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# Transparency now

Legal briefing on the disclosure of EU customs data



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# 1. Introduction

Customs authorities in the European Union (EU) Member States (MSs) collect data on exporters and importers of goods passing through state borders. Currently this data is not made available to the public at the EU level or in any of the EU MSs.

On 12 September 2017, the European Parliament adopted a resolution<sup>1</sup> which “calls on the Commission and encourages Member States to seek ways to enable parties having a public interest stake to access, subject to appropriate justification and upon a request made on the grounds of public interest, the customs data collected from parties trading in products or goods imported into the EU”.

This data could then help NGOs, human rights defenders and victims of corporate abuse to identify European companies trading with companies in third countries, which are involved in human rights violations<sup>2</sup> including abusive labour conditions, to allocate responsibility and deliver justice to the victims. Importantly, it would help European consumers to gain confidence in the products they buy in a global economy.

By making selected customs data available for the public, the EU would also level the playing field between companies already voluntarily disclosing supply chain information to the public and those which don't. This would help to reduce the effectiveness of the oft-cited barriers to supply chain transparency, such as competitive reasons. Additionally, the EU would reach the same level of transparency with its major trade partners, such as the USA and India, which are already disclosing basic customs information to the public.

This legal briefing paper examines the possibilities for the EU to make customs data public for the purpose of increasing transparency and accountability for human rights abuses committed by companies in the context of global value chains.

<sup>1</sup> For more information on the resolution on the impact of international trade and the EU's trade policies on global value chains (2016/2301(INI)), see <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2017-0269&format=XML&language=EN> (accessed 12.9.2017)

<sup>2</sup> The European companies importing goods to the European single market and companies in third countries from whom they are sourcing their products and/or the exporters of these products are collectively referred to as “trade parties” in this legal briefing.

## Supply chain information could help identify products marketed to consumers that have been produced in conditions of labour abuse

*The following are examples of electronics manufacturers which are all suspected of having abused the rights of their workers. According to publicly available information, they also all export their products to Europe. It is therefore possible that goods which have been produced under abusive working conditions are being marketed to consumers in Europe without European consumers knowing by whom, where and in what conditions the products they are considering buying are made.*

HEG Technology is a high-tech electronics manufacturer located in Huizhou City, Guangdong Province. It supplies mobile handset brand companies such as Samsung and Huawei. It also exports, for example, plugs and sockets overseas<sup>3</sup>. The company and its branches employ more than 15,000 people<sup>4</sup>.

China Labor Watch has been monitoring working conditions at HEG Technology since 2012, where, despite some improvements in working conditions problems still persist<sup>5</sup>. According to China Labor Watch, these include the following:

- exploitation of underage workers. The company continues to hire teenagers aged between 16 and 17 without providing them without any of the health and safety protections as required by law.
- gender-based discrimination in hiring.

- excessive working hours. Workers at the HEG production plant typically work an 11 to 12-hour shift – of which two to three hours are overtime – six days per week. During production peaks, daily overtime could reach as much as seven hours. Overtime is often mandatory.
- the workers are required to seek “authorisation” if they want to resign.

According to company information published by Global Sources, a business-to-business media company which facilitates trade between Asia and the rest of the world, Huizhou HEG Technology exports to Asia, Northern America and Western Europe<sup>6</sup>. Detailed information on these exports, or the companies importing Huizhou HEG Technology products to Europe is not available on public databases. Therefore, it is not possible to establish from publicly available information which company(ies) is marketing Huizhou HEG Technology products to consumers in Europe.

*See other case examples on pages 13 and 15.*

3 Panjiva, Huizhou HEG Technology Co. Ltd – Company profile made by Panjiva, <https://panjiva.com/Huizhou-Heg-Technology-Co-Ltd/30298743>

4 Global Sources, Huizhou HEG Technology Co. Ltd, [www.globalsources.com/si/FL/Huizhou-HEG/6008843055008/Homepage.htm](http://www.globalsources.com/si/FL/Huizhou-HEG/6008843055008/Homepage.htm)

5 China Labor Watch, 2015, Follow-up Investigative Report on HEG Technology, available at [http://www.chinalaborwatch.org/upfile/2015\\_11\\_17/HEG%20follow-up%20report%20-%20EN%20v2.pdf](http://www.chinalaborwatch.org/upfile/2015_11_17/HEG%20follow-up%20report%20-%20EN%20v2.pdf)

6 Global Sources, Huizhou HEG Technology Co. Ltd, [www.globalsources.com/si/FL/Huizhou-HEG/6008843055008/Homepage.htm](http://www.globalsources.com/si/FL/Huizhou-HEG/6008843055008/Homepage.htm)

## 2. Benchmark: USA

In the United States, customs data on international trade is collected by a federal customs authority, US Customs and Border Protection (CBP)<sup>7</sup>. There is no system that traces movement of goods crossing state borders within the United States.

As a general rule, import declaration data is available to the public. The Freedom of Information Act (FOIA)<sup>8</sup> gives any person a right<sup>9</sup>, enforceable in court, to access information and records developed or maintained by US federal agencies, subject to nine exemptions<sup>10</sup>. FOIA is often described as the law that keeps citizens in the know about their government. In general, the public can obtain customs data by submitting a data request, if reasonably described, to CBP, unless the data is exempted from disclosure, such as, for example, confidential trade secrets or commercial or financial information, pursuant to the FOIA and the Code of Federal Regulations (CFR)<sup>11</sup>.

The information on vessel<sup>12</sup> manifests is subject to specific rules pursuant to CFR. According to CFR §103.31, the public may request and obtain from Customs information on the cargo declaration of the inward

vessel manifest (import customs data)<sup>13</sup> and also purchase this data acquired from the Automated Manifest System (AMS) *en masse* on CD-ROMs at the government's production cost<sup>14</sup>. The AMS data is compiled daily and contains all manifest transactions made on the nationwide system within the last 24 hours. The data elements on the CD-ROMs are:

1. Carrier code
2. Vessel country code
3. Vessel name
4. Voyage number
5. District/port of unloading
6. Estimated arrival date
7. Bill of lading number
8. Foreign port of lading
9. Manifest quantity
10. Manifest units
11. Weight
12. Weight unit
13. *Shipper name*
14. *Shipper address*
15. *Consignee name*
16. *Consignee address*
17. *Notify party name*
18. *Notify party address*
19. Piece count
20. Description of goods
21. Container number
22. Seal number<sup>15</sup>

The above customs data on imports can be considered confidential in two cases, pursuant to CFR. First, the information shall not be disclosed 'if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo

7 The website of the CBP: <https://www.cbp.gov/>

8 5 US Code § 552, as amended

9 Any person – United States citizen or not – can make a FOIA request. See United States Department of Justice, Who can make a FOIA request?, <https://www.foia.gov/faq.html#who> (accessed 23 March 2017)

