

ISSUE 7

FEBRUARY / MARCH 2021

ISSN 2669-2171

ISSUE 7 ONLINE

# CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

## SOURCES OF KNOWLEDGE

“Lex portus” fueling discussion on customs in Ukraine and the EU  
Customs-related databases (4<sup>th</sup> Authors’ Meeting)

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EU law news: March, February 2021

## CASE-LAW

Different duty tariffs: tractor towing broken-down or undamaged vehicles (CJEU)  
The concept of a customs debtor and the case-law in Lithuania

## OVERVIEWS AND COMMENTS

Significance of guidelines, explanatory notes and other “soft law” acts  
EU hard law: hierarchy, types, and opportunities  
U.S. export law between third countries  
AEO: a look at other countries’ programmes and mutual recognition agreements  
Cases of repayment of import duties (EU and UK)

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WCO releases new online tool to support actors in international trade  
How to enhance customs risk management with external data?  
Customs in Switzerland: reinvention through digitalization and paperless clearance

## EU-UK TRADE

One month of Brexit at the French ‘smart border’  
Using importer’s knowledge to claim preferential treatment: a gift or a trap?  
EU-UK TCA: preferential origin vs returned goods relief  
UK car import to Ireland

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& RISK MANAGEMENT  
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## MEET CUSTOMS SPECIALISTS FROM AROUND THE WORLD!

Contribute an article to the CCRM journal and be invited to participate in bimonthly Authors’ Meetings!

Next meeting takes place on 22 April 2021 at 3 pm CET.  
The topic for discussion:  
“Customs news in our countries. How do we learn them?”.

Contact us: [info@lcpa.lt](mailto:info@lcpa.lt)



## Editorial

Dear Reader,

As part of Issue 7 of this journal, we are excited to invite you to a webinar to meet editors of journals/ magazines on customs from around the world! On 29 April 2021, you will have the unique opportunity to meet editors of WCO News (global), World Customs Journal (global), Foreign Trade (Germany), LEX Portus (Ukraine), Customs-Digital (Germany), Muitų teisė praktikams (Lithuania), this journal (Europe), and editors of two more journals are expected to join! See the invitation on the next page.

In advance to the webinar, you can already meet Dr. Borys Kormych, editor of “Lex Portus” journal. His article [“Lex portus” fueling discussion on Customs in Ukraine and the EU](#) contains interesting facts about the journal as well as customs developments in Ukraine, for instance, the extensive practice of customs appeals. On the topic, in the section covering “Case-law”, you can read about the case-law in Lithuania and the concept of customs debtor. An overview of this year’s first ruling of the Court of Justice of the European Union on the interpretation of the Combined Nomenclature is also included.

Please note that there is another event taking place on 22 April 2021. It is an online meeting of the authors of the CCRM journal. The topic for discussion this time is “Customs news in our countries. How do we learn them?”. We welcome you to contribute an article to the journal to receive your invitation to participate. You can access a summary of what was discussed in the previous meeting in the article [Customs-related databases](#). In this issue of the journal, the topics of data, databases and digitalisation are addressed from various perspectives. Read the articles to learn about WCO new online tool, ICS2 system, external data for Customs risk management, and digital transformation of Customs in Switzerland.

Another topic of focus is EU-UK trade. A lot of practical challenges remain to be discussed and clarified. Read about these ongoing issues from the first months of Brexit and learn answers to questions: When is it beneficial to claim preferential treatment using importers’ knowledge? How to import a car from the UK to Ireland? Do returned goods retain their EU or UK preferential origin? Additionally, watch the [video on direct transport rule](#), which was prepared to answer the question: How to prove that the non-manipulation rule is met, if the goods originating in Ukraine under the UA-UK trade agreement are unloaded and stored in a customs warehouse in Lithuania after export?

The section “Overviews and comments” starts with two great articles explaining the roles of the “soft” and of the “hard” law. The law is a complex subject, as illustrated by the article on U.S. Export Administration Regulations (EAR) - many trade compliance professionals are not aware that its scope can extend to shipments that do not physically involve the U.S.! See other parts of the section for more topics covered in this issue.

Enjoy reading and leave us your feedback under [info@lcpa.lt](mailto:info@lcpa.lt). We look forward to meeting you at the upcoming events!

Enrika Naujokė  
Member of the editorial board



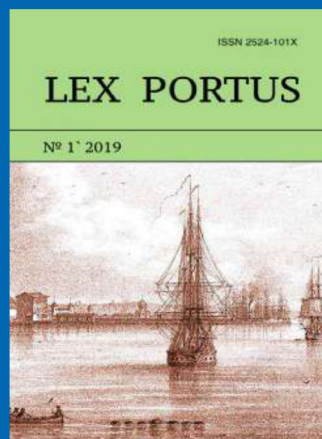
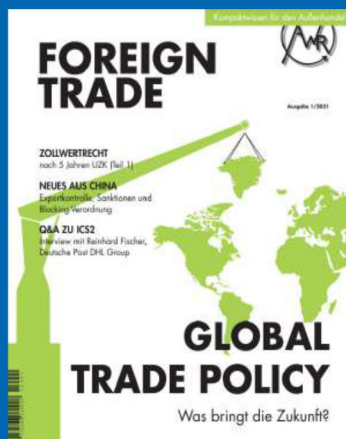
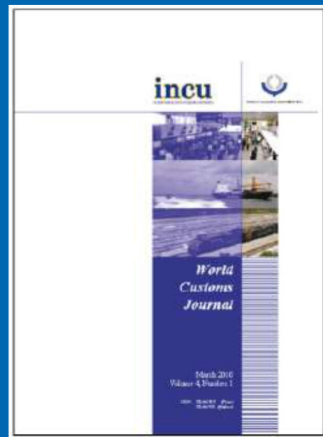
**CUSTOMS  
PRACTITIONERS  
ASSOCIATION**

# FIRST GLOBAL WEBINAR JOURNALS ON CUSTOMS

**29 April 2021, 3:00-5:00 pm CET**

## INVITATION

We invite you to use the unique opportunity to meet editors of journals on customs from various countries!



**CUSTOMS-DIGITAL**

**LEARN MORE**

<http://webinar.lcpa.lt/en>



**Dr. Borys Kormych**

Professor, Head of Maritime and Customs Law Department, National University “Odessa Law Academy”

[About the author](#)

SOURCES OF KNOWLEDGE

“Lex portus” fueling discussion on customs in Ukraine and the EU

“Thus, it is important for us to provide the floor for discussion of issues important for scientists and practicing lawyers focusing on respective fields, for logistic and customs professionals.” - dr. Borys Kormych, the editor in chief of “Lex Portus” journal, tells in an interview about the journal, shares insights from articles, provides interesting facts about the case-law (Ukraine has an extensive practice of customs appeals) and answers other questions.

**WHAT STORY IS BEHIND THE LATIN TITLE OF THE JOURNAL?**

The name “Lex Portus” is Latin words that can be literally translated as “the law of ports” or “the law of harbors”. It can also be traced back to the Latin word “portorium”, which means tax or duty collected in Ancient Rome from all goods imported or exported firstly by sea and later extended to the importation and exportation by land.

Initially, the term “Lex Portus Asiae” emerged after discovering the so-called “Monumentum Ephesenum” in 1976. That was a stone stele with carved text in Latin and Greek of Roman laws imposing duties on trade in goods in the East part of Mediterranean, Near East, and the Black Sea. The text was dated 62 AD and was a transcription of original laws stored in Basilica Julia’s archives in Rome. Interestingly, the Lex Portus Asiae included the customs duties and provisions on procedures of collecting duties, storage of imported and exported goods, exemptions from customs duties, etc. Overall, Lex Portus Asiae is considered as the first known complete set of customs rules.

We have picked up the name Lex Portus for our journal because the idea behind it was to combine such subjects as transport and maritime law on the one side and trade and customs law on the other to cover all legal aspects of a supply chain. On top of that, we added such aspects as globalization and Europeanization because the said laws currently represent the most internationally standardized legal orders.

**WHAT WERE THE GROUNDS FOR ESTABLISHING THE JOURNAL?**

As I have mentioned above, the initial idea behind Lex Portus was to provide insights for different legal issues that arise throughout the functioning of supply chains that primarily comprise transportation (emphasizing maritime transport) and customs and border formalities. That is very topical for Ukraine, and for the South Ukraine especially. For example, only in the Odessa region there are eight seaports, including those located on the Danube. Once again, in accordance with the customs statistics for 2020 it was imported and exported more than 105 million tons of goods through the land checkpoints (including 40,6 through the borders with the EU). Whilst through the seaports the aggregate volume of import and export comprised 228,7 million tons for the same period. Thus, it is important for us to provide the floor for discussion of issues important for scientists and practicing lawyers focusing on respective fields, for logistic and customs professionals.

Besides, there have been two other piles of issues that also influenced the launching the journal. Firstly, it was the annexation of Crimea by Russian Federation that erects a huge number of issues concerning performing of the coastal jurisdiction and shipping rights in the Black Sea and the Sea of Azov. And our journal has published a series of papers on those subjects.

Secondly, but not less important, there is implementation of EU - Ukraine Association agreement and functioning of the Deep and Comprehensive Free Trade Area (DCFTA) between EU and Ukraine. That is a strong challenge for public administration, for business and obviously for scholars in the field. We are trying to highlight a range of related issues including general approximation of customs legislation, introduction a new set of rules in Ukrainian customs legislation, like launching AEO or Ukrainian attempts to adhere to the Common Transit System. And all that is interconnected with the implementation of WCO and WTO obligations, for example the harmonization of the national legislation with the rules of the WTO Trade Facilitation Agreement. That also has been the reason to our journal to include a specific rubric on Europeanisation and globalization.

I suppose we have made noticeable progress since 2016 and our journal has become recognized both by scholars and practitioners in different countries. Besides, Lex Portus has been indexed in several reputable databases, including Scopus starting from 2020. All these make us believe that we are on the right track.

#### **PLEASE SHARE SOME INSIGHTS FROM THE ARTICLES**

Speaking of the publications of 2020, I would like to highlight the paper focused on the EU transit procedure concerning regional integration, which reviews Ukrainian attempts to join the Convention on Common Transit Procedure. The respective Ukrainian legislation raises certain concerns among professionals. For example, it is a potential issue with integrating the NCTS applications with the existing Ukrainian Automated System of Customs Clearance. Besides, there may be insufficient integration of other customs procedures to provide the Common transit function seamlessly. For example, Ukrainian customs legislation is still missing such categories as “customs debt” or “individual guarantee” essential for common transit.

