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Control and regulatory activity of customs authorities in the collection of customs duties*

Keywords: control and regulatory activity, customs duties, customs authorities, resource system

Summary. The issues of customs duties, customs, as well as their legal aspects in both substantive and procedural law, have always been at the centre of attention of modern civilisations. From the earliest times, every state formation has protected its interests in the movement of goods, persons, labour, etc. Law has always played a crucial and irreplaceable role in this sense. No other instrument of social regulation, especially today, has the intrinsic strength and capacity to better express and protect these interests. From this point of view, the view of law as an important instrument for the organisation, existence, implementation and further development of the social relations it regulates is entirely appropriate¹. Today, there is little doubt that customs legislation is very responsive to the socio-economic development of each country. From this point of view, therefore, it is both a reflection and a legal expression of this.

In this paper, the author purposely focused her attention on the institution of customs duties, not only from the perspective of customs law as one of the sub-branches of financial law, but also, and above all, from the perspective of budgetary law, analysing the customs duties as a traditional own resource, which represents a direct source of revenue for the EU budget. In this context, she considered it necessary to deal with the regulation of the collection of customs duties at national level and to highlight the role of the customs authorities in the above-mentioned control and regulatory activity.

Działalność kontrolna i regulacyjna organów celnych w zakresie poboru należności celnych

Słowa kluczowe: działalność kontrolna i regulacyjna, cła, organy celne, system zasobów

Streszczenie. Problematyka należności celnych, ceł, a także ich aspekty prawne zarówno w prawie materialnym, jak i procesowym, zawsze znajdowały się w centrum zainteresowania współczesnych cywilizacji. Od najdawniejszych czasów każda formacja państwowa chroniła swoje interesy w zakresie przepływu towarów, ludzi, siły roboczej itp. Prawo zawsze odgrywało w tym sensie kluczową i niezastąpioną rolę. Żaden inny instrument regulacji społecznej, zwłaszcza dzisiaj, nie ma wewnętrznej siły i zdolności do lepszego wyrażania i ochrony tych interesów. Z tego punktu widzenia patrzenie na prawo jako na ważny instrument organizacji, istnienia, realizacji i dalszego rozwoju regulowanych

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¹ See: Babčák V, *Základy finančného práva I. časť*, Právnická fakulta UPJŠ, Košice 2001, p. 21.

przez nie stosunków społecznych jest całkowicie właściwe. Obecnie nie ulega wątpliwości, że prawo celne w dużym stopniu reaguje na rozwój społeczno-gospodarczy każdego kraju. Z tego punktu widzenia jest więc zarówno jego odzwierciedleniem, jak i wyrazem prawnym.

W niniejszym opracowaniu autorka celowo skupiła swoją uwagę na instytucji należności celnych, nie tylko z perspektywy prawa celnego jako jednego z podgałęzi prawa finansowego, ale przede wszystkim z perspektywy prawa budżetowego, analizując należności celne jako tradycyjny środek własny, stanowiący bezpośrednie źródło dochodów budżetu UE. W tym kontekście uznana za konieczne zajęcie się regulacją poboru należności celnych na poziomie krajowym oraz podkreślenie roli organów celnych w ww. działalności kontrolno-regulacyjnej.

Introduction

At this time, the analysis of the issue is also highly topical in view of the development of the own resources system, which should contribute as much as possible to the development of the policies of the individual EU Member States. New categories of own resources are currently being discussed in order to maintain the level of financial resources available to the EU.

In this context, reference should be made to Article 3(6) TEU², under which: “The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties”, and Article 311 TFEU³, under which: “Without prejudice to other revenue, the budget shall be financed wholly from own resources. The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements”.

In accordance with the defined reasons for the choice of the topic of the paper, the author considers the following hypotheses to be the basic hypotheses:

Hypothesis 1. Consistent and harmonised regulation of customs and the collection of customs duties is necessary due to the dynamic development and from the perspective of effective securing of EU financial resources.

Hypothesis 2. Efficient and effective customs controls on the collection of customs duties by customs authorities have an impact on the EU’s financial interests.

In the process of verifying or rejecting the established hypotheses, the author also concentrates attention on the achievement of the set objective of the paper. In order to achieve this objective, a comprehensive approach to the chosen issue is required, which needs to be examined from the perspective of the currently set

² Article 3(6) of the Treaty on the EU.

