

THE LEGAL EUROPEAN CUSTOMS REGIME

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Abstract:

The activity of clearance is a particularly complex legal transaction, structured in several stages and carried out after a specific procedure, which expresses at a practical level the complexity of the legal customs reports and the social situations that may arise during the exercise by the customs authority of its rights and its obligations, in the permanent consideration of the fundamental prerogatives of the individuals, subjects of these official legal reports.

The clearance is a complex operation whose content expresses in the most categorical way the substance of some specific social relations which through legal regulation became law reports, in this case, of public law. Therefore, as in any report or set of legal reports, and in the case of the clearance we identify the subjects of the law report and also a specific object of the activity of clearance.

The carriers of goods destined for free circulation, export or transit or their representatives are required to show to the customs frontier offices along the border the means of transport with the required documents.

The legal regulations for customs arose from the need for creating an appropriate legal framework and according to the circumstances actually created along with the movement of goods, the people and the values in the international regime.

Keywords: customs activity, customs legal regulations, customs legal report, customs policy, customs union

JEL Classification: K 33, K 39

INTRODUCTION

The customs legal regulations originally came from the need to regularize the inter-state relations, because the evolutions and the conditions occurring in the social, political, economic and historical domain, having initially an obvious political character. Currently, there is an acute need to establish clear and precise rules of some factual situations in the movement of goods and services in the international regime.

Therefore, the customs service is nothing but a multitude of activities regulated by the law and other normative acts carried out by competent authorities, with the participation of the importers, of the exporters or their representatives in order to achieve export-import operations, so as to do them with the fulfilling their obligations towards the state [1].

Therefore, the customs law might be considered as a distinct branch of law governing its object, a special category of reports and specific characteristics. As a branch of the Romanian legal system, the customs law is made up from all the legal rules governing the customs in order to achieve the customs act, to prevent acts of evasion in customs and of committing any crimes in this area.

The customs' subject is defending the economic interests of the state, taking into account that for the collection of the indirect tax which is represented by the customs tax, a lot of complex activities which are elucidated, result in the damage of the society's legal interests

Performing under normal conditions the activity of customs and also making incomes at the state budget is provided by respecting the importers and exporters' duties, including the individuals', who sometimes make legal customs relations.

The legal rules are done through legal reports, **the legal report** is defined as a social report, concrete and historical, volitional, regulated by the legal norm, in which the participants are the holders of the rights and obligations and by exercising them the legal norm's finality is achieved.

The customs legal reports are those relationships with specific structure that occur during the customs act itself, the nature of the report of customs law being patrimonial.

The main selves of the legal customs report are, on the one hand, the customs authorities- as

representatives of state, more exactly of the financial authorities and on the other hand, the natural or legal persons, importers, exporters or their representatives.

THE CUSTOMS POLICY – COMPONENT OF THE FISCAL-TRADE POLICY

The trade policy as part of the general economic policy is the one that establishes the correlation of the national economy with the world's economy through administrative, fiscal, customs and currency rules. The trade policy includes all the rules adopted by the state as an attribute of sovereignty to regulate the behavior of the authorized persons in the international trade. The trade policy has an important function in the mechanisms of the international economic interdependences and influence the international trade balance.

By trade policy states pursue:

- to promote exports of domestic products,
- to complete the need of the national economy with goods and services via import,
- to support the international economic cooperation,
- to protect the domestic industry and the other branches of production in front of the foreign competition,
- to direct and control the import and the export of capital.

Since most payments of a country come with the trade flows relations, the trade policy is obvious exercised in close coordination with the exchange rate policy, which influences and oversees the national currency exchange rate against foreign currencies and determines guidelines about entries and exits of capital [2].

The objectives of the commercial policy are given by a series number of factors such as: the available economic potential of a state, the size of the territory, the population, the geographical location, the phenomenon of concurrence of the international market or the global economy. We might say that the objectives of a state's trade policy aim to ensure the international trade balance.

The customs policy includes all the laws on the entry and the exit of goods in and out of the country, having a lot of economic and financial means and means of customs technique and procedure.

Romania has a customs policy in a relation of interdependence and subordination to the state's economic policy, its main objective being the development of the economic potential that determines the export offer and the import demand, as well as Romania's integration into the international trading system, by adopting measures through which to achieve the reduction of tariff and non tariff restrictions, that settle the trade between the states and protect the national economy [3].

