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CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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CONTENT

CUSTOMS COMPLIANCE & RISK MANAGEMENT
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Editorial

Dear Reader,

For the past three months, Europe, and the rest of the world, have been living under the conditions of Russia's unjustified and unprovoked aggression in Ukraine. The war has created new sanctions and challenges concerning international trade, as well as customs and logistics that must be taken into account by exporters, distributors, and other stakeholders. In this regard, I would like to draw to your attention recent legislative changes in Ukraine, dictated by martial law and the extremely difficult conditions for foreign trade, prepared by Iryna Pavlenko and Oleg Kyryievskyi, as well as the article 'Sanctioned persons: get to know your customers and suppliers' by Andrius Košel, and the article 'Kaliningrad - Russia transit: are there any special simplifications?' by Jurgita Stanienė.

The origin of goods is one of the most frequent topics in the CCRM Journal. In the current issue, Peter Mitchell and Enrika Naujokė analyse the process of post-clearance verification of preferential origin set out in some of the free trade agreements of Canada, the UK, and the EU. Practical examples and suggestions on how the preferential origin-related risk could be managed by importers are provided.

In the article 'Keep an eye on customs case law or Who has enough money to throw away?' Dr Talke Ovie advises on how not to lose money, i.e. ask for payment of interest in the case of reimbursement of customs duties collected unlawfully. In this regard, Gediminas Valantiejus analyses the case law of the Court of Justice of the EU and summaries conditions under which persons are entitled to receive compensation in the form of interest.

The case law section is also represented by Ingrida Kemežienė, who overviews 'The case with the smell of vanilla', which deals with the classification of vanilla extracts containing ethanol and their exemption from excise duty on alcohol. Continuing the classification topic, Dr David Savage describes the challenges of appealing classification rulings in the article 'The "dark art" of classification (challenging a BTI ruling)'. Prof Krzysztof Lasiński-Sulecki draws attention to the fact that the validity of a BTI can be affected by the soft law in the article 'A few remarks on the softness of soft law in the sphere of customs classification'.

The complexity and diversity of activities that fall under customs control involve many employees and departments of a company. Who should ensure compliance with numerous requirements and regulations? You will find some suggestions in an article 'Who is responsible for customs compliance? or When everyone is responsible - no one is!' by Enrika Naujokė. A further point to consider concerning the topic of compliance is made by Samuel Draginich, who highlights in his article on the US CBP's current developments that customs compliance practitioners are pivotal in strategic business planning. Regarding the topic of planning, Monika Bielskienė invites readers to consider the future of the EU customs through a review of the Wise Persons Group's proposals for customs reforms.

In addition, in the current CCRM issue, you can find other interesting and valuable information, particularly on the non-transparent licensing of imports in various countries, the issues that go with a low customs value of goods, and the opportunities that implementation of Port Community Systems brings, and more.

Please enjoy reading and leave your comments, suggestions, or questions to an article online or email them to info@lcpa.lt.

Dr Ilona Mishchenko
Member of the Editorial Board
Odesa, Ukraine, 31st May 2022

EU LAW AND CASE LAW

EU law news: April/May 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 21 (23-29 May): an updated version of the guidance document on the Registered Exporter (REX) system; regulations concerning anti-dumping and/or countervailing duties on imports of certain iron or steel fasteners originating in China, woven and/or stitched glass fibre fabrics originating in China and Egypt, and electrolytic chromium coated steel products originating in China and Brazil.

OFFICIAL JOURNAL

Russia and Belarus - sanctions

4.5.2022 L 130I Commission Delegated Regulation (EU) 2022/699 of 3 May 2022 amending Regulation (EU) **2021/821** of the European Parliament and of the Council by removing **Russia** as a destination from the scope of **Union general export authorisations**. Regulation (EU) 2021/821 introduces eight Union general export authorisations for exports of certain items to certain destinations under specific conditions and requirements. Currently, three Union general export authorisations can be used for exports to Russia: EU003 (re-export of items after repair or replacement in the EU), EU004 (export of items for fairs or exhibitions), EU005 (exports of telecommunications equipment). In view of the Union's actions against Russia, it is appropriate to remove Russia from the destination lists of Union general export authorisations Nos EU003, EU004 and EU005 in order to prevent Russia from gaining access to critical technologies and dual-use items. Regulation (EU) 2021/821 is therefore amended accordingly.

21.4.2022 L 120 Council Decision (CFSP) 2022/660 of 21 April 2022 amending Decision **2014/145/CFSP** concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. **Two individuals** were added to the list of persons, entities and bodies subject to restrictive measures set out in the Annex to Decision 2014/145/CFSP.

21.4.2022 L 120 Council Implementing Regulation (EU) 2022/658 of 21 April 2022 implementing Regulation (EU)

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EU LAW AND CASE LAW

Keep an eye on customs case law or Who has enough money to throw away?

