It’s out of control!

Is the management of export controls becoming uncontrollable?

Trade Intelligence Asia Pacific
July / August 2023

pwc

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.

It's out of control!

Is the management of export controls becoming uncontrollable?

Although modern-day export controls are said to date back to the US's Trading with the Enemy Act of 1917, for most of us in charge of managing the regulatory aspects of cross-border trade, "export controls" (or "strategic goods controls", as they are often referred to in many Asian nations) still feels new and unfamiliar. It does not help that the term "export controls" can apply to a wide range of regulatory restrictions, often with very different objectives. Many of our readers probably think 'weapons of mass destruction' when they hear the term export controls. The more experienced will know that many more products are subject to such controls.

The reason why the export of certain products is controlled varies significantly. It could be for general public safety (such as the aforementioned controls on weapons). It could be to maintain a competitive advantage (such as – to some extent - the recent US semiconductor controls). It could be to prevent a shortage of certain goods in the country of export (such as the recent Indian rice export restrictions). It could be for environmental reasons (for example to fight illegal logging). Or perhaps some other geopolitical reason (such as – allegedly – the recently lifted Indonesian restrictions on exports of sea-sand).

Although often the US springs to mind when the term export controls comes up, it is clear that such controls are widely used in many territories. Keeping track of these controls can be a tough task, especially the ones that are extra-territorial. Although it is usually the customs authorities that are tasked with policing, they may not always have a full understanding of which controls apply to which shipments. It is easy to look for an export licence if it is linked to the declared tariff classification of a product. But many controls apply to product characteristics, not tariff codes. Hence even companies that have a good handle on their tariff codes may well struggle to correlate such codes (even through use of technologies) to the appropriate export control codes and related licensing requirements. In addition, the product characteristics that determine export controls are harder for a port official to know about. Not to mention that accidental or deliberate misclassification of products makes even the "easy" controls harder to police.

For a long time, dealing with export controls was something that was added to the list of a customs manager or customs broker to take care of. For many companies, it still is. Yet the proliferation of "trade compliance managers", often with a very distinct scope from a more traditional customs manager, suggests that many companies see a need to take these regulations more seriously, or at least dedicate more manpower to them. To some extent this is a result of regulatory requirements. Often obtaining bulk export licences necessitates not only detailed Internal Compliance Programmes to be developed, but also the appointment of a dedicated trade compliance manager. The "Strategic Goods Compliance Officer" is borne.

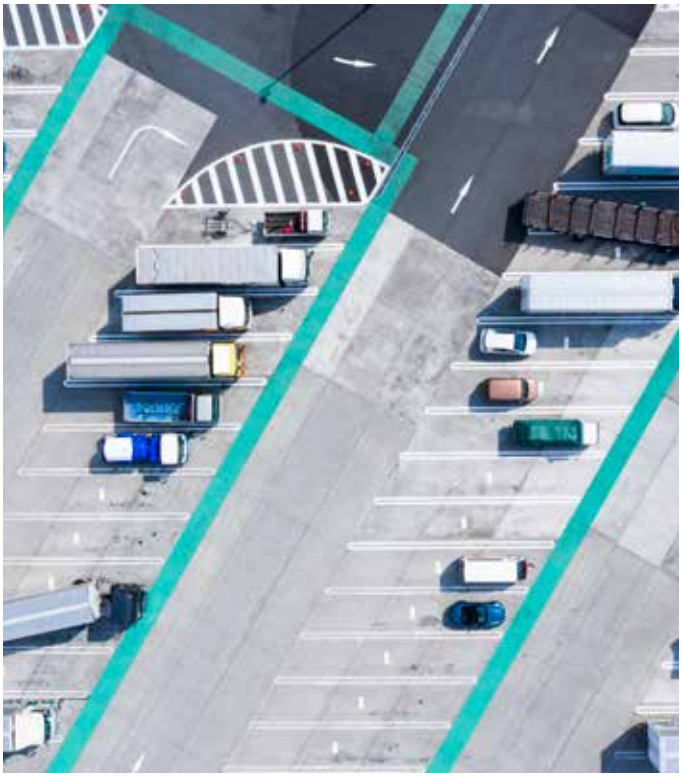
Despite all this, it is also abundantly clear that many companies look to get by without such a dedicated resource. The sheer volume of trade and the resource constraints on the customs authorities mean - in practice at least - that unless there is a good reason for the authorities to believe that a company is in breach of applicable export control rules, no questions are asked. Are you exporting an X-ray machine? Red flags abound. Are you exporting dried milk powder? Probably less so. Yet both can cause quite a bit of damage in the wrong hands. Consequently, it is likely that many products leave many countries every day that should have an export licence, but don't. The exporters don't know they need a licence, or can't be bothered to get one. The border authorities don't have the resources and knowledge to know which shipments to stop and challenge. At the same time, it is equally likely that for the vast majority of those products a licence could be easily obtained, if only it was applied for.

The advances of modern technologies make both the analysis of large volumes of data and the scanning of physical shipments a much more manageable exercise. Hence from a regulator's perspective, things may be looking up when it comes to policing the export of controlled goods. From an exporter's perspective, maybe less so. In our recent work we have come across a great many companies, even large multinationals in clearly affected industries, that display a worrying lack of knowledge and / or care.

With that in mind, here's some thoughts on what should be the basics of proper export controls management.

- Clearly **allocate responsibility and accountability** for managing all export controls. This should be the case no matter how small or large your organisation. Small companies may not necessarily have (m)any resources to spare, but someone needs to be spending some of their time to make sure their company is at least aware of what matters. Knowing the landscape is not limited to companies that export controlled products. Both companies that supply their customers in-territory, as well as those that purchase goods, may have export control responsibilities. The former may need to attest to the sourcing of their inputs and the relevant characteristics of products, while the latter may need to explain their intended use for them. Fortunately, there are plenty of resources available, many for free and some at a cost, that should be sufficient for any company to do this. As a bonus, it shows to the regulators that you take export controls seriously.

- Establish a system for **monitoring regulatory requirements** on exports. This should start with cataloguing any existing regulations, an exercise that can be time-consuming. Care should be taken to check all regulations that may apply, especially those from other jurisdictions (such as US re-export controls). Once an appropriate catalogue is made, continued monitoring should be easier to conduct. Many off-the shelf tools exist to help in that. Do remember though that they are just tools, so make sure you read and understand the small print on comprehensiveness and up-to-date-ness.



- **Determining which** of those **requirements apply** to you. This may be the hardest task. It may require you to know the tariff classification of your products (regardless of whether you actually export them). Even if not, you may need to know the characteristics of inputs into your products, which only your suppliers may know, and may – for commercial reasons – not be so willing to share. Even relevant knowledge of your own products may be harder to come by than you would at first think. Engineers, researchers, procurement, HR, are but some of the departments that have a role in determining the proper application of export controls. They will typically not be aware of this, and often not want to know. You will likely also need to ask your customers what they plan to do with the products (finished or intermediate) you supply to them – again something they may not be so willing to share (which you may want to treat as a red flag). Moreover, the Incoterms under which you trade will have a bearing on who has the immediate legal responsibility for export control compliance. Some Incoterms may put that onus on you even if you do not have the necessary knowledge about the products you export (this is a common challenge for trading companies). Hence your relationships with your suppliers and customers are going to be key.

- **Establish processes** for managing the export controls requirements that apply. In a way, this ought to be a relatively easy step. Most companies are quite familiar with process implementation in many parts of their business. Hence as long as someone knows which requirements apply, it should not be an unsurmountable task to create a clear process outlining all the steps to take: obtaining information, documenting analyses, apply for a licence (if applicable), instructing shippers, escalating issues and so on and so forth. Most importantly, such processes, and whomever is responsible for them, need to have the power to stop potentially non-compliant shipments, regardless of how much it upsets their sales and supply chain people, or how much their customers complain. Once again, there are many systems and tools that can help you with this step, but also once again, they are limited in what they can do. The biggest risk we see is that companies expect such tools to do everything, leave it all to the tool, and "switch off" their common sense and human safeguards.

- **Escalation and disclosure processes** for if/when things go wrong. Even the best make mistakes. It is therefore also necessary to be ready for dealing with such mistakes. Correcting incorrect information supplied to a customer. Disclosing the shipment of a controlled product without a licence to the authorities. Eliminating suppliers or customers that are unable or unwilling to comply. All of this and more should form part of a comprehensive error management programme. It may not entirely prevent another mistake occurring. But it will certainly minimise the risk, and mitigate any penalties the authorities would look to impose.

