

SOMO



Transparency for fairer and greener EU supply chains

**The need for Union Customs Code reforms for
non-state actor access to EU customs information**

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**European
customs law
reforms are
instrumental in
making trade
and production
fairer and
greener**

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1. Key messages

EU supply chains need to become much more transparent to effectively address the abuses they are fraught with. EU customs law reforms can ensure supply chain transparency if:

- detailed trade information held by EU customs is accessible through freedom of information requests;
- a specific set of detailed trade information held by EU customs is accessible online through a public central database;
- the quality of trade information collected by EU customs improves by requiring more detailed customs declarations and collecting information on intra-EU trade.

These reforms SOMO proposes would add a minimal administrative burden for EU customs and companies, respect data protection rules, and address concerns about commercially sensitive information.

2.

Introduction

EU value chains are infested with human rights violations, land grabs, deforestation, pollution, and adverse biodiversity and climate impacts. EU companies are linked to deforestation¹, fraud², modern slavery³, and land grabs⁴ through imports of Brazilian meat, and involved in illicit trade of tropical timber from Myanmar⁵ and of Russian sanction products,⁶ to name a few examples. Forced labour and child labour are reported in the production of least 159 products in 78 different countries worldwide.⁷

In the Xinjiang autonomous Uyghur region in China, this type of abuse and exploitation is especially rampant. The region is a major hub in world production of cotton (20 per cent),⁸ tomato concentrate (19 per cent),⁹ and polysilicon (45 per cent).¹⁰ EU companies then directly import or further process these products in the form of solar panels, apparel and textiles such as t-shirts and sweaters, and tomato-based processed food products such as sauces, soup, and pizza.¹¹ Mainly because of imports of soy and palm oil, companies in the EU also account for 16 per cent of all deforestation associated with worldwide trade of agricultural commodities. This amounts to a loss of 0.3 million hectares of tropical forest and emission of 118 million tonnes of CO₂ each year.¹²

EU customs: roles and challenges

Member state customs authorities are responsible for taxing goods crossing EU borders and to prevent drugs, weapons, and other illegal or unsafe products from leaving or entering the common market. Increasingly, EU policymakers are also looking to broaden customs' traditional remit to include tasks in enforcing legislation on issues such as deforestation and human rights violations in supply chains.

EU customs, however, already face numerous challenges, including unequal enforcement among member states and a general lack of capacity to fulfil their duties in relation to the growth of e-commerce. Therefore, it is the European Commission's (EC) ambition to reform the Union Customs Code (UCC), the EU's legal framework for union customs, to better equip customs for their current and future work.¹³ In May 2023, the EC put forward a proposal for a new UCC including a new EU customs authority and an EU trade information hub.¹⁴ These two institutions are to improve coordination, information collection, and risk management through a more centralised approach. The proposal is, however, silent on the feature that would enable the UCC to contribute most to making EU supply chains more just and sustainable: transparency.

Non-state actors: roles and challenges

Non-state actors, such as civil society organisations (CSOs), trade unions, journalists, and academics, play an important role in bringing injustices in global value chains to light. Non-state actors are also pivotal in the development of laws for ensuring respect for human rights and the environment in EU supply chains, and increasingly play a role their functioning as well. CSOs, for example, inform and challenge responsible business conduct due diligence approaches, help victims and negatively impacted communities obtain remedy, and support enforcement by submitting substantiated concerns and raising complaints.

However, non-state actor contributions in all these areas could be much more effective, with more detailed insight into global supply chains and trade flows. Access to EU customs trade information would facilitate stakeholder interventions with companies and authorities to make companies' value chains more respectful of human rights and the environment and consequently contribute to more effective implementation of regulation in these areas.

International supply chain transparency

International supply chains have become more transparent as the result of CSO advocacy and campaigning, growing investor and consumer expectations, and an increasing number of mandatory and voluntary instruments for responsible business conduct due diligence. More companies now share information about their supply chains than ever before. Nonetheless, the number of companies that publicly disclose information on their business relations, such as suppliers and corporate clients, and transactions, such as the volume and origin of the commodities they source or sell, remains limited.

Customs authorities collect detailed supply chain information as goods are traded over international borders. In the case of major economic powers such as the United States or India and many other countries, customs information on trade transactions between companies is accessible. However, in the world's largest trading bloc, the EU,¹⁵ member state customs deny non-state actor access to company-specific information because it is considered confidential on the basis of member state laws and practices or UCC article 12.¹⁶

Since 2017, a European Parliament (EP) resolution¹⁷ and several CSO statements¹⁸ have advocated in vain for the public interest of non-state actor access to customs information. The new UCC presents a historic opportunity for the EU to move forward on supply chain transparency and to make trade and production more sustainable and fairer internationally. In this briefing we show that enabling non-state actors to access customs trade information is both urgently needed and compatible with concerns for privacy, data protection, and commercial interest.

3. Transparency in global supply chains

Global value chains with their asymmetric power relations and extractive nature are, and have historically been, associated with unequal value distribution, environmental harms, and human right violations.¹⁹ Inequality and adverse human rights and environmental impacts particularly occur at the level of raw materials production, manufacturing, and product and/or waste disposal.²⁰ These massive challenges, which both the EC and the EP recognise, compromise the benefits of international trade and the sustainability of international supply chains.

3.1 From voluntary to mandatory without more transparency

For decades, governments around the world have relied on voluntary and self-regulatory approaches, that is, corporate social responsibility, to address the negative social, economic, and ecological impacts of global value chains. Critics have consistently questioned such approaches' effectiveness, and many CSOs have exposed and denounced their failure.

This criticism has in the end contributed to a change of the tide. The ineffectiveness of self-regulation in making global value chains fairer and greener is now widely acknowledged, including by the EC.²¹ Consequently, there has been increasing regulation for responsible business conduct and sustainable supply chains. EU member states France and Germany, for example, have passed national-level corporate due diligence laws,²² and there is EU-wide legislation for conflict minerals,²³ illicit tropical timber,²⁴ and corporate sustainability reporting.²⁵ Similarly, EU legislation banning forced labour products²⁶, sustainable batteries,²⁷ deforestation-free products,²⁸ and corporate sustainability due diligence²⁹ are in various stages of development in the legal process.

In EU laws for making supply chains more sustainable, the emphasis is on legislating for companies to address problematic issues in their business relations or sectors of operation. Transparency plays a role in all of them, with companies required to report on their efforts and processes to combat or prevent malpractices in their operations, business relations, and supply chains. In the cases of conflict minerals and tropical timber, companies even need to be transparent about their sourcing, but only to the competent authorities. Moreover, for companies to be able to conduct adequate responsible business conduct due-diligence and report on it their supply chains need to be transparent.

Therefore, supply chain transparency is conditional for companies' responsible business conduct due diligence efforts and state enforcement in EU regulation. So far, however, EU regulation has not required companies to communicate about supply chain details publicly.

3.2 Promoting sustainability by improving transparency

Over many years, supply chains have gradually become more transparent.³⁰ Yet public access to company-specific trade information is still inadequate for CSOs to ascertain whether and how companies are connected to problematic conditions in their extended supply chains and vice versa.

The number of companies that publicly disclose detailed information on their business relations and sourcing is still very limited (see Box 1). Those that do are often larger, frontrunning, and consumer-facing multinational corporations in sectors such as retail, food, garments, electronics, and automotive. The supply chains of smaller business-to-business companies and those operating in other sectors mostly remain opaque.

Box 1. Comparative research on company supply chain transparency

There is a lack of comparative research on supply chain transparency. The studies available show that transparency is limited even in sectors that have a long history of being challenged by CSOs for unsustainable practices in their value chains, such as garments and food retail.

For example, of 12 major EU retailers reviewed by Oxfam in 2022, only half disclose the names and locations of their first-tier food suppliers.³¹ Also in 2022, SOMO found that just 29 out of 100 leather apparel, footwear, and accessories brands and retailers disclose first-tier supplier lists.³² And the Fashion Transparency Index reported in 2022 that only 52 per cent of 250 major fashion brands and retailers reviewed publish lists of their first-tier manufacturers.³³

As global value chains often are complex and extended, information on connections between buyers and first-tier suppliers is helpful but insufficient to fully map or understand them. Primary or intermediate production may take place further upstream (see also Box 2), and/or production may be entirely outsourced by first-tier suppliers.

The lack of detailed supply chain information frustrates independent oversight and verification by CSOs. In practice, therefore, the supply chain transparency regulation gap means insufficient opportunity for adequate public scrutiny. Moreover, non-state actors are hindered from using the alert and complaint mechanisms built into most of the laws for making EU supply chains making supply chains greener and fairer. Opaque supply chains are also in the way of rightsholders such as supply chain workers and communities seeking remedy and compensation from companies that are linked, or contribute, to the harmful impacts they suffered. Last but not least, CSO contributions to inform, develop, and scrutinise company due diligence approaches under these laws are impeded by a lack of supply chain transparency as well. All these factors directly undermine the (potential) effectiveness of sustainable supply chain laws in the EU.

