

TradeWatch



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Insights

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EU: 2024 update of the compendium on customs valuation released



In the ever-evolving landscape of international trade, customs valuation remains a cornerstone of fair and consistent import practices. The European Commission's Customs Expert Group, Customs Valuation Section, has recently updated its Compendium of Customs Valuation Texts (the Compendium).¹ The 2024 edition offers fresh insights into the intricate world of customs valuation. It does so by introducing new instruments on buying commissions (Commentary No. 19) and the valuation of prototype cars and development services (Conclusion No. 38) as well as by updating its summaries on court rulings of the European Court of Justice on customs valuation matters.

The Compendium is frequently updated by the European Commission's Customs Expert Group, Customs Valuation Section, and provides for non-binding instruments on customs valuation. Despite the non-binding nature of the instruments, they play an important role in how customs authorities and courts interpret and apply the customs valuation provisions in the European Union (EU).

In this article, we review the updates and look at the implications for businesses.

Commentary No. 19: a closer look at buying commissions

Buying commissions, as outlined in Article 71(1) (a)(i) of the Union Customs Code (UCC),² has long been a subject of debate. The recent commentary sheds light on the treatment of commissions paid

¹ "Compendium of Customs Valuation Texts: Edition 2024," *European Commission website*. [Find it here](#).

² "The Union Customs Code," *European Commission website*. [Find it here](#).

by an importer, Company X, to its subsidiary, Company Y, for a number of services under a Buying Agency Agreement. The question considered in the commentary is whether these payments can be excluded from the customs value as bona fide buying commissions.

The commentary examines the nature of the services provided by Company Y, distinguishing between those that fall squarely within the scope of buying commissions and those that do not. For instance, commissions for finding producers and placing orders are excluded from the customs value, aligning with the definition of buying commissions under Article 5(41) of the UCC. Conversely, payments for inspecting goods to ensure compliance with supply terms do not qualify as buying commissions and should be included in the customs value. The commentary also explains that as part of examining the nature of the services, it should be determined whether the payments are non-dutiable buying commissions or payments that fall under the scope of other (dutiable) price elements, such as assists or transport costs that apply different conditions for determining the dutiability of the price elements.

The European Commission's Customs Expert Group emphasizes the importance of objective and quantifiable data to substantiate the nature of commissions, especially if only a portion of the remunerations relates to non-dutiable buying agency services. Importers bear the burden of proof to demonstrate the genuineness of buying commissions, a task that requires meticulous documentation and transparency. In cases where the buyer and buying agent are related, particular

attention should be paid to whether the parties have applied the arm's-length principle.

Conclusion No. 38: valuation of prototype cars and development services

The valuation of prototype cars and associated development services presents a complex scenario for importers and customs authorities. Conclusion No. 38 addresses the treatment of prototype cars imported for testing before mass production and the costs related to their development.

The Conclusion clarifies that the customs value of prototype cars, which are not sold for export to the EU, cannot be determined using the transaction value method. Instead, secondary valuation methods or simplified customs declarations should be used. Furthermore, the costs associated with the development services, which are directly related to the production of mass-produced cars, should be included in the customs value if not already reflected in the price.

The Conclusion also touches on the presentation of costs on invoices. It is crucial for the costs of prototypes to be transparently indicated, allowing customs authorities to accurately assess their impact on the customs value of mass-produced cars.

Implications for trade and compliance

The updated Compendium serves as a critical guide for importers and customs authorities. The insights underscore the necessity for clarity in contracts, invoices and other commercial documents to ensure compliance with customs valuation rules.

For businesses, the insights provided by the Customs Expert Group, Customs Valuation Section, highlight the need for robust internal controls and documentation practices. Understanding the nuances of customs valuation is essential to avoid costly adjustments and potential disputes with customs authorities.

As global trade continues to grow in complexity, the guidance from the European Commission's Customs Expert Group remains an invaluable resource for navigating the intricacies of customs valuation. TradeWatch will continue to monitor and report on these developments, keeping the trade community informed and prepared for the challenges ahead. ■

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EU: How recent and pending court rulings affect post-clearance price adjustments on customs valuation

The intricacies of customs valuation continue to challenge businesses and tax authorities alike, with post-clearance adjustments being a particularly contentious area.¹ A recent court ruling in the Netherlands and a pending court case before the Court of Justice of the European Union (CJEU) have brought this issue to the forefront again, highlighting the need for clarity and precision in the application of customs laws.

