

# CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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EU law news December 2023

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Editorial

Dear Reader,

WCO dedicated 2024 to 'Customs Engaging Traditional and New Partners with Purpose'. We can only agree that this is a very topical focus. The best way out of the current challenges such as declining data quality and the increasing lack of professional staff can be found through collaboration. The perfect example of this is the collaboration between NASA and SpaceX. By the way, the European Space Agency has also started collaborating with the private sector as the global competition is shifting from Earth to space, where satellites influence our daily lives and the lunar economy is seen as the next step forward (just think what this means for customs control and, for example, the origin of goods!). To sum up, we are excited to see what will come of this great WCO initiative.

The aim of the proposed EU customs reform seems no less compelling than the 'lunar economy' topic. No customs declarations. No declarant. All data should flow directly into the EU data hub, or more precisely, customs will take the data directly from the traders' systems. One BUT. Quality data is not about quality systems. It is about professionals who take care of the quality of the data that goes into the systems. We therefore wonder how much importance is attached to this aspect in the reform. In our opinion, little. For example, customs brokers are about to disappear in the EU (the shift of focus from direct representation to indirect because of the concept of the 'single responsible person'). So how can we ensure that there are enough professionals in the private sector to look after the quality of the data? Without going into detail in this issue of the journal, we invite you to consider the role of customs brokers in the light of all the current developments.

The first CBAM reports are due in January. The EU is leading the way in this area. What about other countries? We invite you to take a look at the proposed U.S. Foreign Pollution Fee Act. And while talking about the U.S., we also take a look at the expansion of labour laws. Such a law is also in preparation in the EU. Overall, it is clear that sustainability is increasingly impacting the customs area - origin, valuation, classification, etc. To continue the reflection, we take a look at the textile sector and also point to the EU deforestation regulation, which shifts our thinking from 'deep origin' to 'deeper origin' when we will be obliged to check whether imported poultry comes from chickens fed with soya feed from areas not affected by deforestation.

And, of course, there are other articles to read - on EU's dual-use exports, the impact of the war in the Middle East on customs valuation, the electronic certificate of origin, year-end transfer pricing adjustments and more. We are also proud of the publications of the student section, which reveal the thinking and growth of dedicated customs professionals who are vitally needed.

Enjoy reading this issue!

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



## EU LAW AND CASE LAW

# EU law news January 2024

Overview of customs-related legal acts, case law, notices published in the EU Official Journal; information published by the Court of Justice of the EU (CJEU), European Commission, Customs of some EU member states and EU trading partners, World Customs Organization (WCO) and World Trade Organization (WTO). Updated weekly, every Monday/ first working day.

## WEEK 4 (22-28 JAN)

News at a glance: WCO dedicates 2024 to 'Customs Engaging Traditional and New Partners with Purpose'; EU's white paper on export controls and new guidelines on data gathering and processing; uniform regional restrictive measures implementation in Lithuania, Latvia and Estonia; preparation for linking the excise system EMCS to export system AES; FAQs about CBAM; updates to the tariff measures for poultrymeat, open mesh fabrics of glass fibres and mixtures of urea and ammonium nitrate; extension of protective (SPS) measures for bivalve molluscs from Türkiye.

**WCO**

*International Customs Day: WCO dedicates 2024 to 'Customs Engaging Traditional and New Partners with Purpose'*

26.1.2024 [WCO dedicates 2024](#) to Customs Engaging Traditional and New Partners with Purpose. Secretary General Ian Saunders: The theme for 2024 is a strategic call to action, urging us to broaden our perspectives, think creatively, and embrace innovative approaches. This is essential for Customs administrations to maintain their role in facilitating global trade and ensuring security in a rapidly evolving environment.

## Control of dual-use exports

## New Guidelines on data gathering and processing on export controls

2024.01.25 [The European Commission](#) has today issued important new Guidelines on data gathering and processing on export controls. The goal is to increase transparency through more information sharing on Member States' licensing decisions in the area of export controls. Such Guidelines will provide exporters, civil society organisations and the public at large with a more complete set of information on the control of dual-use exports, and a comprehensive

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## EU LAW AND CASE LAW

# EU law news December 2023

Overview of customs-related legal acts, case law, notices published in the EU Official Journal; information published by the Court of Justice of the EU (CJEU), European Commission, Customs of some EU member states and EU trading partners, World Customs Organization (WCO) and World Trade Organization (WTO). Updated weekly, every Monday/ first working day.

### WEEK 52 (25-31 DEC)

News at a glance: Changes to import duties on certain products from 2024.01.01; changes to tariff quotas (reduced import duties) from 2024.01.01; EU-UK trade - transitional rules of preferential origin for electric accumulators and electrified vehicles; Anti-Coercion Instrument enters into force - possible new tariffs and trade restrictions in the EU; farewell event for WCO Secretary General Dr. Kunio Mikuriya.

#### *Changes to import duties on certain products from 2024.01.01*

29.12.2023 [Council Regulation \(EU\) 2023/2890](#) amending [Regulation \(EU\) 2021/2278](#), which suspends the application of Common Customs Tariff (CCT) duties on certain products by allowing the products listed in its Annex to be imported into the Union at reduced or zero duty rates, thus guaranteeing a sufficient and uninterrupted supply of certain products which are not manufactured in the Union. The most recent changes are: in order to promote the integrated production of batteries in the Union, the suspension of the application of the CCT duties on certain products related to the production of batteries; the updating of the description and classification of certain products listed in the Annex, in the light of technical product improvements and economic market trends; the Union is no longer interested in the continuation of the suspension of the CCT on a certain number of products, and the suspension is lifted, etc. The Regulation is applicable from 2024.01.01.

