

## INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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### THE EUROPEAN CUSTOMS UNION STUDY GROUP: DRAFTING THE EU CUSTOMS LAW

The article provides the analyses of the early stages of creation the body of contemporary EU Customs Law that has been realized within frameworks of the European Customs Union Study Group (ECUSG) in 1947 – 1950. The research reveals main considerations and ideas arisen from the discussion of the possibilities to create an inter-European customs union as a part of actions within the Marshall Plan. The focus is made at the customs technical issues the European States faced investigating the creation a customs union reflected in the ECUSG reports and the proposed ways and means to solve them. In particular, the article describes the approaches elaborated towards such issues as common customs nomenclature, types of customs duties, unified base of taxation, elimination of tariff and non-tariff barriers. Besides, the negotiation process within ECUSG and its transformation into Customs Cooperation Council are also reflected.

**Keywords:** EU Customs Law, Customs Union, ECUSG, OEEC, GATT, Customs Cooperation Council, Brussels Nomenclature, customs tariff, customs duties.

The EU customs legislation is considered to be the core part of the *acquis communautaire* and one of the most effective drivers of the harmonisation and Europeanization of administrative laws of the Member states<sup>1</sup>. Moreover, the common customs law proved to be the very first body of law that was drafted at the pass towards the European integration almost ten years before the signing Treaty of Rome. As a matter of fact, the key principles and institutions of that body of law had been drafted during pretty short period of time in the late 40<sup>th</sup> years of the 20<sup>th</sup> century with respect to the wider discussion of the ways and means of the economic integration of the post-war Europe. However, the general shapes of a future EU customs law have roots in the earlier efforts of the League of Nations to deliver common standards for customs procedures in 1920<sup>th</sup>-1930<sup>th</sup>. That efforts reflected in two major documents, namely, the International Convention Relating to The Simplification of Customs Formalities signed in 1923<sup>2</sup> and Geneva Nomenclature proposed by the League of Nations Sub-Committee of Experts for the Unification of Customs Tariff Nomenclature in 1931 and revised in 1937<sup>3</sup>. Besides, the drafting legal frameworks for the European customs union from the very beginning were bind by the rules of GATT-47 newly signed for that time.

The essential history of the first practical steps towards drafting specific legal instruments to harmonize national customs legislations in Europe with the view of creation of the customs union can be traced back to the 1947. That process was started within the frameworks of the Marshall plan; basically as a result of activities of the Committee for European Economic Co-operation (CEEC) that was emerged from the Marshall plan.

The first meeting of the Conference on European Economic Co-operation was held on 12 July 1947 in Paris as a response to the US State Secretary G. Marshall offer of American aid for the reconstruction of Europe after the World War II. The Conference was composed of 48 diplomats representing 16 Western European states. The next day, 13 July 1947, it was suggested the draft project that provided creation

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<sup>1</sup> Limbach, K. (2015). *Uniformity of Customs Administration in the European Union*. Oxford and Portland, Oregon. Hart Publishing, 12.

<sup>2</sup> *International Convention Relating to The Simplification of Customs Formalities*. Geneva, November 3, 1923. *League of Nations. Treaty Series. Vol. 30. 1924 – 1925*, 371.

<sup>3</sup> Nakagawa, J. (2011). *International Harmonization of Economic Regulation*. Oxford University Press, 22.

of the specialized temporary organization – Co-operation Committee which main function should be «preparing a report concerning European availabilities and requirements having in view a period of 4 years. This report shall be submitted to the United States Government before 1st September 1947»<sup>1</sup>.

The decision establishing the CEEC was adopted by the Conference on 16 July 1947<sup>2</sup>. The CEEC was to create a number of technical committees on food and agriculture, energy, coal and steel, transport. But the issues of development inter-European trade at the very beginning were excluded from the CEEC competence.

