TradeWatch

EY Global Trade – Global Insights

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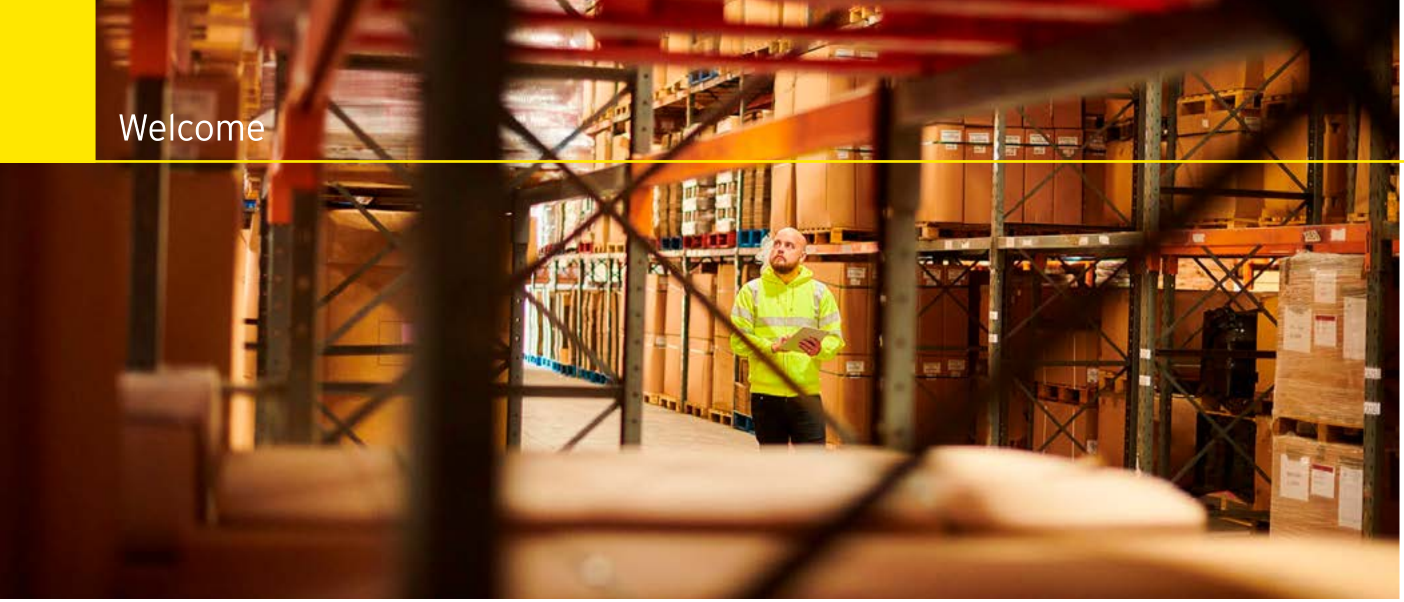

Welcome

Welcome to Issue 3, 2022 of *TradeWatch*, the global EY organization's global trade magazine. In this final edition of the year, we reflect on what we have seen in trade in 2022, examine some of the current trade trends and look forward to the trade outlook for 2023.

2022 key trends in review

Trade disruption

One clear theme of the past year has been trade disruption. The war in Ukraine has greatly contributed to the levels of disruption, but it has not been the only factor. Trade disputes, new trade agreements and alliances, a rapidly changing regulatory environment, and the ongoing effects of the COVID-19 pandemic have all contributed to creating high levels of trade uncertainty.

These factors are creating new risks and new opportunities for companies all around the world, elevating trade and supply chain issues to the boardroom and putting the trade function in the spotlight as never before.

Legislative change

2022 saw many new legislative proposals impacting trade, such as proposals for transparency to counter adverse tax practices, environmental measures, and the Creating Helpful Incentives to Produce Semi-conductors for America (CHIPS) Act in the United States (US).

Customs valuation

Traders importing goods into the European Union (EU) are facing increased scrutiny from the customs authorities on customs valuation.

Of particular interest in this regard is the final decision in the Hamamatsu case, recently delivered by the German Federal Fiscal Court. The court ruled that a downward transfer pricing adjustment does not entitle the company to claim a refund of import duties. However, the outcome of the case is not clear on other crucial aspects, such as whether upward price adjustments should also be ignored for customs valuation purposes. It seems that the German Court and the Court of Justice of the EU (CJEU) may not be aligned with a global trend, supported by the World Customs Organization (WCO), for a closer alignment between customs values and transfer prices. At the time of writing, the EU still has not issued clear guidance on this matter. You can read more on the Hamamatsu case and its implications for business in "Hamamatsu – a long journey about to end?" and in *TradeWatch* Issue 2, 2022.[1]

Other recent developments and practices related to valuation are also impacting companies trading in the EU. They include several recent CJEU court cases that have considered the use of statistical value, discussed in more detail in *TradeWatch* Issue 2, 2022.[2] In addition, some Member States' customs authorities are paying increased attention to back-to-back ordering flows, with some countries taking the position that the first purchase order (PO) triggering a succession of sales should be used to determine the customs value.

1 "Germany: Hamamatsu – the journey nears its end" in *TradeWatch* Issue 2, 2022, page 43, *EY website*. Find it here.

2 "EU: CJEU rules on use of statistical data for determination of customs value" in *TradeWatch* Issue 2, 2022, page 35, *EY website*. Find it here.

Sustainability

Climate change and related concerns about the environment and social policy have been in the news for several years, but their impact on global trade has greatly increased in the past year as more countries commit to ambitious net-zero targets and more organizations include environmental, social and governance (ESG) measures in their corporate strategies. Trade policy is at the heart of these commitments. Around the globe, 2022 has seen a variety of measures proposed or introduced in this area, including taxes and levies aimed at combatting plastic waste and decreasing the use of fossil fuels and incentives to adopt greener methods of producing and distributing goods.

In this edition

We see the key trends for 2022 reflected in a number of the articles in this edition of *TradeWatch*, including "Thailand: Five-year extension of Thai Customs' One-Stop Service voluntary disclosure process", "Poland: Transfer pricing adjustments and their impact on VAT, excise and customs duties" and "Technical Committee on Customs Valuation approves new advisory opinions on ancillary charges".

Regulations, often connected to geopolitical events, continue to add to the workload of the trade function, including monitoring and complying with trade security programs, sanctions and export controls – "US implements new technology export controls on China" and "Japan: Updates on sanction measures". On the positive side, we consider opportunities and trade facilitation measures, such as those offered by the Authorized Economic Operator (AEO) program in Vietnam, the new India-Australia free trade agreement, investment opportunities in Costa Rica and freeports in the United Kingdom.

Our authors also consider how advanced technologies and the use of trade data solutions are becoming more important in the domain of trade. See "Blockchain and its potential role in the future of global trade" and "Going with the data flow: things every business should know".

