TradeWatch

EY Global Trade

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Welcome to Issue 2 2024 of *TradeWatch*

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Welcome to Issue 2 2024 of *TradeWatch*, the global EY organization's global trade magazine.

In this second issue of the year, we explore some key themes impacting global trade, including customs valuation, digital trade, outsourcing and sustainability. We have dealt with many of these topics in previous editions of *TradeWatch*, and in this issue, we provide additional updates and insights into how these topics are developing.

The geopolitical landscape

Recent years have seen an increase in trade tensions and events that have disrupted global supply chains. Trade executives must be aware of geopolitical developments and their potential impact on businesses as never before. At the recent *EY Indirect Tax Symposium*, we asked approximately 400 tax and trade professionals, "What are the macro trends influencing supply chain decisions?". While 13% of the respondents identified sustainability, 63% chose geopolitics as the single most important factor.

One major aspect of geopolitical disruption in 2024 is what has been termed "the global elections supercycle."[1] Voters in countries representing more than half of the world's population and nearly 60% of global gross domestic product (GDP) are heading to the polls this year. The elections taking place around the globe have the potential to shape the landscape of international affairs. Shifts in political direction can result in new or radically different trade policies that then, in turn, have an impact on companies' trade strategies. For instance, the outcome of the European Union (EU) elections that were held in June 2024 may result in a change in the Parliament's attitude to the bloc's environmental, social and governance (ESG) agenda, possibly causing the European Commission to move away from some of the ESG measures that have been proposed in recent years. Similarly, trade alliances and trade policy shifts could occur in other important trading nations, such as the United Kingdom (UK) where the recent election saw a change in government and the United States (US), following the Presidential election later in the year.

Trade and sustainability

Increasingly, regulators are turning their attention to how goods are produced, leading to a proliferation in ESG measures globally. This focus is reflected in the number of articles we feature on this topic in this issue, in response to the prominent role that tax and trade functions are now playing in this space. Measures include the US legislation and EU Directives to prevent the use of forced labor in the production of goods, requiring a far greater degree of due diligence by companies in understanding the labor practices adopted throughout their supply chains. In this issue, the EU measures are considered in two articles: European Parliament approves legislation to ban forced labor products and New EU Supply Chain Due Diligence Directive.

1 "Top 10 geopolitical risks for 2024," *EY website*, 12 December 2023. Find it here.

Carbon Border Adjustment Mechanisms (CBAMs) in the EU and UK are also dominating the sustainability agenda for many trade functions, as these measures begin to take effect (see our articles As EU CBAM reporting progresses to actual emissions data, what should companies do next? and UK government consultation on the CBAM introduction: the current EY thinking) and the responsibility for dealing with ESG matters is increasingly falling on tax and trade professionals.

This new responsibility was reflected in the polling at the EY Indirect Tax Symposium. When asked which teams in their organizations deal with sustainability taxes, including plastic taxes and CBAMs, 71% of the respondents said this is the responsibility of the tax or customs function, even in organizations where the topic was first identified by a different part of the business.

Outsourcing and the trade function

As trade functions take on this new role, many are facing challenges with finding or furnishing the data needed to meet their new ESG reporting obligations, and few so far have been given additional resources to cover the additional tasks. In this environment, it is imperative for businesses to look at how their trade functions are organized and how their operations may be improved. This is a topic that we have dealt with previously in this publication, and we continue to explore it as we hear from our clients that it is a vital issue for many businesses.

Last year, we published a report How trade functions are transforming the 'new normal' about the global trade function and how it is evolving in an era of increased access to technology matched by a scarcity of resources and increasing responsibilities. In *TradeWatch* Issue 1 2024, we looked at how trade technologies and automation can release potential within the trade function.[2] In this issue, in Effective outsourcing for global trade functions – strategies and considerations we consider the role of outsourcing in helping trade executives to cost effectively improve trade compliance and efficiency.

Customs valuation and transfer pricing

The interaction of customs valuation and transfer pricing also continues to be a hot topic, particularly how businesses should treat retrospective transfer pricing adjustments. The different approaches taken by tax and customs authorities around the world and the uncertainty created by recent court cases are keeping this topic as a high priority for tax and trade executives. In this issue, we consider some recent developments related to customs valuation in the EU in How recent and pending court rulings affect post-clearance price adjustments on customs valuation. We also feature the second part of a three-part article looking at this topic on a global scale: Transfer pricing and customs valuation – a conflict for eternity?

Digital trade

Another disruptive force in the 21st century has been the rapid development of technology and the move toward digitalization. Customs regulations and trade practices have not always kept pace with these developments.

In our last edition of *TradeWatch*, we looked at paperless trade in Australia,[3] and in this edition, in The journey to digitalization requires mapping paperless trade solutions and navigating adoption hurdles, we consider this topic from a global perspective, including the impact of the adoption of the UN Model Law on Electronic Transferrable Records (MLETR) by various countries and its increasing presence in free trade agreements. This trend will help to spur the development of digital solutions for trade finance and supply chain management, and digital platforms for shipment management and documentation. However, we also outline how the journey toward full digital adoption in global trade presents its own challenges that require careful navigation, as the solutions landscape is still evolving.

2 "Transforming customs and trade functions: how trade technologies and automation can release potential," *TradeWatch* Issue 1 2024, page 6.

3 "Australia accelerates its transition toward paperless trade," *TradeWatch* Issue 1 2024, page 41.

Trade facilitation

Many countries around the world are aiming to facilitate trade and improve their attractiveness as import destinations. In this issue, we look at three trade facilitation measures in the Americas:

- In Brazil: New import process set to go live, we look at how the Brazilian government is using technology to facilitate trade through an ambitious comprehensive single-window approach that aims to simplify import procedures by consolidating multiple requirements into one integrated platform. By eliminating redundant processes and fostering a more transparent and predictable import environment, the initiative is expected to reduce the time and cost associated with importing goods into Brazil.
- In Colombia: Recent amendments to customs regime, we outline Colombia's revised customs regulations aimed at enhancing anti-smuggling measures and bolstering security at the country's borders and points of entry. The national government has argued that stricter regulations on imports will allow for greater control over foreign trade operations while facilitating trade. However, it could also be argued that increased control could hinder the fast and dynamic flow of trade that some operations previously enjoyed.
- In Mexico: The Istmo de Tehuantepec Interoceanic Corridor Initiative, we outline the Mexican government's transformative project to create a new transoceanic connection between the Atlantic and Pacific Oceans through rail connections, potentially positioning Mexico as a pivotal player in global supply chain.

Keeping up to date with developments in trade

We hope you enjoy this edition of *TradeWatch*. We aim to reflect the key trends affecting international businesses and provide news and insights you can use to inform your trade strategy and improve your trade operations.

You can also keep up to date with developments in global trade by subscribing to EY Tax Alerts and to future editions of our *TradeWatch* and *TradeFlash* publications by visiting ey.com/global trade. You can subscribe to future webcasts and access replays of past webcasts via the EY webcasts page on ey.com.

If you would like more information on any of the topics covered in this issue or how they may impact your business, please reach out to the authors listed with the articles or any of the EY Global Trade professionals listed in the contacts section of the magazine. We also welcome your feedback and suggestions for future editions.

Effective outsourcing for global trade functions – strategies and considerations

Businesses are constantly looking at short- and long-term requirements to manage their operations efficiently and effectively. So, what does this mean for how the trade function should operate in today's complex world?

We do not need to look further than the tax function to see this trend in action. The tax operating model, which worked well for organizations for many years, has become less fit and agile over time. Many heads of tax face the challenge of delivering the same level of assurance as before (such as compliance standards) but with much greater efficiency and cost savings. Outsourcing tax operations, partially or even fully, has become a common solution to address this challenge. The evolution of the tax function poses a reference point to consider how the trade function may also evolve. When comparing the journey of the tax and trade functions, the following commonalities appear:

- Expanding the territories of operation and the added complexity resulting from that are inevitable by-products of business growth. Operations can be dispersed around the globe, and most multinational enterprises face the need to complete tax reporting obligations in multiple countries. From a trade function point of view, trade declarations are effectively another type of tax return.
- Labor cost has been consistently increasing in recent years, accelerated by inflation. This encourages enterprises to look at siting their back-office operations in jurisdictions where talent cost remains comparatively low.
- Many processes and steps involved in operating these functions can be repetitive in nature; therefore, the question is if this is the best use of the current team's time and talents.

To meet the ever-changing external and internal challenges these functions face, outsourcing is also a consideration for global trade functions to deal with their operations. However, other than customs filing, which is typically contracted to customs brokers or agents, outsourcing is still relatively new when it comes to other trade and customs-related decisions and activities.

Many trade executives are initially skeptical of outsourcing. This reaction is not unexpected, since it is also how many organizations first reacted to outsourcing the tax function. A common concern is that outsourcing could jeopardize compliance, but this is not necessarily true. For example, a good way to set up the outsourcing model involves creating a consistent and standardized process that can be handed off to a managed services provider's team. The standardization can help drive better compliance results. In addition, there is the benefit of freeing up existing team members to focus on more tactical and strategic activities. These activities tend to drive far greater and longer-term value for the function and overall business organization.

The right outsourcing strategy is critical

For companies considering outsourcing, they may learn valuable lessons from organizations that are further ahead in their outsourcing journey. In this article, we explore important considerations for trade executives, including:

- Striking the right balance between what to outsource and what not to outsource, centralized vs. localized activities, and compliance outcome vs. cost reduction
- Weighing the right time to outsource
- Ensuring effective governance of the outsourcing provider

Outsourcing options

Outsourcing can be a vaguely defined term. When talking about outsourcing in the customs and trade space, a few different delivery models can apply.

Outsourcing the filing activity to customs brokers is the most common type of customs outsourcing. Customs brokers typically rely on information provided by the importer and exporter for populating customs declarations. Depending on the jurisdiction, customs brokers may be jointly and severally responsible with the importer and exporter for the accuracy of such declarations. A typical governance model is through service level agreements, whereby key performance indicators (KPIs) such as accuracy and clearance time are set out.

Many companies have also created, or are in the process of creating, internal shared service centers. Shared service centers are typically based in lower-cost locations. The center resources may or may not be dedicated customs and trade professionals. For example, it is not uncommon to see the resource "shared" between customs tasks and other finance or logistics responsibilities.

Other service providers, such as consultancy firms, have created their own managed services centers. Like internal shared service centers, these teams are also generally based in lower-cost locations. These managed services centers tend to be staffed by dedicated customs and trade professionals, but the resources may be servicing several clients at the same time.

The choice of outsourcing model needs to be carefully considered with regard to the activities, scope, timing and governance.

Navigating outsourcing global trade activities

Global trade activities can be categorized into tactical activities and strategic activities:

- **Tactical activities** are tasks and decisions taken to manage day-to-day operations and compliance. These activities are often routine and involve the implementation of procedures that have been established by governance leadership.
- **Strategic activities**, on the other hand, involve long-term planning and decision-making that shape the goals and objectives of the organization's global trade function. These activities are focused on achieving competitive advantage, growth and compliance over a long period.

Tactical activities that are considered to be lower risk are frequently outsourced. This practice permits global trade professionals to direct their attention toward overarching controls and the monitoring of these activities, rather than becoming entangled in the intricacies of day-to-day tasks. Low-risk trade activities are those routine, well-defined tasks that require adherence to established procedures and regulations but do not involve complex decision-making or high-stakes outcomes. These tasks, while essential for maintaining compliance, do not inherently demand the strategic expertise that higher-risk activities might require. Filing is the activity most often outsourced to customs brokers and agents.

Recently, the trend in global trade functions is moving toward a clear separation of tactical and operational activities from those that are strategic and compliance focused. The strategic arm of the function often takes on governance and oversight of operational tasks, facilitating a more effective division of labor. This separation has made it easier for companies to justify and execute outsourcing by clarifying the roles and responsibilities within the trade function.

The most common outsourced trade activities include:

- Import and export clearance
- Classification (import and export)
- Country of origin determination
- Free trade agreement (FTA) qualification, including solicitation
- Audits (pre-entry and post-entry reviews)
- Restricted party screening (with initial review being outsourced but escalations and final determinations completed in-house)
- Data analytics

While these activities are commonly outsourced, it is not necessarily the right choice for every company. Effective governance of the trade function, with well-defined policies and procedures, is essential to ensure adequate oversight of outsourced tasks. The degree to which the global trade function is integrated within the company also significantly influences the success of outsourcing. The activities listed above often depend on access to data and information from various internal departments, such as tax, procurement, logistics, engineering and IT. Therefore, it's crucial that the global trade function is already adept at acquiring this information to facilitate successful outsourcing.

Moreover, technology plays a pivotal role in outsourcing. While some outsourcing partners will use their own technological solutions, others will use the technology systems provided by the client company. This is because the company's technology typically allows for better integration with other internal systems and tools and for providing real-time information that is valuable to the company. Robust technology can enhance the monitoring of outsourced activities and manage or limit risks, making it a key factor in the decision to outsource.

Strategic timing for outsourcing

When considering whether and when to outsource certain global trade activities, several factors come into play that can significantly influence the approach. One of the primary factors is the need to align with internal cost and headcount reduction initiatives. Even as companies look to streamline their operations and reduce expenses, work within the global trade function must continue uninterrupted. Outsourcing can provide a cost-effective solution that maintains efficiency without compromising the quality of the work.

Another factor is related to staff turnover. Team turnover presents a significant challenge for maintaining consistency and expertise within the global trade function. When experienced individuals leave, they take with them valuable knowledge and skills that are not easily replaced. Outsourcing offers a solution to this issue by providing access to specialized professionals who can fill in the gaps. This can enable critical trade activities to continue without disruption and eliminate the pressure associated with recruiting and training new employees. Similarly, outsourcing can be a solution for bridging gaps in expertise. For example, engaging with expert classifiers with backgrounds in chemical, electrical or mechanical engineering can provide a depth of technical knowledge that might be difficult to find or develop in-house.

A sudden increase in the team's workload can be another factor that triggers the need to outsource. When companies experience workload increase, often triggered by mergers and acquisitions, new market expansion or the development of new trade lanes, it can overwhelm existing teams. Outsourcing becomes an option to manage this increased demand and allows the company to scale its operations efficiently without increasing headcount. This approach helps to manage the immediate increase in volume and provides a flexible solution that can adapt to future business fluctuations without the need for permanent expansion.

Audits, whether internal or external, often highlight areas that require improvement or additional controls. After an audit, companies are faced with the decision of how to address these findings effectively and efficiently. Outsourcing is a strategic response to audit findings, particularly when gaps in compliance or operational inefficiencies are identified. Engaging specialized service providers to address audit findings allows for the rapid implementation of best practices and corrective actions with minimal disruptions to the workload of internal resources.

Finally, outsourcing can be a strategic move for companies looking to optimize the global trade function. Tactical tasks are increasingly seen as non-core competencies of a global trade team. By delegating these tasks to external providers, companies can benefit from the providers' expertise in handling such routine processes efficiently and accurately. This not only reduces the burden on internal resources but also allows the company to reallocate its skilled individuals to focus on more strategic, high-value tasks that require in-depth knowledge and critical analysis, such as navigating complex trade regulations and optimizing supply chain strategies.

Governance and risk management

Once enterprises have trained the internal shared service centers or external teams, handed over the task based on comprehensive statements of work and standard operating procedures, they are still responsible for governance and liable for all activities done by their business process outsourcing partner.

Therefore, it is recommended to:

- Perform full or risk-based sampled transactional post-entry controls, if the filing of customs declarations has been outsourced (this can be outsourced to an internal shared service center or external partner).
- Take ownership of transactional data on import and export declarations to monitor compliance-relevant information, such as customs classification, export control coding, preferential and non-preferential country of origin statements, and customs and statistical values.
- Collect transactional data, making the information available in a central database to create compliance metrics and KPIs and to analyze potential compliance risks and duty-saving opportunities.

The chart below offers examples of how to perform regular checks on KPIs and internal shared service centers or external partners:

Category	Function	Description
Classification	Quality Control or Internal Audit	Report on inconsistent customs codes for the same part number globally
Classification	Quality Control or Internal Audit	Report on 20 customs codes with highest duty paid amounts per month
Classification	Compliance requirement for identified changes	Report on financial consequences of wrongly classified articles for imports during the prescription period to be used for local customs applications to apply for reimbursement or additional duty or VAT payments
Preferential origin	Quality Control or Internal Audit	Check imports from FTA eligible countries with preferential code (PAC)
Statistics	Operational KPI	Report on quantity of classifications completed
Statistics	Operational KPI	Report on customs declarations per broker and country
Statistics	Financial KPI	Number of lines, cumulated customs values cleared into free circulation directly and after ending customs regimes (customs procedure code (CPC) 4*), duty paid
Statistics	Financial KPI	Saving due to preferential savings (generalized system of preferences and other FTAS)
Statistics	Financial KPI	Saving due to customs valuation programs (buying commission, others) if applicable
Statistics	Financial KPI	Duty avoided due to usage of customs regimes, FTA PAC 200 or duty suspensions PAC 300
Valuation	Quality Control or Internal Audit	Report on 20 part numbers with highest customs value amounts per month
Valuation	Quality Control or Internal Audit	Random check on average customs value per piece for a certain part number compared to previous month when difference is higher than xx% (needs to be defined)

Summary

Both internal and external forces have resulted in companies looking in detail at their global trade operations and their global trade functions. Internally, companies may be looking for a better financial result – e.g., less costs and more revenue – or perhaps they are seeking increased compliance following an adverse audit result. Externally, in the current economic climate, companies are looking to do more with less – e.g., by creating efficiencies and using technology. Similarly, in a world where governments continue to use trade policy to support national agendas, companies need to be nimble in their operations. These situations tend to shift the balance in favor of outsourcing.

Understanding the difference in scope between tactical and strategic activities and when tactical activities are outsourced that effective governance is critical to achieve the intended result. To state the obvious, introducing additional incremental risk into a compliance function is not advisable. Therefore, any potential cost savings or efficiencies must be weighed against the risks. While the strategic trade activities are generally kept onshore and in-house, that is not to say that outsourcing cannot be a strategic decision. On the contrary, saving money in direct costs (e.g., salaries) is a strategic business decision in and of itself. Trade leaders would be remiss not to explore the possibility in these discussions generally occurring at the C-suite level. Importantly, while blueprinting the functions that could be effectively outsourced, trade leaders are advised to align personnel and department KPIs to an outsourced environment in parallel. This proactive attention to company culture can help reduce negative reactions from the group and fears of job uncertainty.

In addition to considering financial results and company culture in an outsourcing decision, IT is an equally important stakeholder. Outsourcing of any activity necessitates an IT roadmap and strategy. This is particularly relevant now, with so many companies updating their enterprise resource planning (ERP) systems (e.g., from SAP to S4/HANA).

While outsourcing in the global trade function will look different to each company, whether by sector, region or company structure, one common theme is that the majority of global companies are analyzing what, when and where to outsource. In a global economy where disruption is now the norm, outsourcing provides the flexibility that companies require to address growing demands with an increasingly scarce resource base. ■

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The journey to digitalization requires mapping paperless trade solutions and navigating adoption hurdles

Supply chains continue to depend on antiquated paper-based documents and processes to facilitate the physical flow of goods between buyers and sellers. A reliance on paper trade documents exposes supply chains to a range of risks and inefficiencies that can delay transactions. Paperless trade offers a promising resolution to these process deficiencies and risks.

In our previous article on paperless trade in Australia,[1] we highlighted the growing adoption of the UN Model Law on Electronic Transferrable Records (MLETR) as a landmark framework in the transition toward digitalization by giving electronic documents the same legal status as paper equivalents. The adoption of the MLETR domestically in various countries and its increasing presence in free trade agreements will help to spur the development of digital solutions for trade finance, supply chain management and digital platforms for shipment management and documentation.

