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Issue 2 2021

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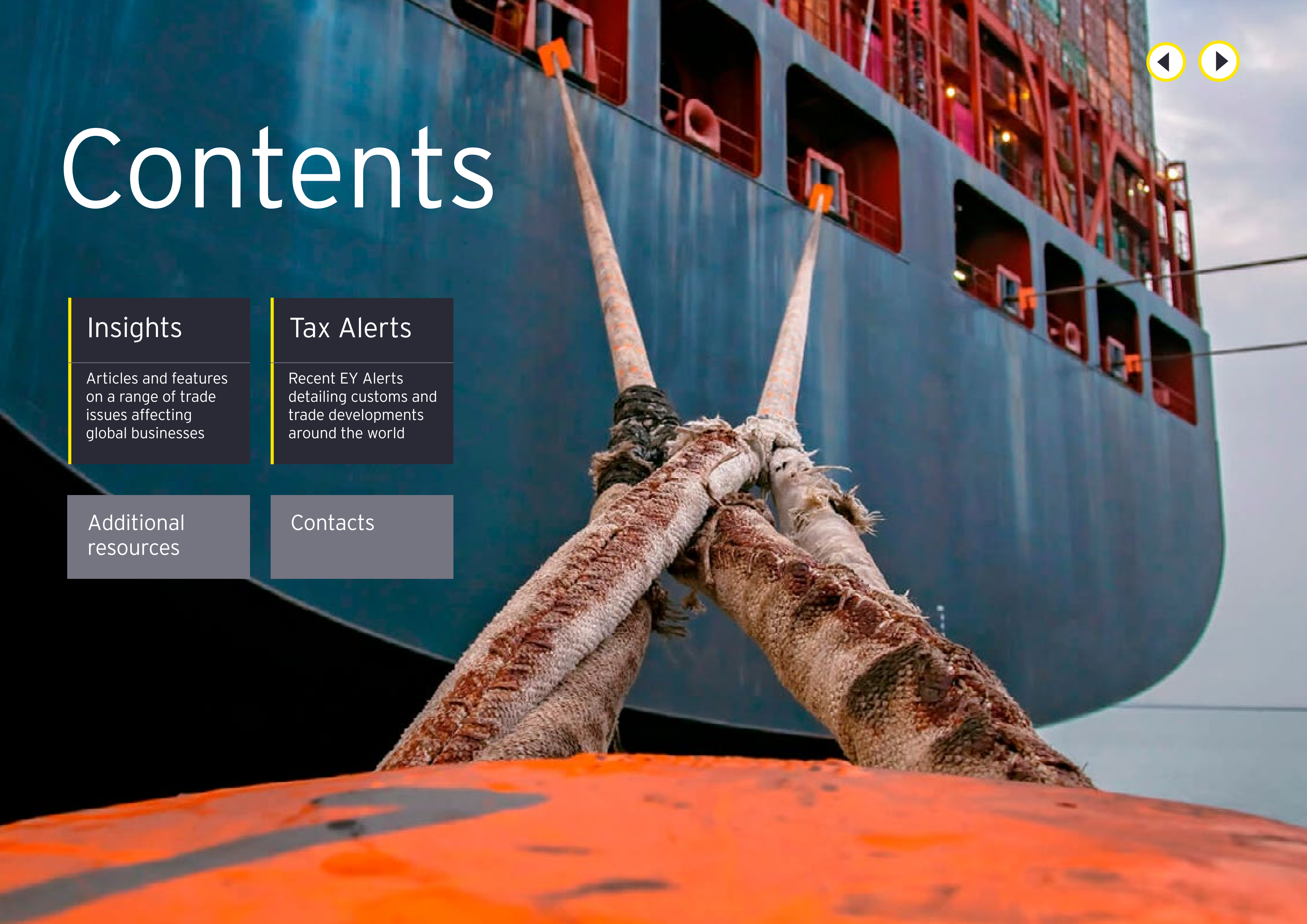

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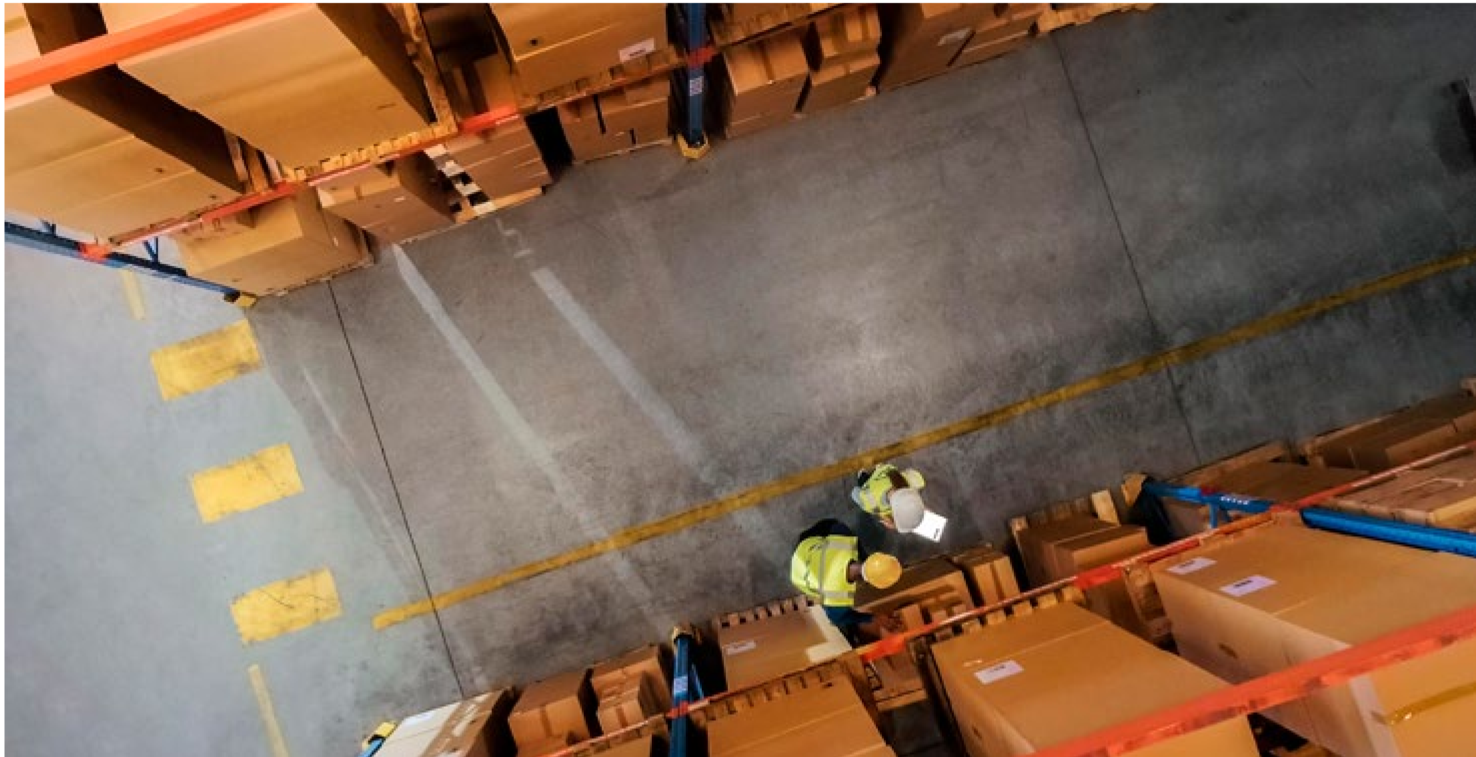
Using customs warehouses for e-commerce fulfillment – a comparison of valuation approaches

Background

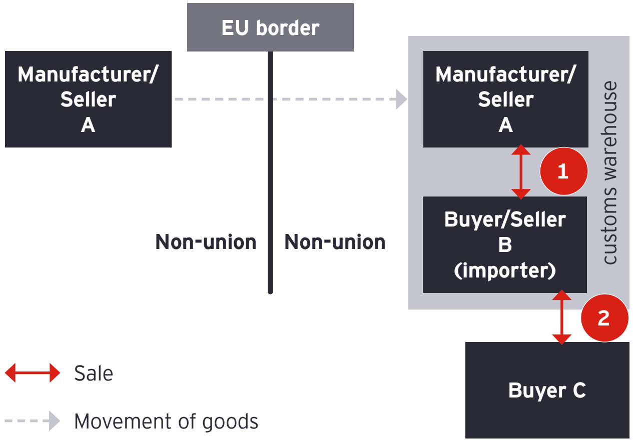
On 25 September 2020, the European Commission (EC) published new guidance on customs valuation effectively removing the domestic sale principle. Former guidance issued by the EC established that a sale between two EU-established entities could not be regarded as a sale for export, thus requiring importers to look at earlier sales in multi-tiered transactions as the basis of customs valuation. New rules introduced by the EC now instruct importers to declare the last sale prior to the importation of goods into the EU customs territory as the basis of customs valuation, no longer precluding domestic sales from consideration.[1]

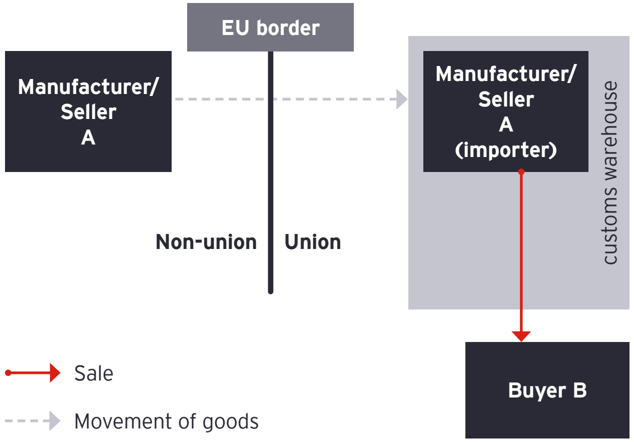
One interesting aspect of the new guidance is that it clarifies the customs valuation rules when goods are imported into a customs warehouse (i.e., a bonded warehouse) for storage before entry for free circulation. In those instances when there is a sale for export to a party who moves the goods into the customs warehouse, that sale for export may properly be used to establish transaction value. But, when there is no sale for export, according to EU customs legislation, the customs value shall be based on the sale taking place while the goods are stored into the customs warehouse. Paragraph 7 of the new guidance clarifies that in cases where there are multiple sales occurring while the goods are stored in a customs warehouse, the relevant sales transaction is "the sale occurring closest to the moment of the introduction of the goods into the customs territory of the Union."

The concept is illustrated in Example 6 from the guidance (replicated below), in which Manufacturer/Seller A (A) transfers goods to a customs warehouse in the EU for storage. A subsequently sells the goods to Buyer/Seller B (B) while the goods are in the warehouse, and B removes the goods from the warehouse for free circulation before selling onward to Buyer C. The guidance states that the sale from A to B, occurring in the warehouse after importation, is a transaction value that should be used when B removes the goods from the warehouse for free circulation.



1 "European Commission publishes new guidance on Customs Valuation," *EY website*, accessed 10 May 2021. Find it here.





As e-commerce sales directly to consumers are becoming more prevalent, consider this variation of the scenario in Example 6 of the guidance (see below illustration): A transfers goods to a customs warehouse in the EU to fulfill e-commerce sales. A receives an order, removes the good from the warehouse and enters for free circulation, and then delivers the good to a customer's premises in the EU where the sale takes place. Based on the legislation and new guidance document, the customs value appears to be the sale price (transaction value) from A to B, even though that sale takes place in the EU at the customer premises after the goods are in free circulation.

If this is the case, the EU position would seem to be at odds with treatment in other regions.

Other jurisdictions

Many jurisdictions have customs bonded warehouse regimes which are similar to the EU regime. An internal survey of global jurisdictions highlighted a similar view among customs authorities in the North American and Asia-Pacific regions in valuing goods in a bonded warehouse scenario where there is not a sale for export upon admission to the bonded warehouse. In Canada, for example, in all cases, goods transferred into a Canadian bonded warehouse will be valued according to the inbound transaction, regardless of whether transaction value applies. The duties and taxes assessed at time of entry would be calculated on the value as determined at time of admission to the bonded facility.

In Japan, appraisal of merchandise is also based on the transaction that causes the goods to be admitted, not entered for free circulation. Regardless of an absence of sale for export into the bonded warehouse, the goods would be valued based upon inbound value rather than the sale from the bonded area. In India, the inbound value is also applicable when the importer is the manufacturer and the resale to the customer occurs after customs clearance. The US and Australia follow similar rules.

In our example the goods are transferred to the bonded warehouse by a manufacturer without a sale for export. In a situation like this, computed value may be the appropriate method for appraising merchandise.[2] The computed value for manufacturing a product later sold directly to a consumer in an e-commerce transaction, of course, would result in a lower value than would the later retail resale to the consumer. Nevertheless, based on the application of the principle set out the example above, the EU guidance would seem to suggest that the retail resale, which is the only sale in this scenario, is the correct value for customs.

The chart on the following page lists the results in a number of other countries.[3]

2 There are situations in which there are no sales of identical of similar merchandise, and in which neither computed nor deductive value are appropriate, requiring the use of the fallback method. Japan has a protocol for direct-to-consumer sales from a bonded warehouse in which the fallback method is based on 60% of the retail resale price.

3 In a variety of surveyed countries, importers must be residents, and the scenario contemplated would not be possible. These countries are excluded from the poll results.

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US	Inbound

China

China released its own guidance on valuation of bonded goods in 2014 in Decree 211, PRC Customs Valuation Measures for Determining the Dutiable Value of Bonded Goods for Domestic Sale. The General Administration of Customs (GAC) provides that the dutiable value of the bonded goods for domestic sale should be based upon the transaction value of those goods and clarifies how value should be determined under various scenarios. For goods admitted into a bonded facility for domestic sales, the customs value is assessed on the outbound price, or the domestic sales price of the goods sold from the bonded area.

It is understood that the valuation rule for treatment of e-commerce sales is currently under review by the GAC, and the current guidance may be adjusted to value bonded goods according to the inbound transaction.

Free trade zones

A number of jurisdictions have free trade zone (FTZ) regimes, sometimes in addition to bonded warehouse regimes, and sometimes instead of bonded warehouse regimes. As opposed to bonded warehouses, FTZs are often considered outside the customs territory of the specific country. Valuation rules do vary in these situations; in some countries the removal of a product from FTZ for domestic entry is considered the introduction of goods into the country and would be the point at which customs value would be determined. In other countries, including the United States, rules are more complex and can be based on value of the products at admission to the FTZ.

Conclusion

Survey results indicate a consistent trend to value bonded goods sold through e-commerce channels based upon the inbound transaction (i.e., the transaction which triggers admission of the merchandise to the bonded area), which appears contrary to the new EU guidance. The treatment of merchandise that is delivered from a domestic location to a second domestic location as a sale for export, seems misaligned with the World Trade Organization agreement on customs valuation. Customs authorities across countries in the Asia-Pacific and North American regions appear to have considered this in developing their own local framework around the valuation of bonded goods in e-commerce transactions.

Given the continued and increased growth in e-commerce sales channels, understanding differing applications of rules applicable to e-commerce fulfillment from a customs bonded warehouse is important for customs planning. Companies using bonded areas in EU trade lanes should consider the current EU guidance and implications of duty assessment on a later sale. Additional guidance from the European Commission dealing with e-commerce scenarios to supplement the guidance given in September 2020 would also be helpful as new business models and supply chains for e-commerce continue to develop. ■

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Technical Committee on Customs Valuation approves two new advisory opinions

The Technical Committee on Customs Valuation (TCCV) is a committee of customs authorities created by the World Trade Organization Valuation Agreement. The committee is tasked with providing interpretation and guidance on the Valuation Agreement and is administered by the World Customs Organization (WCO). While its guidance is not binding on any jurisdiction, its pronouncements are regularly cited by customs authorities worldwide.

The TCCV approved two advisory opinions at its May 2021 meeting:

1. Applicability of transaction value to goods bearing the buyer's own trademark
2. Withholding tax on royalties

The first deals with a situation in which a buyer imports an item with the buyer's trademark at a different price than that paid for the same item when it is sold with the seller's trademark. The advisory opinion confirms that the buyer's purchase price remains the transaction value. Following approval by the WCO Council, it is expected to be released as Advisory Opinion 24.1.

The second advisory opinion involves a patent royalty agreement that requires the licensee to pay the royalty and to separately pay on behalf of the licensor the withholding tax applicable to the royalty. The advisory opinion concludes that the total amount paid by the licensee, inclusive of the withholding tax, is included as an addition to dutiable value. It is expected to be released as Advisory Opinion 4.18.

Advisory Opinion 24.1

The facts of Advisory Opinion 24.1 involve two sets of goods (for example, shirts – one set with the trademarked logo of the buyer and one set with the trademarked logo of the seller). The purchaser pays a different price (presumably less) for the goods that bear its own trademark than it does for goods that bear the seller's trademark. The facts note that the goods are apparently the same, were produced in the same country, were exported at about the same time, and were sold at the same commercial level and in the same quantities.

The advisory opinion states that each importation must be evaluated independently, and there is no indication that any factors are present that would prohibit the application of transaction value. The TCCV also notes as instructive the language defining "similar goods" in Article 15.2 of the Valuation Agreement. This applies when transaction value is not applicable and goods are being evaluated for application of the next method of valuation, which is the transaction value of identical or similar goods. Factors that are evaluated to determine whether goods are similar include the quality of the goods, their reputation and the existence of a trademark. This definition supports the notion that differences in trademark can explain differences in price.

Finally, the advisory opinion concludes that Article 8.1 of the Valuation Agreement, which applies to royalties, is not implicated because the buyer owns the trademark and there is no separate payment of a royalty.

Advisory Opinion 4.18

Advisory Opinion 4.18 involves a patent royalty that is paid by the importer with respect to imported goods and constitutes an addition to transaction value under Valuation Agreement Article 8.1(c). The license agreement provides that the licensee will pay a royalty calculated at 5% of the resale price of imported patented goods, and in addition will pay any taxes imposed on the royalty, without offset. The licensee pays 1,000 currency units (CU) for imported merchandise, and subsequently resells the merchandise for 2000 CU, which requires a royalty payment to the licensor of 100 CU. The country of importation imposes a nonresident income tax on income earned by a licensor for exploitation of intellectual property of 10% and obligates the payor of the royalty to withhold and remit the tax to the tax authority. Under the domestic tax rules of the importing country, the additional commitment of the licensee to fund the licensor's tax obligation is considered part of the licensor's gross royalty income. Accordingly, the tax is 11.11 CU, computed:

Royalty payment to licensor	100 CU
Divided by (1 – income tax rate)	(1-10%)
Multiplied by income tax rate	10%
Equals Tax obligation	11.11 CU

The advisory opinion concludes that the full amount paid by the licensee pursuant to the license agreement – 100 CU paid to the licensor and 11.11 CU paid to the tax authority to satisfy the licensor's tax obligation – is added to the dutiable value. Consequently, the dutiable value of the imported patent items is 1,111.11 CU (i.e., the invoiced price of 1,000 CU plus the 11.11 CU addition to value for the royalty).

Advisory Opinion 4.18 serves as a companion to Advisory Opinion 4.16, which describes a licensee that is not obligated to fund tax imposed on a royalty, but instead withholds a portion of the royalty equivalent to the tax and remits only the difference to the licensor. Article 8.1 (c) of the Valuation Agreement provides that the addition to value for royalties is the amount "that the buyer must pay, either directly or indirectly." Consequently, royalties paid by the licensee/buyer are part of the customs value, regardless of the amount of royalties that the licensor ultimately receives. This conclusion applies regardless of whether the licensee withholds tax from the royalty and remits the difference to the licensor, as in Advisory Opinion 4.16, or pays the licensor the full amount of the royalty and additionally funds the licensor's income tax obligation as is the case in Advisory Opinion 4.18. ■

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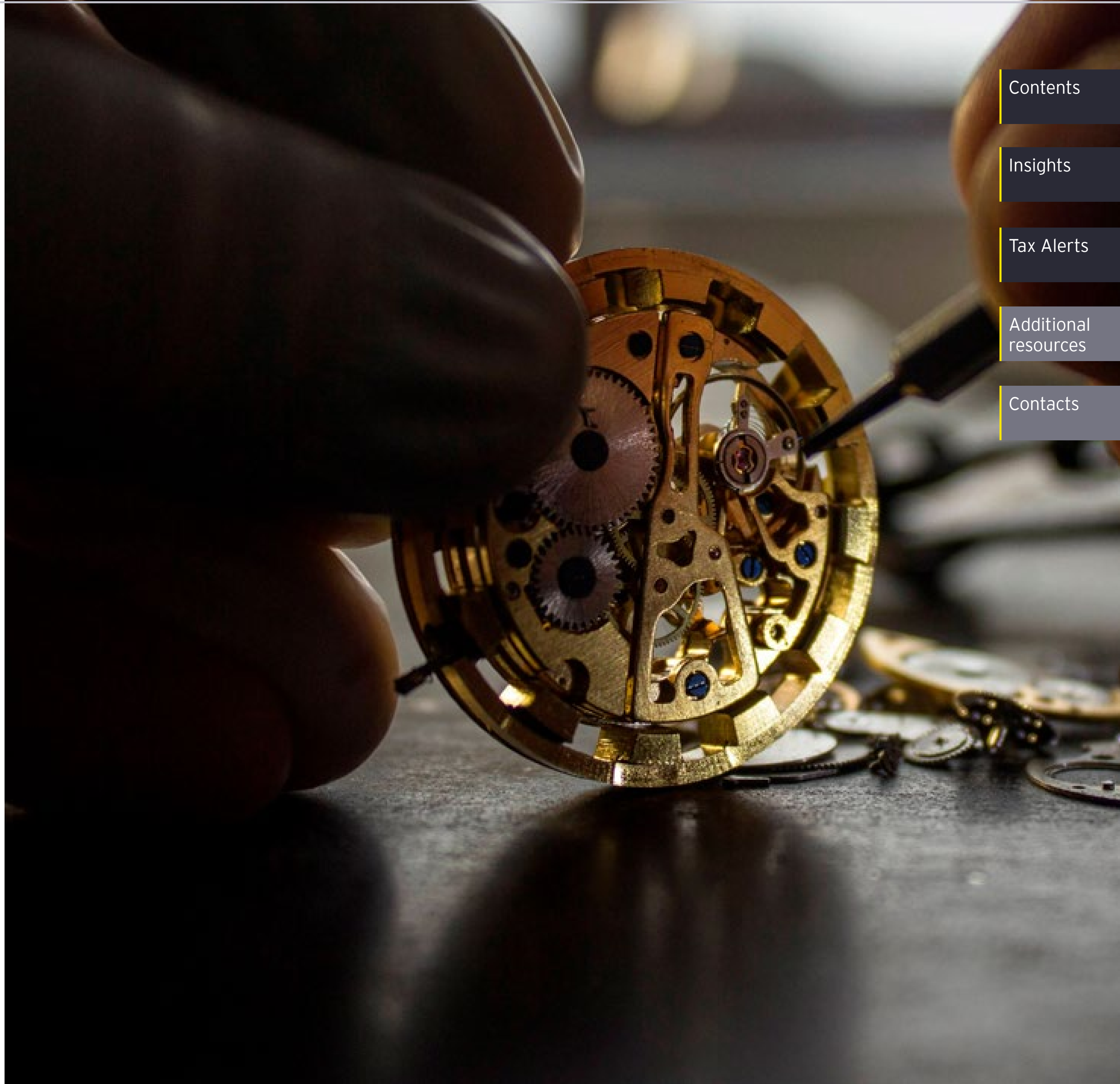

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Richard J. Albert, an Indirect Tax and Global Trade partner with Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, hosts a series of podcasts featuring EY Global Trade professionals from around the world.

Poland

Spotify | Apple Podcast

In this episode of EY Global Customs Talks, Richard speaks with Slawomir Czajka about developments in the Polish excise tax (namely, the new sugar tax). Furthermore, the discussion covers a ruling of Polish tax authorities that jeopardizes the VAT exemption for exported goods owned by a non-EU principal.

Switzerland

Spotify | Apple Podcast

In this episode of EY Global Customs Talks, Richard discusses e-commerce in Switzerland from a VAT and customs perspective with Benno Suter.

Vietnam

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In this episode of EY Global Customs Talks, Richard and Anh Tuan Thach talk about the customs import process, including navigating import customs audits in Vietnam.

Brazil

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In this episode of EY Global Customs Talks, Richard, Ian Craig and Daniela Menon discuss the digitalization and facilitation of the customs environment in Brazil, the beneficiary customs program and considerations around managed services in the customs space including Authorized Economic Operator.

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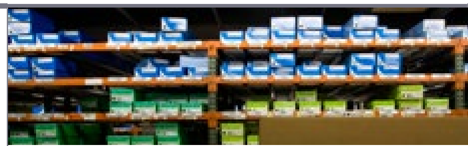

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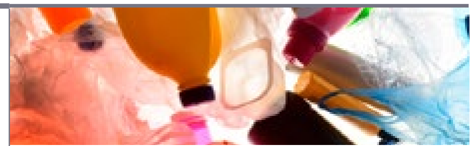

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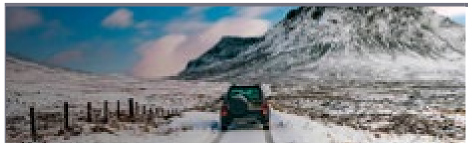

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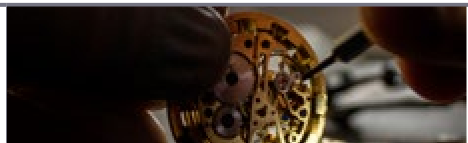

Three indirect tax topics vital for global business

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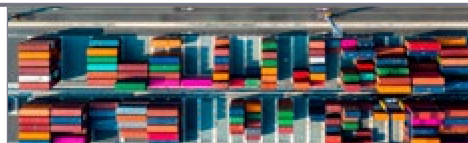

Why understanding Free Trade Agreements is key to trade strategy

25 March 2021

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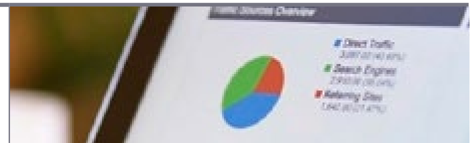

Germany: Spotlight on indirect tax technology

11 March 2021

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Brazil: Single-window customs system, unique importation declaration and product catalog

In line with the recent speed of change and evolution in the Brazilian customs environment, Brazil has been working on an import "single-window" customs system. This system continues to herald a more modern and ambitious approach compared to the current SISCOMEX (i.e., Brazilian Integrated Foreign Trade) system. The focus of the single-window concept will be to benefit traders as it is intended to reduce bureaucracy, increase efficiency and harmonize and integrate different systems and government agencies.

The overall goal is to close the performance gap between Brazil and Organisation for Economic Co-operation and Development (OECD) countries, by reducing clearance indicators for both exports (from 13 days down to 8 days) and imports (from 17 days down to 10 days). This is expected to lead to a gradual increase in GDP as processes become more efficient and competitive. It should be emphasized that the new export process has already been fully conducted within the single-window customs system since 2017, and it has already reached its planned efficiency targets, closing the gap that Brazil had when compared to OECD countries for export indicators.

