

**Regional Office for Capacity Building/
Regional Training Centers for the European Region
of the World Customs Organization**



Customs Scientific Journal

C U S T O M S

**Special edition
Number 1**

ROCB & RTCs
European Region
2012

Published by the Academy of Customs Service of Ukraine on behalf of the Regional Office for Capacity Building & Regional Training Centers for the European Region of the World Customs Organization

Scientific collection

Recommended for publication by Scientific Council of the Academy of Customs Service of Ukraine (protocol № 9 from March 22, 2012)

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UDC: 339.543

Number 1 (April), 2012

First published 28 April 2011

(License for publishing – SC № 10 from 2000-02-24, Academy of Customs Service of Ukraine)

The *Customs Scientific Journal CUSTOMS* is published electronically, twice a year.

The website is at: www.amsu.dp.ua

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CONTENTS

Editorial.....	5
Greetings.....	6
SECTION 1 – CUSTOMS & BUSINESS PARTNERSHIP.....	8
Customs representation in Poland	
<i>Wieslaw „Wes” CZYŻOWICZ, Ewa GWARDZIŃSKA.....</i>	<i>8</i>
SECTION 2 – PROFESSIONAL EDUCATION IN CUSTOMS DOMAIN....	19
Modernization strategy within the German customs administration: the example of education and training of customs officers	
<i>Lothar GELLERT.....</i>	<i>19</i>
The analysis of innovative educational technologies development in training of customs business specialists in the Eurasian economic community c ountries	
<i>Alexander ERSHOV, Ekaterina STEPANOVA.....</i>	<i>24</i>
SECTION 3 – IMPLEMENTATION OF THE WCO STANDARDS.....	32
Strategic aspects of Russian Federation Customs Service development	
<i>Andrei Yu. BELYANINOV.....</i>	<i>32</i>
International experience and programme-oriented and target-based Approach in modernization process of the Customs Service of the Republic of Belarus	
<i>Aleksandr SHPILEVSKY.....</i>	<i>38</i>

SECTION 4 – BEST PRACTICES.....	49
Smuggling as a crime of international character: concept, characteristics, qualifications	
<i>Elena MARTSIUSHEVSKAYA, Victor OSTROGA</i>	<i>49</i>
Customs Service of independent Azerbaijan is successfully walking the path of dynamic development	
<i>Aydin ALIYEV.....</i>	<i>59</i>
Customs control in the 21st century	
<i>Mihály ARNOLD.....</i>	<i>66</i>
SECTION 5 – YOUNG RESEARCHERS’ PAGE.....	91
The need for greater convergence and coordination between customs and tax authorities over the issue of transfer pricing	
<i>Roman OLEKSIENKO</i>	<i>91</i>
The problems of the Russian Federation customs activity management nowadays	
<i>Nina AKSENOVA.....</i>	<i>103</i>
SECTION 6 – GUESTS.....	114
The history of the development of the US customs administration and its influence on the development of the country	
<i>Robert E. OLSON.....</i>	<i>114</i>
Information about authors.....	128
Conditions for publication.....	129



EDITORIAL

We would like to introduce you the special edition of the *Customs Scientific Journal CUSTOMS* which is devoted to the 60th anniversary of the World Customs Organization. The Regional Office for Capacity Building and Regional Training Centers for the European Region of the World Customs Organization are proud of the fact that just now they can give customs administrations of WCO Members opportunity to publicize in this regional scientific edition their researches into customs activity as well as national practices.

The Directors General of several countries of the Region Europe were kind to submit their review articles about experience of the implementation of WCO Capacity Building Strategy to this jubilee edition.

The WCO has traveled a long way – a way of development characterized by key milestones such as cooperation, harmonization, standardization, capacity building, regionalization and partnership. Over the years WCO has developed essential instruments (models, compendiums, guidelines) and tools to help WCO Members implement the Organization's standards and solutions.

So it is natural that this jubilee edition also includes some achievements focused on Customs-to-Customs and Customs-to-Business partnerships. We'd like as well to draw your attention to the young researchers' articles inviting to participate in the discussion concerning transfer pricing and suggesting their viewpoints on improvement of customs management system.

Editorial Board congratulates Customs community on the WCO anniversary and wishes both the Organization and its Members further achievements and progress on the next stage of development.

We thank all our authors for their valuable contribution and invite to further cooperation.

Editorial Board



Ladies and Gentlemen,

Knowledge has always been one of the cornerstones of the Customs community. Throughout its 60-year history, the WCO has been at the forefront of organising numerous conferences and capacity building activities, contributing to knowledge sharing and educating a new generation of Customs officers. Moreover, the year of 2011 was dedicated to the promotion and pursuit of knowledge activities. However, without the support of colleagues and peers in different countries, without their continuous and persistent work, no progress would be possible. Therefore, as the theme of 2012, special emphasis has now been placed on “connectivity,” which entails combining knowledge and the free flow of ideas with means for its dissemination. And, it is a pleasure to see that there are many interesting initiatives in the sphere of research and knowledge sharing both on the national and regional levels.

The special edition of the ROCB-RTC Scientific Journal *Customs* is one of these initiatives, and it is my great pleasure to introduce it to the Customs community. The pilot edition of the Journal, issued last year, became the first stepping stone in the development of widely accessible research on Customs matters in the Europe region. Forging connections, establishing an active dialogue with researchers from different countries and gaining access to high-quality research on a variety of customs related subjects are the primary objectives of this publication.

Using this opportunity, I want to wish all the best to the Editorial Board of the Journal, its readers and contributors. May the Journal attract the widest audience and become an indispensable part in the library of every Customs professional. May readers always have an appetite to ask more questions and strive to learn more. I also want to wish contributors persistence, scientific rigor and strength while doing their research.

Best regards,

Kunio Mikuriya

WCO Secretary General



I am very pleased to have this opportunity to congratulate the Editorial Board on the publication of the first issue of the Customs Scientific Journal.

The Journal will provide a very useful outlet for contributors and experts to publish articles and share information, insights and reflections of interest to the Customs Community. I am pleased to see that partnership with business features prominently in the pilot edition, as well as topics which, together, cover a very broad range of Customs and global trade matters.

The work that is done by the ROCB and RTCs in the implementation of the Capacity Building Strategy is very important across the Europe Region and this Journal could be a very useful means of supporting their work. The chapters on modern technologies and best practices in customs administration will be particularly useful in this regard.

I wish the management and staff in our regional offices every success in your endeavours.

Josephine Feehily,
Chair of WCO Council

CUSTOMS & BUSINESS PARTNERSHIP

JEL Classification: K34, L84, P48

CUSTOMS REPRESENTATION IN POLAND

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Abstract

The article is devoted to considering customs representation as one of the legal institutes facilitating relationships between customs and business partners. The EU and Polish Customs regulations are analysed to determine the forms of representation. The special procedural requirements for performing the function of the customs broker in Poland are defined. The recommendations as to unification of the market of customs representation services are made.

Keywords: representation, transactions, regulations, power of attorney, customs, entrepreneurs, brokers.

Introduction

Freedom of business activities, both on a domestic and on international market, is one of the basic rules of democratic political and economic systems. It has been expressed in the simplest way in “Charter of Fundamental Rights of the European Union”¹. In this fundamental document, Article 16 entitled “Freedom to conduct a business”, it states that “The freedom to conduct a business in accordance with Community law and national laws and practices recognised.”²

Business transactions encompass the institute of contracts for representation or intermediation. Representation in business activities is one of the legal institutes which allows facilitation of conduct of business. This also regards activities in the international commercial turnover. Yet, there it is related to [governed by] specific regulations of the civil law as well as of the EU and national customs laws. Thus, the conditions of the “Charter of Fundamental Rights of the European Union” are met, as the regulations recognise both the EU and Polish norms of law.

1. Representation and power of attorney in the Polish civil law

Regulations of the Polish Civil Code broadly allow for the possibility of conducting legal transactions via a representative. To understand the institute of representation, it is

¹ “Charter of Fundamental Rights of the European Union”. The text with explanations of the Convention Secretariat, Cracow, 2002, see also: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

² Ibid. p.30. „Article 16: Freedom to conduct a business: The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.”

necessary to distinguish between its two types:

- statutory representation – a parliamentary act or a court’s order is the source of the representative’s authorization to act,
- power of attorney – a declaration of will by the principal is the source of the representative’s authorization to act on behalf of the principal in relation to third parties.

Such a differentiation in the Civil Code regulations clearly points out to substantial differences between the above mentioned forms of representation in business transactions. Two important characteristics of transactions performed by a representative are worth mentioning here: first, he acts on behalf of another person; and, second – legal transactions performed by a representative bear legal effects not for him but directly for the grantor. Therefore, in the course of legal transactions a legal relationship is created, participated in the capacity of a party not by him but by directly by the grantor, who does not participate in the legal transactions. “For such a transaction to be validly performed on behalf of another person, it must result from the transaction’s contents that the person who performs it, acts as a representative (...). Also, the declaration of will by the representative must indicate the represented person³.”

Power of attorney is a unilateral legal transaction – it is granted by way of the grantor’s declaration of will and it authorizes the representative to act on the grantor’s behalf in relation to third parties within the strictly-defined limits of the authorization granted to him – the power of attorney can be general, specific or special.

Under general power of attorney the representative may perform acts of ordinary management (transactions consisting in ordinary, everyday use of property, e.g. entering contacts for rent or lease, paying taxes, etc.). For acts exceeding the scope of ordinary management specific power of attorney for a certain type of legal transactions (e.g. real property sale), or special power of attorney regarding a defined legal transactions (e.g. a deed of declaration of acceptance or rejection of inheritance) must be entered before a public notary or a court of law. It is worth stressing here that a transaction performed by a representative within the scope of power of attorney granted to him bears direct effects for the grantor.

Provisions of the Polish Civil Code on representation have the nature of general regulations in relation to specific parliamentary acts regarding the performance of transactions by a representative including, in relation to the Community Customs Code’s regulations.

2. Forms of representation in the EU and Polish Customs regulations

Legal regulations directly referring to the institute of representation in customs matters are included in:

³ Prawo i postępowanie celne [Customs Law and Practice], scientific editor: W. Czyżowicz, WSHiP, Warsaw 2001, p. 258.

- the Community Customs Code (Modernized Customs Code – [EC Regulation 450/2008])⁴,
- the Act of 19 March 2004 on the Customs Code (Journal of Laws of the Republic of Poland No. 68, item 622)
- the Act of 19 March 2004 – Regulations implementing the Act - the Customs Code (Journal of Laws of the Republic of Poland No. 68, item 623),
- the Ordinance of the Minister of Finance of 17 May 2004 on the customs brokers licensure exam and the entry of customs brokers (Journal of Laws of the Republic of Poland No. 117, item 1223),
- the Ordinance of the Minister of Finance of 9 November 2011 changing the Ordinance on the customs brokers licensure exam and the entry onto the list of customs brokers (Journal of Laws of the Republic of Poland No. 257, item 1540),
- the Ordinance of the Minister of Finance of 22 April 2004 on the designation of the Director of the Regional Customs Office (Izba Celna) in Warsaw to care for certain customs matters (Journal of Laws of the Republic of Poland No. 87, item 830),
- the Act of 18 March 2008 on the rules of acknowledging professional licenses obtained in the European Union Member States (Journal of Laws of the Republic of Poland No. 63, item 394),
- the Ordinance of the Minister of Finance of 6 January 2009 on the adaptation internship and the customs brokers qualifications test in the course of the customs brokers' licenses acknowledgement proceedings (Journal of Laws of the Republic of Poland No. 13, item 71)
- the Act of 18 March 2011 on amending the Act on the Goods and Services Tax (VAT) and the Act – Measurements Law (Journal of Laws of the Republic of Poland No. 64, item 332).

Under the EU customs regulations (Article 11 and Article 4, point 6 of the EU Modernized CC) the function of a representative may be held by a natural person permanently residing within the Community or a legal person, or an association of persons deemed capable of performing legal transactions but not being a legal person, whose registered office stipulated in the Articles of Organization, its main registered office or a its permanent registered office is located within the Community. The condition of having a registered office within the Community does not regard persons who declare transit of goods or temporary customs clearance, or make sporadic customs declarations, provided that customs authorities accept these acts as justified. Under the Polish customs regulations (Article 75 of the Customs Law), the legislator indicates an exemplary list of representatives: customs agencies, forwarding agents, carriers. Yet, it should be noted that, under Article 11, excerpt 11 of the EU Modernized CC, everyone may appoint a representative to act on his behalf before customs authorities with the aim of meeting all the formal requirements provided for in the customs law.

⁴ REGULATION (EC) No 450/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), Official Journal of the European Union, L 145/1, 4.6.2008



It is the duty of a representative to provide a customs authorities with written power of attorney (in the original or in the form of an officially certified copy) specifying the type of the granted representation (direct, or indirect) and the scope of transactions which the representative is authorized to perform, indicating the person to whom the power of attorney have been granted. In case of noncompliance with the above mentioned requirements, the person acting as the representative shall be deemed as a person acting in his own name and behalf. This rule is of a vital importance for customs regulations, as in each case it allows the customs authorities to determine the identity of the owner of goods, the declaring person, and the person responsible for the customs debt. According to Article 77 of the Polish customs law, the representative may grant further authorizations to perform specified transactions, yet solely if so permitted by the grantor of the power of attorney, by way of substitution. It is worth indicating, though, that such a right is legally entertained by customs agencies only, and the entity to which the right may be transferred shall be another customs agency. In case of substitution, the financial liability towards the customs authorities for the payment of the customs debt by improper or untimely performance, or a failure to perform the transaction without an authorization, shall be borne jointly and severally by the customs agencies.

Under the UE customs regulations, the Member States shall be free to regulate certain matters, among others, as regards representation performed by a customs broker. Under Article 5 excerpt 2 of the Community Customs Code ⁵, the Member States may define the right to make customs declarations on their territories in the form of direct or indirect representation so that to ensure that the representation is performed by practicing customs brokers. Using the above mentioned right, Poland has reserved direct representation as the only one possible to be performed by customs brokers.

Despite, being ruled by the uniform legislation (the customs law, the customs procedures and the customs tariff), the legal construct of customs representation in the European Union states is characterized by various differences in the functioning of customs representatives, which is subject to the domestic law. Here we can identify three main patterns: the first one regards cases where customs brokers are the only entities authorized to perform customs representation (e.g. Portugal); the second one provides for a free choice of persons providing customs representation services, with the reserved form of direct representation (e.g. Poland, Italy) or indirect representation (e.g. Belgium) as the only one possible to be performed by the brokers; and the third one allows for complete freedom in provision of customs services by entities bearing various names (e.g. in Germany, Great Britain).

Among the EU Member States, only Spain, Greece, Italy, France, Malta, Cyprus, Lithuania, Latvia, Poland and Portugal have the issue of customs representation regulated by the law. As confirmed by statistics, these states have a relatively low number of customs frauds and irregularities, as compared to the states which have not regulated the issue in their legal systems.

⁵ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, (OJ EC L 302, p. 1)

2.1 Direct representation

Direct representation occurs if the representative acts in the name and on behalf of another entity (Article 11 of the Modernized CC) and, therefore– as a result of his transactions performed on behalf of the represented person - the representative produces effects directly for the represented person.

According to the Code, the representative may not be the same as the person making the declaration. As he is not the declaring person, consequently he does not take liability towards the customs authorities for the customs debt, which may arise also as a result of his improper performance. A direct representative may not also declare goods using the each customs procedure in the customs office proper for his place of residence, or the represented person's registered office. From the point of view of the liability borne, this form of representation is more advantageous for the representative. The table below presents a breakdown of persons authorized to represent Polish entrepreneurs by way of direct representation.

Table 1. The persons authorized to represent Polish entrepreneurs by way of direct representation

Customs declaration	<ul style="list-style-type: none"> - customs broker - a person (e.g. a customs agency), in the name and on behalf of who the employee entered in the list of customs brokers act - an employee of the interested person
Customs declaration of: <ul style="list-style-type: none"> - non-commercial goods, - the postal turnover 	<ul style="list-style-type: none"> - a natural person permanently residing within the Community - a legal person whose registered office stipulated according to registration or another registered office is located within the Community.
Customs declaration: <ul style="list-style-type: none"> - for the transit procedure, - for temporary clearing, - sporadically, provided that the customs authorities deem transactions justified 	<ul style="list-style-type: none"> - a natural person - a legal person - an association of persons deemed capable of performing legal transactions but not having the status of a legal person

Source: W. Czyżowicz, *The on-line version of the customs manual*, available on http://www.mf.gov.pl/sluzba_celna/podrecznik_celny/, 10 November 2011.

2.2 Indirect representation

Indirect representation is the second form of representation provided for business in the EU customs regulations. Its construct stipulates that the representative acts in his own name but for [on behalf of] another person, which means that based on the customs regulations, he may be the declaring person (according to Article 4 point 11 of the Modernized CC) and a debtor who bears liability for his actions jointly and severally with the person for whom the customs declaration is being made. It departs from the rule of acting on behalf of another person and, therefore, this form of representation in customs matter, though similar to representation established by will of the represented entity, specified in the Polish Civil Code, it has features characteristic of customs law only.

This form of representation is less advantageous for the representative and more advantageous for the entrepreneur. The table below presents a breakdown of persons entitled to represent Polish entrepreneurs by way of indirect representation.

Table 2. The persons entitled to represent Polish entrepreneurs by way of indirect representation

Customs declaration	<ul style="list-style-type: none"> - a natural person permanently residing within the Community - a legal person whose registered office stipulated according to registration or another registered office is located within the Community. - an association of persons deemed capable of performing legal transactions but not having the status of a legal person - whose registered office stipulated in the Articles or another registered office is located within the Community.
Customs declaration of: - non-commercial goods, - the postal turnover	
Customs declaration: - for the transit procedure, - for temporary clearing, - sporadically, provided that the customs authorities deem transactions justified	<ul style="list-style-type: none"> - a natural person - a legal person - an association of persons deemed capable of performing legal transactions but not having the status of a legal person

Source: W. Czyżowicz, *The on-line version of the customs manual*, available on http://www.mf.gov.pl/shuzba_celna/podrecznik_celny/, 10 November 2011.

3. Procedural requirements for performing the function of the customs broker in Poland

The main procedural requirement for performing the function of the customs broker in Poland is an entry onto the list of customs brokers. Within the last more than ten years the list was held by various institutions, first by the President of the Central Board of Customs – GUC ⁶, then by Minister of Finance, and currently it is being held by the Director of the Customs Office (Izba Celna) in Warsaw ⁷.

The separate institution of a customs broker in the Polish regulations was introduced by the Act – Customs Code of 9 January 1997 ⁸. (The persons who took the exam from 1 January 1992 to 31 December 1997 had qualifications to perform the activities of a customs agency. Practically speaking, the regulations regarding the procedural requirements in this scope have remained unchanged since the year 1998 (small changes are a logical result of Poland's entry into the European Union), although since that time the Polish Customs Law ⁹ has been amended many times.

