Armella & Associati

Italian Customs & Tax Experts

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Customs & Trade

Impact of new US Tariffs on European and Italian Export in 2025

A new trade war between the EU and the US is expected in 2025: the newly elected President Trump has already announced that he wants to introduce new tariffs, between 10 and 20 per cent, on European products. In the first half of 2024, the value of Italian exports to the US reached EUR 38.82 billion, while imports reached EUR 15.46 billion.

The Swedish National Board of Trade estimated lower exports to the US for Italy by 16% and a general reduction of European exports by 17%, mainly impacting the mechanical, pharmaceutical and chemical sectors. According to the Swedish study, the new tariffs will reduce US-EU trade, while China will reduce exports to the US by 66% and increase exports to Europe by 7%.

Looking at the estimates conducted by Prometeia, if the 10% increase in tariffs will only affect products already subject to duties, for Italy the additional cost of the new US protectionism will exceed USD 4 billion. If Trump opted, instead, for a generalised tariff increase for all exported goods, the costs for Italian companies would exceed 9 billion, 7 more than in 2023.

EU - Mercosur Trade Deal

On 6 December 2024, an agreement was signed between the European Union and Mercosur, the South American common market of which Argentina, Bolivia, Brazil, Paraguay and Uruguay are members.

This is a historic agreement, which will enable the current tariff barriers to trade between the EU and South America to be broken down and duties to be reduced on more than 90% of imports.

The industrial sector will be the most liberalised. Both the EU and Mercosur countries will eliminate all duties on goods such as cars, auto parts, chemicals and pharmaceuticals.

This will be accompanied by a 10-year transition period, during which these products will be subject to a duty equal to half of the current non-preferential tariff. The entry into force of the agreement will still take time.

Political differences in both the EU and Mercosur member states have imposed numerous obstacles to its implementation and, over the years, have led to significant modifications of the initial clauses.

European Case law / Enforcement

Customs origin: Harley Davidson case

The relocation of production activity from the USA to a third country does not exempt products from the application of additional customs duties provided in Europe for US-made goods, is the conclusion reached by the Court of Justice in the Harley Davidson case.

With the judgment of 21 November, Case C-297/23, the European judges open the way for the application of tax avoidance also to the customs sector by establishing that, if the purpose of the relocation is to avoid the application of the duties provided for goods made in the USA, it is of no use to have used a factory in Thailand as a production site.

The ruling overturns the conclusions of the Advocate General at the Court, according to which the choice to avoid the application of customs duties should be neither illegitimate, since it is part of the taxable person's right to choose the form of conduct of business which allows him to limit his tax contribution.

In the opinion of Advocate General Kokott, the rules of origin cannot be read as opposing any attempt to save on customs duties. If there is no manipulation of origin, the "duty saving" practice should not constitute circumvention of the customs rules.

On the other hand, the Court of Justice confirmed the European Commission's position, on the assumption that Article 33 *Reg. 2446/2015* provides that the processing of the product is not economically justified (and, therefore, does not allow the recognition of customs origin) if the purpose is to avoid the application of a Union measure. In other words, it is not legitimate to reorganise one's production chain in order to avoid the application of a higher duty.

EU Court upholds anti-subsidy duties on relocated imports from Egypt

The Court of Justice, in its judgment of 28 November 2024, Joined Cases C-269/23 and C-272/23, affirmed the legitimacy of the EU Commission's extension of anti-subsidy countervailing duties to products imported by two foreign companies, since it is a measure designed to protect the EU's financial interests against strategic relocation phenomena.

In the case brought before the Court of Justice, the applicants contested that the EU Commission could legitimately use anti-subsidy measures to compensate the financial support received by the two companies from the Chinese government for the manufacture of their goods in Egypt.

The Court noted, however, that the decision of the two companies to relocate their production chain cannot be understood as a mere strategy to save customs duties, being instead a move to circumvent the application of anti-subsidy measures.

In the present case, therefore, the extension of countervailing duties, by the EU Commission, to the products of the Egyptian companies is legitimate, since the relocation had the sole purpose of avoiding a higher duty.

