The Tariff

Part 4: Resurrections

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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.

The Tariff

Part 4: Resurrections

Movie sequels are rarely as good as the originals. Arguably the same can not be said about tariffs, be they on imports or exports. Originating as a concept – believe it or not – in the Middle East, tariffs have been around for millennia. However, in the recent past (say, 50 years) the prevailing economic consensus has been that tariffs are bad, and free trade is good for global economic development and wealth creation. As a result, and driven by an increasingly open global trading landscape, governments around the world have been slashing tariffs and seen remarkable growth in return.

However, more recently this consensus and trend has come to an abrupt halt and even seen reversal. It is not for this publication to discuss the relative political and economic arguments for and against the imposition of tariffs. Instead, we'd like to focus on the implications of movements in tariffs and what companies should be prepared for, either to manage or lobby.

For that, it is important to first understand why tariffs are imposed. A wide variety of reasons exists, each of which comes with its own implications for effective management or response. More or less, they can be categorised into the following four groups:

1) Revenue generation

Clearly the imposition of tariffs helps fill governments' coffers. Most customs authorities will have specific revenue collection targets, typically set by the Ministry of Trade (or equivalent). Applied tariff rates are bound by the commitments that World Trade Organization (WTO) members have made under the General Agreement on Tariffs and Trade (GATT) in 1948. Tariff rates applied in practice are usually well below these "bounds". Moreover, a significant part of international trade is conducted under the provisions of free trade agreements, meaning that actual tariff rates paid are even lower or zero.

Consequently, in the vast majority of territories, customs duty revenues are a small if not negligible component of government revenues. Although many governments are legally entitled to raise tariffs to their bound rates in order to raise revenues, even doing this would likely have a small impact on tariff revenues collected.

In short, tariff increases aimed at growing the revenue base are unlikely to be something that should concern importers. If they do occur, shifting supplies to sources that are entitled to preferential trade rates, or simply accepting the rate increases and either on-charging them to customers or funding them out of supply chain profits are the most common and logical actions companies can take.

2) Protection of domestic companies or industries

Another traditional reason for the imposition of tariffs is to protect vulnerable industries or companies in the domestic market from overseas competition. Although this is still a common concern and priority for governments, over time, and because of GATT commitments, it has become more popular to impose non-tariff measures, such as quotas or licenses, to achieve this goal.

Tariffs used to discourage overseas entities to target a market only affect a relatively small number of players, usually in specific industries. The use of preferential trade is often not an option, as the protection tends to extend to Free Trade Agreement provisions, either by excluding affected products from tariff rate reductions or by making qualification for lower rates hard to achieve (for example through local content requirements). Hence there are few good options for importers to avoid such tariffs.

In addition to standard tariffs, protection of domestic companies is also often achieved through the imposition of anti-dumping duties or countervailing duties. There has been a marked increase in the number of such measures imposed in the recent past in many territories around the world. Although there are specific globally acceptable standards on when and how such duties may be imposed, especially in relation to demonstrating "injury" to a domestic industry, the complexity of business and supply chains provides ample opportunity for governments to argue that they are appropriate. To avoid this kind of tariff to have a (significant) impact, the seller would need to provide detailed and convincing argumentation that they are not selling at an unreasonably low price, or have benefited from government subsidies in the territory of manufacture. Doing so is a time consuming and complex exercise, without guarantee of success. Sometimes it may be possible to reduce the level of anti-dumping or countervailing duties, rather than eliminating them altogether.

Finally, governments may see the need to protect domestic companies or industries that are of "strategic interest". One way of doing this is by imposing prohibitively high duty rates on products made by such industries or companies. As an example, the US has applied this basis for the imposition of punitive tariffs extensively during the Trump administration, but there are many more examples, less publicised, to the same effect. Again, there are global rules on when and how such tariffs may be imposed. Nevertheless, there is significant room for interpretation, allowing governments to be perhaps more liberal in their imposition than the letter of the rules may suggest. Typically, the level of additional tariffs, often in conjunction with non-tariff measures, leave little if any scope for a would-be importer to continue importing affected products.

Although theoretically it is possible to challenge the imposition of additional tariffs through the WTO Dispute Panel, in practice this Panel is hampered by some of the WTO members to the extent that it is not possible for it to rule definitively on any such measures. Consequently, companies are left with few good options. Appeal to another national government, for example in the territory of manufacture, may lead to the imposition of retaliatory tariffs. However, although this may help at a macro-economic level, it usually does little for the companies affected by the additional tariffs in the first place.

3) Encouragement of local investment

Sometimes governments impose additional tariffs in order to make it more attractive for economic operators, at least economically, to set up business in a particular market rather than supplying such market from abroad. Although this is a fairly crude measure and is more often than not combined with other requirements or non-tariff measures, in practice it means that the only viable option for companies to supply such a market is to set up shop there. This may be achieved from scratch, i.e. establishing a greenfield facility. It may be attractive to invest or acquire an existing business. However, this may be subject to strict foreign investment rules (such as CFIUS) that may not always be manageable in practice.

Ultimately, the objective of governments in this instance would be to create employment and economic activity onshore, including the development of valuable intellectual property. Whereas this may be achievable through the establishment of a new business or the acquisition of an existing one, the imposition of tariffs may simply be a preferred way to make it happen. Consequently, an attempt to avoid those tariffs without creating the desired activity onshore will probably result in yet higher tariffs or additional non-tariff restrictions, until the objective is met.

4) Discouragement of overseas growth

A final noteworthy reason for the imposition of tariffs is the aim to stifle production abroad, Although this can be closely linked to the objective of encouraging local investment, this is not necessarily so. Discouragement of overseas growth is often targeted at specific territories, often for strategic reasons. This means that it may well be possible to supply the market in question from other territories, where a company may already have facilities or be in a better position to establish a new facility. Hence the options to avoid tariffs imposed for this reason may be wider, possibly even avoiding them altogether by using appropriate preferential trading options.

Clearly the above is a somewhat crude categorisation of the reasons to impose new tariffs. However, the important message is that understanding the underlying reasons is crucial for any affected organisation in devising an appropriate response. Most companies will have become used to a world of low tariffs and have excluded tariff considerations from important business decisions. That world is fast disappearing, particularly in some industries and geographies. Accepting that reality and spending the time and effort to consider appropriate business responses will separate the commercial wheat from the chaff.

FTA focus

Headline	New development
New Zealand- EU FTA enters into force	The New Zealand-EU Free Trade Agreement (NZ-EU FTA) entered into force on 1 May 2024. In brief, the NZ-EU FTA provides the following benefits: • Removal of duties for 94% of EU tariff lines on New Zealand goods from 1 May 2024 onwards. This will rise to 98.5% of tariff lines after seven years (i.e. by 2031). The impact of this is significant as prior to this, most New Zealand goods entering the EU are subject to import duties; and • Removal of duties for key EU exports to New Zealand (e.g., pig meat, wine and sparkling wine, chocolate, sugar confectionery and biscuits). For details on the FTA benefits and rules of origin (ROO), please refer to the implementing FTA legal text in the importing market. For the EU, this can be found on the European Commission website. For New Zealand, this can be found on the New Zealand Customs Service website. This FTA provides for self-certification of origin. Any company looking to claim FTA benefits should document and retain all records/calculations demonstrating that the product fulfils the relevant ROO to mitigate the risk of inadvertent FTA non-compliance.
The Philippines has signed the Second Protocol to amend and upgrade the AANZFTA	On 6 March 2024, the Philippines ratified the Second Protocol to amend the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA). This aims to enhance trade and economic cooperation between ASEAN member states, Australia and New Zealand. The protocol updates the AANZFTA, which originally came into force in 2010, to reflect developments in trade and investments in the region. The protocol includes upgrades to many areas, notably increasing the number of products covered and enhancing the rules of origin, customs procedures, e-commerce and flow of goods during times of crisis. It is important to note that it is not a requirement for all parties to adopt this protocol and signatories can opt-out if they desire. Currently, Australia, Brunei, Indonesia, Malaysia, New Zealand, and Singapore have adopted the second protocol.
India-EAEU bloc hold talks to start FTA negotiations	On 2 April 2024, India and the Eurasian Economic Union (EAEU), which comprises Russia, Armenia, Belarus, Kazakhstan and Kyrgyzstan initiated talks to begin negotiations for an FTA. The potential FTA aims to boost economic cooperation and trade between India and the member states of the EAEU. The negotiations are expected to cover a wide range of areas, including trade in goods and services, investment and intellectual property rights.
Bangladesh eyes FTA with China by 2026	On 29 March 2024, the Bangladesh Commerce Ministry, announced that Bangladesh aims to negotiate an FTA with China by 2026, with the key objective to boost trade and economic ties between the two parties. The potential FTA aims to reduce tariffs on a wide range of products, particularly textiles and garments which are key industries for Bangladesh. The FTA is also expected to increase Bangladesh's export competitiveness and attract more Chinese investment.

