# TradeWatch

## EY Global Trade

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# Insights



## Europe, Middle East, India and Africa

# EU: Antidumping measures as trade remedies

The General Agreement on Tariffs and Trade (GATT), binding 164 countries, lays out principles and rules of international trade and sets up procedures for dispute settlement. The Agreement also gave birth to the World Trade Organization (WTO), one main objective of which is to achieve smooth and predictable international trade flows. The WTO aims to achieve this by creating a non-discriminatory trading environment whereby one party's exports are treated fairly and consistently in another party's markets. The Most Favored Nation (MFN) rule, perhaps the WTO's most widely known concept, ensures equitable treatment between members. But what happens when certain countries or companies do not play by the rules of free trade?

## Antidumping measures

The promotion of free trade and fair competition, core values of the institution, does not preclude the possibility for parties to the WTO to implement certain trade defense measures when they are subject to unfair commercial practices. In recent years, there has been a greater recourse to trade defense measures by many countries invoking not only market distortions but also the protection of critical industries and national security.

Antidumping measures are an example of instruments of trade defense that can be used, under strict conditions and following a specific procedure, to ensure fair and undistorted competition on global markets. Since 2018, the United States (US), China, and the European Union (EU) have adopted a series of trade restrictive measures targeting the products obtained or manufactured in the territories of each other, engaging in what observers would soon call trade wars, and giving rise to a panoply of international trade barriers: additional duties, safeguards, non-tariff barriers (such as restrictions on a number of technology goods), etc. As a result, the global number of antidumping measures has also increased sharply. This phenomenon of increased trade barriers has sparked worldwide debates on the end of free markets globalization.

India and the US represent a large portion of these investigations, each accounting for 19.3% of the antidumping investigations initiated in the last four years.[1] In contrast, the number of investigations initiated by the European Union (EU) has been relatively constant, and only represented 4% of the total investigations launched over that same period.[2] However, with a default five-year validity and the renewal of most measures, the number of antidumping measures enforced by the EU has also kept growing.

1 "Trade Remedies Data Portal," *World Trade Organization website*. Find it here.

2 Ibid.

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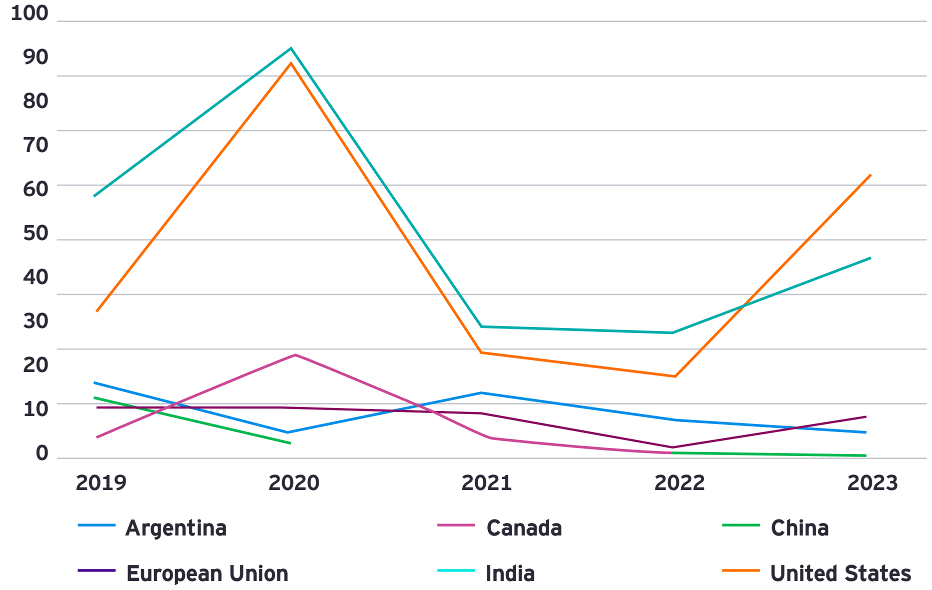
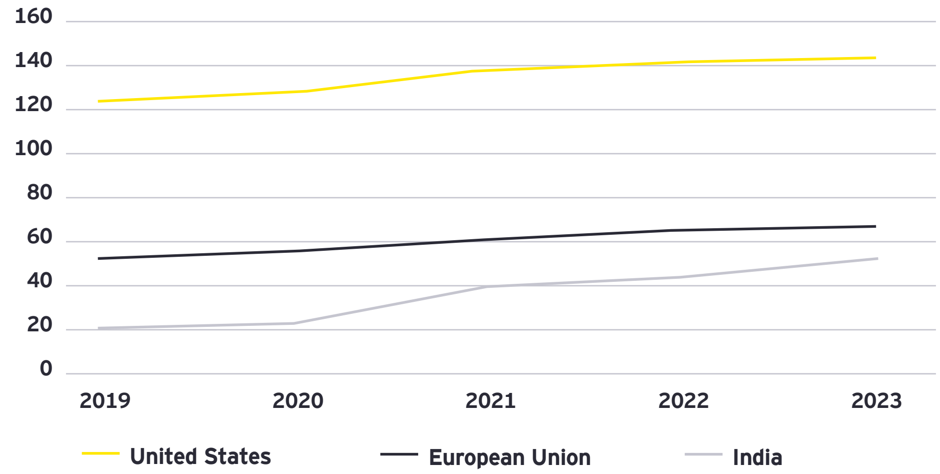
**ADD investigations per initiation year and importing country**




*Data source: Home – Trade Remedies Data Portal (wto.org)*

As a large manufacturing economy with an export-driven growth strategy backed by the central government, China has been the target of many of the antidumping and anti-subsidies duties adopted by other jurisdictions.

**Antidumping measures in force against China exports, per importing country**




*Data source: Home – Trade Remedies Data Portal (wto.org)*

The WTO debate over China's market economy status embodies the international trade tensions. The EU has been cautious about granting this status to China, arguing that the economy is not driven by market forces but by political objectives,[3] and claiming there is an asymmetry in their respective market openings.[4] Earlier this year, the EU Commission updated its report on state-induced distortions in China's economy, thereby reiterating its contention that a specific approach is justified in calculating antidumping duties.[5] The Chinese government contested this approach at the WTO, but later retracted its complaint. In reaction to these developments, and to the recent imposition of countervailing duties on electric vehicles,[6] China recently launched investigations into the dumping of EU brandy, pork, and certain dairy products onto Chinese markets.

3 DG TRADE, SWD(2024)91.

4 "EU trade relations with China," *European Commission website*. Find it here.

5 DG TRADE, SWD(2024)91, "Commission staff working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations," 10 April 2024.

6 See "Canada: Surtaxes on Chinese-origin EVs and steel and aluminum products" on page 31 in this edition.

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## The EU's strategic use of antidumping measures

In the EU, the deployment of antidumping measures is governed by Regulation 2016/1036 on protection against dumped imports from countries not members of the European Union,[7] which implements the terms of international agreements reached within the WTO. This regulation sets up a framework for antidumping measures in the EU and establishes procedures for their deployment.

