

No, where are you REALLY from?

Proving origin is become ever more complicated

Trade Intelligence Asia Pacific
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Key intelligence



Stricter requirements on the import of hazardous chemicals in China 10

India releases its new Foreign Trade Policy 2023 with interesting customs and trade implications 12

Possible electronic examination of imports in Indonesia 15

Important updates on export control trends in Japan 17

Malaysia implements new Orders for restriction and prohibition of import and export 19

RCEP takes effect in the Philippines on 2 June 2023 21

Declaration of royalties in Taiwan 23

Vietnam Customs suspends non-targeted post-clearance audits in 2023 26

Index

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.

Editor's note		Territory reports	
No, where are you REALLY from? Proving origin is become ever more complicated	4	Australia	8
		China	10
		India	12
		Indonesia	15
		Japan	17
		Malaysia	19
		Philippines	21
		Singapore	22
		Taiwan, R.O.C	23
		Thailand	24
		Vietnam	26
Free Trade Agreements focus			
ASEAN and China start negotiations on upgrading bilateral FTA	6		
Upgraded ASEAN-Korea Free Trade Agreement in pipeline	6		
UK joins the CPTPP	6		
UK Parliament approves trade agreement with Australia	6		
Cambodia and UAE conclude talks on trade pact	6		
Indonesia invites India to expedite PTA negotiations	7		
Indonesia proposes limited FTA with USA on minerals	7		
The New Zealand - UK FTA to take effect	7		
Philippines eyes free trade deal with US	7		
Singapore and China complete 'substantial negotiation' on FTA upgrade	7		
Thailand and EU to relaunch FTA negotiations	7		
Thailand and Bangladesh to explore FTA prospects	7		

No, where are you REALLY from?

Proving origin is become ever more complicated

Until fairly recently, the concept of origin was not one that was generally understood, let alone appreciated, by most people. Some might have been aware that a handful of customs specialists were working in a dark back-room somewhere to try and obtain pieces of paper from some authority or other that might help to reduce or even get rid of a duty payment here or there. Various legal departments concerned with licenses or authorisations may have had some awareness that it mattered where a product was from, although exactly how to determine such origin would as easily be gut feel as it would be a due process.

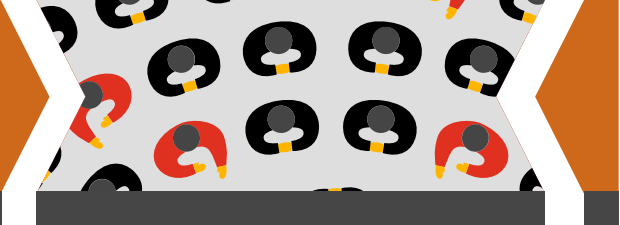
How the world has changed. Most C-suite executives and even board members are acutely aware that “origin” can make or break a business. Much-trumpeted large Free Trade Agreements, imposition of punitive tariffs under trade disputes, diversification of supply chains, proliferation of sanctions are at the top of a long list of regulatory changes that have made origin standard meeting room fare.

In itself that is not a bad thing. But there are (at least) two big challenges: explaining what it all means, and making sense of a bemuddling set of rules.

First: explaining. Finally the people that deal professionally with the concepts of origin have an attentive audience. That, however, comes with its own challenge of trying to explain the difficult and intricate concepts of origin to this audience, which may well be quite senior, impatient, not concerned with technical detail, yet very demanding for quick and clear answers. For many trade professionals, the sudden limelight, craved for years if not decades, swiftly turns into a scary place. It turns out that even with the most advanced technical knowledge on origin in all its guises, explaining to non-specialists how it works and – most importantly – how it impacts business is far from obvious. That is not just to blame on the audience's lack of knowledge. We work with many trade and customs professionals that do not spend anywhere near enough time on business impact, choosing instead to operate predominantly within the safe(r) confines of their technical field.

So what to do? For one, perhaps one size does fit all. Because the principles underlying origin, whether preferential or non-preferential, are not very difficult. Clearly determining the (again, preferential or non-preferential) origin of a particular product when it crosses a





border somewhere can be devilishly hard. A product could have five different origins depending on the border it crosses and the regulation it is being assessed under. Nevertheless, understanding that:

- there is a difference between preferential and non-preferential origin,
- different rules and regulations may apply,
- required documents may need to be obtained from authorities or may be created in ERP systems, and – perhaps most importantly –
- not being able to support an origin claim could lead to additional duties, penalties, shipment delays, import or export prohibition, loss of customers (re-order based on your companies priorities),

is fairly easily explained to any audience (try it on your kids or parents if you are concerned about the CEO – you may be surprised!). Even better if you have some simple suggestions as to how all this can be managed and controlled. Who knows, there may even be some budget in it for you.

Second: making sense of the rules. You may be surprised to hear us say that this might be the harder part of the equation. For the same reasons as outlined above, the authorities and regulators also have a renewed interest in origin and its underlying rules. It is perhaps ironic to think that preferential rules, which have probably taken up the vast majority of time of anyone dealing with origin, are the least problematic (using the word “least” in a purely relative way, as anyone who has ever attempted a practical application of a regional value build-up method will readily recognise). These rules are relatively clearly defined, and by and large consistent between the territories that they apply to.

Yet the proliferation of trade protective measures predominantly relies on application of non-preferential rules of origin. Harmonisation of these has been under discussion at WTO and WCO level for many decades, with not very much to show for it. Some countries don't have them at all. Others (including, for example, the US) define them very subjectively, based around substantiveness of process. [US Ruling N317669](#) is a great example of the kind of confusing, counterintuitive results this may lead to. Increasingly we also see examples of products that meet FTA rules of origin, and are hence entitled to preferential tariff treatment, but fail non-preferential rules, leaving them subject to punitive tariffs and or import restrictions at the same time.

Chambers of Commerce that often issue non-preferential certificates of origin apply the rules in the country of export, where they are based, rather than the rules in the country of destination, which are likely to apply upon import. Exporters or importers, especially SMES, that self-declare origin may do neither, but use a “gut-feel” approach to determine

whether they do enough to feel comfortable saying that their product originates, sometimes blissfully unaware of the potential implications and that there are rules governing such determination.

As the authorities are both wisening up to these trends and becoming ever more concerned that companies are re-routing products purely with the intent to avoid, if not evade, import tariffs and restrictions, challenges and verification requests are becoming more commonplace. These can be hard and time consuming to deal with, especially if they do not have robust processes to determine and document the origin of the product they trade. Specifically, self-certification is a double-edged sword: initially seen as facilitating trade, many companies are now finding that they are more likely to be challenged and experience shipment delays when they self-certify. Responding to verification requests by overseas authorities, or their customers, has a significantly adverse effect on their competitiveness. We are aware of a recent case where an importer in the US received a formal summons with detailed questions about the factory operations of a third party overseas facility two steps further up their supply chain in order to demonstrate the origin of the product they were buying and bringing into the US. Commercially this is simply not manageable.

To round it all off, in line with the OECD discussion around fair taxation, we are seeing some green (albeit that is not the appropriate colour in this context) shoots of questions being asked of companies that move some final stage production or assembly to a different territory purely for the purposes of meeting rules of origin. The EU ruled in 2021 that a company that moved production of goods that were subject to punitive tariffs from the US to Thailand were still subject to such tariffs, even though they met the appropriate rules of origin, because the move was not “economically justified”. Some may argue that such a ruling is absurd: variation of tariffs, be it preferential or punitive, are put in place specifically to encourage or discourage certain supply chains. Disallowing companies to make commercial decisions to manage this landscape competitively undermines the reason the rules were established in the first place, the argument goes.

Hence, making sense of the rules is probably harder than explaining how they work, regardless of your audience. Nevertheless, the “battle of origin” seems to have only just begun. Do not underestimate what it can do to your company's fortunes. And by all means do not be afraid to speak up. Your company needs you.