Headline	New development
Bangladesh to sign letter of intent for FTA talks with Thailand	On 26 April 2024, Bangladesh's Foreign Ministry announced that Bangladesh's Prime Minister Sheikh Hasina is set to sign a letter of intent with Thailand to begin negotiations for a Bangladesh-Thailand FTA during Prime Minister Sheikh Hasina's visit to Thailand. As this marks the nascent stages of FTA negotiations, it is not a given that the FTA negotiations will be smooth sailing and it is still premature to ascertain that a Bangladesh-Thailand FTA will be concluded. Companies interested in this particular FTA should keep a close eye on updates and potentially raise their interests to their respective government contacts to make sure their perspectives and interests are taken into account during the negotiations.
Malaysia and South Korea resume FTA negotiations	On 26 March 2024, Malaysia and South Korea resumed FTA negotiations to boost bilateral trade and investment. This comes after negotiations were suspended in 2019. Malaysia's Ministry of Investment, Trade and Industry (MITI) made a statement that the proposed Malaysia-Korea FTA would likely cover trade in goods and newer areas such as the digital economy, green economy, supply chain, and bioeconomy as well.
South Korea and Chile hold talks on improving bilateral FTA	On 2 April 2024, South Korea's Trade Ministry announced that it launched another round of talks with Chile to update their bilateral FTA. The FTA has been in effect since 2004. The focus during this round of talks was on upgrading matters on energy, minerals, intellectual property rights along with trading of goods.
Taiwan R.O.C - Paraguay 4th ECA Joint Committee Meeting signals closer trade cooperation	On 21 March 2024, Taiwan R.O.C and the Republic of Paraguay held the 4th Joint Committee Meeting of the Agreement on Economic Cooperation (ECA) by video conference. Both parties discussed market access and related issues in the currently effective Taiwan-Paraguay ECA to deepen bilateral economic growth and development through further business cooperation. In particular, both parties noted the positive benefits brought about by the ECA. Bilateral trade volume has tripled over the past year compared to the pre-ECA period, so much so that Taiwan R.O.C. has emerged as the top market for Paraguayan pork exports. Additionally, Taiwan R.O.C.'s export volume of industrial products such as bicycles, steel products, and vehicle parts to Paraguay grew by 4.3%.
Thailand-Sri Lanka FTA endorsed by Thai Parliament	On 2 April 2024, Thai Parliament endorsed the Thailand-Sri Lanka FTA, which is currently awaiting ratification by both member states. The FTA is expected to boost bilateral trade and investments by reducing trade barriers and tariffs. This upcoming Thailand-Sri Lanka FTA is part of Thailand's efforts to expand its trade relations and to promote economic growth, in particular for industries such as textiles and garments. This FTA is in the latter stages of implementation and should come into effect soon, depending on both parties' ratification process and issuance of domestic regulations. However, interested companies can already plan ahead and understand and prepare for the opportunities this FTA presents.

Australia

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Australia strengthens export control measures to align with AUKUS allies

The Australian Parliament enacted the Defence Trade Controls Amendment Act 2024 on 27 March 2024, ushering in significant reforms to Australia's export controls regime. The Act aims to foster enhanced cooperation, collaboration and innovation between Australia, the United Kingdom (UK) and the United States (US), aligning with the shared commitment of these territories within the AUKUS partnership to bolster a seamless industrial base.

Key changes introduced by the *Defence Trade Controls Amendment Act 2024* include a national exemption from Australia's export control permit requirements for the UK and the US under the *Defence Trade Controls Act 2012*. Additionally, provisions are made for further exceptions to be delineated through the Defence Trade Control Regulation 2013 and the Defence and Strategic Goods List (DSGL). Items listed in the DSGL are regulated military and dual use items including goods, software and technology, and require permits for exportation, supply, brokering, or publication, unless exempted.

Crucially, the Defence Trade Controls Amendment Act 2024 will also significantly strengthen Australia's existing export control framework to establish a robust protective security regime that is comparable to the export control regime administered by the US and introduces three new criminal offences punishable by up to 10 years in jail or a fine of AUD 782,500:

- 'Deemed' exports: Supplying DSGL technology to a non-exempt foreign person within Australia without a permit.
- 'Secondary supply' of DSGL goods and technology: Supplying previously exported DSGL goods and technology (specifically sensitive and very-sensitive list items) from Australia to another foreign country or person.
- Provision of DSGL 'services': Offering DSGL services, including assistance and training, in the design, development, engineering, and other specified activities related to military goods or technology without a permit.

To balance national security interests with economic growth and research collaboration, the *Defence Trade Controls Amendment Act 2024* provides exceptions for certain persons and activities, including exempted defence and intelligence alliances, exempted parties, exempted activities and timeframe limitations. Through these measures, Australia reinforces its commitment to robust export controls while facilitating productive partnerships with its AUKUS allies, thereby ensuring both national security and economic prosperity.

The *Defence Trade Controls Amendment Act 2024* commences within six months of receiving Royal Assent, with the criminal offences coming into effect a further six months after commencement.

Our take: There are a number of actions businesses should take immediately in order to be prepared for the commencement of the Defence Trade Controls Amendment Act 2024 and associated compliance obligations, including considering the impact of the reforms on your business operations, reviewing existing Trade Governance Frameworks, and being prepared for increased regulatory interaction. We can expect authorities to apply greater scrutiny on export control measures under geopolitical tensions. Therefore, it is essential that traders of items on the DSGL implement controls to be ready once the act commences.

Note that all operational details of this Act have yet to be released. We will provide updates in future editions of Trade Intelligence once they are available.

Removal of 'nuisance' tariffs on range of goods to reduce administrative burden

The Australian Government is planning to abolish 'nuisance' tariffs on a range of goods imported into Australia including toothbrushes, hand tools, fridges, dishwashers, clothing, and menstrual and sanitary products that often enter under a concessional rate of duty (i.e. under a Free Trade Agreement or Tariff Concession Order). This will come into effect from 1 July 2024.

The removal of these tariffs is aimed at reducing compliance burdens for importers of these goods. Whilst there will be a lowered administrative and financial burden as importers of these goods will no longer need to assess eligibility for concessional rates, it will be important for importers to ensure that they continue to proactively manage other compliance aspects, including tariff classification, as penalties may still apply for non-compliance under Australian customs law even when there is no duty impact.

The full list of tariffs to be abolished will be finalised and published in the upcoming Federal Budget in May 2024.

Increased focus on split consignments, structured ordering and undervaluation by the ABF

The Australian Border Force (ABF) is increasing its focus on low value goods (i.e., goods valued less than AUD 1,000) shipments, with specific attention on split consignments, structured ordering (i.e. deliberately structuring orders in such a way that consignments have a value equal to or below the AUD 1,000 threshold to avoid customs duty and Goods Services Tax liabilities), related undervaluation of imported goods and claiming of low value duty concessions.

Recent compliance activity conducted by the ABF has identified a growing trend of supplier-initiated "artificially" split consignments and undervaluation in order to benefit from relief from taxes, levies, origin certification costs and other fees in the country of origin / supplier jurisdiction.

Our take: It is prudent for any e-commerce retailer or traders frequently dealing in low value goods to review their compliance with these rules given the increased scrutiny and attention on these matters. Significant penalties apply where breaches are detected, including relating to split consignments and undervaluing of goods.

Maturation requirement relaxation for import of brandy, whiskey or rum

The Customs Act 1901 requires all imported brandy, whisky and rum products to have been matured by storage of wood for at least two years and a maturation certificate to be provided to the ABF on import to demonstrate compliance with this requirement.

The Australian Border Force (ABF) recently announced the alignment of import laws with local excise laws such that certain spirits will not need to be matured in wood for at least two years. This is provided that the products are not labelled as, described as, or marketed domestically as a brandy, whiskey or rum. With this announcement, importers of brandy, whiskey or rum products must declare whether the imported spirits are labelled as, described as or intended to enter the domestic economy as brandy, whisky or rum. If so, these spirits will still have to have been matured for at least two years.

The ABF will also now accept an increased range of evidentiary material for the purposes of supporting claims of compliance with the maturation requirements under the Customs Act 1901 (e.g. maturation certificates, statements from the manufacturer/supplier, certificates of analysis, etc.).

New ability to obtain a refund of customs duty on short shipped goods

The Australian Border Force (ABF) introduced a new refund reason code for customs duty paid on short-shipped goods. The short shipment of goods is a common occurrence in global supply chains whereby the volume of goods received by an importer is less than the volume listed on the commercial invoice. The new refund reason code will enable importers to apply for a refund of customs duty paid on goods which were not received (i.e. short shipped).

Refund applications for short-shipped goods must be made within 14 days from the goods clearing customs control or delivery of the goods from the packages in which they were originally packed. The ABF may extend this period upon request if the circumstances are reasonable.

Our take: While the new refund code provides importers with the ability to recover overpaid duty in instances of short-shipment of goods, importers should also be aware of the possible adjacent requirement to ensure that appropriate amendments are made to import declarations and additional duty paid (if applicable) where there is an over-shipment of goods. The importer must also make sure that its claims are well supported by documentary evidence.

