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ISSUE 11 ONLINE

# CUSTOMS COMPLIANCE & RISK MANAGEMENT

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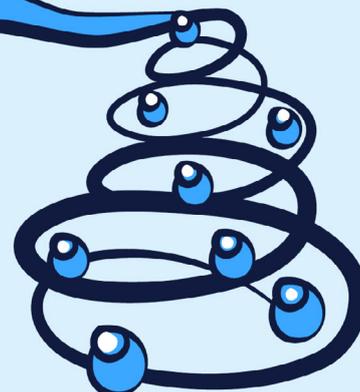
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Editorial

Dear Readers,

On behalf of my colleagues on the Board of Editors, I would like to extend a welcome to our 11<sup>th</sup> edition.

There is an apocryphal Chinese curse that is often quoted in the English language media – “may you live in interesting times”. Well, perhaps this curse was aimed at mankind in 2021! Though COVID-19 and its troublesome variants continue to provide us with a lot of ‘interesting times’, it is difficult to take one’s eyes off the world of international trade right now given there is so much happening.

From my perspective as a customs consultant living in Ireland this is something I can definitely attest to. On the one hand, we are currently confronted by the apparent impasse of the EU and the UK regarding the Northern Ireland Protocol which by all accounts could lead to the suspension of the EU-UK trade agreement, but on the

other hand, we see the EU and the USA burying the hatchet on protracted disputes that caused much economic disruption on both sides of the Atlantic ocean. As if these issues were not interesting enough, the past few months have seen the UK issue the latest version of their Border Operating Model. We have seen a significant change to the Pan-Euro-Med convention. The actions of the regime in Belarus are having horrible consequences for thousands of desperate migrants; the EU imposes economic sanctions. And that’s just scratching the surface in Europe!

On behalf of my colleagues on the Editorial Board, I would like to express my gratitude to all the authors who contributed to this edition of the Customs Compliance and Risk Management Journal. This edition has a strong focus on getting the basics of your customs compliance right. Jessica Yang and Toby Spink have presented two articles aimed at those companies who have hitherto traded inside the EU’s Customs Union but as a result of Brexit, are confronted by new compliance requirements. Milda Stravinskė and Virginija Guobytė respectively deal with the fundamental issue of valuation in their articles. Dr Gediminas Valantiejus provides in-depth background and an examination of ECJ case C-706/20 – which really is a ‘must read’ for those interested in Customs Classification. Luis Gomez introduces the exciting world of Artificial Intelligence as applied to Customs Classification. Sam Draginich gives us a timely explanation about the pitfalls to avoid when using Preferential Trade Agreements. Also on the topic of origin, Zofija Pečiukonienė deals with the recent legislative changes regarding how trade from Oversea Countries and Territories (OTCs) is dealt with. Enrika Naujoke, Peter Mitchell and Momchil Antov shine a light on the activities of the Customs Broker and what this key player in supply chains can reasonably be expected to do. Kieran Gleeson introduces the topic of GVMS which is of crucial importance to those importing to or exporting from the UK by RoRo. In a further article, Momchil describes the role of a Customs representative in Bulgaria. Lourdes Catrain and Elena Theodoropoulou provide a very useful synopsis of the key elements from the recast of the EU dual-use Regulation. This is a critically important topic for EU exporters. Patrick Nieveler talks about how INFs – effectively the means of communication between the various EU national customs authorities really needs to be updated so as to accommodate more modern automated business practices to further unleash the potential of the customs union. Bhupendra Singh provides an interesting article on how Returned Goods Relief is administered in India. As usual, we are presented with the indispensable EU law updates. Similarly, Iryna Pavlenko and Oleg Kyryievskiy present updates from Ukraine. On the trade policy side, Andrius Košel provides a very pertinent article regarding the sanctions that the EU has applied to Belarus.

Finally, in a real coup for our publication, Jessica Yang interviews Timothy Lyons, author of one of the Bibles of Customs compliance for those of us living in the EU, i.e. EU Customs Law (published by Oxford EU Law Library). Do not miss the opportunity to meet the author at the [Books on Customs webinar!](#)

As an editorial group, we are very proud of the network we are part of. We would like to nurture the growth of our community, promote the sharing of expertise and encourage our readership to comment on articles they like. Furthermore, we are very much open to constructive comments!

On behalf of my colleagues on the editorial board, we hope you enjoy this edition. We wish you all a happy Christmas and all the very best for 2022.

Dr. David Savage



Photo by Kristaps Grundsteins on Unsplash

EU LAW

## EU law news: October/ November 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, the World Customs Organization and the World Trade Organization. Updated weekly!

News in week 47 (22-28 Nov): CJEU ruling concerning the tariff classification of mastectomy bras; autonomous duties suspended on imports of certain industrial products into the Canary Islands; export authorisation for the exports of covid vaccines will be not required, the goods will be subject to export surveillance; PEM transitional rules of origin applicable between the EU and the Republic of Moldova; the 2022 edition of the Harmonized System Nomenclature is available online.

### OFFICIAL JOURNAL

#### Tariff classification

22.11.2021 [Case C-706/20](#): request for a preliminary ruling *Amoena Ltd v Commissioners for Her Majesty's Revenue and Customs*. Dispute concerning the tariff classification of **mastectomy bras** under headings 6212 and 9021 of the Combined Nomenclature. The case is overviewed and commented in the article [Separate goods or accessories for tariff classification purposes: assessments by the Court of Justice of the EU](#) by Dr. Gediminas Valantiejus.

18.11.2021 C 4661 [Explanatory Notes](#) to the Combined Nomenclature of the European Union concerning 6307 90 10 Knitted or crocheted and 6307 90 91 Of felt and 6307 90 98 Other: these subheadings include articles of **textile materials in the shape of baskets or dens for animals** or similar articles designed for animals to rest inside or upon. To 9404 the following text is added: this heading does not include the articles.

