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The Newsletter in brief

- Our News
- Case law on **transport law:**

❖ The Court of Cassation ruled that, pursuant to Article L.133-6 of the Commercial Code, when goods have been presented for delivery on several occasions—by mutual agreement between the parties—the one-year statute of limitations cannot begin to run from the date of the first presentation.

❖ The Versailles Court of Appeal ruled that a claim report filed by the carrier constituted unequivocal acceptance of the consignee's reservations.

- Case law on **customs matters**:

❖ The Court of Cassation issued a ruling on the statute of limitations for the customs administration's right of collection of incurred duties.
❖ The Court of Cassation issued a ruling on the principle of adversarial proceedings and the rights of the surety.
❖ The General Court of the EU has ruled on the rights of the judicial authorities of Member States to amend a "BTI decision" (binding tariff information) with retroactive effect
❖ The General Court of the EU ruled, on the one hand, on the tariff classification of a robotic arm attached to a wheelchair for a person with a disability and, on the other hand, on decorative paper impregnated with resin used as a coating for kitchen cabinets.
❖ The General Court of the EU issued two decisions on the interpretation of the directive harmonizing excise taxes on manufactured tobacco products.
❖ The Court of Cassation ruled out the application of the reduced tax rate on natural gas.
❖ The General Court of the EU has ruled on irregularities in outward processing and the options for rectification
❖ The CJEU issued a ruling in a case involving a measure to protect trade regarding the conditions for the retroactive submission of a "valid" invoice.
❖ The Cassation Court issued a ruling about the registration of the Treasury lien.

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OUR NEWS

On 12 June 2026, Vincent Courcelle-Labrousse, alongside Joseph Oughourlian, president of RC Lens (Racing Club, football), presided over the graduation ceremony for the final-year students at the Lycée Charles de Gaulle in London.

In collaboration with the Pôle Mer Méditerranée, Aurélie Giordano authored a regulatory guide on port water management in France, produced as part of the European Blue Ecosystem project. The guide aims to facilitate understanding of the regulatory framework and support the development of innovative solutions. In particular, it provides a clear overview of the main applicable regulations, key considerations, and practical guidance to support projects. The guide is available on the Pôle Mer Méditerranée website.

DOMESTIC ROAD TRANSPORT – STARTING POINT OF THE STATUTE OF LIMITATIONS – SUCCESSIVE REFUSALS TO ACCEPT THE GOODS – NEW AGREED DELIVERY DATE

A consignee refused to accept delivery of damaged goods on three separate occasions. Following the first refusal, the parties agreed to arrange for a new delivery after the goods had been repackaged. The consignee again refused to accept delivery due to the condition of the goods upon the second attempt, and again upon the third attempt.

The freight forwarder then retrieved the goods and sold them to recover the costs.

The consignee sued the freight forwarder more than one year after the first two delivery attempts, but less than one year after the third.

In a ruling dated May 20, 2026 (No. 24-20.998), issued pursuant to Article L.133-6 of the Commercial Code—which states that the one-year statute of limitations "*is calculated, in the case of total loss, from the day on which the goods should have been delivered, and, in all other cases, from the day the goods were delivered or offered to the recipient*," the Court of Cassation ruled that, since the parties had agreed to arrange a new delivery after repackaging, the statute of limitations could not begin to run from the date of the first presentation.

DOMESTIC ROAD TRANSPORT – FORECLOSURE – ABSENCE OF WRITTEN RESERVATIONS UPON RECEIPT OF THE GOODS – CARRIER'S CLAIM NOTIFICATION CONSTITUTING UNEQUIVOCAL ACCEPTANCE OF THE RESERVATIONS

During a road transport, the driver struck a bridge and damaged the goods. The consignee failed to note any reservations on the waybill at the time of delivery and did not submit a substantiated complaint by certified mail within three days of receiving the goods.

The carrier then invoked the statute of limitations under Article L.133-3 of the Commercial Code, which states that "*acceptance of the transported goods extinguishes any claim against the carrier for damage or partial loss if, within three days—*

excluding holidays—following such acceptance, the consignee has not notified the carrier of a substantiated complaint by extrajudicial document or by certified mail."

In a ruling dated May 6, 2026 (No. 24/00001), the Versailles Court of Appeals reiterated that, to avoid the time bar to action under Article L. 133-3 of the Commercial Code, the carrier's acceptance of the reservations raised by the consignee must be unequivocal.

In this case, the carrier had reported the claim to its insurer. According to the claim report sent to the insurer, the driver acknowledged the accident, which occurred when the vehicle struck a bridge during transport, did not dispute the damage sustained by the goods, and established a link between the accident and the damage. The Versailles Court of Appeals held that the claim report, signed by the driver, constituted unequivocal acceptance by the carrier of the reservation and dismissed the foreclosure.

STATUTE OF LIMITATIONS — OFFENSES CONSTITUTING "ACTS GIVING RISE TO CRIMINAL COURT PROCEEDINGS"

In a ruling dated May 28, 2026, the Commercial Chamber of the Court of Cassation (Appeal No. 25-14.078) dismissed an appeal filed by a company that had raised the statute of limitations as a defense. This was undoubtedly a bold, if not reckless, move on the company's part.

Indeed, if there is one area in which legal practitioners have noted a definite tightening of case law, it is the statute of limitations on the government's "right of recovery" (its right to collect duties and taxes several years later, see the article by the firm's partners in the *Revue du Droit des Transports et de la Mobilité* No. 3, July–September 2014, "*The Statute of Limitations: Clear Choices, but in Need of Reevaluation*," pp. 20–22).

