

# HOW MUCH? HOW? WHY?

Your customs values need some support

Trade Intelligence Asia Pacific  
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# Key intelligence



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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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## HOW MUCH? HOW? WHY?

### Your customs values need some support

The last time we talked in depth about customs valuation is nearly two years ago: the lead article of the [August / September 2021 issue of Trade Intelligence](#) entitled “The battle continues – the war between transfer pricing and customs is far from over”. In that article, we highlighted the increasingly onerous expectations and requirements custom authorities around the region were either starting to place, or expected to start placing, on custom value declarations. We advocated companies at the very least perform a risk assessment. We also indicated that they would probably be wise to proactively create some kind of “customs value documentation” akin to, but quite distinct from, transfer pricing documentation. The objective of all that is to be clear about the supportability (or lack thereof) of declared customs values under customs legislation, as well as be ready to answer any questions that a customs authority might raise.

*The article stated: 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.*

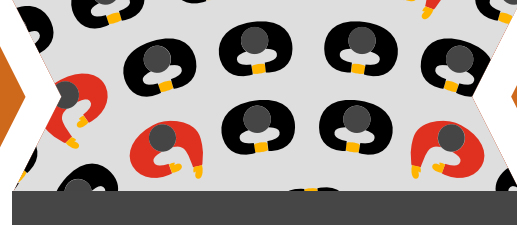
Fast forward nearly two years and the above rings truer than ever. In this edition of Trade Intelligence, you can read about regulatory changes in Indonesia that require any importer to proactively confirm whether the seller of imported products is a related party, that using the Transaction Value to determine customs values is appropriate, and – if not – to explain why not and – by inference – what other method is appropriate.

In India, meanwhile, the amendments to the Finance Act 2022 place an additional onus on the importer in cases where the imported goods are likely to be undervalued. These amendments include rules that outline added responsibilities for importers of a class of imported goods whose values were not declared correctly, the criteria for the selection of such goods and the checks to be exercised for such goods. The Customs (Assistance in Value Declaration of Identified Imported Goods) Rules (CVAR) 2023 has been introduced to propose a mechanism for the government to determine the class of goods that would warrant additional obligations and checks related to undervaluation. It specifies details regarding the determination mechanism and the additional obligations on the importer.

Japan Customs, meanwhile, issued an announcement in January reminding importers to identify and voluntarily disclose any retrospective payments made in relation to previously imported goods. These could relate to transfer pricing adjustments, but also due to revised raw material costs or management of exchange rate fluctuations.







We can add to these three examples many more that have been introduced or more actively enforced since our article nearly two years ago. China requires importers to proactively notify the possible post-clearance payment of any fees to a related party. Australia requires importers to declare related-party imports that may be subject to a subsequent TP adjustment provisionally and reconcile affected entries at a later time, typically only after a customs valuation ruling has been received. Taiwan has introduced new voluntary disclosure requirements. China has piloted the possibility of importers obtaining a joint tax/customs ruling on the appropriate import price of their products in Shenzhen. Further afield, the European Court of Justice decision in the Hamamatsu case has been interpreted by the UK to cast doubts over the appropriateness of using the Transaction Value method in intercompany transactions that are subject to a margin-based transfer pricing model (most of them, basically).

The message should be clear. An importer is expected to make sure that a supportable method is used to determine the customs values for purchase from related parties, rather than blindly applying their organisation's transfer pricing policy as a transaction value approach, perhaps with the occasional real-time or retrospective adjustment. "Supportable" in this context means that it is based on customs legislation. Net margin, the typical cornerstone of transfer pricing policies, does not feature highly in this legislation. Nor do functions, roles, risks and responsibilities. What does feature dominantly are "gross margins", "like products" and "the way prices are determined".

In our emerging work with companies that are creating customs value support documentation, it has become abundantly clear that none of those aspects feature in transfer pricing documentation. What's more, many such companies struggle to provide answers to the questions we have in order to create robust support documentation. They do not really know how their

intercompany pricing process works, or how it may compare to an equivalent process between unrelated parties. They have no data to – at least easily – determine gross margins or landed costs. And although they do typically know who they are competing with, segmenting their business along the lines of "like products" is a struggle, to say the least. Similar segmentation problems arise when comparing gross margins to other importers of like products.

Bluntly, that has to change. And it is the job of the customs professional to change it. Getting the message across that at the very least an internal review of the supportability of using transfer prices as the basis for customs value declarations, and documenting such review, is a necessary first step. It is quite possible that, upon closer investigation, transfer prices turn out not to be appropriate bases for customs value purposes. In such cases, companies have some hard calls to make on what needs to give. Change their TP policy? Not use Transaction Value? Find a middle way? Seek rulings? Options aplenty. The most appropriate choice will obviously vary case by case.

The OECD driven changes, such as the new minimum global tax being implemented in many territories, will have a major impact on transfer pricing policies and resulting intercompany prices. Many customs professionals are not aware of the impact of these changes. Given that the physical supply chain and characteristics of affected products are unlikely to change, customs authorities worry that such transfer prices are not appropriate for their purposes, even if they come with lengthy transfer pricing documentation support. To allay such worries, companies will need to go beyond their current documentation to address them head-on. The recipe for this, as outlined in our earlier article, is quite clear. Whether the chefs are willing to cook it, or whether the resulting meal is palatable, is another question altogether.





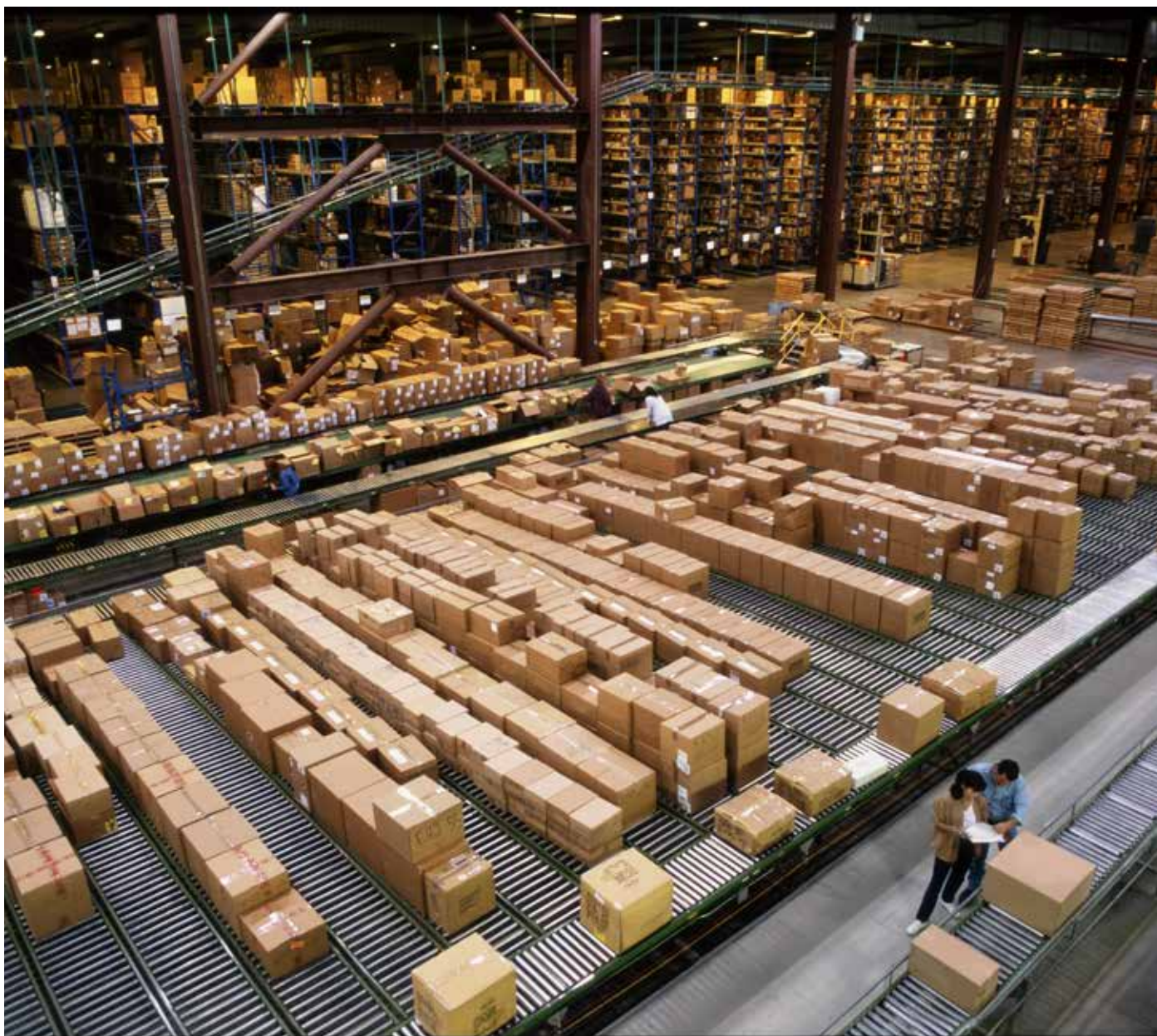


## ASEAN and Chile bolster development partnership

On 16 February 2023, the 4th ASEAN-Chile Development Partnership Committee (AC-DPC) meeting was held between ASEAN and Chile. Both sides [reaffirmed their commitment to strengthen the development partnership](#) through the implementation of the Practical Cooperation Areas (PCA) from 2021-2025.

There were many priorities in the discussion, for topics related to customs and trade, there were discussions on trade and investment; the mining industry and critical minerals and sustainable and renewable energy including green hydrogen and energy efficiency.

**Our take:** It is worth noting that several of the ASEAN member states are already bilateral FTA partners with Chile and Chile's ratification of the CPTPP has expanded trading between Chile and ASEAN member states. While the priority commitments highlighted are unlikely to bring immediate benefits to traders, there could be broader benefits to the ASEAN community through this partnership. For example, Chile is one of the world's largest copper and lithium exporters and with ASEAN's increased focus on electric vehicles and electronics production, this may be why ASEAN has a keen eye to seek cooperation with Chile.