10 These exemptions protect interests such as personal privacy, national security, trade secrets or commercial or financial information that is confidential or privileged, and information compiled for law enforcement purposes (certain investigatory records). 5 US Code § 552, 19 CFR §103.12

11 A request for records must describe the records in reasonably sufficient detail in order to locate the records without placing an unreasonable burden upon Customs Service. The Customs Service must make the requested records promptly available to the requester – there is a 10-day period for making an initial determination to grant or deny a request for records. The businesses are provided with notice of FOIA requests and an opportunity to object to disclosure the requested data on the grounds laid down in CFR. 19 CFR § 103.5(a) and (e), 19 CFR § 103.35

12 Vessel means every description of water craft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft. 19 CFR § 4.0(a)

13 Customs Form 1302, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2016-Mar/CBP%20Form%201302.pdf>. 19 CFR § 4.7, 4.7(a). The public is not allowed to examine vessel manifests themselves, only the data on the manifests may be requested. 19 CFR §103.31(c)

14 CD-ROMs are available for specific days or on a subscription basis. 19 CFR § 103.31(e)

15 Data elements 13-18, in italics, are not included in the CD-ROMs where confidentiality has been requested. *Ibid.*

declaration [of the inward vessel manifest] is likely to pose a threat of personal injury or property damage<sup>16</sup>.’ Second, ‘an importer or consignee may request confidential treatment of its name and address contained in inward manifests’ and the ‘name and address of the shipper or shippers to such importer or consignee’ (i.e. data elements 13-18 in italics in the above list) by submitting a certification claiming confidential treatment that is valid for 2 years<sup>17</sup>. In the latter case, ‘[t]here is no requirement to provide sufficient facts to support the conclusion that the disclosure of the names and addresses would likely cause substantial harm to the competitive position of the importer or consignee<sup>18</sup>.’

The public accessibility of federal customs data has made it possible for commercial services, such as Import Genius<sup>19</sup> and Panjiva<sup>20</sup>, to draw CBP’s raw import data and put it into more user-friendly, searchable databases that anyone can use by paying a fee. Import Genius and Panjiva have contracts with CBP so they can directly access the data *en masse* and in real time.

In the USA, NGOs have used the CBP data to track down American importers, buyers and retailers of products that are known to have been produced by forced labour. This has enabled the NGOs to engage in dialogue with these businesses so that the businesses could be persuaded to address adverse human rights impacts in their value chains. Customs data has been used also by the media, for example, to track down business activities of political decision makers or to compile projections on trade trends<sup>21</sup>.

The import data is also used to enforce a specific law, section 307 of the Tariff Act of

1930<sup>22</sup>, which prohibits the importation of ‘merchandise mined, produced or manufactured wholly or in part in any foreign country by... forced labour<sup>23</sup>.’ Such merchandise is subject to exclusion and/or seizure by the CBP, and may lead to criminal investigation of the importer(s). To start an investigation and release withhold release orders, CBP needs to receive a petition from anyone<sup>24</sup> showing ‘reasonably but not conclusively’ that ‘merchandise within the purview of section 307 is being, or is likely to be, imported’ to the US<sup>25</sup>. The importation is prohibited if CBP is provided with information sufficient to make the determination that the goods in question are subject to the above provisions and the importer has not provided satisfactory counter-evidence<sup>26</sup>. In practice, a very high level of traceability back to the source is required<sup>27</sup>.

22 19 US Code § 1307, as amended

23 ‘All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. “Forced labor”, as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.’ 19 US Code § 1307

24 That is, irrespective of that person being a business, an agency, or a private individual, whether a US citizen or not. Kuplewatzky N. A., 2016, An Appeal for Targeted Regulatory Protection of Human Rights in the European Union’s External Trade Relations in Light of *Front Polisario*, in *Global Trade and Customs Law, Volume II*, Issue 11-12, p. 576. CBP’s website contains an electronic allegations system where anyone may report allegations anonymously. See the e-Allegations system at: <https://eallegations.cbp.gov/Home/Index2> (accessed 7 March 2017)

25 19 CFR § 12.42(b), 12.42(e)

26 19 CFR § 12.42(f). U.S Customs and Border Protection, Forced Labor, <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations> (accessed 31 January 2017)

27 19 CFR § 12.42(f), 12.42(g). According to the International Labor Rights Forum (ILRF), “petitioners must prove that forced labor is taking place on a particular factory or farm and trace the tainted product to a particular shipment entering a U.S. port.” ILRF says that this “makes enforcement of Section 307 nearly impossible with many agricultural goods, where products from many farms are comingled before being processed and shipped to the U.S. market.” ILRF, 2016, *Tariff Act Strengthened, But Will Enforcement Follow?*, <http://www.laborrights.org/blog/201602/tariff-act->

16 19 CFR § 103.31(a)(3), 103.31(c)

17 19 CFR § 103.31(d), 103.31(d)(iv)

18 19 CFR § 103.31(d)(ii)

19 The website of Import Genius, <https://www.import-genius.com/> (accessed 23 March 2017)

20 The website of Panjiva, <https://panjiva.com/> (accessed 23 March 2017)

21 See for example Washington Post, *A Decade of Trump’s Imports*, <https://www.washingtonpost.com/graphics/politics/trump-products/> (accessed 4 April 2017); Entrepreneur, *What The Season’s Hottest Toy Reveals About How Holiday Retail is Changing*, <https://www.entrepreneur.com/article/285787> (accessed 4 April 2017)

Similarly to the USA, customs data is made available to the public also in India, for example. The public data includes product type, port and country of destination, port of origin, Indian exporter's name and address, and foreign importer's name and address<sup>28</sup>.

strengthened-will-enforcement-follow (accessed 23 March 2017)

28 This information was attained from a data sheet acquired from India Info Drive, a commercial service that sells Indian customs data. In the data sheet, the entry point for address was empty, hence, its availability for public remains a bit unclear. See the website of India Info Drive at: <http://www.indiainfodrive.com/>

## 3. The EU customs data system and its shortcomings on transparency

### 3.1 CUSTOMS DATA ON EU'S INTERNATIONAL TRADE

The EU is a customs union of independent EU Member States and the customs law is very harmonized within the EU. The new framework legislation on the general rules and procedures of customs throughout the EU is the Union Customs Code (UCC, Regulation (EU) No 952/2013). Its substantive provisions entered into force on 1 May 2016 but a transition period lasting no longer than until 31 December 2020 prolongs its full implementation due to the need to develop or upgrade IT systems<sup>29</sup>.

While the EU has its common customs legislation and policy, the customs administration is decentralised: the EU customs law is implemented and applied by the national customs authorities of the MSs. The application of EU customs law should be uniform in different MSs, as prescribed by EU law<sup>30</sup>, but different national traditions, trainings and translations of EU legislation and some undefined EU legal terms remain a challenge.<sup>31</sup>

Because of the customs union, there are customs only on EU foreign trade, that is between the EU MSs and non-EU countries, not between MSs. This means that goods imported to the EU must be declared only to the national customs authorities of that MS which is the first point of entry to the EU single market.

