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# REGIONAL TRADE YEAR-END HIGHLIGHTS 2023



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# OVERVIEW

Dear Friends,

Happy 2024! To wrap up the year 2023 and further to our [Regional Trade Mid-year Highlights](#), we are pleased to present an overview of the various trade law related developments in the region. 2023 has been a year of moving onward from the pandemic, though fraught with gloomy growth predictions. In spite of this, trade law has continued to evolve, with legislations, regulations, and policies continuously upgrading to better facilitate the movement of goods across borders. We discuss some of the key developments across Southeast Asia, on topics such as anti-dumping and safeguard measures, developments relating to export/import, free trade agreements, as well as sanctions.

Some of the key developments highlighted in this Update include those on anti-dumping and safeguard duties in Malaysia, Thailand, Philippines, and Vietnam. There are also developments to improve the ease of import and export of goods, by way of agreements for the mutual recognition of Authorised Economic Operator (“AEO”) programmes across countries, in particular the ASEAN AEO Mutual Recognition Agreement signed by all 10 ASEAN Member States. Singapore has updated its rules on its Free Trade Zones (“FTZ”), which imposes fresh obligations on FTZ cargo handlers, shipping agents, and air cargo agents. Businesses involved in the Malaysian market should also be cognisant of the enhanced marking obligations on wholesalers, manufacturers, imports and producers in relation to pre-packaged goods. Under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”), Vietnam has also introduced requirements on the import management of refurbished goods to meet their obligations.

Countries have also remained active in the negotiation and signing of both bilateral and multilateral free trade agreements (“FTA”), in a bid to facilitate greater trade and investment flows. Regionally, an update of significance is the enhancement of the ASEAN – Australia – New Zealand Free Trade Area (“AANZFTA”), which is ASEAN’s most comprehensive ASEAN-Plus FTA to date, with improvements being made in e-commerce, investment, services, consumer protection, and government procurement, amongst others. The UK is also set to join the CPTPP, which will help countries such as Malaysia, Singapore and Vietnam in gaining greater market access to the UK and present new opportunities for trade and investment. Going into 2024, we expect to see newer FTAs possibly incorporating elements such as digital trade, green economy, and e-commerce, which will further aid businesses in navigating the rapidly changing landscape. On sanctions, while there have been minimal developments in the second half of 2023, businesses should continue to stay alert to ensure that they comply with them, given the severity of breaching sanctions. There is enforcement activity, occurring as recent as in December 2023.

Moving forward into 2024, we wish you a smooth and prosperous year. We look forward to working and engaging with you, whether it is to ensure legal compliance, assisting to resolve any issues, or advising you on how to best utilise FTAs to improve your cross-border trade processes. We are also happy to help in conducting trainings or have a dialogue with you, to provide you with unique insights specific to your industry. Please feel free to reach out any time if you have any queries, or if you would like to have a chat.

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# OUR ACHIEVEMENTS:

## Practice Accolades

*Rajah & Tann Asia has been named as a leading Trade Practice across several different jurisdictions across South East Asia by major legal ranking journals, including but not limited to:*

Chambers Asia-Pacific 2024	ITR World Tax 2023
 <p><b>South-East Asia Region – International Trade/WTO</b> Rajah &amp; Tann Asia: <b>Band 1</b></p> <p><b>Asia-Pacific Region – International Trade/WTO</b> Rajah &amp; Tann Asia: <b>Band 3</b></p>	 <p><b>Customs</b> R&amp;T Asia (Thailand): <b>Tier 1</b></p>
Benchmark Litigation Asia-Pacific 2023	WorldECR Awards 2021
 <p><b>Trade and customs</b></p> <p>R&amp;T Asia (Thailand): <b>Tier 1</b></p>	 <p><b>Export Controls/Sanctions Law Firm of The Year – Rest of World</b></p> <p>Rajah &amp; Tann Asia <b>Honorable Mention</b></p>

# OUR ACHIEVEMENTS:

## Individual Accolades

The members of our Rajah & Tann Asia Trade team have also been individually recognised in various legal ranking journals, including but not limited to:

