

Customs in the EU legal order

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Yves Melin

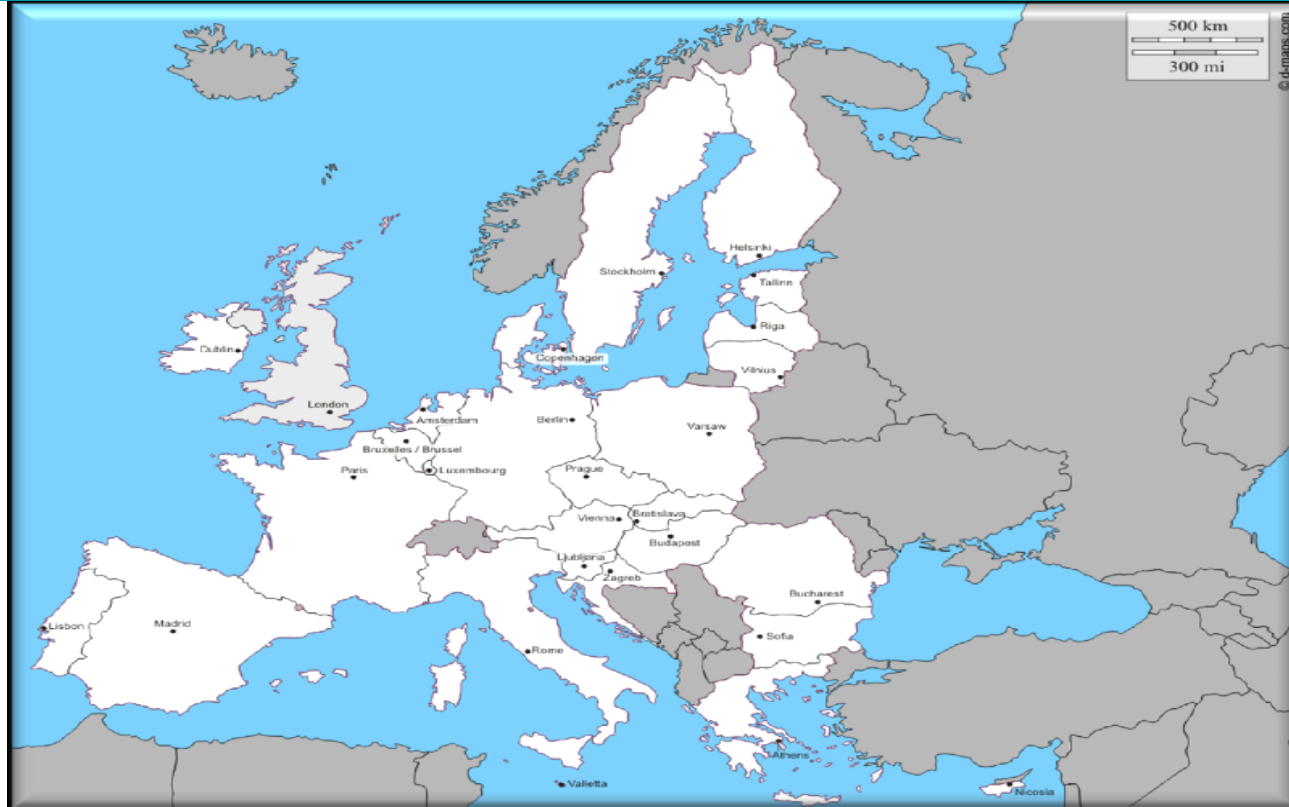
Customs in the EU legal order

- **The EU is a Customs Union and a single market**
- Sources and players
- Calculation of the duties levied
- Why complying with customs rules matters

The EU is a customs union and a single market

- The EU is a customs union, and a single market:
 - no duty is levied when goods cross the borders between two member states
 - Good made in a Member States can be sold in the other member states
 - the rules must be the same for goods crossing the external border to avoid distortions and forum shopping→ Need to harmonise
- Controls are made, and duties paid when goods cross the external border
- The **Customs Union** and the **Common Commercial Policy** are **exclusive EU competences**: customs rules, the conclusion of international trade agreements (WTO, FTAs, etc.) and unilateral trade measures are done by the EU for the 28 Member States

The EU is a customs union and a single market



What is the purpose of the EU's customs system?

