ISSUE 9
JUNE / JULY 2021
ISSN 2669-2171

ISSUE 9 ONLINE

CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

CONTENT

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Editorial

Dear readers,

We're delighted to welcome you to the 9th edition of the Journal of Customs Compliance and Risk Management ('CCRM').

First, I would like to thank all the authors who contributed to this edition. Without these valuable contributions this journal would not be the success that it is today. Customs professionals, you are encouraged to reach out to us if you would like to contribute to this journal.

This edition provides insight on a wide array of topics: FTAs, statement on origins, VAT obligations, dual-use regulations, and many more.

I'd like to mention a very special article and video from Dr. Hans-Michael Wolfgang in which he sits down with Enrika Naujokė to discuss the realities of being an editor at the World Customs Journal. The World Customs Journal is the leading international academic journal on customs issues; it has solidified its place over the years as a bastion of excellence in the customs world. This insightful exchange sheds light on many of the challenges and benefits of being involved with such as prestigious journal.

In this edition our CCRM UK Customs superstars Jessica Yang and Toby Spink collaborated on an article about direct and indirect representation. This is a niche topic not frequently spoken about yet of immense importance. A must read for customs practitioners operating in Europe.

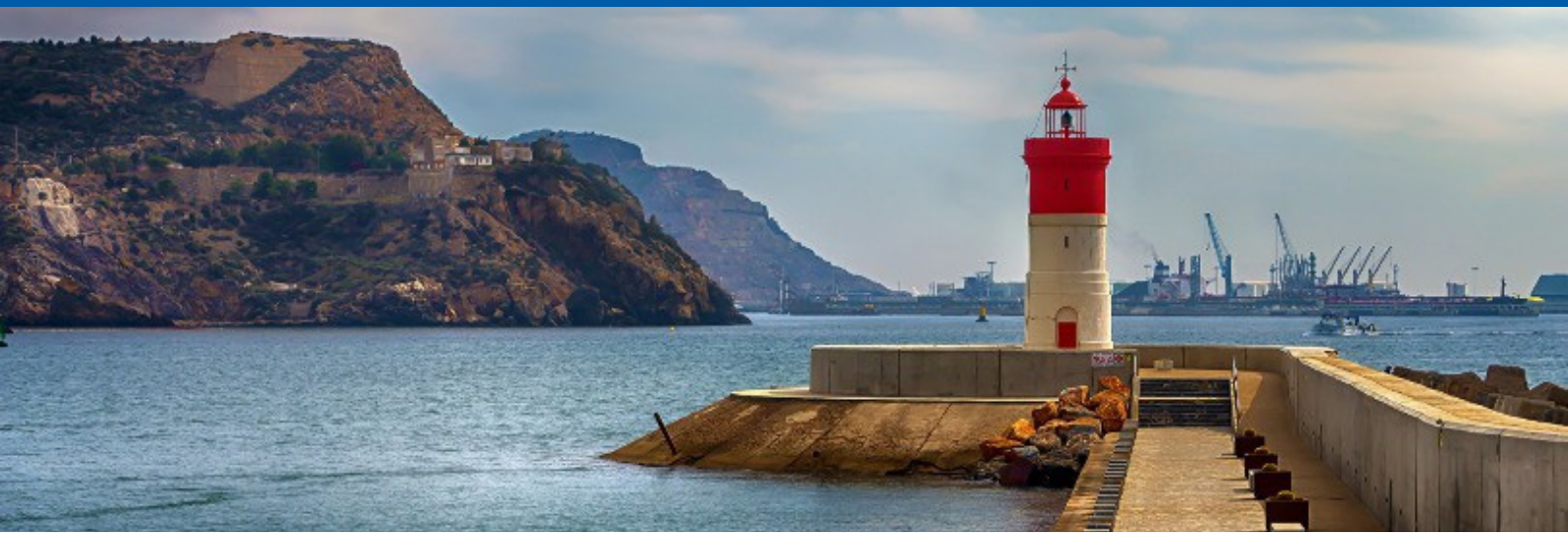
Finally, this edition brings up a rather nebulous but intriguing subject, what is the most complex customs topic? During the 6th Authors' Meeting we crowdsourced ideas on the most pressing customs issues of the moment. The 'Trump Tariffs' (Section 301 China action), new VAT regulations in the UK and EU, as well as the level training needed for customs brokers to be considered competent are just a few of the topics brought to light. This is a must read for anyone interested in the theory and philosophy behind customs.

Above is but a brief synopsis of the articles included in the 9th edition of the CCRM. We encourage you to read through all of them, provide feedback, and consider contributing if you have helpful knowledge to offer. Finally, I'd like to encourage readers to look at the training courses and videos offered on CustomsClearance.net. There you will find an array of informative videos covering a wide breadth of customs topics; crucial knowledge for those working in the customs field or aspiring customs professionals.

Thank you for your time, we hope you enjoy the 9th edition of the Journal of Customs Compliance and Risk Management.

Samuel Draginich
Member of the Editorial Board

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE



EN LT

EU LAW

EU law news: July 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 the World Customs Organization. Updated weekly!

News in week 30: EU-Argentine agreement relating to the modification of concessions on all the tariff rate quotas; storage of and automated access to the information on the VAT exempted importations under the 'import scheme'; notices of the expire of anti-dumping measures on imports of high fatigue performance steel concrete reinforcement bars and of aspartame.

OFFICIAL JOURNAL

7.7.2021 L 240 Decision No 1/2021 of the EU-Georgia Association Committee in Trade Configuration of 17 June 2021 updating Annex XIII (Approximation of customs legislation) to the Association Agreement between the EU, of the one part, and **Georgia**, of the other part.

Tariff classification

19.7.2021 C 289 CJEU Case C-76/20 concerning tariff classification of "**bamboo beakers**". The operative part of the judgment: The Combined Nomenclature must be interpreted as meaning that goods described as 'bamboo beakers', made up of 72,33 % plant fibres and 25,2 % melamine resin, must, subject to the referring court's assessment of all the facts available to it, be classified under heading 3924 of that nomenclature, in particular under subheading 3924 10 00. The case is overviewed and commented in the article "Wooden or plastic tableware (0% or 6.5% duty rate)?" by Virginija Dordzikienė, Lithuanian customs.

19.7.2021 C 289 CJEU Case C-822/19 concerning tariff classification of **aqueous solution** used in the food industry. The operative part of the judgment: The Combined Nomenclature must be interpreted as meaning that an aqueous solution obtained by thermal decomposition of dextrose, composed in particular of water-soluble aldehydes and ketones, does not come either under subheading 1702 90 95 of that nomenclature, which covers inter alia invert sugar and other sugar and sugar syrup blends with fructose content, in the dry state, of 50 % by weight, not classified under other subheadings of heading 1702 of that nomenclature, or under subheading 2912 49 00 thereof, which refers to

'other' aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function, but under subheading 3824 90 92 of that nomenclature, which refers to 'Chemical products or preparations, predominantly composed of organic compounds, not elsewhere specified or included', 'in the form of a liquid at 20 oC', provided that any potential nutritive value of that solution is merely incidental to that solution's function as a chemical product and food additive.

Origin

12.7.2021 C 278 CJEU Case C-209/20 concerning the determination of the **country of origin of solar modules** assembled in a third country from solar cells manufactured in another third country. The operative part of the judgment (not full): Examination of the first question referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Commission Implementing Regulation (EU) No 1357/2013 of 17 December 2013 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. An overview of the case is also provided in an animated story: Non-preferential origin of solar modules imported in the EU (Is duty 0% or 67,9%?).

Customs procedures and formalities

19.7.2021 C 289 CJEU Case C-39/20 concerning period for notification of the **customs debt** (the debt resulted from customs checks which established that the certificate of preferential origin was false). The operative part of the judgment: Article 103(3)(b) and Article 124(1)(a) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, read in the light of the principles of legal certainty and protection of legitimate expectations, must be interpreted as applying to a customs debt incurred before 1 May 2016 and not yet time-barred at that date.

12.7.2021 CJEU Case C-230/20 concerning action taken against the **guarantor** to enforce the guarantee. The operative part of the judgment (not full): Article 195 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, must be interpreted as meaning that the guarantor of a customs debt referred to in that article cannot be regarded as a 'debtor' within the meaning of Article 221(3) of Regulation No 2913/92, as amended by Regulation No 1186/2009, and, therefore, the limitation period of three years from the date on which the customs debt was incurred laid down in that provision does not apply to that guarantor.

7.7.2021 L 240 Decision No 1/2021 of the EU-CTC Joint Committee of 1 June 2021 as regards the amendments of Appendices I and III to the **Convention on a common transit procedure**. One of the changes: "The period of validity of a comprehensive guarantee certificate or a guarantee waiver certificate shall not exceed five years. However, that period may be extended by the customs office of guarantee for one further period not exceeding five years."

Duty; anti-dumping and countervailing duty; other related measures

29.7.2021 C 303 Notice of the expiry of certain anti-dumping measures. Product: **high fatigue performance steel concrete reinforcement bars**, country of origin or exportation: China.

29.7.2021 C 303 Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of **aspartame** originating in the People's Republic of China.

27.7.2021 L 267 Commission Implementing Regulation (EU) 2021/1218 of 26 July 2021 amending Implementing Regulation (EU) No 79/2012 as regards the storage of and automated access to the information on the **VAT exempted importations** under the 'import scheme'.

26.7.2021 L 264 Agreement in the form of an exchange of letters between the European Union and the **Argentine** Republic 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.

23.7.2021 L 263 Commission Implementing Regulation (EU) 2021/1209 of 22 July 2021 initiating 'new exporter' reviews of Implementing Regulation (EU) 2017/2230 imposing a definitive anti-dumping duty on imports of **trichloroisocyanuric acid** originating in China for three Chinese exporting producers, repealing the duty with regard to imports from these exporting producers and making these imports subject to registration.

22.7.2021 L 261 Council Regulation (EU) 2021/1203 of 19 July 2021 amending Regulation (EU) 2020/1706 as regards the inclusion of autonomous Union tariff quotas for certain **fishery products**.

21.7.2021 L 260 Agreement in the form of an Exchange of Letters between the European Union and **Indonesia** 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 EU.

16.7.2021 C 284 Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of **sodium cyclamate** originating in China and Indonesia.

15.7.2021 L 250 Council Directive (EU) 2021/1159 of 13 July 2021 amending Directive 2006/112/EC as regards temporary VAT exemptions on importations and on **certain supplies, in response to the COVID-19** pandemic.

12.7.2021 C 277 Notice of the impending expiry of certain anti-dumping measures. Product: certain **hot-rolled flat products of iron, non-alloy or other alloy steel;** country of origin or exportation: China.

12.7.2021 C 277 Notice of the impending expiry of certain anti-dumping measures. Product: Okoumé **Plywood**; country of origin or exportation: China.

