

CCRM ISSUE 20

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CCRM ISSUE 20 ONLINE

CUSTOMS COMPLIANCE & RISK MANAGEMENT

JOURNAL FOR PRACTITIONERS IN EUROPE

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Editorial

Dear Readers,

Without a doubt, the main news of May was the unveiling of a large-scale customs reform in the EU. The European Commission describes it as the most ambitious and comprehensive reform of the EU Customs Union since its establishment in 1968. The far-reaching plans, which are expected to be implemented in 2038, will continue to be discussed by practitioners, academics and interested parties for a long time to come. I am confident that the CCRM journal will contain many articles on this topic, with analysis, forecasts and other insights. I am pleased to draw your attention that one of the “fathers” of the UCC, Michael Lux, has already made a start with his article "The Reform of the UCC". In it, you will find a description of the changes he considers most important and a first assessment.

Another major topic covered in this issue is the Carbon Border Adjustment Mechanism set out in a recently published regulation. In the article “CBAM reports and declarations for imported goods: Who, what, when?” by Enrika Naujokė, you can find answers to these questions and learn what will change from October 2023 and beyond.

The multifaceted subject of customs compliance does not go unnoticed by our authors. Dr Michael Jung looks at the challenges of customs compliance management, as well as a new approach to it through the use of the INCASE model. The article by Prof Dr Andrew Grainger highlights the role of the key players in customs compliance - customs managers.

Directly related to customs compliance, the topic of customs knowledge management is always relevant and inexhaustible. You can never have too much knowledge, it is never too late to learn - these are simple truths that everyone has known since childhood. In a dynamic environment, with frequent changes in legislation, this topic is particularly acute. Best practices, tips and tricks for managing customs knowledge can be found in the review of the 15th Authors' Meeting.

Another topic that has remained at the top of our recent issues is export control. The Russian-Ukrainian war has intensified the cross-border movement of military and dual-use goods, bringing with it new challenges and old problems. In this context, I would like to draw your attention to the articles by Armin Belle and Christelle Dubouchet.

More than three years after Brexit, the legal processes associated with it are still ongoing. The Windsor Framework, which was designed to address the problems associated with the application of the Northern Ireland Protocol, is a testament to this. The articles by Michael Lux and Dr David Savage outline the key aspects of the Windsor Framework in relation to trade in goods between Great Britain and Northern Ireland and provide a detailed overview of the background, drivers and key points of the agreement.

The case law section traditionally deals with classification and origin issues. In this section you can find out whether car seat covers and bag nets are parts or accessories, what pitfalls to avoid classifying unassembled goods and the limits of binding origin information in Union customs law.

Another important topic in this issue is information technology in customs. It is covered in articles dealing with issues related to the creation and functioning of an EU digital customs environment and tips for businesses on choosing the right customs software.

Ira Reese's article describes how the United States prevents the entry of goods obtained with the forced labour in China and the challenges importers face.

A country-specific section is presented with insights from Ukraine and Bulgaria.

I sincerely hope you enjoy this CCRM issue. If you have any questions about our journal, including how to contribute an article, please contact us at info@customsclear.net

Best regards,

Dr Ilona Mishchenko,

Member of Editorial Board

Enrika Naujoke, Member of the international Editorial Board of CCRM journal, Lithuania: Dr Ilona Mishchenko is living and working in Odesa, Ukraine. We send her our thanks and support. In the night from 9 to 10.6.2023, three people died in Odesa due to explosions caused by drone attacks. People in Odesa are also witnessing the tragedy after the Kakhovka hydroelectric power plant was blown up on 6.6.2023: objects from the Kherson region (refrigerators, sofas, roofs, etc.) are washed up on the coast of Odesa, a dog was rescued after spending several days at sea.

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Michael Lux

Attorney-at-law, Michael Lux BVBA

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EU LAW

The Reform of the UCC

Ambitious and far-reaching customs reform proposals by the EU Commission

The EU Commission has presented a proposal for the reform of the Union Customs Code (as well as amendments of several other legal acts). In view of the largely failed centralisation (and thus standardisation) of customs activities and – apart from ICS2 – IT systems, as well as a lack of harmonisation of customs sanctions, the proposals for an EU Customs Data Hub, an EU Customs Authority, the shift to the (deemed) importer as the person responsible for duties and all compliance aspects, as well as a partial harmonisation of customs sanctions are bold steps with regard to which the business community suffering from unequal treatment within the EU Customs Union and Single Market can only wish the EU Commission success in the Council and the Parliament.

INTRODUCTION

On 17.5.2023, the EU Commission presented its long-awaited proposal for a reform of the Union Customs Code in the document COM(2023) 258, which is based in particular on recommendations of the Wise Persons Group ([CCRM Issue 14](#)). At the same time, the EU Commission has presented proposals to amend the Regulation setting up a Community system of reliefs from customs duty and the Regulation on the tariff and statistical nomenclature and on the Common Customs Tariff with the aim of elimination of the customs duty relief threshold for small commercial consignments up to a value of EUR 150 and introducing instead a system of flat rate duties for the goods concerned (COM(2023) 259); the e-commerce platform handling the B2C sale shall be the (deemed) importer and pay the duties as debtor. In addition, the VAT Directive is to be amended in the sense that the Import One-Stop Shop (IOSS) can be used also for goods of a value beyond the current threshold of EUR 150 (COM(2023) 262). As required for far-reaching proposals, the EU Commission has also prepared an impact assessment (SWD(2023) 140).

Given the volume of these documents, it is not possible to present all the proposed changes and the reasons for them in a single CCRM article. Instead, the author attempts to describe the changes he considers particularly important and to give a first assessment. He will concentrate on the rules and IT systems envisaged to be applied after the end of the proposed transition period (2038), so that the reader will understand that these proposals do not merely aim at a further gradual reform of the Customs Code, but that these proposals would raise the Customs Union to a higher level, if they are actually adopted by the Council and the Parliament.