³ Article 311 of the Treaty on the Functioning of the EU.

legislation aimed at the own resources system in an effort to ensure adequate resources for the proper development of EU policies, while maintaining strict budgetary discipline. Due to the responsibility of the customs authorities for an efficient and effective approach to the collection of customs duties as an own resource accruing to the EU budget, it is also necessary to examine the state of the customs legislation governing the above-mentioned issue.

Several research methods were used to achieve the set objective. One of the basic research methods was the method of scientific explanation, which, also due to the nature of the hypotheses set out, is followed by (and intertwined with) the method of scientific prediction. Within the scientific explanation, the causal explanation method was used, where the author focused on the need to regulate and control the collection of customs duties in the context of ensuring sufficient funds within the EU budget. Due to the dynamic development, a historical comparison was also used (pointing in particular to changes in the perception of the institution of customs duties).

Since an adequate explanation of an individual phenomenon takes the form of deductive reasoning, the method of deductive reasoning was also used in the paper, taking into account in particular the feature of deductive reasoning, according to which a conclusion follows from certain assumptions only with a certain degree of probability. The degree of probability is, in the case of the issue under study, directly dependent on the next steps taken by the EU in the field of regulatory and control activities provided by the national authorities of Member States in the collection of customs duties, and largely determined by the current dynamic changes in EU legislative tendencies⁴. Since the basic thought processes of deduction and induction are interlinked, the author used induction in addition to deduction in this paper. In addition to these methods, the methods of description, analysis and synthesis were used, which are mutually dependent.

1. Institution of customs duties

A thorough analysis of the chosen issue, both in terms of theoretical-legal, legislative, as well as legal-application and implementation, requires, first of all, the definition and clarification of the basic concepts. Various definitions of a customs duty can be found in the literature, but even in the past there was no uniform opinion on this concept. Etymologically, the word derives from the Ancient Greek word “tèlos”, meaning a goal, end, final payment, while other concepts can also be

⁴ See: COUNCIL DIRECTION (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own sources of the European Union and repealing Decision 2014/335/EU, Euratom.

found in the literature⁵. There are divergent, but in principle comparable, views on the definition of a customs duty in the current literature. The understanding and definition of the customs duty has depended on the understanding of its nature by individual authors. Each author approaches the definition of the concept from his or her often subjective rather than objective point of view.

Many definitions can be found in the literature which ultimately express the same essence of customs duty (an instrument of foreign trade). The customs duty as a monetary charge levied by the state on goods when they cross the state border has been perceived in recent years by several representatives of economic sciences in particular⁶. The view of treating the customs duty as a tax with a certain specific status can be found in Polish authors, who, however, are inconsistent in defining the concept of customs duty. A. Huchla states that customs duty has the characteristics of a tax⁷, the Polish author A. Drwiłło defines customs duty as a public levy similar to a tax⁸, other representatives of financial law in Poland identify customs duty with a tax; e.g. one can mention C. Kosikowski, E. Ruśkowski⁹. One could also speak of customs duty as a separate charge levied for fiscal purposes,¹⁰ but such a concept has not gained wide support and most contemporary authors do not share such an understanding of customs duty¹¹.

Customs duties can be seen in both a legal and an economic sense. Although customs duty is the closest in its nature to (indirect) taxes, it must de lege lata be seen as a sui generis payment¹². In the theory of Slovak and Czech financial law, this concept has been defined as a monetary charge levied by the state on goods when they cross the state or customs border¹³. Like A. Slovinský, the concept of customs duty is also defined in the theory of German financial law¹⁴. If we were to

⁵ For example, telonium, douane, customs, pedaticum, Zoll, and other. See, for example, Grůn L., *Vybrané kapitoly z histórie daní, poplatkov a cla*, Olomouc 2004, p. 169; Babčák V. et al., *Finančné právo na Slovensku a v Európskej únii*, Bratislava 2012, p. 361 et seq.; Balko L., Králik J. et al., *Finančné právo: 2. časť*, 1. vyd., Bratislava 2005, p. 459; Babčák V. et al., *Finančné právo na Slovensku*, Bratislava 2017, p. 306.

