Japan: 2023 tax reform changes to the customs law

On 15 December 2022, the Council on Customs, Tariff, Foreign Exchange and Other Transactions (the Council) under Japan’s Ministry of Finance produced a proposal on the revision of customs duty rates and the taxation system, the contents of which were reflected in the 2023 Japan tax reform outline.¹ The tax reform outline received a Cabinet decision on 23 December 2023. Key highlights of the reform include the introduction of tighter control over e-commerce cargo and goods that infringe intellectual property rights. While some items that require changes to the laws still need to be deliberated in Japan’s parliament, the Diet, it is expected that most of these proposed changes will enter into force on 1 April 2023.

Tighter control over imports of cross-border e-commerce

Although the expansion of cross-border e-commerce has led to an increase in the number of import declarations in Japan, it has also resulted in an increase of imports of prohibited goods and duty evasion. To address these issues, the following new measures have been proposed:

Change in the content of import declarations

In an effort to more accurately capture the import of cross-border e-commerce cargo² and fulfillment services,³ the Council has proposed that importers of e-commerce cargo must specifically indicate in the import declaration form that the declared goods are cross-border e-commerce cargo (i.e., indicate the name of the e-commerce platform when the goods are sold on such a platform) and also indicate the domestic delivery destination of the goods.

In addition, it will be clearly stipulated in the government ordinance that the addresses and names of the importers are to be added to the import declaration. This change will provide the legal basis for making importing these goods under a false name a criminal offense.

Revision to the Attorney for Customs Procedure system

Customs law currently stipulates that if importers with no domicile in Japan (nonresidents) intend to import goods as importer of record into Japan, they may do so by appointing an Attorney for Customs Procedure (ACP) who handles customs formalities on their behalf, and they must notify the appointment to

¹ “2023 Japan tax reform outline,” EY website. Find it here
² These refer to products that are sold by overseas sellers on e-commerce websites and shipped directly to buyers in Japan.
³ This refers to domestic warehousing and delivery services provided by e-commerce platforms operating businesses for overseas sellers.
Customs. However, due to an increase in various inappropriate behaviors in this regard, such as where nonresidents appoint local residents with no knowledge of the import transactions to handle import declarations or where the ACP is immediately dismissed after the import declaration, the Council has proposed the following measures:

- If a nonresident importer does not notify Customs of the ACP, the Director General of Customs shall specify the deadline by which the nonresident importer is required to submit the notification.
- If the nonresident does not submit the notification by the specified deadline, Customs shall appoint a domestic person or entity that may have a close relationship with the nonresident importer4 as ACP.
- When submitting the ACP notification, it will be necessary to provide information regarding:
  1. The business of the nonresident importer
  2. The nature of the relationship between the importer and the ACP
  3. Proof of the power of attorney provided to the ACP

In addition, it should be highlighted that the Council is currently separately considering clarifying the definition of importer of record in the Basic Circular of Customs Law by stipulating that an overseas seller should generally act as the importer of record in the case of fulfillment services and cargo importations. It is probable that this change may be reflected in the Basic Circular at around the same time as the other customs-related changes enter into force, i.e., in April 2023.

### Expansion of the scope of the simplified customs verification procedure for goods infringing intellectual property rights

Currently, there is a simplified customs verification procedure5 whereby Customs may unilaterally determine whether the imported goods infringe trademark rights without having to conduct a detailed analysis if the importer does not challenge the designation. This procedure will now be expanded to cover not just trademark rights but also more broadly various intellectual property rights, such as patent design rights, utility model rights and protected business secrets. The aim is to allow Customs to more effectively crack down on the import of goods that infringe various intellectual property rights, which are on the rise due to the increase in the import of cross-border e-commerce cargo.

### Strengthening the penalty provision

Along with revisions to domestic tax laws, the Council proposes to revise the penalty provisions in the Customs Law.