EU customs declarations are made in a prescribed form and manner, either electronically or in writing, on a Single Administrative

Document (SAD)<sup>32</sup>. The general rule is that an electronic declaration is lodged instead of the SAD. All the customs information (declarations and so forth) is to be made electronic by 2020 in the EU and the national systems will then be further harmonized<sup>33</sup>.

The common data requirements for customs declarations are laid down in the UCC Delegated Act (Commission Delegated Regulation (EU) 2015/2446)<sup>34</sup> that supplements the UCC. The obligation to require the data, as prescribed in Annex B of the UCC Delegated Act, is suspended until the appropriate IT systems are operational – this may prolong the implementation of the new common data requirements until 2020<sup>35</sup>. Data that must be collected by each MS in declarations for release for free circulation (import declaration)<sup>36</sup> will include the following data (all data is mandatory for the MSs to collect with exception of the first one listed):

- Exporter<sup>37</sup> (optional for MSs to collect<sup>38</sup>)
- Importer<sup>39</sup>

29 The detailed rules regarding the transitional period are contained in Commission Delegated Regulation (EU) 2015/2446, also called as UCC Transitional Delegated Act.

30 National customs authorities must respect also requirements of the World Trade Organisation (WTO) that has established certain standards regarding the uniform administration of customs law. Limbach K., 2015, Uniformity of Customs Administration in the European Union, pp. 1–3

31 EU customs law is open to interpretation due to its undefined legal terms or margin of appreciation. The UCC, however, purged and simplified the EU customs law, most references to national law were removed and legal definitions were increased. Ibid.

32 For travellers and private consignees the declaration is possible to be made also orally or by means of an act replacing a customs declaration. The single administrative document, SAD form is based on Commission Regulation (EC) 2286/2003 and is used for customs declarations in the EU, Switzerland, Norway, Iceland, Turkey, Macedonia and Serbia. European Commission, The single administrative document (SAD), [http://ec.europa.eu/taxation\\_customs/business/customs-procedures/general-overview/single-administrative-document-sad\\_en](http://ec.europa.eu/taxation_customs/business/customs-procedures/general-overview/single-administrative-document-sad_en) (accessed 31 January 2017)

33 European Commission, 2012, Communication on the State of the Customs Union, p. 13, available at: [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/common/publications/com\\_reports/customs/com\(2012\)791\\_en.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/publications/com_reports/customs/com(2012)791_en.pdf)

34 UCC, in its consistency with the Treaty on the Functioning of the European Union (TFEU), delegates the Commission the power to supplement certain non-essential elements of the Code, in accordance with Article 290 of TFEU. In addition, the UCC Implementing Act, adopted as Commission Delegated Regulation (EU) 2015/2447, lays down detailed rules for implementing certain provisions of UCC.

35 Article 55 and preamble (5) of UCC Transitional Delegated Act, adopted as Commission Delegated Regulation (EU) 2016/341

36 Column H1 in the Table legend of Annex B, Chapter 2, Regulation (EU) 2015/2446

37 'The full name and address of the last seller of the goods prior to their importation into the Union.' Ibid.

38 Data that MSs may decide to waive. Ibid.

39 'Name and address of the party who makes, or on

- Declarant<sup>40</sup>
- Representative<sup>41</sup> (if different from declarant)
- Seller<sup>42</sup> (if different from exporter)
- Buyer (or owner<sup>43</sup>)
- Country of destination code<sup>44</sup>
- Country of dispatch /export code<sup>45</sup>
- Country of origin code<sup>46</sup> (only countries of non-preferential origin<sup>47</sup>)
- Description of goods<sup>48</sup>

*whose behalf an import declaration is made.* Ibid.

- 40 Declarant means 'the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re-export declaration or a re-export notification in his or her own name or the person in whose name such a declaration or notification is lodged.' UCC 5 Article (15).
- 41 Customs representative means 'any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities.' UCC Article 5 (6)
- 42 'The seller is the last known entity by whom the goods are sold or agreed to be sold to the buyer. If the goods are to be imported otherwise than in pursuance of a purchase, the details of the owner of the goods shall be provided.' Regulation (EU) 2015/2446, Annex B
- 43 'The buyer is the last known entity to whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the details of the owner of the goods shall be provided.' Ibid.
- 44 The 'Union code ... for the Member State where the goods are located at the time of release into the customs procedure... However, where it is known at the time of drawing up the customs declaration, that the goods will be dispatched to another Member State after the release... the code for this latter Member State' is entered. Ibid.
- 45 'If neither a commercial transaction ... nor a stoppage unrelated to the transport of goods has taken place in an intermediate country, this is the relevant Union code indicating the country from which goods were initially dispatched to the Member State in which the goods are located at the time of their release into the customs procedure. If such a stoppage or commercial transaction has taken place... the last intermediate country' is indicated. Ibid.
- 46 'The relevant Union code for the country of non-preferential origin', as defined in UCC Article 60. Ibid.
- 47 Non-preferential rules of origin are the instruments used to determine the "nationality" of a good when entering a country. They are used for the implementation of all the non-preferential commercial policy instruments, such as *anti-dumping and countervailing duties, trade embargoes, safeguard and retaliation measures, quantitative restrictions, but also for some tariff quotas, for trade statistics, for public tenders, for origin marking, and so on.* European Commission, Taxation and Customs Union, Non-preferential origin, Introduction, [http://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/rules-origin/non-preferential-origin/introduction\\_en](http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/non-preferential-origin/introduction_en) (accessed 3 April 2017)
- 48 'It is a plain language description that is precise enough for Customs services to be able to identify the goods' meaning 'the normal trade description'. 'Ex-

- Commodity code (combined nomenclature (CN) code<sup>49</sup>)

In most of the commercial imports, all the parties listed above are companies (legal persons) but in principle the party can also be a natural person<sup>50</sup>. One person can act in several party roles, i.e. declarant can be also the exporter of the goods. Concerning all the parties on the list, name, address<sup>51</sup> and identification number (EORI number)<sup>52</sup> is provided.

