TradeWatch

EY Global Trade

Issue 2 2024

EY

Building a better working world

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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. ■

For additional information, please contact:

Renata Natalino | + 1 415 894 8278 | renata.s.natalino@ey.com
Lynlee Brown | + 1 858 535 7357 | lynlee.brown@ey.com
Shenshen Lin | + 44 782 725 4521 | slin1@uk.ey.com
Petra Herrmann | + 49 160 939 23002 | petra.herrmann@de.ey.com

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.

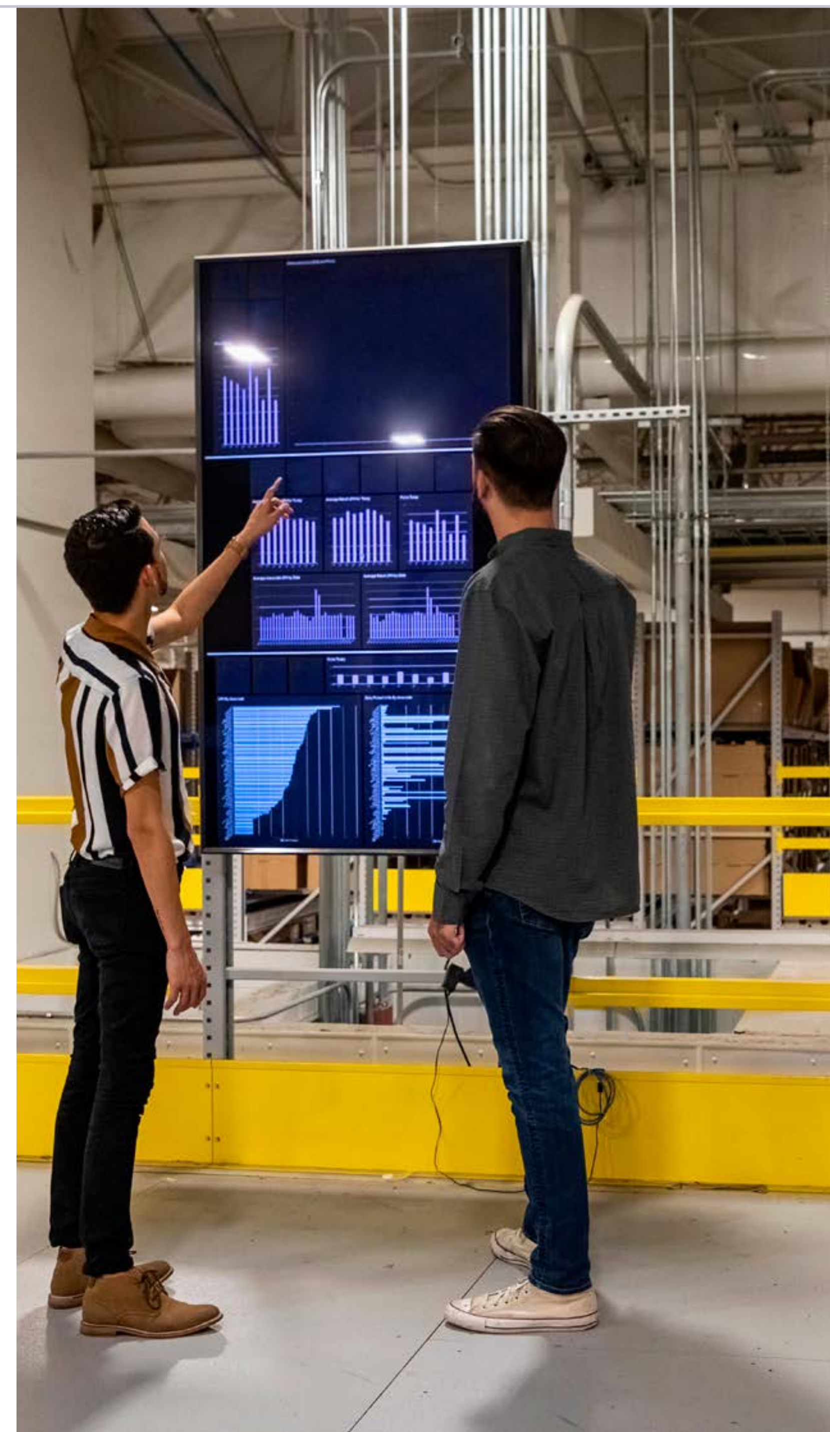
Solution landscape

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. ■

For additional information, please contact:

