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The Role of Customs Clearance in Ensuring the Security and Protection of Cross-Border Trade in the European Union

Introduction

Ensuring the security and protection of cross-border trade by the customs authorities of the Member States of the European Union is one of the tasks carried out as part of its protective function. Admittedly, the enforcement of this function – given the existing economic and technological conditions that, on the one hand, are conducive to an increasingly larger economic freedom, and, on the other hand, provide a stimulus for numerous abuses in customs and taxation – plays a pivotal role, as it encompasses a vast array of tasks that are related to traders, the society, the state, and the natural environment. In cross-border trade, the actions that are taken focus primarily on ensuring a fully legitimate system of importing goods into the EU customs territory, and an equally lawful export of goods beyond it. In light of the above, throughout a given transaction, each importer and exporter has to attend to certain formalities set out by the applicable customs legislation, and, therefore, becomes a party to the entire process of customs handling and clearance that is administered by the customs authorities. The quality of this service has an unquestionable importance, as it may have a major impact on the overall safety and security of the trade in goods.

The goal of this paper is to look at the significance of customs clearance throughout the process aimed at safeguarding the security and protection of

cross-border trade in the European Union. The research hypothesis has been formulated as follows: the customs authorities, viewed as the bodies equipped with a comprehensive array of competences in the field of surveillance and control of all the goods transported across the customs borders, can, as part of the European Customs Union, implement modern and coherent solutions that are geared towards ensuring an effective protection of the trade in goods, facilitating customs clearance rather than creating further barriers. The research is based on a descriptive analysis preceded by an overview of the subject literature available, as well as a selection of EU laws and domestic secondary legislation. The overriding theme of the study is a subject of current interest which is of key importance. The research conducted thus far on the role of customs handling and clearance for the assurance of the security and protection of trade has not been sufficiently disseminated. The conclusions drawn, above all, pertain to the subject matter at hand and attempt to fill in the existing gap in the studies conducted so far.

Market security and protection as a key priority area of EU customs administrations

The European Union has a major share in the global trade in goods, estimated at approximately 16%. In 2018, the overall value of trading with non-EU countries stood at over 3.936 billion EUR: the value of import reached 1.980 billion EUR, and the value of export stood at 1.955 billion EUR.¹ It is clear to see that the scale of customs operations is enormous: on average, within the span of one year, approximately 313 million customs declarations are accepted, which equates to about 594 declarations per minute. In 2017 2,140 customs offices handled as many as 332 million customs declarations.² The economic growth of the European Union to a large extent hinges upon international trade, which means that the European Union is heavily exposed to a variety of threats that pose a risk to the security and protection of its trading activities.³ One of the salient objectives set to be attained by all the Member States is the pursuit of the single internal market, which despite the lack of control at the internal borders, guarantees a certain level of safety and security for their citizens, and the natural environment.

The notion of security is clearly ambiguous. Etymologically, the word “security” is derived from the Latin phrase *sine cura (securitas)*,⁴ which means “without care” or without sufficient care, which, in turn, denotes a condition of being free from

¹ *Top Trading Partners 2018 – Trade Statistics*, <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/> (accessed: 21.07.2019).

² European Commission, *EU Customs Union – Unique in the World*, https://ec.europa.eu/taxation_customs/facts-figures/eu-customs-union-unique-world_en (accessed: 21.07.2019).

³ European Commission, 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, COM 0793 final, 2012, p. 1.

⁴ R. Zięba, *Instytucjonalizacja bezpieczeństwa europejskiego. Konceptje – struktury – funkcjonowanie*, Warszawa 2004, p. 27.

anxiety or fear; a situation that gives a sense of reassurance.⁵ Nowadays, security is frequently associated not only with a condition that guarantees the certainty of existence and survival of a given entity, but it also implies the freedom of its growth. B. Płonka points to the fact that in a number of EU documents, the terms “security” and “protection” are used in various contexts. The notion of “security” appears with reference to the cross-border movement of weapons, explosives, the dual use goods (i.e. for civil and military purposes), biological materials, and chemical and radioactive substances. The term “protection”, in turn, is used in connection to the safeguarding of the health and life of citizens and the natural environment, and it denotes the surveillance and control of goods that may spread diseases, hazardous and noxious substances, waste and contaminations, medicines, precursors of drugs, and even goods of everyday use.⁶ Since the European Union does not have a single common customs administration, but rather a network of separate domestic authorities competent to handle this particular field of interest, the “customs” area is to a certain degree shaped by solutions adopted in the individual Member States. The EU customs laws and regulations do not create a uniform structure of customs administration, the internal subdivision of competences, or the place of customs bodies in the structure of public administration. The enforcement of these legal provisions has been transferred to each Member State to be handled individually. In line with the overriding principles and assumptions of the treaties that constitute the customs union, the common dimension of activity rests on the application of a unified customs legislation with regard to trading with non-EU countries. This foundation is above all put into practice by the EU Customs Code, and the Common Customs Tariff. Although the enforcement of the provisions that result from these legal acts lies in the hands of each Member State, and the scope of duties and responsibilities of the individual administrations differs, in consequence – with the idea of effective functioning of the European Customs Union in mind – the customs administrations of the Member States ought to act in a manner that ensures that they are a single entity. At the moment, despite the differences, the nature of customs is such that the interaction of the customs authorities is strong enough to make sure that the individual administrative bodies are able to operate as a single entity. The bodies in charge of customs are to a large extent responsible for overseeing the EU’s international trading, implementing the external aspects of the internal market, the common trade policy, as well as the remaining common policies of the EU that are related to the trade in goods, not to mention the security of the entire supply chain.⁷ Customs administrations have been launching measures geared, in particular, towards the protection of the EU’s financial interests and those of its Member States, the protection of the EU

⁵ Idem, ‘Kategoria bezpieczeństwa w nauce o stosunkach międzynarodowych’, in D.B. Bobrow, E. Haliżak, R. Zięba (ed.), *Bezpieczeństwo narodowe i międzynarodowe u schyłku XX wieku*, Warszawa 1997, p. 33.

