EU: CJEU rules on the liability of indirect customs representative for import VAT

The Commissione tributaria provinciale di Venezia, Italy (Venice Customs Office) has requested a preliminary ruling from the European Court of Justice (CJEU) in the case of U.I. The request concerns the question of whether an indirect customs representative can be held liable for import VAT.

Relevant facts and circumstances
U.I., a company established in Milan (Italy), acted as an indirect customs representative for several companies. The Venice Customs Office reassessed, respectively, 45 and 115 import declarations of the represented companies. U.I. was then issued two tax notices for the amounts of import VAT payable plus interest and was held jointly and severally liable by the Venice Customs Office for the payment of the import VAT, based on Articles 77 and 84 of the Union Customs Code (UCC).

The reassessment was based on the Venice Customs Office's finding that the importing companies had not met the criteria to apply the VAT-free purchase quota. As a result, the underlying transactions of the import declarations that the Venice Customs Office verified were not exempt from VAT in accordance with local VAT legislation.

U.I.'s perspective
U.I. filed an appeal against both tax notices it received and requested they be declared unlawful. In its appeal, U.I. argued that, while it did act as an indirect customs representative based on a valid power of attorney, Articles 77 and 84 of the UCC were not applicable to VAT and that the Italian legal framework does not contain a provision that makes the indirect customs representative jointly and severally liable for the payment of import VAT.

Italian Customs Agency's perspective
The Italian Customs Agency requested that U.I.’s appeal be dismissed. According to the former, the chargeable event for the import VAT debt was importation, which is an event that is identified in the customs regulations. Those regulations should also be used to determine the origin of the import VAT debt and, therefore, to establish that the debtors are the persons presenting the goods to customs in line with the case law of the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the importer and its indirect customs representative, jointly and severally.
Request for preliminary ruling

The Venice Customs Office decided to stay the procedure and asked the following questions to the CJEU:

1. Whether Article 201 of the VAT Directive must be interpreted as meaning that an indirect customs representative can be held jointly and severally liable with the importer for the payment of import VAT where there are no national provisions expressly designating or recognizing that representative as being liable for that tax.

2. Whether Article 77(3) of the Customs Code must be interpreted as meaning that, under that provision alone, the indirect customs representative is liable for the customs duties payable on the goods it has declared to customs and for the import VAT on those goods.

Concerning the second question, the CJEU notes that while customs duties and import VAT have comparable essential features (e.g., chargeable events), Article 201 of the EU VAT Directive leaves it up to the discretion of the Member States to designate the persons liable to pay import VAT. As such, the CJEU rules that Article 201 of the EU VAT Directive must be interpreted as meaning that the liability of the indirect customs representative for the payment of the import value added tax, jointly and severally with the importer, cannot be accepted if no national provisions explicitly and unequivocally designate or recognize that representative as being liable for that tax.

The CJEU also states that, in the context of the second question, an indirect customs representative is identified as a debtor according to Article 77(3) of the UCC together with the person on whose behalf the customs declaration is made. According to Article 5(19) of that code, the debtor is “any person liable for a customs debt.” Article 5(18) of the UCC defines customs debt as the obligation on a person to pay the amount of “import or export duty which applies to specific goods under the customs legislation in force.” However, import VAT is not included as an import duty under Article 5(20) of that code, which covers customs duty payable on the import of goods. Consequently, the CJEU rules that Article 77(3) of the UCC must be interpreted as meaning that, under that provision alone, the indirect customs representative is liable only for the customs duties payable on the goods they have declared to customs, and not also for the import VAT on those goods.

Actions for businesses

The determination of whether an indirect customs representative can be held liable for EU import VAT (in addition to customs duties) depends on whether the Member State of import identifies the former explicitly and unequivocally as such in its local legislation. While import VAT is generally recoverable by taxable persons entitled to full input VAT deduction, EU Member States may argue that if goods are not destined or owned by a party, the latter is not entitled to deduct the import VAT. Importers, parties offering indirect customs representation services and others involved in the import of goods into the EU should verify whether they can be held (jointly and severally) liable for import VAT in the EU Member State of import. Parties can then take the necessary steps to reflect this liability in their contractual arrangements (e.g., by incorporating appropriate provisions on redress in case of liability).

For additional information please contact:

Martijn Schippers  |  +31 88 4079160  |  martijn.schippers@nl.ey.com
Walter de Wit  |  +31 88 4071390  |  walter.de.wit@nl.ey.com
EU: CJEU rules on use of statistical data for determination of customs value

On 9 June 2022, the European Court of Justice (CJEU) published its decisions in two court cases, Baltic Master and Fawkes. In these two cases, the CJEU ruled on the use of statistical values for determining the customs value.

**Baltic Master**

**Background**

Baltic Master imported various quantities of goods purchased from Gus Group into Lithuania between 2009 and 2012. The goods originated from Malaysia and were presented as parts of air-conditioning machines in the customs declaration. In the declaration, only one TARIC code was used for these goods and the transaction value of the goods was used to determine the customs value.

During an inspection, the Lithuanian customs authorities were of the opinion that the description of the goods was incorrect and that the goods should have been declared under another TARIC code. Additionally, due to the nature of the business relationship between Baltic Master and Gus Group, the transaction should have been regarded as one taking place between related persons. The customs value should then be determined on the basis of the data available in the national authorities’ customs information system since the customs value could not be determined by the other valuation methods.

During the appeal process, the Supreme Administrative Court of Lithuania asked for a preliminary ruling and brought two questions before the CJEU. The first question concerns the interpretation of the related person provision, and the second question is whether the customs

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1. CJEU 9 June 2022, C-599/20 (Baltic Master), ECLI:EU:C:2022:457
2. CJEU 9 June 2022, C-187/21 (Fawkes), ECLI:EU:C:2022:458
3. The TARIC code (TARif Intégré Communautaire; Integrated Tariff of the European Communities) is designed to show the various rules applying to specific products when imported into the European Union.
value can be determined based on the information provided in a national database with regard to the customs value of goods with the same origin and that, although not similar within the meaning of Article 142(1)(d) of the Implementing Regulation, are ascribed to the same TARIC code.

**Decision of the CJEU**

As a general rule, the transaction value is used to determine the customs value of imported goods. According to Article 29(1)(d) of the Community Customs Code (CCC), the transaction value of the goods cannot be used for determining the customs value where two cumulative conditions have been met:

1. The buyer and seller are related.
2. The transaction value is not acceptable for the purposes of determining the customs value.

In accordance with Article 143(1)(b), (e) and (f) of the implementing regulation, persons may be regarded as being related if they are legally recognized partners in business or when one of them directly or indirectly controls the other or both are directly or indirectly controlled by a third person.

The CJEU ruled that Article 29(1)(d) of the CCC and Article 143(1)(b), (e) and (f) of the implementing regulation should be interpreted as meaning that the buyer and the seller may not be deemed to be related, in a situation in which no documents exist to prove such a relationship, but the buyer and seller may be deemed to be related if, substantiated by objective elements, it can be demonstrated that one of the parties is de facto in control of the other or both are controlled by a third party.

With regard to the determination of the customs value, the general rule should be followed. First, the customs value must be determined on the basis of the transaction value (Article 29 of the CCC). If the transaction value method cannot be applied, the alternative methods in Article 30 of the CCC can be applied in hierarchical order. If the customs value still cannot be determined according to these methods, Article 31 of the CCC allows the tax authorities to apply the valuation methods set out in Articles 29 and 30 of the CCC with a certain degree of flexibility. The means that are chosen should be based on the available data, and they need to be reasonable and in accordance with the relevant legal framework.