8.7.2021 L 243 Commission Implementing Regulation (EU) 2021/1123 of 8 July 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. The application of Implementing Regulation (EU) 2020/1646 is hereby suspended for a period of five years from 11 July 2021.

6.7.2021 L 238 Commission Implementing Regulation (EU) 2021/1100 of 5 July 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain h**ot-rolled flat products of iron, non-alloy or other alloy steel** originating in Turkey.

5.7.2021 L 236 Commission Implementing Regulation (EU) 2021/1091 of 2 July 2021 amending Commission Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure against imports of certain **steel products** (correction of a clerical error made in Commission Implementing Regulation (EU) 2021/1029).

2.7.2021 C 258 Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of **silicon** originating in China.

28.6.2021 C 251 Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain **molybdenum wires** originating in China.

28.6.2021 L 227 Commission Implementing Regulation (EU) 2021/1053 of 25 June 2021 repealing the definitive anti-dumping duties on imports of certain **seamless pipes and tubes of iron or steel** originating in China imposed by Implementing Regulation (EU) 2015/2272.

28.6.2021 L 227 Council Regulation (EU) 2021/1052 of 18 June 2021 amending Regulation (EU) No 1387/2013 suspending the **autonomous Common Customs Tariff duties** on certain agricultural and industrial products. Some suspensions are granted or deleted, some changed.

28.6.2021 L 227 Council Regulation (EU) 2021/1051 of 18 June 2021 amending Regulation (EU) No 1388/2013 opening and providing for the management of **autonomous tariff quotas** of the Union for certain agricultural and industrial products. New tariffs quotas are opened, volumes of some tariff quotas increased or decreased, and some quotas closed.

Non-tariff measures

14.7.2021 L 249 Council Decision (EU) 2021/1157 of 30 June 2021 on the position to be taken on behalf of the Union in reaction to the unilateral declaration of the United Kingdom setting out the practice it intends to put in place as regards **imports of meat products from Great Britain into Northern Ireland** between 1 July and 30 September 2021.

12.7.2021 C 278 CJEU Case C-87/20 concerning **protection of species of wild fauna and flora**. Operative part of the judgment: Article 7(3) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as amended by Commission Regulation (EU) No 1320/2014 of 1 December 2014, must be interpreted as meaning that sturgeon caviar, when brought into the customs territory of the European Union, may be regarded as a 'personal or household item' within the meaning of that provision, when it is intended to be offered as a gift to a third party, provided that there is no evidence of a commercial purpose, and may thus benefit from the derogation provided for in that provision from the obligation on the importer to present an import permit.

8.7.2021 L 243 Commission Implementing Regulation (EU) 2021/1121 of 8 July 2021 specifying the details of the statistical data to be submitted by the Member States as regards controls on products entering the Union market with regard to **product safety and compliance**. The regulation specifies what data from customs declaration is required when the goods are not released for free circulation: (i) the date when the customs declaration was accepted by the customs authorities; (ii) an indicator of the type of customs declaration in the case of a customs declaration with a reduced dataset pursuant to Articles 143a and 144 of Commission Delegated Regulation (EU) 2015/2446 (2); (iii) the country of origin (data element 16 08 000 000) or, if not available, the country of exporter (data sub-element 13 01 018 020); (iv) the Harmonized System sub-heading code (data sub-element 18 09 056 000), etc.

2.7.2021 L 234 Commission Implementing Regulation (EU) 2021/1079 of 24 June 2021 laying down detailed rules for implementing certain provisions of Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of **cultural goods**.

EUROPEAN COMMISSION

21.7.2021 Statement by Vice-President Maroš Šefčovič following the announcement by the UK government regarding the **Protocol on Ireland / Northern Ireland**.

20.7.2021 EU-UK relations: Commission proposes draft mandate for negotiations on **Gibraltar**.

6.7.2021 EU Recognised Customs Academic Programmes 2021. In June 2021 the European Commission (Directorate-General for Taxation and Customs Union) awarded five academic programmes (Bachelor's, Master's, and modules within) with the "**EU Recognition Certificate for Customs academic programmes**". The recognised academic programmes are expected to significantly contribute to the rise of Customs performance and professionalism.

1.7.2021 Joint statement of the EU and **Ghana** on the start of trading under the EU-Ghana interim Economic Partnership Agreement.

1.7.2021 EU-Republic of **Korea** trade grows twice as fast under trade agreement.

30.6.2021 EU-UK relations: solutions found to help implementation of the Protocol on Ireland and **Northern Ireland**.

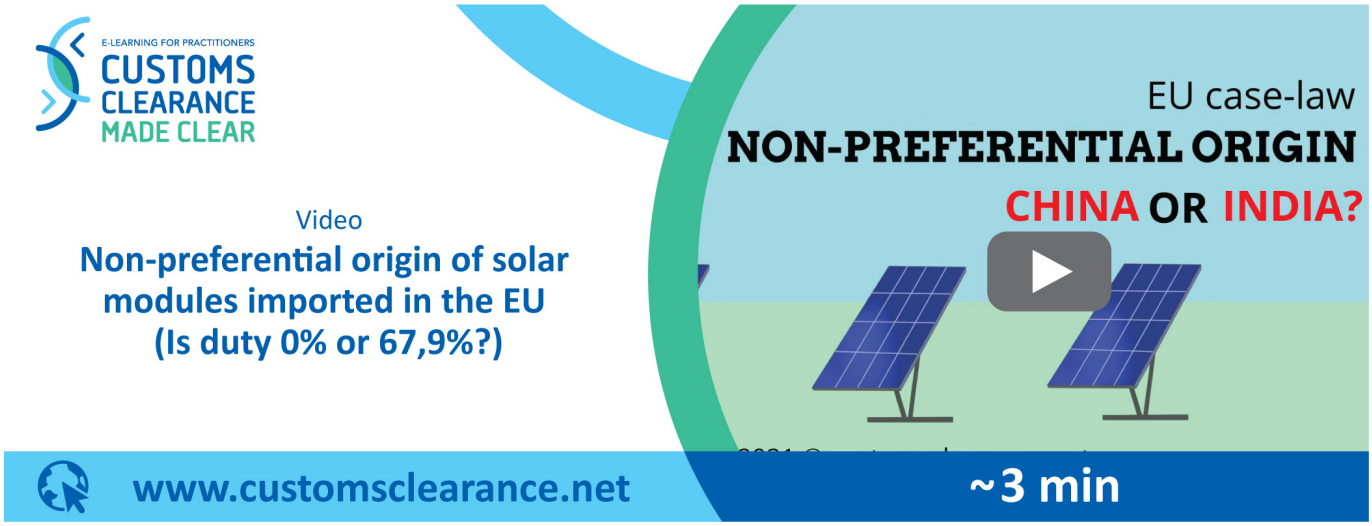
30.6.2021 The EU has extended until 30 September 2021 the COVID-19 vaccines export transparency and authorisation mechanism in its current form.

28.6.2021 VAT: New e-commerce rules in the EU will simplify life for traders and introduce more transparency for consumers.

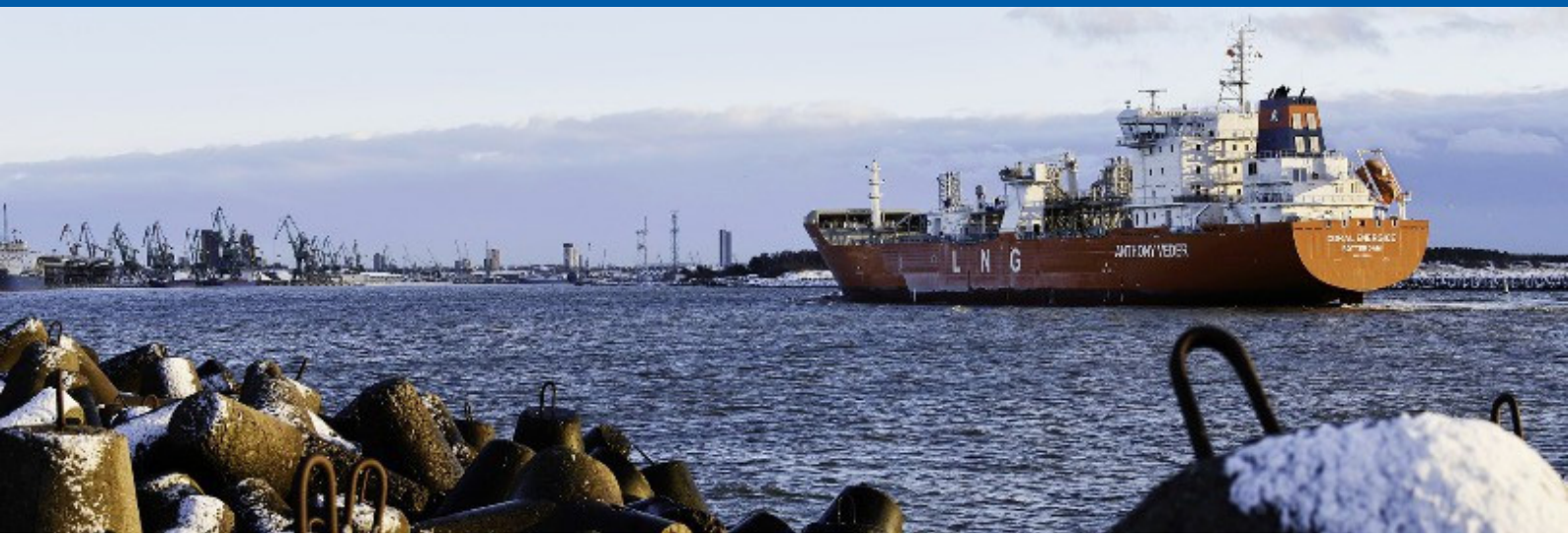
WORLD CUSTOMS ORGANIZATION

14.7.2021 WCO has worked closely with the WTO to produce the **Joint Indicative List of Critical COVID-19 Vaccine Inputs** issued the on 13 July 2021, see the list here. The items on the list were determined through collaboration between the WTO, WCO, OECD, vaccine manufacturers and other organizations.

30.6.2021 Members and stakeholders provide new impetus to future WCO work on cross-border **e-commerce.**



CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE



EN LT

EU LAW

EU law news: June 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. Updated weekly!

News in week 25: prolonged safeguard measure on imports of certain steel products; anti-dumping proceeding concerning imports of certain corrosion resistant steels; restrictive measures on imports and exports from/ to Belarus; EU proposes World Customs Organization modernisation in support of a strengthened multilateral order; and more news!

OFFICIAL JOURNAL

Tariff classification

15.6.2021 L 211 Commission Implementing Regulation (EU) 2021/957 of 31 May 2021 concerning the classification of an oval shaped article measuring approximately 180 cm in length and 95 cm at its widest point. The article is designed to float on water, similarly to a pneumatic water mattress. Given the objective characteristics of the article (designed to be taken along to different places and to be used there temporarily, lightweight, easy to transport and to set-up, similarity to pneumatic mattresses) it is an article for camping. The article is therefore to be classified under CN code 6306 90 00 as camping goods.