18.11.2021 C 4661 [Explanatory Notes](#) to the Combined Nomenclature of the European Union concerning 8714 94 20 **brakes**.

29.10.2021 L 385 Commission Implementing Regulation (EU) 2021/1832 of 12 October 2021

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CASE LAW

## Separate goods or accessories for tariff classification purposes: assessments by the CJEU

The Court of Justice of the EU (CJEU), while interpreting the provisions of the Combined Nomenclature (CN), has repeatedly emphasized that the main criteria determining the tariff classification of goods are normally understood as the objective characteristics and properties of those goods listed in the particular CN heading and specific CN section or chapter notes. However, goods with independent characteristics and a clear purpose of use, cannot be considered as accessories of other related goods and must be classified as separate (independent) goods. For this purpose, the article discusses the recent case law of the CJEU, which allows to distinguish between separate goods or accessories of goods for the purposes of tariff classification and complements the previous clarifications on these issues.

### FACTS AND LEGAL BACKGROUND OF THE CASE C-706/20 OF THE CJEU

**On the 3rd of September 2021, the CJEU adopted the order in case C-706/20, Amoena**, in which it re-examined the issue of differences in the tariff classification of separate goods or accessories of goods, and **further clarified the previous provisions in the decision of the CJEU, adopted on 19th of December 2019, in case C-677/18, Amoena**, i. e. the Court has repeatedly ruled on the interpretation of the content of its previous decision. For this reason, it is necessary to mention the essential factual and legal circumstances of this, prior, decision of the CJEU (in 2019), which led to the subsequent new Court's order in 2021 and the re-examination of the case.

It should be considered that in case C-677/18, Amoena, the CJEU examined the legal and factual situation in which Amoena, a company established in the United Kingdom, imported post-mastectomy bras for women who had had one or both breasts surgically removed. They were designed to hold silicone breast prostheses and included pockets on the left and right to hold the prostheses firmly. Other features that differentiate post-mastectomy bras from normal ones are the wide padded braces attached above the breasts in the middle, which help to maintain the weight of the prosthesis and prevent excessive tension associated with neck and shoulder problems for operated women.

Following the importation of a consignment of mastectomy bras, the company (Amoena) classified them in the CN heading 9021 (artificial parts of the body) at a customs duty rate of 0%. However, the tax authority classified those goods in subheading 6212 10 90 of the CN (brassières, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other), in accordance with EU Implementing Regulation

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A COFFEE BREAK WITH...

## A coffee break with... Timothy Lyons

**THIS IS A "COFFEE BREAK" ARTICLE IN OUR NEW SERIES FEATURING THOUGHT LEADERS IN THE FIELD OF CUSTOMS.**

I'm delighted to speaking with Timothy Lyons, a barrister and Queen's Counsel (England and Wales), a barrister in the Republic of Ireland and a member of the Bar of Brussels. Those studying EU customs law as well as customs practitioners will most likely know Timothy through his book, EU Customs Law, published by the Oxford EU Law Library.

**Jessica:** Timothy, thank you for making time to create this coffee break article for our readers. You are well known to those of us working in the field of customs in the UK and the EU, but for the people who have not had the pleasure of meeting you yet, please could you describe what you do?

**Timothy:** It's a great pleasure for me to contribute. I am instructed by professionals around the EU to give opinions on law - customs, trade and tax law especially, to draft documents such as letters to customs and tax authorities, and to represent clients before courts and tribunals. Then, of course, I write when I have the time.

**Jessica:** I'm often told that customs is a niche field. Some people choose to be a part of it, others accidentally end up in this field. What made you decide to specialise in customs and trade law?

**Timothy:** Quite a long time ago, an Advocate General in the CJEU asked me to write a book on EU customs law. I accepted the offer and since that time customs and trade have been a very important part of my practice. It's an area that requires one to deal with EU law and the law of Member States as well as, now, UK law, but to do so in the context of global trade and international relations. That is a very interesting context in which to work.

**Jessica:** Let's talk about your book, EU Customs Law. It is very extensive and many of us working in customs see it as an indispensable tool. How did you find time to write this book? And are you already preparing for the 4th edition?

**Timothy:** I'm not sure how I found the time to write the book. It seemed to involve working through the night so that my clients were kept happy during the day. As for the 4th edition, yes that will appear in due course. There is a lot of work to do. The new edition will deal with Brexit and the EU/UK TCA, and it will have to take account of new developments such as the Carbon Border Adjustment Mechanism as well. I am also going to add in more material on EU integration and the customs union and extend the coverage of economics.

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OVERVIEWS AND COMMENTS

# The fall and partial rise of EU-US trading relations

In spite of recent challenges, the EU-US trading relationship is underpinned by deeply integrated economies. The European Commission website describes this relationship as defining world trade and contributing as much as 40% to world GDP.

Despite both the EU and the USA being modern developed economies, competition for global market share in addition societal changes brought about by an increase in globalisation has influenced trade policy. This has been particularly evident during the Trump presidency.

This article tracks this difficult spell that we look to be emerging from and looks forward to what is hoped will be a détente in trade tensions between the two trading powerhouses on either side of the Atlantic Ocean.

## LARGE AIRCRAFT CASE

For the past 15 years, the EU and the USA have been in dispute over the topic of government aid being given to Airbus and Boeing respectively.

The origins of the dispute was an allegation made by the US that a number of countries i.e. France, Germany, Spain and the United Kingdom were providing unfair state assistance to Airbus. At the same time Airbus also alleged that US state and federal Government subsidies channelled mostly through NASA and the Department for Defence was unfairly benefitting the American aviation company.

Initial efforts to defuse this issue failed and the issue became more acrimonious.