In most cases, it starts with a complaint lodged by European producers who believe that they are exposed to unfair competition resulting from dumped imports from non-EU countries. On the basis of a complaint which includes evidence of injury, the EU may initiate an investigation involving exporting producers, producers in the EU, importers and users. The goal of the investigation is to determine whether there is dumping, and whether this represents a material injury (or threat thereof) to European producers. The potential dumping margin is then calculated and compensated as necessary by the adoption of tariff measures. While conducting the investigation, the Commission may, under certain conditions, subject the import of the investigated products to temporary measures such as their registration into national databases, or to provisional antidumping duties paid in the form of a security deposit. These temporary measures are aimed at offering immediate protection against a material injury to the Union's economy that is identified during the investigation. They also allow duties to be collected retroactively if definitive measures are ultimately implemented. If a causal link can be found between the dumping and the material injury in the EU, and if it is not against the overall economic interests of the EU to do so, the Commission may decide to implement definitive antidumping measures.

Antidumping measures can take different forms. They commonly consist of ad valorem duties calculated on the customs value of the imported products, with individual reduced rates for exporters who have cooperated with the investigation. In some cases, the Commission allows certain cooperating exporters to formally undertake to raise their export prices to be granted an exemption. Finally, in some cases, the Commission determines a minimum import price: a price (upon import) under which duties are due to the amount of the price difference.

Antidumping measures are always applied to specific commodity codes and specific non-preferential origins (also known as economic origin, i.e., the nationality of the product). However, the EU regulation foresees certain cases of antidumping circumvention (e.g., economically unjustified consignment via third countries, or limited assembly in third countries). In these cases, the Commission may extend the measure beyond its initial scope.

For example, in 1993, the EU imposed antidumping duties on bicycles originating in China. In 1997, following an investigation into the circumvention of this measure via the import of unassembled bicycles, the duties were extended to certain parts of bicycles. In 2013, following another circumvention investigation, the measures were extended to bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, regardless of their origin. In 2015, the duties were further extended to bicycles consigned from Cambodia, Pakistan and the Philippines.

Traditionally, the EU has imposed antidumping duties on raw materials or intermediary products such as steel, ceramics, chemicals and textiles, where there have historically been significant concerns about dumping and subsidization. However, more advanced products have recently become the target of these measures, with the examples of solar panels, electric bicycles and electric vehicles. The EU aims to strike a balance between protecting its interests from distorted competition, being integrated into global value chains that also benefit European companies, and maintaining sustainable access to critical raw materials that are heavily dependent on Chinese suppliers.

Other factors must be taken into account; they include heightened political tensions, national security concerns, decline in the EU's industrial production capacity, and differences in labor standards. Increasingly, the EU has considered environmental, social, and governance (ESG) standards in designing trade policies, including trade defense instruments. This is leading to more cases where lower environmental or labor standards in exporting countries are found to impact dumping margins, resulting in potentially higher antidumping duties, and impacting a wider range of products and exporting countries.

7 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union. Find it here.

For example, the circumstances of labor are taken into account in the EU investigation into the dumping of polyethylene terephthalate (PET products) from China, including considerations on workers' freedom of movement and collective bargaining ability.[8]

### Strategies for global companies in a shifting trade landscape

What can a global company do in this rapidly evolving global trade landscape to stay on top of antidumping?

- **Monitor trade restrictive measures:** In the face of unstable geopolitics and considering the greater recourse to trade policies in international relations, it is important to have processes in place for monitoring trade restrictive measures in all sourcing and marketing regions. These processes will help to reduce the risk of being surprised by a steep antidumping duty, or by a sudden shortage of important materials or equipment. This step is particularly important in complex value chains involving special customs procedures and tax suspensive regimes, as trade defense mechanisms often restrict their use, either by categorically excluding certain goods from being placed under suspensive customs regimes (e.g., inward processing and placing on the EU market) or by imposing control measures and restrictions (e.g., common storage in a customs warehouse).
- **Stay informed:** As trade disputes lead to the adoption of tariff measures around the world, it is vital to stay informed about potential trade barriers, for example, non-EU countries may also start adopting new measures restricting the export of European products to third countries' territories or subjecting them to high tariffs.
- **Adopt robust procedures:** To efficiently monitor the applicability of newly adopted trade defense measures, companies must have robust procedures for determining the customs classification and the non-preferential origin of the materials and products that they trade in.
- **Understand the different legal frameworks that impact the business:** Multinational companies may need to navigate a host of different trade regulations. For EU companies it is important to remember that the United Kingdom's (UK) exit from the EU (Brexit) also had implications for them. The UK was a significant market within the EU and is still a major trade destination for EU businesses. Post-Brexit, the UK has the autonomy to set its own trade restrictive policies, which may lead to divergences from EU practices. Businesses that used to operate under a single EU trade policy, now need to ensure compliance with both UK and EU trade defense measures. This requires understanding the different legal frameworks and procedures for antidumping investigations.
- **Maintain supply chain resilience and flexibility:** As various types of trade barriers are steadily rising, and developing in ways that are hard to anticipate, it is important to choose critical suppliers and trading partners wisely. There is real value in having flexibility and resilience built into the supply chain.
- **Meet the formal requirements:** If a company's imports qualify for a reduced rate or an exemption of antidumping duties, it is crucial to meet the formal requirements laid out in the legislation, and to maintain appropriate records to obtain those reductions. Failing to do so may, upon inspection, subject the import to the highest anti-dumping duty rate and to high financial penalties. ■

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8 For more information on this topic, please see our article EU: European Parliament approves legislation to ban forced labor products, *TradeWatch* Issue 2 2024, page 47. Find it here



# EU: Countervailing duties on imports of battery electric vehicles from China

On 4 October 2024, European Member States voted regarding a decision to impose anti-subsidy duties on Chinese-origin battery electric vehicles (BEVs). This marks a decision on definitive duties, establishing them for a five-year tenure.

The European Commission (EC) initiated an anti-subsidy investigation on Chinese-origin BEVs in 2023, which concluded on 4 July 2024 with the decision to impose provisional countervailing duties, a significant development in trade defense measures. This action is a response to the Commission's findings that the Chinese BEV sector is, according to the EC, benefiting from trade-distorting subsidies and posing a potential economic threat to the European BEV industry.

The European Commission's investigation assessed the impact of a variety of Chinese subsidies on European Union (EU) importers, BEV users, and consumers, ensuring a comprehensive understanding of the impact. Recent diplomatic engagements have seen intensified consultations with Chinese officials, with Executive Vice President Valdis Dombrovskis and Chinese Trade Minister Wang Wentao at the forefront of discussions. These ongoing technical-level contacts aim to forge a World Trade Organization (WTO)-compatible resolution that effectively addresses the EU's concerns regarding the injurious subsidization practices identified.

The provisional duties, which target three major Chinese BEV manufacturers, are as follows:

- BYD at 17.4%
- Geely at 19.9%
- SAIC at 37.6%

Other Chinese BEV producers, which cooperated with the investigation but were not part of the sample, face a weighted average duty of 20.8%. Non-cooperating companies are subject to the highest duty of 37.6%. Tesla applied for a specific duty which has been set at 9%. These duties will be applied in addition to the EU's 10% tariff for non-preferential origin BEVs imported into the EU from China.

EC and Chinese officials have signaled willingness to continue bilateral discussions on the imposition of duties and potential diplomatic solutions. A Commission Implementing Regulation including the definitive findings in the investigation was published in the Official Journal on 30 October 2024 and entered into force a day later.

## Actions for business

Importers of BEVs are advised to determine whether their import flows into the EU are affected by these final duties. Depending on the impact, they are advised to consider engaging in discussions with the Commission by requesting a company-specific ruling.

Businesses should also assess their customs valuation of products impacted by imports into the EU. In the longer-term location strategy and sourcing decisions will be crucial.