Outlook for next year

We expect these trends – including trade disruption, customs valuation, transfer pricing, and the interplay between trade policy and the ESG agenda – will continue to influence the trade policies of governments and the trade strategies of corporations into 2023 and beyond.

In particular, we see that new environmental taxes and initiatives will become even more important next year. In the US, measures aimed at promoting near-shoring and decarbonization continue, and in Europe, new environmental taxes and measures are expected to come into effect or be clarified, including plastic taxes in Spain and Italy,[3] and the EU Carbon Border Adjustment Mechanism (CBAM)[4] and deforestation regulation.[5]

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

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

Jeroen Scholten
EY Global Trade Leader

Martijn Schippers
Chief Editor of TradeWatch Magazine

3 See "EU: New plastic packaging measures offer businesses an opportunity to innovate" from *TradeWatch* Issue 2, 2022, page 62. Find it here.

4 Related articles on this topic are available in previous editions of *TradeWatch*: "EU: Final legislation on CBAM expected soon" from *TradeWatch* Issue 2, 2022, page 57. Find it here. "CBAM and its impact on EU cross-border imports" from *TradeWatch* Issue 1, 2022, page 61. Find it here. "EU: Emissions – Europe's new frontier" from *TradeWatch* Issue 3, 2021, page 36. Find it here.

5 See "EU: Proposal to introduce a deforestation regulation" from *TradeWatch* Issue 2, 2022, page 65. Find it here.

Technical Committee on Customs Valuation approves new advisory opinions on ancillary charges

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

The TCCV approved a new advisory opinion at its October 2022 meeting involving "ancillary charges" appearing on a second invoice from the seller to the buyer. With approval from the WCO council, it is expected to be adopted as Advisory Opinion 25.1.

Fact pattern

The fact pattern involves an exporter who sends two invoices for each shipment received by an unrelated importer, the first for the unit prices of the goods and the second containing additional charges broken out into three categories:

1. A per-unit charge for participation in a "Savings Program," in which the importer receives free units of goods from the seller if certain purchasing targets are met over a period of time
2. A per-unit charge for a "Club Program," a program in which the importer receives free gifts and hotel packages if certain purchasing targets are met over a period of time
3. A per-unit "currency surcharge," which the exporter states is charged to maintain the price of the product with regard to any change that might occur in the foreign exchange (forex) market

Importers have the option of participating in both the Savings Program and Club Program. Whether the importer participates, the price of the goods stated on the first invoice does not change. The currency surcharge is charged to all importers, regardless of participation in either of the programs.

Transaction value

The primary method of customs valuation is transaction value as set forth in Article 1 of the WTO Valuation Agreement. Transaction value is defined as the price paid or payable for imported merchandise, subject to specified adjustments. In some situations, when invoices specify breakouts that are related to the goods imported, it is difficult to identify if charges are for the goods or instead are for

something else. Pertinent to this analysis, paragraph 7 of Annex III to the Valuation Agreement says, "The price actually paid or payable includes all payments actually made or to be made, as a condition of sale of the imported goods, by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller."

TCCV analysis

Focusing on the optional nature of the charges for the two programs, the TCCV concluded that those charges are for something other than the goods. The TCCV points out that regardless of participation in the programs, the goods can be purchased for the same price and on the same commercial terms. Consequently, those charges are not part of the transaction value of the imported goods, but instead are paid for the possibility to obtain free units of the same goods or gifts or hotel packages when specific purchasing targets are met. As the payments are optional, they would not properly be characterized as a condition of sale as specified in paragraph 7 to Annex III.

In contrast to the program charges, the currency surcharge is a required payment for every purchase. The TCCV notes that although the stated purpose of the currency surcharge is to maintain the price of the imported goods with regard to any change that might occur in the forex market, the exporter does not give buyers the option of assuming the foreign exchange risk or paying in a different currency to avoid paying the currency surcharge. As such, it cannot be shown that the payment is for something other than the goods, and the mandatory currency surcharge is considered part of the price paid or payable for the imported goods.

The Advisory Opinion concludes with a caution that any free units of goods or gifts received as part of the programs are not addressed by this Advisory Opinion and would need to be separately considered.

Implications for importers

It is often quite difficult for customs authorities to ascertain whether payments are made for goods or for something else. As noted in this Advisory Opinion, even when a payment is characterized as for something other than the goods (i.e., the currency surcharge), it is important for the importer to demonstrate that fact; simply labelling the payment as for "something else" is not sufficient. Of course, the Advisory Opinion also demonstrates that when additional payments are demonstrated to be for something other than the imported goods (i.e., the program charges), those payments are not part of the transaction value. Exporters and importers structuring transactions involving multiple value streams, some of which may not be related to imported goods, are well advised to clearly separate consideration and support each portion of the transaction to avoid all payments being considered part of the price paid or payable for the imported goods. ■

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The India-Australia Economic Cooperation and Trade Agreement – a long-awaited pathbreaker

In April 2022, India and Australia sealed the Economic Cooperation and Trade Agreement (ECTA), an "early harvest agreement"[1] intended as a precursor to a Comprehensive Economic Cooperation Agreement (CECA). The trade agreement between the two countries has been long pending after negotiations stalled in 2015. The initiative was relaunched at the 17th India-Australia Joint Ministerial Commission meeting on 30 September 2021. At this meeting, Australian Trade Minister Dan Tehan and Indian Minister of Commerce Piyush Goyal reaffirmed their commitment to conclude a CECA and agreed upon a timeline to initially reach an interim agreement by December 2021 and to conclude the negotiations on a full CECA by the end of 2022. The ECTA is believed to provide the much-needed impetus in trade between the two countries with a broadened and diversified list of goods to be considered for trading.

At this stage, the ECTA has yet to enter into force.

Salient features of ECTA

The ECTA is the first trade agreement India has entered into with a developed country in more than a decade. The Agreement encompasses cooperation across the entire gamut of bilateral economic and commercial relations between the two countries and covers areas like trade in goods, rules of origin, trade in services, technical barriers to trade, sanitary and phytosanitary measures, dispute settlement, movement of natural persons, telecommunications, customs procedures, and pharmaceutical products, as well as cooperation in other areas. Eight subject-specific side letters covering various aspects of bilateral economic cooperation were also concluded as part of the Agreement.

Objectives of ECTA

The objectives of the ECTA include:

- Establishing a free trade area between India and Australia and a framework for strengthening and enhancing the economic, trade and investment relationship
- Liberalizing and promoting trade in goods and services in accordance with Articles of the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS)
- Improving the efficiency and competitiveness in manufacturing and services sectors to expand trade and investment between the two countries
- Facilitating, enhancing and exploring new areas of economic cooperation
- Developing appropriate measures for closer economic cooperation between the countries

1 **An early harvest agreement** is a precursor to a free trade agreement between two trading partners. It is used to liberalize tariffs on the trade of certain goods between two countries or trading blocs before a comprehensive free trade agreement is concluded.

