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CUSTOMS COMPLIANCE & RISK MANAGEMENT

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COMPLIANCE

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Targeting compliance in the minefield of customs (trade) rules

Customs-competent staff: nice to have or a must?

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EU law news: August/September 2022

ECJ rules on liability of indirect customs representative

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Learning the lingua franca of international trade

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Software installation and origin of goods

COUNTRY-SPECIFIC

Ukraine customs and trade news: August/September 2022

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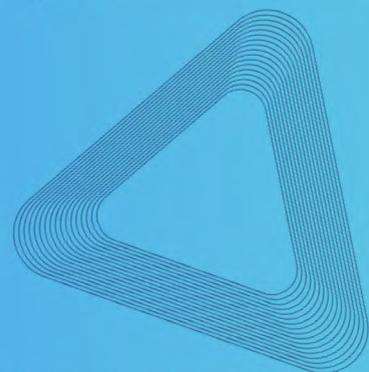
Authors' Meeting and discussion on the topic:

INTERPRETATION OF CUSTOMS LAW: THE MOST CHALLENGING ASPECTS FOR BUSINESS



20 October 2022, 3:00–4:00 PM CEST | ONLINE

 CustomsClear



<https://community.customsclearance.net/authors-meetings> | info@customsclear.net



Samuel Draginich

Senior Trade Compliance Manager
EMEA, Amazon EU

Dear Reader,

Welcome to CCRM Issue 16 for August/September 2022. In this issue you'll find a return to fundamentals: a keen focus on compliance and risk management. It's easy to diverge into disparate topics – and we should, to broaden our knowledge base – but it is crucial to never lose focus on the core topics.

As we approach choppy economic waters now more than ever should businesses ensure their compliance programs are buttoned down. Risk of violations, which attracts enormous fines, may be more easily absorbed when times are good but when times are difficult every cent matters. Avoid unnecessary costs by being compliant. Additionally, as compliance practitioners we must remain aware we do not normally generate revenue for our employers – oftentimes we're seen as an expensive – thus we must focus on robust solutions that utilize current resources. Do more with less, as the saying goes.

Major topics covered in this issue include biggest compliance challenges faced in companies, managing compliance with the minefield of customs rules on the books, and customs-competent staffing. In the [previous issue \(15\)](#) there was an article '*Financial consequences of indirect customs representation mode in the EU*' which provides a perspective from France; in this issue we provide the same case but from the perspective of the Netherlands. As compliance practitioners it is crucial we understand how compliance issues are viewed by different governments – the concept of national perception is important when creating country-specific compliance programs.

We sincerely hope you enjoy the content of this issue. We're always interested in contributions from other compliance practitioners, if you would like to get involved, please don't hesitate to reach out to info@lcpa.lt

Best regards,

[Sam Draginich](#)

Member of Editorial Board

Date	Time CEST/CET	Topic	Organiser	
12.10.2022	15.00-16.00	Interpreting EU Law – finding the right information Online training	CKI	€
17.10.2022	16.00-17.00	Customs in an Economic Downturn CKI Community meeting Online	CKI	free
20.10.2022	15.00-16.30	EU Customs – Import/Export VAT. Double Duty pitfalls and other Issues Online training	CKI	€
20.10.2022	16.00-17.00	Interpretation of customs law and most challenging aspects for business CCRM Authors' Meeting Online	CustomsClear	free
26.10.2022	16.00-17.00	Customs, inflation and an economic downturn Webinar	CKI	free
15.12.2022	16.00-17.30	Books on Customs 2022 Online event	CustomsClear	free

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COMPLIANCE

The biggest challenges in ensuring customs compliance in a company

‘Compliance starts from managers’ awareness’, ‘You can want the best specialists, but you can choose only among those available and fitting into your budget’, ‘Frequent legal changes and lack of guidance introduce instability’ - these and many more aspects were highlighted by experts from various countries representing business, customs, and academia during the [12th Authors’ Meeting](#).

YOU CAN CHOOSE ONLY AMONG THOSE AVAILABLE AND FITTING INTO YOUR BUDGET

Michael Lux, Lawyer, Author of the book ‘UCC - Text edition and introduction’, Belgium

As an experienced customs consultant and customs attorney, Michael Lux highlighted reasons why something went wrong in ensuring customs compliance and why he has been called. The most significant of them are:

1. Lack of qualified and knowledgeable staff
2. Lack of regular knowledge updates and training about legal, administrative, and IT changes
3. Insufficient storage and updates of required information and documents in the ERP system/ customs files
4. Lack of oversight/ control of what in-house and external customs staff does
5. Lack of suitable and knowledgeable service providers, where needed due to insufficient in-house capacity, for
 - tariff classification, origin, customs value
 - customs declarations
 - transit, special procedures
 - appeals, refunds, amendments of customs declarations
 - self-disclosure, criminal investigation
 - applications for tariff suspensions
 - participation in anti-dumping investigations, lodging anti-dumping refund applications
 - VAT, excise, Intrastat

- prohibitions and restrictions
- logistics, storage
- your own, your business partners' and your customs administration's IT systems and updates
- compliance audits
- customs formalities in the other Member States

To minimise the negative effect of all the above issues, Michael suggested the following to those involved:

- Be pro-active and attempt to avoid or at least reduce the above-mentioned sources of errors
- Install an internal compliance program/system adjusted to your company's size and activities
- Maintain a list of, and a relationship with, qualified service providers for the various topics listed above, if there is, or might later be, insufficient in-house capacity
- Be sceptical when a job applicant or service provider claims to have expertise on all your customs issues

On the other hand: you can choose only among those available and fitting into your budget so that whomever you select can only partially meet your expectations and requirements.

APPLICATION OF SANCTIONS REQUIRES A NEW UNDERSTANDING AND APPROACHES

Normunds Rudzitis, Professor at Riga Technical University, Latvia

In the context of the biggest challenges for ensuring customs compliance, Normunds Rudzitis paid attention to the implementation and application of sanctions.

