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CUSTOMS COMPLIANCE & RISK MANAGEMENT

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CONTENT

CUSTOMS COMPLIANCE & RISK MANAGEMENT
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Editorial

Dear Reader,

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

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

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

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

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

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

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

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

Enrika Naujoke
Director of Lithuanian Customs Practitioners Association

Prague, Photo by JESHOOTS from Pexels

EU LAW AND CASE LAW

EU law news: June/July 22

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

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

OFFICIAL JOURNAL

Support for Ukraine; sanctions against Russia and Belarus

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

Duties, taxes, tariff quotas

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

Please read all the news in the article online.

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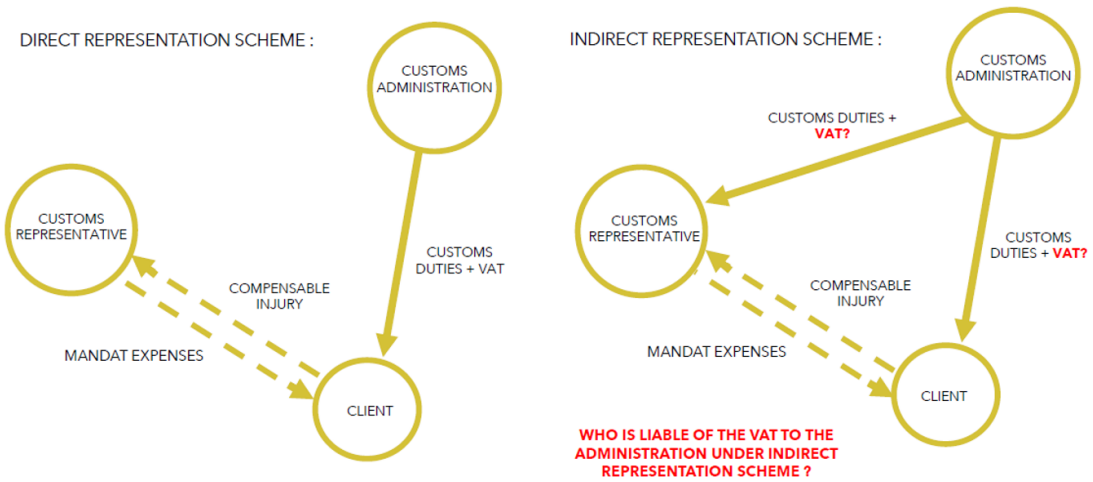
EU LAW AND CASE LAW

Financial consequences of indirect customs representation mode in the EU

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



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

The Court of Justice of the European Union (CJEU) had to rule on the question of whether the customs representative acting as an indirect representative could be validly claimed to pay VAT in addition to customs duties (CJEU, C-714/20, 12 May 2022).

The question could have sounded absurd, as the link between import VAT and customs duties can be very close. Indeed, import VAT is calculated on the basis of the information provided in the customs declaration and is often recovered 'as in customs matters'.

This question is not insignificant, however. In this case the importer, while ultimately liable for the VAT debt, was the subject of collective procedures. The customs representative was asked 959,607.46 euros for VAT with interest without any possibility of recovering it from the importer, nor any right to deduction (CJEU, C-621/19, 8 October 2020).

IS VAT PART OF THE 'CUSTOMS DEBT'?

In order to answer the question asked, the Court first had to consider whether VAT was part of the 'customs debt', which is the obligation to pay the amount of 'import or export duties' (Article 5(18) UCC). It answered in the negative, recalling its 2010 case law (CJEU, C-248/09, 29 July 2010) in which it had ruled that VAT was not part of 'import duties' which were, at the time, defined as 'customs duties and charges having equivalent effect laid down for the importation of goods' (former Article 4(10) of the former Community Customs Code). Since then, the concept of 'import duties' has been refined and now only includes 'customs duties payable on the importation of goods' (Article 5(20) of the UCC).

However, if VAT is not part of the 'customs debt', it cannot be subject to the rules governing the latter and necessarily follows its own regime.

IS THE SOLIDARITY OF THE CUSTOMS REPRESENTATIVE ACTING AS AN INDIRECT REPRESENTATIVE PROVIDED FOR IN THE UCC INCLUDED IN THE TEXTS APPLICABLE TO VAT?

The solidarity of the customs representative acting as an indirect representative with the importer as regards customs duties is expressly provided for in the UCC. The customs representative acting as an indirect representative is qualified as a 'declarant' within the meaning of Article 5(15) of the UCC, but Article 77(3) of the same code stipulates that the 'declarant' must be considered to be the debtor, in the same way as his principal (§40 to 42 of the decision), with both becoming 'jointly and severally' liable for payment (Article 84 of the UCC; §46 of the decision). But this joint and several liability only concerns the 'customs debt', which does not include VAT. The CJEU therefore concluded that the customs representative acting as an indirect representative is not held liable for the VAT debt 'solely by virtue of Article 77' of the CDU.

The Court then turned to the VAT Directive 2006/112/EC to find out whether the customs representative acting as an indirect representative is jointly and severally liable with the importer. Article 201 of the Directive does not refer to the rules applicable to customs debts for the determination of the debtor (§50 of the decision). This definitively rules out the hypothesis that VAT may follow the same legal regime as the 'customs debt' referred to in Article 5(18) of the UCC. Article 201 of the VAT Directive simply provides that the obligation to pay VAT lies 'with the person or persons designated or recognised by the Member State of importation' (§55 of the decision). This provision allows Member States to choose the person or persons liable for payment of VAT (§56 and §57). Accordingly, the Court replied that there is no automatic solidarity between the customs representative acting as an indirect representative and the importer as regards VAT, unless the Member States have decided to adopt a different approach in their national legislation transposing the Directive.

The CJEU concluded that in the absence of implementing measures which 'explicitly and unequivocally' designate or 'recognise' the customs representative acting as an indirect representative as being jointly and severally liable for the payment of VAT with the importer, he cannot be considered to be liable for the payment of that tax (§65 of the decision).

For France, Article 293 A of the General Tax Code provides that the customs representative is jointly and severally liable for the payment of VAT when acting as an indirect representative.

For the other Member States, you should refer to the texts transposing the VAT Directive in each Member State, which you can find with the Celex number of the Directive (32006L0112) on the EUR - Lex website under the heading 'advanced search'.

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About the author

CASE LAW

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

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

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

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

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

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

WHAT IS INTERESTING IN THE PARTICULAR CASE?

The trial case was initiated in conjunction with the procedure for challenging the plausibility of the declared transaction values of the imported goods, considered by the customs authorities to be abnormally low, which required the application of the above methods - an extremely common situation.

What is interesting in this particular case is that:

- in its defence the importer requested the collection of data from other EU institutions as well, and not only from the customs information system (CIS) maintained by the administration of the challenging country;
- moreover, the importer has requested taking into account the values of identical and similar goods imported by the same trader in another Member State, where the declared values were accepted by the competent customs administration.

ISSUES SUBJECT OF EXAMINATION AND PRELIMINARY INTERPRETATION BY THE CJEU

This is precisely what gave rise to the issues subject of examination and preliminary interpretation by the CJEU, namely:

1. are the customs authorities, who challenge the declared transaction value, obliged to check for identical or similar imports in the information systems (IS) maintained by the EU, and make requests to other Member States about similar imports, or may they only use the information in the national database maintained and managed by them;
2. may identical or similar imports of the same trader, which have not been challenged by the customs administration in the importing country, be excluded from the procedure of determining the customs value; and
3. what is the period, in which identical or similar imports are considered made at the same or around the same time, and may such imports be used to determine the customs value of the goods whose transaction value was challenged or not accepted due to regulatory restrictions?

ANSWER 1. IS MAINTAINED BY THE EU

In order to answer the first question, the CJEU emphasized the main duty of the customs administration to exercise due care in analysing the facts, gathering information and evidence for the use of each of the alternative methods for determining the customs value, including the first two - the method of transaction values of identical goods and the method of transaction values of similar goods. This includes the duty of the customs authorities to consult all the information sources and databases available to them. Such interpretation is given in the cited previous CJEU judgment in case C-46/16, item 52 and item 56.

Undoubtedly, the competent customs authorities who have to apply one of these alternative methods are obliged to analyse the CIS maintained and managed by themselves. It contains all data about the type, characteristics and customs value of the goods, as well as the supporting evidence presented by the importers.

However, does due care in the application of each of the alternative methods require that the administration sought and analysed information from external sources – from the systems maintained by the EU and other Member States?

To assess this, the CJEU analyses the possibilities offered by EU-supported information systems, taking into account the purposes for which the respective systems are maintained, as well as the completeness of the information contained in them.

First, the judgment examines the CIS maintained under Council Regulation (EC) 515/97 of March 13th, 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters. Regarding the said system, the CJEU notes that the competent authorities of the Member States enter information on relevant events, such as seizure or detention of goods in the CIS. The customs information system does not therefore identify

information on all customs clearances taking place within the customs territory of the European Union from which the competent authorities may, in any event, extract the information necessary to determine the customs value of goods (item 47 of the CJEU judgment).

Similar is the issue with the foreign trade statistics provided to the Commission by each Member State on the grounds of Regulation (EC) 471/2009 of the European Parliament and of the Council of May 6th, 2009 on Community statistics relating to external trade with non-member countries. Since such data do not contain detailed information about the physical characteristics, quality, reputation, interchangeability of goods and the commercial level of the sales, the CJEU accepts that as such they are not capable to enable the customs authority to determine the customs value of the goods according to the two above alternative methods (item 48 and item 49 of the CJEU judgment).

