EC Customs Law
Second Edition

TIMOTHY LYONS

OXFORD UNIVERSITY PRESS
Contents

Table of Cases from the European Court of Justice and Court of First Instance  xxix
Table of Cases from Other Jurisdictions lvii
Table of European Community Treaties lix
Table of European Community Secondary Legislation lxi
Table of Legislation from Other Jurisdictions lxxv
Table of International Agreements, Conventions, and Treaties lxxvii

1. INTRODUCTION  1
A. Customs duties and customs unions: a broader perspective  2
  1. The economics of customs unions  5
B. The international dimension in Community customs law  7
C. GATT and the WTO  14
D. GATT 94 and EC customs law  17
  1. The primacy of international agreements  18
  2. GATT and direct effect  21
E. The EC's customs union  23

2. THE CUSTOMS UNION IN ITS COMMUNITY CONTEXT  25
A. The customs union: economic and social objectives  26
B. The legal context of the customs union  28
  1. The customs union, free movement of goods, and transit  28
  2. The Common Agricultural Policy (CAP) and customs law  32
  3. The customs union and internal taxation  33
      3.1 Article 90  37
  4. The customs union: VAT and turnover taxes  41
  5. The customs union and state aid  44
  6. The customs union and competition law  45
7. The common commercial policy and external affairs 47
   7.1 Anti-dumping and countervailing duties 52
C. Customs Law and the EU 53
D. The financial context of customs duty: own resources 56
   1. General obligations concerning own resources 58

3. FUNDAMENTAL CONCEPTS OF THE CUSTOMS UNION 63
   A. The nature of the Community's customs union 63
      1. A customs union not a free trade area 63
      2. Euratom and ECSC 66
   B. The common customs tariff 68
   C. The prohibition of internal customs duties and equivalent charges 70
      1. What is a customs duty or charge having equivalent effect? 72
         1.1 Regional duties 73
         1.2 The relevance of a charge's purpose and use 76
         1.3 Prohibited charges need not be payable to the Member State 79
         1.4 Charges for services may be prohibited charges 80
            1.4.1 Are the activities charged for required or permitted under Community law? 81
            1.4.2 Is the activity a service to the payee? 81
            1.4.3 Is the amount of the charge legitimate? 83
   D. The nature of 'goods' 84
      1. Treaty goods 85
         1.1 Goods: a broad concept 85
      2. Community goods 88
   E. Free circulation 89
   F. The customs territory of the Community 92

4. THE CUSTOMS UNION: LEGISLATION AND ADMINISTRATION 95
   A. The CCC 97
      1. The nature of the CCC 98
      2. The contents of the CCC 100
3. Amendments to the CCC
   1.1 Amendments in 1996
   1.2 Amendments in 1999
   1.3 Amendments in 2000
   1.4 Amendments in 2005
   1.5 Modernized Customs Code

4. The application and interpretation of the CCC
   B. The implementing regulation
   C. The Commission: customs law and administration
   D. The Member States: customs law and administration
      1. Penalties for customs offences
   E. Cooperation between Member States and with the Commission
      1. Cooperation in relation to recovery
      2. Cooperation in relation to the application of customs law
   F. The Trader, the Member States, and the Commission

