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CCRM ISSUE 15 ONLINE

CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

CONTENT

Editorial

Dear Reader,

If you had the chance to talk to an expert who was working on the Union Customs Code (UCC), what would you ask? Questions we asked: what suggestions of yours do we find in the UCC? What are you especially proud of about the UCC? What could have been done differently? What would be your advice for users of the UCC? Grab a cup of coffee and enjoy our interview with Michael Lux.

In this issue of the journal, the key topic is case-law. Procedural fairness, forced labour, export control measures and classification of goods, royalty fee and other valuation-related issues, the liability of a customs broker (representative), tariff classification and the main feature of a product - insights on these topics were shared during the 11th Authors' Meeting. We invite you to learn which court cases were selected and which aspects were paid attention to by experts from various countries.

Moreover, we invite you to read articles about the latest CJEU decisions concerning customs valuation and the concept of ‘related persons’; the use of customs valuation databases and the selection of identical or similar goods; and the financial consequences of indirect customs representation mode in the EU. Also, let’s consider together the answer to the question, ‘can you appeal if you disagree with the CN code recommendation issued by the Customs Laboratory?’.

Customs brokers is another topic, which we were interested in looking at. We share views and news from the United Kingdom, Germany, Bulgaria, Lithuania, and Canada on aspects such as: should the profession be licensed, what services customs brokers should (or should not) provide, and how the profession is adapting to the ever-changing trade and legal environment. Moreover, we look at the standards, which set the norms aimed at ensuring the quality of the services. We also draw importers' attention to four common misconceptions in the relationship between importers and customs brokers.

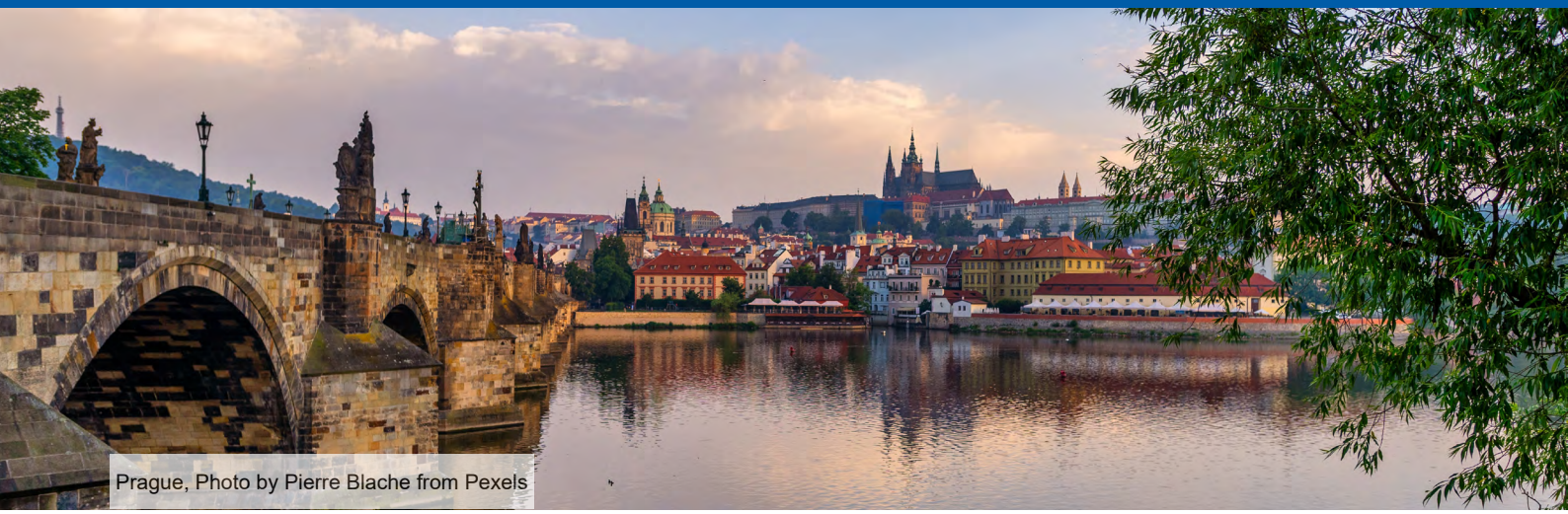
Declarants might be interested in deepening their knowledge by reading ‘Types of import and export declarations in the EU: have you set the code correctly?’. Academics and students might get new ideas by reading ‘Customs Control Club: What customs should not be, what customs is today, and what customs should be tomorrow?’. Those interested in global harmonisation of rules, should not miss the article ‘Mission possible: how the WTO Valuation Agreement strikes a balance between trade facilitation and customs regulation’.

Finally, the customs-related news from Ukraine, where colleagues are working under the conditions of war are, for us, a source of strength, courage and inspiration. Ukraine will soon join the Convention on a common transit procedure and the Convention on the simplification of formalities in trade in goods. As the authors note, ‘this can greatly speed up logistics, especially in wartime’.

There are definitely more insightful readings. On behalf of my colleagues on the editorial board, we hope you enjoy this edition.

Your comments are always more than welcome under info@lcpa.lt or in the comments section of each online article.

Enrika Naujoke
Director of Lithuanian Customs Practitioners Association



Prague, Photo by Pierre Blache from Pexels

EU LAW AND CASE LAW

EU law news: June/July 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 30 (25-31 July): restrictive measures in view of Russia's actions destabilising the situation in Ukraine extended until 31 January 2023; European Commission answers questions about Russian gold import ban; definitive anti-dumping duty on imports of molybdenum wire originating in China; definitive anti-dumping duty on imports of mono ethylene glycol originating in the USA and the Kingdom of Saudi Arabia; investigation concerning possible circumvention of the anti-dumping measures on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia; updated lists of products of animal origin subject to official controls at border control posts; and more news!

OFFICIAL JOURNAL

Support for Ukraine; sanctions against Russia and Belarus

27.7.2022 L 198 Council Decision (CFSP) 2022/1313 of 25 July 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. The decision **extends the validity** of the decision 2014/512/CFSP **until 31 January 2023.**

Duties, taxes, tariff quotas

27.7.2022 L 198 Commission Implementing Regulation (EU) 2022/1310 of 26 July 2022 initiating an investigation concerning possible circumvention of the **anti-dumping measures** imposed by Implementing Regulation (EU) 2020/1408 on imports of certain **hot rolled stainless steel sheets and coils** originating in Indonesia by imports of certain hot rolled stainless steel sheets and coils consigned from Turkey, whether declared as originating in Turkey or not, and making such imports subject to registration.

26.7.2022 L 197 Commission Implementing Regulation (EU) 2022/1305 of 25 July 2022 imposing a definitive anti-dumping duty on imports of molybdenum wire originating in the People's Republic of China following an expiry review

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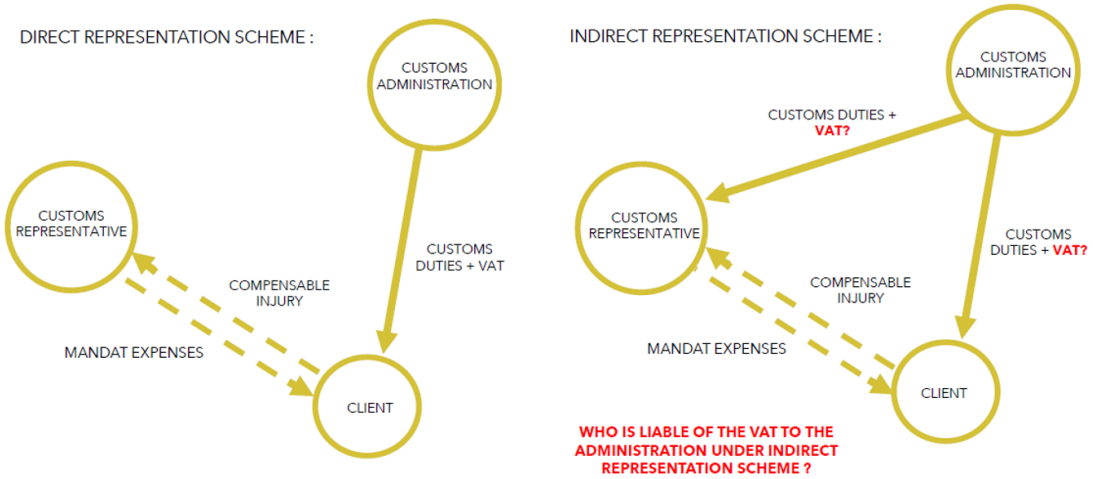
Anouck - Préscillia Biernaux

Lawyer, PARADIGMES Cabinet d'avocats, France

EU LAW AND CASE LAW

Financial consequences of indirect customs representation mode in the EU

According to Article 18 of the Union Customs Code (UCC), the customs representative may carry out customs formalities by direct or indirect representation. Regardless of the method of representation chosen, the representation contract remains a mandate contract, which obliges the importer to guarantee the customs representative the payment of import duties and taxes incurred by the operation. The choice of the mode of representation, on the other hand, is important when the importer has disappeared (or become insolvent) and has left the customs representative alone to deal with customs. Indeed, if the representative has acted as an indirect representative, the administration can claim payment of the entire debt from him... except perhaps in the case of VAT, because, according to the CJEU, solidarity in VAT matters is not automatically established.



