Trade Wars Part II

The return of the tariff men

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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.

Trade Wars – Part II

The return of the tariff men

For those of you that have been reading this publication for quite a while, you may recall our lead article in the January / February 2018 issue about "the art of trade war" (we argued that they were bad and easy to lose). We recommended in that article that companies lobby, analyse and plan to stay ahead of the game and be in the best position to compete.

Fast forward nearly seven years and it is clearly a good time to both look back and look forward. New, significant punitive tariffs may be introduced in the US on a wide range of products as early as 20 January, assuming Joe Biden is not looking to steal some of Donald Trump's thunder before then. Some existing punitive tariffs have recently already been increased. Retaliatory tariffs in many other territories around the world, be they generic or targeted at US exports, are likely to follow shortly thereafter. Where tariffs are not available or unlikely to achieve the desired effect, non-tariff measures may be introduced at short notice. Examples are the enhanced export controls on the semiconductor industry out in place last month by the Biden administration, and China's response restricting the export of certain rare minerals to the US a few days later.

Those are opening salvoes in what could quickly become quite a noisy and messy global trade war. What companies should be looking at and considering doing may not be obvious or easy. But doing nothing is not really an option, even if in hindsight it was seven or so years ago.

A quick look back

At that time, press reporting and boardroom discussions overflowed with talk about supply chain restructuring. However, as we have reported regularly since, much of that talk indeed remained talk only.

Lobbying, the first of our recommendations at the time, had some initial effect, but quickly became stuck in resource shortages in the US and other administrations to be effective. And although some supply chain impact analysis (our second recommendation) took place, few significant change plans (our third recommendation) were implemented as restructuring supply chains takes effort and time, and is often not feasible in the short term.

Hence many companies sat on the fence, watching and waiting for the storm to blow over. However, neither the mid-term elections in the US in 2018, nor the change of US administration in 2021, provided any relief. If anything, tariff and non-tariff barriers have become more prevalent, significant and impactful, in the US and elsewhere.

Because very few companies were taking definitive action in response, taking a watch-and-see approach turned out to be not all bad, at least from a competitive perspective. Everyone was being "lifted" by the same tariff tide. Although inflation increased and profit margins were under pressure, competitiveness for many did not notably change (at least not because of a trade war).

Nevertheless, as highlighted, many companies have been doing their homework, at least in terms of analysing their supply chains' vulnerability to tariff and non-tariff barriers and possible options to mitigate the negative impact of such barriers. Gradually, supply chain diversification has become more commonplace (China plus one, anyone?), even if often incremental.

A longer look forward

So what do or should we expect to happen over the next couple of months? The number of questions we receive from companies for support on restructuring efforts in response to an impending tougher trade war suggests that more of them are prepared and ready to take action. Margins and pricing are much tighter in many industries today than they were seven years ago. Hence absorbing additional tariff costs or passing them on to consumers is likely to be harder. The OECD's Pillar II implementation is putting even more pressure on profits.

Furthermore, PwC's Tariff Impact Assessment tool is proving a rude awakening to many companies as to the scale of the problem. It is not unusual that our scenario analysis indicates that new mooted US punitive tariffs will increase US importers' duty bills by factors of up to 100. A recent example demonstrated a likely increase in annual import duties for a company from 1 to 70 million USD under the most likely scenario, not even the most draconian one. The impact of retaliatory tariffs elsewhere, or harder to quantify non-tariff measures, has not yet been included in that modelling.

Hence action is imperative. Our conversations in the market show an increased readiness to make significant supply chain changes to counter these impacts. Nevertheless, we also still encounter many unprepared companies, or companies that have been preparing based on outdated or unrealistic assumptions.

What is more, scenario planning often falls short of what is needed, both in breadth and depth. Even though predicting future regulatory measures largely remains crystal ball gazing, both the tools and the knowledge exist to cover more options at a more appropriate level of detail and likelihood than is commonplace. This leaves a level of uncertainty that companies find it hard to act on. Alternatively, companies may plan their responses based on unrealistic expectations or predictions.

Now is the time

We have commented before in this publication on the need for trade and customs professionals to take a step up and become more visible, audible and involved in strategic planning. This has become even more important following the US election. Senior management needs guidance on the likely and unlikely impacts of the brewing trade war intensification. Without appropriate inputs from adequately trained professionals, they are likely to receive half-baked if not outright incorrect advice. The number of CEOs or COOs we talk to that still believe a simple transhipment will enable them to benefit from Free Trade Agreements is outright staggering.

At the same time, it is crucial to understand that trade war impacts do not work in isolation. They impact the sustainability and adequacy of Transfer Pricing policies. They are material in the due diligence of an acquisition. They determine whether a market remains accessible in the first place. They affect the ability to continue doing business with current suppliers, customers and service providers. They may change the location of manufacturing and distribution activities. The list goes on.

We continue to maintain that few companies can be winners in a trade war. Nevertheless, the companies that are best prepared and quickest to take the appropriate actions will not be the losers.

Multilateral FTA updates

Headline	New development
Australia passes legislation for the accession of the UK to CPTPP	Australia's Parliament has passed legislation to admit the United Kingdom (UK) to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a multilateral trade agreement which currently includes Australia and 10 other economies such as Canada, Malaysia, Mexico, New Zealand, Singapore and Vietnam. This amendment introduces CPTPP preferential tariffs for goods originating from the UK following its accession to the agreement. The UK formally joined the CPTPP on 15 December 2024, becoming the first non-original member and European country to join the agreement. The UK and Australia have an existing bilateral FTA that took effect on 31 May 2023.
ASEAN and China conclude the ACFTA 3.0 Upgrade negotiations	On 10 October 2024, it was announced at the 27th ASEAN-China Summit that ASEAN and China have substantially concluded the ASEAN-China Free Trade Area (ACFTA) 3.0 Upgrade negotiations. The ACFTA 3.0 Upgrade introduces new chapters focusing on the Digital Economy, Green Economy, Supply Chain Connectivity, MSMEs, and Competition and Consumer Protection, aiming to enhance cooperation and facilitate growth between ASEAN and China in these areas. It also enhances existing chapters on Customs Procedures, Standards, Sanitary and Phytosanitary Measures, and Economic and Technical Cooperation to improve trade facilitation and regulatory understanding Singapore's Ministry of Trade and Industry (MTI) initiated the ACFTA 3.0 Upgrade negotiations in 2022 to ensure the Agreement stays relevant, is future-oriented and capable of addressing global challenges. This upgrade aims to be fully concluded by next year.
Indonesia pushes for ATIGA upgrade signing in 2025	Indonesia is pushing for the finalisation and signing of the upgraded ASEAN Trade in Goods Agreement (ATIGA) next year, following significant progress at the 38th ASEAN Free Trade Agreement (AFTA) Council Meeting. Indonesia's Trade Ministry also announced that the Trade Negotiating Committee (TNC) had finalised several chapters of the upgrade at the regional meeting, with the agreement expected to be ready for signing in 2025. Key upgrades being discussed are in areas such as expansion and improvement of intra-ASEAN trade connectivity, addressing and reducing trade barriers, and sustainability.
Indonesia requests to join the CPTPP	On 25 September 2024, Indonesia announced it has officially requested to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). This decision is backed by both the current and incoming presidents of Indonesia, who agree that Indonesia should not fall behind other ASEAN members states who are already members of the CPTPP. If Indonesia becomes a member of the CPTPP, Indonesian-origin goods can enjoy preferential access to new markets such as Canada, Mexico and Peru as well as the UK. This is a good opportunity for traders of goods between Indonesia and CPTPP members to explore potential duty savings and advocate for such goods to be covered under the CPTPP.

Bilateral FTA updates

Headline	**New development**
Australia and the UAE conclude bilateral FTA negotiations	Australia and the United Arab Emirates (UAE) have successfully concluded negotiations of the Australia-UAE Comprehensive Economic Partnership Agreement (AU-UAE CEPA). The agreement will provide tariff free entry into the UAE for 99% of Australia's export products (with most of these being eliminated on entry into force, and the remainder being reduced over 3 to 5 stages), while Australian import tariffs will be cut on UAE-produced furniture, copper wire, glass containers and plastic. While the text of the agreement is yet to be released, key highlights of the agreement include: Benefits for agricultural and mining goods; • Flexible and trade-facilitating Rules of Origin outcomes, alongside commitments to make customs procedures more efficient; • Additional support and promotion of two-way investment between Australia and the UAE. • Both Australia and the UAE will now work to formalise the legal treaty text, which is expected to be signed this year, before the agreement goes through the standard assessment process and the required legislation is passed by parliament. Entry into force is expected by mid 2025. Businesses should begin preparing to take advantage of the improved preferential access afforded by the agreement upon Entry into Force.
FTA talks between India and UK to relaunch early 2025	On 18 November 2024, the Prime Minister of the United Kingdom (UK) announced that the UK and India are set to relaunch FTA negotiations in early 2025, signalling renewed efforts to strengthen bilateral trade ties. The relaunch of FTA negotiations would bring about market access expansion, investment opportunities as tariff reductions between both territories. While the relaunch of FTA negotiations between the UK and India is promising, it is important not to be overly optimistic, as the process will be lengthy and involve navigating numerous complex challenges to negotiate the terms of FTA.
Indonesia and the GCC conclude first round of FTA negotiations	Indonesia and The Gulf Cooperation Council (GCC) have successfully concluded the first round of negotiations for a free trade agreement on 13 September 2024. Key members of the GCC include the United Arab Emirates, Saudi Arabia and Qatar. This agreement is anticipated to strengthen economic ties by creating new opportunities for trade and investment. Priority areas discussed during the negotiations included trade in goods and services, investment, customs procedures, rules of origin, technical barriers, sanitary and phytosanitary measures, digital trade, and trade remedies.