⁶ B. Płonka, ‘Zarządzanie bezpieczeństwem obszaru celnego Unii Europejskiej’, *Zeszyt Naukowy Wyższej Szkoły Bezpieczeństwa Publicznego i Indywidualnego APEIRON w Krakowie*, vol. 3, 2009, p. 68, [http://bazhum.muzhp.pl/media//files/Zeszyt_Naukowy/Zeszyt_Naukowy-r2009-t3/Zeszyt_Naukowy-r2009-t3-s62-72.pdf](http://bazhum.muzhp.pl/media//files/Zeszyt_Naukowy/Zeszyt_Naukowy-r2009-t3/Zeszyt_Naukowy-r2009-t3-s62-72/Zeszyt_Naukowy-r2009-t3-s62-72.pdf) (accessed: 24.07.2019).

⁷ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L. 269 of 10.10.2013, art. 3.

against unfair and illegal trade at the same time supporting legal commercial activity, safeguarding the security and protection of the EU and its residents, as well as the protection of the natural environment (where applicable, this occurs in close cooperation with other bodies), and maintaining a proper balance between customs controls and facilitating a trade that is fully legitimate.⁸

It is important to highlight the fact that the implementation of the protective function performed by the customs administrations is a truly multidimensional operation, as it regards:

- traders: the customs authorities protect supply chains against the influx of goods as a result of unfair competition, including protection against the potential infringement of intellectual property rights, trademarks, or patent rights. Breaches of intellectual property rights have negative effects for traders, as they generate, among others, lower incomes caused by a decreased demand for legal goods, additional costs generated on account of proceedings and enquiries related to cases that pertain to the protection of intellectual property rights against infringement, and, last but not least, they can also damage the reputation of given trademarks – as the quality of counterfeit goods is frequently worse, which makes them useless. In 2017, numerous EU customs bodies seized over 31 million counterfeit products at EU borders, their overall value going well beyond 580 million EUR. The major country of origin of forged goods that enter the EU customs territory is China, which, along with Hong Kong, is the top-ranked country as regards the largest number of fake mobile phones and related accessories, toners, and CDs/DVDs. Forged clothes, in turn, came mostly from Turkey, and counterfeit and potentially harmful medication originated mainly from India. In 90% of all the reported cases, the goods were destroyed, or appropriate court proceedings were launched to deal with the issue;⁹
- societies: the role of customs authorities is to check whether the goods imported to the territory of the European Union meet the mandatory quality standards, and to check whether the items and/or appliances do not pose a threat to the life, safety and health of EU citizens. A safe product is a product that does not pose any threat to the consumers, or indeed poses a minimal threat related to its use and is regarded as permissible in regular everyday use, taking into account the high level of protection of the security and health of consumers.¹⁰ In 2017, counterfeit and potentially hazardous items used every day – such as health care products, medication, toys, and electrical appliances – constituted 43% of all the seized goods. The largest category of counterfeited items were groceries (24%), followed by toys (11%), cigarettes (9%), and clothes (7%);¹¹

⁸ *Ibidem*.

⁹ European Union, *Rapid Alert System for Dangerous Products – 2017 Annual Report*, Luxembourg 2018, p. 15, https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/reports/docs/Rapex_annual_Report_2017.pdf (accessed: 16.07.2019).

¹⁰ Directive 2001/95/EC of the European Parliament and the Council of 3 December 2001 on general product safety, OJ L 011 of 15.01.2002, art. 2.

¹¹ *Ibidem*.

- the natural environment: the main task of the customs authorities is to provide the necessary protection against predatory trade in species that are on the verge of extinction, and against the import of hazardous and noxious substances and/or microorganisms. The protection of the natural environment handled by customs administrations plays a pivotal role, although it is frequently underrated, neglected and regarded as a minor responsibility of these bodies. The steps taken focus primarily on: 1) endangered animals and plants, and 2) the movement of waste. Currently, in the majority of cases, those most frequently seized are dead specimens, ready products (mostly handbags, and shoes), and souvenirs. As far as tourists are concerned, a vast majority of their attempts to smuggle across the border what they frequently refer to as “souvenirs” are the consequence of a lack of adequate knowledge and information about the laws related to the protection of animals and/or plants. Beyond the tourist-related trafficking of prohibited specimens, there is yet another side of the issue in question: illegal trade handled by organised criminal groups that treat this kind of activity as a source of massive profits.¹² Detection of the illegal transboundary transport of endangered species of animals and/or plants is indeed a major area of activity for customs authorities, as the European Union is a key import market for the international trade of species featured on the CITES list.¹³ In 2017, approximately 106,000 import transactions were reported at a total estimated value of 1.506 million EUR. At the same time, there were over 336,000 export transactions – of which 54% were cases of re-exportation – with a total estimated value of 2.595 million EUR. The overall value of the import of plants stood at 240.8 million EUR, and in the case of export it reached 262 million EUR. In 2017, customs authorities revealed almost 5,000 cases of breaching the provisions of CITES;¹⁴
- domestic budgets and the EU budget: the customs authorities are the first and last “official contact point” for the goods that are subjected to customs duties and fiscal duties on account of import, and this explains their role as protectors of the state budget against the loss of income generated from the financial payments due. As 80% of the inflows from customs are transferred to the EU budget, and merely 20% of the sums collected are withheld by the Member States as collection costs,¹⁵ ensuring fiscal security plays a major role not only

¹² J. Świerczyńska, ‘Bezpieczeństwo i ochrona rynku jako priorytetowy obszar działania europejskiej służby celnej’, in J. Rymarczyk, M. Domiter, W. Michalczyk (ed.), *Przemiany strukturalne i koniunkturalne na światowych rynkach*, Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu No 369, Wrocław 2014, pp. 229–230.