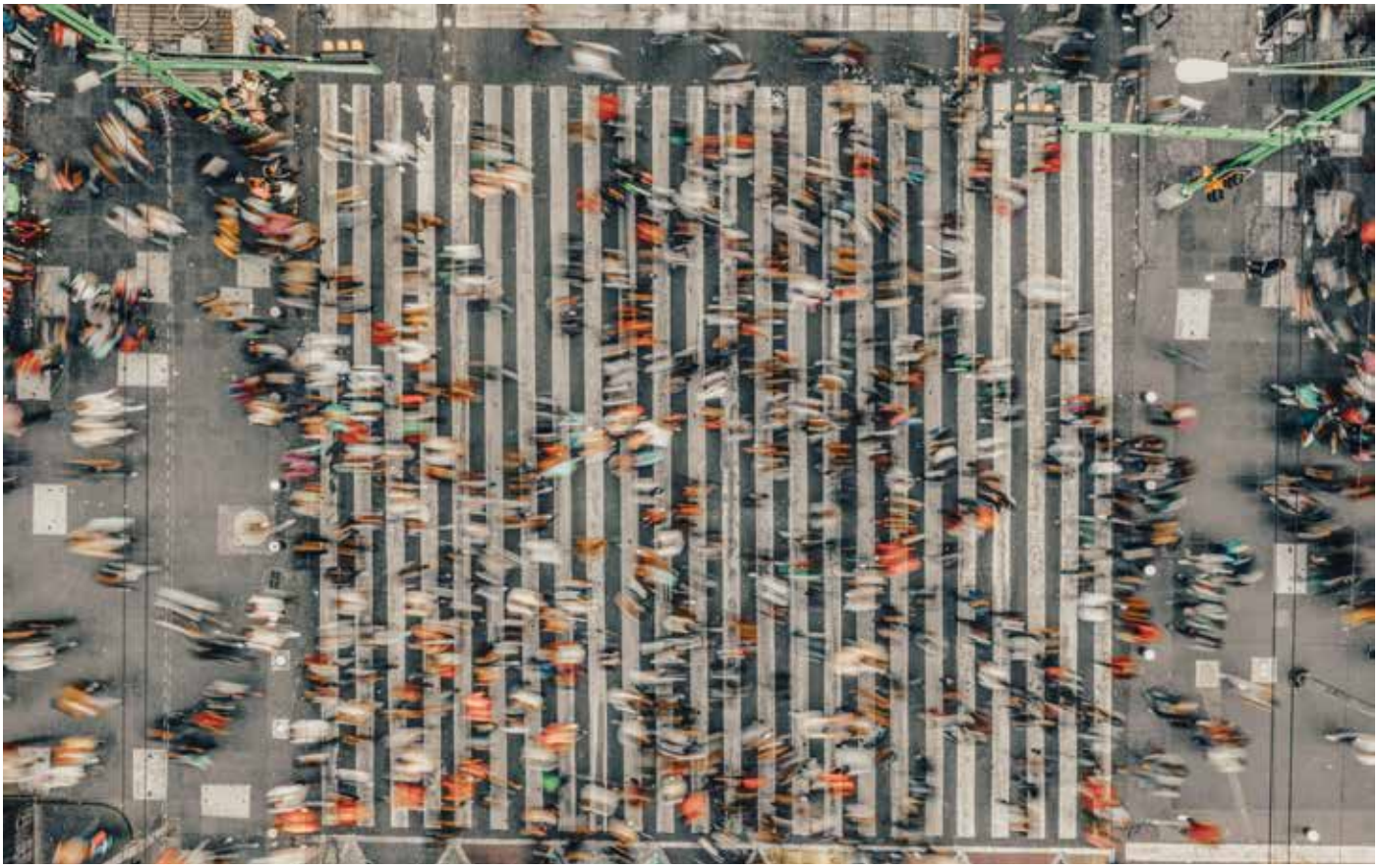
Following the above guidelines to the best of your ability will get you a long way on the road to full export control compliance. A remaining challenge, and one that perhaps warrants a special word, are the latest US re-export controls affecting predominantly the semiconductor industry, but with ramifications far beyond. Recent penalties imposed on companies breaching these rules have been eye-watering (up to US$ 300 million and 5 year denial of export). In many cases they are imposed on the US affiliates of companies that violated US rules in other territories. If such companies have no US affiliates (or another so-called “nexus” in the US), they may lose access to US dollars, severely impeding their ability to engage in international trade.

On 13th October 2022, the US Department of Commerce’s Bureau of Industry and Security (“BIS”) announced an interim final rule (it is still interim today) on additional export control measures to advanced computing, supercomputer and semiconductor manufacturing. Industries most affected by this rule are semiconductor manufacturers and distributors, suppliers of semiconductor manufacturers (e.g., semiconductor production or testing equipment supplier), and all their customers.

Products, technologies, software and services developed, manufactured, and / or provided outside the US may be subject to US export control if there is sufficient linkage to the US. This does not only cover inclusion of US originating physical materials, but also the inclusion of US related technologies or software, the use of US related production equipment, and the involvement of US persons in product development, production or shipment. Determination of US export control implications also requires knowledge of the end-use / end user of your products and services. “End use” is the ultimate intended use of the product, while “end user” is the last consumer in the product’s supply chain. Neither of these may relate to your immediate customer and its use of the product. It is up to you, as the seller, to take reasonable actions for end use / end user identification for US export control purposes.

In short, under the US’s Foreign Direct Product Rules, products made entirely outside of the US may still be subject to US export controls and require a licence from the BIS. Our experience is that most companies that make products in – say – a facility in Malaysia and sell them to – say – India are not aware that US re-export controls may apply to them. Consequently they have no processes in place to check which of their products are captured, even if they knew how to, let alone obtain the necessary licences for export.

Confused? Concerned? Good. That could be the first step to compliance. Remember that export control compliance relies on good controls, good controls rely on good processes, good processes rely on good knowledge, and good knowledge relies on awareness and concern.