Since 1998 and the famous *Harth* decision (Criminal Division, January 29, 1998, Appeal No. 96-83.149, published in Bulletin No. 35), followed by the Commercial Chamber's decision of January 11, 2000 (Appeal No. 97-19.421, published in Bulletin No. 10), the Court of Cassation has held that a customs report has the effect of interrupting both the tax action and the action to recover evaded duties.

Another line of case law is based on the concept of an "act giving rise to criminal Court prosecution," which allegation, deriving from Community law, allows for extension of the three-year statute of limitations on this right of recovery (Article 221(4) of the Community Customs Code CCC, Regulation No. 2913/92 of October 12, 1992). It was this mechanism that was at issue in this case.

An importer had cleared goods through customs in France between June and December 2013. In April 2018, the customs authorities notified the importer of false declarations regarding the tariff classification, followed by a notice of assessment in May 2018. The company argued that the authorities could no longer collect the duties under Article 221 (3) repealed on April 30, 2016, (in effect at the time of the events), which provides that "*Communication to the debtor shall not take place after the expiry of a period of three years from the date on which the customs debt was incurred.* "

The first ground of the company's appeal to the Court of Cassation was based on the application of Article 221(3), since, according to the plaintiffs, this

was the substantive rule existing in 2013 that should therefore have remained in effect despite the entry into force of the Union Customs Code on May 1, 2016 (UCC, regulation No 952/2013 of 9 October 2013). However, it was Article 103 UCC that applied to this case, as held by the Court of Appeals, whose reasoning was upheld by the Court of Cassation.

Article 103(1) continues to provide for a three-year statute of limitations. Its (2) also provides that if the act that gave rise to the customs debt "*at the time it was committed, was liable to give rise to criminal court proceedings, the three-year period laid down in paragraph 1 shall be extended to a period of a minimum of five years and a maximum of 10 years in accordance with national law*".

The Court of Appeals had found that Article 103 was a provision of immediate effect. The previous three-year statute of limitations had not expired on May 1, 2016, the date on which the new five-year statute of limitations came into effect and thus replaced it. The longer five-year statute of limitations had not yet taken effect as of the date of the notice of customs duties in April 2018.

This controversy over the temporal application of these provisions was somewhat artificial, given that Article 221 CCC included a provision analogous to Article 103(2), namely Article 221(4). However, this text did not establish any "time range" for this classification. It simply allowed for the notification of duties in cases of "acts giving rise to criminal court proceedings" to be served beyond the three-year statute of limitations.

The fourth ground of the appeal was the most interesting and raised an issue that has long been criticized in practice, namely that even the slightest violation of the Customs Code is subject, at a minimum, to a first-class fine under Article 410 of the former Customs Code. The fourth ground of the appeal argued that "*the principle of a three-year statute of limitations on customs debts established by European Union law would be rendered meaningless if it were accepted that it must be set aside for any act which, without involving fraudulent conduct, is subject to a fine, insofar as any violation of customs rules may give rise to a fiscal penalty; that in the present case, to hold that a five-year statute of limitations would apply to the duties and taxes covered by the AMR of May 25, 2018, the Court of Appeals found that the customs administration, in a report dated April 26, 2018, classified the facts as a false declaration of currency and that it is undisputed that the offense of false declaration of currency is subject to judicial and punitive proceedings"; that by ruling in this manner, the Court of Appeals rendered meaningless the rule derived from European Union law regarding the three-year statute of limitations for customs debts and exceeded its authority by violating the principle of the primacy of European Union law*."

Thus, this appeal raised a fundamental issue leading to the conclusion that the three-year statute of limitations is never applicable under French customs law. The appeal also argued that an "act giving rise to criminal court proceedings" could only be defined as an "act involving fraudulent schemes" (second ground of the appeal). The third ground of the appeal argued that "*an act subject to criminal prosecution refers to acts for which the public prosecutor may bring a criminal action; that the public prosecutor may act as the principal party only in proceedings for the imposition of penalties punishable by imprisonment, and not for the imposition of tax penalties corresponding to misdemeanors; that, consequently, the commission of an offense punishable by imprisonment justifies extending the statute of limitations to five years*" (third ground).

This interpretation of the concept of an “act giving rise to criminal Court prosecution” was reasonable but ran up against the—to say the least—questionable case law of the Court of Justice of the European Union. The Court has consistently held that the administration was not required to initiate such criminal proceedings, much less to obtain a conviction against the liable party. It is sufficient, in the context of establishing the violation, for the administration to allege that the act could “give rise to criminal prosecution” (see CJEU, November 27, 1991, *Meico Fell*, C-273/90).

However, it is well established that even the slightest irregularity in France leads to such a finding. The very form of the official report, which is used systematically, allows for the act to be classified as either a misdemeanor or a tort. French customs law inevitably results in a five-year statute of limitations and ensures that there is always an “act giving rise to criminal court proceedings” on the record.

The 1991 case law of the Court of Justice, as confirmed by the *ZF Zefeser* judgment of December 18, 2007 (C-62/06), is particularly illustrative of this reasoning. This practice in no way protects either legal certainty or the rights of operators.