Also, I should mention the paper on conflicts of international and national customs law with EU customs law, which utilizes cases of the Republic of Lithuania. That is very interesting from the point of Ukrainian approximation to EU customs legislation. There are strict rules for possible conflicts of member states' national customs legislation with the EU customs legislation, but there is much less even situation with specific conflict-of-law rules, which should be used to resolve conflicts between applicable sources of EU customs law and international customs law. That may become more noticeable for associated states that obligations for alignment with the EU customs legislation are somewhat soft, and on the other hand, there are many other international obligations on trade and customs matters.

Besides, there are papers on different internal of performing customs formalities. For example, there are many discussions about the effectiveness of Automated System for Analyses and Administration of Risks (ASAAR). This system does not carry out format-logical control (i.e., checking the authenticity of additional documents) because it cannot analyze the transport, shipping, and commercial documents required for customs control and customs clearance with the data specified in customs declarations. It happens because Ukrainian customs still accepts scanned pdf documents instead of XML ones suitable for machine-reading. Thus, in practice, customs officials often apply additional forms of control even to the goods flagged “green” by the ASAAR, grounding on their subjective concerns about supporting documents provided.

#### **COVID-19 CONTINUES TO IMPACT INTERNATIONAL TRADE AND CUSTOMS. WHAT ABOUT THIS SUBJECT?**

COVID-19 has been a topical theme in 2020. Major databases have been flooded with research articles, letters, reviews, notes, and editorials related to COVID-19, and they counted more than 23.000 articles on the topic in just a half year. Obviously, our journal has published a few articles on the issue. Firstly, I should mention the papers on port safety in the conditions of the COVID-19 pandemic. I guess they might be interesting not only from the side of the seaports' regime but also from the point of maintaining customs infrastructure because respective rules

apply to the functioning of customs offices, warehouses, terminals located in the seaports. In particular, our authors emphasise harmonisation of national rules and protocols on counteracting COVID-19 in the seaports through sharing recommendations and best practices. The key role there play international and regional organisations, for example International Maritime Organisation, which issued a number of respective circular letters.

On the other hand, COVID-19 pandemic had impact on non-tariff regulations, especially at its early stages in the spring of 2020 when major countries experienced a shortage of goods utilised for counteracting pandemic (i.e. protective gear and medical equipment). And we have published a paper investigating respective changes in Ukrainian non-tariff regulations, including quotas and bans on exportation of specific products.

### **YOU ARE THE HEAD OF DEPARTMENT OF MARITIME AND CUSTOMS LAW, NATIONAL UNIVERSITY “ODESSA LAW ACADEMY”. WHAT IS THE SITUATION OF CUSTOMS RELATED EDUCATION IN UKRAINE?**

As for customs-related education in Ukraine, we can talk about two different approaches. First, a number of universities have specialized bachelor’s and master’s programs with a focus on customs or international trade. However, students receive standard bachelors’ or masters’ degrees in law, public administration or economics, and the difference is only in the specific subjects they chose every semester. For example, at my university students may choose such subjects as “Customs law”, “EU customs law”, “International customs law”, “Customs administration” and “Customs clearance”. And they also may practice at customs service. In addition, there is one university under the Ministry of Finance which have a special faculty of economics, taxation and customs service. However, it also does not provide any specific “customs-related” degrees.

As for customs brokers, basically, there are short-term courses provided by different companies. As usual, such companies are doing business in expediting or customs clearance, and they provide courses on transport logistics, supply chain management, customs clearance, etc. I believe that some of such courses are even certified by FIATA. In Ukraine, a customs broker’s status may be obtained by any company, which gains joint permission of State Customs Service and State Border Guard Service. And then such a company is included in the register of customs brokers. However, Ukrainian legislation does not provide any specific criteria for evaluating the competence of employees of customs brokers. The only exception is the tests for the staff of Authorized Economic Operators responsible for customs clearance, but there is too little practical application of these rules so far.

### **AND YOU ARE ALSO AN ATTORNEY AT LAW. ARE THERE MANY DISPUTES SOLVED IN COURTS?**

Basically, Ukraine has an extensive practice of customs appeals. For example, following the Ukrainian State Customs Service information for the period from January to November 2020, there were 6 899 administrative appeals under the court review. We also can determine the most popular subjects of appeals. In the first place, with the wide margin, we have appeals of decisions of customs on correction of customs value that comprise 71% of all cases heard. In the second place (4,7% of all cases), there are appeals on the classification of goods, and in the third place (2,3% of all cases), there are appeals on the return of paid taxes.

What is important there is an abnormal share of cases where courts have ruled in favor of business. For the same eleven months of 2020, there were 2 917 court decisions, 80% of which were decided in favor of appellants. The customs decisions have withstood only in 20% of cases, and in monetary terms, such share was even less – only 12% of imposed additional charges that were subjects of appeal. That basically shows that in many cases, customs officials are trying to avoid taking responsibility for making decisions in favor of declarants, even if the cases are pretty clear. They tend not to recognize the declared customs value or classification, not to be accused by their authorities of letting under-taxation. So, customs officials often prefer declarants to go to courts even knowing that their decisions will likely be overruled. Besides, such a great share of successful appeals also means that businesses often suffer extra losses due to unmotivated delays in clearance and release of goods, longer terms of warehousing of goods, holding financial guaranties for extra charges, etc.

**Thank you for the interview! To our reader - the “Lex Portus” journal is in English, free of charge, you are invited to read it by visiting <https://lexportus.net.ua/en/>**



## SOURCES OF KNOWLEDGE

# Customs-related databases (4<sup>th</sup> Authors' Meeting)

What customs-related databases do you use, find the most useful and/ or the most interesting? An exchange on customs-related databases used worldwide took place on 18 February 2021 during the 4th meeting of the authors of the CCRM journal. Why there is no comprehensive list of such databases? Herewith we could start the list! We would be happy to amend it with the databases you use, write to us: [info@lcpa.lt](mailto:info@lcpa.lt)

### THE MOST ENTERTAINING DATABASE - ON SHIPS

Anthony Buckley, Anthony Buckley Consulting Ltd., Ireland, demonstrated how busy the Channel is in [Marine Traffic: Global Ship Tracking](#) and showed how much information we can learn about each ship in the database, including its IMO number required for the Customs declaration. The time flies watching the ships!

### WELL, SHIPS AREN'T THE MOST ENTERTAINING FOR CHEMISTS!

Customs chemist dr. David Savage from Ireland shared that his favorite is the [European Customs Inventory of Chemical Substance](#) (ECICS Consultation). The ECICS is an information tool managed by the European Commission's Directorate-General (DG) for Taxation and Customs Union which allows users to:

1. clearly and easily identify chemicals;
2. classify them correctly and easily in the Combined Nomenclature;
3. name them in all EU languages for regulation purposes.

The ECICS mainly contains pure chemicals and is routinely used by practitioners in the Customs space when dealing with the complex customs classification rules in Chapters 28 and 29 of the HS/CN.

### CLASSIFICATION 'GEEKS'

The classification topic revealed, that there are many classification 'geeks' among participants!

Roberto Raya da Silva, a founding member of Raya Consult - Engenharia e Avaliações Ltda., an expert in tariff classification of machinery and equipment from Brazil, shared the link to [Siscomex system](#). It is a multipurpose database, tariff classification is a part of it. In the database, one finds legal notes, explanatory notes, tax information, and, what is especially great, the customs classification decisions to a product.



Ingrida Sakalienė, the tariff classification expert from Lithuanian Customs, shared about the [EU CLASS Consultation](#) database, which is a project by the European Commission to help in the tariff classification process by providing the main classification tools in one place. Please see the presentation prepared by Ingrida attached below.

Samuel Draginich, a global trade compliance specialist at INTRAL Corporation, U.S./ Vietnam, has extensive experience with the Harmonized System tariff schedule of several countries! [Vietnam Tariff Schedule](#) can be used to look at tariff duty rates for goods entering Vietnam. In [Harmonized Tariff Schedule of the United States](#) (HTSUS) you can search for codes if you already know them or look them up by chapter via the pdf file.

### LET'S COMPARE! SWISS TARES MORE USER-FRIENDLY THAN TARIC IN THE EU

Thomas Woodtli, a customs expert at Eugster / Frismag AG, Switzerland, finds that [Swiss Tares](#) is more user-friendly than [TARIC in the EU](#). The Swiss working tariff "Tares" isn't only a customs-related tool that Swiss companies as well as the Swiss customs administration use. It is also a powerful database. For example, it is possible to search for HS headings of chemical elements using a CAS, CUS number or by entering the element's name. It is also possible to browse through the HS explanatory notes which are available in German, French and Italian. Enter any word and you'll find it quickly. You can also use the "Tares" to find any suitable HS (sub)headings first in order to continue to search for the remaining digits in your local tariff. Comparing many national tariff databases, the "Tares" is one of the user-friendliest tariffs to search for the correct commodity code. And here are Thomas' links to other useful customs-related databases:

- SwissImpex is a powerful database of [Swiss foreign trade statistics](#)
- [US binding tariff information](#)
- [Japan binding tariff information](#)
- [Canada binding tariff information](#)
- [US Export customs tariff](#)
- [Norway working tariff](#), also available in English
- [Colombia working tariff](#)
- [Australia working tariff](#)
- [Philippines binding tariff information](#)
- [Bangladesh binding tariff information](#)
- [Mauritius binding tariff information](#)

### THE UK CUSTOMS CREATES GREAT TOOLS TO HELP NEW PLAYERS

Jessica Yang, director of JY XBorder Consulting Ltd, the United Kingdom, noted that this initiative of sharing our favorite database is similar to a section in one of the inflight magazines she used to read (probably Swiss Air). In there, people in different cities are interviewed and they share their favourite restaurants, bars, etc. Shall we call this article "incustoms" instead of "inflight" interview-read during this no-travel period? :-)) What are the databases Jessica uses?

- [UK Trade Info](#) is one of her favorite UK databases. You can download imports/exports by commodity code or trader. Or search a commodity code and see how many traders imported/exported using that code.
- [Exporting from the UK](#). Similar to EU Access to Market database, it is built to help UK exporters. Traders can see the rules of origin.
- Importing into the UK. This shows [the UK Tariff](#), check the import/ export tabs once you have found the code for further details.
- [UK AEO database](#). Currently, just a list in Excel, might become a tool like the EU AEO database in the future.
- [UK EORI validator](#). Used to validate UK EORI, sometimes it also shows the business name and address.
- [Companies House](#). Search companies incorporated in the UK for their annual accounts, list of directors, beneficial owners, etc.
- [UK Global Online Tariff - Tariff tools](#). Search for information on for tariff quotas, including daily updated balances; certificates, licenses and other document codes; additional codes; chemicals by CAS Registry Number (RN). Similar to this tool is [Northern Ireland Online Tariff - Tariff tools](#).
- Other tools. [ArcticTARIFF](#) is a tool from Dutch Customs. ArcticTARIFF is a comprehensive web-based tariff system for customs-administration authorities in European Union (EU) countries. The system is compatible with EU requirements and provides flexible and comprehensive functionality, also allowing national regulations to be applied.

