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CCRM ISSUE 18 ONLINE

CUSTOMS COMPLIANCE & RISK MANAGEMENT

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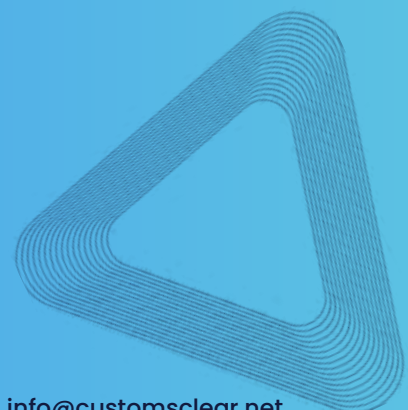
BEST PRACTICES/ TIPS OF MANAGING CUSTOMS KNOWLEDGE IN COMPANIES



23 March 2023, 3:00–4:00 PM CEST | ONLINE

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

 CustomsClear





Editorial

Dear Customs Colleagues,

As we look to what the new year might bring, I feel we can expect the whole area of trade to be as turbulent in 2023 as it was in 2022. In recent years, we have become used to living in a globalised and increasingly interconnected world. However, events throughout the world, but not least in Ukraine, have seen a pull back on the process of globalisation as much of the world polarises and falls into distinct trading blocs. As a direct consequence of the Ukrainian conflict, trade has become weaponised as each side uses whatever leverage they can in order to realise their strategic ambitions. Policy makers make the rules and those of us in the Customs world must quickly understand and apply these to keep our businesses and clients on the right side of the law. At the same time normal life continues. Court rulings are made and the customs law continues to evolve.

In such a dynamic environment, we on the editorial team at the Customs Compliance and Risk Management Journal are proud to provide you with invaluable information to keep you and your businesses up to date with contemporary and important information and insights. In this, the 18th edition of the CCRM journal, we provide comprehensive coverage of developments in EU law in December and January. Jovita Miksiene provides commentary on judicial clarification in respect of the landmark Hamamatsu case. Jugita Staniene reports on a case where an importer thought they were availing of a quota but was unaware it had become exhausted.

The growing importance of Environmental Societal and Governmental issues is reflected with four articles dealing with issues related to both customs and sustainability. Dr Erika Besuspariene and Dr Milita Vienazindiene describe the challenges and opportunities for businesses cooperating with customs. Dr David Savage describes the EU's proposed Carbon Border Adjustment Mechanism. Karolina Semionovaite sets out the role that banks can play in green transition that we must all make for the health of our society and planet. As we are encouraged to participate in the circular economy Milda Stravinske describes the issues around the customs valuation of reusable waste materials.

In the 'Overviews and comments' section, Michael Lux and Erika Naujoke provide in depth information about the forthcoming EU single Window Environment for Customs which will change how business interacts with the authorities in the context of international trade in the years ahead. Rolf Finger presents three case studies in the very topical subject of export controls and which should convince you to take your export compliance responsibilities seriously. An update to the 'dark arts of classification' article that originally was published in CCRM Issue 14 is also provided.

Former senior Irish Customs official Anthony Buckley sets out what developments we can expect in the UK and EU respectively during 2023. Ronnie Van Royen provides 2 articles in which he sets out very practical measures we can take to maintain good compliance in our supply chains.

Iryna Pavlenko and Oleg Kyryevskyi bring us up to date with developments in the field of customs and trade in Ukraine. Omer Wagner recounts a case from Israel where an importer had to pay customs duties twice for the same import.

On behalf of the editorial team, I hope that you find these articles to be interesting, informative and useful in your daily role.

Best regards,

[Dr David Savage](#)

PROGRAMME May 25, 2023

EEST (Vilnius)

- 8.00-9.00** Registration
- 9.00-9.10** Welcome address by Enrika Naujokė, Director of Lithuanian Customs Practitioners Association
- 9.10-11.00** **LAW - WHAT ARE THE LATEST DEVELOPMENTS AND CHALLENGES FOR BUSINESS?**
The development of mega-free trade agreements Prof Dr Hans-Michael Wolfgang, Head of the Institute of Customs and International Trade Law, University of Münster, Germany
'Hardening' EU soft law Prof Dr Krzysztof Lasiński-Sulecki, Director of the Centre of Fiscal Studies, Nicolaus Copernicus University, Poland
How to navigate legal complexity and manage compliance? Michael Lux, Lawyer, Michael Lux BVBA, Belgium
Moderator: Dr Gediminas Valantiejus, Lawyer, Dr Gediminas Valantiejus Law-Firm GVLEX, Lithuania
- 11.00-11.30** Break
- 11.30-13.00** **'EMPLOYING' TECHNOLOGY IN CUSTOMS AND BUSINESS - WHAT AND HOW TO?**
Customs, Inside Anywhere, Insights Everywhere Frank Heijmann, Director of the National Committee on Trade Facilitation of the Netherlands and Head of Trade Relations at the Netherlands Customs
Project management in customs IT projects Michael Tomuscheit, Managing Director, AWB Consulting GmbH, Germany
Classification of goods: pitfalls in the use of automation Christopher Matt, Managing Director, MA-TAX Consulting GmbH, Germany
Moderator: Milda Stravinskė, Advisor to the LCPA Board, Lithuania
- 13.00-14.30** Lunch
- 14.30-16.00** **EU-UK TRADE AND COOPERATION AGREEMENT - WHAT WORKS, WHAT NOT, AND WHAT IS IN PROGRESS?**
Double duty trap: issues of origin and status Zandra Horgan, Co-Founder, HFS Accountants, Ireland
Seamless border - is it realistic with a 24hr supply chain? Kevin Shakespeare, Director of Strategic Projects and International Development, Institute of Export & International Trade, the United Kingdom
Customs compliance - being prepared for a customs audit (focus on suppliers' declarations) Richard Bartlett, Managing director, Export Unlocked, the United Kingdom
Moderator: Anthony Buckley, Chair of CKI Board, Customs Knowledge Institute, Ireland
- 16.00-16.30** Break
- 16.30-17.30** **GREEN CROSS-BORDER TRADE - WHAT SHOULD IMPORTERS AND EXPORTERS THINK OF AND PREPARE FOR?**
Quo Vadis: Green Customs? Arne Mielken, CEO of Customs Manager Ltd., the United Kingdom
Practical action in the customs department Anna Gayk, Managing Partner of Mendel Verlag and Dr. Christian Struck MLE, Global Head of Trade Compliance at Wacker Chemie AG, Germany
Moderators: Dr Erika Besusparienė, Associate professor, Vytautas Magnus University, Lithuania and Monika Bielskienė, Manager in the Indirect Tax Team, PwC Lithuania
- 19.00** Networking evening