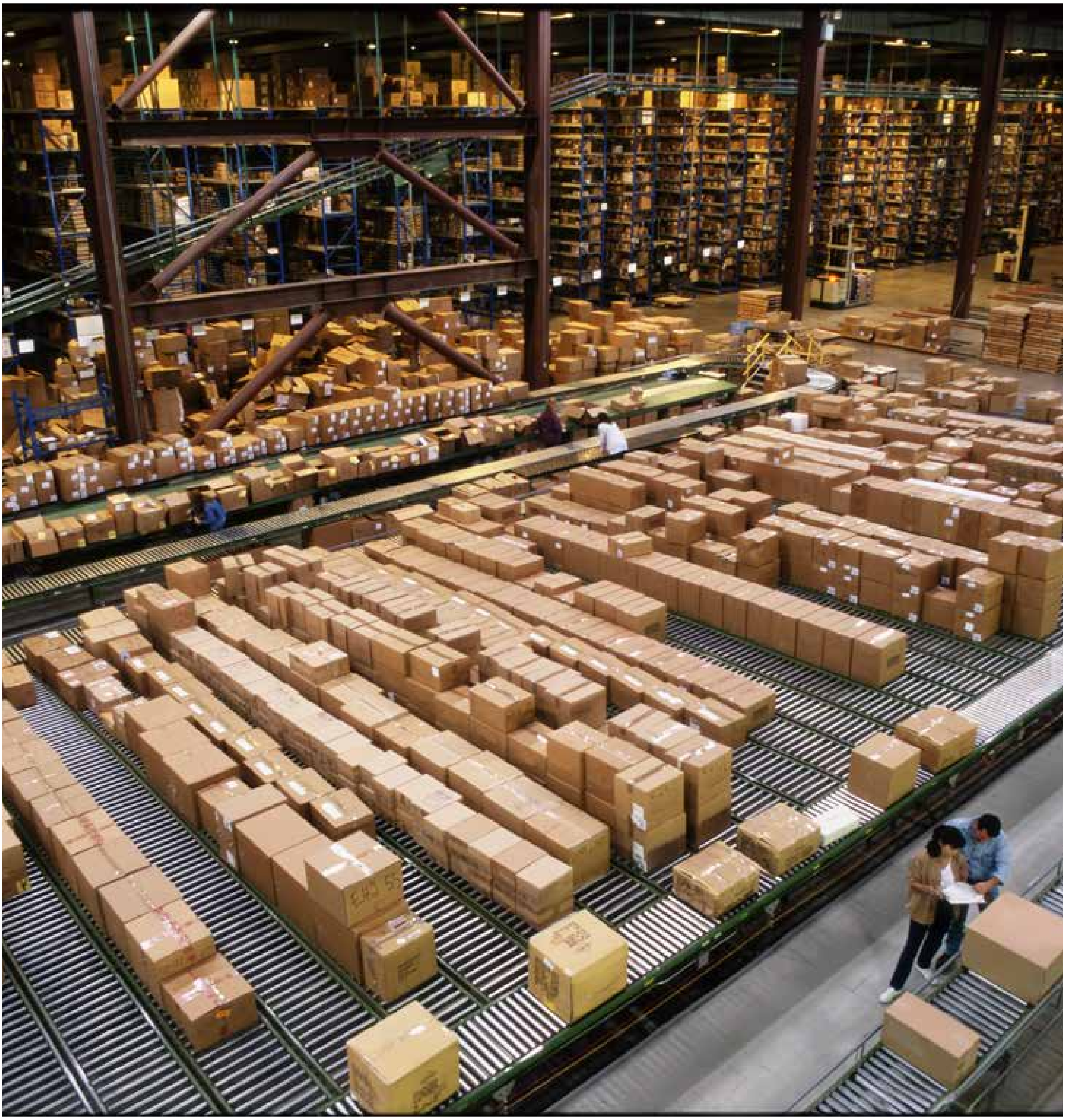
[Indonesia and Japan sign protocol to upgrade the JIEPA]	Japan and Indonesia signed a protocol that amends the Japan-Indonesia EPA (JIEPA). The revised protocol is scheduled to come into effect after both territories complete their domestic procedures for ratification. The amendments include: • Improved market access for importing into Indonesia: • Elimination or reduction of tariffs on 19 items including automobiles and steel products; • Improvement of the User Specific Duty Free Scheme for steel, etc.; Improved market access for importing into Japan: • Elimination or reduction of tariffs on 114 agricultural and fishery products. • Enhancement in terms of rules: – Addition of a chapter covering electronic commerce (e.g. addition of provisions related to online consumer protection and personal information protection etc.); – Expansion of the chapter on intellectual property (e.g. addition of provisions related to geographical indications etc.).
[Japan and the UAE launch negotiations for an FTA]	On September 2024, Japan and the UAE decided to begin negotiations for a bilateral FTA. Both parties are keen to progress and have officially begun negotiations on 28 November 2024. This is still in the very early stages of FTA negotiations, and it is not uncommon for this process to take multiple years until the FTA comes into effect.
[Malaysia and the GCC finalising FTA to boost economic ties]	On 24 September 2024, Malaysia's Foreign Minister announced that Malaysia is near the completion of a free trade agreement (FTA) with the Gulf Cooperation Council (GCC). This agreement would boost competitiveness of Malaysia exports in the Gulf market and make GCC goods more accessible to Malaysia. The agreement is expected to strengthen bilateral trade, attract investment and create new opportunities for both regions.
[New Zealand and the UAE conclude FTA negotiations]	New Zealand concluded its free trade agreement negotiations with the UAE on 26 September 2024, just over four months after launching the talks in May. Although legal ratification is still pending, both parties are committed to bring the agreement into force in 2025. The FTA will eliminate tariffs on 98.5% of NZ exports to the UAE upon its entry into force, increasing to 99% after three years. Sectors set to benefit include dairy, red meat, industrial and horticultural products.
[The Philippines' Senate ratifies Philippines-South Korea FTA]	On September 24, 2024, the Philippines' Senate ratified the Philippines-South Korea FTA, which was signed in September 2023. This is a good example of how FTA processes can be delayed, as both parties expected the ratification to occur much earlier. South Korea is also working to complete its domestic ratification process. While no specific timeline has been published, it is understood that South Korea aims to complete this before the end of 2024.
[FTA between Thailand and Sri Lanka to be implemented on 1 Jan 2025]	Following ratification in August 2024 (and reported in our previous edition), the Sri Lanka-Thailand FTA will take effect on 1 January 2025. This implementation comes at a timely point where Sri Lanka seeks to boost cross border trade and bring in investment into its territory.

[Thailand concludes FTA negotiations with EFTA]	The Thai Minister of Commerce recently announced the conclusion of negotiations for the European Free Trade Association (EFTA) – Thailand Free Trade Agreement. This is Thailand's first FTA with European territories, including Switzerland, Norway, Iceland, and Liechtenstein. The agreement aims to reduce trade barriers, enhance export opportunities, and attract foreign investment among the member parties. The next step involves seeking cabinet approval and preparing for ratification in January 2025. The EFTA–Thailand Free Trade Agreement offers exporters and importers a chance to explore duty savings and increased market access with the covered European territories. As trade barriers decrease, businesses should prepare to capitalise on cost reductions and new opportunities.
[Progress made with Thailand – EU FTA negotiations after a long hiatus]	The Thai Ministry of Commerce successfully finalised two chapters—'Good Regulatory Practices' and 'Transparency'—during the fourth round of Thailand–European Union (EU) FTA negotiations. These chapters focus on enhancing public participation and ensuring transparency in regulatory design and implementation. This progress follows a long hiatus in the FTA discussions due to a military coup in 2014, marking a significant step forward. The fifth negotiation round is scheduled for March 2025 in Brussels, where both parties will prioritise modalities and timelines to expand market access for goods, services, and government procurement.
[Thailand and South Korea aim to finalise bilateral FTA in 2025]	Thailand's Commerce Minister announces that Thailand and South Korea are set to finalise their bilateral FTA negotiations in 2025. The signing is expected to take place at the APEC summit in November 2025, which will be held in South Korea. The EPA aims to enhance market access for goods, services, and investment, building on existing agreements like the ASEAN-Korea Free Trade Agreement (AKFTA) and the Regional Comprehensive Economic Partnership (RCEP). This provides traders between the two members with an additional FTA to explore. Ratification and implementation will be longer in the making.
[Thailand and Turkey agree to resume FTA negotiations]	Thailand's Deputy Commerce Minister and Turkey's Deputy Minister of Trade have agreed to resume negotiations on a proposed FTA between the two territories. The resumption of the FTA negotiations, which were initially suspended in 2022, could pave the way for expanded trade and investment between the two territories by establishing a framework to reduce trade barriers. If ratified, this would be the first FTA between the two territories, providing with traders with new opportunities.

ASEAN AEO MRA takes effect in Indonesia

On 1 October 2024, the ASEAN Authorised Economic Operator Mutual Recognition Arrangement (AAMRA) became operational in Indonesia. This makes Indonesia the fifth ASEAN member to operationalise the AAMRA which took effect in Singapore, Malaysia, Thailand and Brunei in August 2024, which we reported in our Trade Intelligence Publication for July/August 2024.

Eligible AEO companies must ensure they meet all in-territory customs declaration requirements tailored to the AAMRA to fully benefit from the MRA. The remaining five ASEAN Member States (i.e. Cambodia, Lao PDR, Myanmar, the Philippines and Vietnam) are targeting to implement the AAMRA by 2025, with the Philippines expected to be the first to follow.



Australia

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Navigating Compliance: Insights into the ABF's Compliance Monitoring Program

The Australian Border Force (ABF) recently released its latest edition of the Goods Compliance Update, shedding light on the current state of compliance with trade and customs laws and offering insights into its ongoing Compliance Monitoring Program (CMP). The CMP monitors the accuracy and quality of import and export declarations and cargo reports to assess overall levels of industry compliance. Through the CMP, the ABF has continued to see errors on key compliance issues, including:

1. Incorrect Tariff Classification and associated use of Tariff Concession Orders
2. Valuation related errors, including errors in the valuation date (i.e. date of export), invoice term type and related party transaction indicator
3. Incorrect delivery address, such as an intermediary address instead of the address where the goods are finally destined

These errors often occur due to brokers failing to accurately identify the goods being imported or not undertaking enough due diligence.

The ABF routinely reports on the number of errors it identifies through its targeted compliance activity as part of the CMP, reporting a 30.6% error rate in import declarations, which has alarmingly increased from 26.4% in the prior period.

Our Take: Importers often place over-reliance on third parties reporting on their behalf to make decisions regarding the particulars declared in import declarations. It is important to understand that the compliance obligation cannot be outsourced - the risk always resides with the importer. The practice of good governance and maintaining compliance with customs laws is about more than avoiding penalties - it is underpinned by internal controls that foster accuracy, efficiency and proactive risk management. Businesses need to have a trade compliance framework in place to help identify and rectify errors, mitigate risks and improve compliance.

Further, regular and periodic independent compliance reviews of declarations lodged with the ABF can play a critical role in identifying potential instances of non-compliance or patterns of repeated errors, thus helping to identify and rectify errors, enhance internal controls, mitigate risks and improve compliance.

Second Carbon Leakage Review Consultation Paper released

Building on its first consultation in 2023, the Australian Department of Climate Change, Energy, the Environment and Water (DCCEEW) released its second Consultation Paper on the Carbon Leakage Review in November 2024. Carbon leakage refers broadly to the relocation of an enterprise out of a jurisdiction, primarily due to the imposition of a domestic carbon tax (or other form of price signal).

For context, the Australian Government announced it would undertake a review of carbon leakage as part of the 'Safeguard Mechanism' reforms in March 2023. This formally commenced on 1 July 2023. Following a first consultation in late 2023, a second consultation was released seeking feedback on preliminary findings relating to carbon leakage risk for specific commodities and policy options.