In the case of direct representation, the customs representative acts on his client's behalf, who is considered the declarant and therefore the debtor of the customs duties and VAT. In the case of indirect representation, the customs representative acts on his client's behalf but in his own name, which makes him jointly and severally liable with his client for the payment of customs duties and, in principle, VAT... But while the joint and several liability of the customs representative acting as an indirect representative and the client is expressly stipulated in the text for the customs debt, this is not the case for VAT.

The Court of Justice of the European Union (CJEU) had to rule on the question of whether the customs representative

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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CASE LAW

CJEU guidelines on the selection of identical or similar goods for determining the customs value

Customs administration shall exercise due care in analysing the facts, gathering information and evidence for the use of each of the alternative methods for determining the customs value. This includes the duty of the customs authorities to consult all the information sources and databases available to them. Are customs authorities obliged to check information systems maintained by the EU? May identical or similar imports (which have not been challenged) of the same trader be excluded? What is the period, in which identical or similar imports are considered to be 'made at the same or around the same time'? We look at the CJEU's answers to these questions.

With the judgment in case C-187/21 (FAWKES Kft.) for preliminary ruling, the CJEU answers several essential questions that could and very often arise when applying the first two alternative methods for determining the customs value regulated in Art. 30, §2, b. 'a' and 'b' of Regulation (EU) 2913/92, replaced from May 1st, 2016 by the provisions of Art. 74, §2, b. 'a' and 'b' of Regulation (EU) of the European Parliament and of the Council 952/2013 on the adoption of the Union Customs Code.

REMINDER ON THE TWO METHODS – OF IDENTICAL AND OF SIMILAR GOODS

Before moving on to the questions, it is appropriate to remind that the two methods - of identical and of similar goods are applicable in the order of their listing in the indicated regulations when the transaction value method cannot be applied due to regulatory restrictions (e.g. it concerns contracts between related parties where the relationship influences the negotiation of the price), as well as when the customs authorities challenge the plausibility of the declared transaction price under the established procedure. In such cases, first of all, the competent administration is obliged to determine the customs value of the imported goods on the basis of the transaction value of identical goods, which are the same as the imported goods in all respects, including physical characteristics, quality and reputation. Where there is no data for such goods, the customs authorities must use the next listed method, namely - the method of similar goods, which although not alike in all respects, have similar characteristics, are made of similar materials and, above all, perform similar functions and are interchangeable with the imported goods.

Both methods require the goods to be produced in the same country of exportation, plus to compare the prices of goods in a sale at the same commercial level and in the same quantity, as well as to compare imports made at or around the same time as the import of the goods whose transaction value has been rejected. In case several values of identical or similar goods are applicable, the lowest one of them must be used.

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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CASE LAW

Baltic Master case in the CJEU: once again about related persons and the use of customs valuation IS

On 13.06.2022, the Court of Justice of the European Union (CJEU) issued a decision in the Baltic Master case (C-599/20) on two relatively unrelated issues. The first, whether customs must establish an objective legal relationship between the buyer and the seller in order to consider them as related persons. The second, whether customs can rely on the value of a single comparable transaction found on the national customs valuation information system (IS), denying the acceptance of the declared value of the goods (air conditioning units). In this article, we discuss interpretations provided by the CJEU; and we look forward for the national verdict of the Supreme Administrative Court of Lithuania (**SACL**).

Before getting into the essence of the case, here are some important and interesting details.

First, the SACL decided to turn to the CJEU after the European Court of Human Rights recognised that the initial unmotivated refusal of Lithuanian courts to refer the case to the CJEU violated the Convention on the Protection of Human Rights and Fundamental Freedoms. In other words, it is a reminder that reasoned requests from taxpayers to the CJEU should not be dismissed without further investigation.

Second, the questions presented by the SACAL proved to be extremely relevant both to the CJEU itself and to other member states. It was decided to examine the case with the involvement of the General Advocate and receiving his opinion, and in addition, not only the Government of Lithuania and the company itself, but also the Governments of Czech Republic, Spain, Estonia, the Netherlands, France, and the European Commission submitted their written observations.

Third, although the decision was made in interpreting the previously valid Community Customs Code (Regulation No. 2913/92, **CCC**), the interpretations remain relevant in principle when applying the Union Customs Code (Regulation No. 952/2013, UCC).

THE ACTUAL CIRCUMSTANCES OF THE CASE

Between 2009 and 2012, Baltic Master imported into Lithuania various quantities of goods originating from Malaysia, which it had purchased from *Gus Group*. In the customs declarations, those goods were presented as “parts of air-conditioning machines”. Those declarations referred to only one TARIC code, together with the total weight of those goods in kilograms. In those declarations, Baltic Master indicated the transaction value as the customs value of those

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Michael Lux

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A COFFEE BREAK WITH....

A coffee break with… Michael Lux

If you had the chance to talk to an expert who was working on the Union Customs Code (UCC), what would you ask? … Questions we asked: What your suggestions do we find in the UCC? What are you especially proud of about the UCC? What could have been done differently? What would be your advice for the users of the UCC? And more! Grab cup of coffee and enjoy our interview with Michael Lux.

Enrika: Michael, thank you for the possibility to talk to you. You are one of the best-known experts in the customs world, and not only in the EU, where you significantly contributed to the preparation of the UCC. You're also an author of many publications, and a frequent speaker at conferences. What were the most exciting moments for you in your impressive career?

Michael: The first moment was when I joined the regional customs Directorate in Hamburg. Only a few years later I was asked to work in the tariff division of the Ministry of Finance in Bonn where my main task was to organise and attend as a German representative the WCO meetings of the Committee developing the Harmonised System. I enjoyed working together and socialising with the delegates from all over the world. The result of this work - apart from the adoption of the HS (for which the voting rights for customs unions was the hottest issue) - was the publication of my first book explaining the origin and systematic of the Harmonised System in 1986 (in German).

The next highlight was when I joined the Commission in 1987. This led to the publication of my first book in English 'Guide to Community Customs Legislation' in 2002. The most prestigious job I held was that of head of unit 'Customs Legislation'. During this time, I prepared the proposals for the Modernised Customs Code and for the eCustoms Decision (which stipulated, *inter alia*, the creation of a European Single Window).

Enrika: In each of the many posts you have held at the various units of the European Commission, you launched various modernisation initiatives. Please tell us more about some of them.

Michael: My first job in the Commission was to run the TARIC service. When I took over in 1987, I realised that the software developed so far was only capable of printing the TARIC. So, having worked on the German electronic customs tariff, my first initiative was to request the development of a tool that could extract the updates, so that we could forward them to Member States. Initially, once this tool was available, the updates had to be printed out in order to be sent to Member States. It took a while until we were able to send electronic files to Member States so that they could feed them into their national tariff database. However, there was for a long time one Member State which had to print out this file in order to update its national tariff database (with the consequence that the TARIC and the national

tariff database were not in step).

The lesson from this is that clear communication with IT and Member States about what you want to achieve and what the others need is necessary. This is especially relevant with regard to IT developments where the Commission provides software or data which must then be fed into national IT systems. The different timelines of Member States all being ready at a certain pre-defined moment is a constant problem which is now resolved by defining periods for national implementation (which cannot be found in Art. 278 UCC but are indicated and adjusted in the Multi-annual strategic plan - MASP).

