

# RSM ERASMUS UNIVERSITY

## Executive Master in Customs and Supply Chain Compliance



### THESIS - Unauthorized customs clearances

(The lodging of a customs declaration without empowered by (customs) representative/agent)

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## Table of content

Table of content .....	2
Preface.....	4
Executive Summary .....	4
List of tables and figures.....	8
Chapter 1: Introduction .....	10
Background.....	11
What is an unauthorized custom declaration? .....	15
Chapter 2: Problem definition and research questions.....	17
Problem definition.....	17
Research questions.....	18
Research methodology.....	19
Research methodology limitations.....	20
Research methodology justification .....	20
Chapter 3: Review of researched literature .....	21
Agency theory .....	21
Law and legislation .....	22
Standard contract and related to service offered by logistics service providers. ....	26
How is representation / empowerment setup?.....	27
Summary from literature study .....	29
Chapter 4: Research approach .....	30
Case study Cisco .....	30
Data Collection method.....	31
Quantitative data analysis .....	32
Sample review .....	33
Customs agent interviews .....	33
The interviews .....	33
Chapter 5: Research results and analysis .....	36
Research results on case study Cisco .....	36
The data review.....	36
The sample reviews.....	39
The interviews.....	43

Chapter 6: Conclusions and Recommendations .....44  
    Conclusions..... 44  
    Recommendations..... 44  
    Limitations of the research..... 46  
Chapter 7 Contribution for research and practice .....47  
    Contribution ..... 47  
    Further research opportunities ..... 49  
List of References .....50

## Preface

This thesis is written as part of the Master Customs and Supply Chain Compliance at the Erasmus University of Rotterdam. The topic of my graduation thesis is “Unauthorized Customs clearances”.

The last three years have been a great experience. During the pre-master classes we moved to a virtual setting cause by the pandemic. Under these exceptional circumstances we were still able to complete the master program and collaborating with classmates to build out our network. The knowledge gained during the program has helped me in my strategical thinking and day-to-day work as customs and trade compliance manager.

I want to thank all who contributed to making this program worthwhile. Special thanks to my supervisor Ruud Tusveld and Albert Veenstra for their support and guidance in successfully conducting this research.

Finally, I would like to express my gratitude to my family, friends, and colleagues for their ongoing support through my time as a student to complete my academic journey.

Harold Jansen

A handwritten signature in blue ink, consisting of stylized initials and a long horizontal stroke extending to the right.

## Executive Summary

### Background

When companies are moving products across international borders, customs formalities are required. The company can either do the customs clearances them self or outsource it to a representative (customs broker or agent). When customs activities are outsourced, an agency relationship is created. An agency relation has legal consequences that require mitigation by reaching a consent, preferably documented in an agreement between principal and agent. This agreement should include empowerment and agreement limitations. Customs legislation covers legislation related to outsourcing customs activities to a representative. Not following legislation may lead to risk for the parties involved in the customs clearance process. With the help of reports from the government, importers and exporters can archive visibility on their customs clearance activities. This report can reveal agents acting for the company as customs agents not covered by an agreement or empowerment. Cisco has noticed that unauthorized clearances are happening in their logistics supply chain operation. Cisco compliance teams are trying to limit unauthorized customs clearance and considered every unauthorized clearance “one is one too many”.

In this research, the definition of an unauthorized customs clearance is a customs (import or export) declaration lodge through standard procedure by a customs broker or agent without a written empowerment (authorization from the principal) for the clearance of a specific shipment or falling within the limitation of the empowerment.

### Problem statement

The purpose of this research is to increase the cross disciplinary knowledge between the domain of legislation and the outsourced (customs) services to develop a joint understanding of the domains principles to facilitate a better interaction between the domains. By investigating the phenomena unauthorized clearances through a case study, practical knowledge will be gained on the phenomena to answer the research questions.

This all to understand and answer the primary research question: *how to control and mitigate possible compliance risks related to unauthorized customs clearances activities.*

To answer the research question, the sub-questions below need to be answered to reach the research goal:

- What is the legal basis of representation and empowerment for custom clearance?
- What are the legal consequences and risks of unauthorized customs clearance?
- What has commercially been agreed between companies’ and third-party service providers in contracts and Terms and Conditions?
- How should the framework look like to mitigate the risk and control unauthorized clearances in European Union Member States and United Kingdom?

## **Methodology**

The research methodology used to investigate the above problem statement is practice-oriented research. The practice-oriented research consists of theoretical research and a case study on Cisco import and export customs clearances. The Case study allows the researcher to closely examine the data in real-life and will consist of a data review and several interviews.

## **Research findings**

During the research, the available literature gave good insight into the agency theory, existing (customs) legislation, Customs authorities guidance on representation and empowerment, and the agents terms and conditions logistics and customs conditions. On the domain of outsourcing of customs services is limited literature available.

The governmental reports used for the data analysis show that unauthorized customs clearances are happening for Cisco with authorized as well as unauthorized agents. The interviews with the agents and samples provided a good understanding of the customs clearance process and the process followed related to empowerment and clearance instructions.

The research showed, with practical examples, the challenges and friction that occurred between the operational and legislative domains. Agents have a preference to control the clearance submission to limit the logistical impact of the operation in their domain. Standard processes are preferred even though it could bring compliance and commercial risks to the agent. A gap was identified related to empowerment. In general, empowerments and clearance instructions were missing for the selected customs entry lines. The agents consider systems the account notes as clearance authorizations. After reviewing the account notes it was noticed that the account notes were outdated and not aligned with what contractually had been agreed between Cisco and the agents.

## **Conclusion**

My research has shown that without a customs compliance framework for outsourced customs services for authorized customs agents, it is not possible to control and mitigate risks related to unauthorized. By understanding the companies authorized broker footprint, unauthorized customs clearances can be detected with the help of governmental reports. Access to governmental reports is critical to detect unauthorized clearances. The reports on the use of EORI or VAT number provide the insight so that measures can be implemented to control and mitigate risks related to outsourced brokerage activities.

The research also showed that there are frictions between the domain's operations, outsourcing and legislation. A joint understanding of the principles by interaction between the domains will improve mutual understanding of the paradigms between the principal and agents for outsourced customs service, operational principles, and legislations. Agreements should be limited and specific, else the agent will look for opportunities to act in their own interest and fall back into a support (model) preferred by the agent which has the best operational fit.

## List of Abbreviations

AEO	Authorised Economic Operator
AGS	Aangifte Goederen Systeem, Dutch Customs declaration system
CoO	Country of origin
DDP	Delivery Duty Paid (Incoterm)
EC	European Commission, EU's politically independent executive arm
EO	Economic Operator, a person involved in activities by customs legislation.
EORI	Economic Operators Registration and Identification, EO EU registration number
EU	European Union (customs union)
IT	Information Technology, products or services linked to computers, storage, networking and other physical devices and infrastructure
ITA	Information Technology Agreement, WCO agreement to eliminating tariffs on IT products
GPA	Periodical Supplementary declaration for entry into free circulation
HMRC	Her Majesty Revenue and Customs (UK tax authorities)
HTS	Harmonized Tariff System (tariff code)
MSS	Management Support System
SOP	Standard operation procedure, set of instruction to support services. Described in SOW.
SOW	Statement of Work, narrative description of a services to provide.
T&C	Terms and Conditions
T(CT)A	Tax (Cross-border Trade) Act 2018, UK Customs legislation
UCC	Union Customs Code, Regulation (EU) No 952/2013
VAT	Value Added Tax, indirect tax to be paid or reported (deferred) when goods are imported
VSA	Vendor service agreement (VSA), contractual (legal) agreement between parties

## List of tables and figures

Figure 1	Cisco governance of authorized representative/agent customs services
Figure 2	AEO risk management
Figure 3	Research framework
Figure 4	Agency relationship
Figure 5	Steps for assignment of customs representative/agent
Figure 6	Overview of customs representation for customs clearance
Figure 7	Selection methodology of unauthorized customs clearance lines
Figure 8	Governmental report data processing
Figure 9	Frame-work broker governance

Table 1	Unauthorized clearance lines in The Netherlands and United Kingdom
Table 2	NL import lines overview
Table 3	UK import lines overview
Table 4	NL export lines overview
Table 5	UK export lines overview
Table 6	Number of authorized clearance lines for calendar year 2022
Table 7	NL import sample results overview
Table 8	UK import sample results overview
Table 9	NL export sample results overview
Table 10	UK export sample results overview



## Definitions

**Customs representative:** a person appointed as customs representative (article 19 EU UCC)

**Customs agent:** a by person (“the principal”) appointed other person (a “Customs agent”) to act on the principal’s behalf for the purposes article 21(1) Taxation Act 2018)

**Empowerment:** a customs representative shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect (article 19-1 UCC) and provide evidence of their empowerment by the person represented (article 19-2 UCC), or appointment disclosure as mentioned under (article 21(2) Taxation Act 2018)

**Unauthorized (customs) representative:** Customs representative acting without empowerment and clearance instructions under UCC, and national guidance.

**Unauthorized (customs) agent:** Customs agent acting without empowerment under UK Taxation Act 2018 and guidance provide by HMRC Commissioners.

**Indirect (representative/agent):** making Customs declarations in agent’s own name (article 21(1)(b) Taxation Act 2018/article 18-1 UCC)

**Direct (representative agent):** making Customs declarations in the name of the principal (article 21(1)(a) Taxation Act 2018/ article 18-1 UCC)

**Clearance Cost:** referred to as (clearance) service fee, duty & taxes to be paid at destination.

**Custom clearance:** customs declaration lodged for customs procedures import or export by an authorized person followed by acceptance and release of the goods by the customs authorities.

## Chapter 1: Introduction

Companies have started to globalize their supply chain due to the demand of customers and competitive pressures. As result of this, companies have restructured themselves to operate on a global basis to take advantage of the international products, factories, and capital markets. Companies have been focusing on reducing costs and risks through contract manufacturing and outsourcing. Operating in an international environment leads to uncertainties in the supply chain operation. An uncertainty is defined as the perceived inability to predict something accurately (Milliken 1987<sup>1</sup>). Operating a global supply chain requires highly coordinated flows of goods. Shipping, consolidation, and customs clearance all contribute to delays and variability in the end-to-end lead time of global supply chains (Christoper, 2011<sup>2</sup>).

Global supply chains have potentially more delay points, greater uncertainties, and hence the need for greater coordination, communication, and monitoring. Coordination will ensure that the international supply chains have an uninterrupted flow of goods and products, avoiding disruption and increasing costs (Manuj and Mentzer, 2008<sup>3</sup>). However, it will not take care of all disruption. Companies need to protect their supply chain against disruption by building safeguards to mitigate risks. Segmentation or regionalization are strategies for reducing supply chain fragility. Design, detection, and deployment become simpler and faster in regionalized and segmented strategies. Deployment of the back-up suppliers and lead-times can be reduced in a regionalized strategy. Segmented or regionalized supply chains are more likely to have backup sources for critical parts, commodities, or services to be able to design and deploy solutions quickly in the event of a disruption.

Customs clearance is one of the complication factors when conducting global trade. Customs clearance has an explicit influence on the supply chain efficiency, as mentioned by Haughton and Desmeules (2001)<sup>4</sup> as it can create uncertainties. Managing a cross border operation adds an additional layer of complexity onto the global supply chain operation. Outsourcing customs brokerage to an agent or representative as part of the supply chain setup requires, like any outsourced service, proper management, and oversight. Outsourcing customs brokerage operations will create legal and financial liability not only for the outsourcing partner but also for the outsourcing company. Specific agreements and empowerments are required to manage expectations and to arrange liability between the parties. Activities not covered by the agreement or empowerment will have legal tax and commercial impactions for the economic operator and the representative.

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<sup>1</sup> Milliken (1987), "Three Types of Perceived Uncertainty about the Environment: State, Effect, and Response Uncertainty"

<sup>2</sup> Christopher (2011), *Logistics & Supply Chain Management*

<sup>3</sup> Manuj and Mentzer (2008), "Global Supply Chain Risk Management"

<sup>4</sup> Haughton and Desmeules (2001), "Recent reforms in customs administrations"

When shipments cross an international border, formalities must be fulfilled with authorities. One of these formalities is lodging customs declaration to place products under a customs procedure.