The associated transfer of certain tasks or competences to the EU and the associated abolition of national systems

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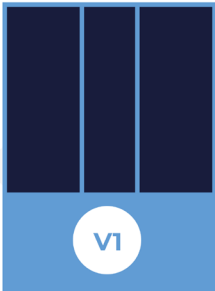
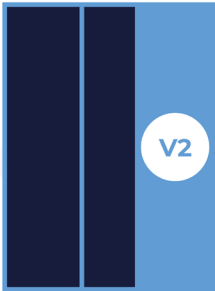

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Michael Lux

Attorney-at-law, Michael Lux BVBA

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EU-UK TRADE

Changes to trade in goods between Northern Ireland and Great Britain as a result of the Windsor Framework

The article was originally published (online) on 9 May 2023. The author has updated it following the adoption of [Commission Delegated Regulation \(EU\) 2023/1128 amending the UCC DA](#), see under the subtitle "Adjustments made to the UCC".

On 24 March 2023, the EU and the United Kingdom (UK) agreed to settle their dispute over the Northern Ireland Protocol, in particular by responding to some of the UK's requests to facilitate trade between Great Britain – GB (England, Wales, Scotland) on the one hand and Northern Ireland on the other (so-called East-West trade) and by accommodating the UK on some other issues. The relevant legal acts, recommendations and declarations were published in Official Journal No. L 102 of 17 April 2023. CCRM Journal for Practitioners in Europe has therefore asked Michael Lux, who advised the Government of Northern Ireland on the interpretation of the original version of the Northern Ireland Protocol, to outline the main aspects of the Windsor Framework with regard to trade in goods between Great Britain and Northern Ireland.

THE STARTING POINT OF THE CONFLICT

The starting point of the conflict was and is the demand, on the one hand, not to erect – as a consequence of the Withdrawal Agreement between the UK and the EU – a border between Ireland and Northern Ireland (NI) despite the Brexit, and, on the other hand, to allow, from the UK Government's point of view, unfettered access for trade between GB and NI.

As a result of this hardly resolvable conflict of objectives, the NI Protocol lays down contradictory provisions according to which, on the one hand, NI is *de facto* part of the customs territory and the internal market of the Union due to the obligation to apply Union customs law and other internal market regulations, while, on the other hand, further provisions specify that NI is part of the customs territory and internal market of the UK.

As a consequence of the obligation to apply Union customs and internal market law, the EU insisted that EU rules on imports (customs declarations, conformity checks, etc.) be applied to goods brought into NI from GB which, by its very nature, created obstacles to East-West trade insofar as the UK authorities actually applied these rules (which was only partially the case, and this lack of compliance was unacceptable from the EU's point of view). In the opposite direction – i.e., for the movement of goods from NI to GB – the NI Protocol also provides for administrative formalities

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Dr David Savage

Member of the Editorial Board, Customs Compliance & Risk Management journal

[About the author](#)

EU-UK TRADE

Brexit Diary – the Journey to Windsor

The Windsor Framework possibly places Northern Ireland in a very enviable position. Importers and exporters from Northern Ireland uniquely have free access to both the UK and EU markets – which should surely attract considerable foreign investment and transform it into a prosperous trading hub. How did the journey to Windsor go?

RECAP FROM BREXIT

Back during the Brexit referendum campaign in 2016, not much attention was given to how Northern Ireland would fare if the United Kingdom exited the EU. Rather, much of the focus was on issues such as migration to the UK and how that could be controlled.

In July 2016, the UK voted to leave the EU. In the post Brexit negotiations, the status of Northern Ireland became a major point of contention.

To recap: Northern Ireland endured a 30-year conflict period which was brought to an end in 1998 by the Belfast/ Good Friday Agreement (GFA). Often framed as a sectarian (Catholic/ Protestant) issue, in truth, this conflict was mainly about the constitutional position of Northern Ireland. Nationalists/ Republicans wanted unification with the rest of Ireland while Unionists/ Loyalists wanted to remain in the United Kingdom.

In short, the GFA essentially dismantled the border on the island of Ireland. It recognised the right for citizens of Northern Ireland to consider themselves Irish, British or both or simply Northern Irish. It paved the way for a very successful peace process. It also provided for a parliament, devolved from Westminster, where power must be shared between parties from both sides of the divide.

Brexit now threatened the delicate equilibrium of this agreement. As part of the UK, Northern Ireland would be leaving the EU. It was feared that this would reinstate a border with all of its associated infrastructure between Northern Ireland and the Republic, something that all sides in the negotiation said should be avoided for fear of provoking extreme Republican elements.

Eventually, both sides agreed upon the Withdrawal Agreement which included the Northern Ireland protocol. Essentially, this said that Northern Ireland, though British customs territory, would operate within the EU Customs Union and Single Market. That meant that goods being traded between Great Britain and Northern Ireland would be subject to checks upon arrival in Belfast - to protect the integrity of the EU's single market.

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Enrika Naujokė

CEO, CustomsClear, Lithuania

[About the author](#)

OVERVIEWS AND COMMENTS

CBAM reports and declarations for imported goods: Who, what, when?

To reduce carbon emissions in the EU and globally, the EU has put in place a legal framework - the Carbon Border Adjustment Mechanism (**CBAM**), set out in a recently published regulation. The CBAM will apply to imports of certain goods such as fertilisers, screws, wires, hydrogen, etc., the range of which will be expanded. The obligation for importers of these goods or their indirect customs representatives to submit quarterly CBAM reports comes into force already this year.

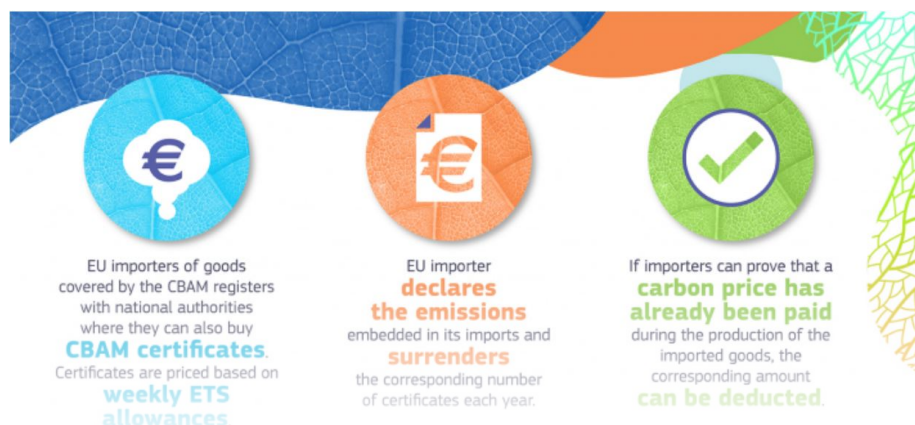
CONTEXT: EU PLANS AND ACTIONS TO COMBAT CLIMATE CHANGE

EU's goal by 2050, as it is set out in the EU's Green Deal, is to reach climate neutrality ensuring:

- no net emissions of greenhouse gases and
- economic growth decoupled from resource use (e.g. by switching to [circular economy](#)).