5. THE COMMON CUSTOMS TARIFF: ADMINISTRATION AND INTERPRETATION
   A. What is the tariff?
   B. Elements of the tariff
      1. The Combined Nomenclature
         1.1 Its function, history, and basis
         1.2 The CN: what is it?
      2. Customs duties: common features—different types
      3. The alteration and suspension of customs duties
      4. Tariff quotas
         4.1 Tariff quotas: applications and licences
         4.2 Management of tariff quotas
         4.3 Allocation of quotas
            4.3.1 Traditional trade flows
            4.3.2 Order of applications—first come first served
            4.3.3 Application according to quantity requested
C. TARIC and the tariff regulation 145
   1. The Commission's discretions in applying the CN and TARIC 147
      1.1 Case law on the Commission's role 148
      1.2 Classification regulations 150
D. The tariff, the Court of Justice, and the requirement of objectivity 152
   1. The role of the Court of Justice and national courts 153
   2. The Court of Justice's general approach and the requirement of objectivity 157
      2.1 Time that objective characteristics considered 159
      2.2 Evidence of objective characteristics 160
   3. Specific considerations relating to objectivity 160
      3.1 Advances in medical science 161
      3.2 Artistic merit 161
      3.3 Breeding methods 161
      3.4 Functions which the product facilitates 161
      3.5 Geographical origin 162
      3.6 Intention and the creation of products 162
      3.7 The intended use of products and their presentation 162
      3.8 Manufacturing and processing of products 164
      3.9 Sight and sensory perception 164
      3.10 Technological innovation 166
E. Interpretation of the tariff: rules and aids 167
   1. General rules regarding the CN 167
      1.1 'A'—General rules for the interpretation of the CN 167
      1.2 'B'—General rules applicable to both nomenclature and duties 171
   2. Notes and opinions of the WCO and the Community 172
   3. Case law generally 175
      3.1 Case law on specific goods and classification headings 176
F. The provision of information by customs authorities 178
   1. Issuing binding information 178
   2. Relying upon binding information 180
   3. The uses of binding information 181
   4. Binding information: validity and invalidity 181
   5. The UK and binding information 183
6. INTERNATIONAL ARRANGEMENTS AND AGREEMENTS 185
A. Autonomous Community measures 187
1. The generalized system of preferences (GSP) 188
   1.1 The benefits of the GSP 191
   1.2 Loss of benefits 193
   1.3 Administrative matters 194
2. Overseas Countries and Territories 195
   2.1 The Overseas Association Decision 197
B. Agreements 200
1. The EEA Agreement 202
2. The Europe Agreements and the Stabilization and Association agreements 204
3. Association agreements 206
4. Cooperation, trade, and development agreements: Yaoundé, Lomé, and Cotonou 207
5. Cooperation agreements 212
6. Partnership and cooperation agreements 213
7. Trade and cooperation agreements 213
C. Applying and interpreting international agreements 214
1. Agreements as part of the Community legal order 214
2. The Court as interpreter of the agreements 215
   2.1 Charges having equivalent effect 217
3. Traders’ directly effective rights 219
D. The role and influence of international law 222

7. THE ORIGIN OF GOODS 227
A. Rules of origin: what they concern and their function 228
B. Multilateral international agreements and non-preferential origin 230
      1.1 Criteria for establishing origin 233
C. The CCC and non-preferential origin 235
   1. Origin in only one country 235
      1.1 Maritime matters 237
1.1.1 Territorial sea: CCC, Article 23.2 and 23.3 237
1.1.2 Products taken from the sea: Article 23(f) 238
1.1.3 Exclusive rights to exploit the seabed: Article 23(h) 238
2. Origin in more than one country 240
  2.1 ‘Last’ processing or working 241
  2.2 ‘Substantial’ processing or working 241
  2.3 Assembly operations 243
3. CCC, Article 25 and origin shopping 244
4. Special rules for particular products 246
D. Preferential origin 247
  1. The generalized system of preferences (GSP) 249
    1.1 Origin in a single country 250
    1.2 Origin in two or more countries 251
      1.2.1 Unit of qualification, accessories, and sets 252
      1.2.2 Norway and Switzerland 253
      1.2.3 Regional cumulation 253
      1.2.4 The least-developed countries 254
  2. The Overseas Countries and Territories 255
  3. Other Community measures governing origin 256
  4. Preferential origin under international agreements 257
    4.1 The EEA 257
      4.1.1 Full and regional cumulation 259
    4.2 The Europe Agreements 260
    4.3 Agreements with EFTA 261
    4.4 Euro-Mediterranean Agreements 261
    4.5 The ACP states 262
E. Proof of origin, customs authorities, the Commission, and the trader 264
  1. Proof of origin 265
    1.1 Proof of origin and the Kyoto Convention 265
    1.2 Proof of origin and the GSP 266
      1.2.1 Certificate of origin form A 267
      1.2.2 The obligations of the competent authorities 267
Contents