‘Compliance’ with statute law has given rise to a lot of publications and debates. However, when considering compliance, it should not be forgotten that case law also influences a company’s organisation and processes. Can you think of any court cases which are having an effect on your internal operations? Using the current proceedings on ‘reimbursement interest’ as an example, this contribution shows that court rulings can influence customs practice in companies and so it is important that you follow court proceedings from the outset. This is because even pending proceedings may enable you to earn money with customs or at least avoid throwing it away. Court judgements do not always operate to the detriment of the economic participant.

If customs duties are collected unlawfully, Art. 117 of the Union Customs Code (UCC; Art. 236 CC, former edition) provides for their **reimbursement**. However, it is disputed if the customs debtor should also receive **interest** on the customs debt paid.

In ‘Wortmann’, the **European Court of Justice (ECJ)** decided as follows:

“Where import duties, including anti-dumping duties, are reimbursed on the ground that they have been levied in breach of EU law, […] there is an obligation on Member States, arising from EU law, to pay to individuals with a right to reimbursement the corresponding interest which runs from the date of payment by those individuals of the duties.”

According to the ECJ, therefore, there is also a right to **interest payments** which results directly from Union law and exists alongside the general prohibition on interest payments as provided for in the old edition of the Customs Code (and now the UCC) in the classic case of unlawfully levied import duties. This particularly applies if the national interest regime does not order interest to be calculated from the date of the undue payment, thereby denying the customs debtor reasonable compensation for the loss suffered by paying the unlawful customs duties. This is the situation in Germany because, according to § 236 para. 1 AO, interest will only start to run once proceedings are pending (i.e., once the action has been initiated in the fiscal courts). The reimbursement of interest does not cover the period before this (i.e., from the payment of the customs duties).

Since the Wortmann judgement, there has been a debate with Customs over its application in cases where import duties were unlawfully levied. Irrespective of the fact that Customs regards interest as 'hard cash', the (legal) background is that the Wortmann judgement dealt with cases involving a legislative defect. Wortmann KG paid anti-

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EU LAW AND CASE LAW

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Payment of interest on returned sums that were unlawfully recovered by the customs authorities in the EU Member States and their assessment by the EU courts

In business practice, the customs authorities often recover from the traders (business entities) (or sometimes – refuse to pay to these persons) various duties, charges, levies, or sanctions administered by them, even though such recovery or refusing to pay them at the later date may be declared illegal, contrary to the EU law, e.g. by national courts. Accordingly, in such a situation the question arises whether such wrongly recovered and/or paid sums (customs duties, other charges, penalties) administered by the customs authorities in the EU Member States must be repaid together with additionally calculated interest for the period during which the person concerned was unlawfully deprived of the relevant sums of money? The article analyses how such issues should be addressed in the light of recent case law of the European Court of Justice (CJEU).

FACTUAL CIRCUMSTANCES OF CASES C-415/20, C-419/20 AND C-427/20 OF THE CJEU

In joined cases C-415/20, C-419/20, and C-427/20, the CJEU has heard references from the national courts of the Federal Republic of Germany related to the interpretation of provisions of EU customs law concerning the calculation of interest on recovery of amounts of customs duties or other taxes or payments (charges) administered by the customs authorities.

In particular, these cases dealt with three related situations in which national courts of the Federal Republic of Germany referred interrelated questions to the CJEU concerning the provisions of EU customs legislation on the application of interest corresponding to the recovery of duties/charges or sanctions administered by customs authorities.

The first situation in case C-415/20 concerned *Gräfendorfer*, i.e. y. activities of a company established in Germany exporting poultry carcases to the third countries. The Principal Customs Office, Hamburg, refused to grant *Gräfendorfer* export refunds on poultry carcasses which it had exported to third countries between January and June 2012 on the ground that the poultry carcasses were not of 'fair marketable quality' within the meaning of the EU legislation on export refunds for agricultural products, since they had not been fully plucked and contained too many giblets. The Principal Customs Office, Hamburg, also imposed a financial penalty on *Gräfendorfer* on the ground that it had applied for an export refund in excess of the refund applicable. *Gräfendorfer* brought an administrative appeal against that refusal, and then another against that financial penalty.

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EU LAW AND CASE LAW

The case with the smell of vanilla

On 7 April 2022 the Court of Justice of the European Union (CJEU) examined the case C-668/20, the goal of which was to clarify the tariff position that covers a runny and golden-brown product with a strong smell of vanilla, consisting of approximately 85% ethanol, 10% water, 4.8% dry residue and having an average vanilla content of 0.5% (the Goods), and whether the Goods of such composition shall be exempt from excise duty on alcohol. The CJEU had to clarify whether the Goods are classified as vegetable extracts, extracted oleoresins or a mixture thereof. It was also necessary to comment on the interpretation of 'flavouring', which is not defined in either the Combined Nomenclature (CN) or Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (Directive 92/83).

The CJEU only partially agreed with the decision of the German Principal Customs Office (Hauptzollamt), i.e., the CJEU agreed that the Goods should be classified under the subheading 1302 19 05 of the CN. As regards the levying of excise duty on alcohol, the CJEU ruled that vanilla oleoresin falling within subheading 1302 19 05 of the CN was to be regarded as a 'flavouring' within the meaning of Article 27 (1) (e) of Directive 92/83, provided that it constitutes an ingredient which brings a specific taste or smell to a particular product.

