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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 Deal¹ 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 Directive⁶ 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 vehicles⁸ 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 Directive⁹ 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 removals¹⁰ 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 rules¹¹ 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 Directive¹² 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 Act¹⁶ 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 Tracker¹⁷ can help you map out the green taxes and incentives landscape in over 65 jurisdictions. ■



For additional information, please contact:

Alenka Turnsek | + 44 20 7951 1383 | alenda.turnsek@uk.ey.com

Charlene Glenister | + 44 20 7951 2770 | charlene.glenister@uk.ey.com

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 approval¹ on 23 April 2024 of a new regulation² 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.

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](#)



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 regulation⁴ 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. ■

For additional information, please contact:

Jeroen Scholten | + 31 8 84071009 | jeroen.scholten@nl.ey.com

Martijn Schippers | + 316 2908 4186 | martijn.schippers@nl.ey.com

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 Regulation⁵ 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.

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](#).

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 Conduct⁸ 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.

- ▶ 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 Agreement⁹ 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 statement¹³ 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 ■

For additional information, please contact:

Richard J. Albert | + 49 160 939 17756 | richard.j.albert@de.ey.com

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.

EU CBAM: Impact on ASEAN businesses¹

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 partner² 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 package³:

- ▶ 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 prices⁵ 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.](#)

For additional information, please contact:

Shubhendu Misra
+ 85 222 326 578 | shubhendu.misra@hk.ey.com

Shu Hui Toh
+ 65 630 98375 | shu-hui.toh@sg.ey.com

Michiel Friedhoff
+ 88 622 757 8888 | michiel.friedhoff2@tw.ey.com

Donald Thomson
+ 65 6309 8636 | donald.thomson@sg.ey.com

Richard J. Albert
+ 49 160 939 17756 | richard.j.albert@de.ey.com

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. ■

For additional information, please contact:

Mark Feldman
+ 44 20 7951 5528 | mark.feldman@uk.ey.com

George Riddell
+ 44 20 7951 9741 | george.riddell@uk.ey.com

Richard J. Albert
+ 49 160 939 17756 | richard.j.albert@de.ey.com

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. ■

For additional information, please contact:

George Riddell | + 44 20 7951 9741 | george.riddell@uk.ey.com

EY's Green Tax Tracker

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Tax alerts

A dark gray world map outline is visible in the background, showing the continents and country borders.

Tax alerts

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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- ▶ Trade Talking Points – Latest insights from EY’s Trade Strategy team (June 2024) (18 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 (June 2024) (18 July 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)

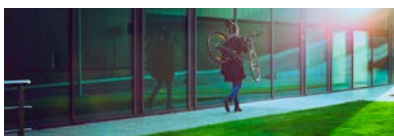
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Contacts

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Trade knowledge team



Jeroen Scholten
EY Global Trade
Practice Leader



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

Contacts

Contacts

Global Trade contacts by jurisdiction

Americas			Asia-Pacific	
Argentina	Colombia	United States	Australia	Korea (South)
Sergio Stepanenko ▶ + 54 11 4318 1648	Gustavo Lorenzo ▶ + 57 14847225	Jay Bezek ▶ + 1 704 331 1975	Luke Branson ▶ + 61 3 9288 8369	Dongo Park ▶ + 82 23 787 4337
Brazil	Costa Rica	Lynlee Brown ▶ + 1 858 535 7357	Kylie Norman ▶ + 61 2 9248 4765	Malaysia
Ian Craig ▶ + 55 21 32637362	Carolina Palma ▶ + 506 2459 9727	Sergio Fontenelle ▶ + 1 212 466 9780	China Mainland	Jalbir Singh Riar ▶ + 60 3749 58329
Fernando Fagiani ▶ + 55 11 2573 6913	Mexico	Nathan Gollaher ▶ + 1 312 879 2055	Lynette Dong ▶ + 86 21 2228 4107	New Zealand
Cesar Finotti ▶ + 55 11 2573 6465	Karla Cardenas ▶ + 52 664 681 7844	Michael Heldebrand ▶ + 1 408 947 6820	Yao Lu ▶ + 86 139 1015 1448	Paul Smith ▶ + 64 9 348 8409
Gabriel Martins ▶ + 55 21 3263 7201	Roberto Chapa ▶ +52 81 8152 1853	Michael Leightman ▶ + 1 713 750 1335	Bryan Tang ▶ + 86 21 2228 2294	Phillipines
Waine Peron ▶ + 55 11 2573 3559	Rocio Mejia ▶ + 52 555 283 8672	Sharon Martin ▶ + 1 312 879 4837	Hong Li Wang ▶ + 86 10 5815 2307	Singapore
Canada	Jorge Nacif ▶ + 52 551 101 7327	Bryan Schillinger ▶ + 1 713 750 5209	Dong Xu ▶ + 86 21 2228 3655	Donald Thomson ▶ + 65 6309 8636
Kristian Kot ▶ + 1 2502 948384	Peru	Prentice Wells ▶ + 1 408 947 5438	Tina GY Zhang ▶ + 86 10 5815 2197	Taiwan
Sylvain Golsse ▶ + 1 4169 325165	Giancarlo Riva ▶ + 51 1411 4448	Shane Williams ▶ + 1 713 751 5715	Hong Kong	Michiel Friedhoff ▶ + 886 2 2757 8888
The Caribbean			Shubhendu Misra ▶ + 852 9664 0842	Vivian Wu ▶ + 886 2 2728 8833
Rose Boevé ▶ + 599 0 430 5076			Japan	Thailand
			Yumi Haraoka ▶ + 81 3 3506 2110	William Chea ▶ + 662 264 9090
			Yoichi Ohira ▶ + 81 3 3506 2110	Vietnam
				Anh Tuan Thach ▶ + 84 28 3629 7366