Classification of vehicles for persons with disabilities

The Court of Justice of the European Union, in its judgments of 28 November 2024, C-129/23 and C-567/23, ruled that vehicles not exclusively designed for use by persons with disabilities cannot be classified under heading 8713 of the Combined Nomenclature, which is reserved for vehicles intended solely for the disabled.

At the heart of the issue is the balance between the technical criteria required by the customs legislation and the inclusion purposes set out in the UN Convention on the Rights of Persons with Disabilities, approved by the European Union in *Decision 2010/48/EC*.

The Court pointed out that the technical specifications of the products are incompatible with the provisions of the CN Explanatory Notes for heading 8713, which only applies to vehicles specifically designed to alleviate significant disabilities and intended only for persons with severely limited mobility.

The Court, in fact, clarified that the stated intended use or the possibility of use by persons with disabilities cannot override the objective technical criteria required by the CN.

No exceptional circumstances required for temporary importation extensions under 24 months

Exceptional circumstances are not necessary to obtain an extension of the period during which goods may remain under the temporary importation procedure, if the duration of the authorised period, with the extension, does not exceed twenty-four months. This is the principle affirmed by the Court of Justice in its judgment of 12 December 2024, C-781/23.

Temporary importation is a special customs procedure that allows the special use, within the customs territory of the Union, of non-Union goods to be re-exported without having undergone any modification, with total or partial exemption from import duties and from the application of commercial policy measures.

The period of time during which the goods may remain under the temporary admission procedure must be sufficiently long so that the objective of authorised use can be achieved (Art. 251 UCC).

This period, which may be a maximum of twenty-four months (unless otherwise stipulated), may be extended for a reasonable period of time when, due to exceptional circumstances, the authorised use cannot be completed.

The EU Court of Justice has clarified that where, as in the present case, goods under the temporary importation procedure remain in the EU customs territory for a period longer than the authorised period but still less than twenty-four months, there is no need to prove the existence of exceptional circumstances to justify non-re-exportation.

Penalty payments for Customs debt under Article 114 UCC

The Court of Justice of the European Union has ruled that Article 114 of the Union Customs Code does not preclude a national administrative practice that allows the imposition of a 'penalty payment' in addition to the interest for late payment provided for in Article 114 UCC, for non-payment of a customs debt within the prescribed time limit (Judgment of 5 December 2024 C-506/23).

In the case examined, in the two-year period 2016-2017, a company operating in international trade had imported into Romania some bicycles and components, declared to be of Thai origin.

The regularity of the transaction was called into question by a customs check carried out in 2018, which led to the finding that the goods were, in fact, from China.

On the basis of this finding, the customs authorities applied the definitive anti-dumping duty provided for in Reg 2013/502, plus default interest pursuant to Article 114 Cdu and, in addition, additional penalties, as provided for by the national legislation in force in Romania.

According to the EU Court of Justice, the penalties may take the form, inter alia, of pecuniary charges imposed by the customs authorities, as in the case of the periodic penalty payments provided for by the Romanian national law.

Article 114 UCC, therefore, does not preclude the application of periodic penalty payments provided for by domestic legislation, provided that they respect the fundamental principles of EU law.

Liability of the seller for excise duties in distance sales

According to the EU Court of Justice (Judgment 19 December 2024, C-596/23), a person who makes 'distance' sales and influences the purchaser's choice of transporter of the goods is liable to pay excise duties in the EU Member State of destination.

The case before the European courts concerned an online sale of alcoholic products from Germany to a citizen established in Finland. The transport was not carried out directly by the German company, but by a third party.

The transporter, in fact, was chosen directly by the buyer from among a number of subjects suggested on the seller's website at the time of purchase.

For this reason, the Finnish authorities, who had inspected the contested products, had held the German seller liable for payment of excise duty. According to the Customs, the company had induced the buyer to choose between a limited number of transporters and, therefore, was 'indirectly' the dominant party in the shipment of the goods (Art. 36(1) and (3) EU Directive 2008/118).

Nevertheless, the EU Courts considered this circumstance irrelevant for the purpose of the qualification of the transaction.

The EU legislator has attached greater importance to the objective nature of the acts of negotiation, which must reflect the economic reality of the transaction regardless of any formalism.

The Court has, therefore, held that a vendor who has already brought excise goods into a Member State guides or influences a buyer's choice as to which transport company to rely on for transport, and is, therefore, liable to pay excise duty in the Member State of destination.

