

RAJAH & TANN ASIA

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REGIONAL TRADE HIGHLIGHTS 2021



RAJAH & TANN ASIA

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OVERVIEW

Dear Friends,

Happy Lunar New Year!

We trust that the holidays have been good for you. Given the volume of legal updates on 2021 released in the industry over the past two months and so as not to overwhelm, we have timed this publication to ensure that you are kept informed as you set foot into the rest of the year.

2021 has witnessed various developments related to trade law across Southeast Asia. In this publication, we provide a snapshot of these developments by discussing key highlights on trade related topics in 2021, such as regulatory activity relating to anti-dumping and safeguard measures, developments relating to export/import, free trade agreements, as well as sanctions. Amongst others, our highlights touch on Myanmar's introduction of a new Safeguard on Increased Imports Law as well as Malaysia's and Vietnam's regulatory activity in anti-dumping and safeguards; Thailand's implementation of catch-all controls to block exports of dual-use goods involving proliferation of weapons of mass destruction; the developments relating to controlled goods such as in the Philippines for wood products and Singapore for lead paint; Cambodia's new Law on Investment and its impact on duties involving prescribed investment sectors/activities; as well as developments in free trade agreements in the region such as the Regional Comprehensive Economic Partnership Agreement and Indonesia's Indonesia-European Free Trade Association Comprehensive Economic Partnership Agreement.

As things gear up in 2022, we remind businesses to keep abreast of legislative and enforcement updates on trade-related topics, which do not always involve only pure law but also involve very practical know-how aspects such as working with the regulators, and to always place a healthy emphasis on your internal trade processes – from the classification of your products to the determination of rules of origin to the securing of the necessary permits for import/export of controlled goods or strategic goods. This is critical not only to ensure continued compliance with the law, which is always developing, but also to catch existing areas of non-compliance.

In this regard, we trust that you will find this report helpful. If you wish to discuss any of these highlighted topics in greater detail, please do not hesitate to get in touch with one of our Trade team members across Southeast Asia or feel free to email us in Singapore and we will put you in touch. Separately, if you would like us to come in and do a training or dialogue with you, we would be happy to. We look forward to more opportunities to work and engage with you this year.

Yours sincerely,

The Rajah & Tann Asia Competition & Antitrust and Trade Practice

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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:

<p>Chambers Asia-Pacific 2022</p>  <p>RANKED IN Chambers Asia-Pacific 2022</p> <p>South-East Asia Region Rajah & Tann Singapore: Band 1</p> <p>Asia-Pacific Region Rajah & Tann Singapore: Band 3</p>	<p>WorldECR Awards 2021</p>  <p>The WorldECR Awards 2021</p> <p>Export Controls/Sanctions Law Firm of The Year – Rest of World</p> <p>Rajah & Tann Asia Honorable Mention</p>
<p>ITR World Tax 2022</p>  <p>ITR</p> <p>Customs R&T Asia (Thailand): Tier 1</p>	<p>Benchmark Litigation Asia-Pacific 2021</p>  <p>B BENCHMARK LITIGATION</p> <p>Trade and customs</p> <p>R&T Asia (Thailand): Tier 2</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 2022	Expert Guides International Trade	Asialaw Profiles 2022
 <p>International Trade/WTO <u>South-East Asia Region</u></p> <p><i>Singapore:</i> Kala Anandarajah (Spotlight Table)</p> <p><i>Thailand:</i> Melisa Uremovic (Spotlight Table)</p>	 <p>International Trade</p> <p><i>Thailand:</i> Melisa Uremovic</p>	 <p>International Trade/WTO</p> <p><i>Thailand:</i> Melisa Uremovic (Distinguished Practitioner)</p>
Who's Who Legal National Guide: Southeast Asia 2021	Who's Who Legal Global Guide 2021	
 <p>Trade & Customs</p> <p><i>Cambodia :</i> Heng Chhay</p> <p><i>Malaysia:</i> Tracy Wong</p> <p><i>Singapore:</i> Kala Anandarajah</p> <p><i>Thailand:</i> Supawat Srirungruang Melisa Uremovic</p>	 <p>Trade & Customs</p> <p><i>Singapore:</i> Kala Anandarajah</p> <p><i>Thailand:</i> Supawat Srirungruang Melisa Uremovic</p> <p>Trade & Customs - Economists & Anti-Dumping Consultants</p> <p><i>Singapore:</i> Kala Anandarajah Tanya Tang</p>	

ANTI-DUMPING & SAFEGUARDS



In 2021, the region saw various action being taken relating to anti-dumping and safeguard measures, where a number of corporations were subjected to investigations in myriad industries. Amongst others, applications for determinations in relation to anti-dumping duty were made in various countries. A new safeguard law was also passed in Myanmar. We share some of the decisions issued by the regulators and the type of goods involved, as well as highlight the new law in Myanmar.