In addition, entry summary declarations<sup>53</sup> that are submitted in advance of importation include mandatory data on trade parties. The data requirements vary a little depending on the mode of transportation (waterways, air cargo, express consignments, postal consignments, road and rail<sup>54</sup>) and in certain cases only partial datasets are required. The following data elements are mandatory for complete datasets in most of the cases, among others:

- Consignor (in the master or house level transport contract<sup>55</sup>)

*cept for non-Union goods placed under [certain types of] customs warehousing procedure ... this description must be expressed in terms sufficiently precise to enable immediate and unambiguous identification and classification of the goods.'* Regulation (EU) 2015/2446, Annex B

- 49 'Indicate[s] the customs nomenclature code under which the applicant expects the goods to be classified.' Ibid.
- 50 UCC Article 5 (4)
- 51 Street and number, country, postcode and city. Regulation (EU) 2015/2446, Annex B
- 52 This is 'Economic Operators Registration and Identification number' (EORI number) which means 'an identification number, unique in the customs territory of the Union, assigned by a customs authority to an economic operator or to another person in order to register him for customs purposes.' Article 1 (18) of the Regulation (EU) 2015/2446.
- 53 UCC Article 5 (9)
- 54 Complete datasets are set in columns F1a, F2a, F3a, F4a and F5 in the Table legend of Annex B, Chapter 2, Regulation (EU) 2015/2446. Ibid.
- 55 'Party consigning goods as stipulated in the transport contract by the party ordering the transport' or '[p]arty consigning the goods as stipulated in the master airway bill.' Name and address are provided 'whenever his EORI number is not available to the declarant.' Consignor or consignee of master level transport contract does not need to be provided in cases of postal consignments where they can be 'deduced automatically from D.E. 7/20 Receptacle identification number'. Consignor and consignee of house level transport contract is not collected in entry summary declarations for road and rail. Ibid.

## European Commission is tasked with increasing transparency in supply chains

According to the UN Guiding Principles on Business and Human Rights<sup>56</sup> Principle 1, “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” In meeting their duty to protect human rights in the context of business operations, States should (Principle 3)

*(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*

*(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights (...).*

The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities<sup>57</sup>. These values are common for all Member States and they guide the EU’s actions both inside and outside its borders, including through its contribution towards fair trade and protection of human rights<sup>58</sup>. Recent European Union initiatives, such as those on (i) corporate liability for serious human rights abuses in third countries (2016), (ii) the EU flagship initiative on the garment sector (2017), and (iii) palm oil and deforestation of rainforests (2017) have already improved accountability, responsibility and transparency in the supply chains of businesses operating in Europe and beyond. Increased transparency of customs data on trade parties would build on and strengthen these initiatives.

In 2015, the European Commission issued a new strategy titled “Trade for All”<sup>59</sup>. The strategy seeks to ensure that the Union’s trade policies are also based on its values. Further, the strategy places emphasis on the confidence that the European consumers must be able to have on the products they buy in the global economy:

“Consumers have the right to know what they are buying in order to take well-informed decisions. The rules of the EU’s single market mean that consumers can have full confidence in the goods and services they buy from other EU Member States. EU health, safety, consumer protection, labour and environmental rules are amongst the most protective and effective in the world. But the same is not the case everywhere. And in an open global economy, where products are produced along value chains that criss-cross developed and developing economies alike, ensuring that consumers can be confident in what they buy is a bigger challenge. The Commission must address this reality.” (EC, Trade for All, 4.1.1)

The Trade for All strategy recognises that “responsible management of global supply chains is essential to align trade policy with European values” (EC, Trade for All, 4.2.3). In this regard, the Commission is tasked with increasing “transparency in supply chains” and “improving consumer information by creating additional incentives for supply-chain due diligence reporting by large EU companies”.

56 The Guiding Principles are available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciples-BusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciples-BusinessHR_EN.pdf)

57 Treaty on European Union, Article 2

58 Treaty on European Union, Article 3(5)

59 Trade for All – Towards a more responsible trade and investment policy is available at [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

- Consignee (in the master<sup>60</sup> or house level transport contract<sup>61</sup>)
- Declarant (only identification number)
- Representative (only identification number<sup>62</sup>)
- Seller (only waterways, rail and road imports)
- Buyer (only waterways, rail and road imports)<sup>63</sup>
- Commodity Code (combined nomenclature code)

The data requirements for EU customs declarations or notifications do not include manufacturer<sup>64</sup>. However, the name and address of the exporter, seller or consignor are in many cases the same as the manufacturer in a non-EU country<sup>65</sup>.

Although the customs data may tell us whether certain products are brought into the EU single market, it does not tell us into which EU MSs the products are imported after they have been released for free circulation by one of the EU MSs.

60 'Party to whom goods are actually consigned.' Ibid.

61 As a general rule, '[p]arty receiving the goods as stipulated in the lowest House Bill of Lading or in the lowest House Air waybill.' Ibid.

62 The company details can be searched from the following database by entering the EORI number: [http://ec.europa.eu/taxation\\_customs/dds2/eos/eori\\_validation.jsp?Lang=en](http://ec.europa.eu/taxation_customs/dds2/eos/eori_validation.jsp?Lang=en) (accessed 18 April 2017)

63 Seller and buyer are generally the same as in declarations for release for free circulation. Ibid.

64 The EU Customs Data Model (EUCDM) is a technical instrument that models the data requirements for various declarations and notifications laid down by EU customs legislation. EUCDM is fully compatible with the World Customs Organisation's (WCO) Data Model although EUCDM and the EU and national customs data requirements do not adopt all the data that is included in the WCO Data Model. For example, the WCO model contains also an entry point for 'manufacturer'. See European Commission, EUCDM Intro, What is it?, available at: [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/customs/customs\\_code/eucdm-intro\\_en.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_code/eucdm-intro_en.pdf)

65 The economic operators may also provide an 'additional supply chain actor(s) identification No.' but this data cannot be demanded by the MSs. It is a 'unique identification number assigned to an economic operator of a third country in the framework of a trade partnership programme developed in accordance with the World Customs Organization Framework of Standards to Secure and Facilitate Global Trade which is recognised by the European Union. The identifier of the party concerned shall be preceded by a role code specifying his role in the supply chain.' Regulation (EU) 2015/2446, Annex B. In practice, the supply chain actor can be for example, an assembler, manufacturer, storage controller or a forwarding agent.

### 3.2 PUBLICITY AND ACCESSIBILITY OF THE EU CUSTOMS DATA

Every MS has its own customs systems and databases where they collect the customs data on EU foreign trade. As stated earlier, EU customs data systems (including declarations) are to be made electronic by 2020. Despite the reform, there will be no general EU-wide IT applications for customs clearance<sup>66</sup> and no EU-wide customs database is currently planned. However, the customs data can be exchanged between MS customs authorities upon request.

In theory, if an NGO or a member of the public wanted to find out information about imports of goods to the EU, they would need to request the customs data from the national customs authority in a EU MS where the non-EU product was first imported to. This is impractical as there is no systematic way to find out to which EU MS the goods were imported first.

Even if the request was made to the right national customs authority, the company-specific customs data is considered routinely confidential by EU MSs, hence not available to the general public on the grounds of EU law or national laws and practices.

