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Newsletter in brief

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- **Transport law proceedings** news: opening of a second "maritime law and transport" chamber at the Marseille Economic Activities Court.
- **Customs** case law :

❖ The CJEU overturned a ruling by the General Court of the European Union and ruled that the principle of the "right to be heard" was inapplicable in the context of the preparation of a regulation introducing additional customs duties.

❖ The CJEU issued a ruling on the new challenges posed by the sanctions imposed on Russia since 2022.

❖ The French Council of State ruled on the legality of two circulars and annulled an illegal requirement for travelers purchasing VAT-free goods for export to prove that they are not residents of the EU.

❖ The French Court of Cassation reiterated the principles of joint and several liability in the context of the statute of limitations for the enforcement of a customs fine.

❖ The Court of Cassation dismissed a recourse against an appeal ruling that had reiterated the autonomy of the procedure for reimbursement of duties paid in error, as opposed to procedures for invalidating or amending customs declarations.

OUR NEWS

Stéphane LE ROY participated in the symposium organized at the Ministry of Economy and Finance in Bercy on December 18, 2025, whose theme was "*The Code of Taxation on Goods and Services* [CIBS in French]*, an Original Experience in Recodification.*" Stéphane LE ROY spoke at the second round table on "*users' acceptance of the CIBS*," addressing the uncertainties that remain regarding excise duties on energy, awaiting for the regulatory section of the CIBS, which has been delayed since 2022. The proceedings of this symposium are currently being published in the *Revue de Droit fiscal*.

Stéphane LE ROY is co-editor of a column entitled "*Customs: control – sanctions – litigation*" in the new magazine *TVA Douane Environnement* (VAT, Customs and Environment taxation) Editions JFA Juristes & Fiscalistes Associés). The first issue of which was published in December 2025. Stéphane LE ROY commented on a ruling by the Criminal Chamber of the Court of Cassation on February 12, 2025 (No. 24-83.285) concerning the new customs administration inspection regime. He also commented on a ruling of April 2, 2025, by the same chamber (appeal no. 24-80.999) concerning the conditions for applying the customs detention regime provided for in Article 323-1 of the Customs Code (pages 343 to 347).

FINANCE ACT FOR 2026

We will comment on the articles of the Finance Act for 2026 relating to customs and energy and environmental taxation in a special newsletter No. 62.

NEWS ON TRANSPORT LAW PROCEEDINGS

Opening of a second "maritime and transport law" chamber at the Marseille Economic Activities Court

One of the distinctive features of the Marseille Economic Activities Court is that it has a chamber specializing in maritime and transport law disputes.

This specialization is linked to the large number of disputes in these areas brought before the Marseille court each year, particularly due to the jurisdiction clause in favor of the court stipulated in the bills of lading of the company CMA CGM.

In response to the increase in activity in the "maritime and transport law" chamber, a second specialized chamber was opened on January 23, 2026. The first chamber will continue to sit on Fridays, while the second chamber will sit on Thursdays.

The opening of this chamber should reduce the time taken to schedule cases. Currently, the first chamber refers cases that are ready for hearing to a hearing to be held in 12 to 14 months. With the opening of the second chamber, a hearing date could be set several months earlier.

The Court has also signed an agreement with the Marseille Bar Association providing for the establishment of a procedural calendar within these two chambers in order to anticipate and set deadlines for the exchange of submissions between the parties, which should reduce the length of proceedings.

“RIGHT TO BE HEARD” – INAPPLICABILITY OF THE PRINCIPLE TO TRADE RETALIATION MEASURES

On January 29, 2026, the Court of Justice of the European Union (CJEU) handed down an instructive decision on retaliatory measures in the context of the common commercial policy (C-811/23 P).