The single-window customs system project is structured in four strategic pillars:

1. **Integration:** This pillar will bring all stakeholders together to map, plan, test and deploy each functionality.
2. **Process redesign:** This evolves the 1990s system (SISCOMEX) to a modern environment, not only in respect of technology, but also from a process perspective – moving from a sequential process approach to a parallel process approach.
3. **Cultural change:** Like the AEO Program, the single-window process is aimed at increasing transparency and interaction among stakeholders.
4. **Technology:** This pillar involves the use of application programming interfaces and artificial intelligence.

Unique import declaration and product catalog

The implementation project is still in process. It incorporates the support and involvement of the private sector to map, plan, test and onboard the new tool, specifically regarding the new import process. The central piece of this new process is the unique import declaration (DUIMP), which will be the only customs document for import purposes. Therefore, it will encompass data regarding the administrative, commercial, financial, tax and fiscal nature needed for the control of imports by the Brazilian customs authorities.

Additionally, the new single-window customs system will incorporate a product catalog module, where importers will provide information regarding the characteristics of each of the goods they import. This will enable importers to present accurate and structured information for their products with the possibility of attaching data sheets, drawings, catalogs and so on.

This feature will enhance transparency and enable customs authorities to effortlessly review documentation should doubts arise about tariff classifications during the customs clearance process. From the importer's perspective, it should eliminate errors caused by manual data keying and human interaction, as the data, once logged, will be reused for subsequent import processes. It will also have a strict correlation with the Import Licensing and Administrative treatment, streamlining the process entirely.

As a result of these changes, product descriptions and tariff classifications will become even more relevant in the import processes than they have been up until now. Currently, with the support of the private sector and industry associations, the Brazilian Government is defining, by sector, the main attributes that will need to be described when the product catalog goes live.

How can companies prepare for the new system?

- Engage in the mapping process with industry associations and the Brazilian Government to understand ahead of time what attributes will be applied to each sector
- Map the present and future states of the tariff classification and product description processes to identify potential risks and improvements
- Review databases (Although some attributes are yet to be defined, companies can start by reviewing their relevant databases to standardize the description and tariff classification of products.)

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Latin America: Nearshoring opportunities in Panama and Costa Rica

Nearshoring in a recovering economy

Nearshoring is the practice of transferring a business operation to a nearby country, especially in preference to a more distant one. Nearshoring is not a new concept – global companies have been exploring nearshoring possibilities for several years as markets expand and as consumers grow in numbers and demands. According to a recent article from the Kelley School of Business[1], many businesses have been employing the strategy.

However, the need for nearshoring became stronger with the global COVID-19 pandemic that began in 2020. Incipient ideas of relocating operations to different latitudes were no longer a luxury, but a necessity. As Asia, a major location for offshore operations, encountered sudden supply chain disruptions and as consumers demanded quick, fast and healthy solutions across all businesses, companies were forced to rethink their supply chain routes and even their manufacturing activities, which resulted in many choosing to re-source initiatives to Latin America.

In an EY survey conducted at the start of the pandemic, 100% of Fortune 500 companies reported COVID-19 impacts to trade and to their supply chains. Many of them needed to have better, faster and closer sourcing options to their Latin American or US markets, which led them to explore expanding operations to the region.

1 "Nearshoring, reshoring, and insourcing: Moving beyond the total cost of ownership conversation," *Science Direct website*, accessed 10 May 2021. Find it here.

Nearshoring options in Central America

Due to their strategic positioning and economic stability, and the availability of incentive regimes, Central American countries surged in popularity as investment destinations for companies in need of faster, better solutions with cost savings and efficiencies following the disruption caused to supply chains by the COVID-19 pandemic.

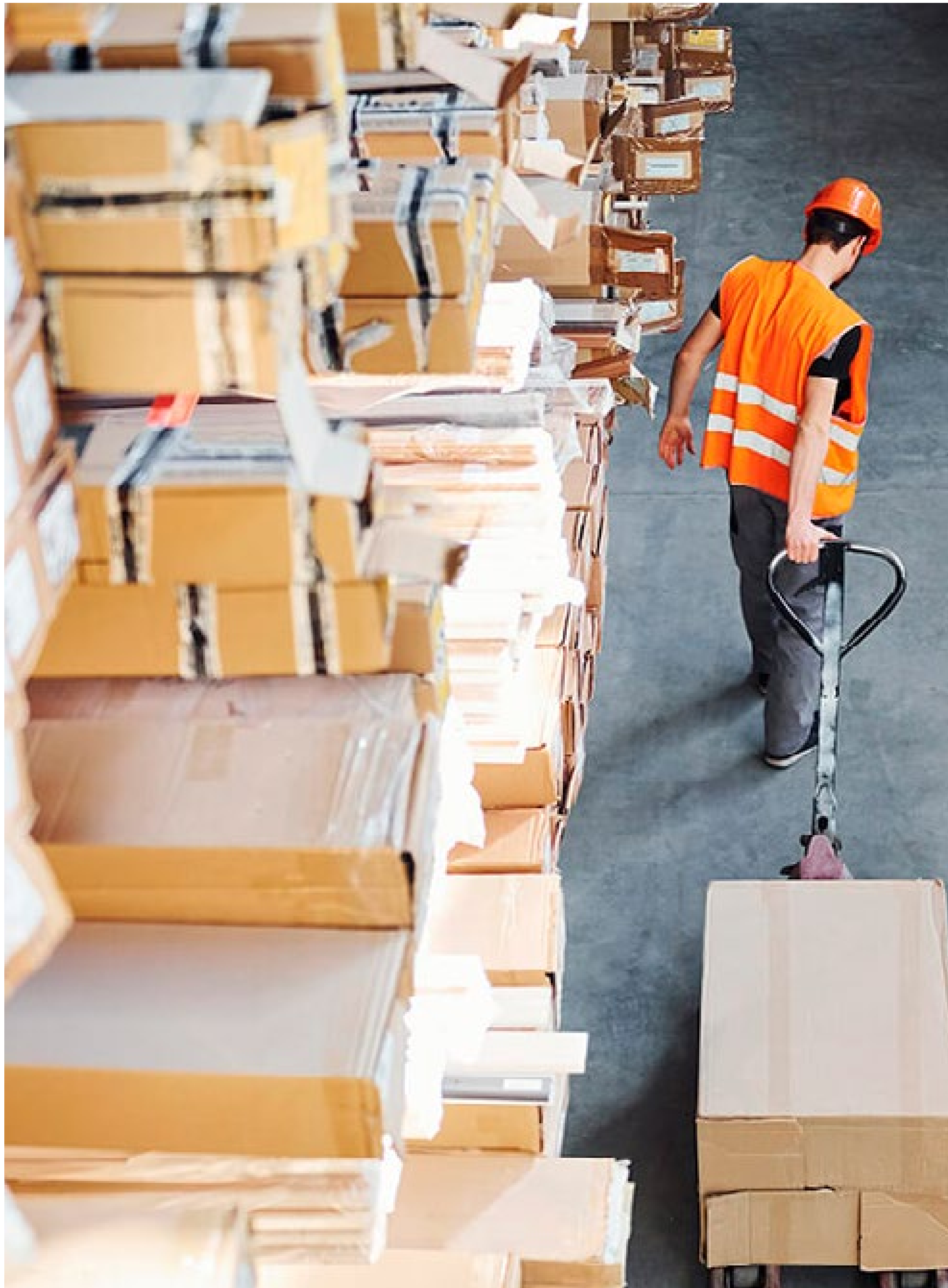
Research institutions such as the Inter-American Development Bank and the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) determined that US-based companies have new opportunities to generate business value by outsourcing customer relationship services to a Latin American destination. Central America appeared as a good option due to its strategic location, its openness and friendly environment for trade and investment.

Trade preferences are numerous within Central America, as seen in the table below which details the free trade agreements negotiated and signed by countries in the region. It is evident that the region has a particularly business-friendly environment, exemplified by the large number of free trade agreements signed.

Free trade agreements

Jurisdiction	USA	EU	Canada	CARICOM*	Chile	China Mianland	Singapore	Colombia	Mexico	Panama	Peru	DR*	Taiwan	EFTA*	CACM*
Guatemala	●	●			●			●	●	●		●	●		●
Honduras	●	●	●		●			●	●	●	●	●	●		●
El Salvador	●	●			●			●	●	●		●	●		●
Nicaragua	●	●			●				●	●		●	●		●
Costa Rica	●	●	●	●	●	●	●	●	●	●	●	●	●	●	●
Panama	●	●	●		●		●		●		●		●	●	●

* CARICOM means the Caribbean Community. DR means the Dominican Republic. EFTA means the European Free Trade Association. CACM means the Central American Common Market.

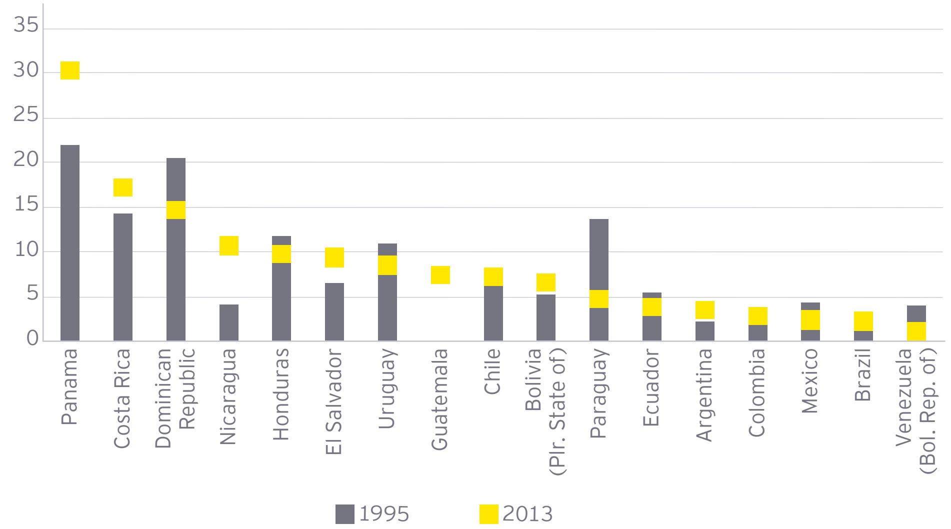


Panama options for nearshoring

Thanks to the Panama Canal and the country's strategic location, skilled workforce, infrastructure and business-friendly environment, it stands out as a destination for nearshoring. In addition, tax incentives in Panama are attractive for multinational companies.

Panama also stands out as the country with the most exports of services in the region, as presented by the ECLAC:

Latin America (selected countries): service exports as a percentage of services GDP, 1995 and 2013 (percentages)



Source: Prepared by the authors on the basis of official data from the Economic Commission for Latin America and the Caribbean (ECLAC)

As an example, the Colón Free Trade Zone (CFZ) was restructured by Law 8 of 4 April 2016. Its operations began with 10 companies in a segregated area of 35 hectares originally in downtown Colón. Now, this free trade zone is divided into nine different sectors totaling over 1,000 hectares with more than 2,000 companies. The main objective of CFZ is to promote international trade.

Logistics services, as well as sales of merchandise, are part of the permitted activities. From a practical perspective, traded goods need to flow through the CFZ for sale.

The special area is located on the Atlantic side of Panama. The CFZ offers several tax incentives, such as:

- Corporate income tax: 0% on exports and sales within the CFZ
- Repatriation tax (if a subsidiary): 0% if only foreign source
- Repatriation tax (if a branch): 0% if only foreign source
- Withholding tax: 0% given no deduction of service or royalty payments
- "Notice of operation" payment: 2% on capital with a minimum of US$100 and maximum of US$60,000
- VAT: 0% on exports and 0% on sales within CFZ

Some regimes provide for corporate income tax, dividend withholding tax, VAT, customs, labor and immigration benefits.

In addition to the CFZ, there are several other options, such as the Panama Pacífico and Multinational Headquarters regimes, that also bring companies substantial benefits and cost savings.

Costa Rica options for nearshoring

Along with Panama, Costa Rica also stands out as a strong candidate for nearshoring for firms looking into exports into North America and supplying the Latin American market. Manufacturing, services and logistics activities may be performed, depending on the regime.

Costa Rica has the Zona Franca Regime (Free Trade Zone Regime), a set of incentives and benefits granted by the Costa Rican government to companies making new investments in the country. It offers incentives up to 0% tax and 0% duties for several years, with the possibility of extensions, depending on the location of the activity, the size of the operation and the activities performed. As an example, for services companies, a 0% tax applies for income tax for eight years with a possible extension, 0% on emittances for repatriation tax, 0% on local sales tax, and 0% on imports, exports and excise taxes.

Conclusion

The COVID-19 pandemic revealed the fragility in global supply chains and the need for constant improvement. The crisis may become the new constant, therefore the focus on supply chain resilience is crucial for companies around the world. Now is the time to evaluate nearshore planning that includes duties modeling and taking advantage of available benefits and incentives, with an eye toward making nearshoring a significant part of business strategy.

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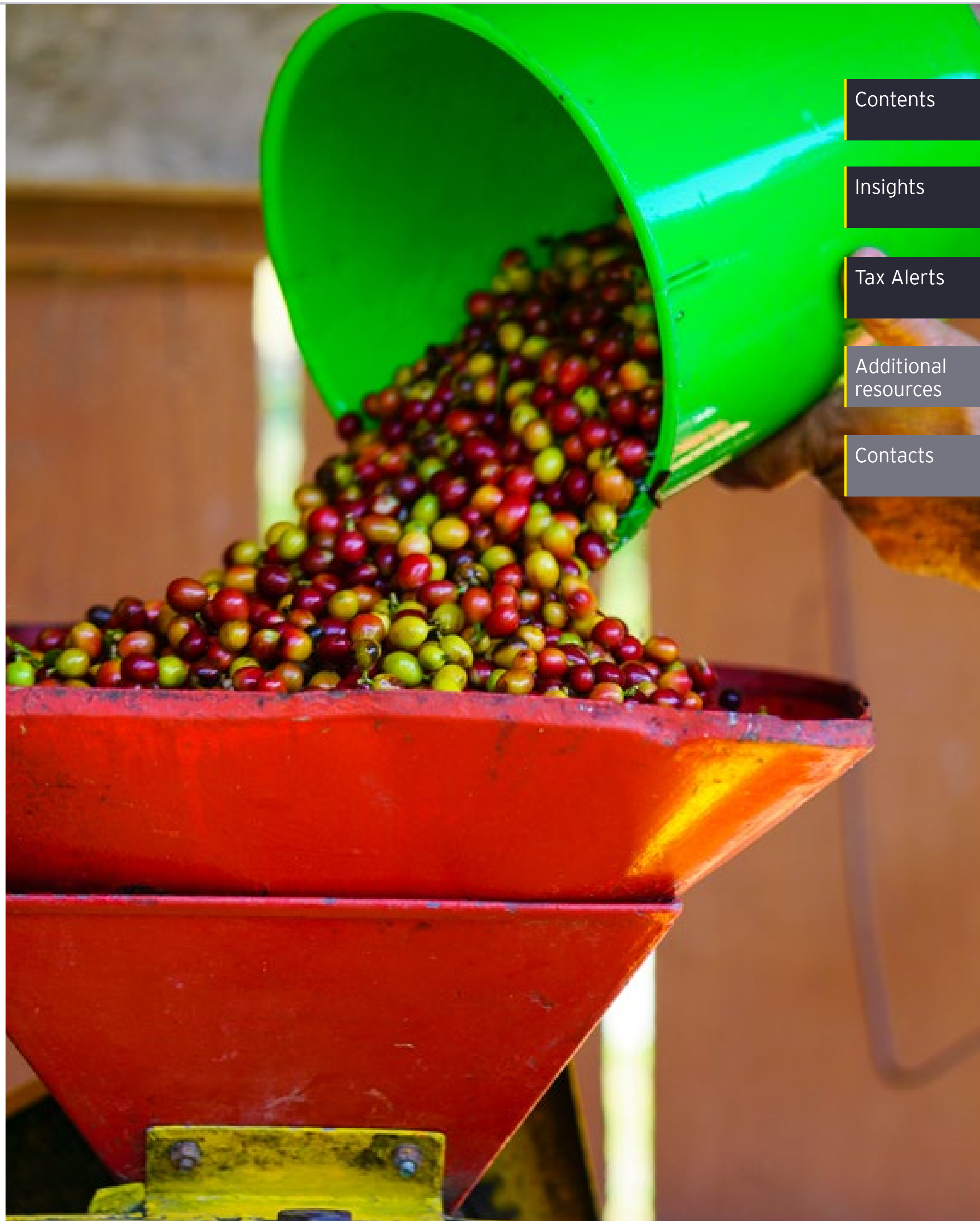
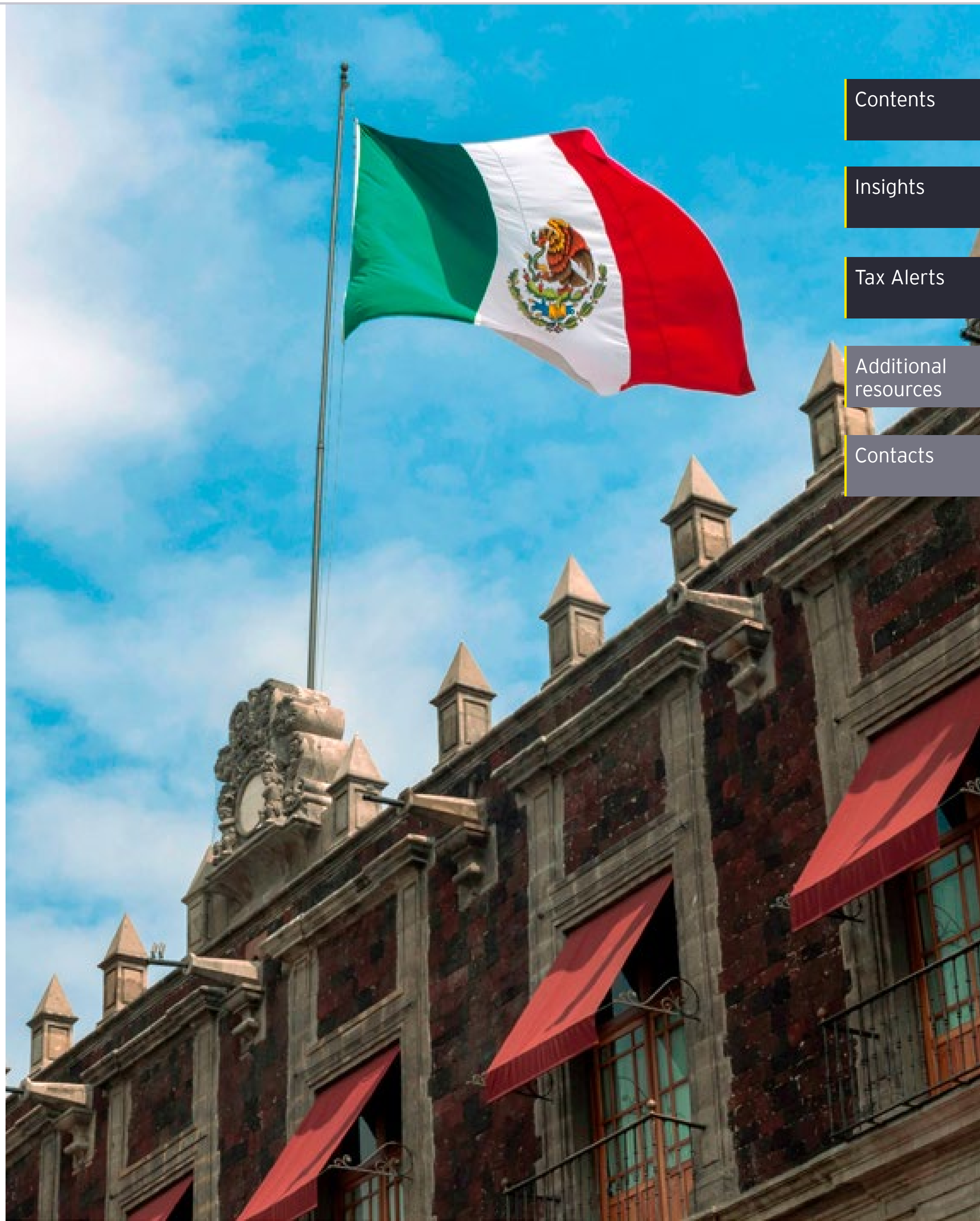


Mexico: Labor implications of the United States-Mexico-Canada Agreement

On 1 May 2019, an important labor reform entered into force in Mexico in response to negotiations under the United States-Mexico-Canada Agreement (USMCA), the new trade agreement between Canada, Mexico and the United States, that entered into force on 1 July 2020, which radically changed labor issues in the country. One of the most important changes it brought to labor law was the new rules to guarantee an effective union democracy by introducing new processes for employees to select their unions and their union representatives and to validate the collective bargaining agreements entered into between their employers and their union representatives. It also granted the right to a secret ballot for employees within these processes. Since the inception of the first Mexican labor law in 1931, employees had the right to vote on certain union matters; however, it was not until almost 90 years later that the right to a secret vote was recognized by law.

During the negotiations for the USMCA, both Canada and the United States urged Mexico to adopt new labor rules that guaranteed an effective union democracy; the parties to the USMCA even conditioned the agreement's entrance into force on whether Mexico reformed its labor rules. Labor matters are so important for the USMCA that, in addition to the expected dispute resolution mechanism to deal with trade disputes between the participating parties, there is a second mechanism dedicated to resolving labor-related issues: the Facility-Specific, Rapid Response Labor Mechanism (MLRR, for its acronym in Spanish).



The MLRR addresses possible denial of labor rights by specific companies in specific facilities in Mexico. It does not involve trade; rather, its purpose is to correct the denial of one or more workers' rights. In addition, in the MLRR, a company workplace that enjoys some commercial benefit derived from the USMCA is called a Covered Facility.

According to the rules of the MLRR, it should take up to 75 days for a dispute to be resolved and up to an additional 60 days in the case of on-site verification. The process is initiated at the request of either Canada or the US, when the party making the complaint alleges in good faith a denial of rights in a Covered Facility. How the party making the complaint became aware of a potential denial of rights is not considered relevant to the process; as long as it considers in good faith that the denial of rights has occurred, it has the ability to start the MLRR. The US has set up a mailbox so that any worker, union leader or interested party (whether in Mexico or in the US) may report a possible denial of rights. The US may investigate the reports and start an MLRR, if deemed appropriate.

Once Mexico has been informed that an MLRR has been initiated, it has 10 days to notify the party making the complaint if it wants to conduct its own investigation, which should last up to 45 days. The investigation is carried out by the Ministry of Labor and Social Welfare. If the conclusion is that there was a denial of rights, the respondent party proposes remedies; if the party making the complaint accepts the proposed remedy, the remedy is carried out and the process is closed. However, if the party making the complaint does not accept the proposed remedy, it may invoke a Rapid Response Labor Panel, which is composed of one independent labor expert drafted from a list of specialists appointed by the respondent party, one drafted from the complainant party's list of appointed independent specialists and one drafted from a joint list appointed by both parties.

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The Rapid Response Labor Panel carries out an investigation that may include an on-site verification (at the Covered Facility's premises) and may last up to 30 days, after which the panel has an additional 30 days to issue its conclusions. If the conclusion is that there was no denial of rights, the procedure is concluded; if the conclusion is that there was a denial of rights, the panel will make a suggestion as to how the respondent can repair the damage; however, the sanction is decided by the party making the complaint, and it could be any of the following:

- Suspension of preferential duty treatment for the goods produced at the Covered Facility
- Additional trade sanctions on the goods from the Covered Facility
- Blocking the exportation of goods from the Covered Facility

The remedies may be lifted if the parties agree that the damage from the denial of rights has been resolved. If the parties do not agree on the remedy, the panel may again be invoked to determine whether the damage has been remedied and whether the sanctions should be lifted.

The trade impact of labor noncompliance could be significant. Further enforcement of the new law is expected – evidence of this further enforcement is the request recently made by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to the government of the United States, encouraging them to file the first labor complaint against Mexico under the USMCA. AFL-CIO's request alleges that workers of a company located in the State of Tamaulipas, were denied independent union representation, against the provisions of the treaty.

It is very important for companies with Covered Facilities to prevent risks associated with the MLRR with a comprehensive labor compliance effort, particularly in the collective employment section. Equally important is the training of all stakeholders in compliance with collective labor rights and the risks of MLRRs.

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US: Court of International Trade decision questions first sale principle applicability to Chinese and Vietnamese origin goods

A US Court of International Trade (CIT) decision, issued on 1 March 2021, questions the applicability of the first sale principle to transactions involving non-market economies,[1] including China and Vietnam. In instances where merchandise is subject to multiple sales for export to the US prior to importation, the first sale concept allows the US importer to declare the price paid on an earlier sale for custom purposes, provided certain criteria are met. The criteria, set forth by the Court of Appeals for the Federal Circuit decision *Nissho Iwai America Corp. v. United States*, 982 F.2d 505 (Fed. Cir. 1992), requires that the sale from the manufacturer to middleman be a bona fide sale for export, the goods be clearly destined for the US, and that the "manufacturer and middleman deal with each other at arm's length, in the absence of non-market influence that affect the legitimacy of the sale price."

Meyer decision

Meyer Corporation, US v. United States[2] deals with a multiple sale for export scenario. Meyer Industries, Ltd, a Thai company, and Meyer Zhaoquing Metal Products Ltd, a mainland Chinese company, both manufacture cookware. The manufacturers sell cookware to related Meyer companies in Macau and Hong Kong, respectively, who act as middlemen and then resell the cookware to Meyer Corporation, the US importer. The importer's use of the manufacturer to middleman sale as the customs value was challenged by US Customs and Border Protection (CBP) as not meeting first sale requirements. The Court found that the sales from the manufacturers to the middlemen met the "bona fide sale" and "clearly destined for the US" criteria, but did not satisfy the Nissho Iwai requirement that "the manufacturer and the middleman deal with each other at arm's length, in the absence of any non-market influence that affect the legitimacy of the sales price."

1 Currently, the US considers the following to be non-market economies: Republic of Armenia (see 57 FR 23380), Republic of Azerbaijan (see 57 FR 23380), Republic of Belarus (see 57 FR 23380), People's Republic of China (see 82 FR 50858), Georgia (see 57 FR 23380), Kyrgyz Republic (see 57 FR 23380), Republic of Moldova (see 57 FR 23380), Republic of Tajikistan (see 57 FR 23380), Turkmenistan (see 57 FR 23380), Republic of Uzbekistan (see 57 FR 23380), and Socialist Republic of Vietnam (see 68 FR 37116).

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In its analysis, the Court viewed the *Nissho Iwai* requirement as necessitating two separate considerations: (1) whether the sales price is at arm's length and (2) whether the sales price is determined absent any distortive non-market influences. The Court concluded that Meyer had not demonstrated either, eliminating the application of first sale valuation. With regard to the "distortive non-market influences" consideration, the Court shared its concern as to whether products made in a non-market economy could be shown to be free of non-market influences, noting:

"as a result of its consideration of the issues presented here, this court has doubts over the extent to which, if any, the 'first sale' test of Nissho Iwai was intended to be applied to transactions involving non-market economy participants or inputs. In that regard, the Court of Appeals for the Federal Circuit could provide clarification."

Two factors or one?

While the Court reads the phrase "at arm's length, in the absence of any non-market influence that affect the legitimacy of the sales price" as necessitating two separate factors, the phrase has been commonly considered by businesses to mean single factor, with "non-market influences that affect the legitimacy of the sales price" simply defining the meaning of arm's length. US Customs and Border Protection (CBP) also seems to view this phrase as a single requirement. Guidance given by CBP dating to 1996 – Treasury Decision 96-87, which specifies information to be presented in any ruling request to CBP on first sale – includes the entire quote from the Nissho Iwai case referenced in the *Meyer* decision:

"The manufacturer's price constitutes a viable transaction value when the goods are clearly destined for export to the United States and when the manufacturer and the middleman deal with each other at arm's length, in the absence of any non-market influence that affect the legitimacy of the sale price *** [T]hat determination can be made on a case-by-case basis."