Sanctions are one of the biggest challenges for both companies and customs in the EU. The application of such a huge number of sanctions requires a new understanding and approaches; previous experience is not enough. As a result, many different incidents occur that significantly affect business activities and the customs clearance process.

The main problem for businesses is the long waiting time which is required for customs to make a decision on the clearance of goods. In turn, this leads to an increase in vehicle and cargo downtime. On the one hand, there is uncertainty about what documents should be prepared for submission to customs to prove that the goods do not belong to the sanction list. Unfortunately, there are no guidelines for businesses regarding accompanying documents that should be submitted. On the other hand, the long time for customs processing can be explained by the need for consultations with other agencies and institutions. Such consultations may take several days. In addition to this, much more risk profiles are created due to the sanctions that also prolong the time of customs clearance. For example, transit customs declaration is subject to documentary control of almost 100 % of shipments in Latvia.

Finally, in many cases, the issue is not only the identification of sanctioned goods but also the compliance with the rules regarding sanctioned persons. Sometimes it is very difficult to identify the consignor or consignee as related persons with those subject to sanctions. Normunds supposes that it will take some time to gain the experience and understanding to overcome the above challenges.

CUSTOMS VALUATION IS A WELL-KNOWN CHALLENGE FOR IMPORTERS

Omer Wagner, Advocate, Indirect taxation, PwC Israel

Customs valuation is a well-known challenge for importers from various countries. Omer highlighted a challenge typical for Israel. Customs authorities of Israel presume that every importer is probably a liar in the context of declaring a customs value. Therefore, they oblige each importer to submit a special document called the 'importer's affidavit'.

In this legal document, an importer annually confirms the accuracy of all data declared for the previous year. Basically, this document includes questions related to customs valuation (i.e., Did you pay royalties? Did you receive any discounts? Is there a special relationship between your company and supplier that affects the price of goods? etc.). If customs authorities find out that certain data is not accurate, the importer may be subject to penalties, including

even criminal ones.

The law does not set who exactly should sign the importer's affidavit. In practice, the signatory is usually an import manager, accountant, or another employee who may not be aware of all the details of an import transaction. Customs authorities of Israel quite often demand retroactively additional amounts of duties and taxes for non-declaration of the correct customs value.

According to Omer, this is one of the ways to increase state revenue. He suggests a solution to the issue. The law must define the specific person entitled to sign the importer's affidavit. This person should consult a customs agent, attorney or other expert before signing to avoid costly errors and discrepancies.

EMPLOYEES SHOULD LEARN THE LANGUAGE OF INTERNATIONAL TRADE FIRST

Rizwan Mahmood, Additional Collector of Customs, Pakistan Customs

Rizwan elaborated on the core areas that pose challenges for ensuring customs compliance in a company which is engaged in international trade.

The first area is tariff classification. In particular, it is important to understand the Harmonized System (HS) and its structure. HS is the lingua franca of international trade. So, if a company is dealing with international trade, then its employees first need to learn this language.

The second important area is customs valuation. Customs valuation has different components and needs to be declared correctly for the assessment of duty/taxes. For instance, when the Incoterms are not explicitly stated on the sales documents, then it is the importer's responsibility to confirm the Incoterm used by the supplier and declare the Cost, Insurance, and Freight value as the customs value for imports. The importer is also required to add to the CIF value all other charges incidental to the sale and delivery of the imports, e.g., selling commissions, packing costs, royalties and licence fees, and the handling charges at the port of exportation.

The third area relates to the rules of origin. An exporter is required to apply for a preferential certificate of origin from the relevant department or body for exported products if the overseas importer wishes to claim preferential tariff treatment for the imported goods. However, to get the required certificate of origin, the exporter's goods must qualify for the origin criteria prescribed in the rules of origin. Here comes the importance of learning the rules of origin.

Lastly, a company is required to keep records of all traded goods for a specific period. For instance, HMRC requires record keeping for four years. This record keeping is important as customs can demand such records during post clearance audit of the company.

As each of these areas requiring customs compliance is very technical in nature, Rizwan suggested using a toolkit approach, which will be described in a separate article.

MANY COMPANIES ARE NOT AT ALL PREPARED TO DEAL WITH CUSTOMS THEMSELVES

Dr Momchil Antov, D. A. Tsenov Academy of Economics, Bulgaria

Momchil's experience allows saying that many companies are not at all prepared to deal with customs themselves, and even co-working with customs representatives is very difficult and ineffective. There are several reasons for this, for example, lack of specialists, lack of investment in staff, non-sharing information between departments of a company, desire to 'save' money, and others.

Traditionally, the most problematic areas regarding customs and trade compliance are: the classification of goods in the customs tariff, origin of goods, customs value of goods, non-tariff measures, simplified procedures, and customs information systems.

Momchil shared advice to companies to meet all these challenges. The most important of them are: hiring a customs representative as well as suitable other specialists and training own employees to increase their qualifications. Learn more by reading the article '[Customs-competent staff: nice to have or a must?](#)'.

THE MAIN CHALLENGE - THE AWARENESS OF MANAGEMENT

Annette Raiser, Lawyer, nettes`globaltrade, Switzerland

Summarising 20 years of experience in her practice, Annette underlined that the main challenge for a company was and remains to increase the awareness of management of customs risks. Once you have done that, everything else is done. This is the most difficult and priority task. Its completion allows you to engage in other necessary areas: education, setting up the processes, team building, technical issues, etc.

Unfortunately, many companies consider customs compliance as a part of logistics. They believe that to comply with customs requirements, it is enough to fill out several customs documents. And all this does not require great knowledge and effort. In fact, the price of getting it wrong may be very high.

