Examination of goods in the EU Customs legislation, sampling and ... time travel in customs control

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EFS Erasmus
EUROPESE FISCALE STUDIES

Table of contents

Abbreviations

EU: European Union
ECJ: European Court of Justice
AG: Advocate General of the European Court of Justice
VAT: Value Added Tax
SAMANCTA: Sampling Manual for Customs and Taxation Authorities
CLEN: Customs Laboratory European Network
ILIADe: Inter Laboratory Inventory of Analytical Determination
CCC: Community Customs Code
CCIP: Community Customs Implementing Provisions
UCC: Union Customs Code
AEO: Authorised Economic Operator
WCO: World Customs Organisation
HS: Harmonised System
CN: Combined Nomenclature
ICRU (International Commission on Radiation Units and Measurements)
DTI (Department of Trade and Industry
VAM: Valid Analytical Measurement – programme
EN: European Standards
ISO: International Organization for Standardization
ASTM: American Society for Testing and Materials

1. Introduction

While the world of global trade moves rapidly[1], new technologies are invented and new goods are created, the ancient need for legality (i.e.: "certainty of rules") is constant and more present than ever. Economic operators have historically always wanted a market with clear rules to … "play the game of trading". The main difference in the contemporary world is represented by two major factors: volume and speed. In other words nowadays we "do more and faster". An immediate corollary of this simple and well known fact (which modern people like to call globalization) is that the cost of legal uncertainties becomes comparatively higher than before and traders are consequently more demanding than ever in terms of obtaining legal certainty and trade facilitation. At the opposite of the spectrum is the authority that sets the rules, an authority focusing more and more on control and security[2].

One of, if not the main, set of rules in international trading designed to strike the right balance between trade facilitation and security is commonly known as "customs legislation", a wide variety of rules designed to identify/classify the object of trade, its origin as well as all other control, security and fiscal measures a government (or a group of governments) deem appropriate.

While these control rules are developing towards a risk based approach[3], the main tool for the identification of the object of trade (the goods) remain the classic "examination of the goods", by way of inspection, sampling and laboratory analysis.

In the present work I wish to research and analyse examination techniques in the EU Customs juridical system, with its advantages and uncertainties or pitfalls. In a nutshell, The taking of samples and its analysis (hereinafter "sampling") is the set of techniques designed to separate *part* of a certain good, analyse this *part* with the aim of establishing the essence of the *whole* product (i.e.: what the product is), with the further objective to apply a number of rules (whether classification, origin and duties; quotas, environmental or safety obligations etc.).

In this respect, it will be discussed firstly the current EU legislative landscape with its needs for further and more precise EU Customs regulations[4] (currently limited to the more sensitive industries – like food or animals - or left to good international standards not always nor necessarily followed); secondly, the effect of sampling including the retroactive consequences of customs examination as well as the need for transparency; finally the protection of economic traders against the administration errors with regarding to examination procedures. In the concluding part features of the EU examination and sampling system are assessed while alternatives are sought.

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[1] International trade has increased annually by 8% from 2002 to 2006, as mentioned in the WCO document « Customs in the 21st Century, Enhancing Growth and Development through Trade Facilitation and Border Security, World Customs Organisation, Pretoria/Brussels, 2008

[2] Needless to remind the major change in internation trading following the terrorist attack of 9/11 as well as other cases such as the more recent Yemen "printer bomb" episode.

[3] Refer in particular to the enhanced role of Risk Management, AEO and the newer information sharing programmes such as the Data Pipeline project named "Cassandra" (Common Assessment and analysis of risk in global supply chains), see http://www.cassandra-project.eu/

[4] The term « EU customs regulation » is used broadly to refer not only to the Customs Code (CCC or UCC) and its implementing regulations (CCIP or Delegated and Implementing Acts) but the complex arrays of secondary regulations that can be found in European legislations having an impact on customs and international trade. With regard to the concept of examination and sampling most of these regulations are referred in the Annex to the present work

2. Sampling: what is it, how does it work?

Sampling[5] is the inference of product characteristics (and the categorization of the product) from the analysis of a specimen of the product itself. In the words of learned scholars "frequently consignments as large as several hundreds of tonnes have to be examined, whilst the final stage of the analysis can involve the injection of only few microliters of solution into an instrument; sampling is an important stage in bridging this gap"[6].

The scientific value of sampling has been largely demonstrated, basing its relevance on the laws of statistics as well as on the general model of scientific inquiry. However, such great value is insufficient in a legal contest if it is not implemented into the juridical system. This "implementation" is only partially present in the European Union customs legislation[7], where the general principles on goods examination are stated while the actual sampling methods are regulated only to a very limited extent.

2.1 The players: customs administrations and economic operators

The physical examination of goods has relevance both for the customs administration and economic operators.

For customs administrations this is the main tool to establish the correctness of declarations by economic operators in terms of product classification and, to a certain extent, origin. It is also a mean to enforce environmental and safety legislation, for example in the food industry and in the handling of chemicals or hazardous goods.

For economic operators sampling is the mean to verify that a certain contractual agreement with a **supplier** of goods has been fulfilled as well as the one with the **transporter** (who has the duty to carry and maintain the product in the appropriate state) or to maintain a control on its **employees** handling company goods. For this reason traders, regardless of legislative requirements, tend to use highly respected independent surveyors to make sure the quantity and the quality of their purchases is up to contractual standards.

[5] Customs legislation focuses on « mere sampling » with regard to the analysis of one specific good and normally disregards the concept of statistical sampling. "Statistical sampling is a process that allows inferences about properties of a large collection of things (commonly described as the population), to be made from observations made on a relatively small number of individuals belonging to the population (the sample). [This] is conceptually different from the activity of merely collecting individual samples, or specimens. In the latter case, specimens can be collected and measured to describe characteristics of those specimens only, with little or no ability to generalize to the population", from Oxford Journal of the ICRU (International Commission on Radiation Units and Measurements), Volume 6, Issue 1Pp. 25-34.