Headline	New development
ASEAN and China start negotiations on upgrading bilateral FTA	<p>On April 11 2023, ASEAN and China started the first round of negotiations on the upgrade of the ASEAN-China Free Trade Area (ACFTA) at a meeting of the Working Group on Standards, Technical Regulations, and Conformity Assessment Procedures (WG-STRACAP). The upgrade of the ACFTA will focus on sectors that benefit the interests of both parties (ASEAN and China), including the digital economy, green economy, non-tariff measures, consumer protection issues, and MSMEs, as well as the rearrangement of chapters structure of the ACFTA.</p> <p>Our take: Although it is still too early to determine (m)any impacts for traders, it shows the general direction of various ASEAN FTAs being upgraded. After a few years of focus on new headline grabbing multilateral FTAs, which may offer limited impact or opportunities, it is likely that these upgrades will have greater impact on companies that are already utilising the popular ACFTA. Companies should also consider lobbying for changes that could have a positive impact on their use of the ACFTA. There are various ways in which companies can make their voices heard, through chambers of commerce, business councils, or even directly with the relevant authorities in charge of FTA negotiations. Consultation processes may vary by territory, so make sure you understand these.</p>
Upgraded ASEAN-Korea Free Trade Agreement in pipeline	<p>On 12 April 2023, Satvinder Singh, the deputy secretary-general for ASEAN Economic Community announced that ASEAN is currently in the process of upgrading its existing ASEAN - Korea Free Trade Agreement (ACFTA) with dialogue partner South Korea.</p> <p>Our take: Similar to our update above, this is another important update we recommend traders to keep a close eye on. This is of course still early days but once the upgrades become operational, you should ensure that you are in a strong position to take advantage of such opportunities. Similar to above, companies should also consider lobbying for changes that could have a positive impact on their use of the FTA. There are various ways in which companies can make their voices heard, through chambers of commerce, business councils, or even directly with the relevant authorities in charge of FTA negotiations. Consultation processes may vary by territory, so make sure you understand these.</p>
UK joins the CPTPP	<p>After two years of negotiations, the UK has joined the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) trade bloc after substantially concluded negotiations.</p> <p>The members of the CPTPP will need to complete their own domestic ratification procedures to approve the UK's accession. The accession will come into force 60 days after the last of the current members gives notice that it has completed its domestic legal procedures. Although it is not uncommon to see delays in these procedures, hence it may be quite a while before the accession takes effect, it now does seem to be a matter of when, not if. Hence companies should use this time to assess the opportunities and impact the UK joining CPTPP has for them.</p>
UK Parliament approves trade agreement with Australia	<p>The UK Parliament recently granted Royal Assent to the legislation necessary to bring the Australia - United Kingdom Free Trade Agreement (A-UKFTA) into effect. A-UKFTA passed through both houses of the Australian parliament on 22 November 2022. The A-UKFTA will therefore enter into force once the UK has completed its domestic processes and Australia and the UK exchange diplomatic notes which confirm the commencement date of the agreement. Though, it is unclear yet when exactly the domestic processes in the UK will happen. That being said, the A-UKFTA is expected to come into force in mid-2023.</p> <p>Our take: Importers and exporters should begin preparations now to be ready to capitalise on the benefits provided by A-UKFTA by considering the necessary documentation and supporting information that will be required to claim preferential duty treatment when the agreement enters into force.</p>
Cambodia and UAE conclude talks on trade pact	<p>After three rounds of formal negotiations, it was announced on 18 March 2023 by Cambodia's Minister of Commerce and UAE's Minister of State for Foreign Trade that talks for the Cambodia-United Arab Emirates Comprehensive Economic Partnership Agreement (CEPA) had formally concluded. The new CEPA will cover trade in goods; trade in services; technical barriers to trade; rules of origin; customs and trade facilitation; sanitary and phytosanitary measures; trade remedies; electronic commerce; investment; and intellectual property.</p>

Indonesia invites India to expedite PTA negotiations	<p>During a meeting with Indian Commerce and Industry Minister Piyush Goyal in New Delhi, India, on 14 March 2023, Indonesia's Trade Minister Zulkifli Hasan expressed his expectation of immediately beginning negotiations for a bilateral Preferential Trade Agreement (PTA) between Indonesia and India, which has been under consideration since 2020.</p>
Indonesia proposes limited FTA with USA on minerals	<p>On 10 April 2023, Indonesia's Coordinating Minister of Maritime Affairs and Investment announced that Indonesia will propose an FTA for certain minerals shipped to the United States, so that companies in the electric vehicle battery supply chain operating in the territory can benefit from U.S. tax credits. This news comes as nickel products have become increasingly important in international supply chains. Indonesia is trying to attract investments from battery and electric vehicle makers because of its nickel reserves.</p>
The New Zealand - UK FTA to take effect	<p>New Zealand's FTA with the UK will come into force on 31 May 2023. This FTA will provide opportunities for businesses to grow, invest and diversify particularly for New Zealand exporters accessing the UK market. It is intended that over time the UK will eliminate all tariffs on New Zealand exports, with the large majority of current goods imported into the UK duty free from 31st May 2023. Certain New Zealand exports such as dairy, sheep meat and beef will take a number of years for tariffs to be completely removed. New Zealand will eliminate tariffs on all UK-originating goods from 31 May 2023. The FTA also includes commitments to address environmentally harmful subsidies such as fossil fuels or overfished stocks and to protect ka mate haka.</p> <p>Our take: Companies looking to take advantage of the FTA of course need to conduct an assessment to ensure that their goods qualify for preferential treatment. Apart from this, companies should also review which FTA is most suitable for them. The UK joined the CPTPP, and since New Zealand is also a member of the CPTPP, it is worthwhile to assess which FTA offers the best benefit.</p>
Philippines eyes free trade deal with US	<p>On 18 April 2023, the Philippines indicated that it was eyeing a free trade deal with the United States after the expiration of the US Generalised System of Preferences (GSP) in 2020. The GSP is a unilateral trade programme that provides duty-free importation of select goods from eligible developing territories.</p> <p>Our take: The uncertainty in various GSP programmes has led many companies to struggle to cope with repeated changes and difficulty to access the US market. Even if the GSP is extended, companies should plan ahead to be agile to cope with any unexpected developments in GSPs. This can be achieved through exploring other markets that offer preferential treatment under other unilateral trade programmes or FTAs for your products.</p>
Singapore and China complete 'substantial negotiation' on FTA upgrade	<p>China and Singapore have completed "substantive negotiations" and signed a MOU on the upgrade of their bilateral FTA on 1 April 2023. This will improve market access for each other's businesses and provide for more transparent and higher-level economic rules.</p> <p>Our take: It is interesting to see that China and Singapore are still focused on upgrading their bilateral agreement even if there are other multilateral FTAs to which both are signatories. This shows that companies should always consider all relevant FTAs, including bilateral FTAs, to ensure duty and trade optimisation.</p>
Thailand and EU to relaunch FTA negotiations	<p>On 15 March 2023, Thailand and the EU announced the relaunch of negotiations for an ambitious, modern and balanced FTA deal, with sustainability at its core. The aim of the FTA will be to boost trade and investment by addressing a wide range of issues such as market access for goods, services, investment and government procurement; the protection of intellectual property rights, and the removal of obstacles to digital trade and trade in energy and raw materials, thereby supporting the digital and green transitions.</p> <p>For more details refer to our Thailand section.</p>
Thailand and Bangladesh to explore FTA prospects	<p>On 15 March 2023, Thailand and Bangladesh officials agreed to explore the prospects of an FTA to further enhance the bilateral trade between the two territories; after the third Foreign Office Consultations between both territory officials at the Ministry of Foreign Affairs in Dhaka on 14 March 2023. Currently, Thailand already has a unilateral agreement with Bangladesh (i.e. Bangladeshi imports can obtain preferential treatment under the agreement) for Least Developed Countries.</p>

Australia

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UK Parliament approves trade agreement with Australia

The UK Parliament recently granted Royal Assent to the legislation necessary to bring the Australia - United Kingdom Free Trade Agreement (A-UKFTA) into effect. A-UKFTA passed through both houses of the Australian parliament on 22 November 2022. The A-UKFTA will therefore enter into force once the UK has completed its domestic processes and Australia and the UK exchange diplomatic notes which confirm the commencement date of the agreement. The A-UKFTA is expected to come into force in mid-2023.

Our take: Importers and exporters should begin preparations now to be ready to capitalise on the benefits provided by A-UKFTA by considering the necessary documentation and supporting information that will be required to claim preferential duty treatment when the agreement enters into force.



New Customs Tariff By-Laws - 2023

The tariff by-laws (which were due to automatically become “sunset” in April 2023) have been replaced by a new single set of by-laws. This will enable the same goods to be eligible for previously established concessional rates of customs duty.

Schedule 4 of the Customs Tariff Act 1995 (Cth) allows importers to claim concessional ‘duty free’ treatment on eligible imported goods. The customs tariff by-laws set out the eligibility requirements for obtaining this concessional ‘duty free’ treatment. On 1 April 2023, certain customs tariff by-laws were automatically repealed or ‘sunsetting,’ with Customs By-laws 2023 introduced in their place to replicate the effects of the previous customs tariff by-laws. We note that the previous by-laws were not replicated in their entirety and the changes are as shown below:

- By-law 1301117, which relates to vehicles and components for use in testing, etc. of motor vehicles manufactured or designed under the Automotive Transformation Scheme, has been repealed.
- By-law 1325719, which relates to paper and cardboard of 4810 or 4811 for manufacture of cigarette packaging, and By-law 1700334, which relates to personal goods for a French Republic Visiting Force, are also being repealed and remade.

Our take: Importers will need to ensure that they correctly enter the new by-law numbers (as set out in the Customs By-Laws 2023) on import declarations in order to continue to access the concessional rates of customs duty provided. Importers should also note which tariff by-laws have been repealed and plan their imports accordingly.

Guidance regarding minor errors and discrepancies on Certificates of Origins obtained for FTAs

The Australian Border Force (ABF) has updated their guidance in relation to minor errors and discrepancies on Certificates of Origins (COO) obtained for the purposes of claiming preferential treatment under certain FTA.

In order for originating goods to be eligible for FTA preference, a valid and accurate COO is typically required. Notwithstanding this, the ABF have advised that COOs that contain minor discrepancies may still be used to claim preference. These errors may include:

- spelling or grammatical errors;
- differences in units of measurement in the COOs and supporting documents such as invoices/packing lists; and
- slight differences in description of the goods between the COOs and the supporting documents.

The guidance relates only to the following FTAs that Australia has in force:

- Agreement Establishing the ASEAN - Australian - New Zealand Free Trade Area (AANZFTA);
- China Australia Free Trade Agreement (ChAFTA);
- India-Australia Economic Cooperation and Trade Agreement (ECTA);
- Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA);
- Malaysia-Australia Free Trade Agreement (MAFTA);
- Regional Comprehensive Economic Partnership Agreement (RCEP); and
- Thailand-Australia Free Trade Agreement (TAFTA).