PROGRAMME May 26, 2023

- 10.00-11.30** **WORKSHOP** 'Increasing competencies in the field of customs'. Five working groups on different topics led by an international team of experts! Organiser: Customs Knowledge Community
- 11.30-12.00** Break
- 12.00-13.30** **LET'S CONNECT!** An event to make contacts with practitioners from other countries
- 13.30-15.00** Break
- 15.00-18.00** A guided walk in Vilnius

Learn more and register on www.lcpa.lt/en



Photo by Karolina Grabowska on Pexels

EU LAW

EU law news: December/January 23

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 4

News at a glance: International Customs Day 2023 and the theme of the year “Nurturing the Next Generation: Promoting a Culture of Knowledge-sharing and Professional Pride in Customs”; REX system in EU trade with Côte d’Ivoire and Madagascar; antidumping updates: expiry reviews, new exporting producer treatment; and more news.

27.01.2023 OJ C 030 [Notice of initiation](#) of an expiry review of the **anti-dumping** measures applicable to imports of certain **cast iron articles** (CN codes ex 7325 10 00 and ex 7325 99 10) originating in the People’s Republic of **China**.

26.01.2023 [WCO Secretariat celebrates International Customs Day 2023](#). The theme of the year is “Nurturing the Next Generation: Promoting a Culture of Knowledge-sharing and Professional Pride in Customs”.

26.01.2023 [Indonesia has requested WTO](#) dispute consultations with the European Union regarding **EU anti-dumping** and countervailing duties imposed on imports of **stainless steel cold-rolled flat products from Indonesia**.

26.01.2023 OJ C 029 [Notice of the impending expiry](#) of certain **anti-dumping** measures. Product: certain **pneumatic tyres**, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121. Country of origin or exportation: China. Date of expiry: 23.10.2023.

23.01.2023 OJ C 023 [Notice concerning the application](#) of the **Registered Exporter system (REX)** of the European Union by **Côte d’Ivoire** and **Madagascar** under, respectively, the EU - Côte d’Ivoire stepping-stone Economic Partnership Agreement and the EU – Eastern and Southern Africa interim EPA.

23.01.2023 OJ L 020 Commission Implementing Regulation (EU) 2023/148 of 20 January 2023 accepting a request for new exporting producer treatment (Raoping Jinde Ceramics Co. Ltd) with regard to the definitive anti-dumping

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Jovita Mikšienė

Customs valuation specialist, Lithuania

[About the author](#)

CASE LAW

Adjustment of the customs value of goods: judicial clarification in the Hamamatsu case

The German Federal Tax Court has ruled in a case referred to the Court of Justice of the European Union (CJEU) for clarification. The main question put to the CJEU was: can the transaction value be based on the original price paid if a fixed adjustment is subsequently applied calculated by means of a proportional splitting mechanism, notwithstanding that at the end of the year, in the event of an adjustment, there will be a refund of or an additional payment of import duties? The CJEU has given a striking, albeit not entirely clear, ruling that retrospective adjustments (upward or downward) to transfer pricing are not taken into account in determining the customs value of goods. Here is an overview of the case and the highlights of the German court's decision.

On 20 December 2017, the CJEU gave a highly controversial and contentious judgment in the case Hamamatsu Photonics Deutschland GmbH ([C-529/16](#)).

FACTS OF THE CASE AND QUESTIONS REFERRED FOR A PRELIMINARY RULING

Hamamatsu, a company based in Germany, belongs to a worldwide group of companies; its parent company, Hamamatsu Photonics, is based in Japan.

The company purchased imported goods from its parent company, which, under a prior transfer pricing agreement, invoiced those goods at intra-group prices. The aggregate amounts invoiced by the parent company to the applicant in the main proceedings were regularly checked and, where necessary, adjusted to ensure that the selling prices were in line with the 'arm's length' principle laid down in the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines).

The referring court, the Finance Court of Munich (Germany), states that the check of the amounts is carried out in several stages, on the basis of the so-called Residual Profit Split Method, which is in accordance with the OECD Guidelines. First, each participant is allocated a profit sufficient to achieve a minimum return. Residual profits are distributed proportionally according to the factors identified. Second, Hamamatsu sets a target range of Operating Margin. If the actual operating result does not fall within this range, it is adjusted to reach the upper or lower end of the range, and credit or debit adjustments are made.

In the period from 7 October 2009 to 30 September 2010, the applicant in the main proceedings released for free As

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Jurgita Staniene

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[About the author](#)

CASE LAW

One court case - two lessons: tariff quotas, invalidation of a customs declaration and potential risks

Tariff quotas mean less or no duty when importing goods. Most tariff quotas are allocated on a first come, first served basis; therefore, the timing of lodging a customs declaration might be crucial. What if, due to issues concerning customs IT systems, you are late and the quota is exhausted? Can you ask customs to invalidate the customs declaration and wait until the new tariff quota is opened?

Such a question was recently dealt with in the courts in Lithuania. On the 11th of October, 2022, the Vilnius Regional Administrative Court (the Court) heard administrative case No. I3-825-596/2022 on the complaint filed by Cie LT Forge UAB (the Company) against the defendant Customs Department and Klaipeda Territorial Customs (Territorial Customs) regarding the annulment of customs decisions.

SITUATION

On the 8th of February, 2021, the Company submitted applications to the Territorial Customs for invalidation of electronic import declarations (EIDs) and permission to place the goods under temporary storage. The reason: special circumstances as set out in Article 174 of the Union Customs Code (UCC or the Code).

Article 174 Invalidation of a customs declaration

1. *The customs authorities shall, upon application by the declarant, invalidate a customs declaration already accepted in either of the following cases:*
 - a. *where they are satisfied that the goods are immediately to be placed under another customs procedure;*
 - b. *where they are satisfied that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.*

However, where the customs authorities have informed the declarant of their intention to examine the goods, an application for invalidation of the customs declaration shall not be accepted before the examination has taken place.