By 2030 (only 6 years to go!), an important milestone should be reached - net greenhouse gases emissions reduced by at least 55%, compared to 1990 levels. Furthermore, it's not only about the EU. The impact of EU's actions must be truly global, as climate change is.

One of the important tools to reach these EU and global goals is the EU's Carbon Border Adjustment Mechanism (CBAM, see [Regulation \(EU\) 2023/956](#) of 10 May 2023). CBAM puts a fair price on the carbon emitted by the production of carbon-intensive goods entering the EU, thereby promoting cleaner industrial production in non-EU countries. The picture below shows how this will work from 2026, after a transition period.



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SUSTAINABILITY

The issue with using supply chain information to control product flow from the forced labor area of China

THE IMPORTER IN THE UNITED STATES MUST PROVE A NEGATIVE

With many countries following its lead the United States has vigorously pursued a policy to prevent the entry of goods into the United States that are either produced in or having any part originating from the Uyghur Autonomous Region of the People's Republic of China. The policy of Customs Officials in the United States is to prevent entry into the country "goods, wares, articles and merchandise that is mined, produced or manufactured in whole or in part in the Xianjiang Autonomous Region of the People's Republic of China (PRC)." Most people that work in the worldwide import/export industry are familiar with the Rules of Origin and with terms such as "substantial transformation" and "double substantial transformation". However, the concept put forth to prevent importation of Uyghur goods is totally alien to the community in that an importer who is the focus of an allegation must prove that no part of his importation(s) has either originated or been furthered in value in the Uyghur Region. In other words, the importer must prove a negative.

Customs Services are basically urging that all importers of products from China "tighten up" their supply chains and be able to trace the supply chain for their products from the source materials to the final product. For instance, United States Customs and Border Protection's "Operational Guidance for Importers" requires that the importer provide "documentation from raw materials to imported good" should the importer be the subject of an allegation. This will allow the importer to respond to an allegation that it has violated the Forced Labor Laws and a Withhold Release Order (WRO) has been issued against its product(s). The importer will be able to respond to the WRO by either proving that his product has no originating segments from the Uyghur Area by either substantiating its supply chain or by physical and chemical testing of the product.

THE ISSUE WITH SUPPLY CHAIN TRACEABILITY

Supply chain traceability is incredibly difficult with regards to all forms of synthetic products exported from China. While substantial transformation that takes place in China can be readily established, tracing a synthetic product from its finished product back to its basic source is incredibly difficult. Adding to this difficulty is the fact that the production of a product made from several different synthetic materials will have multiple supply chains that must be traced back to its originating organic molecules. These include all forms of synthetic plastics materials including polyvinyl chloride (PVC), epoxies, polyesters, etc. that would go into making the final products such as plastic materials and objects, paints, synthetic fibers, etc. The reason for this difficulty is that originating chemical compounds of these synthetic materials are usually transported using gas or petroleum pipelines and stored in petroleum product tank farms or gas storage facilities. Since it is estimated that 20% of China's hydrocarbon raw materials originate in the Uyghur Region and is transported using these pathways it can be assumed that these raw materials end up in a significant number of products exported from China. As an example, the basic compound used to produce the vinyl chloride monomer that is used to produce the PVC that is used to make a beach ball almost certainly originated from a natural gas pipeline.

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Jonas Sakalauskas

Partner, Attorney-at-law, Law firm "Averus"

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CASE LAW - CJEU

Harley-Davidson case highlights limits of binding origin information in Union customs law

In the European Union customs law, it is possible for an economic operator to obtain binding tariff or origin information decisions, which provide assurance about the tariff classification or origin of goods. However, does such a customs decision always guarantee legal security just because national customs has issued a favorable decision to the trader?

In the [case T-324/21](#), the European General Court (General Court) issued a decision on March 1, 2023, rejecting Harley-Davidson's complaint about the European Commission's (Commission) decision to revoke binding origin information (BOI) decisions issued by the Belgian customs.

The Union Customs Code (UCC) provides for rules on the determination of the origin of goods in three categories: rules relating to non-preferential origin of goods, rules relating to preferential origin of goods, and rules based on which the origin of specific goods is determined.

The rules for determining non-preferential origin are primarily used by applying the Common Customs Tariff, as well as Union measures relating to tariff or non-tariff regulatory measures relating to the origin of goods imported into the Union. Trade policy measures such as anti-dumping duties, tariff quotas, and others are determined and implemented based on the country of origin.

In June 2018, the United States imposed additional duties on imports of Union-origin steel and aluminum products, aiming to promote and increase the domestic production of these products.

In response to the imposition of tariffs, the Commission adopted Regulation 2018/886 on June 20, 2018, which provides for the application of additional duties on certain products imported from the United States, including certain groups of motorcycles.

Harley-Davidson, a US-based company specializing in motorcycle manufacturing, sought guarantees regarding the origin of motorcycles produced by its factory in Thailand intended for the Union market, thereby ensuring that additional duties applied to US-origin motorcycles would not apply to motorcycles imported into the Union. The Belgian customs issued favorable BOI decisions to Harley-Davidson.

However, after doubts arose that the processing operations carried out by Harley-Davidson in Thailand were not economically justified and were intended to avoid the imposition of additional duties on US-origin motorcycles, the Commission's decision No. 2021/563 required the Belgian customs to revoke the two BOI decisions issued to Harley-

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Erika Naujokė

CEO, CustomsClear, Lithuania

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CASE LAW - CJEU

Case of classification of unassembled goods OR How to save €389 973?