15.6.2021 L 211 Commission Implementing Regulation (EU) 2021/956 of 31 May 2021 concerning the classification of a modular article with sound-absorbing and sound insulating properties (so-called ‘Room in room system’) in the Combined Nomenclature. The article is a composite product, where the essential character is given by the constructive element (aluminium frame). It is therefore to be classified according to the constituent material of that component. Consequently, the article is to be classified under CN code 7610 90 90 as other aluminium structures.

7.6.2021 C 217 Case C-62/20 Vogel Import Export NV v Belgische Staat. The operative part of the judgment of the Court of Justice of the European Union: the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87, must be interpreted as meaning that planed wooden boards the four corners of which have been slightly rounded over the entire length of the board, must not be regarded as continuously shaped and are capable of falling

Read continuation on Customs Clearance

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Dr. Gediminas Valantiejus

Attorney at Law
"iLAW"; Mykolas Romeris University

About the author

EU LAW

Expectations for the future of the EU trade and customs policy: what should be known to practitioners?

The article analyses new strategic document of the EU's Commission (presented to the public in February, 2021, and currently discussed in other EU institutions) called "Trade Policy Review - An Open, Sustainable and Assertive Trade Policy". This document (strategy) aims to establish a new consensus for trade policy in the EU and sets new core objectives for the regulation of trade and customs issues with specific third countries. Taking into account this aspect, this article summarizes and critically evaluates the provisions of the new strategy designed to regulate trade with the EU's main foreign trade partners (United States, China, Russia, India, other countries of the BRICS region) and describes the significance of the strategy for international trade business and its taxation.

EU'S TRADE POLICY REVIEW 2021: WHY IT IS IMPORTANT?

The question of what changes in the EU foreign trade and customs policy/Common Commercial Trade and Customs Policy we could and should expect in the future and which foreign markets are the most competitive for the import and export of goods from/to the EU is always a relevant and important issue for all business entities involved in international trade. This year (in February of 2021) the Commission has presented and outlined EU's future guidelines/strategy of the trade and customs policy ("Trade Policy Review - An Open, Sustainable and Assertive Trade Policy", COM(2021) 66 final) [1]. They are already widely discussed, e. g. in July, 2021, - by other EU institutions (such as the European Economic and Social Committee [2] as well as a number of non-governmental organizations [3]. Having this in mind, it is important to review the provisions of the above-mentioned document regarding the planned changes in the EU's trade and customs policy towards specific third countries (major EU trading partners).

PROPOSALS FOR THE REGULATION OF INTERNATIONAL TRADE WITH SPECIFIC FOREIGN COUNTRIES ENSHRINED IN THE TRADE POLICY REVIEW

As it was mentioned, the document - "Trade Policy Review - An Open, Sustainable and Assertive Trade Policy" (hereinafter – "Trade Policy Review") outlines specific provisions how the EU's trade policy towards its major trading partners will look like in the nearest future. It is important to stress that certain important provisions related to such issues are enshrined in various places of the Trade Policy Review (different chapters; mainly (but not solely) in the chapter "2.4. Trade policy in support of the EU's geopolitical interests"), so its content should be interpreted in a systematic and comprehensive way by analysing the full text of the document. On the basis of suc

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Lucie Cordier

Attorney at Law
Custax & Legal

About the author

EU LAW

New dual-use regulation: What are the changes in the “rules of the game”?

Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfers of dual-use items (recast) was published in the OJEU L 206 of 11 June 2021.

This regulation recasts and repeals regulation 428/2009 on dual-use items (items designed for civilian purposes but which may have both civilian and military use). It will be applicable as of September 9, 2021. While the amendments do not change the fundamental principles of the control of trade or the general scheme of the Regulation, they will nevertheless result in some changes to the current “rules of the game”.

After four years of negotiations between the Commission, the European Parliament and the Council of the European Union on a Commission proposal of September 2016, a preliminary political agreement on the text of the Regulation was reached on November 9, 2020. The Parliament gave its first reading agreement on 25 March 2021, followed by the Council on 10 May 2021.

The text of the Regulation will enter into force after a transitional period of 90 days following its publication in the OJEU on 11 June 2021, i.e. on 9 September 2021. This means that the relevant provisions of Regulation (EC) No. 428/2009 remain applicable for export authorization applications submitted before September 9, 2021.

THE CHANGES IN THE “RULES OF THE GAME”

These changes in the “rules of the game” are briefly outlined here and concern primarily new or revised definitions.

Exporter

The definition of exporter has been revised in point 3) of Article 2 of Chapter I “Purpose and Definitions” of the Regulations.

Firstly, the time at which this definition is to be analysed has been clarified, namely “the time at which the export or re-export declaration or the exit summary declaration is accepted”. In the previous version, the reference was to “the moment when the declaration is accepted”.

As a reminder, the rule for defining an exporter under the Regulation is as follows: the exporter is the person (natural or legal) who has the power to determine the sending of the items out of the customs territory of the Union (see 3) a)). In line with this rule, the exporter can only be resident or established in the EU. Indeed, if the person entitled to

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Professor David Widdowson

President, International Network of Customs Universities

About the author

Dr. Mikhail Kashubsky

Associate Professor and Higher Degrees by Research Coordinator, Centre for Customs and Excise Studies, Charles Sturt University

About the author

EU LAW

UCC Navigator - a new innovative tool that helps to overcome EU customs legislation complexity

The world in which customs legislation operates is increasingly complex and, consequently, customs legislation itself tends to get quite complex, especially when it is intended to operate across several jurisdictions. Legislative complexity has long been an issue in the field of Customs. Complex customs legislation (and complex legislation in general) uses valuable resources due to the increased time taken by courts, advisers, administrators, the private sector operators involved in cross-border trade and the general public in reading and understanding the legislation.

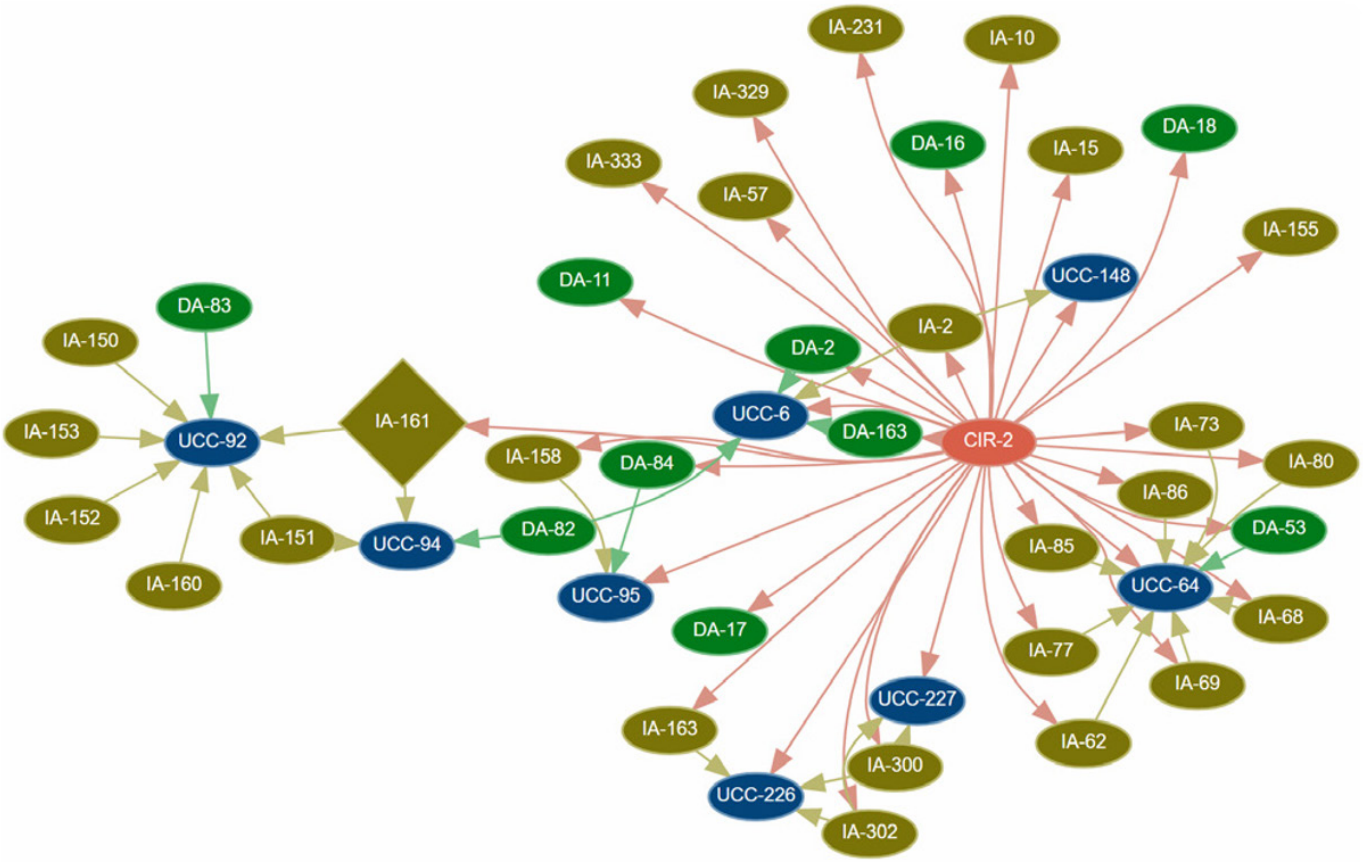
Following the introduction of the Union Customs Code (UCC), the public and private sectors have been looking for a smart way to navigate the complexity of the UCC, which must be read in conjunction with the Delegated Act, the Transitional Delegated Act and the Implementing Act to gain a proper understanding and interpretation of the legal provisions. This task is greatly simplified through the use of new interactive web-based tool called UCC Navigator® (www.uccnavigator.com), which has been developed by the Centre for Customs and Excise Studies (CCES) at Charles Sturt University in collaboration with a leading software developer, Vivid Thought.

THE TOOL

This innovative online tool, which is available in 23 languages, provides a visual overview of the linkages between the various provisions of the UCC and related legislation through the use of smart interactive infographics. The UCC Navigator is being continually updated to reflect the latest amendments in EU customs law. It is extremely user-friendly and enables the user to:

- Navigate the EU Customs law with ease
- Instantly see how articles influence and are influenced by related legislation
- Instantaneously locate topics covered by the legislation
- Conduct searches and view legislation in multiple languages
- Switch between languages on any search or content page
- Access search results in the context in which they appear in the legislation
- Receive a visual overview of legislative linkages via interactive infographics
- Click on articles in the graphics to navigate linked articles of legislation, or simply hover over them for more information

Figure 1: A visual overview of legislative linkages through interactive infographics.
Source: UCC Navigator.



