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CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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CONTENT

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Editorial

Dear Readers,

The ever-changing environment of international trade constantly creates new challenges for traders and practitioners of customs law. Many of them are covered in this bimonthly journal which has already reached the 10th issue.

This issue focuses on various topics, one of which covers the complex and crucial aspects of rules of origin. The authors discuss the application of these rules under preferential trade agreements and the actual practices relating to their application in the EU Member States. Regulation of specific customs procedures in the EU such as inward and outward processing is another topic. Non-tariff regulation of international trade operations which, due to its diversity, is a common “headache” for business. In this issue, authors deal with packaging issues, the application of the “CE” marking regime and the import of dangerous products. And of course, there is compliance. In addition to these topics, we present country-specific news and overviews covering Ukraine, Northern Ireland (UK) and Canada.

Finally, I would like to draw your attention to one particular article in this issue. After evaluating the experience of the authors of the CCRM journal, for the first time, we share insights relevant to all future writers and authors on how to write a practical article on customs. We also provide advice on developing professional competence in customs law, such as what to look for and where to focus attention on. See the article by A. Buckley “Acquiring customs competence: What is the process?” in the “Knowledge” section. Please enjoy reading and do not forget to leave us your feedback under info@lcpa.lt!

Dr. Gediminas Valantiejus
Member of the Editorial Board

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EU LAW

EU law news: August/ September 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 38: amendments of TIR Convention relating to the eTIR procedure; Commission proposes new EU Generalised Scheme of Preferences; anti-dumping and countervailing measures concerning imports of electrolytic chromium coated steel products and certain rainbow trout; amendments of regulations as regards the entry into the Union of consignments of certain animals and products of animal origin; and more news!

OFFICIAL JOURNAL

Customs procedures

20.9.2021 L 331 Amendments to the Customs Convention on the International Transport of goods under cover of TIR carnets (TIR Convention 1975). One of the amendments: Article 1, new paragraph (s) '(s) The term '**eTIR procedure**' shall mean the TIR procedure, implemented by means of electronic exchange of data, providing the functional equivalent to the TIR Carnet. Whereas the provisions of the TIR Convention apply, the specifics of the eTIR procedure are defined in Annex 11.'

Tariff classification

30.8.2021 C 349 Court of Justice of the European Union Case C-362/20 on tariff classification resulting from a Court judgment and definitive anti-dumping duties on imports of **threaded tube or pipe cast fittings**, of malleable cast iron, subheadings 7307 11 10, 7307 19 10 and 7307 19 90. The operative part of the judgment: Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron,

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ORIGIN OF GOODS

Changes in the application of the Pan-Euro-Mediterranean (PEM) rules of preferential origin from 1 September 2021

Edita Trukšinienė

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

The contracting parties to the PEM Convention have agreed on the application of the transitional rules pending the application of the modernized PEM Convention. This opens the possibility for economic operators to choose between the rules of preferential origin set out in the PEM Convention and the transitional rules. The latter rules are in many cases more flexible and simpler. Let us look at this new possibility.

ABOUT THE PEM CONVENTION

The system of Pan-Euro-Mediterranean (PEM) cumulation of origin allows for the application of diagonal cumulation between the EU, EFTA States, Turkey, the countries which signed the Barcelona Declaration, the Western Balkans, and the Faroe Islands. It is based on a network of Free Trade Agreements having identical origin protocols. Those origin protocols are being replaced by a reference to the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM Convention). The European Commission (EC) regularly publishes notices indicating which Contracting Parties to the PEM Convention may apply diagonal cumulation of origin

MODERNISATION OF THE PEM CONVENTION

In order to adapt the rules of origin to the changing economic conditions, the PEM countries launched discussions on the modernisation of the PEM Convention in 2012. The revised PEM Convention must be adopted unanimously by the Joint Committee of the PEM Convention. However, not all Contracting Parties to the PEM Convention have accepted these new rules, and, therefore, the revised Convention cannot be adopted. Instead, it has been decided that the new rules (known as transitional rules) may be introduced by those Contracting Parties that have an interest in applying them in place of the current rules of the PEM Convention, pending the agreement of all Parties. This temporary solution allows the economic operators of the Contracting Parties, that have accepted transitional rules, already to benefit from modernised, simplified, and more flexible rules of origin.

To this end, the protocols of origin contained in each bilateral trade agreement signed between the EU and its partners have been amended to include Appendix A, which contains transitional rules that are compatible with the current rules of the PEM Convention. Both sets of rules of origin will apply between the Contracting Parties, which have accepted the revision of the PEM Convention. Operators will be able to choose which rules of origin to apply - the existing rules of the PEM Convention or the rules of origin of the transitional period. This selection is to be made for each consignment.