An unassembled good must be classified as a complete good. For example, if you import disassembled bicycles, you still have to declare them as bicycles and pay the import duties due on the bicycles. But maybe you could be smarter and save the import duties by declaring half of the bicycles' parts in your name and the other half in a friend's name? In addition, perhaps it would help to place the parts under different customs procedures before releasing them for free circulation?

Let's see what we can learn from the judgment of the Court of Justice of the European Union (CJEU) of 27 April 2023 in case [C-107/22](#) in proceedings between X BV and the Inspecteur van de Belastingdienst/Douane district Rotterdam on the tariff classification of components of satellite receivers.

LEGAL BASIS: GENERAL RULE 2(A)

When classifying goods, we are primarily guided by the six general rules for the interpretation of the Combined Nomenclature (Rules). In the case of an unassembled good, Rule 2(a) must be applied:

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Ingrida Kemežienė

Project manager, PwC Lithuania

[About the author](#)

CASE LAW - CJEU

Car seat protector and pocket net: parts or accessories?

Can the net for making pockets in the rear part of seats and the protection for the inside of seats be classified under subheading 9401 90 80 of the Combined Nomenclature (CN) as parts of seats? The "value" of the answer to the importer is EUR 300 000! The Court of Justice of the European Union has provided clarification on this point.

On 09/03/2023, the Court of Justice of the European Union (CJEU) handed down another* ruling this year in a case concerning the tariff classification of goods. The CJEU dealt with case [C-725/21](#), in which it clarified whether net for making pockets in the rear part of seats and the protection for the inside of seats could be classified under subheading 9401 90 80 (seats and parts thereof) of the Combined Nomenclature (CN).

FACTUAL SITUATION

SOMEO S.A. (the Company) imported the goods 'net for making pockets in the rear part of seats – Bend and net' (**'net for making pockets'**) and 'seat protector – Skirt assy' (**'seat protector'**) under CN subheading CN 9401 90 80 in the years 2015 to 2017, declaring the goods as parts of car seats.

Following an examination of the declarations in question, the tax authority of first instance took the view that those goods should not be classified under subheading 9401 90 80 of the CN and ordered the Company to pay EUR 298 810.52 in customs duties on those goods, together with default interest. According to that authority those products could not be regarded as parts of seats for motor vehicles and should be classified as accessories:

- the 'net for making pockets' should be classified under subheading 6307 90 10 of the CN, which relates to other knitted or crocheted articles, and
- the 'seat protector' should be classified under subheading 3926 90 97 of the CN, which relates to other articles of plastics.

The company disagreed with this conclusion and lodged a complaint with the Slovenian Ministry of Finance, as the tax authority of second instance, which rejected the company's complaint as unfounded. It noted that CN heading 9401, which covers parts of seats, does not apply to accessories such as the products in question. In its view:

- first, the seat protector does not constitute a support without which a seat could not fulfil its essential and principal function and,

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Dr Michael Jung

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[About the author](#)

COMPLIANCE

Customs compliance with the “INCASE-Model” – a holistic approach for real effectiveness

Through several years as a customs auditor, I saw many companies with numerous approaches and attempts to get a grip on the management of the customs requirements. Despite big efforts (financially, personally, technically), organizations often do not succeed in establishing the desired effect and corresponding success in the area of customs compliance.

PROBLEMS IN MANAGING CUSTOMS COMPLIANCE

In many companies, the area of customs compliance or customs management does not seem sufficiently managed (especially strategically, but also operationally as a result of this weakness). This even leads to blind spots in the organisation, particularly in the structural field, which has in the meantime become increasingly apparent due to the changed audit approach by the authorities.

- In small and/or start-up organisations, often an ignorant “laissez-faire” is practiced;
- in large or traditional organisations, overregulation and bureaucracy (unfortunately also in combination with blind spots in individual or specialised areas) are often revealed.

A NEW APPROACH IN CUSTOMS COMPLIANCE: THE “INCASE”-MODEL

In order to remedy this, as a university research project involving numerous economic actors (companies, consultants, service providers) as well as institutions and trade/industry associations the “INCASE” model was developed. The model is scientific theory-based as well as tested empirically. The “INCASE” model offers an equally effective as well as clearly arranged instrument that can be individually limited, extended and coordinated, focusing in particular on the strategic-structural components and connections of customs management in the company and the sustainable and long-term organisation of customs compliance.

Conceptually, the term “INCASE” is derived from the following five individual dimensions

- IN (integral/integrated),
- C (compliance),
- A (advantage),
- S (synergy) and

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Prof. Dr. Andrew Grainger

Director, Trade Facilitation Consulting Ltd

[About the author](#)

COMPLIANCE

Customs managers: What do they do?

How are customs issues managed within companies? What is it that people in charge of meeting Customs' expectations do? This article highlights the role of the key players in customs compliance - customs managers. The findings presented are based on interviews with key informants in nine multinational companies from a cross-section of industries.*

Customs and trade compliance requirements are frequently equated with unnecessary red tape. The transaction costs between businesses and the border agencies are known to inhibit efficient logistics and supply chain management operations. The customs environment is not static and unchanging. It is evolving and improving, and so is the understanding of how customs issues relate to businesses in international supply chains.

CUSTOMS MANAGERS: WHO ARE THEY?

Companies involved in global trade, especially multinational companies, must have specially trained staff to deal with customs clearance, formalities and other compliance requirements. Specialists who deal with these issues may hold different positions and have different titles, but the essence of the job does not change. For the sake of simplicity, we

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Best practices and tips for managing customs knowledge in a company

What aspects should be taken into account in the context of customs knowledge management within a company? During the [15th Authors' Meeting](#), experts from the UK, Israel, France, Colombia, Brazil and Lithuania shared many tips and practices on how to acquire, update and manage knowledge to be successful in customs processes. The main insights – on the role of a customs manager, exchanging information internally, ensuring awareness of all the involved persons, manuals, peer learning, etc. - shared are summarised in the following overview.