The CEEC meetings in 1947 were held at the same time with the tariff negotiation and negotiations on the ITO Charter within the frameworks of the second session of the Preparation Committee for UN Conference on Trade and Development in Geneva. Those Geneva negotiations made a reasonable influence upon CEEC agenda because of its focus upon reduction of tariff barriers and simultaneous elimination of individual trade preferences. Besides the reduction of trade barriers between the European states was the one of the key conditions to obtain the aid in accordance with the Marshall plan.

Grounding their position upon the results of the ITO/GATT negotiations, the representatives of the British delegation at the CEEC working meeting on 15 August 1947 made a statement about necessity to reduce the tariffs for trade between the western European states. But so far the rules of the draft ITO Charter prohibited creation of new preferential zones, it was proposed to create one or a few inter-European customs unions as a tool for such reduction. It was supposed that the whole process would take from five to eight years and whiting the preliminary discussion it was drafted a few basic positions towards the customs union issue:

(a) the precedent of BENELUX is probably special in three important respects: firstly, because the decision was taken at a favourable psychological moment; secondly, because the way had been prepared for the idea over a number of years; thirdly, because the problems of adjustment in the case of BENELUX were probably less acute than they would be in the case of a wider customs union embracing a number of larger countries;

(b) the continued free movement of goods between the members of the customs union depends on the establishment and maintenance of a sound internal and external financial position in the participating countries;

(c) this leads to the question whether a customs union in the modern world can be envisaged except as leading to a currency or even a full economic union;

(d) there are liable to be formidable technical difficulties in negotiating a common tariff, and it is one of the necessary conditions of the draft charter that this should not, by and large, exceed the average level of the tariffs of the participating countries<sup>3</sup>.

On 23 August 1947 due to the need of studying the above mentioned issues, the establishment of a separate European Customs Union Study Group (ECUSG) was proposed for consideration by the plenipotentiary of the CEEC. But such a proposal faced objections from a number of CEEC member states. In particular, Norway and Sweden insisted that the issue of a customs union was beyond the competence of the CEEC and suggested that they should be considered by the UN Economic Commission for Europe as a less politically divided institution<sup>4</sup>. Also, a separate opinion on this issue existed among the Benelux countries.

On September 12 1947 French Foreign Ministry announced that the study of the customs union would be made by Austria, Belgium, the United Kingdom, Denmark, Ireland, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Portugal, Turkey, Romania, and 10 other 10 Eastern European countries would be probably invited including the USSR.

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<sup>1</sup> Draft plan for the establishment of a Cooperation Committee (Paris, 13 July 1947). *OCDE. Historical Archives of the European Union-Florence*. <[http://www.cvce.eu/content/publication/2003/1/14/62e5536c-db04-4842-87c7-483f7b0e3987/publishable\\_en.pdf](http://www.cvce.eu/content/publication/2003/1/14/62e5536c-db04-4842-87c7-483f7b0e3987/publishable_en.pdf)>

<sup>2</sup> Encyclopedia of Public International Law (1983). *Vol. 6: Regional Cooperation, Organizations, and Problems focuses on regional organizations, cooperation, and problems, including boundary disputes, membership, and functions of organizations*. Amsterdam: Elsevier Science Publishers, 364.

<sup>3</sup> *Statement by the British delegation during a working session of the Committee for European Economic Cooperation (CEEC)* (Paris, 15 August 1947). <[https://www.cvce.eu/content/publication/2003/1/15/be7edee7-c99f-446e-9f07-a7bf85d4e83a/publishable\\_en.pdf](https://www.cvce.eu/content/publication/2003/1/15/be7edee7-c99f-446e-9f07-a7bf85d4e83a/publishable_en.pdf)>

<sup>4</sup> Milward, A. (1984). *The Reconstruction of Western Europe, 1945-51*. Berkeley: University of California Press, 241.

The interesting fact that the same day Moscow warned the Scandinavian nations against creation regional customs unions and voiced suspicion that Northern Europe were included in Western block sponsored «by reactionary Anglo-American Sources»<sup>1</sup>.