China removing steep tariffs on Australian wine

China removed the steep tariffs of up to 212% on Australian wine imported into China that were introduced in early 2021 (a move that forced many Australian exporters to halt exports to China after being priced out) following an improvement in relations between Australia and China. This removal became effective on 29 March 2024. Restrictions on Australian lobster and beef remain. However, the Australian Government is aiming to have these tariffs removed before the end of 2024.

WTO decision on Australia's anti-dumping duties on Chinese steel imports

The World Trade Organisation (WTO) came to a decision on 27 March 2024 that Australia had acted inconsistently with some articles of the anti-dumping agreement. This decision is regarding Australia's imposition of anti-dumping measures on Chinese wind towers, railway wheels and stainless steel sinks in 2014, 2015, and 2019. Australia had already announced its decision to terminate the anti-dumping measures surrounding the wind towers in April. Australia has accepted the decisions and will work with China and the WTO to rectify any wrongdoings.

Tariff relief extended for Ukraine

The Australian Government will extend the tariff relief provided to Ukraine. Specifically, the current customs duty exemption will be extended for two years until 3 July 2026 for goods that are produced and manufactured in Ukraine. The measure will see tariffs of up to five per cent reduced to zero on Ukrainian goods.

China

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China passes new Customs Tariff Law

On 26 April 2024, the 14th Standing Committee of the National People's Congress, i.e. China's legislature approved a new Customs Tariff Law. This Law was promulgated as official law via Presidential Order No. 23 and will become effective on 1 December 2024.

The new Customs Tariff Law seeks to consolidate and codify customs and tariff rules and practices currently scattered across different announcements and measures into a single law. Notably, this new Law retains the current tariff system and is not expected to impact the overall tariff burden of traders.

The new Customs Tariff Law introduces the following key changes:

1. Stipulation of legislative powers for in-charge tax authorities to adjust tariff items and rates;
2. Clarification of tax obligations and responsibilities of taxpayers operating under cross border e-commerce business models. Specifically, the new Customs Tariff Law defines the tariff withholding agent for cross border e-commerce imports as their e-commerce platform and logistics and broker service provider;
3. Codification of specific customs' practices into law, including nationwide integration of customs clearance, two-step declaration, and consolidated tax collection;
4. Clarification of the following controversial issues at regulatory level:
   - Priority of tariff collection under different debts, specifically that tariff collection takes precedence over unsecured claims (i.e. companies' debts without guarantee); and
   - Ability for authorities to take anti-circumvention measures by adjusting tariffs for goods originating in countries implementing measures disturbing normal trade with China (e.g. if a country/region adopts trade protectionist measures against China in violation of international agreements).
5. Alignment with the Tax Administration and Collection Law by extending the tariff refund and claw-back period to 3 years, up from 1 year.

Our take: By 1 December 2024, importers and exporters should have completed a review of their import and export operations and tariff payments to ensure compliance with the new Customs Tariff Law.

We recommend the following steps to achieve this:

1. Proactively conduct an internal review of customs declaration and tax payment processes and accuracy of tax-related elements to address any compliance gaps and leverage optimisation opportunities;
2. Pay close attention to upcoming regulatory revisions and updates. It is expected that the State Council and Customs will revise and update tariff related regulations before the implementation of the new Customs Tariff Law. We recommend enterprises to maintain close communication with Customs considering the fluidity of the situation, and actively contribute to public consultation on regulation updates where relevant; and
3. Manage customs risks and achieve tariff certainty through voluntary disclosures and advance rulings. Enterprises must consider the extended three-year claw-back period when evaluating the risks and benefits of a voluntary disclosure.

If you would like to learn more about the new Customs Tariff Law, please see our Trade Alert.

Revised customs declaration requirements to import and export goods

On 14 March 2024, the General Administration of Customs (GAC) announced its decision to revise declaration requirements in the "China Customs Import/Export Declaration Form" and "the Filing List of Entry (Exit) Goods of the Customs of the People's Republic of China". Refer to the announcement for details.

Our take: The GAC's revision of import and export goods declaration requirements seek to improve customs clearance efficiency and reduce customs declaration compliance costs for enterprises. We recommend enterprises to keep a close eye on updates on this matter to access corresponding policy benefits and prevent unnecessary delays at customs clearance.

GAC introduces option of extending validity period of customs advance rulings

On 15 March 2024, the General Administration of Customs (GAC) announced the option for applicants to extend the validity period of customs advance rulings on tariff classification, customs valuation and product origin (hereinafter collectively referred as "customs advance rulings"). Key provisions are as follows:

1. **Qualifying conditions to extend the validity period of customs advance rulings**

Under Article 13 of the GAC Order No. 236 as amended by GAC Order No. 262 (i.e. main Orders regulating customs advance rulings in China), the standard validity period of a customs advance ruling decision is three years. This announcement allows the same applicant to apply to the GAC for a validity period extension request of said decision. The request is subject to fulfilment of the following conditions:

a. The applicant must apply within 30 to 90 days before the expiration date of the customs advance ruling decision;

b. There is no change in the subject matter and goods covered by the customs advance ruling decision;

Note that the GAC has specified that it will not accept extension applications in the following situations:

a. The decision has become invalid or has been revoked;

b. Any change in the applicant's name, enterprise code, or unified social credit code;

c. Failure to submit an application within the prescribed time limit; and/or

d. The GAC has published new regulations/Orders on the matter after issuing the customs advance ruling.

2. **Examination and verification of extension applications**

The GAC will complete examination of extension applications within 30 days from the date of receipt of such applications, except for special circumstances as determined by the GAC. If approved, the GAC will issue a new decision with a new decision number, and the original decision will automatically become invalid. If rejected, Customs will return the application and indicate its reasons for doing so.

3. **Clarification that eligible applicants include foreign exporters/manufacturers applying for advance rulings on a pilot basis in the China (Shanghai) Pilot Free Trade Zone**

This announcement specifies that foreign exporters/manufacturers can apply for customs advance ruling decisions on a pilot basis in the China (Shanghai) Pilot Free Trade Zone (including the Lingang Special Area) and relevant extensions from 1 May 2024 onwards.

Our take: It must be noted that extensions are specific to the particular goods transaction or scenario described in the application and cannot be used to cover all potential future situations. Companies should carefully evaluate the need to extend existing customs advance rulings based on their current and future needs and circumstances and in consideration of whether there has been a new regulation/Order that already addresses their classification/valuation/origin question. If relevant and beneficial, companies must ensure that they meet the relevant procedural requirements to apply for an extension within the prescribed time limit.

Launch of voluntary disclosure function in the China International Trade Single Window

On 6 April 2024, the General Administration of Customs (GAC) announced the launch of the "Enterprise Audit (Voluntary Disclosure)" function in the China International Trade Single Window to streamline the submission and processing of voluntary disclosure applications. This function provides an e-portal for companies to submit voluntary disclosure applications including requisite supporting documentation, sign off on relevant documents, and receive feedback from the GAC regarding such submissions.

Our take: This update is part of the GAC's continued efforts to encourage proactive disclosure of potential customs non-compliance. In our Trade Intelligence Issue for September/October 2023, we reported that the GAC introduced new rules to incentivise use of the voluntary disclosure mechanisms. This newly-launched voluntary disclosure function complements the new rules by improving the procedural efficiency of making voluntary disclosure applications. It serves as a timely reminder for enterprises to conduct comprehensive self-assessments and carefully strategise voluntary disclosure in view of the new benefits. We also recommend all enterprises to familiarise themselves with this new function to proactively prepare for a voluntary disclosure should the need arise.

China removing steep tariffs on Australian wine

Effective from 29 March 2024, China removed steep tariffs of up to 212% on Australian wine imported into China that were introduced in early 2021. For more details, please refer to the Australia section.

India

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Tribunal issues a ruling on treatment of licence and royalty fees

On 13 March 2024, the Customs Excise & Service Tax Appellate Tribunal ("Tribunal") announced a decision on a court case relating to the addition of licence and royalty fees to the price actually paid or payable to form the transaction value.

In this case, the importer is a trader in apparel goods with exclusive franchise rights of the brands owned by M/s Jockey International USA ('Jockey Int.') and Speedo International, U.K. ('Speedo Int.'). The importer holds a trademark licence agreement with Jockey Int. for the manufacture of products. While also holding a licensing and distribution agreement with Speedo Int.

Indian customs authorities assessed that the importer and the supplier of the goods were related parties. Therefore, India customs authorities challenged that the royalty paid to the licensor and the cost of advertisement incurred by the importer in India are dutiable from a customs valuation perspective. If substantiated, the importer would need to apportion said royalty and cost of advertisement to the price actually paid or payable to come to the transaction value.