The shift from traditional paper methods to digital is set to improve the efficiency, agility and innovation of global trade. The benefits of paperless trade have been made evident in numerous cases. For example, the UN estimates a 44% reduction in the transaction time of trade, resulting from the elimination of manual processes, and a 31% reduction in costs overall.[2] Considering these compelling benefits, a variety of solutions have emerged to facilitate the journey toward digitalization. However, it's important to recognize that the journey toward full digital adoption in global trade presents its own challenges that need to be navigated carefully — and the solution landscape is still evolving.

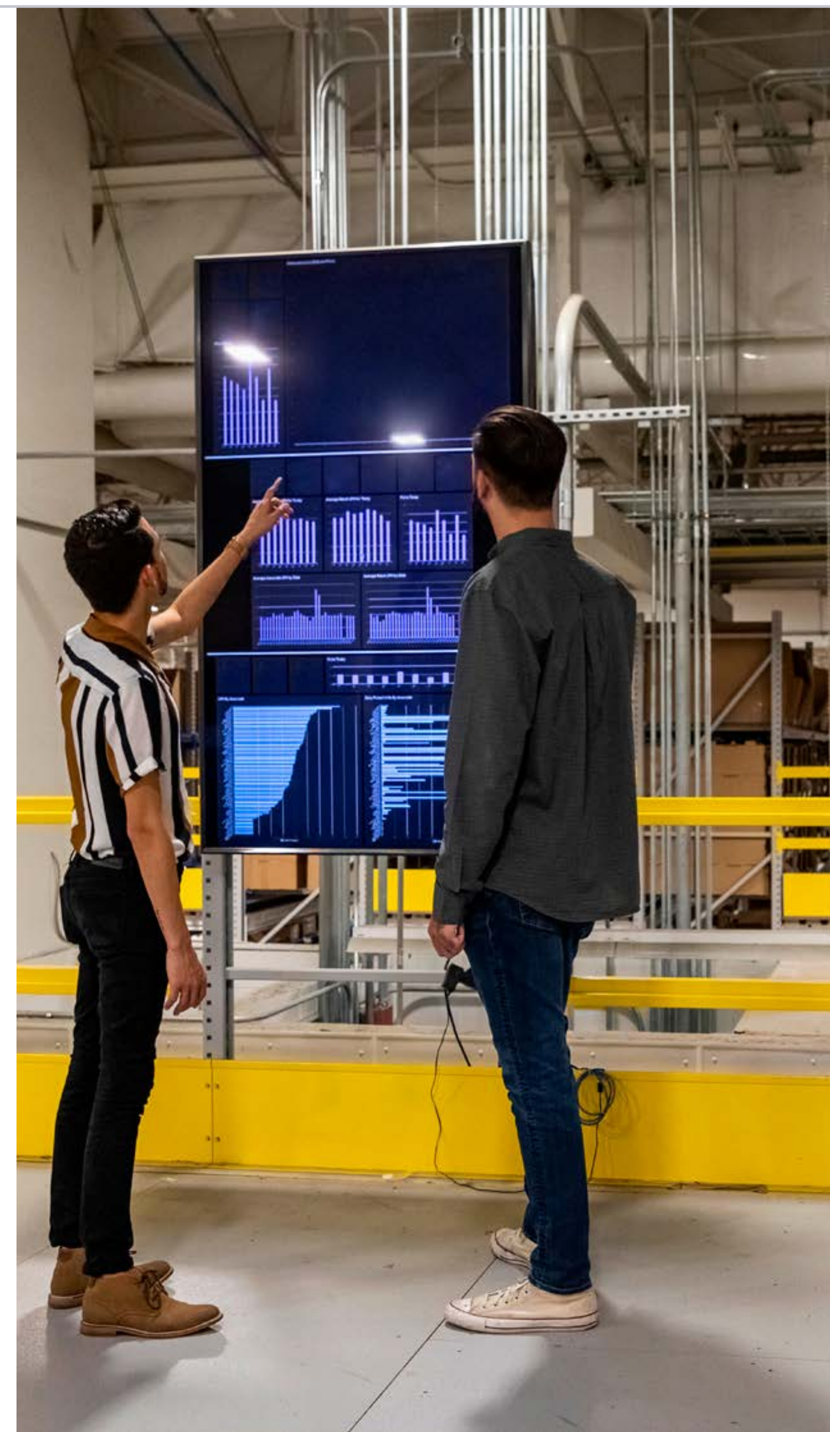
Solution landscape

The current solution landscape can be grouped into three broad categories:

1. **Enterprise solutions** are designed to optimize internal operations, data management and data exchange within a single organization and with its supply chain partners. Enterprise solutions typically seek to leverage and integrate with existing enterprise resource planning systems

1 "Australia accelerates its transition towards paperless trade", *TradeWatch Issue 1 2024*, page 41.

2 "Estimating the Benefits of Cross-Border Paperless Trade", *United Nations ESCAP*. Find it here.



and offer software-as-a-service-based solutions to automate traditional document exchange processes, which allow a company to exchange trade document data equivalents of purchase orders, bills of lading or invoices electronically with supply chain partners, streamlining the trade process and reducing errors.

2. **Industry solutions** apply to a whole sector, aiming to modernize and transform traditional practices through widespread adoption of digital technology, such as distributed ledger technology (blockchain), to create trusted end-to-end supply chains that boost productivity and foster transparency across an entire industry.
3. **Ecosystem solutions** (whether open or closed) establish a digital framework that enables a whole range of ecosystem players, including buyers, sellers and supply chain partners to interact and transact within a shared digital environment. Open ecosystems, such as national single windows, seek to simplify and digitalize the trade process for exporters and importers and encourage wide participation and collaboration. Closed ecosystems are exclusive to members.

Despite the promising potential of these solutions, transitioning to digitalization comes with challenges. Early adopters have faced challenges with overcoming problems ranging from high up-front and ongoing solution costs, to securing commitments from supply chain partners to adopt solutions, to regulators who are unable to participate in enterprise or industry solutions. It is essential to identify and implement fit-for-purpose solutions that meet the individual organization's context and key business needs.

Taking theory into reality

To accurately ascertain business needs, it is crucial to have a clear vision and objectives, and a thorough understanding of the distinct needs and pain points across all departments and stakeholders. A focus on understanding the current and future user journey is critical.

We recommend a structured four-step approach to the digitalization of an international supply chain. It begins with a critical first deep dive into the existing landscape to uncover the most impactful opportunities for change — effectively prioritizing the delivery of high-value digitalization use cases first.

1. **Discover**
   This phase requires clear identification of the current business priorities and needs. A thorough evaluation of existing trade processes is typically necessary to establish a foundation for identifying which paper-based procedures can be digitalized. The breadth of operations is a vital consideration, as it informs the regulatory and legal requirements that they are subject to and informs the next stage of the solution.

2. **Diagnose**
   Once priorities and needs have been clearly identified, a gap analysis finds areas that require improvement, whether in technology, processes or people. A roadmap can then be developed that outlines the steps required to transition from paper-based trade to digital trade, within the requirements specified. A critical part of this phase involves a thorough risk assessment and the development of strategies to address potential vulnerabilities, such as cybersecurity threats inherent in digital trade. Additionally, it is imperative to evaluate how these changes might affect current contracts, legal agreements and supply chain structures to ensure a smooth and compliant transition.

3. **Decide**
   Identify a vendor that offers the right balance of functionality, support and cost-effectiveness. Once the preferred digital solution is identified, plan the implementation with clear timelines, resources and costs associated with the transition to digital trade. It is vitally important to engage with stakeholders to ensure their buy-in and support for the transition.

4. **Deliver**
   The move to paperless trade, which includes technical implementation, also requires comprehensive training and change programs to ensure that all stakeholders understand the new processes and can use the digital solution. Regular monitoring and evaluation of the solution's performance is needed to ensure functionality and discern opportunities for continuous improvement. This requires further engagement with stakeholders to ensure their ongoing support and to address any issues that arise during the transition to paperless trade.

Implications for business

Each step of the journey to digital trade, from the initial discovery of opportunities to the solution delivery and ongoing support, is integral to ensuring a successful digital transformation. The aim should be not only to modernize operations but also to position the business for future growth and resilience as fully digital international supply chains begin to emerge. Embarking on this journey is an exciting undertaking, but risks must be managed. In the past, businesses have not reaped the promised benefits of trade digitalization, but with a structured approach focused on business needs, organizations can move closer to harnessing those promised benefits and more. ■

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Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict on a global scale. Part II

This article is the second in a three-part series that aims to raise awareness about the complexities and ambiguity surrounding retrospective transfer pricing (TP) adjustments from a customs valuation standpoint. The first part, featured in *TradeWatch* Issue 1 2024,[1] delineated recent developments in Germany concerning uplift adjustments as well as offering a glimpse into the customs administration's stance in the aftermath of the landmark Hamamatsu ruling by the European Court of Justice (CJEU).[2]

The second part of this series endeavors to broaden the scope of the discussion, presenting a perspective on the handling of such matters across various jurisdictions. We achieve this through a high-level comparability analysis carried out using the EY Global Trade network. Our findings reveal a global mosaic of methodologies, underscoring the critical need for meticulous evaluation of TP adjustments for the purposes of customs valuation.

1 "Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict at a global scale," *TradeWatch* Issue 1 2024, page 14.

2 CJEU 15 December 2016, C-529/16 (Hamamatsu Photonics), ECLI:EU:C:2017:984.

EY global customs valuation study

Introduction, parameters, and areas of focus

Given the differing approaches of customs administrations in the European Union (EU) Member States to the treatment of retrospective TP adjustments for customs valuation purposes and, simultaneously, relevance for businesses, our EY global customs valuation study aims to provide an initial overview on challenges and opportunities for importers in specific fields of trade, beyond the borders of the EU customs territory.

In our quest to discover the core issues of this longstanding debate around retrospective TP adjustments from a customs valuation perspective, we sought the insights of local professionals within our network, spanning over 40 jurisdictions across the Asia-Pacific, Europe, Middle East, India, and Africa (EMEIA), and Americas areas. This initiative was driven by our clients' need to understand the ramifications of divergent administrative interpretations concerning retrospective adjustments to the customs value of imported goods.

We have examined certain facets with the intention of highlighting the challenges and identifying potential opportunities for businesses. Our analysis extends beyond the standard legal framework governing the customs valuation of import transactions between related parties and the general applicability of the transaction value method (TVM) in these circumstances. To do so, we have delved into pertinent operational questions to provide additional insights. Our study questions addressed the following:

- What are the identification criteria that customs authorities use to assume a related-party sale? And in consequence, how do the authorities conclude that the relationship has influenced the price?

- In which circumstances does the local customs authority agree on building the customs value based on the TVM? And if the TVM is not applicable, how do they anticipate arriving at the customs value?
- To gain legal certainty, is it possible to obtain a ruling?
- How do the customs authorities treat uplift adjustments (additional customs duties) and downward adjustments (refund opportunities)?

In the following sections, we summarize the key implications of various administrative practices for businesses, provide further background on the link between the TP and customs value, and finally share some key trends in this respect emerging from the *EY global customs valuation study*.

Starting position: possible outcomes of different approaches

First, we explore potential outcomes resulting from TP adjustments, to provide a preliminary survey of the diverse methodologies observed across various jurisdictions and to offer an initial perspective on the significance of this topic.

Retrospective TP adjustments can result in a multitude of consequences for the determination of customs value and, consequently, the amount of customs duty paid. These outcomes can be categorized into four distinct overarching groups. They are broadly downward and uplift adjustments, supported by sufficient documentation or lacking documentation, as set out in scenarios 1–4 in Figure 1. The specific approach adopted can place economic operators in varying financial positions, requiring them to undertake various appropriate actions.

Further we recognize an additional category where no refund is granted, or an additional duty is charged based on other parameter (scenario 5 in Figure 1). This categorization resembles the rationale that the German tax authorities currently apply based on an internal statement of the General Directorate of Customs (not available for the public). It is remarkable insofar as it appears not to be strictly in line with the Hamamatsu verdict, as announced by the Federal Fiscal Court in 2022, since the concept of the decisive date of import is not considered; but, the rationale, as such, is conceptually understandable, since it adopts "true and fair value" principles on the basis of the General Agreement on Tariffs and Trade (GATT).

Figure 1

	Scenarios
1	**Downward TP adjustment + sufficient documentation = refund of customs duties**
2	**Uplift TP adjustment + sufficient documentation = additional charge of customs duties**
3	**Downward TP adjustment + no sufficient documentation = no refund of customs duties**
4	**Uplift TP adjustment + no sufficient documentation = factual obligation to declaration and additional charge of customs duties**
5	**Factual additional categories which are worth exploring where no refund is granted, or additional duty is charged based on other parameter**

Parameter	Downward TP adjustment	Uplift TP adjustment
Sufficient documentation	Customs duty refund	Additional customs duty charges
No sufficient documentation	No customs duty refund	Factual obligation to declaration and additional customs duty charges
Insufficient documentation	**No customs duty refund**	**Additional customs duty charges**

Post-transaction adjustments

Customs duty is typically calculated at the time of importation. Therefore, any subsequent calculations may have a retrospective effect on the value declared at the time of the importation. How this fact is dealt with presents a challenge to customs authorities. This challenge was addressed within Europe as part of the Hamamatsu decision, but its implications extend further, causing disruptions in other parts of the world, as identified in our comparative *EY global customs valuation study*.

In *TradeWatch* Issue 1 2024,[3] we examined in detail the transformation in the German government's approach to TP adjustments in recent years, in the wake of the pivotal Hamamatsu case. Prior to the landmark Hamamatsu decision, our observation was that customs authorities would determine the eligibility for a refund or would levy additional charges following retrospective TP adjustments, contingent upon the provision of sufficient documentation to prove that the relationship between the grouped buyer and seller did not influence the price (which is actually not referred to in the Hamamatsu decision at all). The criteria for what constituted "sufficient documentation" were subject to various interpretations by different customs administrations.

Following the Hamamatsu ruling, it has been fascinating to observe the evolution of scenarios 1 and 2 within Europe (i.e., a downward or upward adjustment backed by documentation), particularly how the customs authorities have assimilated the case law into their evaluations for refunds and supplementary assessments. This period has also seen the revision of administrative guidelines, the adjudication by national and local courts on related cases, and the implications for economic operators who have been compelled to defend their established customs valuations.

Building a customs value based on different TP methodologies: margin-based vs. non-margin-based methods

Let's examine the composition of the intercompany TP, as it constitutes the foundation for the customs value and is the source of the disruption when retrospective adjustments are applied to the initially established value. This is particularly pertinent in the context of calculating the customs value for transactions between related parties.

The Organisation for Economic Co-operation and Development (OECD) TP Guidelines[4] outline five distinct TP methodologies. The methods are divided into two general categories: *traditional transaction methods*, i.e., Transactional Net Margin Method (TNMM) and the Profit Split Method (PSM); and *transactional profit methods*, i.e., Comparable Uncontrolled Price Method (CUP), Cost Plus Method (CPM) and Resale Price Method (RPM). Nonetheless, from the perspective of customs valuation, it may be more pertinent to classify these five methods into margin-based and non-margin-based approaches. This distinction arises from the central challenge in this area of conflict, which is the retrospective adjustments prompted by margin considerations.

The feasibility of retrospective adjustments is contingent not only on the TP method employed but also on the particular regulations and practices of the tax jurisdiction in question. However, it is generally observed that margin-based TP methods are more susceptible to being subject to retrospective adjustments and, therefore, are more likely to be challenged as customs values by customs authorities around the globe, due to their inherent characteristics.

All methods aim to establish or sustain an arm's-length price. The method used to establish this arm's-length price for each individual business, however, may deviate in its approach. The most suitable method is based on different parameters, such as the nature of the transaction, availability of reliable data and alignment with that enterprise's TP policy. The overall aim for TP and customs valuation is to reach a price between grouped entities that reflects a price that would have been set between independent enterprises in comparable transactions and comparable circumstances.

Margin-based TP methodologies focus on the profits that entities earn, and they usually aim to reach a certain overall margin.

This aspect of bundling sold products between the related parties to achieve an adequate margin on a group level is the key argument made by customs authorities to waive the TVM, as there is not sufficient indication that arm's length aspects have been considered adequately on the product level. In these cases, the reasoning of the Hamamatsu decision comes into play i.e., that the customs value assessment is a time- and product-specific assessment.

3 "Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict at a global scale," *TradeWatch* Issue 1 2024, page 14.

4 "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations," *OECD website*, 2022. Find it here.

For instance, the TNMM could be qualified as a "Margin-based TP methodology". The TNMM compares the net profit margin of a taxpayer in a controlled transaction to the net profit margin of comparable companies in comparable uncontrolled transactions.

The TNMM often involves setting target profit level indicators, such as operating margins, net cost plus, etc., based on comparables. If the actual results at year-end (or in any other foreseen period) differ from the targeted arm's-length range, a retrospective adjustment is likely to be made to bring the results within the arm's-length range.

Non-margin-based TP methodologies do not focus on profit margins but rather on the price or value of the transaction itself.

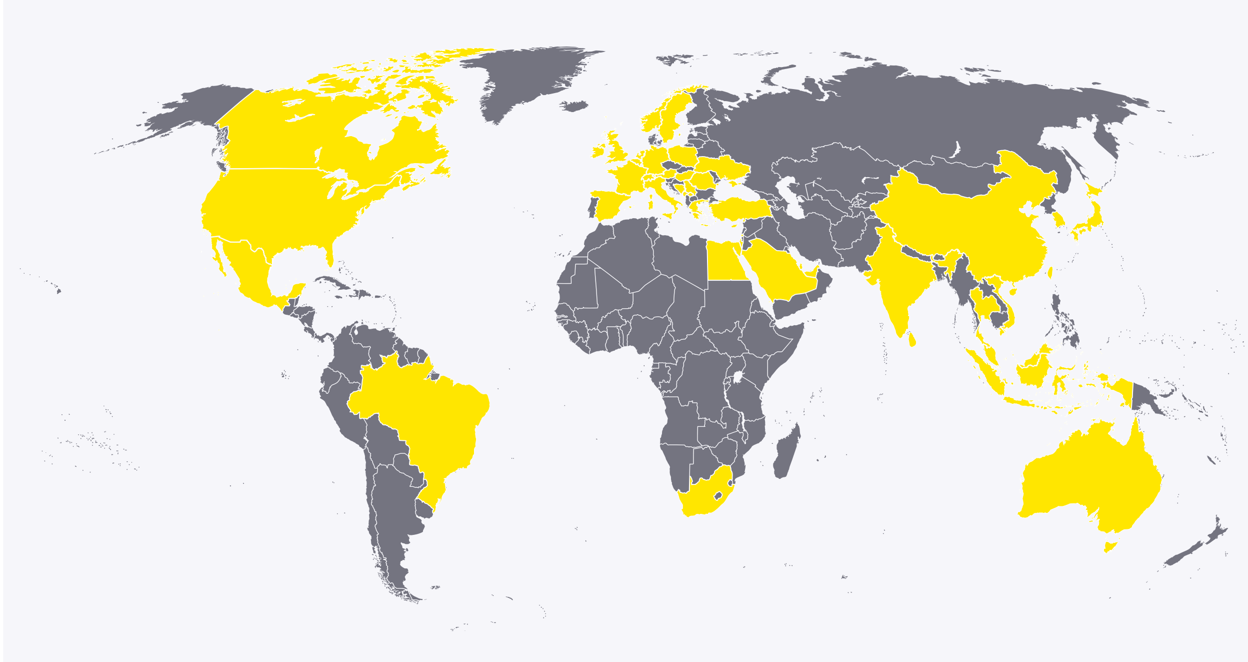
For instance, The CUP method compares the price charged in a controlled transaction to the price charged in a comparable uncontrolled transaction.