Moreover, the CJEU considers that the limitations of the data contained in the said EU systems and the specific purposes for which they were created, do not allow detailed grounds for future negative judgments referring to data from these systems, as is the requirement of Art. 6, §3 of the UCC. Detailed arguments in this direction are given in items 53, 54 and 55 of the CJEU judgment.

Given the above, the most reliable and direct source of information for determining the new customs value based on the transaction values of identical or similar goods is undoubtedly the national system maintained by the competent customs administrations, and in the first place, this is the information system administered by the importing country, which is competent to determine the customs value of the goods.

In conclusion, the interpretation of the CJEU is that if the information contained in the national database of the respective Member State is sufficient for the customs authorities of that state to determine the customs value using the method of identical goods or the method of similar goods, then these authorities are not required to make requests to other Member States for identical or similar imports. According to the CJEU, the latter would be unnecessarily burdensome and could jeopardise the attainment of the objective of combating financial fraud and any other illegal activity affecting the financial interests of the European Union (item 45 of the CJEU judgment).

Given the above, the **final CJEU judgment on the first question is that in the procedure for challenging the declared customs value and determining a new one based on the transaction values of identical or similar goods, the customs authorities should first of all consider the data contained in the information system they maintain. Only if such data are not sufficient, the customs authorities may request information from other Member States or turn to the institutions of the European Union to obtain additional data to determine the customs value of the goods.**

Of course, an additional question could be raised in this case, namely what would happen if the national system of the challenging customs administration does not contain the necessary data enabling application of the first two alternative methods (the identical goods method and the similar goods method)? Is the customs administration obliged in this case to request from other Member States such data before proceeding to the application of the next methods - the method of the greatest aggregate quantity, the method of the computed value, and the other methods specified in Art. 74, §3 of the current UCC?

A possible affirmative answer to the above question could be supported by the starting point in the CJEU judgment in case 187/21, namely the requirement to exercise due care when using each of the successive alternative methods of determining the customs value of goods, combined with the possibilities available to the administration for obtaining data from other Member States based on requests under Regulation 515/97.

On the other hand, in its judgment, the CJEU considers the request to the customs administrations of other Member States an opportunity and not an obligation for the challenging administration, which may be an argument supporting the opposite understanding as well.

However, in the specific case, this question was not raised, since the procedure has been exhausted with the

application of the first two methods. Of course, this does not preclude raising it in future requests for preliminary ruling to the CJEU, where the grounds set out in the cited case C-187/21 will be a solid basis to build the possible answer of the CJEU.

ANSWER 2. EXCLUSION OF IDENTICAL AND SIMILAR IMPORTS OF THE SAME TRADER

The other two questions considered in the CJEU judgment also significantly contribute to the correct understanding and application of the two alternative methods for determining the customs value of goods based on identical or similar imports.

The **CJEU gives an affirmative answer to the question whether the customs administration who is competent to determine the customs value of the goods can exclude from the procedure previous imports of identical or similar goods made by the same trader, assuming that this can be done legally, provided that the following requirements are met:**

- the importing country may exclude from the procedure the import of other identical or similar goods that the same trader has made into the same Member State, provided that the administration has reasonable doubts about the plausibility of the declared transaction value and has initiated the verification procedure regulated in the now effective Art. 140 of the now effective Commission Implementing Regulation (EU) 2015/2447;
- the importing country may exclude from the procedure the values of other identical or similar goods imported by the same trader into the other Member States where the customs authorities had not challenged these values, provided that the importing country has and sets out in its decision sufficient grounds and considerations against the plausibility of these values.

Taking into account the interpretation of the CJEU, the contrary argument is that the importer can refer to the transaction values of its previous imports into the same Member State, which have not been challenged by the verifying administration and against which a procedure for non-acceptance of the declared values had not been initiated. Respectively, the importer may also refer to its previous imports made in other Member States, against which, the customs administration could not present grounds for their non-plausibility.

ANSWER 3. DEFINITION OF THE PERIOD 'MADE AT THE SAME OR AROUND THE SAME TIME'

Regarding the last question, the **CJEU considers that to be used to determine the customs value of the imported goods, the identical or similar goods must have been imported for a fixed period of 90 days, including 45 days before and 45 days after customs clearance.**

The CJEU considers that this period appears to be sufficiently close to the date of export that the risk of a substantial change in commercial practices and market conditions affecting the prices of the goods to be valued is avoided.

In its judgment, the CJEU also allows the possibility of extending this period within reasonable limits, only if the decision-maker considers that during this longer period the commercial practices and market conditions have not changed significantly.

CONCLUSION

In conclusion, answering the above questions the CJEU provides considerable clarity and certainty in the application of the first two alternative methods of determining the customs value of goods, namely the methods based on the transaction value of identical or similar goods imported at the same or round the same time as the goods to be valued. The interpretation of the CJEU given in the preliminary ruling case C-187/21 is also a solid basis for clarifying all other additional questions that may arise when applying the said methods, as well as other questions related to the procedure for determining the customs value of goods. Following an audit by the Vilnius Territorial Customs (Vilnius TC), customs refused to apply the transaction value method, because of the nature of the business relations which Baltic Master had with the seller:

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CASE LAW

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

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

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

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

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

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

THE ACTUAL CIRCUMSTANCES OF THE CASE

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

Photo from Baltic Master public website

Following an audit by the Vilnius Territorial Customs (**Vilnius TC**), customs refused to apply the transaction value method, because of the nature of the business relations which Baltic Master had with the seller:

1. the seller and Baltic Master have a long-term commercial relationship;
2. the goods were supplied without a sales contract defining delivery, payment, return of the goods and other conditions specific to such transactions;
3. the goods were supplied without any advance payment and despite the fact that Baltic Master still owed significant amounts to the seller in respect of previous deliveries;
4. no provision was made for enforcement or risk-mitigation measures notwithstanding the particularly high value of the transactions at issue;
5. there is no evidence to suggest that the seller monitored the proper implementation of payments due and performance of other obligations;
6. cases were identified in which Baltic Master's employees acted on behalf of the seller under an authorisation and used its corporate stamp.

In the opinion of the Vilnius TC, these circumstances were sufficient to state that, based on items b, e and f of Article 143 of the Implementing Regulation of the Community Customs Code (Regulation (EEC) No. 2454/93), the parties may be regarded as being related (are legally recognised business partners or one person directly or indirectly controls the other or both are directly or indirectly controlled by a third person). The Vilnius TC determined the customs value of the goods by applying the 'fall back' method (Article 31 of the CCC in force at that time), based on the data available at the national valuation IS (**PREMI**).

Disagreeing with the decision of the Vilnius TC, Baltic Master initiated a tax dispute. After a long process (as mentioned before, Baltic Master had to apply to the European Court of Human Rights), the SACL decided to ask the CJEU for clarification. The SACL stated that although there are no documents proving the legal relationship between Baltic Master and the seller, the nature of the commercial relationship established by the Vilnius TC shows that there is a particularly close relationship between them, as a result of which the transactions at issue were executed under conditions that are not characteristic of the ordinary course of business and there is no objective factor capable of justifying the economic logic of those transactions. In the opinion of the SACL, such a conduct corresponds to a conduct in situations in which one of the parties controls the other or where both parties are controlled by a third party, i.e., the parties are de facto legally recognised business partners and de facto control each other. The SACL asked the CJEU to confirm whether this logic is correct.

Another issue raised by the SACL was related to the application of the 'fall back' method based on very limited PREMI data, i.e., only on one case of import of goods, where the goods, although of the same TARIC code and same origin, cannot be considered similar ('similar goods') for the purposes of the customs value method.

CJEU INTERPRETATIONS

Regarding the differences between business partnerships, de facto and legal control and close commercial relationships.

The CJEU rejected the possibility of considering individuals as factual business partners (Article 143 (1) (b) of the Implementing Regulation).

The court emphasised that persons shall be deemed to be related only in specific cases as specified in Article 143 (1) of the Implementing Regulation. According to the CJEU, such a strict interpretation (that is, that only those persons who meet the literal criteria of the Implementing Regulation would be considered as related persons) is due to the fact that the transaction value method constitutes the main method to determine the customs value and its limitation (e.g., by applying the rules of related persons) is an exception. And exceptions must be interpreted and applied strictly.

The CJEU rejected the argument of the European Commission and the Member States in essence that such a strict interpretation would undermine the effectiveness of the provision. According to the CJEU, customs authorities have other means to fight/assess cases of inappropriate transaction value, for example, Article 181a of the CCC Implementation Regulation (Article 140 of the currently valid UCC Implementation Regulation), which allows the customs authorities to demand additional evidence from the undertaker if there are doubts about inappropriate customs value and to not recognise the customs value if the evidence are not enough.

In summary, under the CJEU opinion, in order to apply the provision of the Implementing Regulation on legally recognised business partners, it is necessary to establish the legal relationship of the companies, that is to prove that the relevant provisions of the national legislation of the state have been fulfilled.

However, the *de facto* relationship becomes relevant if other – namely provision 143 (1) (e) (f) of the Implementing Regulation (where one party to the transaction controls the other or both parties to the transaction are controlled by the same third party) is applied. The court emphasised that in this case, the note in Annex 23 of the Implementation Regulation distinguishes between legal and factual (operational) control. Factual control in this case includes the ability for one company to exercise restraint or direction over another.

According to the CJEU, there is no evidence of existing legal control in the case. Moreover, in the CJEU's opinion, although the SACL specifies the circumstances that confirm a close relationship between the companies, but they do not support the conclusion that such a position of restraint or direction exists, i.e., the level of de facto control necessary to recognise the persons involved in the Implementing Regulation 143 (1) (e) on the basis of the provision. However, as usual, the CJEU left both of these circumstances to the national court to assess.

