

CCRM ISSUE 13

FEBRUARY/  
MARCH 2022

ISSN 2669-2171

CCRM ISSUE 13 ONLINE

# CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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More information on [page 26](#) and [www.lcpa.lt/en](http://www.lcpa.lt/en)

We look forward to meeting you!



Editorial

Dear Reader,

The speed at which information travels, we could say, is instantaneous, and so is its impact. The war started by Russia in Ukraine on the 24<sup>th</sup> of February, moved foreign trade and financial markets worldwide at an unprecedented pace, due to the many sanctions imposed and made countries and businesses reconsider with whom they deal and how they go about the situation.

Brazil imports 85% of fertilisers, and Russia is responsible for 23% of these imports. This is one of the facts that makes Brazil choose to adopt a neutral position towards the war. Israel tends to choose the same position as well, in the opinion of Omer Wagner, which he expresses in the article '*Non-government-controlled territories and free trade agreements*'. In this article, the question is considered: what is the origin of a product manufactured in the territory de-facto controlled by another state?

The origin of goods aspects is dealt with in two more articles. Ira Reese, in the article '*Customs issues related to trade in purported forced labour*,' highlights customs challenges determining the origin of 'Uighur cotton' and concludes that '*countries may enact "feel good" laws forbidding the importation of such products and international bodies can develop guidelines and principles in commerce, but without the proper enforcement tools nothing can be accomplished unless these laws and guidelines can be enforced*'. Thomas Woodtli, in the article '*PEM Convention: application of the new rules of origin in the machinery sector*', draws attention to the application of the new transitional rules of origin.

Thomas Woodtli, who is starting his new role as Global Customs Expert at one of the world's leading providers of diagnostic systems for hospitals, gave an interview where he answered the question: why seek a career as a customs specialist? The role of the customs specialist was also discussed during the [10<sup>th</sup> Authors' Meeting](#), organised by CustomsClear. You will find a summary of the thoughts and insights of customs specialists from various countries in the article '*War: How does it highlight the role of a customs specialist, and related challenges?*'

You will certainly reflect once again on the impact of the war, reading the news published on the website of EBA European Business Association on martial law imposed in Ukraine, the abolishment of mandatory labelling of non-food products in Ukrainian during martial law, and the abolishment of the list of critical imports, and, especially, reading the *Open Letter to international community in relation to the full-scale Russian aggression against Ukraine*. The news is included in the '*Ukraine customs-related news: February/March 2022*' by Iryna Pavlenko and Oleg Kyryievskyi.

There are many more relevant topics for customs practitioners covered in this issue, such as the EU customs declarations and procedures, customs clearance in the UK, proposed changes in Indian Customs law, digitisation of customs processes in business, and phytosanitary, veterinary and sanitary import controls.

I hope you will find new customs-related insights and knowledge in this issue. We would love to learn your thoughts, questions and feedback, so please leave your comment below an article on the [CustomsClear](#) platform, or email us at [info@lcpa.lt](mailto:info@lcpa.lt)

We always look forward to hearing from you! Enjoy reading!

[Roberto Raya da Silva](#), São Paulo, Brazil  
Member of the Editorial Board



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### Iryna Pavlenko

Associate, Attorney-at-law, First Chair Legal, Ukraine

[About the author](#)



### Oleg Kyryievskiy

Managing partner, Attorney-at-law, First Chair Legal, Ukraine

[About the author](#)

## Ukraine customs-related news: February/March 2022

*CCRM Editors: Thank you to Iryna Pavlenko and Oleg Kyryievskiy from the Law firm 'First Chair Legal', who each month contribute customs-related news from Ukraine to the CCRM journal; however, not in February and March 2022. We will continue publishing the news until the trade and customs of sovereign Ukraine can operate freely and safely again. Additionally, we share information published on the website of the EBA European Business Association. Oleg Kiryievskiy is the Co-chair of the Customs Committee of EBA.*

### EBA EUROPEAN BUSINESS ASSOCIATION NEWS

- 31.3.2022 [The introduction](#) of e-registration for drugs is extremely critical
- 30.3.2022 [Business losses](#) after a month of the war
- 29.3.2022 [Mandatory labeling](#) of non-food products in Ukrainian is abolished during martial law
- 24.3.2022 [Business proposes](#) to abolish the list of critical imports
- 20.3.2022 [The National Food Security Platform](#) was established
- 17.3.2022 [Tax changes](#) under martial law
- 4.3.2022 [Open Letter to the international community](#) in relation to the full-scale Russian aggression against Ukraine
- 4.3.2022 [EBA appeal to global](#) pharmaceutical and medical devices manufacturers, sponsors, contract research organizations to stop investing in Russia
- 1.3.2022 [Ukraine has applied](#) for EU membership
- 28.2.2022 [EBA urges](#) to stop doing business in/with Russia
- 27.2.2022 [How can businesses](#) help Ukraine in wartime?
- 24.2.2022 [Business proposes steps](#) to support Ukraine with the necessary pharmaceutical products
- 24.2.2022 [Martial law](#) imposed in Ukraine

### CUSTOMS-RELATED NEWS

**No news in February and March 2022. Please find the news from January 2022/December 2021 below.**

News in international trade at a glance: the duty-free limit for parcels has been raised to 150 Eur; the government announced an ambitious plan - five new FTAs; imports of some kinds of cheese subject to safeguard investigation; anti-dumping duty on imports of potato starch, wood panels and thermal insulation materials; abolition of excise stamps on certain types of alcoholic beverages.

