
Customs & Trade

■ I. FOCUS

AN INITIATIVE OF ICC FRANCE

A NEW CUSTOMS CHARTER OF FACILITATION

Following a long reflection on the rights and obligations of companies in their relations with customs authorities, engaged at the initiative of ICC France, including various professional organizations, ICC has just adopted a new customs Charter of Facilitation.

Let us first recall that the development of international trade today is marked by a growing number of free trade agreements and multilateral WTO agreements, which now cover most of the tariff and non-tariff barriers to trade. These rules help to meet the needs of operators, both in terms of investment and trade, and advocate for an open, foreseeable and transparent business environment, especially in tax and customs matters. From this point of view, international trade, investments and taxation are closely linked.

In such a context, the Customs Committee of ICC France has for long been denouncing the insufficient guarantee for the rights of companies in customs matters, both at national and European level, despite the progress made by the Community Customs Code replaced by the Customs Code of the Union since May 2016 and

various autonomous national texts (e.g. in France, the notice of assessment - 2002, the right to be heard - 2009 and the right to an error - 2018).

Thus, the right to be heard finds its limits in its short deadline (30 days) while the right to an error established by the French so-called law ESSOC excludes from its field the customs taxation! All too often it is as difficult for companies to preserve the presumption of good faith in customs matters as it is for individuals to preserve the presumption of their innocence.

From this point of view, the disappearance of the Commission de Conciliation et d'Expertise Douanière (Customs Arbitration and Advisory Committee) on January 1, 2017 (by the Law of December 29, 2016) for reasons that are still poorly understood has deprived operators of a valuable forum for contradictory debate under the control of an independent authority. The absence of such a forum is felt all the more because the judicial risk before non-specialized French jurisdictions remains high.

Moreover, the prospects for European harmonization in terms of sanctions opened by the proposal for a directive of the European Parliament and the Council of 2014 now seem unfortunately permanently postponed because of the stall of the debates since the report of the parliament of July 2016.

Of course, companies are aware of the need to fight against fraud which globalization and the emergence of new players has facilitated. At a time when customs matters seem to have to go through the main entrance in the field of compliance, companies are also more and more aware of their social, ethical and security responsibilities.

But it should be clear that any obligation must be the counterpart of a right, without which the system will penalize honest businesses and thereby paradoxically encourage fraud. Moreover, these obligations and rights must not be reserved solely for national operators, or only for authorized economic operators.

The reluctance of the French legislator to give companies in customs matters the equivalent of the guarantees it has granted for a long time in tax matters is surprising to say the least. The stakes are not lower, however.

ICC France's Customs Commission was therefore inspired by another French initiative, that of the Tax Commission, to draw up a Charter of tax rights for international investors.

After two years of intense exchanges, this customs Charter of facilitation has just been adopted and must now be widely promoted by international trade actors in order to convince the customs authorities of their respective countries to make these rules their new standard.



This Charter does not start from scratch, but rather aims to update and complete existing ICC documents in the area of control:

- ICC Customs Guidelines (2012);
- ICC Guidelines for traders in goods (2012).

Moreover, the Charter is also fully in line with the WTO Trade Facilitation Agreement, which came into force on February 22, 2017.

The Charter first sets out a series of guiding principles that create obligations for both customs and business parties: good faith, equal treatment, a reasonable burden of proof, etc.

It then sets out a list of fundamental rights of the operators. These rights are divided into 3 categories:

- The daily relationship with the customs authority: predictability, simplicity, mutual trust, confidentiality;
- Under control: the respect of the contradictory and right to be heard; and
- In case of litigation: fast and fair payment, proportionality of sanctions, transaction.

Thus, this Charter is in fact a renewed approach to old business' demands.

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■ II. BRIEF OVERVIEW

EUROPEAN UNION

[European Court of Justice \(ECJ\) confirms compatibility of Investment Court System with EU Treaties](#)

In its Opinion 1/17 of April 30, 2019, the ECJ concluded that the Investment Court System (ICS) provisions of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada are consistent with the EU Treaties, and in particular with the principle of autonomy of EU law and the exclusive jurisdiction of the ECJ for the interpretation of EU law.