## AT THE MOMENT - THE EU DATA ELEMENTS ARE THE MOST INTERESTING NEWS!

Milda Stravinskė, Project manager at Lithuania Post. For those who are interested in customs data elements, various declarations data sets, Milda suggests getting familiar with the [EU Customs Data Model](#) (EUCDM), which is also a very useful tool for businesses introducing or adapting their IT systems in relation to customs requirements. EUCDM provides you with well-structured information on data requirements, starting from the legal background and practical examples up to the technical details, data codes and formats that might be interesting for IT people.

## THE TOOLS WHICH HELP TO UTILIZE PREFERENCES (FTAs)

Enrika Naujokė, director of Lithuanian Customs Practitioners Association (LCPA) shared that LCPA is currently preparing an online course for customs brokers and she is working on the origin part. There are great tools developed to help traders to utilize free trade agreements (FTAs)! Her favorite database is by German Customs '[Origin of goods and preferences online](#)'.

[Rules of Origin Facilitator](#) is another tool, which helps to find and compare the rules of origin worldwide. 372 trade agreements with rules of origin are already available here!

And, of course, a great help for traders from EU and with EU is the [ROSA](#), part of the new [EU Access2Markets](#) database. It is a step-by-step guidance to help traders to meet all the requirements to claim the preferential duty tariff.

What are the codes of origin-related documents? [Lithuanian customs database LITAR](#) (available also in English) is of great help informing about the codes - write 'origin' in the field Certificate description and learn how many documents relate to the topic!

The law is not always easy to interpret, therefore, for those who like the stories of the case-law, the database of the [European Court of Justice CURIA](#) might be a good source and a good read (search by keyword "origin", or any other you are interested in).

## QUESTIONS? FIND A CUSTOMS EXPERT IN ANY COUNTRY AROUND THE WORLD!

Catherine Truel, CEO of Alegrant Ltd., the UK/ France, shared her novel approach - the [www.alegrant.com](http://www.alegrant.com) platform for Global Trade and Customs world-class expertise. The platform helps companies to get reliable customs advice in any country of the world.

## THE DATABASES FOR CUSTOMS USE

Dr. Toni Männistö, Head of Research, Cross-border Research Association (CBRA) from Finland, shared what external databases Customs use (see examples in the picture below) and discussed with attendees related challenges.

<b>Industry platforms</b>	Private information systems of logistics and commercial data	
<b>Company information providers</b>	Updated firmographic and commercial data on companies worldwide	
<b>Import and export analytics services</b>	Detailed information and analytics on imported and exported goods	
<b>Cross-validation databases</b>	Verified data elements for cross-checking of declaration information	
<b>Movement tracking services</b>	Information and analytics based on tracking data of vessels and cargo units	
<b>Industry certification programs</b>	Private risk data on companies and their supply chains	
<b>E-commerce platforms</b>	Data on online suppliers, orders, payments, and shipping processes	

## FINAL NOTES

We invite readers of the article to share their databases with us. Contribute to the CCRM Journal and start participating in the bimonthly authors' meetings! In the next meeting (in April) we will share how we learn the Customs news and why the source is important for us (e.g. the tweets from European Commission on Twitter informing about newly released guidelines). Look forward to meeting you! Contact us at [info@lcpa.lt](mailto:info@lcpa.lt)

[Download presentation "Tariff classification and CLASS consultation"](#)



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LEGAL NEWS

## EU law news: March 2021

*Overview of customs-related legal acts, case-law, notices published in the Official Journal of the EU, and information published by the European Commission and by the World Customs Organization. Updated weekly!*

News in week 13. Judgements of the Court of Justice of the European Union: tariff classification of bank note validator and cash boxes (headings 8472 and 9031), inward processing and failure to present goods to customs, anti-dumping duties on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China. Regulation imposing a definitive anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China.

### OFFICIAL JOURNAL

18.3.2021 L 095 [Council Decision \(EU\) 2021/463](#) of 9 March 2021 on the position to be taken on behalf of the European Union within the Administrative Committee established by the Customs Convention on the international transport of goods under cover of **TIR Carnets**, as regards the amendments to that Convention.

16.3.2021 L 087 [Regulation \(EU\) 2021/444](#) of the European Parliament and of the Council of 11 March 2021 establishing the **Customs programme for cooperation** in the field of for the period from 1 January 2021 to 31 December 2027. The general objective of the Programme is to support the customs union and customs authorities working together and acting as one to protect the financial and economic interests of the Union and its Member States, to ensure security and safety within the Union and to protect the Union from unfair and illegal trade, while facilitating legitimate business activity.

12.3.2021 L 085 [Council Decision \(EU\) 2021/443](#) of 18 February 2021 on the position to be taken on behalf of the European Union within the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards the date on which provisional application pursuant to the **Trade and Cooperation Agreement** is to cease.

### TARIFF CLASSIFICATION

29.3.2021 C110 [Case C-760/19](#). Judgment of the Court of Justice of the EU of 4 February 2021 JCM Europe (UK) Ltd

v Commissioners for Her Majesty's Revenue and Customs. Tariff classification, headings 8472 and 9031 **bank note validator and cash boxes**. Operative part of the judgment: the examination of the questions referred has disclosed no factor capable of affecting the validity of Commission Implementing Regulation (EU) 2016/1760 of 28 September 2016 concerning the classification of certain goods in the Combined Nomenclature.

26.3.2021 C104I [Explanatory Notes](#) to the Combined Nomenclature of the European Union. In the explanatory note to subheading **8543 70 90** the second paragraph is deleted. In the explanatory note to **9506 69 90**, the second and the third paragraph are deleted and replaced by the following: "This subheading however excludes so-called '**anti-stress balls**' which have the shape of a ball and can be decorated in various ways. They are usually made of plastic or rubber and are designed to be repeatedly squeezed in the hand as an anti-stress exercise. The 'anti-stress balls' and similar 'anti-stress items' of various shapes and designs are classified in heading **9503**."

26.3.2021 L 106 [Commission Implementing Regulation \(EU\) 2021/532](#) of 22 March 2021 concerning the classification of certain goods in the Combined Nomenclature. A so-called 'camera station appliance' or '**all-in-one recorder**', the CN code 8521 90 00.

26.3.2021 L 106 [Commission Implementing Regulation \(EU\) 2021/531 of 22](#) March 2021 concerning the classification of certain goods in the Combined Nomenclature. A **camera lens mount** made of metal and plastic with a bayonet connection, and with dimensions of approximately 92 × 86 × 35,1 mm. The article is designed to be attached to the front of the digital video camera recorder, being placed between the video camera recorder and the objective lens. CN code 9002 11 00.

26.3.2021 L 106 [Commission Implementing Regulation \(EU\) 2021/530](#) of 22 March 2021 concerning the classification of certain goods in the Combined Nomenclature. A portable hand-held **electromechanical appliance for personal skincare**, CN-code 8509 80 00.

10.3.2021 L 083 [Commission Implementing Regulation \(EU\) 2021/419](#) of 9 March 2021 amending Implementing Regulation (EU) 2018/2019 as regards **certain plants** for planting of Jasminum polyanthum Franchet originating in Israel and adapting Combined Nomenclature codes for Ullucus tuberosus and amending Implementing Regulation (EU) 2020/1213 as regards the phytosanitary measures for the introduction of those plants for planting into the Union territory.

8.3.2021 C 079 [Court of Justice of the European Union Case C-99/20](#). Operative part of the order: the combined nomenclature must be interpreted as meaning that **rail components for hanging curtains**, in the form of finished tubes (painted, nickel-plated, chromed), come under tariff subheading 8302 41 90, unless those finished tubes consist in rods, tubes or bars merely cut to the desired length.

## CUSTOMS PROCEDURES

29.3.2021 C 110 [Case C-92/20](#). Judgment of the Court of Justice of the EU of 3 February 2021 *Rottendorf Pharma GmbH v Hauptzollamt Bielefeld*, invalidation of the authorisation and issue of an authorisation for **inward processing** with retroactive effect, failure to present goods to customs. Operative part of the judgment: the second indent of Article 239(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, first, an economic operator may claim repayment of the customs duties which it has paid only where that operator is in a special situation and there is no manifest negligence or deception on its part and, second, that the fact that the goods concerned were re-exported to a third country without entering the economic network of the European Union is insufficient to establish that that economic operator was in such a special situation. The same conclusion applies where the conduct giving rise to the imposition of the customs duties concerned was caused by an error in the information contained in the computer system of that economic operator, since that error could have been avoided if the same economic operator had taken account of the conditions contained in the authorisation granted to it.

## DUTY; ANTI-DUMPING AND COUNTERVAILING DUTY; OTHER RELATED MEASURES

30.3.2021 L 109 [Commission Implementing Regulation \(EU\) 2021/546](#) of 29 March 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of **aluminium extrusions** originating in the People's Republic of China.

29.3.2021 C 110 [Case C-324/19](#). Judgment of the Court of Justice of the EU of 4 February 2021 eurocylinder systems AG v Hauptzollamt Hamburg. Anti-dumping duties on imports of certain **seamless pipes and tubes of iron or steel** originating in the People's Republic of China. Operative part of the judgment: Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China is invalid.

19.3.2021 L 096 [Commission Implementing Regulation \(EU\) 2021/469](#) of 18 March 2021 accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of **ceramic tableware and kitchenware** originating in the People's Republic of China and amending Implementing Regulation (EU) 2019/1198. The following company is added to Annex I to Implementing Regulation (EU) 2019/1198 containing the list of cooperating companies not included in the sample: Hunan Legend Porcelain Industry Co., Ltd.

17.3.2021 C 090 [Notice of initiation](#) of an expiry review of the anti-subsidy measures applicable to imports of **tubes and pipes** of ductile cast iron (CN codes ex 7303 00 10 and ex 7303 00 90) originating in India.

17.3.2021 C 090 [Notice of initiation](#) of an expiry review of the anti-dumping measures applicable to imports of **tubes and pipes** of ductile cast iron (CN codes ex 7303 00 10 and ex 7303 00 90) originating in India.

12.3.2021 L 085 [Commission Implementing Regulation \(EU\) 2021/441](#) of 11 March 2021 imposing a definitive anti-dumping duty on imports of **sulphanilic acid** originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council.