66 However, as part of this progress, it will be possible for 'traders of proven trustworthiness' to deal with one customs authority instead of several frontier control bodies in different MSs, and need only send customs information once. This concept of a 'Single Window' allows standardised information and documents to be submitted to a single electronic entry point to fulfil all regulatory requirements related to import, export and transit. Once this standardised information is electronically delivered to the single portal it is made available to all relevant authorities. Limbach, 2015, Uniformity of Customs Administration in the European Union, p. 72 and footnote 87

## Supply chain information could help identify products marketed to consumers that have been produced in conditions of labour abuse

In May 2013, China Labor Watch reported that a 14-year old boy, Liu Fuzong, had died suddenly in his dorm bed at Jinchuan Electronics Company in Dongguan City, Guangdong Province. He had used an ID card of an older boy to obtain work at the factory which, at the time, was producing motherboards for ASUS.<sup>67</sup>

According to other young workers of the factory, all Jinchuan Electronics Company employees, no matter their age, worked 12-hour shifts with two breaks. When production quotas required, overtime might be extended beyond 12 hours. The interviewed youngsters were part of an 80-person group of student workers from a school in Sichuan who had started working at Jinchuan Electronics Company shortly before Liu Fuzong's death. According to them, some students in their group were, like Liu, under the age of 16 which is the minimum age for working in China.

According to Panjiva, a US-based website with import and export details on commercial shipments, Jinchuan Electronics Company, Dongguan, exports products in more than 50 product categories, including transistors, and in hundreds of shipments<sup>68</sup>. It is possible that products manufactured by Jinchuan Electronics in conditions of labour exploitation and child labour are being imported also to the European single market and marketed to consumers within the European Union. However, it is currently not possible to confirm this from publicly available information.

See other case examples on pages 5 and 15.

67 China Labor Watch, 2013, Child Worker Dies Suddenly at Electronics Factory Producing For ASUS, <http://www.chinalaborwatch.org/newscast/209>

68 Panjiva, Jinchuan Electronics Co., LTD., Dongguan – Company profile made by Panjiva, <https://panjiva.com/Jinchuan-Electronics-Co-Ltd-Dongguan/15463836>

The “FOIA equivalent” in the EU is the Regulation (EC) No1049/2001 regarding access to European Parliament, Council and Commission documents<sup>69</sup>, but it does not apply to national customs authorities that collect EU customs data<sup>70</sup>.

Instead, EU law contains rules that may limit public accessibility to data held by national customs authorities. UCC Article 12 on communication of information and data protection stipulates, as follows (paragraphs 1 and 2):

*‘All information acquired by the customs authorities in the course of performing their duty which is by its nature confidential or which is provided on a confidential basis*

69 In addition, articles 41 (right to good administration) and 42 of the Charter of Fundamental Rights of the European Union recognise the right of any citizen of the Union and any natural or legal person residing or having its registered office in a Member State to have access to European Parliament, Council and Commission documents.

70 The Directive 2003/98/EC on the re-use of public sector information establishes a minimum set of rules governing the re-use and the practical means of facilitating reuse of existing documents held by public sector bodies of the Member States but does not contain an obligation to allow re-use of documents: It ‘shall not apply to documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules as defined in line with common administrative practice in the Member State in question’ (Article 1, paragraph 2(a)). Some of the EU MSs have signed and ratified the Council of Europe Convention (No. 205) on Access to Official Documents which is the first binding international legal instrument to recognise a general right of everyone to have access to official documents held by public authorities. Its entry into force requires 10 ratification and currently 9 countries have ratified the Convention. According to the Article 3 of the Convention, ‘all limitations to the right of access to official documents shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting privacy and other legitimate private interests and commercial and other economic interests, among others. Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the above interests, unless there is an overriding public interest in disclosure.’ Council of Europe, Chart of signatures and ratifications of Treaty 205, Status as of 7 April 2017, [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p\\_auth=M07gLS9a](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p_auth=M07gLS9a) (accessed 7 April 2017). See also Recommendation (Rec(2002)2) of the Committee of Ministers to member states on access to official documents available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c6fcc> (accessed 7 April 2017).

*shall be covered by the obligation of professional secrecy. - - - such information shall not be disclosed by the competent authorities without the express permission of the person or authority that provided it.*

*Such information may, however, be disclosed without permission where the customs authorities are obliged or authorised to do so pursuant to the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.'*

The UCC Article 12 does not define or specify, as such, which customs data shall be considered confidential, hence, the confidentiality is determined on the grounds of other EU legislation and/or EU MSs' national legislation.

Data Protection Regulation (EU 2016/679) and Directive (EU 2016/680) harmonize protection of the privacy and the integrity of natural persons in the EU. However, this legislation does not restrict publishing information on large companies – as mentioned above, in most of the commercial imports, all the parties listed in customs declarations are companies (legal persons).

The Directive on the Protection of Trade Secrets (EU 2016/943) lays down rules on the protection against the unlawful acquisition, use and disclosure of trade secrets (Article 1). The definition of trade secret in the Directive is very general and inconclusive (Article 2 paragraph 1 (1)<sup>71</sup>). However, whatever the definition, the Directive does not in any case affect the application of EU or national rules requiring trade secret holders to disclose, for reasons of public interest, information, including trade secrets, to the public or to administrative or judicial authorities for the

71 According to the Article 2 paragraph 1 (1) of the Directive, "trade secret" means information which meets all of the following requirements: (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) it has commercial value because it is secret; (c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.'

performance of the duties of those authorities (Article 1 paragraph 2 (B)).

At the national level, customs authorities in different EU MSs have thus far refused to release company-specific data on identified products based on data requests that Finnwatch and its NGO partners made in 2016. The requested data has been regarded as trade, professional or tax secrets subject to certain exemptions pursuant to rules in national customs laws, tax laws or publicity laws with exception to Dutch authorities that referred to UCC Article 12<sup>72</sup>.

For example, in Finland, the official documents are in principle public, but the Finnish Custom refused to release the data pursuant to the Act on the Openness of Government Activities, Section 24, paragraph 1 (20)<sup>73</sup>, that enlists the exempted official documents that shall be secret, including:

*'documents containing information on a private business or professional secret, as well as documents containing other comparable private business information, if access would cause economic loss to the private business, provided that the information is not relevant to the safeguarding of the health of consumers or the conservation of the environment or for the promotion of the interests of those suffering from the pursuit of the business, and that it is not relevant to the duties of the business and the performance of those duties.'*

72 In response to a data request submitted by the Centre for Research on Multinational Corporations SOMO, a Dutch NGO. See SOMO's website at: <https://www.somo.nl/> (accessed 7 April 2017). Regarding the Dutch Customs' decision, the wording of the UCC Article 12 may support some customs authorities to adopt an interpretation that customs data on traders shall not be disclosed as professional secrets (either 'by nature' or 'provided on a confidential basis', as stipulated in UCC 12 paragraph 1).