1.2.3 Invoice declarations xix
1.2.4 Single or global proofs of origin?
1.2.5 Presentation of the proof of origin
1.2.6 Errors in certificates and declarations
1.2.7 Transactions for which certificates of origin are unnecessary
1.2.8 Evidence of the status of Community goods
1.3 Proof of origin and international agreements
2. Administrative cooperation
   2.1 Administrative cooperation and the GSP
      2.1.1 Subsequent verification of origin
   2.2 Case law on relations between importing and exporting states
   2.3 The Commission and subsequent verification
   2.4 The importer and subsequent verification

8. THE VALUATION OF GOODS 283
   A. Customs valuation and international agreements 285
      1. The normal price and the transaction value 286
   B. Valuation and Community law 288
      1. Simple, equitable, and commercial—not arbitrary or fictitious
         1.1 Rates of exchange 288
      2. Valuation for customs duty purposes only 290
      3. The transaction value and alternatives to it 290
   C. Determining the transaction value 292
      1. Which sale is relevant? 292
      2. What is 'the price actually paid or payable'? 294
         2.1 Additions to the price actually paid or payable 296
         2.2 Exclusions from the price actually paid or payable 300
      3. Limitations on the use of the transaction value 301
         3.1 Related sellers and buyers 302
   D. Alternatives to the transaction price 304
      1. The value of identical goods 305
2. The value of similar goods 306
3. The value based on unit price: the deductive method 306
4. The computed value 308
   4.1 The elements of computed value 309
5. The default method 310
6. Simplified procedures for certain perishable goods 311
E. Items excluded from customs value 313
F. Declarations of value 315

9. CUSTOMS ENTRY AND DECLARATION 319
A. Entry of goods into the customs territory 321
   1. Pre-entry procedure 321
   2. Customs supervision 323
      2.1 The duration of supervision 323
   3. Duty to convey goods to a customs office 324
   4. Presentation of goods to customs authorities 325
   5. Summary declaration 326
   6. Temporary storage 326
      6.1 Extending the time of temporary storage 328
      6.2 Global applications for extension 330
B. The declarant and customs declarations 330
   1. The declarant 330
   2. The declaration 331
      2.1 The purpose of the declaration 331
   3. The form of the standard declaration 332
   4. Documents accompanying the declaration 333
   5. Incomplete and simplified procedures 334
   6. Importers' obligations as regards the customs declaration 335
   7. Lodging and acceptance 336
   8. Amending and invalidating the declaration 336
   9. Examination of the declaration and the goods 337
   10. Release of goods 338
   11. Post-clearance examination of declarations 339
Contents

10. CUSTOMS PROCEDURES AND APPROVED USES AND TREATMENTS 340
   
A. Customs controls in a customs union 341
   1. Summary entry and exit declarations 344
   
B. Proving the existence of community goods 344
   
C. Rules governing customs procedures with economic impact 347
   1. General provisions relating to authorizations 348
   2. Applications for authorization 349
      2.1 Where to apply 350
   3. Single authorizations 351
   4. The examination of economic conditions 351
   5. Decisions on authorizations 352
   6. The period for which authorizations are effective 352
   
D. The authorized economic operator 353
   
E. Release for free circulation and 'end use' 355
   1. Authorization for favourable treatment 356
   2. The contents and duration of an authorization 358
   3. The transfer of goods subject to an authorization 358
   
F. Transit procedure 359
   1. The Kyoto Convention 362
   2. International agreements creating transit regimes 362
      2.1 The TIR Convention 363
      2.2 TIR and ATA procedures and the Implementing Regulation 364
      2.3 The Convention on Common Transit 365
   3. Community transit 366
      3.1 The external transit procedure 368
      3.2 The internal transit procedure 369
      3.3 Simplifications 370
      3.4 The responsibilities of the principal/holder 371
      3.5 The transit declaration and formalities on departure, en route, and at destination 371
      3.6 The end and discharge of the procedure 372
Contents