In **Indonesia**, anti-dumping and safeguard measures are regulated under Law No. 34 of 2011 on Anti-Dumping, Countervailing, and Safeguard Measures. Between 2020 to 2021, the Indonesian Ministry of Trade ("**MOT**") initiated investigations into four anti-dumping cases on products such as steel, lysine, fibre, and frit, and six safeguard cases on products such as textile, garments, cigarette paper, expansible polystyrene, steel, and ceramic tile. Of these investigations, the MOT has concluded the investigations on imported lysine bearing HS Code 2922.41.00 originating from China, and hot-rolled coil bearing HS Code 7225.30.90 originating from China. The MOT has recommended a five-year application term of anti-dumping duty for lysine and hot-rolled coil originating from China.

In addition, on 3 December 2021, based on an investigation report from the MOT, the Indonesian Ministry of Finance issued Government Regulation No. 174/PMK.010/202 on the Application of Safeguard Duty on Imported Expansible Polystyrene (EPS) bearing HS Code 3903.11.10. This safeguard duty applies for a term of three years on and from 24 December 2021.

In **Malaysia**, authorities may impose anti-dumping and safeguard duties under the Countervailing and Anti-Dumping Duties Act 1993, the Countervailing and Anti-Dumping Duties Regulations 1994, and the Safeguards Act 2006 and Safeguards Regulations 2007. There was significant activity in this regard, and in 2021, there were five Notices of

Affirmative Final Determination of the imposition of anti-dumping duty, and five Notices of Negative Final Determination made, amongst others. Specifically:

- (a) The Affirmative Final Determinations were made for reasons including: the domestic industry in Malaysia producing the relevant goods suffered material injury due to the import of such goods; there existed injury to the domestic industry; the continued imposition of the anti-dumping duty for the product would be necessary to offset dumping; and the termination of anti-dumping duty would likely lead to continuation or recurrence of dumping. These Affirmative Final Determinations related to imports of:
- (i) stranded steel wire for prestressing concrete originating or exported from China;
 - (ii) cold rolled coils of alloy and non-alloy steel of certain thicknesses and widths imported for the purpose of automotive end-usage originating or exported from China, Korea and Vietnam;
 - (iii) prepainted, painted or colour coated steel coils originating or exported from China and Vietnam;
 - (iv) cold rolled stainless steel in coils, sheets or any other form of certain thicknesses and hardness values originating or exported from Indonesia and Vietnam; and
 - (v) cold rolled coils of alloy and non-alloy steel of certain thicknesses and widths originating from or exported from Vietnam.
- (b) The Negative Final Determinations were made for reasons including: the effect of dumping of such products from these countries were found not to cause material injury to the domestic industry in Malaysia producing the relevant products; and the export price value of such product is higher than the normal price value in its originating country. By way of further information, these Negative Final Determinations related to imports of:
- (i) polyethylene terephthalate with certain intrinsic viscosities originating or exported from China, Indonesia, Korea and Vietnam;
 - (ii) cold rolled stainless steel in coils, sheets or any other form with certain thicknesses originating or exported from Indonesia and Vietnam;
 - (iii) steel concrete reinforcing bar products, that are hot rolled steel bars containing indentations, ribs, grooves or other deformation originated or exported from the Republic of Turkey;
 - (iv) prepainted, painted or colour coated steel coils originating or exported from China and Vietnam; and
 - (v) certain cold rolled coils of alloy and non-alloy steel of certain thicknesses and widths originating or exported from Korea and Vietnam.

In **Myanmar**, the new Safeguard on Increased Imports Law, which was passed by Parliament in 2019, came into effect in July 2021. The law was passed to safeguard domestic production from serious injury or threat of serious injury from a sudden increase in foreign imports by imposing safeguard measures for a limited period, to facilitate fair competition among domestic producers. Increase in foreign imports is defined as "any kind of imports into Myanmar which is significantly higher than the amount of domestically produced goods that are similar or directly competitive." A new Committee for Preventing an Increased Quantity of Imports, led by the Ministry of Commerce, will be formed under the law in order to determine the risk by investigation and imposing certain safeguards as prescribed under the law.

