

CCRM ISSUE 23  
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CCRM ISSUE 23 ONLINE

# CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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Editorial

Dear Reader,

Compliance with customs regulations is based on four pillars. The three classic ones - classification, valuation, origin. And the non-tariff measures, with sustainability at its core. This pillar is the most recent one. It changes the other three considerably. For example, customs are increasingly faced with the dilemma of figuring out how a product should be classified and treated - as waste or as a reusable/recyclable product? The origin of goods is no longer about rules of origin; it is also about issues such as forced labour or carbon emissions, and the new term 'deep origin' has emerged.

Non-tariff measures are the core topic of this issue: in the articles we explain the background - what purpose they fulfil and what impact they have on trade - and discuss the biggest challenges of this year. International sanctions are one of them and also the fight by customs against their circumvention through the introduction of various national measures. With regard to the latter, the question arises as to where to draw the line between non-tariff measures and non-tariff barriers. We analyse the national measures in Bulgaria and Latvia.

The Combined Nomenclature 2024 is another important topic. We provide an overview of the changes. And draw your attention to the communication that sets out which binding tariff information decisions have become invalid. The aim of this action is to harmonise the rules worldwide, which would be of great benefit. But what does it look like in practice? The figures speak for themselves: there are EU member states in which the number of BI decisions on origin is zero. Why businesses do not use this tool? We take a look at the reasons for this.

However, as we close 2023 with this issue, we want to remain optimistic. There is a German motto 'Zoll ist toll', which means 'customs is cool'. And indeed, it is! For many reasons. We invited Rainer Wilms, Head of European Customs at DB Schenker Europe GmbH, to share his views with us. We also invite you to think about it: what is 'cool' about customs for you? And when the times get tough, you might remember the words of Mr Wilms: 'Don't think about what others should be doing differently. Think about what you can do differently to make a change for yourself and maybe the customs world.'

We wish you and all CCRM readers that 2024 will be the year of small but important changes that will really make a difference for the better in the long term - for you and for the world of customs!

Enjoy reading this issue!

Enrika Naujoke  
CEO of CustomsClear, Lithuania  
Member of the Editorial Board





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Trade Compliance Officer, Sandvik Group, Sweden*

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**Virginija Dordzikiene**

Tariff classification specialist, Lithuania

[About the author](#)

EU LAW AND CASE LAW

## Combined Nomenclature 2024 (and how we... classify dragons)

Editors' word: 2024 is the year of the wood dragon (Chinese zodiac sign). How do we classify such a dragon? :-) We can start the discussion with wood and its products, among which we find a dragon tree\* (4407 29), and an old legend says that when a dragon dies, it is reborn as a dragon tree... such an interesting fact in the run-up to the New Year. Despite the importance of dragons in 2024, we won't find anything new about them in next year's Combined Nomenclature. However, we invite you to take a look at the other changes - check for any new developments related to your imports or exports. Thank you to Virginija Dordzikiene for the overview.

### ANNUAL AMENDMENTS TO THE COMBINED NOMENCLATURE

The Combined Nomenclature (CN) is updated annually to take account of the needs related to statistics, trade policy and technological and trade developments, environmental and health protection. The version of the CN applicable in 2024 has already been adopted on 26 September 2023. It is [Commission Implementing Regulation \(EU\) 2023/2364](#) amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff; it includes a total of 9763 CN codes. Below we will discuss the more important novelties of

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## ORIGIN OF GOODS – THE TRENDS



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**Ingrida Sakalienė**

Tariff classification specialist, Lithuania

[About the author](#)

EU LAW AND CASE LAW

# Communication (EU): Recent changes in the classification of goods

A recently published EU Official Journal contains a communication [1] in accordance with Article 34(7)(a)(iii) of the Union Customs Code on decisions relating to binding information issued by the customs authorities of the member states concerning the classification of goods in the customs nomenclature. In this article, we provide an overview of some of the international tariff measures listed in the communication.