We note that this guidance supersedes the previous ABF document Guidance on minor errors or discrepancies on Certificates of Origin obtained for purposes of the China-Australia Free Trade Agreement.

Our take: It is important for importers who wish to claim FTA preferences to present their COOs fully and correctly and that any errors are limited to those covered in the ABF guidance. If the errors on COOs are not considered 'minor' in nature, the COOs will be determined as invalid. This might result in duties being payable and increase the potential for infringement notices (penalties) to be issued by the ABF.

Australia and China agree to resolve barley trade dispute

Australia and China have reached an agreement for resolving a dispute over Chinese tariffs placed on Australian barley. In May 2020, China imposed an 80.5% tariff on Australian barley, claiming that Australia had used subsidies to distort the market. In response, Australia lodged a dispute claim with the World Trade Organisation (WTO) on the basis that there was no justification for these duties.

Recently, Australia agreed to suspend its appeal to the WTO after China promised to conduct an "expedited review" of the tariffs over a three-month period. China's Ministry of Commerce announced the details of the review on 14 April 2023 and has asked interested parties to provide submissions to the review and provide corresponding evidence within 20 days. If the duties are not lifted at the end of the review period, Australia has announced it will resume the dispute in the WTO.

Our take: This positive development in the China-Australia trade relationship will hopefully pave the way for the removal of dumping duties and similar measures on other Australian products and re-open China as a viable export market.



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Expansion of stricter requirements for import of hazardous chemicals into China

In April 2023, the GAC announced measures to [further strengthen the inspection and supervision of imported hazardous chemicals](#) under Announcement of the GAC [2023] No.29. This measure took effect on 13 April 2023. The details are as follows:

- Update of the inspection mode for importation of hazardous chemicals: The GAC has implemented the mode of “document verification and port inspection or destination inspection” in batches. The inspection work site and sampling rate will be determined according to the characteristics of the hazardous chemicals and the packaging type of hazardous goods.
- Stricter documentation of the declaration requirements such as system declaration information and declaration materials.

Our take: Clearly the three-month pilot reform of the inspection mode of imported hazardous chemicals implemented by Shanghai Customs on 1 December 2022 was a success. Hence the GAC has decided to apply this measure throughout China. It would be worthwhile for companies to monitor other “pilots” in the field of Customs, learn lessons from such pilots, and prepare for broader roll-outs of such pilots throughout China.

Streamlining of various administrative processes under Order No. 262 of the GAC

On 9 March 2023, the GAC announced the “[Decision of the GAC to amend some regulations](#)” under Order No. 262 of the GAC which amended 22 regulations. We have summarised the key changes below:

1. The management of customs declaration entities is adjusted from the previous registration process to a more simplified recordation; the relevant articles of 9 regulations including the “**Interim Measures for the Administration of Advance Rulings**” have been amended accordingly.
2. The relevant articles of the “**Administrative Measures for the Quarantine Approval of Imported Animals and Plants**” have been revised according to the changes in the quarantine approval process of Imported Animals and Plants. The key amendments are as follows:

- Streamlining of the approval process: The GAC allows Customs to directly conduct quarantine approval and abolishes the “preliminary examination” process to reduce timeline;
- The validity period of the “Quarantine Permit” has been extended from 3 months to 12 months;
- Simplification of the required documents for quarantine approval application and cancellation of the “documents proving the entity as a legal person” and “assessment report of manufacturing, processing and/or storing entity”.

Our take: The Decision has amended many regulatory articles to further simplify approval processes and optimise them for businesses. Traders should not only be aware of the easing of these administrative burdens, but take the opportunity to review and update their SOPs and plans accordingly.

Imported cement eligible for third party inspections for customs clearance

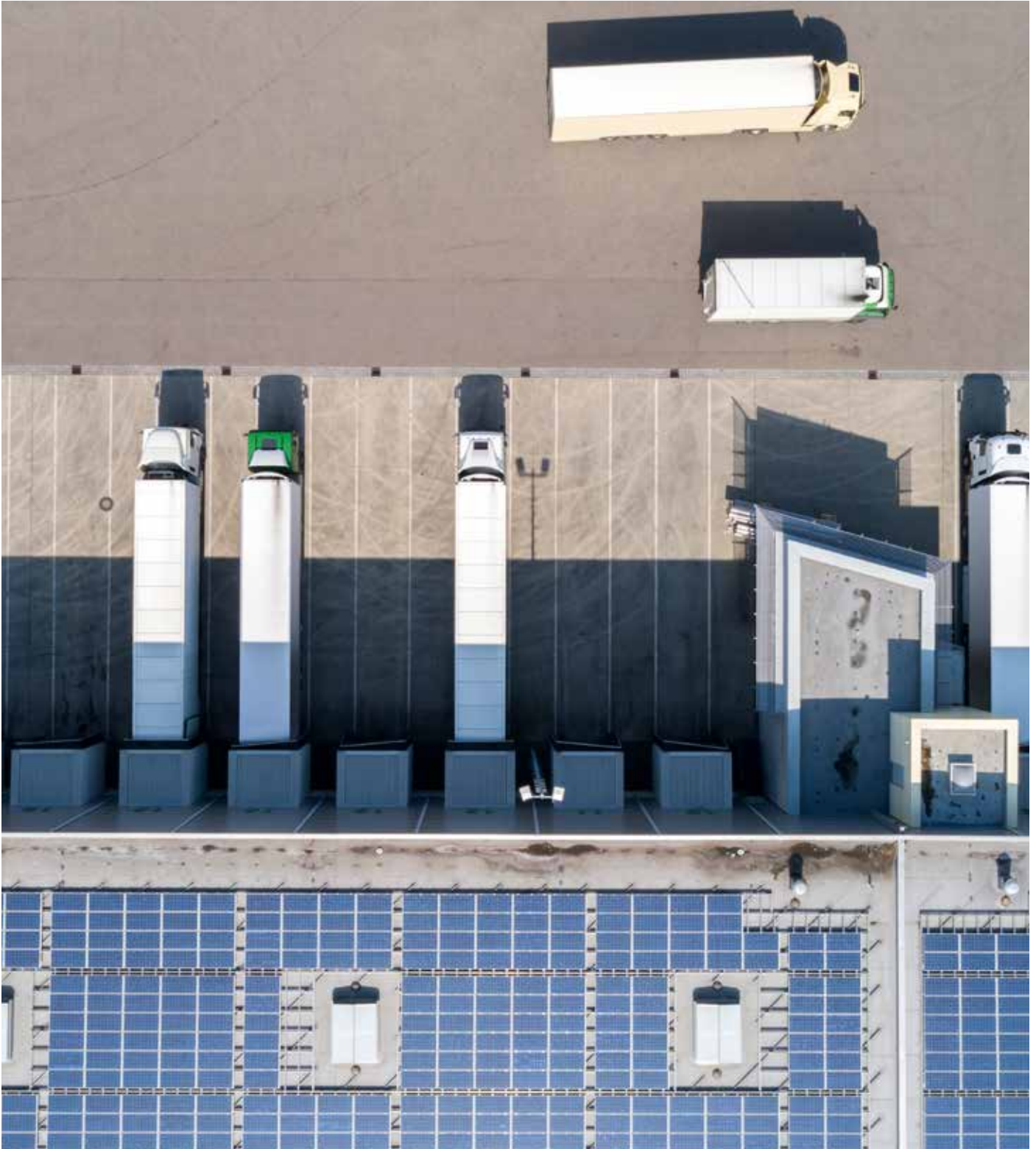
In March 2023, the GAC issued the “[Announcement on the Adoption of Inspection Results of Imported Cement](#)” (Announcement of the GAC [2023] No.21) which adds imported cement to the list of commodities that are eligible for third party inspection based on Order No. 259. Key details are summarised below:

- Imported cement classified under HS 2523.29.00.00, is included in the list of commodities that allows for third party inspection; and
- The announcement specifies the inspection methods, content and validity period of inspection report, requirements for inspection institutions, import declaration requirements, etc.

Our take: This development will increase the efficiency of customs clearance and reduce customs clearance costs for importers of cement. Currently, commodities that are eligible for such treatment include imported cement and imported clothing. We believe that Customs will announce the acceptance of third-party inspection results for more commodities in the future. However, it is unlikely that Customs will entertain any lobbying efforts by importers.

Extension of temporary duty exemption on imported coal

For the purpose of supporting a safe and stable supply of coal, the Customs Tariff Committee of the State Council has announced the extension of the temporary duty exemption for the import of coal from 1 April 2023 to 31 December 2023. The exemption was initially introduced in 2022 when the GAC published the [Announcement of the Customs Tariff Committee of the State Council on Adjusting the Import Tariffs on Coal](#) which stipulated that a provisional import tariff rate of zero was to be applied to importation of coal from 1 May 2022 to 31 March 2023.



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Customs and trade related updates from the introduction of the new FTP 2023

The new Foreign Trade Policy ("FTP") was released on 31 March 2023 and became effective on 1 April 2023. Unlike the previous policies, which have a tenure of five years, the [new FTP 2023](#) will have no end date and subsequent revisions will be done on a need basis as per the emerging trade scenario.

