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OVERVIEW

Dear Friends,

2023 has been an odd year where seemingly global trade appears to have slowed down somewhat. Yet, trade regulations have continued to see modifications, enhancements and enforcement. We discuss some of the key developments across Southeast Asia, including investigations and sunset review relating to anti-dumping and safeguard measures, developments relating to export/import, free trade agreements, as well as sanctions in this Update that spans the 1st half of 2023.

Some of the key developments highlighted in this Update include those on anti-dumping and safeguard duties in Indonesia, the Philippines, Thailand, and Vietnam, various regulatory changes that may affect the ease of import and export of goods, particularly with new procedural requirements being introduced in Thailand and Myanmar, and new rules of origin for imports and exports in Cambodia and Vietnam. Perhaps of somewhat serious consequence is a new rule introduced by Indonesia mandating exporters of natural resources to place their foreign exchange export proceeds from the natural resources into a special account for such proceeds within three months of receipt and thereafter to maintain at least 30% thereof for a further period of three months from the date of initial deposit.

Regulatory requirements and enforcement aside, there continues to be numerous developments in the negotiation and conclusion of various free trade agreements ("**FTAs**"), such as the Regional Comprehensive Economic Partnership ("**RCEP**") Agreement being ratified by Indonesia and the Philippines, and various countries like Indonesia, the Philippines, Thailand, and Vietnam being actively involved in negotiating FTAs. In Singapore specifically, there has also been a surge in new digital trade agreements, and economic agreements relating to the green economy. The ASEAN Trade in Goods Agreement ("**ATIGA**") is also being reviewed by member states to upgrade it for continued relevance amidst emerging global trends.

On sanctions, Singapore continues to ban exportation of, transshipment in, or transit through, Singapore of specified dual use goods which destination is or is intended to be Russia. Also, the US has imposed additional sanctions onto certain entities in Myanmar, as well as sanctions on certain individuals in Cambodia.

Moving forward into the remaining part of 2023, we expect to see further significant developments that would affect cross border trade. These would include specific licensing or other regulatory requirements depending on the specific type of products or services involved, which we have not touched on in this Update. Our team is always ready to assist with any case or query that you may have, or even to just have a chat.

The Rajah & Tann 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 2023</p>  <p>South-East Asia Region – International Trade/WTO Rajah & Tann Asia: Band 1</p> <p>Asia-Pacific Region – International Trade/WTO Rajah & Tann Asia: Band 3</p>	<p>ITR World Tax 2023</p>  <p>Customs R&T Asia (Thailand): Tier 1</p>
<p>Benchmark Litigation Asia-Pacific 2023</p>  <p>Trade and customs R&T Asia (Thailand): Tier 1</p>	<p>WorldECR Awards 2021</p>  <p>Export Controls/Sanctions Law Firm of The Year – Rest of World Rajah & Tann Asia Honorable Mention</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 2023	Expert Guides International Trade	Asialaw Profiles 2023
 <p>Chambers TOP RANKED Asia-Pacific 2023</p> <p>International Trade/WTO <u>South-East Asia Region</u> <i>Singapore:</i> Kala Anandarajah (Leading Individuals)</p> <p><i>Thailand:</i> Melisa Uremovic (Leading Individuals)</p>	 <p>EXPERTGUIDES THE WORLD'S LEADING LAWYERS CHOSEN BY THEIR PEERS 20 years' experience</p> <p>International Trade</p> <p><i>Thailand:</i> Melisa Uremovic</p>	 <p>ASIALAW LEADING LAWYERS DISTINGUISHED PRACTITIONER 2023</p> <p>International Trade/WTO</p> <p><i>Thailand:</i> Melisa Uremovic (Distinguished Practitioner)</p>
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ANTI-DUMPING & SAFEGUARDS



Multiple actions were taken by countries in relation to anti-dumping and safeguard measures. This included anti-dumping and safeguard duties being imposed in countries like Indonesia, the Philippines, Thailand, and Vietnam, as well as sunset reviews with certain anti-dumping duties being terminated in Thailand. We share some of these actions taken by the regulators.

