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The Customs Union of Russia, Belarus, Kazakhstan, and the European Union: Selected Cross Border Issues

Martine Chin-Oldenziel & Anatoly Nesterov*

This is a review of issues and problems, including cross-border disputes, arising during customs examination and sampling in the Russian Federation and the European Union. The Customs Union of the Russian Federation, Republic of Kazakhstan, and the Republic of Belarus was formed in accordance with the Agreement of 6 October 2007. This article provides some concrete examples of cross-border disputes in comparison to similar problems that have arisen in the EU, particularly in the Netherlands. Based on this review, we will conclude with some suggestions to improve the handling of cross-border disputes arising from customs examinations and sampling.

I. RUSSIAN CUSTOMS UNION AND RELEVANT LEGISLATION

Russian customs law has been quickly developing in the past twenty years. The First Customs Code was adopted in 1993 together with the Law on Customs Tariff.¹ Liberalization of the economy led to the adoption of the new Customs Code in 2003.² The Customs Union Agreement of 6 October 2007 established a Customs Union between the Russian Federation, Kazakhstan, and Belarus. This agreement also established a Commission of the Customs Union, which is a single permanent governing body of the Customs Union. In 2009, a set of actions was set up including the contractual framework of the Customs Union, including the Customs Code and the Common Customs Tariff. The Customs Code was adopted in 2009 but entered into force in 2010. A chapter of the Customs Code of the Customs Union is devoted to customs examination and the procedure for taking samples of goods. Although this chapter provides authorization for the collection of samples of the goods, it does not set out specific methods to be used. Furthermore, no approved methods for the study of goods for customs purposes have been adopted. The Customs Code of the Customs Union does not include any provisions relating to sanctions. Those articles are part of the national legislations of the Russian Federation, Kazakhstan, and Belarus. The adoption of the Customs Code of the

Customs Union also led at the same time to the adoption of the Law on customs regulation in the Russian Federation.³

2. ISSUES ARISING FROM CUSTOMS EXAMINATION AND SAMPLING IN RUSSIA

Many Russian lawyers observe that economic operators face unexpected risks when planning, executing, and actually shipping the goods across the Russian customs border. The increase in trade has required the elimination of some administrative obstacles, but many difficulties still persist. These risks relate to the practice of the customs authorities, as well as to the ambiguity of the Customs Code of the Customs Union, the Administrative Offences Code of the Russian Federation (AOCRF), and court practice. The AOCRF is applied every time customs rules are violated, particularly when customs authorities establish that goods were falsely declared.

Administrative offence cases that are opened in the sphere of customs are numerous. For example, 83700 administrative offence cases were opened in 2008, and administrative investigation was undertaken in 39,168 of these (47%). But in the last two years, the tendency to start court proceedings challenging decisions of customs authorities grew significantly and court rulings favourable to economic operators

Notes

- * Dutch Supreme Court, Tax Section, Scientific Department. Faculty of Law, National Research University, School of Economics, Moscow.
- 1 The Customs Code of the Russian Federation (1993), IPS ConsultantPlus; Federal Law of the Russian Federation on customs tariff (1993), IPS ConsultantPlus.
- 2 The Customs Code of the Russian Federation (2003), IPS ConsultantPlus.
- 3 The Customs Code of the Customs Union (2010), IPS ConsultantPlus; Federal Law of the Russian Federation on customs regulation in the Russian Federation (2010), IPS ConsultantPlus.

involved in cases connected with false declaration of goods' quality characteristics became a trend. This trend results from objective as well as subjective aspects of interaction at the customs border.

The objective aspect is defined by the customs officers' and economic operators' practical inability to check the compliance of quantity and quality characteristics of the shipped commodities against the information submitted in the customs declaration for 100%. I.V. Petrov⁴ points out that, as a whole, the court practice analysis shows that the scope of decisions taken at determining the guilt of the interested person (shipper, expeditor, declarer, or customs broker (representative)) who is accused of having submitted an incorrect or false customs declaration at the Russian customs authorities lies between two approaches. According to the first approach, guilt is present if the person was legally and actually able to check the correctness of the information but failed to do so. The second approach involves the theory that conducting a check is a right, not an obligation, so there is no guilt if the goods have not been previously checked. The first approach does not take into account that it is impossible to check 100% of the cargo. The second approach has never been invoked.