The penalty for imported goods not declared by importers whose import tax amount is greater than JPY3 million will increase from 20% to 30% of the import tax differential for the amount exceeding JPY3 million. Moreover, for repeat offenders who have been penalized in the previous two years, an additional 10% will be levied.

### Actions for business

As many of the changes proposed focus on the import of cross-border e-commerce cargo and fulfillment services, companies that are involved in such importations and e-commerce platform providers should closely monitor the developments and review their existing procedures to ensure that they will continue to be compliant with the Customs laws.

### For additional information please contact:

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</tbody>
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4 This refers to persons who have a special relationship or a close relationship, such as a contractual relationship with the nonresident or e-commerce platform operator used by nonresidents.

5 The simplified procedure allows Customs to verify the goods without requesting the holder of the rights for their opinion or evidence.
Japan/Indonesia: Economic Partnership Agreement – introducing electronic certificates of origin

Introduction of certificate of origin data exchange

In November 2022, the Joint Committee under the agreement between Japan and the Republic of Indonesia for an Economic Partnership Agreement (JIEPA) decided to implement the data exchange of certificates of origin (COs) to simplify operational procedures and facilitate trade between both countries. The committee also adopted the modified operational procedures referred to in Chapter 2 (Trade in Goods) and Chapter 3 (Rules of Origin). This is the first time that Japan has introduced CO data exchange.

It is expected that the pilot operation for CO data exchange will begin in April 2023 and the official operation will be implemented by the end of June 2023.

Switching to CO data exchange

Once the CO data exchange system is in place, importers will be able to submit an electronic CO (e-CO), i.e., CO data transmitted from an electronic system of the authority in the exporting country to the Nippon Automated Cargo and Port Consolidated System (NACCS), at the time of importing goods under JIEPA preferential duty rates. This means that importers and exporters no longer need to exchange COs in a paper format but will be able to do so by providing the reference number of the e-CO.

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1 “Japan-Indonesia Economic Partnership Agreement,” Japan Ministry of Foreign Affairs website, 27 December 2022. Find it here
2 NACCS is a system dedicated to electronic processing of air and sea cargo, enabling faster and more efficient customs clearance. This system is available only to individuals subscribed to NACCS Center.
3 Using e-CO in Japan (on NACCS) requires an e-CO key, which is the invoice number of the first item that appears on the CO, in addition to the CO number.
The procedures for issuing a CO under JIEPA

a. Exporting goods from Japan
To export products from Japan under the JIEPA’s third-party certification system, exporters are required to:
- Submit documents that certify that the goods to be exported originate in Japan.
- Register the origin determination.
- Submit a request for a CO to be issued to the Japanese Chamber of Commerce and Industry (JCCI), the designated issuing authority in Japan.

Previously, for paper COs, exporters were required to receive the CO at the counter of the JCCI and mail it to the importer. These procedures will no longer be required when issuing an e-CO, as it will be delivered from the issuing authority in the exporting country directly to the customs system in the importing country. Going forward, exporters will merely be required to apply to the JCCI for the issuance of an e-CO and obtain its approval. Once the operation is fully implemented, JCCI will generally issue e-COs only for the exports covered by the operations under the JIEPA.

b. Importing goods to Japan
Once the CO data exchange system is in place, importers will be able to submit an e-CO instead of a paper CO to Japan Customs at the time of the import declaration when applying JIEPA rates, as the e-CO will be considered as a valid CO under the JIEPA’s and Japan’s customs laws and regulations. However, importers in Japan will still be allowed to submit paper COs issued by the authority in Indonesia.

For goods imported under an e-CO, Japan Customs may confirm the originating status of the goods in the light of the JIEPA’s provisions during a post-clearance audit. Importers should check the information indicated on an e-CO to ensure that there are no errors with respect to the identity of the items (e.g., names of the importer and exporter, invoice number) as well as the originating status of the items (e.g., HS codes, origin criteria) prior to making an import declaration. Importers are not required to retain a copy of an e-CO submitted to Japan Customs.