The lodging of a customs declaration in for example the European Union or United Kingdom, can either be done by the economic operator or outsourced to an agent or representative. If a customs representative is leveraged, it needs to be mentioned specifically in the declaration submitted to the customs authorities, including the type of representation applied. The “customs representative” according to the EU Union Customs Code (2013)<sup>5</sup> (UCC art-5-6) is *“any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities”*. This is in alignment with the UK Taxations (cross-border) Trade) act 2018<sup>6</sup> (article 21), which defines a Customs Agent as *“a person (“the principal”) may appoint any other person (a “Customs agent”) to act on the principal’s behalf for the purposes of ...”*. Both legislations require that the agent manages the empowerment and documentation of the empowerment in any form. An additional notification/authorization might be required from the authority's customs system. If the representative/agent fails to provide the empowerment or evidence, the clearance is deemed considered to be done by acting under their “own name” and on their own behalf.

## Background

[Cisco Systems \(Cisco Annual report, 2022<sup>7</sup>\)](#) designs and sells a broad range of technologies that have been powering the Internet since 1984. Cisco integrates intent-based technologies across networking, security, collaboration, applications, and the cloud. These technologies are designed to help customers manage more users and devices connecting to their networks. Cisco provides customers with a highly secure, intelligent network platform for their digital business.

Cisco conducts business globally and manages business by geography. Business is organized into the following three geographic segments: Americas; Europe, Middle East, and Africa (EMEA); and Asia Pacific, Japan, and China (APJC). To support business Cisco has field sales offices in 95 countries. Products and services are sold both directly and through a variety of channels.

Cisco products and technologies are grouped into the following categories: Infrastructure Platforms; Applications; Security and Other Products. In addition to our product offerings, Cisco provides a broad range of service offerings, including technical support services and advanced services. Increasingly, Cisco is delivering technologies through software and services. Cisco customers include businesses of all sizes, public institutions, governments, and service

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<sup>5</sup> Regulation (EU) No 952/2013 - Union Customs Code (UCC)

<sup>6</sup> UK Government Taxation (Cross-border Trade) Act 2018

<sup>7</sup> Cisco Annual report Reimagining the future of connectivity.

providers. These customers often look to Cisco as a strategic partner to help them use information technology (IT) to differentiate themselves and drive positive business outcomes.

Cisco relies on external parties for manufacturing needs. Cisco uses presently a variety of independent third-party companies to provide services related to printed-circuit board assembly, in-circuit test, product repair, and product assembly. Proprietary software on electronically programmable memory chips is used to configure products that meet customer requirements and to maintain quality control and security. The manufacturing process enables Cisco to configure the hardware and software in unique combinations to meet a wide variety of individual customer requirements. The manufacturing process uses automated testing equipment and burn-in procedures, as well as comprehensive inspection, testing, and statistical process controls, which are designed to help ensure the quality and reliability of our products. The manufacturing processes and procedures are generally certified to International Organization for Standardization (ISO 9001) standards.

Cisco Product Operations and Global Manufacturing Organization (Cisco CSR report, 2012<sup>8</sup>) procures manufacturing as outsourced activities with contract manufacturers. The contract manufacturers ensure quality, cost, and delivery requirements, as well as manufacturing process terms, such as continuity of supply; inventory management; flexibility regarding capacity, quality, and cost management; oversight of manufacturing; and conditions for use of our intellectual property. Besides manufacturing Cisco also offers logistics services for the delivery of the manufactured products or service parts. For the EMEA supply chain operation, Cisco has centralized warehouses in The Netherlands. The warehousing, transportation and logistics services are outsourced to global service providers like; DHL, FedEx/TNT, Schenker, UPS, etc. In the Netherlands and United Kingdom, many of the transactions to/from warehouses and to customers are supported by electronic (B2B) communication. The customs clearance process is also supported by this message. The remaining flows of imports and exports are done “manually” by the authorized agents.

Cisco has a centralized governance and management model in place for import and export Customs brokers captured in a global policy. This is to ensure Cisco’s is compliant with local country import and export regulations and assure that Cisco has proper internal controls in place to comply with internal compliance requirements. The Global Import and Export Customs Brokerage and Courier Policy ensures that authorized brokers are selected, empowered based on contractual requirements and operate with proper internal control in place. The policy ensures that processes are followed during selection and onboarding of new service providers and is an import safeguard to capture unauthorized clearances, to ensure that Cisco maintains its reputation and position with Customs Authorities, other local trade related authorities, as well as minimizing risk.

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<sup>8</sup> Cisco CSR report Supply Chain(2012)

Once a broker has been set up and the scope of work has been defined the broker is considered as an authorized broker and added to perform import or/and export brokerage activities for a specific business flow in a country. The overall process looks like below:

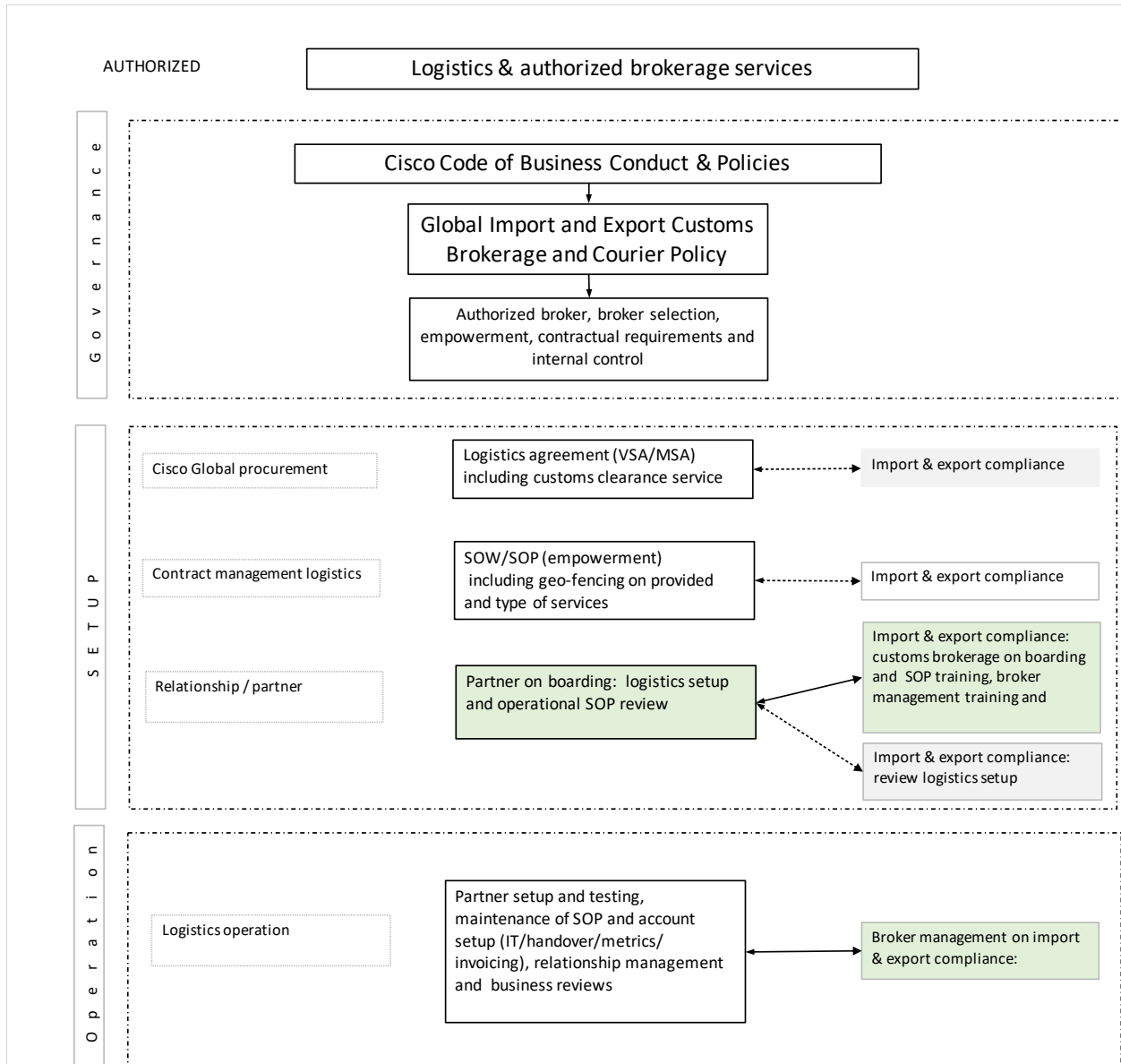


Figure 1: Cisco governance of authorized representative/agent customs services

The domain for this research are the unauthorized customs clearances activities in the European Union (Netherlands) and United Kingdom. This is where the main import and export activities of Cisco are happening in EMEA. The Netherlands (NL), where the Cisco supply chain and logistics operations in EMEA have the centralized warehouses, and United Kingdom (UK), which is the largest distribution country outside the European Union. In both countries (NL and UK), Cisco has an AEO license in place to support the logistics operation. During the distribution of products to these countries, Cisco has noticed that "unauthorized customs clearances" are

being made by authorized agents and unauthorized agents. Reports and samples have shown that the number of unauthorized clearances is limited from a quantitative perspective. However, every unauthorized clearance is a violation of internal policies and could lead to risks for Cisco. The overall internal perceived risks are low; however, this has never been investigated properly. It is recommended to do in-dept research to quantify the exact risk. As part of the customs compliance processes and Broker Management Program, Cisco monitors and is taking measures to further reduce the number of these clearances. This is to ensure that business and employees follow policies and ensure that the numbers and compliance risks of unauthorized clearances stay under control.

As “unauthorized customs clearance” is considered; a customs declaration submitted to the customs authorities that is not aligned with the Cisco Global Import and Export Brokerage policy. The following policy requirements need to be covered in a sequential order to be considered as an authorized customs agent / broker:

1. contract/agreement: vendor service agreement (VSA), statement of work (SOW) or brokerage terms & conditions needs to be signed.
2. authorization: proof of empowerment (standalone or covered in contract) or authorization of the agent with local authorities needs to be recorded;
3. (clearance) instructions available; which can either be a long-term instruction provided in a standard operation procedure (SOP) or single one-off instruction.

Since Brexit (1-1-2021) the number of unauthorized clearances has gone up. Expected reason for this is that shipments from and to the United Kingdom and the European Union now required customs formalities. Additionally, it has been noticed, the phenomenon of unauthorized clearance becomes harder to control as related brokerage, duty and tax costs linked to these clearances are low for Cisco. The main reasons of why the costs for specifically Cisco are low are:

- customs duty: low duty rates (mostly 0%) are applicable on Cisco products as the products are part of the Information Technology Agreement (ITA);
- postponed payment of import taxes: the introduction and expansion of import VAT deferment schemes in European Union Member States and United Kingdom lead to more possibilities to postpone the payments of import VAT. The means that doesn't become immediately payable at import or become a chargeable cost by the service provider;
- service type: customs clearance costs are a fraction of the overall logistics (international) service fee and are not noticed when cross-charged.

International shipments arranged with carriers/logistics service providers (fast parcel/courier) follow in general "the shippers' instructions". Information entered at origin is leveraged at destination. This could lead to customs clearances without being empowered or authorized to act as customs representative by an agent or broker. In general, the receiver is acting in good faith providing instructions to get the goods delivered. However, the receiver is not aware that

this could lead to compliance risks, violation of internal policies and an expansion of the broker footprint without the company is aware.

To become aware of the size and impact the unauthorized clearance activities, there is a dependency on governmental data and reports. The reports are needed to get a full picture of the companies' brokerage activities with the customs authorities. The reports are not always standard available and sometime provided on an ad-hoc basis. The reports provided are in general standard reports and may not contain all the data elements required for proper analysis. Missing elements could be names and addresses of the parties involved in the clearances, due to General Data Protection Regulation (GDPR) rules. This makes it hard to identify the broker, agent, or shipper. Beside GDPR challenges, there are audit trail challenges as references in the reports are missing to link an import or export declarations to a company transaction or trade administration. Additional reports or records are required from the agents to establish an audit trail for further analysis. This makes the analysis cumbersome and time consuming.