The importer disagreed with such an assessment and filed an appeal with the Tribunal. The Tribunal ruled in favour of the importer and held that the payments for royalty and the cost of advertisement should not be added to the price actually paid or payable to form the transaction value. The Tribunal references the following reasons:

- There was no actual transfer of know-how agreement for the royalties to be considered dutiable.
- Activity of advertisement and sales promotion was a post-import activity which was incurred by the importer on its own account and not to discharge for any obligation of the seller under the terms of sale.
- The importer and supplier were not related to each other as their relationship was on a principal-to-principal basis.
- The Tribunal stated that although royalties, licence fees and other payments made or to be made as a condition of sale of imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller, must be added to the invoice value to form the transaction value, in this case no such condition of sale occurred.

Our take: Similar to the Indian court case surrounding customs valuation treatment of royalty shared in our November/December 2023 TI publication, there appears to be a trend of Indian customs authorities increasing their focus on the dutiability of royalties, and challenging the existence of a relationship between the buyer and the seller. In both cases, being able to effectively demonstrate that such royalty fees relate to activities after importation was a critical factor in the Tribunal's final decision to rule in favour of the importer.

Based on this trend, we strongly encourage importers to have supporting documentation readily available to produce to the customs authorities to justify and support the transaction value (e.g. relevant royalty/licence contracts in place, invoices to support the transaction value, etc.). Being well prepared for circumstances like this will put you in the driver's seat and mitigate the risk of having to go through a laborious and time intensive legal proceeding with customs authorities to defend a declared customs value.

Availability of RoDTEP for AA holders, EOU and SEZ units and extension of RoDTEP

On 8 March and 11 March 2024, the Directorate General of Foreign Trade ('DGFT') published Notification No. 70/2023 and Notification No. 74/2023 announcing that the Remission of Duties and Taxes on Exported Products (RoDTEP) scheme is extended until 30 September 2024. Previously, it was valid until 30 June 2024.

Apart from this, RoDTEP benefits are extended to Advance Authorization (AA) holders, Export Oriented Units (EOU) holders and Special Economic Zone (SEZ) units. It was not previously allowed to combine such benefits.

For ease of reference, the various trade facilitation schemes mentioned above are:

- **AA scheme:** allows duty free import of input goods, inputs which have been used in output products that are required to be exported within a specified term;
- **EOU scheme:** allows duty free import for entities that are completely export-oriented; and
- **SEZ:** is an area located within India's national borders but for which the trade laws are different from the rest of India and a unit set up in the SEZ area is known as SEZ unit.

Our take: The RoDTEP scheme is a duty and tax refund scheme provided to certain exporters, which covers the refund of central, state and local duties and taxes paid on imported goods that are subsequently re-exported. Any current AA holders, EOU and SEZ units should make sure that they are not missing out on these added benefits.

Exemptions from mandatory quality control requirements for inputs used for exports for EOU holders, AA holders, and SEZ units

The Directorate General of Foreign Trade ('DGFT') published Notification No. 69/2023 and No. 71/2023, and Public Notice No. 47/2023 and No. 50/2023 to exempt mandatory Quality Control Orders ('QCO') for AA holders, EOU and SEZ units. These measures already came into force on 7 March 2024 for AA holders and EOU holders and on 11 March for SEZ units.

The QCO are introduced to ensure the safety standards of certain goods for consumers imported into and manufactured in India.

With this announcement, AA and EOU holders and SEZ units may be exempt from the QCOs requirements for their domestic inputs and/or imports when used in production for export products provided they meet all the procedural requirements and conditions.

The list of the imports controlled by the following competent authorities are eligible for QCO exemption:

- Ministry of Steel;
- Department of Promotion of Industry & Internal Trade; and
- Ministry of Textiles.

Reduction of import duty and SWS for imported CBU EVs

The Central Board of Indirect Taxes and Customs (CBIC) published two notifications, namely, Notification No. 19/2024-Customs (Tariff) and Notification No. 20/2024-Customs (Tariff) to extend basic customs duty (BCD) and social welfare surcharge (SWS) reduction for imported completely built-up (CBU) electric vehicles (EV). This reduction came into effect on 15 March 2024.

The Ministry of Heavy Industries announced a scheme to promote manufacturing of electric passenger vehicles in India under which import duty concessions would be given to companies setting up manufacturing units with a minimum investment of USD 500 million. Such companies may be eligible for reduction of import duty and SWS for the import of CBU EVs with a minimum CIF value of USD 35,000. Below is a summary of such reduction:

- Concessional rate of BCD 15% from a normal rate of 100%
- Exemption of SWS from the normal rate of 10% of the duty amount.

The reduction is subject to the fulfilment of the conditions specified by the CBIC and should be carefully studied. Note that this exemption would not apply to imported EVs that are incomplete or unfinished, as a knocked down kit containing necessary components, or its parts.

Our take: The key objective of this scheme is to develop India's manufacturing capacity of EVs over time, which ideally would start with the importation of CBUs to increase commercial uptake of EVs in general. With sufficient uptake of EVs, this would have knock-on benefits in the form of increasing the demand and competition in the industry, developing the required infrastructure (e.g. charging stations, etc.) and know-how which would in turn, facilitate the capabilities of developing a fully local assembly line for EVs.

Bulk licence procedures for export of controlled telecommunication and information security items

The Directorate General of Foreign Trade ('DGFT') published Notification No. 82/2023 and Public Notice No. 53/2023 to detail the general authorisation (i.e., bulk licence) procedures for the export of telecommunication related items and information security items controlled under Special Chemicals, Organisms, Materials, Equipment, and Technologies ('SCOMET') items category. It came into effect on 27 March 2024.

The announcement covers the SCOMET procedural requirements for the export of controlled telecommunication and information security items such as eligibility for general authorisation for bulk licences, documentation, reporting, and recordkeeping.

Our take: SCOMET items are export controlled goods pertaining to dual-use items that can be used for both civilian and military applications. Hence, export of such controlled items are strictly regulated and we are seeing more enforcement in this area amid rising geopolitical tension globally.

Conditions to import high end and high value used medical equipment

In June 2023, the Ministry of Environment, Forest and Climate Change (MOEFCC) had issued an office memorandum permitting the import of 50 high-end and high-value used medical equipment for certain users subject to specified conditions. Some examples of the listed exempted medical equipment are MRI equipment, high end X-ray equipment, etc. Imports of such medical equipment prior to the announcement in June 2023 were prohibited.

The Central Board of Indirect Taxes and Customs issued an instruction on 5 April 2024 to align its regulation with the MOEFCC on allowing for import of said 50 high-end and high-value used medical equipment, provided MOEFCC's conditions are met. The instruction also clarified that certain used critical care equipment is prohibited for import for re-use. There are 14 types of equipment listed such as high-end ventilators, nitric oxide generators, and flexible bronchoscopes. Refer to the published instruction for the full list.

Reduction of basic customs duty for import of x-ray tubes and its parts and accessories

On 12 March 2024, the Central Board of Indirect Taxes and Customs published Notification No. 15/2024- Customs (Tariff) and Notification No.16/2024-Customs (Tariff). The notification reduces the basic customs duty of the following from 15% to 10%.

- X-ray tubes classified under tariff code 9022.30.00 and;
- X-ray parts and accessories classified under HS code 9022.90

Import duty concessions are also extended to specified parts required for manufacture of x-ray machines for medical, surgical, dental or veterinary uses.

Both notifications came into effect on 1 April 2024.

Changes to concessional tariff rates under the India-Mauritius CEPA and India-UAE CEPA

The Central Board of Indirect Taxes and Customs (CBIC) published a notification to reflect the changes to the concessional tariff rates under the India-Mauritius Comprehensive Economic Partnership Agreement. It came into effect on 14 March 2024.

Another CBIC notification was published to reflect the changes to the concessional tariff rates under the India-UAE Comprehensive Economic Partnership Agreement. It came into effect on 15 March 2024.

Cooperation and Mutual Administrative Assistance between India and Armenia

On 15 March 2024, the Central Board of Indirect Taxes and Customs published a notification to announce the Agreement on Cooperation and Mutual Administrative Assistance ('CMAA') on customs matters between India and the Republic of Armenia.

This agreement allows for both customs authorities to assist one another through sharing of information, data and intelligence. It is hoped that the administrative assistance will help facilitate trade and ensure efficient clearance of goods traded between the parties as well as support any investigations.

Our take: It is important to note that this agreement is not a free trade agreement between the parties. However, do note that India is holding talks with the Eurasian Economic Union, of which Armenia is a member (see our FTA focus section).

Streamlining and digitalising norm processes under the Advance Authorization scheme

On 14 March 2024, the Directorate General of Foreign Trade ('DGFT') published a Public Notice 51/2023 to streamline and digitalise the norms fixation under the Advance Authorization (AA) scheme. The notice also updates the Standard Input Output Norms (SION).

The scheme allows manufacturers to import raw materials duty free provided that a fixed norm amount is used in export products.

ANF and its submissions available online

On 2 April 2024, the Directorate General of Foreign Trade ('DGFT') published a Trade Notice 01/2024-25 to introduce digitised Aayat Niryat Forms ('ANF') and their appendices.