EU Sanctions & Export control

New package of Russian sanctions

The fifteenth package of economic sanctions against the Russian Federation was approved, aimed at weakening its war and industrial strategy and countering the supply of arms and technology used in the conflict with Ukraine.

Key elements of the new restrictions are the sanctions imposed on the ships of the so-called 'shadow fleet', i.e. the vessels that facilitate oil and arms trade between Russia and foreign countries. In particular, the 15th package will include bans specifically affecting 52 new ships, bringing the total to 79 vessels affected by the sanctions.

The new measures also update the black list of natural and legal persons considered dangerous to Ukraine's territorial integrity and with whom it will therefore be forbidden to do business.

A further significant change is the prohibition on recognising or enforcing in the EU judgments issued by Russian federal courts, which give their national court exclusive jurisdiction to decide on disputes between Russian and EU companies, even in the absence of an agreement between the parties involved.

Italian Customs News

New italian customs law

In Italy has come into force the *Legislative Decree 141/2024*, which provides the reform of national customs law. The reform completely rewrites the applicable rules: from over 400 articles of law spread over various regulatory sources, some of them from 1896 and others from various financial sources, to 122 articles, divided by thematic area. One important issue is the coordination with European legislation, which is no more left to companies, as it is now up to the legislator to clarify when EU rules apply and when national rules apply. This means that it is no longer necessary to coordinate the reading of European and national sources in order to identify the rule applicable to the concrete case: a saving of time and resources, which eliminates most of the errors that cause common illegalities and sanctions.

There are four main directions of the reform: regulatory clarification and coordination between national and European law, more efficient and coordinated controls, reinforcement of operators defences, greater certainty and proportionality of the sanctioning system.

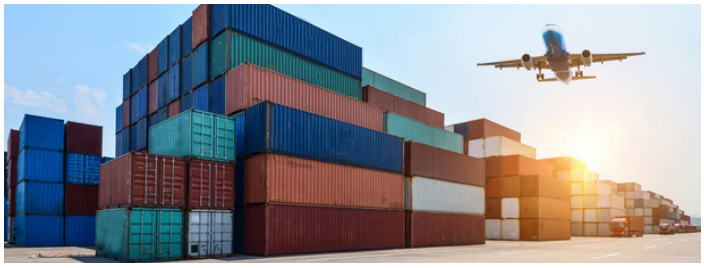
Another important issue, also in a perspective of competitiveness, is the streamlining of customs controls. To carry out an import or export operation, operators must submit, in addition to the customs declaration, up to 68 applications to 18 different administrations, in order to obtain authorisations, permits or licences. The reform provides, as a general rule, for the application of the "single window" concept, a unique interface for operators, who need to submit all information only once to the public administrations involved in the operation.

Clarifications on Customs penalties and Defence Rights in the new Reform

Radical changes in customs penalties, streamlining of controls, and strengthening of the pre-investigative cross-examination. These are the novelties of the Circular of the Customs Agency, published on 4 October, the very day of the entry into force of *Legislative Decree 141/2024*.

A central role is given to the protection of the right to cross-examination: the circular confirms the application of the new *Article 6-bis of the Taxpayer's Statute* also to customs matters.

The rule entails the obligation, also for ADM, to adopt in advance an outline of the assessment notice, assigning the operator a period of 30 days to submit his observations; another important novelty concerns the operator's right to formulate requests to the offices, for instance for access to the documents.



Regularisation options to avoid criminal charges for smuggling

With *Circular No. 25/D* of 10 December 2024, the Customs Agency intervenes on the subject of customs violations, providing for various possibilities of regularisation, which make it possible to exclude a criminal charge for smuggling.

The new sanctions framework introduced by the customs reform (Legislative Decree No. 141/2024), in fact, had raised some questions as to the possibility of incurring a criminal sanction even in the event that the operator wished to spontaneously correct any errors made in the customs declaration.

With Circular No. 25/D, the Customs Agency clarified that it is possible to proceed with the a posteriori regularisation of the declaration or with the revision at the request of a party, without incurring any criminal consequences, thus limiting the applicative scope of the new contraband and minimising the penalty consequences for operators.