Headline	New development
<a href="#">ASEAN, Australia and New Zealand complete negotiation for FTA upgrade</a>	On 22 February 2023, it was announced that negotiations to upgrade the ASEAN-Australia-New Zealand Free Trade Area (“AANZFTA”) agreement have been completed. The Director General of ASEAN Negotiation under the Indonesian Ministry of Trade stated that the upgraded version of this FTA would make it easier for businesses to collaborate in the ASEAN, Australian and New Zealand markets, and is designed to be more responsive, adaptive and flexible to emergencies such as future pandemics or natural disasters. Businesses looking to utilise the upgraded AANZFTA will need to wait for further details to analyse the impact and opportunities it will open up.
<a href="#">The US open to forging FTA with ASEAN</a>	The United States may pursue a FTA with ASEAN as it seeks to boost economic activities with the economic bloc. Philippine’s Ambassador to the United States Jose Manuel Romualdez said that it was possible for the economic superpower to elevate its trade relations with the region.
<a href="#">Cambodia looks at FTA possibility with Switzerland</a>	On 25 January 2023, during a meeting with the Swiss State Secretary for Economic Affairs, the Cambodian Minister of Commerce announced that both countries may explore an FTA between them. The two sides also pledged to further strengthen existing bilateral ties and expand cooperation in priority areas as well as international cooperation.
<a href="#">Senate cements Philippines’ membership in RCEP trade deal</a>	On 21 February 2023, the Philippine’s Senate concurred with the ratification of the Philippines’ membership of the Regional Comprehensive Economic Partnership Agreement (“RCEP”). The Philippines becomes the latest active Southeast Asian member of the bloc, after other ASEAN counterparts Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand and Vietnam ratified RCEP in 2022.
<a href="#">Sri Lanka to restart trade deal talks with India, China and Thailand</a>	On 5 January 2023, Sri Lanka announced that it will restart negotiations on trade pacts with India, China and Thailand after a four-year hiatus. Officials from Thailand arrived in Sri Lanka on 9 January 2023 to start the third round of talks after negotiations were suspended in 2018. Negotiations with India and China are expected to begin in March 2023.
<a href="#">Sri Lankan Government resumes measures to operationalise FTA with Singapore</a>	On 20 January 2023, the Sri Lankan government resumed measures to operationalise the Sri Lanka-Singapore Free Trade Agreement (“SLSFTA”) that was signed in May 2018 but is yet to come into force. The activation of the FTA was halted during the past three years due to political developments.
<a href="#">Thailand and the European Union ready to conclude free trade agreement</a>	On 24 January 2023 the European Union announced that it is ready to open FTA talks with Thailand again after an eight-year political impasse. Thailand’s Commerce Minister, Jurin Laksanawisit has since headed to Brussels to accelerate talks on an FTA with the EU.
<a href="#">Thailand and the UAE to form closer trade ties</a>	On 9 February 2023, Thailand and the United Arab Emirates (UAE) agreed to form a Comprehensive Economic Partnership Agreement (CEPA) and establish a Joint Business Council to expand bilateral trade and investment cooperation, with the goal of increasing Thai exports to 30 billion baht for the year 2023.
<a href="#">Vietnam and India to begin talks on trade agreement</a>	As of January 2023, Vietnam and India are set to begin talks on a potential trade agreement in an effort to boost bilateral trade and investment. It is noted that a joint Indo-Vietnamese working group will be formed in the coming months to examine the feasibility of a trade pact; after which the assessment of this study will then be taken up by the governments of both countries. However, at the time of publishing this, we have not heard any further updates. This is something that we should keep a close eye on.



## Australia

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### “Greenlane” Biosecurity Trade Facilitation Program - Coming soon!

The Department of Agriculture, Fisheries and Forestry (DAFF) has been piloting a trust-based “Greenlane” biosecurity trade compliance program over the past 18 months and will soon open applications for eligible importers.

Biosecurity requirements are in many cases the primary driver of regulatory impediments, delays and costs at the Australian border. The Greenlane program aims to reduce the administrative burden and border congestion, allowing goods to be cleared faster - resulting in time and cost savings for importers. The program looks to assess and map a participant’s supply chain to identify what (if any) controls exist to mitigate biosecurity risk throughout the supply chain. Successful participants will be entitled to a range of bespoke benefits that are customised for their particular risks and circumstances.

Businesses that have an Australian Business Number and who are highly compliant should begin preparations to apply for the program before it launches to the public in the coming months.

**Our take:** Importers that are facing delays and disruptions in clearing goods at Australian ports due to DAFF’s biosecurity requirements should consider the Greenlane program as an effective mechanism to facilitate trade and create greater certainty over supply chain continuity, whilst also providing an opportunity to improve the speed to market and potentially reduce costs.



### Increased administrative biosecurity charges for sea freight

Starting 16 January 2023, the biosecurity cost recovery charge for imported goods with a customs value of over AUD 1,000 arriving in Australia by sea will be increased from its previous amount of AUD 49 to 58 for each declared consignment. There is no increase to the charges on goods arriving in Australia by air (currently at AUD 38).

The implementation of this change is aimed at covering costs relating to activities administered by the DAFF, including biosecurity assurance and mitigation of the risks posed by pest and disease incursions as a result of rising trade volumes and supply chain complexities.

### New deferred payment benefits for Australian Trusted Traders

The Australian Border Force (“ABF”) is expanding the Duty Deferral benefit available under the Australian Trusted Trader (“ATT”) Scheme which currently allows eligible ATT importers to defer the payment of import duties on most goods until the 21st day of the following month. Under ‘Duty Deferral Plus,’ the benefit will be expanded to include additional taxes and charges such as Import Processing Charges, Wine Equalisation Tax and Agriculture Processing Charges. However, the benefit will not be extended to the importation of excise equivalent goods and the deferral does not apply to excise equivalent customs duties. In order to access the ‘Duty Deferral Plus’ benefit, ATT importers must be registered for Deferred Goods and Services Tax with the Australian Taxation Office.

**Our take:** The expansion of the ATT Duty Deferral benefit is a new addition to the ATT Scheme which will further reduce the regulatory burden of paying multiple taxes and charges on imports and improve the cash flows of eligible ATT importers. Any importers concerned with their duty footprint should consider enrolling into this benefit as well as explore duty saving opportunities.



## Proposed streamlining of excise administration for small businesses

In the March 2022 Federal Budget, the former government announced a package of measures to streamline the administration of fuel and alcohol excise. The current government recently completed a public consultation process on proposed legislation to deliver the following two components of this package:

- Small-scale repackaging of beer into smaller containers - to provide a targeted exemption from excise licensing requirements to venues repackaging duty-paid beer from kegs (and other large containers of specific kinds) into other sealed, non-pressurized containers of up to 2 litres, that are intended for short-term storage. This exemption will apply only to small-scale operations, with a maximum of 10,000 litres per premise per year that can be repackaged.

- Aligning excise and customs reporting with other indirect taxes to permit fuel and alcohol businesses with an annual aggregated turnover of less than \$50 million to apply to lodge returns and pay excise and excise-equivalent customs duty on a quarterly basis rather than weekly or monthly. This will help to ensure that the reporting schedule for businesses lodging returns for excise and excise-equivalent goods is aligned with other indirect taxes.

**Our take:** The proposed measure will ensure that the schedule for businesses lodging returns for excise and excise-equivalent goods is aligned with other indirect taxes and alleviate the administrative burden on small businesses who have to contend with the current high reporting frequency. Unfortunately, no such relief exists for larger taxpayers. However, businesses are recommended to conduct a review for their eligibility of such streamlining.



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## Revision to registration process for foreign trade operators

On 30 December 2022, the Standing Committee of the National People's Congress adopted the [decision on revising the Foreign Trade Law of the People's Republic of China](#). The notable updates are as follows:

1. Removal of Article 9 which provided details on record requirements for a foreign trade operator.
2. Introduction of a new policy for enterprises' registration of consignee or consignor with Customs
  - a. Enterprises can complete the registration through an online application. In the application, enterprises can directly apply for registration of consignee or consignor with Customs through the "Single Window" Customs Enterprise General Qualification Module or through the "Internet + Customs".
  - b. There is an option to complete the application for consignee or consignor registration along with a business licence. In this scenario, the enterprise can submit the electronic application for registration with Customs through the "Multiple documents integration" government affairs service platform of the market supervision department, and simultaneously apply for registration with Customs.
  - c. If the online application does not suit the applicant, there is an on-site registration process available. Enterprises may go through the registration with Customs at the local customs.

When enterprises go through the registration of the consignee or consignor of import and export goods, Customs will no longer check the "Registration Form of Foreign Trade Operators", so as to improve overall process efficiency.

## Tax policies for exported and returned goods in cross-border e-commerce

On January 30, 2023, the Ministry of Finance, the General Administration of Customs and the State Taxation Administration jointly issued [the Announcement on Tax Policies for Exported and Returned Goods in Cross-border E-commerce \(Announcement of the Ministry of Finance, the General Administration of Customs and the State Taxation Administration \[2023\] No.4\)](#).

The key details of the announcement are as follows:

1. Import duty, import VAT and consumption tax exemption will apply to returned products (excluding food products) that were initially exported and declared under a cross-border e-commerce customs supervision code, and brought back in an unchanged state within six months of the date of export.

If any export duties were collected at time of export, a refund can be made. The VAT and consumption tax that were collected at the time of export can be refunded. The wording "returned and brought back in an unchanged state" means that the minimum form of the exported goods when returned and brought back shall be basically the same as that of the goods when exported, with no accessories or parts added, and without any processing or modification. They would still be regarded to be "in an unchanged state" after unpacking, inspection (laboratory testing), installation, and commissioning; the goods returned and brought back must be unused, except where the goods can only be found to be of poor quality by trial use or can be proved to be returned after trial use by customers.
2. The enterprise must submit the following materials to handle the return:
  - a. A declaration list of exported goods or export customs declaration form;
  - b. Reasons for the return, and other materials proving that the goods are indeed returned and brought back to due to them either not having been sold or returned by the customers; For goods returned due to goods being left unsold/poor sales, enterprises must provide a "self-declaration", promising that the goods are returned due to goods being left unsold/poor sales;
  - c. For goods returned due them not having been sold, enterprises must provide a "self-declaration", promising that the goods are returned because they could not be sold;

**Our take:** This policy is the implementation of the tax policy requirements mentioned in last year's "Circular of the Ministry of Commerce on Issuing the Several Policy Measures for Supporting the Stable Development of Foreign Trade". These new rules will help e-commerce enterprises in China to reduce cost, improve after-sales services and enhance their international e-commerce competitiveness.