In this context, the Court of Cassation dismissed the appeal and upheld the appeal ruling, noting that the Court of Justice had held that Article 103 UCC applied to legal situations in which the right of recovery provided for under Article 221 CCC had not expired as of the date the UCC entered into force on May 1, 2016.
The Court then found that the facts in question constituted third-class summary (no-jail) offences under Article 412 of the Customs Code (and thus are “act giving rise…”).

Consequently, as of the date of notification of the violation and communication of the customs debt, April 26, 2018, the administration’s right to claim customs duties had not expired.

THE PRINCIPLE OF ADVERSARIAL PROCEDURE AND THE RIGHTS OF SURETIES

On April 1, 2026 (Appeal No. 24-19.390), the Commercial Chamber of the Court of Cassation issued a ruling that is problematic in two respects: first, regarding the application of the principle of adversarial / *inter partes* proceedings and the rights of the defense; and second, regarding the rights of sureties.

The case involved an authorized warehouse keeper that was guaranteed by a professional surety company for its business of warehousing and shipping beverages and alcoholic products. Between April and June 2015, the authorized warehouse keeper had sent eleven shipments to an Italian company—also an authorized warehouse keeper— using electronic accompanying documents (DAE).

As was often the case during that period, when numerous instances of fraud occurred, Customs found that the goods had never reached their destination.

On March 30, 2018, the administration issued a preliminary notice of assessment of excise taxes and social security contributions.

On May 4, 2018, the company submitted its comments, to which the DNRED (France’s main inquiry and intelligence Customs service directorate) responded on June 25, 2018.

In the meantime, based on the preliminary assessment notice, the French company had taken steps in Italy to determine what had happened.

It sought to obtain evidence regarding the distribution of its products in that country. However, on August 21, 2018, the DNRED issued a statement of violation setting forth the taxes due. As early as August 22, a mandatory order to pay / collection notice ("AMR") was issued. On August 31, another collection notice was served on the guarantor company for the same debt.

1. Regarding the principle of adversarial / *inter partes* proceedings, the violation of which had been upheld by the judgment of the Paris Court of Appeal, the Court of Cassation applied the case law of the Court of Justice, which, in many respects, has been instrumental in establishing the requirement for an adversarial procedure / "right to be heard" prior to any customs assessment since the *Sopropé* decision of December 18, 2008 (C-349/07).

However, the case law has sometimes been overly rigid, leading to restrictions on the rights of operators, notably in the *Kamino International Logistics BV* judgment of July 3, 2014 (C-149/13). Thus, according to this case law, which was reaffirmed on June 18, 2020 (C-831/18, para. 105) "*an infringement of the rights of the defence, in particular the right to be heard, results in the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different.*"

The difficulty faced by the authorized warehouse keeper's company was that the administration had complied with the adversarial / "right to be heard" procedure at every stage (prior notice, consideration of comments, detailed response) and subsequently notified the assessment adjustment via the official "statement of offence". The company objected to the procedure on the grounds that it had refused to stay the notification even though the company's attorney had announced the submission of new, decisive evidence that could lead to a different decision. However, as of the date of the AMR (the following day), this submission had obviously not yet been made.

The Court of Cassation held that this situation was irrelevant to the proceedings, since the company's attorney "*referred to the arguments he had set forth in the reply letter dated May 4, 2018, to which the customs administration had responded in detail in a letter dated June 25, 2018...*". The Court of Cassation held that "*this communication was not likely to have any impact on the decision being considered by that agency*..." (para. 18).

This constitutes a narrow interpretation of the application of the principle of the right to fair hearing. The claimant pointed out that, even though the communication had been announced on August 21, the notice of collection was served on the company on August 22, 2018, leaving it no reasonable and sufficient time to exercise the rights it intended to assert.

2. The co-defendant surety in the cassation recourse noted, for its part, that the AMR served on it on August 31, 2018, appeared to be a copy-and-paste of the one served on the importer, did not refer to the surety bond, and did not allege any default by the authorized warehouse keeper as of the AMR's due date. The Court of Appeal had agreed with the surety and annulled the AMR.

The Court of Cassation, on the contrary, held that it was sufficient for the AMR to mention the guarantor's status as such.

According to the Court, Article R 256-1 of the Book of Tax Procedures "*does not require the AMR to mention either the guarantee agreement under which the guarantee is enforced or the guarantee provided for in that guarantee agreement that is being enforced…* "

As a matter of principle, the surety is called upon because the authorized warehouse keeper is deemed to be in default. In this regard, the tax authorities had not even waited to see whether the authorized warehouse operator would pay the excise taxes or not, considering the AMR. They had immediately enforced the surety.

The Court of Cassation ruled for the Customs : "*The default by the debtor company resulted from the notice of violations dated August 21, 2018, referred to in the AMR, which established the existence of consumption taxes and social security contributions that were due but unpaid as of their due date, such that the debt secured by the surety was due... .*" (paragraph 23)

Thus, the due date is not the date of notification of the assessment to the principal debtor but the date (the exact date of which is unknown) on which the goods left the suspension regime and should therefore have been subject to excise taxes.

This makes the surety an automatic co-debtor, which it is not. Yet EU and national case law is clear on its accessory nature (see Commercial Chamber May 25, 2022, Appeal No. 19-23.516; see our Newsletter No. 43, May–June 2022; in the same case, CJEU March 9, 2023, C-358/22; see our Newsletter No. 47, March–April 2023).

