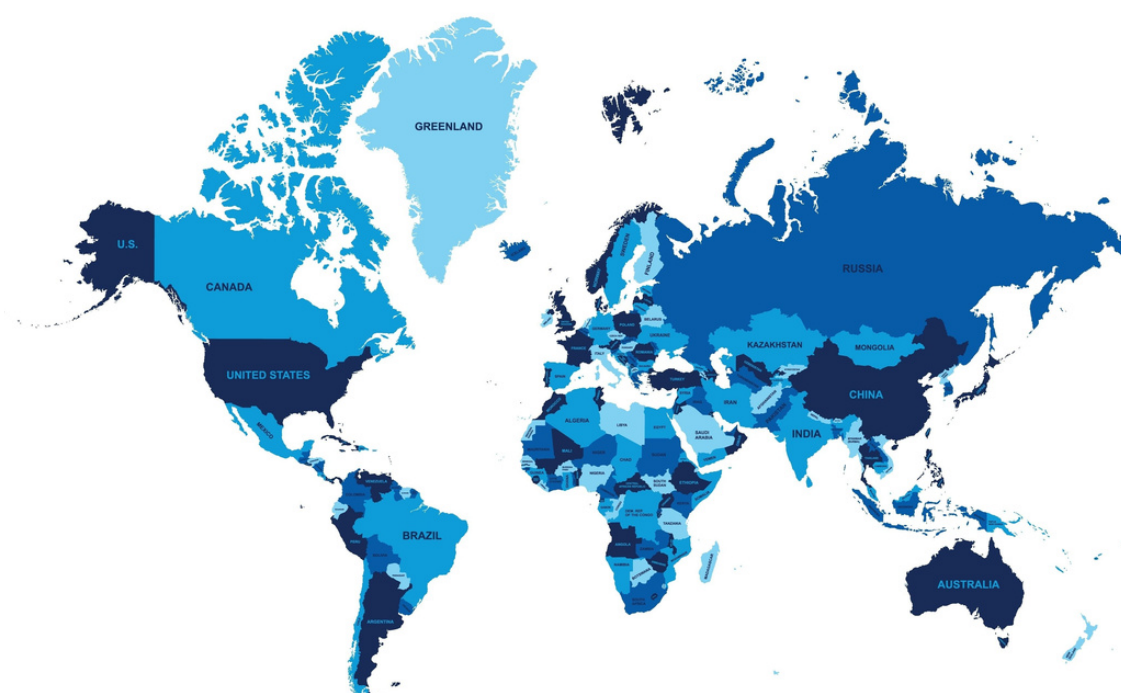


# INTERNATIONAL TRADE ALERT

## DUTIES AND SANCTIONS UP TO 714% FROM 2008 TO 2022

The deglobalisation of trade began with the 2008 financial crisis, but the geopolitical tensions and the pandemic has given a significant acceleration: protectionist measures in force in the world have risen to around 3,000, including duties, sanctions and export quotas with an increase of 714% from 2008 to 2022 (continues on page 3)



## EU COMBINED NOMENCLATURE UPDATED

As of 1st January 2024, EU Implementing Regulation 2023/2364 comes into force. The Regulation introduces numerous new features, **updating the European Union's Combined Nomenclature**. The new Implementing Regulation introduces new subheadings or the modernisation of existing ones, and affects widely used categories such as tomatoes, waste plastics and textile products. Specifically, there are new customs codes for plastic waste (heading 3915), for nonwovens (heading 5603), for waste and scrap of other closed fabrics and of rovings of glass fibres

(heading 7019). New customs codes also for lasers (heading 9013) parts of seats of motor vehicles (heading 9401).

The changes in the customs classification of goods have significant operational consequences for companies who work in international trade and meet the need to update and adapt the Common Customs Tariff and the Union's external trade statistics.