[6] General Principles of good sampling practice, Neil T. Crosby and Indu Patel

[7] Examination of goods by way of sampling is prescribed in art. 68 CCC and 188 of the UCC. The principle is further expanded in title VIII of the CCIP (art. 242 and following) and present in Chapter 3 of the draft implementing acts to the UCC (art. Article IA-V-3-04 and following)

2.2 Customs control and the principle of verification

Customs supervision is one of the primary duties of the customs administration; however this is a very general principle which needs to be further specified[8]. The first level of specification relates to the time when this supervision commences which is the moment when goods are brought into the customs territory of the European Union[9]. This is a very specific point in time which is geographically defined at the place of physical arrival of the goods, for example when a truck or a train arrives in the area where the customs office of entry is located (which is at the border, but already part of the EU territory), or when a vessel enters the territorial waters of the European Union.
At this point the customs authorities are entitled to carry out controls[10], which may be documental (i.e.: on the accuracy and completeness of the information given in a declaration or notification; the existence, authenticity, accuracy and validity of documents; accounts of economic operators and other records) or physical. The latter can consist of an inspection of the means of transport (this is very similar to a search where customs officers penetrate every room they wish to view - however no court warrant is needed); an inspection on a luggage (i.e.: opening a luggage, touching the content, even empting the content fully, asking questions on the product, etc.); a mere examination of goods (i.e.: visually looking at the cargo and inferring conclusion from the aspect of it); taking of samples or sampling.

This last physical examination technique is the most scientific method currently used to verify that a certain good really is what the trader states in its documentation.

2.3 General principles of good sampling

Before reviewing what the EU customs legislation provides regarding the taking of samples (hereinafter “sampling”) and its analysis, it may be interesting to understand what good sampling is from a scientific perspective and what a good regulation should include.

An initiative in the UK (called the V.A.M. – Valid Analytical Measurement – programme[11]) produced a number of scientific works in this field which may help in giving an overview on sampling procedures and its implementation.

The main steps in sampling can be summarised as follows[12]:

1. Designing of a **sampling plan** covering
    a. Definition of objective aims of measurements
    b. Select of constituents (also called analytes) and analytical methods[13]
    c. Determine the sampling location
    d. Fix a number of increments and the possible methods for sampling
    e. Select the method for sampling, preservation and pre-treatment

2. **Implementation** of the sampling plan, including

[8] Art 4(13) CCC and 5(37) UCC
[9] Art 37 (1) CCC and 134 (1) UCC. In the present work the term Union will be preferred to the term Community in view of the entry into force of the UCC
[10] Art 68 CCC; Arts. 46 and 188 UCC
[11] This programme was promoted by the DTI (Department of Trade and Industry, later replaced by Department for Innovation, Universities and Skills and Department for Business, Enterprise and Regulatory Reform).
[12] General Principles of good sampling practice, Neil T. Crosby and Indu Patel, Chapter 2
[13] This step is necessary to screen how homogeneous the analysed product is.

a. Obtaining a sampling from the product
b. Reduction and preparation of one or more laboratory samples
c. Laboratory analysis of the sample
d. Taking of the decision
e. Disposal of the sample

In broad terms, sampling must be adapted to the product, the location and the aim of the analysis, which can vary from establishing a customs classification to meeting health and safety standards.

While this is the "scientific perspective", it must be coupled with the protection of traders' rights and the fostering legitimate trade. Such protection must be guaranteed by legislation with clearly established rules and notably:

- the steps necessary to apply the sampling principles (i.e.: the quantity of the product sampled, the methods to obtain the sample, the method of analysis such as the list of tests performed and the machines and components used in such tests);
- the timing of the sampling and the response;
- the information regarding the entire process (from its notification to the analysis results) and the disposal of the samples after sampling.

2.4 The EU Customs legislative landscape

EU Customs legislation establishes rules regarding the following:

1. Power of sampling
2. Right to sampling
3. Timing and place of sampling
4. Decision and notification of sampling
5. Some sampling methodology
6. The disposal of samples
7. The examination reports

These various elements will be examined in more details in the subsequent paragraphs.

2.4.1 Power of sampling

The taking of samples within the meaning of customs legislation as the powers of customs authorities can be carried out any time **from the moment goods are under customs supervision**, till the time the customs supervision ends, which depends on the customs procedures applied to the goods and which will not be reviewed in further details[14]. Sampling can take place before the product has been unloaded from the method of transport[15] or after authorisation for unloading has been granted. Customs can even request unloading for the purpose of sampling[16]. The point in time when the power of sampling is triggered can be

[14] See Art 37 (2) CCC and for example 82 CCC in relation to end use. Any scenario of sample taking outside customs supervision will not be analysed in the present work.
[15] Art 68(b) CCC and 188(d) UCC
[16] Art 46(2) CCC and 140(2) UCC

important when planning the logistics on the arrival of a vessel or in the unusual scenario where a truck driver receives a last minute order not to enter into the European Union. In both cases it can be conceived that even if a means of transport enters into the EU customs territory, and, before receiving any request from the customs authority, the product is immediately taken out of that territory, then the power of sampling can no longer be exercised unless a specific international agreement with the country where the product is transiting exists and provides for customs cooperation. As a general advice for traders, it is certainly better to wait with a means of transport outside territorial waters or outside the border until the business need for entering the EU customs territory (and being subject to customs supervision) is confirmed. On the customs administration side, on the other hand, if the risk analysis of a certain cargo has drawn attention, it is better to request sampling informing the trader as soon as the product enters the EU customs, to avoid discussion as to whether a product is formally under customs supervision[17].

2.4.2 Right to sampling

The entering of customs supervision causes a limitation for the trader in the use of the goods, until such time customs has verified all documentation and granted clearance to proceed to the "next step" (whether discharge, temporary warehousing, release for free circulation or other customs procedures)[18]. However, a trader may still need, for business reasons, to analyse the product. Typically a trader may wish to examine the goods to make sure its supplier has delivered the contractually agreed product and that the product is "in good shape" or has not perished. The same control assures that the transporter has taken good care of the product during transport. In order to carry out such examination, traders can use their own employees or third party surveyors. In either case, in order to perform their "private examination" sampling is needed and customs must authorise this operation. Such examination can also serve the purpose of complying with customs rules, establishing tariff classification, customs value or customs status. Differently from the customs power of sampling, which is triggered as soon as goods are under customs supervision, the right to sampling is triggered only once goods have been presented to customs[19]. The presentation of goods to customs[20] is a formal act triggered by the duty to convey the product to the customs authorities[21].

If the presentation formalities are complied with by the trader and if the trader presents the request for sampling[22], the customs authorities cannot refuse it. A refusal would be a violation of the customs legislation from the customs authorities and technically even a case of force major or danger to neither public security nor health is an insufficient ground for refusal. The only power of customs in this case is to establish precise conditions regarding the sampling in its authorisation. All risks and costs are in any case for the trader requesting sampling.

