

ISSUES CONCERNING THE LEGAL STATUS OF PORT DUTIES

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Abstract: *Most ports have created cities near the coast, on which arrangements were made for anchoring ships, unloading and loading goods. The economic development has allowed the specialization of these areas, causing an expansion of commercial activities, forming domestic and international markets for goods, as a liaison with countries bordering the sea or ocean basins. In the context of a system of fees, in order to complete exchange transactions, ports allowed the introduction of port duties. Thus the Black Sea, the Mediterranean Sea turned into points of contact for trade with countries in the Middle East and Western Europe, with the Baltic Sea and North Sea Basin.*

Keywords: *Customs duties, customs tariff, the customs*

1. INTRODUCTORY CONCEPTS

In accordance with the legislative developments in financial and fiscal regime, over time, customs duties became an indirect tax that is levied by the state for the goods crossing over the borders of a country, to import-export operations or for the transit of such goods [1].

In general, all taxes imposed on goods in a given territory are contained in a tariff. Therefore, it follows that the customs tariff nomenclature is a catalog that includes the full range of products subject to customs taxation and customs duties levied on a product or a product group separately.

Regarding this aspect, the customs territory is the geographical area or the territory across which those customs charges apply. In this regard it is noted that the customs territory may coincide or not with the national territory, in case of extensions (customs unions) or restrictions (customs warehouse) thereof.

Port duties are indirect taxes levied by the state on goods when they move across borders. Maritime borders are usually fixed in accordance with the Convention on the Law of the Sea and with the arrangements with the neighboring countries, at a distance of 12 nautical miles, duties being applied in these cases in sea and river ports.

2. CUSTOMS AUTHORITY

More numerous and complex, commercial agreements and bilateral and multilateral customs treaties of countries have imposed the existence of international legal principles and common practices to be applied and respected in more and more extensive areas of the planet [2].

Besides the main task to collect taxes, customs has always had to control the goods and documents and the means of transport and to find violations of the law.

Primele legi vamale moderne, cuprudeau reglementări de procedură special adresate activităților de vămuire a mărfurilor și a vaselor. În Legea nr. 9/1949 asupra vămilor, este rezervată secțiunea § 2 din Capitolul II pentru „Poliția vamală a vaselor” (art. 9-12). Această lege nu este astăzi în vigoare, dar în vocabularul uzual, se fac trimiteri la expresia „poliția vamală portuară”, înțelegând, „autoritatea vamală” din porturi, biroul vamal de intrare/ieșire, de import/export etc.

The first modern customs laws included regulations and special procedures to the activities of customs clearance of goods and vessels [3]. The Law no. 9 / 1949 on the customs includes section § 2 of Chapter II for “Customs police vessels” (art. 9-12). This law is not in force today, but in the common vocabulary reference is made to the term “customs port police”, meaning “customs authority” in the ports, the customs office of entry / exit, import / export, etc.

According to art. 13 para. (1) of Law no. 86/2006 on the Romanian Customs Code, customs officials are entitled to customs control under the law, to board any ship, including the military ones, in maritime or inland ports.

Divided into 13 titles and several chapters, sections and subsections this regulates the exchange of commodities and goods between Romania and other countries and applies all over the territory of Romania which includes the territory of the Romanian state enclosed by the state border as well the territorial sea and the air space over the territory and the sea.

Title I regulates the institutional system of the customs authority, its structuring, its attributions, rights and duties, its personnel and the rights and duties thereof and several other general aspects, Title II deals with the elements on which the import and export rights and the other measures prescribed for the international commodities exchange shall be applied and regulates such specific aspects as the customs tariff and the tariffs classification of goods, Title III contains provisions applicable to the status of commodities that entered the customs territory of Romania until they get a customs destination, Title IV regulates the customs destination of goods, Title V deals with customs status of various commodities, Title VI covers various other customs destinations of goods and contains specific provisions concerning the free zones and free warehouses and the re-export, destruction or abandon of goods, Title VII deals with the status of commodities that leave the customs territory of Romania, Title VIII regulates privileged operations which cover customs tax exemptions, returned goods, maritime fishing products and other sea extracted products, Title IX regulates customs duties, Title X deals with the right to sue while Title XI contains provisions concerning prohibitions and restrictions which apply to goods prohibited to enter or leave the customs territory of Romania or to goods that may enter or leave the customs on condition they abide by certain conditions or formalities.

The violation of its provisions may represent crimes that may end up in prison terms in the range of 2 up to 15 years, or contraventions, as stipulated by Title XII. Title XIII, and the last, contains transitory and final provisions.

In case of transport by sea or river, the master, owner or agent of the ship carrying goods to be unloaded or transhipped shall submit to the customs office within 24 hours after landing, the original copy of the cargo manifest and submit a copy of it; the name of the cargo shall be written in Romanian, on the copy of the cargo manifest.