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### REQUIRED CONDITION OF SALE FOR THE INCLUSION OF ROYALTIES IN THE VALUE OF THE GOODS

The Italian Supreme Court, with sentence No. 1041/2021, established a principle of law already widely confirmed by the jurisprudence of legitimacy (Supreme Court No. 21775 of 9 October 2020 and No. 22480 of 16 October 2020) on the subject of the **inclusion or non-inclusion of royalties in the customs value**. The value of royalties must be included in the effective value of the imported goods when the requirement of the 'condition of sale' exists, i.e. in the case where the goods bearing the logos and trademarks cannot be sold or imported if royalties are not paid. On the other hand, the requirement of the condition of sale is excluded where it is not provided that the manufacturer is the recipient of the royalties or is entitled to request their payment. In the case examined by the Supreme Court, neither the sellers/suppliers, nor any other person related to them had the power to demand payment of royalties from the licensee for the use of the mark, as there was no link, even in the form of control, between the licensor and the sellers/suppliers.

### CUSTOMS PENALTIES MUST BE PROPORTIONATE TO THE AMOUNT OF UNPAID DUTIES AND THE CONDUCT OF THE TRADER

In its judgment C-653/22 of 23 November 2023, the Court of Justice of the EU ruled that customs penalties must be weighted according to the amount of unpaid duties and the conduct of the trader, so that companies that

acted in good faith and made an effort to comply with legal obligations are punished less severely. In the present case, the Hungarian customs authority applied, in addition to the anti-dumping duty imposed on bicycles of Chinese origin, a **sanction of 50% of the customs duty assessed**, while still excluding the importer's fraud. However, the Courts of Luxembourg noted that the Hungarian legislation provides for an appropriate modulation of penalties, which are much more severe in the case of intentional wrongdoing and attenuated in the case of an error committed in good faith. In the Court's view, a penalty of 50% of the customs duties must be regarded as proportionate in relation to the infringement committed. It is not excessive, as it serves the deterrent function of encouraging traders to carefully evaluate the basic data (classification, origin and value) that are then included in the customs declaration.

### THE BINDING EFFECT OF BTI

The Italian Supreme Court, with judgment of July 19, 2023, No. 21306, reaffirmed the important principle that a **BTI (Binding Tariff Information)** may be relied upon as evidence by a person other than its holder, since, in the absence of any regulation of the concept of "evidence" at Community level, all means of evidence permitted by the procedural laws of the Member States are, in principle, admissible. The Supreme Court therefore upheld the company's appeal, stating that also BTIs issued after the contested adjustment form part of the evidence freely assessable by the Court for the purposes of its decision.

### DUTIES AND SANCTIONS UP TO 714% FROM 2008 TO 2022

The deglobalisation of trade began with the 2008 financial crisis, but the pandemic has given a significant acceleration: protectionist measures in force in the world have risen to around 3,000, including duties, **sanctions and export quotas with an increase of 714% from 2008 to 2022**. This was discussed in Milan at the first International Trade Forum organised by Arcom Formazione. The event sponsored by **Armella & Associati law firm** and many other important sponsors hosted many speeches.

Among the speakers who intervened: Sara Armella (scientific director of ARcom Formazione), Giorgio Sacerdoti (professor of international law at Bocconi University), Edoardo Rixi (undersecretary of the Ministry of infrastructure and transport), Sandra Savino (Undersecretary of State at the Ministry of Economy and Finance), Giorgio Arfaras (economist). These include a talk by Matthias Petschke (director TAXUD.A customs), Bruna Romano (International Trade Compliance Puma Group), Rita Bucchi (Administrative and Financial Director of Clementoni spa), Bruno Pisano (President of Assocad), Alessandro Pitto (President of Fedespedi), Nazzarena Franco (CEO DHL Express Italy), Federica Ingrosso (External Relations, Simest Spa), Marina Stella (Director general, Confindustria Nautica), Laura Calligaro (WTO Advisor - UNCTAD - ITC - WEF - UNECE Permanent Representation of Italy to International Organisations in Geneva), Claudio Oliviero (Director of the Customs Directorate, ADM), Luca Abatello (President, Circle Group), Jikke Biermasz (Greenlane partner, Ploum Rotterdam), Stefano Comisi (lawyer, Armella &

