

**Baker
McKenzie.**

Customs and Key Compliance Developments

12 - 14 September 2023

ANNUAL COMPLIANCE CONFERENCE

Annual Compliance Conference 2023

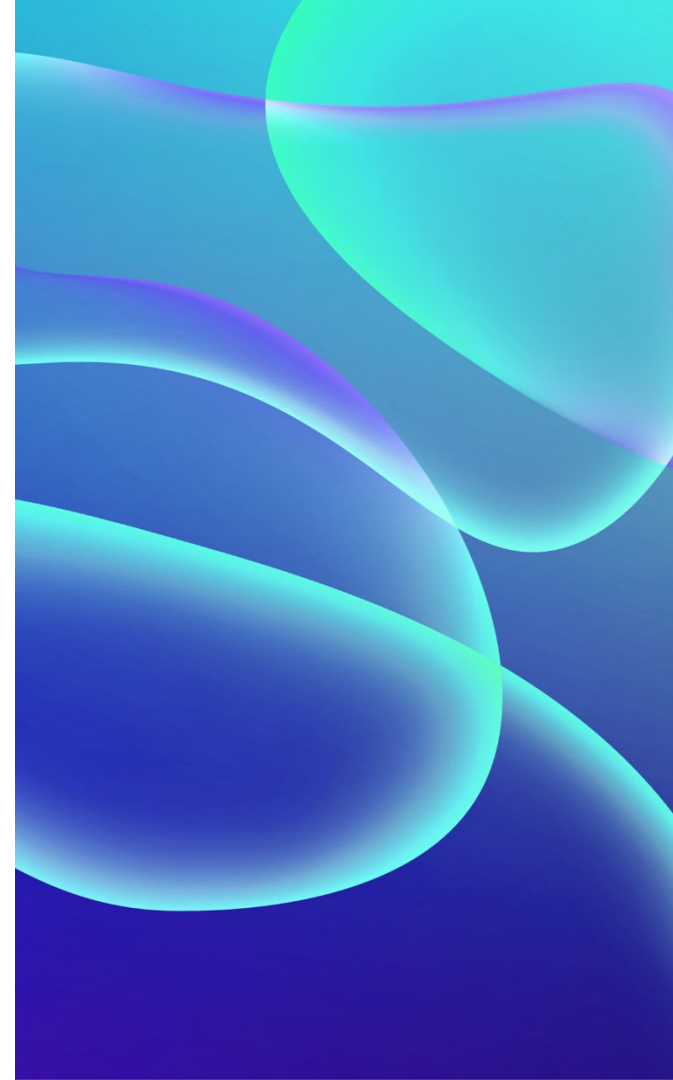
01 Anti-bribery and corruption and economic crime
5 - 7 September

02 Customs and key compliance developments
12 - 14 September

03 ESG, supply chain and product compliance
19 - 21 September

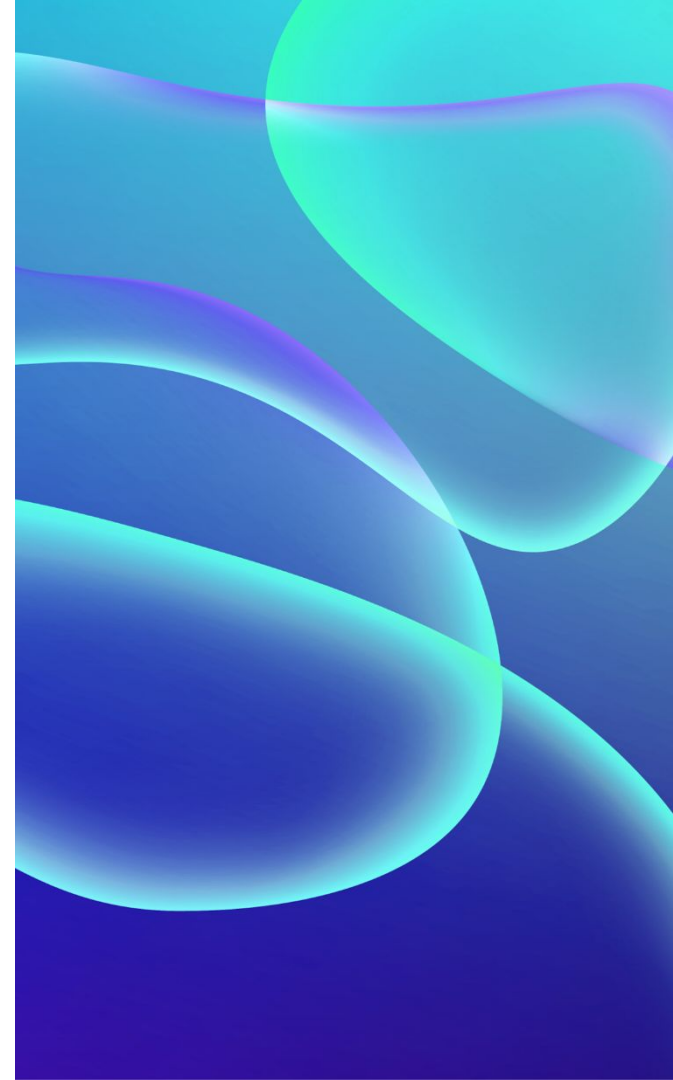
04 Sanctions and export controls
26 - 28 September