TD 96-87 then specifies that the information needed to satisfy the arm's length criterion is the same as in other instances requiring support for related party pricing for customs purposes as provided in 19 USC 1401a(b)(2)(B); i.e., that the circumstances of sale indicate that the relationship did not influence the price or that the transaction value closely approximates certain test values.

CBP guidance on related party pricing does not reference non-market economies.[3] CBP has also issued an Informed Compliance Publication[4] that deals specifically with first sale. Section 17, titled, *When is a foreign manufacturer's price acceptable in accordance with the decision in Nissho Iwai?,* notes that the foreign manufacturer's price is valid:

"as long as the transaction between the foreign manufacturer and the middleman was a sale negotiated at 'arm's length' that was free from any non-market influences that could affect the legitimacy of the sales price…."

3 See, e.g., 19 CFR 152.103(l); "Determining the Acceptability of Transaction Value for Related Party Transactions," *CBP website,* accessed 10 May 2021. Find it here.

4 "Bona Fide Sales & Sales for Exportation to the United States," *CBP website,* accessed 10 May 2021. Find it here.

5 See, e.g., HQ H295538 (May 31, 2018), HQ H291762 (May 7, 2018, HQ H268741 (February 27, 2018), HQ H278748 (March 17, 2017).

Subsequent sections discuss the criteria set forth by *Nissho Iwai*; Section 20 is titled, *When is merchandise clearly destined for exportation to the United States in a multi-tiered transaction?*, and Section 19 is titled, When is a sale considered to have been conducted at *"arm's length"*?. There is no further reference to non-market influences in the publication, consistent with the view that "at arm's length, in the absence of non-market influence that affect the legitimacy of the sale price" is a single factor, rather than two separate factors as contemplated by the CIT.

Numerous CBP first sale rulings also treat the phrase a single factor, generally referring to it as requiring an arm's-length determination. And, CBP rulings have approved first sale from Chinese and Vietnamese manufacturers without reference to non-market influences.[5] Additionally, one prior CIT case, *Synergy Sport LTD v. United States*, 17 CIT 18 (1993), approves first sale valuation for a first sale made by a Chinese manufacturer, where the court noted, "In the case currently being decided, there was no allegation that the price paid by Synergy (the middleman) to Chinatex (the factory) was artificially low due to a lack of arm's length bargaining or nonmarket conditions."

Transaction value and non-market economies

The concept of first sale is premised on there being two or more sales that each qualify for transaction value. The World Trade Organization Customs Valuation Agreement, which is the basis for US customs valuation rules, does not seem to contemplate any consideration of market or non-market economy status for transaction value eligibility. The introductory comments to the Valuation Agreement state that "customs valuation should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between source of supply." Technical Committee on Customs Valuation (TCCV)[6] Commentary 2.1 states that valuation of goods subject to government subsidies are to be valued the same as any other goods and are eligible for transaction value. TCCV Commentary 3.1 elaborates on this concept, noting a dumped product should not be treated differently than other products sold at below the prevailing market price.

With first sale valuation being premised on first sale eligibility for transaction value, the possibility that a sale of a product produced in a non-market economy would be ineligible for first sale raises additional questions. If being subject to "non-market influences" is a separate test for first sale, it would appear to apply to both sales between related and unrelated parties. And, as the first sale principle is premised on eligibility for transaction value, if non-market influences are viable considerations in determining transaction value, then the same reasoning could be applied to single sales for export – potentially preventing any import from a non-market economy country from eligibility for transaction value. The Court suggests this possibility in its conclusion:

"All of the foregoing leads the court to doubt that accurate ascertainment of the "true" value of the "price paid or payable" at the first sale level in the customs duty sense has been demonstrated in this case. Whether the same can be said with respect to the second-level "price paid or payable", i.e., by Meyer itself as importer, the court need not opine, for no party has proposed an alternative method of appraisement in any event. Such matters are best left to the parties in any further negotiations as a result of this opinion."

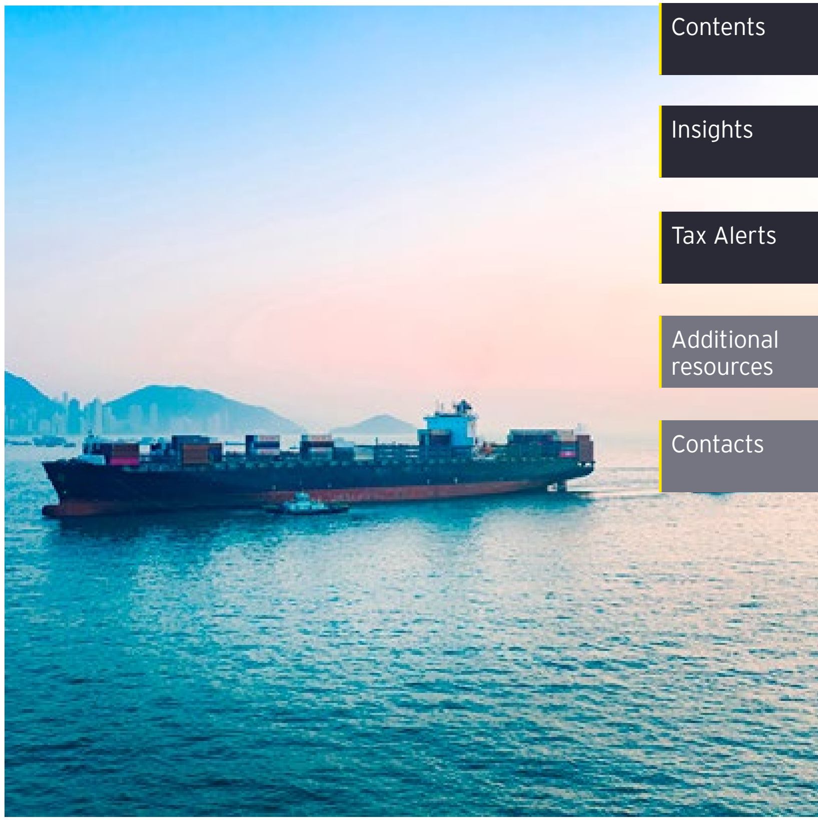
Implications

The CIT itself notes that clarification from the Court of Appeals for the Federal Circuit is needed, and Meyer Corporation has filed an appeal. To date, CBP has not provided any specific guidance on potential implications of the Meyer decision. Informal discussions CBP headquarters personnel have indicated that they, too, are waiting on further guidance from the Court of Appeals before adjusting approach.

In the meantime, it is important to note that the CIT also found Meyer did not demonstrate arm's-length pricing for the first sale under the traditional customs tests, which invalidates first sale for Meyer regardless of whether a non-market economy was involved in production. The case serves as a reminder for any importers using transaction value for related party imports, whether under the first sale principle or not, to be sure there is adequate customs support in place for this pricing.

In addition, of course, all importers of products from non-market economy countries, such as China or Vietnam, will also want to carefully monitor further developments in the *Meyer* case. ■

6 The TCCV is established in the Valuation Agreement and is charged with providing guidance on application of the Valuation Agreement.



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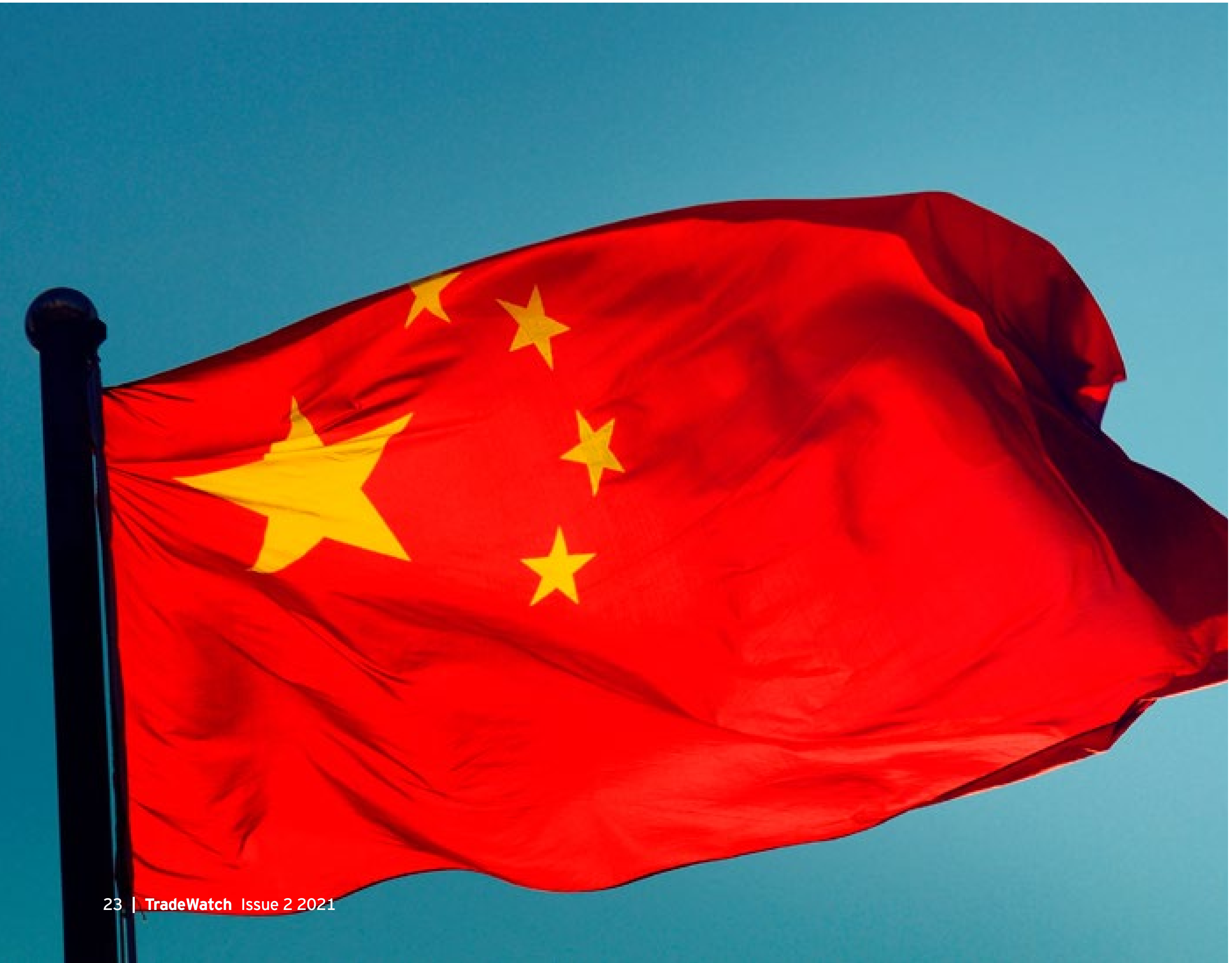
China: Ministry of Commerce provides guidance on export controls by exporters of dual-use items



Background

To safeguard national security and interests, fulfill nonproliferation and other international obligations, and strengthen and standardize export control, the Export Control Law of the People's Republic of China (Export Control Law) formally came into force on 1 December 2020. It signals China's efforts to further promote the formation of a complete system of foreign laws and regulations through formal legislation. The Export Control Law encourages export operators to establish an internal compliance system for validating compliance. On 28 April 2021, China's Ministry of Commerce (MOFCOM) published the guidance of the Ministry of Commerce on the establishment of export control internal compliance mechanisms by export operators of dual-use items (Guiding Opinions) along with practical guidelines on internal compliance for export control of dual-use items (Guidelines).

In view of the current global trade environment, the Guiding Opinions document underscores the importance of establishing an internal compliance mechanism for businesses to manage their export control function. The document provides an update to MOFCOM's previous guiding opinions published in Announcement No. 79 in 2007 (Announcement No. 79). The 2021 Guiding Opinions set forth nine basic elements that are suggested for inclusion in

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the internal export compliance system, while the Guidelines provide guidance in general for the implementation of the system.

In addition to providing guidance around establishing compliance mechanisms for the exportation of dual-use items, other types of operators can refer to this document to establish corresponding internal compliance mechanisms, including operators that import or export encrypted commercial products or precursor chemicals, operators that provide services for the export of dual-use items, and businesses and research institutions engaged in research and development (R&D) and production of dual-use items.

The Guiding Opinions and Guidelines are benchmarked with the mature export control legislation and/or legislative systems that are used in other parts of the world, including the European Union (EU) Internal Compliance Program and the United States (US) Export Compliance Program. The issuance of the Guiding Opinions and Guidelines also indicates China's continuous efforts to improve legislation related to the regulation of export controls. Businesses can refer to the Guiding Opinions and the detailed Guidelines to establish an internal compliance mechanism in line with their individual conditions to achieve stability and long-term development.

Three principles for internal compliance mechanisms

1. Legitimacy

Exporters shall strictly follow the nation's laws and regulations on export control, which is the fundamental principle in establishing their internal compliance mechanisms for export control, and they should fully understand the importance of abiding by the legal and compliance requirements in their daily operations. Where relevant, operators shall comply with the provisions of the Export Control Law and regulations, and any operator that commits an act in violation of those laws and regulations shall assume the corresponding legal liability.

2. Independence

The internal compliance mechanism shall be an important part of each exporter's management system and exist independently in the operation and management system. Each exporter shall, through process controls and system assurance under the internal compliance mechanism, regulate its own operating activities and conduct self-supervision, and in the case of any activity in violation of the laws and regulations on export control, the veto power may be exercised under the internal compliance mechanism.

3. Effectiveness

Each exporter shall, based on its own situation/needs, establish an effective internal compliance mechanism for export control. It should aim to achieve an operating system with heightened attention from senior management, participation of all those involved, full-process control, regular assessment and ongoing improvement, so as to effectively provide a role for its internal compliance mechanism in the supervision and control of export activities.

Basic elements of internal compliance mechanisms for export control

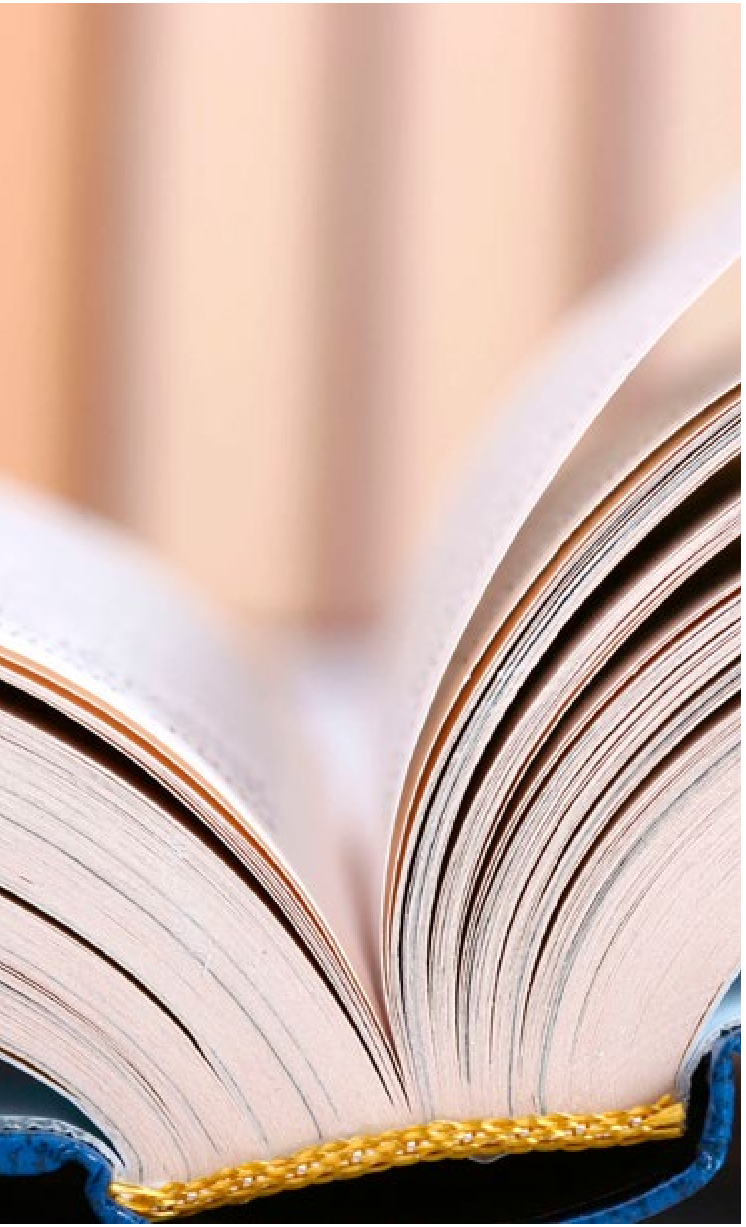
Basic elements	Main contents	Key implementation points
1. Preparing a policy statement	The statement shall include but not be limited to: • Clarification of the basic purpose and importance of export control compliance • Commitment to comply with export control-related laws and regulations • A promise not to engage in business activities that violate export control-related laws and regulations under any circumstances • A clear indication of support for export control compliance • A commitment to conduct an assessment review of export control risks prior to commercial activities • An emphasis on the importance of employee familiarity and careful compliance with export control-related regulations, as well as a requirement for employees to comply with export control-related laws and regulations, and to not export in violation of them under any circumstances • A description of risks and possible penalties for violating export control-related laws and regulations • Corporate export control compliance contact information	1. Designate senior management to lead this effort 2. Offer full coverage 3. Provide timely update
2. Establishing an internal body	• According to the business's actual operation and risk assessment results, export operators should establish an all-around, multi-level organizational structure for compliance management that is supported at the level of decision-making, led by the export control compliance department and implemented by each business unit • Export operators should determine the organizational structure at all levels, clarifying the hiring criteria, job responsibilities, authority and contact information of export control compliance personnel, and include the performance of compliance work into performance reviews.	1. Reinforce responsibility 2. Facilitate objectiveness and independence 3. Provide full authorization 4. Make compliance a priority 5. Offer a performance incentive
3. Conducting comprehensive risk assessment	A comprehensive risk assessment is the basis of the internal compliance system for export control. The operator shall conduct a comprehensive assessment of possible export control risks and, based on the risk assessment results, establish and improve an internal compliance mechanism for export control and relevant organizational management systems that suit its own characteristics to establish and analyze available risk prevention measures: 1. Items traded 2. Clients 3. Technology and R&D 4. Internal operation 5. Export control-related information 6. Third-party partners 7. Risk prevention measures	1. Be comprehensive and prudent 2. Regular evaluation 3. Provide tiered management
4. Establishing screening procedure	Export operators should scientifically design screening procedures and conduct risk screening work for each transaction in accordance with export control-related laws and regulations, as well as export control lists, including: 1. Pre-contract screening procedures 2. Contract signing procedures 3. Application for license procedures 4. Fulfillment of the contract procedures	1. Strengthen end-user and end-use management 2. Implement full coverage and process screening 3. Utilize a variety of measures to facilitate risk screening

Basic elements	Main contents	Key implementation points
5. Developing emergency response measures	The compliance department determines whether to initiate a corporate internal investigation based on reports or other information (specifying the criteria for initiating an investigation): • Determine the scope of the investigation • Define the investigation process • Draft investigation report • Take remedial measures • Communicate the results of the investigation to the whistle-blower, as appropriate • Report results to management • Consider incorporating cases related to violation identification and remediation into the content of export control compliance training • Report to the national export control administration when serious violations exist	1. Validate the security of reporting channels 2. Implement the reward and punishment system 3. Take remedial measures in a timely manner
6. Providing education and training	Different training materials can be designed according to employees' job responsibilities, as noted below: • General staff • Export control-related business units • Export control compliance department	1. Provide full staff coverage 2. Diversify training for different positions 3. Include of performance assessment 4. Facilitate external training 5. Use a flexible format

Basic elements	Main contents	Key implementation points
7. Improving compliance audits	The audit formats are the following: • Overall audit • Special audit The audit process is detailed below: • Identify the business units and personnel to be audited • Prepare the audit templates, such as interview questions and transaction audit checklists • Collect written materials from the business units • Interview with personnel at all levels of each of the business units • Review the written materials, interviews and actual business operations carefully to identify irregularities • Prepare audit reports (The report needs to reflect the degree of deviation of the actual implementation from the relevant requirements, provide in-depth analysis of the root causes of any problems, make recommendations for rectification and compare the audit results of the current year with the reports of previous years to determine how the problems will be rectified through vertical implementation.) • Provide feedback and audit results to the audited business units • Report audit results and recommendations to management • Implement the means of rectification and coordinate continuous follow-up	1. Enable flexible selection of internal and external audits 2. Provide audit professionalism 3. Promote implementation through audits

Basic elements	Main contents	Key implementation points
8. Record-keeping	Documents to be archived include: • Export product specifications • Documents related to commercial transactions (such as inquiry-related records, order forms, contracts, invoices, bills of lading, airway bill and transfer records) • Communications with relevant government authorities • Customer screening records and correspondence • End-user and end-use documentation • License application documents • License approval documents • Export project implementation • Regulations, minutes of meetings, resolutions of meetings and admin documents involving export control • Identified violations and measures taken • Training records and materials • Audit reports • Records of visits by foreign subcontractors and customers • Other documents that need to be archived	1. Regularly archive, and conduct spot checks occasionally 2. Retain relevant documents in a complete, accurate way 3. Clarify archiving procedures, requirements and timelines 4. Cooperate with other departments to complete regular archiving 5. Select the most appropriate archiving method 6. Verify that documents are true, accurate and clear 7. For archived documents to be provided overseas, confirm compliance with the requirements of Export Control Law

Basic elements	Main contents	Key implementation points
9. Preparing a management manual	The manual includes, but is not limited to: • A policy statement signed by the major responsible personnel • A summary of the Export Control Law and regulations • The enterprise's export control compliance policies and systems • Export control compliance organizational structure and related responsibilities • A list of the enterprise's full-time (part-time) export control compliance personnel and their contact information • The identification and screening system for controlled items operated or likely to be operated by the enterprise, including relevant items that are not controlled items but may have the risks listed in Article 12 of the Export Control Law • The main elements of a comprehensive risk assessment and the results of the risk assessment • The export screening process and the focus of the screening • The procedures for reporting and handling violations • Relevant training materials • Contact information of for the national export control administration, provincial departments responsible for export control-related work, etc.	1. Update as appropriate 2. Enable straightforward implementation 3. Provide easy accessibility



Implications

The Guiding Opinions provide clear guidance on how businesses operating in China should establish their internal compliance systems in accordance with the Export Control Law, encouraging exporters to build internal compliance mechanisms. The issuance of the Guidelines further provides specific references for export operators in this regard.

In detail, the Guiding Opinions suggest export operators should establish internal compliance mechanisms in nine areas: incorporating preparation of a policy statement, establishing an organizational structure, carrying out a comprehensive risk assessment, establishing screening procedures, developing emergency response measures, providing education and training, improving compliance audits, record-keeping and preparing the management manual. Compared to the previous six areas suggested in Announcement No. 79, these nine areas are more aligned with the current global trade environment based on international practice for export control compliance, as well as the new characteristics of export control work in the new era and the current situation of China.

Overall, the Guiding Opinions and Guidelines are important rules for implementation of the Export Control Law by guiding export operators to establish an internal export control compliance system. The Guiding Opinions provide a solid foundation for improving China's export control system, whereas the Guidelines provide export operators with general guidance on building internal compliance systems.

The issuance of these two documents provides both opportunities and challenges for businesses. On one hand, businesses can take this opportunity to build an internal export control compliance system that meets their development needs in order to navigate complicated international trade relations; on the other hand, establishing a compliance system is also a major challenge to businesses' daily operations.

Impact on businesses

1. **Businesses should respond proactively to the establishment of internal compliance mechanisms to apply corresponding licensing facilitation measures and reduce the risk of penalties by taking the initiative to identify noncompliant areas.**

Article 14 of the Export Control Law states, "Exporters who have established an internal export control compliance review system, and have good record, may be granted facilitation measures such as a general license granted for the export of relevant controlled items by the State export control authorities." However, in Part IV of the Guiding Opinions, it is not clear how exporters should apply for licensing facilitation measures. This demonstrates why supplementary implementation rules are urgently needed.

From another perspective, the MOFCOM will legally impose lighter or mitigated administrative penalties on those who violate the administrative provisions on export control of dual-use items but take the initiative to eliminate or mitigate the harmful consequences of such illegal acts. Through the establishment of internal compliance mechanisms,

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businesses can more easily implement risk-and-assessment and screening procedures to proactively identify noncompliance issues. These mechanisms give businesses opportunities to eliminate or mitigate harmful consequences of violations, ultimately enabling them to avoid or reduce administrative penalties.

As the regulations for specific licensing facilitation have not been issued, businesses need to pay continuous attention to the subsequent implementation rules. They should actively respond to the establishment of internal compliance mechanisms in order to prevent export control violations and actively eliminate or mitigate the resulting negative consequences.

2. The Guidelines are used for general reference, and businesses need to establish their own internal export control compliance systems in accordance with their industry's characteristics and commercial needs.

While the Guidelines outline the main contents and detailed implementation points for the nine areas of export control compliance and provide annexes of audit reference forms, they serve as general guidance for reference and were not intended to cover all situations encountered in daily business operations.

Export control compliance varies among business models, business partners, production, R&D and personnel in the actual operation of businesses. In addition, the requirements for export control compliance are not identical across industries. For instance, we have observed that businesses in high-tech industries have a higher need for export control compliance because their products may contain many controlled items or technologies. In contrast, other businesses have low export control compliance requirements (e.g., businesses in consumer industries or small and medium-sized (SME) enterprises).

For these reasons, businesses need to assess the possible export control risks involved in their business activities and establish and improve an export control compliance system that is effectively operative and in line with their actual situation.

3. In addition to export operators, the Guiding Opinions and Guidelines are also significant for other operators engaged in trade.

Some chemical businesses involved in the export of precursor chemicals and controlled chemicals also need the corresponding licenses. In addition, Part V of the Guiding Opinions states that the following types of businesses, in addition to exporters of dual-use items,[1] can refer to the Guiding Opinions for guidance on establishing their export control compliance mechanisms:

(a) Operators that apply for the Statement on End Users and End Uses with the Ministry of Commerce

(b) Operators that import or export commercial cryptographic products or precursor chemicals, or operators that provide agency, freight, delivery, customs clearance, third-party e-commerce trading platform, financial or other such services for the export of dual-use items

(c) Businesses or scientific research institutes engaged in the R&D or production of dual-use items

Operators and related personnel who conduct import and export activities need to pay attention to the guidelines on export control compliance and build an effective internal compliance system according to their actual business needs.

Recommendations

Since the export control risks and compliance requirements of each enterprise are different, and the stages of establishing the compliance mechanism are not the same across enterprises, below are a few compliance recommendations for specific stages of business:

1. For businesses that have established other export control compliance systems, similar compliance processes can be used as a reference to reduce the cost of compliance.