Under the provision of Article 80 excerpt 1 of the Polish customs law, a natural person may be entered onto the list who:

1. has the place of residence within the Community;
2. has a full capacity to perform legal transactions;
3. enjoys full civil rights;
4. has the minimum of a secondary school graduation certificate;
5. has not been sentenced with a final judgment for an offence against credibility of documents, or against property, financial and securities turnover, an economic or a fiscal offence;
6. by his conduct, warrants proper performance of the duties of a customs broker;
7. has passed the customs brokers licensure exam in front of the examination board appointed by the Ministry of Finance or has obtained a decision on the acknowledgement of his licence to perform the job of a customs broker, issued pursuant to separate regulations;
8. applied for an entry onto the list of customs brokers not later than within 2 years from the day of passing the exam.

⁶ On 30 April 2002, after 40 years and two months from its establishment, the Main Customs Office (GUC) was liquidated and the position of the President of the Main Customs Office was abolished.

⁷ An authorisation to keep the list was included in the Ordinance of the Minister of Finance of 22 April 2004 on the designation of the Director of the Customs Chamber in Warsaw to care for certain customs matters (Journal of Laws of the Republic of Poland No. 87, item 830)

⁸ Journal of Laws of the Republic of Poland of 1997, No. 23, item 117, amendment in Journal of Laws of the Republic of Poland No. 64, item 407, the Act became effective on 1 January 1998.

⁹ The Act of 19.03.2004 - Customs Law (Journal of Laws of the Republic of Poland, No. 68, item 622)



It is one of the important requirements for an entry onto the list of customs brokers to pass the customs brokers licensure exam. Verifying the candidate's knowledge is aimed not only at securing the state's interests but also interests of entities participating in the international trade. That is why, the requirement of having broad knowledge in the areas of customs law, as well as administration, taxation or commercial law is a prerequisite of his due and professional performance of the job.

The mode of conducting the customs brokers licensure exam, and the manner of appointing the examination board, qualifications of the board's members, the scope and manner of conducting the exam, as well as the level of the exam fees designated for covering the costs of the board's functioning and remuneration of the board's members, as well as the manner of keeping, and the mode of making entries onto, the list of customs brokers have been specified in the Ordinance of the Minister of Finance on the matter of the customs brokers licensure exam and the entry onto the list of customs brokers ¹⁰.

Taking the exam is conditioned by the candidate's filing of an application to be allowed to seat for the exam, together with an entry fee (20% of the examination fee), the remaining part (80%) shall be paid not later than on the day of taking the exam but before the beginning of the exam ¹¹.

The exam consists of two parts. The first of them is conducted in the form of a test consisting of 100 questions covering the areas of customs, taxation and administration law needed for the proper performance of the duties of customs brokers, and in particular, the questions regard:

1. assigning goods to customs approved treatment or use,
2. customs representation,
3. certain topics regarding calculations,
4. privileged transactions ,
5. customs debt,
6. certain topics regarding commodity science and the knowledge of the customs tariff, as well as regulations regarding trade policy instruments,
7. administration law in the scope used in customs matters,
8. the goods and services tax on import of goods,
9. means of calculating the excise tax, the turnover of excise goods, excise exemptions and securities
10. taxation law regulations applied for excise tax, customs control and the rules of special tax supervision,
11. INTRASTAT (statistical) declarations.

The text lasts not longer than 150 minutes and the positive result is guaranteed by providing the right answers to at least 81 questions. This is also the condition for moving

¹⁰ The Ordinance of the Minister of Finance of 17 May 2004, JoL of the Republic of Poland , No. 117, item 1223.

¹¹ The amount of the exam fee, the entry fee (20% of the exam fee) and the remaining part (80% of the exam fee), as well as the date of the exam are published on the Customs Service website: http://www.mf.gov.pl//sluzba_celna/agenci_celni, the exam fee for the persons who filed the applications in the 4th quarter of 2011 is PLN 719, 20% of the exam fee is PLN 144, and the remaining part of the fee is PLN 575.

on to the second part of the exam. The second part of the exam regards the candidates' practical skills and it consists in:

- filling in prints and forms of documents obligatory in import of goods to the EU common customs area and export from this area;
- preparing documents needed to assign goods to customs approved treatment or use, including the filling out of a customs declaration,
- filling out of the accompanying administrative document, the simplified administrative document, a tax return and documents related to the excise tax.

In case of obtaining a failing grade from the second (oral) part of the exam, the examined person may take it for the second time, after having filed an application with the Head of the Examination Board, yet not later than within 2 months of the date of obtaining the results. If a failing grade is obtained once again from this part of the exam, the exam shall be retaken in whole.

Obtaining two passing grades (from the first and the second parts of the exam) and receiving a certificate of passing the exam, confirmed by the Head of the Examination Board does not authorize one to perform the job yet. The procedure continues. The person must file an application with the body making the entries onto the list (currently, the Director of the Regional Customs Office in Warsaw), attaching certified copies of the documents: confirming the minimum of a secondary school education, a current certificate clean criminal record (valid for 6 months from its issue by the National Court Register – KRS), and a certificate of the NIP (Tax Identity) number assignment. The authority making the entries may request originals of the above mentioned documents in case of doubt as to their credibility.

An entry onto the list of customs brokers is made in the form of an administrative decision, and it includes the number and date of the entry, the surname, the first (and the middle) name(s), the date of birth, the place and address of residence and the appropriate tax identity number.

An entry onto the list of customs brokers may also be applied by persons who have obtained a decision on the acknowledgement of the licence to practice as customs brokers, apart from those, who have obtained a passing grade from the customs brokers licensure exam. This has been made possible by the ordinance on the adaptation internship in the course of the proceedings for the acknowledgement of the licence to practice as a customs broker in the EU Member States¹². Provisions of this ordinance are applicable to citizens of the EU Member States licensed to practice as customs brokers in their home state, who are going to perform the job of a customs brokers in Poland.

If, in the course of the proceedings for the acknowledgement of the licence, the Minister of Finance establishes that there are substantial differences as to the rules for obtaining the licence to practice in Poland and in the state where it was obtained, he may

¹² The Act of 18 March 2008 on the rules of acknowledging professional qualifications obtained in the EU Member States (JoL of the Republic of Poland, No. 63, item 394) and the Ordinance of the Minister of Finance of 6 January 2009 on the adaptation internship and the skills test in the in the course of the proceedings for the acknowledgement of the licence to practice as a customs broker (JoL of the Republic of Poland, No. 13, item 71).

subject the decision on the acknowledgement of the licence to the passing the adaptation internship or taking a skills test. After the adaptation internship has been passed or the test has been taken (the choice to be made by the person applying for the acknowledgement of his licence) the Minister of Finance makes the choice to acknowledge the applicant's licence to practice as a customs broker on the territory of Poland, or not.

A person entered onto the list of customs brokers in accordance with Article 80 excerpt 2 of the Polish Customs Law, may be obligatorily deleted from the list in three cases of:

- breaching one of the requirement for the entry to be made,
- non-performance of the job of a customs broker for the minimum period of 5 years,
- the person's death.

The right to perform the job of a customs broker may also be suspended for the period of criminal proceedings initiated against him for an offence against credibility of documents, against property or against financial or securities turnover, economic or fiscal offences. A deletion or suspension of a customs broker is always made in the form of an administrative decision.

Since 1 May 2004 tax advisors may also perform the job of customs brokers but only a few of them use this opportunity, due to the low profitability of the jobs in the customs services. Since 2011 (April) ¹³ customs brokers in Poland may also act as tax advisors in the case of import of goods and the following intercommunity delivery of goods. In this case the customs broker is entitled to keep, in the name and on the behalf of the taxpayers, the documentation and the record for the needs of the goods and services tax, as well as for preparing, in the name and on the behalf of the taxpayers, tax returns and summary information, i.e. certain activities so far reserved for tax advisors and professional bookkeepers.

Summary and concluding remarks

Customs representation in Poland, like in the remaining Member States of the European Union, though based on Article 11 of the Modernized Customs Code, contains specific regulations regarding the legal requirements for professional customs servants (customs brokers), subject to national regulations, which means that there is a lack of uniformity on the market of customs representation services. Perhaps this issue might also be standardized in the law systems by introducing uniform criteria allowing practicing as customs brokers.

Endnotes

1. "REGULATION (EC) No 450/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)", *Official Journal of the European Union*, L 145/1, 4.6.2008

¹³ Act of 18 March 2011 on the amendment of the act on the goods and services tax – Measurement Law, JoL of the Republic of Poland, No. 64, item 332)

2. "Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code", *OJEC L 302*, p. 1
3. "The Act of 19.03.2004 - Customs Law", *Journal of Laws of the Republic of Poland*, No. 68, item 622
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PROFESSIONAL EDUCATION IN CUSTOMS DOMAIN

JEL Classification: A20, O15, O17, O18

MODERNIZATION STRATEGY WITHIN THE GERMAN CUSTOMS ADMINISTRATION: THE EXAMPLE OF EDUCATION AND TRAINING OF CUSTOMS OFFICERS

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Abstract

The article is devoted to considering modernization processes within the German customs administration. The new tendencies of education and training of customs officers have been analysed.

Keywords: modernization, customs administration, education, training, customs officers.

Introduction

The role of customs administration has changed significantly within the recent 10 years. Threads which were rather unknown 10 years ago are now under discussion not only on a European level but worldwide wherever members of customs administrations come together on conferences and other meetings.

The role of customs has evolved in parallel with the evolution of the preoccupations of the world. From a traditional role of revenue collector, which goes back to the Middle Ages, customs have evolved into a powerful tool to implement measures developed by any other policy that need to be controlled at the border and has developed its own capacities to ensure security and safety of the EU, always based in its role of controlling all goods entering and leaving the territory.

Today customs is responsible both for:

Protecting against unfair and illegal trade while supporting legitimate business activity;

Ensuring the security and safety of the people, and the protection of the environment, where appropriate in close cooperation with other authorities;

Maintaining a proper balance between customs controls and facilitation of legitimate trade.

To fulfill the above mentioned requirements, it was found necessary

- a) to increase system based control,
- b) to modernize customs working methods and
- c) to develop staff competences and

In terms of a strategic framework Customs Administrations have to be aware that only continuous developments and strategic investments in skills, competences and resources can maintain customs efficiency and effectiveness.

One of the missions of the Customs Administrations for the future is the Security and Safety of international Supply Chain. A challenge within this mission is the need for Customs to invest in the Customs officers competences.

The German Customs Administration always being aware of this challenge has developed and introduced a system of education and training which gives a sound bases of knowledge of all customs related issues to young customs officers and to prepare them for their daily work WITH and FOR business in the local customs houses or on a higher level.

This system of education shall be described hereafter.

1. Who is the German Customs Administration?

Within the German Customs Administration 40.000 Customs officers are working in the different fields of customs work, such as

- collecting duties for the federal budget
- fighting against organized crime
- protecting the European industry and the domestic labour market
- caring for the public order and security
- guaranteeing the agricultural competitiveness
- standing for the protection of endangered specimen of flora and fauna, the environment and the consumer protection

Main areas of activity:



2. How to become a Customs Officer

Each year the recruitment of new customs officers take place on 1st of August. All applications have to be sent to one of the 5 Federal FinanceDirectorates, that is either in Neustadt/Weinstraße, Köln, Hamburg, Potsdam or Nürnberg.

The selection procedure consists of a written and an oral part. For some special services within the Customs Administration a test on physical fitness has to be made.

The application has to be accompanied by an extract from judicial records and a medical examination.

All applicants need to have the German nationality or the nationality of another EU -Member State.

They must possess the moral, mental and physical capability and they must be ready to wear a weapon and uniforms. Next to that they must accept working in shifts.

The conditions for the several services within the German Customs Administration are different:

2.1 Middle Management:

- Secondary school diploma or an equivalent level of education
- physical conditions as minimum height of 165 cm, fitness and a certain minimum eyesight

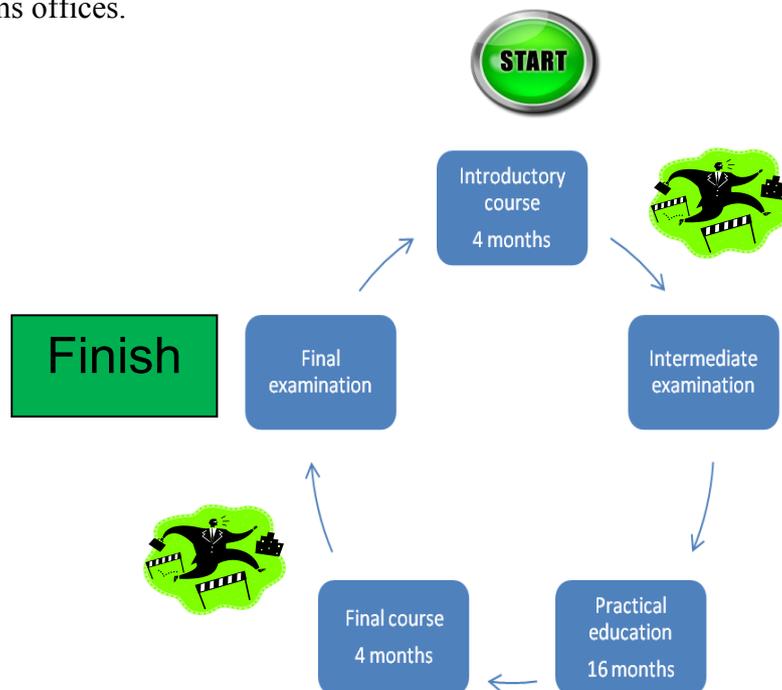
2.2 Executive Rang

- Baccalaureate / entrance qualification for studies at universities of applied sciences or equivalent level of education
- sufficient eyesight

3. How is the education organized?

3.1 Middle Management

The duration of the education is two year, of which 8 months are a real theoretical education in the premises of the Center for Education and Science of the Federal Finance Administration. Another 16 months are a practical education within the customs offices.

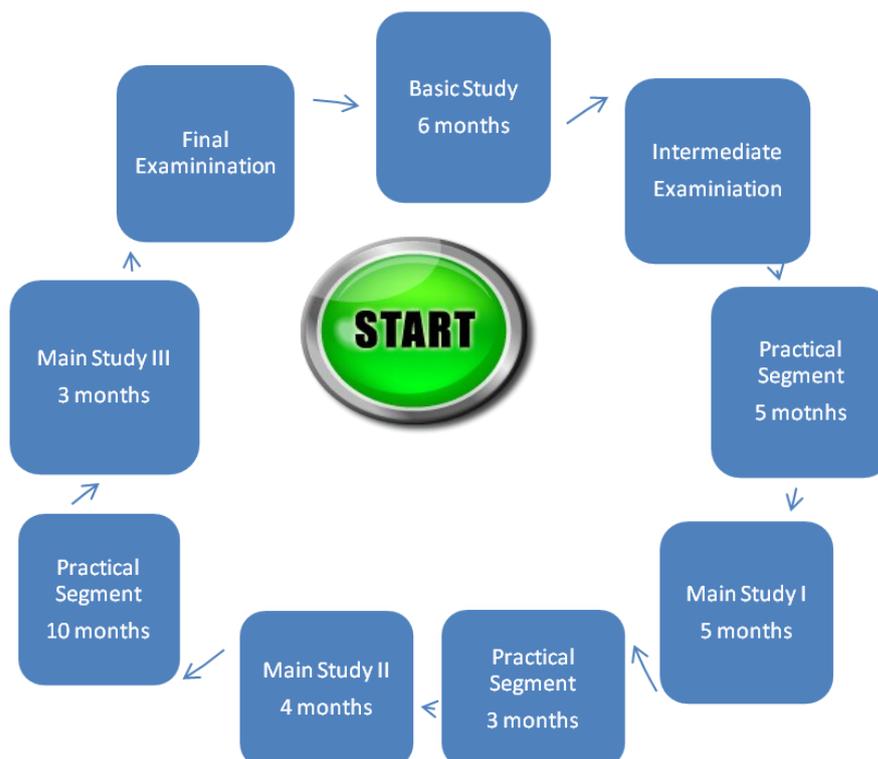


3.2. Executive Rang

The study takes place at the Federal University of Applied Administrative Sciences - Departmental Branch of Financial Administration.

This University is an interdepartmental administrative institute which trains new Personal Membership for the intermediate non-technical management level of the customs service.

At the time when the young people come to us to the university to start with their studies, they already have the temporary legal status of civil servants.



The study as such are organized on an interval basis with alternating theoretical and practical segments. The study in total has duration of three years, of which 18 months of take place within the Departmental Branch of Financial Administration.

It all starts with the basic study of 6 months which ends with an intermediate examination.

After having passed this exam the customs officers return back to their customs offices for a practical segment of 5 months.

Then they come back to the University for the so called Main Study I which last as well 5 months followed by another practical segment of 3 months.

Having undergone this practical segment another part of the study takes place within the University and it is called Main Study II with duration of 4 months.

At the end of this term the civil servants go back for another 10-month-practical segment.

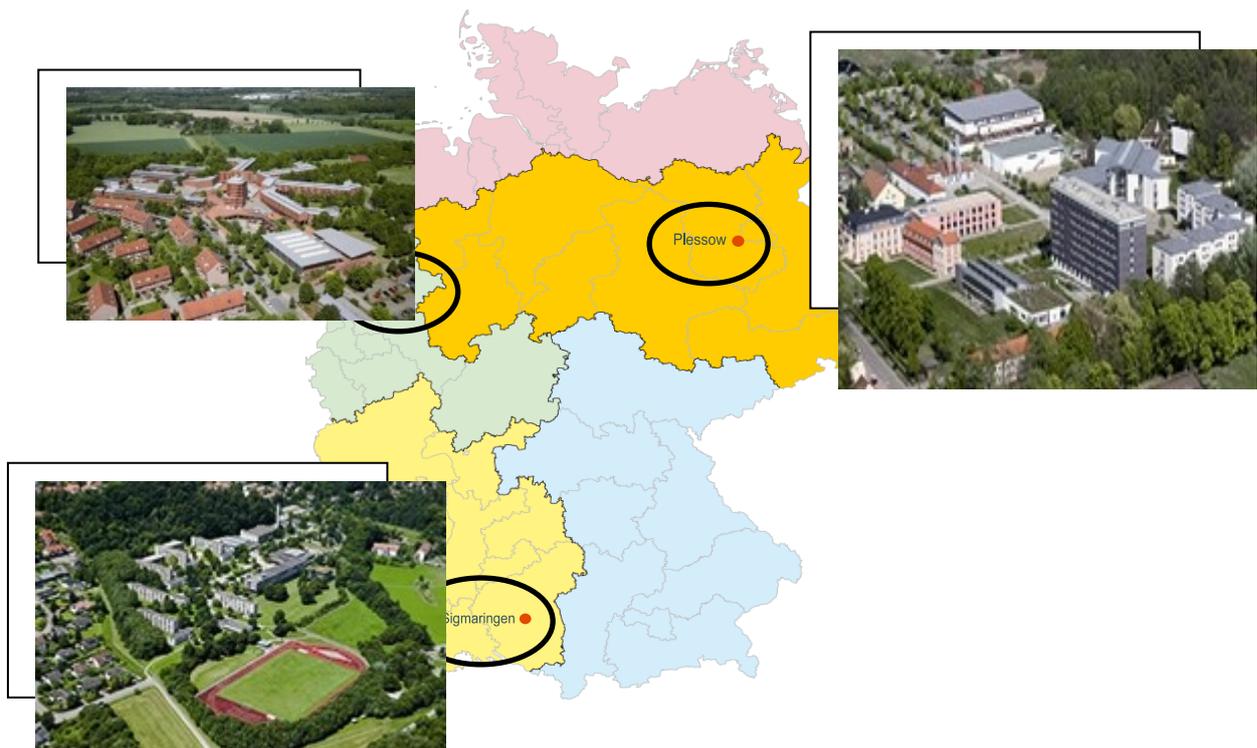
After that they continue their studies within the University for another 3 months (Main Study III) before they have to pass a university-level career examination. This examination consists of a written and oral examination and the civil servants get an academic degree in financial administration.