In my second job I was, *inter alia*, in charge of customs procedures with economic impact and end-use. For each of these customs procedures, a different official was in charge, and each of them developed the implementing provisions without much taking into consideration what his neighbour did. I once asked the person in charge of inward processing: "Why did you not propose to extend this rule also to outward processing?". He answered: "I am not in charge of that procedure". So I decided to create as many common rules for these (or some of these) procedures as possible, a process that was later followed even further with the Modernised Customs Code (MCC) and the Union Customs Code (UCC). Lesson learned: Breaking up silos within and between units is a constant task within administrations.

When I became head of unit 'Customs Legislation' I had the opportunity to apply this approach to the whole Customs Code, and to prepare the ground for the digitalization of all customs procedures and processes. The lesson learned insofar was that it takes much more time than we expected, notably because of the shared or parallel development of national and EU-wide IT systems.

Enrika: Let's talk about the UCC. What are your ideas included in the UCC? And, in general, what you are especially proud about the UCC and what could have been done differently?

Michael: Centralised clearance (CC) and self-assessment are certainly the two most innovative elements of the UCC, though I had managed, while I was in charge of customs procedures with economic impact and end-use, to introduce CC concept already in the Customs Code implementing provisions under the title 'Single Authorisation'. The new rules on the customs debt and the common provisions for special procedures are also an achievement.

During the work on the MCC and UCC we had also attempted to replace provisions under which customs authorities 'may' authorise certain procedures or facilitations by provisions stipulation that they 'shall' do so if certain conditions (set out in Union legislation) are fulfilled. However, this work has not been fully accomplished, and such 'may'-provisions are is still a source of divergent application by Member States.

What has failed completely so far is the implementation of self-assessment. There are a number of reasons for this, all of them outside customs legislation:

- the budgetary rules prescribing a maximum of monthly duty establishment/payment have not been changed;
- the rules for external trade statistics also require monthly reporting;
- the rules on prohibitions and restrictions do not allow for a self-control and self-certification by economic operators, even if they are AEO.

Efforts must therefore be made to change these rules so that self-assessment can become a successful concept. The Wise Persons report also highlights the need to replace transaction-based reporting and controls by system based controls.

Enrika: You also prepared the implementation assessment of the UCC. IT systems is a central topic, as the UCC is the product of shifting from a paper-based customs environment to electronic systems. In your opinion, is it realistic to expect that the deadline 2025 to implement the IT systems in all the EU member states will be met?

Michael: We must distinguish here two aspects:

1. Will the Commission make available the promised IT systems by the end of 2025? The answer here is: probably yes, possibly with the exception of the guarantee management system (GUM).
2. Will the Member States have implemented all IT changes prescribed under the UCC by the end of 2025? The answer here is: probably no, because the data elements in Annex B UCC DA and IA have been constantly changed by the Commission (*inter alia* for e-commerce), thus making it impossible for Member States to keep the agreed deadlines.

Member States customs administrations are under so much pressure to keep the UCC deadlines that they have no spare capacity to test new technologies, such as blockchain.

Enrika: From the perspective of a practitioner, in practice it is not simple to use the UCC and related regulations. What difficulties do you see in your practice as a lawyer and what would be your advice?

Michael: In order to find the relevant provisions use a printed book, such as 'UCC - Text edition and introduction' or the 'UCC - Practioner's edition', together with the extra book containing the Annexes to the UCC DA and IA (Mendel Verlag). You will then find the links between the different provisions (indicated either on top of, or printed behind, each UCC Article, though not all possible links can be indicated in this way due to the structure of the UCC, where some provisions are in Title I (General provisions), and others, for example, in Title VII (Special procedures). Mendel Verlag also offers an electronic version with a search function under https://www.custleg.eu

The main difficulty I face as a lawyer working in different jurisdictions is that the import clearance systems and portals for submitting applications of Member States work differently and that many provisions (especially those using 'may') are applied differently. Even greater differences exist with regard to appeals and sanctions. So you always need a partner with knowledge of the local systems and practices.

Enrika: Your publications help practitioners navigate the legal trade and customs rules. Please share some insights from your latest work.

Michael: Apart from articles on specific subjects (such as my recent article, in German, 'Does Art. 173(3) UCC allow to change the - erroneously indicated - name of the declarant in a customs declaration?'), I am constantly updating my introduction to the UCC (quoted in the previous answer), indicating new judgments of the ECJ and adding further explanations to the UCC Articles and the corresponding DA and IA provisions, so that their purpose and scope can be better understood.

Enrika: I wonder, how much you manage to accomplish professionally, and also how you manage to balance it with time for your family and hobbies. What is the key to such efficiency and productivity?

Michael: I think that a long experience in Customs, both in a national administration and in the Commission, as well as an attorney and consultant helps a lot in finding out quickly what the root problem is and what solutions might be available. Furthermore, my approach in dealing with customs officials is to communicate always in a friendly and constructive way, even if we interpret the law differently (in the worst case, we meet in Court again but even there I remain friendly). Since I am no longer working in the administration, I am also able to interrupt work regularly for pauses in which I do something different (such as jogging or gardening) which leads to more efficiency when I return to work or writing.

Enrika: Thank you very much for your time and all the insights shared. We look forward to meeting you on 15th December 2022, at the 'Books on Customs 2022' event* and to talking to you about the book 'UCC – Text edition and introduction', 2nd edition, Issue 2, March 2022 (also available in German and French).

*Information will be available in September 2022 in the CustomsClear 'Events' section.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
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About the author

CLASSIFICATION, VALUATION AND ORIGIN

Mission possible: how the WTO Valuation Agreement strikes a balance between trade facilitation and customs regulation

Customs valuation is one of the largest challenges in international trade. That is why the rules of customs valuation are set out in an international treaty. On the one hand, this is aimed at harmonizing the valuation rules, on the other hand, at protecting economic operators from arbitrariness of the authorities and, ultimately, at helping traders. Does it really work in practice and does it serve both public and private interests in international trade? In the article, peculiarities of customs valuation are highlighted, which are especially important to consider for those, who deal with developing and least-developed countries.

INTRODUCTION

According to the World Trade Organization (WTO), the aim of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the Agreement) is *"to have a fair, uniform and neutral system for the valuation of goods for customs purposes - a system that conforms to commercial realities, and which outlaws the use of arbitrary or fictitious customs values"*. The Agreement is based on a 'positive' approach and it aims to facilitate rather than regulate trade. However, there is a decision of WTO's Committee on Customs Valuation, which gives customs administrations the right to reject the declared value if there is reasonable doubt regarding the accuracy of the information. In the light of this backdrop, this article critically analyses how the WTO Valuation Agreement strikes a balance between trade facilitation and customs regulation.

HOW DO THE PRINCIPLES OR ELEMENTS OF CUSTOMS VALUATION APPLY?

The Agreement prescribes a set of rules by precisely expanding the provisions of Article VII of the General Agreement on Tariffs and Trade. The Agreement stipulates that the system for the valuation of imported goods for customs purposes must be fair, uniform, and neutral. It requires that such a system should preclude the use of arbitrary and fictitious customs values. It demands that the application of each of the six valuation methods must accord with commercial practice. The Agreement specifies the transaction value as the primary method of valuation.

The transaction value is the price paid or payable for imported goods with addition of certain adjustments envisaged under the Agreement. The use of this method provides prediction to the trading environment. With the help of transaction value, traders can predict accurately the amount of duty and taxes on the imported goods. It also provides certainty to the system as in the first instance, the customs value of imported goods will be based on the invoice value.

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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CLASSIFICATION, VALUATION AND ORIGIN

Can you appeal if you disagree with the CN code recommendation issued by the Customs Laboratory?

You can ask the Customs Laboratory to classify your goods to double-check the commodity code you use or plan to use. However, the recommended product code might differ from yours, and you may disagree with it. What should be done in such a case? Should you ignore the recommendation of the Customs Laboratory? Or is it better to appeal against it? And, in general, is it possible to appeal against such non-binding conclusions? The Supreme Administrative Court of Lithuania (SACL) clarified the latter issue.

Let's look at the decision of the SACL on the 8th of June, 2006, concerning the administrative case No. eP-72-442/2022.

SITUATION

The Company (also Applicant) contacted the Customs Laboratory stating that it was preparing to manufacture mixtures of beverages and, therefore, requested classification of the goods in the Combined Nomenclature (CN), the TARIC, and that the additional national code be set. The Company provided descriptions and samples of the goods for this purpose.

