily submitted in order to speed up the customs clearance procedures.
- The late submission of the original copy in paper must be indicated in the "Notes" section of the electronic customs declaration.
- Companies must provide the additional original copy within 30 days of the day the customs declaration was registered. In case the company or Customs department is located in an isolation/blockade area, the time limit for document submission is 5 working days from the end of the isolation/blockade period.



# Around the world

## Around the world

### World Customs Organisation (WCO)

Title	Description
<a href="#">HS2022 nomenclature now available</a>	The new version of the Harmonised System Nomenclature will enter into force on 1 January 2022. It is available on the <a href="#">WCO Trade Tools site</a> . The 2022 edition introduces more than 350 new entries covering a wide range of goods (e.g., on e-waste, drones and edible insects). Explanatory Notes and Classification Opinions will be published by the end of 2021.
<a href="#">Workshop on counterfeiting and piracy for Sri Lanka Customs</a>	From 4 to 6 August 2021, the WCO Secretariat organized a series of workshops on combating counterfeiting and piracy for the Sri Lanka customs administration. The focus was distinguishing original products from counterfeit products.
<a href="#">Risk management workshop for Philippines Customs</a>	Members of the Philippines Bureau of Customs attended a two-day workshop on risk management from 12 to 13 August 2021. The workshop was jointly conducted by WCO and World Bank. Participants were exposed to use of databases and data analytics to select high risk consignments, conveyances and travelers.
<a href="#">Iran and Japan sign agreement on assistance and cooperation on customs matters</a>	On 22 August 2021, Iran and Japan signed an Agreement on Mutual Administrative Assistance and Cooperation in Customs Matters. It sets the legal basis for exchanging customs documents and information between the two territories, amongst others.
<a href="#">ECOWAS and UEMOA discuss advance rulings and HS2022</a>	Members of the Economic Community of West African States (ECOWAS) and the West African Monetary and Economic Union (UEMOA) attended a regional meeting to review a draft regulation on advance rulings and to discuss HS2022 which enters into force on 1 January 2022.
<a href="#">RKC/MC concludes Step 3 of RKC review</a>	From 13 to 16 September 2021, a Revised Kyoto Convention Management Committee (RKC/MC) meeting was held to progress the review of the RKC. Participants discussed all concepts that progressed through Step 2 and agreed with the proposals. They related to Authorised Economic Operator (AEO), e-declarations, advance rulings, free zones, express/expedited shipments, rules of origin, advance cargo information, etc. Step 4 is the development of potential amendment proposals in line with Articles 6 and 15 of the RKC.

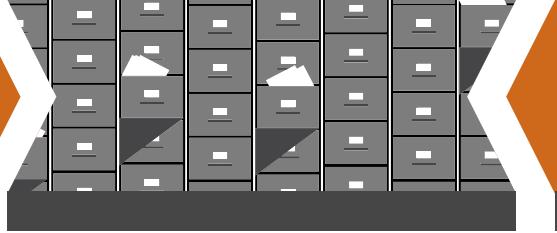


## World Trade Organisation (WTO)

Topic	Description
<a href="#">WTO Goods Trade Barometer</a>	The WTO's Goods Trade Barometer indicates strong trade expansion in July 2021, as countries recover from the impact of COVID-19. The reading was the highest on record since the indicator was first rolled out in 2014.
<a href="#">Growth in exports of intermediate goods</a>	A new quarterly report released by WTO on 2 September 2021 shows that world exports of intermediate goods (such as parts and components) rose by 20% year-on-year in the first quarter of 2021. Asia recorded the highest growth in exports of intermediate goods.
<a href="#">E-commerce negotiations: Two more articles</a>	On 13 September 2021, e-commerce negotiations yielded two clean articles on online consumer protection and open government data. This is in addition to existing clean articles on spam, electronic signatures and authentication, and e-contracts. The discussions also focused on proposals to help developing and least-developed countries implement new rules on e-commerce.
<a href="#">Greater cooperation required from COVID-19 vaccine manufacturers and governments</a>	A COVID Task Force comprising heads of IMF, World Bank Group, WHO and WTO urged governments and vaccine manufacturers to: release doses to low- and lower middle-income countries; release details on delivery schedules of vaccine supplies; eliminate export restrictions and prohibitions; and streamline and harmonise regulatory approvals.
<a href="#">Business groups at the WTO Public Forum</a>	The International Chamber of Commerce (ICC) and B20 highlighted at the WTO Public Forum the need for WTO reform. This included the need for a fully functioning dispute settlement mechanism and a strong notification and trade monitoring system. ICC's paper titled " <a href="#">Global Business Priorities for the WTO</a> " was also mentioned. It contains 27 recommendations for WTO reform.
<a href="#">Draft ministerial declaration for MC12</a>	On 24 September 2021, members of the Informal Working Group on Micro, Small and Medium-sized Enterprises (MSMEs) finalised a draft ministerial declaration for the WTO's 12th Ministerial Conference (MC12) in late November.
Updates on disputes brought by or against Asian territories	<p>The Dispute Settlement Body (DSB) agreed to establish a dispute panel to assess if <a href="#">China</a> has complied with a 2019 ruling regarding its administration of Tariff Rate Quotas for certain agricultural products.</p> <p><a href="#">Japan</a> has requested for the establishment of a dispute panel to examine anti-dumping measures imposed by China on stainless steel products from Japan.</p> <p>The WTO issued its panel report on <a href="#">US</a> safeguard measures on imports of certain crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products (CSPV products). <a href="#">China</a> is appealing the report.</p>



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Worldtrade Management Services (WMS) is the global customs and international trade consulting practice of PwC. WMS has been in Asia since 1992 and is a regionally integrated team of full-time specialists operating in every location. Our team is a blend of Asian nationals and expatriates with a variety of backgrounds, including ex-senior government officials, customs officers, lawyers, accountants, and specialists from the private sector who have experience in logistics, customs and international trade.

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The materials contained in this publication were assembled in August / September 2021 and were based on the law enforceable and information available at that time.

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