Reform of the UCC to allow non-state actor access to customs trade data would be a quick and effective way to improve supply chain transparency in the public interest without imposing much additional administrative burdens on companies.

4. Non-state actors and customs trade data

Detailed company-specific information on commodities and products traded internationally can be obtained from a dozen commercial trade intelligence services such as Export Genius³⁴, Globalwits³⁵, and Panjiva³⁶. Besides official customs filings, these services report having access to bills of lading and vessel manifests. In the USA, trade information can also be obtained through freedom of information requests to federal authorities.³⁷ Export Genius currently provides customs trade information about both imports and exports with company details for 48 countries worldwide.

Trade information that customs authorities hold does not generally cover international supply chains from primary production upstream to retail companies downstream (see also Chapter 4). For supply chain transparency, however, countries with accessible customs information are a valuable source of information not available elsewhere. Customs information helps non-state actors ascertain how companies are connected in global value chains. This enables them to hold companies worldwide accountable for negative impacts in their supply chains and business operations and to promote corporate accountability regulation and government enforcement (see Box 2).

In the USA, CSOs file petitions with US customs to help them identify and block imports of products such as palm oil,³⁸ cocoa,³⁹ cotton,⁴⁰ and disposable gloves⁴¹ produced using forced labour. CSOs have also helped US customs enforce sanctions and import bans on products such as fruit and vegetables from the Xinjiang autonomous region, China,⁴² and timber from Myanmar.⁴³

There are also cases of non-state actors playing a role in EU customs enforcement. Research surfaced one case in which CSOs supported EU customs' illicit tropical timber regulation enforcement (see Box 3). This case was based on exceptional access to EU trade information.

Box 2. Case: Child labour in mica mining

Mica is a mineral in high demand, mostly from the electronics and automotive industries.⁴⁴ In 2019, SOMO reported about the precarious labour conditions and low incomes of mica workers and their families in Madagascar, the world's third largest exporter by volume. Among other problems such as sexual exploitation and a lack of access to basic services, child labour was found to be a hallmark of mica mining and sorting in this country.

Almost all Malagasy mica exports have China as their destination. The availability of customs data on Chinese imports at the time allowed SOMO to identify the main buyers in that country. Through interviews and additional research in China, we could ascertain that these buyers and/or their Chinese clients process mica from Madagascar in a range of (semi-finished) products including insulation material, electric wires and cables, and electric motors and appliances. As customs data on EU imports and Chinese exports are not available, only a few European clients of these Chinese manufacturers could be identified and held accountable.⁴⁵

However, some high-profile US clients of the Chinese manufacturers were exposed by NBC News based on US customs import information.⁴⁶ Since 2020, Malagasy mica has been on the country's Bureau of International Labor Affairs (ILAB) list of 'goods produced by child labor or forced labor'. With publication of the inventory, ILAB intends to raise public awareness of child and forced labour and to promote efforts to combat them in production.⁴⁷ In 2022, ILAB funded a large programme to address child labour in Madagascar's mica mining.⁴⁸

Logging in Myanmar. Photo: United Nations.



Box 3.

Case: Illicit tropical timber import from Myanmar

Myanmar is the world's leading supplier of teak, a tropical hardwood used extensively for yacht decking and luxury furniture. However, trade in teak fuels extensive deforestation in this South Asian country⁴⁹ and props up its brutal military junta, responsible for genocidal violence against the country's Rohingya Muslim minority and other atrocities.⁵⁰

Following implementation of the EUTR in 2013, EU importers need to be able to show documentation that traces timber to an exact and legal logging location. Since 2017, there has been consensus among EC and member state experts that this is impossible for timber from Myanmar.⁵¹ Notwithstanding, trade statistics showed a continuous surge of EU teak imports from Myanmar from 2010 to 2021, when trade started imploding.⁵² The eventual decline in imports relates to an [EU common position](#) of December 2020 formalising the 2017 consensus,⁵³ and EU sanctions on the state-owned monopoly teak trading company Myanmar Timber Enterprise (MTE) from mid-2021.⁵⁴

Shifting trade patterns

In 2017, a pattern emerged with trade shifting from countries with stricter EUTR enforcement, for example Denmark, Germany, and the Netherlands, to more lenient member states, such as Croatia, Czechia, Italy, and Poland.⁵⁵ In 2020 and 2021, the non-governmental Environmental Investigation Agency (EIA) revealed that companies continue importing illicit 'blood teak' into the EU. The EIA reported that companies abuse weaknesses in EUTR rules and the unequal implementation and enforcement of the regulation across member states.⁵⁶

In Italy, for example, teak imports surged after the EU's adoption of the common position because, unlike in northern member states, the Italian authorities continued to allow teak from Myanmar. Italian importing companies, some of which are suspected to be mere front or conduit firms, had exported 60 shipments to other member states, according to the EIA.⁵⁷

Even with proper enforcement, however, penalties for EUTR violations differ substantially across member states, which creates incentives for rerouting trade. To illustrate, importers of illicit wood face being sent to prison for up to six years in the Netherlands, whereas in Croatia and Czechia they may receive only a fine.⁵⁸

‘Substantiated concerns’

By filing so-called ‘substantiated concerns’ and advocacy, the EIA was able to contribute to EUTR enforcement improvement in a number of EU countries, including Croatia, Germany, Italy, and the Netherlands.⁵⁹ In these countries, consignments of teak were seized or confiscated and teak importers were issued with warnings. A Croatian company importing teak for buyers with stricter EUTR implementation was summoned to improve its due diligence and is under investigation for fraud.⁶⁰ The EIA’s successful interventions were possible because of exceptional access to Croatian and Italian import declarations (see section 4.4).

In March 2023, the International Consortium of Investigative Journalists (ICIJ) and their media partners reported on the massive continuing scale of worldwide avoidance of international trade sanctions on teak from Myanmar, including in the EU.⁶¹ The ICIJ exposed the traders and shipbuilders exploiting defective EUTR oversight, the buyers of extravagant luxury yachts with their ‘blood teak’ decks, and the fraudulent practices involved.⁶² Leaked documents from MTE, non-EU customs information, and investigations in importing countries formed their evidence base.

5.

Customs trade data in the EU

According to the EC: “Since its birth in 1968, EU’s Customs Union is the cornerstone of the EU single market and external trade policy and a key component of EU strategic autonomy.”⁶³

The Union Customs Code (UCC, Regulation (EU) 952/2013) is the common framework for customs rules and procedures in the EU. The UCC aims to facilitate cross-border flows of goods while protecting financial, economic safety, and security interests of the Union and its member states. The UCC is also concerned with implementation of data-processing techniques and IT systems to facilitate digital customs declarations and information sharing among member states’ customs.⁶⁴

There are no customs authorities or databases at the EU level. Customs authorities in member states are responsible for the implementation of UCC rules and procedures. Customs traditionally levy import taxes (see also Box 6); however, they are also increasingly involved in non-fiscal tasks such as preventing market entry of unsafe consumer products, stolen cultural heritage, endangered animals, explosives, counterfeits, and drugs.

5.1 Collection of extra-EU trade data

Of the 51 types of declarations⁶⁵, also called procedures, in use in the EU today, the most important for supply chain transparency are those for import⁶⁶ and export (see Box 4). Entry and exit summary declarations are also interesting for supply chain transparency because, next to announcing imports and exports, they register shipments that merely make a stopover in a member state on their way out of the EU.⁶⁷

The UCC is supplemented by Commission Delegated Regulation (EU) 2446/2015,⁶⁸ which specifies the data requirements for customs declarations. For EU imports, for example, it is mandatory⁶⁹ to provide information⁷⁰ about the exporter,⁷¹ importer,⁷² declarant,⁷³ representative,⁷⁴ seller,⁷⁵ buyer,⁷⁶ country of destination, region of destination, country of dispatch,⁷⁷ country of origin, country of preferential origin,⁷⁸ description of goods, commodity code, net mass, and statistical value. Member states and declarants may, however, decide to waive certain of these entry categories⁷⁹ until 2025 at the latest,⁸⁰ when IT systems are to be fully operational.⁸¹

Need for data quality improvement

The quality of the information collected in customs external trade declarations needs to improve for more transparent supply chains and adequate customs enforcement. In the current arrangement, for example, there may be confusion about the roles of different actors in the supply chain. The exporter may be the producer or manufacturer of an exported good but they need not be. Alternatively, a buyer or importer may be buying products on behalf of the actual buyer or do so in order to process under contract. Manufacturers or producers and second-tier or end buyers therefore need to be identified in customs declarations if these are, or can be, known by declarants. Declarants should also have to identify the product supplier in the case of exports and define the mandatory elements for product descriptions such as name, brand, and batch number.