If it is not proven in the national court that the parties should be considered related according to the criteria explained by the CJEU, the value of the imported air conditioner parts will have to be determined according to the declared value of their transaction entered in the declaration at the time of import.

Regarding the PREMI data and the concept of 'similar' goods.

The second part of the CJEU decision is related to the criteria for the use and comparability of the PREMI database [1].

The CJEU recalled that this case applied the 'fall back' (6th) method of customs valuation. This means that the data available to customs was not sufficient for the application of the (3rd) method of customs valuation of similar goods.

As a reminder, the six methods of customs valuation must be applied in strict accordance with the hierarchy, and when the customs value cannot be determined by applying a given method, the method which comes immediately

after it in the order established by the Customs Code should be used. The 'fall back' method means that the customs has the right to apply the principles of the methods (1st – 5th) above, but with reasonable flexibility. In other words, it is possible to deviate from some of the mandatory conditions imposed by the methods (for example, in order to apply the similar goods method, their import date must cover a period of no more than 90 days, while the 'fall back' method would allow taking data from a longer period).

Thus, the national court (SACL) essentially asked whether that 'reasonable flexibility' of the 'fall back' approach is still justified if customs rely on imported goods of the same manufacturer under the same TARIC code, even though this TARIC code covers a much wider spectrum than parts for air conditioning units (plastic motor shields, metal rings, pipes, transmission cables, switches, pressure sensors, swirl diffusers in building floors, electronic circuits, etc.)

According to the CJEU, yes. Although similarity should mean homogeneity (i.e. similar characteristics, which are difficult to reconcile with the variety of goods designated by the specified TARIC code), however, since the company itself did not provide sufficiently accurate or reliable data on the customs value of the relevant goods, and the customs took into account the data provided by the company (weight and TARIC code), the court recognised that based on this information received from the importer, customs relied on appropriate data. According to the CJEU, they meet the definition of 'data accessible within the Union' and do not exceed the limits of 'reasonable flexibility'.

At the end of the decision, the CJEU once again emphasised that the latter interpretation is relevant in the case under consideration only if Baltic Master and Gus Group are recognised as related companies. Otherwise, according to the court, the transaction value method will have to be applied to calculate the customs value of the goods.

SUMMARY

In my view, CJEU reasonably claims that exception to the application of the transaction value method must be interpreted strictly. Although the EU has a right to defend its interests (and budget revenues) and seeks to have maximum power to cope with the undervaluation, it is necessary to remember that customs valuation rules are not only part of the autonomous functioning of the European Union, but part of the obligations of the European Union as a member of the World Trade Organization and the Customs Valuation Agreement. Thus, any rules must be interpreted not only in the context of the UCC, but also in the context of provisions of the World Trade Organization, the general Agreement on Tariffs and Trade (GATT) and even the protocols of the negotiators who sought the aforementioned agreements and reached them at the expense of huge compromises. The agreements reached and the exceptions set must be respected, so deviations from them can only be made if there is a clear legal basis.

Although the CJEU also indicated in its decision that a reasonable flexibility ('efficiency') in this case cannot be the basis for a wide interpretation of legal norms, in my opinion, the interpretation provided by the CJEU is somewhat ambiguous. The CJEU stated that customs authorities can seek efficiency by applying the provisions of the Implementing Regulation (currently Article 140 of the UCC Implementing Regulation) which allow customs not to apply the transaction value method if the importer does not provide sufficient evidence to support it. In my opinion, it is important to emphasise that this provision is not a 'separate' instrument. In other words, a situation where customs simply ask for additional evidence, without additionally justifying which element of customs valuation they relate to, should not exist. Accordingly, this provision gives the customs the right to disregard the transaction value, only if an importer does not provide sufficient evidence to support the elements of the transaction value specified in the UCC.

The CJEU also ruled on the criterion of actual control in assessing the relation of persons in the context of the provisions of Implementing Regulation 143 (1) (e) (f). The court emphasised a very specific expression of this control – "restraint or direction", "operational" control. Unfortunately, a detailed explanation on how this should manifest is not provided. One of the indications for the national court (which will make the final decision in this case) is that the circumstances currently established by the customs are insufficient to establish factual control. As one of the sources, the national court could use the Explanatory notes of the Technical Committee. My colleague Mark Neville also shared with me an interpretation issued by the USA Customs (14/09//1994, No. 545481) on a similar issue. This

interpretation takes the position that that operational control can be confirmed or denied by analysing the provisions of the agreement between the parties and ruling whether it is not 'one-sided' or whether the same agreement could be concluded between unrelated persons. Importantly, a certain level of control and restraints are inherent in absolutely all, even the simplest agreements (for example, services shall not be provided if they are not reimbursed by the established terms), especially significant rights to restrain and direction can be found in distribution agreements. Thus, it is important to read the agreement not only as a separate document, but also to evaluate it in the context of the market and certain types of agreements. Indeed, how complex the criteria for proving the relationship between persons can be in the customs context!

Also, if we look into this CJEU's decision in a wider tax context, another point follows. There can be no such thing as *abstractly* related persons. Different criteria are applied to related parties for the purposes of corporate income tax, value added tax, transaction pricing, civil law, or public administration - so it is very important to clarify in each case which provisions of legal acts apply and whether there will be any contradictions (for example, in relation of customs valuation and transfer pricing).

Finally, here are a few words about the application of the national customs valuation IS (PREMI) database. In this regard, the CJEU set quite wide limits for the operation of the customs authority. The data contained in the national database, despite being minimal in number or having minimal links to the physical characteristics or purpose of the imported products, is considered sufficient as it meets the broad concept of 'data available within the Union'. Although both the General Advocate and Baltic Master tried to appeal to other data that the customs could obtain (for example, get in touch with other the EU member states [2]), the court did not establish such an obligation for national customs. On the one hand, in my opinion, such omnipotence of PREMI (or another country's customs database) is questionable. On the other hand, the enterprises themselves should proactively defend their rights - starting from the exact description of the goods in the import declaration (the court emphasised that the abstractness of the description in the import declaration justifies wider customs rights), ending with the provision of information during import, for example to justify the application of the deductive or calculated value method.

This decision of the CJEU has attracted a considerable attention from the customs community, it is cited in the European Commission's new customs valuation guidelines, so it will undoubtedly find its place in the customs valuation doctrine. Meanwhile, the destiny of Baltic Master is in the hands of the national court.

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[1] At a remarkably similar time, the CJEU delivered another crucial decision on comparability issues (Fawkes, C-187/21); an overview of the case 'CJEU guidelines on the selection of identical or similar goods for determining the customs value' by Georgi Goranov

[2] Consolidation of data was one of the proposals of the Wise Persons Group; read more in the article 'Wise Persons Group recommendations: what is the future of EU customs?' by Monika Bielskienė

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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A COFFEE BREAK WITH....

A coffee break with… Michael Lux

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

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

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

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

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

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

tariff database were not in step).

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

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

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

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

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

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

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

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

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

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

Michael: We must distinguish here two aspects:

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

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

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

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

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

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

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

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

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

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

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

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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CLASSIFICATION, VALUATION AND ORIGIN

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

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

INTRODUCTION

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

HOW DO THE PRINCIPLES OR ELEMENTS OF CUSTOMS VALUATION APPLY?

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

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

The Agreement requires that customs value should be determined based on simple and equitable criteria. The

valuation procedures should not differentiate between the countries, exporters, or products. In addition, the dumping of goods should be handled by using the anti-dumping laws and the valuation procedures should not be used for such purpose. Moreover, the transaction value cannot be rejected on the premise that it is 'very low'.

The Agreement requires customs administrations to examine the facts and commercial practices involved in the transactions. The information required for the valuation of goods must be collected keeping in view the commercial practices. The Agreement requires customs administrations to use methods, which are consistent with Generally Accepted Accounting Principles (GAAP) for gathering and preparing the requisite information.

In order to eliminate discretion and to ensure uniform application of law, the Agreement prescribes that any additions to the transaction value should be made by using quantifiable data only. The Agreement prohibits any addition on the basis of personal experience, judgment, or estimation.

TRADE FACILITATION MEASURES UNDER THE AGREEMENT

Before this Agreement, there were numerous methods in the use of customs administrations. These methods were arbitrary in nature and would often lead to unpredictable outcomes. Some of the methods were designed to collect maximum revenue. They were therefore acting as a significant non-tariff barrier to free trade.

In order to overcome these difficulties, the Agreement aims to ensure uniformity, transparency, certainty, and predictability of the trading environment by making customs valuation as simple as possible. It demands that the decisions should be based on rules and facts demonstrated by 'objective and quantifiable data'. Its Article 9 stipulates that the currency conversion rates should be published, and the date of importation should be defined by the member countries. Its Article 12 requires well-publicised laws, procedures, administrative directives and other legal instruments relating to customs valuation.

The Agreement also confers certain rights to the trading community and places obligations on customs administrations for ensuring trade facilitation. For instance, Article 1.2 (a) requires that customs must inform the importer of the grounds for considering that the relationship has influenced the price and allow the importer a reasonable opportunity to respond. Article 6 does not create an obligation for the importer to provide evidence from overseas sources which otherwise can be a cumbersome task for a trader. Paragraph 6 of the Note to Article 6 requires that customs must inform the importer, if requested, of the source of any data, the data itself, and the calculations based on data for using the computed value method subject to the provisions of Article 10.

Likewise, Article 7.3 requires that customs must inform the importer in writing, if requested, of the ascertained customs value and method used to determine such value. Article 10 requires that all information submitted to customs is to be treated as 'strictly confidential'. Article 11 requires the government to provide a right of appeal 'without penalty' to the importer in regard to determination of customs value. Moreover, Article 13 provides the importer a right to clear the

goods from customs under a security if required, when the final determination of customs value has to be delayed. Furthermore, Article 16 provides a right to the importer to have an explanation in writing from customs as to how the customs value was determined.

