

# TradeWatch



## EY Global Trade Insights – Global

Issue 1 2024

**EY**

Building a better  
working world



# Insights

Insights

---

Top seven trade trends in 2024

1

---

Transforming customs and trade functions: how trade technologies and automation can release potential

4

---

World Trade Organization's 13th Ministerial Conference – assessing the outcomes

9

---

Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict at a global scale

12

---

EU and US: Export control and sanctions 2023 year in review

16

---

EY International Tax and Transfer Pricing Survey 2024

26

---

Insights from EY.com

27

---

Our Global Trade webcasts and podcasts

28



# Top seven trade trends in 2024

At the start of 2023, we set out our expectations of what the year would bring for international trade and how seven trends that we identified would affect the UK.<sup>1</sup> 2023 – as predicted – was an up-and-down year around the globe, and we’re predicting another busy year for international trade in 2024. This year, we have seven trends in international trade that we will be watching through the coming year, this time considering a global perspective.

## 1. Elections, elections, elections

2024 is set to be one of the most consequential years for elections ever, with more people going to the polls in a single year than ever before.<sup>2</sup> This will have profound consequences for international trade. These are some of the main elections taking place this year:

- ▶ The European Parliament elections in July 2024 will see a new European Commission installed and will determine whether the EU can reinvigorate its track record on passing bilateral trade agreements. Several important elections will also take place in EU Member States, including Austria, Belgium, Croatia, Finland, Lithuania, Portugal, Romania and Slovakia.

- ▶ The US presidential election will take place in November 2024. In November 2023, the Republican nominee expressed hard-line positions on trade, with proposals ranging from removing normalized trade relations with China, to implementing a flat tariff on all imports and withdrawing from the Indo-Pacific Economic Framework for Prosperity.<sup>3</sup> The Biden Administration has indicated that it continues to prioritise a “worker-centric trade policy” as part of its 2024 Trade Policy Agenda<sup>4</sup> which has highlighted progress in trade talks with Taiwan, Kenya, IPEF and the Americas Partnership for Economic Prosperity.
- ▶ In the UK, speculation abounds about when Prime Minister Rishi Sunak will call an election. The opposition Labour Party (which may form the next government) has set out its own vision for trade policy.<sup>5</sup>

1 'UK: Top seven trade trends in 2023,' *TradeWatch* Issue 1 2023, page 52.

[Find it here](#)

2 2024 is a record year for elections. Here's what you need to know, *World Economic Forum*, 15 December 2023. [Find it here](#)

3 Following Donald Trump, GOP Candidates Talk Tough on Trade, *The Wall Street Journal*, 30 August 2023. [Find it here](#)

4 USTR Releases President Biden's 2024 Trade Policy Agenda and 2023 Annual Report, *US Trade Representative website*, March 2024. [Find it here](#)

5 Boosting Trade for Economic Growth, *Labour and Co-operative website*, 15 November 2023. [Find it here](#)

## 2. Challenging Ministerial Conference for the World Trade Organization (WTO)

In February 2024, the attention of trade watchers shifted to Abu Dhabi, where the WTO held its 13th Ministerial Conference (MC13).<sup>6</sup>

A number of measures were agreed including the extension of the e-commerce moratorium for another two years and the easing of rules for least developed countries.

Agreement could not however be reached on a number of important topics where intensive work was undertaken prior to MC13, including dispute settlement, fisheries subsidies, agriculture and Trade Related Aspects of Intellectual Property Rights (TRIPS) Waiver.

Failure to deliver meaningful outcomes and a realistic way forward on the dispute settlement mechanism and other topics will undermine the credibility of the organization, where some members are starting to question the size of the WTO's budget.

## 3. Green supply chain regulations will start to impact

At the start of 2023, we predicted that “green trade” would be one of many geopolitical flashpoints, and the introduction of the EU's Carbon Border Adjustment Mechanism (CBAM)<sup>7</sup> proved to be just that. As one of the largest shifts in the EU's trade regime over the past 30 years, CBAM has been met with international challenges about the perceived protectionist design and operation of the regulation, particularly from developing nations.

Over the course of the year, we saw more governments explore implementing similar policies to address the issue of carbon leakage, including the UK government's consultation on adopting its own version of CBAM.<sup>8</sup> Separately, several related bills have been put forward in the US Congress, and Australia and New Zealand are conducting their own reviews of policies to address carbon leakage.<sup>9</sup>

The EU's CBAM is now in force, with the first declarations originally due on 31 January 2024 for all importers of certain covered goods (steel, iron, aluminum, concrete, fertilizer, hydrogen and electricity) imported into the EU in Q4 2023. This deadline was slightly pushed back, but businesses are realizing the impact of this new reporting regime nonetheless.

Further changes to the regime will be implemented throughout 2024 and beyond, with businesses having to account for actual greenhouse gas (GHG) emissions embedded in products from 31 July 2024.

Other countries will increase their consultations as to whether to implement similar measures, with the UK and Australia most likely to adopt similar regimes next.

Companies will also have to contend with the entry into force of the EU's Deforestation Regulation<sup>10</sup> that takes full effect from 30 December 2024.<sup>11</sup> Other EU regulations to watch out for are the Corporate Sustainability Due Diligence Directive<sup>12</sup> and potential progress on an EU forced labor regulation.<sup>13</sup>

## 4. More sanctions and export controls

As we predicted in our 2023 article,<sup>14</sup> last year the US government continued its focus on updating and expanding the Export Administration Regulations<sup>15</sup> developed in 2022. In October 2023, the US announced an expansion of the regime to cover a broader range of semiconductor manufacturing equipment and reduce the de minimis threshold.<sup>16</sup> Similarly, with export controls, the US, EU and UK have continued to impose an escalating series of coordinated economic sanctions, targeted primarily at Russia.<sup>17</sup>

We predict that in 2024 the modernization and expansion of sanctions and export control regimes will accelerate across much of the West with a focus on compliance and expansion of coverage.

6 'World Trade Organization's 13th Ministerial Conference – assessing the outcomes,' article on page 13 of this issue. [Find it here](#)

7 'CBAM: EU update on the Carbon Border Adjustment Mechanism,' article on page 59 of this issue. [Find it here](#)

8 'CBAM: UK Government announces Carbon Border Adjustment Mechanism,' article on page 62 of this issue. [Find it here](#)

9 Previous articles on CBAM are included in earlier editions of *TradeWatch*, available [here](#).

10 Regulation (EU) 2023/1115 of the European Parliament and of the Council on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, 31 May 2023. [Find it here](#)

11 'EU: Fight against global deforestation,' *TradeWatch* Issue 2, 2023, page 33. [Find it here](#)

12 'Proposal for a Directive on corporate sustainability due diligence and annex,' *European Commission website*, 23 February 2023. [Find it here](#)

13 'Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market,' *European Commission website*, 14 September 2023. [Find it here](#)

14 'UK: Top seven trade trends in 2023,' *TradeWatch* Issue 1 2023, page 52. [Find it here](#)

15 U.S. Export Regulations, *US International Trade Administration website*. [Find it here](#)

16 Commerce Strengthens Restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern, *US Department of Commerce Bureau of Industry and Security website*, 17 October 2023. [Find it here](#)

17 'EU and US: Export control and sanctions 2023 year in review,' article on page 18 of this issue. [Find it here](#)

In the US, for example, the ongoing development of US export controls and bipartisan support for strengthening the US export control regime are anticipated. Focus will be on what can be achieved in the context of the wider US government budget negotiations with Congress and the development of new US export control rules and procedures.

Whether countries will be able to increase cooperation and alignment on export controls will remain a key discussion point.

### 5. Strained US-EU relations to continue

The list of outstanding trade negotiation issues between the EU and US continues to grow, leaving a narrow window for progress on some discrete issues.

First on the agenda is the Global Arrangement on Sustainable Steel and Aluminium,<sup>18</sup> designed to remove the threat of US tariffs on steel and aluminum resuming (and the inevitable EU retaliatory measures if they do). The talks have also involved the treatment of US steel and aluminum under the EU's CBAM regime. With the talks faltering, the EU may resume its WTO dispute against the US.

The possibility of a critical minerals agreement,<sup>19</sup> which would allow European producers to be eligible for certain incentive programs under the US Inflation Reduction Act, is also one to watch.

18 Global Arrangement on Sustainable Steel and Aluminium, *European Aluminium website*, November 2023. [Find it here](#)

19 EU-US critical minerals agreement: Building stronger supply chains together, *European Parliament website*, 28 November 2023. [Find it here](#)

20 'Transforming customs and trade functions: how trade technologies and automation can release potential,' article on page 6 of this issue. [Find it here](#)

21 'UK: An overview of the Electronic Trade Documents Act,' *TradeWatch Issue 3 2023*, page 37. [Find it here](#)

The US-EU Trade and Technology Council missed its meeting in December, with substantive progress stalled. The next meeting has not been scheduled but is due in the first half of 2024. One of the key issues will be the US position on data flows, which has been called into question following its unexpected withdrawal of support for certain provisions in the WTO e-commerce negotiations.

### 6. Accelerating customs modernization

Digitalization of trade processes will continue in 2024, driven by customs agencies wanting enhanced trade facilitation coupled with better risk management procedures and compliance requirements. For companies, better quality data will deliver greater visibility of their supply chains while giving them the ability to better manage their compliance obligations.<sup>20</sup>

The UK's Electronic Trade Documents Act passed in 2023,<sup>21</sup> enabling digital versions of international trade documents such as bills of lading to have the same legal recognition under English law as traditional paper-based documents. We expect that 2024 will see more countries following suit and commencing their own digital trade legislative processes. Cross-industry standards will emerge, unlocking new forms of data that can enhance product allocation and risk decisioning.

22 "2023 Trade Finance Gaps, Growth, and Jobs Survey," *Asian Development Bank website*, September 2023. [Find it here](#)

23 Sibos 2023: five key trade finance takeaways, *flow*, 19 October 2023. [Find it here](#)

24 'UK: Top seven trade trends in 2023,' *TradeWatch Issue 1 2023*, page 52. [Find it here](#)

### 7. Trade finance

In 2023, we saw the global trade finance gap expand to US\$2.5t.<sup>22</sup> While there was no shortage of liquidity in the market, an increasingly volatile geopolitical and macroeconomic landscape has made access to trade finance more difficult.<sup>23</sup> In 2024, we expect increased engagement with regulators.

#### Implications for business

In our view, these seven trends will have a significant impact on international trade over the course of 2024. This year's lineup features several trends that we featured in 2023<sup>24</sup> that continue to be influential, such as the importance of green trade and the expanded use of sanctions and export controls. But some new themes have also emerged and will continue to do so as the year progresses. Businesses that trade internationally must monitor how these trends develop and be ready to adapt their trade strategies in response to changing events. ■

#### For additional information, please contact:

Sally Jones

+ 44 20 7951 7728 | [sally.jones@uk.ey.com](mailto:sally.jones@uk.ey.com)

George Riddell

+ 44 20 7951 9741 | [george.riddell@uk.ey.com](mailto:george.riddell@uk.ey.com)

# Transforming customs and trade functions: how trade technologies and automation can release potential

The past decade has seen a wealth of incredible technology innovations. Many of these advancements are epoch defining, pushing beyond what was imaginable only a few years ago. And we are expecting to see even more progress in the next decade – probably more than in the past 100 years.<sup>1</sup>

The tectonic shift in technology innovation is penetrating all aspects of the global supply chain, and businesses need to directly engage with these innovations. For global trade executives, trade technologies and automation offer steep changes in productivity and control. They are asking questions such as:

- ▶ How do we navigate this change?
- ▶ How do we determine the right solution?
- ▶ How do we use new technology in the global trade function?

In our experience, applying some basic principles helps in answering these questions.

## **The role of technology in customs and trade functions**

The term “trade technologies” can refer to several areas when it comes to the cross-border movement of goods, including:

### ▶ **Global trade management (GTM) solutions**

These solutions seek to automate specific trade processes, such as bonded processing. They typically have trade content that allows businesses to stay abreast of changing regulations.

### ▶ **Analytics solutions**

These solutions seek to produce summarized snapshots and visibility for an organization’s customs function and identify potential risks and opportunities. They are usually deployed based on a set of existing data, including, although not limited to, post-clearance data.

### ▶ **New technologies (such as blockchain, machine learning and generative AI)**

These advanced technologies seek to fundamentally change processes based on how humans interact with them.



<sup>1</sup> Peter Diamandis and Steven Kotler, *The Future Is Faster Than You Think* (Simon & Schuster, 2020).

For most trade functions, the term “trade technologies and solutions” usually refers to technologies in the first two categories above, and this article will focus on these two categories. The technologies in the third category do not currently have a high adoption rate, but it is easy to see how they will likely change the trade landscape and the role of the trade function in the near future.