## Opportunities under import and export tax "policy research"

In the last [Trade Intelligence issuance for November/December 2022](#), we introduced the main contents and benefits of the 2023 Tariff Adjustment Plan (Announcement of the Customs Tariff Commission of the State Council [2012] No. 11). This article elaborates how Chinese importers and exporters can participate in the adjustment of import and export tax policies in the form of "tax policy research".

If importers and exporters wish to promote any reasonable demands on any import and export tax policy, they can put forward a proposal of "tax policy research" to Customs and other related authorities, and the relevant authorities will submit this to the Tariff committee of the State Council. If the suggestions of tax policy research are adopted, they will be reflected in the new Tariff Adjustment Plan.

All importers and exporters or industry associations can put forward reasonable suggestions and specific appeals for tax policy research based on the needs of enterprise development and industry development. Applicants participating in tax policy research can fill in and submit the tax policy revision and adjustment proposal form to Customs within a specified time. Other related authorities such as the Ministry of Finance, the Ministry of Commerce and industry departments can also collect suggestions on tax policy research.

The potential scope of tax policy research is as follows:

### Tariff schedule related:

- add or delete the subheadings of a commodity;
- adjust the position of a subheading;
- modify the name of the subheadings; etc;

### Provisional import tariff rates related:

- add or cancel the provisional import tariff rate for a commodity;
- raise or lower the provisional import tariff rate;
- adjust the scope of application of the provisional import tariff rate; etc;

### VAT:

- Adjust the VAT and consumption tax rates for a commodity;
- Adjust the VAT export refund rate;
- Adjust other tax preferential policies; etc.

Over the past few years we have observed that the focus of tax

policy research in recent years includes:

- Ensuring people's health, reducing the financial burden of patients;
- Trend of consumption upgrading and meet the demand for goods that are closely related to people's daily life but cannot currently be fully met by domestic production;
- Strengthening resource supply, improving the supply chain flexibility of the industrial chain;
- Promoting scientific and technological innovation;
- Promoting innovative development of advanced manufacturing industry and accelerate industrial transformation and upgrading;
- Optimising and improving the structure of tariff schedules and items.

**Our take:** The import and export tax policy research benefits people and enterprises' core concerns. It is the most direct way in China for enterprises and industries to lobby their needs and participate in the formulation of tax policies. If a tax policy research suggestion is adopted, its advantages will be directly reflected through reducing the costs, improving the competitiveness of enterprises, and promoting the development of the affected industry.





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## India Union Budget 2023 - key trade & customs related aspects

The India Union Budget 2023 was presented by the Indian government on 1 February 2023 and aims to further strengthen India's economic status. As part of the budget, the government proposed changes from a tax perspective to serve the government's long-term vision of 'Made in India' and sustainable growth. The key amendments from a customs and trade perspective are shown below. For the complete regulation, please refer to the Customs notifications section of the [India Budget website](#).

### A. Key proposals for amendment in the legal provisions

The following proposals have been made in this budget to make suitable amendments to the Customs Act, 1962 ("the Act"). These changes will become effective once these proposals receive the assent of the President of India.

- **2021 sunset clause** - Earlier, a sunset clause of two years was prescribed for the withdrawal of customs duty exemption which may also be reviewed in the future. In this budget, it is proposed that this sunset clause shall not apply to certain categories of conditional exemptions. These exemptions include but are not limited to the following: Free Trade Agreements, re-import/temporary imports, exemption extended under the Foreign Trade Policy.
- **Timelines for passing of an order by the Settlement Commission** - A timeline of nine months from the date of application has been prescribed for passing of an order by the Settlement Commission. It is extendable on specific grounds by an addition of three months.



### B. Key changes to customs duty exemptions

There are various exemptions available on the basic customs duty upon fulfilment of specified conditions. From 31 March 2024 onwards, some exemptions will be withdrawn. A list of key additions to the customs duty exemptions are shown below:

Description of goods	Chapter/Tariff Heading
Drugs and materials	Chapter 30 or any other chapter
Components or parts, including engines, of aircraft of heading 8802	Chapter 90 or any other Chapter
Hospital Equipment (equipment, apparatus, and appliances, including spare parts and accessories thereof, but excluding consumable items) for use in specified hospitals	Chapter 90 or any other Chapter
Portable X-ray machine / system	Chapter 90 or any other Chapter
Machinery, electrical equipment, other instruments, and their parts except populated Printed Circuit Boards for use in fabrication of semiconductor wafer and Liquid Crystal Display (LCD)	Chapter 84, 85 or 90
Machinery, electrical equipment, — other instruments and their parts except populated Printed Circuit Boards for use in assembly, testing, marking, and packaging of semiconductor chips	Chapter 84, 85 or 90
Batteries for electrically operated vehicles, including two and three wheeled electric motor vehicles.	Heading 8507
Parts and Components of Digital Still Image Video Cameras	Chapter 85 or any other chapter
Parts or subparts, components, and accessories except populated printed circuit boards for manufacture of CCTV Camera/IP camera falling under CTH 852581 to CTH 852589	Chapter 85 or any other chapter
Open cell (15.6" and above) for manufacture of LCD and LED TV panels of CTH 8524	Heading 8529
Specified goods for manufacture of LCD and LED TV panels of CTH 8529	Heading 8529

The table at the earlier page covers a list of key products under major sectors. In addition to these, the Government also introduced numerous other changes to the exemptions for specific HS codes and these exemptions may impact the relevant sectors. Readers should review the regulation to check if their products are covered under this update.

### **C. Key changes in the rate of customs duty**

A summary of selected changes pertaining to customs duty rates can be found below. The changes became effective from 2 February 2023 onwards.

#### 1. Increase in the rate of BCD

Chapter/Tariff Heading	Description of goods	Existing BCD Rate (%)	New BCD Rate (%)
8414.60.00	Air or vacuum pumps (hoods)	7.50%	15%
Heading 8703	<p>Motor cars and other motor vehicles (excluding EVs), principally designed for transport of persons (other than CTH 8702, including station wagons and racing cars that have not been registered anywhere prior to importation)</p> <p>1. as a CKD kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle</p> <p>a. engine, gearbox and transmission mechanism not in a pre-assembled condition;</p> <p>b. Engine or gearbox or transmission mechanism in pre-assembled form but not mounted on a chassis or body assembly</p> <p>3. in any other form, -</p> <p>a. with CIF value more than 40K USD or with engine capacity more than 3000 CC for petrol run vehicles and more than 2500 CC for diesel run vehicles or with both;</p> <p>b. other than (a) above</p>	<p>15%</p> <p>30%</p> <p>100%</p> <p>60%</p>	<p>15%</p> <p>35%</p> <p>100%</p> <p>75%</p>
Heading 8703	<p>Electrically operated vehicles, if imported:</p> <p>1. incomplete or unfinished, as a knocked down kit containing necessary components, parts or sub-assemblies for assembling a complete vehicle, including battery pack, motor, motor controller, charger, power control unit, energy monitor, contactor, brake system, electric compressor, whether or not individually pre-assembled</p> <p>a. none of the above components, parts or sub-assemblies inter-connected with each other and not mounted on a chassis</p> <p>b. any of the above components, parts or sub-assemblies inter-connected with each other but not mounted on a chassis</p> <p>3. in a form other than (1) above</p> <p>a. with a CIF value more than US\$40,000</p> <p>b. other than (a) above</p>	<p>15%</p> <p>30%</p> <p>100%</p> <p>60%</p>	<p>15%</p> <p>35%</p> <p>100%</p> <p>70%</p>

2. Decrease in the rate of BCD

Chapter/Tariff Heading	Description of goods	Existing BCD Rate (%)	New BCD Rate (%)
2207.20.00	Denatured ethyl alcohol for use in manufacture of industrial chemicals	5%	Nil
8516.80.00	Heat coil for use in manufacture of electric kitchen chimneys falling under CTH 84146000	20%	15%
Heading 8529	Following goods for use in manufacture of open cell of LCD and LED TV panels of CTH 8524: - Chip on films - PCBA -Cell (glass board/substrate)	5%	2.5%

3. Other Key changes

Changes in Agriculture Infrastructure Development Cess ('AIDC') with effect from 02 February 2023

Chapter/Tariff Heading	Description of goods	Existing BCD Rate (%)	New BCD Rate (%)
Headings 2701, 2702, 2703	Coal, Lignite, Peat	1.5%	Nil
4011.30.00	Pneumatic tyres of rubber of a kind used on aircraft	Nil	Nil
8802.20.00 8802.30.00 8802.40.00	Subject to certain exceptions, aeroplanes and other aircrafts of an unladen weight not exceeding 2000 KG within 2000 KG to 15000 KG exceeding 15000 KG	Nil	0.5%

Exemption from Social Welfare Surcharge with effect from 02 February 2023

Chapter/Tariff Heading	Description of goods
Heading 8703	Motor cars and other motor vehicles (excluding EV's) imported in specified manner
Heading 8703	Electrically operated vehicles imported in specified manner
88022000 88023000 88024000	Subject to certain exceptions, aeroplanes and other aircrafts of an unladen weight  - not exceeding 2000 KG - within 2000 KG to 15000 KG - exceeding 15000 KG

The above tables cover a list of key products under major sectors. In addition to these, the Government has also introduced numerous other changes in BCD rates for specific HS codes which may impact the relevant sectors. Readers should review the regulation to check if their products are covered under this update.