CUSTOMS REQUIREMENTS SHOULD BE A PART OF CORPORATE STRATEGIES

Christophe Pereira, Customs and International supply chain manager, Groupe La Poste, France

Customs requirements will become more exigent in the near future and will be more complex to implement for companies that do not foresee them in their corporate strategies. Christophe named data quality as one of the most significant challenges in customs compliance. As a representative of the postal operator, he sees a large scope of customs data that does not have the proper level of accuracy and relevance. This disrupts automated processes and leads to manual corrections of improper data. In turn, this increases the cost and time of customs clearance. An additional issue in the context of incorrect data in customs declarations is an underpayment of import duties and taxes. All of this causes delays in the delivery of goods to consumers. The latter often address their dissatisfaction with postmen who are not to blame for these delays.

The second challenge highlighted by Christophe is getting AEO status for postal operators. The benefits of this status are obvious in terms of operational, competitiveness and business aspects. However, there are some constraints related to getting this status. Firstly, this process requires a lot of time, efforts and human resources, taking into account a huge number of items that are handled every day by a postal operator. In addition to this, an audit, which must be performed every three years, also requires dedicated staff to be created or reassigned from the other areas. Finally, the financial benefits are not so significant compared to constraints. Learn more by reading the article [‘Customs strategies at the heart of international business development’](#).

FREQUENT LEGAL CHANGES INTRODUCE INSTABILITY

Krishna Barad, Partner - Customs and International Trade, BDO India

The problematic points of customs compliance in various countries are traditionally customs classification, valuation and origination, as well as customs duties. Krishna highlighted their specific features in India.

The assignments of proper HS codes are a key challenge. It especially concerns new technology products, chemicals, textiles and automobiles. In the context of valuation, one of the biggest challenges is import operations between the related parties and the application of Transfer Pricing to determine customs value. Regarding rules of origin compliance, there is a challenge related to meeting the requirements of FTAs. Particularly in India, some recent legislative changes require suppliers' support related to value, as well as to the bill of material. This also creates issues for importers, especially those who claim FTA benefits.

There are export and import authorisations to claim certain duty benefits under a foreign policy that also cause issues with customs compliance. In addition to this, some external factors make it difficult to meet duty payment obligations. Krishna refers to the anti-dumping and safeguard duties imposed on many Indian goods. He also mentions frequent legal changes which introduce instability in trade development and, accordingly, customs compliance.

The list of challenges is not exhaustive. Among them are multiple documentation requirements, as well as IT systems, both private and public, that are often incompatible, and many others.

WHEN EVERYONE IS RESPONSIBLE, NO ONE IS

Enrika Naujokė, Editor, Customs Compliance & Risk Management journal, Lithuania

From a general perspective, Enrika emphasised three challenges in ensuring customs compliance in a company:

1. The first one is to find the right people - who own their tasks and aim to create the most value for the company and, thus, for the broader context - the society - in which the company operates.
2. The second challenge is to ensure that the employees have the right knowledge and skills. Two aspects are important, first, that the employees want to learn, then it is quite simple - ensure that they have the possibility to do that.
3. And, finally, getting the right processes in the right way - communication, documentation, checks.

Enrika provided an example of a practical case, where all three above-mentioned points were failing, despite (or, rather, because of it) there were many persons and departments involved to take care of – customs warehouse manager, customs broker (outsourced services), finance department and logistics department of a manufacturing company. The company stored goods in a customs warehouse prior to releasing them to free circulation. The goods qualified for preferential treatment (0% duty), and the certificates of preferential origin were duly received. However, these certificates went to the customs warehouse’s archive and were not used for release for free circulation. Therefore, the manufacturer overpaid more than €100.000 annually until the issue was revealed. The importer got the duties repaid for the past three years; a longer period is not foreseen in the EU customs legislation.

COUNTRIES ALL OVER THE WORLD HAVE THE SAME CHALLENGES

Maria Gottifredi, Lawyer, Argentina

Maria noticed that different countries all over the world have the same problems and challenges regarding customs and trade compliance. She drew parallels with Israel, where, as previously mentioned, one of the largest issues is customs valuation. Argentine importers and customs authorities also face complications in terms of determination and correction of customs value when importing goods. Maria emphasised that so many participants of the meeting spoke about the lack of highly qualified personnel involved in a customs-related activity. This issue is also relevant for Latin America and Argentina.

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Dr David Savage

Member of the Editorial Board,
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Management journal, Ireland

[About the author](#)

COMPLIANCE

Targeting compliance in the minefield of customs (trade) rules

'I would recommend trade compliance to anyone with the ability to distil complex, rigid structures down to a practical reality. Trade compliance rules are a minefield that even the most seasoned professionals cannot confidently claim they have a complete grasp of. If you're willing to constantly be challenged and willing to continuously learn you'll probably fit in well.' – says Samuel Draginich, Senior Trade Compliance Manager, EMEA (Europe, Middle East, and Africa), Amazon EU and Member of the Editorial Board of CCRM journal.

CCRM: Samuel, would you agree that often term 'trade compliance' is used meaning 'customs compliance'? For example, shouldn't your position be called 'Senior Customs Compliance Manager'? What is, in your opinion, the main difference between those terms (e.g., a Trade Manager that I know explained that it's simply because 'trade' has more weight in decision making in the company than 'customs')?

Samuel: Interesting question. In my view, customs compliance is one aspect of trade compliance but does not encompass the profession entirely. For example, I spend significant amount of time ensuring dual-use export controls are adhered to. In most jurisdictions dual-use controls do not fall under the umbrella of customs; usually these are more related to national security. However, they're in integral part of the trade compliance profession and cannot be ignored. Additionally, our team spends a lot of time ensuring compliance on the logistics ends; for example, verifying information on waybills is accurate and that hauliers are adhering to standards set out in our Service Level Agreement.

CCRM: How did you get involved in customs/trade compliance?

Samuel: I got into trade compliance mainly by chance. After completing my Master's degree in International Trade and Transport in 2012 my goal was to get involved in the logistics industry in any capacity. At this time the job market was still reeling from the 2008 crisis so it wasn't easy finding opportunities. When I was finally hired by my first employer in the US, I didn't know what to expect. As it turned out they desperately needed help with tariff code classifications due to a new client they had just taken on. I accepted the task and learned how to classify per the HTS. The scope of the role eventually developed and I moved onto other areas such as export controls, audits, free trade agreements, etc. I don't think anyone goes to school with trade compliance in mind.

