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EU: Customs legislation reform

On 17 May 2023, the European Commission (Commission) proposed[1] what it says is the most ambitious and comprehensive reform of the EU Customs Union since its establishment in 1968. The proposals aim to come to a new partnership with businesses, take a smarter approach to customs checks and enact a more modern approach to e-commerce.

Since the substantive provisions of the Union Customs Code (UCC)[2] became applicable in May 2016, the Commission has recognized that an increasing number of customs provisions are no longer fit for purpose, due to a huge increase in trade volumes, especially in e-commerce; a fast-growing number of EU standards that must be checked at the border; and shifting geopolitical realities and crises.

The Commission's proposals intend to address these challenges. They include changes to existing IT systems and introducing new IT systems, simplifications to the current customs legislation and a more uniform application of customs controls, and a full-fledged analysis and coordination capacity at EU level.

1 'EU Customs Reform'. *European Commission website*, 17 May 2023. Find it here.

2 Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast). OJ L 269, 10.10.2013, p. 1–101.

The proposals build upon three pillars:

1. A new partnership with business
2. A smarter approach to customs checks
3. A more modern approach to e-commerce

Pillar 1 – a new partnership with business

The Commission proposes a fundamental change to submitting and storing customs data and interaction between customs authorities and businesses. Under the reformed UCC, businesses can import their goods into the EU and log all the information on their products and supply chains into a single online environment, the so-called "new EU Customs Data Hub." This automated system provides customs authorities with a 360 overview of supply chains and the movement of goods.

The establishment of a single window aims to reduce the administrative burden for businesses when interacting with the EU customs authorities. With the new EU Customs Data Hub, businesses will only have to submit data once for multiple consignments.

Furthermore, the current Authorised Economic Operators (AEO) program will be extended by adding a "Trust & Check" category for the most trusted traders operating in the EU market. Trust & Check traders will benefit from further reductions in the physical and document-based controls. Imports by Trust & Check traders can be cleared at the customs authorities in the Member State of establishment of the trader, rather than the customs authorities of the Member State of importation. Thus, these traders will have all their customs dealings in the EU with

one customs authority. They can also self-assess their customs duties payable and receive goods without interference of the customs authorities.

Pillar 2 – a smarter approach to customs checks

The aim of the new system is to provide customs authorities with a better understanding of the goods entering the EU by using real-time data and artificial intelligence to predict potential problems and risks before the goods are shipped from third countries. The new system is expected to enable EU customs authorities to operate more effectively, freeing time and resources to safeguard the EU market from illegal or unsafe goods. Additionally, it will facilitate authorities' proper collection of duties and taxes.

Pillar 3 – a more modern approach to e-commerce

The Commission intends to make online platforms the key actors for ensuring that goods sold on the EU market comply with all customs obligations. Online platforms will be deemed to be the importer of record to ensure that customs duties and VAT are paid at the time a customer makes a purchase on a platform.

The Commission reform also intends to remove the exemption of customs duties for goods valued at less than EUR150. Furthermore, a simplification will be made in the way customs duties are calculated for most common low-value goods. These goods will be classified in five categories, down from thousands of possible customs duties categories.

Timeline

The Commission intends to open the EU Customs Data Hub for e-commerce consignments in 2028, then on a voluntary basis for all other importers in 2032. The centralized clearance for imports of Trust & Check traders will also be implemented in 2028. A review in 2035 will assess whether this can be extended to all traders when the EU Customs Data Hub becomes mandatory in 2038. The EU Customs Data Hub will be managed by a new organization: the EU Customs Authority. The key function of this authority will be to pool expertise and competence that are currently scattered across the EU to steer, coordinate and support national customs authorities in the EU. This will enable strengthened supply chain supervision with customs authorities at the EU and national level.

Other changes in the UCC

Besides the proposed changes already discussed, the Commission proposes legislative changes in the UCC concerning, among other issues:

- Introduction of legal definition of "importer" while abolishing the notion of "declarant"
- Common provisions on customs infringements and noncriminal sanctions for those infringements
- Enhanced international cooperation between national customs authorities

These proposed changes will be discussed in detail in future editions of *TradeWatch*.

Actions for businesses

In light of these proposals, businesses should:

- Assess whether their current record-keeping systems are suited for the new way of exchanging data with the customs authorities.
- Evaluate whether removing the exemption for customs duties and the new customs duties categories impact their importations.
- Determine whether the new Trust & Check category could benefit their business. ■

Reform of the EU Customs Union webcasts

In this webcast, the panelists will share insights on the proposals put forward by the European Commission and what the proposed changes could mean for businesses.