In **Indonesia**, the Indonesian Anti-Dumping Committee initiated a sunset review investigation in 2021 on the importation of frit and glazes or similar preparations along with glass frit and other glass from China upon the request of local companies. Based on the results of the investigation, the products are now subject to anti-dumping duties under the Minister of Finance's Regulation PMK 23 of 2023, which are effective from 10 April 2023 to 10 April 2028. Separately, investigations by the Indonesian Trade Security Committee revealed a spike in the number of imports of curtains (including drapes), inner blinds, bed valances, and other furniture goods. This prompted the Minister of Finance to impose safeguard import duty under regulation PMK 45 of 2023, effective from 22 May 2023 to 22 May 2026. Yarn (other than sewing thread) of synthetic staple fibres is also now subject to safeguard import duty under the Minister of Finance Regulation PMK 46 of 2023, effective from 22 May 2023 to 22 May 2026.

In **Philippines**, an expiry review is ongoing on the anti-dumping duty imposed against imports of wheat flour from the Republic of Türkiye. Preliminary safeguard investigations have also been initiated on Liquefied Petroleum Gas (LPG) cylinders.

In **Thailand**, the Trade Remedies Administration of Thailand initiated an end-of-term review investigation in March 2023 to consider whether the order to impose anti-dumping duties on various Vietnamese steel products should continue to apply. After two months of investigation and review, the final determination to the cases was issued via Official Letter No. 0309/1364. For certain hot dip plated or coated with aluminium zinc alloys of cold rolled steel, Thailand terminated the anti-dumping duty which applied to Vietnam. For certain hot dip galvanised of cold rolled steel and painted hot dip

plated or coated with aluminium zinc alloys of cold rolled steel, Thailand extended the anti-dumping measures for a period of five years.

In **Vietnam**, the Ministry of Industry and Trade ("**MOIT**") initiated investigations on various anti-dumping and safeguard cases, such as Decision 235/QD-BCT dated 13 February 2023 where MOIT applied official anti-dumping duties to imports of specified table and chair products from China. MOIT is also in the process of reviewing several cases of application of anti-dumping measures, such as Decision 1466/QD-BCT dated 19 June 2023, which is the second review of the application of anti-dumping measures imposed on MSG products originating from China and Indonesia. On 21 March 2023, after conducting its final review, MOIT also issued Decision No. 691/QD-BCT, which resulted in an extension of the application of safeguard measures to imported long steel products.

Commentary

Collectively, the above activities aim to prevent losses to countries' domestic industries. This is done through a combination of antidumping and safeguard measures depending on the specific outcome to be achieved. It is clear that regulators continue to closely monitor businesses and act against those that violate anti-dumping and safeguard regulations. Their investigations can disrupt businesses, so it is vital to respond quickly and accurately. Do monitor regulatory updates and adapt your business plans accordingly; and ensure that your pricing and export policies are compliant and regularly updated based on the latest developments.

EXPORTS & IMPORTS, EXPORT CONTROL, AND OTHERS



There have been a variety of developments relating to the export and import of goods in 2023 thus far. The developments relate to changes in export/import processes, changes in rules of origin, prohibitions on exports, imposition of duties, etc, as well as other general regulatory changes affecting the export/import of goods. We highlight some of these key developments below.

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

In **Indonesia**, on 12 July 2023, the Government issued Regulation PP-36 of 2023 addressing foreign exchange export proceeds from the business, management and processing of certain natural resources arising from mining, plantation, forestry and fishery. The requirement, which took effect on 1 August 2023, requires proceeds from the export to be placed into a special account within three months of the export. Following this deposit, at least 30% of the foreign exchange export proceeds must be maintained for a further minimum period of three months from the date of the deposit. To encourage the deposits, various incentives will be made available, including making it easier for exporters to export their products. Note that non-compliance will attract administrative sanctions.

Separately, still in Indonesia, the Government also intends to prohibit the exportation of bauxite to encourage the domestic smelter construction, and to prohibit the exportation of liquified natural gas to encourage the utilisation thereof domestically within the industry.