In May 2005, both the USA and the EU filed cases against the other at the WTO.

In March and September of 2010, the WTO found that both the EU and the USA had been providing unfair government assistance to Airbus and Boeing respectively.

In a series of rulings, the WTO ruled that both the EU and the US has been unfairly supporting Airbus and Boeing and ordered the Government subsidies to be repaid.

By 2012 this dispute was still rumbling on. Both the EU and the US accused the other of not complying with the WTO rulings. The EU escalated matters by requesting the WTO to approve the implementation of 12 billion \$US of punitive

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## OVERVIEWS AND COMMENTS

# EU overseas countries and territories: developments after Brexit

Editorial word. Customs legislation applies in a customs territory, so knowledge and understanding of territories are significant. They are of various types, such as the customs territory of the Union, special fiscal territories, third countries, as well as overseas countries and territories (OCTs). The territories change and the most recent example is Brexit: when the UK's customs territory was established, for example, Northern Ireland became part of two customs territories. The OCTs were impacted by Brexit as well. The EU used the opportunity to review relations with OCTs and adopted new legislation. Mrs. Zofija Pečiukonienė kindly agreed to overview the developments.

### NEW LEGISLATION: TO WHICH OCTs IT APPLIES?

The [Council Decision \(EU\) 2021/1764](#) of 5 October 2021 on the association of the OCTs with the EU including relations between the EU on the one hand, and Greenland and the Kingdom of Denmark on the other (Decision) was published in the OJ L 355/6 on 7 October 2021 and applies, with retroactive effect, from 1 January 2021.

The decision **applies to 13 OCTs** listed in Annex II to the Treaty on the Functioning of the European Union (TFEU). These are Greenland, New Caledonia and Dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Saint Pierre and Miquelon, Saint-Barthélemy, Aruba, Netherlands Antilles: Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten.

After the United Kingdom of Great Britain and Northern Ireland left the European Union, the association of OCTs **does not apply to 12 territories of the UK** listed in Annex II to the TFEU. These include Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands and Bermuda.

### GENERAL INFORMATION ON THE OCTs

Overseas countries and territories are not part of the EU single market and the customs territory. Therefore, they must comply with the obligations imposed on third countries in relation to trade, in particular rules of origin, human health and plant protection standards.

Article 355 of the Lisbon Treaty allows the European Council, at the initiative of the Member State concerned, to change the status of certain OCTs (i.e., the outermost regions or OCTs) of France, Denmark, or the Netherlands without changing the treaties. For example, until the end of 2011, Saint Barthélemy was the outermost region of the

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OVERVIEWS AND COMMENTS

## Compendium of customs valuation 2021

A new edition of the European Commission's Compendium of customs valuation has been published. The main purpose of the Compendium is to provide support to the customs administrations of the Member States to ensure the uniform and correct application of the principles and general provisions of customs valuation. On the other hand, the business obligation is a correct declaration of the customs value of goods, so this document also benefits the business community. Let's take a brief look at how the need for such a document has evolved and what is presented in the new edition of it.

### THE NEED FOR FAIR, UNIFORM, AND NEUTRAL CUSTOMS VALUATION AND REGULATORY DEVELOPMENTS

The value of goods is considered to be one of the key aspects of commercial relationships. It may sound paradoxical - although desire, need, availability and resources are considered to be the most important criteria for the value of an item (commodity), they are probably easier to understand from a philosophical point of view, but not from a legal point of view.

In international trade, the customs value and the process of determining it are used to calculate the customs duty payable on the imported goods. Although customs duties are existing for thousands of years, the need for a fair, uniform, and neutral customs valuation became particularly apparent as the world economies recovered rapidly from the Second World War, when the idea of creating a globally standardized system for valuing goods that would help to ensure a level playing field in international trade came naturally.

It should be noted that the foundations of the global customs valuation system took a really long time to develop and improve, almost 50 years before the adoption of the main instrument at the international level - the World Trade Organisation (WTO) Customs Valuation Agreement (Agreement). Rules established in the Agreement must be integrated into the national customs law of each WTO contracting party. As it is known, the provisions of the Agreement also have been implemented in the relevant customs legislation of the European Union (EU).

### NEW ASPECTS OF THE CONTENT AND FORM OF COMMERCIAL RELATIONS - REGULATORY MEASURES

In recent decades, international commercial relations have become fundamentally new in terms of content and form,

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OVERVIEWS AND COMMENTS

# Discounts, flash sales and customs valuation

Various price discounts are often applied in trade in goods. Where the transaction is international and provisions of customs law apply, it is necessary to determine the customs value of the goods and to assess the acceptability of the discounts.

First of all, what is a discount? **A discount is a reduction in the price of goods or services applied to certain customers in certain circumstances and at certain times.** The discount is usually reflected in the invoice, but the terms of its application can also be discussed in the terms of the contract. The discount can be expressed as a separate amount or as a percentage of the price in the price list.

The purpose of price reduction by applying a discount may be to attract new customers, to gain their trust, and to promote further trade: setting attractive prices increases the volume of trade, which allows reducing sales price, thus facilitating and encouraging further sales.

Discounts can be of a certain nature - seasonal, instant, quantity, faster payment, etc. With the growth in e-commerce, instant discounts and instant sales, known as flash sales, have become particularly popular - these are promotional sales aimed at attracting potential customers using greatly reduced prices for a limited period of time.

The legal provisions (Article 130 of the Implementing Regulation of the Union Customs Code) on the application of discounts provide that, for the purposes of determining the customs value, discounts shall be taken into account if, at the time of acceptance of the customs declaration, the sales contract provides for their application and their amount.

Thus, the **discount must relate to the imported goods and, at the time of acceptance of the declaration by the customs authorities, the contractual right to receive such a discount must be in force.** For example, if the discount is cumulative or there is another special or retrospective discount that relates to previous imports and goods previously purchased, such price reduction will not be considered as an acceptable discount for customs valuation purposes.

