CCRM ISSUE 19
FEBRUARY/MARCH 2023
ISSN 2669-2171

CCRM ISSUE 19 ONLINE

CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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CONTENT

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Editorial

Dear Readers,

I am delighted to write the editorial for the February/ March issue of CCRM. The WCO Secretariat announced the 2023 slogan "Nurturing the Next Generation: Promoting a Culture of Knowledge-sharing and Professional Pride in Customs", which, in fact, goes far beyond mere customs administrations and is essential for all stakeholders involved in international trade. The knowledge-sharing culture can help build stronger partnerships, trust and mutual understanding between customs and the private sector and develop more effective processes to achieve common goals, such as improving trade facilitation and enhancing supply chain security. The WCO emphasizes the role of professional journals, magazines, and newsletters in knowledge management and sharing. And, in this regard, I am thrilled to inform you that the case of CCRM in providing information and fostering exchanges between brokers and representatives of Customs and other relevant institutions was presented by our Editor, Enrika Naujokė, in her insightful piece for the first 2023 issue of WCO News.

The current CCRM issue makes a particular focus on tariff classification. Articles written by Christopher Matt, Ingrida Kemežienė and Taichi Kawazoe cover a broad range of cases, including the completeness of product information, procedures for advance rulings, pipe transportation devices, inflatable couches, and drones. The latter reminds us of the ongoing Russo-Ukrainian armed conflict that shows the extensive utilization of commercial drones for military purposes. So, I think we will soon see a more detailed classification of drones to distinguish some features critical for military use, empowering more strict export controls

The customs procedures section starts with the notes from the discussion at the 14th CCRM Authors' Meeting, which involved customs experts from Belgium, Germany, Lithuania, France, Bulgaria, Israel, Brazil and Argentina. It provides valuable insights into possibilities the proper choice of procedure may deliver and highlights the diversity of challenges customs professionals face in particular countries. This is followed by articles investigating inward procedures in the UK by Arne Mielken and the EU by Sandra Rinnert, Michael Lux and Enrika Naujokė. Besides general information, readers may get some comparative aspects of the UK and the EU customs procedures trajectory after Brexit.

Among the overviews of the EU law, I would like to highlight the article by Gediminas Valantiejus on the long-lasting EU efforts on the harmonization of penalties for customs infringements that "celebrate" the tenth anniversary this year. The series of EU-organized surveys and research revealed too many differences between member states, yet few suggestions on harmonization. In the same section Boryana Peycheva addresses pressing measures to unify customs control practices across the EU that are discussed in the report for the European Parliament's committee on Internal Market and Consumer Protection.

The current issue traditionally embraces the valuation topic. Georgi Goranov discusses the pros and cons of the Commission's draft delegated regulation on Binding Valuation Information. Enrika Naujokė looks into the interplay between the choice of place of entry of goods and customs value. In country-specific publications, Ilona Mishchenko addresses information exchange challenges between Ukrainian customs and businesses. At the same time, Omer Wagner provides insights on the "importer's affidavit," a unique tool the Israeli customs uses to obtain valuation information.

I would rather not bore readers with any further listing, but on behalf of our editorial team, I hope you will find this CCRM issue exciting and valuable.

With Best Regards,
Dr. Prof. Borys Kormych

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EUROPEAN CUSTOMS PRACTITIONERS CONFERENCE

MAY 25-26, VILNIUS, LITHUANIA AND ONLINE

+370 664 26393 lcpa@lcpa.lt

HYBRID EVENT: Hilton Garden Inn, Vilnius, Lithuania and ONLINE

PROGRAMME May 25, 2023 (in EN, translation to LT, RU*)

*working language in Central Asia

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 Wolffgang, 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?**

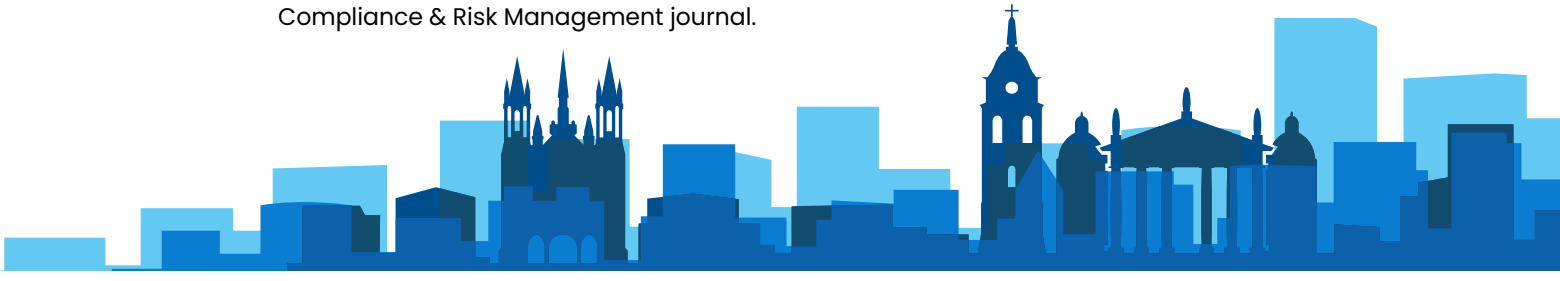
Quo Vadis: Green Customs? Arne Mielken, CEO of Customs Manager Ltd., the United Kingdom

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

We have chosen the question '**And how is this done in your country?**' to start the evening. Michaël Van Giel, ADON bv, Belgium, will share insights from the research conducted in the EU member states and Boryana Peycheva, PhD Student, Bulgaria, will share the insights gained during the preparation of the article 'Customs law in EU: 1 or 27 interpretations?', published in the Customs Compliance & Risk Management journal.



PROGRAMME May 26, 2023 (English only)

10.00–11.30 **WORKSHOP 'INCREASING COMPETENCIES IN THE FIELD OF CUSTOMS'**

The workshop is organised by LCPA partner, the international Customs Knowledge Community (CKC) established by an Irish-based not-for-profit organization Customs Knowledge Institute (CKI). We will discuss these topics in working groups: **'Competencies of a customs broker', 'Customs knowledge management in companies', 'Competencies required in the future', 'Ensuring compliance with export control and sanctions', 'Exchange of knowledge in a global community'.**

11.30–12.00 Break

12.00–13.30 **LET'S CONNECT!**

Let's connect!' is an event for everyone who wants to collaborate with practitioners in the field of customs in Europe and Central Asia. Take this great opportunity to showcase yourself (live in Vilnius or online) by preparing a slide (see examples) and presenting: **Who you are? What you do? Who you are looking for?** and Your contact details. Get to know others, find out what they are looking for - maybe it is you or your company and this could be the start of a new cooperation!

13.30–14.15 **AUTHORS' WORKSHOP WITH MICHAEL LUX**

Renowned Customs Expert Mr. Michael Lux is working on a new book '**Customs Compliance for Cross-Bordert Businesses in a Globally Connected World**'. The book (which builds on, and expands, the publication by German author Dr. Jung 'Compliance für Zoll und Außenhandel') will offer a unique perspective on the customs and foreign trade rules that every global trading business needs to meet. **Authors from different countries** are invited to write about how the law and compliance requirements in their country apply to some of the topics in the book. Learn more in the e-programme. Conference participants who wish to learn more about the project are invited to join live or online.

14.15–15.00 Break

15.00–18.00 A guided walk in Vilnius

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

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EU LAW

EU law news: February/March 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 13

News at a glance: communication on decisions relating to binding tariff information; conclusion of the 71st Session of the Harmonized System Committee; CJEU judgements in two tariff classification cases; updates related to anti-dumping; creation of certain tariff rate quotas under the steel safeguard measure; and more news!

31.3.2023 OJ L 039 Commission Implementing Regulation (EU) 2023/712 of 30 March 2023 initiating a '**new exporter**' review of Implementing Regulation (EU) 2017/2230 imposing a definitive **anti-dumping** duty on imports of **trichloroisocyanuric acid** originating in the People's Republic of China for one Chinese exporting producer, repealing the duty with regard to imports from that exporting producer and making these imports subject to registration.

31.3.2023 OJ L 039 Commission Implementing Regulation (EU) 2023/711 of 30 March 2023 accepting a request for **new exporting producer** treatment with regard to the definitive **anti-dumping** measures imposed on imports of **ceramic tableware and kitchenware** originating in People's Republic of China and amending Implementing Regulation (EU) 2019/1198.