⁶ Pauličková A., Bakeš M. et al., *Finančné právo na Slovensku a v Čechách*, Bratislava 2007, p. 214. See, for example, Beňova E., Hlavatá I. et al., *Financie a mena*, Bratislava 1996, p. 88.

⁷ Huchla A. et al., *Encyklopédia práva*, Warszawa 1999, p. 82.

⁸ Deriřlo A., *Zarys práwa dewizowego i celnego*, Gdańsk 1991, p. 281.

⁹ Kosikowski C., Ruśkowski E., *Finanse i prawo finansowe*, Białystok 1994, p. 238.

¹⁰ See, for example, Spáčil B., *Teorie finančného práva ČSSR*, Praha, Orbis 1970, p. 67; Brodesser S. et al., *Celnictví v Československu: minulost a přítomnost*, Praha 1982, p. 7.

¹¹ See Kubicová J., *Zdanie medzinárodného obchodu a transakcií prostredníctvom ciel*, [in:] "Dane a právo v praxi" 1998, no. 11, p. 27: "...the phrase »customs duties«, used mainly in practice, is absurd in financial terminology, since customs duties are not levied in return for any service, there is no equivalent consideration, nor are they levied in connection with overloading, nor are they levied in connection with the third enumerated reason for levying charges – the existence of externalities".

¹² Jánošíková P., Mrkývka P. et al., *Finanční a daňové právo*, 2 vyd., Plzeň 2016, p. 397.

¹³ Slovinský A. et al., *Československé finančné právo*, Bratislava 1985, p. 133.

¹⁴ ZOLL, online, <https://wirtschaftslexikon.gabler.de/definition/zoll-49053>.

define the concept of customs duty, we would agree with Professor Bakeš's definition: "Customs duty is a sui generis compulsory payment, laid down by law, which is levied in direct connection with the passage of goods across a national frontier on persons importing or exporting the goods or on persons for whom such goods are imported or exported"¹⁵. Today, when customs duties are levied in international trade, they are largely motivated by the concept of territorial or economic customs duties, which was developed in the early 20th century by the customs law theorist Karl Lampe. According to this economic theory, the right to impose customs duties is linked to the direct entry of goods into economic circulation. Therefore, the right to impose a customs duty arises as soon as the foreign product is released into domestic circulation, thereby contributing to domestic price formation¹⁶.

In today's terms, customs duties can be characterised as a sui generis, non-equivalent monetary payment to the public budget, laid down by law, at a specified rate, levied in connection with the passage of goods across the national border on natural and legal persons importing or exporting goods or for whom goods are imported or exported¹⁷. Customs duties are an instrument which, in most cases, distorts natural economic relations, both internationally and in the internal economy, and their existence is in most cases linked to practical economic and political phenomena and processes¹⁸. The intensity of these interventions is reflected in the formulation of trade and, within it, customs policy priorities of the state. It is clear that in modern society, where economic phenomena are intrinsically linked to social, political, etc. phenomena, it is more likely to find the optimum degree of use of customs.

2. Customs duties as part of the EU's own resources system

To function as a major trading bloc, the EU depends on the efficient flow of goods in and out of the customs union, as well as on the free movement of goods within the single market. According to the latest available statistics¹⁹, in 2019 the EU's combined imports and exports amounted to around 4 trillion euros (which is equivalent to roughly 25% of the EU's GDP). This highlights the impact of international trade on EU economic activity and the importance of the customs union.

In this paper we will try to highlight the need for the application of uniform and harmonised customs rules, customs controls, procedures, risk assessment by national customs authorities, as the above has an impact on the effective and ef-

¹⁵ Bakeš M., *Teoretické otázky finančního práva*, Praha 1979, p. 102.

¹⁶ Wolfgang H., *Emerging Issues in European Customs Law*, [in:] "World Customs Journal" 2007, vol. 1, no. 1, p. 3-10.

¹⁷ Kárník M., *Clo a celní politika od A do Z*, 1. vydání, Olomouc 2012, p. 11.

¹⁸ Zahradník P., *Clo: historie, teorie, praxe*, [in:] "Finance a úvěr" 1991, vol. 41, no. 9, p. 421.

¹⁹ International trade in goods – Statistics Explained (europa.eu).

ficient collection of customs duties, which is important as a traditional own resource of the EU budget.