**Discount for early payment shall be taken into account**, even if the price has not actually been paid at the time of acceptance of the customs declaration. **Discounts arising from amendments to the contract subsequent to the time of acceptance of the customs declaration shall not be taken into account.**

The question may arise as to whether it is determined which maximum discount is still acceptable to the customs

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## OVERVIEWS AND COMMENTS

# Import taxes administered by customs: a short overview

Collection of import taxes is one of the main tasks of customs. What are the import taxes in various countries? What is the basis of their calculation? In this article, we overview the taxes in Brazil, the EU, and Ukraine. The provided examples of imported goods reveal that, in some cases, the amount of import taxes might exceed the value of the goods themselves. Therefore, the advice for importers is to check the amounts of import duties payable before purchasing goods abroad.

### THÁLIS ANDRADE, BRAZIL

When importing goods into Brazil, the import taxes must be declared to customs in the box "tributos" (taxes) of the customs declaration. In Brazil, Customs administer 7 import taxes and 2 charges related to services rendered:

1. the **Import tariff** generally depends on the Common External Tariff rate based upon the 8 digit-code of Common Nomenclature of Mercosur. In all cases, it is assessed as a percentage figure based on the customs value of the goods (ad valorem);
2. the **IPI-Importation** (tax on imported industrialized goods) is assessed as a percentage figure on the customs value of the goods plus the import tariff amount. The IPI tax is only applied to goods that have faced any kind of industrial processing, and, in many cases, it has a higher rate for superfluous goods or harmful to health, similar to excise duties.
3. the **PIS/PASEP-Importation** is assessed as a percentage figure on the customs value, and the revenues are aimed at the federal pension system.
4. the **COFINS-Importation** is assessed as a percentage figure on the customs value and the revenues are aimed at the federal pension system.
5. the **CIDE-Importation** is a federal tax charged over imported fuel. This tax is assessed as a volume (cubic meters) of fuel.
6. the **AFRMM** (additional over the renewal of merchant navy) is a federal tax levied only on importers who have used maritime transport for their imports. Therefore, this tax is assessed as a percentage based on the international freight cost.
7. the TUM (the fee due to the use of the system for paying the AFRMM) is a fixed fee incurred by importers who

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## Three pitfalls to avoid in 2022 when moving goods between the EU and the UK

It has almost been a year since the end of the Brexit transition period, meaning most businesses will have started settling comfortably into their new routine. However, it is important to remember that the new trading relationship between the UK and EU is still evolving and 2022 is the host of some big changes.

For example, certain easements that were introduced to facilitate trade will expire, multiple new systems will be introduced, and sanitary and phytosanitary controls will commence for the first time.

So, if you think your business has mastered trading across the new border, then think again. In this article, we outline three pitfalls that could disrupt your supply chain and what you can do to avoid them.

### **#1 NOT COMMUNICATING WITH YOUR BUSINESS PARTNERS WHEN USING GVMS FOR UK IMPORTS.**

#### *What's happening?*

From January 2022, goods arriving in the UK via certain ports (mostly Ro-Ro ports such as Dover) will have to be declared to HMRC using a new government system called the Goods Vehicle Movement Service (GVMS).

GVMS allows the haulier to present one reference at the frontier to prove that the goods have pre-logged declarations (i.e., customs declarations submitted before the journey begins). Whilst the goods make their way to the UK, various risk-based analysis will be carried out. If HMRC wish to inspect a shipment, the driver will be informed to travel to an inspection site.

If all goes well, goods will have been successfully cleared in HMRC's system by the time they arrive in the UK. However, what happens when things don't go smoothly? What if the driver is instructed to travel to an inspection site but does not comply? Who is responsible?

#### *What to do to prepare?*

It is crucial that a business communicates with its partners in the supply chain so that goods are moved in a compliant manner. Given the lack of clarity in the UK's customs legislation on matters relating to GVMS, it is also in everyone's interest to be clear in commercial arrangements who is responsible for when things go wrong. As always, having

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## Customs compliance: Are you doing the right thing? Try these quizzes today!

When buying or selling goods across a border, it is considered good business practice to understand the rules applied on the other side of the border. This is because the decisions you make when selling the goods can have a significant influence over the decisions and responsibilities of the business buying them on the other side.

Whilst nobody wants to pay for the mistakes of another party, Customs authorities will often deem the importer liable for mistakes made by both the buyer or the seller. In our previous articles, we discussed how mistakes can be identified and additional costs applied years after the import has happened. These mistakes are sometimes a result of something the exporter has (or has not) done.

This article contains two quizzes based on typical scenarios we have seen this year. If these conversations appear familiar to you, try to spot the mistakes and take note of the tips we have provided at the end of the article, on best practices to avoid them.

### **QUIZ 1 – BACKGROUND: UK SUPPLIER OF GOODS SOURCED FROM OUTSIDE THE UK IS SELLING TO A CUSTOMER IN THE EU.**

- EU customer's logistics manager: *Hi, our broker says we don't need to pay any duty when we buy UK goods. Apparently, we just need a statement on the invoice or some other commercial document from you. Can you reissue the invoice with the statement included? See attached the wording the broker gave us.*
- UK supplier's sales manager: *Sure! Let me get our finance team to reissue the invoice and get it to you asap.*
- EU customer's logistics manager: *Thanks! The duty rate is high on this product, we are keen to avoid having to pay this.*
- UK supplier's sales manager: *No problem, we'll stick the statement on the invoice to help you get preferential treatment! The goods are already sitting in our warehouse, so we'll state they are of UK preferential origin.*

A week later...