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ORIGIN OF GOODS

Controversies and peculiarities regarding application of rules of origin in EU Member States: practice in the Republic of Lithuania

The article discusses the peculiarities of the practical application of European Union (EU) rules on customs origin in the EU Member State - the Republic of Lithuania and presents the current practice of national authorities in this area (in tax disputes related to the origin of imported goods), emphasizes its peculiarities and differences from practices in other EU Member States. The analysis performed and described in the article substantiates that in the Republic of Lithuania the possible sources of proof of customs origin of goods are assessed and interpreted in a unique and rather formal way. Besides, the burden of proving the origin of imported goods and its distribution between customs and importer is understood specifically and can be considered as more favourable to importers than the usual practice at the EU level.

CONTROVERSIES REGARDING APPLICATION OF RULES OF CUSTOMS ORIGIN IN THE EU MEMBER STATES (REPUBLIC OF LITHUANIA)

The application of the rules of origin of goods (due to their diversity, e. g. non-preferential vs. preferential rules, not always clearly defined criteria of origin, etc.) was always a problematic area of the EU customs law [1; see p. 306 – 315]. Their application in the individual EU Member States is also not always consistent nor uniform as it is also confirmed by the developing practice in the Republic of Lithuania. Therefore, in this article, we will discuss other relevant national case-law that may be relevant to international traders clearing goods in the Lithuanian customs and which highlights the controversies and peculiarities application of EU rules on customs origin on the national level.

PROOF OF CUSTOMS ORIGIN AND ADMISSIBLE EVIDENCE: HOW IS IT ASSESSED IN LITHUANIA?

According to the Article 61 of the Union Customs Code (Regulation (EU) No 952/2013) and the provisions of the EU regulation 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of the Union Customs Code (Articles 57 to 126), the basic provisions applicable in relation to proof of origin of goods are such that they require to present a formal document (e. g. certificate) proving origin. Such a document (certificate, invoice declaration, etc.) identifying the country where the goods were wholly obtained or underwent their last substantial transformation, may be issued in accordance with the rules of origin in the country or the territory of destination of goods. These documents may be and can be verified (later) and this sometimes leads to the situations when the customs authorities in the EU Member States conclude that formal certificate of origin was wrongly issued and is inaccurate. According to the practice of the Court of Justice of the EU (CJEU) formulated in case C-12/92,

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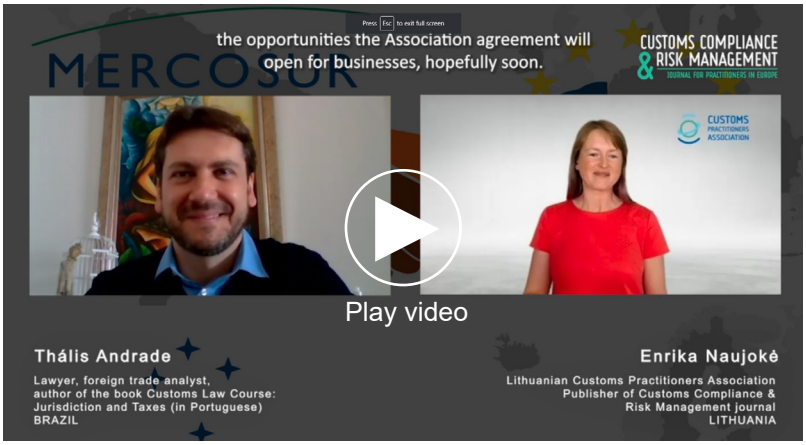
ORIGIN OF GOODS

EU-Mercosur Association Agreement: the opportunities for European products in Brazil

On July 7, 2021, Brazil disclosed its tariff elimination schedule embodied in the EU-Mercosur Association Agreement announced on June 28, 2019, in Brussels (Belgium). The official documents will only be binding after the ratification in each Member-State. However, the disclosed Annex gives an idea to European traders and practitioners of the gains that can be obtained when the deal enters into force.

We also invite you to watch the interview about: when the agreement between the EU and Mercosur is expected to enter into force; Brazilian position regarding international trade and Mercosur partners; the shift in Brazilian trade policy regarding new free trade agreements.



THE EU-MERCOSUR AGREEMENT IN A NUTSHELL

The agreement between the European Union and Mercosur will constitute one of the biggest free trade areas in the world, integrating a market of 780 million people representing a quarter of the world´s GDP. On the one hand, the EU is the 2nd largest partner of Mercosur, but, on the other hand, Mercosur is the 8th biggest trade partner of the EU. In order to strengthen the relationship between these historical partners, Mercosur will eliminate tariffs on 96% of the

Read continuation and watch video on Customs Clearance

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Žydrė Bartaškienė

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IMPORT DUTIES

Planning tariff changes: suspensions

The possibility of tariff suspensions is actively used by businesses in the EU - importers save significant amounts of duties. It is also important for EU exporters, for instance, exporting their products to the UK, where tariff suspensions are used as well and may result in increased demand for certain products from the EU. We are talking to Žydrė Bartaškienė, Adviser of the Tariff Division of the Customs Department, Lithuania, about various aspects of this topic - news, tariff classification of goods, financial planning in business, and others.