The EC in its legal proposal for banning forced labour products singles out the exact same quality flaws hindering effective enforcement. It proposes specific delegated and implementing regulation to make it mandatory for companies to report to customs on these aspects for specific risk products.⁸² The EC addresses some of this ambivalence in its new UCC proposal, but there is no reference to mandatory details for product descriptions.⁸³

Box 4. Case: Evading Russian export sanctions

In February 2023, the European Bank for Reconstruction and Development (EBRD) reported that EU export sanctions to cripple the Russian war economy may be evaded on a substantial scale through neighbouring conduit countries.⁸⁴ As well as military technology, weapons, and munition, the EU has also imposed sanctions on the export of dual-use technology and luxury goods.

Based on trade statistics, the EBRD found that direct exports to Russia of these products, including computer chips, refinery factory parts, and expensive cars, yachts, jewellery, and clothes, plummeted after sanctions were imposed on them in March 2022. In the same period, however, indirect imports of these sanction products, rerouted through countries like Armenia, Kazakhstan, and Kyrgyzstan, increased markedly. Overall, the EBRD estimates indirect exports accounted for 5 per cent of the exports prior to the sanctions. Post-sanctions flows may be much higher, because of unreported illicit trade.

Export flows to Russia of sanctioned dual-use and luxury goods

In December 2022, the Dutch state media outlet NOS found a similar pattern of export flows of dual-use and luxury goods from the Netherlands to Russia through conduit countries.⁸⁵ While indirect exports to Russia are illegal, the NOS found that only a handful of sanction products exported to conduit countries were withheld by the Netherlands authorities.

With access to EU customs data, non-state actors would be better equipped to expose and ascertain patterns of sanctions evasion. Currently, import declarations of the conduit countries that have seen the highest increase of trade in sanction products from the Netherlands, are not accessible via commercial trade information providers.⁸⁶ If the business information in EU export declarations were publicly accessible, it could for example help with investigation of the importing companies in conduit countries and their clients.

Experience with trade in tropical timber from Myanmar (see Box 3) and products from the Xinjiang autonomous Uyghur region, China (see Box 5), shows how non-state actor contributions have been crucial in exposing trade obfuscation. The Uyghur Human Rights Project alerted US customs to continued imports of red dates from Xinjiang, helping expose how Chinese companies actively conceal the dates' origin to avoid US sanctions.⁸⁷ Research by the Sheffield Hallam University Helena Kennedy Centre has also exposed how China's cotton industry has benefitted from an export strategy that obscures cotton's origin in the Uyghur region.⁸⁸

5.2 Collection of intra-EU trade data

The common internal market, facilitating trade between member states through removal of internal trade barriers, is a fundamental feature of the EU. In the UCC, imports into the EU internal market are formally referred to as ‘released for free circulation’. Therefore, once goods have been imported into the EU there are no further customs formalities. This means that the movement of goods across member state borders will not be evident from customs import declarations. However, pursuant to Regulation (EU) 2019/2152 on European business statistics,⁸⁹ customs⁹⁰ and other competent authorities in member states also collect information about trade flows across member state borders.

Companies in the EU that trade goods with companies in other member states need to report on this monthly when trade is above a certain value threshold that differs per member state and with the direction of the trade flow.⁹¹ Reporting obligations are less comprehensive than those of import or export declarations. For dispatches (exports), for example,⁹² there are only nine mandatory fields: partner (buyer), period (month), transport mode, commodity, partner member state, country of origin, value, volume, and nature of transaction.⁹³

5.3 Disclosure of EU customs data

Customs authorities in EU member states consistently refuse non-state actors’ requests for the company-specific information they have access to because it is considered confidential on the basis of member state laws and practices or the UCC’s article 12.⁹⁴ According to this article:⁹⁵

“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 shall be covered by the obligation of professional secrecy. Except as provided for in Article 47(2), such information shall not be disclosed by the competent authorities without the express permission of the person or authority that provided it.”

Article 12 does not specify what information exactly is confidential by nature or declaration. Nor is there further guidance, such as on approaches or procedures for verifying and/or obtaining permission from declarants, or a definition of terms in the rest of the regulation. Despite its ambiguity and flaws, the Dutch authorities frequently use article 12 to deny access to customs declaration information in response to freedom of information requests (FOIs) (see Box 6).

Box 5. Case: forced labour and forest destruction

China is the world's largest producer of tomatoes⁹⁶ and exporter of tomato paste.⁹⁷ The Xinjiang autonomous Uyghur region produces 80 per cent of the country's processing tomato supply.⁹⁸ The Uyghurs and other Muslim minorities in China are brutally oppressed, including with surveillance, torture, and more than a million people detained in internment camps. Many Uyghurs are also forced to work in Xinjiang and other parts of the country. In Xinjiang's tomato industry, for example, they are put to work in planting and harvesting tomatoes in the fields as well as processing them in the factories.⁹⁹

Italy, the second largest exporter of tomato paste worldwide, was by far the leading importer of Chinese tomato paste in 2021.¹⁰⁰ In October 2021, journalists from Italy's IrpiMedia and the Canadian Broadcasting Corporation reported that a dozen Italian tomato canning and processing companies import paste from Chinese exporters with links to Uyghur forced labour.¹⁰¹ Unlike in the USA, however, **there is no EU regulation banning the import of tomato concentrate or other forced labour products from Xinjiang.**¹⁰²

'Chinese-Italian' concentrate

According to the Italian tomato industry association, ANICAV, about 90 per cent of the imported tomato paste is "brought in under the inward processing regime or as temporary imports. (...) The paste temporarily enters the national territory for improvement purposes (remanufacturing, processing or remediation) and is then re-exported to countries outside the EU, mainly to North and West Africa and to the Middle East."¹⁰³ This means that up to 10 per cent of tomato paste imported into Italy may end up elsewhere in the EU as canned paste or in another form. A relatively new chemical test developed in Italy showed that non-EU-origin tomato paste is indeed sometimes sold as Italian elsewhere in the EU.¹⁰⁴

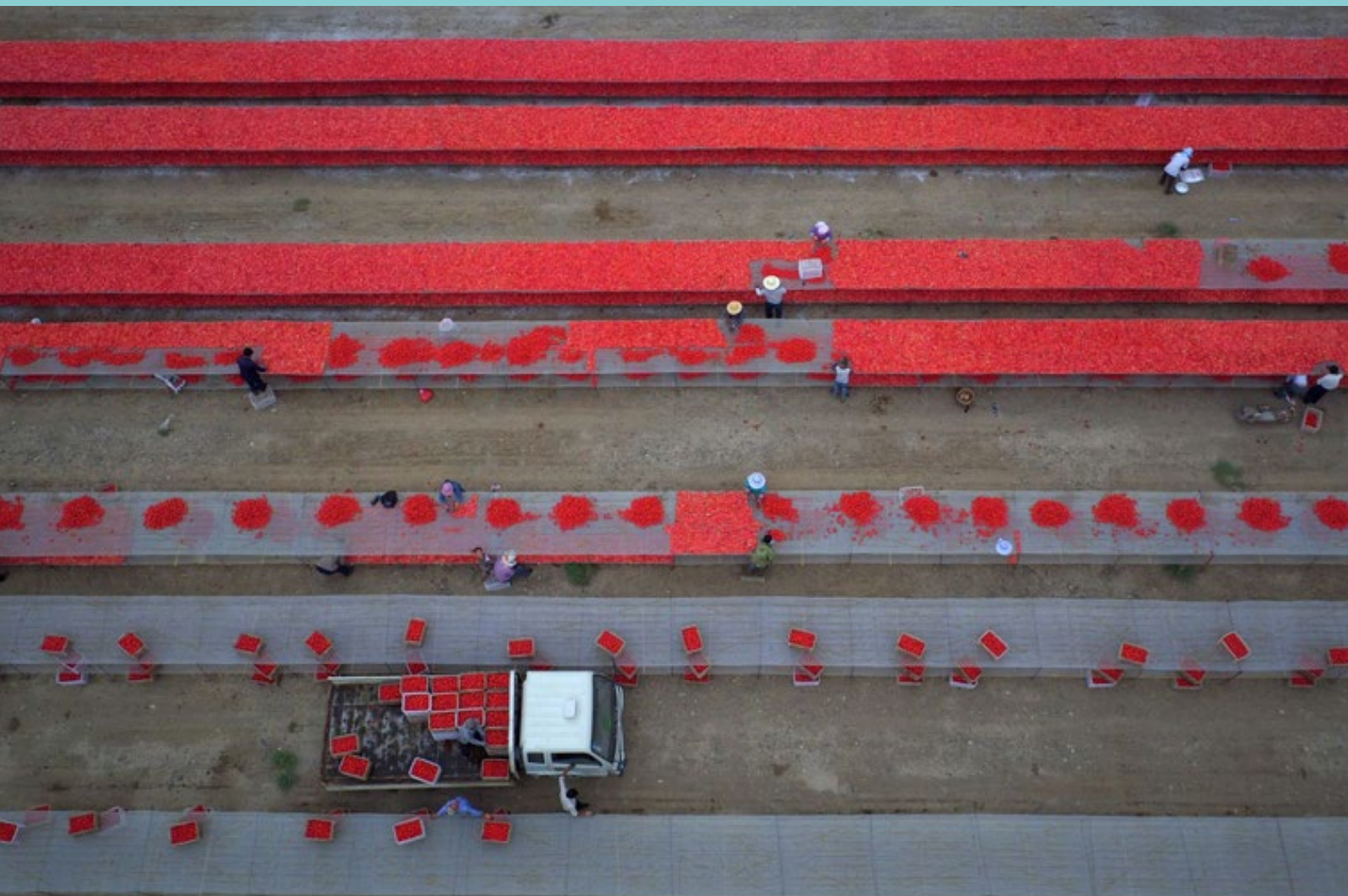
With access to intra-EU trade information, non-state actors would be better equipped to identify which EU food companies use tomato products of these Italian importers for their products including store brands. This would help to test these products, challenge the mandatory or voluntary due diligence policies of these retailers, and inform ethical consumer choices by raising public awareness.