## FIRST OF ALL: WHAT IS A 'COMMUNICATION'?

A communication is an official announcement or information about an international agreement on classification of certain goods. The agreement takes the form of classification decisions, classification opinions or amendments to the Explanatory Notes of the Nomenclature of the Harmonised Commodity Description and Coding System (HS), which are within the scope of work of the WCO HS Committee [2].

It is set out in the communication that the customs authorities shall revoke decisions relating to binding tariff information (BTI) from the day the communication is published in the Official Journal if they become incompatible

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**Dr. Ilona Mishchenko**

Associate Professor of the Maritime and Customs Law Department, National University "Odessa Law Academy", Ukraine

[About the author](#)

EU LAW AND CASE LAW

# CJEU on the right to be heard: It cannot be limited by any legislative provision

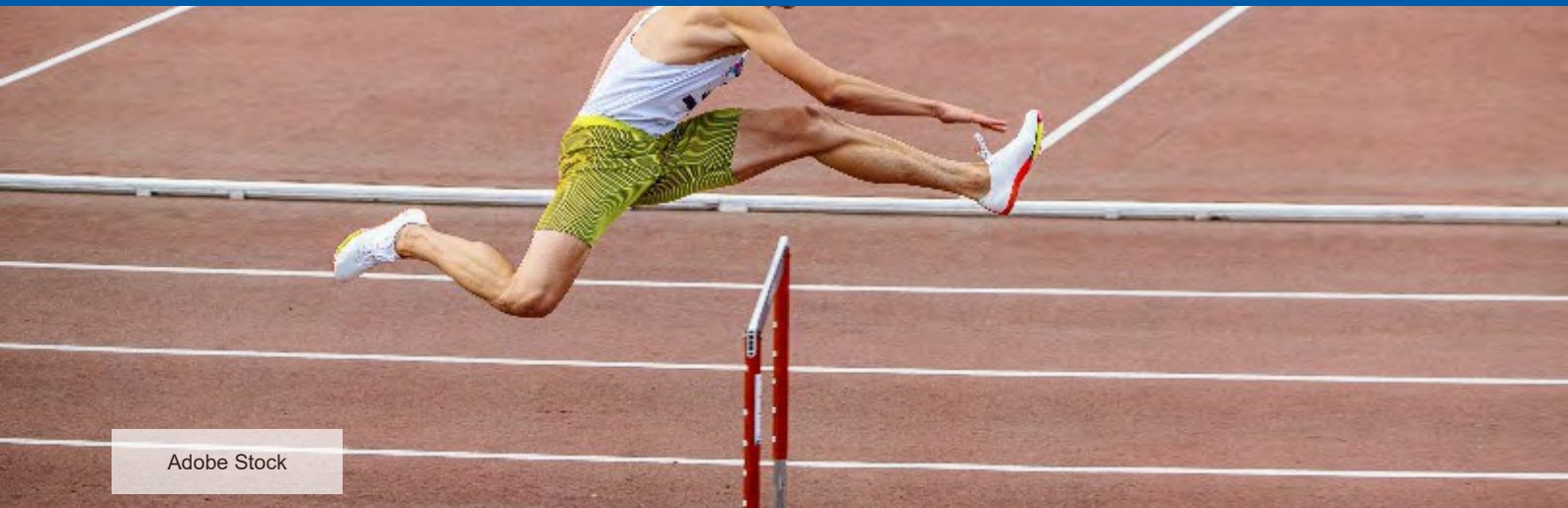
The right to be heard is well known to practitioners from various customs decisions and the Art. 22(6) of the [Union Customs Code](#): 'Before taking a decision which would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express his or her point of view'. This fundamental right of the EU legal order is not just a formality - the Court of Justice of the EU (CJEU/ Court) recently annulled a regulation because it found that the European Commission had violated the importer's right to be heard during the process of adopting that regulation. It is therefore worthwhile for importers, exporters and other parties involved to take a close look at the topic and be prepared to use the right to their own advantage at EU or national level if needed.