In **Philippines**, trade remedies are covered by three legislations, namely, RA 8800 or the Anti-Dumping Act of 1999, RA 8752 and the Safeguard Measures Act, and RA 8751 which provides for countervailing measures. The three legislative acts were adopted in their entirety in RA 10863 or the Customs Modernisation and Tariff Act. There have been various issuances in 2021 on safeguard measures on imports of products such as aluminium zinc/GL, galvanised iron and motor vehicles, amongst others. As illustration, on 3 March 2021, the Department of Trade and Industry issued Department Order No. 21-02 ("**DO 21-02**") which amended the list of developing countries that are excluded from the definitive safeguard duties on imported cement classified under the ASEAN Harmonised Tariff Nomenclature ("**AHTN**") Codes 2523.29.90 and 2523.90. The issuance came after a review of the volume of cement imports originating from developing countries that were previously excluded from the safeguard measure. Following the review, cement imports originating from developing countries that have breached the prescribed "volume share to total import threshold of less than 3%" shall now be subject to the definitive safeguard duty.

In **Vietnam**, anti-dumping and safeguard measures are mainly covered by the Law No. 05/2017/QH14 on Foreign Trade Management and its guiding instruments, international treaties such as the General Agreement on Tariffs and Trade (GATT), WTO Anti-Dumping Agreement, WTO Agreement on Subsidies and Countervailing Measures and WTO Agreement on Safeguards. Under Vietnamese law, anti-dumping and safeguard measures are considered as trade remedies imposed on imports into Vietnam on a case-by-case basis. Vietnam's regulators have been actively applying trade remedies to establish a fair competition environment and protect the legitimate interests of domestic manufacturing industries. The Ministry of Industry and Trade ("**MOIT**") has initiated investigations on various anti-dumping and safeguard cases on products such as steel, cooking oil, fertilizer, sugar cane, aluminium, polyester filament yarn, etc. One 2021 investigation was the MOIT's Decision No. 2302/QD-BCT on 13 October 2021 in relation to the application of the anti-dumping tax on certain polyester fibre products bearing HS Codes 5402.33.00; 5402.46.00 and 5402.47.00 originating from China, India, Indonesia, and Malaysia, which imposed different anti-dumping tax rates on businesses from these different countries, which shall apply for five years from the issuance date of the decision. Another anti-dumping case involved Sorbitol products bearing HS Codes 2905.44.00 and 3824.60.00 originating from India, Indonesia, and China under Decision No. 2644/QD-BCT dated 23 November 2021.

Our Further Comments

There continue to be anti-dumping actions initiated against a number of companies in Southeast Asia by countries across the world. It is important that where such dumping allegations are made, quick action is taken to respond to allegations, which tend to come through requests for information, in a timely manner. Responses will need to be carefully crafted, whilst ensuring that business can continue as usual.

Separately, to avoid dumping allegations, business do need to ensure that their products are priced properly, and of course that there are no massive exports to any particular country. These will require a degree of familiarity with the relevant law. In particular, we recommend that businesses in Myanmar, or importing goods into Myanmar, familiarise themselves with the new Safeguard on Increased Imports Law.

EXPORTS & IMPORTS, EXPORT CONTROL, AND OTHERS



In 2021, the region continued to see developments relating to the export and import of goods. These developments related to the range of goods being controlled for export/import, the operational processes relating to export/import, what are regarded as dual-use goods for the purpose of export control, as well as tariffs and duties, among others. Significantly, Thailand has implemented laws relating to catch-all controls which aim to control exports of goods increasing the risk of proliferation of weapons of mass destruction. We highlight some of these salient developments below. An important point to note is that local export control laws are not identical to those which exist in the likes of the US and EU, and hence caution is required when managing exports and imports.

Export & Import: Controlled Goods, Processes

In **Philippines**, the Department of Environment and Natural Resources ("**DENR**") issued the DENR Administrative Order 2021-06 ("**DAO 21-06**") dated 21 April 2021, which governs the import, entry and disposition of wood products (e.g. fuel wood, wood charcoal, wood wool, etc) in addition to existing import guidelines and procedures of the Bureau of Customs and the Department of Agriculture-Bureau of Plant Industry's National Plant Quarantine Services Division. The DAO 21-06 introduced important changes. Amongst others, these include the express adoption of the ASEAN Harmonised Tariff Nomenclature ("**AHTN**"), which describes and classifies the commodities regulated by the DENR, the requirement of additional documents for the transport of imported wood materials from the port of entry to the point of destination (e.g. Sanitary and Phytosanitary Import Clearance or Plant Quarantine Service Certificate, Import Entry & Internal Revenue Declaration, Packing List, CITIES Import Permit), as well as the increase of application fees and cash bonds payable in relation to an application for a certificate of registration to import wood products.