USERS

UCC Navigator provides significant benefits for a range of both public and private sector organizations. For example, government agencies such as customs and VAT administrations are able to streamline their legal research procedures, facilitate decision making and encourage the use of UCC Navigator to improve informed compliance.

Traders and service providers are able to readily locate the legislative provisions that affect their business and minimize the risk of non-compliance leading to penalties and unplanned interruptions to trade. Similarly, professional and industry associations are able to provide their members with thoroughly researched advice quickly, efficiently and with confidence, and consultants are able to provide advice to their clients more quickly, efficiently and with greater confidence.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Prof. Dr. Hans-Michael Wolffgang

Head of the Institute of Customs and International Trade Law, University of Münster

About the author

Enrika Naujokė

Director, Lithuanian Customs Practitioners Association

About the author

KNOWLEDGE

World Customs Journal – the leading international academic journal on customs

The World Customs Journal is the leading international academic journal on customs. How was the idea to start the journal born? What are the challenges and rewards of being an editor of the journal? Prof. Dr. Hans-Michael Wolffgang kindly agreed to answer these and some more interview questions for the CCRM journal.

We also invite you to watch a video record of his talk about the World Customs Journal during the webinar "Journals on Customs" on 29 April 2021.

HOW WAS THE IDEA TO START THE JOURNAL BORN?

It was an initiative of the World Customs Organization (WCO) in 2004 to start a collaboration with academia. There were several conferences and brainstorming sessions. The finding was that at that time, there was some research existing in customs and academic education in a few countries worldwide, but globally there were no academic conferences, no global network of customs researchers and universities. And there was no academic journal at the global level.

In 2006, the WCO launched the PICARD Programme, which means Partnerships in Customs Academic Research and Development. The aim was the creation of a cooperation framework for Customs administrations, practitioners and academic institutions to work closely together on two main objectives: advancement of Customs-related academic research and promotion of Customs professionalism. The professional standards for education at bachelor's and master's levels were created.

The PICARD conferences have been very successful for more than 15 years now. Conferences took place in different countries such as Belgium, China, Morocco, Azerbaijan, Costa Rica, Turkey, Abu Dhabi, Mexico, Philippines. This year it is planned to be held in Brussels because of the pandemic. Probably, it is going to be online and onsite. See also the call for paper.

The conferences are platforms that help to create networks between customs researchers, practitioners, and other stakeholders. Also, in those early days, a not-for-profit organization International Network of Customs Universities (INCU) was started. INCU aims to raise the academic profile of the customs profession through the development and promotion of educational programs, providing academic and applied research, and intellectual input to strategic decision making. INCU has over 200 members and affiliates.

PLEASE TELL US MORE ABOUT THE WORLD CUSTOMS JOURNAL.

The flagship of the INCU is the World Customs Journal, published on behalf of INCU jointly by the Centre for Customs & Excise Studies, Charles Sturt University, Australia, and the Institute of Customs and International Trade Law at the University of Munster, Germany. It was started in 2007, the first volume was 60 pages. Currently, there are around 200 pages per volume with different topics. The idea is to have a forum for customs researchers, for scholars dealing with customs topics, for customs professionals, for research students, and for customs practitioners as well. The aim is to share research and experiences regarding all aspects of customs.

Today the World Customs Journal is the leading international academic journal on customs. It is peer-reviewed and published electronically twice a year in the English language. In general, access is free via www.worldcustomsjournal.org for all interested persons worldwide. There are more than 3000 readers per volume. Free access to the journal is, however, only activated three months after publication; before that, only INCU members have access as part of their membership fees.

WHAT ARE THE MAIN TOPICS COVERED IN THE LATEST ISSUE OF THE WCJ?

The newest volume available for readers is Volume 15 from March 2021.

The issue naturally focuses on the management and impact of the Corona pandemic in relation to customs aspects. However, there are also articles on fundamental customs issues ranging from intellectual property rights to digital transformation, from rules of origin to performance management, and from the promotion of diversity to illicit trade in tobacco.

WHAT IS YOUR FAVOURITE CUSTOMS-RELATED TOPIC?

As a lawyer, I am most interested in legal topics. Customs law is shaped by international regulations, e.g. of the World Trade Organisation and the World Customs Organisation. These affect the movement of goods worldwide and should therefore be known. Furthermore, the developments of the free trade agreements are interesting for many; the rules of origin should be emphasized. However, it is also interesting to read about legislative procedures or case law in individual countries to see how customs law has developed in the various countries.

WHAT ARE THE MOST CHALLENGING AND THE MOST REWARDING ASPECTS OF BEING AN EDITORIAL BOARD MEMBER OF THE JOURNAL?

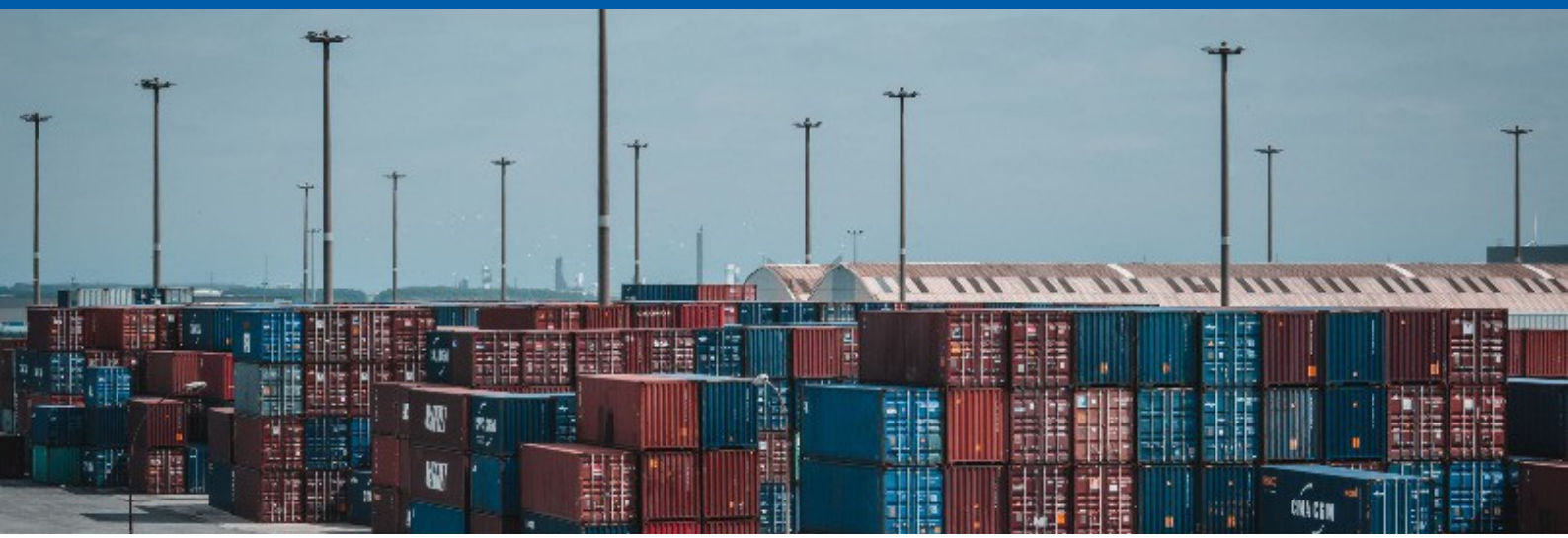
The most challenging is the problem of quality. WCJ is a peer-reviewed journal, and many articles are not fulfilling the preconditions. The editorial board tries to help to advance their publications. Another challenge is the English language since for most authors the English language is not their mother tongue.

The most exciting aspect of the work on the editorial board is the international network.

WHAT WOULD BE YOUR ADVICE FOR PERSONS, BOTH FROM ACADEMIA AND FROM BUSINESS, WHO HAVE AN IDEA TO START A JOURNAL ON CUSTOMS IN THEIR COUNTRIES?

When the WCJ was founded, there was no international academic journal for customs. In this respect, the starting position for us founders was simple and clear. Today, there are both academic and practice-related publications in many countries. In this respect, I advise newcomers to first analyze the existing works and consider whether there is a gap. It may be better to collaborate with or support existing journals. Both the difficulties of attracting qualified authors and securing funding should not be underestimated.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE



KNOWLEDGE

A customs topic or not? What is the most complex customs topic?

"A customs topic or not? What is the most complex customs topic?" - a discussion took place during the 6th Authors' Meeting. The views were shared on many aspects of customs: the so-called "Trump tariffs", non-customs regulations, border crossing e-commerce, new VAT regulations in the UK and EU, quality of master data, the complexity of training of a specialist in customs, and more.

"TRUMP TARIFFS". MANAGING YEARS OF UNCERTAINTY

Jeffrey L. Snyder, Partner, Attorney, Crowell & Moring LLP, the United States

Some notes on non-customs regulations after the talk of Anthony Buckley (On some complex customs topics aftermath of Brexit): Many think that customs work is limited to classification, valuation, origin issues. But there are around 70 governmental agencies in the US for which customs is their agent at the border, such as the US Food & Drug Administration (FDA), the Federal Communications Commission (FCC), and others. These regulations create the need for additional expertise to help importers trade smoothly. It's very challenging, because each agency is adapting and this means Customs must adapt, and we practitioners must manage change. This is why we need information from experts and having it shared on platforms like this.

The most complex customs-related topic that Jeffrey sees right now is the set of issues arising from the so-called "Trump tariffs" on imports from China. There were a number of "lists" of products, ultimately covering almost everything imported from China. Billions of dollars in duties were collected. An exclusion process was established, and these had to be implemented by Customs (creating scope issues for Customs to interpret, including the instructions from the USTR and the Department of Commerce); if exclusions were denied, duties continued to be collected. Importers have protested the collection of duties in case there might be refunds. Now, around 4000 companies are challenging the tariffs in the Court of International Trade, which may decide to invalidate the tariffs altogether, in part, or some other ruling. Predicting how the CIT will rule, and taking protective action, maintaining records, and managing years

of uncertainty places a burden on importers and practitioners, who must keep track of payments, exclusions, and other relevant data on an entry-by-entry basis. Each port of entry, obligated to act uniformly, do not, because they are only human, and so mistakes (premature liquidation, denial of protests, and the like) constantly occur, only adding to the complexity.