05 Antitrust compliance
3 - 5 October



This Week: Customs and Key Compliance Developments

01	Tuesday 12 September 2.30 - 3.30 pm BST 3.30 - 4.30 pm CEST 9.30 - 10.30 am EDT	Customs and trade governance strategy
02	Wednesday 13 September 2.30 - 3.30 pm BST 3.30 - 4.30 pm CEST 9.30 - 10.30 am EDT	Customs audits, investigations and litigation: how to prepare and manage your response
03	Thursday 14 September 2.30 - 3.30 pm BST 3.30 - 4.30 pm CEST 9.30 - 10.30 am EDT	An overview of customs valuation



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McKenzie.**

Customs and Trade Governance Strategy

Tuesday, 12 September, 2.30 - 3.30 pm BST

ANNUAL COMPLIANCE CONFERENCE

Speakers



Jenny Revis
Partner (Chair)
London
jenny.revis
@bakermckenzie.com



Francisco Negrao
Partner at Trench
Rossi Watanabe*
Sao Paulo
francisco.negrao
@trenchrossi.com



Christine Streatfeild
Partner
Washington D.C.
christine.streatfeild
@bakermckenzie.com



Lionel Van Reet
Partner
Brussels
lionel.vanreet
@bakermckenzie.com



Bregt Natens
Counsel
Brussels
bregt.natens
@bakermckenzie.com



Kelvin Hong
Senior Associate
London
kelvin.hong
@bakermckenzie.com



Eunkyung Kim Shin
Senior Associate
Chicago
eunkyung.kimshin
@bakermckenzie.com

* Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law



0 Thinking Strategically on
1 Customs and Trade

Setting up a Trade & Customs Strategy

Why it matters...



20% of world's largest companies serve more than 150 countries

80% deal with identical topics

90% of the **companies** do not feel in control on customs global operations

75% feel that a harmonized approach and strategy would bring along significant savings

70% of multinationals employ local decision makers to deal with customs matters

Trade & Customs

Burning topics – EU

▶ **Increased investigation AND enforcement trend** in the EU across a variety of areas, including classification, valuation, and trade diversion. National Customs authorities are ready to sue economic operators to court in relation to even the smallest breach of the customs legislation.

▶ The transition phase of the **Carbon Border Adjustment Mechanism** will start on 1st October 2023.

▶ While the proposal for a ban on goods made using forced labour is still currently being negotiated, some EU Member States have already moved towards adopting concrete acts to address **human rights concerns in companies' supply-chains** (see: the Duty of Vigilance Law in France or the Supply Chain Due Diligence Act in Germany)

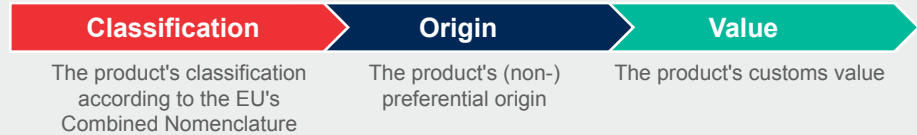
▶ The EU is set to lay out a **strategy to respond to a unilateral US and more coercive China**. This could lead to more tariffs on certain products and also potentially EU-wide export controls on sensitive technologies.

The sanctions against **Russia** and the audits with regards to **circumvention** actions by operators are gaining traction throughout the EU

▶ **ICS 2 implementation and deployment throughout** the EU. The latter concerns Postal operators, express and air carriers and freight forwarders.

Trade & Customs...2 Sides of the Same Coin

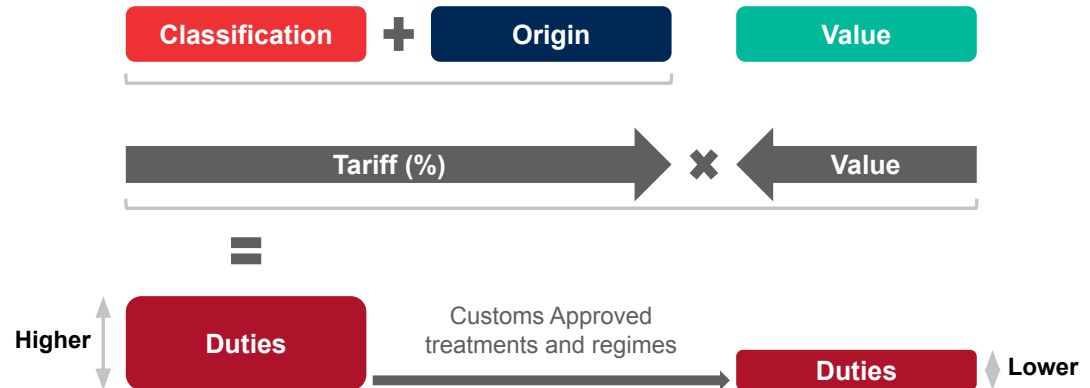
Products entering/ leaving / manufactured the EU's customs territory are subject to controls driven by data analytics relying on **three key data elements** regulated by the Union customs legislation.



Based on these elements, national customs authorities apply measures relating to EU customs tariff and commercial legislation, **including:**



- **Tariff measures** (e.g., (non-) preferential tariff treatment, autonomous tariff suspensions)
- **Trade defence measures** (e.g., antidumping duties, countervailing duties, safeguard measures)
- **Prohibitions/restrictions** to import and export (e.g., sanctions, dual-use trade controls measures).