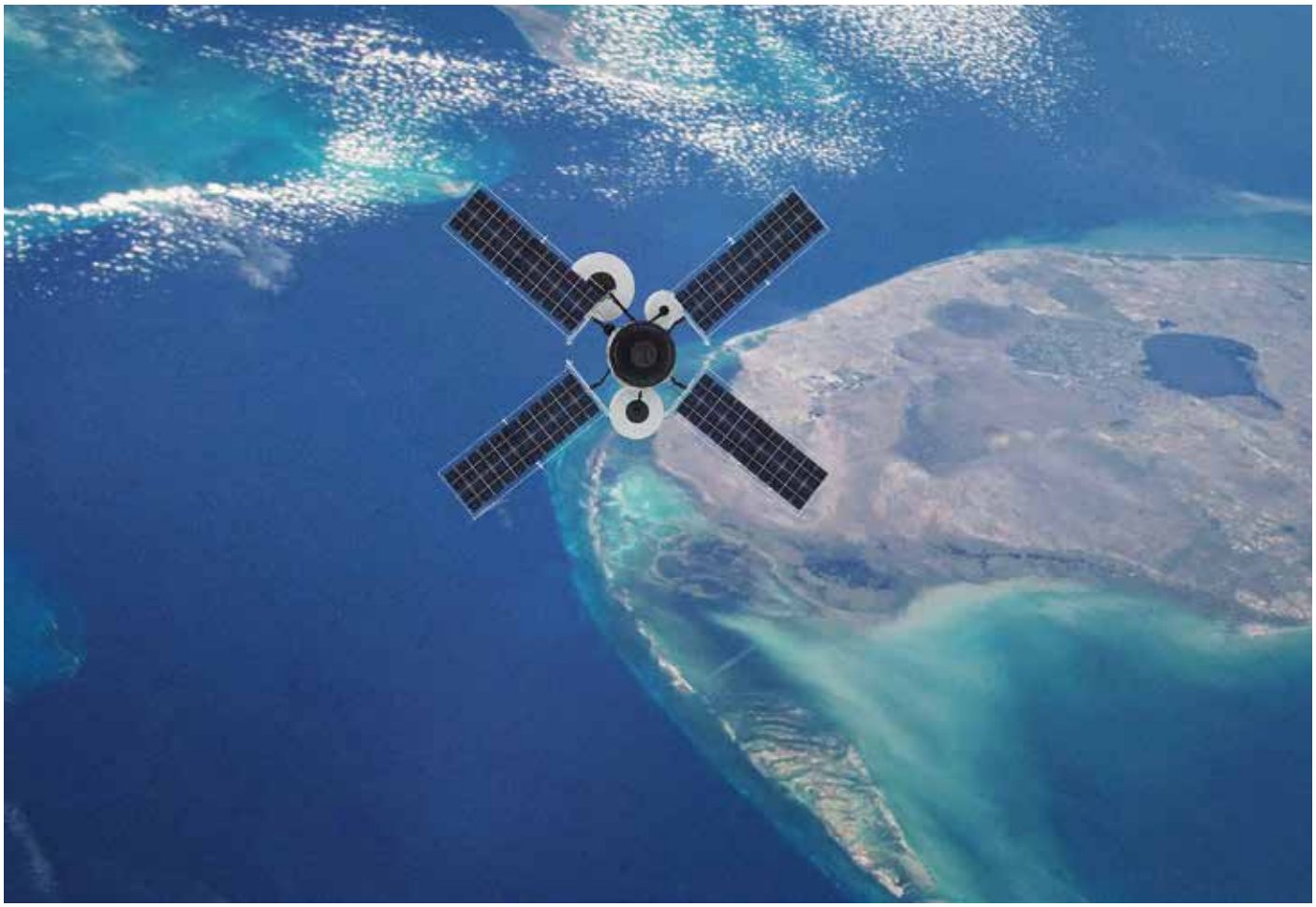


FTA focus

Headline	New development
CPTPP trade deal in effect in all original member states after Brunei's ratification	On 12 July 2023, Brunei became the final territory of the original member states (i.e. not including the UK) to ratify the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), marking the ratification of the CPTPP by all of its 11 original signatories.
India and EFTA agree for early conclusion of talks for FTA	On 12 July 2023, India's Commerce Industry announced that India and the European-Free Trade Association (EFTA) states, which includes Iceland, Liechtenstein, Norway, and Switzerland, are negotiating a Trade and Economic Partnership Agreement (TEPA). While there seems to be an optimism to conclude the TEPA quickly, there is currently no indication of a timeline. Hence, until a more concrete timeline is announced, quite some hurdles may need to be cleared before the agreement can be concluded.
Japan and the GCC to resume FTA talks	On 16 July 2023, Japanese Prime Minister Fumio Kishida and Gulf Cooperation Council (GCC) Secretary General Jasem al-Budaiwi announced that both parties will start talks to resume negotiations for an FTA in 2024. The previous FTA talks between the two parties were suspended in 2009 as both sides were unable to reach an agreement on issues such as tariff eliminations. Resuming FTA negotiations is primarily intended to secure Japan's energy security, as Japan significantly relies on crude oil and natural gas supplies from GCC members.
Philippines eyes talks for EU–FTA	On 12 July 2023, the Philippines' Trade Secretary Alfredo Pascual announced that discussions for an FTA with the European Union (EU) are set to begin this year. For more details, refer to our Philippines section.
Sri Lanka to join RCEP and explore FTAs with ASEAN member states once debt restructuring completed	On 10 August 2023, Sri Lanka announced plans to expand its reach in international trade through opportunities to enter into FTAs, once their debt restructuring is complete. This includes the intention to join the Regional Comprehensive Economic Partnership Agreement (RCEP) and exploring FTA collaborations with several ASEAN member states.
UK accession to the CPTPP	On 16 July 2023, the original 11 CPTPP member states and the UK signed an Accession Protocol for the UK to formally join the CPTPP. The agreement is expected to take effect in the second half of 2024 once the UK and all CPTPP parties have completed their domestic processes to bring the Accession Protocol into force. Among the CPTPP member states, this marks Malaysia's and Brunei's first FTA with the UK, bringing new supply chain opportunities for these two parties in particular. Affected companies should conduct an FTA opportunity assessment to take advantage of potential duty savings.
China and Honduras negotiate potential FTA	On 3 July 2023, China and Honduras launched talks on a potential new bilateral FTA. This follows the two countries signing a cooperation document jointly building the China-proposed Belt and Road Initiative earlier in June.Both parties are targeting the completion of the FTA negotiations by mid-2024.
FTA between the Philippines and South Korea expected to be signed soon	On 6 August 2023 South Korea's Department of Trade and Industry announced it is ready to sign and ratify a bilateral FTA with the Philippines. Meanwhile, the Philippines is still working on domestic approval processes, which could take a minimum of two months, probably more.

FTA focus

Singapore and Bangladesh agree to expedite free trade deal process	On 19 July 2023, the foreign ministers of Bangladesh and Singapore agreed to accelerate the process of signing an FTA to improve cooperation in the areas of trade, investment, agriculture, agro-processing industry, health and pharmaceuticals, ICT, connectivity and medical diplomacy. While the agreement to accelerate talks is a positive sign, uncertainty remains as to how long it may take for such an agreement to be signed and enter into force.
Thailand and Sri Lanka expected to sign FTA in March 2024	On 25 July 2023, it was announced by Sri Lanka's cabinet spokesperson that Sri Lanka plans to complete free trade talks with Thailand by February 2024 and sign an agreement in March 2024. This comes as part of Sri Lanka's effort to expand trade as it emerges from economic turmoil.
Thailand signs mini-FTA with Yunnan province in southwest China	On 17 August 2023, Thailand signed a memorandum of understanding (MoU) to form deeper trade partnerships through a mini free trade agreement (mini-FTA) between Thailand and Yunnan province in southwest China. This is Thailand's 8th mini-FTA; with the territory eying more trade cooperations with minor cities after previous mini-FTAs resulted in a significant growth of Thai exports in such cities. Do note that these mini-FTAs are generally focused on trade facilitation framework and are limited in customs duty implications. For duty saving opportunities, traders should still refer to full fledged FTAs with specific reduction in tariffs such as the ASEAN - China FTA or the China - Thailand FTA.
Vietnam and Israel sign free trade agreement	On 25 July 2023, Vietnam's Minister of Industry and Trade, Nguyen Hong Dien, and Israeli Minister of Economy and Industry, Nir Barkat,signed the Vietnam - Israel Free Trade Agreement (VIFTA). This comes after 7 years of negotiations for the agreement between both parties.



Launch of ASEAN Tariff Finder

On 19 August 2023, the ASEAN Tariff Finder was launched on the sidelines of the ASEAN Economic Ministers' (AEM) Meeting – ASEAN Business Advisory Council Consultation.

The ASEAN Tariff Finder is a free to use online platform aimed to inform traders of key customs and trade data points for imports into more than 160 territories. The data points include normal customs tariff rates, preferential tariff rates, rules of origin, and other key information relating to import processes and requirements in the destination territory. Users of the platform can input a product's tariff classification, origin and destination territories to begin the search. However, it is important to note that this platform is intended to be used as a general guidance on the import requirements and processes in the destination territory, not formal legal advice.

Our take: The ASEAN Tariff Finder will certainly be useful for the preliminary assessment of any FTA utilisation or expansion plans a company may have. This platform will help traders understand what are the key areas to look into. Such efforts from ASEAN to assist SMEs in the region will be much appreciated.

However, the customs and trade regulatory field is constantly evolving in the APAC region and beyond, which always makes it challenging for such a platform to keep up the pace. Moreover, customs and trade matters can be complex and referring to the platform alone may not be sufficient to ensure compliance. All international trade business plans must be assessed on a case by case basis as small differences in aspects such as a product's tariff classification, the role of the importer or a product's intended use can influence which rules apply and to what extent. Relying on generalised information on international trade matters may lead to unintended consequences such as:

- Evaluating your business feasibility plans with an inaccurate tariff code;
- Applying incorrect rules of origin when applying for a preferential certificate of origin or;
- Missing out on application of import licences.

Hence before finalising and implementing any plans, any business looking to execute should review the relevant legislation at the appropriate time directly and in sufficient detail to understand the current on-the-ground requirements.

Australia

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Australia Border Force's increase focus on related party transactions and TPAs

In the recent Goods Compliance Update for Autumn 2023, the Australian Border Force (ABF) re-emphasised that overseas related parties making transfer pricing adjustments (TPAs) affecting imports are obliged to make a voluntary disclosure of the adjustment made and its impact on the declared customs value. This is regardless of whether the adjustment is upwards or downwards.

Any import declaration that has not been adjusted/disclosed to reflect the impact of any year end TPAs is a potential "false and misleading statement" and is an offence under Australian Customs regulations. The minimum penalty for a "false and misleading statement" is currently AUD 14,085 per false and misleading statement made or 75% of the customs duty shortfall (if any), whichever is the greater.

This update follows from an earlier update in the Goods Compliance Update for Spring 2022 which provides details on the customs valuation implications of related party transactions and states importers are obliged to make a voluntary disclosure if post-importation TPAs were made.

Our take: The ABF's emphasis on compliance requirements of related party transactions and TPAs indicates that they see these areas as having a higher risk of non-compliance, and are more likely to scrutinise them closely. Importers making related party transactions are advised to perform regular compliance review of these transactions and assess whether a voluntary disclosure to the ABF is required.

AAT rules on classification of food for GST purposes

In the recent case of Chobani Pty Ltd and Commissioner of Taxation [2023] AATA 1664, the Administrative Appeals Tribunal (AAT) held that the sale of Chobani Flip Shortcake flavoured yoghurt is not eligible for a Goods and Services Tax (GST) exemption. Whilst food supplies are generally eligible for GST exemption, food that is a combination of one or more foods is subject to GST.

This decision is based on AAT's conclusion that the Chobani Flip Shortcake flavoured yoghurt is a combination of biscuit goods and confectionery. The product's nature, its ingredients and composition, packaging, appearance, in-store display and the statutory construction of the legislation were considered in making this decision.

Our take: This decision is important as GST is applied to most imported products. It highlights the increasing complexity of classifying food for GST purposes, on top of the already complex customs tariff classification, which is a totally different subject. Considering the ABF's targeted scrutiny on claims to GST exemptions, it is important for food importers to assess whether their food imports are of a type eligible for GST exemption and ensure they can provide the necessary evidence. If in doubt, companies may seek a Private Ruling from the Australian Taxation Office.

