A little knowledge.

The practical dangers of knowing too much or too little

Trade Intelligence Asia Pacific
January / February 2024

pwc

Key intelligence

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Our regional team of trade and customs consultants works with a wide variety of companies across the region on their challenges and opportunities. We monitor, analyse and clarify the cross-border trade regulatory landscape on a daily basis. On a bi-monthly basis we consolidate our latest findings and experiences into our market-leading "Trade Intelligence Asia Pacific", now in its 20th year of publication.

A little knowledge.

The practical dangers of knowing too much or too little

Many companies are in the midst of, or starting out on, restructuring journeys. "Rebalancing", as we refer to it in PwC. Many of these journeys are at least in part triggered by concerns about changes in the international trading landscape, be it geopolitics, pandemics, natural disasters, sustainability and so on and so forth.

Nevertheless, business restructuring tends to be a strategic initiative. Business concerns (such as growing market share, entering new markets, diversifying activities, protecting intellectual property, strengthening customer loyalty) will usually take precedence over operational concerns (such as transaction management, compliance, system implementation), at least in the early stages of the restructuring journey.

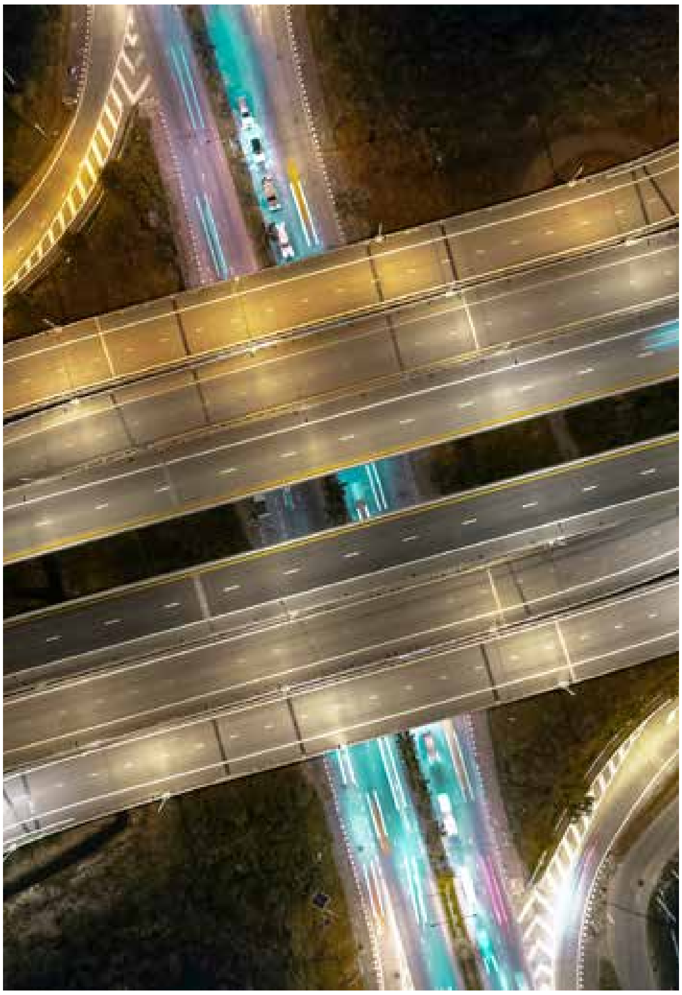
Time and again, however, we encounter situations where an operational challenge that is only uncovered at a late(r) stage, usually during implementation, renders the underlying new preferred business model inoperable, either in absolute terms or at least without crossing an organisation's "red lines". Quite a few of such challenges are customs or trade related. Think for example about the inability of obtaining an import or export licence. Or a requirement of setting up a new entity in-country for import or export purposes which creates an unwanted permanent establishment. Or a disastrous loss of FTA benefits as a result of changes in manufacturing footprint. The list goes on.

It would be reasonable to ponder why organisations end up in such conundrums. There are plenty of reasons available, some better than others. We would argue that most if not all of them boil down into two categories: not enough knowledge, or too much knowledge, both at the outset of the restructuring journey.

The challenge of not enough knowledge is probably the more logical one to think about. It may even feel blatantly obvious: if you don't know the issues that could get in the way, you will not be able to prepare for dealing with them. Practical reality tends to be more nuanced though. Many strategists and senior business leaders will have broad experience. As part of this, they are likely to have come across, and probably successfully dealt with, certain operational trade or customs matters in their past. Often, though, that leads them to conclude one or both of two things: that they understand everything that may come their way and/or that they are equipped to deal with the things that actually do come their way.

Neither of those is necessarily true. As professionals in the field will know, the trade regulatory landscape is both wide and deep. Although many of the regulatory principles are consistent across territories and industries, detailed requirements can vary significantly. A tobacco company diversifying into vaping products will start coming across questions about refurbished products that it never had to deal with in the past. For example, "Am I allowed to import a defunct heater for repair"; "Where do I classify a defunct heater?"; and "How do I value the refurbished heater?". The success of its choice of repair facility may hinge on good answers to those questions. A consumer products company starting out on an e-commerce journey will face equally daunting new questions: "Who can import my B2C sale?"; "How do I manage unpredictable border costs in my online price?'; and "Who is left holding the baby if a shipment gets stuck?". Their selection of priority markets to enter, and the ability to be competitive in them, may hinge on that.

Equipping the strategists and business leaders with enough wisdom to know that they do not have enough wisdom and need help early on is increasingly a crucial task of an effective trade and customs professional. That should be easy, no?



Well, no. This is where the challenge of too much knowledge rears its ugly head. Many professionals in the field (and probably not just in customs and trade) are so wrapped up in the technical, operational and transactional details of what they do, that they frequently cannot see the wood for the trees. Such lack of business acumen means that they tend to focus on matters that are less, or not at all, relevant at an early stage of business restructuring. Alternatively, they struggle to articulate clearly why they worry about certain matters at that stage and what can and should be done to prevent them becoming a problem later on. As a result, such problems are more likely to occur during implementation, because they are not properly understood and hence underestimated in a feasibility or planning stage. Moreover, the strategists and business leaders may conclude that all such issues can be managed during implementation and need not take up their valuable time early on.

One recent example of this we came across was the assumption that a secondary manufacturing facility should be established in one of a company's largest customer markets. It was understood and assumed that finding a good location for such a facility in a bonded processing zone would be possible in any chosen market. Although that was true to some extent, as it turned out, available incentives for manufacturing for export were much more attractive, and the availability of bonded locations was far less limited, in a different market altogether.

Another example related to an organisation that was also setting up a secondary manufacturing facility and relied heavily for its competitiveness on the use of FTAs. Although manufacturing registration and application for certificates of origin were clearly included in the implementation plan, it turned out that the secondary facility, being marginally different to the existing facility, could not meet the origin requirements, significantly reducing its value and competitiveness.

In both those examples, the people responsible for customs and trade management had raised the technical topics, but had failed to get across their business relevance, instead focusing on (even complaining about!) the amount of effort that would be required to manage them during implementation and beyond. The ability to distil and express their relevant knowledge from their total breadth and depth of knowledge is therefore an equally crucial task of effective trade and customs professionals.

A lack of knowledge, assumed knowledge, or overemphasis on irrelevant detail all have the potential to get in the way of successful business restructuring. Acknowledging that would be a good first step to ensure that a little knowledge does not become a dangerous thing[1].

1 This is, of course, not the correct quote. Watch out for the next Trade Intelligence to learn more about the correct one.

FTA focus

Headline	New development
Only hardcopy ASEAN-India FTA CO will be accepted by India Customs	India Customs has rejected preferential tariff claims under the ASEAN-India Trade in Goods Agreement (AIFTA) for exports to India covered by electronic copies of Certificate of Origin (i.e. Form AI) and confirmed that they will only accept hardcopy Form AI with wet ink signatures and seals issued by the exporting customs authority. This affected exporters from Vietnam particularly as Vietnam Customs had previously released a Notice stating that exporters must print electronic copies of Form AI for submission to India Customs to claim AIFTA preferential tariff treatment. For more details, please refer to our Vietnam section. It must also be noted that Vietnam plans to raise the acceptability of electronic copies of Form AI at the upcoming AIFTA implementation meeting. If Vietnam reaches an agreement with India and other ASEAN member states on this matter, we expect that they will release an official announcement about this. We recommend keeping a close eye on updates on this matter.
Hong Kong SAR-ASEAN Protocol signed	On 9 January 2024, Hong Kong's Secretary for Commerce and Economic Development, Algernon Yau Ying-wah, signed a protocol amending the FTA between the Hong Kong Special Administrative Region (Hong Kong SAR) and the Association of South-East Asian Nations (ASEAN), which is intended to enhance the competitiveness of products originating from Hong Kong SAR. There are various areas planned for upgrade. In terms of the trade in goods, the signed protocol would update the Product Specific Rules of Origin, hence increasing the coverage from over 200 categories of products to almost 600 categories. Any interested traders between Hong Kong SAR and ASEAN should review the new product coverage published.
India and EFTA sign FTA	On 10 March 2024, India and members of the European Free Trade Association (EFTA) completed the signing of the India-EFTA FTA. This is significant progress as the FTA has been under negotiation for 16 years. Note that the signing of FTA does not mean that it is fully implemented and operational. FTAs will still need to go through all parties' parliamentary approval process for ratification. This will usually take at least a few months up to a year.
Thailand and EFTA commit to conclude FTA negotiations by end 2024	On 7 March 2024, it was announced that Thailand and the EFTA aim to finalise FTA negotiations by the end of 2024. This came about after the FTA negotiations were revived in 2022 after a 15-year long hiatus. While there seems to be optimism that the negotiations can be concluded this year, our experience is that it may take longer than expected to iron out final details of FTAs in general. Delays will not be unexpected.
China-New Zealand FTA fully implemented	On 10 January 2024, the Chinese embassy in New Zealand announced that the China-New Zealand FTA has been fully implemented. This essentially means that gradual elimination of tariffs for qualifying goods under the China-New Zealand FTA is now complete. The China-New Zealand FTA offers the most attractive duty saving opportunities for companies importing dairy products from New Zealand into China. From 1 January 2024 onwards, all dairy products from New Zealand are able to enter China duty-free and quota-free under the FTA. The only other FTA that both parties are party to, the Regional Comprehensive Economic Partnership Agreement (RCEP), offers zero duties for specific dairy products only. Companies eligible should assess if their products qualify for New Zealand origin under the FTA rules of origin before taking advantage of these savings.