The EU budget is financed by own resources and other revenue²⁰. The EU's own resources can be characterised as revenue allocated to the EU to finance its budget and flowing into that budget automatically without the need for any additional decision by the national authorities. Other revenue (e.g. competition fines, taxes and other deductions from EU staff remuneration, bank interest, contributions from non-EU countries to certain EU programmes, etc.) provides only a relatively small share of the financing of the European budget.

In July 2020, EU leaders agreed on the MFF (Multiannual Financial Framework) 2021-2027 package and the Recovery Plan. To finance it, in line with the conclusions of that summit, the system of own resources was reformed²¹ and, in addition to existing levies such as customs duties, Member States' contributions based on value added tax (VAT) and gross national income (GNI), a levy based on the amount of non-recycled plastic packaging was introduced from 2021 onwards. Other own resources are foreseen in the future, such as a carbon border adjustment (carbon levy), a resource based on the revenues from emissions trading (targeting the aviation and maritime sectors), a digital services tax, as well as a single market tax.

The currently valid **“System for the management of the European Communities’ own resources in the Slovak Republic”** was adopted by Resolution of the Government of the Slovak Republic No. 594 of 2 September 2009. This document lays down the responsibilities of the individual entities in the Slovak Republic and activities that ensure financial and information flows, accounting, control and reporting in the implementation of the Slovak Republic's own resources contributions to the EU budget. As a complement to the already existing own resources management system, the Slovak Republic adopted **Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom** by Resolution of the Government of the Slovak Republic No. 148 of 17 March 2021. In addition to the above, Council Regulation (EU, Euratom) 2021/76 of 30 April 2021 laying down implementing measures for the system of own resources of the

²⁰ Other revenue mean, for example, fees for the administrative activities of the institutions, fees relating to the functioning of the European Economic Area, fines, interest on late payments, taxes from EU staff remuneration, revenue from loans and borrowings and, above all, the budget surplus from the previous year. In general, however, if it were not for the budget surpluses, this group of revenue would be almost negligible in terms of the overall budget. See, for example, Council Regulation (EEC, Euratom, ECSC) No 260/68 of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities, or Council Regulation (EU) 2016/300 of 29 February 2016 regulating the emoluments of high-ranking EU public officials.

²¹ See: COUNCIL DECISION (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom.

European Union and repealing Regulation (EU, Euratom) No 608/2014 is also in force.

Currently, the EU's own resources system consists of:

- **traditional own resources** represented by **customs duties**. Customs duties result from the application of EU customs legislation and the Common Agricultural Policy to imports from third countries. Member States pay 75% of the customs duties collected to the EU budget and retain 25% for the cost of collection²²;
- **a VAT-based source**, which is derived from the application of a uniform rate for all Member States (except Germany, the Netherlands, and Sweden, which apply a reduced rate) to estimates of harmonised VAT bases determined under EU rules. The harmonised VAT base is calculated in accordance with the provisions of Council Directive 2006/112/EC on the common system of value added tax and Council Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax. The principle of calculating the harmonised VAT base is to simulate the situation as if all Member States applied a fully harmonised VAT system²³;
- **a GNI-based resource**, which is calculated by applying a uniform rate to the GNI of a Member State. This rate is fixed during the budgetary procedure²⁴. The GNI-based resource is a variable resource that is used to provide the revenue needed to cover expenditure when all other sources of EU funding are insufficient to cover the expenditure of the EU budget. The GNI-based resource thus ensures the balance of the EU budget;
- **a resource based on non-recycled plastic packaging waste**. This resource should be an incentive for Member States to recycle. With higher recycling rates, the levies are lower. The uniform rate for 1 kg of non-recycled waste is EUR 0.80.

3. Efficient and effective collection of customs duties by customs authorities

It is important to recognise that customs duties²⁵, now as in the past, are the most transparent and predictable way of protecting domestic industry, world trade and

²² König P., Lacina L., *Rozpočet a politiky Evropské unie*, Praha 2004, p. 55; König P. et al., *Rozpočet a politiky Evropské unie: příležitost pro změnu*, 2. vyd., Praha 2009, p. 23.