Chambers Asia-Pacific – International Trade/WTO 2024	Expert Guides International Trade	Asialaw Profiles 2023-24 International Trade/WTO
 <p><u>APAC Region</u> Singapore: <b>Kala Anandarajah</b> (Band 4)</p> <p><u>South-East Asia Region</u> Singapore: <b>Kala Anandarajah</b> (Spotlight Table)</p> <p>Thailand: <b>Melisa Uremovic</b> (Spotlight Table)</p>	 <p>Thailand: <b>Melisa Uremovic</b></p>	 <p>Thailand: <b>Melisa Uremovic</b> (Distinguished Practitioner)</p>
Who's Who Legal National Guide: Southeast Asia – Trade & Customs 2023	Who's Who Legal Global Guide: Trade & Customs 2023	Who's Who Legal Global Guide: Trade & Customs – Economist & Anti-Dumping Consultants 2023
 <p>Malaysia: <b>Tracy Wong</b></p> <p>Singapore: <b>Kala Anandarajah</b></p> <p>Thailand: <b>Supawat Srirungruang</b> <b>Melisa Uremovic</b></p>	 <p>Singapore: <b>Kala Anandarajah</b> <b>Tanya Tang (Expert)</b></p> <p>Thailand: <b>Supawat Srirungruang</b> <b>Melisa Uremovic</b></p>	 <p>Singapore: <b>Kala Anandarajah</b> <b>Tanya Tang</b></p>

## ANTI-DUMPING & SAFEGUARDS



*In 2023, numerous actions were taken by countries in relation to anti-dumping and safeguard measures. This included anti-dumping duties being imposed in several countries, as well as regulators in Malaysia, Thailand, Philippines, and Vietnam actively initiating investigations on various goods. These measures, whilst at one level appear protectionist, are obviously taken to protect businesses and consumers within the particular jurisdictions and to ensure continued fair trading. We share some of these actions taken by the regulators.*

In **Malaysia**, on 29 September 2023, the Ministry of Investment, Trade and Industry (“MITI”) completed an investigation and issued its final determination under the Countervailing and Anti-Dumping Duties Act 1993 and its regulations to impose anti-dumping duties on the import of various types of cold rolled coils of steel originating or exported from Japan. The Customs (Anti-Dumping Duties) Order 2023 (“**Order**”), which was issued to effect the collection of anti-dumping duties, specifies duties and exemptions for different manufacturers. The Order will be effective for 5 years from 29 September 2023 to 28 September 2028.

In **Thailand**, anti-dumping measures remain the most commonly used trade measure, with three anti-dumping measures imposed by Thailand in 2023. The measures were imposed on: (i) stainless pipe and tube originating in the People’s Republic of China and Republic of Korea (initiated by the sunset review on 20 July 2023); (ii) hot roll steel in coils and not in coils originating in Federative Republic of Brazil, the Islamic Republic of Iran and Republic of Turkey (initiated by the sunset review on 2 June 2023); and (iii) hot roll steels in coils and not in coils originating in Malaysia and the People’s Republic of China (initiated by sunset review on 11 July 2023). There was also an anti-dumping investigation on aluminium extrusions originating in the People’s Republic of China, which led to the Department of Foreign Trade (“**DFT**”) concluding on 10 June 2023 that it would not impose any anti-dumping measures.

In **Philippines**, on 13 September 2023, an expiry review was initiated for the anti-dumping duty imposed on wheat flour imported from Turkey. The anti-dumping duty had previously been imposed by the government to protect the local flour



milling industry. Proponents against the expiry review have argued that the expiration of the anti-dumping duties would enable Turkish firms which had exited the market to compete at their normal prices to regain their foothold in the Philippines market share, to the detriment of local producers. On 29 November 2023, the Department of Trade and Industry (“DTI”) announced formal investigation on Liquefied Petroleum Gas (LPG) cylinders. This was in response to an application from Ferrotech Steel Corporation, a local steel cylinder seller who claimed that a surge in imports of LPG steel cylinders was harming the domestic industry. The above are hence important spaces to watch.

In **Vietnam**, the Ministry of Industry and Trade (“MOIT”) initiated investigations on various anti-dumping and safeguard cases, such as Decision 2494/QD-BCT dated 25 September 2023 where MOIT conducted an official investigation to apply anti-dumping measures on wind power tower products from China. MOIT is also in the process of reviewing several cases involving the application of anti-dumping measures, such as Decision 2751/QD-BCT dated 23 October 2023 which involves a final investigation and review of the application of anti-dumping measures on flat-rolled, painted steel products originating from Korea and China that are imported into Vietnam. MOIT has also initiated various other anti-dumping investigations in 2023, such as on PC strands imported from Malaysia, Thailand and China.