SITUATION

Y GmbH imported the Goods to Germany. In order to obtain such goods an intermediate product is extracted from the vanilla bean using ethanol (the intermediate product). That strongly aromatic, viscous, dark brown intermediate product is then diluted with alcohol and water in order to obtain the Goods. Y GmbH declared those Goods for release for free circulation under subheading 3302 10 90 on 10 February 2016.

On 25 April 2016, the Hauptzollamt took the view that the Goods should be classified under subheading 1302 19 05 of the CN and, therefore, that they were also subject to excise duty on spirits under German law. This position was also confirmed by the German Finance Court (Finanzgericht).

Y GmbH did not agree with the decision of the Finanzgericht and brought an appeal on a point of law to the German Federal Finance Court (Bundesfinanzhof, Court), which referred the question to the CJEU for a preliminary ruling.

In the first place, the Court noted, that heading 1302 of the CN includes vegetable saps and extracts, provided that

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CLASSIFICATION, VALUATION AND ORIGIN

The "dark art" of tariff classification (challenging a BTI ruling)

In March 2021, an article reporting on the deliberations of the Irish Tax Appeals Commission regarding a tariff classification dispute between the Irish Revenue Commissioners and a medical technology company appeared in an Irish daily newspaper.

As a customs consultant and a former civil servant with a particular interest in tariff classification, my attention was immediately piqued. Sometimes, it is interesting to see how legal cases can clarify the scope of tariff headings. Sometimes, it is interesting simply to see what the general level of knowledge of tariff classification in the greater public is.

Through a variety of sources and familiarity with the process, it has been possible to track the progress of this issue through the various layers of appeal.

In March 2021, the Irish Tax Appeals Commission (TAC) issued a ruling regarding the classification of a plastic basin with a plastic disposable liner. Both components were embedded with silver ions. The silver ions gave this product antimicrobial properties. Its envisaged use was in clinical settings and its function was to prevent the spread of infection.

This issue was referred to the TAC because Irish Customs had issued a Binding Tariff Information (BTI) ruling for the product in question under heading 3922. Heading 3922 covers *'Baths, shower-baths, sinks, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics'.*

However, the applicant did not agree with the BTI and appealed that classification under heading 3922 was not correct. The company put forward its argument in favour of classification under heading 9018 as a medical device.

The proceedings of this case are presented in case number 22TACD2021 on the Tax Appeals Commission website.

From the point of view of a classification expert, the determination of the TAC began quite promisingly. The 6 General Interpretive Rules were quoted as were the EU Regulations that give legal force to the Harmonised System convention and the European Union's external tariff.

In the report from the proceedings, both the appellant company and the Revenue Commissioners set out the basis for their respective classification opinions for this product.

The company claimed that this basin and liner system can prevent the spread of life-threatening hospital acquired

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CLASSIFICATION, VALUATION AND ORIGIN

A few remarks on the softness of soft law in the sphere of customs classification

The application of customs classification provisions is facilitated by soft law and hard law. The former category comprises opinions issued by the World Customs Organization (explanatory notes and classification opinions of the Harmonized System Committee) and the European Commission (explanatory notes), whereas the latter classification regulations of the European Commission. The said regulations will not be discussed in this article, as they are examples of hard law, even if very specific.

Soft law measures (as well as classification regulations of the European Commission) are aimed at explaining the meaning of the classification rules and not at altering these rules (even for the sake of clarity). This is particularly easy to notice in the reindeer meat case, where practical problems with distinguishing between the meat of domesticated reindeers and wild ones were not considered to justify treating these types of products as one for customs classification purposes. The Court of Justice, in its judgment of 12 December 1973 in case 149/73 *Otto Witt KG v Hauptzollamt Hamburg-Ericus* held:

"1. (…) In this matter the customs authorities referred to the explanatory notes to the Common Customs Tariff, published by the Commission, according to which reindeer are held to be domestic animals, with the result that their meat is not classified under subheading 02.04-b and must be classified under subheading 02.04-c-iii.

2. The arguments put forward by the Commission to justify the classification of all reindeer meat under the same subheading in this way, leaving no possibility for a different treatment of the meat of wild reindeer as compared with that of domestic reindeer, consist in the absence as between the two products of objective characteristics and properties which would allow one to be distinguished from the other when submitted for customs clearance.

However, this similarity between the products is not such as to exclude treatment differentiated on the basis of other objective factors, of which evidence can be given when the products are submitted for customs clearance, for example by means of certificates of origin.

3. The explanatory notes to the Common Customs Tariff, although an important factor as regards interpretation in all cases where the provisions of the tariff provoke uncertainty, cannot amend those provisions, the meaning and scope of which are sufficiently clear.

The expression "game" in its ordinary meaning designates those categories of animal living in the wild state which are hunted."

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CLASSIFICATION, VALUATION AND ORIGIN

Low value - is it the market price, a result of good business negotiation skills, or fraud?