The governments are obliged to honour these rights conferred upon traders by the Agreement. In case of violation of these rights, other governments can lodge complaints to the WTO Dispute Settlement Body (DSB). The DSB keeps surveillance for the implementation of its rulings and the issue remains on DSB agenda till the issue is resolved.

CUSTOMS REGULATION UNDER THE AGREEMENT

In order to strike a balance between trade facilitation and customs regulation, the Agreement provides certain rights to customs administrations. For instance, Article 11 provides that an initial right of appeal without penalty may be to an authority within customs or to an independent body. It confers a right on customs to create an internal dispute resolution body. Paragraph 3 to the Note to Article 11 gives a right to customs to require the importer to pay full amount of duty and taxes prior to filing of an appeal. Article 13 provides a right to customs to require the submission of a security instrument covering the amount of duty and taxes involved for release of the goods when the final determination of customs value has to be delayed. Article 17 provides a right to customs to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. Paragraph 6 to the Annex III confers a right on customs to expect the full co-operation of importers in the enquiries referred to in Article 17, subject to national laws and procedures. Customs, after reviewing any information submitted, may determine that the transaction value cannot be used to determine the customs value.

HOW DOES THE AGREEMENT APPLY IN DIFFERENT COUNTRIES?

The international themes in the development and application of customs valuation indicate that some countries are using Incoterms® CIF1 whereas others are applying FOB2 values for the assessment of duty and taxes. For instance, the United States, Canada and South Africa use FOB values whereas the European, African and most of the Asian countries use CIF values. The countries using FOB values take the exchange rate prevalent at the time of export of the imported consignment. Whereas, the countries using CIF values base their exchange rate at the time of import of the goods.

Most of the countries applying the Agreement have developed a full complement of supporting legislation, policies, procedures and practices intended to facilitate international trade by simplifying, harmonising, and standardising valuation. For instance, the European Commission has transposed the rules of the Agreement into the European Union customs legislation. The legislation also contains provisions for the partial delivery and price adjustments for the defective goods. The customs value is determined on CIF basis after adding insurance and freight to the cost of goods. The rate of exchange is published by the European Central Bank for the Member States whose currency is Euro. Whereas, for other Members the competent national authority publishes the rate of exchange. This rate is published on the second last Wednesday of each month and it applies for a month beginning on the first of the following month.

Australia has transposed the provisions of the Agreement into its Customs Act, 1901. More than 95% of the goods imported in Australia are assessed for duty and taxes on the basis of transaction value. The imported goods are assessed on the basis of FOB values. It means the insurance and freight costs are not added to the value of the goods for assessment purposes. Since FOB values are used for the assessment therefore, the rate of exchange is taken which prevails on the date of exportation of the goods.

However, the review of the Customs Acts of the developing countries reveals certain inconsistencies. They have incorporated the rules of the Agreement in their Customs Acts but most of them have legal provisions for fixation of values in their domestic law. For instance, sub-section 2 of section 14 of the Customs Act, 1962 of India empowers the Central Board of Indirect Taxes and Customs to fix values for any class of imported or exported goods for charging the duty and taxes. Likewise, section 25A of the Customs Act, 1969 of Pakistan empowers the Collector

of Customs or the Director of customs valuation to determine the customs value of goods or any category of goods imported into or exported out of Pakistan in the light of the methods prescribed by the WTO. Such valuation ruling remains applicable until and unless revised or rescinded by the competent authority.

Whereas, there is stark difference in the legislation of the least developed countries which are members of the WTO. For instance, the Sea Customs Act 1878 of Myanmar does not contain any legal provision to reflect the Agreement. Section 22 of this Act empowers the Ministry of Finance to fix or alter tariff values of any goods imported in or exported from Myanmar. Likewise, there are no provisions in the Customs Act, 1969 of Bangladesh to meet its international obligations as WTO member. Section 25 (3) of this Act authorises the Government of Bangladesh to fix minimum values for the levy of customs duties on imported or exported goods.

The analysis of the situation reveals that there are various reasons for the inconsistencies in the valuation procedures of the developing and least developed countries. The legal framework is inadequate to cater to the requirements of the Agreement. In the case of least developed countries, the rules of the Agreement are non-existent in the domestic legislation. Whereas, Article 22 of the Agreement makes it obligatory for the Members to align their domestic legislation with the provisions of the Agreement. The weak administrative structures, dearth of capacity and resources, insufficient risk management systems, insubstantial Post Clearance Audit (PCA) mechanism, poor tax culture, undocumented economy, informal trade, double invoicing, under-invoicing, high level of non-compliance, technological backwardness, and lack of political will are the major factors responsible for the non-implementation of the Agreement and thwarting the attempt of the WTO to achieve the objective of uniformity in the valuation rules of the Member countries.

CONCLUSION

In short, the Agreement strikes a balance between trade facilitation and customs regulation by delineating the rights and obligations of traders and customs administrations. It also provides a dispute settlement mechanism to ensure that the rights of trading community are not denied by the governments of importing countries. It envisages a uniform, transparent, equitable, fair, predictable, certain, neutral and compliant trading environment. However, an analysis of international themes in the application of customs valuation reveals stark differences in the domestic legislation of developed, developing and least developed countries. The domestic legislation of developed countries fully reflects the rules of the Agreement. Whereas, the developing countries have incorporated additional provisions in their domestic law enabling them to fix the minimum values. Moreover, the provisions of the Agreement are almost non-existent in the domestic legislation of the least developed countries. This is a result of socio-economic and political conditions of the developing and least developed countries. It is frustrating the attempt of the WTO for uniformity of valuation rules in all its Member States.

[1] CIF - Cost, Insurance and Freight - for CIF value, insurance and freight is added to the customs value of the goods

[2] FOB - Free on Board - for FOB value, insurance and freight is not added to the customs value of the goods

CUSTOMS COMPLIANCE & RISK MANAGEMENT
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CLASSIFICATION, VALUATION AND ORIGIN

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

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

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

SITUATION

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

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

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

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

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

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

- If the Customs Laboratory determined that a specific product was subject to a specific CN code, entities in Lithuania have no other options than to follow the Customs Laboratory's 'recommended' path, as there are no other competent, impartial testing laboratories accredited to examine the specific goods in Lithuania.

IS IT POSSIBLE TO APPEAL AGAINST SUCH RECOMMENDATIONS?

In the opinion of the Customs Department, it was not possible. The Customs Department decided not to deal with the appeal of the Company because:

- The conclusion of the Customs Laboratory was advisory and not legally binding; hence, it had no legal ramifications for the Company. Furthermore, it is possible to rely on the findings of other competent authorities, also from other countries, which may invalidate the findings of the Customs Laboratory;
- Companies have the right to appeal decisions issued by customs authorities to the Customs Department, but not documents of an informative nature. Conclusions are only intermediate documents used to justify the other institutions' decisions.

The SACL resolved the dispute in favour of the Company, i.e., clarified that the conclusion of the Customs Laboratory could be appealed, and ordered the Customs Department to examine the appeal because:

- In accordance with its regulations, the Customs Laboratory shall provide recommendations on the tariff classification of goods to legal and natural persons; the content of such recommendation is in accordance with the form of the consultation established in Article 37 of the Law on Tax Administration of the Republic of Lithuania;
- As a result, the Customs Department, acting in accordance with its regulations, is in charge of a subordinate institution (the Customs Laboratory); therefore, it is required to accept and investigate the appeal. It did not follow the procedure for dealing with these types of appeals by neglecting to do so.

CONCLUDING REMARK

The SACL clarified that the conclusion of the Customs Laboratory regarding the tariff classification of goods has the features of an individual legal act; therefore, it can be appealed against. This is a reminder that even so-called recommendation documents (interpretations, guidelines, etc.) should be considered to have potential legal implications, which should be taken into account in both business and institutional decision-making.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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FILLING OUT THE CUSTOMS DECLARATION IN THE EU

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

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

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

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

LEGAL REGULATION

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

- Convention on the simplification of formalities in trade in goods.
- Council Decision (EU) 2021/1764 on the association of the overseas countries and territories with the European Union, including relations between the European Union and Greenland and the Kingdom of Denmark. Please find an overview of the decision in the article 'Overseas Countries and Territories: developments after Brexit', in CCRM Issue 11.
- Article 4 'Customs territory' of the Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013, laying down the Union Customs Code (**UCC**).
- Article 1 (11) and (35), definitions of a 'third country' and a 'special fiscal territory' of the Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015, supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.
- Appendix D1 'Codes to be used in the forms' to Annex 9 of the Commission Delegated Regulation (EU) 2016/341 of 17 December 2015, supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446.

- Articles 6 and 7 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.
- Articles 5 and 6 of the Council Directive 2008/118/EC of 16 December 2008, concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

GENERAL INFORMATION

The particulars in the first subdivision of SAD box 1 shall be common to all goods declared in the same SAD. The relevant codes from Appendix D1 'Codes to be used in the forms' to Annex 9 of the Commission Delegated Regulation (EU) 2016/341 shall be used.

Here is an example of the completed box:

USAGE OF THE CODE 'IM' - IMPORT

The 'IM' code is indicated when declaring goods **imported:**

- **from countries and territories outside the Union customs territory,** such as the USA, India, and Japan. Exception: cases where the EU or CO codes are required, which are described below;
- **from another EU member state**, where there is trade between member states and the goods are of the **non-Union status**. For example: a Swedish company imports goods from the USA and places them under the customs warehousing procedure in Sweden. The goods are sold to a Polish buyer and sent to Poland under the transit procedure. In Poland, the goods are released for free circulation, indicating the IM code in the first subdivision of SAD box 1.