Non-margin-based methods (like the CUP method) are less likely to involve retrospective adjustments because they are based on actual transaction prices rather than profit outcomes. However, if material differences are identified between controlled and uncontrolled transactions, adjustments may still be required. Sometimes, from a corporate income tax perspective, this could constitute a harmful effect, in case the tax base and the effective tax rate (ETR) are calculated only after the respective period has ended, and the retrospective adjustments are naturally also considered here.

EY global study selection: highlights and trends

Our *EY global customs valuation study* compared different approaches to retrospective TP adjustments on a global scale. Our findings indicate that while some jurisdictions have specific guidelines and documentation requirements for margin-based TP methods, others do not have clear provisions or do not have experience with these methods affecting customs valuation. The approach to TP adjustments and customs valuation varies by country.

Figure 2: Jurisdictions included in the *EY global customs valuation study*



Key

The jurisdictions included in the EY global customs valuation study.

In our quest to discover the core issues of this longstanding conflict, we sought the insights of local professionals within our network, spanning over 40 jurisdictions across the Asia-Pacific, Europe, Middle East, India, and Africa (EMEIA), and Americas areas:

Australia	Ireland	South Africa
Austria	Israel	South Korea
Belgium	Italy	Spain
Brazil	Japan	Sweden
Canada	Liechtenstein	Switzerland
China	Malaysia	Taiwan
Egypt	Mexico	Thailand
France	Netherlands	Turkiye
Germany	Norway	Ukraine
Greece	Poland	United Arab Emirates
Hong Kong	Romania	United Kingdom
Hungary	Saudi Arabia	United States of America
India	Serbia	Vietnam
Indonesia	Singapore	

Legal framework and administrative practices

Given that the majority of jurisdictions in the EY study have adopted the World Trade Organization (WTO) Customs Valuation Agreement,[5] the TVM is generally the preferred method in all jurisdictions, with the exception of Switzerland and Lichtenstein. While regions such as the EU have common legal frameworks at an ordinance level, individual jurisdictions often implement supplementary

5 "WTO Valuation Agreement," *World Customs Organization website.* Find it here.

regulations and adopt local interpretations. Differences arise in the degree of regulatory detail, unique valuation methods and enforcement practices. Despite aiming for international alignment, these variations impact the consistency and predictability of customs procedures globally.

We have also seen that implementation and enforcement practices differ between jurisdictions. Diverse regulatory bodies and guidance sources further shape how customs valuation is applied, leading to significant variations despite efforts toward international alignment with the WTO Customs Valuation Agreement.

Applicable customs valuation method for intercompany transactions

The overall trend emerging from the inputs from individual jurisdictions in the study regarding the customs valuation method used for intercompany transactions is that the TVM is the primary method used. However, while the TVM is the starting point for customs valuation of intercompany supplies, it is also clear from the results that there is a need for flexibility and for thorough documentation to ensure compliance with customs requirements when related-party transactions are involved.

A few common themes and practices also emerge for cases where the TVM is not applicable or is rejected by customs authorities; particularly, there is a consistent emphasis on the arm's-length principle across various jurisdictions. If the relationship between the buyer and seller has not influenced the price, then the TP can generally be used as the basis for the TVM. Further, in various jurisdictions, such as Hong Kong, additional conditions must be met, e.g., the consideration of proceeds from the subsequent sale.

Importers are often required to provide sufficient and relevant documentation to substantiate that the TP is at arm's length, and hence, the relationship did not influence the price. This may include TP studies, contracts and comparable transaction data, which the customs authorities typically require the importer to provide. Overall, the study responses indicate that while specific document requirements may vary widely between jurisdictions, the goal is to ensure that the declared value is consistent with the arm's-length principle and that the relationship between related parties has not influenced the transaction value. Depending on the jurisdiction, importers may need to be prepared to provide comprehensive and detailed documentation to support using TPs as the basis for the TVM.

Customs authorities may review intercompany transactions to ensure that the prices are consistent with those between non-related parties, which may result in them challenging TP-based calculations.

While most jurisdictions in the study typically base the TVM on the TP, a few jurisdictions have indicated further constraints in this area that surpass the standard documentation required to demonstrate that the relationship between the parties did not influence the price. Specifically, within Europe, certain jurisdictions, such as the Germany, Sweden and the United Kingdom (UK), have underscored that when margin-based TP methods are employed, there is a strong likelihood that the price could be contested as being influenced by the intercompany relationship. Some, such as the UK and Sweden, to an extent, have taken the stance that the TVM is not applicable to intercompany transactions that are predicated on margin-based TP methods.

In instances where the TVM is deemed to be inapplicable, importers are compelled to establish the customs value based on alternative valuation methods. The declarant must then furnish ample evidence to substantiate the calculation, potentially placing it in a more susceptible position with regard to customs inspections.

Administrative guidance and customs valuation ruling

Some jurisdictions provide rulings or guidance, particularly concerning intercompany transactions and TP, that importers can use to navigate the complexities of customs valuation. However, the available help varies greatly between jurisdictions, ranging from binding concrete rulings to abstract administrative guidelines; whereas in some jurisdictions, businesses may be advised to obtain a customs valuation ruling, in others, the experience of local customs specialists is required to navigate through the local administrative interpretations of the law.

In this respect, we would also like to highlight that the EU recently published new rules related to decisions on binding valuation information (BVI). The new rules are included in the Commission Delegated Regulation 2024/1072 and Commission Implementing Regulation 2024/1071, which entered into force on 5 May 2024 and will apply from 1 December 2027. EU global trade specialists hope that the BVI process will facilitate a safe trade environment in terms of the duties that have to be paid that will help to minimize subsequent issues, including booking adjustments and corrections at the close of a reporting period.

Retrospective adjustments to the customs value

A central objective of our study was to gain insight into the treatment of retrospective TP adjustments, both downward and upward, in selected jurisdictions. We explored whether retrospective TP adjustments – conducted in accordance with advance pricing agreements (APAs), sanctioned by the relevant tax authorities and aligned with OECD guidelines – are typically reflected in the determination of customs value.

Overall, we recognize that customs authorities are intensifying their examination of retrospective TP and customs value adjustments. In a general sense, retrospective TP adjustments are often considered for customs value adjustments. This is due to the principle that the transaction value of imported goods should reflect the actual price paid or payable as per the TVM or more generically the true economic value of a good, which is influenced by TP adjustments. At the same time, the level of scrutiny differs significantly between jurisdictions. This is partly driven by high-profile legal rulings, such as the Hamamatsu case, which have brought attention to the impact of TP adjustments on customs valuations. As a result, economic operators are experiencing more rigorous compliance checks and are required to maintain thorough documentation to justify their TP adjustments.

The diverse range of jurisdiction inputs we received indicates myriad approaches to retrospective TP adjustments and their impact on customs valuation. The key highlights include:

- **Means of disclosure:** Customs authorities in various jurisdictions (such as the US, and Germany) provide mechanisms for businesses to disclose and correct retrospective TP adjustments, including guidance through information letters and the option for voluntary disclosure to ensure proper customs valuation. Additionally, due to the link between the product and the rate due, in almost all regions a structured approach between companies and customs officials can be recognized, delineating the procedures for reporting and accounting for such adjustments. Examples include Austria, Germany and the Netherlands.
- **Clear reference to imported goods:** A common challenge is establishing a clear reference between the retrospective TP adjustments and the specific imported goods affected. This linkage is crucial for some customs authorities to accept the adjustments for customs valuation purposes, indicated clearly for the customs authorities of China, Germany, Italy and Thailand.
- **Different approaches for uplift and downward adjustments:** Many administrations, like Germany, South Korea, India, and Thailand, differentiate in their treatment of retrospective adjustments, applying distinct approaches for uplift as opposed to downward adjustments. This leads to the unsatisfactory and questionable situation whereby additional customs duties are charged for upward adjustments and no customs duty refund is granted for downward adjustments.

- **Interest payments on top:** In some jurisdictions, especially in India, but also to a certain extent in other countries such as South Africa and Ukraine, the customs authorities may require the payment of interest on the adjusted customs value if a retroactive TP adjustment results in an additional payment to the supplier. This further increases the financial burden on importers.
- **Time constraints:** Most jurisdictions impose a statute of limitation to adjust the customs declaration. In some jurisdictions, such as in the Netherlands, the time constraint in such cases is individually confirmed between the authorities and the importer. Failing to comply within these time frames can lead to penalties and complicate the adjustment process.
- **No mechanism to amend customs declaration:** In some jurisdictions, such as Abu Dhabi, there is currently no mechanism in place to amend a customs declaration once it has been filed. This presents a significant challenge for businesses that need to make retrospective TP adjustments.
- **No consistent practice or administrative guidance:** Most jurisdictions treat retrospective TP adjustments on a case-by-case basis, with inconsistent results, as may be found in Germany and the UK. This approach can lead to uncertainty for businesses, as there is no standardized method for handling such adjustments. A few jurisdictions indicated that the legislation and administrative guidance have remained largely silent on the issue of retrospective TP adjustments and their impact on customs valuation. This silence leaves businesses without clear direction on how to proceed.

The significant variation in treatment of retrospective TP adjustments for customs valuation purposes presents a complex landscape for multinational companies to navigate. The challenges highlighted underscore the need for local expertise to ensure compliance and minimize the risk of disputes with customs authorities.

Practical challenges for businesses

The practical challenges encountered by businesses in applying customs valuation methods are manifold; however, regarding the applicability of the TVM in related-party transactions and the treatment of retrospective TP adjustments when they arise, EY Global Trade professionals have underscored the following key points:

- When building the customs value based on the TP as part of the TVM, the key challenges for businesses lie in aligning the TP study with the condition that the relationship did not influence the price and to provide sufficient proof. Customs authorities may scrutinize the rationale of TP studies on a product-by-product level, which may not always align with the established TVM. Not only is there a great variance of defense file requirements throughout the different jurisdictions, but also the level of detail varies greatly when looking at the different inputs.
- The EY study reveals that customs authorities worldwide are increasingly scrutinizing retrospective TP adjustments and their influence on customs value, with practices varying widely among jurisdictions. The absence of consistent practices or administrative guidance in certain jurisdictions adds to the complexity, necessitating local expertise to ensure compliance and avoid disputes with customs authorities.
- The real practical challenge we see, therefore, lies in the fact that the burden of proof is with the importer, who must have an overview of the national specifics. Economic operators must be proactive in understanding and complying with the customs valuation requirements related to TP adjustments in each jurisdiction where they operate. This includes staying informed about legal developments, engaging with customs authorities to clarify requirements, and preparing for potential audits or disputes. Companies may also need to consider the implications of their TP policies on customs duties and plan accordingly to manage risks and ensure compliance.

These findings reflect a dynamic and evolving area of customs practice, where legal precedents, international guidelines and national policies intersect to shape the treatment of retrospective TP adjustments in customs valuations.

There is one further challenge that even the best budgeting processes cannot foresee – the development of market conditions. And insofar as that is the case, there will always be a gap between budgeted data (i.e., projected prices) and the actual value of the goods at the decisive time of the import. Mitigating and continuously reducing this gap will be the decisive element going forward to reduce customs valuation risks imposed by the application of TPs as customs value.[6]

Conclusion: lack of global uniformity and country guidelines

Not surprisingly, and despite the overarching key principles of customs valuation as set out in international guidelines, there is still a significant variation in how jurisdictions around the world treat retrospective TP adjustments for customs valuation purposes. In fact, there is a wide variance in approaches to the customs valuation of related-party transactions on several levels, such as the applicability of the TVM in related-party transactions, the required documentation and the consideration of retrospective TP adjustments for the customs value. Some jurisdictions have well-defined guidelines and processes, while others may lack specific regulations on the matter. This lack of uniformity can pose challenges for multinational companies operating across multiple jurisdictions, as they must navigate a complex landscape of differing requirements and interpretations.

In our final part of this trilogy, to be published in *TradeWatch* Issue 3 2024, we will shed more light on select country-specific considerations and provide insights from our local professionals.

6 Reference is made to the comparison of prices multiple jurisdictions perform. If the price of a product deviates, this may trigger suspicions by the customs authorities. Such approach is even in the EC facilitated by the CJEU's Fawkes decision, although the permanent change of the price based on daily (or at least weekly or monthly) condition would fulfill the ambition of all customs valuation rules around the globe, which is to determine the value of the good at the decisive time of import.

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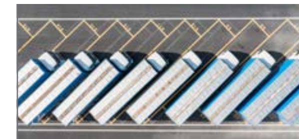

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Brazil: New import process set to go live

Approximately a decade ago, Brazil embarked on a transformative journey to completely adapt its foreign trade process through an ambitious comprehensive single-window approach.[1] The goal of the single window is to simplify import procedures by consolidating multiple requirements into one integrated platform. By eliminating redundant processes and fostering a more transparent and predictable import environment, the initiative is expected to reduce the time and cost associated with importing goods into Brazil.

The Product Catalog

At the heart of the single window lies the Product Catalog, a comprehensive digital repository that contains detailed information on goods, including tariff classification, attributes and regulatory requirements. While the single window serves as a one-stop shop for importers to submit all required data and comply with regulatory and administrative

1 Brazilian National Single Window Project, *Brazil government website*. Find it here

demands, the Product Catalog provides a standardized database methodology that ensures consistency and accuracy in product identification. Using the Product Catalog is mandatory; if the Product Catalog is not used together with the appropriate published tax attributes for each tariff code, the new Single Import Declaration (known in Brazil as DUIMP) will not work correctly, and significant disruption will ensue.

New import process

In addition to the integration of the Product Catalog, Brazil's single-window initiative incorporates two other key features designed to further improve the efficiency of the import process: the Centralized Management of Permissions and Licenses (LPCO), which enables electronic submission and approval of various permits required by different government agencies, and the Centralized Payment, which enables importers to make payments for duties, taxes and fees through a single platform.

All these components are interconnected modules designed to work in tandem in real time as the new import process.

New import process timeline

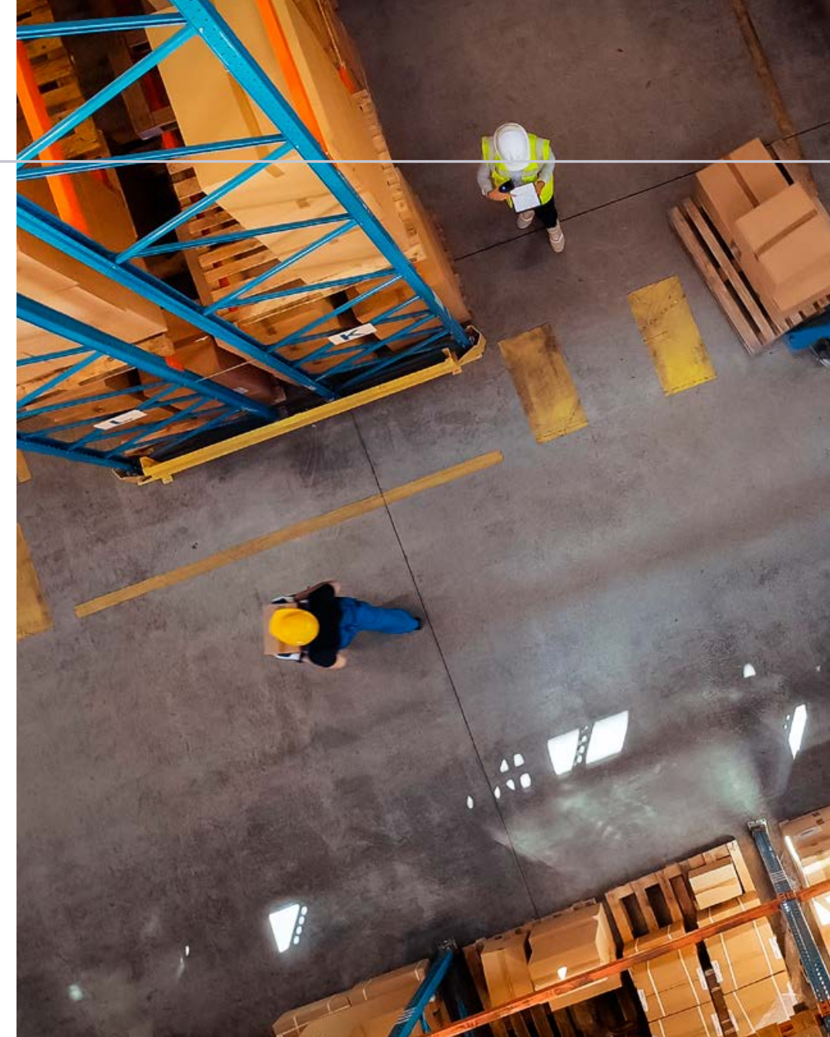
The timeline for implementation of the new import process is progressive, with phased rollouts to ensure a smooth transition:

- **October 2024:** Maritime import operations for consumption and under special customs regimes not subject to licensing to the new system should all be conducted under the new import process.
- **January to June 2025:** Imports via air transportation and operations subject to administrative control – imports requiring import licensing and conducted using certain special regimes, such as drawback – are phased into the new import process.
- **July to December 2025:** Land imports and those carried out under the Manaus Free Trade Zone regime are phased into the new import process.

Recommendations for businesses

Businesses should be conscious of the timeline set out above. The current process, via SISCOMEX, will be phased out in line with these milestones. With that in mind, companies should start to prepare for the new import process and, more specifically, the Product Catalog, which will require them to:

- Conduct thorough data collection for imported goods and future imports.
- Ensure current tariff classification databases are updated and correct, prior to developing the mandatory Product Catalog and assigning the published attributes.
- Comply with accurate product classification per regulatory standards.
- Define product attributes according to government-provided tariff guidelines.
- Accurately submit product details to the Product Catalog.
- Be familiar with the new system to use it efficiently. ■



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Back to Welcome

Colombia: Recent amendments to customs regime

On 22 May 2024, the Colombian government issued Decree 659,[1] which came into effect on 7 June 2024. It revises current customs regulations and aims to enhance anti-smuggling measures and bolster security at borders and points of entry for goods into the national territory.

This decree has sparked debate among trade associations, importers and the national government. The national government has emphasized the need to protect the country from smuggling, arguing that stricter regulations will allow for greater control over foreign trade operations while facilitating trade. However, it could also be argued that increased control could hinder the fast and dynamic flow of trade that some operations previously enjoyed.

The regulation introduces several changes to various articles (nearly 68 articles are being modified) of the current Customs Code (Decree 1165 of 2019). Below is a summary of the changes expected to have the most significant impact on foreign trade operations:

1. Advance import declaration: The most controversial change is that an import declaration for goods entering the country must now be made in advance and is mandatory in all cases. Previously, goods arriving in Colombia did not require an advance declaration, except for certain items such as textiles, clothing and footwear. Import declarations for other goods were made once they have arrived at a Colombian port or airport. With this change, advance import declarations are required for most operations. These declarations must be submitted at least 48 hours before the goods arrive in the national customs territory and must be updated once the transporter submits the unloading report, notifying any differences. If the declaration is submitted late, the importer may file an initial late declaration, which may incur a penalty ranging from 400 TVU[2] to 100% of the value of the goods. If the advance, initial or entry declaration is not submitted or updated within the stipulated terms, the goods will be legally abandoned, and they will become the property of the Customs Administration.