## Commentary

Regulators continue to scrutinise the market, and actively investigate and enforce anti-dumping and safeguard duties as part of their efforts to protect domestic industries from losses. It is significant that such investigations may be triggered by complaints from businesses incentivised to do so, such as from competitors. It is thus crucial to manage your business flow to ensure that you remain competitive and are not taken advantage of by cheaper foreign imports, nor are you creating an environment seemingly to unfairly keep prices high. This means business strategies and plans need to be carefully structured, and of course in compliance with relevant laws. This is not to say boundaries cannot be pushed. It is about careful management. The aim really is to minimise any potential disruptions to your business.

# EXPORTS & IMPORTS, EXPORT CONTROL, AND OTHERS



*Export control and general imports and exports are where we see the most issues. This is not least because there have been a variety of developments relating to the export and import of goods in 2023. The developments relate to general regulatory changes affecting the export/import of goods, signing of agreements for the mutual recognition of Authorised Economic Operator programmes across countries, updates to strategic goods lists, and adjustments of tariffs in Vietnam, amongst others. It is primarily because this is where businesses are most active in! We highlight some of these key developments below.*

## Export & Import: Controlled Goods, Duties and Tax, Others

**Regionally**, in September 2023, all 10 customs administrations of ASEAN Member States (“**AMS**”) signed the Mutual Recognition Arrangement (“**MRA**”) of their respective Authorised Economic Operator (“**AEO**”) programmes. The ASEAN AEO MRA (“**AAMRA**”) provides assurance that the certification standards that the AMS apply within their respective AEO programmes are compatible and in accordance with principles and standards of the World Customs Organisation (“**WCO**”) SAFE Framework of Standards to Secure and Facilitate Global Trade. It aims to ensure a predictable and transparent trading environment amongst AMS, with cost savings arising from certified AMS AEOs being able to receive faster cargo clearance and priority treatment for cargo inspection for their goods traded within ASEAN.

In **Malaysia**, on 21 September 2023, the Ministry of Domestic Trade and Cost of Living issued the Trade Descriptions (Marking of Quantity for Pre-packaging Goods) Order 2023 (“**New Marking Order**”), which has been gazetted on 2 October 2023 and will take force from 4 June 2024. The New Marking Order has retained most of the provisions in the existing Trade Descriptions (Marking of Pre-packaged Goods) Order 2023 (“**Existing Marking Order**”), which imposes marking obligations on the wholesaler, manufacturer, importer and producer for all pre-packaged goods, whether packaged, manufactured, or produced in Malaysia or imported into Malaysia. This includes provisions on application,



mark legibility, tolerable deficiency, sample testing and penalties. However, the New Marking Order will make the provisions for quantity declaration and marking requirements for pre-packaged goods stricter. For example, the New Marking Order now has an express obligation requiring a wholesaler, manufacturer, importer or producer to declare the quantity of pre-packaged goods in a package.

Additionally, with effect from 1 October 2023, various amendments have been made to the Customs (Prohibition of Imports) Order 2023 and the Customs (Prohibition of Exports) Order 2023. These amendments include, amongst others: (a) the removal of subheadings '3824.99.99 10' and '3824.99.99 90' (classifications falling under the description '*mixture and preparation whether or not containing tobacco extract or essence, nicotine, aromatic oil, flavouring etc. of a kind used for vaporizer smoking*') from the schedule of goods that require an import licence issued by the Ministry of Health; and (b) the inclusion of additional export requirements in respect of goods falling under the subheading classification '1516.10', '1517.90.80 00' and '1518.00.12 00' (i.e., '*animal fats or oils and their fractions; mixtures or preparations of animal fats or oils of their fractions; animal fats and oils chemically modified*') that are being exported to East Malaysia (i.e., Sabah and Sarawak).

In **Singapore**, the United Kingdom – Singapore MRA on AEO came into effect on 1 August 2023. Under the MRA, vendors that are certified under Singapore Customs' Secure Trade Partnership-Plus programme can benefit from facilitated clearance for their goods exported to the UK. Similarly, companies accredited under the UK's AEO programme can also benefit from facilitation on their goods exported to Singapore.