Luke Branson
+ 61 3 9288 8369 | luke.branson@au.ey.com

Cam Tran
+ 61 2 8295 6176 | cam.tran@au.ey.com

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.

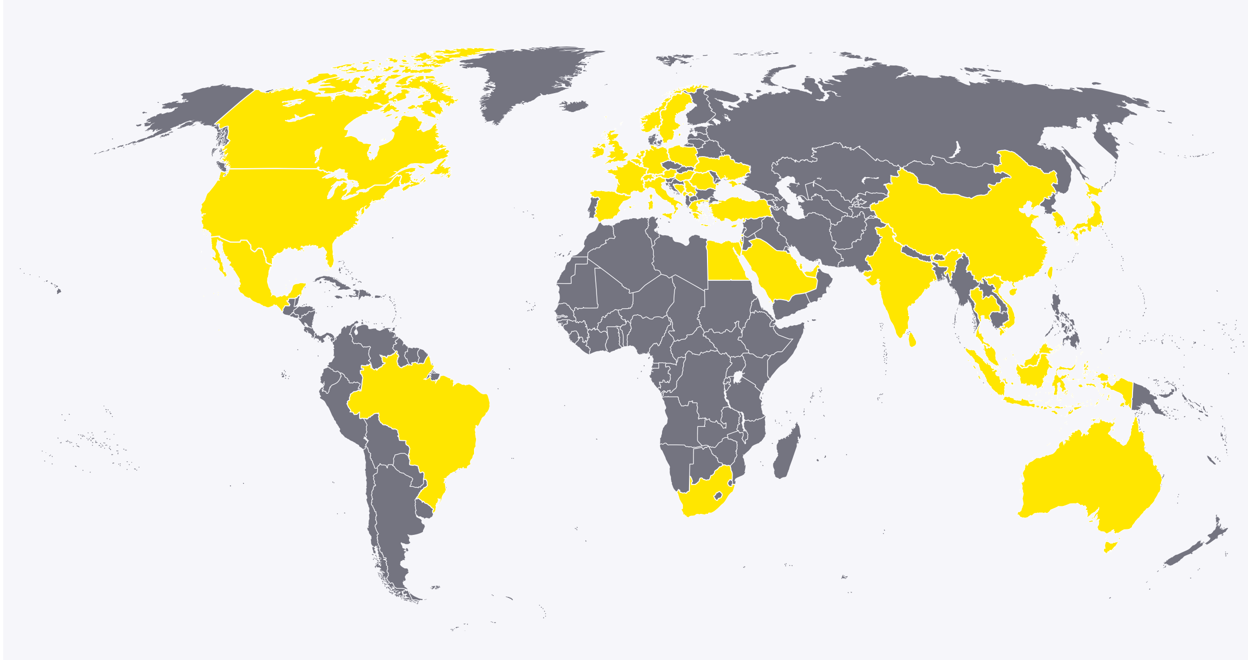
For instance, The CUP method compares the price charged in a controlled transaction to the price charged in a comparable uncontrolled transaction.

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.

