

Key global customs issues – an overview for exporters

Mr. Nico Ooyevaar, partner at McMan & Co, International Trade Lawyers highlights some current customs issues and their likely impacts for global trade, and exporters.

For a variety of reasons (including anti-terrorism measures) exporters are now confronted with increased scrutiny not only in their own countries but also in countries where their goods are imported. It is usual and normal for exporters to prepare the relevant export documentation in the country of export. This practice however often fails to have regard to appropriate risk management strategies particularly where difficulties might arise in the importing country which adversely impact on the exporter. Customs administrations internationally are using increasingly sophisticated technology and methodology. The customs authorities in trading countries like the US, China, Japan as well as trading blocks like the EU devote much effort to training their customs officials in an endeavour to ensure the proper duty is paid and that appropriate anti-terrorism checks are conducted. Customs officials of many developing countries also now undertake thorough training as a result of training courses developed by the World Customs Organisation (WCO). Many of the traditional developing countries are now focusing more and more on the main customs issues like tariff, origin and customs valuation.

Tariff classification of goods is an important and often neglected element of export

Although in the industrialised world the duty rates have come down to an average 4 to 5 %, duty rates in many other countries are still in the double digits and import duties form a significant part of their state revenue. Many goods may still be subject to classification interpretation, particularly where new technologies are involved. This new focus on tariff classification is particularly relevant in countries that also levy some form of duties or taxes on certain exported goods (like China). It is the discrepancy between the tariff code used by the exporter and the code used by the importer, however, which often triggers an enquiry by the importing country's customs administration often resulting in a higher duty bill. As more exporters are confronted with these kinds of disputes it is increasingly apparent that developing and implementing a global tariff classification policy is in the best interest of the exporter.

Origin of goods is another important element with impacts on the customs duty amount payable in the country of importation.

Most traders will be familiar with this system when importing into the EU. There are many agreements between the EU and other countries offering a favourable duty rate on import. Often these agreements give a one-sided benefit, intended for the development of the country of export. However, the number of Free Trade Agreements (FTA's) between countries and trading blocks is rapidly increasing. One key benefit is that this allows duty-free trade between the partners. These FTA's all have complex systems of determining the preferential origin. This issue is internationally referred to as the "rules of origin". Failure to comply with these rules of origin on the exporting side may lead to costly problems on the importing side. Such problems also often tarnish the reputation of the exporter. There is another issue associated with "origin" also addressed in the international trade agreements and the domestic laws of each importing country. This is called "non-preferential origin" and it is often ignored (to their detriment) by exporters. Non-preferential origin in international trade law relates to the rules to establish origin of goods for purposes unrelated to preferential duty rates. That is, what are the rules for establishing origin in circumstances like antidumping and safeguard measures? The EU and the US have made extensive use of these measures; other countries are increasingly using them now either for retaliatory purposes or simply because domestic manufacturers are becoming more aggressive. Exporters should at least be familiar with the potential problems in the importing country and ensure that they have adopted appropriate risk management strategies to address those problems.

Customs transfer pricing of goods is currently a third important and serious issue confronting many exporters.

As the majority of global transactions occur between related parties, customs administrations in an increasing number of countries are realising that the customs valuation rules applicable to these transactions have not been fully utilized. The focus on transfer pricing by the revenue authorities in many countries has resulted in an increased awareness by the customs services that all related party transactions should in fact be subject to investigation/enquiry to make certain that the declared transaction value (sales price) has not been affected by the relationship. Because of this profound shift by customs administrations internationally, exporters now need to take particular care with their contractual arrangements for customs purposes. Shrewd exporters who deal with the above issues in advance obviously have an advantage. Failure to address risks within the supply chain is often expensive.

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