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CUSTOMS COMPLIANCE & RISK MANAGEMENT

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Authors' Meeting and discussion on the topic:



**CUSTOMS PROCEDURES –
POSSIBILITIES NOT TO BE MISSED
AND WORTH KNOWING ABOUT**



19 January 2023, 3:00 – 4:00 PM CET | ONLINE

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Editorial

Dear Readers,

As we approach a new year - 2023 - the most concerning questions worldwide are definitely related to the tariff classification questions and the implementation of transformations that are necessary for the renewed tariff classification nomenclatures. It is important to stress that in developing that theme, the authors of this CCRM issue paid a lot of attention to the new version of the EU's Combined Nomenclature (2023), discussed the role of 'communications' as the special (and sometimes - forgotten) source of EU's customs law and their importance. However, we also touch on issues important for the readers not only in the EU but the other countries, such as the introduction of the concept of 'attributes' in the classification of goods in Brazil, the adoption of a new tariff classification nomenclature (based on WCO's Harmonized System 2022 version) in the Republic of Ukraine. Finally, those, who are interested in tariff classification of some particular products/ items, will be able to find commentaries about the classification of smartwatches or recommendations on how to optimize the classification process (what instruments should be included in the 'Tariff classification toolkit').

Another fairly widely covered topic worth paying special attention to is the interpretation of legal acts of customs and trade law, including the issues of liability for violations - this time thoughts of more than nine authors from different countries are summarized in the article 'Interpretation of customs law and related challenges for businesses'. Based on their expertise, the authors identified and presented many challenges, requiring the attention of all practitioners and starting from the challenge of wording or even punctuation used in customs laws and ending with the necessity to achieve the vision of the world's most effective border.

Finally, this time and in this particular issue of CCRM Journal, we have decided to focus on the previously not-so-extensively researched but very important aspect - communication of businesses with customs lawyers. When do you need to start communicating with a customs lawyer or a consultant and what you should keep in mind while talking to them? As such questions naturally come to the mind of any practitioner from time to time, it is worth taking a look at the article by Dr Ilona Mishchenko 'Ask a customs lawyer about what and why can go wrong'?

I sincerely hope you will enjoy the content of this issue. As we are always interested in contributions from all customs compliance practitioners worldwide, if you would like to get involved and present your own ideas next time, please do not hesitate to reach out to us! (info@lcpa.lt)

Best regards,

[Dr Gediminas Valantiejus](#)

Member of Editorial Board

Attorney-at-Law, Partner of the Law-Firm GVLEX, Lithuania

Senior Research Associate at the Mykolas Romeris University, Lithuania



EU law news: October/November 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 47

News at a glance: EU-Ukraine approximation of customs legislation; the WCO Symposia Series 'Visualising a greener HS to support environmentally sustainable trade'; updates of anti-dumping measures applicable to bicycles and ceramic tiles from China; and more news!

25.11.2022 OJ L 305 [Commission Implementing Regulation \(EU\) 2022/2302](#) of 23 November 2022 amending Regulation (EC) No 1484/95 as regards fixing **representative prices** in the **poultrymeat and egg** sectors and for egg albumin.

24.11.2022 OJ L 304 [Commission Delegated Regulation \(EU\) 2022/2292](#) of 6 September 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of **consignments of food-producing animals** and certain goods intended for human consumption.

23.11.2022 [The third symposium](#) in the WCO Symposia Series, “**Visualising a greener HS to support environmentally sustainable trade**”, supported by the European Union, was held on 8 November 2022. The symposium, held under the theme “The textile industry: the interaction between textiles and the environment”, addressed the role of the Harmonized System (HS) in the identification at the borders of significant goods of the textile sector in terms of environmental policy.

22.11.2022 OJ L 301 [Decision No 1/2022](#) of the **EU-Ukraine** Association Committee in Trade Configuration of 25 October 2022 as regards the update of Annex XV (**Approximation of customs legislation**) to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part.

22.11.2022 OJ L 301 [Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of](#)

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Eglė Pučkuvienė

Tariff classification specialist, Lithuania

[About the author](#)

CLASSIFICATION

Combined nomenclature 2023 – what is changing?

The Combined Nomenclature (CN) is updated annually and businesses should check for changes relating to imported or exported goods. The version of the CN to be applied in 2023 has already been published. Let's take a look at the more important changes, which are, in fact, not many - 42 new CN codes were introduced, 23 CN codes were abolished.

The Council Regulation (EEC) No. 2658/87 sets the Combined Nomenclature, which is updated annually considering the needs related to statistics, trade policy and changes in technology and trade, environmental and health protection. The version of the CN, which will be applied in 2023, has already been adopted by the Commission Implementing Regulation (EU) 2022/1998 of 20 September 2022 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariffs and statistical nomenclature and on the Common Customs Tariff (OJ 2022 L 282, p. 1). In this overview, we look at more important changes. In fact, there are not many of them - 42 new CN codes were introduced, 23 CN codes were abolished.

In order to define edible products more precisely from insects, the description of subheading 0410 10 91 has been changed to 'Flours and meals'.