13 September 2023

Register for the webcast at the time that suits you best – 09:00 a.m CEST or 16:00 p.m. CEST

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Kingdom of Saudi Arabia: Growing network of special economic zones

The Kingdom of Saudi Arabia (KSA) announced in mid-April 2023[1] the launch of four special economic zones (SEZs) located in logistically strategic sites across the country. The institutionalization of SEZs is in line with the increased focus on developing a diversified national economy, formation of an investment-friendly environment and development of forward-looking industries.

The establishment of the SEZs fosters Saudi Vision 2030, which aims to make KSA a global investment hub while achieving economic development goals. The SEZ institutionalization is part of a much broader strategy targeting the economy of KSA as a whole.

Regulatory background

The recent announcement on the launch of the four SEZs brought in a unified regulatory umbrella, i.e., the Economic Cities and Special Zones Authority (ECZA), to govern and manage the SEZs in KSA.

KSA's endeavors to develop an integrated SEZ regulation, harmonize commercial rules that apply to SEZs and create a unified digital government service platform (one-stop shop) for foreign investors are intended to streamline the administration of the existing SEZs, and avoid legislation disunity and duplication.

Role of the ECZA

The ECZA was established in 2010 to govern the development of SEZs and Economic Cities (ECs). In 2019, the ECZA's responsibilities and powers were expanded to oversee the operational performance of SEZs, creation of the SEZs' regulatory framework, and implementation of incentives and exemptions. The ECZA is also empowered to evaluate requests for new SEZ establishment.

The ECZA strives to establish an ECs and SEZs ecosystem that will provide an investment-friendly regulatory environment and offer highly efficient integrated government services.[2]

1 https://www.spa.gov.sa/en/1c4b9e13bax
2 "About ECZA," *ECZA website*. Find it here

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KSA SEZ incentives and beneficiary sectors

In April 2023, the ECZA announced an extensive list of tax and regulatory benefits for companies registered in the SEZs. In particular, the ECZA declared the following initiatives across the SEZ network:[3]

- Corporate income tax reductions for up to 20 years
- Flexible regulations around foreign talent
- Variety of withholding tax exemptions
- Deferred customs duties on goods in the SEZ
- Exemption from operational fees for employees and their families within the SEZ
- VAT exemptions based on sector and/or activity criteria

The established SEZs including the Special Integrated Logistics Zone (SILZ), aim to support a wide range of industry sectors and business activities, including information and communications technology (ICT), medical technology and the aerospace industry. The table[3] opposite details the targeted industries per SEZ:

King Abdullah Economic City SEZ	**Province:** Makkah **Size of the zone:** 60km^2 Located at the heart of the Red Sea and close to Africa markets	▸ Automobile supply chain and assembly ▸ Consumer goods ▸ ICT ▸ Electronic light manufacturing) ▸ Pharmaceuticals ▸ Medical technology ▸ Logistics
Ras Al-Khair SEZ	**Province:** Eastern Province **Size of the zone:** 20km^2 Located in Ras Al-Khair Industrial city, giving access to global markets	▸ Shipbuilding and maintenance, repair and operation (MRO) ▸ Rig platforms and MRO
Jazan SEZ	**Province:** Jazan **Size of the zone:** 24.6km^2 Ideal Red Sea location near key mines and industrial assets	▸ Food Processing ▸ Metal conversion ▸ Logistics
Special Integrated Logistics Zone (SILZ)	**Province:** Riyadh Adjacent to the King Khalid International Airport	▸ Consumer products ▸ Computer parts ▸ Pharmaceuticals ▸ Nutritional and medical supplies ▸ Aerospace spare parts ▸ Luxury goods, jewelry and precious metals
Cloud Computing SEZ	Headquarters in Riyadh Free zone without a central physical location	▸ Cloud computing services

3 "Investing in Saudi Arabia's Special Economic Zones," *ECZA website*. Find it here

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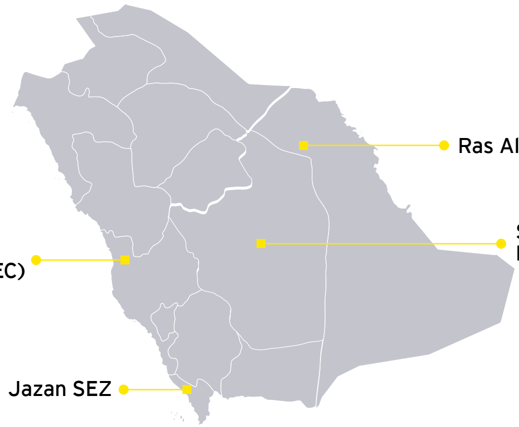

The existing SEZs provide access to advanced logistic and industrial infrastructure, such as renewable energy resources, cheap and efficient water and energy supply, and a wide portfolio of telecommunications services with a state-of-the-art fiber network.