As the US, EU and some other countries have formed mature export control compliance systems, many importing and exporting businesses have already established export control compliance systems that meet China's requirements. These businesses should refer to the established export compliance system and embed additional corresponding functions,

1 According to the Export Control Law, the term "dual-use items" refers to items that can be used for civil purposes, as well as for military purposes or for helping improve military potentials, especially those goods, technologies and services that can be used for the design, development, production or use of weapons of mass destruction. Broadly speaking, dual-use items and technologies include sensitive items and technologies, precursor chemicals, some dual-use items and technologies, special civilian items and technologies, and commercial encryption codes.

risk assessment nodes and process review nodes into their existing organizational structures, risk assessment systems and review procedures to avoid duplication of work and thus reduce compliance costs. In this scenario, businesses need to consider how to effectively integrate different compliance processes to form a complete and well-run compliance mechanism.

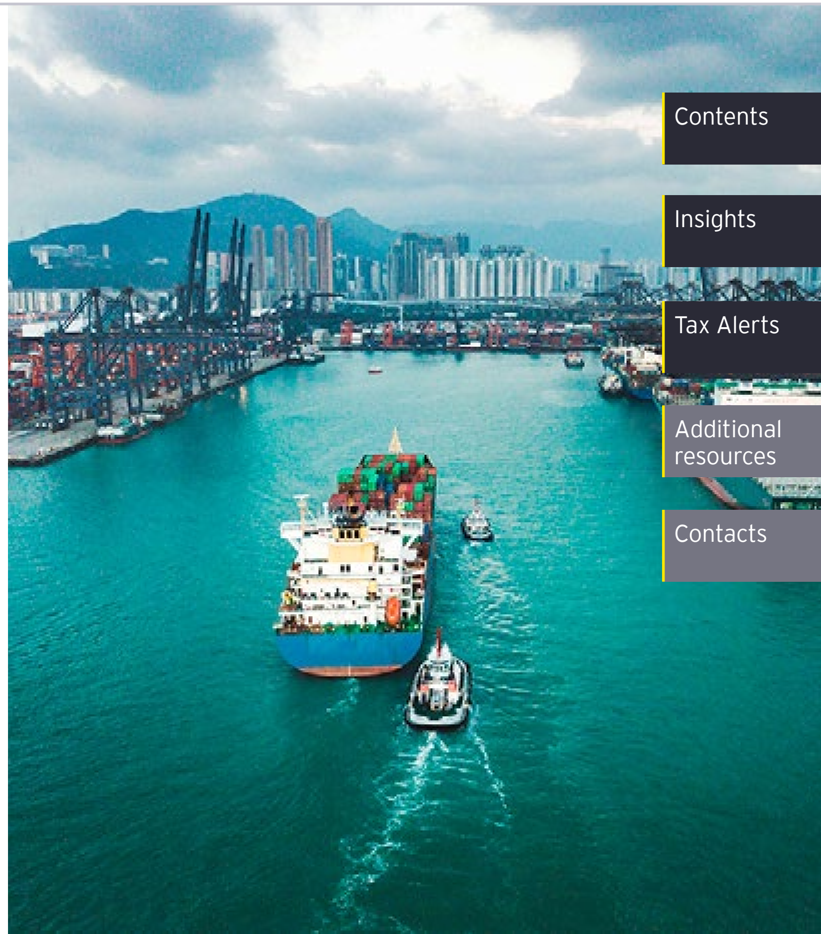
2. For businesses that are in the process of establishing export control compliance systems, the Guidelines can help them fully assess any shortcomings in their current process settings and develop more targeted internal compliance mechanisms.

For businesses that are establishing export control compliance systems, there is still much room for adjustment as relevant processes have not yet been determined. Businesses should consider incorporating the practical guidelines when developing internal compliance processes. Additionally, they should develop a more suitable internal compliance mechanism for their own activities. For example, consider how to combine the compliance process of multiple export control management systems in the same process node, so as to seek common ground while preserving differences, and identify specific risks by setting up a warning review system for specific matters. In this scenario, businesses need to adjust the implementation path and timing to develop an internal compliance mechanism that meets the requirements of all parties.

3. For businesses that have not established any other export control systems, an internal compliance team needs to be formed as a first step, supported by appropriate resources.

Businesses that have not established an export control compliance system must recognize is that export control compliance is a top-down process. They also should refer to the Guidelines on formulating a policy statement and establishing an organizational structure, with top management personnel publicly supporting the export control framework of the business, resulting in the formation of an export control compliance organization independent from the business units.

Senior management should grant the department and personnel responsible for export control compliance the power and authority needed to fulfill their responsibilities. The compliance department should take the lead in carrying out export control-related work. In addition to the initial work, senior management should provide appropriate resources, such as useful training, reasonable budget and adequate staff. In this scenario, businesses can review the resource allocation periodically to validate that compliance work is implemented in a sustainable manner. ■



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China: Customs update – April 2021

The China tax authority issued a number of circulars in April 2021 providing details of customs updates in China. This article provides a summary of these updates and actions for business.

Integrated circuits and software industries – notices 4, 5 and 413

- **Notice regarding import tax policies for supporting the development of the integrated circuit (IC) industry and software industry (Caiguanshui [2021] No. 4)[1]**
- **Notice regarding the administrative measures related to import tax policies for supporting the development of the IC industry and software industry (Caiguanshui [2021] No. 5)[2]**
- **Notice regarding standards for formulating the list of IC enterprises, projects and software enterprises eligible for preferential tax policies (Fagaigaoji [2021] No. 413)[3]**

Synopsis

Relevant Chinese government authorities jointly released a series of circulars to further clarify the implementation of tax preferential policies related to imports by the IC and software industries, as announced in the Guofa [2020] No. 8 (Circular 8) Notice regarding certain policies for promoting the high-quality development of the IC industry and software industry.

Among these announcements, Caiguanshui [2021] No. 4 (Circular 4), jointly released by the Ministry of Finance (MOF), State Taxation Administration (STA) and General Administration of Customs (GAC) on 16 March 2021, further clarifies the import-related tax policies for IC and software enterprises as follows:

1 "Notice of the General Administration of Taxation of the General Administration of Customs of the Ministry of Finance on import tax policies to support the development of the integrated circuit industry and software industries", *Ministry of Finance of the People's Republic of China* website, accessed 20 May 2021. Find it here.

2 "Ministry of Finance National Development and Reform Commission Ministry of Industry and Information Technology General Administration of Customs Notice of the General Administration of Taxation on the management of import tax policies to support the development of the integrated circuit industry and software industries", *Ministry of Finance of the People's Republic of China website*, accessed 20 May 2021. Find it here.

3 "Notice on the requirements for the development of lists of integrated circuit enterprises or projects and software enterprises that enjoy preferential tax policies", *People's Republic of China government website*, accessed 20 May 2021. Find it here.

Matters as prescribed in Circular 8	Further clarifications in Circular 4
‣ Customs duty (CD) for the importation of raw materials, consumables, parts, specific construction materials for clean rooms and so on (hereinafter collectively referred to as materials) for self-use by qualifying logic circuit or storage manufacturing enterprises that produce products with a line width equal to or less than 65nm and qualifying IC manufacturing enterprises that produce products with a line width equal to or less than 0.25μm shall be exempt. ‣ CD for the importation of materials for self-use by qualifying IC manufacturing enterprises that produce products with a line width equal to or less than 0.5μm and advanced assembly and testing technology enterprises shall be exempt.	‣ Circular 4 further specifies that the term "enterprises that produce products with a line width equal to or less than 0.25μm" refers to analog, high voltage, radio frequency IC manufacturing enterprises and so on. ‣ Circular 4 further clarifies that qualifying IC manufacturing enterprises that produce certain key raw materials and parts (e.g., photoresist) shall also be eligible for the CD exemption for importation of materials. ‣ The import materials that are eligible for CD exemption should be self-used materials that cannot be produced domestically, or the domestically produced materials cannot meet the demands.
CD for the importation of equipment together with related technology (including software), parts and auxiliary equipment, as well as spare parts (except for those that are not entitled to CD exemption) to be used by key IC design enterprises whose activities are encouraged under this policy, and software enterprises as well as the abovementioned qualifying IC manufacturing enterprises and advanced assembly and testing technology enterprises shall be exempt.	‣ Circular 4 further specifies that "those that are not entitled to CD exemption" refers to goods listed in the Catalog of Imported Commodities without Tax Exemption for Domestic Investment Projects, the Catalog of Imported Commodities of Foreign-invested Projects Not Entitled to Duties Exemption and the Catalog of Non-tax exempt imported Key Technical Equipment and Products. ‣ The CD-exempt importation of equipment, technology, etc., to be used by key IC design enterprises and software enterprises as well as the abovementioned qualifying IC manufacturing enterprises and advanced assembly and testing technology enterprises shall not take up the total investment of the enterprises.
Import VAT for the importation of equipment for key IC projects can be paid in installments, the applicable period to be announced.	For the period from 27 July 2020 to 31 December 2030, newly imported equipment (except for those that are not eligible for CD exemption) by enterprises undertaking key IC projects may be allowed to pay the import VAT in installments within six years upon the importation of the first equipment, i.e., 0% shall be paid in the first year and 20% shall be paid in each following year.

Caiguanshui [2021] No. 5 (Circular 5) was released by the MOF, Ministry of Industry and Information Technology, National Development and Reform Commission, STA and GAC on 22 March 2022, to specify the arrangements for the stipulation and announcement of relevant lists of IC and software enterprises, as well as lists of materials and goods that qualify for the CD exemption and for installment payments for import VAT, as prescribed in Circular 4. Both Circulars 4 and 5 are valid for the period from 27 July 2021 to 31 December 2030.

Following Circular 5, the authorities jointly released Fagaigaoji [2021] No. 413 (Circular 413) on 29 March 2021, to announce the detailed standards for formulating the lists of IC enterprises, projects and software enterprises eligible for preferential tax policies. According to Circular 413, enterprises that qualify for the criteria and standards announced in that circular should complete online filing in the period from 25 March to 16 April each year and submit the relevant supporting documents via the information reporting system. Those enterprises that cannot complete an audit on their financial statements by 16 April of the following year will be provided with an extended deadline, i.e., 10 working days after 16 April.

Actions for business

IC and software enterprises that intend to apply for the CD exemption or import level VAT installment payments should read Circulars 4, 5 and 413 in detail and prepare for online filing.

New display industry — notices 19 and 20

- **Notice regarding the import tax policies for supporting the development of the new display industry for 2021–2030 (Caiguanshui [2021] No. 19)**[4]
- **Notice regarding the administrative measures for the import tax policies for supporting the development of the new display industry for 2021–2030 (Caiguanshui [2021] No. 20)**[5]

Synopsis

To accelerate the development of information technology, the MOF, STA and General Administration of Customs (GAC) jointly released Caiguanshui [2021] No. 19 (Circular 19) on 31 March 2021, to clarify import tax policies for the new display industry.

Key features of Circular 19 are as follows:

- From 1 January 2021 to 31 December 2030, CD shall be exempt for the following activities:
  - Importation of raw materials, articles of consumables and auxiliary system for clean rooms,[6] as well as parts of manufacturing equipment (that cannot be produced or meet the requirements domestically) for self-use by qualifying manufacturing enterprises that manufacture new display devices[7]
  - Importation of raw materials and consumables (that cannot be produced or meet the requirements domestically) for self-use by qualifying manufacturing enterprises of key raw materials and parts in the new display industry
- For the period from 1 January 2021 to 31 December 2030, newly imported equipment (except for items that are not eligible for the CD exemption) imported by enterprises undertaking key new display device projects may be allowed to pay the import VAT by in installments with 0% in the first year and the rest of the VAT due spread evenly over the following five years.

On the same day that Circular 19 was released, the MOF, Ministry of Industry and Information Technology, National Development and Reform Commission, STA and GAC jointly released Caiguanshui [2021] No. 20 (Circular 20) to specify the administrative measures for the preferential tax policies for the new display industry, as prescribed in Circular 19.

Circular 20 clarifies arrangements on the stipulation and publication of lists of manufacturing enterprises in the new display industry and lists of imported goods eligible for tax exemption, as well as the application requirements for making installment payments for import VAT. Circular 20 is valid for the period from 1 January 2021 to 31 December 2030.

Actions for business

Enterprises engaging in the new display industry are encouraged to read Circular 19 and Circular 20 for more details and leverage the customs and tax benefits available for the sector.

4 " Notice on import tax policies to support the development of new display industries in 2021-2030", *People's Republic of China government website,* accessed 20 May 2021. Find it here.

5 " Notice on supporting the new display industry development import tax policy management measures for 2021-2030", *People's Republic of China government website,* accessed 20 May 2021. Find it here.

6 A clean room is an environment free from dust and other contaminants, used chiefly for the manufacture of electronic components.

7 A display device is an output device for the presentation of information in visual or tactile form.

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Supporting technology innovation — notice 23 and order 106

- **Notice regarding the import tax policies for supporting technology innovation during the 14th Five-Year Plan period (Caiguanshui [2021] No. 23)**[8]
- **Decisions on the abolition of three tax-related regulations (MOF/GAC/STA Order [2021] No. 106)**[9]

On 15 April 2021, the MOF, STA and GAC jointly released Caiguanshui [2021] No. 23 (Circular 23) to specify the import tax policies for supporting technology innovation during the 14th Five-Year Plan period.

Key features of Circular 23 are as follows:

- Importation of production materials (that cannot be produced or meet the requirements domestically) for scientific research, technological development and education purposes by qualifying entities (i.e., science and research institutions, technological development institutions, schools, party schools (schools of the administration) and libraries) shall be exempt from CD, import VAT and corporate tax.
- Importation of books and materials for the purposes of scientific research and education, imported by publication import entities for science and research institutions, schools, party schools and libraries shall be exempt from import VAT.

Circular 23 also specifies the definition of qualifying entities, arrangements for the list of imported materials eligible for tax exemption and administrative measures related to these tax policies. Circular 23 is valid for the period from 1 January 2021 to 31 December 2025.

In addition, to better implement the transitional work, the MOF, STA and GAC jointly released MOF/GAC/STA Order [2021] No. 106 (Order 106) on 13 April 2021, to abolish three tax-related regulations for production materials imported for the purposes of scientific research and education. Order 106 took effect from 1 January 2021.

Actions for business

Organizations operating in these sectors are encouraged to read Circular 23 and Order 106 for more details and leverage the available customs and tax benefits. ■

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8 "Notice of the General Administration of Taxation of the General Administration of Customs of the Ministry of Finance on the policy of supporting the import tax of scientific and technological innovation during the 14th Five-Year Plan period" *Ministry of Finance of the People's Republic of China website*, accessed 20 May 2021. Find it here.

9 "Ministry of Finance of the People's Republic of China General Administration of Customs Order No. 106 of the State Administration of Taxation – Decision on the repeal of the Regulations on the Exemption of Import Taxes for Scientific Research and Teaching Supplies" *Ministry of Finance of the People's Republic of China website*, accessed 20 May 2021. Find it here.

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Japan: A step to realizing carbon neutrality – carbon border adjustment mechanism under consideration

On 17 February 2021, Japan's Ministry of Economy, Trade and Industry (METI) advised that the implementation of a carbon border adjustment mechanism (CBAM) is being considered. In recent years, Japan has adopted measures that promote carbon neutrality, such as laws and regulations to facilitate voluntary cooperation among businesses and market mechanisms for carbon pricing, which are increasingly gaining attention.

This article outlines the background to the discussions regarding the proposed introduction of a CBAM in Japan and evaluates the purpose and the expected impact of introducing such a measure. It also provides details on the current status of the discussions.

Background

The movement to realize carbon neutrality is accelerating in many countries, including Japan. Carbon pricing refers to initiatives that stimulate businesses to go "carbon neutral" by reflecting a price of carbon embedded in the price of commercial goods and services. While carbon pricing can take various forms, recent global focus is on CBAMs, and many countries are considering implementing this mechanism as a measure for cross-border trading.

The EU is particularly active in this area and has advised that it will announce the details of a CBAM by July 2021.[1] Incorporation of a CBAM has also been announced in the US by the Biden administration.[2]

Japan had initially pledged to be carbon neutral "as early as possible in the latter half of the century" but, in October 2020, Prime Minister Suga announced that Japan will aim to achieve this goal by 2050.[3] Japan has so far taken some proactive measures in this area, such as the establishment of a subsidy for businesses aiming to go carbon neutral (Green Innovation Foundation Project – the third supplementary budget of JPY2 trillion in FY Reiwa 2),[4] a review of the climate change countermeasure plan, at the joint conference between the Ministry of the Environment (MOE) and METI, and an amendment of the Act on Promotion of Global Warming Countermeasures. These actions indicate how the Japanese Government has attempted to maintain the country's international competitiveness by taking into account and reflecting the international circumstances pertaining to climate change.[5]

1 "Overview of the recent movement of carbon border adjustments, with a central focus on the trend in EU," *METI website,* accessed 31 March 2021. Find it here.

2 "2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program," *USTR website,* accessed 24 March 2021. Find it here.

3 "Japan's Green Development Strategy corresponding to the goal to achieve carbon neutrality by 2050," *METI website,* accessed April 2021. Find it here.

4 "The outline of the third supplementary budget in FY Reiwa 2 (in relation to METI)", *METI website,* accessed 31 March 2021. Find it here.

5 "What is carbon neutrality? To achieve Japan's carbon neutrality by 2050," *Ondankataisaku website*, accessed 7 April 2021. Find it here.

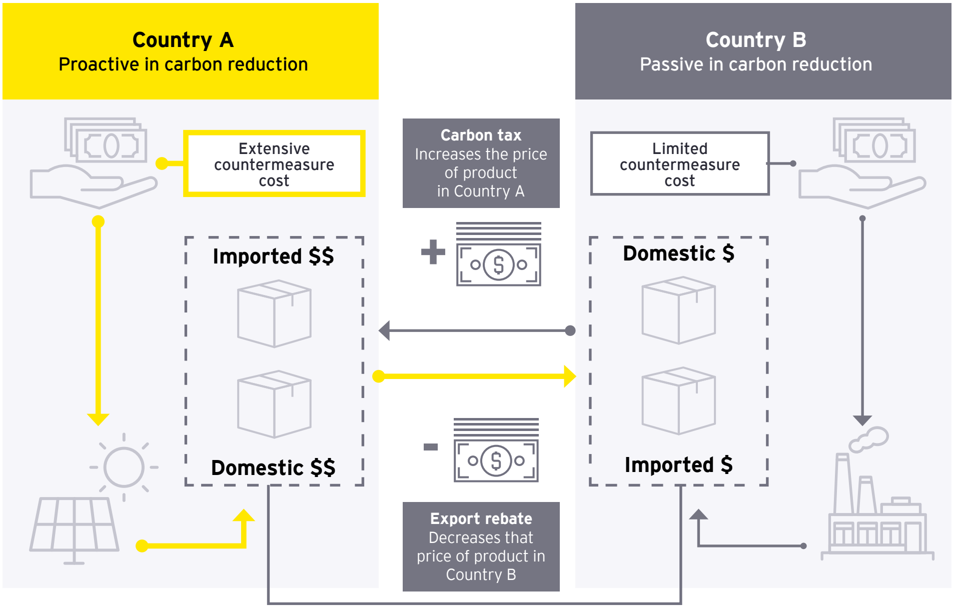
On the other hand, METI has also indicated that the ultimate purpose of the Japanese Government is not to introduce CBAM itself, but to facilitate all the countries in the world, including Japan, to engage with climate change countermeasures.[6] Thus, while the Japanese government is endorsing carbon neutrality, it is still cautious about introducing a CBAM taxation regime at an early stage.

The purpose and planned design of the CBAM

The CBAM has the following two purposes:

1. Mitigation of adverse effects on international competition caused by the differences in the strength of climate change countermeasures undertaken by different jurisdictions
2. Prevention of carbon leakage[7]

At this stage, the mechanism is designed to enable a country with strict climate change countermeasures to levy a carbon tax at the border on goods (i.e., to represent the cost of carbon embedded in those goods) imported from countries with weaker countermeasures. In addition, the mechanism considers an incorporation of export rebates, whereby a part of the countermeasure cost is refunded when goods are exported from a country that has incurred that cost. As illustrated below, both measures facilitate the elimination of handicaps caused by differences in the efforts undertaken by different jurisdictions to reduce carbon emission.



Carbon adjustments at the border can create a level playing field between countries with differing degrees of countermeasure efforts

6 "Basic overview of CBAM and how it should be understood", *METI website*, accessed 23 March 2021. Find it here.

7 Carbon leakage means (1) a decrease in the domestic output as a result of the domestic market being threatened by the lower-priced import goods produced with low carbon efficiency, and (2) the total global carbon emission remaining the same due to the displacement of industrial base from jurisdiction with strict carbon constraints to another with lesser constraints, incentivized by a desire to escape a vigorous carbon restriction.

However, the proposed design has various potential issues, including the following:

- Efficacy of the mechanism in actually reducing carbon output
- Consistency with the World Trade Organization (WTO) rules (e.g., whether the CBAM can be accepted as a border tax adjustment within the WTO rules, and whether it will not conflict with the principle of most-favored-nation treatment and national treatment.)
- Selection of countries and sectors subject to the CBAM
- Calculation of carbon output, and a valuation/verification method for setting the carbon price
- Securing fairness for developing or emerging countries that are technologically challenged
- Achievement of visibility of the amount of carbon tax (i.e., the cost of carbon embedded in the production)

Apart from the issues listed above, many countries have also been raising concerns over the CBAM's potential adverse effects on international trade, such as possible retaliations. Considering the current circumstances, it is likely that the negotiations between multiple countries will continue for a while before an international consensus is reached on the design of the CBAM and on how it should be implemented.

Expected impact on Japan

METI has conducted a predictive analysis on how a CBAM and other forms of carbon reduction measures may affect Japanese steel products.[8] The following table summarizes the expected impact on Japan:

Countermeasure	Impact on Japan[9]
Japan, US, EU implement domestic carbon reduction plan only	▸ An increase in the cost of countermeasures for Japanese steel products, leading to a decrease in Japan's relative competitive power ▸ A decrease in output/export quantity, and an increase in import quantity, particularly from East Asia (e.g., China) and Southeast Asia
Japan, US, EU implement domestic carbon reduction plan and CBAM	▸ An increase in the cost of countermeasures for Japanese steel products, though a decrease in the relative competitive power may be alleviated by a CBAM ▸ A small decrease in output quantity ▸ A decrease in export quantity for East Asia (e.g., China) and Southeast Asia is alleviated by the effect of export rebates ▸ A relatively significant increase in import quantity from the US, East Asia and Southeast Asia If retaliation is taken by a country that doesn't carry out countermeasures ▸ Adverse effects are expected (e.g., a decrease in Japan's competitive power)
All countries of the world equally implement domestic carbon reduction plan (no implementation of the CBAM)	▸ An increase in output quantity ▸ A remarkable increase in the export quantity to and a decrease in the import quantity from China. ▸ Adverse effects caused by retaliations are likely avoided

8 The analysis considers direct steel products only. Car parts and other products that utilize steel products are out of scope.
9 "Analysis of CBAM concerning steel products", *METI website*, accessed 24 March. Find it here

As illustrated above, it is likely that the quantity of the output, import and export in each country is influenced differently depending on the countermeasure taken. Depending on how carbon neutrality is pursued, a cross-country supply chain may be affected, and businesses may be required to reconsider or redesign their current supply chains

CBAM's possible impact on supply chains

The potential impact on companies' supply chains caused by any CBAM needs to be considered carefully, as many complex factors are involved. For example, if Country X introduces a CBAM, a company in Country X may consider changing procurement from Country Y, which takes insufficient countermeasures, to Country Z, which takes sufficient countermeasures, in order to avoid the cost increase in importation due to carbon tax. In this case, although the company may successfully prevent this particular cost increase, it may unexpectedly face a cost increase in customs duty, if the previously used preferential tariff treatments (e.g., as a result of a free trade agreement) with Country Y is not available in Country Z, or vice versa.

Further, it is likely that other factors apart from customs duty may influence the company's final decision on the supply chain, such as the manufacturing cost, cost of carbon reduction measures and a potential refund of such costs (as a form of export rebate) in Country Z, and any retaliatory customs duty levied by the other partner country.

On the other hand, considering the current movement toward carbon neutrality, it is possible that the implementation of a green supply chain may, itself, eventually lead to an increase in the corporate value or become a condition of trade. Therefore, it will be necessary for businesses to consider this matter from multiple perspectives in the medium to long term.

Status of discussions and prospects

At the WTO, the first meeting of the Trade and Environmental Sustainability Structured Discussion (TESSD) was held on 5 March 2021,[10] and it is expected that the discussions on climate change countermeasures including CBAM will be continued there. According to the International Institute for Sustainable Development (IISD), the EU and Canada showed a positive attitude toward the implementation of the CBAM, while some other participating countries, such as the (UK, expressed a hesitant position, although they still showed understanding toward the importance of considering making carbon adjustments through trade policy).[11] Although China did not participate in the TESSD conference, there was speculation that China may not be in favor of the CBAM and that such opposition may be amplified if China perceives CBAM's implementation as being advantageous to the EU.[12]

In Japan, MOE and METI continue to lead the discussion on this topic with careful consideration for the international situation as well as opinions from industry. MOE established the Subcommittee on the Utilization of Carbon Pricing in 2018, and it has been discussing the possibility of promoting a strategic allocation of funds and resources through carbon pricing, and how their synergistic effect may facilitate carbon neutrality. Further, as mentioned above, METI also established a research group on 17 February 2021, consisting of MOE as an observer, experts and researchers of carbon neutrality, as well as representatives of relevant industries, to further the discussion on climate change countermeasures.

It is expected that these efforts will be more effective in the future with the collaboration between MOE, which has been extensively studying carbon pricing, and METI, which has connection with industry. As for the future schedule, the research group plans to establish an interim report in July or August 2021 and conclude a certain direction by the end of 2021.

In order to understand the impact of a carbon border adjustment mechanism, multinational corporations should continue to pay close attention to the information provided by the government of Japan and other countries related to carbon and other green measures so that it can take the necessary actions to understand their impact and prepare for the implementation.

10 "First meeting held to advance work on trade and environmental sustainability," *WTO website*, accessed 29 March 2021. Find it here.

11 "Trade and Environment Structured Discussions Among WTO Member Group Get Underway," *IISD website*, accessed 29 March 2021. Find it here.

12 "Perception of the Planned EU Carbon Border Adjustment Mechanism in Asia Pacific – an Export Survey," *Konrad Adenaur Stiftung website*, accessed 6 April 2021. Find it here.

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Oceania: Duty drawback for importers and exporters in Australia and New Zealand

The topic of duty drawback for importers and exporters in Australia and New Zealand is currently experiencing significant interest. It is being driven by the changes in global supply chains and the need to access cash refunds to reduce spiraling freight costs.

Some examples of the commercial drivers include:

- E-commerce models, whereby goods are returned to overseas distribution centers
- Transfers of stock between different markets (for example, seasonal apparel ranges being switched between regions or hemispheres)
- Imported goods incorporated into goods that are later exported. (While dealing with this concern is sometimes regarded as being too difficult, the duty drawback is often available.)

What is duty drawback?

It is important to be aware that availability and rules for duty drawback vary according to each jurisdiction. Even within Oceania, there are differences:

Duty drawback provisions

Australia	New Zealand
If duty has been paid on goods imported into Australia and those goods are later exported, or are incorporated into goods that are later exported, the importer may be able to get a refund of the duty paid on import.	Duty drawback (refunds of duty) may be allowed on: • Goods that were imported into New Zealand that are later exported • Imported parts or materials that are used in goods that are manufactured in New Zealand and later exported • Goods manufactured in a Customs Controlled Area (CCA) that are later exported

Consider the following example: a clothing company imports jeans into Australia, and it incurs duty at a rate of 5% (assuming preferential rates of duty do not apply). Seventy percent of the jeans are sold in stores in Australia, and 30% are exported to New Zealand. Upon re-export of the jeans to New Zealand, the clothing company is eligible for a refund of the duty paid on the 30% of its products that have been re-exported.