Headline	New development
The China and Nicaragua FTA came into effect	The FTA between China and Nicaragua entered into force on 1 January 2024. The China-Nicaragua FTA was signed in August 2023, which is the 21st FTA signed by China. Nicaragua became the 28th free trade partner of China and the 5th free trade partner in Latin America after Chile, Peru, Costa Rica and Ecuador. With this FTA, Nicaragua's major exports, such as beef, shrimp, coffee, cocoa, jam, peanuts, frozen convolvulus and ethanol entering China will have tariffs reduced or exempted. In addition, China will grant Nicaragua a tariff quota of 50,000 tons of sugar every year. Note that all other entry requirements for food products, such as pre-authorization of overseas suppliers and import licensing, remain in place. In turn, China's manufactured vehicles (including new energy vehicles), motorcycles, batteries, photovoltaic modules, clothing and textiles, shoes and boots, aquatic products, vegetables and other products entering Nicaragua will have tariffs reduced or exempted. Both parties agree to gradually reduce their tariff commitments over a 15 year period (i.e., until 2039) after the signing of the FTA. After the completion of this 15 year period, both parties will need to agree whether to reduce the duty rates even further.
Indonesia and Japan close to finalising IJEPA amendment	Following a bilateral meeting between Japanese Prime Minister Fumio Kishida and Indonesian President Joko Widodo in December 2023, Japan and Indonesia have agreed to remove more trade barriers via amendments to the Indonesia-Japan Economic Partnership Agreement (IJEPA). Both parties are looking to finalise and sign the IJEPA amendment by the first quarter of 2024. This amendment will introduce the following new tariff benefits: • Additional 114 tariff lines in Japan; • Eliminate tariffs for certain Indonesia-originating food products imported into Japan; • Expand tariff allocation quota for Indonesia-originating bananas and lightweight pineapples imported into Japan; and • Reduce or eliminate tariffs for 19 types of Japanese goods imported into Indonesia. As of now, there is no indicative timeline on when the amendment will take effect.
Malaysia targets to conclude FTA negotiations with UAE by June 2024	On 27 February 2024, Malaysia announced that it is targeting to conclude FTA negotiations with the United Arab Emirates (UAE) by June 2024. This FTA promises to remove traditional tariffs on goods traded between the parties but it is unclear yet what product categories will be included. While the commitment to conclude FTA negotiations is a positive sign, uncertainty remains as to how long it may take for this agreement to be signed and enter into force. Nevertheless, traders between these two parties should keep track of any further updates, especially, any announcements of tariff lines to be included.
Thailand and Sri Lanka sign FTA	On 2 March 2024, Thailand signed a bilateral FTA with Sri Lanka. Both parties are required to complete their domestic approval processes before this FTA becomes effective. This typically takes about six to eight months for Thailand. It is unclear how long the domestic approval process will take in Sri Lanka. Once this FTA becomes effective, there will be a gradual reduction of tariffs for specific goods over a 15-year period. Sri Lanka hopes this FTA could also pave the way to potentially join larger multilateral FTAs such as the Regional Comprehensive Economic Partnership (RCEP).

Australia

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Updates to the PACER Plus and AANZ Free Trade Agreements to align with HS2022

The Australian Government has announced the updated versions of the Product-Specific (PSR) Rules of Origin under the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) and the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) to align with 2022 Harmonized System (HS2022) from former nomenclatures HS 2012 and HS 2017, respectively. Traders must use the updated version of these FTAs to continue enjoying preferential duty benefits.

Based on these updates, the Declarations of Origin (DO) and Certificates of Origin (CO) will be required to adhere to the nomenclature of the HS2022 available on the Australian Border Force (ABF) webpage for each agreement (per link above). This update became effective on 12 February 2024 for PACER Plus and 1 March 2024 for AANZFTA.

Our take: In order to continue to enjoy preferential treatment under PACER Plus and AANZFTA, importers will need to revisit product classifications to make sure that origin claims remain supportable and make sure they have supporting documentation to reflect this. Failure to do so can result in the lost duty preference, the possibility of penalties being applied, as well as delayed clearance times.

New substances controlled for import and export

On 21 February 2024, the Customs Legislation Amendment (Drugs scheduling) Regulations 2024 came into effect, amending the Customs (Prohibited Exports) Regulations 1958 and the Customs (Prohibited Imports) Regulations 1956, to impose controls on the importation and exportation of several new substances.

The updates were made to ensure Australia maintains compliance with the applicable United Nations conventions on narcotic drugs (to which Australia is a signatory). The list of prohibited goods for import and export substances added are summarised below:

Newly controlled **imports**	Newly controlled **exports**
• ADB-BUTINACA • alpha-PiHP • Etazene • Etonitazepyne • 2-methyl-AP-237 • Protonitazene	• ADB-BUTINACA • alpha-PiHP • Etazene • Etonitazepyne • 2-methyl-AP-237 • Protonitazene • 3-methylmethcathinone (aka 3-MMC)

Our take: Traders, particularly those in the pharmaceutical industry, should be cognisant of the controls imposed on substances under the Prohibited Imports Regulations and Prohibited Exports Regulations and obtain the necessary licence and/or permits required for circumstances under which these substances can be imported into or exported from Australia under the amended regulations.

Increased scrutiny on gold and jewellery declaration

The Australian Border Force (ABF) is increasing its scrutiny on compliance in the customs declaration of gold, precious metals, jewellery and luxury watches. This includes a focus on issues such as customs valuation, FTA usage, misclassification and attempts to avoid customs duty and GST (particularly as it relates to "scrap" gold).

The increased focus on gold and jewellery has been as a result of the ABF noticing issues with reporting of gold and jewellery particularly relating to undeclared or undervalued items. Scrap gold is a particular focus of the ABF as scrap, including scrap gold, does not attract customs duty. As such, there have been cases of misclassification of items as scrap to intentionally avoid paying duties.

Our take: We believe that the ABF is focusing more on travellers' declarations or B2C trades, and not necessarily our intended corporate readers who approach customs declaration with care. Importers of gold, precious metals, jewellery and luxury watches should be aware of potential issues when reporting to the ABF and verify that information declared is accurate and complete to ensure compliance. This includes declaring goods with a supportable customs value (e.g., invoice from seller) and customs classification, as well as making sure that any FTA claims are supportable. Significant penalties are being issued for detected breaches, primarily relating to undeclared and undervalued items.

China

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Updates on customs related dispute resolution process under Administrative Reconsideration Cases

On September 1, 2023, the Standing Committee of the National People's Congress revised and adopted the Law of the People's Republic of China on Administrative Reconsideration (hereinafter referred to as the "Administrative Reconsideration Law"). The law came into effect on 1 January 2024.

In order to meet the needs of the newly revised Administrative Reconsideration Law, the General Administration of Customs (GAC) promulgated the Provisions of the Customs of the People's Republic of China on the Procedures for Handling Administrative Reconsideration Cases (Order of the General Administration of Customs No. 265, hereinafter referred to as the "Provisions of Procedure") for Customs administrative reconsideration (i.e., dispute resolution process). This was announced on 22 January 2024, and came into force on 1 March 2024. The preceding Measures of the Customs of the People's Republic of China for Administrative Reconsideration is repealed.

In 2022, there were 313 Customs administrative reconsideration cases and 78 Customs administrative litigation cases according to the statistics published by the Ministry of Justice.

Some key points for the Provisions of Procedure are as follows:

1. **Scenarios for filing of administrative litigation**

If a trader is dissatisfied with Customs' decision, the trader may firstly apply for an administrative reconsideration of the decision based on Article 11 of the Provisions of Procedure. Traders can escalate the issue via filing an administrative litigation for certain types of cases, if they are still dissatisfied with Customs' decision under the administrative reconsideration. The trader can escalate the issue to an administrative litigation if the trader:

- is dissatisfied with an administrative penalty decision made by Customs at the point of importation;
- believes that Customs has failed to fulfil its statutory duties;
- applied for a disclosure of government information but Customs refuses to disclose such information; or
- has any dispute over payment of tax with Customs.

2. **Other key procedures for administrative reconsideration cases**

- The time limit to apply for administrative reconsideration cases is 60 days upon being informed and understanding of the administrative actions.
  - The time limit can be extended if Customs fails to inform traders of their rights to apply for administrative reconsideration (i.e., escalate disputes). If this is the case, then the time limit would be 60 days from the date where the trader is made aware of their rights to apply for administrative reconsideration.
  - Note that such administrative reconsideration applications must still be made within one year from the date applicants should have understood the administrative action (not from the date applicants are aware of their rights).
- Introduction of simplified procedures and ordinary procedures for the handling of administrative reconsideration cases based on the Administrative Reconsideration Law (Article 17);
- Clarification of the specific provisions in relation to Customs' administrative reconsideration handling procedures, such as the date of acceptance, the time limit of ordinary and simplified procedures. (Article 28); and
- Clarification of the mediation procedures (Articles 30 and 31).

Our take: Any trader in China that has an ongoing dispute should consider applying for an administrative reconsideration to ensure that its interests and rights as a trader are protected. However, it is essential for traders to carefully assess the new provisions to understand what are the key changes impacting their situation or possible challenges or disputes with Customs in the future.