Still, a large number of court decisions show that the judges, when assessing whether the economic operator involved committed the administrative offence he was accused of, take into account the circumstances, international agreements, and customs circulations that are distributed to businesses. Not only the abstract possibility of conducting the check by the shipper or the declarant is taken into account by the judges but also the presence of motives and grounds for such checks. The reason and adequacy of checks by shippers, brokers, and others are often determined by the fact that, as a practical matter, 100% examination is not possible. Court rulings illustrate this.

For instance, the Federal Court of Arbitration (FCA) of the North-Western district, by its Ruling on the case N A26-5024/2009 dated 8 April 2010, confirmed that identification of quality characteristics, which allows a part of the goods to be classified as a different kind of product, did not constitute an administrative offence of non-declaring such goods. If the goods are completely declared by quantity but the declarant indicated in the declaration false information on the quality characteristics of the goods necessary for customs purposes, these actions constitute an administrative offence if this information was the basis for exemption from or reduction of customs duties or other taxes.

The ruling of the FCA of the North-Western district in the case N A56-11886/2006 dated 21 March 2007 concerned the question of the application of a prior decision of the customs authorities. The customs broker had been accused that he had not used his right to have a preliminary decision. The FCA ruled that this is a right and not an obligation. Therefore, not having exercised the right to a preliminary decision is not sufficient for being accused of an administrative offence.

However, customs officers themselves quite often violate the procedural requirements when taking the goods' samples during customs control procedures or fail to take into account the peculiarities of international and Russian sampling methods. In particular, they make use of national standards (the state standards, GOST⁵), which are not suited for customs purposes as will be shown when discussing the case of *S.V.T.S – Legion Severo-Zapad LLC* (hereinafter 'SVTS'). This means that even if the declarant takes all required measures, he still runs the risk of adverse consequences of the absence of harmonization of the sampling methods or methods of study of the quantity (quality) of goods.

An example is the case of SVTS, a customs broker. The customs authorities accused SVTS of having failed to employ enough care and caution while receiving the shipment as it had not checked the actual weight of the goods, oil derivatives, against the weight indicated in the documents. The customs declaration indicated a weight of 514.800 kilograms, whereas customs concluded that the quantity was 518.857 kilograms. The decision of the customs authorities was based on a special customs revision at the depot of Neste Sankt-Peterburg LLC. The measurement of the quantity was made by SJS Vostik Limited CJSC under the agreement of rendering services dated 15 January 2008. It is important to note that pursuant to Article 210 paragraph 4 of the AOCRF, the burden of proof rests on the customs authorities. The FCA annulled, by its decision of 15 September 2010, case N A56-53182/2009, the decision of the customs authorities. The FCA ruled that the customs authorities failed to produce any evidence that the SVTS had been or could have been aware of the falsification of the information contained in the customs documents that it had submitted to the customs. The reasons for annulling this decision were the following.

First of all, FCA concluded that, since the commodities concerned had not been subject to customs examination, there was no definite evidence that the excess

Notes

- I.V. Petrov. Issues of guilt of legal entities brought to responsibility for administrative offences in the area of customs law, related with declaring false information to the customs authorities. Arbitration disputes – 2010-N 3.
- The (State System for ensuring the Uniformity of Measurements, Mass of Petroleum Products, and the General Requirements for Procedures of Measurement or *gosudartsvennyye standarty* (GOST)) is a set of technical standards maintained by the Euro-Asian Council for Standardization, Metrology and Certification (EASC). The Russian federation, Belarus, Ukraine, Moldova, Kazakhstan, Azerbaijan, Armenia, Kyrgyzstan, Uzbekistan, Tajikistan, Georgia, and Turkmenistan have adopted these measures.

of goods discovered had crossed the Russian border. Second, the customs authorities had not disproved the argument of SVTS that SJS Vostik Limited CJSC and the supplier used different methods of weighing the goods, with every method having its own margins of error at calculating the goods' weight. The FCA ruled that the customs authorities failed to produce arguments proving the unacceptability of any of these methods. Moreover, the customs authorities had not denied that the method of determining the mass of the petroleum derivatives at place of destination is different from the method employed by the sender of the goods, which could also have caused the discovered discrepancies of the commodities' weight information.