[17] This is common in the commodity business where bulk fungible goods are traded, like mineral oil, coal, metals, grain etc. The aim can be to limit any controls which may delay their logistics; or in case they enter the Union, if no control has been exercised yet and no formalities have been carried out, they may technically decide to immediately exit, as if they had never entered the territory (provided that no action from the customs authorities had taken place).
[18] With modern risk management techniques these steps in the customs clearance process can be extremely fast and are carried out, for the large majority of cargoes, in a few seconds. The average clearance timing, for example, in the port of Rotterdam averages circa 23 seconds.
[19] Art 42 CCC and Art 134 UCC
[20] Art 40 CCC and 139 UCC
[21] Art 38 CCC and 135 UCC
[22] Art 187a CCIP

2.4.3 Timing (pre-release and post-release) and place of sampling

As mentioned, sampling can occur before discharge of a product, after discharge or after transport to a different location[23].

In the latter case "all the handling necessitated by such examination or taking of samples, shall be carried out by or under the responsibility of the declarant. The costs incurred shall be borne by the declarant." The EU customs regulation[24], while giving power to the customs authorities to decide when and where to carry out the examination, shifts the duty of transport and all costs of handling onto the trader. The main rationale for this can be seen in the following: 1. the idea that a trader knows the goods and can handle them better than customs authorities 2. the aim to limit any responsibility for customs should any accident or loss of product occurs during such operation.

While this rationale is certainly to be supported, the legislation only gives general principles on the "when" and the "where" sampling should take place. There simply is a safeguard clause requiring that "provided that samples are taken **in accordance with the provisions in force**, the customs authorities shall not be liable for payment of any compensation in respect thereof. This is a first indicator of the weakness in the EU sampling regulations[25], which will be reviewed further: the incidence of time and place are part of the sampling methodology. A general reference to the "provisions in force" is only good where such provisions exist "somewhere", are specific and cover the wide variety of existing products or category of products by industry.

In case of lack of sufficient "provisions in force", a bad timing in requesting sampling can have a negative effect on the examination results.

In addition to the above scenarios, in which examination takes place *before release*, sampling can occur after products have been declared into free circulation. This is the so called post-release examination[26]. The only "limitation" provided by the customs legislation is that goods can be examined "where it is still possible for them to be produced". This is a very important caveat as in normal commercial practices there is a tendency to limit inventories and to speed up the commercial cycle so that it is practically very difficult, not to say impossible, to identify the exact goods related to a certain customs declaration, even more where supply chains become complex or where goods have entered into a transformation process. In such cases then only a documental review is viable.

2.4.4 Decision and notification of sampling

Considering the size of global trading, the limited human and technical resource of the customs authorities and the recent development of the risk based approach, it goes without saying that only a part (and often a very limited part) of the goods entering the EU customs territory will be sampled. Should, for any reason (risk flag, random examination, suspicion of wrongdoing, whistle-blower information etc.), a decision to sample be taken, it is still important in a state of law that the trader's rights are respected. In lay terms a trader is entitled "*to know what is going on with its goods*" and this translates in a number of specific rights, the first being to know that the examination will take place. It seems then obvious that the trader is notified of the decision of sampling by the customs administration[27].

[23] Art 69 CCC and 189 UCC
[24] See suprat note 4
[25] See supra note 4
[26] Art 78 CCC and 48 UCC
[27] Art 242 CCIP and IA-V-3-03 UCC Draft implementing Acts. For the case of incorrect decision or lack of notification sell below part 4

The other important rights to bear in mind are the presence of the trader during the sampling, knowledge of the sampling methodology applied as well as right to cross-check the same sample via independent surveyors. While the presence during the sampling is clearly stated[28] in the law, sampling methodologies are only partly regulated (regulations which are normally not found in the customs code nor in the implementing acts).

2.4.5 Sampling methodology: sample taking and analysis

Sampling methodology is the heart and the art of sampling. It defines the substance of it, answering questions such as: is partial sampling sufficient or is full sampling necessary? What is the quantity to be sampled? What preparation is needed (ex.: equipment, precaution for hazardous or dangerous products, risk of contamination of the team sampling or the sample itself, etc.)? How to physically take the samples (which instruments, from which parts of the means of transport or storage facility)? How to transport the samples to the laboratory? What conservation means should be adopted to avoid any effect on samples which would compromise the product? What is the maximum transport or storage time which should be allowed to consider a sample still authentic to carry out some tests? What are the objective of the tests (i.e.: for the purposes of which EU customs regulations[29] is the examination report to be issued)? And consequently, what tests should be carried out?

The answers to the above questions would depend on one hand to the nature of the product to be sampled and analysed, but also and most importantly on the applicable sampling methodology rules. These rules should ideally be found in legally binding EU Customs regulations[30] reflecting the best international scientific standards on sampling.

The main provision in the EU customs system is in reality a “referring provision” stating that “samples shall be taken in accordance with the methods laid down in the provisions in force”[31]. What are the “*provisions in force*” and where can these be found?

These rules are dispersed in various Council and Commissions Regulations, Decisions, Directives and Recommendations. These mostly cover the agricultural industry and notably the areas of feeds, foodstuffs, fruit and vegetables, animals but also dangerous goods[32]. While it is certainly good that binding legislation can be found for some of the most sensitive products, it would certainly be appropriate that it is codified in one legislative document which is in direct connection with the Combined Nomenclature of the EU.

Additionally, it must be noted that sampling legislation does not cover the totality of products and practically all other items are left to international best standards (especially ISO, but also ASTM). This would typically be the case for the vast majority of products, from machines and equipment to mineral oils, metals etc. As it already occurs for rules on customs classification (where international standards are widely mentioned in the notes), it would similarly be appropriate that, without having to “reinvent the wheel”, the EU legislator introduces sampling provisions referring to such standards, while using the Combined Nomenclature as referring classification model. Legal certainty would greatly benefit from this approach.

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[28] Art 69(2) CCC and 189 (2) UCC
[29] See note 4
[30] See note 4
[31] Art 242 (2) CCIP and Article IA-V-3-01 (531-01-IA) UCC Draft implementing Acts.
[32] See Annex on “Sampling specialised relevant legislation”

2.4.6 The disposal of samples

Once sampling operations have been carried out (decision, notification, sample taking, analysis and notification of results), samples may have either been destroyed (during the analysis) or still be in existence.

If destroyed, a trader should only bear in mind that the sample quantities do not diminish the quantities declared in its customs declaration[33]. Therefore, any customs debt would be payable not only for the quantity effectively introduced, but also for the quantity of the sample, hence a need to limit the sample quantity to the minimum necessary for the examination[34].

In addition, in case of destroyed samples, a trader can request authorisation to replace the sample with identical goods (to reintegrate the initial quantity). However, what are identical goods and how can these be examined?