THE CUSTOMS UNION - AN ESSENTIAL ELEMENT OF THE EUROPEAN SINGLE MARKET

The customs system is a complex structure that includes measures used by the state to influence customs, the administrative and management methods, the institutional and legal framework and aims at the national economy's level, to defend the economic interests of the state, the production of statistics in the foreign trade, the creation of the state's fiscal policy and the encouragement of the activities of export through different forms and ways.

The customs system operates in certain space called "customs territory" meaning "the territory where a certain customs regime, a certain customs legislation activates " [4]. During the postwar period, the states have agreed that through the extension or the stint of the customs territories, to impose special territorial customs regimes. Since the customs territory of the state is the national territory, the extending of the customs' territory arises when two or more countries agree to form a customs union.

The customs union is the essential condition for an economic integration of all the European Union countries and it's the framework in which it is possible to create, develop or manage a single common market where goods can move freely and where common rules are applied in the interior of external borders, the provisions of art. XXIV of GATT defines the customs union as "*replacing several customs territories with a single customs territory.*" Without customs union, "the common commercial policy and the development policy of the EU, the agricultural common market and the effective coordination of the economic and monetary policies, would not be possible (after Gh. Caraiani).

The essential feature of a customs union is that the participating countries abolish the tariff scales applied in the relations between them and applies in the relation with third parties a common trade policy, based on a single customs tariff. Another form of customs integration and economic cooperation is, besides the customs union, the free trade areas.

As a form of extending the customs territory, free trade areas meet two or more customs territories, with the objective of total eliminating, between the countries, of the customs taxes and the restrictive trade regulations, appearing when there is a desire of the countries for close economies, without integrating them or turning them into a single economy. In this situation, the extension of the customs territory regards only mutual trade, by maintaining the independence in the sphere of trade policy. Thus, each state shall preserve its own customs tariff and its own commercial policy opposite the outside world. So the rules governing what types of goods can move freely from one country to another within this area are defined. This concerns mainly the establishment of the rules of origin. The customs procedures should be maintained in order to check whether these rules are respected.

Unlike free trade areas, the customs union mainly aims for economic integration without restriction within the EU borders, although some internal taxes on sales accompany the process.

If there were no customs union and the fundamental principle of free movement of goods, then the creation of a single market and the economic expansion of the European Union wouldn't have been possible, since before its foundation, there were already plenty of border customs formalities for transports of goods, which hindered the inter-community trade and made the EU companies to pay large sums of money and to lose time.

Customs' role in implementing common policies of the European Union is obvious in health, environment, economy, agriculture and external relations.

Thus, the customs union protects the citizens of the Community, by checking through the customs services of the member states, the import of food such as meat, milk, eggs, vegetables, fruit and wine to eliminate the health risks they may present, the import of hazardous or ozone-depleting products, thereby protecting the environment, monitors and prohibits the international trade with endangered species of flora and fauna, threatened with the extinction, and also controls on psychotropic substances, weapons and ammunition, etc..

In order to protect the economic interests of the European Union It's necessary to use non-tariff instruments regarding unfair competition, to have quantitative restrictions on imports, counterfeit goods and pirated goods, as import rights are reduced, their range becomes wide.

CUSTOMS LEGAL REGIME IN THE EUROPEAN UNION

When entering or leaving the customs territory of the EU with goods presented to the customs office, the customs authority of any member state establishes the customs regime and hence the customs procedure attributed to the categories of goods in part. The EU customs regime includes all the rules that apply for the clearance, depending on the commercial operation or the goods' destination. The customs regimes can be:

- suspensive;
- final.

The European customs union is the legal framework for establishing and giving the customs regime to the goods submitted to the operations of foreign trade in and from the community space.

The Treaty of Rome on the European Economic Community signed on 25th of March 1957 and entered into force on 1st January 1958, stipulates in art. 23 that the customs union covers all trade with goods from the member states and towards the third countries a Common Customs Tariff will be applied. The customs regimes and practices adopted through the EU regulations and directives and governed by the laws in force are based on the EU Customs Code.

The EU Customs Code contains general rules and regulations relating to all customs regimes applicable to goods that are traded, being a summary of all the legislation enacted between 1968 and 1990 and that were replaced by it. The first Code was adopted in 1992 by The EEC Regulation (European Economic Community) No. 2913 from 12th of October 1992 and amended by Regulation no. 450/2008 regarding the establishment of the new Community Customs Code published in the Official Journal of the European Union on 4th of June 2008 [5].