During an Integration Project on use of Fallback procedures, import and export declaration reports from the Dutch customs declaration system AGS were reviewed. Based on the reports provided, full visibility was given on Cisco's actual brokers footprint in The Netherlands. Based on the Cisco EORI number that was used, several unauthorized import and export customs agents were identified. The report showed that the issue of unauthorized clearance is mainly happening with the fast parcel (courier) service providers. Even though the number of these unauthorized clearances made are limited compared to the overall number of clearances, it made sense to further research unauthorized clearances as they create a potential compliance risk and liability for the company.

### **What is an unauthorized custom declaration?**

The commercial outsourcing of (customs) activities is common within the supply chain and logistics operation. Reasons for outsourcing of customs activities (Authorized Economic Operator Guidelines, 2016)<sup>9</sup>. could be knowledge, costs linked to run a customs broker operation, logistics and technical (IT) infrastructure and automation, flexibility or required certificates or licenses required for customs operation. The outsourcing of customs activities to a (customs) representative to deal with customs authorities leads to an agency relation between the company (principal) and representative (agent).

The European Union (EU) and United Kingdom (UK) customs legislation has the legal basis for (customs) representation in case a customs declaration needs to be lodge. Additional requirements can be found in national legislation of the EU member states, linking representation requirements to national civil or commercial law. In cases where representation is used, empowerment is required which might include instructions required for the customs clearance for a specific shipment.

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<sup>9</sup> Authorized Economic Operator Guidelines 2016 3.III.6.2. (TAXUD/B2/047/2011-REV6)

For this research topic, the definition of unauthorized customs clearance is, a customs (import or export) declaration lodge through standard procedure by a customs broker / agent without a written empowerment (agreement from the principal) for the customs clearance of a specific shipment or falling outside the limitations of the empowerment.



## Chapter 2: Problem definition and research questions

### Problem definition

Economic operators in international trade need to perform risk analysis and audits to assess the effect of risk mitigation measures to limit the company's risk. The risks related to customs and trade compliance operation should be part of their overall risk management strategy. The AEO license owners need to demonstrate a high level of control of his or her operations, which includes outsourced customs brokerage activities. Outsourcing of customs activities to third parties is possible, but you cannot outsource the compliance responsibilities<sup>8</sup>. Outsourcing does not materially reduce the risk for the company and requires proper risk mitigation. The risks related to business partners need to be managed through implementing requirements into contracts and monitoring. Specific customs brokerage risks should be mapped based on likelihood and impact as for example mentioned below figure from the European Commission Authorized Economic Operator (AEO) Guidelines (2016)<sup>10</sup>.

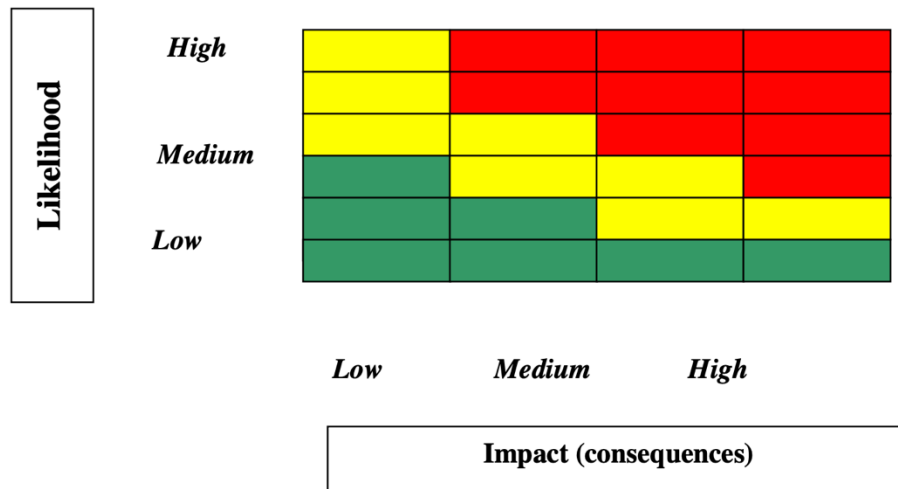


Figure 2 AEO risk management

As already mentioned in the previous chapter, outsourced services, like representation for customs, lead to risks if not managed and overseen properly. With an authorized service provider, the economic operators have processes and controls in place to monitor third parties service provider's work and related compliance risks. The unauthorized services are out of scope of regular monitoring and could impact the operator's economic compliance. Knowing that outsourcing within the international supply chain is happening when goods move across international borders, the impact of unauthorized activities should not be ignored. It should be part of the trade compliance risk assessment to determine the likelihood and impact. In this research knowledge is gained on unauthorized clearances in the countries where Cisco has an AEO license in place. To understand the impact of unauthorized clearance on import and export

<sup>10</sup> Authorized Economic Operator Guidelines 2016 3.III.6.2. (TAXUD/B2/047/2011-REV6)

privileges granted under AEO license and how they manage the risk is a key objective of this research.

The following potential risks have been identified for Cisco:

- Internal policy breach: unauthorized clearance led to internal policy breach impacting companies and AEO license compliance. Impact on AEO license due to missing compliance controls have led to investigation of unauthorized clearances, amendments, and incident to be reported in the AEO incident tracker.
- Unauthorized entries leading to incorrect declarations with financial impact or breaches of export control requirements. In all identified cases with financial impact it led to disclosures, costs and in rare case fines.
- Non-business-related shipments or non-Cisco shipments being customs cleared under Cisco's name leading to incorrect deferment/ postponement of import VAT by broker. Manual adjustment of VAT reporting or exclusion of VAT needs to be done as the cost doesn't qualify as reclaimable because business purpose justification is missing.
- Companies risk profile impacted: submitted entries cannot be retroactively amended in authorities' customs declaration system. This is leading to records in the customs authorities (IT) system which could impact on the companies' "risk profile".
- Duties, VAT, and clearance cost covered by service provider not covered by contract, leading accounts payable policy breach and payment disputes.

Besides the risk mentioned above, unauthorized clearance follow-ups are creating extra work to manage. Each case needs to be followed up to get closed or mitigated. With the help of the case study research, I want to develop a strategy to mitigate risks and how to get more visibility on unauthorized customs clearance activities.

## Research questions

This research aims to research the phenomena of "unauthorized customs clearance" to develop a framework to mitigate the compliance risks for the economic operator related to outsourced unauthorized customs clearance activities.

This leads to the following research question:

**How to control and mitigate possible compliance risks related to unauthorized customs clearances?**

To answer the research question below sub-questions, need to be answered to reach the research goal:

- What is the legal basis of representation and empowerment for custom clearance?
- What are the legal consequences and risks of unauthorized customs clearance?
- What has commercially been agreed between companies' and third-party service providers in contracts and Terms and Conditions?

- How should the framework look like to mitigate the risk and control unauthorized clearances in European Union Member States and United Kingdom?

This research will provide recommendations based on a case study to mitigate the risk to avoid, reduce, transfers or last accept the risks for the company. This research might help other companies facing similar issues. As economic operators need to control unauthorized customs clearance activities as part of their overall trade compliance risk management, broker management program and AEO license. It is recommended to develop an overall strategy to manage and oversee outsourced broker activities to get visibility of risks related to unauthorized clearances for import and export.

### Research methodology

To investigate the above problem statement, a practice-oriented research method is used. Practice-oriented research consists of theoretical research by reviewing available literature and documents to define what is considered as an unauthorized customs clearance and what the legal requirements are. Besides literature study, a case study will be done by research of data, interviews and archival of documentation. The case study will be cross-sectional as the phenomena of unauthorized clearance will be researched retrospectively for import and export in two different geographical jurisdictions and agents over a longitude of 3 calendar years. The import and export data records are provided by the authorities in The Netherlands and United Kingdom. Semi-structured interviews will be held after the data review to collect opinions on a pre-defined set of questions to support the real-life context of the research.

The literature and case study leads to conclusions and recommendations (for the companies and authorities) for a framework on how to control unauthorized clearances and if there is risk, how risks can be mitigated.

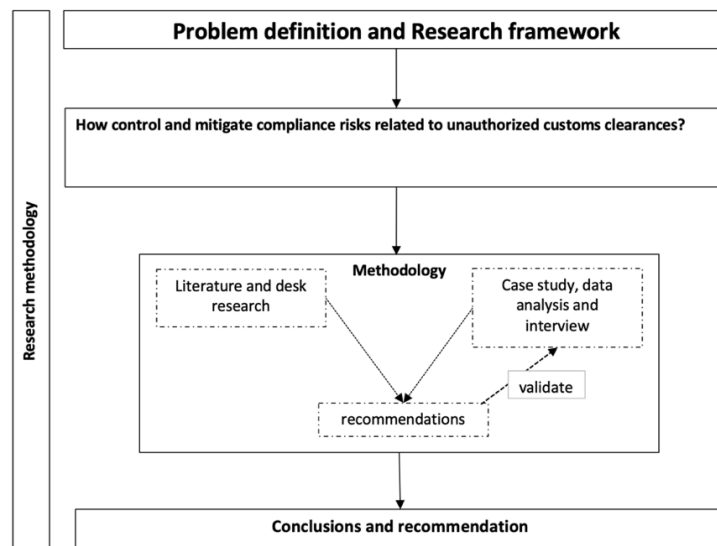


Figure 3: research framework

Case study methods are widely recognized as strategies for empirical research. Case study research allows the exploration and understanding of complex issues and can be considered as a robust research method, particularly when a holistic, in-depth investigation is required. A case study method enables a researcher to closely examine the data in a real-life context (Dul & Hak, 2008<sup>11</sup>) and helps to understand how the phenomena unauthorized clearance within Cisco. Thanks to the case study approach, a clear and in-depth understanding of the challenges that Cisco was faced with on brokerage compliance was gained.

### Research methodology limitations

Case studies research method also has its limitation due to methodological and practical choices (Dul & Hak, 2008). The limitations that are recognized for this research are called out below as part of the research project. They can be summarized as followed:

- discretion of the researcher about which data to include (researcher bias);
- time- and resource-intensive – resource strains
- lack of generalizability – single case study
- It is hard to study past phenomena due to recollection (bias and information) – limit the longitude.

### Research methodology justification

For this research project there is a rationale for the case study approach. The case study will provide an in-depth understanding of the challenges that Cisco is faced with and gain knowledge on the compliance impact for the Netherlands and United Kingdom. The researcher is aware of the bias. The case strategy has been implemented in a way to maintain objectiveness by using data source triangulation by reviewing data and samples. Information triangulation is done by including multiple respondents. The selected respondent will be dependent on response with a similar global broker footprint and standardized process. This would allow the option to generalize conclusions and recommendations.

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<sup>11</sup> Dul & Hak (2008), Case study in business research

## Chapter 3: Review of researched literature

In this chapter the theoretical background of the research is presented which mainly consists of reviewed literature linked to the research topic unauthorized clearances. The literature review includes agency theory and principles, (customs) law, regulation, policies from authorities and standard contract/agreements and empowerment documents available with service providers who offer customs clearance service. The literature study will give insights into the different sub questions related to the legal basis of representation and empowerment. The literature research will concentrate on in the European Union/The Netherlands and United Kingdom available literature. Reason for this is that the case study on Cisco to focus on above countries is that Cisco has their main warehouses and customs activities in The Netherlands/European Union and a large export market from the warehouses is the United Kingdom.

### Agency theory

Within contract and commercial law definitions of agency and representation exist. A good example is The Principles on European Contract Law (PECL)<sup>12</sup> (O. Lando, 2000), which provides model rules and definition on contract law by leading academics in Europe. Under section 3 the authority of agents in case of a contract with a third party is described. Under this provision the categories of representation direct and indirect are defined. In article 3:204 PECL the consequences described when an Agent is acting without or outside its authority or acts without sufficient authority, falsus procurator (Verhagen, 2009)<sup>13</sup>.

The definition of agency can be described as "a relationship arising where one person, the principal.... appoints another, the agent... to bring about legal relations between the principal and one or more third parties<sup>14</sup>.