- UK supplier's sales representative: *Here is the updated invoice. We'll include this statement on all the invoices from now. Hope it helps!*

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COMPLIANCE

## The pitfalls of free trade agreements – claiming back duty paid due to error

The basic principle behind free trade agreements is simple; two or more countries agree to allow originating goods to trade between partners at zero or reduced duty rates. On the surface this concept is straight forward; the mechanics, however, are a different story. Myriad steps need to be adhered to for a free trade agreement to function as intended. Failure to adhere to even one of these steps can result in the full duty being owed upon import.

Let's examine one specific pitfall importers/exports frequently fall victim to when trading under the auspices of a free trade agreement. In this scenario **the responsibility lies on the exporting party for qualifying each line item for the relevant free trade agreement.** The exporter reviews the relevant rules of origin for each tariff heading, confirms they qualify, draws up the necessary documents and off the shipment goes. Job done, supposedly.

Upon arrival in its destination the customs officials review the documentation and find a flaw. This flaw could be as egregious as blatantly omitting the 'Preferential Origin' status on the invoice or as innocuous as the descriptions on the entry summary differing by a couple characters compared to that of the invoice. Either way, the result is the importer must pay the full duty rate as opposed to the reduced (or zero) rate prescribed under the free trade agreement. In many countries this can be more than 20%. With a lower value shipment this may be nuisance; with a larger shipment this added cost could put a business in jeopardy.

Generally, the way this event plays out is the importing party (specifically the importer of record) must pay the full duty rate before the goods can clear customs. The local customs authority normally provides a timeframe by which corrected documentation can be furnished. Upon receipt of said documentation, assuming the reviewing official deems it acceptable, a refund of the differential between the duty rate paid and duty rate owed per the free trade agreement will be disbursed. The caveats are 1) **in many countries whether the documentation is acceptable is subject to the whims of the reviewing official(s)** 2) **the timeframe in which the overpaid duty is refunded could be days, weeks, months or even over a year.** This all depends on the practices of the importing country and the officials involved.

Let's look at a hypothetical example of said scenario:

AM Smith Fine Mayonnaise Co. of France sends EUR 150,000 worth of its mayonnaise to a wholesaler in Madagascar. AM Smith proactively ensures that their product adheres to the change in tariff heading rules outlined in the EU-Eastern and Southern Africa (ESA) agreement. At the last minute an AM Smith sales representative adds five addi

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

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# Why should importers care to provide quality information to their brokers?

Many importers assume that once they hire a broker, they do not need to take time to understand customs and trade concepts. That can be a risky approach. In this article, we discuss how customs brokers operate in Canada and the EU; and why importers should care to provide quality information to their brokers. IT platform Trade Defense of Ukraine

## COMPLEX AND INFLEXIBLE LEGAL RULES

**Peter Mitchell, Canada:** The customs process is intimidating for most importers. The rules are complex and inflexible, and the entry documents appear undecipherable.

**Enrika Naujoke, Lithuania, EU:** This might be the reason why the services of customs brokers are so popular. In Lithuania, around 85% of import and export declarations are lodged by customs brokers. In Bulgaria, as I learned from the recent article written by Momchil ([“The role and importance of customs representation in Bulgaria”](#)), the number is even higher.

**Momchil Antov, Bulgaria, EU:** Indeed, despite the easy way of submitting customs documents through information systems, the peculiarities of customs procedures require quite specific knowledge.

## RISK CANNOT BE OUTSOURCED

**Peter:** Many importers assume that once they hire a broker, they do not need to take time to understand customs and trade concepts. That can be a risky approach. Customs brokers have much knowledge. However, they may put it to good use only if importers provide them with complete and accurate information. When importers do not do that, the goods may be misclassified, over- or under-valued, or declared the wrong type or country of origin. Delays in release and/or significant duty and penalty costs may occur.

**Enrika:** In the EU, there are two types of customs representation: brokers act as direct or indirect representatives. Importers should know that usually, the representation is direct. It means that the importer is the declarant, i.e., he is responsible for the correctness of data provided to customs. That is right, as brokers possess only the information provided to them by the customers, they do not have access to importers' internal data to check that information. However, I do agree that importers tend to ignore this fact, and maybe, therefore, the numbers in the annual report of Lithuanian customs are as follows: in 2020, customs took samples of 1128 goods and found that 557 (49%) of them were misclassified, and, in most cases, customs duties were underpaid. The financial risk of the importer becomes even higher when the post-clearance audit takes place after several years.

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## The most unexpected customs risk that businesses faced

Is it possible for the business to consider all the possible customs-related risks? The answer to the poll question was unambiguous. All participants of the 8th Authors' Meeting on 21.10.2021 said... NO! And shared various examples of unexpected customs-related risk, talked about sources of the risk and its management.

### LINA PETRONIENĖ, CUSTOMS AFFAIRS EXPERT, DHL LITHUANIA

The EU is strengthening its **export control**, new Regulation (EU) 2021/821 entered into force in September. There is a significant risk for logistics companies, which take care of export customs formalities and transportation of goods out of the EU. The risk stems from the definition 'exporter': even if there is no contract or authorization, "exporter means the person who has the power to determine the sending of the items out of the customs territory of the Union".

DHL handles thousands of export declarations on a daily basis, and the processes are very dynamic. It is a challenge to manage such risk, for instance, to analyze whether ball bearings are meant for sports equipment and not for military purposes. In Lina's opinion, the practice for declaring such goods for export should change and exporters, who are exporting goods of more than 1000 Eur value or more than 1000 kg, should take care of export clearance themselves, as they are the ones who know all the details about their goods and the buyers of those goods.