11.3.2021 L 084 [Commission Implementing Regulation \(EU\) 2021/425](#) of 9 March 2021 suspending commercial policy measures concerning certain products from the United States of America imposed by Implementing Regulation (EU) 2020/1646 following the adjudication of a **trade dispute** under the Dispute Settlement Understanding of the World Trade Organization.

8.3.2021 L 079 [Commission Implementing Regulation \(EU\) 2021/401](#) of 5 March 2021 fixing the import duties applicable to certain types of **husked rice** from 8 March 2021. The import duty for husked rice falling within CN code 1006 20, other than basmati rice, shall be EUR 30 per tonne.

3.3.2021 L 072 [Council Decision \(EU\) 2021/373](#) of 22 February 2021 on the signing, on behalf of the Union, of the Agreement between the European Union and the Kingdom of **Thailand** pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the **tariff-rate quotas** included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union.

2.3.2021 L 071 [Commission Implementing Regulation \(EU\) 2021/370](#) of 1 March 2021 making imports of **stainless steel cold-rolled flat products** originating in India and Indonesia subject to registration.

## NON-TARIFF MEASURES

26.3.2021 C 104 [Notice to undertakings](#) intending to import or export controlled **substances that deplete the ozone layer** to or from the European Union in 2022 and undertakings intending to produce or import these substances for essential laboratory and analytical uses in 2022. It is set out, that before an import for uses other than those listed in paragraph 4 or an export takes place in 2022, undertakings must apply for a licence using the licence application form available online in the ODS Licensing System.

25.3.2021 L 104 [Commission Implementing Regulation \(EU\) 2021/521](#) of 24 March 2021 making specific arrangements to the mechanism making the exportation of **COVID-19 vaccines as well as active substances** subject to the production of an export authorisation.

12.3.2021 L 085 [Commission Implementing Regulation \(EU\) 2021/442](#) of 11 March 2021 making the exportation of certain products subject to the production of an export authorisation. An export authorisation established in accordance with the form set out in Annex I shall be required for the export of the following goods: (a) **vaccines against SARS-related coronaviruses** (SARS-CoV species) currently falling under CN code 3002 20 10, irrespective of their packaging; (b) active substances, including master and working cell banks used for the manufacture of such vaccines, currently falling under CN codes ex 2933 99 80, ex 2934 99 90, ex 3002 90 90 and ex 3504 00 90.

### EUROPEAN COMMISSION

15.3.2021 [The European Commission is launching](#) its **new import control system (ICS2)**, a major reinforcement of the Customs Union's "first line of defence" against security and safety threats posed by illicit traffic in goods across the EU's external borders. In its first phase, ICS2 will focus on postal and express consignments coming to or through the EU by air, before eventually being applied to all modes of cargo transport.

12.3.2021 [New trans-European systems for export and transit](#) to facilitate simpler and more efficient trade. On 15 March, the European Commission and Member State customs authorities are launching an important transition for **the trans-European customs systems for export and transit**, starting with the successful deployment of the new UCC AES and UCC NCTS-Phase 5 IT systems in Germany. This opens the path to the next generation of interconnected trans-European systems for the trade community and the national customs authorities. The new systems will be deployed in a gradual manner from now on until December 2023, to allow for a smooth transition across Europe, while ensuring operational business continuity.

The new export and transit systems offer significant benefits and enable simplifications - services such as Centralised Clearance and pre-lodgement facilities, AEO benefits and real-time trade notifications, as well as seamless cross-border on-line real time interactions across Member States and Common Transit Convention countries. Furthermore, the new systems are built on the new EU Customs Data Model. This enables alignment to International Standards such as the WCO Data Model, data harmonisation across EU Customs and Taxation and reinforcing EU Customs Compliance and Controls.

5.3.2021 [EU and U.S. agree to suspend](#) all **retaliatory tariffs on EU and U.S. exports** imposed in the Airbus and Boeing disputes for a four-month period. The suspension allows both sides to focus on resolving this long-running dispute. It provides an important boost to EU exporters, since the U.S. had been authorised to raise tariffs on \$7.5 billion of EU exports to the U.S. Similarly, EU tariffs will be suspended on some \$4 billion worth of U.S. exports into the EU.

### WORLD CUSTOMS ORGANISATION (WCO)

16.3.2021 [Second Global Origin Conference](#) successfully held virtually. Through the sessions, participants gained a deep understanding of the following topics: challenges faced by trade professionals when seeking to apply RoO; current progress and future actions in implementing preferential RoO; development of international guidelines and standards related to implementing RoO, especially through the RKC Review process; and latest efforts by Member administrations and relevant stakeholders to address the different issues.

3.3.2021 WCO announced the release of its **new online tool**, [www.wcotradetools.org](http://www.wcotradetools.org), which compiles information to support international trade actors in the classification of goods and the determination of the corresponding Customs tariffs and taxes. This new database offers a single point of access to the Harmonized System, preferential Rules of Origin and Valuation, through a completely new, user-centric and ergonomic interface. The new export and transit systems offer significant benefits and enable simplifications - services such as Centralised Clearance and pre-lodgement facilities, AEO benefits and real-time trade notifications, as well as seamless cross-border on-line real time interactions across Member States and Common Transit Convention countries. Furthermore, the new systems are built on the new EU Customs Data Model. This enables alignment to International Standards such as the WCO Data Model, data harmonisation across EU Customs and Taxation and reinforcing EU Customs Compliance and Controls.



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LEGAL NEWS

## EU law news: February 2021

*Monthly overview of customs-related legal acts, case law, notices published in the Official Journal of the EU, and information published by the European Commission and by the World Customs Organization.*

### EU - UK TRADE

26.2.2021 L 068 [Decision No 1/2021](#) of the Partnership Council established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part of 23 February 2021 as regards the **date on which provisional application pursuant to the Trade and Cooperation Agreement is to cease** (2021/356). The date on which provisional application is to cease pursuant to point (a) of paragraph 2 of Article FINPROV.11 [Entry into force and provisional application] of the Trade and Cooperation Agreement shall be 30 April 2021.

19.2.2021 L 058 [Commission Implementing Regulation \(EU\) 2021/254](#) of 18 February 2021 amending Implementing Regulations (EU) 2020/761 and (EU) 2020/1988 and Regulations (EC) No 218/2007 and (EC) No 1518/2007 as regards imports of products originating in the **United Kingdom** and excluding those products from the **tariff quotas** with ongoing quota periods.

19.2.2021 Commission released [Introductory Guide for Traders to the Rules of Origin provisions](#) of the **EU-UK Trade and Cooperation Agreement** (TCA). This document can serve as the first point of reference for business, providing general answers to the most common questions about the preferential rules of origin of the EU-UK TCA, and how they should be applied.

5.2.2021 To assist **EU businesses importing from and exporting to the UK**, the Commission has developed detailed [guidance on preferential treatment, origin and customs procedures](#) within the framework of the new relationship with the UK. These guidance documents are available:

19.2.2021 L 058 [Commission Implementing Regulation \(EU\) 2021/254](#) of 18 February 2021 amending Implementing Regulations (EU) 2020/761 and (EU) 2020/1988 and Regulations (EC) No 218/2007 and (EC) No 1518/2007 as regards imports of products originating in the **United Kingdom** and excluding those products from the **tariff quotas**

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CASE-LAW

## Different duty tariffs: tractor towing broken-down or undamaged vehicles

‘The aircraft tractor’ hauls an undamaged vehicle - the rate of the duty is higher than it hauls a broken-down vehicle! The correct classification of goods is important for the proper and correct payment of customs duties.

The Court of Justice of the European Union (ECJ) delivered its first ruling this year on the interpretation of the Combined Nomenclature (CN) on 25 February 2021 (C-772/19). This time, the court clarified the tariff heading of aircraft tractors. In its judgment, the ECJ not only paid close attention to the general rules for the interpretation of the CN but also noted that the wording used in the language versions of European Union law, in this case, the CN, cannot be the sole basis for interpretation or precedence. The ECJ agreed with the decision of the Vienna Customs that an electric towed aircraft maintenance vehicle for towing and pushing aircraft falls under heading 8701 of the CN and not under heading 8705 of the CN, as argued by Bartosch Airport Supply Services GmbH (Bartosch).

### THE SITUATION

On 23 February 2017, Bartosch requested from the Vienna Customs authority the issuance of the Binding Tariff Information (BTI) concerning an aircraft tractor. In the request, Bartosch described the aircraft tractor as a vehicle capable of towing aircraft weighing up to 54 432 kg and consisting of a metal platform with four wheels, an electric engine with an engine power of 33.8 kW, drive, braking, and steering devices and two drivers’ seats arranged opposite one another with operating levers on both sides. This aircraft tractor is equipped with a pulling winch with a belt pulling device and an electrohydraulic lifting device. The winch of the aircraft is clamped on a hydraulic lifting device and then lifted by this hydraulic device. An aircraft in this position can be towed or pushed. According to Bartosch, the aircraft tractor thus described falls within subheading 8705 90 80 of the CN, which covers special vehicles (other than for the transport of persons or goods) and which falls within 3.7% duty rate.

The Vienna customs authorities disagreed with Bartosch’s assessment and issued a BTI on 08/05/2017 stating that the aircraft tractor referred to by Bartosch fell under subheading 8701 92 90 of the CN, ‘other’ type of tractors and tugs, which accounted for 7% duty rate.

Following the rejection of Bartosch’s appeals by the Austrian customs authorities and the Bundesfinanzgericht (Austrian Federal Finance Court), Bartosch appealed on a point of law to the Verwaltungsgerichtshof (Supreme Administrative Court), which decided to refer the matter to the ECJ for a preliminary ruling.

The Austrian Supreme Administrative Court (the Court) stated that according to the Explanatory Notes to the

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CASE-LAW

## The concept of a customs debtor and the case-law in Lithuania

In tax disputes with customs authorities, the question very often arises as to whether a person in respect of whom a customs debt is calculated or an inspection was initiated can be regarded as a customs debtor.

This issue is particularly evident in cases where the person concerned did not import the taxable goods himself, but only possibly indirectly or directly contributed to their importation and provision of incorrect information about the goods to customs authorities (in customs declarations). While in the European Union (EU) such issues are mainly regulated and covered by the EU customs law (Union Customs Code (2013)), in practice the implementation of EU customs law differs in the various EU Member States, which sometimes even adopt their own national laws in this area. With this in mind, the article discusses the latest practice in the Republic of Lithuania and the position of its national courts (which may also be important for the other EU Member States) whether such expansive interpretation of the concept of customs debtor is possible and in which cases.