Characteristics in a typical agency relationship are:

- consent between principal and agent in contractual form;
- agent is appointed to act on behalf of its principal for describe activities, that are affecting the legal position of the principal, entered in a contract (mandate)
- agents (authorization) will somehow be limited the effect on the principal legal position in the contract;

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<sup>12</sup> Lando (2000), The Principles on European Contract Law

<sup>13</sup> Verhagen (2009), The liability of the Falsus Procurator

<sup>14</sup> McKendrick (2016) - Goode on Commercial Law

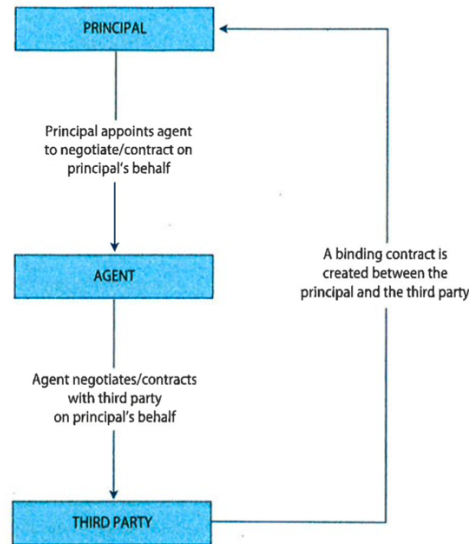


Figure 4: A typical agency relationship<sup>15</sup>

Principles for (commercial) agents including rights and obligations can be found in both European Union and United Kingdom directives. An example is the Commercial Agents directive<sup>16</sup>, which describes the principles of the authorizations of the agents including direct and indirect representation and the consequences of when person acting as an agent acts without authority or outside the scope of its authority. The same principles in civil law are applied when commercial parties agree on customs representation as meant in the Union Customs Code and its previous regulations.

In the agency theory, the principle-agent problem is a known issue. Agents' decisions might not be optimal in terms of principle outcome. The agents will focus on their own domain to maximize a successful outcome and minimize the risk exposure, which will not always be in the interest of the principle. Both parties act in their self-interest under the limitations of the agreement.

## Law and legislation

For this research the European Union (EU) and United Kingdom (UK) customs legislation form the legal basis for customs representation. Additional requirements can be given in national legislation of the EU Member States linking representation requirements to national civil or commercial law.

<sup>15</sup> Baskind, Osborne & Lee (2019), Commercial Law Chapter 3 An introduction to the law of agency

<sup>16</sup> The Commercial Agents (EU Council Directive) Regulations (1993)

Relevant articles linked to representation from the EU Union Customs Code (UCC)<sup>17</sup> are:

- article 5(4) UCC: "person" means a natural person, a legal person, and any association of persons which is not a legal person, but which is recognized under Union or national law as having *the capacity to perform legal acts*;
- article 5(6) UCC: "customs representative" means *any person appointed by another person* to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities;
- article 5(12) UCC: "customs declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;
- article 5(15) UCC: "declarant" means the person lodging a customs declaration ..... in his or her own name or the person in whose name such a declaration or notification is lodged;
- article 18(1) UCC: customs representative: *any person may appoint a customs representative*. Such representation may be either *direct*, in which case the customs representative shall act in the name of and on behalf of another person, or *indirect*, in which case the customs representative shall act in his or her own name but on behalf of another person.
- Article 18(3) UCC: option for additional conditions by Member States: in accordance with Union law, *the conditions under which a customs representative may provide services in the Member State where he or she is established*.
- article 19(1) UCC: When dealing with the customs authorities, a customs representative *shall state that he or she is acting on behalf of the person represented* and shall specify whether the representation is direct or indirect - Persons who *fail to state that they are acting as a customs representative* or who state that they are acting as a customs representative *without being empowered* to do so shall be deemed to be acting in their own name and on their own behalf.

Relevant articles from the United Kingdom Taxation (Cross-border Trade) Act 2018<sup>18</sup>:

- article 21(1) T(CT)A - Customs agent: A person ("the principal") may appoint any other person (a "Customs agent") to act on the principal's behalf for the purposes of this Part, and ....
- article 21(2) T(CT)A - Customs agent: The appointment of a person as a Customs agent, and the withdrawal of an appointment of a person as a Customs agent, must be disclosed to HMRC in accordance with regulations made by HMRC Commissioners

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<sup>17</sup> Regulation (EU) No 952/2013, Union Customs Code

<sup>18</sup> [Taxation \(Cross-border Trade\) Act 2018](#)

Additional requirements or guidance are provided at national level for The Netherlands in the Customs Handbook<sup>19</sup> and for United Kingdom on the HMRC website<sup>20</sup>.

Based on above theory and literature on agency and representation, for this research the definition of unauthorized customs clearance is a customs (import or export) declaration lodge through standard procedure by a customs broker / agent without a written empowerment (agreement from the principal) for the customs clearance of a specific shipment or falling outside the limitations in the empowerment.

### Customs clearance

The term “customs clearance” is not defined in the Union Customs Code and Taxation (Cross-border Trade) Act 2018. A custom clearance can be defined as customs declaration per article 5(12) EU UCC, “*a customs declaration is the act whereby a person indicates the wish to place goods under a given customs procedure when goods cross, for example, an international border*”. A customs clearance is in general lodged by a declarant who can be the owner of the goods, a person having control over the goods or a person acting on behalf of this person (a representative). The lodging for customs imports or export by a person acting on someone else's behalf is considered as a customs representative and requires an empowered.

### Customs representative

In the case of representation, there are always 3 parties involved, the client (principal), the representative (agent) and customs authorities. Besides standard representation, the EU and UK customs legislation both allow customs representation for the placing of the goods under a customs procedure with custom authorities by a representative. In both the EU and the UK, the customs representative or agent needs to meet certain conditions, like being established in the EU or UK and required qualifications. EU Member States or National customs authorities may provide additional requirements to meet by the representative or agent, like in The Netherlands for example meeting certain AEO requirements linked to internal controls, administration, and knowledge of article 39 UCC. It also requires an active act, where an authorized person appoints a party for representation. This is captured in EU customs legislation in article 18(1) UCC describing customs representative meaning “any person may appoint a customs representative....”. The United Kingdom custom legislation describes under article 21(1) T(CT)A as Customs agent: “*a person (“the principal”) may appoint any other person (a “Customs agent”) to act on the principal’s behalf for the purposes of this Part*”. Per UCC introduction article 5(6) UCC a definition of customs representative is given: *any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities.*

Both EU and UK customs legislation are covered in article 19(1) UCC and article 21(1) T(CT)A, when being represented with the customs authorities, through a representative or agent, the

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<sup>19</sup> [Handboek Douane \(HDU\) section 2.00.00](#)

<sup>20</sup> GOV.UK - [Get someone to deal with customs for you on your behalf](#)



representative or agent shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect including optional disclosure with the authorities per local regulation.

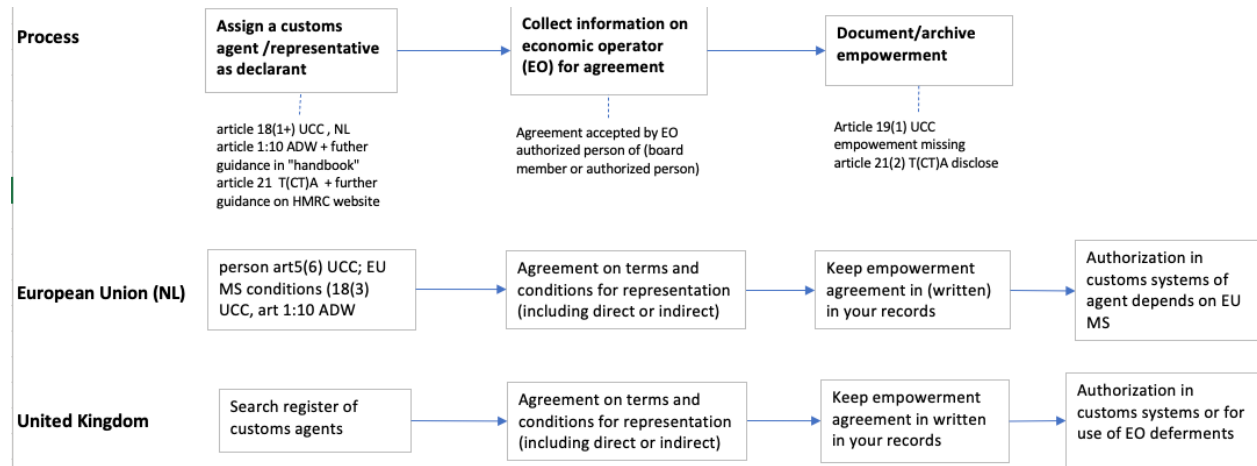


Figure 5: steps for assignment of customs representative/agent

Legislation covered under article 19(1) UCC and 21(2) T(CT)A states that a person who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf.

## Empowerment

When acting as representative empowerment is required. Empowerment in civil and commercial law can be given oral or in written. However, an empowerment in written is recommended as this is a document that gives legal certainty and hard evidence. It will also avoid confusion on the scope of the empowerment. The format of the empowerment is open to the principal and his representative. In practice different models are used. Models can be standardized by certain business segments and are in most cases extend to the empowerment beyond customs representation to freight and other trading conditions. Examples of agreement are; in the Netherlands the Fenex conditions<sup>21</sup> and in United Kingdom the BIFA<sup>22</sup> agreements.

In national legislation or policies, additional elements or definitions of empowerment may be provided, like:

- person represented (economic operator) and (customs) representative.
- identification of person (on behalf of economic operator) authorized to sign.
- in case of customs representation, direct or indirect representation
- scope of empowerment
- (starting) date and signature by economic operator and customs representative / agent.

<sup>21</sup> Fenex (2018), Dutch forwarding conditions

<sup>22</sup> Bifa (2021), Standard Trading conditions

An important element in the empowerment to cover is, in the case of customs representation, direct or indirect representation. This sets the legal responsibilities and liabilities linked to the customs activity and forthcoming financial obligations. Both European Union and United Kingdom are following the same principles for the type of representation in their legislation, article 18(1) UCC and article 21(1) T(CT)A:

- direct representative/agent: the case where the customs representative/agent acts in the name of and on behalf of another person. The person acting as representative will be solely liable for keeping records, the accuracy of any information provided on your customs declarations and any Customs Duty or import VAT due. Direct representation also has a limitation as the economic operation (principal) must be established in the EU or UK;
- indirect representative/agent: in the case of the custom's representative acts in his or her own name but on behalf of another person. The economic operator and representative/agent will be liable for making sure the information is accurate and jointly and severally liable for any Customs Duty or import VAT.

A representative who fails to state that they are acting as a customs representative or, who states that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in own name and on own behalf.

### **Standard contract and related to service offered by logistics service providers.**

Research of the different parties in the market that offer customs representation services have shown that you can make a distinction between service offering as part of a logistics solution or service offered by standalone customs declarants / agents. In general, standalone agents are flexible in the setup of the empowerment and agreement offered. The other market parties offer customs representation as part of their logistics or carriage terms and conditions. In most cases a model from freight forwarders organization is leveraged. An example of model agreements for empowerment are the Fenex Forwarding Conditions available in The Netherlands or the Bifa Standard Trading Conditions in the United Kingdom. Both agreements contain all elements required but also refer to the overall Freight Forwarding terms and conditions which go beyond the UCC or T(CT)A legal requirements. In general freight forwarders are hesitant in offering customs clearance service as a stand-alone commercial product as their risk model is based on end-to-end control. Research on the templates available on the internet with service providers, for example UPS POA (2022)<sup>23</sup>, shows that the available empowerment templates are all based on direct representation. Indirect representation is possible as an exception.