ANF refers to the forms which are used to apply for various licences, certificates and permissions related to international trade in India. Such ANF and its submission is required to be or has been made available online. This is aimed to improve the imports and exports procedures and to create systems that are more efficient and transparent.

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Update on import restrictions

In March and April 2024, the Ministry of Trade (MoT) released several updates to the import restrictions regulated under MoT Regulation No 36/2023. We covered the original regulation in our Trade Intelligence Publication for November / December 2023 and again in our January / February 2024 publication when Import Restriction Regulation 1 came into effect.

Update no.	Change	Effective date
1	**MoT Regulation No. 3/2024: First update to amend MoT Regulation No 36/2023** On 7 March 2024, MoT issued Regulation No 3/2024 as the first amendment to MoT Regulation No 36/2023. This amendment considers feedback from affected importers on Import Restriction Regulation 1. Key changes are summarised below: 1. Emphasise that the surveyor report is required for each individual import declaration (i.e., PIB); 2. New provision regarding import approval and import statement letters for complimentary, market testing and after-sales goods issued under the previous prevailing regulations (MoT Regulation No 20/2021 (MoT-20/2021) amended by MoT Regulation No 25/2022 (MoT-25/2022); 3. Revocation of import restriction requirements for specific HS codes; 4. Revised import approval requirement for plastic raw materials and horticulture products; and 5. Changes to two tariff codes for hazardous material captured by import restrictions and addition of one tariff code for hazardous material captured by import restrictions.	10 March 2024
2	**MoI Regulation No. 8/2024: New official guidelines on issuance of Technical Consideration for import of certain upstream chemical industry commodities** MoI issued regulation number 8/2024 (MoI-8/2024) on Guidelines for the Issuance of Technical Consideration and Import Recommendations for the Import of Certain Upstream Chemical Industry Commodities. This regulation includes details on application, issuance, revision, monitoring, and reporting of Technical Considerations for the mentioned commodities in MoT Regulation No 3/2024 and MoT Regulation No 36/2023. It also reconfirms that importers must obtain a permit from the Minister of Industry ("MoI") on top of a permit from MoT as is the requirement under MoT Regulation No 3/2024. It acts as a guideline for Technical Consideration and is not an amendment to the preceding import restriction regulations. As mentioned in our Trade Intelligence Publication for January/ February 2024, MoI has already issued Technical Considerations guidelines for other classes of controlled imports in February 2024.	N/A

Update no.	Change	Effective date
3	**Standing statement to address issues regarding the implementation of MoT Regulation No 3/2024 and MoT Regulation No 36/2023** On 16 April 2024, the Indonesian Government released a standing statement to address issues regarding the implementation of MoT Regulation No 3/2024 and MoT Regulation No 36/2023. This statement is released following complaints from importers due to the short transition period from the previous to the current regulation. Key points of the standing statement are as follows: 1. Rollback of restriction for import of consignment goods belonging to migrant workers in Indonesia and passenger goods; 2. Postponement of Technical Consideration requirements for several commodities; and . 3. Introduction of a transition period for MoT Regulation No 36/2023 and MoT Regulation No 3/2024	N/A
4	**MoT Regulation No. 7/2024: Latest amendment to MoT Regulation No 36/2023** On 2 May 2024, MoT issued MoT Regulation No. 7/2024 which amends MoT Regulation No. 36/2023. This import regulation implements the following changes: 1. Partial implementation of the standing statement, including rollback of restriction for import of consignment goods belonging to migrant workers and passenger goods; 2. Changes to unit of measurement for several traditional medicine, health supplements, cosmetics and household health supplies; and 3. Relaxation of importer requirement for specific HS codes. For details, please refer to MoT Regulation No. 7/2024.	6 May 2024

Our take: Based on recent developments to the original MoT Regulation No 36/2023, it seems that the Indonesian Government has decided to relax some of the import restriction requirements due to complaints from importers, particularly industrial importers. We recommend affected companies to keep a close eye on this matter considering the rapidly evolving regulatory landscape. It is not clear when or if the MoT will announce further amendments to the import restrictions since not all of the points on the standing statement have been fully addressed by MoT 7/2024.

Changes to procedural requirements under Indonesia-Korea CEPA

The Ministry of Finance issued regulation no. 11/2024 to amend MoF regulation No 219/PMK.04/2022 on the procedural requirements to obtain a Certificate of Origin (CO) under the Indonesia-Korea Comprehensive Economic Partnership Agreement (Indonesia-Korea CEPA). This regulation became effective from 29 February 2024 onwards. The regulation mostly makes minor updates to regulatory provisions to make them clearer and also introduces the following key changes:

1. A new provision that reaffirms the scope of the original MoF regulation No 219/PMK.04/2022;
2. Clarification that Indonesia-Korea CEPA CO can only be reissued if the original CO is lost or damaged and the CO has not been used to obtain preferential tariff treatment in the importing territory;
3. Prior to this announcement, the date of export was based on the date of goods loading for all modes of transport (i.e., air, land and sea). With this new regulation, if the date of the bill of lading is different from the date of departure or date of loading, the date of export is determined based on the mode of transport:
    - For air or land freight, the date of export should be determined based on the date of vessel departure;
    - For sea freight, the date of export should be determined based on the date of goods loading;
4. For third-party invoicing, where the invoice is issued by a 3rd party located either inside or outside Indonesia or Korea, if the number and date of the 3d party invoice is not known when the Indonesia-Korea CEPA CO is issued, the exporter can use and include its own invoice number and date under column 10 of the CO form as substitute;
5. Invoices issued by a third party in the same country which issued the Indonesia-Korea CEPA CO must be included under column 10 of the CO form. It is not necessary to tick the “NON-PARTY INVOICING” box or include the third-party company address under column 4 of the CO form for such situations; and
6. Removal of COVID-19 CO submission provision.

Japan

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Proposal for more FTAs and EPAs to strengthen cooperation with the Global South

The KEIDANREN (as known as Japan Business Federation) compiled proposals on strengthening cooperation with the Global South and published "Proposal for strengthening cooperation with the Global South" on 16 April 2024 following a conference by the Japanese government on the same matter. The Global South typically refers to a broad method of grouping developing economies, many of which are not actually in the southern hemisphere.

The proposal emphasised the need for cooperation with the Global South. It advocates for the Japanese government to implement Economic Partnership Agreements (EPAs) and Free Trade Agreements (FTAs) to comprehensively expand and deepen economic relations with the Global South. Below is a snippet from the report:

> *"Japan already concludes EPAs/FTAs with trading partners that account for more than 80% of its total trade volume. However, Japan does not have agreements with the Middle East and Africa yet, and the agreements in South America are limited to a few countries. These regions are rich in food, resources, and energy. In particular, we have high expectations on the early start of negotiations for an EPA with Mercosur and the early resumption of negotiations on an FTA with the Gulf Cooperation Council (GCC). In Africa, where a steady population increase is predicted, it is necessary to explore the possibility of concluding an EPA/FTA based on existing bilateral investment agreements, while keeping an eye on the progress of the African Continental Free Trade Area (AfCFTA)."*

The KEIDANREN is a comprehensive economic organisation with a membership of 1,512 representative companies in Japan, 107 industrial associations and the regional economic organisations for all 47 prefectures (as of 1 April 2023).

More items captured by Japan's export ban to Russia

On 10 April 2024, Japan's Ministry of Economy, Trade and Industry (METI) announced the amendment of the Export Trade Control Order ("the amended Order") related to the export ban of goods that contribute to the strengthening of Russia's industrial infrastructure. The amended Order came into effect on 17 April 2024.

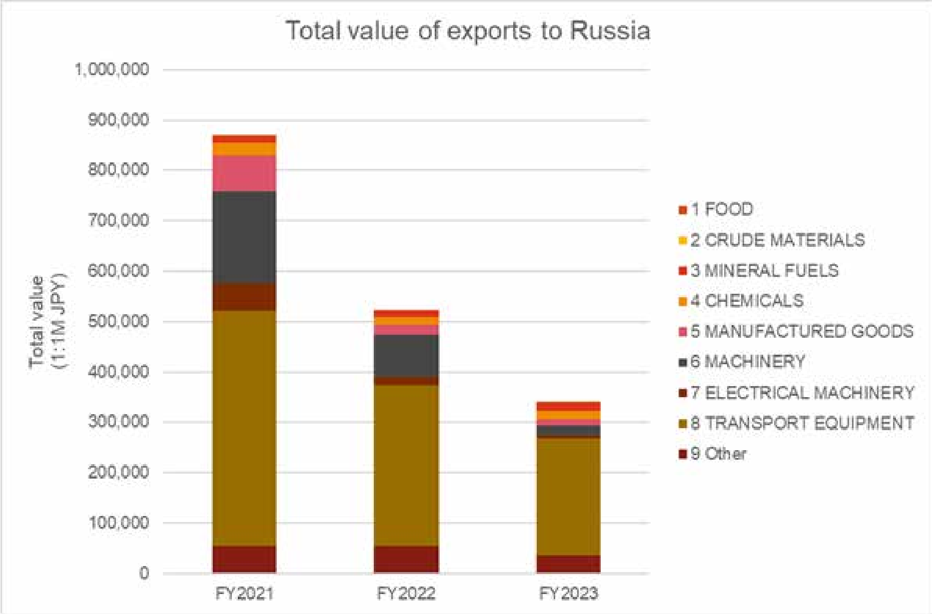
A total of 164 items are added in scope of the export ban with this amendment. The full order now covers the following categories of items including, but not limited to;