### Why pursue and adopt these solutions?

GTM and analytics solutions are generally developed and adopted to address specific objectives, including:

- ▶ **Improve compliance** via automatically updated content, by reducing human errors that typically arise from manual processes.
- ▶ **Increase visibility** and create better governance (e.g., classification solutions), with the greatest benefit often seen where the solution is deployed across multiple territories or through harmonization of global trade data.
- ▶ **Reduce cost and increase operational efficiency** (e.g., free trade agreement (FTA) management, free trade zone (FTZ) management), especially in regions that use special trade programs.
- ▶ **Optimize the use of third parties** (e.g., for declarations and filings), which can include digital transmission of information or coded communication protocols that enhance control.

### Challenges to adopting trade technologies and solutions

The possibilities for these trade technologies and solutions are truly vast. Yet we sometimes see a gap between what these solutions are capable of doing and what trade functions actually use. In a recent EY survey, global trade executives cited the “inability to leverage technology” as one of the greatest challenges impacting their trade functions.<sup>2</sup> Adoption rates for GTM and analytics solutions are low in comparison to their broad capabilities.

Below are some reasons behind these challenges:

- ▶ The technical details behind how solutions work can be daunting to trade specialists. With backgrounds typically in tax, law or operations, trade specialists may view trade technologies as outside their comfort zone, posing a conceptual block to their adoption.
- ▶ Unrealistic expectations exist before implementation of a solution. The outcomes may fall short of high expectations, sometimes due to how a business adopts and uses technology rather than because of shortcomings in the solution itself.
- ▶ Implementation can be costly, long and messy, and can include disruptions to business as usual and uncertainty for the people and processes affected.

### How to release the potential of trade technologies

#### 1. Fix the right issues in the right places.

It's crucial to identify the right issues and where they arise before jumping in to adopting a solution. We recommend that all global trade executives ask themselves two questions before embarking on adopting a solution:

- ▶ Why do we need a technology solution?
- ▶ What problem are we trying to fix?

A problem may manifest itself in a customs process, but the fix may exist elsewhere in the business. For example, many trade functions are challenged with accurate and efficient management of preferential origin. When taking a closer look at the process, it is common to see bills of materials (BOMs) stored as PDFs or spreadsheets and that are manually maintained. This means that information such as the value of the components is not regularly updated with supplier price changes. As a result, the trade team cannot stay on top of its BOM analysis, missing opportunities to qualify the items or stating a qualification when it should not have been used. In this example, better master data governance and digitalization of a business process is far more important and effective than making changes to the trade process on its own.

Trade functions need to have a clear diagnosis of their current operations, be diligent on the root causes of issues and rigorously assess the options for resolution of these issues. One beneficial practice might be to conduct a baseline assessment as a first step. This is not only important for identifying the location of any gaps but also for the potential stakeholders and owners of any solution.

<sup>2</sup> “How trade functions are transforming the ‘new normal’,” *EY website*, chapter 9, 11 September 2023. [Find it here](#)

Some of the typical gaps we have seen and their causes include:

- ▶ **Poor-quality master data:** This includes trade-specific data, such as commodity codes, but also business data, such as BOM components, or business partners' information. The governance and stewardship of different data means that it may not just be the trade function, or IT that can provide the necessary checks.
- ▶ **Enterprise resource planning (ERP) issues:** Having entities and sites not operating on ERP systems or operating on different instances of the ERP system is not necessarily a problem in itself, but it can sometimes pose challenges to a business's trade function's endeavor to harmonize trade data and trade processes.
- ▶ **Manual business as usual processes:** Examples of these gaps include having to manually create an intercompany sales invoice or having to manually screen a customer against sanctions lists and block a shipment after a positive hit. The former is an example of gaps in the core ERP process, whereas the latter is related to a trade-specific process and the integration between that and the core ERP process.
- ▶ **Manual changes and updates:** An example of this would be having to manually review and update the country of origin based on rules of origin changes or BOM changes. This is usually due to a lack of regularly updated trade content and certain trade processes being technically advanced and complex.

- ▶ **Manual interfaces between internal systems or with external parties:** This includes clearance instructions to customs brokers being provided via email or requesting long-term supplier declarations with large volumes of suppliers by email. Many of these gaps can and should be automated with a targeted GTM solution.
- ▶ **Lack of governance – of data or processes:** Examples of this include unlogged exceptions or unauthorized systems overrides. These issues go beyond user access and find their root causes in organizational accountabilities and governance.

**2. Compare tech and solutions and choose the right ones.**

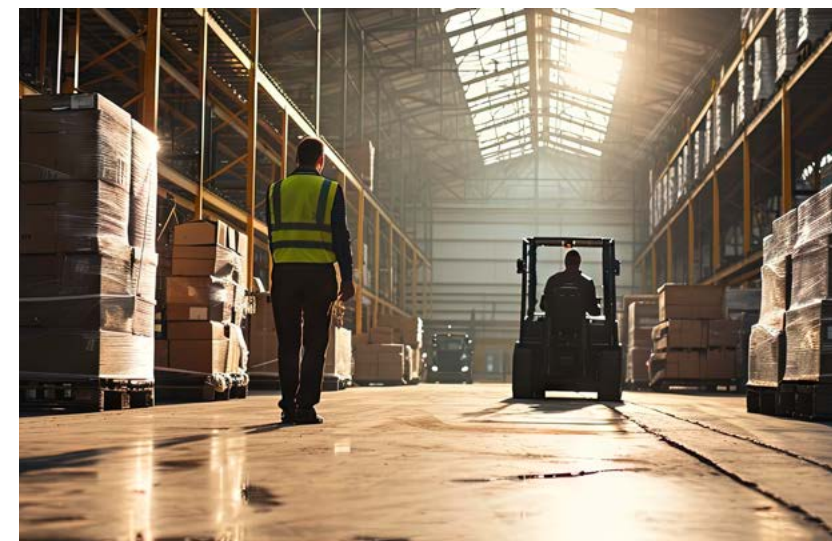
Once an enterprise has established where the gaps are and the cause of these pain points, the next step is to be clear and realistic as to what a solution can and cannot deliver, which solution can deliver with the best outcome, and when that outcome can be delivered.

When it comes to choosing the right solution, it is standard practice to conduct a cost-benefit analysis. The below two considerations might be helpful:

1. Remember that cost and benefit can go beyond license and duty savings.
2. Consider the impact of adopting the solution (e.g., change effort), prerequisites and dependencies as part of the evaluation.

Below is an inexhaustive list of elements to evaluate:

Aspects for evaluation	What it includes
<b>Cost</b>	License, trade content, cost of implementation, cost of maintenance and future cost of upgrade
<b>Benefit</b>	Operational efficiency, reduction of penalties, reduction of human errors, improved duty optimization and reduction of third-party costs
<b>Impact</b>	Impact on existing processes, impact on people, and impact on trade teams and other business functions
<b>Pre-requisites</b>	System (e.g., architect) prerequisites and business organizational prerequisites
<b>Dependencies</b>	Other in-flight projects and planned systems changes, and wider (i.e., non-system-related) business transformation initiatives (e.g., operating model, human capital)





The evaluation needs to be considered in the specific context of the business itself. As advisors who frequently support businesses with evaluating solutions, our view is always that there is no such thing as the perfect solution in all circumstances – only what is right for the individual business.

Naturally, not all elements in the cost-benefit analysis exist in explicit numbers. However, we find that quantifying the various cost and benefit elements into figures to the extent possible can facilitate direct comparisons between possible solutions. It also helps to strengthen the credibility of the analysis and, eventually, the business case where a solution is recommended for adoption.

Where it makes sense, the evaluation should also be given a long-term lens. For example, an urgent gap usually requires a quick fix, but a quick fix may not align with the long-term strategic objectives of the business.

It is common to see localized and customized fixes and patches as a result of evolving requirements from the trade team, either directly on their ERP systems or built as a solution outside the ERP. For example, a bespoke solution related to commodity codes gets built, and a different customized solution for BOM analysis is implemented at a later stage. When new patches are added, ensuring they integrate (or are at least compatible) with the existing patches can be a challenging and costly task.

Another major downside can arise when the business goes through enterprise-wide systems migration or transformation (e.g., to SAP S/4HANA), where

significant additional effort may be required to capture all these customizations. Multiple localized customizations, each taking a shorter time to implement, can present different cost-benefit dynamics compared to one comprehensive suite of solutions that takes longer to adopt.

### 3. Understand that technology implementation is never simple or fast.

Looking at wider enterprise transformations in the technology and digital space, it could be said, empirically, that these major transformations have not always been successful. There can be many reasons for this, but a few common lessons learned include:

- ▶ **A lack of a clear vision – the "why":** Why the technology is being implemented is often not clearly identified or not clearly communicated to the people and processes that are going to be affected by the transformation. The transformation leaders need to be able to articulate what the outcome will be for the business and directly identify the correlation between the transformation and such business outcomes.
- ▶ **Unclear roles and responsibilities:** Digital transformation is by no means just an IT transformation. Many business users or business process owners do not understand what is required of them in the process. The consequence is often a gap in communication that could lead to missing key design requirements.

- ▶ **Underestimating the change impact on people:** While the use of technologies may reduce the need for manpower in the long term, the implementation process can often mean taking human resources out of their day-to-day responsibilities.

When it comes to adopting trade technologies and automation solutions, these general transformation lessons can help enterprises.

As we have said, it is critical to clearly articulate the why, which is not only what it means for the trade team but also for the wider organization. This is an important first step that should not be skipped. The successful implementation and subsequent use of trade technologies heavily depend on the rest of the business. Experience has shown that trade solutions implemented independently of the wider organization simply cannot be sustained in the long term. Instead, we typically find the most successful implementation and adoption of a trade technology preceded by the trade team's ability to translate the benefit from customs language into business language, for example, by explaining the direct correlation between an automated trade process such as broker instruction with reduced shipment delays and demurrage costs.

Technology is an essential part of the three pillars of a trade function together with people and process. These pillars supplement and influence each other. Understanding the impact of technology on people and process, and the dependency of each pillar on the others, is essential to making holistic decisions. For example, when a systems implementation is adopted at large scale, how does that impact the



organizational structure of the trade team in the short term and the long term? If certain trade processes are automated, does that pose a risk to the job security of existing talent? Or does it free up the team to focus on other trade areas?

Organizations can expect these questions from the trade team and senior management, and it is important that trade function leaders have answers that can provide clarity. Given a natural inclination in many people to resist change, we have seen the most successful technology transformations in trade functions underpinned by cultural change. Especially for the large-scale transformations, having a number of change champions getting behind a common vision and anchoring it in the culture of the team can accelerate the transformation journey and significantly reduce potential challenges.

#### Where to start

Much as many global trade executives would love to have a blank check and automate all customs processes, it can be hard to know where to start. Here are our suggestions, based on the projects we have helped our clients undertake.

First, start with the baseline assessment, followed by a rigorous needs analysis. Making sure you have a watertight business case, with measurable benefits and key performance indicators, will benefit the business and reduce issues later in the process.

Secondly, connect with the business. This includes getting buy-in from stakeholders and even leveraging wider transformation initiatives, a common one being SAP S/4 transformation. Despite the obvious upsides of trade technologies and automation, their adoption is not always a top priority for the enterprise as a whole. Sometimes this is due to conflicting agendas, where resources such as budget and staff are constrained. Being part of a bigger transformation where organization-wide changes are expected can deliver economies of scale and make the project more feasible.

And, above all, understand your people and bring them along on the journey. Transformation can only be successful if the people transform with it. ■

#### For additional information, please contact:

**Shenshen Lin**  
+ 44 782 725 4521 | [slin1@uk.ey.com](mailto:slin1@uk.ey.com)

**Shobhit Arora**  
+ 44 207 951 7930 | [shobhit.arora@uk.ey.com](mailto:shobhit.arora@uk.ey.com)

# Thirteenth Ministerial Conference: Functioning of the multilateral trading system and future work of the World Trade Organization

Trade ministers from 164 states and territories attended the World Trade Organization's 13th Ministerial Conference (MC13) in Abu Dhabi, United Arab Emirates (UAE), from 26 to 29 February 2024. Ministers managed to agree on modest outcomes, avoiding a failed ministerial meeting but not making any significant breakthroughs on important issues, such as agriculture, fisheries subsidies and dispute resolution.

## What was agreed

In the final MC13 Ministerial Declaration,<sup>1</sup> World Trade Organization (WTO) members agreed to a number of measures, including:

- ▶ **Extending the e-commerce moratorium:** WTO members agreed to extend the moratorium on imposing customs duties on cross-border electronic transmissions for another two years. Given the challenges in extending the moratorium at MC13 and the inclusion of language assuming the expiration of the moratorium, there is a likelihood it ends in 2026 at MC14.
- ▶ **Easing rules for least developed countries (LDCs):** One of the challenges LDCs report as they graduate from preferential trade regimes is eligibility to access special funding. The new measures agree that graduated LDCs retain their access to WTO technical assistance programs and special dispute procedures for three years after graduation.
- ▶ **Welcoming two new WTO members:** Comoros and Timor-Leste formally joined the WTO at MC13. Companies operating in or with these economies are likely to have expanded growth opportunities in the years ahead.