This article outlines the cases and examines the implications of these rulings for businesses engaged in international trade.

Recent Dutch court ruling on post-clearance adjustments

A pivotal decision by a Dutch court dated 1 February 2024 addressed the impact of transfer pricing adjustments on the customs value of imported goods.² The court examined whether a flat-rate correction to the customs value was applicable, referencing the precedent set by the CJEU's Hamamatsu Photonics case.³

The Hamamatsu case

In the Hamamatsu case, the CJEU said the customs value should reflect the real economic value of the goods at the time they are imported; it is not permitted for the customs value to be based on a transaction value consisting of an amount initially invoiced and a flat-rate adjustment made after the end of the accounting period, without it being possible to know whether that adjustment will increase or decrease. The CJEU consequently ruled that the transaction value method should be rejected and an alternative method should be used for customs valuation purposes.



¹ See our article "Transfer pricing and customs valuation – a conflict for eternity? An attempt to view this conflict on a global scale. Part II" on [page 12](#) of this issue

² Rechtbank Noord-Holland of 1 February 2024, No. AWB – 21_4607.

³ CJEU 15 December 2016, C-529/16 (Hamamatsu Photonics), ECLI:EU:C:2017:984.

In the case under consideration, the importer is part of an international corporate group. It disclosed upward transfer price adjustments to Dutch Customs and paid the additional duties due. The importer then changed its mind and sought a refund of customs duties, arguing that the transfer price adjustments should not have been taken into account to determine the customs value of its imports because the transfer pricing adjustments could not be linked to the transactions in the goods. However, the Court concluded that a retrospective cost allocation to a customs value is possible, leading to its rejection of the company's reimbursement request. The court considered that in the current case, there was no lump-sum amount used to correct the profit distribution between the subsidiary and the parent company. Instead, there was an amount related to the goods supplied, with a fixed profit percentage attached to achieve an arm's-length price. This case, therefore, differs from the Hamamatsu Photonics case,⁴ and as a result, the court did not apply the ruling of the CJEU in that case, but, in fact, allowed transfer pricing adjustments to be taken into account under the transaction value method.⁵

CJEU-pending decision on post-clearance price adjustments

The pending case before the CJEU, 'Tauritus' UAB v. Muitinés departamentas (Customs Department),⁶ is not about the impact of transfer price adjustments on determining the customs value of imported goods, but it may be of interest for such cases as it deals with post-clearance price adjustments. In this case, the importer applied the fallback method and declared provisional prices in its import declarations as the customs value of imported diesel and jet fuel. The provisional price was subsequently adjusted to take account of circumstances that arose after the importation of the goods, such as the average fuel prices on the market for the relevant period and the average exchange rate for the relevant period. In some cases, the importer applied for an adjustment of the

import declarations after receiving the revised invoices; for some, it did not. The local customs authority took the view that the importer was under an obligation to apply for an adjustment of the import declarations at issue, i.e., to calculate the customs value of the goods in accordance with the transaction value method, by accepting the final price indicated in the revised invoices as the transaction value. The answer of the court on whether this is possible under the transaction value method is expected to provide much-needed guidance on the applicability of the transaction value method and the obligations of importers to adjust the customs value post-release.

Implications for business

These rulings underscore the complexities of post-clearance adjustments and their implications for customs valuation. Businesses must navigate these legal intricacies with a thorough understanding of the relevant customs laws and ensure that their documentation and evidence can withstand scrutiny.

As the international trade community awaits the outcomes of these cases, it is clear that the issue of post-clearance adjustments will remain a hot topic. The decisions will not only affect the parties involved but also set precedents that could influence future customs valuation practices. TradeWatch will continue to monitor these developments, offering insights to help businesses stay compliant and informed in the ever-changing landscape of customs regulation. ■

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⁴ This case is discussed in detail in our articles "Hamamatsu – a long journey about to end?", [TradeWatch Issue 3 2022](#), page 63, and "EU: CJEU rules on use of statistical data for determination of customs value", [TradeWatch Issue 2 2022](#), page 35.