Effects of introducing the CO data exchange

The introduction of the e-CO is expected to have the following effects on Japanese importers and exporters:

Simplified and smoother operations:
- With the direct data transmission from the issuing authority to Customs in the importing country, the operational procedures for delivery of COs among business parties (e.g., importers, exporters, brokers) will be simplified, and the authenticity of the CO will be better secured.

Effects of introducing the CO data exchange

Source: Introduction of CO data exchange under JIEPA, Customs and Tariff Bureau of Ministry of Finance website, 1 February 2023. Find it here
Where importers need to split a declaration of JIEPA goods into two or more declarations, importers will be able to provide the e-CO to the designated Customs office more easily and smoothly.

**Enhanced data utilization:**

- With Customs linking CO data with import declarations for data storage, such data will be more effectively used for inspection at the time of import clearance as well as for confirming the appropriateness of JIEPA application (e.g., whether the rule of origin is fulfilled) at the time of post-clearance audits.

- Companies may use CO data for a variety of purposes, such as for tracking records and current state analysis.

Additional information for the operational procedures for e-COs will be announced after the official implementation in June 2023. Businesses whose imports or exports may be affected by the new procedures should continue monitoring these developments to be prepared for the upcoming changes.

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Indonesia: New customs procedures for importing software and digital goods electronically

The Indonesian Government issued a new Minister of Finance Regulation No. 190/PMK.04/2022 (MOF-190) concerning release of imported goods for use. MOF-190 was promulgated on 15 December 2022 and came into effect on 14 January 2023.

MOF-190 covers changes on import procedures, but the most significant changes relate to the customs procedures around importing software and digital goods through electronic means.

Import of software and digital goods electronically has been covered under Indonesian Customs Law since 2006. Article 8B Paragraph (2) of the Customs Law clearly stipulates that the delivery of software and/or electronic data through electronic transmissions would constitute an import or export. As such, despite not taking the form of physical goods, software and electronic data are considered as goods under the Customs Law. Consequently, the import of software and digital goods is subject to import duty. However, the procedural rules were not clear in determining the import duty and filing the import declarations.

In early 2018, Indonesian Customs took steps to address this issue by introducing the Harmonized System (HS) codes and import duty tariff for software and digital goods. This allowed the import duty amount to be calculated for the imported software and digital goods. However, there was still no implementing regulation detailing how the importer should report the importation. For physical goods, the importer prepares an import declaration (PIB), which needs specific information, such as the outward manifest, bill of lading and port of discharge. However, this information is not relevant to the import of software and digital goods that are transmitted electronically.

To address this issue, Indonesian government introduced procedures regarding the import settlement of software and digital goods through MOF-190. MOF-190 details the specific procedures for reporting import of software and digital goods to Customs, such as what minimum information should be declared, when it should be submitted and to which Customs office the report should be submitted.

Procedures for declaring the import of software and digital goods

Under MOF-190, the delivery of imported goods for use as intangible goods such as software products
and other digital goods may be performed through electronic transmission. However, similar to the importation of tangible goods, there will be customs obligations that should be fulfilled to import these intangible goods, as follows:

- The settlement of the customs obligation on the importation of intangible goods shall be performed using a customs declaration (PIB).
- The PIB must be submitted within 30 days from the date of payment for the goods.
- The PIB should be submitted through a Service Computer System (SKP) to the Customs office where the importer is domiciled or another Customs office.
- The importer should settle the payment of import duty and import taxes upon importation. The imposition and collection of import duty and import taxes shall be performed in accordance with the provisions of laws and regulations in the customs and tax sector.

The import duty tariffs of software and digital goods vary depending on the HS code of the goods. Software and digital products transmitted electronically that are not related to imported machines or devices are classified under HS Code 99.01 with no import duty tariff. However, other digital goods transmitted electronically that are related to imported machines or devices are classified with these machines or devices, and the import duty tariff follows the rate that applies to the underlying machines or devices.