Under the CCC and the CCIP the definition of identical goods was limited to the concept for the purpose of customs value. In the UCC Delegated Acts there is a more general definition whereby "'identical goods' means, in the context of samples taken as part of the verification of a declaration, goods produced **in the same country** which are the **same in all respects**, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical"[35]. Assuming a trader is able to obtain identical goods, it remains open the question as to how customs can verify this process. The mechanic of it would create a vicious circle where customs needs to take sample on the identical goods (a sample of the quantity replacing the sample) which hopefully is sufficiently negligible for the trader to proceed with its operations.

If the samples are not destroyed, four scenarios are open[36]:

a. the trader request for the samples to be returned
b. the customs authority destroys the samples
c. the customs authorities keep the sample
d. the customs authorities request the trader to remove the samples

2.4.7 The examination report and its consequences

Once the examination has taken place, the customs authorities have an obligation to issue a document (the examination report) where they indicate "**at least in the copy of the declaration retained by the said authorities**, or in a document attached thereto, the **basis and results** of any such verification or examination"[37]. So the trader, based on the current regulations, is not necessarily informed of the entire sampling and examination process.

This formal obligation is a little broadened in the Draft delegated Act to the UCC where the limitation to the "copy of the declaration retained by the authority" is no longer stated because the authorities shall **"record the object and the results of any such verification or**

[33] Art 245 CCIP and *IA-V-3-01* (4) UCC Draft implementing Acts
[34] Art 242 (3) CCIP and IA-V-3-01 (3) UCC Draft implementing Acts
[35] Article IA-I-1-01 (14) UCC Draft implementing Acts
[36] Art 246 CCIP and IA-V-3-06 UCC Draft implementing Acts. In the latter the power of customs to refuse to return samples can be motivated by the need to keep samples for further examination or for appeal or court proceedings
[37] Art 247 (1) CCIP

examination"[38]. The main advantage in the new text is that the examination report should fully contain all details not only in the customs authority copy, but also in the version received by the trader. This same approach is used with regard to the scenario where the verification leads to results which are different from the customs declaration of the trader. Again in the CCIP the basis to calculate the customs debt (or other consequences) needs to be in the declaration retained by the authorities, while in the UCC implementing act such information must be in the report provided to trader.

While this change from the CCIP should be welcomed, the amended wording related to the content of the examination report seems to make a step backwards. It replaces the content of the report being in the CCIP the "basis and results" of the verification or examination with (in the UCC) the "object and the results". This may be a dangerous statement, since it may be interpreted so that the customs authorities would not include the basis of their analysis (i.e.: the sample taking methods, the tests carried out, the standards which were followed or the machine used in the testing) but only the final outcome, hence resulting in less transparency for the trader. This danger is even more evident considering that another sentence of the CCIP has disappeared. Notably it was stated that "the findings of the customs authorities shall indicate, where appropriate, the means of identification adopted"[39]. While this did not create a full obligation on the customs authorities (due to the proviso "where appropriate"), it gave an opening for some transparency in relation to basis of the sample analysis. In the UCC Delegated Act, instead of reinforcing this transparency approach, this obligation disappears completely.

Further to the issuance of the examination report (in a more or less transparent manner), it is essential that there is an obligation of notification to the trader, so to preserve its right of appeal and defence. While this is not immediately evident in the CCIP, the new UCC delegated Acts is more explicit in creating such an obligation for the customs authorities[40]. Nonetheless, considering the current wording of the CCIP (in particular art 247(2), where such an extensive obligation on the content of the examination report must be provided), it may be thought that an obligation of notification is implicit to the architecture of the customs juridical system.

The effects of the examination report will be outlined in part 3 of the present work as well as its temporal scope.

2.5 SAMANCTA, CLEN and sampling methodology coordination and development

As mentioned, sampling methodology is not fully covered by legally binding rules. Nonetheless a framework of "rules" does exist and it is a mixed of legally binding rules, international standards and European guidelines.

In fact in 1999 the "Group of European Customs Laboratories (GCL)" was created within the EU Commission (Directorate General for Taxation and Customs Union) with the aim of coordinating a broad programme on all aspects of sampling. This Group has now evolved into the CLEN, the Customs Laboratory European Network[41].

[38] Art. *IA-V-3-07* (1) UCC Draft implementing Acts
[39] Art 247(3) CCIP
[40] Art. *IA-V-3-07* (2) UCC Draft implementing Acts
[41] The CLEN carries out the coordination of six actions and namely: 1 ILIADe (Inter Laboratory Inventory of Analytical Determination); 2 Inter-comparisons and method validations; 3 Networking on quality; 4

One of the main achievements of this group was in 2010 the set-up (via an external provider) of SAMANCTA, the "Sampling Manual for Customs and Taxation Authorities"[42]. This on-line manual gathers not only references to the legal basis with regard to sampling, but also general principles on sampling, reference to the applicable EN and ISO standards, as well as sampling procedure cards and sampling tools. Unfortunately SAMANCTA was not maintained[43], hence the EU Commission launched in 2013 an invitation to tender[44] in order to update and enrich this manual.

This tool will certainly be of great assistance not only to customs authorities, but also to traders especially in the framework of the Customs 2020 programme[45] where, amongst the specific objectives of the programme there is the one of "ensuring modern and harmonised approaches to customs procedures and controls" as well as "computerisation" and "enhancing the functioning of the customs authorities".

Nonetheless the perspective of making sampling methodology legally binding[46] should still be fostered.

Communication and Strategy (including Conferences and seminars); 5 Scientific expertise; 6 European Customs Inventory of Chemical Substances. More details can be found at http://ec.europa.eu/taxation_customs/customs/customs_controls/customs_laboratories/group_ecl/index_en.htm

[42] SAMANCTA can be consulted at http://ec.europa.eu/taxation_customs/dds2/SAMANCTA/EN/index_EN.htm

[43] The last update dates back to 2011

[44] Open invitation to tender n° TAXUD/2012/AO-08, for the provision of scientific and technical assistance in the field of scientific customs

[45] Regulation EU 1924/2013 of 11 December 2013

[46] See above par. 2.4.5

3. Effect of the examination

The document summarising the results of the sampling (or in general the examination) process is the examination report.

The most important element of it is related to the financial (calculation of customs duties or other charges and levies) and non-financial (imposition of other obligations or seizure of illegal goods etc.) impact on the trader. The scope of such impact certainly covers the actual customs declaration which is the object of the examination. In fact the report would specifically refer to a certain customs declaration and also the customs legislation always discusses the verification of a certain declaration and the particulars given in a certain declaration[47]. So if a certain examination refers to a certain declaration referred therein, the following should be considered: (1) the extension to the full cargo and its immediate effects; (2) the impact on similar or identical declarations which occurred in the past (retroactively) or will occur in the future.