THE ROLE OF A CUSTOMS MANAGER

Dr Andrew Grainger, Director, Trade Facilitation Consulting Ltd., the UK

Today, based on his experience in customs consultancy, freight forwarding and logistics, Dr Andrew Grainger is a well-known author of numerous articles and books for both practitioners and academics. Therefore, he is himself a creator of customs knowledge sources that are helpful in customs management processes.

In his recent research, Andrew raised the question: What is the role of the customs manager in a company? The question is very relevant when it comes down to customs knowledge management. For example, if a customs manager is just a go-to person, he or she may have all the knowledge in the world, but if the organisation does not know how to engage with this person, it can be quite tricky. For a comprehensive overview of the role of the customs manager, see the article '[Customs managers: What do they do?](#)'.

Andrew also pointed out that government can be a driver of knowledge (compliance). In the UK, for example, there are tax avoidance rules that require the company to have systems in place to ensure that they are always compliant. If the systems are shoddy, that would not be a good excuse for a compliance brief.

INTERNAL EXCHANGE OF INFORMATION IN THE COMPANY

Omer Wagner, Attorney-at-law, Indirect taxation, PwC Israel

In Israel, customs authorities check the accounting records to find out how much the importer has paid per year to a particular supplier. These amounts are then compared with declared imports. If there are discrepancies, an audit is

initiated.

The main reason for the discrepancies is the lack of communication and cooperation between the company's finance department and its import department. This leads to ignorance in both departments and inaccuracies in the records. The finance department is responsible for paying suppliers and recording payment information for accounting purposes. The import department is responsible for import declarations, contacting the customs agent and declaring the goods to customs. These two departments of the importing company should work closely together, contacting each other and checking that the information is recorded correctly and completely on both sides.

MANUALS ARE THERE TO REFLECT THE KNOWLEDGE OF THE COMPANY AND TO BE USED IN PRACTICE

Juan David Barbosa, Attorney-at-law, Colombia

Customs policy and procedures manuals can be an important source of knowledge needed in the company. However, sometimes companies have a manual of, say, 300 pages that no one wants to read. The problem is not that it is not good practice; the problem is that it should be kept simple and used in daily work. The best way to learn is by doing. You can have a huge library of knowledge, but if you don't apply it, it's useless.

Some of the important aspects to be considered when preparing a manual:

- Explain how customs declarations are filed. You should know the company very well and how the different departments work together or need to work together (as Omer pointed out).
- The manuals must contain and establish sensible data for the company. A big problem is the rotation of personell in the logistics department. New colleagues shouldn't try to apply their previous experience, they should learn to deal with the company-specific data and processes.
- You have to include the relevant customs law. The problem is that the regulators like to change it. The big problem is that you have customs knowledge that is not updated. Keep track of the changes and communicate them not only internally but also to customs brokers.
- When preparing a manual for a region, you should also take local requirements into account. Otherwise, no meaningful decisions can be made about local procedures.
- Binding rulings. Please remember that they are not permanent. You need to review and update them regularly.

LEGAL UPDATES MUST BE FOLLOWED CLOSELY

Roberto Raya da Silva, Founding member, Raya Consult, Brazil

Roberto pointed out the "revolution in goods classification" in Brazil in connection with the new edition of the Brazilian customs tariff codes for goods and the introduction of attributes. This means that the legal updates need to be followed closely as the attributes are due to come into force in 2024. In addition, in-depth knowledge of tariff classification will be required in Brazil to mitigate the risk of penalties and fines for companies.

Learn more about the attributes in the article '[Trade with Brazil: the use of 'attributes' in classification of goods](#)' by Eduardo Leite and Laércio Cruz Uliana.

RISK MANAGEMENT STANDARDS: DON'T ALLOW THE PROBLEM TO REPEAT

Eduardo Leite, Attorney-at-law, Aduaneiras - Cursos e Treinamentos, Brazil

Eduardo noted that as a lawyer he is confronted with many cases where considerable fines are involved. In Brazil, fines for infringement can be twice as high as the amount of taxes, or even higher. Making mistakes is therefore very expensive. Risk management is thus very important. A tip is to use standards such as COSO ERM (Enterprise Risk Management) or ISO 31.000 Risk management as a basis, and embed risk management in an organisational culture. The main point of ERM is 'don't allow the problem to repeat'. The personell must be aware of any problems company had in the past to prevent them happening in the future.

Another aspect is the mapping of customs processes. Start with your company and then look at the experience and

practices of other companies and learn from them by asking: What was the problem that caused fines and delays in customs procedures and how was it resolved? How can this be avoided in the future?

An important theme in risk management is the concept of "knowing your supplier". Keep in mind that it is not enough to fill in the questionnaires once. Things change quickly and due diligence checks must be carried out regularly. Also, discuss with your suppliers what can be improved in the processes, this can lead to great results.

EXPORT CONTROL: EVERYONE INVOLVED SHOULD BE AWARE

Christelle Dubouchet, Attorney-at-law, CUSTAX&LEGAL, France

Christelle presented her vision of customs knowledge management from an Export Control perspective. When dealing with a company:

- The first step is to find out whether the company's products are controlled and notably listed in Annex 1 to Regulation (EU) 2021 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items;
- The second step is to ensure awareness of the Export Control's regulations within the company and everyone involved in the supply chain.

One of the best practices for knowledge management, especially in the field of Export Control, is to conduct training and courses to ensure that people involved have the necessary information regarding the regulations in order to be able to alert their top management.

PEER LEARNING AND OTHER METHODS IN TODAY'S CHANGING WORK ENVIRONMENT

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

The modern business environment is constantly changing. The most important factors are digitalisation, the Covid 19 pandemic, wars, the expansion of remote work, etc. Under these conditions, some traditional knowledge management methods may not be appropriate. To attract employees to the existing ecosystem, companies should consider: active engagement, collaborative or socially oriented work style, motivation, inspiring missions and goals and emotional intelligence, communication and teamwork instead of hierarchy, leadership and ambition, self-management skills and technology skills.

Another method that can be used in the workplace is the peer learning method. Learning by doing rather than by listening is the main idea of this method. This teaching method allows individual learning skills to be combined with group work. The advantages of this method are obvious. Employees understand each other better than a teacher/trainer. Peer learning encourages collaboration and teamwork and promotes a culture of knowledge sharing. Finally, it is cost-effective.