My move to Amazon represented a massive leap forward in my career. As the world's largest online retailer, it's obvious it would present a unique set of challenges. My role here is still in its early days as of July 2022 but already

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



Assoc Prof Dr Momchil Antov

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[About the author](#)

COMPLIANCE

Customs-competent staff: nice to have or a must?

Customs compliance is full of challenges and ‘surprises’ from counterparties, customs brokers, carriers and other persons involved. Unpredictable risks and conditions are the inevitable companions of international trade. However, there are many areas where companies can keep most of the risks under their control. What are these areas? What should companies do to mitigate such risks and meet the related challenges?

As the global trade landscape constantly changes, companies need to stay up to date on new regulations and ensure compliance, and use new technologies. Nobody says it is easy, as the company’s usual mode of operation has to change to add a new feature - continuous learning and application of new knowledge and skills. In fact, this is one of the main challenges for companies. It raises the question, how can companies meet this challenge? Is it possible at all?

‘Knowledge is power’ (Lat. *scientia potentia est*) is a very famous phrase attributed to Francis Bacon (1561-1626). These words are still relevant for all areas, including international trade and customs. Let us take a look at the most common knowledge-related issues companies face and try to understand the main reasons for these.

WHERE IS THE KNOWLEDGE PROBLEM IN COMPANIES?

Unfortunately, many companies are not at all prepared to deal with customs themselves. Mostly because they do not understand the necessity of gaining customs knowledge. Companies use customs broker (customs representative) services and want to stay aside from customs matters and issues without realizing the fact that the customs broker acts on their behalf. This means that the **consequences of the actions taken by the representative directly occur to the company**. That is why they do not pay attention to customs knowledge. Their collaboration with representatives under such conditions becomes difficult and ineffective, and the risk of non-compliance is high.

The situation mentioned above may be caused by several reasons, either financial, organisational, or human nature. The most typical of them are the following.

Underdeveloped capacities

In many companies, there are no specialists in the field of customs legislation. Their role should be to monitor relevant legislation, implement all legislative supplements and amendments into day-to-day operations and consult compliance personnel. Companies hire accountants, financiers, marketing specialists, HR specialists, lawyers, and others but underestimate the necessary customs competencies. Thus, their internal **ability to understand what is going on is underdeveloped, and no one internally can recognise the risks** until, for example, customs issue an

invoice with significant amounts of additional duties and taxes, interest and fines.

Lack of investment in staff

Even if companies have employees dealing with customs matters, very few companies care about their professional qualifications and invest money in their upgrading training. This is a problem as **customs-related rules and requirements evolve, and companies must follow this process**. Unfortunately, not everyone understands that investing in your own staff today will help save much more in the near future thanks to proper risk management and compliance.

Insufficient information exchange

Customs is cross-functional and the **risks may stem from various departments, for example, procurement, logistics, finance, legal, IT, R&D, sales**. However, we can often observe the lack of desire in individual departments of a company to share information with each other or to regard the opinions of their colleagues. Problem solving is confined to a department, and cross-functional working groups are rarely formed. Even if there is a customs specialist in the company, very often, colleagues do not understand what she/he tells them or do not want to listen to his/her advice.

Lack of information can result in serious problems in any business process, including those dealing with customs. For example, a customs broker usually contacts a specific individual in the company. If the individual has not received the necessary documents or the correct information for customs clearance from another department, this will lead to a loss of time and probably financial loss. The company may lose the benefits of the preferential origin of imported goods if the customs clearance specialists do not consult with those colleagues who are aware of all the details of the preferential treatment. Such situations are quite common in companies where the exchange of information is not properly organised.

Desire to save money

It is a natural desire of all individuals and companies to pay less and gain more. Companies tend to ignore the complexity of customs-related regulations to maximize profit from a trade transaction. Moreover, there are still business owners whose desire to pay less duty is stronger than the threat of a fine and other risks. This is certainly not a foundation for the **development of a reputable business**.

The list of the reasons given above is not exhaustive, and we do not claim to have listed them all. However, they give a basic idea of the consequences of the competency issues. Obviously, it is impossible to know everything about customs. In this regard, we would like to draw attention to the priority areas of acquiring knowledge.

WHAT ARE THE MAIN PROBLEM AREAS?

Continuing the topic of the current article, we cannot avoid mentioning those areas that include the cornerstones of customs compliance. Ignorance or insufficient attention to these areas can create many problems for companies.

The first one is a **tariff classification of goods**. The classification of goods in the customs tariff is a challenge even for customs specialists, as it requires significant knowledge regarding the type and characteristics of the goods. On the one hand, companies should have such information, but on the other hand, a lack of knowledge about the rules for working with the customs tariff often leads to serious mistakes. These errors can result in the incorrect assessment of duties and taxes or non-compliance with certain regulations regarding importation or exportation of the goods.

The next problematic area is the **origin of goods**. This is a complex economic category that often is not properly understood. For importers, the goods might originate in the country from which they are shipped or where they believe the goods were produced. Customs legislation in this area is very complex and ignorance of it can cause problems not only for the exporter, who determines and informs about the origin, but primarily for his partner in the importing country, who bears the consequences of non-compliance. Companies and their employees should pay

particular attention to the rules of preferential origin that can be found in a specific preferential arrangement, because the rules differ in each of them. This fact complicates the learning process.

Customs value of goods is another complex customs area for understanding and implementation. There are still more questions than answers on this topic, though the rules are set out and explained in many legal documents. The biggest misconception is that customs value is the invoice value. To understand what it includes or does not include, it is not enough to know only the customs regulations in this area but also the conditions of the specific sales contract and, of course, Incoterms.