3.1 Present effects: full or partial examination

With regard to the extension of the effects of the sample analysis to the entire cargo, this is typically the function of sampling: analysing a small portion in order to verify a much larger consignment or group of consignments. If the sampling had already covered the entire consignment, the customs code considers this operation as a full examination, which does not need further specification. If however, the sampling was only partial, then this partial examination may need further verification[48].

Whether an examination is full or partial (this not being precisely distinguished in the customs legislation) should be looked at in the light of the sampling methodology described above. However, if it is ascertained that a partial examination occurred, while the current CCIP only provides for particulars to be provided in the examination report, the UCC and its Draft Implementing Acts give more protection to the trader: in fact if the trader considers that the results of the partial examination, or of the analysis or examination of the samples taken, are not valid as regards the remainder of the goods further examination can be requested[49].

Concerning the financial and non-financial effects on the present goods, firstly the examination report may show a different tariff classification or customs valuation than the one put forth by the trader. This clearly is the basis for a customs debt higher (or lower) than the one initially considered by the trader.

Secondly, it can provide a calculation on agricultural subsidies or refunds other than the one made by the trader.

Thirdly, it can show goods are not incompliant with environmental or health and safety regulation, with drugs or other illegal goods rules, or that goods are counterfeited. All the latter non-financial consequences (in terms of customs debt) can cause the seizure of the product as well as trigger criminal investigations.

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[47] This is typically the wording in the CCC (which refers to declarations in art 68) and the CCIP (art. 247) and the same approach is kept in the UCC where in art 191 is stated that “the results of verifying the customs declaration shall be used for the application of the provisions governing the customs procedure under which the goods are placed”.
[48] Art 70 CCC
[49] Art 190 (1) UCC

3.2 Retroactive and future effects

While it is evident that the examination on goods has or can have significant effects on the goods which are object of the declaration, what about past declarations or future declarations which are not, per se, subject to any specific examination nor sampling? Can a specific customs examination travels in time (past or future) and apply to other declarations?

While there is no specific rule in the customs legislation, Advocate General Mengozzi and the Court of Justice of the European Union considered that, in some very specific scenarios, customs offices can be equipped with tools to apply examination results retrospectively (or prospectively) ... a sort of customs "Delorean" (the time travel vehicle used by "Doc." Brown and Marty McFly in the '80 movie "Back to the future"). This was decided in the Latvian Greencarrier case[50].

In this case the trader had imported biscuits and chocolate bars from Russia and these were released for free circulation into the European Union. The trader had undergone such activity for a number of years when the customs authorities decided to examine the goods. The products were then sampled and examined: based on the examination report the authorities established that the customs classification used by the trader should have been different, resulting in a customs debt (as well as import VAT) higher than the one initially declared by the trader.

The customs authorities used the examination results to assess not only the customs clearance to which goods were actually directly linked, but also to establish an assessment on import declarations entered during the three years preceding the actual examination.

Two very important (and common) features must be highlighted in this case: firstly, as it is often the case in a post-clearance examination[51], it was not possible for the trader to produce the goods related to the old declarations. Hence the customs authorities based its assessment on the principle of "partial examination", whereby "where only part of the goods covered by a declaration are examined, the results of the partial examination shall be taken to apply to all the goods covered by that declaration". Secondly, it was observed that, based on documentary evidence, the goods related to the previous declarations came from the **same manufacturer** and on the manufacturer's certificates the **same name and composition** of goods were given.

Two principles were behind the customs authorities reasoning and were tested by the European Court of Justice:

1. The principle of the **extension of the effect of a partial examination** to "all the goods covered by *that* declaration";

2. The **principle of identity** between goods declared in previous declarations and goods declared in current declarations, in the peculiar scenario of post-clearance examination

On the first point, as duly noted by AG Mengozzi[52] and diligently followed by the European Court, the first argument of the customs office was rejected as simply inconsistent with the wording of the customs legislation as well as with the right of "re-examination" in case of partial examination. In other words, partial examination simply means the sampling and analysis of a

[50] Case C-571/12 Greencarrier Freight Services Latvia SIA v. Valsts ieņēmumu dienests, in particular paragraphs 31-33 and 40-42
[51] Art 78 CCC and 48 UCC
[52] C-571/12 Opinion, par. 22

portion of a specific cargo and the application of the examination results to the totality of *that* specific declaration. On this basis an examination cannot have a "retroactive effect" and be extended to past clearances.

The second point brings an additional level of complexities to sampling and its effects onto customs declarations, which is analysed for the very first time in this case. As noted by the Advocate General, the principle of immutability of customs declarations has been weakened considerably by the introduction of the **post-release examination concept**. If the customs legislation provide on one hand for the possibility of amending past declarations, on the other hand there is no specific provision whereby an examination report can (or cannot) be used to assess the customs debts on past declarations[53].

In the view of the Advocate General, whose reasoning was followed by the Court, the customs authorities should be allowed to use the results of a current examination towards past declarations on the economic rationale that "customs authorities do not generally carry out a priori examinations as it is necessary for 'customs formalities and controls [to] be abolished or at least kept to a minimum' in order to speed up the conduct of commercial operations". This principle is certainly in line with the risk based approach which has developed in the last years in the CCC and which was carried forward into the UCC.

However, this power of the Customs Authorities on "retroactive assessment" must be exceptional and limited to very clear conditions. The main requirement in this respect is linked to the **principle of identity between past goods** (i.e.: object of the previous clearance declarations) **and the current goods** (object of the actual sampling). The customs legislation in the current version of the CCC has very scarce information regarding identity between goods, while the UCC has introduced some clarity in this respect[54].

The AG and the ECJ focus this principle on the "identical nature of the goods" clarifying the conditions for applying examination results retroactively. These conditions can be more specifically listed as follows:

a. past and current goods are identical
b. the burden of proof rests on the party which seeks to rely on the identity of the goods
c. the temporal limit of three years (from the moment the original declarations on past goods) has not lapsed.

With regard to the concept of identical goods, while the AG simply indicates that goods should have been classified under the same CN code and that it is a factual matter to determine such identity[55], the Court seems to give some extra indications by stating that identity can be shown via the inspection of the commercial documents and data relating to the import or export and notably that goods **come from the same manufacturer and are identical as regards their name, appearance and composition**. Nonetheless, the final answer on identity is a factual matter which remains at national level and for which the trader should be given a possibility to challenge the national decision on identity, bringing forward its own arguments as to why present goods are not identical to past goods.