For additional information, please contact:

Frank-Peter Ziegler
+ 49 6196 996 14649 | frank-peter.ziegler@de.ey.com

Katharina Königstädt
+ 41 582 863 617 | katharina.koenigstaedt@ch.ey.com

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Brazil

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

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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
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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
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- 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
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- UAE is boosting trade through Comprehensive Economic Partnership Agreements
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United Kingdom

- UK General Election 2024 results in first Labour Government in 14 years
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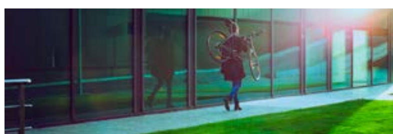

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Contacts

Global

Jeroen Scholten
EY Global Trade Practice Leader

Trade knowledge team

Richard Albert
Ernst & Young GmbH, Germany Global Trade Partner

Lynlee Brown
EY LLP US, Global Trade Partner

Ian Craig
Ernst & Young Assessoria Empresarial Ltda, Brazil Global Trade Partner

Sergio Fontenelle
EY LLP US, Global Trade Leader

Sally Jones
Ernst & Young LLP UK, Trade Strategy and Brexit Leader

Michael Leightman
EY LLP US, Global Trade Partner

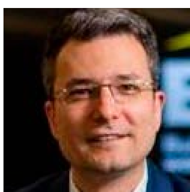
Shenshen Lin
Ernst & Young LLP UK, Global Trade Partner

Sharon Martin
EY LLP US, Global Trade Partner

Rocio Mejia
EYS Equipo Y Soluciones, S.C. Mexico, Global Trade Leader

Yoichi Ohira
Ernst & Young Tax Co Japan, Indirect Tax Leader

Carolina Palma
Ernst & Young S.A. Costa Rica, Global Trade Leader



Waine Peron
EY Latin America, Global Trade Leader

George Riddell
Ernst & Young LLP UK, Director of Trade Policy & Strategy

Martijn Schippers
Ernst & Young Belastingadviseurs LLP, Netherlands, Indirect Taxation and Global Trade

Paul Smith
EY Oceania, Global Trade Leader

Global Trade contacts by jurisdiction

Americas

Argentina

Sergio Stepanenko
+ 54 11 4318 1648

Brazil

Ian Craig
+ 55 21 32637362

Fernando Fagiani
+ 55 11 2573 6913

Cesar Finotti
+ 55 11 2573 6465

Gabriel Martins
+ 55 21 3263 7201

Waine Peron
+ 55 11 2573 3559

Canada

Kristian Kot
+ 1 2502 948384

Sylvain Golsse
+ 1 4169 325165

The Caribbean

Rose Boevé
+ 599 0 430 5076

Colombia

Gustavo Lorenzo
+ 57 14847225

Costa Rica

Carolina Palma
+ 506 2459 9727

Mexico

Karla Cardenas
+ 52 664 681 7844

Roberto Chapa
+52 81 8152 1853

Rocio Mejia
+ 52 555 283 8672

Jorge Nacif
+ 52 551 101 7327

Peru

Giancarlo Riva
+ 51 1411 4448

United States

Jay Bezek
+ 1 704 331 1975

Lynlee Brown
+ 1 858 535 7357

Sergio Fontenelle
+ 1 212 466 9780

Nathan Gollaher
+ 1 312 879 2055

Michael Heldebrand
+ 1 408 947 6820

Michael Leightman
+ 1 713 750 1335

Sharon Martin
+ 1 312 879 4837

Bryan Schillinger
+ 1 713 750 5209

Prentice Wells
+ 1 408 947 5438

Shane Williams
+ 1 713 751 5715

Asia-Pacific

Australia

Luke Branson
+ 61 3 9288 8369

Kylie Norman
+ 61 2 9248 4765

China Mainland

Lynette Dong
+ 86 21 2228 4107

Yao Lu
+ 86 139 1015 1448

Bryan Tang
+ 86 21 2228 2294

Hong Li Wang
+ 86 10 5815 2307

Dong Xu
+ 86 21 2228 3655

Tina GY Zhang
+ 86 10 5815 2197

Hong Kong

Shubhendu Misra
+ 852 9664 0842

Japan

Yumi Haraoka
+ 81 3 3506 2110

Yoichi Ohira
+ 81 3 3506 2110

Korea (South)