<sup>1</sup> 13th WTO Ministerial Conference, *WTO website*. [Find it here](#)



### What wasn't agreed

WTO members did not reach consensus on some important topics where members had undertaken intensive work prior to the ministerial meeting. These included:

- ▶ **Dispute settlement:** Many delegations were focused on WTO reform and re-establishing a functioning dispute settlement system, as these efforts are seen as necessary to maintain the WTO as a core pillar for the functioning of the global economy. Unfortunately, WTO members were only able to agree to continue talking and reiterated the commitment to restoring the dispute settlement pillar of the organization in 2024.
- ▶ **Fisheries subsidies:** Some WTO members submitted their notice of ratification to the WTO's 2022 Agreement on Fisheries Subsidies, bringing the total to 71 members (at the time of writing) that have agreed to eliminate harmful fisheries subsidies contributing to the collapse in global fish stocks. Unfortunately, 109 members are required to ratify the agreement, so the agreement has not yet taken effect. Similarly, there was no agreement to extend this to phase out subsidies that have contributed to fishing fleet overcapacity.
- ▶ **Agriculture:** Recent WTO negotiations on agriculture have focused on:
  - ▶ Tackling export restrictions on food
  - ▶ Agricultural production and trade in net food importing developing countries and LDCs
  - ▶ Domestic support to the agricultural sectorAgain, agreement was not reached, and it will remain difficult due to domestic political considerations in many markets.
- ▶ **TRIPS waiver:** The determination not to expand the waiver on Trade-Related Aspects of Intellectual Property Rights (TRIPS) related to COVID-19 vaccines to therapeutics and diagnostics was decided prior to ministers arriving in Abu Dhabi. Future negotiations on this issue are uncertain at this time.

### What happened in the margins

Increasingly, progress at the WTO no longer happens at the multilateral level involving all WTO members. Rather, a varying subset of WTO members pursue negotiations plurilaterally. Significant advancements include:

- ▶ **Domestic Regulation for Services:** India and South Africa dropped their objections to the entry into force of the WTO Agreement on Domestic Regulation for Services, which is a plurilateral agreement among 67 WTO members that seeks to bring increased predictability and transparency to the technical standards, licensing and qualification requirements governing services provision, and procedures that affect service providers operating across borders.
- ▶ **Investment Facilitation for Development:** Ministers representing 123 WTO members issued a Joint Ministerial Declaration<sup>2</sup> marking the finalization of the Investment Facilitation for Development (IFD) Agreement. Ministers also issued a submission asking for MC13 to incorporate the IFD Agreement into the WTO rulebook. Unfortunately, some WTO members blocked this integration, so it will require ongoing discussions.
- ▶ **E-commerce:** Resuming negotiations among the 90 WTO members involved in the Joint Initiative on E-commerce continues to be a priority. The Joint Initiative aims to codify new obligations on facilitating electronic transactions and digital trade, strengthening consumer protection and improving cross-border telecommunications. The withdrawal of US support from several ambitious digital trade and data flow provisions will be considered at future negotiating rounds.

<sup>2</sup> Three-quarters of members mark finalization of IFD Agreement, request incorporation into WTO, *WTO website*, 25 February 2024. [Find it here](#)

- ▶ **Trade and environment:** Trade and environment was one of the most popular topics to be discussed in the margins of MC13, with four groups of WTO members highlighting the progress that has been made, which included the Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade (DPP)<sup>3</sup>; the Trade and Environmental Sustainability Structured Discussions (TESSD)<sup>4</sup>; Fossil Fuel Subsidies Reform (FFSR)<sup>5</sup>; and the Coalition of Trade Ministers on Climate,<sup>6</sup> which launched its menu of voluntary actions. MC13 was also an opportunity for a group of developing country WTO members to criticize the imposition of what they deem to be protectionist unilateral trade-related environmental measures, such as the EU's CBAM.<sup>7</sup>
- ▶ **Micro-, small- and medium-sized enterprises:** The MSMEs presented their ongoing work concerning the integration of MSMEs into Authorized Economic Operator (AEO) programs and MC13, including the official launch of the Compendium of Financial Inclusion Initiatives to support women-led small businesses.

### What's next?

In many ways, the hard work starts again after the ministerial conference. WTO members will return to Geneva, Switzerland, where the organization is headquartered, tasked with fulfilling the forward-looking reform agenda for the organization set out in the MC13 Ministerial Declaration, picking up where their ministers left off.

WTO ministers are set to hold the next Ministerial Conference in 2026 in Cameroon.

### Action for businesses

Experience shows that a well-informed business community can play a significant part in influencing its government's position on trade issues. By including the WTO on the agenda when engaging the government, businesses have a real opportunity to shape the course of WTO negotiations, which will have a direct impact on their operations.

The WTO is also a rich source of information that can help businesses to build a trade strategy that meets their objectives. There are numerous trade databases filled with information ranging from the tariffs in a particular country to lists of the most recent trade-related standards and regulations being implemented by WTO members. Having access to the right advice and support is critical to navigating the global trade landscape. ■

### For additional information, please contact:

George Riddell | + 44 20 7951 9741 | [george.riddell@uk.ey.com](mailto:george.riddell@uk.ey.com)

3 Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade, *WTO website*. [Find it here](#)

4 Trade and Environmental Sustainability Structured Discussion (TESSD), *WTO website*. [Find it here](#)

5 "Fossil Fuel Subsidy Reform (FFSR) Initiative," *WTO website*. [Find it here](#)

6 *Coalition of Trade Ministers on Climate website*. [Find it here](#)

7 "Ministerial Declaration on the Contribution of the Multilateral Trading System To Tackle Environmental Challenges," *WTO website*. [Find it here](#)

# Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict at a global scale

This is the first in a series of three articles relating to retrospective transfer pricing (TP) adjustments and customs valuation.

Out of the blue, John, the Head of Global Trade of our fictional client, Simply Make It Ltd, was approached by his colleague Susie, the Head of Tax. “John,” Susie said with a relaxed tone in her voice, “Just to let you know that our sales teams in China, Brazil and Germany did a tremendous job last year and that profits went through the roof. Therefore, we will issue debit notes accordingly to bring local profits back to the accepted range. If there is anything to do from your customs standpoint, please take it up with the local team.”

Many professionals working in a trade and tax environment will be familiar with this or similar situations. Retrospective TP adjustments are performed predominantly at year-end but also at other times, such as with the closing of a quarter and sometimes even on an ad hoc basis. The question of the interdependency between the transfer price and the customs value and the potential implications on each of any adjustments therefore comes up on a regular basis.<sup>1</sup>

However, the right course of action is often unclear, especially on the question of whether and how the customs value should be adjusted to take into account adjustments to the transfer price. The matter certainly has not been clarified by the various discussions and ambiguous interpretations of customs authorities driven by the Hamamatsu decision of the European Court of Justice (CJEU),<sup>2</sup> nor by the interpretation of the case by the German Federal Fiscal Court, as expressed in its decision published on 17 May 2022.<sup>3</sup>

As consultants, the interface between transfer pricing and customs valuation has become a big part of our trade advisory business, and the increasing controversy and court cases on this topic prove that it is a major concern for businesses and professionals alike. Therefore, we decided to conduct a survey of 40+ jurisdictions within the EY network to better understand the wider impact of transfer pricing adjustments for related party transactions and attempt to view this conflict on a global scale.



1 For the purpose of this article, we have assessed the question of the impact of adjustments for the customs value for retrospective TP adjustments only. Prospective adjustments are not a focus area, since typically new prices are accepted by customs authorities, if they fall within a certain range. Nonetheless, the question remains and holds great potential for discussion, whether such prospective TP adjustments need to be split into the area of pre- and post-adjustment.

2 CJEU Hamamatsu Photonics, case C-539/16, 20.12.2017. See also ‘Germany: Hamamatsu – the journey nears its end,’ *TradeWatch* Issue 2 2022, page 43. [Find it here](#)

3 BFH Ruling, VII R 2/19 V, 17 May 2022. See also ‘Hamamatsu – a long journey about to end?’, *TradeWatch* Issue 3 2022, page 63. [Find it here](#)

Given the wide scope of the analysis, we have split our comments into three parts, which will be published in three separate articles:

*Part 1* summarizes the case law in connection with the impact of retrospective TP adjustments on the customs value and the subsequent and most recent developments in Germany. This is what triggered the international survey and outlined the parameters and areas of focus for it. It is interesting to note that following the Hamamatsu decision, which denied a refund for downward adjustments, German importers and lawyers have also challenged the treatment of uplift adjustments. While the local fiscal court has published its decisions on this matter in favor of the taxpayer, the German customs authorities have appealed the ruling and the case is now with the German Federal Fiscal Court to ultimately decide.

*Part 2* will elaborate on the analysis of the country inputs as part of the survey and shed light on selected areas by pointing out what we consider to be the most surprising and relevant facts and attempts to rate the outcomes in an overall overview of the country specifics. In addition, as this may add value not only for global trade experts, but also for transfer price practitioners, we will group and bundle the countries into clusters.

*Part 3* summarizes the results as a type of overview and lists the EY customs professionals taking part in this survey who may provide more in-depth review of the local details and specifics on request.

### **The Hamamatsu Court Case – a recap of the most relevant facts**

In the *Hamamatsu Photonics Case*, the CJEU elaborated on the question raised by the local German Fiscal Court in Munich, on the impact of retrospective (downward) TP adjustments as per TP guidelines for the customs value in related party transactions.

Summarizing the decision, the CJEU concluded that a lump-sum adjustment made after the end of the accounting period prevents the use of the transaction value method to calculate the customs value, since it is not possible to know whether an adjustment at the end of the accounting period would be made up or down. With this decision, the highest court of the European Union (EU) went in the opposite direction to the position taken over the years by the World Customs Organization (WCO), which has tried to establish a practical solution for related party transactions by aligning TP and customs valuation considerations and accepting transfer prices as the basis for the transaction value for customs valuation purposes under certain conditions.<sup>4</sup>

The German Federal Fiscal Court decided, on the basis of the CJEU ruling, that a subsequent adjustment of the transfer price is not suitable to prove a lower transaction value applies to the import for customs duty purposes, and does not entitle Hamamatsu for a refund.<sup>5</sup> The court argued that the transaction value is regarded as the price actually paid or payable for the goods *at the time of acceptance of the customs declaration*. Changes in factual or legal circumstances that occur only after

payment of the customs duty as the customs value relates to a specific transaction are not to be taken into account for the transaction value *at the time of acceptance of the customs declaration* and therefore cannot be subject to refund.<sup>6</sup>

As a consequence, according to the German court, it should be noted that the importing party is not eligible for a refund if the adjustment to the price is not known *“at the relevant point in time.”*<sup>7</sup> The court goes so far as to say<sup>8</sup> that *“such a transfer price adjustment, which serves as an income tax instrument to avoid disputes and to reduce transfer price risks, remains without influence on the relevant customs value within the framework of all customs valuation methods – because of the product- and date-related nature of customs valuation.”*<sup>9</sup>

Therefore, according to the CJEU and the German Federal Fiscal Court, the customs valuation determination with the transaction value method relates strictly to a product- and date-related transaction.

4 Refer for instance to the WCO Guide to customs valuation and transfer pricing, publicly available at the website of the World Customs Organization ([wcoomd.org](http://wcoomd.org)).

5 BFH Ruling, VII R 2/19 V, 17 May 2022. The questions were initially raised by the local fiscal court in Munich and subject to its ruling, 14 K 2028/18, 15 November 2018. This ruling has been appealed to the Federal Fiscal Court in Germany (BFH). See detailed discussion in ‘Hamamatsu – a long journey about to end?’, *TradeWatch* Issue 3 2022, page 63. [Find it here](#)

6 BFH Ruling, VII R 2/19 V 17 May 2022, para. 42.

7 The relevant point in time as part of this article is always referring to the time of acceptance of the customs declaration.

8 Note from the authors: We consider it to be remarkable that there was no need to assess this for other valuation methods, which nonetheless were included in this statement.

9 BFH Ruling, VII R 2/19 V 17 May 2022, para. 59.

**Recent update in German case law – How are the German customs administration and courts applying the Hamamatsu Case reasoning for uplift adjustments?**

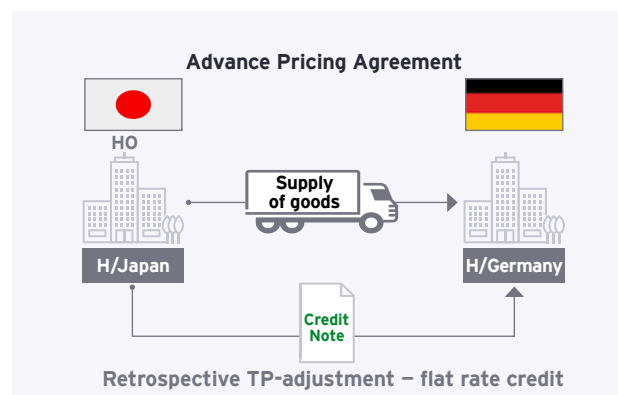
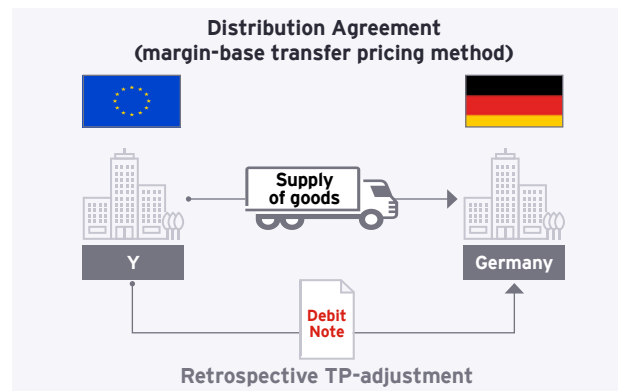
Following this landmark decision by the highest fiscal court in Germany that downward adjustments of the intercompany price do not result in a duty refund, uplift adjustments, which in the past would typically result in a retrospective payment to the customs authorities, have been open to challenge by businesses.