In **Malaysia**, the Ministry of Finance issued a new Customs (Prohibition of Imports) Order 2023 and Customs (Prohibition of Exports) Order 2023, each effective 15 April 2023 (together, the "**Prohibition Orders**"). These Prohibition Orders, which replace the previous versions issued in 2017, update the range of goods regulated by the Malaysian customs authority. These are important to note as they have direct impact on businesses undertaking regular imports and exports into the country.

In **Myanmar**, on 23 May 2023, the Department of Trade under the Ministry of Commerce ("**MOC**") issued new guidelines on importer and exporter registration under Notification 35/2023, which replaces the previous Order 42/1954 and Export and Import Bulletin No. 6/2018. Under the new procedure, the registration structures are divided into two categories: (i) for trading purposes; and (ii) for non-trading purposes. Both categories require an import export registration certificate ("**EIR**"). Applicants can apply for an EIR through the TradeNet 2.0 system, following which MOC will carry out an on-site inspection and provide its decision to the application after 15 working days. Renewal applications must be submitted six months before expiry, rather than the three months previously. If there is no renewal application within one year after the EIR expires, the EIR will be automatically canceled.

In **Singapore**, Singapore Customs issued an advisory on 9 June 2023 to remind traders and declaring agents that parties who have no interest in goods being imported, no involvement in the movement thereof, and no actual relationship with the actual traders of the goods, must not be declared as the "Importer" in permit applications. Surprising as it may appear, there are parties who do provide such services. Apart from potential criminal liability for providing false or misleading information, the misdeclaration of the "Importer" in permit applications will also have implications on any input tax claims under the Goods and Services Act 1993. The Inland Revenue Authority of Singapore (IRAS) requires any GST-registered business who wishes to claim input tax in respect of its imported goods to hold import permits showing the business as the importer of goods to support its input tax claims. Thus, it is important for businesses who wish to claim input tax in respect of their imported goods to ensure that their service providers correctly declare them as the "Importer" in the permit applications.

With effect from 14 February 2023, the excise duty across all tobacco products was increased by 15%. For example, the excise duty on cigarettes was increased from 42.7 cents per stick to 49.1 cents per stick. This comes as part of Singapore's Budget 2023 to fortify Singapore's fiscal position and discourage the consumption of tobacco products.

With effect from 23 February 2023, various wildlife and timber species (such as the white-rumped sharma, hammerhead shark, several freshwater turtle species, etc.) have been included into the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("**CITES**"). Singapore is a party to CITES and enforces CITES through the Endangered Species (Import and Export) Act 2006. Businesses that wish to import, export or re-export CITES specimens (which include live specimens, their parts and products) are required to obtain a CITES permit from the National Parks Board (NParks).

Export Control: Strategic / Dual-Use Goods

In **Malaysia**, the mandatory death penalty was abolished on 4 July 2023, through the passing of the Abolition of Mandatory Death Penalty Act 2023. This had impact on the penalty under the Strategic Trade Act 2010 ("**STA**"). Specifically, punishment by death or imprisonment for natural life is the penalty provided for offences under the STA relating to the export, transshipment, transit, brokering of or transactions relating to strategic items and unlisted items, as well as the provision of technical assistance in connection with restricted activities. In these instances, the Abolition of Mandatory Death Penalty Act 2023 varied the natural life imprisonment sentence to imprisonment of a term between 30 and 40 years instead. The penalty of death provided under the STA was not removed, as only mandatory death penalties were abolished.

In **Philippines**, from 1 January 2023, authorisation by the Department of Trade and Industry-Strategic Trade Management Office ("**STMO**") is required for all exports of strategic goods from the Philippines. This is in accordance with Republic Act No. 10697 (An Act Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provision of Related Service, and for Other Purposes) ("**STMA**"), which was signed into law in 2016 to comply with the United Nations Security Council Resolution No. 1540. STMO has urged all entities engaged in exporting strategic goods to register and apply for authorisation before carrying out any regulated business activities, and to refer to the Nationally Controlled Goods List issued by the Strategic Trade Management Committee to determine if their goods are items that require export authorisation. Any failure to comply with the prescribed authorisation requirements will result in the imposition of administrative or criminal penalties under the STMA.