THE ENVIRONMENT IS INCREASINGLY BECOMING A CUSTOMS ISSUE. CUSTOMS LAW IS MORE AND MORE DENSE AND COMPLEX

Evguenia Dereviankine, Lawyer, Partner, PARADIGMES Cabinet d'avocats, France

Evguenia is a French lawyer specialized on customs and environmental law. She has been working in the field of customs law for 15 years now and says, nevertheless, that there is no single day when she does not learn something new about customs. This situation is both amusing, because it makes the daily work interesting, but also frustrating if we put ourselves in the shoes of the economic operators who are not all professionals or who do not all have years of experience in the customs field... Customs law is more and more dense and complex and not knowing it perfectly can be a source of dangerous situations.

Customs law is complex, but learning it is even more complex. Unfortunately, there are no solid educational programs in France where customs law is sufficiently taught. Knowing the basics is already a great step, but it is usually necessary to practice it on a daily basis for years to understand well its functioning. It is also very important to have an open mind as customs law has a lot of interconnections with other fields of law. Many topics are not customs-related in the strict sense of the word, but they are nevertheless important to know, since they are controlled by customs or influence the application of customs law.

On the topic "Customs topic or not?" Evguenia shared that environment used to be a "very customs" topic in France. Since 2000, Customs has been responsible for the control and collection of all environmental taxes in France. The situation is changing now as these taxes are coming under the control of the tax administration (handover schedule spread from 2019 to 2024). That being said, the environment is increasingly becoming a customs issue in the strict sense of the term, as compliance with environmental rules determines the access of goods to the EU market. The proposed introduction of the Carbon Adjustment Mechanism at the borders (CAF), currently under discussion, will certainly add a new arrow to the bow of the customs authorities.

BORDER CROSSING E-COMMERCE, NEW VAT REGULATIONS IN THE UK AND EU. CUSTOMS IS INVOLVED IN ALL CROSS-BORDER TRADE, EVEN IF THE LEGAL FRAMEWORK IS LINKED TO OTHER MINISTRIES

Mette Werdelin Azzam, former Head of Origin Sub-Directorate in the Tariff and Trade Affairs Directorate of the WCO, Belgium

Mette mentioned border crossing e-commerce as a "Customs topic or not". The definition of e-commerce has been discussed in order to understand whether it should be limited to electronically transferred goods (e-books, goods for 3D printing etc.) or also cover all goods that have been ordered online.

The definition of e-commerce remains broad and in that sense goods ordered electronically will of course be subject to normal customs procedures and declarations upon importation of the physical goods, but there are no special considerations linked to e.g. classification, valuation or origin just because the goods were ordered online.

The new VAT regulations in the UK (as from 1 January 2021) and the EU (as from 1 July 2021) will have an impact on customs flows as all low value consignments will have to be declared to Customs upon importation; VAT will have to be paid regardless of the value whereas goods not exceeding 135 £ / 150 € will continue to be duty free. In this manner, a customs declaration has to be filed not for customs purposes, but for VAT purposes.

Both examples show that Customs is involved in all cross-border trade, even if the legal framework is linked to other ministries.

TRYING TO FIND THE OPTIMAL MODEL OF FUNCTIONING OF CUSTOMS

Dr. Ilona Mishchenko, Associate Professor of the Maritime and Customs Law Department, National University "Odessa Law Academy", Ukraine

Speaking about the complex problems that exist in our country and fall within the sphere of customs influence, it is worth starting with the fact that for the last 30 years, we have been trying to find the optimal model of functioning of Ukrainian customs.

Today, after numerous reforms and reorganizations, the Ukrainian customs is mainly dealing with issues that are traditionally classified as customs. All of them are regulated in sufficient detail in the legislation and do not cause disputes regarding the division of powers between different state bodies to resolve them.

At the same time, some points deserve discussion due to the lack of determination of their sectoral affiliation. We are talking about non-tariff regulation of international trade. According to the Customs Code of Ukraine, the application of non-tariff regulation mechanisms is included in the customs affairs of Ukraine along with the tariff regulation of international trade. However, if tariff measures are undoubtedly a customs instrument, the mechanism of their application is clearly regulated by the CC of Ukraine. Non-tariff measures have remained out of the legislator's attention.

Surprisingly, until 2020, the list of non-tariff measures was presented in the Tax Code, which indicates their complex nature and content. Today this norm is removed from the Tax Code. And the list and procedure for applying these measures have not been determined. Analysing the practice of non-tariff measures in Ukraine, we can argue that their implementation involves many government agencies other than customs - Ministry of Economy, Ministry of Health, and others. Their performance affects such specific areas as health care, public order, safety, environmental protection, etc. Therefore, it would be incorrect to consider them as purely customs measures. The role of customs authorities is mainly to verify compliance by importers and exporters in the movement of goods across the customs border of Ukraine established restrictions and prohibitions.

Thus, on the one hand, the legislator referred to non-tariff regulation of international trade to customs instruments. On the other hand, it did not correctly regulate exactly how customs should use this instrument. That is why the question arises whether non-tariff regulation is really a customs issue?

WHAT DOES IT TAKE TO TRAIN A PERSON FROM ZERO KNOWLEDGE TO A CUSTOMS BROKER

Enrika Naujoke, member of the editorial board of the CCRM journal, Lithuania

Every week Enrika prepares an overview of EU law legal updates related to customs (e.g., EU law news: June 2021). She often considers the question: "A customs topic or not?", i.e. shall some of the legal changes be included in the updates? For instance, regulations related to forest law enforcement, as FLEGT licences are checked by customs. To learn the opinions of other authors, she ran a poll. Surprisingly to her, 70 % of answers were "no/ rather no". One of the authors explained later on, that the overview of legal updates might become too complex if all the updates related to non-customs regulations were included.

Customs is complex, as, besides work with customs regulations, its role is to enforce non-customs regulations. Respectively, this is an issue for training. What knowledge does a customs broker need? What level of this knowledge is "sufficient"? How much time should be dedicated to training? In Lithuania, the training courses take up to 3 weeks. Is it possible in such a short period to train a person from zero knowledge to a customs broker? The same questions can be raised about the knowledge of importers, exporters, and other stakeholders in the logistics chain.

SPECIALIZATION IN VARIOUS FIELDS OF CUSTOMS, E.G. TARIFF CLASSIFICATION OF CHEMICALS, REVEALS THE COMPLEXITY OF CUSTOMS

David Savage, member of the editorial board of the CCRM journal, Ireland

David works in a consultancy. His professional background is in the tariff classification of chemicals, his colleagues specialize in other customs topics. Therefore, when he has questions related to administrational or procedural things, which might be tricky, he reverts to a colleague. Such a specialisation in itself reveals the complexity of customs. Therefore, gaining knowledge and experience across the broad spectrum of customs topics can be difficult and the questions raised in terms of training are complex as well.

MANAGEMENT OF THE COMPLEXITY BY INFORMATION AND TOOLS ON THE CUSTOMS WEBSITES

Roberto Raya da Silva, a founding member of Raya Consult, Brazil

Roberto noted that the complexity could be diminished if customs would provide user-friendly information and tools on their website to help users to find the right way in the world of customs (a complex task for customs!). He shared that the Brazilian customs website is very informative. On the other hand, businesses need to understand the importance of knowledge and seek to ensure compliance themselves. Such awareness may be increased also by means of penalties. Roberto noted that the interest in customs-related training increased in Brazil after penalties for customs infringements were increased.

COMPANIES HAVE TO ENSURE AN ACCEPTABLE LEVEL OF QUALITY OF THEIR MASTER DATA

Tanja Balzer, Consultant and Trainer, Grenzlotsen GmbH, Germany

In her daily work, Tanja raises these questions: How can we analyse data in customs? How is the quality of master data in companies? What statistical measures can/ should be used to measure the level of quality? The most complex topic for her is customs data quality management. Companies have to ensure an acceptable level of quality of their master data. For this purpose, AQL (the Acceptable Quality Level) method might be of help: an acceptable level of mistakes should be set and then the master data checked; if the number of mistakes is higher than AQL, the company should go for the master data quality project.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Jessica Yang
Director
JY XBorder Consulting Ltd
About the author

Toby Spink
Director
BKR Consultants Limited
About the author

OVERVIEWS AND COMMENTS

Staying ahead of the game: anticipating a customs audit

If your business buys goods from abroad and imports them, then the next customs audit target could be you. There are different types of customs audits, different triggers for an audit, and different focuses during an audit. This article aims to demystify customs audits to help businesses stay ahead of the game.

WHY ARE CUSTOMS AUDITS CONDUCTED?

Customs compliance audits are conducted post-clearance. That is, after the goods have been customs cleared, with customs duty and import VAT paid. In other words, the importer's responsibility does not end when the goods are customs cleared. Using a customs broker to complete customs declarations does not remove this responsibility.

To facilitate trade, it is not feasible to check all imports at the border to verify whether the correct amount of customs duties and import VAT are paid. Thus, customs authorities conduct post-clearance audits to check if the import was made in a compliant manner. Customs authorities have the power to review historic imports. In the UK, the time limit is normally three years.

Another important reason why customs audits are carried is to train new customs officers. Brexit turned shipments between the UK and the EU into imports/ exports overnight. This has resulted in a need for more customs officers to manage the increased customs activities in both the UK and the EU. The overall number of customs audits may increase as more and more customs officers enter that phase of their training.

WHAT TRIGGERS AN AUDIT?

Whilst businesses could be the target of a customs audit through random selection, in most cases, an audit is more likely triggered by something of interest to the customs authority. This could be based on a risk theme set by the customs authorities, such as imports with a certain commodity code or imports claiming customs reliefs. It could also be inconsistencies on the customs declaration, for example, a mismatch between the description of the goods and the commodity code.

Remember, customs authorities have access to data you declared to them on the import declaration. Using data interrogation tools as simple as an Excel formula, it is possible to identify inconsistencies or areas of potential non-compliance worthy of a customs audit.

Although it is not possible to anticipate which themes customs authorities will focus on next, it is possible to conduct

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

EN LT

OVERVIEWS AND COMMENTS

Ramutė Neniškienė

Director of Customs Laboratory
Customs Department under the
Ministry of Finance, Lithuania

Product classification recommendation for business planning

Businesses usually contact the Customs Laboratory to find out the tariff classification of a good and/ or certain parameters of it in order to assess the financial aspects of their business plan and aspects related to the prohibitions and restrictions on entry or exit of goods. Let's take a look at how to get the product classification recommendation in Lithuania and what to do if you disagree with it.

PRODUCT CLASSIFICATION RECOMMENDATION MIGHT BE VERY IMPORTANT FOR BUSINESS PLANNING

Business entities usually contact the Customs Laboratory to find out the CN code and/ or certain parameters of the product to be imported, exported, or manufactured in order to assess the financial and other aspects of their business plan. The CN code of the good and/or the parameters of the good determine the taxes applicable to the good, including excise duty, and the prohibitions and restrictions imposed.