In addition to this, we should mention the **non-tariff measures** area where many misunderstandings and questions can arise. Generally speaking, non-tariff measures include various prohibitions or restrictions on the import and export of specific goods, and companies must comply with them. However, for this to happen, they must know them. Underestimating these measures can lead to the impossibility of importing or exporting goods. It is worth noting that the application of these measures depends not only on the type of goods but also on the country of origin for the imported goods and the country of destination for the exported goods.

As you know, nowadays customs are moving to an electronic environment and using several specialised information systems. Therefore, **customs information systems** are also a crucial point for customs compliance, and companies must pay attention to investigating them. Companies have access to some of these systems, allowing them to exchange information with customs regarding the goods they import, export, or transit. However, working with these systems implies specific knowledge and experience, which are not always sufficient within companies.

The last area we would like to mention is not like the previous areas. It does not concern risks such as penalties or fines. It is about benefits and additional opportunities for companies. It is a **simplified procedures** area. Many companies do not know or underestimate the possibilities that are offered by the so-called simplified customs procedures. This is generally not a compliance problem for businesses, but it deprives them of the opportunity to gain a competitive advantage by saving time or money. Even the Authorised Economic Operator status is not appreciated enough by the companies, and many see it only as a part of corporate image.

Customs legislation is very extensive, and we would not be able to list all the areas where companies should be well prepared. However, the points mentioned above are enough to outline what companies should first consider when working with customs.

HOW CAN COMPANIES DEAL WITH THIS CHALLENGE?

Ensuring that companies comply with customs legislation is not an easy task, and solving the knowledge and competence issue certainly takes time and costs money. Each company chooses its own way of how to meet this challenge and whether to fight against the ignorance of the employees involved. However, here are some universal



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tips that will not be redundant in any case.

Firstly, companies should work with **customs representatives**. They are specialists in customs matters and can certainly help companies a lot. However, it should not be assumed that their intervention is a sufficient condition for the companies' business to comply with customs rules. Companies should not ignore the advice of their customs representatives just because this would complicate their operations. Simultaneously, companies should take care of the customs knowledge of their employees who are in contact with the representatives. Both **companies and representatives must speak the same language**. It is important to remember that a representative acts on the customer's behalf, which means that they do the work, but the client bears the risk of non-compliance.

Secondly, companies should hire **customs specialists**. Hiring your own specialists in the customs field is a good solution to the problem as it is assumed that they will know not only the customs legislation but also the internal business processes of the company. Unfortunately, finding such people today is not an easy task. That is why most companies do not have such specialists. To some extent, the shortage of such personnel is also a consequence of the lack of specialised training in schools and universities.

Thirdly, companies should **train their employees**. If you want something done right, do it yourself. That is why the option of increasing the qualifications of the company's employees looks the most realistic and the most effective. Employees involved in customs matters can very quickly ensure compliance of the company's activities with customs regulations and thus be of maximum help. Ongoing customs and trade compliance training and other education programmes are essential if managers are looking to save their company and comply with global trade and customs rules.

An excellent example of such an opportunity is the comprehensive course '[Customs clearance and trade compliance in the EU training](#)' offered by the Customs Knowledge Institute (CKI) and verified by several universities. As Anthony Buckley, Chair of CKI and former Head of Irish Customs, says: 'When you complete all modules and do all tests, we are satisfied that you can satisfy any authority or anybody who is interested that you are indeed knowledgeable and competent in the operation of customs'.



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Content of the training

Basics

1. Business understanding of customs
2. Supply chain operations
3. Customs legislation and regulation
4. Customs representation

Tariff and non-tariff measures

5. Non-tariff regulation
6. VAT related to export and import
7. Excise related to export and import
8. Customs duty, debt and its payment
9. Tariff classification of goods
10. Value
11. Origin

Customs procedures

12. Customs declaration
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Compliance

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19. Export control and sanctions
20. Risk management
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EU LAW AND CASE LAW

EU law news: August/September 22

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

WEEK 39

News at a glance: new package of restrictive measures against Russia including measures to prevent circumvention; Lithuanian customs informs about cases of mis-classification of goods to circumvent sanctions, and provides numerous examples; amendment of Convention on a common transit procedure; EU and Kosovo agree to apply an alternative set of rules of origin based on those of the amended PEM Convention; and more news!

30.9.2022 OJ L 253 [Decision No 1/2022](#) of the EU-CTC Joint Committee of 25 August 2022 as regards amending the **data element requirements for transit** declarations and rules on administrative assistance in Appendices I, IIIa and IV to the Convention on a common transit procedure.

30.9.2022 OJ L 252 [Decision No 1/2022](#) of the EU-Kosovo Stabilisation and Association Council of 29 April 2022 amending the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part, by replacing Protocol III thereto concerning the concept of 'originating products'. The Contracting Parties have agreed to apply an **alternative set of rules** of origin based on those of the amended **PEM Convention**, which may be used bilaterally as alternative rules of origin to those laid down in the PEM Convention.

30.9.2022 OJ L 252 [Commission Implementing Regulation \(EU\) 2022/1675](#) of 29 September 2022 fixing the representative prices, import duties and additional import duties applicable to molasses in the **sugar sector** from 1 October 2022.

29.9.2022 OJ C 372 [Notice of the impending expiry](#) of certain **anti-dumping** measures. Product **tartaric acid**, country of origin or exportation China, date of expiry 30.6.2023.

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EU LAW AND CASE LAW

ECJ rules on liability of indirect customs representative

EXECUTIVE SUMMARY

In the recent Case C-714/20 (U.I. Srl v Agenzia delle Dogane e dei monopoli – Ufficio delle dogane di Venezia (U.I.)) of 12 May 2022, the Court of Justice of the EU (ECJ) ruled that under the EU law, an indirect customs representative is liable, jointly and severally with the importer, only for customs duties and not for import VAT. In order to make an indirect customs representative jointly and severally liable for import VAT payment, the legislation of the EU Member State should explicitly provide for such liability.