When choosing an 'IM' code, it is important to understand that the EU territory is not quite the same as the Union customs territory. Monaco, for example, is not a part of the EU territory, but it is a part of the Union customs territory (see Article 4 of the UCC). Another example is that the following territories of the EU member states do not belong to the Union customs territory: the Faroe Islands, Greenland, the island of Heligoland, the territory of Büsingen, Ceuta and Melilla, the Italian municipality of Livigno, New Caledonia and Dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Saint Pierre and Miquelon, Saint-Barthélemy, Aruba, Netherlands Antilles: Bonaire, Curaçao, Saba, Sint Eustatius, and Sint Maarten.

The legislation also defines the codes of customs procedures to be used with the code 'IM'. These are the **release for free circulation, temporary admission, inward processing and customs warehousing procedures**. The procedure code in the first subdivision of SAD box 37 shall be chosen from columns H to J of the table in Section B of Title I of Appendix C1 'SAD explanatory notes' to Commission Delegated Regulation (EU) 2016/341:

- H - release for free circulation, codes 01, 07, 40, 42, 43, 45, 48, 49, 61, 63, 68;
- I - temporary admission for inward processing or temporary admission, codes 51, 53, 54;
- J - customs warehousing, code 71.

The code 'IM/c' shall be entered in the first subdivision of box 1 of the SAD continuation form.

USAGE OF THE CODE 'EX' - EXPORT

The 'EX' code is used in the same way as the 'IM' code, just for the export of goods:

when the goods are **brought out of the Union customs territory to countries or territories outside it**, such as Canada, Australia, and Brazil. The same exception applies when the 'EX' code is not used: in cases where the 'EU' or 'CO' codes are required;

when **non-Union goods are shipped in trade between the EU member states**. For example: a Greek company imports goods from Malaysia and places them under the customs warehousing procedure in Greece. The goods are sold to a Dutch customer and are shipped to the Netherlands under a transit procedure. In Greece the customs warehousing procedure is ended by lodging a re-export declaration, in which the code 'EX' is entered in the first subdivision of the SAD box 1.

The code to be entered in the first subdivision of the SAD box 37 shall be selected from columns A, E, C or D of the table in Section B of Title I of Appendix C1 to Commission Delegated Regulation (EU) 2016/341 (hereinafter referred to as **Columns**):

- A - **export/ dispatch**, codes 10, 11, 23;
- E - **outward processing**, codes 21, 22;
- C - **re-export** after temporary admission or inward processing, code 31;
- D - **re-export** after customs warehousing, code 31.

The code 'EX/c' shall be entered in the first subdivision of box 1 of the SAD continuation form.

USAGE OF THE CODE 'EU' - IMPORT AND EXPORT*

The EU and the countries of the European Free Trade Association (EFTA) have concluded the **Convention on the simplification of formalities in trade in goods**. This Convention provides for the completion of formalities for the export, transit and import of goods using the SAD in trade between the contracting parties. The parties have agreed that the code 'EU' should be used in the first subdivision of SAD box 1 in case of import and export.

To date, in addition to the EFTA countries (**Norway, Switzerland, Liechtenstein and Iceland), Turkey, Northern Macedonia, Serbia, the United Kingdom (GB), Andorra, and San Marino**, have joined the Convention.

The code to be entered in the first subdivision of the SAD box 37 shall be selected from the Columns: A, C, D, E, H, I, and J.

The code 'EU/c' shall be entered in the first subdivision of box 1 of the SAD continuation form.

USAGE OF THE CODE 'CO' - UNION STATUS GOODS

As regards the use of the code 'CO', the concept of a **special fiscal territory** is important. It is part of the Union customs territory where the provisions of the VAT Directive (Council Directive 2006/112/EC) or the Excise Directive (Council Directive 2008/118 /EC) do not apply. Such territories are:

- Mount Athos, in Greece;
- Spanish Canary Islands;
- Finnish Åland Islands;
- French territories: Guadeloupe, French Guiana; Martinique; Mayotte; Reunion; the Northern part of Saint-Martin that belongs to France;
- Campione d'Italia and the Italian waters of Lake Lugano.

Thus, in the case of trade between parts of the Union customs territory covered by those Directives and parts not covered by them, the customs declaration shall include the code 'CO'. For example, when the Union status goods are traded between Lithuania and the Canary Islands, or between the Canary Islands and the Åland Islands.

The code 'CO' shall also be provided:

- placing of goods under the **customs warehousing** procedure in order to obtain payment of **special export refunds** prior to exportation or manufacturing under customs supervision and under customs control prior to exportation and payment of export refunds;
- in respect of Union goods subject to **specific measures** during the transitional period following the **accession of new member states**.

The code 'CO/c' shall be entered in the first subdivision of box 1 of the SAD continuation form.

CONCLUDING REMARK

There are only four codes to be indicated in the first subdivision of SAD box 1. However, to choose the correct code, it is necessary to know:

- what is the customs status of goods;
- the customs territory of the Union (and which EU territories do not belong to it and which non-EU territories belong to it);
- the special fiscal territory;
- which countries have acceded to the Convention on the simplification of formalities in the trade of goods;
- that the correctly set declaration type code is the result of knowledge and due diligence.

*The code ‘EU’ is not used when the relevant electronic systems are put into operation in the EU member state, see Title II of Annex C ‘Formats and codes of the common data requirements for declarations, notifications and proof of the customs status of Union goods’ of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013.

CUSTOMS COMPLIANCE & RISK MANAGEMENT
JOURNAL FOR PRACTITIONERS IN EUROPE

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OVERVIEWS AND COMMENTS

Customs broker's profession: national peculiarities in the EU

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

STANDARDISATION

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

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

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

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

NATIONAL PECULARITIES IN EU MEMBER STATES

'In Bulgaria, the profession is not regulated' by Assoc Prof Dr Momchil Antov, D. A. Tsenov Academy of Economics

In 1998, in view of the forthcoming application of Bulgaria for a member state of the European Union, the customs legislation in the country was unified with that of the Community, and from January 1st, 1999, the customs representation was restored as an activity. Its implementation was allowed both through persons approved by the customs authorities (customs agents) and by authorising third parties involved in a particular foreign trade operation (freight forwarders, carriers, representatives of the consignee or consignor and other persons).

On January 1, 2007, Bulgaria became a full member of the European Union and began to directly apply the common customs legislation. The changes that have taken place since then in trade with the other EU member states have reduced the territorial scope and number of active customs representatives in the country. A significant part of the foreign trade turnover went beyond the scope of customs control, as a result of which the need for economic operators to contact the customs authorities regarding their international trade operations was eliminated.

At the beginning of 2013, the profession of 'customs representative' in Bulgaria was exempt from any regulations, and today we rely only on the market and competition to regulate who is doing well and who is not. The customs shall monitor only whether a power of attorney has been duly issued to the customs representative with all the rights and responsibilities arising therefrom. On the one hand, this approach is good because today, working as a customs representative in Bulgaria is relatively easy, as it is not necessary to go through an expensive and difficult examination of professional competencies or to pay license fees. On the other hand, the opening of the profession risks a decline in the level of professionalism of customs representatives and, last but not least, the lack of a guarantor from the customs administration that the interests of business will be defended in line with customs legislation.

The licensing of customs representatives means that there are restrictions on the choice of persons to assist economic operators in the customs clearance of goods traded by them. At least, in my opinion, the requirement to license customs representatives in some EU Member States is an obstacle to the submission of customs declarations by customs representatives established in another Member State where such a regime does not apply (for example, could I work as a customs broker in Lithuania, given that I am established in Bulgaria and there is no requirement to be licensed here?).

However, I agree that the establishment of customs brokers creates the preconditions for building secure relations between customs authorities and economic operators. Ensuring their professionalism by the customs administration or their national branch association leads to ensuring proper customs clearance, reducing customs clearance time and, last but not least, saving money on fines or correcting mistakes.

Although in Bulgaria, there is no legal requirement for the approval of customs brokers, **among the members of the National Organisation of Customs Agents (NOCA), there is a rule that every new employee must undergo specialised training**. Apart from that, NOCA annually organises various seminars and training for its members, aiming to maintain a high level of professionalism and ethical norms.

'In Lithuania, the profession is regulated' by Enrika Naujokė, Lithuanian Customs Practitioners Association

In June 2022, there were 518 registered customs broker's services providers in Lithuania. The registration is a must, as it is set out in the national Customs Law that to provide customs broker's services in Lithuania, a person established in Lithuania or in another EU member state:

- must comply with the requirements set out in Articles 39 (a) and (b) of the Union Customs Code (absence of any serious infringement and requirement of professional qualification) and
- must have an **identification number granted by customs**.

The rules on how to receive the identification number (fill out and submit the application, etc.) are set out in an Order of the General Director of Lithuanian Customs.

The same Order provides rules on how the **professional qualification of a natural person is approved** - an exam held by the Customs training centre must be passed. Usually, prior to going for the exam, the person takes a course (90+ academic hours), which programme is approved by Customs. There is **no requirement to renew qualification**. In case of **infringements**, which are set out in the Code of Administrative Offences, the qualification certificate might be annulled.

The restriction of the provision of customs broker services in Lithuania, compared with Bulgaria, might be seen as a burden; however, it is not an object of discussion in the Lithuanian customs brokers' community (the administrative penalties are, as they are an object of constant disputes, also solved in courts). Vast knowledge is required to handle customs clearance and to ensure customs compliance; preparations for the exam ensure that it is up to a set standard.