Baltic Master did not provide sufficiently accurate or reliable information regarding the customs value of the imported goods. Therefore, the customs authorities determined the customs value by using the national database relating to goods that are declared by another importer, using the same TARIC code and originating from the same manufacturer.

The CJEU confirmed that Article 31(1) of the CCC must be interpreted as not prohibiting the customs authorities from using the national databases containing the customs value of goods that have the same origin and that, although not similar within the meaning of Article 142(1)(d) of the Implementing Regulation, are ascribed under the same TARIC code.

### Fawkes

**Background**

In 2012, Fawkes imported textile goods originating in China into the European Union (EU). The Hungarian customs authorities considered the declared customs value to be significantly low and were of the opinion that an alternative valuation method should be applied to determine the customs value. The customs value was then determined in accordance with the transaction value of similar goods sold for export to the EU by using information from a national database covering a period of 90 days in total (45 days prior and 45 days after the customs clearance) without taking into account the other customs clearances granted to Fawkes.

In this respect, Fawkes claimed that the Hungarian customs authorities should have consulted the databases of various EU services – such as the Directorate-General for Taxation and Customs Union (DG TAXUD) of the European Commission, the European Anti-Fraud Office (OLAF) and Eurostat, the Statistical Office of the EU – to determine the customs value. Fawkes also claimed that the transaction values of its other imports into Hungary and other EU Member States have not been challenged by the customs authorities and should have been taken into account. Additionally, the period taken into account for determining the customs value should have been longer than 90 days.

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During the appeal process, the Kúria (i.e., the Supreme Court of Hungary) asked for a preliminary ruling and brought several questions before the CJEU. In essence, the questions were whose database should be taken into account for determining the customs value, whether the values of other transactions from Fawkes should have been taken into account and whether the 90 days for determining the customs value should be extended.

**Decision of the CJEU**

Based on precedent court decisions, customs authorities are required to consult all the information sources and databases that are available to them for determining the customs value. In accordance with this obligation, the customs authorities are required to use the national database that contains the necessary information to apply Article 30(2) (a) and (b) of the CCC. The CJEU ruled that these articles should be interpreted as meaning that for the determination of the customs value, the customs authorities of a Member State may confine themselves to using information contained in the national database that it compiles and manages. Said customs authorities should only request access to the information held by the customs authorities of other Member States or by the EU services and institutions if the information is not sufficient for determining the customs value, in order to obtain additional data for the determination of the customs value.

The CJEU also ruled that a Member State, when determining the customs value, does not have to take into account the transaction values relating to other undisputed imports of the applicant provided these are retroactively disputed by the customs authorities. Also, undisputed imports of the applicant in other Member States do not have to be taken into account. The customs authorities of one Member State are, after all, not in a position to influence the choices of the customs authorities from other Member States. The customs authorities should, however, indicate in such cases why the undisputed imports cannot be used as the basis to determine the customs value under the transaction value of identical or similar goods.

Additionally, with regard to the period that covers the use of the data, the CJEU noted that if the customs authorities conclude that the export transactions of goods that are identical or similar to the goods being valued over that period enable the customs authorities to determine the customs value of those goods according to the transaction value of identical or similar goods, the authorities, in principle, cannot be required to extend the cover period of their inquiry.

**Action for businesses**

The Union Customs Code (UCC) replaced the CCC on 1 May 2016. Nevertheless, the relevant provisions of the CCC mentioned in these two court cases are to a large extent similar to the provisions under the UCC. The Baltic Master and Fawkes cases are the result of a new trend whereby the EU customs authorities use statistical values to detect undervaluation and the use of statistical data to determine the customs value in accordance with the alternative valuation methods. However, these cases also make clear that the customs authorities need to indicate why they did not dispute the customs value of previously imported identical or similar goods.

In light of these court cases, businesses should:

- Review their existing customs valuation policy to determine the impact of these court cases.
- Assess whether sufficient information has been provided to support the declared customs value.
- Obtain confirmation from the customs authorities on the correct customs valuation approach to avoid a correction and fine after inspection.

**For additional information please contact:**

Martijn Schippers  
+ 31 88 4079160 | martijn.schippers@nl.ey.com

Walter de Wit  
+ 31 88 4071390 | walter.de.wit@nl.ey.com
EU: New version of Compendium on Customs Valuation released

A new version of the Compendium on Customs Valuation (Compendium) was released in July 2022. The Compendium provides Member States and economic operators in the European Union (EU) with non-binding guidance on the provisions related to customs valuation by means of interpretative notes on customs valuation, commentaries and conclusions of the Customs Code Committee Valuation Section and the Customs Expert Group Valuation Section (CEG VAL), and summaries of judgments of the Court of Justice of the European Union (CJEU) on customs valuation matters. Periodically, the EU Commission publishes a revised version of the Compendium.

Key amendments to the 2022 edition of the Compendium include:

- The addition of Commentary No. 17: Apportionment of license fees under Article 136(3) of the UCC Implementing Act
- The addition of Commentary No. 18: Valuation of harvest seed; determination of the value of assists under Article 71(1)(b)(i) of the UCC
- The addition of the summary of Case C-599/2020 (Baltic Master UAB v. Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos)\(^1\)
- The addition of the summary of Case C-187/2021 (Fawkes Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága)\(^2\)

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1. This case is discussed in detail in our article “EU: CJEU rules on use of statistical data for determination of customs value” in this publication, page 35.
2. Ibid.
**Commentary No. 17: Apportionment of license fees under Article 136(3) of the UCC Implementing Act**

In this commentary, the CEG VAL provides guidance on the definition of “appropriate adjustment,” as meant in Article 136(3) of the Union Customs Code Implementing Act (UCC IA). As there is not a legal definition of the concept of appropriate adjustment, the CEG VAL considers three formulas in Commentary No. 17 as an example of appropriate adjustment. The CEG VAL provides the following dataset for these examples:

<table>
<thead>
<tr>
<th>Data used for the calculation purposes</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price paid for the imported goods</td>
<td>450.000</td>
<td>540.000</td>
<td>725.000</td>
</tr>
<tr>
<td>Price/cost of other components plus manufacturing cost after importation</td>
<td>150.000</td>
<td>180.000</td>
<td>175.000</td>
</tr>
<tr>
<td>Total production costs of the finished products</td>
<td>600.000</td>
<td>720.000</td>
<td>900.000</td>
</tr>
<tr>
<td>Total sales of the finished products</td>
<td>1,000.000</td>
<td>1,200.000</td>
<td>1,500.000</td>
</tr>
<tr>
<td>License fees paid (5% of the total sales of the finished product)</td>
<td>50.000</td>
<td>60.000</td>
<td>75.000</td>
</tr>
<tr>
<td>Total sales margin of Company A related to the finished product</td>
<td>400.000</td>
<td>480.000</td>
<td>600.000</td>
</tr>
<tr>
<td>(1,000.000–600.000)</td>
<td>(1,200.000–720.000)</td>
<td>(1,500.000–900.000)</td>
<td></td>
</tr>
<tr>
<td>Sales margin of Company A related to the imported goods</td>
<td>300.000</td>
<td>360.000</td>
<td>483.333</td>
</tr>
<tr>
<td>[400.000* (450.000/600.000)]</td>
<td>[480.000* (540.000/720.000)]</td>
<td>[600.000* (725.000/900.000)]</td>
<td></td>
</tr>
</tbody>
</table>
Based on this dataset, the CEG VAL considers the use of three formulas that all result in a different outcome.

