BEN J.M. TERRA

Community CUSTOMS LAW I

A Guide to the Customs Rules on Trade between the (Enlarged) EU and Third Countries

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Community Customs Law

A Guide to the Customs Rules on Trade
between the (Enlarged) EU and Third Countries

with Value Added Tax upon Importation and Exportation

by

Professor Ben J.M. Terra

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Preface

This book deals with Community customs law. As the subtitle of this book reveals, it is meant to be 'a Guide to the customs rules on trade between the (enlarged) EU and third countries.' As much as possible the results of the negotiations on the accession of Austria, Sweden and Finland to the European Union have been included in the text.

This 'Guide' is to serve as a reference book of students, law practitioners and businesses engaged in trade between third countries and the Community. It contains a detailed description of the rules in force, referring to case law, preparatory texts, commentaries and memoranda. The basis of this book is formed by the Community Customs Code which has been referred to by the European Commission as the most far-reaching project of legislative consolidation ever undertaken in a field subject to Community law. This Code containing 253 Articles is accompanied by an implementing code of more than 900 Articles, 100 Annexes and a separate implementing Regulation on relief from import or export duties. This Guide discusses the Articles of the Code and the implementing provisions in an integrated manner; the implementing provisions are discussed under the main Article of the Code to which they pertain. In the commentaries the Articles of the Code are announced by a heading in bold, the Articles of the implementing code are introduced by a heading in italics. This Guide not only deals with customs rules and the payment of the import or export duties as the ultimate consequence, but also discusses the consequences for VAT purposes of the various customs-approved treatment or uses.

The Guide is divided into 12 Chapters. The first 9 Chapters follow the numbering and subject matters of the IX titles of the Code dealing with the following subjects: (I) 'General provisions,' (II) 'Factors on the basis of which import duties or export duties and the other measures prescribed in respect of trade in goods are applied,' (III) 'Provisions applicable to goods brought into the customs territory of the Community until they are assigned a customs-approved treatment or use,' (IV) – the most extensive Chapter, dubbed by the European Commission 'the core of the Code' – 'Customs-approved treatment or use,' (V) 'Goods leaving the customs territory of the Community,' (VI) 'Privileged operations,' (VII) 'Customs debt,' (VIII) 'Appeals,' (IX) 'Final provisions.' Chapters X to XII offer an introduction to anti-dumping, excises and Value Added Tax. Several Chapters are accompanied by an annex or annexes to the Chapter concerned, providing texts or materials relevant to the particular subject matter. All Annexes to the Code as amended by various Regulations are reprinted at the end of the Guide. The Guide provides for the rules as they stand on 1 April 1995.

Customs rules form the border line between law and detailed formalities. The sheer quantity and degree of details of the formal requirements would make the title 'border lines' equally appropriate to this book, although a more prosaic title like 'broken seals' would also cover part of the content, but fully the intent of this Guide. It is hoped that this Guide breaks the seals to and gives access to a field of Community law which deserves more attention than that of a few experts alone.

Ben Terra
July 1995
Amsterdam

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Introduction

0.1. GENERAL

On 28 February 1990 the Commission of the European Community presented a proposal for a Community Customs Code. In the accompanying explanatory memorandum this proposal was described by the Commission as 'the most far-reaching project of legislative consolidation ever undertaken in a field subject to Community law' and it was intended to be applicable from 1 January 1993. The Commission was, however, too optimistic with regard to this date. On 12 October 1992 the Code was adopted. According to Article 253 of the Code it applies from 1 January 1994. The same Article provides that Title VIII does not apply to the United Kingdom until 1 January 1995 and that Article 161 and, in so far as they concern re-exportation, Articles 182 and 183 apply from 1 January 1993. For this purpose a separate (Commission) regulation was adopted, Regulation (EEC) No. 3269/92 which temporarily applied until 1 January 1994. On 11 October 1992 the Commission Regulation (EEC) No. 2454/93 of 2 July 1993 was published, laying down provisions for implementation of the Code, hereinafter referred to as the implementing code. On 21 December 1993 Commission Regulation (EC) No. 3665/93 was adopted amending the implementing code. During 1994 further amendments to the implementing code were adopted.

This book follows the structure of the Code. From the reference to a legislative consolidation in the explanatory memorandum to the proposal for the Code it may be inferred that the Code reflects to a large extent the rules applied before 1994. Thus, where necessary, reference will be made to the case law relating to the (old) body of customs legislation, but we refrain from extensive references to the body of customs legislation as applied before 1994.

Before we turn in this introductory Chapter to the preamble of the Code (and the implementing code) we deal with the character of levies upon importation in section 0.2. below.

The customs union is one of the foundations of the Community. The customs union resulted in the free movement of Community goods within the Community, in which customs controls are removed with the completion of the single market starting 1 January 1993. Therefore, the movement of Community goods falls outside the scope of 'Community Customs law.' However, in order to understand the context of the Code it is necessary to discuss in some detail the provisions and developments with regard to the customs union. In section 0.3. below entitled 'the framework of the customs union' we discuss in more detail the elimination of customs duties between Member States, the developments with regard to the common customs tariff and the elimination of quantitative restrictions and measures with equivalent effect.

Finally, in section 0.4. the preambles and the introductory commentaries on the preambles are discussed.

0.2. CHARACTER OF LEVIES UPON IMPORTATION

Customs borders are present whenever at the moment of, and with regard to, the crossing of a geographical (or political) border certain formalities have to be fulfilled. These border crossings should not be taken too literally; as will be seen later, the release for free