This was an appeal by the European Commission against a judgment of the General Court of the European Union of October 18, 2023 (T-402/20). The latter had annulled Commission Implementing Regulation No. 2020/502 of April 6, 2020, concerning certain trade policy measures insofar as it targeted products falling under tariff subheading 9613 80 00 of the Combined Nomenclature, originating in the United States of America.

President Donald Trump's appetite for taxation was evident from his first term in office (2017-2021). To this end, his administration introduced tax measures in the form of increased customs duties on imports of certain aluminum and steel products originating in the EU, by an act dated January 24, 2020, which took effect on February 8, 2020. According to the European Commission, these were safeguard measures taken improperly by the United States within the framework of the World Trade Organization.

These safeguard measures enabled the Commission to activate Regulation No. 654/2014 of May 15, 2014, whereby the European Union could suspend or withdraw concessions as a retaliatory measure in the event of violations of international trade rules by third countries.

On March 6, 2020, as provided for in Article 9 of Regulation No. 654/2014, the Commission sought “the views of interested parties” on its draft regulation proposing additional duties, in particular on products falling under tariff code 9613 80 00 “other lighters and igniters.”

On April 6, 2020, the Commission adopted the disputed Regulation No. 2020/502. It turned out that the American products covered by heading 9613 80 00 consisted mainly of lighters of the world-famous “ZIPPO” brand. The US company Zippo Manufacturing Inc. and its German subsidiary brought an action before the General Court of the European Union (GCEU), arguing, on the one hand, that the regulation directly affected them and rendered their action admissible. They also argued, on the merits, that the Commission had failed to respect their “right to be heard,” contrary to Article 41(2) of the Charter of Fundamental Rights of the European Union (hereinafter the Charter).

The Court upheld their appeal, considering it admissible. This point does not pose any difficulty.

However, the partial annulment of the regulation on the grounds of a violation of the “principle of sound administration” by the ECJ judgment was the subject of an appeal by the Commission.

The Commission argued that Article 41(2)(a) of the Charter applied only to individual measures, whereas the regulation was an act of general application. The Commission did not deny that a text could provide for the parties concerned to be heard in the context of the preparation of an act of general application. However, it denied that this was a general principle of law. In its view, Article 41(2) could not apply to a measure of general application unless there was a derogation, which did not exist in this case.

The European Commission challenged the reasoning of the General Court, which had held that, given the highly specific nature of the retaliatory measure targeting lighters, it could not be ruled out that ZIPPO and its subsidiaries would be individually affected (implicitly because of their reputation and market share). ZIPPO should have been given the "right to be heard," according to the TEU.

The Court of Justice recalled its case law on the application of Article 41 of the Charter, i.e., the adversarial procedure also known as the "right to be heard" (paragraphs 54 to 58). Following its Advocate General, Ms. CAPETA, the CJEU ruled that « *the right to be heard, within the meaning of Article 41(2)(a) of the Charter, is not, in principle, intended to apply where a person claims to be adversely affected by an act of general application*» (paragraph 61). The Court of Justice ruled that the General Court's ruling « *regarded that regulation as an act of general application. In those circumstances, it could not, without erring in law, hold, in paragraphs 75 to 77 of that judgment, that the applicants at first instance had the right to be heard during the procedure for the adoption of the regulation at issue on the ground, in essence, that the Commission had, during that procedure, identified their products as being the subject of the rebalancing measures envisaged via that regulation* » (paragraph 70).Thus, as the General Advocate already stated, « *the mere fact that the Commission had identified certain legal persons to which that ad valorem duty would apply to a large extent is not such as to render the regulation at issue an individual measure within the meaning of Article 41(2)(a) of the Charter*. » (paragraph 73).

The CJEU also rejected the link that ZIPPO companies sought to establish between the validation of the admissibility of their appeal, insofar as they were directly and individually affected by the act, and the application of the principle of the "right to be heard."

The Court of Justice considered that these « *are two separate legal issues which pursue, as follows from point 78 of the Advocate General's Opinion, different objectives."* (paragraph 74). The CJEU then ruled on certain pleas that the General Court had not examined and referred the case back to the General Court for it to rule on a plea that was not ready for judgment.

