



# Customs in a Day

**A Concise Overview  
of the EU Customs  
System**

Dr. Frank Nellen  
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Dr. Emma van Doornik



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# Preface

This book serves as an introduction to the current European Union (EU) customs system. It provides an overview of the functioning of that system, as well as the concepts and rationales behind it. All explanations and examples are based on the legislative acts concerning customs law, most prominently the Union Customs Code (UCC), Regulation (EU) 952/2013.

The goal of this book is to enable the reader to obtain a basic understanding of the EU Customs system, or to refresh one's customs law knowledge within a day's work. Hence, this book is titled: 'Customs in a Day'. The concept of this book motivated the authors to make didactically sound choices as regards the depth at which the various subjects in this book are discussed. For those who wish to gain a quick yet thorough understanding of VAT law, there is the book '*VAT in a Day*<sup>1</sup>', which employs the same method as used for this book.

It would not have been possible to make this book available free of charge without the support of the Indirect Tax Fund. The Indirect Tax Fund is a unique collaboration of three universities (Tilburg University, Maastricht University and VU University Amsterdam) with the business community (Baker McKenzie, Deloitte, KPMG Meijburg & Co, Loyens & Loeff and PwC) and the Tax Administration (Belastingdienst) in the Netherlands. The Indirect Tax Fund stimulates education and research in the field of indirect taxation.

The authors hope that this book generates enthusiasm in readers, encouraging them to continue devoting many more days to the study of EU customs law.

Nijmegen / Amstelveen / Eindhoven, August 2025.

**Note:** this book contains text and figures that the authors have written and created for a textbook on EU customs law (which is a work in progress and has not been published yet). This book is to be regarded as a short pre-publication of (parts of) the textbook. The authors are very much open to feedback. If you have any, please send an email to [frank.nellen@maastrichtuniversity.nl](mailto:frank.nellen@maastrichtuniversity.nl)

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1 Ad van Doesum and Frank Nellen, *VAT in a Day*, Fonds Indirect Tax 2025.

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# **PART I**

## OVERVIEW

# 1. Introduction

Customs law has always been at the center of the global economy. The reason for this is that it is strongly connected with the domains of international relations and world trade – an assertion that is supported by the implications of, among others, the Brexit, the US-China-EU trade wars and the Russo-Ukrainian war. Often, within the context of such major events, customs law is employed as an instrument to realize a certain (geo)political, economic, or social agenda. Trade restrictions and sanctions have, for example, shaped the EU-Russia relations following developments in Ukraine in 2014. In practice this has resulted in the EU customs system implementing measures to restrict the trade of goods with Russia that may be used for, among others, military purposes.

Also from a more internal perspective, EU customs law has traditionally claimed a prominent position in the EU's legal order. In fact, the landmark judgment of the Court of Justice of the EU (CJEU) in *Van Gend & Loos*, which established the doctrine of direct effect of EU law, involved a dispute on customs law and the levy of import duties.<sup>2</sup> Furthermore, the creation of the Customs Union of the EU (then the European Economic Community, or 'EEC') in 1968 constituted a critical step in the gradual integration of the economies of the Member States; with that, and eighteen months ahead of planning, customs duties within the shared internal market disappeared and common external tariffs were established.<sup>3</sup> Today, the Customs Union and its underlying administrative infrastructure not only ensure the collection of customs duties and other charges (e.g., import VAT, excise duties), but also serve a wide array of other goals, including the fight against organized crime and terrorism, the protection of citizens and the environment, and the encouragement of legitimate trade.<sup>4</sup>

This book contains a concise account of the EU customs law system. It is structured around three main themes. First, the subjective dimension of customs law (Part II) provides an overview of the various relevant actors in the domain, including the declarant, debtor, customs representatives and the customs authorities. In Part III, focusing on the objective dimension of

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2 CJEU 5 February 1963, Case C-26/62, *Van Gend en Loos* / *Administratie der Belastingen*, ECLI:EU:C:1963:1.

3 Regulation (EEC) 802/68 of the Council of 27 June 1968, OJ L 148; Regulation (EEC) 803/68 of the Council of 27 June 1968, OJ L 148; Regulation (EEC) 950/68 of the Council of 28 June 1968, OJ L 172.

4 See [https://taxation-customs.ec.europa.eu/customs/eu-customs-strategy\\_en](https://taxation-customs.ec.europa.eu/customs/eu-customs-strategy_en), accessed on 11 August 2025.

customs law, the authors discuss the primary substantive components of the legal system: the classification and origin of goods, customs valuation, duties and debt, and exemptions and reliefs. Third, Part IV (procedural dimension) elaborates on the formal aspects of the EU customs system, including customs procedures, formalities, repayment and remission, and legal remedies.

### **1.1. The EU customs union in a nutshell**

In simple terms, the current EU customs system is a border control system that governs the physical movement of people and goods across the external frontiers of the EU. There are numerous reasons why the EU chose to implement this system. At the time of its entry into force on 1 July 1968, the participating Member States had a strong desire to integrate their national economies and establish an internal market, to protect their populations, provide adequate security, and promote balanced trade, economic growth and social progress.<sup>5</sup> The creation of an external border control mechanism – the EU's very own customs union – was of pivotal importance for the attainment of said goals. For example, the system allowed for the effective taxation of goods moving into the Union, as well as the enforcement of consumer protection rules and environmental regulation. By controlling the physical flow of goods into and out of the EU, customs authorities were thus able to put the EU's policies into practice. The internal frontiers between the participating Member States would ultimately disappear, leaving an internal market in place that was protected and demarcated by the external customs border.<sup>6</sup>

The EU's border control system is a customs union.<sup>7</sup> First, this means that goods, services, capital and people can in principle move around freely within the internal market, so within one Member State or from one to the other.<sup>8</sup> Thus, Member States are not allowed to impose customs duties or similar charges on goods originating from other Member States.<sup>9</sup> Second, the Union

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5 These values are for example embedded in the Treaty of Rome (artt. 2 and 3) and the TEU (artt. 3(3) and 3(5)).

6 See artt. 3 and 9 – 13 Treaty of Rome and Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, OJ L 376.

7 Article 28(1) TFEU.

8 For further reading on the Four Freedoms, refer to C. Barnard, 2022, *The Substantive Law of the EU: The Four Freedoms*, Oxford University Press. On the topic of the customs union, see J. Viner, 2014, *The Customs Union Issue*, Oxford University Press.

9 Articles 28(1) and 30 TFEU.

relies on a shared and uniform customs tariff (“Common Customs Tariff”) vis-à-vis third countries.<sup>10</sup> As a result, an individual Member State cannot unilaterally decide to apply a certain tariff rate to a product originating from a third country. Instead, it is the EU that has the exclusive competence to decide on such matters for *all* the participating states.<sup>11</sup> This implies that, regardless of the Member State in which goods are imported, they will, in principle – and aside from certain minor formalities – receive the same customs treatment. Third, and finally, the proceeds from the levy of said tariffs at the external border are allocated on the basis of a pre-agreed distribution mechanism.<sup>12</sup> In the EU, this means that the revenue generated by EU customs duties contributes to the budget of the EU, whereas the collecting Member State is allowed to retain a certain percentage of the collected customs duties to cover its collection costs.<sup>13</sup> In sum, the customs union is a uniform legal framework applicable at the external borders of all Member States.

## **1.2. Levy of customs duties in an international supply chain**

The EU customs union is underpinned by a broad legal foundation. The main legislative document, the UCC, is a directly applicable Regulation that contains hundreds of provisions and is supplemented by various other ancillary Regulations and (non-legally binding) guidance documents.<sup>14</sup> This legal framework constitutes the foundation of EU customs law, defining the rights and responsibilities of all actors engaged in international trade between the EU and non-EU countries and territories. This includes parties such as the EU institutions, Member States, the customs authorities, economic operators (traders and importers) and customs representatives.

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<sup>10</sup> Articles 28(1) and 31 TFEU.

<sup>11</sup> Article 3 TFEU.

<sup>12</sup> See also J. Viner, 2014, *The Customs Union Issue*, Oxford University Press.

<sup>13</sup> Article 311 TFEU and Council Decision 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, OJ L 424. In the period 2021–2027, Member States are allowed to retain 25% of the revenues.

<sup>14</sup> See Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, (2013) OJ L 269/1. The most important ancillary legal instruments are the Implementing Act (IA) and the Delegated Act (DA). For an overview of the Regulations, refer to [https://taxation-customs.ec.europa.eu/customs-4/union-customs-code/ucc-legislation\\_en](https://taxation-customs.ec.europa.eu/customs-4/union-customs-code/ucc-legislation_en), accessed on 24 September 2024. For an overview of guidance documents, refer to [https://taxation-customs.ec.europa.eu/customs-4/union-customs-code/ucc-guidance-documents\\_en](https://taxation-customs.ec.europa.eu/customs-4/union-customs-code/ucc-guidance-documents_en), accessed on 24 September 2024.

Naturally, EU customs law includes provisions on the collection of customs duties. The notion of ‘customs duties’ covers both import and export duties. The UCC defines import duties as those payable on the import of goods (i.e., when non-Union goods are moved from non-EU countries and released for free circulation<sup>15</sup> in the customs territory of the EU).<sup>16</sup> Conversely, export duties are those payable on the export of goods, (i.e., when Union goods are transported from the customs territory to other places).<sup>17</sup> Currently, the EU only levies import duties; export duties are effectively non-existent. Additionally, the tax system only relates to goods; intangibles (i.e., services not linked to the importation of goods) are not subject to the levy of (import) duties.

At this stage, it is important to distinguish two main categories of goods under the UCC: *Union goods* and *non-Union goods*. Simply put, ‘Union goods’ are goods which have an EU “stamp”, formally referred to as “customs status”. They can either be goods wholly obtained in the EU (e.g., wheat grown and harvested in France), or goods that were brought into the EU which were released for free circulation (e.g., bananas imported from Brazil for which all duties and similar charges have been paid at the external borders, and for which all customs formalities have been dealt with), or goods produced in the EU from other Union goods (e.g., banana cakes made in Germany from said wheat and bananas).<sup>18</sup> ‘Non-Union goods’, on the other hand, are goods without an EU stamp. They are either goods that have lost their Union status (e.g., banana cakes that have been exported to China from Germany) or goods that never acquired such status in the first place.<sup>19</sup> Figure 1.1 contains an example of an international supply chain.

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15 Throughout this book, the terms “release for free circulation” (the EU-specific legal term) and “customs cleared” (the more globally and commercially used term) will be used interchangeably. Unless expressly stated otherwise, references to “customs cleared” should be understood as referring to release for free circulation.

16 Article 5(20) UCC.

17 Article 5(21) UCC.

18 Articles 5(23) and 201 UCC.

19 Articles 5(24) and 154 UCC.

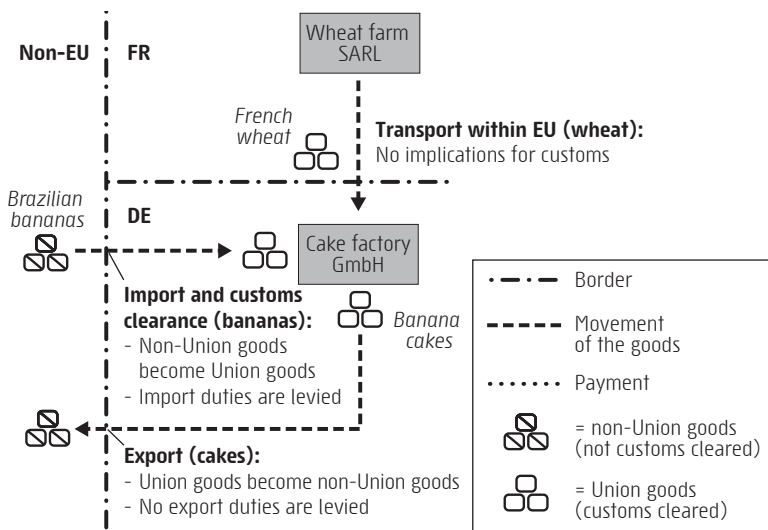


Figure 1.1: An example of a supply chain involving wheat, bananas and cakes

### 1.3. The three pillars of EU customs law

The levy of customs duties relies on three substantive pillars: the classification of goods, the origin of goods, and the valuation of goods. Only when these three parameters have been established can the proper tariff rate be determined, as well as any non-tariff measure (e.g., trade restrictions). Together, the three substantive pillars form the core of the EU's customs duty system.

**Pillar I: Classification:** A central legal concept in EU customs law is the Common Customs Tariff (CCT).<sup>20</sup> In simplified terms, this is the customs union's backbone when it comes to the calculation of customs duties. It consists primarily of shared tariff rates and of the so-called Combined Nomenclature (CN). The CN is essentially a structured and comprehensive list consisting of descriptions of goods and accompanying tariff classification codes including the tariff rates. Each and every product that one can think of – or, more precisely, each type of product sharing the same essential characteristics – must be assigned a unique code that sets it apart from other goods. In this way, the products can be *identified* and *grouped*.

<sup>20</sup> Article 56 UCC.

Even if a product is not explicitly listed, it must still be classified within the nomenclature. The CN is a closed and exhaustive system in which classification is achieved through the application of interpretative rules laid down in the General Rules for the Interpretation (GRI). This allows the EU to apply different tariff rates or other measures (e.g., trade restrictions) to different products. The need for product identification and grouping is apparent when one thinks of rocket launchers versus medicines: the legislator may want to restrict trade in the former, but not in the latter. The classification system based on the CN allows for diverging (tariff) treatment in line with the international trade policies of the EU. As such, the 'classification' of goods constitutes the first pillar of EU customs law.

**Pillar II: Origin:** Second, each good has a country of origin – sometimes referred to as its 'nationality'. Depending on the origin of the product, the tariff rate or trade measures may differ. For example, following decisions of the UN Security Council, trade in certain goods (e.g., fuels and arms components) with North Korea is prohibited. In addition, some countries or territories (e.g., developing nations) receive a discount on the tariff rate when they export goods to the EU, whilst others are charged extra. Thus, origin determination allows the EU to establish where goods are from, so that trade policy measures vis-à-vis specific third countries can be achieved. There are two categories of origin determination: non-preferential<sup>21</sup> and preferential<sup>22</sup>. As the name suggests, if a good is eligible for preferential origin, the importer may claim advantageous treatment such as reduced duty rates or even zero rates. EU customs law has two sets of rules on preferential origin. It may either follow from bilateral (or multilateral) trade agreements (Free Trade Agreements or 'FTAs') made with other countries and territories, or from the EU's unilateral preferential system (Generalized System of Preferences or 'GSP'). Notwithstanding the possibility of preferential origin, a good *always* has a non-preferential origin – which can be regarded as its default nationality.