¹³ The Convention on International Trade in Endangered Species of Wild Fauna and Flora (also known as the Washington Convention, or CITES) was signed by 21 states on 3 March 1973 in Washington. Poland ratified the document on 3 November 1989, and it has been effective since 12 March 1990. The document contains a list of species of a variety of plants and animals that have been classified as endangered or that could become endangered in the future. The list does not feature animals or plants endangered on account of natural or environmental causes, but rather those that are imperilled due to the human desire to possess them.

¹⁴ European Commission, Directorate General Environment, *EU Wildlife Trade 2017: Analysis of the European Union’s annual reports to CITES 2017*, Belgium 2019, pp. 3–26.

¹⁵ Council Decision of 26 May 2014 on the system of own resources of the European Union, No 2014/335/EU, Euratom, L 168, art 2. In 1970, as a result of the Council’s decision to establish the

at the level of the Member States. In 2017, the sum total of disclosed losses in customs revenues in Member States stood at 482 million EUR.¹⁶ Abuses related, among others, to evasion or intended customs evasion, indirect taxes and other fees applied to imported goods are immeasurably dangerous from the point of view of the protection of fiscal interest. This explains the vital importance of the need to protect the budget against loss of revenues, and it requires the customs administration bodies of the Member States to shoulder a specific kind of responsibility.

The efficiency of the actions taken by the European Union as a large trading bloc depends on the effective flow of goods into the customs union and out of it, as well as on an unimpeded movement of goods within the single market. The freedom of movement of goods, which implies that each item that crosses the customs border of the European Customs Union and is acknowledged for trading may without any further hindrances circulate in this market, helps to generate irregularities, and in respect to the customs administration it triggers a larger number of requirements as regards security and protection. The fact that the customs bodies act as a guard in cross-border trade is a derivative of a number of factors. Likewise, assigning certain key tasks in this area to customs administration stems from the fact that these bodies have been equipped with full competencies with regard to the surveillance and control of all the goods that are transported across the customs borders, thus safeguarding and facilitating their movement. In practice, this means that because they are viewed as the service that is the most abundantly represented at the customs border, they take actions aimed at ensuring that within the EU's customs territory only such goods are brought in that are safe, and which therefore do not pose a threat to people's life and/or health, do not damage the natural environment, or put public safety at risk.

Within the cross-border trade in goods, the implementation of the protective function plays a major role for the following reasons:

- fiscal reasons: illegal trading in goods leads to losses for domestic budgets on account of unpaid taxes;
- social reasons: here, it is the health aspect that has a fundamental meaning, as launching hazardous goods into the market causes health hazards, and in many cases also for the health of prospective consumers;
- economic reasons: protecting entrepreneurs and manufacturers who act according to the law and observe all the necessary regulations against unfair competition.

Community's own financing resources, the payments due collected by the domestic customs administrations became the first own resources, the so-called Traditional Own Resources (TOR). At the beginning, the customs duties – seen as own resources of the EU's general budget – were adding funds to it at a rate of 90% of the registered payments due. From 2000 to 2013, these proportions stood at 25% and 75%, respectively (Council Decision, 2007/436/EC).

¹⁶ European Commission, *Customs sees what you don't... and protects you*, https://ec.europa.eu/taxation_customs/facts-figures/customs-sees-what-you-dont-protects-you_en (accessed: 23.07.2019).

The role of customs clearance in the protection of cross-border trade

Admittedly, the cross-border security of the European Union has to be understood as a process that is the outcome of all the actions geared towards ensuring the safe crossing of the EU's customs border. In trade, what plays a fundamental part is the movement of the freights that are part of the international supply chain across the customs border. The international supply chain is a set of several intertwined elements: entrepreneurs, streams of products, information, and the financial means that flow between them. One of the fundamental goals of the supply chain is to maintain a constant flow – i.e. one without demurrage or disruptions – of goods from the place of their origin to the end buyer.¹⁷ Traders, at the individual stages of the exchange – from the manufacturing phase of a product to the moment in which it is delivered to the consumer based in a different customs area – inevitably become its participants. From the point of view of the customs proceedings, as set out by the recommendation of the European Commission, the group of participants includes, among others, the manufacturer, the exporter, the freight forwarder, the warehouse keeper or another storage facilities operator, the customs agent/representative, the carrier, and the importer.¹⁸ Throughout the execution of a given transaction, the participants of the supply chains have to attend to certain formalities set out by the customs legislation, and, therefore, become a party to the process of the customs service provided by the customs administrations. Following E. Gwardzińska, the customs services include the administrative customs services that are provided by the customs administration, and the customs services that are related to the clearance of goods that can be realised directly by a trader – and, as such, are not customs agency services – or a customs representative, thus becoming a customs agency service.¹⁹ According to the definition adopted by the Customs Service, a customs service is a set of actions taken as part of the tasks carried out by the customs administration aimed at providing a client a number of advantages or benefits in response to his or her needs.²⁰ Broadly speaking, the notion of customs service encompasses all customs-related formalities performed with regard to the transactions made by the participants of a supply chain in the international trade of goods, carried out before the customs authorities in line with the applicable laws.²¹ The threats posed to cross-border security are deeply rooted in the international and global setting, as well as in a variety of external sources. This

¹⁷ A. Harrison, R. van Hoek, *Logistics Management and Strategy: Competing through the Supply Chain*, 3rd ed., Harlow 2008, pp. 6–15.