In **Malaysia**, the Trade Descriptions (Amendment) Act 2021 ("**Amendment Act**") was passed by the Dewan Rakyat (House of Representatives) for the purposes of the Trade Descriptions Act 2011 ("**TDA**") on 28 October 2021. The TDA oversees the promotion of good trade practices by prohibiting false trade descriptions and false or misleading statements. Amongst others, the Amendment Act introduces a range of enforcement instruments for the regulator, and more prominently, seeks to expand the overall scope of the TDA to include "prohibiting, restricting or otherwise regulating or controlling the use of any statement, expression or indication which is likely to discriminate or boycott any product or goods or to discourage, forbid, hinder or influence any person from using or consuming any product or goods in the course of trade or business". Arising from this, the existing power of the Minister to make regulations to prohibit, restrict, regulate or control the use of any "expression" or "indication" used in the course of trade or business shall be amended to include "statements" as well. The rationale behind this expansion of scope is to prohibit any statements, expressions or indications against Malaysia's major commodities, especially palm oil – for example, using the expression "no palm oil" in advertisements including food labels, notices and catalogues.

The date the Amendment Act will come into force has yet to be determined by the Minister of Domestic Trade and Consumer Affairs. This is a significant update and businesses, including those involved in importing goods into Malaysia, must keep themselves updated on developments (including such regulations as may be enacted under the TDA), especially if these goods compete with its major commodities.

In **Myanmar**, the Ministry of Commerce ("**MOC**") suspended the import of foreign motor-vehicles, which means that licences will not be issued from 1 October 2021 to private (individual) importers and showroom importers. Business licences for showroom/retail centres have also been suspended with effect from 1 October 2021. Additionally, import licenses for the purposes of swapping old vehicles as per the old/used regime implemented by the Road Transport Administration Department will only be issued to showroom/retail business licence holders.

Separately, the Department of Trade of the MOC issued the Newsletter No. 12/2021 stating that licensing requirements for the import of all pharmaceuticals and pharmaceutical products (including liquid oxygen) used in response to the COVID-19 pandemic would be eliminated for three months. The lifting of licensing requirements, which was to provide support to the treatment process during the third wave of the COVID-19 pandemic, ended on 11 October 2021. Businesses must ensure that they comply with any licensing requirements that have since resumed. For reference, businesses can refer to the list of tariff lines of the items under Newsletter No. 13/2021.

Last, in November 2021, the MOC amended the existing list of preferential commodities allowed for sale in retail or wholesale by foreign companies. The list includes three additional types of commodities: (i) foodstuff ingredients, (ii) animal feed ingredients, and (iii) industrial products and materials. Notwithstanding the inclusion, existing retail or wholesale licence-holders are required to notify the MOC, or such other relevant ministries when intending to import the three said commodities.

In **Singapore**, the range of goods that are regarded by competent authorities as controlled items for the purpose of export and/or import expanded in 2021. New controlled goods include import and export of lead paint exceeding prescribed levels of lead concentration, import of vehicles containing signal flares, and import of power-assisted bicycles and motorised personal mobility devices, amongst others. These hence require additional licenses, permits and/or approvals.

There were also developments relating to certain import and export processes. It was announced on 1 October 2021 that with effect from 1 February 2022, drivers going through cargo checkpoints in Singapore will no longer need to have their cargo clearance permits manually endorsed after passing through in respect of all conventional and containerised cargo, save for certain permit types. This is intended as part of the move towards full digitalisation to achieve a seamless and secure cargo clearance experience. There will be a six-month adjustment period until 31 July 2022, during which time drivers may still request for ad-hoc endorsements if needed.

Export Control: Strategic / Dual Use Goods

In **Malaysia** and **Singapore**, their respective legislations relating to export control i.e. export of strategic items / goods were updated. As of 26 April 2021, **Malaysia** updated the list of strategic items under its Strategic Trade Order 2010, which governs the export and brokering of strategic items, including arms and related material, amongst other things. The main amendments include an update to item descriptions for military items under Part 1: Military Items List of the Strategic Items List and updated acronyms and abbreviations used and item descriptions for dual-use items under Part 2 of the Strategic Items List. As of 1 October 2021, **Singapore** updated the list of strategic goods under its Strategic Goods (Control) Act. This brings it up to date with the 2020 EU's List of Dual-Use Items. These updates mean that businesses must review the updated wordings against such products they are exporting or brokering, amongst other things, that involve Malaysia and Singapore, to ensure they are still in compliance with the respective legislations.

In **Thailand**, the Trade Controls of Weapons of Mass Destruction Act B.E. 2562 (2019) ("**TCWMD Act**") took effect on 1 January 2020 and governs goods related to weapons of mass destruction, which includes dual-use items. However, the regulations implementing the TCWMD Act controls on these goods had not been implemented until only recently. To this effect, a notification on catch-all controls ("**CAC Notification**") was published in October 2021, taking effect on 26 December 2021. Under the TCWMD Act, the Department of Foreign Trade will be able to "block any shipment of dual-use items (or any items which may be dual-use items, and also include the transfer of technology and software) that will be delivered to a high-risk end-user", which risks proliferating weapons of mass destruction. The list of controlled dual-use items, which is set out in the CAC Notification, is generally based on the EU dual-use control list. In applying the controls under the CAC Notification, the regulator will consider if there is a risk of proliferation of weapons of mass destruction based on the list of controlled dual-use items, and the identity of the end-user involved, amongst other things. In addition to the CAC Notification, a notification in relation to internal compliance programs was also published, which took effect on 11 October 2021 ("**ICP Notification**"). The ICP Notification provides guidance on implementing an internal compliance program.

