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Customs Today

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Summary

The Single Window for Customs and Controls

The Single Window for Customs and Controls (SUDOCO) has finally been introduced, in implementation of the National Recovery and Resilience Plan (PNRR), which has included it among the strategic reforms for the recovery of competitiveness of the national logistics network. The objective is to standardize the system of controls on products entering and leaving the national territory, ensuring interoperability between the various administrations involved in import-export operations.

The long-awaited simplification, provided by art. 20 Legislative Decree no. 169 of 4 August 2016, is contained in the regulation preliminarily approved by the Council of Ministers no. 46 of 10 November 2021. This measure, to be adopted by decree of the President of the Republic, intervenes eighteen years after the introduction of the Single Customs Window, with Law no. 350 of 24 December 2003, which was the first, at the national level, to outline the principle of coordination, at the same time and in the same place, of all controls affecting goods.

The regulation of SUDOCO allows the national system to continue the activity of adaptation to the main recommendations issued at the international level on trade facilitation, with particular reference to the transmission of information by economic operators only once through a single interface (single window), and the need to perform controls at the same time

and in the same place (one-stop-shop). These principles are provided for at the international level by the WTO Trade Facilitation Agreement and, at the European level, by the 2016 Customs Code, which assigns the Customs Agency the role of "guide in the supply chain".

The new platform, which will be set up at the Customs Agency, will provide operators with a lot of services, such as the activation of the prodromal procedures and controls necessary for customs clearance, the possibility of tracking the progress of these procedures, and also allowing them to consult the state of interoperability between the systems of the Customs Agency and those of the other administrations involved in the international operation. Operators will only be able to transmit all data relating to the goods to the Customs Agency, which will then proceed to the automatic exchange with other public authorities involved in the controls, such as health or environmental protection authorities.

The revision of the Harmonized System 2022

From the first of January 2022, the European Union's new customs classification comes into effect, with significant changes for the latest generation of goods, such as e-cigarettes, drones, smartphones, and 3D printers. The new version of the Combined Nomenclature and Taric incorporates the changes made following the revision of the Harmonized System 2022

With the publication of the European Commission's Implementing Regulation (EU) no. 2021/1832 of 12 October 2021, several innovations have been introduced about customs classification. In addition to the usual annual update of the Combined Nomenclature and Taric by the European Commission, the regulation incorporates the significant changes introduced by the World Customs Organization (WCO) through the revision of the Harmonized System 2022.

The EU legislator has launched an important update of the customs classification codes used by operators for the classification of goods in international trade, making 351 changes in the Harmonized System and 760 in the Combined Nomenclature.

In particular, new customs identification codes are foreseen for many of the latest products, such as electronic cigarettes, smartphones, drones, and 3D printers. There are many new features for electronic products (chapter 85), organic chemistry (chapter 29), and also food

preparations. Insects, for example, become part of the chapter on food preparations (chapter 16). It is also introduced the possibility to trace at the international level the difference between virgin and extra-virgin olive oil.

Particular attention is dedicated to electrical and electronic waste, with particular attention to the issues of recycling and environmental sustainability. Important innovations also concern the medical and diagnostic sector, the chemical sector, and dual-use products.

Companies need to adapt their customs procedures because of the changes to the Combined Nomenclature codes of imported products and avoid possible challenges from the Customs Administration. To prepare for the change, operators can consult the HS Tracker (https://hstracker.wto.org/), developed with the support of the World Customs Organization (WCO).

First sale price: illegitimate the assessment of Customs

Royalties, research and development expenses, commissions, and exchange rates related to the last sale are not allowable if the operator is entitled to the application of the first sale rule

The Provincial Tax Commission of Milan, with sentence no. 3988 of 20 October 2021, clarified that in the event of chain sales before final importation, the customs value of the goods must be identified based on the price of the first sale, without any further additions or adjustments to be made. Under the Community Customs Code (EEC Reg. 2913/1992), the "first sale" represented a particular method of determining the customs value of goods, applicable whenever a product was subject to chain sales before its final importation (art. 147 DAC, EEC Reg. 2454/1993). Since the price of a previous sale is normally lower than the subsequent ones, through the first sale method it is possible to attribute to the goods a lower customs value, thus reducing the taxable base for customs clearance.

In the case examined by the Provincial Tax Commission of Milan, the sale before the introduction of the goods into Italian territory, i.e. the transaction between the foreign suppliers and another Group Company, did not provide for any payment of royalties, or research and development expenses, commissions or exchange rates. Therefore, according to the judges, such consideration cannot be relevant for customs taxation purposes. (Prov. Tax Comm. Milan,

sez. XIV, 20 October 2021, no. 3988; in the same sense Prov. Tax Comm. Milan, sez. III, 21 June 2021, no. 2749).