Apart from the European and German Customs Law, the theoretical parts of the studies within our University consist of the following matters:

- Constitutional Law
- Administrative Law
- Civil Law
- Economics and public finance
- Business Management, organization and information processing
- Social sciences
- Special career topics.

4. Places of education

The education takes place for the executive rang in Münster and for the middle management in Plessow and Sigmaringen.



Summary and concluding remarks

By this system of education the German Customs Administration has fulfilled its Modernization Strategy towards an up-to-date-administration which fulfills all the new existing needs and can fight successfully against new threads.

JEL Classification: A20, A29

THE ANALYSIS OF INNOVATIVE EDUCATIONAL TECHNOLOGIES' DEVELOPMENT IN TRAINING OF CUSTOMS BUSINESS SPECIALISTS IN THE EURASIAN ECONOMIC COMMUNITY COUNTRIES

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Abstract

The article is devoted to research of innovative educational technologies' application in the sphere of customs education in the customs union of the Eurasian economic community countries. Complication, integration processes, increase of information flows demand customs authorities' human resources quality improvement.

Keywords: Innovative Educational Technologies, Information Technology, Professional Education, Training of Customs Business Specialists, Educational Factors and Models.

Introduction

The customs service occupies one of the central places in regulation of foreign trade activities and maintenance of the state economic safety. Performance of these tasks directly depends on quality and level of vocational training of customs authorities' specialists. Globalization of the world trade and development of its regulator system, modern integration and customs services' modernization demand good practice of customs officers' training and retraining.

Customs business specialists should be adaptable to constant changes of regulatory and legal framework, introduction of modern information customs technologies and the increased complexity of customs infrastructure. Volume and complexity of information increase avalanche and demand the person to update his knowledge operatively, to be adaptable to constantly changing information environment. In other words, in the modern world the successful and demanded professional should possess the personal qualities: firstly, making decision quickly and correctly; secondly, being adaptable to new conditions, i.e. to be mobile person ¹⁴. The major component of formation of highly

¹⁴ B. M. Igoshev System-integrative organization of professionally mobile trainers training: thesis/ Igoshev; the Ural state pedagogical university. – M, 2008. – pp. 3-5.



skilled mobile human resources is the created and constantly improved continuous professional customs officers training system ¹⁵.

Increasing demands for a level of customs specialists training leads to operative introduction of the modern results-oriented technologies in educational process. It should be noted that development of educational technologies is based on psychology, sociology, pedagogic, computer science achievements and other sciences achievements i.e. they «accumulates» innovative potential of these sciences. The technological approach in training becomes the leading in solving problem of necessary quality assurance of education. The technology of training synthesizes all resources and organizational characteristics of system. They show as property of certain education quality and quality management of educational system. Thus, the urgency of problems and tendencies of development innovative educational technologies in customs sphere does not raise the doubts. The article is one of the results of scientific research, which was conducted within the framework of the confirmed research work on the theme: «The research of educational management development in the customs sphere based on using of interactive educational technologies» (supervisor, professor. Alexander Ershov, St. Petersburg branch of the Russian Customs Academy).

The analysis of existing publications shows that this problem isn't considered in the field of customs business practically. Some available separate articles don't have systematic understanding of its solving. There aren't research works and special literature.

The urgent need of this problem solving determined the importance of this research, defined its theme, object, subject and purpose. The object of this research is customs staff training system in the Customs union of the Eurasian economic community (EurAsEc). The subject is the innovative educational technologies in the field of customs staff training at the present stage.

The purpose of this article is research of using of innovative educational technologies in the field of customs staff training in the Customs union of the Eurasian economic community (EurAsEc).

During the research time frame was determined (from 1991 to 2012) and forecast of educational technologies development was determined to 2020. The first time border is 1991. It is a period of the sovereign independent countries (former USSR republics) customs services' establishment. The final border of research is caused by the launch of the Single economic space of the Customs union countries (Russia, Belarus and Kazakhstan).

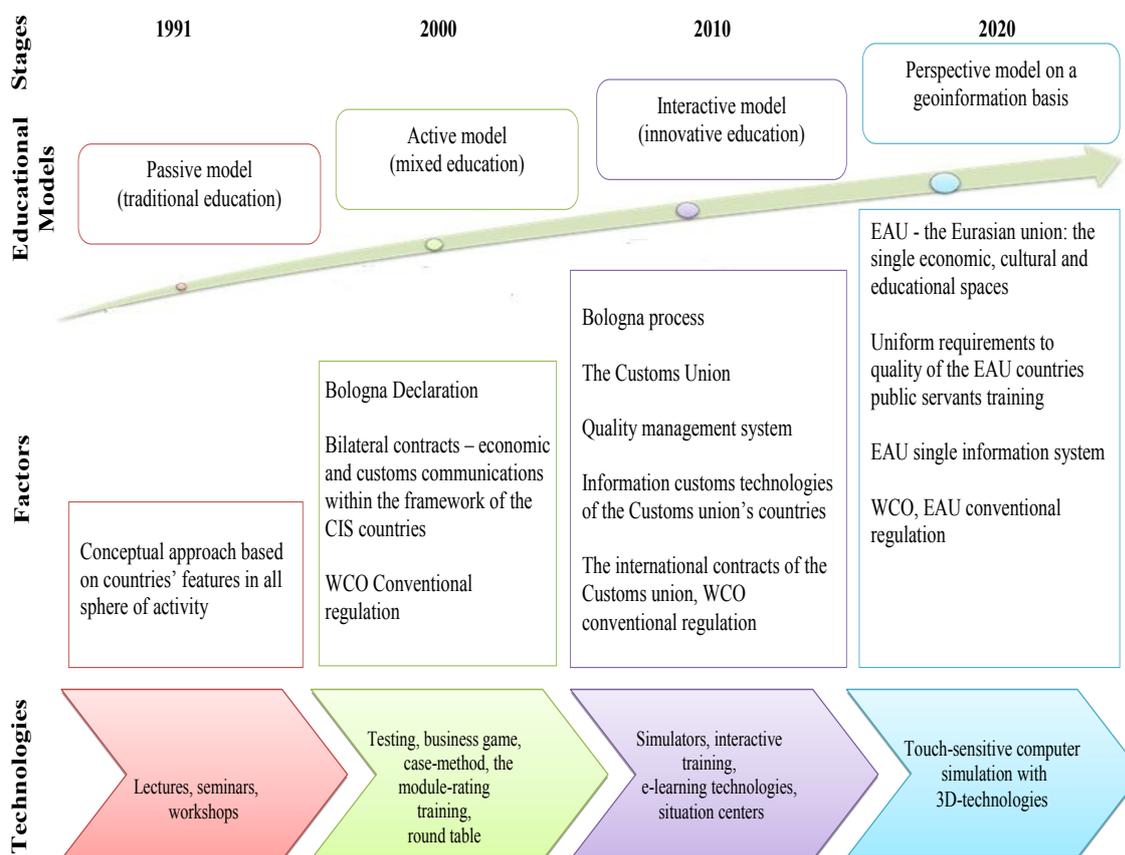
It's necessary to consider the evolution process of the customs business specialists training system in conjunction with the formation of educational models and factors which have influence on customs business' development of Customs union EurAsEc customs services. There is the model of the modern customs education evolution in the figure 1.

During the period from 1991 to 2010, there were large-scale changes in spatial characteristics of Russian, Belarusian and Kazakh customs services. For example, there were 8 regional customs departments, 4 specialized regional customs departments, 102 customs, 566 customs posts, 8 agencies which are administered by the Russian Federal

¹⁵ Strategy of the Russian Federal customs service (FCS) up to 2020, was confirmed by the Decision of the Russian FCS board on June, 26, 2009.

Customs Service (FCS), 10 Russian FCS representative offices abroad in the Russian customs authorities system in 2010. During the analyzed period the staff of the Customs union services increased repeatedly to ensure the economic safety of the sovereign states and to promote trade. For example, there is the dynamics of customs officers increase in Russia: January, 1992 – 8 thousand people; January 2010 - 68 thousand people ¹⁶. During the analyzed period the basic method was both mass and a wave-like set of different profiles specialists. The system problem was low professional level of staff. That problem was objective because customs departments couldn't train necessary number of highly skilled specialists for so short term. Training was conducted on workplaces with the assistance of coaching institute. That stage was associated with passive model, i.e. listener (student) played the role of “object” of training (listen and look). The main form of the customs staff initial training was the traditional lectures and seminar system.

Figure1: Evolutionary model of the modern customs education development within the frameworks of the Customs union



¹⁶ The Russian Federal customs service, see also: <http://www.customs.ru>.



Generally, in the EurAsEc countries the traditional education was based on «teaching» approach and directed to memorizing information, giving maximum of theoretical knowledge and a minimum of competence and practical skills. In the transition to the market economy the crisis was showed in discrepancy of specialists training content to changing environmental conditions, first of all, to new employers' requirements. The important component of this discrepancy was lack of the majority people training in the foreign trade activities to work in changing information-professional conditions. The general lack was a tendency of “the differentiated subject executors” training - specialists in the standard conditions of command-administrative economy.

The reality of the market relations demands training of professionals, who can adapt their knowledge to the contingency social and economic processes management creatively and practice their competence¹⁷. Need for reform of customs education system was also caused by the discrepancy of old educational models to the new training possibilities which were result of information-communication technologies development, appearance of a global computer network the Internet, integration in educational processes.

The following stage of customs education development within the framework of the Customs union is related to the active model formation based on the mixed training - traditional and computer technologies. In the 2000s development of the customs specialists training system in the Customs union countries is related to the world processes of the higher education reforming: 1) beginning of the Bologna Process; 2) new training methodology (“Learning” approach). This stage is characterized with the active training model in which the student is a "subject" of training (independent creative work).

In the Eurasian economic community countries the idea of specialists training is strongly related to the improvement of the professional training quality which is oriented the international standards. Development and acceleration of the foreign trade due to the modern information technology and effective management procedures introduction demand improving the quality of customs business specialists training. Transition to the modern requirements and high technologies is impossible without the effective using of the personal potential possibilities.

The measure of the individual intelligence quality is the ability to make professional decisions under partial and full uncertainty. Personal development is the main component of the modern education. The concept of progress as a special type of the personal development has integral character and is adapted to innovations, concerning the integrated educational activities. So it's impossible to talk about the trends of the educational system innovative development based on only the changes of quantitative factors. According to the system approach, innovations should be related to the quantitative and qualitative parameters which have influence on the procedural side of education development, increase the degree of its integrity and adaptation to the environment, and provide the demanded potential for the further development.

During the research it was identified that development and practical application of

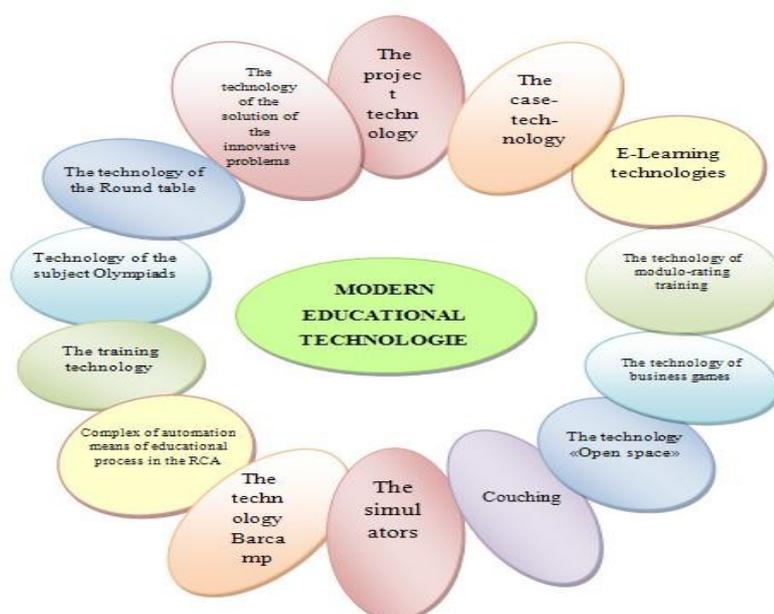
¹⁷ M. B. Alekseeva System management of the educational economy (theoretical bases and methodology): thesis / M.V. Alekseeva; the St.-Petersburg state engineering-economic academy. – St.-Petersburg, 1998. – p. 36.

the innovative technologies in the educational sphere should be conducted in parallel with the analysis of the effectiveness of these innovations introduction. It's clear from the figure1 that the number of factors which have influence on the development of the professional customs education increased in the analyzing period considerably. There was the transition from the short-term courses to the continuing education. The number of directions and levels of training increased. For example, there was one level of training; set of three specialties was implemented at the Russian Customs Academy in 1994. In 2011 two-level system of training was formed (a bachelor - a magistracy), specialty is preserved; the number of training direction was doubled at the Russian Customs Academy.

Nowadays, one of the most important requirements to the modern specialist is the knowledge of traditional and innovative technologies of customs control and customs clearance. Young specialists should be successful in integration into the work activity. Not only national authorities but also international organizations make their demands to the quality of customs business specialists' training. Nowadays quality of the higher education is defined the position of quality management system which based on ISO standards. Quality of the higher customs education is assessed from the perspective of SAFE (WCO, 2005), the international and bilateral agreements in the customs sphere.

To implement these requirements, using of an interactive training model was the most effective. The term «interactive training» is training based on active interaction with the subject of training (the teacher, the head, and the trainer). The information should be acquired in active-creative model not in a passive model. Using of interactive model in training includes modeling of practical situations, using of role-playing games, fast joint problem-solving, application of trainings and simulators. The types of technologies which are used for customs officers training and retraining in the Customs union countries are presented on the figure 2.

Figure 2: Modern educational technologies in professional training system in countries of the Customs Union





Nowadays, many educational technologies are used for customs specialists training and retraining. E-Learning technologies and simulators are recognized the most promising. E-Learning technologies are the technologies which are based on the application of information and telecommunication technologies with the mediated (on distance) or not completely mediated interaction between trainee and trainer¹⁸. E-Learning system is effective in the conditions of a mass professional training. It is an instrument of the solution of problems in professional training and retraining of customs officers. E-Learning process isn't limited by time frameworks, multimedia technologies are used in it, and mailing of teaching materials is made as compared with the traditional training models.

Specialized systems, for example, Moodle, Prometheus, are used to realize this technology in the Customs Union countries. Virtual learning environment Moodle has been used in the St.-Petersburg branch of the Russian Customs Academy since 2009. This software product is constructed according to the modern standards of information training systems. It gives the opportunity to realize all mechanisms of communication between trainee and trainer: perceptual (is responsible for perceptions of each other), interactive (is responsible for organization of interaction) and communicative (is responsible for exchange of information).

The virtual learning environment is the optimum organizational form for realization of information accessibility in education; it is the basic resource of mobility. Professional mobility is a dynamic quality of the person which causes its successful adaptation to changing conditions of professional activities, ability to learn innovations, being ready for self-improvement, self-development and self-realization in professional activities¹⁹.

Simulators are the necessary element of the effective training and formation of students' competence. They are software and hardware product of training or practical skills' development. Simulators are widely used in many spheres of activity. In customs business they are used to acquire skills in working in customs software tools on-line, and with the customs and foreign trade documentation, regulatory and legal framework.

For example, in 2011 a multiinteractive simulator on training of people who serve the international train «Allegro» Russia-Finland was developed and approved within the framework of the initiative research work "Working out of the methodical recommendations for improvement of organization of the high-speed passenger railway communications Russia-Finland' customs clearance and customs control" (supervisor professor Alexander Ershov) in the St.-Petersburg branch of the Russian Customs Academy. This simulator allows model various situations close to the practice which the customs inspector can face to and train to make fast and correct decisions at application of new innovative customs technologies. The purpose of the multi-interactive simulator introduction is obtaining skills in administrative decision-making in the system of specialists training and retraining who serve the international high-speed passenger trains,

¹⁸ The order of the Russian Federation Ministry of Education and Science of May, 06, 2005 № 137 "About E-Learning using".

¹⁹ B. M. Igoshev System-integrative organization of professionally mobile trainers training: thesis/ Igoshev; the Ural state pedagogical university. – M, 2008. – pp. 14-16.

and also for training of undergraduates on a specialty “Management of customs service”.

Introduction and using of the innovative interactive educational technologies will allow reach a new level in customs specialists’ training. The category «new quality» means change in representations of educational process subjects about educational conditions, processes and results. It is treated as achievement of the educational system state which provides forming of students’ abilities:

- to study throughout all life ;
- to think and operate in various situations independently;
- to solve daily life and professional problems, using the acquired subject, intellectual and general knowledge and skills.

As a result of this research stable growth of students was identified in the Russian Customs Academy: from 29 students in 1994 to 9339 persons in 2010. 18257 persons (in 2009 – 16 169) were retrained on programs of professional skills improvement. The Russian Customs Academy is the head high school of the learning-methodical association on customs education which consists of 79 high schools of the Russian Federation.

When the Customs code of the Customs union entered into force, more than 45 thousand Russian customs officers were trained.

In 2010 14392 Russian customs officers were trained and retrained in the Russian Customs Academy. 5175 persons were trained at the Institute of E-Learning, retraining and professional skills improvement, 939 persons were trained at the law-enforcement Institute, 8278 persons were trained at the faculties of professional skills improvement in the branches of the Russian Customs Academy. The total number of the customs officers who were trained and retrained at the Russian Customs Academy exceeded the level of 2009 at 18,4 % ²⁰.

This trend will continue until 2020 because it is expected strengthening of the integration processes in the educational sphere. It will be necessary to use e-self-organizing systems with having obligatory feedback to provide academic mobility of many students within the framework of the Union States.

Such promising model will be based on the GIS technologies with using of 3D-models. That’s why it is necessary to apply the new educational technologies based on touching computer models and on-line 3D-technologies during specialists training. Probably, there will be new educational technologies based on nanotechnologies in the future. It will allow developing necessary skills of students and to continue develop of creative qualities.

Summary and concluding remarks

In conclusion it is necessary to note that special attention is paid to improving the quality of customs officers training in the context of integration processes and developments of the Customs union countries’ customs authorities up to 2020. Level and quality of training should meet the requirements of employers, the international standards. Increasing demands to the quality of the specialists’ professional training should be

²⁰ The Russian Federal customs service, see also: <http://www.customs.ru>



accompanied with the introduction of the innovative technologies to the educational process. The analysis of the development evolutionary model of customs education showed the transition from the passive model based on the using of traditional technology to the perspective model based on modern achievements of science, techniques and technology. Thus, it is necessary to provide such single system of the professional training which will allow prepare the creative specialists which have a wide range of knowledge, skills, potential of self-development throughout all life.