Benefits of non-state actor access to intra-EU trade information

Non-state access to intra-EU trade information would generally promote supply chain transparency in the EU. This would be instrumental for cases such as tomato paste imports, where ultimate buyers of EU imports are not, or cannot be, identified in customs declarations, and when imported goods are (semi-) processed before being sold to companies in other EU countries.

Moreover, information on trade between companies in the EU is also conducive to addressing abusive labour conditions and other harmful impacts such as biodiversity loss and environmental degradation in EU-based production for EU markets. To illustrate, this would make it easier to link downstream companies, such as retailers, with migrant labour exploitation in tomato production in Italy¹⁰⁵ or Spain,¹⁰⁶ and energy companies with suppliers of unsustainably produced wood pellets and other biomass in Estonia¹⁰⁷ and Romania.¹⁰⁸

Xinjiang Production and Construction Corps workers sorting tomatoes. The US has sanctioned the company for alleged human rights violations. Photo: Xinhua.



Box 6. Case: trade with illegal Israeli settlements

The Israeli occupation in the Occupied Palestinian Territories and Occupied Syrian Territory has grave impacts not only on human rights but also on agriculture.¹⁰⁹ In 2022, Israeli agricultural exports to the EU such as fruit, vegetables, and flowers accounted for € 855 million.¹¹⁰ It has been estimated that up to 28 per cent of this trade flow originates from the illegal Israeli settlements on the West Bank, in East Jerusalem, and on the Golan Heights.¹¹¹

Although settlement products are produced on illegally occupied lands, it is not illegal to import them into the EU. Retailers are, however, required to specify their origin to consumers.¹¹² In practice, labels and displays are rarely found on retail products from Israel.¹¹³ This is because either products from Israel and the settlements are mixed and then marketed as 'products from Israel', or their origin is simply obscured on paper.

EU customs policies for Israeli settlement products

There is a specific EU customs policy for ensuring imports of settlement products do not receive the special tariff discount for produce from Israel proper. Customs do this by checking whether the producer's postal code is on a list of these from known settlements. However, fraud takes place with regard to this.¹¹⁴ From May 2023, importers applying for the preferential tariff have been required to declare, using a specific code in the import declaration, that products are not from settlements.¹¹⁵ The measure is intended to strengthen enforcement, because the code automatically triggers an origin information check. Previously only a limited number of risk-based checks were in place.¹¹⁶

In 2016, 2018,¹¹⁷ 2020, and 2021,¹¹⁸ SOMO made requests to Dutch customs and other Dutch authorities for access to documentation on imports of Israeli settlement products and Xinjiang cotton. Together with other methods such as isotopic testing,¹¹⁹ these FOIs were intended to help provide a more detailed understanding of the extent of the problematic EU trade in these products. This would allow SOMO to address the trade with the implicated companies and to call for appropriate measures from customs and trade policymakers. In all cases, however, SOMO was categorically denied access to detailed customs trade information in reference to the UCC's article 12. Legal proceedings are still ongoing relating to Dutch customs' objections to share the information requested in the FOIs filed in 2020 and 2021.

Regulation (EU) 2152/2019 on European business statistics is clear on the confidentiality of intra-EU trade data. State actors that have obtained “confidential data shall treat that information confidentially and shall use it exclusively for statistical purposes”. The terms ‘confidential’, ‘statistics’, and ‘statistic purposes’ are further defined in Regulation (EC) 223/2009 on European statistics.¹²⁰ In sum, intra-EU trade data may not be used or shared to identify or address individual companies.

5.4 Indirect disclosure of EU customs data

Customs authorities in the EU share declaration information with each other and with other governmental bodies including national statistics offices, ministries, and the EC (Eurostat).¹²¹ When exchanging, UCC article 12 requires authorities to “ensure an adequate level of data protection in full compliance with data protection provisions in force”.¹²² The UCC contains no further reference or specification as to these provisions.

Pursuant to members state laws and Regulation 223/2009, statistics offices in the EU will not release confidential information of a non-statistical nature.¹²³ This includes not sharing information they collect from customs that provides details about companies involved in extra-EU trade and specific transactions.¹²⁴

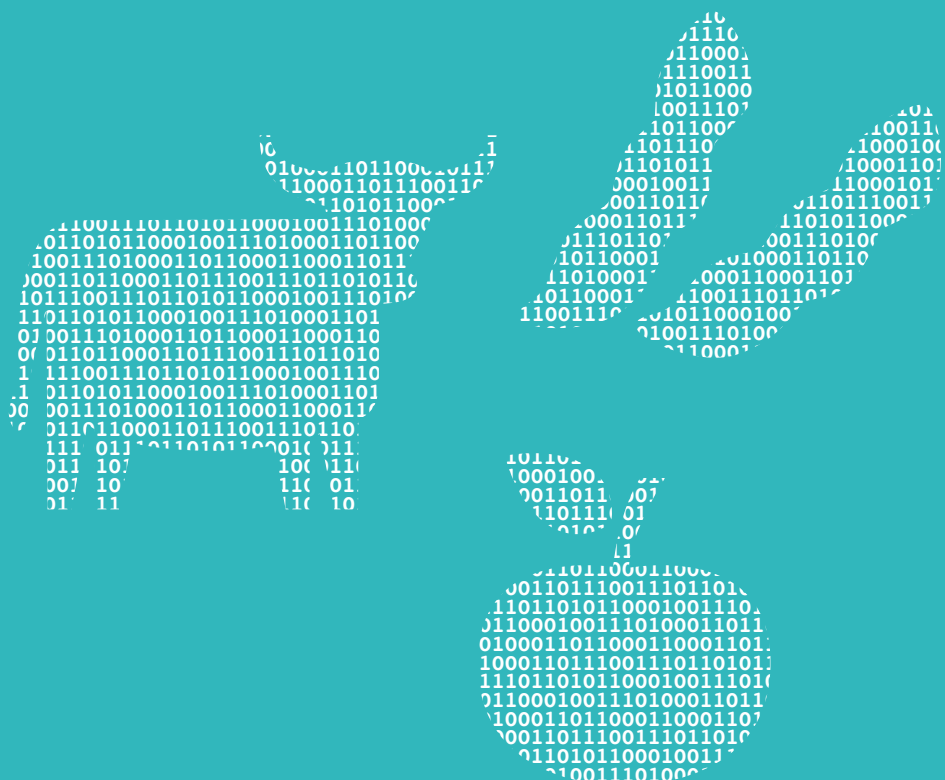
Company-level details from EU customs declarations and potentially other sources that are inaccessible via customs and statistics offices are occasionally released by non-customs authorities (see Box 7). Most of these exceptions arise from differences in national implementation of EU directives for imports of illegally logged timber (EUTR) and conflict minerals (3TG). The two other examples in Box 7 show that food sector health-and-safety regulation may facilitate disclosure by both EU and member state authorities. While these cases are exceptional and apply only to certain commodities, supply chains, and countries, they show that disclosure of company names and other non-statistical information can be compatible with the UCC and other EU regulations.

Box 7. Examples of 'confidential' business information

The Environmental Investigation Agency (EIA) accessed data about Croatian and Italian importers of teak from Myanmar through FOIs to the Croatian¹²⁵ and Italian¹²⁶ ministries of agriculture in 2020 and 2021 respectively (see also Box 3).

In the context of enforcing the EU Conflict Minerals Regulation (3TG), the Austrian authorities disclose the names of Austrian companies whose imports exceed the threshold for 3TG minerals that requires them to have risk management systems in place and brings them under the regulation's remit. The Czech authorities do so only for importers whose risk management efforts they have spot-checked.¹²⁷ And in Finland, CSOs can obtain the names of importers exceeding thresholds for 3TG minerals from the competent authorities.¹²⁸

IrpiMedia accessed detailed company information on Italian importers and their Chinese suppliers of tomato concentrate through an FOI with the EC Directorate-General for Health and Food Safety in 2021.¹²⁹ The Italian Ministry of Health regularly publishes datasets with details on Italian importers of different kinds of food, feed, and live animals.¹³⁰



6. Discussion & recommendations

6.1 Discussion

International trade and the income it generates have been growing more or less steadily for decades.¹³¹ In the absence of national and international regulatory frameworks to address its negative impacts, global trade has also led to massive and increasing socioeconomic injustice and environmental harms.