A separate subheading 0809 30 20 has been introduced to distinguish flat peaches and flat nectarines from other

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Ingrida Sakalienė

Tariff classification specialist, Lithuania

[About the author](#)

CLASSIFICATION

Communication on tariff classification of goods - what is it?

After the publication of a certain communication in the EU Official Journal, Binding Tariff Information (BTI) decisions must be revoked if they no longer correspond to the interpretation of the customs nomenclature according to the specified international tariff measures. The latest communication was published at the end of October this year. Let's take a look at the current issues that are important for both business and customs. For example, how should household plastic clothes hangers be classified? Or what about digital smart pen classification?

WHAT IS A COMMUNICATION?

First, let's briefly define what is a communication. Communication is an official announcement or information about international agreements, the results of negotiations between countries worldwide. In the latest communication, related to the uniform and correct tariff classification of goods, published in the EU Official Journal (OJ) 2022/C 404/01, there are measures approved by the Harmonized System Committee of the World Customs Organization (HS Committee), i.e., changes in nomenclature explanations of the Harmonized System (HS), classification opinions approved by the HS Committee and classification decisions approved by the HS Committee published/ announced.

EU Member States must cancel BTI decisions that no longer correspond to the changes to HS

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Taichi Kawazoe

HS classification adviser, Japan

[About the author](#)

CLASSIFICATION

Classification of the smartwatches is not so smart

Tariff classification is never simple. This is a complex process that has been always causing complications and misunderstandings. It may seem that persons over the years should have learned to avoid problems when classifying goods. However, in practice the further it goes, the more complicated it becomes. In this article, we offer to get acquainted with one such example that confirms this statement.

In recent years, many new products have appeared on the market that combine the functions of different items. These products can serve different purposes and needs simultaneously. A mobile phone has long ceased to be just a device for making calls. All-in-one printers combine the functions of a printer, scanner and copier. A multi-tool can replace an entire toolbox, as it includes a knife, pliers, scissors, bit drivers, etc. Such products, due to their multi-functionality, make our lives much easier. We do not have to buy several different products; rather, we can simply buy one to meet several needs. Besides being more convenient, it is also cheaper.

At the same time, it is quite difficult to classify such goods for customs purposes precisely because of their multi-functional nature. Indeed, it is difficult to distinguish the main purpose of such a product, its main function and main characters as required by the General Interpretive Rules (GIR).

We suggest looking at the mentioned problem using the examples of tariff classification of several devices that

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Pixabay



Rizwan Mahmood

Additional Collector of Customs,
Pakistan Customs, Pakistan

[About the author](#)

CLASSIFICATION

Tariff classification toolkit

The areas requiring customs compliance are of a very technical nature. To get it right, a systematic approach is required. In this article, we present the ‘Tariff classification toolkit’, developed by the author. This is a generic version of a toolkit. It can be tailored to the requirements of any company by expanding them and making the requirements more specific.

The ‘Tariff classification toolkit’ was first mentioned during the 12th Authors’ Meeting on the topic ‘[The biggest challenges in ensuring customs compliance in a company](#)’.

The toolkit consists of two parts: the essential requirements and good practices.

ESSENTIAL REQUIREMENTS

The first part of the toolkit, see the figure below, relates to essential requirements. Concerning essential requirements, first, it is important to understand the Harmonised System and its structure. The Harmonised System is the lingua franca of international trade. So, if you are dealing with international trade, then you first need to learn its language (see ‘[Learning the lingua franca of international trade](#)’). When classifying any given product, you will have to work through the General Interpretative Rules and Legal Notes, which consist of section notes, chapter notes, sub-heading notes and headings before arriving at the correct commodity code.

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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
13. Goods brought into the Union customs territory
14. Release for free circulation
15. Special procedures
16. Transit
17. Goods taken out of the Union customs territory

Compliance

18. Customs decisions and authorisations
19. Export control and sanctions
20. Risk management
21. Customs IT systems

Download detailed programme in PDF 

Meet some of the lecturers



Anthony Buckley
CEO at Anthony Buckley
Consulting Ltd., former
Head of Irish Customs, Ireland



Jessica Yang
Customs & Trade Compliance
Specialist at Takeda,
Switzerland/the United Kingdom



Patrick Nieveler
Manager Customs & Excise
Tax at BMW, Founder & CEO of
PASSANI Academy, Germany



Dr. Momchil Antov
Associated Professor at the D. A. Tsenov
Academy of Economics, Bulgaria



Inessa Platonova
Vice President FIATA, Vice President
ICC Ukraine, Founder & CEO of
PLASKE Academy, Ukraine



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Lawyer, Professor, Aduaneiras - Cursos e Treinamentos, Brazil

[About the author](#)



Laércio Cruz Uliana

Administrative Federal Judge of Tax and Customs matters, Lawyer and Professor, Brazil

[About the author](#)

CLASSIFICATION

Trade with Brazil: the use of 'attributes' in classification of goods

Due to the need for more precise controls on foreign trade, the Brazilian government decided to adopt an additional methodology to performing the classification of goods in the HS/NCM, which is the use of 'attributes'. Each position in the HS/NCM can have several attributes, and the importer must indicate which one or which ones apply to the goods. This new import process aims to optimise customs inspection and increase the application of fines due to incorrect classification.