With respect to the difference between the methods used, the following explanation can be provided. The supplier, Neste Oil Corporation, based its quantity on the following method. Rail tank cars were weighed at the cargo terminal by a static method, according to which the weight of an empty tank car (lightweight) is determined before the loading procedure by weighing the tank car on the commercial non-automatic scales 'Scalex 17001000 C'. The loading procedure is done on the scales. After the loading had been completed and the weight of the fully loaded tank car was known, the loaded quantity had been calculated by subtracting the lightweight from the weight of the fully loaded tank car. It was technically impossible for the SVTS to weigh the oil derivatives in tank cars at the customs post at drawing up the Customs Cargo Declaration. Therefore, it used the quantity found by Neste Oil Corporation. The survey carried out at Neste Sankt-Peterburg was carried out by means of the GOST P 8.595-2004 method. To determine the mass of the oil derivatives, the indirect method of static measurements is used. The product's density and temperature are measured in standard conditions with the temperature at 15°C or 20°C. All measurements (pouring height, density, and temperature) are made by an independent company and documented by acts of acceptance of fuel. These acts are the basis for registration and accounting operations in the future. According to the above-stated GOST, a margin of error is acceptable in the measurements of the mass of oil derivatives, when using the indirect method of static measurements. This method is used because the direct method of static measurements of the oil derivatives' mass – weighing – is not

possible in this depot, since there is no appropriate scale platform.

3. CUSTOMS EXAMINATION AND SAMPLING IN EUROPE

The EU is also a customs union. On 1 July 2008, it celebrated its fortieth-year anniversary. Like the Customs Union between the Russian Federation, the Republic of Belarus, and the Republic of Kazakhstan, the EU has adopted a Customs Code, which is the Community Customs Code (CCC).⁶ In addition, implementing provisions of the CCC (IPCCC)⁷ have been adopted. The CCC will be repealed by the Modernized Customs Code (MCC),⁸ which, except specified articles, however, has not yet entered into force. This will depend on the adoption of the implementing provisions of the MCC. It was expected that the MCC and MCCIP would enter into force on 24 June 2013 and repeal the CCC,⁹ but recent information indicates that this date will be postponed.¹⁰ The CCC provides, among others, for common rules on the various customs procedures, calculation of customs duties, rules on origin of goods, and who is responsible for customs debt.

Although there is harmonized legislation, the EU Member States have also adopted specific rules in their national legislations within the scope of the CCC and IPCCC and other relevant EU legislation. Especially national sanctions for violations of customs regulation are included in the national legislation of the EU Member States, similar to the situation of the Customs Union. This means that companies dealing in the EU with customs declarations and shipping goods not only are faced with common EU rules but also with national legislation of the EU Member States concerned.

Although the EU is a Customs Union, there is no EU customs authority or administration. EU Member States have maintained their own customs administrations and customs laboratories. Each EU Member State has its own responsibility for the revenue and collection of customs duties and other applicable duties. With respect to legislation in relation to customs examination, the EU has adopted some common rules. Moreover, a Group of European Customs Laboratories (GCL) has been established in 1999. The GCL has a co-coordinative function for the customs laboratories of the EU Member States.