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**Prof Dr Borys Kormych**

Odessa Law Academy, Ukraine

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**Enrika Naujokė**

Director, Lithuanian Customs Practitioners Association, Lithuania

[About the author](#)

## 'Lex Portus' - the journal launched in Ukraine after the annexation of Crimea

*CCRM Editors: A year ago, we published an interview with Prof Dr Borys Kormych, with whom we have the honour of cooperating on the editorial board of the CCRM journal. We then discussed the 'Lex Portus' journal, which was started in Ukraine after the annexation of Crimea, to address, among other topics, the resulting legal challenges in transport, customs and border formalities. The war started by Russia in Ukraine sheds new light on many of the topics covered in the interview: the annexation of Crimea, the EU-Ukraine Association Agreement, work done in Ukraine to join the Convention on Common Transit Procedure, and more. We invite you to read the interview.*

'Besides, there have been two other piles of issues that also influenced the launching of the journal. Firstly, it was the annexation of Crimea by the Russian Federation that erected a huge number of issues concerning the performance of the coastal jurisdiction and shipping rights in the Black Sea and the Sea of Azov. Our journal has published a series of papers on those subjects.'  
- Prof Dr Borys Kormych, the Editor in Chief of '[Lex Portus' journal](#)', says in an interview about the journal.<sup>1</sup>

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

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

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

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

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**Roman Kril**

Advisor, State Fiscal Service of Ukraine,  
Ukraine

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# Implementation of Common Transit and NCTS: Ukrainian realities and challenges

The article analyses EU policies on the extension of Common Transit and the New Computerized Transit System (NCTS) to associated countries given the case of Ukraine. The decision on accepting Ukraine to join the Convention on Common Transit may be expected in 2022. Otherwise, considering the EU plans to complete the transition to the NCTS Phase 6 in the second quarter of 2025, the accession may be delayed until the end of 2025.

## INTRODUCTION

Transit procedures within the EU and neighbouring European countries are functioning within three multilateral legal regimes based on different law sources. Nevertheless, the transit systems are primarily complementing or overlapping each other. The list of the transit systems includes:

- Community Transit based on the Union Customs Code and other EU customs legislation;
- Common Transit based on the Convention on Common Transit and Convention on the Simplification of Formalities in Trade in Goods, both of 20 May 1987 (Conventions);
- Transports Internationaux Routiers (TIR) system based on the 1975 TIR Convention.

In their present form, the first two, Community Transit and Common Transit systems, provide an entirely paperless environment for customs authorities and traders, as the New Computerized Transit System (NCTS) is used.

## THE ROLE OF THE EU IN THE FUNCTIONING OF NCTS

The emergence of the NCTS was an attempt of the EU authorities to answer challenges of massive fraud that transit procedures faced in the 1990s due to vulnerability of validation of paper documents and poor management of guaranties. In particular, those problems were caused by the low capacities of customs services of neighbouring eastern countries.

Currently, the EU provides both the legal and the institutional framework for the NCTS implementation and application throughout all parties of the Convention on Common Transit. The legal framework of NCTS comprises the Union Customs Code and other EU secondary legislation; the institutional framework is managed by the European Commission's Directorate-General for Taxation and Customs Union (DG TAXUD), which is responsible for managing the standard electronic reference data for NCTS, and ensuring that the common secure data network is available at the regional level.

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**Enrika Naujokė**

Director, Lithuanian Customs Practitioners Association, Lithuania

[About the author](#)

**UKRAINE**

# Sanctions: peace, security and human rights

How to stop the war in Ukraine? Countries apply sanctions. Canada cut Russia and Belarus from the Most-Favoured-Nation Tariff treatment. In just one day, the EU released nine decisions and regulations concerning restrictive measures against Russia. Customs in Lithuania extended controls to check whether sanctioned banks were not used for payments. Many businesses, especially SMEs, for the first time, one way or another, have encountered the impact of sanctions. So what are sanctions? What are the related developments in general?

**WHAT ARE SANCTIONS?**

International sanctions are non-military measures aimed at ensuring international peace and security and respect for human rights. They target states, natural or legal persons, and other entities whose actions, decisions or policies violate human rights, contribute to ethnic, territorial or religious conflicts, support terrorism, or otherwise, violate the most important norms and principles recognised by the international community.

Sanctions range from comprehensive economic and trade sanctions to more targeted measures, such as arms embargoes, travel bans, and financial or commodity restrictions. See examples of types of sanctions that are set in some countries in the table.