I will give you the following example: currently, in the face of the COVID-19 pandemic, the use of disinfectants based on ethyl alcohol has become particularly relevant. As you know, ethyl alcohol is the subject of excise duty. We are often confronted with the misconception of the business that excise duty applies only to food (non-denatured) ethyl alcohol. It is not true. The excise duty shall also apply to denatured ethyl alcohol, including those contained in products such as disinfectants. The exception is ethyl alcohol denatured according to the requirements established by legal acts, which are regulated by Article 28 of the Law on Excise Duty "Denatured ethyl alcohol not subject to excise duty", Resolution No 902 of the Government of the Republic of Lithuania of 13 June 2002 "On denatured ethyl alcohol not subject to excise duty" (the current version of Resolution No. 927 of the Government of the Republic of Lithuania of 17 August 2011) and the Order of the Ministry of Finance of the Republic of Lithuania of 15 May 2002 No. 135 "On the approval of the list of denaturing formulas for ethyl alcohol."

Therefore, when importing or manufacturing disinfectants in Lithuania, it is necessary to assess the denaturing conditions of ethyl alcohol contained therein. These tests are performed in the Customs Laboratory. Only if it is established that the denaturation of ethyl alcohol meets the established requirements, the excise duty relief shall be granted to disinfectants. Otherwise, they are subject to excise duty imposed on edible (non-denatured) ethyl alcohol.

HOW TO GET A RECOMMENDATION

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Ingrida Beliokienė

Chief Specialist of the Tariff Division, Customs Department under the Ministry of Finance, Lithuania

EN LT

OVERVIEWS AND COMMENTS

First-come, first-served tariff quotas: what business needs to know

The use of tariff quotas is an important topic for many EU importers, and its relevance is not diminishing. Let's take a look at the questions that businesses raise about tariff quotas and what is important to pay attention to.

GENERAL INFORMATION ON TARIFF QUOTAS

Tariff quota is a pre-determined volume of goods that can be imported by applying lower than third countries duty or zero rate of duty during a certain period of time. In case the quota is exceeded, the third countries duty will apply. Tariff quotas are divided into quotas managed with licenses and so called 'first-come, first-served' bases tariff quotas.

To date, we still receive questions from importers what is the difference between them, so I will remind you that:

- Quotas managed with licenses (their number always starts with 09.4xxx) are determined by allocating quotas in advance based on import or export licenses issued by the Public Institution Rural Business and Market Development Agency (the name of the responsible institution in Lithuania).
- 'First-come, first-served' tariff quotas, the number of which begins with 09.xxxx, are allocated based on the date of acceptance of the declarations for release for free circulation of the goods.

Let us discuss the 'first-come, first-served' quotas managed by the European Commission Directorate-General for Taxation and Customs Union in cooperation with the customs authorities of the Member States.

THE REGULATION OF 'FIRST-COME, FIRST-SERVED' QUOTAS

The management of tariff quotas at the EU level is determined by the three main legal acts adopted by the European institutions - the Union Customs Code, the Delegated and Implementing Regulations. The volumes of tariff quotas and special provisions are defined in separate regulations.

Regulations usually set an annual period and quantity for the application of tariff quotas. For example, Council Regulation (EU) 2021/1051 sets the annual autonomous tariff quotas for certain agricultural and industrial products. Most products are subject to a 0% duty rate with several exceptions (e.g., sweet cherries with added alcohol are subject to a 10% duty within quota limits).

Another example is Commission Implementing Regulation (EU) 2021/1029, which determines quarterly tariff quota volumes for certain steel products. These products are subject to a duty rate of 0% within the framework of tariff quotas. When the corresponding tariff quota is exhausted or when the relevant tariff quota is not applied, the standard

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Ingrida Beliokienė

Chief Specialist of the Tariff Division, Customs Department under the Ministry of Finance, Lithuania

EN LT

OVERVIEWS AND COMMENTS

Tariff-rate quotas for steel products: peculiarities of the application

Editorial word. This month, the European Commission published a regulation that prolonged the application of safeguard measures against imports of certain steel products. Ingrida Beliokienė, the chief specialist of the Tariffs Division of the Customs Department under the Ministry of Finance (Lithuania), kindly agreed to share information about the peculiarities of the use of these measures [1].

In January 2019, a tariff quota was opened in relation to imports into the EU of certain steel products for an initial period of three years (until 30 June 2021). This was done by publishing the Commission Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products.

Importers ask many questions about the use of the quota because the legal provisions are quite complicated. Let us take a look at some of the provisions, also of the new regulation that prolonged the application of the tariff quota for three more years.

THE NEW REGULATION (EU) 2021/1029

In June 2021, Commission Implementing Regulation (EU) 2021/1029 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measures on imports of certain steel products was published. It sets out that the measures are prolonged until 30 June 2024, increasing the quota by 3% annually.

Annexes IV.1 and IV.2 to the Regulation lay down the volumes of tariff-rate quotas for the period of three years: 01-07-2021 - 30-06-2022; 01-07-2022 - 30-06-2023; 01-07-2023 - 30-06-2024.

It should be noted that the new regulation has not changed the use of tariff quotas set out in the Regulation (EU) 2019/159.

PECULIARITIES OF USE OF TARIFF-RATE QUOTAS SET OUT IN THE REGULATION (EU) 2019/159

The safeguard measures consist of tariff-rate quotas for 26 categories of steel products. The quotas are allocated on a first-come-first-served basis. Where the relevant tariff-rate quota is exhausted or where imports of the product categories do not benefit from the relevant tariff-rate quota, an additional duty at the rate of 25 %, applicable to the net, free-at-Union-frontier price, applies.

QUARTERLY TRANSFER OF UNUSED BALANCES

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Samuel Draginich

Global Trade Compliance
INTRAL Corporation

About the author

OVERVIEWS AND COMMENTS

FTA mechanics – change in tariff heading and long-term supplier declarations

Preferential origin agreements (or free trade agreements) generally have 3 methods by which goods can qualify depending on the specific tariff heading: wholly obtained, cumulation and change of tariff heading (CTH). This article will discuss what happens when a good must qualify via CTH but cannot fulfill the rules.

Broadly speaking, the overall goal of preferential origin agreements is to support trade between two or more countries. However, the goal is not to simply allow a free flow of goods to move between signatories regardless of where they are manufactured. It would be rather pointless to allow a free flow of goods moving between the EU and South Africa if most of those goods were made in China; this does not promote the local economies of any of the signatories.

As such, preferential origin agreements stipulate steps must be taken to demonstrate goods have an 'economic nationality' of one of the signatory states. This is done in several ways; the main goal is to show the good has taken on its finished 'character' in a signatory state. This in turn ensures the preferential origin agreement is promoting manufacturing and sourcing in local economies. CTH is one of the most common ways of accomplishing this goal.

When qualifying goods for preferential origin agreements you will often find certain materials not meeting the required change of tariff heading rules. Without meeting applicable CTH rules goods cannot qualify for preferential origin. The below example will help to better illustrate this concept.

Below is the bill of materials (BOM) for a bottle of balsamic vinegar sauce (TARIC code 2209009100) being shipped from France to South Africa.

Material / HS code
Case / 48191000
Packing film / 39201024
Glue/ 35069190
Packaging / 39201025
Label / 48211090
Cap / 83099010
Label / 48211090
Jar / 70109045
Balsamic vinegar / 22090910

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Samuel Draginich
Global Trade Compliance
INTRAL Corporation

About the author

OVERVIEWS AND COMMENTS

EVFTA: proof of origin when consignments are split in a country of transit

The EU-Vietnam Free Trade Agreement (EVFTA) came into force on 1 August 2020. It is one of the most noteworthy EU FTAs that have come into force in recent years as it brings closer one of the world's largest economic blocs with the fastest-growing emerging economy in the world.

Vietnam is widely considered to be the next regional powerhouse, rapidly emerging as one of the world's premier manufacturing destinations. The EU wisely saw the value in crafting a closer partnership with Vietnam, a partnership that will undoubtedly reap immense rewards for both parties going forward.

As the EVFTA is a work in progress amendments to the relevant guidance are still being made to clarify and improve its execution.

THE MOST RECENT UPDATE OF THE GUIDANCE

The most recent update (version 5) of the EVFTA Guidance on the Rules of Origin (v5 – June 2021) seeks to impart clarity on the proof of origin when consignments are split in a country of transit. The updates can be found on pages 11-13 of the document.

Article 13, Paragraph 3 of the EVFTA Origin Protocol [1] sets out that the splitting of consignments may take place where carried out by the exporter or under his responsibility, provided they remain under customs supervision in the country or countries of splitting.

What about the proof of origin in such a case? Some of the clarifications provided in the guidance:

- The EU-Vietnam Free Trade Agreement (EVFTA) came into force on 1 August 2020. It is one of the most noteworthy EU FTAs that have come into force in recent years as it brings closer one of the world's largest economic blocs with the fastest-growing emerging economy in the world.
- Vietnam is widely considered to be the next regional powerhouse, rapidly emerging as one of the world's premier manufacturing destinations. The EU wisely saw the value in crafting a closer partnership with Vietnam, a partnership that will undoubtedly reap immense rewards for both parties going forward.

These clarifications are crucial as it is standard practice in logistics to break apart cargo bound for different destinations while in transshipment.

Let us look at the following hypothetical but realistic scenario.

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Enrika Naujokė

Director
Muita UAB

About the author

EN LT

OVERVIEWS AND COMMENTS

Statement on origin (EU-Vietnam FTA)

Continuing on the topic started by Samuel Draginich in the article “EVFTA: proof of origin when consignments are split in a country of transit”, let us take a closer look at the statement on origin - the only proof of EU preferential origin that might be issued under the EU-Vietnam FTA (EVFTA) - and the commercial document on which it may be made out; also in the case of splitting of consignment in a country of transit.

BACKGROUND: THE RULES OF PREFERENTIAL ORIGIN

Rules of preferential origin define the conditions under which a product is regarded as originating and can benefit from lower rates of duty upon importation in the country of destination. There are three types of those conditions:

- origin-related (if non-originating materials are used in the manufacture of the product, they must be processed according to certain requirements);
- procedural provisions (proof of origin may be issued in case the product complies with origin-related requirements);
- transportation-related (the product shall not be altered on the way to the country of importation).

For more information, see “Rules of preferential origin” in the glossary of customsclearance.net. It is important to note that rules of preferential origin are not the same in different free trade agreements (FTAs), therefore you should always check the relevant rules in the FTA in question.

In this article, we review clarifications on making out the statement on origin provided in the current version of the EVFTA [1] Guidance on the Rules of Origin (Guidance) [2], also concerning the situation of a consignment being split into several consignments in the country of transit.

PROOF OF ORIGIN OF GOODS FOR EXPORTS FROM THE EU TO VIETNAM

The only document that may be issued as proof of EU preferential origin of goods in trade with Vietnam is the statement on origin made out on a commercial document (note: other documents are to be used to prove the Vietnam preferential origin).