The problem of declaring a low value of goods and undervaluation to customs has always been relevant, and the control of determining the correct customs value has never left the sight of customs.

This topic was explored in various ways during the international conference in Rotterdam on the 31st March 2022, organised by the academic community. It resulted from a collaboration between the four European universities (Münster, Valencia, Bologna and Rotterdam).

Academics, lawyers, and customs representatives presented the international legal framework governing customs valuation, commented on the notable Hamamatsu case. The judgement of the European Court of Justice (ECJ) at the end of 2017 shook the customs world. The question arose as to how the provisions of the legislation would have to be applied in practice, when the court ruled on the value that could not be accepted in the transactions of related companies for customs valuation purposes, but did not rule on what the practice should. From the current perspective, in the opinion of experts, the judgment did not substantially change the business and customs practices.

Questions have been raised concerning what needs to be improved in the legal framework so that it would not create unwanted bureaucracy or create additional costs for business. The customs law in the rapidly changing business environment was described as ‘old-fashioned‘ and outdated, and few of the participants of the discussion ‘have sent‘ it to the museum. The customs representatives themselves debated whether an invoice in e-commerce was really the only way to justify the customs value, and whether electronic data alone would not be enough. However, it must be acknowledged that the EU law is affected by international agreements of the World Trade Organization, the fundamental change of which would be a considerable challenge.

E-COMMERCE AND UNDERVALUATION

The issue of the risk of undervaluation in e-commerce attracted much attention at the event. With the abolition of the import VAT exemption, which took effect from the 1st of July 2021, this problem did not decrease; rather, it was exacerbated. The practise shows that the declared value of goods purchased in e-commerce has decreased.

The question has been raised as to what measures to control fraudulent undervaluation could be effective. It has been suggested that the application of certain risk management measures could lead to stricter controls or even blocking of certain risky sales platforms by regulators. However, the discussions concluded that such a measure is

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CLASSIFICATION, VALUATION AND ORIGIN

Post-clearance verification of preferential origin of goods

Customs may carry out post-clearance verification of the preferential origin of goods. As a result, a letter from customs might appear on the importer's desk stating that the preferential tariff treatment has been denied. In this article, we look at what is the process of post-clearance verification of preferential origin set out in some of the free trade agreements of Canada, the UK and the EU. Also, we provide practical examples and suggestions on how the preferential origin-related risk could be managed by importers.

CANADIAN PERSPECTIVE

Preferential origin as the source of risk

Importers who claim preferential tariff treatment under a free trade agreement ('FTA') are generally familiar with the certificate of origin provided by the exporter or producer of the goods. In most FTAs, importers are required to have this certificate in their possession at the time the preferential treatment is claimed.

Many importers assume that the certificate of origin is the end of the story or that it shields them from liability should the goods subsequently be found not to originate. Unfortunately, this is not the case.

It is the importer who must pay the duties owing plus interest, and perhaps also penalties, should the certificate be invalid. This can come as an expensive surprise. For example, assume a Canadian importer purchases $10 million of goods from a German supplier over four years. They have certificates from the producer which state the goods originate under CETA and are thus duty free. A verification audit determines that the goods did not qualify under the CETA Rules of Origin, and are subject to the MFN rate of 6.5%. The assessment of duties would be $650,000. With penalties and interest, the total bill could be over a million dollars.

Risk management: provisions in the sales contract, 'red flags'

Where preferential tariff treatment under an FTA is critical to an importer, they might consider negotiating a provision in the sales contract whereby the exporter guarantees that the goods originate and agrees to pay the duties, interest and penalties assessed if they do not.

At a minimum, the importer should take reasonable steps to ensure that the producer has done the work necessary to conclude that the goods originate. They should also review the certificate for 'red flags'. For example, a producer who states that a complex piece of machinery is 'wholly obtained or produced' in the countries that are party to the FTA

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NON-TARIFF MEASURES, SANCTIONS

What exporters should know about licensing barriers?

Due to the non-transparent import licensing requirements in many countries, such as Turkey, India, Malaysia, Brazil, and Argentina, to mention a few, exporters are denied trade opportunities, which these days are especially important for those who lost their export markets after Russia invaded Ukraine. The article introduces basic information on automatic and non-automatic licensing and provides practical examples of some non-transparent licensing regimes worldwide that must be considered when choosing new export markets.

INTRODUCTION

Despite the somewhat negative attitude of the World Trade Organization (WTO) to quantitative restrictions on international trade, particularly the licensing of imports, many WTO members apply such measures to a wide range of goods. WTO Agreement on Import Licensing Procedures (Agreement) is designed to streamline and structure the application of such actions.

According to the Agreement, import licensing is defined as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing WTO Member. This definition covers both procedures referred to as 'licensing' and other similar administrative procedures. These might be authorisation, permitting, or approval procedures. The restricting essence of such measures is that the importer must take additional, not typical actions, to comply with specific requirements, which do not exist, if the product is not subject to the licensing regime.

There are automatic and non-automatic licensing types.