2. *The customs declaration shall not be invalidated after the goods have been released unless where otherwise provided.*

The Company's reasons for its requests were that the EIDs in question were submitted to benefit from tariff quota No

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Dr David Savage

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[About the author](#)

SUSTAINABILITY AND CUSTOMS

**The European Union
Carbon Border
Adjustment Mechanism –
the launch in 2023**

In mid-December 2022, negotiators of the Council and the European Parliament reached an agreement of a provisional and conditional nature on the Carbon Border Adjustment Mechanism (CBAM). The agreement needs to be confirmed by ambassadors of the EU member states, and by the European Parliament, and adopted by both institutions before it is final. However, according to the agreed timetable, the transition period for its implementation is set to come into force in October 2023. What should companies do?

In the face of increasing Greenhouse gas (GHG) emissions and the environmental consequences for same, policy makers are beginning to take serious action.

The EU ‘Fit for 55’ package of climate measures is a roadmap for the halving of CO2 emissions relative to the 1990 figure by 2030 and carbon neutrality by 2055.

As part of this package of measures, the European Commission made proposals for the adoption of a Carbon Border Adjustment Mechanism (CBAM) in July 2021.

Essentially, these measures seek to limit *carbon leakage*. The *carbon leakage* concept can be explained as purchase of products with a high energy input from jurisdictions with less rigorous GHG emission reduction programmes than the EU.

CBAM seeks to levy charges based on the amount of embedded GHG in the imported product, thereby protecting clean EU industry and encouraging importers to adopt for environmentally friendly production methods.

In mid-December 2022, negotiators of the Council and the European Parliament reached an agreement of a provisional and conditional nature on the Carbon Border Adjustment Mechanism (CBAM). The agreement needs to be confirmed by ambassadors of the EU member states, and by the European Parliament, and adopted by both institutions before it is final. However, according to the agreed timetable, the transition period for its implementation is set to come into force in October 2023.

IMPACT FOR EU COMPANIES

It is anticipated that the introduction of CBAM will have huge implications for EU importers. Initially CBAM will cover imports of cement, iron/steel, aluminium, fertilisers, electricity, and hydrogen along with downstream products. It is

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SUSTAINABILITY AND CUSTOMS

The European Green Deal: challenges and opportunities for business cooperating with customs

Carbon Border Adjustment Mechanism (CBAM); green transport and value of goods

The European Green Course, presented at the end of 2019, raised new challenges for various business enterprises; however, at the same time, it presented new opportunities. Businesses that cooperate with customs, such as customs brokers, logistics companies, and companies that export or import goods, are no exception.

The European Green Deal is an action plan that aims to collectively transform the EU's economy and society towards a more sustainable path. Transformation of the EU economy to a sustainable future includes ambitious goals: to reduce the amount of greenhouse gas (GHG) emissions in the EU by 55% (compared to 1990) by 2030; and to achieve climate neutrality until 2050. To achieve these goals, an action plan includes a roadmap with key actions. The main actions that will have a significant impact on businesses cooperating with customs can be highlighted as follows (Communication from the Commission, 2019):

- Carbon border adjustment mechanism for selected sectors;
- Circular economy action plan, including a sustainable products initiative and a particular focus on resource intense sectors such as textiles, construction, electronics and plastics;
- Propose legislative waste reforms;
- Sustainable and smart mobility;
- Assessment of legislative options to boost the production and supply of sustainable alternative fuels for the different transport modes;
- Proposal for more stringent air pollutant emissions standards for combustion-engine vehicles;
- Implementation of the goal of zero-pollution - no toxic substances.

CARBON BORDER ADJUSTMENT MECHANISM (CBAM)

CBAM is one of the most significant changes caused by the European Green Deal, which will directly affect businesses cooperating with customs. The EU alone would not be able to achieve the goal of reducing the amount of GHG, as for this, international communication is necessary, especially with third countries that are less ambitious in terms of reducing GHG. The aim of the CBAM is to tax imported goods that are subject to less stringent GHG rules than those applied in the EU. The CBAM is a complement to the EU Emissions Trading System (ETS) currently in place. CBAM implementation works will start already in 2023; it is planned to be fully implemented in 2026; and free carbon

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Milda Stravinskė

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SUSTAINABILITY AND CUSTOMS

Customs valuation of raw materials and waste as subject of the circular economy

Commentary No. 15 of the EU Customs Valuation Compendium

In the EU Customs Valuation Compendium, we can find a Commentary on the customs valuation of waste. The need for regulation of this topic is growing together with an aim to meet the objectives of the circular economy. The Commentary is one of the newest interpretative instruments that has been published, so let's take a look at the clarifications it provides, including a practical case study.

There has been a lot of recent discussions about the circular economy, the green transition and the international legal changes needed in this area. First of all, the topic is relevant in an environmental context. In addition, the value supply chains are usually not limited to the borders of a single country or a single customs union, and therefore their international significance becomes evident. Thus, in relation to the foreign trade and supply, the need for different regulation also arises in the area of customs clearance of raw materials, waste and even used goods.

TYPES OF RAW MATERIALS AND WASTE IMPORTED INTO THE EU

One of the interpretative instruments published in the EU Customs Valuation Compendium 2022 is Commentary No. 15, which specifically refers to the valuation of waste. In principle, it even reflects the problem of definitions, where some products intended to be renewed, repaired, further processed, and reused are narrowly referred to as waste, regardless of their specificity and their later use.

For the sake of clarity, we will also use in this Article the definition of raw materials, not only waste. As said before, the Commentary No. 15 refers to the products as waste that can be subject of importation into the customs territory of the Union as:

- waste containing recoverable materials;
- waste to be further processed;
- waste to be destroyed/neutralised.

COMMENTARY NO. 15 AND 'RECIPES' FOR DETERMINING THE CUSTOMS VALUE OF RAW MATERIALS/ WASTE

The question is whether we will find in the Commentary No. 15 any specific 'recipe' for determining the customs value of such goods? The answer is 'No'.

The rules for the determination of the customs value of raw materials or waste being imported into the customs

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Karolina Semionovaitė

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SUSTAINABILITY AND CUSTOMS

The role of banks in supply chain sustainability transformation

‘As the importance of sustainability grows, so does the need to have a good understanding of our entire supply chain. A company’s sustainability is also measured in terms of its entire supply chain, which is why choosing responsible and sustainable suppliers and partners is so important. Consider them as an extension of your company. The ecological footprint of the raw materials, products or services you buy becomes part of your company’s ecological footprint.’ - says Karolina Semionovaitė, Sustainability Officer at Swedbank Lithuania, who kindly accepted the invitation to answer questions on the role of banks in the sustainability transformation.