Trade in goods

It has been mutually agreed that neither country will increase any existing customs duty, or adopt any new customs duty, on an originating good and that each country will progressively eliminate or reduce its customs duties on originating goods in accordance with the Schedule for each country in Annexure 2A to the ECTA (Tariff Commitments).[2]

The countries may also mutually or unilaterally consider accelerating the elimination of customs duties set out in their respective Schedules in Annexure 2A. If the most-favored-nation (MFN) rate of customs duty applied by a country on a particular good is lower than the rate of customs duty provided for in its Schedule in Annexure 2A (Tariff Commitments), the lower rate will prevail.

To keep in perspective the imminent trade liberalization proposed under the ECTA, especially in India, note that in 2008 the Indian tariff schedule contained 12,552 tariff lines (identified at the eight-digit Harmonized System (HS) level) under which nearly 3.7% of these tariff lines were duty-free and 87.8% attracted an ad valorem duty. On the other hand, the Australian tariff schedule identified 6,256 tariff lines (at the eight-digit HS level) during the same period, where 52% of these lines were duty-free, with the vast majority of the remaining 48% being levied with an ad valorem tariff.[3]

Across all tariff lines in the Australian and Indian tariff schedules, the average (unweighted) 2008 tariff rate levied on imports from the other country was estimated to be 3.2% in Australia and 17.6% in India. The table below illustrates the tariffs levied on imports from Australia and India in 2008.

Applied tariff barriers to bilateral merchandise trade 2008

Sector	Australian tariff	Indian tariff
	Percent	Percent
Paddy rice	0.0	80.0
Wheat	0.0	37.5
Cereal grains nec	0.0	20.2
Vegetables, fruit, nuts	0.6	33.5
Oil seeds	0.5	33.0
Sugar cane, sugar beet	0.0	30.0
Plant-based fibers	0.0	13.6
Crops nec	0.1	38.9
Bovine cattle and sheep	0.0	22.6
Animal products nec	0.3	23.0
Raw milk	0.0	0.0
Wool, silk-worm cocoons	0.7	7.8
Forestry	0.0	19.2
Fishing	0.0	28.5
Coal	0.0	6.2
Oil	0.0	7.5
Gas	0.0	5.0
Minerals nec	0.4	4.9
Bovine meat products	0.0	28.2
Meat products nec	0.6	33.9
Vegetable oils and fats	1.3	55.1

Sector	Australian tariff	Indian tariff
	Percent	Percent
Dairy products	0.7	33.8
Processed rice	0.0	72.5
Sugar	0.0	42.5
Food products nec	1.5	32.4
Beverage and tobacco	2.1	87.8
Textiles	7.0	39.2
Wearing apparel	13.4	27.7
Leather products	5.1	10.0
Wood products	2.8	9.9
Paper goods, publishing	2.7	9.6
Petroleum, coal products	0.0	9.5
Chemical, rubber, plastic	2.1	9.1
Mineral products nec	3.0	8.9
Ferrous metals	1.8	10.0
Metals nec	1.0	5.9
Metal products	4.2	9.8
Motor vehicles and parts	4.9	33.2
Transport equipment nec	2.3	20.5
Electronic equipment	1.1	4.2
Machinery nec	2.6	7.3
Manufactures nec	2.2	10.0

Source: Economic Modelling for the Australia-India FTA Feasibility Study[4]

2 "Australia-India ECTA Annex 2A (Tariff Commitments) Section 2A (Tariff Schedule of Australia)," *Australian Government Department of Foreign Affairs and Trade website*, Find it here. "Australia-India ECTA Annex 2A (Tariff Commitments) Section 2A (Tariff Schedule of India)," *Australian Government Department of Foreign Affairs and Trade website*. Find it here.

3 "Economic Modelling for the Australia-India FTA Feasibility Study," *Centre for International Economics Canberra & Sydney*, p. 10, August 2008.

4 Economic Modelling for the Australia-India FTA Feasibility Study' *Australian government website*. Find it here.

Welcome
Insights
Tax Alerts
Additional resources
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Other than customs duties, all charges equivalent to an internal tax or other internal charges and anti-dumping and countervailing duties imposed on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic goods or taxation of imports or exports for fiscal purposes.

Tariffs will be eliminated on more than 85% of Australian goods exports to India (valued at more than AUD12.6 billion a year in 2018–20), which would reach 91% (valued at AUD13.4 billion) over 10 years. After the agreement comes into force, 96% of Indian goods imports entering Australia will also be duty-free.

India is the world's largest democracy and one of the world's fastest-growing economies, with gross domestic product (GDP) projected to grow by 6.8% in 2022[5]. India will be offering preferential access to Australia on over 70% of its tariff lines, including lines of export interest to Australia, which are primarily raw materials and intermediaries, such as coal, mineral ores and wines. This is the first time that India has offered benefit to alcoholic beverages in a free trade agreement (FTA), which may also kick-start export of Indian liquor to Australia and reduce tariff disparities.

The ECTA will progressively eliminate tariffs over three to 10 years on goods such as infant formula; certain peas and beans; certain nuts, such as macadamias, shelled pistachios, cashews and hazelnuts; certain fruit and vegetables, such as avocados, onions, cherries and berries; certain oil seeds and oils; certain food preparation, such as malt extract; pasta; breakfast cereals; petroleum oils; certain non-ferrous metals; pharmaceutical products; and certain medical devices.

There will be immediate access to duty-free quota for cotton and an immediate 50% tariff reduction to quotas on lentils, almonds, oranges, mandarins and pears.

Tariffs will be locked in at 0% on barley, oats, hides and skins, and liquefied natural gas (LNG).

The following are some of the major goods[6] exported from Australia that are expected to enjoy tariff reduction or elimination in India with the CECA coming into force.

Goods	Present tariff rate	Anticipated tariff after reduction/ elimination
Sheep meat	30%	Nil
Wool	2.5%	Nil
Wine	USD 5 per bottle	100% to 50% over 10 years
Wine bottles	USD 15 per bottle	75% to 25% over 10 years
Avocados, onions, broad, kidney and adzuki beans, cherries, shelled pistachios, macadamias, cashews in-shell, blueberries, raspberries, blackberries, currants	30%	Nil over seven years
Coal, alumina, metallic ores, including manganese, copper and nickel; and critical minerals, including titanium and zirconium	Various	Nil
LNG	Various	
Pharmaceutical products and certain medical devices	Various	Nil over five and seven years

India will benefit from preferential market access provided by Australia on 100% of its tariff lines. This includes all the labor-intensive sectors of export interest to India, such as gems and jewelry, textiles, leather, footwear, furniture, food, agricultural products, engineering products, medical devices and automobiles.