The second Consultation Paper offers an important insight into how Australia may respond to the risk of carbon leakage and explores potential policy mechanisms, including the potential introduction of a Border Carbon Adjustment (BCA). The Consultation Paper recommends an import-based BCA (i.e. applying a carbon price to imports based on their embedded emissions) as a mechanism to equalise the level of carbon tax paid by international producers with those paid by domestic producers, with clinker, concrete and lime products likely to be the first commodities subject to a BCA, followed by steel, glass and ammonia-based products at a future date. Importantly, this Consultation Paper does not reflect an adopted Government position, but rather the recommended policy setting by the Review.

Our Take: The introduction of a BCA would significantly alter the competitive landscape for industries operating in Australia, particularly those reliant on imported emissions-intensive materials. Businesses will need to prepare, in the following ways:

In the shorter term:

- **If you are an overseas importer or domestic producer** - take steps to better understand your emissions and competitive profile, so that you can make well informed decisions when responding to these regulatory changes.

- **If you are domestic Australian producer** - understand how the already legislated EU and UK Carbon Border Adjustment Mechanisms (CBAM) operate, to inform the likely direction of travel for an Australian BCA, noting there may be some key differences. If you are currently under the thresholds of the Safeguard Mechanism, conduct an assessment to determine how your business may be impacted if the threshold changed,
- **If you are a downstream customer** - conduct a supply chain assessment to gain a better understanding of how an Australian BCA could impact your business.

In the longer term:

- **Conduct a strategic assessment** of your supply chain to identify carbon emissions and evaluate alternatives for carbon intensive commodities sourced internationally, which could include:
  - "Resource shuffling" or substituting imported inputs with those already subject to a carbon price (noting this may only provide short term relief); and
  - Making reasonable investments in supply chains development, which prioritise low-carbon or already adequately carbon-priced sources.
- **Make investments in supply chain visibility, planning and control**, as these may help to pre-empt administrative burdens, mitigate compliance risks and enable effective navigation of the increasingly complex web of obligations globally.

Australia signs AEO MRAs with India and Indonesia

Australia has signed Authorised Economic Operator (AEO) Mutual Recognition Arrangements (MRA) with India and Indonesia. AEO MRAs are arrangements between customs administrations with equivalent AEO programs developed in accordance with the World Customs Organization (WCO) SAFE Framework of Standards to Secure and Facilitate Global Trade. The MRAs seek to provide reciprocal trade facilitation benefits to AEO accredited businesses, including Australian Trusted Traders. These agreements aim to streamline regulatory processes and reduce barriers to trade, thus supporting businesses to gain faster, more efficient and more secure market access.

Our take: These MRAs mark the 10th and 11th AEO MRAs signed by Australia and highlight the Australian government's continued focus on providing global trade facilitation benefits to those businesses who can demonstrate high levels of supply chain security and trade compliance.

Proposed changes to Tariff legislation to streamline trade and extension to Ukraine tariff concessions

A Bill to amend Australia's Customs Tariff Act 1995 ("Customs Tariff Act") has received assent to enact various trade measures, as follows:

- Eliminate "nuisance tariffs" by setting the general rate of customs duty applicable to over 450 tariff headings and subheadings to 'free' as part of measures to reduce administrative burdens and promote a streamlined trade environment.
- Ensure the preferential rate of customs duty applied to specified goods covered by the Regional Comprehensive Economic Partnership Agreement (RCEP) is not higher than the general rate of customs duty. The amendments will maintain phased customs duty rate reductions, which were in place as at 1 January 2024, reducing them to the rate of 'free' from 1 July 2024.
- Simplify Australia's tariff legislation by removing phased reduction of customs duty provisions – including goods covered by the Korea-Australia Free Trade Agreement (KAFTA) and the Japan-Australia Economic Partnership Agreement (JAEPA) - which are 'spent' by virtue of having already operated to reduce the rate of duty applicable to the goods to 'free'.
- Repeal a number of paragraphs within the Customs Tariff Act that provide the method for determining the time at which phased rates of duty applicable to several schedules in the Act have effect, and therefore the relevant rate of duty to be used for the calculation of duty payable in respect of the importation of goods into Australia. The relevant phased rate reduction provisions have already operated to reduce the customs duty rate to 'free' in the affected schedules and so are no longer required.
- Extend the period for the temporary duty-free treatment of goods that are produced or manufactured in Ukraine (excluding specified categories such as fuel and tobacco) for an additional 2 years from 4 July 2024 to 3 July 2026.

Our Take: While the measures address a range of different objectives, they collectively underline Australia's commitment to both trade reform and international solidarity. For businesses, the simplification of tariff legislation reduces compliance burdens, administrative costs, and trade barriers, creating a more efficient trading environment. These measures highlight the importance of proactive trade management and staying informed of changes in legislation.

ASEAN-Australia-New Zealand Free Trade Area Second Protocol

A Bill to amend Australia's Customs Act 1901 ("Customs Act") has received assent to implement the new customs commitments under the Second Protocol to the Association of Southeast Asian Nations (ASEAN)-Australia-New Zealand Free Trade Area (AANZFTA).

The AANZFTA Second Protocol represents a significant advancement in trade relations between ASEAN member states and Australia and New Zealand. This agreement encompasses a wide array of sectors, aiming to reduce barriers to trade and investment, thereby creating enhanced opportunities for Australian industries and investors.

Once enacted, the Bill will amend the Customs Act to include several key changes:

- Introduce new record-keeping and verification requirements for exporting goods under the Second Protocol. Failing to provide requested documents to an authorised officer may now be an offense under section 243SB of the Customs Act.

- Ensure the correct preferential tariff treatment will only apply to goods intended by the Agreement as amended by the Protocol, regardless of changes to the HS version of the goods over time.
- Insert a new definition of 'Product Specific Rules' to ensure the correct criteria are used to determine if goods transformed from a non-member state qualify for preferential treatment under the amended Agreement.
- Expansion of proof of origin requirements so that, importers may also use a self-declaration to make a claim for preferential tariff treatment.

The Bill also amends the Customs Act to revise and streamline multiple provisions concerning the RCEP, the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) and the Malaysia–Australia Free Trade Agreement (MAFTA). These amendments aim to streamline and ensure consistency across various agreements.

Our Take: The new trade measures provide businesses trading between AANZFTA members states easier access to markets and a competitive advantage. In particular, the option to use a self-declaration document to claim preferential tariff treatment simplifies the process and potentially reduces costs associated with leveraging the free trade agreement.

Updated requirements for providing assurances that imported goods do not contain asbestos

The Australian Border Force (ABF) has released updated requirements for importers and licensed customs brokers in relation to the prohibition of imports into Australia of asbestos and goods containing asbestos. Since December 2003, an Australia-wide ban on the manufacture and use of all types of asbestos and asbestos containing materials has been in place, meaning imports of asbestos or goods containing asbestos into Australia are prohibited unless a permission or exemption has been granted, or a lawful exception applies.

When making an import declaration, importers are required to declare if goods contain, or may contain, asbestos. With this update, the ABF will require importers who have declared "yes" to the potential presence of asbestos to arrange testing and certification in Australia at their own cost, unless a relevant exception, exemption or permission applies. Certain approved testing certificates and laboratory reports, in conjunction with supply chain documentation, can provide assurance that asbestos is not present in imported goods. Importers also have the option to import samples into Australia (with prior Ministerial permission) for testing, or undertake testing overseas. For testing in Australia, the ABF will only accept certification from a laboratory that is accredited by the National Association of Testing Authorities (NATA) to undertake asbestos testing that confirms asbestos was not detected. For testing undertaken overseas, the ABF will only accept certification confirming no asbestos was detected in samples from a laboratory accredited to undertake asbestos testing by a NATA-recognised equivalent through a Mutual Recognition Arrangement (MRA).

However, the ABF does not solely rely on information included on an import declaration. It conducts risk assessments of all goods entering Australia and targets those considered at higher risk of containing asbestos. This means that importers who have declared "no" to the presence of asbestos may still be required to provide information to assure the ABF that the goods do not contain asbestos when and if requested. Importers are required to undertake due diligence prior to importing goods into Australia to be certain that their goods do not contain asbestos. If the information presented does not provide sufficient assurance, the ABF will require importers to arrange testing and certification in Australia, at their own cost, by a laboratory accredited by NATA.

China

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New Export Control Regulation on Dual-Use Items

On 19 October 2024, the Chinese State Council issued the Regulations on the Export Control of Dual-Use Items of the People's Republic of China ("Regulation"), which came into effect on 1 December 2024. The key change in this Regulation is the establishment of one unified administrative system for the export control of dual-use items which falls under the responsibility of the Ministry of Commerce (MOFCOM). This unification of regulations and controls is aimed to simplify and strengthen the licensing process for the export of dual-use items.

Key points from the Regulations include the following:

- **A unified list of dual-use items subject to export control:** A unified list of dual-use items subject to export control was published on 15 November 2024. The list became effective along with the Regulation. However, MOFCOM may impose temporary controls on items outside of the list in the interest of national security and international obligations.
- **End-use and end-user management:** The Regulation publishes controls on the end use and end user on the "Controlled List" and "Watchlist." Any exports for restricted end use and/or to entities on these lists are subject to stricter review and may even result in an export denial.
- **Licensing control processes:** Exporters of controlled itms must apply for an export licence with MOFCOM before all exports. This is referred to as a "Single Licence." Exporters demonstrating robust internal compliance for export control are able to apply for a "General Licence" that allows for exports of multiple (or bulk) shipments of a specific dual-use item to one or more end-users for a period of three years. This significantly reduces the administrative burden on exporters.
- **Extraterritorial controls:** This may require entities and individuals outside of China to comply with the relevant provisions of this Regulation while transferring China-originated dual-use items or dual-use items manufactured outside China that contain or utilise China-originated dual-use items.

Our Take: The new Chinese Regulations on the Export Control of Dual-Use Items are similar in concept to the controls in place under the US Export Administration Regulations (EAR), especially their extraterritorial controls. With increasing political tensions, export control has become a prominent topic, as key global players aim to maintain control over their high-end technology. Exporters must ensure compliance with such regulations, as non-compliance can have significant implications. A good approach is to implement stringent controls in processes and take advantage of general licences as much as possible to streamline operations and reduce administrative burdens.

New measures to streamline import duty and tax policies to support foreign trade

On 5 September 2024, the General Administration of Customs (GAC) issued a "Circular on the Relevant Measures for Further Optimising Customs Duty Services to Support the Upgrading and Stabilisation of Foreign Trade ("Shu Ban Shui Han [2024] No. 12")" announcing a number of changes to streamline the use of import duty and tax policies and measures.