WHAT IS THE ROLE OF BANKS IN THE SUSTAINABILITY TRANSFORMATION?

In the context of the EU Green Deal, the financial sector has a unique role to play. The Sustainable Finance Mechanism requires banks to enable and drive sustainability transformation in the market through financing solutions. This happens in several steps. First, the assessment of sustainability risks becomes an important part of credit processes. Before financing is granted, the company and the project to be financed are also assessed from a sustainability perspective. It follows that the availability of capital starts to depend on sustainability indicators.

In addition, banks are starting to measure their indirect environmental impact - CO2 emissions from financing and investment portfolios. Leading global banks, including Swedbank, have already made a commitment to reduce their operational emissions to zero by 2050. There are also interim targets to achieve this goal. This means that the interest in working with more sustainable businesses will only grow as the sustainability performance of the bank starts to depend on the sustainability performance of its customers. And to encourage customers to make sustainability changes, banks are also offering green finance products.

WHAT SPECIFIC ACTIONS ARE BANKS TAKING ON SUSTAINABILITY?

Sustainability is a topic of strategic importance at Swedbank and we integrate it into our business decisions, internal processes and products. The topic of sustainability itself is quite broad, covering the whole spectrum of environmental impact, social impact and good governance. Swedbank is active in all of these areas, from reducing environmental impacts and CO2 emissions to employee welfare, equal opportunities, business ethics and other important issues. We have joined international climate change initiatives and set CO2 reduction targets for our financing portfolios. We also work closely with our clients to offer them financing solutions for sustainable investments and to help them

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Michael Lux

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OVERVIEWS AND COMMENTS

A closer look at the Regulation on the EU Single Window Environment for Customs

In December 2022, [Regulation \(EU\) 2022/2399](#) establishing the European Union Single Window Environment for Customs was published which amends at the same time 2 Articles of the UCC. The title of this Regulation is misleading insofar as it suggests to the reader that its aim is to establish an EU Single Window for Customs. So, what is actually the aim of this Regulation? How will our work change in the future? What is the meaning of the UCC amendments introduced by this Regulation? We thank [Michael Lux](#) who kindly agreed to answer these and other related questions.

WHAT IS THE CURRENT PROGRESS IN THE IMPLEMENTATION OF A SW?

Prior to the Regulation (EU) 2022/2399 (Single Window/SW Regulation), the development of SW services was provided for in [Decision No 70/2008/EC](#) (2008) on a paperless environment for customs and trade. [Regulation \(EU\) 2018/1724](#) (2018) establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services foresees SW services as part of EU and national information platforms in a general context. Furthermore, Art. 47 'Cooperation between authorities' of the Union Customs Code (UCC) provides for a single entry point to promote joint controls between customs and other competent authorities and allows for an exchange of data between the authorities involved for this purpose.

However, apart from the pilot project 'Single Window of the European Union for the exchange of certificates in the customs area' (the results of which have been incorporated into the SW Regulation), no real progress has been made on the EU level, what the Commission explains in the recitals of the new regulation with the lack of common rules for harmonised and integrated SW services. What is not mentioned there is the fact that the heavy workload of both the Commission and the Member States due to the IT adaptations required by the UCC and other new requirements (e-commerce) has also contributed to the limited progress.

WHAT IS THE AIM OF THE EU SINGLE WINDOW REGULATION?

Contrary to its title 'Regulation establishing the EU Single Window Environment for Customs', this Regulation neither introduces a Single Window (SW) in the area of Customs activities at EU level nor does it oblige the Member States to establish a national SW for all import and export transactions. Rather, its aim is linking certain non-customs IT systems of the Commission relevant for imports or exports with the national customs clearance systems and

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OVERVIEWS AND COMMENTS

EU Single Window for Customs: new regulation and what lies ahead?

New regulation establishes the EU Single Window Environment for Customs (SWE-C) and amends the Union Customs Code (UCC). One of the objectives of SWE-C is to enable the seamless flow of data between the administrations of exporting and importing countries, as well as between customs authorities and economic operators, allowing data entered in the system to be re-used. What does it mean for business? What steps have been taken so far in practice? What lies ahead? What is changing in the UCC?

In this article, we overview [Regulation \(EU\) 2022/2399](#) of the European Parliament and of the Council of 23 November 2022, which establishes the European Union Single Window Environment for Customs and amends Regulation (EU) No 952/2013 (the Union Customs Code). Let's start with some background information.

WHAT IS A SINGLE WINDOW (SW)?

The most commonly accepted definition of a SW is the one provided by UNECE Recommendation No. 33. It describes the SW as 'a facility that allows parties involved in trade and transport to lodge standardised information and documents with a single-entry point to fulfil all import, export, and transit-related regulatory requirements'. In addition, 'if information is electronic, then individual data elements should only be submitted once'. [1]

WHAT STEPS HAVE BEEN TAKEN SO FAR IN PRACTICE IN THE EU?

EU Member States, at their own pace, are creating national SWs, which will become parts of the EU SWE-C. For example, Irish Customs inform [2] [3] that:

- Phase 1 of the SW project was released on 19.10.2022. This phase introduced a business rule that prevents a declarant declaring CHED or COI certs at goods shipment header level. The certificates must be declared at goods shipment item level.
- Phase 2 relates to the introduction of further validation checks including Quantity Management on data declared on CHEDs/COIs and import declarations. Phase 2 is scheduled to go live on 11.01.2023. The following data on the customs import declaration will need to match the details declared on the corresponding CHED or COI: certificate reference number, CN code (up to the first 8 digits), net mass or Supplementary Units (match or not exceed)

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Rolf Finger

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OVERVIEWS AND COMMENTS

Export control in trade within EU: 3 case studies

**End-use statement can make a lot of sense at the
moment**

Even in these difficult times, it is important for all companies to always conduct their business legally safely. While a few months ago it was still completely 'normal' business within the European Union or third countries, things can be very different at the moment. Possessing an end-use statement makes a lot of sense, even if you are making only a seemingly harmless sale of goods within the European Union. Let's take a look at 3 practical examples.