31.3.2023 OJ L 039 Commission Implementing Regulation (EU) 2023/709 of 29 March 2023 amending Regulation (EC) No 1484/95 as regards fixing **representative prices** in the **poultrymeat** and **egg** sectors and for egg albumin.

31.3.2023 WCO: Successful conclusion of the 71st **Session of the Harmonized System Committee**. The Committee finalised and approved 18 amendments to the HS2027 Nomenclature, 12 amendments to the HS2022 Explanatory Notes, 23 new Classification Opinions, 462 INN classifications and 30 new classification decisions.

31.3.2023 Updated FAQ **Sanctions against Russia**. Q: Does the Sanctions Regulation affect the export of controlled goods shipped in transit through Russia by land to third countries? A: Yes. Article 2 of the Sanctions Regulation prohibits the transit via the territory of Russia of dualuse goods and technology exported from the Union.

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Boryana Peycheva

Assistant Logistics Manager, Nemuno Banga Ltd., Bulgaria

About the author

EU LAW

Customs law in EU: 1 or 27 interpretations?

A recently published comparative analysis of Member States' customs authorisation procedures for the entry of products into the EU concludes that the EU is a customs union with common legislation, customs rules, procedures and a single development plan; yet, for a number of objective reasons and considerations, each Member State manages and develops its customs activities at its own pace and according to its own interpretation of the Union Customs Code (UCC). We overview some aspects of the analysis.

OBJECTIVES OF THE ANALYSIS

In December 2022, a Comparative Analysis of Member States' Customs Authorisation Procedures for the Entry of Products into the European Union was published by the request of the European Parliament's committee on Internal Market and Consumer Protection (IMCO).

The main objective of the analysis is to compare the application of UCC for the entry of goods into the EU customs territory at operational level in a selected sample of Member States in several main areas:

- application of customs control;
- penalties for customs noncompliance and infringements;
- IT systems.

The study also aims to demonstrate good practices, identify weaknesses and provide recommendations and guidance for improving customs control activities in the Union.

AND HOW IS THIS DONE IN YOUR COUNTRY?

Although a detailed analysis and comparison of the performance of customs administrations in all Member States has not been made, the examples given are sufficient to draw the following conclusion: customs legislation is interpreted and applied in 27 different ways, which in turn means that the Union as a whole is as vulnerable as its weakest border when it comes to unregulated imports of goods.

This conclusion is not new for customs practitioners, as specialists from different EU countries systematically exchange information with each other and in order to enrich their own experience or out of sheer curiosity ask the question 'And how is this done in your country?'.

The existence of differences in the application of the UCC across Member States has so far been an assumption, but the release of the report itself makes it a proven fact.

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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Dr Gediminas Valantiejus

Attorney at Law, Dr. Gediminas Valantiejus Law-Firm GVLEX, Lithuania

About the author

EU LAW

Customs infringements and related penalties in the EU: current situation (2023)

In January 2023, the EU Commission presented the report "On the assessment of customs infringements and penalties in Member States" (COM(2023) 5 final), which provides a summarized overview of the individual system of penalties for infringements of customs law in each EU Member State. This article presents the essential highlights of the Commission‘s report, describes the existing system of infringements of customs law in the EU and its specific features throughout the EU Member States, as well as its specific features in different states. At the same time, the article reviews the perspectives of unifying the system of application of legal responsibility for infringements of customs law and the initiatives currently which are being considered in this area.

GENERAL GROUNDS FOR THE APPLICATION OF LEGAL RESPONSIBILITY FOR VIOLATIONS OF CUSTOMS LAW IN THE EU

It is necessary to note that currently **the Union Customs Code (UCC) and its Article 42 do not establish the specific types or amounts of sanctions (penalties) that can be applied for specific violations of customs law**, limiting regulation in this area to the general provision that each Member State establishes sanctions, applicable for non-compliance with customs law (Article 42(1) of the UCC). A similar position is followed by the Court of Justice of the EU (CJEU), for example, in cases C-210/91, Commission of the European Communities v. Hellenic Republic; C-382/09, Stils Met SIA v. Valsts iegmumu dienests. Pursuant to Article 42(2) of the UCC, when administrative sanctions are applied for infringements of customs law, they may take, inter alia, a form of a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty.

Let's take a look at the system of administrative sanctions for violations of customs law applied to natural and legal persons in Lithuania. It includes two types of provisions [1]:

- administrative fines (sanctions) applied in accordance with the Code of Administrative Offenses (only natural persons can be the subjects of this responsibility), and
- tax fines (economic sanctions as a form of tax liability) which are applied in accordance with the Law on Tax Administration (their subjects can be both natural and legal persons).

For example, the Law on Tax Administration of the Republic of Lithuania (Article 139) stipulates that in case of unlawful reduction of the tax payable (without proper calculation and/or declaration to the tax authorities), the taxpayer may be fined an amount ranging from 10 to 50% of the unpaid tax. In addition, individual, more dangerous violations of

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Customs Accountant at a manufacturing company

Contact us:

info@customsclear.net

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Task	Submission	Points
Write down three of your most important insights from the learning material (up to 5 sentences each)	Prior to the meeting	3
Complete a given task, e.g. a quiz, classify a product	Prior to the meeting	2
Share country or industry specific news	During the meeting	3
Participate in the meeting	The meeting	2
	Total	**10**

Evaluation at the end of 2023

Points	Certificate
45-50	With distinction
25-45	Certificate
0-24	—


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December 15, 2023

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Enrika Naujoke
CEO, CustomsClear

Anthony Buckley
Chair, CKI

Online meetings

Day	Time CEST/CET
April 27, 2023	15:00-16:00
June TBA, 2023	15:00-16:00
August TBA, 2023	15:00-16:00
October TBA, 2023	15:00-16:00
December TBA, 2023	15:00-16:00

Group size up to 15 participants

Subsribe here

CUSTOMS COMPLIANCE & RISK MANAGEMENT
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Christopher Matt

Managing director, Head of the classification and export controls unit, MA-TAX Consulting GmbH, Germany

About the author

CLASSIFICATION

The classification of goods – It's what you don't know that brings you in trouble

Responsibility can bring joy and burden. Whether the responsibility for the customs tariff numbers (CTN) of a few hundred thousand (or even millions? I'll have to count) items/ goods/ products of a multitude of companies is more burden or joy for me - that's hard to say. It swings back and forth more like a pendulum. Would I be happier if the system was designed to be simpler - yes. But: It is what it is and we have to live with it and deal with it.

My experience brings the advantage of recognizing the full complexity, which often does not reveal itself for normal "classifiers" (i.e. for people who nevertheless also worked with the nomenclature - but never descended into the deep end).

Let us start with a brief introduction to classification and customs code numbers. I do not cover all the basics, as this would take up too much space in this text - but all the basics can easily be found on the websites of all customs authorities of the member states of the EU (or the Customs Union) in the official languages. Certainly, the basics on this topic are also well presented and available from customs authorities outside the European Union.

LET US START WITH THE TERMS 'CLASSIFICATION' AND 'CUSTOMS CODE NUMBERS'

The classification of goods is the process of determining the correct classification of a product under a specific category of the Harmonized System (HS) code extended by additional digits of the nomenclature valid in the respective customs areas. The HS code is an internationally recognized system of numerical codes to classify traded goods and products. The HS code is used by customs officials to determine (among other things, such as export restrictions) the applicable tariff rate, which is the tax imposed on imported or exported goods.

The internationally used HS structure maps the layout up to the sixth digit, thus giving a framework (in all participating 200+ countries) for assigning a commodity to the resulting logic. Building on that, we find the extensions of the nomenclature in the various customs areas, which (can; does often) differ upwards of the 6th digit.

In the European Union, we extend the HS-System to the eighth digit with the Combined Nomenclature, which is published in October of each year and thus provides a preview at that time of the changes and adjustments to be made in the following year.

This Combined Nomenclature is then extended to ten digits with the TARIC. The different measures are coded at the

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Taichi Kawazoe
HS classification adviser, Japan

About the author

CLASSIFICATION

Advance Rulings on Tariff Classification: What? Why? Where?

One of the cornerstones of successful and efficient global trade and customs operations is the classification of goods for customs purposes. At the same time, it is one of the most difficult stages in customs clearance and taxation. Correct classification is the first step in properly determining the applicable duty rate, which means minimising problems with customs authorities.