Customs status of goods entering the SEZs

Goods entering the SEZs are not subject to customs duties, since companies established in SEZs operate under a duty suspension regime. As such, these goods cannot circulate freely in the rest of the KSA territory or in the Gulf Cooperation Council (GCC) countries without prior customs clearance.[4]

Moving the imported goods from the SEZ to mainland KSA is subject to the completion of customs entry requirements, and payment of customs duties and other taxes. Goods remaining in the SEZs will be under a duty suspension regime and will benefit from customs duties exemption. ■

4 The GCC countries which constitute the GCC Customs Union are the UAE, Bahrain, Oman, Kuwait, Qatar and KSA

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South Africa: Between importers and clearing agents, who is responsible for customs compliance?

Importing goods into South Africa involves a declaration process that requires the collaboration of multiple stakeholders to ensure a smooth and legally compliant transaction. Among these key players are the importer, clearing agent and the South African Revenue Service (SARS). This involvement of multiple parties often raises questions regarding the responsibilities of each, especially when things go wrong.

This article will consider the interaction between and the responsibilities of the parties involved in the recent *South African Breweries (Pty) Ltd v. Commissioner for the SARS and Another*[1] case (SAB case).

An importer is any person or entity that brings or causes goods to be brought into South Africa from a foreign country. Importers are required to comply with various customs laws, regulations and procedures, including the declaration and payment of customs duties and other taxes.

A clearing agent is an individual or juristic person appointed by an importer or exporter to lodge customs clearance declarations on its behalf. A clearing agent, also known as a customs clearing agent or customs broker, is authorized by SARS to act on behalf of importers and exporters in the customs clearance process. While importers may lodge their own declarations, clearing agents are often used in practice to ensure compliance with customs provisions.

SAB case

The SAB case dealt with the question of liability between an importer and a clearing agent in an import transaction. In this matter, the Pretoria High Court heard a dispute between South African Breweries (Pty) Ltd (SAB), SARS and the SDL Group CC (SDL). The clearing agent in question was Ocean Light Shipping CC (Ocean Light), which forms part of the SDL.

SAB imported Corona Light beer from Mexico. It used Ocean Light's services to clear the goods for import into South Africa. However, SAB subsequently discovered that Ocean Light fraudulently[2] cleared the goods as traditional African beer instead of regular malt beer. The improper clearance resulted in an underpayment of duties and VAT.

As a result of the import transactions, duties and VAT in the amount of ZAR139 million were not paid to SARS. SARS recovered a significant amount from the importer (SAB) through various means, including the set-off of VAT refunds. However, SAB did not make further payments toward the amount allegedly due to SARS, and as a result, SARS issued a letter of demand to SAB.

1 Case No. 01740/21; 3889/21 and 7772/21, 2022, ZAGPPHC 695 (13 September 2022) heard in the High Court of South Africa, Pretoria Division. Find it here

2 Paragraph 2 of the judgment states that *"The goods were cleared in the Port of Durban, South Africa in 139 import transactions. Later on, the applicant discovered that the goods were fraudulently cleared by Ocean Light as Traditional African Beer."*

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SAB argued that SARS should recover the duties and VAT from SDL or Ocean Light. According to SAB, Ocean Light is a clearing agent licensed by SARS in terms of Section 64B of the Customs and Excise Act[3] the Act), and the decision to clear and release goods for import was made by SARS. SAB further denied that a principal-agent relationship existed between it and Ocean Light. SAB argued that SARS accredited Ocean Light and that it selected Ocean Light from the pool of approved agents.

SAB claimed that the Act created an "agent-principal" relationship between Ocean Light and SARS. Furthermore, SAB said Ocean Light is the importer in terms of the definitions included in the Act. In light hereof, SAB argued that SARS should hold Ocean Light liable for the relevant taxes because it had already paid all the money due to SARS to Ocean Light.