2. Entry declaration for goods consigned to Free Trade Zones (FTZs) and warehouses: All goods consigned to an FTZ, an international logistics distribution center and certain warehouses will require an entry declaration. Previously, goods destined for a warehouse or FTZ only required a customs transit authorization, which allowed the transport of goods to a destination within Colombia or to a special zone. With the regulatory modification, a new declaration is required to indicate in advance which goods are arriving at these primary zones. The entry declaration applies to goods transferred to FTZs, international logistics distribution centers, warehouses for transformation and assembly, private warehouses for industrial processing, international distribution warehouses, and duty-free warehouses. In most cases, this declaration must be submitted in advance.

3. International trading companies: International trading companies (CIs, in Spanish) are able to issue certificates to suppliers when they purchase goods that are 100% national or imported from industrial users located in FTZs. This is a significant change, as CIs and FTZs are both mechanisms for promoting foreign trade, but they were not previously compatible with each other. In Colombia,

1 "Colombia | Government Decree updates customs regulations," *EY website*, 31 May 2024. Find it here.

2 TVU: tax value unit. For 2024, 1 TVU is COP47.065 and approximately USD11.80.

supplier certificates are issued to local suppliers that sell to a CI as proof of export through these companies (similar to an indirect export). Purchases by CIs from FTZs were not eligible for supplier certificates, as this operation was not considered to be an export.

4. FTZs: FTZs in Colombia are a mechanism for promoting foreign trade, as goods entering these zones are considered to be outside the country for import tax purposes. The decree modifying the customs regime includes several changes for operations by FTZ users:

- Most operations require an advance entry declaration (48 hours before). Previously, this declaration was not needed, only the authorization to transport goods between the port or airport and the FTZ. Now, users of FTZs must complete an advance entry declaration, even if the goods they receive belong to a third party.
- Transfers of goods between FTZs must be covered by an entry declaration and goods movement form and must be carried out with a security device.
- The 15-business-day period for issuing the goods movement form is clarified based on the form of entry. The form must record the identification details, date and time of entry of the means of transport. This time frame is new, as previously users did not have to meet a time limit.
- Exports of goods require the processing of an authorization request for shipment and export declarations. Previously, this was not necessary, as a form was sufficient to indicate that the goods would be exported from an FTZ. Now, this document facilitates identifying export operations in line with the internationalization plans presented by new users of FTZs to benefit from the Preferential Corporate Income Tax (20% vs. 35%) for being in an FTZ, based on income from export operations of goods and services.

5. New definitions: Some definitions have been added throughout the decree. Two of them are particularly relevant:

- **Expected behavior:** This refers to the conduct expected by the customs authority from customs users. However, failing to maintain appropriate behavior will not necessarily result in an immediate penalty. Nonetheless, it could negatively impact the risk management system under which each foreign trade actor is profiled by the Customs Administration. This system assesses the risk levels associated with different actors, and any deviation from expected behavior could lead to a higher-risk profile, potentially resulting in stricter scrutiny and more stringent controls in future transactions.
- **Operational contingency:** The Customs Administration may declare an operational contingency due to events affecting logistics, public order or natural disasters, allowing the transfer of goods to authorized warehouses or FTZs. The goods will be transferred to the warehouse indicated in the transport document or determined by the Customs Administration if unspecified.

6. Validity of the decree: The decree came into effect 15 calendar days after its publication in the Official Gazette, i.e., on 7 June 2024. However, some provisions, such as those related to operations between international trading companies and FTZs and advance declarations, are subject to the implementation of Electronic Information Services, which will be certified by a resolution. To date, it is uncertain when this will occur.

Implications for businesses

These amendments present several issues that companies in Colombia will need to review to ensure compliance with the new regulations in their operations. This will pose a challenge, given the operational difficulties involved. Nevertheless, it is recommended that companies conduct new analyses of their supply chains to adapt accordingly. Currently, we are awaiting the regulation of the mentioned decree, which is expected to clarify some points. This regulation must be issued in resolutions that govern what is indicated in Decree 659. ■

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Back to Welcome

Mexico: The Istmo de Tehuantepec Interoceanic Corridor Initiative

In the evolving landscape of global trade, the Istmo de Tehuantepec Interoceanic Corridor Initiative (CIIT) is a transformative project with the potential to reshape logistics and trade flows in the Americas.[1]

This ambitious initiative, championed by the Mexican government, aims to create a new transoceanic connection between the Atlantic and Pacific Oceans through rail connections, positioning Mexico as a pivotal player in global supply chains.

CIIT background and objectives

The CIIT is a major infrastructure project designed to enhance trade efficiency and connectivity within the region. This corridor spans the narrowest part of Mexico, between the Gulf of Mexico and the Pacific Ocean, covering approximately 300 kilometers (about 186 miles).

The primary goal of the CIIT is to provide an alternative route to the Panama Canal,[2] thereby alleviating congestion and offering a more efficient passage for global maritime trade. By connecting the ports of Coatzacoalcos on the Gulf of Mexico and Salina Cruz on the Pacific Ocean, the corridor facilitates the movement of goods between Asia, the Americas and Europe.

1 "An energising bridge: Mexico's CIIT Project," 21 November 2022. Find it here.

2 "PROGRAMA Institucional del Corredor Interoceánico del Istmo de Tehuantepec 2023-2024," *Diario Oficial de la Federación website*, 3 July 2023. Find it here.

The primary objectives of the CIIT are to:

- Reduce congestion and reliance on the Panama Canal.
- Shorten transit times and reduce shipping costs.
- Boost regional economic development.
- Enhance Mexico's strategic position in global trade.

Infrastructure and investment

The CIIT's success hinges on significant infrastructure investments. Key components of the project include:

- **Modernizing ports:** Upgrading the ports of Coatzacoalcos and Salina Cruz to handle increased cargo volumes, including expanding docking facilities, storage capacities and implementing advanced cargo handling technologies.
- **Railway network upgrades:** Enhancing the existing railway network to support high-capacity freight trains, reducing transit times and improving reliability. This includes upgrading tracks, signaling systems and rolling stock.
- **Construction of logistics hubs and industrial parks:** Developing strategic logistics hubs and industrial parks along the corridor to support manufacturing, warehousing and distribution activities. These hubs will provide integrated services, such as customs processing, inventory management and value-added services.
- **Development of road infrastructure:** Building and improving roads to ensure seamless connectivity between the ports, railway networks and logistics hubs. This includes constructing new highways, expanding existing roads, and enhancing connectivity to regional and national transportation networks.

The Mexican government has earmarked approximately $4.5 billion for these developments, with funding sourced from both public and private sectors. International investors are also showing a keen interest in the project, recognizing the corridor's potential to streamline global supply chains.[3]

Economic and logistical benefits

The CIIT promises a range of economic and logistical benefits:

- **Reduced transit times and costs:** By providing a shorter and more direct route between the Atlantic and Pacific Oceans compared to the Panama Canal, the CIIT is expected to cut shipping times by three to five days, leading to significant cost savings for shippers. This will enhance the competitiveness of businesses relying on transoceanic shipping.
- **Economic development:** The project is projected to stimulate economic growth in the region, generating thousands of jobs in construction, logistics, manufacturing and related sectors. It is expected to attract investment in infrastructure, industrial facilities and service industries, boosting local economies.
- **Increased trade flows:** By offering an alternative route for transoceanic shipping, the corridor will enhance Mexico's trade capacity and attract new business. It will facilitate the movement of goods between key global markets, including North America, Asia and Europe, increasing trade volumes, and fostering economic integration.
- **Strategic positioning:** Mexico will strengthen its role as a critical logistics hub, fostering deeper integration with North American, Asian and European markets. The CIIT will enhance Mexico's competitiveness as a preferred location for manufacturing, distribution and logistics activities.

Comparison with the Panama Canal

While the Panama Canal remains a critical artery for global trade, the CIIT offers several comparative advantages:

- **Capacity:** The corridor is designed to handle larger volumes of cargo, particularly benefiting industries with high logistics demands. The ports of Coatzacoalcos and Salina Cruz will be equipped to accommodate larger vessels, increasing throughput capacity and reducing congestion.

3 "Isthmus corridor project secures US $4.5B in potential investment," *Mexico News Daily*, 22 June 2023. Find it here.

- **Flexibility:** Unlike the Panama Canal, which faces limitations due to vessel size and congestion, the CIIT will provide a more flexible and scalable solution for shippers. The corridor will accommodate a wide range of cargo types and vessel sizes, offering greater operational flexibility.
- **Economic impact:** The regional development spurred by the corridor's construction will have broader economic benefits for Mexico, beyond just transit fees. The infrastructure investments, job creation and increased trade flows will stimulate economic growth, enhance productivity and improve living standards in the region.

Environmental and social considerations

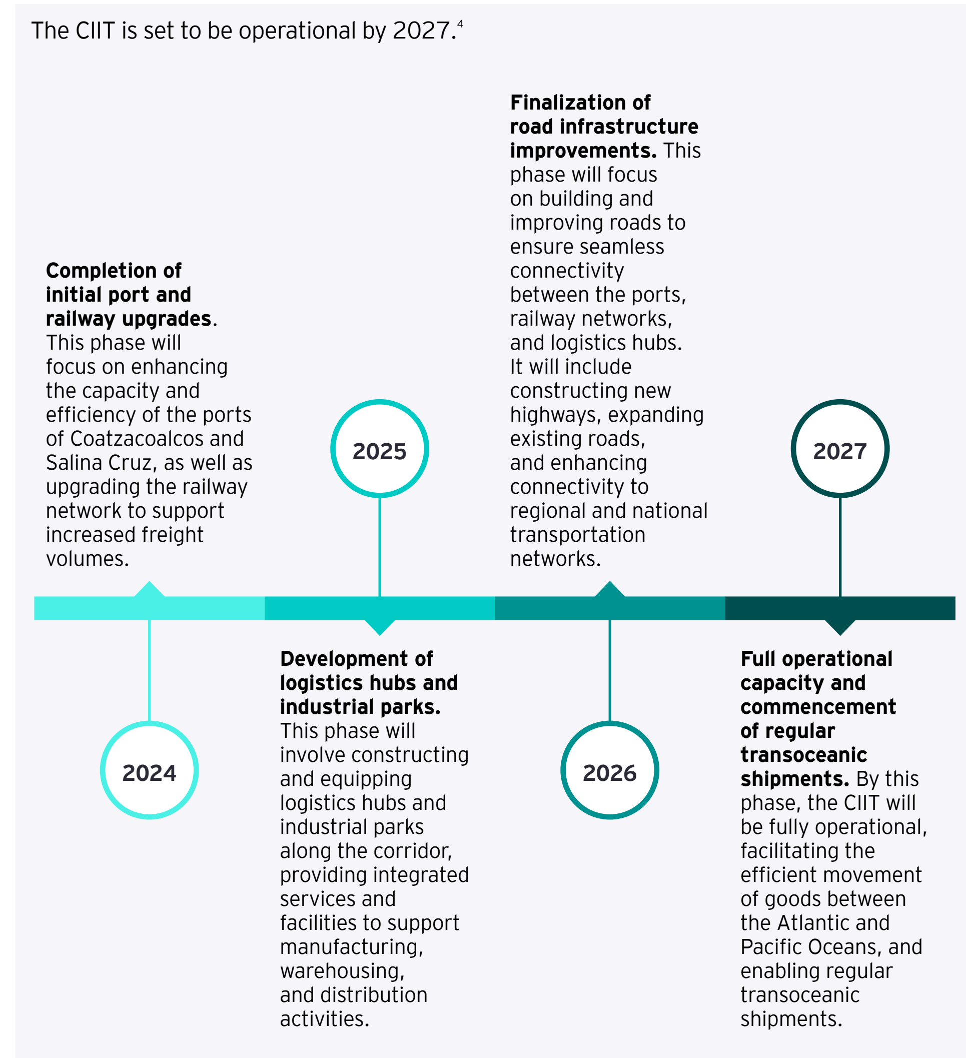
In addition to the economic and logistical benefits, the CIIT also aims to address environmental and social concerns. The project includes measures to minimize environmental impact, such as:

- **Implementing green logistics practices:** Adopting sustainable logistics practices, including optimizing transportation routes, reducing emissions and promoting the use of eco-friendly technologies. This will contribute to reducing the carbon footprint of the corridor and reducing environmental impact.
- **Promoting the use of renewable energy:** Integrating renewable energy sources into infrastructure development, such as solar and wind power. This will reduce reliance on fossil fuels, enhance energy efficiency and support Mexico's transition to a low-carbon economy.
- **Ensuring sustainable land use and conservation efforts:** Implementing land use planning strategies that prioritize sustainable development and conservation of natural resources. This includes protecting biodiversity, preserving ecosystems and promoting responsible land management practices.

Socially, CIIT is expected to bring substantial improvements to local communities. The development of infrastructure will lead to better access to education, health care and employment opportunities.

The project also includes initiatives to support local businesses and promote cultural heritage tourism, fostering inclusive and sustainable development.

Timeline and implementation



4 PROGRAMA MAESTRO DE DESARROLLO PORTUARIO DEL PUERTO DE SALINA CRUZ 2022-2027," *Salina Cruz Port website*, Find it here.

Comparative analysis with other global trade corridors

To understand the significance of the CIIT, it is helpful to compare it with other major global trade corridors:

- **Suez Canal:** The CIIT offers a shorter route for goods moving between the eastern and western coasts of the Americas, whereas the Suez Canal primarily serves Europe and Asia. This makes the CIIT more efficient for trade flows within the Americas, reducing transit times and shipping costs.
- **Northern Sea Route:** While the Northern Sea Route offers a shorter route between Europe and Asia, it is limited by seasonal accessibility and environmental concerns. The CIIT provides a reliable year-round option for transoceanic shipping, offering greater operational flexibility and reducing the risk of disruptions.
- **Silk Road Economic Belt:** The CIIT complements the Silk Road by providing an additional route for goods moving between Asia and the Americas, enhancing global connectivity. It strengthens the global supply chain by offering an alternative and efficient pathway for trade flows, diversifying logistics options and improving resilience.

Tax incentives and government support

The Mexican government has announced several fiscal incentives to attract companies to the development hubs along the Tehuantepec Interoceanic Corridor:[5]

- **Accelerated depreciation:** The Ministry of Finance and Public Credit (SHCP) will grant accelerated depreciation during the first six years of operation, allowing companies to recover their investments more quickly and reduce tax liabilities.
- **Value-added tax exemption:** During the first four years, a VAT exemption will apply to transactions both within and between the development hubs. Additionally, companies can recover VAT paid on purchases made outside these hubs, enhancing cash flow and reducing operating costs.
- **Income tax discount:** A 100% income tax discount will be offered during the first three years of operation, providing significant tax relief to companies. For the following three years, a 50% discount will apply, which can increase to 90% if employment targets are exceeded, incentivizing job creation and economic growth.

Additional support programs

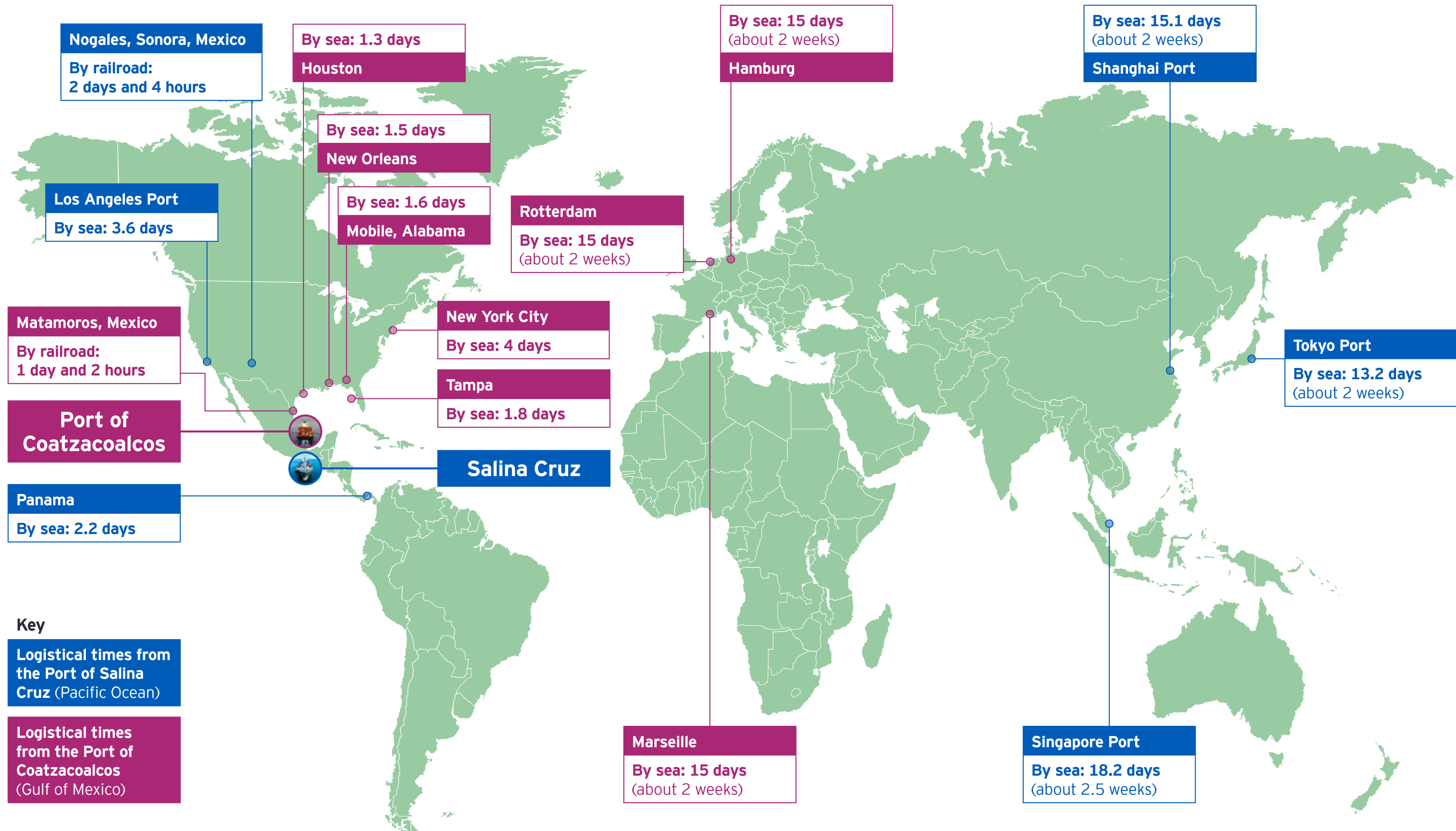
- **IMMEX program:** This program promotes exports by allowing companies to import goods temporarily for industrial processes aimed at producing export goods. It defers the payment of general import taxes, VAT and, where applicable, countervailing duties, reducing the financial burden on businesses and encouraging export-oriented activities.
- **Sectoral promotion programs:** These programs allow certain manufacturers to import goods at preferential tariffs for producing specific products, regardless of whether they are destined for export or the domestic market. This supports the development of key industries and enhances their competitiveness in the global market.

5 "Comunicado No. 40 Gobierno de México lanza nuevos estímulos fiscales para empresas que invierten en Polos de Desarrollo del Istmo," *Mexican Government website*. Find it here.

Estimated logistical times

The Mexican government has provided estimated logistical times for various routes from the two ports:

These estimated logistical times highlight the efficiency and strategic advantages of the CIIT, making it a compelling alternative to existing trade routes.



Additional notes

The success of the CIIT will depend on several critical factors, including effective governance, robust stakeholder engagement, and continuous monitoring and evaluation. The Mexican government must work closely with international partners, private sector stakeholders and local communities to ensure that the project is implemented efficiently and sustainably.

Furthermore, ongoing investments in technology and innovation will be essential to maintain the competitiveness of the corridor. Adopting advanced logistics technologies, such as automated cargo handling, real-time tracking systems and data analytics, will enhance operational efficiency and provide a competitive edge in the global logistics market.