¹⁸ European Commission, *Authorised Economic Operators. Guidelines*, TAXUD/B2/047/2011-REV.6, Brussels 2016, pp. 17–20.

¹⁹ E. Gwardzińska, *Przedstawicielstwo celne w międzynarodowym obrocie towarowym*, Warszawa 2018, p. 141.

²⁰ Ministerstwo Finansów, *Program e-Cło – e-Uслуги*, speech delivered at the conference held on 29.07.2014, Departament Służby Celnej i Cła, Warszawa 2014.

²¹ J. Świerczyńska, 'Jakość obsługi celnej a konkurencyjność przedsiębiorstw uczestniczących w obrocie międzynarodowym', in P. Antonowicz, E. Malinowska, J. Siciński (ed.) *Sektorowe uwarunkowania funkcjonowania i rozwoju przedsiębiorstw*, Gdańsk 2019, p. 187.

can clearly cause disruptions in the functioning of the supply chain, and/or internal sources, which, in turn, is connected to the use of the supply chain to criminal activities, such as e.g. smuggling weapons of mass destruction, or using a means of transport as a weapon, which turns it into an actual threat for people's health and life, the infrastructure, the economy, or for the level at which a given society feels safe.²² It is worth highlighting the fact that the biggest threat within a supply chain occurs during the transportation or reloading of goods. Threats typically occur whenever the security measures applied are insufficient and are least expected. As regards the participants of the international supply chains, the threats in cross-border trade are frequently the effect of customs risk.

The notion of risk was added to EU customs legislation in 2005.²³ Since then, working out a single approach of the Member States to managing customs risk has become a major issue of concern against the backdrop of safeguarding the security of the supply chains. Based on the applicable laws of the EU Customs Code, risk implies the likelihood and the impact of an event occurring, with regard to the entry, exit, transit, movement or end-use of goods moved between the customs territory of the European Union and countries or territories outside this territory. It also applies to the presence of non-Union goods within the customs territory of the European Union, which would prevent the correct application of Union or national measures, compromise the financial interests of the Union and its Member States, or 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.²⁴ The number of entities that take part in a supply chain, as well as the diverse nature of their activities, extends the areas of potential customs risk beyond any imaginable limits. As a rule, the threats and risk related to customs stem from customs crimes and petty offences, whose sources are indeed varied. In the transboundary movement of goods, the key sources of risk include:

- behaviour that violates the provisions of customs legislation or the application of measures related to the bans and restrictions, and trade policy measures,
- failure to comply with the applicable customs norms and standards,
- incomplete or improper control of the movement of goods,
- lack of control of the transport of goods,
- inaccurate, insufficient or absolute lack of knowledge about trading partners,
- the likelihood of the appearance of goods as part of unfair competition, goods that infringe the intellectual property rights, goods that fail to comply with EU standards and ones that pose a threat to life and/or health.

²² World Bank, *Supply Chain Security Guide*, Washington 2009, p. 8.

²³ Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending the Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ L 117/13 of 04.05.2005. Pursuant to Article 4, risk implied the likelihood of an event with regard to the entry, exit, transit, movement and end-use of goods moved between the customs territory of the EU and non-EU countries, and the presence of non-Union goods, which would prevent the correct application of EU or national measures, compromise the financial interests of the Union and its Member States, or 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.

²⁴ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269 of 10.10.2013, *op. cit.*, art. 5, point 7.

Doubtless, it is impossible to fully eradicate the customs risk and all the threats that may occur in the international supply chains. Yet it is worth taking all the possible actions to bring them down to a minimum. This is why the role of the level of customs clearance, which is an intrinsic stage of transactions in the international market, is so important. And, indeed, the quality of this service is a major factor that determines the effectiveness and efficiency of the actions taken within the area of protecting cross-border trade in goods. M. Bugdol points to the following factors that shape the overall quality of customs service: availability of the service, manner of communication, competences, politeness, credibility, responsibility, reliability, security, understanding, and specificity.²⁵ This proves that quality is indeed the response to a client's expectations. The factors that have an impact on the quality of customs services are the standards of service adopted, and the level at which they are provided. A high quality of customs service necessitates the customs administration taking a modern approach and dynamically adapting to the ever-changing environment. As regards the overall quality of customs service – especially in the cross-border movement of goods – an absolute priority for traders is the time and the cost of the service, the functionality of the services, easy access to information, and a uniform mode of providing the service at all the organisational units of the customs administrations of the Member States. Another major component is the security of the supply chain, as only such a chain can be a source of benefits and profits for traders. Therefore, it is of key importance to make sure that an effective protection of the cross-border trade safeguarded by the customs administrations is geared towards ensuring security in a positive way, i.e. by removing any existing barriers, and streamlining customs procedures. Indeed, the growth of global trade requires a systematic reduction of the level of interference that results from the inspections.²⁶ A major premise for such a reduction of barriers in customs handling by the European Union are the Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organisation (WCO SAFE Framework).²⁷ Adopted in 2005, the document introduced modern security standards into a supply chain, enhancing the level of involvement of the customs authorities in the creation of the economic security of the individual states and made it possible to simplify the handling of legal trade. It is made up of four elements:²⁸

- harmonisation of the guidelines with regard to advance information about the deliveries of goods;
- taking of a coherent approach with regard to risk management in order to identify risk for the supply chain;

²⁵ Cf. M. Bugdol, *Zarządzanie jakością w urzędach administracji publicznej. Teoria i praktyka*, Warszawa 2011.