The new FTP 2023 has a paradigm shift from an incentive-based to a remission-based framework with focus on export promotion through collaboration, promoting the ease of doing business through automation and solutions. It focuses on emerging areas like e-commerce and export hubs. The highlights of the new FTP 2023 from a customs and trade perspective are outlined below.

General measures and measures to enhance the ease of doing business

The following changes have been introduced to enhance the ease of doing business from a customs and trade perspective:

- Reduction in the processing time and immediate approval under the automatic route for various permissions such as Advance Authorization ('AA'), Export Promotion Capital Goods ('EPCG') scheme, etc.
- Revision and reduction in the application fees for AA and EPCG schemes to benefit exporters and especially the Micro, Small and Medium Enterprises (MSME).
- Optional scheme of self-certification of Certificate of Origin ('CoO') for status holders under the Approved Exporter Scheme.
- Revamping of the e-certificate of origin platform to provide for self-certification of CoO and automatic approval of CoO. There will be electronic exchange of CoO data with contracting territories, to the extent feasible.
- Redemption applications for different authorisations to be paperless. Currently, the paperless facility is limited to the application process.
- Benefit to exports to be extended for realisation of export proceeds according to the guidelines by the Reserve Bank of India.
- Guidelines to promote merchanting trade from India will be introduced.
- The policy for exportation of dual use items under the Special Chemicals, Organisms, Materials, Equipment and Technologies ('SCOMET') has been consolidated

and streamlined. The focus is on simplifying guidelines and policies to facilitate the exportation of dual use high-end goods and technology like drones, cryogenic tanks, certain chemicals, etc.

Customs and trade related measures under FTP 2023

Below are specific updates to customs and trade related schemes under the FTP 2023:

A. Updates to AA scheme and EPCG scheme

The Advance Authorization ('AA') scheme allows for the duty-free importation of inputs (i.e. raw materials) that are meant to be physically incorporated in a product meant for export. The purpose of the scheme is to make India's products competitive in the global market.

Under the Export Promotion Capital Goods ('EPCG') scheme, the importation of capital goods is allowed duty-free, subject to the fulfilment of the Export Obligation ('EO'). The main aim of the scheme is to improve India's competitiveness in the manufacturing sector.

The key changes to these schemes are summarised as follows:

- Authorisation for importation will be valid for 24 months from the date of issuance.
- Battery electric vehicles, green hydrogen, rainwater harvesting systems, green technology products, etc. will be eligible for the benefit of reduced export obligation. (i.e. only 75% of the imported goods need to be exported)
- Exempt the dairy sector from the need to maintain average export obligation.
- A list of green technology products including farming equipment, wastewater treatment and recycling, rainwater harvesting system and rainwater filters, green hydrogen, etc. are eligible for reduced export obligation (i.e. only 75% of the imported goods need to be exported)

Key takeaways: The focus on green energy products may enable the electronic vehicle sector to emerge as the flag bearer for the export industry. However, there are no changes to the duty benefits under both schemes.

B. Updates to e-Commerce

- All FTP benefits that are available to conventional exports will also be extended to e-commerce exports, including financial assistance for specified activities under the Market Access Initiative.

- Guidelines to be formulated in six months to promote exports under e-commerce with capacity building, outreach, integrated IT system establishment to facilitate communication between various departments such as commerce and post.
- Designated e-commerce hubs with warehousing facilities to support e-commerce aggregators for their operations such as making their processing facilities available for last mile activities like labelling, testing, etc.

C. Designating districts to become export hubs

The objectives of this measure are listed below:

- Converting each district of the territory into an export hub by identifying products with export potential in the district to address bottlenecks for export clearance.
- Supporting local exporters and manufacturers with market access, export promotion and overall economic development.
- Each district will have a separate District Export Promotion Committee ('DEPC'). The primary function of the DEPC will be to prepare and implement district-specific export action plans in collaboration with all the relevant stakeholders including governments at all levels.
- The progress and actions taken by the DEPC will be monitored through an online portal which can be accessed by the trade as well.

D. Amnesty scheme in the FTP

As a relief measure to exporters who are unable to meet their export obligation under the AA and EPCG scheme, a one-time settlement has been introduced. The Amnesty scheme will be in operation until 30 September 2023.

Cases under investigation for fraud or diversion will not be eligible. Other pending cases of export obligation shortfall can be regularised through the payment of all customs duties on which exemption was claimed proportionate to the shortfall in export obligation with interest (capped at 100% of duties exempted). However, no interest will be payable on the additional customs duty and special additional customs duty components of the duty payable.

Our take: FTP 2023 strives for wider engagement and coverage through promotion of export hubs and e-commerce exports. The ease of doing business measures are expected to help reduce trade compliance costs and lead times. Moreover, the amnesty scheme for export obligation regularisation under the EPCG and AA Schemes may come as a relief to exporters with possible reduction in litigation. Thus, the FTP 2023 is expected to be dynamic and responsive to changing trade realities. Further, the issuance of guidelines and contours completes the operationalisation of FTP 2023. There is a need to evaluate the opportunities in terms of export hubs and e-commerce hubs.

Extension of deadline for mandatory electronic filing of Non-Preferential CoO

The transition period for [mandatory filing of applications for Non-Preferential CoO through the e-CoO platform](#) has been further extended to 31 December 2023.

Digitalisation of applications for AEO LO scheme

AEO-LO certification is granted to economic operators other than importers and exporters (e.g. logistics providers, custodians, customs brokers and warehouse operators) after the physical verification of premises. The updates can be summarised as follows:

- To promote digitization which is in line with the Digital India Initiative, a new version of web application for online filing of the AEO-LO application has been launched.



- This new version of web application has been designed to ensure continuous, real-time, and digital monitoring of the physically filed AEO-LO applications for timely intervention and expedience.
- From 1 May 2023 onwards, it has been mandatory for AEO-LO applicants to register for certification on the AEO portal.

- Non-affixation of QR Code on the e-CoO;
- Absence of overleaf notes from the CoO which provides guidance on how to fill certain entries in the CoO format;
- Putting “Any ports in India” in the Port of destination field of the CoO by issuing bodies of Australia.

Refer to [Instruction No. 10/2023-Customs dated 10 March 2023](#) for further details.

Phased implementation of ECL

The Electronic Cash Ledger ('ECL') is a non-interest bearing deposit with the Indian government for the payment of taxes and aims to ease the process of ensuring regulatory compliance. This ECL was introduced recently for importers and exporters making payment for customs duties including cess and surcharge. The implementation of ECL will help to reduce the time required to make payment for custom duties as well as the lead time for the clearance of goods. In consideration of the present state of development and integration, it has been decided that ECL will be enabled in phases from 1 April 2023 onwards. The first phase of the implementation stage covers the period from 1 April 2023 to 30 April 2023. Note that certain exceptions apply for the use of the ECL.

Refer to [Circular No. 09/2023-Customs](#), [Notification No. 18/2023- Customs \(Non-Tariff\)](#) and [Notification No. 19/2023-Customs \(Non-Tariff\) dated 30 March 2023](#) for further details.

Postponement of requirements for health certificate to accompany food imports

The Food Safety and Standards Authority of India ('FSSAI') 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 the competent authority of the exporting territory. The implementation of the order had been extended to 28 February 2023. However, the said implementation has been postponed until further notice.

Refer to Instruction [No. 08/2023-Customs](#) dated 03 March 2023 for further details.

Implementation of origin procedures under the India-Australia ECTA

The India-Australia Economic Cooperation and Trade Agreement was signed in April 2022. To facilitate the use of the agreement, the Government has provided clarifications on the following aspects that are related to the implementation of the Rules of Origin ('RoO') and Operational Certification Procedures ('OCP'):

- Electronically issued Certificates of Origin ('e-CoO') by the issuing bodies of Australia will be valid in India if they have been issued in the prescribed format.
- It is mandatory for the e-CoOs to be uploaded onto the e-Sanchit portal for the importer to claim preferential treatment.
- The following are not grounds for initiating verification or denial of preferential treatment:

Further duty reductions under the India-UAE CEPA and India - Mauritius CEPA

In February 2022, India entered into a Comprehensive Economic Partnership Agreement ('CEPA') with the UAE. Consequently, the Indian government issued the schedule for the preferential rates of customs duty on specified goods and conditions to claim preferential treatment. Now, the Indian government has further increased the duty reduction for approximately 3,030 tariff items.

For the India-UAE CEPA, refer to [Notification No. 20/2023 - Customs \(Tariff\)](#) dated 31 March 2023 for further details.

In March 2021, India entered into a CEPA with Mauritius where the rate of concessional customs duty on specified goods and conditions to claim preferential treatment was notified. Now, the Government has further increased the duty reduction for approximately 455 tariff items.

For India - Mauritius CEPA, refer to [Notification No. 19/2023 - Customs \(Tariff\)](#) dated 31 March 2023 for further details.

Our take: This is a good time for importers in India and exporters in the UAE to review their FTA usage. Previously the duty reduction may have been so low that some companies may have decided against utilising these FTAs. However, since there are further reductions, companies should rethink their FTA strategy. Do note that FTAs require stringent controls on rules of origin and misuse of FTAs may backfire, so ensure that your products are compliant before utilising FTAs.

Clarifications regarding the acceptance of e-CoOs under the India-Japan CEPA

The Indian government has clarified that e-CoOs issued by the issuing bodies of Japan will be valid in India provided that they comply with all requirements (e.g. formatting requirements and rules of origin). For importers to claim preferential treatment, it is mandatory for the e-CoOs to be uploaded on the e-Sanchit portal.