**Pillar III: Valuation:** The third core element of the EU's customs system is the valuation of goods. The reason is simple: a tariff rate alone is insufficient for calculating the payable customs duties. A tax base is required to which the tariff rate can be applied. The EU customs legislation provides for six methods of customs valuation. The first and most important method is the so-called "transaction value method", which is the primary method of valuation. The transaction value is the price actually paid or payable for the goods when sold

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<sup>21</sup> Title II, Chapter 2, Section 1, UCC.

<sup>22</sup> Title II, Chapter 2, Section 2, UCC.

for export to the customs territory of the EU.<sup>23</sup> This price can be adjusted by adding or deducting certain elements. For example, royalties or payments for trademarks, shipping and insurance may need to be added, whilst other elements, such as buying commissions, may be deducted from the price. Only when the goods cannot be properly valued with the transaction value method, can one resort to the other (secondary) methods.<sup>24</sup> This may, for example, happen when the buyer and seller are related parties who have agreed on a price that does not reflect the real economic value of the respective goods.

#### 1.4. Roadmap of EU customs law

EU customs law is characterized by a very broad scope and a high level of detail. Notwithstanding this, the customs system is also structured logically around certain key elements and concepts. Figure 1.2 provides an overview of the structural elements of the EU customs system. Virtually all individual rules, exceptions, case law, guidances, and opinions on the subject matter can be related to one or more of these structural elements. The chapters that follow elaborate on each of these elements in greater detail.

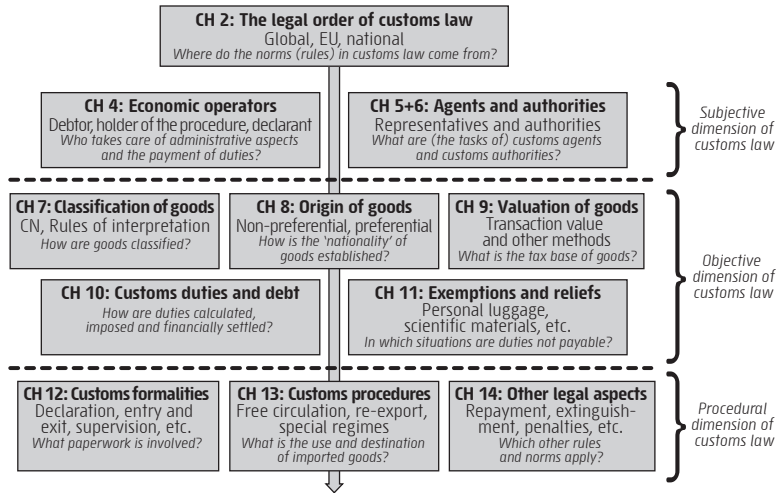


Figure 1.2: Roadmap of EU customs law: an overview of the structural elements of the customs system

<sup>23</sup> Article 70(1) UCC.

<sup>24</sup> Article 74 UCC.

# 2. The legal order of customs law

## 2.1. Introduction to the sources of (EU) customs law

As previously mentioned, the EU customs system functions as a border control system that governs the physical movement of people and goods across the external frontiers of the EU. The body of legal norms and rules that underpin this control system is referred to as the *legal order of customs law*.

An interesting aspect is that, from an EU perspective, customs law has three distinct legal orders: a global one, an EU one, and national ones (see Figure 2.1). Within each of these legal orders, there are various *sources* of customs law from which we derive the norms and rules that govern international trade.

Examples of these sources are the supranational World Trade Organization (WTO)<sup>25</sup> or World Customs Organization (WCO)<sup>26</sup> frameworks (e.g., the Global Agreement on Tariffs and Trade (GATT), EU legislation (e.g., the UCC), jurisprudence (CJEU case law, rulings of national courts), and guidance documents (e.g., the EC's guidance on non-preferential rules of origin).



Figure 2.1: The three legal dimensions of (EU) customs law

<sup>25</sup> World Trade Organisation (WTO).

<sup>26</sup> World Customs Organisation (WCO).

## 2.2. The global legal order of customs law

The global legal order of customs law consists of legal frameworks that transcend national jurisdictions, and also the EU's legal order.<sup>27</sup> In this section, we discuss the two most influential and far-reaching institutions for the governance of global trade: the WTO and the WCO. The legal instruments and agreements developed under their auspices cover the vast majority of global trade transactions (i.e., more than 97% by some estimates). Furthermore, this section also discusses bilateral trade arrangements, which are commonly referred to as Free Trade Agreements (FTAs).

### 2.2.1. The World Trade Organization (WTO)

The WTO was established in 1995 and is headquartered in Geneva, Switzerland. This institution oversees and operates a worldwide system of trade rules. The main ambition of the WTO is to “ensure that trade flows as smoothly, predictably and freely as possible.”<sup>28</sup> This may seem straightforward, yet beyond this ambition lies a plethora of secondary goals, such as the promotion of inclusive trade, non-discrimination and fair competition, and the protection of the environment.<sup>29</sup> Thus, the facilitation of trade is not an absolute objective of overriding importance; instead, it is merely one of many interests that are taken into account by the WTO.

The most important concepts of the GATT and the WTO are the following:

- The **Most Favored Nation** principle (MFN): the WTO members have agreed that any trade advantage granted by one member to any product originating in or destined for any other member shall be accorded immediately and unconditionally to the same product originating in or destined for the territories of all other members. For example: if New Zealand decides to apply favorable (lower) tariff rates or more lenient customs clearance procedures to the importation of bananas from Brazil, it should also apply these benefits to the importation of bananas from Nicaragua. In this way, the Most Favored Nation principle promotes fair competition between traders based in different countries, as it guarantees

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27 Following Article 216 TFEU, the EU is required to adhere to international agreements such as the GATT and the HS Convention. Hence, if the EU is party to an international agreement, those agreements are *de facto* binding on the EU institutions (see, to that effect, CJEU 4 February 2016, Case C-659/13 and C-34/14, C & J Clark International and Puma, ECLI:EU:C:2016:74, paragraph 83).

28 See [https://www.wto.org/english/thewto\\_e/thewto\\_e.htm](https://www.wto.org/english/thewto_e/thewto_e.htm), accessed on 11 November 2024.

29 See World Trade Organization: Annual Report 2024, p. 32 – 33.

equal access to the world market irrespective of the origin of the goods. In this way, it enhances economic efficiency.

- The **National Treatment** principle (NT): Another aspect of WTO law is the notion that once goods have been customs cleared<sup>30</sup>, and once all customs formalities in connection with their entry into a certain country have been properly dealt with, the respective country should treat those goods as if they were domestically produced. As such, the National Treatment principle ensures, to a certain extent, fair competition.

### 2.2.2. *The World Customs Organization (WCO)*

The WCO, headquartered in Brussels, Belgium, is an organization with an administrative (i.e., public) focus on a strategic level. Its main goal is to facilitate legitimate trade, secure fair revenue collection and protect society in a broad sense.<sup>31</sup> The primary instruments of the WCO are harmonization (i.e., developing shared standards) and international cooperation. Currently, 186 nations are members of the WCO, including the EU and the Member States. The most important concepts of the WCO are the following:

- The **Harmonized System (HS) Convention**: This agreement, which entered into force on 1 January 1988, institutionalized a standardized commodity code system, generally referred to as the Harmonized System. For tariff and customs purposes, each tangible good needs to be identifiable. To simplify affairs on a global level, the WCO members agreed to rely on a harmonized nomenclature. This nomenclature contains six-digit codes that identify tradeable goods.
- The **Agreement on Rules of Origin**: For tariff and customs purposes, each tangible good requires a 'nationality', referred to as "origin". With the Agreement on Rules of Origin, the WCO has produced an instrument that, to a certain extent, harmonizes the principles and rules that govern the non-preferential origin of goods.<sup>32</sup>

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<sup>30</sup> *Supra* n 14.

<sup>31</sup> See <https://www.wcoomd.org/en/about-us/what-is-the-wco/vision-mission-values.aspx>, accessed on 18 November 2024.

<sup>32</sup> See <https://www.wcoomd.org/en/topics/origin/instrument-and-tools/wto-agreement-on-rules-of-origin.aspx>, accessed on August 6, 2025.

### **2.2.3. Free Trade Agreements (FTAs)**

FTAs are bilateral (or multilateral) agreements between two sovereign entities (e.g., countries or territories such as the customs union of the EU) that regulate, on a supranational level, trade related aspects in the context of their mutual relationship. Generally, the arrangements of FTAs adhere to the obligations of WTO and WCO agreements, and focus on executive or administrative details, the balanced reduction of tariff barriers, and the (gradual) reduction of tariffs.

## **2.3. The EU legal order of customs law**

### **2.3.1. Primary EU statutory law**

The main constituent elements of the EU customs system are stipulated in primary EU statutory law, notably the Treaty on the European Union (TEU) and the Treaty on the Functioning of the EU (TFEU). As stated, the Member States have agreed to set up and operate a customs union (Article. 3(1)(a) TFEU). This means that tariff measures between Member States have been completely abolished and that the Union as such maintains a uniform tariff on imports originating from and exports destined for countries which are not part of said Union.<sup>33</sup> In addition, the customs union maintains a uniform CCT for global trade. So, bananas imported from Brazil into France are faced with exactly the same duty rate as the same goods imported into Germany.

### **2.3.2. Secondary EU statutory law**

Whereas primary EU statutory law sets the stage, secondary EU statutory law regulates the practical, material conditions of the EU's customs affairs. First and foremost, the UCC is the primary legal foundation of the EU's customs system. It is a Regulation, meaning that it is directly applicable in all of the Member States, without the need to transpose the rules and requirements into national law. The UCC provides detailed rules on the three pillars of EU customs law: the classification of goods, their origin determination, and their valuation. In addition, its provisions arrange numerous other aspects, such as customs debt and debtorship, customs representation, special customs procedures (e.g., inward processing) and customs supervision.

The UCC is complemented by two other Regulations. First, the UCC Delegated Act (UCC-DA) provides supplementary rules to the UCC on certain

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33 See also J. Viner, 2014, *The Customs Union Issue*, Oxford University Press.

non-essential aspects.<sup>34</sup> Second, the UCC Implementing Act (UCC-IA) promotes the uniform application of the UCC by providing further elaboration on concepts like the last sale for export, customs debt, and royalty payments.<sup>35</sup> Also the CN constitutes secondary EU law.

### **2.3.3. CJEU case law**

Both primary and secondary statutory law comprise numerous rules on the EU customs union and the manner in which it operates (or should operate). Whenever doubt arises as to the proper interpretation of these rules, or whenever Member States fail to adhere to them, the CJEU is competent to render judgment if cases are brought before it.<sup>36</sup> By means of its case law, the CJEU is able to clarify the meaning of the rules, and to provide guidance on their application.

## **2.4. The national legal order of customs law**

Not every aspect of customs law is arranged on an EU level. In fact, the Member States themselves enjoy a certain degree of discretion to adopt and implement rules of their own, for instance, in connection with certain formal aspects like sanctioning or the proper method for communicating a customs debt to the debtor. Thus, also national laws and regulations have a bearing on the customs affairs of economic operators and authorities.

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34 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, OJ L 343.

35 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343.

36 Initially the CJEU screens requests for preliminary rulings under Article 267 TFEU and, in six clearly defined subject-matter areas (VAT, excise duties, the Customs Code, tariff classification under the Combined Nomenclature, passenger compensation and assistance rights, and greenhouse-gas emissions trading) it may transfer jurisdiction to the General Court (see Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, OJ L 2024/2019).

### 3. The EU customs system and its Determination Scheme

In this chapter, we present the determination scheme of the EU customs system. The determination scheme is a step-by-step methodology that enables the systematic identification and application of every legal aspect of customs law relevant to goods entering or exiting the EU customs territory.

#### ***Step 1: Who? The subjective dimension of EU customs law***

The first step in the customs determination scheme identifies the primary actors in the course of customs taxation. Each actor enjoys certain rights and responsibilities. The customs debtor and declarant are held to pay customs duties and take care of administrative aspects (i.e., customs formalities) such as lodging customs declarations. In case any special customs regime applies, the holder of the authorization is generally the person authorized to utilize that regime and is typically also the holder of the procedure liable for the obligations arising from that regime. The customs authorities supervise and enforce customs legislation. Finally, customs representatives can act on behalf of other parties (economic operators) in the course of taxation.

**Step 1a:** Economic operator, customs debtor, holder of the procedure and the declarant

**Step 1b:** Customs authorities

**Step 1c:** Customs representatives

#### ***Step 2: What? The objective dimension of EU customs law***

The second step concerns the goods and all legal aspects related to those goods. First, goods need to be classified and valued, and their origin needs to be determined. Only then can the amount of customs duties, and thus the customs debt, be ascertained accurately. Finally, certain exemptions and reliefs may be applicable.

**Step 2a:** Classification

**Step 2b:** Origin

**Step 2c:** Valuation

**Step 2d:** Customs duty calculation and debt

**Step 2e:** Exemptions and reliefs

***Step 3: In what manner? The procedural dimension of EU customs law***

The third and final step of the customs determination scheme involves the formal, procedural dimension of customs law, focusing on the interactions of the economic operator and the customs authorities. Customs formalities concern the standard administrative operation of the customs system, for instance, the filing of customs declarations. Customs procedures relate to the release of goods for free circulation (i.e., customs clearance) and special legal regimes (e.g., customs warehousing, inward processing) and the associated granting of authorizations. Finally, the third step also covers various other legal aspects that may come into play, depending on the exact circumstances of the case at hand (e.g., remission and repayment of duties, the extinguishment of customs debts, and legal remedies against decisions of the customs authorities).

**Step 3a:** Customs formalities

**Step 3b:** Customs procedures and authorizations

**Step 3c:** Other legal aspects, such as repayment and remission, penalties, extinguishment, binding information decisions, legal remedies etc.

## **PART II**

### THE SUBJECTIVE DIMENSION OF EU CUSTOMS LAW

## 4. Economic operator, customs debtor, holder of the procedure and the declarant

This chapter examines the roles of the customs debtor, the holder of the procedure, and the declarant, as they may be assumed by an economic operator. It explores the relationships and interactions between these key legal concepts within the framework of EU customs law.

### 4.1. Economic operator

Before exploring the various roles an economic operator may assume, it is essential to first define who qualifies as an economic operator. According to Article 5(5) UCC, an ‘economic operator’ is any person who, in the course of his or her business, engages in activities covered by customs legislation. The term “person” is broadly defined under the UCC and includes natural persons, legal persons, and any association of persons that is not a legal entity but is recognized under Union or national law as capable of performing legal acts.<sup>37</sup> Taking these definitions into account, ‘economic operator’ can be understood as a general term to specify entities that, by virtue of their commercial actions, are affected by the legal framework of EU customs law. Classic examples of economic operators are customs agents, international freight forwarding companies, trading companies and customs warehouse operators. As economic operators, they all have a function in the context of customs law.