As a signatory to the International Convention on the Harmonized System of Description and Coding of Goods (popularly known as the Harmonized System or HS), Brazil, like other countries, uses the nomenclature codes as a basis for: (1) Customs tariffs; (2) the collection of international trade statistics; (3) rules of origin; (4) the collection of internal taxes; (5) trade negotiations (e.g., the WTO schedules of tariff concessions and Free Trade Agreements); (6) transport tariffs and statistics; (7) the monitoring of controlled goods (e.g., wastes, narcotics, chemical weapons, ozone layer depleting substances and endangered species); (8) Customs process areas of Customs controls and procedures, including risk assessment, information technology and compliance¹.

In addition to the 6 digits in the nomenclature codes of the HS, Brazil, as well as the other member countries of MERCOSUR (Paraguay, Uruguay and Argentina), adds 2 digits to the HS and calls this new code structure the NCM (Common Nomenclature of MERCOSUR).

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



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Anthony Buckley

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OVERVIEWS AND COMMENTS

What about customs trends in an economic downturn?

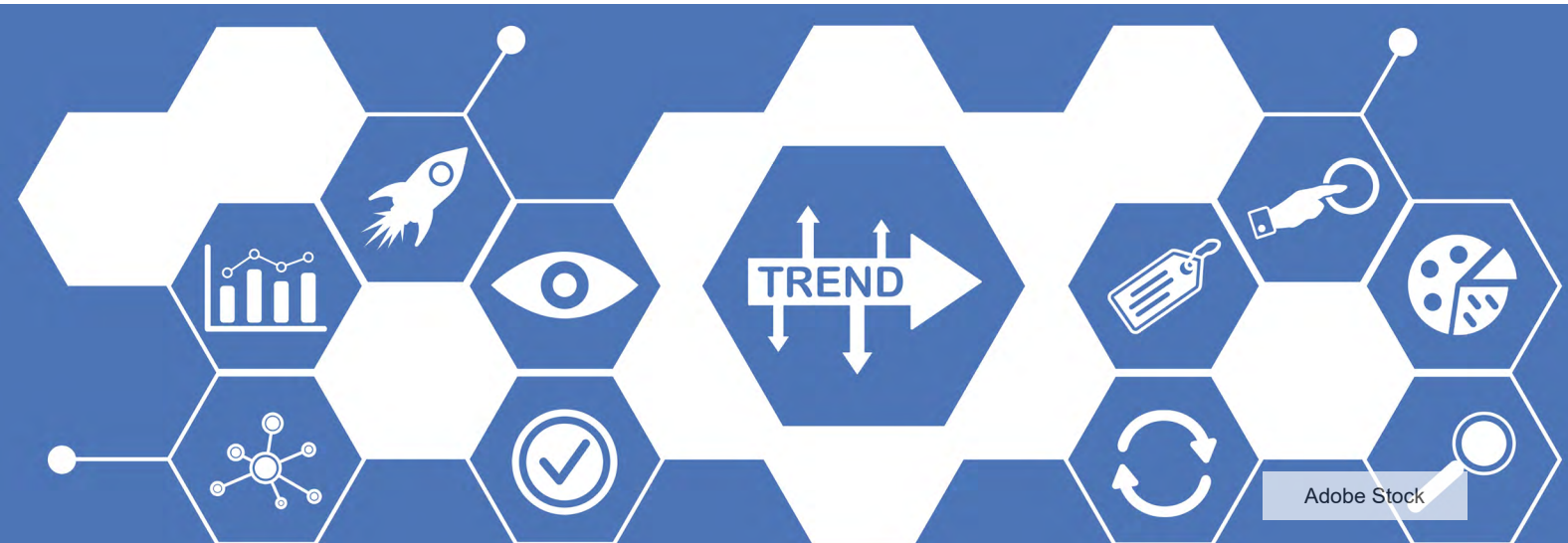
Obviously, customs could not stay aside from all the processes related to the economic downturn, being an important element in the global supply chain. Customs regulation can significantly affect the course and results of international trade in both directions: either to aggravate problems or to contribute to their solution. What customs trends can be identified today?

MAIN REASONS CREATING A THREAT OF A GENERAL ECONOMIC DOWNTURN

Over the past two decades, the world economy has faced many challenges and trials. That led governments to review their priorities in economic policy and approaches to managing the economy, and to use innovative measures. Now, rising inflation is one of the main reasons creating a threat of a general economic downturn. There are many reasons for this; let us consider the main ones.