Option for small businesses with excise-equivalent customs duty obligations on a quarterly basis

From 1 July 2023 onwards, fuel and alcohol businesses with an aggregated turnover of less than AUD 50 million can apply to the Australian Taxation Office to pay excise equivalent customs duties on a quarterly instead of weekly or monthly basis. Weekly or monthly payment were the only two options available previously. This mechanism is the latest measure introduced as part of the Australian Government's 2022-23 Budget measures seeking to streamline excise administration for smaller fuel and alcohol businesses, and aligns with already existing measures for domestic producers of excisable goods.

Businesses with an aggregated turnover of AUD $50 million or more will not be able to apply for permission to pay excise-equivalent duty on a quarterly basis. Reporting processes for these companies remain unchanged.

China

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China's new voluntary disclosure rules open for public hearing

On 29 June 2023, the General Administration of Customs (GAC) released a draft of the amended voluntary disclosure rules for customs-related violations for public hearing. If and when effective, these rules will repeal the disclosure rules set out in the GAC's Announcement No. 54 of 2022, as summarised in our Trade Intelligence Issue for July and August 2022. The new draft is tentatively valid for two years effective from 1 August 2023 (not officially released as of 31 August 2023). Some of the key proposed changes are as follows:

- **Expanded scope of voluntary disclosures exempted from administrative penalties**: the draft proposes an expansion of the scope for violations eligible for voluntary disclosure. The expansion will include a penalty exemption to non-tax-related violations, i.e., violations that do not have customs duty and tax implications (e.g., violations of quarantine and inspection formalities, export tax refund management, customs statistical accuracy).
- **Extended deadline for tax-related violations**: The deadline to apply for voluntary disclosure of tax-related violations is proposed to be extended from one year to 18 months.
- **Clearer policies pertaining to repeated disclosures for the same violation**:
    1. Definition of the same violation has been clarified to mean violations that are identical in substance and violate the same article within a specific customs regulation. Note that no clarification is made on what identical substance constitutes under this draft.; and
    2. Repeated voluntary disclosures for the same violation within a year or for licensing rights on the same goods, will not benefit from a penalty reduction or exemption under this draft.
- If voluntary disclosures of tax-related violations are accepted, the trader can apply for reduction/waiver of late payment surcharges

Our take: The new disclosure rules provide greater access to reduced penalties/penalty waivers under the voluntary disclosure scheme, suggesting that it is China Customs' desire for businesses to proactively reach out to them through a voluntary disclosure if they discover potential non-compliance. Businesses should nevertheless assess the related risk exposure and carefully strategise such voluntary disclosure to China Customs. Incorrect or incomplete disclosures may lead to unforeseen and unnecessary risks for companies, higher penalties and closer scrutiny from China Customs.

New export controls on gallium and germanium products and specific drones

China imposed new export controls on gallium and germanium products (effective from 1 August 2023) and temporary export controls on specific drones (effective from 1 September 2023).

Our take: Export controls are becoming a key compliance topic in the customs and trade community in China. We are seeing significant shifts in China's export control policies and companies are finding it hard to navigate the complex and regularly changing rules.

Export controls are no longer limited to goods that relate to weapons of mass destruction or dual use items. Semiconductor and high end computing industries are now being dragged into this arena as territories seek to gain advantage in technological development.

China-Costa Rica AEO MRA takes effect

On 26 June 2023, the GAC announced that the China-Costa Rica Customs Authorised Economic Operator (AEO) Mutual Recognition Agreement (MRA) will be effective from 1 July 2023. Having an MRA between trading partners will mean that there is a preferential treatment for AEO qualifying companies. This includes faster and more efficient customs clearance, and less inspections at clearance.

India

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Key Tribunal conclusions on customs valuation

There are two key updates relating to the acceptability of customs value in India in July and August 2023. Both of these emphasise the importance of having the right support for declared customs values and being in a position to defend any challenges. We have summarised both updates below.

1. **Rejection of the declared transaction value by India Customs and challenges to apply the transaction value of identical goods**

In a case brought to the Customs Excise & Service Tax Appellate Tribunal ("the Tribunal"), the declared customs value by an importer was assessed by India Customs, who contended that the declared value should be increased, based on a comparison with the import of identical goods by another importer with a higher assessable value.

The Tribunal noted the following key points when evaluating the case:

- The importer in the present case had a five year contract in place whereby it was importing a higher quantity of goods, compared to the other importer (to which the importer in the present case was compared), who only had one consignment with a minimal import quantity. Hence, the imports are at a different commercial level.
- There was a gap of more than three months between the contract dates of both imports, during which fluctuation in international prices could occur.

Considering the above-mentioned factors, the Tribunal concluded that the comparison was not suitable for revising the declared value in the present case, and the case was ruled in favour of the importer. Note that the Tribunal is not the final stage of appeal and the said decision could be appealed by the customs authorities at the next level.

2. **Addition of licence and services fee to the invoice price to arrive at the transaction value**

In another case brought to the Tribunal, the transaction value of the goods came under scrutiny by the revenue authorities, particularly regarding the inclusion of a licence and service fee payable by the importer into the price actually paid or payable (i.e., invoice price).

The importer is involved in manufacturing of wind turbine generators specifically designed for large wind firms. The imported goods were purchased from a related party. The licence agreement indicated that the payment of the licence fee was applicable for each wind turbine generator commissioned. The Tribunal held that the licence fee shall be added to the transaction value for customs duty calculation only if it is a 'condition of sale'.

However, there was insufficient evidence to establish that the licence fee paid formed a condition of sale for the goods. Therefore, it was ruled in favour of the importer, whereby the licence fee should not be included in the transaction value of the imported goods for customs duty calculation. Similar to the above, the said decision could be appealed by the customs authorities at the next level.

Our take:

When a declared customs value is challenged by the customs authorities, it is crucial for importers to take note of the basis of the challenge. As illustrated in the cases above, challenges from India Customs on comparisons of the price declared for identical goods, or dutiability of any overseas payment (e.g., licence fees or royalties) are common. Relevant supporting documentation, such as contracts to defend the importer's position, serves as a basis to defend the transaction value declared.

However, importers should also consider documenting any rationale to the acceptability of their declared customs value even before any challenge, to make sure they are in the driver's seat. This is especially true for importers who frequently purchase goods from a related party. Sooner or later, there will be questions from India Customs on the acceptability of the invoice price as a transaction value and whether all the dutiable adjustments (e.g., licence fees, royalties and assists) are reflected in declared customs values.

Restriction of imports of laptops and other similar products

On 20 July 2023, the Directorate General of Foreign Trade (DGFT) published a notification restricting the import of personal computers, laptops, tablets, servers, etc. covered under HS heading 8471. Import of such goods will require an import licence. From what we understand, such import licences will be challenging to obtain for commercial import of laptops.

Initially, the restriction was planned to come into effect on 3 August 2023. However, this has been delayed and the import licence requirement will only be effective from 1 November 2023. Note that the import licence requirement excludes the following:

- imports under Baggage Rules (i.e., personal items);
- import of one laptop, tablet, all-in-one personal computer, or ultra-small form factor computer, including those purchased from e-commerce portals, through post or courier, subject to payment of applicable customs duties;
- re-import of goods repaired abroad;
- import of a maximum of 20 units of such items per consignment for the purpose of research & development, testing, benchmarking and evaluation, repair and re-export, product development, subject to the condition that:
  - such goods are used for the stated purposes and will not be sold; and
  - after use, such goods would either be destroyed beyond use or re-exported.
- laptops, tablets, all-in-one personal computers, and ultra-small form factor computers and servers which are an essential part of capital goods.

Restriction of gold imports

On 12 July 2023, the DGFT published a notification to restrict the import of gold items. Gold products that are classifiable under customs tariff codes 7113.19.11, 7113.19.19 and 7114.19.10 now require an import licence. Gold items under the customs tariff code 7113.19.11 that are imported under a valid India-UAE Comprehensive Economic Partnership Agreement (CEPA) tariff rate quota are not subjected to the import licensing requirement.

The restrictions came into effect on 12 July 2023.

Prohibition of export of non-basmati rice

On 20 July 2023, DGFT published a notification putting a complete prohibition on the export of non-basmati rice classifiable under customs tariff code 1006.30.90. It came into effect on 20 July 2023. Exportation of such goods is only allowed in special circumstances, where prior approval must be granted by the Indian Government. Such approval will be based on the food security needs of other territories, as requested by their respective government.

Our take: The above import and export restrictions are likely to be driven by the economic interests of the Indian government. They are aimed at helping boost the Indian economy through incentivising local manufacturing and ensuring there is sufficient supply of food for India. Although these policies are effected with the intention to support the Indian people, companies trading such goods will be affected significantly. This is especially true for the import restriction on laptops (and other, similar products), since companies producing computers and laptops will need to rethink their manufacturing processes for India if they want to continue their business in India.

New customs database to digitalise the AA scheme

On 17 July 2023, the Directorate General of Foreign Trade (DGFT) published a notification to digitalise and streamline the norms ratification process in the customs database under the Advance Authorization ('AA') scheme. Norms in this context refers to the ratios of goods/input items which are imported and used in the export/output items, as permitted under the AA scheme.

