



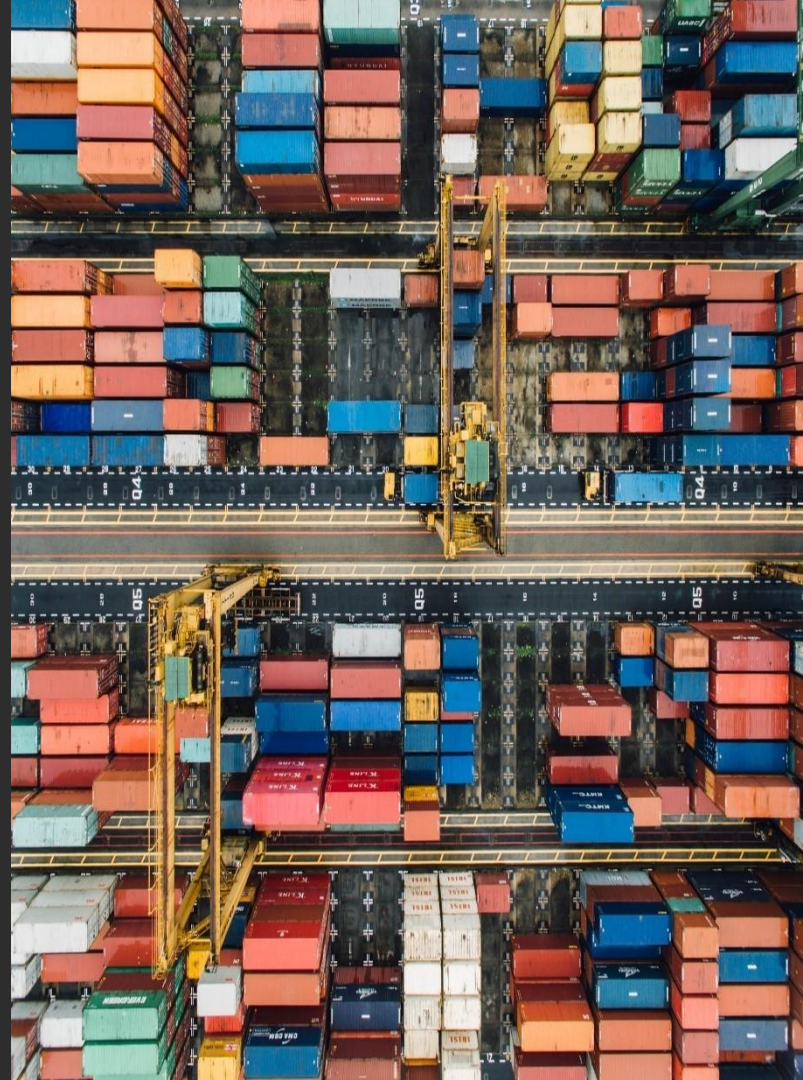
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Tax, Trade and Customs Compliance in a Digital Age

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► Topics

1. Introduction
2. The role, responsibility and (potential) liability of LSPs/customs agents
3. Examples of responsibilities and risks
4. Recent and ongoing developments:
 - Sustainability compliance: economic, environmental and social
 - Carbon Border Adjustment Mechanism (CBAM)
5. Best practices and recommendations

► Introduction

Introductory questions:

1. Can a non-EU company customs clear products in the EU?
2. Can a Dutch customs agent act as the direct representative in customs compliance for a non-EU company?
3. Is it recommendable to act as an indirect representative in customs compliance?
4. A UK company keeps stock with a Dutch LSP. Can this UK company export products from the EU to a non-EU destination?
5. Does a LSP/customs agent have any EU trade/regulatory responsibilities in respect of the EU import, distribution and supplies of goods?

▶ Role, responsibility and liability of LSPs/customs agents

- Representation of a principal, for example an importer or exporter of record.
- UCC based / Dutch customs and VAT legislation: role, responsibility and liability
- Direct versus indirect representation customs compliance
- General versus limited fiscal representation for VAT
- (EU) Regulatory based role, responsibility and liability
- Confirmed/documentated by POA, agreement and/or terms & conditions
- From an EU/Dutch compliance perspective: LSPs/customs agents have an important and expanding role that is getting rather complex and comprehensive

▶ Role, responsibility and liability of LSPs/customs agents (2)

Is there a significant legal/regulatory difference between
dealing with B2B or B2C consignments?

▶ Examples

1. Can a customs agent be held liable in case of:
 - undervaluation of imported products
 - principal/importer is a non-EU company
 - a POA direct representation is in place
2. An EU company appointed a customs agent as direct representative to customs clear B2C shipments. The customs agent assisted the importer to structure the transactions, ensure proper invoicing, etc. Due to non-compliance, Customs claims additional duties and VAT from the EU company. Can the customs agent also be held liable?
3. At request of an EU company, a LSP transports products from the EU to Turkey. The products are then supplied to Russia. The export of these particular products from the EU to Russia is prohibited under the existing EU sanctions. Does the LSP potentially have a problem?