The Customs Laboratory concluded that the goods should be classified under the CN heading 2208 and informed that this was a non-binding recommendation. The Company disagreed with this. In its view, the correct CN code should have been 2206. Despite its allegedly non-binding nature, the recommendation was nevertheless the decision of a special customs office and was personally applicable to the Company concerning the application of the customs legislation.

Important fact: beverages falling within CN heading 2208 are subject to a significantly higher rate of excise duty than those falling within CN heading 2206.

WHAT SHOULD THE COMPANY HAVE DONE: IGNORED THE CONCLUSION OR APPEALED AGAINST IT?

The Company decided to appeal (lodging the appeal with the Customs Department) because, in its opinion:

- The commodity code determines the tax-legal situation of the product, including the rate of excise duty applicable to the beverage in question. When the Customs Laboratory found that the Applicant's beverage was to be classified under the CN heading 2208 and not under the CN heading 2206, it was found that the

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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FILLING OUT THE CUSTOMS DECLARATION IN THE EU

Types of import and export declarations in the EU: have you set the code correctly?

SAD box 1, data element (1/1) or 11 01 001 000

In the case of the import or export of goods, you will be required to enter one of the following codes in the first subdivision of box 1 of the Single Administrative Document (SAD): IM, EX, EU, CO. These codes indicate the countries or territories to/from which the consignment is transported and the customs status of the goods. Let's look at what the codes mean, and in what cases, which code should be used.

Please note that the article is for explanatory purposes only. It aims to ensure that both customs officers and declarants have a common understanding and apply the same rules for completing the SAD box 1. Further detailed information is provided in this article concerning the aspects covered by the legislation governing the completion of this box. The legal provisions take precedence over the content of these interpretations; therefore, always follow the authentic texts of the legislation.

LEGAL REGULATION

First of all, I would like to encourage you to re-examine the legislation on which this material is based:

- Convention on the simplification of formalities in trade in goods.
- Council Decision (EU) 2021/1764 on the association of the overseas countries and territories with the European Union, including relations between the European Union and Greenland and the Kingdom of Denmark. Please find an overview of the decision in the article 'Overseas Countries and Territories: developments after Brexit', in CCRM Issue 11.
- Article 4 'Customs territory' of the Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013, laying down the Union Customs Code (**UCC**).
- Article 1 (11) and (35), definitions of a 'third country' and a 'special fiscal territory' 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.
- Appendix D1 'Codes to be used in the forms' to Annex 9 of the Commission Delegated Regulation (EU) 2016/341 of 17 December 2015, supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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OVERVIEWS AND COMMENTS

Customs broker's profession: national peculiarities in the EU

The importance of the customs broker's profession (also called 'customs representatives', 'customs agents') is growing in the supply chain. In the complex and ever-changing legal, technological, and geopolitical environment, they serve traders, customs and society by acting as a trade compliance checkpoint before submitting data to customs. Knowledge and ethical requirements are very high; therefore, the standardisation theme is topical. We look at some standards and provide an overview of the national differences of several EU member states and share some related thoughts.

STANDARDISATION

The main role of customs brokers around the world is to help traders deal with customs formalities and act as the first compliance checkpoint before submitting data about the goods in a customs declaration to customs. It is set out in the **WCO Customs Brokers Guidelines** (2018) that 'the scope of practice generally relates to services that require knowledge and skills best acquired through education and training and where the performance of these services by persons without such knowledge and skill can cause harm (financial or otherwise) to traders and customs alike'. The guidelines provide reference guidance in establishing or adjusting customs brokers' regimes in line with **the Revised Kyoto Convention** and the **WTO Agreement on Trade Facilitation**. The topics covered: licensing requirements, the scope of practice, obligations and responsibilities, knowledge base, professional development, the agreement between the customs broker and the client, etc.

On the European level, competency requirements are central. They are set out in the **EU Customs Competency Framework** by the European Commission, and the **European Standard Competency for Customs Representatives** approved by CEN in 2016. The latter was established as a tool to support mutual understanding through the articulation of competencies required and deployed by customs representatives. It is also in line with the criteria of customs competency required by the AEO-C status.

Private sector organisations undertake standardisation efforts as well. Confiad Paneuropean Network prepared the **European Customs Representatives Code of Conduct and European Customs Representatives Quality Charter**, aimed at ensuring the quality of the services.

However, despite all the standardisation efforts, the national differences, even in the EU member states, are significant. They should be considered when dealing with customs brokers in various countries or when expanding subject to

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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OVERVIEWS AND COMMENTS

Customs broker's profession: views and news

The previous article, 'Customs broker's profession: national peculiarities in the EU', highlighted the role of the customs broker in checking compliance and lodging a customs declaration. There is much more that customs brokers do and/or can do in regard to adapting their services to meet the challenges of an ever-changing trading and regulatory environment. We share views and news on various aspects of the profession in the UK, Germany and Canada.

VIEW FROM THE UK: ARNE MIELKEN, MANAGING DIRECTOR OF CUSTOMS MANAGER LTD.

In today's global economy, it's not unusual for organizations to cross international borders in search of products or services offered by companies based in different countries. In most cases, these organizations need help navigating through complex international trade regulations and requirements.

When importing goods into the UK, businesses will have to deal with a lot at the border. The import process can be time-consuming and complicated if there is no help from a customs broker in the UK. Customs brokers are experts who know exactly what's required for importing goods into their country and can help you get your products through customs quickly and efficiently. They will deal with customs issues for importers and exporters. They are an important part of the supply chain, responsible for ensuring that the correct documentation is submitted and that the correct duties are paid.

Remember that if you are bringing goods from outside the UK into Great Britain, including from the European Union (EU), there may be different rules and regulations than those that apply in in the European Union itself. These requirements may change depending on what type of product is being imported and how long it has been stored in its country of origin. In particular, you are likely to have to pay customs duties, VAT and excise, as required by the product. It is important to understand what these taxes and the brokerage charges and associated clearance fees and port costs mean for your business. Besides a competent customs manager or customs consultant, only a UK customs broker (known as a customs agent in the UK) with the necessary expertise will be able to advise on that.

In addition to performing a variety of tasks related to logistics management (e.g., identifying shipping routes), a UK customs broker also acts as an agent on behalf of clients who wish to import or export goods into or out of Great Britain. In this capacity they can advise on which documents should be prepared before shipments depart their country; arrange audits if necessary; manage payments; monitor compliance with legal requirements; handle paperwork related to clearance at ports/airports/border crossings etcetera – all while dealing with different agencies

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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About the author

OVERVIEWS AND COMMENTS

Customs strategies at the heart of international business development

In the year 2021, there has been a major breakdown in the customs practices in the EU and the changes will continue over the next years for many reasons: data provisions and data quality will become the new hobbyhorse for customs authorities, more significant facilitations will be granted to companies who have the AEO status for e-commerce flows, etc. We provide a brief overview of the changes, highlight the role of customs experts in turning challenges into opportunities, and share some thoughts on what is needed to become a member of the big family united under the customs topic.

The postal sector has been undergoing fundamental changes for many years through the evolution of the market, players and operational practices. It is also subject to strong regulatory, commercial and logistical pressures which force it to rethink its purpose and its strategies.

E-COMMERCE DEVELOPMENTS CHANGE CUSTOMS

In this context, the development of e-commerce since early 2000's has obliged customs authorities to reconsider their legislation to tackle some loopholes where criminal networks infiltrated to deliver illicit traffic. Therefore, customs have been trying to strengthen their national legislation for many years by adopting regulations for:

- safety and security purposes in order to detect a bomb in the box, counterfeits, illicit drugs, etc.;
- tax collection purposes because of two phenomenon which imply a low level of tax collection; those two phenomenon are the VAT payment threshold and undervaluation of the goods.

Many countries/ regions in the world have already adopted such regulations to mitigate the threats and the risks (China, Australia, USA and others).

In Europe, the European Commission has considered that due to e-commerce challenges, all components of those customs regulation have to be set up at the same time in 2021:

- safety and security regulation with the Import Control System 2;
- the VAT package for tax collection;
- the low value consignment for the electronic data provision and the customs clearance process.