### PROVISIONS OF EU CUSTOMS LAW, REGULATING THE CONCEPT OF CUSTOMS DEBTOR AND ITS INTERPRETATION

The second subparagraph of the Article 201 (3) of the Community Customs Code (Council Regulation (EEC) No 2913/92 of 12 October 1992) provided that: „where a customs declaration [...] is drawn up on the basis of information which leads to all or part of the duties legally owed not being collected, **the persons who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known that such information was false, may also be considered debtors in accordance with the national provisions in force.**“

According to the changes of Article 201 (3) of the Community Customs Code, which came into force after adoption of the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC), the words „may“ and the reference to „national law“ were excluded from the current text of the UCC.

Thus, Article 77 (3) of the UCC is currently formulated as follows: „where a customs declaration [...] is drawn up on the basis of information which leads to all or part of the import duty not being collected, **the person who provided**

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OVERVIEWS AND COMMENTS

## Significance of guidelines, explanatory notes and other “soft law” acts

In the European governance the EU legislation distinguishes between the so called “formal law” and the “informal law”. The latter is also known as measures of soft law. Formal law comprises regulations, directives and decisions, whereby recommendations and opinions, as well as other methods of developing policy: e.g. policy guidelines are considered soft law. Practical examples of informal law in the field of customs are the Guidelines for Customs Valuation of Goods, the Customs Valuation Compendium, the Transit Guide. What is the significance of these documents in practice?

Soft law instruments are referred to as rules of conduct which, in principle, have no legally binding force, however, which nevertheless may have practical effects. The use of soft law instruments has increased in the activity of political and administrative EU bodies.

The European Commission published in 2001 a White Paper on governance. Among others, it promoted flexibility in legislation and the recourse to soft methods of governance, such as the open method of coordination. Another point stated in the White Paper regarded the coherent combination of non-binding legal instruments with hard legislation in order to deliver better regulation.

Even without being formally legally binding, such informal legislation is often inseparable from binding international treaties or EU legislation, as it details and interprets their provisions, protects and promotes the same constitutional values, and promotes the development of democracy.

The case law of the European Courts reflects the increasing number of references to soft law. Sometimes, in the description of the legal basis, they even cite certain recommendations or guidelines that are taken into account in deciding the case, or refer to them to reinforce their reasoning.

The format of informal law began to emerge a little over 30 years ago. The European courts have therefore been forced to assess the legality and reasonableness of this legal instrument and its legal consequences.

The case law of the Court of Justice of the European Union (CJEU) (judgment of 13 December 1989 in Case C-322/88, Salvatore Grimaldi v Fonds des maladies professionnelles) has formulated the doctrine of the binding nature of soft law, according to which national courts, in which the application of informal EU legislation is relevant, must take into account not only EU primary and secondary legislation, but also non-binding legislation, and state the

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OVERVIEWS AND COMMENTS

## EU hard law: hierarchy, types, and opportunities

Sources of European Union (EU) law can be classified according to their binding nature. Hard law defines binding legislation, and soft law includes non-obligatory guidelines, recommendations, opinions. Andrius Košel has published an excellent article on soft law and here we will examine hierarchy and types of hard law, as well as opportunities in its application.

Let us begin with some background knowledge. EU is a specific supranational organisation differing from ordinary international organisations. It is a legal entity with its separate legal system. EU countries ceded some of their sovereign rights to give the EU exclusive competence in areas like customs union and common commercial policy. In some other areas (like internal market, transport, environment) EU and its countries share competence. While in the rest of the spheres EU has only a coordinative and supplementary functions (e. g. social policy). EU law is enforceable in the national courts, and, on the top of that, EU countries can not apply laws contradicting to those of EU. In other words, EU law can be characterised as having a direct effect and superiority to national law.

Naturally, EU law has its own (internal) hierarchy. For that purpose, the primary and the secondary EU law is distinguished. Primary law is the touchstone of EU's existence, competence, and functioning. It includes treaties under which EU was established and is functioning (including their protocols); EU charter on fundamental rights, Treaty on the European Atomic Energy Community (Euratom), international treaties, and general principles of law. We will shortly introduce some of these primary legal acts.

First to mention is the Treaty on European Union (TEU), signed in Maastricht in 1992. Under this treaty European Union was established to continue activities of European Communities. TEU was a leap into a new stage of EU's integration. It created internal market comprising an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured – one of the key characteristics of the EU.

Treaty on the Functioning of the European Union (TFEU) stands next to Treaty on EU as to its importance. TFEU regulates in detail competences of EU institutions and countries, their rights, and obligations. If we would look closer to any legal act of EU Parliament, Court of Justice of the EU (CJEU) or a decision of any other EU institution we would find a reference to a specific article of TFEU, allowing adoption of such a decision. It is the TFEU that expressly declares that customs union and common commercial policy are areas of exclusive EU competence.

Another primary legal act of EU, that is key to customs law, is EU's international treaties, including free trade

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## U.S. export law between third countries

While most trade compliance professionals are likely aware of U.S. Export Administration Regulations (EAR) as it pertains to exports originating from the U.S., many are not aware its scope can extend to shipments that do not physically involve the U.S.

There are two situations where a good or technology moving between two non-U.S. jurisdiction countries could fall under the purview of the EAR:

1. Shipments involving U.S.-made goods/technology.
2. Shipments involving any of the following:
  - a. Non-U.S.-made commodity incorporating controlled U.S.-origin commodities.
  - b. Non-U.S.-made commodity bundled with controlled U.S.-origin software.
  - c. Non-U.S.-made software incorporating controlled U.S.-origin software.
  - d. Non-U.S.-made technology commingled with or drawn from controlled U.S.-origin technology.

The first scenario is quite straightforward. For example, if you were to ship a U.S.-made computer-controlled under ECCN 5D002 from Germany to China the trade compliance professional would need to ensure this complies with the U.S. export rules pertaining that to that specific heading. Depending on the end-user, this may include obtaining a license from the Bureau of Industry and Security (BIS) and/or reporting the transaction to BIS.

In the second scenario the question becomes, what is the threshold for U.S. origin commodities/ software incorporated into non-U.S.-made goods/technologies? This is known as 'de minimis'. In short, it depends.

First, you must determine what the ECCN of the U.S.-origin commodity/technology is. Secondly, you must know the destination country. For certain sensitive ECCNs any amount of U.S.-content above 0% places the product/ technology under the jurisdiction of the EAR. This includes many encryption categories (ex. ECCNs 5x002). However, in the majority of cases the de minimis percentage is 25%. This includes items that fall under EAR99 going to most countries (i.e., not countries in Group E:1 or E:2 which are the most restrictive destinations).

For trade compliance professionals to ensure they are compliant it is of utmost importance to have a comprehensive, detailed understanding of the full supply chain of any items/technologies being exported. Just because something is above 0% places the product/ technology under the jurisdiction of the EAR. This includes many encryption categories (ex. ECCNs 5x002). However, in the majority of cases the de minimis percentage is 25%. This includes items that fall

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OVERVIEWS AND COMMENTS

## AEO: a look at other countries' programmes and mutual recognition agreements

Continuing the overview launched a year ago [2], we present a review of the AEO Compendium 2020 [1] published by the World Customs Organization (WCO). There was in the previous review mentioned that, following Brexit, the EU and the United Kingdom are likely to sign an agreement on the mutual recognition of AEO programmes (which has already been signed [3]) and that the AEO certificate will become even more desirable. We are after Brexit and before the VAT changes on low-value consignments entry in force - the number of businesses facing customs formalities is growing, as is the number of companies planning to apply for AEO status, so the topic of AEO remains important. What do we learn by reading the AEO Compendium? The compendium presents how the AEO programme has been developed in various countries over the past year, what mutual agreements have been concluded between the countries and the benefits for businesses with AEO status.

### INITIAL WORD

The World Customs Organization, as every year starting from 2010, published the 2020 edition of the Authorized Economic Operator (AEO) Compendium on December 18, 2020. The Compendium provides a concise but specific and structured overview of the implementation of the current AEO programmes and Mutual Recognition Agreements (MRA) implemented by WCO members. In addition to basic information on AEO and Customs Compliance programmes, the Compendium also provides a brief overview of the criteria, accreditation procedures and benefits of the respective AEO programmes. The information is not limited to the current situation. It also covers the foreseeable future developments and initiatives of WCO members. There is a lot of information provided and at first glance it seems that the Compendium consists only of statistics, whose review requires a special urge. Nevertheless, the information it provides can be eloquent, especially for those interested in AEO and related trends. Thus, I am sharing insights.

### WHAT DOES THE NAME OF THE PROGRAMME HIDE

The Compilation consists of four parts, two of which contain lists of programmes with relevant information. Why the programmes are divided into two groups in the Compendium, though both AEO and another name, listed under the line "Programme Name" of the different countries programme, can be found in both parts. For example, in Part I, where

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## OVERVIEWS AND COMMENTS

# Cases of repayment of import duties (EU and UK)

Reader's question. Is it possible to recover import duties if the imported goods are exported? For example, a Lithuanian company imports goods from China (releases them into free circulation). After a few months, it happens that unchanged goods are sold and exported to a company in Switzerland. In such a case, could the Lithuanian company apply for a refund of import duties? Because the goods were exported and the company itself, if it had foreseen that such a situation would arise, would not have released the goods for free circulation but would have placed them in a customs warehouse. We also operate in the UK, what would be the rules there in a similar situation?

### SPECIALISTS OF THE CUSTOMS DEPARTMENT (LITHUANIAN CUSTOMS) KINDLY AGREED TO ANSWER THE QUESTION

We would like to emphasize that import duty and taxes are not repaid or remitted for the sole reason that the goods previously imported are exported. Import duties may be repaid or remitted in the cases specified in Article 116 of Regulation No. 952/2013 of the European Parliament and of the Council, of 9 October 2013 laying down the Union Customs Code, while excise taxes and VAT – in the Resolution of the Government of the Republic of Lithuania No. 330 “Approval on Cases when Unduly Paid Value Added Tax and/or Excise Duties on Imported Goods are Refunded or Remitted” (hereinafter Resolution No. 330 of the Government of the Republic of Lithuania of 24 March 2004).