### 4.2. Customs debtor

Another relevant defined person in EU customs law is the customs debtor. According to Article 5(19) UCC, a “debtor” is any person liable for a customs debt that has arisen as a consequence of his or her business activities (e.g., importing non-Union goods into the EU customs territory). The identification of the customs debtor depends on the specific type of customs debt incurred.<sup>38</sup>

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<sup>37</sup> Article 5(4) UCC.

<sup>38</sup> At the time of writing this book, the EU did not impose duties on exports, and therefore, no scenarios currently exist where a customs debt on exports could arise under Articles 81 and 82 UCC. For this reason, this section of the book will not further elaborate on who may be considered a customs debtor in such situations.

There are two primary ways of incurring a customs debt, namely due to the manifestation of the following:

- I. The release of goods for free circulation and the temporary admission of goods with partial import duty relief;
- II. Non-compliance with customs legislation.

These triggers for the incurrance of a customs debt are connected with persons who are held to carry the burden, namely the customs debtors. The following subsections discuss the them to further detail.<sup>39</sup>

#### **4.2.1. Release for free circulation and temporary admission with partial import duty relief**

Article 77 UCC arranges the incurrance of a customs debt in two specific cases. First, a customs debt arises when non-Union goods are released for free circulation in the EU customs territory. Second, the application of Article 77 UCC also triggers the incurrance of a customs debt when goods are temporarily admitted into the EU with partial (so: not full) import duty relief. In the mentioned situations, the customs debtor, as defined in Article 77(3) UCC, includes:

- I. **The declarant:** This is the person who has submitted the customs declaration for the release or temporary admission of the goods.
- II. **The (represented) principal:** In cases of indirect representation, a customs agent acts in its own name vis-à-vis the customs authorities, but on behalf of the principal that it represents.<sup>40</sup> Such an appointment does not relieve the principal from the obligation to pay customs duties, as Article 77 UCC specifies him as customs debtor, too.
- III. **The information provider:** If the customs declaration is based on information that leads to the full or partial non-collection of import duties, the person who provided the information and who knew, or should reasonably have known, that the information was false, is also a customs debtor.

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<sup>39</sup> Article 78 UCC contains a third way of incurring a customs debt, i.e. for the import of certain non-originating goods included in processed products when a declaration for re-export of the products concerned is accepted.

<sup>40</sup> Article 18 UCC.

#### **4.2.2. Non-compliance with customs legislation**

Article 79 UCC specifies the customs debtors in case of non-compliance with customs legislation. In the context of this provision, there are two distinct situations in which a customs debt may arise. First, this occurs when it has been established that there is non-compliance with customs obligations concerning the introduction of non-Union goods into the customs territory, the removal of such goods from customs supervision, the end-use of goods within the customs territory of the Union, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within the customs territory. In that situation, the following entities shall be regarded as debtors on the basis of Article 79(3) UCC: any person required to fulfil the obligations under customs legislation, any person who knew or should reasonably have known that the obligation was not fulfilled and who acted on behalf of the obligated person or participated in the act leading to non-compliance, and any person who acquired or held the goods and knew or should reasonably have known at the time of acquisition or receipt that the obligation was not fulfilled.

The second situation concerns non-compliance with conditions for customs procedures (e.g., inward processing) or favorable treatment under the rules for end-use of goods. The following entities shall then be considered to be debtors, following Article 79(4) UCC: any person required to comply with the relevant conditions, and the person who provided false information and who knew, or should reasonably have known, that the information was false.

#### **4.3. Holder of the procedure**

When goods enter or exit the EU customs territory, they need to be ‘purposed’, that is, placed under a customs procedure that essentially defines what will happen to the goods.<sup>41</sup> For example, cocoa products from Bolivia which are destined for the EU market may first be stored in a customs warehouse in Rotterdam (special procedure, see Article 240 UCC), after which they may be customs cleared to be sold to supermarkets (release for free circulation, see Article 201 UCC).

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<sup>41</sup> Article 5(16) UCC.

The economic operator who is responsible for the procedure is referred to as the 'holder of the procedure'. The holder is, as outlined in Article 5(35) (a) UCC, the person who lodges the customs declaration or on whose behalf that declaration is lodged. The holder of the procedure has several key responsibilities (e.g., maintaining proper records).

#### **4.4. Declarant**

Under Article 5(15) UCC, the declarant is the person who submits a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration, or re-export notification in their own name, or in whose name such a declaration or notification is submitted. In simple words, the declarant is the person who, in the context of EU customs law, takes care of reporting obligations. Further to this, the declarant is typically also the holder of the procedure.<sup>42</sup> Furthermore, in most, if not all, instances where a customs debt arises, the declarant is also considered (one of) the customs debtor(s).

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<sup>42</sup> An exception to this is in cases of indirect customs representation (refer to section 5) and instances where the TORO mechanism is applied.

## 5. Customs representative

While anyone capable of providing the necessary information and presenting the goods may theoretically act as a declarant, not all economic operators are practically equipped to submit customs declarations. In addition to requiring specialized knowledge and expertise, they must possess the technical means to submit declarations electronically. For this reason, customs legislation allows for the appointment of a customs representative. This is nothing but a service provider (generally referred to as “agent”) who, often in return for payment, takes care of customs affairs on behalf of another party (generally referred to as “principal”). In legal terms, a “customs representative” is any person appointed by another to carry out the acts and formalities required under customs legislation in their dealings with customs authorities.<sup>43</sup> Customs representation is commonly carried out by parties who advertise themselves as customs brokers/agents, freight agents, or other specialized customs intermediaries.

As a general rule, customs representatives must be established within the Union, although specific exceptions may apply.<sup>44</sup> They can act in one of two capacities<sup>45</sup>:

- I. **Direct representation:** The customs representative submits the declaration in the name and on behalf of the principal. In the context of the representation, a direct customs representative therefore is not an independent entity; it can be regarded as an integral part of the economic operator in whose name it acts (i.e., comparable to an employee of the latter).
- II. **Indirect representation:** the customs representative submits the declaration in their own name but on behalf of the principal. In the context of the representation, an indirect customs representative therefore acts independently as an entity separate from the principal, even if it acts in the interests of the latter.

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<sup>43</sup> Article 5(6) UCC.

<sup>44</sup> Article 18(2) UCC.

<sup>45</sup> Article 18(1) UCC.

## 6. Customs authorities

### 6.1. General mission statement and responsibilities

The national customs authorities of the Member States constitute the primary actors in the administration of customs affairs within the EU customs territory. The mission of the customs authorities extends well beyond the mere collection of customs duties. Pursuant to Article 3 UCC, their responsibilities encompass the supervision of the Union's international trade with the aim of contributing to fair and open trade and to various other goals. They should protect the financial interests of the EU and its Member States, and prevent unfair and illegal trade while supporting legitimate business activity. Further, they are required to ensure the security and safety of the EU and its residents, and the protection of the environment.

### 6.2. Customs controls

One of the primary operational tasks of the customs authorities is to carry out customs controls, which are defined as the actions that are meant to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved to, from and sometimes within the customs territory.<sup>46</sup> In practice, such actions may involve examining goods, taking samples, verifying the particulars entered in customs declarations, and inspecting vessels or luggage.<sup>47</sup> The customs authorities work with a risk-based approach. Customs controls are carried out following a balanced risk assessment which is based on electronic data analysis techniques.<sup>48</sup> In other words: shipments and consignments are differentiated according to their level of risk, meaning that a higher risk profile leads to a higher likeliness of inspection and auditing. This being said, the customs authorities also carry out random checks. The purpose of this multi-faceted approach is to maximize the effectiveness and efficiency of their public function.<sup>49</sup>

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46 Article 5(3) UCC.

47 Article 46(1) UCC.

48 Article 46(2) UCC.

49 The Customs Reform Plan or UCC reform (see the Communication from the Commission, 17 May 2023, COM(2023) 257 final) aims to redefine the approach to customs controls in the EU. An important element of the plan is the formation of an EU Customs Authority, which would use an EU data hub to establish the strategic risk approach and to assist the Member States with the coordination of their checks and inspections.

Besides customs controls, there's also the concept of customs supervision, which is an activity that, by its very nature, is more passive and hands-off. Customs supervision concerns the uninterrupted diligence and vigilance of the customs authorities with a view to ensuring that customs and other legislation are observed.<sup>50</sup> This supervision is especially important for goods which have a non-Union customs status (i.e., which lack an "EU stamp"). The reason is that for these goods, no duties, taxes and charges have been paid yet. In addition, it may be that not all customs formalities have been properly dealt with. For that reason, the UCC provides that non-Union goods shall remain under customs supervision until their customs status is changed (e.g., by means of customs clearance), or until they are taken out of the customs territory of the Union, or until they are destroyed.<sup>51</sup> This underlines that customs supervision is a continuous control mechanism that is meant to minimize the risk of non-compliance and the loss of revenues. Union goods, which have the "EU stamp" and are freely tradeable on the internal market, are not (or: no longer) under supervision, assuming that their customs status as Union goods has been properly established.<sup>52</sup>

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<sup>50</sup> Article 5(27) UCC.

<sup>51</sup> Article 134 UCC.

<sup>52</sup> This being said, Union goods declared for export, internal Union transit or outward processing shall be subject to customs supervision from the time of acceptance of the declaration until such time as they are taken out of the customs territory, or are abandoned to the State, or destroyed. Article 158(3) UCC.

## **PART III**

### THE OBJECTIVE DIMENSION OF EU CUSTOMS LAW

## 7. Classification

### 7.1. Introduction

The levy of customs duties is based on three substantive pillars: classification, origin, and valuation. These pillars apply exclusively to goods, as intangibles such as services do not constitute a standalone object of customs taxation. Only once the classification, origin, and customs value of a good have been properly determined can the applicable tariff rate and any relevant non-tariff measures (e.g., trade restrictions or import quotas) be established. Together, these three elements form the core of the EU's customs framework.

This chapter explains the tariff classification of goods for EU customs purposes. A central notion in this context is the CCT<sup>53</sup>, which consists primarily of shared tariff rates and of the so-called CN. The CN is essentially a huge ledger consisting of descriptions of goods and accompanying tariff classification codes. Each and every product that one can think of has a unique code that sets it apart from other goods. In this way, the products can be *identified*. This allows the EU to apply different tariff rates or other measures (e.g., trade restrictions) to different products.

### 7.2. The classification code

For many years, the World Customs Organization (WCO) has strived to harmonize product classification around the globe.<sup>54</sup> Its efforts were not in vain: on 1 January 1988, the International Convention on the Harmonized Commodity Description and Coding System (HS Convention) entered into effect.<sup>55</sup> The HS Convention is nothing but a huge product ledger, containing unique 6-digit codes for thousands of distinguishable goods. It allows traders and customs officials around the world to specify products for customs and trading purposes, irrespective of their different mother tongues and alphabets. The HS-code of a product consists of a chapter denomination (first two digits), a heading denomination (third and fourth digits) and a subdivision or subheading denomination (fifth and sixth digits). The HS-codes are ordered

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<sup>53</sup> Article 56 UCC.

<sup>54</sup> For more information, see [https://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs\\_convention.aspx](https://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs_convention.aspx), accessed on 10 June 2025.

<sup>55</sup> International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, entered into force on 1 January 1988. The annex contains an international nomenclature (HS Nomenclature), which constitutes the basis for the EU Combined Nomenclature.

by means of sections that provide a crude categorization on the basis of the general nature of the respective good. For example, one may scroll through the HS Convention and find an HS-code relating to textiles (see Figure 7.1).

| Harmonized System (HS)                     |            |            |               | Description                                                                         |
|--------------------------------------------|------------|------------|---------------|-------------------------------------------------------------------------------------|
| HS Section                                 | HS Chapter | HS Heading | HS Subheading |                                                                                     |
| XI                                         |            |            |               | Textiles                                                                            |
|                                            | 63         |            |               | Other made-up textile articles; sets; worn clothing and worn textile articles; rags |
|                                            |            | 01         |               | Blankets and travelling rugs                                                        |
|                                            |            |            | 30            | Blankets (other than electric blankets) and travelling rugs, of cotton              |
| Full HS-code: 6301.30, found in Section XI |            |            |               |                                                                                     |

Figure 7.1: Harmonized System (HS) classification coding system

The EU is a contracting party to the HS Convention. In order to comply with the universal standard of the Harmonized System, the EU operates a classification system that is based on it.<sup>56</sup> This ‘CN’ system provides for descriptions of products and the applicable tariff rates, discerning between goods on the basis of their unique 8-digit classification codes. These numbers are called CN-codes. The first six digits are derived from the HS chapters, headings and subheadings, whereas the seventh and eighth digits define the CN subheadings (which are unique to the EU). When a heading or subheading of the HS is not further subdivided for Union purposes, the seventh and eighth digits shall be ‘00’. Further, the Combined Nomenclature allows for an additional ten digits, which are commonly referred to as TARIC<sup>57</sup> digits.

56 Commission Implementing Regulation (EU) 2023/2364 of 26 September 2023 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 2023/2364.

57 TARIC stands for Tarif Intégré des Communautés Européennes. The TARIC coding encompasses “...all measures relating to EU customs tariff, commercial and agricultural legislation”. The TARIC database can be used to look up the measures applying to a certain product. See [https://taxation-customs.ec.europa.eu/customs-4/calculation-customs-duties/customs-tariff/eu-customs-tariff-taric\\_en](https://taxation-customs.ec.europa.eu/customs-4/calculation-customs-duties/customs-tariff/eu-customs-tariff-taric_en), accessed on 11 June 2025.

These coding additions allow for further sub-specification of the products, for instance, to differentiate with a view to applying diverging trade policy measures.

### **7.3. The Rules of Interpretation**

A product classification system requires a proper methodology for the identification of the goods. Or, to put it differently: if apples and pears are to be treated as distinct commodities, one must also have a sound method of establishing when a product is an apple, when it is a pear, or when it is something else entirely. Realizing this need for a structured approach to classification, the WCO has drafted and adopted the six 'GRIs', which are embedded in the HS Nomenclature.<sup>58</sup> The rules dictate the manner in which the classification of goods takes place. Within the context of EU law, these rules are incorporated into Annex I to the Tariff Regulation as the CN.<sup>59</sup> In this section, we discuss the GRIs in further detail. It is important to note that the rules must be applied in a strict order, starting with the first.

#### **7.3.1. GRI 1: Primacy of Headings and Chapter and Section Notes**

*"The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions [authors: GRIs 2 - 6]."*

The first GRI establishes the foundation of the classification methodology. That foundation consists, first and foremost, of the terms of the headings and the notes to the sections and chapters. The heading terms are the wordings mentioned by the Combined Nomenclature in relation to the four digit level of the product. One must also take into account the notes to the sections and chapters - if there are any.

As can be derived from its wording, GRI 1 clarifies the legal standing of various elements of the classification system. First, the titles of sections, chapters and sub-chapters are for ease of reference only. This means that they can indeed

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<sup>58</sup> Article I(a) of the HS Convention.