²³ Begg I. et al., *Financing of the European Union Budget. Study for European Commission, Directorate General for Budget – Final report*, 2009, p. 7; Leen A., *The Return of the Value Added Tax: A New Own Resource to Finance the Budget of the European Union*, [in:] "ATINER's Conference Paper Series POL2013-0496", pp. 191-202.

²⁴ See: Beličková K. et al., *Rozpočtová teória, politika a prax*, Bratislava 2010, p. 173.

²⁵ In this respect, for example, Strasser defined "own sources" as a tax borne directly by EU taxpayers, which is included under revenue in the EU general budget and does not appear in the budg-

business, and that they are clear, direct and easily comparable. The evolution of the Customs Union to date has been towards ensuring a more efficient and effective regulatory environment with a true regulatory environment for all Member States, whereby the customs authorities of all Member States should act according to common rules so that customs duties are collected more efficiently and effectively. As customs administration was not coordinated in international trade, the World Customs Organization (WCO) adopted a framework of standards for customs authorities to secure and facilitate global trade with the aim to provide a global response to supply chain security and facilitation²⁶. The EU itself has the responsibility of supervising the Union's international trade and upholding minimum standards of customs risk management and controls. Like many other jurisdictions and in line with international standards, the EU has a common policy framework intended to address customs risks and accelerate legitimate trade²⁷.

Member States' customs authorities have the responsibility to collect customs duties, excise duties and value added tax payable on imports. They also have a number of other tasks, such as improving the EU's internal security, protecting the EU from unfair and illegal trade and protecting the environment.

The Union Customs Code²⁸ provides: "Customs authorities shall be primarily responsible for the supervision of the Union's international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Union policies having a bearing on trade, and to overall supply chain security. Customs authorities shall put in place measures aimed, in particular, at the following: protecting the financial interests of the Union and its Member States; protecting the Union from unfair and illegal trade while supporting legitimate business activity; ensuring the security and safety of the Union and its residents, and the protection of the environment, where appropriate in close cooperation with other authorities; and maintaining a proper balance between customs controls and facilitation of legitimate trade".

ets of the Member States. See: Strasser D., *The Finances of Europe: The budgetary and financial law of the European Communities*, Luxembourg 1991, p. 89.

²⁶ COM(2014) 527 final. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade, https://eur-lex.europa.eu/resource.html?uri=cellar:a2e8d50b-2914-11e4-8c3c-01aa75ed71a1.0001.03/DOC_1&format=PDF.

²⁷ COM/2012/0793 final. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Customs Risk Management and Security of the Supply Chain, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0793>.

²⁸ Article 3 of the Union Customs Code.

On 12 July 2018, EU finance ministers signed the CHARTER Customs Administrations of the European Union²⁹, under which customs administrations commit to share the same values and implement a common set of rules enabling the functioning of the EU Customs Union and Single Market.

Finding a balance between the need to facilitate trade through faster and smoother import procedures and the need to carry out customs controls with respect to the resources available in the country is a challenge for customs authorities. Goods imported into the EU are subject to customs controls. Customs controls³⁰ can only ensure the proper functioning of the internal market and the protection of the EU's financial interests if they are based on common rules and applied in a uniform and standardised way by the Member States.

The effective and efficient collection of customs duties by customs authorities is also affected by "risk", which is defined in the Union Customs Code³¹ as "the likelihood and the impact of an event [...], which would: (a) prevent the correct application of Union or national measures; (b) compromise the financial interests of the Union and its Member States; or (c) pose a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers. Financial risks are risks compromising the financial interests of the EU and its Member States.

The World Customs Organization (WCO)³² indicates in its risk management compendium that, to determine the level of risk, an analysis of the likelihood and the potential consequences and magnitude should be carried out. Risk analysis is defined as the systematic use of available information to determine how often defined risks may occur and the magnitude of their likely consequences.

The WCO developed the Revised International Convention on the Simplification and Harmonisation of Customs Procedures – the so-called Revised Kyoto Convention in an effort to promote the achievement of a highly facilitative process. According to the WCO, the Convention represents an international roadmap for prudent and innovative customs management and is designed to keep customs regimes relevant at a time when technological developments are revolu-

²⁹ CHARTER Customs Administrations of the European Union. The Customs Union since 1968 – Now and in the Future, online [cit. 6.02.2020], https://taxation-customs.ec.europa.eu/system/files/2018-07/charter_customs_administrations_of_the_eu.pdf.