The Guangdong-Macao S.A.R In-depth Cooperation Zone based in Hengqin commences operation

The Executive Committee and Office of the Guangdong-Macao S.A.R In-depth Cooperation Zone in Hengqin jointly issued a notice on 8 February 2024 to announce that the Guangdong-Macao In-depth Cooperation Zone in Hengqin (hereinafter referred to as the "Cooperation Zone") commenced operations on 1 March 2024.

For context, the key customs objective of the Cooperation Zone is to enforce the supervision of goods within the area. The Cooperation Zone is separated into two "lines" which determine the level of customs control on goods movement at a particular area. Below is the summary of the two lines:

- The "First Line" offers greater trade liberation and facilitation for goods' movement. It will be set up between Hengqin and the Macao Special Administrative Region;
  - Certain goods (i.e. machinery, equipment, and moulds for the importer's own use within the Cooperation Zone, spare parts for the maintenance of these goods, capital construction materials) entering the Cooperation Zone via the "First Line" will enter the Cooperation Zone duty free.
  - Goods entering the Cooperation Zone via the "First Line" in other circumstances (i.e other than goods mentioned in the above point) will become bonded goods.
- The "Second Line" tightens controls on goods' movement. It will be set up between Hengqin and other regions within the Customs boundary of the People's Republic of China.
  - Import duties, import VAT and consumption tax shall be levied on goods intended for domestic sale that enter via the "Second Line" and the goods will be subject to Customs' inspections.
  - Goods manufactured within the Cooperation Zone will be exempt from customs duties when they enter Mainland China via the Second Line.
    - The key qualifying criterion is that the goods must have a value added in the Cooperation Zone of more than 30% of the raw materials' value. Meaning that the value add activities in the Cooperation Zone needs to be more than 30% of the total value of the raw materials (both imported and domestically purchased outside the Cooperation Zone) used.
    - Other taxes including import VAT and consumption tax will still apply. It is crucial to note that not all goods will be eligible for this scheme.
  - Goods from Mainland China entering the Cooperation Zone via the "Second Line" are regarded as exports, hence export VAT refund shall be implemented in accordance with regulations, and any relevant export duties are levied on such taxable goods.
- For goods transferred within the Cooperation Zone:
  - The bonded goods and their processed finished products may be transferred in bond status between enterprises in the Cooperation Zone.

Our take: This update is only intended to give readers a brief overview of the policies of this Cooperation Zone. Any interested companies should carefully study feasibility and comply with all operational requirements. We also provide a list of relevant policies for interested companies to review, bearing in mind that it will be important to understand the practice and interpretation of such regulations.

For the detailed content of the above summary, as well as other regulatory requirements and facilitation measures of the Guangdong-Macao In-depth Cooperation Zone in Hengqin, do continue to pay attention to the specific content of the following relevant policies.

List of relevant policies:

- "Overall Plan for Building the Guangdong-Macao In-depth Cooperation Zone in Hengqin"
- "Circular on the Relevant Import and Export Tax Policies for Goods in the Guangdong-Macao In-depth Cooperation Zone in Hengqin" (Cai Guan Shui [2024] No.1)
- "Circular on the Relevant Tax Policies for Personal Luggage and Articles Sent by Post and Delivery in the Guangdong-Macao In-depth Cooperation Zone in Hengqin" (Cai Guan Shui [2024] No.2)
- "Measures of the Customs of the People's Republic of China for Supervision of the Guangdong-Macao In-depth Cooperation Zone in Hengqin" (Announcement of the General Administration of Customs [2023] No. 202)
- "Circular on Adjusting the Scope of Goods Subject to Value-Added Tax and Consumption Tax Refunds in the Guangdong-Macao In-Depth Cooperation Zone in Hengqin" (Cai Shui [2024] No.1)
- "Simplified Declaration Requirements for Duty-free and Bonded Goods in the Guangdong-Macao In-depth Cooperation Zone in Hengqin" (Announcement of the General Administration of Customs [2024] No. 4)
- "Measures of the Customs of the People's Republic of China for Duty-Free Management of Goods Imported into the Guangdong-Macao In-depth Cooperation Zone in Hengqin" (Announcement of the General Administration of Customs [2024] No. 18)
- "Measures of the Customs of the People's Republic China for the Administration of Tax Collection on the Domestic Sales of Processed Value-Added Goods from the Guangdong-Macao In-Depth Cooperation Zone in Hengqin" (Announcement of the General Administration of Customs [2024] No. 10)

India

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CESTAT rules that Customs must support its preferred tariff classification code if it alleges that an import has been misclassified

In the case of *M/s Toyota Kirloskar Motor Private Limited vs Commissioner of Customs, Chennai*, the Customs Excise & Service Tax Appellate Tribunal (CESTAT) held that where imported goods have allegedly been misclassified, the onus is on India Customs - not the importer - to prove the supportability of the tariff classification it deems to be correct.

In the instant case, tariff classification of 'sensor bag assembly' was disputed.

Our take: This ruling may set a precedent for classification cases in general. Prior to this, India Customs can argue that the onus is on the importer to demonstrate that all information declared (including tariff classification) is accurate. With this ruling, India importers may possibly argue that the burden of proof is on India Customs to demonstrate that an alternative tariff classification is correct if its original tariff classification is disputed. However, the best practice would be to get your tariff classification supported with supportable rationale when you declare.

Revised time limit to combine AAs to sell exports incorporating duty-exempted inputs

On 12 February 2024, the Directorate General of Foreign Trade (DGFT) published a Public Notice to modify the timeframe to club (i.e. combine) an Advance Authorisation application (AA) with another AA to obtain closure of AA without having to pay shortfall customs duty, interest and composition fee through the submission of an Export Obligation Discharge Certificate ('EODC'). Specifically, this Notice extends the time period for clubbing of AAs from 18 to 24 months from the date of issuance of the earliest authorisation sought for clubbing. Moreover, the Notice imposes a condition that, upon clubbing, only exports that are made within 48 months from the date of issue of the earliest authorisation will be considered. Any that are made beyond 48 months of the earliest authorisation will not be accepted.

For context, the AA scheme exempts import of raw materials and other inputs required to manufacture exported products from customs duty subject to the fulfilment of export obligations, i.e., export a prescribed quantity and value of goods manufactured using duty-exempted inputs within a specified period. Exporters are required to provide proof of utilisation of duty-exempted inputs in manufacture of exports to obtain closure of the AA, which is necessary for the exporter to sell goods manufactured from duty-exempted inputs or dispose of such inputs. In case exporters fail to meet the requisite export obligations within the specific timeframe, AA can still be closed upon payment of customs duty shortfall, interest and a composition fee. An alternative is to make use of the clubbing facility, i.e. to combine the present AA with other AAs with excess duty-exempted inputs and shortfall in exports to obtain closure of the present AA.

DGFT clarifies scope of restriction on ITC imports

In 2023, the Directorate General of Foreign Trade (DGFT) imposed import restrictions in the form of licensing requirements on certain information technology cybersecurity (ITC) imports under tariff heading 8471. On 12 January 2024, the DGFT issued a Circular to clarify that the foregoing import licensing requirements only apply to the following five types of ICT articles of tariff heading 8471:

1. Laptops;
2. Tablets;
3. All-in-One personal computers;
4. Ultra small form factor computers; and
5. Servers.

This Circular also specified that import licensing requirements do not apply to other ICT articles under tariff heading 8471 (e.g. desktop computers).

Extension of validity period for customs duty exemptions

Under the Finance Act 2021, conditional customs duty exemptions (including both import and export duty exemptions) were granted to specific goods and goods meant for specific uses for an initial two-year period via notifications based on the government's policies and aims.

On 29 January 2024, India Customs published two Notifications No.06/2024 and No.07/2024 to extend the validity period of specific conditional customs duty exemptions notifications that were set to expire on 31 March 2024 to 30 September 2024. For details on which goods and / or uses are entitled to extended conditional customs duty exemption, refer to the published Notifications.

Our take: As of now, it is not clear whether the customs duty exemptions will be further extended beyond 30 September 2024. India Customs will typically complete an expiry review and announce its extension decision a few months before the expiry date. Numerous factors influence this decision, including whether extension is aligned with the India government's wider financial and economic aims.

Introduction of relief in export obligations for EPGC scheme authorisations

On 22 February 2024, the Directorate General of Foreign Trade (DGFT) published a Circular to introduce export obligations relief for use of the Export Promotion Capital Goods scheme (EPCG). The EPCG scheme exempts customs duties on the import of capital goods for manufacture of exported goods. The exemption is subject to the exporter's fulfilment of export obligations.This means that companies utilising EPGC must export finished goods manufactured using duty-exempted capital goods at a volume equivalent to six times of duty savings within six years from the issuance date of EPCG authorisation.

In the context of a significant decline in exports recorded for specific sectors in FY 2022-23 compared to FY 2021-22, the DGFT allowed for the reduction of mandatory export volume to duty savings ratio in a manner that is proportionate to the sector- or product-specific reduction in exports during FY 2022-23. It must be noted that this relief is only available for exports of the 428 product groups specified in the Circular that recorded a decline in export volume of more than 5% in FY 2022-23 compared to FY 2021-22.