On 18 October 2023, the CJEU delivered its judgment in Case [T-402/20 Zippo Manufacturing Co, Zippo GmbH and Zippo SAS v Commission](#). The applicants were seeking the annulment of a regulation on certain commercial policy measures concerning certain products originating in the US.

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## NON-TARIFF MEASURES

# Non-tariff measures: the biggest challenges in 2023

Where do we draw the line between non-tariff measures that help governments achieve important goals (e.g. sustainability) and non-tariff barriers that unnecessarily restrict trade? How can SMEs ensure compliance in an increasingly complex regulatory environment (international sanctions, export controls, SPS, CBAM, REACH, forced labour, etc.)? As a distributor, how do you control the supply chain with multiple points of sale and resale, especially in relation to export control? These and other related questions were addressed at the 18<sup>th</sup> Authors' Meeting in an exchange of views between experts from different countries - the EU, the UK, the US, Brazil and Pakistan.

### INCREASING IMPACT OF NON-TARIFF MEASURES ON INTERNATIONAL TRADE

#### Rizwan Mahmood, Pakistan Customs

Rizwan highlighted the increasing impact of non-tariff measures (NTMs) on international trade. According to UNCTAD, 90% of world trade is subject to non-tariff measures. For policymakers, NTMs are becoming increasingly important as tariffs have been significantly reduced in trade agreements as well as unilaterally. UNCTAD research shows that NTMs have become more restrictive than existing tariffs. Although many non-tariff measures are primarily aimed at protecting public health or the environment, they have a significant impact on trade due to information, compliance and procedural costs.

NTMs can be beneficial to international trade, as they guarantee quality through certification, provide information on products through labelling, reflect a commitment to socially important issues through labelling and proof of compliance with environmental standards, and so on. On the other hand, countries can impose NTMs in the form of disguised protectionism in order to affect trade. These types of NTM are often referred to as non-tariff barriers.

Would you like to find out more about these aspects? Read the article '[Non-tariff measures: their purpose and effect on trade](#)'.

[Read continuation on CustomsClear](#)



**Rizwan Mahmood**

Additional Collector of Customs,  
Pakistan Customs, Pakistan

[About the author](#)

**NON-TARIFF MEASURES**

**Non-tariff measures:  
their purpose and  
effect on trade**

According to UNCTAD, 90 % of global trade is subject to non-tariff measures (NTMs). NTMs can increase trade costs three times as much as tariffs. NTMs often lack transparency. This increases uncertainty and unpredictability in global trade. At the same time, NTMs can be beneficial for international trade, as they guarantee quality through certification, provide information about products through labelling, reflect a commitment to socially important issues through labelling and environmental standards, etc. This article briefly describes what non-tariff measures are, what purpose they fulfil and what impact they have.

**WHAT ARE NTMs?**

According to UNCTAD, non-tariff measures are **policy measures** other than ordinary customs tariffs that can potentially have an **economic effect** on **international trade** in goods, changing quantities traded, prices or both. Almost all products are subject to NTMs at and behind the border. They have different forms such as the requirement for import registration, product quality testing requirement, labelling and quarantine requirements, and conditions of export permits.

**WHY ARE NTMs IMPORTANT?**

Non-tariff measures affect lives every day. For instance, requirements on how food is processed to ensure what we eat is safe.

NTMs can be a tool in countries' efforts to achieve Sustainable Development Goals (SDGs) in many areas such as health and environment [1]. These policy measures have a growing impact on international trade which is important for economic growth and jobs.

**POTENTIAL NTMs THAT A COUNTRY MAY IMPOSE FOR DIFFERENT PURPOSES**

You can find several purposes for potential NTMs that may be imposed by countries and their example in the table below.