<sup>59</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 256.

be used to conveniently browse the nomenclature - which is immense -, yet they cannot be relied on in a legal sense (e.g., in disputes or proceedings). Finally, it should be mentioned that GRI 1 only relates to headings and as such is only applicable to the first four digits of the CN code; in respect of further subdivisions arising from subheadings, GRI 6 applies.

### **7.3.2. GRI 2a: Incomplete, unfinished and non-assembled goods**

*“Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”*

GRI 2a connects with the circumstance that for various reasons, goods which are presented to customs authorities may not have the form that they have whenever they are used or traded after customs clearance. It is, for example, very expensive and complicated to transport fully assembled playground equipment or beds. Often, such products arrive at the customs border in an incomplete, unfinished or unassembled state, simply because it is logistically more efficient and cost-effective. First, GRI 2a provides references to complete or finished goods in the heading terms also include those goods in an unassembled or disassembled state. Second, GRI 2a covers situations in which goods presented to customs are, for whatever reason, incomplete, in the sense that they are missing certain (functionally crucial) elements. It follows from GRI 2a that an unfinished, unusable product that reflects the core characteristics of a certain finished good and can only be used as such, is to be classified as that finished good.<sup>60</sup>

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<sup>60</sup> This aspect of GRI 2a is commonly referred to as the 'object shape'. See also CJEU 9 February 1999, Case C-280/97, ROSE Elektrotechnik GmbH & Co. KG, ECLI:EU:C:1999:62.

### **7.3.3. GRI 2b: Mixtures, combinations and goods with certain material characteristics**

*“Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3 [authors: GRI 3].”*

GRI 2b specifies that any heading referring to goods of a given material or substance includes goods consisting partly of that material or substance. The effect of this rule is to extend the scope of any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. Likewise, GRI 2b expands the scope of the heading in which a certain material or substance is mentioned to include that material or substance when it is mixed or combined with other materials. For example, when two agricultural products (wheat and barley) are mixed, the headings that mention the separate products (i.e., headings 1001 and 1003, respectively) include the resulting mixture as a whole.<sup>61</sup> In such situations, GRI 3 provides tie-breaker rules.

### **7.3.4. GRI 3a: Tie-breaker rule (specificity)**

*“When by application of Rule 2 (b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.”*

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<sup>61</sup> However, if the headings or section or chapter notes require that a material or substance is not mixed or combined, this rule does not apply (i.e., in that case, the heading does not cover mixture or combination). See HS Explanatory Notes published on the website of the WCO <https://www.wcotradetools.org/en/harmonized-system/rules>, accessed on 17 June 2025.

First, GRI 3a provides that for classification purposes, a heading with specific terms takes precedence over a heading with less specific terms. Since there is no universal hierarchy of specificity between the hundreds of headings, their level of specificity should be assessed on a case by case basis. Second, GRI 3a points out that the specificity is deemed to be equal in case two or more headings refer to part only of a) the materials or substances or b) the items in a set put up for retail sale.<sup>62</sup> This is also the case when one of the headings gives a more detailed and nuanced description of the materials, substances or items put up for retail sale.

### **7.3.5. GRI 3b: Tie-breaker rule (essential character)**

*“When by application of Rule 2 (b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows:*

**b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3a [authors: GRI 3a], shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”**

GRI 3b only applies when GRI 3a produces no satisfactory classification result.<sup>63</sup> It relates to four different product types: mixtures, composite goods consisting of different materials, composite goods made up of different components, and goods put up in sets for retail sale. When classifying a good that belongs to one of these types, it is necessary to identify the material or component that bestows the essential character of the good as a whole to that good as a whole.

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62 Strangely, a “set put up for retail sale” is only explained by the WCO under the explanatory notes for GRI 3b, which also makes mention of the concept. Such a set “consist[s] of at least two different articles which are, prima facie, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set (...) [Further, it] consist[s] of products or articles put up together to meet a particular need or carry out a specific activity, and (...) are put up in a manner suitable for sale directly to end users without repacking (e.g., in boxes or cases or on boards).” HS Explanatory Notes published on the website of the WCO, <https://www.wcotradetools.org/en/harmonized-system/rules>, accessed on 17 June 2025.

63 See HS Explanatory Notes published on the website of the WCO <https://www.wcotradetools.org/en/harmonized-system/rules>, accessed on 17 June 2025.

#### **7.3.6. GRI 3c: Tie-breaker rule (numerical order)**

*"When by application of Rule 2 (b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*c) When goods cannot be classified by reference to [authors: GRI] 3a or 3b, they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."*

GRI 3c is the third and final tie-breaker rule for goods classifiable under two or more headings. It stipulates that classification takes place under the heading which occurs last in numerical order. So, a toolkit that consists of differently classifiable, equally important tools, without one tool representing the essential character of the toolkit, shall obtain the heading code which is numerically last in the HS system.

#### **7.3.7. GRI 4: Likeness rule**

*"Goods which cannot be classified in accordance with the above Rules [authors: GRIs 1 - 3] shall be classified under the heading appropriate to the goods to which they are most akin."*

GRI 4 is a so-called 'catch-all rule' with general meaning. It is meant to create a closed system and to prevent classification blind spots. Following this rule a good that is unclassifiable under the first three GRIs must undergo a comparability test vis-a-vis different, albeit similar goods. Ultimately, the good is classified under the same heading as the good with which it shares the most similarities or the highest extent of similarity.

#### **7.3.8. GRI 5a: Special case and container rule**

*"In addition to the foregoing provisions, the following Rules [authors: GRIs] shall apply in respect of the goods referred to therein:*

*a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall*

*be classified with such articles when of a kind normally sold therewith.  
This Rule does not, however, apply to containers which give the whole its  
essential character.*

GRI 5a is somewhat of an exceptional classification rule, as it relates to cases and containers, which are only ancillary to the good(s) that they commonly hold.<sup>64</sup> First, it does not apply to containers which reflect the essential character of the physical object that is presented to customs. Second, the rule contains various other criteria, as it only applies to containers that are specially shaped or fitted to contain a specific article or set of articles, that are suitable for long-term use, that are presented with the articles for which they are intended, and that are of the sort that is normally sold with the respective good.

#### **7.3.9. GRI 5b: Special packing rule**

*“In addition to the foregoing provisions, the following Rules [authors: GRIs] shall apply in respect of the goods referred to therein:*

***b)** Subject to the provisions of rule 5(a), packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.”*

Where the packing is not covered by GRI 5a, its classification must be considered under GRI 5b. This rule concerns the classification of packing materials of the sort that is normally used for packing such goods.<sup>65</sup> Such materials or containers are those that are strictly necessary for the use of the goods in question or those that are commonly used for the marketing and use of the goods to which they relate.<sup>66</sup>

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<sup>64</sup> Also the order (hierarchy) of this rule is disputed. For example, Advocate-General Kokott has stated the following:

“The structure of the general rules [authors: GRIs] is such that so far as general rules 2 to 4 are concerned, the order in which they are considered follows the order in which the provisions appear. This is not the case with general rule 5. It is distinct from general rules 2 to 4 and may be considered first.” Opinion of Advocate-General Kokott of 8 June 2006, Case C-250/05, Turbon International GmbH, ECLI:EU:C:2006:384, paragraph 75.

<sup>65</sup> HS Explanatory Notes published on the website of the WCO <https://www.wcotradetools.org/en/harmonized-system/rules>, accessed on 17 June 2025.

<sup>66</sup> CJEU 20 November 2014, Case C-40/14, Utopia SARL, ECLI:EU:C:2014:2389, paragraphs 39–43.

### 7.3.10. GRI 6: Subheading classification

*“For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules [authors: GRIs 1 - 5b], on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.”*

GRI 1 only relates to headings and as such is only applicable to the first four digits of the CN-code. In respect of further subdivisions arising from subheadings, GRI 6 applies. It dictates that the terms of the subheadings and related notes are leading for classification purposes; GRIs 1 to 5b govern, *mutatis mutandis*, classification at subheading levels within the same heading.<sup>67</sup>

### 7.4. Classification aids and BTI

Although the GRIs seem rather straightforward, tariff classification can be a complex affair. To promote the uniformity of tariff classification, there are various supporting instruments.<sup>68</sup> At the EU level, the main ones are those drafted by the Commission: the classification regulations and explanatory notes. Other uniformity promoting measures come from the WCO, which issues classification opinions, advice and explanatory notes – and, naturally there is CJEU jurisprudence on classification, too.

One instrument deserves special attention. To reduce the extent of legal uncertainty concerning the proper CN code for a certain good, Article 22 of the UCC allows an economic operator to apply for an administrative decision relating to the application of the customs legislation, namely a Binding Tariff Information (BTI). A BTI is a decision of the competent (customs) authorities as regards the tariff classification of a good. A BTI is valid for three years and

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<sup>67</sup> HS Explanatory Notes published on the website of the WCO <https://www.wcotradetools.org/en/harmonized-system/rules>, accessed on 17 June 2025.

<sup>68</sup> The legal foundation of these instruments is formed by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 256 (Tariff Regulation). With the adoption of the UCC, the mandate of the Commission to adopt a Classification Regulation regarding tariff classification is embedded in article 57(4) of the UCC. Following art. 9(2) Tariff Regulation, the Commission is not allowed to amend tariff rates.

shall be binding on the customs authorities and the holder of the respective BTI.<sup>69</sup> It therefore provides an economic operator with a certain extent of legal certainty as regards the classification of his products.

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<sup>69</sup> Article 33(2) UCC. See also CJEU case of 7 April 2011, Case C-153/10, Sony Supply Chain Solutions (Europe) BV, ECLI:EU:C:2011:224.

## 8. Origin

Alongside the classification and valuation, the origin of goods is a key determinant for the customs treatment of goods that enter the EU customs territory. This chapter provides an overview of the concept of origin, and of the primary rules for its determination.

### 8.1. Origin: the concept and rationale

Contrary to common misconceptions, origin does not refer to the location from which goods are shipped, but rather to their “economic nationality” – i.e., the place where the goods were sourced from or produced, judged from a customs law perspective.<sup>70</sup> The nationality of goods depends on economic parameters, such as the location where value was added or where product A was transformed into product B. In metaphorical terms, the origin of a good reflects its locational nexus, or the place which is most strongly associated with its economic genesis. The reason that we have origin determination is that there is a profound need for structured locational differentiation in international trade. For example, the EU may be willing to acquire certain goods from Bolivia or Norway, but not from countries under (partial) embargoes like North-Korea or Russia.

One complicating factor is that EU customs law distinguishes between preferential origin and non-preferential origin. According to the European Commission, preferential origin “...is conferred on goods from particular countries when they fulfil the rules of origin provided for in the relevant preferential arrangement”, following which they can benefit, for example, from reduced customs duties or no duties at all.<sup>71</sup> By contrast, non-preferential origin is the standard origin of a product and in principle confers no special status or treatment on the goods. Every product has a non-preferential origin, but not necessarily a preferential origin.

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<sup>70</sup> WCO Origin Compendium, Version 1.0, 15 May 2017, p. 53.

<sup>71</sup> Guidance on non-preferential rules of origin, European Commission, March 2022, p. 5, <https://taxation-customs.ec.europa.eu/system/files/2022-03/Guidance%20on%20non-preferential%20rules%20of%20origin.pdf>, accessed on 25 March 2025.

## 8.2. Preferential origin

The EU grants preferential tariff treatment to certain countries and territories through unilateral, bilateral, and multilateral trade arrangements. To assess whether a product qualifies for such preferential treatment, it is essential to determine the country or territory from which the product is considered to preferentially originate. The preferential origin determination can fail, in the sense that a good obtains no such origin when the criteria are not met. In contrast, a good *always* has a non-preferential origin.

The framework for determining preferential origin consists of both a substantive and a formal dimension. These two dimensions can be further divided into three layers. The first two layers, which fall under the substantive dimension, assess whether a product meets the material requirements for preferential origin based on established origin criteria. The first layer involves the Product Specific Rule (PSR) of origin, which defines the processing, production or manufacturing requirements that must be met for a product to be considered as originating from a particular country or territory. The second layer encompasses the General Rules of Origin (GRO) that must be considered to determine whether the origin criteria are satisfied. Finally, the third layer addresses the procedural requirements that must be fulfilled to qualify for preferential tariff treatment.

### 8.2.1. Substantive dimension – Layer 1: Product Specific Rule (PSR)

To qualify for preferential tariff treatment, goods must possess preferential originating status. The Product-Specific Rule (PSR) serves as the foundational layer in determining whether a product meets the criteria for originating status. As the basis of origin determination, it generally relies on two primary criteria, each applicable to a separate category of goods: 1) wholly obtained, and 2) substantial or sufficient transformation.<sup>72</sup>

- I. Wholly Obtained:** This criterion is applicable when a product is manufactured or produced entirely within a single country or territory. Generally, it demands that in an economic sense, a good has fully and exclusively come into existence in one country or territory; all value was added there. A classic example of such a product is an apple.

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<sup>72</sup> Chapter 4, Rules of Origin, Handbook, World Customs Organization, <https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/origin/overview/origin-handbook/rules-of-origin-handbook.pdf>, accessed on 28 November 2024.

**II. Substantial/sufficient transformation:** This criterion applies when the production or manufacture of a product involves multiple countries or territories. Typically, the substantial transformation PSR employs three basic criteria (or a combination thereof) to assess whether a product has undergone sufficient transformation:

- A. Value-added criterion:** A product is deemed substantially transformed when its value increases to a specified level, expressed as an *ad valorem* percentage.
- B. Change in tariff classification criterion:** Under the rule of change in tariff classification, a product is considered substantially transformed when the product is classified under a commodity code different from the non-originating materials used.
- C. Specific processing/manufacturing/production criterion:** a product is considered substantially transformed when non-originating materials are subjected to particular processing, manufacturing, or production operations. This is usually specified by indicating the types of non-originating materials that can be utilized (e.g., production from specific materials like metal or grain).

#### **8.2.2. Substantive dimension – Layer 2: General Rules of Origin (GRO)**

The General Rules of Origin (GRO) constitute the second layer of the preferential origin framework that is used to determine whether the substantive origin criteria are satisfied. The GRO are general complementary rules which build upon the foundations of the PSR. The application of GRO can influence whether or not a certain commodity obtains preferential origin. They typically consist of the following key elements:

- A.** Minimal operations
- B.** Cumulation
- C.** No-drawback
- D.** General tolerance
- E.** Principle of territoriality
- F.** Non-alteration/Direct transport

The following subsections discuss each category of the GRO to further detail.

#### **8.2.2.1. Minimal operations**

There are certain types of operations which are labelled as insufficient to confer preferential origin to a product. These typically include basic and simple activities such as packaging, labeling, washing, or simple<sup>73</sup> assembly, cutting or mixing that fall short of the substantial transformation criteria required for preferential trade treatment. Even if a PSR is technically satisfied through a minimal operation, the product does not obtain the preferential originating status if that operation is deemed to be minimal.