According to WCO official history the September 12th is considered as the starting point for the creation of the ECUSG, although, in fact, the relevant proposals have been expressed before, and the decision to create such a group, as well as the actual start of its work, occurred later.

The issue of tariffs and cooperation in the customs sphere had gradually occupied one of the central places in the activities of CEEC. The final position on this issue was drawn up in the General Report of the Committee of European Economic Cooperation (Volume I), submitted on September 22, 1947, which was signed by all 16 member States, and contained a number of provisions on customs matters<sup>2</sup>. That Report included a series of provisions dealing with the issues of rules and principles for the draft of a customs union and its legal framework.

First of all there were the conclusions supporting the ideas of liberalization of foreign trade. It was stated that to make Marshall Plan to have a full contribution to the restoration of the European economy "...it must be accompanied by a freer movement of goods and services within Europe itself". To that end the participating countries were resolved:

- to abolish as soon as possible the abnormal restrictions which at present hamper their mutual trade;
- to aim, as between themselves and the rest of the world, at a sound and balanced multilateral trading system based on the principles which have guided the framers of the Draft Charter for an International Trade Organization (p. 82 of CEEC Report).

The other important point was the considerations of "Customs Unions as a means of achieving the speedier reduction and eventual elimination of tariffs between a group of countries" (p. 90). There were recalled the example of advantages which United States had enjoyed through the existence of a large domestic market as well as the decision of Belgium, Luxembourg and the Netherlands to form a Customs Union.

Finally it was the declaration of France representative assuming that "no Customs Union can be brought into full and effective operation by a stroke of the pen. A Customs Union, particularly between several large and highly industrialized countries, involves complex technical negotiations and adjustments, which can only be achieved by progressive stages over a period of years. Special problems also arise for countries with a high proportion of their trade outside any proposed Customs Union, or as between countries at widely differing stages of economic development" (p. 92). For the last purpose it was agreed to set up the Study Group that should examine the "possibilities of establishing a common tariff" (p. 97).

The first ECUSG meeting took place on November 10-14, 1947 in Brussels at the invitation of the governments of Benelux countries. The representatives of Austria, Belgium, Denmark, France, Greece, Ireland, Iceland, Italy, Luxembourg, the Netherlands, Portugal, Great Britain, Switzerland and Turkey took part in it. In addition representatives of Norway, Sweden, as well as representatives of Canada, Australia, New Zealand, South Africa and India were present as observers. Within the framework of this meeting the issues of the current state of customs regulation in the participating countries as well as the technical aspects of the creation of a customs union were discussed<sup>3</sup>. In total, six ECUG meetings were held during four years, the last one took place from June 24 to 28, 1950.

At the first ECUSG meeting there were elected Chairman, Vice-Chairman, Secretary-General and the General Secretariat was created. The first ECUSG Chairman was the Dutch diplomat, the head of the delegation of the Benelux Union *Dirk Pieter SPIERENBURG*, the Vice-Chairman – the head of Luxembourg delegation *Albert Calmes*, the Secretary General – the plenipotentiary minister of Belgium – *Christian Bastin*.

<sup>1</sup> Kalijarvi, Th.V. (1947). *Introduction and Chronology of The Marshall Plan From June 5 to November 5 1947*. US Library of Congress. Legislative Reference Service, 23.

<<http://marshallfoundation.org/library/documents/introduction-chronology-marshall-plan-june-5-november-5-1947>>

<sup>2</sup> *Traver's notes*. Organization for European Economic Cooperation. Fonds code OEEC-274. Date 1947. 39 – 40. <[archives.eui.eu/files/documents/14769.pdf](http://archives.eui.eu/files/documents/14769.pdf)>

<sup>3</sup> *The Netherlands and European Integration, 1950-1986*. ECUSG. W00419. 13-11-1947 / NA, 2.05.117, Buitenlandse Zaken, blok 1, 1945-1954 (Nationaal Archief, Den Haag) inv.nr. 26239 <<http://resources.huygens.knaw.nl/europeseintegratie/doc/W00419A>>

ECUSG sponsored the creation of two committees. The Economic Committee acted upon the issue of forming a common economic and customs policy within the framework of the Customs Union and the Customs Committee was focused on the technical problems of harmonizing customs procedures within the framework of the future customs union.