The key features of the digitalisation are summarised as follows:

- A user-friendly database has been introduced for ad-hoc norms. The database is accessible online (https://dgft.gov.in) and allows users to search norms based on criterias such as export and import item description/technical characteristics, ITC (HS) code of the export and import items.
- In cases where there are ad-hoc norms applied, which refer to specific input-output norms for an export product for which there are no prescribed standard input-output norms, the AA licences will be issued based on self-declarations by the applicant.

Relaxations on the acceptance process under the EPCG scheme initiative

On 13 July 2023, the Directorate General of Foreign Trade (DGFT) published a public notice in relation to changes to the Export Promotion Capital Goods (EPCG) application processes, which aims to provide greater relaxation for EPCG applicants to enhance ease of doing business. It came into effect on the same day.

The EPCG is a scheme that enables an export-oriented importer to import capital goods without paying customs duties (i.e., applied at a 0% rate). To apply for the EPCG scheme, certain documents must be submitted, which includes an "installation certificate" used as evidence of the installation of the capital goods.

An installation certificate must be submitted within six months from the date of completion of the import process. However, recently relaxations have been introduced to allow for the delay in submission of the mandatory installation certificate, where it can be submitted up to December 2023, subject to payment of late fees and fulfilment of certain conditions as specified.

Extension of amnesty scheme for AA and EPCG

On 20 June 2023, DGFT published a public notice in relation to the one-time settlement scheme for exporters failing to meet their export obligation under the AA and Export Promotion Capital Goods (EPCG) schemes. This scheme provides a benefit by placing a cap on the interest amount payable, which under normal circumstances is not capped.

The last date to apply for the amnesty scheme has been extended from 30 June 2023 to 31 December 2023 and the last date for payment of customs duty along with interest has been extended from 30 September 2023 to 31 March 2024.

Transition to HS 2022 from HS 2007 for preferential origin claims under India-Japan CEPA

On 4 July 2023, the Central Board of Indirect Taxes and Customs (CBITC) published an announcement to transition to use HS 2022 instead of HS 2007 for the application and issuance of Certificate of Origin (CO) under the Comprehensive Economic Partnership Agreement between India and Japan (India-Japan CEPA).

The announcement instructs that any traders looking to claim for preferential treatment under the India-Japan CEPA must use the HS 2022 version and indicate such on the bill of entry at the time of customs clearance.

Our take: Recently, India and Japan had revised their respective tariff codes to be in line with HS 2022. However the CO issuing authority in Japan were still issuing COs for India-Japan CEPA based on HS 2007. As a result, the customs authorities in India denied preferential claims. This highlights the importance of HS classification in relation to claiming of preferential treatment under FTAs. Any misalignment of HS codes, whether related to HS version or disputes on tariff classification, will put companies at risk of having FTA claims rejected. Companies that manage their duty footprint through the use of FTAs must ensure that all information is aligned, to reduce the risk of being challenged by India Customs.

Indonesia

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New guidelines on monitoring and evaluation of customs valuation related VDs and VPs

On 25 July 2023, the Indonesian Directorate General of Customs and Excise (DGCE) issued regulation number PER-12/BC/2023, giving Customs the right to review importers' Voluntary Declaration (VD) and Voluntary Payment (VP) on customs valuation matters. The VDs and VPs relevant to this update include misdeclaration of invoice values, freight costs, insurance costs, assists, royalties, usage of Free Trade Zones, Free Zones and Bonded Stockpiling Place Entrepreneurs.

This regulation allows Customs to monitor importers' VD and VP frequency for irregularities and evaluate all VD and VP submissions to ensure the following:

- VD and VP was submitted within the required time period; and
- VP amount declared in the VD report submitted to the DGCE is correct. This will be determined by cross checking the base document for such VP, customs billing, payment proof and any other evidence or documents received on the settlement date.

During the monitoring and evaluation process, Customs may also ask companies to provide further statements, information, or additional documents. The Head of Customs Office may issue a recommendation to perform a re-examination or a customs audit on the related Import Declaration (PIB) if the monitoring and/or evaluation results show that the company in question:

- has not performed VP for an underpayment of import duty and/or import taxes;
- has not submitted the VD report; or
- data and/or value in the VD report is incorrect.

In such instances, Customs will examine PIBs declared under the VD mechanism after the settlement date during the next re-examination or customs audit.

This regulation also clarifies that if companies are unable to allocate the value of royalties and/or proceeds on the PIB, such royalties and/or proceeds may be allocated to each type of good during the reporting period, according to the applicable accounting principles.

New procedural guidelines on exporting controlled goods

The Directorate General of Customs and Excise (DGCE) issued regulation number PER-09/BC/2023 on the revised procedure to export controlled goods from Indonesia. Approvals from authorities are required prior to exportation of such controlled goods. This regulation is an implementing act of the Minister of Finance Regulation No 155/PMK.04/2022, which was summarised in our Trade Intelligence issue for November and December 2022.

New procedural guidelines are as follows:

- Periodic Export Declaration (PEB Berkala) is applicable for the export of electricity, liquid or gas;
- Bill of lading or airway bill must be completed within three days of the departure date;
- Physical examination of exports by Customs may include laboratory testing;
- Weight limit for export of consignment goods that are exempt from export declaration (PEB) requirements is reduced from 100 kg to 30 kg;
- Monitoring and evaluation of export consolidation must be conducted at least once a year, whilst the requirement for an export consolidator permit has been revoked;
- Updates to provisions on revising and cancelling PEB, as follows:
  - revision of the type and quantity of goods will be rejected if there is an Intelligence Report (NHI) issued for the PEB or if a mistake is found by customs officials;
  - exporters may submit a new PEB for the exported goods as long as the goods have not been loaded to a transport vehicle; and
  - PEB cancellation must be reported within three working days of the departure of a transport vehicle evidenced by the outward manifest, estimated date of export, or date of outward manifest cancellation.

This regulation became effective on 31 March 2023 but was published only in July 2023.

New guidelines to export controlled goods from the Ministry of Trade

The Ministry of Trade issued regulation number 23 Year 2023 which provides new guidelines to export controlled goods from Indonesia. Approvals from the authorities are required prior to exportation of such controlled goods. Notable changes are as follows:

- Updated data elements for Export Permit, i.e., Persetujuan Ekspor (PE), which now includes:
    1. Reference PE number and date of issuance;
    2. Business identification number and exporter's identity;
    3. Customs tariff code/HS code;
    4. Type/description of goods;
    5. Number of goods and unit of goods; and
    6. Validity period (i.e., start and end date) of the PE.
- Requirement for exporters who have obtained the relevant PE to regularly submit an export realisation report via the INATRADE system. If they fail this requirement, exporters will first be given a warning, before sanctions apply subsequently. Sanctions may include freezing of the export licence or permit, postponement of additional required export documents, or revocation of the export licence or permit until the exporter submits the export realisation report; and
- Transition to using the 2022 edition of the Indonesia Customs Tariff Book.

The regulation is not limited to only document guidelines for export of controlled goods. Other key updates in the regulation include:

- Masks and raw materials of masks are no longer subject to export controls.
- The deadline for export of certain metal minerals has been extended from from 10 June 2023 to 31 May 2024.

This regulation became effective on 17 July 2023.

Updated list of goods prohibited from export out of Indonesia

On 10 July 2023, the Ministry of Trade issued regulation number 22 Year 2023 on the updated list of goods prohibited from export, which include:

- Forestry;
- Agriculture;
- Fertiliser (Subsidy);
- Mining;
- Cultural Heritage Items;
- Metal Waste and Scrap; and
- Tin Alloy of customs tariff code 8001.20.00

This regulation became effective on 17 July 2023.

Amended guidelines for export of palm oil, crude palm oil, and it derivatives

The Directorate General of Customs and Excise (DGCE) issued regulation number PER-11/BC/2023 which amends the guidelines for the export of palm oil, crude palm oil and its derivatives out of Indonesia. Notable changes are as follows:

- Any physical examination results used as the basis of export declaration (PEB) submission must include the name and identification of the goods for traceability;
- If the goods are exported in bulk and originate from a Bonded Stockpiling Area, the approval for export in bulk can be used as the document for customs clearance; and
- Cancellation of PEB for export in bulk must be submitted before the exporter obtains the registration number for export declaration. Approval or rejection of the cancellation request will be made known within three working days. If approved, the cancellation request document will be used as:
    - Document to unload goods from transport vehicle and/or clearance of goods from customs area; or
    - Document for re-entry into Bonded Stockpiling Area.

This regulation became effective on 26 June 2023.

New compliance examination framework for companies dealing with excisable goods

The Directorate General of Customs and Excise (DGCE) issued regulation number PER-10/BC/2023 establishing a routine compliance examination framework for companies dealing with excisable goods.