73 Act on the Openness of Government Activities (621/1999), Unofficial translation, available at: <http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf>

### 3.3 CUSTOMS STATISTICS ON THE EU'S INTERNAL TRADE

Once a non-EU product is imported and declared upon its arrival to the EU single market, it can be released for free circulation within the single market without customs. Hence, no customs data is collected when the goods cross national borders between MSs. However, national customs administrations still do collect statistical data directly from companies on trade between EU MSs using a statistical data collection system on intra-community trade in goods, Intrastat<sup>74</sup>. It

74 Trade statistics serve the needs of different users, including governments, businesses, academic and EU

began operation on 1 January 1993, when it replaced customs declarations as the source of trade statistics within the EU. The system is based on Regulation on Community Statistics relating to the trading of the goods between EU countries (EC 638/2004)<sup>75</sup>.

researchers and the general public. Intrastat, [http://www.intrastat.ro/di\\_cri\\_en.php](http://www.intrastat.ro/di_cri_en.php)

75 Article 5 paragraph 1 of the Regulation: 'A specific data collection system, hereinafter referred to as the 'Intrastat' system, shall apply for the provision of the statistical information on dispatches and arrivals of Community goods which are not the subject of a single administrative document for customs or fiscal purposes.'

## Supply chain information could help identify products marketed to consumers that have been produced in conditions of labour abuse

In 2015, China Labor Watch and The Future in Our Hands (Framtiden i våre hender) issued a follow-up report on working conditions at Pegatron subsidiary in Shanghai, a manufacturer of laptops and mobile phones for companies including Apple. During peak season, approximately 100,000 people work at Pegatron.<sup>76</sup>

The two organisations found several violations of workers' rights at Pegatron subsidiary in Shanghai including the following:

- In pre-job training, nothing is mentioned of the toxic chemicals that workers may come into contact with during the course of their work, or how to protect themselves. Workers receive eight hours of training but must sign paperwork saying they have received 20 hours of training.
- With a median work week of 60 hours, workers typically accumulate 70 to 90 hours of overtime a month. According to a staff member, a worker who simply wants to do an eight-hour, five-day work week "does not conform to our hiring practices". Overtime is mandatory.

76 China Labor Watch and The Future in Our Hand, 2015, Something Is Not Right Here, available at [http://www.chinalaborwatch.org/upfile/2015\\_10\\_21/2015.10%20Apple%20Pegatron%20report%20FINAL--compress.pdf](http://www.chinalaborwatch.org/upfile/2015_10_21/2015.10%20Apple%20Pegatron%20report%20FINAL--compress.pdf)

- Workers are fined for different behaviours, including crossing their legs or not wearing a work ID badge.
- Workers' living quarters are crowded and unhygienic. Between eight to 14 people are housed in one room; up to 40 people share one toilet. Bed bugs have spread throughout some dorms.
- There is no trade union present at Pegatron and workers are not informed about their trade union rights.

According to Panjiva, Pegatron has exported products such as for example ADSL modems from their manufacturing base in Shanghai to four customers in North America in more than 30 shipments<sup>77</sup>. According to Global Sources, Pegatron also exports to Eastern Europe<sup>78</sup>. Detailed information on their exports, or the companies importing Pegatron products to Europe, is not available from public databases. It is however, possible, that goods manufactured by Pegatron in conditions of labour exploitation are being marketed to consumers within the European Union.

*See other case examples on pages 5 and 13.*

77 Panjiva, Petagron Corporation, <https://panjiva.com/Pegatron-Corporation/21973113>

78 Global Sources, Pegatron, <http://www.globalsources.com/si/FL/Pegatron-Corporation/6008828987241/CompanyProfile.htm>

The obligation to file monthly statistical declarations on dispatches and arrivals to customs applies to companies whose total value of imported goods is more than 550 000 euros in a year. The national customs shall transmit monthly results of their statistics to the Commission (Eurostat<sup>79</sup>) – the data that the Commission holds is not company-specific.

Mandatory data that shall be collected by the national authorities for statistical purposes, pursuant to Article 9 of the Regulation, includes the following:

- Identification number of the party
- Flow (arrival/dispatch)
- Commodity (CN-code)
- MS of consignment/dispatch, on arrival
- MS of destination, on dispatch.<sup>80</sup>

In addition, pursuant to Article 8 of the Regulation, national authorities shall set up and manage a register of intra-Community operators containing at least:

- Consignors, upon dispatch, and
- Consignees, upon arrival.

All data collected for statistical purposes is treated as confidential, hence, no company-specific data is released to the public. Pursuant to the Regulation on European Statistics (EC) 223/2009 the development, production and dissemination of European statistics shall be governed by 'statistical confidentiality' (Article 2 para 1 (e)) which is further elaborated in the European Statistics Code of Practice (Principle 5):

'[t]he privacy of data providers (households, enterprises, administrations and other respondents), the confidentiality of the information they provide and its use only for statistical purposes are absolutely guaranteed.'

The European Commission has made a proposal for a Framework Regulation Integrating Business Statistics (FRIBS)<sup>81</sup> which is currently under discussion in the Council of the European Union. As part of this reform, Commission may issue delegated regulation that would extend the data requirements related to Intrastat to include data on trading partners.

79 The Statistical Office of the European Communities

80 MSs may also collect additional information, for example the country of origin, on arrival.

81 European Commission, European business statistics (FRIBS), [http://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-114\\_en](http://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-114_en) (accessed 7 April 2017)

## 4. Recommendations for new European customs data transparency rules

In order to increase transparency and accountability for human rights abuses, EU customs on trade parties (companies) in imports entering European ports (foreign trade) and cargo that is being traded between Member States of the EU (trade within the single market) should be made available to the general public. To make this data truly accessible, the data should be publicly available at a centralised on-line database, in open format and free of charge or by paying a moderate fee at production cost at the most.

To achieve this aim, we invite the EU to take the following legislative action in the short term:

**Recommendation 1:** Make it mandatory for the EU MSS' customs authorities to make the customs data that they collect on trade parties (companies) of EU-imported products available to the public by 2020.

This could be done by introducing an amendment to the Union Customs Code Article 12 (Regulation (EU) No 952/2013) that would harmonize the law within the EU so that customs data on trade parties that are large companies (legal persons) of goods imported to the EU would not be considered confidential by any of the EU member states.

This legal reform should be implemented simultaneously with the MSSs developing new IT systems required by the UCC and the UCC Delegated Act and UCC Transitional Delegated Act<sup>82</sup>. IT systems are required to be operational by 2020.

The data to be made open to the public shall be listed as: exporter<sup>83</sup>, importer, declarant, representative, seller, buyer, country of destination, country of dispatch/export, country of origin, description of goods and commodity

code, as this data shall be collected by MSS' customs authorities via declarations for release for free circulation, pursuant to UCC Delegated Act<sup>84</sup>. In addition, the data should also include consignor and consignee of the commodities as this data is collected in most of the entry summary declarations, pursuant to the UCC Delegated Act<sup>85</sup>.