The global courier / fast-parcel operators work based on their own global terms and conditions of carriage with optional customs clearance services offered. In general, the shipper or sender at origin determines, by booking a shipment in the courier companies' tools, on which terms and conditions (T&C) the goods are delivered to their destination. Once the booking is made,

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<sup>23</sup> [UPS POA Direct representation](#)

the courier company links the freight booking to a destination account. Empowerment is in general not required per T&C. Once the freight is booked and the T&C is accepted the empowerment is set. An examples are the DHL Terms and Conditions of Carriage (2022)<sup>24</sup> or UPS Terms and Conditions of Carriage(2022)<sup>25</sup> under the section 4, customs clearance, *“When a shipment requires customs clearance, it is the shipper’s obligation to provide, or to ensure that the receiver will provide, UPS with complete and accurate documentation for the purpose but UPS will, unless instructed otherwise, act on behalf, at the expense and at the risk of the shipper or receiver in obtaining an authorization for customs clearance”*. In the FedEx Condition of Carriage NL (2021)<sup>26</sup> section 13.6; *“the sender shall ensure recipient authorizes FedEx in accordance with this provision, when applicable”*. The shipper or sender plays a key role in international shipment through courier / fast parcel companies. This setup leads to the requirements to do proper due diligence by the shipper with the receiver, provide jointly agreed clearance instructions with supportive documents for customs clearance at destination. In general, by accepting the T&C also the empowerment/authorization is given to the service provider for further processing at destination.

## How is representation / empowerment setup?

### The Netherlands

As mentioned in the earlier sections representation in The Netherlands is based on EU regulation (UCC). Additional conditions linked to representation and empowerment is covered in the Dutch National Customs Law (Algemene Douanewet - ADW<sup>27</sup>). Further guidance is given in the Dutch Customs Handbook on legislation and procedures. Article 18(3) UCC, allows Member States to provide additional requirements linked to customs representation. In The Netherland this is done in the Dutch Customs Law (ADW) in article 1:10 which provides the additional requirement for representation in The Netherlands stating that the criteria of article 39 a-d UCC needs to be met. For this requirement additional guidance is given in the Dutch Customs Handbook (2023) in chapter 2.00.00<sup>28</sup>. This section provides additional guidance on the requirement to the representative customs administration and controls (article 39b UCC) and professional qualification (article 39d UCC).

To summarize the conditions for representation and empowerment in The Netherlands:

- general provision of information requirement is applicable (article 15 UCC), which covers in case of representation; an empowerment (article 19-2 UCC), clearance instructions and copy of the customs clearance;
- additional conditions from Dutch Customs Law (ADW) are referring to the general the criteria of article 39 a-d UCC need to be met;

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<sup>24</sup> UPS Terms and Conditions of Carriage

<sup>25</sup> UPS Terms and Conditions of Carriage

<sup>26</sup> FedEx Express TERMS AND CONDITIONS OF CARRIAGE for Europe

<sup>27</sup> Algemene Douane wet (ADW)

<sup>28</sup> Handboek Douane

- the handbook gives additional requirements linked to acceptance of representation (due diligence and validation of the empowerment including records), clearance instructions, communication with the economic operator, archiving and controls (article 39 b UCC);
- professional qualifications are linked to EU Customs Competence Framework for the Privat Sector could be used as guidelines as it gives guidance on expected competences (article 39 d UCC);
- Guidance from Customs Administration of the Netherlands<sup>29</sup>

### United Kingdom

Representation by a customs agent in United Kingdom legislation is based on Taxation (Cross-border Trade) Act 2018. Article 21(2) T(CT)A HMRC Commissioners the option to provide additional regulation or guidance. Additional guidance can be found on the UK governmental websites and in CDS customs system setup guidelines. The UK guidance, legislation and forms are still referring to the EU UCC for the base rules and guidelines related to representation.

To summarize the conditions for representation and empowerment in United Kingdom:

- follow the instruction provided on the HM Revenue & Customs website<sup>30</sup> *“Get someone to deal with customs for you”*;
- provide written instructions to the agent as they cannot act on your behalf without written instructions from you. The instruction must show whether they’re acting on your behalf as directly or indirectly representative.
- The customs agent needs to be authorized and linked to the economic operator in the UK customs system for use of duty deferment account or postponed VAT accounting.

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<sup>29</sup> Dutch Customs (2023), Customs representation

(<https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/customs/representation/>)

<sup>30</sup> UK Government - HMRC guidance (<https://www.gov.uk/topic/business-tax/import-export>)

## Summary from literature study

The literature study showed that “principle-agent problem” from the agency theory also exists in the domain of outsourcing of customs activities. This problem will be further researched through a case study to understand the real-life context. Based on the literature study, the consequences of outsourcing of customs clearance activities to a customs agent or broker can be made visible. By linking principle-agent agency relation, representation, and legal impact implication the below table has been created.

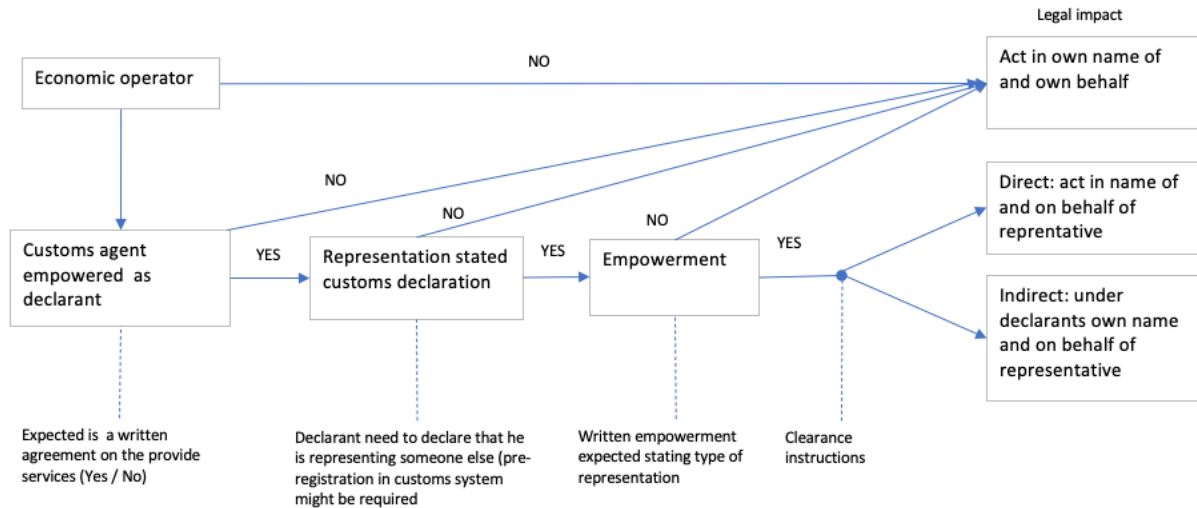


Figure 6: Overview of (customs) representation for customs clearance

## Chapter 4: Research approach

The literature studies gave a solid theoretical base for further research. It helped to understand the legal frameworks, the policies and the standard agreements leveraged by service providers in the market. The next step in this practice-oriented research is to explore, with the help of a case study, the gap between existing literature and daily practice. In the Cisco case study multiple agents are reviewed in The Netherlands and United Kingdom on customs clearance activities that they are doing for Cisco. This is to reach conclusions on how the overall clearance process is set up and how empowerment and compliance processes are set up with the agents.

### Case study Cisco

For Cisco the Netherlands and United Kingdom are the main import/export countries in the EMEA region. In both countries the Cisco entities have AEO licenses in place. These licenses require proper broker management and (compliance) controls. In both countries, governmental reports are available which will be used to support the case study. Cisco's annual import and export data was requested to support quantitative research. Besides the data requests, interviews will be held with the agents who have become visible as agents submitting unauthorized clearances. Since the data required for the case study is provided by multiple sources, the reliability and quality of this study is guaranteed. The results coming from this case study research are used to validate the perception of the problem of authorized versus unauthorized clearances.

The reports to support the case study, for both countries standard reports are received from national customs systems. In the Netherlands the source is AGS and in the United Kingdom it is CHIEF and CDS. The requested data will be used for quantitative analysis to detect the number and agents involved in the unauthorized clearances. Authorized clearance lines will be excluded from the data based on Cisco's authorized agent import and export database. The remaining customs clearances are considered unauthorized until proof of authorization is provided. Customs entry records, like airway bill, customs declaration and invoice, clearance instructions, will be requested by the Cisco compliance team for further review. The goal of the case study is to get a deeper understanding of the root cause of unauthorized clearances and get answers on the research questions leading to recommendations on how to control and mitigate risks related to unauthorized clearances. A second extract of data will be pulled from the authorized agents' data, as these could contain unauthorized clearance lines due to limitations in the brokerage agreement. This extract will be pulled based on business logic from the supply chain logistics operation which links the agents to specific inbound and outbound lanes. The unauthorized clearance lines will be further analyses based on requested samples.

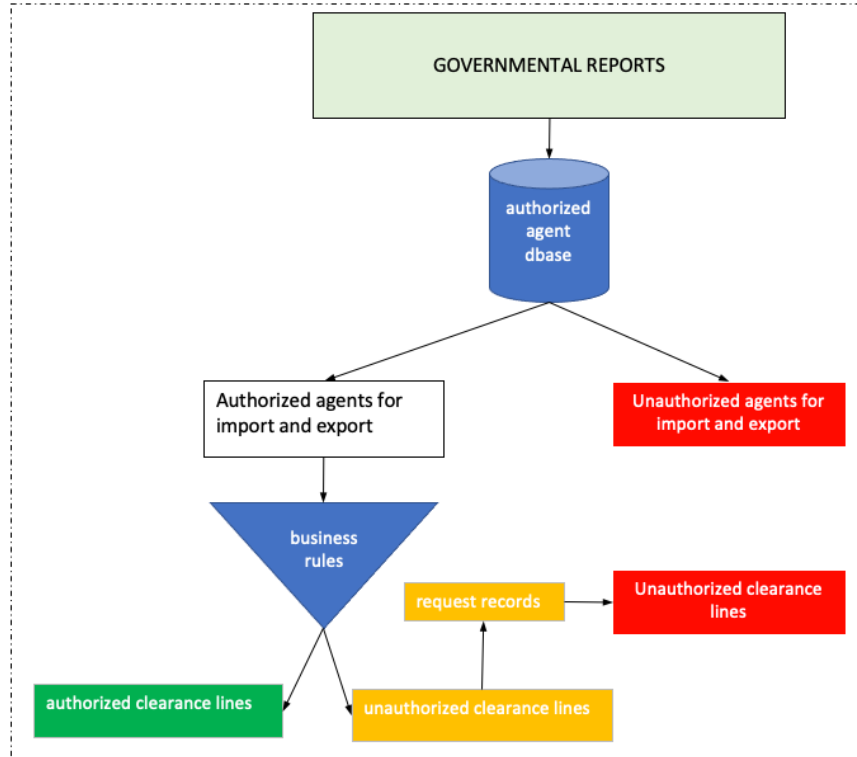


Figure 7: selection methodology of unauthorized clearance lines

### Data Collection method

The domain for the quantitative data analysis is all import, and export declarations done in The Netherlands and United Kingdom. However, for the Cisco case study, the population of the object of study is the import and export data for Cisco received from the authorities over the calendar years 2020-2022. The data records at a minimum should include; declarant name, declaration reference and date, shipment reference, consignor, country of dispatch, document reference (invoice), customs/statistical value, duty paid and representation. Optional fields could be relevant like submitter EORI, representative EORI, importer or exporter, location of the goods, seller/shipper, and receiver/buyer.

### The Netherlands

*As mentioned in the earlier chapters, the main source for visibility on unauthorized clearances is the data received from the authorities. In the Netherlands, Cisco has agreed with the regional customs office that entry data can be requested at a sequence of half year for AGS import and export for specific EORI numbers. The AGS import report contains all imports done by Cisco in the Netherlands through the normal process. Most of the import lines for Cisco are submitted through the monthly declaration (GPA). This means that the AGS import data population does not include all import lines in the Netherlands. The records provided are based standard reports and are delivered as Excel spreadsheet through email at request of the economic operator. If the reports are too big, they can be downloaded from a "file-transfer" location. The reports are*

standard reports and contain in total 183 import and 98 export fields. Only 10-15 fields in the reports are relevant to determine if an entry line is done by an authorized broker.

### United Kingdom

In the United Kingdom, Cisco has a subscription on “Management Support System”<sup>31</sup> for import and export reports with HM Revenue and Customs. Two monthly reports are provided by the UK Border Service, Data and Design, Trade Statistics & Customs Analysis team in an Excel format to a Cisco email mailer secured with a password. The reports include all imports and exports carried out under Cisco’s EORI number. Not included is the low value (<£150) bulk clearance done by fast parcel operators. Since July of 2022 HMRC was in transition from the entry declaration system CHIEF to the new CDS system. This led to two reports with different fields which had to be merged for calendar year 2022.