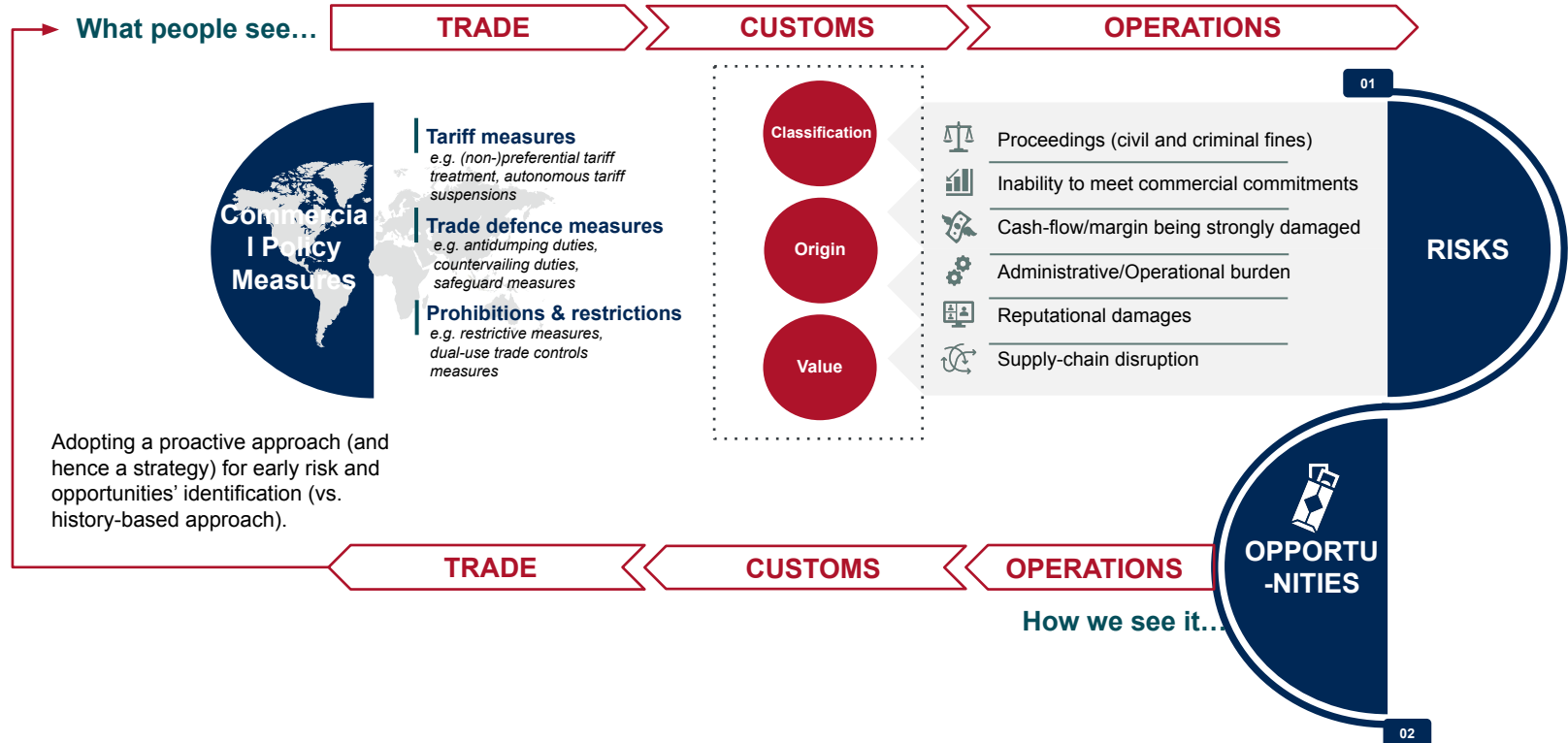
Trade & Customs Strategy

From Trade Compliance Footprint to Trade Strategy



Trade & Customs

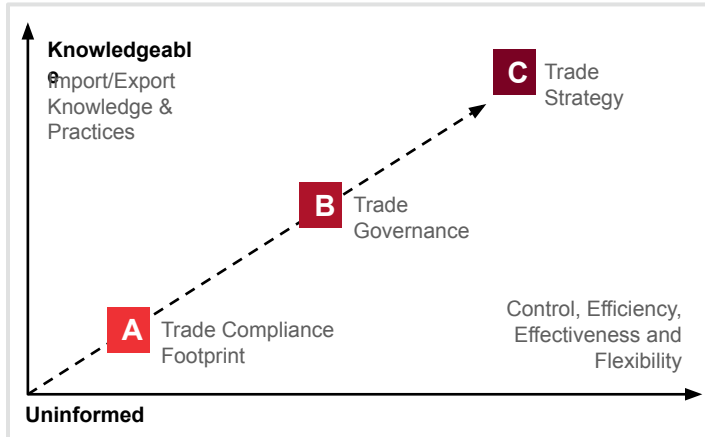
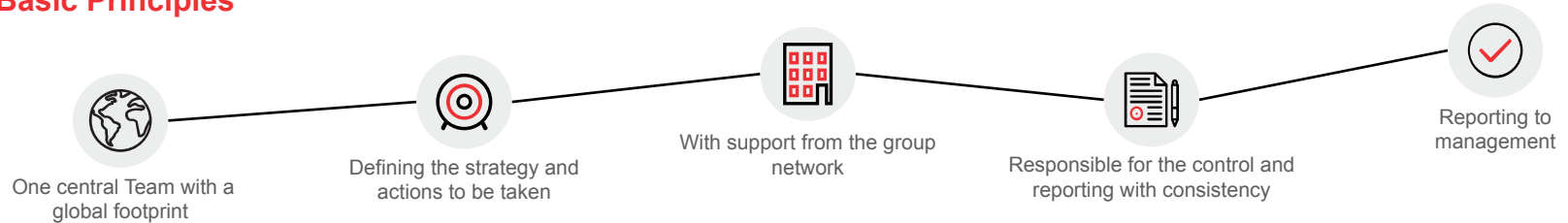
The link between customs and trade



Trade & Customs Strategy

From Trade Compliance Footprint to Trade Strategy

Basic Principles



Trade Strategy

- C** Understand the strategic trade agenda: a Board Room issue.
- C** Adapt trade function to benefit from upcoming opportunities or mitigate upcoming risks.
- C** Proactive organisation: control, efficiency, effectiveness and flexibility.