These principles are from a logical and academic perspective impeccable. It is very logical and reasonable to consider, in the view of the overall juridical customs system, that identical goods should be treated in an identical manner and hence, within temporal limits, a retrospective

[53] This is defined by the AG "extrapolation of the results of post-clearance examination", see par. 34 of the AG Opinion to the Greencarrier case
[54] *Article IA-I-1-01 (14)* UCC Draft implementing Acts
[55] Par. 48 of the AG Opinion to the Greencarrier case

application of examination reports respect perfectly these principles. However, the next immediate question a practitioner (whether the trader or the customs authority) would ask is: how can I show identity? Is the fact that two goods (one produced two or three years before the one which is actually examined) have the same manufacturer and name sufficient to state such “identity”? What about the suggestion from the ECJ that two goods must be identical also as to their appearance and composition?

The manufacturer identity can easily be proved with a certificate of origin coupled with corporate documents (incorporation certificates, chamber of commerce etc). Similarly, the identity of name and CN code are also simple documental checks. However, identity on appearance and composition are more essential features of a product and these are also more difficult to prove (especially if the same product can be produced by different suppliers or manufacturers). One example could be to use the description in commercial contracts, however these do not necessarily describe in a precise manner the product ingredients, especially in those industries where suppliers do not wish to share with their clients the full extent of the manufacturing process (for obvious business reasons). Another example could be the use of third party reports which, though not official reports from the customs authorities, could be sufficient evidence from reliable independent surveyors. Such reports, however, are still linked to sampling and laboratory examinations, which are not necessarily a practice in all industries. Consequently, the real evidence to show identity is …. examination by way of sampling and analysis. However, this would throw the discussion back into a vicious circle of legal arguments and it is as impractical as the approach adopted in the Greencarrier case where identity has to be somehow discretionally inferred by documentary evidence. This policy can be advantageous for the customs authorities and (in cases of errors) can be even beneficial to traders, however it weakens legal certainty.

Are there other solutions? Actually not so many… the extrapolation of the results of post-clearance examination is either accepted or excluded. In other words basically two opposite perspectives can be explored: the first one is the methodology which follows the “Greencarrier” principles and has just been explained which privileges the application of customs law regardless of its impact on certainty. The second one is a standpoint where retroactivity is simply prohibited in the name of certainty (this was the situation before the possibility of post-release examination was introduced).

If it is true that the main objective behind the first approach is to avoid the risk of constant examination in order to facilitate speed in logistics and operations at arrival of the goods, nonetheless, customs authorities are still entitled to examine goods at arrival. Therefore, why would it be appropriate now to return to an older system?

In reality this could be one step backward …. to make two forwards, based on the new reality of the world of customs. In other words the customs legislation could go back to a system where custom declarations become once more the strong document which gives certainty to traders (which cannot be amended retroactively based on current examination results), but in the modern context of technology which has developed in the last decades and which continues at a very fast pace. In this environment the cases where retrospective examination would be applicable can easily fall into the category of immateriality.

This would be a less legalistic and more pragmatic method, that can be adopted (or re-adopted) in further enhancing the risk based approach and the cooperative relationship between customs authorities and traders. In fact, the complex system of pre-notification and use of electronic means has created a more technological environment where traders and customs authorities can operate. In this respect a retrospective analysis and a post-release examination could be fully replaced by the structural AEO/risk-analysis system, coupled with

further enhancement in the use of electronic means (such as the development of the e-Manifest process, etc)[56]. This would limit actual examination and sampling on to goods in a pre-clearance phase, where the authorities have carried out a risk analysis which should point them in the right direction. This is obviously a political choice, but will make the customs authorities environment within the EU even more competitive in the modern world of globalised trade

Finally, as to the temporal limitation, the AG opinion differs somewhat from the decision of the ECJ. The AG considers that a lack of specific rules on the matter causes a fall back onto National legislation, i.e.: since EU law does not specifically provides for a rule, the Member State can use their discretion provided it complies with EU principles (notably the three years period for the communication of a customs debt). The AG adds a suggestion that the EU legislator should intervene to fill this gap. On the opposite, the ECJ simply indicates that the retrospective use of examination reports should not exceed three years[57].

[56] The already mentioned CASSANDRA project of data pipeline is the perfect example, coupled with a number of others such as the CONTAIN project (http://www.containproject.eu/), INTEGRITY (http://www.integrity-supplychain.eu/), Smart Container Management (http://www.smart-cm.eu/).
[57] Par 40 of the Greencarrier decision

4. Incorrect sampling and remedies

In this last part, remedies to the traders for violation of sampling rights or rules will be described.

4.1 Refusal to the right of sampling

As previously stated, the customs authorities have an obligation to allow the trader/declarant the exercise of a right to sample its own goods.

What if, against all odds, customs does not issue an authorisation for sampling or, even worse, issue a denial of sampling?

Two interpretations would be possible:

1. The right to sampling is an absolute right triggered by the request, which, more than a request, can be seen as a notification. The trader proceeds anyway, considering the lack of authorisation or the denial as a void or null act;

2. The right of sampling is a conditional right, subject to the specific condition/requirement of a customs authorisation. In this case the request is not a mere notification but an actual demand to which a response is necessary for the right to sampling to be plain.

Even though the first interpretation seems more appealing to traders, the second approach should really be preferred. This is based firstly on the letter of the law, which specifically uses the word “written request” for a trader to obtain the right to sampling (i.e.: the word “request” cannot be equalled to the word “notification” or “information”). Secondly, this approach is reinforced on the power of customs to attach further conditions to the authorisation, such as the quantity to be sampled and other sampling procedures. Thirdly, any illegal act or misbehaviour from customs is always subject to general actions for damages or abuse of power, which, in the context of EU customs regulation[58], should be adequate to grant satisfaction to traders.

Consequently, in case of a lack of decision or a refusal to the right of sampling, a trader can appeal the decision and have it annulled. Alternatively, more practically, if a trader’s intention is to bring a product in free circulation, sampling can occur after the customs authorities have validated the declaration of import, while in case of other customs procedures requiring the goods to remain under customs control, there is no other remedy than a judicial (or quasi-judicial) appeal.

4.2 Lack of decision or decision notification

A second remedy relates to the obligation of customs to **issue a decision** of exercising their right to sample and to **notify such decision** to the traders.

What if such decision is either not formalised in a document or not notified to the trader? This is an important ground of defence for a trader in case of challenge of the sampling results. This three steps process (decision, notification and presence of the trader) is based on the rationale that a valid decision and notification ensures that a trader can prepare its personnel, having experts present during the sample taking operations, so that any incorrect sampling can be

[58] See note 4

immediately reported. Should this right be denied, the entire sampling ought to be considered null and void, as if it had never taken place, or it may be annulled.