It was not contested that the incorrect classification of the goods resulted from fraud or that Ocean Light acted as SAB's clearing agent.[4]

The court considered the prevailing rules of interpretation, the general rule of principal-agent contract, and Sections 38 and 39 of the Act, which deal with the importation of goods and the duties imposed on the person entering the imported goods.

In this case, it was common cause that Ocean Light attended to the requirements set out in the Act on behalf of SAB. The court recognized that the only role SARS had in carrying out these requirements was to prescribe the method of importation and obligations.

3 Act 91 of 1964

4 Paragraph 9 of the judgment states that *"It is not in dispute that the clearance and release of goods as African Traditional Beer instead of the correct classification of the product was influenced by fraud committed by the agent of the applicant."*

The completion of the relevant documents and the correctness of such information falls under the responsibility of the clearing agent (i.e., Ocean Light).

The court held that the law did not prohibit SAB from clearing its own consignments and that the act of using the services of Ocean Light for reward created a principal-agent relationship and contract. In addition, the payment terms between SAB and Ocean Light clearly showed a business relationship that extended beyond the general regulation between SARS and Ocean Light.

In applying the law, the court held that SAB did not argue against the actual authority it had over Ocean Light. The parties' conduct supported the principle of authority, whether ostensible or otherwise. SAB was in a position to be the first to discover the fraud committed by Ocean Light because, among other reasons, SAB was in possession of the documents and was privy to certain information. According to the court, this proves SAB's control over Ocean Light (arising from a principal-agent relationship between them).

The court found that Ocean Light was SAB's agent, and accordingly, SAB was liable to pay SARS and not Ocean Light. Accordingly, the court dismissed SAB's arguments in this matter, and the appeal was dismissed with costs.

Implications

The outcome of this case ousts any misconceptions in the industry relating to liability in the context of import transactions while setting a noteworthy precedent. The Act clearly defines the role of an importer and clearing agent, and it also sets out the duties and responsibilities of each party in an import transaction. Therefore, in such circumstances, SARS will look to hold the importer liable for the applicable duties and taxes even when a clearing agent acted fraudulently.

The case confirms that the importer bears the ultimate legal and financial responsibility for complying with all customs regulations, including paying applicable duties and taxes. While a clearing agent plays a crucial role in facilitating the customs clearance process on behalf of the importer, the clearing agent acts as an intermediary and agent of the importer rather than assuming direct liability.

Actions for business

It is important for businesses to choose a reputable and reliable clearing agent to handle their import transactions because, ultimately, the importer retains the primary liability in import transactions. Therefore, the importer should clearly understand their legal obligations, actively participate in the import process and conduct regular independent customs compliance review. ■

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UK: EY report on TradeTech and the digitalization of trade

EY and the Institute of Export and International Trade (IOE&IT) have produced a new report on trade technology (TradeTech), exploring the potential benefits for businesses of greater digitalization of trade.

TradeTech: a pathway for businesses to seize trade opportunities explores how technology could be a fundamental part of ensuring international trade moves away from its existing dependence on paper-based forms, thus allowing businesses to digitalize trade operations. However, from our research, businesses often struggle with understanding what technologies are available to them and how they can integrate them into their existing operations.

What is TradeTech?

The World Economic Forum (WEF) defines TradeTech as "a set of technologies and innovations that enable global trade to be more efficient, inclusive and equitable." Practically, this could mean something as simple as digitalizing a commercial invoice or as complex as using blockchain to exchange smart contracts.

EY latest thinking looks into the different technologies and their benefits, and explores practical steps for businesses and governments to realize the full benefits of TradeTech. The report finds varying levels of maturity and complexities (and consequently investment levels) when it came to technologies and how they could be implemented operationally. This should not deter any players (including governments or small businesses) from thinking about how TradeTech will impact them.

Considering current trends, which were accelerated by the COVID-19 pandemic, the UK government's Ecosystem of Trust, which is designed to facilitate smoother and efficient border processes, and the Electronic Trade Document Bill – it is an opportune time for businesses to consider their TradeTech strategy.

The benefits of TradeTech

While there are real opportunities for businesses to use TradeTech to grow, increase productivity and improve efficiency (faster, more accurate and secure methods of completing and transferring trade data, and increased visibility of supply chain information), TradeTech will offer significant opportunities for SMEs, and it won't be through the implementation of large-scale investments in high-tech solutions.