Duty drawback is often missed by organizations that do not have full visibility of their supply chains to understand where duty is being paid. Therefore, cash refund opportunities may be left on the table.

Who can claim duty drawback?

There are slight differences between Australia and New Zealand as to who can claim duty drawback:

Eligibility to claim duty drawback

Australia	New Zealand
The legal owner of the goods at the time they are exported from Australia may claim duty drawback.	Anyone who can prove they paid duties when they imported goods into New Zealand as well as manufacturers that have paid duty on goods manufactured in CCAs, may claim duty drawback.

What evidence is required to support a duty drawback refund claim?

Again, there are differences between Australia and New Zealand with respect to the evidence required to support a claim for duty drawback and in how the claimant may calculate the amount of the claim. Significantly, Australia offers a more simplified methodology than New Zealand for calculating the duty drawback refund.

Evidence required to support a duty drawback refund claim

Australia	New Zealand
In making a claim for a refund, the claimant must be able to substantiate and provide evidence showing that goods subject to the claim were: ▸ Originally subject to duty ▸ Not used in Australia ▸ Exported	In making a claim for a refund, the claimant must be able to provide evidence to support: ▸ The nature and quality of the goods at export ▸ Exportation of the goods ▸ The duty paid in respect of the goods Additional information may be required to be submitted at the request of the New Zealand customs authorities. Where the drawback claim is submitted late (i.e., it is not a standard drawback claim), evidence may be required as to why the claim was not submitted at the time of export.

Calculation of duty drawback refund

Australia	New Zealand
The calculation of the amount refundable must be based on one of the following three calculation methods: 1. *Shipment-by-shipment basis.* This method is used where imports directly relate to exports. 2. *Representative or averaging shipment basis*. This method is generally used for high-volume, low-value goods. A representative shipment for a period is picked as a typically representative sample of the values of identical items. The averaging of shipments is costed over time and must not result in an overclaim. 3. *Imputation method*. This method is used where import documents are generally unavailable. With this method, the import value for the purposes of calculating duty drawback is imputed to be 30% of the purchase price of the goods. The imputation method can only be used where goods are fully imported and have been purchased in Australia by the exporter.	Unlike in Australia, the calculation of the amount refundable must be based on the duty amount originally paid on importation or manufacture. Depending on the quality of the goods at the time of export, duty drawback may not be allowed on the full amount.

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Other requirements are summarized below.

Additional requirements

Australia	New Zealand
To be eligible for duty drawback, the claim must be made within four years from the date of export (other than the export for tobacco or tobacco products). The minimum amount per claim is AUD100 and multiple claims of less than AUD100 can be aggregated to form a single claim.	A standard duty drawback can be submitted upon export of goods (generally 48 hours before the goods are shipped). In some cases, late and periodic drawback claims can be made; however, they must be made within four years from the date of export. The minimum amount per claim is NZD50 (albeit, there is no restriction for private importers).

Actions for business

Understand your supply chain and duty profile

Data analytics can be used to provide important insights related to an organization's supply chain, including an in-depth analysis of its imports and export volumes, duties payable and other opportunities. With this information, businesses can identify where opportunities may exist and determine whether there is benefit in pursuing opportunities such as duty drawback claims.

Historically, many organizations have found it difficult to meet the levels of substantiation required as system limitations have made it difficult to match duty paid on importations with goods exported from Australia and New Zealand. Processes have tended to be manual and very time-consuming, and this has been a real barrier to many businesses in pursuing duty drawback claims.

However, advanced technologies such as robotics are changing that position and streamlining the process, thus reducing the impact on the business. For example, with data obtained directly from customs authorities or customs brokers, robotics can be used to automate the matching process for imports and exports. These processes work extremely well not only where goods are imported and exported without further alteration but also for imported goods that are subject to alteration or manufacture before exportation. ■

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Africa: Implementation of the African Continental Free Trade Area Agreement

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Background

On 1 January 2021, trading under the African Continental Free Trade Area (AfCFTA) agreement commenced as determined at the 13th Extraordinary Session of the Assembly of the African Union (AU) on 5 December 2021. The AfCFTA was established to integrate Africa's markets and to drive economic development for the continent.

The AfCFTA is also part of the AU's implementation of Agenda 2063, the developmental plan to enhance intra-African trade in goods and services (with the subsequent aim of transforming Africa into a global trade superpower).

The AfCFTA is set to create the world's largest free trade area (in size) with an estimated US$3 trillion boost to economies across Africa. However, the eventual realization of the envisioned trade benefits depends on the efficient implementation of the AfCFTA agreement and finalization of key items such as rules of origin (RoO) and the adoption of tariff concessions.

Fifty-four of the 55 African countries have signed the AfCFTA agreement (Eritrea being the only holdout). In addition, 36 African countries have deposited their instruments of ratification with the chair of the AU Commission. The AfCFTA agreement will be implemented in conjunction with the existing regional African trade arrangements as well as other economic communities in Africa (e.g., the Southern African Development Community).

AfCFTA's current status

The implementation of the AfCFTA agreement has set in motion the steps required to create a single market for goods and services and therefore expand intra-African trade. The initial key focus areas around the AfCFTA are:

- Eliminate tariffs and non-tariff barriers to trade in goods
- Introduce cooperation on customs matters and the implementation of trade facilitation measures
- Establish a mechanism for settling disputes concerning member states' rights and obligations
- Establish and maintain an institutional framework for the implementation and administration of the AfCFTA

The implementation of the AfCFTA agreement has kick-started a phase of liberalized trade. Liberalization of trade requires that the AfCFTA member states commence with the progressive elimination of import duties on goods originating from the territory of any other member state. Member states typically do this by submitting schedules of tariff concessions, also referred to as tariff offers. To date, only a few countries have submitted their tariff offers, and it is expected that the other member states will finalize and submit their tariff offers at some point this year.

In conjunction with the tariff offers from the member states, the RoO are also essential for inter-Africa trade to occur under the AfCFTA agreement. RoO have so far been partly agreed upon, and it is projected that these will be finalized by June 2021. For inter-Africa trade to occur under the AfCFTA agreement, the tariff offers from both member states (regional African trade areas) must be submitted and the RoO must be finalized.

South Africa's implementation after the ratification of the AfCFTA agreement

South Africa is one of the member states that has set in motion the steps required to implement the AfCFTA agreement by publishing its tariff offer (i.e., the preferential tariffs for trade under the AfCFTA agreement). The preferential tariffs published in South Africa represent the offer made under the AfCFTA agreement as adopted by the Southern African Customs Union (SACU). The applicable preferential rates were gazetted and published in Schedule 1 Part 1 of the Customs and Excise Act 91 of 1964 (the Act). The schedule to the Act details the qualifying goods and applicable preferential duty rates under the AfCFTA agreement. In this regard, member states trading with South Africa may take part in the preferential treatment afforded by the AfCFTA agreement (i.e., free or reduced import duty rates).

Regarding the tariff offer, the preferential duties under Schedule 1 of the AfCFTA agreement shall be suspended if the conditions of the SACU's tariff offer are not met. At this stage, the key condition is the requirement of reciprocity from member states on tariffs.

Given the limitations specified above, South Africa's implementation of the preferential duties currently has limited application with the reciprocity requirement in place (i.e., benefits are only afforded to those member states with similar tariff concessions). As such, the preferential duties in Schedule 1 of the AfCFTA agreement are currently only applicable to Egypt and the Democratic Republic of São Tomé and Príncipe.

This limitation on the implementation is further exacerbated by the delay in the finalization and approval of the RoO under the AfCFTA agreement. Member states have yet to agree on uniform RoO for the AfCFTA. Until this is settled, actual trade and enjoyment of incentives will not be possible.

Key consideration for exporters under AfCFTA

Registrations: exporters

Companies that are currently trading or intend to trade in Africa must consider initiating the compliance requirements under the AfCFTA agreement. From a South African perspective, exporters who intend to export goods under the AfCFTA agreement will be required to register with the South African Revenue Service as an exporter specifically for AfCFTA purposes.

In addition to register as an exporter under the AfCFTA agreement, companies may also be required to apply for origin certificates. In South Africa, exporters can also apply to register as an approved exporter for AfCFTA purposes. An approved exporter designation requires an additional registration that allows exporters to use origin declarations in lieu of the certificate of origin (irrespective of the value of a shipment). To make use of origin declarations, exporters must still fulfill all origin requirements for the products exported under the AfCFTA agreement.

Recommended actions

With the implementation of the AfCFTA agreement, companies that engage in intra-African trade should consider whether they could potentially benefit from the preferential trade regime. We suggest following the approach described below:

- Ascertain which member states have so far submitted their tariff offers.
- If an entity operates in any of these member states, assess whether its products are subject to preferential import duties.
- If a benefit is established, the entity should start the registration process where required and available (e.g., South Africa) to partake in the AfCFTA. This means that once the RoO are finalized, such an entity will be able to start trading under the AfCFTA agreement immediately.

Conclusion

The AfCFTA has officially launched, setting in motion the world's largest free trade area with an estimated US$3 trillion boost to the African economy. The AfCFTA aims to bring about the elimination of tariffs and non-tariff barriers to trade in goods.

Actual trade has not yet commenced as most tariff offers are still outstanding, and the RoO have to be finalized. It is anticipated that the RoO will be finalized in June 2021, and once this is done, preferential trade under the AfCFTA agreement should be possible. For this reason, entities operating in Africa should start familiarizing themselves with the potential benefits for their products under the AfCFTA agreement.

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European Court of Justice: Court rules on transport costs and customs value under DAF delivery terms

On 22 April 2021, the European Court of Justice (ECJ) decided in the *Lifosa* case (C-75/20)[1] that (1) transport costs should not be added to the customs value if they are actually incurred by the seller and (2) according to the agreed delivery terms, the obligation to cover those costs lies with the seller, even though those costs exceed the price actually paid by the importer.

Background

Lifosa UAB (Lifosa or importer), a company established in Lithuania, imported goods from a producer in Belarus to be used in the production of fertilizers in the customs territory of the European Union. The goods were sold at a low value to the importer in Lithuania to avoid a very high environmental tax in the country of export, Belarus. For the sales transaction, the producer and importer agreed on using Incoterm "Delivered at Frontier" (DAF), under which all costs of transporting the imported goods are borne by the producer up to the agreed place of delivery at the border. The customs value of the goods that was declared by Lifosa was the same amount actually paid as set out on the invoices issued. The customs value declared was, however, less than the costs incurred by the producer for the transport of the goods up to the Lithuanian border.

The local customs authorities argued that if, for the purpose of determining the customs value of the imported goods, their transaction value is not adjusted by adding the transport costs incurred by the producer, the customs value does not reflect all the elements of those goods that have economic value. Lifosa objected to this decision. The Supreme Administrative Court of Lithuania decided to stay the procedure and ask the ECJ for a preliminary ruling. In summary, the question is whether the transaction value must be adjusted to include all the costs actually incurred by the producer in transporting the goods to the place where they were brought into the customs territory of the European Union when:

- It follows from the delivery conditions that the obligation to cover the transaction costs was borne by the producer.
- The transportation costs exceed the price that was agreed upon and actually paid by the importer.
- The price actually paid by the importer corresponds to the real value of the goods, even if that price was insufficient to cover all the costs of transport incurred by the producer.

1 ECJ 22 April 2021, C-75/20 (Lifosa), ECLI:EU:C:2021:320.

Consideration of the question referred

The answer to this question is that under both the old and current EU customs legislation,[2] the costs actually incurred by the producer for transporting the goods to the place where they have been brought into the customs territory of the European Union should not be added to the transaction value of the goods in situations as described above.

Why is this relevant?

It has once again been confirmed by the ECJ that Incoterms and other delivery and contractual arrangements are important for determining the customs value of goods imported into the EU. This court case in particular shows in addition that the transaction value can still be used, even if the actual transport costs exceed the price established between the buyer and seller. This is in some cases a favorable outcome for businesses. For instance, businesses that sell and ship goods to the EU for the purpose of repairing, recycling or refurbishing them may find themselves in similar situations to the Lifosa case. Under the conditions set out in the Lifosa case, the business may be entitled to report lower customs values as it does not need to fully cover the actual transportation costs, and consequently, this may lead to saving opportunities if it currently adds the actual transportation costs to the customs value of the imported goods.

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2 Articles 29(1) and 32(1)(e)(i) of the Community Customs Code and Articles 70(1) and 71(1)(e)(i) of the Union Customs Code.

EU: Impact of new e-commerce VAT rules on customs

On 1 July 2021, a new set of VAT rules with regard to e-commerce will enter into force in the EU. These new rules also affect the customs treatment of business-to-consumer (B2C) e-commerce transactions into the customs territory of the EU. This article reflects on the background of the new e-commerce VAT rules and the changes to these rules, especially those with customs consequences.

Background

In April 2016, the European Commission launched its Digital Single Market Strategy for Europe as part of the Action Plan on VAT. This included an initiative to modernize VAT for e-commerce, which aimed to simplify VAT obligations for businesses involved in e-commerce while at the same time combating VAT fraud and enabling fair competition for European businesses. On 5 December 2017, the VAT e-commerce package was adopted, with new e-commerce measures being introduced on a step-by-step basis. The measures will fundamentally change the VAT rules for international trade in order to encourage e-commerce and expand the digital economy.

A number of measures already entered into force on 1 January 2019 (simplification of the regime for telecommunications, radio and television broadcasting and electronically supplied services). A second package of measures will enter into force in July 2021. This package includes major changes of the European legislative framework for VAT on B2C e-commerce, covering both distance sales within the EU and distance sales of goods imported into the EU. Despite the intended simplification, these new rules are very comprehensive and detailed. In essence, the changes in question are outlined below:

1. The thresholds for intra-Community distance sales will be adapted.
2. A new category of taxable transactions will be introduced, namely distance sales of imported goods.
3. Even indirect involvement of the supplier with the transport of the goods is sufficient to be covered by the distance selling rules.
4. The exemption of import VAT for shipments of low-value consignments will be abolished

5. Systems to simplify VAT reporting will be introduced (the "One-Stop Shop" rules for both intra-Community transactions and imports).
6. The so-called online platforms or electronic interfaces are (in certain cases) deemed to have purchased and sold the goods supplied via these platforms for VAT purposes, although they do not legally obtain ownership of the goods.
7. In certain cases, the moment when VAT becomes due, and therefore must be declared and paid, is adjusted to the moment when the payment is accepted by the supplier.
8. The invoice obligations will be adjusted.
9. Special arrangements will be introduced for postal and courier companies to facilitate the payment of import VAT when the goods are supplied from outside the EU.

Below, the changes with a customs angle are discussed in greater detail.

Distance sales of imported goods

The new rules apply in particular to distance sellers. These are suppliers of goods who sell their products to private individuals (B2C) and certain types of customers. In addition to the familiar concept of intra-Community distance sales, the new e-commerce rules also provide for a new definition of distance sales of goods imported from third territories or a third country.

The concept of distance sales of imported goods covers the supplies of goods dispatched or transported from a third territory or a third country to a customer. These sales, like intra-Community distance sales, have the following characteristics:

- The supplier is responsible for the transport of the goods from a third territory or a third country to a customer in an EU Member State. This includes cases where the supplier indirectly intervenes in the transport or dispatch of the goods.
- The customer is either a private individual or a member of the so-called "group of four."[1]
- The goods supplied are not new means of transport and are not installed or assembled by or on behalf of the supplier.

The rules differentiate between situations where the Member State of arrival of the goods is or is not the same as the Member State of importation:

- If the Member State of importation is the same as the Member State of arrival of the goods (e.g., the goods come from Switzerland and are shipped to the Netherlands, which is the final country of destination), the place of supply of the goods is the Member State of destination, but only if the Import One-Stop Shop (IOSS) scheme is used, which is only possible for low-value goods not exceeding €150. This means that:
  - If the IOSS scheme is not used or if the goods have an intrinsic value of more than €150, the place of supply should be determined according to the regular (non-distance sales) rules.
  - If the IOSS scheme is used, the sale will be subject to VAT in the country of importation. The importation itself will be exempt from VAT.
- If the Member State of importation is different from the Member State of arrival of the goods (e.g., the goods come from China, are imported in Belgium and subsequently shipped to the Netherlands), the place of supply of the goods is the Member State of destination, irrespective of the use of the IOSS scheme and irrespective of the intrinsic value of the goods.

If the IOSS scheme is used, the VAT will become due when the payment for the supply is accepted (i.e., upon payment confirmation or approval received by the supplier using the IOSS, irrespective of the moment when the actual payment takes place).

1 The group of four consists of:
- Small enterprises whose annual turnover below a certain threshold is exempt from VAT (for example, in Belgium this is €25,000
- Taxable persons subject to the common flat-rate scheme for farmers
- Taxable persons carrying out only supplies of goods or services in respect of which VAT is not deductible (These are the so-called "VAT exempt taxable persons" (e.g., certain undertakings in the medical or financial, insurance or real estate sphere, but only if their turnover is entirely exempt from VAT)
- Nontaxable legal persons (e.g., governmental bodies or passive holding companies)

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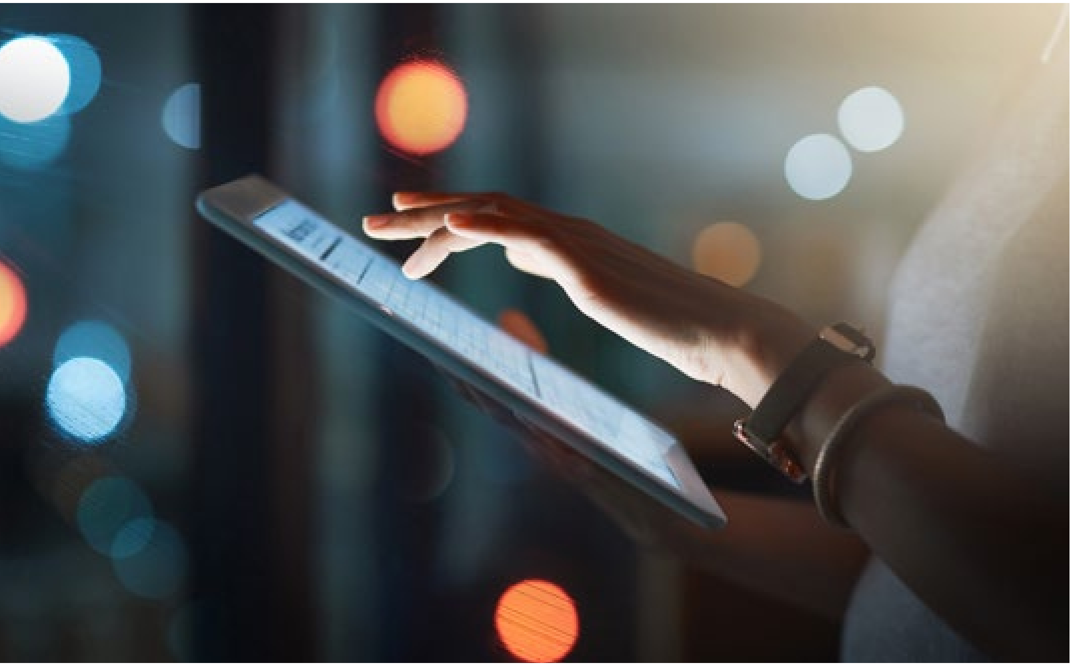
With regard to compliance for distance sales of imported goods, a distinction should be made between small consignment shipments or low-value goods and other shipments, as explained below.

Low-value goods

Under the current rules, the importation of commercial goods of a value up to €10 or €22 is exempt from VAT in the EU. The threshold for customs duties is, and will remain, at an intrinsic value of €150; no customs duty should be paid for goods imported in the EU with an intrinsic value not exceeding €150 (except for alcoholic products, perfumes, toilet waters, tobacco and tobacco products). As of 1 July 2021, the VAT threshold of €10 or €22 will be abolished. There will be a threshold of €150; for goods not exceeding this threshold, the importation may continue to be exempt from VAT, subject to the use of the IOSS scheme. However, unlike under the current rules, the sale will be subject to VAT in the country of arrival of the goods.



While under the current rules, there is a definitive exemption for small consignment shipments (below €10 or €22) coming from non-EU countries, such exemption will be removed and the sale should be subject to VAT, either upon importation (no use of the IOSS scheme) or via the IOSS scheme (VAT due in the Member State of destination).

There is a commercial benefit for the supplier (or electronic interface) to use the IOSS scheme (i.e., the customer should then understand the full price upon purchase of the product and should no longer be surprised by additional charges, such as import VAT) when the product has to be "customs cleared" by the customer. Furthermore, use of the IOSS aims for a quick release of the goods by the customs authorities and a speedy delivery to the customer.

Other goods

These goods are also covered by the distance sales rules for imported goods. However, the place of supply rules are different, as the import exemption for goods not exceeding €150 is not applicable and the IOSS scheme cannot be used for these goods.

The VAT treatment depends on whether the Member State of importation is the same as the Member State of destination:

- If these are the same (e.g., the goods are imported in France and are destined for a customer in France), the customer or the supplier can normally act as importer of record:
  - If the customer acts as the importer of record, they will pay the import VAT and customs duties. The distance sale as such is not taxable in the EU (France).
  - If the supplier acts as the importer of record, they will pay the import VAT and customs duties. The distance sale is taxable in the EU (France). The supplier should normally register for VAT in the Member State of import/sale and should be entitled to deduct the import VAT in that country.
- If these are not the same (e.g., the goods are brought into the EU via France, but destined for a customer in the Netherlands), the VAT consequences are as follows, and it should be noted that for these situations, the customs rules

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have changed. For goods with a value below €150, the import exemption cannot be applied, and the import declaration must be filed in the Member State where the customer is established. As a result of this new rule, in the example given, the import declaration must be filed in the Netherlands where the customer is established:

- If the supplier itself acts as importer, import VAT will be levied from them, and VAT on the sale will be due in the Member State of destination (the Netherlands). The supplier should obtain a Dutch VAT number and file Dutch VAT returns in which these domestic sales are declared and the import VAT is claimed as refundable VAT.
- If the customer (consumer without a right to deduct input VAT) is the importer of record, the import VAT is obviously not recoverable. In this situation, postal operators (see below for more details) will normally file the import declaration and charge the import VAT to the customer.

Special arrangements for the declaration and payment of import VAT for low-value goods

There are special arrangements for the declaration and payment of import VAT for imported goods where neither the IOSS nor the standard VAT collection mechanism on importation is being used. This is an optional mechanism available for goods not exceeding €150 where the Member State of import is the same as the Member State of destination of the goods, and the mechanism is not applicable to products subject to EU harmonized excise duties.

This simplification measure is designed for postal operators, express carriers or other customs agents in the EU who typically declare low-value goods for importation, as either a direct or indirect customs representative. One of the main benefits of these special arrangements is that the declarant will remit only the VAT they actually collected from the customer during a calendar month. Thus, for goods not delivered or not accepted by the customer, the declarant would not be liable to pay the related VAT. It also means that the declarant will have to keep records of all transactions covered by the special arrangements, which should allow the declarant to justify the nonpayment of VAT on parcels refused by the customer.

Under the special arrangements, the customer pays the VAT to the declarant (i.e., the person presenting the goods to customs, such as a postal operator), and the declarant pays the collected VAT by the 16th of the following month to the authorities.

Member States have the option to require that only the standard VAT rate can be used for goods imported under the special arrangements, which may be disadvantageous for goods subject to a reduced rate.

Exemption for low-value goods

Current situation	As of 1 July 2021
Exemption (VAT/customs) of imports of low-value goods not exceeding: • VAT: €10 to €22 • Customs: €150	• VAT exemption abolished • Customs exemption intact • New VAT reporting system (IOSS)
• Possibility to declare the goods not exceeding €22 at customs (no customs declaration)	• Electronic customs declaration, irrespective of amount • New customs declaration with limited data set

Under current European legislation, imports of low-value goods from outside the EU for consumers in the EU are exempt from VAT. These are consignments with a value not exceeding €10 to €22 (most EU Member States opted for the €22 threshold).

However, this threshold was introduced in a completely different era (1983), when there was no internal market yet, nor digitalization and e-commerce (with the exception of mail order catalogs). With the rise of e-commerce, this VAT exemption proved disruptive to normal competition. Traders carrying out small consignments from the EU cannot benefit from a similar VAT exemption. Moreover, there was also a practice of abuse whereby the importing party under-declared the value of the goods in order to benefit from the VAT exemption.

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To counter this distortion of competition and loss of VAT revenue, this VAT exemption will be abolished as of 1 July 2021. All e-commerce imports will, in principle, be subject to VAT, irrespective of their value. This corresponds to the intention to subject all distance sales to VAT according to destination.

In order to comply with the additional VAT obligations that will be triggered, this abolition will be accompanied by the introduction of the IOSS scheme for low-value consignments not higher than €150. This will allow companies to avoid having to apply for a VAT number (and file VAT returns) in every EU Member State of destination. For imports where the IOSS system is not used and the goods are imported in the name of the consumer by postal or courier companies, a special payment and declaration system is introduced.

As an increasing number of low-value consignments imported into the EU is to be expected, declarants and customs IT systems face an enormous challenge to handle the production of customs declarations. Because there is no customs liability for goods of a value below €150, it is possible as of 1 July 2021 to declare low-value consignment goods below the threshold of €150 with a customs declaration containing a "super-reduced data set" that is more manageable but presents an adequate level of data.

Simplification mechanism for reporting and payment of import VAT

The European legislator has also introduced a simplification mechanism for the collection and payment of VAT if the IOSS (for the declaration and reporting of VAT on distance sales of goods shipped from third countries) is not used.

The simplification mechanism entails logistics service providers (such as postal operators and express carriers) collecting and remitting import VAT in the name and on behalf of the customer. These service providers must collect VAT from the customer, declare it and pay it on a monthly basis. This simplification mechanism can only be used for goods other than excise goods when the value of the consignment does not exceed €150.

The postal operators and express carriers using the system will therefore have to confirm that VAT is paid correctly (at the correct rate). They will also have to keep records of the transactions carried out under this simplification mechanism.

The explanatory notes recently published by the European legislator clarify, in this case, the possibility for Member States to impose the use of the standard rate for goods declared under this procedure. For example, the import of a book could be subject to the standard rate instead of the reduced VAT rate. The customer needs to provide his approval: if they do not, the traditional import procedure should still be applied.

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EU: Trade Policy Review – aiming at open strategic autonomy

Confronted by various contemporary challenges, ranging from climate change to growing international trade tensions and a greater recourse to unilateral conduct within the framework of international trade, the EU Commission announced on 18 February 2021, its new trade policy.[1] The trade policy – which is closely intertwined with the EU's Green Deal and EU Digital strategy – stipulates the three core objectives on which the EU will focus:[2]

1. Supporting the recovery and fundamental transformation of the EU economy in line with its green and digital objectives
2. Shaping global rules for a more sustainable and fairer globalization
3. Increasing the EU's capacity to pursue its interests and enforce its rights, including autonomously where needed

In order for the EU to accomplish its prescribed objectives, the EU subsequently identified the following six areas that need to be addressed simultaneously:

- Reforming the World Trade Organization (WTO)
- Supporting the green transition and promotion of responsible and sustainable value chains
- Supporting the digital transformations and trade in services

1 "Commission sets course for an open, sustainable and assertive EU trade policy," *European Commission website*, accessed 10 May 2021. Find it here.