- Mineral fuels and mineral oils and their distillates, bituminous substances and mineral waxes (a part of HS Chapter 27);
- Inorganic chemicals and precious metals and their inorganic or organic compounds(a part of HS Chapter 28),
- Plastics and its products (a part of HS Chapter 39);
- Steel products and their parts (a part of HS Chapter 73);
- Tungsten powder, molybdenum, cobalt, zirconium, rhenium and their products (a part of HS Chapter 81);
- Base metal product (a part of HS Chapter 82);
- Boilers and machinery, and parts and accessories thereof (a part of HS84);
- Electrical equipment and its parts (a part of HS Chapter 85);
- Yachts and other recreational or sporting vessels, paddle boats, canoes, light boats, fire boats, crane boats and other vessels, floating docks and floating or submersible drilling or production platforms (a part of HS Chapter 89); and
- Optical equipment, photographic equipment, measuring equipment, inspection equipment, precision equipment, and parts and accessories thereof (a part of HS Chapter 90).

All of the newly added products are major exports to Russia in the last few years.

<u>**Summary of the impact of export bans and restrictions**</u>

The total value of exports to Russia has significantly decreased since FY2021 in response to Japan's consecutive measures against Russia as visualised below:



Note that mineral fuels exports have increased since FY 2021 even after such measures came into effect (for more details on the % increase by export, refer to the amendment Order). We expect this number to reduce significantly given the export ban of mineral fuels to Russia under this amendment. Below is a detailed list of mineral fuels that are banned for export to Russia:

Additional banned export items among mineral fuels

HS code	Example of goods
2701.11, 2701.12, 2701.19, 2701.20, 2702.10, 2702.20, 2703.00, 2704.00	coal, briquettes, lignite, peat, coke, semi-coke, retort carbon
2707.30	xylol
2708.20	pitch, pitch coke
2710.19	kerosenes, gas oils, heavy fuel oils, greases
2712.10, 2712.90	petroleum jelly
2715.00	bituminous mixtures

Classification opinion on works of art under HS heading 9703

Japan's classification opinion for HS heading 9703 covering HS classification for sculptures, clay statues, cast statues and similar objects was amended with effect from 1 April 2024. The **underlined and bolded** interpretations below were added as part of this update to the opinion for future clarification.

Chapter 9703
1. (Omitted) 1. Certification of artists 1. Certification of artists shall be based on documents such as encyclopaedias <u>**or other materials that objectively show the artist's career, achievements, etc.**</u> Items that are recognized as works of an artist: (a) Items that bear the name of the artist on the actual item by stamping or signature; (b) Items that do not bear a stamp or signature on the actual item, but whose style clearly proves that they are the work of an artist, as determined by an appraiser. <u>**(c) Materials that are exhibited or are planned to be exhibited (limited to exhibitions sponsored, co-sponsored, or supported by government agencies and/or public interest corporations) and where e.g. the organisers of the exhibition provide the certification equivalent to that of (2) above, then the items may be considered as the work of an artist.**</u>

Korea

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Instructions for provision of information for investigations

The Korea Customs Services ("KCS") released instructions for companies to submit taxation data during customs investigations ("Instruction"). This Instruction seeks to address uncooperativeness during customs investigation and introduces more streamlined data request procedures to facilitate such investigations. This instruction became effective from 5 April 2024.

We have summarised the key points in this Instruction:

1. **Article 2: Instructions on providing documents for investigation of related party transactions.**

   This specifies the taxation data that KCS will request during a customs investigation. It includes information regarding price declaration, transfer pricing of related party transactions and explanatory documents when the import price is significantly different from the price of goods regarded by the KCS as identical or similar. KCS may also request for supporting evidence proving declarants' eligibility for duty incentive schemes including duty drawback, duty deduction, and bonded area.

2. **Article 7 to 18: Introduction of penalties for failure to cooperate in submission of taxation data during customs investigation.**

   The Instruction also introduces penalties against individuals or entities that do not act in good faith and/or are viewed to intentionally evade customs investigation by delaying / refusing to submit taxation data and/or who submit erroneous taxation data without justifiable reasons. Actual penalty depends on the type and severity of the offending behaviour. Some examples of include:

   - Financial penalty of maximum KRW 200 million (refer to Article 11 of the Instructions for details on the penalty amount by offence);
   - Extension of investigation;
   - Exclusion from customs facilitation schemes such as paperless declaration and monthly duty payment;
   - Restrictions on the issuance of revised import tax invoices (if penalty is imposed);
   - Denial of using the transaction value method; and
   - High chance of being investigated in the future.

3. **Note that the Instruction also provides that companies that wish to file a complaint against KCS' actions during customs investigation may request a protection of rights. The request should be raised during the same time period as the investigation.**

Our take: As long as there have been customs audits and investigations, companies have struggled to know what they have to, do not have to, should, and should not share with the authorities. Sharing too much risks eliciting further queries that are time-consuming to handle but are ultimately irrelevant. Sharing too little risks upsetting the auditors or investigators and extending the audit or investigation, and/or making it more confrontational.

This Instruction at least provides some clarity on what the authorities expect and somewhat removes the second risk, even though it does not necessarily address the first risk. At the same time, it shows the importance of having supporting documentation for your declared customs values readily available, especially under related party transactions. Companies that solely rely on transfer pricing documentation to support customs value declaration will find this to be insufficient. In fact, transfer pricing documentation is becoming a more common source for KCS to challenge the acceptability of transfer prices as transaction values.

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Deferred implementation of HVGT

On 31 March 2024, the Ministry of Finance (MoF) announced that the high-value goods tax (HVGT) will be deferred from the initial implementation date of 1 May 2024 as proposed during the Budget 2024 speech. The HVGT is expected to range from 5% to 10%.

To date, the new implementation date has yet to be announced.

Our take: The delay in implementing HVGT is primarily attributed to the necessity for the Malaysian Government to engage with industry players. We believe this engagement is crucial to ensure that forthcoming HVGT legislation aligns with the needs of affected industries and the existing tax structures in Malaysia. Additionally, it appears that the government is not fully prepared, indicating the need to ensure that the legislation is well-rounded. Introducing such a HVGT is not a simple task and requires careful consideration and preparation. Drawing parallels, similar delays and refinement rounds were observed during the implementation of the Low-Value Goods Tax (LVGT).

AANZFTA implementation aligns with HS 2022

On 29 February 2024, the Ministry of Finance (MoF) gazetted the Customs Duties (Goods under the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area) (Amendment) Order 2024. This announcement is to align provisions under the ASEAN-Australia-New Zealand FTA (AANZFTA) in Malaysia with HS 2022, as per the Malaysia Customs Duties Order 2022. Prior to this, HS 2017 was in use. The Order became effective on 1 March 2024.

In this respect, the Product Specific Rules (PSR) for AANZFTA have also been updated in accordance with HS 2022. Traders should note the qualification for origin for certain goods are impacted by this update and any HS code differences may have an impact on origin claims under AANZFTA.

Our take: It is relatively common for legal texts of FTAs to adhere to former HS nomenclatures (i.e. HS 2017, HS 2012, etc.) as amendments to legal texts typically take time to be updated and aligned.

In practice, we have witnessed companies claiming FTA benefits based on former HS versions. There are typically no major issues with this as it can be legally upheld through the respective FTA legal text. However, when it comes to the official gazette of the latest HS version, it is likely that Customs will be more stringent to ensure the proper HS versions are being referred to. Hence, manufacturers and traders who utilise AANZFTA are strongly encouraged to conduct an HS code assessment to ensure alignment with HS 2022 and avoid potential invalidation of preferential claims.

Import duty exemption for manufacturing aids and cleanroom equipment

On 14 March 2024, the Ministry of Finance (MoF) gazetted the Customs Duties (Exemption) (Amendment) (No. 2) Order 2024 to provide import duty exemption on manufacturing aids and cleanroom equipment. While this order was announced on 14 March, it is deemed to be effective since 1 January 2024.

This import duty exemption is an extension of the sales tax exemption that has already been effective since 1 January 2024 (gazetted on 29 December 2023) for manufacturing aids and cleanroom equipment in line with the Malaysian Budget 2024. For more details, please refer to our Trade Intelligence publication for January / February 2024 and the Order for the list of specific conditions to claim for sales tax exemption.