Its provisions can be applied in the EU trade relations with third countries, to goods that are subject of The ECSC Treaty, the Treaty establishing EURATOM [6]. The EU customs Code also establishes the customs treatment applicable to goods from the EU customs territory until they have been released. Thus, the entry of goods into the community customs territory, lodging and unloading the goods in temporary storage or under the customs regime of temporary transit are approved. It regulates the treatment of goods according to their destination, establishing a tariff classification and obtaining a final customs regime (export or import) or suspensive (customs transit, customs warehouse, temporary admission - on import and export, the regime of active or passive perfecting, processing under control customs) and approval of goods for free circulation in the community's space after their "customs release". The EU customs Code approaches the final and the suspensive customs regimes and also the exceptions from paying the customs taxes, granted under various schemes provided for the goods.

The export and the import to and from the EU are final customs regimes. Other regimes, called economic, correspond to situations with greater complexity, which require temporary storage of goods or transforming the goods by processing them. These regimes take into account the particularities of the economic circuit of goods and adapt to it, avoiding the payment of the customs taxes by the importing firms.

The common elements for the EU customs regimes are:

- ✓ any goods is the subject of a customs declarations corresponding to that customs regime. Its representative, the holder of the transaction, completes the **Single Administrative Document (SAD)** on a standard form that he signs and he submits together with other documents at the customs office for accepting the requested customs regime. The date stated on the accepted SAD determines the application of the customs regime;
- ✓ the control of the other documents by the customs authority;
- ✓ the total or partial physical control and also the sampling.

The transport of goods to the place where the customs control is carried out is on the risk and the expense of the customs declarant, who is entitled to attend the physical control and the sampling.

In terms of the customs regime and the customs procedure in connection established by the EU, the transactions made by traders who are in the category of final customs regimes are operations of import and export in and from the EU. Both types of transactions are the two basic customs regimes of international trade.

From 1st of January 1993, these arrangements can only apply to trade from the European Union and the third countries, the European space being a single customs territory, as a consequence of the creation of the customs union.

THE CUSTOMS REGIME FOR EXPORTS IN THE EUROPEAN UNION

The European Union rules consider as permanent export customs regime in the EU all the goods sent abroad on a contractual basis and intended to remain permanently outside the community customs territory, except:

- the goods sent abroad temporarily;
- the goods that are subject of a passive perfecting.

All the goods produced in the EU can be exported, also the previously imported, except those that are prohibited to be exported from the European Union, namely:

- the prohibited goods;
- the restricted goods during the common trade policy.

In the European Union, the exports of goods may be carried out by legal persons established in an EU state, which have as object these operations.

When exporting goods from the European Union no taxes are charged, the only condition for their release is the goods leaving the UE customs territory in the same condition as they were in the customs declaration, which has a statistical purpose only. The elimination of the customs tax is due to the European community's interests to stimulate the export of goods. When exporting goods from the European Union no value added tax (VAT) is applied.

The exporter is required to submit a SAD of export at the customs office, in whose area his office is situated or the place where the goods are packed or loaded for export. However, this declaration also can be made at a border customs office from the EU .

The goods for export, controlled and cleared in the country, are submitted to the customs control at the border, where they check only the number, the series and the integrity of the applied seals based on the document of export.

The following are subjects of customs control, on exports from the UE:

- the vehicles and packages for export, cleared within the community's space, which arrived at its border without seals, with modified, or not properly implemented seals or seals which don't match those specified in the documents;
- the vehicles and packages that do not qualify for sealing;
- the vehicles where there is a presumption that there are other assets than those provided in the documents.

When there are not appropriately conditions at the border customs offices of the European Union, the vehicles are directed to the nearest customs office where there are conditions for verification.

The transport, the handling, the packing and the unpacking of the goods in order to exercise customs control is carried out by the customs declarant, at its own expense or, eventually, at his representative [7].

THE CUSTOMS REGIME FOR IMPORTS FROM THE EUROPEAN UNION

The main customs regime in the European Union is the final import. It consists in entering the EU customs territory of foreign goods with the purpose of introducing them in the economic cycle, after the customs formalities at the community budget.

In the EU, the import of goods is liberalized. However, certain categories of goods are submitted to quantitative restrictions or are submitted to control, in accordance with the international commitments. The list of goods subjected to licensing shall be determined periodically, by decisions of the community's authorities. The methods and the formalities of clearance provided by the European regulations are part of the general principles defined by the GATT (WTO) (General Agreement on Tariffs and Trade). This means that the limits and the liberalism of the common commercial policy are reflected in the principle of reciprocal trade concessions.