While the CAC Notification does not impose a positive obligation on exporters to conduct due diligence/screening on their shipments, we recommend that exporters do so. When an investigation on the risk of proliferation of weapons of mass destruction is triggered, exporters who are unable to provide information and/or evidence to satisfy the regulator to the contrary may be subject to the control measure. These updates mean that businesses need to review their operations against the controls in the CAC Notification, and consider implementing the said due diligence / compliance programs with reference to the ICP Notification.

Preferential Tariffs and Duties

Separately, under **Cambodia's** new Law on Investment dated 15 October 2021 ("**Law on Investment**"), any investment sector/activity that is certified as Qualified Investment Project ("**QIP**"), not listed in the negative list and not excluded under law, shall enjoy duty-free imports of production equipment, construction materials and production input, depending on which category of QIPs (Domestic QIP, Export QIP and Supporting Industry QIP) it falls under, and exemption of export tax. We recommend that businesses review the impact of the new law on the duties / taxes that are potentially no longer payable, depending on the goods in question.

In **Vietnam**, imported goods are subject to different types of import taxes, including ordinary, preferential and special preferential import tax. The Government has recently implemented new decrees on preferential and special preferential import and/or export tariffs for implementation of bilateral trade enhancement between Vietnam and other countries, amongst other things. These include:

- (a) Decree No.83/2021/ND-CP dated 13 September 2021, which implements Vietnam's special preferential import tariff schedule for implementation of bilateral trade enhancement between Vietnam and Cambodia until 31 December 2022; and

- (b) Decree No.90/2021/ND-CP dated 19 October 2021, which implements Vietnam's special preferential import tariff for implementation of the trade agreement between Vietnam and Laos until 4 October 2023.

Separately, **Vietnam** also saw the issuance of Decree No. 18/2021/ND-CP on 11 March 2021, which amended and supplemented Decree No. 134/2016/ND-CP guiding the Law on Export and Import Duties. Imported and exported goods are generally exempt from import and export duties under international treaties to which Vietnam is a member. The basis for determination of such tax-exempt goods has been amended. Specifically, this shall include: (i) categories and quotas of goods specified in international treaties; and (ii) written confirmation of the authority proposing conclusion or accession to the international treaty or a specialised management authority, if the international treaty does not specify the categories and quotas of duty-free goods. The decree came into effect from 25 April 2021. Businesses are reminded to familiarise themselves with these changes to understand if their goods are still tax exempt.

Our Further Comments

Businesses involved in the export and import of goods are reminded that this business activity engages different areas of trade law, as can be gleaned from the developments above. Hence, businesses must familiarise themselves with the relevant law to ensure that they factor compliance into their operations. Where dual use goods are concerned in particular, businesses must understand that laws are not consistent across the world and that an export which benefits from an exemption in one country may not similarly benefit from it in, for example, Singapore. This can have dire consequences, and we have seen a steady stream of non-compliance cases here.

All said, the consequences of not ensuring compliance with specific local laws are heavy and can involve civil and/or criminal penalty, depending on the specific violation. A robust internal compliance programme, which must include adequate training, is hence necessary to address potential issues before they arise.

FREE TRADE AGREEMENTS



In 2021, the region saw developments in the negotiation and conclusion of free trade agreements ("FTA"), both as a regional bloc and on an individual country basis. Despite the seemingly protectionist tendencies that have seeped through the world in recent years, FTAs remain an important tool to allow for growth in trade. In particular, the newer FTAs have introduced elements recognising digital trade, which is a critical growth engine. Amongst the several FTAs entered into, the entering into force of the Regional Comprehensive Economic Partnership Agreement on 1 January 2022 is noteworthy.

On 1 January 2022, the Regional Comprehensive Economic Partnership Agreement ("**RCEP**") entered into force, following the ratification of the RCEP by 10 Parties. The RCEP involves the 10 ASEAN countries and its five FTA partners (Australia, China, Japan, New Zealand and South Korea). Comprising about 30% of global Gross Domestic Product and close to a third of the world's population, the RCEP is the world's largest FTA to date. The key benefits of the RCEP include tariff elimination on an average of 92% of goods traded amongst RCEP Parties, enhanced provisions relating to non-tariff measures that aim to bring down trade transaction costs for businesses, streamlined rules of origin and regional cumulation for greater flexibility to tap on preferential market access benefits and enhanced trade in services commitments above existing ASEAN Plus One FTAs in selected sectors. The RCEP includes new areas such as Intellectual Property, Competition Policy, e-Commerce, Government Procurement and Small and Medium Enterprises ("**SMEs**"). Please refer to our earlier regional Client Update on the signing of the RCEP [here](#).