It is worth noting that classification problems have been, are and probably will always be relevant. Unfortunately, they cannot be completely solved by the adoption of some legal acts. New, previously unknown products, or products that combine many different functions, materials that cannot be clearly assigned to one or another product heading, appear very quickly. Periodic revision of the goods nomenclature does not solve all problems. The number and variety of goods does not allow for a 100% uniform approach to their classification. There are also subjective factors, i.e. people's different perceptions and evaluations of the same items and their characteristics.

Since problems of classification of goods are relevant to all countries of the world, the WCO, as the "keeper" of the Harmonised System, has developed a number of tools for its correct and uniform application. These tools include Explanatory Notes, Compendium of Classification Opinions, Classification Decisions, Recommendations Related to the Harmonised System, and Advance Rulings for Classification. Let us look at the last tool in more detail.

WHAT IS AN ADVANCE RULING?

Article 3 of the WTO Agreement on Trade Facilitation requires WTO Members to issue advance rulings, in particular, on tariff classification of goods in accordance with the provisions of that Article.

The term "advance ruling" generally refers to the possibility for Customs, upon application of an economic operator planning an international trade transaction to issue a decision on the basis of the applicable regulations. The legal guarantee that the decision will be applied is the main benefit for the applicant.

Tariff classification is currently the most common area for binding rulings. With regard to tariff classification, the advance ruling system helps economic operators to obtain the correct commodity code for the goods they wish to import or export. This is clearly an important factor since the tariff heading of the goods determines not only the rate of duty but also the application of various legal provisions (import or export licences, rules of origin, anti-dumping duties, etc.). Using such a ruling will also help importers and exporters to reduce the formalities involved in customs

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CLASSIFICATION

Classification of drones: toy or unmanned aircraft?

In 2022, the approach to the classification of unmanned aircraft changed. A separate heading has been introduced for them. Has the classification of these goods been simplified? Have there been fewer problems in determining their code? Let's find out what challenges we may face when classifying some types of drones.

INTRODUCTION

Drones, quadcopters and unmanned aircrafts have quickly become a part of our lives. For someone, it is entertainment, an opportunity to make exciting videos and photos. Others use them for work, for example, firefighting, searching for people after natural disasters, farming and even delivering cargo. There are also drones used for military purposes, such as intelligence and surveillance, and attack drones, including kamikaze drones.

The widespread use of such devices throughout the world results in a large volume of turnover in global trade, but also in certain difficulties in customs clearance. One of the main issues is their tariff classification. Drones vary in size, shape, weight and integrated equipment, which in turn affects the functions for which these devices are intended.

CLASSIFICATION ISSUES

To begin with, let us look at the HS Chapter 88, which covers aircraft, spacecraft and parts thereof, and heading 8806, which covers unmanned aircrafts. Note to this chapter states "Unmanned aircraft" means any aircraft designed to be flown without a pilot on board. They may be designed to carry a payload or be equipped with permanently integrated digital cameras or other equipment, which would enable them to perform utilitarian functions during their flight. However, this Note excludes from the term 'unmanned aircraft' flying toys designed solely for amusement (heading 9503).

The Explanatory Notes to the Combined Nomenclature of the EU (hereinafter referred to as the CN) include the following clarification: multi-rotor helicopters (so-called ‘drones’) of different sizes can be distinguished from articles of heading 8802 for example by reference to their low weight, the limited height, distance or time they can fly, their maximum speed, their inability to fly autonomously or the inability to carry a load/cargo. They are remotely controlled in an easy way and are not equipped with sophisticated electronic apparatus (e.g. GPS, night flight requirements/ nocturnal visibility).

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About the author

CLASSIFICATION

Classification of a pipe transportation device: an article of aluminium or a container?

Let's take a look at the second judgement issued by the Court of Justice of the European Union (CJEU) earlier this year on the tariff classifica tion of goods (the first one was on classification of inflatable couches). This case is about a pipe transportation device: Should it be classified as an article of aluminium or a container? Accordingly, the import duty rate is 6% or 0%. The CJEU also clarified what a 'container' means for tariff classification purposes.

The judgment, delivered on the same day, February 9 this year, is the judgment in case C-788/21, which concerns the classification of a Tubular Transport Running-system (TubeLock) that is, a system for transporting pipes.

Source: https://globalgravity.com/products/tubelock/

SITUATION

On 28 February 2014, Global Gravity ApS (**GG**) applied to Skattestyrelsen (the Danish Tax Administration) for a binding tariff information (**BTI**) decision in respect of the product known as a 'Tubular Transport Running System (TTRS)' or 'TubeLock'. That product, developed by GG is described as a safe method for transporting pipes from pipe manufacturers to oil and gas drilling rigs by various modes of transport (by road, train and/or boat) without there being any need to repack them in transit.

TubeLock consists of a number of aluminium lifting profiles, two steel lifting poles (left and right) per lifting profile and

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About the author

CLASSIFICATION

Classification of inflatable couches: furniture or camping equipment?

The Court of Justice of the European Union (CJEU) has in the first 2 months of the year provided clarifications in 2 cases related to the tariff classification of goods. This shows that business is constantly confronted with questions of the proper classification of goods, which, for certain goods, we will overview. In this article, let's start with the classification of inflatable couches: Are they furniture or camping equipment? The duty tariff would be 3.7% or 12%, respectively.

So, on 9th February 2023, the CJEU examined case C-635/21, which deals with the question whether inflatable couches (air loungers, **Goods**) can be classified under the heading 9401 of the Combined Nomenclature (**CN**) (seating furniture).

SITUATION

In July 2017, LB GmbH, declared the Goods imported from China for release for free circulation under CN subheadings:

- 9404 90 90 - other' 'articles of bedding and similar furnishing' not classified in other subheadings of heading 9404 of the CN, import duty tariff 3.7% and
- 3926 90 92 - 'other articles of plastics and articles of other materials of headings 3901 to 3914', not classified in other subheadings of heading 3926 of the CN, 'made from sheet', import duty tariff 6.5%.

The customs authorities granted that request. However, following a classification opinion issued by the Bildungs- und Wissenschaftszentrum der Bundesfinanzverwaltung (Education and Science Centre of the Federal Revenue Administration, Germany), in 2019 the Principal Customs Office D issued an import duty notice, stating that the goods at issue do not fall under Chapter 94 or Chapter 39 of the CN, but rather under subheading:

- 6306 90 00, which covers 'other camping equipment' and in respect of which the applicable import duty rate is 12%.

In accordance with that notice, the customs office proceeded with post-clearance recovery for the goods at issue at LB's expense and dismissed its objection as unfounded. LB GmbH, disagreeing with the customs decision, lodged a complaint with the Finanzgericht Bremen (Finance Court of Bremen, Germany, the **Court**), in which it stated that the Goods fall under subheading:

- 9401 80 00 of the CN, as 'other seats', or, alternatively, under subheading 3926 90 92 of the CN, as 'other

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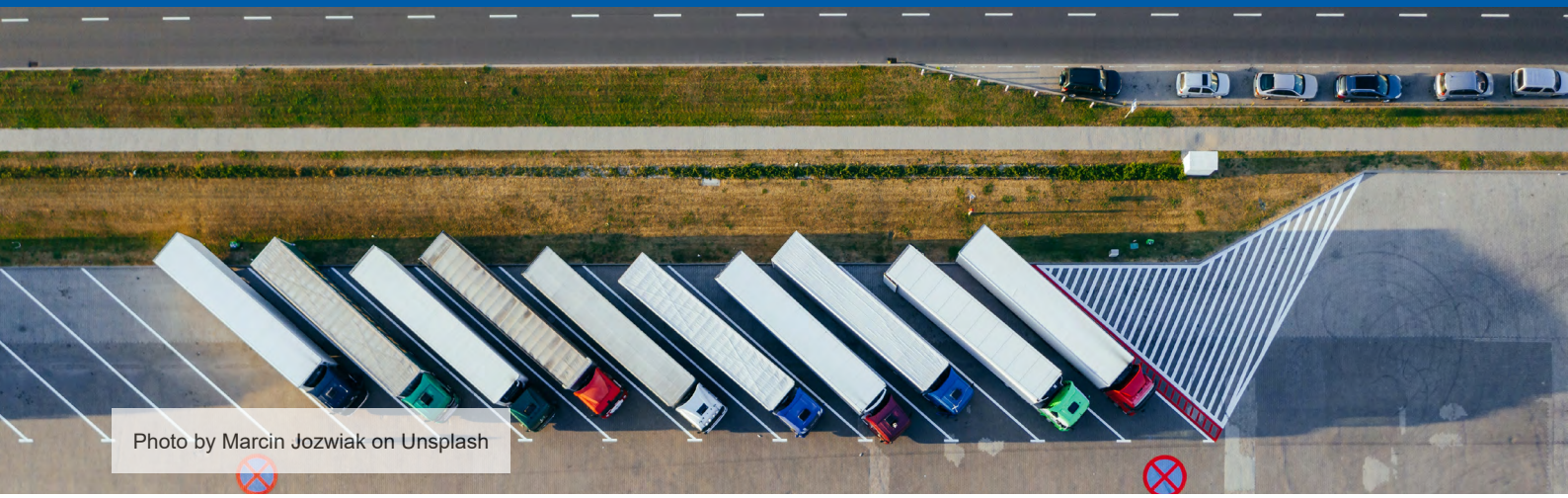