#### *Changes to tariff quotas (reduced import duties) from 2024.01.01*

29.12.2023 [Council Regulation \(EU\) 2023/2880](#) amending [Regulation \(EU\) 2021/2283](#) opening autonomous tariff quotas for certain products in order to ensure adequate supply of products of which the Union has insufficient production. Under those quotas, products may be imported into the Union at reduced or zero duty rates. Recent

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  - Providers of legal and consulting services



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*Thomas Knebel, CPD programme participant,  
Trade Compliance Officer, Sandvik Group, Sweden*

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**Jonas Sakalauskas**

Partner, attorney-at-law,  
Law firm "Averus", Lithuania

[About the author](#)

**EU LAW AND CASE LAW**

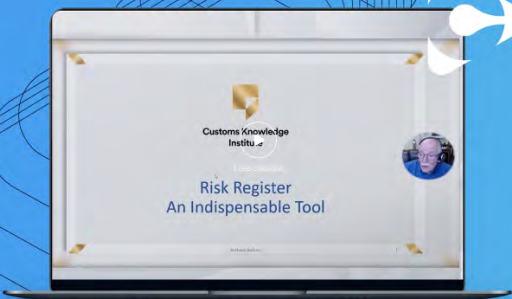
## CJEU: a decision on legal certainty


Late payment of taxes, including import taxes recalculated as a result of discrepancies detected by customs after clearance, is subject to late payment penalties and interest. The sums can be huge, especially considering that tax reassessments can be made for three years or even longer (for example, if the dispute is in court). For an idea of how long this period can be, see the relevant Court of Justice of the EU (CJEU) judgement in [Case C-615/21](#). Moreover, it is a significant Court's decision impacting the landscape of Value Added Tax (VAT) and customs law within the EU. This article delves into the Court's findings, emphasizing the principles of legal certainty and effectiveness in EU law, and exploring its implications for VAT legislation and practices.

### BACKGROUND OF THE CASE

The dispute involved Hungarian company Napfény-Toll Kft. and the Hungarian National Tax and Customs

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**Michael Lux**

Attorney, Michael Lux BV, Belgium

[About the author](#)

## OVERVIEWS AND COMMENTS

# A future without customs declarations and with new roles and responsibilities for importers and exporters in the EU

The UCC reform proposal, if adopted, means saying goodbye to many familiar concepts (entry summary declaration, customs declaration, declarant, etc.) and welcoming new ones. We provide an overview of some proposed changes to the definitions of the UCC, which show that the current roles and responsibilities of the actors involved (e.g., exporter, importer, declarant, carrier, customs warehouse of free zone operator) as well as certain familiar customs simplifications will disappear (e.g., entry in the declarant's records, simplified and supplementary declaration) and customs processes will change significantly, in particular due to the creation of a central EU Customs Data Hub. Economic operators concerned should analyse the forthcoming changes and draw the attention of the legislative bodies to weaknesses and possible unintended consequences in customs processes in a timely manner.

## INTRODUCTION

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**Enrika Naujokė**

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[About the author](#)


## OVERVIEWS AND COMMENTS


# UCC e-systems: Updated implementation deadlines

The remaining electronic systems provided for in the [Union Customs Code](#) (UCC) will be implemented in 2024 and 2025. The introduction of a new customs system can have various implications for a company, depending on its specific activity: time savings when paper documents become electronic (e.g. T2L), significant financial savings thanks to new simplification possibilities (e.g. centralised clearance), the need to adapt company processes and software to the transition to the new systems, or simply the potential for disruption during implementation (for example, the introduction of new services of the Intelligent Customs Declaration System (iMDAS) this month in Lithuania has led to a sad joke in business community that the only Christmas wish is a working iMDAS), etc.

On 15 December, the European Commission adopted a [new work programme](#) to replace the previous one. Let's take a look at the updated implementation deadlines for the systems planned for the coming years. If you work with these

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### Boryana Peycheva

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[About the author](#)


## OVERVIEWS AND COMMENTS

# EU's dual-use exports - disunity or unity?

The first month of 2024 started with the publication of several European documents at common European and regional level (Baltic Republics), which present interesting facts and analyses on the export and transit of prohibited, restricted or dual-use goods. These are: White paper on Export Control; Commission Recommendation (EU) 2024/214 of 10 January 2024 on guidelines setting out the methodology for data gathering and processing for the preparation of the annual report on the control of exports, brokering, technical assistance, transit and transfer of dual-use items pursuant to Regulation (EU) 2021/821 of the European Parliament and of the Council; and 'Regional Approach to Ensure Uniform Customs Controls and Information Exchange for Implementation of the EU Restrictive Measures', adopted by the Baltic Republics of Lithuania, Latvia and Estonia.

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**Albert Willem Veenstra**

Professor Trade and Logistics, Rotterdam  
School of Management, the Netherlands

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**SUSTAINABILITY IN EU AND A LOOK AT US**

# EU Deforestation Regulation: Impact on Customs

Note from the CCRM editors: What can we expect from customs in the future? Professor Albert Willem Veenstra addressed this question together with other authors in the article '[The changing role of Customs: Customs aligning with supply chain and information management](#)' (World Customs Journal). After participating in a webinar on the EU Deforestation Regulation (EUDR), in which Professor Veenstra shared his insights, we took the opportunity to ask about the impact of this regulation on Customs and talk about various other related topics, such as complex supply chains, new business models for customs brokers and, of course, the knowledge required to meet the demands of a modern compliance professional.