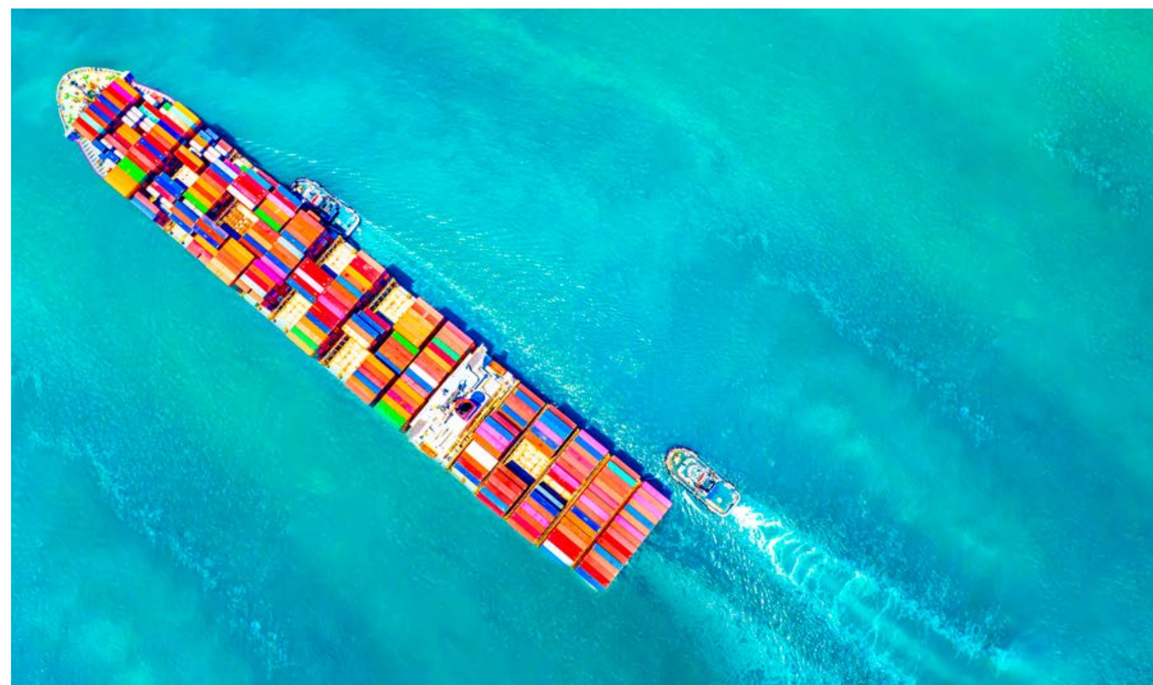
Finally, the CIIT must remain adaptable to changing global trade dynamics. Flexibility in infrastructure planning and the ability to respond to emerging market trends will be crucial for the long-term success of the corridor. By embracing innovation and fostering collaboration, the CIIT can become a model for future transoceanic trade routes and logistics hubs worldwide.

Conclusion

The CIIT represents a bold step forward in Mexico's quest to become a global logistics powerhouse. By providing an efficient, cost-effective alternative to the Panama Canal, the CIIT will enhance global trade flows, drive regional economic development and strengthen Mexico's position as a key player in international commerce.

The CIIT aims to facilitate faster and more economical transportation of goods between the Atlantic and Pacific Oceans, significantly reducing transit times and shipping costs. This should attract global businesses looking for efficient logistics solutions and foster increased trade flows between North America, Asia and Europe.

Moreover, the CIIT is expected to generate substantial economic benefits for the region, including job creation, infrastructure development, and increased investment in manufacturing and logistics sectors. The project's emphasis on sustainability and social development will help to ensure that the economic gains are inclusive and environmentally responsible. The CIIT is not just an infrastructure project; it is a vision for a more interconnected and prosperous global economy. ■



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US: Navigating CBP's statute of limitations waivers

It is standard practice for United States (US) Customs and Border Protection (CBP) to request a statute of limitations (SOL) waiver from importers during an audit. A CBP audit can span years, and the waiver essentially extends the time frame for CBP to assess potential penalties or take other enforcement action on a broad scope of reported data (e.g., classification, valuation, origin). Such waivers have also become common practice for reviews of prior disclosures.[1]

While this type of request is routine, it is essential for companies to understand what latitude they have in signing, or not signing, and their ability to edit or reduce the scope of the SOL waiver.

Legal landscape

Customs duties can be recovered under the primary customs penalty statute 19 US Code (USC) 1592(d).[2] 19 USC is bound by the SOL period in 19 USC 1621.[3] Section 1621 is not a limit on jurisdiction but instead creates an affirmative defense, which may be raised.[4]

Section 1621 applies a five-year limitations period that runs from discovery, in the case of fraud, or from the alleged violation, in the case of negligence or gross negligence. For negligence and gross negligence cases, the alleged violation is generally viewed as the date of the false customs entry. Thus, the SOL is five years, unless there is an indication of fraud, or unless CBP elects to pursue matters as liquidated damages for a customs bond violation, which uses a six-year limitations period[5] but would be limited to the bond amount and liquidated damage claim administrative procedures. However, it should be noted that the SOL can be waived and may also be subject to tolling or estoppel.

1 A prior disclosure refers to the voluntary act of notifying CBP of a violation of the customs laws before the commencement of a formal investigation or before the discovery of the violation by CBP. This process is outlined in the CBP regulations under *19 CFR § 162.74*. Find it here.

2 *19 USC § 1592. Penalties for fraud, gross negligence, and negligence*. Find it here.

3 *19 USC §1621. Limitation of actions*. Find it here.

4 See *United States v. Hitachi Am., Ltd.*, 172 F.3d 1319, 1334 (Fed. Cir. 1999) (reversing a decision by the Court of International Trade and holding that the SOL under § 1621 could be waived because it was not jurisdictional).

5 See *U.S. v. Commodities Export Co.*, 755 F.Supp. 418 (C.I.T. 1991).

Should a business sign a SOL waiver?

Signing a SOL waiver is a decision that should not be taken lightly. While there is no legal obligation to sign, companies often do so to maintain a cooperative relationship with CBP auditors. The underlying concern is that refusing to sign may have a negative impact on the CBP audit or review process.

However, signing a SOL waiver can also extend the period in which CBP can assess penalties and recover duties, potentially exposing the company to prolonged scrutiny and uncertainty. It is a strategic decision that must weigh the benefits of increasing goodwill against the risks of protracted liability.

Key considerations influencing the decision to sign include:

- **Strength of a case:** If a business is confident it has not violated any regulations, it might be hesitant to grant more time for potential penalties.
- **Complexity of the review:** If the audit or review is intricate, a waiver can provide breathing room for both sides to gather information and reach a resolution.
- **Negotiation leverage:** A business may be able to negotiate terms. For instance, a shorter waiver extension could be agreed to, or the scope of what is covered may be limited.

What options do companies have?

Companies faced with a request to sign a SOL waiver have several options:

- **Sign the waiver:** This could be seen as a gesture of good faith, potentially fostering a more amicable audit process. However, it extends the period for CBP to bring forth any claims.
- **Refuse to sign:** By not signing, a company asserts its legal rights but risks a more rigorous audit. This option should be considered if the company is confident in its compliance status and record-keeping.
- **Negotiate terms**: It may be possible to negotiate the terms of the waiver, such as limiting the scope or duration of the extended period.
- **Seek legal counsel:** Before making a decision, it is advisable to consult with legal specialists experienced in customs and trade law. They can provide guidance on the potential implications and help devise a strategy that aligns with the company's best interests.
- **Prepare for the audit:** Whether signing the waiver or not, companies should prepare thoroughly for the audit by reviewing their documentation, ensuring compliance with customs regulations and readiness to address any potential issues that CBP may raise.

In conclusion, the request for an SOL waiver during a CBP audit or prior disclosure review is a routine but significant matter. Companies must carefully consider their options and the potential consequences of their decision. By understanding the legal background and assessing their compliance posture, businesses can navigate this complex issue and make informed decisions that protect their interests. ■

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China: Recent developments related to imports and international trade

Preferential tax policies for imported exhibits sold during the China Import and Export Fair

The Ministry of Finance (MOF), General Administration of Customs and the State Taxation Administration (STA) have jointly issued Circular 10,[1] extending the period of preferential tax policies for imported exhibits sold during the China Import and Export Fair (CIEF). Eligible items were previously outlined in Circular 5 issued in 2023.[2]

1 "Circular Caiguanshui [2024] No. 10". Find it here.

2 "Circular Caiguanshui [2023] No. 5". Find it here.

The key points of the preferential tax policies are:

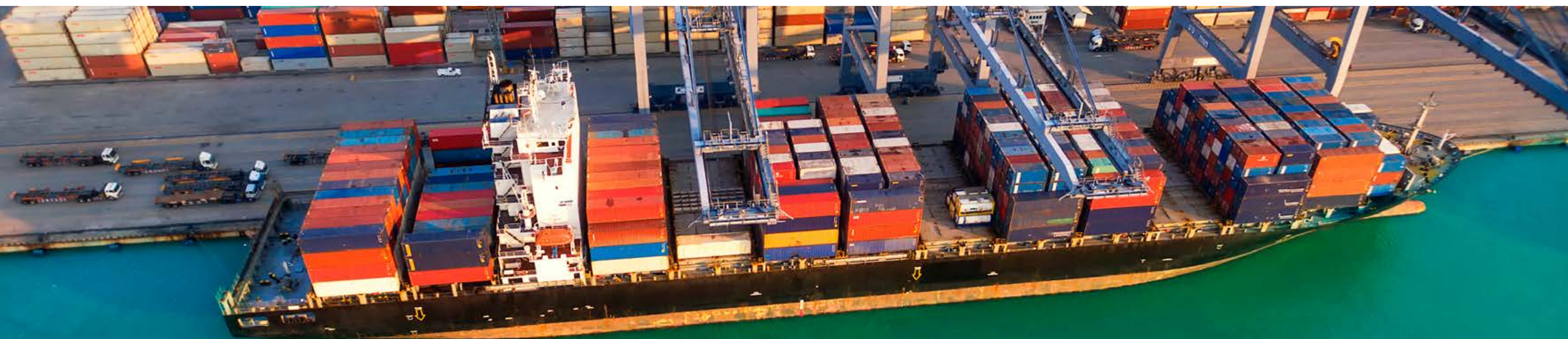
- **Preferential tax treatments:** Sales of imported exhibits within the duty-free quota during the CIEF 2024 and 2025 will be exempt from import duties, import-level value-added Tax (VAT) and consumption tax.
- **Eligible imported exhibits:** The scope of exhibits eligible for the preferential policies remains the same as those listed in Circular 5. Notably, certain imported goods, such as tobacco, alcohol and automobiles, do not qualify for these exemptions.

The new Tariff Law of the People's Republic of China (PRC)

On 26 April 2024, the Tariff Law of the PRC (the Tariff Law)[3] was approved by the Standing Committee of the 14th National People's Congress. The Tariff Law will take effect from 1 December 2024 and will supersede the prevailing Regulations of the PRC on Import and Export Duties.[4]

3 The Tariff Law may be accessed here.

4 The Regulations of the PRC on Import and Export Duties may be accessed here.



The overall tax liability level remains unchanged compared to the existing tariff system. The Tariff Law comprises 72 articles in seven chapters, and the key features are as follows:

Category	Description
Tax scope	▸ Goods permitted to be imported or exported by the PRC and inbound articles
Taxpayers	▸ Consignees of imported goods, consignors of exported goods, and carriers or recipients of inbound articles
Withholding agents	▸ E-commerce platform operators engaging in cross-border e-commerce retail imports, logistics companies and customs declaration enterprises ▸ Entities and individuals that are obligated by laws and regulations to withhold or collect tariffs
Tariff items and rates	▸ Tariff items and rates are stipulated in the Tariff Schedule of the PRC.[5] The types of rates mainly include: ▸ Most-favored-nation (MFN) rates, conventional rates, preferential rates and general rates for imports ▸ Rates for exports ▸ Tariff rate quota (TRQ) rates and provisional rates for specific imports and exports
Tariff calculation	▸ Specific, ad valorem or compound (i.e., a combination of both)
Preferential treatments	▸ Import or export goods and inbound articles subject to tariff reduction or exemption as stipulated in the Tariff Law ▸ The State Council may formulate preferential policies under special circumstances
Administration and collection	▸ The collection of tariffs can be managed in the mode of separating the release of goods from tariff amount determination ▸ Taxpayers or withholding agents may choose a customs office to declare and pay tariffs according to the provision of the Law ▸ Tariff payment can be made on a consolidated basis provided certain conditions are met ▸ Taxpayers may have up to three years (instead of one year under the prevailing regulations) to claim a refund upon their discovery of an overpayment of tariffs

Exclusions to the goods originating from the US that are imposed with additional tariffs

The Customs Tariff Commission of China's State Council announced Public Notice 3[6] to extend the tariff exclusions on 124 products from the US to 30 November 2024. The exclusions were set to expire on 30 April 2024. This is the 14th extension of the exclusion list. As a result, from 1 May 2024 to 30 November 2024, the tariffs imposed by China to counter the US Section 301 measures will continue to be waived on the goods listed in the annex.

The exclusions cover a wide range of products, including, but not limited to:

- Rare earth metal ore
- Gold ore
- Medical disinfectants
- High-speed television cameras
- Night vision digital cameras
- Navigation radar equipment ■

5 The Tariff Schedule may be accessed here.

6 Public Notice 3 may be accessed here.

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EU: 2024 update of the compendium on customs valuation released

In the ever-evolving landscape of international trade, customs valuation remains a cornerstone of fair and consistent import practices. The European Commission's Customs Expert Group, Customs Valuation Section, has recently updated its Compendium of Customs Valuation Texts (the Compendium).[1] The 2024 edition offers fresh insights into the intricate world of customs valuation. It does so by introducing new instruments on buying commissions (Commentary No. 19) and the valuation of prototype cars and development services (Conclusion No. 38) as well as by updating its summaries on court rulings of the European Court of Justice on customs valuation matters.

The Compendium is frequently updated by the European Commission's Customs Expert Group, Customs Valuation Section, and provides for non-binding instruments on customs valuation. Despite the non-binding nature of the instruments, they play an important role in how customs authorities and courts interpret and apply the customs valuation provisions in the European Union (EU).

In this article, we review the updates and look at the implications for businesses.

Commentary No. 19: a closer look at buying commissions

Buying commissions, as outlined in Article 71(1)(a)(i) of the Union Customs Code (UCC),[2] has long been a subject of debate. The recent commentary sheds light on the treatment of commissions paid

1 "Compendium of Customs Valuation Texts: Edition 2024," *European Commission website*. Find it here.

2 "The Union Customs Code," *European Commission website*. Find it here.

by an importer, Company X, to its subsidiary, Company Y, for a number of services under a Buying Agency Agreement. The question considered in the commentary is whether these payments can be excluded from the customs value as bona fide buying commissions.

The commentary examines the nature of the services provided by Company Y, distinguishing between those that fall squarely within the scope of buying commissions and those that do not. For instance, commissions for finding producers and placing orders are excluded from the customs value, aligning with the definition of buying commissions under Article 5(41) of the UCC. Conversely, payments for inspecting goods to ensure compliance with supply terms do not qualify as buying commissions and should be included in the customs value. The commentary also explains that as part of examining the nature of the services, it should be determined whether the payments are non-dutiable buying commissions or payments that fall under the scope of other (dutiable) price elements, such as assists or transport costs that apply different conditions for determining the dutiability of the price elements.

The European Commission's Customs Expert Group emphasizes the importance of objective and quantifiable data to substantiate the nature of commissions, especially if only a portion of the remunerations relates to non-dutiable buying agency services. Importers bear the burden of proof to demonstrate the genuineness of buying commissions, a task that requires meticulous documentation and transparency. In cases where the buyer and buying agent are related, particular attention should be paid to whether the parties have applied the arm's-length principle.

Conclusion No. 38: valuation of prototype cars and development services

The valuation of prototype cars and associated development services presents a complex scenario for importers and customs authorities. Conclusion No. 38 addresses the treatment of prototype cars imported for testing before mass production and the costs related to their development.

The Conclusion clarifies that the customs value of prototype cars, which are not sold for export to the EU, cannot be determined using the transaction value method. Instead, secondary valuation methods or simplified customs declarations should be used. Furthermore, the costs associated with the development services, which are directly related to the production of mass-produced cars, should be included in the customs value if not already reflected in the price.

The Conclusion also touches on the presentation of costs on invoices. It is crucial for the costs of prototypes to be transparently indicated, allowing customs authorities to accurately assess their impact on the customs value of mass-produced cars.

Implications for trade and compliance

The updated Compendium serves as a critical guide for importers and customs authorities. The insights underscore the necessity for clarity in contracts, invoices and other commercial documents to ensure compliance with customs valuation rules.

For businesses, the insights provided by the Customs Expert Group, Customs Valuation Section, highlight the need for robust internal controls and documentation practices. Understanding the nuances of customs valuation is essential to avoid costly adjustments and potential disputes with customs authorities.

As global trade continues to grow in complexity, the guidance from the European Commission's Customs Expert Group remains an invaluable resource for navigating the intricacies of customs valuation. TradeWatch will continue to monitor and report on these developments, keeping the trade community informed and prepared for the challenges ahead.

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EU: How recent and pending court rulings affect post-clearance price adjustments on customs valuation

The intricacies of customs valuation continue to challenge businesses and tax authorities alike, with post-clearance adjustments being a particularly contentious area.[1] A recent court ruling in the Netherlands and a pending court case before the Court of Justice of the European Union (CJEU) have brought this issue to the forefront again, highlighting the need for clarity and precision in the application of customs laws.

This article outlines the cases and examines the implications of these rulings for businesses engaged in international trade.

Recent Dutch court ruling on post-clearance adjustments

A pivotal decision by a Dutch court dated 1 February 2024 addressed the impact of transfer pricing adjustments on the customs value of imported goods.[2] The court examined whether a flat-rate correction to the customs value was applicable, referencing the precedent set by the CJEU's Hamamatsu Photonics case.[3]

The Hamamatsu case

In the Hamamatsu case, the CJEU said the customs value should reflect the real economic value of the goods at the time they are imported; it is not permitted for the customs value to be based on a transaction value consisting of an amount initially invoiced and a flat-rate adjustment made after the end of the accounting period, without it being possible to know whether that adjustment will increase or decrease. The CJEU consequently ruled that the transaction value method should be rejected and an alternative method should be used for customs valuation purposes.

1 See our article "Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict on a global scale. Part II" on page 12 of this issue

2 Rechtbank Noord-Holland of 1 February 2024, No. AWB – 21_4607.

3 CJEU 15 December 2016, C-529/16 (Hamamatsu Photonics), ECLI:EU:C:2017:984.

In the case under consideration, the importer is part of an international corporate group. It disclosed upward transfer price adjustments to Dutch Customs and paid the additional duties due. The importer then changed its mind and sought a refund of customs duties, arguing that the transfer price adjustments should not have been taken into account to determine the customs value of its imports because the transfer pricing adjustments could not be linked to the transactions in the goods. However, the Court concluded that a retrospective cost allocation to a customs value is possible, leading to its rejection of the company's reimbursement request. The court considered that in the current case, there was no lump-sum amount used to correct the profit distribution between the subsidiary and the parent company. Instead, there was an amount related to the goods supplied, with a fixed profit percentage attached to achieve an arm's-length price. This case, therefore, differs from the Hamamatsu Photonics case,[4] and as a result, the court did not apply the ruling of the CJEU in that case, but, in fact, allowed transfer pricing adjustments to be taken into account under the transaction value method.[5]

CJEU-pending decision on post-clearance price adjustments

The pending case before the CJEU, 'Tauritus' UAB v. Muitinės departamentas (Customs Department),[6] is not about the impact of transfer price adjustments on determining the customs value of imported goods, but it may be of interest for such cases as it deals with post-clearance price adjustments. In this case, the importer applied the fallback method and declared provisional prices in its import declarations as the customs value of imported diesel and jet fuel. The provisional price was subsequently adjusted to take account of circumstances that arose after the importation of the goods, such as the average fuel prices on the market for the relevant period and the average exchange rate for the relevant period. In some cases, the importer applied for an adjustment of the import declarations after receiving the revised invoices; for some, it did not. The local customs authority took the view that the importer was under an obligation to apply for an adjustment of the import declarations at issue, i.e., to calculate the customs value of the goods in accordance with the transaction value method, by accepting the final price indicated in the revised invoices as the transaction value. The answer of the court on whether this is possible under the transaction value method is expected to provide much-needed guidance on the applicability of the transaction value method and the obligations of importers to adjust the customs value post-release.