Refer to [Instruction No. 13/2023-Customs](#) dated 31 March 2023 for further details.

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New provisions on the electronic examination of imported goods

The Directorate General of Customs and Excise (“DGCE”) issued regulation [PER-1/BC/2023](#) as a follow-up to the Minister of Finance (“MoF”) regulation 185/PMK.04/2022 regarding customs examination of imports. The regulation includes a provision on examination of imported goods through electronic media and scanning tools to streamline the provisions for physical examination of imported goods.

Typically, any inspection will be done through a physical examination (i.e. opening of the packaging of imported goods) by a customs officer. To streamline the process, certain importers are eligible for an electronic examination of their goods (e.g. scanning through x-ray). Below are the types of companies eligible for a electronic examination:

- AEO companies;
- MITA companies (i.e. for import of raw material / supporting material and/or import of no more than three types of goods);
- Goods imported for businesses in the oil and gas industry located in the middle of the sea.

Do note that Indonesian Customs’ approval is required for importers that wish to opt for electronic examination of their goods.

Electronic examination through scanning tools may be conducted preliminary to or as a replacement for physical examination by a customs officer. The former will be conducted at the entrance to a customs and/or temporary stockpiling area. The latter can be done as a replacement for manual physical examination through a request by the importer or if initiated by a customs officer.

Apart from the changes above, the new regulation specifies the conditions for the exemption of the physical requirement of stripping (i.e. supervision of cargo unloading done by customs officials) for:

- Importers with AEO and/or MITA status;
- Import declaration with a maximum of three types of goods;
- Goods that can be quantified without stripping (e.g. larger items); and
- Goods for which the result of scanning shows no indication of error in the type of goods

The regulation came into effect on 13 January 2023 but was only released to the public in April 2023.

Our take: Importers who face delays with customs clearance should consider their eligibility for electronic scanning to remediate such delays. This should help reduce clearance times and lessen administrative tasks. Depending on your business, your route to becoming eligible for electronic scanning may differ. Therefore, you should conduct an assessment on which option is most suitable for you (e.g. through AEO or MITA).

Minor changes to the IMEI registration provision

The Directorate General of Customs and Excise (“DGCE”) has issued regulation PER-7/BC/2023. The regulation is the first revision of the procedures for the declaration and registration of International Mobile Equipment Identity (IMEI) of telecommunication devices. The changes can be summarised as follows:

- Customs officials may ask passengers and transportation crew to turn on their telecommunications devices as part of customs examination.
- Customs officials may determine the customs value of the telecommunications device according to the transaction value of the device if sufficient evidence is provided (e.g. commercial invoice). If sufficient evidence is not provided, customs officials will determine the customs value based on the data that DGCE possesses.
- There are new provisions for registration of IMEI for a passenger or transportation crew who did not submit the IMEI registration form electronically. Details are as follows:
 - If a passenger or transportation crew did not submit the IMEI registration form electronically and has not left the customs area, they may register the IMEI through the customs official in the port of entry.
 - If a passenger or transportation crew did not submit the IMEI registration form electronically and has left the customs area, they are given 60 days to register the IMEI in any customs office and, if applicable, must pay the outstanding import duty and import taxes (e.g. imported for domestic sale).
- A new format for manual IMEI registration form has been provided. The previous regulation did not provide a format for the manual IMEI registration form.
- Adjustment of the HS code for smartphones is in accordance with AHTN 2022.

The regulation came into effect on 13 March 2023.

New anti-dumping import duties for the importation of frit, glaze or similar preparations from China

On 20 March 2023, the Ministry of Finance issued regulation [#32 of 2023](#) regarding the imposition of anti-dumping duties on imports of frit, glaze or similar preparations as well as glass frit and other types of glass from China. The regulation imposes anti-dumping duties on imports of frit, glaze or similar preparations under HS code 3207.20.90 and glass, frit and other types of glass under HS code 3207.40.00. Details on the rate are provided in the table below:

No	Exporter	Anti-Dumping Import Duty Rate
1	Zibo Fuxing Ceramic Pigment & Glaze Co., Ltd	6.3%
2	All other exporters	25.5%

The regulation will be in force for five years from 30 March 2023 onwards.

Minor Revision to the Bonded Exhibition Area Regulation

The Ministry of Finance issued regulation [#33 of 2023](#). This regulation is an amendment to the Bonded Exhibition Area Regulation. The regulation consists of minor revisions which are summarised as follows:

- The maintenance and operation of a temporary bonded exhibition area can now be conducted by either the venue manager and/or exhibition organiser. Previously only the organiser could conduct the maintenance and operation.
- Any location that fulfils the conditions to become a bonded exhibition area for regular buying and selling activities can now become a temporary bonded exhibition area.
- Exhibition of goods from local parties other than the bonded exhibition area applicant is no longer restricted to only industrial production machines and agricultural machines.
- Stock-keeping of exhibition goods inventory must be conducted by the bonded exhibition area applicant.

This regulation came into effect on 20 March 2023.

Update to provisions on submission of COO and DAB

The Indonesian Ministry of Finance issued regulation [#35 of 2023](#) on the submission of a Certificate of Origin (“COO”) and/or an Origin Declaration (“DAB”) for the purposes of claiming preferential tariffs on imported goods under Free Trade Agreements (“FTAs”). This regulation changes the practical verification process of scanned COO or DAB copies with Indonesian Customs. The content of the provisions remains largely the same, which includes requirements surrounding the submission of scanned COO and/or DAB copies, signature exemption for COO specific to each FTA and the FTA claim deadline for AEO companies (i.e. within 5 days after declaration).

If Indonesian Customs has doubts about scanned copies of a COO and/or a DAB, they may require the importer to submit the original copy of the COO and/or DAB within one day (for customs offices with a 24-hour service) or one working day (for customs offices without a 24-hour service) of said request.

The regulation came into effect on 28 April 2023.

Revisions to RCEP preferential tariff schedules for Japan and South Korea

On 28 March 2023, the Ministry of Finance issued regulations [#36 of 2023](#) and [#37 of 2023](#) regarding the first revisions to the preferential tariff schedules under the RCEP Scheme for Japan and Korea respectively. Basically this update adds preferential tariffs to ten HS Codes for vehicles under HS 8703. The previous regulation had left the preferential tariff rate empty.

This regulation became effective on 29 March 2023.





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CAR registration required for non-resident entities importing goods into Japan

On 31 March 2023, the Customs Reform Act was passed by the National Diet in Japan with some additional details. As noted in our [November/December 2022 issue of Trade Intelligence](#), this Act addresses the rapid increase in e-commerce imports.

Notably, measures to ensure that a Customs Affairs Representative (CAR) is registered for non-resident importers have been [clarified](#) as below:

- Where an import declaration is filed by a non-resident importer without registering a CAR importer, Customs may submit a written request to the importer to register a CAR and notify Customs **within 60 days**;
- If a non-resident importer does not register any CAR by the prescribed deadline, Customs may assign a certain company in Japan deemed appropriate to be a CAR to handle customs procedures on behalf of the non-resident importer;
- A company deemed appropriate to be a CAR can be either:
 - A company which has a close relationship with the non-resident importer for the purposes of customs value calculation, customs procedures; or
 - A company which provides a platform for the non-resident importer to continuously or repeatedly conduct transactions over the Internet or other advanced information and telecommunications networks; and
 - A company which has a special relationship with the non-resident company. This is defined in the Cabinet Order as a company which directly or indirectly owns or manages 50% or more of the total number of stock entailing voting rights of the non-resident importer;
- If Japan Customs determines that a registration of CAR is no longer necessary, the registration will be cancelled and notification will be sent in writing.

The above measures will be effective from 1 October 2023. A comparison between the old and new measures can be found [here](#).

Our take: These new measures facilitate Japan Customs' scrutiny of e-commerce imports by non-resident companies, specifically in identifying customs values which are not based on the purchase price of the import transaction. Additional details will become clear with the publication of the e-Commerce regulations. Watch out for those (as will we).

Separately, companies should be aware that a related measure requiring importers to declare additional details on e-Commerce transactions is yet to be approved. This is likely due to the time required to assess the impact to traders as well as the integration with the customs clearance system in Japan (Nippon Automated Cargo and Port Consolidated System (NACCS)).

Updates on trends in Japan's export controls

1. Japan-South Korea Export Control Policy Dialogue

In 2019, Japan tightened its export control measures against South Korea, which led South Korea to file a WTO complaint in the same year. The measures applied to South Korea in 2019 included downgrading South Korea's Group A country status (i.e. Group A countries enjoy a more relaxed export control treatment) and removal of certain items eligible for simplified export control measures.

To improve their bilateral economic and diplomatic relationship, the Japan Ministry of Economy, Trade and Industry (METI) and the Korean Ministry of Trade, Industry and Energy (MOTIE) held the [Japan-South Korea Export Control Policy Dialogue](#) from 14 to 16 of March 2023. Through this dialogue, METI assessed the operation and structure of South Korea's export controls for 3 items subject to export controls (i.e., hydrogen fluoride, fluorinated polyimide and resist), and acknowledged improvements. METI has thus decided to loosen the export controls for these 3 exports to South Korea, starting from 23 March 2023. Specifically, "[Special General Bulk Export License](#)", permitting exporters to export relatively low sensitivity goods/technologies to certain destinations including those other than Group A, can be used to export these items. South Korea has also announced its formal withdrawal of the WTO dispute complaint against Japan.