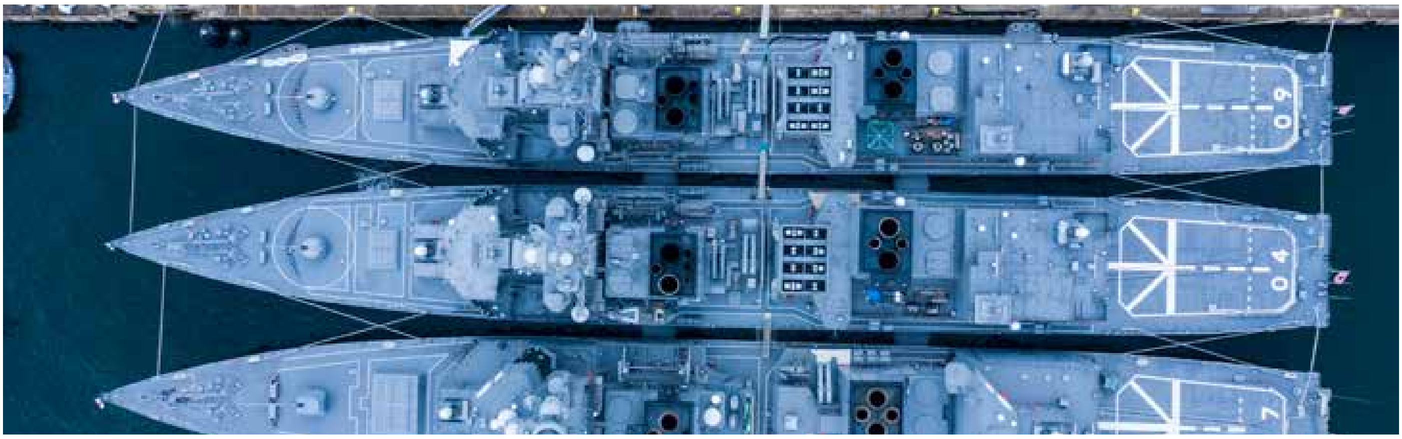
Retrospective import duty concessions for wearable and hearable device inputs and components

On 24 January 2024, the India Central Board of Indirect Taxes and Customs (CBIC) announced its decision to remove customs duty on inputs and components used in the manufacture of wearable and hearable devices imported into India from 1 February 2022 to 27 April 2023 via Notifications No. 7/2024 and No. 8/2024. In practice, this means that where no customs duty had been levied or collected for said imports during this period, importers do not have to pay any duty not paid or short paid retrospectively to CIBC.

This is an important clarification that accounts for recent developments in CBIC's position on the eligibility of wearable and hearable device inputs and components for basic customs duty (BCD) concessions. Although this had been formalised under the law on 1 February 2022 via Notifications #1 and #2, there were instances where India Customs denied BCD for said imports on the basis of rule 2(a) of the General Rules of Interpretation for tariff classification (GRI) (i.e. since inputs / components are imported together, they can be deemed finished goods in Completely Knocked Down / Semi Knocked Down form having the essential character of finished goods. Hence, India Customs views that they should be classified as the finished good).

Following CIBC's consultation with industry representatives, CBIC released an amended Notification #3 in April 2023 to clarify that wearable and hearable device inputs and components classified under rule 2(a) of GRI are eligible for BCD concessions. This announcement seeks to implement the amended Notification.

Our take: While this decision makes it clear that affected importers do not have to pay any duty not paid or short paid retrospectively to CBIC for wearable and hearable device inputs and components cleared between the release of Notifications #1 #2 and amended Notification #3, it is not clear whether importers who have already paid customs duty for said imports during the same time period are entitled to a duty refund. We recommend affected importers to seek alignment with CBIC on this matter.



Indonesia

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Official guidance on new import restrictions

As we reported in our Trade Intelligence Publication for November / December 2023, the Ministry of Trade (MOT) announced a slew of changes in relation to import restrictions on various tariff codes, mostly impacting the import of commodities and finished goods through MOT Regulation No. 36/2023 (MOT 36/2023). The regulation came into effect on 10 March 2024.

The changes predominantly affect Indonesian importers of the following types of product:

- Iron or Steel, Alloy Steel, and its Derivative Products
- Traditional Medicine, Health Supplements, Cosmetics, and Household Health Supplies
- Textile, Textile Products, Bags, and Footwear
- Electronic Products
- Valves

The restrictions are aimed at increasing domestic production and manufacturing in Indonesia. This is done in two ways:

- **Entity level restrictions:** Only specific types of companies can import certain goods affected by the regulation. Entities can be categorised as either API-U, being a general distributor, or API-P, being a manufacturer. Some goods must be imported by API-U's while others may be imported by either API-Ps or APIUs.
- **Import Approval (PI) and Surveyor Report (LS) restrictions:** These are in essence import licence requirements imposed by the Ministry of Industry (MOI). Some import approvals are on a quota basis. The Ministry of Industry (MOI) will consider the allocation of quota based on specific entity details provided as part of the entity's application. The general process to obtain an Import Approval is as follows:
  - The importer needs to apply for a "Technical Consideration" with the MOI.
  - Assuming the MOI approves, the Importer must obtain an Import Approval (Persetujuan Impor) from the MOT.

Prior to the new regulation, the majority of restrictions applied to imports for certain uses, such as market testing. The importer of such restricted goods was required to obtain an Import Approval issued by the MOT. Following the change, importation of many restricted goods for ***any purpose*** now requires both a Technical Consideration and Import Approval. Moreover, it can often be only API-Ps that can obtain such approval. In other words, API-Us that used to import any of the captured goods to be used in their processing activities will now need to have a different company import and provide such goods to them. Importers will face uncertainty on how much Import Approval quota they will receive and whether this will satisfy the importers' commercial and business needs.

The Indonesian government has now issued various regulations to implement the change. We list below a series of new regulations published in January to March 2024 as part of guidelines on Technical Considerations issuance to the MOT Regulation No. 36/2023. These guidelines include details on application, issuance, revision, monitoring, and reporting of Technical Considerations:

- **Iron or Steel, Alloy Steel, and its Derivative Products** (MOI Regulation No 1 Year 2024 / MoI-1/2024), effective starting from 8 January 2024;
- **Traditional Medicine, Health Supplements, Cosmetics, and Household Health Supplies** (MOI Regulation No 4 Year 2024 / MoI-4/2024), effective from 30 January 2024;
- **Textile, Textile Products, Bags, and Footwear** (MOI Regulation No 5 Year 2024 / MoI-5/2024), effective from 10 March 2024;
- **Electronic Products** (MOI Regulation No 6 Year 2024 / MoI-6/2024), effective from 6 February 2024;
- **Valves** (MOI Regulation No 7 Year 2024 / MoI-7/2024), effective from 6 February 2024

Our take: The announcement of MOT 36/2023 has a significant impact on affected importers of the products covered. Importers need to determine whether they can continue to import or need to appoint someone else to do so for them. Permitted importers will need to apply for Technical Considerations as soon as possible to avoid disruptions to their supply chain. Importers also need to factor in the uncertainties related to quota allocation. It is currently unclear how the quotas will be allocated.

Updates to the trade restrictions of narcotics, psychotropic and pharmaceutical precursors

The Indonesian Food and Drug Authority (Badan Pengawas Obat dan Makanan/BPOM) announced a regulation on a slight relaxation of import / export restrictions for commercial import / export of narcotics, psychotropics and pharmaceutical precursors (i.e. chemicals or substances which act as raw materials in the production of pharmaceutical products, whether finished or in progress, that contain ephedrine, pseudoephedrine, norephedrine / phenylpropanolamine, ergotamin, ergometrine and potassium permanganate) (collectively termed "Narcotics").

Previously, only state-owned pharmaceutical agencies were allowed to import and export Narcotics into and out of Indonesia. After this change, companies that possess import and / or export licences for narcotic goods are allowed to import / export Narcotics subject to fulfilment of relevant import / export restriction requirements. Import / export restriction requirements are summarised as follows:

1. Traders must first register an account on BPOM's service system to submit a Supervision Result Analysis application (Analisis Hasil Pengawasan/AHP) for each type of narcotic, psychotropic and pharmaceutical precursor imported / exported. The AHP will be issued on a shipment basis.;
2. After obtaining the AHP, traders must obtain an Import Approval Letter (Surat Persetujuan Impor/SPI) / Export Approval Letter (Surat Persetujuan Ekspor/SPE). Note that the AHP is a precondition to obtaining the SPI and SPE.; and
3. Traders must submit an import / export realisation report within the time specified under the BPOM's regulation on reporting on pharmaceutical industry activities accessible at: https://jdih.pom.go.id/download/product/1342/2/2022.

This regulation will become effective on 25 July 2024.

The full list of products captured by this regulation can be found under the Minister of Health Regulation No. 2 Year 2023 accessible at: https://peraturan.bpk.go.id/Details/245565/permenkes-no-5-tahun-2023.

Import duty exemption for BEVs into Indonesia until the end of 2025

The Indonesian Ministry of Finance ("MoF") issued regulation no 10/2024 which amends the preceding MOF regulation 26/PMK.010/2022. This regulation exempts the import duty for battery electric vehicles (BEVs) for the following tariff codes:

- Completely knocked down sedan (Tariff code 8703.80.17)
- Other completely knocked down cars (Tariff code 8703.80.18)
- Other completely knocked down battery electric vehicle (Tariff code 8703.80.19)
- Completely built-up Sedan (Tariff code 8703.80.97)
- Other completely built-up cars (Tariff code 8703.80.98)
- Other completely built-up battery electric vehicle (Tariff code 8703.80.99)

In order to obtain the import duty exemption for the tariff codes above, the importer must:

- attach the approval letter for the utilisation of the import incentive and/or delivery of the four-wheeled battery-based electric motorised vehicle; and
- mention the facility code 87 in the import declaration.

This amendment became effective on 15 February 2024 until 31 December 2025.

Japan

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METI finds significant gaps in many Japanese companies' export controls compliance

The Ministry of Economy, Trade and Industry ("METI") published two key reports on export control compliance of Japanese exporters in FY2022. These are the following reports:

- Analysis of Foreign Exchange and Foreign Trade Control Act violations
- Results of FY2022 audits on export compliance by exporters

We have summarised the two reports below:

1. Analysis of Foreign Exchange and Foreign Trade Control Act violations

This report is based on actual cases that were handled by METI related to violations of export control rules between **1 April 2022 and 31 March 2023**. Key findings are as follows:

- The main causes of violation were related to export control classification including misclassification and non-classification (i.e., missing out on export control obligations). This accounts for 64% of total violations. This shows that many exporters in Japan are lacking control over their technical expertise to determine whether export controls apply. See table #1 below for the complete breakdown of violations.
- Exporters can make a written report to voluntarily disclose to METI cases of unintentional violations. The report must include a statement on remedial measures. If METI agrees that it is an unintentional violation, it may issue a warning, in writing or orally.
- The majority of violations only requires exporters to complete a report to METI as part of the voluntary disclosure action. A minority of exporters is subject to both reporting requirements and either a verbal or written warning. This shows that METI offers exporters a chance to remediate their export control management with the most severe action being a written warning. See table #2 below for the complete breakdown of the action taken on the exporter.