Contacts

Global Trade contacts by jurisdiction continued

Europe, Middle East, India and Africa				
Albania, Bulgaria, Kosovo and North Macedonia	Denmark	India	Middle East and North Africa	Sweden
Milen Raikov ▶ + 359 2 8177 155	Anne-Mette Høiriis ▶ + 45 51582559	Ruchi Bhat ▶ + 91 98 6044 1874	Ramy Rass ▶ + 971 4 7010900	Zoran Dimoski ▶ + 46 8 52059260
Austria	France	Preetham Chennaveerappa Narasim ▶	Netherlands	Switzerland
Theresa Arlt ▶ + 43 1 211 70 1102	Marguerite Trzaska ▶ + 33 1 46 93 84 32	+ 91 98 8012 0381	Caspar Jansen ▶ + 31 88 407 1441	Ashish Sinha ▶ + 41 58 286 5906
Belgium	Germany	Dhruv Gupta ▶	Bastiaan Kats ▶	Turkiye
Antoine De Donder ▶ + 32 2 749 36 90	Rafik Ahmad ▶ + 49 6196 996 22586	+ 91 98 1080 7942	+ 31 88 40 73806	Sercan Bahadir ▶ + 90 212 408 53 41
Erwin De Vos ▶ + 32 2 774 93 75	Richard J Albert ▶ + 49 211 9352 17756	Sourabh Jain ▶ + 91 98 1800 9094	Martijn Schippers ▶ + 31 88 407 9160	Yakup Gunes ▶ + 90 212 408 58 38
Jef d'Hollander ▶ + 32 4 851 58 852	Robert Boehm ▶ + 49 211 9352 10529	Krishna Kanth Kotagiri ▶ + 91 99 6388 4466	Jeroen Scholten ▶ + 31 88 407 1009	Sedat Tasdemir ▶ + 90 212 408 52 57
Christina Horckmans ▶ + 32 2 774 93 22	Nadin Nottekämper ▶ + 49 211 9352 26138	Suresh Nair ▶ + 91 22 6192 2004	Norway	United Kingdom
Philippe Lesage ▶ + 32 2 774 92 69	Frank-Peter Ziegler ▶ + 49 6196 996 14649	Agneshwar Sen ▶ + 91 98 11167838	Øystein Arff Gulseth ▶ + 47 982 06 387	Onelia Angelosanto ▶ + 44 161 234 0508
Kristof Verbist ▶ + 32 2 774 90 86	Greece	Ireland	Narve Løvø ▶ + 47 982 06 238	Marc Bunch ▶ + 44 20 7980 0298
Keshia Wagner ▶ + 33 6 61 08 49 83	Nicoleta Merkouri ▶ + 30 697 3773203	Ciarán Behan ▶ + 353 1 2211445	Poland	Penelope Isbecque ▶ + 44 113 298 2447
	Hungary	Colin Doolin ▶ + 353 1 2212949	Slawomir Czajka ▶ + 48 71 711 88 93	Sally Jones ▶ + 44 20 7951 7728
	Attila Fulop ▶ + 36 30 559 1364	Italy	Spain	Gerard Koevoets ▶ + 44 20 7951 6496
	Aron Nagy ▶ + 36 1 451 8636	Alessandra Di Salvo ▶ + 39 335 7361484	Pedro Gonzalez-Gaggero ▶ + 34 954 665 246	Shenshen Lin ▶ + 44 20 7951 2063
		Kenya/rest of Africa	South Africa/rest of Africa	George Riddell ▶ + 44 20 7951 9741
		Hadijah Nannyomo ▶ + 254 20 2886000	Redge de Swardt ▶ + 27 21 443 0637	

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