⁵ The transaction value method is the primary valuation method, which comprises the total amount paid (or to be paid) for the imported goods (Article 70 UCC), *European Commission website*. [Find it here](#).

⁶ [CJEU referral C-782/23](#).



United Arab Emirates: Boosting trade through Comprehensive Economic Partnership Agreements

Two years after the launch of the first Comprehensive Economic Partnership Agreement (CEPA) with India, the United Arab Emirates (UAE) has been actively working toward boosting trade through partnering with more countries. This initiative aligns with the country's vision and roadmap, unveiled in the Projects of the 50¹ in 2021, which aims to foster a new phase of growth for the UAE, both domestically and internationally.

An overview of the first CEPA that entered into force: UAE-India CEPA

The UAE-India CEPA² has greatly contributed to the advancement of trade, with bilateral exchanges increasing from USD73 billion (April 2021 to March 2022) to USD84 billion (April 2022 to March 2023), registering a year-on-year increase of 16%.³

Multiple sectors have witnessed substantial growth. For instance, gems and jewelry exports to the UAE expanded by almost 64% in just two years. Additionally, the pharmaceutical and horticulture (fruits and vegetables) industries have experienced considerable growth.⁴

1 "Projects of the 50," UAE government website. [Find it here.](#)

2 "UAE-India Comprehensive Economic Partnership Agreement," UAE government website. [Find it here.](#)

3 "India, UAE mark two years of free trade with 16% growth," Arab News website. [Find it here.](#)

4 Ibid.

The UAE-India CEPA has paved the way for multiple investment opportunities by UAE entities in India and has driven notable Indian investments in the UAE, such as the Bharat Mart.⁵

CEPAs currently in force: Israel, Indonesia, Türkiye and Cambodia

Following the first CEPA the UAE signed with India in 2022, four more CEPAs have been concluded and entered into force with Israel, Indonesia, Türkiye and Cambodia.

The UAE concluded its second CEPA with Israel, which entered into force on 1 April 2023.⁶ The agreement includes the removal or reduction of tariffs on 96% of goods traded between the nations. The UAE-Indonesia CEPA,⁷ which focused on attracting investment in the energy, logistics, agriculture and infrastructure sectors, was concluded next. One of the key elements of the UAE-Indonesia CEPA is that it includes provisions on digital trade, streamlining customs procedures and trade facilitation as well as Islamic economics. The agreement came into force on 1 September 2023, along with the UAE- Türkiye CEPA⁸ on the same date.

Trade between the UAE and Türkiye jumped 40% in 2022, the fastest rate of growth among the UAE's top 10 export markets.⁹ The UAE-Türkiye CEPA is expected to boost the value of non-oil bilateral trade between the two countries to USD40 billion in the five-year period from the effective date of the CEPA with Türkiye, with the elimination and reduction of customs duties on 82% of goods.

The most recent CEPA that entered into force on 31 January 2024 is with Cambodia.¹⁰ The agreement consists of the removal or reduction of tariffs on more than 92% of product lines, eliminating unnecessary barriers to trade and improving market access for service exports. Non-oil trade between the UAE and

Cambodia reached USD407 million in 2022, marking 33% growth from 2021.¹¹ The UAE-Cambodia CEPA aims to push this growth beyond USD1 billion by 2030.

CEPAs currently under discussion: Philippines, Kenya, Chile, Ukraine and New Zealand

Discussions have been concluded and terms finalized for four more CEPAs: Philippines, Kenya, Chile and Ukraine. Discussions are underway with New Zealand.

The UAE-Philippines CEPA is expected to focus on the aerospace sector, as helicopters and aerospace parts are the Philippines' top exports to the UAE. Both the UAE and the Philippines are aiming to conclude the agreement within 2024, in time for the 50th anniversary of the Philippines and the UAE establishing diplomatic relations. One of the notable elements of the UAE-Philippines CEPA is the focus on e-commerce.

Kenya was the first African country that the UAE started CEPA negotiations with in 2022 as part of a strategy to diversify its oil-based economy. The objective of the UAE-Kenya CEPA is to foster innovation and sustainable growth in key sectors such as agriculture, technology and tourism. The negotiations were concluded, and the terms of the agreement finalized, in February 2024.