Photo by Marcin Jozwiak on Unsplash

Customs procedures - possibilities not to be missed and worth knowing about

The possibilities and risks of customs procedures were the focus of discussion at the 14th Authors' Meeting. Experts from Belgium, Germany, Lithuania, France, Bulgaria, Israel, Brazil, and Argentina shared insights and tips on how to manage customs procedures for the maximum benefit of businesses. A number of issues were raised, particularly in relation to the use of special customs procedures.

ALL POSSIBILITIES OF ACHIEVING DUTY-FREE TREATMENT SHOULD BE EXAMINED

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

Bringing goods into the EU is usually associated with using a customs procedure such as release for free circulation. However, there are alternatives to this customs procedure:

- External transit (e.g., when non-Union goods are only to be moved through the EU, when import clearance is to be performed at the importer's premises, or when excise goods are destined to another Member State than that in which the goods arrive);
- Customs warehousing, free zone (e.g., when import clearance is to be performed at a later stage or if some of the goods will be re-exported); if the storage period is shorter than 90 days, temporary storage is an alternative;
- Temporary admission (e.g., when non-Union goods will only temporarily be used in the EU);
- Inward processing (when non-Union goods will be processed before release for free circulation or re-exportation).

It is worth noting that where the goods are duty-free, these alternatives may not be needed, so all possibilities of achieving duty-free treatment (e.g., preference, duty relief, tariff suspension/ quota, end-use) should be examined. With regard to import VAT, customs procedure code 42 allows avoiding VAT payment in the country of importation, if the importer is established in another Member State.

If you take the goods out of the EU, consider the following alternatives to export:

- Outward processing where the goods are destined for processing outside the EU and then to be re-imported;

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- Temporary export with Carnet ATA or CPD;
- Export with administrative preparation of re-import as returned goods;
- Export is followed by external transit for excise goods (especially in trade with countries covered by the Common Transit Convention).

The choice (or combination) of the right customs procedure(s) is only one aspect of customs management. Other aspects (which should be examined also in this context) include:

- Tariff classification, origin, customs value;
- Customs declaration simplifications;
- Guarantee simplifications/ reductions;
- Authorisations required;
- Prohibitions and restrictions;
- Information exchange with the commercial partners in the supply chain;
- IT-tools necessary or useful.

Michael's final practical advice is to analyse the additional staff, IT systems, and consultant support required (cost versus benefit), as well as the additional risks of error, duty liability, and sanctions, before implementing the duty-saving alternatives compared to a standard import or export. Subsequently, risk-mitigating actions can be considered.

KNOWLEDGE OF CUSTOMS PROCEDURES CAN LEAD TO SIGNIFICANT BENEFITS, WHILE THE OPPOSITE CAN OFTEN BE A WASTE OF TIME AND MONEY

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

What does it mean when goods are placed under a customs procedure? According to Momchil, this question should be answered first in order to better understand what customs procedures are. This means that specific provisions of customs legislation apply to these goods and define their so-called legal status. In fact, this legal status determines what you must, must not, or can do with the goods when using a particular customs procedure.

Another question asked by Momchil is why is it important to know customs procedures? Since the choice of customs procedure depends not only on the direction of movement of the goods, but also on the business purposes of the companies, their solvency, and other factors, it is crucial to know how each procedure works. Only then can we take full advantage of them.

For example, a company may want to bring non-Union goods into the EU and then resell them in a third country. It has two options. The first is to release the goods into free circulation with all import duties and taxes paid and then export the goods to the third country with the VAT refunded. The second one is to place the goods under the customs warehousing procedure, where no tax is paid. The goods are then re-exported to the third country. As we can see, the second option requires no payment to customs. Therefore, knowledge of customs procedures can lead to significant benefits, while the opposite can often be a waste of time and money.

That is why customs professionals are among the most valuable and their services should not be ignored or underestimated.

SPECIAL PROCEDURES ARE ONE OF THE MOST INTERESTING LEGAL WAYS TO SAVE MONEY. BUT THERE ARE ALSO CHALLENGES

Dr Sandra Rinnert, Editor of 'AW-Prax' journal, Germany

If there is no need to place goods on the EU market, it is advisable to use special procedures and avoid paying import duties and taxes. However, this can bring additional risks and challenges. Let's take a look at an example.

According to Article 256 of the Union Customs Code (UCC), non-EU goods may be brought in the customs territory of the Union in one or more processing operations. This does not mean the release of these goods for free circulation but the use of a special procedure, namely inward processing.

Let's assume we bring vehicle parts into the EU customs territory to manufacture electric cars. In principle, the e-cars must be re-exported from the EU customs territory to complete this customs procedure. In this case, no customs duties are being incurred. However, there is also the alternative of discharging the procedure by releasing them into free circulation if the goods shall remain on the Union market. In this case, import duties and taxes must be paid. Here comes the challenge to be discussed.

Pursuant to the general rules for calculating the amount of import duty (Article 85(1) of the UCC) the amount of import duty is determined on the basis of those rules which are applicable to the goods concerned at the time when the customs debt was incurred. In our case, a customs debt is incurred for e-cars (processed goods) that are placed under the release for free circulation procedure. However, according to special rules (UCC Art. 86 (3)) the amount of import duty corresponding to such debt (for e-cars) shall, at the request of the declarant, be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods placed under the inward processing procedure (parts of a vehicle) at the time of acceptance of the customs declaration relating to those goods.

In this case, the point under discussion is the applicable duty rate, which is different for imported and processed goods. There are two opinions in this regard:

1. The first one, promoted by the European Commission and the German authorities is that the duty rate of imported goods at the time of release for free circulation must be applied even though the tariff classification, customs value, and origin of the imported goods (parts of a vehicle) are the basis for calculation at the time of releasing the goods into inward processing in case the procedure according to Art. 86 (3) UCC has been applied for.
2. The second one is that the calculation of the duty amount for the processed goods should be based on the tariff classification, customs value, origin, and duty rate of the imported goods at the time of releasing the goods into inward processing in case the procedure is according to Art. 86 (3) UCC has been applied for.

In Sandra's opinion, only the second one is correctly referring to Art. 57(3) of the UCC. It stipulates that tariff classification, particularly subheading or further subdivision of the combined nomenclature, shall be used for the purpose of applying the measures linked to that subheading, including the application of tariffs. Therefore, all factors for determining the amount of a customs debt (basis of assessment) including the duty rate (“measure”) as a legal consequence of tariff classification of the imported goods according to Art. 57(3) UCC has to be applied not when the processed goods are released into free circulation, but at the time of releasing the imported goods into inward processing in case the procedure according to Art. 86(3) UCC has been applied for. [1]

ALWAYS LOOK AT THE BIG PICTURE WHEN CONSIDERING THE BENEFITS OF A CUSTOMS PROCEDURE

Annette Reiser, Lawyer, nettes`globaltrade, Switzerland

To pick up on what Michael Lux said - you have to consider all the rest, not just the customs procedure itself. That's my experience in the industry. Usually, you do have a benefit from the procedure itself, but there is a lot more to consider. First of all, there are the requirements to consider, such as the appropriate place where the goods are stored, because they are under customs supervision and have to be kept safe; and when customs carry out an inspection, you have to know exactly where certain goods are. This involves a lot of effort.

You must also consider the flow of goods through the supply chain. You may gain an advantage through a customs procedure, but, for example, the preferential origin of goods may be lost. So, you should always look at the big picture when considering the benefits of a customs procedure. On the other hand, we sometimes forget the advantages of

customs procedures, so we must also always keep the procedures in mind.