- Primary objectives:
 - **levy customs duties at the applicable rate on all imported products**
 - **security**
- But also:
 - Levy trade defence duties (anti-dumping, anti-subsides, safeguards)
 - Manage quotas
 - Control compliance with restrictions and bans applying on the placing of certain products on the market (REACH, conflict minerals, IP protection, etc..)
 - Export restrictions and embargoes (export controls and sanctions)

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Sources and players (1)

- One set of rules harmonized at the level of the EU
 - The Union Customs Code: Regulation (EU) No [952/2013](#)
 - And its implementing Regulations
 - the Delegated Act: Commission Delegated Regulation (EU) [2015/2446](#)
 - the Implementing Act: Commission Implementing Regulation (EU) [2015/2447](#)
 - Replaced the Community Customs Code and its Implementing Regulation on 1 May 2016
- Implementing legislations adopted by each of the EU's 28 Member States
 - Rules of procedure
 - Penalties

Sources and players (2)

- The 28 customs authorities of the EU's Member States
 - Enforcement
- The European Commission
 - DG Taxud
 - legislation (initiative) and implementation
 - https://ec.europa.eu/info/departments/taxation-and-customs-union_en
 - DG Trade
 - implementation (trade remedies, quotas, etc.)
 - http://ec.europa.eu/trade/index_en.htm
- OLAF – The European Anti-Fraud Office
 - Implementation (indirect, through the protection of EU funds and own resource)
 - https://ec.europa.eu/anti-fraud/home_en

Sources and players (3)

- The European Parliament and the Council of the EU
 - Legislation
- Coordination through customs committees meeting regularly in Brussels, chaired by the Commission
 - Comitology [register](#)
- Customs duties is EU money (so called “own resources”). If Member States do not collect the duties properly, they become the Member State’s own debt

Sources and players (4)

- International harmonisation:
 - Very high degree of harmonisation for **classification** and **valuation**
 - World Customs Organisation – WCO
 - <http://www.wcoomd.org/en.aspx>
 - High degree of harmonisation for rules of **preferential origin**
 - bilateral agreements (e.g. CETA) or autonomous concessions (e.g. GSP)
 - [List](#) of all list rules in the EU
 - Low for **non-preferential origin** (World Trade Organisation - WTO)
 - <https://www.wto.org/index.htm>

- In cases of disputes:
 - Appeal before the customs administration
 - Litigation before national courts
 - Questions asked by the national Court to the Court of Justice of the EU, through the **preliminary reference** procedure – ensures that the EU rules are interpreted and applied in the same way throughout the EU

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Calculation of the duties levied (1)

- How much duty is levied upon importation depends on three things:
 - What product is imported → classification
 - The origin of the product → rule of origin
 - Preferential origin: the originating product is subject to a lower duty
 - Non-preferential origin:
 - for trade remedies: high duties
 - For quotas: duty free until the quota is exhausted
 - The value of the product (for ad valorem duties - %) → valuation rules

Calculation of the duties levied (2)

- Duties are due when goods are released for free circulation into the territory of the EU
 - First entry into the EU, when goods are declared. Duties are paid and the other customs formalities are complied with
 - Release for free circulation is only one of the customs treatment that applies to imported products.
 - Alternatives: temporary importation, customs warehousing, inward processing relief, transit, etc.

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Why complying with customs rules matters (1)

- Declaring a wrong classification and/or a wrong origin may mean that the wrong duty percentage is applied → too high, or too low
- If the valuation is wrong, the percentage of duty will be applied on the wrong value:
- Near-objective liability with customs: unescapable

Why complying with customs rules matters (2)

- What if the duties paid are too low because of mistaken classification, origin or valuation?
 - The difference can be recovered by customs up to three years after the release for free circulation, more if criminal intent
 - Penalties may apply (In some member states, up to 10 times the evaded duty), criminal sanctions
 - Contractual liability towards customers, in particular if a certain origin is certified or guaranteed

Why complying with customs rules matters (3)

- What if the duties paid are too high because of mistaken classification, origin or valuation?
 - Difficult to claim the difference back, impossible after three years.
 - Products are more expensive than they could be → loss of market and profit
 - Contractual liability: customers may try to get the money back from the operator responsible for the mistake

Why complying with customs rules matters (4)

- How can a company limit this risk?
 - Customs due diligence: do you classify your products properly, do you declare the right origin and value?
 - When possible, disclaim or limit liability in contract with customers, and shift liability in contracts with suppliers
 - Binding Tariff Information (BTI) and Binding Origin Information (BOI) procedures, Customs Decisions on any other aspects (new)

Thank You !

Yves Melin

Step toe & Johnson LLP

ymelin@step toe.com

LinkedIn: [yvesmelin](#)