³⁰ Article 5(3) of the Union Customs Code.

³¹ Article 5(7) of the Union Customs Code.

³² COM(2014) 527 final. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade, https://eur-lex.europa.eu/resource.html?uri=cellar:a2e8d50b-2914-11e4-8c3c-01aa75e-d71a1.0001.03/DOC_1&format=PDF.

tionising the world of international trade and travel³³. In particular, the Convention aims to promote the achievement of a highly facilitative international travel and trade environment while maintaining an appropriate level of. The Convention is designed to provide the basic conditions and tools that will help the Contracting Parties achieve modern customs administration and contribute significantly to the facilitation of international trade, in particular by eliminating differences between the Contracting Parties' customs procedures and practices that may hinder international trade and other international exchanges, by

- meeting the needs of international trade and customs administrations to facilitate, simplify and harmonise customs procedures and controls,
- ensuring appropriate standards of customs control,
- enabling customs administrations to respond to major changes in trade and administrative methods and techniques,
- ensuring that the basic principles of simplification and harmonisation are made mandatory for the Contracting Parties, and
- providing efficient procedures for customs administrations, supported by appropriate and effective methods of control³⁴.

The WCO was an early advocate of the need to reconsider the traditional approach to controlling international trade and to abandon the “gatekeeper”³⁵ mentality that traditionally prevailed. Regarding the concept of customs control, the WCO states that the principle of customs control is the correct application of customs laws and compliance with other legal and regulatory requirements, with the maximum facilitation of international trade and travel. Customs controls should therefore be kept to the minimum necessary to meet the main objectives and should be carried out on a selective basis using risk management techniques to the greatest extent possible.

The application of the principle of customs controls will allow customs administrations to:

- focus on high-risk areas and therefore ensure more effective use of available resources,
- increase ability to detect offences and non-compliant traders and travellers,

³³ World Customs Organization 2002, Kyoto 2000: The International Convention on the Simplification and Harmonization of Customs procedures (Revised) – Pathway to Efficiency and Effectiveness in the Customs Environment, World Customs Organization, Brussels.

³⁴ World Customs Organization, 1999. International Convention of the Simplification and Harmonization of Customs Procedures, as amended, known as the Kyoto Convention.

³⁵ The “gatekeeper” means someone whose job is to “open and close” the gate and prevent entry without permission.

- offer compliant traders and travellers greater facilitation, and
- expedite trade and travel³⁶.

It is clear from the above that the role of customs authorities, as well as customs duties itself, has changed significantly due to development factors, including the increasing globalisation of trade and revolutionary factors.

Customs authorities now have a huge range of supervisory and control responsibilities in relation to goods imported into the customs territory of the EU. Not only do they collect customs duties and VAT on imported goods and, where appropriate, excise duties, but they also control these goods for a range of non-financial reasons, for example to ensure that they meet EU product compliance³⁷ requirements, food, health and environmental standards and many other aspects. Customs authorities also verify that imported goods comply with rules on the protection of intellectual property rights³⁸, control the imports of drug precursors³⁹ to prevent their illegal diversion for drug production, control trade in cultural objects, trade in species of wild fauna and flora⁴⁰, and transport of waste to prevent illegal exports and imports, and enforce rules on illicit money flows entering or leaving the EU as part of EU anti-money laundering legislation. They also work together with law enforcement, administrative, border and internal security authorities in the fight against fraud, terrorism and organised crime. In addition, they are responsible for managing and enforcing the growing number of preferential trade agreements between the EU and other countries.

Despite the extensive modernisation of EU customs legislation in 2016, there are demonstrable problems such as the undervaluation of goods to avoid customs duties and VAT⁴¹, as well as the smuggling of illicit or dangerous goods. There are also concerns about imbalances in the way Member States carry out customs controls and the diversion of goods to the weakest points of entry and exit to avoid detection. It should be noted that the structure of trade has changed significantly

³⁶ Revised Kyoto Convention, Chapter 5, online [cit. 2020-02-21], <https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/wto-atf/dev/rkc-guidelines-ch-6.pdf>.

³⁷ Product compliance includes not only compliance with legislation on harmonisation of product requirements, but also with other requirements such as product safety and accessibility for people with disabilities.