In addition to the RCEP, another multilateral FTA involving several Southeast Asian countries (namely Brunei, Malaysia, Singapore and Vietnam) is the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**"). The CPTPP held its fifth Commission meeting in September 2021, where the Commission agreed to establish a Committee on Electronic Commerce to facilitate the implementation of the CPTPP's e-commerce chapter and promote digitalisation within the region.

Within the region, the ASEAN Trade in Services Agreement ("**ATISA**") saw its first ratification in April 2021 by Singapore. The ATISA builds upon and enhances the existing ASEAN Framework Agreement on Services ("**AFAS**") by further

reducing "beyond-the-border" barriers and will supersede the AFAS. The ATISA also includes a built-in agenda for ASEAN Member States to convert their AFAS commitments to a negative list approach which will provide greater transparency on the current services regime amongst ASEAN Member States. When fully implemented by all ASEAN Member States, the ATISA will make up the third and final part of the "troika" of ASEAN agreements that seek to improve ASEAN's economic and sectoral integration, along with the ASEAN Trade in Goods Agreement and the ASEAN Comprehensive Investment Agreement.

In addition to the above regional developments, individual countries have also seen developments in their advancement of FTAs.

In **Cambodia**, two free trade agreements were signed with China and South Korea respectively.

China and Cambodia officially signed the Cambodia-China FTA ("**CCFTA**") on 12 October 2020, which was ratified by the National Assembly of Cambodia on 9 September 2021. The CCFTA entered into force on 1 January 2022. Under the CCFTA, agriculture is one of the target sectors (along with trade, investment, transportation, and tourism) to be promoted and there will be approximately 340 duty-free goods, such as seafood products, garlic, cashew nuts, and dried chili, etc.

The Cambodia-Korea Free Trade Agreement ("**CKFTA**") was officially signed on 26 October 2021 through a virtual ceremony and is expected to come into force in early 2022. Under the CKFTA, South Korea will eliminate tariffs on 95.6% of all imports from Cambodia, while Cambodia will abolish levies on 93.8% of all South Korea-sourced items. For Cambodia, key export products under the CKFTA will be agricultural products and textile items, while key import products will be cars, textiles, machinery and marine and agricultural products.

Separately, with Brexit, the UK did not replicate the EU's 2020 withdrawal of the 'Everything But Arms' preferential treatment to Cambodia, and granted Cambodia trade preference via duty-free and quota-free access on exports to the UK on all goods (except arms and ammunition) under its Generalised Scheme of Preferences ("**GSP**"). The UK's independent trade policy in relation to Cambodia in this regard took effect from 1 January 2021. Separately, Cambodia's eligibility for trade preference under the US' GSP in 2022 is still in the reassessment process. Businesses must monitor the developments to keep themselves updated of their trade preferences under the GSP(s).

In **Indonesia**, the Indonesia-European Free Trade Association ("**EFTA**") Comprehensive Economic Partnership Agreement ("**Indonesia-EFTA CEPA**") entered into force on 1 November 2021. This marked the first comprehensive economic agreement between Indonesia and the EFTA states, which comprise Iceland, Liechtenstein, Norway and Switzerland. Under the Indonesia-EFTA CEPA, both sides enjoy a wide array of benefits such as market access, trade, sustainable development, cooperation and capacity building. Indonesia will gradually eliminate the tariff for EFTA exporters from 80% to 98% by 2033. Reciprocally, EFTA states will eliminate over 99% of the customs duties on industrial products, including fish and other marine products, originating from Indonesia.

Separately, since 20 August 2021, Indonesia and the EU started using the scheduled quantitative commitments in relation to tariff-rate quotas apportioned between the EU and the UK following the UK's exit from the EU. This is in line with Article XXVIII of the GATT on the modification of concession on all tariff-rate quota. In particular, in respect of the tariff-rate quota on manioc/cassava as set out under G/SECRET/42/Add.2 where Indonesia holds the negotiating rights, Indonesia and the EU agreed that the new scheduled quantitative commitment for this product for the EU without the UK is 165,000 tonnes. The conditions for this tariff-rate quota as previously set out in the relevant EU schedule (in-quota preferential tariff of 6% *ad valorem*) and administration based on EU rules will remain the same following the apportionment.