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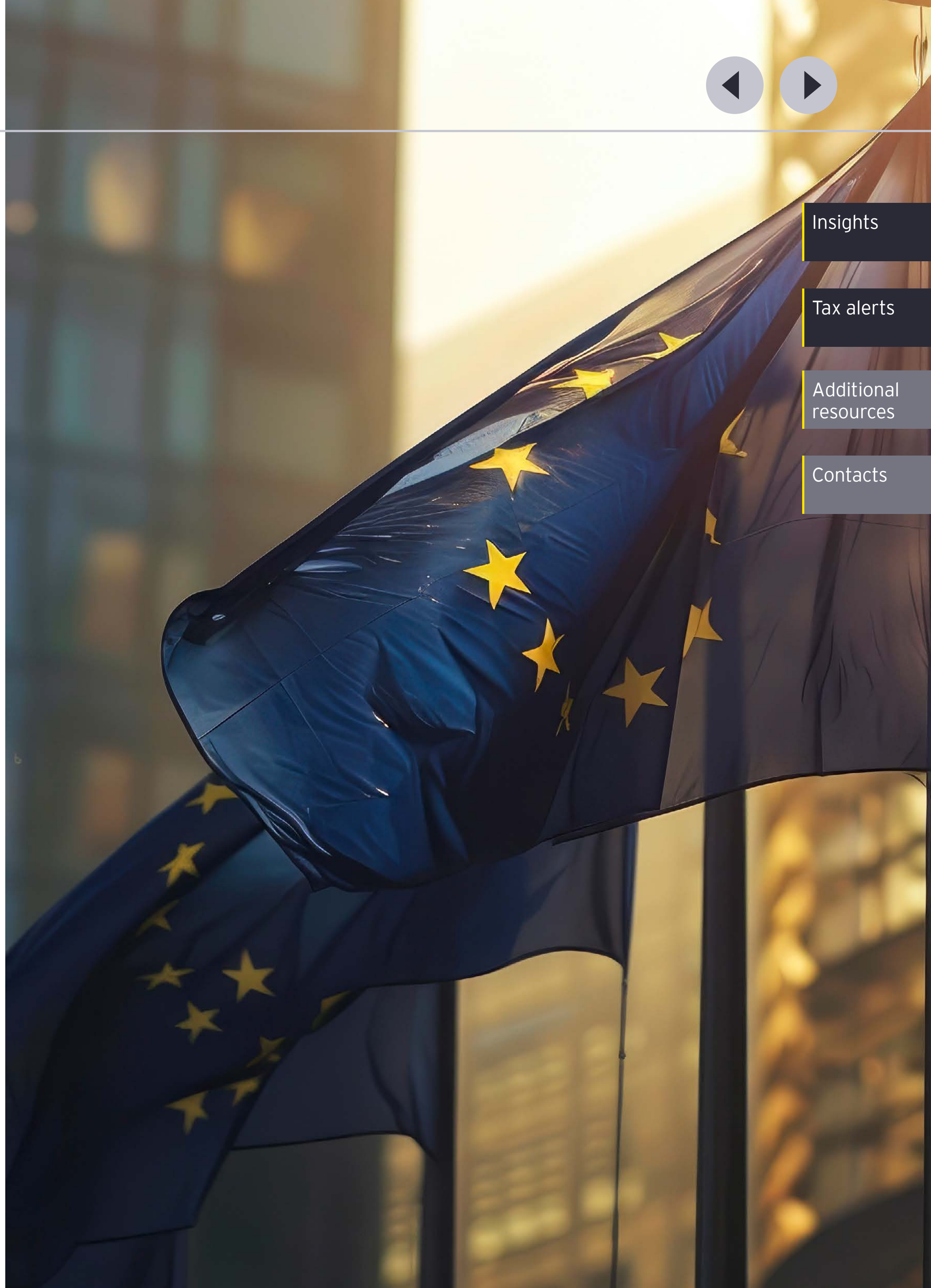


# EU: Restrictive measures against Russia

As the war in Ukraine continues, the European Union (EU) continues to adopt and enforce restrictive trade measures and sanctions against Russia and Belarus. EU traders must be aware of these measures and comply with them. However, the impact of these measures goes beyond the EU's borders, with new measures aimed at preventing activities that bypass the EU restrictions and undermine the impact of its sanctions.

### New measures to prevent circumvention by non-EU subsidiaries

On 24 June 2024, the EU adopted the 14th sanctions package of restrictive measures against Russia, amending Regulation (EU) 833/2014.[1] This package introduces a new Article 8a, which requires that EU companies make their best efforts to ensure that their non-established subsidiaries do not engage in activities that undermine the sanctions outlined in the Regulation (EU) 833/2014. Regulation (EU) 2024/1865 amending Regulation (EC) 765/2006[2] on EU sanctions against Belarus, includes the same measure.

In recent months, the EU's focus has shifted from enforcing prohibitions on EU-based companies to tackling attempts to bypass these prohibitions. This change became evident with the adoption of Article 12g in December 2023, requiring companies outside the EU to contractually agree not to re-export goods to Russia if these same goods were initially imported from the EU.

Both Articles 8a and 12g Regulation (EU) 833/2014 aim to prevent activities that undermine the intended impact of EU sanctions, regardless of whether the company involved falls under the jurisdiction of the EU or not.

1 Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine.

2 Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine.

Discussions among businesses and trade professionals about the extraterritorial application of EU sanctions against Russia began when Article 12g was adopted and the debate has intensified with the introduction of Article 8a.

## EU principles of territoriality and nationality

As specified in the Article 13 of Regulation (EU) 833/2014, EU sanctions against Russia apply based on the principles of territoriality (i.e., within the territory of the EU, and in respect of business done in whole or in part in the EU) and of nationality (i.e., to EU nationals, businesses incorporated or constituted under the law of a Member State, and aircrafts and vessels under the jurisdiction of a Member State, regardless of their location).

The same limitations are reflected in other EU sanctions regimes, such as those against Iran (Article 49 of Regulation (EU) 267/2012), Syria (Article 35 of Regulation (EU) 36/2012), Venezuela (Article 20 of Regulation (EU) 2017/2063), and the Democratic Republic of Congo (Article 11 of Regulation (EC) 1183/2005).

Following the principle of nationality, the EU applies certain regulations outside its territory, such as the General Data Protection Regulation (GDPR) when foreign entities process data of EU citizens. Similarly, the restrictive measures against Russia apply to foreign affiliates of EU companies, as they are constituted under the law of an EU Member State.

## Extraterritorial application

The EU has repeatedly emphasized its commitment to the principles of territoriality and nationality, including in the frequently asked questions (FAQs) related to the Regulation (EU)833/2014. The EU stated that "the sanctions are never extraterritorial" and that "subsidiaries of EU companies are incorporated under the laws of the host country, thus bound by the host country laws." Based on these elements, Article 8a seems to contradict the EU's stance on the scope of its legal authority.