ENSURING EFFECTIVENESS OF SELF-LEARNING: GUIDANCE, FEEDBACK, ASSESSMENT

Enrika Naujoke, CEO, CustomsClear, Lithuania

Enrika is the editor of two customs journals. Subscribers sometimes ask how best to ensure that employees involved in customs processes read, learn and apply the knowledge in practice for the benefit of the business.

Of course, there are employees highly motivated to get the most of it. For example, here is what one of them says: 'Every time a new article is published, I take the time (it doesn't take much!) to engage with the content. I rethink our company's processes and often discover new areas for improvement.' Another type of employee is the 'too busy' one. It is useful to remember that when a problem arises, we suddenly have as much time as we need to solve it. Often it would be less costly (financially and in terms of reputation) for the company if employees would dedicate some time for learning and improving their knowledge and skills to prevent non-compliance. And there are other types as well.

In any case, everyone can be effectively involved in the self-learning process, if it is guided and feedback/ evaluation is provided. Guidance can take the form of regular internal meetings, in preparation for which certain tasks have to be completed. Enrika also mentioned a new guided self-learning possibility, the [CPD programme](#).



Dr Ilona Mishchenko

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

[About the author](#)

COMPLIANCE

Knowledge of customs and tax regulations: Who is concerned?

There is often a perception that laws are the domain of lawyers, taxes are the domain of accountants and financiers, profits are the domain of salespeople, and so on. Is this the right approach? The purpose of this article is to examine why knowledge of customs and tax regulations is important not only for lawyers and financial experts, but also for other employees, especially directors, managers and other supervisors. The article is based on a presentation given on the occasion of the launch of the MBA programme '[Customs Process Management](#)' at Vytautas Magnus University.

INTRODUCTION

Global trade, or more specifically importing and exporting, is a complex area, otherwise there would not be so many international conventions, agreements and national laws on the subject. All of these documents lay down the rules for global trade. Whether trading is a company's main activity, or whether it is involved in the process from time to time (for example, by buying raw materials or parts for manufacturing), the rules are the same. And everyone involved has to follow it. In an ideal world, everyone, without exception, has at least a basic legal education, knows how to read, understand and interpret regulations correctly, and keeps abreast of changes in the law. But we live in a real

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OVERVIEWS AND COMMENTS

Current progress towards a fully digital EU customs environment

From the point of view of many customs operators, especially those who conduct cross-member state customs activities, the developments in IT are rather sobering. Although the legal framework for further standardization and harmonization has been established, isolated solutions and uncoordinated development statuses within the EU are delaying a real breakthrough. In this article, we provide an overview of the project status regarding the report of the European Commission.

BACKGROUND

Beginning of this year the fourth progress report pursuant to Article 278a of the Union Customs Code (UCC) on the development of the electronic systems in the European Union (EU) was published by the European Commission. The report informs annually on the status of the gradual implementation of the systems which are listed in Article 278 UCC. This is based on the key objective of creating a fully digital customs environment in the EU by end of 2025. The decision on e-customs was first written down in 2008 (decision number 70/2008/EG) and came into force by law on 1st May 2016 in the UCC (updated in 2019). An associated strategic plan for the systematic implementation was first published as the UCC Work Programme in 2014.

The UCC Work Programme defines national and trans-European projects for the implementation of the electronic

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Kieran Gleeson

CEO, Custran

[About the author](#)

OVERVIEWS AND COMMENTS

First steps in choosing customs software

This article covers the questions that companies should raise when looking for customs software. It highlights the key points to consider before choosing software and gives advice on how to minimise potential issues and maximise benefits. This is important for businesses considering making their own customs declarations for the first time, or switching from one customs software package to another. Here's what you need to know.

FIRST STEPS IN CHOOSING CUSTOMS SOFTWARE

The first step before a company decides to invest in customs software is to assess whether the existing internal environment is ready for it. In other words, you need to determine whether the company has **the right team with the appropriate customs knowledge**. If not, the company should upgrade its customs knowledge by attending customs courses that teach the basics of customs procedures. Please note that customs training is not the same as customs software training. Customs training is aimed at those who need to know the basics of customs, such as customs procedures, the difference between commodity codes, Incoterms and the different terminologies, and so on. This knowledge is necessary before considering the use of software. The software supplier can probably offer you customs software training.

Once you have completed your customs training and before you start using the software, you need to ensure that you have the **necessary registrations and authorisations**. For example, in Ireland you need an ROS account and in the UK you need a Government Gateway account. Other registrations may also be required, such as a postponed VAT account, or you may need to tick the 'customs and excise' box on your government revenue account. This procedure is sometimes automatic, but you should check that it is in place before submitting your declarations. You must have EORI number this to deal with customs.

There are many questions you need to ask yourself before you start using the software for the first time. It is sometimes advisable to **get help from a consultant or someone else who knows exactly what questions to ask**.

QUESTIONS SMES - IMPORTERS AND EXPORTERS - SHOULD ASK

Let's take the case of small and medium-sized enterprises (SMEs), because they are the ones who may be introducing the software function for the first time. Can these importers and exporters internalise the processes? Of course they can. However, before taking this decision, each company needs to weigh up the pros and cons and answer certain

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Armin Belle

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OVERVIEWS AND COMMENTS

Certain critical export-controlled product groups to be aware of

The main purpose of the article is to raise awareness of certain product groups that are subject to export control. This concerns in particular drive and automation products as well as emerging technologies in the high-tech industry. For example, inverters can have a special software extension for output frequencies above 600 Hz, which is critical because this type of product can be used in chemical centrifuges and nuclear power plants in sanctioned countries.

INTRODUCTION

Modern "free" trade is very complex as different modes of transport and environments (e.g., industrial environment, port environment) are involved. We have to follow many rules and be clear about what to do. The situation is even more complex when it comes to export control, which is currently receiving special attention due to the war on the European continent and the sanctions against Russia.

Let's start with a brief overview of the sub-sectors of export control (as presented by the Federal Office of Economics and Export Control in Germany (BAFA)):

1. Goods-specific export control refers to certain types of products, e.g., dual-use goods, regardless of country of destination;
2. Consignee-specific export control refers to specific consignee, e.g., if the consignee is a terrorist or extremist organisation;
3. Application-specific export controls is based on critical areas of use, e.g., the manufacture of weapons;
4. Country-specific export control is based on application of embargoes, sanctions, e.g., against Russia, Iran.