Table 1: *Ratios of the causes of the violations*

Type of violation	Cause	Proportion
Governance	Inadequate export control risk management controls	12%
	Inadequate knowledge of export control regulations	8%
	Absence of export control risk management controls	8%
Export control classification	Relevant exports were not classified as exporter assumed that exports are not subject to export control	32%
	Reliance on third-party's erroneous classification	16%
	Incorrect interpretation of export control regulations	16%
Transaction screening	Incorrect interpretation of the special licensing exceptions	2%
	Incorrect licence type application	0%
Shipping management	Error in shipping and declaration	4%
Intentional violation	Intentional violation	2%

Table 2: *Breakdown of action taken on exporters for export control violations*

Action taken on exporters	Proportion
Administrative sanction*	0%
Letter of censure*	0%
Warning in writing + reporting	2%
Verbal warning + reporting	14%
Reporting only	84%

Note*: The administrative sanctions and letters of censure are penalties for malicious violations.

2. **Results of** FY2022 audits on export compliance by exporters

METI conducts audits to review export controls compliance on exporters every year. Under Article 68 of Foreign Exchange and Foreign Trade Act, METI is responsible to ensure the execution of compliant export controls management.

On-site audits are generally conducted, primarily targeting exporters with METI administered compliance programmes. The compliance programme allows companies to apply for bulk export licences. During the on-site audit, METI conducts interviews and checks the status of internal rules and actual practices in place based on the exporter's "Self-Management Checklist". This checklist is a requirement under the compliance programme and needs to be submitted when applying for a bulk licence to METI.

The audits found the following key takeaways:

- More than half of the audited exporters needed to improve their internal controls. One exporter was found to have significant issues with its export control compliance. Verbal advice was given by METI to all audited exporters as guidance on compliant export control management. The results of the on-site compliance audit finding results for FY2022 are shown in Table 3.
- More than half of the companies targeted in FY22 audit had issues that were discovered by METI (see table 4 for the full breakdown). The biggest **number of areas of improvement and significant findings** pointed out to the exporters were related to the following (listed in order of occurrence):
  - B: Transaction screening
  - A: Governance of export control
  - C: Export control classification
- METI also provided advice to exporters on optimising export control compliance (see table 4 for the full breakdown). Most of the advice from METI is (listed in order of occurrence):
  - D: Shipping management for export
  - E: Internal audit
  - F: Internal education
  - K: Usage of bulk licences

Table 3: Breakdown of METI export control audit findings results

	No issues	Need for improvement	Significant issues	Total
Number of exporters for each finding result	25	28	1	54

Table 4: Breakdown of export control related issues detected during audits

Audit items	Case			Total
	Significant findings	Area for improvement	Advice	
A: Governance for export control management	1	9	2	12
B: Transaction screening (not including export control classification)	1	22	7	30
C: Export control classification	0	10	2	12
D: Shipping management	0	5	10	**15**
E: Internal audit	0	3	13	**16**
F: Internal education	0	5	10	**15**
G: Recordkeeping	0	4	4	**8**
H: Instruction to subsidiaries and affiliates	0	1	3	**4**
I: Violation report/ preventive measures	0	1	0	**1**
J: Deemed export	0	1	0	**1**
K: Usage of bulk licences	0	7	10	**17**
Total	**2**	**68**	**61**	**131**

Our take: We are noticing an increasing trend of companies being unaware of their potential export control obligations. Exporters of electronics, semiconductors, industrial goods, and chemicals should assess if they are impacted by export controls. Since the list of strategic goods or dual use items is updated periodically, it is prudent for exporters to review the potential implications for their exports regularly.

As the FY2022 audit data stands, many Japanese exporters do not have a clear overview of their export control obligations and may treat them as a checkmark exercise. This inadvertently leads to non-compliance and a large number of areas for improvement.

Although METI was somewhat lenient on penalising exporters in FY 2022, it does not guarantee that it will keep this approach. Rather, exporters should be looking to implement controls through documentation, SOPs and training to their internal teams to ensure that they are in control (e.g. screening of customers/end-users, shipment control, verification of end destination, etc.). Only when these controls are in place, exporters should look to optimise their operations through bulk licence applications.

Proposal to expand simplified import e-commerce customs declaration for sea shipments

The Ministry of Finance ("MOF") is considering introducing simplified customs procedures for certain e-commerce imports transported by a sea consolidator. This is aimed at addressing the increase in imports of such e-commerce items.

At this stage, simplified import declarations are available for shipments by air transportation only. This is under a manifest customs declaration via an air consolidator. This is often used for low-value e-commerce imports transported by air (i.e. value not exceeding 10,000 JPY). As many of the exporters in neighbouring territories are opting more to use sea shipments for their e-commerce, the MOF is considering expanding the manifest customs declaration to sea shipments to address the surge of e-commerce by sea.

If this proposal to include sea shipments becomes effective, importers can expect to benefit from needing to complete less data fields than standard import declarations for sea shipments as well, provided that the e-commerce imports have the following characteristics:

- They are handled by an ocean consolidator;
- They are eligible for the duty exemption scheme for goods with customs value at JPY 10,000 or less;
- They are not subject to any excise taxes (e.g. tobacco tax, alcohol tax)
- They are not subject to regulations under laws and regulations other than the Customs Act (e.g., import licences);
- They do not contain false or misleading origin marking;

- Information is submitted in advance to Japan Customs; and
- Customs clearance is completed through the Nippon Automated Cargo and Port Consolidated System (NACCS).

MOF plans to introduce the simplified customs procedures in October 2025. For this initiative, the MOF is working in collaboration with customs brokers and is planning to conduct trial runs before full implementation.

For e-commerce imports not eligible for simplified customs procedures (e.g. knitted clothing, tobacco and alcohol), importers need to file standard import declarations per our Trade Intelligence update in May/June 2023.

Digitalisation of COs issued under JAEPA for exports to Australia

METI announced the digitalisation of certificates of origin (CO) for the Japan-Australia Economic Partnership Agreement ("JAEPA"). COs under the JAEPA will be issued in PDF file format as PDF-CO by METI from 3 June 2024. We expect more EPAs and free trade agreements (FTAs) to become digitised in this way in the future.

For ease of reference, the following is a summary of the current status of METI's efforts to digitalise CO:

EPA/FTA	Importing party	Format	Digitalisation effective date
JAEPA	Australia	PDF	3 June 2024
Japan-Chile EPA (JCEPA)	Chile		5 February 2024
ASEAN - Japan Comprehensive Economic Partnership (AJCEP)	Malaysia		18 July 2023
	Vietnam		19 September 2023
Japan-Malaysia EPA	Malaysia		18 July 2023
Japan-Vietnam EPA	Vietnam		19 September 2023
Japan-India EPA	India		18 July 2023
Japan-Thailand EPA	Thailand		4 January 2022
Regional Comprehensive Economic Partnership (RCEP)	All RCEP members		4 January 2022
Japan-Indonesia EPA	Indonesia	Electronic data	26 June 2023
Japan- Mexico EPA	Mexico	Hard-copy (not digitised yet)	N/A
Japan-Brunei EPA	Brunei		
AJCEP	Other than Malaysia & Vietnam		
Japan-Philippines EPA	Philippines		
Japan-Switzerland EPA	Switzerland		
Japan-Peru EPA	Peru		
Japan-Mongolia EPA	Mongolia		
Japan-Singapore EPA	Singapore		

Korea

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Longer audits for related-party transactions and higher cost of audit non-cooperation

The Korea Customs Services (KCS) released an amendment to the Instruction on the Operation of the Customs Audit, which became effective on 1 January 2024.

The amendment includes the following two key changes:

1. Extension of customs audit period for cross-border related-party transactions under Article 12 of the Instruction on the Operation of the Customs Audit. This is the timeline for KCS to conclude any audits from the start date of an audit (which will be made known to importers 15 days prior).

   This amendment lengthens the Customs audit maximum period for cross-border related-party transactions to 180 days to account for potential complexities during investigations. For such cases, Korea Customs would typically examine the defensibility of the transaction value by investigating whether the relationship has influenced the prices for goods transacted between related parties. The standard customs audit period for most customs matters is 90 days and can be extended up to 120 days.

2. Increase in sanctions on audit non-cooperation under Article 38 of the Instruction on the Operation of the Customs Audit.

   To deter customs audit non-cooperation, Korea Customs has introduced new sanctions on companies that fail to submit relevant documents or materials requested by Korea Customs for Customs audit purposes, or refuse or avoid Customs audit altogether.

   New sanctions include the following and will apply depending on the severity of the audit non-cooperation:

   - Withholding customs clearance for future shipments;
   - Prohibition on making deferred lump-sum monthly duty payment. Sanctioned organisations are instead required to pay duties within 15 days per the standard payment timeframe; and
   - Restriction on the issuance of revised import tax invoice which is necessary to claim import tax credit.

Our take: The extended customs audit period for related-party transactions suggests an increased scrutiny and focus on the use of the transaction value method for related-party transactions by Korea Customs. Companies are recommended to proactively review and manage their customs valuation risks, especially concerning related party transactions. Based on experience, having a customs valuation report on hand that explains the intercompany pricing process and how this is supportable based on customs valuation regulations is an effective way of mitigating audit exposure.