Moreover, the EU stands against the extraterritorial application of foreign regulations from non-EU countries beyond their own borders. In 1996, it adopted the Blocking Statute ((EC) 2271/96),[3] which aims to protect EU operators from the extraterritorial application of the United States (US) sanctions against Cuba and Iran and to prohibit compliance with those laws. The recitals of the Blocking Statute state that "by their extra-territorial application such laws [...] violate international law," which includes the principles of sovereignty, non-intervention, and territoriality as the primary basis for jurisdiction. The Blocking Statute was a direct response to specific US laws and to the possibility for the US administration to enforce secondary sanctions against non-US parties conducting transactions outside the US, with no connection to the US (i.e., with no US nexus). The Blocking Statute also aims to impede compliance with requirements based on ownership and control. It prohibits companies located in the EU and constituted under the law of an EU Member State, even if they are owned or controlled by a US entity, from complying with US sanctions against Iran (Act 6 (iii) of the Annex).

Therefore, it would seem inconsistent for the EU to take this position against the US while asserting that foreign subsidiaries of EU companies, established under a foreign law, should comply with EU sanctions.

Examining recital (27) of the 14th package, it seems that the EU remains true to its core principle, as the recital affirms that sanctions are enforced "within the jurisdictional boundaries established in Article 13." It adds an important responsibility for EU companies, stating that "At the same time, if Union operators are able to and effectively assert a decisive influence over the conduct of [the foreign entity], they may incur responsibility for actions of that [entity] that undermine the restrictive measures and should use their influence to prevent those actions from occurring."

3 Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

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Nevertheless, the wording used by the regulator was deliberate. The term "undermine" is used instead of "violate," underscoring the difference between being subject to EU law and violating it and conducting activities that compromise or diminish the effectiveness of EU law. Moreover, "they" refers to the Union operators, suggesting that these operators could be held accountable for actions taken by their subsidiaries, rather than the subsidiaries themselves being held accountable. In fact, an EU court could not find a non-EU company's actions that go against EU sanctions punishable, as the company is governed by foreign law.

While recitals are not legally binding, this one may provide necessary insight into how to interpret Article 8a and it confirms that Article 8a does not establish EU jurisdiction through ownership and control.

### The impact of the new measures

That being said, Article 8a Regulation (EU) 833/2014 introduces significant changes to the EU sanctions regime that may make it more difficult for *bona fide* companies to navigate the complexities of the sanctions regime against Russia.

Article 12 of the same regulation already stated that "It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in this Regulation." The FAQs have also indicated that EU companies cannot use their foreign subsidiaries to circumvent the sanctions, for instance, by delegating decisions to them that are contrary to the EU measures, and that EU nationals working for a foreign subsidiary could be held liable for their actions if their effect were to circumvent the measures.

The adoption of Article 8a seems to confirm that the role of EU companies regarding "what happens next" should shift from passive to active. They must not only refrain from being involved in activities of foreign subsidiaries that undermine the EU sanctions, but they must also take appropriate measures to prevent these activities.

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## Actions for business

In the absence of any further EU guidance on the interpretation of Article 8a, it is our view that EU companies should take appropriate actions to address this new provision and verify to what extent it might be relevant to their activities. To do so, EU companies should:

- Verify how the definitions of "ownership" and "control"[4] may apply to their structures. Ownership is defined as holding 50% or more of the proprietary rights in a legal entity or having a majority interest. Indicators of control may include the ability to appoint or remove a majority of the board members, the right to use the subsidiary's assets, or the ability to manage the subsidiary's business in a unified manner, with consolidated financial reporting. The EU sometimes refer to ownership and control as "influence."
- Consider that merely being "aware" of a transaction that undermines EU sanctions is sufficient to establish liability. For instance, if an EU parent company knows that its non-EU subsidiary is exporting goods to Russia that fall under the prohibitions outlined in Regulation (EU) 833/2014, and those exports would be deemed prohibited had they been made from within the EU, the parent company could be held liable.
- Conduct a risk assessment based on the country of establishment of their subsidiaries, their business flows, their sector and the type of goods, software or services that they could trade with Russia.
- Implement policies, controls, and procedures to mitigate the risk of undermining the sanctions. They should be able to demonstrate to the authorities that they made every effort possible to prevent their subsidiaries from engaging in activities that would be prohibited if conducted by them.

If this level of control is not feasible, EU parent companies should analyze and justify why it is not, considering elements such as the degree of effective control over non-EU subsidiaries, the size and nature of the subsidiaries, or the application of the legislation of third countries that may impede the exercise of control over the subsidiaries.

## Summary

Article 8a Regulation (EU) 833/20 seems to introduce a proactive role for EU companies to ensure compliance with the EU's sanctions against trade with Russia, while seemingly stretching the EU's influence past its territorial borders. EU companies should, therefore, proactively assess and control their subsidiaries' activities to prevent actions that undermine EU sanctions. These are complex matters. Additionally, as these developments may contrast with the EU's traditional stance on extraterritoriality, EU companies should regularly verify the related EU guidance and seek professional advice to navigate these challenges effectively. ■

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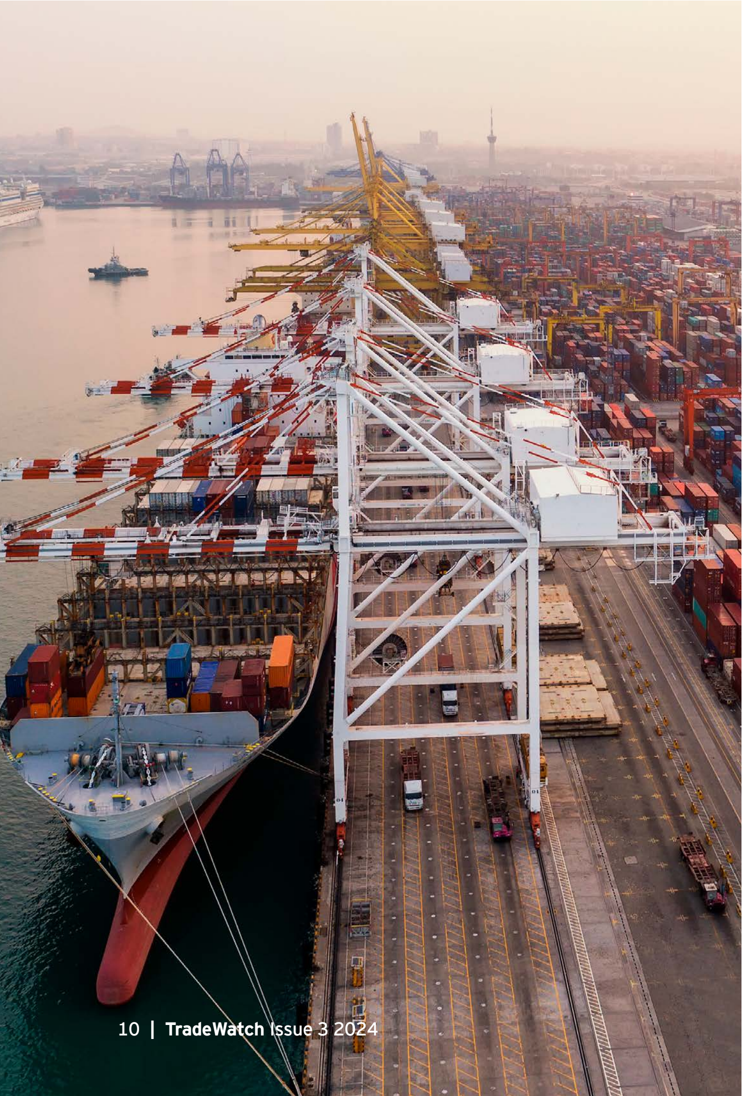
4 Recital (28) in Regulation (EU)833/2014 and "EU Best Practices for the effective implementation of restrictive measures" 11623/24.