5 International Monetary Fund Datamapper accessed on 8 November 2022, World Economic Outlook (October 2022) – Real GDP growth. Find it here.

6 "Historic trade deal with India," *Minister for Trade, Tourism and Investment website*, April 2022. Find it here.

Supply chain and market access for business

Once the agreement comes into force, there will be opportunities to review and improve existing businesses' supply chain networks to take advantage of the Australia-India ECTA (AI-ECTA) on originated goods traded between India and Australia. By removing barriers, the AI-ECTA will create new opportunities for market entry across various industries such as food and agribusiness, energy and resources, medical, and consumer packaged goods.

Rules of origin

For this agreement, before goods can be considered to be originating, all non-originating materials must have undergone at least a change in tariff sub-heading (CTSH) level of the Harmonized System and the Qualifying Value Content (QVC) of the good must not be less than 35% of the free on board (FOB) value as per a build-up formula or 45% of the FOB value calculated as per a build-down formula, provided that the final production process of the manufacture of the good is performed within the territory of the exporting country.

The QVC shall be calculated using the following build-down or build-up formula:

a) Build-down formula: based on the value of non-originating materials

$$[QVC = \frac{\textit{FOB value} - \textit{value of non-originating materials}}{\text{FOB value}} \times 100]$$

b) Build-up formula: based on the value of non-originating materials

$$[QVC = \frac{\textit{FOB value of originating materials}}{\text{FOB value}} \times 100]$$

A certificate of origin issued under the agreement may indicate two or more invoices issued for a single importation. The certificate of origin must be issued before or within five working days of the date of exportation. However, if a certificate of origin could not be issued at the time of exportation or within five working days from the date of shipment, there is a provision in the agreement for retroactive issuance.

A provision for acceptance of a "non-party invoice" or an invoice issued by a third party has also been made, provided that the goods meet the requirements of rules of origin under the agreement. In such cases, the exporter of the goods must indicate "non-party invoicing," and the name, address and country of the company issuing the invoice must appear in a separate column in the certificate of origin.

Trade in services

Regarding trade in services, Australia has offered India wide-ranging commitments in around 135 subsectors and MFN status in 120 subsectors that cover key areas of interest to the Indian economy, such as information technology, information technology-enabled services, business services, health, education and audio visual services. Some of the key offerings from Australia in the services space include quotas for chefs and yoga teachers, post-study work visas of two to four years for Indian students on a reciprocal basis, mutual recognition of professional services and other licensed or regulated occupations, and work and holiday visa arrangements for young professionals.

India has offered market access to Australia in more than 100 subsectors and MFN status in 31 subsectors in 11 broad service sectors, such as business services, communication services, and construction and related engineering services.

Both sides have also agreed to a separate annex on pharmaceutical products under this agreement, which will enable fast-track approval for patented, generic and biosimilar medicines.

In a boost to India's science, technology, engineering and mathematics (STEM) and IT workforces, the length of stay for an Indian student with a bachelor's degree with first-class honors will be extended from two to three years post-study in STEM and information and communications technology (ICT) sectors.

In identifying the qualifying services, this is India's first agreement where a mixed scheduling approach is adopted for scheduling sector-specific commitments. This is a step before complete transition to a negative list approach (under which all services are covered except those that are specifically excluded). Adopting the positive list approach, by listing only those sectors in which trade commitments are made, gives India the right to impose trade barriers or regulatory restrictions over all the sectors that are not included in the list. Australia follows a negative list approach. Further, there is a transition clause in the ECTA, according to which India has to submit a proposed schedule of non-conforming measures within five years of the date of entry into force of the Agreement providing an equivalent of liberalization. This implies that both countries will eventually move to a negative list approach. This would be the first time that India will follow a negative list approach in trade agreements.

Each country is anticipated to make commitments under national treatment, MFN treatment and market access. Commitments between the two countries have been categorized into Schedules for Specific Commitments for India – the positive list (Annexure-8E)[6] – and Schedules for Non-conforming measures for Australia – the negative list (Annexure-8F).[7]

Temporary movement of natural persons

The ECTA has measures set out in each country's Schedule in Annexure 9A (Schedules of Specific Commitments on Temporary Movement of Natural Persons)[8] affecting the movement of natural persons of a country into the territory of the other country, where such persons are engaged in trade in goods, the supply of services or the conduct of investment. Commitments have been made concerning the temporary entry of natural persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of natural persons. The countries have agreed to establish a work group of representatives from both sides to oversee, review, monitor and consider opportunities to facilitate the temporary entry of each country's respective natural persons into the other country for business purposes in accordance with the ECTA.

Negotiation of a CECA

It has been agreed to establish a Negotiation Subcommittee comprising government representatives of the two countries. Within 75 days after the date of signature of the ECTA, the Negotiation Subcommittee will commence negotiations on amendments to the ECTA, on a without-prejudice basis, on areas including, among others, market access for goods and services, a complete Product Specific Rules Schedule, a Digital Trade Chapter and a Government Procurement Chapter to transform the ECTA into a CECA. Following such negotiations, the countries may make amendments to the ECTA to transform it into a CECA.

Benefits of the ECTA to Australia

India is one of Australia's most important trading partners, currently its seventh largest, and their economies are highly complementary. Australian resources and other commodities such as wool and cotton are important inputs that drive Indian industry. India is also a growing market for Australia's critical minerals and resources sectors. Australian services are increasingly sought after in India, with Australian services exports nearly doubling in value over the past decade.

6 "Australia-India ECTA Annex 8E Schedules of Specific Commitments – Schedule of India," *Australian Government Department of Foreign Affairs and Trade website*. Find it here.

7 "Australia-India ECTA Annex 8F Schedules of Non-Conforming Measures – Schedule of Australia," *Australian Government Department of Foreign Affairs and Trade website*. Find it here.

8 "Australia-India ECTA Annex 9A Australia's schedule of specific commitments on temporary movement of natural persons," *Australian Government Department of Foreign Affairs and Trade website*. Find it here.
"Australia-India ECTA Annex 9A India's schedule of specific commitments on temporary movement of natural persons," *Australian Government Department of Foreign Affairs and Trade website*. Find it here.

As noted above, key Australian goods that will be duty-free as soon as the agreement enters into force include sheep meat; wool; metallic ores, such as manganese, copper and zirconium; coal; alumina; titanium dioxide; certain critical minerals; and certain non-ferrous metals. India will also lock in existing duty-free entry for Australian barley, oats, hides and skins, and LNG.

Australia can be expected to have greater predictability in its trade with India in sectors such as higher education and adult education, business services (such as tax, medical and dental, architectural and urban planning), research and development, communication, construction and engineering, insurance, banking, hospital, audio-visual services, and tourism and travel.