#### **8.2.2.2. Cumulation**

Cumulation allows for a departure from the strict requirement that goods must be entirely produced within the exporting country or territory, or that they must undergo substantial processing there to be considered as originating in that place. It enables countries or territories within a preferential trade arrangement to collaborate in production and *collectively* meet the rules of origin requirements. This means that materials from one partner country or territory can be further processed or combined with products in another partner country or territory and be considered as originating from the latter. In the EU's preferential trade arrangements, there are typically three types of cumulation, which are typically arranged in the origin protocols of the respective FTAs: bilateral, diagonal, and full cumulation.<sup>74</sup>

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<sup>73</sup> Most preferential trade agreements provide specific definitions for "simple". For instance, under the EU-Japan Economic Partnership Agreement (see Article 3.4(2) of the Agreement), an operation is deemed "simple" if it does not require special skills, machinery, apparatus or equipment specifically produced or installed for carrying out the specified operation. For the EU's unilateral preferential trade arrangements, the term "simple" is defined in a similar way in Article 47(2) UCC-DA.

<sup>74</sup> <https://trade.ec.europa.eu/access-to-markets/en/content/cumulation-0>, accessed on 28 November 2024.

**Example of bilateral cumulation (see Figure 8.1):**

Country A and Country B have preferential trade arrangements in place on the basis of an FTA, including specific rules on bilateral cumulation. Company X produces staplers in Country B, using input materials sourced from Country A which reflect 55% of the ex-works price of the final product. The Product Specific Rule (PSR) stipulates that the value of all non-originating materials used must not exceed 30% of the ex-works price (MaxNOM 30% (EXW)) if goods are to obtain preferential origin in Country B. The finished products (staplers) are exported to Country A. Due to the bilateral cumulation, the input materials are considered to have originated in Country B.<sup>75</sup> Thus, the staplers obtain preferential origin of Country B, even though more than 30% of the ex-works price consists of value added in Country A.

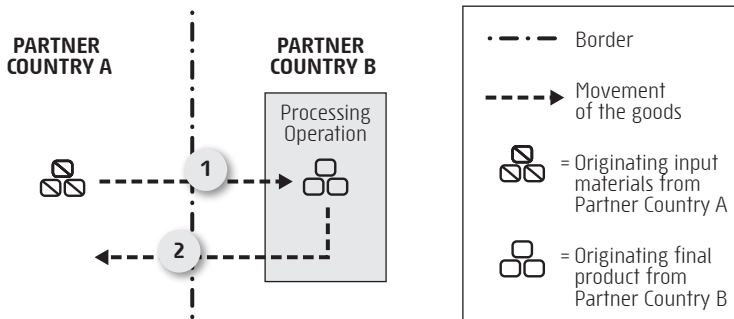


Figure 8.1: Bilateral cumulation

**8.2.2.3. No-drawback**

Certain EU preferential trade agreements include a “no-drawback” clause or rule. This clause prohibits the refund, remission, or exemption of import duties on non-originating materials used in the production of (finished) goods for which a proof of origin is issued under a preferential arrangement. The legislative intent of the no-drawback rule is to prevent double benefits, ensuring that producers do not simultaneously enjoy duty exemptions on inputs and preferential treatment on outputs; it bars producers from exploiting the preferential trade agreement in unintended ways.

<sup>75</sup> For other examples, see <https://trade.ec.europa.eu/access-to-markets/en/roo-explain-term/origin/JP/destination/BE/term/bilateralCumulation>, accessed on 9 April 2025.

#### **8.2.2.4. General tolerance**

The general tolerance rule provides limited flexibility by permitting the use of a certain percentage (typically 10% or 15%) of non-originating materials in a product without disqualifying it from being considered 'originating' in the partner country, even when these materials would normally breach the Product Specific Rule (PSR).

#### **8.2.2.5. Principle of territoriality**

Many FTAs include rules on territoriality. The underlying principle of territoriality requires that goods with preferential origin be produced within the countries or territories that are party to a preferential trade agreement. Limited processing outside these countries or territories is generally allowed, provided the added value does not exceed a specified percentage (often 10%) of the ex-works price of the final product.

#### **8.2.2.6. Non-alteration and direct transport rule**

The non-alteration and direct transport rules, corollaries to the territoriality principle, are key components of many preferential trade agreements. Their purpose is to ensure the integrity of originating goods during their journey from the exporting partner country to the importing one. The rules typically stipulate that the transported goods a) must remain under customs supervision during transit in a third country, and b) cannot undergo any processing or alteration, except for actions necessary to preserve their condition (e.g., repackaging, unloading for inspection, or ensuring proper storage).

The direct transport rule commonly requires originating goods to be transported directly between the EU and the partner country, with limited processing allowed in third countries under customs supervision and with sufficient proof of compliance. Alternatively, the non-alteration rule, while also preventing further processing in third countries, allows more flexible operations like splitting consignments and labeling, and typically does not require (upfront) proof unless requested by customs authorities.

### **8.2.3. Formal dimension – Layer 3: Procedural requirements**

The previous sections have elaborated on the material requirements of preferential origin determination. However, to claim preferential treatment of goods under trade agreements, certain procedural (formal) requirements must be met in order to demonstrate the origin of goods. This section discusses the most important evidentiary instruments in further detail.

#### **8.2.3.1. Proof of origin**

If an economic operator (importer) wants to enjoy preferential treatment in the context of his trading activities, he needs to substantiate the origin of the goods under the criteria stipulated by the respective trade agreement. For that very purpose, the economic operator is often dependent on the supplier of the goods (exporter), as that party has produced (and possibly shipped) the goods. After all, the nationality of the goods is only fully and unambiguously known to the person who has created them, and who has controlled them from the moment they came into existence.

Arguably the most pivotal document in the context of origin determination is the so-called ‘proof of origin’. In the past, (paper) origin certificates were commonly used as proof of origin. These origin certificates are simply statements that convey the origin of the goods that they accompany. However, because of the apparent disadvantages of such documents – mainly, their susceptibility to forgery and abuse – many countries and territories are now increasingly relying on other methods (e.g., digitalized registration-based certification systems).

#### **8.2.3.2. Supplier’s declaration**

A supplier’s declaration is a document issued by a supplier confirming that the goods they provide meet the required origin criteria.<sup>76</sup> This declaration serves as underlying evidence for the substantiation of the origin, enabling the exporter to demonstrate that the supplied materials or final products comply with the applicable rules of origin.

#### **8.2.3.3. Non-manipulation certificates and transport documents**

Non-manipulation certificates and transport documents are commonly used to prove that goods have not been altered during transit, particularly

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<sup>76</sup> Article 61 et seq. UCC-IA.

under the direct transport or non-alteration rules. Transport documents, such as bills of lading or air waybills, can serve as proof that the goods were transported in compliance with these rules. The non-manipulation certificate, which confirms that the goods have not been altered, may also be required to demonstrate compliance with these provisions.

### **8.3. Non-preferential origin**

Non-preferential origin rules are used to determine the country of origin of goods for the application of various measures. Unlike preferential origin, *every* product has a non-preferential origin. It is therefore the nationality of the goods in its most fundamental, general form.

Similar to preferential origin, the non-preferential rules of origin (NPO ROO) encompass both a substantive and a formal dimension. Equally, the NPO ROO also comprise of three layers: the Product-Specific Rule (PSR) and the General Rules of Origin (GRO) within the substantive dimension, and procedural requirements within the formal dimension.

#### **8.3.1. Substantive dimension – Layer 1: Product Specific Rule (PSR)**

In the EU, the Agreement on Rules of Origin was approved by Council Decision 94/800/EC.<sup>77</sup> While the use of EU NPO ROO is not mandatory for export, an exception applies when specific Union measures relating to origin are in place, such as export refunds.<sup>78</sup>

The primary criteria for determining non-preferential origin in the EU are outlined in Article 60 UCC, which establishes two key tests: the wholly obtained test and the substantial or sufficient transformation test. Both are discussed separately in the following subsections.

##### **8.3.1.1. Wholly obtained**

The wholly obtained criterion relates to goods that are entirely produced or manufactured in a single country (see Article 60(1) UCC), often involving

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<sup>77</sup> 94/800/EC: Council Decision (of 22 December 1994) concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994), OJ L 336.

<sup>78</sup> Guidance on non-preferential rules of origin, European Commission, March 2022, p. 6. The NPO ROO at the WTO level remain unharmonized.

natural products or resources, such as harvested crops or extracted minerals. A list of wholly obtained goods is provided in Article 31 UCC-DA. For example, fish that is caught in the territorial waters of a country is deemed to be wholly obtained there, conferring on that fish the origin of said country.

#### **8.3.1.2. Substantial or sufficient transformation**

The substantial or sufficient transformation criterion applies when production involves multiple countries or territories. Goods are deemed to originate in the location where they underwent their last substantial, economically justified processing or working, performed in an undertaking equipped for that purpose, and resulting in a new product or a significant manufacturing stage. The UCC legislative framework evaluates whether processing or working results in the manufacture of a new product or represents a significant stage of manufacture by distinguishing between goods listed in Annex 22-01 UCC-DA and those not included in the annex. In connection with this particular distinction, we note the following:

- 1. Goods listed in Annex 22-01 UCC-DA:** The Annex provides “legally binding”<sup>79</sup> criteria and operations that must be fulfilled in the final country of production to confer non-preferential origin on specific goods. The annex outlines two types of rules: primary rules and residual rules. The non-preferential origin determination process begins with the application of the primary rules, which rely on specific criteria to establish origin (e.g., a value-added criterion or change in tariff classification). If a product does not satisfy the primary rule, a residual rule is applied as a secondary measure to assign origin. These residual rules ensure a comprehensive and closed system for determining non-preferential origin, as every product must ultimately obtain a non-preferential origin. Outlined at the beginning of each HS chapter in Annex 22-01 UCC-DA, a residual rule typically designates the country where the major portion of materials originates as the country of origin.
- 2. Goods not listed in Annex 22-01 UCC-DA:** For goods outside the scope of Annex 22-01 UCC-DA, origin is determined on a case-by-case basis in accordance with the principle of last substantial transformation as

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<sup>79</sup> The “legally binding” primary origin rules established by the Commission under its delegated, circumscribed powers may be deemed invalid if they fail to comply with Article 60(2) of the UCC. In a recent judgment, the CJEU declared the primary rule for HS subheading 7304 41 invalid, finding that it did not conform to Article 60(2) UCC. The Court concluded that the Commission had committed a manifest error of assessment when adopting this rule. See CJEU 21 September 2023, Case C-210/22, Stappert Deutschland, ECLI:EU:C:2023:693.

articulated in Article 60(2) UCC and further developed through CJEU case law.<sup>80</sup> In the absence of binding legislative rules for these goods, the European Commission has provided non-legally binding guidance, commonly referred to as 'list rules,' to foster a more consistent and harmonized interpretation. These list rules include both primary and residual rules.<sup>81</sup>

### **8.3.2. Substantive dimension – Layer 2: General Rules of Origin (GRO)**

The Product Specific Rules (PSRs) discussed in the previous subsection constitute the foundation of non-preferential origin determination. Like with preferential origin determination, there are various complementary rules (e.g., minimal operations, economic justification), which are referred to as General Rules of Origin (GRO). These rules can have a decisive impact on the actual origin of goods.

### **8.3.3. Formal dimension – Layer 3: Procedural requirements**

The determination of the (non-preferential) origin of goods comes with certain procedural (formal) requirements. These requirements have, as their primary aim, the production of sufficient proof to demonstrate the origin and its legal validity. With respect to proving the non-preferential origin of goods, the UCC legislative framework distinguishes three scenarios:

- 1) Products not subject to special non-preferential import arrangements:** In this scenario, the so-called "free evidence doctrine" applies<sup>82</sup>; the legislation does not prescribe specific evidence to be produced, and also does not regulate the burden of proof and its allocation.
- 2) Products subject to special non-preferential import arrangements:** Products that fall under special non-preferential import arrangements are those that are eligible for tariff reductions through established quotas in Union law. To qualify for these

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80 A list of relevant CJEU case law is included in section 2.2.2 of the Guidance on non-preferential rules of origin, European Commission, March 2022.

81 Table of list rules conferring non-preferential origin on products (following the classification in the CN), European Commission, [https://taxation-customs.ec.europa.eu/table-list-rules-conferring-non-preferential-origin-products-following-classification-cn\\_en](https://taxation-customs.ec.europa.eu/table-list-rules-conferring-non-preferential-origin-products-following-classification-cn_en), accessed on 24 December 2024.

82 See section 2.3 of the Guidance on non-preferential rules of origin, European Commission, March 2022.

reduced rates when the goods enter free circulation, it is mandatory to submit a certificate of origin, as outlined in Article 57 UCC-IA.

- 3) Products subject to Union export measures governed by the NPO ROO:** EU NPO ROO typically apply only to exports covered by Union export measures, such as export refunds. Outside of these circumstances, indicating origin or adhering to these rules is not mandatory for most exports.<sup>83</sup> Apart from cases where Union measures are applicable, the legislation on non-preferential origin for exports primarily addresses the issuance of a document proving origin (i.e., certificate of origin).

#### **8.4. Binding Origin Information (BOI)**

Determining the origin of goods can be a challenging task due to the complex rules and the potential for varying interpretations. Misdeclaring the origin of goods, whether preferential or non-preferential, can lead to significant material and operational consequences. To mitigate uncertainties, businesses can seek clarity by requesting a Binding Origin Information (BOI) decision.<sup>84</sup> This decision provides legal certainty regarding the determination of the (preferential) origin of goods. Once granted, a BOI decision is legally binding on both the applicant and customs authorities, obligating both parties to comply fully with its terms. The BOI operates within a framework largely identical to that of the Binding Tariff Information (BTI) for classification purposes. For further details on binding information decisions, refer to the section of this book on BTIs, as the same principles, *mutatis mutandis*, apply to BOIs.

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<sup>83</sup> Ibid., section 3.

<sup>84</sup> Article 22 UCC jo. Article 33 UCC.

## 9. Valuation

The third pillar of EU customs law is (customs) valuation.<sup>85</sup> Once goods have been identified (classified for customs purposes), and once their origin is established, their value must be determined. There are various reasons for this, yet arguably the most important one is that the customs value of the goods constitutes the tax base for calculating *ad valorem* customs duties, and, depending partly on national legislation, also several other duties, charges, or taxes.<sup>86</sup> Establishing the correct customs value of goods is thus pivotal to the functioning of the customs system.