CUSTOMS PROCEDURES FROM THE POINT OF VIEW OF ACQUIRING THE RELEVANT KNOWLEDGE

Dr Erika Besuspariene, Associate Professor, Vytautas Magnus University, Lithuania

As Dr Momchil Antov pointed out, it is crucial to know how customs procedures work and it must be seriously considered, how relevant quality knowledge can be gained. As a representative of the academic community, Erika looks at customs procedures and other customs topics from an educational point of view. She believes that anyone who wants to be successful in managing cross-border trade in goods, should pay a lot of attention to special training as well as improving their customs knowledge. For example, this could be a study programme in a higher education institution based on three pillars - customs itself, taxation, and supply chain management. In particular, the programme may include areas for study such as the benefits of AEO status, trade barriers, climate change mitigation, and customs, the impact of trade facilitation on business development, and many others.

THE PAPERWORK REQUIRED TO PLACE GOODS UNDER A CUSTOMS PROCEDURE

Eduardo Leite, Lawyer, Professor, Aduaneiras - Cursos e Treinamentos, Brazil

There is a Regulation on the documents required for customs valuation control when importing goods into Brazil. Firstly, it defines the minimum set of documents that must be presented to the customs authorities. It consists of a Bill of Lading/AWB, signed original invoice (commercial or pro forma), tax payment receipt, and packing list.

This Regulation also contains a list of the documents required to comply with the rules on special procedures and other specific cases. These include commercial correspondence, price quotations, proof of the formalisation of commitments and contractual responsibilities, the pro-forma invoice, or equivalent documents, proof of payments, accounting records, formalisation of guarantees for payments, transport contracts, and transport insurance contracts.

If you do not present the required documents to the customs authorities, this can have a variety of consequences. For example, it may lead to an interruption in the customs clearance process and a corresponding delay in the release of the cargo. In certain circumstances, customs authorities may even have the right to confiscate the goods. You could lose them forever. And let's not forget the additional costs such as fines, penalties, extra taxes, storage fees, etc. We can see how important it is to possess and submit to customs all the necessary documents, which must be in accordance with legal requirements and each other.

In order to minimise fraud and infringements, the new approach to communication between business and customs has been in place since last year, with increased powers for customs control. It is therefore time for companies in Brazil to review their customs management, particularly in relation to customs valuation.

UNIQUE SITUATION WITH APPEAL PROCEDURE IN ISRAEL

Omer Wagner, Advocate, Indirect taxation, PwC Israel

Omer describes a unique situation that is probably only typical of Israel. Let us say a company imports goods that are classified in a subheading with a zero-duty rate. Customs disagrees with the company's classification and changes the subheading so that duty is payable. The company pays this duty to release the goods.

What should be the next steps for this company if it is sure that the customs authority's decision is wrong? It should be noted that the tax appeal procedure for income tax, VAT and land tax is traditional and clear – the limitation period starts only after the tax authority denies an internal appeal. At the same time, customs taxation is based on rather old legislation, in particular the Customs Ordinance of 1923/1957. It contains a lot of old-fashioned, irrelevant and even comical provisions.

However, if a company wants to appeal against the demand of the customs authorities, it has to pay the duties "under protest". The company has three months after this payment to file lawsuit in court. Even though the company keeps

importing the same goods, it has to go back to court again and again to challenge the customs claims.

Unfortunately, the Israeli Customs Ordinance does not provide for an internal appeal procedure within the customs authorities. Therefore, the limitation period starts after the payment, not from the appeal denial. In order to solve this problem, the Israeli customs authorities have invented their own internal procedure, which is not mentioned in any legal act. This procedure consists of the following stages:

- Payment of duties "under protest"
- Appeal to Customs
- Reporting to Customs every 3 months on new import entries for the goods in question
- Extension of the limitation period in order not to miss the time for appeal.

Omer considers that the Israeli government benefits from this limited period for appeal, since its missing is a ground for rejection. At the same time, Omer hopes that this old law will soon be amended and the limitation period will be extended.

ON THE PROCEDURE OF "IMPORTING" KNOW-HOW (THE US EAR)

Christelle Dobouchet, Lawyer, CUSTAX & LEGAL, France

Christelle talked about critical changes to the US Export Administration Regulations (EAR). Export Administration Regulations are issued by the US Department of Commerce, Bureau of Industry and Security (BIS) "under laws relating to the control of certain exports, re-exports, and activities," and can constitute extra-territorial laws.

It must be emphasised that in certain circumstances the EAR is extraterritorial. This means that the US law can be applied outside the US, in particular within the EU territory. Anyone in the EU and beyond involved in activities covered by the EAR should be very careful when planning to re-export to third countries certain goods previously imported from the US.

As an example of critical changes, Christelle mentions the following. The modification involves the information to "US Persons that support for the development or production" of integrated circuits that meet certain specified criteria implicates the general prohibitions set forth in Section §744.6(b) of the EAR and is therefore subject to a BIS license requirement. This is particularly relevant in the context of the so-called economic wars between the US and China over integrated circuits and semiconductors. EU companies should be careful when employing US persons (US citizens or other persons in the US) as these persons bring the EAR with them to the EU. This does not mean that all their activities are regulated by US law. This is the case only if their activity is treated as 'support'.

'Support' is defined in paragraph (b) (6) to encompass a number of activities, including, but not limited to:

- Shipping, transmitting, or transferring (in-country) items not subject to the EAR;
- Facilitating such shipment, transmission, or transfer (in-country); or
- Servicing items not subject to the EAR.

In any case, you should check whether the license is required for your type of activity.

VOLUNTARY DISCLOSURE OF ERRORS IN THE CUSTOMS DECLARATION

Maria Gottifredi, Lawyer, Argentina

Maria outlined the possibility of voluntary disclosure of errors in the customs declaration in Argentina. In practice, this possibility is treated as one of the trade facilitation measures, as it allows to mitigate or avoid penalties for infringements caused by such errors. This is what is directly set out in the WTO Trade Facilitation Agreement. Currently, voluntary disclosure is possible in Argentina within 30 days after customs clearance. However, an extension to 60 days is expected soon. [2]

THE BENEFITS WITHIN A BENEFIT OF A SPECIAL CUSTOMS PROCEDURE

Enrika Naujokė, Director, Lithuanian Customs Practitioners Association

Every benefit of a special customs procedure is an additional risk that must be managed. For example, according to the Lithuanian Customs report, four customs audits were conducted in 2019 related to import procedure 42 alone. As a result of these audits, companies paid nearly 600,000 euros in additional VAT, fines, and interest.

The second point highlighted by Enrika is “the benefits within a benefit of a special customs procedure”. For example, inward processing: the possibility of generalising the reports for a certain period of time; it is also possible to transfer goods from one place to another without the need for customs formalities; there is also an option of using Union goods as equivalent goods, which might be beneficial when producing goods for both the EU market and the third countries. [3]

The various benefits offer great potential for companies to save time and money and better manage financial flows. Another example of how time and money can be saved - is when goods are moved from one temporary storage facility to another, there is a possibility not to use the T1 declaration. Some companies are unaware of this.

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[1] Learn other opinions on the subject reading the article ‘Does the duty rate always depend on the commodity code for the goods?’

[2] Learn more on this topic in the article Voluntary disclosure of errors in the customs declaration in Argentina by Dr Marcelo Antonio Gottifredi, CCRM Issue 17, 2022

[3] Learn more on this topic in the article Inward processing: did you know that…? by Jovita Dobrovalskienė, CCRM Issue 4, 2020

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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CUSTOMS PROCEDURES

Inward processing in the EU: Does the duty rate always depend on the commodity code for the goods?

Classification under a tariff subheading is not an end in itself but serves to determine which measures, tariff or other, should be applied to the goods concerned. However, in case of inward processing in the EU, the question has been raised, whether the duty rate of the processed goods at the time of release for free circulation must be applied in certain cases even though the tariff classification, customs value, and origin of the imported goods are the basis for the duty calculation.

Prof Dr Sandra Rinnert:

If there is no need to place goods on the EU market, it is advisable to use special procedures and avoid paying import duties and taxes. However, this can bring additional risks and challenges. Let's take a look at an example.