**Formula 1**

\[
\text{Price paid or payable} \times \text{ royalty rate} = \text{dutiable royalty amount}
\]

\[
\text{Total production costs of finished goods}
\]

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>((450,000/600,000)\times50,000)</td>
<td>((540,000/720,000)\times60,000)</td>
<td>((715,000/900,000)\times75,000)</td>
</tr>
<tr>
<td>37,500</td>
<td>45,000</td>
<td>60,417</td>
</tr>
</tbody>
</table>

**Formula 2**

\[
\frac{(\text{Price paid or payable sales margin Company A})}{\text{Total sales of finished goods}} \times \text{ royalty rate} = \text{dutiable royalty amount}
\]

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>((450,000+400,000)/1,000,000\times50,000)</td>
<td>((540,000+480,000)/1,200,000\times60,000)</td>
<td>((725,000+600,000)/1,500,000\times75,000)</td>
</tr>
<tr>
<td>42,500</td>
<td>51,000</td>
<td>66,250</td>
</tr>
</tbody>
</table>

**Formula 3**

\[
\text{Price paid or payable} \times \text{ royalty rate} = \text{dutiable royalty amount}
\]

\[
\text{Total sales of finished goods}
\]

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>((450,000/1,000,000)\times50,000)</td>
<td>((540,000/1,200,000)\times60,000)</td>
<td>((725,000/1,500,000)\times75,000)</td>
</tr>
<tr>
<td>22,500</td>
<td>27,000</td>
<td>36,250</td>
</tr>
</tbody>
</table>

The CEG VAL concludes that the first formula should be used for making an appropriate adjustment for the following reasons:

- The formula is based on two concepts that are directly comparable, being the price paid for the imported goods (excluding the license fees) and the total production costs.
- The appropriate amount of license fees to be included in the customs value should be based on the price paid for the goods and the total production costs, as these are closely related to the imported goods and the imported goods were used in the production phase. It is considered irrelevant in this regard that the license fees are paid as a certain percentage of the total sales of the finished products.
- The formula is considered to be easily applicable (compared to the other example formulas).

Taking the above into account, the essential elements of the appropriate adjustment are met if the adjustment is based on objective and quantifiable data, which is usually accounting data, that is compliant with the generally accepted accounting principles as defined in Article 1(20) of the UCC Delegated Act.
Commentary No. 18: Valuation of harvest seed. Determination of the value of assists under article 71(1)(b)(i) of the UCC

In this commentary, the CEG VAL provides guidance on the valuation of harvest seed. In the case at hand, a seed supplier imports harvest seed from a third country. The harvest seed is produced by a seed grower company in a third country to which the raw material, basic seed, is provided free of charge by the importing seed supplier.

To determine what customs valuation method to apply in the case of the harvest seed, the CEG VAL considers the concept of sale as defined by the Technical Committee on Customs Valuation of the World Customs Organization (WCO TCCV) and reflected in the Christodoulou case before the CJEU. In that regard, the CEG VAL holds that the production contract concluded between the importer and the seed grower company may be considered a sales contract. This means that the customs value of the imported harvest seed shall be established under the transaction value method as defined in Article 70 of the UCC, taking into consideration the price adjustments established in Article 71 of the UCC.

In determining what provision of Article 71 of the UCC applies in this case, the CEG VAL referenced the Baywa AG v. Hauptzollamt Weiden case, in which the court ruled that basic seed provided free of charge should be categorized under Article 71(1)(b)(i) of the UCC, which covers "materials, components, parts and similar items incorporated into the imported goods." Assists categorized in the subparagraphs of this provision need to be added to the customs value regardless of whether they are produced in the European Union.

To establish the value of the assist, the CEG VAL referenced Commentary No. 18.1 of the WCO TCCV. This commentary indicates that if design or research and development (R&D) work has been undertaken in the European Union, even if for basic seed, the value of this work should be included as part of the cost of acquisition or of production of the basic seed. According to the CEG VAL, this is also supported by the fact that in another case, the CJEU ruled that Article 71(1)(b)(i) of the UCC cannot be interpreted as excluding intangible assets. The CEG VAL argues...

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3 Technical Committee on Customs Valuation, 2 October 1981, Advisory Opinion 1.1 – The concept of sale in the agreement.
4 Judgment of 12 December 2013, Christodoulou and Others, C-116/12, EU:C:2013:825, paragraph 60.
6 Technical Committee on Customs Valuation, 23 October 1992, Advisory Opinion 18.1 – Relationship between Article B.10(b)(i) and (b)(v).
that in the case in hand, the value of the product-related R&D used to produce the basic seed in the European Union should therefore be reflected in the value of the assist and, consequently, in the value of the imported harvest seed.

Based on this examination, the CEG VAL concludes that the customs value should be based on the transaction value method existing out of the following elements:

a) The cost of the multiplication of basic seed to obtain harvest seed undertaken outside the customs territory of the European Union (the costs are reflected in the invoice issued by the seed grower to the seed supplier)

b) The value of the basic seed under Article 71(1)(b)(i) of the UCC (comprising product-related R&D; license fees; fees for the multiplication of the pre-basic seed and other costs directly linked to the production of the basic seed in the customs territory of the European Union)

c) The cost of transportation and insurance of the harvest seed, as well as loading and handling charges associated with its transportation up to the place where it was brought into the customs territory of the Union (Article 71(1)(e) of the UCC)

**Actions for businesses**

It is increasingly important for businesses to assess their customs valuation position, especially in case of separate payments for license fees and in cases where they use formula-based customs values under the transaction value method. Businesses should:

- Map and visualize the supply chain of companies, including the goods, invoice/purchase order and royalty flows.
- Assess existing or new contracts that will govern the legal relationship between the seller, the buyer and — if the seller is not the license holder — the license holder.
- Determine whether royalties and license fees fall within the concept of royalties and license fees for customs valuation purposes and whether they should be added (in part) to the customs value of the goods imported into the EU.
In the week of 26 September 2022 the Federal Fiscal Court issued its ruling in the Hamamatsu case. This development has not been reflected in this article, but will be covered in the next edition of TradeWatch.

In December 2017, customs experts around the globe (but predominantly in Europe) were surprised by the decision in the Hamamatsu case, which dealt with the long-standing question of downward transfer pricing (TP) adjustments and the corresponding potential for a duty refund. While a refund was denied in this case, the Court of Justice of the European Union (CJEU) concluded that a preliminary price paid between connected parties that is subject to a subsequent lump-sum correction cannot constitute a transaction value for customs purposes.

Almost five years later, following a decision from the Fiscal Court in Munich (which derailed the refund ambitions of the Hamamatsu company) and an escalation of the case to the Federal Fiscal Court in Germany, an oral hearing took place at the Federal Fiscal Court in Munich in May 2022.

Below are several insights on the latest hearing, the likely consequences of the decision and what it may mean for other open cases.

Case background
Hamamatsu Germany (H/DE), a subsidiary of Hamamatsu Japan (H/JP), receives goods directly from H/JP and distributes them in Germany. In 2009, H/JP and H/DE concluded an advance pricing agreement (APA) with their respective tax authorities for the period from October 2006 to September 2010.

Transfer prices were set preliminarily according to the APA and were adjusted at the end of the transfer pricing period. At the end of the year, H/DE’s profit level was below the target range for the relevant period. As a result, H/DE received a lump-sum credit note from H/JP. H/DE later lodged a refund application to the customs authorities, claiming a refund of overpaid customs duties based on the average duty rate of all shipments taken together (i.e., no correction was assigned to the respective single transactions that took place).

The local customs authority in Munich rejected the wholesale correction of the total price, as the adjustment amount was not segregated on a product level and by import transactions. It also argued, among other things, that the mechanism for pricing and subsequent adjustments was not agreed upon in detail in advance. Further, the customs authority stated that refunds would only be possible if, prior to importation, the final total price was precisely defined.