Trade Governance

- B** Centralised global trade function ensuring consistency across the network.
- B** Standard operating procedures.
- B** Independent organisation, able to monitor the trade compliance footprint, take mitigating actions and ensure operation effectiveness.

Trade Compliance Footprint

- A** Visibility on the customs operations.
- A** Lack of dedicated trade compliance organisation.
- A** Fire fighting – incident driven organisation.
- A** Some procedures are in place, but not covering all processes.
- A** Highly dependent on third parties (e.g. consultants, brokers).

Trade & Customs Strategy

How to Get to the Next Level?

Legal Framework



Operations



Strategy



Strategic Assessment

We **confront** your operations against the legal framework through a standardized approach.

We will assess the products you import/export into/from the EIU's customs territory against the EIU customs tariff and commercial legislation. To do so, we will rely on a list of commodity codes and their related origin, which we will process through our data analytics solution supported solely and exclusively by official data issued and maintained by the European Commission (i.e., TARIC database).

The results of this confrontation will take the form of a **playbook** listing our findings and their implications.

Strategic Intelligence

We **investigate** our findings, take action and pave the way towards a **global trade strategy**.

We will confront our playbook with your current practice to derive a set of actions to be taken in order to improve your performance and conformity. We will support you to achieve these actions and give you the tools to ensure a constant monitoring of changes and their impacts on your operations through a dedicated governance model, including a set of procedures.

This approach will lead to **concrete results** (increased conformity and performance) as well as to a tailored global trade strategy.

That context reveals the need for an **upstream global trade strategy** in order to strengthen companies' performance and conformity, and subsequently build their competitive advantage.

**0 Strategically Leveraging
2 Country of Origin**

Why Do We Care About Origin?



- Entry documentation requirements, MFN duty rate
- Preference claims (e.g., FTA)
- Other agency requirements (e.g., US Food and Drug Administration)
- Antidumping Duties (AD) / Countervailing Duties (CVD)
- Admissibility of the goods (e.g., quantitative restrictions, tariff quotas)
- Other purposes (e.g., trade statistics)

COO and United States



- The US government's retaliatory tariffs against certain Chinese origin goods pursuant to Section 301 of the Trade Act of 1974, the so-called "**Section 301 Duties**"
- Generalized System of Preferences (**GSP**)
- Country of origin **marking** under US customs law
- **Government procurement** (e.g., Buy American Act and TAA waivers)
- Considerations associated with "**Made in USA**"-type claims

COO Changes & Related Considerations

01

Before changes to production flows are made

- What exact production steps in scope?
- Involve all key stakeholders – what are other legal areas/issues to get ahead, both in the United States and outside the United States (e.g., the new production country)
- Would the preferred COO be conferred?

02

As the changes are being made

- How to manage two (or more) import flows in the interim
- Consider types of supporting documentation available

03

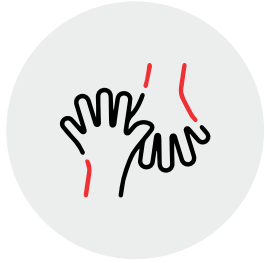
Managing import flows with "new" COO

- Active area of mistakes and evasion – need to be able to handle potential questions from US Customs
- Consider advanced binding ruling
- Manage broker communications
- Document decisions
- Other post-importation considerations



0 **Customs and Trade –**
3 **A View from APAC**

Considerations for an Effective Strategy



**Local language
and culture**



**No one size
fits it all**



**Relationship with
local authorities**



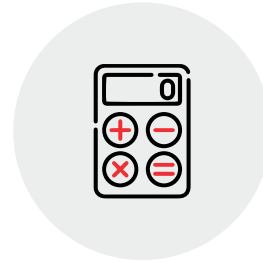
**Need to
localise approach**

Customs Audit Trends



Tariff Classification

- 0% HS codes are being challenged
- Strategic importance of customs rulings



Customs Valuation

- Transfer pricing
- Local authorities are developing capacity

Customs Audit Trends



Customs Facilities

- Compliance with conditions attached to customs facilities
- Supply chains with hubs in Asia