The key measures of the Circular are summarised below:

Measures	Details
Customs guarantee management Retroactive duty reduction/exemption for preferential imports	• Expansion of the number of insurance companies eligible to issue a customs guarantee insurance. • Customs guarantee insurance to apply to cross-border e-commerce retail imports. • If goods eligible for preferential import duty claims were imported with duties paid upfront due to urgent needs or other reasons, traders can request a retroactive duty reduction or exemption in form of a refund. To do this, the importer must initiate a refund with Customs within one year from the date of duty payment.
Treatment of duty free imports for technological uses	• Specific materials and consumables imported duty free for use in integrated circuits, new display devices, and scientific and technological innovation, will be automatically released from customs supervision from the date they are used. • For duty free imports of supplies used for scientific research, technological development, and teaching, any changes in their place of use (i.e., location where the imported goods will be used) must be approved by Customs. Additionally, any changes in the place of use during the previous quarter must be reported to Customs by the 10th day of the first month of each quarter.
Advancement and facilitation of FTAs	• Expand the scope of self-printing services for certificates of origin to include exports to Malaysia and Vietnam. • Accept certificates of origin issued by agencies of the Asia-Pacific Trade Agreement members for originating goods within one year after export or shipment. • Further simplify the submission requirements for preferences. • When reviewing certificates of origin under Free Trade Agreements (FTA), Customs should not refuse preferential tariff treatment to imported goods due to minor errors or discrepancies.

Enhanced tariff law compliance and tax collection

The General Administration of Customs (GAC) has recently issued regulations to enhance the effectiveness of China's Tariff Law. The key regulations are summarised as follows:

1. Measures for the Tax Collection and Administration of Imported and Exported Goods by the Customs of the People's Republic of China (GAC Order No. 272)

The "Measures for the Tax Collection and Administration of Imported and Exported Goods" ("The Measures," formerly GAC Order No. 124) is a key policy for customs tax collection and administration. Since 2005, it has ensured scientific tax collection, secured tax receivables, and protected taxpayers' rights. Following the Tariff Law's promulgation, The Measures were updated. The new version, issued on 28 October 2024 and effective from 1 December 2024, includes these key revisions:

- Removal of clauses requiring Customs review of tax amounts during clearance, replaced by importer-led review and declaration of tax payments. "Customs confirmation" wording is revised.
- Customs now have a three-year limit, after tax payment has been during customs clearance, to confirm tax amounts post-payment, excluding time from scenarios such as audits, and investigations.
- Additional revisions address tax guarantee administration, applicable duty and exchange rates, tax enforcement measures, and dutiable royalties' declaration obligations.

2. GAC amendments to align with Tariff Law (GAC Order No.273)

The GAC has amended 33 regulations to align with the Tariff Law, as outlined in GAC Order No. 273. These changes primarily update terminology, such as altering "Customs reviewed tax amount" to "Customs confirmed tax amount," to reflect a new import tax collection system.

Under this system, importers are now responsible for calculating, declaring, and paying taxes in accordance with the Tariff Law and the new Measures for Tax Collection and Administration on Imported and Exported Goods (GAC Order No. 272).

3. Measures for the Collection of Customs Duties, Value Added Taxes and Consumption Taxes on Inward Articles (Shuiweihui [2024] No.11), and the Announcement for Inward Articles Classification Principle and Dutiable Value Confirmation Principle (GAC Announcement [2024] No.175).

On November 29, 2024, China announced new measures for collecting customs duties, VAT, and excise taxes on imported articles, effective 1 December 2024. These measures retain the current import tax system but set a unified value cap of CNY 2,000 for postal imports.

Additionally, China Customs announced updates to the classification and valuation principles for imported articles (e.g. personal postal items, luggage items), including their classification and dutiable value chart. This update, also announced on 29 November 2024, took effect on 1 December 2024. The key points of this announcement are:

- Updates to the customs valuation principle for imports: The dutiable value is now determined by a sequential method—using the actual transaction price first, followed by the dutiable value chart, and then other reasonable valuation methodologies.
- Updates to classification schedule, revising applicable tariffs, VAT, consolidated consumption tax rates, and prices for certain articles.

Our Take: The updated "Measures for the Tax Collection and Administration of Imported and Exported Goods," effective December 2024, may reduce transparency for importers by shifting the responsibility for tax amount review and declaration entirely onto them, potentially conflicting with WTO commitments to transparency and predictability. By removing the requirement for customs to review tax amounts during clearance, importers face increased pressure to self-assess accurately without immediate oversight. Furthermore, the provision allowing customs to verify tax amounts up to three years post-payment introduces a layer of uncertainty, making it challenging for importers to predict and manage their financial liabilities with confidence, thus complicating their compliance and planning efforts.

Draft of new standards for bonded logistics account books

The General Administration of Customs (GAC) has drafted the "Circular of the General Administration of Customs on Implementing the Reconciliation for Bonded Logistics Account Book (Draft for Comments)" with the aim to further standardise the management of bonded logistics ledgers and promote the high-quality development of bonded logistics businesses. The new Reconciliation Management of Bonded Logistics Account book will be implemented on 1 January 2025.

The main areas the new account book pertain to the scope of reconciliation of management of the bonded logistics account book, regulations on reconciliation management of the bonded logistics account book and requirements for switching between old and new bonded logistics account books.

Zero-tariff treatment for all products originating from least developed countries

On 11 September 2024, the State Council Tariff Commission issued the "Announcement of the Customs Tariff Commission of the State Council on Granting Zero-Tariff Treatment for 100% of Products from the Least Developed Countries ([2024] No. 9)" to expand unilateral preferential access to exports from least developed territories to boost its economic development.

Effective from 1 December 2024, a preferential tariff rate of zero applies for all products originating from the least developed territories that have established diplomatic relations with China, including 33 territories in Africa. For products subject to tariff quotas, only the tariff rates within the quota are reduced to zero, while the tariff rates outside the quota remain unchanged.

India

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Use of third party invoicing when using FTAs

On 21 October 2024, India Customs announced Instruction No. 23/2024 to clarify the ASEAN-India Free Trade Agreement (AIFTA) and the general use of FTA preferential origin in India. The instruction covers the following key points:

- There have been instances where India Customs denies AIFTA preferential treatment when companies use third-party invoicing because the invoice value declared for customs valuation purposes does not match the FOB value indicated on the Form AI. This practice is not aligned with the AIFTA legal text on third party invoicing provisions and most other FTAs. This announcement clarifies that India Customs cannot deny a Certificate of Origin (COO) on the basis that the value declared on the customs declaration and COO does not match as long as the product meets the specific FTA's Rules of Origin.
- Under the Customs (Administration of Rules of Origin under Trade Agreements) Rules (CAROTAR) - i.e., India Customs' mechanism to validate FTA claims - India Customs are only able to request information that is consistent with the specific FTA legal texts and must strictly follow the review process. This means that CAROTAR does not obligate the importer to share commercially confidential information with India Customs.
- A speaking order to deny a preferential claim can only be issued by India Customs when there is a review process to establish that the origin criteria have not been complied with.

Our take: This instruction clarifies that discrepancies between invoice values and FOB values on COOs should not result in the denial of preferential treatment if the product meets the specific FTA's Rules of Origin. This is aligned with the intended purpose of third-party invoicing provisions. Under CAROTAR, the emphasis on adhering to specific FTA legal texts without demanding commercially confidential information marks progress towards more transparent and consistent customs procedures. Although the announcement is a step in the right direction, we are still seeing customs authorities at various ports continue to operate autonomously as before and make assessments based on port-specific practices.

Clarification on Retrospective Certificates of Origin under India-UAE CEPA

The India–UAE Comprehensive Economic Partnership Agreement (CEPA) allows for Certificates of Origin (COs) to be issued retrospectively under exceptional circumstances, such as errors or omissions, up to twelve months after shipment. This change addresses problems faced by importers who were previously denied preferential benefits due to retrospective COs. On 16 October 2024, India Customs issued Instruction no. 21/2024-Cus (N.T.) to clarify that retrospective COs are valid if certain conditions are met, including issuing refunds for denied benefits. Minor clerical errors should not result in benefit denial if the CO is credible. This clarification may also influence similar issues in other trade agreements.

Our take: The clarification on retrospective COs under the India-UAE CEPA is promising, but its practical implementation remains uncertain, requiring importers to stay informed about compliance requirements. Importers should also assess whether this approach might apply to other FTAs with similar clauses, as it could influence the handling of retrospective CO claims elsewhere.

Update to India's export control SCOMET list

Effective from 2 October 2024, the Directorate General of Foreign Trade (DGFT) updated the Special Chemicals, Organisms, Materials, Equipment, and Technologies (SCOMET) list through issuance of Notification No. 25/2024. The Notification was issued on 2 September 2024. SCOMET items are dual-use items that can be used for both civilian and military applications and controlled for export out of India.

Exporters of SCOMET items are required to obtain a licence from DGFT (except for certain specific categories) prior to export. The licensing process involves a thorough review by the DGFT or any relevant ministries of the technical specifications of the items to ensure that they do not contribute to the proliferation of weapons of mass destruction or pose a threat to national and international security.

Digitisation of customs bonded warehouse approval processes

On 30 September 2024, India Customs launched a new warehouse module on ICEGATE to digitise the currently manual approval processes for establishing bonded warehouses (public, private and special) and related compliance activities.

Key features of the ICEGATE warehouse module are summarised as follows:

- Online warehousing licence approval: Applicants can now submit online applications with the required documents, which will be processed by the relevant customs authority. Upon approval, a warehouse code is generated, and the relevant warehousing licence will be issued.
- Goods transfer procedures: The module supports various transfer scenarios, including transfers within a warehouse and changes in ownership. It automates workflows for seller and buyer details, bond requirements, and customs officer approvals, while maintaining records of goods under the in-bond bill of entry.
- Monthly returns filing: Monthly returns covering receipt, storage and removal of goods must be submitted online. Scanned copies need to be uploaded for verification. A phase II update will introduce online forms for these returns.
- Miscellaneous Guidelines: The physical submission of security and bonds remains necessary at the port of import. Transfer applications are now visible to buyers on their dashboards. Specific bonds and certificates are required for certain transfers.

Extension of RoDTEP validity period and updates to its rates

Following the Directorate General of Foreign Trade's (DGFT) extension of the Remission of Duties or Taxes on Export Products (RoDTEP) scheme till 30 September 2024 earlier this year, the DGFT published Notification No. 32/2024-25 on 13 September 2024 announcing a further extension of the scheme's validity as below. The RoDTEP scheme is a duty and tax refund scheme provided to certain exporters, which covers refund of central, state and local duties and taxes paid on imported goods that are subsequently re-exported.

- For eligible exporters using the Advance Authorisation (AA), Export Oriented Units (EOU) and Special Economic Zone (SEZ) schemes: RoDTEP scheme has been extended to 31 December 2024.
- For other eligible exporters: RoDTEP scheme has been extended to 30 September 2025.

This notification also provides the updated RoDTEP rates effective from 10 October 2024.

Exporters of goods via courier able to leverage export duty drawback and benefits

On 12 September 2024, India Customs issued Circular No. 15/2024 to announce that exporters exporting goods via courier are able to submit claims for export duty drawback, RoDTEP and Rebate of State and/or Central Taxes and Levies (RoSCTL) benefits via the Indian Customs EDI system (ICES).