Purposes of NTMs	Examples
To protect moral, political, or cultural values	Imports of books and magazines displaying pornographic pictures are prohibited
To ensure domestic food supply	Exporter of more than 500 tons of whole

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**Boryana Peycheva**

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[About the author](#)

NON-TARIFF MEASURES

# EU sanctions against RU and BY: non-tariff measures or non-tariff barriers? (Bulgaria)

This article discusses the challenges faced by the Bulgarian automotive industry in the context of EU sanctions against Russia and Belarus. A national customs risk profile has been introduced, triggered by the export of certain automotive parts of HS Chapters 84 and 85 to Turkey, the United Arab Emirates, Kazakhstan and others. The documents and information required from the consignee of the goods in the third country and the end user of the goods (if different) in order for these goods to be exported are problematic, as it is often very difficult, if not impossible, to obtain this data.

## INTRODUCTION

The auto parts manufacturing sector is highly developed in the Republic of Bulgaria, with over 270 companies operating in the country, some of which are representative branches of large international companies, but there are also quite a few local manufacturers. According to the Bulgarian Investment Agency, 11% of the country's GDP is

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Specialist at Takeda,  
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**Patrick Nieveler**  
Manager Customs & Excise  
Tax at BMW, Founder & CEO of  
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**Dr. Momchil Antov**  
Associated Professor at the D. A. Tsenov  
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Attorney at Law, Partner,  
RockBridge Legal, Latvia

[About the author](#)

NON-TARIFF MEASURES

# What to expect if you transport goods to (or from) Russia and Belarus via Latvia?

According to customs data, since the introduction of sanctions, Latvian customs performed 184,972 cargo document controls and 6,027 cargo physical controls. In 8,396 cases, customs prevented the movement of goods subject to sanctions [1]. In 2022, 114 criminal proceedings have been initiated for the circumvention of sanctions, and in 2023, – 87 criminal proceedings.

Considering the above, economic operators who move goods from or to Russia and Belarus or countries that could be used to circumvent sanctions should consider the consequences mentioned below.

## BACKGROUND

Given Russia's war against Ukraine, the European Union continues to strengthen sanctions against Russia and Belarus. More than 4,500 Russian and more than 1,300 Belarusian goods are currently subject to sanctions. Latvia is one of the five countries of the European Union that have a land border with Russia. It is also one of the two countries of the European Union that have a land border with Belarus. Therefore, Latvia is often chosen as a country for transferring goods from and to these countries.

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3.1. Wie verkaufe ich Zoll gewinnbringend an meine Kollegen aus Einkauf, Vertrieb und Co.? (Präsentieren, Storytelling usw.)

1.2. Stammdaten, Plastiksteuer, CBAM und Russlandsanktionen: wie werden wir des Datenwahnsinns noch Herr?

2.2 Es muss nicht immer das gesamte ERP oder die ATLAS Software getauscht werden. Wie und wo kann man Quick Wins umsetzen ?

3.2. Führen in digitalen Zeiten - mit Remote Teams und neuen Generationen (Führung, Motivation, Selbstmanagement)



### INTERVIEW

Aktuelle Herausforderungen:  
wie blicken wir in die Zukunft?

Janine Lampprecht & Prof. Dr. Hans  
Michael Wolfgang

### PANEL DISKUSSION

Weiterbildung in der  
Zollbranche in Zukunft

Janine Lampprecht, Ralf Schmitt, Patrick  
Nieveler, Enrika Naujoké, Thomas Glanzer

### KEYNOTE

Alles, was recht ist!  
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Volker Römermann

### EXPERTEN

Enrika Naujoké, Prof. Dr. Hans Michael Wolfgang,  
Janine Lampprecht, Thomas Glanzer, Lars Gemppe,  
Werner Pechmann, Tobias Wawrzynczak, Annika Vollmer,  
Patrick Nieveler, Prof. Dr. Volker Römermann, uvm.



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**Mark Rowbotham**

Customs, Excise & VAT Consultant,  
PORTCULLIS ISC, the UK

[About the author](#)

NON-TARIFF MEASURES

# REACH chemical regulations in the EU and the UK – international conflict?

In the manufacturing industry, there are often complex supply chains where chemical substances cross borders between the UK and the EU several times. In this article we provide an overview of how REACH works in the EU (including the current revision) and in the UK, the implications for businesses and also address the Windsor Framework for Northern Ireland. Most companies use chemicals, sometimes even without realising it, therefore you need to check your obligations if you handle any chemicals in your industrial or professional activity. You might have some responsibilities under EU REACH or UK REACH or both.