This examination is under the purview of the Directorate Technical and Excise Facility of the Regional Customs Office, Customs Main Office (KPU), and Customs Surveillance Office (KPPBC). The examination will typically happen in two phases: first administrative, then an on-site examination. The list of activities that may happen under administrative and on-site examination respectively are as follows:

Administrative examination	On-site examination
• Data and information collection; • Classification and examination of documents; • Examination of excise related document and supporting documents; • Examination of the fulfilment of excise licences; • Examination on the execution of excise facility; • Overall analysis of compliance with the prevailing customs and excise regulations;	• Stocktaking on excisable goods; • Examination of transport vehicles; • Field examination in the form of physical checks on Excisable Goods Entrepreneur, office space, warehouse, stockpiling area, and any other areas as necessary.

The regulation became effective on 29 May 2023, but was only published in July 2023.

New guidelines on movement of excisable goods

The Directorate General of Customs and Excise (DGCE) issued regulation number PER-13/BC/2023 establishing new guidelines on stockpiling, entry, release, and transport of excisable goods. The regulation replaces regulation number PER-02/BC/2015 and all relevant amendments. Notable changes are as follows:

Topic	Changes
Stockpiling	• Excisable exports can be stockpiled in the final stockpiling area. • Excisable goods can be stockpiled in the Excise Exemption Facility before excise is paid provided that they are used as raw/supporting materials in the production of finished non-excisable goods
Monitoring of entry and release	• DGCE are entitled to directly monitor entry and release of excisable goods; • If excisable goods are not transported within the timeline stipulated in the excise document and there is no extension granted, it may affect the risk evaluation of the excisable entrepreneur; and • If there is inconsistency between the declared quantity of excisable goods and the actual quantity, the DGCE may conduct further examination.
Alcohol/ alcoholic goods specific changes	• Manual submission of Declaration of Excisable Goods Mutation (CK-5) and Transport Document for Ethyl Alcohol/ Alcoholic Beverage Containing Ethyl Alcohol for which excise is already paid (CK-6) is allowed if electronic submission is not possible due to system defect/failure. • CK-5 should be completed via the excise application system. • New data requirements to amend CK-5 and CK-6. The Head of Customs and Excise Office will provide approval or rejection of the request to amend CK-5 and CK-6 within five working days from the request submission.

This regulation became effective on 14 August 2023.

Updated export duty rates on metal minerals

On 12 July 2023, the Indonesian Ministry of Finance issued regulation number 71 year 2023 to update the export duty rates on metal minerals based on different construction phases of the mineral refinement facility (i.e., completeness in construction of the mineral refinement facility). This update seeks to encourage completion of refinement facilities and support downstream industries more generally.

The Indonesian Ministry of Energy and Natural Resources is responsible for assessing and recommending a refinement facility's construction completeness and each Phase is defined according to the below criteria:

Phase	% of completion of mineral refinement facility
Phase I	50% - less than 70% of total construction is complete
Phase II	70% - less than 90% of the total construction is complete
Phase III	Equal to or more than 90% of the total construction is complete

- Updated export duty rates on metal minerals (applicable until 31 December 2023):

Goods	Export duty rate		
	Phase I	Phase II	Phase III
Copper concentrate at a rate of ≥ 15% Cu	10%	7.5%	5%
Lateritic iron concentrate at a rate of ≥ 50% Fe and (Al^2O^3+SiO^2) ≥ 10%	7.5%	5%	2.5%
Lead concentrate at a rate of ≥ 56% Pb	7.5%	5%	2.5%
Zinc concentrate at a rate of ≥ 51% Zn	7.5%	5%	2.5%

- Updated export duty rates on metal minerals (applicable from 1 January 2024 – 31 May 2024):

Goods	Export duty rate		
	Phase I	Phase II	Phase III
Copper concentrate at a rate of ≥ 15% Cu	15%	10%	7.5%
Lateritic iron concentrate at a rate of ≥ 50% Fe and (Al^2O^3+SiO^2) ≥ 10%	10%	7.5%	5%
Lead concentrate at a rate of ≥ 56% Pb	10%	7.5%	5%

Japan

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New definition for IOR against the backdrop of increased e-commerce non-compliance

The number of e-commerce imports, and associated non-compliance, is on the rise in Japan. A noteworthy example is the undervaluation of goods imported for warehousing before final sale to Japanese consumers. Since no transaction value exists at the time of importation, the customs value is frequently misdeclared.

Given this context, the Basic Circular to the Customs Act has been amended to clarify the definition of importer of record (IOR). This will clarify who is required to be responsible for customs declaration, preventing those unfamiliar with the consignment from being the responsible party to clear the goods. Japan Customs has also published case studies (in Japanese) to clarify who will be deemed as IOR in a given import transaction.

The new definition of IOR is as follows:

- Where importation of goods is based on a sale for import transaction (i.e., a buy/sell transaction), the IOR is:
  - in principle, the consignee indicated on the invoice (or bill of lading, etc. where there is no invoice) for cargo imported through normal import transactions;
  - the person who is considered the "limited declarant" pursuant to the Customs Tariff Law or Temporary Tariff Measures Law (this is limited to certain special situations);
  - the subsequent buyer in cases where the cargo is resold in a bonded area before import permit
- Where importation of the goods is **NOT** based on a sale for import transaction, the IOR is:
  - the person who, at the time of the import declaration, has the right to dispose of the imported goods after release of goods;
  - the person who acts for the purpose of import other than (1), such as:
    - » a person who rents and uses goods imported under a lease contract
    - » a person who sells commissioned goods imported for consignment sales
    - » a person who processes or repairs goods imported for processing or repairing
    - » a person who disposes of goods imported for disposal

The above definition will come into effect on 1 October 2023.

Our take: Case studies relevant to the IOR clarification are all related to goods imported using e-commerce fulfilment services. It is likely therefore that Japan Customs intends to control e-commerce imports with these amendments. However, there are some indications that Japan Customs may take a broader view to the new definition. Separately, it is not clear how the use of certain Incoterms, which determines who has responsibility for import clearance, will work in practice with this new IOR definition in place. We are still seeking clarification on these points. In the meantime, it is recommended that e-commerce businesses importing goods into Japan check their current import transactions with the new definition in mind and ascertain whether or not the amendment may affect their businesses.

Reminder of Japan Customs' reforms taking effect in October 2023

As reported in the past few issues of Trade Intelligence, a series of customs reform amendments will become effective soon, as summarised below:

Effective date	Details of amendments
1 October 2023	• "Name and address of importer" will become the import declaration items required under Order for Enforcement of the Customs Act • Definition of IOR will take into effect • "Relationship with Customs Affairs Representative ("CAR")" etc. will be added to the CAR registration form (please see Nov/Dec 2022 issue) • Customs will be able to request non-resident importers to register a CAR, and where the request is not responded, assign a CAR on their behalf (please see March/April issue 2022)
12 October 2025	Addition of the followings to the import declaration items (please see our May/June 2023 issue): • Whether or not the good is considered "e-commerce good" • Information of e-commerce platform where the good is a "e-commerce good" • Delivery address and the name of the recipient after the goods have been cleared

Changes to PSR and procedural provisions under JIEPA to align with HS 2017

On 3 July 2023, Japan Customs announced that amendments to Annex 2, which specifies the Product Specific Rules (PSR) of the Japan-Indonesia EPA ("JIEPA") will come into force on 5 February 2024. Corollary amendments to the Operational Procedures will also be implemented on the same day.

Key changes are as follows:

1. PSRs and procedural provisions have been updated to align with HS 2017;
2. Description of PSRs simplified with abbreviations; and
3. Changes to procedural provisions to provide for transition phase before updated PSRs take effect. Certificate of Origin (COOs) based on the dated HS 2002 issued before 5 February 2024 will be accepted by Japan Customs within one year of the issue date. COOs issued retroactively after 5 February 2024 for goods that have already been exported should be based on the amended PSR. The overall process of claiming preferential treatment under JIEPA remains unchanged.

Our take: Companies leveraging the JIEPA should review HS code changes, check if affected imports still qualify for preferential treatment under the updated PSRs and update its internal SOPs accordingly. Although COOs issued before 5 February 2024 remain valid one year within the issue date, we recommend businesses to begin their review process now to avoid supply chain disruptions and safeguard duty savings under the JIEPA.

Transition to HS 2022 from HS 2007 for preferential origin claims under India-Japan CEPA

On 4 July 2023, India Customs published an announcement instructing Japan exporters looking to claim preferential treatment under the Comprehensive Economic Partnership Agreement between India and Japan (India-Japan CEPA) to use the HS 2022 version and indicate such on the bill of entry at the time of customs clearance in India. Please see our India section for more information.

Updated export prohibition related to Russia

On 2 August 2023, Japan's Ministry of Economy, Trade and Industry (METI) announced amendments to the Export Trade Control Order which bans the export of goods that contribute to the strengthening of Russia's industrial infrastructure (the Amended Order).

The Amended Order covers broader categories of goods (e.g., chemicals, plastics, rubbers, passenger cars etc.) which are major products exported to Russia in the last few years. A total of 758 items are now subject to said export ban.

These amendments became effective on 9 August 2023.