## Assistance in filing of applications for fixation of SION through video conferencing

The Directorate General of Foreign Trade [announced the initiative to assist trades on filing of applications for fixation of Standard Input Output Norms \("SION"\)](#). This announcement means that interactions with Regional Authorities ('RA') can be done through video conferencing on a daily basis (between 10:30 AM to 11:30 AM). These would be carried out using a video conferencing link available on the [Government website](#). The guidance pertaining to the filing of AA applications can also be availed through this facility.



## Introduction of CVAR 2023

The amendments to Finance Act 2022 placed an additional onus on the importer in cases where the imported goods are likely to be undervalued. The amendments include the rules that outline the added responsibilities of the importer regarding a class of imported goods whose values were not declared correctly, the criteria for the selection of such goods and the checks to be exercised for such goods. Refer to Circular No. 01/2023-Customs and Notification No. 03/2023-Customs (Non-Tariff) dated 11 January 2023 or our PwC India update for further details.

The Customs (Assistance in Value Declaration of Identified Imported Goods) Rules (CVAR) 2023 has been introduced to propose a mechanism for the government to determine the class of goods that would warrant additional obligations and checks related to undervaluation. The details regarding the determination mechanism and the additional obligations on the importer have been specified therein. The other highlights of CVAR 2023 have been outlined as shown below:

- The validity of the aforementioned notifications covering the class of goods issued will be a minimum of one year and a maximum of two years in the first instance.
- The notifications will be subjected to a mid-term review or if needed earlier in specific cases to ascertain the need for de-notification or an extension of the validity period.
- CVAR 2023 will not apply to a listed category of goods such as:
  - imports not involving duty;
  - goods for which tariff values have been fixed or which attract duty on a specific rate basis;
  - imports where parties are being investigated by the Special Valuation Branch (SVB) or an SVB report that already exists;
  - imports made in terms of authorisation or licence issued under the duty exemption scheme of the Foreign Trade (Development and Regulation) Act 1992;
  - project imports; and
  - any other imports as specified.

**Our take:** Traders would need to evaluate these rules as they will have a bearing on compliance in terms of incremental obligation on clearance of goods when value is not correctly declared. Moving forward, traders also need to put in place systems and processes to ensure compliance, including justification of value declared in cases where imports are subjected to additional scrutiny and checks by Indian Customs authorities because of the notification issued under the rules. Therefore, it is highly recommended for traders who are importing goods that attract higher duty or through a related party transaction to ensure that their declared values are consistent with India's customs valuation regulations.

## Amendments to the Remission of Duties and Taxes on Export Products scheme

The Remission of Duties and Taxes on Export Products ("RoDTEP") scheme aims to refund exporters for the payment of the embedded central, state and local duties and taxes paid on inputs that were so far not refunded or rebated. The benefit of the scheme was made available on exports on 1 January 2021.

An RoDTEP Schedule titled as 'Appendix 4R' contains the eligible RoDTEP export items, rates and per unit value caps etc. A [revised Appendix 4R](#) on RoDTEP rates and caps for exports made from 16 January 2023 to 30 September 2023 was published. There has been a revision in 432 HS codes in line with the recommendation of the RoDTEP committee on the apparent anomalies and errors in the earlier version of Appendix 4R that was published.

Furthermore, additions were made to the list of export items which previously included items that fall under Chapters 28, 29, 30 & 73 of the Customs Tariff Act 1975. The Appendix 4R has been aligned with the First Schedule of the Customs Tariff Act 1975 for implementation with effect from 15 February 2023. This is after the inclusion of export items and recommendations by the RoDTEP committee.





## Changes to export obligations under EPCG authorisations

The Export Promotion Capital Goods (EPCG) is a scheme that enables an importer (being an export-oriented business) to import capital goods at zero rate of customs duty. However, the importation of capital goods under the scheme will be subjected to an export obligation which is equal to six times of duty saved, that is to be satisfied within six years from the date of issue of EPCG authorisation (such a timeline period is known as export obligation period). If a holder of the EPCG authorisation is unable to meet the stipulated export obligation, the importer of the capital goods will be required to pay customs duties along with interest on it as prescribed.

In consideration of the Covid-19 pandemic, a [one time relaxation has been provided from maintenance of average export obligation and extension in export obligation period](#) for specified EPCG Authorizations. There has been an amendment to provide separate provisions for hotel, healthcare, and educational sectors in the following manner:

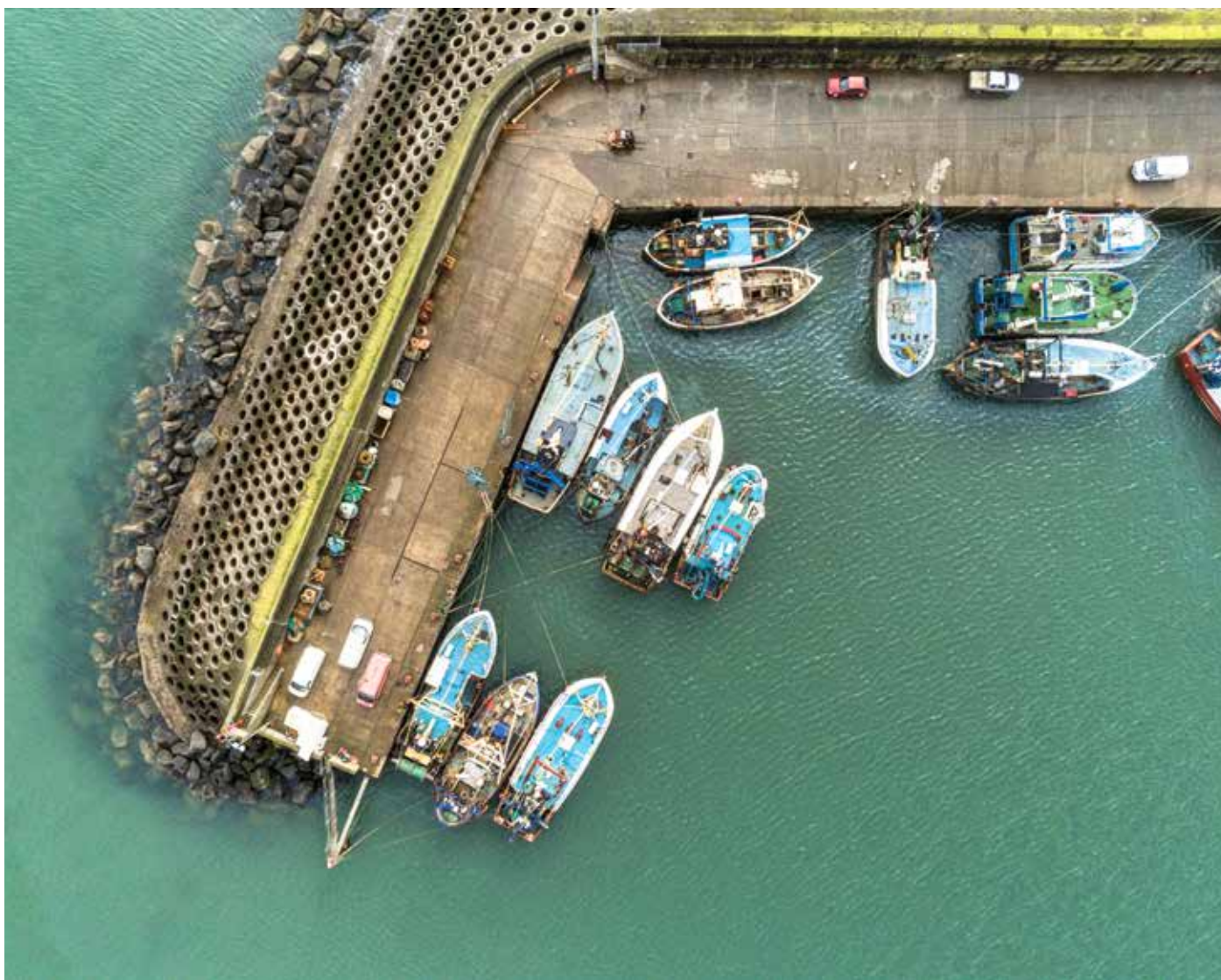
- Hotel, Healthcare and Educational sectors - The requirement to maintain average export obligation has been waived off for the years from 2020 to 2022. Payment of composite fees would not be required in cases of extension in export obligation period. However, a refund of composite fees would not be provided in cases where the period has already been extended.

- Other sectors - A similar extension of the export obligation period as prescribed without payment of composite fees would be available to other sectors as well, but it would be subjected to an additional 5% export obligation in terms of the value of the goods. However, a refund of composite fees would not be provided in cases where the period has already been extended.

These extensions and revisions in export obligations are subject to the various procedures and conditions that were prescribed.

## Extension of requirement of health certificate for the import of food consignments

The Food Safety and Standards Authority of India ('FSSAI') had previously stated that with effect from 1 November 2022, imported food consignments of food categories as specified in Food Product Standards & Food Additives ('FSS') must be accompanied by a health certificate issued by competent authority of the exporting country. The implementation of the said previous order had been extended by two months and will now be effective from 1 March 2023 onwards.