## PLEASE TELL US ABOUT YOURSELF.

I am professor of Trade and Logistics at Rotterdam School of Management. I also work at the Erasmus University Center for Urban, Port and Transport Economics. In previous years, I have worked for the Dutch Institute for Applied Sciences, TNO, and for a funding agency for the Dutch Topsector Logistics, TKI Dinalog. In those years, I have been heavily involved in large scale European research projects on container security (INTEGRITY), and customs supervision innovation (CASSANDRA). I am currently the academic director of the Master of Science in Customs and Supply Chain Compliance. One of my main research interests is to innovate customs supervision approaches. We are working on a new approach for large scale e-commerce supervision, based on advanced data analytics methods.

## SINCE YOU MENTIONED THE NEW APPROACHES, WOULD YOU PLEASE SHARE SOME OF THE INSIGHTS FROM THE ARTICLE ON THE CHANGING ROLE OF CUSTOMS?

In the article in the World Customs Journal, Frank Heijmann and I wanted to highlight the standard tools that customs agencies have at their disposal to carry out their enforcement and trade facilitation role. This idea came from work some of our students did on assessing various regulatory developments in the EU, where often the role of customs was acknowledged, but the actual way of working of customs agencies was not properly represented. Issues run from strange definitions, of for instance, import, to the creation of completely new declaration processes under some of the new regulations.

This leads to some thoughts we formulate in the article on what new competences customs agencies should or could

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**Michael Lux**

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## SUSTAINABILITY IN EU AND A LOOK AT US

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

Note from the CCRM editors: The [first part of the article](#) provided an overview of the history, objectives and scope of the Carbon Border Adjustment Mechanism (CBAM) introduced by the EU. It also examined the issue of whether the Paris Agreement on climate change foresees border adjustment measures by countries with high climate ambitions, and posed the following question: Is the CBAM fair towards developing countries? In this second part, the author provides an overview of the provisions of the General Agreement on Tariffs and Trade (GATT) which could

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## EPISODE 6

# SUSTAINABILITY: 'DEEP' ORIGIN OF GOODS



Anthony Buckley  
Ireland



Brian Staples  
Canada



Dr Anna Jerzewska  
The UK

Listen to the podcast <https://www.customsclearance.net/en/courses/sustainability-and-deep-origin-of-goods>





**Ira Reese**

Chief Technology Officer and Director, Global Security and Innovative Solutions, the USA

[About the author](#)

**SUSTAINABILITY IN EU AND A LOOK AT US**

## Proposed U.S. Foreign Pollution Fee Act (similar to the EU's CBAM)

EU importers of cement, iron and steel, aluminium, fertilizers, electricity and hydrogen are preparing to submit their first report under the Carbon Border Adjustment Mechanism (CBAM), based on emissions data from their third-country suppliers. What about other countries? Will they also introduce such climate measures, so that EU and other countries' suppliers (exporters) should be getting ready to prepare their emissions data? Indeed, there are similar initiatives in other countries, for example, the proposed U.S. Foreign Pollution Fee Act.

Recently proposed in the U.S. Senate, the [U.S. Foreign Pollution Fee Act](#) is somewhat similar in intent to the EU's CBAM that will take full effect on January 1, 2026 and has already entered the transitional reporting period. In short, both pieces of legislation are meant to assess fees on specific categories of goods produced outside of their jurisdictions that take advantage of the exporting countries lax environmental regulations resulting in lower manufacturing costs. This, of course, results in an unfair competitive advantage against domestic manufacturers and results in a dirty more polluted world. Accordingly, the proposed U.S. legislation appears not only to be an attempt to force foreign manufacturers to use environmentally friendly manufacturing processes, but to provide a more level playing field for domestic manufacturers that are encumbered with strict environmental requirements.

According to the authors of the Act, the bill assumes that, in general, Chinese manufacturers generate three times as much greenhouse gases (GHG) as manufacturers of the same products in the U.S. The presumption of the Act is that as the United States has enacted more than 15 major environmental laws that significantly reduce GHG, those laws have encumbered manufacturers in the United States with higher costs to manufacture their goods. This incentivizes industries to locate its facilities in countries with low environmental standards so that they can take advantage of lower manufacturing costs.

The U.S. legislation was introduced to the U.S. Senate in November of 2023 but it has a long and torturous path before it can be enacted. The path includes pushing the Bill out of Senate Committee for a vote by the Senate; "markup" in the House of Representatives for language changes; approval by the House of Representatives; re-approval by the Senate; and finally making its way to the President for signature or veto. However, the President will work with the legislative branches prior to the Bill reaching his desk. It is highly probable that if the Act does make its way to the President for signature, it will have undergone significant changes that cannot be predicted at this time. Due to the fact that the law has been introduced by the Republican side of the Senate, that is usually connected with open door trade policies, it has the potential to pick up significant bipartisan support.

