

EU Customs Law

THIRD EDITION

Timothy Lyons

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EU Customs Law

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Third Edition

TIMOTHY LYONS QC.

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To Patricia

General Editor's Preface

Preface to the Second Edition

It is a pleasure to welcome this new edition of *EC Customs Law*. Although customs law might, at first, seem a subject of limited academic and even practical concern, that branch of law is in fact – as this book shows – of central importance in the European Union.

The European Community is based, according to the EC Treaty, on a customs union. That union is indeed the foundation of the Community. Because of its foundational status, customs law, as the author admirably explains and demonstrates, forms a vital part of EC law and policy across a very wide field.

Customs law is of course of critical importance for the internal market of the Community. But it is fundamental also to the European Union's relations with the outside world: not least to the common commercial policy and to the Union's development policy. The subject has now to be seen in its global setting, being governed by many international arrangements and agreements. The interaction of EC law and international law is one of the themes of this work.

The book firmly places customs law in its broader context. It examines against that background the main branches of the subject—including, for example, rules of origin; classification under the Common Customs Tariff; valuation; customs procedures; customs debt—while never losing sight of the wood for the trees.

All those concerned with trade law and with the operation of the customs union will welcome this clear, expert, and systematic exposition of the subject. Because of its focus on the guiding principles, as developed in particular in the case law of the Court of Justice, and by its emphasis on the place of customs law within the Community legal system and international law, the book will appeal also to an even wider readership.

Francis G. Jacobs

Preface to the Third Edition

We very much welcome this third edition, to what is now *EU* customs law. Much has changed in EU law since the previous edition, in particular, but by no means exclusively as a result of the Lisbon Treaty. There is nevertheless also a lot of continuity, as this outstanding analysis of customs law shows. Change and continuity have become the hallmarks of the EU project. The author continues to succeed in his excellent exposition of the subject, praised in the preface to the second edition. The perspective has even been widened, with more focus on economic theory, and some forward-looking sections which highlight a possible end state – that of a truly unified, “federal” customs administration – which was hardly imaginable when the EU customs union was in its infancy.

At the time of writing this preface one cannot help but noticing that the author does not discuss Brexit – no doubt a wise decision given the current uncertainty surrounding this process. The book nevertheless makes a great contribution to the debate about the future trade relations between the EU and the UK: it shows the scope and depth of the law, and

its institutions (not least the Court of Justice), which are required to make a customs union work well – or indeed other forms of advanced trade relationships and customs cooperation and facilitation. To echo the preface to the second edition: this book will now appeal to an even wider readership.

Piet Eeckhout

Author's Preface

The customs law of the EU is sometimes regarded as a specialist field, having little association with the main body of EU law and divorced from some of its most interesting developments. Nothing could be further from the truth. As the Union Customs Code acknowledges, the Union is 'based upon a customs union'. This is true to some extent financially because customs duties form part of the Union's own resources. The foundational role of the customs union also ensures that customs law affects, and is affected by, EU law and policy in a wide range of areas. On the one hand, customs law is inextricably associated with internal elements of the Union, such as freedom of movement of goods and their free circulation. These are matters that are particularly examined in Chapters 2 and 3. On the other hand, it is fundamental to the relationship between the EU and the rest of the world, particularly, of course, in relation to trade relations and development policy. These matters are considered in Chapters 1 and 6.

Chapter 1 contains some new material on the history of the development of the customs union in the EEC. It also contains an extended discussion of the economics of customs unions. The author cannot pretend to approach the work of specialist economists as anything other than an interested general reader. The law of the customs union needs, though, to be put in an economic as well as a historical context. If nothing else, the new sections on economics will help to do that. Chapter 6 has been substantially altered so as to reflect the current priorities of the EU's trade policy. No one who considers that policy in any detail, with its pivot to Asia amongst other things, can sensibly accuse the EU of introspection.

Customs law has also proved to be an arena in which the competences and powers of the institutions of the EU, and the relations between them, have developed. The EU's trade policy is significant in this context as the recent consideration by the Court of Justice of the EU of the EU/Singapore agreement has shown. More generally the Union Customs Code itself, with its frequent references to delegated and implementing regulations, reflects the new architecture of the Union established under the Lisbon Treaty. In the internal affairs of the EU, the exercise of discretion, particularly by the Commission, is of considerable significance. That is a topic which is considered in Chapters 4 and 5 which deal with customs legislation and administration and the common customs tariff. Relationships between EU institutions and traders have also been examined within the context of customs law. Chapter 13 has, consequently, to consider what amounts to matters of EU administrative law in relation to claims for repayment and remission of customs duty.

