

THE NATIONAL INSTITUTIONAL SYSTEM WITH COMPETENCE IN ADMINISTERING CUSTOMS DUTIES

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Abstract: *Customs duties are budgetary revenues, but also important instruments in streamlining international trade. There are several types of customs duties, but their contribution in terms of value to the establishment of public funds is rather negligible. The attributions of the customs authorities are the customs control of goods and people, the establishment and collection of taxes due, fighting crime or, to put it differently, the enforcement of customs duties. Romania has joined the movement to liberalize world trade by ratifying numerous international conventions and harmonizing its legislation with the one of the European Union, whose member it is.*

Key words: *customs duty, customs tariff, customs authority.*

1. The customs duty. Definition and classification

Customs duties represent a category of *indirect taxes*, included in the special consumption taxes, which are levied on the goods crossing the state border. They are an indirect contribution as they are paid by legal entities and / or individuals who, in the commercial transactions, import or export goods or transit with these the customs border of a state. Instead, these taxes are borne by the final consumer, their amount being found in the market price of products constituting or containing goods for which duties were paid [1], [3], [5].

Customs duties are defined in the literature [6] as those levy funds, collected by the state when the goods cross the border for import, export or transit. They are part of the public revenue, being

instruments setting the customs regime. From the legal point of view, they represent financial-budgetary obligations.

Regarding the name of customs duty, in the literature it was stated that this should be considered a linguistic archaism, dating from the period of trade relations when financial obligations had a fiscal function and their differentiation made no importance [2].

The author does not specify what would be the name to use in this respect. Probably the one of customs tariff if we consider the terminology of the General Agreement on Tariffs and Trade whose target was to eliminate the tariff barriers in the international trade or the EU Customs Code that uses the concept of customs tariff parallel to the one of customs duty.

Customs duties are classified according to several criteria. Thus, according to the

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operation representing the object of taxation, we can talk about:

a) *import customs duties* which are levied on bringing goods into the country; they are the most numerous and consistent customs duties. They have a dual role, a fiscal and protectionist one.

For example, by establishing a customs duty on the import of a category of goods, it is intended to encourage and protect the domestic production for the same category of goods.

b) *Customs duties* are levied on the export of goods out of the country. In the international customs practice, levying this kind of taxes was given up on. They are levied in certain countries, isolated for some raw materials in order to stimulate the domestic production of finished goods, which are then exported at a higher price.

c) *Transit customs duties* are levied for means of transportation and the goods crossing its territory, between two customs borders. It was generally given up on levying them as states prefer to increase the transit of goods.

The revenue which was lost as a result of giving up on collecting the transit customs duties is offset with the revenue from the fees charged for using the national network of roads / highways / railways, those collected for the temporary storage of goods in special places in the state transited, from the price of the goods and services used by the carriers.

Romania is currently using only import taxes, in accordance with the Customs Import Tariff, expressed in percentages and differentiated among commodities and commodity groups.

A. According to the purpose of the imposition, there are:

a) *Customs duties of a fiscal nature* with the sole purpose of procuring revenue to the state budget or the budgets of local communities.

b) *Customs duties with a protectionist character mainly aimed at encouraging the domestic production of goods, by discouraging imports of similar foreign goods, and only in the event of collecting budget revenues.* They are more consistent than those of a fiscal nature.

B. According to the taxation manner, they can be classified into:

a) *ad valorem customs duties.* They are determined according to the customs value of the goods and represent the rule in the international customs practice. But their amount is influenced by two factors: the fluctuation of commodity prices on the international market and the easy circumvention by the importers declaring much lower values than the real ones. For this, within GATT, the Customs Evaluation Code was adopted (1979, Tokyo Round) and then amended (1994 Uruguay Round), a document containing the rules for correctly determining the customs value.

The General Agreement on Tariffs and Trade (General Agreement of Tariffs and Trade - GATT) is a multilateral treaty that entered into force on the 1st of January 1948 and was concluded, mainly in order to phase out the restrictions in the international trade field. Although not an international organization itself, however, in order to fulfill the ambitious goals, an institutional structure in accordance with the domain was created [4].

