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EU Customs Law: Import Duty Relief and Other Measures to Address the COVID-19 Crisis

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DAY

COMMENTARY
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EU Customs Law: Import Duty Relief and Other Measures to Address the COVID-19 Crisis

IN SHORT

The Situation: Businesses and customs authorities alike are confronted by customs-related challenges amidst the novel coronavirus ("COVID-19") crisis, whether for the import of goods to combat the outbreak, or difficulties in complying with customs formalities. In response, the European Commission ("Commission") is providing a panoply of tools and guidance in the area of EU customs law towards tackling the COVID-19 crisis.

The Result: To streamline the import of goods in the fight against COVID-19, a new Commission Decision ("Decision") has waived import duties and provided exemptions from value-added tax ("VAT"), subject to certain conditions. The Commission has also issued new Guidance on relying on the existing customs law framework to address various difficulties stemming from the COVID-19 crisis. To ease customs compliance and financial burdens, the Guidance document outlines how economic operators may rely on available flexibilities in the framework, including extended time limits, the waiving or relaxation of certain formal requirements, as well as alternative procedures to comply with customs obligations.

Looking Ahead: The Commission is likely to remain vigilant in addressing customs issues as they arise, including by updating its Guidance and taking other necessary actions.

The European Commission has issued a Decision that allows for import duty and VAT relief for goods to combat the COVID-19 outbreak. The Commission has also issued new Guidance on how various customs-related challenges can be dealt with on the basis of existing legislation. The Guidance offers practical solutions for traders facing difficulties as a result of the crisis. Additionally, an Information Note addresses simplified proof of origin for goods that can rely on preferential trading arrangements.

In light of these initiatives, some of the most relevant issues to economic operators engaged in international trade are addressed below.

Relief from Import Duties and VAT for Goods to Combat the COVID-19 Outbreak

On April 3, 2020, the Commission issued a [Decision](#) on relief from import duties and VAT exemption for certain goods imported to combat the COVID-19 outbreak. Relief from import duties applies to imports made from January 30, 2020 to July 31, 2020, if the goods are:

- Distributed or made available cost-free by certain (State/publicly-mandated) bodies and organizations to persons affected by, or at risk of, COVID-19 or involved in combating the COVID-19 outbreak. More specifically, such goods must be imported by or on behalf of State organizations (e.g., State bodies, public bodies, and other bodies governed by public law or by or on behalf of organizations approved by the competent authorities in the Member States). Member States must communicate the list of such organizations to the Commission by November 30, 2020, which should allow sufficient time to ensure that all relevant imports are covered; or
- Imported by or on behalf of disaster relief agencies in order to meet their needs during the

period they provide disaster relief to the persons affected by or at risk from COVID-19 or involved in combatting the COVID-19 outbreak.

Moreover, in its new [Guidance](#), the Commission notes that the COVID-19 crisis can be considered as a "disaster" in the context of EU customs law. Consequently, goods such as ambulances or certain support medical equipment brought to the European Union to counter the effects of COVID-19, should be eligible for temporary admission exempt from import duties.



The Commission's new Guidance usefully outlines existing solutions under current customs legislation, which can be applied to exceptional cases arising from the COVID-19 crisis.



Customs Debts and Financial Obligations: Taking Account of Serious Economic or Social Difficulties of Economic Operators

Although the Commission notes in its Guidance that a blanket exemption on payments of customs debts is not possible, it raises several provisions in the current legislation allowing customs authorities to take account of a debtor's serious economic or social difficulties, such as by:

- suspending the implementation of a customs decision without a guarantee;
- refraining from requiring a guarantee, charging credit interest, or charging interest on arrears;
- suspending, without requiring a guarantee, the time limit for payment of a customs debt for which an application for remission has been made; and
- suspending, without requiring a guarantee, the time limit for payment of a customs debt incurred through non-compliance.

Accelerating Entry of Goods Needed to Combat Pandemic

To facilitate the swifter entry of medical, surgical, and laboratory equipment into the European Union, the Commission referred to the following provisions relaxing customs formalities, as set out in the Guidance:

- **Relaxed document requirements.** Commercial, port, or transport documents can be used for the purpose of lodging an entry summary declaration ("ENS");
- **Oral (or *de facto*) declarations.** Declare disaster relief material (e.g., ambulances or certain support medical equipment, as well as certain medical, surgical, and laboratory equipment) for temporary admission by oral declaration or by any other act, (e.g., by the sole act of crossing the border);
- **Simplified declaration of organs, tissue, blood.** Organs and other human or animal tissue or human blood, pursuant to an amendment to the Union Customs Code Delegated Act, can benefit from simplified declarations to customs, as already available under existing legislation. This amended provision will apply retroactively from March 15, 2020.

For other categories of goods, the Commission has encouraged economic operators to make use of existing provisions that simplify customs controls, such as certain transit procedures.

Easing Proof of Preferential Origin

The Commission issued an [Information Note](#) to address difficulties faced by several EU Member States and EU trading partners, that are unable to provide certificates issued for preferential origin purposes in the light of the COVID-19 crisis. The Commission thereby invites customs authorities in the European Union and in EU trading partner countries to accept such certificates in the form of a paper or electronic copy.

These certificates should either be a copy of an original certificate signed by the competent authorities as ordinarily required, or alternatively, a certificate with a digital signature of the

competent authorities (or a copy).

This approach only applies to certificates issued since the start of the COVID-19 crisis, i.e., since March 1, 2020.

The Information Note also provides that such certificate may be issued after exportation.

Finally, the Commission also suggests making the widest possible use of the approved exporter status, which would facilitate proving origin.

Other Facilitating Measures

The Commission further cites various available means to assist traders and customs authorities in the current crisis, for instance:

- Economic operators can:
 - use the available three-year period to request an amendment to their customs declarations lodged during the COVID-19 crisis;
 - use simplified customs declarations without prior authorization;
 - present goods such as critical goods to customs directly at the trader's own premises;
 - invoke *force majeure* for goods that remain in temporary storage beyond the 90-day time limit due to circumstances related to COVID-19;
 - apply for extending the time limit for re-exporting goods under temporary admission, where this was not possible for COVID-19 related reasons; and
 - rely on simplified inward processing procedures for medicines;
- Customs authorities can:
 - prolong the period for the exit of goods from the European Union, without invalidating the relevant customs declaration;
 - waive the requirement for postal operators, express carriers, or customs agents to prove that the person they represent has provided the empowerment for them to do so;
 - facilitate certain transit requirements, for instance allowing leniency in case the time limit for presenting goods in transit at the customs office of destination is exceeded due to COVID-19 related measures; and
 - extend certain time limits in case economic operators need additional time to ensure fulfilment of relevant conditions for applying for a customs decision (for instance, in cases where the applicants cannot allow customs to enter and inspect their premises due to quarantine measures).

The Commission has also requested economic operators to only apply for essential customs decisions, to avoid overburdening the customs authorities.

THREE KEY TAKEAWAYS

1. Certain goods are now eligible for import with relief from import duties and VAT, and importers facing serious economic or social difficulties can rely on several provisions that allow for financial leniency.
2. The Commission's new Guidance usefully outlines existing solutions under current customs legislation,



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which can be applied to exceptional cases arising from the COVID-19 crisis. Companies facing customs issues should assess whether their situation is covered by any of the scenarios addressed in the Guidance and, if so, to make full use of the possibilities to extend time limits, reduce formalities, or use expedited procedures to fulfill their customs obligations.

3. Proving preferential origin, in order to rely on preferential trading arrangements, is likely to be made easier during the current crisis in the light of the Commission's recent Information Note.

the preparation of this Commentary.



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