The German customs authorities still uphold the opinion that in the case of uplift TP adjustments, the customs value needs to be corrected retrospectively as an uplift adjustment indicates that the initial price did not reflect an arm’s-length price.<sup>10/11</sup> However, meeting the arm’s-length principle substitutes the requirement that enables the importer to refer to the transfer price to take it as a basis for the customs value within the transaction value method.

This set of facts has been brought to court and was subject to a local fiscal court decision by the German local fiscal court in Munich.<sup>12</sup> Similar to the Hamamatsu case, in this situation, an intercompany price had been established following a margin-based transfer pricing methodology between two related parties, which had been retrospectively adjusted as per the applicable TP provisions to reach the agreed margin. Therefore, the actual turnover achieved by the importer was higher than that which was expected and agreed. Consequently, the initially agreed transfer price was too low for the purposes of profit allocation and corporate income tax (following OECD-approved TP Methodology) and needed to be

retrospectively adjusted upward. For this purpose, a debit note had been issued.

A visualization of the fact patterns in both cases aims to facilitate the comparison:



The German customs authorities decided as the outcome of a customs audit that the importer was required to adjust the previously declared and assessed customs value to a higher customs value due to the debit note, which would result in a

retrospective uplift adjustment of the customs value. A case was then filed to the local fiscal court against this decision by German Customs.

The plaintiff brought forward arguments mainly driven and inspired by the reasoning in the CJEU the Hamamatsu Photonics court case and the following German court cases based on this. Based on this, they argued that retrospective adjustments to the customs value due a TP adjustment driven by a margin-based methodology to establish the adequate profit for corporate income tax purposes are not possible, as it cannot be known at the relevant point in time whether at the end of the accounting period there will be an adjustment to the price and whether any adjustment would be made up or down.

The German customs authorities on the other hand argued that the declared customs value can always be subject to a subsequent review by the customs authority within the three-year limitation period from the time of importation (under Article 78, German Customs Code), by taking into account all factual and economic circumstances relevant for the determination of the customs value and the associated data. As part of such a review, the declared customs value has been found to have been established incorrectly. One main reason for this is that the customs administration argued that

10 As such the HZA argues also in the FG München, 14 K 588/20 27 October 2022 case, Rn. 36. and brings forward justification by referencing Section 31 of their internal customs valuation service provision.

11 The German customs authorities usually justify this view with section 31 of their internal customs valuation service provisions, which notes that performed TP adjustments may be seen as an indication that the price has been influenced by the relationship of the parties.

12 FG München, 14 K 588/20 27 October 2022.



the transaction value method is not applicable in cases where the relationship between both parties influenced the price and, in such cases, new circumstances are to be considered for the assessment of the customs value.

The German fiscal court in Munich followed the principles brought forward for the Hamamatsu decision for downward adjustments and the question of whether uplift adjustments are permissible and upheld the action by the plaintiff.

This matter is currently pending with the highest fiscal court in Germany.

### Wrap-up of the German status of the conflict

#### Imports into Germany

The current status of these cases in Germany has created a confusing state for all parties. In the jungle of ambiguity, importers in Germany do not have a reliable guidance on how to deal with retrospective TP-driven pricing adjustments from a customs perspective.

For downward adjustments, the highest fiscal court in Germany decided in its Hamamatsu decision that a subsequent adjustment of the transfer price is not suitable to prove lower transaction and customs values and does not entitle an importer for a refund. At the same time, German Customs authorities still grant refunds of assessed and paid customs duties in cases where credit notes have been issued, provided there is a clear link to a sales contract, which enables a calculation of the adjustment payment. This practice by the German Customs authorities is remarkable as the Federal Fiscal Court following

the ECJ Hamamatsu decision does not leave any room for interpretation that could give rise to granting refunds.

For uplift adjustments, the German Customs authorities generally take the position that the price has been influenced by the relationship of the parties unless the importer can prove that the initial value contained every decisive aspect to value the goods in the decisive moment of importation (to prove that the price at the relevant point in time was adequate and reflects the true economic value). The local fiscal court in this case followed the reasoning of the Hamamatsu case law but the customs authorities' appeal is still pending with the highest fiscal court and a final court decision is still to be awaited.

To sum up, importers are left with uncertainty that also impacts TP. This is due to the lack of clear consequences for the calculation of a retrospective TP adjustment, which is necessary to calculating the adequate profit. From a practical standpoint, this has become almost impossible, as it cannot be foreseen, whether the knock-on effect due to any potential customs duty aspects is relevant or not. This holds true for debit and credit notes (i.e., for uplift and downward adjustments).

#### Exports from Germany and imports into other jurisdictions

Looking beyond the German status of the conflict, this topic opens up a variety of local interpretations. The landscape is heterogenous on how to deal with transfer prices as the basis for the transaction value

method and subsequent adjustments. Considering the general agreement on tariffs and trade (GATT-Valuation agreement) is a global legal source for customs valuation matters, it is remarkable that no clear approach can be seen on a global basis or even throughout regions (such as the EU or APAC<sup>13</sup>). In fact, this issue presents a global challenge.

We are, therefore, of the opinion that it would be short-sighted to limit our commentary on this topic to Germany; instead, we should view this conflict on a global scale. This is why we have decided to conduct a study taking into account various perspectives in different regions and areas globally with the aim of establishing a framework that helps to set out and compare regional differences and similarities and summarize areas of controversy. ■

We are excited to share our insights in our study in the second article in this series, to be published in *TradeWatch* Issue 2 2024. ■

#### For additional information, please contact:

Frank-Peter Ziegler  
+ 49 6196 996 14649 | [frank-peter.ziegler@de.ey.com](mailto:frank-peter.ziegler@de.ey.com)

Katharina Königstädt  
+ 41 582 863 617 | [katharina.koenigstaedt@ch.ey.com](mailto:katharina.koenigstaedt@ch.ey.com)

<sup>13</sup> 'Asia-Pacific: Interplay between transfer pricing and customs valuation,' *TradeWatch* Issue 3 2023, page 18. [Find it here](#)

# EU and US: Export control and sanctions 2023 year in review

The United States (US) and European Union (EU) have deepened their partnership to address critical global challenges involving Russia, Belarus and China. This includes coordinating export control efforts through multilateral channels, such as the Wassenaar Arrangement, the Australia Group, and the Missile Technology Control Regime, as well as the Global Export Controls Coalition (GECC) and the US-EU Trade and Technology Council (TTC). Throughout 2023, the national governments of the US and EU Member States implemented these measures and enforced new provisions.

This article highlights the key export control and sanctions rules implemented by the US and EU in 2023, as well as major enforcement activities relevant to multinational businesses, including key sectors impacted by these measures. We also outline ways companies can improve their export control and sanctions compliance programs to help prevent costly violations and to adapt to future rule changes.

1 "US takes more trade actions against Russia," *EY website*. [Find it here](#)

2 For example, Federal Register: Russian Sanctions: Licensing Policy for the Crimea Region of Ukraine. [Find it here](#)

3 See [Implementation of Sanctions Against Russia Under the Export Administration Regulations \(EAR\)](#) and [Expansion of Sanctions Against Russia and Belarus Under the Export Administration Regulations \(EAR\)](#). BIS carved out very narrow license exceptions for certain mass market items classified under 5A992 or 5D992. BIS implemented several other notable restrictions on business with Russia and Belarus in 2022, including new foreign direct product rules, in-country transfer restrictions, a general policy of denial for license applications with few exceptions, and new license requirements for items not described on the CCL (e.g., luxury goods). A summary of its actions can be found at: [Russia-Belarus-Press-Releases-2022 \(doc.gov\)](#). The US also imposed import restrictions on Russian energy products (e.g., oil, liquefied nature gas, coal), seafood, alcohol, and, and suspended normal trade relations with Russia and Belarus in 2022 resulting in the levy of a 35% ad valorem tariff on all Russian and Belarus imports. "US bans imports of Russia energy products; bans exports of oil refinery equipment to Russia," *EY website*. [Find it here](#)

4 Occupied regions of Ukraine subject to export controls are Crimea and the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR).



## Export controls and sanctions related to Russia and Belarus

### US export controls

In response to Russia's invasion of Ukraine in February 2022, the US and many other countries, including EU Member States, imposed highly restrictive licensing requirements for exports of tangible and intangible goods (e.g., software, technology) destined for Russia, Belarus, and occupied regions of Ukraine, and entities connected to those destinations.<sup>1</sup> These extensive controls build on pre-existing restrictions related to Russia's occupation of Crimea in 2014, among others.<sup>2</sup> A peak was reached in these measures in April 2022 when the U.S. Commerce Department's Bureau of Industry and Security (BIS) implemented a strict license requirement for all items described on the Export Administration Regulation's (EAR) Commerce Control List (CCL) when destined for Russia.<sup>3</sup>

In response to these comprehensive licensing requirements, many multinational corporations decided to cut off business with Russia, Belarus, occupied territories of Ukraine,<sup>4</sup> and entities connected to those destinations, or severely limited such transactions. As a result, exports of goods to Russia and Belarus declined significantly during this period. Between 1 January

2021 and 31 December 2022, exports of goods to Russia declined 74% from USD6,386,000,000 in 2021 to USD1,663,000 in 2022.<sup>5</sup> Similarly, exports of goods to Belarus fell 82% from USD218,000,000 in 2021 to USD40,000,000 in 2022.<sup>6</sup>

Throughout 2023, the BIS continued to implement new export control restrictions on transactions with Russia and Belarus and to strengthen certain rules previously implemented in 2022. BIS implemented a narrowly targeted rule in January 2023 restricting exports of US-origin parts and components to drone manufacturers outside of the US that historically have supplied the Russian military.<sup>7</sup>

In February 2023, the BIS implemented a series of license restrictions applicable to a variety of commercial items (e.g., low technology items) not previously described on the CCL but subject to the EAR (i.e., EAR99<sup>8</sup>). The rule expanded the scope of items requiring export licenses under previously implemented Russian and Belarusian industry sector sanctions and “luxury goods” sanctions to align those rules with controls implemented by US allies and partners. Below is a summary of the key changes:<sup>9</sup>

- ▶ Expansion and clarification of scope for the “Oil and Gas Sector Sanctions” of Supplement No. 2 to 15 Code of Federal Regulations (CFR) Part 746
  - ▶ Among other technical updates, the BIS redefined the scope of items requiring a license to include parts, components, accessories, and attachments, regardless of their Harmonized Tariff Schedule of the United States (HTSUS) Code or HTSUS Description.
- ▶ Addition of 322 HTSUS sub-heading entries to the “Industrial and Commercial Sector Sanctions” of Supplement No. 4 to 15 CFR pt. 746
  - ▶ Three HTSUS Chapters represent 87% of the entries added, including HTSUS Chapter 72 (iron and steel, 21%), Chapter 84 (machinery/parts, 42%), and Chapter 85 (electrical machinery/parts, 24%).
  - ▶ The remaining 13% of entries reside in HTSUS Chapter 73 (articles of iron and steel), Chapter 76 (aluminum and articles thereof), Chapter 87 (vehicles and parts), and Chapter 90 (optical, measuring, checking, precision, medical/surgical instruments and apparatus, and parts).

- ▶ The addition of 276 HTSUS sub-heading entries to the “Luxury Goods Sector Sanctions” of Supplement No 5 to 15 CFR pt. 746
  - ▶ Entries listed in HTSUS Chapter 84 account for 65% of the entries added, and entries listed in HTSUS Chapter 85 account for the remaining 35% of entries added.
- ▶ Expansion and clarification of scope of the “Chemicals/Biologics/Advanced Manufacturing Sector Sanctions” of Supplement No. 6 to 15 CFR pt. 746

In May 2023, the BIS extended export license controls to additional commercial items and expanded other restrictions by:<sup>10</sup>

- ▶ Adding all remaining HTSUS sub-heading entries of Chapters 84, 85, and 90 – totaling an addition of 1,200 HTSUS sub-headings – to the “Industrial and Commercial Sector Sanctions” of Supplement No. 4 to 15 CFR pt. 746, resulting in over 2,000 HTSUS sub-headings that now require an export license
- ▶ Adding chemicals to the “Chemicals/Biologics/Advanced Manufacturing Sector Sanctions” of Supplement No. 6 to 15 CFR pt. 746
- ▶ Expanding the list of foreign-produced items in Supplement No. 7 (Iran UAV controls) to 15 CFR pt. 746
- ▶ Expanding the scope of the Russia/Belarus Foreign Direct Product rule to include destinations in Crimea

<sup>5</sup> “Trade in Goods with Russia,” *U.S. Census Bureau website*. [Find it here](#)

<sup>6</sup> *Ibid.* Similarly, US exports of services to Russia significantly declined by 33% during this period, from USD4,200,000,000 in 2021 to USD2,800,000,000 in 2022.