CONTROL OF SANCTIONS AGAINST RUSSIA

In a judgment dated February 5, 2026 (C-619/24), the CJEU ruled on the application of Council Regulation No. 833/2014 of July 31, 2014 concerning restrictive measures against Russia due to its actions in Ukraine. This regulation, adopted after the annexation of Crimea in March 2014, underwent numerous amendments following Russia's invasion of Ukraine on February 24, 2022.

Economic sanctions are a long-standing and repeated practice, whether by the United States or the European Union. They generally follow similar patterns that are repeated from case to case. However, these sanctions against Russia have broken new ground in many respects, with the development of lists of transactions or goods that cannot be traded because they « *could contribute in particular to the enhancement of Russian industrial capacities,* » or « *generate significant revenues for Russia thereby enabling its actions destabilising the situation in Ukraine*»

For practitioners, these innovations raise the question of whether these qualifications are irrefutable presumptions or, if not, how the burden of proof should be borne.

The question arises as to whether the administration must demonstrate that the goods or transaction are *in concreto* likely to contribute to strengthening industrial capacity or generating significant revenue for Russia, or whether the person concerned can demonstrate that this is not the case, or whether there is nothing else to be done but to check whether the goods appear on the annex or not.

This case is therefore instructive in this regard. It concerns the interpretation of Article 3i(1) of Regulation No. 833/2014, which provides that « *It shall be prohibited to purchase, import, or transfer, directly or indirectly, goods which generate significant revenues for Russia thereby enabling its actions destabilising the situation in Ukraine, as listed in Annex XXI into the Union if they originate in Russia or are exported from Russia.* »

Annex XXI, as amended by Regulation No. 2022/1904 on the date of the events, aimed to the « *Motor cars and other motor vehicles principally designed for the transport of < 10 persons, incl. station wagons and racing cars (excl. motor vehicles of heading 8702)* ». Article 3i had been added within the regulation No. 833/2014 by a regulation No. 2022/876 of the Council of 8 April 2022.

Exceptions were inserted after Article 3i by Regulation No. 2023/2878 of December 18, 2023.

The Düsseldorf Finance Court in Germany referred two questions to the CJEU for a preliminary ruling following the importation of a vehicle originating in Russia by a Russian citizen living in Düsseldorf. In January 2023, this person had purchased a vehicle in Russia, which he had brought into Poland without registration on May 11, 2023. The Russian citizen had it transported on a trailer to Germany and wanted to register it in that country in August 2023. The vehicle was therefore presented to customs at the Düsseldorf customs office.

German customs refused the declaration and seized the vehicle based on Article 3i. The value of the vehicle was €50,000.

The German court asked the Court of Justice whether the prohibition laid down in Article 3i applied only if the transaction generated significant revenue for Russia or whether all goods covered by Annex XXI were to be deemed to generate such revenue. There were linguistic differences in the various translations of the regulation.

Some imposed this condition, while others appeared to establish an irrefutable presumption that transactions involving these assets were necessarily related to the amount of revenue generated for Russia.

The CJEU conducted a meticulous analysis of the provision in light of its wording and the general structure of the regulation, concluding

« *That provision prohibits all transactions concerning one of the goods listed in Annex XXI to Regulation No 833/2014, as amended by Regulation 2022/1904.* » (paragraph 25).