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IMPLEMENTATION OF THE WCO STANDARDS

JEL Classification: O2, O4, P21

STRATEGIC ASPECTS OF RUSSIAN FEDERATION CUSTOMS SERVICE DEVELOPMENT

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Federal customs service of the Russian Federation

Abstract

The report gives a brief analysis of the current state and tasks facing The Federal customs service of the Russian Federation and sets forth the main guidelines for its development in the period of up to 2020.

Keywords: foreign trade, economic security, the Russian Federal Customs Service (FCS), development, strategy.

Introduction

Today the Federal customs service has the following complex strategic tasks to solve (Federal Law 2010): to promote the advancement of the state's interests in the foreign trade sphere, to bolster domestic production, to effectively counteract the threats to the Russian Federation's economic security, to combat crime and administrative violations, to address issues involving federal budget revenues collection, to create favorable conditions for development and intensification of foreign trade activities, to promote cost minimization for participants in foreign trade activities and interested parties by reducing the time needed for the completion of customs operations, to enhance the quality of state services in customs business. The above tasks are being addressed under dynamic conditions.

Beginning from July 1, 2010 the international agreements between the member states of the Customs Union (CU) and legislative acts of the CU agencies enacted in compliance with the CU Customs Code, have become a foundation for liberalizing provisions contained in the customs legislation. The streamlined statutory framework that has resulted, defines common principles of customs tariff regulation, unifies customs documentation forms, the ways and procedures of filling in customs declarations; establishes common rules for defining, declaring and monitoring the customs cost of goods, determines a uniform nomenclature of goods to be granted full conditional customs duty and tax exemption during temporary importation; defines common principles and rules for placing goods under the customs procedure of a free customs area and a customs procedure of a free warehouse; establishes uniform rules for goods relocation by physical persons, and, finally, creates a mechanism of import customs duties transfer and distribution. A unified Foreign Economic Activity Commodity Nomenclature for the



Customs Union (FEACN CU) and the Common Customs Tariff (CCT) have been prepared and approved (The Customs Code of the Customs Union 2009; CU CNFTA 2011; CCT 2010).

There has also been considerable improvement in the quality of customs regulation and administration related to innovative business, however the fiscal component still continues to prevail over the incentive one.

The main purpose of improved law-enforcement activities is to counteract national security challenges and threats. The chief menace to the Russian Federation's economic security during the relocation of goods and conveyances across the customs border stems from unfair actions by entities engaged in foreign economic activities which contain essential elements of offence and administrative violations deemed to fall the customs authorities' jurisdiction.

The Russian customs service has made much progress in the fight against illegal trade in counterfeit goods. The annual WCO Council session, held in Brussels in June 27, 2008, summed up the results of a competition among national customs administrations in the fight against counterfeit products and named the Russian Customs Service as the best among the customs administrations of the 174 WCO member states (which account for 98 percent of world trade).

The international co-operation of the Russian Federal customs service is aimed at simplifying the process of goods and vehicle movement by harmonizing and unifying the legislation of the Russian Federation in the customs sphere with the norms of international law and standard international practice.

Currently, the Russian FCS is actively engaged in interacting with the customs services of the Republic of Byelorussia and the Republic of Kazakhstan in order to address issues concerning the functioning of the common customs space and practical implementation of the CU mechanisms. Simultaneously, it continues to bolster integration processes in the territory of the CIS, the EuroAsian Economic Community (EurAsEC) both on a bilateral and multilateral basis. Work is being done to bring closer the norms of their customs legislations, to develop their IT systems and facilitate the relocation of goods and conveyances.

The Russian FCS continues its co-operation with the customs services of European states within the framework of the Russia - EU co-operation projects as well as on a bilateral basis.

Representatives of the Russian FCS participate in the work of the World Customs Organization, the Russia - EU Subcommittee for customs and transboundary co-operation, in events held under the auspices of the Asia-Pacific Cooperation Forum, the Shanghai cooperation organization within the framework of its Special working group on customs cooperation. The Russian FCS and the WCO have signed the Memorandum of Co-operation in training, education, modernization and research in the customs sphere.

Being an integral part of state control over foreign trade activities the Customs service acts simultaneously as a major regulatory mechanism combining the functions of a fiscal, law-enforcement supervisory body with those designed to promote foreign trade activities. This signifies that as part of the state's economic system the customs service of the Russian Federation fulfills today not only the traditional functions of state

administration in the area of foreign trade tax collection but also acts as a social and economic institution in which its customs activities manifest themselves as a special form of service. One of the ways to accomplish the Russian FCS's strategic mission international trade promotion is to provide high-quality state services in the customs sphere to participants in foreign trade activities.

The Russian FCS provides its services based on world expertise in the area of interaction with the business community. Presently, it has elaborated 15 administrative sets of rules concerning the performance of state functions and provision of state services and introduced them in its customs agencies.

Today, modern IT technologies have become the cornerstone of customs processes by forming a common information space for Customs Union member states. In order to ensure the economic security of the Russian Federation, improve the quality of the customs administration and provide state services great efforts are being made to introduce modern IT technologies in the work of the customs agencies and update the existing software, including the infrastructure that ensures fault-free performance of all the components of the Unified Automated Data System of the customs agencies (CA UAIS).

The milestone event in its recent history is a wide spread of the goods and conveyance electronic declaration technology that was made possible largely by equipping the customs bodies with adequate hardware and software capabilities on a massive scale.

In the period between 2008 and the present day the Federal customs service has concentrated its main efforts on developing its customs infrastructure. To promote the infrastructural development of the frontier constituents of the Russian Federation, on the one hand, and to minimize the transport load on big cities in the Russian Federation due to increased foreign trade, on the other, the Russian Federal Customs Services has elaborated the Concept of Customs Registration and Customs Inspection of Goods in Places Close to the Russian Federation Border (hereinafter, the Concept).

Much attention is paid to the enhancement of the HR potential and formation of the customs agencies' professional personnel structure since the latter warrants a high quality of state services. That is why raising the personnel potential requires constant improvement of staff management methods, technologies and methods of providing personnel management, and the regulatory and legal framework of the organizational structure of administration.

In view of the above personnel recruitment and training for the customs agencies are carried out on a basis of scientifically proven methods that take into consideration rapidly growing demands on human resources and forecast future needs first and foremost by monitoring human resources on a regular basis and forecasting the demand for qualified customs specialists.

The Federal customs service pays special attention to the solution of social questions. The amount of the budgetary appropriations earmarked in the past few years as material incentives for customs authority officials has made it possible to maintain customs officers' monetary allowance and upkeep on the same levels as those that had existed prior to the 2008 financial crisis.

The Russian FCS has also been persistently working on ways to provide pensions to those who had served in the customs agencies and to their family members which is not



only a socially important dimension of the customs administration's activity but also a major element of its social protection net.

Special attention has been given to questions of its medical services and expansion of its resort and healthcare facilities.

Effectivization of the Federal customs service is linked with measures to improve its organizational and administrative activity, and, first of all, to elaborate a customs management theory, to introduce systematic methodologies for managing the performance and development of the customs agencies, to bring all the customs service components in line with international standards, to build up the competency potential of the managerial staff, to enhance analytical work in the customs bodies at every managerial level.

Given the new conditions, the reforms of customs administration should take into account the needs for an adequate feedback from an object of its administration - a participant in foreign trade activities who exists and operates in a market environment. This calls for modernization of the traditional autocratic administrative model to bring it closer in line with that of client-centered management in a commercial firm. This approach allows the customs authorities to realize to the full the concept of state services in the customs sphere based on international quality standards in conformity with the ISO 9000 family of international standards.

The first pilot project to introduce elements of the ISO 9000 family of international standards was carried out in the Privolzhsky customs office (the Volga river basin). The analysis of its results shows a high efficiency index in the activity of the customs bodies.

Several strategic guidelines have been worked out to serve the interests of further innovative development of the Russian Federation customs service.

Improved customs regulation calls for effectivization of tariff and non-tariff regulation measures in foreign trade activities, a prompt and well-grounded decision-making about remote goods release, daily preliminary information and transition to an electronic form of data presentation for customs purposes, development of customs technologies during the implementation of the Concept of Customs Registration and Customs Inspection of Goods in Places Close to the Russian Federation Border, further development of the Customs Union's risk management system (CU RMS).

Following goods release Customs control envisages to develop its legal framework and methodological foundation, to optimize its organizational and staff structure of customs bodies on the departmental vertical.

An improved fiscal function is based on effective control and supervision of its compliance with the legislation of the Russian Federation on customs business and laws on taxes and duties, correct calculation and prompt collection of duties, taxes and revenues by using modern IT technologies and complying strictly with the law on the federal budget regarding revenues administered by the customs authorities.

Enhanced law-enforcement activity, intensified struggle against other crimes and administrative violations in the customs sphere are all aimed at raising the level of the state's economic security.

International co-operation with foreign states' customs and other competent agencies, international organizations involved in customs business and the struggle against international crime is carried out in the interests of creating favorable conditions for

foreign trade and ensuring a full compliance with the Russian Federation customs legislation. Introduction of international standards and rules into the Russian FCS's practice by actively involving it in international institutions of co-operation and regional economic associations, promoting integrational processes in the EvrAzEs territory and strengthening the CIS, the Shanghai cooperation organization and other international organizations in which the Russian Federation participates.

State services can be improved by enhancing the quality and accessibility of state services in customs business; raising the efficacy of the RF customs agencies' activity in provision of state services in the field of customs business; integrating customs agencies' data systems into the existing infrastructure of the services to ensure their accessibility and enhanced quality of state services in customs business; elaborating a system of indicators that measure the methodological support and setting up a system to monitor the quality of the state services provided in the sphere of customs business.

A developed customs infrastructure requires that border points for entry into the Russian Federation be established and opened in the order prescribed by the RF legislation, the existing check points be reconstructed to meet the modern requirements of the customs agencies, relevant procedures be followed to shut down nonfunctioning check points, and the existing and new facilities be reconstructed and created to ensure customs bodies' effective performance, border check points of entry into the Russian Federation, including railway and marine points, be further equipped with modern means of customs control, inspection customs complexes (ICC) and radiation monitoring instruments on a planned basis.

Streamlined personnel management should aim to enhance the work of customs bodies, to provide an all-around development of a customs officer, to ensure a systematic and integrated administrative, economic, social and psychological effect on customs authority officials and to raise the level of their professional skills.

Modern approaches towards realization of customs operations and customs inspection, use of cutting-edge customs technologies make great demands on the professional activity, training and retraining of customs authority officials at the Russian customs academy and its branches.

Stepping up anticorruption activity and struggle against offences in the sphere of customs business calls for :

- A higher level of anticorruption awareness among officers at the Russian Federation customs agencies by using effective motivation methods to minimize conditions that lead to illegal activities;
- Creation and effective performance of the departmental anticorruption centre attached to the Federal customs service;
- Struggle against corruption practices in accordance with departmental programs/ plans to fight corruption and malfeasance in the Russian Federation customs bodies with the aim of raising the level of anticorruption awareness among customs authority officials, preventing and suppressing wrongful acts and enhancing the quality of educational and preventive measures in respect to customs officers, providing a prompt response to corruption practices and



uncovering corruption schemes, combating effectively the infiltration of criminal elements into the system of customs agencies.

The social safety net which covers customs authority officials, Is one of the major factors that contribute to the successful solution of problems that face the customs authorities.

Currently, there exist numerous factors that call for an improved management system. They include both optimization of the managerial staff size, its functions and organizational structure, introduction of automated management systems and decision-making systems.

The urgency of developing this direction arises from the need to successfully adapt to new conditions and changing requirements of the national and international legislation that demand a constant analysis of vast amounts of incoming data in order to meet the strategic target of the Russian FCS's development.

The above aspects represent the main essence of the Development strategy for the Federal customs service of the Russian Federation for the period of up to 2020.

Stage One (2012-2014) of the Strategy implementation is aimed at creating an institutional basis and technological conditions necessary to effect a systemic transition of the Federal customs service to a qualitatively new level of development.

Further institutional development of the Federal customs service will be carried out on a modern theoretical and methodological and technological basis of customs business.

Stage Two (2015-2020) of the Strategy implementation envisages further effectivization of the Federal customs service's activity in all directions. This stage will see the institutional and customs infrastructures continue to develop and improve aiming to create a new technological basis (IT, innovative customs technologies) and the development of the social sphere of the customs bodies.

Summary and concluding remarks

A positive image of the customs agencies of the Russian Federation will be created by publicizing it in the mass media and interacting closely with state and public organizations and associations. The institutional and infrastructural potential to be accumulated through innovative customs and IT technologies and best practices of the world's most advanced customs administrations will be used as a foundation for sustainable development of the Federal Customs Service.

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JEL Classification: O15, O18, O21, O22

INTERNATIONAL EXPERIENCE AND PROGRAMME-ORIENTED AND TARGET-BASED APPROACH IN MODERNIZATION PROCESS OF THE CUSTOMS SERVICE OF THE REPUBLIC OF BELARUS

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Abstract

The present article reports on periods of establishing the customs environment in the modern Republic of Belarus, and issues of international cooperation. The concept of programme-oriented and target-based approach in the context of modernization of the Customs service of Belarus is under consideration. In regard to capacity building the article includes the following aspects: information exchange for the purposes of customs matters in format “Customs-to-Customs”, “Customs-to-Business” and “Customs-to-Governmental bodies”. The article provides analysis of development stages of the Customs service with regard to international experience, support to establishment of necessary prerequisites for sustainable economic growth of the country, implementation of coordinated state support for strategic branches and enterprises, increasing competitive capacity at international market of goods and services.

Keywords: business, international, approach, customs, government, modernization.

Introduction

All stages of customs developments in the modern Belarus took place taking into account international experience in customs administration. Initially the following was determined as core elements in customs sphere: international cooperation, implementation of Conventions developed by the World Customs Organization (WCO) and World Trade Organization.

As a result of participation in WCO activities Belarus has the opportunity to study and use in its practice information about international customs cooperation, technical issues, proposal of WCO regarding practical tools to achieve connectivity and uniformity of customs systems.



Belarus has implemented fundamental WCO conventions. The Republic of Belarus has become the 72nd country acceded to the International Convention on Harmonization and Simplification of Customs Procedures.

The main procedures on implementation of the Convention are planned to be completed after adoption of the Law “On customs regulation in the Republic of Belarus” that along with the Customs Code of the Customs Union in force will form the basis of Belarusian customs legislation.

The draft Law includes practical approaches to customs regulation that ensure Belarusian economic operators to reduce their foreign economic operations’ costs and to enhance competitive capacity. The draft Law is being developed considering achievements of the customs service in application of information and communication technologies, its best practice regarding electronic declaration of goods, up-to-date interaction networks for production of high technology articles and logistics of goods.

For the purposes of goods classification in accordance with the Common customs tariff of the Customs Union and its further application with a view to consider the rules of origin the Republic of Belarus is implementing provisions of the International Convention on the Harmonized Commodity Description and Coding System.

The customs authorities of the Republic of Belarus introduce the provisions of the Convention on Carnet ATA and Convention on Temporary Admission simplifying the import of goods intended for sports, concerts and exhibition activities.

Legal principles of cooperation and interaction in fight against smuggling and other customs offences, mechanism of mutual assistance in Belarus are based on the International Convention on mutual administrative assistance in prevention, investigation and suppression of customs offences.

In the present time the Republic of Belarus is a contracting party of 2 multilateral international agreements with CIS countries and member-states of the Customs Union. Furthermore 15 bilateral international agreements on cooperation and mutual assistance in customs matters are concluded with Azerbaijan, Italy, Iran, Libya, Latvia, Lithuania, Poland, Vietnam, Slovakia, Turkey, Czech Republic, Estonia, Ukraine, Finland and Turkmenistan.

Moreover about 30 international agreements between respective authorities on different cooperation matters are concluded: advance information exchange on transported goods and vehicles, customs statistics data exchange of bilateral trade, cooperation on matters of customs value control, mutual recognition of documents etc.

The work is continued on conclusion of international agreements on cooperation and mutual assistance in customs matters with Georgia, Austria, Belgium, Rumania, Serbia, South Korea, France, Japan, Bulgaria, China, Indonesia, Great Britain, Germany, Montenegro, Syria, Macedonia, Slovenia, Albania, as well as regarding conclusion of interagency agreements with Iran, Turkey, Italy, and Ukraine.

The Customs service of the Republic of Belarus participates in implementation of the three modernization elements within the World Customs Organization concept – “3Ps”: Political Will, People and Partnerships.

Political Will – improvement of customs regulation is going forth in accordance with the concept document – Strategy and main directions of development of the customs service of the Republic of Belarus for the period till 2015.

The implementation of the Action plan on implementation of the Strategy and main directions of development of the Customs service will ensure achievement of goals determined on the basis of the current status in the customs sphere and according to strategic guidelines for implementation of provisions within directions on national level.

In particular:

- ensuring favourable environment for business community: simplification, reduction of existing and refusal to introduce new administrative procedures, reduction of costs related to customs clearance of goods, and as a consequence increased competitive capacity of Belarusian enterprises, improved investment climate;

- organizational and legal compliance with international customs standards, ensuring efficient functioning of the Customs Union within the Eurasian economic community, as well as within ongoing integration of Belarus into global economic relations.

In regard to capacity building the Customs service is implementing such pillars as “Customs – Research”, “Customs – Business”.

Strategy and main directions of development of the Customs service for the coming 5 years and Action plan on its implementation are closely connected with enhancement of the performance quality of customs clearance procedures.

To address quality problem a universally recognized tool is used, namely, a package of international standards ISO 9001 “Quality management systems”. Aspects concerning introduction of requirements set in international system ISO are included in the Strategy and main directions of development of the Customs service of the Republic of Belarus for the period till 2015.

The Action plan on implementation of the Strategy and main directions of development take into account the provision stipulating that the customs services shall target and satisfy the requests and expectations of consumers – business entities and natural persons.

Three key elements of comprehensive quality management system have been taken into consideration as well: definition of objectives, strategic and medium-term planning, and assessment of results. Programme-based and targeted approach to Customs service development is based on provisions set out in Concept of national security and takes into account performance measurement indicators in index numbers.

Methodology and planning approaches to ensure quality correspond with indicative planning of social and economic development guidelines of the state. The activity of the Belarusian Customs service is being annually assessed pursuant to performance and efficiency indicators and criteria what totally complies with ISO 9001 standards.

The legal environment is now being created that is essential to move from planning and assessing based on achieved outcomes towards programme-based and targeted approach as well as evaluation in terms of deflections and performance measurement indicators. Integral objects of monitoring and analysis of the customs service development are set. The product “customs services” is defined in index numbers, this product’s quality is and will be developed by the Service.