The EU economic operators are required to carry out the importation of goods in accordance with their activity and take necessary measures to clear the goods for their immediate introduction into the economic circuit. Thus, they are obliged to declare and present the arrived goods, while submitting the customs documents. They are responsible for the delay in the goods' clearance caused by failure to appear with the documents within the legal time.

The Customs Authority makes within the definitive import customs regime, three activities:

- ✓ clearance of goods;
- ✓ collection of customs taxes;
- ✓ application of the measures of EU trade policy.

The customs authorities shall be obliged, when clearing the goods to import, to ascertain whether the goods comply with the data in the customs documents, in terms of quantity and nature.

An important commodity will be submitted to customs taxes and VAT and also to other indirect taxes. The import operations are subject to a great number of formalities and constraints than the export operations. The importance and the financial stake for the Customs and the tax administration in such operations must be well defined for a good orientation of the EU's economic and financial policy.

The EU import taxes are mostly *ad valorem* customs taxes. Only for 10% of the eight-digit tariff positions, the customs taxes are set on another basis than *ad valorem* : specific customs taxes, mixed customs taxes depending on certain components or as a maximum or a minimum limit of taxes. The customs taxes expressed in percentages are applied to the value of goods in the customs (CIF value at the EU border), expressed in Euro and are those referred to at the date of registration of the customs declaration.

The payment of the customs taxes are normally carried out during the clearance. In this principle, it ought to be the case for the EU, but despite its rating as a "Single market", it continues to show fiscal frontiers and the member countries continue to autonomously manage the VAT regimes. This feature leads to the distinction of two types of customs regimes for imports of goods in the EU: *putting the goods in free circulation and releasing the goods for consumption*.

CONCLUSIONS

The legal rules, as components of the law, established by the Government or recognized by it, which have to be respected, if necessary, through the coercive force of the state, are closely linked together, forming a whole, no matter how different in content. A different set of legal rules, that are organic linked between them and regulate the social relations that have the same object and use the same method of regulation, form the branch of law. The branches of law are closely interdependent, not isolated from each other.

Since *the public right regards the formation of the state and of the public powers, the relationship between the state and particulars, and generally, all the acts done by people working for a general interest in virtue of a direct or indirect delegation of the state*, the customs law can be included in the public law.

Starting from the fact that the customs act is particularly complex, because during the activity of customs, there is an application of many provisions regulated by other branches of law that are part of the Romanian law, it can be said that the customs law is in a close connection with them. One can observe, therefore, that the customs law has many connections with branches of law such as: financial law, administrative law, transportation law, commercial law and international trade law, environmental law, competition law, community law, private international law, civil law, etc. ..

The financial relations nowadays, as well as the customs relations, are the result of a complex historical process, which was and is influenced by the economic and social development so that the degree of development of the financial relations is closely linked to the state's level and evolution. Along with the establishment of the state's public force, the need for mechanisms to obtain material and financial resources, in order to maintain its structures, appeared.

The mechanism of the customs system is created and operates directly in this domain, in relation with the entire financial system established by the state at a certain moment. In this perspective, it can be noted that the purpose of customs law achieved by fulfilling its purpose is, in fact, the material source of law for other areas of law.

REFERENCES:

- [1] Ion Suceavă, *The custom Right*, Ed. Cris Book Universal, București, 1997, p. 8
- [2] Aurel Teodor Moldovan, *The custom Right*, Ed. C.H. Beck, București, 2006, p. 21
- [3] D.D. Șaguna, *The Financial and fiscal Right*, Ed. Eminescu, București, 2003, p. 887
- [4] D.D. Șaguna, op.cit., p. 888
- [5] www.avocatnet.ro
- [6] Mihaela Belu, C. Joldes, Laura Marinas, *The Custom Sistem*, Ed. Economică, București, 2003, p. 124
- [7] Aurel Teodor Moldovan, *The custom Right*, Ed. C.H. Beck, București, 2006, p. 32

BIBLIOGRAPHY:

1. Aurel Teodor Moldovan, *The custom Right*, Ed. C.H. Beck, București, 2006
2. D.D. Șaguna, *The Financial and fiscal Right*, Ed. Eminescu, București, 2003
3. Ion Suceavă, *The custom Right*, Ed. Cris Book Universal, București, 1997
4. Mihaela Belu, C. Joldes, Laura Marinas, *The Custom Sistem*, Ed. Economică, București, 2003
5. www.avocatnet.ro