RETROACTIVE EFFECT OF A JUDICIAL DECISION ON A BINDING DECISION REGARDING TARIFF INFORMATION

On May 13, 2026, the General Court of the European Union issued a landmark decision (T-150/25) on the relationship between Community customs law, judicial decisions, and the relevant tax procedural rules. This decision was guided by the opinions of Advocate General Martín y Pérez de Nanclares, which were fully adopted by the General Court.

An Austrian company had requested a binding tariff information decision (hereinafter "BTI"), which was one of the major contributions of EU customs law in the late 1980s, even before the adoption of the Community Customs Code. A BTI is a decision that binds the customs administration regarding the tariff classification of goods for the applicant for a specified period (currently three years). Its framework is now set forth in Articles 33 and 34 UCC, which address its application, granting, retroactive annulment, or revocation for the future if the law changes.

Article 34, paragraph 6, provides in particular that "*BTI and BOI decisions may not be amended.*"

Furthermore, the UCC enshrined the right to appeal administrative decisions, first before an administrative authority and then before a judicial authority, under Article 44.

The case involved a request for a binding tariff information (BTI) filed by an importer in Austria regarding a tourniquet.

The granted BTI had classified the product under heading 4008, whereas, according to the applicant, it should have been classified under heading 4014. The Customs administration had made a classification error.

Upon hearing a judicial appeal, the Austrian Federal Finance Court upheld the appeal and amended the decision based on a provision of the Austrian Federal Tax Code authorizing it to do so (analogous to the "full jurisdiction" powers of the tax judge in France). The national court had therefore not only amended the code listed on the BTI decision to align with the importer's request but also intended to rule that this amendment would apply *ex tunc*—that is, retroactively.

The national court asked the European courts whether its analysis was consistent with EU law, in particular with the specific rules governing the BTI, which make retroactive effect contingent upon the annulment of the decision in cases where the importer has provided inaccurate or incomplete information—which was not the case here—and emphasizes the final nature of a BTI.

Since Article 44(4) of the Customs Code requires Member States to ensure that "…*the appeals procedure enables the prompt confirmation or correction of decisions taken by the customs authorities*." The question arose as to what was meant by the term "*correction*".

The General Court of the European Union first explained that the rules governing the issuance, annulment, or revocation of BTI by the customs authority, as set forth in Articles 33 and 34 UCC, could not be applied by analogy to the appeal proceedings taking place before the various administrative authorities and subsequently before the courts.

The General Court also cited as evidence the fact that Article 45 UCC further requires that " *the customs authorities shall, however, suspend implementation of such a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with the customs legislation or that irreparable damage is to be feared for the person concerned*."

The Court considers that Article 45 UCC justifies the judicial authorities giving full effect to their decisions in the context of judicial review. The Court also notes that " *It is apparent from the case-law of the Court of Justice that a court seized of a dispute governed by EU law must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under EU law"* (paragraph 34).

Article 45 UCC "…*does not limit the power of the judicial authorities, hearing an appeal lodged in accordance with Article 44(2) of that code, to suspend implementation of the disputed decision in order to comply with their obligation to ensure the full effectiveness of EU law*." (paragraph 34). The General Court held that "*the grant of suspension of implementation necessarily goes hand in hand with the possibility of amending retroactively the legal position of economic operators in order to prevent them from suffering undue financial damage where an initial decision proves to be incorrect*." (paragraph 35).

Furthermore, in light of Article 47 of the Charter of Fundamental Rights (cited in paragraph 38), "*an appeal cannot be regarded as effective if it does not remedy the situation resulting from unlawful BTI and does not place the economic operator holding the decision on that BTI in the situation which he or she would have been in had the unlawfulness in question not taken place*." (paragraph 39)

Regarding the principle of legal certainty, the Court considers it important to respect the effects of a final administrative decision. Case law does not require a public authority to call into question a decision that has become final. Conversely, in the present case, since the operator had filed an appeal in accordance with the procedures and time limits provided for by national law, this principle could not be invoked against it. On the contrary, the operator should have been able to expect to have its appeal fully upheld.

Finally, in response to an objection raised by the Italian government—which argued that amending the BTIs would create problems regarding the flow of information among Member States—the General Court noted that the BTIs are compiled in a database (EBTI) and that any amendment is recorded in EBTI, where it is immediately visible to all Member States.

TARIFF CLASSIFICATION

The General Court of the EU has issued two rulings on tariff classification.

Robotic arm attached to an electric wheelchair - heading 8479 or 9021

In a judgment dated June 3, 2026 (T-313/25), the General Court ruled on a robotic arm attached to a wheelchair. The device is intended to compensate for the loss of function in the arms of a severely disabled person. The robotic arm has joints and “fingers” that allow it to grasp objects and assist the person in the daily life. The German importer had applied for a binding tariff Information (BTI) for its robotic arm in 2020.

The German customs authorities had classified it under heading 8479 of the EU Customs Combined Nomenclature, considering it to be simply a machine. However, according to the company, it was a genuine orthopaedic prosthesis that fell under heading 9021 of the Combined Nomenclature.

The main issue stemmed from the fact that the robotic arm was not attached to the person’s body but was positioned next to it. According to the authorities, this robotic arm could not be equated with either a crutch that enables a person to walk or a wheelchair that facilitates movement by compensating for a lack of balance. This robotic arm was a marvel of technology, clearly perfectly suited to be controlled—even by thought—by the person with a disability.

The Tribunal’s thorough examination shows that it did not want to be accused of a form of legal “rigidity” by rejecting heading 9021.