Associati law firm), Yves Melin (Greenlane Partner, ReedSmith Bruxelles Partner), Enrico Perticone (National Council of Customs Agents). The event was realised with the patronage of the European Commission, with the participation of companies and representatives of national and European institutions. The return to trade protectionism also concerns the European Union: there are currently around 350 measures in force on the subject, including 177 definitive trade defence measures, 117 definitive anti-dumping measures, 21 anti-subsidy measures and one safeguard measure, with an increase of 14 measures compared to 2021.

### CBAM MANAGED BY MINISTRY OF THE ENVIRONMENT AND CUSTOMS

The Ministry of Environment and Energy Security has been officially appointed to manage the **Cbam**, together with the Customs Agency. The European Commission has published some clarifications and practical tools, which are intended to accompany importers in the very first Cbam accompany importers in the very first Cb quarterly report. The dossiers focus on the production processes to be examined at the factories of non-EU suppliers and on the method to be applied to match the greenhouse gas emissions produced by the factory to the imported goods, with the lowest possible degree of approximation.



### SANCTIONS AGAINST RUSSIA: WHAT THE EU PARLIAMENT ENVISAGES

On 9 November 2023, the European Parliament passed a **non-binding resolution on the tightening of sanctions against Russia**. The measure aims to expand and update the lists of natural and legal persons on the blacklists, and to introduce measures to prevent the circumvention of previously adopted restrictions. Specifically, it called for large-scale restrictive measures to monitor the origin of diamonds based on new technologies. In addition, the EU Parliament called for sanctions to be imposed on all major Russian oil companies, as well as on the banking institutions that support them, including an embargo on the sale of oil tankers to Russia. To this end, a white list of authorised operators should be drawn up and all oil tankers transiting European territorial waters should be required to verify that they have adequate insurance ('protection and indemnity') against oil spills.

### KAZAKHSTAN: RE-EXPORT OF CERTAIN GOODS BANNED DUAL USE TO RUSSIA

Kazakhstan **bans the re-export to Russia** of 106 types of dual-use (military and civil) goods. Kazakh Deputy Trade Minister Kairat Torebayev stated that, according to the findings of the national authorities, the goods subject to this restriction were not produced within the country, but were exported, through a triangulation system, for final entry into the Russian market. Kazakhstan has also invested in a digital platform that has allowed

the national authorities to increase the efficiency of customs controls on goods crossing national borders, with the sole purpose of circumventing the sanctions against Russia.

### NEW RESTRICTIONS FOR DUAL USE GOODS

The European Commission published Information Note No. 441 of 20 October 2023, containing the first compilation of national control lists of **dual-use goods**: this term refers to items that can be used in both civil and military applications.

Specifically, this information note collects the national lists adopted by Spain on 31 May 2023 and by Netherlands on 23 June 2023. Included are Dutch controls on semiconductor manufacturing machinery and Spanish controls on quantum computing, additive manufacturing and other emerging technologies.



### SMUGGLING: DOUBTS ABOUT THE LEGITIMACY OF CONFISCATION

In its Order No. 30499 of 2 November 2023, the **Italian Supreme Court called upon the United Sections** to rule on the legitimacy of confiscation in cases of decriminalised smuggling, where the facilitated definition



of penalties has taken place. In particular, the Court has been called upon to assess whether the decriminalisation of smuggling removes the obligation to proceed with confiscation, and whether the latter can be qualified as an accessory measure: if this is the case, in fact, in the event of adhesion to the facilitated definition of sanctions pursuant to Article 16 c. 3 of Legislative Decree 472/97, the application of the sanction of confiscation should be excluded. Finally, the Supreme Court should clarify whether administrative confiscation can be ordered on things belonging to third parties. This order is part of an increasingly broader jurisprudential scenario, in respect of which the Supreme Court has not yet reached a unanimous orientation.