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## New import declaration format with increased focus on related party transactions and customs valuation

On 30 December 2022, the Directorate General of Customs and Excise (“DGCE”) issued [PER-23/BC/2022](#) regarding the fifth revision to DGCE regulation number P-22/BC/2009. The updated regulation provides a new import declaration (BC 2.0) format. A summary of the changes to the import declaration can be found below:

The main changes are as follows:

1. Importers are now required to declare the full country name of the exporter and seller; the previous import declaration only required the importer to declare the name, address and country code of the exporter and seller. Previously, the country of exporter and seller was not compulsory for import declaration
2. “APIU/APIP” is rephrased to “API/NIB” since the importer identification number (angka pengenal importir/API) is replaced with the business identification number (nomor induk berusaha/NIB).
3. There is a new requirement to add the owner of goods’ relationship with the seller. The column is filled with relationship codes as follows:
  - a. Affiliated Company (Code: AFL)
    - i. Employee or management of a company who also holds a position in another company
    - ii. Entities who are legally in a business partnership
    - iii. Employee and employer
  - b. Financially / Legally Controlled (Code: CTR)
    - i. Entities that directly or indirectly own, control or hold 5% or more of the shares of another company
    - ii. Entities that directly or indirectly control another entity
    - iii. Entities that are directly or indirectly controlled by a third party
    - iv. Entities that simultaneously or non-simultaneously control a third party
  - c. Family Member (Code: FAM)
    - i. The owner of the goods and the seller have a familial relationship; one may be the husband, wife, parent, child, sibling, grandparent, in-law etc. of the other.
  - d. No relationship (Code: TAH)

4. There is a new requirement to add the cost components of imported goods. If there are cost components that are not included in the invoice such as royalty or if there is a voluntary declaration for cost estimation, importers will need to fill the column with “ada”. If there are no such cost components, the column is filled with “tidak”.
5. There is an additional requirement to declare.
  - a. The customs value determination method along with the reason why customs value has not been determined through the transaction value method if indeed the transaction value method is not used, with criteria as follows:

Reason	Code
Not a sales transaction, goods are consigned	KON
Not a sales transaction, goods are a prize/promotion/sample	CMA
Not a sales transaction, goods are imported by an intermediary who does not purchase the goods	ITM
Not a sales transaction, goods are leased	LES
Not a sales transaction, goods are a relief/grant	HBH
Other non-sales transaction	BTR
Sales transaction that does not fulfill the transaction value requirement	TTS

- b. Price difference due to the amount of goods purchased and/or the trading level. If such a price difference exists, importers must fill the column with “ada”. If not, the column should be filled with “tidak”.
- c. The type of voluntary declaration with criteria as follows:

Reason	Code
Sales transaction containing proceeds, the value of which cannot yet be determined	PRO
Sales transaction containing royalty, the value of which cannot yet be determined	ROY
Sales transaction based on a future price, which is a price that can only be determined after the import declaration is submitted	FTR
Sales transaction containing assistance, the value of which cannot yet be determined	AST
Sales transaction containing freight cost, the value of which cannot yet be determined	FGH
Sales transaction containing insurance, the value of which cannot yet be determined	INS



**Our take:** The changes to the import declaration may seem at first sight to be limited to operational changes. However, many of these changes are significant for customs valuation purposes since importers must now declare the relationship between the importer and the seller as well as make a voluntary declaration for costs that cannot be determined at the time of importation. This shows that Indonesian Customs are focusing more on customs valuation and related party transactions. Importers must ensure that their declared values are in accordance with Indonesia Customs valuation regulations. Importers should maintain documentation to support their customs valuation determinations.

## Implementation of RCEP Form under the RCEP

Following the regulation on the preferential tariff rates under the Regional Comprehensive Economic Partnership (“RCEP”) agreement as summarised in our [Trade Intelligence issue for November and December 2022](#), the Indonesian Ministry of Finance (“MoF”) issued regulation number [209/PMK.04/2022](#) on 28 December 2022 regarding the procedures for the imposition of import duty tariff on imported goods under the RCEP. The new regulation gives further explanation regarding the country of origin for goods with tariff differentials. The exporting country will be considered an RCEP country of origin if the exporting party fulfils the applicable origin criteria.

Importers may enjoy a preferential import duty tariff under the RCEP scheme by using facility code “69” when declaring the import declaration, fulfilling the origin criteria requirement, fulfilling the procedural provisions e.g. ticking the “Issued Retroactively” box if the Certificate of Origin (“COO”) is issued after the shipping date, and fulfilling other requirements in 209/PMK.04/2022. The regulation became effective from 1 January 2023 onwards.

**Our take:** Any trader looking to utilise RCEP should explore other potential FTA options to make sure the optimal preferential rate is being used. There are many factors that may come into play when selecting which FTA works best for your operations. Even if an FTA may provide the most financial benefit (i.e. lowest duty rate) for your planned supply chain, it may still not be the most suitable for your operations. Other factors such as the ease of qualification, difference in rules of origin (e.g. accumulation of originating materials or the change in tariff classification), and trade flow requirements (e.g. direct consignment) should be considered. In some cases, the most “obvious” FTA may not be the most suitable for your operations.

## Implementation of KICEPA Form

The Ministry of Finance (“MoF”) has issued MoF regulation number [219/PMK.04/2022](#) regarding the procedures for the imposition of import duty tariff on imported goods under the Comprehensive Economic Partnership Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Korea (“KICEPA”).

The regulation became effective from 1 January 2023 onwards.

## Technical guidelines on guarantee in the context of customs and excise

On 28 December 2022, the Directorate General of Customs and Excise issued regulation number [PER-20/BC/2022](#) regarding the technical guidelines on guarantee management in the context of customs and excise activities. PER-20/BC/2022 is the implementing regulation for MoF regulation number 168/PMK.04/2022. It provides further details on the new customs guarantee regulation without adding any new provisions. You may refer to our [November/December 2022 Trade Intelligence issue](#) for a summary of the new customs guarantee regulation. The regulation became effective from 1 January 2023 onwards.



## New Regulation on the procedures for declaration of excisable finished goods

On 30 December 2022, the DGCE issued regulation number [PER-24/BC/2022](#) regarding new procedures for declaration of excisable finished goods. PER-24/BC/2022 covers the declaration of all excisable goods, where previously declarations of finished electric cigarettes and other processed tobacco products were regulated in a separate regulation from the regulation for other excisable products.

In addition, PER-24/BC/2022 makes changes to the procedures for the declaration of excisable finished goods such as:

- Declarations of excisable finished goods are now submitted on the 10th of the following month where previously declarations of excisable finished goods were submitted on the 3rd or 17th of the following month;
- When a company does not produce any excisable finished goods, the company is required to make a nil declaration;
- Updated declaration formats of excisable finished goods, factory holiday declarations, etc.

This regulation became effective from 13 February 2023 onwards.

## Customs and excise objections to be submitted through CEISA portal

On 30 December 2022, the DGCE issued regulation number [PER-25/BC/2022](#) regarding new procedures for the submission and settlement of objections in the customs and excise sector. PER-25/BC/2022 is the continuation of MoF regulation number 136/PMK.04/2022 which stipulates that starting from 1 January 2023, all submissions of customs objection letters will be done through customs' CEISA portal. PER-25/BC/2022 provides detailed procedures for the electronic submission of customs objections. This regulation will be effective from 1 January 2023 onwards.

## Implementation regulation for new bonded exhibition area

On 30 January 2023, the Directorate General of Customs and Excise ("DGCE") issued regulation number [PER-3/BC/2023](#) regarding the procedures for bonded exhibition areas. PER-3/BC/2023 is the implementing regulation for MoF regulation number 174/PMK.04/2022 and provides further details on the procedures for bonded exhibition areas without the addition of any new provisions. You may refer to our [November/December 2022 Trade Intelligence](#) issue for a summary of the new bonded exhibition area regulation. The regulation is effective from 30 January 2023.







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## Implementation of e-CO under the JIEPA

The Japanese government started discussions on the electronic data exchange of certificates of origin (“e-CO”) for free trade agreements with Indonesia, Thailand and ASEAN. The Ministry of Economy, Trade and Industry (“METI”) and the issuing bodies in Japan (the Japan Chamber of Commerce (“JCCI”), Japan Customs and Nippon Automated Cargo and Port Consolidated System, Inc. (“NACCS Center”)) [announced in December 2022 that both Japan and Indonesia would start a pilot project to exchange e-CO](#) under the [Japan-Indonesia Economic Partnership Agreement \(JIEPA\) from April 2023 onwards](#). They plan to progress to full-fledged implementation of the e-CO under the JIEPA, which is scheduled for June 2023.

Japan Customs explained that the use of e-CO will bring benefits such as those listed below:

- Facilitate a smoother customs procedures for claiming of preferential tariff rates under the FTA/EPA in the importing country;
- Enable both parties to ensure the authenticity of the certificate of origin (Note: seals and signatures of the issuing authority of the exporting party will not be printed in the e-CO) as the data will be exchanged directly from the issuing authority of the exporting party to the import customs authority;
- Allow importers to submit proof of origin to customs authorities via e-CO, meaning that importers do not need to scan the hard copy of certificates of origin for customs clearance;

- Allow Customs and importers to manage customs clearance of split shipments covered by a single certificate of origin.

How to utilise e-CO for importation into Japan

- Importers who are willing to use e-CO upon import declaration will need to obtain an e-CO number, and e-CO key (the invoice number of the first item) from the exporter prior to import. They need to share such information with their customs broker so that the broker can refer to the appropriate e-CO.
- In cases where the e-CO number or e-CO key exceeds 20-digits, another code called “N-C/O number” (16-digits) is required to file an import declaration. N-C/O numbers will be generated by the [customs clearance system](#).
- If importers want to manage the submission of e-CO directly through NACCS, they can establish a contract with the NACCS Center prior to the first shipment to gain that ability. Alternatively, they can submit the e-CO through their customs brokers.
- Importers are not required to retain a copy of individual e-COs in cases where the importer submits the e-CO to customs to claim the preferential tariff in conjunction with the import declaration.
- Paper-based certificates of origin will continue to be accepted when an importer claims the preferential tariff even after the implementation of the e-CO.

**Our take:** The e-CO program has the potential to provide a significant reduction in the management of the documentation required for use of FTAs. It should be noted that importers are still required to check whether the information of the e-CO matches up with the information related to the importation of goods (e.g., importer/exporter name, invoice information, etc.) and that the imported goods meet the rules of origin.