- 1. Unprecedented 'pump-priming' by governments.** These measures were intended to restart economies after the property-led crash of 2007 – 2008. In general, 'pump-priming' takes the form of stimulation of government expenditures and public consumption in order to increase aggregate demand. That, in turn, should encourage economic growth.
- 2. Zero interest rates.** On the one hand, these measures were aimed to make the investment climate more

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OVERVIEWS AND COMMENTS

Interpretation of customs law and related challenges for businesses

'Interpretation of customs law and related challenges for businesses' was the topic discussed in the [13th Authors' Meeting](#). Many interesting and important aspects around the topic were raised by the participants: the challenge of wording and even punctuation used; the importance of understanding the background of legal changes; interpreting law vs first understanding what product we have; the lack of legal clarity in defining responsibilities and liabilities; the need for more simplifications; and how the law shall evolve to help to achieve the vision of the worlds' most effective border.

THE DIFFERENT WAYS IN WHICH EU LEGISLATION IS FORMULATED AND THE RESULTING CHALLENGES

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

Rather than discussing the ways in which you can or must interpret Union law, Michael drew attention to the different ways in which legislation is formulated and thus creates a wider or smaller scope for administrations and national legislators and may be the source of divergent treatment within the single market. For example:

- a. Art. 182(1) UCC: 'The customs authorities **may... authorise** a person to lodge a customs declaration ... in the form of an entry in the declarant's records'
- b. Art. 188 (c) UCC: 'The customs authorities **may... examine** the goods'
- c. Art. 173(3) UCC: '...within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration **may be permitted...**'

Logically, two questions arise:

1. For which situations are 'may' provisions inevitable?
2. To what extent are 'may' provisions a source of divergent treatment?

At the same time, the UCC includes counter examples:

- a. Art. 38(6) UCC: 'The authorised economic operator referred to in paragraph 2 **shall enjoy more favourable**

treatment than other economic operators in respect of customs controls according to the type of authorisation granted, including fewer physical and document-based controls.'

- b. Art. 174(1) UCC: 'The customs authorities **shall... invalidate** a customs declaration ... in either of the following cases...'
- c. Art. 211(2) UCC: 'The customs authorities **shall grant** an authorisation with retroactive effect, where all of the following conditions are fulfilled...'

Questions:

1. What is the reason for the divergent use of the terms 'may' and 'shall'?
2. Does a 'shall' provision provide in practice a right or a benefit?

You will find more questions for reflection in the article '[Interpretation of Union law – potential sources of different treatment](#)' and also find answers to some of the questions in the book '[UCC – Text edition and introduction](#)'.

THE IMPORTANCE OF UNDERSTANDING THE BACKGROUND OF LEGAL CHANGES

Monika Bielskienė, Attorney at Law, PwC Lietuva, Lithuania and Michael Lux

During the meeting, a discussion took place between Monika Bielskienė and Michael Lux. Since Michael is one of the creators of the Union Customs Code (UCC), he was asked to lift the veil on the details of the amendment to this code. Particularly, Monika was curious about the reasons for certain changes. She also asked where it would be possible to find proposals and initiatives for such changes?

Michael advised finding answers in his book 'UCC – Text edition and introduction'. He also pointed out the importance of the history of the EU legislation, which is, first of all, relevant for the use of judgments if they are still applicable. In addition, Michael noted that nothing is eternal, including decisions of the European Court of Justice (ECJ). This also concerns VAT and customs legislation, which had to be repeatedly interpreted by the ECJ.

In turn, Monika shared the background of her questions. They are caused by the different approaches of customs and businesses to changes in the inward processing procedure. Initially, these changes concerned only the aircraft industry; now, according to Monika's interpretation, they apply to all industries. However, the customs authority does not agree that the changes can be applied to industries other than the aircraft industry. That is why it is important to know what plans, ideas and thoughts were the backgrounds for those changes.

Michael stated that the changes were deliberate. He explained that before the rules were to be changed, 'we always followed up to see if there was anything positive and helpful and if it could be extended to other areas'.

THE TECHNICAL ASPECTS OF THE LAW-MAKING PROCESS: A WORD AND EVEN PUNCTUATION MATTER

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

Some problems with the interpretation of law directly depend on the technical aspects of the law-making process. Wording, words, phrases and even punctuation matter. For example, there is an article in the Customs Code of Ukraine that provides for liability for illegal transactions with goods for which customs clearance has not been completed. This means the prohibition to **use and disposal** of such goods without the permission of the customs authority.

At a glance, everything is fine. However, in two cases under very similar circumstances, two different Ukrainian courts issued two opposite decisions based on this article. In one case, the court penalised a person; in another case, the court released him/her from liability. Why did this happen? In both cases, these persons, without the permission of the customs authority, transferred non-cleared goods that were under customs supervision to other persons, i.e., disposed of them. These persons did not use the goods. That is, only one of the two actions provided for in the cited article took place.

In the article, these two actions are connected by the conjunction 'and'. The legislator usually uses it to combine something. Otherwise, the conjunction 'or' or 'and/or' should be used. That is, in our case, it should be understood literally that both actions (the use and disposal) are necessary for liability to arise. At the same time, it is illogical. In practice, it is too complicated to expose a person to both the use and disposal of the goods.

We can see that a little conjunction of 'and' may cause a large problem of ambiguous interpretation of the law. Due to the Constitutional Court of Ukraine, the problem was resolved. In its decision, the court recognised that each of these two actions is a separate form of offence and entails liability.