Editor: The idea of this interview was born during a discussion with UK specialists about objections to requests for duty suspensions (see UK invitation here), when the topic of multi-classification, i.e., when several product codes are assigned to one product description, was raised. So how are and should be descriptions of goods and tariff codes for tariff suspensions purpose indicated?

Žydrė Bartaškienė: Since the suspension of EU tariffs applies to goods not produced in the EU, in the request for duty suspension the product should be described in detail, distinguishing only its characteristic features or how it differs from other similar goods, since, in this case, it is easier to 'defend' against objections raised by the other Member States. For example, when a Danish company applied for a suspension of duty on **"Transparent noodles, cut in pieces, obtained from beans (Vigna radiata (L.) Wilczek), not put up for retail sale,"** the request was accepted as no such noodles is produced in the EU. However, if only 'noodles' were written in the request, there would certainly be hundreds of producers in the EU, and they would, of course, oppose the introduction of a duty suspension on such a product. Of course, if there is no particular kind or type of product in the EU and no one will oppose the suspension of duties, the description of the product may even coincide with the description of the subheading of the Combined Nomenclature (CN), such as **"Red phosphorus"**, and a more detailed description is not necessary.

As some subheadings (in particular fish or meat) are repeated in the CN nomenclature, it should be noted that, for example, different CN subheadings apply to frozen and fresh or chilled products. Whereas annexes of Council Regulation (EU) No 1387/2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products and Council Regulation (EU) No 1388/2013 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products, are already voluminous, to reduce them, the goods are grouped where possible, i.e., multi-classification is introduced.

I will give an example from the UK list. There could be two separate lines, but they are "summarized" into one, and

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IMPORT DUTIES

Returned goods relief: requirements in various countries

There are often situations where goods exported from a country are returned for various reasons. Therefore, countries have special regulations on returned goods which provide for relief from duties and possibly other import taxes. In this article, we overview regulations in the European Union, the United Kingdom of Great Britain and Northern Ireland, Switzerland, Ukraine, Mexico and the United States.

When preparing the overview, we found that three categories of the requirements exist in all countries:

1. the **time limit** for re-importation and claim of duty relief (ranging from 6 months to unlimited);
2. the goods have to be returned in an **unaltered state** and value; and
3. **documents** proving the exportation, unaltered state of the goods, and fulfillment of other requirements must be submitted to customs either when claiming the duty relief or during a post-clearance audit.

Other rules and requirements might be significantly different, for instance, in the U.S., there is even a separate Harmonized Tariff Schedule subheading for returned goods, which is not the case in other countries.

EUROPEAN UNION

In the EU, the conditions which have to be fulfilled to enjoy duty relief for returned goods are set out in the Union Customs Code and related regulations. There are three main conditions:

- the goods have to be returned in the course of 3 years after exportation (the period may be exceeded in order to take account of special circumstances); partial return is allowed;
- the goods should be in the state in which they were exported, i.e., they may have received treatment only to restore them to good condition or maintain them in good condition;
- export declaration or information sheet INF 3 must be provided to customs to prove that the goods were exported

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IMPORT DUTIES

Trade defence instruments (TDIs): what EU importers and exporters should know

The European Commission has published its 39th Annual Report on the use of trade defence instruments (TDIs) in 2020. The TDIs are applied to prevent unfair trade practices - mainly cheap imports due to dumping or subsidies - which harm EU producers.

However, EU importers, especially SMEs, are often caught by a newly launched TDI unprepared and not aware of the unfair trade. The price of unawareness is high - the amount of import duties to be paid may be similar to the price of the goods themselves (a practical example is given in the article Case of import of electric bicycles: duty, anti-dumping and countervailing duty, published in Customs Law for Practitioners, No 89, October 2020).

Thus, to prevent unpleasant surprises and financially painful consequences, importers, exporters and other stakeholders of the supply chain should know TDIs, monitor related updates and plan their business accordingly. Information on investigations launched by the European Commission on the possible application of TDIs is published here. Related legal updates are reviewed on a weekly basis in this journal, see EU law news: August/September 2021.

To learn more about TDIs, let's take a look at several facts from the Commission's report and draw some conclusions.