### INTERNATIONAL TRADE: OPPORTUNITIES FOR MADE IN ITALY

Despite the many customs complexities affecting international trade, Italian exports are experiencing a phase of steady growth. The ability of Italian companies to expand in international markets, the production of quality products of undisputed value and the strength of the '**Made in Italy**' brand make Italy the sixth largest exporting country in the world. Specifically, in 2023, our country recorded a growth in sales of goods across borders that exceeded 660 billion euros; equally positive is the figure for exports of services, which gained +7% compared to last year, thanks to the full recovery of the tourism sector and transport services. The macroeconomic outlook for Made in Italy, indeed, although in a context of growing trade and geopolitical tensions,

tends to be positive. In 2024, in fact, it appears that external sales of goods, in value, and services will grow by a further 4.5% compared to 2023.



### SARA ARMELLA APPOINTED BY THE MEF TO THE CUSTOMS LEGISLATION REFORM COMMITTEE

**Sara Armella**, founder of Armella & Associati law firm, has been appointed by the Ministry of Economy and Finance as a **member of the Technical Committee** for the implementation of the follow tax reform. This Commission will have the task of prepare the legislative decrees for the implementation of the enabling act for tax reform approved by Parliament. The enabling act for tax reform introduces some specific provisions for the customs sector, confirming the strategic role of this specialisation of tax law, whose function is to regulate international trade and provide, in relation to them, for diversified forms of taxation.

The enabling act therefore makes a significant leap forward quality compared to the previous tax reform, in which the customs sector was not even contemplated, by placing in the foreground the taxation of international trade, which is increasingly important for the tax revenue generated and for the leading

role acquired by Italian companies in global trade. The enabling act provides for, in addition, the completion of the telematisation of customs procedures and institutions, with the objective of making the services to companies fully computerised, an aspect of great importance also for investments in our country.

It's very important the strengthening of the Single Customs Window, which consists of a full integration of border controls, avoiding bottlenecks that are created due to the convergence of several public checks on products. It should be noted, indeed, that in order to carry out an import-export transaction, operators must submit up to 68 applications and 18 other administrations involved, transmitting often identical or repetitive information to obtain authorisations or licences: the Single customs Window, which has been many years awaited in its concrete implementation, revolves around the principle of being able to transmit all data to a single public interface, reducing the fulfilments of companies and the time required for customs clearance.



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The delegation also sets the objective of increasing the quality of customs controls, improving coordination between all the administrations involved in the performance of international operations. Article 18 of the Enabling act also introduces particular principles for breaches of customs legislation, with a comprehensive revision of current rules, both with regard to administrative and criminal penalties. The revision of penalties shall be inspired by European principles and, in particular, to proportionality.

### ARCOM FORMAZIONE: SCHEDULED COURSES

Starting in January, two new courses, organised by ARcom Formazione, to learn more about customs law and its innovations.

**CBAM 2024 workshop** is a course for companies affected by the new environmental tax, in order to understand the new obligations. Objective due diligence, revision of contracts with suppliers, monitoring obligations and compilation of the quarterly report are the main topics of the course.

Export and import managers, company customs officers, accountants and lawyers can also register for the **"Advanced Customs Course"**, an opportunity for companies and professionals to learn more about new developments with the greatest impact on global trade. The training course deals with topics such as geopolitical crises and new sanctions on Russia, new environmental duties, Free Trade Agreements and the digitisation of customs procedures.

To register:

<https://www.arcomsrl.it/corsi/workshop-cbam-2024/>.

## WORKSHOP CBAM

In-depth study on the  
Carbon Border Adjustment Mechanism  
JANUARY 2024



To register:

<https://www.arcomsrl.it/corsi/corso-avanzato-dogane/>.



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### International trade alert - December 2023

International trade alert is a tax magazine edited by Studio Legale Armella & Associati, lawyers with expertise in tax law and international trade. Studio Armella & Associati provides consultancy in customs matters. Contact us for any further information

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