As for South Korea's reclassification into Group A, METI expressed its intentions to continue further dialogue with MOTIE.

2. Public comment on export control regulation for semiconductors

In response to increasing complexity in the international security environment, METI announced its [solicitation of public comments on a new Ministerial order of the Cabinet Order on Export Trade Control for semiconductors](#) as well as [the corresponding implementation](#).

Moreover, to supplement the Wassenaar Arrangement and prevent military diversions, METI is planning to add specific goods and technologies to export control targets in consideration of the latest export control trends of the territories. Specifically, METI proposed to add 23 items related to semiconductor manufacturing equipment and relevant technologies that are of Japan's national security interest. Some examples include equipment for dry etching, atomic layer deposition and producing

pellicle. The new regulations have been released in May, and will subsequently take effect in July.

Our take: Whilst approximately 30% of semiconductor manufacturing equipment is destined for China, METI noted that the above measures do not specifically apply only to China but to all destination territories. Companies that export relevant products from Japan or a group entity in Japan need to carefully watch the new regulation and check if there is any impact on its operations.

Further digitisation of COOs

As part of its effort to promote digitisation of Certificates of Origin (COOs), the Japanese government has allowed for the issuance of COOs in a soft copy format for the Thailand-Japan EPA and RCEP agreement. METI announced that the COO issued under the India-Japan EPA, Malaysia-Japan EPA and the ASEAN-Japan CEP Agreement will also be digitised and issued in a soft copy format from 18 July 2023.

It also started a pilot project to exchange electronic-COO data under the Japan-Indonesia Economic Partnership Agreement (EPA) from April 2023, as reported in the [November/December 2022 issue of Trade Intelligence](#). The complete announcement can be found on the [METI website](#).

Our take: We expect that the digitisation of origin certification procedures will simplify administrative procedures. Japan hopes that this digitisation will expand the use of Economic Partnership Agreements (including FTAs) and consequently, promote exports from Japan. We recommend importers who wish to claim preferential tariffs under the mentioned FTAs to confirm the soft copy COO submission requirements with their local Customs authorities, specifically whether the soft copy COO needs to be printed and submitted as a physical copy as well.



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Malaysia's new Orders for restriction and prohibition of import and export

On 13 and 14 April 2023, the MOF gazetted the new [Customs \(Prohibition of Imports\) Order 2023](#) and [Customs \(Prohibition of Exports\) Order 2023](#), replacing the Customs (Prohibition of Imports) Order 2017 and Customs (Prohibition of Exports) Order 2017, respectively. The new Orders are issued to reflect revisions from HS 2017 to HS 2022. Besides changes to HS codes themselves, there are additions to and removal of import and export licensing requirements for certain products with specific HS codes. For example, roasted coffee and tea are now subject to import licensing requirements by the Department of Malaysian Quarantine and Inspection Services (MAQIS). It is important to note that what is indicated as prohibited may not be prohibited but rather is restricted (i.e. requires approval for import or export). The Orders came into effect on 15 April 2023.

For details on impacted products and HS codes, refer to the order linked above.

Our take: Obviously, importing or exporting goods without necessary licences may lead to potential delays in clearance and/or penalties. The licensing requirements can be quite challenging for traders to manage. Oftentimes non-compliance is uncovered only after affected goods have already been imported or exported, and large penalties may be applied. Therefore, traders should ensure that they create and implement the necessary SOPs and training programs to ensure the responsible people in their organisation know what to look out for and how to correctly document the actions they take. This will help reduce these occurrences to a minimum.

Updates to RCEP, ATIGA and CPTPP

On 14 March 2023, the MOF gazetted the [Customs Duties \(Goods under the Regional Comprehensive Economic Partnership Agreement\)\(Amendment\) Order 2023](#) which took effect on 15 March 2023.

This Order has since been amended to include updates to Product Specific Rules (PSRs) under the Regional Comprehensive Economic Partnership Agreement (RCEP) and overleaf notes in the RCEP Form (e.g. removal of certified true copy requirement). These were done to align with the implementation of HS 2022.

On 31 March 2023, the MOF published the following amendment Orders in relation to the Customs Duties Order for ASEAN Trade in Goods Agreement (ATIGA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP):

- [Customs Duties \(Goods of ASEAN Countries Origin\) \(ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement\) \(Amendment\) Order 2023](#);
- [Customs Duties \(Goods of ASEAN Countries Origin\) \(ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement\) \(Amendment\) \(No. 2\) Order 2023](#);
- [Customs Duties \(Goods of ASEAN Countries Origin\) \(ASEAN Harmonised Tariff Nomenclature and ASEAN Trade in Goods Agreement\) \(Amendment\) \(No. 3\) Order 2023](#); and
- [Customs Duties \(Goods under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership\) \(Amendment\) Order 2023](#).



Low value shipments imported through air postal service eligible to enjoy import duty exemption

On 8 March 2023, the Ministry of Finance (MOF) issued a [Customs Duties \(Exemption\) \(Amendment\) Order 2023](#) which took effect on 9 March 2023.

The amended Order clarifies that all goods (except for tobacco related products) imported using air **postal** service are eligible to enjoy import duty exemption. Previously, only imports through air **courier** services were eligible for exemption.

To enjoy said import duty exemption, the goods must be imported through prescribed airports (i.e., Kuala Lumpur International Airport, Senai International Airport) and the CIF value must not exceed RM500 per consignment.

Online submission of excise forms and payment of excise duties

The Royal Malaysian Customs Department (RMCD) [announced](#) that starting from 13 March 2023, excise forms and payment of excise duties for sweetened beverages and non-critical goods must be made online through the new portal, MyEkasis.

The frequency and the deadline for the submission of the excise forms depend on the type of dutiable good.

Imposition of excise duties on e-cigarette liquid of gel products containing nicotine

In March and April 2023, the Ministry of Finance gazetted Orders on the imposition of excise duties on e-cigarette liquid and gel products containing nicotine at the rates of RM0.40 per millilitre. The announcements below took effect on 1 April 2023:

- [Excise \(Amendment\) Regulations 2023](#),
- [Excise Duties \(Amendment\) Order 2023](#),
- [Excise Duties \(Tioman\) \(Amendment\) Order 2023](#),
- [Excise Duties \(Pangkor\) \(Amendment\) Order 2023](#),
- [Excise Duties \(Langkawi\) \(Amendment\) Order 2023](#), and
- [Excise Duties \(Labuan\) \(Amendment\) Order 2023](#),

The announcement on [Excise Duties \(Amendment\) \(No. 2\) Order 2023](#) took effect on 1 May 2023.

The imposition of excise duties will also be applied to duty free islands in Malaysia, namely Labuan, Langkawi, Pangkor and Tioman.

Removal of sales tax on e-cigarettes and similar electrical vaporising devices not for commercial use

On 31 March 2023, the MOF published the [Sales Tax \(Rate of Tax\) \(Amendment\) Order 2023](#).

Starting from 1 April 2023, imported e-cigarettes and similar electrical vaporising devices are no longer subject to 10% sales tax, provided that they are not imported for commercial use, i.e., any use that falls outside retail operations/sales (e.g., personal consumption).

Postponement of imposition of sales tax on LVG and excise duties on premix preparations

On 10 March 2023, the RMCD released a [notice](#) that the imposition of sales tax and excise duties on low value goods (LVG) and premix preparations is postponed from 1 April 2023 until further notice.

The imposition of sales tax and excise duties on the above mentioned goods was first introduced in the Malaysian 2022 Budget Speech. For more details of the original announcement, please refer to [October-November 2021 edition of Trade Intelligence](#).

Our take: The postponement of both sales tax and excise duty on these goods will provide affected industry players with more time to prepare to implement such changes in their operations, as and when they take effect. Customs may also take into consideration the concerns and impact on industry players, which may ease the transition process. At the same time, Customs may well expected quicker and better compliance when the measures ultimately do take effect, given the extra time companies would have had to prepare.

Removal of certain goods from sales tax exemption

On 3 April 2023, the MOF gazetted the [Sales Tax \(Goods Exempted from Tax\) \(Amendment\) Order 2023](#). The Order is scheduled to be laid in Parliament but the effective date has yet to be announced.

The amendments remove certain tariff codes from sales tax exemption. The removal includes:

- other oil seeds and oleaginous fruit (HS heading 12.07),
- placebos and blinded (or double-blinded) clinical trial kits for a recognised clinical trial (HS heading 30.06)
- certain parts of machinery for the industrial preparation or manufacture of food and drinks (HS heading 84.38).