Even many of those aspects of customs law which, at first sight, appear most closely concerned with exclusively customs matters prove to have a wider significance. For example, the consideration of customs legislation in Chapter 4 has to cover matters such as the effect and application of legislation and the difference between procedural and substantive rules. The discussion of rules of origin in Chapter 7 has significance for many activities concerned with the regulation of markets. The treatment of valuation in Chapter 8 is significant too beyond the field of customs duty.

Of course, there are matters which are frequently the preserve of customs lawyers and the book seeks to ensure that these are covered too. Chapter 5 is concerned with the common customs tariff and its interpretation, and seeks to outline the principles established by the numerous classification cases which the European Court of Justice has had to consider. Chapters 9 to 12 are concerned with matters such as the customs declaration, customs

procedures, approved treatments and uses (including, of course, the economically important matters of transit and inward and outward processing), and the customs debt.

The UCC has significantly amended the law relating to customs procedures and Chapters 10 and 11 reflect the changes which have been made. In these chapters, as throughout the book, I have kept in mind that many practitioners will want to consider customs law from the perspective of the Community Customs Code as well as from that of the Union Customs Code. Legislative references are frequently made, therefore, to both codes. Decisions of the EU courts on the Community Customs Code are referred to regularly. Many of these will continue to be significant.

In many areas, although the customs union has been in place a long time, customs law and practice are still developing. To see that, one need only look at the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code which will not conclude for a number of years yet. Other areas of potential development include penalties for customs infringements. In a relatively short time, the customs union will be reduced in size because of the departure from the EU of the UK. The reduction in the size of the customs union will not, however, result in any reduction in the importance of the law of the customs union. That law will continue to be highly significant for those outside the EU as much as for those within it.

Throughout the book I have sought to describe the guiding principles and rules of customs law, in the Union Customs Code and secondary legislation, and to consider them in the context of the relevant case law of the Court of Justice, in a way which is useful to experienced customs lawyers as well as to those coming to the subject for the first time. It is true, of course, that the courts and tribunals of the Member States, just like the national customs administrations, play a vital role in the application of customs law. I have not attempted, however, to incorporate the domestic case law, or statute law of any Member State, into the text. To do that would require a different and much larger book.

I have attempted to state the law as at 1 December 2017.

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I have also been grateful for invitations to address seminars on EU trade and customs law from: Prof. Dr. Andrea Biondi (King's College, London); Prof. Wieslaw Czystowicz (Warsaw School of Economics); Prof. Dr. Sjoerd Douma (Leiden University); Mr. Gary Fitzgerald BL and Ms Anne Fitzpatrick BL (Irish Centre for European Law); Dr. Tom O'Shea (Queen Mary College, London); Dr. João Rolim (São Paulo); Dr. Ian Roxan and Dr. Eduardo Baistrocchi (London School of Economics); Prof. Dra. Glória Teixeira (Porto University); and Prof. Dr. Hans-Michael Wolfgang (Münster University). One always gains more than one gives. I have had the advantage too of considering the Union Customs Code with Ms. Panayota Anaboli, Ms. Ann Gayk, Mr. Jean-Michel Grave, Mr. Michael Lux, and Dr. Christian Struck as a contributor to a forthcoming publication.

Alex Flach and Imogen Hill of Oxford University Press have seen the manuscript through the publishing process with admirable efficiency. Finally, I should like to acknowledge the patience and constant encouragement of my wife Patricia. Naturally, I alone remain responsible for the text and for any errors it may contain.

Selected Customs Legislation

UCC: Regulation of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) [2013] OJ L269/1 as amended.

The First Delegated Regulation: 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 [2015] OJ L343/1.

The Second Delegated Regulation: Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 [2016] OJ L69/1.

The First Implementing Regulation: 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 [2015] OJ L343/558.

The Second Implementing Regulation: Commission Implementing Regulation (EU) 2016/481 Commission Implementing Regulation (EU) 2016/481 of 1 April 2016 repealing Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [2016] OJ L87/24.

The Third Implementing Regulation: Commission Implementing Regulation (EU) 2017/989 of 8 June 2017 correcting and amending Implementing Regulation (EU) 2015/2447 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 [2017] OJ L149/19.

CID: Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code [2016] OJ L99/6.

The Tariff Regulation: Council Regulation (EEC) 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1987] OJ L256/1, as amended.

CCC: The Community Customs Code, Council Regulation (EC) 2913/1992 of 12 October 1992 establishing the Community Customs Code [1992] OJ L302/1, as amended.

The Implementing Regulation: Commission Regulation (EEC) 2454/1993 of 2 July 1993, laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1993] OJ L253/1, as amended.

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