The UAE-Chile CEPA, concluded in April 2024, is intended to provide UAE companies and exporters with greater access to the fast-growing economies of Chile and Latin America. The agreement will improve mutual trade by allowing broad access to goods, services and government procurement, and marks a significant step toward a more interconnected global economy.

The UAE-Ukraine CEPA, also concluded in April 2024, will support Ukraine in rebuilding some of its key sectors and industries, and will focus on strengthening major exports such as grains, machinery and metals.

The most recent discussions have been between the UAE and New Zealand, with the two countries concluding a joint declaration of intent in May 2024. The UAE is New Zealand's largest trade partner in the Middle East.¹² The UAE-New Zealand CEPA will seek to remove or reduce tariffs and trade barriers in key sectors such as agriculture, renewable energy, logistics, education and health care. New

5 "Bharat Mart; An upcoming world-class Indian marketplace in Dubai," *UAE Business Gate website*. [Find it here](#).

6 "UAE-Israel Comprehensive Economic Partnership Agreement," *UAE government website*. [Find it here](#).

7 "UAE-Indonesia Comprehensive Economic Partnership Agreement," *UAE government website*. [Find it here](#).

8 "UAE-Türkiye Comprehensive Economic Partnership Agreement," *UAE government website*. [Find it here](#).

9 "UAE's non-oil foreign trade jumps 17% in 2022," *Reuters*. [Find it here](#).

10 "UAE-Cambodia Comprehensive Economic Partnership Agreement," *UAE government website*. [Find it here](#).

11 "UAE and Cambodia sign CEPA to double non-oil trade," *Sharjah*. [Find it here](#).

12 "UAE and New Zealand to launch talks for a free trade deal," *Reuters*. [Find it here](#).

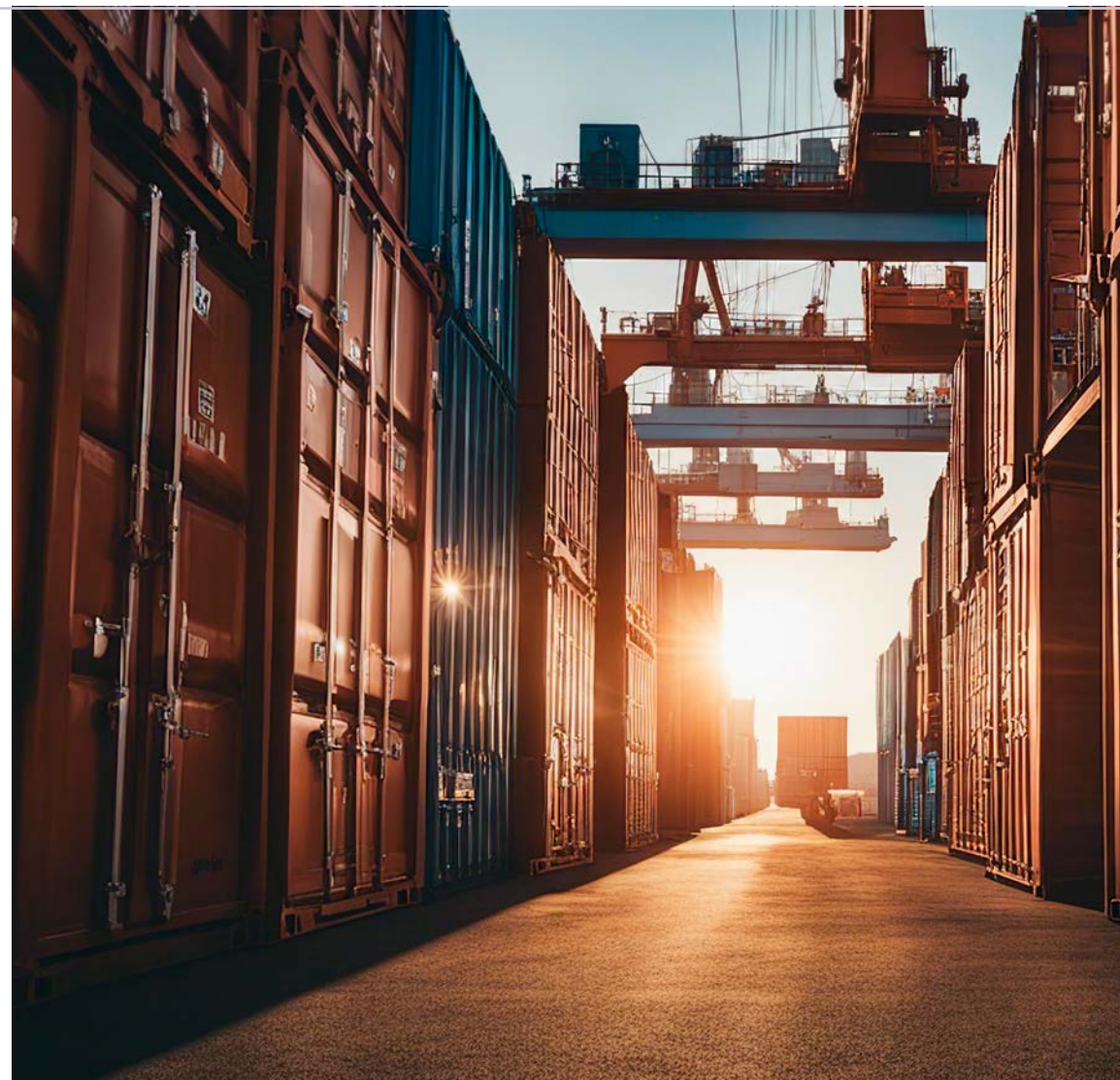
opportunities in the UAE will open further commercial opportunities that will improve domestic incomes and reduce the cost of living.