Malaysia

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Update to the export controlled goods list

On 17 July 2023, the Ministry of Investment, Trade and Industry (MITI) published the Strategic Trade (Strategic Items) List 2023 to align with the Strategic Trade (Strategic Items) (Amendment) Order 2023. This list became effective on 1 August 2023 and replaces the preceding Strategic Trade (Strategic Items) List 2021 for strategic goods controlled under the Strategic Trade Act 2010 (STA 2010).

This update aims to clarify the strategic items list through updates to technical specifications, clarification of existing definitions and inclusion of new definitions, terms, sections and category code. For example, there is a new Category Code under "Category - 3 - Electronics", which covers technology required for slicing, grinding and polishing of specific silicon wafers.

Our take: Failure to comply with the STA 2010 may result in heavy penalties. Exporters are strongly recommended to review their exported goods against the changes and assess whether their goods fall into any of the new requirements. This is to ensure that the relevant export permits are obtained prior to exportation to avoid supply chain disruptions and/or incurring penalties.

Export permits can also be an administrative burden for exporters. A possible workaround is for the exporter to explore the possibility of using a bulk export permit in place of single use export permits. This is most suited for exporters with recurring transactions since it will reduce the amount of paperwork to manage for application of single use permits.

Expansion of existing FIZs and FCZs

In July and August 2023, The Ministry of Finance (MoF) gazetted the following notification Orders in relation to Free Zones:

1. Free Zones (Amendment of Second Schedule) (No. 2) Notification 2023
2. Free Zones (Declared Area) (No. 2) Notification 2023
3. Free Zones (Declared Area) (No. 2) (Amendment) Notification 2023
4. Free Zones (Declared Area) (No. 3) Notification 2023
5. Free Zones (Declared Area) (Amendment) Notification 2023
6. Free Zones (Amendment of First Schedule) Notification 2023
7. Free Zones (Amendment of First Schedule) (No. 2) Notification 2023

The notification Orders further expand the following Free Industrial Zones (FIZ) and Free Commercial Zones (FCZ):

FIZ	FCZ
• Tanjung Bin Petrochemical and Maritime Industrial Hub Free Industrial Zone (Phase 1), Johor • Sultan Ismail International Airport, Johor	• Sultan Ismail International Airport, Johor • Kuala Lumpur International Airport, Selangor • Kapar, District of Klang, Selangor

Our take: In Malaysia, Free Zones consist of FIZs and FCZs. Manufacturing activities are allowed to be conducted in FIZs, while trading activities including breaking bulk or repackaging are to be carried out in FCZs. The key benefits of Free Zones is that payment for any applicable import duty and sales tax are suspended on the movement of goods into a Free Zone, which helps companies to better manage their cash flow. Companies who wish to expand their manufacturing facilities or require additional space for storage of goods for regional distribution can consider setting up a manufacturing or storage warehouse in a Free Zone to enjoy these benefits.

Updates on anti-dumping duties for imports of steel and iron products into Malaysia

1. **Anti-dumping duties on cold rolled stainless steel goods**

On 25 July 2023, the Ministry of Finance (MoF) gazetted an administrative review Order on cold rolled stainless steel goods under the HS headings 7219 and 7220, with provisional anti-dumping duties imposed on said goods from China, Korea, Taiwan and Thailand. The anti-dumping duty amount will differ between sources of such goods. The rates are specified directly in the Order.

The affected stainless steel goods are imports of cold rolled stainless steel in coils, sheets or any other form with thickness between 0.3 millimetres to 6.5 millimetres and width of not more than 1,600 millimetres, excluding:

i. cold rolled stainless steel with bright annealed (BA), No. 8 (Mirror Finish), embossed, rigidised, etched or coloured finishes; or

ii. cold rolled stainless steel with hardness value of more than 250HV

These anti-dumping duties are effective from 27 July 2023 to 26 July 2028.

2. **Imports of iron or non-alloy steel from Korea and Vietnam are no longer subject to anti-dumping duties**

Effective from 27 June 2023, imports of cold rolled coils of iron or non-alloy steel, of width more than 1300mm from Korea and Vietnam are no longer subject to anti-dumping duties.

Philippines

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The Philippines resumes FTA talks with the EU

The Regional Comprehensive Economic Partnership ("RCEP") The Philippines and the European Union (EU) will resume negotiations for a Philippines-EU FTA, which were previously put on hold due to concerns over alleged human rights violations of the previous government leadership in the Philippines. The FTA talks between the Philippines and the EU initially began in 2015.

Representatives from both parties will set the scope of discussions in September 2023 to prepare for the formal negotiations that are expected to start in 2024. The prospective FTA will cover market access commitments, trade in goods, customs trade facilitation, protection of intellectual property rights, among others.

At present, the Philippines continues to benefit from the EU's Generalised Scheme for Preference Plus (GSP+) which gives exporters in the Philippines duty free access in the EU for 6,274 eligible products. Products potentially enjoying these benefits include vacuum cleaners, hairdressing equipment, crude coconut oil, preserved tuna and pineapples, amongst others. The EU GSP+ will expire by the end of 2023 with a proposed four year extension still under consideration.

Our take: It has always been in the interest of the Philippines, and other ASEAN countries, to establish FTAs with the EU. However, the EU's stringent expectations and requirements on issues such as human rights and environmental sustainability, among others, have meant that negotiations are frequently thwarted. However, after the ratification of EU FTAs with Singapore and Vietnam it is likely that other ASEAN member states will be even keener to follow suit.

An extension of the GSP+ programme for the Philippines is far from guaranteed. It is possible that the EU may view that the programme is no longer necessary in order for the Philippines to continue its economic development. Companies reliant on GSP+ should plan for a move away from this scheme and explore other duty saving opportunities on offer.

Singapore

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Implementation of the United Kingdom-Singapore Mutual Recognition Arrangement

On 25 July 2023, Singapore Customs announced the implementation of the United Kingdom (UK) - Singapore Mutual Recognition Arrangement (MRA) on Authorised Economic Operators (AEO). It came into effect on 1 August 2023.

Under this MRA, companies that are certified under the Singapore Customs' Secure Trade Partnership-Plus (STP-Plus) programme can benefit from expedited import clearance for goods entering the UK. Likewise, companies that are accredited under the UK's AEO programme will enjoy similar facilitation on their goods imported into Singapore.

Revisions to Singapore's Strategic Goods Control Order

On 1 August 2023, Singapore Customs gazetted the new Strategic Goods (Control) Order 2023. It will take effect on 1 October 2023.

The Strategic Goods Control List (SGCO) 2023 will incorporate revisions, which include new controls, as well as editorial amendments for consistency and clarity. It brings Singapore's strategic goods control list up to date with the 2022 Wassenaar Arrangement's Munition List ("WAML") and 2022 European Union's List of Dual-Use Items ("EUDL"). The EUDL contains dual-use items controlled by the four multilateral export control regimes (the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement).

Streamlined process for the submission of End-User Statements/ Certificates

On 1 August 2023, Singapore Customs published a circular on the streamlined process for the submission of End-User Statements/Certificates (EUS/EUC). The streamlined process means that only a single combined EUC is need for an application for a Strategic Trade Scheme (STS) Individual Permit for the following:

Types of goods	EUC required starting 1 August 2023
Goods subject to the Strategic Goods (Control) Act 2002 (SGCA) and exported to territories pursuant to United Nations Security Council (UNSC) sanctions or regulations.	Combined EUC for STS Individual Permit to UNSC Countries
Goods that are both SGCA controlled goods and controlled under the Chemical Weapons (Prohibition) Act 2000 (CWPA).	Combined EUC for STS Individual Permit & Chemicals Weapons Convention (CVC)

Prior to 1 August 2023, the type of goods specified above needed two separate EUS/EUCs. This update aims to reduce the administrative burden on exporters of strategic goods.

Guidance on Importer of Record determination

On 9 June 2023, Singapore Customs published a circular to advise all traders and declaring agents that parties who have no interest in imported goods, no involvement in their movement, and no relationship with their actual traders, must not be declared as the importer of record in permit applications made under the Regulation of Imports and Exports Regulations and/or the Customs Act.

Freight forwarders or other third party service providers who are engaged by importers to import goods and submit permit applications on their behalf will need to declare the entity name and Unique Entity Number (UEN) of the importer in the permit application. Such service providers are also recommended to provide the importer with a copy of the approved permit to avoid any misdeclaration.

Singapore Customs also encourages all importers in Singapore to consider signing up to Singapore Customs' free Trade Notification service. Through this service, notifications are sent whenever an import permit is approved, cancelled or amended to the Unique Entity Number (UEN). Information including permit number, permit approval date, name of the declaring agents and the GST amount are also provided in the notification for importers to verify the amount paid to any service providers or overseas suppliers.

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Taiwan Customs urges importers to truthfully declare international freight charges

Due to an increase in under-declared international freight charges discovered in post-clearance audits, Taiwan Customs has urged importers to declare such charges truthfully.

While freight charges have fluctuated significantly since the COVID pandemic, Taiwan Customs has observed that some importers do not truthfully declare their actual import transportation costs, and their declarations do not reflect such fluctuations. If inaccuracies are found by Taiwan Customs, importers could face delays in customs clearance and/or high penalties for providing fraudulent, forged, or false information.