LOGISTICS OPERATORS CHANGE THEIR PROCESSES

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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About the author

OVERVIEWS AND COMMENTS

New on Access2Markets: export bans imposed by Russia and Belarus

EU import - export database

In response to EU and other countries' sanctions, Russia and Belarus retaliated by imposing export bans on certain products to what were branded 'unfriendly countries'. As a result, some products, although not subject to EU import restrictions, cannot be imported because they cannot be taken out of the exporting country. So how can one learn which goods are restricted? Information on export prohibitions, restrictions and tariffs are now available on Access2Markets.

ABOUT ACCESS2MARKETS DATABASE

Access2Markets was created by the European Commission to support companies in internationalising their business. The database is mainly used by persons involved in the importing and exporting of goods. It provides information about the import of goods into the 27 EU Member States (including national taxes) and the export of goods from the EU to 135 countries worldwide. You can learn about tariffs, taxes, procedures, formalities and requirements, rules of origin, export measures, statistics, trade barriers, and much more. However, keep in mind that the database is not a legal source (read the disclaimer). It just offers guidance. The search results should be verified in legal sources and/or by shipping a test consignment.

The database is constantly being updated and amended by adding new countries (for example, key information on 13 additional countries was added in March 2022, see news) and new features. One of the newest features contains information regarding export bans from Russia and Belarus. This is a helpful tool to get an overview of what those countries have taken as counter-measures reacting to sanctions imposed on them after Russia invaded Ukraine. Let's look at the tool based on several examples of products[1].

NEW FEATURE: RESTRICTIONS IMPOSED BY RUSSIA/ BELARUS

Temporary prohibition to export wood products from Russia

There is a temporary prohibition on exporting certain wood products from Russia to 'unfriendly countries'. On Russia's list of these countries, among others, are Ukraine, all EU countries, the UK, Switzerland, the USA, Canada, Japan, Australia. The prohibition also applies to exports under contracts that foresee settlements through financial institutions registered in the 'unfriendly countries'. This measure will apply until the 31st December 2022, and might be prolonged.

You can find this information by entering the commodity code you would like to import into the EU, e.g., 4403110001 (this is the code used in Russia for export), and by selecting Russia as the exporting country in the 'Restrictions

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About the author

OVERVIEWS AND COMMENTS

Four common misconceptions in the relationship between importers and customs brokers

Importers often try to avoid customs clearance processes, relying entirely on the customs broker. On the one hand, the broker is a customs expert, possesses relevant experience and, ultimately, receives a commission for his/her work. It seems that the importer should not be involved in the processes managed by the customs broker. On the other hand, such self-exclusion can result in very unpleasant financial and reputational consequences. This article considers the most common misconceptions of importers in cooperation with customs brokers, which cause losses for both sides.

The majority of small and medium-sized organisations often do not import enough to hire a full-time customs manager. The job tends to be a part-time responsibility of someone working in accounting or logistics or, in many owner-managed businesses, the president. The most significant challenges for the part-timer are the possession of sufficient knowledge of trade and customs matters to provide the customs broker with complete and accurate information, and awareness of tax-saving opportunities.

Importers tend to assume that brokers possess all the knowledge required to prepare the customs entry documents. Brokers do know much about customs and trade; however, their knowledge of a particular import shipment is generally limited to the information on the customs invoice, manifest, and other transaction-related documents provided to them. Generally, they do not review underlying legal documentation, such as purchase and sale contracts, and do not have time to ask probing questions.

Here are four of the most common misconceptions that importers and their customs managers have when dealing with customs brokers.

1. CUSTOMS VALUE IS THE PRICE INDICATED IN THE INVOICE

The valuation of 90% of imports is based on 'transaction value', the price payable on the commercial invoice issued by the exporter. However, an importer should be aware of several statutory additions and deductions from the invoice price.

For example, if a customs invoice states that the price includes the installation of a machine on-site in Canada, the broker will ask for the information necessary to deduct the installation costs in determining the value. However, if the invoice simply describes the machine, the broker will assume the price includes delivery only, unless the importer

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COUNTRY-SPECIFIC

Ukraine customs-related news: June/July 2022

News at a glance: cancellation of quotas and established licensing for export of rye and fertilisers; invitation to Ukraine to join the Convention on a common transit procedure and the Convention on the simplification of formalities in trade in goods; expanded list of goods prohibited for export; EU and UK suspend import duties on Ukrainian goods; new rules of administrative responsibility for infringements of customs formalities; and more news.

CANCELLATION OF QUOTAS AND ESTABLISHED LICENSING FOR THE EXPORT OF RYE AND FERTILISERS

The Ukrainian government abolished quotas and established licensing for the export of rye and certain fertilisers. The Cabinet of Ministers of Ukraine made changes to the lists of goods and volumes of quotas of goods, the export of which is subject to licensing in 2022. As of coming into force, the export of the following goods is only subject of licensing (not of quotas anymore):

- rye and
- mineral or chemical fertilisers made of nitrogen, phosphorus, potassium, and two or three nutrients of nitrogen, phosphorus and potassium.

UKRAINE WAS INVITED TO JOIN THE CONVENTION ON A COMMON TRANSIT PROCEDURE

On 7th of July, the EU-CTC working group made the following decision:

- to invite Ukraine to join the Convention on a common transit procedure;
- to supplement this Convention with the 36th country - Ukraine;
- to invite Ukraine to join the Convention on the simplification of formalities in trade in goods.

The next steps are the following: the decisions of the joint committees of the countries participating in the conventions; sending of the official invitations to Ukraine; ratification of the conventions by the Ukrainian Parliament; submitting the official translations of the conventions to the European repository.

The application of the Convention on a common transit procedure will allow using the 'T1' declaration for Ukrainian importers and exporters. It means that companies will be able to transfer goods from the EU to Ukraine (and vice versa) without additional re-registration to internal transit. A guarantee of the payment of customs payments will be provided by the sender. This can greatly speed up logistics, especially in wartime.

The companies can also use transit simplifications. For example, the possibility of receiving and sending transit cargo directly from the company (status of authorised conignee/ consignor), as well as the right to use a general financial guarantee (comprehensive guarantee and guarantee waiver).

AUSTRALIA: ABOLITION OF IMPORT DUTIES FOR UKRAINIAN GOODS

On the 7th of July, the Australian Government announced the abolition of import duties on goods produced in Ukraine and imported to Australia. In this case, the non-preferential origin is determined by the place of final production and export (it should be Ukraine). Exception applies to alcohol, tobacco and tobacco products, which are subject to excise duty (this tax is one of the highest in the world in Australia). Such a statement is a unilateral decision of the Australian government regarding Ukraine lasting for one calendar year.

The relations between Ukraine and Australia are regulated by the provisions of the Agreement on Trade and Economic Cooperation dated 7.6.1999. According to Art. 3 of the Agreement, the Contracting Parties provide each other with the regime of the Most Favoured Nation (MFN) in everything related to customs.

UKRAINE RECEIVED CANDIDACY FOR EU MEMBERSHIP

European leaders granted Ukraine candidate status on 23rd June 2022. The European Commission has identified the implementation of seven blocks of reforms as a condition for maintaining candidate status: reform of the Constitutional Court; continuing judicial reform; anti-corruption, including the appointment of the head of the Specialised Anti-Corruption Prosecutor's Office; anti-money laundering; the implementation of the anti-oligarchic law; harmonisation of audiovisual legislation with European legislation; change in legislation on national minorities.

'VISA-FREE TRANSPORT REGIME' WITH THE EU

At the end of June, the European Commission has agreed on the final text of the Special Agreement on the Liberalisation of Road Transport Ukraine - EU. The 'Visa-free transport regime' was signed on 29th June 2022. It permits bilateral and transit transportation by Ukrainian carriers without permits. The application of the Agreement will significantly improve and speed up logistics between Ukraine and the EU, which is critical in times of war.

GRAIN EXPORTS

The European Commission with V_labs and Rail Cargo Group launched a grain trading platform called Grain Lane. The platform significantly facilitates the process of organising export deliveries, as it places both trade and transport requests at once. Thus, in a few clicks, representatives of European logistics will be able to resolve organisational issues with Ukrainian partners. The latter will be able to find partners to export their products, as well as find new logistics solutions.