NPRA guidelines for application of clinical trial import licence

On 20 March 2024, the National Pharmaceutical Regulatory Agency (NPRA) announced the Malaysian Guidelines for Application of Clinical Trial Import Licence and Clinical Trial Exemption. With this announcement, all clinical trial imports and domestically manufactured products requiring Clinical Trial Import Licence (CTIL) and Clinical Trial Exemption (CTX) must be registered with the National Medical Research Register (NMRR). The announcement became effective on 30 April 2024.

Products that requires a CTIL/CTX are as follows:

1. An unregistered product, including a placebo, imported/ manufactured domestically for the clinical trial.
2. A product with a marketing authorisation when assembled (formulated or packaged) in a way different from the approved form AND when used for unapproved indication or when used to gain further information about an approved use, for clinical trial purposes.
3. A pharmaceutical form of an active ingredient or placebo, being tested or used as a reference in a clinical trial (i.e., an investigational product). This includes products with marketing authorisations, which, upon assembly (formulated or packaged) are different from their authorised forms.
4. A traditional product with a marketing authorisation with an indication for "traditionally used", when used for an unapproved therapeutic claim in a clinical trial.

With regards to the above, any authorised person from a locally registered pharmaceutical company, sponsor, contract research organisation (CRO) with a permanent address in Malaysia or an investigator may apply for a CTIL/CTX.

Our take: Submission for a CTIL/CTX requires a company to prepare supporting documents (refer to the link/NPRA website for the required supporting documents) and may take time especially in cases where there is a significant number of goods involved. Therefore, it is important to plan in advance to ensure that the necessary licences are obtained before importation.

RCMD's guide on the Approved Major Exporter Scheme

On 29 March 2024, the Royal Malaysian Customs Department (RMCD) issued a Guide on Approved Major Exporter Scheme (AMES) ("AMES Guideline"). This guide provides instructions for traders/and manufactures to apply for AMES and the conditions required for benefits under AMES.

The AMES has been effective since 1 July 2020. The AMES was introduced as a sales tax exemption facilitation for traders and manufacturers whose annual sales exceed RM10 million and export at least 80% of their annual sales. Traders who can fulfil and meet the prescribed conditions under AMES are granted full sales tax exemption on their importation or purchase of goods.

The AMES Guideline includes the required documents in its appendices, such as the application form, declaration form and report/statement required to be submitted to the RMCD by the traders or manufacturers in order to enjoy the exemption under AMES.

Our take: The AMES has been in effect for quite some time. However, there was no comprehensive guide listing requirements in a single source document. The efforts of RMCD to publish a guide demonstrates the potential increased interest surrounding the AMES. As with most guidelines published by the RMCD as well as other government agencies, the AMES Guideline serves as a key reference for both the applicants and the authorities. We can hence expect there to be greater uniformity of understanding of the AMES. Current and potential AMES approved traders/ manufacturers should review the conditions thoroughly, such as ensuring the required documents are up to date to enjoy the exemption.

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New Customs' electronic payment system

On 15 April 2024, the Bureau of Customs ("BOC") issued a guideline to implement the use of the electronic Payment Portal System ("ePay").

ePay is an application aimed at B2C importers to pay duties and taxes, and various miscellaneous fees to the BOC using retail payment methods such as credit cards, debit cards, and digital wallets. It can also generate payment instructions (Order of Payment) and provide real-time confirmation of successful payments. ePay provides an alternative payment option for personal and/or low value shipments where the current practice is that related duties and taxes are paid in cash.

Note that ePay will not replace the existing payment channel for higher value shipments, where the current practice is that duties and taxes are paid through electronic bank transfers to the BOC. The BOC has yet to announce when ePay will be available for public use.

Our take: The introduction of ePay offers convenience, particularly for B2C importers, who are receiving shipments for personal use or sampling. Given the nature of such transactions (i.e. on a single-use basis and generally infrequent), these importers are typically unaware of customs obligations and processes making it difficult for them to claim their shipments from the BOC. With ePay in place, the customs clearance process can be simplified, hence it may reduce manual paperwork and reduce clearance processing time.

Singapore

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Enhanced paperless clearance procedures for conventional cargo at all cargo checkpoints

On 26 March 2024, the Immigration and Checkpoints Authority (ICA) issued a circular outlining enhancements to the paperless clearance of conventional cargoes system at all ICA cargo checkpoints. These enhancements are aimed at improving convenience for drivers and traders.

Key enhancements include the following:

1. Prior to this change, drivers/traders were required to print hardcopy permits when the paperless clearance system was down or under maintenance. With this change, the SG Arrival Card (SGAC) Cargo Website and MyICA mobile app allows drivers/traders to upload permits offline and generate a QR code to produce at the first leg of clearance. This eliminates the need for drivers to bring hardcopy permits during system downtime or maintenance.;
2. Allow drivers/traders to make changes to vehicle/permit number(s) in transhipment permits before arriving at the second leg checkpoint for export clearance. Export clearance includes releasing the submission for temporary storage in the warehouse and consolidating cargo from multiple cargo vehicles into one.;
3. The option to declare low value goods (LVG) at Air Cargo Command has been added to allow drivers/traders to indicate on the SGAC Cargo website or MyICA mobile app that they are carrying LVG. Prior to this change, the trader needs to verbally declare as such to the officers at Air Cargo Command.; and
4. Establish a fully paperless clearance process for all conventional cargo by allowing traders/drivers to submit all conventional cargo permits to ICA online.

These enhancements became effective on 31 March 2024.

Our take: These enhancements seek to make Singapore's existing paperless clearance system more efficient for conventional cargoes. In particular, drivers have flagged issues with the SGAC Cargo website or MyICA mobile app not working at times. The enhancements provide contingency solutions to minimise the need for hardcopy permits to the extent possible. Drivers/traders of conventional cargoes should familiarise themselves with these new enhancements to maximise clearance efficiency and predictability at the ICA checkpoints.

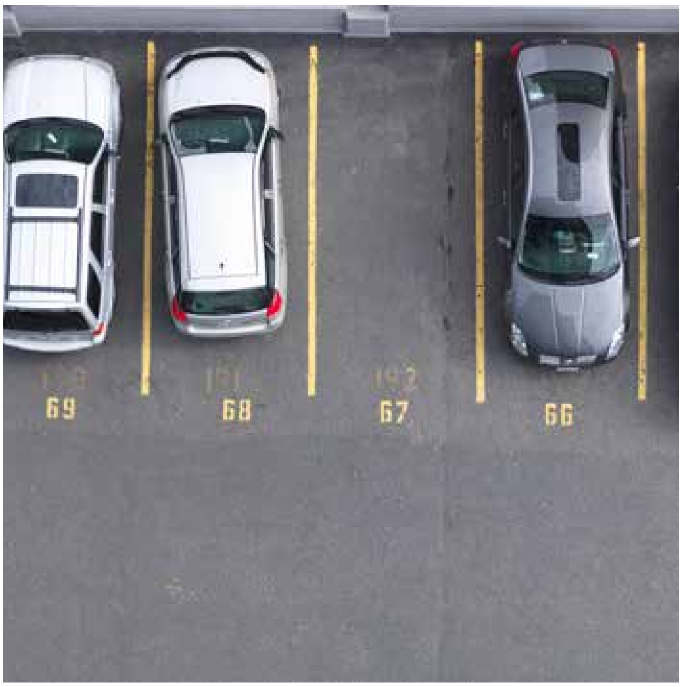
New controls for import, export and transit of electronic waste starting on 2025

On 1 April 2024, the National Environmental Agency (NEA) issued a circular outlining new controls for the import, export and transit of 'waste electrical and electronic equipment' (WEEE) to comply with recent treaty-level amendments to the Basel Convention.

For context, parties to the Basel Convention adopted changes to Annexes II, VIII and IX of the Basel Convention in June 2022. The changes list waste that requires special consideration, waste presumed to be hazardous and waste presumed not to be hazardous, respectively. Changes were made to subject all WEEE to the prior informed consent procedure.

The NEA announced that export, import and transit of WEEE listed under updated Annexes II and VII of the Basel Convention will be subject to controls from 1 January 2025 onwards. The transboundary (i.e., import, export and transit) control procedure remains the same: traders must obtain a Basel Permit from the NEA's Chemical Control and Management Department prior to importing, exporting or transiting controlled WEEE. Implementation details (e.g. list of controlled HS codes etc.) have yet to be finalised and will be shared with the industry upon finalisation.

Our take: It is expected that the NEA will enforce these new requirements strictly from 1 January 2025 onwards to fulfil its international obligations to promote responsible e-waste management and prevent the illegal trade of WEEE. Although the implementation date is still some time away, traders dealing in electronics can start to conduct a review of their shipments by reference to updated Annexes II and VIII of the Basel Convention.



Singapore Customs and Customs Administration of Netherlands sign MOU to establish container track and trace service

On 17 April 2024, Singapore Customs and the Customs Administration of the Netherlands signed a Memorandum of Understanding (MOU) which provides a legal framework for both territories to collaborate in establishing a Container Track and Trace Service.

This service leverages on the integration of data from various sources (i.e. port and terminal operations, customs-related events from both ports) to enhance tracking efficiency and visibility of containerised shipments between the Port of Singapore and Port of Rotterdam.