CASE STUDY #1

German company A is selling goods to France. A classic case of an intra-EU shipment. Apparently, an intensive export control does not have to be carried out.

However, company A meanwhile has decided that an end-use statement must be available for each customer transaction. After this instruction was given, the export control responsible person in the company A found out that these goods do not stay in France at all, but are intended for an end customer in Iran. **Iran is on the list of banned EMBARGO countries!**

Conclusion: since the goods are dual-use goods, company A declines the order of the French customer.

CASE STUDY #2

An EU customer B would like to have an offer from the German manufacturer A for diaphragm pumps and various electronic parts to be shipped within the European Union. Since, according to the internal instructions of the manufacturer's management, an end-use statement had to be obtained here too, it turns out that the goods in question would be delivered to a car dealership in Kazakhstan. **A car dealership has nothing to do with diaphragm pumps and electronic parts!**

Conclusion: Due to these facts, manufacturer's management has refrained from doing this business and put their customer on the internal blocked list (in the ERP system).

CASE STUDY #3

An EU customer C would like to have an offer from the German manufacturer A for a replacement delivery of various pumps and valves within the European Union. In this case, too, an end-use statement was requested and it showed that the shipment was intended for a customer in Syria. **Syria is on the list of banned EMBARGO countries!**

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Dr David Savage

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[About the author](#)

OVERVIEWS AND COMMENTS

The “dark art” of classification (challenging a BTI ruling) II

In CCRM Issue 14 we wrote about a case, where a company challenged a BTI ruling ([see the article here](#)). There is news in this case, as the European Commission issued a classification regulation concerning such products. We take this opportunity to update the article, which not only provides information on how to classify ‘a plastic basin with a plastic disposable liner to be used in clinical settings’ (9018, 3922, or 3924), but also provides an overview of the tools, procedures and possible pitfalls of the tariff classification of goods; and discusses what all the stakeholders can learn from this case

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

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PLANNING 2023 AND BEYOND

What is planned for EU and UK customs in 2023?

What is planned for European customs in 2023? Probably, everyone involved in international trade asks this question. Based on the materials we already know and signals that have been already given, let's overview what changes and trends in the EU and the UK we can expect for international trade and customs at this stage.

OVERVIEW OF UPCOMING DEVELOPMENTS OF CUSTOMS IN THE EU AND THE UK

Between late 2022 and the end of 2023 there will be several significant developments that are already foreshadowed

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PLANNING 2023 AND BEYOND

Customs and Trade Compliance: Tips from Authors of Books

Books on Customs and Trade Compliance can provide great guidance in planning your future activities (2023 and beyond). Authors of the books and also their readers were exchanging distilled insights and tips in this regard during the [3rd Global Webinar 'Book on Customs'](#), which took place on the 15th of December, 2022. We overview some of the thoughts and practical tips shared.

TIPS AIMED AT DEALING WITH UNION CUSTOMS LAW

Michael Lux, author of the book '[UCC – Text edition and introduction](#)' 2nd edition

In this book, Michael provides many tips aimed at dealing with Union customs law. To succeed in finding appropriate legislative provisions, first, you should **familiarise yourself with the structure of the Titles, Chapters and Sections of the UCC**. The good news is that the Delegated and Implementing Acts have the same structure, though sometimes a Chapter or Section may be missing.

Then you **may use the alphabetical index** of the book or the **search function** of the electronic customs legislation version. For example, it might be the free platform www.custleg.eu, where you can search by the keywords. However, when using non-official resources, be careful and double check the relevance of all provisions you find.

At the same time, bear in mind that there are some traps. One of them is that the same subject may be treated in different parts of the UCC. For instance, for all provisions referring to authorisations, you may find further relevant rules in Title I UCC, given that authorisations are at the same time “decisions”. Therefore, when you find appropriate provisions in UCC, be sure to **look at other Titles and Chapters**, so you don't miss additional important information. That's why the first point, 'What's the structure of the UCC?', is so important to fully understand it.

You should know what **customs legislation other than the UCC** exists as well as non-customs import/ export legislation because many customs related points are not covered by the UCC (for example, duty relief, non-tariff measures, etc.). Accordingly, the methods of finding the proper provisions are different for different legal areas.

In this regard, it will be necessary to familiarise yourself with and use **various software tools and databases** (e.g. TARIC, Access2Markets, etc.) for finding information on tariffs, prohibitions and restrictions and so on. It can save

you time and prevent you from missing something important.

Don't forget to consult the national website and tariff database of the country concerned and just google your subject. It is often very helpful.

TIPS AND TOOLS FOR READING AND UNDERSTANDING EU CUSTOMS LEGISLATION

Dr Christian Struck and Anna Gayk, authors of the book '[UCC Practitioner's Edition](#)' 3rd edition

The main idea of this book is to facilitate reading and understanding customs legislation, in particular, the UCC, by practitioners. For this purpose, the authors created special tools for practical use. Here are several of them shared by Christian.

Since the UCC consists of four legal acts and provisions are connected with each other, it takes a lot of time to find desired provisions in these documents. In their book, the authors used a tool that is simple on the one hand, and very helpful on the other. In essence, this tool is margin columns where all these connections are indicated. Now, when reading text from the UCC, you can easily see what articles of the Delegated Act, Implementing Act or Transitional Delegated Act it relates to and better understand the subject.

The next way to make the professional lives of customs practitioners easier is establishing a so-called compliance system for customs. In this book, the authors designed a table where you can see all the types of official tools, their short explanations and related legal acts – all in one. Such tools with concentrated information and short overviews on various topics save your time and simplify the search for answers to many questions.

The authors also created an overview of the developed electronic systems. They also gave a short overview of what they tried to do using a dogmatic approach to Union customs laws, and an introduction to customs law itself. It can be helpful when you need such focused information repeatedly (for internal company reports, webinars, workshops, etc.).

Tip from Anna for anyone who has to deal with a new customs topic: Try to familiarise yourself with a new topic, try to read the law and new regulations. You can use books on the respective topics, if they already exist, and also research on the internet. Of course, at a certain point you may need a professional lawyer for the correct interpretation of the law. But rest assured that familiarising yourself with the law beforehand will help you.