# EU: The sale-for-export principle once more subject for debate



What transaction in a series of sales is to be used to determine the customs value is a topic of significant importance for businesses engaged in international trade and is again subject to debate in the European Union (EU). Several newspapers have reported on an importer scrutinized in Belgium for, in the view of the authorities, using the incorrect transaction in a series of sales to determine the customs value leading to a reassessment.

At the same time the European Court of Justice (ECJ) is poised to deliver pivotal judgments in two pending cases that delve into the nuances of determining the sale for export in a series of successive sales (C-348/24[1] and C-500/24[2]). Also, the Customs Expert Group is discussing two new instruments that relate to this topic.

## Facts as presented in the preliminary ruling requests

### Facts C-348/24

A Cuban tobacco company engaged in the sale of cigars to a Spanish company, overseeing the transportation of the product from Cuba to a customs warehouse located in Agoncillo (La Rioja, Spain). Upon arrival a distribution firm acted as the consignee and stored the goods under a customs warehousing arrangement.

The cigars, while housed in the Agoncillo warehouse, were destined for various locations. Some were sold by the Spanish company to the distribution company, who then distributed a portion to Ceuta and Melilla – territories outside the EU customs territory – and the remainder to local tobacconists. The cigars sold to tobacconists, which are central to the current legal proceedings, remained under the Spanish companies' ownership until the distribution firm finalized sales agreements with the tobacconists. At that point, ownership transferred to the distribution firm, who then released the cigars for free circulation, enabling their sale and delivery to the tobacconists.

The Taxation Agency initiated several noncompliance records against the distribution firm for the fiscal years 2012 to 2015, citing various reasons. The primary adjustment was due to the declared customs value, which pertained to the sale of Cuban cigars by the Cuban tobacco company to the Spanish company, not meeting the criteria for successive sales. The Taxation Agency contended that the initial sale (from the Cuban tobacco company to the Spanish company) was not explicitly for export to the

1 C-348/24 Find it here.
2 C-500/24 Find it here.

EU customs territory. Consequently, it determined that the customs value should reflect the sale that resulted in the import of the goods into the EU, namely the sale from Spanish company to the distribution company.

### Facts C-500/24

In the preliminary ruling request C-500/24, a batch of goods manufactured in Asia was sold through a two-tiered transaction process. Initially, an Asian supplier sold the goods to a Swiss intermediary. This first sale was then followed by a second sale to an international fashion retailer.

Upon manufacturing completion, the goods embarked on a direct journey from Asia to Spain. Upon arrival, a decision was made to release most of the goods into the European market, allowing them to circulate freely. A portion of the goods, however, was earmarked for storage in a customs warehouse, awaiting further distribution.

The goods that entered the free market were destined for a dual-purpose role: some were to be sold within the EU, while others were tagged for export to various third-country destinations. The labels affixed to these goods were deliberately designed to accommodate this flexibility, ensuring compliance with marketing regulations both within the EU and beyond.

In the process of customs declaration, the international fashion retailer decided to value the goods based on the initial transaction price – the price paid by the Swiss entity in the first sale. This approach, however, was met with resistance from the Spanish customs authorities. In a move that challenges traditional valuation practices, the authorities insisted on using the second sale price – the price at which the international fashion retailer acquired the goods – as the basis for assessing customs duties.

## Primary issue in both preliminary ruling requests

At the heart of the two preliminary ruling requests is which transaction in a series of sales should be used to determine the customs value, a matter that the ECJ first addressed over three decades ago in the landmark Unifert case (C-11/89)[3].

The applicant contends that the customs value should reflect the sale when goods were placed in the customs warehouse. Conversely, the customs authority argues for the latter sale within the warehouse, challenging the presumption of a sale for export in chain transactions for goods with ambiguous final destinations. It basically questions whether ‘sale-for-export’ should be interpreted geographically, requiring the export destination to be the EU's physical territory, or commercially, requiring the destination to be the EU market.

Although the cases are dealt with under the predecessor of the Union Customs Code (UCC) – the current legal customs framework in the EU – that allowed the first-sale-for export principle, the ECJ's forthcoming decisions are anticipated to refine the concept of sale for export and provide clarity on handling such transactions under the current UCC, particularly Article 128 UCC-IA, which governs the timing of valuation.

## Two new cases under discussion

The Customs Export Group, Valuation Section (CEG VAL) discusses customs valuation matters and also prepares new non-binding instruments to be included in the compendium on customs valuation. Although the instruments are non-binding, they represent a valuable source to interpret EU customs valuation provisions and are typically adhered to by the customs authorities in the EU. Although the following cases are not converted into instruments, they provide valuable insights into the discussions of the CEG VAL on the concept of a sale for export.

1. **Goods sourced from non-EU procurement company**

   The first case revolves around a complex chain of transactions involving multiple sales across international borders. At the core of this chain is a distributor based within the EU, who initiates the process by placing orders with a central purchasing entity situated in a non-EU country. This central purchasing company then forwards the order to the actual manufacturer, who is also located outside the EU. Upon receiving the order, the manufacturer dispatches the goods directly to the distributor firms within the EU.

   When it is time to handle customs formalities, the distribution company acts as an indirect representative and files the customs declaration on behalf of the central purchasing company. In

3 Judgment of the Court (First Chamber) 6 June 1990, Case C-11/89. Find it here.

doing so, the distribution company declares the transaction value as reflected in the sales invoice between the central purchasing company and the manufacturer, thereby setting the stage for customs valuation based on this specific link in the sales chain.

In its preliminary remarks, the Commission underscored the absence of a clear legal mandate necessitating the buyer's presence within the Union for the purposes of identifying a sale for export to the Union's customs territory. Consequently, the location of the buyer within the Union should not be regarded as a critical factor in determining the sale of export. This perspective is applicable even in scenarios involving a sequence of successive sales, provided the criteria for employing the transaction value method are satisfied. The Commission elucidated that the role of the distribution company, serving as the indirect representative of the central purchasing company, is a significant factor to consider. According to Commissions viewpoint, the pertinent transaction for assessment is the sale between the manufacturer and the central purchasing company, during which the distribution company within the EU functioned as the indirect representative.

### 2. E-commerce sales

This case revolves around a sequence of orders placed through an online platform, followed by the acceptance of these orders. An e-commerce company facilitated orders from consumers within the EU to a manufacturer located in a third country. Subsequently, the goods were produced and shipped directly to the customers in the EU. The central issue was determining which transaction should be considered the relevant one for the purpose of customs valuation.