1 CJEU Case C-529/16.
2 FG München 15 November 2018 (14 K 2028/18).
by a formula and clearly related to the imports. In addition, the authority noted that Article 29 of the Community Customs Code (CCC) also points to the actual price paid (i.e., the transaction value method).

In response, H/DE argued that it was basing its calculations on a so-called average-duty-rate analysis that, for purposes of external comparison, assumed that all goods imported would achieve the same return on sales.

H/DE subsequently appealed this decision. After the appeal proceedings, legal action at Munich Fiscal Court was lodged. That court, in turn, referred the following questions to the CJEU in a preliminary ruling:

- Can an agreed transfer price, which is composed of an amount initially invoiced and declared and a lump-sum adjustment after the end of the accounting period, be taken as the customs value using an apportionment formula, irrespective of whether a subsequent debit or credit is made to the party concerned at the end of the accounting period?
- If so, can the customs value be reviewed or determined using simplified approaches if the effects of subsequent transfer pricing adjustments (both upward and downward) are to be recognized?

The CJEU decision

The CJEU ruled that the provisions of Articles 28 to 31 of the CCC (which are, in essence, reflected in and replaced by Articles 70 to 74 of the Union Customs Code (UCC) as of 1 May 2016) are to be interpreted as not allowing the customs value to be based on an agreed transaction value that is composed partly of an amount initially invoiced and declared and partly of an adjustment after the end of the accounting period.

The CJEU further stated in its decision that the CCC does not impose an obligation on the importing company to adjust a transaction value, regardless of whether it was subsequently adjusted. The CJEU added that the CCC does not contain any provision enabling customs authorities to safeguard against the risk that companies only apply for downward adjustments.

Based on these arguments, the CJEU concluded that a retrospective adjustment of the transaction value, such as in the case at issue in the main proceedings, is not possible.

Subsequent decision of the courts in Munich

In 2018, the Munich Fiscal Court interpreted the CJEU ruling as indicating that the main customs office, the Hauptzollamt, had correctly determined the customs value on the basis of the invoice prices declared during the year. Consequently,
the refund application was rejected. The Fiscal Court in Munich also explicitly criticized the CJEU’s judgment of November 2018. In its opinion, the CJEU’s judgment only reproduces settled case law with purely factual statements, leaving fundamental questions unanswered.

At the end of 2018, the Hamamatsu company decided to escalate the case to the Federal Fiscal Court in Munich. The final procedural step – an oral hearing – took place in May 2022.

**Likely outcome**

This article was drafted after the oral hearing but before the pronouncement of the court’s highly anticipated verdict.

Based on the discussions at that time and the reaction of the judge of the German Federal Fiscal Court during the oral hearing, the refund request likely will be refused. That means that although the customs value can be based on an initial transfer price, a downward TP adjustment may not be taken into account in the case at hand. The ruling and the arguments have not yet been made public. However, the judge indicated during the oral hearing that the verdict will not address the treatment of upward adjustments. Nonetheless, declarants who face upward adjustments should stay tuned to see whether the judgment contains any wording that supports importers in not taking into account any upward pricing adjustments for customs valuation purposes.

One important argument for not taking upward price adjustments into account in determining the final customs value could be made with reference to Article 85(1) of the UCC, which states that “the amount of import duties shall be determined on the basis of the rules for calculation of duty, which were applicable to the goods concerned at the time at which the customs debt in respect of them was incurred.” By default, transfer pricing adjustments are made after the customs debt occurred, so this argument may be successful – although a court decision would be necessary to have a definitive answer. In that respect, the judge indicated during the verdict that he anticipates a future court case about the impact of upward transfer pricing adjustments on the final determination of customs values. As there are court cases pending on this matter in various EU Member States, the impact of transfer pricing adjustments on the final determination of customs values likely will continue to attract attention in the coming years.

**Actions for business**

Importers who are in a potential duty refund position as a result of downward pricing adjustments should not write off their claims. The Hamamatsu case was fact-specific, in particular because the transfer pricing adjustment was not made at a transactional level. As similar cases are pending at various local courts in Europe, legal protection in refund cases should still be claimed.

Importers who have upward price adjustments should consider that customs authorities are likely to uphold their view that these adjustments are dutiable, since they assume that the relationship has influenced the price. However, even in the case of a retroactive declaration or a self-disclosure resulting in an additional customs assessment following retroactive adjustments, businesses could appeal against the assessment and seek legal advice on the matter, as the expected verdict in the Hamamatsu case may provide some strong arguments in their favor. And even if that does not prove to be the case on this occasion, it appears to be more likely than not that any case related to the treatment of upward adjustments will have to be decided by a court.

Because of ongoing developments around the impact of transfer price adjustment on the final determination of customs values, this issue affects a wide range of businesses that import into the EU. Businesses should consider carefully assessing their customs values, particularly if they are based on intercompany prices. Although arguments may be made against taking transfer pricing adjustments into account for determining the final customs values, businesses should consider working with their local customs authorities before importation to have legal clarity about the treatment of transfer pricing adjustments and to limit the risk of incurring additional costs and interest.

**For additional information please contact:**

Frank-Peter Ziegler  
+ 49 160 939 14649 | frank-peter.ziegler@de.ey.com
Imports

Intragroup purchases of goods and services

When importing goods into Norway from abroad, customs duties and VAT must be calculated on the basis of the customs value of the goods. As a general rule, the customs value must be determined on the basis of the transaction value (i.e., the price in a sale for export to a buyer in Norway, adjusted for certain costs as described in the legislation, including shipping costs).

In corporate groups, it is not unusual that subsidiaries in Norway, in addition to buying goods, also buy services from the parent company abroad, usually referred to as management fee services. These services may include, for example, administrative, legal and IT services. With the exception of certain services that must be included in the customs value, according to the legislation (including design and development costs and royalties), management fee services should not be included in the customs value. This presupposes that the parent company's invoicing in this respect represents real services supplied to the subsidiary.

Common errors when importing and exporting goods

When importing and exporting goods to and from Norway, companies are making potentially costly mistakes that can be avoided. In some cases, issues arise from a new, stricter interpretation of the law by the Norwegian authorities. Other errors may come from an importer or exporter not being aware of the correct procedures. But all of them can have major financial consequences. Being aware of these common pitfalls can help companies engaging in cross-border trading to avoid potentially expensive errors.

Common errors when importing and exporting goods

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<td>Incorrect customs value for intragroup purchases of goods and services</td>
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However, we have seen cases where certain elements in invoices named as sales of management fee services are not services but instead the parent company’s own costs that should have been included in the price of the sale of goods. This could be, for example, administrative costs linked to the parent company’s own inventory management abroad. Such storage costs must be allocated to the parent company’s own business, regardless of the fact that they relate to the goods that are later sold to the subsidiary. In such cases, the customs authorities assume that the purchase of services must be considered additional payment for the goods, and the amount charged is to be included in the customs value of the goods at import.

Significant challenges may relate to documentation that supports not including the invoiced services in the customs value. The Norwegian customs agency currently operates strict documentation requirements in this context. These requirements relate both to whether services have actually been supplied and to the volume of services provided in cases where the customs authorities accept that the services are real. In recent years, many subsidiaries have been reassessed for significant amounts in VAT and customs duties, including penalties, because the customs authorities have not accepted the documentation of the services.

In these situations, the parent company often operates much of the same type of business as the subsidiary – namely the purchase of goods for resale. This commonly happens, for example, in the consumer products sector. When the parent company performs services or functions that it partly needs for its own business and partly sells to the subsidiary, the question arises as to what should be allocated to the respective companies. In this context, the customs authorities normally do not accept allocations based on turnover, even if such an allocation is accepted by the tax authorities in connection with tax documentation for transfer pricing purposes.