At first instance the customs services quality means the compliance with the established standards: the Customs Code of the Customs Union, requirements recognized by the World Customs Organization and set in the International Convention on Harmonization and Simplification of Customs Procedures and the Framework of Standards to Secure and Facilitate Global Trade.

Concerning the element “Partnerships” the following should be emphasized: since 1993 the Customs Service of the Republic of Belarus is a member of the World Customs Organization, it cooperates dynamic in a wide range of issues with the customs authorities of the Republic of Kazakhstan and the Russian Federation within the Customs Union, with the customs bodies of the CIS and those of neighboring countries, it interacts with the European Union and other international instruments in matters related to technical assistance.

The World Customs Organization has dedicated the year 2012 to the promotion of “Connectivity” – extensive support and promotion of information exchange on official and informal levels between the members of the global customs community: customs administrations, customs officials.

The prerequisite to efficient fight against smuggling and other offences of customs legislation in the territory of the Customs Union is to organize valuable exchange of information between the customs services of Belarus, Russia and Kazakhstan. By means of information provided by the Russian colleagues a number of supply chains for smuggled goods across the Belarusian segment of border has been detected and prevented. In its turn the Belarusian side also provides to the Russian colleagues the information contributing to interception of goods transported in violation of legislative provisions.

The customs bodies of Belarus apply extensively information exchange for the purposes of customs matters in the following directions: “Customs-to-Customs”, “Customs-to-Business”, “Customs-to-Governmental bodies”. The exchange of information is a core element of customs services’ cooperation on national level.

The State Customs Committee participates in meetings of ad hoc Working Group on Globally Networked Customs of the World Customs Organization.

The WCO Secretariat has invited Belarus to take part in development of information exchange procedure for railway traffic of goods between the European Union states and countries of Eurasian community.

Training of personnel

In relation to element “People” it should be mentioned that the training of customs officials and participants of foreign economic activity as to customs legislation issues is provided within the recently established State Institute of Advanced Training and Development of Human Resources of the customs bodies.

The basic principle of personnel training system in the customs service is continual, sustainable and results-oriented process of training at stages of higher and advanced education.

Training course “Customs” as special subject based on high education is available in the Belarusian State University, Belarusian National Technical University, Belarusian State University of Transport.

Annually graduates of secondary schools from Belarus become students of full-time course of study in the Russian Customs Academy.

The customs officials visit retrain courses in the “State Institute of Advanced Training and Development of Human Resources of the customs bodies”, Academy of Public Administration under the aegis of the President of the Republic of Belarus, National Security Institute, Institute of Governmental Service and Institute of Managerial Human Resources in the Academy of Public Administration under the aegis of the President of the Republic of Belarus and other institutions.

The process of training in the course of customs officers’ service includes officials’ duties and physical education, weapons training, retraining, and advanced training, executive development and personnel reserve training, secondments. Much attention is paid to practice and training exercises to develop skills of the officials in emergency situations.

Moreover an English language training programme has been designed for the customs officers within the course “English language for special purposes: customs issues” in association with the Minsk State Linguistic University.

On regular basis diverse workshops are held for heads of customs inspection and customs checks support units, for officials from tariff regulation divisions concerning issues of customs charges collection, for legal services and tariff regulation divisions in matters related to development of unified cases treating in court proceedings, and development of common approaches to use of legislation of the Republic of Belarus and the customs legislation of the Customs Union.

The customs officials participate in international meetings to study the best practice of European Union member states in preventing corruption and promoting integrity, in establishing and introducing preliminary informing system, in developing the Concept of Integrated border management of the Republic of Belarus within the flagship initiative “Integrated border management” of Eastern partnership; as well as the customs officials take part in regional seminars on post clearance audit for customs administrations of the Customs Union member states organized in cooperation with the World Customs Organization.

One of the crucial parts for the customs service development was establishment of sectoral research frameworks. The scientific component is developed within the State Institute of Advanced Training and Development of Human Resources of the customs bodies, as well as by means of department “Customs” in Belarusian State University, Belarusian National Technical University, Belarusian State University of Transport and National Security Institute.

The State Institute of Advanced Training and Development of Human Resources is considered as educational and scientific centre for the benefit of customs interests. Establishing the departmental educational institution has ensured the creation of unified and system-based approach to training and advanced development of the customs officials. The Institute provides the opportunity for advanced training of teachers from institutions of higher education from the whole republic who lecture in customs course disciplines.



Automatization of customs processes

A weighty contribution to development of customs bodies in the coming years was the fact that a separate subprogram “Electronic Customs” has been included into the National programme of accelerated services growth in IT and communication technologies for the period 2011 – 2015. The projects objective is to create conditions for comprehensive electronic declaration of goods. The main goals are defined as follows: development of IT and communication technologies infrastructure, application of risk analysis and management system, upgrading information and analytical support, and facilitating introduction of electronic commercial documents.

About 82% of export and 50% of import consignments are performed today using electronic customs declaration. The introduction of computerized (without a human involvement) performance of several customs operations is foreseen in the future that will enable to reallocate officials among crossing points, in the first instance aiming at solving tasks within the Customs Union.

The pre-arrival electronic information system is designated to focus the Customs service’s resources on control of goods not compliant with the established requirements of safety for consignments and taking into account the necessity to speed-up the customs clearance. The utilization of this system allows reducing time required to complete formalities for transit and release of goods according to any customs procedure.

Introduction of pre-arrival electronic information system in global supply chain prevents illicit trafficking in drugs, weapons and ammunition, commercial fraud.

More than 30% of freight vehicle transit traffic passing the Republic of Belarus is executed using pre-arrival informing of the customs bodies. It is planned to launch the mentioned technology in relation to shipments by rail.

Pre-arrival information enables to implement selectivity principle of customs control while ensuring its high efficiency, eliminating cases of shipping documents replacement, and declaring under false code according to goods nomenclature, as well as understatement of transported goods weight.

Border equipment

Along with its fiscal and enforcement duties the Customs Service of the Republic of Belarus is implementing today the next five-years-term Comprehensive development programme of road crossing points infrastructure at the State Border of the Republic of Belarus.

During the last 5 years the reconstruction of the following crossing points has been completed: “Kotlovka” and “Beniakoni” – at the border with Lithuania, “Bruzgy” and “Berestovitsa” – at the border with Poland, “Mokransy” and “Novaya Rudnya” – at the border with Ukraine.

In 2011 the crossing point “Domachevo” has been build at the Belarusian-Polish border. The total capacity of the crossing points has increased more than in two and a half times – from 8200 to 20950 vehicles per day. It is planned to achieve the index 34000 vehicles per day till the year 2015.

The Belarusian part of the external boundary of the Customs Union territory is equipped both in line with the national programme and by means of international technical assistance within the Cross-border cooperation programmes “Poland – Belarus – Ukraine” and “Latvia – Lithuania – Belarus”. It is expected to provide full reconstruction of the crossing point “Peschatka”, it is foreseen to build scanning systems in the crossing points “Privalka” and “Grigorovshchina”.

Suppression of illicit drug trafficking, fight against smuggling

Within the Customs Union and considering intensive growth in international trade, liberalization of approaches to foreign trade transactions, the key objective of improving enforcement activities of the customs bodies became sufficient to address challenges and threats emerging in relation to national security matters within the Customs Union member states.

The every day practice of the Belarusian Customs Service includes modern operational tools based on risk management system, use of technical means of customs control, intelligence and enforcement instruments and canine service facilities, as well as post clearance control.

Specific conditions for enforcement activities within common customs area are directly associated with increase of such risks and threats as illicit trafficking in drugs, weapons and explosives, import and involvement in economic turnover of smuggled goods.

In two recent years about 114 attempted violations of smuggled trafficking in drugs and psychotropic substances in total weight more than 2 tons have been suppressed at the border with the European Union and Ukraine. A number of proceedings have been initiated in line with smuggled trafficking in weapons and ammunition.

It becomes a high level threat that the crime actively participates in organizing fraud mechanisms aiming at evasion of customs payments while importing goods into the territory of the Customs Union. In 2011 about 55 criminal proceedings were initiated in line with mentioned facts. Attempted consignments of smuggled goods and vehicles have been also prevented that were transported under the guise of temporary import into the common customs territory in order to evade customs payments.

Taking into account the actual trends of development in smuggling and illicit business activity and widely using the available capacity and resources in order to combat the described threats the Customs service of Belarus has moved from the practice of large-scale operations to targeted work of mobile groups.

In the custom houses located on major drug-traffic routs the canine service units are established. In the present time in collaboration with colleagues from the Federal Customs Service of Russia a concept of perspective development of canine services of both countries is being developed.

Innovative technologies of customs control

In the process of Customs service modernization particular attention is paid to innovative methods of detecting and suppressing illegal actions while performing foreign economic activity, notably, use of X-Ray scanning systems. The Custom houses operate 6 mobile X-



Ray scanning systems, in the nearest future it is planned to equip the border crossing points with further 4 systems.

The introduction of customs control system with involvement of X-Ray scanning systems resulted in increase of customs inspection efficiency up to 40%. Furthermore the number of detected customs offences committed by means of hidings has increased as well. In parallel the time required for performance of customs operations in the crossing points across the State border has been reduced what therefore resulted in increased capacity of the crossing points.

Facilitation of customs formalities while transportation of goods across the customs borders and reduced time of customs clearance is balanced by measures on development and improvement of customs control after release of goods. The system of post clearance control also builds on risk management system. Measures of control are applied in relation to goods released for free trade or production process. The effectiveness of customs checks is not lower than 90%.

Transit and logistics

The developed network of transport and logistics centers, equipment of crossing points at the border aim at efficient service of goods turnover, inter alia transit. The development of this branch within governmental programmes takes place in active participation with the customs bodies.

The necessity to use advantages of logistics system in modern customs environment is stipulated by the requirement to reduce time of customs services and accordingly delivery of goods to users, the need to enhance receipt of required information about flows transferred across the custom houses.

The adoption of the Customs Union Customs Code has unified formalities in relation to transit across three countries. The standard form of transit declaration is applied and harmonized with the corresponding document of the European Union. The following documents are possible to be used as transit declaration: shipment documents, package of documents stipulated by the Convention on International road transport and temporary import of goods, documents of Universal Postal Union.

A transport operator crossing the Belarusian-Russian and Russian-Kazakhstan borders does not face the necessity to undergo customs control and to complete the national transit declaration. The single system of delivery control is established. The exchange of electronic messages between the customs houses of departure and destination has eliminated the need to transmit paper documents.

In practice the goods imported into the customs territory of Belarus can be placed under the procedure of customs transit in Belarus and forwarded to Russia or Kazakhstan without completing any additional transit customs declarations when entering the territory of these countries.

The dynamics of goods turnover across the Belarusian part of the customs border of the Customs Union is consistently a positive trend. In 2011 comparing to 2010 up to 13% growth of freight vehicles crossing the border ha been established. All means of transport forwarded up to 14% more goods across the border in comparison to 2010.

Measures taken in Belarus in relation to improvement of transit environment and development of transport logistics enable to enhance interest of foreign operators in using the territory of the Republic for purposes of cargo transportation and investment of capital in transport and customs infrastructure.

For the same purpose is intended development of legislation, reduction of customs formalities, modernization of data communication networks necessary for informational support of consignments and for usage of electronic systems to monitor the movement of cargo.

Customs and Business, Authorized Economic Operators

One of the main achievements of the Customs Service of the Republic of Belarus is strengthening of reliable cooperation between the business and customs authorities. The Strategy and main directions of development of the customs bodies of the Republic of Belarus for the period till 2015 define one of its core objectives ensuring favourable environment for business community: simplification, reduction of existing and refusal to introduce new administrative procedures, reduction of costs related to customs clearance of goods, and as a consequence increased competitive capacity of Belarusian enterprises, improved investment climate.

One of the efficient tools of such cooperation is institute of authorized economic operators. For business entities granted this status is foreseen a number of specific benefits related to movement of goods across the customs border as well as prevention of violations against the customs legislation and effective use of business entities' and customs authorities' resources. For example, the goods from the producer warehouse is transmitted to the border or from the border – to the warehouse with involvement in economic turnover, furthermore the customs payments are to be paid later.

In the present time there are registered about 305 authorized economic operators. Development of this institute is pursued by means of granting benefits while customs clearance in relation to how the business entities comply with established requirements.

Constructive dialog with business community takes place during meetings of Social Council of the State Customs Committee. Its best practice stipulates that Council members participate in consideration of the most crucial decisions on customs matters, at the same time the State Customs Committee a priori positively aims at taking into account interests and proposals coming from business community.

Cooperation of customs bodies with business community representatives concerned in creation of favorable environment for lawful foreign trade transactions is considered as key element of action framework on prevention and detection of violations in customs matters and damage ceased thereof.

The used risk management system has significantly reduced the number of control that business entities have been previously subjected to. The number of performed checks comparing to 2004 is lower more than in four times. At the same time the efficiency of customs inspections has increased from 2005 to 2011 more than in seven times.

The reduced number of field customs checks and retargeting to office customs checks (performed without visiting the business entity and based on documents available at the customs bodies) has become the objective of work carried out by the customs authorities



towards minimization of their involvement in business processes, characterizing the control as a preventive measure.

The approaches to assess insignificance of offences committed in foreign economic activity have been specified, notably, regarding offences not ceasing significant damage to economic interests of the country. They are the following:

when discrepancies occur in transport (shipping) and commercial documents;

when facts are established regarding wrong classification of goods implying failure to pay customs charges.

In 2011 based on insignificance criteria the customs authorities have dismissed 1425 cases regarding administrative offences without be brought before court.

Participation in “Columbus” programme of the World Customs Organization

In 2005 in order to coordinate customs bodies’ activity on implementation of Framework of Standards to Secure and Facilitate Global Trade adopted by the Chairpersons of 170 customs administrations worldwide, the WCO Secretariat has developed the “Columbus” programme. The Republic of Belarus has launched this project since 2006.

Within this Programme in June 2007 the WCO diagnostic mission has been conducted to research the Customs service. The main purpose of the performed study was to provide assessment of the service’s opportunities to introduce in practice the SAFE Framework of Standards. The WCO experts have emphasized that core principles and approaches set within the SAFE Framework of Standards have been included in strategic documents of development of the Customs service in the Republic of Belarus. The experts noted the high level of efficiency in strategic management system and high competence and qualifications of the personnel. The experts estimated the high level of border crossing points’ infrastructure and their operation. In accordance with the mission’s findings the Customs service has launched the 2nd phase within the “Columbus” programme.

In the course of the past years the World Customs Organization has provided support to the Customs service of Belarus in improving customs administration regarding the areas as nonintrusive control, information and communication technologies, as well as pre-arrival electronic information exchange, concerning classification of goods and post clearance audit issues.

Expert groups of the World Customs Organization visited twice the State Customs Committee and noticed the high level of management in the customs authorities of Belarus, their compliance with international standards.

The Republic of Belarus became the 3rd country in the world invited to participate in the 3rd completion phase within the “Columbus” programme stipulating monitoring and evaluation of outcomes achieved by the Customs service. The mission of WCO experts is expected to visit Belarus in April 2012.

Summary and concluding remarks

The guideline in development of the Customs service of the Republic of Belarus aims at knowledge and technologies, international best practice and experience, harmonization of activities within the Customs Union with the Russian Federation and the Republic of Kazakhstan.

Ensuring free circulation of goods and assuring fulfillment of legal provisions and regulations the customs officials contribute to establishment of required environment for sustainable economic growth of the country, for providing coordinated governmental support of high priority branches and enterprises, for increasing competitive capacity at international market of goods and services.



BEST PRACTICES

JEL Classification: K33, K42, K49

SMUGGLING AS A CRIME OF INTERNATIONAL CHARACTER: CONCEPT, CHARACTERISTICS, QUALIFICATIONS

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Abstract

The current article is devoted to theoretical aspects of smuggling as international crime in modern international law. Activization of the integration processes occurring at the international and regional levels, globalization of economy and abolition of the international trading barriers do the world very uniform and interconnected. At the same time it becomes rather vulnerable. Gradual transformation of world space to a uniform zone where capitals almost free move, the goods, services and freely extend ideas, creates real preconditions for active development of socially dangerous phenomena. One of the most serious problems is contraband of narcotics, psychotropic substances, weapon, cultural-historical values.

Keywords: smuggling, concept, characteristics, qualifications, international, customs, law.

Introduction

Concept of smuggling of international law

At the moment the concept of smuggling is the settled term, but somewhat disputable. So, in the dictionary reference on international law smuggling is the international offense in the sphere of customs business. According to national state legislation smuggling admits moving through customs border of separately taken state besides or with concealment from customs control or with deceptive use of documents or means of customs identification, or interfaced to a non declaration or doubtful declaring: drugs, psychotropic, strongly operating, poisonous, poisoning, radioactive and explosives; arms, explosive devices, firearms, cartridges to it and ammunition (except the smooth-bore hunting weapon and cartridges to it) Nuclear, chemical, biological and other types of weapon of mass destruction, materials and the equipment which can be obviously used at its creation; strategically important raw goods; subjects of art, historical and archaeological property of the people of separately taken country and foreign countries, and equally such moving of other goods made in the large sizes or with use of office position of the public official or the public official with use of the office position or the person, released from certain forms of customs control, or the person authorized on moving through customs

border of the state of the separate goods and vehicles, released from certain forms of customs control, or a group of persons, organized for employment by contraband. At the same time, contraband admits non-return on customs territory of the state of subjects of art, historical and archaeological property of the people of the country and the foreign countries which have been taken out for its limits if such returning is obligatory; or moving of the goods and vehicles through customs border of the state by its break expressed in their open moving through customs border contrary to a direct interdiction of the official present thus, carrying out customs control ²¹. Contraband is punished according to the national criminal legislation (item 228 of CK RB), and also with the national administrative legislation (Gl.14 KoAP). Arms, explosives, fire-arms, cartridges to it and ammunition (except the smooth-bore hunting weapon and cartridges to it).

In our opinion, contraband from the point of view of international law is in any way the international offense. Because in crime international law in customs sphere it is considered to be crimes of the international character, we should prove that contraband is an international crime.

On purpose of evidence it is reversible to formulations the international crime and a crime of the international character. The international crime and a crime of the international character are two versions of the international criminality. We will address to the dictionary-directory on Dodonov V. N's international law.

The international crime – the heaviest international and illegal act encroaching on bases of existence of the states and the nation, the undermining major principles of international law menacing to an international peace and safety. In prepared by the International Law Commission draft articles on responsibility of the states it is emphasized that «the international and illegal act resulting violation by the state of the international obligation, so fundamental for ensuring the vital interests of the international community that its violation is considered as a crime before the international community as a whole, makes the international crime».

The universal peace and the international safety can be object of the international crime; good-neighbourhood between the people and the states; the rights of the people and the nations to self-determination; laws and customs of war.