### HRISTINA HRISTOVA, HEAD OF THE CUSTOMS DEPARTMENT, DHL BULGARIA

Hristina explained, continuing the topic of **dual-use items**, that in Bulgaria, in the case the tariff code requires additional information regarding the dual-use of an item, it is a must to present to customs a written declaration signed personally by the exporter where it is stated that the goods are not dual-use (if it is the case). However, it does not reduce the risk of the logistics company because the risk is shared.

As a "hot" risk, she shared a recent case when DHL employees captured many shipments of clothes and accessories from one exporter. All the goods were breaching the **intellectual property** rights of well-known fashion companies. Customs seized these goods. Such cases

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**Kieran Gleeson**

CEO, Custran, Ireland

[About the author](#)

DIGITALISATION

## UK and EU hauliers: get ready for GVMS 2022

Brexit for EU and UK hauliers transporting goods in and out of the UK will really begin on January 1st 2022. Up until now goods imported or exported to and from the UK may have moved through the ports in some cases without the correct customs declarations. This was due to the lack of UK preparedness around Brexit as a whole. The Goods Vehicle Movement System (GVMS) will ensure this practice stops.

From January 2022 all declarations that should be made including UK import or export and transit declarations and GB Safety and Security Declarations (GB S&S) will have to be made and included in GVMS before a valid Goods Movement Number (GMR) can be created and a RoRo shipment can board a ferry in or out of GB.

### WHAT IS GVMS

GVMS is a pre-boarding notification system. HMRC are introducing GVMS for all RoRo traffic going in and out of the GB. When fully implemented this means that all import or export declarations would need to be included in the GVMS in a type of digital envelope before a truck can board the ferry. Once MRNs are added to the GVMS a single reference number the GMR is created for that shipment. This GMR must be presented by the driver at the port before boarding the vessel. Proof of customs origin and admissible evidence: how is it assessed in Lithuania?

### WHY GVMS

GVMS enables declaration references to be linked together so that the person physically moving the goods only has to present one single reference number (GMR) at the port. The system allows the linking of the movement of the goods to declarations, enabling the automatic arrival/departure of goods within HMRC systems. GVMS automates the Office of Transit function, marking the entry of goods into NI or GB. Also, it allows notification of the risk assessment of declarations in HMRC systems to be sent to the person in control of the goods by the time they physically arrive in NI or GB.

### WHO NEEDS TO REGISTER FOR GVMS

HMRC has stated that all UK haulage companies and EU haulage companies that transport goods in and out of the UK must register for GVMS.

### HOW TO REGISTER FOR GVMS

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DIGITALISATION

# INF STP: electronic exchange of information for inward and outward processing in the EU

On the 1st of June 2020, the EU Commission implemented the INF Specific Trader Portal (STP) which should ensure the electronic data exchange between the customs authorities involved in the customs procedures of inward and outward processing. This article provides an overview of what traders need to consider and which functions are missing in the current version of INF STP.

**WHAT IS INF AND IN WHICH CASES INF IS NEEDED?**

Under the Community Customs Code (CCC) and its implementation provisions various Information Sheets (INF) had been used, especially for triangulation procedures of Inward Processing (IP) and Outward Processing (OP). For inward processing, especially the INF1 and INF5 had been in place. For outward processing, the INF2 was the relevant document. The purpose of the Information Sheets was and is still today, to share the relevant Information for customs supervision in cases where the customs office of placement is different from the customs office of discharge (triangulation method). Under CCC especially information necessary for the calculation of the customs debt was part of the INFs.

**LEGAL BASIS FOR INF UNDER THE UNION CUSTOMS CODE (UCC)**

With the implementation of the UCC in 2016, it became necessary to replace the paper-based INF documents with an electronic system. Due to that, the INF STP had been implemented on the 1st of June 2020.

Additionally, the UCC implemented the use of equivalent goods for the outward processing procedure. Under CCC the use of equivalent goods was a specialty only for inward processing. Due to that, the UCC Delegated Regulation (UCC-DA) defines respectively two different types of inward and outward procedures:

- OP IM/EX means the prior import of processed products obtained from equivalent goods under outward processing before the export of the goods they are replacing.
- OP EX/IM means the export of Union goods under outward processing before the import of processed products, which is the standard form of the OP procedure.
- IP EX/IM means the prior export of processed products obtained from equivalent goods under inward processing before the import of the goods they are replacing.
- IP IM/EX means the import of non-Union goods under inward processing before the export of processed products.
- OP EX/IM means the export of Union goods under outward processing before the import of processed products.

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**Luis Gomez**

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# Automatic classification of goods with machine learning

Machine Learning is an exciting new field, and while it carries risks (what if the computer makes the wrong decision), it has the potential to free up a significant amount of human resources, as we pass decisions and solutions over to computers on our behalf. Specifically, in the field of trade compliance and supply chain management, machine learning offers tremendous value in several key areas. One whose time has come, is the area of product classification.

## BACKGROUND

Artificial Intelligence (AI) is a term that's been used for decades. As far back as the 1950's science fiction shows frequently referred to it, even though it was little more than a concept at the time. Years later, IBM challenged the world's greatest chess player to a match against its computer's artificial intelligence. An impressive leap forward, but hardly the stuff of science fiction novels or movies where robots take control of mankind! Thankfully we are not yet the subjects of a cruel robot army, but AI has come a long way.

## WHY GVMS

GVMS enables declaration references to be linked together so that the person physically moving the goods only has to present one single reference number (GMR) at the port. The system allows the linking of the movement of the goods to declarations, enabling the automatic arrival/departure of goods within HMRC systems. GVMS automates the Office of Transit function, marking the entry of goods into NI or GB. Also, it allows notification of the risk assessment of declarations in HMRC systems to be sent to the person in control of the goods by the time they physically arrive in NI or GB.

A related term used lately is Machine Learning. There is confusion over whether machine learning is the same as AI, a separate phenomenon, or a "subset" of AI. For our purposes, we refer to machine learning when referring to a computer system that will learn from experience and make predictions based on that learning.