Subsectors of Export Control

<p>I. Goods-specific Export Control</p> <p>➔ e.g. Dual-use goods</p>	<p>II. Consignee-specific Export Control</p> <p>➔ e.g. Consignee = Terrorist</p>
<p>III. Application-specific Export Control</p>	<p>IV. Country-specific Export Control</p>

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Christelle Dubouchet

Attorney-at-law, CUSTAX & LEGAL

[About the author](#)

OVERVIEWS AND COMMENTS

Export control: the need for an internal compliance programme

What is an Internal Compliance Programme (ICP) and what are its core elements? What if the ICP is not required by law, should companies still use it? The answer is definitely yes. Even if your company does not fall under the criteria for a mandatory ICP, it is important to have one in place if you deal with export-controlled items.

LEGAL BACKGROUND

When it comes to export controls, there are two things to understand: a company deals with defence-related products or dual-use items.

Within the EU, the basic legal act for dual-use items is [Regulation \(EU\) 2021/821](#) of the European Parliament and of the Council of 20 May 2021 setting up a Union Regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (hereinafter the “Regulation 2021/821”). This Regulation 2021/821 is directly applicable in the EU Member States.

As regards defence-related products, Directive 2009/43/EC of the European Parliament and of the Council of 6

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Barbara Scott

Chair, Customs Practitioners Group

[About the author](#)

COLLABORATION

Customs Practitioners Group in the UK

We are talking to Barbara Scott, the Chair of the CPG about the period of time ranging from 1988, when CPG was established, to today: When and how was the idea to establish CPG born? What was the customs environment then? What was the environment of similar groups? What about today and the future?

WHEN AND HOW WAS THE IDEA TO ESTABLISH CPG BORN? WHAT WAS THE CUSTOMS ENVIRONMENT THEN? WHAT WAS THE ENVIRONMENT OF SIMILAR GROUPS/ ASSOCIATIONS?

The Customs Practitioners Group was formed in January 1988 and I was present at the inaugural meeting. The UK customs consultant environment was very small then with just a few practitioners in large accountancy firms and we had one member from a law firm. Large companies, for example, in the motor industry (which was my background), chemical industry and petro-chemicals, employed their own customs and international trade practitioners but other businesses would rely on a Shipping Manager to manage their customs affairs. There was a big opportunity to help these other businesses reduce their import duty costs by making use of duty reliefs and planning their import trade more efficiently. The CPG grew over the initial years from a dozen to about 40 members by the time the Single Market was established in 1993. The role of the Shipping Manager declined and a new world of logistics and supply chains opened up. But this meant that customs and international trade was pushed aside as there was no-one in a company to “own it” because no-one had the required knowledge. At the same time, HM Customs & Excise was changing significantly as numbers were slashed and the administration moved to being more of a revenue collector than a body which would assist business with its import/ export activities; in 2005, HMC&E merged with the Inland Revenue to become HM Revenue & Customs (HMRC). Businesses then began to realise that they needed the assistance of customs consultants as HMRC started to place a greater emphasis on compliance with the law and procedures which were now being aligned across the EU. The membership of the CPG expanded to 70 and remained at that level until a number of new members joined after Brexit.

WHAT WAS THE INITIAL VISION? DID IT CHANGE IN THE COURSE OF YEARS?

The vision has always remained the same, which is to benefit members' better understanding of the practical workings of customs and international trade law and interpretation of the law. Also, to discuss with the customs authorities and other relevant administrations ways of simplifying the law and mitigating unfairness in international trade through practical experience. We have been, and remain, members of the UK Joint Customs Consultative Committee and

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Ukraine customs and trade news April/May 2023

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

EXTENSION OF TRADE LIBERALISATION WITH THE EU

The Council of the EU has adopted a regulation extending the duty-free regime for imports from Ukraine until June 2024. This regulation suspends the application of:

- all tariffs under Chapter IV of the Association Agreement between the EU and Ukraine, which have not yet been liberalized;
- anti-dumping duties;
- general import rules concerning imports from Ukraine.

IMPORT BAN ON UKRAINIAN AGRICULTURAL PRODUCTS

In April, the governments of several European countries (Poland, Slovakia, Hungary and Bulgaria) banned imports of Ukrainian agricultural products. What's more, the transit procedure is complicated. For example, the shipment must be sealed and a convoy must accompany its movement through Poland. After negotiations, these countries agreed to lift the unilateral bans. However, the European Commission has taken a similar decision, adding Romania to the list. The decision is valid until 5 June, but is likely to be extended.

These decisions were accompanied by protests from Polish farmers, who blocked the checkpoints at the border with Ukraine, allowing goods to be transported. The Ukrainian government condemned these actions, describing them as contrary to international agreements.

UKRAINE STOPS EXPORTING SUGAR

The Ukrainian government has set a zero quota for sugar exports from 5 June to 15 September. Government representatives have noted that Ukrainian producers have already exported 95% of the planned sugar. These export rates are due to the increase in world sugar prices. The establishment of quotas prevents the creation of a deficit and an increase in sugar prices on Ukraine's domestic market. Given that September is the new harvest period, we do not expect these quotas to be extended.

RESTORATION OF FUEL OIL EXPORTS

The Ukrainian government resumed fuel oil exports on 11 April. The quota has been set at 540,000 tonnes per year. At the same time, exporters must obtain a licence from the Ukrainian Ministry of Energy in order to export.

UPDATE ON FREE TRADE AGREEMENT WITH CANADA

On 11 April, Ukrainian Prime Minister Denys Shmyhal and Canadian Prime Minister Justin Trudeau signed a declaration on the completion of negotiations on the renewal of the free trade agreement between Canada and Ukraine. The new agreement will replace the previous one (signed in 2017) and will significantly expand trade opportunities. For example, customs duties will be waived for Ukrainian goods containing components originating in the EU, EFTA, Great Britain and Israel. The main innovation will be that the agreement will operate on the principle that "everything that is not prohibited" is permitted, as well as the fact that it includes an agreement on digital trade, similar to the one that Ukraine signed with the UK (we wrote about this in the last issue).