Romania has attended the GATT as observer since 1957, and in 1971 it obtained full membership [7] [2]. Reaching its goal, GATT was transformed into the World Trade Organization from the 1st of January 1995.

b) *specific customs duties* to be determined in a fixed amount per physical unit of cargo declared at the customs (piece, ton, linear meter, cubic meter, hectoliter, etc.).

Despite the complicated customs tariff, the application of the tax system has the ability to be effective whereas the two disadvantages of ad valorem duties are eliminated.

c) *the composite or mixed customs duties* involve levying a customs duty on value, doubled by a special customs duty, an additional one, which is established for a limited period of time, particularly to emphasize the protective nature of certain duties.

C. A final classification would be based on the criterion of the method and level setting as follows:

a) *autonomous duties*. They are determined independently by each state and concern the goods from the countries that have not signed bilateral or multilateral trade agreements, or for goods whose origin cannot be proved by a certificate of origin. They are usually the highest taxes.

b) *conventional customs duties*. They are negotiated by states and established in international conventions. They apply within the Most-Favoured-Nation Clause, being negotiated at a low and identical level for all the states that were granted this clause.

c) The preferential customs duties are established as a result of direct negotiations between states, thus derogating from the Most-Favoured-Nation Clause. Usually they are set only for certain categories of goods. For example, France establishes preferential customs duties on goods originating from its former colonies such as Algeria, Morocco, Tunisia, Cameroon, the Ivory Coast.

The retaliation customs duties or the response ones representing effects of certain repressive measures of economic policy, directed against the states that practice systems of hidden subsidies to export (*countervailing customs duties*) or a

policy of *dumping* (*anti-dumping customs duties*).

Retaliatory customs duties have a predetermined level. Thus, anti-dumping duties cannot exceed the difference between the price of the product on the international market and the dumping price, the so-called dumping margin, while the level of the countervailing customs duties cannot be greater than the amount of subsidies used by the exporting state for the product in question.

Worldwide, the level of retaliatory customs duties is established by the organization authorizing such a measure, namely the World Trade Organization.

In general, there is a preliminary procedure of research, its results being a basis for the solution to be adopted on the respective matter. In this respect, two documents developed under GATT are capitalized: the Anti-Dumping Code and the *Code on the export subsidies and countervailing duties*.

2. The functions of customs duties

Given the characteristics of the different types of duties presented above, we can draw the important functions they perform.

A first function would be to that of tax instrument. They supply public funds and can be important budgetary resources. However, given the post-war international trade trends, this historical function is very much subdued.

The second function, and the most important in the new international context, is that of instrument of trade policy understood as a set of measures with an administrative, political, legal, fiscal, foreign exchange or another nature by which countries promote their national interests and participate in the international trade relations network [6].

Customs duties outline state customs procedure and, why not, in the context of

regional integration, the regional customs regime. Depending on how they are regulated, they not only affect imports and exports, in the sense of increasing or decreasing, but also international economic cooperation.

The means used to achieve the trade policy objectives can be grouped into two categories. On the one hand, measures of direct control or coercive measures that affect the international trade volume. For example, quotas, licenses, prohibitions and currency control belong to this category. On the other hand, indirect control measures or termination means influencing prices, such as, for example, anti-dumping or compensation taxes, subsidies and export bonuses.

Over time, customs duties have played a role in protecting national economy by applying high tariffs on imports of manufactured products and lower taxes on raw materials in order to develop their industry.

Gradually, the customs protectionism was given up on and the states preferred to promote free trade or the one involving lower duties. However, customs duties have not disappeared, the states finding sufficient reasons for the existence of customs duties and a national customs tariff, an embodiment of their own customs / pricing policy. Among the aspects that are considered when developing the national customs policy we mention the need to protect some branches or sub-branches of national economy, the protection of competition, measures to protect certain social categories, reducing imports and boosting the domestic production. Here we are dealing with a mix of trade, fiscal exchange and social policies.