TIPS ON COMPANY'S COMPLIANCE PROGRAMME

Eduardo N. B. Leite, co-author of the book '[Contemporary Customs Law](#)'

Tips based on Eduardo's chapter of the book 'Compliance in Foreign Trade'. First, add value to your company's compliance programme and don't focus only on the problems. Business performance indicators can justify the costs incurred for implementing a compliance programme. A good idea has to start with the history of losses (fines, demurrage, detention, delay in completing the import/export process, etc.) and the company's strategic planning that your position has access to.

Second, you should set measurable goals. For this purpose, it is worth using the indicators to eliminate the gap between Work-as-Done and Work-as-Imagined. Only an adequate choice of indicators allows an accurate measurement of whether the organisation is achieving its goals. Moreover, to make good decisions, it is essential to have quality information on which decisions are based. Finally, always take into account that the indicators are always linked to the organisation's risk appetite and risk tolerance.

Third, stay trustworthy under any circumstances. Justified trust is definitely the ultimate goal of an effective Compliance programme, as providing confidence for the customs authority that you will fully correct your error as soon as required is what the programs' regulations aim to ensure. Thus, only those who are really committed to maintaining compliance will be entitled to the benefit that the programmes provide, whether the AEO or Anti-Corruption.

PROBLEMS RELATED TO A DIFFERENT INTERPRETATION OF THE CUSTOMS VALUATION AGREEMENT

Mark Neville, author of the book 'The Customs Valuation Agreement: Origin, Standards and Interpretations'

The book that will be released soon mostly deals with cornerstone rules of customs valuation reflected in GATT and WTO Valuation Agreement. The first part of the book is about the negotiation leading up to the Agreement in 1979. It also contains an analysis of the Agreement itself. The second part deals specifically with related parties, pricing and transfer pricing for income tax purposes.

The analysis of custom legislations of the US, Canada and the EU was carried out with an in-depth study of judicial interpretation of respective provisions on customs valuation. In this context, the book reveals significant problems related to a different interpretation of the Agreement's norms in different Member States.

There are many instances where the legislation of different countries diverges from the provisions of the Valuation Agreement. One example is the misuse of databases, which were initially considered alternative sources of valuation information. Another example is a definition of the concept 'price actually paid or payable'. Therefore, it's very important to be able to understand what the actual terms of the Agreement are in order to then understand whether or not to expect a deviation from them, as well as find out their reasons and consequences.

Mark highlights that it's time to acknowledge the existing problems with the above divergences, misinterpretation, etc. and calls for an effort to finally resolve them. Given the fact that essentially the Agreement has been unchanged since 1979, its update today is crucial.

The book is based on the fundamental work, which was done by Saul I. Serman and Hinrich Glashoff in the 1980s and intended to update it. In this regard, the author suggests using the approach – try not to supplant any good work; rather, amplify it.

TIPS ON HOW TO BE PREPARED FOR REGULAR TRADE IN A NEW ITEM

Reader Rizwan Mahmood, Additional Collector at Pakistan Customs

From the reader's point of view, Rizwan presented tips from the book '[Customs Matters - Strengthening Customs Administration in a Changing World](#)' by Augusto A. Perez Azcarraga, Tadatsugu Matsudaira and others.

The first tip concerns how to be prepared for trade in a new item if you plan to import it regularly in future. In this case, if you have doubts about its tariff classification, valuation, applicable origin treatment, origin-related concessions, or exemptions under any Free Trade Agreement, it is advisable to **apply for an advance ruling from customs** if possible.

Such an advance ruling will provide you with numerous benefits. You will have a predictable and certain environment for importing your goods. There will be no 'Port Shopping' as your goods will get the same treatment in all ports, which will result in consistency. As there will not be any dispute with customs on the arrival of your goods, therefore it will ensure efficient and cost-effective faster clearance of your goods, resulting in a reduction of trade costs. Since you would already know the treatment which would be given to your goods; therefore, you will take more informed business decisions. The advance ruling has a binding nature for customs; therefore, it inculcates a culture of shared responsibility. The proactive compliance on your part will enhance the image of your firm.

If your company is highly compliant with customs laws and procedures, then the second tip is to **opt for an Authorised Economic Operator** title if other conditions are fulfilled and your customs administration offers AEO status to the nature of your business. Such status entitles your company to a bundle of benefits such as expeditious clearances, deferred payments, and lesser audits. It entitles a company to preferential treatment for its exports not only in its own country but also in the country of export if there is a mutual recognition agreement between the two trading countries.

TIPS ON TARIFF CLASSIFICATION

Reader Dr David Savage, Editor of Customs Compliance & Risk Management journal, Ireland

There are not many HS classification books available, so any practical advice on how to approach this issue is very welcome indeed. The book '[ImageSearch for HS classification](#)' by Taichi Kawazoe is one big tip as it provides a practical roadmap for accurately assigning commodity codes and helps find the required tariff classification answers. To do this, the author uses the EU and the US advanced ruling databases. The author provides a range of really useful hints and tricks to maximise user experience when searching these databases.

Since the US database does not include images of classified goods and the EU one does include them, the author suggests that English speakers **use both databases for cross-checking**. In this way, the classifier can ensure that the item for classification matches up well and facilitate accurate classification.

Personal tip from David as a classification expert: it is important not to be completely reliant on search results from the ruling databases. Advance rulings with incorrect tariff codes does happen. It is absolutely essential to understand and apply HS General Interpretive Rules before trying to classify a product purely on the basis of a precedent ruling.

TIPS ON MANAGEMENT OF COMPLIANCE

Reader Enrika Naujoke, Director of Lithuanian Customs Practitioners Association

Enrika presented three tips from the book '[Customs and foreign trade compliance](#)' 2nd edition by Dr Michael Jung. It is no secret that Compliance is about respecting the rules and good management. Regarding management, the new aspect and the first tip is the systematic and holistic management of compliance in and through the organisation. It is necessary to systematically identify the provisions to be complied with and to manage their compliance systematically and sustainably through the creation of an appropriate organisational structure.

To implement this systematic and holistic management the author proposes 'INCASE' model (second tip). Conceptually, the term 'INCASE' is derived from the following five individual dimensions: IN (integral/integrated), C (compliance), A (advantage), S (synergy), and E (efficiency).