Over recent decades, the problems of global trade have manifested themselves more and more, as has the failure of voluntary approaches to address them. In response, the EU and its member states have increasingly looked to regulation for solutions. The opacity of global supply chains now undermines the effectiveness of (emerging) regulation in the EU in making international production and trade fairer and greener.

Recent legal measures to make EU supply chains more sustainable, such as the French *Loi de Vigilance*, the German *Lieferkettengesetz*, and the EU's proposed Corporate Sustainability Due Diligence Directive, make implementation of authoritative international standards and approaches for responsible business conduct, or elements thereof, mandatory. The history of voluntary application of such standards, such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, has shown that results, if any, are often meagre and slow to emerge.¹³²

Optimising conditions for regulation

CSOs and other non-state actors have been instrumental in exposing the weakness and failures of voluntary approaches, thereby raising the bar for company and government efforts. By continuously using new evidence in awareness raising and advocacy, civil society has played a key role in informing and influencing debates that have eventually culminated in adequate political support for the transition to mandatory frameworks. However, whereas the voluntary nature of the application of international standards has indeed been an important hindering factor in their realisation, they have other fundamental weaknesses that are not addressed including supply transparency.

For the new regulations for sustainable supply chains and responsible business conduct to achieve their objectives, it is crucial to optimise conditions for their implementation. Supply chain transparency can play an important part here as it facilitates non-state actor contributions to monitoring and evaluation as well as to the development of company and sectoral implementation efforts. With voluntary

approaches based on self-regulation, the reputation mechanism is one of the few effective instruments for CSOs to help steer companies towards better practices. For this mechanism to work, supply chain transparency is essential, and its lack is often the hindering factor. With the new mandatory regimes, supply chain transparency can have even more impact, because, alongside the reputation mechanism, fines and other sanctions can bring about better practices.

Historic opportunity to significantly improve transparency

There now is a historic opportunity in the EU to significantly improve supply chain transparency through UCC reforms. More sustainable and ethical trade clearly is not the main ambition of the EC with the Customs Union reforms. However, the “promotion of our European way of life and the (...) green (...) transition”¹³³ are major priorities identified by the EC that align with the ambitions of EU regulation for greener and fairer supply chains.

More specifically, the reforms aim for adequate customs enforcement capacity in “the banning of forced labour products, (...) the sustainability requirements of EU legislation or the carbon content of imported products”.¹³⁴ Measures to improve supply chain transparency therefore make sense both in terms of the intended UCC reform ambitions as well as from a more holistic policy coherence perspective.¹³⁵ Moreover, the reforms have the advantage that no additional supply chain transparency reporting burden is imposed on companies.

Balancing public and commercial interests

To improve supply chain transparency, there is no need for public access to information held by customs about natural persons. The reforms proposed below can therefore be fully compatible with data protection regulation. Commercially sensitive information, explicitly referred to in the UCC proposal, is the other important data category of potential concern.

It is in the public interest for trade information held by customs to be accessible in as much detail as possible. By contrast, business groups and governments, out of concern about potential negative effects on company competitiveness, may want access to be as limited as possible. The reforms SOMO proposes take both sets of interest into consideration but with emphasis on lifting restrictions on access where possible.

The act of balancing interests should also be evidence based, and the evidence indicates that any negative business impacts will probably be limited. Indeed, as discussed, detailed trade information is already commercially available for many countries with strong economies and companies. And numerous competitive companies in sectors such as food and garments already voluntarily publish detailed information on their sourcing and business relations.

Omissions in the European Commission’s UCC proposal

To make risk management more effective and address capacity problems with customs, the Commission’s UCC reforms are intended to improve the quality and exchange of trade and supply chain information. The new UCC proposal provides for several measures to this end including an EU customs authority, an EU trade information hub, and new mandatory supply chain information categories for

operators to report on. In this context, the proposal also foresees the need for data exchange involving a range of authorities both in the EU and abroad.

There is still, however, no reference to the contribution of, or information sharing with, non-state actors. And there are no specific provisions for including intra-EU trade information in the new EU customs database.

The following section makes policy recommendations for the UCC and related reforms under three broad categories: confidentiality, accessibility, and data quality.

6.2 Policy recommendations

6.2.1 Confidentiality

Changes in the UCC are needed to address the central problem presented in this briefing that (detailed) trade information that customs authorities hold is considered confidential, and therefore non-state actor access is refused. To this end UCC article 12 should be removed completely, as is the case in the EC proposal. Alternatively, article 12 can be amended to ensure as a minimum that trade information collected by customs is not confidential by default and can be disclosed publicly.

It is important to ensure that these changes have effect on all trade information collected by customs and that no exception is made for the transition period in which operators may continue to make declarations outside of the EU trade information hub as proposed for the new UCC.

In the interest of shielding personal and commercially sensitive information, the generic accessibility thus obtained could be limited by specifying which type of information (or fields) and type of documents are exempt from disclosure. Such exceptions could include documents that may accompany customs declarations such as invoices, contracts, insurance certificates, and cargo letters.

Additionally, Regulation (EU) 2152/2019 on European business statistics needs to be amended by removing the ‘statistical purposes only’ restriction on the use of customs information collected from companies on the trade of products in the internal market.

6.2.2 Accessibility

When the generic confidentiality measure in UCC article 12 is lifted through deletion or the amendment proposed above, detailed trade information will in principle be accessible through freedom of information requests (FOIs) to customs and other authorities that have access to this information directly or through the EU trade information hub. Handling these requests could lead to extra work for customs authorities, whereas the EC wants to unburden customs. Also, because FOI requests are administratively burdensome, and FOI procedures can be extremely lengthy in member states such as the Netherlands, it may take a long time to access information.

Box 8. Public EU trade information

As a minimum, monthly releases of information relating to extra-EU trade and held by national customs authorities should include data from the following eight procedures: B1 (export and re-export declarations); D1 (special procedure – transit declarations); F10, F20, F30, and F50 (entry summary declarations); H1 (declarations for release for free circulation); H4 (special procedure – processing declarations for inward processing).¹³⁶

To the extent it is specific to these procedures, information from the following fields should be included as minimum for each consignment: exporter, consignor, seller, importer, consignee, buyer, declarant, representative, producer/manufacturer, country of destination, region of destination, country of dispatch/export, country of origin, country of preferential origin, description of goods, commodity (Harmonised System/HS) code, volume, value, and declaration date.

For intra-EU trade, monthly updates should include all mandatory fields of monthly company reporting at the dispatch or arrival level. For declarations made directly to the EU trade information hub, releases should include all mandatory fields at the consignment level for all nine procedures from the EC's UCC proposal.

All data should be made available for download in a standardized, machine-readable format (like CSV, Excel and/or JSON), and ideally via an open API interface. The data should be available under an open data license.

Therefore, the revised UCC legal package should include a new provision that a standard set of trade information, whether held by member state customs only or in the hub, is released publicly each month. This information (see Box 8 for specification) should be accessible online, preferably through a dedicated central database such as at the EU trade information hub.

6.2.3 Data quality

The quality of supply chain information that customs authorities hold needs to improve. The new UCC legal package should make disclosure of the name and address of the manufacturer or producer of the traded product mandatory in current customs declarations. This will require an amendment to Annex B of the UCC Delegated Act to make ‘manufacturer/producer’ and ‘second tier/end buyer’ a mandatory declarant field to be collected by customs when an exporter is not the producer or manufacturer and the buyer or importer is an intermediate-level buyer. Currently, this information may be included within the optional ‘additional supply chain actors’ field, which customs may decide to waive. This obligation should apply only in cases where declarants can reasonably be expected to have this information or obtain it.

The new UCC proposal allows for a long transition period in which declarations under the many different procedures currently available continue to be possible. It is therefore important that these changes take effect on current procedures.

In Titles VI, VII, and VIII, the new UCC proposal specifies a number of new mandatory fields, such as product supplier and manufacturer. These constitute improvements in the quality of reporting of operators under the new procedures proposed. Compared to the old procedures, however, important details may be lost. Therefore, we recommend the continued inclusion among the mandatory reporting fields as a minimum the consignment volume and weight. Additionally, both old and new procedures operators should also be required to provide a specific description of the products including name, brand, and batch number.

The internal trade information that EU member states now collect in the Intrastat system is too limited. Article 9 of Regulation (EC) 638/2004 should be amended to make it mandatory for authorities to collect trade information from companies that is currently optional, including identification of goods at a more detailed level, including HS code, country of origin on arrival, region of origin on dispatch, and region of destination on arrival. Additionally, the mandatory data elements to be collected should extend to include the name and address of the buyer or importer, seller or exporter, and manufacturer, and the transaction date.