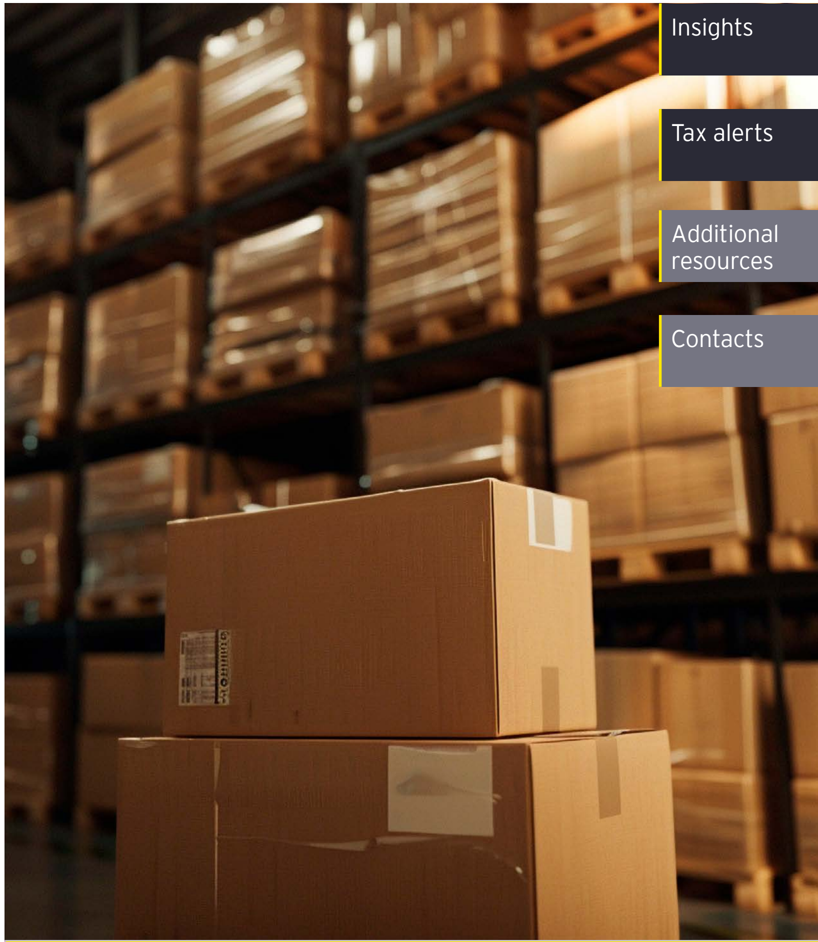
The Commission highlighted that, under the prevailing legal framework, only a single sale can meet the criteria set out in EU customs legislation. In the view of the Commission, for the first scenario, the significant sale for valuation is the business-to-business (B2B) transaction between the manufacturer and the online company.

The second scenario differed in that the online company, prior to finalizing the purchase order from an EU customer, sought confirmation from the manufacturer for the acceptance of the order.

In the context of the second case, the Commission referred to a comment by a Member State regarding the notion of a 'distance sale' as defined and utilized under the VAT Directive. The Commission clarified that such a concept is not recognized in the current customs legislation, although it has been suggested for inclusion in the context of e-commerce transactions for customs valuation purposes in a proposed legal reform of customs procedures.

## Actions for business

The apparent scrutiny from the customs authorities based on news reports, the pending ECJ's court rulings and ongoing discussions in the CEG VAL underscores the importance of tracking the developments in this area and reviewing the customs valuation position of companies involved in a series of sales. ■



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# Türkiye: The impact of changes for cross-border e-commerce



Türkiye has amended its customs law to address quality degradation issues affecting an increasing number of goods sent from abroad via the post and express couriers.[1]

The Decision on Amendments to the Decision on the Implementation of Certain Articles of the Customs Law No. 4458 was published in the Official Gazette No. 32624 dated 6 August 2024. This decision makes changes to the tax rates and value limits of goods to be brought into free circulation in Türkiye by passengers, by post or by express cargo transportation.

In this article, we provide a brief overview of the background and scope of changes for cross-border business-to-consumer (B2C) electronic commerce (e-commerce) in Türkiye and discuss some of the impacts of the change.

## Background

Goods arriving to an individual in Türkiye via postal or express courier transport, within specified limits, can be declared through a Simplified Customs Declaration (SCD). This is done by paying a single and fixed duty through the postal administration or express courier operators that meet conditions determined by the Ministry of Trade of Türkiye. Or the goods can be declared under the normal customs procedures, within the designated limits.

According to an announcement made by the Ministry of Trade on 6 August 2024, due to the quality degradation of goods coming into Türkiye from abroad via post and express courier and the rapid increase in these imports, there has been a

1 Turkiye reduces allowed value limits on and increases duties applicable to B2C e-commerce shipments, *EY tax alert*, 7 August 2024. Find it here.

surge in complaints from consumers, manufacturers, merchants, industrialists and chambers of commerce regarding sales, production and employment losses.

For this reason, both the single and fixed duty rate applied to imports was increased and the limit for imports within the scope of the Simplified Customs Declaration was reduced. Although the increase in duty rates was initially on the agenda, there was also a significant reduction of the limit in Simplified Customs Declaration transactions recognized for express courier operators. As the normal import transactions will be applied for shipments above the specified limits, import transactions that no longer qualify for the simplified procedure will likely to be slower and import costs will likely increase.

## Limits and taxation

Under the legislative amendment, the value limit is reduced from EUR150 to EUR30 for goods subject to the single and fixed duty that do not have a commercial quantity or nature, that arrive in Türkiye to an individual via postal or express courier transport, and that are declared through Simplified Customs Declaration by the postal administration or express courier companies. Additionally, the single and fixed duty rate levied on these shipments has been increased from 20% to 30% if the shipment comes directly from European Union (EU) Member States, and from 30% to 60% if it comes from other jurisdictions.

For example, previously, a product purchased from outside the EU for an order valued at less than EUR150 would be subject to 30% single and fixed duty. Following the latest amendment, the limit for a product to be purchased from abroad subject to payment of the single and fixed duty is reduced from EUR150 to EUR30, and for products under EUR30 which are shipped directly from outside the EU, a duty at twice the rate of the previously paid duty (60%) will be applied.

## Sample calculations

### Example 1: Single and fixed duty rate

#### Before the amendment

Let's assume that a consumer has purchased a handbag online from a company based outside the EU on Monday, 3 June 2024. The sales price of the product is stated as EUR20 on the website. The table below presents the tax amount that the consumer would be required to pay (in this example, TL209.34).

| Sale price | Exchange rate – Central Bank of the Republic of Türkiye (31.05.2024) | Sale price in Turkish Lira (TL) | Single and fixed duty rate | Potential challenges facing circular trade |
|---|---|---|---|---|
| EUR20 | 34,8910 | 697.82 | 30% | 209.34 |

#### After the amendment

If the same consumer wishes to purchase a bag with a sales price of EUR20 on Sunday, 1 September 2024, through the same platform and the same company which is based outside the EU, the table below presents the tax amount that this consumer would be required to pay (in this example, TL452.88).

| Sale price | Exchange rate – Central Bank of the Republic of Türkiye (01.09.2024) | Sale price in Turkish Lira (TL) | Single and fixed duty rate | Potential challenges facing circular trade |
|---|---|---|---|---|
| EUR20 | 37,7402 | 754.80 | 60% | 452.88 |

As it is shown in the above tables (example 1), after the amendment, duty at twice the rate of the previously paid duty is applied to a product under EUR30 that is shipped directly from outside the EU.

Further, the value limit for goods arriving in Türkiye to an individual via postal or express courier transport and declared under the normal procedure without a Single Customs Declaration by a postal administration or express courier company has been reduced from EUR150 to EUR30. Under Article 126 of Decision No. 2009/15481, goods that do not constitute a commercial quantity or nature and are valued at more than EUR30 but not exceeding EUR1,500 can be declared for free circulation under the normal procedure by the postal administration or express courier company authorized as an indirect representative.