In **Malaysia**, the scope of the existing Malaysia-Turkey Free Trade Agreement ("**MTFTA**") is set to be expanded. In force since 1 August 2015, the MTFTA sets out a shared commitment to progressively reduce or eliminate tariffs on a substantial number of products between Turkey and Malaysia and for both parties to develop on opportunities including providing technical assistance, capacity building and the facilitation of market access for products of interest. On 13 July 2021, the two governments signed the Joint Declaration on the Expansion of the Free Trade Agreement between Malaysia and Turkey, which reinforces the mandate in pursuing the expansion of the agreement to include chapters on services, investment and e-commerce. In efforts to deepen the economic bilateral ties, Senior Minister and Minister of International Trade and Industry, Datuk Seri Mohamed Azmin Ali, also released a statement commenting that both countries are dedicated to convene a separate meeting to advance discussions on the bilateral currency swap agreement. It is notable that as of 2020, Turkey has continued to remain Malaysia's third largest trading partner after the United Arab Emirates and Saudi Arabia, with trade amounting to a total of RM 9.62 billion (USD 2.30 billion).

Malaysia also met with the EFTA states for their 11th round of negotiations in August and September 2021, in order to establish the Malaysia-EFTA Economic Partnership Agreement ("**MEEPA**"). Negotiations spanned multiple areas, such as sanitary and phytosanitary measures, trade remedies, intellectual property rights and sustainable development. Developments relating to the MEEPA should be closely monitored with the 12th round of negotiations scheduled to take place in the beginning of 2022.

In **Myanmar**, the country's bilateral Trade and Investment Framework Agreement with the US has been suspended by the US as a response to the military coup orchestrated in Myanmar on 1 February 2021. The Trade and Investment Framework Agreement was signed in 2013 to create a platform for ongoing dialogue and cooperation on trade and investment issues between the two countries.

In **Philippines**, trade negotiations with South Korea officially concluded in October 2021, making the Philippines-Korea Free Trade Agreement ("**PH-KR FTA**") the second bilateral trade agreement of the Philippines, the first being the Philippines-Japan Economic Partnership Agreement. Aimed to be signed before February 2022, the highlights of the PH-KR FTA include the improved market access for agricultural products such as bananas and other tropical fruits, as well as industrial products and other services. According to Department of Trade and Industry ("**DTI**"), the Philippines was able to secure tariff elimination for bananas and improved tariff treatment for processed pineapples. Meanwhile, tariffs on some imports of South Korean automotive parts will be eliminated in five years. The FTA, which will complement the ASEAN-Korea FTA and RCEP agreement, is also expected to improve the balance of trade between the two countries more generally through enhanced trade flows, facilitating the movement of natural persons, and generating more investment and, consequently, job generation opportunities.

In **Singapore**, efforts continue towards the conclusion of digital trade agreements, which are free trade agreements that focus on digital trade rules and digital economy collaborations between signatory countries, so as to enable more seamless cross-border data flows and build a trusted and secure digital environment for businesses and consumers. On 9 December 2021, it was announced that negotiations between Singapore and the UK were substantially concluded for the UK-Singapore DEA ("**UKSDEA**"), following the launch of negotiations in June 2021. The agreement includes binding disciplines on key areas of the digital economy, such as data, as well as cooperative elements in a wide range of emerging and innovative areas such as Artificial Intelligence, fintech and regtech, digital identities and legal technology. Less than a week later, it was announced that Singapore and South Korea had concluded negotiations on the Korea-Singapore Digital Partnership Agreement ("**KSDPA**"). The KSDPA will be Singapore's fourth Digital Economy Agreement ("**DEA**") following the Digital Economy Partnership Agreement with Chile and New Zealand, the Singapore-Australia DEA and the UKSDEA, and the first with an Asian country. Amongst others, the KSDPA will prohibit data localisation except for specific purposes, to give businesses more freedom to choose where they wish to store and process their data based on business needs. The agreement will also deepen cooperation between the two countries in emerging areas such as Personal Information Protection, E-payments, and Source Code protection, and facilitate innovation and collaborations in the area of Artificial Intelligence.

As another emerging area, it was announced in October 2021 that Singapore and Australia are developing a Green Economy Agreement ("**GEA**") to look at practical initiatives to promote green growth, economic collaboration and cooperation on climate change. It aims to remove non-tariff barriers to trade in environmental goods and services and to accelerate the uptake of low emissions green technology.

On 22 July 2021, Singapore concluded negotiations with the Pacific Alliance ("**PA**") for the Pacific Alliance-Singapore Free Trade Agreement ("**PASFTA**"). The PA comprises of Chile, Colombia, Mexico and Peru. The PASFTA will be Singapore's first FTA with Colombia.