Ultimately, that is what it did, based on an analysis that tends to demonstrate that this product does not meet the requirements of heading 9021, because it does not “take over” or replace the function of the impaired or disabled body part.

As the Court reports “*it does not appear that that robotic arm was specifically designed for an orthopaedic purpose or for a given person, or that it is specifically adapted to a disability*.” (paragraph 46). Thus, this robotic arm mitigates the effects of a disability or impairment but does not “compensate” for it within the meaning of heading 9021.

This decision illustrates the recurring difficulties in enforcing heading 9021 of the Harmonized System. The Court of Justice had issued a judgment (Lohmann, November 7, 2002, C-260/00).

This ruling contained numerous “*criteria for distinguishing simple or ordinary products from those serving a medical purpose include the method of manufacture of the product concerned, the nature of the materials of which it is made, the adjustability to the handicaps which it is intended to correct or other special characteristics, in particular the specificity of its purpose*.” (paragraph 44).

However, the distinction between the few products classified under this heading and those relegated to textile bandages—which are classified under Chapter 62 or Chapter 63 on made-up textile articles (among the highest-taxed items in the nomenclature…)—has always proved to be overly simplistic and very disappointing for importers. The latter legitimately considered their products to be genuine, fully developed orthopaedic articles highly adaptable to various medical conditions—a view the Customs authorities often refute.

In recent years, the CJEU has issued two favorable rulings (CJEU April 26, 2017, C-51/16, see our Newsletter No. 23, March–May 2017, and CJEU May 16, 2019, C-138/18, see our Newsletter No. 30, January–August 2019).

In contrast, the Commercial Chamber of the Court of Cassation upheld the “textile” classification in a ruling dated November 6, 2024 (appeal No. 23-15.126, see our Newsletter No. 55, November–December 2024).

Extensive debates also took place during the sessions of the Nomenclature Committee in Brussels (Member States’ and General directorate TAXUD’s experts), and classification regulations were issued.

The design of this tariff heading and/or the complexity of the *Lohmann* case law have led to an impasse.

The application of heading 9021 requires the fulfillment of too many multifactorial criteria, the analysis of which is complex, fraught with subjectivity, and yields unpredictable results.

It should be noted that decisions by social security agencies regarding the medical use of any particular product are not binding on customs authorities.

Resin-impregnated decorative paper - Heading 3921 or 4811

On June 10, 2026 (T-304/25), the General Court of the European Union ruled on a case referred by the Bulgarian Supreme Administrative Court concerning resin-impregnated decorative paper. The resin in question was a type of melanin resin that was incorporated into the paper pulp, with a layer of plastic on both the top and bottom. The issue, therefore, was whether the product should be classified as plastic under Chapter 39 on plastics (heading 3921) or as paper under Chapter 48 (heading 4811).

In practice, these panels were intended for the manufacture of furniture, such as kitchen cabinets, and are mounted on particleboard. These are products that gradually take their final form.

According to the importer, the paper served to give the product its color and aesthetic appearance. The Court held that, in the absence of a better alternative, the product should be classified in accordance with General Rule of Interpretation 3(b) of the Combined Nomenclature, which applies to composite products and requires an examination of the constituent materials to determine which ones give the product its “essential character.”

The melamine resin gives the product in question its water resistance, as well as its heat and scratch resistance (para. 67). Thus, it is the resin that plays a predominant role in the manufacture of furniture. Furthermore, the court held that the product is not a paper laminated with a layer of plastic on each side.

According to the General Court "*That product is characterised by a more complex composition, given that it consists of a layer of paper impregnated with plastics and is covered with plastics on both sides. It therefore contains a layer of impregnated paper and two layers of plastics*." (paragraph 75).

Furthermore, the Court notes that the World Customs Organization had adopted a classification opinion in 1986 classifying this product under heading 3921 90 of the Harmonized System. The Tribunal therefore classified this product under heading 3921 of the tariff.

SMOKING TOBACCO - DEFINITION

In April 2026, the General Court of the European Union issued two judgments on the interpretation of Article 5(1)(a) of Council Directive 2011/64/EU of June 21, 2011 *on the structure and rates of excise duty applied to manufactured tobacco.*

This provision means by "smoking tobacco" "*tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing*."

Smoking tobacco – definition – relationship to the rules of the Combined Nomenclature

In the first decision of April 15, 2026 (T-190/25), a Lithuanian company was an importer and exporter of tobacco raw materials. "*It processed imported tobacco, in part, consisting, in essence, in stemming it, splitting it, irrigating it, partially or completely removing the stems from the shredded leaves and packaging it in plastic bags of 20 kilograms. The tobacco, however, was not cut. That tobacco, processed, in part, was then exported to other Member States of the European Union*." (paragraph 18).

Under the customs rules governing the classification of tobacco products within Chapter 24 of the Combined Nomenclature, an explanatory note provided for a "smoking test" to be carried out meticulously in order for the product to be classified as "smoking tobacco" for customs purposes.

A customs laboratory had analyzed these products and concluded that they were already manufactured tobacco, without having properly followed the test procedures.

The referring court was inclined to conclude that the laboratory had correctly identified the presence of "smoking tobacco" but noted that the laboratory had not properly conducted the "smoking test."

The referring court therefore sought to determine whether this explanatory note could apply to the dispute concerning excise taxes and preclude the imposition of excise taxes as a result of noncompliance with the test's rules.