The publicity should be absolute so that companies cannot request confidential treatment of the listed data of legal entities on any grounds. This would be the most cost-efficient solution and would guarantee a systematic and uniform application of the law throughout EU MSSs. The identity of the trade parties of the EU-imported goods is not sensitive as such to the businesses and shall not be protected as trade or professional secrets<sup>86</sup>. Usually, businesses want to hide data on quantity or prices of the goods from their competitors but this data is not proposed here to be made public.

However, in case any exception for confidentiality will be suggested, it should be granted only upon a specific request for confidentiality by a concerned company on a shipment-by-shipment basis where the requester has the burden of proof to provide sufficient facts to support the conclusion that the disclosure of the data (names and addresses of the trade parties/companies, as enlisted above) could cause substantial economic loss to the requester company provided that the information is not relevant to the safeguarding of the health of consumers or the conservation of the environment or for the promotion of the interests of those suffering

<sup>82</sup> Regulation (EU) 2015/2446 and Article 55 of Regulation (EU) 2016/341

<sup>83</sup> Currently, the data on exporter is optional for MSS which means MSS may decide to waive this data. Importer, seller and buyer are mandatory for MSS to collect. Regulation (EU) 2015/2446, Annex B

<sup>84</sup> Regulation (EU) 2015/2446

<sup>85</sup> See column H1 for the data requirements for declarations for release for free circulation and columns F1a, F2a, F3a, F4a and F5 for the data requirements for entry summary declaration for waterways, air cargo, express consignments, postal consignments, road and rail imports in the Table legend of Annex B, Chapter 2, Regulation (EU) 2015/2446.

<sup>86</sup> Many international brands and traders, such as H&M, S-Group, Neste, Kesko and Lindex, already publish this data on voluntary basis.

from the pursuit of the business. In these very exceptional cases, the decision granting the confidentiality should be valid only for a maximum period of one year.

The Union has exclusive competence in Customs Law under Article 3 paragraph 1 (a) of the Treaty of the Functioning of the European Union (TFEU), hence, the EU has the required jurisdiction to make the legal amendments proposed herein to make the customs data available to the public in the EU.

**Recommendation 2:** Make the customs data on trade parties accessible *en masse* upon request made to national customs authorities.

An amendment is needed to the UCC (or other Regulation or Directive) that would stipulate that the data or records acquired from the declarations for release for free circulation and entry summary declarations shall be made available to the interested members of the public for free or at the government's production cost<sup>87</sup>. The amended legislation should make clear that the data shall be available *en masse*. The amendment could also stipulate that MSs can establish public reading rooms where the data can be freely browsed and copied.

This legislation would make it possible for businesses to ask for comprehensive data sets from national customs authorities and establish commercial services where they combine the customs data from different MSs to one user-friendly, searchable online database, like in the USA. This would be a very cost-effective way to enhance accessibility of the data in the short-term as there is no need to use public funds and resources to establish official databases. This is in line with the Directive 2003/98/EC on the re-use of public sector information that encourages

<sup>87</sup> This is in line with the Directive 2003/98/EC on the re-use of public sector information that states that 'Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents' (Preamble (14)).

MSs to make public sector information available for re-use<sup>88</sup>.

In addition to the short-term primary legislative proposals, we invite the EU to consider also taking the following legislative action in the long term (post-2020):

**Recommendation 3:** Make 'exporter' and 'manufacturer' mandatory customs data elements to be collected by EU MSs' national customs authorities. This does not require a legal amendment to the UCC. It is enough that the Commission issues a delegated regulation supplementing the UCC, defining 'exporter' and 'manufacturer' as mandatory data elements to be collected by each MS in declarations for release for free circulation – currently, this is only optional data that MSs may decide to waive, pursuant to the UCC Delegated Act<sup>89</sup>. These extensions of data requirements would enhance transparency and traceability of global value chains in cases where a manufacturing company uses a broker or distributor to bring the goods to the EU single market as in those cases the name of the manufacturer may not be in the customs records.

**Recommendation 4:** Make it mandatory for customs authorities to collect data on parties on the trade between EU MSs and make the data available to the public. EU MSs collect already a very limited set of company-specific data on EU internal trade. By extending the data elements and making this data available to the public it would be possible to track down where (into which EU MSs) and by whom the goods are imported after they are released for free circulation in the first point of entry to the EU single market. This

<sup>88</sup> According to the Directive 2003/98/EC on the re-use of public sector information, '[w]ider possibilities of re-using public sector information should inter alia allow European companies to exploit its potential and contribute to economic growth and job creation' (Preamble (5)). 'There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource' (Preamble (6)). 'Public sector bodies should promote and encourage re-use of documents, including official texts of a legislative and administrative nature in those cases where the public sector body has the right to authorise their re-use' (Preamble (9)). See also footnote 51.

<sup>89</sup> Commission Delegated Regulation (EU) 2015/2446

legal reform, unlike the other recommendations that fall under the EU's exclusive competence, falls under shared competence between the Union and MSs in the principal area of internal market under Article 4 of the TFEU.

**Recommendation 5:** Interconnect the national customs databases and establish an EU-wide customs database managed by the European Commission once all the customs declarations are made in electronic format and the IT systems are operational in the EU<sup>90</sup>. The Commission already manages centralized databases on certain customs data<sup>91</sup>.

### **Possibilities to enhance customs transparency at national level**

Transparency of customs data may be enhanced also at national level by making amendments to national laws<sup>92</sup> or appealing to the court in case the customs data is not released. For example, in Finland, it could be argued that customs data concerning the identity of the traders cannot be regarded – at least not automatically – as a private business or professional secret or as other comparable private business information where access to this information would cause economic loss to the private business. It could also be clarified that the disclosure of the trade parties of the products manufactured by companies that breach human rights is relevant such as for the promotion of the

interests of those suffering from the pursuit of the business, as prescribed by the Act on the Openness of Government Activities (see p. 14).

<sup>90</sup> All the customs information (declarations etc.) is to be made electronic by 2020 in the EU. At the same time, the national systems are further harmonized. See p. 6.

<sup>91</sup> For example, binding tariff information (BIT) is issued by MSs for economic operators and transmitted to the Commission and stored in a central database managed by the Commission and accessible to all national administrations. European Commission, Binding Tariff Information, [http://exporthelp.europa.eu/thdapp/display.htm?page=it%2Fit\\_BindingTariffInformation.html&docType=main&languageId=en](http://exporthelp.europa.eu/thdapp/display.htm?page=it%2Fit_BindingTariffInformation.html&docType=main&languageId=en) (accessed 7 April 2017)

<sup>92</sup> To support the national amendments, the European Commission should also consider the possibility to issue a non-binding soft law instrument clarifying UCC Article 12 so that mandatory data on trade parties that is collected by each MS in declarations for release for free circulation and in entry summary declarations is not considered by its nature confidential or as information provided on a confidential basis, hence, not being covered by the obligation of professional secrecy in the meaning of the Article 12 of UCC.