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In this case, **the point under discussion is the applicable duty rate, which is different for imported and processed goods**. There are two opinions in this regard:

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CUSTOMS PROCEDURES

Inward processing in the UK: How a trivial compliance failure caused them to be taxed millions

When you realise that the biggest threat to your business is neither the competition nor international event risk, but a seemingly minor compliance failure, you will have read this case study: According to a recent tribunal judgement, even a seemingly trivial compliance failure, such as an error or discrepancy in the information supplied to HMRC by the importer and their customs agent, may invalidate a customs tax remission for an entire time. We explain it all in-depth and provide valuable pointers on legally handling your customs clearances.

A recent tribunal decision indicates that even minor inaccuracies or discrepancies in the information submitted to HMRC by the importer and their customs agent could invalidate a customs duty relief for an entire period, resulting in a much larger bill than the importer might expect for a seemingly minor compliance failure. We break it down in detail and provide key tips on what you can do to deal with your customs authorizations compliantly.

GOOD FLOW FROM EU TO UK AFTER BREXIT

Since the UK's departure from the EU Internal Market and the EU Customs Union, extensive customs declarations need to be completed before goods may cross the border from the European Union to the United Kingdom. As a consequence, many EU and UK businesses involved in international trade employed us as their customs agents / or brokers to ensure the effective flow of their commodities across borders and the management of associated paperwork.

WHAT WAS THE CASE ABOUT?

According to a recent tribunal ruling, even a seemingly minor compliance failure, such as a mistake or inconsistency in the information submitted to HMRC by the importer and their customs agent, may render a customs tax remission illegal for the whole period. The appeal concerns an aircraft component manufacturer that habitually imported aluminum and other goods into the United Kingdom and resold them to consumers.

LUCRATIVE SPECIAL CUSTOMS PROCEDURE... BUT WITH A CATCH!

HMRC permits importers to avoid paying customs tax and import VAT on certain products that have undergone a special customs procedure, called inward processing (IP). IP is usually subject to authorization by HMRC and requires a great understanding of how the cost-saving scheme works and how it is managed within a company. In particular, there are compliance requirements to be met - companies need to verify that the items were disposed of

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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OVERVIEWS AND COMMENTS

3 real-life cases: To be or not to be in trade and customs compliance?

Why is there so much talk and writing about trade and customs compliance? Why is so much attention being paid to this issue in legislation and judicial practice? What are the consequences of non-compliance with many laws and trade agreements? Read about 3 real-life cases of failing to comply and their consequences.

Everyone knows that global trade is a very complex mechanism. It requires the efforts and coordinated work of many participants to keep it running smoothly. It can be compared to a complex team game. The rules of the game are defined by a large number of international and national laws with many nuances. It is not surprising that sometimes one or more of the players do not fully follow them. There are many reasons for this: ignorance or misunderstanding of the rules, carelessness, lack of skill, etc. Either way, the consequences of non-compliance can be disastrous.

Below are some real-life examples of breaches of customs law and the consequences. These cases date from different years, took place in different countries, but have a similar scenario. This means that the problem of trade non-compliance has no national or time boundary, i.e. it is and will always be relevant everywhere.

REAL-LIFE CASES OF FAILING TO COMPLY AND THEIR CONSEQUENCES

The Volkswagen entities violated US criminal and civil customs laws by knowingly making materially false statements to US Customs and Border Protection (CBP). They falsely declared that nearly 590,000 imported vehicles complied with all applicable environmental laws, knowing that these statements were untrue. They also omitted important information for several years with the intent to deceive or mislead CBP as to the admissibility of the vehicles into the United States. In response to these frauds, US authorities announced a criminal and civil settlement against Volkswagen in 2017, totalling $4.3 billion. Volkswagen pleaded guilty to three criminal charges and agreed to pay a criminal fine of $2.8 billion and a civil penalty of $1.45 billion, the largest civil penalty ever imposed [1].

Another example is the violation of US export control regulations. It is worth noting that exports of defence articles and related technical data to China have been prohibited since 1989. However, in 2001 and 2002, Pratt & Whitney Canada Corp (PWC), a Canadian subsidiary of the US defence contractor United Technologies Corporation (UTC), supplied 10 engines to China for use in the development of China's first modern military attack helicopter. Despite the military nature of these helicopters, PWC on its own determined that these development engines were not "defence articles" requiring a US export licence. This was because they were identical to engines that PWC was already supplying to China for a commercial helicopter. It turned out that the engine software supplied had been modified

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OVERVIEWS AND COMMENTS

Binding Valuation Information (BVI) decisions in the EU: the pros and cons

Biding tariff and binding origin information decisions are used in the EU and provide legal certainty to economic operators regarding the correct determination of the tariff code and origin of their goods. What about the introduction of the same measures with regard to valuation? In the following article, we highlight some points on this topic.

The project of the European Commission for implementing a procedure for obtaining Binding Valuation Information (BVI) decision [1] may oblige the importer and the customs authorities to use the predetermined method and criteria for determining the customs value of the goods in particular circumstances.

It was announced by the draft of the Regulation amending Delegated Regulation 2015/2446 published by the Commission. With this new procedure, the European Commission completes the already well-established legal and operational framework for the issuance of binding decisions regarding tariff classification information (BTI) and binding origin information (BOI).

In general, the proposed procedure for obtaining a BVI is quite identical to the procedure for obtaining a BTI and a BOI. Anyone involved in global trade is familiar with both. Just to remind the identity concerns the following:

- The time limit for the BVI decision is a maximum of 180 days (30 days for the verification of the conditions for the acceptance of the application, 120 days for taking a decision itself and additional 30 days if customs authorities are unable to comply with the 120-day time limit);
- The period of validity is 3 years from the date on which the decision takes effect;
- The reason for suspending the decision is if the correct and uniform determination of the customs value is not ensured;
- The BVI decision ceases to be valid before the end of the 3-year period if it no longer conforms to the new or amended legal framework;
- The conditions for annulling the BVI – it can be annulled where it is based on inaccurate or incomplete information;
- The conditions for revoking the BVI decisions – they are revoked in case of non-compliance with the customs law.

It is very important to clarify that the BVI cannot be amended or revoked upon an application of the holder of the BVI. It is also critical to point out that the parallel management of the BVI and BOI decisions will also be supported by an IT system based on the existing European Binding Tariff Information (EBTI) system. This will be quite beneficial for both parties, i.e. the economic operators and the customs authorities.

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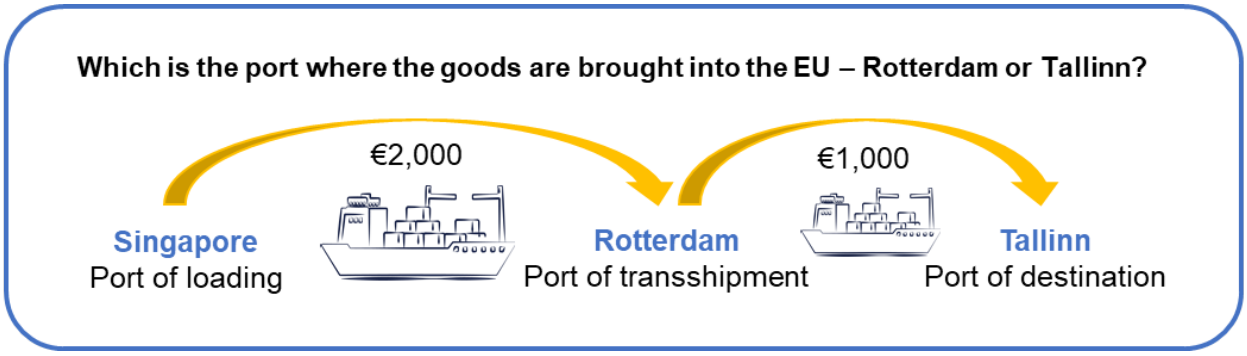
OVERVIEWS AND COMMENTS

How to save on import taxes? or Which is the place where the goods are brought into EU?

Reader's question: Goods FOB Singapore are shipped to Tallinn. Rotterdam is the port of transshipment (containers are only moved from one vessel to another). What transportation costs - Singapore-Rotterdam (€ 2,000) or Singapore-Tallinn (€ 3,000) - should be included into the dutiable value of goods upon their importation in Estonia?



LEGAL BASIS

Let's start with the legal basis of the customs value of goods. Article 71 of the Union Customs Code, 'Elements of transaction value', states that for the determination of the customs value in accordance with Article 70, 'Method of customs valuation based on the transaction value', the price actually paid or payable for the imported goods shall be supplemented by, *inter alia*, the **cost of transport of the imported goods up to the place where the goods are brought into the customs territory of the Union**.