The General Court held that, since the directive serves both the objective of maximizing excise tax revenue and that of protecting public health, it could not be interpreted narrowly. The concept of "smoking tobacco" must therefore be interpreted broadly. The CJEU had already issued a ruling in the *Eko Tabak* case on April 6, 2017 (C-638/15; see our Newsletter No. 23, March–May 2017), which defined what is meant by "industrial processing."

The General Court therefore held that may be subject to excise taxes "*manufactured tobacco which is ready, or can easily be made ready, by non-industrial means, to be smoked*" (paragraph 31). The General Court judged that the directive 2011/64 and the Combined Nomenclature "*constitute two different regulatory frameworks which may be open to differing interpretations.*" (paragraph 35)

The Court ruled that the explanatory note cannot preclude the application of the directive in the event of non-compliance with the requirements of the "smoke test."

The Lithuanian court had also referred questions to the CJEU regarding issues of legal certainty arising from the unpredictability of this situation of divergence between customs rules and excise rules for operators.

The General Court reiterated the CJEU's case law on assessing the predictability of rules. The solutions depend not only on the complexity of the text but also on the audience for which it is intended, which is expected to be knowledgeable and supported by expert advisors who can review the texts, assess the risks, and then act appropriately. This divergence was therefore upheld considering legal certainty principle.

Smoking tobacco – definition - Hookah tobacco – production

In the second case, a judgment dated April 29, 2026 (T-194/25) was issued regarding an import of tobacco leaves seized in Germany. These tobacco leaves were intended for use in the manufacture of water pipe tobacco. The question arose as to whether these were raw tobacco not subject to excise tax or, specifically, "smoking tobacco" within the meaning of the aforementioned definition in the directive.

A German public laboratory had concluded that the products consisted of "*scraps of tobacco, that is to say of pieces of raw tobacco leaves that were neither flavoured nor processed, obtained during the threshing of tobacco leaves and suitable for consumption, including through use in a pipe or as the filler for hand-rolled cigarettes. That tobacco, of which only a small part needed to be split using a garden shredder, could be smoked in a water pipe following thermal treatment with water, glycerine and sugar, before being mixed with pipe-tobacco flavouring. According to those conclusions, the processing steps could be carried out by the end consumer, with the help of instructions available online."* (paragraph 10).

In the context of the litigation, a court-appointed German expert had concluded that the moisture content of this tobacco was still too high for it to be smoked without "further industrial processing".

The Court nevertheless held that the concept of "further industrial processing" should be examined not in relation to consumer perceptions, but reviewing what was required in practice to render the tobacco "smokable" (or deemed to be so).

It had been noted that the processing could be carried out by the consumer. The Court found that "*first, the various steps of processing of the product described by the referring court, namely boiling with water, glycerine and sugar and mixing with flavouring, do not require any standardised process. Second, the fact that detailed instructions for consumers on carrying out those steps are freely available online confirms that that process is different from industrial processing …*" (paragraph 29).

ENERGY TAXATION – REDUCED RATES ON GAS – COMPANY'S ACTIVITIES NOT COVERED BY THE GREENHOUSE GAS EMISSION QUOTA DIRECTIVE

On May 6, 2026, the Court of Cassation issued two related rulings (appeals 25-10.367, published in the Bulletin, and 25-10.368) concerning the application of the reduced rates provided for in Article 265 (9) of the Customs Code with respect to the Domestic Consumption Tax on Natural Gas ("TICGN").

A company that manufactured corrugated cardboard had been assessed additional taxes for purchasing its natural gas at the reduced rate granted under Article 265 (9), paragraph 1, of the Customs Code. This rate applies to companies whose activities are listed in Annex I of Directive 2003/87/EC of the European Parliament and of the Council of October 13, 2003 (the directive establishing the greenhouse gas emissions trading system), specifically the "*production of paper or cardboard, with a production capacity exceeding 20 tons per day.*"

According to the company, its corrugated cardboard "*is a material made from several sheets of flat paper called linerboard and one, or even two or three, corrugated sheets forming flutes, all assembled with glue, such that the process involved is indeed a manufacturing process and not merely a transformation.*" (first branch of the argument). The Court of Appeal, on the contrary, had held that this constituted a simple transformation that did not fall under Annex I and therefore did not qualify for the reduced rate.

The company's cassation recourse was dismissed. The Court of Cassation upheld the lower court's ruling, noting in particular that it had determined the classification of the company's business activity according to the European Community's statistical classification of economic activities (NACE).

There was a separate division covering the manufacture of paper or paperboard (17.12) distinct from that covering the manufacture of paper or paperboard packaging (17.21). The French Classification of Economic Activities (NAF) also made this distinction (point 8). Nor did it fall under the NAF category of "*manufacture of paper or cardboard intended for further processing by industry.*"

It was ruled that the company's business did not involve the "production of paper and cardboard."

The Court therefore upheld the tax reassessment for the years 2017 and 2018 (25-10.368) and for the year 2019 (25-10.367).

The use of the NACE and NAF classifications to determine which facilities are eligible for reduced rates or exemptions is particularly significant in the context of electricity taxation ("TICFE").

Furthermore, the company argued on second ground of appeal that the tax authorities had issued a binding tax ruling they had sent to the company at its request. The company provided the tax authorities—as required by law—with the certificate it had remitted to its supplier so that the TICGN can be invoiced at the relevant reduced rate. The tax authorities had acknowledged receipt of the certificate by affixing a customs stamp to it. The company concluded that, having thus informed the tax authorities of its situation and business activities, it was entitled to a formal tax ruling and the associated protection against any tax reassessment.