Benefits of the ECTA to India

Indian exports to Australia primarily consist of consumer and manufactured goods, including most textiles and apparel, a few agricultural and fish products, leather, footwear, furniture, sport goods, jewelry, machinery, electrical goods, railway wagons, selected pharmaceutical products and medical devices. Currently, most of these items attract 4% to 5% import duty in Australia. Therefore, India will mainly benefit from tariff liberalization by Australia, along with fast-track approval for pharmaceutical products. Australia is offering zero-duty access to 100% tariff lines from India, and zero duty on 96.4% value of Indian exports will be offered immediately. For 113 tariff items comprising 3.6% of exports, the duty will be brought down to zero in the next five years.

Moreover, as India largely imports raw materials and intermediates from Australia, many industries in India will get cheaper raw materials to make them more competitive. In particular, this will benefit the steel, aluminum and apparel sectors.

India is also offering concessions on tariffs to Australia on imports of goods, mainly raw materials and intermediates, in the form of tariff elimination or tariff reduction, with or without a tariff-rate quota. India is immediately eliminating tariffs on 40% of its tariff lines, comprising 85% of Australia's exports in value terms to India. Tariffs will be eliminated or reduced on 30.3% of its tariff lines progressively over three to 10 years, per the agreement. Only a few agricultural products, such as oranges, mandarins, almonds, pears and cotton, have been allowed with limited quota.

India has kept many sensitive products in the exclusion category without offering any concession, comprising 29.8% of tariff lines. Some of these products are milk and other dairy products, chickpeas, walnuts, pistachio nuts, wheat, rice, bajra, apples, sunflower seed oil, sugar, oil cakes, gold, silver, platinum, jewelry, iron ore and most medical devices.

Actions for business

- Assess goods against the ECTA rules of origin to support importers and exporters to claim the tariff concession available under the agreement.
- Assess the ECTA consignment rule against the business's supply chains to obtain the benefits of the Agreement.
- Review the HS code classification of originated goods and seek advice where issues or uncertainties arise.
- Identify how to prepare and file the relevant import and export documents to comply with the ECTA, including certificates of origin and any other customs documentation of non-party countries when requested by any of the importing parties.
- Consider whether some or all of these activities could be outsourced to or be managed by third parties.
- Consider the tax implications of cross-border trades between Australia and India.
- Consider any other customs-related matters regarding the ECTA and their impact on supply chains and business operations.

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Blockchain and its potential role in the future of global trade

In recent years, many businesses and governments around the world have considered whether blockchain technology can or should be used to facilitate global trade. Blockchains could help to increase safety and security as goods move across borders, potentially cutting transit times and costs. But what are the obstacles preventing or delaying the use of blockchains in global trade, and what steps may be needed to implement these ideas?

Overview of blockchain

The fundamental characteristic of a blockchain is to act as a digital record of activity or information that maintains a source of truth that is extremely difficult to alter or modify. This is achieved through the principles of cryptography, advanced mathematical techniques and technology.

Blockchain networks consist of distributed ledgers, commonly referred to as nodes. Removing the need for a centralized party to maintain full control, blockchains rely on peer-to-peer collaboration and consensus. Data added to new blocks in the blockchain requires validation and agreement from all the administrators of the blockchain (known as miners) before they are added to the distributed ledgers on all nodes.

Blocks on the chain are linked together using mathematics and cryptography. Once blocks are added to the chain, they are extremely difficult to modify. Generally, each node within the blockchain network will keep a copy of a part of the entire blockchain. Therefore, making false changes to the chain requires large control of the nodes on the network, which is extremely difficult to achieve.

Most blockchain protocols allow for the execution of "smart contracts," which are essentially business logic that can be published on the blockchain ledger (and synchronized across the network of nodes). Parties can use smart contracts to execute certain predetermined rules. Smart contracts can also be self-executing, without the involvement of third parties and without any time loss.

Applying blockchain technology comes at a cost. Blockchain solutions need to be well designed to achieve cost benefits compared to processes that do not use this technology. Because blockchain ledgers are typically not the most efficient data storage solutions (as all information needs to be synched across the network of nodes), often key confidential information is not stored on the blockchain ledger itself but in traditional "off-chain" databases. Only hashes (unique digital fingerprints) of the off-chain data are then stored on the blockchain network and synched across the network of nodes. By comparing a hash on the blockchain with a hash from the off-chain data, the authenticity of off-chain data can be verified.

How blockchain could address global trade challenges with moving goods internationally

To evaluate blockchain's applicability to global trade, it is important to first understand the challenges that businesses face in trading internationally that could align with blockchain's uses:

- Moving goods across borders typically involves many parties engaged in a variety of processes and corresponding customs formalities. Much of this activity currently relies on physical documentation that can easily be lost or may be inconsistent. For example, manually creating documents and entering data into systems can result in data errors. A single weak link can create compliance errors for the entire chain or lead to complications that need the effort of multiple parties to resolve.
- Finance and cash flow for trading globally, including the assurance that other parties can meet their payment obligations in the future, rely heavily on third-party interactions.
- Clearance processes and the interaction with customs authorities and other government officials (including those responsible for health, food, animal products, etc.) are time consuming and require duplication of data.
- Customs authorities may lack the necessary information to make adequate decisions on risk assessments, with the potential for higher unidentified fraudulent movements.

Elements of global trade that blockchain can support

Many areas of global trade and customs could benefit from blockchain technology in the following ways:

Reduce trade friction

Trade barriers, including tariff, nontariff and technical barriers, lead to increased trade friction, adding to the complexity of doing business internationally. Understandably, these trade barriers are often a focal point of discussions between jurisdictions and of negotiations for trade agreements. However, the process of facilitating trade generally involves paperwork and other compliance obligations that can be costly and burdensome. As a result, trade facilitation opportunities may be missed.

Blockchains could allow trading parties to reduce the efforts needed to carry out cross-border movements of goods and to benefit from trade facilitation, such as free trade agreements and trusted trader programs, through automated exchanges of information in predefined smart contracts.

The more efficient trade processes can become, the greater the likelihood that more traders will make use of trade facilitation measures, thus increasing frictionless trade.

Blockchain technology could, therefore, support not only larger traders with trading more widely and cost-effectively, but also smaller and newer traders that may struggle with a lack of knowledge or resources.

In addition to the benefits of using blockchains to facilitate customs processes, there are many other related areas of tax where this technology could bring benefits to traders and tax authorities in terms of accuracy, transparency and fraud prevention. Examples include value-added tax (VAT), excise taxes, environmental taxes and the proposed Carbon Border Adjustment Mechanism (CBAM).

Increase trust, authenticity and availability of information

Fraud will always be a challenge for businesses and tax and customs authorities. Therefore, adding as much information as possible to a distributed ledger that is trusted by users and inherently difficult to tamper with could result in significant benefits.