INFORMATION IN NUMERICAL LANGUAGE

The Commission points out that, in order to protect EU industry from unfair trade - dumping and subsidised imports into the EU - 150 TDIs were applied at the end of 2020 on imported goods, of which:

- 128 anti-dumping,
- 19 countervailing, and
- 3 safeguard measures

In 2020, the Commission:

- launched 15 investigations (by comparison, 16 investigations were initiated in 2019) and applied 17 provisional and definitive measures (15 measures applied in 2019),
- conducted 54 reviews of the measures in force, both interim and as regards the expiry of the measures.
- Which countries were the subject and to how many TDIs? The report includes the following figures:

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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Mara Valdemarca
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CUSTOMS PROCEDURES

Outward processing procedure in the EU: the basics

Everyone entering the import-export sector should be aware of the variety of customs procedures to work in the most efficient way and satisfy their economic needs. Outward and inward processing are two of the often-used procedures that can help you pass through the borders paying less duties or no duties at all. In this article, we overview EU's Customs Decisions System and focus on one of 22 authorizations that might be applied there – the outward processing. In the following article, we will continue the topic by looking at inward processing.

INTRODUCTION

On 1st May 2016, the Union Customs Code (UCC), Regulation No 952/2013, came into effect. The main goal of this new code, as explained in article 6, is to make customs offices free from paper through electronic procedures, thus making customs clearance easier and more efficient.

One of the biggest changes to reach the goal has been done in October 2017 with the going live of the CDS – the Customs Decisions System, the new European portal for Customs Authorizations.

UCC lists 22 types of authorizations that could be applied via CDS. In this article, we focus on one of them: OPO – outward processing.

INNOVATIONS INTRODUCED WITH THE CUSTOMS DECISIONS SYSTEM

Before we focus on outward processing, let us take a look at what is new with the CDS. The purpose of the CDS is to harmonize the requirements and process of application, authorization, and management of authorizations in the EU Members States [1].

CDS is a system with some components of the software from the EU and some components from the EU Member States systems. Thus, it enables economic operators to apply for authorizations with only national validity and also for authorizations with validity in more than one Member State. However, Member States are free to decide to use national systems for national decisions. For example, using EU's CDS you can apply for both types of authorizations in Italy and Lithuania, but in Germany EU's CDS is not used yet for authorizations with only national validity.

Economic operators can access CDS via the EU Trader Portal. Before that, it is important to ensure possession of required EU's and national registrations. For example, to access CDS in Ireland, you will need to have: a valid national

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CUSTOMS PROCEDURES

Inward processing procedure in the EU: the basics

We continue the overview of tax-saving possibilities for economic operators provided in the Union Customs Code (see Outward processing procedure in the EU: the basics). In this article, we focus on the inward processing procedure - how it works, the benefits, what is necessary, and point out some special features. Finally, we look at the recently updated European Commission (EC) Guidance for trade on special procedures.

INTRODUCTION

Economic operators increasingly face the fact that global value chains cover many countries and the goods have to pass through customs borders many times. To avoid delays and to be most cost-efficient, it is fundamental to choose in advance the customs procedure and to prepare accordingly, especially when we talk about materials to be processed in the EU. In such a case, a customs authorisation for inward processing (IPO) could help you to save the import duties and taxes.

WHERE TO START

As explained in the previous article about the outward processing (OPO), to obtain the authorisation you have to access the CDS – Customs Decisions System from the EU Trader portal and identify your company with the EU EORI number and numbers of national registrations, where required. Once this is done you can start filling in all the necessary information to get the authorisation. Note, that it might take up to half a year to get the authorisation (Reg. 952/2013 Art. 22 (3)).

Another option, if you do not plan to use the IPO regularly, is the simplified IPO authorisation. A customs declaration may be considered an application for an authorisation where goods other than those listed in Annex 71-02 (sensitive goods and products, for example, certain ethyl alcohol and spirit products, unmanufactured tobacco, products subject to agricultural export refund, etc.) are to be placed under the IPO procedure (Reg. 2015/2446 Art. 163 (1)(c)).

Let us see what is important to know about the IPO.

FOCUS ON IPO

How it works

Offering products in the markets at a competitive price is the main purpose for an economic operator to obtain an

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CUSTOMS PROCEDURES

Canada: where the EU (or other country) exporter acts as the importer of record

Are you planning to export your goods to Canada? In this article, we overview some of the important points for you to consider: free trade agreements, the federal goods and services tax (the Canadian VAT), and we focus on the situation where the exporter (a non-resident of Canada) acts as an importer of record.

INTRODUCTION: FTAs

Most companies who export goods to Canada transfer title and possession in their home country or in international waters and let their Canadian customers handle customs clearance. The customer acts as the "importer of record", arranging for release by the Canada Border Services Agency (CBSA, the customs authority) and paying any duties and taxes owing.