For this research project the following steps are taken to prepare the data for quantitative research:

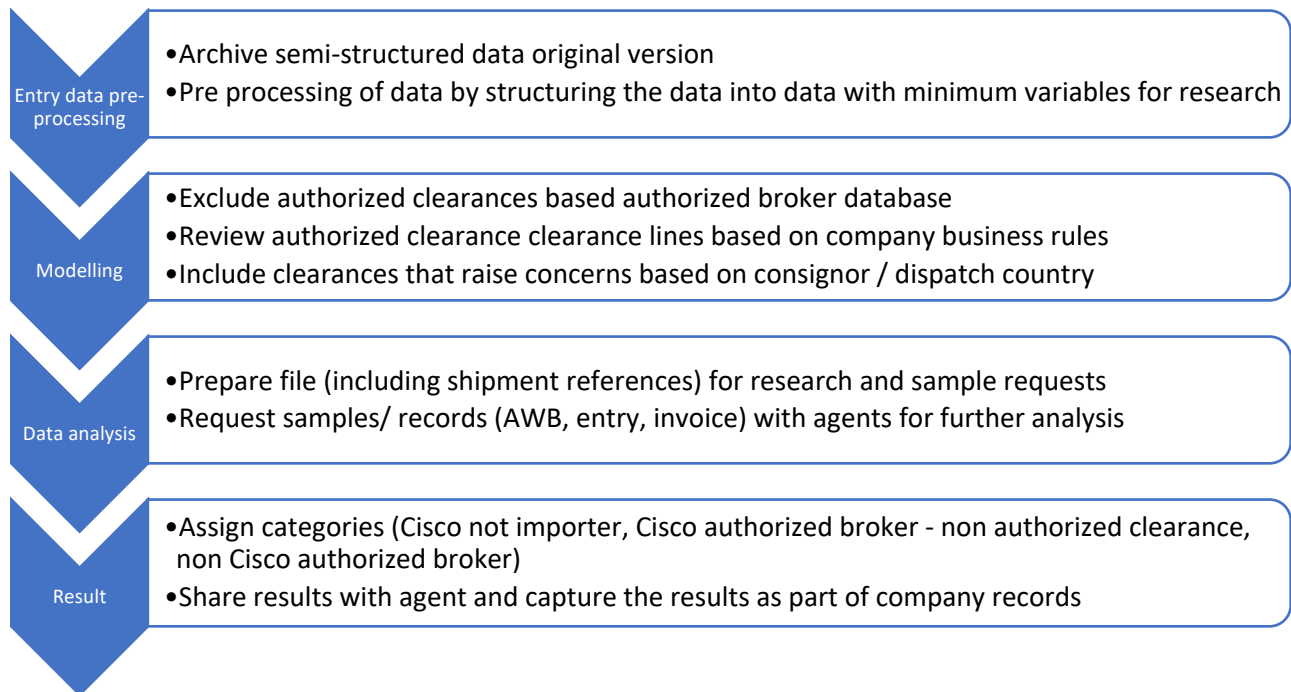


Figure 8: governmental report data processing

### Quantitative data analysis

In this section the results from the review on the Cisco import and export data record review are presented. The scope for the data analysis for import and export is the period 2020-2022. The reason for going back to the year 2020 is to validate if the introduction of a border between the EU and UK after per 1-1-2021 impacted the number of clearances. Additionally, the UK and EU Member States have introduced an easements process related to VAT for import clearances. This VAT deferment process makes import VAT not payable at import. This measure has

<sup>31</sup> Management Support System (<https://www.gov.uk/guidance/mss-supporting-guidance>)



impacted on the clearance cost to be invoiced by the agent as the import VAT now became a non-chargeable cost to cross charge for the customs agent managing the import clearances.

### Sample review

From the unauthorized population determined based on the reports, a further in-dept analysis is done by requesting entry samples. This is to test if the selection logic is reliable and to test on false positives. A false positive in this case is an authorized clearance line in the unauthorized population. Per agent three import and export samples will be reviewed (if available) in the calendar year 2022. The selected samples will be discussed during the broker interview as examples. For all requested samples the agents were not able to provide any empowerment or clearance instructions. This confirms that the selection logic is reliable.

### Customs agent interviews

To support the outcoming of the finding from the data and sample review, several interviews were held with the agents in the Netherlands and United Kingdom. The interview questions are set up in a semi-structured way with the objective of receiving agent opinion on the selected unauthorized customs clearance samples to understand what guidance customs agents follow in daily practice. The answer to the interview questions will help with answering the problem statement.

### The interviews

The interviews were held in a face-to-face meeting or in a virtual setting. Prior to the meeting a preparation meeting was scheduled to ensure that the subject matter experts were attending the meetings. To ensure active participation of the interviewees, specific samples were shared prior to the meeting to facilitate a better discussion. If questions could not be answered immediately it was agreed that the questions would be answered later via email communication.

For the interviews the following questions were constructed:

1. How is empowerment arranged within your company?
2. How are clearance instructions provided?
3. What is captured in account notes in the system to support the clearance process? Can they be shared?
4. What are the safeguards in agent or customs system to avoid unauthorized clearances?
5. How can unauthorized clearance be avoided by Cisco?

### Summary of the interview questions

#### **How is empowerment arranged within your company?**

The interviewees mentioned that the agents preparing and submitting the clearances follow the customs account notes in their system. The account notes are linked to a specific shipping or customs account. If the notes mention that the agent is responsible for the customs clearance, the clearance will be processed as “declarant” (1) in the customs system. If the notes

contain any exceptions, these will be leading and should be followed by the agent. In The Netherlands no empowerment is requested if the entry declaration is submitted by the agent as declarant. It was also mentioned that the agents use importer EORI and VAT numbers, without requesting instructions or pre-approval.

The interviewees explain that in the United Kingdom the situation is different. If the agent's simplified customs license is used for customs clearance. The import declaration is submitted by the declarant under indirect representation. Empowerment is requested during the setup of the accounts for the use of the importer's deferment account for duties and VAT. After 1-1-2021 (Brexit) additional approval is requested to use postponed VAT accounting for the importer. During last year's implementation of new UK customs systems (CDS), the importers had to provide a new authorization to the agents for the use of importers duty deferment account. For UK accounts with specific instructions, the agent will reach out to the importer/exporter. The requested clearance instructions are considered as an empowerment for a specific transaction. The clearance instruction may contain customs empowerment for direct representation. The clearance instructions are forwarded to the receiver of the shipment by email. In cases where the email address is missing, the system notes contact details are leveraged. The interviewees mention that they expect the receivers to arrange an internal empowerment to approve the shipment for customs clearance.

#### **How are clearance instructions provided?**

The interviewees mention that for clearance instructions the system notes are followed. In general, the notes don't provide specific guidance on the data elements to be used in the entry declarations. If the agent is acting as declarant, the agent uses origin data available in the system to complete the entry at destinations. In exceptional cases clearance instructions are requested. The instructions include the following minimum data elements: EORI number of importer or exporter, customs procedure to follow (import/export or T1), country of origin, customs value, description of the goods and harmonized system code, deferment instructions for duties and VAT. The clearance instructions are not requested based on a fix format or template. After the instructions are received, they are archived in the agent's system as part of their records.

With the agents the instructions for delivery term Delivery Duty Paid (DDP) were discussed. By agents they are accepted under service type Duty Tax Paid (DTP). Factually in this case the agents are leveraging EORI and VAT number if available. In these cases, the agent prefers to charge the import VAT (deferred) to the importer and the duty cost is charged back to the shipper. Results from these interview questions created awareness on how fast parcel agents manage brokerage of shipments and leverage importer and exporter EORI and deferment account.

#### **What is captured in the account notes in the system to support the clearance process? Can they be shared?**

The interviewees mention that the account notes are critical for the agents. Account notes are leading for the remote team preparing the entries. The local agents use them to identify the shipments and link shipments to the correct customs procedure if any. The notes cover in

general elements like; name and address receiver, clearance procedure to be used, VAT/EORI number if applicable, billing account details, contact details and free text to cover specific requirements like export requirements (license). One agent mentioned that for Cisco, there is a separate note in the system to support handover to a third party authorized broker. In this case the shipments are moved to the agent's bonded warehouse until the release message from customs is shared by the authorized broker. The accounts were shared after the meeting per email.

### **What are the safeguards in agent or customs system to avoid unauthorized clearances?**

Recommended by interviewees is to have the B2B setup enabled to avoid any manual activities by the agents. For the automated setup different setups are accepted. In the case of an automated setup the agents will only do a sanity check prior to submission to the customs system. If manual process is followed, the system notes need to be accurate and have a clear guidance on process to follow and communication path for questions or instructions. All agents mention that account notes reviews with importers and exporters are happening rarely as these notes are for internal use only.

### **How can unauthorized clearance be avoided by Cisco?**

See also the above section on the safeguards. Recommended is to have regular review of the account notes to keep them accurate and relevant. The account managers attending some of the interview meetings acknowledge this as a gap. The Cisco provide samples have been cleared based on instructions in the notes with the agent as declarant. For the shipments no instructions were requested from the receivers or account notes were ignored by the agent.

With the help of the interviews, I was able to get a good sense of how agents process customs clearances. In general, standard processes are followed to limit disruption as processes are integrated. There is no time for the agent to request for an empowerment, as for the majority of the shipments, the customs clearance is done pre-arrival. Handover to an authorized agent is not the standard setup and makes this process sensitive to errors.

## Chapter 5: Research results and analysis

### Research results on case study Cisco

In this section, the research findings of the case study on outsourced customs clearance model and unauthorized customs clearances are presented. The case study constituted out of empirical research on obtained import and export clearance data from authorities, a sample reviews of entries and interviews with agents responsible for the lodging of customs clearance in the Netherlands and United Kingdom.

#### The data review.

To identify unauthorized brokerage activities engagement is required from the authorities. The entry data obtained from the authorities contained all customs clearance lines created by agents linked to Cisco's EORI number. The reports consists out of default records and fields from the authority's entry systems. Based on the Cisco governance of authorized representative/agent customs information unauthorized brokers can be made visible. Further determination of the unauthorized clearance lines is done manually because a direct link to the importers/ exporters' transactional details are missing in the reports. The reason for this is that the agent completes the entries based on the legal requirements and their logistics administration to ensure a proper audit trail for their records. In almost all cases the importer or exporter references are missing.

Based on internal documented business rules and understanding of companies supply chain, outliers were identified. Having a company database available with agent details like EORI numbers, locations and authorized lanes helped to identification authorized and unauthorized transactions more accurately. The data analysis showed that unauthorized clearances are happening in both countries:

Declarant/Agent	2022	2021	2020	Declarant/Agent	2022	2021	2020
Authorized NL	287,303	775,920	10,298	Authorized GB	52,352	52,862	942
Unauthorized NL	879	835	346	Unauthorized GB	230	253	13
Total	288,182	776,755	10,644	Total	52,582	53,115	955

Table 1: unauthorized clearance lines in the Netherlands and United Kingdom.

#### Detailed results from data review AGS and CHIEF/CDS

After the above analysis a more detailed analysis will be done for both countries of imports and exports.

