

TradeWatch



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Australia accelerates its transition towards paperless trade

The Australian government recently reaffirmed its commitment to Australia's trade modernization journey by increasing investments to key agencies to implement several trade reform initiatives. This article provides an overview of these investments and how the digitalization of trade processes and documentation is increasingly seen as a new driver for enhancing the productivity of Australia's trade ecosystem, with substantial sustainability and supply chain benefits.

Australia's actions follow recent successes in the digitalization of trade documentation in the UK and Singapore. The Australian government will now explore domestic implementation of the United Nations' Model Law on Electronic Transferable Records (MLETR) to provide the legal framework for promoting trade digitalization and paperless trade.

Recent disruptions to the global trading landscape have revealed the importance – and the fragility – of trade as a driver for global economic prosperity. The COVID-19 pandemic placed unprecedented pressures on supply chains, which, along with the conflation of economics and security, have seen a rise in economic decoupling, the resurfacing of interventionist industrial policy agendas and greater friction at our borders. We are also seeing governments and consumers become more discerning, with stringent product specifications and regulations challenging global traders and regulators alike. In the face of a more dynamic risk environment, digitalizing trade processes and documents has the potential to be the next leap in the productivity of Australia's trade ecosystem and drive sustainable growth.



Australia has been steadily making progress toward modernizing its trade systems, led by the Australian government's Simplified Trade System Implementation Taskforce (STS Taskforce),¹ which has a "whole-of-government" mandate, and bipartisan support, to lead regulatory reform efforts. The STS Taskforce was established in July 2021 under the former government as part of a suite of economic reforms to enhance productivity of Australia's post-pandemic recovery. Its work has recently been boosted through additional investments announced by the Australian government in its 2023-24 Mid-Year Economic and Fiscal Outlook (MYEFO) in December 2023.²

As part of this, the government allocated AUD53.5 million over four years beginning in 2023-24 to digitalize trade procedures, support paperless trade, reduce regulatory burdens, trial new cargo inspection technologies and procedures, and streamline business-to-business interactions. Specifically, the STS Taskforce has committed to exploring options to implement the MLETR³ in Australia as a means of accelerating the adoption and exchange of electronic

¹ "Simplifying trade for Australia," *Australian government website*. [Find it here](#)

² "Budget 2023-24: Mid-Year Economic and Fiscal Outlook," *Australian government website*. [Find it here](#)

³ "UNCITRAL Model Law on Electronic Transferable Records (2017)," *United Nations website*. [Find it here](#)

trade documents and moving away from paper-based systems and processes. Adoption of MLETR and introduction of legislative amendments to modernize and strengthen existing customs regimes and digitalizing processes would bring Australia in-step with its trading partners, including the UK and Singapore.

This additional funding will also build on existing initiatives being implemented by Australia's key border agencies, including the Australian Border Force and the Department of Agriculture, Fisheries and Forestry, to upgrade their legacy systems, improve data-sharing, and strengthen border and biosecurity protection.

Challenges of the paper-based system

Paperless trade refers to the digitalization of information flows that are used to support and facilitate cross-border transactions. While not a new initiative, there continues to be a strong reliance globally on paper-based trade documentation by regulators and businesses alike. There are currently over 4 billion documents circulating in the trade system⁴, with an inadequate degree of standardized information, processes and systems, along with outdated national laws. Paper-based trade in the current environment creates inefficiencies and delays across the supply chain, hindering the efficiency and cost-effectiveness of global commerce. It also limits the ability to respond swiftly to market demands, quality issues or safety concerns. The value of costs incurred can be claimed back through the digitization of global trade processes, which is estimated to bring total benefits to nearly USD1.2 trillion by 2026.⁵ Reliance on paper also increases the risks of errors, fraud and loss of valuable information.

These issues are often seen in the provision of trade finance, a critical enabler of global trade and an area that stands to benefit most from trade digitalization. In the Australian context, there are still several regulatory obligations that impose strict requirements to produce and retain paper documents. For example, the Australian Transaction Reports and Analysis Centre (AUSTRAC) requires all reporting entities to create, store and manage transaction records

for seven years as part of its core anti-money laundering obligations. While such requirements play an important part in broader anti-money laundering and counter-terrorism financing prevention efforts, they are some of the few remaining obligations preventing companies from fully transitioning to paperless systems. There is an emerging consensus that the commercial and regulatory risks such paper-based measures seek to address could be effectively managed through an agreed and trusted approach to the use of electronic data exchange and e-documentation.