<p><b>In the UK:</b></p> <ol style="list-style-type: none"> <li>1. trade sanctions, including arms embargoes and other trade restrictions;</li> <li>2. financial sanctions, including asset freezes;</li> <li>3. immigration sanctions, known as travel bans;</li> <li>4. aircraft and shipping sanctions, including de-registering or controlling the movement of aircraft and ships.</li> </ol>	<p><b>In the EU:</b></p> <ol style="list-style-type: none"> <li>1. arms embargoes;</li> <li>2. restrictions on admission (travel bans);</li> <li>3. asset freezes;</li> <li>4. other economic measures such as restrictions on imports and exports.</li> </ol>
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## CAREER AS A CUSTOMS SPECIALIST

# War: How does it highlight the role of a customs specialist, and related challenges?

The war in Ukraine and all the wars and armed conflicts happening around the world highlight the role of customs and customs specialists, especially as it regards compliance with restrictions and prohibitions. Customs specialists must be not only active, but also proactive, so that bad hands do not get access to the tools they can use to cause suffering. Many other topic-related aspects were discussed, and views from various countries were shared during the [10<sup>th</sup> Authors' Meeting](#), which took place on 17<sup>th</sup> March 2022.

### COMPANIES LACK KNOWLEDGE RELATED TO DUAL-USE AND EXPORT CONTROLS

**Annette Reiser, Customs specialist in the military sector, Switzerland**

Switzerland, despite the country's neutral status in many affairs, imposed the same sanctions against Russia and Belarus as the EU.

The main problem in this regard is that companies do not have sufficient knowledge about the customs procedures related to the dual-use items and export controls. Customs brokers and forwarding agencies are usually involved in the declaration and other customs related processes. However, they are often unaware of the specifics of dual-use goods, their tariff classification and, of course, imposed sanctions.

Such misunderstanding and lack of awareness may lead to huge customs and economic risks. Therefore, one of the most important tasks for companies exporting dual-use goods is to raise the awareness of their employees and other stakeholders regarding export control and customs compliance.

### CORRECT IMPLEMENTATION OF SANCTIONS IS A CHALLENGE FOR CUSTOMS AND BUSINESS

**Šarūnas Avižienis, Head of Customs Policy Division, Lithuanian Customs**

The application of sanctions imposed against Russia and Belarus is currently topic number one for Lithuanian Customs. New sanctions and their correct implementation are a challenge for both customs officials and economic operators. To tackle this issue, the Special Coordinating Working Group of Customs has been created. It meets

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### Thomas Woodtli

Customs Specialist, Switzerland/Germany

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### Enrika Naujokė

Director, Lithuanian Customs Practitioners Association, Lithuania

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## CAREER AS A CUSTOMS SPECIALIST

# Why seek a career as a customs specialist? Interview with a Global Customs Expert

Many people discover their profession as customs specialists by chance and realise that it is their life passion. It is not a profession one usually dreams of. But it is worthy to be dreamed of! In this series of articles, we talk to customs specialists, including customs brokers, customs experts in manufacturing and trading companies, lawyers, consultants, and many others from around the world to find out why this profession is so exciting for them.

Today, we talk to Thomas Woodtli, who started his career as a civilian customs officer at the Swiss Federal Customs Administration and is now taking the role as the global customs expert at one of the world's leading providers of diagnostic systems for hospitals, laboratories and doctors' practices, located in Germany.

**Enrika Naujokė:** Let's talk about customs first. When considering their career, more and more young people think about how their work will contribute to the greater good. They want to have a meaningful and interesting job. From your point of view, what are the main areas where customs contribute to the greater good in the world?

**Thomas Woodtli:** Usually, many people curse about customs. It is often seen as a hurdle. But many people don't know that customs authorities not only collect customs duties but are often the only control body physically present at the border and, for example, enforce laws designed to protect the population. For example, food is inspected for hygiene. Customs authorities take samples that they inspect for pests. Customs authorities also fight human trafficking, which is unfortunately still a reality in many countries. Customs also ensures a level playing field in international trade in goods in many places.

**Enrika Naujokė:** Despite all the great work customs is doing, businesses often think of customs as a 'minefield' at the border or after clearance (post-clearance customs audits). What are your thoughts on that?

**Thomas Woodtli:** During my time as a customs officer, I often experienced customs declarants complaining about the hurdles. On the other hand, some of them had great respect for the customs authorities. During my work, it was always important to me that I not only came across as an inspector checking goods but that I also provided support. I was always aware that everyone was doing their job and that mistakes can always happen, even at customs. As soon as any tension was released, there was mutual respect at all times. Companies that care about complying with customs laws do consciously attract the attention of customs in a positive way and can, at least in Switzerland, fall on friendly ears. By means of good cooperation, processes can be improved. This also benefits the companies, for example, which can rely on correct customs declarations.

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**Omer Wagner**

Advocate, PwC, Israel

[About the author](#)

## ORIGIN OF GOODS

# Non-government controlled territories and free trade agreements

As is well known, the war started by Russia in Ukraine affects a wide range of areas, both security and economic. It may also affect aspects related to imports and exports between Israel and Ukraine, which have signed a free trade agreement (FTA) in 2019. The reminder on that comes from the European Commission, which on February 23<sup>rd</sup>, 2022 released a notice to importers regarding imports from the non-government controlled territories of the Donetsk and Lugansk oblasts of Ukraine.

### FTA BETWEEN ISRAEL AND UKRAINE

Israel and Ukraine have signed in 2019 a Free Trade Agreement (FTA), which entered into force in January 2021 [1]. Under the FTA, the imposition of customs duties on the movement of goods between countries was abolished in relation to most types of products, mainly industrial, and customs duties were reduced on agricultural products.