Regarding the complexity of the technical issues the Customs Committee faced, it was decided to form expert groups on specific issues. Thus at the second session of ECUSG (January-February 1948) a decision was made to establish a permanent Customs Bureau funded by the Belgian Government that was focused on the development of a draft common customs nomenclature. Later the Customs Bureau was assigned the task to provide the Customs Committee with reports on the origin of imported goods, containers, procedures to be applied to mixed and complex goods etc.

Following the signing Convention Establishing the Organization of European Economic Cooperation (OEEC) of April 16, 1948 the ECUSG activities were carried out under the Art. 5 of the Convention which provided that the Contracting parties «shall continue to study the customs union or similar measures, such as free trade zones... Those Contracting Parties which have already agreed in principle on the creation of a customs union will subsequently establish such an association as quickly as circumstances permit»<sup>1</sup>.

It should be noted that in the ECUSG activities were divided for two general sets of issues institutionalized by the Economic and Customs Committees. Within the framework of the Economic Committee, the United Kingdom and France acted as the driving forces representing its own vision of a customs union in its economic aspect, covering issues of the economic effect of eliminating internal customs barriers, levels of external tariff and non-tariff barriers, order and procedures for making joint decisions within the competence of the future customs union. The activities of the Economic Committee were suspended after the fourth ECUSG session in connection with the creation of the OEEC that took the functions of coordination of programs for the liberalization of intra-European trade was transferred.

As for the technical issues of the common customs tariff (which was considered by the Customs Committee) the role of leaders was taken by the representatives of Belgium, Netherlands and Luxembourg who had the experience of solving similar problems within the framework of the Benelux Union. Unlike the story of economical issues, ECUSG members pretty quickly reached consensus on the approach to the technical ones. This position was reflected both in the formation of the ECUSG governing bodies and in most of the documents adopted at its meetings, which directly pointed to the need to study the experience of the Benelux Customs Union, which began working on January 1, 1948.

The experience of establishing the Customs Union of Benelux allowed the ECUSG Customs Committee to define at the first meeting the key issues that need to be agreed upon in order to create the possibility of establishing a common external customs tariff.

The first Report of ECUSG was issued in March of 1948 and was composed of three Chapters: 1. The Nature and Purpose of Customs Union; 2. Necessary technical measures; 3. Economic considerations relating to these technical problems<sup>2</sup>.

The Chapter 1 of ECUSG report was primary focused upon the application of the Art. 24 of GATT and Art. 42 of the draft ITO Charted to the Customs Union and the possible issues may arise from that. The ECUSG therefore determined two essential modalities for the constitution of Customs Union. First, it was highlighted that the removal on internal barriers between member states may arise cases from balance of payments or specific regulations of agriculture (p. 8. of ECUSG Report). Second it was predicted the issue to constitute the Customs Union so that it would facilitate trade between the parties but not create new obstacles between the member countries of the Union and other countries (p. 9).

There were relatively interesting, as for very beginning of European integration, considerations about perspectives of creation of Customs Union, which were divided into five possible stages (p. 17):

(1) The tariff community in which the Member States adopt a common tariff of import duties and refrain as far as possible from collecting import duties on goods originating in the territory of any other State member.