Previously, exporters exporting goods out of India via courier were unable to claim duty drawback, RoDTEP and RoSCTL benefits as the Express Cargo Clearance System (ECCS) (i.e. system for automated customs clearance of shipments via courier) could not process the foregoing claims.

Our take: This initiative aims to boost courier exports and strengthen India's position in the growing global e-commerce sector. As such, it presents direct cost saving benefits for businesses involved in international trade through courier services, particularly smaller sellers on e-commerce platforms.

Updates to EO fulfilment reporting requirements for exporters leveraging the EPCG scheme

On 20 September 2024, the Directorate General of Foreign Trade (DGFT) released Public Notice No. 24/2024-25 on updates to the Export Obligation (EO) fulfilment reporting deadlines which is a requirement under the Export Promotion Capital Goods (EPCG) scheme. Previously, EPCG authorisation holders had to submit their EO fulfilment status online, including shipping bill details and goods and services tax (GST) invoices, by 30 June of each year. To facilitate business compliance operations, exporters are now required to report EO fulfilment at the end of the first four-year block and then annually, with certification by a Chartered Accountant, Cost Accountant, or Company Secretary, along with requisite supporting documents.

For context, EPCG is a scheme that allows exporters in India to import capital goods without incurrence of customs duty. To leverage this scheme, exporters must fulfil an EO which is essentially the obligation to export products covered by the EPCG. The EO period under the scheme is divided into two blocks:

- First block: First four years after the EPCG licence has been issued.
- Second block: Remaining two years after EPCG licence has been issued.

CBIC extends transitional period for SCMTR

On 31 August 2024, India Customs issued Notification No. 57/2024-Customs (N.T.) to extend the transitional provisions of the Sea Cargo Manifest and Transshipment Regulation (SCMTR) by port. This extension gives stakeholders additional time to transition to new formats and timelines for filing manifest declarations and to implement controls to ensure compliance with new customs obligations stipulated under the SCMTR. The extended transition dates by port are published directly in the notification.

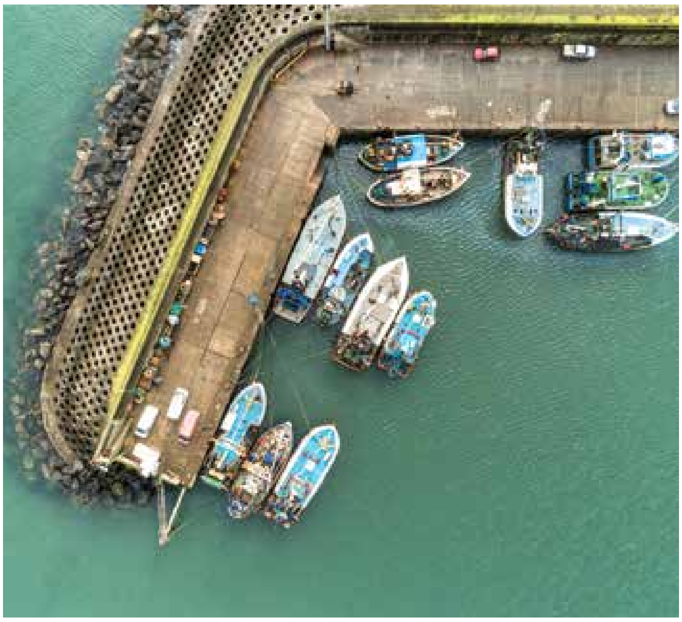
Operationalisation of automated IGCR compliance procedure for EOUs

In August 2024, India Customs issued Circular No. 11/2024 for the rollout of the ICEGATE system for Export Oriented Units (EOUs) to complete the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR) compliance requirements digitally. IGCR is a set of regulations introduced to streamline the process of importing goods into India at reduced import duty rates. With this update, relevant EOUs (i.e. those leveraging reduced import duty rates) must transition to the automated module on the ICEGATE system to fulfil compliance requirements under IGCR.

We have summarised key steps for EOUs to activate the automated IGCR module on ICEGATE below:

- First, EOUs must generate an IGCR Identification Number on the ICEGATE portal and register the IGCR bond for filing the bill of entry with the IGCR benefit.
- On activation, the same ICEGATE module can be used for clearances from special economic zones to EOUs. This means that the clearance process for EOUs to leverage reduced import duty rates under the IGCR will be fully automated.

The implementation of the said module was decided initially to begin from 25 August 2024 however, due to the difficulties in the implementation of the automated module, the CBIC issued Circular No. 13/2024 and 16/2024 to delay the implementation date, eventually, to 25 September 2024.



Updates from the BIS on machinery and industrial equipment and steel products

The Bureau of Indian Standards (BIS) is India's national standards body, responsible for developing and enforcing quality and safety standards for products and services. While BIS certification is generally voluntary, certain products must comply with BIS standards to ensure quality and safety. BIS achieves this through Quality Control Orders (QCOs) and Safety Orders (SOs), which mandate compliance with specific standards. We have summarised recent developments from the BIS below:

- Machinery and Electrical Equipment Safety
  - Machinery and Electrical Equipment Safety (Omnibus Technical Regulation) Order, 2024: Issued by the Ministry of Heavy Industries on August 28, 2024, effective from August 28, 2025.
  - Covers over 50,000 types of machinery, including pumps, compressors, cranes, and more and requires compliance with BIS safety and conformity standards.
- Steel and its Products
  - Steel and Steel Products (Quality Control) Order, 2024: Issued by the Ministry of Steel on August 29, 2024
  - Mandates standards for multiple steel items under Chapter 72 of the HS. Certain standards are effective immediately, while others will be enforced after a specified period.

DRI Officers Recognised as "Proper Officers" for Issuing SCNs

In a recent decision, the Supreme Court reversed its 2021 ruling regarding the authority of Directorate of Revenue Intelligence (DRI) officers to issue Show Cause Notices (SCNs) for customs duties. Previously, the court had ruled that DRI officers were not authorised to issue such notices. However, it has now recognised DRI officers as "proper officers" under the Customs Act, granting them the authority to issue SCNs. This change aligns with amendments made in the Finance Act, 2022, which clarified the role of "proper officers" and validated SCNs issued by DRI officers retrospectively. The Supreme Court's decision provides clarity on the legal standing of DRI officers, impacting ongoing cases and disputes. Traders should note this clarification, as it settles the issue of DRI officers' authority to issue SCNs and offers guidance for resolving pending appellate matters.

Indonesia

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Expanded Implementation of container scanning tools

On 29 October 2024, the Directorate General of Customs and Excise (DGCE) issued regulation PER-11/BC/2024 to enhance the efficiency and effectiveness of physical examinations during customs clearance by mandating the use of container scanning tools. This regulation amends PER-1/BC/2023, previously covered in our March/April 2023 edition of Trade Intelligence, and became effective on 5 November 2024.

The key changes in the regulation are as follows:

1. Container scanning tools are now mandatory for all imports, irrespective of the importer lane.
2. Customs officials must oversee the opening of containers during physical inspections.
3. A new provision allows customs officials to decide whether full container checks are necessary, with options for partial or no physical checks.
4. New procedures for partial checks include:
    - Removing goods until the container's back wall is visible.
    - Removing specific items from the container for inspection.
5. If discrepancies arise, such as mismatches between physical quantities and import declarations, or if goods are deemed high-risk, customs officials may conduct a more thorough examination.

New anti-dumping duty on goods imported from China, Malaysia, South Korea, and Taiwan

The Ministry of Finance (MoF) issued Regulation No. 60 Year 2024 (MoF-60/2024), 66 Year 2024 (MoF-66/2024), and 70 Year 2024 (MoF-70/2024). These regulations impose new anti-dumping duties on commodities such as Biaxially Oriented Polypropylene, Flat Rolled Iron or Non-Alloy Steel Plated or Coated with Tin and Ceramic Tiles that originate from Malaysia, China, South Korea and/or Taiwan.

These regulations will be effective for the following commodities for five years, with the specific periods as follows:

- Biaxially Oriented Polypropylene: 01 October 2024 – 01 October 2029
- Flat Rolled Iron or Non Alloy Steel Plated or Coated with Tin: 18 October 2024 – 17 October 2029
- Ceramic Tiles: 28 October 2024 – 27 October 2029

Note that the anti-dumping duty rates will differ based on commodity, HS code, on the country of origin and suppliers. For further details on the specific anti-dumping rates, please refer to regulations.

New export restrictions on ocean sedimentation products and kratom plant

The Ministry of Trade (MoT) issued Regulation No. 20 Year 2024 (MoT-20/2024) and 21 Year 2024 (MoT-21/2024) to amend MoT Regulation No. 22 Year 2023 and 23 Year 2023, respectively. Specifically, the two regulations introduce new export prohibitions and export restrictions for a range of ocean sedimentation products and kratom plant products. The regulations took effect on 28 September 2024.

Note that export restricted goods may be exported once an exporter obtains the required export licence. However, export prohibited goods cannot be exported at all.

Depending on the specific tariff codes and product description of the ocean sedimentation products (under HS heading 2505) and kratom plant (under HS heading 1211), export may be either restricted or prohibited. For further details on the specific restriction/prohibition status, please refer to the regulations.

Japan

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Japan's MOF publishes report on FY24 post-clearance audit results

On 13 November 2024, the Japanese Ministry of Finance (MOF) published the results of Japan Customs' PCA of import declarations for customs duties and Japan consumption tax (JCT) for FY24 (July 2023 ~ June 2024). Japan Customs conducted post clearance audits (PCA) on 3,576 importers in FY24, compared to 3,312 in FY23 and of these importers in FY24, 74.9% were found to have filed non-compliant import declarations, which is a slight increase from 73.6% cases in FY23. The top five categories of goods with the highest duty and JCT underpayment are as follow:

#	Description of goods	HS Chapter	Underpayment (billion JPY)
1	Optical instruments, etc.	90	2.64
2	Electrical appliances	85	1.76
3	Machinery	84	1.49
4	Pharmaceutical products	30	1.48
5	Automotives, etc.	87	1.27

The aggregate amount of underpayment related to these five categories of products accounts for approximately 67% of Japan's total customs value underpayment (12.83 billion JPY) discovered by Japan Customs in FY24.

In the report, Japan Customs provided the following typical examples of non-compliance:

- import declarations made based on invoices intentionally set at a lower value by exporters or importers;
- failure to include additional values paid on separate invoices connected to the imported goods as part of the customs value in the import declaration (e.g., undeclared transfer pricing adjustments); and
- failure to include the cost of parts provided free of charge (i.e., assists) by the importer to the exporter, or other service fees paid by importers separately, in the import customs value.