However, in the contemporary world, the national economies cannot be conceived outside the international economic system, isolated, but only in interaction.

Imperatives like industrialization, modernization, use of advanced technology, technology transfer, information exchange, quality and price competitiveness are equally important motivations for states to negotiate the tariffs for customs duties and to provide mutual benefits.

Starting from the customs duties functions, we identify a number of *effects* of customs duties: on budget revenues, on domestic production, on costs, quality and price, on domestic consumption, on income, on domestic and international competitiveness, on the domestic and international competition and on the international economic system.

The General Agreement on Tariffs and Trade (GATT) stipulates in art. XI that the contracting parties shall not impose and will not support other import restrictions apart from customs duties. All customs duties are included in the customs tariff, being an important instrument of trade policy.

3. Romanian customs regulations

The Romanian customs legislation has been adopted in view of the requirements imposed by Romania's membership in GATT, in the World Trade Organization, associate member and full member of the European Union. Undoubtedly, the main customs regulation is Law no. 86/2006 regarding the Romanian Customs Code, as amended. The Code provides the enforcement of Council Regulation (EEC) No. 2913/92 establishing the *Community Customs Code*. It should be noted that, unlike other indirect taxes (value added tax, excises), customs duties are not regulated by the Fiscal Code into force since January 1st 2004. Given the specificity and the complex procedure of determining customs duties, it was preferred to maintain a distinct body of law

to regulate this domain, namely the Customs Code.

In order to apply this code, the Government Decision no. 707/2006 was adopted, approving the Implementing Regulations of the Romanian Customs Code, as amended. Other important regulations that establish the competences, rights and obligations of the customs staff are the Regulations regarding Customs staff and the Customs Conduct Code for customs staff.

At the same time, the Government Ordinance no.92 / 2003 on the Fiscal Procedure Code, as amended, regulates issues related to budgetary obligations regime and settlement of customs appeals. The enactment of Law no.207 / 2015 regarding the Fiscal Procedure Code which will come into force on 01.01.2016 is also worth mentioning.

There are other laws that contain customs regulations. Among these we mention only a few: Law no.69 / 1994 regarding Romania's joining the Convention on International Trade with Endangered Species of wild flora and fauna, Law no.98 / 1996 concerning Romania's joining the International Convention on the Harmonized System of Description and Certification of goods, Law no.149 / 1997 to ratify the UNIDROIT Convention on Stolen or Illegally Exported Cultural Goods, Law no.103 / 2000 on ratifying the International Convention for the harmonization of border control of goods, Law no.143 / 2000 on combating trafficking and illicit drug consumption, Law no.182 / 2000 on the protection of the national cultural movable heritage, Law 261/2002 on the regime of precious metals and stones, the Administrative Agreement for tariff quota management TAXUD / 3439/2006-EN-re.3.

Worth mentioning is the fact that the regulations concerning customs duties are

highly technical in what regards their content. This is why, under art.37 of the Customs Code, the interested parties may request the customs authority relations and information on the application of customs regulations. The request must be accompanied by documentation and the customs authority will provide a response in writing and free of charge, within 10 days.

The customs rules shall apply uniformly throughout the customs territory of the country, unless there are contrary dispositions or different times provided in international agreements and conventions within which Romania is a party.

Post-communist Romania made a considerable effort to amend the legislation so as to ensure the transition to a competitive, free economy taking into account the desideratum of participation in the international economic relations. In 1993, in Brussels, Romania signed the Agreement to join the European Communities which aimed to help our country in its efforts to achieve the transition to a market economy and strengthen its democracy, for the admission as a full member.

The agreement provisioned the harmonization of the Romanian legislation with that of the Community, including the one regarding customs. Cooperation in the customs field targeted the following:

- exchange of information,
- introducing a unique administrative document and a combined nomenclature (the customs declaration and codification of goods on eight digits in the Customs Tariff)
- simplifying the control and formalities relating to the transportation of goods,
- mutual assistance in customs matters.