Most of Canada's trade is with countries that are partners in free trade agreements, principally the United States, Mexico, the European Union, the United Kingdom, Israel, South Korea and, through the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Japan, Singapore, Australia and New Zealand. Where goods being exported from those countries are dutiable under Canada's general MFN tariff schedule, **the exporter's principal contribution is to ascertain whether the goods meet the rules of origin under the free trade agreement**. If they do, the goods may usually be imported duty free or, in certain cases, at a reduced rate.

The producer of goods within a free trade area has most of the knowledge required to support the certification of origin that allows the importer to claim preferential tariff treatment. The producer, or the exporter if that is someone other than the producer, may generally prepare and sign this certification. However, the exporter will often have to rely on information or certification provided by the producer. In some agreements, notably the United States-Mexico-Canada Agreement (USMCA), the importer may also sign the certification. However, the importer may do this only with full knowledge, much of which must come from the producer.

Canada is an ideal place to establish North American operations because its free trade agreements offer access to markets in both the United States and most other developed countries. The United States does not have free trade agreements with the European Union, the United Kingdom, or Japan.

VAT/GST considerations

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NON-TARIFF MEASURES

Vilma Mikelaitienė
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Why is it important to control wood packaging material?

We often do not even think that the wood packaging material (WPM) used in trade to support, strengthen, and transport any production can pose any threat. Due to well-established production technologies, size standards, and the ability to use WPM many times, this product is very convenient to use.

THE CONCEPT OF REGULATED WOOD PACKAGING MATERIAL

All forms of WPM are regulated that may serve as a pathway for pests posing a pest risk mainly to living trees. They cover wood packaging material such as crates, boxes, packing cases, dunnage, pallets, cable drums and spools/reels, which can be present in almost any imported consignment, including consignments that would not normally be subject to phytosanitary inspection.

The following articles are of sufficiently low risk to be not regulated: wood packaging material made entirely from thin wood (6 mm or less in thickness); wood packaging made wholly of processed wood material, such as plywood, particle board; oriented strand board or veneer that has been created using glue, heat or pressure, or a combination thereof; barrels for wine and spirit that have been heated during manufacture; gift boxes for wine, cigars and other commodities made from wood that has been processed and/or manufactured in a way that renders it free of pests; sawdust, wood shavings and wood wool; wood components permanently attached to freight vehicles and containers.

WHY CONTROL IS NEEDED?

So what will happen if we do not control the movement of WPM from third countries to the EU?

It is known that harmful organisms can spread with WPM. The most dangerous of these are the lemon mustache (Anoplophora chinensis), the eastern mustache (Anoplophora glabripennis), the capricorn tribe insects (Monochamus sp.), and the pine mast nematodes they carry (Bursaphelenchus xylophilus).

As an example, we can recall the outbreak of pine stem nematodes in Portugal in 1999, which affected not only the country's landscape and natural environment, but also the timber industry, which suffered significant economic losses, millions of pine trees were destroyed, entire forest areas were felled, and this had a negative impact on the activities of the wood processing industry. There has also been a significant increase in production costs since, following this event, all pinewood must undergo heat treatment before leaving Portuguese territory to prevent the spread of quarantine pests.

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NON-TARIFF MEASURES

EU CE marking: requirements, the responsibility of the importer, actions in case of non-compliance

Arvydas Naina

Head of the Market Surveillance Planning and Risk Assessment Division, State Consumer Rights Protection Authority, Lithuania

Editorial word. We keep hearing stories of products, such as massage chairs, plush toys, 'stuck' in customs and not allowed into the EU market due to incorrect or non-existent CE marking. What should be known to EU importers to prevent such situations? Mr. Arvydas Naina, Head of the Market Surveillance Planning and Risk Assessment Division, State Consumer Rights Protection Authority (SCRPA), Lithuania, kindly agreed to answer related questions.

THE PRODUCT IS PROPERLY MARKED WITH A CE MARKING, WHAT DOES THAT MEAN?

The abbreviation "CE" in French means "Conformité Européenne," i.e., "European Compliance." The CE marking is a key feature (but not proof) of the product's compliance with EU legislation and allows free movement of goods in the EU and European Economic Area, as well as in Turkey, regardless of where in the world the product is manufactured.

The CE marking requirement applies to all products covered by the legislation on such marking and intended for the EU market. Therefore, the CE marking must be affixed to:

- all newly manufactured products covered by the CE marking legislation, both in the Member States and in third countries,
- used products imported from third countries covered by the CE marking legislation,
- modified products covered by the CE marking legislation as new products and modified in such a way as to affect product safety or compliance with the applicable harmonisation legislation.

In some cases, the product is considered to be a finished product in accordance with a specific Union harmonisation legislation [1] and must be CE marked. Then, the same product is included in the composition of another finished product covered by another Union harmonisation legislation on compulsory CE marking. In such cases, more than one CE marking can be found on the product, for example, on the computer. The product is properly marked with a CE marking, what does that mean?