The main products that Israel imports from Ukraine are agricultural products and food products, metals and machinery.

### DEFINITION OF THE TERRITORY FOR THE PURPOSES OF THE ORIGIN OF GOODS

One of the basic conditions in the FTA for granting a customs duty exemption for a 'made in Ukraine' product imported into Israel, is that the product is manufactured in the territory of Ukraine.

*The FTA defines in Article 1.2(w)(i) [1], that the territory of Ukraine, is: "...the land territory, internal waters, and territorial sea of Ukraine and the airspace above them and the exclusive (maritime) economic zone and continental shelf, over which Ukraine exercise sovereign rights and jurisdiction in accordance with its national laws in force and international law".*

Origin of a product manufactured in the territory de-facto controlled by another state

The war raised the legal question: "What is the origin of a product manufactured in the territories of eastern Ukraine, that are de-facto under the control of Russia?". That is, whether for the purposes of the FTA with Israel, such a product remains a 'Made in Ukraine' product, or not.

This is not an academic question, but a question that may directly affect the question of whether the product will be subject to customs duty on import to Israel, or not.

It is important to note that there is no FTA between Israel and Russia, and therefore products made in Russia,

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



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ORIGIN OF GOODS

## Customs issues related to trade in purported forced labor

In recent years, there have been a significant number of purported, but as of yet unproven, instances of forced labor in countries with high international trade profiles including China, India and Pakistan. However, it is apparent that the world’s media have focused on the purported uses of Uighur slave labor in the cotton fields of the Xinjiang region of China. Whether this has been proven or not, parts of the world’s trade community have decided to restrict the movement of Uighur cotton and cotton products among its countries.

While there has been significant interest in enforcement of anti-slavery laws in many countries, there have been little movements on the part of international agencies to provide global standards or guidance to standardize enforcement. As a consequence, countries are developing their own statutory language and guidelines for enforcement resulting in uneven enforcement and unclear definitions of slave labor products. Such statutes are well meaning in principle, however, due to the lack of guidance, enforcement of existing statutes is extremely difficult.

Modern analytical chemistry allows scientists to determine the origin of many agricultural products. Traditionally, agricultural products were analyzed for origination by using quantitative analytical methods related to the uptake of metals from the soil in which they were grown. Forensics work since the late 1990’s has shown that metal contents of specific growing regions are clustered together. One can identify the source of an agricultural product by applying mathematical clustering algorithms to the product’s concentration of metals. Accordingly, this technique has been used for more than 20 years to investigate cases of transshipment of agricultural products.

The major challenge of this technique is for the investigative authority to acquire comparative samples of the product from the suspected region of origin. Even with comparative samples, there could be questions as to whether the metal profiles of other regions could match those of the suspect region. In most cases, it is impractical to develop metal profiles of every growing region of an agricultural product requiring corroborating information. Even in the most ideal of situations the processing of agricultural products can render this investigative technique unsuitable to determine the origin of the products.

In the case of cotton, specifically cotton suspected of having originated in the Xinjiang Region of China, the Broker and Customs Officer will be dealing with the end product of the cotton such as clothes, linens, etc. These products are far removed from the original cotton boll picked in Xinjiang by slave labor or even the finished twisted spun cotton yarn. Accordingly, traditional agricultural techniques cannot be applied when investigating the origination of these

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**Thomas Woodtli**

Customs specialist, Switzerland/Germany

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## ORIGIN OF GOODS

# PEM Convention: application of the new rules of origin in the machinery sector

As of September 1<sup>st</sup>, 2021, there are new rules of origin in the European structure of the Pan-Euro-Mediterranean (PEM) Convention that apply in parallel to the previous rules of origin as part of a transitional phase.<sup>1</sup> They are called 'transitional rules'.

The new rules of origin provide breathing space in the machinery sector (HS chapters 84, 85 and 90) for those companies that have to work with small margins. For most of the items in these chapters, the value criteria increase from 30%, 40%, to 50% (share of third-country materials relating to the EXW price). Also, a 'pure' change of heading is now possible, i.e. it is not bound to a value criterion anymore.

### INPUT MATERIALS FOR WHICH THE NEW RULES ARE ALREADY APPLICABLE

From the perspective of Switzerland, which input materials with preferential origin are already subject to the new transitional rules? In the matrix below, see which countries have incorporated the PEM transitional rules of origin in their bilateral preferential trade agreements. Only then do the transitional rules apply mutually. New countries of the PEM convention that apply the transitional rules are constantly being added.

### ATTENTION: DIFFERENT PROOFS OF ORIGIN

It is important to know that there are now two different ways to prove the preferential origin, which must not be mixed. Cross-border shipments from Switzerland's point of view. The proofs of preferential origin issued based on the transitional rules are supplemented as follows:

- previous declarations of origin with additional wording 'according to the transitional rules of origin';
- previous EUR.1 with the remark 'transitional rules' in box 7.

Deliveries within Switzerland:

- previous long-term supplier's declaration with remark 'transitional rules' to the respective country codes.

Thus, depending on the business case, companies have to decide whether they already want to work with the new transitional rules or not.

### HOW CAN MANUFACTURING COMPANIES START BENEFITTING?

It is clear that very few companies yet work with the new rules of origin because they, for their part, have not yet received any proofs of preferential origin from their suppliers that were issued based on the transitional rules. Nevertheless, how can manufacturing companies already benefit?