²⁶ N. Wilson, *Examining the Trade Effect of Certain Customs and Administrative Procedures*, OECD Trade Policy Working Papers, No 42, Paris 2007, p. 18.

²⁷ World Customs Organization, *SAFE Framework of Standards to Secure and Facilitate Global Trade*, http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx (accessed: 15.06.2019).

²⁸ *Ibidem*.

- in justified cases, applying early risk evaluation, a more invasive approach to the inspection of containers and high-risk loads, based on scanning done with the use of non-invasive methods or physical inspection;
- the benefits that can be gained by enterprises that meet the minimum security standards in a supply chain and will apply the best practices.

The change of the approach to the security of loads in a supply chain that can be discerned after this period regards, among others, the need for the participants of a supply chain to provide more detailed information on the origin, intended use and type of load (including any information documenting the previous stages in the supply chain), and to shift the inspection of a good from the point of destination to the place of shipment, which is the consequence of introducing the duty of providing the customs authorities with detailed information on the freight before it has been loaded onto the means of transport.

The impact of selected instruments of customs clearance on the quality of actions taken in the process of ensuring the security and protection of trade

The catalogue of the customs services provided by the customs authorities of the Member States is broad and is updated on an ongoing basis. It encompasses, among others, the services that result from the implementation of the customs policy, which is the consequence of being part of the EU's customs union; the implementation of incomes generated from customs duties and other payments connected to the entry and exit of goods (collection of fees due, and settlements with the EU and the budget); covering goods with customs procedures and regulating the status of goods related to their entry and exit; identification, detection and combatting criminal offences and petty offences committed with regard to the goods whose sales are subjected to prohibitions and/or restrictions; preventing such incidents, and prosecuting their perpetrators. The obligation undertaken by the customs administrations to guarantee an unimpeded movement of goods necessitates a constant improvement of the relevant tools that facilitate the operations. Having said this, facilitating customs clearance must not have a negative impact on the level of security and protection of the European Union. Reaching a compromise between the number of solutions aimed at reducing the barriers that hinder customs clearance and the need to ensure effective protection – which, in turn, is the key element in the process of safeguarding the security of cross-border trade – is indeed an arduous task, but an attainable one, as proved by experience.

Admittedly, throughout customs clearance, what plays a pivotal role for traders is, above all, the manner in which the customs authorities carry out their controls. Customs controls in cross-border trade are the epitome of the protective function performed by the customs administrations. This tool serves to verify the proper observance of the customs laws and other provisions related to the import and export of goods in the trade activities occurring between the EU and non-EU

countries. Its effect should, on the one hand, be the proper safeguarding of customs and tax dues, and, on the other, a guarantee of the security of trade and the growth of a legal commercial activity. According to the provisions of the Union Customs Code, the notion of “customs controls” implies specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure.²⁹ Customs controls may, among others, consist in examining goods, taking samples, verifying the accuracy and completeness of the information given in a declaration or notification and the existence, authenticity, accuracy and validity of documents, examining the accounts of economic operators and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts.³⁰ The EU applies the system of selective customs controls, based on the risk analysis of the entities that are selected for it. This approach means that it is not an “absolute control of everything”, but rather a selective activity geared towards scrutinising specific areas of interest. Customs controls ought to be balanced with facilitating legitimate trade.³¹ The ones that currently allow for the concentration of controls to be carried out in areas where the risk of abuses is high are the highly qualified customs officials, effective methods, as well as modern IT-based tools.

Given the fact that the entities that undergo the controls are frequently treated disapprovingly, a variety of solutions have been launched across the European Union that are aimed primarily at upgrading the methods and tools applied in such processes, a case in point being the area of e-services.³² The significance of applying information and communication technologies to facilitate trade, and at the same time to ensure the effectiveness of controls by lowering the costs incurred by business enterprises and lowering the risk has been laid down explicitly in the Union Customs

²⁹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269 of 10.10.2013, *op. cit.*, art. 5 point 3.

³⁰ *Ibidem*, art. 46.

³¹ *Ibidem*, art. 3.

³² The origins of e-facilitations in customs handling and clearance goes back to 2003, when the Council, in its Resolution of 5 December 2003 on creating a simple environment for customs and trade (Council Resolution of 5 December 2003 on creating a simple and paperless environment for customs and trade, OJ C 305 of 16.12.2003, p. 1.), called on the Commission to develop, in close cooperation with the Member States, a long-standing strategic plan with regard to the creation of coherent and inter-operational electronic customs systems, the so-called electronic environment for customs. This document, termed the Multi Annual Strategic Plan, or MASP (European Commission’s document TAXUD/477/2004-Rev.7), was developed by the Commission and became the basis for introducing information technology for the European customs union. What had the major impact on simplifying customs clearance was the decision of the European Parliament and Council related to the launching of a pan-European electronic system of customs clearance (Decision No 70/2008/CE of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade, OJ L 23/21, 2008), whose implementation was possible thanks to the e-Customs Programme (electronic customs).