The Court of Cassation ruled that Article 345 bis of the Customs Code—which was extremely brief and imperfect but had been in effect since 2005—offered "*the taxpayer a guarantee against changes in the administration's doctrine… provided that the administration had formally taken a position on the assessment of a factual situation in light of a tax provision*. " (paragraph 13).

The Court of Cassation logically dismissed the argument in paragraph 15: "*First, sending the customs administration a copy of the certificate provided for in Article 4 of the aforementioned decree—which was addressed to the gas supplier—does not constitute a request for an advance ruling addressed to the administration, but rather simply compliance with an obligation set forth in that provision. Second, the stamp and signature affixed by the customs authorities to this CERFA form—which serve no other purpose than to acknowledge receipt—do not constitute a formal position on a factual situation*."

SPECIAL PROCEDURES – THE IMPORTANCE OF COMPLIANCE WITH THE PLACEMENT OFFICE

On April 15, 2026 (Case T-589/24), the General Court of the EU issued a ruling that is particularly noteworthy in two respects regarding special regimes and opportunities for regularization.

The case involved an application for outward processing, specifically to temporarily export EU peanut oil to Switzerland, where it would be processed before being reimported into the European Union.

The company was German and had obtained an authorization for outward processing that designated two German customs offices as the offices of placement.

These offices were thus the only ones authorized to accept declarations for the placement of goods under temporary export under this procedure and to monitor the process upon return.

However, the company holding the authorization had purchased raw peanut oil in the Netherlands that had been released for free circulation. It had declared the goods at a Dutch customs office for direct export to Switzerland without mentioning its authorization. Similarly, upon the goods' return, the product was released for free circulation without any reference to a prior customs procedure.

However, with regard to the customs value, the petitioner had proceeded… as if it had entered into the processing operation and had declared as the value only the cost of the processing operations carried out in Switzerland, rather than the total value of the imported, processed peanut oil.

The German customs office had amended the processing authorization for future use to allow the services of the Dutch customs office to be used as a third processing office. Nevertheless, an assessment adjustment was issued on the grounds that the company was not eligible for the outward processing regime since it had not complied with the procedural requirements (use of a customs office other than those authorized and failure to use the regime's identification codes on the declarations).

The second issue concerned whether it was possible to regularize the situation by invoking Article 86(6) of the Union Customs Code, which permits the maintenance of tariff preferences in certain cases notwithstanding non-compliance with Community customs regulations. The General Court addressed this issue successively under the Community Customs Code (CCC, 1992) and then under the Union Customs Code (UCC, 2013).

With regard to the CCC, the General Court held that, even though Dutch customs had agreed to amend the export declarations to include the required outward processing codes, there was no justification for its having given prior consent to act as a processing office. The General Court even appeared to question whether, at the time of the events, the German company had intended to use its German processing authorization to carry out the operation from the Netherlands. In any case, no inspection could have been conducted, either upon departure or upon return.

Under the provisions of the CCC, and Article 78, which allowed for the "revision" of the customs declaration, the General Court notes that "*Such an amendment may, however, only be done in compliance with the rules governing the placing of goods under that procedure. Accordingly, the objectives of the procedure – in the present case those of the outward processing procedure – must not have been threatened (see, to that effect, judgment of 14 January 2010, Terex Equipment and Others, C-430/08 and C-431/08, EU:C:2010:15, paragraph 65).*" (paragraph 52). The General Court concluded that under the CCC, "*the objectives of the outward processing procedure, due to the impossibility to carry out that monitoring, were threatened*…" (paragraph 53).

Under the UCC regime, the conclusion remains the same: compliance with the principle of the customs office of entry is a decisive factor in the administration of the system. The General Court notes that the possibility of correcting a customs declaration after the goods have been released is provided for in Article 173(3) UCC. This mechanism constitutes an exception to the principle of the irrevocability of declarations, which must be interpreted strictly (paragraph 59).

Furthermore, the German authorization was not a so-called "single" authorization applicable ipso facto in all Member States. Prior approval from the competent authorities—in this case, the Dutch authorities—was required to apply this authorization in that other Member State. Thus, the German outward processing authorization could not be invoked and used automatically in the Netherlands.

These findings guided the response under Article 86(6) UCC, which "*allows, under certain conditions, for a failure that arose in the context of the import or export of goods to be remedied*" (paragraph 67).

However, the General Court observes that Article 86(6) can, in essence, apply only to legal situations in which no declaration was made and in which Article 79 of the Customs Code determines the circumstances under which a customs debt arises and the parties liable for it.

However, in this case, the goods had been imported in full compliance with the law. The debt therefore arose under Article 77(1)(a) of the Customs Code, "*a situation which is not covered by Article 86(6) of that code*" (paragraph 67). As the General Court notes, Article 86(6) "*intends thus to remedy the failure to comply with any conditions stipulated, for example, for the placing of goods under a special customs procedure. In that case, the other conditions for the placing under such a procedure must already be satisfied, such as the lodging of the declaration at the customs office designated in the outward processing authorisation*." (paragraph 68).

Under these circumstances, Article 86(6) UCC, could not provide relief to the German company.

COMMERCIAL DEFENSE - THE ISSUE OF "VALID" INVOICES

On May 21, 2026, the CJEU ruled on the issue of the so-called "valid and proper" commercial invoice (C-889/24 *"Delve 2" SIA*), which can be a thorny issue.