Automatic import licensing is defined as import licensing where approval of the application is granted in all cases. Automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing. This type of import licensing aims to collect statistics, and monitor imports and their geography but not regulate them. In other words, it does not affect the volume of imports, and the restrictive nature may be manifested only in the procedure, which is somewhat more complicated than unlicensed imports (the need to submit additional documents or information, etc.).

Non-automatic import licensing procedures are defined as import licensing not falling within the definition above.

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NON-TARIFF MEASURES, SANCTIONS

What strategies may EU traders use to overcome trade barriers?

Recently, the European Commission (EC) terminated the examination procedure concerning obstacles to trade applied by Mexico (see Commission implementing decision (EU) 2022/161, 3.2.2022). This was because the dispute regarding Tequila export licenses was resolved in favour of EU exports by domestic courts in Mexico. The example reveals that exporters can cope with trade barriers in several ways: in courts, and through complaints to the EC.

In this article, we take a deeper look at the latter and discuss the issues that accompany it.

INTRODUCTION

'Pacta sunt servanda' is a Latin phrase meaning treaties must be fulfilled. It is one of the fundamental principles of international law. Indeed, international agreements are concluded between countries with clear intentions to comply with them; otherwise, they would make no sense. These concern agreements in various fields: security, environmental, and economical. It does not matter whether we are discussing global treaties such as the Agreement establishing the WTO, the General Agreement on Tariffs and Trade, etc., or numerous bilateral agreements. Simultaneously, there are cases of violations by individual countries of their obligations voluntarily undertaken based on certain international agreements. Unfortunately, the world often faces similar challenges in the international legal field, when the figurants (violators) are whole countries subject to different jurisdictions, have other laws, and levels of economic, scientific, and technological development significantly complicate countering these challenges.

Examples of such violations were cited in the article 'What exporters should know about licensing barriers?' [1]. This article is about non-transparent import licensing by countries such as Turkey, Brazil, Argentina, India, and Malaysia, which created serious barriers to trade with these countries in the relevant categories of goods. This approach to licensing violates provisions of the Agreement on Import Licensing Procedures, one of the WTO Agreements. All the countries mentioned in this article are WTO members, and accordingly, they comply with these agreements. Therefore, it seems possible to supply goods to countries that use non-transparent and unclear licensing regimes, but in fact, it is impossible. What should, in particular, European exporters do in this situation? Is there a possibility of resolving such a problem quickly, considering that the other party to such a dispute is not a specific person but the state as a whole?

BACKGROUND

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NON-TARIFF MEASURES, SANCTIONS

Sanctioned persons: get to know your customers and suppliers

As you know, the European Union has adopted several packages of restrictive measures against the Russian Federation in the wake of the Russian war of aggression against Ukraine and restrictive measures against the Republic of Belarus in the light of the situation in Belarus. All these measures must be effectively implemented by the competent authorities and the EU economic operators. Let us discuss one of the measures - directly and indirectly sanctioned persons and how to identify them so that they do not appear among customers or suppliers.

The restrictive measures prohibit the direct and indirect import or export of the goods in question (sectoral sanctions) and restrict the access of the persons and businesses concerned to the use of their assets and financing (personal sanctions). We will look at the latter type of sanctions.

POSSIBLE CONSEQUENCES OF COLLABORATION WITH THE SANCTIONED PERSON

Without calling into question the validity of the social, political and military objectives pursued by the sanctions, let us discuss the possible consequences for a person who knowingly or not collaborates with the sanctioned person.

The first and probably the main consequence is the loss of property; after all, transactions with the sanctioned person, e.g., the supply of goods or services, are very likely to fail to be settled, as funds for payment will be mercilessly frozen by the financial institutions controlling the financial flows. Nor should we underestimate the damage to a business's reputation if information about such illegal business practices becomes public.

LIST OF PERSONS SUBJECT TO EU SANCTIONS

The list of persons subject to EU sanctions is publicly available, and economic operators, regardless of the number of business customers and partners, must ensure that they do not infringe EU sanctions when dealing with their customers or partners. Accordingly, continuous verification of information is the only possible way to avoid errors. The primary condition for such verification is the existence of detailed information about the person, i.e., the collection of data on its ownership and management structure.

In addition to primary sources (legislation), one of the most reliable sources for data verification is the website https://www.sanctionsmap.eu/#/main. It makes it easy to find up-to-date information on sanctioned persons in a variety of languages. Among other things, this dataset contains the names of all sanctioned persons adapted to the specificities of the different languages, which allows for a comparative identification of 'the bad guy' and an assessment of the

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NON-TARIFF MEASURES, SANCTIONS

Kaliningrad – Russia transit: are there any special simplifications?

Due to the war in Ukraine, the Kaliningrad Oblast is getting increased attention. We receive questions about the 'Kaliningrad transit': whether there are any simplifications for the transportation of goods from Russia to Kaliningrad and vice versa or exemptions from sanctions? The exemptions have been introduced in the fifth EU sanctions package against Russia. But let's start with an overview of some historical events.