Notes

- 6 Council Regulation (EEC) No. 2913/92 of 12 Oct. 1992 establishing the Community Customs Code (OJ L 302/1).
- 7 Commission Regulation (EEC) No. 2454/93 of 2 Jul. 1993 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code (OJ L 253/1).
- 8 Regulation (EC) No. 450/2008 of the European Parliament and of the Council of 23 Apr. 2008 laying down the Community Customs Code (OJ L 145/1).
- 9 This is the date provided by the European Commission in its power point presentation 'The Modernised Customs Code Conditions and Its State of Implementation', 1 Nov. 2008, <http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/general_community_code/mcc_implement_en.pdf>, but is also indicated in Art. 188(2) of Regulation (EC) No. 450/2008.
- 10 The MCC will be recasted, part of this recast is due to the implementation of the Lisbon Treaty and the fact that new legislation has entered into force in the meantime.

The aim of GCL is 'to rationalize, coordinate and optimize the use of human and technical resources among the European Customs laboratories'.¹¹ Within the context of the GCL, the customs authorities of the EU Member States coordinate methods of customs examination in an attempt to harmonize common standards that are *stricto sensu* not EU legislation. The GCL has adopted six action plans,¹² whereby each GCL is chaired by an EU Member State or the European Commission. It is interesting to note that various databases are published on the website of DG Taxud,¹³ such as ILLIADe and ECICS.

In relation to customs examination, the CCC and IPCCC stipulate some general rules for examination and sampling of goods, such as which person is required to take samples, where are the samples to be taken, who has to pay for the costs, as well as presence of the declarant and/or representative. However, neither the CCC nor the IPCCC set out specific and detailed rules with respect to the method of sampling and examination. To that extent, the CCC and IPCC differ from the Customs Code of the Customs Union as it does not contain any method of sampling. Like the Customs Code of the Customs Union, it does not provide for methods of examination. This is probably also due to the fact that it is not possible to define one standard for the various products. Neither the CCC nor the IPCCC is appropriate for establishing all kind of standards for examination and sampling as this would make them comprehensive documents.

The customs authorities of the EU Member States have a competence in tax and non-tax matters (for example, consumer protection, agricultural goods, and counterfeit goods) to examine goods. With respect to customs matters, customs can examine the goods in order to verify the customs declarations that the customs authorities have accepted (Article 68 CCC). This verification can be an examination of the documents covering the declaration and documents accompanying the customs declaration, but the customs authorities may also examine the goods and take samples for further analysis. By examining the goods, the customs authorities can verify, among others, whether the classification and EU export refunds for agricultural products are correct. The goods are examined in the places designated and during the hours appointed for that purpose by the customs authorities. However, the declarant may request that the sampling takes place at another place than the appointed places.

With respect to taking samples, the CCC provides for certain rights and obligations of the declarant. Article 69(1) CCC stipulates in this respect that the

transport of the goods to the places where the goods are to be examined and where samples are to be taken and all the handling necessitated by such examination or taking of samples shall be carried out by or under the responsibility of the declarant. Moreover, the declarant has to bear the costs for this transport. The customs authorities do not have to provide for compensation if the analysis has been carried out within the scope of the applicable provisions. However, the costs related to the analysis or examination are borne by the customs authorities (Article 69(3) CCC).

The declarant is entitled to be present when the goods are examined and when samples are taken by the customs authorities. The declarant or his representative must be informed that the customs authorities will take a sample (Article 240 IPCC). The customs authorities can also require the declarant or his representative to be present during the sampling where the customs authorities consider this appropriate and can ask the declarant for assistance. If the declarant refuses to provide assistance, the customs authorities are entitled to take the samples, in which case the costs are borne by the declarant.

Article 247 IPCCC requires the customs authorities to indicate, either in the copy of the declaration or in a document attached to it, the basis and results of the verification of examination. Where appropriate, the means of identification are indicated as well. If the results of the examination of the goods indicate that the goods are not in accordance with the particulars given in the customs declaration, the customs authorities have to indicate in the copy of the declaration or in a document attached to it the particulars to be taken into account for the application of the applicable duties or export refunds. These requirements enable declarants to understand why the results of the examination do not correspond with the particulars provided in the customs declaration.