### 9.1. Economic value principle

Customs valuation is grounded in the economic value principle. This principle requires that the value for customs purposes should reflect, as accurately as possible, the true economic value of the imported or exported goods. Consequently, all elements of value that are sufficiently associated with the respective good must be included, whereas elements of value that are insufficiently associated are to be excluded. In the *Compaq Computer* case, which concerned the importation of computers with pre-installed copies of MS-DOS and Windows operating systems, the CJEU provided the following on the economic value principle:

*“...the Community legislation on customs valuation seeks to introduce a fair, uniform and neutral system excluding the use of arbitrary or fictitious customs values (...). The customs value must thus reflect the real economic value of an imported good and, therefore, take into account all of the elements of that good that have economic value.”<sup>87</sup>*

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85 For an extensive (academic) account on customs valuation, refer to: M. Schippers, 2021, *Douanewaarde in een globaliserende wereld* (diss), Erasmus Universiteit Rotterdam.

86 Article 69 UCC. The customs value of goods is also used to calculate taxes, levies or charges other than customs duties. For example, Article 85 of the VAT Directive provides that for import VAT purposes, the taxable amount shall be the value for customs purposes.

87 CJEU, 16 November 2006, Case C-306/04, *Compaq Computer International Corporation*, ECLI:EU:C:2006:716.

## **9.2. Valuation methods**

In Article 70 and onwards, the UCC sets out multiple valuation methods. The prescribed primary valuation method is the transaction value method.<sup>88</sup> If the customs value cannot be determined with this method, the secondary methods shall be used in the following sequence: the transaction value of identical goods, the transaction value of similar goods, the value based on the unit price at which the goods are sold in the EU (the deductive value method), the value based on the cost of production, including materials, labor, and general expenses, plus a reasonable profit (the computed value method), and the fall-back method.<sup>89</sup> The prescribed order of applying the secondary methods must generally be followed with some exceptions. The following sections discuss the methods to further detail.

### **9.2.1. Primary method: transaction value method**

The primary method for customs valuation is the transaction value method. According to Article 70 UCC, this method relies on the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted where necessary. This value is determined at the time of acceptance of the customs declaration based on the sale occurring immediately before the goods were brought into that customs territory.<sup>90</sup> Further, the price actually paid or payable shall be the total payment made or to be made by the buyer to the seller or by the buyer to a third party for the benefit of the seller for the imported goods. It includes all payments made or to be made as a condition of sale of the imported goods.

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<sup>88</sup> Article 70 UCC.

<sup>89</sup> Article 74 UCC.

<sup>90</sup> Article 128(1) UCC-IA.

The primary method should in principle be used for customs purposes. However, there are various conditions attached to its application. These conditions ensure that the transaction value is not a distorted, arbitrary or fictitious reflection of the economic value of the product – which may happen in certain situations, even if there is no fraud or abuse. The conditions are as follows:

1. There are no restrictions as to the disposal or use of the goods by the buyer;<sup>91</sup>
2. The sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
3. No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made;
4. The buyer and seller are not related or the relationship did not influence the price.

Each of these conditions serves to safeguard the integrity and reliability of the transaction value as a true reflection of the economic value of the goods. For example, certain restrictions on the disposal or use of the goods by the buyer may indicate that the transaction price does not fully capture the goods' real economic worth. Such restrictions can distort the price and thus undermine the suitability of the transaction value method. Further distortions may arise if the sale or price is subject to conditions or considerations which cannot be properly valued<sup>92</sup>, or when the buyer and seller are related parties<sup>93</sup> and the relationship has influenced the price. In such situations, one must resort to the secondary valuation methods.<sup>94</sup>

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91 There are some restrictions that are allowed: a) restrictions imposed or required by a law or by the public authorities in the Union, b) limitations of the geographical area in which the goods may be resold, c) restrictions which do not substantially affect the customs value of the goods.

92 Naturally, some sales or price conditions can indeed be valued, in which case they can be taken into account for determining the transaction value. See M. Schippers, 2021, *Douanewaarde in een globaliserende wereld* (diss), Erasmus Universiteit Rotterdam, p. 175.

93 For a legal definition of related parties, refer to art. 127 UCC-IA.

94 For customs valuation purposes, parties determine the value at the time of acceptance of the customs declaration and, moreover, on the basis of the sale occurring immediately before the goods are brought into the customs territory of the EU. This is commonly referred to as the 'last-sale-for-export' principle.

### 9.2.2. *Secondary methods*

If the primary customs valuation method cannot be applied, the secondary methods must be used sequentially, in the order prescribed by Article 74 UCC.<sup>95</sup> While these methods share the fundamental principle that the customs value should approximate the true economic value of the goods as closely as possible, they differ in their criteria and approach. The secondary methods are the following:

1. **Transaction value of identical goods:** If the conditions for the application of the primary method are not met, the first prescribed alternative to consider is the transaction value of identical goods which are sold for export to the EU customs territory and which are exported at or about the same time as the goods being valued.
2. **Transaction value of similar goods:** More common is the transaction value of similar goods sold for export to the EU customs territory and exported at or about the same time as the goods being valued. This is the third method in the hierarchy of customs valuation.
3. **Deductive value:** The fourth valuation method is based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the EU customs territory in the greatest aggregate quantity to persons not related to the sellers.
4. **Computed value:** The computed value consists of a) the cost or value of materials and fabrication or other processing employed in producing the imported goods, b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind, and c) various other elements such as the cost of transport, handling, loading and insurance of the imported goods up to the point of entry into the EU customs territory.
5. **Fall-back method:** If none of the other valuation methods can be used because of legal conditions not being met, or because of practical limitations inherent to the case at hand, the fall-back method is to be used. In brief, this method prescribes valuation on the basis of data available in the customs territory of the Union, using reasonable means consistent with the principles and general provisions of the GATT and the UCC.<sup>96</sup>

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<sup>95</sup> If the declarant so requests, the order of application of the EU unit price value method and the computed value method shall be reversed. See Article 74(1) UCC.

<sup>96</sup> Article 74(3) UCC.

9.3. Adjustments to the customs value when using the primary method

The principle of (real) economic value requires that the value of the goods at the moment of their entry into the EU customs territory is approximated in the most precise fashion that is reasonably achievable. This implies, amongst other aspects, that the transaction value is sometimes adjusted, either upwards or downwards, depending on the circumstances of the case at hand. In a temporal sense, the crucial point is the moment of entry of the goods into the EU customs territory (moment t=0): generally speaking, value elements that were added to the goods *prior* to that moment (t-1 and before) are to be added to the customs value, whereas value elements that were added to the goods *after* that moment (t+1 and after), or which are insufficiently related to the goods, are to be excluded. For example: transport costs associated with the movement of wool up to the EU customs border (e.g., from South Africa to the port of Rotterdam in the Netherlands) are added to the customs value, whilst transport costs associated with the movement of the goods beyond the EU customs border (e.g., from the port of Rotterdam to Paris, France) are not part of the customs value.<sup>97</sup> Figure 9.1 contains a graphical overview of adjustments to the customs value, both upward and downward, involving a simple example.

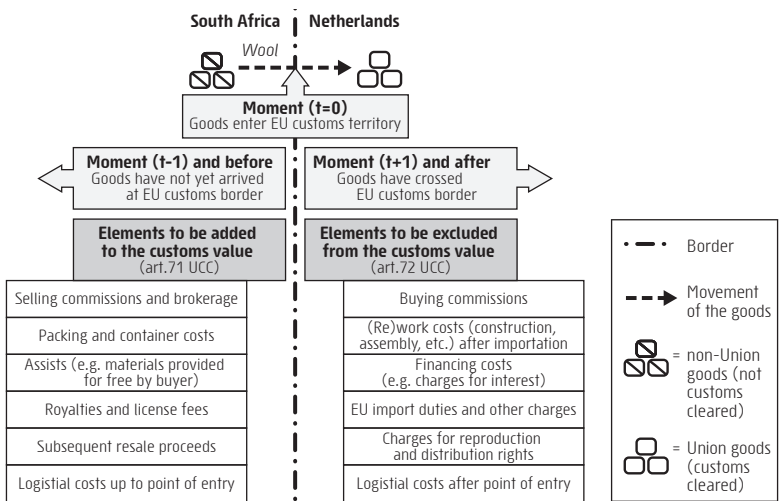


Figure 9.1: Adjustments to the customs value for the primary method (art. 71 and 72 UCC). Note: this concerns a simplified overview (!)

97 Articles 71(1)(e)(i) and 72(a) UCC.

# 10. Customs duty calculation and debt

## 10.1. Customs duty calculation

The UCC defines import duties as customs duties payable on the import of goods, that is, when non-Union goods are moved from non-EU countries into the customs territory of the EU.<sup>98</sup> Conversely, export duties are those payable on the export of goods, that is, when Union goods are transported from the customs territory to other places.<sup>99</sup> This section discusses the manner in which customs duties are calculated and the customs debt is established. There are two primary legal foundations for the calculation of customs duties:

- I. **Article 85 UCC:** This provision sets out the general rules (*leges generales*) for calculating the amount of import and export duties.
- II. **Article 86 UCC:** This provision contains various special rules (*leges speciales*) for calculating the amount of import and export duties in specific cases.

Both categories of rules are discussed in further detail in sections 10.1.1 and 10.1.2.

### 10.1.1. General rules for calculating import or export duty amount

Under Article 85 UCC, the amount of import or export duty is determined according to the rules of calculating the duty that were in effect at the time the customs debt for the goods was incurred. On the basis of Article 77(2) UCC, a customs debt is typically incurred at the time of acceptance of the customs declaration.<sup>100</sup> That 'tax point' is therefore pivotal for the calculation of customs duties, at least in a temporal sense. Further, the calculation encompasses other determinants as well, including the three pillars of customs law: tariff classification, origin, and customs value of goods. Other elements, such as the quantity and nature of the goods, are also considered in the calculation

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<sup>98</sup> Article 5(20) UCC.

<sup>99</sup> Article 5(21) UCC.

<sup>100</sup> In situations of non-compliance, the customs debt is typically incurred at the time that the obligation is not met or ceases to be met. See Article 79(2)(a) UCC.

of duties.<sup>101</sup> Fundamentally, the mathematical procedure itself is not overly complicated. Many customs duties are *ad valorem* by nature, meaning that they are exactly proportional to the price of the goods as agreed by the seller and buyer.<sup>102</sup> So, assuming the classification and origin of the goods are undisputed, the duties are calculated simply by applying the percentual duty rate to the customs value of the goods that are released for free circulation.

### **10.1.2. Special rules for calculating import duty amount**

The general rule under Article 85 UCC does not apply to cases specified in Article 86 UCC. This provision contains various special rules for determining the (import) duty amount. These concern, *inter alia*, the following:

- I. Usual handling costs:** It may happen that goods, whilst in temporary storage or placed under a customs procedure (e.g., internal transit), are treated in certain ways to preserve their value of quality. The costs for such usual treatment of goods (or: the value increase of the goods) are not taken into account for the calculation of customs duties when, at a later moment in time, the goods are released into free circulation.
- II. Request following inward processing:** Under the special procedure ‘inward processing’, non-Union goods may be processed, modified, destroyed or repaired in the customs territory of the EU without having to pay import duties and without being subject to other charges or commercial policy measures.<sup>103</sup> For such instances, Article 86(3) UCC provides that the amount of import duty shall, at the request of the declarant, be determined on the basis of the tariff classification, customs value, quantity, nature and origin of the goods at the time that the customs declaration for the placement of the goods under the inward processing procedure was accepted.

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<sup>101</sup> Guidance on Customs Debt (Title III of the UCC), European Commission, May 2024 (revision 2), p. 26, [https://taxation-customs.ec.europa.eu/document/download/b5844d5a-0c43-4940-be4b-462dec0a10a3\\_en](https://taxation-customs.ec.europa.eu/document/download/b5844d5a-0c43-4940-be4b-462dec0a10a3_en), accessed on 12 January 2025.

<sup>102</sup> Following Article 70(1) UCC, the calculation basis for customs duties shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the EU. Additionally, Article 128(1) IA provides that the transaction value shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into the EU customs territory.

<sup>103</sup> Article 256 UCC.

**III. Non-EU processing costs:** For two specific situations, Article 86(5) UCC provides that the import duties are calculated on the basis of the costs of processing operations that were carried out outside the customs territory of the EU. These two situations concern replacement products and outwardly processed products.

## **10.2. Customs debt**

Under Article 5(18) UCC, a “customs debt” is defined as the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force. Following its formalization, the customs debt constitutes the financial outcome of the application of customs law, as it defines how much tax needs to be paid, and also the timing and place of taxation.

### **10.2.1. Taxable event, tax point and place of taxation**

The establishment of the customs debt depends on three primary determinants:

- I. The incurrence of the customs debt (taxable event):** The incurrence of the customs debt relates to the event that gives rise to the obligation to pay import or export duties. This occurrence is typically referred to as the ‘taxable event’. Perhaps the most common taxable event is formed by the placing of non-Union goods liable to import duty under the procedure release for free circulation, as this act triggers a customs debt.<sup>104</sup> Another notable taxable event concerns the non-compliance with customs legislation.<sup>105</sup>
- II. The timing of the incurrence of the customs debt (tax point):** The timing of the incurrence of customs debt establishes the moment that the obligation to pay import or export duties arises. This moment is generally referred to as the tax point; *before* it occurs, no formal payment obligation exists. The tax point is relevant as it determines, inter alia, whether the customs debt can be notified taking into account the statute of limitations.

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<sup>104</sup> Article 77(1)(a) UCC.

<sup>105</sup> Article 79 UCC.

**III. The place of incurrence of the customs debt (place of taxation):** the place of incurrence is critical for identifying the jurisdiction responsible for collecting the duties (i.e., the competent customs authority), preventing conflicts or duplications in enforcement, and avoiding double taxation, which is strictly prohibited under the EU customs legal framework.<sup>106</sup>

The above three determinants are crucial for the practical side of the taxation process. They make sure that duties are levied as uniformly as possible throughout the entire EU customs union - which is quite a feat, considering the diverse institutional and historical background of the various Member States.

#### **10.2.2. Formalization of the customs debt**

Upon the incurrence of a customs debt, a series of formalities must be followed to ensure the proper determination, notification, and accounting of the debt. This process of formalization ensures that the customs debt is properly documented and enforceable. Furthermore, since the notification of the customs debt is considered a (customs) decision in the sense of Article 5(39) UCC, it creates a legal avenue for customs debtors who wish to contest the debt under Article 44 UCC. The notification allows them to challenge the decision through administrative or judicial means, ensuring due process and the opportunity for legal redress.

As regards the formalization process, first, the customs authorities, competent at the place of taxation, determine the amount of import or export duty due.<sup>107</sup> After that, the customs debt is formally notified to the debtor by the customs authorities competent at the place of taxation. Finally, the customs authorities must enter the determined amount of duty into their accounts, in accordance with national legislation.<sup>108</sup> This entry is, in principle, made within fourteen days of the goods' release.<sup>109</sup>

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106 CJEU 6 September 2012, Case C-262/10, Döhler Neuenkirchen GmbH, ECLI:EU:C:2012:559, paragraph 46 and the case-law cited.