Crimes belong to number of the international crimes according to the Charter of the International military court of 1945 (Art. 6) and other international legal acts against the world, war crimes, crimes against humanity, crimes against humanity among which it is possible to call: colonialism, genocide, apartheid, mass pollution of the atmosphere or seas (ecocide). Such crimes can be made as a result of heavy violation of the international obligations having fundamental value for providing an international peace and safety, the right of the people to self-determination, protection of the human person, protection of environment. They infringe interests not only directly affected state, but also all world community as a whole. In this case the relations of responsibility arise between the state

²¹ Додонов В.Н., Панов В.П., Румянцев О.Г. Международное право. Словарь-справочник / Под общей ред. акад. МАИ, д.ю.н. В.Н. Трофимова. – М. ИНФРА – М, 1998. – с.110-111
which has committed the international crime, and all other states.



The states, the international organizations and physical persons can be subjects of the international crime and subjects of responsibility for their fulfillment. The states and other subjects of international law bear material, moral and political responsibility for the international crime, and physical persons – the international criminal liability of individuals.

Crimes of the international character – socially dangerous acts provided by international treaties which are not relating to the international crimes, encroaching on the normal relations between the states and causing a damage to peace cooperation in various areas. Unlike the international crimes of responsibility for crimes of the international character bears not the state, and individuals. Responsibility attacks to a basis of the international treaty, but by the national right. Depending on object of encroachment and degree of the international danger they are subdivided into the following groups:

- 1) crimes against stability of the international relations (the international terrorism, capture of hostages, crimes on air transport, plunder of a nuclear material, a drug trafficking, contraband, illegal emigration, propagation of war and other acts, causing a damage to economic, social and cultural development of the states);
- 2) counterfeiting, legalization of criminal incomes, encroachments on cultural values of the people and others;
- 3) criminal encroachments on personal human rights: slavery, a slave-trade, trade in women and children, tortures, regular and mass infringements of human rights and others;
- 4) the crimes made in the high sea: a piracy, *неоказание* on the sea, pollution of the sea environment, rupture or damage of an underwater cable or the pipeline and others;
- 5) war crimes of the international character; application of the forbidden means and war methods, marauding, violence over the population in the war zone and others

Summarizing the above-stated kinds of crimes according to the dictionary-directory on international law it is necessary to note the following. The international crime should be delimited legally from crimes of the international character.

So, delimiting criteria are elements and signs of the crime encroaching on the world and safety of mankind, and also object and the objective parties of an encroachment. Concerning the subject of the international crimes responsibility for their fulfillment bear both the states, and separate individuals, sometimes legal bodies. As to the subject of a crime of the international character only physical persons in what basic difference consists in a question of responsibility of the subject of international law in this case can admit.

Regarding the concept of international crime "international crime" means a special degree of public danger to the international community, coming from the wrongful conduct of states ²². As the state's responsibility for international crime entails political consequences in international relations. Gravity of the violation, the importance of the obligation breached the security of the international community to define the objective aspect of the crime. The object of attacks in the international crimes are international peace

²² Reshetov, Yu. The fight against international crime against the peace and security. M., 1983, P.45.

and security, the fundamental obligation to protect human rights and environmental protection²³.

Therefore an international crime violates peremptory norms of international law [jus cogens], and specific forms of international obligation [erga omnes]²⁴.

We agree with E. and F. Narbutaeva Safaeva that because of great public danger qualification of a wrongful act of the state as an international crime distinguishes it from ordinary crimes. The fact that the qualification of ordinary crime is the responsibility of national courts and differentiated framework of national legislation. In contrast to such a qualification is not an international crime is the result of subjective assessment by the individual state. Unlawful action of a State or group of states recognized by the international crime only if the International Criminal Court, UN Security Council or other international bodies say about it and take some steps towards the realization of the international responsibility of that State²⁵.

According I.P.Blischenko and I.V.Fisenko, state participation in the international crimes may be direct or indirect. According to them, when the state commits a crime on behalf of their agencies, law enforcement agencies and representatives, we can say about his direct involvement. If the commission of international crimes by individuals who have no formal relationship to the state apparatus, is allowed within the jurisdiction of the state alleged, it is indirectly involved.

Thus, we conclude that the separation of some compounds of international crimes of international crimes is very conditional. Thus, in light of Resolution 1269 (1999), adopted by the Security Council on the 4053 meeting, October 19, 1999 was the first attempt to classify terrorism as an international crime. This thesis is based on the considered measures to "address threats to international peace and security posed by terrorism²⁶."

In the future, the events of September 11, 2001 by the Security Council was adopted at the 4385 meeting, 28 September 2001 Resolution 1373 (2001) on the basis of Resolutions 1269 (1999) on October 19, 1999 and 1368 (2001) on September 12, 2001. The document stipulated: "any act of international terrorism constitute a threat to international peace and security", which confirms the transformation of terrorism in international crime. In 2001 significantly intensified its efforts in this direction, which was also the result of Resolution 1377 (2001) Adopted by the Security Council at the 4413 meeting of November 12, 2001.

At the present stage of the final document on counter-terrorism is resolution 1989 (2011), adopted by the Security Council at the 6557 meeting of June 17, 2011 pursuant to resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001) 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1624 (2005), 1699 (2006), 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009) and 1988 (2011), which implies that "terrorism in all its forms and manifestations constitutes one of the most serious threats to

²³ Э.НАРБУТАЕВ, Ф.САФАЕВ. The rate of international criminal law. Tashkent, 2006, C.311.

²⁴ International Crimes of States, ed. by Weiler J., Berlin, New York, 1989, pp. 156-157.

²⁵ Э.НАРБУТАЕВ, Ф.САФАЕВ. The rate of international criminal law. Tashkent, 2006.

²⁶ S/RES/1269 (1999) Resolution 1269 (1999) adopted by the Security Council at its 4053 meeting, on 19 October 1999

peace and security and that any acts of terrorism are criminal and unjustifiable, regardless of their motivation, whenever and by whomsoever committed. " In the text must be "unequivocal condemnation" of al-Qaeda "and other related individuals, groups, companies and organizations for ongoing and multiple criminal terrorist acts aimed at causing the death of any innocent civilians and other victims, destruction of property and greatly undermining stability. Terrorism can not and should not be associated with any particular religion, nationality, or civilization ²⁷. "

Thus, on the basis of the above, such as smuggling offense must be considered separately for the compositions in accordance with modern law enforcement.

The history of smuggling

Smuggling as a crime occurred in the early days, but these wrongful acts took place at the national level, within a single state. The twentieth century saw the flourishing of smuggling.

Thus, the Convention on the Suppression of smuggling of alcoholic products (Helsinki, August 19, 1925) was among the first to curb alcohol.

With the growth and spread of drug addiction was a process of development, improvement and convergence of international and national laws. The first ever international treaty was the Hague Convention of 1912, which laid down the following principles: production and distribution of raw opium shall be verified by law, and his smoking should be eradicated, production, sale and use of drugs should be limited by law solely for medical purposes, and more. In the following were accepted international legal instruments on the fight against smuggling, among them the Convention on the Prohibition of the illegal drug trade in 1936

In order to unify the numerous international legal norms adopted in the 1961 Single Convention on Narcotic Drugs, which replaces all earlier agreements in this area, except for the previously mentioned 1936 Convention About a hundred States have acceded to the Convention.

In order to differentiate psychotropic substances and the fight against illicit production and distribution in 1971 adopted the Convention on Psychotropic Substances.

Both conventions require States to all serious and deliberate illegal operations with drugs and psychotropic substances are punished with imprisonment or other penalties related to deprivation of liberty (art. 36 Convention of 1961 and article. 22 of the Convention, 1971.).

In violation of these norms in Iran, Iraq, Pakistan, Malaysia and other countries (of 12) for the use and distribution of drugs established the death penalty ²⁸. Convention

²⁷ S/RES/1899 (2011) Resolution of 1899 (2011) adopted by the Security Council at 6557 meeting, on 17 June 2011

²⁸ Likhachev, In. A. The role of criminal law in the protection of the economies of developing countries, M. 1983.

provide for the territorial principle of criminal punishment, ie, under the laws of the State in whose territory the crimes. In place of detention, criminal jurisdiction is exercised only when the non-his extradition....

The norm against these crimes is in the UN Convention 1982. Law of the Sea. According to Art. 108 all States shall cooperate in curbing the illicit trade in narcotic drugs and psychotropic substances engaged in by ships on the high seas in violation of international rules.

In 1988 he was adopted and opened for signature by the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It does not undo the action of the 1961 and 1971gg. and includes links to some of their provisions. Among the offenses Convention 1988 relates to the production, manufacture, extraction, distribution, sale, delivery on any terms, transport, import or export, as well as the cultivation of opium poppy, coca leaf, cannabis plant for the production of illegal drugs.

Vienna International UN Convention obliges States parties, to bring its legislation into conformity with its provisions (Article 3). This suggests to approximate the norms of national and international legislation to establish a common responsibility for engaging in illicit traffic in narcotic drugs and psychotropic substances. The need for this measure in our view, the following objective reasons.

First, in most countries there is no single comprehensive and exhaustive legislation and generated criminal drug policy in national legal systems.

Second, the criminal-law doctrine of developed countries with regard to drug addiction focused less punitive than in developing countries.

Third, the legislation takes a significant number of states under the control of only the so-called natural drugs and is totally in control of psychotropic substances. In those few cases where such monitoring takes place, it is not through criminal law and administrative law, which have often vague, insufficient for a rigorous and specific controls.

Fourth, the laws of most countries there is no uniformity in the terminology of the classification of drugs in determining the types of crimes and other offenses in determining penalties, as well as details of administrative and judicial procedures. This international convention has played an important role not only in addressing these shortcomings of foreign laws to combat the illicit trafficking of narcotic substances, but also made a worthy contribution to the systematization.

The UN Commission on Narcotic Drugs at its next meeting on January 29, 1990 decided to add the List of the Single Convention on Narcotic Drugs of 1961. new kinds of drugs and a list of the UN Convention on Psychotropic Substances of 1971. - Psychotropic Substances. The latter also were enshrined in the national legislation of several Member States of the Convention of 1988²⁹. These changes continue to occur and to this day³⁰

Smuggling in contemporary international law

The principal distinguishing feature is its dynamic trafficking, because the methods

²⁹ Materials of the UN Commission on narcotic drugs Vienna - 29.01-02.02 1990.

³⁰ The report of the UN Commission on narcotic drugs Vienna - 08-12.11.1991 g.



and techniques for its use are constantly being improved.

As stated earlier, since September 11, 2001 Terrorism pays special attention from both the UN Security Council, International Court of Justice, and other intergovernmental organizations. Meanwhile, no less a danger to the international community is smuggling weapons to the planet's hot spots, as well as to carry out terrorist acts. The smuggling of narcotic drugs and psychotropic substances is not much of a threat because it undermines the efforts of governments to create and develop economic infrastructure to address the economic and social problems ³¹. There is a steady tendency to increasing volume of smuggling of cultural property and objects of nature and wildlife.

It is known that the composition of international crimes are different from international crimes, which are caused by an attack on peace and peaceful relations between nations and peoples, international security, the basics of international communication. Feature is the availability of qualified smuggling several formulations of the crime.

The smuggling of weapons and ammunition

In modern international law there is an equivalent concept of smuggling of arms and ammunition, namely contraband of war.

The smuggling of war - under international law a set of materials and items carried by the neutral countries in violation of their neutral status for one of the belligerents. Contraband of war can not be objects of care for the wounded and sick. Contraband of war shall be subject to forfeiture, together with the means of delivery. ³²

The specifics of the crime is manifested in the features of the subjective side, namely the requirement of specific intent to further arms shipments as possible to recover the revenue and (or) direct extermination. Thus the objective of the offense of smuggling of arms and ammunition includes not only actions aimed at the direct physical destruction of people in the implementation of military operations, but also in peacetime, in order to carry out terrorist actions.

So far, the UN was not accepted by the relevant resolutions on weapons smuggling. These issues are partially addressed in the United Nations Convention against Transnational Organized Crime (A/RES/55/25) on November 15, 2000, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (A/RES/55/255) on May 31, 2001.

The subject of crime are different kinds of weapons and precursors. The main qualified by the smuggling of weapons and ammunition, is that these crimes are the subjects of the state in most cases, the highest representatives of the government or individuals acting on their instructions, as well as natural persons (smugglers), organized group of persons acting under a single agreement.

³¹ Customs crime : the Nature and problem identification. A.Zhbankov. Siberian Law Herald. - 2004. - № 4. c.24-35 (p.31)

³² V.N. Dodonov, V.P. Panov, Rummyantsev O.G. The international law. Dictionary-Handbook / Under General edition Acad. MAI, doctor of law. V.N.Trofimova. - M. INFRA - M, 1998. - c.254

States and other subjects of international law are non-material (political) and the financial responsibility, as individuals - individual criminal responsibility. The official status of the person (head of state or government) does not exempt him from criminal responsibility.

Assign responsibility for the offense involves the degree of participation in the implementation of the subject of smuggling weapons, given that the unifying feature of the customer, Executive Director (technical artist), a mediator is the presence of direct intent.

The smuggling of narcotic drugs and psychotropic substances

The concept of crime remains the same, but the tendency to expand its contents revealed since 2008 in the relevant General Assembly resolutions 63/195 and 63/197 of 18 December 2008, resolution 64/179 of 18 December 2009, resolution of the Economic and Social Council, UN 2009/23 on July 30, 2009, resolution 2010/20 on July 22, 2010, resolution 2011/34 on July 28, 2011, the strategy of the United Nations Office on Drugs and Crime, 2008-2011.

The International Convention on Mutual Administrative Assistance in the prevention, investigation and combating of Customs offenses (Nairobi, 9 June 1977) Appendix X - Help in the fight against smuggling of narcotic drugs and psychotropic substances contain the rules on information cooperation among customs authorities in the face.

The peculiarity of the subjective side is that the intentions are realized, undermine the viability of a single nation, which causes economic and social problems of the state.

The subject of crime are different kinds of drugs of plant and synthetic origin.

The subjects of this crime are mostly individuals and legal persons (under the guise of pharmaceutical companies). Individuals bear individual criminal responsibility.

The smuggling of cultural property

Despite its importance as part of the cultural heritage of humanity, cultural values are too often treated as mere commodities, not only deprives them of the main cultural, historical and symbolic content, but also stimulates the activity that leads to their loss, destruction, displacement, theft and trafficking. In this regard, the smuggling of cultural property acquired such a serious scale³³.

In order to deal with criminal assault have been numerous attempts, dating back to 1954.

Resolution of the Economic and Social Council 2003/29 on July 22, 2003, entitled "Prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property." Resolution 2004/34 on July 21, 2004 and 2008/23 dated July 24, 2008, entitled "Protection against trafficking in cultural property," the General Assembly resolution 58/17 on December 3, 2003, 61/52 of 4 December 2006 and 64/78 of 7

³³ E/2010/SR.45 Measures in the field of crime prevention and criminal justice in the protection of the cultural values, particularly in relation with their illegal turnover of 22 July 2010



December 2009 concerning the return or restitution of cultural property to countries of origin, as well as other relevant United Nations resolutions.

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 November 1970.

Convention on Stolen or Illegally Exported Cultural Objects, adopted by the International Institute for the Unification of Private Law 24 June 1995 and the Convention on the Protection of Cultural Property in the Event of Armed Conflict, adopted May 14, 1954, and its two protocols, adopted May 14, 1954, and goda124 March 26, 1999³⁵, as well as such regional instruments as the Convention on the protection of archaeological, historical and artistic heritage of American States, adopted by the General Assembly of the Organization of American States, June 16, 1976, and the revised European Convention for the Protection of Archaeological Heritage, signed on January 16, 1992 ,

The United Nations Convention against Transnational Organized Crime

The International Convention on Mutual Administrative Assistance in the prevention, investigation and combating of customs offenses Nairobi, 9 June 1977) Annex XI - Assistance in the fight against smuggling of works of art, antiques and other cultural values, which include rules on information cooperation of States in the face customs authorities.

The peculiarity of the subjective side of that is looting of historical and cultural heritage separate state.

The subject of crime are different types of historical values of particular value to the cultural heritage is not just a single state, but of all mankind.

The subjects of this crime are mostly individuals and legal entities. Individuals bear individual criminal responsibility.

Smuggling of wild fauna and flora threatened with extinction

In order to combat the smuggling of wildlife and fauna, Member States shall take appropriate measures to prevent illicit trafficking in species of wild fauna and flora, endangered, and control, including the adoption, where appropriate, the necessary legislation for the prevention, investigation and prosecution of such trafficking, in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES, including its fundamental principles³⁶;

Devoted to the crime of Economic and Social Council decision 2001/12 of July 24, 2001 and 2003/27 dated July 22, 2003, regarding the illicit trafficking in protected species of wild fauna and flora, and resolution 2008/25 on July 24, 2008, concerning international cooperation in the prevention of illegal international trafficking in forest products, including timber, wildlife and other forest biological resources, and combat resolution 62/98 of the General Assembly on December 17, 2007, in which the Assembly adopted a non-legally binding instrument on all types of forests in which the Member States and

³⁵ Ibid, vol. 2253, No. 3511.

³⁶ United Nations, *Treaty Series*, vol. 993, No. 14537.

other parties were urged to strengthen bilateral, regional and international cooperation in addressing international illegal trade in forest products.

The subjective side - is treacherous destruction and damage to life and health of wildlife is threatened fauna species diversity.

The subject of the crime - different types of flora and fauna, endangered species, which are shared with the global community.

The subject of the crime - individuals and legal entities. Individuals bear individual criminal responsibility

Summary and concluding remarks

Modern international crimes are criminal acts that do not just inflict economic damage to the States, are making a social imbalance in society, but can also pose a threat to the security question, life and health of citizens of one state or the entire world community as a whole. We share the view Mansurov TT on contemporary international crimes, which differ greatly increased technical equipment, high level of organization, with significant financial resources. Their main feature is a clear - a blurring of boundaries between international crimes and crimes committed at the national level. Moreover, in the exercise of criminal offenses of terrorist organizations has been developing with the drug, as well as criminal organizations involved in illegal arms and human trafficking for the purpose of illicit trafficking³⁷.

As a result, smuggling of arms, narcotic drugs and psychotropic substances by virtue of increased social danger to the international community may qualify as an international crime. The fact that no contraband import / export of weapons is impossible to carry out certain war crimes and acts of terrorism.

As for the smuggling of narcotic drugs and psychotropic substances and allow the possibility of allocating a separate international crime of persecution because of his goal: the extermination of people secretly a separate state.

In fact, smuggling may be cited as an international crime, because it undermines the fundamental principles of international law, threats to international peace and security.

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JEL Classification: K34, O2, O4, O18

CUSTOMS SERVICE OF INDEPENDENT AZERBAIJAN IS SUCCESSFULLY WALKING THE PATH OF DYNAMIC DEVELOPMENT

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Abstract

The article is devoted to research of dynamic development of Customs Service of the Independent Republic of Azerbaijan. The issues of strengthening the legal framework and modernization of the customs service have been analyzed. The principle of "Single window" has been highlighted as the main factor to simplify transport and trade flows. The results of combating illicit trafficking have been shown.

Keywords: development, modernization, strengthening, customs, authorities, changes.

Introduction

20 years ago when Azerbaijan has gained its independence, on January 30, 1992, there has been formed the State Customs Committee. The State Customs Committee being of the same age as the independent Republic of Azerbaijan, has passed through difficult but successful path of development during the last period. Over the years in the country the Customs Service has been formed that is compatible with the recognized world standards.