Under that legislation, import duties and taxes are repaid or remitted where:

1. the goods were found to be defective at the time of release or did not comply with the terms of the contract under which they were imported (Articles 116 and 118 of the UCC provide for the repayment or remission of import duties, if goods at the time of release were defective or did not comply with the terms of the contract on the basis of which they were imported, if the goods were not used, except for the initial stage of their use necessary to establish the defect or non-conformity of the goods with the terms of the contract, and if they leave the customs territory of the Union);
2. where a customs declaration is invalidated according to provisions of UCC Art. 174 (repayment or remission of duties because the customs declaration under which they are to be paid is invalidated). There are several cases when a customs declaration is invalidated after release of the goods - the wrong goods were declared in error, goods were declared in error for the wrong procedure, as well as when the goods were purchased under a distance selling contract, etc. 174 (2) of the Union Customs Code

[Read continuation on Customs Clearance \(€\)](#)



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DIGITALISATION

## ICS2: the new European customs “Import Control System” just arriving!

The purpose of this note is to introduce the new European Import Control System (ICS2) in the safety and security measures framework and the launch of its first “release 1” version for express courier and postal shipments transported by air. Looking at it from a French perspective.

In France, two operators will be involved in this release 1 scheme: the national postal operator and one express courier company with its hub in France.

### GENERAL CONTEXT AND OBJECTIVES OF ICS2

The ICS1 system was implemented as part of the safety and security measures instituted after the September 11 terrorist attacks in the United States in 2001, to ensure the risk analysis of goods upstream of their arrival in the customs territory of the Union, or even before long-distance containers are loaded, whatever the mean of transportation (air, sea, rail and road) on the basis of an electronic entry summary declaration (ENS). The ICS1 system has been in force since 1<sup>st</sup> January 2011<sup>1</sup>.

The European ICS2 system is now intended to replace the current ICS1 system, in view of security requirements and of the provisions of the Union Customs Code in force since 1<sup>st</sup> May 2016. **The main objectives of ICS2** are to enable European Union (EU) customs authorities to:

- better identify high-risk consignments and intervene at the most appropriate point in the chain of supply;
- strengthen the protection of EU citizens and of the internal market against the threats as regards safety and security;
- facilitate the cross-border passage of most legitimate trade;
- simplify the exchange of information between economic operators and customs authorities in the EU.

### The main changes are as follows:

- the submission of a Minimum Data Set (MDS)<sup>2</sup> prior to the loading of consignments on an aircraft for aviation security purposes - implementation of “do not load”;
- removal of exemptions (postal and express consignments of negligible value) with the exception of consignments of Correspondence<sup>3</sup>;
- additional data (buyer/seller) only for maritime and river, road and rail transportation;
- the implementation of “multiple filing” for maritime and air transportation;
- the setting up of a consultation (“referral data”) on the data of the summary declarations (ENS) after allocation of the Movement Reference Number (MRN);

- the possibility to invalidate the entry summary declaration (ENS);
- better identification for the treatment of Authorised Economic Operators (AEOs) (implementation of mutual recognition, notification of controls before the arrival of goods on the customs territory of the Union).

**The filing of the ENS in the ICS2 framework.** The obligation for filing the ENS, in a general way, is the responsibility of the carrier, as is the operation of ICS1. The latter is responsible for the transport of goods into the customs territory of the Union. The ENS may be filed by the importer or by the consignee of the goods or by any person capable of presenting the goods to the customs services. In practice, the vast majority of ENS will be deposited by the carrier and other persons involved in the supply chain. The ENS can be filed:

- either in the form of a complete ENS by the carrier,
- or in the form of several pieces of ENS “multiple filing” filed by the other players involved in the maritime or air logistics chain. The aggregation of these messages will be carried out by the European customs system by means of transport documents (air waybill, sea bill of lading). Each actor being responsible for the message he/she sends.

Depending on the type of flow (express consignments, postal consignments, air freight, sea freight) and transport (road, rail), ENS data sets (partial or complete) have been defined in accordance with Annex B to the Commission Delegated Regulation (EU) 2021/234 of 7 December 2020 amending the Delegated Regulation (EU) 2015/2446.

The deadlines for the submission of ENS declarations vary according to the modes of transport and the duration of the transport according to the ICS1 rules renewed in the UCC.

**New provisions in the context of air transport.** In the case of air transport, two ENS risk analysis will be carried out by the customs authorities:

- the first one before the loading of the goods onboard an aircraft for aviation security purposes, in support of a PLACI ENS (minimum data set “7+1”), “bomb search” according to civil aviation rules. This ENS must be filed, as soon as possible, prior to the loading of the goods into the aircraft. This covers all goods, i.e. express shipments, goods in transit, postal consignments and conventional cargo freight;
- the second one before the arrival of the goods in the customs territory of the Union in support of an ENS (partial or complete) for safety and security purposes.

#### **PRINCIPLE: A CENTRAL EUROPEAN SYSTEM (“CENTRAL BASE”)**

Due to the strategic importance and scope of this European ICS2 project, its design has been taken over by the European Commission (DG TAXUD), in collaboration with the Member States (creation of a central database (CR)<sup>4</sup> and a shared operator interface (STI)<sup>5</sup>), and has led to the creation of the presentation of a project divided into three versions (release 1, 2 and 3) described below.

Economic operators will access the central European system via a single entry portal (ITS). The access modalities and certification are defined by the European Commission (DG TAXUD). Communications between States and economic operators will be made through the said European system.

This European system will receive all the ENS filed by economic operators and will transmit them to the EU entry point Member State and to the Member States involved in the supply chain for risk analysis for safety and security purposes. These results will be communicated to the EU entry point Member State responsible for the final decision.

The main functionalities of the central database (CR):

- processing of ENS (partial or complete with new data sets provided for in Annex B to the Commission delegated Regulation (EU) 2021/234 of 7 December 2020 amending the delegated Regulation (EU) 2015/2446);
- the harmonised admissibility;
- reconciliation of partial messages with a link key;
- storage;
- notification of arrival of the means of transport;
- the life cycle of the ENS, followed by the customs presentation of the goods;
- notification of controls for “safety/security” AEOs;
- requirements for customs control.



## TIMETABLE FOR THE DEPLOYMENT OF THE EUROPEAN ICS2 SYSTEM

The European ICS2 system will be operational in three versions in accordance with the EU Customs Code work programme (see Commission Implementing Decision (EU) 2019/2151). Each version concerns different economic operators and modes of transport (air, maritime, road and rail). Economic operators will start filing entry summary declarations under ICS2 depending on the type of services they provide.

ICS1 will operate in parallel with ICS2 until the deployment of version 2 (airborne vector - 01 March 2023) and of version 3 (road, sea and rail vector - 01 March 2024). After the deployment of version 3, ICS1 will be phased out after a transition period of 200 days.

A practical guide<sup>6</sup> has been drawn up by the Commission and the Member States on the modalities of exchanges as regards aviation security - "referrals" between economic operators and customs authorities.

The economic actors concerned by the different versions are as follows:

- Version 1: express carriers and postal operators based in the customs territory of the Union who ship goods to the EU by air will have to file the ENS PLACI before the loading of the aircraft, for aviation security purposes.
- Version 2: Postal operators, express delivery companies, air carriers and freight forwarders who ship goods to the EU by air will have to file the ENS PLACI before the loading of the aircraft, and then provide all ENS data prior to the aircraft's arrival at the EU port of entry to safety and security purposes.
- Version 3: Operators transporting goods (including postal and express consignments) by means of the maritime, river, road and rail transport companies will have to file the ENS before the arrival of the goods at the point of entry into the EU Customs territory and, for long-distance containerised goods, before the ship is loaded, for safety and security purposes.

## INTEGRATION OF ICS2 IN THE EU GOODS ENTRY PROCESS

The entry of goods into the EU is a 5-step customs process that constitutes pre-clearance:

1. the submission of the ENS;
2. notification of arrival of the means of transport;
3. the notification of presentation of the goods, in response to this notification, which authorises the goods to be unloaded in a place approved of by customs;
4. the temporary storage of the goods;
5. the placing of the goods under a customs procedure.

The ICS2 process covers three stages out of the five listed above: the lodging of the ENS, the notification of arrival of the means of transport and the presentation of the goods to customs. This last stage allows the notification of the ENS to the central base and, if necessary, the safety and security checks to be carried out.

As a reminder: in France, ICS1 already covers these three stages (via the Automate de Sûreté (AS) tele-services and DELTA P) and complies with the provisions of the UCC.

<sup>1</sup>ICS Circular 7052 of 15 February 2015 (Administrative Decision 15-010), published under the Community Customs Code, that is still in force, until the deployment of the ICS2 programme

<sup>2</sup>Preloading Advance Cargo Information

<sup>3</sup>Letters, postcards, ecograms and printed matter not subject to import or export duties (Article 1(26)) of the delegated regulation (EU) 2015/2446

<sup>4</sup>Central repository (CR)

<sup>5</sup>Shared Trade Interface – STI

<sup>6</sup>[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/ics2-eu-guidance-air-cargo-security-referral-protocols\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/ics2-eu-guidance-air-cargo-security-referral-protocols_en.pdf)



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DIGITALISATION

## WCO releases new online tool to support actors in international trade: [www.wcotradetools.org](http://www.wcotradetools.org)

Get to know more about WCOTradeTools.org and watch a video with some practical applications on the platform. Benefit also from a promotional code on the purchase of your subscription!

In March 2021, the WCO Publications & Data Solutions Service released [www.wcotradetools.org](http://www.wcotradetools.org), a new online tool that offers a single point of access to several editions of the Harmonized System, preferential Rules of Origin for more than 300 free-trade agreements, and legal and interpretative texts of the Valuation rules, including those agreed by the Technical Committee. This new platform is designed to improve the accessibility of Customs standards through a completely new, user-centric and ergonomic interface. It offers a number of key features developed specifically to facilitate the work of international trade actors and support them in their daily tasks, such as the classification of goods and the determination of Customs tariffs and taxes.

### HARMONIZED SYSTEM

The full Harmonized System Nomenclature developed by the WCO is available free of charge on the platform, which provides access to the past four HS editions: 2002, 2007, 2012 and 2017. The latest edition of the Nomenclature comprises 21 Sections, which are subdivided into 97 Chapters, classifying more than 5,000 commodities. Each subheading is identified by a six-digit code, arranged in a legal and logical structure, and is supported by well-defined rules to achieve uniform classification. Every five years, a new version of the Nomenclature is published, featuring new commodities. The future HS 2022 will be available upon official release.

The WCO provides within the Nomenclature several additional documents to facilitate user understanding and navigation:

- The Legal Notes provide the official technical description of the Harmonized System and form part of a legally binding international agreement.
- The Explanatory Notes contain technical descriptions of goods and practical guidance for their classification and identification. Published in the form of commentaries by the Harmonized System Committee, they constitute the official interpretation of the HS at an international level. The Notes are updated every six months, and the latest

amendments can be accessed with the single click of a button.