In this harmonization effort, the Romanian Customs Code was adopted in 2006, which is in the letter and spirit of the Community Customs Code. Over time, the

Romanian Customs Code was amended to keep pace with the new realities and Union regulations.

Furthermore, even the Community Customs Code was amended by the EU Regulation 952/2013 of the European Parliament and of the Council of October 9th 2013. In conclusion, the Romanian customs legislation is in line with the European one and with the treaties to which Romania is a party.

4. The customs authority and the customs staff

In Romania, according to article 5 paragraph 1 of the Code, the activity of the customs authority is exercised by *the National Agency for Fiscal Administration* (ANAF) and the subordinate structures. The customs authority exercises within the state customs policy, the attributions conferred by the customs regulations in order to carry out the customs control of the goods brought into or out of the country.

Establishing, levying and collecting the customs duties are done via *an institutional system with specific organization and attributions*. Thus, the customs activity is exercised by the General Directorate of Customs, a specialized body of the central public administration functioning in the Ministry of Finance, under the National Agency for Fiscal Administration.

At territorial level, under the General Directorate of Customs, regional customs directorates and customs offices are established. Within the latter, clearing points can also be set up.

The General Directorate of Customs and the regional directorates of customs exercise the coordination, guidance and control regarding the execution of the operations carried out by the customs offices, ensuring the uniform application of customs regulations.

The customs clearance is carried out at the inland clearing offices and stations by the customs staff, under the direction and control of the regional directorates of customs and the General Customs Department (art. 9 paragraph 2 of the Customs Code).

The customs staff includes officials appointed to a public position in the institutional system of the customs authority. Only those who fulfill any of the functions provided for in art. 5-8 of the Customs Staff Regulations, respectively management and execution functions have the quality of civil servants and are subject to the provisions of specific legislation. They are chartered in executive positions and professional degrees. The remaining employees who work within the institutionalized system of the General Department of Customs (those performing administrative, supply, secretarial activities etc.) are employed based on an individual employment contract, subject to the provisions of the Labour Code.

The General Directorate of Customs is headed by an ANAF vice-president and has the rank of state undersecretary in the Ministry of Finance.

The general public leadership functions from the central body of the General Directorate of Customs are ranked as follows: director, deputy director, head of department, head office. Other people filling a managerial and executive positions in the structures subordinated to the General Directorate of Customs are determined separately for each hierarchical category subordinated to the General Directorate of Customs.

The quality of civil servant generates a complex of specific elements related to: the recruitment of the customs staff; the content of specific rights and duties [1]; the terms of termination of services; incompatibilities and conflicts of interest [11]. The provisions of the Customs Staff

Regulations are supplemented by those of the Civil Servants Regulations [8] which is the common law.

5. The material and territorial competence of the customs authority

The competence regarding the establishment and levying of customs duties is a special one, derogating from the common law. The *material competence* of the General Department of Customs can be defined by listing its main tasks:

a) carrying out the customs clearance of the means of transport, merchandise, goods and assets belonging to individuals, even without the proprietor's consent;

b) the corporal customs clearance of people;

c) carrying out the clearance of goods into or out of the country, at the customs offices and stations or other places;

d) stopping vehicles and possibly their immobilization in case of refusal to stop;

e) the possibility to board any vessel or aircraft, civil or military in ports or airports;

f) the possibility of controlling the goods subject to customs clearance, found in any place in the country;

g) exercising customs supervision and routine customs clearance in the special customs supervision area or elsewhere (e.g. in free zones) etc. Under the Customs Code, the customs surveillance area comprises a strip of 30 km inside the state border and the space between the outer limit of the territorial sea and the state border.

Inside it, the customs authority sets up customs supervision stations, permanent or temporary, fixed or mobile and carries out snap checks to identify the people suspected of violating customs regulations. Regarding the corporal customs clearance of people, it is exceptional, being

conditioned by the existence of information or allegations on the violation of customs regulations. If the suspicions refer to transporting illicit drugs in a person's body, medical investigations may be carried out, with the consent of the person concerned or with the authorization of the Prosecutor [9]. The summary customs clearance does not have the nature of the corporal search provided in the Criminal Procedure Code.