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RCEP will take effect on 2 June 2023

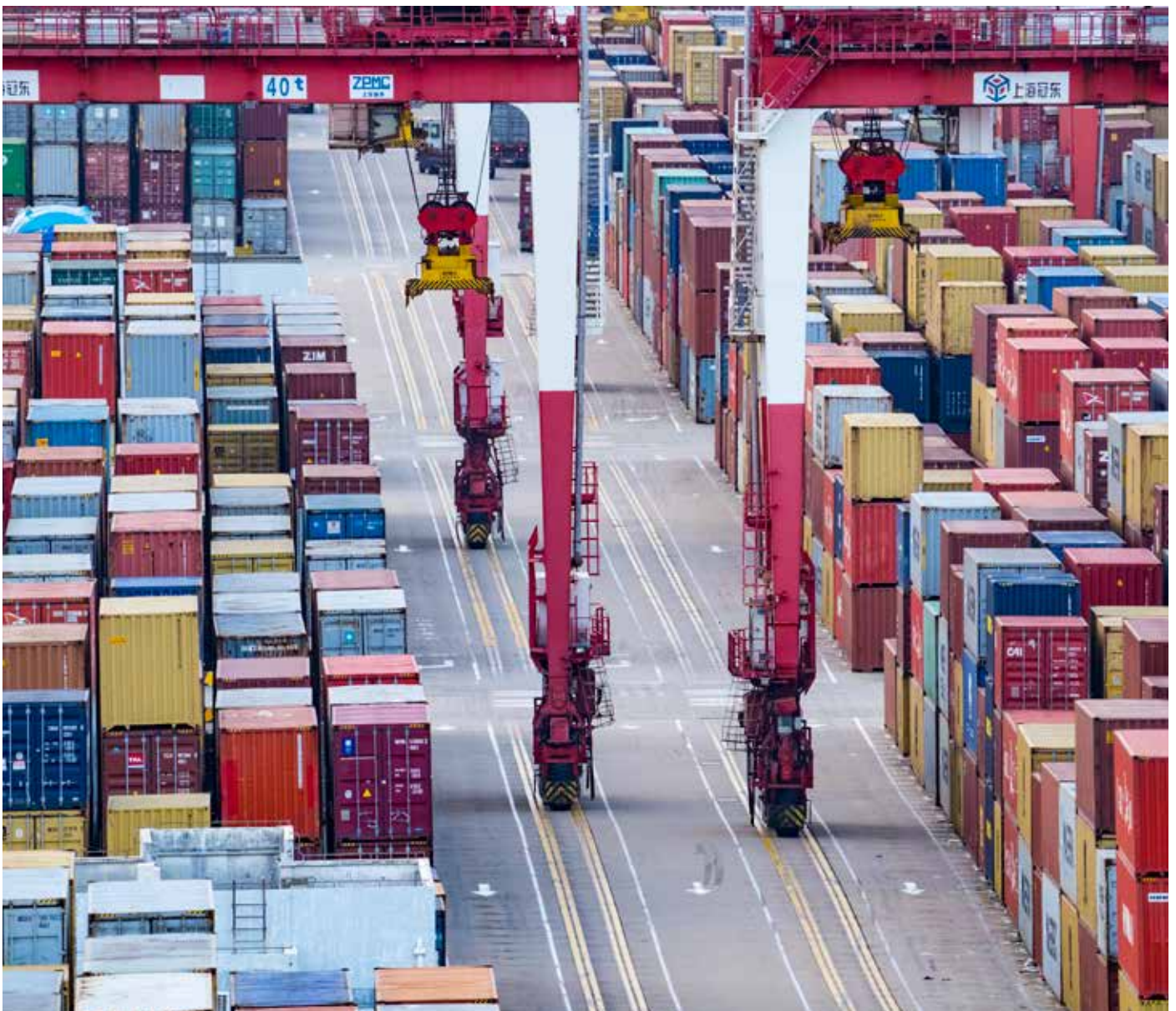
After the ratification of the Regional Comprehensive Economic Partnership (RCEP) in February, an Executive Order was approved to implement the RCEP in the Philippines beginning 2 June 2023.

As a result of the Executive Order, the Department of Trade and Industry will launch an information campaign to inform the public on the benefits of RCEP, while the Bureau of Customs is expected to release related guidelines on RCEP.

RCEP is a free trade agreement (FTA) signed in 2020 by the 10

member states of ASEAN (i.e., Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and its 5 FTA partners (i.e., Australia, China, Japan, New Zealand, and South Korea).

Our take: As there are tariff preferences already available under existing FTAs between RCEP members, companies should perform a benefit assessment to determine whether RCEP can bring new opportunities to the table. They may start by comparing benefits, coverage, and requirements of existing FTA with those of RCEP to understand how RCEP can be of value. Imported products that do not qualify for preferential tariffs under other Free Trade Agreements may well qualify for RCEP benefits, due to its enhanced ability to cumulate originating content from signatory parties.





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Updated procedures for e-Form D issuances and planned cessation of hard copy Form D

On 10 April 2023, Singapore Customs published a circular on the [updated procedures for the exchange of ATIGA e-Form D via the ASEAN Single Window \(ASW\)](#). This circular supersedes Circular No. 15/2017 which was dated 9 November 2017.

This circular details the updated procedures for electronic transmission of ATIGA e-Form D on the Networked Trade Platform (NTP) for exporters and declaring agents. Do note that Singapore Customs will cease to issue physical copy Form Ds by the end of 2023. Singapore Customs will inform exporters at least 3 months prior to the change in policy.

Our take: Exporters in ASEAN must ensure that their procedures and operations are updated to the use of e-Form D. It is good to prepare well in advance even before Singapore Customs' notification on the official date of the cessation to avoid any unnecessary surprises. Importers should look out for any training or outreach programmes hosted by Singapore Customs and update their SOPs to accommodate for the cessation of the physical Form Ds accordingly.

Changes to the prohibition of exports, transshipments and goods in transit to Central African Republic

On 1 March 2023, Singapore Customs announced [changes to the prohibition of exports, transshipments and goods in transit to the Central African Republic through Singapore](#). The change has been effected through an update of Regulation 6(1)(b) of the Regulation of Imports and Exports Regulations (RIER), to comply with the United Nations adoption of the UNSCR 2648 (2022) on the Central African Republic. This resolution is an arms embargo on the Central African Republic. As such, exportation from, transshipment in or transit through Singapore of any arms and military items that will contravene the decisions of the United Nations Security Council (UNSC) in resolutions made under Chapter VII of the Charter of the United Nations are prohibited.

The update became effective on 15 March 2023.

Launching of container track and trace service for trades between Singapore and China

On 21 March 2023, Singapore Customs announced the [launch of a new Container Track and Trace service](#). All Networked Trade Platform (NTP) users can now access this service on the platform to obtain visibility of trade between Singapore and China, starting with the ports of Singapore and the China ports of Yangshan (Shanghai) and Qinzhou (Guangxi).

This service will allow traders and logistics supply chain partners who are based in Singapore to monitor the status and location of containerised shipments quickly and easily. It also helps to facilitate supply chain management and logistics planning by enabling businesses to see the location or status of a particular container at a glance.



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Customs appeals to importers to declare royalties to speed up customs clearance

The Customs Administration has [announced that importers must declare any dutiable royalties and remuneration related to imported goods and include them in the import value](#). The declaration of royalties and other such remuneration is required by law and failure to do so can result in penalties.

Our take: This reminder signifies the attention and focus by Taiwan Customs on royalty and overseas payments. Importers are strongly advised to review whether some or all of a royalty or overseas payment should form part of the value of imported goods. Once such review is completed, importers should document the analysis to present to Taiwan Customs if challenged. This will help importers show to Taiwan Customs that they are aware of the requirement and signals to Taiwan Customs that they are in control of their declared customs values.

Early harvest agreement between the US and Taiwan

The first negotiating round of the [US - Taiwan Initiative on 21st Century Trade](#) was held in November 2022, followed by a second round in January 2023.

After the meeting in January, Taiwan's Office of Trade Negotiations said that it expected the two sides to sign an early harvest agreement on trade facilitation, anti-corruption, small and medium-sized enterprises (SMEs), good regulatory practices and the domestic regulation of services soon. The early harvest agreement would be a precursor to a "full-fledged" Free Trade Agreement. This agreement would be the first trade-related pact that the U.S. President Joe Biden has signed with a foreign territory since assuming office in January 2021.

Requirements on managing the EU's tariff quota for steel imports remain valid till 2024

The European Union (EU) announced in 2021 that country-specific tariff quotas for 26 types of steel products imported into the EU will be extended to 2024. In response to this announcement, the Taiwan Bureau of Foreign Trade [reminded](#) exporters of Taiwan-origin steel bound for the EU to obtain a proof of Taiwan-origin before exportation (i.e., a production certificate that also serves as an export licence).



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Thailand and the EU resume FTA negotiations

In March 2023, Thailand and the European Union (EU) officially announced the relaunch of negotiations for a free trade agreement (FTA), which had been paused since 2014. Both parties aim to have an 'ambitious, modern, and balanced FTA by 2025.

Negotiations will cover trade in goods and services, as well as government procurement and investment in key Thai industries, such as renewable energy, microchips and electric vehicles. It will also focus on the removal of barriers to digital trade, sanitary and phytosanitary procedures, and the protection of intellectual property rights.

Currently, the EU is Thailand's fourth-largest trading partner and third-largest investor. In 2022, trade with the EU accounted for 7% of Thailand's total trade (approximately USD41bn). Thailand's key export products to the EU are computer equipment and components, gems and jewellery, rubber products and electronic circuit boards.

If signed, this pact would be the EU's third bilateral FTA with an ASEAN state, after Singapore and Vietnam. It would also increase Thai business access across markets in 27 European territories.

Our take: Clearly any move to enhance existing or introduce new FTAs is in our view a good one. Nevertheless, prior experience suggests that a 2025 target may be unrealistic, given that the EU-Singapore and EU-Vietnam agreements took much longer to conclude. What would be worthwhile right now is to determine whether you feel strongly enough about specific content of such agreement to start lobbying the negotiators, either in the EU or in Thailand.