Our take: Given the high rate of non-compliance, it is clear that customs import declarations is still a common issue faced by importers. It's also apparent that Japan Customs is targeting such post-clearance audits on certain industries, potentially due to more convoluted nature of their products, where customs valuations and declarations are more challenging and prone to errors due to the number of technical parts, assists involved, etc. Until the levels of non-compliance are meaningfully reduced, we can expect Japan Customs to continue focusing on such targeted post-clearance audits to reduce to volume of underpayment and loss of Government revenue due to declaration issues.

Japan eases import duty payment process for non-resident importers through its appointed ACP's account

Non-resident entities acting as Importers of Record (IOR) in Japan now have the option to use their appointed Attorney for Customs Procedures (ACP)'s real-time account to pay import duties and taxes, as announced by the Nippon Automated Cargo and Port Consolidated System (NACCS). This new regulation took effect on 15 September 2024. In addition, Japan Customs has introduced procedural changes to reduce the administrative burden for ACP registration. Previously, non-resident entities were required to use a real-time account option to pay import duties through an NACCS-designated bank in Japan.

For context, since October 2023, non-resident entities transacting as IORs in Japan are required to appoint an ACP. This requirement was reported in our Trade Intelligence Publication for September/October 2023.

Our take: Japan Customs has made several crucial changes regarding the requirements to be an IOR in Japan since October 2023. These updates have led many companies to review their existing commercial setups, sometimes resulting in the need to appoint a non-resident entity to become a non-resident IOR in Japan. Consequently, non-resident IORs need to appoint an ACP to continue their imports. Foreign companies (i.e., non-resident) importing into Japan should closely monitor updates surrounding IOR and ACP regulations, as these changes may cause supply chain disruptions.

Upcoming changes to Japan's import declaration requirements

Starting October 12, 2025, importers in Japan will be required to provide additional information on import declaration forms. Japan Customs has released further details to clarify these new requirements, which were previously outlined in our Trade Intelligence May-June 2024 edition. We have summarised the changes below:

- Post-Import Destination Declaration
  - Importers must now specify the post-import destination using a code in the Nippon Automated Cargo And Port Consolidated System (NACCS), Japan's digital platform for trade procedures. The available codes are:
    - C: Destination is the same as the importer's address.
    - N: Destination not defined in the transport contract.
    - T: Part of the cargo goes to a different address.
    - M: Multiple destinations differ from the importer's address.
  - For example, if a transport contract states that a single product is to be delivered to the importer's address, the code "C" should be used. If two products are delivered to different addresses, code "T" applies, whereas "M" is used for multiple products going to various locations. Post-clearance changes in destination do not require updates to the declaration. An Excel template for multiple destination entries has been published and will be included in a future Customs Circular.
- E-Commerce Platform Declaration
  - Transactions made through online platforms will require the platform's name to be entered into NACCS using a unique, pre-logged code. A list of these platforms and their codes will be available by October 10, 2025. If a platform is not listed, importers can use the dummy code "ZZZ" and specify the name. An application on the Japan Customs website will also be available for platform registration.

Korea

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Increased control and penalties on strategic goods

The Ministry of Trade, Industry, and Energy (MOTIE) issued an amendment to the Presidential Decree of Foreign Trade Act to allow Korea's export control regime to become more agile in an increasingly stressed geopolitical environment. The amendment became effective from 8 October 2024.

Key details are summarised below:

MOTIE can expand control over strategic items beyond those agreed in international agreements (e.g., Wassemar Agreement, Nuclear Suppler's Group, Missile Technology Control Regime, Australia Group) where there is support to control such goods to adapt to the evolving export control environment.

Penalties related to export control violations are increased and new violations are introduced. Please see the table below for more details:

	Violation	Relevant Article under Foreign Trade Act	Penalty Amount (Unit: KRW 10,000)		
			First violation	Second violation	Third violation
Amended	Cases where self-classification on strategic item is conducted without completing the mandatory training, or where the results of the self-classification are not registered	Article 20-2(1)	500	700	1000
Newly established	Cases where there is a violation of the requirement to submit materials for strategic item classification verification.	Article 48(2)	1000	1500	2000
	Cases where an export licence exemption has been granted, but the required supporting documents are not submitted.	Article 19-6(3)	500	700	1000

Our take: The expansion of control over strategic items beyond international agreements, coupled with increased penalties for export control violations, signals the government's commitment to robust compliance and national security. It is not uncommon for these changes to also come with increased scrutiny and stricter enforcement of export control regulations. Companies should conduct a review of their key areas of export control risks to mitigate potential non-compliance, which can result in financial and reputational costs.

Malaysia

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Amendments under Budget 2025

On 18 October 2024, the Ministry of Finance (MoF) tabled its Budget 2025. We summarise the key budget items concerning customs and trade are as follows:

1. Amendment to excise duty rate for sugar sweetened beverages

On 13 December 2024, the MoF published the Excise Duties (Amendment) (No.2) Order 2024 to increase the excise duty rate from RM0.50 to RM0.90 per litre for beverages containing sugar specifically listed in Chapter 20: Preparations of vegetables, fruit, nuts or other parts of plants and Chapter 22: Beverages, spirits and vinegar. This is aimed at curbing the consumption of sugary drinks and promoting public health. This order will take effect on 1 January 2025.

This amendment is made in reference to the Budget 2025 announcement. However, the changes to the excise duties are not being implemented in phases, as originally outlined in the Budget 2025 announcement. Instead, it has been enforced as a single one-off increase.

Our take: The upcoming increase in excise duty rates are rather substantial in nature as compared to the initial announcement of a phased increase, hence we do expect businesses importing such sugary sweetened beverages to be affected in terms of impact to their bottom line, early next year. Affected businesses should proactively assess the key financial impacts and exposures of the increased cost of imported goods to manage key budget allocations for 2025.

To mitigate the impact of potential increase in excise duty on sugar-sweetened beverages, companies can consider reassessing their pricing strategies and exploring more health-conscious product lines.

1. Increase in export duty rates for crude palm oil

Effective 1 November 2024, crude palm oil with market prices exceeding RM4,050 per metric ton is subject to a flat export duty rate of 10%.The previous export duty flat rate was 8% for crude palm oil with market prices exceeding RM3,450 per metric ton.

New price bands are introduced for crude palm oil priced above RM3,601 per metric ton, with an incremental export duty rate of 0.5% for each subsequent price band of RM149 from the preceding price band, up to a cap of RM4,050 per metric ton.

2. Increase of crude palm oil price threshold triggering windfall profit levy

On 16 December 2024, the MoF published the Windfall Profit Levy (Oil Palm Fruit) (Amendment) Order 2024 to increase to increase the thresholds for calculation of windfall profit levy on oil palm fruit as proposed in the 2025 Budget.

Currently, the price threshold for triggering windfall profit levy applicable to crude palm oil producers is set at RM 3,000 per metric ton in Peninsular Malaysia and RM3,500 per metric ton in Sabah and Sarawak, with a uniform levy rate of 3% applied across Malaysia. Effective from 1 January 2025, crude palm oil price threshold for Peninsular Malaysia will be increased from RM3,000 to RM 3,150 per metric ton and RM3,650 for Sabah and Sarawak. The levy rate would remain unchanged.

Our take: The above amendments will have the greatest impact on businesses in the beverage and crude palm oil industries. To stay competitive, these industry players must be proactive in adapting their pricing strategies and financial models accordingly.

Potential changes to the crude palm oil tax structure are aimed at ensuring domestic crude palm oil supply and encouraging domestic production of value-added products that incorporate crude palm oil.

Crude palm oil exporters should thus expect increased costs and consider strategic planning to manage financial impacts. On the other hand, potential increase in the windfall profit levy threshold represents a win for domestic producers as it acknowledges and provides relief from the rising costs of production in the palm oil industry.

Designation of Pulau 1 in Johor's Forest City as a duty-free island

On 20 and 27 November 2024, the Ministry of Finance issued several orders and amendments that took effect on 1 December 2024 (see below for the full list of orders and amendments). These primarily concern the designation of Pulau 1 in Forest City, Johor, as a duty-free island, similar to Labuan, Langkawi, Tioman, and Pangkor. Key points are as follows:

- Goods imported or transported to Pulau 1, or from the principal customs area (which includes all parts of Malaysia except Free Zones and duty-free islands), are generally subject to import duty, excise duty, and sales tax. Exemptions apply to intoxicating liquors, chocolates, perfumes, and cosmetics, which are not subject to these duties and taxes.
- Individuals wishing to sell goods exempt from import duty, sales tax, and excise duty must apply to the Ministry of Finance for approval. Approved sellers must adhere to specified conditions set by the Ministry.

Full list of Orders and Amendments:

- Excise Duties (Pulau 1) Order 2024;
- Sales Tax (Imposition of Sales Tax in Respect of Designated Areas)(Amendment) Order 2024;
- Free Zones (Amendment) Regulations 2024;
- Customs (Prohibition of Imports) (Amendment) (No.4) Order 2024;
- Customs Duties (Pulau 1) Order 2024;
- Customs (Amendment) (No.3) Regulations 2024;
- Sales Tax (Amendment) Regulations 2024,
- Customs (Compounding of Offences)(Amendments) Regulations 2024; and
- Excise (Compounding of Offences) (Amendment) Regulations 2024.

Discussion on the proposed Johor-Singapore Special Economic Zone

Officials from Singapore and Malaysia met in Johor from August 28 to 30, 2024, to discuss the Johor-Singapore Special Economic Zone (JS-SEZ), covering issues like economic sectors, movement of people and goods, ease of doing business, and talent development, though details on its implications for traders are still limited. Please refer to our Singapore section for more details and our take.

New Zealand

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New ruling sets precedent to include royalties for non-product related IP in declared customs import value

A recent High Court judgement (Chief Executive of New Zealand Customs Service v Country Road Clothing (NZ) Ltd [2024] NZHC 1696) highlights a common and long-standing issue on whether certain royalty payments should be included in the customs value declared for imported goods. Whilst acknowledged as a "very finely balanced decision" by Becroft J, the High Court judgement overrules an earlier 2022 Customs Appeal Authority decision and agrees with New Zealand Customs that royalty payments in respect of non-product related intellectual property may need to be included in the customs import value.

We have summarised key details of the case below.

Case summary

- Country Road Clothing (NZ) Ltd (CRNZ) purchases goods from Country Road Clothing Pty Ltd (CRAU) and is the importer of record into New Zealand.
- In addition to the purchase of goods, CRNZ pays a royalty to CRAU that relates to a comprehensive bundle of intellectual property rights, governing aspects of CRNZ's retail operations (including shop layout, design and marketing). The royalty is only payable if CRNZ's net profit exceeds a 5% return on sales. No royalty is payable if the routine return on sales is less than this.
- The key matter before the High Court was whether the royalties paid by CRNZ should be included in CRNZ's declared customs value for the goods.