This ECJ Opinion means that no changes have to be made to the text of the CETA agreement and Member States' ratifications can proceed. Also, no change will be required in the ICS provisions included in the agreements with Singapore, Mexico and Vietnam.

[EU-Singapore Free Trade Agreement approved by the EP](#)

The European Parliament (EP) has finally given the green light to the trade agreement with Singapore. The EP also agreed to an investment protection agreement to settle disputes between investors and state, and to a partnership and cooperation agreement, which extends cooperation beyond the field of trade.

Once the Council concludes the trade agreement, the agreement can enter into force on the first day of the second month following its conclusion.

For the investment protection and the partnership and cooperation agreements to enter into force, the EU member states first need to ratify them.

[New horizontal framework for safeguards clauses in bilateral agreements](#)

The EU adopted a regulation aiming at the inclusion of safeguard measures in trade agreements so that they are applied effectively and consistently with third parties. The first agreements to be covered by this horizontal regulation will be the EU trade agreement with Japan, followed by the trade agreements with Singapore and Vietnam. Further trade agreements might be added to the scope of the regulation in the future by means of delegated acts.

[EU Commission reinforced procedural rights of parties in trade defense investigations](#)

The Commission has updated the terms of reference for the Hearing Officer for trade defense proceedings. The updated rules take into account the recent reform of the EU anti-subsidy and anti-dumping legislation that shortens deadlines for completing investigations. The revised terms of reference provide practical guidance to interested parties on how to involve the Hearing Officer if they consider that their rights of defense are not respected.

The Hearing Officer's new Terms of Reference will enter into force 20 days after their publication in the OJEU.



[New 2019 version of the Explanatory Notes to the EU Combined Nomenclature](#)

The Explanatory Notes of the EU Combined Nomenclature are complementary to the section and chapter notes of the Customs Tariff published each year. The Commission published a new consolidated version of the Explanatory Notes incorporating all the changes from the previous version (2015) until January 4, 2019. Any notes published in the Official Journal afterwards will be in force from the day of their publication and will be included in the consolidated version in a future revision.

[Publication in OJEU of twelve regulations and a decision to prepare stakeholders for the withdrawal of the UK from the EU](#)

The published regulations, as part of the contingency plan of the EU in case of no-deal scenario, contain measures in different fields, but namely Regulation (EU) 2019/496 of the European Parliament and of the Council of March 25, 2019 amending Council Regulation (EC) No 428/2009 by granting a Union general export authorization for the export of certain dual-use items from the Union to the United Kingdom (UK). By this Regulation, the EU adds the UK to the list of destinations covered by Union general export authorization No EU001, in case of a no-deal.

FRANCE

[Dematerialized issuance of licenses for dual-use items](#)

The Decree of February 20, 2019 dematerializes

the procedures for the application and issuance of export authorizations for dual-use goods. Moreover, the Decree introduces this dematerialization in particular for replies to license applications.

Applicable from April 1st, the Decree refers to the modalities and elements of the requests of the various licenses to a new address:

www.sbd.entreprises.gouv.fr

The Decree also makes other changes and technical corrections, as regards intra-EU transfers of DUIs, national or EU licenses, unlicensed applications (DHL), etc.

AFRICA

[The Africa Continental Free Trade Agreement \(AfCFTA\) to be implemented on May 30, 2019](#)

The AfCFTA enacted in Kigali on March 21, 2018, by 44 African heads of State has reached the required ratification threshold of 22 ratifying states, with the ratifications by Sierra Leone and the Saharawi Republic on April 29, 2019. Therefore, AfCFTA is set to come into force on May 30, 2019, in accordance with Article 23 of the Agreement.

The AfCFTA aims to create the largest trade zone in the world encompassing more than 1.2 billion people and a combined gross domestic product of more than US\$3.4 trillion. Nevertheless, there are still considerable challenges to be met: ratification of the agreement by Nigeria, the synchronization of overlapping trade agreements and existing communities, the

elimination of irregular practices, significant logistical challenges, etc.