The abbreviation "CE" in French means "Conformité Européenne," i.e., "European Compliance." The CE marking is a key feature (but not proof) of the product's compliance with EU legislation and allows free movement of goods in the EU and European Economic Area, as well as in Turkey, regardless of where in the world the product is manufactured.

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NON-TARIFF MEASURES

Arvydas Naina

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Dangerous product - release for free circulation in the EU not authorised

Editorial word. The website of the State Consumer Rights Protection Authority (SCRPA), Lithuania contains numerous reports of prohibited products to be placed on the market, for example, due to the risk of injury, it is prohibited to place a scooter from China on the market (see picture below). Therefore, importers seeking the smooth release of goods for free circulation need to be certain of the product's compliance with EU safety requirements. Mr. Arvydas Naina, Head of the Market Surveillance Planning and Risk Assessment Division, SCRPA, kindly agreed to answer questions on the topic.

HOW DOES SCRPA COOPERATE WITH CUSTOMS?

Points of entry into the EU play a key role in preventing the entry of non-compliant and unsafe products from third countries. Since all products from third countries enter the EU only through these points, it is the most appropriate place to detain unsafe and non-compliant products before they are released for free circulation and then move freely within the European Union. Therefore, customs authorities have an important role to play in assisting market surveillance authorities in the control of product safety and compliance at the external borders.

Such cooperation is clearly defined in EU legislation. Regulation No 2019/1020 on market surveillance and compliance of products stipulates that the Member States designate the authorities responsible for controlling products entering the Union market.

The customs authorities, as designated authorities, check products that should be placed under the customs procedure for release for free circulation. Customs controls are primarily based on risk analysis carried out using electronic data processing tools. The customs authorities also closely cooperate with other authorities if other checks on the same goods are to be carried out in addition to customs controls (see Article 46 of the Union Customs Code (Regulation 952/2013) 'Risk management and customs controls' and Article 47 'Cooperation between authorities').

The authorities suspend the release for free circulation of a product if the control reveals that:

the product is not accompanied by the documentation required by the Union law applicable to it, or there is a reasonable doubt as to the authenticity, accuracy, or completeness of such documentation;

the product is not marked or labeled in accordance with Union law applicable to it;

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COMPLIANCE

EU-UK trade 2021 – Top 5 customs compliance mistakes and how to avoid them

For businesses trading between the EU and UK, 2021 has been a year of change. The various easements introduced by HMRC with the aim to phase in the changes caused more confusion. With three months left to the year, take a look at the top 5 common mistakes made by businesses this year and read about how you can avoid them.

MISTAKE #1 "THE COMMODITY CODE GIVEN TO ME BY THE SUPPLIER MUST BE CORRECT, SO I SHOULD USE IT ON THE IMPORT DECLARATION."

All goods belong somewhere in the Tariff. The process of allocating a commodity code to the goods is called tariff classification. The commodity code is one of the elements that influences what duty rate is applicable, which in turn determines the amount of customs duties payable. See mistakes #2 and #3 for the other elements that determine the customs duty rate.

The importer is responsible for declaring the correct commodity code upon import. Many businesses see a commodity code stated on a commercial document from a supplier and believes that it must be correct. This is not always the case. When declaring the wrong commodity code upon import, the wrong amount of customs duties could be paid. Therefore, the importer must exercise due diligence by checking the commodity codes using the classification rules for all the goods declared to HMRC.

During post-import customs audits, the incorrect usage of commodity codes as well as random allocation of commodity codes without research would very likely result in penalties on top of a request for the underpaid duties to be paid.

MISTAKE #2 "I'M BUYING GOODS THAT ORIGINATE IN THE EU, SO I'M ENTITLED TO PAY ZERO DUTIES."

One of the most common misconceptions relating to the EU-UK trade agreement was if something was shipped from the EU, then it would be treated as a beneficiary of the agreement. Unfortunately, many businesses realised that what would actually grant them preferential treatment is not where the goods were shipped from, but rather, where the goods originate from. Then another misconception was born.

Businesses erroneously believed that if something originates in the EU, then they are automatically entitled to claim preference and pay zero duties. What they forget is the important procedural requirement of proving that the goods

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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About the author

COUNTRY-SPECIFIC

Ukraine news: August/ September 2021

News in international trade in September at a glance: duty rates on imports from the EU for 2022 were published; new safeguard and anti-dumping measures were established on imports of cement, wires and cables; new safeguard and anti-dumping investigations on imports of PVC profile and PVC windowsill boards, aluminum ladders, seamless cold-drawn and cold-rolled pipes; e-service for submitting an application for AEO authorization.