Malaysia

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Application to extend re-export timeframe for goods that are eligible for sales tax exemptions

On 1 November 2023, the Royal Malaysian Customs Department (RMCD) published an announcement to extend the standard re-export timeframe for goods imported for re-export under a sales tax exemption scheme per the Sales Tax Act 2018 and Sales Tax (Persons Exempted From Payment Of Tax) Order 2018 (the Order). Compliance with the standard timeframe is a requirement to obtain sales tax exemption. The possibility of extension allows traders to obtain sales tax exemption even when the goods cannot be re-exported within the initially agreed timeframe. Re-exportation includes transportation of goods from a principal customs area to any special areas such as free zones, licensed warehouses, licensed manufacturing warehouses or designated areas such as duty free islands of Labuan, Langkawi, Tioman and Pangkor.

An extension is only possible if affected goods cannot be exported within the standard prescribed timeframe of three months. This announcement also highlights the following submission requirements to obtain said extension:

- Any Malaysian company applying for extension of the export timeframe must submit an application before the goods' export date or date of transport into a special area/ designated area; and
- Key documents, such as an application letter consisting of description of goods, quantity, customs declaration forms, sales tax exemption certificate number, justifications for the extension request as well as import documentation, must be submitted to the Facility Control Division/Branch, State Inland Tax at the zone/state.

Our take: The supporting documents to any application to extend the re-export timeframe may take time to prepare, especially in cases where there is a significant number of goods involved. It is important for companies to prepare the application package in advance to mitigate the risk of forfeiture of sales tax exemption arising from unforeseen supply chain delays.

Sales tax exemption for manufacturing aids and cleanroom equipment

As mentioned in our Trade Intelligence publication for November / December 2023, the Ministry of Finance gazetted the Sales Tax (Persons Exempted From Payment Of Tax) (Amendment) (No. 3) Order 2023 on 29 December 2023. With this Order, sales tax exemption became available on 1 January 2024 to registered manufacturers and any person acting on behalf of said manufacturers for the importation, purchase or transportation of manufacturing aids and cleanroom equipment used in the manufacturing of finished goods. Eligible manufacturers / persons would have to apply to obtain this exemption. A full list of manufacturing aids and cleanroom equipment eligible for the foregoing exemption can be found in Appendix 1 and 2 of the Public Ruling No. 2/2024.

To supplement the Ministry of Finance's policy, the RMCD clarified the definition of "manufacturing aids" and "cleanroom" in a recent Guide on Sales Tax Exemption under Schedule C, Sales Tax (Persons Exempted from Payment of Tax) Order 2018 published on 29 December 2023:

- **"Manufacturing aids"** refers to goods used in the manufacturing process to accelerate, improve, complement or complete the manufacturing process of finished goods, but do not become part of the finished goods.
- **"Cleanroom"** refers to a facility in a regulated factory where pollutants such as dust, aerosol particles, airborne microbes, and chemical vapours are reduced to a minimum level.

Our take: Sales tax exemption for manufacturing aids and cleanroom equipment aims to enhance the competitiveness of Malaysia's manufacturing sector. It is important for eligible manufacturers to ensure that they understand the procedures to claim for sales tax exemption. This may include preparing sufficient documentation and communicating with the authorities on their intent to claim for such sales tax exemptions.

Excise duty on sugar sweetened beverages, chewing & sucking tobacco and premix preparations

The Ministry of Finance updated the excise duties for sugar sweetened beverages and introduced excise duties on chewing and sucking tobacco and premix preparations. These updates were gazetted through several amendment Orders, including the Excise Duties (Amendment) (No.3) Order 2023, Excise Duties (Amendment) Order 2024, Excise Duties (Exemption) (Amendment) Order 2024, Excise Duties (Payment of Premix Preparation) Order 2024 and Excise (Exemption from Licensing) (Amendment) Order 2024.

Key updates are as follows:

- **Sugar sweetened beverages:** Effective 1 January 2024, there is an increase in excise duty rate imposed on sugar sweetened beverages under tariff heading 20.09 and 22.02 from RM0.40 per litre to RM0.50 per litre.
- **Chewing and sucking tobacco:** Effective 1 January 2024, chewing and sucking tobacco under tariff code 2403.99.50 00 will be subject to an excise duty inclusive of a fixed (i.e. RM27.00) and ad valorem (i.e. rate of 5% per kilogram) duty amount. Previously such chewing and sucking tobacco products were not subject to excise duty.
- **Premix preparation:** Effective 1 March 2024, premix preparations will be subject to an excise duty of RM0.47 per 100 grams. This duty will be levied on goods falling under Chapter 18 (Cocoa and cocoa preparations), Chapter 19 (Preparations of cereals, flours, starch or milk; pastrycooks' products), and Chapter 21 (Miscellaneous edible preparations). The imposition of excise duty on premix preparations was first announced during Budget 2022 and is an expansion of the excise duty on ready-to-drink sugar sweetened beverages. Note that certain goods are exempt from excise duty including:
  - follow-up formula for infants and children aged 6 months to 9 years;
  - flavoured milk powders with a total sugar content of 46.7 grams per 100 grams or less; and
  - certain food preparations falling under subheadings 1806.90.90 00, 1901.90.39 00, 1901.90.49 00, and 1901.90.99 00.

These amendments were previously gazetted but postponed by the RMCD in September 2022.

Addition of tariff codes for metal waste subject to SIRIM import licence restrictions

On 27 February 2024, the Ministry of Finance published an amendment to the Customs (Prohibition of Imports) Order 2023 to extend the scope of waste and scrap metal subject to an import permit approval from SIRIM. The amendment will take effect from 1 May 2024.

Examples of additional goods captured by this Amendment Order include nickel waste and scrap and lead waste and scrap. Importers in the industry should refer to the amendment for the full list of affected tariff codes.

Philippines

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Obligatory use of the eCO portal to apply for ATIGA e-Form D

On 5 February 2024, the Bureau of Customs (BOC) launched the eCO portal for exporters in the Philippines to apply for electronic Certificates of Origin (CO) under the ASEAN Trade in Goods Agreement (i.e. e-Form D). The eCO portal was launched to support the entry into force of the ASEAN-wide Self-Certification Scheme (AWSC) on 1 January 2024, which mandates all ASEAN member states to issue and accept e-Form D only. Paper based Form Ds are not allowed unless ASEAN member states experience downtime or technical issues with their National Single Window.

The BOC began to issue and accept e-Form D on 1 January 2024, but this was done via the BOC's backup system. With the formal launch of the e-CO portal, Philippine exporters must transition to use the eCO portal immediately to obtain e-Form D. To start, they must register and create an account in the eCO portal, and upload a Pre-Evaluation Report (PER) for each shipment on the portal to apply for e-Form D. If the PER is not available, they must coordinate and request for the BOC to perform a product origin evaluation for their exports. For more details on how to navigate the e-CO portal, refer to the BOC's Exporters User Manual.

Our take: While electronic COs speed up the process of obtaining preferential tariff treatment, it is important to remember the importance of having a documented and compliant process in place to support preferential origin qualification and claims.

We have seen a number of companies neglecting their compliance responsibilities when it comes to FTA qualification (especially through self certification). This can lead to significant financial penalties and complications with customers who already claimed preferential treatment in the country of import. Companies need to be aware that the use of FTAs is a privilege and not a right. It requires effort and resources to ensure compliance and optimisation.

New system to request trade statistics from the BOC

On 23 February 2024, the BOC launched the Trade Data Platform (TDP) for traders in the Philippines to request trade statistics. This measure is aimed to increase transparency and efficiency for traders to access trade statistics/ Trade data can help traders analyse their potential risks and opportunities. Previously, there was no central platform to request for such data. TDP is accessible at https://tradedata.customs.gov.ph/

Our take: Declaration data are essential for companies to manage their customs compliance and take advantage of any potential opportunities available. Companies can take an informed approach to alleviate any risks and take advantage of opportunities available through a data driven approach.

Singapore

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The newly revised Free Trade Zone regime takes effect

In our Trade Intelligence publication for September / October 2023, we reported that Singapore has revised its Free Trade Zones (FTZ) Act to tackle illicit trade in FTZs. The revised FTZ regime became effective on 1 March 2024. Singapore Customs released a Circular on 28 February 2024 to guide the implementation of the revised FTZ regime.

Below is a summary of key points raised in the Circular:

- Reiteration of key changes introduced by the amended FTZ Act, which are as follows:
  - Introduction of a licensing regime for FTZ operators;
  - Mandating shipping agents to share Bills of Lading information to specified cargo handlers; and
  - Mandating specified FTZ cargo handlers to provide Bill of Lading information to Singapore Customs. Singapore Customs will inform specified cargo handlers of the date of commencement of this requirement and provide instructions on how to submit the relevant information via separate notices addressed to each cargo handler.
- Shipping agents and specified FTZ handlers handling non-containerised cargo are exempted from the abovementioned submission requirement until further notice;
- Air cargo shipping agents and air FTZ cargo handlers are also temporarily exempted from the abovementioned submission requirement. Singapore Customs is currently still gathering industry feedback on the roll-out of this requirement to air agents and air FTZ cargo handlers before formalising this requirement;
- Provision of a 6-month adjustment period from 1 March to 31 August 2024 for shipping agents and specified FTZ handlers handling containerised cargo to implement the necessary processes to ensure compliance with the new submission requirements. During the adjustment period, shipping agents and specified FTZ cargo handlers will generally not be penalised by Singapore Customs for non-compliance, including late or incomplete submissions. Note that Singapore Customs are generally facilitative and will consider the facts before deciding to impose penalties. All other customs offences and penalties are still applicable during the adjustment period; and
- The information required to be stated in the Bill of Lading presented to Singapore Customs by shipping agents must include the following information:
  - Voyage number
  - Bill of Lading Number
  - Container number (for containerised cargo)
  - Place of receipt
  - Place of delivery
  - Shipper name
  - Shipper address
  - Cargo description
  - Consignee name
  - Consignee address
  - Notify party name
  - Notify party address
  - HS code
  - Gross weight
  - Gross quantity

Our take: While the revisions of the FTZ Act mainly add new responsibilities for FTZ operators, shipping agents and cargo handlers, for companies moving products through Singapore it will be important to ensure that Bills of Lading contain all required information to avoid risks of clearance delays and or shipments being stuck. While these fields are relatively standard, it is still important to make sure all relevant information is accurate and made available.