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## EU LAW NEWS

# EU law news: February/March 22

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

News in week 12 (21 - 27 Mar): a guidance Q&A document on EU's restrictive measures to respond to Russian aggression in Ukraine published; definitive anti-dumping duty on imports of calcium silicon originating in China; definitive countervailing and anti-dumping duties on imports of optical fibre cables originating in China (corrections of the regulation); protective measures on imports of bivalve molluscs from Turkey; amendments of REACH regulation; and more news!

### OFFICIAL JOURNAL

#### Russia and Belarus - sanctions

15.3.2022 L 0871 [Council Decision \(CFSP\) 2022/430](#) of 15 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. New measures:

- All transactions with certain state-owned companies are prohibited, and
- the provision of any credit rating services, as well as
- access to any subscription services in relation to credit rating activities, to any Russian person or entity.
- Export restrictions regarding dual-use goods and technology are tightened, as well as
- goods and technology which might contribute to the technological enhancement of Russia's defence and security sector, and
- the list of persons connected to Russia's defence and industrial base, which are subject to those restrictions, is expanded.
- Furthermore, new investments in the Russian energy sector are prohibited, and
- a comprehensive export restriction on equipment, technology and services for the energy industry.

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



**Aivaras Kasperas**

Customs valuation specialist, Lithuania

[About the author](#)

## EU CUSTOMS DECLARATION AND PROCEDURES

# Changes in nature of transaction codes

**SAD box 24, data element 8/5**

As of January 1<sup>st</sup> this year, the corresponding changes made by the European Commission in regard to the nature of transaction codes (see new codes in the Annex below) provided in the data element 'Nature of transaction (8/5)' of the customs declaration have affected many businesses, and many of them have questions about which transaction code is to be used instead of the previous ones.

### READER'S QUESTION

We hereby provide answers to the following reader's questions: based on the invoice the seller is a Latvian company 'Y', the importer is a Lithuanian company 'A'. The goods are from a third country. When filling in box 24 of the declaration/ data element 'Nature of transaction (8/5)', we used to enter the transaction code '19' as it was not a direct purchase-sale. What type of transaction is to be chosen after the changes of legislation? What is an outright sale-purchase? When the transaction code '99' shall be used?

### LEGAL BASIS

In accordance with the Commission Implementing Regulation (EU) No. 2020/1197 as of July 30th, 2020 pursuant to Regulation (EU) 2019/2152 of the European Parliament and of the Council on European business statistics repealing 10 legal acts in the field of business statistics, laying down technical specifications and arrangements with Annex B, Part C, Table 1, the list of transactions is upgraded, removing some codes valid before January 1<sup>st</sup>, 2022 (including code '19').

### SUGGESTION TO USE CODE '11' INSTEAD OF TRANSACTION CODE '19'

According to the new breakdown by nature of the transaction in the Regulation, instead of the previously used transaction code '19' ('Other; Transactions involving actual or intended transfer of ownership from residents to non-residents against financial or other compensation') as from January 1<sup>st</sup>, 2022 it is recommended to use transaction code '11' ('Outright sale/ purchase except direct trade with/ by private consumers; Transactions involving actual change of ownership with financial compensation') that covers purchase and sale (including resale) between legal entities in connection with an actual change of ownership in the presence of a financial consideration, which specifically reflects the situation described in the question.

### THE CONCEPT OF AN OUTRIGHT SALE OR PURCHASE

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



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## EU CUSTOMS DECLARATION AND PROCEDURES

# Import into the EU: peculiarities of the end- use procedure

**SAD box 37, data element 1/10**

The end-use customs procedure can offer the benefit of an import duty relief when the goods are imported for a specific use, or it might be the only option to import certain goods. Let's look at the specifics of this procedure by answering the reader's question about the conditions for the import into the EU of propane gas, which will be used in the technological process of a manufacturing plant. We also provide an overview of the general import requirements for chemicals.

### READER'S QUESTIONS

A manufacturer plans to buy propane gas of 99.5% purity from China and use it for its own purposes for technological processes. What are the import conditions for this substance? Does the importer need to take care of any licenses for release for free circulation?

### ABOUT THE PRODUCT

Pure propane is flammable, colourless, non-toxic gas obtained while refining petroleum products. The biggest advantage is that pure propane can be used at temperatures below zero. This is important during the winter period. Propane gas is widely used within numerous industry in various technological processes.

### REQUIREMENTS FOR IMPORT OF CHEMICAL

The import of propane is subject to general handling requirements for chemicals. Firstly, the obligation to register a substance under the Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18th December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH). The REACH Regulation is directly applicable, and its requirements apply uniformly in all EU Member States and have not been transposed into national law.

Under Article 6 of the REACH Regulation, any manufacturer or importer of a substance, either on its own or in one or more mixture(s), in quantities of one tonne or more per year shall prepare and submit a registration to the European Chemicals Agency (ECHA). The registration shall not apply to substances manufactured or imported in quantities of less than one tonne per year.

A natural or legal person established in a non-EU country, in our case, China, who manufactures a chemical substance, may appoint a representative to register the substance imported into the EU. This exempts EU importers in the same supply chain from the obligation to register, as they are regarded as downstream users.