Interestingly, **Thailand** which introduced export control rules and specifically criteria for an Internal Compliance Program Certification and Catch-all-Control measures at the end of 2021 through Trade Controls of Weapons of Mass Destruction Act, has been enforcing quietly over the last two years. The focus has, however, been on encouraging companies to put in place voluntarily an Internal Compliance Program Certification partially so as to ensure that adequate due diligence is undertaken to ensure that the goods exported are not going to be used in the creation of weapons of mass destruction. The Department of Foreign Trade (DFT) has indicated that they will continue with this approach for the immediate future. This does mean, however, that anyone exporting dual used goods out of Thailand must nevertheless ensure proper compliance.

Rules of Origins; Preferential Tariffs and Duties

In **Cambodia**, the new Law on the Rules of Origin ("**LRO**") was promulgated on 5 July 2023. The new LRO sets out principles and rules of origin in relation to imports and exports. The LRO aims to promote and facilitate businesses, and prevent counterfeiting. Certificates of origin issued prior to the entry into force of the LRO remain valid. Containing eight chapters and 35 articles, the LRO sets out various provisions, including rules on how to determine the origin of goods that fall outside preferential trade systems, certificate of origin and exceptions, record keeping obligations, competent authorities, verification, investigation, and penalties. The LRO also defaults the determination of origins of goods under free trade agreements, trade agreements and unilateral preferential trade framework to the rules of origin under the respective documents/framework.

In **Thailand**, exporters to India making use of the ASEAN-India and Thai-India FTAs may face more challenges and investigations by India's Customs, who are paying more attention to whether imports into India under FTAs meet the applicable FTA origin rules. In particular, India's Customs no longer systematically accepts the origin certification granted by the Department of Foreign Trade (DFT) in Thailand. Thai companies exporting to India are thus advised to keep good records of all evidence that can support FTA compliance to minimise the scope of investigation.

In **Vietnam**, on 31 May 2023, the Ministry of Finance (MOF) issued Circular No.33/2023/TT-BTC regulating determination of origin of imports and exports ("**Circular 33**"), which took effect from 17 July 2023. Circular 33 provides, amongst other things, provisions on the: (i) contents of custom dossiers; (ii) receipt and inspection of applications for the pre-determination of origin; (iii) declaration and submission of documents certifying the origin of imports and exports; and (iv) procedures and contents of inspection, determination, and verification of the origin of imports and exports. The declarant must submit to the customs office documents certifying the origin of goods in certain cases, e.g. where the declarant wants to enjoy special preferential tax rates for imported goods originating from countries, etc.

On 31 May 2023, the Government also issued Decree No. 26/2023/ND-CP on schedule of export tariff, preferential import tariff, list of goods and absolute tax rate, mixed tax, import tax outside tariff quota ("**Decree 26**"); and Decision No. 15/2023/QD-TTg regulating the normal tax rates for imported goods ("**Decision 15**"). Decision 15 provides that for goods included in the list in Section I and Section II of Appendix II of Decree 26, the normal tariff is at 0%. For goods included in the list promulgated together with Decision 15, the normal tariff is at 5%. For other goods, normal tariff is applied at 150% of the preferential import duty rate applicable to each corresponding item in Appendix II of Decree 26. Both Decree 26 and Decision 15 have taken effect on 15 July 2023.

Commentary

Trade regulatory requirements in import and export, and in export control is an area which sees regular updates. This necessitates businesses to regularly review and update the requirements themselves; and indeed each time there is to be an import or export, steps should be taken to verify the current status. Specifically, as regards export controls, an increasing number of Southeast Asian countries have introduced laws and mandated compliance, as has the STMO in the Philippines. With export controls, errors can have dire consequences and hence verifying before actual export is critical. Process-wise, the nuances such as who is declared as the "Importer" in permit applications can have implications in terms of false declarations as well as on input tax claims in Singapore. What all this means is that a regular review of internal trade compliance programmes is necessary to catch these developments.

FREE TRADE AGREEMENTS



Negotiations of new and updating of existing free trade agreements ("FTA") continue. FTAs promote increased trade and investment flows and are key to business growth. Increasingly, there has also been an emphasis on digital trade and e-commerce in newer FTAs and other forms of collaborative agreements, which businesses can tap on.