With effect from 1 January 2024, the Goods and Services Tax ("**GST**") will be increased from 8% to 9%. Amongst others, the new GST rate of 9% will apply to imported goods, and goods released from licensed premises for local consumption after 31 December 2023. Vendors who have taken up In-Payment (GST) and In-Payment (Duty and GST) permits with a GST rate of 8% are advised to clear their goods by 31 December 2023, as GST short-payment of 1% must be made for the clearance of these goods from 1 January 2024 onwards.

Separately, Singapore's Parliament has also tabled a bill to amend the Free Trade Zones ("**FTZ**") Act 1966. The Free Trade Zones (Amendment) Bill ("**FTZ Amendment Bill**"), which was read for a second time on 4 October 2023, aims to bolster the regulation and control of goods flowing through Singapore's FTZs. The FTZ Amendment Bill will be implemented from early 2024, with companies and individuals having 6 months to adhere to the new requirements.

Amongst other amendments, the FTZ Amendment Bill will result in the following changes:

- Introduction of a new licensing regime for companies operating in the FTZs. The licensing requirements shift some responsibility onto FTZ operators for monitoring and preventing illegal activities within the FTZs. Additionally, it imposes fresh obligations on FTZ cargo handlers, shipping agents, and air cargo agents, and requires them to comply with directives from the Director-General of Customs, provide information on goods management, implement security measures, and report dangerous or unlawful goods. Non-compliance with these requirements may result in criminal penalties.
- Expansion of the powers of the Director-General of Customs. The Director-General of Customs may now suspend or revoke an FTZ operator's license without compensation in cases of non-compliance or violations. Customs officers may also enter FTZs for compliance monitoring, conduct searches and inspections, detain goods for inspection, demand goods for examination, make arrests without a warrant, and compel individuals to provide information and documents.

In **Thailand**, from January to September 2023, the Board of Investment ("**BOI**") received a total of 1,555 project applications, reflecting a substantial 31% increase in value to a combined THB 516.8 billion, marking a 22% year-on-year increment. The BOI provides these projects with both tax-based (e.g., corporate income tax exemptions and import duty exemptions) and non-tax privileges (e.g., waiver of foreign ownership restrictions). Key sectors for 2023 included electrical appliances and electronics (E&E), agro-industry and food processing, and automotive and parts. Businesses should keep abreast of applicable schemes to reap the benefits such as the said import duty exemptions.

Separately, a cornerstone of Thailand's trade facilitation efforts is its commitment to its AEO program, which has been developed based on WCO Standards and tools. Benefits include inspection exemptions, expedited refund procedures, limited audit periods, and additional advantages in the event of a dispute. Most recently, Thailand has signed an AEO MRA with New Zealand in May 2023.

In **Vietnam**, on 2 November 2023, the Government issued Decree 77/2023/ND-CP on import management of refurbished goods ("**Decree 77**") under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**"). Decree 77 takes effect from 1 January 2024, and applies to the import of refurbished goods as defined under the CPTPP. Under the Decree, importers of refurbished goods into Vietnam must have: (i) an import licence; (ii) certificates of origin under the CPTPP; and (iii) any other necessary documents, including documents prescribed by Vietnamese law and any specialised laws applicable to new goods of the same type.

### Export Control: Strategic / Dual-Use Goods

**Malaysia** has updated its list of strategic items in the Schedule of the Strategic Trade (Strategic Items) Order 2010 on 1 August 2023. The prescribed list of strategic items have been amended to, amongst others: (a) include, under Category Code ML1, 'handguns specially designed for any of the following: (1) slaughtering of domestic animals; or (2) tranquilising of animals; and (b) amend, under the description of Category Code ML5, the initial description of '*Fire control, and related alerting and warning equipment*' to '*Related fire control, surveillance and warning equipment*'.