Why is it important to go so deeply and do analysis systematically? Through active and in-depth work on the subject of customs compliance, you can systematically prevent violations ('compliance') and exploit benefits ('advantage'). The author notes, that in many companies, the aspect of potential benefit identification and benefit utilisation is neither sufficiently recognised nor sufficiently examined or used operationally. Finally, the third tip: exploit benefits and do not focus only on ensuring legal compliance.

A UNIQUE GLANCE INTO HOW CUSTOMS AND TRADE PROCEDURES CAN BE MODERNISED

Reader Enrika Naujoke, Director of Lithuanian Customs Practitioners Association

Another book introduced by Enrika was '[Customs Inside anywhere, insights everywhere](#)' by Frank Heijmann, John Peters, and Albert Veenstra. This book:

- Is a must for everyone who wants to know how customs globally think and act;
- Provides insights into finding the right balance between trade facilitation and customs supervision;
- Gives a unique glance into how customs and trade procedures can be modernised to keep up with the changes in global trade.

WE SHOULD ALL BE BRAVER AND ALLOW A MUCH MORE RADICAL CHANGE IN THE MINDSET

Attendee Uwe Liebschner, Germany

With regard to a future re-design of customs legislation, we should all be braver and allow a much more radical change in the mindset.



Ronnie Van Rooyen

Author of Day-to-Day-Customs posts on LinkedIn

[About the author](#)

PLANNING 2023 AND BEYOND

Customs compliance programmes tomorrow – focus on ‘prepare’, not ‘repair’

When we come to December and ponder what the new year may bring, it is an ideal opportunity to reflect on the past success and failure of our trade business in order to seek-out how to improve our business performance in the future. Let’s consider compliance reviews that deliver the highest value but require the least effort.

THE REAL TEST IS TO LEARN FROM YESTERDAY TO SET NEW STANDARDS FOR TODAY AND TOMORROW

I read that it does not matter how dirty our past is because our future is still spotless. Well in global trade I would define this quote as half-a-truth. Why? Simply because ‘dirty business’ implies that historic trade transactions are in contravention of a particular Customs legislation and if this is the case, those ‘contraventions’ need action.

If we are suspicious that some of our historic trade activities may fall within the definition of ‘dirty business’ - then we need to identify those transactions and make a decision whether we want to be in the driver’s seat and make a full and complete voluntary disclosure to the Customs Authority with the intention to make payment should we owe the Customs Authority indirect taxes. However, we may need to go further and also discuss and create suitable and practical control procedures that we need to put in place in order to avoid similar mistakes going forward.

The ultimate goal for any trader is to be better today than yesterday. To achieve this it is my recommendation that a trader engages in regular compliance reviews or health checks, that is review historic global trade transactions, to identify areas that require improvement and to make plans to become even better tomorrow.

I guess the key questions to ask is how does our global trade business stack up if we do a review of, for example, our contracts of sale and Customs clearances?

The review process may bring us to a point where we, for example, consider the following questions:

- Did our trade team follow through and apply the contract of sale agreement to a particular export and/or import shipment?
- Did our trade team apply previously identified risk controls to better manage current instructions to Customs brokers ensuring compliant Customs declarations?

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



Ronnie Van Rooyen

Author of Day-to-Day-Customs posts on LinkedIn

[About the author](#)

PLANNING 2023 AND BEYOND

Customs supply chain management in times of uncertainty

It is clear that global trade has new challenges and John Finley made a good point when he said that [business] maturity is the capacity to endure uncertainty. The future is uncertain, but the key may well be to have a Customs supply chain that consists of a team working together to deliver cost-effective and quality goods as well as a matching service; moreover, in today's world of global trade there is an urgent need to embrace and use data-driven decisions.

COMPLEXITY AND UNCERTAINTY ARE THE NEW SUPPLY CHAIN RULES OF THE GAME

In 2002 Dr Hau Lee was quoted as saying that complexity and uncertainty are the new supply chain rules of the game. Today, uncertainty continues to trouble, for example, the Customs supply chain. If we consider the global trade arena for the last twelve months, then we will discover that it has been unpredictable, to say the least.

The COVID-19 pandemic, the Russian invasion of Ukraine, the subsequent Western sanctions on European consumers, the potential shortage of export supply of petroleum, coal, gas, grain and iron ore and a spike in energy prices - are all global trade disruptions that have had and will continue to have a serious impact on Customs supply chains.

These global trade uncertainties have made the task of the parties involved in global trade far more challenging and there is no easy answer how best to deal with Customs supply chain uncertainties.

However, it is clear that the supplier/seller should not construct its Customs supply chain whereby it only relies on a single party to assist it to secure, sell and deliver goods cross-border.

The current Customs supply chain suggests that supply chain costs alone will become a huge challenge to manage in order to prevent the landing costs of goods not be unpalatable to potential buyers. Furthermore, the seller will have to demonstrate and apply greater flexibility to keep manufacturing and logistical costs to an acceptable level for potential buyers. This may include the need to switch suppliers supplying goods to the seller, to use different transportation modes, to develop new partnerships with, for example, carriers, agents, banks and brokers to better manage these uncertainties, to firm up on the indirect taxes in the countries of export and import and to try and deliver the goods in a format and timeframe as required by the buyer.

Global traders all agree that the Customs supply chain works well when all the entities engaged by the seller work

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



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[About the author](#)

Ukraine customs and trade news: October/ November 2022

News at a glance: agreement on the "Single Market" with the EU; adoption of the full base of European technical standards; Licensing of goods and quotas for 2023; the CEPA between Ukraine and UAE; and more updates!

AGREEMENT ON THE "SINGLE MARKET" WITH THE EU

On January 19, the Ukrainian government created a delegation to negotiate an agreement between Ukraine and the EU. The "Single Market" program is a financial support program of the EU with a budget of 4.2 billion euros, valid from 2021 to 2027. This program allocates funds to create conditions for:

- simplifying access to EU markets;
- improving the business environment;
- promoting business development;
- increasing the competitiveness and sustainability of small and medium-sized businesses (almost a quarter of the entire budget, about 1 billion euros, is allocated to support SMEs);
- improving the collection, processing, and analysis of statistical information (€546 million);
- other areas that will help our business integrate into the pan-European market.