International consensus on trade digitalization

The MLETR offers a practical mechanism for accelerating the pace of digitalization in Australia – at a modest cost for government and using a proven reform path that is gaining traction globally. The MLETR creates an enabling legal framework for paperless trade, providing an international benchmark to align national laws and enable the legal use of electronic transferrable records, both domestically and across borders. By being technology and systems neutral, the MLETR allows users to comply as they see fit (through the use of tools such as registries, tokens and distributed ledgers), enabling digital information to move seamlessly across borders.

There are some powerful examples among our international peers, including the UK and Singapore, that have successfully amended their domestic legal regimes to implement the MLETR. The UK's Electronic Trade Documents Act (EDT Act),⁶ implemented in September 2023, made the UK the first G7 country to place electronic trade documents on an equal footing with their paper counterparts. The UK government has estimated that domestic implementation would add GBP1.14 billion to the British economy over the next decade.

On 15 November 2023, the EY Global Trade Advisory team in Sydney, Australia, co-hosted a trade digitalization event with the British Consulate General and the Business Council of Australia. The event brought together public and private sector representatives from Australia and the UK to share their views and exchange experiences on progressing reform agendas and best-practice industry-led initiatives to address regulatory and commercial barriers to paperless trade adoption. This event highlighted the need for continued dialogue and cooperation between Australia and the UK on paperless trade and

4 United Kingdom | Creating a Modern Digital Trade Ecosystem, *International Chamber of Commerce website*. [Find it here](#)

5 Quantitative Analysis of the Move to Paperless Trade, *The Commonwealth Website*, Quantitative Analysis of the Move to Paperless Trade. [Find it here](#)

6 'UK: An overview of the Electronic Trade Documents Act,' *TradeWatch Issue 3 2023*, page 37. [Find it here](#)

demonstrated a strong appetite among regulators and businesses to cooperate on paperless trade. There was strong interest in exploring opportunities around trial shipments of completely paperless exchanges to help identify barriers to adoption and accelerate the transition.

In addition to the UK and Singapore, the MLETR has now been implemented by seven countries⁷ and three more countries⁸ are in the process of domestic implementation.⁹ This progress is set to continue off the back of senior political-level endorsement, including by G20 Trade Ministers, who last year issued their High Level Principles on Digitalization of Trade Documents,¹⁰ which highlighted the centrality of MLETR as a means of promoting neutrality, collaboration, security, reliability and trust.

Opportunities for collaboration between Australia's private sector and international partners

While there are many barriers to overcome, accelerating Australia's transition to paperless trade is not only a necessity but also an opportunity that could deliver an estimated \$1.7 billion in economic benefits.¹¹ Therefore, it is no surprise that the private sector and trading community have signaled strong support for the government's efforts.

Businesses should be positioned to embrace opportunities and positively contribute to trade digitalization and the reform agenda by sharing their own operational experiences and what they have learned. There are rich lessons from business attempts at adopting existing paperless trade solutions already in market, in particular the challenges associated with cultivating the required change across the end-to-end supply chain.

Sharing these insights with government stakeholders, participating in pilots of trial shipments and shifting toward paperless systems wherever possible will support the Australian government's efforts to implement the MLETR domestically and deliver its broader trade modernization agenda. ■

7 US, Belize, Paraguay, France, UK, Germany, and Papua New Guinea.

8 Thailand, Mexico and Japan.

9 'MLTER Tracker' *United Nations Economic and Social Commission for Asia and the Pacific Website*, MLETR Tracker | Cross-Border Paperless Trade Database (digitalizetrade.org)

10 "Annex-C High Level Principles on Digitalization of Trade Documents," *G20 website*. [Find it here](#)

11 Trade simplification aims to save \$4.3 billion in regulatory costs, *Australian Financial Review website*. [Find it here](#)

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Japan: 2024 tax reform changes to the customs law

On 15 December 2023, the Council on Customs, Tariff, Foreign Exchange and Other Transactions (the Council) under Japan's Ministry of Finance produced a proposal on the revision of customs duty rates and the taxation system, the contents of which were reflected in the 2024 Japan tax reform outline.¹ While some items that require changes to the laws still need to be deliberated in Japan's parliament (the Diet), it is expected that most of these proposed changes will enter into force.