Implications for business

These rulings underscore the complexities of post-clearance adjustments and their implications for customs valuation. Businesses must navigate these legal intricacies with a thorough understanding of the relevant customs laws and ensure that their documentation and evidence can withstand scrutiny.

As the international trade community awaits the outcomes of these cases, it is clear that the issue of post-clearance adjustments will remain a hot topic. The decisions will not only affect the parties involved but also set precedents that could influence future customs valuation practices. TradeWatch will continue to monitor these developments, offering insights to help businesses stay compliant and informed in the ever-changing landscape of customs regulation.

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4 This case is discussed in detail in our articles "**Hamamatsu – a long journey about to end?**", *TradeWatch* Issue 3 2022, page 63, and "**EU: CJEU rules on use of statistical data for determination of customs value**", *TradeWatch* Issue 2 2022, page 35.

5 The transaction value method is the primary valuation method, which comprises the total amount paid (or to be paid) for the imported goods (Article 70 UCC), *European Commission website*. Find it here.

6 CJEU referral C-782/23.

Back to Welcome

United Arab Emirates: Boosting trade through Comprehensive Economic Partnership Agreements

Two years after the launch of the first Comprehensive Economic Partnership Agreement (CEPA) with India, the United Arab Emirates (UAE) has been actively working toward boosting trade through partnering with more countries. This initiative aligns with the country's vision and roadmap, unveiled in the Projects of the 50[1] in 2021, which aims to foster a new phase of growth for the UAE, both domestically and internationally.

An overview of the first CEPA that entered into force: UAE-India CEPA

The UAE-India CEPA[2] has greatly contributed to the advancement of trade, with bilateral exchanges increasing from USD73 billion (April 2021 to March 2022) to USD84 billion (April 2022 to March 2023), registering a year-on-year increase of 16%.[3]

Multiple sectors have witnessed substantial growth. For instance, gems and jewelry exports to the UAE expanded by almost 64% in just two years. Additionally, the pharmaceutical and horticulture (fruits and vegetables) industries have experienced considerable growth.[4]

1 "Projects of the 50," *UAE government website*. **Find it here**.

2 "UAE-India Comprehensive Economic Partnership Agreement," *UAE government website*. **Find it here**.

3 "India, UAE mark two years of free trade with 16% growth," *Arab News website*. **Find it here**.

4 Ibid.

The UAE-India CEPA has paved the way for multiple investment opportunities by UAE entities in India and has driven notable Indian investments in the UAE, such as the Bharat Mart.[5]

CEPAs currently in force: Israel, Indonesia, Türkiye and Cambodia

Following the first CEPA the UAE signed with India in 2022, four more CEPAs have been concluded and entered into force with Israel, Indonesia, Türkiye and Cambodia.

The UAE concluded its second CEPA with Israel, which entered into force on 1 April 2023.[6] The agreement includes the removal or reduction of tariffs on 96% of goods traded between the nations. The UAE-Indonesia CEPA,[7] which focused on attracting investment in the energy, logistics, agriculture and infrastructure sectors, was concluded next. One of the key elements of the UAE-Indonesia CEPA is that it includes provisions on digital trade, streamlining customs procedures and trade facilitation as well as Islamic economics. The agreement came into force on 1 September 2023, along with the UAE- Türkiye CEPA[8] on the same date.

Trade between the UAE and Türkiye jumped 40% in 2022, the fastest rate of growth among the UAE's top 10 export markets.[9] The UAE-Türkiye CEPA is expected to boost the value of non-oil bilateral trade between the two countries to USD40 billion in the five-year period from the effective date of the CEPA with Türkiye, with the elimination and reduction of customs duties on 82% of goods.

The most recent CEPA that entered into force on 31 January 2024 is with Cambodia.[10] The agreement onsists of the removal or reduction of tariffs on more than 92% of product lines, eliminating unnecessary barriers to trade and improving market access for service exports. Non-oil trade between the UAE and Cambodia reached USD407 million in 2022, marking 33% growth from 2021.[11] The UAE-Cambodia CEPA aims to push this growth beyond USD1 billion by 2030.

CEPAs currently under discussion: Philippines, Kenya, Chile, Ukraine and New Zealand

Discussions have been concluded and terms finalized for four more CEPAs: Philippines, Kenya, Chile and Ukraine. Discussions are underway with New Zealand.

The UAE-Philippines CEPA is expected to focus on the aerospace sector, as helicopters and aerospace parts are the Philippines' top exports to the UAE. Both the UAE and the Philippines are aiming to conclude the agreement within 2024, in time for the 50th anniversary of the Philippines and the UAE establishing diplomatic relations. One of the notable elements of the UAE-Philippines CEPA is the focus on e-commerce.

Kenya was the first African country that the UAE started CEPA negotiations with in 2022 as part of a strategy to diversify its oil-based economy. The objective of the UAE-Kenya CEPA is to foster innovation and sustainable growth in key sectors such as agriculture, technology and tourism. The negotiations were concluded, and the terms of the agreement finalized, in February 2024.

The UAE-Chile CEPA, concluded in April 2024, is intended to provide UAE companies and exporters with greater access to the fast-growing economies of Chile and Latin America. The agreement will improve mutual trade by allowing broad access to goods, services and government procurement, and marks a significant step toward a more interconnected global economy.

The UAE-Ukraine CEPA, also concluded in April 2024, will support Ukraine in rebuilding some of its key sectors and industries, and will focus on strengthening major exports such as grains, machinery and metals.

The most recent discussions have been between the UAE and New Zealand, with the two countries concluding a joint declaration of intent in May 2024. The UAE is New Zealand's largest trade partner in the Middle East.[12] The UAE-New Zealand CEPA will seek to remove or reduce tariffs and trade barriers in key sectors such as agriculture, renewable energy, logistics, education and health care. New

5 "Bharat Mart; An upcoming world-class Indian marketplace in Dubai," *UAE Business Gate website*. Find it here.
6 "UAE-Israel Comprehensive Economic Partnership Agreement," *UAE government website*. Find it here.
7 "UAE-Indonesia Comprehensive Economic Partnership Agreement," *UAE government website*. Find it here.
8 "UAE-Türkiye Comprehensive Economic Partnership Agreement," *UAE government website*. Find it here.
9 "UAE's non-oil foreign trade jumps 17% in 2022," *Reuters*. Find it here.
10 "UAE-Cambodia Comprehensive Economic Partnership Agreement," *UAE government website*. Find it here.
11 "UAE and Cambodia sign CEPA to double non-oil trade," *Sharjah*. Find it here.
12 "UAE and New Zealand to launch talks for a free trade deal," *Reuters*. Find it here.

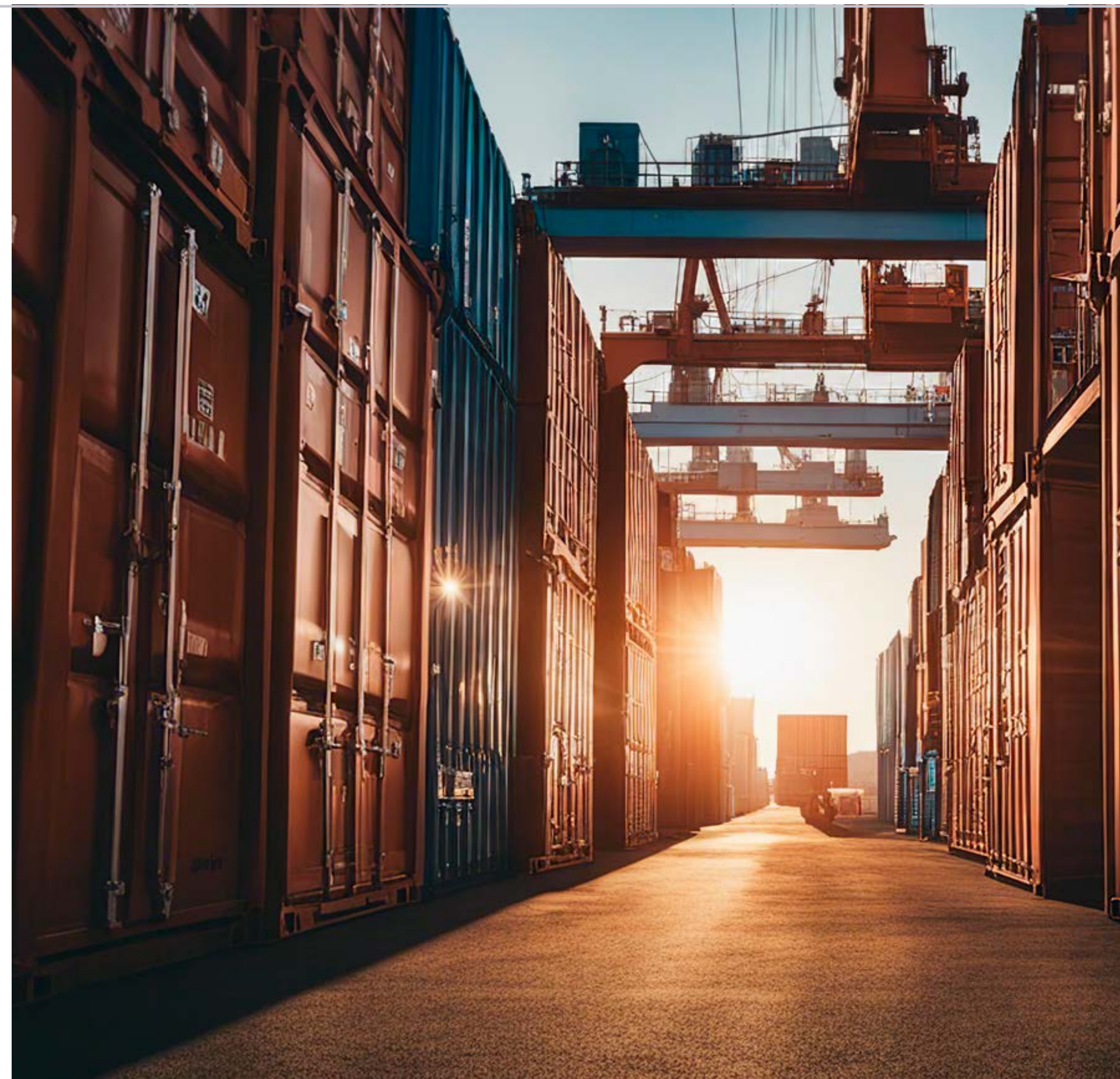
opportunities in the UAE will open further commercial opportunities that will improve domestic incomes and reduce the cost of living.

CEPA	Status	Date
India	Entry into force	1 May 2022
Israel	Entry into force	1 April 2023
Indonesia	Entry into force	1 September 2023
Türkiye	Entry into force	1 September 2023
Cambodia	Entry into force	31 January 2024
Philippines	Scope of negotiations finalized	January 2024
Kenya	Concluded and terms finalized	February 2024
Chile	Concluded and terms finalized	April 2024
Ukraine	Concluded and terms finalized	April 2024
New Zealand	Joint declaration of intent signed	May 2024

Implications for businesses

With five CEPAs already operational and another five to take effect shortly, UAE-based companies should undertake a thorough analysis to discern the impact of these agreements on their specific sectors and business activities. It is advisable for affected organizations to engage in comprehensive market research to identify new opportunities that have emerged in partner nations due to the CEPAs. Additionally, there may be a need for them to restructure their supply chains to capitalize on reduced tariffs and increased operational efficiency.

Businesses should ensure that their workforces are fully informed about the existing CEPAs and receive adequate training on the new trade procedures and requirements to maintain seamless business functions. Compliance with the new regulations outlined by the CEPAs is of the utmost importance; therefore, companies may wish to consult with trade specialists to gain a deep understanding of the CEPAs' ramifications and to adeptly maneuver through the intricacies of international trade under the new agreements. ■



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EU: Recent sustainability regulatory developments

In the April and May 2024 sessions of the European Parliament (EP) and the European Council, a number of regulations were adopted to push the Green Deal[1] forward and achieve a net-zero Europe by 2050. This article provides an overview of key developments from the round of EP votes in April and May and other noteworthy developments.

Timelines vary, but one thing is certain: The current European Union (EU) regulations are a clear indicator for every business doing business with the EU to accelerate sustainable business transformation, given impacts on entire global value chains. In some cases, noncompliance can impede the ability to trade with the EU.

How well do you know your supplier base?

On 24 April 2024, the EU Corporate Sustainability Due Diligence Directive (CS3D or CSDDD)[2] was approved by the EP. It will be phased in from 2027 based on a company's size. In-scope businesses are required to implement due diligence measures across their global chain of activities and own operations to prevent, mitigate and remedy adverse impacts on human rights and the environment. Indirectly, smaller companies operating in the value chains of covered companies around the globe will be affected as a result of contractual requirements imposed on them by covered companies (a trickle-down effect).

Other adjacent supply chain regulations are the EU forced labor regulation,[3] that prohibits the sale, import and export of goods made using forced labor within the three years from publication of the regulation, and the EU deforestation-free regulation (EUDR).[4] From 30 December 2024, the EUDR will require certain products and commodities being imported into, traded within or exported out of the EU to be accompanied by due diligence statements confirming the deforestation-free and legality status.

The above regulations point to the need to clearly map, analyze and evaluate global supply chains to protect against adverse environmental impacts. This imperative is not new in the European Green Deal, as demonstrated by the EU Carbon Border Adjustment Mechanism,[5] which requires businesses to take a cross-functional approach and work closely with suppliers.

1 "The European Green Deal," *European Commission website*. Find it here.

2 See our article "New EU Supply Chain Due Diligence Directive" on page 50 of this issue.

3 See our article "EU: European Parliament approves legislation to ban forced labor products" on page 49 of this issue.

4 For more information on this topic, see our article "EU: Fight against global deforestation," *TradeWatch* Issue 2 2023, page 33.

5 For more information on this topic, see our article "CBAM: EU update on the Carbon Border Adjustment Mechanism," *TradeWatch* Issue 1 2024, page 59. For more articles on this topic in recent editions of *TradeWatch*, visit here.

Mission: reduce emissions

With the approved Energy Performance of Buildings Directive[6] in tandem with the Energy Efficiency Directive part of the Fit for 55 package, the EU is aiming for a climate-neutral building sector by 2050. All new buildings must be zero-emission by 2030, and residential buildings must reduce energy usage by at least 16% by 2030.

Methane is also in the spotlight. Under the new methane regulation,[7] impacted companies in the energy sector (oil, gas, coal) will be required to monitor, report and verify emissions at the asset level and implement leak and detection compliance measures. Venting and flaring will be prohibited. The new regulation impacts not only EU-based producers but importers of oil and gas into the EU and indirectly to the non-EU producers.

On the transport front, there are new emission-reduction targets on heavy-duty vehicles[8] representing another push toward decarbonization transportation, especially when paired with other Fit for 55 elements, such as emission standards for cars and vans, the upcoming Emissions Trading System (ETS) for road transport, ETS for maritime, and sustainable aviation fuel targets.

Resolution to reduce pollution

Decarbonization continues with the Zero Pollution Action Plan, which includes targets to reduce pollution at the source by improving air, water and soil quality, and generally reducing waste. The revised Industrial Emissions Directive[9] is the main EU instrument regulating air, water and soil pollution from industrial installations. The new rules will see stricter regulations on emissions from industrial large livestock farms. There will be tougher rules on water usage, waste management, energy efficiency and raw material use. Other important industrial developments include the new voluntary certification framework for carbon removals[10] and the Industrial Carbon Management Strategy, which looks to support the uptake of carbon capture, utilization and storage.

It's time for consumers to get circular!

Continuing on combatting waste, recent developments help pave the way toward less e-waste by extending lifecycles of products. New approved ecodesign rules[11] will see priority products sold in the EU designed with circularity principles in mind: more reusable, repairable, upgradable and recyclable, likely starting with iron, steel, aluminum, textiles, detergents, lubricants, chemicals, etc. Operators will need to report on quantities discarded, and unsold clothing, accessories and footwear cannot be destroyed.

A key element of the ecodesign rules is the Digital Product Passport (DPP), which is another nod to supply chain traceability. DPPs will provide standardized information on the lifecycle of all products regulated under the new rules, such as materials used, recyclability and repairability, and is aimed at helping consumers make more informed sustainable purchasing decisions.

The adoption of the Right-to-Repair Directive[12] will make it easier for consumers to assess, compare and access repair services, and encourage repair and refurbishment over repurchasing. The directive sets out the obligations for manufacturers to repair goods and extend a product's lifecycle through repair.

In March 2024, the EU Green Claims Directive (GCD)[13] was adopted, complementing the Empowering Consumers for the Green Transition Directive, which references improving product information on durability and repairability for consumers, protecting consumers from greenwashing and premature obsolescence, and facilitating repair. Under the GCD, only businesses that have verified their claims as environmentally friendly can use such claims in marketing and communications for products sold on the EU market.

6 "Energy efficiency of buildings: MEPs adopt plans to decarbonise the sector," *European Parliament website*, 12 March 2024. **Find it here**.

7 "European Parliament adopts new regulation to reduce global methane emissions from energy sector," *EY website*, 19 April 2024. **Find it here**.

8 "Heavy-duty vehicles: Council and Parliament reach a deal to lower CO2 emissions from trucks, buses and trailers," *European Council website*, 18 January 2024. **Find it here**.

9 "Industrial emissions: Council signs off on updated rules to better protect environment," *European Council website*, 12 April 2024. **Find it here**.

10 "Carbon removals: MEPs adopt a new EU certification scheme," *European Parliament website*, 10 April 2024. **Find it here**.

11 "Ecodesign: new EU rules to make sustainable products the norm," *European Parliament website*, 23 April 2024. **Find it here**.

12 "Right to repair: Making repair easier and more appealing to customers," *European Parliament website*, 23 April 2024. **Find it here**.

13 "European Parliament adopts new rules on green claims," *EY website*, 14 March 2024. **Find it here**.

The recently adopted revised EU Packaging and Packaging Waste Directive (PPWD)[14] is part of the solution to combat plastic litter waste whether on land or sea. The PPWD includes new targets to reduce plastic packaging waste and encourage reuse, refill and recycling. Additionally, certain single-use plastic packaging and "forever chemicals" (PFAS) will be banned. The PPWD will help to harmonize national Extended Producer Responsibility schemes across Europe and sets out new labelling requirements.

Financing and funding opportunities

In parallel to the flurry of new rules, the EU has a number of existing financing and funding programs to help businesses achieve net-zero goals, such as Horizon Europe, LIFE and the EU Innovation Fund. Under the Temporary Crisis and Transition Framework,[15] state aid funding is available to support investments in production of batteries; electrolyzers; heat pumps; carbon capture, utilization and storage (CCUS); solar panels; and wind turbines.