THE 'INTERPRETATION' OF GOODS FOR TARIFF CLASSIFICATION PURPOSES

Jonas Sakalauskas, Attorney at Law, Law Firm 'Averus', Lithuania

Based on his experience, Jonas considers the interpretation of customs law on tariff classification to be the biggest challenge for businesses. Given the fact that tariff classification is regulated by a large number of legal acts, the main issue for businesses is to find out which specific regulation or rule should be applied in a particular case.

The second issue for businesses in this regard is the application of these regulations and rules in specific circumstances. Often, businesses face challenges identifying goods themselves and defining their technical and other characteristics. As goods are becoming increasingly multifunctional, this leads to more and more problems with the interpretation and application of the law.

Companies are liable for the identification of technical parameters of goods. It directly depends on the staff's competence and knowledge of classification both from a legal point of view and from a practical point of view. Today businesses have different tools for classification that can be used. However, they are not sufficient for a comfortable and clear classification process, especially in cases of classification of chemicals, composite goods, etc.

THE CHALLENGE: THE WORLD'S MOST EFFECTIVE BORDER - THE MOST EFFECTIVE LEGISLATION

Kevin Shakespeare, Director of Strategic Projects and International Development, Institute of Export & International Trade, the United Kingdom

The UK has a different path in terms of customs legislation. There is a number of things to look at, including the long-term Target Operating Model (TOM) that describes the future border and will be released soon. The vision for the UK border is to have the most effective border in the world.

The ability clearly to introduce trade and customs facilitations is currently under discussion. The UK has been looking at a path of trade and customs facilitation partly based on advanced supply chain data and also on the development of the UK Single Trade Window. For the latter, there is a very ambitious task to have it by November 2023 around both customs and borders and around SPS (sanitary and phytosanitary controls).

It will be interesting to see how far the UK can introduce trade and customs facilitation. The initial TOM introduces the potential concept. This concept is based on trusted traders and low-risk products when no phytosanitary and veterinary health certificate is required. The definition of trusted traders is under consideration as well, whether that is AEO-F or another authorisation. There is also talk about periodic declarations and transit facilitation.

In conclusion, Kevin noted that it is always fascinating to see the different paths being taken by different countries. But the ability of the UK to introduce facilitations based on advanced supply chain information is going to be very interesting in the future.

MORE SIMPLIFICATIONS FOR BUSINESSES SHOULD BE INTRODUCED IN THE LAW

Zandra Horgan, Co-Founder, HFS Accountants, Ireland

In her professional activity, Zandra deals with the importation and exportation of foodstuffs subject to sanitary and phytosanitary controls. It has become quite difficult to handle all the consignments from the UK since 1st January 2021. That is why Zandra's main efforts are focused on finding possible solutions regarding simplifications rather than waiting for Single Trade Window to come in. She is sure that changes for the better are possible. Simplifications

would significantly reduce costs for the final consumer.

FLUCTUATING LIABILITY: ONE YEAR – ADMINISTRATIVE OFFENSE, ANOTHER – CRIMINAL

Toms Čevērs, PhD student at the University of Latvia, Faculty of Law

Toms drew attention to the interpretation of criminal law in the context of the criminalisation of customs offences, in particular, smuggling. He stressed that in different jurisdictions, there are various approaches to determining thresholds for such criminalisation.

Using Latvian legislation as an example, Toms showed how these thresholds and their criteria changed over the past nearly twenty-five years. Initially, large scale of illicitly trafficked goods was considered to be the adequate threshold. The value of goods had to correspond to at least 50 minimum monthly wages. Later, a deed committed repeatedly within a year became sufficient to bring a criminal charge. Therefore, the first committing of an offence entailed administrative liability, and the second was criminal liability. After that, substantial harm to any legal interests caused due to smuggling was considered the right option. Any legal interests might be taken into account, including financial harm to State Budget. Currently, the first approach is returned. Now the value of goods must reach at least 10 minimum monthly wages.

All these thresholds are very different. The criteria for distinguishing between an administrative offence and a crime are of a completely different nature (objective side, offender as a person, and negative consequences). It is worth reminding about the Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions (COM(2013)0884). The Proposal initially included the idea of determining administrative sanctions according to the value of goods and then - according to the financial consequences caused, more precisely, the amount of taxes evaded. In Tom's opinion, the latter is the better solution.

THE CHALLENGE OF THE 'ANY PERSON' RESPONSIBILITY FOR BUSINESSES

Enrika Naujokė, Director, Lithuanian Customs Practitioners Association

Enrika was inspired by Dr Talke Ovie's presentation at the 6th Customs Practitioners Conference held in June 2022 (the upcoming conference takes place on 25.5.2023, [see here](#)).

So, one day you can learn that you are the 'any person' responsible for an infringement. What does this mean? For example, the UCC Art. 15(1) sets out that *'any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall... provide all the requisite documents and information...'*

In this regard, Enrika presented recent clarification of the Supreme Court of Lithuania based on the following situation. A Finnish company signed contracts with two Lithuanian warehouses. One of them was a customs warehouse for the storage of non-Union goods. Another one was a warehouse for the storage of only Union goods. One day a shipment under T1 was mistakenly placed in the latter warehouse. The mistake was noticed after several days, and the goods were shipped to the right warehouse (the customs warehouse). However, by the time the T1 time limit expired. For this mistake, the commercial director of the warehouse which initially accepted the goods by mistake was fined €900.