Code.³³ It has also been emphasised that the use of information and communication technologies should be accompanied by a harmonised and standardised application of customs controls by the Member States to ensure an equivalent level of customs control throughout the Union in order to provide, among others, a balanced level of these controls.³⁴ In line with the Union Customs Code, the exchange of information (i.e. the declarations, reports, applications, or decisions) between the traders and the customs authorities – as well as the storage of such information – should be carried out by means of electronic data-processing techniques.³⁵ To this end, major attempts have been made to upgrade and develop a total of 17 IT systems.³⁶ Most of the activities scheduled to be carried out in this area will be completed by 2020,³⁷ but in order to guarantee a comprehensive and fully integrated structure in all the Member States of the EU, this effort will most probably continue until 2025.³⁸ Having data collected electronically makes it easier to process them, associate them, or search them through according to a set of established criteria. Hence, it is necessary to implement all the IT systems so as to make it possible for the customs administrations to manage financial risk and the risk posed to security, and at the same time facilitate trade.³⁹

In cross-border trade, there are specific e-services which are an excellent example that proves that it is possible to facilitate commercial activity and at the same time guarantee high standards of security, e.g. the digital border (which allows for an efficient handling of a participant of a supply chain at border crossings with the use of automatic vehicle identification mechanisms and traffic control); notification (which allows to announce the anticipated arrival at a border along with the transfer of data on the goods in advance so as to enable preliminary preparation of the clearance procedure and reduce the waiting time at the border crossing, as well as repeated use of the transferred data in subsequent processes of customs handling); digital clearance (which allows to carry out customs clearance in line with the requirements set by

³³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269 of 10.10.2013, *op. cit.*, p. 4.

³⁴ *Ibidem*.

³⁵ *Ibidem*, art. 6.

³⁶ This includes 14 trans-European systems (upgraded systems): Binding Tariff Information (BTI), Authorised Economic Operators (AEO), Economic Operators' Registration and Identification (EORI), common customs tariff and surveillance, New Computerised Transit System (NCTS), Automatic Export System (AES), Import Control System (ICS), and new ones: Registered Exporter System (REX), Customs Decisions System (CDS), and Uniform User Management and Digital Signature (UUM&DS.), Guarantee Management (GUM), Proof of Union Status (PoUS), uniform exchange of information for special purposes (INF), Centralised Clearance for Import (CCI).

³⁷ Implementation of the following projects carried out within the Union Customs Code will be delayed and will be completed after 2020: Automatic Export System, upgrading the New Computerised Transit System (NCTS), guarantee management, special procedures, centralised clearance for import, confirmation of Union customs status of goods and upgrading the import controls system – European Court of Auditors, *A Series of Delays in Customs IT Systems: What Went Wrong?*, Special Report No 26, Brussels 2018, p. 17.

³⁸ European Commission, Report from the Commission to the European Parliament and the Council on the IT strategy for customs, COM 178 final, Brussels 2018, p. 7.

³⁹ *Ibidem*.

the Union Customs Code); e-transit (which makes it possible for the goods subjected to excise duty to transit with the use of electronic documents); single window (which is a facility that guarantees mechanisms of exchange and multiple use of data between the customs authorities and the business entities, along with the coordination of joint controls). Currently, the European Commission is working intensely on the system of the single window, which would allow a commercial entity to transfer the data for the several regulatory purposes – e.g. veterinary, sanitary, environmental purposes – in a standardised format to a number of recipients and through a network of harmonised access points.

Another significant instrument – both from the point of view of customs controls and trade facilitations – worked out as part of the changes introduced in the field of security, is the Authorised Economic Operator (AEO) scheme. The programme became part of EU legislation in 2005,⁴⁰ and, practically, it has been effective since 1 January 2008.⁴¹ An authorised AEO trader is an entity who is regarded as trustworthy, reliable and solvent in terms of his/her customs activities. Also, his/her organisation, infrastructure and IT systems security measures applied, and the storage points of the goods guarantee the security of places and goods, and protect them against unauthorised access. An AEO trader is eligible to a number of benefits and privileges laid down in the relevant customs legislation.⁴² These include e.g. fewer controls, priority treatment of consignments whenever they have been selected for control, choice of the place of controls in a place outside a customs office, prior notification, customs self-service, or centralised clearance.⁴³ The strict requirements for those applying for an AEO authorisation make sure that meeting them is definitely not easy for a business entity. As for the AEO authorisation⁴⁴ with regard to security and protection, the criteria that have to be met pertain, among others, to the security of buildings (a guarantee that the location of a given building and the materials with which it has been built render intrusion more difficult); appropriate access controls (these should make it impossible for unauthorised persons, vehicles or

⁴⁰ Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, *op. cit.*

⁴¹ Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ L 360 of 19.12.2006.

⁴² It is also worth pointing to other facilitations – the so-called “indirect” benefits. Although they have not been included in the provisions, in practice, they have a positive impact on the commercial activity conducted by helping to cut down on the cases of theft and losses; ensure timely delivery, facilitate planning, improve customer service, build more trust and thereby enhance clients’ loyalty, ensure rational stock management, boost employees’ engagement, lower the number of incidents related to security and protection, bring down supplier control costs, hone the level of security and improve communication with the partners within a supply chain – European Commission, *Authorised Economic Operators. Guidelines, op. cit.*, pp. 26–27.

⁴³ *Ibidem*, pp. 19–25.