Many trusted trader programs globally allow for authorizations to reduce border checks on goods to add efficiency for traders and authorities. Blockchains can support these programs by maintaining trust in areas such as certification, documentation, identity authentication, availability of finance, expedited shipments, and streamlined processes can be enabled and be more effective.

Another benefit is the availability of this information across multiple parties in a supply chain, which otherwise may be subject to long wait times and delays.

Reduce potential loss of information

In many instances, historical information is needed, such as by customs authorities when investigating compliance issues. The distributed nature of the information held on a blockchain can reduce the burden and reliance on individual owners, so important historical information is much more likely to be retained and accessible.

Considerable cost reductions

Automation, defined process models and blockchain technology (including smart contracts) can be used to further digitize trade processes. The full digitization of data sharing along the supply chain and eliminating today's paper-based processes can reduce costs.

What is happening in practice?

More business activity is happening at a rapid pace, and this disruption is starting to change the perception of the future of trade, showcasing how blockchain technology can be applied in practical ways. The following are some examples of current blockchain trade developments around the world:

- A digital supply chain platform that helps to connect stakeholders and information related to supply chain movements. This includes traders, freight forwarders, inland transportation, ports and terminals, ocean carriers, customs, and other government authorities.
- Blockchain-based platforms that allow importers and exporters to exchange trade documents, such as commercial invoices, packing lists and certificates of origin, to support secure paperless transactions. In principle, this can support reduced customs clearance times.

- A consortium including customs authorities and a technology provider concluded a pilot use of blockchain technology to make logistics paperwork available in real time with an immutable ledger to simplify the document issuance process.
- An enterprise-ready business-to-business (B2B) blockchain platform solution that aimed to cover the entire logistics process of a shipment – connecting shipping companies, port operators and cargo owners.
- An industry consortium used long-term supplier declarations as customs preference qualification data in its first use case of a blockchain-based tax and customs solution. Additional use cases in customs, VAT, transfer pricing and supporting real-time tax audits have been identified for the solution in the future.
- EY OpsChain: The EY OpsChain Traceability solution provides a trusted platform for traceability and transparency of data within an ecosystem through the use of notarization and tokenization. While the main focus of the solution is the tracking of goods throughout the end-to-end supply chain, the information recorded on the ledger can be made available and connected with data from other sources for customs and tax processes (e.g., to feed analytics solutions employed for automated risk management). EY teams are exploring use cases in the context of sharing information about the qualifaction of goods for customs preferences as well as non-preferential origin. Another use case under testing is the use of EY OpsChain technology for documenting, tracing and sharing criteria in the context of the sustainability requirements that businesses will need to share in the future.

Obstacles

As with any transformation, there are obstacles. The following obstacles may prevent blockchains from making a significant impact to global trade:

Lack of blockchain alignment: Organizations are creating or using segregated blockchains without interoperability. This is not consistent with key blockchain principles, including scalability and use of standards.

To transform global trade by sharing information digitally and avoiding paper-based processes, a huge standardization effort is needed. Only when stakeholders agree on the data points and parameters that need to be shared on the distributed ledger could such a system be used in practice. This is an ambition that the World Customs Organization and certain regional initiatives are pursuing.

Legislative challenges: The benefits of blockchain extend beyond the use of information that has touch points in a single customs authority. The ability for multiple authorities involved in the trade process to receive information in a manner that reduces the administrative burden across the supply chain is constrained by the level of flexibility in legislation and formalized trust across authorities. As such, global standardization of data structures is key to enabling global sharing of data. As blockchain proves its capabilities, legislation will need to be adopted, otherwise it will not be possible to leverage the full process efficiency and cost benefits for businesses and authorities.

Lack of digitization: Paper forms are still the norm in carrying out trade processes, and this data is often digitized later for archiving and record-keeping. Along with the inefficiency and potential for errors and risks, the lack of coordinated and digitized data means that the improvements that blockchain could facilitate are held back until this key prerequisite is met.

Digitized processes will ideally be easy to access and user-friendly so that small and medium-size businesses, and even private individuals, can participate in digitized trade.

Operating costs: A fully digitized trade environment can save significant cost by reducing paperwork and manual intervention in the supply chain by avoiding repeated data entries, data checks and false entries by the different stakeholders.

Costs related to services needed to carry out trade processes may also be reduced. For example, some of today's intermediary services may transform to simply data processing and compliance checks. While this may bring benefits to economic operators, it may also result in disruption to some service providers' business models.

However, using advanced technologies can also bring higher costs. Depending on the type of blockchain and technical concepts, using a blockchain comes with costs for infrastructure, operating transactions and operational costs. Therefore, each blockchain solution requires a carefully thought-out setup to avoid reducing the cost savings and other benefits that increased data sharing can bring.

Remaining risks: Even when trade processes are fully digitized and authenticated using blockchain, it may not be possible to guarantee the elimination of fraud. Scammers will adapt their behavior and actions to commit fraudulent activity.

For example, while it can be validated that data authenticated through the blockchain has not been falsified during the process, there is a risk that, by deliberate action or by unintended error, false data is put on the blockchain, such as from an off-chain database. Another risk is that data reflects the facts and circumstances at the time that the transaction started, but then the actual goods are tampered with or substituted in real life without changing the digital record.

Therefore, blockchain will not eliminate fraud. However, this technology may help to greatly reduce it. The more data there is about transactions throughout the supply chain that is kept and managed centrally, the more difficult fraud will become because the effort to design a whole environment with plausible-looking data will increase. Benefits from a risk management perspective include increased availability of trade data (whether secured by a blockchain or not) to businesses, customs authorities and other agencies. This information used in conjunction with conventional checks and investigations can increase risk screening to identify implausible and suspicious fact patterns. As such, expect that with fully digitized trade processes, customs and tax authorities will also increase – but better target – controls and process-integrated risk management in the virtual world while keeping their investigation units and activities on the ground.

Conclusion

With fully digitized trade and clean data, global supply chains can adopt faster clearance processes at less cost, given savings from reduced paperwork and intermediary services and with a reduced compliance risk.