3.7 Paperless procedures 373
3.8 The principal's guarantee 374
3.9 Irregularities and the customs debt 375

G. Customs warehousing 376
   1. Community legislation 377
      1.1 Goods capable of being stored 378
      1.2 Storing and handling the goods 379
      1.3 Customs warehouses 380
      1.4 Responsibilities of warehouse-keeper and depositor 381
      1.5 Authorization 382

H. Processing under customs control 383
   1. Community legislation 384
   2. Authorization 384
   3. Operation of the procedure 386
   4. Calculating the customs debt 386

I. Temporary admission 387
   1. Community legislation 389
   2. Period of temporary importation 390
   3. Total relief from import duty 391
   4. Partial relief from import duty 392
   5. ATA carnet 393
   6. The customs debt 393
   7. Discharge of the procedure 394

J. Export 394

K. Customs-approved treatments and uses which are not customs procedures 397
   1. Free zones and warehouses 397
      1.1 The designation of free zones and warehouses 398
      1.2 Entry to a zone or warehouse 399
      1.3 Use of goods and activity within free zones and warehouses 400
      1.4 Removal of goods from free zones or warehouses 402
      1.5 Valuation 402
   2. Re-exportation, destruction, and abandonment 403
11. INWARD AND OUTWARD PROCESSING

A. The Inward Processing Procedure
   1. What it is and why it is necessary
   2. Inward Processing: a Community procedure
   3. The suspension system and the drawback system
   4. The equivalent compensation and prior exportation systems
      4.1 The equivalent compensation system
      4.2 The prior exportation system
   5. Triangular traffic system
   6. Permitted processing operations
   7. Authorization
      7.1 The form of the application
      7.2 Conditions for authorization
      7.3 Economic conditions
      7.4 Content of authorization
   8. The rates of duration and yield of the procedure
      8.1 The duration of the procedure and the period for discharge
      8.2 Rates of yield
   9. Movement of goods within the procedure
   10. The customs debt
   11. Calculating the proportion of import goods in compensating products
      11.1 The quantitative scale method
      11.2 The value scale method
   12. Discharge of the procedure
   13. Administrative cooperation

B. Outward Processing
   1. What it is and why it is necessary
   2. Outward processing: a Community procedure
   3. The standard exchange and prior importation systems
      3.1 The standard exchange system
      3.2 Prior importation system
   4. Triangular traffic system
Contents

5. Permitted processing operations 424
6. Authorization and entry 425
   6.1 The form of the application 425
   6.2 Conditions for authorization 425
   6.3 The content of the authorization 426
   6.4 Entry of goods for the arrangements 426
7. The duration and yield of the procedure 427
   7.1 The duration of the procedure 427
   7.2 The rate of yield 427
8. Relief from import duty 428
9. The method of relief 428
   9.1 Reasonable means 429
   9.2 Reduced and zero rates of duty 430
   9.3 Preferential rates of duty 430
   9.4 Repair of temporary export goods 431
10. Calculating the proportion of temporary export goods in compensating products 431
11. The aggregated discharge procedure 432
12. Administrative cooperation 432