³⁸ Act No. 486/2013 Coll. concerning customs enforcement of intellectual property rights.

³⁹ Act No. 331/2005 Coll. on state administration authorities in matters of drug precursors, amending certain acts.

⁴⁰ Act No. 15/2005 Coll. on the protection of species of wild fauna and flora by regulating trade therein, amending certain acts; Act No. 39/2007 Coll. on veterinary care.

⁴¹ For example, the potential losses of customs duties and VAT due to undervaluation of imports of textiles and footwear from China to one Member State were calculated to be close to 5.2 billion euro for the period 2013–2016. See Report of the European Court of Auditors No 19 of 2017: “Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU”, https://www.eca.europa.eu/Lists/ECADocuments/SR17_19/SR_CUSTOMS_EN.pdf.

in recent times, which has caused the progress of global production specialisation, especially in industry. First, the share of manufactured goods in a global scale has increased significantly; second, the share of exports of parts and components in the total exports of goods has increased significantly; and third, exported goods account for a significant proportion of imported intermediate products. This changing structure has an impact on the type of transactions carried out by many customs administrations. As far as the Slovak Republic is concerned, the commodity structure of foreign trade is relatively diversified, but it does not represent a pure focus on one type of goods, despite the clear dominance of the machinery and equipment manufacturing sector – automobiles⁴².

Customs authorities themselves would benefit from more data and deeper analysis to assist in risk management, customs controls, customs clearance and anti-fraud measures. A rapidly changing world with accelerating digital transformation and new business models such as e-commerce is another of the challenges customs authorities face in implementing and enforcing EU import and export legislation. At the same time, customs authorities must always strive to facilitate legitimate trade, as international trade is essential for the EU to prosper.

The biggest problem in the customs area is that no EU-wide financial risk analysis is carried out, as a result of which the EU's financial interests are not properly protected. Risk analysis and the uniform application of customs controls are the basis for effective customs collection. Undeclared and misdeclared imports that have escaped customs controls result in a “duty gap” – the difference between the import duty actually collected and the amount that should theoretically have been collected⁴³.

In this context, the Commission launched in 2018 a project to ensure a long-lasting and efficient EU customs system. This innovative project, “The Future of Customs in the EU 2040”⁴⁴, aims to address current and future customs challenges, and to arrive at a vision of how EU customs should look like in 2040.

The result is a picture of the EU Customs Union of the future, where customs authorities work in a fully integrated way to:

⁴² See more: *Vývoj a štruktúra Slovenského exportu a importu*, “Bencont Weekly Report”, vol. 2018, no. 18, <https://www.bencont.sk/app/cmsSiteAttachment.php?ID=212&disposition=inline>.

⁴³ See the study of the European Parliament: European Parliament, Directorate General for Internal Policies, *From Shadow to Formal Economy: Levelling the Playing field in the Single Market*, 2013.

⁴⁴ Ghiran A., *Future of customs in the EU 2040*, 2020, <https://op.europa.eu/fr/publication-detail/-/publication/15e0391b-3a9b-11eb-b27b-01aa75ed71a1#:~:text=The%20Future%20of%20Customs%20in%20the%20EU%202040,its%20relevance%20and%20its%20effectiveness%20in%20the%20long-term>

1. protect society, the environment and the EU economy through effective facilitation of legitimate trade,
2. be proactive, work seamlessly with their stakeholders, and be committed to innovation and sustainability,
3. be seen to act as one.

This Action Plan sets out an ambitious set of actions to ensure a more coherent and stronger Customs Union in response to four areas where efforts are needed: risk management, e-commerce, compliance and the Customs Union acting as one.

(a) Risk management is crucial for customs controls, given the significant volumes of goods entering and leaving the customs territory, which cannot always be controlled individually by customs authorities, and given the need to facilitate legitimate trade. Customs authorities already carry out risk management on the basis of an EU-wide common risk management framework consisting of common risk criteria and standards, arrangements for exchanging risk information and the implementation of electronic risk analysis. The biggest concern is that the risk management framework is not implemented in the same way in all Member States. In addition, Member States' risk assessment systems may not include relevant information, either because this information is not collected or exchanged between Member States, or because Member States do not have EU-wide comparative data against which to interpret their own national data.