- The Classification Opinions are some of the most important and/or difficult classification decisions taken by the Harmonized System Committee and adopted by the WCO.
- The Alphabetical Index lists some classified commodities with their corresponding HS code. Nonetheless, given that the classification of an article can depend on many legal and technological factors, the index should not be regarded as a substitute for the basic texts.

All these official documents can be used to facilitate the classification of goods, and the **comparison tool** was developed with this purpose in mind. Users can browse different editions, languages and content that are displayed side by side, making it easier for them to identify the correct subheading. This tool alone constitutes a unique added value for [www.wcotradetools.org](http://www.wcotradetools.org).

Also new to the platform, the **history tool** can be used to view any changes that have been made to a subheading over the past four editions of the Harmonized System.

**VIDEO WITH SOME PRACTICAL APPLICATIONS!**



Readers of CCRM journal can benefit from a discount of 10% when purchasing any subscription on [www.wcotradetools.org](http://www.wcotradetools.org).

Discount code : CUSTOMSCLEARANCE  
Valid until the end of June!

## ORIGIN

There is no international definition of “origin”, although a distinction is made between two systems of origin: preferential and non-preferential. In the case of preferential origin, everything is based on bilateral or multilateral agreements (free-trade agreements (FTAs), Customs unions, free-trade areas, etc.) or unilateral non-reciprocal preferential arrangements (GSP, etc.).

In the light of the proliferation of preferential trade arrangements and disputes over the origin of goods, the WCO has created a global database of trade agreements and their specific rules of origin in an effort to improve the interpretation and application of those rules. The database references the legal texts of the agreements, various annexes, rules of origin and those specific to the products, as well as samples of certificates of origin.

The comparison tool can be used to create a juxtaposition of the core texts of rules of origin provisions of different agreements within this extensive collection. Moreover, the platform allows the user to search the product-specific rules of origin (PSRO) of most of these agreements with a view to verifying the preferential origin of goods. Users can quickly search the content of the available PSRO for specific HS numbers (Legal Notes, Explanatory Notes, Classification Opinions) as well as access the history tool in order to view any changes that have been made to subheadings over the past four editions of the Harmonized System.

## VALUATION

Determining the Customs value of imported goods is essential to the application and calculation of Customs tariffs. The rules applying to the valuation of goods are set out in a variety of documents, such as the WTO Customs Assessment Agreement (including the former GATT Article VII and Tokyo Round Valuation Code) adopted in 1994 and the texts of the Technical Committee on Customs Valuation. All these legal and interpretative texts can be found on a single platform: [www.wcotradetools.org](http://www.wcotradetools.org).

The WTO Customs Assessment Agreement is intended to provide a single, fair, uniform and neutral Customs valuation system for imported goods. The WCO platform provides access to the texts of the Agreement and its implementation as well as texts and decisions taken by the Technical Committee on Customs Valuation.

An alphabetical and a subject index are provided to make it easier to browse the content of the various articles, texts and decisions.

## ADDITIONAL TOOLS AND MULTI-USER FUNCTIONALITIES


The new platform also promotes cooperation between individual users or among team members, as well as with Customs brokers and companies, through various collaborative features, such as the ability to apply tags to information, post comments and share files. These new features provide a more comprehensive and personalized use of the platform; users can search the extensive databases and organize and store content according to their personal preferences.

Once registered, users can make use of personal tags, comments and folders to organize their navigation of the HS. Finally, as part of a subscription plan, the HS can be downloaded, printed or forwarded by e-mail directly from the menu to the left of the screen.

## WHAT IS THE WORLD CUSTOMS ORGANIZATION?


To help its Members meet the challenges related to the management of Customs administrations, the WCO has been developing Customs rules and standards since 1952 to ensure the harmonization of Customs procedures. Today, the WCO represents 183 Customs administrations that together handle approximately 98% of world trade.

The new bookshop of the WCO is also available here: [www.wcoomdpublications.org](http://www.wcoomdpublications.org)



Video  
**General Interpretative Rules (GIR)**

Prepared by: Muita UAB




**GIR 1** | The classification is determined by the terms headings and the relative section or chapter

<b>0806</b>	<b>Grapes, fresh or dried:</b>
0810	- Fresh:
0810	-- Table grapes .....

GIR 1-4 must be applied sequentially. Sandra starts with GIR 1 and classifies the grapes as follows: she finds the name of the good in the heading.

**~4 min**



[www.customsclearance.net](http://www.customsclearance.net)

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**DIGITALISATION**

## How to enhance customs risk management with external data?

The Pan-European Network of Customs Practitioners (PEN-CP) has published a study that explores the data landscapes of the today's customs world, marking yet another concrete highlight for the world's first innovation-boosting customs network.

Risk-based and data-driven approaches to customs operations have formed the foundation of customs control activities in Europe since many years. Bringing clear benefits, risk-based controls allow customs to focus on high-risk traffic, facilitate low-risk traffic, and this way oversee cross-border trade without disrupting the flow of goods. Digital data is the key enabler of risk-based controls, and access to external data sources provides customs valuable new information on cross-border traffic for risk assessment purposes.

The recent study by the Pan-European Network of Customs Practitioners (PEN-CP) explores how external data can benefit customs risk management. The study argues that external data can enrich pre-existing declaration data, providing additional data elements for customs to verify and base risk assessment on. In some cases, the value of external data lies in its early availability, which allows customs to carry out risk assessment earlier than with the traditional datasets. In some cases, external data is about commercial information that sellers, buyers, and intermediaries exchange to organize trading and logistics; this first-hand, binding commercial information tends to be relatively accurate and reliable. Access to additional external data also enables more effective cross-validation across datasets and updating of customs information with the latest data. Historical data from external sources can also help customs to improve the accuracy of trader profiling.

The study defines external data as any information that lies outside customs systems and that is not readily available for customs. This data comes from a large number of sources, for example, third-party data sharing platforms, data analytics and service providers, and open internet. The figure (Figure 1) below summarizes the seven categories of external data with a few examples. These data sources, when integrated into the customs system, could provide unique information on international traders, transactions, and movements of goods.

As practical examples, the study provides the first look at two customs risk management pilots with external data. The Belgian pilot seeks to improve pre-arrival risk assessment by enriching Entry Summary Declarations with commercial information, such as booking records, shipping instructions, and bills of lading data. The Dutch pilot develops ways to obtain valuation-relevant information from online e-commerce marketplaces.

The study also discusses barriers that customs must overcome before they can fully benefit from external data. There are many technical, organizational, political and other issues that make it difficult for customs to integrate external

data in their day-to-day risk management operation. One issue is related to negotiations with data owners who want to get something valuable in exchange for sharing their precious data assets. Typical topics in negotiations include purchase fees as well as terms, and conditions for the data usage. Another major issue is related to data privacy, security, and confidentiality, especially if external data sources contain commercially sensitive information or data on private individuals (= personal data).

A third issue is linked to the quality of external data. Because external data comes in many shapes and forms, raw data from external sources needs often to be cleaned, transformed, and organized before further processing and analysis as part of the customs risk management process. Due to this data preparation, it can take considerable time and money to refine external data into useful insights and actionable intelligence. Also, linking of external data with existing customs data assets can be difficult, especially if external dataset do not feature unique identifiers — like containers numbers or IMO references — that would allow clear-cut linking of records across datasets. Finally, legacy IT systems and cybersecurity safeguards can make it difficult for customs to connect to external data sources.

The first edition of the external data study is available for download at the PEN-CP website <https://www.pen-cp.net/announcements>

Figure 1

<b>Industry platforms</b>	Private information systems of logistics and commercial data	
<b>Company information providers</b>	Updated firmographic and commercial data on companies worldwide	
<b>Import and export analytics services</b>	Detailed information and analytics on imported and exported goods	
<b>Cross-validation databases</b>	Verified data elements for cross-checking of declaration information	
<b>Movement tracking services</b>	Information and analytics based on tracking data of vessels and cargo units	
<b>Industry certification programs</b>	Private risk data on companies and their supply chains	
<b>E-commerce platforms</b>	Data on online suppliers, orders, payments, and shipping processes	

## ABOUT THE PAN-EUROPEAN NETWORK OF CUSTOMS PRACTITIONERS

The Pan-European Network of Customs Practitioners, PEN-CP [www.pen-cp.net](http://www.pen-cp.net), is a 5-year long EU Horizon 2020 funded security practitioner network (Grant Agreement No 786773) -project, with 13 European customs administrations, both EU and non-EU, as beneficiaries and active partners. In short, PEN-CP can be described as ‘a Novel Customs Innovation Boosting Network and On-line Platform, offering Valuable Innovation Intermediary Services’. PEN-CP’s endeavor is to establish a customs practitioner network which facilitates translating customs security research and innovation ideas and requirements into scalable, viable solutions, technologies, and process improvements that would help the Customs community to overcome the challenges of the contemporary customs and border management security. The project started in September 2018 and will finish in January 2024.



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DIGITALISATION

## Customs in Switzerland: reinvention through digitalization and paperless clearance

With numerous innovations such as smartphone apps as well as the elimination of Swiss sub-headings in the customs tariff numbers, Swiss Customs aims to drive digital transformation. Since Switzerland is not part of the EU customs union, shipments of goods have always had to be cleared at the Swiss border. Now, cooperation with neighboring countries is to be promoted in order to exchange the data that is now available electronically with each other. This will speed up customs clearance on both sides. In this article, you will find out what innovations are in store for EU as well as Swiss companies.

Sometimes Switzerland is somewhat forgotten in the heart of Europe. It's a small country that doesn't cause much of a stir. And so, it is not surprising that many companies in the EU do not even know that Switzerland is a separate customs union together with the Principality of Liechtenstein. Switzerland's border with its neighboring countries, all of which are members of the EU, has become even more invisible since the Schengen Agreement came into force in 2008.

In day-to-day business with EU suppliers and EU customers, Swiss exporters and importers often feel that the customs knowledge of their EU partners is sometimes insufficient. An intra-Community delivery does not entail any customs duties and does not attract much attention here. Intrastat declarations as well as EU supplier declarations are sometimes the only points of contact that EU companies have with customs. Since Switzerland is not a member of the EU, it has its own customs and tax laws. While these have many similarities to the Union Customs Code, the electronic customs systems are not compatible with those of the EU.

### **MEDIA DISRUPTIONS DUE TO INCOMPATIBLE CUSTOMS APPLICATIONS AND PAPER-BASED CUSTOMS CLEARANCE**

What ATLAS is in Germany, the "e-dec" system is in Switzerland. The customs tariff nomenclature of the EU "TARIC" is called "Tares" in Switzerland. While TARIC works with ten-digit customs tariff numbers, Switzerland only knows their eight digits.