In addition to the customs tariff, other import taxes also apply, including income tax under Income Tax Law Article 22 at 2.5% or 7.5% of the import value (depending on whether the importer has an Importer Identification Number (API)) and import value-added tax (VAT) at 11% of the import value.

There are minimum data elements that should be declared on the PIB on the importation of software and digital goods, including the customs office, PIB type, import type, type of payment, sender data, importer data, customs broker (PPJK) data (in terms being authorized to PPJK), invoices, transaction, currency, exchange rate (NDPBM), free-on-board (FOB) value, Cost Insurance Freight (CIF) value, HS code and goods description, country of origin, and type of levy (import duty, excise, VAT/PPN, Luxury Goods Sales Tax (LGST/PPnBM) and income tax (WHT/PPh).

It should also be highlighted that the supervision of settlement of customs obligations on the import of software and digital goods will be performed through the customs audit mechanism. This means that customs officers will review the payment of software and electronic data during customs audits whether they are related to the imported goods or not.

**Actions for business**

While the Indonesian government has released the procedures for conducting import settlements for software and digital goods through MOF-190, the customs import declaration system has not yet been updated to reflect these changes. The customs system still requires certain information that is not relevant to the import of software and digital goods to be input the import declaration. Given the situation, at this stage, importers will need to wait until the customs system is updated to reflect the contents of MOF-190.

Nevertheless, since software and digital goods are subject to Customs Law and the government has now issued the regulation with regard to these procedures, importers should begin to establish internal procedures to comply with the new obligation. If there is any doubt concerning the fulfillment of a customs obligation, importers may seek written clarification from the Customs Authority.

The introduction of MOF-190 has led to some confusion around how the new procedures interact or overlap with other tax provisions, potentially leading to double taxation. In particular, providers of digital goods are currently required to collect VAT from their buyers, but the introduction of MOF-190 means that the buyer will also need to pay import VAT to Customs, resulting in the buyer having to pay two types of VAT for a single transaction. This issue of overlapping tax treatments is still unclear and needs further analysis and clarification from the Tax Authority.

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Philippines: Customs audits and the Prior Disclosure Program

Four years after the Philippine Bureau of Customs (BOC) resumed conducting customs audits in January 2019, many importers have come forward and voluntarily paid deficiency duties and taxes by making use of the Prior Disclosure Program (PDP).

The Prior Disclosure Program
The PDP is a voluntary disclosure program based on leading international customs practices. It authorizes the BOC Commissioner to accept, as a potential mitigating factor against penalties and interest, disclosure by importers of errors and omissions in their prior import declarations that resulted in the assessment of deficient duties and taxes on past imports. It is both a compliance and revenue measure that aims to generate additional revenues with the least administrative cost both to the government and to importers. It is an option given to importers to comply with the customs laws and regulations. At the same time, the PDP helps importers to avoid undergoing a full customs audit and the steep penalties that apply if there are deficient duty and tax findings in the course of an audit.

What is the status of BOC post-clearance audits?
Since January 2019, the BOC has issued almost 1,000 Audit Notification Letters (ANLs) to importers, covering companies from different industries and groups such as oil and gas, automotive, pharmaceutical, consumer, and users of Super Green Lanes.

In January 2023, the BOC reported that 492 importers are recommended for post-clearance audit this year. The companies were identified and selected through the BOC’s improved Computer-Aided Risk Management System (CARMS) that identifies potentially incorrect import transactions.

It appears that several companies that were under audit used the PDP. There were also companies that used the PDP process without an ongoing audit.

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1 Super Green Lanes are a trade facilitation measure granted on application to trusted traders. More information may be found at SGL Requirements | Bureau of Customs.
Penalties for making use of the PDP and waiver applications

While the PDP provides a facility to pay deficient duties and taxes, doing so is subject to payment of a penalty and/or interest, depending on whether the importer is under audit:

- If the importer is under audit, using the PDP within the 90-day period is subject to a 10% penalty and 20% interest per year.
- If the importer is not under audit, it is only subject to 20% interest per year.