Norwegian subsidiaries that purchase both goods and services from a parent company or from other group companies abroad should focus on ensuring that all the elements in the management fee invoices represent real services of a kind that should not be included in the customs value. In addition, companies should also focus on whether they are able to prove and document that the services have been received and to what extent.

Transfer pricing adjustments
Changes in the price of goods and services traded between group companies after the fact is common to ensure the correct internal price is achieved for tax purposes. Such corrections are often regulated in price adjustment clauses included in the sales agreement. The changes can be made several times during the year, but most often the price is adjusted once at the end of the year.

Such price adjustments are important for determining the customs value when importing goods, as the value declared to customs at the time of importation must be adjusted accordingly. As mentioned above, the customs value for the import of goods must, as a general rule, be determined on the basis of the transaction value. Application of this method assumes that the price has been finally determined.

If the price has not been finally determined, for example, as a result of price adjustment clauses for transfer pricing purposes, the conditions for applying the transaction value are not met. In these circumstances, customs value must, in principle, be determined based on alternative customs valuation methods. However, it appears from the legislation that it is possible to apply to the customs authority for a postponement of the final determination of the customs
value. Based on these rules, the customs authorities’ practice is that importing companies that buy goods from foreign group companies under price adjustment clauses must apply for a postponement of final customs value determination until the price change has been made. A granted postponement will require that the company corrects all customs declarations during the year covered by the price change. Even if such an application has not been sent, in our experience the Norwegian customs authorities are likely to require that the importer corrects all affected customs declarations.

However, many companies are not aware that the customs value must be corrected in such cases and that they are obliged to apply to the customs authority for a postponement of the final customs value determination for future imports. Such an error can prove costly in the form of duty recalculations and additional penalties if the customs authorities discover this issue during an audit.

The customs value for chain sales

Foreign companies may conduct business with the sale of goods for export to several countries, including to customers in Norway. Many of these companies conduct their business on the Norwegian market without having a place of business in Norway, or they are only established in Norway with a branch. When, for example, a German company with such a setup buys goods from external suppliers (e.g., from China), there are several sales in the sales chain: sales from the external supplier to the German company as well as sales from the German company to the customer in Norway.

The question in this scenario is which of these sales represents the relevant sale in relation to the correct customs value or transaction value when the goods are imported into Norway. In our experience, the customs value in these types of situations is often determined on the basis of incorrect sales in the sales chain.

Norway follows the last-sale principle, which means that the transaction value must be determined on the basis of the price in an export sale to a buyer who is established in Norway. According to the legislation, a foreign company that conducts operations subject to registration in Norway is considered to be also established in Norway for customs value purposes, even without any physical place of business. Both sales in such sales chains are therefore covered by the last-sale principle.

The highest transaction value (i.e., the sale based on the price to Norwegian customers) is undoubtedly acceptable according to the legislation in these circumstances. According to the Customs Act, however, there is an opportunity to use the previous sale in the sales chain when it is also considered an export sale to Norway. If the goods are sent directly to Norway from, for example, a supplier in China, the conditions for using this sale are met. If the goods from the supplier are sent to, for example, the company in Germany for intermediate storage/preparation for onward shipment to Norway, the supplier’s sale may possibly still be considered an export sale to Norway (and not just to Germany). According to the customs authorities’ guidelines, intermediate storage based on “transport considerations” will not be an obstacle to using the previous sale as the customs value. Whether this condition has been met must, according to practice, be assessed concretely in the individual case.

In recent years, the Norwegian customs authorities have interpreted this requirement strictly – even quite insignificant activities in the warehouse related to the goods have led to the conclusion that the temporary storage is not related to transport considerations (alone). For example, if the shipment from China consists of goods that are meant for further shipments to both Norway and other countries, the splitting of the shipment in the warehouse implies that the customs authorities regard the storage as not being made for transport considerations. Companies have been assessed for significant amounts in VAT and customs duties because Customs has based the recalculation of duties due at import using the customer prices in Norway as the customs value instead of the price from the subcontractor overseas. Penalties of 20% to 30% of the re-assessed customs duties have also been imposed in these cases for applying the wrong customs value basis. This issue has hit businesses operating in the textile industry particularly hard, as many textiles/clothing are subject to customs duties based on value/purchase prices.

Wrong company is acting as the importer

When importing goods into Norway, the person stated as the recipient or customs debtor (importer) in the customs declaration is responsible for reporting and paying import VAT and customs duties if the goods are subject to customs duties. In general, if the importer is registered for VAT in Norway and the imported goods are to be used in the VAT-registered business, the importer will
have the right to deduct the import VAT as input tax.

According to the legislation, in principle, anyone can act as the importer and thereby assume responsibility for the reporting and payment of import duties. However, not everyone has the right to deduct the import VAT. Mistakes in this area can prove costly.

In some cases, an already-VAT-registered group company is being used as an import company, despite the fact that another group company, which does not operate a business subject to VAT registration, has bought the goods from abroad. In other cases, the company having bought the goods has been newly established and the VAT registration is not yet in place. The Tax Appeals Board, which recently had a case to consider, agreed with the tax authority’s assessment for the deducted VAT, as well as the imposition of an additional tax of 20%. The imposition of additional tax presupposes, among other things, that the error could have led to tax advantages for the importer. Despite the fact that in this case the importing company had reported and deducted exactly the same tax amount in the VAT statement and could not make a profit from the error, the Tax Appeals Board agreed with the tax office that the error could have led to tax benefits and upheld the penalties.

In other cases, the issue relates to the sale of goods from abroad for export to customers in Norway. Uncertainty in these situations is often linked to whether it is the buyer or the seller who may act as importer with the right to deduct the import VAT when both companies carry out activities subject to VAT in Norway. A common example is where a foreign company sells equipment for installation in Norway to Norwegian customers. In such cases, according to practice, the seller will normally be obliged to register for both the sale of goods and the installation work, with the obligation to collect VAT on the entire delivery. If the parties are unaware that the sale of goods is subject to VAT in Norway, they may agree that the customer should act as importer when the equipment arrives in Norway. The customer will then be charged VAT twice for the same acquisition – once by the seller when invoicing the customer for the supplies and again for the importation. In practice, there is uncertainty as to whether the customer in such cases will have the right to deduct both VAT amounts. If it does not, the additional VAT will be a cost.

Sale of goods in bonded warehouses

Companies that buy goods from abroad may commonly choose to put the goods in a customs warehouse. The use of a customs warehouse means that the goods are not cleared through customs upon importation, but only when they are taken out of the customs warehouse for free circulation in Norway. It is only then that the obligation to report and pay import VAT and any customs duty arises.

Sometimes the owner of goods stored in a customs warehouse chooses to sell them when they are still in the warehouse. However, many companies are unsure how such sales should be handled in terms of VAT, and that often leads to them making mistakes in this regard. Many believe that the sales are not considered as domestic sales since the goods have yet not been customs cleared for importation.

However, the tax authority has, in several statements, said that sales of goods in customs warehouses must be calculated for VAT. These are deemed to be domestic sales in Norway since the customs warehouse is in Norway. There is no legal authority in the legislation to handle such sales differently from other goods that are placed somewhere else in Norway. The consequence is that the VAT on the sale of goods can be collected even before the goods have been processed by customs for importation into Norway. In addition, this means that if the buyer of the goods is acting as the importer or customs debtor at the time of removal from the customs warehouse, the buyer is charged twice for the same purchase – once in the sales invoice from the seller and again as import VAT as a result of customs clearance.
This also raises the question of whether the buyer will have the right to deduct both VAT amounts. Many factors indicate that the answer should be yes to that question; however, the central tax authorities have not taken an explicit position on the question, so this issue is not yet clarified.