The recently EP-approved EU Net-Zero Industry Act[16] supports the deployment of net-zero technologies, i.e., renewable, nuclear, industrial decarbonization, grid, energy storage tech and biotech. Under the act, planning and notification processes will be simplified, and timelines will be accelerated in some cases.

Impact on the tax function

What does the influx of sustainability regulatory developments mean for the tax function? The tax function has a big role to play:

- Certain regulations will force a re-evaluation of supply chains and operations, resulting in changing business models and associated tax and transfer pricing implications.
- Tax and nontax incentives should be identified to help fund research and development and sustainable product design, materials and processes (e.g., ecodesigns, move to electric vehicles, funding for low-carbon or circular technologies).
- In addition to regulation, governments are using taxes to disincentivize negative environmental behaviors (e.g., plastic packaging taxes) that are increasing costs of certain products and operations.
- Tax, notably governance, is interwoven with sustainability reporting (e.g., EU Taxonomy, Corporate Sustainability Reporting Directive (CSRD), the Global Reporting Initiative).

With so much change, there's no better time for the tax function to collaborate with the wider business to understand sustainability strategies and wider business transformation plans. As a first step, the EY Green Tax Tracker[17] can help you map out the green taxes and incentives landscape in over 65 jurisdictions. ■

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14 "New EU rules to reduce, reuse and recycle packaging," *European Parliament website*, 24 April 2024. Find it here.
15 "EU's Initiative Is a Potential Game Changer in Green Tech Quest," *Bloomberg Tax*, 30 June 2023. Find it here.
16 "MEPs adopt plans to boost Europe's Net-Zero technology production," *European Parliament website*, 25 April 2024. Find it here.
17 "Get ahead and stay ahead of evolving global green tax policies," *EY website*, 17 April 2024. Find it here.

EU: European Parliament approves legislation to ban forced labor products

The European Union (EU) has taken a decisive step toward eliminating forced labor from its market with the European Parliament's final approval[1] on 23 April 2024 of a new regulation[2] that will ban the sale, import and export of goods produced under such conditions. This move underscores the EU's commitment to ethical trade practices and human rights standards.

Under the new regulatory framework, Member State authorities and the European Commission (Commission) are empowered to conduct investigations into goods, supply chains and manufacturers suspected of using forced labor. The investigations will be informed by credible sources, including international organizations, cooperative authorities and whistleblowers. A range of risk factors, such as the incidence of state-imposed forced labor in specific sectors and regions, will guide the investigative process.

Companies found to be in violation of the regulation will be required to remove their products from the EU single market and take appropriate actions, including donation, recycling or destruction of the banned goods. Fines will be imposed on noncompliant entities. However, there is a provision for companies to reintroduce their products to the market once they have successfully eradicated forced labor from their supply chains.

The regulation was passed with overwhelming support, garnering 555 votes in favor, six against and 45 abstentions. The next step is formal approval from the EU Council, followed by publication in the Official Journal. Member States need to start applying the regulation within three years after its publication.

Implications for business

In line with the EU's progressive regulatory landscape, this latest development joins the ranks of pivotal legislative measures, such as the Carbon Border Adjustment Mechanism (CBAM),[3] the anti-deforestation regulation[4] and regulations on the digital product passport. The EU's commitment to sustainable and ethical trade practices is further reinforced by this array of regulations, each designed to address specific environmental and social challenges. Together, these pieces of legislation underscore the critical importance of transparent supply chains and the need for thorough documentation that can trace the entire product lifecycle. ■

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1 Products made with forced labour to be banned from EU single market, *European Parliament website*. 23 April 2024. Find it here.

2 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on prohibiting products made with forced labour on the Union market, *Council of the European Union website*, 13 March 2024. Find it here.

3 For further information on CBAM, please refer to articles on this topic in this and previous editions of *TradeWatch* available here

4 For more information on this topic, see our article EU: Fight against global deforestation, ***TradeWatch*** Issue 2 2023, page 33. Find it here

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New EU Supply Chain Due Diligence Directive

On 24 April 2024, the European Parliament (EP) adopted the final text of the Corporate Sustainability Due Diligence Directive (CS3D or Directive),[1] and on 24 May 2024, the Council of the European Union approved the agreement.[2] This new legislation outlines the requirements for businesses to implement due diligence measures across their global chain of activities and own operations to prevent, mitigate and remedy adverse impacts on human rights and the environment. The CS3D will be published in the European Union (EU) Official Journal by autumn 2024 and will subsequently enter into force. The EU Member States will then have two years to transpose it to national law.[3]

Although the Directive provides a level playing field and has a harmonizing effect across the EU, certain aspects will be defined by national legislation. An increasing number of companies are already using due diligence to identify risks for adverse impacts on people and the environment and build resilience. However, voluntary action has not led to large-scale improvements, resulting in persistent negative effects from production and consumption, such as child labor, forced labor, greenhouse gas emissions and deforestation. The new rules aim to foster sustainable and responsible corporate behavior throughout global value chains and to establish a harmonized legal framework in the EU.

1 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, *European Commission website*. **Find it here**.

2 Corporate sustainability due diligence, *European Commission website*. **Find it here**.

3 Please also see our article "EU: Recent sustainability regulatory developments," on **page 44** of this edition.

Which companies are affected?

The CS3D establishes rules regarding companies' obligations to address actual and potential adverse human rights impacts as well as adverse environmental impacts arising from their own operations; those of their subsidiaries; and, where related to their chains of activities, those of their direct and indirect business partners.

The Directive overlaps with other up-to-date supply chain regulations that refer to certain products and components in terms of their applicability, such as the EU Deforestation Regulation,[4] the EU Battery Regulation[5] and the EU Conflict Minerals Regulation,[6] which also stipulate due diligence obligations.

In terms of scope, the CS3D will apply to:[7]

- EU companies (or ultimate parent companies) that had more than 1,000 employees on average and a net worldwide turnover of more than EUR450 million in the last financial year.
- Non-EU companies (or ultimate parent companies) that generated a net turnover of more than EUR450 million in the EU in the last financial year; the employee threshold does not apply to non-EU companies.
- For EU and non-EU companies that generated license revenues within the EU of at least EUR22.5 million in the financial year before last and a total net turnover of at least EUR80 million.

Financial services companies are only subject to due diligence obligations for the upstream part of their supply chains. Downstream business partners that are receiving their services and products are out of scope.

Key obligations for companies

Companies should conduct risk-based human rights and environmental due diligence in line with the six steps defined by the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct[8] by carrying out the following 10 actions:

1. **Integrate due diligence into all their relevant policies and risk management systems** and have in place a due diligence policy that ensures a risk-based due diligence approach. The due diligence policy should include a description of the company's approach, a code of conduct and a description of the processes put in place to integrate due diligence, including measures to verify compliance. Companies should update their due diligence policy without undue delay after a significant change occurs, and review and, where necessary, update it at least every 24 months.
2. **Identify and assess actual or potential adverse impacts** and, where necessary, prioritize potential and actual adverse impacts, such as child labor, labor exploitation, pollution, deforestation and damage to ecosystems along the entire chain of activities. Such obligations mean taking appropriate measures to map and carry out an in-depth assessment of the relevant operations to identify general areas where adverse impacts are most likely to occur and to be most severe. Companies are entitled to make use of appropriate resources to gather quantitative and qualitative information, including independent reports and information gathered through the notification mechanism and complaints procedure. To conduct meaningful human rights and environmental due diligence, companies should take appropriate measures to carry out effective engagement with stakeholders, for the process of carrying out the due diligence actions.
3. **Prevent and adequately manage potential adverse impacts.** If potential adverse impacts are identified, companies are required to take appropriate measures, such as:
   - Develop and implement a prevention action plan (perhaps in cooperation with industry or multi-stakeholder initiatives) with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvement.

4 For further information on this topic, see "EU: Fight against global deforestation," *TradeWatch* Issue 2 2023, page 33.

5 See our article "EU: Commission and Council take steps as part of the Circular Economy Action Plan with new rules on textiles and batteries," *TradeWatch* Issue 3 2023, page 55.

6 "Conflict Minerals Regulation," *European Commission website*. Find it here.

7 Note that the CS3D will not apply to alternative investment funds and undertakings for collective investment in transferable securities that meet these thresholds.

8 "Responsible Business Conduct: OECD Guidelines for Multinational Enterprises," *OECD website*. Find it here.

- Seek contractual assurance from a direct business partner that it will ensure compliance with the company's code of conduct and a prevention action plan. The contractual assurances should be accompanied by the appropriate measures to verify compliance, such as independent third-party verification.
- Make necessary financial or nonfinancial investments, adjustments or upgrades, such as into facilities, production, or other operational processes and infrastructures.
- Make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices.

4. **Bring actual adverse impacts that have been, or should have been, identified to an end.** Appropriate measures include, for example, neutralizing the adverse impact or minimizing its extent; developing and implementing a corrective action plan; seeking contractual assurances; and making necessary financial or nonfinancial investment adjustments or upgrades to the business plan, overall strategies and operations.
5. **Remediate actual adverse impacts.** Companies that have caused or jointly caused an actual adverse impact will have to provide remediation. Where the actual adverse impact is caused only by the company's business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner causing the adverse impact to enable remediation.
6. **Carry out effective engagement with stakeholders** by providing relevant and comprehensive information needed to carry out effective and transparent consultations. Stakeholders include the company's employees, the employees of its subsidiaries, trade unions and workers' representatives, and consumers. They also include other individuals, groups, communities or entities whose rights or interests could be affected by the products, services and operations of that company, its subsidiaries and its business partners, including the employees of the company's business partners, trade unions and workers' representatives, national human rights agencies, environmental institutions and civil society organizations.
7. **Establish and maintain a notification mechanism and complaints procedure** with people or organizations that have legitimate concerns regarding actual or potential adverse impacts. Companies should establish a fair, publicly available, accessible, predictable and transparent procedure for dealing with complaints, and take measures to prevent retaliation of submitters of complaints.
8. **Monitor the adequacy and effectiveness of their due diligence policy and measures.** Companies should carry out periodic assessments of their due diligence policies and measures. The due diligence policy needs to be reviewed at least every 24 months. Regarding the due diligence measures in their own operations and along the supply chain, companies need to assess the implementation and effectiveness of the processes for identification, prevention, mitigation, minimization and cessation of adverse impacts. Assessments should be based on qualitative and quantitative indicators and carried out at least every 12 months and consider information received from stakeholders.
9. **Creation and implementation of a transition plan for climate change management**, which aims to ensure, through best efforts, compatibility of the business model and strategy of the company with the transition to a sustainable economy and with limiting global warming to 1.5 degrees Celsius. This includes developing the plan, putting it into action and confirming that the plan is appropriate for achieving the Paris Agreement[9] objectives. The transition plan has to be updated every 12 months and include a description of the company's progress.[10]
10. **Report their efforts to comply with the CS3D** by publishing on its website a description of the due diligence system implemented as well as potential and actual adverse impacts identified, and appropriate measures taken with respect to those impacts.[11]

9 "The Paris Agreement," *United Nations Climate Change website*. Find it here.

10 Companies that report a transition plan for climate change mitigation in accordance with the CSRD are deemed to have complied with this obligation.

11 Companies reporting under CSRD are not expected to submit an additional report for CS3D; they integrate CS3D implementation details into their existing CSRD reports.

Key definitions

The definition of chain of activities includes:

- Activities of a company's **upstream business partners** related to the production of goods or the provision of services by the company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of the products, and development of the product or the service.
- Activities of a company's **downstream business partners** related to the distribution, transport and storage of the product, where the business partners carry out those activities for the company or on behalf of the company, excluding the distribution, transport and storage of products being subject to export control.[12]

Business partner is defined as an entity with which the company has a commercial agreement related to the operations, products or services of the company or to which the company provides services (direct business partner). It applies also to an entity that performs business operations related to a company's operations, products or services (indirect business partner).

Independent third-party verification

- **Companies may use independent third-party verification** on the company or parts of its chain of activities to support the implementation of due diligence obligations (such as contractual assurance) to the extent that such verification is appropriate to support the fulfillment of the relevant obligations. Third-party verification may be carried out by an expert or multi-stakeholder initiative, i.e., a combination of voluntary due diligence procedures, tools and mechanisms developed and overseen by governments, industry associations and interested organizations, including civil society organizations.

12 Please note that only export controls for dual-use goods or for the authorized export of arms, munitions or war material are excluded.

- **Independent third-party verifiers should act with objectivity and complete independence** from the company; be free from any conflicts of interest; remain free from external influence, whether direct or indirect; and refrain from any action incompatible with their independence. According to the nature of the adverse impact, they should have experience and competence in environmental or human rights matters and should be accountable for the quality and reliability of the verification.

Civil liability and penalties

- Companies can be held liable for damage caused to a natural or legal person if the company intentionally or negligently failed to comply with its due diligence obligations concerning the prevention and mitigation of adverse impacts.
- Individuals or organizations, including trade unions and civil society groups, have at least a five-year window to file claims related to breaches of duty.
- Noncompliance is punishable by a fine of a percentage of the company's global net turnover as well as a public statement[13] indicating the company responsible for the infringement.

The expected timeline

Member States should transpose the CS3D into national law two years from its date of entry into force. The provisions of the Directive would then apply:

- Three years from the date of entry into force of the Directive for EU companies with more than 5,000 employees on average and more than EUR1.5 billion net worldwide turnover in the last financial year as well as non-EU companies with more than EUR1.5 billion net worldwide turnover in the last financial year. Reporting should apply for financial years starting on or after 1 January 2028.
- Four years from the date of entry into force of the Directive for companies with more than 3,000 employees on average and more than EUR900 million net worldwide turnover in the last financial year as well as non-EU companies with more than EUR900 million net worldwide turnover in the last financial year. Reporting should apply for financial years starting on or after 1 January 2029.
- Five years from the date of entry into force of the Directive for companies with more than 1,000 employees on average and more than EUR450 million net worldwide turnover in the last financial year as well as non-EU companies with more than EUR450 million net worldwide turnover in the last financial year. Reporting should apply for financial years starting on or after 1 January 2029.[14] ■

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13 A statement will be published in the case of noncompliance with a decision imposing a pecuniary penalty on the company.
14 According to the version published on 13 May 2024. It remains to be seen whether the date will be corrected to 2030.

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EU CBAM: Impact on ASEAN businesses[1]

The introduction of the European Union (EU) Carbon Border Adjustment Mechanism (CBAM) has significant implications for global trade flows and investment. The Association of Southeast Asian Nations (ASEAN), the EU's third largest trading partner[2] after China and the US, is particularly impacted by CBAM. Hence, ASEAN-based companies will need to understand, identify and assess the financial impact, and plan for the broader challenges arising from CBAM introduction.

What CBAM is and why it matters

On 17 May 2023, the European Parliament approved key elements of the "Fit for 55" legislative package[3]:

- The EU Emissions Trading System (EU ETS) reform
- The EU CBAM

The EU CBAM regulation was introduced as a policy tool, placing a levy on imports of products from the most carbon-intensive sectors – iron and steel, cement, fertilizer, aluminum, electricity, hydrogen products, and their precursors and downstream products – from countries that do not have equivalent carbon pricing policies. CBAM is designed to address the risk of carbon leakage, which occurs when moving production to countries with less stringent carbon policies or when products are replaced with more carbon-intensive imports.

Given their heavy trade with the EU, ASEAN-based companies need to understand the new requirements and reporting obligations, which came into effect on 1 October 2023.

There are two phases of CBAM implementation:

1. **Transitional period** – 1 October 2023 to 31 December 2025. Greater flexibility and the retention of certain allowances available under the EU ETS are allowed.
2. **Fully operational period** – from 1 January 2026. Only CBAM authorized importers are allowed to import CBAM goods into the EU and are required to purchase CBAM certificates. The start of the fully operational period also triggers the gradual phasing out of the allowances available under EU ETS, increasing the total CBAM costs significantly in the years following 1 January 2026.

Concurrently, the EU is expected to announce expansion of the CBAM scope by adding other downstream products and product categories already covered by EU ETS (e.g., organic chemicals and polymers). During the transition period, noncompliance in CBAM reporting, such as those due to incorrect or incomplete CBAM declarations,

1 A version of this article was first published by Bloomberg Tax here.

2 "Association of South East Asian Nations (ASEAN)," *European Commission website*. Find it here.

3 "Fit for 55," *European Council website*. Find it here.

can lead to fines if the necessary steps were not taken after the relevant CBAM authority initiated a correction procedure.

While CBAM focuses on the importation of goods and EU importers themselves, the regulation will inevitably impact ASEAN businesses, given that ASEAN economies have significant trade flows with the EU. The impact of CBAM is likely to vary across the ASEAN region as some jurisdictions are relatively more exposed to CBAM than others due to the nature of their exports. Cost and compliance requirements aside, CBAM can be a catalyst to incentivize ASEAN countries and businesses in accelerating their climate policy commitments.

Implications for ASEAN jurisdictions

ASEAN is the EU's third largest trading partner outside Europe. In 2022, the EU imported almost EUR180 billion worth of goods from ASEAN,[4] covering both CBAM and non-CBAM products.

The scope of the CBAM extends to ASEAN manufacturers and exporters of goods into the EU, whether they have operations in Europe or not. This necessitates comprehensive additional reporting and engagement with suppliers and customers. ASEAN companies selling CBAM in-scope products that are imported into the EU, as well as those that are brought in by unrelated customers, will be required to support the additional CBAM compliance preparations to help EU importers meet the reporting requirements. Suppliers unable or unwilling to support customers to meet their CBAM obligations risk being replaced by suppliers that are better prepared for the various CBAM challenges.

As CBAM is levied based on the emissions occurring from manufacturing outside the EU when those goods are exported to the EU, ASEAN businesses face the risk of impacting their competitiveness due to the increased price. Hence, supply chains may evolve as a result. If companies want to remain competitive, they need to decarbonize quickly while having ready access to the data to meet the increasing CBAM emission information requests.

CBAM, together with other sustainability-driven initiatives, such as the EU Deforestation Regulation, has the potential to significantly alter trade patterns by forcing a fundamental shift in how businesses determine their supply chain footprint from procurement to manufacturing to distribution. All parties in the supply chain need to adapt to deal with the disruption – and the resulting challenges and opportunities.

Actions for companies and future outlook

ASEAN companies need to understand the potential impact of CBAM requirements by identifying covered products and align internal and external stakeholders and processes. Businesses should start gathering CBAM emission data now. In the medium term, companies need to anchor this against their overall strategy to remain competitive in the market.

ASEAN businesses selling into or operating in the EU need to have a broad understanding of the EU ETS carbon trading system, especially since the EU carbon prices[5] under ETS increased nine-fold between 2018 and 2022. Therefore, companies need to model potential future considerations that will impact the landed price of products. Finally, business resilience planning is an important element for companies looking at ways to decarbonize or to reduce the carbon emissions of their products.

Although there are likely to be increased costs resulting from shifting supply chains, the news is not all bad for ASEAN businesses. ASEAN governments are providing various jurisdiction-level incentives to promote activities related to decarbonization, the circular economy and energy efficiency to support the transition to a low-carbon future. Companies should position themselves to take advantage of the external support available. ■

4 "Association of South East Asian Nations (ASEAN)," *European Commission website*. Find it here.

5 "Allowance Price Explorer," *International Carbon Action Partnership website*. Find it here.

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As EU CBAM reporting progresses to actual emissions data, what should companies do next?

Companies are transitioning to completing Carbon Border Adjustment Mechanism (CBAM) reports in the European Union (EU) using actual embedded emissions data, rather than default values. In this article, we look at how companies can best prepare to manage their CBAM obligations over the long term.