## 5. Conclusions – Why the EU should take action

The Customs Union is a cornerstone of the European Union and an essential element in the functioning of the Single Market. Common rules are applied at the Union's external borders. These common rules go beyond the Customs Union as such and extend to all aspects of trade policy, such as preferential trade, health and environmental controls, the common agricultural and fisheries policies, the protection of economic interests by non-tariff instruments and external relations policy measures.<sup>93</sup>

Harmonizing EU legislation on public disclosure of customs information as discussed above would ensure uniform application of EU customs law in this regard. National measures adopted by MSs cannot provide effective solutions for enhancing transparency as divergences in transparency rules at national level cannot guarantee full and effective access to EU customs data and would affect the functioning of the Single Market. Hence, this issue is dealt with more efficiently by taking action at EU level.

Already, EU legislation in some cases impacts the transparency and disclosure of private or otherwise confidential information at MS level. For example, pursuant to the Regulation on the financing, management and monitoring of the common agricultural policy ((EU) No 1306/2013<sup>94</sup>), "MSs shall ensure annual ex-post publication of the beneficiaries of [European Agricultural Guarantee and the European Agricultural Rural Development] Funds."

The information published shall contain: the first name and the surname, the full legal name or the full name of the associations depending on who the beneficiary is; the municipality where the beneficiary is a

resident or otherwise officially registered; the amounts of payment; and the nature and the description of the measures financed. As per the Regulation, the information must be made available on a single website per MS and remain available for two years from the date of initial publication.

These methods of publishing information were devised in line with the principle of proportionality and so as to strike a balance between the objectives of transparency and reinforcing public control of the use of the money from these two agricultural funds and privacy of the beneficiaries<sup>95</sup>. The same could be done in respect to the customs law.

The Union has the required competence to act as it has exclusive competence in Customs Law<sup>96</sup>. The proposed actions respect the general EU law principle of proportionality, as laid down in Article 5 of the Treaty on European Union (TEU): opening a limited set of customs data to the public would not present intrusive (or any) limitation or demonstrable constraining effect on the EU's external relations, international trade, free movement of goods in the EU single market or business conduct of European companies. They would bring only relatively low administrative burden to the national authorities as it is about data that customs will collect and hold in any case – the only thing is that they would need to provide public access to this data. An EU-wide database managed by the Commission or other EU institutions would be only a long-term object.

In contrast, the proposed measures will bring invaluable benefits related to transparency and sustainability in global value chains and contribute towards efforts to eliminate forced labour and other human rights abuses linked to EU-imported products and consumption. It would be one vital (and cost-effective) step

<sup>93</sup> European Union DG TAXUD, 2013, Study on the Evaluation of the EU Customs Union, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/evaluation\\_customs\\_union\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/evaluation_customs_union_en.pdf). Regulation (EU) No 1306/2013, Article 111

<sup>94</sup> ((EU) No 1306/2013, Article 111 (see also recitals 69–87), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0549:0607:en:PDF>

<sup>95</sup> See Regulation (EU) No 1306/2013, recitals 69–87

<sup>96</sup> Article 3 paragraph 1 (a) of the Treaty of the Functioning of the European Union (TFEU). The data on trade between EU countries falls under shared competence between the Union and Member States in the principal area of internal market under Article 4 of the TFEU.

for managing change towards a sustainable global economy by combining long-term profitability with social justice. The proposed measures will also create a level playing field for industries as, presently, some companies disclose supply chain information voluntarily but most do not.

The proposals are also in line with the latest legal reforms in the EU enhancing transparency and corporate responsibility in global value chains, such as the Non-Financial Reporting Directive which gives investors, consumers and other stakeholders easy access to information on the impact of businesses on society<sup>97</sup>. By adopting the proposed measures the EU would show that it is taking seriously its duty to ensure compliance with principles and rules concerning fundamental rights<sup>98</sup>.

97 Other recent transparency legislation related to global value chains include the Timber Regulation (EU No 995/2010) which prohibits the placing of illegal harvested timber on the EU market and requires EU traders to exercise due diligence, and Conflict Minerals Regulation (approved by the EU Parliament and the EU Council in 2017) that will require European Companies to ensure their trade of minerals from conflict-affected areas is not linked with human rights abuses.

98 According to the Article 3(5) of Treaty of European Union (TEU), *'In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.'*

## Annex: Comparing US and EU customs data systems

USA	EU
Federal state; federal law and state law	Customs Union; EU law and national laws
Customs data only on international trade, not on state-to-state trade	Customs data on EU foreign trade only; statistical data on EU internal trade
Data of interest: shipper/importer, consignee	Data of interest: exporter*, importer, seller, buyer, consignor, consignee <sup>1</sup>
Federal customs agency, CBP <sup>2</sup> , collects data to one federal database	National customs authorities collect data; no EU-wide database
Data can be requested from CBP (one source)	Data must be requested from national authorities
Publicity as general rule (for any person); importer or consignee may request confidential treatment of its name and address	No publicity or very limited publicity; national authorities routinely decline releasing data on exporter/importer, etc...
Legal basis of publicity/confidentiality: Freedom of Information Act (FOIA) and Code of Federal Regulations (CFR)	Regulation (EC) 1049/2001 sets rules on the right of access to the documents of the EU institutions but it does not apply to national customs authorities that collect EU customs data; specific data protection and trade secret (confidentiality) rules in EU law; national laws  National customs administrations collect statistical data on trade between EU Member States by using an EU-wide data collection system, Intrastat. The system is based on Community Statistics Regulation relating to the trading of the goods between EU countries (EC) No 638/2004. This data is protected by statistical confidentiality.
Data available <i>en masse</i> in CD-ROMs	No data availability <i>en masse</i>
Commercial services providing user-friendly databases (Import Genius, Panjiva)	So far, national customs authorities have refused to disclose company-specific customs data to commercial services.

<sup>1</sup> The data on exporter is optional for Member States which means the MS may decide to waive this data. Importer, seller, buyer in declarations for free circulation as well as consignor and consignee in most of the entry summary declarations are mandatory for MSs to collect, pursuant to UCC Delegated Act (Regulation (EU) 2015/2446), Annex B.

<sup>2</sup> Customs and Border Protection





Finnwatch ry  
Malminrinne 1B, 2.krs  
00180 Helsinki  
[info@finnwatch.org](mailto:info@finnwatch.org)  
[www.finnwatch.org](http://www.finnwatch.org)  
[@Finnwatch1](https://www.instagram.com/finnwatch1)