⁴⁴ The status includes two types of authorisations: 1) authorised trader within customs simplifications (AEOC authorisation), and 2) authorised trader within security and protection (AEOS authorisation). Interestingly, a trader may hold two types of authorisations at the same time, and then in practice, this combination refers to the customs simplifications/security and protection status, marked AEOF. Cf. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269 of 10.10.2013, *op. cit.*, art. 38.

goods to gain access to shipping areas, loading docks, etc.); cargo security (having appropriate measures for the handling of goods that guarantee the inviolability of the cargo); business partner security (identification of and appropriate knowledge about a specific business partners); personnel security (transparent hiring procedures, and periodical controls of the staff employed in security-sensitive positions). In 2019, the number of Authorised Economic Operators stood at almost 17 thousand. At the same time, as many as 673 traders had the AEOS authorisation, and the AEOF status for customs simplification/security and protection was granted to 8,483 entities.⁴⁵ One of the positive things in the cross-border movement of goods is the possibility to have one's AEO status recognised in the third countries with which the EU has made relevant agreements. These countries are: Norway, Switzerland, Japan, Andorra, the US, and China. Such a solution helps to create a stable and coordinated structure of movement of goods in international supply chains, and for the traders it translated into a number of advantages, including fewer controls related to security and protection, or priority treatment during customs clearance.⁴⁶

Another element that plays a pivotal role in safeguarding a legitimate movement of goods in cross-border trade is the nature of customs cooperation. Effective and efficient cooperation has a positive impact on the quality of customs clearance. Its specificity changes along with the growing significance of the EU customs authorities within the international security of the supply chain. The spectrum of actions undertaken by the customs administrations is indeed wide and includes both general actions – such as e.g. assistance and cooperation between customs administrations, using information technologies in customs, cooperating in the field of enforcing customs legislation), and specific actions, i.e. those targeted at specific customs offences. The customs administrations of the Member States are a key partner of the security bodies and law enforcement authorities as regards combatting transboundary threats. Therefore, an effective customs cooperation in the European Union would not be possible without collaborating with a network of specialised institutions, which include: the European Police Office (Europol), the European Anti-Fraud Office (OLAF), the European Border and Coasts Guard Agency (Frontex), and Eurojust – a judicial coordination and cooperation authority. The numerous discoveries by the customs administrations of the Member States, acting on their own or in cooperation with the above listed bodies, are the best proof of the effectiveness of the actions taken in the field of security and protection the EU market, leaving a positive mark when it comes to the expectations not only of the traders acting in a fully legitimate way, but also of the society and the state. Taking actions related to the development and strengthening of the cooperation between the customs administrations of the Member States, as well as between the customs authorities and other bodies that play a major role from the point of view of the security of cross-border trade in goods and the economic environment, is

⁴⁵ As of 25 June 2019, the number of AEO entities stood at 16,889, https://ec.europa.eu/taxation_customs/dds2/eos/aeo_consultation.jsp?Lang=en&holderName=&aeoCountry=&certificatesTypes=AEOC&certificatesTypes=AEOF&certificatesTypes=AEOS&Expand=true&offset=1&showRecordsCount=1 (accessed: 25.07.2019).

⁴⁶ European Commission, *Authorised Economic Operators. Guidelines, op. cit.*, p. 118.

of key importance for the effective implementation of the protective function. Also, from the point of view of the quality of customs handling and clearance, it is also important to enhance the overall capability of customs administrations to act, and to attain an optimal level of coordination with other areas of the EU policies that have an impact on the duties and responsibilities of customs administrations.⁴⁷

Conclusions

Admittedly, supporting international trade and cracking down on customs crime and other undesirable phenomena that are still part of it lie at the core of the modern role of organisations in charge of an effective functioning of the European customs union. The changes that have taken place in the ways in which the customs authorities of the Member States are organised and how they act to streamline their controls deserve a positive assessment when one looks at them through the prism of the implementation of the protective function in cross-border trade. The solutions that are put into practice within the entire European customs union are a good example of modern and coherent tools whose effect is a protective shield of trade in goods that does not pose obstacles, but rather facilitates customs procedures. The solutions aimed at making controls more efficient, based on state-of-the-art technologies (e-services), allow for better identification and more efficient discovery of attempts made to abuse the customs and tax system, they improve the financial security of the Member States' budget and the EU budget, and they speed up the pace at which goods move within the international supply chain. A comprehensive knowledge about who sends what, to whom, and where from makes it easier for the customs administrations to identify legitimate trade and, consequently, to avoid unjustified controls and focus on the areas that constitute the major threats. Real-world experience shows that e-services, which are provided as part of the cross-border customs clearance, are instruments that not only translate into easier business processes (in practice, this implies quicker and cheaper fulfilling the customs obligations), but they also have a positive impact on the overall safety and security of entities.

In the future, security in cross-border trade will still require an incessant perfection of the quality of the services provided by removing the barriers that will be emerging, and this will also translate into a further decrease of the costs of running a business activity and boosting the levels of trust of traders and entrepreneurs for the controls carried out by the EU customs administrations. Only a high quality of customs clearance can have a positive impact on the effective performance of all the tasks related to the measurement, controls and collection of public levies both on a domestic level and the EU level. At the same time, against those entities that knowingly and wilfully disregard the laws or take advantage of the control instruments to quickly gain a profit or a competitive advantage, the customs administrations ought

⁴⁷ European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Developing the EU Customs Union and Its Governance, Brussels 21.12.2016, COM (2016) 813 final, pp. 7–14.

to act swiftly and consistently in response. Enhancing effective controls at the optimal point of the supply chain, based on maximal automation and electronisation, allows to carry out this process quickly, effectively, and in line with the expectations of the entities that comply with the law, at the same time ensuring a high level of security of the external border of the European Union. These days, striking a balance between facilitating legitimate trade and the protection of supply chains is possibly the greatest challenge for the customs administrations in the EU, as traders generally are not willing to accept promises made to ensure security at the expense of growth. This explains the positive impact that uniform and effective procedures applied in customs clearance across the Member States of the EU have on striking and maintaining a balance between security and the various facilitations provided.

To sum up, it needs to be emphasised that the high quality of customs clearance plays a fundamental role for the security and protection of goods moved within the international supply chain and constitutes a major element that facilitates legitimate trade and the protection of the economic interests of the Union and its Member States.