It should be noted that in the EU member states, like Lithuania, where the profession of customs representatives is regulated, customs representatives established in other EU member states may provide their services without being subject to regulation if they have the **AEO-C status**.

One more important point to be considered is the consequences of mistakes made by the customs representative. The financial losses can amount to tens and even hundreds of thousands of euros. In Lithuania, several years ago, it was a must for a customs representative as a service provider to **insure professional liability**. It is not a legal requirement today; however, many customs brokerage companies continue insuring their liability voluntarily. Companies with in-house customs departments do not have such a possibility.

The national association of customs practitioners, the Lithuanian Customs Practitioners Association, organises seminars and conferences, which bring customs practitioners from private and public sectors together to exchange their know-how and keep the knowledge up-to-date, and in line with the latest global, regional and national developments. The association is a member of the International Network of Customs Universities and the International Federation of Customs Brokers Associations. It is also expanding the international network based on memoranda of collaboration signed with other associations, currently with the European Business Association, Ukraine and the National Organization of Customs Agents, Bulgaria.

'New law in Greece' by Athanasios Pantazis, Pantazis & Associates customs services, Greece

The main piece of legislation regulating the Customs broker's business in Greece is law N.718, originally introduced and set into practice back in 1977. Main affairs of the business, communicated as solid parts of the law are:

- the definition of the customs broker's profession and the related customs services;
- the practice of the profession and the pertaining supervision;
- the competent persons (natural and legal) offering customs services after meeting certain criteria;
- the exams accompanied by credentials and qualifications;
- the customs brokers' registry set at the national and on a customs prefecture basis;
- the customs brokers' license provided by the Hellenic customs Directorate;
- obligations and liabilities raised towards the traders as principals and towards the Customs Administration;
- fines, bookkeeping of services and the Disciplinary board.

Throughout the years, the law was amended several times. Most effective amendments with wide impact appeared in the year of 1983, but also in 1989, 1993, 1996 and 2007. The update of the customs broker's law went through several phases and, in some cases, modernised the practice of the business and the overall 'landscape'. In 2007, for example, certain legal limitations and geographical barriers were finally lifted, allowing persons providing customs services to choose the type of legal form and perform activities anywhere in Greece.

Recently (2022), the Greek government has decided to no longer modernise the existing law N.718 and annul it with the presentation of a new law. A new preliminary draft law has been designed and submitted for public consultations by the Ministry of Finance. The draft law will go through voting in the Greek parliament already this summer to pass and establish itself as the new customs representatives' law.

The main characteristics of the draft law are the changes expected in the areas of: customs education, obligations against Customs authorities, customs representation (direct and indirect), a new structure of the Disciplinary board, and new lines of penalties and fines.

Opinion giving note.

We are living in 'liberal' times, where changes, are successive, and not only in the legislative framework. The reform of the national customs practitioners' law should not be an issue untouched or forbidden; on the contrary, it should align itself with the Pan European practice with relevant educational standards and background.

No doubt, more and wider yet specific customs educational programs are needed for the customs practitioners. Far more important is the continuous form of education with consistency in the continuous customs updates on a technical and economic level.

Being a customs professional for over 14 years now, I trust that the awaited national customs representatives' law will actually set the ground and means for the advancement in the career of a customs practitioner.

But, regardless of the pragmatic outcome, customs representatives, customs brokers or customs practitioners, however would someone phrase it, will remain the backbone of the supply chain, true partners in trade compliance, bridging the interests of traders with those of customs administrations and the society (the consumers of the goods).

CUSTOMS COMPLIANCE & RISK MANAGEMENT
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OVERVIEWS AND COMMENTS

Customs broker's profession: views and news

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

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

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

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

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

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

The rules governing customs agents are spelled out in the UK Taxation (Cross Border) Act of 2018, in particular, Section 21. This explains that the customs agent needs to have a written permission from the importer or exporter to act on their behalf. It also explains the options of hiring a direct or indirect representative and what the legal responsibilities and liabilities are.

In the UK, the big issue on all customs brokers mind is the new Customs Declaration System (CDS), replacing CHIEF.

Customs declarations must be submitted to HMRC's systems to import, export, or transit goods to and from the UK. Customs agents typically submit them. The current system, known as CHIEF, will be decommissioned on March 31, 2023 (with imports starting in autumn 2022). All businesses must then use the Customs Declaration Service (CDS) to declare goods for customs purposes.

Businesses, in my opinion, should learn about CDS and take training courses to understand the scope of the change and advise brokers on what to do. This can be difficult if you do not collect this data regularly. What will you do if critical data is not available by October 1st, as required by CDS? Effective instructions must be given, standard operating procedures (SOPs) must be documented, and Key Performance Indicators (KPIs) must be established to truly control your imports and exports. This is the for importers and exporters time to 'dive in' and learn everything there is to know about customs declarations and how to instruct brokers to submit them on time, correctly, and completely. Only then can you establish a global enterprise for long-term import and export growth.

VIEW FROM GERMANY: MICHAEL TOMUSCHEIT, MANAGING DIRECTOR OF AWB CONSULTING GMBH

The field of customs representation and customs consultancy in connection with customs clearance is determined by a number of market participants in Germany. In addition to the internationally active logistics service providers, which also offer their services in this area, there are nationally and internationally active customs agencies, which vary in size.

A regulation of the access to the profession or the market of customs representation in the sense of Art. 18(3) of the Union Customs Code (UCC) '*Member States may determine, in accordance with Union law, the conditions under which a customs representative may provide services in the Member State where he or she is established*' is not to be found in German law. There is no legal standardisation with regard to 'customs brokers' or 'customs agents'. Thus, the principles of Art. 18 'Customs representative' and Art. 19 'Empowerment' of the UCC apply, which is why it is only necessary to be empowered so that the customs representative - as a rule a legal entity - can effectively act in legal transactions.

The customs representative is authorised to perform all customs procedural acts - his scope is not limited to the submission of customs declarations and related active and passive acts: this also includes, for example, customs valuation and customs debt law, appeal procedures and refund and discharge procedures.

Restrictions addressing customs representatives from other EU Member States are not permissible provided they hold an AEO-C authorisation (Art. 18(3) of the UCC). Nevertheless, the AEO-C status has developed as a 'de facto' access requirement to the German customs brokerage market: given the high number of AEO authorisations held in Germany (approx. one third of the authorisations issued EU-wide), it is hardly conceivable that an AEO-certified company would cooperate with a non-certified customs representative.

The power of representation is in principle conclusively regulated by Art. 19 of the UCC, also for Germany. The granting of power of attorney is concretised by Section 166 of the German Civil Code. The granting of a power of attorney is not subject to any formal requirements, although the written form is recommended in any case for proof purposes. A statutory power of attorney exists for Deutsche Post AG, according to which it is authorised to represent the consignee under customs law for goods transported by it that are to be presented in accordance with the UCC within the framework of the submission of the customs declaration.

An interesting field of discussion exists in Germany in the context of customs consulting. While advisory activities by the customs broker in connection with customs representation (e.g., customs tariffing, customs valuation, etc.) are permitted by Art. 18 and Art. 19 of the UCC, there is also a corresponding supplementary regulation in Section 4(9) of the German Tax Advisory Act. The extent to which this provision allows a commercial customs broker, customs agent or customs advisor to provide advice beyond customs representation, or whether the Tax Advice Act is not even fully overridden by the UCC in this point, is disputed. The fact is that, with a few exceptions, tax consulting firms licensed in Germany do not provide advice on customs law, but regularly focus their activities on other types of tax. It would therefore be all the more important to establish the certified profession of customs agent or customs advisor in Germany in order to ensure comprehensive, high-quality advice in this special area.

VIEW FROM CANADA: PETER MITCHELL, THE OWNER OF MITCHELL TRADE CONSULTING LTD.

In Canada, customs brokers are licensed by the customs authority, the Canada Border Services Agency (CBSA), after passing a rigorous examination. For most purposes, any agent may represent a client to transact business with the CBSA or provide trade consulting services. However, only a licensed customs broker may account for goods and pay duties.

Excepting only the largest and most sophisticated, substantially all Canadian importers use licensed customs brokers to submit documents for release at the border and handle queries raised by the CBSA. In most cases, brokers also prepare and submit the entry document calculating duties and taxes. Brokers do not generally review the contract for purchase of goods, or any other documents not required for release and accounting. They are not paid enough to do that. This is weakness in the system. Many importers, lacking sufficient customs and trade knowledge, are unaware that brokers need the information contained in those documents to properly value, classify and determine the origin of imported goods. This leads to mistakes, which are sometimes costly.

Since May 2021, importers have been able to pay their duties and taxes directly to the CBSA through the CARM online portal, which has been under development for several years. By early 2023 all importers will be required to do this, leaving brokers out of the payment process for the first time. At that time, importers will also be able to submit their customs accounting entries directly to the CBSA through the portal. They may continue to delegate this task to customs brokers, which most will likely do. Through their CARM program, the CBSA is attempting to develop a more direct relationship with importers, akin to the one the Canada Revenue Agency has with taxpayers and GST (VAT) registrants. CARM does not affect the release process.

Approximately 70% of Canada's trade is with the United States. Most of that trade is under the USMCA, a free trade agreement which, together with its two predecessors, has been in effect since 1989. The Canadian trade community has watched with some interest since, a year and a half ago, the United Kingdom entered a similar arrangement with the European Union after being part of that customs union for decades. The major difference for Canada is that the United States is one sovereign nation, with a single customs authority (CPB) operating under the same rules and principles in all 50 states. The UK confronts a European Union consisting of 27 sovereign nations, each with its own customs authority having its own rules, including for the licensing (or not) of customs brokers.