UCC Art. 233 (3) sets out the following: *'A carrier or recipient of goods who accepts goods knowing that they are moving under the Union transit procedure shall also be responsible for the presentation of the goods intact at the customs office of destination within the prescribed time-limit and in compliance with the measures taken by the customs authorities to ensure their identification.'*

Supreme Court of Lithuania concluded that the commercial director of the warehouse, according to his job description, has the duty to check what goods are accepted into the warehouse. He acted carelessly, accepting goods under the T1 procedure. That is why Customs were right to fine him. And that is why one day, even if you have never dealt and never planned to deal with customs formalities, you can learn that you are 'any person', unfortunately...

More food for thought on the topic in the article ['Any person' concept or What we learn from the UCC about who is responsible for what?](#) by Dr Talke Ovie.



Michael Lux

Lawyer, Michael Lux BVBA , Belgium

[About the author](#)



Enrika Naujokė

Director, Lithuanian Customs Practitioners Association, Lithuania

[About the author](#)

OVERVIEWS AND COMMENTS

Interpretation of Union law – potential sources of different treatment

“Rather than discussing the ways in which you can or must interpret Union law, I want to make you reflect on the different ways in which such legislation is formulated and thus creates a wider or smaller scope for administrations and national legislators, and may be the source of divergent treatment within the single market.” – with these words, Michael Lux opened the exchange of views on the topic "Interpretation of customs law: the most challenging aspects for business" at the [13th Authors' Meeting](#).

So which legal formulations lead to different treatments in the EU Member States? Michael Lux highlighted three areas.

TOO MUCH SCOPE FOR MEMBER STATES' ADMINISTRATIONS?

Examples from the Union Customs Code (UCC):

- a. Art. 182(1) UCC: “The customs authorities **may ... authorise** a person to lodge a customs declaration ... in the form of an entry in the declarant’s records”
- b. Art. 188 (c) UCC: “The customs authorities **may ...examine** the goods”
- c. Art. 173(3) UCC: “... within three years of the date of acceptance of the customs declaration, the amendment of

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Image by Gerd Altmann from Pixabay



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[About the author](#)

OVERVIEWS AND COMMENTS

‘Any person’ concept or What we learn from the UCC about who is responsible for what?

Legal responsibility is one of the reasons why people refrain from engaging in non-compliant actions or activities. No one wants to be fined, let alone jailed, including participants of the international supply chain. So, what does customs compliance mean for those involved in international trade? What rules should be followed?

THE RULES

First, the need to comply with the terms of the sales contract is obvious (regarding the quality and quantity of goods, timeline of delivery and payment, etc.). Otherwise, the liability provided for in the contract itself will arise. Everything is clear with this.

Second, it is important to comply with the national laws and regulations of the Member State to avoid prosecution and, consequently, to avoid punishment for the infringement.

Third, it is necessary to comply with the provisions of the EU legislation. We are primarily talking about the Union Customs Code (UCC). This is a basic legal act on customs throughout the EU. Together with the Implementing Act, the Delegated Act, and the Transitional Delegated Act, it contains a tremendous number of provisions and makes up the lion's share of the EU customs legislation.

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



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OVERVIEWS AND COMMENTS

Ask a customs lawyer about what and why can go wrong

Lawyers are often called by importers and exporters when something goes wrong. A customs lawyer with many years of experience representing clients in disputes with customs and in the courts is an invaluable source of compliance knowledge. However, solving disputes in appeal procedures and subsequently in the courts is a long and costly process (and there is no success guarantee); therefore, be proactive, talk to a lawyer or a consultant beforehand about what and why can go wrong and take actions to prevent the issues.

This article is inspired by [Michael Lux](#), a lawyer and author and co-author of numerous publications. It is based on his insights shared during the [12th Authors Meeting](#) on the topic 'The biggest challenges in ensuring customs compliance in a company'. As a lecturer teaching Union customs law at the 'Odessa Law Academy', I find these meetings, during which exchange on certain topics among business, academia and customs from countries around the world takes place, very enriching and thought-provoking. Such regular exchange is especially important for those who train future specialists, whose crucial role is highlighted in this article.

Before proceeding to 'What' and 'Why' things go wrong, let's give some thought to planning and preparation.

WHERE DO WE START (TO GET A PRODUCT FROM CUSTOMS TERRITORY 'A' TO 'B')?

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



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OVERVIEWS AND COMMENTS

Digitalisation of customs processes and the strategy of the customs department

Customs and IT teams need to be integrated

Overseeing the digitalisation of business processes is a particularly great challenge for executives responsible for customs and foreign trade - in addition to those presented by trade wars, Brexit and sanctions, which can change on a daily basis. The influence of digitalisation on production, purchasing, distribution and logistical processes relating to customs and foreign trade law demands serious change. At the same time, digitalisation offers the chance to develop efficient and future-proof solutions. But what is important to consider...?