Similarly, on 1 October 2023, **Singapore** updated its list of strategic goods by passing the Strategic Goods (Control) Order 2023 ("**SGCO 2023**"). The SGCO 2023 brings Singapore's strategic goods control list in line with the 2022 Wassenaar Arrangement's Munition List and 2022 EU's List of Dual-Use Items. For example, the updated list contains the definition of "Gate All-Around Field-Effect Transistor", which refers to a type of innovative next-generation semiconductor that has emerged in recent years. The threshold for "digital computers" to qualify as a strategic good has also been relaxed to include only digital computers which have an adjusted peak performance exceeding 70 weighted teraflops, as compared to the previous threshold of 29 weighted teraflops. Businesses must review the updated wordings and ensure their exports continue to adhere to the updated regulations.

Separately, with effect from 1 August 2023, the requirements for submitting end-user statements ("**EUS**") and end-user certificates ("**EUC**") have been streamlined for certain goods. Currently, when applying for an export permit for goods that are both controlled under the Strategic Goods (Control) Act 2002 ("**SGCA**") and the Chemical Weapons (Prohibition) Act 2000, both an EUS for the Strategic Trade Scheme ("**STS**") Individual Permit and an EUC for the Chemical Weapons Convention have to be submitted. For goods controlled under the SGCA and exported/transhipped to countries pursuant to United Nations Security Council ("**UNSC**") sanctions, both an EUS for the STS Individual Permit and an EUC for UNSC countries must be submitted. The streamlined process now requires only a single combined EUC to be submitted in each of these scenarios.

In **Thailand**, there are export control regulations under the Trade Controls of Weapons of Mass Destruction Act, which contains licensing measures for dual-use items. While such measures were previously not enforced yet, given the escalating global conflicts in recent months, the DFT stated on 2 November 2023 that it intends to enforce licensing measures for dual-use items, to align with the practices adopted by other jurisdictions.

In **Philippines**, on 4 September 2023, the DTI – Strategic Trade Management Office signed a Memorandum of Agreement with the Bureau of Customs ("**BOC**") to strengthen collaboration areas on trade facilitation of strategic goods. Collaboration areas include the establishment of a Strategic Trade Management Team within the BOC, capacity-building programs, data sharing, risk management, trade facilitation mechanisms and enforcement.

### Rules of Origins; Preferential Tariffs and Duties

In **Vietnam**, on 7 September 2023, the Government issued Decree 68/2023/ND-CP ("**Decree 68**"), which amends various articles of Decree No. 115/2022/ND-CP dated 30 December 2022 on Vietnam's Preferential Export Tariffs and Special Preferential Import Tariffs to implement the CPTPP for the period of 2022 to 2027. Amongst other amendments,

Decree 68 adjusts Vietnam's tariff schedule for certain countries from the period of 2022 to 2027 (for Malaysia) and 2023 to 2027 (for Chile and Brunei). Decree 68 takes effect from its issuance date.

### Commentary

Businesses involved in the import and export of goods need to ensure that they are keenly aware of all relevant trade laws that apply to them, so that they can ensure compliance. There can be complexities involving challenging considerations. For example, would a business trigger any export control rules in the course of developing and transmitting technology within a team that is geo-located in different countries? Does it matter what stage of development it is and whether it is a product ready for the market? Clarity is important as there are strict legal consequences. What are the record keeping requirements, and what if you miss an end user statement or a certificate of origin? What are the implications? Attention is necessary and early guidance important.

Separately, businesses should ensure that they stay updated on all updates in the law, so that they utilise any new agreements that benefit them, such as AEO MRAs. For example, businesses in ASEAN can utilise the AAMRA to better facilitate trade amongst each other in the region and enjoy the cost savings arising from the arrangement.

## FREE TRADE AGREEMENTS



*In 2023, there were numerous developments in the negotiations and signings of free trade agreements ("FTA"). FTAs promote increased trade and investment flows and are key to business growth. Increasingly, there has also been an emphasis on digital trade and e-commerce in newer FTAs and other forms of collaborative agreements, which businesses can tap on. As these FTAs are introduced or enhanced, businesses should explore how to better align their trade relationships and flows so as to take advantage of preferential rates and speedier movement of goods and services, including of personnel, amongst others. Note though that with the use of FTAs, caution is also necessary so as not to fall foul of export control and other legal requirements, as these will stand separate.*

In August 2023, the agreement establishing the ASEAN – Australia – New Zealand Free Trade Area ("AANZFTA") was upgraded, and is currently **ASEAN's** most comprehensive ASEAN-Plus FTA to date. These enhancements relate to areas such as supply chain resilience for essential goods, simplified rules of origin, and a standalone chapter on trade and sustainable development. Noteworthy improvements were also made in areas such as e-commerce, investment, services, consumer protection, and government procurement.