The declarant or his representative can challenge the representativeness of the sample. This may be done until the moment at which the samples are taken. The right to challenge the method of sampling is possible until the goods have been released. The representativeness of the sample, however, may be challenged after the release of the goods, provided the release has not altered the conditions of the goods. The European Court of Justice (ECJ) ruled in his judgment of 4 March 2004, *Derudder & Cie*, C-290/01, ECR 2004 p I-2041, points 42 and 43 in this respect as follows:

42 In such circumstances, the right to challenge the representativeness of a sample the imported goods

Notes

- 11 <http://ec.europa.eu/taxation_customs/customs/customs_controls/custom_laboratories/group_ecl/index_en.htm>.
- 12 Those actions plans are (1) Action 1: Inter Laboratory Inventory of Analytical Determination (ILLIADe); (2) Action 2: inter-comparisons and method validations; (3) Action 3: networking on quality; (4) Action 4: communication and strategy (including conferences and seminars); (5) scientific expertise; and (6) Action 6: European Customs Inventory of Chemical Substances (ECICS).
- 13 Directorate General Taxation and Customs of the European Commission.

taken by the customs authorities cannot a priori be denied to the declarant or his representative, even if he made no objection in this regard at the time the samples were taken. In addition to the fact that such an interpretation is in no way precluded by the wording of the abovementioned provisions, it also coincides fully with the actual aim of the Community customs rules, as stated in particular in the ninth recital in the preamble to Directive 79/695 and the fifth recital in the preamble to the Community Customs Code, that is to say to ensure the correct application of duties, charges and levies laid down by that legislation. Whilst to that end the customs authorities must be regarded as having wide powers of inspection, traders must also have the right to contest decisions taken by those authorities, in particular where, as in the main proceedings, they consider that the samples taken for analysis by those authorities are not representative of the whole of the goods imported and because of that have led to incorrect assessment of import duties.

43 Although it follows from those considerations that a customs declarant or his representative may be permitted to challenge the representativeness of a sample taken from imported goods, even if he was present when the samples were taken and at that time raised no objection in this regard, both the principle of legal certainty and the need to give practical effect to Directives 79/695 and 82/57 and the Community Customs Code require that the possibility of raising the objection be restricted in time. It must lapse when the customs authority releases the goods concerned, except where it can be shown that the condition of those goods was not altered in any way whatsoever after the release, so that the possibility remains of conducting inspections and, if necessary, of taking additional samples.

The right to challenge the representativeness of the sample should not be underestimated. It is important to note that the results of the customs examinations (regardless of whether or not the declarant has been present or has provided assistance) are used for the purposes of applying the provisions governing the customs procedure under which the goods are placed. When a sample is not representative for the results, there can be doubts as to the results of the examination.

The customs laboratories of the customs authorities of the EU Member States examine the samples taken. It is interesting to note that neither the CCC nor the IPCCC stipulates specific requirements as to the way in which the samples have to be taken. Article 242 (2) IPCCC stipulates that the samples shall be taken in accordance with the methods laid down in the provisions in force. Detailed legislation has been laid down for specific goods in relation to the method of sampling. This legislation can be specific EU legislation, but EU standardized norms are also used.

An example of such detailed EU legislation is Regulation (EC) No. 765/2002.¹⁴ This regulation applies to physical checks on the nature and characters of boneless beef cuts. This regulation sets out rules with respect to the amount of samples to be taken as well as the methodology to be applied: sampling, extraction and purification of DNA, polymerase chain reaction, analysis of amplicons by gel electrophoresis, and documentation. Also, the legislation in relation to the classification of goods in the Combined Nomenclature (CN)¹⁵ can provide for specific methods of sampling and examination. Those methods could refer to standardized norms.

It could also be that national legislation provides for specific sampling methods. Such legislation applies only in the EU Member State concerned. It is interesting to note in this respect that the Dutch customs administration has published a guide on various issues not only in relation to customs matters but also in relation to customs examination. This guide sets out which rules and methods the Dutch customs authorities adhere to.¹⁶ However, for the majority of the goods, there are no specific EU and/or national requirements as to the way in which the goods have to be sampled.