CEPA	Status	Date
India	Entry into force	1 May 2022
Israel	Entry into force	1 April 2023
Indonesia	Entry into force	1 September 2023
Türkiye	Entry into force	1 September 2023
Cambodia	Entry into force	31 January 2024
Philippines	Scope of negotiations finalized	January 2024
Kenya	Concluded and terms finalized	February 2024
Chile	Concluded and terms finalized	April 2024
Ukraine	Concluded and terms finalized	April 2024
New Zealand	Joint declaration of intent signed	May 2024

Implications for businesses

With five CEPAs already operational and another five to take effect shortly, UAE-based companies should undertake a thorough analysis to discern the impact of these agreements on their specific sectors and business activities. It is advisable for affected organizations to engage in comprehensive market research to identify new opportunities that have emerged in partner nations due to the CEPAs. Additionally, there may be a need for them to restructure their supply chains to capitalize on reduced tariffs and increased operational efficiency.

Businesses should ensure that their workforces are fully informed about the existing CEPAs and receive adequate training on the new trade procedures and requirements to maintain seamless business functions. Compliance with the new regulations outlined by the CEPAs is of the utmost importance; therefore, companies may wish to consult with trade specialists to gain a deep understanding of the CEPAs' ramifications and to adeptly maneuver through the intricacies of international trade under the new agreements. ■



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Americas

Argentina

- ▶ Argentina implements the Regularization Regime for Tax, Customs and Social Security Obligations (24 July 2024)
- ▶ Argentine tax authorities extend suspension of VAT and Income Tax exclusion certificates on imports (10 July 2024)
- ▶ Argentina enacts Bases Law and Tax Package (08 July 2024)
- ▶ Argentine Congress approves bills that include major tax measures (28 June 2024)

Brazil

- ▶ Brazil tax authorities rule on treatment of payments for right to commercialize or distribute software (11 July 2024)

Canada

- ▶ Canada Border Services Agency updates trade compliance verification list (18 July 2024)
- ▶ 2024 Federal Budget Implementation Bill No. 1 receives Royal Assent (24 June 2024)
- ▶ Enacts income and indirect tax measures under Bill C-59 budget bill (24 June 2024)
- ▶ Northwest Territories budget 2024-25 (30 May 2024)
- ▶ Canada delays implementation of CBSA Assessment and Revenue Management (CARM) project Release 2 to October 2024 (02 May 2024)

Colombia

- ▶ Government Decree updates customs regulations (31 May 2024)