The CJEU considers in particular that the exceptions introduced by Regulation No. 2023/2878 correspond to transactions involving vehicles for diplomatic or strictly personal use, excluding resale. In the Court's view, these exceptions therefore strictly limit the cases in which transactions involving the goods in question do not generate revenue for Russia: « *If the prohibition laid down in Article 3i(1) of that regulation, as amended by Regulation 2022/576, only applied where the purchase, importation or transfer in question would, taken individually, be capable of generating*

significant revenues for the Russian Federation due to its specific characteristics, it would not be necessary to provide for those exceptions. Those exceptions concern, first, goods purchased in Russia which are necessary for the personal use of the natural persons in question. That requirement highlights that the exception concerns goods which are considered to be essential in that regard, to the exclusion of any luxury good or good of an above-average value and therefore capable of generating such revenues. Second, the goods covered by those exceptions must belong to the natural persons in question and importation of those goods is limited to personal effects and goods which are manifestly not intended for sale. It follows that those exceptions concern transactions which, by their very nature, are not capable of generating such revenues.» (paragraph 27)

The CJEU considers that the achievement of the objectives of Regulation No. 833/2014 « … *be compromised if the applicability of that prohibition were conditional on the good in question, taken individually, generating significant revenues for the Russian Federation.* » (paragraph 31). The Court adds that « … *the application of the prohibition laid down in Article 3i(1) of that regulation, as amended by Regulation 2022/576, to any good falling under the CN codes listed in Annex XXI to Regulation No 833/2014, as amended by Regulation 2022/1904, is capable of effectively pursuing those objectives*» (paragraph 31), namely « *in view of the gravity of the situation, and in response to the Russian Federation's military aggression against Ukraine, to introduce further restrictive measures, inter alia by introducing 'additional import restrictions on certain goods exported by or originating from Russia'*» (paragraph 30).

Reading this decision raises questions about the usefulness of creating annexes under the banner of these new concepts, which ultimately do not seem to require any individual examination.

The CJEU then responded to the second preliminary question from the German court, which asked whether, in the context of the exceptions introduced in December 2023, Article 833/2014 could benefit Russian citizens living in Germany.

This was a transitional measure: : « *The prohibition in paragraph 1 shall not prevent vehicles already in the territory of the Union on 19 December 2023 from being registered in a Member State.* »

The CJEU gave a negative response: « *Article 3i(3ad) of Regulation No 833/2014, as amended by Regulation 2023/2878, is not intended to introduce an exception to the prohibition laid down in Article 3i(1). It is apparent from the very wording of paragraph 3ad that it concerns only the registration of a vehicle and not its purchase, importation or transfer into the European Union.*
It follows that the possibility afforded by Article 3i(3ad), concerning the registration of vehicles already present in the territory of the European Union on 19 December 2023, can, in any event, apply only to vehicles whose presence in that territory is not the result of a breach of the prohibition laid down in Article 3i(1) of Regulation No 833/2014, as amended by Regulation 2022/576.. » (paragraphs 34 and 35)

Since the vehicle was in an irregular situation with regard to customs regulations on December 19, 2023, its owner was not eligible for this transitional measure.

CONTROL OF THE LEGALITY OF CIRCULARS

The French Council of State has issued two rulings on the control of circulars / general by-law rulings.

In a first decision on December 22, 2025 (request 494 906), the Council of State dismissed a request from the union for the recycling, recovery, and treatment of hazardous waste (SYPRED) to partially annul the Official Public Finance Bulletin (BOFiP) BOI-TCA-POLL-40-10-20 published on April 10, 2024. Paragraph 260 was criticized "*insofar as these comments state that are subject to energy excise duties provided for in Article L. 312-1 of the Code of Taxation on Goods and Services and, as a result, are exempted from the general taxation on polluting activities, the waste of energy product whose introduction into a hazardous waste thermal treatment facility allows the temperature to be maintained above the thresholds of 850°C or 1,100°C* " (paragraph 3). According to SYPRED, "*exemption from the general tax on polluting activities would automatically entail subjection to the energy excise tax, which is less favorable* [to its members] *than the general tax.*"

The Council of State rejected the appeal. According to the ruling, this comment is only addressed to agents of the Directorate General of Public Finances who are responsible for collecting the general tax on polluting activities. They are informed that "*waste of energy product whose introduction into a hazardous waste thermal treatment facility allows the temperature to be maintained above the thresholds of 850°C or 1,100°C is exempt from this tax*" (paragraph 5).