2 "Communication from the Commission: Trade Policy Review – An Open, Sustainable and Assertive Trade Policy," *European Commission website*, accessed 10 May 2021. Find it here.

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- Renewing focus on strengthening multilateralism and enhancing the EU's partnership with neighboring countries and Africa
- Strengthening the EU's focus in implementation and enforcement of trade agreements as well as taking a more assertive stance in defending its interests and values

By fulfilling the aforementioned objectives, the EU's end goal is to secure an "open strategic autonomy, "the situation whereby the EU is able to make its own choices and shape the world around it "through leadership and engagement" reflecting its strategic interests and values."[3]

International cooperation and multilateralism as top priority: WTO reform

While the EU acknowledges that 60% of EU trade is conducted on the WTO's most-favored-nation terms and commends the WTO's role in reducing tariffs worldwide and providing stable trading environments for businesses, the EU has stated that the WTO is facing an existential crisis as the WTO is said to be unable to perform its key functions, namely trade negotiations, the dispute settlement procedure and the monitoring of trade policies.

First, the EU Commission stated that the WTO rules must be updated and improved to reflect today's trade realities.[4] This includes new rules on digital trade and sustainable developments such as a renewed emphasis on the protection of the environment and stronger protections of worker's rights.

Second, the blockage of appointments of Appellate Body members by the United States is regarded as a significant impediment to the EU's trade policies. As a result of the Appellate Body's inability to hear new appeals due to the appointment blockage, WTO members will be able to avoid binding rulings and hence escape their international obligations. This is achieved by appealing the panel report during the instances where the Appellate Body is unable to examine appeal cases. As a result, disputes will be placed into a legal void and will remain unresolved (the "appeals into the void" problem).

Third, although increasingly important because of the shortcomings above, monitoring trade policies has become extremely difficult due to ineffective procedures, compliance gaps with transparency obligations and a widespread lack of trust.

Therefore, the Commission intends to pursue reform of the WTO across all of its functions. In this respect, the Commission has set out two clear objectives:

1. The adoption of a first set of reforms enhancing the WTO's contribution to sustainable development and the launch of negotiations that will reinforce the rules addressing the distortions of competition due to state intervention
1. Restoration of a fully functioning WTO dispute settlement with a reformed Appellate Body

While the EU has a set of proposed WTO reforms, the Commission reiterated the importance of discussing such reforms with like-minded WTO members such as the US or Japan.

Autonomy

Strongly related to the WTO reforms proposed by the EU, the EU trade policy agenda also includes a section on measures that will reinforce the EU's capacity to pursue its interests and facilitate a level playing field for EU businesses. It is mainly this section that market operators must closely monitor for legal developments, as the EU is drafting new legal instruments addressing novel issues. On one hand, this section elaborates on the implementation of the EU's trade agreements. The Commission's intention is to place more emphasis on identifying and unlocking the benefits of the EU's trade agreement. This includes the utilization of the "Access2Markets" portal and other information platforms. More importantly, and somewhat sequestered at the end of the Communication document, the Commission also has a clear ambition that will greatly benefit the operations of all businesses across the EU, especially for small to medium-sized enterprises. This is the Commission's plan to harmonize the rules of origin in the EU's trade agreements.[5]

3 *Ibid.*
4 *Ibid.*
5 *Ibid.*

The Commission also intends to invest more in the enforcement of the trade agreements that it has concluded with its trade partners. Particularly, emphasis shall be placed on infringements of sustainable development commitments by the counterparties. Such infringements of sustainable development commitments and market access barriers will subsequently be examined by the recently created one-stop platform — the Single-Entry Point system — and by the chief trade enforcement officer. Additionally, the EU Commission will further rely on information received from its network of EU Delegations, Member State embassies and WTO committees on the legislative developments in partner countries that may impede the agreed-upon trade commitments.

On the other hand, the renewed trade strategy contains several references to unilateral instruments that are inherently defensive in nature. The usage of such unliteral instruments by the EU may lead to additional administrative and tax burden for the companies exporting from or importing/investing in the EU. Some of these references involve existing instruments, whereas other references foreshadow the introduction of new instruments that may be developed in the upcoming years.

Potential new unilateral instruments referred to in the Trade Policy Review:	References to existing instruments
• Legal instrument to protect the EU from potential coercive actions of third countries • Legal instrument to address distortions caused by foreign subsidies on the EU's internal market • Carbon Border Adjustment Mechanism • Commission proposal on sustainable corporate governance and mandatory due diligence • Legislation addressing deforestation and forest degradation	• The EU has updated its Enforcement Regulation[6] to strengthen its capacity to act in situations in which dispute settlement is blocked • The Commission intends to use its trade defense instruments in a firm manner • The Commission restates its call to all Member States to set up and enforce a fully fledged foreign direct investment screening mechanism • The Commission proposed to modernize the Export Control Regulation[7]

6 "Regulation 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation 654/2014 concerning the exercise of the Union's right for the application and enforcement of international trade rules," *EUR-Lex website*, accessed 10 May 2021. Find it here.

7 "Council Regulation 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast)," *EUR-Lex website*, accessed 10 May 2021. Find it here.

Green Deal

The Green Deal requires all EU policies to contribute to combating climate change and environmental degradation. Trade policy is supposed to support and accompany a global transition toward a climate-neutral economy. This entails policy actions at the multilateral, bilateral and unilateral levels.

Among other suggestions, the Commission intends to make the Paris climate agreement an essential element in all future trade agreements that the EU negotiates. This means that, if accepted by the trading partner, parties may partially or fully suspend an agreement unilaterally in the event that this clause is breached.

Moreover, the Commission is currently working on a proposal for the Carbon Border Adjustment Mechanism that will also address the negative effects stemming from carbon leakage.

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Digital transition

With regard to the digital transition, the EU recognizes that EU businesses significantly and increasingly rely on digital services. In its strategy documents, the Commission stipulates that the EU, in cooperation with like-minded partners, will assist the WTO in the creation of new rules regulating digital trade and explore the possibility of regulatory cooperation. Moreover, the EU's desire is the creation of additional rules on other areas of digital trade such as e-commerce. In the meantime, the EU Commission will vigilantly monitor all data flows between the EU and third countries and examine whether any unjustified obstacles to these data flows exist.

Enhancing the EU's partnerships with neighboring countries and African countries

While the EU welcomes the new US administration's willingness to cooperate at the multilateral level and regards transatlantic relations as the "most economically significant partnership in the world,"[8] the EU's short-term plan is to drastically enhance its partnership with its neighboring countries as well as with African countries. Specifically, the EU wants to enhance its trade relations with the Western Balkan states via the implementation of its Economic and Investment Plan.[9]

What does the United States say?

Although there are similarities between the new EU trade strategy and the 2021 Trade Policy Agenda of US President Joe Biden,[10] there are also fundamental differences. While the two documents are obviously not of the same nature, they can nevertheless be used to compare the most important focus areas of the EU and the US, respectively.

Whereas the European Commission primarily aims at openness and multilateralism, one of the main trade priorities of the US is to prepare for any potential future disruption to the global trading system. The Partnering with Friends and Allies section, which includes the role of the WTO, is only the sixth priority in Biden's Trade Policy Agenda. Furthermore, the United States seem to have a much bigger focus on domestic issues. The first two trade priorities of the Biden administration are (1) tackling the COVID-19 pandemic and restoring the economy and (2) putting the workers' interests at the center of its trade policy.

Overall, the utilization of trade policies to address sustainability and climate change is a priority that is shared by both economic superpowers on both sides of the Atlantic. In this context, the United States includes consideration of carbon border adjustments. Moreover, both trading blocs also share the increased attention of the enforcement of already negotiated trade rules.

8 "Communication from the Commission: Trade Policy Review – An Open, Sustainable and Assertive Trade Policy," *European Commission website*, accessed 10 May 2021. Find it here.

9 "Communication from the Commission: An Economic and Investment Plan for the Western Balkans," *European Commission website*, accessed 10 May 2021. Find it here.

10 "2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program," *US Trade Representative (USTR) website*, accessed 10 May 2021. Find it here.

Reflections

With regard to the renewed trade strategy, there are three important conclusions.

First, the European Commission has clearly opted for openness and multilateralism at the core of its trade policy. It puts forward effective rules-based multilateralism as a key geopolitical interest. However, one can expect that it will not be a walk in the park for the EU to deliver upon its good intentions in this respect. As the EU also admitted in its communication, in recent years, we have mostly seen a shift to unilateralism with regard to trade practices. Considering the expected change of the EU's relative position in the international economy, it remains to be seen if the EU will manage to turn around this trend in the upcoming years.

Second, the EU's renewed trade strategy seems to pave the way for a new set of unilateral instruments and the increase in usage of unilateral instruments. The question remains whether the EU will merely use these unilateral instruments will be merely used as tools to leverage its multilateral agenda or actively use these unliteral instruments to defend its interests. The latter would actually undermine the pursuit of the EU's primary objective. But it is clear that the EU needs both kinds of tools and cannot afford to put all its eggs in the WTO basket.

Third, while the EU has recently negotiated an investment agreement with China, the EU's strategy document nevertheless frequently reiterates China's obligation to address and mitigate any perceived adverse effects caused by its economic system. An in-depth reading of the EU's strategy document suggests that several measures that the EU intends to implement to defend its trade interests have been designed to combat what it perceives as anti-competitive trade practices conducted by China. This includes measures addressing subsidies granted by the Chinese state, and the conduct of Chinese state-owned enterprises, and an EU proposal prohibiting trade practices such as forced technology transfers.

Overall, the business community has been positive about the Commission's new trade policy. In particular, the strong focus on services and digital trade, as well as the Commission's proposed measures that facilitate a level playing field between EU businesses, has been lauded.

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Gabon: Certificate of conformity for imports and exports

In order to improve the health and safety of consumers as well as the protection of the environment, the Gabonese authorities have set up a mandatory assessment and verification procedure for compliance with quality standards for all goods imported into and exported from Gabon.

This procedure gives rise to the issuance of a document certifying that the imported goods comply with the regulations and quality standards in force in the country. The entry into the national territory of all imported products is now subject to the presentation of a certificate of conformity for customs clearance.

The application of this measure led the Gabonese Government to set up a program to assess compliance with standards through Decree No. 00341/PR/MIM of 28 February 2013, establishing the national system for assessing compliance with standards.

The controls implemented by the public authorities will be effective from 1 July 2021, in accordance with Decision No. 034.2020/MCPMEI/SG/AGANOR/DG/DJ, fixing the extension of the transitional period to produce the certificate of conformity with the standards for each import and export.

Consequently, all checks carried out before this date will be considered irregular.

However, some products remain subject to compulsory control during the transitional period. This is the case of goods for which the free on board (also called FOB) value is greater than or equal to €3,000.

Which authority is in charge of this regulation?

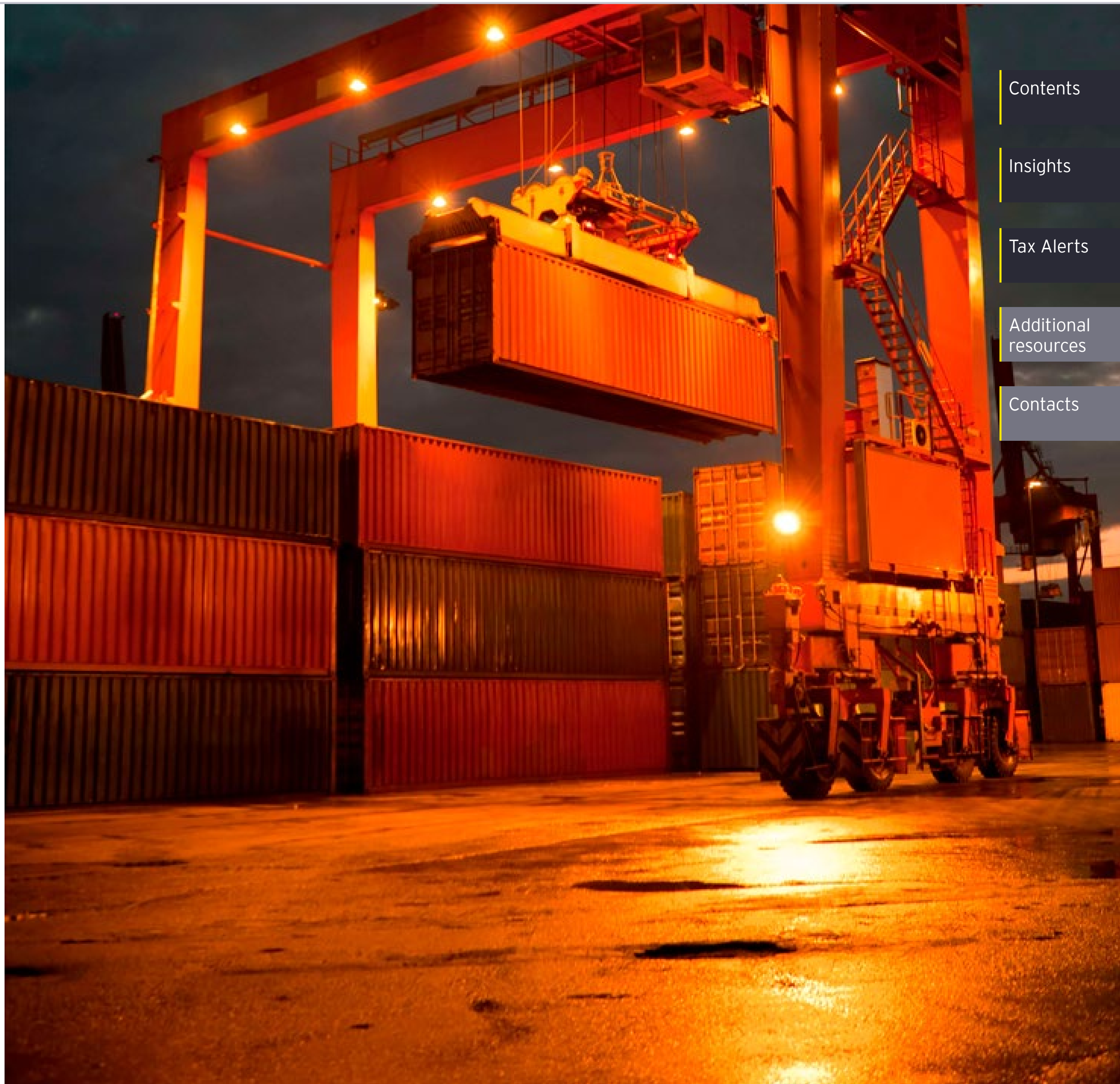
The authority in charge of this regulation is the Gabonese Standardization Agency (AGANOR), which is a public administrative establishment. In accordance with the provisions of Article 5 of Ordinance 1080-20/MTCPMEI/MEF setting the conditions for the application of the assessment of conformity with standards and the entry into force of controls, AGANOR is responsible for the adoption and application of standards for imported and locally manufactured products placed on the Gabonese market. AGANOR also issues certificates of conformity to products, goods and equipment which are deemed to comply with the quality standards in force.

The international company for the control of compliance with quality standards, Intertek, has been accredited by AGANOR, to implement any inspection, physical test and certification to quality standards for all Gabon sourcing countries.

What products are subject to conformity assessment?

The products that are subject to the assessment of conformity to quality standards are subdivided into three (3) market segments:

1. Medical equipment, surgical instruments and appliances, cosmetics and toys (in accordance with Chapters 33,34,90 and 95 of the customs classification)



2. Household, electrical and electronic equipment and related parts (in accordance with Chapters 84, 85 and 94 of the customs classification)
3. Chemicals and Construction Materials (in accordance with Chapters 29, 31, 32, 35, 38, 39, 40, 44, 45, 46, 68, 69, 70, 72 and to 83 of the customs classification)

Food products are not subject to assessment of compliance with quality control standards.

Who is responsible for obtaining the certificate of conformity when shipping to Gabon?

Exporters are responsible for obtaining the certificate of conformity before shipping their goods to Gabon. They should initiate the certification request by submitting the certification request form to the Intertek office in their region.

The importer cannot initiate the procedure for verifying the conformity of the products they import. It is the responsibility of the exporter to submit a certificate request to Intertek.

However, the importer can obtain the information that the supplier would need from the Intertek office in Libreville.

What is the procedure for exporting from Gabon to abroad?

In order to export, the operator in Gabon must first submit the goods to the verification procedure according to the quality standards in force. To do this, it must refer the matter to the department responsible for monitoring compliance, which will inspect the goods to verify their compliance with the relevant quality standards.

This inspection will be carried out in two stages:

1. Initially, the establishment in charge of the control will take a sample of the goods that it will submit to a prior conformity test.
2. Subsequently, the goods will be subjected to a physical verification in order to control, for example, the labeling of the products, but also to confirm the reconciliation of the results of the physical inspection with the tests that have been previously carried out on the samples.

At the end of this verification process, if the goods have characteristics of conformity to quality standards, a certificate of conformity will be issued accordingly. Conversely, if the goods are not compliant with the applicable standards, the analysis will be accompanied by a noncompliance report, which will indicate corrective measures.

In this case, the issuance of the certificate will be subject to the correction of the discrepancies observed.

What documents will be requested by Gabonese Customs?

The certificate of conformity must be provided for the customs clearance of the goods. The other documents usually requested (transit file) must also be provided.

The certificate of conformity may be sent to the importer in one of the following three ways:

3. Intertek sends it directly to the importer.
4. Intertek sends it to the exporter, who passes it on to its importer.
5. The certificate of conformity is printed at the Intertek office in Libreville, or the importer can collect it.

An electronic copy of the certificate is automatically transmitted to AGANOR and to Gabonese Customs.

How will goods arriving in Gabon without a certificate of conformity be managed by Customs and AGANOR?

Failure to present the certificate of conformity is not without legal risks. In the absence of a certificate of conformity, the importer or exporter will not be able to clear the goods and they will be reshipped. In the event of the illegal exit of produce for failure to present the certificate of conformity, a fine will be imposed on the operator that is involved.

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Germany: Customs tariff classification of sports footwear from Vietnam

The customs tariff classification of goods provides the basis for all customs measures – both tariff and non-tariff measures – all over the world. Therefore, classification is a vital issue for all international trade in goods. But it is not always easy to assign the correct customs classification and fairly minor differences between similar products can have a major impact.

The classification of footwear is a topic that has gained a higher level of importance in the context of the newly implemented free trade agreement (FTA) between the European Union (EU) and Vietnam. Under this FTA, the differentiation between "regular" footwear and "sports" footwear has an impact on the applicable customs duty rate. Sports footwear is mainly subject to a customs duty rate of 0%, in contrast to regular footwear, for which a tariff from 3.5% up to 11% is still applicable for a phasing-out period, even if preferential origin is given. Therefore, the proper classification and hence differentiation between regular footwear and sports footwear can have a significant impact on potential duty costs or savings, sales advantages and unconsidered landed cost.

Background

In the past, this differentiation between sports footwear and regular footwear was used to implement antidumping duties in the context of imports of footwear from Vietnam and China into the EU. This measure was introduced but ended in 2011. Under this measure, sports footwear was not covered by antidumping duties. Therefore, this topic of differentiation is not totally new for shoe and sportswear importers.

Since 2011, the differentiation in customs classification on a subheading level has been more for statistical purposes. However, now, once again, customs authorities and importers are focused on the customs classification of these articles to make sure the correct tariff codes – and therefore the correct customs duty rate – are applied on imports.

Relevant criteria to determine the correct customs tariff code

The Harmonized System (HS) already differentiates between regular and sports footwear as shown within Chapter 64 (subheadings 6402 12 HS, 6402 19, HS 6403 12 HS, 6403 19 HS and 6404 11 HS) by the term of the subheadings according to General Rules of Interpretation 1 and 6.

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The only available definition on a global level of the term "sports footwear" is provided by Subheading Note 1 to Chapter 64, which states the following: "For the purposes of subheadings 6402 12, 6402 19, 6403 12, 6403 19 and 6404 11, the expression 'sports footwear' applies only to: (a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like; (b) skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes."[1]

However, the vague legal concept of "design for a sporting activity" in particular leaves considerable room for interpretation. In the non-binding explanatory notes to the Combined Nomenclature to Subheading 6402 19 00 CN, the EU explains that goods "designed for a specific sporting activity" have "fixed or removable attachments" that "make it difficult to use these shoes for any other purpose, in particular for walking on asphalt roads, because of the height or stiffness or slipperiness, etc. of the attachments."[2]

That said, classifying sports footwear is difficult because the meaning of "specific design for sports," including the definition of "attachments" and "incompatibility" for non-sporting activities in contrast to regular footwear, is not entirely clear.

German case law

In Germany, some decisions of the Fiscal Courts regarding the classification of sports footwear are available, including decisions from the highest national institution, the Federal Fiscal Court. In these decisions, the requirements of Subheading Note 1 to Chapter 64 are specifically challenged.

They indicate that the stiffness, incompatibility for regular activities, foot stabilization, shock-absorbing properties and – in general – recognizable design specifically for sporting activities are the details that indicate classification as sports footwear. Moreover, the case law states that the use of footwear for non-sporting activities on a regular basis does not prevent its classification as sports footwear. In addition, the "provisions for the attachment or the attachment itself" are not discussed in most of the available decisions, which provides another level of uncertainty in determining the correct customs classification. At any rate, this requirement should already be met if there is an existing mechanism to add these attachments. One example of this is riding boots that have holders where spurs can be attached.

As noted above, understanding around the term "sports footwear" leaves considerable room for interpretation, even if all available provisions, explanatory notes and the applicable case law are examined. However, for businesses, this means that every case must be observed separately and a deeper dive into the classification of each sports-footwear product is likely to be unavoidable.

Implications for businesses

The most important takeaway from this short overview is that compliance is not as easy as it seems, and the risk lies with the operator. In practice, regular shoes often have the appearance of sports footwear while the other aspects required for tariff classification as sports footwear may not be satisfied or may be unclear.

One of the main implications is a risk of paying additional duties and penalties. The customs authorities follow a fiscal approach and they aim to identify shoes that are currently classified as duty-free but which, based on their opinion, customs duty is applicable. As a result, retroactive customs duty assessments plus interest as well as an increased future landed cost bill may occur.

On the other hand, a few operators have incorrectly classified imported shoes as regular footwear and paid customs duty while not benefiting from the zero-customs duty rate applicable to shoes that meet the "sports footwear" customs classification criteria for Vietnam preferential origin goods. In this case, duty savings may be identified and overpaid amounts refunded.

1 "Chapter 64 – Harmonized Tariff Schedule," World Customs Organization World Customs Organization (wcoomd.org)

2 "Explanatory Notes to the Combined Nomenclature of the European Union," *EUR-Lex website*, accessed 10 May 2021. **Find it here.**

Actions

EU businesses that import footwear should review the customs tariff classification of the shoes they import, with regard to their qualification as sports footwear. If possible, they should request a binding decision while providing the customs authorities with a detailed statement regarding the customs tariff perspective. In the EU, this is called a Binding Tariff Information (BTI) decision).

For imports into Germany, the German Fiscal Code may require proactive notification of the customs authorities in case of use of customs classifications that could lead to a higher amount of import duty (i.e., possible tariff classification as regular footwear).

In addition, depending upon the relevant impact, businesses may consider lodging appeals for ongoing duties or may make refund applications to secure the right tor more beneficial customs treatment for historic imports if preference duty qualification can be claimed for sports footwear. In any case, operators may consider requesting a legal remedy against previous decisions issued by the customs authorities where the classification was is in dispute.

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JUVE ranks EY as Number One Tax Consultancy/Customs and Excise Tax Consultancy in Germany in 2021

Germany: Preparing for customs audits

In today's global economy, a seamless cross-border flow of goods is of critical importance for most, if not all, businesses to stay competitive. One critical part for fast movement along the supply chain is a good customs organization, which is why it is important to maintain customs authorizations and simplifications such as the Authorized Economic Operator (AEO) regime , and including operating a place for keeping goods that are not customs cleared under temporary storage, simplified export procedures, and receiving or sending goods under customs transit procedures.

In the EU, to maintain these simplifications and authorizations, businesses must regularly undergo audit checks by customs authorities to prove that they still meet all the requirements.

In Germany, the customs authorities have started to perform these checks in a more in-depth manner as part of regular customs import audits. Sometimes these checks and the documentation of facts, circumstances and the auditors' assessments are done in the background by the auditor. But more and more often, auditors have the party being audited complete additional questionnaires during the audit or provide additional information in advance of the audit. After a period during which the regional customs offices used individual self-created questionnaires, this practice has now been standardized. Given the standardization, it is now possible for businesses to prepare accordingly.

For example, the people in the business who deal with the customs authorities should have a deep understanding of the circumstances that will be documented by the auditor. This allows them to maintain the necessary certificates and information that the auditor will require in a structured way, in readiness for the auditor's questions. Alternatively, the auditor could provide questionnaires for businesses to complete themselves.

There are two questionnaires that are typically used by German customs auditors.

1. Record-keeping and data management

In advance of an audit, the customs authorities frequently request details about the location of IT infrastructure and IT solutions relevant from a tax or customs perspective. If service providers are used for the operation of IT infrastructure, the authorities also often ask about organizational measures to confirm that the service providers comply with German legal obligations for proper record-keeping and processing as provided in the German General Tax Act. In this context, the authorities often not only ask for a detailed description of data entering, processing and retention in IT systems, but also about how traditional hard-copy records are processed and retained. Other questions involve the description of how outsourced processes with tax or customs relevance are instructed and controlled by the audited entity.

Furthermore, the customs authorities also often ask for the names of employees responsible for providing the fiscal authorities with full access to the relevant IT systems and records as well as confirmation that all legal requirements in relation to processing and keeping of data in IT systems and access to the data have been met.

2. Corporate customs organization

Another questionnaire includes questions that are similar to those included in the AEO self-assessment and covers details about the structural customs organization, the customs process organization and the respective internal controls. However, the questions are not identical to the AEO self-assessment; therefore, it is not possible to answer them by simply copying AEO self-assessment responses. For example, the following question could be included in the questionnaire:

"Which operational regulations for internal controls and measures for error avoidance, detection and elimination exist in the processing of audit-relevant processes, company processes and master data management?"

Given the complexity and variety of the audited entity's customs processes, a comprehensive and valid answer to the above question can require a very detailed and extensive response. The same applies to the question below, which may require a highly detailed explanation since many companies operate multiple processes and IT systems for different business units, product categories, plants within a single legal entity and so on. Below is another sample question:

"How are the audit-relevant processes in the company regulated with regard to the flow of data, goods and documents in relation to the movement of goods (incoming goods> production / storage> outgoing goods)?"

Other questions ask for a description of the audit trail in the context of physical flows of goods, data flows, and hard- and soft-copy documentation; an explanation of the corporate customs organization, including the different customs-related roles and their process involvement; and details about the corporate structure, shareholding relationships and outsourced organizational units and, again, operated IT applications, master data management and data retention.

Actions for business

Fulfilling the expectations of the customs audit service can be very challenging for businesses, given short deadlines to respond and in view of the complexity and extensive nature required for sufficient responses that an audited entity may need to provide. In general, every audited entity may review the individual circumstances and questions provided by the audit service to determine whether general tax or customs law requires cooperation or allows the entity to decline to respond. However, even if declining to respond on certain matters is permissible under the law, this can create difficulties and the issue needs to be communicated carefully with the auditor.