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<sup>1</sup> *Convention establishing the Organisation for European Economic Cooperation*. Paris, 16 April 1948. <[http://www.cvce.eu/obj/convention\\_for\\_european\\_economic\\_cooperation\\_paris\\_16\\_april\\_1948-en-769de8b7-fe5a-452c-b418-09b068bd748d.htm](http://www.cvce.eu/obj/convention_for_european_economic_cooperation_paris_16_april_1948-en-769de8b7-fe5a-452c-b418-09b068bd748d.htm)>

<sup>2</sup> *Study Group for the European Customs Union: First Report*, 10-14 November 1947, 2-6 February 1948, 18-23 March 1948. Brussels: Study Group for the European Customs Union, 1948. <[http://www.cvce.eu/en/obj/initial\\_report\\_by\\_the\\_study\\_group\\_for\\_customs\\_union\\_march\\_1948-en-00e49fa1-c8c6-4bb1-94a4-4614575f6e49.html](http://www.cvce.eu/en/obj/initial_report_by_the_study_group_for_customs_union_march_1948-en-00e49fa1-c8c6-4bb1-94a4-4614575f6e49.html)>

(2) The Customs Community, in which the tariff community referred to above is supplemented by the adoption of uniform customs legislation and regulations.

(3) A customs union in the sense of taxation which takes place when, after the unification of the customs tariff and customs legislation, the unification of excise duties and other taxes on consumption takes place, and tax on the transfer of movable property (transmission tax or turnover tax);

(4) The Customs Union in accordance with Art. 42 of the ITO Charter... (abolishing quantitative restrictions and other restrictive and sanitary regulations);

(5) Economic Union, at which stage the countries concerned may not establish quantitative restrictions and harmonize their economic, commercial, financial, industrial, agricultural and other policies.

As one may see, even in 1948, there was a strong understanding that a customs union had a potential to lead to closer forms of association and that any economic association should be developed gradually, step by step from freeing trade to common economic policies.

But the most important role in creating the clear understanding of major rules and principles were to be laid down into the grounds of common customs legislation definitely belongs to the conclusions made in Chapter 2 of ECUSG Report dealing with the technical issues of the future customs union. There were highlighted the customs technical issues were of four kinds:

- those relating to the form of the common tariff;
- the definition of the taxable value;
- the level of duties;
- the gradual abolition of customs duties between Member States (p. 33).

The decision upon the form of a common tariff was to be composed of three problems: the establishment of a nomenclature (it was agreed to use the 1931 League of Nations nomenclature as a sample) (p. 35); the choice between a single tariff and double-column tariff (including or not the preferential rates of duties) (p. 36); the establishment of a common basis of collection (ad valorem duties or specific duties with the expression the preference to the first ones) (p.p. 37).

The definition of taxable value was to be linked to the conclusion of an agreement on the definition of a common notion of value requires a threefold form of agreement: on prices, at the moment and on the place to be taken into consideration (p. 38).

As for the level of duties (p. 39), the key point was its compliance with the Art. XXIV GATT demanding the duties of customs union not to exceed the level of duties of every member State. That led to the need for proper methodology to examine the existing tariffs to calculate the level of duties and to reduce specific duties on ad valorem.

Finally it was proposed two possible approaches to the elimination of customs barriers between member States (p.p. 41, 42). A first method was to phase out the duties by starting with one or more specific categories of products. A second method was to reduce the duties uniformly and in stages, in order to achieve, at the end of a more or less lengthy period, the complete abolition of duties.

Performing its tasks the ECUSG cooperated not only with the Organization of European Economic Cooperation but also with the newly established Secretariat of the GATT providing information on the findings and proposals developed as it provided Art. 24 of GATT-47. The ECUSG report submitted on April 20, 1950 in the Secretariat of the GATT<sup>1</sup> reflected the final decisions made on the main technical issues.

It was made a final choice to use as a general rule a tariff with ad valorem duties. It was also adopted a definition of an open market transaction and recalled that value for customs purposes included all costs, charges and expenses incidental to sale and delivery at the place considered for the determination of such value. Finally, and the most important, the ECUSG drafted the 1949 Brussels nomenclature for use in the customs tariffs.

Regardless the ECUSG had no authority to take a decisions (the way it acted was sending reports to the participating governments and obtaining comments from them) the number of European countries up to the 1950 started adopting the drafted nomenclature and transforming their tariffs with respect to ad valorem duties.