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OVERVIEWS AND COMMENTS

Customs strategies at the heart of international business development

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

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

E-COMMERCE DEVELOPMENTS CHANGE CUSTOMS

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

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

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

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

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

LOGISTICS OPERATORS CHANGE THEIR PROCESSES

Therefore, the convergence of all those regulations has obliged logistic operators to rethink their processes and their

IT architecture. Those sets of regulations implemented in 2021 have implied huge changes for logistic operators.

Three aspects of the evolution have to be taken into account:

- the first one is the capability for all operators worldwide to extend the usage of electronic messages for customs declarations purposes. In the past, for example, only 5% of customs declarations were digitalised in the postal stream. Since July 2021, 100% of those declarations have to be electronically declared, this has implied financial impact, IT systems changes such as implementation of Optical Character Recognition (OCR), Artificial Intelligence (AI) technology, etc.;
- the second impact is that posts will have to make sure that data are in sufficient quality. If messages are exchanged with a bad quality level, this is as if there had been no messages at all;
- the third impact is that operators wanted to avoid hampering the mail flow because of lacking data or because of bad quality data and to keep as much as possible a smooth process from end to end for the customer.

A non-compliance to those requirements could have led your organisation to deal with three types of risks:

- financial,
- operational and
- the public image.

THE REASONS FOR CONTINUING CHANGE

Therefore, the year 2021 has been a major breakdown in the customs practices in the EU and the legislation will be constantly changing over the next years for many reasons:

- data provisions and data quality will become the new hobbyhorse for customs authorities;
- more significant facilitations will be granted to companies who have the AEO status for e-commerce flows;
- specific regulations such as prohibitions and restrictions and embargos will create more complex processes and procedures to comply with;
- the carbon footprint and anti-counterfeiting regulations in the importation schemes will become a growing criteria of the customs declarations.

THE MAJOR ROLE OF CUSTOMS EXPERTS IN THE SUCCESS STORIES

The customs experts have played a major role in the success story of the implementation of those rules. Several factors can explain this involvement. They have:

- disseminated the customs regulations among the business units by making it as simple as possible in order to let people get the real sense of the actions they undertake;
- created a bridge between the IT, the operational and the business teams to figure out the best technical solutions at the minimum costs;
- consistently proposed new corporate strategies adapted to the new constraints;
- kept the discussions alive with the national authorities to defend their business;
- consolidated their networks of international partners to get the best advice to tackle a bad situation or to find out a quick win solution.

That is the reason why customs experts are very engaged to implement new strategies and switch those constraints into opportunities by:

- foreseeing the e-commerce and cross border issues by understanding the new trends of e-consumers and e-sellers;

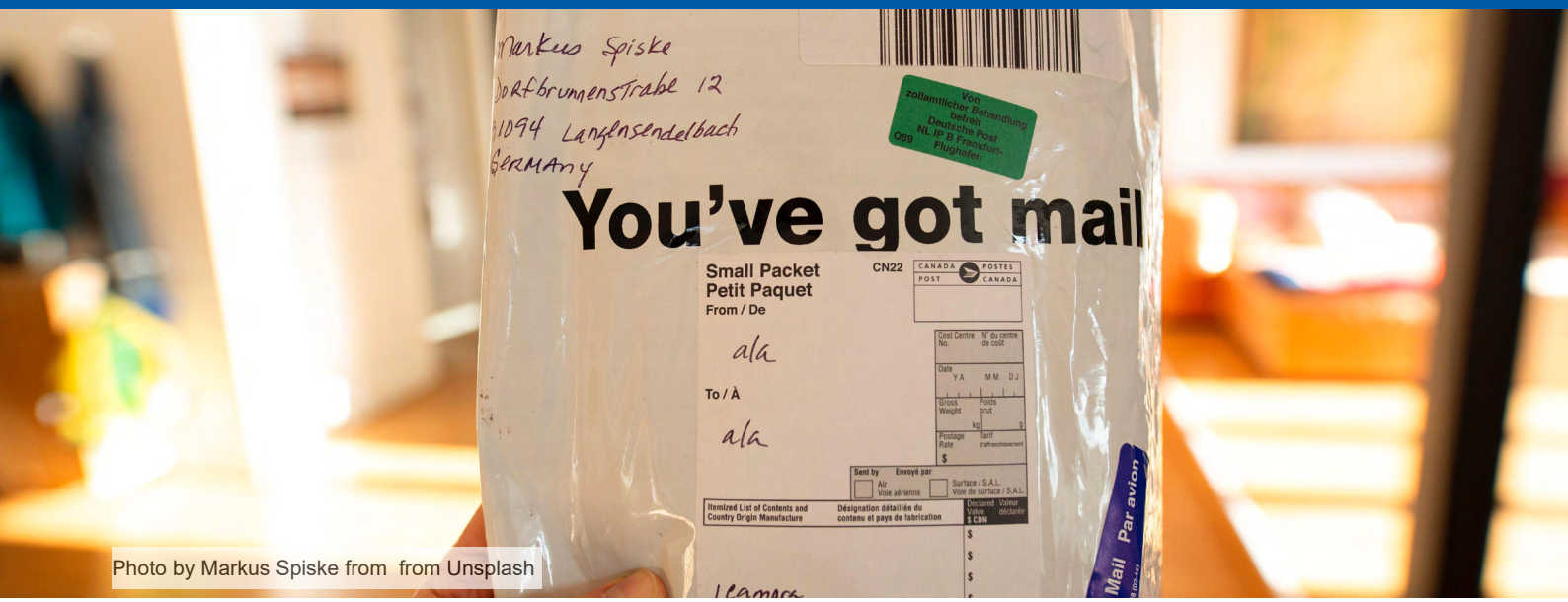

Photo by Markus Spiske from from Unsplash

- understanding new schemes of importation (fulfilment centres by major marketplaces, etc.);
- having closer relationships with the different supply chain stakeholders;
- promoting the usage of new technologies such as Blockchain or Artificial Intelligence to figure out alternative ways to comply with the regulation and to accelerate the delivering to the consumer;
- qualifying their companies into certified status process (regulated agents, AEO, etc.).

In conclusion, the customs topic has become a very strategic topic within organisations thanks to the recent entry into force of a couple of customs regulations.

CONCLUDING THOUGHTS ON THE SKILLS REQUIRED

People who could be interested in joining the big family of the customs topic, need to get a good knowledge of the customs regulations. But this is not all. They need to acquire and develop additional skills such as:

- capacity to populate and disseminate experts' discussions into basic concepts;
- open-minded approach to understand that your organisation will have to deal with different areas of constraints: regulatory but also financial and economical; therefore, you shall have the capacity to take into account all those aspects in your approach;
- last, sometimes discussions with customs authorities need to adopt a consensual approach of your business, but the most important is to keep the discussions as smooth as possible with your national authorities.

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JOURNAL FOR PRACTITIONERS IN EUROPE

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OVERVIEWS AND COMMENTS

New on Access2Markets: export bans imposed by Russia and Belarus

EU import - export database

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

ABOUT ACCESS2MARKETS DATABASE

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

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

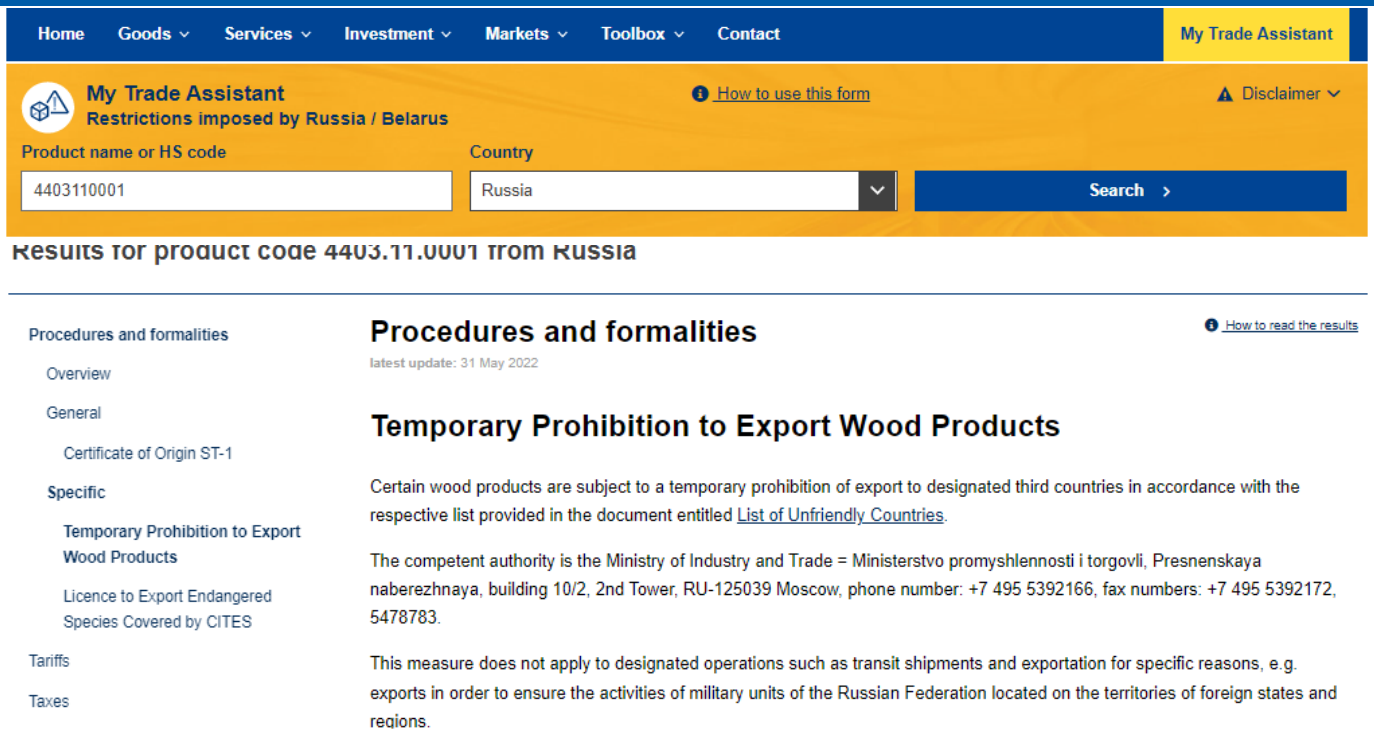
NEW FEATURE: RESTRICTIONS IMPOSED BY RUSSIA/ BELARUS

Temporary prohibition to export wood products from Russia

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

You can find this information by entering the commodity code you would like to import into the EU, e.g., 4403110001 (this is the code used in Russia for export), and by selecting Russia as the exporting country in the 'Restrictions imposed by Russia/ Belarus' section on Access2Markets, see the pictures below.