Regionally, the ASEAN Trade in Goods Agreement ("**ATIGA**") is being reviewed by member states to upgrade it for continued relevance amidst emerging global trends. The ATIGA Upgrade is looking into addressing trends such as supply chain resilience, digitalisation and sustainability.

In **Indonesia** and **Philippines**, the Regional Comprehensive Economic Partnership ("**RCEP**") Agreement has entered into force, with effect from 2 January 2023 for Indonesia, and with effect from 2 June 2023 for the Philippines. Being the world's largest FTA to date, the RCEP Agreement is expected to boost preferential market access for products, including mineral fuels, plastics, chemical products, miscellaneous food preparation and beverages. The RCEP Agreement also streamlines the rules of origin and regional cumulation provisions, allowing businesses to tap on regional supply chains more easily. As a result, trading parties may enjoy reduced transaction costs, as well as stronger and more resilient supply chains in the long-term.

Indonesia and India are set to commence negotiations on their bilateral Preferential Trade Agreement, which has been under consideration since 2020. In addition, Indonesia has proposed a Limited Free Trade Agreement to the United States ("**US**") that will allow nickel and other critical commodities used in electric vehicle production to be shipped to the US.

Philippines is working towards resuming bilateral FTA negotiations with the European Union ("**EU**") in order to retain preferential treatment in EU trade policy. On the other hand, the US has expressed that they are not keen to negotiate a bilateral FTA between the Philippines and the US, as such traditional FTAs are not aligned with the US' interests presently.

In **Singapore**, there has been continued focus on building bilateral and regional trade through various types of Frameworks of Cooperation ("**FOCs**"), Free Trade Agreements ("**FTAs**") and Memorandums of Understanding ("**MOUs**"). There has especially been a push towards environmental and digital trade collaborations. On environmental collaborations, Singapore signed an FOC on Green Economy with Malaysia on 30 January 2023, followed by other MOUs in the first half of 2023, such as the UK-Singapore Green Economy Framework (UKSGEF) with the UK on 1 March 2023, two MOUs on renewable energy cooperation and sustainable urban housing development with Indonesia on 16 March 2023, an MOU on carbon credit collaboration with Cambodia on 26 April 2023, an MOU on Liquefied Natural Gas and Low-Carbon Technology collaboration with Qatar on 21 June 2023, and an MOU on carbon credit collaboration with the Dominican Republic on 27 June 2023. The agreements generally focus on cooperation in green transport, low-carbon solutions for businesses, developing new and renewable energy and regulatory standards, sustainable finance solutions, cross-border electricity trading projects, and technology exchange.

On digital trade collaborations, Singapore signed digital trade agreements to combat developments in generative artificial intelligence (AI) and to meet increasing demands for cross-border financial transactions. This includes the signing of three MOUs to bring the Korea-Singapore Digital Partnership Agreement (KSDPA) into force on 14 January 2023, the signing of an FOC on Digital Economy with Malaysia on 30 January 2023 and the signing of the European Union – Singapore Digital Partnership (EUSDP) with the EU on 1 February 2023, just to name a few.

Aside from the above, Singapore has entered into various broad economic agreements in the first half of 2023, encompassing green economy, digital trade and other areas of trade. For instance, Singapore signed an MOU on the Economic and Trade Cooperation Workplan with Vietnam on 9 February 2023, an MOU with the State Government of Uttar Pradesh, India, on 10 February 2023, amongst others with the UK, South Africa and China.

In **Thailand**, on 15 March 2023, the EU and Thailand announced the relaunch of FTA negotiations, which originally begun on 6 June 2013 but was stopped by a 2014 coup. The EU is Thailand's fourth largest trade partner, accounting for 7.5% of the country's total trade. The FTA aims to boost trade and investment, by addressing issues such as market access for goods, services, investment and government procurement; swift and effective sanitary and phyto-sanitary procedures; the protection of intellectual property rights including geographical indications, and the removal of obstacles to digital trade and trade in energy and raw materials. In January and April 2023 respectively, Thailand also engaged in the third and fourth rounds of negotiations with the European Free Trade Association ("**EFTA**"). Bilateral trade between the EFTA and Thailand reached more than USD 2.82 billion in 2021, a significant amount. Discussions on this FTA centred on trade in goods, rules of origin, trade facilitation, trade remedies, competition, sustainable development and intellectual property rights, among other issues.