**Example 2: Limit changes**

| | Duties | | | | Non-duty measures | |
|---|---|---|---|---|---|---|
| HS Code | Customs duty (import from third countries) | Additional customs duty (import from third countries) | RUSF[2] | VAT | Communiqué on Surveillance in Import (Communiqué No: 2020/9) | Communiqué on the Import Inspection of Consumer Products (Product Safety and Inspection: 2024/12) |
| 4202.32.90.90.00 | 3.70% | 30% | 6% | 10% – and 20% | True | True |

With the new regulation, the goods above the mentioned limit will now be subject to the normal customs procedures. It is anticipated that these transactions will be negatively affected in terms of both taxation and import process and customs clearance costs. As the duty amount to be paid in a normal procedure will increase and in the case of a product that is subject to a permit or analysis, these procedures must be also carried out. This will therefore prolong customs clearance and increase import costs such as storage.

## Impacts on cross-border e-commerce parties

The innovations brought by digital transformation and the increasing trend of e-commerce with the rise in internet usage have created new opportunities in this sector by changing consumer habits. This trend was accelerated by the COVID-19 pandemic when many more consumers started to purchase goods online.

As mentioned in the report called "E-Commerce in Türkiye Outlook Report" published by the Ministry of Trade on 27 May 2024, in Türkiye, the volume of e-commerce reached 1.85 trillion Turkish liras in 2023, an increase of 115.15% compared with the previous year ($77.89 billion). The number of transactions increased by 22.25% compared with the previous year, amounting to 5.87 billion.[3]

In the above-mentioned report, the Ministry of Trade forecasts that in 2024, the e-commerce volume will reach 3.4 trillion Turkish liras and the number of transactions will be 6.67 billion.

Further, in the same report under the title of countries with the most cross-border e-commerce, according to the Ministry of Trade, the jurisdictions most popular with Turkish consumers for cross-border e-commerce are, in order, Canada, the United Kingdom, the United States of America, the Russian Federation, Germany, Azerbaijan, and the Netherlands. This ranking has been established based on the evaluation of cross-border goods e-commerce transactions conducted through the Simplified Customs Declaration, with respect to the export aspect.

2 The Resource Utilization Support Fund Rate (RUSF) is a special fund applied to imports into Türkiye that are made on a credit basis.

3 E-Commerce in Türkiye Outlook Report, *The Ministry of Trade*, 27 May 2024. Find it here.

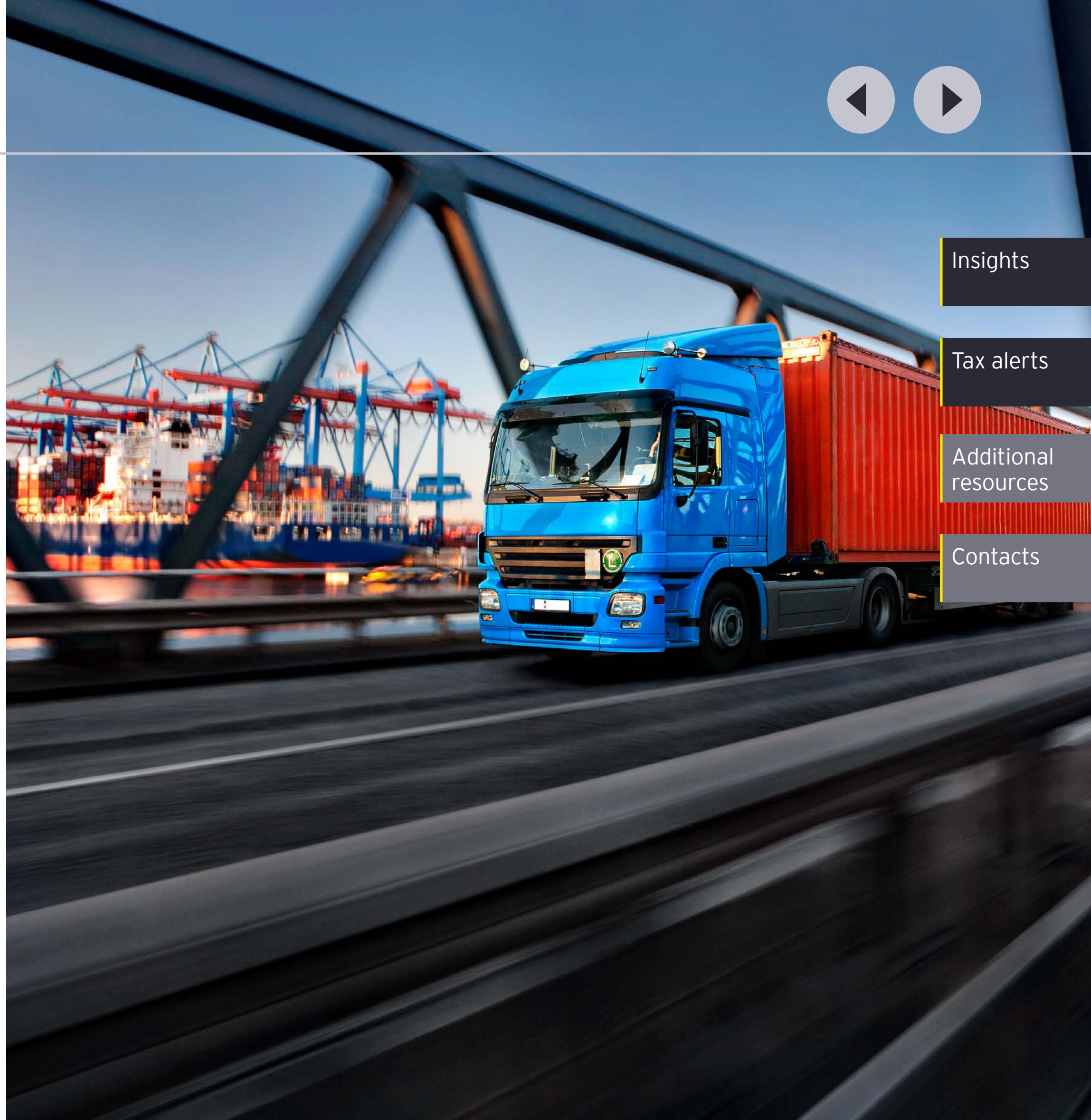
It is understood from the announcement made by the Ministry of Trade on 6 August 2024 that the new regulation was made to improve sales, production and employment factors in Türkiye. However, the new limits and duty rates announced may deter consumers in Türkiye from placing orders from abroad through online platforms. This situation may also negatively affect express courier operators and online platform owners who may have already made substantial investments in e-commerce. Also, these changes came into force on 21 August 2024, giving companies only 15 days to comply with the new regulations.

Following the regulation in question, a globally operating sportswear company made an announcement in August that it had suspended its online sales operations in Türkiye. The reason behind the suspension is possible delivery problems due to prolonged customs procedures.

The issues caused by this change to express courier operators are significant. The reduction of the limit in Simplified Customs Declaration transactions will switch the transactions (valued at more than EUR30 but not more than EUR150) from the Simplified Customs Declaration procedure to the normal customs import procedure. This flow may cause an increase in workload in terms of customs procedures for express courier operators.