It is worth noting that all the information should be carefully read while paying close attention to the notes. For example, check the 'Tariffs' section of this commodity code and you will find that a 25% export tariff rate applies. In



addition, there is a note that the exportation of goods of this subheading is restricted by an annual quota. The current quota is 0 t, which means that exportation is not possible. So, if there was no export ban on wood products, but the quota would be 0 t, the result would be the same – a ban on exportation.

Temporary prohibition to export grain

One more example of an export ban imposed by Russia could be grain, e.g., commodity code 11022010. It is important to note that though the ban has the general term 'grain' in the title, not all grain exports are banned – the prohibition applies only to this specific commodity code (see the note in the picture below).

FINAL REMARKS

Note that at the time you check the information in the section 'Restrictions imposed by Russia/ Belarus', there might be new restrictions imposed that are not yet included, as it takes time to upload the information. Therefore, as mentioned at the beginning, use the database as the starting point/ initial guidance. Search results should be verified, and the risk of restrictions and prohibitions should be managed by respective provisions in the sales-purchase contracts.

What database could be used to check whether the importation of a product from Russia or Belarus into the EU is not restricted or prohibited? The EU TARIC database. European Commission informs (see FAQ as of 24.5.2022, page 1, question 3) that the TARIC has been updated in order to include all targeted goods.

[1]The examples were provided during a training by the European Commission's DG Trade, see information about the events.

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OVERVIEWS AND COMMENTS

Four common misconceptions in the relationship between importers and customs brokers

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

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

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

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

1. CUSTOMS VALUE IS THE PRICE INDICATED IN THE INVOICE

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

For example, if a customs invoice states that the price includes the installation of a machine on-site in Canada, the broker will ask for the information necessary to deduct the installation costs in determining the value. However, if the invoice simply describes the machine, the broker will assume the price includes delivery only, unless the importer advises him/her otherwise. Therefore, it is the importer's responsibility to be aware of the terms of the purchase contract, and that the installation portion of the price may be deducted, i.e., duties might be saved.

In Canada, each adjustment is set out in subsection 48(5) of the Customs Act and described in summary in the Canada Border Services Agency's (CBSA) Memorandum D13-4-7. The following items are deducted from the price payable if they are included in it; i.e., they are incurred by the seller:

- transportation charges, expenses and insurance from the place within the country of export from which the goods are shipped directly to Canada (D13-3-3);
- costs for construction, erection and assembly after importation into Canada (D13-3-11);
- duties and taxes payable because of the importation or sale in Canada of the goods; and
- export packing required by the transportation company (D13-3-3).

2. GOODS ORIGINATE IN THE COUNTRY FROM WHICH THEY ARE SHIPPED

This is not true. A pair of football boots manufactured in Indonesia, stored in a warehouse in the United States and subsequently sold to a customer in Canada, remains of Indonesian non-preferential origin. This may or may not be clear on the customs invoice provided by the American exporter.

The individual managing customs at an importer should know the basic principles of origin. Every good that crosses a border anywhere on earth has an economic nationality known as its 'non-preferential origin'. This is generally the country where the good was manufactured. However, a good must be 'substantially transformed' by the manufacturing process for origin to be conferred. Each country interprets this principle in a slightly different way and not all forms of manufacturing meet this test.

The United States Customs and Border Protection (CBP) agency states that 'substantial transformation means that the good underwent a fundamental change (normally as a result of processing or manufacturing in the country claiming origin) in form, appearance, nature, or character, which adds to its value an amount or percentage that is significant in comparison to the value which the good (or its components or materials) had when exported from the country in which it was first made or grown'. In October 2018, the Law Offices of George R. Tuttle published an excellent article summarising the United Sates jurisprudence on the subject of substantial transformation. The article will be useful to anyone struggling with which side of the line their product falls.

In its March 2022 publication Guidance on Non-Preferential Rules of Origin, the European Union states that substantial transformation occurs 'where goods underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture'.

3. A CERTIFICATE OF ORIGIN IN IMPORTER'S POSSESSION IS A GUARANTEE THAT THE GOODS QUALIFY FOR PREFERENTIAL TREATMENT

The rules of origin that confer preferential tariff treatment under a free trade agreement are not based on the principle of substantial transformation. Rather, they are product specific according to their tariff classification, and often quite detailed. While the details of origin rules are different for each free trade agreement, the general framework is similar for all - learn more.

A common misconception among importers is that receipt of a certification of origin under a free trade agreement from the producer or exporter guarantees that the goods qualify for preferential (often duty-free) treatment. This is not the case. If the producer has not done the work necessary to substantiate that the goods qualify under the rules of origin, or mistakenly concluded that they do, the importer is the person who is assessed for any duties, interest and penalties owing. Post-clearance verification of the preferential origin of goods is discussed in this article.

4. TARIFF CLASSIFICATION IS SIMPLE AND CAN BE HANDLED BY THE BROKER FROM A BASIC DESCRIPTION OF THE GOODS

Tariff classification is the area where study and legwork by the importer may pay the most dividends. While it often is straightforward, it can be complex, requiring analysis and complete knowledge of the goods.

Most brokers are experienced at classification. However, they cannot know your goods as well as you do. They cannot walk out to the warehouse to look for them, and they do not have access to the people that use them or to the product literature.

Studies by customs authorities worldwide have generally found that a quarter to a third of imported goods are misclassified. These errors, generally caused by poor communication within an organisation or between the importer and broker, often result in costly assessments or overpayments of duties and taxes.

FINAL ADVICE TO IMPORTERS AND THEIR CUSTOMS MANAGERS

The person managing customs at a small or medium-sized organisation should be the primary, and preferably only, contact with the customs broker. That manager would coordinate input from others in the organisation to ensure that the broker has the information to properly carry out his/her primary tasks, i.e., preparing complete and accurate customs entry documents and having the goods promptly released at the border.

The customs manager should report to a senior executive, likely the vice-president finance or controller, who is interested in ensuring that customs and trade issues are properly addressed in the organisation.

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COUNTRY-SPECIFIC

Ukraine customs-related news: June/July 2022

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

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

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

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

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

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

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

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

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

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

AUSTRALIA: ABOLITION OF IMPORT DUTIES FOR UKRAINIAN GOODS

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

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

UKRAINE RECEIVED CANDIDACY FOR EU MEMBERSHIP

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

'VISA-FREE TRANSPORT REGIME' WITH THE EU

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

GRAIN EXPORTS

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

EXPORT PROHIBITIONS

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

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

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

RESUMPTION OF IMPORT TAXES

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

EU SUSPEND IMPORT DUTIES ON UKRAINIAN GOODS

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

The trade-liberalisation measures take the following form:

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

The suspension will last until 5th June 2023.

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

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

POLAND: UKRAINE AND POLAND SIGNED A MEMORANDUM ON TRADE FACILITATION

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

ADMINISTRATIVE RESPONSIBILITY FOR INFRINGEMENTS OF CUSTOMS FORMALITIES

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

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

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KNOWLEDGE

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

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Bogomila Kadieva
Neirin Remzi
Isabella Alenina
Todor Doychev

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About the academy

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

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

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

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

CUSTOMS KEEPING PACE WITH GLOBALISATION

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

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

keep pace with globalisation.

CUSTOMS ASSOCIATIONS

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

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

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

HOW CUSTOMS WORK TODAY

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

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

Customs main responsibilities can be summarised as follows:

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

- ensure the control and protection of EU external borders.

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

WHAT SHOULD BE THE EUROPEAN CUSTOMS TOMORROW

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

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

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

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

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

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

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KNOWLEDGE

Insights from judgements of the courts

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

ISSUE OF PROCEDURAL FAIRNESS

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

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

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

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

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

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

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

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

FORCED LABOUR PROTECTION; CLASSIFICATION AND VARIOUS EXPORT CONTROL MEASURES

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

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

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

ROYALTY FEE AND CUSTOMS VALUATION

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

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

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

of sale for those goods.

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

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

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

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

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

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

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

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

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

SPECIFIC CIRCUMSTANCES (LOW CONTRACTUAL PRICE) AND CUSTOMS VALUE

Monika Bielskienė, Attorney at Law, PwC Lietuva, Lithuania

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

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

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

LIABILITY OF A CUSTOMS REPRESENTATIVE

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

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

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

COMMON DISPUTES INVOLVING CUSTOMS AUTHORITIES IN UKRAINE

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

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

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

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

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

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

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

Omer Wagner, Advocate, Indirect taxation, PwC Israel

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

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

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

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

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