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## SUSTAINABILITY IN EU AND A LOOK AT US

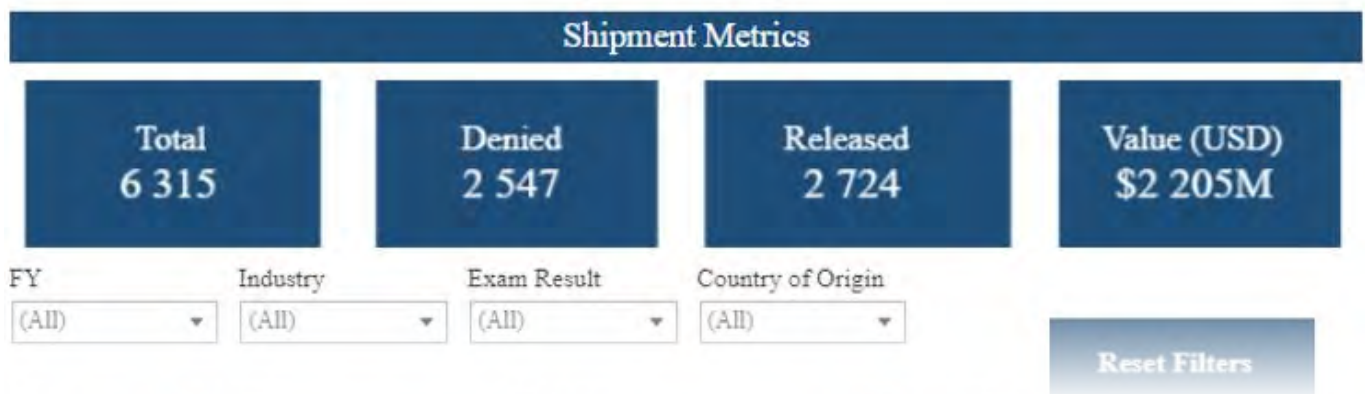
# Compliant on Forced Labor? Prove It: The Expansion of U.S. Anti-Forced Labor Laws and Compliance Requirements for Importers

Forced labor is on the rise worldwide [1]. The United States is one of the largest importers of merchandise at risk of being produced with forced labor [2] and U.S. Customs and Border Protection (CBP) is committed to identifying products made with forced labor and preventing them from entering the United States. From FY 2022 to date, CBP's forced labor enforcement has impacted over \$ 2 billion worth of shipments [3]. Clearly, companies have a lot at stake, and compliance with anti-forced labor requirements is critical not only from a corporate responsibility standpoint but due to the impact it may have on a company's financial position.



U.S. Customs and  
Border Protection

## U.S. Customs and Border Protection (CBP) Uyghur Forced Labor Prevention Act Enforcement Statistics June FY2022 to FY2024 to date



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**Enrika Naujokė**

CEO, CustomsClear, Lithuania

[About the author](#)

## SUSTAINABILITY IN EU AND A LOOK AT US

# Sustainable clothing and slow fashion in the global circular economy

Did you know that the EU imports around 26 kg of textiles per person per year? And around 11 kg are thrown away? That clothes are usually only worn 7 or 8 times? The EU is working on an EU strategy for sustainable and circular textiles (see [European Parliament resolution](#), published in the Official Journal on 21.12.2023), as textiles have the fourth highest negative impact on the climate and the environment, after food, housing and mobility. This article invites you to reflect on what can/ needs to be done in customs area to contribute to the EU's and global sustainability objectives. For example, whether customs tariffs or preferential rules of origin promote the circular economy, i.e. the import of used textiles for reuse or recycling and other sustainable options.

## IMPLICATIONS OF FAST FASHION AND CONSUMER BEHAVIOUR FOR THE ENVIRONMENT

The production and consumption of textiles has a negative impact on the environment in terms of greenhouse gas emissions, chemical pollution, biodiversity loss, the use of natural resources such as water and land, and the amount of textile waste that ends up in landfills. This sector leaves the fourth largest environmental footprint. Let's take a look

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## CUSTOMS BROKERS

# Customs brokers and their management: current challenges and the future

Customs brokers are an important part of the customs ecosystem. Both parties - traders and customs - can benefit greatly from working with these professional intermediaries. Customs brokers take on the complex tasks related to customs clearance, protect and serve the interests of the parties involved while balancing their different needs (e.g. fast delivery vs. thorough control) and save them a lot of time so they can focus on their core activities. This topic is not new, and one might think that these areas of operation should already be established and standardised. However, discussions at the 19th Authors' Meeting showed that there are still more questions than answers in the countries of Europe and America.

## **BORDERS WORK BEST WHEN CUSTOMS BROKERS OPERATE WITHIN A FRAMEWORK OF TRANSPARENCY, FAIRNESS AND COMMITMENT TO COMPLIANCE**

**Carol West, Secretary IFCBA (International Federation of Customs Brokers Associations), Canada**

Carol's comments reflect her decades of experience in the field of regulating and licensing the activities of customs brokers as a means of facilitating trade in many parts of the world. Carol highlighted two points about the work of customs brokers. First, customs brokers manage data to support risk management. Brokers have a role to play in collecting, analysing and transmitting data to customs authorities to support security and facilitation. Where pre-payment release of goods is involved, this includes the financial assessment of customers, importers and traders. The second role is in revenue collection, ensuring that the correct amount of duty and tax is paid, and not a penny more. Both these points focus on compliance with regulatory requirements.