2022: DUTY RATES ON IMPORTS FROM THE EU

The Ministry of Economy has traditionally published on the Ministry's website information on Ukraine's import duty rates, which will be applied in 2022 to imports of goods originated from the EU.

Started from 2022, the 0% duty rate will apply to the wider range of goods. For example, the goods of textile (clothes, lingerie and shoes) mostly are imported to Ukraine with a 10% duty rate. In 2022 this rate will be 0%.

A similar situation is with livestock and meat, dried/salted fish (Pacific salmon, tilapia), shellfish and seafood. Also, materials and goods made of stone, cement and gypsum products (HS code headings: 6801-6815) will be imported to Ukraine with 0% duty.

NEW SAFEGUARD AND ANTI-DUMPING MEASURES WERE ESTABLISHED

On the 14th of September, the Interdepartmental Commission on International Trade established new safeguard and anti-dumping measures:

final anti-dumping duty regarding the import of incl. clinker cement, and Portland cement, originated from Turkey for 5 years (HS codes: 2523 10 00 00, 2523 21 00 00, 2523 29 00 00). The size of duties varies from 32,64 % to 50,54 % and will come to force in 30 days.

Safeguard duty regarding the import of wires and cables (HS codes: 8544 49 20 00, 8544 49 91 00, 8544 60 10 10, 8544 60 10 98, 8544 60 90 10, 8544 60 90 90, 8544 70 00 10, 8544 70 00 90) regardless the state of origin. The 23,5% duties are established for 3 years for all importers, except some countries (e.g. EFTA states).

The established measures can be appealed to the court in the course of 30 days after the date of official publication. The company can file such a claim to the administrative court, located in Kyiv.

NEW SAFEGUARD AND ANTI-DUMPING INVESTIGATIONS

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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COUNTRY-SPECIFIC

Northern Ireland: a case study on import-export customs formalities

Editorial note.The idea to publish the case study was born during the 7th Authors' Meeting on tips for writing an article and favourite articles (see an overview here). The tip by Jeffrey Snyder was "think about the article ... as if you are hired to explain and provide a piece of advice to a company about the issue". Anthony Buckley shared that his favourite is "actually not a published article, but a case study written by a student at the end of a course on customs". The case study mentioned by Anthony is advice to a company located in Northern Ireland (NI). NI is in a unique situation as it has become part of two customs territories this year - the UK and the EU. With all that in mind, there are various aspects of the case study that may be of interest!

THE QUESTION THAT THE CASE STUDY DEALS WITH

The case study is about a company, which brings in a lot of equipment and manufactures some equipment in Northern Ireland and then exports 95% of its products again. Therefore, what does it need to do to engage in the new customs environment between GB, Northern Ireland and the EU?

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KNOWLEDGE

Favourite article on customs and tips for writing an article

What is your favourite article on customs? What advice would you give to the author writing the first practical (non-academic) article? In this overview, you will learn the views shared during the 7th Authors' Meeting, which took place on 26 August 2021. A summary of tips for writing an article is provided at the end.

JEFFREY L. SNYDER, EDITOR IN CHIEF OF GLOBAL TRADE AND CUSTOMS JOURNAL, USA

Jeffrey, as Editor in Chief of Global Trade and Customs Journal (GTCJ), and as a trade lawyer in Washington, DC is currently working on projects at the intersection between customs and human rights law. US Customs and Border Protection (CBP) is charged with enforcing the US ban on imports made in whole or in part with forced labor. If CBP has reasonable suspicion of the use of forced labor, it can issue what is called a Withhold Release Orders (WROs) – orders by customs headquarters to all the ports to exclude or withhold the release of such items. Legislation is pending to require CBP to provide more guidance to the importing community but for now, there is significant uncertainty around the legal and evidentiary standard that applies to authorize CBP to issue a WRO, what level of evidence is necessary to seek partial or complete lifting of a WRO; these issues have moved to the Court of International Trade (CIT) as importers do battle with CBP over these issues. A full list of CBP's' WROs can be found here. The GTCJ has published a number of articles on this topic, with more to come. This trend is accelerating, as other US agencies join in the effort to address human rights, and to enlist importers in the battle.