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**Michael Lux**

Attorney, Michael Lux BV, Belgium

[About the author](#)

## SUSTAINABILITY AND CUSTOMS

# CBAM: History, objectives, scope, and its compatibility with international law (I)

Note from the CCRM editors: This first part of the article provides an overview of the history, objectives and scope of the Carbon Border Adjustment Mechanism (**CBAM**) introduced by the EU. It also examines the issue of whether the Paris Agreement on climate change foresees border adjustment measures by countries with high climate ambitions, and poses the following question: Is the CBAM fair towards developing countries? In the second part, the author will provide an overview of the provisions of the General Agreement on Tariffs and Trade (**GATT**) which could justify the CBAM, his assessment of the CBAM Regulation, and share a practical list of questions that companies can use in order to find out whether they are affected, and if so, how they can prepare to meet the CBAM requirements, in particular for the transitional period.

### HISTORY, OBJECTIVES AND SCOPE

#### The European Green Deal

In 2019, the European Commission announced in its [Communication on the European Green Deal](#) an ambitious target for the EU to achieve no net emissions of greenhouse gases in 2050 and to decouple economic growth from resource use. This should help to limit, reduce or prevent the rise in temperature in the atmosphere, climate change, the extinction of the species and the pollution or destruction of forests and oceans. However, the Commission also recognised that Europe cannot achieve the environmental goals of the Green Deal alone, as the causes of climate change and biodiversity loss are global in nature and do not stop at national borders. The EU would therefore use its influence, expertise and financial resources to mobilise its neighbours and partners to follow it on a sustainable path and form alliances with like-minded partners. The Commission admitted already then that there is a need to maintain the EU's security of supply and competitiveness even if others are unwilling to act.

As long as many international partners are pursuing less ambitious targets than the EU, there is a risk of carbon (CO<sub>2</sub>) leakage. This is either because production is shifted from the EU to other countries with less stringent emission reduction targets, or because EU products are replaced by imported, more CO<sub>2</sub>-intensive products. If this risk materialises, global emissions will not be reduced, thus undermining the efforts of the EU and its industry to meet the global climate targets of the Paris Agreement. If different global targets continue to apply while the EU increases its climate ambitions, the Commission would propose a carbon border adjustment mechanism for

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**Jurgita Stanienė**

Head of the Customs Compliance Department, UAB "Muita", Lithuania

[About the author](#)

SUSTAINABILITY AND CUSTOMS

# Used car parts - export of waste or goods for reuse?

Today, we often talk about circular economy goals and the ambition to reduce waste by extending the life of products through reuse, repair, refurbishment or recycling. The legal framework is still under development. For example, there are provisions in the EU Combined Nomenclature for certain waste and scrap and for used cars, but no such provisions for used car parts - this can lead to difficulties when declaring these goods for the chosen customs procedure.

Let us give an overview and discuss a practical case in one EU member state - Lithuania - regarding the environmental and customs requirements for the declaration of parts of used cars for export.

**PRACTICAL EXPORT CASE**

Various second-hand parts of passenger cars are declared for export: rear-view mirrors, door locks, engines fitted with gearboxes, bumpers, lights and other mechanisms, assemblies and parts resulting from the dismantling of cars. These goods are intended for the repair of passenger cars in third countries. The Combined Nomenclature does not have a product code for second-hand parts, indicating that they are second-hand goods, as they are not

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When is export of electronic devices... export of waste?