Let's start with some context. The EU CBAM is being introduced using a phased approach to make companies' pathway to compliance smoother and easier. You can read more about the requirements in previous *TradeWatch* articles.[1] Crucially, they include an obligation for EU importers to report specific greenhouse gases released upon the manufacture of goods imported into the EU, details about the production method, carbon cost paid in the origin countries and the specific details of the manufacturing installation. All these details can reasonably only be provided from suppliers based in jurisdictions outside the EU.

For the first two CBAM quarterly reporting deadlines – in January and April 2024 – the transitional arrangements allowed for the use of default values where actual embedded emissions data was unavailable. That is about to change. The quarterly report that was due by 31 July 2024 is the final one where default values are permitted for use. Based on the current law, actual embedded emissions data will be required for CBAM reports from then on.

Challenges ahead

For imports of CBAM goods into the EU from 1 July 2024 onward, businesses will need to collect and report actual data on the specific embedded emissions of those products, as well as the other information mentioned above. EU importers will be expecting their non-EU suppliers to monitor, calculate and share that information.

Failure to comply with these requests will introduce a commercial risk to non-EU companies of losing their supply contracts. But the reality is that getting hold of actual emissions data is often far from straightforward. Across many industries, we are seeing a lot of businesses facing challenges to do

1 "EU: CBAM in force," *TradeWatch* Issue 3 2023, page 51.

this in practice. While in many cases progress is being made, we expect EU-based businesses to face significant problems around obtaining the actual data they need. An important element is that the calculation of embedded emissions in line with the EU CBAM regulation differs in many ways from other methodologies for product carbon footprint (PCF) calculation. Therefore, PCF data as well as data based on calculations made by use of benchmark values cannot be used for CBAM purposes.

Concern over the potential challenges facing EU importers has been deepened by recent research into CBAM awareness and readiness published by the Stuttgart Chamber of Commerce and Industry.[2]

The study found that 42% of German companies thought the official information provided on CBAM was of poor quality, while only 3% rated it as good. The most concerning finding was that just 3% of the surveyed companies believed they would be able to receive actual emissions figures from their suppliers in the future.

The challenge of obtaining actual embedded emissions data for imports is exacerbated by the mandatory use of the EU's emission calculation methodology. While producers may use alternative methods for calculating actual embedded emissions of products until 31 December 2024, only the EU's calculation methodology will be permitted beyond this date. Therefore, producers must ensure not only that they can provide the required actual embedded emissions data but also that they have arrived at these figures using an acceptable monitoring methodology which is in line with EU regulation.

Growing urgency

The message for non-EU companies looking to continue exporting to trading partners in the EU is clear: They must assess now whether they have the actual emissions data — including, where necessary, emissions data for the upstream supply chain — that their EU-based customers will require. If they do not yet have that data, then they must act to get this information through a far more detailed data collection process than is currently implemented in many cases. With the requirement for reporting actual embedded emissions data looming, they need to do this urgently.

In many cases, this will involve adjustments to purchase contracts to pass on these requirements to suppliers, as well as education and knowledge transfer to partners in the downstream supply chain to activate and upskill them about the requirements of the emissions calculations and data sharing requirements in general. Although, attention and special solutions are required for businesses operating in affected sectors who need to consider any competition law requirements that may limit or restrict information sharing.

Securing the relevant information and providing it throughout the supply chain to EU customers for inclusion in their quarterly CBAM reports is just the start. This is not a one-off requirement but a continuing obligation. It demands the creation and ongoing management of a robust, repeatable data collection and reporting process — one that will have significant impacts on areas ranging from supply chain management to third-party contracts to internal controls.

Yet, a challenge for many businesses is the lack of available data from suppliers and producers. It is expected that the EU Commission will provide more guidance on how to handle pending data. But it is clear that importers covered by CBAM must exercise all reasonable efforts to organize the details for CBAM reporting and be able to provide evidence of the efforts made. The EU Commission and some of the EU Member States national CBAM authorities, emphasize that CBAM declarants who incorrectly report data or do not undertake sufficient efforts to comply with the regulation will be subject to sanctions.

Readying for further regulations, including UK CBAM

Looking ahead, another factor to consider is that the EU CBAM requirements will change again when the transitional phase ends on 31 December 2025. Until then, a couple of additional implementing CBAM regulations are expected, e.g. on acceptance of carbon pricing schemes in non-EU countries, details about qualification and admission of independent CBAM verifiers as well as change regulations adjusting details in the current CBAM provisions. As CBAM requirements are very dynamic, operators must keep track of how all the changes and additional regulations affect them.

Beyond that, there will be a growing number of EU regulations requiring businesses to collect detailed data across their supply chains. These requirements are likely to expand to other countries, such as where CBAMs are expected. Among the new

2 "The first CBAM report: Lessons learned," *IHK website*. Find it here.

regulations coming down the track, one of the most significant will be the UK's CBAM regime, currently scheduled for launch in 2027. Unlike the EU's CBAM, the UK version will not have a transitional phase. To handle these obligations efficiently and effectively, companies will need a consolidated data collection framework that can cover all of them at once, rather than having to collect the data separately for each individual regulation.

Next steps for businesses

Against this complex and evolving background, what steps should non-EU exporters who export CBAM goods to the EU be taking today? Here are eight future-focused actions that we recommend:

1. **Horizon scanning and monitoring developments:** It's important to continue to update internal controls and forecasting based on the potential expanded scope of the CBAM regime to other goods and to other jurisdictions.
2. **Modeling the financial impact of CBAM:** Businesses should calculate and factor the future potential financial liability related to CBAM certificates into their group-wide financial planning. This includes modeling scenarios for different future Emissions Trading System (ETS) costs of carbon.
3. **Review intercompany transactions of CBAM goods:** Flows of CBAM goods should be reviewed and rationalized where they occur between different parts of a corporate group. This will ensure that the business does not incur a CBAM cost when it could be mitigated internally.
4. **Data validation:** It is necessary to validate data and review the data and documentation provided by suppliers to make sure the information is complete and plausible. This should be part of the CBAM internal controls framework to evidence that the business is acting with due diligence and reasonable care. Vendor due diligence and other investigative measures may also be advisable to ensure that CBAM data and documentation are complete.
5. **Supply chain optimization:** Taking into account the potential financial liability imposed by CBAM, businesses could seek out opportunities to optimize the efforts of decarbonization of manufacturing plants, by adjusting their supply chains. A holistic exercise to understand how some of the cost impact of CBAM might be passed on to customers could also be undertaken, including the resulting effect on sourcing decisions. This assessment should look in particular at embedded carbon intensity in procurement processes and suppliers' ability to provide comprehensive data for CBAM reporting.
6. **Carbon price paid:** In cases where a carbon pricing regime exists in the country of origin of CBAM goods imported into the EU, an internal process should be put in place to collate the required information for reporting as part of the CBAM declaration process, as otherwise a double payment of carbon cost may occur.
7. **Allocating internal responsibility for CBAM certificate costs:** A function or team should be given internal responsibility for continuous purchasing and surrendering the CBAM certificates on an annual basis. In the EU this will be required from 2026.
8. **CBAM governance structure and documentation:** CBAM is a process that involves the participation of multiple stakeholders in different functions within a business. it is advisable to incorporate CBAM into the overall corporate risk management framework. This entails clearly documenting roles and responsibilities, processes, tasks and internal governance structures. This will help to demonstrate that the business is taking reasonable care in the management of CBAM. ■

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Back to Welcome

UK government consultation on the CBAM introduction: the current EY thinking

The United Kingdom (UK) is currently on track to introduce the world's second Carbon Border Adjustment Mechanism (CBAM) regime after the European Union (EU).

On 13 June 2024, the UK government's consultation on the introduction of the UK CBAM from 2027 closed. The consultation sought input on the scope, design and administration of the UK CBAM, which will introduce a tax on imports of certain emission-intensive goods, based on the embedded emissions contained within those goods. The UK CBAM aims to address the risks of carbon leakage, where emissions are transferred from one jurisdiction to another, due to variations in the robustness of climate-related policies.

The UK government has confirmed its intention to introduce the UK CBAM from 2027. While the consultation sets out the UK government's thinking on the design and application of the UK CBAM, further information will be confirmed following the consultation.

As seen with the introduction of the EU CBAM on 1 October 2023, the UK CBAM will have both considerable financial and operational implications for in-scope businesses in the UK. Further, overseas suppliers of UK CBAM goods will be required to provide detailed emissions information covering goods exported to the UK.

While the introduction of the UK CBAM will support the UK in meeting its climate objectives, the UK government must consider the administrative and financial burdens placed on businesses. In both the UK and the EU, the volume of measures requiring businesses to collect information and engage with their

suppliers is growing. The UK government has an opportunity to streamline requirements and minimize disruption by designing the UK CBAM with consideration for other reporting requirements businesses face.

This opportunity forms a central part of the current EY thinking on the themes raised in the consultation:

- **Streamlining processes for businesses:** The implementation of the UK CBAM will introduce complex reporting requirements for in-scope businesses. The administrative burden placed on businesses can be reduced by aligning data collection categories and accounting periods with other reporting measures businesses face, including Extended Producer Responsibility (EPR) and Plastics Packaging Tax (PPT) in the UK, as well as the EU CBAM and the EU Deforestation-free Products Regulation (EUDR).
- **International cooperation and developing standards:** Businesses in the scope of the UK CBAM will be required to report embedded emissions data broken down by direct and indirect emissions. The UK government should seek international alignment with the UK's key trading partners to form standards and establish methods of reporting to reduce the impact of duplicative reporting across jurisdictions and regulations.
- **Providing businesses with sufficient preparation time:** A key lesson learned from preparations for the EU CBAM was that businesses that act early have the greatest chance of collecting accurate and complete data. Sufficiently detailed guidance should be published ahead of the implementation of reporting requirements, allowing businesses sufficient time to make necessary system updates and collect data from their supply chain.
- **Incentivizing the use of actual embedded emissions data:** Requiring businesses to report actual emissions data for imported goods is an important factor in the UK CBAM meeting its policy objectives. However, actual emissions data is not always readily available, and businesses will likely need to leverage default values for a limited time. The adoption of reporting with actual emissions data without introducing prohibitive costs on businesses that must report with default values, particularly where businesses have made every effort to obtain actual emissions data would benefit UK CBAM reporters.

Following the consultation, the teams at HM Treasury and HM Revenue and Customs will consider all the evidence that has been submitted by businesses, traders and other stakeholders and form a government response that is expected later in 2024 (although this could be impacted by the timing of the UK general election on 4 July 2024). Once the government response has been published, the necessary primary and secondary legislation will need to be drafted and tabled in Parliament before it can enter into force.

Businesses are encouraged to continue monitoring policy developments and assigning internal responsibility for the internal management of the UK CBAM and to start preparing for its introduction. In addition, businesses should continue to engage with the UK government on the design and application of the UK CBAM as well as with wider trade and sustainability developments and measures.

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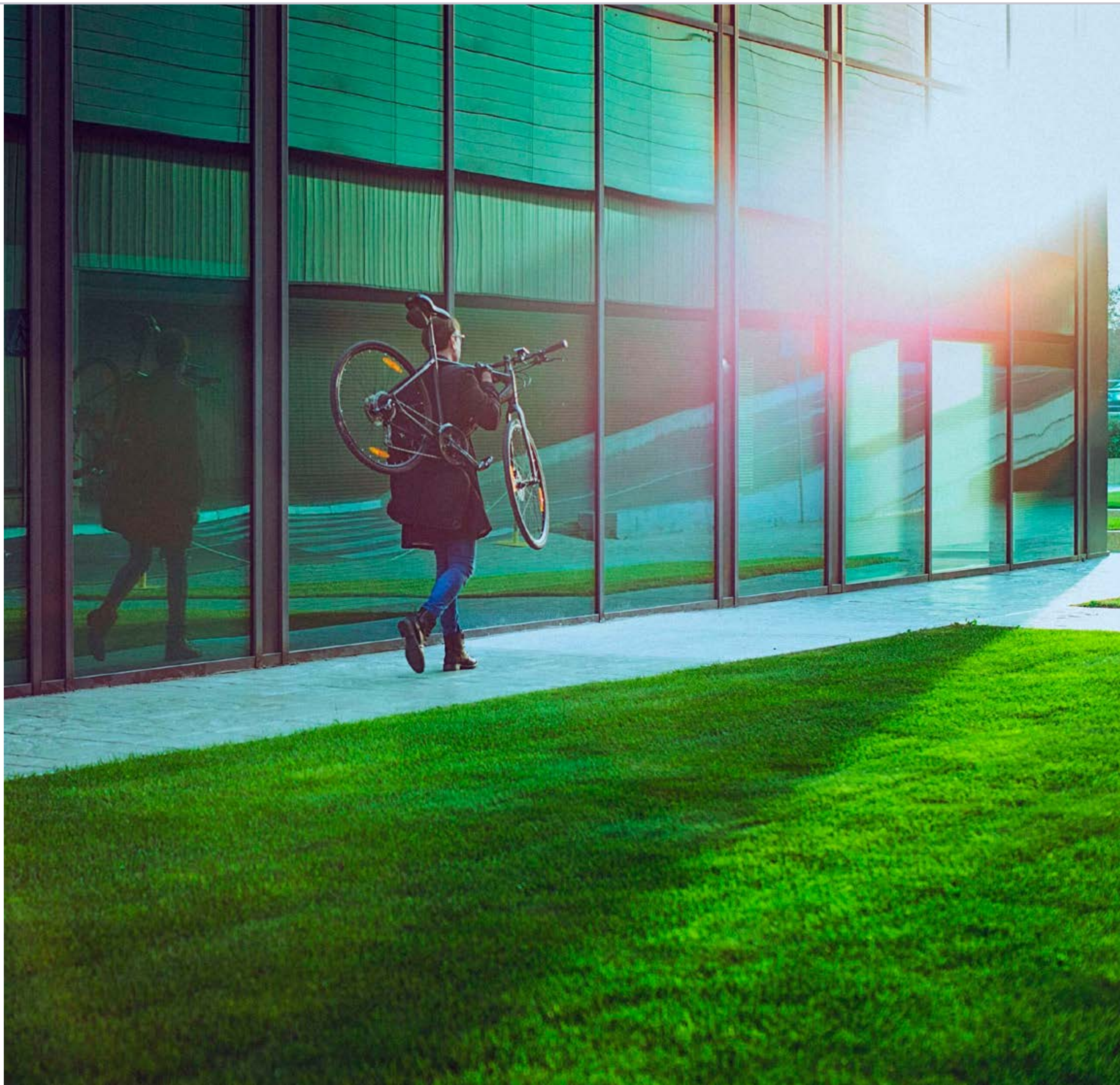
Keep pace with sustainability incentives, carbon regimes and environmental taxes — The EY Green Tax Tracker helps you monitor evolving sustainability tax policies across the globe. ■



Tax alerts

Americas

Argentina

- Argentina implements the Regularization Regime for Tax, Customs and Social Security Obligations
(24 July 2024)
- Argentine tax authorities extend suspension of VAT and Income Tax exclusion certificates on imports
(10 July 2024)
- Argentina enacts Bases Law and Tax Package
(08 July 2024)
- Argentine Congress approves bills that include major tax measures
(28 June 2024)

Brazil

- Brazil tax authorities rule on treatment of payments for right to commercialize or distribute software
(11 July 2024)

Canada

- Canada Border Services Agency updates trade compliance verification list
(18 July 2024)
- 2024 Federal Budget Implementation Bill No. 1 receives Royal Assent
(24 June 2024)
- Enacts income and indirect tax measures under Bill C-59 budget bill
(24 June 2024)
- Northwest Territories budget 2024-25
(30 May 2024)
- Canada delays implementation of CBSA Assessment and Revenue Management (CARM) project Release 2 to October 2024
(02 May 2024)

Colombia

- Government Decree updates customs regulations
(31 May 2024)

Global

- Trade Talking Points – Latest insights from EY's Trade Strategy team (July 2024)
(26 July 2024)
- Trade Talking Points – Latest insights from EY's Trade Strategy team (June 2024)
(18 July 2024)
- EY Global Tax Controversy Flash Newsletter (Issue 71) – How trade technologies can help reduce controversy risk
(15 July 2024)
- Trade Talking Points – Latest insights from EY's Trade Strategy team (May 2024)
(06 June 2024)

Peru

- Peruvian Congress approves law granting President powers to enact various tax measures
(12 July 2024)

United States

- US imposes adjustments to steel and aluminum imports from Mexico
(15 July 2024)
- USTR to extend most 429 Section 301 tariff exclusions through 14 June 2024 – and some through 31 May 2025
(29 May 2024)
- USTR publishes further guidance on impacted China-origin products subject to additional Section 301 tariffs
(23 May 2024)
- US Biden Administration and USTR announced additional tariffs upon completion of China Section 301 review
(15 May 2024)

Asia-Pacific

Australia

- Australia delivers 2024–25 Federal Budget
  (16 May 2024)

Global

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  (26 July 2024)
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- Trade Talking Points – Latest insights from EY's Trade Strategy team (May 2024)
  (06 June 2024)

Thailand

- Thailand makes key interim changes for collection of VAT/excise tax on Low-Value Goods imports
  (23 July 2024)

Europe, Middle East, India and Africa

Ethiopia

- Ethiopia issues Directive regulating foreign investors' participation in restricted export, import, wholesale and retail trade
  (02 May 2024)

European Union

- EU – New round of Tariff Suspension Quota Scheme; application window open until 31 July 2024
  (18 July 2024)
- Still no agreement at EU on VAT in the digital age (ViDA) proposal
  (21 June 2024)
- EU has not yet reached agreement on VAT in the digital age (ViDA) proposal
  (14 May 2024)

Finland

- Finland's VAT increase could make VAT rate the second highest in the EU
  (08 May 2024)

France

- Releases specifications for e-invoicing reform
  (20 June 2024)

Germany

- Publishes e-invoicing draft administrative guideline, accepting feedback until 11 July
  (18 June 2024)

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- Trade Talking Points – Latest insights from EY's Trade Strategy team (May 2024)
  (06 June 2024)

Kenya

- Kenya proposes tax changes under the Finance Bill, 2024
  (21 May 2024)
- Kenya High Court rules tax laws don't explicitly impose additional customs duties on oil 'product gains'
  (16 May 2024)

Pakistan

- 2024 Finance Bill proposes indirect, individual, corporate tax changes
  (17 June 2024)
- Pakistan implements amendments to tax appeals system
  (07 May 2024)

Saudi Arabia

- Saudi Arabia issues resolution amending customs duties on certain goods
  (25 July 2024)
- Saudi Arabia announces 13th wave of Phase 2 e-invoicing integration
  (08 July 2024)
- Saudi Arabia tax bulletin clarifies requirements and procedures for excise tax refund
  (30 May 2024)
- Saudi Arabia joins the international ATA Carnet guarantee system
  (20 May 2024)

Slovakia

- Slovakia proposes new tax on sweetened soft drinks
  (02 May 2024)

Turkiye

- Turkiye imposes fees on vessels for greenhouse gases
  (17 July 2024)
- Turkiye introduces three new types of retrospective import inspections
  (03 June 2024)
- Turkiye's Ministry of Trade announces all trade with Israel has been halted
  (03 May 2024)

United Arab Emirates

- Dubai Customs publishes policy on voluntary disclosures
  (24 July 2024)
- UAE is boosting trade through Comprehensive Economic Partnership Agreements
  (21 May 2024)

United Kingdom

- UK General Election 2024 results in first Labour Government in 14 years
  (09 July 2024)

Additional resources

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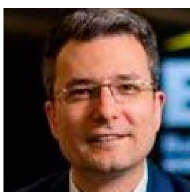

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