The work of a customs broker has two priorities. The first is the needs and requirements of governments, primarily customs, but increasingly other government agencies as well. It is about respecting and ensuring compliance. The second is to meet the needs of customers - importers and exporters - once again, by ensuring compliance through

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**Ilona Kawka**

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## CUSTOMS BROKERS

# The future of customs intermediaries in the UK - overview

The realm of international trade is a complex interconnected system of legislation, documentation and supply chain processes. Customs intermediaries are crucial for businesses trying to manoeuvre through the sometimes confusing and challenging process of moving products across borders. These intermediaries - such as customs brokers, customs agents and freight forwarders - assist traders in meeting their obligations and effectively facilitate the movement of goods through the various customs systems. In the UK the customs intermediaries sector plays a vital role in facilitating international trade, especially post-EU Exit.

After the UK's withdrawal from the EU, the demand for customs intermediaries in the country increased significantly. A vast majority (78%) of customs declarations for international trade were reportedly submitted by third parties in 2022, according to HMRC Trade Statistics and Customs Analysis. In consideration of this need, the government allocated resources to the sector, such as grants to assist intermediaries in adapting to the new requirements.

The UK government undertook a significant step in February 2022 by releasing a 'Call for Evidence: An Independent Customs Regime'. The government requested the industry to provide insights and opinions on the functioning of three key components of the UK's customs system:

- the intermediaries sector
- simplified customs declarations processes
- transit procedures

This evidence was to be used to guide future policy decisions. When it comes to the first topic, the request for input sought opinions on several areas, such as

- the cost-effectiveness of customs intermediates for small and medium-sized firms (SMEs)
- the level of service offered by intermediaries
- the difficulties in assessing the quality of intermediaries before selecting an intermediary

The responses to the call for evidence varied. Although a considerable number of traders expressed satisfaction with the service they received, there were also testimonials of inadequate services. These included concerns around intermediaries' knowledge and experience, cases of incorrectly completed declarations and customer service-related challenges - such as delays in responses and general communication difficulties. An important suggestion that arose

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## CUSTOMS BROKERS

# Customs brokers in Europe: Shaping and establishing a future-proof role

Case law tells us how importing and exporting SMEs, which do not have in-house customs expertise, understand their role and responsibilities, as well as those of a customs broker. Often, when a dispute arises with customs over penalties imposed on an importer or exporter for an offence, the company claims that it was confident that it had properly fulfilled its obligations by entrusting customs clearance to a professional service provider - the customs broker. The company therefore learns the hard way about its customs-related responsibilities and obligations. What role does the customs broker play in preventing such situations? In this article, we argue that customs brokers need to take on the role of proactive educator and suggest a way to do this.

## BACKGROUND

Customs brokers currently handle around 80% of all customs declarations (statistics of several EU member states) and are therefore an important part of the supply chain. However, with increasing legal complexity and proposed

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The advertisement features a blue background with a laptop displaying a video course interface. The laptop screen shows the 'Customs Knowledge Institute' logo, 'Lesson 1. Representation', and 'Dr Momchil Antov'. Below the laptop, there is a white button that says 'Learn more'. To the right of the laptop, there are three white buttons: 'Video course', '1 h.', and '175 €'. The CustomsClear logo is in the top right corner. The main title 'Customs brokers in the EU and their management' is prominently displayed in white text.

More information: <https://www.customsclearance.net/en/courses/customs-representation-in-the-eu-basics-and-customs-brokers-management>



**Omer Wagner**

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[About the author](#)

## VALUATION, CLASSIFICATION, ORIGIN

# Impact of the war in the Middle East on customs valuation

Israel has been in a state of war for the past three months. This war has had an impact on international trade, particularly on customs valuation, including for importers in other countries such as the EU, as explained in more detail in this article.

## BACKGROUND

In recent months, since the beginning of the war, the Yemeni Houthi organisation has begun threatening any ship that passes through the Gulf of Aden into the Red Sea on its way from the eastern hemisphere to the State of Israel. This sea route through the Red Sea not only serves the State of Israel, but is also common for the transport of goods from the Far East - China, Japan, Thailand, Vietnam, South Korea, India, etc. - to the European Union, Egypt and many other countries.

Several leading shipping companies such as Maersk and Hapag-Lloyd have announced that they will no longer enter the Red Sea due to the threat posed by Yemen, but will extend their voyage by rounding the African continent and then going through the Atlantic until they reach Europe. Other shipping companies such as Cosco have announced that they will no longer be calling at Israel until further notice.

## EFFECTS ON IMPORTERS DATING BACK TO THE TIME OF COVID-19

Needless to say, this situation is disadvantageous for Israeli, EU and other importers as they have to wait much longer for their cargo and pay more for freight costs, surcharges, etc.

This can remind us of the time of Covid-19 ([Governments should consider waiving taxes on transport costs until we are back to "normal", WCO News 96, 2021](#)). When the Covid-19 crisis broke out worldwide, the cost of sea transport increased by more than 100% for many reasons. Shipping a container from China to Israel, which used to cost around USD 2,000, rose to over USD 15,000.