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## EU CUSTOMS DECLARATION AND PROCEDURES

# Entry of the previous document in the customs declaration

**SAD box 40, data element 2/1**

The previous document shall be entered in box 40 of the customs declaration or in the data element (2/1). The correct declaration of this data is particularly important in the case of customs procedures such as transit, customs warehousing, temporary admission, and inward processing. According to the information provided in this box, customs authorities control the discharge of the procedure, and failure to discharge the procedure properly may give rise to tax liability.

### LEGAL BASIS FOR FILLING IN THE CUSTOMS DECLARATION

The rules for filling in the electronic customs declaration are set out in Annex B 'Common data requirements for declarations' of the Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

There is national guidance or legislation of the EU Member State available as well. For example, *AIS trader Guide* by Irish Customs, *Order No 1B-810* of Lithuanian Customs, *Information on customs declaration* by German Customs, etc.

### FILLING IN THE BOX 40/ THE DATA ELEMENT (2/1)

Upon declaration of goods brought into the customs territory of the Union (regardless of whether they are declared for release for free circulation or customs warehousing or simply temporary admission) the box 40 'Summary declaration/ Previous document' of the single administrative document (SAD)<sup>1</sup> or the data element (2/1) 'Previous document' of the electronic declaration must always indicate the document under which the goods were brought into the customs territory of the Union or were kept/used there under customs supervision.

The previous document is entered with the document code and number. The document code consists of:

- Document type code: 'X' if the particulars of the summary declaration are given; 'Y' if the details of the initial declaration are given; 'Z' is used for data about another document and
- the three-digit abbreviation for the title of the document from Appendix D1 of Annex 9 to Commission Regulation (EU) 2016/341 (see the attachment below).

The document type code X shall be used to declare goods that are accompanied by an air waybill and for which an

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## EU CUSTOMS DECLARATION AND PROCEDURES

# Entry of documents and additional information in the customs declaration

**SAD box 44; data elements 2/2, 2/3 and others**

One of the most important boxes of the customs declaration is the 44 (relevant data elements are 'Additional information (2/2)', 'Documents produced, certificates and authorisations, additional references (2/3)' and others), which contains the documents based on which the customs declaration is completed. It also indicates certificates, permits, and other information that we will review in discussing practical examples.

### LEGAL BASIS

The rules for filling in the electronic declaration are set out in Annex B 'Common data requirements for declarations' of the Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

There is national guidance or legislation of the EU Member State available as well. For example, *AIS trader Guide* by Irish Customs, *Order No 1B-810* of Lithuanian Customs, *Information on customs declaration* by German Customs, etc.

Also see Appendix D1 to Annex 9 to Commission Regulation (EU) 2016/341 'Codes to be used in the forms'. It shall be known that EU Member States use the national codes set out in their respective legislations as well.

### DATA TO BE FILLED IN

Box 44 of the SAD contains information on the documents under the basis of which the submitted customs declaration is made (purchase-sales documents, contracts, permits, certificates, documents substantiating the representation, documents substantiating the value of the goods, etc.) and other required information.

It shall be noted that all codes to be used for customs clearance are regulated in Annex B to Commission Regulation (EU) 2015/2447 'Formats and codes of the common data requirements for declarations, notifications and proof of the customs status of 'Union goods'. The codes to be used in box 44 are also given in the Title II of this Annex.

For example, when declaring goods for inward processing under the simplified procedure, the code '00100' must be entered in box 44.

Other documents, for example, are listed in the following table.

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**EU CUSTOMS DECLARATION AND PROCEDURES**

# Retrospective termination of the export procedure in the EU

Retrospective termination of the export procedure due to Brexit: different formalities of the EU member states using the example of Lithuania and Germany. In this article, we would like to address a topic that is not entirely new but which is still frequently invoked and raises many questions. In particular, when different customs offices have different requirements for an alternative proof, uncertainty arises, and questions arise. While it is not a Brexit-specific problem, many export procedures opened to the UK still remain unsettled. The German customs administration has reacted to this with simplifications. But one thing after the other.

## THE FOLLOW-UP-PROCEDURE FOR EXPORT

If no exit confirmation is received within 90 days of release for export, the customs office opens the follow-up procedure, and you are requested by an electronic message to provide information on the whereabouts of the goods. In Germany, the declarant has 45 days in which to reply. In Lithuania, the declarant has 20 days to provide information on an actual customs office of exit and date of departure from the customs territory of the Union

If the export has taken place, but the office of departure cannot confirm export of goods within 90 days, and the declarant does not provide the requested information within 45 days in Germany, and 20 days in Lithuania, the exporter or declarant normally has 150 days (after release for export) for the presentation of alternative proof for the recognition of goods release from the customs territory of the Union.

Due to a large number of unprocessed transactions to the UK, the German customs administration has extended the deadline to 500 days until further notice.

Unlike in Germany, the Lithuanian customs authorities have not extended this deadline, so if the customs office of export have not received information or evidence on the departure of the goods from the customs territory of the Union within 150 days after the goods were released for export (or 130 days after the deadline for submitting additional information), the export declaration shall be invalidated.