The Dutch VAT legislation does not seem to explicitly provide for the liability of the indirect customs representative. This means that the current liability of the indirect customs representative for import VAT does not have a legal basis in neither of the EU or Dutch law.

This is good news for forwarding agents and their clients since it potentially limits the liability of the forwarders and subsequently their fees and guarantees required by them.

The experts from some other MSs (e.g., Poland and Spain) have commented that the national legislation of their countries explicitly provides for joint and several liability of the indirect customs representative for import VAT.

INTRODUCTION

This article looks what the ECJ decided in its recent Case C-714/20 (U.I.). In addition, the article will analyse this case in light of the previous ECJ cases on similar matters. It also touches upon the deductibility of the import VAT by the forwarders and carriers. Finally, the article looks at the practical implications of this case for the EU, particularly the Netherlands and some other EU Member States.

BACKGROUND

In order to file an import declaration in the EU, the declarant must be established within the EU. Therefore, in order to import goods in the EU, a non-EU business has an option to appoint an indirect customs representative that is established in the EU who would import those goods on behalf of the non-EU business. Acting in an indirect capacity means that the indirect customs representative together with the non-EU business is held jointly liable for the import duties which become due when importing goods in the EU. This liability is based on Article 77 (3) of the Union Customs Code (UCC) that provides that the declarant shall be liable to pay duties due on import. In the event of indirect representation, the person on whose behalf the customs declaration is made (i.e. the importer) is also liable. Article 84 of the UCC provides that where several persons are liable for payment of the customs debt, they shall be

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CASE LAW

Extinction of customs debt - does it include VAT and excise?

Confiscation of detained goods case

Knowing how provisions of one or another customs and tax legislation are applied, protects business from financial and time losses intended for the resolution of disputes in courts. In this review of the judgement of the Court of Justice of the European Union, we draw attention to the aspects related to excise duty and VAT debt for goods illegally imported into the EU from the third countries - whether it is extinguished together with the import duty debt.

Article 124 of the Union Customs Code (further – **UCC**) 'Extinguishment of a customs debt' provides: '1. Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways: <...> (e) where goods liable to import or export duty are confiscated or seized and simultaneously or subsequently confiscated'.

When importing goods subject to import duty, they are also subject to import value added tax (further – VAT) and, when we import excise goods, also to excise duty. Do all import duties and taxes are extinguished after customs detain and confiscate the goods? The answer to this question is given in the judgement of the Court of Justice of the European Union (further - the Court of Justice) [in case C-489/20](#) (UB vs Kaunas Territorial Customs Office), issued on 7 April, 2022. Although the decision is clear, I still would like to share some insights.

IS THE JUDGEMENT RELEVANT FOR BUSINESS?

Briefly about the case. A tax dispute arose between a natural person and the Kaunas Territorial Customs Office (hereinafter - KTC), which, in its decision 'On the calculation of the tax liability at customs', for the illegal importation of cigarettes (importation determined on the territory of the country, i.e. not in the area of the first customs office), into Lithuania from Belarus, taxed the natural person (further - as the applicant) with the excise duty and import VAT as well as late interest related to these taxes. The KTC did not calculate the import duty debt. The cigarettes were confiscated and destroyed. The applicant, motivating that, since the customs debt was extinguished on the ground provided for in Article 124(1)(e) of the UCC, his obligation to pay excise duty and import VAT should also be regarded as extinguished, appealed the KTC decision to the Customs Department, and later to the Vilnius Regional Administrative Court, which rejected it as unfounded. The applicant then filed an appeal with the Supreme Administrative Court of Lithuania (hereinafter - SACL), which applied to the Court of Justice for a preliminary ruling on interpretation of the application of Article 124(1)(e) of the UCC, Article 2(b) and Article 7(1) of the Excise Directive 2008/118, and Article

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CASE LAW

Alcohol turned into water in a customs warehouse: who pays the customs bill?

A customs warehouse stored bottled alcohol (vodka). Customs audited the warehouse, took a sample, and found that there was water instead of vodka in the bottles! Customs ordered the warehouse to pay €308,455 customs debt (import duties and taxes, fines and interest). A dispute arose regarding who must pay the customs debt, as the customs warehouse is not obliged to take samples of the goods. Let's look at the clarification of the Supreme Administrative Court of Lithuania (**SACL**) in this case.

We overview the judgment of the SAACL in the case No. eA-543-442/2022 (30.3.2022).

LEGAL BASIS

Pursuant to Art. 215(1) of the Union Customs Code (**UCC**), customs warehousing procedure shall be discharged when the goods:

- a. are placed under a subsequent customs procedure,
- b. have been taken out of the customs territory of the Union, or
- c. have been destroyed with no waste remaining, or
- d. are abandoned to the State in accordance with Art. 199.

It is set out in Art. 242(1) of the UCC that the holder of the procedure shall be responsible for the following:

- a. ensuring that goods under the customs warehousing procedure are not removed from customs supervision;
and
- b. fulfilling the obligations arising from the storage of goods covered by the customs warehousing procedure.

Otherwise, according to Art. 79 of the UCC, a customs debt on import incurs, and the debtor is the person who was required to fulfil the obligations concerned.

DISPUTED SITUATION

A temporary storage/ customs warehouse (hereinafter also the **Company**) received for storage a shipment of bottled alcohol, which was brought to the warehouse under a transit procedure. Seals were intact and no discrepancies were found comparing information in the accompanying documents and the delivered goods.

After some time, customs decided to conduct audit. They took a sample of vodka and sent it to Customs laboratory.

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OVERVIEWS AND COMMENTS

Resolving trade disputes beyond borders: the role of the WTO

In international trade, the policies of the government of the trading partner such as the country of destination for exports may affect the business of a company. If a company conducting international trade believes that another member country of the World Trade Organization (WTO) is not complying with its obligations under a WTO Agreement and is creating trade barriers then what remedy is available under international trade law? Who can help a business entity in such a situation, which is beyond the jurisdiction of the home country? Is there any effective dispute resolution mechanism available under international trade law? How does it work? What are its strengths and weaknesses? What are the timelines for dispute resolution? How does it affect business environment? In this article these important aspects are explained for a better, certain, predictable, and fair international trading environment.