## NO UNIFORM VALUATION RULE REGARDING FREIGHT COSTS

The general rules for customs valuation are set out in the [WTO Customs Valuation Agreement](#). The Agreement contains several uniform customs valuation rules, such as the addition of commissions other than buying commissions (Art. 8(1)(a)(i)); addition of materials, components, etc. provided to the seller free of charge or at a reduced price (Art. 8(1)(b)(i)); addition of royalties and license fees (Art. 8(1)(c)); and more than thirty other

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VALUATION, CLASSIFICATION, ORIGIN


## Customs valuation and transfer pricing – understanding similarities and differences (I)

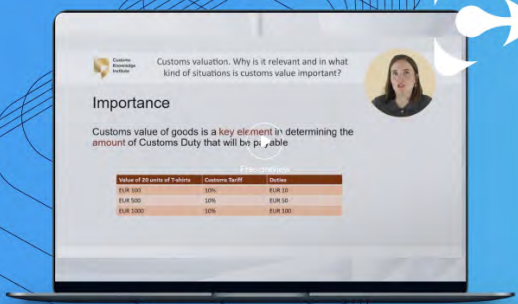
Editors' note: In November, the European Commission published the news '[New transfer pricing rules to make life easier for businesses in the EU](#)'. The new rules are necessary to address several challenges, including the competing objectives of customs and tax authorities, which lead to double compliance requirements. The problem is global. According to the Corporate Tax Association of Australia (CTAA), 'it is unacceptable for a business to be required to satisfy two arms of the same government, one demanding a higher price and the other a lower price in respect of the same transaction'. In this first part of the article, the author provides an overview of the rules and methods of customs valuation and transfer pricing.

### INTRODUCTION

The value of cross-border transactions is the first point for assessing customs duties and for determining profits for the parties involved in such dealings. It impacts the allocation of tax bases among countries for such transactions.

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Pakistan Customs, Pakistan

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VALUATION, CLASSIFICATION, ORIGIN

## Customs valuation and transfer pricing – understanding similarities and differences (II)

Editors' note: In this second part of the article ([the first part on page 53](#)), the author highlights the similarities and differences between customs valuation and transfer pricing and emphasises that the requirements may differ for the same goods. He also outlines the solutions used by customs in different countries. For example, the Canada Border Services Agency considers the transfer price to be the 'uninfluenced' price paid or payable for imported goods if a written transfer price agreement exists between a vendor and a related purchaser and is in effect at the time of importation.

### CUSTOMS VALUATION AND TRANSFER PRICING VALUATION CAN BE DIFFERENT FOR THE SAME GOODS

#### Similarities

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**Omer Wagner**

Advocate, Israel

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## VALUATION, CLASSIFICATION, ORIGIN

# Year-end transfer pricing adjustments and the customs value

Customs value and transfer pricing could be likened to Siamese twins - that's how closely linked they are. Let's discuss some practical questions related to the year-end transfer pricing adjustments: If the price is revised upwards, does the importer have to go to customs and pay additional duties? If the price is revised downwards, is the importer entitled to a refund of duties? What if the goods are duty-free and there is no excise duty, but only import VAT (which is deductible in any case)?

## BACKGROUND

Many imports of goods to Israel, and I assume to countries as well, are handled between affiliated companies such as subsidiaries, sister companies, etc. In Israel, this is a common practice in the clothing and food sectors. The parent company is usually a foreign company that owns several companies, including a subsidiary in Israel that acts as an importer and distributor of the products to Israel. In this structure, the parent company usually controls the profit margin of its subsidiaries, and occasionally the price between the parties is changed, based on transfer pricing (TP) adjustments.

Following the excellent articles by Rizwan Mahmood [1], [2], I would like to focus on the practical customs aspects of TP adjustments.

## RELATED PARTY TRANSACTIONS

As we know, the WTO Customs Valuation Agreement sets forth that if the parties are related, the declared value will be valid only if the relationship did not influence the price [3]. Such a question appears also in the Israeli importers' affidavit [4]. A common way to prove that the relationship has not affected the price is to conduct a transfer pricing study that shows that it is a market price or that it is consistent with prices between unrelated parties.

## YEAR-END TP ADJUSTMENTS

However, even if the price quoted is considered reasonable and acceptable for customs purposes, the parent company may change the price after a certain period. For example, the parties have agreed that the importer will realize a profit of 5% after deducting its costs. As a rule, the importer's profit margin is checked - if it was higher than agreed, the importer pays more to the seller. If it was lower than agreed, the seller compensates him.

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**VALUATION, CLASSIFICATION, ORIGIN**

## e-Certificate of Origin: the failing vision of efficiency and a possible solution

The World Customs Organization (WCO) has published a [comprehensive study on the digitalisation of the Certificate of Origin](#) (CO). This article provides a short summary of the existing CO issues and suggests some solutions that could help achieve the long-term digitalisation goals – such as the framework for trusted digital signatures currently used in the EU.

### BACKGROUND

As import/ export regulations become more complex, the task of collecting, reviewing, analysing and responding appropriately to additional data requirements (for a particular imported good) becomes more complex and time consuming. Some countries grant preferential treatment or impose sanctions on goods produced in certain locations; some countries track whether the originating materials do not come from places protected by various regulations; other countries strive to avoid importing goods from places where forced labour is used to produce those goods, or from places where improper waste disposal destroys the natural habitat of humans or animals.

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## COUNTRY-SPECIFIC

# UK customs-related updates: BTOM, CDS (I)

Editors' note: Many economic operators in the EU and other UK trading partners are and will be affected by the ongoing customs changes in the UK. We start with a monthly overview of some important news from the UK. Many thanks to Mark Rowbotham, who recently joined the CCRM Editorial Board, for preparing the updates on the Border Target Operating Model (that will be progressively introduced from the end of January 2024) and the Customs Declaration Service (from 30 March 2024, the CDS will be the UK's single Customs platform). Related developments are also interesting to follow for those who are not directly involved in trade with the UK but are interested in effective border management as the UK aims to create [the most effective border in the world](#).