107 Article 101(1) UCC.

108 Article 104(1) UCC.

109 Article 105(1) UCC.

### ***10.2.3. Payment of the customs debt***

The payment of import and export duties is primarily governed by strict timeframes. According to Article 108 UCC, customs duties must be paid by the debtor within a specified time-limit determined by the competent customs authority. This time-limit may not exceed ten days after the notification of the customs debt, unless specific provisions apply for extensions.

The UCC offers various payment facilities for customs debtors facing cash flow challenges. Article 110 UCC, for instance, outlines the deferment of payment, which can be granted under certain conditions, such as providing a guarantee. Furthermore, Article 112 UCC allows the authorities to offer alternative payment facilities, again contingent on a guarantee, while charging interest remains applicable.

# 11. Exemptions and reliefs

Customs exemptions are measures that, in specific circumstances, allow non-Union goods to be brought into free circulation in the EU with a reduced payment of import duties and related taxes, or none at all. These measures are generally based on the nature and/or intended use of the goods and are governed by international<sup>110</sup>, EU<sup>111</sup>, and national legislation<sup>112</sup>. While they reduce or eliminate duties, they should not be confused with preferences or suspensions, which have different legal frameworks despite similar effects.<sup>113</sup>

The primary aim of customs exemptions is to address specific economic, social, humanitarian, diplomatic, or military needs, ensuring that import duties are not applied unnecessarily, especially when economic protection is not required.<sup>114</sup> In that sense, customs exemptions are exceptional by nature. They cover a wide range of goods under clearly defined conditions, responding to the previously mentioned needs. These include personal and household goods like personal effects and vehicles for individuals relocating<sup>115</sup>, and educational, scientific, or cultural materials, including teaching aids and research instruments<sup>116</sup>.

Reliefs also extend to humanitarian and charitable goods, such as medical supplies for disaster relief<sup>117</sup>, and to diplomatic and consular goods for official or personal use<sup>118</sup>.

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<sup>110</sup> See, for instance, Article 36 of the Vienna Convention on Diplomatic Relations 1961 with respect to customs duty exemptions for diplomatic missions.

<sup>111</sup> See, for instance, Council Regulation (EC) 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, OJ L 324.

<sup>112</sup> Under EU law, exemptions like those in Regulation (EC) 1186/2009 apply uniformly across all Member States. At the national level, additional measures are often enacted to specify certain elements such as administrative processes and procedural requirements.

<sup>113</sup> For instance, preferential tariff treatment under a free trade agreement or the autonomous tariff suspension regime under Council Regulation (EU) 2021/2278 of 20 December 2021 suspending the Common Customs Tariff duties referred to in Article 56(2), point (c), of Regulation (EU) 952/2013 on certain agricultural and industrial products, and repealing Regulation (EU) 1387/2013, OJ L 466.

<sup>114</sup> See recitals 3 and 4 in the preamble to Regulation (EC) 1186/2009 (previously cited).

<sup>115</sup> Chapter I, Title II of Regulation (EC) 1186/2009 (previously cited).

<sup>116</sup> Chapter XI, Title II of Regulation (EC) 1186/2009 (previously cited).

<sup>117</sup> Article 74 of Regulation (EC) 1186/2009 (previously cited).

<sup>118</sup> Article 128 of Regulation (EC) 1186/2009 (previously cited).

One significant exemption within the EU is the relief for consignments of negligible value, outlined in Chapter V, Title II of Regulation 1186/2009. This exemption allows goods valued at EUR 150 or less to be imported without customs duties, facilitating cross-border trade and reducing administrative burdens. In practice, it applies primarily to business-to-consumer (B2C) e-commerce sales, supporting the efficient movement of small parcels across borders. However, the exemption has faced criticism for being susceptible to misuse, such as the undervaluation of goods to exploit the threshold, leading to revenue losses and compliance challenges.<sup>119</sup> To address these issues, the European Commission has proposed abolishing this exemption as part of broader reforms to the EU Customs Code.<sup>120</sup>

Another notable aspect of customs law is the so-called Returned Goods Relief (RGR) scheme, established under Article 203 UCC, which offers a duty exemption for goods previously exported from the EU when they return to the EU's customs territory within three years. This relief applies to goods that were originally Union goods, assuming they re-enter the Union in the same condition in which they were exported. To qualify for this exemption, declarants must demonstrate that the goods have not undergone any significant transformation during their time outside the EU, supported by documentary evidence such as the initial export declaration or an information sheet INF3<sup>121</sup>. In essence, the RGR scheme ensures equal economic treatment of Union goods that were produced in the EU to stay there, and Union goods that, after production in the EU, have been exported only to return at a later moment in time.

Key conditions for the application of RGR include the requirement that the goods be Union goods initially, re-entering the Union within three years of export, and in the same condition as they were when exported. Certain treatments, such as repair or simple handling, are permitted as long as they do not alter the goods beyond what is necessary for their re-use.

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119 Proposal for a Council Regulation amending Regulation (EEC) No 2658/87 as regards the introduction of a simplified tariff treatment for the distance sales of goods and Regulation (EC) No 1186/2009 as regards the elimination of the customs duty relief threshold, COM/2023/259 final.

120 Ibid.

121 Article 255 UCC-IA.

## **PART IV**

### THE PROCEDURAL DIMENSION OF EU CUSTOMS LAW

## 12. Customs formalities

### 12.1. Introduction

Customs formalities are an important instrument for the control of transport flows across the EU customs border. Compliance with the formalities produces an indispensable source of information for the customs authorities. For example, the customs declaration contains a wealth of data pertaining to the consignment, such as the identity of the declarant and consignor/consignee, a description of the goods, the customs value and origin of the goods, the mode of transport, etc.<sup>122</sup> Upon receipt of such information, the customs authorities are generally able to make proper risk assessments and supervision or enforcement decisions.

Customs formalities are not only relevant for goods moving into the EU customs territory. Also goods leaving that area may be subject to (additional) measures - in particular controls governing the export of certain sensitive goods<sup>123</sup> or those that prevent sensitive goods ending up in the wrong hands. An example concerns the various sanction measures taken vis-à-vis Russia in relation to the war in the Ukraine.<sup>124</sup>

### 12.2. Entry and exit of goods into the EU: formalities

The entry of goods into the EU customs territory is commonly referred to as 'entry'. Alternatively, the exit of goods out of the EU customs territory is called 'exit'. These two phenomena are connected with various formalities, which are discussed in the below subparagraphs.

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<sup>122</sup> See art. 162 UCC, which provides that "standard customs declarations shall contain all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared."

<sup>123</sup> See, for example, 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 (recast), OJ L 206.

<sup>124</sup> See Council Regulation (EU) No 833/2014 of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, OJ L 229.

### **12.2.1. Entry of goods into the EU customs territory**

The formalities associated with the process of entry can be summarized as follows:

- I.** An Entry Summary Declaration (ENS) must be filed electronically in the Import Control System (ICS2) and must contain all the data elements related to the goods that are necessary for the cargo risk assessment for security and safety purposes.<sup>125</sup>
- II.** Upon arrival of the means of transport, the carrier must inform the customs office of first entry of its arrival.<sup>126</sup>
- III.** Goods need to be presented to customs, which means that the customs authority must be informed about the fact that the goods have arrived and are available for inspection at the customs office or the designated location.<sup>127</sup>
- IV.** All non-Union goods will be in temporary storage from the time that they are presented to customs until the time that they are either placed under a customs procedure or are re-exported.<sup>128</sup>
- V.** Finally, a customs declaration should be filed to place the goods under a customs procedure, such as release into free circulation.<sup>129</sup>

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<sup>125</sup> Article 127 UCC.

<sup>126</sup> Article 133 UCC.

<sup>127</sup> Article 139 UCC.

<sup>128</sup> Article 144 UCC.

<sup>129</sup> Article 158 UCC.

### **12.2.2. Exit of goods out of the EU customs territory**

There are also certain formalities to consider when goods leave the customs territory of the EU. It is important to note that these formalities are first and foremost linked with risk analyses and (geo)political dynamics, as there are no customs duties applicable upon export. The process of exit can be summarized as follows:

- I. A pre-departure declaration must be lodged within a specific time limit.<sup>130</sup>
- II. The goods need to be placed under the export procedure by filling an export declaration with the customs office of export.<sup>131</sup> For non-Union goods that are re-exported, a re-export declaration should be filed.<sup>132</sup>
- III. The goods need to be presented to the customs office of exit allowing this office to perform their risk analyses.<sup>133</sup>
- IV. The goods need to leave the territory of the EU in the same condition as declared for export up until which time the goods are under customs supervision.<sup>134</sup>
- V. A confirmation of exit is obtained from the customs office of export via the customs office of exit.<sup>135</sup>

### **12.3. Placing goods under a customs procedure**

All goods that cross or are intended to cross the EU customs border must sooner or later be placed under a customs procedure.<sup>136</sup> To place goods under a customs procedure, such as export or release into free circulation, a customs declaration needs to be filed.

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<sup>130</sup> Article 263(1) UCC and Article 244 UCC-DA.

<sup>131</sup> Article 269 UCC and Article 221 UCC-IA.

<sup>132</sup> Article 270 UCC.

<sup>133</sup> Article 267 UCC and Article 332 UCC-IA.

<sup>134</sup> Article 267(4) UCC.

<sup>135</sup> Article 334 UCC-IA.

<sup>136</sup> Article 5(16) UCC; also see Chapter 13 of this book.

### **12.3.1. Types of customs declaration**

Customs declarations must in principle be lodged electronically.<sup>137</sup> All Member States have their own IT-systems for the filing and processing of customs declarations. As a backup or emergency procedure, customs declarations can also be filed by way of written declaration. Moreover, a declaration can in certain cases be filed orally or by means of an act, for example when walking through the ‘nothing to declare’ or green lane at an airport.<sup>138</sup>

There are several types of customs declarations that can be used to place goods under a customs procedure. First, there’s the standard customs declaration, which must contain all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared.<sup>139</sup> Next to the standard customs declaration, there is an option to file a simplified customs declaration.<sup>140</sup> This allows a trader to speed up the logistics process, as some of the particulars and/or supporting documents of the customs declaration may be omitted at the time of customs clearance. These particulars and supporting documents should however be made available within a set time-limit and, in connection thereto, a supplementary declaration needs to be filed.<sup>141</sup>

### **12.3.2. Formalities connected with the customs declaration**

The customs office where the customs declaration should be lodged is the office responsible for the place where the goods are presented to customs.<sup>142</sup> If the customs declaration is lodged before the presentation of the goods, they must be presented within thirty days of the lodging of the customs declaration.<sup>143</sup>

In case the customs declaration complies with the conditions laid down in the UCC, it shall immediately be accepted by the customs authorities, provided

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<sup>137</sup> Article 158(2) UCC.

<sup>138</sup> Article 141 UCC-DA.

<sup>139</sup> Article 162 UCC.

<sup>140</sup> Article 166(1) UCC.

<sup>141</sup> Article 167 UCC.

<sup>142</sup> Article 159 UCC.

<sup>143</sup> Article 171 UCC.

that the goods to which they refer have been presented to customs.<sup>144</sup> The customs office may perform risk analyses and, if necessary, execute controls for customs clearance.<sup>145</sup> They can examine the declaration and supporting documents, request for further documentation, examine the goods and/or take samples.<sup>146</sup> In case the goods and/or documentation are examined, and the controls are satisfactory, the goods are released for the customs procedure indicated in the customs declaration.<sup>147</sup>

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<sup>144</sup> Article 172 UCC.

<sup>145</sup> Article 46 UCC.

<sup>146</sup> Article 188 UCC.

<sup>147</sup> Article 194 UCC.

# 13. Customs procedures

## 13.1. Introduction

When goods enter or leave the EU customs territory, one of the main formal steps involves placing these goods under a customs procedure, typically, through a customs declaration – a formal request to customs authorities explaining the intended use or status of the goods. This process was introduced in the previous chapter. This chapter explains the different customs procedures applicable in the EU.

## 13.2. Release into free circulation

Goods that are in fact destined for the EU internal market are released into free circulation, which means that the customs duties (if any) are paid, and all the other import formalities must be fulfilled.<sup>148</sup> Once this release occurs, the goods acquire the status of Union goods. In other words, they are legally considered part of the EU internal market and can move freely within it without further customs formalities. This contrasts with non-Union goods, which are goods still under customs supervision and control because duties have not yet been paid or formalities completed. Upon release into free circulation also other duties may become due, such as VAT upon import<sup>149</sup> and excise duties<sup>150</sup>.

## 13.3. (Re-)export

When goods leave the EU customs territory, this movement is categorized as either export or re-export. It is essential to distinguish between these two:

- I. Export refers to the movement of Union goods (i.e., goods with an EU 'stamp') out of the EU customs territory. A key requirement is that the goods must physically exit the EU customs territory.<sup>151</sup> Once exported, these goods lose their status as Union goods since they no longer reside within the EU internal market.

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<sup>148</sup>Article 201 UCC.

<sup>149</sup>Article 2(1)(d) of the VAT Directive.

<sup>150</sup>Article 6(1)(b) of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), [2020], OJ L 58.

<sup>151</sup>Article 269 UCC.

II. Re-exportation applies to non-Union goods that had entered the EU but were never released into free circulation (for example, goods stored temporarily under a customs suspensive arrangement like customs warehousing).<sup>152</sup> Re-exportation allows the customs suspensive procedure to be discharged<sup>153</sup> and the subject goods to be sent back outside the EU customs territory without paying import duties, as they are considered (for instance) to be in transit or temporarily in the EU. The export formalities are also applicable for re-exportation.<sup>154</sup>

#### **13.4. Special procedures**

To accommodate for specific commercial and logistical needs, the EU customs legislation provides for a number of special procedures. These procedures, subject to specific conditions and authorisations, allow for the suspension of customs duties and other import-related charges while goods are stored, moved, or processed within the customs territory of the EU. This system introduces flexibility for businesses engaged in complex international supply chains and helps promote economic activity within the Union. The EU legislation has four categories of special procedures which are discussed in detail in the following sections.<sup>155</sup>

##### **13.4.1. Transit**

The transit procedure allows goods to move within or across the EU customs territory without being subject to (amongst other) customs duties, import VAT, excise duties, other charges and/or commercial policy measures during the movement. EU customs law distinguishes between internal transit and external transit, each serving different purposes depending on the status of the goods and the route they take.

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<sup>152</sup> Article 270 UCC.

<sup>153</sup> Article 215 UCC.

<sup>154</sup> Article 270(2) UCC.

<sup>155</sup> See Article 210 UCC.

The internal transit procedure applies to Union goods (i.e., goods already in free circulation within the EU) that are transported<sup>156</sup>:

- between parts of the EU customs territory that are geographically separated by non-EU territory; or
- between two EU Member States via the territory of an EFTA country (e.g., Norway or Switzerland); or
- between two points in the EU via a third country that is neither part of the EU customs territory nor EFTA.