On 11 February 2021, the UK-Singapore Free Trade Agreement ("**UKSFTA**") entered into force, which is separate from the UKSDEA, following its signing on 10 December 2020. Under the UKSFTA, Singapore and UK companies will enjoy the same benefits that they received under the EU-Singapore FTA ("**EUSFTA**"). In line with the current arrangement under the EUSFTA, UK and Singapore companies can continue to use EU-27 materials and parts in their exports to each other's markets. Materials and parts sourced from ASEAN Member States can also be used and qualified under the rules of origin for exports to the UK, when the relevant arrangements are put in place. This would enable such products to more easily qualify for preferential tariff treatment.

In **Vietnam**, the Vietnam - UK Free Trade Agreement ("**UKVFTA**") came into effect on 1 May 2021. The UKVFTA was signed on 29 December 2020 after Brexit, and was negotiated based on the principle of inherited commitments from the EU-Vietnam Free Trade Agreement ("**EVFTA**"), with the necessary adjustments to ensure compliance with the bilateral trade framework between Vietnam and the UK. Preferential trade conditions and economic benefits through market-opening commitments already included in the EVFTA have been maintained in the UKVFTA. In addition, elimination of virtually all customs duties also helps foster exciting opportunities for investors across various sectors such as education, renewables and healthcare. Vietnam has since issued certain regulations to implement the UKVFTA, and investors should be aware of the implementing legal instruments to take advantage and reduce costs in trading goods between the two countries.

In addition to the UKVFTA, as of November 2021, Vietnam is also in negotiation for a number of other FTAs including the Vietnam - Israel FTA (officially launched from 2 December 2015) and the Vietnam – EFTA FTA with EFTA States including Norway, Switzerland, Iceland, and Liechtenstein (officially launched from May 2012).

Our Further Comments

These updates on the conclusion of new FTAs and expansion of existing FTAs are expected to boost trade and investment flows. Businesses can expect to greatly benefit from the new measures put in place under the various bilateral and regional FTAs and should make arrangements to take advantage of the opportunities afforded. In particular, businesses should consider how they can utilise the network of trade agreements within Southeast Asia to leverage regional supply chains and structure their production and supply chains accordingly. At the same time, businesses must exercise due diligence to ensure they fully understand the rules of origin and calculation of regional value content, and follow the correct procedures to obtain the relevant Certificate of Origin, as well as comply with other operational requirements such as the record-keeping requirements. These rules and requirements are specific to each FTA and businesses cannot simply replicate the processes used for one FTA to seek preferential access under another FTA.

TRADE SANCTIONS



While 'sanctions' in the most literal sense of the word involve a wide range of measures including those related to anti-money laundering and anti-financing of terrorism, below, we focus on developments relating to trade sanctions, which involve trade restrictions. Importantly, whilst there have not been many sanctions introduced by or against Southeast Asian countries, businesses operating in this part of the world need to be alert to sanctions across the world, depending on the flow of goods or services, to avoid disruptions and unnecessary delays. We do not discuss such foreign imposed sanctions here.

In **Philippines**, Annex 3 of the National Strategic Goods List ("**NSGL**") was introduced on 24 August 2020 to give effect to Section 4 of RA 10697, otherwise known as the Strategic Trade Management Act. Annex 3 sets out trade sanctions in relation to the export, transshipment and transit of certain nationally controlled goods to and from, in relation to Philippines, the Democratic People's Republic of Korea ("**DPRK**") as well as Iran. The list of nationally controlled goods includes nuclear materials and equipment, as well as other items such as base metals and articles of base metal, petroleum items, and transport equipment.

Annex 3 of the NSGL was adopted by the National Security Council – Strategic Trade Management Committee, and, with effect from 1 February 2021, the Strategic Trade Management Office ("**STMO**") began regulating exports, transshipments and transits of the goods listed in Annex 3 to and from, in relation to Philippines, the sanctioned countries DPRK and Iran. Businesses are to note that registration with, and authorisation from, the STMO will be required for Annex 3 transactions.

In **Singapore**, trade sanctions are imposed on imports and/or exports via various pieces of legislation, including the Regulation of Import and Export Regulations ("**RIER**"). With effect from 2 August 2021, Singapore updated the RIER to adopt the trade prohibitions under the UN Security Council's ("**UNSC**") UNSCR 2551 (2020). Exports, transshipments and transits of nitroglycerin and mixtures containing nitroglycerin, and technology required for the production or use of these items, from Somalia through Singapore are now prohibited, save for prescribed exclusions.

Our Further Comments

Businesses are reminded that violations of trade sanctions can hold serious consequences. As trade sanctions can present themselves in different forms, including imports and/or exports involving designated countries, entities or persons, as well as specific types of goods, and is a moving area of law, we recommend that businesses set up compliance processes to specifically monitor the developments in this area.

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