<sup>7</sup> “Commerce Restricts Foreign-Made Components to Seven Iranian Entities Supplying Drones Used by Russia to Attack Ukraine,” *Bureau of Industry and Security website*. 31 January 2023. [Find it here](#)

<sup>8</sup> CFR 734.3(c): “items subject to the EAR which are not listed on the CCL are designated as ‘EAR99’”.

<sup>9</sup> “Commerce Imposes Additional Export Restrictions in Response to Russia’s Brutal War on Ukraine,” *Bureau of Industry and Security website*. 24 February 2023. [Find it here](#)

<sup>10</sup> “Commerce Expands and Aligns Restrictions with Allies and Partners and Adds 71 Entities to Entity List in Latest Response to Russia’s Invasion of Ukraine,” *Bureau of Industry and Security website*. 19 May 2023. [Find it here](#)

It is worth noting that the BIS further strengthened restrictions on 25 January 2024 through:<sup>11</sup>

- ▶ Adding all remaining 94 HTSUS sub-headings of Chapter 88 (generally, industrial materials and certain aircraft-related items) to the “Industrial and Commercial Sector Sanctions” of Supplement No. 4 to 15 CFR pt. 746
- ▶ Adding antennas, antenna reflectors, and parts thereof classified in HTSUS 8529.10 to the “Iran UAV controls” of Supplement No. 7 to 15 CFR pt. 746
- ▶ Prohibiting the use of *de minimis* treatment for foreign-produced EAR-controlled munitions entries and spacecraft-related items destined for Russia or Belarus

Concurrently with the new rules, the BIS engaged the trade community through direct outreach such as speeches, press releases, and publication of several guidance and “best practice” documents.

By February 2024, BIS license controls on commercial, dual use, and defense items and technologies had become significant and are summarized below:

	Type of export		
	Defense*	Dual-use*	Commercial*
<b>Items controlled when destined for Russia, Belarus, or occupied areas of Ukraine</b>	<p>All defense articles, technical data (including software), and US defense services</p> <p>* As described in the USML</p>	<p>Virtually all dual-use items (hardware, software, technology) with few exceptions for certain food, medicine, and civil telecommunications</p> <p>* As described in the CCL</p>	<p>Virtually all items of strategic military/ industrial significance (e.g., HTSUS Chapters 84, 85, 88, 90, oil, gas, steel, aluminum, chemicals, biologics) plus additional luxury items</p> <p>* As described in the HTSUS</p>

11 **Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR) and Refinements.** The new rules also clarified that “medicines” are excluded from the scope of Supplement No. 6 to 15 CFR pt 746; that fasteners (and similar items) are released from the scope of Supplement No. 2, 4, 5, and 7 to 15 CFR pt 746 but retain license requirements under 15 CFR pt 744.21 (military end users/uses) and other 15 CFR pt 744 requirements; and that luxury goods of Supplement No. 5 to 15 CFR pt 746 will not be considered US-controlled content for purposes of calculating *de minimis* to determine whether items manufactured abroad are subject to the EAR.

12 “Trade in Goods with Russia,” U.S. Census Bureau website. [Find it here](#)

US exports to Russia and Belarus further plummeted as a result of the new rules. From 2021 (pre-invasion) through the end of November 2023 (implementation of comprehensive export controls), US exports of goods to Russia declined 92% from USD6.366 billion in 2021 to USD538 million in 2023, and US exports of goods to Belarus declined 93% from USD218 million to USD16 million in 2023.<sup>12</sup>

While certain sectors are either not subject to the strict license requirements discussed above or can utilize license exceptions allowing for continued sales to Russia and Belarus of items such as food, medicine, and consumer telecommunications (for private sector end users), other considerations complicate such transactions (e.g., sanctions, payment, and logistics restrictions). For non-US-based companies or those with operations outside the US, the new rules also create challenging restrictions and licensing scenarios for items made outside of the US destined for Russia or Belarus when manufacturing involves US-origin parts, components or technology.



### US sanctions

Sanctions imposed on Russia, Belarus, and occupied regions of Ukraine have been swift, widespread and voluminous.<sup>13</sup> The economic sanctions implemented by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) complement the export controls imposed by the BIS and the U.S. Department of State's Directorate of Defense Trade Controls (DDTC), which enforces export controls under the International Traffic in Arms Regulations (ITAR) on items listed on the US Munitions List (USML). By the end of 2023, the OFAC had named nearly 3,400 individuals, entities and vessels on its restrictive List of Specially Designated Nationals and Blocked Persons (SDN List).

Beyond the SDN List, the OFAC also has:

- ▶ Maintained embargoes on Crimea and the DNR and LNR regions of Ukraine
- ▶ Imposed a ban on imports into the US of Russian oil, gas, energy products, seafood, diamonds, gold, and other items
- ▶ Restricted the ability of US persons to provide certain professional services and services involving certain key sectors
- ▶ Restricted financial institutions and certain financial transactions involving Russia<sup>14</sup>
- ▶ Issued approximately 10 general licenses to allow businesses to wind down transactions with newly designated SDNs

Any business contemplating transactions involving Russia, Belarus, occupied regions of Ukraine, or individuals and entities connected to those geographies should conduct restricted party screening prior to engagement. The US Government maintains a free tool that can be used to identify whether prospective business partners are restricted parties under various denied party lists (e.g., SDN, Entity List).<sup>15</sup>

13 "Sanctions Programs and Country Information," *Office of Foreign Assets Control website*; and specifically for recent sanctions, Russian Harmful Foreign Activities Sanctions, Ukraine-/Russia-related Sanctions, and Belarus Sanctions. [Find it here](#)

14 EY coverage of OFAC's ban on investment in Russia can be found at: 'US: Developments in export controls and sanctions,' *TradeWatch Issue 2 2022*, page 24. [Find it here](#)

15 "CSL Search," *International Trade Administration website*. [Find it here](#)

16 EY coverage of the EU's 2022 sanctions packages can be found [here](#).

### EU sanctions packages

In 2023, the EU enacted three further sanctions packages against Russia, taking the total number of EU packages to 12.<sup>16</sup>

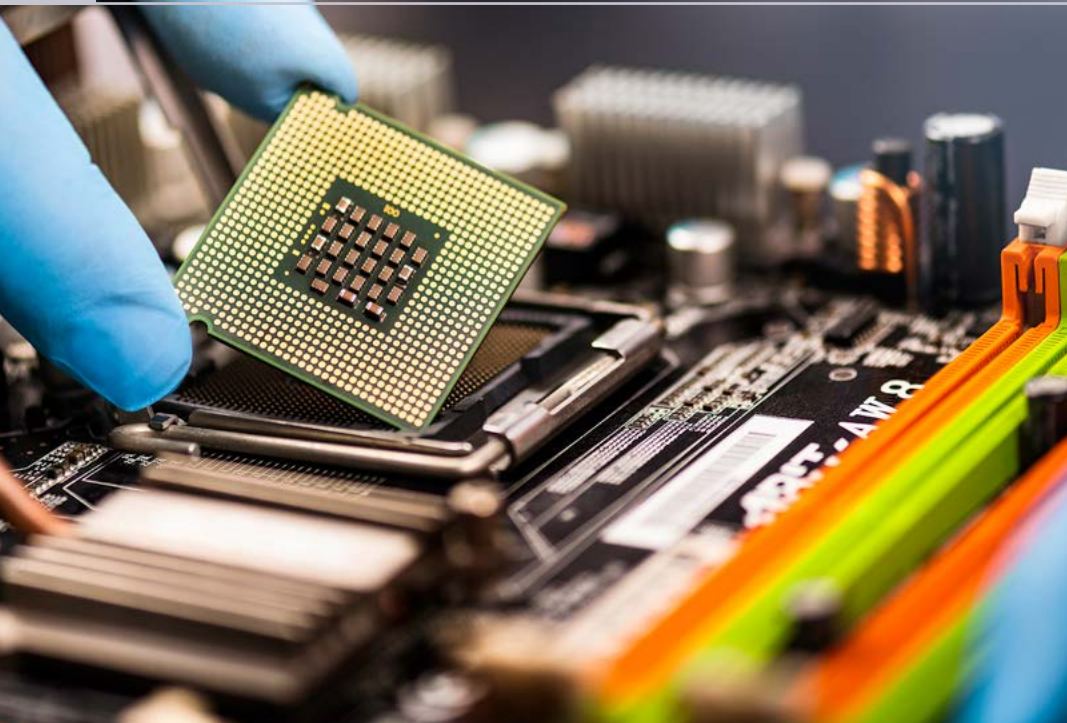
Apart from goods and technologies with a potential military use (e.g., cutting-edge technology), a wide range of luxury, commercial and industrial goods, as well as goods from other sectors such as energy and aviation, are banned for trade with Russia. Currently, there are numerous lists extending to thousands of goods that are prohibited to be sold or exported to Russia while other lists specify a vast number of goods of Russian origin that are subject to purchase and import restrictions. In some cases, even goods manufactured in countries outside Russia but using specific pre-materials with Russian origin are subject to the trade prohibitions unless specific documentary evidence can be provided at the time of their importation into the EU.

With the latest sanctions package enacted at the end of 2023, the sale and supply of software for the management of enterprises and software for industrial design and manufacture, as well as accompanying services, updates and upgrades have been prohibited. The scope of software is broad since the measure provides a non-exhaustive list. Operators might consider the generic descriptions provided rather than focusing more narrowly on the examples listed.

This measure includes the provision of software, therefore covering the provision of Software as a Service (SaaS), whereas that was previously more debatable in the context of export controls.

As of 20 June 2024, the sale, supply, transfer, export, or provision of such software intra-group, for subsidiaries of EU or partner countries located in Russia, will be subject to the obtention of an authorization, while this was previously covered by an exception provided for in the regulation.

In addition, the scope of items for which transit through Russia is prohibited was widened. Furthermore, specific restricted intra-group services (e.g., accounting, auditing, bookkeeping, legal advisory, IT consultancy services, market research and public opinion polling services, technical testing and analysis services, and advertising services) will require a license by the export control authorities if these services are rendered from the EU to subsidiaries in Russia after 20 June



2024. The current “group privilege” for services rendered to subsidiaries of EU-based companies will no longer apply from that date.

The 12th sanctions package introduced a new requirement for EU exporters when selling or exporting specific goods to a third country to contractually prohibit their re-exportation to Russia or their use in Russia, with the exception of several partner countries (currently, US, UK, Japan, Switzerland, South Korea, New Zealand, Australia, Canada and Norway). Moreover, additional comprehensive trade restrictions continue to apply to specific Russia-controlled regions of Ukraine.

To avoid circumvention of these sanctions, the 11th sanctions package also introduced a prohibition to sell, supply or export certain goods to third countries

17 “EU restrictive measures against Russia over Ukraine,” *European Council website*. [Find it here](#)

18 “EU trade with Russia – latest developments,” *Statistics Explained website*. [Find it here](#)

considered to be facilitating the circumvention of EU restrictive measures. The corresponding lists of goods and countries has not been published. It will be completed when it is considered necessary to do so as a last resort measure, and it will be regularly reviewed.

Other prohibitions include, among other things, an oil ban and price cap, as well as transportation and banking restrictions.

According to information published on the EU website,<sup>17</sup> EU restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, or independence of Ukraine now directly apply to over 2,000 individuals and entities. In December 2023, the EU sanctioned an additional 61 individuals and 86 entities, leading to travel bans, freezing of assets located in the EU, as well as a comprehensive trade ban. Considering that the trade ban extends to entities owned or controlled by sanctioned persons or entities, the number of sanctioned targets in Russia is likely much higher than the above figures might suggest.

Due to the sanctions, the value of EU imports from Russia fell by 81% between February 2022 and September 2023, while the value of exports from the EU to Russia fell by 62% in this period.<sup>18</sup>

While the initial sanctions packages against Russia and Belarus were somewhat harmonized, the trade restrictions against Russia have become much more comprehensive compared with those issued against Belarus.

In 2023, an export ban against Belarus on goods and technology suited for use in aviation and the space industry was introduced, along with further export restrictions on goods used by Russia for its war against Ukraine. These include semiconductor devices, electronic integrated circuits, manufacturing and testing equipment, photographic cameras, optical components, as well as specific machinery and tobacco products. In addition, specific products are subject to an import ban, including petroleum products, potassium chloride products, wood products, and iron and steel products.