For the Council of State, "*the wording of this exemption, which does not in itself mean that these products are subject to energy excise duty, does not prejudice the interests defended by SYPRED.*"

This decision demonstrates the complexities and difficulties of transferring tax powers between administrations for those operators being caught between two administrations.

However, in a second decision dated January 14, 2026 (application no. 499 482), the Council of State partially annulled paragraph 34 of a customs circular dated August 19, 2024 (No. 24-055 Official Customs Bulletin No. 7527) relating to the sale of goods to be carried in the personal luggage of travelers residing in a country outside the European Union. This concerned the procedures for checking the domicile or habitual residence outside the European Union on the basis of the information contained in the passport or identity card or equivalent document.

This probative regime is provided for in Article 262(I)(2) of the General Tax Code. The authenticity of this non-European Union residence is naturally checked by Customs when the goods in question are transported in travelers' luggage upon departure.

In paragraph 6 of the judgment, the Council of State ruled that "*the exemption from value added tax provided for in favor of deliveries of goods carried in the personal luggage of the traveler who purchased them is subject to the condition that his domicile or habitual residence is located outside the European Union, and that this condition must be assessed in light of the place mentioned as such on the passport of the person concerned, their identity card, or any other equivalent document recognized by the French public authorities.*"

The contested circular distinguished between travelers who were not citizens of the European Union, who were required to show their passports, and travelers who were citizens of a Member State but expatriates, or had dual nationality, who were required to present two documents.

The Council of State annulled paragraph 34 of the circular on the grounds that

"*These comments are not limited to providing the interpretation, set out in paragraph 6, required by the provisions of Article 262 of the General Tax Code, but, on the one hand, make the benefit of the value added tax exemption provided for in those provisions conditional upon the presentation of a passport alone by travelers who are not nationals of a Member State of the European Union and, on the other hand, make it conditional upon the presentation of two supporting documents, including a passport, by travelers who are nationals of a Member State of the European Union or who have dual nationality, including that of a Member State of the European Union. The Minister of Public Accounts, who could not rely on his position as head of department to draw up a list of documents required for tax exemption, did not have the authority to enact such provisions, which, moreover, contravene the rules referred to in paragraph 6*." (paragraph 8, emphasis added).

The developments highlighted in bold refer to the limits placed on the minister's power to enact tax conditions, with regard to his jurisdiction, as well as the review of the legality of circulars if they do not comply with higher rules (see, in customs matters, CE June 14, 2017 req. 405088 our Newsletter No. June-September 2017, September 20, 2017 req. 401294 our Newsletter No. December 2017-February 2018).

It is also an implicit illustration of the margins of discretion that the judge may or may not grant to the regulatory authority (if it is competent) to adopt implementing provisions, depending on the interpretation that the legislative text "called for."

TIME-LIMIT FOR THE ENFORCEMENT OF A CUSTOMS FINE

In a ruling dated November 26, 2025, the Commercial Division of the Court of Cassation (appeal no. 24-10.041 published in the Bulletin) dismissed the statute of limitations on a customs fine.

In a contradictory judgment dated February 12, 1999, the appellant had been ordered to pay a fine as a customs penalty, along with other individuals, thereby incurring joint and several liability for payment. Between 1999 and 2012, the administration had contacted the other jointly liable parties, who had paid in part and, in any event, had received the documents interrupting the limitation period, without ever informing the appellant in the case decided on November 26, 2025.

On January 30, 2014, a regional customs office issued two third-party notices to obtain payment of the balance of this fine from the applicant. The applicant brought the matter before the enforcement judge to obtain the cancellation and release of these two notices, invoking, in the alternative, the statute of limitations on the debt.