Police Customs receives from the master, the customs manifest of the loaded ship and the customs declarations of crew members. It carries out checks to verify the truth of the statements made. It levies taxes or exempts them from taxes and demands the “Clearance Inward” [4].

When found deviations from the law in force it may impose fines or refer the port police.

3. CUSTOMS DUTIES

Customs duties are taxes levied by customs on imported or exported goods. Customs duties may be levied in

accordance with various principles: "ad valorem", minimum, maximum, differential, preferential or most favored nation, based on existing agreements; in special cases, there are applied prohibitive customs duties, which are very many high.

The customs value of goods is that value which is the computing basis provided for in the Customs Tariff of Romania [art. 56 para. (2) of Law no. 86/2006].

In customs, taxes offer a very varied landscape, yet highly specialized, which is usually classified according to the following criteria:

- imposing object: import, export and transit duties;
- taxation purposes: protective tariffs and customs duties of a fiscal nature;
- levying: specific duty, ad valorem and mixed taxes;
- fixing: autonomous, conventional, preferential and retaliation duties (anti-dumping and countervailing);
- degrees of protection: literal, equalizers, restrictive and prohibitive taxes [5].

4. CUSTOMS ENTRY

The customs entry refers to the customs declaration of objects and values that belong to the master and crew of the ship and of the cargo, including supplies on board. It is made by submitting to the customs the declaration for supplies, personal items and currency on board, the crew list, a general cargo manifest and customs declaration for import.

For loading and departure of the ship, the customs declaration implies the submission of the depart license, the export declaration and transport manifesto. The customs entry and the documents necessary to regulate the situation are accepted and registered.

5. CUSTOMS FORMALITIES

Customs formalities are customs forms that are met on arrival or departure of a ship. When arriving in port, the vessel must present to the customs the following documents: ship's stores declaration, declaration of personal objects belonging to the staff or the master, currency declaration, crew list. Typically, these documents are drawn up by the correspondence officer (Officer III) during the journey and they are presented to customs when they are on board for control upon arrival.

In addition to these statements, the ship also submits to Customs the general manifest of the cargo on board, which is attached to the unloading manifesto and the import customs declaration, receiving in exchange the unloading license.

Any mismatch between the entries in these statements can be considered smuggling attempts and punished as such. When loading the ship, the exporter, under an export license, may obtain from customs a loading permit; in former socialist countries that permit is obtained pursuant to the provision of clearance given by the Ministry of Commerce of the Customs Department at the request of the exporting company.

After loading the goods, the export declaration shall be submitted. At the departure of the ship, the transport

manifesto shall be submitted to customs, which must comply strictly with the customs export declaration.

Romanian Customs Authorities grant release after clearance, but may order the release of the goods upon the submission of payment documents. The text contained in Rule 3.40 of the Kyoto Convention refers to the customs formalities after release.

The Customs shall designate the Customs offices at which goods may be produced or cleared. In determining the competence and location of these offices and their hours of business, the factors to be taken into account shall include in particular the requirements of the trade.

At the request of the person concerned and for reasons deemed valid by the Customs, the latter shall, subject to the availability of resources, perform the functions laid down for the purposes of a Customs procedure and practice outside the designated hours of business or away from Customs offices.

Any expenses chargeable by the Customs shall be limited to the approximate cost of the services rendered. Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices.

At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls. Where the Customs intend to establish a new Customs office or to convert an existing one at a common border crossing, they shall, wherever possible, co-operate with the neighbouring Customs to establish a juxtaposed Customs office to facilitate joint controls.

The same agreement provides that, if Customs is sure that all customs formalities will be subsequently completed, it grants release on condition that the declarant presents a commercial or administrative document that customs can accept, containing the main data relating to the shipment as well as a guarantee, if necessary, to ensure recovery of rights and duties.

6. PORT AND MARITIME CUSTOMS AREA

Port and maritime customs area is the port and the sea strip along the coast, where the coastal State exercises its rights to control and follow customs.

It rightfully extends to the "territorial sea", where the coastal State has sovereign rights and to the contiguous zone, which varies in width from state to state. With the exception of Poland, European states have a sea customs area that coincides with the width of the "territorial sea", i.e. 12 miles, under the UN Convention on the Law of the Sea, signed at Montego Bay (Jamaica) on 10 December 1982, ratified by Romania by Law no. 110 of October 10, 1996. Poland, whose territorial sea has a width of three miles, set a contiguous customs area of 12 miles. Chile has a customs contiguous area of 100 km; U.S. customs control zone is of 12 miles, and about 35 countries have customs control zones of 3-12 miles. In port and maritime customs areas, the sovereign state can control, monitor and even seize the ship for breaking its customs.

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