## BORDER TARGET OPERATING MODEL

**Focus of this brief overview - Ireland ([see Part II for the general overview](#))**

In August 2023, the government published the final version of the [Border Target Operating Model \(BTOM\)](#) which confirmed that from 31 January 2024 some goods will face full Customs controls when moved directly from Irish ports to Great Britain. Goods will need to complete import processes if they are being imported directly from Ireland into Great Britain (not moving from or through Northern Ireland).

Goods moving from Northern Ireland to Great Britain through Irish ports will also have to complete import processes if they are:

- Non-qualifying Northern Ireland goods;
- Excise goods (alcohol, tobacco, and energy products);
- Goods which do not move directly to an Irish port once they have left Northern Ireland, for example, goods which are held in storage in Ireland.

For these goods the trader will have to follow the import requirements set out in the Border Target Operating Model. When moving these goods, most traders will need to make import customs declarations at the point of import and will no longer be able to delay making declarations. Ports will be required to control these goods moving from Ireland to Great Britain, meaning that unless they have received customs clearance they will not be released from the port.

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## COUNTRY-SPECIFIC

# UK customs-related updates: BTOM, CDS (II)

Despite officially leaving the EU's single market in January 2021, the UK has delayed introducing full border controls several times due to concerns over cost and disruption. However, we now know that these post-Brexit checks on plant and animal goods coming into the UK from EU countries will begin at the end of January 2024. What does this mean for businesses importing these goods into the UK? We provide a summary of the changes coming into effect and how the trader can prepare for these stricter border controls ([see Part I dedicated to Ireland and Northern Ireland here](#)).

## WHAT ARE THE NEW UK IMPORT RULES?

The UK government has set out its new [Border Target Operating Model \(BTOM\)](#) in a bid to control imports of animals, plants and all products derived from them. Lord Benyon, minister for biosecurity at the Department for Environment, Food and Rural Affairs (Defra) said: "Protecting UK biosecurity through effective border controls on the goods that we import is so important. These border controls safeguard the food that we eat, and protect animal and plant health across the UK".

The new import rules will be rolled out throughout 2024 in three phases:

- **Phase One.** Food and drink from the EU is categorised into high, medium and low risk categories under the BTOM. **From 31 January 2024**, EU businesses exporting medium risk plant and animal products to the UK will have to submit extra paperwork known as health certificates.
- **Phase Two.** **From 30 April 2024**, physical checks to medium risk products will be introduced. Existing inspections of high risk plants/ plant products from the EU will move from destination to [Border Control Posts](#).
- **Phase Three.** **From 31 October 2024**, safety and security (S&S) declarations for imports from the EU will become mandatory.

## WHAT DOES THIS MEAN FOR BUSINESSES?

Businesses that import food products, live animals, animal products, plants or plant products into the UK will need to prepare for the upcoming changes. The first step is to identify the BTOM risk category for the animals and animal products you plan to import. You can do this by referring to the [Import Risk Categories](#) document which provides a

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## COUNTRY-SPECIFIC


# Discount for customs purposes? On one condition

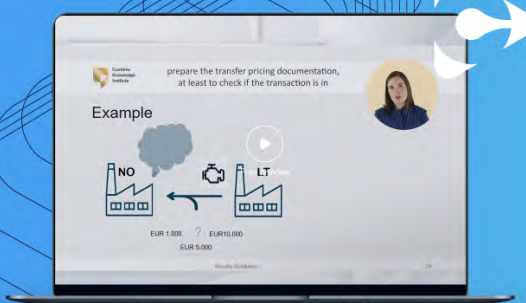
The Israel Customs Authority does not seem to be a fan of discounts. It appealed against the judgement of the District Court, in which the court clarified that the Customs Authority cannot, on the one hand, rely on the fact that the price is subject to a condition (discount) that cannot be assessed and the transaction price is therefore invalid, and, on the other hand, base the assessment on the transaction price but without the condition. Let's take a look at what the Supreme Court had to say in this dispute. The disputed amount is about ILS 5 million (~1.3 million Eur).

## Brief

In [CCRM Issue 21 \(June/July 2023\)](#) we wrote about the attitude of the State of Israel towards discounts for customs purposes ([see the article here](#)). We mentioned a judgement by the Israel District Court from 2020, concerning conditional discounts on vehicle spare parts [1]. There is an update on this topic, as recently, in January 2024, the

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## STUDENT'S SECTION

# Export promotion programmes: Lithuania's case

Exports of goods are an important driver of business productivity and economic growth (Mota et al., 2021). Nobody doubts the benefits of exporting today. The government aims to increase the competitiveness of business and industry in international trade and to promote job creation and economic growth by creating a business-friendly environment. Exports are an important part of business, both for the national economy and for the growth and development of businesses themselves. Economic growth, especially in small countries, is driven by foreign trade, making the promotion of exports a crucial task for a country. The dynamics and development of export growth depend on the implementation of a targeted export policy by the government, and exports are a key factor of economic growth for various countries, including Lithuania.

According to Lithuania's official statistics portal (Business ..., 2022) the share of export of goods and services in GDP has a tendency to increase and was around 80% in 2021, reflecting the fact that the Lithuanian economy is dependent on international trade. Exports are the main driver of Lithuania's economic growth. Export promotion can be ensured through a variety of measures, such as government business missions, representation of the country at exhibitions, training for entrepreneurs, subsidies, etc. At present, Lithuania's export promotion policy lacks analytical information on the effectiveness and economic benefits of the measures. From the point of view of businesses themselves, there is a slowdown due to unforeseen risk factors such as the financial crisis, geopolitical factors, Brexit in the United Kingdom (UK), and the economic downturn caused by the COVID-19 pandemic, which has become a real challenge for many businesses around the world.