Further, on 16 July 2023, the United Kingdom formally joined the CPTPP. The CPTPP is a comprehensive FTA that first came into force in December 2018, and aims to promote free trade across the Asia-Pacific region among member countries, including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. With the UK's accession, members to the FTA can look forward to greater market access to the UK and new opportunities for trade and investment. The agreement is expected to take effect in the second half of 2024.

In **Indonesia**, the Comprehensive Economic Partnership Agreement ("CEPA") between Indonesia and the United Arab Emirates ("UAE") has entered into force, with effect from 1 September 2023. The agreement is expected to strengthen the close ties between the two countries and encourage market access to UAE and Indonesia in various sectors,



including telecommunications, construction, education, finance, insurance, health, tourism, travel, distribution and transport. Specifically, the CEPA aims to develop the Islamic economy through the halal food and beverage, fashion, cosmetics, finance and pharmaceutical sectors, in which the UAE ranks in the top 5 nations. The CEPA also enhances cooperation between the UAE and Indonesian customs authorities to ensure clear and efficient customs procedures that are essential to streamline the movement of goods across borders.

In **Singapore**, there has been a sustained effort to enhance bilateral and regional trade through various trade agreements and Memorandums of Understanding ("**MOUs**"), with the focus on environmental and digital trade collaborations remaining prominent. For example, to further develop its green economy, Singapore signed an MOU with Chile on 14 August 2023 to foster collaboration on carbon markets and carbon pricing, as well as an MOU with Indonesia on 8 September 2023 to strengthen cooperation on low carbon energy projects and cross-border electricity trade. To stimulate digital trade, on 20 July 2023, Singapore launched negotiations with the European Union ("**EU**") in relation to a bilateral digital trade agreement to provide legal certainty for end-to-end digital trade and ensure increased protection when conducting digital transactions.

Aside from the above, Singapore has also entered into various broad economic agreements in 2023 that encompass multiple areas such as the green economy, digital trade, and investor protection. For example, on 28 August 2023, Singapore signed an Upgraded Connectivity Framework Agreement ("**CFA**") with Vietnam, to expand the scope of bilateral economic cooperation in five areas, i.e., (i) energy connectivity; (ii) sustainability; (iii) infrastructure; (iv) digital and innovation; and (v) connectivity. Additionally, the Kenya-Singapore Bilateral Investment Treaty ("**BIT**") came into force on 20 August 2023, with the aim of fostering greater bilateral investment flows by safeguarding the interests of investors. Singapore also signed seven MOUs with Saudi Arabia on 17 October 2023, for cooperation on education, health, transport and investment sectors, among others.

In **Thailand**, there have been developments in the negotiation and signing of FTAs. Currently, Thailand is negotiating the following FTAs: (i) Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) Free Trade Area; (ii) Pakistan-Thailand Free Trade Agreement (PATHAFTA); (iii) Sri Lanka-Thailand Free Trade Agreement (SLTFTA); (iv) Thailand-Turkey Free Trade Agreement (THTRFTA); (v) ASEAN-Canada Free Trade Agreement; (vi) Thailand-UAE Free Trade Agreement; (vii) Thailand-European Free Trade Association ("**Thailand-EFTA**") Free Trade Agreement; and (viii) Thailand-European Union Free Trade Agreement.

The Thai Ministry of Commerce has announced that efforts are underway to finalise the FTAs with the UAE, Sri Lanka, and the EU respectively by the middle of 2024. Thailand also aims to complete the sixth round of discussions on the Thailand-EFTA FTA in mid-2024, with the key sectors for Thailand including processed food, apparel, and auto parts.

In **Philippines**, the Philippines-Korea Free Trade Agreement ("**PH-KR FTA**") was signed on 7 September 2023, which marks a significant step toward strengthening the partnership between Philippines and South Korea. Under the PH-KR FTA, both nations have pledged considerable tariff concessions, and the FTA also includes provisions for capacity building and technical cooperation. This is set to benefit various industries, such as automotive, agriculture, IT and electronics, services, smart farms, and electric vehicles (EVs).