In this context, blockchain provides certainty that data shared is genuinely the data provided by the original source. However, blockchain will not fully eliminate risks, and unintended data errors or different legal interpretations may occur. Therefore, companies must continue building their capabilities to leverage the benefits from working with trade data in a more automated environment while having robust processes to determine they have the correct data to feed into trade systems and share with others. Proper risk management processes will be key so that businesses and authorities do not simply rely on data taken from sharing platforms. ■

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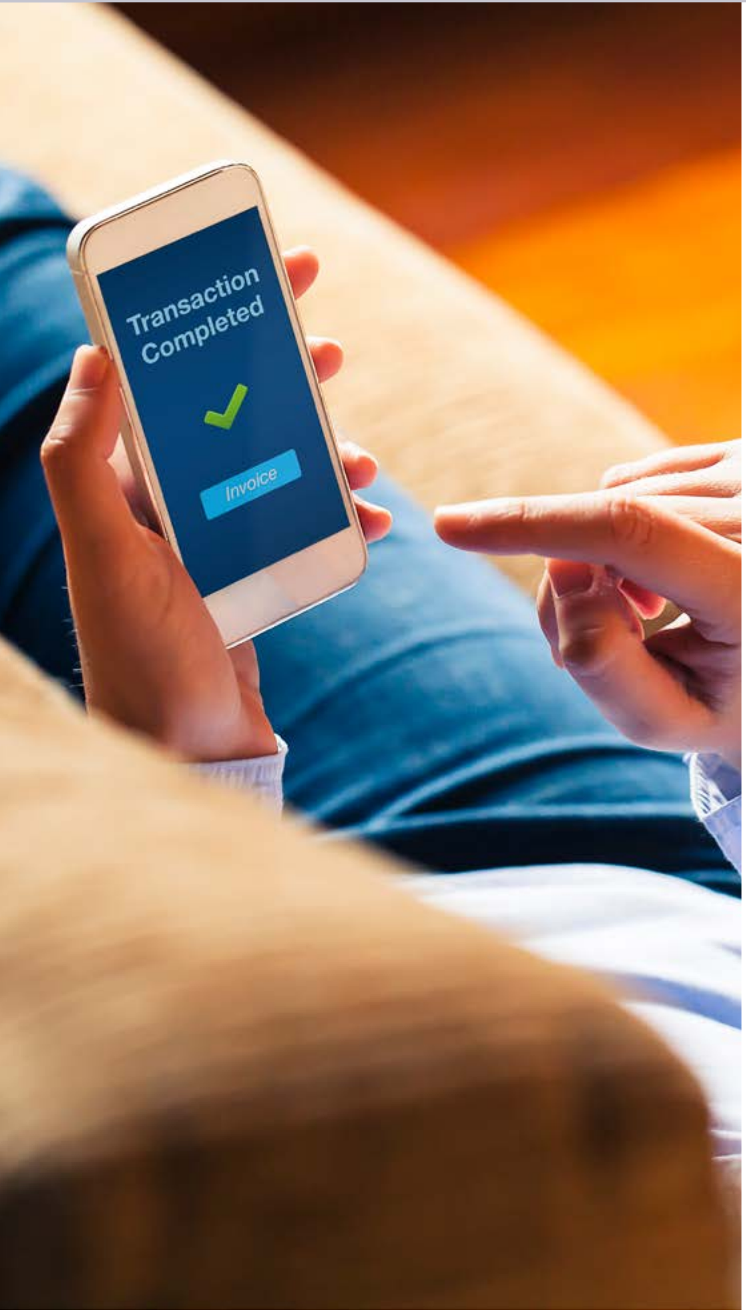

Going with the data flow: things every business should know

What is digital trade?

Digital trade is playing an increasing role in the day-to-day operations of international organizations and in the approaches that governments take to removing trade barriers.

The term "digital trade" is very broad. It refers to any and all places where trade and digital activity meet.

If you send a digital invoice, live-stream media content, email reports, use a digital payment system, or ship goods through customs using a digital compliance system, then you're engaged in digital trade. In short, digital trade matters to all businesses with international suppliers, customers or clients.

It may be helpful to think about digital trade under three headings:

1. Digitizing and automating trade administration for efficiency and transparency
2. How technology is changing the way businesses trade
3. How digital trade can be made safe and secure for users

But the common thread throughout is data, as all digital trade activities rely on cross-border data flows.

Trade talk – barriers to data flows are barriers to trade

When considering data flows, three crucial barriers are tariffs, regulatory fragmentation and data localization.

Tariffs

Tariffs are often seen as the most traditional barrier to trade. Tariffs do not currently apply to data flows, but that could change.

Since 1998, the members of the World Trade Organization (WTO) have been signed up to a rolling e-commerce moratorium, committing them not to charge customs duties on data moving across borders. However, some WTO members, including India and South Africa, are increasingly unhappy with the current arrangement, raising questions as to whether the moratorium will be renewed at the next WTO Ministerial Conference, expected to take place in 2023.

Regulatory fragmentation

Currently, tariffs are often of lesser concern than the limitations placed on trade by nontariff measures. Regulatory fragmentation is a potential hurdle to businesses expanding in overseas markets. The harder it is for people to comply with mismatched or even directly contradictory regulation in different countries, the less likely they are to trade.

This issue is particularly acute in the context of the regulation of personal data.

Personal data protection overlaps with policy issues around privacy, national security, sovereignty and the commercial value of data. Very different approaches have developed in the data cultures of three of the most important stakeholders in the debate – the European Union (EU), the United States (US) and China – with numerous commentators referring not just to fragmentation but to the compartmentalization of the internet as a result of the localization requirements imposed on personal data.

Data localization

Data localization requirements do what their name implies – they require data to be stored and used within, or routed through, a particular geographical location. This constrains the ability of overseas companies to serve clients and may mean they need to set up in-country servers to conduct business.

While some countries do allow data to flow freely between jurisdictions around the world – often relying on legal protections to accompany the data – in recent years, many others have enacted new barriers to transferring data internationally, making it more expensive and time-consuming, and sometimes illegal, to do so.

A 2022 report by the Organisation for Economic Co-operation and Development (OECD)[1] shows that data localization measures affecting all types of data are increasing rapidly. Using OECD data, a 2021 Information Technology and Innovation Foundation (ITIF) study[2] noted that the number of data-localization measures in force around the world has more than doubled in four years. In 2017, 35 countries had implemented 67 such barriers. Now, 62 countries have imposed 144 restrictions, and dozens more are under consideration. The report says that an "estimate[d] 1-point increase in a country's data restrictiveness reduces its gross trade output by 7%, slows its productivity by 2.9%, and increases downstream prices for data-reliant industries by 1.5% over five years."

Businesses use data to create value, and for many, they can only maximize that value when data can flow freely across borders. Therefore, data localization restrictions can reduce access to markets and undermine the impact data-intensive services can have on economic productivity and innovation.[3]

That said, many regimes that impose data localization requirements do allow exceptions, where data can be transferred across borders if particular conditions are met. For example, under the EU's General Data Protection Regulation (GDPR), personal data can be transferred to countries outside the internal market for which an "Adequacy Decision" has been issued, recognizing that functional equivalence may be achieved by a different regime. It may also be possible to transfer data within a company group or under contractual arrangements, if these transfers meet particular criteria. Understanding precisely when and how such transfers can take place is important for all aspects of data handling, including storage, and so it needs to be considered carefully when data decisions are made, such as when appointing a cloud storage provider.

How can trade arrangements help?