Relaxation of security provision requirements for AEO importers

Under Japan's Authorized Economic Operator (AEO) certification program, Japan Customs grants AEO status to operators such as importers, exporters and customs brokers whose level of internal controls meets a required standard from a customs perspective. Among those certified AEOs, importers enjoy the benefit of duty deferral where they can defer the payment of customs duties and other import taxes due upon importation to the following month end. Under the current program, when such AEO importers would like to extend the duty deferral for a further two months, they could only do so after providing a security to Customs for the amount equivalent to two months' worth of customs duties and import taxes.

To further facilitate trade, the Council has proposed to abolish this requirement in principle, so that AEO importers may receive this additional two months' worth of deferral without paying the security. What this means for current AEO importers is that once the changes are enacted into law on 1 October 2024, they would be able to defer duty/import tax payment for the full three months without security, resulting in a cash flow benefit and a reduction in the cost of arranging the security.

Other revisions related to customs

The Council also proposed the following revisions with regard to customs:

Treatment of provisional duty rates

The Council has proposed that the provisional duty rates on 411 items that were due to expire at the end of March 2024 be extended for another full year.

It also proposed that the provisional duty rates for polyvinyl chloride (PVC) gloves be abolished and most favored nation rates be reinstated from 1 April 2024.

Expansion of the scope of penalty provision

Penalty provisions in the Customs Law are to be amended to clarify that when an importer applies for duty refunds by means of concealing or disguising the facts, they would be subject to penalties.

Actions for business

The changes to customs laws in this year's tax reform, such as the expansion of benefits under AEO and the extension of the provisional rates, demonstrate the Japanese government's commitment to trade facilitation and trade liberalization. Companies operating in Japan should be aware of these changes and other customs programs that are available to reduce cost and risk in relation to importing goods into Japan. ■

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¹ "2024 Japan tax reform outline," EY website, 16 January 2024. [Find it here](#)

New Zealand: Customs agency loses valuation case on the treatment of royalties for valuation purposes

A recent Customs Appeal Authority case¹ confirmed that royalties should not be included in the customs value of imported goods where there is no nexus between the payment of the royalty and the imported products. In addition, royalties should not be included in the customs value of the imported goods if they are not “proceeds of subsequent resale of the goods” in New Zealand.

This case is significant as it serves as a reminder that not all royalty payments are dutiable. It also highlights the risk of Customs simply identifying a payment as a royalty and assuming there is a nexus with the imported goods. The decision warns that this approach is not acceptable.

Background

The key facts relating to the case are as follows:

- ▶ The appellant is a clothing importer and retailer that operates shops in New Zealand. It is wholly owned by an Australian company (the parent company) and is part of a wider international group of companies.

- ▶ The appellant purchases goods from the parent company. The purchase price was calculated on a “cost plus” basis, taking into account duty, commission payments, freight sampling, design and a profit margin.
- ▶ The appellant pays the parent company a management fee for services based on the cost plus a markup of 7.5%. The appellant undertakes the day-to-day routine of the local retail stores, and the parent company provides the operational services (i.e., management, administration, HR, finance, IT, legal, advertising and marketing).
- ▶ The appellant pays a royalty to the parent company. The intellectual property (IP) was described as “a sophisticated retail formula, including know-how, trade secrets, confidential information, copyright in artistic works and marketing content, and brands.” It included product selection, locating products, presentation, customer service standards, product line retail strategies, marketing, location, and development of premises and store systems.



- ▶ There was one royalty payment and a two-step process to calculate it. No royalty is payable if the appellant’s net profit is the equivalent of a routine return or less. This was equivalent to a 5% return on sales. If the net profit exceeds the routine return, 75% of the excess is paid to the parent company as a royalty.