Because the GTCJ is not an academic journal, but a practical one, Jeff's advice is to write an article as if you are writing to a client or someone that will recognize your expertise and refer clients to you. Think about the article not as an academic study, but as if you are hired to explain and provide a piece of advice to a company about the issue. Of course, you do not want to give away all your secrets, but it should reflect the way you approach and frame the customs issues, how you think about them, and how you would advise finding a solution. In this way, the reader can see how you work and can start to understand what it might be like to work with you. As you prepare, and again in

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10 TIPS FOR WRITING
A PRACTICAL ARTICLE ON CUSTOMS

This is a summary of tips from "Favourite article on customs and tips for writing an article" published in CCRM Journal, Issue10, 2021

1. **Topic.** Choose a relevant topic and make sure that readers see the relevance of your article to their life rather quickly.
2. **Reader.** Think about your target audience: Whom you are writing for? What do they already know? What are the 1 to 3 key points you want them to take away from your article?
3. **Title.** Think of a catching one!
4. **Main message.** Focus on the main message of the article. It is most important. Every single word should be related to the message! No filling up with nice sidesteps.
5. **Structure.** Structure the article to make it comfortable and easy to read. Introduce what you are going to say, say it, and make a conclusion of what you have said (*"1. say what you are going to say – 2. say it – 3. say what you have said"*).

   The structure also helps the reader follow your train of thought! Tell the reader a 'story' to make the narrative flow: why do you think the topic is important, how do you see the risk of non-compliance, and what would you recommend.
6. **How to write?** Write as if you are hired to explain and provide a piece of advice to a company about an issue. Ask questions and provide solutions. Prioritise recommendations and relate the recommendations directly to the relevant problem/ issue.

   Use short sentences. No complications – the topic is enough for complications! Make a complicated topic approachable to the reader. *For example, imagine how a doctor may advise a patient on their health issues. It is important that the information provided by the doctor is factual and accurate, but they have to think carefully about the terminology they use and the way they explain it, otherwise the patient may not be able to understand the advice they are given.*

   Use practical, real-life examples to elaborate on key points, this additional context can allow the reader to better understand the importance of the message you are trying to get across.
7. **Visuals.** Use diagrams and other visuals assists (e.g., text boxes) that support information.
8. **Footnotes and citations** are fine and often necessary to support your analysis, but becoming overly scholarly, rather than practical, is something you should avoid.
9. **It is your article above all!** Find out what works for you and your style of writing. Share your opinion and be honest. Cooperate – writing an article under the guidance of a senior professional might be very enriching.
10. **Ideas.** Keep the list of ideas that are interesting to you. It will make you even more passionate about all the topics and will keep the desire to share the information with others.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
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About the author

KNOWLEDGE

Acquiring customs competence: what is the process?

The removal of the World's 5th largest economy (the UK) from the EU Single Market faced all European countries with an unprecedented challenge – to rapidly develop business understanding and expert competence in customs, trade and international regulation – in an environment where the progressive liberalisation of trade had effectively depleted customs expertise over a period of 50 years.

Brexit also presents us with a unique opportunity to address some key questions in training:

- With an immensely complex and ever-changing topic like customs, how should training be structured – what is the key framework, theory or experience?
- Is an apprenticeship essential?
- What levels of knowledge are needed for the entrepreneur, the manager, the advisor, the declarant, the broker?

When the UK voted to leave the EU, the authorities in all of the "front-line" countries dealing most heavily with the UK (and of course in the UK itself) began the process of restoring customs expertise, modeling what the likely impacts would be, scaling up their customs systems and capacity, and preparing their business communities for the change. The questions flowing from business were of course coloured by the (very loud!) political debate, and generally were:

- What is customs?
- How will it affect my business?
- How can I continue as if nothing changes?
- Surely, we can find an easy/cheap way of "doing customs"?
- Surely Brexit won't really happen?

The most effective approach, directed mainly at the owners and managers of trading businesses, proved to be to start at the very beginning, defining why customs exist, the reasons why international trade can not happen without it, and some key customs concepts – clearance before entry, proof of status, the accuracy of declarations and records.

As the sobering reality began to be appreciated, practical problems were raised, for example, how does one work a fast turnaround on Ro-Ro ferries with customs checking? What proportion of consignments needs to be checked? What is a "consignment" and what documents does it need? Can declarations be done by the business or do I need

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CUSTOMSDIGITAL

NEW JOURNAL
on www.customsclearance.net

Dear reader,

Welcome to the first edition of Customsdigital.

Our goal is to enable added value through simple language and explanation of digitalization in customs. We want to bring a digital mindset to the customs world. To this end, I conducted an interview together with Christian Schmidt ("Digital Mindset - what does that mean? What does a customs expert need for it?"). He is a customs manager at Adient and oversees innovation projects that deal with blockchain, among other things.

I would also like to cordially invite you to pass on topic requests and ideas to us so that we continue to publish the right topics and articles for you in our development.

In future issues, we will still report on the digitalization of our neighboring countries, explain technologies and look at what the EU is planning in the future in terms of customs and digitalization. From our projects at Grenzlotsen, we will continue to write about our own experiences and challenges to share our knowledge and thus make customs fit for digitization.

Best regards,
Janine Lampprecht

CONTENT

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ABOUT THE JOURNAL

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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.

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