Taiwan Customs has thus reminded importers to refer to transportation companies' periodic announcement of various route freight charges, which ensures transparency in cost information.

Our take: This announcement likely means that Taiwan Customs will scrutinise freight charges more closely going forward. While we do not expect our readers to intentionally falsify freight charges, we have increasingly seen cases where companies are using estimated freight charges for customs clearance purposes. Not having a process in place to declare the correct freight charge or not taking action to disclose to Taiwan Customs when charges are higher than expected creates risk.

Customs concerned about increasing numbers of erroneous declarations

Recently, there have been several instances of importers being penalised for making erroneous import declarations (e.g., product description, quantity, weight, customs value and country of origin misdeclarations). In particular, the increase in cases were mainly found to be related to customs clearance of e-commerce transactions.

In light of this, Taiwan Customs mentioned that if any inconsistency is discovered during customs inspection, it will be considered a false declaration regardless of the importer's intention. False declarations are liable to a fine of 3 to 5 times of the tax shortfall and/or confiscation of goods by Taiwan Customs.

Our take: Taiwan Customs has become increasingly vigilant in detecting false import declarations. The repercussions of false declarations are severe. We are aware of at least one instance in which a company faced criminal charges. It is important for businesses to proactively manage their import declaration compliance and have a clear and compliant process in place. We would also recommend performing periodic reviews to test current processes and ensure compliance on an ongoing basis.

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Public hearing on essential production processes for automotives in Free Zones

On 3 August 2023, the Office of Industrial Economics (OIE) published a draft notification regarding the essential production processes for automotives in Free Zones (FZ) and Industrial Estate Authority of Thailand Free Zones (IEAT FZ) for distribution in Thailand. The draft notification is currently undergoing a public hearing process.

The draft notification is proposed to repeal and replace the current regulation. Key proposed changes are below:

1. **Additional option for battery production under Product Group 30**

The draft notification proposes to add a new process to the definition of essential production processes for automotive batteries under Product Group 30. This means that there are more options for manufacturers to meet the requirements under the OIE. The new option added is for battery pack production and its quality inspection under point 2.2. Note that points 1 and 2.1 are already included in the current legislation and no changes have been proposed.

Essential production process		Pack assembly	Module production	Battery pack (produced from cell)	Quality inspection
Before January 2025	1	√			√
After January 2025 /BEV duty exemption	2.1	√	√		√
(choose either 2.1 or 2.2)	2.2			√	√

The new conditions under point 2.2 are as follows.

- The production process must involve connecting the cells with a switch and assembling them with other sub-parts to be later placed in the assembled automotive vehicles.
- Battery electric vehicle's (BEV) batteries need to pass either essential production process 2.1 or 2.2 for the vehicle to qualify for customs duty exemption for distribution in Thailand under the Ministry of Finance's exemption.

2. **New product groups 35 and 36**

Two new product groups are introduced as a supplement to the requirement in Product Group 30. These are Product Groups 35 and 36. As a supplemental requirement to Product Group 30, the manufacturer needs to ensure that they satisfy the conditions in Product Group 30 before even considering the criteria set out here. Details of the essential production process of each group are summarised below.

Essential production process	
Product group 35 • **Internal combustion engine vehicles (ICE),** • **Hybrid electric vehicles (HEV) and** • **Plug-in hybrid electric vehicles (PHEV))**	**Product group 36** • **BEV built from a specifically designed vehicle structure for BEVs.**
1. Body production (only for ICE and HEV) 2. Body painting (only for ICE and HEV) 3. Battery production (only for PHEV and BEV) 4. Assembly 5. Quality inspection	1. Vehicle structure production 2. Body painting 3. Assembly 4. Battery production (at least from the pack assembling process) 5. Quality inspection

Note that this is a summary of the draft notification. There are more conditions and requirements such as production amounts and production timelines which will need to be examined before taking any action

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Clarification of the timeline for in-territory import procedures in Vietnam

On 31 May 2023, the Customs Department of Binh Duong published Official letter no. 1284/HQBD-GSQL directed to the General Department of Customs stating their concern about the determination of the time limit for performing in-territory import procedures. Note that this is the new terminology for "on-the-spot import/export procedures", as referenced in our January - February 2023 Trade Intelligence edition.

In-territory import refers to goods traded between a Vietnamese company and a foreign trader where the foreign trader instructs the Vietnamese company to deliver the goods to another company in Vietnam. Although such goods were delivered and received within the territory, the Vietnamese companies are defined as in-territory exporter and in-territory importer and subject to required customs procedures pursuant to Article 86 of Circular 38/2015/ND-CP dated 25 March 2015.

In response to this, on 18 August 2023, the General Department of Customs issued Official Letter 4350/TCHQ-GSQL guiding the time limit for performing in-territory import procedures, which clarified the following:

- Materials imported for the production of in-territory export goods are exempted from import duty if (i) those materials were in fact imported for exported goods' production and (ii) the exporter notifies the customs authority of the completion of corresponding in-territory import procedures within 15 days from the clearance date of the in-territory export declaration.
- It was also clarified that "15 working days" is the limit time for in-territory importers to complete the customs import procedures pursuant to Circular 39/2018/TT-BTC dated 20 April 2018 amending and supplementing Circular 38/2015/ND-CP.

Guidance for movement of goods in bonded warehouses

On 18 July 2023, the General Department of Customs issued Official letter no. 3735/TCHQ-TXNK which provides guidance on the customs procedures and tax policy for goods imported into and from bonded warehouses for export production.

The notable points are summarised as follows:

- An exporter is allowed to transfer the ownership of (i.e. sell) goods that have completed all export customs procedures and are subsequently sent to a bonded warehouse, while those goods are in such bonded warehouses.
- If such goods are to be imported back into the domestic Vietnamese market, import customs procedures must be carried out as if the goods were imported from abroad.
- In case goods are imported from a bonded warehouse to the Vietnamese domestic market for export production while also satisfying the required conditions, such goods are exempt from import duty and VAT.

Supplementary Explanatory Notes of AHTN 2022

On 24 July 2023, the General Department of Customs issued Supplementary Explanatory Notes of 2022 (SEN 2022) as an in-territory guide for the tariff classification of goods. This was announced through Official letter no. 3866/TCHQ-TXNK. SEN 2022 is updated from SEN 2017 to reflect the recently updated List of Imports-Exports 2022 issued in Circular no. 31/2022/TT-BTC.

The SEN is aimed to create a uniform understanding and interpretation of the provisions of the ASEAN Harmonised Tariff Nomenclature (AHTN). SEN 2022 should be read jointly with the HS tariff schedule and WCO Explanatory Notes (EN). The HS and EN shall prevail in any case of a conflict between the SEN 2022 and HS and EN.

Guidance on the sale of assets from EPEs to in-territory entities

On 17 July 2023, the Tax Department of Hanoi issued Official letter no. 51359/CTHN-TTHT on the process for Export Processing Enterprises (EPEs) to liquidate fixed assets through a sale into the domestic territory of Vietnam. EPEs are entities that perform export processing activities in export processing zones, industrial zones or economic zones.

The notable points are summarised as follows:

- When liquidating fixed assets by selling to the domestic Vietnamese market, EPEs are not required to adhere to the standard policy on management of imported goods. This is provided that required procedures have been performed sufficiently at the time of initial import (i.e. import specialized requirements). For goods that are under license management, prior approval is required by the respective licensing agency.
- EPEs that liquidate the assets by selling into the domestic Vietnamese market must issue invoices with the statement "For organisations and individuals in non-tariff zones". This is in accordance with Clause 2, Article 8 of Decree 123/2020/ND-CP.

Guidance on declaration of electronic C/O Forms AK and KV/VK

On 20 July 2023, the General Department of Customs issued Official letter no. 3790/TCHQ-GSQL which serves as a guide for electronic C/O Forms ASEAN Korea FTA (Form AK) and Korea-Vietnam FTA (Form KV/VK) when making customs declarations.

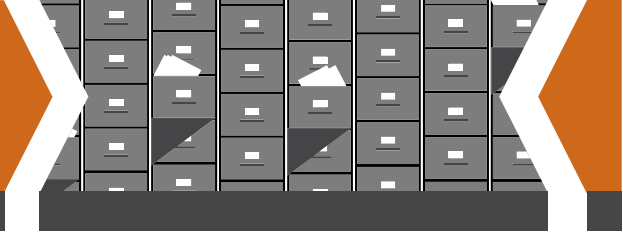
The notable points are summarised as follows:

To claim for preferential tariff under Form AK and Form KV/VK under an electronic declaration, the importer must declare the reference number and the date of issue of electronic C/O at box no. 1.68 on the declaration form and in accordance with the structure outlined in the official letter.

In case the C/O is not available at the time of customs declaration, the importer must declare the C/O information based on the same structure when the C/O information becomes available.

For paper customs declarations, the importer must declare the reference number and the date of issue of electronic CO at criterion no. 32 based on the new structure.

Contact details



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