It is generally recommended for businesses involved in customs procedures to prepare for customs audits thoroughly and well in advance. Preparations may, for example, include gathering essential documentation and preparing draft responses to the questionnaires that the customs audit service often asks audited entities to complete, which can help audit requests to be settled completely and on time.

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JUVE ranks EY as Number One Tax Consultancy/ Customs And Excise Tax Consultancy in Germany in 2021

Norway: E-commerce VAT rules for low-value imports

On 1 April 2020, Norway introduced new VAT rules for low-value goods sold from abroad to private individuals in Norway. These new rules mean a shift from import VAT being levied at the time of importation to a system where VAT is calculated and charged at the point of sale. Norway is not part of the EU, and while there are some similarities to the rules being introduced in the EU from 1 July this year, Norway's new VAT rules also include several important differences.

Introduction

The new VAT on e-commerce (VOEC) rules for low-value goods were introduced to compensate for the removal of the import VAT and customs exemption that previously applied on the importation of small consignments (i.e., items with a value not exceeding NOK350).

For several years, shipments of goods with a value of NOK350 or less were not subject to any import declaration procedures on entry into Norway (i.e., no import VAT or any other import duties were accrued). Due to the exemption from customs processing of the goods, the importer did not need to pay any processing fees to the forwarding agent. This competitive advantage for buyers of low-value goods from abroad had a negative effect on Norwegian companies selling the same types of goods locally to consumers in Norway (as such sales were charged with VAT). Due to the significant increase in internet shopping, the Norwegian authorities decided to remove this NOK350 threshold.

To avoid the need for potentially high fees paid to forwarding agents for the customs processing of low-value goods, a new system was introduced. Under this new system, the foreign seller charges Norwegian VAT at the point of sale and the goods are not processed by customs on importation.

The Norwegian VOEC rules

Background

Since 2011, Norway has had a special VAT on e-commerce-regime for the supply of electronic services to private individuals in Norway (the VOEC regime). As a result of this regime, foreign companies selling digital products such as e-books, streaming films and downloadable software to private individuals must register for VAT in Norway and charge local VAT.

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The rules introduced last year for low-value goods meant an extension of the VOEC regime to also cover low-value goods.

According to the Norwegian VAT Act, companies supplying low-value goods from abroad to private individuals must register for VAT in Norway as soon as their turnover exceeds NOK50,000 during a 12-month period.

The new threshold for what is considered low-value goods is NOK3,000 (approximately €300) per item excluding transport costs. The Norwegian rules on this point are different from the upcoming EU e-commerce system, where the low-value threshold of €150 will relate to the value of the shipment as such and not per item within a shipment.

An ordinary VAT registration of a foreign supplier means that the supplier is required to charge Norwegian VAT on its invoices to customers and required to submit VAT returns on a regular basis according to the normal VAT rules. As such, the supplier will be allowed to deduct input VAT on purchases in Norway, including import VAT in cases where the supplier is acting as the importer of record. If the seller is established in the EU (or European Economic Area), the seller is not required to have a Norwegian VAT representative.

The VOEC regime

As an alternative to the ordinary VAT registration, suppliers of low-value goods to private individuals may opt to register via a simplified VAT registration regime (VOEC), provided that they fulfill certain criteria.

If the foreign supplier sells low-value goods on its own webpage, the supplier may register for VOEC. However, if the sales of goods take place through an intermediary (e.g., an online marketplace for several suppliers), the intermediary (rather than the seller) may be required to register for VAT in Norway.

The requirement for intermediaries to register for VOEC depends on whether the intermediary is deemed to facilitate the sales activity (for example, by handling payment from the customers). The intermediary may thus be required to register for VOEC, even though it is not the contractual/legal seller to the customers. If required to register for VOEC, the intermediary would be responsible for the VAT collection and VAT reporting.

In order to apply for VOEC, the supplier does not have a place of business or residence in Norway. Another condition is that the supplier only be required to calculate and pay VAT on electronic services or low-value goods.

If the supplier is entitled to register for VOEC and choses this instead of an ordinary VAT registration, the supplier may opt to register either from the first sale or after the turnover threshold of NOK50,000 threshold is exceeded.

It is not possible to be registered both in the ordinary VAT register and the VOEC register. Hence, the supplier must choose either ordinary or simplified registration.

Why use the simplified VOEC registration instead of an ordinary VAT registration?

Registering for the simplified VOEC system has some advantages (and disadvantages) compared to ordinary VAT registration. The main differences are as follows:

- *For import VAT:*
  - The sales of goods covered by the VOEC regime mean that VAT is payable at the time of sale. However, the goods will not be processed by customs for importation (i.e., no import VAT will accrue in addition to the VAT charged to the customer at the point of sale).
- *A supplier registered for VOEC is not required to be compliant with the Norwegian Bookkeeping Act.*
  - This means that the supplier is not obliged to have the full transaction record in accordance with the bookkeeping rules.
  - The supplier will not be required to comply with the new Standard Audit File for Tax (better known as SAF-T) rules (this is required for ordinary VAT-registered suppliers).
  - The supplier is not required to issue sales invoices to customers (i.e., there are no Norwegian invoice requirements).
- *There are no customs duties.*
  - When the supplier is registered for the simplified registration scheme, the low value goods would not be subject to customs duties. If registered via the ordinary regime, the regular customs duties rates would apply.

- *For simplified VAT reporting:*
  - The filing of the VAT returns when using VOEC is quarterly and not bimonthly as it is when registered in the ordinary VAT register.
  - The VAT return is less extensive than the ordinary VAT return.
- *VOEC does not, however, include foodstuffs, goods subject to excise duties or goods with import restrictions.*
  - This includes tobacco products and alcoholic beverages.
- On the other hand, a company registered for VOEC is not entitled to make any input VAT deduction in their Norwegian VAT returns. A VOEC registrant may, however, get the input VAT refunded via the general refund regime for foreign companies not doing business in Norway. Typically, it takes about four months from when the application has been submitted before the refund is received.

How does the VOEC system actually work?

The VOEC registration process is fairly simple, and usually it takes only one to two days from when the application is sent to the authorities before the supplier is accepted in the VOEC system.

Once registered for VOEC, the supplier will receive a unique VOEC-number, which the supplier will use when reporting its quarterly VAT returns.

When registered for VOEC, the supplier must mark the consignment correctly. If not, the supplier could have to pay VAT twice – once at the point of sale and once at the point of importation.

When registered for VOEC, the supplier is required to keep a transaction record. This record is not excessive and must be kept for five years. Further, should the tax authorities request it, VOEC registrants must make transaction data available to them within three weeks.

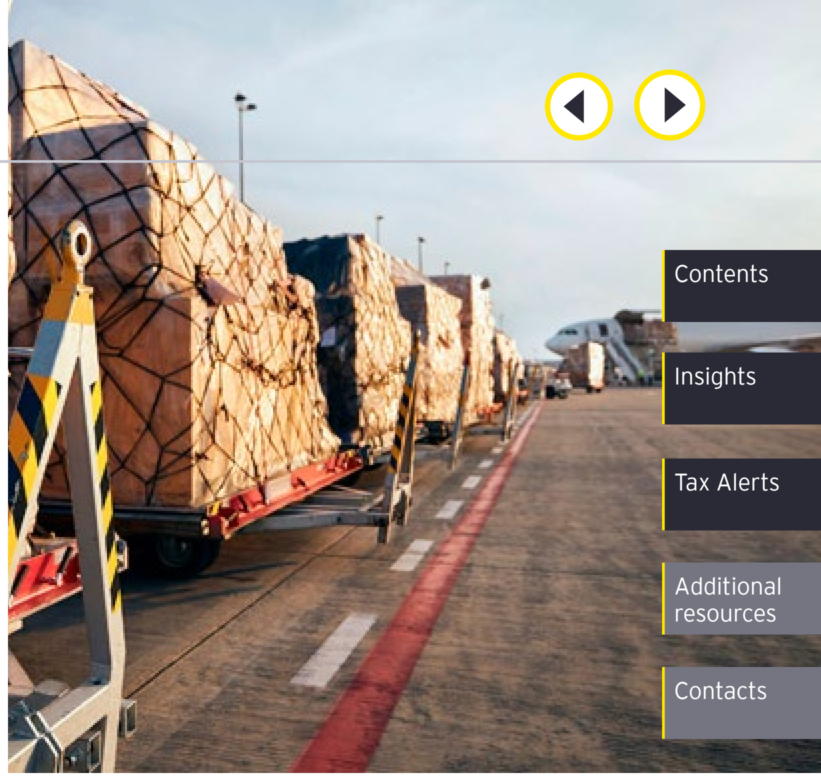
Calculation of VAT

The supplier (or possibly the intermediary) will be liable to calculate and report VAT on a quarterly basis, and the VAT is primarily collected at the point of sale. Hence, the liability to pay VAT has been shifted from the customer to the supplier.

As mentioned above, the threshold for goods that are covered by VOEC is NOK3,000 for each item and the cost for shipment should be included in the VAT calculation. Below is an example of how to calculate the VAT on VOEC goods.

Example

Customer A buys a sweater for NOK2,999, a pair of jeans for NOK1,200 and a pair of shoes for NOK799 from a VOEC-registered e-marketplace. The shipping charge is NOK200. The supplier shall charge Norwegian VAT on the sale because each item has a value of less than NOK3,000, and there will be no customs duty on the clothes. However, in the calculation of the Norwegian VAT, the supplier must include the shipping costs of NOK200.



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Calculation of VAT based on the above example:

Item	Amount in NOK
Sweater	2,999
Jeans	1,200
Shoes	899
Shipping	200
Amount for VAT calculation (total amount incl. shipping) to be reported in VOEC quarterly return	5,298
VAT	1,324.50

Transitional period

During the implementation of the new rules for low value goods, the authorities can allow suppliers to apply for a transitional period. This transitional period gives suppliers time to make the necessary adjustments required for their technical systems and processes to be updated before they apply the VOEC rules. The Government has recently proposed removing this transitional period and suppliers will, from 1 July 2021, no longer be able to apply for this facility. Further, it is also proposed that companies that were previously granted a transitional period, be given a final deadline of 30 September 2021 to comply with the VOEC regulations.

Supply of goods that are not covered by the VOEC registration

In some cases, the VOEC-registered company also supplies goods that are not covered by the VOEC regime (e.g., goods with a value above the threshold of NOK3,000 per item, a kind of low-value good that is not covered by VOEC (e.g., food products), supplies for business customers).

As a starting point, having such sales does not mean that the supplier is excluded from being VOEC registered for low-value goods covered by the regime. For sales excluded from the VOEC regimes, the normal export and import rules apply (i.e., the supplier shall not charge VAT upon exportation for such goods). However, those goods must be processed by customs for importation, and import VAT must be paid by the customers.

If the above-mentioned sales are deemed to take place in Norway (i.e., if they qualify as domestic sales in Norway), the supplier will, however, be required to be registered under the ordinary regime. In this scenario, since the supplier is not allowed to be registered both ordinarily and for VOEC, the VOEC registration must be canceled, and all sales, including low-value goods, must be covered by the ordinary VAT registration.

To determine whether the sales of these goods qualify as export sales or domestic sales, a general assessment of all the circumstances needs to be made. If the circumstances indicate that the supplier has specifically targeted its sales activity to the Norwegian market (for example, by delivering the goods within Norway or by performing Norway-specific marketing), then the sales may be deemed to be domestic.

Consequences of not being compliant

The tax authorities have lately signaled that they will start conducting controls and follow up on foreign suppliers who are not compliant with the Norwegian VAT rules related to low-value goods. Such controls may mean that the supplies are reassessed for Norwegian VAT and penalties are raised. As a main rule, penalties for noncompliance with Norwegian VAT will be calculated at a standard rate of 20% of the reassessed VAT. If the error is deemed to be made by gross negligence or by intention, the penalty may be set to a rate of 40% or 60%.

The general statute of limitations for tax purposes is five years. However, if the supplier has been fined a 40% or 60% penalty or has been reported for violating criminal law, the tax authorities have legal authority to reassess/audit 10 years back in time.

Implications for businesses

As mentioned above, the Norwegian VOEC scheme has shifted the obligation to pay and report VAT from the Norwegian customer upon importation to the foreign supplier upon sale. This means that the foreign supplier is liable to register, pay and report VAT in Norway if it supplies low-value goods to private customers.

Foreign businesses that supply low-value goods to Norwegian private customers should therefore:

- Conduct a risk analysis for the sales to Norwegian customers
- Identify whether they could register for the simplified system
- Assess whether sales that fall outside the scope of the VOEC scheme are deemed as local sales in Norway and therefore obligated to register in the ordinary VAT register
- If required to register for VAT in Norway, fully understand the obligations in Norway

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Switzerland: Impact of Brexit for Swiss business operations

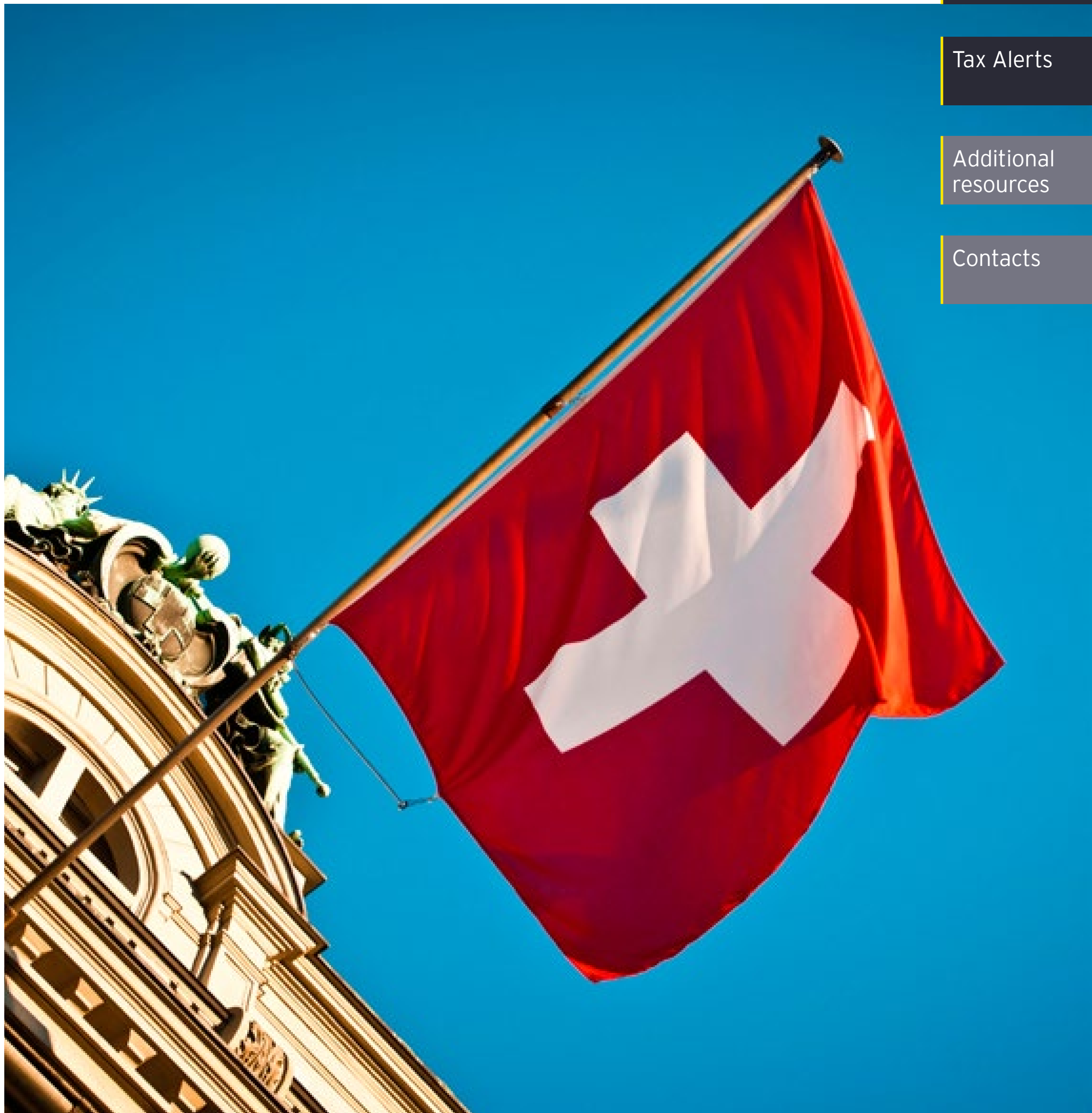
Brexit has been a hot topic for a while now, and the focus has been on UK and EU trade movement. However, Swiss-UK trade operations also undergo a transformation due to Brexit. This article aims to give an overview for Swiss production firms and Swiss-established multinationals on the impact of Brexit.

While on 1 January 2021, with the Trade and Cooperation Agreement (TCA) between the EU and the UK, Brexit became a reality, another agreement came into force on the same day – the Trade Agreement between the UK and Switzerland.

Relevant changes for Swiss companies

Swiss companies are often affected in a manner similar to that of their counterparts in the EU. The following provides a high-level overview from a global trade perspective.

- **Import and export:** The UK no longer belongs to the EU customs territory; therefore, goods moving from the EU to the UK (and vice versa) have to be cleared by customs. Additional costs for customs brokerage, longer lead times and additional regulations have to be taken into account. Swiss companies owning stock in an EU warehouse (e.g., in Germany or the Netherlands) are also affected by the EU's new definition for "exporter," which no longer includes foreign (non-EU-established) entities acting as the exporter.
- **IT systems and master data:** Adjustments to the current IT systems are necessary to enable compliance. Depending on the relevant import and export volumes, companies should consider investing in their global trade systems or using a managed service to take on the additional workload. Master data elements may also have to be updated (e.g., the ISO alpha code for Northern Ireland).



- **Economic Operators Registration and Identification (EORI) number:** To be eligible to import goods in the UK, companies need to apply for a Great Britain (GB) EORI number, as an EU EORI number is no longer valid in the UK. The same applies for UK companies with customs operations in the EU.
- **Customs licenses:** Customs licenses may need to be amended or newly applied for, depending on the industry and customs operations in the UK. For example, EU-established chemical companies will have to decide how to deal with products that are covered by the EU's REACH regulation (e.g., by appointing a so-called "only representative").
- **Origin:** Regarding the origin of goods, many EU exporters may have to re-evaluate their supply chain, as goods originating from the UK no longer qualify as EU origin. Where necessary, changes to the production location and supplier should be considered to preserve EU origin. Bilateral cumulation for raw materials and semi-finished products originating from the UK or Switzerland is possible for transactions between the UK and Switzerland. However, diagonal cumulation with the EU is no longer possible (i.e., Swiss and UK production companies can no longer consider EU materials as originating when determining the preferential origin under the UK-Switzerland free trade agreement (FTA). However, diagonal cumulation may still be possible for countries that are part of the Pan-Euro-Mediterranean region (PEM). We recommend analyzing the relevant transactions in detail to confirm that there is no negative impact on the total costs due to additional customs duties.
- **New rules of origin:** Product-specific origin rules for goods under the TCA are different from PEM rules and other EU FTA rules of origin (e.g., the EU-South Africa FTA). Therefore, exporters should review the current rules to determine the origin before concluding that the goods meet the origin criteria under the EU-UK TCA (e.g., for some goods, the EU-UK TCA considers both value 'or' weight of the non-originating materials; unlike PEM and South Africa, where the rules only consider the value of the non-originating materials).
- **Valuation:** Customs valuation of goods shipped from the UK or the EU under the ownership of the same legal entity (e.g., Swiss principal company moving goods between the EU and UK) should be examined. In certain situations, transaction value may not apply, as there is no underlying transaction to support the sale for export.
- **Regulatory:** The Common Health Entry Document and other product-specific licenses may be needed from a regulatory point of view. Furthermore, other non-tariff trade barriers have become more relevant for business with the UK. For example, the new European Medical Devices Regulation enters into force from 26 May 2021.

Conclusion

The UK leaving the EU single market is about more than just import tariffs. Administrative burdens related to customs clearance as well as non-tariff trade barriers are causing supply chain disruptions with a significant economic impact. The UK is now in a similar situation as Switzerland with regard to its trade relationship with the EU. By carefully assessing the impact on the current supply chain, companies can even gain a competitive advantage. ■

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UK: Beyond Brexit — operational, tactical and strategic responses

Since the end of the transition period on 31 December 2020, businesses with trade activities through or in the UK and the EU have been forced to make operational and financial changes to minimize disruption and facilitate effectiveness of trade now that the UK has left the EU.

Initially, many of these changes were operational, focusing on stabilization in the new environment and maintaining trade continuity. However, as 2021 progresses, there has been increasing commercial focus on optimization for the new trade environment, through either tactical or strategic changes.

"Beyond the headlines: UK business, Brexit and international trade" — a recent EY and London First survey of over 1,000 UK businesses— has provided a granular perspective into the issues these businesses faced during the first two months of 2021. This, combined with deep insights from EY clients across industries and sizes, gives us a clear view into current issues and approaches across the market.

Managing operational disruption

Despite the fact that many businesses prepared extensively for the end of the transition period, operational disruption management remained a significant focus for many businesses at the start of 2021.

This has been illustrated by our survey, which indicated that while many businesses (71%) felt prepared for Brexit prior to the end of the transition period, a significant proportion (75%) of businesses surveyed were experiencing some form of disruption to their business trading under the EU-UK Trade and Cooperation Agreement (TCA).

Customs and supply chain, tax and VAT, and regulation have been the key sources of disruption to business operations:

Cause of disruption	Percentage of businesses reporting
Customs and supply chain	**72%**
Tax and VAT	**70%**
Regulation	**68%**

Of those citing customs as an area of disruption, 43% said that the changes have led to delays in their goods, while 40% said that increased paperwork has meant more costs and slower transportation. As a result, much focus for impacted businesses has been upon maintaining trade continuity through the new administrative requirements imposed for trade between the UK and the EU.

Examples of actions we are seeing taken to mitigate current state disruption for businesses include:

- Sourcing changes to maintain supply continuity
- Active management of brokers and freight agents
- Engagement with customs and tax authorities in both the UK and the EU
- Changes to roles and responsibilities in the supply chain
- Establishment of new entities, and acquisition of representatives, registrations and authorizations to meet customs, tax or regulatory requirements
- Hiring or reassigning staff to manage new administrative requirements

We are seeing more companies focus on more advanced tactical and strategic business actions to operate effectively in the new status quo. However, we are not yet in a stable operating environment as new procedural requirements are phased in through 2021 and into 2022, such as the import declaration and the safety and security declaration starting on 1 January 2022, and the need for the UK Conformity Assessed (UKCA) mark to replace the EU's CE mark for products sold on the UK market by 31 December 2021.

Optimizing and mitigating costs with tactical changes

In addition to operational disruption, businesses are facing cost impacts that require tactical planning to manage – of the businesses surveyed, nearly one third (29%) say that their cost base has increased as a result of the post-transition period disruptions or the need to source from new suppliers.

Direct sources of cost being seen by businesses include:

- New commercial arrangements and suppliers
- New customs duties (or double customs duties)
- New staff to manage administration
- Additional administration costs (e.g., customs broker fees)
- Costs associated with new authorizations or activities, such as customs guarantees
- Costs of new entities and establishments

Of those surveyed who were experiencing an increase to their cost base, nearly half (49%) said they will need to pass costs on to customers. This approach, however, can impact competitiveness. As such, other tactics are being employed by many businesses to manage these additional costs.

One key activity for businesses is manage new customs duty costs by compliantly and effectively claiming preferential duty rates under FTAs such as the EU-UK TCA, and by using authorizations and procedures to minimize the risk of double duty costs.

What are double duties?

Double duties are additional duties paid by a business moving goods across multiple territories, where there is more than one duty point that is not mitigated by a special procedure.

For example, where a business is moving Chinese originating goods into the UK, storing or processing them in the UK, and subsequently transporting them into the EU, there is a duty point at both UK and EU import. Therefore, without mitigating actions such as customs warehousing, the business may pay customs duty on the same goods twice unnecessarily.

Another key activity has been considering approaches to manage trade compliance administration in a cost-effective manner, such as document production, tariff classification and origin management. Many businesses are outsourcing these activities or looking to technology solutions such as global trade management systems to reduce the numbers of new team members required to manage the additional administration that has arisen as a result of Brexit. To support the development of tactics for cost mitigation of both administration and duties, businesses are exploring the use of technology tools such as analytics suites to map their supply chains and deduce the feasibility of different procedure, routing, and administrative and resourcing options.

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Strategic decisions to maximize competitiveness

The new trading environment has also had an impact on strategic decisions for many businesses, be they new or more limited target markets, new product lines or new manufacturing location decisions.

Of the businesses surveyed, 29% reported that they had stopped trading with the EU and countries not covered by rollover agreements. However, almost a third of organizations indicated that Brexit preparations had provided them with unprecedented insight into their operating model, and for over a quarter of respondents, their understanding of how to access new markets had improved.

Some new considerations for businesses with regard to strategic decisions include:

- Impact on preferential origin of manufacturing or sourcing decisions
- Downstream impacts of location and sourcing decisions
- Pricing and commercial terms
- Regulatory market access
- Technology and data requirements

To successfully deliver post-Brexit strategy, a connected trade function in businesses is key so that the range of impacts as a result of strategic decision-making is considered. A manufacturing location decision, for example, will require an understanding of the impact on not only rules of origin, but also data transfer and systems, regulatory requirements and corporate taxation impacts, to name but a few. As such, it is important for businesses to consider their governance frameworks for determining post-Brexit trade strategy and whether a dedicated group needs to be assembled to oversee this.

Next steps

Whatever the maturity of a business, the initial priority for their operations in the new trading environment is stability. Minimized operational disruption provides a platform to continue trading and to drive efficiencies in cost, HR or footprint optimization. Once operational stability is secured, businesses should consider how they will oversee their upcoming strategic decisions on trade, confirming that a cross-functional view on the impacts of this is considered. ■

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UK: New EY research on how the City of London enables international trade

Financial and professional services (FPS) are integral to international trade, but the City of London might not be the first thing that comes to mind regarding international trade by UK businesses. Instead, many associate international trade with trucks and ships carrying containers across borders.

Yet, every ship that sets sail represents a mountain of legal, financial and bureaucratic work from lawyers, bankers and maritime professionals. The City of London ecosystem helps make that happen. FPS firms play a critical role in helping non-FPS businesses in the UK navigate the opportunities and risks involved at every stage of the international trade journey described above by supporting business planning, financial management, technology development, recruitment and marketing.

As the UK reshapes its economic relationships with key global markets and the UK Government seeks to position international trade as a central pillar of the post-pandemic recovery, new EY and the City of London Corporation research[1] examines the pivotal dual role of FPS in enabling international trade. As one of the UK's key sectors globally, FPS also plays a previously underexamined role in supporting businesses to trade internationally across the whole of the economy.

Services in the UK economy

The FPS sector is part of a wider UK services sector; services now account for 80% of UK GDP and employ over 29 million people (not taking into account the indirect benefits for the UK economy). Nearly a fifth of services jobs are in the wholesale and retail industries, followed by human health and social work activities, and professional, scientific and technical activities.

Services now account for nearly half of all UK exports. In 2019, the UK exported a total of £318 billion and 42% of UK services exports were from London. Financial services (plus insurance and pension) continued to be the largest service product exported with £59.2 billion. When combined with the export figures from the professional and business services (PBS) sector, which works alongside the financial services sector in the city, that figure rises to £115.7 billion.