On February 7, 2022, the customs administration had again carried out an administrative seizure from a third party, the cancellation of which was sought in this case.

The applicant argued, in particular, that he had not been informed of the issuance of the order to the other co-debtors, which would have interrupted the limitation period.

The recourse for the cassation argued that, since no personal notification of the orders served on the other co-obligors between 1999 and 2014 had been made to the applicant, the latter could "*legitimately believe himself to be released from his obligation to pay the customs debt and, therefore, the order to pay was not enforceable against him and no interruption of the limitation period could apply to him*." The appeal concluded that the limitation period expired on January 30, 2014, and *a fortiori* on February 7, 2022.

The Court of Cassation rejected the argument. It ruled in accordance with Article 382-5 of the Customs Code, which provides that customs fines "*are subject to the same limitation periods as criminal penalties under ordinary law and the same conditions as damages*." The Court considered that it follows that "*the limitation period may be regularly interrupted by one of the acts referred to in Article 2244 of the Civil Code, in its wording applicable to the dispute, such as an act of enforcement or a payment order*" (paragraph 5). It also refers to Article 2249 of the Civil Code: "*in its version prior to that resulting from Law No. 2008-561 of June 17, 2008, the interpellation made, in accordance with the above articles, to one of the joint debtors, followed by his acknowledgment, interrupts the limitation period against all the others, even against their heirs*." This law of 2008 was a recast of the statute of limitation principles in France.

The same applies to Article 2245 as amended by the Law of June 17, 2008, which incorporated the terms of the former Article 2249.

Since there were interruptions in 2000, 2003, 2008, 2012, the "*order to pay issued by the customs administration on November 25, 2003, the notices to third-party holders, and the acknowledgment of the claim* [in 2012 by one of the debtors] *had an interruptive effect and were enforceable* [against the appellant] *without the customs administration being required to notify him*. " (paragraph 9). This was the core issue of the recourse at the Court of cassation.

Applicant was successful in obtaining the quashing of the appeal judgment which had declared inadmissible a claim that was considered to be "new" on appeal. Pursuant to Article 565 of the Code of Civil Procedure, the Court of Cassation considered that this claim had the same purpose as the claims made at first instance.

REFUND OF CUSTOMS DUTIES

In a case defended by the firm Godin Associés, on February 11, 2026 (appeal no. U 24-18.996), the Commercial Chamber of the Court of Cassation issued a decision rejecting, without justification, the appeal filed by the customs administration against a ruling by the Chambéry Court of Appeal dated June 18, 2024 (case no. 21/02353)

In this case, the administration had refused a request for reimbursement of customs duties made by an operator in respect of goods benefiting from preferential origin that had not been wrongly claimed in the customs declaration.

The customs administration rejected the request for reimbursement on the grounds that the customs declarations included both items benefiting from preferential origin and others that did not.

The administration therefore argued that the importer should have applied to have the customs declarations invalidated and, as this had not been done within the 90-day time limit, the operator was time-barred.

By rejecting the administration's appeal without justification, the Court of Cassation upheld the reasoning of the Chambéry Court of Appeal, which stated in its decision that the two cases of invalidation referred to in Article 148 of Regulation No. 2015/2446 “concern an error in the customs procedure.” However, as stated in the decision, the “customs procedure” is defined in Article 5(16) of the UCC. In this case, requesting a refund on the basis of preferential origin did not change the customs procedure under which the goods had been declared: release for free circulation.

The Court of Appeal had also affirmed the procedural independence of the request for reimbursement from that of the invalidation of the declaration, as the former did not require the operator to have previously requested the invalidation of the customs declaration.

These clarifications, on points of law that were nevertheless fairly obvious, led the Commercial Chamber of the Court of Cassation to dismiss the customs administration's appeal without giving reasons. The judgment of the Chambéry Court of Appeal of June 18, 2024 (RG No. 21/02353) can therefore be considered as stating the state of the law in this area.

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