For a start, Singapore Customs and the Customs Administration of the Netherlands will collaborate with pivotal stakeholders such as the Maritime and Port Authority of Singapore (MPA), PSA Corporation Ltd, the Port of Rotterdam and Portbase (i.e. a Netherlands-based organisation known for its smart information platform for logistics) to develop this track and trace service.

Our take: This service seeks to provide near real-time updates on container movements, which is critical for traders to optimise supply management and improve decision-making when trading between Singapore and the Netherlands. This MOU also marks Singapore Customs' second such agreement, the first of which was for a similar service between Singapore Customs and China Customs which was launched in March 2023. Based on experience, it typically takes a few years for the service to be developed and launched upon signing of such an agreement.

Taiwan, R.O.C.

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Potential continuation of EU safeguard measures on certain iron or steel products

Before the European Union (EU) concludes its second prolongation review of safeguard measures (i.e. tariff quotas) on certain iron or steel products from Taiwan R.O.C., the Taiwan Ministry of Economic Affairs (MOEA) released an announcement to prepare relevant exporters for the potential continuation of such measures. Results of the second prolongation review investigation is expected to be announced before 30 June 2024.

This announcement includes the following key information:

1. Should the EU decide to continue its safeguard measures, exporters must obtain a new 7th period Certificate of Origin (CO) for products originating in Taiwan R.O.C. issued by the Taiwan Steel and Iron Industry Association for the exportation to the EU of the seven types of iron/steel products listed under the "List of Commodities Subject to Export Restriction". This CO must be obtained prior to the release of goods from Taiwan R.O.C. As of now, the MOEA has also provisionally set the total quota of the 7th period (i.e. transition period before the EU concludes its second prolongation review) to be the same as the preceding 6th period for the listed iron/steel products. If the EU decides to modify the implementation method of these measures as well, this will be adjusted accordingly.
2. If the EU decides not to continue such measures, these measures will expire on 30 June 2024. Until then, relevant exporters to the EU are required to apply to the Taiwan Steel and Iron Industry Association for a 7th period CO and report to Taiwan Customs accordingly per the current procedure. This requirement will apply until 20 May 2025.

For context, we have summarised key developments of the EU safeguard measures in chronology below:

1. 19 July 2018: EU implements provisional safeguard measures on certain iron/steel products from Taiwan R.O.C.;
2. 2 February 2019: EU imposes three-year safeguard measures (effective from 19 July 2018 to 30 June 2021);
3. 26 February 2021: EU initiates first prolongation review investigation
4. 11 June 2021: EU decides to extend safeguard measures to 30 June 2024 (effective from 1 July 2021 to 30 June 2024)
5. 9 February 2024: EU initiates second prolongation review investigation

Our take: The EU safeguard measures are aimed at preventing increasing redirection of steel exports from the US to the EU due to US trade protectionist measures, namely the US section 232 tariffs on steel imports. Considering that the US section 232 tariffs are still in force, it is likely that the EU safeguard measures will be extended. If so, based on World Trade Organisation rules, these safeguard measures can be extended for up to two more years (i.e. 20 June 2026).

Thailand

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Low-value goods subject to 7% VAT

Thailand plans to impose a 7% Value-Added Tax (VAT) on low-value goods (LVG) imported into Thailand. Currently, LVG valued at less than THB 1,500 are exempted from VAT. The new rule is aimed to promote fairness for online local and overseas sellers through e-commerce platforms, boost government tax revenue, and reduce the trade deficit between Thailand and other territories, such as China.

In doing so, the Thai Revenue Department (RD) will issue a regulation requiring all e-commerce platforms to register for VAT with the RD and collect 7% VAT from all sales transactions of goods into Thailand to Thai customers, regardless of the origin of the goods. LVG sales via e-commerce platforms will be treated as local sales and be subject to 7% VAT, and platform owners will need to do monthly VAT filings in Thailand.

The draft regulation is expected to be submitted for MOF consideration in May 2024, and it will have immediate effect, if approved. There are no further updates at the time of writing.

Our take: Currently, the operational requirement for collecting VAT on LVG imports is still unclear until further guidance or notification is issued by the RD. Thai Customs has not made any public comments on whether import duty would also apply on LVG imports. Companies with LVG transactions (e.g, B2C import transactions, e-commerce platforms, etc.) should monitor for any updates, and may consider proactively reaching out to the authorities to make their views known. A key consideration for overseas companies supplying LVG is whether their transaction model will lead to any potential VAT leakage (i.e., irrecoverable VAT). With the regulation still in draft, it is a good time to plan and confirm the impact of this new regulation.

Vietnam

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Updates to the ASEAN-Korea FTA rules of origin

On 27 March 2024, the Ministry of Industry and Trade (MOIT) issued Circular No. 04/2024/TT-BCT ("Circular 04") which amended Circular No. 20/2014/TT-BCT on the rules of origin for the ASEAN - Korea Free Trade Agreement (AKFTA). Circular 04 came into effect on 11 May 2024.

Note that this particular Order is specific to Vietnam. Other AKFTA parties shall adhere to prevailing domestic legislations.

The key highlights of Circular 04 are summarised as follows:

- The "ASEAN - Korea Free Trade Agreement" is renamed as "Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and Korea".
- Allowing exporters to use a direct formula for the regional value content (RVC) calculation as an option. This allows for flexibility to select the method of calculating the RVC, whether it is the direct or indirect method. Note that the exporter cannot alternate between calculation methods within a fiscal year.
- There is the additional option of using an electronic Form AK that has been electronically signed, stamped and issued by CO issuing authorities. This is an additional option in addition to the paper form.

Our take: Prior to this, the only method of calculating RVC was the indirect method and only paper forms of COs were accepted. The added option of allowing exporters to use the direct or indirect method for the RVC calculation is a subtle but facilitative amendment which offers exporters more flexibility to use the method that works best for them based on their data available as well as the current method they may be using for other FTAs. Overall, this flexibility is to the benefit of exporters, in terms of greater autonomy to select an approach that is administratively easier for them and streamline their operations.

Temporary suspension of import and re-export of monazite ores and their concentrates

On 29 March 2024, MOIT issued Circular No. 05/2024/TT-BCT to temporarily suspend import and re-export of monazite ores and their concentrates under AHTN code 2612.20.00. This measure is in effect from 13 May 2024 to 31 December 2027. Monzite ores and their ore concentrates can be hazardous in nature hence this suspension aims to prevent environmental pollution and health hazards, illegal trade and commercial fraud.

This measure is hoped to demonstrate Vietnam's commitment to safety and maintain diplomatic relations with other territories.

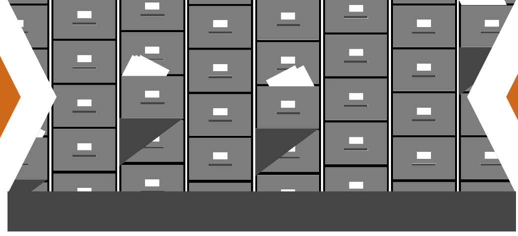
Preferential tariff rates on imports of rice and dried unmanufactured tobacco from Cambodia

On 4 April 2024, the Ministry of Industry and Trade (MOIT) issued Circular No. 06/2024/TT-BCT ("Circular 06") to announce the timeline to claim for preferential tariff rates on imports of rice and dried unmanufactured tobacco under quota allocation of the Arrangement on Bilateral Trade Enhancement between the Government of the Socialist Republic of Vietnam and the Government of the Kingdom of Cambodia. Circular 06 comes into effect from 20 May 2024 to 31 December 2024. The announcement on the quota allocation for the period of 2023 to 2024 was made via Decree No. 05/2024/ND-CP ("Decree 05"). Decree 05 has been in effect from 24 January 2024.

The key highlights of Circular 06 are summarised as follows:

- The timeline to claim for preferential tariff quotas on imports of rice and unmanufactured tobacco are as follows:
  - The 2023 import tariff-rate quotas are from 2 June 2023 to 31 December 2023.
  - The 2024 import tariff-rate quotas are from 1 January 2024 to 31 December 2024.
- The import tariff-rate quotas are automatically calculated upon importation at the respective customs offices where import procedures are carried out. This automatic reconciliation process shall continue until the tariff-rate volumes have been fully utilised and they shall comply with the instruction of the respective customs office.
- Based on the prescribed timelines mentioned above, certain imports will have already surpassed them, namely those from 2023 and imports from 1 January 2024 to date. It may be possible for importers to explore duty drawbacks, provided the goods have been assessed to be eligible for such preferential tariff. Note that duty drawbacks were first mentioned in Circular 05.
- If such duty drawback claims are made, they should be made within ten years from the date of duty payment to the state budget.
- However, for importers of rice and unmanufactured tobacco from Cambodia that did not import within the prescribed tariff rate quota (i.e. import as usual), the out-of-quota tariff rate or the standard tariff rate (where applicable) will be applied hence no preference will be provided to or can be claimed by the importer.

Contact details



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