ADOPTION OF THE FULL BASE OF EUROPEAN TECHNICAL STANDARDS

On December 28, 2022, the head of the national standardization body signed an order on the batch adoption of European CEN-CENELEC regulatory documents in Ukraine. It was another step towards the conclusion of the ACAA Agreement (recognition of the equivalence of the Ukrainian system of technical regulation to the European one). The conclusion of ACAA ("industrial visa-free") will enable manufacturers of industrial products to obtain the necessary certificates independently in Ukraine. Instead, it is now necessary to contact an official representative - a resident of the EU, who has the right to receive such a document.

LICENSING OF GOODS AND QUOTAS FOR 2023

On December 27, 2022, the Government of Ukraine adopted Resolution No. 1466, which determined: list of goods which export is subject to licensing; the volume of quotas for such goods; list of substances which export AND IMPORT is subject to licensing (ozone-depleting substances and fluorinated greenhouse gases); list of goods and equipment that may contain such substances.

In 2023, zero quotas (a de facto ban) were introduced for the export of salt, thermal coal, fuel oil, natural gas, fuel wood, silver, gold, and precious metal scrap.

The list of goods which export is subject to licensing has not changed much - only buckwheat has been added. So, now it includes cattle, beef, chicken, edible meat offal, eggs, rye, oats, buckwheat, millet, sugar, nitrogen, phosphorus, and potassium fertilizers.

THE NEW CUSTOMS TARIFF HAS ENTERED INTO EFFECT

From January 1, 2023, a new Customs Tariff is in force in Ukraine. We have already written about it in previous issues. In short, the Ukrainian commodity codes system now corresponds to the latest version of the WCO Harmonized System.

The State Customs Service of Ukraine also approved Transitional Tables (a table indicating old codes and the corresponding new ones) and Explanations of the new codes system, which will make the transition as convenient as possible.

It is worth noting that after introducing the new Customs tariff, the right holders must change the commodity codes in the IP Customs Register. It will enable Ukrainian customs authorities to check goods further for IP rights violations.

THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN UKRAINE AND UNITED ARAB EMIRATES - FIRST STEPS

On December 5, Ukraine and the United Arab Emirates (UAE) announced their intention to conclude a Comprehensive Economic Partnership Agreement (CEPA). Negotiations between Ukraine and the UAE on the conclusion of CEPA have already begun.

The joint application in this regard was signed by the First Deputy Prime Minister - Minister of Economy of Ukraine, Yulia Svyridenko, and the State Minister of Foreign Trade of the UAE, Dr. Thani bin Ahmed Al Zeyoudi.

It is worth noting that according to the results of 2021, the total volume of bilateral trade in goods and services between Ukraine and the UAE amounted to \$1.147 billion, the highest figure achieved by the countries in the entire history of bilateral trade and economic relations.

FISH EXPORT TO TURKEY AND CHINA

In December 2022, the competent authorities of Ukraine and Turkey agreed on the form of the certificate for the export of fish products. It means that the Turkish market is open for Ukrainian companies to export fish products. In addition, the dialogue regarding opening China market for Ukrainian wild-caught fish products has been renewed.

TERMINATION OF THE AGREEMENT WITH THE DPRK

The Ukrainian government terminated the agreement with the government of the DPRK to create a commission on trade, economic, scientific, and technical cooperation. The reason is the DPRK government's support of Russian armed aggression against Ukraine, the recognition of the "independence" of the temporarily occupied territories of the Donetsk and Luhansk regions of Ukraine, and the severance of diplomatic relations with the DPRK.

Earlier, the White House officially confirmed that North Korea supplies missiles for Russian troops to wage war in Ukraine.

TRADE RESULTS OF 2022

According to the State Customs Service of Ukraine, in 2022, Ukraine imported goods worth \$55.5 billion and exported \$44.2 billion. The most significant imports were from China - \$8.7 billion, Poland - \$5.5 billion, and Germany - \$4.4 billion. Most were exported to Poland - \$6.7 billion, Romania - \$3.9 billion, and Turkey - \$2.9 billion.

Most imported: machines, equipment, and transport - \$16 billion; fuel and energy products - \$13.1 billion; products of the chemical industry - \$9.6 billion.

Most exported: food products - \$23.4 billion; metals and products from them - \$6 billion; machines, equipment, and transport - \$4.2 billion.



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OVERVIEWS AND COMMENTS

Customs always rings twice: the risk of paying duties through customs agents

There are various methods how you can pay import duties and taxes. One of them – paying through the bank account of the agent clearing house. What happens if the agent declares insolvency after receipt of payment – will the importer be required to pay to the State or not? Should the activity of an agent be strictly regulated to prevent situations like this?

On December 5th, 2022, the Israeli magistrate court gave a very interesting decision, related to the tripartite relationship, between the Israeli customs authority ('the State'), the customs agent ('the agent') and the importers [1].

This was a case where importers paid money to the agent for import taxes, the import shipments were released, but since the agent went bankrupt, the taxes were not paid to the State. When the State demanded the importers to pay, the importers refused and claimed it will be to pay twice for the same shipment.

The court rejected the claim, so de-facto, the importers were obliged to pay duties twice.

This is a recent Israeli case-law, but since the issue is quite global, I believe this scenario may repeat in other jurisdictions.

THE STORY BEHIND THE RECENT CASE

An agent served many importers. The State gave the agent a credit of 2 million NIS taxes (~550,000 Euros) per day, and the agent deposited a third-party guarantee (not bank guarantee). The Israeli bank clearinghouse rules allow a cancellation of a transfer up to five days (retroactively), so actually, the credit was up to 10 million NIS (~2.75 million Euros).

The agent represented many importers, who paid him for import duties. The shipments were released based on the bank payment order. The agent became insolvent, so the bank cancelled the last 5 days orders, retroactively. The third-party guarantor became insolvent as well.

The State demanded the import duties from the importers, who claimed they have already paid and shouldn't pay twice.

In essence, the importers claimed that the State was negligent by not properly supervising the activities of the agent, did not demand sufficient guarantees, and therefore the State should bear the damage.

THE COURT RULING


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


Date	Time CEST/CET	Topic	Organiser	
28.02.2023	12:00-13:00	Webinar: EU-UK TCA: updates on the origin of goods	Customs Knowledge Institute	free
23.03.2023	15:00-16:00	Best practices/ tips of managing customs knowledge in companies Authors' Meetings	CustomsClear	free
25/26.05.2023	9:00-17.00	European Customs Practitioners' Conference	Lithuanian Customs Practitioners Association	

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