IDENTIFY THE POTENTIAL OF DIGITALISATION AND AUTOMATION

The first step (in itself a great challenge) of digitalisation is to identify its potential for the company, decide on the approach to adopt, set priorities and plan the project accordingly. The responsibility for implementing the processes relating to customs and foreign trade usually lies with the department for customs and export controls which will cooperate with other areas of the company in this respect (especially IT and logistics). Besides sufficient financing, the other essential prerequisite for the project is an integrated, bespoke organisation.

A lack of staff may present a further hurdle, especially in the areas of customs, foreign trade and information technology. However, it is even more difficult to find staff skilled in these areas and project management. This is a

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Ukraine customs and trade news: October/November 2022

News at a glance: ban on export of fuel wood; cooperation Ukraine - UK, Ukraine - U.S.; anti-dumping and safeguard measures; new Customs tariff; Common transit comes into effect.

BAN ON EXPORT OF FUEL WOOD

At the end of November, Prime Minister announced that the Government adopted a decision to ban the export of fuel wood because it will help to contribute to its accumulation in Ukraine. The reason - wood is now the main resource for heating.

TRADE COOPERATION BETWEEN UKRAINE AND THE UK

In November, Prime Minister of the United Kingdom Rishi Sunak first visited Ukraine and discussed economic priorities of cooperation between Ukraine and the UK, in particular:

1. Extension of the Agreement on the abolition of duties and tariff quotas signed on May 4 for an initial period of 12 months;
2. Ways how the UK will help to unlock investments in Ukraine;
3. Intentions to implement the Digital Trade Agreement till the end of 2022, about which we have written in the previous overview. It will provide the non-application of duties (but freedom of taxation) in digital trade and maintain a common legal framework for electronic transactions, electronic contracting, electronic identification, paperless trade, and the protection of personal information.

PRELIMINARY ANTI-DUMPING MEASURES ON IMPORT OF GLASS FROM BELARUS

Ukraine has initiated an anti-dumping investigation against the import of glass from the Republic of Belarus to Ukraine. During this investigation, the Interdepartmental Commission on International Trade decided on the application of preliminary anti-dumping measures on import of glass from the Republic of Belarus to Ukraine, in particular:

1. Preserving jars of glass;
2. Bottles for food and beverages of colorless glass with a nominal capacity of 0.15l or more but less than 2.5l or from colored glass with a nominal capacity of more than 0.33l but less than 1l.

TERMINATION OF A SAFEGUARD INVESTIGATION

The Interdepartmental Commission on International Trade terminated safeguard investigations on imports of PVC profiles (profiles of polyvinyl chloride of a kind used in the manufacture of sheet pilings and facings) into Ukraine

regardless of country of origin and export, and decided not to implement the safeguard measures.

THE AGREEMENT ON TRADE AND INVESTMENT COOPERATION BETWEEN UKRAINE AND THE UNITED STATES - UPDATE

On November 9, U.S. Trade Representative Katherine Tai and First Deputy Prime Minister and Minister of Economy of Ukraine Yuliia Svyrydenko agreed on a bilateral meeting in Washington to launch negotiations to update the Trade and Investment Cooperation Agreement concluded between the countries back in 2008. This decision supports Ukraine's efforts to create a more transparent and predictable business environment.

NEW CUSTOMS TARIFF OF UKRAINE

In the last overview, we wrote that 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 (HS 2022). At the end of October, our Parliament approved this draft, and President Volodymyr Zelenskyy signed it. The law comes into force on January 1, 2023.

Just a reminder of what this law will change: the goods' codes will be brought into line with the requirements of the Harmonized System of Description and Coding of Goods (e.g., the code of goods which are grouped too generally will be split into several codes; goods with low trade volume will be removed; new items will be added; but no changes to duty rates though).

COMMON TRANSIT HAS COME INTO EFFECT IN UKRAINE

On the 1st of October, the Convention on a Common Transit Procedure and amendments to the Customs Code of Ukraine came into force. It means that Ukraine officially joined the Common Transit Convention and Convention on the Simplification of Formalities in Trade.

Ukrainian businesses have already received the benefits of the 'customs visa-free regime,' which facilitates the international movement of goods between 35 Member States of the Conventions as much as possible: goods can cross any number of frontiers between them using a single transit document. It allows goods to move faster between the EU and common transit countries.

Starting from the 1st of October, Ukrainian businesses took advantage of common transit more than 180 times.



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COUNTRY-SPECIFIC

One car for me, another one for the state - import taxes in Israel

Import taxes in Israel

An excellent article published in CCRM about one year ago reviewed the main import taxes in Brazil, the EU and Ukraine and the means and basis of calculation. The article demonstrated that, in some cases, the import taxes exceed the value of the goods themselves, meaning that the taxes are more than 100% [1]. I may comment that, in my view, the State of Israel is kind of a pioneer in this field. In several sectors, Israel imposes very high import taxes, especially on passenger cars, where the taxes exceed the value of a car.