The UCC should also be amended so that all intra-EU trade information collected in member states is also collected in member states’ customs systems and consequently in the EU central database.

References

- 1 Youssr Youssef, “The Amazon cut: How beef linked to deforestation is exported to Europe by major companies,” *Forbidden stories*, June 2, 2023, <https://forbiddenstories.org/the-amazon-cut-how-beef-linked-to-deforestation-is-exported-to-europe-by-major-companies/>.
- 2 “J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case,” U.S. Department of Justice, October 14, 2020, <https://www.justice.gov/opa/pr/jf-investimentos-sa-pleads-guilty-and-agrees-pay-over-256-million-resolve-criminal-foreign>.
- 3 André Campos and Piero Locatelli, *Monitor #8, Slave labor in Brazil’s meat industry* (Reporter Brasil, 2021), <https://reporterbrasil.org.br/wp-content/uploads/2021/01/Monitor-8-Slave-labor-in-Brazils-meat-industry.pdf>.
- 4 Allan de Abreu, “How Illegal Land Grabs in Brazil’s Amazon Feed the Global Beef Industry,” OCCRP, July 8, 2022, <https://www.occrp.org/en/investigations/how-illegal-land-grabs-in-brazils-amazon-feed-the-global-beef-industry>.
- 5 Scilla Alecci, “From Taiwan to Turkey and beyond: How Deforestation Inc exposed the teak trade from Myanmar,” ICIJ, March 7, 2023, <https://www.icij.org/investigations/deforestation-inc/from-taiwan-to-turkey-and-beyond-how-deforestation-inc-exposed-the-teak-trade-from-myanmar/>.
- 6 Maxim Chupilkin, Beata Javorcik, and Alexander Plekhanov, “The Eurasian roundabout: Trade flows into Russia through the Caucasus and Central Asia,” EBRD, February, 2023, <https://www.ebrd.com/publications/working-papers/the-urasian-roundabout>.
- 7 “List of Goods Produced by Child Labor or Forced Labor,” U.S. Department of State, September 28, 2022, https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2022/2022ListofGoodsExcel.xlsx.
- 8 Xinjiang Supply Chain Business Advisory, U.S. Department of State, July 13, 2021, <https://www.state.gov/wp-content/uploads/2021/07/Xinjiang-Business-Advisory-13July2021-1.pdf>.
- 9 François-Xavier Branthôme, “The 2022 Tomato News Conference: The 2022 Crop in China,” *Tomato news*, January 4, 2023, https://www.tomatonews.com/en/the-2022-tomato-news-conference-the-2022-crop-in-china_2_1864.html; François-Xavier Branthôme, “World paste trade in 2021/2022,” *Tomato news*, October 13, 2022, https://www.tomatonews.com/en/world-paste-trade-in-20212022_2_1795.html.
- 10 “2022 List Of Goods Produced By Child Labor Or Forced Labor,” U.S. Department of Labor, September 28, 2022, https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPR-List-of-Goods-v3.pdf.
- 11 “Withhold Release Orders and Findings List,” U.S. Department of Labor, October 10, 2023, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.
- 12 Béatrice Wedeux and Anke Schulmeister-Oldenhove, *Stepping up? The continuing impact of EU consumption on nature worldwide*, (World Wildlife Fund, 2021), https://wwfeu.awsassets.panda.org/downloads/new_stepping_up_the_continuing_impact_of_eu_consumption_on_nature_worldwide_fullreport.pdf.
- 13 *Call for evidence for an impact assessment*, (Brussels: European Commission, 2022), https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13316-Revision-of-the-Union-Customs-Code_en.
- 14 *Proposal for a Regulation Of The European Parliament And Of The Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013*, (Brussels: European Commission, 2023), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0258>.
- 15 “World trade in goods and services – an overview,” Eurostat, July, 2023, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=World_trade_in_goods_and_services_-_an_overview.
- 16 *Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code*, (Brussels: European Parliament and Council, 2013), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R0952-20221212>.
- 17 *EP resolution 2016/2301 (INI)*, (Brussels: European Parliament, 2016), <https://op.europa.eu/en/publication-detail/-/publication/afeb5d94-bcaa-11e8-99ee-01aa75ed71a1>.

- 18 Access to customs trade information Open CSO letter, (SOMO, 2022), <https://www.somo.nl/download/39257/?tmstv=1698069712>.
- 19 EP resolution 2016/2301 (INI).
- 20 Report on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)), (Brussels: European Parliament, 2023), https://www.europarl.europa.eu/doceo/document/A-9-2023-0184_EN.pdf.
- 21 Report on the proposal for a directive on Corporate Sustainability Due Diligence.
- 22 LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, (Paris: French Government, 2017), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>; Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten, (Berlin: German Government, 2021), <https://www.gesetze-im-internet.de/lksg/LkSG.pdf>.
- 23 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, (Brussels: European Parliament and Council, 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02017R0821-20201119>.
- 24 Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, (Brussels: European Parliament and Council, 2010), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010R0995-20200101>.
- 25 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, (Brussels: European Parliament and Council, 2022), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2022.322.01.0015.01.ENG.
- 26 Proposal for a regulation on prohibiting products made with forced labour on the Union market COM(2022) 453 final, (Brussels: European Commission, 2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0453>.
- 27 Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (provisional agreement), (Brussels: European Parliament, 2023), https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/ENVI/AG/2023/01-23/2023-01-18-Batteries-provisional_agreement_EN.pdf.
- 28 Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, (Brussels: European Commission, 2021), https://environment.ec.europa.eu/document/download/5f1b726e-d7c4-4c51-a75c-3f1ac41eb1f8_en?filename=COM_2021_706_1_EN_ACT_part1_v6.pdf.
- 29 Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, (Brussels: European Commission, 2022), https://commission.europa.eu/document/download/66e70ed3-11a1-4ebc-965d-2ea2e7925478_en.
- 30 Zicht op duurzaamheid? Transparantie in productieketens onderzocht, (MVO Platform 2006), <https://www.somo.nl/nl/wp-content/uploads/sites/2/2006/12/Zicht-op-duurzaamheid.pdf>.
- 31 “Oxfam Supermarkets Scorecard Data 2022, code T5.1,” Oxfam, 2022, https://oxfamlibrary.openrepository.com/bitstream/10546/621358/1/2022_Oxfam_Supermarkets_Scorecard_Data.xlsx.
- 32 “Leather supply chain transparency – analysis 100 companies,” Together for decent leather, (accessed) July 19, 2023, <https://togetherfordecentleather.org/home/leather-supply-chain-transparency/>.
- 33 “Fashion Transparency Index 2023,” Fashion revolution, (accessed) July 19, 2023, <https://www.fashionrevolution.org/about/transparency/>.
- 34 “Trade Intelligence Online Platform,” Export Genius, October 23, 2023, <https://www.exportgenius.in/>.