Rules of Origin

- Cross-border origin verification audits
- Trade remedy



0 Trade Remedies in a Trade 4 Governance Strategy

Protecting Local Manufacturing Industry from Import Competition



Anti-dumping instrument

Imported goods sold at price below fair / normal value

Anti-dumping duties to offset amount of dumping



Anti-subsidy instrument

Imported goods that have been subsidized in country of production

Anti-subsidy / countervailing duties to offset subsidies

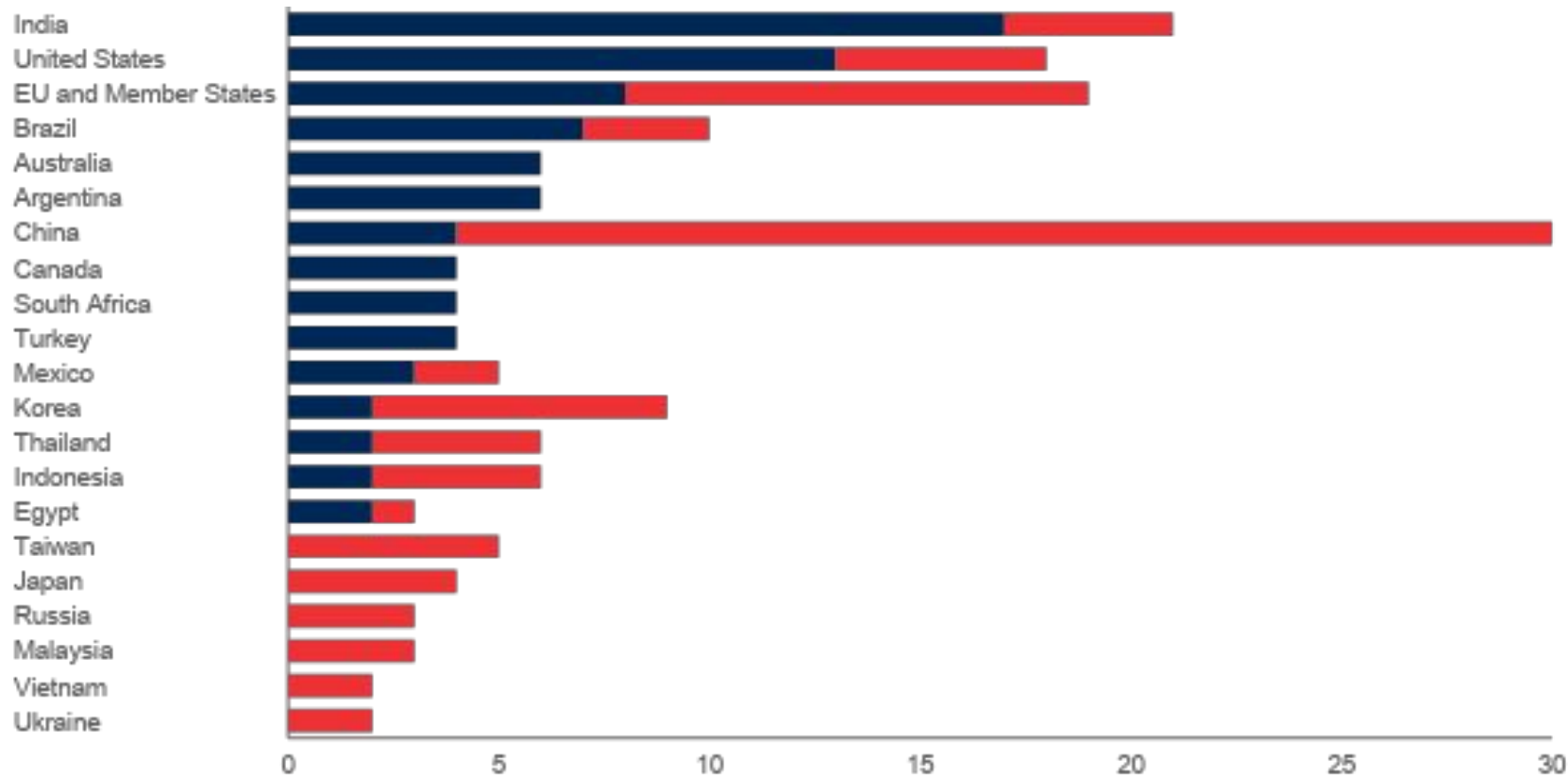


Safeguard instrument

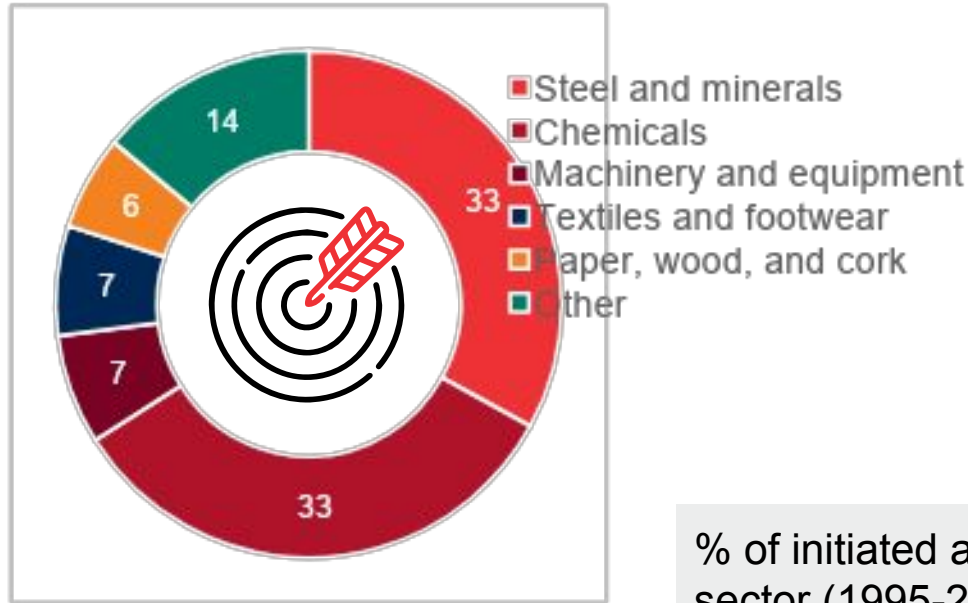
Sharp, sudden increase in imported goods