## WHICH DOCUMENTS CAN BE CONSIDERED AS ALTERNATIVE PROOF?

The question of which documents are recognized as alternative proof should actually be easy to answer. Article 335 IA (Implementing Act / Implementing Regulation to the UCC) contains a list of the documents that come into question (see chart below).

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## OVERVIEWS AND COMMENTS

# Digitisation of customs processes in business: best practices, challenges and the future

Following the [9<sup>th</sup> author's meeting](#) held on 20 January 2022, this article distils the thoughts of eight participants on the important topic on digitisation of customs processes. They examine today's trends and discuss what the future holds.

### INTEROPERABILITY BETWEEN ELECTRONIC SYSTEMS

**Dr Andrew Grainger, Director, Trade Facilitation Consulting Ltd, the UK**

Digitalisation in various forms has always been a core theme. However, despite its obviousness, we need to talk about it. Thus, many trade and customs procedures are already fully electronic, but the use of paper documents can still prevail. Many non-customs documents (veterinary certificates, phytosanitary certificates, etc.) might be proceeded electronically, but they might not be linked to the data elements of customs documents. Therefore, interoperability between electronic systems is frequently an issue.

In addition, many different parties are involved in the customs control system (traders, representatives, carrier, customs, non-customs agencies, etc.). There are many different communications in this regard (advanced notification, declaration, assessment, inspection, etc). So, digitalisation speeds up processes, but does not necessarily make them more efficient and easier.

Key trade facilitation principle is that regulators should draw on information or data already created during commercial processes. In this regard, communications between business to business and government agency to government agency, as well as business to government agency are equally important in this process. The key challenge with many systems when you think about customs data is that much of that information has been already communicated between business and government agencies. If government agencies were able to more effectively to talk with each other, then it could be possible to create considerable efficiencies in that business to government type of relationships.

*The reliability of data might be an issue, especially in the context of when the data is collected and whether*

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## OVERVIEWS AND COMMENTS

# Phytosanitary, veterinary and sanitary import controls in various countries

Any state that allows animals, plants or products of animal and plant origin to enter its territory shall establish additional measures aimed at protecting people, animals and plants from infection, pests and diseases. Having a similar purpose, these measures differ depending on the country of their application. The article offers examples of the use of such measures in some countries, in particular, the UK (where the IPAFFS system is replacing the EU's TRACES), Ukraine and the Eurasian Economic Union.

### UNITED KINGDOM

Since the UK has left the EU, traders are no longer able to use the EU's TRACES (Trade Control and Expert System) to validate GB imports. The Import of Products, Animals, Food and Feed System (IPAFFS) is a replacement system that must be used and its implementation is phased in accordance with the timeline explained below.

#### 1<sup>st</sup> January 2022

Pre-notification requirements entered into force. Importers must use IPAFFS to notify authorities before the following goods arrive in Great Britain:

- live animals and germinal products from the EU,
- animal by-products (ABP) and
- high-risk food and feed not of animal origin (HRFNAO) from the EU (except the Republic of Ireland),
- products of animal origin (POAO) from the EU (except the Republic of Ireland),
- composite products from the EU (except the Republic of Ireland),
- plants and plant products from the EU (except the Republic of Ireland);
- live animals, animal products and HRFNAO from non-EU countries.

The GB importers (or representatives acting on their behalf) are responsible for registration for IPAFFS to pre-notify the relevant authority of the goods' arrival.

It must be noted that, to import regulated plant products, the Procedure for Electronic Application for Certificates (PEACH system) must be used for pre-notification until directed to switch to IPAFFS. The PEACH system does not cover Northern Ireland.

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COUNTRY-SPECIFIC

## Proposed changes in Indian Customs Law: Key areas to keep an eye on!

Every year, the Government of India announces its annual budget, wherein the ruling party tables the estimate of revenue and expenditure for the period beginning April (of the calendar year) and ending on March (of the next calendar year). Along with the revenue and expenditure, the Government of India also announced its tax proposal, which lays out a path for the coming year.

### CHANGES IN CUSTOMS LAWS

On February 1, 2022, the Government of India announced its Union Budget for the period April 2022 to March 2023 (the 'Budget'). While the Budget has introduced many legislative changes pertaining to Indian taxes, this article captures the key proposed changes in Indian Customs Laws which can have an impact on international trade and the supply chain.

#### **Valuation of imported goods: Proposed new mechanism, imposing additional obligations on the importers**

Indian Customs Laws provide a comprehensive set of rules which govern the valuation of goods imported into India or exported outside India<sup>1</sup>. Historically, the interpretation of several such rules has been disputed by the government and/ or taxpayers, and interpretation of such rules has settled only at the Supreme Court of India.

The Budget proposes to cast additional obligations on the importer of goods to ensure that the value of goods is akin to the trend of the declared value of such goods. Though the proposed amendment provides for such obligations, however, the same is yet to be notified by the government. It would appear that the Budget intends to scrutinise the valuation of imported goods on pre-defined criteria, which would be over and above the ones which are already laid down by the WTO.

Although it can be considered an importers' obligation, past experience suggests that the importers' obligation may not be fulfilled unless the information/ data is provided by exporters. Hence, if not legally, then factually, it could very well be a mutual obligation for importers and exporters.