4. A REVIEW OF DISPUTES ARISING FROM CUSTOMS EXAMINATION AND SAMPLING IN EUROPE

When it comes to disputes with the customs authorities as to, for example, the classification of goods and related issues with respect customs declarations, the matter is dealt by the national customs authorities and the matter can be brought to the national courts. The ECJ mainly comes into play when the national judge poses preliminary questions concerning the

Notes

- 14 Commission Regulation (EC) No. 765/2002 of 3 May 2002 on the collection of samples and the adoption of certain detailed rules in connection with physical checks on boneless beef cuts qualifying for export refunds (OJ L 117/6).
- 15 Council Regulation (EEC) No. 2658/87 of 23 Jul. 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256/1).
- 16 <www.douane.nl/bibliotheek/handboeken/handboek_douane/hd_12-10-00.html>, Handboek Douane, monsterneming en monsteronderzoek (in English Handbook Customs: sampling and examination of samples).

interpretation of European legislation. It is, however, also possible that customs matters are dealt by the Court of First Instance (CFI) and the ECJ (appeal). This can be the case when the declarant has requested the national customs authorities for repayment of customs duties and the customs authorities have submitted this request to the European Commission.¹⁷ The European Commission will decide on this request, and its decision is subject to appeal to the CFI. The judgment of the CFI can be appealed to at the ECJ. As the methods of sampling are to a large extent not harmonized, the competence of the ECJ on method sampling and examination is limited.

When looking at some Dutch court cases, there are various examples in which customs examination and sampling were at stake. First of all, it is important to note that if the Dutch custom authorities deviate from the customs declaration submitted by the declarant, the burden of proof rests on the customs authorities with respect to this deviation. This is a similar approach that can be found in Russia, namely Article 210, paragraph 4, of the AOCRF. Moreover, each customs declaration has to be examined on its merits. Therefore, previous customs examinations cannot be used for new customs declarations. There are exceptions to this rule if the goods are, for example, standard goods or if the goods do not change in composition.¹⁸ The Dutch Supreme Court clarified that, for the purpose of the CN, it is not possible to combine customs declarations of different separately packed declared goods.¹⁹

In a matter whereby the Dutch customs authorities failed to take the correct sample, the Amsterdam Court of Appeal ruled that the essential requirements of the verification procedure had been violated, such that the results of these procedures could not be used for the classification of the goods in the nomenclature for export refunds.²⁰ In this case, the sampling related to meat but was based on only some part of meat, which sample was not considered as being representative for the consignment of the meat. Since the sample was not representative, the results of the customs examination could not be used as the basis for the deviation of the customs declaration as submitted by the declaration.²¹ This does not of course necessarily mean that the classification of the customs declaration has to be accepted as the classification is based on the objective

characteristics of the goods that have been determined and the date of the acceptance of the customs declaration. But important proof of the customs authorities cannot be used. There are also various examples of court cases in which the appellant has been successful in challenging the decision of the customs authorities because the way of sampling was not correct. This way of sampling could not be correct because the examination only concerned one part of goods²² or the report of the customs examination was not sufficient and could not be used as proof that the submitted customs declaration was not correct.

The lack of common standards of sampling complicates questions concerning the classification of goods and applicable tariffs. An example thereof is a case involving export refunds for dairy mix powder.²³ The authorities established that the exported product did contain starch, glucose syrup, and/or maltodextrine with the result that a lower amount of export refunds was to be paid. One consignment of the goods was examined by customs. The results of this examination showed that the consignment could contain glucose syrup and/or starch. However, the research method as such could not exclude that small quantity of glucose syrup was actually present. Because the applicant did not keep an administration, the competent authorities took the decision that the exported consignment did not contain these elements. This decision was annulled by the Court. The authorities had to re-examine whether the applicant could be reproached for not having kept an administration. If not, the authorities had to examine the proof of the applicant. When the case came back to the Court, the Court ruled that the evidence of the applicant could not be accepted.

Moreover, with respect to solving disputes arising after customs examination, it is important that the party concerned is present during the sampling. This could prevent later discussion as to the way in which sampling took place. The Amsterdam Court of Appeal ruled that, based on the aforementioned judgment of the ECJ, *Derudder & Cie*, the customs authorities are obliged to inform the declarant or his representative that the customs authorities will sample the goods.²⁴ If this procedure has not been followed, the results of customs examination cannot be used for the final customs decision.