EXPORT PROHIBITIONS

The Cabinet of Ministers has expanded the list of goods prohibited for export. This decision was made in connection

with the imposition of martial law in Ukraine. The Government set zero quotas for the following goods:

- liquid fuel (fuel oil);
- coal, anthracite, briquettes, pellets, and similar solid fuels derived from coal (excluding cooking coal);
- natural gas of Ukrainian origin.

RESUMPTION OF IMPORT TAXES

The Verkhovna Rada passed a bill on the abolition of duty-free import of goods into Ukraine. The law provides for the resumption of payment for the import of goods: duty, excise tax, VAT. The changes will come into force on the 1st July 2022.

EU SUSPEND IMPORT DUTIES ON UKRAINIAN GOODS

Regulation (EU) 2022/870 of the European Parliament and the Council on temporary trade-liberalisation measures with Ukraine entered into force on the 4th June 2022.

The trade-liberalisation measures take the following form:

- the full removal of import duties (preferential customs duties) on the importation of industrial products from Ukraine;
- the suspension of the application of the entry price system to fruit and vegetables;
- the suspension of tariff-rate quotas and the full removal of import duties;
- anti-dumping duties on imports originating in Ukraine made during the application of this Regulation should not be collected at any point in time, including after the expiry of this Regulation.

The suspension will last until 5th June 2023.

UK: ABOLITION OF IMPORT DUTIES IN TRADE BETWEEN UKRAINE AND THE UK

Ukrainian Parliament ratified the Agreement on the abolition of import duties and tariff quotas in trade between Ukraine and the United Kingdom. As of now, the Ukrainian President should sign a law on ratification. Also, we are waiting for the finalisation of the ratification procedure by the UK Parliament. The Agreement provides bilateral abolition of import duties and tariff quotas for 12 months; it may be prolonged for a new term.

POLAND: UKRAINE AND POLAND SIGNED A MEMORANDUM ON TRADE FACILITATION

Ukraine and Poland signed a memorandum on the development of trade facilitation instruments. This agreement provides clear insurance mechanisms for goods and cargo imported into Ukraine. The main aim is to protect the goods and transport from the aggressor's threats. Guarantees from the Polish and Ukrainian Governments can serve as one of the options. The insurance proceeds will be possible through the Polish export credit agency KUKE. As a result of the implementation of this memorandum, the trade operations with Poland will increase. It is strategically important that goods arrive in Ukraine through Poland.

ADMINISTRATIVE RESPONSIBILITY FOR INFRINGEMENTS OF CUSTOMS FORMALITIES

New rules of bringing to administrative responsibility for violation of the order of customs declaration of goods were introduced. On the 16th June 2022, the Law of Ukraine, which amended some provisions of the Customs Code, entered into force. The changes were the consequence of the recognition of certain provisions of Article 471 of the Customs Code as unconstitutional by the Decision of the Constitutional Court of Ukraine on the 21st July 2021. In particular, new sanctions have been imposed for the following acts:

- non-declaration of currency values, which exceeds the amount allowed by the legislation of Ukraine;
- non-declaration of goods (except for restricted and/or prohibited movement across the customs border of Ukraine, as well as currency values);
- non-declaration of goods restricted and/or prohibited for movement across the customs border of Ukraine.

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KNOWLEDGE

Customs Control Club: What customs should not be, what customs is today, and what customs should be tomorrow?

Neli Doinova
Bogomila Kadieva
Neirin Remzi
Isabella Alenina
Todor Doychev
Students, D. A. Tsenov Academy of Economics, Svishtov, Bulgaria

About the academy

This year, the D. A. Tsenov Academy of Economics created a Customs Control Club. The main idea of it is for students to understand why customs is an important factor in international trade and what its significance is for the state and society. At the end of the first season, students were asked to write an essay on what customs should not be, what customs is today, and what customs should be tomorrow.

In society, the topic of 'customs' is always full of clichés, and the understanding of it is not always correct. Even in the sphere of education, where future customs officers and customs brokers are being educated, it is not always possible to develop a thorough comprehension of what customs actually is. Students learn how the customs are built, what the legal regulation of its activities are, what control procedures it applies, etc., but this is not enough to feel its spirit and life.

That is why, at the beginning of 2022, the Department of Control and Analysis of Economic Activities at the D. A. Tsenov Academy of Economics, Svishtov, Bulgaria, developed an academic school of control and analysis through the establishment of several separate clubs, including the Customs Control Club.

The main idea of the Customs Control Club was for students to understand why customs is an important factor in international trade, and what its significance is for the state and society. Participation in the club was voluntary, and in the first season, 11 students actively participated. For a period of three months, the club held six meetings, during which various issues in the field of customs were discussed outside the training material. In the end, the students were asked to write a short essay to share their thoughts on what customs should not be, what customs is today, and what customs should be tomorrow. We present the summary version of these essays for your attention.

CUSTOMS KEEPING PACE WITH GLOBALISATION

In the last three decades, the global economy has been growing continuously. New types of goods have been appearing, which, in their essence, are the result of continuous technical and technological progress. At the same time, however, resources are generally limited, which in turn creates difficulties for a single country to procure all the necessary raw materials and finished products within its borders for its economy. Therefore, to meet the needs of local consumers and producers, it is necessary to seek these raw materials and goods abroad and import them.

Consequently, international trade is taking over and is developing at a very rapid pace, resulting in so-called globalisation. Its main characteristic is the increasing movement of goods around the world, which in turn determines the global supply chain. Customs play an important role in the cross-border movement of goods and are evolving to

keep pace with globalisation.

CUSTOMS ASSOCIATIONS

Customs is a public authority that is often (rightly or wrongly) associated with bureaucracy, corruption, unnecessary, long and complicated procedures and checks on passengers, their luggage, vehicles and the goods they carry in and out of the Customs territory of the European Union. Such a perception of customs is quite wrong and, in our opinion, is probably due to several factors, including:

- a lack of knowledge and understanding of customs formalities and procedures and of customs legislation in general;
- inadequate salary for public sector employees;
- occasional cases where, for personal motives or because of a lack of ethical standards, individual customs officers engage in corrupt practices;
- the unprofessionalism and subjectivism of the media when reporting on individual cases of customs practice on the one hand and on the other hand, the perceptions of viewers/readers as recipients of such information;
- the difficult and slow transition of the public administration towards modernisation and implementation of new technologies in its operational activities in providing services to business and citizens, etc.

Customs is a very broad concept, and very often, people get confused and do not distinguish between a border crossing point and a customs office. This also contributes to a misunderstanding of its role and is a prerequisite for attributing all the sins of international trade to customs, the greatest sin being corruption. Of course, no state institution, including customs, should be susceptible to corruption; however, it should not be forgotten that there are always at least two parties in such actions: a giver and a receiver. Both those offering and those receiving the bribe are part of this illegal act, which is punishable under the legislation.

HOW CUSTOMS WORK TODAY

Regarding the lengthy and sometimes complex checks carried out by the customs authorities, it must not be forgotten that there is a specific reason behind their performance. These checks do not cover every passenger, their hand luggage or unaccompanied luggage, every vehicle and all the goods they carry across EU borders. Checks are carried out selectively on the basis of the results of a risk analysis. It should also be noted that, in line with international trends, customs procedures are continuously being eased and simplified, thereby encouraging legal international trade.

Customs is a government body controlling goods crossing the external borders of the European Union, and it is often perceived as a barrier, applying different approaches, standards and practices in the exercise of these powers, which rather hinder the business. However, this is far from being the case, as its activities are legally regulated. In fact, Customs promotes legal trade and seeks to cooperate with the other competent public authorities and economic operators to effectively fulfil its objectives and tasks. These tasks are most clearly reflected in its main functions, namely fiscal, economic and protective. Customs is the necessary barrier to protecting the interests of European producers and local consumers of goods, cultural heritage, intellectual property, citizens' lives and health, biodiversity and the environment.

Customs main responsibilities can be summarised as follows:

- to facilitate economic operators carrying out their trade legally and lawfully by providing a number of simplified procedures for placing goods under the customs regimes, thereby facilitating not only the functioning of the trade chains but also the operational activity of the customs authorities themselves;
- to ensure the correct application of European Union policies through the correct and lawful application of the Common Customs Tariff, the Common System of Preferences, anti-dumping and other non-tariff measures;

- ensure the control and protection of EU external borders.