Global

- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (July 2024) (26 July 2024)
- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (June 2024) (18 July 2024)
- ▶ EY Global Tax Controversy Flash Newsletter (Issue 71) – How trade technologies can help reduce controversy risk (15 July 2024)
- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (May 2024) (06 June 2024)

Peru

- ▶ Peruvian Congress approves law granting President powers to enact various tax measures (12 July 2024)

United States

- ▶ US imposes adjustments to steel and aluminum imports from Mexico (15 July 2024)
- ▶ USTR to extend most 429 Section 301 tariff exclusions through 14 June 2024 – and some through 31 May 2025 (29 May 2024)
- ▶ USTR publishes further guidance on impacted China-origin products subject to additional Section 301 tariffs (23 May 2024)
- ▶ US Biden Administration and USTR announced additional tariffs upon completion of China Section 301 review (15 May 2024)

Asia-Pacific

Australia

- ▶ Australia delivers 2024-25 Federal Budget
(16 May 2024)

Global

- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (July 2024)
(26 July 2024)
- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (June 2024)
(18 July 2024)
- ▶ EY Global Tax Controversy Flash Newsletter (Issue 71) – How trade technologies can help reduce controversy risk
(15 July 2024)
- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (May 2024)
(06 June 2024)

Thailand

- ▶ Thailand makes key interim changes for collection of VAT/excise tax on Low-Value Goods imports
(23 July 2024)



Europe, Middle East, India and Africa

Ethiopia

- ▶ Ethiopia issues Directive regulating foreign investors' participation in restricted export, import, wholesale and retail trade (02 May 2024)

European Union

- ▶ EU – New round of Tariff Suspension Quota Scheme; application window open until 31 July 2024 (18 July 2024)
- ▶ Still no agreement at EU on VAT in the digital age (ViDA) proposal (21 June 2024)
- ▶ EU has not yet reached agreement on VAT in the digital age (ViDA) proposal (14 May 2024)

Finland

- ▶ Finland's VAT increase could make VAT rate the second highest in the EU (08 May 2024)

France

- ▶ Releases specifications for e-invoicing reform (20 June 2024)

Germany

- ▶ Publishes e-invoicing draft administrative guideline, accepting feedback until 11 July (18 June 2024)

Global

- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (July 2024) (26 July 2024)
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- ▶ Trade Talking Points – Latest insights from EY's Trade Strategy team (May 2024) (06 June 2024)

Kenya

- ▶ Kenya proposes tax changes under the Finance Bill, 2024 (21 May 2024)
- ▶ Kenya High Court rules tax laws don't explicitly impose additional customs duties on oil 'product gains' (16 May 2024)

Pakistan

- ▶ 2024 Finance Bill proposes indirect, individual, corporate tax changes (17 June 2024)
- ▶ Pakistan implements amendments to tax appeals system (07 May 2024)

Saudi Arabia

- ▶ Saudi Arabia issues resolution amending customs duties on certain goods (25 July 2024)
- ▶ Saudi Arabia announces 13th wave of Phase 2 e-invoicing integration (08 July 2024)
- ▶ Saudi Arabia tax bulletin clarifies requirements and procedures for excise tax refund (30 May 2024)
- ▶ Saudi Arabia joins the international ATA Carnet guarantee system (20 May 2024)

Slovakia

- ▶ Slovakia proposes new tax on sweetened soft drinks (02 May 2024)

Turkiye

- ▶ Turkiye imposes fees on vessels for greenhouse gases (17 July 2024)
- ▶ Turkiye introduces three new types of retrospective import inspections (03 June 2024)
- ▶ Turkiye's Ministry of Trade announces all trade with Israel has been halted (03 May 2024)

United Arab Emirates

- ▶ Dubai Customs publishes policy on voluntary disclosures (24 July 2024)
- ▶ UAE is boosting trade through Comprehensive Economic Partnership Agreements (21 May 2024)

United Kingdom

- ▶ UK General Election 2024 results in first Labour Government in 14 years (09 July 2024)

Additional resources



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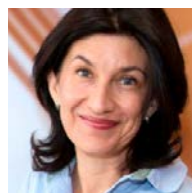
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