Digital provisions in trade agreements could be better. Historically, they have not provided additional market access; instead, they lock in the status quo and prevent the creation of new barriers to trade, for example, by ensuring that discriminatory regulations cannot be introduced.

More recent trade agreements often include provisions that purport to remove barriers to data flows and introduce provisions to prevent data localization requirements. However, in practice, many countries claim that legitimate public policy exceptions disapply these provisions (for example, to address national security, privacy, and prudential and other regulatory or law enforcement concerns). Export controls can also impose limitations on data flows, and many companies do not realize that sending data via electronic means can fall under the export control legislation.

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Welcome
Insights
Tax Alerts
Additional resources
Contacts

That isn't to say that the existing provisions in trade agreements are without value. They and the negotiations themselves can play an important role in fostering regulatory dialogue. But to get serious about guaranteeing free flows of data, then digital provisions must be made stronger.

The ITIF report says, "Building an open, rules-based, and innovative global digital economy will depend on a small group of proactive and ambitious countries ... [They] will need to work together to develop new norms, rules, cooperation mechanisms, and agreements to address legitimate concerns raised by cross-border data flows while supporting the free flow of data. These initiatives can then form the foundation for broader debate, adaptation, and adoption to expand to more issues and countries." It also says, "Countries such as Canada, Japan, the United States, and others that support an open, innovative, and integrated global digital economy should join or emulate the digital economy agreements Australia, Chile, New Zealand, and Singapore have negotiated."

Harnessing the tide

Successful digital trade relies on the ability to navigate a host of data channels. The sheer pace of change in the digital landscape compounds the importance of aligning the trade and data aspects of a business's international strategy.

Just to stay compliant, businesses need to be aware of digital policy developments and regulations.

But there is scope to go beyond mere compliance and to arrange operations to reduce potential constraints. Systems such as the GDPR were actually designed to facilitate the responsible use of data: Fully engaging with what data regimes do permit frees businesses from the potential of adopting an overly cautious approach that fails to make use of data in ways that are permitted.

As governments grapple with balancing data protection with fostering innovation and boosting trade, now is the ideal time for businesses to engage with regulators and trade departments to drive future policy to support digital trade.

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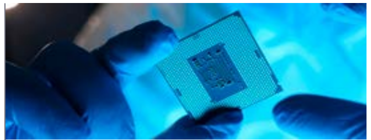

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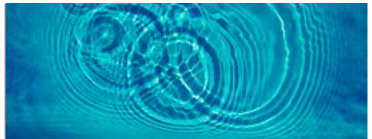

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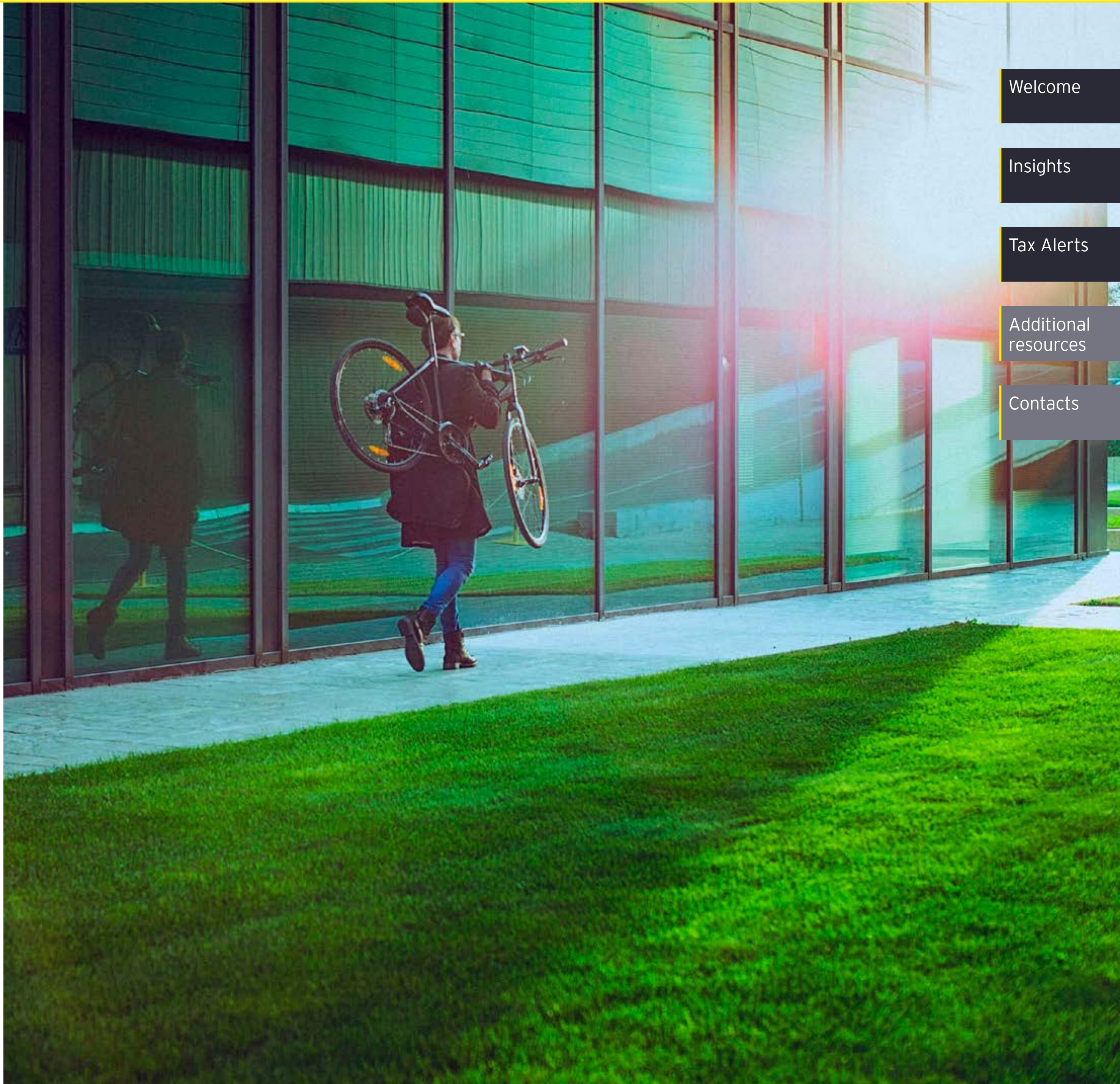

Tax Alerts

Americas

Asia-Pacific

Europe,
Middle East,
India and Africa

Welcome
Insights
Tax Alerts
Additional resources
Contacts

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Welcome
Insights
Tax Alerts
Additional resources
Contacts

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Welcome
Insights
Additional resources
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Contacts

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Insights
Tax Alerts
Additional resources
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Welcome
Insights
Tax Alerts
Additional resources
Contacts

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