It is therefore important to determine the place of 'where the goods are brought into the customs territory of the Union' for customs valuation purposes. The rules of determination can be found in the Implementing Act of the Union Customs Code (Regulation 2015/2447), Article 137:

- 'For the purposes of Article 71(1)(e) of the Code, the place where the goods are brought into the customs territory of the Union shall be: (a) for goods carried by sea, the **first port of entry of the goods into the customs territory of the Union**;' and

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OVERVIEWS AND COMMENTS

Getting information from Customs in Ukraine: Is it even possible?

"He who owns information owns the world", said Nathan M. Rothschild two centuries ago. The quote is relevant today particularly when it comes to customs. What if a company needs information from customs authorities? Is it possible to obtain it? Are customs obliged to provide it to a company or an individual? This article deals with the problems faced by Ukrainian companies in obtaining the information they need from the customs authorities. We also take a look at the provisions of the EU Customs Code.

Communicating with Customs is one of the most effective ways of avoiding offences committed out of ignorance or by accident. Ultimately, this means significant savings in fines and also that other risks are managed.

PROVISIONS OF THE EU CUSTOMS CODE: THE GROUNDS FOR REFUSING A REQUEST

Article 14 of the Union Customs Code (UCC) states that any person may request information from the customs authorities concerning the application of customs legislation. However, such a request can only be made if it relates to an activity pertaining to international trade in goods that is actually envisaged.

Art. 14 UCC: Any person may request information concerning the application of the customs legislation from the customs authorities. Such a request may be refused where it does not relate to an activity pertaining to international trade in goods that is actually envisaged.

In other words, this article already contains the ground for refusal of a request - the lack of connection with a real trade transaction. The UCC does not specify how customs authorities will verify that the information requested is in fact related to international trade. It is clear, however, that the burden of proving such a link lies with the person requesting the information.

What about a person who is just planning his/her transaction, weighing up the pros and cons, benefits and risks? In fact, consultation with the customs authority could help to ensure a balanced and correct decision. However, if a trade transaction is only hypothetical, the possibility of such consultation is likely to be excluded. And a person may make a wrong decision without taking into account all the details and nuances.

Obviously, all formalities related to the submission of requests to customs authorities and the replies to them, procedures, time limits, as well as the consequences of their violation, should be determined by the national legislation

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

Dr Massimo De Gregorio

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COLLABORATION

Confiad organization: shaping the future of customs brokers' profession

The Pan-European organisation International Confederation of Customs Brokers and Customs Representatives (Confiad) was founded in 1982 in Italy. It was founded with the purpose to defend and coordinate the professional interest of its members, supporting harmonisation of the legislative, professional and customs regulations at European level. Confiad President Dr Massimo De Gregorio kindly accepted our invitation to share information about the confederation, its main activities and the customs broker's profession.

ABOUT CONFIAD

The Confiad (Confederation Internationale Des Agents en Douane), is a Pan-European organisation International Federation of Custom Brokers and Custom Representative founded in the heart of the City of the Doges in the Palais Ca' Giustiniani – Venice on the 14th of May 1982.

The Confiad was founded with the purpose to defend and coordinate the professional interest of its members, supporting harmonisation of the legislative, professional and customs regulations at European level. The Confiad represents its members before the EU institutions and before other public and private administrations and organizations. Today, the organisation embodies 20 000 companies (mainly small and medium size enterprise) providing customs services and employing 250 000 workers all over the European Union.

ABOUT OUR MEMBERS – THE CUSTOMS BROKERS

Customs brokers, also known as 'customs agents' are natural persons or legal person whose main duty is to assist importers and exporters in customs clearance, and in general, in the fulfilment of all customs operations and formalities related to the international movement of goods.

A definition of 'customs agent' can be found in the 'Glossary of International Customs Terms' of the World Customs Organization (WCO) that defines the customs clearing agent as a person who carries out and arranges customs clearance of goods and who deals directly with Customs authorities for and on the behalf of another person. Customs brokers/ customs representatives are facilitators of trade and they guarantee the correct recovery of the financial resources of the States.

In Confiad's Members States, customs brokers/ customs representatives must hold a valid State-released licence in order to perform any kind of customs activity on behalf of third parties. In particular each customs representative is required to be registered or accredited by customs authorities and prove their competence, knowledge and reliability requirements with regards to the customs procedures.

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The requirements of 'competency' and 'knowledge' for a customs agent usually entail a preliminary assessment by the public authorities which is performed through an exam combined with a period of practice. This process guarantees that enterprises and national customs authorities work with high professional customs experts. This increases the level of safety and security within the EU's territory.

Without customs brokers, a lot of small and medium enterprises would probably not do business, as they do not have the knowledge and the professionalism to perform customs formalities.

ACTIONS OF THE CONFEDERATION

Our tasks evolve around:

- The development of co-operation and friendly relations;
- The valuation of the exercise of the professional activity;
- The study and solutions, especially through the organization of conferences and meetings, not only for the problems arising from the professional activity but also the application of the adopted decisions;
- The representation of the professional members before the authorities, the public and private administrations or organizations;
- The nomination of the representatives of the professional class, before all international entities and organizations;
- The creation of study and cultural centres.

OUR MESSAGE

As you certainly know, the Kyoto Convention has accelerated integration and harmonization of the principles of the customs law. According to the Convention, each Contracting Party Member State undertakes to promote the simplification and harmonization of customs systems. In particular, the Convention sets out a series of principles and customs techniques and recommends its adoption within the legal systems of each State, to encourage the harmonization of their customs regulations in order to promote the growth of international trade.

The Union Customs Code introduces in art. 5 the customs representative as any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities. A general recognition of the role of the customs broker has been introduced, as well as the possibility to reserve one of the two types of representation to the customs brokers (direct or indirect), allowing each Member State to regulate the access to that activity according to the European law and considering customs representation as a service rather than a status.

These will inevitably affect the future of our profession.

Essential and common requirements to be a customs representative in the EU are that the customs broker, both natural person and legal person, should be:

- Established in the customs territory of the Union (art. 18 UCC);
- Registered with the customs authorities (art. 9 UCC);
- Provide information to the customs authorities (art. 15 UCC);
- Respect criteria laid down in art. 39 'a' to 'd' of UCC.

With the introduction of the new definition of customs representation and the opening of the direct representation, the role of the customs broker is changing from that of notary/chosen spokesman in foreign trade to become a kind of customs representative along with other representatives.

The Confiad had widely guessed since the publication of Regulation 450/2008 and subsequently of Regulation 952/2013, the Union Customs Code now in force, that our profession will have to integrate the world of logistics and

abandon rear-guard positions that in these years have allowed us to prepare and adapt to change.

We did it using our professional skills to serve the general interests of European logistics, therefore winning back the role that we had lost, for lobbying choices, for a long time.

This choice to represent our category, in synergy with other European federations was often exploited for someone's protagonist interests, to make it appear like a division within the category and not as a different vision of the future of our profession.

Our new attitude has finally allowed us to present common positions on issues affecting not only the Customs aspect but the whole logistics field and we hope it will be possible to maintain this quality of service for our members.

More information: https://www.customsclearance.net/en/learning-paths/customs-clearance-and-trade-compliance-in-the-eu

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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COLLABORATION

Customs Consultative Committees: What's in it for business?

Customs Consultative Committees (CCCs) or similar bodies have been set up in EU Member States, the UK and other countries to bring business and customs together to discuss issues, share knowledge and improve the business environment. With what questions or problems can businesses turn to the CCC and what results can be expected? How can this be done? Do businesses actively make use of this tool? We thank Anthony Buckley, Chair of the CCC in Ireland for a number of years during the Brexit preparations, for kindly accepting the invitation to share his experiences and views.

INTRODUCTION - ABOUT THE CCCS IN GENERAL

Customs Consultative Committees are not mandatory, but highly recommended bodies. Membership of the CCCs consist of Customs, other government institutions and business organisations whose members have regular and direct dealings with Customs. The Chair of the CCC is Director General of Customs or Deputy Director. The main form of activity of the CCC is regular meetings (two or more times a year). The rules governing the work of CCCs are not identical from country to country, but they are similar in essence.

Objectives of the CCC in Ireland

CCC provides a two-way forum for Revenue and representative Organisations:

- To consult and exchange views on issues affecting the Customs treatment of imports and exports;
- To review developments and proposals in the Customs area, especially at EU level;
- To support Ireland's competitiveness by advising on the design of Customs regimes in Ireland that will facilitate legitimate trade to the greatest extent possible consistent with legislative and compliance requirements.