In an environment of continuously increasing trade flows, customs is forced to operate in a dynamic and rapidly changing environment characterised by an increase in inherent risks, emerging and evolving industries and consumers with high demands. The challenge for customs is to strike a balance between facilitating trade through faster and smoother import, export and transit of goods, and carrying out effective customs controls. The main objective of customs is to minimise the administrative burden for both the control authorities and traders, to ensure the correct application of customs regulations with uniform criteria and approach, legal certainty and a level playing field for economic operators.

WHAT SHOULD BE THE EUROPEAN CUSTOMS TOMORROW

The European Union has a common customs legislation, but now member states have certain differences in the application of customs control. This is perhaps because each member state has a separate national customs administration. The existence of 27 separate customs administrations gives the impression of incomplete and unsynchronised legislation, of fluctuations in the interpretation and application of the rules, and this, in turn, creates the preconditions for gaps and differences in control activities.

To achieve sustainable customs control results, we believe that customs should be comprehensive and unified. From a national point of view, results can only be more effective if there is a representation, understanding and management of activities as a set of interlinked processes operating in synchrony and interaction with other control authorities at EU level. Particular attention should also be paid to international customs cooperation, which is unfortunately very much subject to the participating countries' own policies. The imposition of sanctions or other restrictions on trade not only hinders the movement of goods but also prevents the exchange of information and good practices in the area of customs control.

The future of customs is linked to the implementation and use of the achievements in information technology and digitalisation. Only through these could a balance be struck between the simplification of customs formalities and more effective controls to reduce corruption, the smuggling of goods, and illegal trafficking of dangerous goods and dual-use goods. The overall digitalisation of customs processes would make it easier for economic operators and their representatives to communicate with customs. In addition to the acceptance and validation of customs declarations, for example, proof of origin of goods and transport documents such as CMR or bills of lading for sea transport could be digitised. This would allow full digital implementation of all processes within international trade chains.

At the same time, the weakness of digitalisation is that it minimises face-to-face contact between customs officers and economic operators, thus interrupting the flow of information exchange on innovations in the field and the exchange of valuable practical experience. On the other hand, the lack of personal contact inevitably leads to a minimisation of corrupt practices. Customs should, therefore, continue to implement electronic systems for the rational clearance of customs formalities, to improve existing systems to effectively prevent and combat customs offences and crime, to optimise and increase the efficiency of administrative services, and to create opportunities for the professional development of its employees.

FINAL NOTES BY ASSOC. PROF. MOMCHIL ANTOV, PHD, HEAD OF THE CUSTOMS CONTROL CLUB

The discussions in the club were very interesting and tense because, in the beginning, the students talked about the customs, as any ordinary person would say. With each subsequent meeting, they changed their views and even began to deny their initial words about customs. This was a signal to me that they were changing their general understanding of customs, went beyond the legally regulated customs formalities, and are now on another level; customs has entered not only their minds but also their hearts.

KNOWLEDGE

Insights from judgements of the courts

Procedural fairness, forced labour, export control measures and classification of goods, royalty fee and other valuation-related issues, the liability of a customs broker (representative), tariff classification and the main feature of a product - insights on these topics were shared during the 11th Authors' Meeting. We invite you to learn which court cases were selected and which aspects were paid attention to by experts from various countries – the United States of America, Ukraine, France, Bulgaria, Israel, and Lithuania.

ISSUE OF PROCEDURAL FAIRNESS

Mark Neville, Principal, International Trade Counsellors, the United States of America

Mark paid attention to four trade law cases of the US Court of International Trade (the "CIT"). All of them were issued within the last few months and are united by a common theme of fundamental fairness and transparency of decision-making procedures.

One case (IN RE SECTION 301 CASES) deals with the challenge of the imposition of additional tariffs of 25 % and 7,5 % on most products coming from China. The decision issued by a three-judge panel recognized that the US Government did have authority to issue the lists related to the third and fourth tranches of this imposition. However, there was no evidence that the Government had met the procedural requirements. Therefore, the Court concluded that the US Government had to prove compliance with the procedural requirements. The Government was granted 90 days for this; this was later extended by a further 30 days.

Another case (NORCA INDUSTRIAL COMPANY, LLC) concerned a charge that an importer had evaded the payment of antidumping duties. One of the aspects of this case again is the issue of procedural fairness. A US competitor of the importer provided photographs and met with the Government agencies to try to interfere with the entry of competitive goods into the USA. In its turn, the importer alleged that the Government's actions were fundamentally unfair, arbitrary and capricious. These actions were not supported by the evidence. The Government recognized the weakness of its case and requested a remand so that it might reinvestigate the matter. The CIT granted the Government motion.

Finally, the third and fourth cases (NLMK PENNSYLVANIA, LLC v. the UNITED STATES) deal with the imposition of

additional 25 % duty on steel products and 15 % duty on aluminium products under a National Security statute. In this case, the importer wanted to get an exclusion. The program was that if the product is not available in the US and the American industry cannot provide it immediately (i.e., within a few weeks) the importer should be allowed to import that product. Here we also can see the impact of private and non-official meetings between the representatives of the US steel industry and the Department of Commerce on Government decisions. The Court denied the opportunity for such US domestic competitors to intervene in the case.

After the meeting, Mark shared the citations for these trade law cases decided by the CIT. The common element is that they all deal with the issue of procedural fairness:

- Section 301 China Tariff challenge: IN RE SECTION 301 CASES, Slip Op. 22-32 (Remanding the Office of the United States Trade Representative's determinations with respect to List 3 and List 4A; granting in part and denying in part Defendants' Motion to Correct the Administrative Recor
- AD Order Evasion Allegation: NORCA INDUSTRIAL COMPANY, LLC and INTERNATIONAL PIPING & PROCUREMENT GROUP, LP v. the UNITED STATES, Slip Op. 22-19 (Granting a motion for remand and remanding the U.S. Customs and Border Protection's determination of evasion of the antidumping duty order on certain carbon steel butt-weld pipe fittings from the People's Republic of China).
- Section 232 exclusion process: NLMK PENNSYLVANIA, LLC v. the UNITED STATES, Slip Op. 21-162 (denial of US Steel motion to intervene) and NLMK PENNSYLVANIA, LLC v. the UNITED STATES, Slip Op. 22-07 (remand to Commerce Dept)

FORCED LABOUR PROTECTION; CLASSIFICATION AND VARIOUS EXPORT CONTROL MEASURES

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

Jeffrey Snyder commented on two problematic areas of the court decisions. The first one has forced labour protection. The so-called, Uyghur Forced Labour Protection Act (or UFLPA) will come into effect on June 21st. This act will give customs the authority to detain imports from this region based on a rebuttable presumption that the goods are made in whole or in part with forced labour. This raises the questions of what the customs are going to do in this regard and what kind of evidence will customs requires to prove that imported goods are not made with forced labour? Obviously, litigation will be inevitable and courts may have a significant role to play in evaluating the standards of evidence customs requires to overcome the presumption.

The second area of Jeffrey's interest is a connection between the classification issues and various export control measures on exports to Russia and Belarus. In a few recent cases, companies tried to identify what can be exported to these countries and what cannot. Many of the EU restrictions are implemented by reference to CN codes. Traditionally, export controls have been based on the Wassenaar Arrangement by reference to Export Control Classification Numbers (ECCN). The understanding of whether something can be exported to Russia or not depends on a join analysis both of export control rules and customs classification. This has been further complicated by the EU's implementation of the use of tariff categories, amendments or customized implementation. The complexity of what is authorized and what is not depends very much on the customs classification, the General Rules of Interpretation, BTIs that have been issued in the EU. It is a new way of doing export controls and beginning to drive integration between import and export sides of compliance because both of them must work closely together to be sure exports are authorized.

ROYALTY FEE AND CUSTOMS VALUATION

Georgi Goranov, Attorney at Law, law office and Unitax Consult Ltd., Bulgaria

Georgi presented CJEU case C-76/19, which deals with the royalty fee and customs valuation.

An amount of the royalty has to be added to the transaction value of goods when two conditions are fulfilled. The first one is that the royalties relate to the imported goods. The second one is that the payment of royalties is a condition

of sale for those goods.

In this case, the plaintiff (a Bulgarian company) claimed that neither of these two conditions is met.

It is worth noting that royalties were paid not directly for the imported parts, but for the finished products in which the imported parts were incorporated. According to the know-how contract the US company (parent company) supplied know-how and patent technologies for the manufacturing of electronic kits for electric vehicles by a Bulgarian company. The royalty rate was a percentage of the net sale price of the kits (finished products).