## Customs value for imported goods with additional payment

In January 2023, Japan Customs released an announcement due to “increasing cases” where the importer makes [additional payments pertaining to the buy-sell transactions of imported goods](#) due to increases in raw material prices and labour costs. Japan Customs encourages importers to file amended declarations in cases where an importer makes additional payments for imported goods after filing the import declaration based on the initial, agreed invoice for the imported goods. If an importer fails to file an amended declaration in such a case and a separate payment is discovered during a customs post-entry audit, the importer will be subject to payment of penalties in addition to the underpaid duties. It is a general principle of WTO customs value that additional payments related to the imported goods are considered a part of the price paid or payable under the Transaction Value method. The Transaction Value is the main valuation method used for customs value declaration. Japan Customs provided a sample case for further explanation:

- Importer A imported machine parts from Exporter B in China. Importer A paid exporter B for the imported goods once but the price of imported goods was revised retroactively after the import declaration was filed based on the invoice with the initial price. As such, Importer A made an additional payment to the exporter.
- Although the additional payment constitutes a part of the customs value, Importer A did not file an amended declaration. Eventually the additional payment to the exporter was pointed out by customs auditors through customs post clearance audit. Additional duty, import consumption tax and interest as well as penalty were assessed on Importer A.

**Our take:** Importers need to be aware of all payments related to the customs value of imported goods under the import transaction. If an importer pays additional costs after filing an import declaration with Customs, the importer needs to consider whether such additional payment constitutes a part of the customs value and file an amended declaration if deemed necessary in order to avoid unexpected duty or tax.



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## Customs and trade related updates of the retabled Malaysia's Budget 2023

On 24 February 2023, the Ministry of Finance (MOF) retabled Malaysia's Budget 2023 ("New Budget") following the administration of the newly elected Government. An earlier version of the Budget 2023 ("Previous Budget") was tabled in October 2022 under the previous Government but has now been replaced by the new budget under the newly elected administration. For your ease of reference, please see our at a glance table to summarise changes below:

Proposed scheme	Updates
Import and excise duties exemption to imported Completely Built-Up (CBU) Electric Vehicles (EVs)	This exemption period will be further extended until 31 December 2025.
Scheme to extend sales tax exemption on the purchase of locally assembled buses	Removed.
Scheme to exempt excise duty on tourism vehicles	Removed
Excise duty and sales tax exemption timeframe on the sale, transfer and disposal of taxis	The effective date has been revised to take effect from 1 March 2023 onwards.
Import duty and sales tax exemption timeframe on nicotine replacement therapy (NRT) products	Effective date has been revised to take effect from 1 April 2023 for a period of 3 years.
Import duty and sales tax exemption timeframe on studio and film production equipment	The effective date has been revised to take effect from 1 April 2023 with an extended period of 3 years until 31 March 2026.
The import duty & sales tax exemption for Carbon Capture and Storage ("CCS")	No changes
Luxury goods tax	Newly introduced
Special Voluntary Disclosure Program (SVDP) Extension of excise duty and sales tax exemptions on locally assembled Electric Vehicles (EVs)	Re-introduced measure with 100% remission on penalties.
Excise duty and sales tax exemptions on locally assembled Electric Vehicles (EVs)	Proposed extension
Excise duty on liquid or gel products containing nicotine used for electronic cigarettes and vapes	Newly introduced.





The key points and comparisons of the proposed amendments that are related to customs and trade are detailed below:

#### **Updates to measures introduced in the Previous Budget**

1. Extension of import and excise duties exemption to imported Completely Built-Up (CBU) Electric Vehicles (EVs)

Currently, imported CBU EVs which include passenger vehicles, commercial vehicles and motorcycles are fully exempted from import and excise duties from 1 January 2022 to 31 December 2023. This exemption period will be further extended until 31 December 2025

2. Removal of the scheme to extend sales tax exemption on the purchase of locally assembled buses

It was proposed in the Previous Budget that the sales tax exemption on the purchase of locally assembled buses including those fitted with air conditioners will be extended for another 2 years until 31 December 2024. Currently, sales tax exemption was available until 31 December 2022 for locally assembled buses including those fitted with air conditioners purchased by eligible bus operators. This proposal was not included in the new Budget 2023. Hence, this proposal will no longer be applicable.

3. Removal of scheme to exempt excise duty on tourism vehicles

It was proposed in the Previous Budget that the exemption be brought back for 2 years for new locally assembled hire-and-drive cars for tourists and excursion buses. The exemption was to be granted to applications received by MOF from 1 January 2023 to 31 December 2024. This proposal was not included and retabled in the new Budget 2023. Hence, this proposal will no longer be applicable.

4. Changes to the excise duty and sales tax exemption timeframe on the sale, transfer and disposal of taxis

It was proposed in the Previous Budget that from 1 January 2023 onwards, excise duty and sales tax exemptions are extended to executive taxis, Teksi 1 Malaysia and airport taxis. Currently, excise duty and sales tax exemption are granted to the sale / transfer / private use / disposal of individually owned budget taxis and hired cars. The qualifying timeline of the vehicle is proposed to be reduced from 7 years to 5 years from the registration date. The effective date has been revised to take effect from 1 March 2023 onwards.

5. Changes to import duty and sales tax exemption timeframe on nicotine replacement therapy (NRT) products

It was proposed in the Previous Budget that import duty and sales tax exemptions will be granted to NRT products such as nicotine gums and nicotine patches from 1 January 2023 to 31 December 2027. Currently, these products are subjected to import duty and sales tax. This proposal

remains but the effective date has been revised to take effect from 1 April 2023 for a period of 3 years.

6. Changes to import duty and sales tax exemption timeframe on studio and film production equipment

It was proposed in the Previous Budget that import duty and sales tax exemptions will be granted to providers of such equipment, production services, studios and cinemas from 1 January 2023 to 31 December 2024. The application for these exemptions must be submitted to the Ministry of Finance (MOF). Currently, studio and film production equipment imported are subjected to import duty and sales tax. This proposal remains but the effective date has been revised to take effect from 1 April 2023 with an extended period of 3 years until 31 March 2026.

7. No changes to the import duty & sales tax exemption for Carbon Capture and Storage ("CCS")

It was proposed in the Previous Budget that companies undertaking CCS in-house activities or CCS services will be given import duty and sales tax exemption on equipment for CCS technology. The application for exemption must be received by the MOF from 1 January 2023 to 31 December 2027. Currently, there is no specific import duty and sales tax exemption that is readily available for CCS technology related equipment. This proposal remains with the same effective date.

Apart from the above, there are four new proposals in relation to customs and trade from the New Budget which are as follows:

#### **New measures announced in the New Budget**

1. Introduction of Luxury Goods Tax

Currently, there is no specific tax imposed on luxury goods. The government has proposed to introduce a luxury goods tax in 2023 for a certain threshold value, based on the type of luxury items such as luxury watches and fashion items. No details are provided at this moment including the date of implementation.

2. Special Voluntary Disclosure Program (SVDP)

The Royal Malaysian Customs Department (RMCD) launched a Special Voluntary Disclosure & Amnesty Program (SVDP) for the period 1 January 2022 to 30 September 2022. This offered a remission of penalties of 50% or 100% and a reduction of 5% or 10% of unpaid tax/duty depending on the voluntary disclosure submission date.

It is proposed that SVDP be brought back with an offering of 100% remission on penalties for voluntary disclosures made from 1 June 2023 to 31 May 2024.

3. Extension of excise duty and sales tax exemptions on locally assembled Electric Vehicles (EVs)

Currently, the components of locally assembled Completely Knocked Down (CKD) Electric vehicles (EVs) are exempted from import duty, while full excise duty and sales tax exemptions are also given to the completed CKD EVs until 31 December 2025. It is proposed that the exemptions will be further extended from 1 January 2026 until 31 December 2027.



4. Excise duty on liquid or gel products containing nicotine used for electronic cigarettes and vapes

Currently, liquid or gel products containing nicotine used in electronic cigarettes and vapes are not subjected to excise duty. As for nicotine-free liquid and gel products, they are subjected to excise duty at RM0.40 per litre. It is proposed that the imposition of excise duty will be extended to liquid or gel containing nicotine used in e-cigarette and vape. The effective date has yet to be determined.

**Our take:** Due to the change in administration there are various new customs and trade measures covering a wide range of industries. It is important to note that these measures are not yet finalised. The details are still subject to change. Any traders interested in any of the measures should closely look out for further updates. Therefore, it would be prudent to be aware of these proposals but only commit to any changes to your operations once the measures are finalised and the operational details are announced.

## Imposition of a 10% flat rate sales tax on LVG for online marketplace

On 30 December 2022, the Ministry of Finance (MOF) published Sales Tax (Amendment) Act 2022, Sales Tax (Total Sale Value of Low Value Goods) Order 2022, Sales Tax (Rate of Tax For Low Value Goods) Order 2022, Sales Tax (Low Value Goods) Regulations 2022 and Sales Tax (Determination of Low Value Goods) Order 2022 which will be taking effect on 1 April 2023.

All imported Low Value Goods (LVG) sold in the online marketplace at a price not exceeding RM500 and brought into Malaysia via air, sea or land modes will be subjected to a flat rate 10% sales tax. However, sales tax exemption is still applicable for imports not exceeding RM500 via air mode at the designated airports under the de minimis exemption rule.

**Our take:** Both local and overseas online sellers should assess their business flow and transactions to determine whether they are eligible to be registered with Malaysia Customs and charge 10% sales tax on LVG. Any companies looking to implement or that already have implemented e-commerce models in Malaysia must be aware of this change and study its impacts.

## Implementation of CPTPP in Malaysia

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”) involving 10 other countries (Australia, Brunei Darussalam, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore and Vietnam) came into effect for Malaysia on 29 November 2022.

In addition, the Ministry of International Trade and Industry (“MITI”) issued an announcement dated on 8 February 2023 regarding the Back-to-Back Certificate of Origin (“CO”) application requirement. It requires a declaration on transit and transshipment and formal undertaking of the originating status to prove compliance under Article 3.18 (Transit and Transshipment) of the CPTPP.

**Our take:** Malaysia exporters should perform an impact assessment of the CPTPP to take full advantage of the benefits while complying with the Back-to-Back CO application requirements, where applicable. With the increasing number of FTAs in the Asia Pacific region, traders would do well to conduct or revisit opportunity assessments to review the most beneficial FTAs for their specific trade flows.