If a truck driver has to cross the Swiss border with the shipping documents, he must first report to the export counter in the EU country of departure and then to the import or transit counter at Swiss customs. A customs declarant declares the goods for import using the "e-dec" system. To do this, he uses the shipping documents, which the truck

[Read continuation on Customs Clearance \(€\)](#)



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EU - UK TRADE

## Using importer's knowledge to claim preferential treatment: a gift or a trap?

Trade agreements (e.g. EU-UK Trade and Cooperation Agreement (TCA)) allow businesses to claim preferential treatment when goods meeting certain conditions are imported into a signatory country. Used correctly, they can be an effective way to manage the amount of customs duty payable.

Determining whether or not preferential treatment can be claimed is a two-step process. First, the preferential origin of the good must be checked. Then, the preferential origin must be evidenced so that preferential treatment can be claimed correctly upon import.

Trade agreements have their own unique rules of origin to determine whether something has preferential origin. They also each have their own rules on how preferential origin should be evidenced. This can be confusing when a business is using multiple trade agreements.

The focus of this article is on a particular method of evidencing preferential origin: importer's knowledge. This is a relatively new concept in the EU, first appearing in the EU-Japan Economic Partnership Agreement, replicated in the UK-Japan Comprehensive Economic Partnership Agreement (CEPA) and now contained in the EU-UK TCA.

But what exactly is importer's knowledge? And what type of business should be considering using it (or avoiding it)?

### MISCONCEPTIONS

Importer's knowledge allows the importer to claim preferential treatment based on their own knowledge about the originating status of imported goods. This is where the misconceptions begin to appear. The devil is in the details: what does "knowledge about the originating status" mean?

Let's take the EU-UK TCA as an example. If a business wants to claim preferential treatment under this agreement, either the exporter can make a statement on origin, or the importer can claim it using importer's knowledge.

Here are two traps businesses should avoid.

**Trap #1 Relying on importer's knowledge without the appropriate evidence from the exporter.** When a business cannot get a statement on origin from the exporter before importing (perhaps because the [EU exporter has no REX](#)), it may be tempting to use importer's knowledge. However, it is not sufficient to claim preferential treatment merely because the importer believes that the goods are of preferential origin. It is more appropriate to think of the exporter's statement on origin and importer's knowledge as two sides of the same coin. The coin represents the information (e.g. suppliers' declarations, supporting documents, manufacturing records, transport route, etc.) needed to evidence that the product qualifies as originating. HMRC produced a [non-exhaustive list](#) of information required for the UK-Japan CEPA, it illustrates the level of details required. Furthermore, unless the importer and the exporter are related,



due to commercial sensitivity, exporters may not want to share the necessary information with the importer for the importer to use importer's knowledge, rendering this an unfeasible option.

**Trap #2 Using importer's knowledge without having sufficient evidence as an interim solution to avoid paying customs duties, then changing the import to a claim made on statement on origin issued after the import was made.** Once the importer selects to claim preference using importer's knowledge, it is not possible to "change path" and claim preferential treatment using a statement on origin from the exporter issue later, especially when customs authorities challenge the use of importer's knowledge and that a statement on origin was not available at the time of import. As such, it may be better to pay the customs duty and reclaim it once a statement on origin becomes available. In certain circumstances, if the importer by mistake claimed importer's knowledge, provided conditions are met, it is possible to amend the customs declaration.

Even if a product has preferential origin, if the importer has incorrectly claimed the preferential treatment, they may be trapped by their mistake and permanently lose the opportunity to claim preferential treatment on that shipment.

## BENEFITS

For certain types of business set-ups, importer's knowledge is a gift. These businesses are typically experienced users of trade agreements, where the importer and the exporter are related parties. Here are two scenarios where importer's knowledge is a gift.

**Gift #1 Moving own stock, or importing from a related party.** Importer's knowledge is claimed upon import by populating the customs declaration in a certain way. Where the importer is moving its own stock which it has manufactured in another signatory country to the trade agreement, importer's knowledge can simplify the process of claiming preferential treatment. Similarly, where the importer is related to the exporter and they share the same systems and sources of information, the importer can extract what they require prior to import without input from the exporter.

**Gift #2 Wanting to engage with the domestic customs authority only during an audit.** When the importing country's customs authority questions the preferential treatment claim, if the claim is made by using a statement on origin, the customs authority can seek support from the exporting country's customs authority to verify the statement on origin. However, if preferential treatment is claimed by using importer's knowledge, engaging with the exporting country's customs authority is not an option. In this case, the discussion is solely one between the importer and the importing country's customs authority. Depending on the view of the business, this may be a preferred option.

Importer's knowledge is a great addition to the set of tools available to policymakers to include in trade agreements going forward. Nevertheless, it appears that importer's knowledge's target audience is narrow, limited to businesses with certain set-ups.

## WHAT NEXT?

Businesses planning to use trade agreements should pay attention not only to checking the origin of the goods but also ensuring that the preferential treatment is claimed correctly. Strengthening customs broker management can also help to reduce errors.

The field of customs is very niche, but the subfield of trade agreements and origin is even more so. Businesses can consult guidance published as well as [materials available on this website](#). If in doubt, engaging a customs advisor early on is highly recommended.

## FURTHER READING

HMRC guidance: [Claiming preferential rates of duty between the UK and EU](#)

EU guidance: [EU-UK TCA guidance on "Section 2: Origin procedures"](#)

EU guidance: [Introductory Guide for Traders to the Rules of Origin provisions of the EU-UK Trade and Cooperation Agreement](#) (19 February 2021)

**Kieran Gleeson**

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EU - UK TRADE

## UK car import to Ireland

Importing a car from the UK has always seemed attractive as there is a much bigger choice than in Ireland, prices are very competitive, and anyone could travel freely to make their purchase. The currency exchange rate can also be favourable to Irish buyers.

But importing a car from the UK has become more complicated in 2021 post Brexit. Before January 1<sup>st</sup> if a car was bought in the UK and imported to the Republic of Ireland only Vehicle Registration Tax (VRT) needed to be paid. Now that same car could be subject to import duties, VAT and VRT.

### IMPORT DUTIES

The UK secured a zero-tariff agreement with the EU at the end of last year for all goods of Great Britain “country of origin”. Rules of preferential origin must be met before the car can be deemed to be UK country of origin. Please [follow this link](#) to find out more about the rules of origin.

According to Revenue the following vehicles imported from Great Britain will have tariffs applied as they will not qualify as UK origin under the rules of origin:

- Vehicles of EU origin used in the UK.
- Vehicles of other third country origin used in the UK.

Customs duty is 10%. However, if you are importing a car from Northern Ireland duties do not apply.

### VAT

A new car, as defined by citizens’ information, is a car that has been in service for 6 months or less or has been driven for 6000 km or less. VAT at a rate of 21% must be paid on new cars and is also payable on second-hand cars from Great Britain.

If you are paying VAT this is usually done at the time the import declaration is processed. If you are using a customs agent to make the import declaration on your behalf, then you need to pay the VAT to the customs agent’s TAN1 account before the declaration is completed.

If you are a registered business and you have a VAT account you may be able to choose a VAT deferment payment option and pay the amount due as part of your bi-monthly VAT payment.

VAT is only applicable on new cars imported from Northern Ireland. Northern Ireland (NI) has a unique trading position

[Read continuation on Customs Clearance \(€\)](#)



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EU - UK TRADE

# One month of Brexit at the French ‘smart border’

Jean-Michel Thillier, Director of Customs for the Hauts-de-France region of northern France and in charge of Brexit, took stock of the ‘smart border’ after one month of Brexit during the Customs Symposium organized by the magazine Classe Export on February 4, 2021. The attention of operators was drawn to various issues identified, including the preferential origin of goods traded under the EU – UK trade and cooperation agreement (TCA).<sup>1</sup>

**A MONTH OF BREXIT!**

**Turned back trucks: confusion and unpreparedness**

The Mr. Brexit of the French Customs first noted that the trade agreement of December 24, 2020 was too often perceived by some operators as an absence of customs formalities in EU-UK trade, which is obviously a mistake. The founding text in this area is the Withdrawal Agreement of February 2020 which provides for the maintenance of customs and health formalities related to crossing the border. This is one reason for the blockages or the turning back of trucks which took place (and sometimes still takes place!) at the border, some carriers coming without having completed any formality beforehand.

A month after the UK left the Union, the figures for trucks represent normal traffic compared to 2020, according to Jean-Michel Thillier who finds that the ‘smart border’ is working, even if there are still things to improve with regard to operators.

The Director of Customs lists the following issues:

- operators believed (despite warnings from the Commission, Customs and professional associations) that there would be no formalities at the border due to the agreement or were insufficiently prepared and saw their trucks turned back by the British authorities or by cross-Channel link operators, such as Eurotunnel;
- formalities are not completed for different reasons: in transit, for example, a lack of notification at the destination does not allow discharge, which can lead to the guarantee being blocked; insufficient instructions given to the driver, which results in the loss of pairing time before boarding; a lack of anticipation regarding the designation of the person in charge of actions and information, in particular for notification in TRACES;
- IT difficulties in the UK “which will not be resolved in the short term”: thus, the English system not knowing

[Read continuation on Customs Clearance \(€\)](#)



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EU - UK TRADE

## EU-UK TCA: preferential origin vs returned goods relief

Since the introduction of the EU-UK Trade and Cooperation Agreement (TCA), business models involving moving goods from the EU to a distribution centre in the UK before moving them back into the EU were featured in many news articles, including this journal<sup>1</sup>. The discussion focused on whether originating EU goods can benefit from tariff preferences set out in the EU-UK TCA if nothing is done to them in the UK, and if not, what can be done to mitigate the customs duties.

On 5 February 2021 European Commission released Guidance on preferential treatment, origin and customs procedures<sup>2</sup> to assist EU businesses importing from and exporting to the UK. One of the questions clarified: **“Goods originating in the EU are exported to the UK and released for free circulation there. They are not transformed. Can they come back to the EU without paying duties?”**. The only suggestion is to customs clear them as returned goods.

Does the same principle apply to all EU FTAs? What are the requirements for returned goods to claim “zero duty”? What about “zero VAT”? Other requirements like Sanitary and Phyto-Sanitary? But let’s start with what is explained

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Video training  
**Direct transport rule**

Prepared by: Enrika Naujokė

### Direct transport rule

Exported good = imported good (not altered, not mixed)





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~15 min

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The Customs Compliance & Risk Management Journal for Practitioners in Europe (CCRM journal) is published bimonthly, until the 10th of the following month, by [Lithuanian Customs Practitioners Association \(LCPA\)](#) on [www.customsclearance.net](http://www.customsclearance.net) (platform) and in pdf.

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