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**Brian Staples**

President, Trade Facilitation Services, Canada

[About the author](#)

OVERVIEWS AND COMMENTS

# Thoughts on non-preferential & Deep origin

“Humanity will be faced with either cooperating in the face of those crises or competing. And what we see from Neanderthals and H sapiens is that the groups that cooperated better were the ones that got through.” Physical anthropologist Chris Stringer suggests that adaptability and networking helped Homo sapiens outlast at least eight hominin species that once roamed Earth - with lessons for those of us living today. ([The Guardian, 10 min read](#))

**INTRODUCTION**

It would be inaccurate to call this discourse on non-preferential and 'deep origin' a paper. The following 'rough draft' observations are more like notes to myself in an effort to better understand these matters and eventually prepare a more detailed analysis at a later date. Therefore, I encourage all readers to contact me with any and all comments and observations.

The fundamental premise of these notes is that the absence of any harmonization for rules of non-preferential rules of origin is increasingly and very rapidly creating additional discriminatory opportunities to expand and extend the

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More information: <https://www.customsclearance.net/en/courses/preferential-and-non-preferential-origin-of-goods-in-the-EU>



**Enrika Naujokė**

CEO, CustomsClear, Lithuania

[About the author](#)

OVERVIEWS AND COMMENTS

# Determination of the non-preferential origin of goods: All you need is... luck

Legal clarity and certainty are what compliant companies need in order to be able to concentrate on their core activities. Legislators are trying to fulfil this need by, for example, introducing additional legislation such as binding information (BI) decisions. Frustratingly, the more legislation, the less clarity. BI decisions issued by customs authorities can be overturned by the European Commission (e.g. Harley-Davidson case), or the Court of Justice of the EU (CJEU) can rule in a dispute over a BI decision that the European Commission has exceeded its powers when adopting delegated legislation, which raises the question of how binding the rules laid down in the delegated regulations, e.g. the [UCC Delegated Act](#), are. On the latter, we provide a brief overview of a recent CJEU judgement on the rules of non-preferential origin.

## A FEW NOTES ON BI DECISIONS

BI decisions are the only legal documents that confirm the tariff classification or non-preferential origin of goods in the EU (binding valuation information decisions have yet to be introduced). They are intended to provide

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**Non-preferential origin & punitive tariffs**

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**Rainer Wilms**

Head of European Customs, DB  
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OVERVIEWS AND COMMENTS

## What is ‘cool’ about customs for you?

‘What are your main tasks as the Head of European Customs at DB Schenker? What are the main challenges and how do you deal with them? How do you measure success? What is ‘cool’ about customs for you? If you would have all the powers and resources, what would be the very first thing you would change in customs world?’ – We had the opportunity to put these and other questions to Rainer Wilms, who we would like to thank for his answers and insights.

### ‘ZOLL IST TOLL’ (CUSTOMS IS COOL) – YOU ONCE SAID. WHAT IS ‘COOL’ ABOUT CUSTOMS FOR YOU?

I didn't create this motto, but it is so right. Customs doesn't mean only using the green or the red channel at an airport. Customs for us is taking care of customer's shipments and declaring them and supporting them in case of any questions they might have. So it has a lot to do with listening and talking to people, understanding their requests or concerns and helping them with our customs competence and network. Customs is not only a side dish, it's a main course.

### HOW IS ‘CUSTOMS’ PERCEIVED IN YOUR COMPANY - AS AN OBSTACLE OR AS A POTENTIAL COMPETITIVE ADVANTAGE?

Customs is on the right path to be seen as a competitive advantage. It is on us to make it happen. As Ingvar Kamprad, the founder of IKEA said: ‘Most things still remain to be done. Glorious future!’ We can look at it from different perspectives. Internal colleagues as well as external customers contact us to understand how we as the customs experts can be of help to them. But the most important thing is that we as the customs experts take the initiative and talk to the internal and external people about customs and the huge benefits for compliant customs handling.

### WHAT WOULD YOU ADVISE TO ACHIEVE THE MINDSET CHANGE (FROM OBSTACLE TO ADVANTAGE)?

Be proactive. Don't wait for something to happen. Be self-convinced about your role and your product, otherwise you won't be able to convince people to change their mind.