In the nineties of the last century, there had been achieved tremendous successes in socio-economic development of the country, its integration into the global economic system owing to the far-sighted policies and hard work of our national leader Heydar Aliyev, in spite of the harsh conditions of the first years of independence.

Today, the realization of the course, defined by Heydar Aliyev upon the comprehensive development of the country and ensuring a decent future for our people and carried on successfully by the President Ilham Aliyev, provides a favorable economic climate in the country and the rapid development of the state. Heydar Aliyev enabled the Azerbaijani government and the economy of the country to get through the chaos and degradation of the early nineties and set to work for the implementation of urgent measures in those years aimed at rehabilitation and economic development of the republic. At the same time an important task brought forward was the maximum use of natural resources and ensuring the national output of goods in foreign markets. At the same time one of the main goals was working out trends in the development of foreign trade relations. That is why the implementation of a unified customs policy, as an integral part of the domestic and foreign policy, was regarded as the primary task of the customs service.

Highly appreciating the role of Customs in economic development, Heydar Aliyev has always kept in focus the activities of this body. Namely the exactingness of Heydar Aliyev was the key guarantee of success of customs authorities of the country, which eventually became a credible tool to protect national and economic interests of the state, promoting the socio-economic development.

In 1997, Heydar Aliyev delivered a keynote speech at an enlarged meeting dedicated to the fifth anniversary of the State Customs Committee of Azerbaijan Republic, where he has outlined the priorities of the Customs Service for that period and subsequent years as well as has given his instructions for organization of customs control and strengthening the fight against smuggling and enhancing financial discipline.

Positive results of personnel changes in the guidance of the State Customs Committee, made in 1995, didn't take long to have an impact since the first months. First of all, the customs authorities have recruited educated, capable and qualified personnel. On the other hand, as a major challenge has been put forward to meet the obligations of the annual budget forecasts taking into account the role and importance of the customs service in the creation of a new structure of the State Customs Committee, opening new customs offices and posts and at the same time, implementation of capital construction and renovation of office buildings, development of logistics, acquisition of new control devices and equipment, harmonization of customs legislation with modern standards and budgeting. For this purpose, the tasks of strengthening the financial discipline, the collection of customs duties for the goods and vehicles imported into the country and strengthening the control over the suppression of facts of evasion from the tax have been



put forward as priorities. Systematic measures are aimed at fulfilling these tasks. Thus, the positive results were achieved in the short term.

During 20 years, especially since 1995, there was done extensive work on the development and modernization of the customs service. During these years, there were strengthened the legal framework of customs, adopted normative-legal acts meeting the European standards, established close cooperation with influential international organizations. During the past 15 years there have been also implemented measures to enhance the customs infrastructure: renovation and construction of border crossing points and customs offices and posts were completed, being provided with modern equipment and facilities. On the basis of government programs for socio-economic development, as well as the "State Program of development of customs system of the Republic of Azerbaijan for 2007-2011", approved by the relevant decrees and orders of the President of Azerbaijan Ilham Aliyev, all sectors of the economy, including the customs service were rebuilt. During the same period the infrastructure of customs system has been completely updated. Only within 2010-2011, the border checkpoints of Astara Customs Office and the "Bilasuvar" - Bilasuvar customs administration, as well as customs posts "Sinig korpu" - Tovuz Customs, "Mazimchai" - Balakan Customs Administration and the "Samur" - Khachmaz Customs were built and handed over with the participation of Azerbaijani President Ilham Aliyev to the use of customs employees. At the present time, in accordance with the decree of the President of the Republic of Azerbaijan "On approval of "the State Program for Socio-Economic Development of Regions of Azerbaijan Republic during 2009-2013" of April 14, 2009, the Khudat border crossing point, as well as the Customs and warehouse terminal in Bilasuvar, Tovuz and Balakan districts are under construction. In addition, since January 1 of 2009, the border-crossing procedures were considerably simplified and created favorable conditions for transport and trade flows due to the introduction of the principle of "Single window" on the state border checkpoints, with the result that the time loss reduced to a minimum in accordance with the decree of the President "On application of the principle of "Single window " on checking the goods and vehicles transported across the border checkpoints of the Republic of Azerbaijan" of November 11, 2008. In accordance with the decree, the authorities of a single state agency to implement the principle of "Single window" on checking the goods and vehicles transported across the border checkpoints of the Republic of Azerbaijan has been assigned to the State Customs Committee.

In Azerbaijan, measures aimed at improving the customs administration, including the modernization of material-technical base of the customs authorities have always been in the spotlight. From this point of view, the opening a new administrative building of Motor Transport Customs Administration of the State Customs Committee in Baku in October of the last year was of great importance. The construction of the new facility was made possible due to the instructions to the relevant authorities of the republic for the simplification of procedures based on the principle of "Single window" of the customs clearance, maintaining of the State Registration and recording of vehicles imported into the country, issuing the state licenses of registration and the mark of state registration, as well as rights to own, operate and dispose of property in light of the decree of the President of Azerbaijan, signed on February 25, 2011. Simultaneously with the decree "On some

measures to strengthen social protection of the State Customs Committee of Republic of Azerbaijan, facilitation and transparency in customs affairs," the State Customs Committee was requested to ensure receipt of all customs payments only through banks or with the help of plastic cards.

In this connection, the customs clearance of all types of vehicles and equipment of various purposes on the import-export operations is carried out in the new administrative building of the Motor Transport Customs Administration, provided with necessary technical means based on the "E-priority". In addition, two electronic "information cabins" were installed in the building of this administration in order to inform people addressing the department for customs clearance and other requests.

Thus, the development of customs affairs in the Republic of Azerbaijan is based on several key areas. One of them is the implementation of fiscal policy. However, in the early years of forming the customs service in the country, the situation in this area left much to be desired.

The current state budget allows the government to aim at resolving social and economic problems of society and customs fiscal function, making a significant contribution to budget revenues is diverging considerably in comparison with the period of the first years of its formation. This is also evidenced by the statistics of customs duties. If the customs authorities have allocated to the state budget 13.6 million manat in 1993, this year is projected to increase this amount to 1 billion 200 million manats. Meanwhile, in 2011, there were transferred 1 billion 41 million 528.5 thousand manats of customs duties and taxes (1 manat is equal to 1, 272 U.S. dollars) against the projected revenues of \$ 1 billion 140 million manats.

The last year there was also carried out the work, which was important for improving the legal framework of customs. Thus, in order to improve legislation on customs affairs of the Republic of Azerbaijan, study and pursue the implementation of international standards relating to customs affairs, as well as reflection of the provisions of the Kyoto Convention "On the Simplification and Harmonization of Customs Procedures" in the State Customs Committee in the national customs legislation within the project of "Improvement of the Azerbaijan Customs Service" prepared by the European Union and United Nations Development Program, there was developed and submitted for consideration to Milli Majlis the new Customs Code of the Azerbaijan Republic, adopted by the Parliament of the Republic, approved by Presidential Decree of 15 September 2011 and entered into force on 1 January of 2012.

To protect the economic interests and security of the Republic of Azerbaijan, there were also taken targeted arrangements in 2011 to combat smuggling and other offenses in the customs sphere. All the activities of operational units of customs authorities being mostly of precautionary, preventive and operative-search nature were pointed to the detection and suppression of smuggling channels, evidence of evasion of customs payments and other offenses, as well as the investigation, preliminary investigation of the facts of crime, as a result of which the guilty ones were held responsible.

First, I have to note that as a result of measures taken to enforce the "Programs to combat illicit trafficking in narcotic drugs, psychotropic substances and their precursors and drug abuse (2007-2012)", approved by Decree of the President of Azerbaijan on June



28, 2007, 461 facts of attempt of illegal distribution of various drugs were registered for the period from 2007 to 2011, detained and removed from circulation the extremely dangerous "heavy" and hard drugs in quantities greater than 1 ton of 345 kilograms, including more than 924 kilograms 344 grams of hashish, 203 kilograms 666 grams of heroin, 188 kilograms 469 grams of opium, 747 kilograms of four grams of marijuana and 24 kilos 400 grams of methamphetamine. On the facts of drug trafficking were prosecuted 531 suspects, 70 of whom were women. In general, the growth of the cases of using the children as drug couriers has given rise to the serious concern in recent years.

As to the year of 2011, 245 of 18 330 offenses identified at the time were of the criminal nature. Last year, 455 legal persons and 17,594 individuals were attracted to the administrative proceedings on 18,085 facts of administrative violations of customs rules and they were imposed fines of \$ 1 million 418 000 022 manats, and confiscated goods amounting to 123 000 541 manats. In addition, last year 227 kilograms 565 grammes of narcotic drugs and psychotropic substances seized on 138 facts.

I have to note that in 2011, the facts of illicit traffic in narcotic drugs and psychotropic substances dominated in the statistics. Despite the preciosity of the methods of fighting against smuggling and drug trafficking in many countries, the international drug mafia is in progress. Unfortunately, the geographical location of Azerbaijan attracts drug traffickers, increasing the possibility of transforming our area into a kind of illicit drug trafficking corridor. However, Azerbaijan undertakes resolute measures against this evil.

Particular attention is paid also to the automation of information support of law enforcement activities of customs authorities, to improve the risk management system, suppression and prevention of addiction to the actions of a criminal nature in foreign economic activities for the sake of increasing the percentage of crime detection and other offenses in the customs. The State Customs Committee is implementing its noteworthy work to create a system of risk management, enhance operational and search activities, introduction of modern technical means of verification and the rising the professional staff. Along with law enforcement activity in the fight against customs offenses, the Azerbaijan Customs Service is pursuing educational work too. One of these events was the final exhibition of the contest posters and photos "Let us say no drugs!", opened in January 2011 in the Museum Center in Baku. Along with the State Customs Committee and the Ministry of Culture and Tourism, the Union of Artists of the Republic took a direct part in organization of the event. The State Customs Committee has opened Exhibition under the same name in the 54th session of the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations, held in Vienna in March 2011. During the exhibition, visitors were provided with information on measures taken in Azerbaijan against the illicit trafficking of drugs, preventive and educational work in the community to explain the serious consequences of drug consumption.

Another event was held in the Museum Center in October of the last year as part of the International Conference on combating illicit trafficking in narcotic drugs held in Baku. An exhibition of the International Cartoon Contest "Molla Nasreddin - Azerbaijan" was opened under the slogan "No to Drugs!" and then there was taken place a victory

ceremony. 307 artists from 63 countries have taken part in the competition, supported by the State Customs Committee, Ministry of Culture and Tourism, the International Federation of Cartoonists Organizations (FECO) and organized by the Association of Cartoonists of Azerbaijan. 670 works were represented. Creative people from different countries brought very interesting and original works to Baku, thus elevating his voice against such a serious social ills like drug addiction.

One of the main strategic directions of the State Customs Committee involves the projects of information and communication technologies. In recent years, important steps were undertaken in simplification of customs procedures and trade facilitation due to the implementation of a number of projects. Development of ICT has been carried out on the basis of the "State Program on development of the customs system of the Republic of Azerbaijan in 2007 - 2011." In general, a large-scale planning and development and implementation of information and communication technologies have been started in Azerbaijan Customs Service after 1995. The period from 1995 to 1999 became the first years of the priority direction of setting corporate networks. At the same time, the information traffic between customs authorities were carried out only by the physical data collection and recording them in a single database.

In 1999, the ICT's strategy for the customs service has been built to international standards. Thus, the project "Strengthening the capacity of the State Customs Committee of Azerbaijan Republic and the creation of networks of information" has a positive voice in the development of the customs service in the sphere of development of an automated control system. In the course of the project implementation there was provided the direct information exchange between the State Customs Committee and the customs authorities in on-line regime as well as coverage of a network of border posts, embedded radio channels and the technology "frame-relay".

Already in the period from 2000 to 2009, we have started to implement the projects for automation of customs affairs, the use of computer technology in business management, software development of the corresponding customs procedures and creating a single database.

Beginning from 2009, the State Customs Committee passed on a new phase - the organization of an automated control system of customs affairs on the Web-based technologies. Over the years, the SCC corporate network has been built on new technologies based on fiber-optic lines and the appropriate server system has been reformed. There was also designed and implemented the project "Single Automated Management System (SASU)." Currently, the SASU is working in the main areas of customs affairs in all the customs authorities, covering customs clearance and other customs procedures.

The successes of the Azerbaijani Customs in this direction were the subject of discussion at various international events and excited considerable attention of many countries. In witness whereof, the representatives of the customs services of Uzbekistan, Russian Federation, Ukraine, Macedonia and Argentina visited Azerbaijan to review the projects and the ICT strategy in the field of electronic customs services in the State Customs Committee of Azerbaijan.



The State Customs Committee holds its third year international scientific-practical conference devoted to information and communication technologies in customs in order to study the experience of adoption of information systems and information technology in customs activity and to determine the future direction of information technology in customs. In the course of these conferences there have been discussed information and communication technologies and electronic customs services, as well as the role of ICT in customs and business cooperation and the organization of electronic services in state agencies. So, in September of the last year there was held the Third International Scientific Conference on "Electronic Customs Service: a Look into the Future" in Baku, which was attended by over two hundred representatives of governmental and nongovernmental organizations from around 20 countries.

The State Customs Committee makes all-out efforts in the direction of the development and strengthening of international cooperation. Since 1995, there had been signed various documents from forty countries on customs cooperation. As a result of consistent effort to strengthen the contractual framework for development of bilateral customs cooperation, only during 2011, the intergovernmental agreement on cooperation and rendering of mutual assistance in customs affairs was signed with the Republic of Argentine, United Arab Emirates, the Republic of Serbia and the State of Israel. It should be noted that the cultural measures are appropriated a broad place in the State Customs Committee. By this means, it is made a significant contribution to the dialogue of cultures of East and West. Thus, in March 2006, there was created Museum of Customs of the State Customs Committee of the Republic of Azerbaijan and in January 2007 the first visitors of the Museum to the memory of Heydar Aliyev and the Customs subdivision of the Museum of History of the State Customs Committee were received in the administrative building of self-financing foreign trade association "Azerterminalcomplex". The State Customs Committee of the Republic of Azerbaijan has organized various exhibitions in Belgium, Switzerland, the Vatican and the Russian Federation, Austria, France and Argentina, where were presented the examples of the modern pictorial art, reflecting the history of the Azerbaijani customs, as well as various items of cultural and historical value that confiscated by customs authorities at different times.

Summary and concluding remarks

As a whole, the Azerbaijani Customs Service, taking its worthy place in the World Customs family, constantly extends ties with relevant international organizations. It is notable that as early as 2003, the Regional Training Center of the World Customs Organization has set up its activity in Baku and in October 2011, there was opened the Regional Office for Capacity Building of the World Customs Organization in the capital city of Azerbaijan. The selection of Azerbaijan for the establishment of the Regional Office to strengthen the capacity of the WCO was entirely natural in view of management's attention to our country's customs service and simultaneously, the impressive success achieved by the customs service. Meanwhile, many countries of the European Union would like this office would be opened namely in their territory, but at the last moment the question was decided in favor of Azerbaijan. It is to be noted that 174 countries voted for

opening of an office in our country, as a result it was decided that the activities of one of the six regions of the WCO will be coordinated from Baku. The activities of the office, covering customs services of fifty-one countries of the European continent and CIS countries will undoubtedly contribute to further increase the international prestige of Azerbaijan and the level of knowledge of national staff in accordance with international standards and will provide an opportunity for further professional development.

JEL Classification: G18, K42, K49

CUSTOMS CONTROL IN THE 21st CENTURY

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Customs of the National Tax and Customs Administration of Hungary

Abstract

The article is devoted to reviewing the general concept of customs and customs duties. The main characteristics of Customs Unions have been analysed. Customs procedures and customs control as essential functions of customs activity have been considered.

Keywords: customs, procedures, control, union, duties, policy, tariffs, regulation.

Introduction

The institution of customs is as old as human civilisation. In the history of mankind the collection of customs duties appeared together with the production of goods and with the regular exchanging of goods, as an important income source of the prevailing power. Decision makers with different contents, but practically in all the eras of history preferred to apply it as a source of treasury income and for regulating the commerce of specific products.

It is our firm belief that the concepts and theoretical /scientific/ groupings included in the first section of our study should be managed as facts, however, in the case of an academic study; from the aspect of our topic they cannot be circumvented. Establishing modern age customs control is essential in order to allow customs to exert the widest impact possible for the purpose of protecting and developing the economy.

I. The concept of customs, the grouping of customs

I.1. The concept of customs

Customs is an economic and commercial policy device applied in the form of public tax, which is integrated into the domestic prices of goods imported from abroad, and through this it may be used for industry protection and commercial policy purposes.

Although the above concept contains a satisfactory definition only for import duties, we should not forget that customs duties may be grouped according to several aspects as well.

I.2. Grouping of customs duties

A) Based on its subordinating impact:

- Budget revenue source
- Internal economic regulation (within the state borders)
- External commercial policy function (outside the state borders)

B) On the basis of the direction of traffic:

- Import duty
- Export duty
- Transit duty

C) According to the impact of customs as regards timing:

- Permanent duty: customs applied continuously without any time limitation
- Seasonal duty: applied in a defined calendar season generally for the purpose of economic interests (e.g. in the case of agricultural products)

D) According to the extent of protection provided by the customs:

- Countervailing customs duty: its purpose is to ensure the equal opportunities for the domestic market by taking away the difference between the higher domestic price and the lower world market price in the form of a customs duty
- “Nurturing customs duty”: its purpose is to limit the import of certain products with the aid of high customs duties

E) Based on the base of customs levying:

- Ad valorem duty: the value of the imported product expressed in money (customs value) represents the basis of levying the customs duty
- Unit based customs duty: a permanent amount established for a natural measurement unit of the imported product is the customs duty payable
- alternative duty: using from the ad valorem customs duty or the unit based customs duty the one that is more favourable from the aspect of the state revenues
- Compound duty: applying ad valorem customs duty and unit based customs duty simultaneously

F) According to the method of establishing the customs:

- Autonomic duty: it is defined independently based on the sovereignty of the given state
- Contractual duty: it is established by two or more states in an agreement through international negotiations

G) According to commercial political objectives:

- Preferential customs duty: applying a lower customs level than the average in order to facilitate the import originating from some country or country group
- Customs duty based on the “principle of most favoured nation”: WTO (World Trade Organization) defines for its contracting partners the application of the principle of most favoured nation.

- Discriminative duty: a customs duty that is higher than the average customs duty, possibly a prohibitive customs duty

II. Customs policy and its system of means

1) Customs policy is an integral part of economic policy and trade policy. As it is reflected by its name it is closely related to customs, that is, it is one of the means that regulates economic relations existing with foreign countries.

2) Customs policy has a wide array of means for implementing the foreign trade related objectives of the economic policy. It uses not only customs duties, but in addition to customs duties a number of other means as well in the interest of achieving the targets set. Its system of means may be divided into internal and external means, and the internal system of means may be further broken down to customs type means and other means beyond customs.

We will review the role of the customs type means that is relevant from the aspect of our topic.