With respect to Belarus, 233 individuals and 37 entities have been designated under the EU sanctions regime as of February 2024.

### Export controls targeting China

#### US

In October 2022, the US imposed precisely targeted license restrictions for exports of advanced technology semiconductor chips and computing items containing such chips, certain semiconductor chip production equipment, and related software and technologies, when destined for China.<sup>19</sup> The rules target major Chinese semiconductor and artificial intelligence manufacturers with the objective of “restricting China’s ability to obtain critical technologies to modernize its military capabilities in ways that threaten the national security interests of the United States and its allies.”<sup>20</sup> Those rules, which span nearly 140 pages, were significantly updated and expanded by the BIS one year later in October 2023.<sup>21</sup>

The restrictions on China were implemented through a series of Export Control Classification Number-based (ECCN) license and end-use controls (15 CFR § 744.23), as well as restrictions on “US Person” services (15 CFR § 744.6), and the October 2023 changes were intended to simplify, clarify, and strategically expand those restrictions. Key changes, among others, include:

- ▶ Adding destinations subject to export license requirements including several Middle Eastern countries and Russia
- ▶ Adding chips that require a license for export by lowering the criteria triggering a license requirement (i.e., performance capabilities)
  - ▶ New license exceptions were introduced for some of these chips.
- ▶ Adding chip-making equipment that requires a license for export

19 “Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification,” *Federal Register website*. [Find it here](#). EY coverage of the October 2022 rules is available at [US Implements new technology export controls on China](#) and *TradeWatch* Issue 3 2022, page 34. [Find it here](#)

20 *Ibid.*, describing China’s use of advanced computers for its military modernization efforts, military decision making, planning, and logistics, cognitive electronic warfare, radar, signals intelligence, and jamming, as well as China’s use of supercomputers to improve calculations in weapons design and testing including for WMD such as nuclear weapons and hypersonics and other advanced missile systems.

21 “Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections,” *Federal Register website*. [Find it here](#)

- ▶ Adding license controls on certain advanced chip-making equipment produced outside the US when it incorporates any US-origin content
  - ▶ Japan has a limited exception.
- ▶ Lowering certain end-use controls by replacing the license requirement for *all items subject to the EAR* used in production of *any* chip-making equipment listed on the CCL with *all items described on the CCL* used in production of *certain “front-end”* chip-making equipment
- ▶ Narrowing of the license requirements for US Person activities

When the US implemented these export controls on China, it did so on a unilateral basis. By July 2023, both the Netherlands and Japan had implemented similar but not identical export restrictions. Other countries, including key US partners and allies, have not elected to follow suit. While the US is expected to continue to refine its controls in consultation with industry stakeholders, enforcement of the new rules has become a priority.

#### EU

There were no notable developments on an EU level in 2023 in the area of export controls and sanctions toward China. Export licenses for military items are generally not issued by the Member States.

For dual-use items, an export license requirement continues to apply as is the case for any third country outside the EU. On a national level, the Netherlands has introduced additional export control measures for advanced semiconductor manufacturing equipment. Starting from 1 September 2023, these items are subject to a national authorization requirement.

### Other key export control and sanctions changes

#### US export controls

The BIS made other important export control modifications in 2023, including updates to the CCL to align US export controls with previous decisions of the Missile Technology Control Regime, Nuclear Group, and Australia Group. Three rules issued on 8 December 2023 generally liberalize the export licensing

requirements for items relevant to companies in the life science, aerospace, defense, and nuclear sectors, and include:

- ▶ Removal of export license requirements for certain pathogens, toxins, and related genetic materials when destined for Australia Group countries<sup>22</sup>
- ▶ Removal of export license requirements for several “Crime Control” items when destined for Austria, Finland, Ireland, Liechtenstein, South Korea, Sweden, or Switzerland<sup>23</sup>
- ▶ Alignment of ECCN-based license controls with recent Missile Technology Control Regime control list changes impacting six ECCNs (1C111, 2A101, 2B119, 6A107, 9A101, 9E515)<sup>24</sup>
- ▶ Addition of license exception eligibility for additional countries for certain missile technology items<sup>25</sup>
- ▶ Proposal to revise License Exception Strategic Trade Authorization (STA) to expand use by the trade community<sup>26</sup>

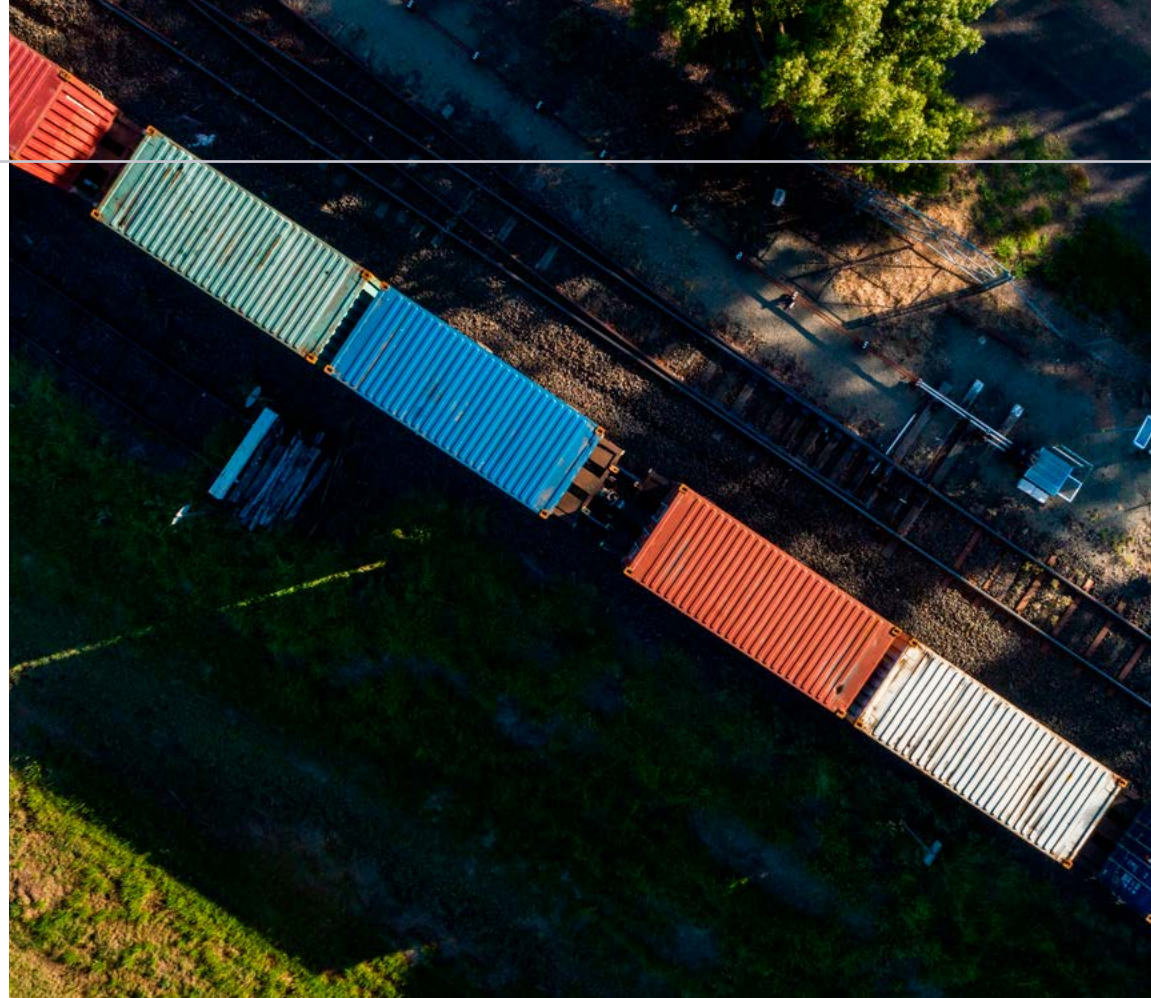
Companies in the life sciences sector should also be aware that the BIS proposed a change to ECCN 2B352 to impose export license controls on certain automated peptide synthesizers used in biotechnology research and development<sup>27</sup> and issued an Advisory Opinion to clarify the scope of export license controls applicable to genetic elements classified under ECCN 1C353.<sup>28</sup>

Key changes in 2023 impacting aerospace and defense companies include the DDTC’s removal of certain high-energy storage capacitors from Category XI(c) (5) of the USML,<sup>29</sup> and a consolidation and restructuring of the purposes and definitions section of the ITAR.<sup>30</sup>

### US sanctions

Similar to the OFAC’s SDN List, the BIS imposes end-user restrictions through the designation of individuals and organizations on the Entity List. During 2023, the BIS added over 800 new entries to the Entity List with Russia and China accounting for approximately 75% of all new entries.<sup>31</sup>

An Executive Order (EO) issued in August 2023 directed the U.S. Department of the Treasury to issue rules restricting outbound US investments in Mainland



22 “Allied Governments Favorable Treatment: Revisions to Certain Australia Group Controls; Revisions to Certain Crime Control and Detection Controls,” *Federal Register website*. [Find it here](#). The AG currently has 43 members.

23 Ibid.

24 “Export Administration Regulations for Missile Technology Items: 2018, 2019, and 2021 Missile Technology Control Regime Plenary Agreements; and License Exception Eligibility,” *Federal Register website*. [Find it here](#)

25 Ibid.

26 “Proposed Enhancements and Simplification of License Exception Strategic Trade Authorization (STA),” *Federal Register website*. [Find it here](#)

27 “Section 1758 Technology Export Controls on Instruments for the Automated Chemical Synthesis of Peptides,” *Federal Register website*. [Find it here](#)

28 Letter, *Bureau of Industry and Security website*, 25 September 2023. [Find it here](#)

29 “International Traffic in Arms Regulations: U.S. Munitions List Targeted Revisions,” *Federal Register website*. [Find it here](#)

30 “International Traffic in Arms Regulations: Consolidation and Restructuring of Purposes and Definitions-Final,” *Federal Register website*. [Find it here](#)

31 See [eCFR: Supplement No. 4 to Part 744, Title 15 – Entity List and Consolidated Entity List \(doc.gov\)](#). Counts reflect new Entity List “entries” in 2023 (i.e., a new entity, or new alias or new address for an existing entity). BIS stated that the number of new entities added to the Entity List in 2023 was 465 parties. [file \(doc.gov\)](#).



China, Hong Kong, and Macao involving sensitive technologies and products including semiconductors and microelectronics, quantum information technologies, and artificial intelligence.<sup>32</sup> Concurrent with the EO, The Treasury issued an Advance Notice of Proposed Rulemaking in the Federal Register but as of 1 February 2024 it had not released or implemented restrictions.

Under EO 14115, issued in February 2024, the Department of State imposed financial sanctions against individuals directing or participating in violent actions in the West Bank. The prohibitions include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of the blocked persons. All entities that are owned, directly or indirectly, by the blocked persons are also in scope.

### EU

Through the publication of a first compilation of EU Member States' national export control lists on 20 October 2023, the EU has strengthened new "autonomous" controls at the EU level.<sup>33</sup> The publication of the list means that individual Member States are now able to impose authorization requirements on exports of items included in other Member States' national control lists, as long as these are included in the EU Commission's own compilation. The first list includes controls by the Netherlands on machines to make semiconductors, as well as Spanish controls on quantum computing, additive manufacturing and other emerging technologies. As a result, it can be expected that national controls of goods that are not included in the EU list of dual-use controlled items will increase in the future.

In December 2023, the EU Council and the European Parliament concluded negotiations for EU legislation introducing criminal offenses and penalties for the violation of EU sanctions.<sup>34</sup> The provisional agreement has been submitted to the Member States' representatives for endorsement. Should it be approved, the legislation will then be formally adopted by the Council and European

<sup>32</sup> "Executive Order 14105 of August 9, 2023," *Federal Register website*. [Find it here](#)

<sup>33</sup> "EU enables coordinated export controls by compiling national lists," *European Commission website*. [Find it here](#)

<sup>34</sup> "Council and Parliament Reach Political Agreement to Criminalise Violation of EU Sanctions," *European Council website*, 12 December 2023. [Find it here](#)

<sup>35</sup> "White Paper on Export Controls," *Circabc website*. [Find it here](#)

<sup>36</sup> "Civil Penalties and Enforcement Information," *Office of Foreign Assets Control website*. [Find it here](#)

Parliament. The proposed legislation stipulates that Member States must define certain actions as criminal offenses, such as trading sanctioned goods, providing prohibited financial services, or performing transactions with sanctioned states or entities. It is the obligation of Member States to ensure that violating EU sanctions is punishable by effective, proportionate, and dissuasive criminal penalties. The maximum penalty for intentional violations must provide for a prison sentence with liability and sanctions also provided for legal persons.