**Exports**

**Lack of sufficient proof of origin**

Most countries have customs duties on imported goods. By using the free trade agreements that Norway has entered into with a number of countries, the buyer in the importing country of goods exported from Norway will receive lower duties or full duty exemption, so-called preferential customs treatment.

The main conditions for obtaining preferential tariff treatment are that:

- The goods are actually covered by the product groups for which the free trade agreement in question provides preferential customs treatment.
- The origin conditions in the protocol have been met.
- A correct certificate of origin has been issued.

There are several types of proof of origin. The most commonly used are the goods certificate EUR1 and the declaration of origin from the exporter, which is normally added to the sales invoice (invoice declaration). The exporter is responsible for the correct certificate of origin being issued. The certificates must accompany the goods to the country of import.

If the exported item is produced based on raw materials from one or more subsuppliers, it is a prerequisite for the exporter to be able to issue a certificate of origin that the supplier can document the origin of the raw materials. If it concerns domestic suppliers, such documentation must be secured by the exporter obtaining a national supplier declaration from them. The same applies if the exporter has not produced the goods himself.

The national supplier’s declaration can be affixed to an invoice, a shipping document, other commercial documents or on separate letterhead. If the declaration is applied to documents other than the invoice, a reference must be given to the relevant delivery or deliveries covered by the declaration, and it must be possible to identify the goods.

Norwegian exporters may forget or may not be familiar with the requirement to issue a national supplier declaration in order to be able to issue a certificate of origin themselves. When the customs authorities in the importing country check proof of origin, it is common for them to ask the Norwegian customs authorities for assistance in confirming the correctness of the issued proof of origin, including whether there are valid national supplier declarations. If it turns out that these have not been prepared or that they are not correct, the customs authorities in the importing country will normally recalculate the customs duties for the importer (i.e., the importer will not enjoy the preferential tariff treatment). This mistake may be very costly for the importer. In addition, if the importer succeeds in getting the additional customs duties refunded by the exporter, the mistake will in the end be very costly for the exporter.

It is therefore important that the exporter in Norway – whether that is a Norwegian or a foreign company – familiarizes themselves thoroughly with the requirements for and the design of national supplier declarations if they use Norwegian subsuppliers for the production of goods to be exported.

**The VAT exemption for export sales – the documentation requirement**

Sales of goods for export abroad are exempt from VAT. The exemption must be documented with the sales invoice, customs declaration for export and attestation for physical export in accordance with the legislation. Based on these rules, for the seller of exported goods to be able to apply the VAT exemption, it must, in addition to the sales invoice, keep a copy (printout) of the customs declaration in which the seller itself is indicated as the exporter. In addition, this copy must be affixed with an attestation as documentation that the goods have in fact been sent abroad. If the transporter that transports the goods out of the country is a Norwegian-registered company, it is the transporter that must affix the attestation. In other cases, including if the exporter itself transports the goods out of the country, the attestation must be affixed by the customs office at the border.

However, often an exit attestation is not affixed to the printout of the customs declaration – often because the exporters and forwarding agents are not familiar with this requirement.
Without an affixed export certificate, the exporter does not meet the tax authority's documentation requirements to be able to apply the VAT exemption. If this is discovered during an accounting audit, the tax authorities will have the authority to post-calculate outgoing VAT as if it were a purely domestic sale. Errors in this area can therefore be very costly. Exporters of goods should establish robust documentation and processes in this area to ensure that the requirement for an exit attestation is met for all their export consignments.

**When is there an export sale?**

Sales of goods in Norway must, as a general rule, be treated as ordinary domestic sales, and 25% VAT must be collected by the seller. This rule basically applies even if the buyer of the goods plans to send the goods out of the country shortly after the goods have been delivered in Norway. If, on the other hand, the seller is to export the goods, and meets the formal documentation requirements, the VAT exemption for export sales will normally apply.

From time to time, however, the question arises as to how quickly the goods must be sent out of the country for the VAT exemption to apply. This is most often brought to the fore when foreign buyers are to pick up the goods themselves in Norway, so-called pick-up sales.

According to the tax authorities' guidelines, sales of goods to foreign buyers can be handled as tax-free export sales, even if the buyer collects the goods himself in Norway; that is, even if the goods are legally delivered in Norway. In some cases, the foreign buyer of the goods may agree with the seller that, after the goods have been legally delivered, the latter will store the goods for a while before they are transported out of the country. Alternatively, the buyer may engage someone, after legal delivery, to repair the goods in Norway before export.

In contrast to a number of other countries, there are no specific rules or guidelines in Norway for when the goods must have left the country for the VAT exemption to apply. In practice, it is our understanding that the goods must be sent out of the country "as soon as possible" after the sale has taken place. This must be assessed based on the fact in the individual case. In a binding advance ruling issued by the tax administration, it was accepted that it took a full three months before the goods were transported abroad. The background was that the goods concerned a large number of building modules that, after delivery, the foreign buyer had to catalog and systematically place in a number of containers with a view to reassembling the modules in his home country. The case was therefore very specialized, and we assume that it would not normally be accepted that several months pass before the goods are shipped out of the country.

Some exporters may not be aware that there may be a risk that the sale of goods will not be accepted as an export sale, if they comply with the buyer's wish that the goods are only to be shipped out of the country after some time. Therefore, where a delay is anticipated, this risk should be evaluated and, where necessary, further guidance sought.

**Summary**

The consequences of not reporting imports or exports correctly can be a reassessment of VAT and customs duties, and incurring penalties and delay interest imposed by the customs and tax authorities. It is possible for companies to correct historical mistakes made during import and export. If companies are proactive in correcting mistakes (i.e., before the tax or customs authorities have notified an inspection), penalties are normally not incurred. Conversely, the longer companies wait to correct these mistakes, the more time and costs are incurred when the correction eventually has to be carried out.

Therefore, we recommend that companies involved in exporting or importing goods familiarize themselves with the legislation and the authorities' guidelines and practices to ensure correct processes are adopted and that any errors are corrected as soon as possible.

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**For additional information please contact:**

Pål Valheim  |  + 47 982 06 814  |  pal.valheim@no.ey.com  
Toril Haarr  |  + 47 476 01 192  |  toril.haarr@no.ey.com
Switzerland: Elimination of import customs duties on industrial goods enters into force 1 January 2024

The Swiss Federal Parliament has adopted the bill to unilaterally abolish import duties on almost all industrial goods and simplify the Swiss customs tariff to reduce costs for consumers and companies. This legislative change will enter into force on 1 January 2024.

Background
In late 2017, the Swiss Federal Council announced its plan to abolish import duties for industrial products (Harmonized System (HS) chapters 25 to 97), among other policies to tackle high prices in Switzerland.¹

Based on government calculations, the expected duty deficit of CHF500 million per annum could be compensated through higher tax returns from companies, as the zero tariffs reduce not only costs for pre-materials but also bureaucracy for customs clearance procedures. Furthermore, consumers would benefit from reduced tariffs, with overall savings of approximately CHF350 million per annum.

After extensive debates, the bill to abolish industrial tariffs was eventually accepted by both chambers of the parliament in the final vote on 1 October 2021, and no subsequent referendum was launched. In consideration of the required lead time of involved parties for planning and (technical) implementation, the Federal Council decided that the tariff elimination will enter into force on 1 January 2024. With regard to tariff elimination, the Swiss customs tariff also will be reduced, from 6,172 to 4,592 tariff codes.