Measures to protect trade result from a lengthy investigation, which is explained in detail in the introductory recitals of the regulations imposing provisional or definitive duties.

These measures are characterized by differentiated tariff treatments based on the dumping engaged in by certain operators from a given country, with duty rates that vary—from higher to lower or even zero—depending on the company. The same applies in cases of subsidies, which are countered by countervailing duties.

Different duty rates apply to different parties, with specific CACO codes and TARIC classifications that allow for a detailed analysis of each importer's obligations based on the status of "their" exporter when subject measures to protect trade.

To ensure oversight of the various producers, the regulations require specific statements to be included on invoices. Consequently, invoices must bear the exact statements specified in each regulation, which must be followed to the letter for the invoices to be considered "valid" / "in due form."

These invoices often raise difficulties because some producers forget to include the invoice declaration or phrase it in imprecise or incorrect terms that are not accepted by the authorities, who are extremely strict about formalities.

Under the CCC, the CJEU permitted the **retroactive** submission of an invoice compliant with the requirements of trade defense measures in October 12, 2017, ruling *Tigers* (C-159/16).

The significance of the judgment under discussion lies in its updating of the *Tigers* case law, this time under the provisions of the UCC. The *Tigers* case law is fully upheld and applies whenever the regulation imposing trade defense measures *provisions in force concerning customs duties are to apply.*" (paragraph 25).

The UCC governs the procedures for filing customs declarations. However, the UCC does not specify the date by which the commercial invoice must be submitted.

Furthermore, Article 173(3) UCC allows for a procedure to request a retroactive correction of any customs declaration within a three-year period.

The "*Delve 2" SIA* case in question involved a Latvian company that had declared goods (iron or steel washers) by submitting invoices that lacked the required statement. The importer had voluntarily corrected the invoices by submitting new invoices bearing the statement "in due form."

According to the CJEU, this corrective procedure stems from Articles 46 and 48 UCC regarding the administrative authorities' powers of inspection. Here again, these provisions do not prohibit the submission, after the customs declaration has been filed, of a corrected invoice that complies with the requirements of the regulation establishing the measure to protect trade. Declarations may, in fact, be verified.

The CJEU was also asked by a Latvian court whether the matter was considered settled by the submission of this corrected invoice or whether the customs authorities had the option to conduct in-depth inspections. The CJEU held that "*Article 15(2) of the Union Customs Code requires declarants to provide, in their declaration, accurate and complete information*." (paragraph 38).

It adds that according to Articles 46 and 48 "*the customs authorities may verify, inter alia, the accuracy and completeness of the information given in a declaration or notification, as well as the existence, authenticity, accuracy and validity of documents*." (paragraph 38)

The CJUE deduct thereof that " *the presentation of a valid commercial invoice, which complies with the requirements set out in Article 1(3) of Implementing Regulation 2022/191, cannot prevent the customs authorities from exercising their powers of control and verification. In those circumstances, it must be held that the production of such an invoice does not ipso facto lead to the application of an individual anti-dumping duty rate*." (paragraph 39).

This requirement is in line with the objective of fighting against fraud. As note the CJUE "…*the presentation of a valid commercial invoice, which complies with the requirements set out in Article 1(3) of Implementing Regulation 2022/191, is a necessary condition for determining the individual anti-dumping duty rate but does not automatically guarantee the application of that rate. Even if they are presented with such an invoice, the customs authorities must, in accordance with the customs rules, be in a position to verify the accuracy of the information given in that invoice*." (paragraph 43).

This decision allows operators to rectify the situation in the event of an irregularity by submitting a new invoice, whilst also guaranteeing them the freedom to provide evidence to demonstrate to the authorities that the invoice, now 'in due form', does not raise any substantive issues.

This case law eases the rigidity that « Trade » cases can sometimes exhibit due to the often-excessive formalism of customs authorities.

REGISTRATION OF THE TREASURY'S LIEN BY CUSTOMS – ADDITIONAL SECURITY (NO) – INCLUSION OF INTEREST ON THE CUSTOMS DEBT (YES)

An importing company had been subject to a substantial anti-dumping reassessment. It had paid part of the duties and applied for a deferral of payment for the balance. It had provided a guarantee to benefit from this deferral. However, the authorities had registered the Treasury's lien, as now provided for under Article 1920 of the General Tax Code and Article 379(1) of the former Customs Code (now Articles L.323-10 et seq.).

The company considered that the registration of the lien constituted a second guarantee, which was prohibited by Article 89 § 4 UCC. In a judgment of 28 May 2026 (25-10.042, published in the Bulletin), the Commercial Chamber dismissed the appeal: "*where a deferral of payment has been granted to the debtor, when the customs authorities register the Treasury's lien – which, as provided for by law, confers on them only a right of preference – they do not require the provision of security within the meaning of Article 89 of the Union Customs Code*" (paragraph 13).

The taxpayer also argued that interest on customs debt did not fall within the scope of Article 379(1) nor Article 1920 of the General Tax Code.

However, the Court of Cassation ruled that "*it follows from the combined provisions of the latter text and Article 379(1) of the aforementioned Customs Code, interpreted in the light of EU law,* [article 113 UCC] *that the Treasury's lien extends to levies of all kinds and similar charges recovered by public accountants, including import duties and anti-dumping duties – the latter only where the regulation establishing them so provides, under the Union Customs Code – as well as their ancillary charges, which include interest on arrears.*"

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