12. THE CUSTOMS DEBT AND RELIEFS FROM DUTY 433
A. Security for the customs debt 434
   1. Compulsory security 435
   2. Security at the option of the customs authorities 435
   3. Types of security 436
   4. Maintenance of, additions to, and release of security 437
B. Incurring a customs debt: the basic rules 437
   1. The debt on importation 439
   2. The debt on importation for breach of customs law 440
      2.1 Unlawful introduction of goods into the customs territory 440
      2.2 Unlawful removal of goods from supervision 441
      2.3 Failure to fulfil obligations or comply with conditions 442
      2.4 Unauthorized consumption or use of goods 445
      2.5 Two situations in which there is no debt on importation 445
2.6 Reliefs and exemptions 446
3. The debt on exportation 446
4. The debt on exportation for breach of customs law 447
   4.1 Removal of goods from the customs territory without a declaration 447
   4.2 Failure to comply with conditions 447
   4.3 Reliefs and exemptions 447
C. The significance of the time and place at which a customs debt is incurred 448
D. Recovering a customs debt 449
   1. Calculating the debt 449
   2. Entry in the accounts 450
      2.1 Time limits for entry in the accounts 450
      2.2 Extension of time periods 451
      2.3 Subsequent entry into the accounts 452
   3. Communication to the debtor 453
E. Post-clearance recovery 455
   1. National authorities, post-clearance recovery, and non-entry in the accounts 456
   2. The Commission, post-clearance recovery, and non-entry in the accounts 457
F. Payment of the customs debt 460
   1. The obligation to pay, and the prescribed periods 460
   2. Deferment of payment 461
      2.1 Methods of deferment 462
      2.2 Periods of deferment 462
   3. Payment facilities other than deferment 463
   4. Interest 463
G. Extinction of a customs debt 464
H. Reliefs from duty 465
   1. Heads of relief from import duty 466
   2. Heads of relief from export duty 469
I. Other privileges 470
   1. Returned goods 470
   2. Products of sea fishing 472
13. REPAYMENT, REMISSION, AND APPEALS 473
   A. Repayment or remission: an introduction 473
      1. Four groups of situations in which repayment or remission is made 474
   B. Duty not owed or improper entry in the accounts: CCC, Article 236 475
      1. CCC, Article 220.2(a)–(c) 476
      2. CCC, Article 220.2(b): Error on the part of the customs authorities 477
      3. CCC, Article 220.2(b): Detectability 480
      4. CCC, Article 220.2(b): Good faith 484
   C. Relief where declaration invalidated or defective goods 486
      1. Customs declaration invalidated: CCC, Article 237 486
      2. Defective goods: CCC, Article 238 486
   D. Repayment and remission in other situations: CCC, Article 239 487
      1. No deception or obvious negligence 488
      2. Situations giving rise to repayment or remission under Article 900 490
      3. Situations under Article 901 493
      4. Returned goods: Article 903 494
   E. The general fairness clause: Article 905 495
      1. What is a special situation? 496
      2. Examples of situations giving rise to special situations 498
         2.1 Access to the Official Journal 498
         2.2 Mistakes by traders 499
         2.3 Fraud by commercial operators and official investigations 499
         2.4 Mistakes by customs authorities, the Commission, and others 500
   F. Applications under CCC, Article 239.2 502
      1. The case to the Commission and the Commission’s role 503
         1.1 Representations to the Commission 505
      2. The Commission’s decision 507
      3. The Commission’s discretion 508
G. Generally applicable procedural matters 510
   1. Applications for repayment or remission 510
      1.1 The form and nature of the application 510
      1.2 The grounds of the application 511
   2. Decision pending 511
   3. The decision 512
   4. Interest on repayments 513
   5. Loss of entitlement to repayment or remission 514
   6. Repayment or remission in error 514
   7. Repayment or remission where quotas and other arrangements apply 514
H. Situations which do not give rise to relief 515
I. Appeals 516
   1. Decisions 517
      1.1 Annulment, revocation, and amendment 518
   2. The appeal, suspension of the decision, and the provision of security 518
      2.1 The provision of security 519
   3. The UK's appeal procedure 520
      3.1 Ancillary and non-ancillary matters 522
      3.2 The provision of security prior to an appeal 523
      3.3 Security and unconditional rights of appeal 524
      3.4 Production of documents 525

14. PLANNING FOR THE FUTURE 527
A. Planning for the future by the Council, the Commission, and Member States 528
   1. Customs 2007 and Customs 2013 529
B. Planning for the future by traders 531

Conclusion 533

Suggestions for Further reading 535

Index 539