▶ Examples of regulatory provisions potentially relevant at import / export

- REACH
- EU safety and health legislation
- Regulation laying down specific hygiene rules for food of animal origin
- EU Medical Devices Regulation
- EU Regulation on Textile Labelling and Fibre Composition
- Etc.

▶ Sustainability compliance: economic, environmental and social

- EU trade policy plays an important role in promoting sustainable development. Aim is that trade policy enhances:
 - social justice
 - respect for human rights
 - high labour standards
 - high environmental standards.
- This is accomplished through, *inter alia*:
 - EU trade agreements
 - special incentives for developing countries
 - trade and development policy
 - EU legislation (including rules directly applicable in the member states)

▶ Examples of sustainability related rules and compliance

- Rules on Trade and Sustainable Development (TSD), for example related to labour conventions and environmental agreements, implemented in Free Trade Agreements with, for example, Canada, South Korea, Central America and Vietnam
- Under GSP+, developing countries can gain additional EU market. They need to ratify and apply international conventions on human and labour rights. If not respected, additional access can be temporarily withdrawn
- Abolishing the death penalty and banning torture: monitoring EU exports of goods that can be used to carry out torture or death sentences
- EU proposal for a regulation to prohibit products made using forced labour, including child labour, in the EU. The proposal covers made in the EU for domestic consumption and for export, and imported goods
- EU legislation prohibiting the use of cadmium in plastics

▶ Carbon Border Adjustment Mechanism (CBAM)

- Aim: fight against climate change and supporting climate ambitions
- CBAM applies to imports of certain goods and precursors whose production is carbon intensive
- CBAM regulation entered into force: 17 May 2023. Enters into application in transitional phase: 1 October 2023. First reporting required: January 2024
- Objective of transition period is to serve as a pilot and learning period for all stakeholders: importers, producers and authorities and to collect useful information

▶ Carbon Border Adjustment Mechanism (CBAM) (2)

- CBAM will initially apply to imports into the EU of certain goods listed in an annex to the CBAM – and processed products of those goods – namely:
 - (a) cement
 - (b) electricity
 - (c) fertilizers
 - (d) cast iron, iron and steel
 - (e) aluminum
 - (f) chemicals (for now only hydrogen is listed)More goods to follow?
- Reporting obligation rests on the importer within the EU. The importer can transfer the reporting obligation to a customs representative (e.g., LSP). The reporting obligation applies directly to the indirect customs representative when the importer is located outside the EU

▶ Final Examples

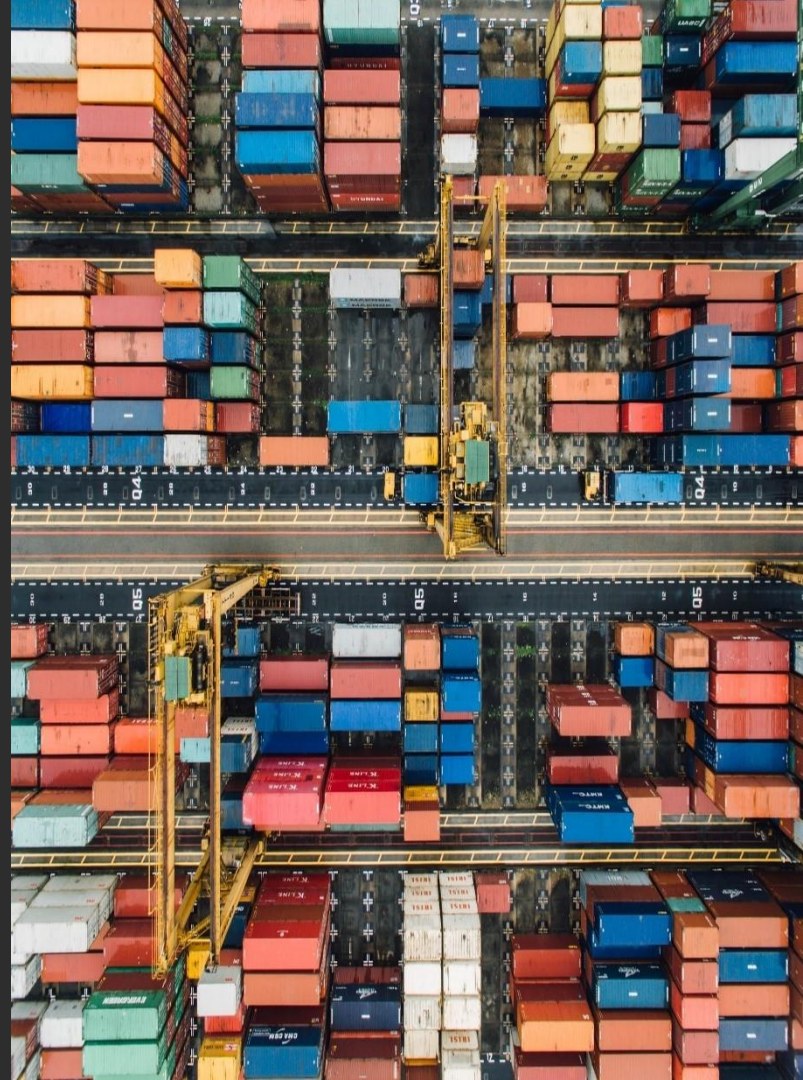
1. Import of steel from China. Principal is a Turkish company.
 - Customs/VAT import compliance considerations
 - Other EU trade/regulatory obligations