This scenario should even cover the case where, despite the lack of notification, the trader or a trader's representative is present during the sampling operations (perhaps by coincidence or as a mere contingency). Such presence does not repair the customs authorities' wrongdoing (lack of decision or notification), specifically because the notification has not attained its purposes of providing sufficient time for preparation and, where needed, "defence". In fact the obligation of notification and the right to presence are complementary: the second cannot or is not properly exercised without the first one simply because the purpose of the notification is to give a chance to **be prepared when present**. In the whole customs examination process, the trader has the role of counterbalancing the customs power to make sure its rights are respected.

The corollary of this reasoning is that a customs debt incurred following such "illegal" examination is not legally owed and the provisions on the repayment or remission of duty would provide a good remedy.

Similar considerations and remedies would apply to the lack of examination report or the lack of notification of the examination report.

4.3 Wrongs in sample taking or analysis

What if the right to sampling formal process is respected (i.e.: there is an appropriate written decision, notification and possibility of the trader to exercise is right to presence), but the actual sampling methodology rules (whether binding or not) have not been respected?
For example what if samples were collected from the means of transport either incorrectly or in insufficient quantity to properly establish to product composition? Or what if the transport to the laboratory by the customs official was done with the inappropriate tools so that the sample was altered? Or what if the wrong examination tests were carried out (for example a machine not apt to a certain product)?

In this respect and to evidence that this is not of mere academic interest, it may be useful to mention an unpublished case which occurred in the oil industry, where a trader was importing a pure chemical called Iso-pentane[59]. This chemical had some traces of other chemicals of the same family (n-pentane and neo-pentane), but these were, according to the trader, negligible amounts. The trader assumption was based on two independent surveyor's reports (from two different and well established companies) which tested the same product at the port of loading (in Russia) and the port of discharge (in the Netherlands). The conclusion in both private examination report was similar: the product was a pure chemical (which was also what was agreed by the trader with its supplier and what was needed as component for gasoline) and was classified in the import declaration under CN code 2901 10 00 00, which carries a free conventional duty rate.

The Dutch customs decided to take samples of the product and to analyse it. The customs report concluded that the correct classification was CN code 2710 12 25 which carries an ad valorem duty of 4.7%. Such conclusion was based on an examination report which showed a composition of the product different from the reports provided by the independent surveyors.

[59] This hydrocarbon is a volatile and flammable liquid which molecular formula is C_5H_{12}. It is used in the oil & gas industry as gasoline component.

The customs authorities in their notification to the trader indicated not only the analysis criteria (the relevant ASTM and ISO methods to establish the analysis criteria) but also the composition obtained and the composition analysis methodology. The latter specifically referred to the method "Reformulyzer/GCMS" which is the name of the testing machine (the Reformulyzer) and the testing manner (GC standing for Gas Chromatography).

After investigation on the composition analysis methodology, it was shown that instructions of the Reformulyzer (as issued by the machine manufacturer) indicated that such instrument was not fit for testing pure chemicals, but only for oil products and their blending. Hence, the machine had produced imprecise results, with a product composition different from the one evidenced by the surveyor's report.

In conclusion the use of the wrong machine had led the customs authorities to an incorrect assessment, which was reversed on appeal in favour of the trader.

What was not analysed in the mentioned case was whether the use of a certain methodology is or is not legally binding.

Where sampling methodology is legally binding and this procedure is violated, the trader is entitled to a remedy. This can certainly be a repayment or remission procedure[60]. Another remedy can also be the amendment of the declaration after release of the goods[61], while the use of the invalidation process[62] can be more problematic but this aspect will not be explored in details.

At the opposite of the spectrum lies the case of non-legally binding sampling methodology or, more specifically, cases where there is no specific European or national legislation, but internationally accepted sampling standards exist (ASTM or ISO). As seen, though widely used, these standards are not always nor necessarily implemented into the customs juridical system. Consequently, in such scenarios it can be argued that, since no rule of law has been violated, there is no legal ground for repayment or remission of the customs debt, nor for amendment or invalidation of the customs declaration. This unfortunate approach, though legally correct, should be prevented by either a general clause which implements into the customs legal system "internationally accepted sampling standards" or, even better, codifying sampling methodology in **one consolidated regulation** which follows the Combined Nomenclature and provide for sampling rules depending on the potential outcome expected from the examination.

[60] art 236 or 237 of the CCC; art 116 and following UCC
[61] art 78 CCC; art 173 UCC
[62] Art 66 CCC; art 174 UCC

5. Conclusions

The purpose of this thesis was to describe “sampling” as a set of rules in the EU customs juridical system in order to show its merits and pitfalls in the perspective of a scientific model which can be defined as a “juridical sampling system” within the broader customs regulation. The EU system partly “passes the test” of the good sampling system, as summarised below, while there is still room for improvement.

5.1 Features of a good juridical sampling system

A “juridical sampling system” within a customs system is a set of rules which not only implements the progressive scientific work on sampling, but it shapes it according to the legal principles of certainty and transparency.

In this perspective, on the basis of the analysis in the present work, the following can be seen as the features of a good and modern juridical sampling system:

1. Transparency in the sampling process;
2. Legality in the sampling methodology;
3. Certainty as to the effect of the sampling process and outcome;

5.1.1 Transparency in the sampling process

This feature describes the fact that, in the sampling process, the trader is (or should be) informed of the actions of the customs administration before and while these are carried out, from the moment the sampling decision is made to the point an examination report is issued, notified and its effects become relevant for the trader.

5.1.2 Legality in the sampling methodology

This is a general rule of law which separate “best standards” from “obligations”: it distinguishes what a sampling methodology “*should be*” from the one it “*shall be*”. A modern society must be capable of bringing the most updated level of standards into the juridical system, making them “rule of law”, without leaving discretion to the customs authorities (or the traders) as to the sampling methodology to apply for a certain product. At the same time this is typically a set of rules which must constantly evolve with the scientific techniques on sampling and must be constantly aligned to the international practice. The use of secondary regulation via “customs committees” would be a good and flexible legislative instrument to bring the “best in class” standards into law.

5.1.3 Certainty as to the effect of the sampling process

While knowing that the customs authorities need to carry out controls and maintain an appropriate level of supervision, a trader wishes to know that its business flows would not be retrospectively challenged. This would otherwise create a climate of uncertainty whereas a modern system should lean more towards cooperation between traders and authorities. Incorrect classifications or loss of customs debts with regard to products already introduced into a customs union are acceptable losses in favour of a system of certainty which, on the other hand, strengthens its risk-based approach focusing its controls on those traders where

risks are pointed and/or mistakes are found (which need to build or improve a relationship with the authorities).

5.2 Sampling in the EU customs juridical system

Does the EU system pass the test of "the good sampling system"? The answer could be: it partly does, but there is room for improvement.