ASIA

CHINA

[Easing duty-free import limit for e-Commerce](#)

China has recently increased the value of goods that may be imported duty-free. Effective January 1, 2019, China's Ministry of Finance increased the value of goods that may enter duty-free in a single shipment from 2,000 CNY to 5,000 CNY. In addition, the accumulated value of goods that may enter duty-free over a year was increased from 20,000 CNY to 26,000 CNY. However, if the value of a single product declared for e-commerce import is greater than 5,000 CNY but less than the 26,000 CNY annual limit, the product will be assessed full duties and taxes as prescribed for commercial imports. The e-commerce retail import product list was also recently updated, with the number of eligible products now totaling 1,321.

[Announcement on Issues Concerning the Formalities for the Filing of Royalty Tax Returns](#)

Effective May 1, 2019, the Announcement [2019] No. 58 of March 27, 2019 clarifies how customs declarations should be completed where the importer is required, or not, to pay dutiable royalties in relation with the imported goods. The Announcement specifies other requirements including time limits, assessment elements and late-payment charges.

**INDONESIA****[Withdrawal of regulation concerning the imposition of VAT on e-commerce transactions](#)**

Regulation No. 210/PMK.010/2018, on Tax Treatment of Trade Transactions of e-Commerce, initially due to be effective as of April 1, 2019, has been revoked. This regulation would have imposed, under unclear conditions, VAT and a specific “sales tax on luxury goods” on all e-commerce transactions. The existing income tax regulations will continue to apply for e-commerce transactions.

LATIN AMERICA**[Uruguay becomes the first country in Latin America to sign AEO agreement with China](#)**

On April 29, 2019, Uruguay became the first Latin American country to sign an Agreement about an Authorized Economic Operator (AEO) with China. This AEO will make easier trade and customs controls, while strengthening trade and competitiveness between both countries. The mutual recognition of AEO will also reduce costs and time and improve the functioning of customs authorities and verification of goods.

This first AEO between China and a Latin American country should be the beginning of increasing relationships and other similar agreements with regional countries or trade coalitions, such as the Pacific Alliance that was created in 2012 by Chile, Colombia, Mexico and Peru.

MENA**[The World Free Zones Organization agrees](#)****[common Code of Conduct with OECD Task Force on Countering Illicit Trade](#)**

The World Free Zones Organization (World FZO) met with the OECD Task Force on Countering Illicit Trade (TF-CIT) for a consultation on a Code of Conduct to make FTZs unattractive to criminal activities and to preserve their competitiveness within the global value chain. The World FZO presented their Safe Zone management standard and TF-CIT outlined its own Code of Conduct for Clean Free Trade Zones. The two parties agreed on ways to combine both models into a common code of conduct for safety and security in FTZs.

Both parties will meet again after their Annual International Conference and Exhibition in Barcelona, Spain in June 2019 where the pilot phase of the Safe Zone program will be completed.

NORTH AMERICA**CANADA****[Steel Safeguards Decision](#)**

On April 3, 2019, the Canadian International Trade Tribunal concluded its investigation into steel safeguards and has published its report. The Tribunal did not recommend safeguards for 1) concrete reinforcing bar, 2) energy tubular products, 3) hot-rolled steel, 4) pre-painted steel and 5) wire rod. However, the Tribunal recommended tariff rate quotas for 1) heavy plate and 2) stainless steel wire, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for General Preferential Tariff treatment.

This decision brings certainty to the surtax on these steel goods.

[Amendments to the bulk oil cargo fees \(BOCF\)](#)

There are amendments to the BOCF applicable to the Quebec/Maritimes Region, the Newfoundland Region and the Great Lakes Region charged by Eastern Canada Response Corporation Ltd. pursuant to an arrangement required by the Canada Shipping Act, 2001. The amendments here show the new fees for 2019-2020 and then for after 2020.

■ III. UPCOMING EVENTS

48th Session of the Technical Committee on Customs Valuation of the World Customs Organization – with Jean-Marie SALVA and Arnaud FENDLER, Brussels, from 13 to 17 May 2019

ICC Knowledge Solutions Assembly “Helping business to shape a better future together” – with Jean-Marie SALVA, Paris, 27 May 2019

«Sécurisation des exports vers le monde arabe» – with Pascal CANGE and Jean-Marie SALVA, Paris, 11 June 2019, 13h

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