Recently, the EU Commission published a White Paper on Export Controls outlining how to make EU export controls more effective at safeguarding the EU's security interests.<sup>35</sup> Among other things, the aim is to address the risk of having a patchwork of export controls in the EU by strengthening the EU's uniform controls. One suggested measure is to include on the list of EU controlled items those items that were not adopted by the multilateral export control regimes due to the blockage by certain Member States, but that were supported by Member States within those regimes. Moreover, better political coordination on export controls is desired.

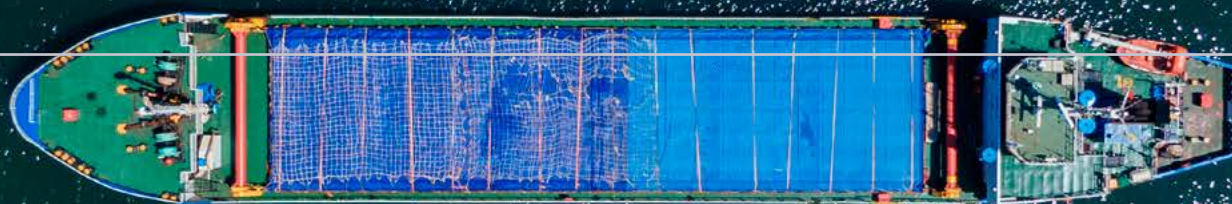
Several EU Member States support the adoption of sanctions against extremist Israeli settlers. While no unanimity on this topic among the EU Member States has been reached so far, France, Belgium, Spain, Ireland and Germany announced they are ready to adopt restrictive measures unilaterally. On 13 February 2024, France adopted sanctions against 28 individuals, including an administrative ban on entering French territory.

Former EU Member State the United Kingdom (UK) has also adopted sanctions against settlers who have committed human rights abuses against Palestinian communities in the West Bank. The measure currently includes travel and visa bans and an asset freeze.

### Enforcement activities

#### US

Civil enforcement actions by the BIS and OFAC during 2023 were numerous and large compared with prior years. The OFAC issued 17 penalties for a total of USD1.54 billion in 2023 – a sharp increase from the penalties issued in 2022 (USD42 million), 2021 (USD21 million), and 2020 (USD24 million).<sup>36</sup> The



BIS announced that its 2023 enforcement actions led to a record number of convictions and increased anti-boycott enforcement.<sup>37</sup>

In February 2023, the BIS announced the launch of the Disruptive Technology Strike Force (DTSF) targeting unlawful exports involving China, Russia and Iran.<sup>38</sup> The interagency effort brings together the National Security Division, the BIS, the FBI, the Department of Homeland Security, and officials from designated US Attorneys' Offices throughout the US with an objective of rigorous criminal and administrative enforcement of US export controls. Within a few months, the BIS announced its first two DTSF actions involving aid to the Russian military.<sup>39</sup>

In April 2023, the BIS announced the largest standalone civil penalty in its history, (totaling USD300 million), for the shipment of electronic hardware to a major Chinese telecommunications company designated on the Entity List.<sup>40</sup> Several other BIS actions and investigations during the year involved shipments of electronics hardware to restricted parties in China. The BIS and DDTC also announced penalties stemming from exports of controlled intangibles (and materials) to China (and other countries) without a license; specifically, defense and dual-use software and blueprints requiring a license under either the ITAR as controlled technical data or EAR as controlled software or technology.

37 "Export Enforcement:2023 Year in Review," *Department of Commerce website*. [Find it here](#)

38 Press Release. The strike force will operate in 12 metropolitan regions across the United States, with oversight and support from the local U.S. Attorneys' Offices in Atlanta, Boston, Chicago, Dallas, Houston, Los Angeles, Miami, New York City, San Jose (CA), Phoenix, Portland (OR), and Washington, D.C.

39 "BIS issues temporary denial order in support of strike force case against defense conglomerate allegedly providing support to Russian intelligence services," *Bureau of Industry and Security website*, 9 June 2023. [Find it here](#); "BIS issues temporary denial order in support of strike force case against Russian national for illegally exporting sensitive U.S.-sourced micro-electronics with military applications to Russia," *Bureau of Industry and Security website*, 31 August 2023. [Find it here](#)

40 "BIS imposes \$300 million penalty against Seagate Technology LLC related to shipments to Huawei," *Bureau of Industry and Security website*, 19 April 2023. [Find it here](#)

41 Federal Register: Civil Monetary Penalty Adjustments for Inflation. [Find it here](#)

42 Federal Register: Department of State 2023 Civil Monetary Penalties Inflationary Adjustment. [Find it here](#)

Lastly, civil monetary penalties increased for violations of dual-use controls to the greater of USD353,534 or twice the value of the transaction.<sup>41</sup> For violations of defense controls, civil penalties increased to the greater of USD1,238,892 or twice the value of the transaction.<sup>42</sup>

### EU

The enforcement actions within the EU in 2023 focused primarily on violations against export controls and sanctions imposed on Russia. Due to the lack of jurisdiction of the EU itself, the enforcement of sanctions is the obligation of each Member State.

While details on enforcement activities are not published by the authorities, our experience suggests that the underlying causes for such violations may be categorized as follows:

- ▶ A lack of experience with goods-related restrictions: Many businesses outside the industrial or high-technology sectors (such as food and fashion) have been impacted by goods-related restrictions for the first time and do not have the required expertise or processes in place to ensure compliance. This can lead to unintentional violations.
- ▶ Mistakes in manual processes: Compared with the area of list-based sanctions screening, there is only limited automated support available on the market to check the numerous goods-related restrictions that have been successively imposed on Russia within the different sanctions' packages. Manual processes are more prone to mistakes compared with automated controls, especially in the period when a new sanctions package has been introduced.

- ▶ Exceeding the timeline of available wind-down periods: Sometimes an unintentional violation occurs if there is a delay in the shipment of goods with no efficient end-control in place and the applicable wind-down period has expired.
- ▶ A lack of clarity in legal language: Differences in the translation of lists of restricted items can lead to ambiguities as to whether or not an item is covered by the restriction.
- ▶ A lack of understanding on the part of authorities: In some cases, the authorities have alleged there was a violation when at the time of the sale or export the respective sanctions package had not yet been enacted. Sometimes an allegation has been raised looking only at the date of the invoice, which does not necessarily correspond with the date of the sales contract. This shows that even the authorities that administer the sanctions are struggling with the sheer number of cases, as well as the many sanctions packages enacted consecutively.

In most enforcement cases the exported items did not land in Russia but were stopped by customs, and the criminal case was based on the allegation of violating a sales prohibition.

### Actions for multinationals

Companies saw major changes to export control and sanctions rules and strong enforcement actions by government regulators during 2023.

The significant changes and regulatory priorities in the US and EU remain in place as of March 2024. It is therefore critical for companies to assess the impact of recent rules on global operations and to have processes in place to monitor upcoming and future proposed changes to export control, sanctions, and outbound investment rules. Companies should consider reevaluating their existing export compliance program in the light of the recent changes, including:

- ▶ Mapping and assessing current state operations, export processes, and export compliance controls including policies, procedures, work instructions and training

- ▶ Reviewing organizational structure and design, resourcing, and the use of technology against a maturity model and/or industry benchmarks
- ▶ Building or updating an export compliance risk register

A company's detailed review of its export compliance program is critical to identify risk exposure and to define the organization's risk appetite. These factors in turn should inform how a company tailors its internal controls.

Lastly, companies should ensure that they conduct routine audits, self-assessments, pre-export reviews and post-export reviews to prevent or limit violations, especially when there are regulatory or operational changes that impact a company's risk profile. In view of the changes enacted in 2023, this could include testing of internal controls related to:

- ▶ Classification changes
- ▶ Licensing and license exception changes
- ▶ Additional restricted parties
- ▶ Additional restricted end-uses
- ▶ Expanded US extraterritorial export controls (e.g., foreign direct product rules)
- ▶ Changes to *de minimis* rules
- ▶ US person restrictions
- ▶ Enhanced sanctions including restrictions on US services, financial transactions, and other business activities ■

### For additional information, please contact:

Rafik Ahmad | + 49 6196 939 22 586 | [rafik.ahmad@de.ey.com](mailto:rafik.ahmad@de.ey.com)

James Lessard-Templin | + 1 503 414 7901 | [james.lessardtemplin@ey.com](mailto:james.lessardtemplin@ey.com)

Alexandra Vernicos | + 32 475 826 928 | [alexandra.vernicos@be.ey.com](mailto:alexandra.vernicos@be.ey.com)

# How do you drive transfer pricing certainty in uncertain times?

The *2024 EY International Tax and Transfer Pricing Survey* finds businesses need a robust transfer pricing policy to manage new risks.

[Read the article on ey.com.](#) ■



# Insights from EY.com

**Articles and features on a range of trade issues published on EY.com**

*For a better viewing experience, please ensure your browser setting is customized to 'open in a new tab'.*

# Our Global Trade webcasts and podcasts



**CESA: Global Trade webcast – overview of key changes**

25 April 2024

Register [here](#) for the recording



**How tax changes, AI and supply chain impact life sciences companies**

16 April 2024

Register [here](#) for the recording



**EU Deforestation Regulation: supply chain challenges and opportunities**

28 March 2024

Register [here](#) for the recording



**Unpacking the latest plastic packaging regulatory and tax developments**

14 March 2024

Register [here](#) for the recording



**EY Tax Talks: Inflation Reduction Act – monetization benefits for companies across all sectors**

12 March 2024

Register [here](#) for the recording



**The outlook for global tax policy and controversy in 2024**

5 March 2024

Register [here](#) for the recording



**EU Deforestation Regulation: building an effective compliance readiness plan**

23 February 2024

Register [here](#) for the recording



**How ESG initiatives will impact supply chains**

14 February 2024

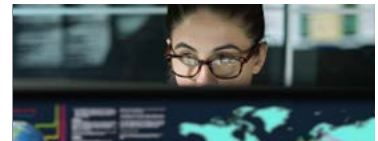
Register [here](#) for the recording



**How to drive value beyond ESG reporting**

06 February 2024

Register [here](#) for the recording



**2024 Geostrategic Outlook: what leaders can do to manage complexity**

23 January 2024

Register [here](#) for the recording

# Tax alerts

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

Tax alerts

Tax alerts

# Americas

## Argentina

- ▶ Argentine Executive Branch sending Fiscal Measures bill to Congress  
(20 March 2024)
- ▶ Argentina eliminates the Economic Financial Capacity analysis for imports  
(23 January 2024)
- ▶ Argentine Executive Branch sends bill to Congress that includes new tax measures  
(11 January 2024)
- ▶ Argentina to issue 'Bonds for the Reconstruction for a Free Argentina'  
(10 January 2024)
- ▶ Argentine Executive Branch sent bill to Congress that includes new Incentive Regime for Large Investments  
(05 January 2024)
- ▶ Argentina implements new economic measures with impact on tax and foreign exchange matters  
(18 December 2023)

## Canada

- ▶ Ontario budget 2024-25 includes measures affecting businesses and individuals  
(28 March 2024)
- ▶ New Brunswick budget 2024-25 holds tax rates steady, adds new credits and expands certain incentives  
(22 March 2024)
- ▶ Quebec 2024-25 budget includes certain tax credit changes  
(14 March 2024)
- ▶ Alberta budget 2024-25 discussed  
(04 March 2024)
- ▶ Nunavut budget 2024-25 tabled  
(29 February 2024)
- ▶ British Columbia budget 2024-25 includes several measures affecting businesses  
(26 February 2024)
- ▶ Canada trade compliance verification list update – January 2024  
(05 February 2024)
- ▶ Canada's Bill C-59 to implement outstanding indirect tax measures receives first reading  
(22 December 2023)
- ▶ Canada's new reporting rules for digital platform operators take effect 1 January 2024  
(01 December 2023)

## Ecuador

- ▶ Ecuadorian President proposes new tax bill, expected to be effective by year-end  
(06 December 2023)

## Global

- ▶ The outlook for global tax policy and controversy in 2024  
(26 March 2024)



# Asia-Pacific

## Asia-Pacific

- ▶ EY Global Tax Controversy Flash Newsletter (Issue 67): transfer pricing and customs valuation – a hot topic in Asia-Pacific (11 March 2024)

## Global

- ▶ The outlook for global tax policy and controversy in 2024 (26 March 2024)



# Europe, Middle East, India and Africa

## Algeria

- ▶ Algeria enacts finance laws with key measures applicable to corporations (14 January 2024)

## Belgium

- ▶ Belgium's mandatory e-invoicing to apply from 1 January 2026 (08 February 2024)

## European Union

- ▶ European Commission issues binding valuation information rules and conditions for decisions on binding tariff and binding origin information (17 April 2024)
- ▶ EU Council approves Corporate Sustainability Due Diligence Directive (19 March 2024)
- ▶ European Parliament adopts new rules on green claims (14 March 2024)
- ▶ European Union: first vote on EU customs reform (27 February 2024)
- ▶ European Commission publishes 'default values' for CBAM transitional phase (05 January 2023)