2. Imports of B2C sales, i.e., toys in combination with candy, on behalf of a non-EU company.
 - Customs/VAT import compliance considerations
 - Other EU trade/regulatory obligations

▶ Best practices and recommendations

- Realize how complex the role and position of the LSP/customs agent has become.
Besides recognizing the business opportunities, understand what the rapidly expanding responsibilities mean from a risk and liability perspective
- It is recommended to:
 - Stay updated on developments and changing compliance obligations
 - Discuss and agree with the principal and other parties in the supply chain on role and responsibilities
 - Confirm in writing what has been agreed with principal
 - Protect from risks and liabilities. In this respect, just having a POA in place and referring to terms & conditions may not be sufficient
 - In case of doubts, consult (possibly with the authorities) and seek acting transparently

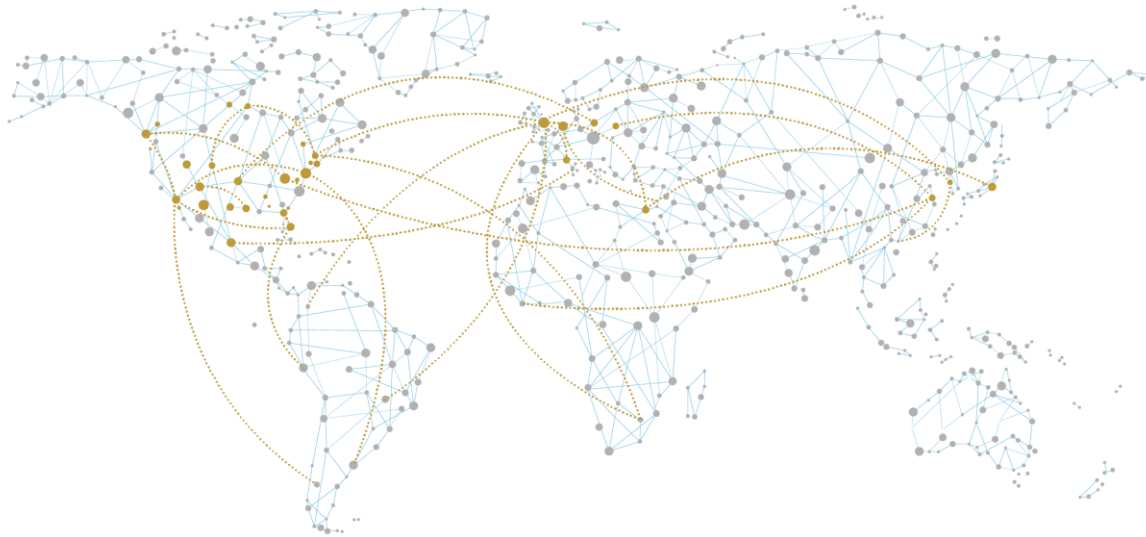
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We help importers and exporters promote global trade, lower trade barriers, and comply with relevant trade laws. Our attorneys offer strategic assistance and representation in all regions of the world to enhance our clients' competitiveness in an ever-changing world economy. Our multidisciplinary team advises in connection with global trade, customs and VAT. We are very experienced in developing and implementing supply chain solutions, including related trade and customs compliance, contracting and managing risks and exposures. We often assist with the implementation of customs planning solutions, like customs bonded warehouses and exemption schemes. We regularly represent our clients when seeking rulings on the interpretation of legislation, lobbying or in litigation before national courts or the European Court of Justice.

When doing business in Europe, efficient compliance with VAT is important. Centralizing an important part of the international supply chain through the Netherlands, often results in the lowest possible VAT costs. Our team can assist with developing and implementing solutions that results in avoiding payments of VAT on imports and exports.

In today's world, export compliance and compliance with sanctions in the various jurisdictions is key. In cooperation with our colleagues in other offices, we advise companies on compliance with rapidly changing legislation and circumstances.

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We are committed to advising clients in their tax and transaction structuring matters throughout Europe, in which the Netherlands historically played an important role. Aside from the tax benefits of using the Netherlands, several other factors usually play a role when our clients consider using the Netherlands to structure their ownership of corporate groups, which include the protection of foreign investments through the wide network of investment protection treaties that the Netherlands have concluded, as well as the use of Dutch investment protection structures making use of one or more Dutch foundations. We often work with our clients' tax advisors in other countries to respect local arrangements.

Regulatory practice

The Regulatory team is well-versed in a broad range of regulatory subjects. Our team offers an impressive range of expertise across permitting, environmental, planning, zoning and health and safety issues, including those with cross-border aspects. Moreover, the team assists clients in public (and private) law proceedings and provides clients with advice on complex environmental matters, such as the transfer of waste and hazardous materials or how to set up large sustainability projects. We have extensive experience advising and representing clients in governmental affairs and relations and guiding them through all phases of the government contracting and procurement process.