The text of the statement on origin is set out in Annex VI to Protocol 1 “Concerning the Definition of the Concept of “Originating Products” and Methods of Administrative Cooperation” (Protocol 1) to the EVFTA, see the figure below. The title of Annex VI is “Text of the Origin Declaration”, however, the same text is used for the statement on origin.

Statement on origin may be made out by any exporter if the value of the consignment does not exceed 6000 EUR

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Jessica Yang

Director
JY XBorder Consulting Ltd

About the author

Toby Spink

Director
BKR Consultants Limited

About the author

COUNTRY-SPECIFIC: UK

What does it mean to have a direct or indirect representative for customs clearance in the UK?

When goods cross a border, customs formalities need to be completed. The trader has the option to complete the formalities themselves, or engage someone else to do this for them. Generally, traders find someone, such as a customs agent, to complete the formalities for them. In this case, the customs agent would act as either a direct or an indirect representative.

This article explains the difference between these two types of representations and what the responsibilities and liabilities are for both the trader and the customs agent.

BASIC PRINCIPLES

There are three types of representation:

1. Self-representation: the trader acts on their own behalf.
2. Direct representation: the customs agent acts in the name of and on behalf of the trader.
3. Indirect representation: the customs agent acts in their own name but on behalf of the trader.

Previously, we discussed in our article Are Software Solutions The Future? whether bringing customs formalities in-house using a software solution would be worth considering. For businesses completing customs formalities in-house, they are using “self-representation”.

When the trader engages a customs agent, usually, what the customs agent offers is a direct representation relationship. This means the agent is acting in the name of and on behalf of the trader, taking instructions from the trader to complete the import/export customs declaration.

A customs agent acting as an indirect representative acts in their own name but on behalf of the trader. The key difference between direct and indirect representation is that because the agent is acting in their own name, they are jointly and severally liable for any customs debt. Being an indirect representative poses more risk to the customs agent.

Given the choice, both the trader and the customs agent would prefer to be in a direct representation relationship. However, there are default positions where an indirect representation is the only option.

THE THEORY: WHEN INDIRECT REPRESENTATION IS THE ONLY OPTION

The most common scenario when an indirect representative is required is when the trader has no customs

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Anthony Buckley

CEO
Anthony Buckley Consulting Ltd

About the author

Toby Spink

Director
BKR Consultants Limited

About the author

COUNTRY-SPECIFIC: UK

On some complex customs topics aftermath of Brexit

"A customs topic or not? What is the most complex customs topic?" - a discussion took place during the 6th Authors' Meeting. The authors of this article shared views on several challenges aftermath of Brexit: meeting non-customs requirements in Northern Ireland and two models for processing import shipments in the ports in the UK.

MEETING NON-CUSTOMS REQUIREMENTS IN NORTHERN IRELAND

by Anthony Buckley, CEO, Anthony Buckley Consulting Ltd., Ireland

The source of the problems

Based in Ireland, the most complex issues I experience at the moment arise from the Northern Ireland Protocol in the Trade and Cooperation Agreement (TCA) between the EU and the UK. The source of the problems is of course the fact that the agreement, unlike almost all other free trade agreements, increased the complexity of existing trade.

The protracted negotiation, with final agreement only 8 days before the new borders went "live", allowed little or no time to develop the support systems and explanatory material required, or to make the small local decisions that are essential to the smooth operation of cross-border trade everywhere.

Positive and negative sides of the current situation

Businesses in Northern Ireland are now faced with a very complex set of decisions. On the positive side, there are great opportunities for some types of business, because there is duty free access for sales to both the EU Single Market and the to the rest of the United Kingdom. On the negative, trying to ensure compliance with law is challenging in a situation where normal customs checking is not in place.

For example, the TCA makes it clear that goods moving from Great Britain (GB) to Northern Ireland are EU imports, yet there is no requirement at present for export declarations from GB, and many deliveries to Northern Ireland are made DDP by courier, without the essentials of customs declaration. The importing business is then expected to complete a supplementary declaration, often without the basic information to do so, such as a commercial invoice.

The business is left with serious doubt about future audits that may find them non-compliant, and also with the challenge of competing with risk-taking businesses that appear to ignore the law. Temptation is strong: another example – parcels posted in Northern Ireland are treated as domestic UK mail and appear to undergo no checks at all. Advising businesses to adopt a fully compliant path may sound easy, but is quite complex in this environment.

Non-customs regulation presents the most complex challenges

In the overall aftermath of Brexit, in my opinion, non-customs regulation presents the most complex challenges. A very clear indication is that imports from the UK to Ireland fell by 48 % in the first three months of 2021, compared with 2019 (pre-Covid) while imports from the rest of the EU rose in the same period. Food imports fell by over 60 %. This is not primarily an effect of customs duty or tax, but rather comes from the need of the importer to prove compliance with EU market regulations.

Before Brexit, this was a matter for the manufacturer or distributor in the UK, and certification of individual consignments was not needed. Now the responsibility transfers to the importer; it applies to every import, and it is a major struggle, especially for smaller importers and for their UK suppliers. Of course, when the UK's customs systems become fully operational at the end of this year, exporters to the UK will also become involved in this enormously complex network of requirements.

Some countries have made significant progress towards the "single window" where all information is entered just once, and then used for all official needs, but in most, one is still dealing with multiple agencies, with systems that do not connect, and with inspection regimes that require making appointments in advance and obtaining signed certificates that must be then fed back to customs for clearance.

I have experienced several cases where, with all customs requirements met, the planned procedure was blocked by non-customs requirements – the absence of a certificate, questions about a seal, or inability to get timely clearance. The impact of non-customs regulation is that, for many controlled goods, a quick decision to purchase or sell is no longer practical. One must plan in advance, ensure in advance that the importer has the correct permissions and the exporter has supplied the correct certification, and arrange with the relevant agency that a speedy clearance process can be obtained.

Businesses can understand customs – they are struggling with the steep learning curve in the less-publicised non-customs regulations.

TWO MODELS CURRENTLY USED FOR IMPORT SHIPMENTS IN THE PORTS IN THE UK

by Toby Spink, Director, BKR Consultants Limited, the UK

Since the UK's withdrawal from the EU, there has been a change in the way import shipments are processed in ports across the UK. Rather than all import shipments following the same standard process, HMRC have allowed port operators to choose between one of two models for processing import shipments.

The two models currently used for import shipments in the UK are the "temporary storage model" and the "pre-lodgement model".

Temporary storage is your traditional process, that means all cargo is immediately entered into customs control upon arrival in the country. This is where it will be held until a customs declaration has been completed and the goods are released. This is usually managed by a CSP inventory system, that is linked to the port's main operating system.

The pre-lodgement model is only available in RO-RO locations and requires the importer or their appointed intermediary to submit an import declaration, prior to the goods boarding the ferry in the EU and arriving in the UK. Currently there is no system for managing this model, but the Goods Vehicle Movement System (GVMS) is anticipated to be introduced to fulfil this need.

The complexity - dual-use of both models simultaneously

This concept would be easy to follow if each model was used exclusively within the port. However, most major UK ports will facilitate both containerised and RO-RO shipments. Consequently, we are now experiencing dual-use of both models simultaneously.

This causes a number of difficulties. The first of which is identifying which of the two processes the transport company and customs intermediary need to follow. It is no longer based exclusively on what port the goods are intended to arrive at, but will in fact require all parties to know specifically what berth within the port itself.

Collecting this information is a problem, as the industry is not conditioned to specify this level of detail and there are very limited ways of actually obtaining it.

The second problem is the timing of the declaration, which is entirely different, depending on what model is being used in the area of the port for which the goods have arrived.

If the importer or their agent does not know which terminal the goods are expected to arrive in and the corresponding clearance model to follow, the goods may not be cleared in the correct manner, leading to a potential compliance issue and delay in receiving the goods.

Whilst HMRC have not yet published guidance on what importers should do in this scenario and what the required actions would be, they have acknowledged that failing to declare your goods within the time parameters of the appropriate port model would be deemed a compliance issue and that the importer of the goods would be held accountable.

This is an evolving issue, as port operators are currently working with HMRC to make decisions around which model they intend to follow from January 2022 onwards. However, at this stage, it would appear some ports will continue to operate both models simultaneously well in to 2022 and beyond.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Iryna Pavlenko

Associate, Attorney at Law
First Chair Legal

About the author

Oleg Kyryievskyi

Managing Partner, Attorney at Law
First Chair Legal

About the author

COUNTRY-SPECIFIC: UKRAINE

Ukraine law news: July 2021

News at a glance: registration of non-residents at the customs office of Ukraine; criminalization of smuggling: the first step done for adoption; the government regulated the monitoring procedure of the compliance of AEO in Ukraine; safeguard regarding import of the ceramic tiles was terminated.

REGISTRATION OF NON-RESIDENTS AT THE CUSTOMS OFFICE OF UKRAINE

Starting from the 1st of July, non-residents are required to register at the Customs Office of Ukraine. It relates to the foreign carriers, including those who transit goods.

A non-resident shall file an application and a copy of the company registration certificate. It can be filed through a UA customs broker or directly by the company representative. The application form can be filled in any language of official international communication. To speed up the processing of information, it is desirable to fill it in Ukrainian or English.

After the application, a non-resident person will be assigned a temporary registration number within one hour. **The temporary registration number allows a non-resident person to carry out all customs formalities** and procedures without restrictions.

The non-resident shall be informed about the registration and assignment of the registration number within the following 5 working days.

CRIMINALIZATION OF SMUGGLING: THE FIRST STEP DONE FOR ADOPTION

On July 13, 2021, the Ukrainian Parliament adopted the Draft of the Law “On the criminalization of smuggling” in the first reading (first step of adoption of the law in Ukraine).

This law establishes the criminal liability for:

- smuggling of the goods, which value is more than appr. 3600 EUR;
- smuggling of the excisable goods, which value is more than appr. 1800 EUR;
- inaccurate declaration of goods.

The **inaccurate declaration will be qualified as the crime** in case such actions will lead to an unlawful reduction or exemption from customs duties for appr. 4600 EUR and more. The action of inaccurate declaration will include the following:

- entering inaccurate information in the customs declaration or

- failure to provide accurate and reliable information during customs clearance.

Such wording will create an unhealthy situation when every mistake in the declaration procedure can lead to criminal liability. Additionally, the number of decisions on adjusting the customs value or changing the good's code will increase.

The importer can be exempted from criminal liability - making the payment of customs duties in double amount.

As of now, the Ukrainian business and public authorities are in active public discussions about the adoption of the law in the suggested wording.

THE GOVERNMENT REGULATED THE MONITORING PROCEDURE OF THE COMPLIANCE OF AEO IN UKRAINE

On July 7, the Cabinet of Ministers of Ukraine adopted a decree, which settled some issues of the functioning of Authorized Economic Operators (AEO) in Ukraine. The **decree establishes the procedure of monitoring the compliance of enterprises with the AEO's criteria**. This regulation will ensure the control by customs authorities over the activities of certified AEOs.