With respect to transparency, the system seems to be in "good shape". The customs authorities do have an obligation to notify traders with respect to sampling procedures as well as to results, so that the trader can be informed and can monitor such activity to protect its rights and intervene where necessary (even though the new UCC may be even clearer with regard to the compulsory content of the examination report).

Concerning the legality, *formal rules on sampling* (i.e.: defining the power of the authorities, the right of the trader, the procedure on notification of documentation etc.) are clear and satisfactory. However, the weak point that remains in the system is linked to the *substantial sampling methods*. Even though there are international high standards regarding these methodologies, such standards have not fully made their way through the EU Customs regulations[63] and are left, except for specific legislation (for example the food industry), to the discretion and reasonability of the customs authorities. A better system, as previously indicated, would be either a simple and general clause allowing legally binding status to international sampling standard or, even better, an enhanced system linked to the Harmonised Convention where the link between the correct standard and the product nomenclature is explicitly made (and revised by a Committee based on scientific advances)[64].

Finally with respect to the need for certainty as to the effect of the sampling process, the only weak point is represented by the current approach to "retrospective sampling" as outlined following the Greencarrier case. The alternative of re-strengthening the principle of immutability of customs declarations in the light of modern technology and enhanced used of risk-based approach should be explored by the legislator testing for a period of time the real need for "post-release" examination in order to pragmatically decide whether it is a power still needed by the customs authorities.

[63] See note 4

[64] At international level it exists a Scientific Sub-Committiee, an advisory body of the WCO Council on questions involving chemical or other scientific matters. However, there is no structural organisation on sampling methodology. The WCO nonetheless has intervened in some occasions, for example publishing Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis.

Literature list

CCC: COUNCIL REGULATION (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1)

CCIP: COMMISSION REGULATION (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1)

UCC: REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1)

UCC Draft Implementing Acts, TAXUD/UCC-IA/2014-1

European Court of Justice case law: Case C-571/12 Greencarrier Freight Services Latvia SIA v. Valsts ieņēmumu dienests;

Customs in the 21st Century, Enhancing Growth and Development through Trade Facilitation and Border Security, World Customs Organisation, Pretoria/Brussels, 2008

General Principles of good sampling practice, Neil T. Crosby and Indu Patel

Statistical sampling, Oxford Journal of the ICRU (International Commission on Radiation Units and Measurements), Volume 6, Issue 1Pp. 25-34

WCO, Guidelines on Methods and Procedures for Ivory Sampling and Laboratory Analysis.

Annex on Sampling specialised relevant legislation[65]

Council/Commission Regulations		
Subject	**Provision**	**Number**
Beef cuts	on the collection of samples and the adoption of certain detailed rules in connection with physical checks on boneless beef cuts qualifying for export refunds	765/2002
Customs Code	establishing the Union Customs Code, Articles 69(5), 67, 70, 71 and 72	2913/92
Customs Code	laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Union Customs Code, Articles 241-246	2454/93
Export refund monitoring	laying down detailed rules for applying Council Regulation (EEC) No 386/90 as regards physical checks carried out when agricultural products qualifying for refunds are exported	2090/2002
Export refund monitoring	on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts	386/90
Feed	laying down the methods of sampling and analysis for the official control of feed as regards presence of genetically modified material for which an authorisation procedure is pending or the authorisation of which has expired	619/2011
Feed	laying down the methods of sampling and analysis for the official control of feed	152/2009
Foodstuffs	amending Regulation (EC) No 333/2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs	836/2011
Foodstuffs	laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs	333/2007
Foodstuffs	laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs	1883/2006
Foodstuffs	laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs	1882/2006
Foodstuffs	laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs	401/2006

[65] This is annex is merely a reproduction of the information gathered from the SAMANCTA web version and can be found at http://ec.europa.eu/taxation_customs/dds2/SAMANCTA/EN/Legal/LegalBasis_EN.htm

Foodstuffs and feed	on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules	882/2004
Fruit and vegetables	laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors	543/2011
Olive oil	amending Regulation (EEC) No 2568/91 on the characteristics of olive oil and olive-pomace oil and on the relevant methods of analysis	1989/2003
Smoke products	implementing Regulation (EC) No 2065/2003 of the European Parliament and of the Council as regards quality criteria for validated analytical methods for sampling, identification and characterisation of primary smoke products	627/2006

Council/Commission Decisions		
Subject	**Provision**	**Number**
Animals	approving a Diagnostic Manual establishing diagnostic procedures, sampling methods and criteria for evaluation of the laboratory tests for the confirmation of classical swine fever	106/2002
Animals	establishing the sampling plans and diagnostic methods for the detection and confirmation of the presence of the mollusc diseases Bonamiosis (Bonamia ostreae) and Marteiliosis (Marteilia refringens)	878/2002
Animals and animal products	laying down detailed rules on official sampling for the monitoring of certain substances and residues thereof in live animals and animal products	179/98
Fish	amending Decision 92/532/EEC laying down the sampling plans and diagnostic methods for the detection and confirmation of certain fish diseases	240/96
Fishery products	determining analysis methods, sampling plans and maximum limits for mercury in fishery products	351/93

Council/Commission Directives		
Subject	**Provisions**	**Number**
Caseins and caseinates	laying down methods of sampling for chemical analysis of edible caseins and caseinates	424/86
Dangerous goods	on the inland transport of dangerous goods	68/2008
Fertilisers	amending Directive 77/535/EEC on the approximation of the laws of Member States relating to methods of sampling and	8/95

	analysis for fertilisers (Methods of analysis for trace elements at a concentration greater than 10 %)	
Frozen foodstuff	laying down the sampling procedure and the Community method of analysis for the official control of the temperatures of quick-frozen foods intended for human consumption	2/92
Milk products (preserved)	laying down Community methods of sampling for chemical analysis for the monitoring of preserved milk products	524/87
Personal protective equipment	on the approximation of the laws of the Member States relating to personal protective equipment	686/89
Plant and animal products	establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC	63/2002

Council/Commission Recommendations

Subject	Provision	Number
Foodstuffs and feed	on technical guidance for sampling and detection of genetically modified organisms and material produced from genetically modified organisms as or in products in the context of Regulation (EC) No 1830/2003	787/2004

Other Legislation/Literature

Subject	Provision	Number
Dangerous goods	European Agreement concerning the Carriage of Dangerous Goods by Road (ADR) including Annexes A and B	ADR
Nomenclature	IUPAC Nomenclature for Sampling in Analytical Chemistry (Recommendations 1990)	Pure &App. Chem, Vol. 62, No. 6, pp. 1193-1208,1990