According to the College of Milan, the Office did not consider the first sale price rule, violating, in this way, a right recognized to operators by European Law. In this regard, the Court of Justice and the Court of Cassation have clarified that "the importer is free to choose", i.e. "he is entitled to pay the duty commensurate with the sale price" (Court of Justice, ruling C-11/89 of 6 June 1990; Court of Justice, ruling C-263/11, *Rēdlihs,* of 19 July 2012; Court of Justice, ruling C-263/06, *Carboni e derivati Srl*, of 28 February 2008; Court of Justice, ruling C 11/89, *Unifert* of 6 June 1990; Cass. sez. V, 10 May 2019, n. 12523; Italian Supreme Court, sez. V, judgments 1° march 2013, no. 5188, 5189, 5190, 5191, 5192, 5193, 5194, 5195, 5196, 5197, 5200, 5201, 5202, 5203, 5204, 5205, 5206, 5207, 5208, 5209, 5210).

Plastic Tax postponed to 2023

Postponed until 2023 the introduction of the Plastic Tax. The new consumption tax will force companies to review their business objectives and manufacturing processes

The 2022 budget document has postponed the entry into force until January 1, 2023, of the so-called Plastic Tax, the consumption tax that will affect producers and parties involved in the trade of disposable plastics. The entry into force of the Plastic Tax has undergone various postponements due to uncertainty over the possible effects that the tax could cause in the economic sectors involved and on consumers.

With Directive N. 2019/904/EU of 5 June 2019, the European Union established a ban on the placing on the market of single-use plastic products, obliging the Member States to take necessary measures to reduce the impact of certain plastic products on the environment. The EU is promoting an approach to move beyond the "production-consumption-disposal" model, to achieve recyclability of all plastic packaging by 2030. Following the requirements of the European Union, Italy, with Budget Law 160/2019 in paragraphs 634 - 658, introduced the tax on the consumption of plastic products with a single-use (s.c. MACSI) to implement what is indicated by the directive. The Plastic tax will affect producers and subjects involved in the trade of disposable plastics and with the introduction of the new tax, companies will be required to change their production standards through an update of the company business plan, to orient

the production cycle towards more environmentally sustainable materials. In light of the regulatory framework foreseen on the Plastic tax and given the introduction of the tax in 2023, many companies have turned to consultants and professionals for services of analysis of international supply flows, for the census of MACSI, for the study of their life cycle and the consequent forecast and quantification of the amounts due under the new tax.

With the introduction of the tax, therefore, it will be necessary to revise business objectives and manufacturing processes, to completely overcome single-use plastics.

The relevance of customs offences in the 231 model

The criminal relevance attributed to simple contraband and the inclusion of customs offences as a prerequisite for the application of Legislative Decree n. 231 of 2001, makes in-depth corporate compliance activities advisable for companies operating abroad through the integration of the 231 organizational model

The national legislator, with Legislative Decree no. 75/2020, has specifically intervened on customs offences, whether committed or attempted, which are considered violations directly damaging to the financial interests of the European Union. In particular, all customs offences, previously decriminalized, punished only with the fine sanction, if the amount of border duties due exceeds 10,000 euros, have been turned into a criminal offence.

The Legislative Decree 231/2001 regulates the responsibility of entities for administrative torts and provides for a series of safeguards to be used to limit the involvement of the entity if unlawful conduct is committed by company employees. The adoption of an appropriate organization and management model with a series of protocols that regulate and define the company structure is a necessary condition for reducing the risk of criminal offences being committed. It is a model to be adopted to allow businesses and companies to be exempt from the crimes charged to their employees and it is through the compilation of this model, that the entity can request the exclusion or limitation of its liability arising from one of the crimes listed in the rule.

With the new criminal relevance attributed to simple contraband and the inclusion of customs offences as a prerequisite for the application of Legislative Decree 231 of 2001, under the new

article 25 sexiesdecies, is regulated the administrative responsibility of entities if a contraband offence is committed.

The sanctions envisaged by the regulation entail the imposition of fines and, regardless of the amount of border duties evaded, the application of further prohibitory sanctions such as a ban on contracting with the public administration, the exclusion or possible revocation of subsidies, loans or grants and a ban on advertising goods or services.

Therefore, following the regulatory provision that introduces customs offences among the offences covered by the application of Legislative Decree 231/2001, the need arises to limit possible legal risks, and a more in-depth corporate compliance activity is appropriate for companies operating abroad through the integration of the 231 organizational model.