In particular, with ex-post regularisation, it is possible to submit a late declaration, rectifying any irregularity and avoiding a charge for 'smuggling for failure to declare'.

With the revision at the request of a party, on the other hand, it is possible to avoid a challenge for 'smuggling for misdeclaration".

New regulations for Customs Free Zones

Circular No. 26/D of 10 December 2024 redesigns the regulation of customs free zones in the light of the new National Provisions complementary to the Union Customs Code, which require the Customs and Monopolies Agency to establish a prior perimeter of these areas.

The Circular regulates the procedure for the establishment and activation of customs free zones, introducing a two-step approach.

The first phase concerns the perimeter, during which the competent authority (a region or a port authority) submits to the Customs Agency a proposal containing a detailed description of the area, documentation on the legal availability of the territory, a plan with the access and exit points, and an indication of the operator.

The second phase, on the other hand, concerns the activation of the ZFD, which takes place only after the required infrastructures have been put in place and their compliance has been verified.

A novelty concerns the requirements for private operators of the free zones established within the SEZ: the circular introduces the obligation to be certified as an Authorised Economic Operator (AEO) or to meet equivalent criteria laid down in the Union Customs Code (UCC).

Elucidations on simplified procedure for duty-free reimportations

The *Customs Agency Circular No. 27/D* of 18 December 2024 clarifies that the duty-free re-importation provided for by the customs reform (Art. 72, Annex 1 to Legislative Decree 141/2024) does not limit the duty-free re-importation institute governed by the EU Code, but is in addition to it, with a simplified procedure designed to facilitate subsequent re-importation.

Article 72 DNC allows the temporary export and re-importation of goods to be carried out in a

simplified manner by requiring prior authorisation from ADM.

The purpose of this authorisation procedure is to simplify the identification of goods to be re-imported without payment of customs duty, by providing for the submission of a special application to the exporting customs, prior to exit.

At the time of re-importation, the goods may be presented to different Customs, using the INF 3. the goods may remain temporarily exported for the time necessary to achieve the purpose for which they were exported and in any case for a maximum period of thirty-six months, which may be extended upon the motivated request of the interested party.

The circular also clarifies that it is already possible, when submitting the application, to indicate any special circumstances that justify exceeding the three-year limit for reintroduction. An extension can also be requested after the authorisation has been granted, if new exceptional circumstances arise.

Strengthened Controls and Transparency in the Gold market and Currency declarations

Published in OJ No. 1 of 2 January 2025, *Legislative Decree 211/2024* adapting national legislation to *EU Reg. 2018/1672* on controls on cash entering or leaving the EU territory.

The decree redesigns the rules of the gold market, introducing new reporting obligations that also apply to transactions without physical delivery of the metal, and significantly strengthens the penalty system. Among the main innovations is the establishment of a register of professional gold dealers, entrusted to the Organismo degli agenti e mediatori (OAM).

The latter will have the task of managing the register, verifying the eligibility requirements of members, and monitoring gold trading activities, ensuring greater transparency and control in a strategic and delicate sector.

Significant interventions also concern Legislative Decree 195/2008, which regulates currency declarations for cash entering and leaving EU territory, to align with European standards.

Confiscation limits and exemptions in new circular

Redefined the limits of customs confiscation, with a clear distinction between the measure applicable in the case of smuggling and that provided for in the case of administrative offence; enhancement of the hypotheses of exclusion and more clarifications on the judicial authority competent to receive the notice of offence from the Customs Agency. These are the novelties provided for in *ADM Circular No. 28/D* of 19 December 2024.

The new Complementary National Provisions to the Union Customs Code provide that, in addition to the administrative penalty, the Customs Agency may proceed to the seizure and confiscation of goods.

Circular No. 28/D clarifies that in this case the affected products can only be those that are the object of the offence. The administrative confiscation must be preceded by a seizure order and, in addition, the operator must be allowed the right to be heard, which is also provided for in the Cdu.

Very important is the provision of some significant exemptions, which allow the exclusion of the application of administrative confiscation in a wide range of cases. These exemptions apply both in cases in which the judicial authority, faced with a report of an offence for misrepresentation, does not recognise wilful misconduct and refers the culpableoffence to the assessment of the administrative authority, and in the presence of certain specific conditions in the face of misrepresentation (as per Art. 79).

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