## France

- ▶ France revises schedule for adopting e-invoicing reform (23 January 2024)

## Germany

- ▶ Germany's early-stage legislative process commences for tax on meat products (07 February 2024)

## Ghana

- ▶ Ghana imposes emissions levy (13 February 2024)
- ▶ Ghana's 2024 Budget Statement tax proposals passed into law (23 January 2024)

## Global

- ▶ The outlook for global tax policy and controversy in 2024 (26 March 2024)

## Italy

- ▶ Italy's plastic tax will enter into force on 1 July 2024 (21 February 2024)

## Poland

- ▶ Poland postpones implementation of mandatory National e-Invoicing System (23 January 2024)

## Saudi Arabia

- ▶ Saudi Arabia further extends tax amnesty initiative through 30 June 2024 (03 January 2024)
- ▶ Saudi Arabia issues guideline for Special Integrated Logistics Zone (22 December 2023)

## South Africa

- ▶ South Africa announces sustainability and energy tax measures as part of 2024 Budget Review (01 March 2024)
- ▶ South Africa commences preferential trade under the African Continental Free Trade Agreement (09 February 2024)

## South Sudan

- ▶ South Sudan enacts Financial Act 2023/2024 (17 January 2023)

## Thailand

- ▶ Thailand's nonbinding consultation discussion with Customs available for HS product classification (13 February 2024)
- ▶ Thailand announces additional criteria for battery powered electric vehicles produced in Free Zones (12 February 2024)
- ▶ Subsidies, duties, excise-tax incentives to encourage development and use of battery electric vehicles (07 February 2024)

## United Kingdom

- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (01 April 2024)
- ▶ UK Trade Talking Points – latest insights from EY UK's Trade Strategy team (25 March 2024)
- ▶ Consultation launched on proposed UK Carbon Border Adjustment Mechanism (22 March 2024)
- ▶ UK Government announces adoption of Carbon Border Adjustment Mechanism (UK CBAM) (22 December 2023)

# Additional resources



## Global trade on ey.com

While indirect tax is a part of everyday life in most countries, the rise of new technologies and expanding global trade adds additional layers of complexity. Learn what EY can do for you, connect with us or read our latest thinking.

[Find out more](#)



## EY Green Tax Tracker

Keep pace with sustainability incentives, carbon regimes and environmental taxes.

[Find out more](#)



## Global Tax News Update

With the global EY organization's Tax News Update: Global Edition (GTNU) subscription service, you'll enjoy access to the same updates that are distributed each day within the EY Tax practice. Choose the topical updates you want to receive across all areas of tax (corporate, indirect, and personal), the jurisdictions you are interested in, and on a schedule that's right for you.

[Find out more](#)



## TradeFlash

Our *TradeFlash* newsletter provides a roundup of the latest developments in global trade around the world.

[Find out more](#)



## Worldwide VAT, GST and Sales Tax Guide 2024

Outlining value-added tax (VAT) systems in 150 jurisdictions, the 2024 edition of our annual reference book, *Worldwide VAT, GST and Sales Tax Guide*, is now available in an interactive map format (as well as to download as a pdf).

[Find out more](#)

Subscribe to receive future editions of *TradeWatch*

[Click here](#)

Additional resources

# Contacts

## Global

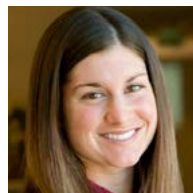
## Trade knowledge team



**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



**Walter de Wit**  
Ernst & Young  
Belastingadviseurs  
LLP, Netherlands  
Global Trade  
Partner



**Jef d'Hollander**  
EY Solutions BV,  
Belgium Global  
Trade



**Sergio Fontanelle**  
EY LLP US, Global  
Trade Leader

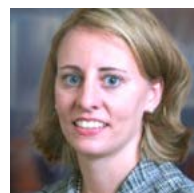


**Sally Jones**  
Ernst & Young  
LLP UK,  
Trade Strategy and  
Brexit Leader



**Michael  
Leightman**  
EY LLP US,  
Global Trade  
Partner

Contacts



**Sharon Martin**  
EY LLP US, Global  
Trade Partner



**Rocio Mejia**  
Mancera, 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



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



**Paul Smith**  
EY Oceania, Global  
Trade Leader

# Contacts

## Global Trade contacts by jurisdiction

Americas			Asia-Pacific	
<b>Argentina</b>	<b>Colombia</b>	<b>United States</b>	<b>Australia</b>	<b>Korea (South)</b>
<a href="#">Sergio Stepanenko ▶</a> + 54 11 4318 1648	<a href="#">Gustavo Lorenzo ▶</a> + 57 14847225	<a href="#">Jay Bezek ▶</a> + 1 704 331 1975	<a href="#">Luke Branson ▶</a> + 61 3 9288 8369	<a href="#">Dongo Park ▶</a> + 82 23 787 4337
<b>Brazil</b>	<b>Costa Rica</b>	<a href="#">Lynlee Brown ▶</a> + 1 858 535 7357	<a href="#">Kylie Norman ▶</a> + 61 2 9248 4765	<b>Malaysia</b>
<a href="#">Ian Craig ▶</a> + 55 21 32637362	<a href="#">Carolina Palma ▶</a> + 506 2459 9727	<a href="#">Sergio Fontenelle ▶</a> + 1 212 466 9780	<b>China Mainland</b>	<a href="#">Jalbir Singh Riar ▶</a> + 60 3749 58329
<a href="#">Fernando Fagiani ▶</a> + 55 11 2573 6913	<b>Mexico</b>	<a href="#">Nathan Gollaher ▶</a> + 1 312 879 2055	<a href="#">Lynette Dong ▶</a> + 86 21 2228 4107	<b>New Zealand</b>
<a href="#">Cesar Finotti ▶</a> + 55 11 2573 6465	<a href="#">Karla Cardenas ▶</a> + 52 664 681 7844	<a href="#">Michael Heldebrand ▶</a> + 1 408 947 6820	<a href="#">Yi Dong ▶</a> + 86 21 2228 4107	<a href="#">Paul Smith ▶</a> + 64 9 348 8409
<a href="#">Gabriel Martins ▶</a> + 55 21 3263 7201	<a href="#">Roberto Chapa ▶</a> + 52 818 152 1853	<a href="#">Michael Leightman ▶</a> + 1 713 750 1335	<a href="#">Yao Lu ▶</a> + 86 139 1015 1448	<b>Philippines</b>
<b>Canada</b>	<a href="#">Rocio Mejia ▶</a> + 52 555 283 8672	<a href="#">Sharon Martin ▶</a> + 1 312 879 4837	<a href="#">Shubhendu Misra ▶</a> + 852 9664 0842	<a href="#">Lucil Vicerra ▶</a> + 63 288 948 115
<a href="#">Sylvain Golsse ▶</a> + 1 4169 325165	<b>Peru</b>	<a href="#">Bryan Schillinger ▶</a> + 1 713 750 5209	<a href="#">Bryan Tang ▶</a> + 86 21 2228 2294	<b>Singapore</b>
<b>The Caribbean</b>	<a href="#">Jorge Nasif ▶</a> + 52 551 101 7327	<a href="#">Prentice Wells ▶</a> + 1 408 947 5438	<a href="#">Hong Li Wang ▶</a> + 86 10 5815 2307	<a href="#">Donald Thomson ▶</a> + 65 6309 8636
<a href="#">Rose Boevé ▶</a> + 599 0 430 5076	<a href="#">Giancarlo Riva ▶</a> + 51 1411 4448	<a href="#">Shane Williams ▶</a> + 1 713 751 5715	<a href="#">Hai Dong Xu ▶</a> + 86 21 2228 3216	<b>Taiwan</b>
			<a href="#">Tina GY Zhang ▶</a> + 86 10 58152197	<a href="#">Vivian Wu ▶</a> + 886 2 2728 8833
			<b>Japan</b>	<b>Thailand</b>
			<a href="#">Yumi Haraoka ▶</a> + 81 3 3506 2110	<a href="#">William Chea ▶</a> + 662 264 9090
			<a href="#">Yoichi Ohira ▶</a> + 81 3 3506 2110	<b>Vietnam</b>
				<a href="#">Anh Tuan Thach ▶</a> + 84 28 3629 7366

# Contacts

Global Trade contacts by jurisdiction continued

Europe, Middle East, India and Africa				
Albania, Bulgaria, Kosovo and North Macedonia	France	India	Middle East and North Africa	South Africa/rest of Africa
Milen Raikov ▶ + 359 2 8177 155	Marguerite Trzaska ▶ + 33 1 46 93 84 32	Ruchi Bhat ▶ + 91 98 6044 1874	Ramy Rass ▶ + 971 4 7010900	Redge de Swardt ▶ + 27 21 443 0637
<b>Austria</b>	<b>Germany</b>	Preetham Chennaveerappa Narasim ▶ + 91 98 8012 0381	<b>Netherlands</b>	<b>Sweden</b>
Theresa Arlt ▶ + 43 1 211 70 1102	Rafik Ahmad ▶ + 49 6196 996 22586	Dhruv Gupta ▶ + 91 98 1080 7942	Walter de Wit ▶ + 31 88 407 1390	Zoran Dimoski ▶ + 46 8 52059260
<b>Belgium</b>	Richard J Albert ▶ + 49 211 9352 17756	Sourabh Jain ▶ + 91 98 1800 9094	Caspar Jansen ▶ + 31 88 407 1441	<b>Switzerland</b>
Antoine De Donder ▶ + 32 2 749 36 90	Robert Boehm ▶ + 49 211 9352 10529	Krishna Kanth Kotagiri ▶ + 91 99 6388 4466	Bastiaan Kats ▶ + 31 88 40 73806	Ashish Sinha ▶ + 41 58 286 5906
Erwin De Vos ▶ + 32 2 774 93 75	Nadin Nottekämper ▶ + 49 211 9352 26138	Suresh Nair ▶ + 91 22 6192 2004	Martijn Schippers ▶ + 31 88 407 9160	<b>Turkey</b>
Jef d'Hollander ▶ + 32 4 851 58 852	Frank-Peter Ziegler ▶ + 49 6196 996 14649	Agneshwar Sen ▶ + 91 98 11167838	Jeroen Scholten ▶ + 31 88 407 1009	Sercan Bahadir ▶ + 90 212 408 53 41
Christina Horckmans ▶ + 32 2 774 93 22	<b>Greece</b>	<b>Ireland</b>	<b>Norway</b>	Yakup Gunes ▶ + 90 212 408 58 38
Philippe Lesage ▶ + 32 2 774 92 69	Nicoleta Merkouri ▶ + 30 697 3773203	Ciarán Behan ▶ + 353 1 2211445	Øystein Arff Gulseth ▶ + 47 982 06 387	Sedat Tasdemir ▶ + 90 212 408 52 57
Kristof Verbist ▶ + 32 2 774 90 86	<b>Hungary</b>	Neil Byrne ▶ + 353 1 2212370	Narve Løvø ▶ + 47 982 06 238	<b>United Kingdom</b>
Keshia Wagner ▶ + 33 6 61 08 49 83	Attila Fulop ▶ + 36 30 559 1364	Colin Doolin ▶ + 353 1 2212949	<b>Poland</b>	Onelia Angelosanto ▶ + 44 161 234 0508
<b>Denmark</b>	Aron Nagy ▶ + 36 1 451 8636	<b>Italy</b>	Slawomir Czajka ▶ + 48 71 711 88 93	Marc Bunch ▶ + 44 20 7980 0298
Anne-Mette Høiriis ▶ + 45 51582559		Alessandra Di Salvo ▶ + 39 335 7361484	<b>Spain</b>	Penelope Isbecque ▶ + 44 113 298 2447
		<b>Kenya/rest of Africa</b>	Pedro Gonzalez-Gaggero ▶ + 34 954 665 246	Sally Jones ▶ + 44 20 7951 7728
		Hadijah Nannyomo ▶ + 254 20 2886000		Shenshen Lin ▶ + 44 20 7951 2063
				George Riddell ▶ + 44 20 7951 9741

Global and Trade  
knowledge team contacts

Americas and  
Asia-Pacific contacts

## EY | Building a better working world

**EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.**

**Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.**

**Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.**

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

*TradeWatch* is a regular newsletter prepared by EY Global Trade groups. For additional information, please contact your local Global Trade professional.

### About EY Global Trade practices

EY teams bring you a global perspective on Global Trade. The Global Trade EY professionals can help you develop strategies to manage your costs, speed your supply chain and reduce the risks of global trade. They can help to increase trade compliance, improve import and export operations, reduce customs and excise duties and enhance supply chain security. They help you to address the challenges of doing business in today's global environment to help your business achieve its potential. It's how EY teams makes a difference.

The views of third parties set out in this publication are not necessarily the views of the global EY organization or its member firms. Moreover, they should be seen in the context of the time they were made.

© 2024 EYGM Limited.  
All Rights Reserved.

EYG no. 003433-24Gbl  
ED None

UKC-032423.indd 04/24.  
Artwork by [Creative UK](#).

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

[ey.com](https://ey.com)