One of the major hurdles to SMEs' growth is difficulty with accessing trade finance (instruments used to help bridge financial payments to facilitate trade and protect the exporting and importing businesses) for international trade transactions. TradeTech has the capacity to provide faster, validated and real-time information for parties involved in a trade finance transaction, making it more accessible for SMEs (and less risky for lenders).

At the launch of the report in March 2023, participants highlighted the importance of ensuring that SMEs are not "left behind" as better-capitalized businesses take advantage of TradeTech's benefits.

TradeTech will also contribute to businesses' net zero and sustainability goals. Digitization of documents reduces the number of hard copies required and the delivery of those to corresponding recipients. Integrated certification will help to adhere to environmental standards, such as the enforcement of sustainability standards relating to due diligence and deforestation, for example.

Considerations for businesses

Our report sets out six important steps for integrating TradeTech into your business's thinking and leveraging the opportunities it can deliver.

1. **Monitoring the ever-evolving landscape:** Businesses should understand the constantly changing TradeTech space, including technological innovation, proposed legislation and regulatory changes, and industry trends.
2. **Integrating TradeTech into digital technology strategy:** Develop a forward-looking, long-term strategy with a focus on opportunities for TradeTech in your business. Key areas of consideration include assessments of areas that can be digitalized and the types of available technologies.
3. **Future-proofing new systems and processes:** Consider current and future opportunities for TradeTech integration in your system and business process design. Not only is this a cost-saving measure, but it also reduces complexity from switching further down the line. This includes making sure there are appropriate supporting policies or regulation, such as privacy and data retention policies that will help with the integration of TradeTech.
4. **Investing in and building capacity:** Consider capacity in both infrastructure and staffing, based on your assessment in step 3. This may involve upskilling based on skills gaps, such as making your team digitally literate.
5. **Engaging with upstream and downstream partners:** Involve business partners along the length of your supply chain to maximize TradeTech's full maximum potential. Encourage them to consider TradeTech in their operations and identify synergies with yours.
6. **Engaging with government:** The private sector drives TradeTech, but high costs and national and international policy environments can inhibit uptake. While government is aware of the opportunities, consistent engagement with government on TradeTech from both national (domestic regulatory matters and government investment) and international (cross-border regulation, governance and standards) perspectives are important to ensure the ideal operating environment and uptake businesses. ■

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Europe, Middle East, India and Africa

Belgium
- Customs and Excise update
  (21 June 2023)

Dominican Republic
- Dominican Republic Executive Branch enacts law implementing mandatory electronic invoicing
  (01 June 2023)

Estonia
- Significant tax changes in 2024 and 2025
  (17 July 2023)

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- European Parliament approves EU Emission Trading System reform and new EU Carbon Border Adjustment Mechanism
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- German Federal Administrative Court confirms legality of local packaging tax in city of Tübingen
  (02 June 2023)
- Germany to implement Single-Use Plastics levy from 2024, extending scope to certain fireworks from 2027
  (02 June 2023)

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- Ghana's new laws introduce new taxes affecting individuals and businesses
  (26 April 2023)

Global
- Geostrategic Analysis: July 2023
  (10 July 2023)

Kenya
- Kenya proposes tax changes under the Finance Bill, 2023
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- Poland's implementation of the Single-Use-Plastics Directive getting closer
  (08 May 2023)

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- Rwanda presents the national budget for financial year 2023/24
  (30 June 2023)

Nigeria
- Highlights of Finance Act 2023
  (14 June 2023)
- Nigeria – Highlights of the Business Facilitation (Miscellaneous Provisions) Act
  (25 May 2023)

Saudi Arabia
- Saudi Arabia announces fourth wave of Phase 2 e-invoicing integration
  (02 May 2023)

Spain
- Obligation to submit the plastic packaging tax ledgers by the end of July 2023; Spanish Tax Authority clarifies interpretative issues
  (13 July 2023)

Tanzania
- Tanzanian Finance Act, 2023 analysis
  (13 July 2023)

Uganda
- Uganda issues Tax Amendment Bills for 2023
  (02 May 2023)

United Arab Emirates
- Dubai Customs amends the grace period for Customs declaration submission
  (01 May 2023)

United Kingdom
- UK Government announces new 'Developing Countries Trading Scheme'
  (22 June 2023)
- UK/Australia and New Zealand Free Trade Agreements enter into force
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- UK concludes negotiations to join Comprehensive and Progressive Agreement for Trans-Pacific Partnership
  (06 April 2023)

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