Dongo Park
+ 82 23 787 4337

Malaysia

Jalbir Singh Riar
+ 60 3749 58329

New Zealand

Paul Smith
+ 64 9 348 8409

Phillipines

Lucil Vicerra
+ 63 288 948 115

Singapore

Donald Thomson
+ 65 6309 8636

Taiwan

Michiel Friedhoff
+ 886 2 2757 8888

Vivian Wu
+ 886 2 2728 8833

Thailand

William Chea
+ 662 264 9090

Vietnam

Anh Tuan Thach
+ 84 28 3629 7366

Global and Trade knowledge team contacts

Europe, Middle East, India and Africa contacts

Global Trade contacts by jurisdiction continued

Europe, Middle East, India and Africa

Albania, Bulgaria, Kosovo and North Macedonia

Milen Raikov
+ 359 2 8177 155

Austria

Theresa Arlt
+ 43 1 211 70 1102

Belgium

Antoine De Donder
+ 32 2 749 36 90

Erwin De Vos
+ 32 2 774 93 75

Jef d'Hollander
+ 32 4 851 58 852

Christina Horckmans
+ 32 2 774 93 22

Philippe Lesage
+ 32 2 774 92 69

Kristof Verbist
+ 32 2 774 90 86

Keshia Wagner
+ 33 6 61 08 49 83

Denmark

Anne-Mette Høiriis
+ 45 51582559

France

Marguerite Trzaska
+ 33 1 46 93 84 32

Germany

Rafik Ahmad
+ 49 6196 996 22586

Richard J Albert
+ 49 211 9352 17756

Robert Boehm
+ 49 211 9352 10529

Nadin Nottekämper
+ 49 211 9352 26138

Frank-Peter Ziegler
+ 49 6196 996 14649

Greece

Nicoleta Merkouri
+ 30 697 3773203

Hungary

Attila Fulop
+ 36 30 559 1364

Aron Nagy
+ 36 1 451 8636

India

Ruchi Bhat
+ 91 98 6044 1874

Preetham Chennaveerappa Narasim
+ 91 98 8012 0381

Dhruv Gupta
+ 91 98 1080 7942

Sourabh Jain
+ 91 98 1800 9094

Krishna Kanth Kotagiri
+ 91 99 6388 4466

Suresh Nair
+ 91 22 6192 2004

Agneshwar Sen
+ 91 98 11167838

Ireland

Ciarán Behan
+ 353 1 2211445

Colin Doolin
+ 353 1 2212949

Italy

Alessandra Di Salvo
+ 39 335 7361484

Kenya/rest of Africa

Hadijah Nannyomo
+ 254 20 2886000

Middle East and North Africa

Ramy Rass
+ 971 4 7010900

Netherlands

Caspar Jansen
+ 31 88 407 1441

Bastiaan Kats
+ 31 88 40 73806

Martijn Schippers
+ 31 88 407 9160

Jeroen Scholten
+ 31 88 407 1009

Norway

Øystein Arff Gulseth
+ 47 982 06 387

Narve Løvø
+ 47 982 06 238

Poland

Slawomir Czajka
+ 48 71 711 88 93

Spain

Pedro Gonzalez-Gaggero
+ 34 954 665 246

South Africa/rest of Africa

Redge de Swardt
+ 27 21 443 0637

Sweden

Zoran Dimoski
+ 46 8 52059260

Switzerland

Ashish Sinha
+ 41 58 286 5906

Turkiye

Sercan Bahadir
+ 90 212 408 53 41

Yakup Gunes
+ 90 212 408 58 38

Sedat Tasdemir
+ 90 212 408 52 57

United Kingdom

Onelia Angelosanto
+ 44 161 234 0508

Marc Bunch
+ 44 20 7980 0298

Penelope Isbecque
+ 44 113 298 2447

Sally Jones
+ 44 20 7951 7728

Gerard Koevoets
+ 44 20 7951 6496

Shenshen Lin
+ 44 20 7951 2063

George Riddell
+ 44 20 7951 9741

Global and Trade knowledge team contacts

Americas and Asia-Pacific contacts

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EYG no. 006690-24Gbl
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