Moreover, the imported goods were purchased by different suppliers while the royalties were paid to the US parent company. The list of suppliers was not predetermined by the owner of the know-how. Bulgarian company could import other parts for manufacturing of the above kits (incomplete electronic boards, other electronic components, mechanical parts, etc.) from different suppliers from the USA, European or Asian countries.

In its interpretation, CJEU answers the question whether the royalties paid relate to the imported goods?

According to the preliminary ruling, in order to answer the above question, the national court should assess what rights were granted against the royalty payment. The CJEU also recommends to find out whether there was a sufficiently close link between the royalties and the imported goods.

The Court said that such a link exists where the know-how supplied is necessary for the manufacture of the imported goods. The mere fact that these parts were incorporated into a finished product did not automatically constitute such a close link. Therefore, CJEU urges the national court to assess whether or not there was a close link between the royalties and the imported goods.

CJEU's opinion: the fact that know-how was necessary only for the completion of the licensed goods meant that there was no sufficiently close link between the royalties and the imported goods.

The second part of CJEU's observation was dedicated to the consideration of whether the royalties paid to a third party, as it is in the present case, constituted a condition of the sale. This means that the third party must be related to the sellers of the goods. The indicators of this relation are given in Commentary No 11 of the Customs Code Committee. It is ultimately necessary also to know whether the person related to the seller is capable of ensuring that imports of the goods are subject to the payment to him of the royalties in question.

Following the interpretation of the CJEU, the Bulgarian court has concluded that the payment of royalties did not relate to the imported components and parts because of the lack of a close link between them.

SPECIFIC CIRCUMSTANCES (LOW CONTRACTUAL PRICE) AND CUSTOMS VALUE

Monika Bielskienė, Attorney at Law, PwC Lietuva, Lithuania

The Court of Justice of the European Union examined a Lithuanian case ("Lifosa", C-75/20) on the customs valuation of goods (chemicals) imported from Belarus into Lithuania. The supplier treated these goods as waste and its recycling would have been more expensive than transportation to Lithuania. At the same time, for a Lithuanian company (Lifosa) it was a valuable material, which could be used in further manufacturing. Parties agreed on a contractual price - including transportation cost - which was less than the actual cost of the transportation itself. Though the price did not cover transport costs incurred by the supplier, that price was claimed to be justified by the economic interest of the supplier. Lithuanian Customs Authorities questioned such a price, the case was examined by the Lithuanian courts and addressed to the CJEU.

The CJEU stated that the specific circumstances and economic reality of the parties to the contract must be taken into account when determining the customs value of goods, even if these are atypical. The CJEU concluded that the transport cost of the goods should not be added to the customs value of the goods in the present case, with the condition that the price paid corresponds to the real value of the goods, which has been re-examined by the national court.

Monika wrote an article about the case "CJEU: DAF transaction price and actual transport costs that exceed it", published in CCRM Journal for Practitioners in Europe, Issue 8, April/May 2021.

LIABILITY OF A CUSTOMS REPRESENTATIVE

Anouck-Préscillia Biernaux, Lawyer, PARADIGMES Cabinet d'avocats, France

The case presented by Anouck dealt with the liability of a customs representative. Anouck pointed out the wide range of litigation in this area, particularly with respect to liability to customers and to the administration. The liability towards the clients usually concerns the mandate fees or the obligation to provide information. Liability to management depends on the type of representation. Anouck's review is only about vicarious liability. The main question in the case under discussion is who is liable for VAT towards the administration in case of indirect representation? The Court of Justice of the European Union has answered that Article 77(3) of the EU Customs Code must be interpreted as meaning that the indirect customs representative is jointly and severally liable for the customs duties owed in respect of the goods he has declared for customs purposes. As far as VAT is concerned, this depends on the implementation of the VAT Directive. Indeed, it is possible for Member States to provide that persons liable for customs duties are also liable for import VAT. This is the case with French legislation, which provides that the customs representative, when acting in his own name and on behalf of another person, is jointly and severally liable for payment of the tax.

Anouck wrote an article about the case "Financial consequences of indirect customs representation mode in the EU", published in CCRM Journal for Practitioners in Europe, Issue 15, June/July 2022.

COMMON DISPUTES INVOLVING CUSTOMS AUTHORITIES IN UKRAINE

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

Since the declaration of martial law in Ukraine on 24 February, access to all state registers and databases, including the record of judgments, has been suspended to prevent threats to the lives and health of judges and participants of court proceedings. Therefore, there is no opportunity to analyse a specific case and judgment in Ukraine. In this regard, Ilona presented the most common disputes involving customs authorities and the corresponding judgments in such disputes.

A year ago, her article "What's wrong with customs valuation in Ukraine?" was published in the CCRM Journal for Practitioners in Europe, Issue 8, April/May 2021. This article dealt with *inter alia* a fascinating statistic of the consideration by Ukrainian courts of disputes, one of the parties to which is the customs authority in 2020. The correlation between court decisions in favour of customs and importers was 20 and 80%, respectively. In 2021, this contrast became even more remarkable - 14% in favour of customs against 86% in turn of importers.

The most frequent cases involving customs authorities are disputes on the adjustment of customs value. Statistics of judgments in these cases are the most impressive: almost 9% in favour of customs and more than 91% in favour of importers. The reason for this situation is that the customs often abuse their right to adjust the customs value if it does not agree with the customs value declared by the importer (or importer's representative). It does not agree in almost every case when it finds in the customs database the higher value of similar imported goods.

Another example is the presence of errors in the documents (including technical errors or typos), which do not affect the value of goods but are a formal sign of requiring additional documents from the importer. In many cases, an importer cannot provide these documents. At the same time, the customs authority usually cannot properly substantiate its doubts about the correctness of the customs value determined by the importer. Customs usually cannot clearly define a specific range of additional documents that could dispel these doubts. The result is a decision by the customs authority to adjust the customs value, usually to a greater extent and mostly in accordance with the highest value of similar goods that were previously imported.

Therefore, litigation is the only way to restore justice, which is increasingly proving its effectiveness.

CLASSIFICATION OF A SET-TOP BOX (STB): THE MAIN FEATURE OF THE PRODUCT

Omer Wagner, Advocate, Indirect taxation, PwC Israel

Omer presented the Israeli set-top box (STB) classification dispute. In this case, a big communication company imported into Israel sets of multifunctional devices to provide its clients with a package of services (TV, Internet and home telephone). The imported boxes consisted of three different devices: TV converter (Cable), internet modem / WI-FI router and home telephone modem. TV converters are classified in HS heading 85.28 and the rate duty or domestic purchase tax is 10 %. Other parts of the boxes mentioned above (so-called communication devices) are classified in the HS heading 85.17 and they are duty-free. The question was how to classify these sets?

The importer claimed that the internet is the main feature of this product and provided customers' survey to justify this approach. Therefore, the sets should have HS code 85.17. The description of this heading is general and covers all three products from the set while HS heading 85.28 applies only to TV devices. The importer also referred to the WTO International Technology Agreement (ITA), which explains what set-top boxes are. Therefore, Israel cannot impose duty on this product whatever the classification is correct because it is a party to this Agreement.

In its turn customs insisted that this was TV equipment. It motivated its position that TV hardware was the most expensive part of the set which is why TV function should be the main element of the price paid by customers to the service provider. Customs also cited the WCO decision of 2006. In this decision, WCO classified similar products as TV converters but not as communication devices. According to customs, internet features were only a little upgrade of this product. Additionally, customs emphasized that this smart box is usually located next to the TV and that fact indicates the major role of the TV feature in the set.

The Court concluded that HS code 85.17 might cover all three types of devices and HS code 85.28 related to TV only. As known, the specific description prevails over the general description. Therefore, the communication device is more specific because it allows describing all features. The Court also did agree with the position that the internet is the main feature. In its turn, placing the device is irrelevant due to WIFI. The Court also rejected the reliance of the WCO classification decision of 2006 and said that such decisions are not binding. The Court also concluded that Israel could not impose a domestic tax on this product because there were no Israeli manufacturers of such devices in Israel. Therefore, purchase tax was imposed, de facto, only on imports. The Court ruled that this is considered as customs duties under discussion or other "duties of any kind". Omer suggested that classification disputes concerning technological products would continue.

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