This type of transit ensures that Union goods retain their Union customs status during the movement, despite temporarily passing through non-EU territory.

Conversely, the external transit procedure applies to non-Union goods that are transported between two points within the customs territory of the EU.<sup>157</sup> Under this procedure, the goods remain under customs supervision and do not become liable to (amongst other) customs duties, import VAT, excise duties, other charges and/or commercial policy measures during the journey.

#### **13.4.2. Storage**

Goods that enter the EU customs territory may also be placed under a storage procedure, allowing them to be kept in the EU without being (immediately) subject to (amongst other) customs duties, import VAT, excise duties, other charges and/or commercial policy measures. This procedure provides flexibility, particularly in situations where the final destination or use of the goods is still undecided at the time of entry. EU customs law provides for two types of storage procedures: customs warehousing and free zones. Under the customs warehousing procedure, non-Union goods may be stored under customs supervision in authorised premises within the EU for as long as the goods remain under the procedure or until they are placed under a subsequent customs procedure.<sup>158</sup> Conversely, a free zone is a designated part of the EU customs territory where goods may be introduced and held without

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<sup>156</sup> Article 227 UCC.

<sup>157</sup> Article 226 UCC.

<sup>158</sup> Article 240(l) UCC.

being subject to (amongst other) customs duties, import VAT, excise duties, other charges and/or commercial policy measures, for as long as they remain in the zone and are not assigned to another customs procedure.<sup>159</sup>

### **13.4.3. Processing**

EU customs law does not only provide for the storage of goods under duty suspension; it also offers the possibility to process goods under special procedures while benefiting from either a suspension or relief of customs duties. These procedures, called inward and outward processing, are essential to support economic activities involving global supply chains and international production processes.

The inward processing procedure allows non-Union goods to be processed, modified, repaired or destroyed within the customs territory of the EU without being subject to (amongst other) customs duties, import VAT, excise duties, other charges and/or commercial policy measures.<sup>160</sup> The processed products may then either be re-exported or released for free circulation, depending on the commercial objective of the operator. If the finished goods are instead sold within the EU, the declarant can release the goods for free circulation and choose that duties are calculated only on the imported parts content.

Conversely, outward processing allows for Union goods to be temporarily exported outside the customs territory of the EU to undergo processing operations.<sup>161</sup> Upon re-importation, the processed goods may be released for free circulation with total or partial relief from import duties. This procedure facilitates cost-effective subcontracting or value-adding activities abroad.

### **13.4.4. Specific use**

In addition to procedures for storage and processing, EU customs law also recognises specific use as a legitimate basis for suspension or reduction of (among others) customs duties. Two principal customs procedures fall under this category: temporary admission and end-use.

First, the temporary admission procedure allows for non-Union goods to

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<sup>159</sup> Articles 243, 247 and 248 UCC.

<sup>160</sup> Article 256 UCC.

<sup>161</sup> Article 259 UCC.

be introduced into the customs territory of the EU without the payment of customs duties or the application of import-related charges or commercial policy measures, provided the goods are intended for re-exportation within a specified period.<sup>162</sup> The rationale behind this procedure is straightforward: certain goods are only needed temporarily within the EU – whether for exhibitions, testing, demonstrations, cultural events, or disaster relief operations<sup>163</sup> – and do not enter the EU internal market on a permanent basis. As such, they do not justify the imposition of duties or other charges. Second, end-use is a procedure that allows certain goods to be released for free circulation at a reduced or zero rate of import duty, provided they are used for a prescribed purpose within the EU.<sup>164</sup>

### 13.5. Formalities

Due to their suspensive nature, special procedures are subject to strict legal conditions and administrative control.<sup>165</sup> They are not automatically available but require prior authorization from the customs authorities.<sup>166</sup> This authorization functions in practice as a formal agreement (akin to a contract) between the economic operator and the customs authority, specifying the conditions under which the procedure may be used. It typically includes detailed information such as the type of goods concerned, their CN codes, values, volumes, locations, and the procedural safeguards in place. In exceptional cases, an authorization may be granted retrospectively, although this is the exception rather than the rule.<sup>167</sup>

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<sup>162</sup> Article 250(1) UCC.

<sup>163</sup> See Articles 221 and 234 UCC-DA.

<sup>164</sup> Article 254 UCC.

<sup>165</sup> See, for example, CJEU, 6 September 2012, Case C-28/11, Eurogate Distribution GmbH, ECLI:EU:C:2012:533, and CJEU, 6 September 2012, Case C-262/10, Döhler Neuenkirchen GmbH, ECLI:EU:C:2012:559. In both cases, the Court confirmed that relatively minor administrative errors in the application of special procedures – namely customs warehousing and inward processing – were sufficient to trigger a customs debt, even where the goods in question had been re-exported and had not been released into the EU internal market. These judgments illustrate the strict formal compliance required under the EU customs law.

<sup>166</sup> Article 211 UCC.

<sup>167</sup> Article 211(2) UCC.

### 13.6. Discharge of special procedures

A special procedure is not indefinite. It must be discharged within a timeframe specified in the authorization.<sup>168</sup> Discharge marks the formal conclusion of the suspensive regime and typically occurs when:

- The goods are placed under another customs procedure (e.g., released for free circulation),
- The goods are re-exported outside the EU,
- The goods are destroyed under customs control.

Each procedure has its own discharge mechanics. For example, transit is discharged once the customs office of destination confirms, via electronic systems, that the goods arrived as declared. For inward processing and end-use, a bill of discharge must be submitted to customs, demonstrating how the goods were used and accounted for.<sup>169</sup> Failure to comply with discharge requirements – especially missing formal deadlines – can result in the incurrence of a customs debt (i.e., the obligation to pay duties as if the suspensive procedure had never applied).<sup>170</sup>

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<sup>168</sup> Article 215(4) UCC.

<sup>169</sup> Article 175 UCC-DA.

<sup>170</sup> See CJEU 6 September 2012, Case C-262/10, Döhler Neuenkirchen GmbH, ECLI:EU:C:2012:559, which dealt with the strict application of customs discharge rules in the inward processing procedure. The case illustrated that failure to comply with the formal requirements for timely submitting a bill of discharge resulted in the imposition of a customs debt.

## 14. Other legal aspects

### 14.1. Repayment and remission

The EU does not operate a traditional duty drawback system, meaning that customs duties once paid are, in principle, not refundable. However, EU customs law provides for specific exceptions under which duties may be repaid or remitted if certain conditions are met. These exceptions are carefully delineated to balance the interests of the customs authorities in securing revenue and those of traders in avoiding unfair or erroneous charges.

Customs duties may be repaid or remitted on the following grounds, each regulated by specific articles of the UCC:

1. Overcharged amounts of import or export duty;<sup>171</sup>
2. Defective goods or goods not complying with the terms of the contract;<sup>172</sup>
3. Error by the competent authorities;<sup>173</sup>
4. Equity (exceptional situations in which no deception or obvious negligence may be attributed to the debtor).<sup>174</sup>

A request for repayment or remission requires detailed information about the goods and the relevant customs declarations, as set out in Annex A of the UCC-DA. The application must be submitted to the customs authority of the Member State where the customs debt was notified.<sup>175</sup> The debtor, or their representative acting under the general rules of customs representation, is entitled to submit this request.<sup>176</sup> However, if the debtor has acted deceptively, repayment or remission shall not be granted.<sup>177</sup> Typically, the Member State where the request is filed will decide on the matter, but in some cases, such

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<sup>171</sup> Article 117 UCC.

<sup>172</sup> Article 118 UCC.

<sup>173</sup> Article 119 UCC.

<sup>174</sup> Article 120 UCC.

<sup>175</sup> Article 92 UCC-DA.

<sup>176</sup> Article 172 UCC-IA.

<sup>177</sup> Article 116(5) UCC.

as when errors by the authorities exceed €500,000, the case is referred to the European Commission for decision.<sup>178</sup>

Each ground for repayment or remission has a specific time limit for submitting the application, which is applied in a strict manner.<sup>179</sup> These deadlines may be extended only under strictly interpreted exceptional circumstances such as force majeure or unforeseeable events.<sup>180</sup> Furthermore, if an appeal is lodged, the relevant time limits are suspended during the appeal process.<sup>181</sup>

#### **14.2. Extinguishment of a customs debt**

Within the UCC legal framework, a customs debt, once incurred, is not necessarily permanent. Under specific circumstances, the law provides for its extinguishment. Article 124 of the UCC provides eleven grounds on which a customs debt may be deemed extinguished. These grounds are varied, reflecting the complexities of customs enforcement and the realities of international trade.

One fundamental ground concerns the expiry of the statute of limitations. When the legally prescribed period within which customs authorities may notify the debtor of the debt lapses, the debtor can no longer be held accountable, and the debt ceases to exist in law. This procedural safeguard protects traders from indefinite liability.<sup>182</sup> Another (perhaps straightforward) ground is the full payment of the customs debt, or the invalidation of a customs declaration.

#### **14.3. Other legal remedies and mechanisms**

Beyond the repayment, remission and extinguishment of a customs debt, the UCC provides several other legal remedies and mechanisms that traders may invoke in case of disagreement with, or errors by, the customs authorities or even by the traders themselves.

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<sup>178</sup> Article 116(3)(d) UCC.

<sup>179</sup> CJEU 14 June 2012, Case C-533/10, CIVAD, ECLI:EU:C:2012:347.

<sup>180</sup> CJEU 14 June 2012, Case C-533/10, CIVAD, ECLI:EU:C:2012:347.

<sup>181</sup> Article 121(3) UCC.

<sup>182</sup> Article 124(1)(a) UCC.

### **14.3.1. Appeal**

Any customs decision taken by the customs authorities that directly and individually affects an economic operator may be subject to appeal.<sup>183</sup> This right is not limited to financial or adverse decisions; it encompasses any act, whether written or oral, and whether made with or without a formal application, that pertains to the application of customs legislation.<sup>184</sup> For instance, a Binding Origin Information (BOI) or a Binding Tariff Information (BTI) issued by the customs authorities may be contested if the economic operator disagrees with it.

Importantly, lodging an appeal does not automatically suspend the contested decision. Suspension occurs only if the customs authorities have reasonable grounds to suspect that the decision conflicts with customs legislation or that enforcing it immediately could cause irreparable damage to the person concerned.<sup>185</sup> When disputes concern the validity of EU legislation itself, the CJEU becomes involved, typically through the preliminary reference ruling procedure, as national courts are precluded from adjudicating on the validity of EU law.<sup>186</sup>

### **14.3.2. Amending a customs declaration**

Customs declarations constitute the cornerstone of customs control, serving as the primary source of information upon which customs authorities base their decisions and enforcement actions. However, they are not immune to human error. Traders may unintentionally declare incorrect information, such as a wrong tariff classification or country of origin. Recognizing that errors happen, the UCC permits amendments to customs declarations (even post-acceptance), but within carefully circumscribed limits.

An amendment must pertain solely to the originally declared goods; it cannot effectively change the subject of the declaration.<sup>187</sup> Additionally, if customs authorities have either announced their intention to inspect the goods, detected an error, or released the goods, amendments are no longer permissible at that stage.<sup>188</sup>

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<sup>183</sup> Article 44 UCC.

<sup>184</sup> Article 5(39) UCC.

<sup>185</sup> Article 45 UCC.

<sup>186</sup> CJEU 6 October 1982, Case C-283/81, Srl CILFIT, ECLI:EU:C:2002:329.

<sup>187</sup> Article 173(1) UCC and CJEU 8 June 2023, Case C-640/21, Zes Zollner Electronic, ECLI:EU:C:2023:457.

<sup>188</sup> Article 173(2) UCC.

Given the speed with which customs often release goods, this provision somewhat restricts the window for correction. Nonetheless, the UCC offers a pragmatic safety valve: the declarant may request amendments to particulars of the declaration even after goods have been released, provided the request is made within three years.<sup>189</sup> Although the customs authorities retain discretion in approving such requests, they are expected to exercise this discretion reasonably and may not arbitrarily refuse.<sup>190</sup>

#### **14.3.3. *Invalidation of a customs declaration***

Occasionally, a declaration may be lodged (for example) for an inappropriate customs procedure, either due to misunderstanding or changed circumstances. The UCC provides a remedy in the form of invalidation of such declarations. Invalidation requires that the goods be immediately placed under the correct customs procedure and that there exist special circumstances rendering the original procedure unjustified.<sup>191</sup> However, where the customs authorities have informed the declarant that they want to examine the goods, an application for invalidation of the customs declaration shall not be accepted before the examination has taken place.

#### **14.4. Penalties**

Penalties serve as an essential deterrent against violations of customs rules. The UCC obliges Member States to impose penalties that are effective, proportionate, and dissuasive.<sup>192</sup> However, unlike many other areas of customs law, penalty systems remain largely a matter of national competence, resulting in significant variation across the Union.

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<sup>189</sup> Article 173(3) UCC.

<sup>190</sup> See for example CJEU 20 October 2005, Case C-468/03, *Overland Footwear*, ECLI:EU:C:2005:624.

<sup>191</sup> Article 174(1) UCC.

<sup>192</sup> Article 42 UCC.

For instance, unauthorized storage of goods in temporary storage facilities may attract criminal sanctions in some Member States, administrative penalties in others, or both in certain jurisdictions.<sup>193</sup> While the European Commission has sought to harmonize sanctions<sup>194</sup> for consistency and fairness, these efforts have yet to achieve comprehensive success.<sup>195</sup>

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<sup>193</sup> Report from the Commission on the assessment of customs infringements and penalties in Member States: Union Customs Code SWD (2023) 2 final, p. 7.

<sup>194</sup> See, for example, Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions, European Commission, COM (2013) 884 final.

<sup>195</sup> With the UCC reform proposal a new attempt is made by including a set of customs infringements and minimum penalties in the legal text. See Proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013, COM(2023) 258 final, Articles 245 – 254.

## 15. Conclusion

EU customs law is, and will remain, a highly dynamic professional field. Its global relevance is underscored by numerous societal, economic and geopolitical phenomena: the fight against fraud and smuggling, the rise of e-commerce, tariff wars, and trade restrictions in connection with armed conflicts (e.g. the Russo-Ukrainian war). Such events on the world stage are often directly translated into customs legislation – in the context of the EU most prominently through the planned EU customs reform.<sup>196</sup> Customs law will continue to evolve in response to the demands of international trade and politics. Consequently, a solid grasp of the central tenets of the EU customs framework is indispensable for any professional engaged in international trade.

This book has offered its reader a concise overview of the most significant aspects of the EU customs system. Surely, understanding the ins and outs of the EU customs system will take more than a day's work. However, since customs law is such an interesting field, that seems to be a blessing rather than a curse.<sup>197</sup>

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<sup>196</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013, COM(2023) 258 final.

<sup>197</sup> The same goes, naturally, for EU VAT. See Ad van Doesum and Frank Nellen, 2025, VAT in a Day (4rd edition).