- 35 “Globalwits since 2001,” Globalwits, October 23, 2023, <http://globalwits.com/en/>.
- 36 “Panjiva Supply Chain Intelligence,” Panjiva, October 23, 2023, <https://panjiva.com/>.
- 37 For a detailed discussion: Transparency now: Legal briefing on the disclosure of EU customs data, (Finnwatch, 2017), https://finnwatch.org/images/pdf/FW_Transparency_of_customs_data_legal_briefing.pdf.
- 38 “NGOs Applaud US Customs and Border Protection’s Ban on Palm Oil Imports from FGV Holdings Berhad (FGV) But Warn of Potential for Failed Enforcement,” Global Labor Justice, October 24, 2023 (accessed), https://globallaborjustice.org/portfolio_page/fgvholdingpalmoilban/.; Judy Gearhart, Robin Averbeck, and Hannah Lownsbrough, “Petition to exclude palm oil and palm oil products manufactured “wholly or in part” by forced labor in Malaysia by FGV Holdings Berhad,” August 15, 2019, (International Labor Rights Forum, Rainforest Action Network, SumOfUs), https://laborrights.org/sites/default/files/publications/FGV_Tariff_Act.pdf.
- 39 “CAL and IRAdvocates Challenge Importation of Cocoa Produced with Forced Child Labor,” Corporate Accountability Lab, February 14, 2020, <https://corpaccountabilitylab.org/calblog/2020/2/14/cal-and-iradvocates-challenge-importation-of-cocoa-produced-with-forced-child-labor>.
- 40 “ILRF Files Complaint to Halt Imports of Forced Labor-made Goods from Turkmenistan,” International Labor Rights Forum, April 6, 2016, <https://laborrights.org/releases/ilrf-files-complaint-halt-imports-forced-labor-made-goods-turkmenistan>.
- 41 Ben Butler, “US bans imports of disposable gloves from Ansell supplier in Malaysia over allegations of forced labour,” The Guardian, February 1, 2022, <https://www.theguardian.com/global-development/2022/feb/01/us-bans-imports-of-disposable-gloves-from-ansell-supplier-in-malaysia-over-allegations-of-forced-labour>.
- 42 Jacob Fromer, “Chinese firms are concealing exports’ Xinjiang ties, say US customs officials,” South China Morning Post, January 7, 2023, https://www.scmp.com/news/china/article/3205932/us-customs-officials-say-chinese-firms-are-concealing-exports-xinjiang-ties?module=perpetual_scroll_0&pgtype=article&campaign=3205932.
- 43 “US companies imported nearly 1,600 tonnes of Myanmar teak, circumventing sanctions,” Justice for Myanmar, January 11, 2022, <https://www.justiceformyanmar.org/stories/us-companies-imported-nearly-1-600-tonnes-of-myanmar-teak-circumventing-sanctions>.
- 44 Irene Schipper and Roberta Cowan, Global mica mining and the impact on children’s rights, (SOMO, 2018), https://www.somo.nl/wp-content/uploads/2018/03/NL180313_GLOBAL-MICA-MINING-.pdf.
- 45 Sanne van der Wal, Child labour in Madagascar’s mica sector Impact of the mica supply chain on children’s rights from the Malagasy mines to the international product line, (SOMO, 2019), https://www.somo.nl/wp-content/uploads/2019/11/tdh-mica_madagascar_rapport.pdf.
- 46 Lisa Cavazuti, et al., “An army of children toils in African mica mines,” NBC News, November 18, 2019, <https://www.nbcnews.com/news/all/army-children-toil-african-mica-mines-n1082916>.
- 47 “2020 List Of Goods Produced By Child Labor Or Forced Labor,” U.S. Department of Labor, September 20, 2020, https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRP_List_Online_Final.pdf.
- 48 “US Department of Labor awards \$4.5M grant to combat child labor in mica mining in Madagascar,” U.S. Department of Labor, February 16, 2022, <https://www.dol.gov/newsroom/releases/ilab/ilab20220216>.
- 49 Hanneke Chin-A-Fo and Karlijn Kuijpers, “Superyacht builders close their eyes to illegal teak trade,” NRC, March 3, 2023, <https://www.nrc.nl/nieuws/2023/03/03/superyacht-builders-look-away-at-illegal-teak-trade-a4158553?t=1679499716>.
- 50 “Rohingya genocide,” Wikipedia, October 24, 2023 (accessed), https://en.wikipedia.org/wiki/Rohingya_genocide.
- 51 “Summary record of the FLEGT/EUTR expert group meeting 19 april 2018”, European Commission, April 19, 2018, <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/32788/download>.
- 52 Chin-A-Fo and Kuijpers, “Superyacht builders”.

- 53 Conclusions of the Competent Authorities for the Implementation of the European Timber Regulation (EUTR) on the application of Articles 4(2) and 6 of the EUTR to timber imports from Myanmar, (Brussels: European Commission, 2020), <https://ec.europa.eu/transparency/expert-groups-register/core/api/front/document/47575/download>.
- 54 Council Implementing Regulation (EU) 2021/998 of 21 June 2021 implementing Regulation (EU) No 401/2013 concerning restrictive measures in view of the situation in Myanmar/Burma, (Brussels: European Commission, 2021), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0998>.
- 55 Chin-A-Fo and Kuijpers, “Superyacht builders”.
- 56 The Croatian Connection Exposed: Importing illicit Myanmar teak through Europe’s back door, (Environmental Investigation Agency, 2020), <https://eia-international.org/wp-content/uploads/The-Croatian-Connection-Exposed-FINAL.pdf>; The Italian Job: How Myanmar timber is trafficked through Italy to the rest of Europe despite EU laws, (Environmental Investigation Agency, 2021), <https://eia-international.org/wp-content/uploads/The-Italian-Job-2021-SPREADS.pdf>.
- 57 The Italian Job.
- 58 Chin-A-Fo and Kuijpers, “Superyacht builders”.
- 59 The Croatian Connection Exposed, p.7.
- 60 Alecci, “From Taiwan to Turkey and beyond”.
- 61 Alecci, “From Taiwan to Turkey and beyond”.
- 62 Alecci, “From Taiwan to Turkey and beyond”.
- 63 Call for evidence for an impact assessment.
- 64 Regulation (EU) 2019/632 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than the electronic data-processing techniques provided for in the Union Customs Code, (Brussels: European Parliament and Council, 2019), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.111.01.0054.01.ENG&toc=OJ:L:2019:111:TOC.
- 65 There are 51 columns with the word “declaration” in the Table legend in Annex B. A number of these are partial declarations. When only counting declaration categories there are some 31. Commission Delegated Regulation (EU) 2015/2446, Annex B, Chapter 2, Table legend Section 1, Column headings.
- 66 These are formally called “release for free circulation” declarations. Regulation (EU) No 952/2013.
- 67 These declarations include details on the seller (consignor) and buyer (consignee) of goods. Regulation (EU) No 952/2013.
- 68 Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, (Brussels: European Commission, 2015), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02015R2446-20220101>.
- 69 Commission Delegated Regulation (EU) 2015/2446, Annex B, Chapter 3, Section 11
- 70 For all the parties, name, address, and identification number (EORI number) need to be provided.
- 71 The exporter is the last seller of the goods prior to their import into the Union.
- 72 The party that makes an import declaration or on whose behalf an import declaration is made.
- 73 The party that makes a customs declaration or on whose behalf a customs declaration is made.
- 74 Mandatory if the representative is different from the declarant.
- 75 Mandatory if the seller is different from the exporter.
- 76 Mandatory if the buyer is different from the importer.
- 77 Mandatory where there is a transit country where goods are processed, sold, or consolidated for transport prior to import.
- 78 Countries that benefit from preferential duty rates for products originating from that country. Cf. “Taxation and Customs Union, Introduction,” European Commission, October 24, 2023 (accessed), https://taxation-customs.ec.europa.eu/introduction-1_en.

- 79 The requirements for customs declarations in the transition period are specified in Annex 9 of Commission Delegated Regulation (EU) 2015/2446, Chapter 2, Section 1, Subsection 1, Article 2, Subsection 2, p. 9). For imports Appendix C1 applies. In contrast to Annex B, for example, the exporter and gross mass field may be waived for import declarations.
- 80 “UCC Work Programme Progress Report 2022,” European Commission, February 24, 2023, https://taxation-customs.ec.europa.eu/news/ucc-work-programme-progress-report-2022-2023-02-24_en.
- 81 For exports (B1), the transitional period (Annex 9) ends with the implementation UCC Automated Export System (AES); for imports (H1), it is the UCC National Import Systems Upgrade. Commission Delegated Regulation (EU) 2015/2446, Annex C. In cases of delays, member states can ask for a derogation from the EC until 2025 for imports. Seventy-five per cent of member states are expected to have upgraded their national import systems by the end of 2023. Only three member states do not expect to have the automated export system ready by the target date, 1 December 2023. “Report from the commission to the European parliament and the council pursuant to Article 278a of the Union Customs Code, on progress in developing the electronic systems provided for under the Code,” European Commission, December 24, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:791:FIN>.
- 82 Proposal for a regulation on prohibiting products made with forced labour, p.19.
- 83 Proposal for the Union Customs Code and the European Union Customs Authority.
- 84 Chupilkina, Javorcik, and Plekhanov, “The Eurasian roundabout”.
- 85 Gidi Pols and Sjoerd Mouissie, “Kirgizië, Armenië, Turkije: via deze landen krijgt Rusland toch sanctieproducten,” NOS Nieuws, December 23, 2022, <https://nos.nl/artikel/2457477-kirgizie-armenie-turkije-via-deze-landen-krijgt-rusland-toch-sanctieproducten>.
- 86 This applies to Export Genius and Globalwits, the two companies providing paid access to the highest number of countries with customs information available.
- 87 “Implementing the Uyghur Forced Labor Prevention Act: A Challenge Worth the Effort,” U.S. Customs and Border Protection, January 05, 2023, <https://www.cbp.gov/frontline/implementing-uyghur-forced-labor-prevention-act>; Eliot Chen, “Date Deception,” The Wire China, August 28, 2022, <https://www.thewirechina.com/2022/08/28/xinjiang-date-deception/>.
- 88 Laura T. Murphy, et al. Laundering Cotton: How Xinjiang Cotton is Obscured in International Supply Chains.” (Sheffield: Sheffield Hallam University Helena Kennedy Centre, 2021), <https://www.shu.ac.uk/-/media/home/research/helena-kennedy-centre/projects/laundering-cotton-annexes/laundering-cotton.pdf>.
- 89 Regulation (EU) 2019/2152 of the European Parliament and of the Council of 27 November 2019 on European business statistics, repealing 10 legal acts in the field of business statistics, (Brussels: European Parliament and Council, 2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R2152-20220101&qid=1677762510183>.
- 90 In 2021, customs were responsible for collecting Intrastat declaration information in a third of the member states. European Union, National requirements for the Intrastat system, 2021 Edition, (Luxembourg: Publications Office of the European Union, 2021), <https://ec.europa.eu/eurostat/documents/3859598/12889594/KS-GQ-21-011-EN-N.pdf/4ffbf688-offa-5223-f7a5-c784d3873750?t=1623747004138>.
- 91 For dispatches (exports) the thresholds range from zero in France to € 1 million in Belgium and the Netherlands. Intrastat guide 2022, (Deloitte, 2022), <https://www2.deloitte.com/content/dam/Deloitte/be/Documents/tax/Deloitte%20Global%20Tax%20Center%20Europe%20-%20Intrastat%20Guide%202022.pdf>.
- 92 The other category is arrivals (imports).
- 93 Regulation (EU) 2019/2152 on European business statistics, Article 13.
- 94 Transparency now: Legal briefing on the disclosure of EU customs data”.
- 95 Regulation (EU) No 952/2013 Union Customs Code.
- 96 François-Xavier Branthôme, “Worldwide (total fresh) tomato production exceeds 187 million tonnes in 2020,” Tomato news, January 28, 2023, https://www.tomatonews.com/en/worldwide-total-fresh-tomato-production-exceeds-187-million-tonnes-in-2020_2_1565.html.
- 97 François-Xavier Branthôme, “World paste trade in 2021/2022”.
- 98 François-Xavier Branthôme, “The 2022 Tomato News Conference: The 2022 Crop in China”.