Correct tariff codes for controlled radioactive materials and irradiating apparatus

In the context of rising tariff code misdeclaration in customs permits for the import / export of controlled radioactive materials and irradiating apparatus, the Singapore National Environment Agency (NEA) issued a Circular on how to identify the correct tariff code to be declared alongside controlled items in a customs permit application. This is required to obtain a valid import / export licence for controlled goods. The NEA is Singapore's regulatory body for the import and export of controlled radioactive materials and irradiating apparatus (collectively referred to as "radioactive products").

In particular, NEA highlighted that traders and declaring agents must select the correct tariff code for their imports / exports from the Official List of HS Codes for Controlled Irradiating Apparatus and Radioactive Materials published on the NEA website. NEA also highlighted other common declaration pitfalls in relation to customs permit application for controlled radioactive products and non-controlled items declared under tariff codes for radioactive materials. Refer to the Circular for more details.

Our take: This update highlights the importance of getting tariff codes right even if there is no customs duty at stake. Tariff codes do not only drive tariff rates (as their name suggests!), but also trade restrictions for - for example - public safety. Although Singapore Customs imposes customs duties on only a small number of tariff lines, it is still important to get tariff codes in check to avoid any potential evasion of import or export requirements. Evasion of import or export restrictions may result in fines for the declarant.

Singapore and Malaysia sign AEO-MRA

On 18 January 2024, Singapore and Malaysia signed the Authorised Economic Operator Mutual Recognition Arrangement (AEO-MRA). This MRA allows a company that qualifies as an AEO in Singapore to have its AEO status recognised in Malaysia, and vice versa. Secure Trade Partnership Plus (STP+) certified companies can enjoy benefits including reduced documentation checks and/or physical cargo inspections for both the import and export of goods between Singapore and Malaysia. Operational details on this AEO-MRA are still limited. It is still unclear how the bilateral MRA between Singapore and Malaysia will differ from the recently signed ASEAN-wide MRA.

For more details on how AEO-certified companies in Singapore and Malaysia can claim these trade facilitation benefits under the AEO-MRA, please refer to the Singapore Customs Factsheet on this matter.

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Maximum penalty for bonded warehouse and container yard violations increase by tenfold

Starting 1 January 2024, an amendment to the Customs Act (Act) amends the maximum penalty for violations related to bonded warehouse and container yard operations under Article 86 of the Act. The amendment increased the maximum penalty from NTD 300,000 to NTD 3,000,000 (i.e., a tenfold increase). This amendment aims to enhance the security of transportation, prevent smuggling, and safeguard domestic security for the movement of goods for bonded warehouse and container yard operators.

Violations are classified into three types depending on the degree of culpability, each with corresponding penalties and measures. These penalties range from a warning to progressive fines based on the frequency of violations within one year from the date of the first violation. The actual fine imposed will depend on the severity of the violations involved. A summary of the penalty types and range are detailed below:

Type	Violations	Penalty range per violation (NTD)
1	Documentation requirements Failure to meet requirements for import, export, transshipment, and transit goods documentation, multinational goods consolidation, and inspection.	6,000 - 300,000
2	Storage requirements Failure to meet requirements for managing storage, movement, handling of import and export, transshipment, transit goods, and designated transportation.	6,000 - 1,000,000
3	Security requirements Failure to meet requirements of surveillance cameras and security control, and failure to adhere to customs instructions and notifications.	10,000 - 3,000,000

Failure to complete corrective actions after breaching the violations three times or in cases of significant violations (determined by Taiwan R.O.C Customs) may lead to the bonded warehouse or container operator in question being suspended up to six months. Such suspensions means that goods are not allowed to be stored in the bonded warehouse during this period. Alternatively, the business registration for the bonded warehouse or container operator can be revoked entirely for two years, such that no bonded warehouse or container operator activities are allowed.

Our take: The Ministry of Finance's decision to significantly increase the maximum penalty highlights its commitment to tackle illicit trade in Taiwan R.O.C. Although we do not expect our readers to be engaged in such illicit trades, any inadvertent errors with documentation, or failure to comply with storage and security requirements may lead to a more significant fine with this cap increase. Hence it is important for operators in this area to regularly review their operations. Typically, it is recommended to complete a customs compliance self assessment on at least an annual basis.

Expanded export control restrictions on High-Tech Commodities to Russia and Belarus

On 7 February 2024, the Ministry of Economic Affairs (MOEA) announced the amendment of the High-Tech Commodities List for Exportation to Russia and Belarus. The announcement expands the scope to include 77 additional machine tools considered as Strategic High-Tech Commodities (SHTC). This aims to prevent such high-tech commodities in Taiwan R.O.C's from being utilised for military purposes in Russia or Belarus. An export permit approval is required for exports to Russia or Belarus of the SHTC covered in this update as per the Foreign Trade Act, Article 13(1). Any exports of SHTC to Russia or Belarus are extremely unlikely to be approved in practice.

The amendment came into effect on 8 March 2024 following the completion of the 30-day transition period from the announcement date.

Our take: As Taiwan R.O.C is a major exporter of industrial goods, it is important for exporters to fully understand their obligations. Authorities are beginning to tighten export control rules as part of their political interests (e.g., semiconductors, high performance computers etc.). So, it is essential for exporters in the industry to keep track of the fast changing export control requirements that may impact them.

Penalties for breaching export control laws in Taiwan R.O.C. are serious, hence it is imperative that exporters review their exports to determine whether they are covered by the export control regulations. Common gaps we see are misclassification of controlled exports or missing export control requirements altogether.

Reminder to applicants for anti dumping duty investigation to review eligibility criteria

On 24 January 2024, the Ministry of Finance (MOF) published a reminder (only available in Traditional Chinese) to remind applicants to review eligibility criteria when requesting anti-dumping duty (ADD) investigations. The key objective of the reminder is for affected companies applying for such ADD investigation to pay attention to the anti-dumping criteria upon filing the anti-dumping investigation request.

Manufacturing companies that are suffering from unfair competition from dumped goods from overseas can request for the MOF to review the imposition of ADD. Such goods should be imported at a lower price, creating unfair competition for the local manufacturing industry.

The reminder states that applicants must compare the actual domestic selling price of the dumped imports in question with the export price to Taiwan R.O.C in their application. The comparison should not be based on the production costs of domestic products or the prices of products from other local manufacturers.

Currently, the following nine categories of products are subject to anti-dumping duties in Taiwan R.O.C.:

1. Towels;
2. Benzoyl peroxide;
3. Portland cement and clinker;
4. Stainless steel cold-rolled steel products (300 series);
5. Specific galvanised and zinc-alloy flat-rolled steel products;
6. Carbon steel plates;
7. Specific aluminium foil;
8. Ceramic tiles, and
9. Float glass.

The MOF further pointed out that Taiwan R.O.C imposed anti-dumping duties totaling over NTD 704 million in 2023. As affected products have mostly shown a steady decrease in import volume, the MOF believes the ADD efforts have led to a more reasonable operating environment for domestic Taiwan R.O.C industries in terms of the competitiveness and fairness of its domestic markets.

Our take: The MOF needs to ensure that its ADD investigations are conducted with a method based on its regulation. Therefore, any manufacturers looking to protect their interest must ensure that they are using the correct data when applying for an ADD investigation. To avoid delays in the overall investigation process, or an outright rejection, it is important for any ADD application to be completed and reviewed against the MOF's regulations and requirements.

Thailand

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Operational updates to the Thai - Australia FTA

Thai Customs issued notification no. 26/2567 (2024) to reflect the recent upgrade of the Thailand-Australia Free Trade Agreement (TAFTA). In parallel, the Department of Foreign Trade (DFT) has also issued a notification to update certain criteria to issue certificates of origin (CO) (i.e., Form FTA) under TAFTA. The key changes include:

- Updating the Harmonised System (HS) version used in TAFTA from HS 2002 to HS 2022, with a corresponding list of product-specific rules.
- Goods under chapters 50 to 64 are allowed to accumulate the value of raw materials from other developing economies listed in Appendix "Gor" of this notification for a maximum of 25% of the Free on Board (FOB) price. Note that this cumulation provision is only effective until 31 December 2024.
- Updated provisions on retroactive issuance of CO, the use of third-party invoicing and specifying the form's validity period as 18 months from the issuance date.
- Introduction of overleaf notes to Form FTA.

The origin criteria under the TAFTA remain unchanged. Both regulations became effective on 1 March 2024.

Our take: Though the TAFTA is not as popular since the introduction of other multilateral FTAs, this update highlights that it may be worthwhile to review "older" FTAs for any new opportunities. In this case, any manufacturers or traders that exports goods classified under Chapters 50 to 64 can explore new opportunities by accumulating origin for raw materials or components imported from developing economies as prescribed in the DFT notification.

New subsidy for BEVs under EV 3.5 programme

The Excise Department announced updates to criteria, procedures and conditions for battery electric vehicles (BEV) under Phase II of the BEV subsidy program (a.k.a EV 3.5) on 1 January 2024. The EV 3.5 is a subsidy programme that aims to transform Thailand to a battery EV manufacturing hub. The new update will be in effect from 2024 to 2027 and is the sequel to EV 3.0 which expires in 2025. The key changes and points under the EV 3.5 are as follows:

- There is a reduction of the subsidy rates and increases in the compensative production ratio for imported passenger car BEV
  - Two units of passenger car BEV must be manufactured in order to receive one unit of subsidised passenger car BEV import (i.e., ratio of 2:1). The deadline to claim for such subsidy is 31 December 2026.
  - The deadline can be extended to 31 December 2028 at a less favourable ratio at three manufactured passenger car BEV for one import of subsidised passenger car BEV (i.e., ratio of 3:1).
- The subsidy for BEV pickup trucks and motorcycles works differently from BEV passenger cars. Manufacturers are eligible to claim for subsidies for domestically manufactured BEV pickup trucks or motorcycles with no requirements on compensation rate, provided that they satisfy the conditions for battery size and suggested retail price.
- For BEV passenger cars and pickup trucks, their batteries must:
  - Satisfy Thai Industrial Standards Institute (TISI) standards;
  - Be certified by the Automotive and Tyre Testing, Research and Innovation Center (ATTRIC), and;
  - Be equipped with a quick-charge feature in line with the Ministry of Industry's requirements.
- Imported BEVs that qualify under the EV 3.0 subsidy but are not sold or registered by the deadline are eligible for a subsidy under EV 3.5 provided that all the requirements are met.