INTRODUCTION

If a company is having trouble with its exported goods due to an action taken by a WTO member in an area covered by a WTO Agreement then it can seek assistance from its government to take up the dispute with the WTO Dispute Settlement Body (DSB). Individual exporters cannot take their trade complaints directly to the WTO. They must work through their own governments.

The dispute resolution mechanism is one of the main pillars of the multilateral trading system established by the WTO. There are various agreements between the WTO member countries, which constitute international trade law. An international trade dispute arises when a member country believes that its legitimate trading interest under such an agreement has been nullified or impaired due to the non-performance of contractual obligations or commitments by another member country. A system is essential to provide for an orderly process of sustaining and monitoring the balance of contractual rights and obligations, and for resolving the inevitable differences between parties in conducting their trade relationships with each other. Legal protection serves as a tool to reduce existing power disparities that allow the powerful country to defy international obligations at the expense of the less powerful. A legal order propelled by a dispute settlement system affords a guarantee of protection to less powerful parties by minimizing the role of power in the distribution and enforcement of legal rights and duties.

The main objectives of the trade policy of any country are to contribute to the national economy through trade liberalization and facilitation, improve export competitiveness, and reduce the cost of doing business. The aim of the trade policy is to achieve higher market access for national products in existing markets as well as new markets.

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OVERVIEWS AND COMMENTS

Learning the Lingua Franca of International Trade

What is the language of international trade? Who should learn it? Why it is important to learn? How to use this language for international trade? What are the international themes in the development and application of this language? What are its advantages and disadvantages? How to develop the skill of using this language? This article finds answers to these important questions for the information and learning of the international trading community.

INTRODUCTION

The Harmonized Commodity Description and Coding System commonly referred to as the 'Harmonized System' or the 'HS' is considered as *lingua franca* of international trade. It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO). Currently, 211 countries, territories, customs or economic unions are using the HS as a basis for their customs tariffs and for the collection of international trade statistics. More than 98% of the international trade merchandise is classified in terms of the HS.

All the stakeholders involved in the supply chain such as traders, customs brokers, postal authorities, courier companies, shipping agents, insurance agents, terminal operators, and shipping lines use the HS.

The World Trade Organization (WTO) and the WCO encourage their members to use the HS for the sake of uniformity in the international trading environment. Moreover, the Statistical Commission of the United Nations has recommended that the countries should use the HS for the collection, compilation, and dissemination of trade statistics. Furthermore, Article 3 of the International Convention on the Harmonized Commodity Description and Coding System creates an obligation for the Contracting Parties to implement the HS.

STRUCTURE AND PRINCIPLES OF THE HS

To begin with, it is important to understand the overall scheme of the HS. It is a structured Nomenclature consisting of:

- description of goods,
- classification numbers,
- legal notes,
- classification rules.

It has a logical structure with the headings and subheadings of the Nomenclature grouped into 96 operating chapters

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OVERVIEWS AND COMMENTS

Types of import and export declarations in the EU: have you set the code correctly? (Part 2)

SAD box 1, data element 1/2 or 11 02 000 000

In the previous issue of the CCRM journal*, it was overviewed what codes should be indicated in case of import or export of goods in the first subdivision of box 1 of the single administrative document (SAD). As the SAD box 1 has also a second subdivision, let's overview what codes go into it and what are the rules of filling it out.

It should be noted that customs declarations shall be submitted by electronic means; the SAD (paper document) is used only in exceptional cases, when it is set out in the legislation that the goods can be declared to customs on the paper form. When filling out the electronic declaration, we refer to data elements, not to SAD boxes, therefore, when it comes to the second subdivision of **SAD box 1**, it is also about the **data element 'Additional declaration type (1/2)'** or the data element **11 02 001 000** in the Member States, which have implemented the latest version of the [EU Customs Data Model \(EUCDM\)](#).

Please note, that the particulars in the second subdivision of SAD box 1 shall be common to all goods declared in the same customs declaration.

CODES TO BE USED UNTIL ALL ELECTRONIC SYSTEMS ARE DEPLOYED IN THE EU MEMBER STATES

Currently, until all the electronic customs systems are implemented, in many EU Member States we still use the codes from **Appendix D1** 'Codes to be used in the forms' to Annex 9 of the Commission Delegated **Regulation (EU) 2016/341**.

An example of a filled out SAD box 1 for the importation of goods with the code 'D' in the second subdivision:



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OVERVIEWS AND COMMENTS

Customs broker’s profession: to be or not to be licensed?

This is the third article in our study of customs broker activity in different countries. The [first one](#) concerned the peculiarities of the customs broker profession in different EU countries. The [second one](#) contained insights and news not only from the EU, but also from the UK and Canada. We dedicate the third article to the approaches of regulation of customs broker’s profession in different countries. For this purpose, we conducted a small survey among our readers before. The results turned out to be quite interesting, especially in the context of their comparison with the current situation in various countries.

SURVEY RESULTS

In the LinkedIn social network, we asked our readers whether customs brokerage should be regulated by the state. We meant, whether it is necessary to establish such additional condition as requirement to obtain a license passing an exam for admission to this profession. 97 people participated in the survey. The geography of the participants was not limited to the EU countries. Moreover, we did not set any restrictions regarding the participants themselves. Please find the survey results below:

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In the previous post, we shared some national peculiarities of the customs broker profession. Now are looking forward to learning your opinion about it – should it be regulated or not. The poll is a part of the research for an article on the subject. We will share the article with all participants of the poll.