There are no specific guidelines on the approval of PDP applications with a request for waiver of penalty and/or interest. Therefore, the BOC considers the PDP applications that it will endorse to the Secretary of Finance for approval on a case-by-case basis.

PDP applications of importers with an audit that are found to be complete and accurate are subject to evaluation by the BOC. These applications may be endorsed for approval, depending on the issues involved and the relevant facts and circumstances.

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Philippines: Strategic trade management update

The Philippine Department of Trade and Industry – Strategic Trade Management Office (DTI-STMO) released an announcement¹ on 26 January 2023 for all industry stakeholders to properly classify items covered by under the National Strategic Goods List (NSGL), including software and technology.

Background

The Philippines Strategic Trade Management Act (STMA), which passed in 2015, seeks to prevent the proliferation of weapons of mass destruction (WMDs) by managing the trade in certain strategic goods. This is in line with United Nations Security Council Resolution 1540, adopted in 2004, which imposes upon states the obligation to take and enforce measures to establish domestic controls preventing the proliferation of nuclear, chemical or biological weapons and their means of delivery.

 Strategic goods in this context are products that, for security reasons or due to international agreements, are considered to be of military importance therefore their export is either prohibited or subject to specific conditions. There is a published NSGL, specifically describing the strategic goods subject to authorization. They are:

- **Military Goods** (listed in Appendix 1) – items or technology developed for military use
- **Nationally Controlled Goods** (listed in Appendix 3) – goods placed under control for reasons of national security, foreign policy, anti-terrorism and public safety
- **Dual-Use Goods** (listed in Appendix 2) – items, software and technology that can be used for both civil and military use or in connection with the development, production, storage or dissemination of WMDs or their means of delivery (e.g., aluminum alloy, machine tools, telecommunication systems and equipment, which are ordinarily manufactured by companies for export or local use)

In addition to the above lists, Section 11 of the law provides for end-use controls to be imposed on strategic goods that are not in the NSGL for which an individual license may still be required, as the goods may be used in the acquisition, development or production of WMDs, or their means of delivery. This is the catch-all provision of the law.

¹ “Commodity Classification Requirement Prior to Registration,” Announcement No. 2023-001. Find it here
Guidance on STMA

The guidance provided on 26 January 2023 by the DTI-STMO covers the classification of items under the NSGL. Commodity classification is considered to be an integral first activity in strategic trade management, since businesses must determine the applicability of STMA to their operations before applying for registration and authorization, pursuant to the STMA. This is particularly relevant to businesses engaged in the trade of dual-use goods under Annex II of NSGL, or goods designed for commercial applications that can also have military applications or potentially be used as components of WMDs. This is also consistent with the department’s previous announcement on 8 August 2022 no longer allowing the export of strategic goods without authorization starting 1 January 2023.

Since the publication of implementing rules and regulations to STMA in 2018, the DTI-STMO has so far registered 50 entities, issued 24 authorizations and reached out to over 600 enterprises to facilitate consultations and trade awareness forums. It has also pre-audited and approved 12 internal compliance programs necessary to ensure STMA compliance and has audited two companies using its investigative capacity. The DTI-STMO convenes and coordinates with government partner agencies, including the Bureau of Customs (BOC), the Philippine Economic Zone Authority (PEZA) and the Department of Foreign Affairs (DFA), via subcommittee meetings to discuss updates and related risk assessments, as well as to formulate robust interagency enforcement and prosecution measures.