SEVERAL HISTORICAL FACTS

Historically it has been the case that the territory of the Kaliningrad Oblast mainly was a territorial exclave [1]. The political link of this land with the metropolis was not always accompanied by a territorial connection. East Prussia, Lithuania Minor, Kaliningrad - all these names unite the same territory. The land of East Prussia since the unification of Germany in the 19th century belonged to Germany. After World War II, the territory was ceded to the Soviet Union, after the dissolution of which, it was separated from the main state and now it borders the countries of the EU.

Until the dissolution of the Soviet Union, the issue of transit to/ from Kaliningrad did not exist, as both Lithuania and Kaliningrad were parts of the same state. The issue of transit arose after Lithuania regained its independence and this issue became especially relevant after Lithuania joined the EU.

SUWALKI CORRIDOR

A geopolitically important area is located between the Kaliningrad region and Belarus in Poland, the so-called Suwalki Corridor, which runs through a narrow stretch of land on the Lithuanian-Polish border and is about 80 km long. According to Russia, due to the "excessive transit fees" applied by Lithuania, Russia envisaged a more advantageous way of transporting goods through Poland and in 1993 publicly announced the project to connect the Kaliningrad Oblast and Belarus through the territory of Poland by an extraterritorial highway. However, the Polish leadership rejected the Suwalki corridor project, arguing for ecological damage to the landscape and possible deterioration of relations with Lithuania.

The issue of the Suwalki corridor became particularly important in 1999 after Poland joined NATO, and in 2004, when Lithuania, Latvia and Estonia did the same. In the event of a conflict, Russia could cut off here the Alliance's military supplies to the Baltic states [2].

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OVERVIEWS AND COMMENTS

Wise Persons Group recommendations: what is the future of EU customs?

In order to stimulate 'thinking outside the box' in the EU debate on the future of the Customs Union, the European Commission has established a Wise Persons Group on Challenges Facing the Customs Union (WPG) to reflect on four key topics: e-commerce, risk management, the effective management of non-financial tasks and the future of customs governance structure. The group consists of 12 representatives of business, science and state institutions. The result of their work is presented in the report published on 31 March 2022, reviewing both the current customs situation and the origins of the systemic problems, as well as providing 10 recommendations for a major breakthrough.

The report provides many statistical data, based on the results of stakeholders' survey, and also data and findings of international organizations or bodies (such as OLAF). On top of this, both the minutes of the meetings of this group and the interim documents are published on the EU website, so there is a lot of material for further analysis. In this article, we will briefly review namely the part of the recommendations.

RECOMMENDATIONS BY THE WPG

1. **A package of reforms by the end of 2022**

The European Commission by the end of 2022 should table a package of reforms, including of the Union Customs Code, implementing the recommendations contained in this report, relating to processes, responsibilities and liabilities, and governance of the European Customs Union.

The report sets an ambitious target of putting forward concrete reform proposals by the end of this year, with a target of implementing them by 2030. The speed under which the EU adapts to innovations is raised as one of the systemic challenges, while some provisions of the UCC approved in 2013 and entered into force in 2016 for the implementation have been postponed until 2025.

2. **A new approach to data**

Rather than relying principally on customs declarations, customs shall focus on obtaining better quality data based on commercial sources, ensuring it is cross-validated along the chain, better shared among administrations, and better used for EU risk management. Certain e-commerce platforms should be required to provide data to customs. Also,

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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OVERVIEWS AND COMMENTS

Who is responsible for customs compliance? or When everyone is responsible - no one is!

Reader‘s question: We are a medium-sized EU manufacturing company. We import and export goods, and customs clearance is handled by customs agents. We are going to set up our own customs warehouse, apply for the AEO status and obtain authorisations for customs simplifications. We have also faced restrictions in regard to the sanctions imposed on Russia and Belarus. The question is, who in the company should be responsible for fulfilling the customs requirements and complying with them so that customs-related processes run smoothly?

When answering the question, let's first look at the areas of customs control and related requirements that businesses have to meet.

CUSTOMS AND RELATED REQUIREMENTS

There are indeed many customs and related (i.e., arising from legal regulation falling within the competence of other institutions) requirements. There is no uniform breakdown of the areas from which they originate, but in any case:

- The customs shall control the physical movement of goods across borders with third countries and the goods shall be declared to customs under the chosen customs procedure applied for. So, it is necessary to know:
  - What is needed - customs registrations (e.g., EORI number), authorisations, decisions, and
  - how to do this - notifications and declarations, and keeping of information and documents after the clearance.
- The purpose of customs controls on goods is to check the compliance with
  - tariff (tax-related) measures and
  - non-tariff (not tax-related) measures.
- The tariff-related measures, i.e., the correct calculation of import duties and taxes, are based on three pillars:
  - the tariff classification of the goods (commodity code),
  - the customs value and
  - the origin.

The application of non-tariff measures, which is a very wide-ranging area of measures, including the sanctions mentioned in the inquiry, as well often depends on these data - commodity code, customs value and origin of goods.