Therefore, this work is dedicated to evaluating the effectiveness of export promotion programmes and discussing the current situation in Lithuania.

**Research object** – export promotion.

**The research aim** is to measure the effectiveness of various export promotion programmes and to improve the competitiveness of Lithuanian industry and businesses.

In order to achieve this aim, the following **objectives** have been set:

1. To analyse the concept of export promotion programmes and related measures.

Please continue reading [online](#).

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## STUDENT'S SECTION

# The customs posts and their impact on customs tax control

The present research covers the interpretation of the concept of customs posts and the relationship with customs tax control. The analysis of the European Union (EU) regulations showed the essential criteria for customs posts. The Maturity model was also reviewed in order to implement the EU regulations requirements for customs posts. In customs posts the Maturity model must be used in three areas – tax administration, customs administration, and information technology implementation. To assess the practical situation, it was chosen to analyse high-risk customs posts. The situation of the Suwalki corridor and the three-month data collected by two customs posts at the Kybartai Road and Raigardas Road posts were reviewed. The analysis revealed that there is a lack of available data for researchers to conduct analysis and determine the impact of selected customs posts on customs tax control.

**Research object** – impact of customs post on customs tax.

**Research aim** – after discloses of the concept of customs posts and their impact on customs tax control, to analyse the current situation at selected customs posts.

The following **objectives** have been set to achieve the aim:

1. To analyse the concept of the customs posts and their role in customs tax control.
2. To make the overview of the current situation of customs posts in selected areas.

Research methods applied synthesis and analysis of scientific literature, compression and generalisation, graphical visualization, systematisation.

## CONCEPT OF CUSTOMS POSTS AND ROLE IN CUSTOMS TAX CONTROL

The topic of optimisation of customs posts is not widely studied in scientific literature. Both in scientific literature and EU regulations, more attention is paid to the problems of the customs office and the improvement of their processes. The concept of customs office and post office is different. The customs office is described as an administrative institution that ensures the regulation of international trade, seeks to increase the volume of foreign trade operations, ensures simplification of customs procedures, and ensures national security (Shpak et al., 2020). In the case of the customs posts concept, several definitions were met in literature. Some authors call them customs posts (McInden

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**STUDENT'S SECTION**

## Customs taxes influence the decision of private persons on e-commerce in the European Union

Customs taxes are a form of taxation imposed on goods imported into a country. They are typically levied on the value of the goods, and are intended to protect domestic industries from foreign competition. In the European Union (EU), customs duties are harmonised across all member states. This means that the same rate of duty is applied to the same goods, regardless of which EU country they are imported into, however, there are some exceptions to this rule. Also, not only duties have to be paid before release for free circulation. E-commerce is the buying and selling of goods and services online. It has become increasingly popular in recent years, as it offers consumers a convenient and affordable way to shop. However, the growth of e-commerce has also led to an increase in the number of goods being imported into the EU. The influence of customs taxes on e-commerce imports can have a significant impact on private persons. For example, if a private person imports goods from a country outside of the EU, they may have to pay customs taxes on those goods. This can make imported goods more expensive, it can also take more time for delivery, and can discourage private persons from importing goods from outside of the EU. The following sections of this paper will explore this topic in more detail and will discuss the various factors that can influence the impact of customs taxes on e-commerce imports for private persons and propose a theoretical model of how customs taxes affect the e-commerce of private persons.

**Research object** – customs taxes for private persons

**Research aim** determine how customs taxes affect the purchasing habits of private persons in e-commerce

The following **objectives** have been set to achieve the aim:

1. Analyse the concept of customs duties;
2. Identify the popularity of cross-border e-commerce in the European Union;
3. Carry out the case study analysis of the customs taxes applied for private persons in e-commerce;
4. Prepare a theoretical model of how customs taxes affect the decision of private persons on e-commerce.

Research methods scientific and methodological literature review, comparative analysis, legislation analysis,

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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?

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Janine Lampprecht & Prof. Dr. Hans Michael Wolffgang

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

### KEYNOTE

Alles, was recht ist!  
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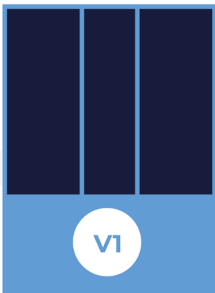
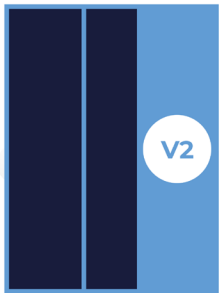

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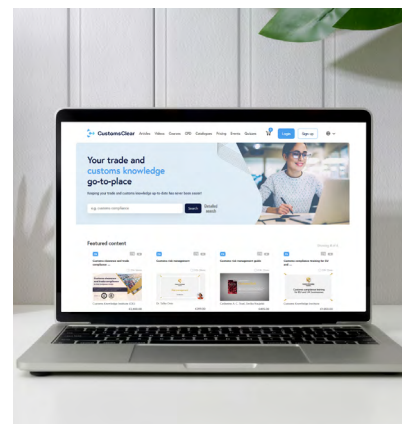
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