

# Regulating for Globalization

Trade, Labor and EU Law Perspectives

## European Customs Law in a Time of Change – Fundamentals “Plus”

Massimo Fabio (KPMG Italy) · Tuesday, June 23rd, 2020

Today, global competition obliges companies dealing in international trade to modernize their procedures of delivery to minimize the customs burden and simplify the relationship with customs authorities. Customs planning is as important as ever, to be effective in the worldwide marketplace. Especially after the Covid19 sanitary emergency, there is a strong need to upgrade the international attitude of any business to improve competitiveness in the global market. On the other hand, customs officials are facing new challenges: they must ensure the smooth flow of trade while applying necessary controls on the one hand, while protecting the health and safety of citizens on the other. To achieve – and maintain – the correct balance between these demands, control methods are constantly evolving raising major challenges to those charged with planning and compliance. This is all happening in the context of the “new” reality – Covid-19, new free trade agreements, global trade wars, and, of course, Brexit.

This means that mastering and implementing the fundamentals of Customs law – classification, valuation, and origin – is as important as ever. In managing the challenges to international supply chains presented by this new dynamic environment, attention to the fundamentals should not be overlooked. In all international transactions, customs barriers cannot be managed just a moment earlier than the customs clearance. On the contrary, to properly overtake any tariff and non-tariff barrier, it is advisable to plan every single step of the international transaction from both the angles: import and export.

- **Classification.** As an inescapable first step, for any business it is critical to exactly identify the HS code of the goods. This is “the starting point” for any direction of a suitable and effective customs planning.
- **Valuation.** Valuation can be the most complex of compliance challenges. What is the value of the imported item – traders much go beyond pure customs issues and understand the broader context of the transaction to understand what is included in the real taxable basis, and which elements that should not be taxable. Key points are represented by the distinction between assists and royalties and their treatment. On this latter topic, there is a significant ongoing EU debate among the different member states. Some apply a case by case approach, not necessarily considering all license contracts as taxable. Some others, on the contrary, insist to retain as taxable whatever is covered by the agreement, generating discrimination among member states and an additional burden on the head of economic operators based across Europe. In the valuation framework, another hot topic is certainly the issue of related party transactions, and the analysis

of the reconciliation between transfer pricing and customs valuation. Worldwide, despite specific Guidelines from the WCO, some countries still explicitly refuse to permit any subsequent change to the customs value that may need to occur when there is a change in transfer pricing (tax). Notwithstanding an EU harmonized customs law and despite the presence of a unique rule given by the EU Regulations, different approaches are still used in the different Member States presenting a challenge for traders who need to identify a single best practice solution. Will be the effectiveness of the global commercial transactions be eased by an appropriate customs planning? Yes, valuation issues require careful attention and planning, but they are manageable. With a deep investigation on the global approach kept in many WTO member countries.

- **Origin.** There are the commercial horizons of the marks of origin and the complexities of the “made in” labelling. In the same context, consider the constraints and the opportunities given by the treatment of the preferential origin, in order to allow the businesses to get awareness on the specific topic and receive a competitive boost in foreign markets linked by bilateral agreements.

All these steps can lead to the final position represented by the status of “Trusted Trader”, as nominated by the Trade Facilitation Agreement. Authorized Economic Operator is the target to be reached by any business in order to be entitled to get all the exclusive facilitation measures that can definitively promote the success of any cross-border company (irrespective of the size).

Especially in a disruptive era, weighted down by Trade Wars and a new unilateral approach, an organized platform is the secret of commercial victory. Customs Law is not meant at all as a list of constraints but, diversely, it is conceived as the way to build an effective commercial scenario in different markets, taking the benefit of the applicability of the same harmonized principles, with the target to multiply the competitiveness of the economic operator and, in this way, increasing development and growth. This can be done through suspensive regimes, simplified procedures, paperless and contactless approach. Mastering all of these challenges is difficult, but achievable. Resources exist, such as [Customs Law of the European Union, Fifth Edition](#) (Kluwer Law International, 2020). Many of the recommendations in this blog post are addressed in more depth in this Manual.

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