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JOURNAL FOR PRACTITIONERS IN EUROPE

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OVERVIEWS AND COMMENTS

Port Community Systems & Customs (Part I)

Customs put the pieces of the various authorities' puzzle together and release the goods with an overall decision. Therefore, among many other players, the customs administration plays an extremely important role in effective operations in the port, and close cooperation among all the stakeholders is an obvious guarantor of quality. In this part, we examine the tasks and challenges facing the logistics industry, the core mandate of customs and their challenges, and how can another dimension of effective process flow be created?

A ROUGH LOOK AT THE TASKS AND CHALLENGES FACING THE LOGISTICS INDUSTRY

The current worldwide supply bottlenecks, and the associated stagnation in the availability of goods clearly show us how strong global networking is in everyday life, and how the time factor dominates our economic fate due to the ever increasing demands for effectivity and efficiency.

Buzzwords, such as the 24/7 principle or delivery on time, and the even more dramatic 'on sequence', and the explosive growth in e-commerce, pose immense organisational challenges for logistics. It should also not be forgotten that in the emerging age of the next industrial phase - Industry 4.0 - the demands on the time factor and the smooth flow of the delivery of goods are becoming increasingly important.

Last but not least, there is, of course, the question of costs and resources. The topic of effectivity and efficiency also affects logistics and every possibility of reducing burdens has a positive impact on the overall process.

To reconcile the resulting effort with the limited resources in the best possible way, fundamental topics such as the continuous improvement of the trusted partnership must not be allowed to falter when considering and focusing on technological approaches. AEO programmes and their mutual recognition could be mentioned here as an example. Digitisation will also be able to provide a positive boost in that respect.

However, we must ask ourselves, how far can such approaches go, and how can cooperation between customs and the port industry contribute to this?

THE CORE MANDATE OF THE CUSTOMS ADMINISTRATIONS AND THEIR CHALLENGES

The priorities of customs administrations have changed in recent years because safety and security now play the leading role. On the other hand, governments are undoubtedly interested in securing prosperity for society and, thus,

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OVERVIEWS AND COMMENTS

Port Community Systems & Customs (Part II)

The aim of Port Community Systems (PCS) or trade Single Windows (SW) activities is not to replace existing systems. Rather, it is to create a sufficient landscape of electronic infrastructure and exchange mechanisms to link the administrative processes with the operation of all stakeholders involved. Collaboration/ cooperation is the key to getting everyone on board and creating the right modern environment for an effective port. This can create an attractive environment for trade and, thus, an increase of economic activities. So, what role do PCS play, and are or can they be a building block for the process?

PORT COMMUNITY SYSTEMS ENVIRONMENT

Let's turn our attention to the Port Community Systems environment and the cooperation of the industry with the customs services. To start with, it might be helpful to state a few facts and information.

Port Community Systems can be considered as Single Window solutions. They act as a data hub for the respective community, but mostly in a local environment. Acting in a local environment does not necessarily mean that PCS has limited capabilities. Rather, it is due to the fact that almost every port has its own individual characteristics and approach.

It is not something new or a great modern trend. PCS have existed since the beginning of the 1970s. In the course of the first big wave of the use of electronic tools at that time, the port industry also benefited from 'modern' activities. Especially in Europe, the 'boom' around this topic began at this time. Thus, there is also a concentration of PCS know-how in Europe. However, this does not mean that current solutions outside Europe are simple replicas of European solutions.

The PCS responsible for the ports of Bremen, Bremerhaven and Wilhelmshaven has more than 500 companies using its services. Another very impressive example comes from Morocco. There, a PCS was first founded and established, and then gradually developed into the Single Window (Portnet.ma) for Morocco. The truly unique success story in Morocco leads to impressive figures of 45,000 connected importers and exporters, 1500 forwarding companies, 20 banks and 43 authorities.

Currently, more than 80% of maritime trade and 30% of air cargo in Europe run via PCS solutions. For global trade, it is approximately 50% in the maritime sector, and the tendency is increasing.

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COUNTRY-SPECIFIC

Ukraine customs-related news: April/May 2022

News at a glance: the ban on the export of Ukrainian agricultural products during martial law; the limitation of foreign currency transactions for import operations; USA: temporary suspension of tariffs on Ukrainian steel; UK: agreement on “cutting” tariffs on all goods from Ukraine to zero; EU: “Solidarity Lanes” for Ukrainian agro-products; common transit in Ukraine: first special transit simplification; FTA between Ukraine and Moldova: amendments on applying PEM; EU: a one-year suspension of EU import duties on all Ukrainian exports.

THE BAN ON THE EXPORT OF UKRAINIAN AGRICULTURAL PRODUCTS DURING MARTIAL LAW

At the beginning of March, the Ukrainian government established new rules for the export of agricultural goods under martial law. Especially, the export of Ukrainian oats, millet, buckwheat, sugar, salt, and meat is prohibited. Some kinds of goods such as wheat and a mixture of wheat and rye (meslin), corn, meat/eggs of domestic chicken and sunflower oil are allowed to be exported only with obtaining a permit (license).