## Guidelines on Approved Permit for Battery Electric Vehicles

On 3 January 2023, the Ministry of International Trade and Industry (“MITI”) issued a guideline on Approved Permit (“AP”) applications for Battery Electric Vehicle (“BEV”). Starting from 1 January 2023 to 31 December 2025, MITI will be granting APs to eligible BEV OEM manufacturers for the BEV segment in order to encourage BEV manufacturing companies to set up a hub installation and distribution of BEVs in Malaysia. The initiative hopes to boost BEV demand in the local market and further promote development of the entire ecosystem for vehicles of this category in the long run.

Please note that APs may be granted under certain conditions, such as meeting the requirements of establishing a Head Office, Experience/Sales Centre and Service Centre in Malaysia, installing at least 50 units of ultra-fast charger with a capacity exceeding 180 kWh etc.



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## Philippines ratifies the RCEP agreement

On 23 February 2023, after several delays, the Senate of the Philippines approved the ratification of the Regional Comprehensive Economic Partnership (“RCEP”) agreement.

The RCEP is a free trade agreement signed in 2020 by the ten ASEAN member states (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and its five FTA partners (Australia, China, Japan, New Zealand, and South Korea) which makes it one of the largest FTAs in the world. It aims to improve market access via the elimination of tariffs and quotas on a variety of goods. The Philippines is the last territory to ratify and enforce the RCEP agreement.

The RCEP is expected to support the development of MSMEs to participate in regional value chains. The key benefit of the RCEP to the Philippines lies in simpler and more efficient cross border trading. In particular, many products that are exported from the Philippines will have access to bigger markets with preferential duty rates for the exportation of agricultural products, automotive parts and garments. In the same manner, manufacturers in the Philippines will also be given access to preferential duty rates on imported raw materials from RCEP participating countries.

**Our take:** More details of the implementation of the RCEP and the list of products with preferential duty rates are expected to be released in the coming months. Companies should study the new opportunities arising from the use of the RCEP and assess whether their current and potential market plans will benefit from it as well as comparing its benefits against the already existing FTAs.



## AEO MRA and e-commerce MOU between the Philippines and China

On 4 January 2023, representatives from the Philippines and China signed a Mutual Recognition Agreement (“MRA”) to benefit the members of the Authorised Economic Operator (“AEO”) Programmes of the two countries. AEO Programmes aim to secure and facilitate trade to improve supply chain security through benefits such as expedited cargo clearance and priority treatment. The MRA serves as a platform for these benefits through international recognition between partner countries.

Under the MRA, products from Level 2 AEO exporters in the Philippines will be given trade facilitation benefits upon import into China. Likewise, products sent by Chinese exporters accorded with ‘Advanced Certified Enterprises’ status will be entitled to trade facilitation benefits when being imported into the Philippines. Depending on the AEO levels, benefits may include expedited clearance time, dedicated processing lanes and help desk.

In six months, both parties are expected to develop plans to implement the MRA. Currently, there is very little guidance from Customs on the claiming of AEO benefits in practice. As of now, there are few companies who utilise such AEO benefits, hence it is difficult to know in practice how such benefits are achieved. Since Philippine Customs are more actively promoting AEOs, we believe more guidance on claiming such benefits will be forthcoming in the foreseeable future.

On the same day, a Memorandum of Understanding (“MOU”) on e-commerce was signed between the Philippines and China. The MOU aims to form a cooperation between the two countries to promote trade in high-quality featured products and services, pursue business exchanges between MSMEs and e-commerce platforms, start-ups and logistics service providers as well as share best practices and innovative experiences in utilising e-commerce.

A working group on e-commerce will be established to serve as the focal point of coordination and source of information for the two parties.

**Our take:** Although it is too early to tell how these agreements could actually be of benefit to companies, these are positive signals of trade cooperation which could create potential opportunities for companies in the Philippines and China. However, based on our experience, the benefits of AEO in the Asia Pacific region are limited. Since there is a growing spotlight on the topic of AEO, this may change in the future.

## Implementation of Safeguard Duty on HDPE Imports

The Bureau of Customs (“BOC”) notified its stakeholders of the implementation of safeguard duty measures on the importation of High-Density Polyethylene (HDPE) pellets and granules for a period of three years. HDPE is used for blow-moulding or injection-moulding of plastic chemical containers, bottles and pipes, etc.

The safeguard duty has been implemented and reflected in the BOC’s electronic system since 17 December 2022. As a result, imported HDPE classified under the ASEAN Harmonised Tariff Nomenclature (AHTN) code 3901.20.00 is subject to the payment of safeguard duty in the schedule as shown below.

Implementation year	Safeguard duty per metric ton (M/T)
First	Php 1,338.00/MT
Second	Php 1,271.00/MT
Third	Php 1,208.00/MT

The products that are excluded from the safeguard measures are polyethylene wax, ethylene acrylic acid copolymer, low density polyethylene, and polyethylene terephthalate resin classified under different AHTN codes. Imported HDPE grades specifically used in the manufacture of wires, cable jackets/coatings and in rotational moulding process applications are likewise not covered by the safeguard duty measure.

HDPEs originating from developing countries are exempted from this safeguard duty. The complete list of exempted countries are listed in Annex “A” of the memo. To be exempted from this implementation, importers must submit a Certificate of Origin (CO) that has been authenticated by a competent agency or the Philippine Embassy in the country of origin.

The application of the safeguard duty will be monitored and reviewed by the Department of Trade and Industry.

## Extension of the reduction in import duty rates

The Philippines extended the [reduction of import duty rates of various imported products](#) as shown below:

Products	AHTN codes	Reduced MFN duty rate in %	Period
Mechanically deboned chicken and turkey	0207.1491.000; 0207.2791.100; 0207.2791.200	5	31 December 2024
Pork	0203.1100.100; 0203.1200.100; 0203.1900.100; 0203.2100.100; 0203.2200.100; 0203.2900.100	15	31 December 2024
	0203.1100.200; 0203.1200.200; 0203.1900.200; 0203.2100.200; 0203.2200.200; 0203.2900.200	25	
Corn	1006.9091.100; 1005.9099.100	5	
	1006.9091.200; 1005.9099.200	15	
Rice	1006.1090.100; 1006.1090.200; 1006.2010.100; 1006.2010.200; 1006.2090.100; 1006.2090.200; 1006.3030.100; 1006.3030.200; 1006.3040.100; 1006.3040.200; 1006.3050.100; 1006.3050.200; 1006.3060.100; 1006.3060.200; 1006.3070.100; 1006.3070.200; 1006.3091.100; 1006.3091.200; 1006.3099.100; 1006.3099.200; 1006.4010.100; 1006.4010.200; 1006.4090.100; 1006.4090.200	35	
Coal	2701.1100; 2701.1210; 2701.1290; 2701.1900	0	Beyond 2023





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## 15% increase of excise duties on tobacco products announced in Singapore's 2023 Budget

Following Singapore's 2023 Budget announcement on 14 February 2023, the [Singapore government increased the excise duty of tobacco products](#) including cigarettes, cigars, and snuffs by 15%. The excise rate increases on tobacco products are published in the Circular 03/2023. Singapore's tobacco products' excise duties are calculated on a specific rate basis (i.e. per quantity). The increase came into effect on 14 February 2023.



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## Online service for importers/exporters to apply for customs clearance data

Taiwan Customs issued a press release on the utilisation of the online customs clearance data service. The scheme to facilitate importers' and exporters' ability to apply for their own customs clearance data was introduced by Taiwan Customs in 2017. The Customs Administration has provided an [online application for customs clearance data services](#) in the CPT Single Window "Product Data Warehouse Service". The average processing time for each application was less than one working day.

In the press release Taiwan Customs emphasised that this service is for the needs of importers and exporters for internal inspection and reconciliation and the data is generated by the database of the customs clearance system in real time. It may still change with the correction of declaration items in the future and as such it is for reference only. It shall not be used as evidence for declaration purposes. If importers or exporters need documents as evidence, they need to either apply for an import and export certificate or a copy of the customs declaration.

**Our take:** Customs clearance data is the bread and butter of customs compliance and optimisation. It is important for companies to review their declaration clearance data from time to time. Ideally, companies should conduct such reviews annually to spot any potential errors or opportunities.

## Dumping of floating flat glass imported from Malaysia, Indonesia and Thailand

The Ministry of Finance ("MOF") announced the results of the [anti-dumping investigation on imported floating flat glass](#) from Malaysia, Indonesia and Thailand and concluded that some manufacturers did engage in dumping activities.

Customs announced the preliminary determination results on 9 November 2022. The Ministry of Economic Affairs stated though that the dumping caused substantial damage to the domestic industry but anti-dumping duties have yet to be levied.

The Ministry of Economic Affairs and the Ministry of Finance will continue to complete the final investigation to determine whether there are damages to the local industry.

# Thailand

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## Updated DFT watchlist on exports to the US and EU

In our [July 2022 Trade Intelligence publication](#) we included an update on the Thai Department of Foreign Trade (“DFT”) notification on the inspection of goods under watchlist before issuing a non-preferential certificate of origin (CO). On 17 January 2023, the DFT issued another [notification on origin inspection for requesting a non-preferential certification of origin for watchlist products \(no.2\) B.E. 2566 \(2023\)](#). This notification became effective from 1 February 2023 and was introduced to replace the prior notification. The DFT aims to be more compliant with the trade measures of importing countries, to prevent the evasion of trade measures and enforce stricter inspection of non-preferential CO.

The key changes between the two notifications are as follows:

1. The list does not specify that China is subjected to anti-dumping action or Section 301 of the Trade Act of 1974 for the exportation of goods to the United States and goods to the EU. Instead, it is a watchlist for the exportation of goods to the United States and EU as a whole.

2. The number of watchlist products has increased from 42 to 48 items.
3. Some products have been removed and others were added to the list. For example, stainless steel, sink and wash basins (HS code 7324.10) have been removed, and passenger vehicles and light truck tires (HS code 4011.10 and 4011.20) have been added.

Exporters are recommended to cross-check and review if their exported goods are affected by the updated watchlist before export to ensure compliance and mitigate the risk of shipment being rejected upon arrival in the country of import.