START OF APPLICATION OF THE PAN-EURO-MED TRANSITIONAL RULES OF ORIGIN WITH THE REPUBLIC OF MOLDOVA

On 15 May, the Protocol amending the Free Trade Agreement between the Governments of Ukraine and the Republic of Moldova entered into force. From now on, the Pan-Euro-Med transitional rules may be used to determine the origin of goods. All the benefits of this version, such as full cumulation and electronic certificates of origin, are available. At the same time, the parties can also use the common version of the rules. The start of the application of the transitional rules with the Republic of Moldova gives hope for their implementation in the EU this year.

UKRAINE SUSPENDED THE TRADE, ECONOMIC AND TECHNICAL COOPERATION AGREEMENT WITH SYRIA

The Ukrainian parliament passed the relevant law on 2 May. Among the reasons is Syria's support for the Russian military and political leadership in connection with the military invasion of Ukraine and the recognition of the so-called "independence" of the temporarily occupied territories of the Ukrainian regions of Donetsk and Luhansk.

DIGITISATION OF QUEUES AT INTERNATIONAL CHECKPOINTS

The eCherha service (an electronic queue at border crossing points) has started operating in Ukraine. From now on, you can join the queue to cross the border (to leave Ukraine) using the application on your smartphone. The application can be downloaded from Google Play and the App Store, and the interface is available in Ukrainian, English and Polish.

UKRAINE PLANS TO JOIN THE CPTPP

On 1 May 2023, a delegation of Ukraine was formed to participate in the negotiations on Ukraine's accession to the Comprehensive Progressive Agreement for the Trans-Pacific Partnership (CPTPP). The Ministry of Economy expects Ukraine to join the Trans-Pacific Partnership Agreement in early 2024. This will allow Ukraine to liberalise non-tariff restrictions on trade in goods and services with countries in this region and open access to new sales markets. It will also allow expanded access to foreign direct investment. The CPTPP was concluded in 2018. By 2023, eight countries had ratified the agreement: Australia, Canada, Japan, Mexico, Peru, New Zealand, Singapore and Vietnam.

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Paper or pixels? The dual challenge of document management in Ukraine's e-customs clearance

In the era of digital technologies, electronic customs clearance of goods has become a standard for many countries across the globe. Ukraine is no exception. However, unfortunately, even in the modern system, problems can arise that can significantly complicate and slow down customs clearance. One such problem is the provision of paper documents. In this context, it is crucial to clarify some issues that regulate the procedure for providing paper documents and the form of customs control during electronic customs clearance of goods in Ukraine. In this article, we present a real case that happened to us at the end of March 2023 in Odesa.

SITUATION

On March 31, 2023, we (hereinafter referred to as the customs clearance agent) submitted an electronic customs declaration with the number 23UA500020004458U6 to the customs clearance department of the Odesa Port Customs Office of the State Customs Service of Ukraine (hereinafter referred to as the customs clearance department). Along with the electronic customs declaration, we submitted a package of documents necessary for customs formalities:

- the packing list;
- the invoice, and other payment documents that determine the value of the goods;
- the payment documents that determine the transportation value;
- the International Waybill (CMR);
- the certificate of origin of the goods (EUR.1);
- the foreign trade contract (contract);
- the contract for the provision of customs broker services;
- the contract for the provision of transport and forwarding services.

During the customs clearance process, the inspector of the customs clearance department sent a notification to the customs agent requesting the submission of original documents (or their copies). The reason for this request was: *"Due to the activation of the Automated Risk Management System, I ask you to provide original documents specified in the customs declaration or their certified copies"*.

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



Georgi Goranov

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[About the author](#)

COUNTRY-SPECIFIC

‘Fair prices’ vs transaction value in Bulgaria

The article deals with the changes in the Bulgarian customs legislation on customs value. These changes do not correlate well with the relevant European legislation, and this raises many questions: Is the application of these new provisions legitimate? What was the reason for the Bulgarian legislator to take such steps? What are the possible consequences? Let us try to find some answers.

Bulgaria, as a member of the EU, has to apply common customs legislation along with the rest of the member states. According to Article 3(a) of the Treaty on the Functioning of the EU, the Union has exclusive competence in the field of customs union. This means that EU legislation on customs takes precedence over any national legislation in this area.

However, two years ago significant legislative changes were made at the national level, in particular to the Bulgarian Customs Act. These were the result of a preliminary ruling by the Court of Justice of the EU (CJEU) in case [C-291/15 EURO 2004. Hungary Kft. v Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Vám- és Pénzügyőri Főigazgatósága](#). In this judgement, the CJEU recognised the right of customs authorities to initiate the procedure for challenging the declared customs value where the declared transaction value is considered unreasonably low in comparison with the statistical average of purchase prices.

WHAT EXACTLY HAS CHANGED?

The Bulgarian Customs Act provides the customs authorities with a new legal tool to object to the declared customs value of imported goods. In fact, it is a procedure that was implemented in Bulgaria at the very beginning of 2020, with the aim of preventing under-invoicing.

The amendments in question affected several articles of this document, but had a significant impact on the relationship between business and the customs administration in determining customs value.

Articles 66c, 195a and p. 40 of paragraph 1 of the Bulgarian Customs Act provide national customs authorities with the following rights:

- **to object to the declared customs value** of the goods on the basis of their transaction value if they suspect that the importer may attempt to undervalue the goods; and
- **to require security** for any additional debt in order to complete customs clearance.

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



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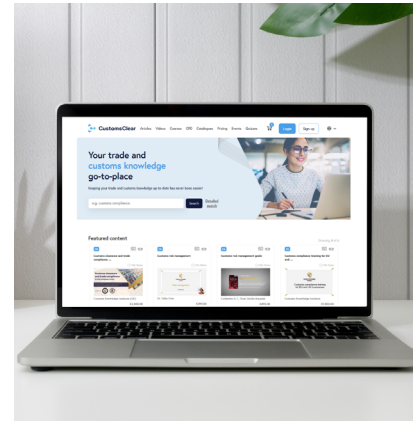
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