### WHAT ARE YOUR MAIN TASKS AS THE HEAD OF EUROPEAN CUSTOMS AT DB SCHENKER?

Connect people with each other, within the DB Schenker Customs community in Europe but also globally - to learn

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## Ukraine customs and trade news October/ November 2023

News at a glance: Customs clearance without presentation of goods - no longer an option; Constitutional Court: the Customs Code must allow for the individualisation of penalties; Pan-Euro-Mediterranean Regional Convention: Alternative rules of origin (EU and Ukraine); verification of exporters of agricultural products; reliable, transparent and comprehensible trade protection tools that benefit both Ukrainian businesses and international partners.

### CUSTOMS CLEARANCE WITHOUT PRESENTATION OF GOODS - NO LONGER AN OPTION

The most discussed date in the last six months has arrived on 7.11.2023. Technically, the provisions of the Ukraine's Customs Code that allowed the import of goods on the basis of a declaration without physical presentation to the customs authorities (e.g. EA type) are no longer in force. These changes, which were originally planned for 2022, have been postponed by one year.

From this day, only Authorised Economic Operators (AEO-C) and only the ones who have obtained a customs simplification (customs clearance of goods at the economic operator's facilities) will have the privilege of importing goods without physically presenting them to customs authorities. This change is directly related to the recent increase in the workload at customs terminals.

### CONSTITUTIONAL COURT: THE CUSTOMS CODE MUST ALLOW FOR THE INDIVIDUALISATION OF PENALTIES

In July 2023, the Constitutional Court of Ukraine invalidated the sanction of Article 483 of the Customs Code, which provided for a penalty of 100% of the value of goods and the confiscation of goods if they were removed from customs control. The Constitutional Court emphasised that this article does not allow for the individualisation of penalties.

In response to the Constitutional Court's decision, draft law no. 9599 was introduced in the Verkhovna Rada. The proposed amendments to the article include the possibility of applying or not applying confiscation of goods.

In November, Draft Law No. 10257 was proposed in the Verkhovna Rada, which provides for amendments to Article 483 of the Customs Code and other amendments related to customs offences. Part 1 of the amended article introduces fines of 50% to 100% (Part 2: 150% to 200%) of the value of the goods and provides for confiscation as an alternative: *Confiscation of goods that are the subject of the offence as well as goods and vehicles with secret*

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STUDENTS' SECTION

# The significance of double taxation avoidance agreements in international trade

Understanding the terms Double Taxation and Double Taxation Avoidance Agreements (DTAAs) is crucial in the field of international taxation, as they encapsulate complex scenarios that impact cross-border trade and investments. This paper aims to unravel the conceptual framework of DTAAs, assessing their advantages and disadvantages in the realm of international trade. By presenting case studies, this paper endeavors to delineate how DTAAs influence international trade decisions, offering a pragmatic understanding of their significance.

**INTRODUCTION**

International trade, a cornerstone of global economic growth, often encounters the hurdle of double taxation, where the same income is taxed in two or more countries. This hurdle can deter multinational entities and individuals from participating in cross-border trade and investments. To alleviate such issues, Double Taxation Avoidance Agreements are forged between nations, ensuring that income is taxed only once. The roots of DTAAs trace back to 1872, when Great Britain and Switzerland (Canton of Vaud) inked an agreement to prevent double taxation concerning death

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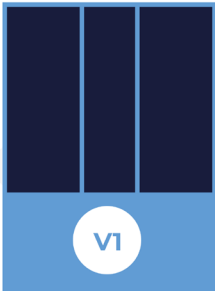

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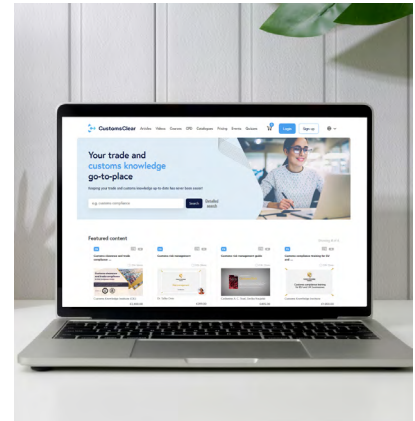
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