## Conclusion

In today's world of commerce, speed and efficiency have become more important than ever for both companies and individuals. In this trading environment, express courier transportation plays a vital role in completing customs procedures quickly and providing prompt access to international shipments. However, the recent regulatory changes in Türkiye are creating economic pressures on consumers and express courier companies, leading to financial difficulties. Increases in tax rates and changes in value limits are affecting the dynamics of international trade by raising costs, which may present significant challenges for both individual consumers and commercial enterprises. ■



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- Argentina eliminates payments on account of Impuesto PAIS for imports of goods
  *(04 December 2024)*
- Argentina reduces payment term for imports
  *(21 October 2024)*
- Argentina reduces Impuesto PAIS tax rate
  *(03 September 2024)*
- Argentina implements withholding-tax exemption for electronic payments
  *(27 August 2024)*

## Brazil

- Brazil moves major VAT reform bill to Senate for consideration
  *(05 August 2024)*

## Canada

- Canada Border Services Agency initiates anti-circumvention investigation into dumping/subsidizing of certain container chassis from China
  *(04 December 2024)*
- Canadian International Trade Tribunal continues its finding on corrosion-resistant flat-rolled steel sheet products from China
  *(04 December 2024)*
- United States President-elect discusses tariffs on Canada and Mexico, and additional tariffs on China
  *(27 November 2024)*
- Canadian International Trade Tribunal issues finding on pea protein imports from People's Republic of China
  *(25 November 2024)*
- Canada begins to levy surtaxes on Chinese steel and aluminum imports and announces remission order process
  *(31 October 2024)*
- Canada imposes surtaxes on imports of Chinese EVs, steel and aluminum products, considers surtaxes on critical manufacturing goods
  *(19 September 2024)*
- Canada Border Services Agency announces transition period and new process for certain customs adjustments
  *(22 August 2024)*
- Canada Department of Finance releases draft legislation for 2024 budget and other measures
  *(21 August 2024)*

## Colombia

- Colombian 2024 Tax reform bill submitted to Congress, would affect corporate and capital gains rates, among others
  *(13 September 2024)*
- Colombia prohibits coal exports to Israel
  *(26 August 2024)*

## El Salvador

- Salvadoran Congress approves tax amnesty program
  *(09 September 2024)*

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- Trade Talking Points – latest insights from EY's Trade Strategy team (November 2024)
  *(04 December 2024)*
- G20 meeting highlights continued support for BEPS 2.0 and international tax cooperation
  *(31 October 2024)*
- Digital services tax jurisdiction activity summary now available (as at 25 September 2024)
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- Trade Talking Points – latest insights from EY's Trade Strategy team (September 2024)
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- Trade Talking Points – latest insights from EY's Trade Strategy team (August 2024)
  *(13 August 2024)*
- G20 Finance Ministers affirm commitment to BEPS 2.0 and enhanced global tax cooperation
  *(02 August 2024)*

## Mexico

- United States President-elect discusses tariffs on Canada and Mexico, and additional tariffs on China
  *(27 November 2024)*

## Peru

- Peru enacts 1% Excise Tax on online gaming and online sports betting
  *(24 September 2024)*
- Peru enacts Special Installment Payment regime for tax debts due by 31 December 2023
  *(20 September 2024)*

## United States

- United States President-elect discusses tariffs on Canada and Mexico, and additional tariffs on China
  *(27 November 2024)*
- United States election outcome – potential impact on global trade
  *(06 November 2024)*
- US White House publishes Fact Sheet outlining proposed changes to de minimis shipments exemption
  *(19 September 2024)*
- USTR publishes final Notice of modification of actions on impacted Chinese origin products subject to increase in additional Section 301 tariffs and applicable exclusions
  *(17 September 2024)*

# Asia-Pacific

## China

- United States President-elect discusses tariffs on Canada and Mexico, and additional tariffs on China
  *(27 November 2024)*
- Canadian International Trade Tribunal issues finding on pea protein imports from People's Republic of China
  *(25 November 2024)*
- Reform decisions from Third Plenary Session seek to modernize China's tax system
  *(07 August 2024)*

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## New Zealand

- Initial Digital Platform Information reporting due in early 2025
  *(14 November 2024)*

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### Denmark

- Danish Government plans to introduce a new agriculture CO2 tax
  *(06 August 2024)*
- Danish Parliament introduces CO2 tax on fuels and CO2-emission tax on industry from 2025
  *(06 August 2024)*

### EU

- European Court of Justice holds relocating production won't enable company to escape additional duties unless relocation is economically justified
  *(03 December 2024)*
- EU Council adopts trade, import and export ban on products made using forced labor
  *(21 November 2024)*
- EU details on VAT in the Digital Age (ViDA) package
  *(07 November 2024)*
- EU CBAM – new consultations on authorizing CBAM Declarants and establishing a CBAM Registry
  *(06 November 2024)*
- EU has finally reached agreement on VAT in the digital age (ViDA) proposal
  *(05 November 2024)*
- EU Court of Justice rules on deemed supply for EV charging
  *(29 October 2024)*
- EU Deforestation Regulation; Insights into 12-month delay and recent updates
  *(09 October 2024)*

### France

- Latest information on electronic invoicing reform
  *(17 October 2024)*

### Germany

- Germany finalizes e-invoicing administrative guidance
  *(22 October 2024)*

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- G20 Finance Ministers affirm commitment to BEPS 2.0 and enhanced global tax cooperation
  *(02 August 2024)*

### Kenya

- Supreme Court declares the Finance Act 2023 constitutional
  *(01 November 2024)*
- Kenya Tax Appeals Tribunal rules on excise duty relief for packaging preforms
  *(24 September 2024)*

### Latvia

- Latvia to require business-to-government e-invoicing as of 1 January 2025
  *(18 November 2024)*

### Poland

- Poland releases draft amendments to e-invoicing rules
  *(08 November 2024)*
- Poland presents framework for National e-Invoicing System
  *(05 November 2024)*

### Saudi Arabia

- Saudi Arabia announces 18th wave of Phase 2 e-invoicing integration
  *(03 December 2024)*
- Saudi Arabia announces 17th wave of Phase 2 e-invoicing integration
  *(04 November 2024)*
- Saudi Arabia announces 16th wave of Phase 2 e-invoicing integration
  *(30 September 2024)*
- Saudi Arabia announces new fee rules on customs services
  *(10 September 2024)*
- Saudi Arabia announces 15th wave of Phase 2 e-invoicing integration
  *(03 September 2024)*
- Saudi Arabia announces 14th wave of Phase 2 e-invoicing integration
  *(05 August 2024)*

### Slovakia

- Slovakia introduces tax on sweetened nonalcoholic beverages
  *(20 September 2024)*

### South Africa

- South Africa publishes amendments to customs duties on lead-acid batteries
  *(13 August 2024)*

### Spain

- Spain approves invoicing software specifications for taxpayers not using electronic VAT system
  *(19 November 2024)*

### Turkiye

- Turkiye reduces allowed value limits on and increases duties applicable to B2C e-commerce shipments
  *(07 August 2024)*

### Uganda

- Uganda issues Tax Amendment Acts for 2024
  *(18 September 2024)*

### United Arab Emirates

- UAE formally announces introduction of e-invoicing, launches e-invoicing portal and amends VAT Law provisions
  *(06 November 2024)*
- Dubai Customs announces implementation of the updated customs declaration
  *(17 October 2024)*

### United Kingdom

- UK to publish e-invoicing consultation in early 2025
  *(05 November 2024)*
- UK Government responds to consultation on introducing UK CBAM
  *(31 October 2024)*
- UK Autumn Budget delivers significant tax increases but seeks to plan for the future
  *(31 October 2024)*
- UK to launch a consultation on e-invoicing
  *(23 September 2024)*

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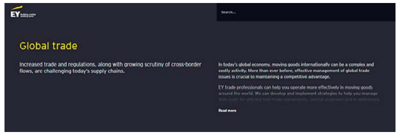


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