High Court judgement

The High Court found that the royalties **should be** included in the customs value declared for the imported goods for the following reasons:

- The reality of the contractual arrangements between CRNZ and CRAU did not support a clear separation between the royalty payments and the goods themselves.;
- Application of the tests developed in a "trilogy" of previous Court of Appeal cases required royalty payments to be included in the price paid or payable.;
- Including the royalty payments as part of the "true value" of the imported goods is consistent with the legislative purpose of the Customs and Excise Act 2018.; and
- There were strong policy purposes to support this approach, including the desirability of consistency of interpretation and "harmonised application of a materially identical provision in an international treaty".

While no decision was required on this matter, the High Court also acknowledged that there would be a strong case for the payments to be viewed as "proceeds of subsequent sale", which would form part of the declared customs value.

Our take: This case is unique as it goes beyond the "trilogy" of previous Court of Appeal cases to rule that royalties for non-product related intellectual property (such as business know-how, retail strategy and operations, and some other post-import services) without a clear nexus to imported goods must be included in the customs value declared for such goods. It is also noteworthy in that it appears to rule based on what the authorities would like the customs valuation legislation to say, as distinct from what it actually says.

For importers that have similar arrangements, it would be prudent to consider whether royalties and / or licence fees should be included in the declared customs value based on latest rulings and practice, and potential steps that can be taken to mitigate financial exposure. A key consideration is to enrol in the Provisional Values Scheme which would give importers the opportunity to disclose adjustments (including royalties) to New Zealand Customs without exposure to compensatory interest.

In view of Customs' trade assurance programme, customs valuation non-compliance will continue to be a key focus. We are aware that 199 audits have been scheduled for the period July to December 2024, so we expect increased scrutiny from Customs to identify non-compliance, including issues related to royalty and licence fees.

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Implementation of the ATA Carnet System

On 7 August 2024, the Bureau of Customs (BOC) issued a memo on the implementation of the ATA Carnet System in the Philippines for the temporary import and export of goods. The ATA Carnet System is an international customs document system that allows the temporary importation of goods without paying duties and taxes, facilitating the movement of items for trade shows, exhibitions, or professional purposes across multiple territories.

Key operational details of the ATA Carnet System include:

- There are customs offices in specific seaports and airports designated to process ATA Carnets. The document can be used for hand-carried goods and accompany air cargo 24/7 at international airports, while unaccompanied air cargoes and sea cargoes can only be cleared during business hours on weekdays.
- Goods subject to trade restrictions must comply with the necessary permits from competent authorities prior to customs clearance.
- Split consignments are not possible, but partial importation of goods specified in the ATA Carnet's General List is allowed under certain conditions.
- Goods must be re-imported or re-exported into and from the Philippines in the same condition as when they were originally exported or imported.
- Duties, taxes, penalties, and regularisation fees will be collected on goods that are not re-exported or have no proof of re-exportation.

Increased tariff for imported salt

On 30 September 2024, the Bureau of Customs (BOC) issued an order to increase the duty rate of imported salt from 1% to 9%. The additional tariff aims to fund the development of the salt industry in the Philippines. The increased tariff will apply to several tariff codes for salt products classified under HS heading 2501. Refer to the order for the full list of tariff codes.

Our take: Increased duties on salt can significantly impact companies' trading margins, whether they are distributors or use salt as a raw material. These higher costs can erode profit margins, making it crucial for businesses to explore potential duty-saving schemes such as FTAs. FTAs can provide reduced tariff rates or duty exemptions, helping companies maintain competitive pricing and profitability.

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Discussion on the proposed Johor-Singapore Special Economic Zone

Officials from Singapore and Malaysia convened in Johor from August 28 to 30, 2024, to discuss the Johor-Singapore Special Economic Zone (JS-SEZ). The meeting addressed a range of issues, including economic sectors, the movement of people and goods, ease of doing business, and talent development. As of now, limited information is available regarding the initiative and its implications for traders, especially in terms of customs and trade facilitation.

Our take: Johor is becoming increasingly important for Singaporean businesses seeking to relocate land and labour-intensive operations like storage and manufacturing to reduce costs while maintaining competitiveness and speed to market. Its proximity to Singapore offers logistical advantages and cost savings, making it an attractive alternative. However, there is still a lack of clarity on customs and trade procedures within the JS-SEZ which is crucial for businesses to fully capitalise on cost saving benefits.

Omission of freight charges considered in sentencing for fraudulent customs value case

On 15 October 2024, the Singapore State Courts convicted business owners of Vanity Closet SG Private Limited for fraudulent evasion for Goods and Services Tax (GST) resulting from wilful under declaration of customs import value and omission of freight charges. Vanity Closet SG Private Limited business was to conduct live stream sales of branded goods from overseas retail outlets.

Imports affected were for the period between August 2021 and January 2023. Apart from the sentencing, cumulative fines of SGD $849,000 were imposed.

Our take: This news sounds a clear warning that Singapore Customs takes customs non-compliance, especially wilful non-compliance, very seriously. The case underscores the importance of accurate customs value declaration, particularly for B2C transactions (e.g., e-commerce) where GST is a crucial tax component. Another point worth noting is that the Singapore State Court took into consideration the omission of freight charges during the sentencing. In Singapore, if actual freight and insurance charges are not known or available, importers/declaring agents must defer to the flat rates for freight and insurance listed on the Singapore Customs website for computation of customs import values.

Updated VDP requirements for GST short payment on imported fish and other marine products

On 1 October 2024, Singapore Customs released an Official Notice to summarise updates made to a preceding Circular which addressed the rise in GST short payment stemming from underdeclaration of customs value for the importation of fish and other marine products through Jurong Fishery Port. This Circular emphasises the importer's and their declaring agent's responsibility to submit a Voluntary Disclosure (VD) to Singapore Customs in the event of short GST payment.

The updates are meant to align the process with current practice for the same type of VD submissions for other types of import. Key points are summarised below:

- Clarification that all VD submissions must be made via the online VD form instead of by fax to Singapore Customs' VDP unit as it was previously. The updated Circular also details steps to access the online VD form on the Singapore Customs website.;
- Updates to the supporting documents required for VD submission and clarification that supporting documents must be submitted in PDF format for successful processing of the VD submission.; and
- In cases of GST overpayment, Singapore Customs has clarified that they will provide specific instructions on how to seek a refund after receiving the relevant VD submission.

TradeNet fees update

On 1 November 2024, Singapore Customs announced that there is change to the statutory fees for permit and Certificate of Origin (CO) applications submitted via TradeNet, which remain at $0.90 and $4.00 respectively. However, effective 13 November 2024, the messaging and processing fees is adjusted by the TradeNet operator, CrimsonLogic Pte Ltd, due to rising operational costs. The messaging fee increased from $0.20 to $0.21 per application, and the processing fee rises from $1.98 to $2.08 per application.

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MOEA Expands High-Tech Export Controls to Russia and Belarus

On 5 November 2024, the Ministry of Economic Affairs (MOEA) announced amendments to the "High-Tech Commodities List for Exportation to Russia and Belarus" to align with international partners. This follows previous controls on Nitrocellulose (HS Code 3912.20) published in our May/June 2024 Trade Intelligence and expands the list to include:

- Cellulose-related Products (HS Codes: 3912.12, 3912.31, 3912.90) - Compounds used in explosives.
- Machine Tool Parts (HS Code: 8466.93) - Utilised in weapons production.
- Servo Motors (HS Code: 8501.10) - Used in battlefield drones.

The MOEA emphasises that penalties for first-time export control violations have increased to NTD 1,000,000. Exporters are urged to comply with regulations and perform due diligence to safeguard their reputation and interests. The MOEA continues to update export control measures according to trends with its international partner.

Our Take: Recent media reports indicate that Taiwan ranks among the top five territories supplying machine tools to Russia. In response, Taiwan has implemented proactive measures to address export control issues. These measures include repeatedly expanding the export control list, increasing penalties for first-time violations to 15 times higher, and organising seminars and conferences to assist businesses. Exporters are strongly advised to comply with export control regulations and stay informed about international trends.

EU and Taiwan reach an agreement on WTO dispute over offshore wind localization rules

In our July/August 2024 Trade Intelligence Publication, we reported that the EU had requested a dispute consultation with the World Trade Organisation (WTO) regarding Taiwan's localisation requirements in competitive auctions for offshore wind energy projects. Following several negotiation rounds, an understanding was reached in early November. Taiwan has committed to revising its guidelines for Phase 3.2 offshore wind projects to introduce more flexibility for implementing winning bids. Key changes include:

- A new mechanism will allow developers to apply to the Ministry of Economic Affairs (MOEA) for contract amendments if they face issues not attributable to them, ensuring grid connection without penalties. Scenarios include:
  - Insufficient capacity from domestic suppliers.
  - Domestic capacity issues affecting the grid connection schedule, such as product quality or delivery conditions.
  - Other unforeseen issues, with a reasonable explanation.
  - Persistent difficulties after changes to the Implementation and Resource Plan (IRP).
- Localisation requirements will be removed from future allocation rounds, no longer serving as eligibility conditions or award criteria.

Launch of new AI-Powered Product Classification System

On 25 September 2024, the Customs Administration of the Ministry of Finance (MoF) launched an Artificial Intelligence (AI) based Product Classification System with the aim of enhancing customs operations.

Currently, Taiwan's tariff query system only supports full-text searches, requiring the exact product name to be present in the tariff code descriptions. This limitation often reduces the system's effectiveness.

The new AI-powered product classification system uses a vast dataset comprising historical declarations, information obtained from advance rulings for tariff classification, and other relevant customs information to provide results to traders. The new system recommends the most appropriate 6-digit classification code for import and export goods. For instance, "potato chips" are not explicitly defined in tariff code descriptions, making them unsearchable in the current system. However, the new AI-powered product classification system can identify the appropriate tariff code based on this general description, suggesting that the product should be classified under Chapters 19 or 20.

In addition to direct product name searches, the system features an interactive Q&A interface that guides users through a series of questions to help them find the applicable tariff code. In the future, the system is expected to evolve to offer 8-digit classification codes and further utilise advanced AI technologies, such as automatic image recognition of goods.

Our Take: It is important to note that while this new AI system offers exciting functions, it should be regarded as a supportive tool and act as the first step in assessing the classification of a product. Further verification may be required to validate the HS code results obtained. Companies declaring to Taiwan Customs are still solely responsible for the accuracy of their declarations.

It is also worth noting that there are certain limitations to the system, as it does not provide tariff rates or related import/export regulation codes, which is less convenient compared to the current system.

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Extension of reduced 7% VAT rate until 30 September 2025

The Thai government has announced the extension of the currently reduced Value-Added Tax (VAT) rate of 7% from the statutory rate of 10%, effective from 30 September 2024 to 30 September 2025. This reduction is a routine adjustment that happens on a yearly basis, as part of the government's broader aim to meet national economic growth targets. As before, the 7% VAT rate will continue to apply to activities such as importation, including importation of low-value goods under THB 1,500, and the domestic sale of goods and services.