Public hearings on the importation of plastic scrap

The Ministry of Commerce (MOC) opened two new public [hearings](#) on the draft MOC notifications controlling the importation of plastic scrap into Thailand. Plastic scrap refers to 'waste, parings and scrap of plastics', classifiable under tariff heading 3915.

Based on the draft notifications, there are two implementation timelines.

- During 2023–2024 – plastic scrap is treated as 'restricted goods'. Importers must request an import licence from the Department of Industrial Work (DIW). The DIW will allow the importation of plastic scrap only in case of necessity (e.g. consideration of the requester's production capacity) or when there is a domestic supply shortage.

- From 1 January 2025 onwards – plastic scrap will be treated as 'prohibited goods' which cannot be imported into Thailand.

Our take: This update reflects how Thailand has become more concerned about waste management under the green economic model. If the draft regulation comes into effect, plastic scrap importers should contact the DIW for more updates on the criteria or requirements for obtaining an appropriate import licence as well as their future plans post-2024. If you believe that your company will be severely affected by such controls, you should raise your concerns to the MOC as soon as possible to ensure that your voice is heard.

Customs' update on collecting users' personal information for electronic payments

In April 2023, Thai Customs issued a notification about the payment channels for duty, fees and insurance. This notification replaces and repeals the previous Customs notification from January 2019. In this notification, there are no significant changes to the available payment channels and printing of electronic Customs receipts.

However, the notification provides details about collecting personal information (i.e. name, ID number, date of birth, telephone number and printing activities) of the users of the Customs electronic system. The data will be retained for ten years from the date of registration and will be shared with relevant government authorities and the partners who develop and maintain the Customs printing system. Companies and individuals can access their own personal information anytime by requesting it from the Revenue Management Section, Customs Secretariat Office.



Change in HS code version from 2017 to 2022 under ATIGA

On 20 March 2023, Thai Customs issued [notification No. 59/2566](#) on criteria and procedures for duty exemption and reduction of goods originating in ASEAN (No.3) to amend the previous notification No. 229/2564. The main update is to cater for changes between AHTN 2017 and AHTN 2022, on the back of the underlying change of the Harmonized System 2017 to 2022.

From 1 April 2023, 6-digit HS subheadings or 8-digit AHTN codes must be specified in Form Ds or origin declaration documents along with the product description, quantity, weight, parcel number, etc., for any imports under the ASEAN Trade In Goods Agreement (ATIGA).

The notification also updates relevant attachments to conform with these changes. The amendments to the attachments include:

1. Attachment 4 – Appendix 3 (Product Specific Rules)
2. Attachment 5 – Attachment 1 of Appendix 3 (Substantial production processes for textiles and textile products)
3. Attachment 6 – Appendix 4 (Information technology products according to AHTN).

In addition, the Department of Foreign Trade (DFT) issued another [notification](#) regarding the issuance of a certificate of origin (CO) under ATIGA (No.2) to replace the following appendices to align with the Customs updates:

1. Appendix B – Annex 3 (Product specific rules or PSR)
2. Appendix C – Annex 4 (Information technology products in AHTN 2022)

Our take: Importers need to apply the correct version of the HS/AHTN for import declarations, since the notification has already come into force. Companies should therefore reconfirm without delay whether any changes in HS/AHTN codes affect their imports and FTA status. Declaring an incorrect HS/AHTN code could invalidate and lead to the rejection of a CO form, which would mean the affected imports would not be eligible for preferential treatment under ATIGA. This may also lead to Customs challenges on false declarations and duty evasion offences.

At the same time, **exporters** should also take note of the change. Any changes in tariff code due to the shift in HS version may lead to changes in product qualification, and the customs authorities in a destination market may reject a CO that does not reflect the new codes. This may lead to delays and/or increased costs to your customers. Do note that the DFT does not conduct comprehensive reviews on whether a declared tariff code is accurate. It is up to exporters to work directly with importers to ensure that the tariff code is aligned between territories.

Updated requirements for damaged or deteriorated batteries to claim for zero-rated excise tax

The Thai Excise Department issued a [notification](#) in March 2023 with regards to the importation of batteries. Under normal circumstances, batteries are subject to 8% excise tax calculated based on the suggested retail price. However, imported batteries used for export production can benefit from a zero-rate excise tax.

The Excise Department is concerned that such batteries may not be used for their intended purpose, i.e. for manufacturing for re-export. Therefore, if a consolidation of exported finished goods indicates that fewer batteries were exported than imported under a zero-rated excise tax, this implies that those batteries were used for domestic sale purposes. Therefore, such discrepancy will be subject to an excise tax clawback, plus penalties and interest. These requirements already existed prior to this announcement.

With the increased demand for battery-incorporated products, the Thai Excise Department has announced a relaxation measure. If a manufacturer can prove that a battery imported under the zero-rated excise tax was not used for exportation due to its physical condition (i.e. damaged or deteriorated), it will not be subject to excise tax clawback, nor penalty, nor interest. There are conditions under this announcement that the manufacturer has to comply with in order to benefit from this relaxation, including a requirement to export or scrap (i.e. environmental concerns), reporting and auditing requirements, and specific timeframes to complete documentation.

Our take: With the increased interest in electric vehicles, it is not surprising to see the Thai government amending its regulations to support the industry. Prior to any disclosure to the Excise Department for deteriorated or damaged batteries, it is essential for manufacturers to ensure that their documentation and physical site are ready to meet the Thai Excise Department's requirements. For example, manufacturers need to ensure that the quantity shown to Thai Excise matches with the physical count, and documentation of any testing done on the batteries to show that they are indeed damaged or deteriorated. If no work is done prior disclosure, manufacturers may expect a long burdensome process for Thai Excise to verify their claims.



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Vietnam Customs suspends non-targeted post-clearance audits in 2023

On 18 April 2023, the General Department of Customs issued [Official Letter No. 1796/TCHQ-KTSTQ](#) on the implementation of post-clearance audits.

In order to support enterprises that are having difficulties due to economic challenges in 2023, the General Department of Customs has decided to suspend non-targeted post-clearance audits as planned in 2023 to concentrate on targeted audits only.

Our take: Customs officials will continue to develop post-clearance audit strategies depending on risk and violation issues. It is important for importers in Vietnam to note that this does not necessarily mean that an audit will not happen. Since Vietnam Customs will be more focused on key non-compliance areas, companies that do get audited can expect Vietnam Customs to be more aggressive and targeted in their reviews. Hence, this is not a signal to take your foot off the gas on managing compliance.

Changes to HS and treatment of Form D issued retrospectively under ATIGA

On 14 February 2023, the Ministry of Industry and Trade issued [Circular No. 03/2023/TT-BCT](#) which amended the previous Circular No. 22/2016/TT-BCT dated 3 October 2016 on the Rules of Origin under ATIGA. This amendment is to update the ATIGA legal text to adopt the change from HS 2017 to HS 2022 and its impact on retroactively issued Form Ds.

Accordingly, Circular No. 03/2023/TT-BCT updated the following texts:

- Update of Product-Specific Rules under Circular No. 10/2019/TT-BCT by Appendix I
- Update of Substantial transformation criterion for textiles and textile products under Circular no. 10/2019/TT-BCT by Appendix II
- Update of List of ITA products in Clause 4, Article 2 of Circular no. 22/2016/TT-BCT by Appendix III

The Circular took effect on 01 April 2023.

Consequently, the General Department of Customs issued [Official Letter No. 1163/TCHQ-GSQL](#) with regard to the HS code declared on the Form D. Notable points are summarised as follows:

- Form Ds with HS 2017 codes are accepted if they are issued before 1 April 2023. From 1 April 2023 onwards, Form Ds are required to use HS 2022.
- Customs may choose to accept a retrospectively issued electronic Form D in which the box “Issued Retroactively” is not marked, but which satisfies the ATIGA requirements.
- In cases where a physical Form D was issued retrospectively and satisfies the relevant ATIGA requirements, but the box “Issued Retroactively” is not marked, Customs will have to report it to the Customs Control and Supervision Department for further verification before deciding on acceptance.

Our take: Both importers and exporters need to ensure that the HS code indicated in the COO is accurate and aligned with the corresponding HS version specified in each FTA. Misalignment of HS codes on a COO may lead to challenges at port of import, delays in shipment or rejection of a preferential duty claim. Therefore, it is essential that when there is a change in HS version, both importers and exporters review the changes and adjust as necessary. In our experience, this is often overlooked or not treated with due consideration.

Self certification under the CPTPP for imports from Chile

On 2 March 2023, the General Department of Customs issued [Official Letter No. 897/TCHQ-GSQL](#) on the origin certification mechanism for imported goods originating in Chile using the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Chile ratified the CPTPP on 21 February 2023. However, the Decree on Vietnam’s special preferential import tariff under CPTPP for Chile had not been issued until the announcement of this official letter. The inspection of the proof of origin for imported goods originating from Chile is required to comply with the provisions of Circular 62/2019/TT-BCT and Circular 03/2019/TT-BCT.

Regarding the form of the proof of origin, Chile has announced that only self-certification of origin issued by exporters is used for the CPTPP. Chile’s competent authorities will not issue certificates of origin. Vietnam has reflected this requirement in Circular 03/2019/TT-BCT and Circular 62/2019/TT-BCT.

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