Customs had issued a decision that the royalties should be included in the value of the imported goods on the basis that the legislation² requires royalties to be included in the value of the imported goods where the royalties are in respect of imported

1 XXXX v Chief Executive of the New Zealand Customs Service [2022] NZCAA 1 (28 February 2022). Please note the hearing was on 26 and 27 June 2019 and the decision was on 28 February 2022. However, the decision was only published and publicly available from late 2023, 2022-NZCAA-01-28-February-2022.pdf (justice.govt.nz). [Find it here](#)

2 The current relevant legislation requiring royalties to be included in the customs value is Clause 7(b)(iv) of Schedule 4 of the Customs & Excise Act 2018. This is materially the same as the requirement in the Customs & Excise Act 1996.

goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to New Zealand. It was also on the basis that the legislation³ requires the value of proceeds of any subsequent resale by the buyer accrues, directly or indirectly, to the seller.

Customs' reasoning is summarized as follows:

- ▶ The appellant's primary activity was exclusively to retail goods that the parent company sold to it. Branded products are not available to other New Zealand retailers.
- ▶ The retail goods had trademarks branding them.
- ▶ The parent company directs the appellant's importing and sales operations.
- ▶ The appellant could not procure the products without paying the royalties.

Customs also rejected the appellant's claim that the royalty payments were for the use of the IP concerning the operation of the New Zealand business.

Comments on the decision

It is clear from the decision that Customs was concerned with the situation whereby a parent company has significant control over the conditions of importation and subsequent resale of the same goods. The concern relates to the risk of manipulation of the customs value and the ability to minimize duty payable – in other words, the ability to load costs into post-importation activities to reduce the customs value.

Customs relied on previous and established case law⁴ concerning the treatment of royalties that places emphasis on the commercial reality or substance of the arrangement. Customs argued that without the goods being imported for sale by the appellant, there would be no reason for the parent company's services (relating to the brands, know-how and commercial strategy) to exist. Customs took the position that on a "but for" analysis the true cost of the imports includes the post-importation support (including the commercial strategy of the New Zealand operations). Therefore, the royalties needed to be included because of the legislative requirements highlighted above.

To address this, it was noted in the decision that this is a mixed question of a fact and law: "It is necessary to determine what was supplied from the parent company to the appellant, and what was paid and the reasons for the payment. Then, apply the law....". In relation to the various supplies and payments, we note the following in respect of the decision:

- ▶ There was no evidence that there was any undervaluation of the imported goods. The decision notes that the pricing methodology adopted for the imported goods takes into account all the costs that are incorporated into the inherent and intrinsic qualities of the goods. The price includes a margin and an allowance for profit for the parent company: "The evidence is that the cost is as close to arm's length as possible (within a transfer pricing regime)."

³ The current relevant legislation in relation to "proceeds of any subsequent resale" is Clause 7(b)(v) of Schedule 4 of the Customs & Excise Act 2018. This is materially the same as the requirement in the Customs & Excise Act 1996.

⁴ *Collector of Customs v Avon Cosmetics Limited* (2000) 1 NZCC 55,011 (CA) [Avon (CA)] [Find it here](#). *Adidas NZ Ltd v Collector of Customs* (Northern Region) [1999] 1 NZLR 558 (CA) [Adidas (CA)] [Find it here](#).

- ▶ There was no quantifiable nexus between the royalties and the value of the imported goods. The quantification of the royalties is a profit-sharing formula with an intention for the parent company and appellant to share the profits. The decision noted the evidence for the appellant to be "plausible and unsurprising."
- ▶ There was no basis to reject the evidence that the royalties were entirely related to the services supplied by the parent company and the transaction value used was not influenced by the relationship between the parent company and the appellant.

Impact of the decision

Imports from related parties continue to draw controversy in New Zealand. This case shows that even with the use of transfer pricing to determine the price of imports into New Zealand, Customs was still prepared to challenge the importer to include royalties to derive an inflated value of the goods at the border. ■

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Asia-Pacific

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- ▶ EY Global Tax Controversy Flash Newsletter (Issue 67): transfer pricing and customs valuation – a hot topic in Asia-Pacific (11 March 2024)

Global

- ▶ The outlook for global tax policy and controversy in 2024 (26 March 2024)

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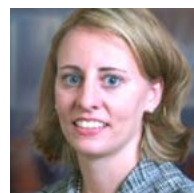


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