Simplified import procedures and tariff classifications
Other than a few industrially produced agricultural products (such as albumin, dextrin or acid oils from refining as covered in HS chapters 35 and 38), the tariffs would be zero, meaning that all other industrial goods could be imported without the payment of any customs duties. Once in effect, the compliance and import procedures for such products will therefore be less complicated and time-consuming, as special procedures (e.g., temporary importation, inward processing relief) may be redundant. In addition, the ongoing transformation

¹ "Federal Council adopts measures to tackle high prices in Switzerland", State Secretariat for Economic Affairs website. Find it here
program of the Swiss customs authorities (called DaziT) will also offer additional simplifications in connection with the customs clearance of industrial goods (e.g., simplified declaration of proof of origins). Furthermore, the downsizing of Swiss customs tariff lines will simplify the whole tariff classification of products and ease the change of lines in master data.

**Impact on business**

In general, import clearance for companies will likely be less burdensome as tariff classification will be simplified and companies will no longer need proofs of origin to benefit from duty reductions in Switzerland. However, companies that manufacture with pre-materials, or re-sell or process products sourced from other countries, still have to comply with preferential origin-related rules of free trade agreements (FTAs) in case their customers request certain proofs of origin. Thus, preferential proofs of origin are still needed and have to be declared for imported goods to ensure origin compliance. Furthermore, import VAT, import licenses, excise taxes (e.g., vehicle tax, VOC) and the corresponding compliance will remain applicable even if there are no customs tariffs.

Even though tariff classification will be simplified, the tariff codes are still the core item in connection with customs clearance, especially in regard to possible permit requirements, origin calculations and export restrictions. It is therefore essential that the internal master data is updated in advance to prevent any unforeseen events and risks.

**Actions for business**

The elimination of almost all customs duties for industrial goods and the adaption of the Swiss tariff codes will require sound planning by companies. Switzerland-based companies should prepare early to enable compliance and to make use of new opportunities that this change will bring. Specifically, businesses should:

- Quantify the impact in terms of potential duty savings and compliance
- Prepare master data (e.g., tariff codes, origin calculation) in advance to be compliant with the new structure
- Update origin compliance procedures
- Prepare assessments of third-party providers to ensure accurate declaration of imports
- Explore new sourcing options and partner countries without existing FTAs to optimize supply chain (e.g., for pre-materials)
- Assess possible domestic processing for (intermediate) manufacturing due to duty reduction
- Evaluate current customs procedures for optimization

Besides the decline of customs duties and reduction of bureaucracy and costs, companies should also be aware of possible new developments. The European Union is currently planning to implement so-called green taxes (i.e., taxes levied on plastics or carbon emissions) to encourage companies to drive more environmental awareness when manufacturing or purchasing certain goods. After the EU announced that a Carbon Border Adjustment Mechanism (CBAM) will be introduced for certain goods, a corresponding legislative proposal was submitted for discussion in the Swiss Parliament. Since the EU CBAM excludes imports from European Free Trade Association (EFTA) countries from its scope, Switzerland has to establish a similar regulation to ensure that EU CBAM requirements are not circumvented when goods are imported via Switzerland (i.e., requirements around carbon leakage).

In light of current developments, there will be cost and compliance issues for businesses in Switzerland with respect to the new Swiss green taxes even though customs duties will be abolished. Businesses could consider repurposing their global trade resources and knowledge base to meet the requirements of Swiss green taxes.

For additional information please contact:

- Ashish Sinha  
  +41 58 286 59 06  |  ashish.sinha@ch.ey.com
- Jonathan Baumeler  
  +41 79 193 1422  |  jonathan.baumeler@ch.ey.com
- Marcel Blöchlinger  
  +41 79 922 5796  |  marcel.bloechlinger@ch.ey.com
- Katharina Königstädt  
  +41 79 199 5097  |  katharina.koenigstaedt@ch.ey.com
United Arab Emirates: Key trade agreement plans for 2022

Signing Comprehensive Economic Partnership Agreements (CEPAs) with eight strategic global markets is one of the key initiatives of the Projects of the 50 unveiled by the United Arab Emirates (UAE) government in 2021. Projects of the 50 is the vision and roadmap for the UAE for the next 50 years, aimed at attracting foreign investment and bolstering the UAE economy into the next phase of growth, technology and innovation.

UAE-India CEPA

The UAE signed its first bilateral trade agreement with India on 18 February 2022 and came into force on 1 May 2022. The UAE-India CEPA provides UAE exporters with tariff elimination or tariff reduction on over 80% of goods exported to India, while India benefits from tariff elimination or reduction on over 97% of tariff lines within a phased period of 10 years.

Key provisions from the UAE-India CEPA:

- Products that are trans-shipped through the UAE will not be subject to anti-dumping investigation by India.
- The UAE-India CEPA includes a chapter focused on harmonization of regulatory standards for digital trade between the two countries. The section covers paperless trading, provision for electronic documents to be accorded the same legal standing as paper documents, protection from unsolicited commercial e-messages, and a framework for electronic transactions and online consumer protection. However, non-application of any of the provisions under the Digital Trade Chapter will not lead to any actions under the CEPA’s Dispute Settlement Mechanism.

- The UAE-India CEPA allows for automatic registration and marketing authorization of Indian generic formulations within 90 days for those medicines that are approved by certain developed countries listed in Annex 5A of the CEPA.
- The UAE-India CEPA enforces strict rules of origin on local UAE producers to verify origin to disallow products manufactured in third countries to take advantage of trans-shipping products through the UAE. For most products, 40% local value addition is required, with more stringent requirements and special qualifying rules demarcated for specific products.
- The Rules of Origin Chapter also provides for Certificates of Origin to be issued retrospectively.
- The UAE-India CEPA includes a chapter focused on harmonization of regulatory standards for digital trade between the two countries. The section covers paperless trading, provision for electronic documents to be accorded the same legal standing as paper documents, protection from unsolicited commercial e-messages, and a framework for electronic transactions and online consumer protection. However, non-application of any of the provisions under the Digital Trade Chapter will not lead to any actions under the CEPA’s Dispute Settlement Mechanism.
• Under the UAE-India CEPA, the UAE has been granted access to government procurement contracts, covering 34 central government entities, for deals worth approximately over USD 25 million. The chapter on government procurement also enables India to apply a preferential procurement policy to protect its micro, small, and medium enterprises (MSMEs). Similarly, Indian industries have access to procurement projects undertaken by 41 federal government entities listed in the UAE’s Schedule of Commitments.

• Pursuant to the UAE-India CEPA, the UAE has granted India access to over 100 service subsectors, including telecommunications, construction, finance, tourism, transportation and health related services.

**UAE-Israel CEPA**

The UAE and Israel signed CEPA on 31 May 2022. The UAE-Israel CEPA is set to eliminate or reduce tariffs on over 96% of tariff lines and is set to provide greater market access and attract investment in key industries, such as hospitality, energy, e-commerce, aerospace and environment. The trade deal is also said to support different service sectors, such as construction, finance and distribution services, among others. Renewable energy, agricultural technology and advanced technology are also priority areas for both Israel and the UAE.

Trade between the two countries is poised to expand the use of Fourth Industrial Revolution technologies to strengthen supply chains and to harness the power of digital trade, blockchain, cross-border data flows and data localization by virtue of the CEPA.

According to the UAE Ministry of Economy, bilateral trade between UAE and Israel is expected to grow beyond USD10 billion within five years, adding USD.9 billion to the UAE’s GDP.¹

**UAE-Indonesia CEPA**

The UAE signed a trade agreement with Indonesia on 1 July 2022 after launching negotiations in September 2021. The UAE-Indonesia CEPA is set to provide immediate zero-duty free access to over 80% of UAE’s exports to Indonesia once the agreement comes into force.