Notes

- 17 See Art. 905 IPCCC in this respect stipulating when the national customs authorities are required to submit the request for repayment to the European Commission.
- 18 Amsterdam Court of Appeal 22 Apr. 2008, No. 04/122, LjN BD2450, Tariff Commissie (Tariff Commission) 10 Sep. 1996, UTC 1996/53.
- 19 Hoge Raad (Dutch Supreme Court) 19 Nov. 2004, No. 39100, LjN AO3315, BNB 2005/55, DR 2005/14.
- 20 Tariefcommissie, 31 Aug. 1991, No. 0048/97 TC, LjN AL1806.
- 21 See also Amsterdam Court of Appeal of 22 Apr. 2008, No. 04/122, LjN BD2450 and Amsterdam Court of Appeal of 7 Mar. 2000, No. 0214/98, LjN AN9467.
- 22 Tariff Commission 8 Aug. 2000, No. 0134/97, LjN AL8182.
- 23 College van Beroep voor het bedrijfsleven, 21 Jul. 1999, No. AWB 98/249, Fida20010204.
- 24 Amsterdam Court of Appeal, 14 Jun. 2006, No. 02/3855 DK, LjN AQ6559.

5. SUGGESTIONS TO PREVENT AND IMPROVE CROSS-BORDER DISPUTES

Lack of common standards for customs examination and sampling can result to disputes. Such disputes could relate to the classification of goods. Those disputes can result to a higher amount of customs duties to be paid or even criminal or administrative offences as the results of the customs examination for the basis of the decision of the customs authorities. Part of these disputes are caused by different or lack of methods of sampling and measurement. An example of such a dispute could arise when the country of departure uses method A, whereas the country of destination could use method B, with the result that there is a difference of the methods used, which could result to different outcomes. Even when a customs union has been formed, there is a lack of common standards as can be seen in the Customs Union and the EU. Transparency of standards is a complicated factor. It may be that the national authorities have adopted standards, but those standards are not known for economic operators. In this respect, the publication of databases of GCL and the guide by Dutch Customs can be regarded as a welcome step for making standards available for the public. The lack of common standards for customs examination and sampling problems could possibly be solved by means of international co-operation to develop common standards for sampling and customs examination. Such development could possibly be done within the framework of the World Customs Organization (WCO). When adopting such standards, it is important that those standards are suitable for customs purposes, unlike the GOST used by the Customs Union and that those standards contain more than just an indication that the sample has to be representative, which is a common standard used in the EU. Various questions have arisen as to what is meant by representativeness. Whether a sample is representative will of course

depend on the products at stake; therefore, various standards will have to be adopted. The common standards should preferably be made publicly available so that economic operators are aware of the methods to be used. When the customs declaration is drafted, the quality and quantity of the goods could already be based upon results of the common methods. In this context, the GCL of the EU can be seen a step forward for adopting common standards.

6. CONCLUSION

Disputes arising from goods crossing borders often involve the classification of goods and the correctness thereof. If the customs authorities establish that the quality, quantity, or other conditions are not met, this can result to payment of higher duties or even to criminal or administrative fines. In these disputes, the methods of customs sampling and examination should not be underestimated. The results of the customs examination are the basis for the authorities to accept the customs declaration or not. In this respect, disputes have arisen not only in the Russian Federation but also in the EU whereby the method of examination and sampling was at stake. Various decisions of the customs authorities have been successfully challenged at the national courts. These disputes are often complicated because no standards have been developed, the standards are not suitable for customs purposes, or the standards are ambiguous. In order to be able to solve such disputes, it will be necessary to have common suitable standards. Such standards could, for example, be developed within the framework of WCO. The EU has already started developing common standards within the GCL. For the sake of transparency and to prevent the use of different methods, those standards should preferably be made publicly available, which is often not yet practice.

GUIDE TO AUTHORS

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