CCPIT's new issuance system to verify authenticity of ACFTA and RCEP preferential COs

In September 2024, the Thai Customs Tariff Policy and Appeal Division issued Notification No. 3/2567 on the China Council for the Promotion of International Trade (CCPIT)'s transition to a new Preferential Certificate of Origin (CO) issuance system from 1 August 2024 for goods exported from China. Thai importers that leverage China-related FTAs (i.e. ASEAN China Free Trade Area (ACFTA) and Regional Comprehensive Economic Partnership (RCEP)) should use the updated CCPIT issuance system to verify the authenticity of ACFTA and RCEP Preferential CO issued in China prior to claiming the relevant preferential tariff treatment in Thailand.

This notification also provides the full list of websites that Thai importers should refer to for verification of different FTAs. Please see the changes related to this announcement in bold text:

Preferential COs	Condition	Website
Form E (under ACFTA)	Form E issued by Customs of the People's Republic of China	http://origin.customs.gov.cn
	Form E issued by China Council for the Promotion of International Trade (CCPIT) (Ceased usage on 31 July 2024)	**http://check.ccpiteco.net**
	Form E issued by the CCPIT (Effective from 1 August 2024, onwards)	**http://check.ecoccpit.net**
Preferential CO/ Declaration of Origin (under RCEP)	Preferential CO under RCEP issued by the CCPIT (Ceased usage on 31 July 2024)	http://check.ccpiteco.net
	Preferential CO under RCEP issued by the CCPIT (Effective from 1 August 2024, onwards)	**http://check.ecoccpit.net**
	Declaration of Origin under RCEP issued by Customs of the People's Republic of China	**http://origin.customs.gov.cn/**
Form AI and Form FTA (under the Thai-India FTA)	Original Form Original Form	http://www.eicindia.gov.in https://coo.dgft.gov.in
Form AK (under ASEAN-Korea FTA)	Form AK issued by Customs of the Republic of Korea	http://www.customs.go.kr/co.html
	Form AK issued by Korea Chamber of Commerce & Industry (KCCI)	http://cert.korcham.net/search
All Preferential COs issued by the Singapore Customs Authority	-	https://www.ntp-ics.gov.sg/vp/

Excise guidance on perfumes and perfume oils

The Thai Excise Department clarified the rules for taxing perfume products under the Excise Act BE 2560 (2017) with a new infographic released in November 2024. The infographic confirms that:

- Excisable perfumes are the following:
  - Finished perfumes, such as eau de perfume, eau de toilette, and eau de cologne.
  - General perfume oils used in making other products, whether those products are excisable or not.
- Perfume oil used only as raw material for creating excisable products is **non-excisable**.

Importers must certify with their local excise office that non-excisable perfume oils are solely for producing excisable products to obtain a clearance certificate for future imports. For general perfume oil used in the manufacture of excisable product, importers or manufacturers can apply for an excise tax exemption to avoid double taxation if the oil meets certain conditions.

Vietnam

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Changes to customs procedures and supervision rules

On 6 September 2024, the General Department of Customs (GDC) issued Official Letter No. 4277/TCHQ-GSQL on the Vietnam Business Forum seeking public comments on amending customs procedures and supervision, including rules on in-country import and export activities, and Authorised Economic Operators (AEO) applications. This draft amendment decree seeks to align current practices and international standards. Public consultation closed on 16 September 2024. We have summarised the proposed changes below:

Category	Proposed changes
Abolishment of Article 35 of Decree 08/2015 and its implications on EPEs	The proposed changes in the draft amendment decree include abolishing Article 35 of Decree 08/2015. Currently, this article allows Export Processing Enterprises (EPEs) and non-EPEs to conduct in-country import/export activities for goods received from a domestic entity under the instruction of a foreign trader with no presence in Vietnam (i.e., no representative office, branch, or direct investment in Vietnam). The proposed change will abolish this article, with a 1-year transition period from the effective date of the decree before the abolishment takes full effect. After the abolishment, tri-party transactions, as currently described in point c, Clause 1, Article 35 of Decree 08/2015/ND-CP, will be treated as domestic goods movements rather than in-country import/export activities. This means such movements will not be subject to customs procedures, and the applicable duty refunds available under in-country import/export will no longer apply. However, the draft amendment does not affect the in-country import/export of goods produced under contract manufacturing and sold to Vietnamese organisations by foreign traders, nor does it affect goods traded between domestic enterprises and EPEs or between EPEs. It should be noted that these changes are still in the proposal stage and may be subject to further modifications.
Stricter AEO evaluations	Stricter criteria for evaluating AEOs, focusing on internal control systems, compliance levels, communication, and reporting mechanisms. For details on proposed new conditions for AEO qualification, refer to the draft decree.
Customs valuation for imports into Vietnam	• The order of applying the deductible value method and the computed value method can be interchanged if requested by the importer. • If the GDC has sufficient grounds to reject the declared customs value, the GDC will be in a position to directly impose duty.
Re-import customs procedures for exported goods	Conditions for carrying out re-import customs procedures for exported goods to qualify for duty and tax exemption are as follows: • re-imported goods must remain in their original condition • re-import period from the date of export must not exceed six months
Imports that must be re-exported	Clarification of distinction between goods temporarily imported for re-export and goods that must be re-exported.
Customs Inspection	Specific guidance on items that can be inspected at customs premises will be provided by publishing a consolidated list of items subject to customs inspection. For unlisted items, the Customs Sub-Department will request an assessment from the relevant inspection organisation as a basis for customs clearance.

Note that this draft decree is still under consideration and has not been finalised into law. In the meantime, given that the draft amendment decree includes a broad range of customs-related changes, we recommend enterprises to review this decree in detail to understand its potential impact on their operations.

Revised export duty rates and preferential import duty rates

On November 1, 2024, the government issued Decree No. 144/2024/ND-CP, which revises the export duty rates and preferential import duty rates for specific goods as detailed in Annex I and Annex II of Decree No. 26/2023/ND-CP. Refer directly to the Decree for the full list of changes. This decree took effect on 16 December 2024.

With the current online customs declaration system, where duty rates are automatically retrieved upon entering the tariff code, the primary impact of this decree is an immediate adjustment in the payable duty amount. Consequently, it is recommended that enterprises incorporate any changes in duty rates into their budgeting and planning processes.

Guidance on transfer of duty-exempt fixed assets to subsidiaries

On 1 October 2024, the General Department of Customs (GDC) issued Official Letter no. 4703/TCHQ-TXNK to guide the Customs Department of Binh Phuoc province on handling the transfer of duty-exempt fixed assets to a subsidiary in the form of capital contribution. This guidance was in response to Customs Department of Binh Phuoc province's concerns about whether such assets remain eligible for duty exemption and whether the subsidiary must implement procedures for investment policy approval.

Key points from the GDC's response include:

- There is currently no specific guidance for cases involving changing the project owner, such as transferring duty-exempt assets for capital contribution to new entities.
- The new owner must ensure the same usage purposes and compliance with investment regulations to maintain duty exemption.
- When transferring duty-exempt fixed assets, the customs authority will involve both the old and new owners and require documentation, including:
  - Documents detailing the change of project owner.
  - List of duty-exempt items and customs declarations.
  - Details of the transfer of rights and obligations.
  - Signatures of legal representatives or authorised persons from both old and new project owners.

The new owner can continue to enjoy duty exemption if they adhere to the same usage purpose as initially registered.

Note that Official Letter no. 4703/TCHQ-TXNK is not published on GAC's website.

Vietnam releases VIFTA preferential tariff schedule for 2024 to 2027

On 15 October 2024, the Government issued Decree No. 131/2024/ND-CP outlining the schedule for preferential duty rates for goods imported under the Vietnam-Israel Free Trade Agreement (VIFTA). The schedule is valid from 15 October 2024 to 31 December 2027 and is broken down by each calendar year. Rates may be subject to change (e.g., decrease) at the start of each calendar year. Note that there are specific rules that the importer needs to follow to claim preferential treatment. Failure to do so may result in goods being imported at the normal (i.e., higher) duty rate.

Updated list of scrap items prohibited from temporary trade until 2029

On 8 October 2024, the Ministry of Industry and Trade (MOIT) issued Circular No. 18/2024/TT-BCT stipulating the list of scrap items that will be temporarily suspended from temporary import for re-export, and transit from 1 January 2025 to 31 December 2029. This list will supersede the current list, which is set to expire at the end of 2024. This measure is driven by environmental concerns in Vietnam and the affected classification codes of scraps prohibited are listed in this Circular.

Meanwhile, the General Department of Customs (GDC) has raised concerns about the difficulties in identifying imported goods as waste or scrap, highlighting the need for clearer regulations and guidelines. According to Article 6 of the Law on Environmental Protection, the import, temporary import, re-export, and transit of waste and scrap from abroad are strictly prohibited in Vietnam. These items fall under the category of goods prohibited from importation and are managed by the Ministry of Natural Resources and Environment (MONRE).

Under point 13, Appendix I of Decree No. 69/2018/ND-CP, MONRE is responsible for publishing detailed lists of goods prohibited from export and import, along with the corresponding tariff codes for effective implementation and management. However, the lack of detailed lists specifying prohibited wastes and scraps has previously led to challenges and inconsistencies for customs authorities. This ambiguity has caused confusion and difficulties in enforcement and compliance when determining whether certain imported goods should be classified as waste or scrap.

The GDC emphasises the urgent need for MONRE to provide clearer regulations and guidelines to ensure proper classification and handling of such goods. This would help customs authorities in making consistent and accurate determinations, thereby improving enforcement and compliance.

MFN duty rates effective for Comoros and Timor-Leste

On 26 September 2024, the General Department of Customs (GDC) issued Official Letter No. 4606/TCHQ-TXNK stating that goods originating from Comoros and Timor-Leste are now eligible for Most-Favoured-Nation (MFN) treatment in Vietnam. This announcement follows the recent accession of Comoros and Timor-Leste to the World Trade Organization (WTO) in August 2024. WTO members are required to apply MFN duty rates in a non-discriminatory manner. Importers of goods originating from Comoros and Timor-Leste must indicate the codes KM and TL, respectively, when declaring in the VNACCS/VICS system to receive MFN treatment.

Review of circumvention of trade remedies for cane sugar products

On 6 September 2024, Ministry of Industry and Trade (MOIT) issued Decision No. 2386/QD-BCT on the review of enforcement measures against circumvention of trade remedies on a range of cane sugar products imported from Cambodia, Indonesia, Laos, Malaysia and Myanmar. Importers of certain cane sugar products may be exposed to higher import duty rates for any circumvention of anti-dumping duties on such products originating from Thailand.

Anti-dumping duty investigation on woodboards originating from Thailand and China

On 25 September 2024, the Ministry of Industry and Trade (MOIT) issued Decision No. 2549/QD-BCT on the investigation of dumping of certain wood fiberboard products originating from Thailand and China, such as LDF/MDF/HDF boards and panels under the HS heading 4411. The proposed anti-dumping duty rate is 20.20% for products originating from Thailand and 14.76% for products originating from China.

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