Results from quantitative data analysis on the use of Cisco's EU EORI numbers for import in the Netherlands leads to below table:

Import in the Netherlands (AGS)							
Declarant/Agent	AUTH/UNAUTH	2022	2022	2021	2021	2020	2020
Brokers in AGS report		entry lines	Stat. value	entry lines	Stat. value	entry lines	Stat. value
Authorized	A	6,609	€ 202,984,005	7,840	€ 134,902,075	9,018	€ 167,033,620
Unauthorized	U	618	€ 6,962,877	530	€ 4,107,916	165	€ 1,792,783
<b>Total</b>		<b>7,227</b>	<b>€ 209,946,882</b>	<b>8,370</b>	<b>€ 139,009,992</b>	<b>9,183</b>	<b>€ 168,826,403</b>
Unauthorized set as percentage of authorized		9.4%	3.4%	6.8%	3.0%	1.8%	1.1%

Table 2: NL import lines overview

### Observations from quantitative analysis:

- A relative high number of unauthorized clearances were found
- > 99% of unauthorized clearances are done by 3 unauthorized customs agents (fast parcel)
- > 99% of unauthorized clearances are submitted by logistics service provider who also responsible for transport (fast parcel/ courier)
- Average entry line value of unauthorized value is around € 7.500 and average duty around € 4,=

### Results from quantitative data analysis on the use of Cisco's UK EORI number for import in United Kingdom:

Import United Kingdom (CHIEF/CDS)							
Declarant/Agent	AUTH/UNAUTH	2022	2022	2021	2021	2020	2020
Authorized	A	46,243	£ 1,275,397,334	46,524	£ 1,119,701,502	491	£ 5,134,552
Unauthorized	U	93	£ 437,274	81	£ 478,904	7	£ 33,366
<b>Total</b>		<b>46,336</b>	<b>€ 1,275,834,608</b>	<b>46,605</b>	<b>€ 1,120,180,406</b>	<b>498</b>	<b>€ 5,167,918</b>
Unauthorized as percentage of Authorized		0.2%	0.03%	0.2%	0.03%	1.4%	0.65%

Table 3: UK import lines overview

### Observations from quantitative analysis:

- a relative low number of unauthorized clearances were found
- > 99% of unauthorized clearances are done by 3 customs agents (fast parcel)
- > 99% of unauthorized clearances are submitted by logistics service provider who also responsible for transport (fast parcel/ courier)
- Average entry line value of unauthorized value is around GBP 5,200 and average duty around GBP 4,=

### Results from quantitative data analysis on the use of Cisco's EU EORI number for export from the Netherlands:

Export in the Netherlands (AGS)							
Declarant/Agent	AUTH/UNAUTH	2022	2022	2021	2021	2020*	2020*
Authorized	A	280,694	€ 2,908,021,971	768,080	€ 2,557,856,730	1,280	€ 8,067,097
Unauthorized	U	261	€ 233,474,060	305	€ 2,337,909	181	€ 2,552,448
<b>Total</b>		<b>280,955</b>	<b>€ 3,141,496,031</b>	<b>768,385</b>	<b>€ 2,560,194,639</b>	<b>1,461</b>	<b>€ 10,619,545</b>
Unauthorized set as percentage of authorized		0.1%	8.0%	0.04%	0.1%	14.1%	31.6%

\* incomplete data

Table 4: NL export lines overview

### Observations from quantitative analysis:

- a relative low number of unauthorized clearances were found
- > 99% of unauthorized clearances are done by 3 customs agents (same fast parcel agents as for import)
- > 99% of unauthorized clearances are submitted by logistics service provider who also responsible for transport (fast parcel/ courier)
- Average entry line statistical value of unauthorized clearance is around € 362,000

### Results from quantitative data analysis on the use of Cisco's UK EORI number for export from United Kingdom:

Declarant/Agent	AUTH/UNAUTH	2022	2022	2021	2021	2020	2020
Authorized	A	6,109	£ 112,793,260	6,338	£ 68,113,250	451	£ 2,475,811
Unauthorized	U	137	£ 2,062,397	172	£ 1,345,569	6	£ 3,194
<b>Total</b>		<b>6,246</b>	<b>€ 114,855,657</b>	<b>6,510</b>	<b>€ 69,458,819</b>	<b>457</b>	<b>€ 2,479,005</b>
Unauthorized as percentage of Authorized		2.2%	1.8%	2.6%	1.9%	1.3%	0.1%

Table 5: UK export lines overview

### Observations from quantitative analysis:

- a relative low number of unauthorized clearances were found
- > 99% of unauthorized clearances are done by 2 customs agents (same fast parcel agents as for import)
- > 99% of unauthorized clearances are submitted by logistics service provider who also responsible for transport (fast parcel/ courier)
- Average entry line statistical value of unauthorized clearance is around GBP 11,100

### Results of the 2022 data review

As explained in the previous section, governmental reports are used for data analysis. The initial review consisted of filtering out agents not listed in the company's authorized import and export agent's database. An in-depth review is done for the calendar year 2022 for the categories authorized and unauthorized agents. In total 1.109 unauthorized entries were detected in the calendar year 2022. The table below shows the unauthorized clearance lines per category over calendar 2022:

Flow country	Unauthorized clearance lines by unauthorized agents	Unauthorized clearance lines by authorized agents	Finding
Import NL	618		In 99.5% of entry lines the agent acting as declarant (1) under their own name and own account
Export NL	124	137	In all entry lines the agent acting as customs representative either under direct (60%) or indirect (30%)
Import UK	13	80	For all of entry lines the agent acting under their own name and own account
Export UK	18	119	Unknown
<b>Total</b>	<b>786</b>	<b>323</b>	

Table 6: number of unauthorized clearance lines for calendar year 2022

### **Results from 2022 data review**

The analysis revealed that:

- 71% of the **unauthorized** clearances were done by **unauthorized** agents. Most of the unauthorized clearances in The Netherlands were done by one agent. The second validation on authorized agents' lodging clearances outside of the scope of the empowerment, revealed that an additional number of unauthorized clearances.
- 29% of the **unauthorized** clearances from the authorized agents was. The total number of unauthorized clearances under the authorized agents we not expected to be that high (29%). Authorized agents go through an on boarding process which includes empowerment, documentation, regular reviews, and training.

The results of the authorized agents were tested on false positives by the sample review. No false positives were found in the samples requested. The logic applied to determine unauthorized clearances is acceptable.

## The sample reviews.

Per agents import and export samples are requested over the calendar year 2022. The samples should consist out of a copy of the clearance, airway bill, invoice, and clearance instructions. The samples were reviewed on empowerment and compliance risks. Results of the reviews will be shared during the interviews with the agents.

### Results from the sample review

The sample review provided a better understanding of the underlying transactions. Most of the samples could be linked to Cisco. However, there were clearances submitted under Cisco EORI number where Cisco was not a party in the transaction. For all requested samples the agents were not able to provide empowerment or clearance instruction from the importer or exporter. It was noticed that the unauthorized entries contained errors. Some errors had financial consequences. For the found errors, a disclosure is required with authorities for shipments where there's a financial impact for import or when export license is not leveraged for the export clearances. Recommended is to report the remaining unauthorized clearances to the authorities in the AEO incident report. The samples helped to gain knowledge on the operational process and confirmed the overall findings as part of the data review and interviews.

### Samples review Netherlands imports (AGS):

Broker	Type	Customs Representative	Empowerment available	Clearance instruction available	Results of the review
#A – 1	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco to Cisco,
#A – 2	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco to Cisco,
#A – 3	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>MED</b> Agent = carrier, Cisco to Cisco, <b>in correct HS with duty impact, incorrect country of origin and incorrect DV1 statement</b> , handover to authorized agent should have happened. Amendment requested.
#B – 1	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>MED:</b> Agent = carrier, <b>non-Cisco not IOR</b> , return because of incorrect EOR / IOR in UK.
#B – 2	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco to Cisco, handover should have happened on T1
#B – 3	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>LOW:</b> agent = carrier, COM entry return from Canary Islands
#C – 1	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Cisco shipment - incorrect HS code – no financial impact
#C – 2	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Cisco shipment

#C – 3	Import	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> LOW: Cisco shipment - incorrect country of origin – no financial impact
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Table 7: NL import sample review results

Observations:

- The agents were not able to provide the empowerment. This require further follow up with agent compliance team to understand how they meet legal and country requirements.
- The agents we not able to provide clearance instructions.
- The requested files consist out AWB, import/export declaration and invoice which all could be provided
- Audit showed that (classification and country of origin) errors are made as clearance instructions are not available;
- The errors made have no financial impact however will reported as AEO incidents to mitigate;

**Samples review Netherlands exports (AGS):**

Broker	Type	Customs Represen - tative	Empower- ment available	Clearance instruction available	Results of the review
#A – 1	Export	No – type 3 = indirect	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, EXW-Cisco not EOR, not EU registered EOR CIL, Cisco BV
#A – 2	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, double export filing, export controlled
#A – 3	Export	No – type 1 = declarant	No	No	<b>UNAUTHORIZED</b> MED: Agent = carrier, double export filing, incorrect EOR, not EU registered EOR, export controlled (AEO incident record)
#B – 1	Export	Yes – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, Cisco not EOR, corrected
#B – 2	Export	Yes – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, correct EOR
#C – 1	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, double export filing, correct EOR
#C – 2	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, double export filing, correct EOR
#C – 3	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, double export filing, correct EOR

Table 8: NL import sample review results

Observations:

- The agents are not able to provide empowerment.
- The agents we not able to provide clearance instructions
- Unauthorized exports delarations lead to double export filling or incorrect export filings
- As clearance instructions are not available, the sample audits showed that export license values are written of twice or for parts that were not controlled;
- All compliance errors need to be reported as AEO incidents to mitigate;



**Samples review United Kingdom Imports (CHIEF/CDS):**

Broker	Type	Customs Represen - tative	Empower- ment	Instruction	Risk
#X – 1	Import	YES, Indirect representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco to Cisco, outbound paperwork available including NL export declaration
#X – 2	Import	YES, Indirect representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco to Cisco, outbound paperwork available
#X – 3	Import	YES, Indirect representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco to Cisco, outbound paperwork available
#B – 1	Import	YES, Indirect (3) representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>MED:</b> Agent = carrier, DDP – Cisco used as IOR, clearance costs charged to shipper (AEO incident record)
#B – 2	Import	YES, Indirect (3) representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>MED:</b> Agent = carrier, Cisco not IOR (AEO incident record)
#B – 3	Import	YES, Indirect representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco-Cisco
#C – 1	Import	YES, Indirect representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco-Cisco
#C – 2	Import	YES, Indirect representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>MED:</b> Agent = carrier, Cisco not IOR (AEO incident record)
#C – 3	Import	YES, Indirect representation, cleared under agent simplified license (CFSP)	No.	No	<b>UNAUTHORIZED</b> <b>LOW:</b> Agent = carrier, Cisco-Cisco

Table 9: NL export sample review results

**Observations:**

- The agents are not able to provide empowerment.
- Due to use of agent simplified procedure license in the United Kingdom, agent submits the import entry under indirect representation under their license
- Agent we not able to provide clearance instructions

**Samples review United Kingdom exports (CHIEF):**

Broker	Type	Customs Representative	Empowerment	Instruction	Risk
#A – 1	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, Cisco not EOR, non-dual use
#A – 2	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> MED: Agent = carrier, Cisco not EOR, export controlled but exported under STC99, amendment submitted (AEO incident record)
#A – 3	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> MED: Agent = carrier, Cisco-Cisco, export controlled but exported under STC99, incorrect HTS code (AEO incident record)
#B – 1	Export	No – type 3 = indirect	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, Cisco-Cisco, return to origin
#B – 2	Export	No – type 3 = indirect	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, Cisco-Cisco, return to origin
#C – 1	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, Cisco-Cisco, non-controlled
#C – 2	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> LOW: Agent = carrier, Cisco-Cisco, non-controlled
#C – 3	Export	No – type 2 = direct	No	No	<b>UNAUTHORIZED</b> MED: Agent = carrier, Cisco-Cisco, controlled no license (AEO incident record)

Table 10: UK export sample review results

**Observations:**

- The agents are not able to provide empowerment.
- The agents we not able to provide clearance instructions.
- As clearance instructions are not available, the sample audits showed that errors were made for exporter, HTS and export license. The agent did not followed provide paperwork.

**Summary of sample review from the interviews.**

For all reviewed samples, the agents were not able to provide an empowerment or clearance instruction. Because of this the selected samples are considered unauthorized. To understand the perceived risks for AEO mitigation, risk categories were assigned according below logic (derived from internal AEO guidelines):

- LOW = No empowerment, Cisco IOR/EOR on document, errors without financial impact or non-export controlled)
- MED= No empowerment, Cisco not IOR/EOR on document, errors with financial or export license impact) → AEO incident to be logged
- HIGH= Empowerment provide by Cisco, clearance with financial impact or export license errors → disclose with authorities

Based on above risk logic, 9 of the 34 samples fall in the medium category (26%) the remaining are considered as low risks (74%).