In **Vietnam**, several other FTAs are in the process of negotiation, including the Vietnam-Israel FTA (officially launched from 2 December 2015) and the Vietnam-EFTA FTA with EFTA States (i.e. Norway, Switzerland, Iceland, and Liechtenstein) (officially launched from May 2012). More recently, on 1 April 2023, Vietnam and Israel concluded seven years of negotiations over their free trade agreement, and announced that they aim to sign the Vietnam-Israel Free Trade Agreement (VIFTA) in 2023.

Commentary

Despite the rise in protectionism, FTAs continue to play a vital role in promoting international trade. Countries are actively negotiating various FTAs in hopes of facilitating greater trade and investment flows. To fully reap the benefits of FTAs, businesses are encouraged to pay close attention to make use of the FTAs applicable to their trade. Thus, it is critical for businesses to look ahead and plan for upcoming developments.

TRADE SANCTIONS



Trade sanctions remain one of the most vexed areas in trade practice, where we see frequent updates. Even where these updates are brought about by foreign jurisdictions, it has direct impact, and the Southeast Asian countries have not been spared. We discuss these below. We highlight that there are also other global trade sanctions that operate across the world, which are not discussed below, that any cross-border business must be alive to.

In **Cambodia**, on 23 July 2023, the US imposed sanctions against Cambodian individuals and cut aid to Cambodia. The US viewed the ruling party's landslide victory at Cambodia's national election on 23 July 2023 as "neither free nor fair" and undermining democracy on the basis that Cambodian authorities had threatened and harassed its political opposition, media, and civil society ahead of the elections. The sanctions include imposing visa restrictions on individuals who undermined democracy, and pausing foreign assistance programmes.

In **Myanmar**, on 23 June 2023, the United States Office of Foreign Assets Control, Department of Treasury added the Myanmar Investment and Commercial Bank (MICB) and Myanmar Foreign Trade Bank (MFTB) (and any related entity which either of them owns directly or indirectly, individually or in aggregate, with a 50 percent or greater interest) in the sanction list, in accordance with the Burma Sanctions Regulations. These sanctions are in addition to the various individual sanctions, and sanctions imposed on military organisations, enterprises and military council affiliates, and other affiliated organisations, following the 1 February 2021 military coup.

In **Singapore**, trade sanctions are imposed on imports and exports via various legislation and regulation, including the Regulation of Import and Export Regulations (RIER). In 2023, Singapore continues to ban exportation from, transshipment in, or transit through, Singapore of specified goods which destination is or is intended to be Russia. Separately, pursuant to UNSCR 2648 (2022), Singapore's trade sanctions against the Central African Republic have been relaxed under certain circumstances with effect from 15 March 2023. The export, transshipment, transit and supply of certain arms and related matériel which have been notified in advance to the UN Security Council Committee are no longer prohibited. These include, amongst others, arms and related matériel by any other UN member states' forces

providing training and assistance to the Central African Republic security forces, intended solely for the support of the Central African Republic process of Security Sector Reform, in coordination with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic.

Also, pursuant to UNSCR 2622 (2022), Singapore's trade sanctions against Somalia have been revised with effect from 26 May 2023 to allow for the export, transshipment and transit of arms and related matériel intended solely for the development of Somalia's security and police institutions, as well as to provide security for the Somali people, subject to notification requirements.

Philippines' Department of Trade and Industry – Strategic Trade Management Office informed the public in January 2023 that an individual had been added to the United Nations Security Council's Sanctions List concerning ISIL (Da'esh) and Al-Qaida, and in March 2023 that two individuals concerning Iraq had been removed.

Commentary

Trade sanctions are constantly developing as it is ever so dependent on the economic and political priorities of sovereign states. Violations can lead to dire consequences under domestic and international law for businesses, so it is crucial that businesses put in place processes to continuously update their compliance measures.

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