#customs #customsclearance #customsbroker #customsagent #customsclear

Should the profession of customs broker be regulated (the requirement to pass an exam to obtain a license)?
The author can see how you vote. [Learn more](#)

Yes	71%
Rather yes	18%

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OVERVIEWS AND COMMENTS

Software installation and origin of goods

Reader's question: 'We export certain devices to Ukraine. The product-specific rule is based on the value criterion. Can the value of expensive software, which was created and developed in the EU, be counted as the value of originating materials?' To answer this question, we review various aspects of the topic, which is becoming increasingly important, as more and more goods do not function without software.

Nowadays, many products without software would not perform the functions they were designed to and become worthless. Such as, probably, the devices indicated in the question, or, for example, such innovations as 3D printers. Thus, the question arises, is it correct to take into account only physical materials or goods when determining the economic (non-preferential) and preferential origin of the goods? This issue was also discussed in the Customs Expert Group Origin Section (the Group) of the European Commission (EC).

To provide you with an answer, we refer to the meeting minutes of the Group ([TAXUD/2744052/17, 30.06.2017](#)). Let's take a look at the various aspects of origin discussed by the Group on how the installation of software should be treated for the purposes of determining the origin of goods.

ORIGIN OF SOFTWARE

When establishing the origin of goods for customs origin purposes, only physical materials are considered as originating or non-originating. For example, it is set out in Article 38 of the EU-UK Trade and Cooperation Agreement:

(e) 'material' means any substance used in the production of a product, including any components, ingredients, raw materials, or parts;

(f) 'non-originating material' means a material which does not qualify as originating under this Chapter, including a material whose originating status cannot be determined.

There was consensus among the members of the Group that, from a legal perspective, software as such is not to be considered a material or good and therefore, rules of origin cannot be applied to it. So, it is not (yet) possible to establish the origin of the software for customs origin purposes.

VALUE OF THE SOFTWARE AND THE EXW VALUE OF THE GOODS

When the product specific rule (PSR) is based on the value criterion, usually, the EXW price of the goods should be determined (for example, the PSR could set out that the value of all the non-originating materials shall not exceed 50

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Ukraine customs and trade news: August/September 2022

News at a glance: amendments to the Customs Code of Ukraine; customs 'visa-free' regime; updating the Customs Tariff of Ukraine; termination of safeguard investigations; upgrade of the free trade agreement between Ukraine and the UK; the Digital Trade Agreement between Ukraine and Great Britain.

AMENDMENTS TO THE CUSTOMS CODE OF UKRAINE

In mid-August 2022, the Parliament accepted the law for bringing Ukrainian customs legislation into accordance with the Union Customs Code and the Convention on a common transit. Companies will be able to move goods from the EU to Ukraine (and vice versa) without additional re-registration to internal transit.

That law also stipulates:

1. simplifications of customs clearance for companies without the Authorised Economic Operator (AEO) status;
2. all goods imported to the customs territory of Ukraine and transported in transit through the territory of Ukraine will be subject to transit guarantee (and Ukrainian financial guarantees for transit will be valid in another 35 countries);
3. improving the current requirements for AEO status;
4. introduction of end-use procedure (release of certain goods for free circulation in Ukraine applying a reduced rate of import duty).

CUSTOMS 'VISA-FREE' REGIME

The Parliament ratified Ukraine's accession to the Convention on the simplification of formalities in trade in goods and the Convention on a common transit procedure. These Conventions unite countries of the European region, which have introduced unified rules for declaring and controlling transit movements of goods using NCTS in all contractual parties.

On October 1, 2022, the provisions of the Convention on a common transit procedure entered into force for Ukraine, and businesses got an opportunity to internationally transport goods to 35 other Parties using a single transit document (T1).

UPDATING THE CUSTOMS TARIFF OF UKRAINE

The Cabinet of Ministers approved a draft law that brings the Customs Tariff of Ukraine into compliance with the

requirements of the latest version of the International Convention on the Harmonized System of Description and Coding of Goods. Some of the changes:

1. goods which are grouped too generally - one code will be split into several;
2. goods with similar characteristics, and a large difference in duties - they will be merged into one to avoid manipulation;
3. goods with low trade volume - will be removed;
4. also, new codes will be added;
5. no changes to duty rates though.

TERMINATION OF SAFEGUARD INVESTIGATIONS

The Interdepartmental Commission on International Trade terminated safeguard investigations into imports of several goods to Ukraine:

1. three-cone rock bits (code of goods: ex 8207 13 00 00 and ex 8207 19 90 00);
2. some types of cheese (code of goods: 0406 30 31 00, 0406 30 39 00, 0406 30 90 00, 0406 90 23 00, 0406 90 25 00, 0406 90 32 00, 0406 90 78 00, 0406 90 86 00, 0406 90 89 00, 0406 90 92 00, 0406 90 99 10);
3. sodium hypochlorite (code of goods: ex 2828 90 00 00).

UPGRADE OF THE FREE TRADE AGREEMENT BETWEEN UKRAINE AND THE UK

Ukraine and Great Britain upgraded the Agreement on political cooperation, free trade, and strategic partnership. It provides the simplification of access to the public procurement market.

The updates are related to changes in currency, which is used for the calculation - from EUR to special drawing rights (International Monetary Fund). In addition, the mutual application of public procurement in medical services will be regulated.

DIGITAL TRADE AGREEMENT BETWEEN UKRAINE AND GREAT BRITAIN

On August 23, 2022, Ukraine confirmed the intention of the parties to conclude the Digital Trade Agreement (DTA). The relevant statement was made during an online meeting.

The Digital Trade Agreement is a new type of a trade agreement that will open up new opportunities for Ukrainian and British businesses to use modern technologies that will reduce bureaucratic procedures and promote the use of electronic payments, digital signatures, and electronic contracts, says the Minister of Economy of Ukraine.

Future arrangements will include the creation of appropriate digital infrastructure and regulatory environment, which will provide:

1. a single window for traders and government authorities;
2. levelling restrictions on cross-border data transfers;
3. growth of trade in services; proper protection of personal data;
4. improving access to public resources managed by Ukraine and Great Britain.



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