Audits and penalties related to STMA

The imposition of administrative penalties was suspended from 1 July 2020 until 31 December 2021 due to the COVID-19 pandemic. Nevertheless, DTI-STMO continued to release several pieces of guidance on STMA compliance. In March 2021, it issued a step-by-step guide on commodity classification, establishing a methodology to properly identify items that should be included or excluded from the NSGL. On 26 October and 9 November 2021, it issued procedures for the registration and authorization of businesses engaged in the trade of goods under Annex III of NSGL (nationally controlled goods), as well as on the registration and authorization of businesses engaged in related services (brokering, financing and transporting) in relation to the movement of strategic goods between two foreign countries and providing technical assistance. It also issued guidelines on end-use and catch-all provisions, emphasizing the necessity for conducting constant end-use, end-user and destination country checks.

On 1 August 2022, the DTI-STMO published a memorandum circular on how it conducts compliance checks or audits. In addition, companies engaged in the trade of goods that are visually similar to strategic goods may be covered by a self-certification or an STMO-issued Non-Strategic Goods Certificate (NSGC), based on guidance issued in the same year, replacing earlier guidance issued in 2020. To manage administrative and criminal penalties that may be imposed for violations of STMA, the DTI-STMO issued guidelines on voluntary self-disclosure, allowing companies to submit notification of violations or potential violations to STMA.

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3 “Guideline on the Temporary Suspension of Administrative Penalty Under the Strategic Trade Management Act in Light of the COVID Pandemic,” Memorandum Circular No. 20-27. Find it here
4 “Lifting of the Temporary Suspension of Administrative Penalties Under the Strategic Trade Management Act Effective 01 January 2022,” Memorandum Circular No. 21-27. Find it here
5 “Guidelines on Commodity Classification,” Memorandum Circular No. 21-10. Find it here
8 “Implementation of Financing and Brokering Under Republic Act No. 10697 Otherwise Known as Strategic Trade Management Act (STMA),” Memorandum Circular No. 21-06. Find it here
9 “Guidelines on End-Use or Catch-All Controls,” Memorandum Circular No. 21-35. Find it here
10 “Guidelines on Compliance Checks,” Memorandum Circular No. 22-16. Find it here
11 “Guidelines on Non-Strategic Good Certificate Repealing DTI Memorandum Circular No. 20-03 S. 2020,” Memorandum Circular No. 22-05. Find it here
12 “Guidelines on Voluntary Self-Disclosure (VSD),” Memorandum Circular No. 21-39. Find it here
Self-regulation by business
The DTI-STMO aims to become a “fully functional office [compliant] with international commitments and obligations in regulating strategic trade by 2028.” By 2028, it will focus on imports of strategic goods and the provision of related services. To realize this vision, it aims to develop the capacity for businesses to self-regulate strategic goods and further enhance the capacity of government partner agencies in identifying strategic items to ease trade flows. Included in its key digital initiatives are plans to develop an IT platform that will serve as a one-stop shop for STMA-related matters and to create an artificial intelligence system that is available 24/7 to assist in commodity classification.

Actions for businesses
With the continued developments in implementation and enforcement of STMA, all industry stakeholders are expected to ensure STMA compliance by initially conducting an internal check, or by seeking advice from experienced customs advisors, as well as consulting with the related government agencies. Businesses are also encouraged to continue to monitor developments on STMA compliance, to ensure audit readiness, as well as the capacity to engage in forums or initiatives aimed at updating policies beneficial to all parties involved.
Asia-Pacific

Australia
• Australia-India Economic Cooperation and Trade Agreement enters into force
  (09 January 2023)

Global
• Global Tax Policy and Controversy Watch
  (20 January 2023)

Malaysia
• Indirect tax measures in Budget 2023
  (06 March 2023)

Singapore
• Singapore passes Goods and Services Tax (Amendment) Bill 2022
  (05 December 2022)
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<td>Outlining value-added tax (VAT) systems in 149 jurisdictions, the 2023 edition of our annual reference book, <em>Worldwide VAT, GST and Sales Tax Guide</em>, is now available in an interactive map format (as well as to download as a pdf).</td>
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## Europe, Middle East, India and Africa

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<th>Country</th>
<th>Europe, Middle East, India and Africa</th>
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**Notes:**
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- Global Trade contacts by country continued
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