Safeguard measures to limit imports

Trade Remedies Used by Countries Around the World Against Imports from Around the World



Traditional Focus on Steel and Chemicals, But Increased Product Coverage



% of initiated anti-dumping investigations by sector (1995-2021)

Outline for a Global Trade Remedies Strategy

Monitor

Manage and mitigate risk and anticipate new cases



Strategize

Develop global strategy to address risks and opportunities



Optimize impact

Consider reviews and refunds



Identify opportunities

Set up mechanism to identify opportunities

Litigate

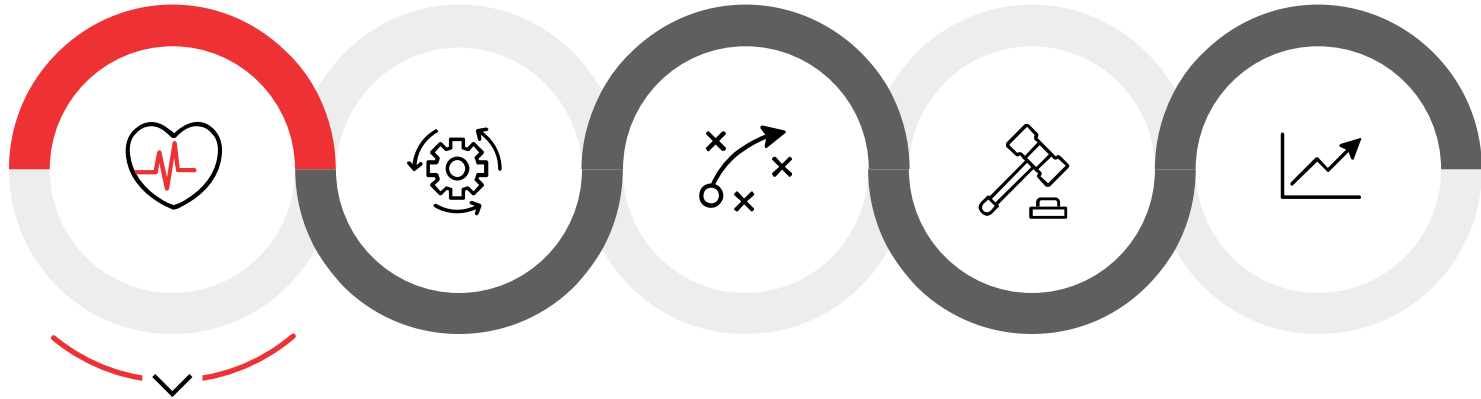
Important or systemic mistakes may warrant litigation in domestic courts and/or at the WTO



Outline for a Global Trade Remedies Strategy

Monitor

Manage and mitigate risk
and anticipate new cases



Compliance:

Dumping IT tool to continuously
quantify and mitigate exposure

Outline for a Global Trade Remedies Strategy

Strategize

Develop global strategy to address risks and opportunities



Preparedness:

Key part of strategy

Outline for a Global Trade Remedies Strategy

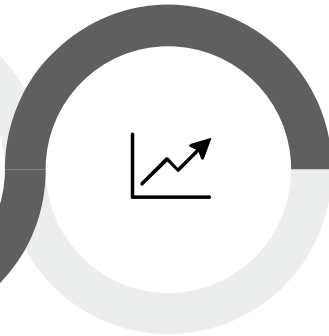
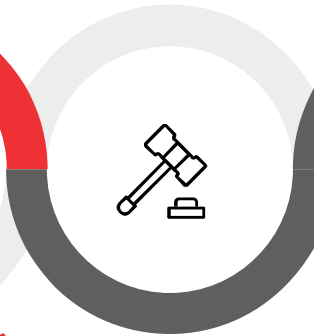
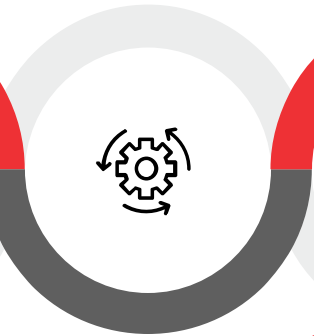
Monitor