- The table below compares the differences between the subsidy criteria and subsidy rates of EV 3.0 and EV 3.5. The subsidy rate is driven by the vehicle type, its suggested retail price (SRP) and battery size:

Vehicle type	EV 3.0 measures			EV 3.5 measures		
	SRP (THB)	Battery size (KWh)	Subsidy amount (THB)	SRP (THB)	Battery size (KWh)	Subsidy amount* (THB)
Electric passenger car	≤ 2M	10 - 29	70,000	≤ 2m	10 - 49	50,000
	2-7m	≥ 30	150,000	≤ 7m	≥ 50	100,000
Electric pickup truck	≤ 2m	≥ 30	150,000	≤ 2m	≥ 50	100,000
Electric motorcycle	≤ 150k	≥ 3	18,000	≤ 150k	≥ 3	10,000

*The subsidy amounts are accurate for the 2024 calendar year. They will be reduced annually depending on the sales of the imported or locally produced vehicles and the registration timeline according to the Motor Vehicle Act.

Our take: It is essential for any interested companies to review the benefits under EV 3.5. Manufacturers who are currently benefiting or have benefitted from EV 3.0 should assess whether this subsidy programme is still attractive for their future plans, especially considering that the subsidy rate will be reduced annually.

Updated form for declaring Suggested Retail Price (SRP) under the EV 3.5 support measure

The Thai Cabinet passed a resolution on 19 December 2023. This resolution directs the Excise Department and Customs Department to continue with support measures for imported and manufactured electric vehicles (EV) cars and motorcycles under Phase II, also known as EV 3.5.

Following this resolution, the Excise Department issued a notification on 28 December 2023 on the criteria, procedures, and conditions for notifying the Suggested Retail Price (SRP) for EVs eligible for the EV 3.5 support measures. The notification provides an updated SRP registration form (Por Sor. 02-01/Yor For Phase II Form [the SRP form]) to standardise the SRP notification process across all types of vehicles.

Eligible companies can submit the SRP form to the Excise Department with the remark 'Electronics Vehicles Phase II' in Thai. This SRP form must be submitted at least 15 days before transferring eligible EVs from the date of excise tax filing and payment or removal of said EV from the factory or bonded warehouse (where applicable).

Excise tax reduction for wine and other fermented beverages and customs duty exemption for imported wines

The Ministry of Finance and the Excise Department announced new duty exemption and excise tax reduction privileges for wine products and other fermented beverages. This is aimed to support the government's goal to transform Thailand into a tourism hub. This exemption was introduced on 14 February 2024.

Wine products under HS heading 22.04 (wine and sparkling wine made from fresh grapes) and 22.05 (vermouth and fruit wine flavoured with plants or aromatic ingredients) are eligible for excise tax reduction privileges and customs duty exemption. The customs duty exemption is applicable only for imports, while the excise tax reduction is applicable to all wines produced and imported into Thailand. The table below summarises the new changes.

Products	HS heading	Excise tax		Customs duty rate
		Ad valorem rate	Specific rate	
Wine and sparkling wine	22.04	5%	THB 1,000 per litre	Exempt
Fruit wine	22.05	0%	THB 900 per litre	Exempt

The Excise Department has also reduced excise tax for other fermented beverages including locally produced alcoholic spirits and beer. A list of eligible products and the effective rate are published in the Ministerial Regulation 'on determining excise tax rates (No.39) 2024' and the MOF Notification 'on duty reduction and duty exemption under Section 12 of the Customs Tariff Decree 1987 (No.7)'

Vietnam

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Revised PSRs and origin certification procedures to obtain COs

In December 2023 and January 2024, the Ministry of Industry and Trade issued Circulars on the revision of rules and origin certification procedures for the following Certificates of Origin (COs):

- **Form B:** Non-preferential CO;
- **Form AANZ:** Preferential CO under The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA); and
- **Form EAV:** Preferential CO under the Vietnam and Eurasian Economic Union Free Trade Agreement (VN-EAEU FTA)

Refer to the table below for a summary of key changes:

Circular reference no.	Certificate of Origin	Key changes	Effective date
Circular No. 44/2023/TT BCT	Form B for non-preferential COs	1. Revision of PSRs for Vietnam origin qualification for non-preferential COs; and 2. Appendix II of this Circular provides a new declaration form to obtain CO for wholly-obtained exports in Vietnam.	15 February 2024
Circular No. 02/2024/TT-BCT	Form AANZ (AANZFTA)	1. Revision of Product Specific Rules (PSRs); and 2. Revision of origin certification process in Vietnam under the AANZFTA.	1 March 2024
Circular No. 01/2024/TT-BCT	Form EAV (VN-EAEU FTA)	1. Revision of PSRs; and 2. Revision of origin certification process in Vietnam under the VN-EAEU FTA.	1 March 2024

Our take: We recommend companies using any of the FTAs mentioned above to undertake a comprehensive product origin analysis by reference to the updated PSRs to ensure that exports and imports still qualify for the relevant tariff treatment. This is to mitigate the risk of origin non-compliance, which could lead to penalties and a loss of current duty saving benefits.

Our comment above also applies to non-preferential COs under Form B. However, there is an added complication for non-preferential COs as the exporter will also need to verify its origin with the regulation or common practice in the importing destination.

Only hardcopy AIFTA CO will be accepted by India Customs

On 9 January 2024, the Ministry of Industry and Trade issued Notice No. 14/TB-XNK. The notice updated the certificate of origin (CO) issuance and submission guidelines for goods exported from Vietnam to India under the ASEAN-India Trade in Goods Agreements (AIFTA). This notice informs Vietnam exporters that India Customs will only accept hardcopy AIFTA COs (i.e. Form AI) with wet ink signatures and seals issued by Vietnam Customs.

Previously, in our Trade Intelligence Publication for November / December 2023, we mentioned that Vietnam exporters are allowed to print electronic Form AI signed and sealed electronically by Vietnam Customs for submission to India Customs to claim AIFTA preferential tariff treatment. This update is no longer valid.

As such, India Customs has rejected preferential tariff claims for exports to India covered by electronic copies of Form AI. The Vietnam Agency of Foreign Trade has since requested for India Customs to grant temporary preferential tariff treatment to said exports until Vietnam Customs completes the reissuance of signed and sealed hardcopy AIFTA COs for all affected exports. Details of how this might proceed is unclear at the moment.

Our take: Vietnam plans to raise the acceptability of electronic copies of Form AI at the upcoming AIFTA implementation meeting. If Vietnam reaches an agreement with India and other ASEAN member states on this matter, it will release an official announcement accordingly. For now, Vietnam exporters leveraging the AIFTA for its exports to India must submit the hardcopy Form AI with wet ink signature and seal to India Customs. For past exports covered by printed copy of electronic Form AI, we recommend companies to align with India Customs on whether and how they can re-apply for and secure preferential tariff treatment under the AIFTA.

Revision of customs compliance assessment framework

On 29 January 2024, The Ministry of Finance issued Circular No. 06/2024/TT-BTC ("Circular 06") to amend and supplement Circular No. 81/2019/TT-BTC ("Circular 81") dated 15 November 2019 on the customs compliance assessment framework. This framework is an internal reference used by Vietnam Customs to understand and determine the compliance levels of all Vietnamese traders. The compliance level drives the degree of scrutiny and trade facilitation each trader will receive. Vietnam Customs will review traders' existing trade compliance records, score them and group them into different compliance levels accordingly.

Circular 06 introduces the following key changes:

1. Modification of compliance levels, which are now as follows:
   - Level 1 - Prioritised enterprises;
   - Level 2 - Very Highly Compliant;
   - Level 3 - Highly Compliant;
   - Level 4 - Moderately Compliant; and
   - Level 5 - Incompliant.
2. Circular 06 also amends the customs compliance assessment criteria established under Circular 81 by changing the scope of violations that determine a company's trade compliance scoring and level, among other things.

The main provisions of Circular 06 (i.e. Article 1 Clauses 4-6 on customs compliance levels, overall assessment criteria and classification of declarants' risk levels) will become effective on 15 July 2025. Remaining provisions of Circular 06 will become effective on 15 March 2024.

Updated list of agricultural products subject to pre- and post- import restrictions under MARD

On 2 February 2024, the Ministry of Agriculture and Rural Development (MARD) issued Circular No. 01/2024/TT-BNNPTNT on the updated list of tariff codes that are subject to specialised inspection by the MARD. Specialised inspection can occur at import or post-import clearance depending on the tariff code of the agricultural import in question. The list of tariff codes can be found under Appendix I, II and III of the Circular.

This Circular replaces Circular No. 11/2021/TT-BNNPTNT dated 20 September 2021 on the same matter, and became effective on 20 March 2024.

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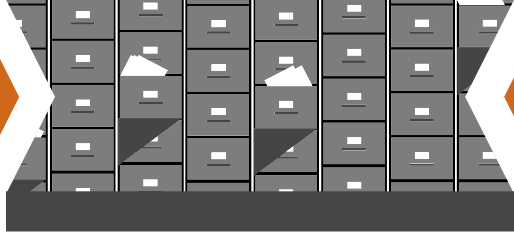

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