- 99 Eric Szeto, et al., “Canada's grocery chains stocked with tomato products connected to Chinese forced labour,” CBC News, October 29, 2021, <https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359>.
- 100 “UN Comtrade Database,” May 3, 2023 (accessed), <https://comtradeplus.un.org/TradeFlow>. HS code 200290.
- 101 Matteo Civillini, Eric Szeto, and Caitlin Taylor, “Il pomodoro dello Xinjiang “confezionato in Italia” conquista il mondo grazie ai colossi delle conserve italiane,” IPRI Media, October 29, 2021, <https://irpimedia.irpi.eu/pomodoro-cinese-importatori-conserve-italiane/>.
- 102 “US Senate votes to ban products from China’s Xinjiang over Uyghur abuses,” The Guardian, July 15, 2021, <https://www.theguardian.com/world/2021/jul/15/us-senate-ban-products-from-china-xinjiang-over-uyghur-abuses>.
- 103 François-Xavier Branthôme, “Chinese tomato products: Anicav clarifies the situation,” Tomato news, November 23, 2023, https://www.tomatonews.com/en/chinese-tomato-products-anicav-clarifies-the-situation_2_1833.html.
- 104 Civillini, Szeto, and Taylor, “Il pomodoro dello Xinjiang”.
- 105 Tobias Jones and Ayo Awokoya, “Are your tinned tomatoes picked by slave labour?,” The Guardian, June 20, 2019, <https://www.theguardian.com/world/2019/jun/20/tomatoes-italy-mafia-migrant-labour-modern-slavery>.
- 106 “Consumers are not aware we are slaves inside the greenhouses,” Al Jazeera, October 16, 2019, <https://www.aljazeera.com/features/2019/10/16/consumers-are-not-aware-we-are-slaves-inside-the-greenhouses>.
- 107 Sanne van der Wal, Wood pellet damage, (Amsterdam: SOMO, 2021), <https://www.somo.nl/wood-pellet-damage/>.
- 108 Sarah Hurtes and Weiyi Cai, “Europe Is Sacrificing Its Ancient Forests for Energy,” The New York Times, September 7, 2022, <https://www.nytimes.com/interactive/2022/09/07/world/europe/eu-logging-wood-pellets.html>.
- 109 Anne Schuit and Roos van Os, “Trading settlement products and the role of Dutch supermarkets in human rights violations,” SOMO, May 1, 2015, <https://www.somo.nl/trading-settlement-products-and-the-role-of-dutch-supermarkets-in-human-rights-violations/>.
- 110 Agri-food trade statistical factsheet: European Union – Israel, (Brussels: European Commission, 2023), https://agriculture.ec.europa.eu/document/download/bc382acd-bc28-4654-9f2c-a34e75246383_en?filename=agrifood-israel_en.pdf.
- 111 Made in Israel: Agricultural Exports from Occupied Territories, (Tel-Aviv: Who Profits 2014), https://www.whoprofits.org/writable/uploads/publications/1668627265_0ec5f259fc258a3fd2d1.pdf.
- 112 Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967, (Brussels: Official Journal of the European Union, 2015), [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015XC1112\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015XC1112(01)).
- 113 Pauline Overeem, What do we (not) know about the products sold by the largest Dutch supermarkets? (Amsterdam: SOMO, 2018), <https://www.somo.nl/what-do-we-not-know-about-the-products-sold-by-the-largest-dutch-supermarkets/>.
- 114 Pauline Overeem, What do we (not) know about the products.
- 115 New code Y864 for goods imported into the EU with preferential origin from Israel as from 16 May 2023, (Brussels: European Commission, 2023) <https://trade.ec.europa.eu/access-to-markets/en/news/new-code-y864-goods-imported-eu-preferential-origin-israel-16-may-2023>.
- 116 Jonathan Shamir, “New EU Guidelines Crack Down on Israeli Imports From West Bank,” Haaretz, Jun 19, 2023, <https://www.haaretz.com/israel-news/2023-06-19/ty-article/.premium/new-eu-guidelines-crack-down-on-israeli-imports-from-west-bank/0000188-d3f3-d6f3-afaa-fbf7d010000>.
- 117 Lydia de Leeuw, From the Dutch Customs Administration to the court: SOMO’s search for fruit and vegetables from the occupied Palestinian territories, (Amsterdam: SOMO, 2017), <https://www.somo.nl/download/40184/?tmstv=1698233571>.
- 118 Lydia de Leeuw, “Rechtbank tikt ministerie van Financiën op de vingers in zaak katoenimport uit Xinjiang,” SOMO, January 19, 2023, <https://www.somo.nl/nl/rechtbank-tikt-ministerie-van-financien-op-de-vingers-in-zaak-katoenimport-uit-xinjiang/>.

- 119 Sanne van der Wal, “Testing the occupation,” SOMO, May 11, 2022, <https://www.somo.nl/testing-the-occupation/>.
- 120 Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities, (Brussels: European Parliament and Council, 2009), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0223-20150608>.
- 121 E.g. Art. 47(2): Regulation (EU) No 952/2013 Union Customs Code.
- 122 E.g. Art. 12(3): Regulation (EU) No 952/2013 Union Customs Code.
- 123 “Statistical confidentiality and personal data protection,” Eurostat, October 25, 2023 (accessed), <https://ec.europa.eu/eurostat/web/microdata/statistical-confidentiality-and-personal-data-protection>.
- 124 Pauline Overeem, None the wiser after consulting Statistics Netherlands? SOMO’s search for fruit and vegetables from the occupied Palestinian territories, (Amsterdam, SOMO, 2017) <https://www.somo.nl/download/40181/?tmstv=1698234740>.
- 125 The Croatian Connection Exposed.
- 126 “Sanction busting Italian timber traders defy EU law to import Myanmar teak aiding the military junta,” Environmental Investigation Agency, November 25, 2021, <https://eia-international.org/news/sanction-busting-italian-timber-traders-defy-eu-law-to-import-myanmar-teak-aiding-the-military-junta/>.
- 127 Lotte Hoex, Jean-Sébastien S  pulchre, and Marianne Moor, The EU Conflict Minerals Regulation: High Stakes, Disappointing Results, (Antwerp/Goma/Utrecht: IPIS PAX, October 2023), https://ipisresearch.be/wp-content/uploads/2023/10/20231019_IPIS-The-EU-conflict-minerals-regulation_High-stakes-disappointing-results.pdf.
- 128 Finnwatch, personal communication.
- 129 IPRI Media, personal communication.
- 130 “Importazioni di alimenti di origine vegetale e mangimi (01/01/2023 - 30/06/2023),” Ministero della Salute, Open Data, July 14, 2023, https://www.dati.salute.gov.it/imgs/C_17_dataset_168_0_upFile.csv.
- 131 “Evolution of trade under the WTO: handy statistics,” World Trade Organization, October 25, 2023 (accessed), https://www.wto.org/english/res_e/statis_e/trade_evolution_e/evolution_trade_wto_e.htm.
- 132 Cf. Sanne van der Wal, Looking good on paper: Review of recent research on the impact of sustainability certification on working conditions on large farms, (Amsterdam: SOMO, 2018), <https://www.somo.nl/download/39990/?tmstv=1698238820>.
- 133 Call for evidence for an impact assessment.
- 134 Call for evidence for an impact assessment.
- 135 Cf. Transparency now: Legal briefing on the disclosure of EU customs data: “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 EC 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”.
- 136 Commission Delegated Regulation (EU) 2015/2446. Annex B, Chapter 2, Section 1.

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Colophon

Transparency for fairer and greener EU supply chains

The need for Union Customs Code reforms for non-state actor access to EU customs information
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