## The interviews.

To gain practical knowledge and a general understanding of the real-life context of the outcomes of the data review, interviews were held with the agents responsible for most of the unauthorized clearances. To support the interviews with the agents, clearance samples were requested for data reviews. For the interviews a per defined set of questions was used to semi construct the interview.

### Results from the interviews.

The interviews have led to a better understanding on how agents operate. After several meetings and interviews with the agents, it can be concluded that the agents are aware of the legal requirements linked to representation and empowerment. The guidelines given by the authorities are clear to them. Agents only request empowerment in the case when the importer or exporter provides clearance instructions. In these cases, the clearance instructions received are considered as empowerment and archived in the agent system. No further validations are done by the agent. It could mean that the person providing the instructions is not authorized by the company to provide an empowerment or instructions. The agents are aware of the risk that an empowerment is only valid if provided by an authorized person. The receiver giving the authorization is acting outside of the companies' policies and is not aware that an empowerment is requested by the agent and of the fact that he or she is acting on behalf of the company without authorization. Customs clearing a shipment without empowerment or with an invalid empowerment transfer the risk to the agent. During the interview the agents confirmed that they are aware of this.

In general, for business shipments with a valid parcel service account for shipping and customs, no clearance instructions are requested. The agents follow the instructions of the notes in the system and consider that the account notes for import and export declaration services include the empowerment. What also was noticed is that most of the agents for import act as declarants based on the account notes. The account notes in the agent's system were reviewed, and it was noticed that they were not in line with the SOW/SOP and outdated.

Acting as a declarant allows fast parcel agents to follow standard processes without causing an operational friction. The fast parcel operating model is driven by fast delivery and standard processes for customs clearances to avoid clogging of the network. Based on the interviews held, the agents prefer to act as declarant instead of acting as customs representative. The risks for the agents when acting as declarant (without authorization) are considered low by the agents. Reason of the agent to qualify it as low is that in case of an error with financial impact, they have a process for mitigation. For mitigation the agent compliance team will work with customs authorities and customers on mitigating the issue.

It was also noticed that in cases where the agent is acting as declarant, the standard procedure is not followed. The receivers or importers EORI number is used, and VAT is deferment. In principle the agent is acting as agent without a commercial empowerment with the importer or receiver of the shipments. The agents confirmed that this is standard practice and will avoid costs for the shipper.

## Chapter 6: Conclusions and Recommendations

### Conclusions

The objective of this research was to achieve a better understanding of the phenomena of unauthorized clearance from a theoretical, legislative, and operational perspective to answer the research question “how to control and possibly mitigate compliance risk”.

My research has shown that to control and mitigate risks related to unauthorized clearances, you first need to have a visibility on the authorized broker footprint. By having a documented broker governance framework, visibility is gained on the authorized agents and the broker footprint. Incremental to detect unauthorized customs clearance agents or lines are the governmental reports. The reports, based on use of economic operators’ EORI or VAT deferment numbers, will provide visibility on the company’s actual brokers footprint and customs clearance activities. The report reveals the gaps, if any, between the economic operator’s broker governance framework and actual broker footprint. Once you have visibility you can implement measures to control and mitigate risks related to outsourced brokerage activities.

The legal basis of empowerment for a customs clearance is based on agency theory and can be found in civil, commercial and customs law. A general characteristic covered in all legislation is that there must be consent between principal and agent in contractual form, including the appointment of the agent and described activities and limitations. In cases where customs representation is applied, the customs legislation describes in more detail the legal basis. The legal consequence of an unauthorized clearance is, in cases where the agent is acting outside or without an empowerment or contract, that the agent shall be deemed to be acting in their own name and on their own behalf. Consequently, increasing the agent’s liability and limiting the customs compliance risk for the economic operator.

In practice, shipments are booked by accepting the standard terms and conditions of the logistics service provider. Especially for fast parcel operators, the terms and conditions have been aligned to support the agent’s operational logistics process which could include customs clearance service. The research showed that terms and conditions are not fully aligned with legislative domains in the Netherlands and United Kingdom related to empowerment and customs representation. Simplifications are leveraged for empowerment and clearance instructions by the fast parcel operators to limit the operational impact in the logistics process.

### Recommendations

#### **Engagement model with agents**

A single case study was used to understand the real-life context between literature and practice. By understanding the real-life context, knowledge has been gained on the clearance process setup and compliance risks. This helped to understand how unauthorized clearances can be mitigated efficiently. My research also showed that there are frictions between the

different domains of legislation, agency, and operations. A joint understanding of the principles by interaction between the domains will improve mutual understanding of the paradigms between the principal and agents for outsourced services.

My recommendation would be to implement a regular engagement model between logistics, customs, and the agents to ensure that the instructions for the agents are aligned with the scope of the logistics contract. Empowerment and clearance instructions, provided as part of the contract or Statement of Work, should be made visible in the operational support systems. This is to ensure that the limitations of the agreements are known within the operational teams. Periodical engagement by review of service providers accounts and system notes with account managers and customs agents will help to limit unauthorized clearances.

### **Authorities reports.**

During the research it was noticed that the reports provided by the authorities are required to identify unauthorized customs clearances. More frequent reports will help to get a more real-time view on the phenomena of unauthorized clearances. My recommendation is to give economic operators access to reports on the use of EORI or VAT deferment number on a more regular basis. This helps companies to monitor the broker footprint and unauthorized agents. A good example of how reports can be provided is in the United Kingdom. Authorities make a limited number of reports on a subscription basis available. By having a subscription on monthly governmental reports, companies stay in control of the broker activities by regular auditing the files. For the UK AEOC license, having a subscription on MSS data reports is considered as a best practice to oversee and control agents. Additionally, I would like to recommend to the customs authorities to enforce with the agent to declare a reference that can be linked to the importer or exporter trade or logistics administration. The current reference entered doesn't provide the audit trail required for further analysis of the reports.

### **Customs entry system**

Customs agents in the Netherlands can submit customs clearance for companies without being authorization in the electronic customs system. As companies might not be aware of this, I recommend implementing system controls, through the customs declaration system, where agents can be authorized to act as declarant, customs representative or for the use of the company's deferment of VAT (article 23). The customs system should contain logic that enforce legislation to be followed by the agents as part of the entry submission process. Importers and exports should have access to a portal where they can authorize or empower agents to represent can be setup and managed.

### **Review and audit**

Unauthorized clearances, once identified, should be reviewed as they will reveal compliance risk and process gaps. The results of the audit's findings should be used to mitigate risks by further update of the agent instructions in the account notes or provide training. Findings from the sample review should be reported in the company's AEO incident registers for tracking. Financial or export license should be disclosed with the authorities by the agents. This also forces agents to work complaint.

### Limitations of the research

The aim of this study is to gain knowledge of the phenomena of unauthorized customs clearances happening within companies shipping internationally making use of outsourced customs clearance services. This thesis has been practically oriented to solve the problem of the Cisco organization, that is faced with outsourced customs services. The thesis might have been compromised by this and could limit the academic relevance as the population of the case study results might not be representative for the domain. Limitations of this research could be addressed in future research.

The recommendations and findings in this research are based on a single case study, including limited samples and interviews. This limits the ability to generalize the findings. For future research it would be advised to perform multidisciplinary research on customs representation in multiple legal systems to aim further harmonization.

## Chapter 7 Contribution for research and practice

### Contribution

The research objective of this thesis is to come to a framework to control and mitigate possible compliance risks related to unauthorized customs for companies using an outsourced model for customs clearances. To reach the research objective several sub-questions needed to be answered related to legislation, empowerment and standard contracts used by service providers in the European union and United Kingdom, to gain a better understand of the principles of the different domains. The research objective and related sub-questions that were answered were based on practice-oriented research methods including a literature study and case study on clearance data, interviews with agents and customs clearance samples. The research led to below contributions:

#### Literature contribution

The literature reviewed included agency theory and principles, (customs) law, regulation, policies from authorities and standard contract/agreements and empowerment documents available with service providers who offer customs clearance service. The literature study shows that there is a “disparity” in supply chain and logistics literature in the domain of Customs. Literature in the domain of customs and trade compliance is not as widely available as for the domain of supply chain and logistics. The available customs literature provides mainly guidelines (WCO Customs broker guidelines<sup>32</sup>) and standards (CEN Standard of Competency for Customs Representatives EN-NEN 16992:2017). The documents only contain general text on customs representation and operational and technical competences. The agency relation, empowerment and legal aspects are not covered. There is no specific literature available linked to the research topic customs clearances as outsourced service or customs representation besides some court cases covering representation. This research contributes to academic literature in the domain of logistics and customs and will gain insight for companies and other researchers how broker governance processes can be set up to keep the companies compliant in case of outsource brokerage activities.

Through this research, I was able to link existing literature on agencies theory, outsourcing and customs legislation, which helped me to a deeper understanding of what outsourcing of customs clearance activities and broker management governance embeds. I also learned that there is limited literature available in the domain of customs operations. I believe the results of this research will contribute to the customs literature domain.

#### Business contribution

From a business perspective the research contributed to a deeper understanding of compliance risk related to outsourced brokerage and applicable legislation. Outsourcing of activities can increase the compliance risk if not properly set up. Governance, engagement, monitoring, and controls are required to oversee the partners' activities. Detection of unauthorized clearances

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<sup>32</sup> WCO (2018), Customs broker guidelines

requires supporting reports from outside of the company. This allows appropriate control measures to be implemented to mitigate the company's risk by following up with the agents. The literature review on empowerment and case study showed that there's a gap between legislative requirements related to empowerment and how empowerment is managed in the day-to-day operation by the customs agents. The business case showed that even though the legislation and guidelines are clear, the customs agent has his own business interpretation on empowerment with a focus on limiting the impact on its operations. The agents are aware of the risks and accept them as part of their operations. During interviews it became clear that in the case of representation, an empowerment needs to be provided. The empowerment is not always validated based on guidance provided by the customs authorities and recorded in the records. The unauthorized and authorized agents responsible for unauthorized entries were not able to provide the empowerment or clearance instructions for all selected samples. It was also noticed that import agents act under their own name and for their own account as declarant. By this way of working, compliance risks related to the clearances, transfers to the agents. Consequently, this decreases the risks related to unauthorized clearances for the company. This still leads to an undesirable situation as the importer or exporter details are used with consensus.

### **Case study**

The case study consisted of a customs clearance data review, interviews with agents and a sample review. The case study contributed to a better understanding of the agent's operation and on how agents manage empowerments and customs clearances. Challenges and frictions were revealed between operation and legislation which led to a better understanding of the logistics and customs domains.

Alignment between the company's governance of broker management and the outsourced customs operation service provider contributed to understanding of the gaps to close. For example, when the unauthorized clearances were discussed with the agent's compliance teams, it was noticed that the agents are following the internal instructions related to the shipment. As these notes were for internal use only, they are not actively shared and reviewed with the customers. It became clear that the notes were not in line with the SOW/SOP and not up to date. The result of this finding is that all agreed that the account setup requires a regular review from the agent's customs compliance team to keep the accounts and the contract or statement of work aligned.

The case study research results were shared with Cisco's trade compliance steering committee responsible for Cisco policies related to brokerage. This led to an update of our internal governance process for authorized brokers (figure 1). Included in the updated SOW/SOP is the periodical review of the account notes to close the gap.

### **Government authorities reports and empowerment setups.**

The research has shown that availability of customs clearance reports improves the economic operator's compliance. Based on the reports provided by the authorities, importers, and exports gain visibility on the usage of EORI number and VAT numbers by agents. The audits done by the company on authorized and unauthorized clearances forces customs agents to



implement compliance measures to ensure that they meet the legal requirements related to empowerment. The research also showed that setting up empowerment in the system also helps to control unauthorized clearances. In the United Kingdom, enforcement of empowerment is partly managed in the new customs system CDS. Importers are required to be authorized agents for the use of the importer's duty deferment account. This forces the customs agent and importer to actively engage in the setup of empowerment and expectations related to the customs clearance. Enforcement by customs authorities through system requirements can close the empowerment gap between importers and exporters and customs agents as it forces them to get engaged with each other.

### Further research opportunities

How empowerment is set up and managed in other EU member States is a potential research opportunity. With the EU Single Window on the horizon, it is recommended to gain knowledge on how empowerment can be managed as part of the system enablement. A customs system can help enforce empowerment and clearance instructions.

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