

**VAN BAEEL & BELLIS**

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**MANAGING THE RISKS IN UTILIZING FTAs**

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**“It should be borne in mind that a prudent trader aware of the rules must, in calculating the benefits from trade in goods likely to enjoy tariff preferences, assess the risks inherent in the market which he is considering and accept them as normal trade risks”**

## **Managing the risks**

- **BEFORE THE RISK MATERIALISES**

- Take precautionary measures

- **AFTER THE RISK HAS MATERIALISED**

- Review your defence strategy

## **Managing the risks**

- **BEFORE THE RISK MATERIALISES**

## **Managing the risks**

- **The EU importer is liable for the customs debt – three years**
  - EU authorities can send requests for *a posteriori* verification of the certificates of origin to exporting countries
  - Certificates of origin can be rejected if no response is received or the response does not prove that the origin is correct
  - On-the-spot verifications in the exporting country
    - Certificates of origin can be rejected
  - **Audit your suppliers**
    - Inform them about the applicable origin rules and its application
  - **Check your contracts**
    - Who is responsible in case of incorrect origin
    - Obligations on the supplier concerning origin issues
  - **Keep records of all actions taken !!**

## **Managing the risks**

- **The exporter must ensure that the goods concerned acquire originating status**
  - The authorities of the exporting country can receive requests from the EU importing country to verify the origin
  - The exporter must keep records to prove the origin of the goods
  - The exporter must have a full understanding of the applicable origin rules
  - The exporter should be made aware of the importance of complying with the origin rules

## **Managing the risks**

- **AFTER THE RISK HAS MATERIALISED**

## **Managing the risks**

- **Error on the part of the customs authorities**
  
  - The error could not **reasonably have been detected** by the person liable for payment
  
  - **Acting in good faith** and having **complied with all the provisions laid down by the legislation** in force as regards the customs declaration
- **Duties are not to be collected if the above conditions are met**



## Managing the risks

- Issuance of incorrect certificates of origin by a third country constitutes an error of the customs authorities
- Except when the exporter submitted an *incorrect account of the facts*
  - Burden of proof on investigating authorities
- Unless it is evident that the issuing authorities were aware or should have been aware that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment
  - Burden of proof on the importer
- Also applicable in the case of “approved exporters”!

## **Managing the risks**

- **Serious failings on the part of the competent customs authorities or the Commission when applying the rules in force and monitoring their implementation, where such errors are such as to contribute to irregularities**
  - “On the contrary, it is for the Commission to make full use of the rights and powers which it has under the provisions of the Association Agreement and the decisions adopted in respect of its implementation so as to fulfil its obligation of supervising and monitoring the proper implementation of the Association Agreement”
  - “However, clearly the Commission did not make full use of the rights and powers conferred upon it by the Association Agreement and its implementing provisions”

**VAN BAEL & BELLIS**

**Thank you**

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