In order to carry out customs duties, there is a *general obligation of cooperation* which targets:

- individuals, for the goods they pass over the border, on their own behalf or on behalf of a legal entity;

- institutions and businesses that are required to freely provide the customs authority with the data and information in their possession relating to the goods subject to customs clearance;

- postal authorities, who are required to submit to customs clearance the parcels and the mail sent from abroad;

- the police, the border police and the control bodies of the Ministry of Finance, bodies responsible for the circulation and use of goods are required to notify the customs authority of any customs offenses they should find (art. 14-17 of the Customs Code).

It is to be noted that in 2013, a wide-ranging reform of the Ministry of Finance began, in which a new structure of fiscal and customs control was created, namely the Fiscal Anti-fraud Directorate General.

This is responsible for the prevention, detection and combating of acts and facts of tax evasion and tax and customs fraud. The Fiscal Anti-fraud General Directorate is headed by an Anti-fraud Inspector General and coordinated by the Managing Director of the General Department of Customs, who is one of ANAF's vice-presidents. This measure is designed to streamline the work of these structures in combating tax evasion. Regional anti-fraud

directorates operate within the Fiscal Anti-fraud Directorate General their staff consisting of anti-fraud inspectors who are civil servants. They conduct operations of current and thematic control [10].

Regarding the *territorial jurisdiction of the* General Department of Customs, the border or internal customs offices effectively conduct clearance operations. Exceptionally, the territorial competence falls upon the territorial structure of the place where the event giving rise to the customs debt occurred, or the place where it was found that the goods generate a customs debt.

6. Final considerations

Customs duties are revenues that supply the public funds, but in the last decades, their role of fiscal instruments reduced considerably.

The official statistics and reports demonstrate this. For example, in Romania they represented only 0.1% of GDP in 2012. But they remain important instruments in fostering interstate trade relations. In this regard, numerous international treaties have been adopted, aimed at unifying and simplifying customs procedures and eliminating customs barriers.

Romania has aligned to this movement to liberalize world trade by ratifying many such conventions. Also still in the pre-EU period, it harmonized its legislation with the European law in order to ensure the free movement of production, services, capital and people, thus contributing to the consolidation of the gigantic economic and financial area represented by the Union. It aims at regulating customs duties, customs procedures, the competences of the national customs authorities, the exchange of information between the customs authorities in different countries,

combating tax evasion as well as transnational crime.

References

1. Costaş, C.F.: *Reflections on limiting the exercise of certain public freedoms of the civil servants*. In: Romanian Treatises, (2004), No. 3, p.47 Bucharest
2. Gliga, I.: *Financial Law*. Bucharest. Humanitas Publishing, 1998.
3. Oprea, C.: *Datoriile vamale (Customs duties)*. In: Revista de drept comercial. Bucharest (2003) No.9 (I), No.12 (II), (2004) No.6 (III), No.12 (IV).
4. Rainell, M.: *Le GATT*. Paris. La Découverte Publishing, 1993.
5. Şaguna, D.D.: *Financial and tax law treaty*. Bucharest. All Beck Publishing, 2001.
6. Şaguna, D.D., Sova, D.: *Tax Law*, 2nd edition. Bucharest. C.H. Beck Publishing, 2008.
7. Văcărel, I., Bistriceanu, Ghe.D.: *Public Finance*, IVth edition. Bucharest. Didactic and Pedagogic Publishing House, 2003.
8. *** Law no. 188/1999, republished in Official Gazette no 365 of 29 May 2007.
9. *** Law no. 86/2006 on the Romanian Customs Code, published in Official Gazette no 350 of 19 April 2006.
10. ***Government Emergency Ordinance No.74/2013 regarding the reorganization of the National Agency for Fiscal Administration, Law no.144/2014 approving Government Emergency Ordinance no.74/2013, published in Official Gazette no 389 of 29 June 2013.
11. *** Government Emergency Ordinance no.10 / 2004 on the status of customs staff, published in Official Gazette no 256 of 23 March 2003.