The CEPA is also expected to attract investment in sectors such as energy, logistics, agriculture and infrastructure. The UAE-Indonesia CEPA is also said to include provisions on digital trade and streamlining customs formalities.

Both the UAE-Israel and the UAE-Indonesia CEPAs have yet to come into force.

**Upcoming UAE CEPAs**

In addition to the abovementioned CEPAs, the UAE has initiated discussions with Turkey and Kenya.

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¹ UAE government website. Find it here
UAE-Turkey CEPA
The UAE and Turkey began CEPA negotiations in April 2021. When finalized, the CEPA is expected to double the bilateral trade between the two countries over five years. The UAE-Turkey CEPA will be assessing how trade and investment can be expanded in key areas, such as the aviation, logistics, renewable energy, infrastructure and tourism sectors.

UAE-Kenya CEPA
On 28 July 2022, the UAE and Kenya announced their intention to start trade negotiations within the next few months. This will be the UAE’s first CEPA with an African country. Negotiations are expected to follow over the next few months.

Gulf Cooperation Council (GCC) trade negotiations
Aside from bilateral trade agreements in negotiation, the UAE is also part of trade negotiations underway in the GCC. The UAE is one of the six GCC Member States along with the Kingdom of Bahrain, Kuwait, Oman, Qatar and the Kingdom of Saudi Arabia.

The GCC is currently negotiating trade agreements with the following countries:
- The United Kingdom (UK): On 22 June 2022, a joint statement announced the commencement of free trade agreement negotiations between the UK and the GCC, with the first round of negotiations to be conducted in September 2022.
- South Korea: The GCC and South Korea ended the fifth round of negotiations on 9 June 2022, with plans to formalize a trade deal before the end of the year. Discussions for a free trade deal started in 2007 and resumed this year after being stalled for 13 years, since the last negotiation between the GCC and South Korea in 2009.

There are also talks of the GCC resuming free trade negotiations with India and Pakistan in the near future.

Free trade agreements hold numerous opportunities for businesses to optimize their supply chain and reduce operating costs. Businesses trading in or with the UAE should assess whether any benefits are available or if their current supply chain and manufacturing processes can be restructured to take advantage of the CEPAs. Businesses should also take note of any changes in customs procedures, rules of origin requirements or any other standards that may be brought on by the trade agreements and make necessary adjustments to avoid issues of customs compliance.

For additional information please contact:

Ramy Rass | + 971 56 409 4584 | ramy.rass@ae.ey.com

2 India times website, 17 December 2021. Find it here
3 Zawya website, 31 May 2022. Find it here
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.

Brexit: read our latest analysis

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## Global Trade contacts by country

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<tr>
<th>Americas</th>
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<tr>
<td><strong>Argentina</strong></td>
<td><strong>Australia</strong></td>
</tr>
<tr>
<td>Sergio Stepanenko  + 54 11 4318 1648</td>
<td>Kylie Norman  + 61 2 9248 4765</td>
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<tr>
<td>Brazil</td>
<td>Malaysia</td>
</tr>
<tr>
<td>Ian Craig  + 55 21 32637362</td>
<td>Jalib Singh Riar  + 60 3749 58329</td>
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<tr>
<td>Fernando Fagiani  + 55 11 2573 6913</td>
<td>China Mainland</td>
</tr>
<tr>
<td>Cesar Finotti  + 55 11 2573 6465</td>
<td>Lynette Dong  + 86 21 2228 4107</td>
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<td>Canada</td>
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<tr>
<td>Sylvain Golsse  + 1 4169 325165</td>
<td>Paul Smith  + 64 9 348 8409</td>
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<td>The Caribbean</td>
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<tr>
<td>Rose Boevé  + 599 0 430 5076</td>
<td>Shubhendu Misra  + 852 9664 0842</td>
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<td>Colombia</td>
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<tr>
<td>Gustavo Lorenzo  + 57 14847225</td>
<td>Bryan Tang  + 86 21 2228 2294</td>
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<tr>
<td>Costa Rica</td>
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</tr>
<tr>
<td>Carolina Palma  + 506 2459 9727</td>
<td>William Chea  + 662 264 9090</td>
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<td>Mexico</td>
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<tr>
<td>Karla Cardenas  + 52 664 681 7844</td>
<td>Yumi Haraoka  + 81 3 3506 2110</td>
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<td>Roberto Chapa  + 52 818 152 1853</td>
<td>Vietnam</td>
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<tr>
<td>Rocio Mejia  + 52 555 283 8672</td>
<td>Anh Tuan Thach  + 84 28 3629 7366</td>
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<tr>
<td>Jorge Nasif  + 52 551 101 7327</td>
<td>Korea (South)</td>
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<td>Dongo Park  + 82 23 787 4337</td>
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|                           |                        | **Europe, Middle East, India and Africa contacts**
# Global Trade contacts by country continued

## Europe, Middle East, India and Africa

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<tr>
<th>Country</th>
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<tr>
<td>Austria</td>
<td>Theresa Arlt</td>
<td>+ 43 1 211 70 1102</td>
<td>Sourabh Jain</td>
<td>+ 91 98 1800 9094</td>
<td>Walter de Wit</td>
<td>+ 31 88 407 1390</td>
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<tr>
<td>Belgium</td>
<td>Antoine De Donder</td>
<td>+ 32 2 749 36 90</td>
<td>Krishna Kanth Kotagiri</td>
<td>+ 91 99 6388 4466</td>
<td>Caspar Jansen</td>
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<tr>
<td></td>
<td>Franky De Prii</td>
<td>+ 32 2 774 94 84</td>
<td>Suresh Nair</td>
<td>+ 91 22 6192 2004</td>
<td>Bastiaan Kats</td>
<td>+ 31 88 40 73806</td>
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<td>Erwin De Vos</td>
<td>+ 32 2 774 93 75</td>
<td>Agneshwar Sen</td>
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<td>Martijn Schippers</td>
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<td>Jef d’Hollander</td>
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<td>Ciarán Behan</td>
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<td>Jeroen Scholten</td>
<td>+ 31 88 407 1009</td>
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<td>Christina Horckmans</td>
<td>+ 32 2 774 93 22</td>
<td>Neil Byrne</td>
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<td>Øystein Arff Gulseth</td>
<td>+ 47 982 06 387</td>
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<td>Philippe Lesage</td>
<td>+ 32 2 774 92 60</td>
<td>Colin Doolin</td>
<td>+ 353 1 2212949</td>
<td>Narve Løve</td>
<td>+ 47 982 06 238</td>
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<td>Kristof Verbist</td>
<td>+ 32 2 774 90 86</td>
<td>Nicoletta Merkouri</td>
<td>+ 30 697 3773203</td>
<td>Sławomir Czajka</td>
<td>+ 48 71 711 88 93</td>
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<tr>
<td></td>
<td>Keshia Wagner</td>
<td>+ 33 6 61 08 49 83</td>
<td>Alessandra Di Salvo</td>
<td>+ 39 335 7361484</td>
<td>Sally Jones</td>
<td>+ 44 20 7951 7728</td>
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<tr>
<td>Denmark</td>
<td>Anne-Mette Høiriis</td>
<td>+ 45 1582559</td>
<td>Hadijah Nannyomo</td>
<td>+ 254 20 2886000</td>
<td>Pedro Gonzalez-Gaggero</td>
<td>+ 34 954 665 246</td>
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<td>Middle East and North Africa</td>
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<td>Pascal Cange</td>
<td>+ 971 4 3129330</td>
<td>Johnathan B Fillis</td>
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<td></td>
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<td>Ramy Rass</td>
<td>+ 971 4 7010900</td>
<td>Zoran Dimoski</td>
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