Some of the functions of the CCC in Lithuania:

- To encourage cooperation between customs and other public authorities with business associations, and disseminate good practices to improve cooperation and information exchange;
- To examine existing, to be amended and new legislation in development to assess the implications for business;
- To discuss customs performance-related questions and possible ways of improving it;
- To disseminate relevant customs information to the business community.

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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COUNTRY-SPECIFIC

Ukraine customs and trade news: February/ March 2023

News at a glance: Common transit - list of goods exempted from guarantee; extended suspension of import duties, quotas and trade defence measures for Ukrainian exports to the EU and the UK; pilot project for the transport of goods between Ukraine and the Republic of Moldova using the TIR electronic procedure; and more news!

DIGITAL TRADE AGREEMENT WITH GREAT BRITAIN

On March 20, Ukraine and Great Britain signed a Digital Trade Agreement. Among other things, it will have an impact on international trade. The agreement provides for the following:

- reducing the cost of trade administration by implementing digital solutions and technologies;
- full-fledged use of digital signatures, electronic contracts, and electronic invoices;
- mutual recognition of digital signatures and means of electronic authentication;
- introduction of a "single window" for the cooperation of traders and government.

In addition, the agreement aims to ensure the free exchange of data, increase consumer protection in the digital environment, create open digital markets, exchange financial services, and introduce new services and technical cooperation.

GUARANTEE FOR THE PAYMENT OF CUSTOMS DUTIES

After Ukraine joined the Convention on a common transit procedure, most goods became subject to the provision of a guarantee for entry into Ukraine. However, the Ukrainian Government has defined a list of goods for which the guarantee is temporarily not applicable. Regarding some goods, the exemption applies until the end of martial law in Ukraine and one year after. However, for some - until February 1, 2023: international express shipments, live animals, trees, cereals, vinegar, and many other goods. You can get acquainted with the full list in clauses 5 and 6 of Resolution No. 1091.

ACCESS TO NEW TRADE MARKETS

Ukraine agreed on export certificate forms for several goods, including:

- rendered fats intended for use as feed material - with Serbia;
- bee packages - with Canada;
- fish products - with Turkey;

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- processed egg products - with the Republic of South Africa.

From now on, Ukrainian producers can export products to listed markets. In addition, the European Commission cancelled restrictions on the export of planting material for apple, plum, and cherry trees from Ukraine to EU countries.

EXTENSION OF THE "ECONOMIC VISA-FREE"

The European Commission has proposed to extend the suspension of import duties, quotas, and trade defence measures on Ukrainian exports to the European Union for another year. The European Parliament and the Council of the European Union must consider the proposal. Currently, the exemptions are implemented until June 5, 2023. In addition, Great Britain has already extended "economic visa-free" with Ukraine until the beginning of 2024.

"TRANSPORT VISA-FREE" HAS BEEN EXTENDED UNTIL JUNE 30, 2024

Until then, Ukrainian carriers don't need to obtain permits for bilateral and transit transportation to EU countries. And owners of driver's licenses from Ukraine and the EU can use their national licenses.

CHANGES REGARDING THE EXPORT OF GRAIN AND OIL CROPS

On March 18, the Ministry for Communities and Territories Development of Ukraine announced extending the "grain agreement" between Ukraine, the UN, Turkey and Russia for 120 days. The agreement took effect on August 1, 2022. 25 million tons of grain were exported. However, Russia continues its attempts to sabotage exports, so Ukraine and its partners continue looking for alternative exporting methods. In particular, since March 9, veterinary control of Ukrainian agricultural products transiting through the Republic of Poland to the Polish ports of Gdansk, Gdynia, Swinoujscie, Szczecin and other countries has been cancelled. This simplification aims to accelerate and increase exports.

CUSTOMS COOPERATION WITH MEXICO

The Cabinet of Ministers of Ukraine approved the draft Agreement between Ukraine and Mexico on mutual administrative assistance in customs matters. The draft Agreement provides mutual administrative assistance by the customs authorities of Ukraine and the United Mexican States with the aim of:

- termination of customs offenses;
- security of international trade;
- calculation of duty, other taxes, and payments by customs legislation.

SUSPENSION OF ANTI-DUMPING DUTIES

On February 17, the European Commission announced the suspension of anti-dumping measures on imports of hot-rolled flat steel products from Ukraine, so anti-dumping duties on imports from Ukraine are no longer in effect. Anti-dumping duties on imports from Ukraine have already been temporarily suspended on June 4, 2022 as part of measures taken by the Commission to support Ukraine's economy, including temporary full trade liberalization and suspension of trade defence measures.

SIMPLIFYING CUSTOMS PROCEDURES WITH THE REPUBLIC OF MOLDOVA

In February 2023, the UNECE conference on new developments in applying the Convention on the International Carriage of Goods Using the TIR Carnet was held in Geneva. The Ukrainian and Moldovan delegations agreed on the implementation of the pilot project for the transport of goods between Ukraine and the Republic of Moldova in 2023 using the TIR electronic procedure. In addition, in March, the transit of railway cargo was simplified between Moldova and Ukraine. The changes provide for the elimination of double and, in some areas, triple customs control.

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CUSTOMS COMPLIANCE & RISK MANAGEMENT
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COUNTRY-SPECIFIC

Do you swear to tell the truth? Israeli "importer's affidavit" concerning customs valuation

BRIEF

The basic rule for customs valuation, as we know, is valuation by transaction value, plus some assists that should be added (articles 1(1) and 8(1) of the WCO Customs Valuation Agreement). Most import duties are imposed ad valorem, i.e. as a percentage tax on the value of the goods. Therefore, disputes over customs valuation – be it the value of the goods or inclusion/ exclusion of a certain assist - are very common in almost all jurisdictions worldwide.

The Israeli customs authority has, as I believe, invented an original tool to gain more information about specific goods valuation process, even before officially starting an audit. The tool is called the "importer's affidavit" [1]. As far as I know, there is no similar requirement in other jurisdictions.

Section 65.B of the Israeli Customs Ordinance of 1957 states the following: "The person lodging an import declaration must answer all questions relating to the goods listed in the declaration when requested to do so by a customs officer". Section 1(a) of the Israeli Customs (Valuation of Goods) Regulations 1970 states that "the owner of a dutiable good must submit a statement concerning that good to the collector of customs together with the import declaration".

On this basis, the Israel Customs Authority requires every commercial importer (imports of more than USD 5,000) to submit an "importer's affidavit". The importer's affidavit must be submitted annually, with a separate document for each supplier. For example, if the importer has 20 different suppliers, he must submit 20 affidavits per year. An importer who does not submit an affidavit cannot import.

The importer's affidavit consists of three sections: two sections relate to the technical details of the importer and the supplier, and the third section is the most interesting, containing ten questions about the relationship between the importer and the supplier. If the business relationship between importer and supplier changes during the year, a new affidavit must be submitted.

WHAT ARE THE TEN QUESTIONS?

Question No. 1: "Are there any restrictions on you as an importer regarding the sale of the goods or their use? If yes: Are the restrictions imposed or required by law in Israel? Do the restrictions relate to the geographical areas in which the goods can be sold? Do the restrictions not materially affect the value of the goods?"

The legal basis for this is Article 1(1)(a) of the GATT Valuation Agreement.

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The Customs Compliance & Risk Management Journal for Practitioners in Europe (CCRM) is published by CC Learning, UAB, Mariu st. 17, 93264 Klaipeda, Lithuania (Publisher).

The articles on the platform www.customsclear.net (platform) are continuously published in English and several other languages. The pdf version is published bi-monthly by the 10th of the following month. Registered users are informed about new content daily or weekly by email.

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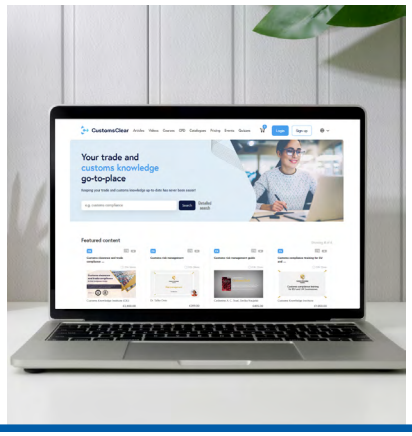

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