THE LIMITATION OF FOREIGN CURRENCY TRANSACTIONS FOR IMPORT OPERATIONS

As to martial law, the National Bank of Ukraine established new rules and prohibitions for foreign currency transactions, including payments for import operations. The legal entity can provide payments in foreign currency abroad only for making payments for 1) goods as the part of humanitarian aim; 2) goods, which are included in the list of critical import goods (such list of goods was established by the government of Ukraine).

USA: TEMPORARY SUSPENSION OF SECTION 232 TARIFFS ON UKRAINIAN STEEL

The United States of America decided to suspend import duties on Ukrainian steel and steel products. Such suspension will last for 12 months.

According to statistics, 359 thousand tons of Ukrainian metallurgical products were exported to the United States in 2020, and 428.9 thousand tons - in 2021.

UK: AGREEMENT ON “CUTTING” TARIFFS ON ALL GOODS FROM UKRAINE TO ZERO

At the end of April, the UK government announced new trade measures as part of broad UK economic support to Ukraine, especially establishing a 0% rate of customs tariffs for all goods, imported from Ukraine.

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COUNTRY-SPECIFIC

Keeping abreast of U.S. CBP's current strategies and developments

Every year U.S. Customs and Border Protection ('CBP') releases the 'CBP Trade and Travel Report'. Trade compliance practitioners should take note of these annual reports to keep abreast of CBP's current strategies and developments. Additionally, the information contained can provide insight into CBP's strategic outlook for the future, a valuable tool for planning purposes.

'CBP Trade and Travel Report' provides an in-depth look at the challenges, successes, plans, and overall state of the agency. In its 2021 report unsurprisingly there's a strong focus on COVID-related challenges. Other major topics covered include new technology deployments (e.g. blockchain ledger technology), trade facilitation and enforcement, anti-dumping/countervailing enforcement and counterfeit goods (particularly personal protective equipment (PPE)).

As trade compliance professionals our work is not limited to complying with current regulations; anticipating future regulatory changes to ensure preparations are in place is an equally critical function.

COVID AND COUNTERFEIT PPE

Much like 2020, 2021 was very much bogged down by COVID-related restrictions and fears. While these restrictions had a drastic, negative impact on daily life as well as both business and leisure travel, this was an entirely different story for trade. CBP processed 36.9 million entries valued at over 2.8 trillion USD during FY2021 which marked a 14.9 percent increase over FY2020. As anyone working in the trade field is aware, the pandemic marked record consumer purchases which is reflected by these figures.

Whenever a crisis unfolds an unfortunate set of characters always appear: profiteers. COVID is certainly no different. As demand for PPE remained strong throughout 2021 so did the flow of counterfeit PPE and COVID testing kits. In FY2021 CBP seized over 35 million counterfeit face masks, and 38,154 illicit test kits. Over 31 percent of these originated in China.

As trade compliance professionals it is our role to ensure we perform proper due diligence on our business partners; we are the first line of defense in the battle against illicit and counterfeit goods.

TECHNOLOGY

Technology has always played an integral role in CBP's ability to detect threats and enhance enforcement techniques.

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JOURNAL FOR PRACTITIONERS IN EUROPE

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KNOWLEDGE

Journals on Customs: Why should you attend the Global Webinar?

On April 28th, 2022, another edition of the event 'Global Webinar: Journals on Customs' took place, during which editors of six leading journals shared their insights concerning some of the most significant topics, events and articles that have taken place in specialist editions over the past year. For me, as a young researcher, such events are of great importance, as they allow me to learn what are the current important issues in the field of global customs control. In the next few lines, I will try to outline what impressed me the most in the presentations of the speakers in the meeting.

PROFESSOR BORYS KORMYCH, UKRAINE, EDITOR OF THE ACADEMIC JOURNAL 'LEX PORTUS'

Professor Borys Kormych addressed the logistical export goods issues that Ukraine faces in the conditions of war. At first glance, the transportation of goods should not directly concern customs, but in fact, it should not be forgotten that customs formalities exist to control and facilitate international trade, and logistics is a significant part of the import-export process. The situation in Ukraine is worrying and affects not only Europe, but the whole world. With the imposition of economic and financial sanctions, more barriers are being placed on international trade relations, and it is the responsibility of customs to apply them as far as the movement of goods is concerned. Of course, the outcome and specific consequences of the war will only become clear once a peace agreement has been signed.

Therefore, current events make me think of the following question: is the time of de-globalization coming and what changes will take place in international supply chains and, therefore, in customs formalities?

LAURE TEMPIER, BELGIUM, EDITOR OF THE 'WCO NEWS'

Laure Tempier highlighted other very interesting topics that are likely to have an increasing impact in the coming decades not only on customs administrations and public sector institutions, but also on the business and human population in general. In particular, the collection, processing and analysis of data and the application of new technologies,-specifically blockchain. Blockchain is an innovative technology that has long been associated with the emergence and development of crypto currencies, but South Korea has demonstrated how it can be applied in customs administration as well. The implementation of blockchain has undoubtedly led to faster shipment processing, an enhanced level of digitization, simplification of customs formalities and procedures, and a high level of data

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