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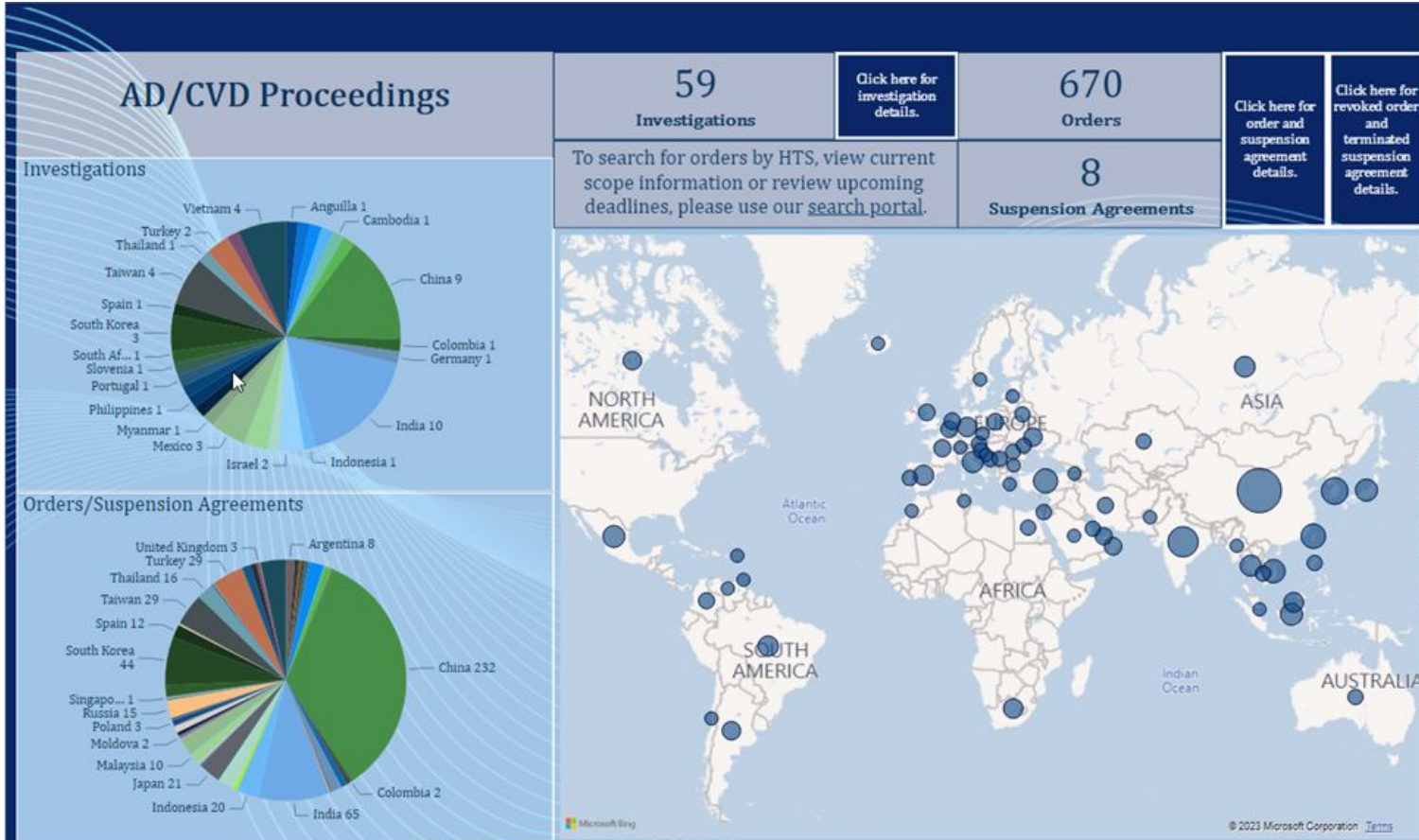
Enforcement:

Increased enforcement in EU via circumvention investigations □ fraud / OLAF / EPPO...



0 **US Trade Remedies**
5

US Antidumping and Countervailing Duty Targets: At a Glance



US Antidumping/Countervailing Duties

Enforcement activities on the rise

Strong use



Duty assessment



Customs enforcement

- US imports are a key target of AD/CVDs
 - Substantial duties and wide range of product and country coverage
-
- Scope and coverage
 - Retroactive assessment of AD/CVDs □ monitoring is critical
-
- Circumvention
 - EAPA actions



06 Brazil: Key Developments with Global Reach

Remedies + Tariffs = (Mean) Business



Prices



Volumes



Access



Costs



Margins

Brazil: New Administration (2023-26)



Speech: Reindustrialization and Increased Protection to the Domestic Producers

Alckmin (VP/MDIC): **reindustrialization** & debureaucratization = top priority

Prazeres (SECEX): address lack of competitiveness of industry to **expand exports of value-added products**

MDIC: **endorsing the renewal of AD as positive measures to ensure legal certainty to producers**



Actions follow speech. Macroeconomic environment key in following-through

Institutional reform of trade authorities: **more diverse members** in GECEX (broader focus); appointment of **experienced trade authorities** for key posts; **comprehensive reform of the public interest assessment**

Exclusion of competition authority (CADE) from the members of GECEX

MDIC gains strength with the return of two agencies: the **Brazilian Development Bank (BNDES)**, and of the **Brazilian Trade and Investment Promotion Agency (ApexBrasil)**

Negotiations of the free-trade agreement between Mercosur and the European Union reaches a new hurdle: **environmental demands**

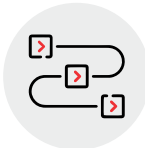
Trade Remedies in Brazil: Open for Business



Relevant data

Trade remedies antidumping; countervailing duties

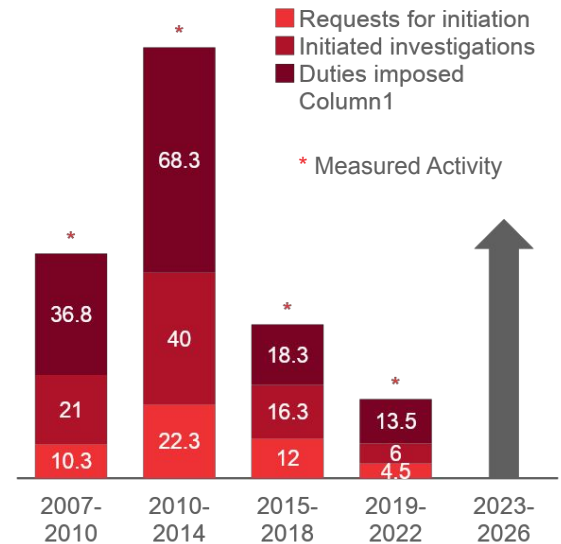
- Authorities reinforcing that trade remedies are legitimate and do not represent protectionist measures
- **Boom is expected**