So, let's begin to study Israel's main import taxes.

CUSTOMS DUTY

Customs duty is mainly calculated as a percentage of the value of the goods. Many manufactured goods in Israel are duty-free under the HS classification code, regardless of their origin. However, to protect Israel's food industry, agricultural products are subject to tariffs.

Passenger cars are currently subject to 7% duty, except for imports from states which hold a Free Trade Agreement (FTA) with Israel. I may note that in December 2022, an FTA between South Korea and Israel will enter into force, and abolish the duty for passenger cars from South Korea which are imported to Israel.

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

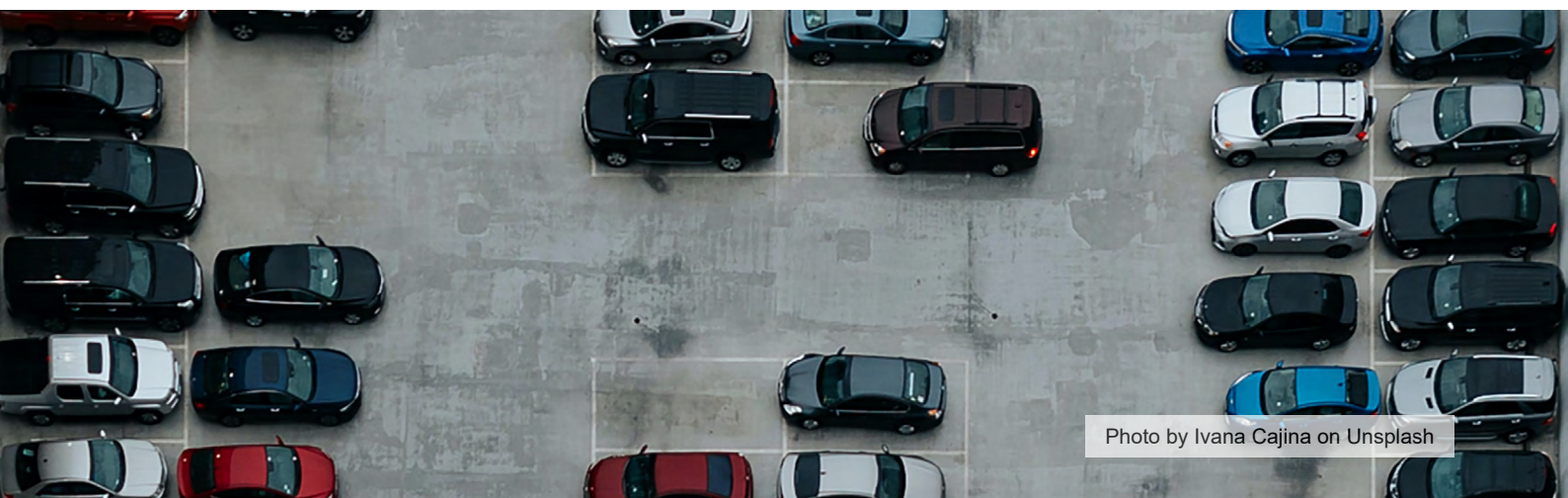


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COUNTRY-SPECIFIC

Voluntary disclosure of errors in the customs declaration in Argentina

Modern states are no longer mere tax collectors aiming to increase their coffers to only do construction work – in the best-case scenario – but also to become facilitators of the whole community's well-being through sustainable, environment-friendly, inclusive, developing and equitable trade. Voluntary disclosure of errors in the customs declaration should be applied in practice as one of the facilitation measures. Currently, voluntary disclosure is possible in Argentina within 30 days after customs clearance; an extension to 60 days is expected soon.

It is set out in the Trade Facilitation Agreement (TFA) Article 6 'Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties' point 3.6 '*When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person*'. This provision is included in Argentinian Law 27,373. As TFA is an international agreement, it has a supra-legal hierarchy; therefore, it has a constitutional hierarchy.

This is to say that it is clearly stated that a person can inform about a breach of import or export customs formalities,

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Date	Time CEST/CET	Topic	Organiser	
15.12.2022	16.00-17.30	Books on Customs 2022 Online event	CustomsClear	free
19.01.2023	15:00-16:00	Customs procedures - possibilities not to be missed and worth knowing about Authors' Meeting	CustomsClear	free
25.05.2023	9:00-17.00	European Customs Practitioners' Conference	Lithuanian Customs Practitioners Association	

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Mini Course on Customs

Crash course on customs for EU-UK trade planning



Debtor – compliance

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

You need a commodity code to:

- determine the rate of duty applied

Product: 4910 00 00 → Free

Product: 0502 90 81 → 6.5 %

Commodity code → Duty rate

Challenge #1: customs data

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

CHIEF Declarations

Product	Rate 1	Rate 2	Rate 3	Rate 4
0000 00 00	0.0 %	0.0 %	0.0 %	0.0 %
0000 00 00	0.0 %	0.0 %	0.0 %	0.0 %
0000 00 00	0.0 %	0.0 %	0.0 %	0.0 %
0000 00 00	0.0 %	0.0 %	0.0 %	0.0 %

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