## WHY IS MACHINE LEARNING NEEDED FOR PRODUCT CLASSIFICATION?

Before we continue, we should clarify what we mean by "Product Classification". In the fields of supply chain management and trade compliance, goods typically need to be classified according to one or more classification schemes. For example, in the United States, to determine the landed cost of an imported, purchased good, you will need the tariff classification for customs purposes, or Harmonized Tariff Classification (HTS). Similarly, when

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## NON-TARIFF MEASURES

# New EU rules on dual-use items: what do they mean for EU exporters?

On 9 September 2021, the revised EU rules on exports of dual-use items set out in Regulation (EU) 2021/821 (“**Recast Regulation**”) came into force. While the Recast Regulation does not fundamentally change the EU rules underpinning dual-use exports, it brings new elements in the EU regime, aiming to make it apt to respond to modern challenges. This short article provides an overview of the most important changes and their impact on exporters.

### WHAT ARE THE MAIN CHANGES THAT THE RECAST REGULATION MAKES?

The Recast Regulation does not change the fundamental principles of EU export control rules, nor does it affect the international export control framework set out in the Wassenaar Arrangement and other multilateral regimes. It aims to modernise the EU dual-use framework and adjust it to modern challenges, in particular concerning new technologies.

In a nutshell, the Recast Regulation tightens controls on dual-use items and introduces additional elements in the process aiming at protecting human rights in the supply chain. The most significant changes include new catch-all controls on cyber-surveillance items, a harmonised concept of “technical assistance”, two new General Export Authorisations (“**GEAs**”) and enhanced due diligence requirements for exporters. The list of controlled items in Annex I continues to be updated annually in line with the changes of the Wassenaar Arrangement.

### WHAT DO THE NEW CATCH-ALL CONTROLS INCLUDE?

The old Dual-Use Regulation already included catch-all controls on dual-use items not listed in Annex I, if their intended end-use related to certain prohibited purposes (in connection with weapons of mass destruction or missiles, military-end use in a country subject to an arms embargo, or military items listed in Member States’ national lists). These catch-all controls are maintained in the Recast Regulation.

Additionally, the Recast Regulation imposes catch-all controls to cyber-surveillance items not listed in Annex I, if the exporter knows or has been informed by the authorities that the items are intended for use in connection with internal repression and/ or serious violations of human rights and international humanitarian law. Cyber-surveillance items are defined as “dual-use items specially designed to enable the covert surveillance of natural persons by monitoring, extracting, collecting or analysing data from information and telecommunication systems”.

The old Dual-Use Regulation already included catch-all controls on dual-use items not listed in Annex I, if their

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**NON-TARIFF MEASURES**

# Sanctions against the regime in Belarus

Sanctions are applied to restrict the movement of money, goods, and services to/from the sanctioned country; travel bans may apply to certain persons. Current developments and the new regulatory framework are increasingly affecting businesses in the international trade and logistics sectors. Let's take a look at what is significant for businesses to pay attention to.

**EU SANCTIONS ON THE REGIME IN BELARUS**

EU restrictive measures (sanctions) have been in place against the regime in Belarus since 2004. In the coming years, the recognition increased that the elections did not meet international standards and that repression against independent candidates and the rest of the population was taking place.

As a result of the Belarusian regime's actions against the opposition, journalists, peaceful protesters, and even EU citizens, the rising number of Belarusian companies are beginning to feel the effects of the sanctions. Financial institutions avoid even indirect links with financial transactions that may involve persons on the sanctions lists.

However, at the same time, there is a growing demand for sanctions avoidance mechanisms, and the number of attempts to apply them should inevitably increase. The logistics systems of the EU and Belarus are probably the most interconnected through neighboring countries' social and technical infrastructure. Those will likely be the first to experience attempts to assess the resilience of the system of restrictive measures in place.

**EU LEGISLATION IMPLEMENTING SANCTIONS**

Article 10 of Council Regulation (EC) No 765/2006 of 18 May 2006 (latest amendment adopted on 24 June 2021) concerning restrictive measures in respect of Belarus (**Regulation 765/2006**) provides that therein specified restrictions shall be applied: a) within the territory of the Community, including its airspace, b) on board any aircraft or vessel under the jurisdiction of a Member State, c) to any natural person inside or outside the territory of the Community who is a national of a Member State, d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State, e) to any legal person, entity or body in respect of any business done in whole or in part within the Community.

The imposition of sanctions on Belarus is mainly related to international trade. It is to say, that the role of customs authorities and fintech is of particular importance in their implementation.

However, it should be noted, that the legal entities operating themselves in the EU (companies, financial institutions,

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## **Ukraine news: October/ November 2021**

News in international trade at a glance: IT platform Trade Defense of Ukraine; the possible changes in customs valuation; Ukraine is about to join Common Transit Convention; new safeguard investigation on imports of rock and/ or earth drilling tools regardless of country of origin; revision of the anti-dumping measures on imports of cement originating in Moldova and rods of carbon and other alloy steels originating in Belarus.

### **IT PLATFORM TRADE DEFENSE OF UKRAINE**

On the 26<sup>th</sup> of November, the Ministry of Economy of Ukraine presented the IT platform [State Information and Service Portal Trade Defense of Ukraine](#). The IT platform was developed with the support of the USAID Competitive Economy of Ukraine Program to improve the work of trade investigations/ reviews (anti-dumping, anti-subsidy, special).

This software is designed to automate the process of:

- conducting trade investigations/reviews in Ukraine;
- involving interested parties into the investigation;
- simplifying the process of submitting and exchanging information and materials in trade investigations;
- providing public access to information and materials.