Our take: While the DFT watchlist aims to safeguard Thai exporters from misdeclaring non-preferential origin, it may increase administrative work for exporters if their items are included in the new list. There are now more procedures to comply with and administrative costs to potentially incur. Companies are advised to maintain up-to-date knowledge of these regulations and news from the DFT, as well as prepare relevant documentation to support their claims that goods originate from Thailand.



## Thailand opens first Digital Free Trade Hub

On 23 January 2023 Thailand [launched its first digital free trade hub in partnership with Alibaba](#), as the territory looks to upgrade its logistics and e-commerce sectors. The hub is a free trade area in Thailand's Eastern Economic Corridor ("EEC"): designed to facilitate cross-border e-commerce between Thailand and China. If successful, the digital free trade hub will allow consumers in Thailand and China to buy products from each other's markets more easily and quickly. The launch of the digital free trade hub is part of Thailand's efforts to position itself as one of Southeast Asia's key logistics centres for trade and e-commerce.

## Transportation control of goods under customs custody

On 18 January 2023, the National Gazette announced a [Ministerial Regulation \(MR\)](#) regarding "transportation control of goods in Customs custody" which specifies the options for a company to secure and track its goods before releasing them from Customs control. These measures are applicable for goods in transit, goods transported to a bonded warehouse, Customs Free Zones, Industrial Estate Authority of Thailand ("IEAT") Free Zones and goods transported from a port to an authorised depot.

This MR provides two control options which are:

1. Control using specific equipment (e.g. using equipment for binding, fastening, stringing, sealing, or by actions to secure this equipment to containers of goods or vehicles for transportation); and
2. Control using digital technology (i.e. a track and trace system using technology to link information with the electronic systems of Customs and other relevant agencies).

It also specifies that the control can be operated by third-party service providers using technology which has effective control, record-keeping and data exchange systems that can be shared with Thai Customs.

To apply for these measures, business operators must file a request and make a payment (operational fees) to Thai Customs before performing any customs formalities. This regulation will become effective on 19 April 2023.

**Our take:** This regulation provides alternatives to facilitate the transportation and tracking of goods under customs custody for importers, exporters, customs brokers and other logistics service providers. Particularly the digital tracking option will serve as another systematic platform for future shipment tracking. Companies can track shipments at any time and be assured that their information will be kept confidential. Since there have not been any sub-regulations providing specific criteria, conditions, procedures, and fees under each option, we suggest the companies closely monitor regulatory updates if interested to use these tracking options.

## HS version under the AJCEP changed from HS 2002 to HS 2017

Thai Customs issued [Customs Notification \(CN\) 46/2566 \(2023\)](#) which is an amendment to [the previous notification CN 230/2564 \(2021\)](#) regarding the criteria and procedures for duty exemption and reduction under the ASEAN-Japan Comprehensive Economic Partnership ("AJCEP"). The notification was issued on 24 February 2023 and became effective on 1 March 2023.

Most criteria and procedures for using the AJCEP duty privilege remain unchanged, except:

- the six-digit HS code version and the product-specific rules ("PSR") have been changed from HS 2002 to HS 2017
- any Form AJ issued from 1 March 2023 onwards must be in accordance with HS 2017.

If the goods have been exported before the new PSR came into effect, Any Form AJ issued after 1 March 2023 must make reference to HS 2017.

Companies who wish to enjoy a duty exemption or reduction (either for imports or exports) after 1 March 2023 must ensure that they issue Form AJ according to HS 2017. If possible, the product descriptions on the invoice and Form AJ should align with HS 2017. Otherwise, the customs authorities in the country of import could reject the Form AJ and the importers would have to pay import duty at standard rates.

**Our take:** There are quite a few changes to the HS between 2002 and 2017. Some HS codes have been removed to reflect products no longer used, while others have been added to reflect new types of products in the market, not only in Thailand but around the world. So companies will have to check and compare the different HS code versions to determine the correct and appropriate tariff codes before applying Form AJ. Incorrectly declaring HS codes may lead to a disqualification of your FTA preferential treatment.





## New duty exemption requirements for BEVs manufactured in free zones or IEAT free zones

On 30 January 2023, the Customs Department issued notification [22/2566](#) which details the duty exemption requirements for battery electric vehicles (“BEV”) manufactured in customs free zones (“FZ”) or IEAT free zones (“IEAT FZ”). The notification sets out criteria and procedures for obtaining duty exemption on BEVs manufactured for domestic sale. It follows the Excise and Ministry of Finance (“MOF”) notifications on BEV duty reduction.

The requirements are similar to those under Customs notification [246/2564](#) Article 16 which states that the ex-factory value of qualifying goods must be from 40% or more of local or ASEAN content to obtain 0% import duty. But the new notification also underlines specific requirements and eligible manufacturing processes for BEV. The key requirements include:

- The BEV must be manufactured in the FZ or IEAT FZ between **8 October 2022 and 31 December 2025**.
- Manufacturers can use the CIF value of imported battery cells for **up to 15%** of the BEV’s ex-factory price to calculate the local content value.

- The BEV must undergo substantial production processes in the FZ or IEAT FZ. If the BEV needs **four or more** substantial processes, the manufacturer may carry out those processes that aren’t a final substantial process outside the FZ or IEAT FZ.
- To be eligible for BEV duty exemption, you must be a free zone operator and must be entitled to the BEV support measures under the [Excise notification](#) on criteria and procedures for duty reduction and duty exemption in accordance with the Customs Tariff Decree 1987 Section 12.

The formal customs approval process for local content privilege is essentially the same as normal for goods imported from the FZ or IEAT FZ into Thailand.

**Our take:** The new notification is the result of the government’s financial support scheme for BEVs, which is administered by the Thai customs and excise authorities. If you are a Thai manufacturer interested in this privilege, you should first check the relevant excise notification for eligibility requirements and ensure that you can meet the requirements under this notification.



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## HS code declaration on C/O Form B for non-preferential origin

The Ministry of Industry and Trade (“MoIT”) have issued [Official Letter No. 48/XNK-XXHH](#) in response to Vietnam Chamber of Commerce and Industry’s Official Letter No. 36/LĐTM-TTXN regarding the HS code declaration on the non-preferential certificate of origin (“C/O”) Form B on 10 February 2023.

Notable points are summarised as below:

- The MoIT is updating the Product Specific Rules from HS2017 to HS2022 in order to be in line with Vietnam’s Nomenclature of Exports and Imports 2022. In the meantime, the issuance of C/O form B will still adhere to Circular No. 05/2018/TT-BCT by using the HS2017 version.
- The HS2022 code could also be indicated on the C/O in the event that there are differences between the two HS code versions and if requested from declarants. The declarant is responsible for the accuracy of the declared HS code.
- The HS2022 version cannot be applied as the basis for C/O issuance.

## Customs procedures for temporary import/export arrangements

On 27 February 2023, the General Department of Customs issued [Official Letter No. 824/TCHQ-GSQL](#) to provide guidance to the customs procedures for re-exporting or re-importing goods in cases where the HS codes have been changed (e.g. due to HS version updates) after the implementation of Circular No. 31/2022/TT-BTC dated 30 December 2022.

The notable points are as follows:

- If the HS codes declared on temporary import/export customs declarations registered before 30 December 2022 are not contained in Circular No. 31/2022/TT-BTC, the declarant must declare the corresponding customs entries in paper form with specific guidance from Customs.
- The updating of customs systems and monitoring of customs declarations is under the responsibility of Customs.

## Procedures for re-exporting imported raw materials for liquidation

On 4 January 2023, the General Department of Customs issued [Official Letter No. 39/TCHQ-GSQL](#) on the procedures of liquidation of imported materials by re-exporting them to overseas parties.

Notable points are summarised as follows:

- In the case where an enterprise liquidates imported materials in the form of re-export for sale to overseas customers, no procedures for changing the purpose of usage (customs mode A42) are required. Instead, enterprises should declare customs mode B13 for re-exporting imported raw materials, provided that the goods have not undergone any processing in Vietnam.
- When handling re-export procedures for the above-mentioned consignments of raw materials under B13, the customs authority will check and compare customs documents with the actual goods to determine that the consignment has not been in any processing procedures for consideration of not collecting tax subject to regulations.
- If Customs has no basis to determine whether the re-exported goods originate from imports or have been processed in Vietnam, they will carry out a post-clearance inspection and apply the normal tax policy according to the regulations.





## Clarification on the inspection for on-the-spot imported and exported goods

On 6 January 2023, the General Department of Customs issued Official Letter No. 87/TCHQ-TXNK on customs valuation and data update for on-the-spot import and export declarations.

Notable points are summarised as follows:

- On-the-spot import and export goods are subjected to import and export duties and customs inspection will be carried out in the same manner as for normal import and export of goods. Customs inspection is based on the results of the customs authority's compliance and risk assessment. The risk assessment procedure is applied to all types of import and export goods, regardless of whether the goods are on-the-spot or normal import and export goods.
- The prevailing regulation does not provide separate provisions on customs value inspection for on-the-spot import and export goods. Therefore, goods that are imported and exported on the spot are not excluded from customs value inspection.
- In the case where on-the-spot import and export goods are classified into the yellow lane (i.e. subject to document inspection) or physically inspected and judged to be at risk of underdeclaration of customs valuation, they will be subjected to customs value inspection.

## 16 new FTA tariffs are now available on the VNACCS system of Customs

On 18 January 2023, the General Department of Customs issued Official Letter No. 315/TCHQ-TXNK on the implementation of Circular No. 31/2022/TT-BTC dated 8 June 2022 and Tariff Decrees.

The Vietnam Automated Cargo Clearance System (VNACCS) system has been created for traders to determine the MFN tariffs, the normal import tariffs and the out-of-quota import tariffs for product codes under the Nomenclature of 2022 listed in Appendix 1 of Official Letter No. 5731/TCHQ-TXNK dated on 29 December 2022. The limitation of this system is that it does not include some of the product codes which as a result need to be declared manually. Such codes are marked as "KBTC".

To further improve facilitation of the application of preferential export tariffs and special preferential import tariffs within the framework of FTAs, VNACCS has now updated 16 new FTA tariffs for automatic tariff determination.





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