<sup>1</sup> *The Work undertaken by the European Customs Union Study Group on customs nomenclature and questions of customs regulations.* CONTRACTING PARTIES Fourth Session. LIMITED B GAT/CP.4/45 20 April <[www.wto.org/gatt\\_docs/English/SULPDF/90320426.pdf](http://www.wto.org/gatt_docs/English/SULPDF/90320426.pdf)>

Besides the ECUSG submitted a number of other reports on harmonisation of customs legislation and simplifying customs formalities (proposals on origin of goods, customs procedures relating to warehousing, transit, temporary import for process and drawback, etc).

However, starting with the third meeting of ECUSG in March 1948, as well as the second phase of the London Conference on Germany in May 1948, there were serious differences in approaches to European economic integration had arisen between the Great Britain, France and the United States. At the same time, the successful lunch of the Benelux customs union and the agreement reached on the customs issues between France and Italy had placed on the agenda the idea of the "Great Benelux" or "Small European Customs Union"<sup>1</sup>. That, in turn, raised the issue of finding new ways to implement ECUSG's proposals on technical customs issues, as far as the possibility of approving the agreements on customs union had been postponed for uncertain period of time. Therefore, at the ECUSG meeting in November 1949, proposals were made for the signing the separate conventions on issues agreed.

Draft conventions on the common tariff nomenclature and the customs valuation were agreed during the sixth meeting of the ECUSG from 24 to 28 July 1950. In addition, it was agreed to provide ECUSG with the status of an international intergovernmental organization as the Advisory Committee for the member states, which will provide advice on ways to achieve the maximum possible uniformity and harmony in the application of the proposed Conventions. The functions of such a committee were foreseen to be settled by a separate Convention. To that end a narrow working group was set up, which proposed the concept and structure of the new organization – the Customs Cooperation Council.

The governments of the participating countries were invited by September 11, 1950 to decide on acceptance of the proposed Conventions. The ECUSG meeting in Brussels on the same day was scheduled with a group of lawyers from Member States to finalize the texts of the Conventions. And on October 24, 1950, the plenary session of ECUSG, which was supposed to recommend the Convention before the signing had began<sup>2</sup>.

The Convention establishing the Customs Cooperation Council (CCC), accompanied with the Convention on Nomenclature for the Classification of Goods in Customs Tariffs and Convention on the Valuation of Goods for Customs Purposes, were signed on December 15, 1950 in Brussels. At the same time the protocol on ECUSG was signed, according to which the costs of this working group, starting in January 1950, had to be provided from the budget of the CCC. In fact, ECUSG was incorporated into the CCC structure, since, according to the letter of the Secretary General of the CCC of September 3, 1953, ECUSG "did not cease to exist with the entry into force of the Convention on the establishment of the RMS, but its activities are currently temporarily suspended"<sup>3</sup>.

For the first years of existence the CCC remained to be focused on solving the tasks assigned to ECUSG. However, in 1955-56 the main features of European economic integration were agreed, the CCC started as a gradual expansion of the scope of its activities and its geographic coverage. In 1955 the CCC in cooperation with the GATT Secretariat, started drafting the Customs Convention on the E.C.S. Carnet on commercial samples, and in the same 1955 the Convention establishing CCC was opened for signing for the states outside the Europe.

Thus in a three years the ECUSG managed to take a decisions that determined not only the way the EU customs law has been developing for next decades but also contributed to formation the modern principles that lunched the contemporary process of harmonisation and simplification of customs procedures at the global scale.

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<sup>1</sup> Milward, A. (1984). *The Reconstruction of Western Europe, 1945-51*. Berkeley: University of California Press, 255.

<sup>2</sup> *The Netherlands and European Integration, 1950-1986. ECUSG. W00425. 28-07-1950. NA, 2.05.117, Buitenlandse Zaken, blok 1, 1945-1954 (Nationaal Archief, Den Haag) inv.nr. 26239.*  
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<sup>3</sup> European Customs Union Study Group. *International Governmental Organization: Constitutional Documents*. (1961) Volume I. The Hague: Martinus Nijhoff, 518.

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