The monitoring procedure is consistent with international practice and will contribute to a balance between the simplification of procedures in foreign trade and ensuring proper control over compliance with the legislation on customs issues.

The monitoring procedure should ensure active interaction between certified AEOs and customs authorities, promote the AEO program, and become an effective tool on the way to mutual recognition of Ukrainian AEOs by other countries.

SAFEGUARD REGARDING IMPORT OF THE CERAMIC TILES WAS TERMINATED

In the begging of June, the Interdepartmental Commission on International Trade opened the safeguard regarding the import of **ceramic tiles (heading 6907)** regardless of the state of origin. Such trade defence investigation was initiated by the NGO "Ukrainian Association of Ceramic Tile Manufacturers" on behalf of the list of Ukrainian manufacturers.

On 23d of July, the Commission decided to terminate the investigation. The purpose of such decision was the Report of Ministry of Economy regarding the result of the investigation.

Such a decision could be appealed to the Kyiv District Administrative Court during 30 days after its publication.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Dr. Talke Ovie

Lawyer
HARNISCHMACHER LÖER
WENSING Rechtsanwälte PartG mbB

About the author

EN DE

EU CASE LAW

Retrospective amendment of the customs declarant

It often happens that customs declarations are incorrectly filled out. Such errors are not necessarily intentional and are often nothing more than carelessness. The question in such cases is whether it is possible to amend the customs declaration retrospectively and how. Whereas it is accepted it is possible to go back and correct particulars about the goods and their value, the customs administration has generally not allowed the customs declarant to be amended in this way. Among the reasons cited is that the relevant court judgements have also rejected such an amendment. We now have two recent judgements which deal with this question of the retrospective amendment of the customs declarant. How helpful are these judgements in practice?

CASE C-97/19; PFEIFER & LANGEN

In its judgement of 16.07.2020 (case C-97/19; Pfeifer & Langen), the European Court of Justice (ECJ) held the following during the preliminary ruling proceedings at the Düsseldorf Fiscal Court:

- Art. 78 (3) CC (old edition) must be interpreted as meaning that the customs authorities may grant an application for amendment of a customs declaration seeking to show that there is a relationship of indirect representation between, on the one hand, a person in possession of a power of attorney who has mistakenly indicated that it was acting exclusively in its own name and on its own behalf, even though it has received such a power from the person holding the import licence, and, on the other hand, the person who has granted the power of attorney and on whose behalf the declaration has been made.

The arguments given for the judgement are as follows:

- Art. 78 CC permits new material to be presented which may be taken into consideration by the customs authorities after the customs declaration has been made. The specific logic of Art. 78 CC is namely to bring the customs procedure into line with the actual situation.
- Art. 78 CC does not distinguish between errors or omissions. The words “incorrect or incomplete information” must be interpreted as covering both clerical errors or omissions and errors of the applicable law.
- Art. 78 CC does not prohibit elements of the customs declaration. This also includes information relating to the identity of the declarant and the existence of a relationship of indirect representation.

It, therefore, follows that:

- Art. 78 CC applies if the representative is able to present the power of attorney, by which it was instructed to

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Virginija Dordzikienė

Chief Specialist, Customs Policy Division, Customs Department under the Ministry of Finance, Lithuania

About the author

EN LT

EU CASE LAW

Wooden or plastic tableware (0% or 6.5% duty rate)?

In this article, we overview a recent judgment of the Court of Justice of the European Union (CJEU) concerning tariff classification of goods. The product is 'bamboo beakers' made of plant fibers (72,33% by weight) and melamine resin (25,2% by weight), the latter gives the product its shape and strength. The questions raised: how are headings 3924 and 4419 of the Combined Nomenclature (CN)1 to be interpreted for the classification of this product; whether GIR 3 (a) ('heading which provides the most specific description') or GIR 3 (b) ('the material which gives the goods their essential character') should be applied.

The judgment of the CJEU is important for the tariff classification of goods made of several materials when GIR 3 (b) of the CN applies.

OVERVIEW OF THE JUDGMENT OF THE CJEU IN CASE C-76/20, 3 JUNE 2020

The request for a preliminary ruling concerned the headings 3924 and 4419 of the CN and the application of General Rules for the Interpretation (GIR) of the CN.

Bulgarian company BalevBio EOOD imported goods of Chinese origin, called 'bamboo beakers', and classified them in subheadings 4419 00 90 and 4419 00 00 of the CN (wooden tableware and kitchenware) respectively, which are subject to 0% import duty rate. The competent customs authorities, having examined the goods and based on the findings of the Customs Laboratory, decided to classify those goods as plastic tableware applying GIR 3 (b) of the CN, since the product contains plastic (melamine resin) which gives it the shape, hardness, strength, i.e. plastic provides essential character. According to the findings of tests carried out by the Customs Laboratory and the University of Forestry, such goods consist of plant fibers (72,33% by weight) and melamine-formaldehyde resin (25,2% by weight). Customs classified the 'bamboo beakers' under CN code 3924 10 00 (tableware and kitchenware, of plastics), which imposed an import duty rate of 6.5% on the goods. The classification of goods was changed and the corresponding taxes were ordered to be paid. BalevBio EOOD disagreed with the customs decision.

During the proceedings before the Administrative Court of Varna, the court decided to suspend the proceedings and to refer the matter to the CJEU for a preliminary ruling: how headings 3924 and 4419 of the CN have to be interpreted for the classification purposes, whether the classification of such goods requires the application of GIR 3 (a) ('heading which provides the most specific description') or GIR 3 (b) ('the material which gives the goods their

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Ingrida Sakalienė

Chief Specialist, Tariff Division, Customs Department under the Ministry of Finance, Lithuania

About the author

EN LT

EU CASE LAW

CJEU: classification of sawn timber (boards)

EU Member States import a significant amount of timber, timber products, and sawn timber from Belarus, Russia, and Ukraine. Therefore, the judgment of the Court of Justice of the European Union (the CJEU) of 15 April 2021 in case C-62/20 NV Vogel Import Export v Belgische Staat, in which the issue of tariff classification of sawn timber (boards) was examined, may be relevant for many businesses.

THE SUBJECT MATTER OF THE DISPUTE

The goods examined by the CJEU are planed wood boards, the four edges of which are slightly rounded over the entire length of the board. The tariff classification of those goods between the following two headings of the Combined Nomenclature (the CN) was examined:

- CN 4407 “Wood, of a thickness exceeding 6 mm, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed” and
- CN 4409 “Wood (including strips and friezes (edgings) for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed.”

The CJEU had to answer the main question: whether the goods in question, namely planed wooden boards the four corners of which have been rounded over the entire length of the board, are to be regarded as being ‘continuously shaped’ and accordingly should be classified under tariff heading 4409 or can the rounding of the corners not be regarded as being ‘continuously shaped’ and should the goods, therefore, be classified under tariff heading 4407?

THE MAIN HIGHLIGHTS OF THE CLASSIFICATION OF SAWN TIMBER

I shall begin with the explanatory notes of the Harmonized System (HS), which, although not legally binding, are very helpful in interpreting individual tariff headings.

According to the HS explanatory notes to heading 4409, that heading covers timber particularly in the form of boards, planks, etc., which, after sawing or squaring, has been continuously shaped along any of its edges, ends, or faces. According to these notes, such continuous shaping over the entire length must either facilitate subsequent assembly or make it possible to obtain the mouldings or beadings used in the manufacture of picture frames, decoration of walls, furniture, doors, and other carpentry or joinery. It should also be noted that HS heading 4409 covers strips and

Read continuation on Customs Clearance (€)

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Evelina Liaubaitė
Associate, Law firm "AAA Law"
About the author

EN LT

EU CASE LAW

Place of origin of import VAT obligation (temporary admission)

Place of origin of import VAT obligation - the final destination of the goods entering the territory of the Union or entering the economic circulation of the Union? This question was further explored and answered by the Court of Justice of the European Union (CJEU) on 3 March 2021 in its judgment in Case C-7/20.

THE MAIN PROCEEDINGS

In the main proceedings, a German resident brought his passenger car registered in Turkey into Germany from Turkey. The imported vehicle was used in Germany for several months but was not subject to any customs procedure. It is important to note here that the vehicle physically entered the territory of the European Union via Bulgaria and that no customs duties were fulfilled in respect of the vehicle in that Member State or in the State in which the vehicle was operated (the vehicle was not presented at a customs office and presented for inspection). Since the vehicle was soon returned to Turkey for sale, the applicant in the main proceedings disputed the amounts of import duty and import VAT payable to him in Germany. According to the applicant, the temporary use of the vehicle for private purposes in the territory of the Union is not a valid basis for recognizing the existence of taxable imports.

THE QUESTION REFERRED TO A PRELIMINARY RULING

The question has been referred to the CJEU for a preliminary ruling: "'Is the second subparagraph of Article 71(1) of [the VAT Directive] to be interpreted as meaning that Article 87(4) of [the Customs Code] can be applied by analogy to the incurrence of [a VAT debt] (import turnover tax)?'"

Under the provisions of the VAT Directive, the importation of goods is subject to import VAT in the country where the goods are located at the time of their importation. Thus, the chargeable event occurs, and the obligation to account for VAT arises when the goods are imported. In the case of, where the imported goods are placed under one of the arrangements or situations (as referred to in Articles 156, 276, 277 of the VAT Directive), or under temporary importation arrangements with total exemption from import duty, as with the external transit arrangements, the moment of chargeability to VAT on importation shall coincide with those arrangements or situations no longer applicable. Under the second subparagraph of Article 71 (1) of the VAT Directive, where the goods in question are subject to customs duties, the chargeable event occurs, and the VAT becomes chargeable when the chargeable event occurs, and those duties become chargeable.

Under Article 79 (1) of the Customs Code, a customs debt on importation is incurred through the failure to fulfil at

Read continuation on Customs Clearance (€)

ABOUT THE JOURNAL

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 (platform) and in pdf.

Articles on the platform are published on an ongoing basis in English and several other languages. Registered users are notified per e-mail (daily, weekly or monthly) about new content.

There are free articles and articles for payment. If you wish to read paid articles on the platform, click on any of the paid articles, learn the pricing and purchase access to a single article or to all content for certain period. Learn more about the CCRM journal.

INFORMATION FOR AUTHORS

You are welcome to contribute articles to the CCRM journal by sending them to info@lcpa.lt. Articles are contributed on a non-remunerated basis. Thanking for contribution, we will invite you to meet other authors in bimonthly online meetings. It is a great opportunity to expand your international network! Learn more.

EDITORIAL BOARD

DISTRIBUTION

RESPONSIBILITY FOR THE CONTENT

CONTACTS

We will be happy to answer your questions. Contact: info@lcpa.lt