(b) E-commerce management. While e-commerce brings advantages, it also brings serious difficulties in ensuring compliance with tax and customs legislation. In addition, customs authorities have an obligation to control goods for a range of non-financial reasons, which have already been mentioned. For this reason, it is necessary to create and ensure conditions that, while facilitating cross-border trade, also create conditions to prevent VAT fraud and the smooth collection of customs duties.

(c) Promoting compliance. In order for customs authorities to focus on suspicious shipments of goods, it is important to achieve greater compliance, develop cooperation with key international partners at bilateral and multilateral level, while monitoring the implementation of existing EU preferential agreements with third countries and enforcing their rules. Individual customs regimes could be facilitated.

d) Customs authorities acting as one. Although Member States already cooperate with each other in many areas, broader and more intensive operational cooperation on a thematic or geographic basis between customs authorities must be achieved to ensure that essential priorities in the customs area are met. Cooperation between customs authorities and other national authorities must also be improved, with the EU acting as one in customs matters at international level. The imbalance between Member States in terms of customs controls needs to be addressed, in

particular by ensuring that all Member States have sufficient and trained human resources and modern and reliable equipment for customs controls. The equivalence of results in the implementation of external border controls must also be ensured by accurately measuring the implementation of customs measures and tasks.

Conclusion

In the context of the growing trend of importing illicit goods into our territory, customs authorities need to respond flexibly to new challenges such as increasing the competitiveness of economic operators operating in the EU, improving the economic environment, in particular by ensuring a smooth flow of trade, while at the same time carrying out the required level of controls to protect the health and safety of all EU citizens. In order to harmonise these requirements with each other, procedures and control methods need to be modernised and cooperation and information exchange between the different workplaces need to be strengthened. Customs authorities also perform a vital role in collecting statistics. The trade flow data they collect helps European policymakers detect economic trends, while information in their records contributes to decisions on whether to introduce limits on goods that may be competing unfairly with EU products⁴⁵.

On the basis of the above, the author set out hypotheses in the introduction, in relation to which she summarises the conclusions reached in the research carried out in the points below:

- Consistent and harmonised regulation of customs and the collection of customs duties is necessary due to the dynamic development and from the perspective of effective securing of EU financial resources.

The role of customs authorities has changed considerably over the last decades, shifting from a focus on trade and commerce of all kinds to a current focus on protecting the external borders of the European Union. Customs authorities also play a central role in ensuring that customs duties and other relevant taxes, such as excise duties and VAT, are collected on the goods concerned. In this context, EU customs authorities play a key role. Their mission is to ensure a continuous balance between protecting society and promoting legitimate trade through supply chain control, information exchange and cooperation, both at the EU's external borders and within the Customs Union. Customs authorities need to respond flexibly to new challenges such as increasing the competitiveness of economic operators operating in the EU, improving the economic environment, in particular by ensuring a smooth flow of trade while carrying out the required level of controls to protect

⁴⁵ The EU customs union: protecting people and facilitating trade, Luxembourg 2014, p. 7.

the health and safety of all EU citizens. In the light of these facts, it can be concluded that Hypothesis 1 has been confirmed.

- Efficient and effective customs controls on the collection of customs duties by customs authorities have an impact on the EU's financial interests

In this regard, it is important to note that customs authorities have identified and understood the key international, regional and national strategic drivers, the nature of illicit trade and the ways in which such trade is carried out, including commodity substitution, misdeclaration, fictitious exports, misclassification of goods, i.e. effective implementation of customs controls. Today's customs have to deal with a rapidly changing environment, e.g. changing production and consumption trends, increasing international trade, global threats (e.g. terrorism, organised crime, crisis situations) and various other new dangers (e.g. trade in dangerous goods), as well as political problems in any given country. In order to harmonise these requirements with each other, procedures and control methods need to be modernised and co-operation and information exchange between the different workplaces need to be strengthened and fully harmonised, which has ultimately an impact on the EU's financial interests. Customs duties are still an important and necessary instrument for stimulating trade and stopping the flow of illicit goods that undermine the economies of states, recognising that trade contributes to national development, competitiveness, job creation, wealth creation, poverty reduction and sustainable economic growth. On the basis of the above, Hypothesis 2 was also confirmed.

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