New radiometric controls on imports

The entry into force of the new radiometric checks on imports has been postponed to 31 December 2021. The new extension, provided for by art. 9 of the "Super Green Pass" decree-law approved by the Council of Ministers, postpones to 2022 the introduction of the new regulations on radiometric checks, with significant operational implications for importers

From the first of January 2022, the new radiometric surveillance measures for goods entering the territory of the State, introduced by art. 72 of Legislative Decree no. 101 of 31 July 2020, will come into force. This reform introduces burdensome obligations for importers, as a list of products is applicable, indicated in attachment XIX of the same legislative decree, which includes products subject to numerous imports from non-EU countries, such as metal screws and bolts.

With this provision, the subjects that for commercial purposes carry out activities of import, collection, storage, or actual smelting operations of scrap metal or other metallic materials, must carry out radiometric surveillance on the different products, to detect the presence of abnormal levels of radioactivity. The same obligation is also foreseen for subjects who carry out activities of import of metal products in large metal import centres. The provision does not apply, however, to subjects that deal exclusively with the transport, without performing other customs operations.

The controls are particularly pervasive, entailing the need to check for radioactivity both during customs clearance and in the loading phase of the goods. It is also established the need to check the state of radioactivity even during the unloading or eventual handling of the products, with an obvious risk of slowing down the supply chain in every single verification phase. Therefore, it was decided to again delay the effective date of these controls until December 31, 2021. Pending the entry into force of the new regulations, the previous regime remains in force, which only provides for radiometric checks at Customs and during the loading of scrap metal.

Only the owner of the goods can deduct the VAT paid for imports

With the principle of the law of 29 September 2021, no. 13/2021, and the answer to interpellation 1 October 2021, no. 644, the Italian Revenue Agency clarified that only the consignee of the import can deduct the VAT paid upstream for import transactions.

Only the actual owner of the imported goods, used in the exercise of his activity, can deduct the VAT paid at customs, even if due following a customs assessment. This is affirmed by the Revenue Agency, with the principle of law of 29 September 2021, no. 13/2021 and the answer to the interpellation of 1 October 2021.

In the two different documents issued, the Agency clarifies that, if the recipient of the products records the transaction in the VAT debit register (art. 25, Presidential Decree no. 633 of 26 October 1972), the right will arise to deduct the tax paid upstream at the time of importation (art. 19, paragraph 1, last sentence, Presidential Decree no. 633 of 26 October 1972).

This principle is based on the Italian VAT legislation, which equates customs import bills with purchase invoices for VAT registration. From this equalization, the tax authorities derive the important operational implication of considering that the only party competent to deduct VAT on importation is the owner of the products. With the answer to a query provided by the Administration on 1 October 2021, the Agency completes this principle, reaffirming that, in cases where the tax is paid by the customs representative, the right to deduct VAT is in any case attributed exclusively to the recipient of the goods, even if due following a "customs" assessment that has become final.

The two interventions of the Tax Administration complete what has already been affirmed for some time by the jurisprudence of the Italian Supreme Court, with judgments no. 23674 of 24

September 2019, and no. 29195 of 12 November 2019, which explicitly excluded the existence of a solidarity liability of the indirect representative in customs regarding import VAT.

Anti-dumping duties on Chinese aluminum become definitive

Through Implementing Regulation 2021/1784 of 8 October 2021, the European Commission imposed a definitive anti-dumping duty on the importation of aluminum flat-rolled products of Chinese origin

Anti-dumping duties do not have a strictly fiscal function, but rather a sanctioning and market protection function, through a rebalancing of the price of the product because they aim at equalizing the price of the foreign good, with a specific duty, of an amount equivalent to the dumping margin practised.

These measures are the most widely used tool to counter trade practices capable of significantly distorting domestic markets, so much so that, according to the thirty-ninth report from the Commission to the European Parliament and the Council, dated 30 August 2021, at the end of 2020, the European Union had 150 trade defense measures in force, including 99 definitive anti-dumping measures.

As of 12 October 2021, imports into the European Union of flat-rolled aluminum products of Chinese origin are subject, in general, to the application of an anti-dumping duty of 24.6%. In addition, more favourable rates (ranging from 14.3% to 21.4%) are foreseen for products from Chinese suppliers who cooperated in the investigation, listed in Article 1 of EU Regulation 2021/1784.

The goods affected by the measure are aluminum products, flat-rolled, classified under CN codes 7606 11 10, 7606 11 91, 7606 11 93, 7606 11 99, 7606 12 20, 7606 12 92, 7606 12 93, 7606 12 99, 7606 91 00, 7606 92 00, 7607 11 90, 7607 19 90. Specifically, these are rolls or strips of rolled aluminum, sheets cut to size or in circular form, and aluminum sheets, even unalloyed, without supports, inner layers, and other materials.

Of note, among the products excluded from the application of the anti-dumping duty are laminates used for beverage cans and tabs.

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