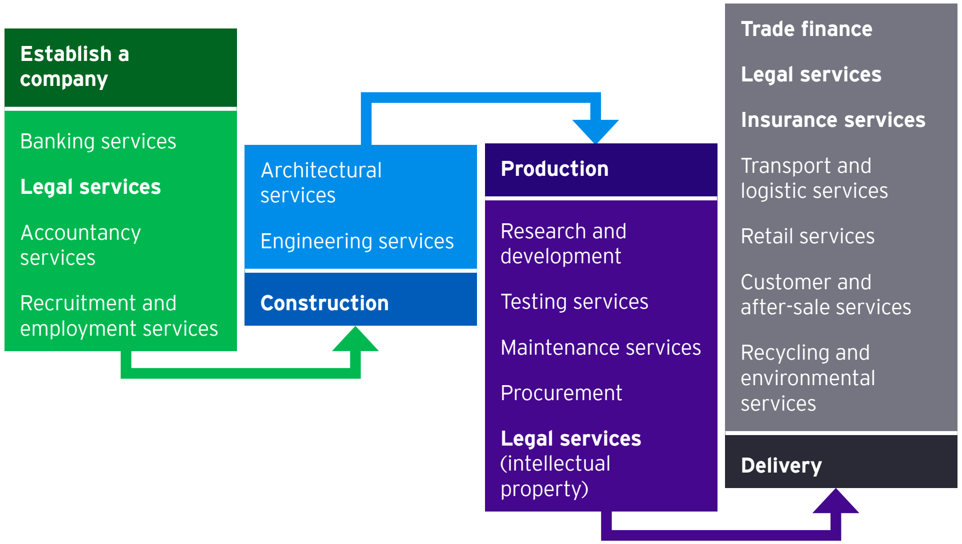
Goods versus services

Much of the existing research on trade policy and FPS has focused on how individual types of services are traded and how to address the barriers that firms face in different countries around the world. Yet, very little work has been done

1 "Why financial and professional services underpin UK trade", *EY UK website*. Find it here.

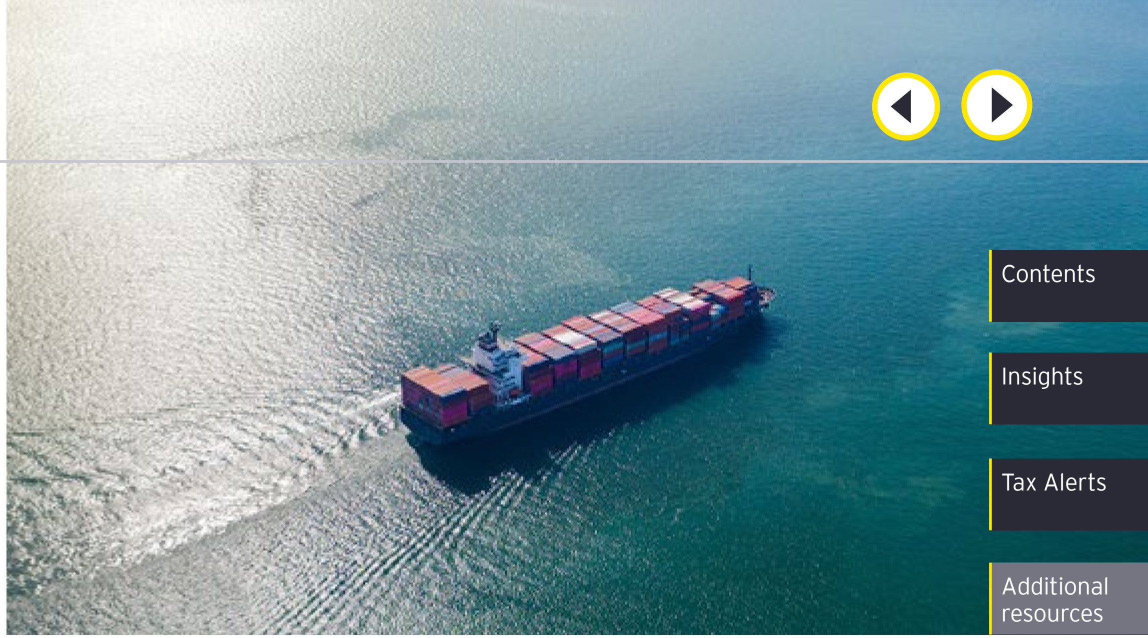
to evaluate how the different subsectors of the FPS industry operate together to enable and encourage manufacturing, agri-food and retail firms to trade internationally. In value-added terms, services now represent half of the value of world trade, with services value-added content accounting for 33.7% of the value of UK manufacturing exports in 2015.

Services provided by the FPS sector



Source: EY report "Why financial and professional services underpin UK trade". Find it here.

The EY and City of London Corporation report assesses the UK's unique and complex FPS ecosystem: the concentration of FPS within the Square Mile complements, extensive networks and regional hubs across the UK; the increasing crossover between tech and financial services; and the benefits of this global prominence for UK trade. With case studies on legal services, trade finance and maritime services, the report analyzes how the sector addresses current trade barriers and the opportunities for future growth.



- **Legal services:** The UK legal services profession is the largest in Europe and the second largest in the world.
- **Trade finance:** Trade finance can take a number of forms, all of which aid the trading of goods and services. In its most basic form, trade finance provides cash support for a firm to manufacture and export its product before receiving payment from its overseas customers.
- **Maritime services:** The maritime services industry links the physical infrastructure of ports, supply chain management, and crewing of the ships themselves. As one of the oldest and most established sectors in the UK, it has provided a template for other countries to establish their own maritime services structures.

Is everything actually about services?

The way in which businesses are trading internationally is also changing, and this is having a corresponding impact what types of FPS services are being provided as well as how the services themselves are provided.

Like many industries, the three case studies described above are currently undergoing fundamental shifts due to the impact of technology, the increasing "servicification" of goods and growing consumer pressure for sustainable environmental standards.

Many businesses are increasingly packaging services together with the goods that they export – servicification for short. This is where manufacturing firms try to add value and better serve their customers by bundling monitoring and maintenance contracts in with their products – an aircraft engine, for example. These additional services contributed to 33.7% of gross manufacturing exports from the UK in 2018[2]. The Organisation for Economic Co-operation and Development has found that the pharmaceuticals sector and the ICT[3] and electronics sectors are the ones where servicification is the most pronounced.

Some manufacturing firms have shifted toward being full service providers that no longer sell goods but rather provide solutions to their customers that no longer involve the transfer of ownership on their products. Typically, those manufacturers who have moved toward servicification tend to have larger value-added as well as employment per unit of value-added. However, when selling internationally, those businesses that also provide services face additional service-related trade barriers in addition to the goods-based obstacles they would have faced previously.

This servicification does not only apply to how the products are sold but also to services that accompany the sale, such as repairs, maintenance or warranties with accompanying considerations such as VAT. With technological developments, manufacturers can now embed ongoing services provision within their products through the internet of things – which can include monitoring, software updates and the like.

Recommendations

The City of London is more than just a financial services behemoth. It is a diverse, vibrant ecosystem of globally leading financial, professional services and technology firms – large and small – that has enormous value in and of itself.

Of at least equal importance is its role as an enabler of the rest of the UK economy, as has been demonstrated in the previous sections of the report. FPS firms provide the expertise that de-risks international expansion for the myriad of UK businesses. Growth through trade will drive global recovery from the COVID-19 pandemic.

While UK-based companies must also improve their approach to international trade and engagement on trade policy issues, the report provides a series of detailed recommendations on how the UK Government can take active steps. These recommendations are grouped into three themes.

Maximizing new opportunities

- Enhancing the UK FPS sector's capacity to support non-FPS firms trade internationally will require a holistic approach to trade policymaking that considers trade in services and trade in goods as interdependent. The UK's trade policy formation architecture and resourcing should reflect this need.
- UK policymakers should complement these efforts with a focus on helping firms develop both an international mindset and an international skill set.

Preserving what works

- Firms thrive on certainty. The UK should take a long-term view to any regulatory changes and take concrete steps to protect elements of the ecosystem perceived to be at risk (e.g., the primacy of English law).

Addressing perception gaps

- The UK Government should focus on championing the value of services with non-FPS firms. Trade promotional efforts should aim to demystify elements of the FPS ecosystem that would directly benefit exporters, especially for small to medium-sized enterprises.

Download the full report here

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2 "Trade in value added: United Kingdom, *OECD website*. Find it here.

3 ICT means information and communications technology.

UK: Parliament passes UK Trade Act 2021 and establishes the UK Trade Remedies Authority

Background

On 29 April 2021, the UK Trade Act received royal assent and became law. The new Trade Act performs a number of functions as the UK establishes its independent trade policy post-EU exit. Of particular relevance for business, the Trade Act establishes the following:

- Provides a legislative basis for the UK to implement its existing trade agreements and agrees the process for future parliamentary scrutiny of trade agreements
- Enshrines the UK's commitments under the World Trade Organization (WTO) Government Procurement Agreement into law
- Enables the government to collect additional data on UK imports and exports
- Establishes the independent UK Trade Remedies Authority (TRA)

One of the delays to the UK Parliament passing the legislation before the end of the Brexit transition period was the so-called "genocide amendment," which was introduced by a cross-party group from the House of Lords.

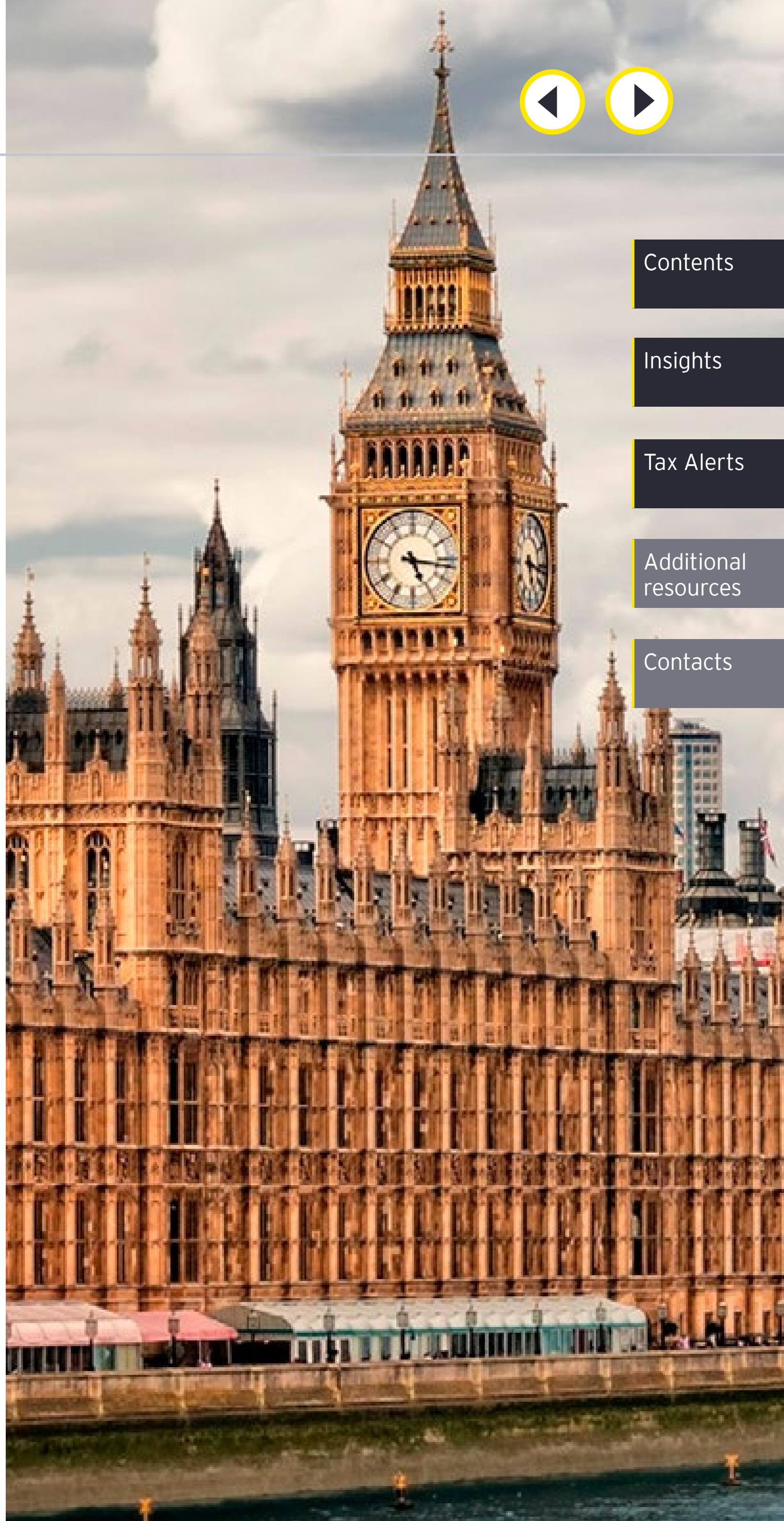
The revised amendment, as it entered into law, requires both Houses of Parliament to vote on a prospective trade agreement with a country if their respective committees issue reports finding that genocide to have taken place and that they are unsatisfied with the UK Government's response.

The largest practical change for businesses trading with the UK will be navigating the new UK trade remedies regime.

Moving from the EU to UK trade remedies regime

While it was part of the EU, the UK followed the EU's trade remedies position during the transition period. However, as of 1 January 2021, the UK has introduced its own trade remedies regime.[1] Importantly, trade remedies measures can now also be applied on trade between the UK and the EU.

1 "An introduction to our investigations process," *UK Department for International Trade website*, accessed 10 May 2021. Find it here.



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Prior to the UK Trade Act 2021 becoming law, the UK's trade remedies regime was being operated by the Trade Remedies Investigations Directorate within the Department for International Trade; however, the Trade Act 2021 has now established the TRA as an independent government body.

Types of trade remedies in focus

Trade remedies are measures (typically significant additional tariffs on specific products) that a national government can take to protect its domestic industry from unfair global trade practices.

In brief, these are divided into anti-dumping measures[2] (where an exporter deliberately sells its products into a market at an undervalued rate), anti-subsidy or countervailing measures[3] (where an exporter is unfairly subsidized by its home government) and safeguard measures[4] (to protect the domestic industry from a surge in imports).

Key features of the UK trade remedies regime

The UK trade remedies regime follows the overall framework set out by the WTO, and there are some key points of divergence from the EU's regime – both in terms of rules and practical application. Businesses need to understand these differences and how the UK regime will operate.

The process for the investigations themselves (as separate from the establishment of the TRA) was set out in the Taxation (Cross-border Trade) Act 2018.

The Taxation Act 2018 sets out in particular:

- The requirements for case initiation
- How investigations should be conducted
- Types of provisional and final determinations TRA may make as part of the case

The UK Government has issued formal guidance for companies wishing to understand the new investigation process.[5]

UK domestic producers can now request a trade remedies investigation as long as the industry in which they operate represents at least 1% of the UK's domestic market and the application is supported by at least 25% of all UK production of the affected goods. The application must not be opposed by producers accounting for a greater share of production. Unlike the EU, which has to consider production across all EU Member States, the UK regime only concerns itself with UK producers. This could lead to very different outcomes for those assessing whether to continue with measures that had applied under the EU regime.

2 "Anti-dumping," *WTO website*, accessed 10 May 2021. Find it here.

3 "Subsidies and countervailing measures," *WTO website*, accessed 10 May 2021. Find it here.

4 "Safeguard measures," *WTO website*, accessed 10 May 2021. Find it here.

5 "The UK trade remedies investigations process," *UK Department for International Trade website*, accessed 10 May 2021. Find it here.

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The TRA is currently undertaking transition reviews for certain products to determine whether existing EU trade remedy measures should be maintained, adjusted or terminated for the UK. They are reviewing the measures in the UK context, with UK-specific data, to decide whether there would be injury to the relevant UK industry if the measures were removed. Current EU safeguard measures will be maintained if it is in the UK's interest.

These reviews could result in significant consequences for both UK domestic producers and importers, and so it is important for affected businesses to engage with the review process. A full list of the transition reviews can be found online[6].

6 "Trade remedies transition policy," UK Department for International Trade website, accessed 10 May 2021.

Trade remedies in the EU-UK Trade and Cooperation Agreement

Under the EU-UK Trade and Cooperation Agreement (TCA), the UK and EU have agreed to reaffirm each other's respective rights and obligations under the relevant WTO agreements. The TCA also obliges each party to be granted an opportunity to fully defend its interests as part of any trade remedies regime. The TCA in no way prohibits the imposition of trade remedies on the other party.

While no anti-dumping or countervailing measure has been applied between the UK and the EU presently, several of the steel and aluminum quotas that are currently in place in the UK and EU respectively mean that some steel and aluminum products require the safeguard duties to be payable if outside of the existing quota arrangements.

Implications for businesses

The new UK trade regime has already introduced significant changes for businesses operating in or trading with the UK. Key actions that businesses can take now include identifying the current EU trade remedy measures under review to assess which are relevant to their operations, either directly or indirectly upstream or downstream in their supply chain, and engaging with TRA to support their assessments on whether to continue, amend or terminate measures. Businesses should look to estimate the impact of changes in trade remedy measures on their operations and cost base and secure their supply chains.

Going forward, businesses impacted by dumped or subsidized imports, or sudden increases in imports, should review and prepare evidence to apply to the TRA for initiation of new investigations. Businesses need to act now to understand what this will mean for their operations and cost base, identify mitigating actions, and plan how to effectively engage with UK and overseas governments. ■

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What's the status of the UK's trade agreements with non-EU countries?

The UK has negotiated trade deals previously covered by its EU membership. We outline the status of these post-Brexit continuity deals.

Read the article on ey.com

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How UK businesses are responding to post-Brexit trade

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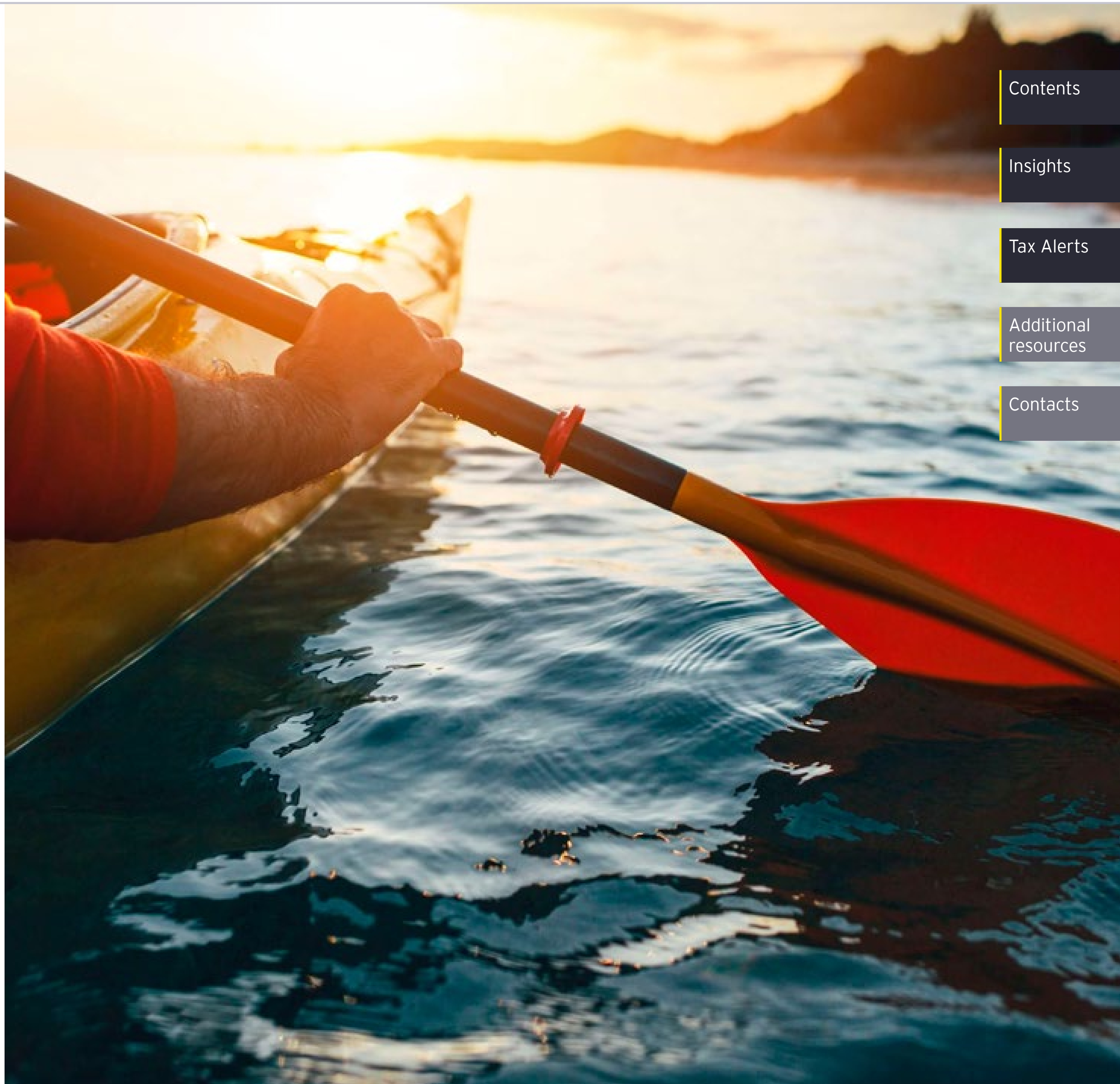

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- Newfoundland and Labrador issues budget 2021-22
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- Ecuador's President announces foreign trade and investment policy measures
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- G7 leaders affirm commitment to global tax changes under BEPS 2.0
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- G7 Finance Ministers express strong support for global tax changes under BEPS 2.0
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- USTR announces 25% punitive tariffs on six specific countries in response to their Digital Services Taxes; Suspends tariffs for 180 days
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- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia
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- US suspends punitive tariffs on UK- and EU-origin goods for four-month period
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- US Court of International Trade Decision questions first sale principle applicability to Chinese- and Vietnamese-origin goods
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- UK and Australia agree on trade deal *(16.06.2021)*
- 2021 Federal budget *(12.05.2021)*

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- US Court of International Trade Decision questions first sale principle applicability to Chinese- and Vietnamese-origin goods *(05.03.2021)*

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- G7 leaders affirm commitment to global tax changes under BEPS 2.0 *(14.06.2021)*
- G7 Finance Ministers express strong support for global tax changes under BEPS 2.0 *(06.06.2021)*
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- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia *(29.03.2021)*

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- Japan's 2021 Tax Reform introduces tax incentives for carbon neutrality and digital transformation *(15.04.2021)*

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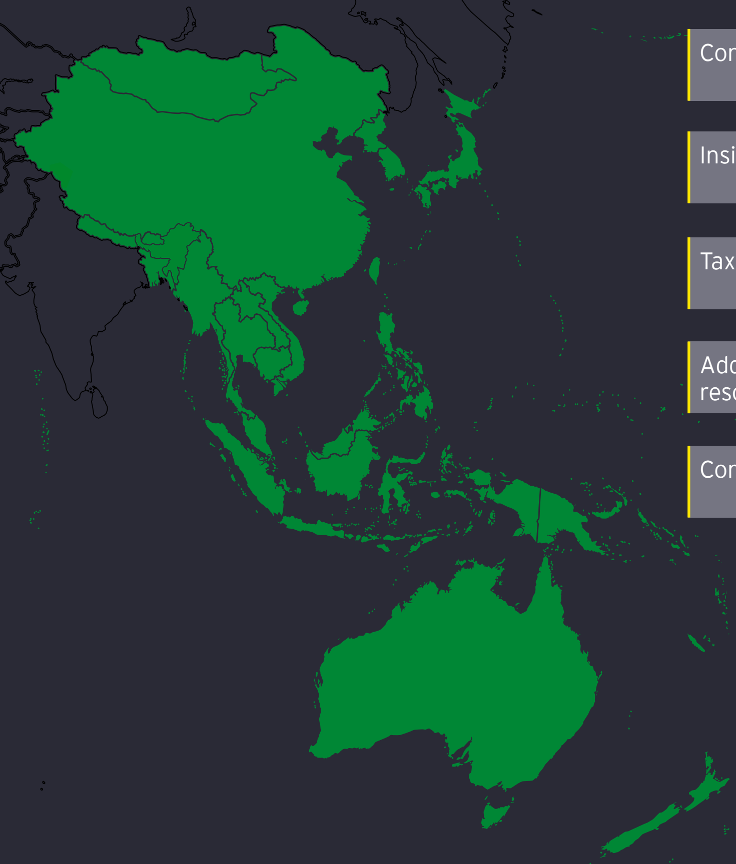
- US Court of International Trade Decision questions first sale principle applicability to Chinese- and Vietnamese-origin goods *(05.03.2021)*



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- Indirect tax changes for 2021
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- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia
(29.03.2021)

Czech Republic

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(29.03.2021)

EU

- US-EU announce Joint Cooperative Framework for Large Civil Aircraft; Suspend punitive tariffs on wide range of products for five-year period
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- European Commission publishes Communication on Business Taxation for the 21st Century
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- European Commission launches public consultation on Union Customs Code
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- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia
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- US suspends punitive tariffs on UK- and EU-origin goods for four-month period
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- Ghana Revenue Authority issues administrative guidelines on various tax measures
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- G7 leaders affirm commitment to global tax changes under BEPS 2.0
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- G7 Finance Ministers express strong support for global tax changes under BEPS 2.0
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- IMF and OECD release joint report on carbon pricing
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- CBIC notifies Regulations for verification of identity of importer, exporter and customs broker
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- CBIC notifies ICEGATE as Common Customs Electronic Portal and relaxes timelines for filing Bill of Entry
(06.04.2021)
- Government extends Foreign Trade Policy 2015-2020 till 30 September 2021
(01.04.2021)
- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia
(29.03.2021)

Italy

- Italy postpones plastic packaging tax to 2022
(26.05.2021)

Kenya

- Kenyan Government presents Finance Bill, 2021 to Parliament
(25.05.2021)

Poland

- Excise duty declarations must be submitted electronically from 1 July 2021
(14.05.2021)

Saudi Arabia

- Saudi Arabia publishes special tax rules for Integrated Logistics Bonded Zone
(29.03.2021)

South Africa

- South Africa's Minister of Finance delivers 2021 Budget Review
(25.02.2021)

Spain

- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia
(29.03.2021)

Turkey

- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia
(29.03.2021)

Uganda

- Uganda issues Tax Amendment Bills 2021
(16.04.2021)

UK

- UK and Australia agree on trade deal
(16.06.2021)
- UK to begin accession process to join Trans-Pacific Partnership
(04.06.2021)
- UK issues policy paper on EU e-commerce VAT changes and the impact in Northern Ireland
(17.05.2021)
- UK issues guidance on new Plastic Packaging Tax
(11.05.2021)
- USTR proposes 25% punitive tariff on Austrian, Indian, Italian, Spanish, Turkish and UK origin goods in response to each country's DST; Terminates investigations for Brazil, Czech Republic, EU and Indonesia
(29.03.2021)
- US suspends punitive tariffs on UK- and EU-origin goods for four-month period
(08.03.2021)
- UK issues 2021 Budget: Initial highlights
(05.03.2021)

Additional resources

Global trade on ey.com

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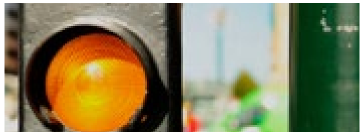

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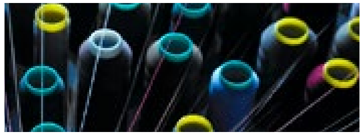

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