From now on, the importers and exporters will have a chance to check the changes in customs rates as a result of the trade investigation. Additionally, they will have the possibility to register for participation in the trade investigation and try to stop imposing such tariffs.

We expect soon the digitalization and complete online interaction between the relevant Ukrainian governmental bodies and applicants regarding trade defence measures in Ukraine.

### **THE POSSIBLE CHANGES IN CUSTOMS VALUATION**

The discussions were renewed in November regarding the Draft of Law No. 3562 “On the controlling procedure of the correctness of determining the customs value of goods”. This Draft provides changes regarding the customs control to determine the customs value.

The Draft provides the following changes:

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COUNTRY-SPECIFIC

# The role and importance of customs representation in Bulgaria

This article discusses features of customs representation in the EU and focuses on its application in Bulgaria. Do economic operators rely on customs representatives in their dealings with the customs authorities?

## INTRODUCTION

The versatile manifestation of foreign trade operations and related customs formalities are some of the main prerequisites giving rise to the need to distinguish customs representation as part of the customs process. Traders cannot and need not know in detail the customs legislation and technological specifics of control on the goods imported or exported by them, especially when trading with third countries is not their main activity. At the same time, a good knowledge of customs procedures is important not only for conforming their activities with the law, but also in terms of deriving maximum economic benefit from each foreign trade transaction – reducing or saving customs duties, shortening the time limits for customs clearance of goods, minimizing the costs associated with the delivery of goods, etc. Customs representatives are therefore an objectively necessary part of international retail chains, as their professional knowledge in the sphere of customs control is a guarantee for the maximum protection of the interests of both the economic operators involved and the state represented by the customs administration.

## 1. FEATURES OF CUSTOMS REPRESENTATION

Representation, as a process, is part of civil law and as such is associated with the implementation of pre-arranged actions between two persons, in which one of them represents the other before a third party. The representative may act in his or her own name (indirectly) or on behalf of the client (directly), but always on account of and in favour of the latter. In this regard, customs representation should be defined as *a purposeful activity in which one person (represented importer or exporter) is represented by another person (a representative) in his/her dealings with the customs control authorities.*

From a normative point of view, this type of representation is legally regulated in Art. 5, item 6 of the Union Customs Code (UCC) (Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, 2013), promulgated in 2013, where a customs representative is defined as *“any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities”.* In the national customs legislation in force in the Republic of Bulgaria, customs representation is defined in Art. 18, Para. 1 of the Customs Act (Customs Act, 1998), according to which

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COUNTRY-SPECIFIC

# Returned goods: conditions for re-import of goods under Indian laws

The current article delves into the legislative and practical framework of returned goods relief in India. It is in continuation of the article [Returned goods relief: requirements in various countries](#) (CCRM Issue 10, 2021).

Returned goods relief, as a concept, has been in India for many decades now; a major overhaul in the legal principles has been introduced w.e.f. July 1, 2017, i.e., with the introduction of Goods & Services Tax. While the legal principles are fairly laid down in various legislation and notifications, however, there are several details that are critical to avail any concessional benefit for returned goods.

Like many other jurisdictions, India has also put conditions like the return of goods in the same condition/ same goods being returned; time period for returned goods (1 to 3 years, on a case-by-case basis); duty payments (in certain cases); etc. While the legislative intent appears to have remained the same, however, there have been many instances where the re-importer approached judicial forums to seek beneficial interpretation of various conditions attached to the exemption. In few cases, such beneficial reading was permitted while in others it was not. This article touches upon such rulings to highlight the basis of beneficial interpretation.

## INTRODUCTION

Export of goods and their re-import due to various business reasons is quite common in any economy. If one has to broadly categorize the re-import of exported goods, then the following categories would emerge:

1. Return of goods **due to quality** or any other product-related issue
2. Return of exported goods, which **need repair**
3. **Export** of goods for **repair, and re-import** therein

While the first 2 categories of re-import pertain to the export of goods with the primary aim of sale to overseas customers, the third category is not a sales transaction but more to do with repair of goods which would be brought back to India for further use in business.

Import and export of goods (in India) are governed by the (Indian) Customs Act, 1962. While the import of goods attracts customs duties (unless exempted specifically), generally, the export of goods is duty-free [1]. Thus, when any exported goods are re-imported, one can conclude that the intention of allowing duty-free export is not met and hence the Government should not extend duty-free status to such goods. In order to ensure that re-imports do not

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# AUTUMN EDITION



Dear reader,

Welcome to the second edition of Customsdigital.

The world is in the process of digitalisation.

From our own experiences and in exchange with customers and authorities, we have the opportunity to gain deep insights into the workings of the customs industry. The topic of procedures and processes and how these can be automated and thus digitalised in the future appears to be increasingly important. Be it with the help of tools, our own attitude to the topic, or also experience reports from neighbouring countries. In the future, we want to continue to share our diverse knowledge and make as many people as possible fit for the future of the digital customs industry.

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.

Best regards,

Janine Lamprecht

## CONTENT

- Ticket systems – a useful and efficient tool?
- Swiss customs as a digital leader? The DaziT transformation program What can we learn from our neighbour in terms of digitalization?
- Key figures in customs and export control

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Debtor – compliance

- 1. No registration
- 2. Direct registration
- 3. Indirect registration

Practical additional duties (Lanes 1, 2 and 3)

You need a commodity code to:

✓ determine the rate of duty applied

Product Commodity code Duty rate

4910 00 00 Free

0802 90 91 6.5 %

Challenge #1: customs data

- Intrastat, UK-EU trade data
- Classification
- Valuation
- Origin
- Customs duty impact analysis
- Incoterms

CHIEF Declarations

Header	Value	Rate	Duty
Item 1	1000	0%	0
Item 2	2000	5%	100
Item 3	3000	10%	300
Item 4	4000	15%	600
Item 5	5000	20%	1000

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