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Znaczenie obsługi celnej w procesie zapewniania bezpieczeństwa i ochrony w transgranicznym ruchu towarowym w Unii Europejskiej
Streszczenie

Celem artykułu jest przedstawienie znaczenia obsługi celnej w procesie zapewniania bezpieczeństwa i ochrony w transgranicznym ruchu towarowym w Unii Europejskiej. Hipoteza badawcza została sformułowana następująco: organy celne, jako służby mające pełne kompetencje w zakresie nadzoru i kontroli nad wszystkimi towarami przewożonymi przez granice celne, potrafią wdrażać w ramach europejskiej unii celnej nowoczesne i spójne rozwiązania, których efektem jest skuteczna ochrona obrotu towarowego – nie tworząc przy tym barier, ale usprawniając obsługę celną. Struktura artykułu obejmuje trzy części oraz podsumowanie. W części pierwszej wskazano na istotę i znaczenie funkcji ochronnej realizowanej przez administracje celne państw członkowskich Unii Europejskiej; druga odnosi się do znaczenia obsługi celnej w procesie ochrony transgranicznego przepływu towarów; trzecia prezentuje wybrane instrumenty, które usprawniają obsługę celną, wpływając jednocześnie pozytywnie na poziom bezpieczeństwa. W badaniach wykorzystano analizę opisową, poprzedzoną przeglądem źródeł literaturowych i aktów unijnego i krajowego prawodawstwa wtórnego.
Słowa kluczowe: Unia Europejska, bezpieczeństwo, ochrona, obrót towarowy, usługi celne, organy celne

The Role of Customs Clearance in Ensuring the Security and Protection of Cross-Border Trade in the European Union
Abstract

The goal of the paper is to highlight the relevance of customs clearance in the process of guaranteeing the security and safety of cross-border trade in the European Union. The research hypothesis has been formulated as follows: customs authorities, acting as the bodies that have full competence over the surveillance and control of the goods transited across the customs borders, are able to implement modern and consistent solutions within the European Customs Union. As a result, trade in goods is effectively safeguarded, no barriers are created, and customs clearance is improved, which facilitates commercial activity. The paper consists of three parts, and a summary. The first part looks at the essence and significance of the protective function performed by customs administrations of the Member States; the second part refers to the relevance of customs clearance in the process of the cross-border flow of goods, and the third part elucidates the selected instruments which enhance customs processing and, at the same time, have a positive impact on the overall level of security and safety. The conclusions drawn from the considerations pondered upon in the paper have been included in the summary. The research was based on a descriptive analysis preceded by a review of the subject literature, as well as a selection of national and EU secondary legislation.

Key words: European Union, security, safety, trade, customs services, customs authorities

Bedeutung der Zollabfertigung im Prozess der Sicherheits- und Schutzgewährleistung im grenzüberschreitenden Güterverkehr in der Europäischen Union

Zusammenfassung

Das Ziel des Artikels ist die Bedeutung der Zollabfertigung im Prozess der Sicherheits- und Schutzgewährleistung im grenzüberschreitenden Güterverkehr in der Europäischen Union darzustellen. Die Forschungshypothese wurde wie folgt formuliert: Zollbehörde, als die für die Aufsicht und Kontrolle über alle durch die Zollgrenzen beförderten Waren zuständigen Dienste, können im Rahmen der europäischen Zollunion moderne und kohärente Lösungen einführen, welche einen effektiven Schutz des Güterverkehrs zur Folge haben, ohne Schranken dabei zu errichten sondern die Zollabfertigung zu optimieren. Die Struktur des Artikels umfasst drei Teile und eine Zusammenfassung. Im ersten Teil wurde auf das Wesen und die Bedeutung der durch die Zollverwaltungen der EU - Mitgliedsländer ausgeübten Schutzfunktion hingewiesen, der zweite Teil bezieht sich auf die Bedeutung der Zollabfertigung im Prozess der Schutzgewährleistung im grenzüberschreitenden Güterverkehr; der dritte Teil stellt ausgewählte Instrumente dar, die die Zollabwicklung erleichtern und sich positiv auf das Sicherheitsniveau auswirken. In den Untersuchungen wurde die beschreibende Analyse benutzt, deren die Übersicht der Literaturquellen und Rechtsvorschriften der Unions- und Landesrechtsvorschriften vorausgeht.

Schlüsselwörter: Sicherheit, Schutz, Güterverkehr, Zollleistungen, Zollbehörde

Значение таможенного обслуживания в процессе обеспечения безопасности и защиты в трансграничном движении товаров в государствах Европейского Союза

Резюме

В статье рассматривается значение таможенного обслуживания в процессе обеспечения безопасности и защиты в трансграничном движении товаров в Европейском Союзе. Исследовательская гипотеза была сформулирована следующим образом: таможенные органы, имеющие полномочия в области надзора и контроля над всеми товарами, перевозимыми через таможенные границы, могут внедрять, в рамках европейского таможенного союза, современные, комплексные решения, результатом которых является эффективная защита товарооборота – не создавая при этом барьеров, а улучшая таможенное обслуживание. Структура статьи включает в себя три части и резюме. В первой части освещены суть и значимость защитной функции, выполняемой таможенными администрациями государств-членов Европейского Союза; во второй части подчеркнуто значение таможенного обслуживания в процессе защиты трансграничных потоков товаров; в третьей – представлено выбранные инструменты, способствующие повышению качества таможенного обслуживания, что имеет положительное влияние на уровень безопасности. В исследовании был использован описательный анализ, которому предшествовал обзор литературных источников и нормативно-правовых актов законодательства ЕС и Польши.

Ключевые слова: Европейский Союз, безопасность, охрана, товарооборот, таможенные услуги, таможенные органы