#### **Withdrawal or reducing count of customs exemption notifications**

The Budget brings a major overhaul to the list of exemptions that are in force as of today. As readers might remember, the Government of India had announced in its 2021 budget that it would review the customs exemptions that are currently in force. The Government has set in motion the said objective. The reduction in exemptions runs across er, readers may access the same here: <https://www.indiabudget.gov.in/doc/ann/distribut.pdf>

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**COUNTRY-SPECIFIC**

# Customs clearance in UK in 2022: what could possibly go wrong?

2022 is already the third year since the UK officially left the Customs Union with the EU in 2019. It is also the third year since covid emerged and changed every aspect of our lives. Both Brexit and covid have disrupted trade in unprecedented ways and continue to do so. Just as people are learning to live with covid, businesses are also learning to cope with the post-Brexit reality.

But there is little time to sit back and relax. More changes are expected in the customs world this year, leading to the need to make operational changes or strategic decisions. In addition, mistakes from 2021 could be picked up during customs audits this year. If they are not spotted this year, unfortunately, they remain a ticking bomb for a further three.

So what could possibly go wrong in 2022? Here are a few things to look out for this year.

## **FIRSTLY, TURNING A BLIND EYE TO CUSTOMS ERRORS IN THE NAME OF MOVING GOODS FAST MAY STOP THEM FROM MOVING.**

This popular expression is often attributed to one of the most significant events in British naval history. At the battle of Copenhagen, Nelson chose to look through the telescope with his blind eye so that he could not see the signal to disengage. Luck was on his side, and victory followed.

However, business success is unlikely to follow when a blind eye is turned to customs errors. Errors could stop the goods at the time of import or export. They could also end business relationships. For example, claiming preferential treatment using “importer’s knowledge” when the importer does not have sufficient documentary evidence to show the goods have originating status is simply the wrong thing to do that could cause delays at the time of import. Similarly, making a “statement on origin” at the request of the customer knowing that the goods do not qualify is also bad practice for which the customer is likely going to be the one who is punished, resulting in a business relationship going down the drain. Forgetting to get evidence from suppliers is also a mistake that should not be perpetuated because the longer it is allowed to go on, the more difficult it is to fix.

Remember, it is always better to spot errors as early as possible, so start looking now.

## **SECONDLY, DEADLINES COULD BE MISSED!**

2021 was the first year businesses in the UK traded with the EU using the post-Brexit transition customs rules. The

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After the great success of this Lithuanian-participant-only event, we decided to open it to the world so you can experience and get the best of it too. Good things need to be shared and celebrated!

By this means, we are honoured to invite you to join us, either in person or online to the 6<sup>th</sup> Customs Practitioners biyearly event on the 2<sup>nd</sup> of June 2022 (yes, it will be hot), in Klaipeda, Lithuania, or online, from 9 until 16.30 EEST. Yes, there is a party afterwards!

**What:** Lithuanian Customs Practitioners Association (LCPA) organises conferences twice a year, during which there are relevant presentations on customs topics, discussions, and, of course, networking! We combine two special values: the enhancement of professional knowledge and the opportunity to maintain existing contacts and establish new ones.

**When:** 2<sup>nd</sup> June 2022 from 9 until 16.30 EEST [book your spot now](#).

**Join us to discuss:**

- The role of a customs specialist in modern organisations
- Changing legal environment: liabilities of a customs specialist
- International sanctions: managing non-compliance risk
- Digitalisation of customs formalities: tools, opportunities and challenges

Check here to read the [full programme](#), you will love it!

**INVESTMENT:**

- **Price for physical attendance:** €290 per participant.
- **Price for online attendance:** €145 per participant or €290 for two or more participants of the same company.
- **Early bird offer:** 20% discount for registrations before 10/05/2022.
- **LCPA members:** 50% discount. Members' evening: €45 per participant.

**WHO:** Speakers from Lithuania, Poland, Germany and France will share their insights on relevant topics. [Learn more about speakers](#). If I were you, I would be there just to learn an extra language...

**Why:** Because of customs is what you like, live, breathe and are passionate about, this is that one-of-a-kind event that eventually can change your life... for the better! Spots are limited, and you cannot miss networking with the best peers in the industry, besides the amazing industry insights you will gain by attending. Don't miss it!

**Where:** In the historic site of the former Klaipeda (Lithuania) castle, where a modern conference room is located, and next to it, pleasure boats with their charming views. If you ever thought you have royal blood, this is your time to experience it!

Don't like long trips? Not a problem, you can attend the conference online.

**What else:** We invite you to enjoy the marine atmosphere and hope that many of you from other regions will have the opportunity to spend a few more days exploring the seaside!

**Gossip:** By the way, the current members of LCPA and candidates to become members will, in addition, enjoy the evening programme, as well as a boat trip to Juodkrante...

**Interested?** We bet you are! We look forward to meeting you at the 6<sup>th</sup> Customs Practitioners Conference on the 2<sup>nd</sup> of June, 2022 in Klaipeda or online!

[Book your spot now](#), they are limited - you cannot afford to miss it!

Reach out to +370 664 26393 or e-mail us at [lcpa@lcpa.lt](mailto:lcpa@lcpa.lt) for further assistance.

Register and learn more about speakers on our website at [www.lcpa.lt/en](http://www.lcpa.lt/en)

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

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