Procedural particularities

- Sunset reviews in Brazil different margins previous administration aimed for the reduction of the applied duties
- Public interest analysis separate procedure analysis of net impacts on economy may result in suspension or reduction of remedy
 - Public consultation for reform of public interest analysis aims at simplification of procedure highlights exceptionalities heated discussions

Original investigations



New Guidelines for Tariffs



Changes of the CET: temporary (LETEC; LEBIT; shortage) and permanent.
Ex-tarifário exceptions

- Previous government was strongly against tariff increases
- Sitting government is openly accepting requests for increases of the TEC under the LETEC regime, as allowed by the Mercosur rules

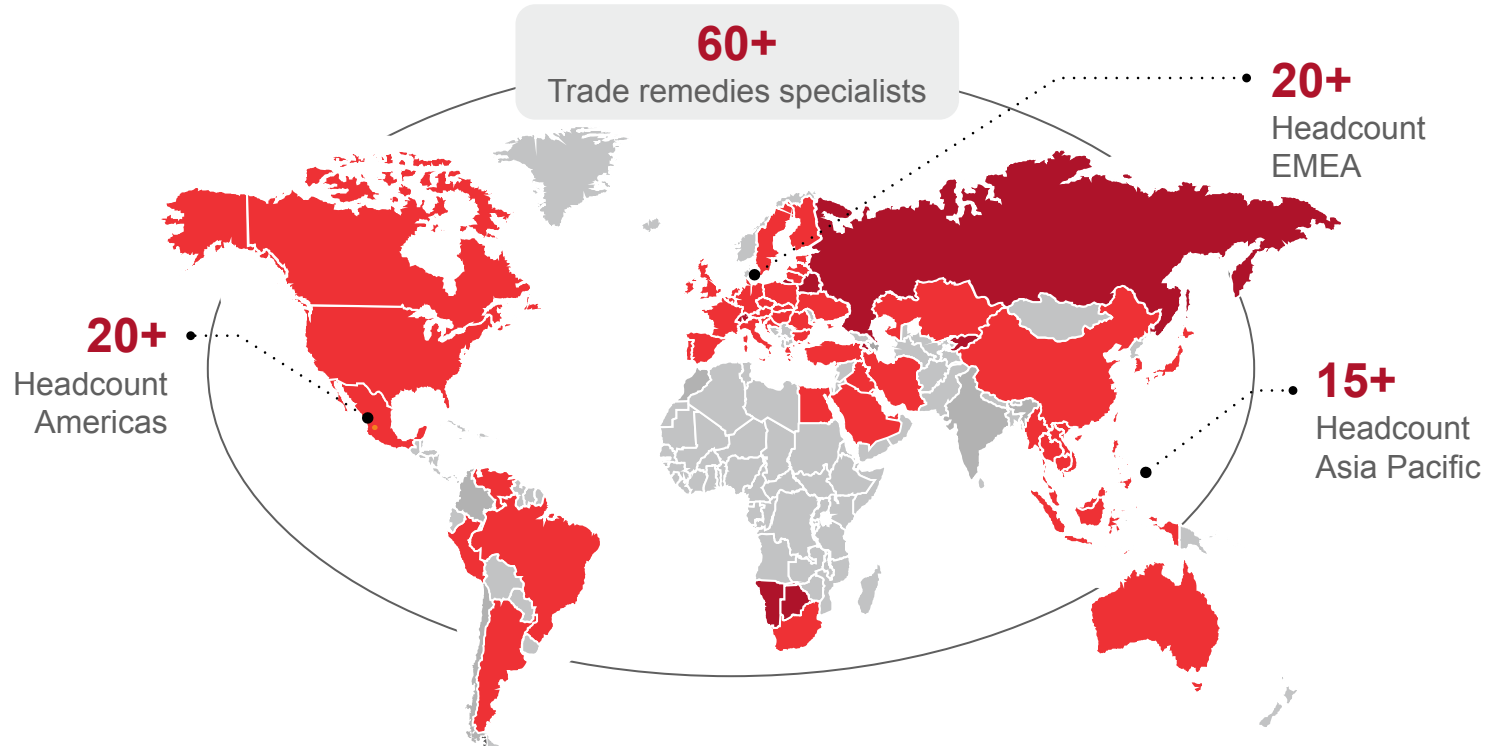


New Ex-tarifário regulation

- Tariff reductions under the Ex-tarifário regime (applicable for BK and BIT) became harder to obtain
- Regime is no longer applicable to used capital goods nor to consumer goods
- Simplification of the requirements for demonstration of domestic production (i.e., reduction of the chances of success of the tariff reduction requests)

Hot Topics: new Transfer Pricing regulations; customs focus on indirect imports

Integrated Platform Uniquely Placed to Assist



* Baker McKenzie and Trench Rossi Watanabe (TRW) have executed a strategic cooperation agreement to consult on foreign law.

The background features abstract, organic shapes in shades of blue and teal. A large white speech bubble is positioned on the left side, containing the word "Questions".

Questions

Customs audits, investigations and litigation: how to prepare and manage your response

Wednesday 13 September

2.30 - 3.30 pm BST

3.30 - 4.30 pm CEST

9.30 - 10.30 am EDT

Tomorrow's session

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