On 2 December 2023, the Philippines signed a Terms of Reference for negotiating a bilateral CEPA with the UAE. The CEPA aims to increase exports of goods and services to the UAE and the broader Gulf region, and attract more investments from the UAE.

In **Vietnam**, there have also been numerous developments in the negotiation and signing of FTAs. On 3 December 2023, it was announced that Vietnam and UAE have achieved breakthrough progress in the negotiation process of a bilateral CEPA. The CEPA aims to boost bilateral trade and economic cooperation, and is expected to be signed by Vietnam and UAE in 2024. In terms of new FTAs entered into by Vietnam, the Vietnam-Israel Free Trade Agreement ("**VIFTA**") has been officially signed on 25 July 2023, and will enter into effect at the beginning of 2024. Vietnam is also in the process of negotiating two FTAs, namely the bilateral Vietnam-EFTA FTA and the regional ASEAN-Canada FTA.



## Commentary

Despite the heightened global protectionism in 2023, countries have actively participated in FTAs, which will ensure greater trade and investment flows. To realise the benefits of the FTAs, businesses must stay updated on the relevant FTAs which have come into force, or are being negotiated, and protectively consider whether they can utilise them to boost their business. Going forward, we expect to see newer FTAs continuing to make further strides in incorporating elements such as digital trade, green economy, and e-commerce, which will further aid businesses in the evolving landscape.

# TRADE SANCTIONS



*Trade sanctions continue to be the bane on trade even as several new sanctions have been introduced by Southeast Asian countries in 2023. We discuss these below, and highlight that businesses must continue to be alive to other trade sanctions imposed worldwide. Given the nature of these restrictions, there are always potential cross-border implications that may arise.*

In **Singapore**, trade sanctions are imposed on imports and exports via various legislation and regulation, including the Regulation of Import and Export Regulations and the United Nations Act 2001 (“**UNA**”). In December 2023, two individuals and three companies related to them were charged in court for shipping gasoil to the Democratic People’s Republic of Korea, in violation of trade sanctions under the UNA and its regulations. The charges involved the individuals using the companies to receive or make payments in relation to the supply, amongst others. If convicted, the companies face up to a fine of S\$1,000,000, and the individuals face up to 10 years jail and/or caning. Separately, as of 2023, Singapore continues to ban exportation from, transshipment in, or transit through Singapore of specified goods which destination is or is intended to be Russia.

In September 2023, the Court of Appeal of Singapore in *Kuvera Resources Pte Ltd v JPMorgan Chase Bank, N.A.* [2023] SGCA 28 overturned the judgment of the Singapore High Court, holding that JP Morgan was not entitled to rely on the sanctions clauses in their letters of credit to deny payment to the letters of credit’s beneficiary. In this case, JP Morgan had, amongst other things, relied on its correspondence with Office of Foreign Assets Control (“**OFAC**”) to justify its decision to refuse payment under the sanctions clauses (specifically, whether the vessel was “subject to any applicable restriction”). The court held that this question must be construed and determined objectively without any third party input such as that from the OFAC. The court held that allowing the declining of a payment on the basis of OFAC’s opinion was speculative and arbitrary; and that JP Morgan’s approach was “entirely a reflection of risk management considerations” which was unsatisfactory and unfair.

In **Thailand**, in October 2023, the Anti-Money Laundering Office (“**AMLO**”) updated its list of high-risk countries in accordance with public statements issued by the Financial Action Task Force (“**FATF**”), which is a global money

laundering and terrorist financing watchdog. The AMLO also updated its list of designated persons as of 29 November 2023.

In **Philippines**, In October 2023, the Department also stated that the governments of Australia, Canada, New Zealand, the UK, and the US had issued guidance on identifying items critical to Russian weapons systems, and advised the public to stay updated on sanctions lists and to conduct due diligence in transactions, to avoid breaching sanctions.

### Commentary

It is crucial for businesses to stay updated on trade sanctions in light of the fast-paced developments in 2023, with multiple countries readily wielding sanctions as a tool to achieve their goals, whether political, diplomatic or economic. Trade sanctions present significant compliance risks and can result in serious consequences under domestic and international law if breached. Businesses are hence reminded to carefully monitor developments and constantly review their processes to ensure strict compliance.

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