3) Customs has three important roles:

A) Customs due to its public tax nature means revenue for the state budget. This is the oldest function of customs, since for the purpose of gaining revenues already in the Middle Ages they collected customs duties at the bridges, at the entrances of the castles.

The higher is the customs level of a country the greater is the budget revenue. Thanks to the different international negotiation series the average customs levels of the specific countries have been significantly reduced, and as a result customs already does not play a decisive role in respect of the revenue of any of the countries.

There are also customs duties that are exclusively levied to gain revenues, that is, they do not protect any domestic production, and they cannot be used for trading policy objectives either. Usually the products involved in these kinds of customs are not produced domestically, or the customs duty is so low that it does not influence the importer in decision making. These customs duties are called fiscal customs duties.

B) Customs duties had an important role since the starting of industrialisation in protecting domestic production. High customs duties cause a disadvantage for foreign suppliers on the market, since the customs duties are integrated into the prices of the import goods and thus it is more difficult for the foreign products to compete with the domestic products. Therefore customs duties may reduce or terminate the competitiveness of a given import product on the domestic market. These protective customs duties implement their tasks if there is domestic production that has to be protected from competition permanently. (E.g. newly launched industrial sectors, employment policy objectives, etc.). When establishing the level of customs protection the development level of the country also plays a role in addition to the mentioned aspects. A less developed country protects its market with higher customs duties against the more competitive products of the more developed countries.

However attention has to be paid, since these customs duties cannot be applied in the long term, since companies that are protected are not forced to improve their competitiveness.

As a result of integration and international negotiation these protective customs duties are gradually eliminated. However, we think it is important to note that this cannot be realised from one moment to the other, that is, it is not possible to force domestic production that has been protected till now by customs duties to face competitive import. Therefore in Ukraine there is a need for a so-called transitional period, during which period the given industrial sector may get prepared for competition. In Hungary this transitional period lasted for ten years.

C) The previous element already includes the most important role of customs, that is, the fact that they may be used for trade policy objectives as well.

Till now we primarily examined the economy of a given country from the side of import. Naturally one of the main objectives of trading policy is to increase export revenues. In the interest of facilitating export activities in the most important relations it is necessary to ensure the conditions of better market entry, which may be achieved by reducing the customs duties.

Customs duties may be used for achieving advantages through the allowances given from them, that is, to provide for the export products a more favourable entry to the market. Naturally this is true the other way around as well, that is „in the case of a disadvantageous distinguishing” the country may expect a similar response. A customs system that serves the regulation of import efficiently may be the basis of international customs contracts. The contractual form means stability, security for the exporter as well.

III. Customs Union

The essence of customs union is the fact that the countries participating in it do not apply in respect of trade taking place between them customs duties or fees that have the effect of customs duties, while they apply against other countries a common customs tariff.

The customs union theory is one of the decisive directions of neoliberal economic theory. Its main theorist is *Jacobo Viner* (1892-1970) – Canadian economist, who between the two world wars headed together with *Frank H. Knight* the school of *Chicago* –, and who introduced the concepts of “trade creation” and “trade diversion”. The “trade creation” concept refers to the fact that customs unions create internal market (the market “expands” within the customs union), while the “trade diversion” concept refers to the fact that customs duties do provide protection from the external market (the members of the customs union prefer to purchase from each other without customs and not from third countries). Therefore a customs union may provide a solution for both the believers of liberalism and the believers of protectionism, since a customs union may be interpreted as the first step taken towards global integration (liberal aspect), or as a mechanism that provides protection against the global tendencies (protectionist aspect).

According to *Viner*, a customs union has three main features: Complete elimination of the customs duties between the member countries, unified customs is levied to import arriving from outside the customs union, and they distribute the customs revenues according to the rules that are laid down in the contract that is signed by the member countries.

Establishing and operating the customs union has taken place several times during history, and even at present there are customs unions operating at several places in the

world: e.g. customs union of Russia-Belarus-Kazakhstan, or the customs union of the European Union. The currently existing customs unions are listed in Appendix 1.

After having clarified the above concepts we have to examine who is authorised to collect the customs duties. It may be clearly declared that each state manages the right of customs collection as a state monopoly. We may say this also when in this section we will examine in detail the European Union. The fact that customs revenues are introduced into the budget of the European Union is due to the fact that the specific countries transferred this monopoly right of theirs to the Union in a contract. However, it has to be mentioned that 25 % of customs revenues are paid to the budget of the country that implemented customs clearance, under the legal title of refunding the costs of customs clearance.

The basic purpose of establishing the European Economic Commission was to establish the common market of the member states. The common market - that had been already replaced since the “Single European Act” with the concept and objective of the unified or internal market – has been the decisive reason for establishing and operating the European integration from the start till our days, and it is an essential aspect that is integrated into all other targets.

The common market is a territory, within which the products, services, the capital and the workforce may freely move without any limitation. In the European Union they have been already interpreting the principle of free movement more widely than the workforce, that is, they have been interpreting it for people in general, since the Maastricht Treaty.

The essence of the concept of the unified market is the fact that the EU is a single economic region, which operates similarly to a national market. Exactly because of this the free movement of the goods altogether is the essence not only of the unified market, but of the operation of the EU as a whole.

The free movement of the goods, that is, the free trade of products within the EU is ensured by the setting up of the customs union and the elimination of the quantity limits that existed between the members.

GATT (General Agreement on Tariffs and Trade) was signed in 1948. Article 24 of GATT already dealt with the issue of customs union.

According to the Treaty of Rome signed in 1957 in the interest of establishing the Customs Union they eliminated the customs duties that existed between the member states and also the “customs like” fees having the same effect as customs duties, and they prohibited the levying of new ones. Council Resolution (66/352/EEC) that was passed on July 26, 1966 defined the deadline of July 1, 1968 for achieving this target.

The Customs Union means the elimination of customs duties and fees of the same effect as customs duties within the Community, and the conducting of a common trade policy based on a common customs tariff in respect of the non-member states.

However in addition to customs duties the Treaty of Rome also ordered the elimination of the application of quantity limitations that existed between the member states (quotas) and the elimination of measures that are equivalent with quotas. However, while it was easy to implement the elimination of the quantity limitations similarly to the elimination of customs duties, the elimination of measures that have similar effects as quantity restrictions caused serious difficulties. Since these measures appeared in the

member states in the most diverse forms, moreover they have proven to be a means that limited trade efficiently.

In addition to eliminating customs duties and fees of similar effect the other component of the Customs Union is represented by the common external customs tariffs. The common customs tariffs represent the main means of regulating trade with the external, so-called third countries. The essence of common customs tariffs is that the same customs duty has to be paid everywhere independently of the place of entrance for all products arriving from outside the Community to any of the countries of the Community, and if the customs duty had been already paid at the time when a product entered any of the member states, then the product may be freely moved to any other member state.

In addition to eliminating customs and fees of similar effect and applying common customs tariffs against third countries the full implementation of the customs union had been achieved by the unifying of the customs legislation and the customs procedures, the simplification of the formalities of control and the development of customs co-operation.

In view of the fact that Ukraine implements a significant part of its trade with the European Union, in the following I will quote the legislative definitions from the Common Customs Code of the Community.

IV. Customs procedures and customs control

IV.1. Customs control

The concept of ‘customs control’ is defined as follows in Point 14 of Article 4 by the Common Customs Code, among the interpreting provisions:

14. ‘Customs controls’ means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts.

When interpreting the legislation it may be established that the primary task of customs control is to implement the customs procedures, to implement the different examinations that are to be done during these procedures (goods, utilisation, authenticity, documents, etc.).

However, according to our opinion customs control may be done in several forms as well:

A) Total customs control

The purpose of this kind of technology is to check each person and consignment that is involved in the customs procedure. It is an obvious disadvantage of this kind of customs control system that it may make the operation of the economy significantly more difficult, and in many cases it may make it even impossible. The reasons of this include on one side the fact that customs administration does not have a capacity that would allow - in the case of operating this kind of customs control - the implementation of customs

procedures in a short time without a long time of waiting. On the other side there are such product types, e.g. commodities, in the case of which the justification of total control can be strongly questioned.

B) Spot-check based customs control

The existence of risk management is already an essential prerequisite of establishing spot-check based customs control. Since this type of customs control may be efficiently applied only if there is a system in the background that is able to filter out those consignments, which may represent risks, and the above mentioned examinations are implemented in the case of these consignments.

C) Administrative customs control

The essence of administrative customs control is to implement the physical examination of the consignments in the basic procedures only in exceptionally justified cases. The existence of the risk management system already mentioned in the previous point is a prerequisite of this type of customs control system as well. Moreover it is necessary to operate such a post-clearance control system as well, which is capable of implementing the general or special purpose examination of the specific economic operators in case already all the papers and documents needed for implementing control are available. We will deal both with risk analysis and with post-clearance control in a separate chapter.

IV.2. Customs procedures

The concept of customs procedures is defined by the Community Customs Code among the interpreting provisions in Point 16 of Article 3, as follows:

16. *'Customs procedure' means:*

- a) *release for free circulation;*
- b) *transit;*
- c) *customs warehousing;*
- d) *inward processing;*
- e) *processing under customs control;*
- f) *temporary admission;*
- g) *outward processing;*
- h) *exportation.*

The customs procedures summarise those rules, which based on the different legal titles have to be applied in the course of the customs clearance of goods that are imported to the territory of the community.

It is important to note that the Community Customs Code took also into consideration in the course of defining the customs procedures the demands of the economy and the market, and for this end so-called economic customs procedures had been also established.

The primary purpose of customs procedures with economic impact is to define special rules, with the aid of which the customs clearance of goods delivered in the framework of specific, certain type of economic contracts should take place with the least disturbance possible, facilitating through this as well the operation of the economy, its growth.

V. Demands of the economy

Examining the economy related, market demand of the 21st century existing in respect of customs we may conclude that on the basis of the demands the path of the development of customs is determined. Its pre-defined nature is given by the fact that it has to clearly fill in an assisting role within the economy of today. This assisting role, in addition to the previously outlined function means that it should slow down the processes of the economy and of trade the least extent possible, and at the same time it should be able to meet its core tasks that have been outlined above.

Examining the economic processes of today from the aspect of customs we may conclude that more and more companies plan their operation according to a „just in time” system, that is, they try to spend the least time possible for on warehousing and storing the goods. The basic danger of this system is represented by the consignments not arriving by the deadline to the premises of the company, because e.g. customs clearance procedures last longer than what may be “expected”. Therefore the reduction of costs may be approached from the aspect of customs from two sides. On one side the storing capacity should be reduced to the least level possible, and on the other side the waiting time, “idle time” should be reduced to the minimum level or it should be eliminated.

Naturally there is no economic interest that could dictate the state to give up its customs duty collection right or not to exercise its related control right. There is only one question, namely, in what form the exercising of this right should take place. This statement is especially true, since if the state would not implement customs control, then non legal trade would spread, which would reduce the competitiveness of the legal enterprises.

It is very important to simplify the procedures as far as possible. We will deal with this issue in a separate chapter. These simplifications are also a kind of specialties as well, since they define for defined situations a procedure practice that deviates from the general practice exactly in the interest of speeding up the procedures, and to minimise the time that is spent with customs clearance.

In order to implement the above targets the economic operators are ready to bring sacrifices and in certain cases to even take over the execution of certain tasks from the authorities. Implementing this will yield a “double benefit” for the state, since on one side it will be able to reduce its expenditures by having to use less resources for implementing authority work, and on the other side he enterprises create workplaces with undertaking this task. The workers employed in this field will pay tax, will purchase, thus they will contribute to the fostering of the development of the economy.

Naturally it is a key issue to whom and under what conditions it is possible to transfer the tasks of the authority, that is, the way we should enforce the “principle of trust”. We think that the state may give out from its hands these tasks only after a defined “filtering”. Obviously this one-time filtering means an additional burden for the authority. However the authority may achieve a significant saving of the resources after implementing this filtering. The way the EU wishes to solve this problem is discussed in a separate chapter.

VI. Simplifications, economic customs procedures

VI.1 Simplifications

As we have mentioned in the previous chapter it is the essential interest of the enterprises that special procedural rules should be applied in certain cases, which will allow less administration compared to the usual one and which will allow the implementation of customs clearances without the presence of the authorities.

According to Article 76 of the Community Customs Code and Article 253 of the Implementation Order it is possible to implement customs clearance with a simplified procedure:

Article 76

(1) In order to simplify completion of formalities and procedures as far as possible while ensuring that operations are conducted in a proper manner, the customs authorities shall, under conditions laid down in accordance with the committee procedure, grant permission for:

a) the declaration referred to in Article 62 to omit certain of the particulars referred to in paragraph 1 of that Article or for some of the documents referred to in paragraph 2 of that Article not to be attached thereto;

b) a commercial or administrative document, accompanied by request for the goods to be placed under the customs procedure in question, to be lodged in place of the declaration referred to in Article 62;

(c) the goods to be entered for the procedure in question by means of an entry in the records; in this case, the customs authorities may waive the requirement that the declarant presents the goods to customs.

The simplified declaration, commercial or administrative document or entry in the records must contain at least the particulars necessary for identification of the goods. Where the goods are entered in the records, the date of such entry must be included.

(2) Except in cases to be determined in accordance with the committee procedure, the declarant shall furnish a supplementary declaration which may be of a general, periodic or recapitulative nature.

(3) Supplementary declarations and the simplified declarations referred to in subparagraphs 1 (a), (b) and (c), shall be deemed to constitute a single, indivisible instrument taking effect on the date of acceptance of the simplified declarations; in the cases referred to in subparagraph 1 (c), entry in the records shall have the same legal force as acceptance of the declaration referred to in Article 62.

(4) Special simplified procedures for the Community transit procedure shall be laid down in accordance with the committee procedure.

Article 253

(1) The procedure for incomplete declarations shall allow the customs authorities to accept, in a duly justified case, a declaration which does not contain all the particulars required, or which is not accompanied by all documents necessary for the customs procedure in question.



(2) *The simplified declaration procedure shall enable goods to be entered for the customs procedure in question on presentation of a simplified declaration with subsequent presentation of a supplementary declaration which may be of a general, periodic or recapulative nature, as appropriate.*

(3) *The local clearance procedure shall enable the entry of goods for the customs procedure in question to be carried out at the premises of the person concerned or at other places designated or approved by the customs authorities.*

(4) *Any person may apply for an authorisation for the simplified declaration or the local clearance procedure, to be granted to himself for his own use or for use as a representative, provided satisfactory records and procedures are in place allowing the authorising customs authority to identify the persons represented and to perform appropriate customs controls.*

Such application may also concern an integrated authorisation without prejudice to Article 64 of the Code.

(5) *The use of the simplified declaration or the local clearance procedure is conditional on the provision of a guarantee for import duties and other charges.*

(6) *The holder of the authorisation shall comply with the conditions and criteria laid down in this Chapter and the obligations resulting from the authorisation, without prejudice to the obligations of the declarant, and the rules governing the incurrance of a customs debt.*

(7) *The holder of the authorisation shall inform the authorising customs authority of all factors arising after the authorisation is granted which may influence its continuation or content.*

(8) *A reassessment of an authorisation for the simplified declaration or the local clearance procedure shall be carried out by the authorising customs authority in the following cases:*

a) major changes to the relevant Community legislation;

b) reasonable indication that the relevant conditions are no longer met by the authorisation holder.

In the case of an authorisation for the simplified declaration or the local clearance procedure issued to an applicant established for less than three years, close monitoring shall take place during the first year after issue.

As it can be seen on the basis of the above legal provisions, the quoted simplifications had been introduced without exception in order to minimise the customs clearance time and to be able to implement the customs procedure even without permanent customs authority supervision.

If we look at the background of these simplifications then we may see that these simplifications may take place only in those cases when the possibility of inspection is ensured for the customs authority (the state). In addition to ensuring the possibility of inspection, simplification is possible only if certain defined conditions are met, after a separate customs authority authorisation.

VI. 2. Customs procedures with economic impact

As we have mentioned it in the previous chapter, in case goods are delivered under certain legal titles the application of the general rules of customs clearance is very bureaucratic without any justification and in certain cases it does also mean significant financial burdens for the economic operators. In order to avoid these unjustified burdens the Community Customs Code defines certain customs procedures that have to be applied in these special cases.

Naturally these special rules similarly to the simplifications may be applied only on the basis of the prior authorisation of the customs authority. Let us briefly review these customs procedure with economic impact.

A. Customs warehousing

Customs warehousing has to be applied in case the fate of the customs law fate of the non-community goods cannot be settled.

The essence of this procedure is the fact that the party requesting customs warehousing is not obliged to pay the customs debt until the customs law fate of the goods is not settled.

Approaching the issue from the other side, customs warehousing is important in the case of export as well, since in the case of export goods under customs warehousing such measures may be applied that are generally connected to the exporting of these kinds of goods.

B. Inward processing

In the case of inward processing the application of the customs procedure may be closely connected to “jobwork” type of economic contracts, although we have to mention that other legal titles may be applied also in the case of these customs procedures. This kind of customs procedure of economic impact assists primarily the operation and development of less developed economies, particularly in countries, where the labour expenditure costs are significantly lower than in the states that order “jobwork”.

Therefore from the above it can be concluded that in the given country the goods managed with the inward processing customs procedure (with added value) are returned to the country of their origin.

C. Processing under customs supervision

This type of customs procedure of economic impact allows the using of such non community goods within the customs territory of the community in the case of which the import customs duty payable is higher than the import customs duty of the goods that will be produced from them or into which they will be integrated.

This customs procedure type clearly serves the interests of the processing industry in order to allow the production of the product with the least expenditure possible.

The procedure is seemingly similar to inward processing, however while the destination of the end product of inward processing is the country that sends the raw material or the semi finished product, in the case of processing under customs supervision the end product will definitely stay within the territory of the community.

D. Temporary import

The purpose of temporary import is to allow bringing into the community the non community goods temporarily with exemption from under the import customs duties and with disregarding the application of trade policy measures.

It is important to emphasise the temporary character in the case of this customs procedure of economic impact as well as that significant difference compared to inward processing that these goods have to leave the territory of the community in an unchanged form.

E. Outward processing

Practically this is the same as inward processing, if it is viewed from the other side. Thus in this case community goods are taken out from the territory of the community temporarily, and the goods will be brought back to the territory of the community after being processed.

If we have said that inward processing helps the developing countries, in the case of this customs procedure we may unambiguously declare that it serves the interests of countries that have developed economies.

VII. Authorised economic operator – as a prerequisite

As we have indicated in the previous chapters already several times in order to implement simplified procedures, for transferring the authority tasks in the case of certain clients it is necessary to conduct preliminary examinations, before starting to apply the “principle of trust”. According to the concepts of the Community Customs Code the client may receive the so-called authorised economic operator status as a result of this examination.

Article 5a of the Customs Code prescribes the following as regards of issuing this status:

Article 5a

(1) Customs authorities, if necessary following consultation with other competent authorities, shall grant, subject to the criteria provided for in paragraph 2, the status of ‘authorised economic operator’ to any economic operator established in the customs territory of the Community.

An authorised economic operator shall benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules.

The status of authorised economic operator shall, subject to the rules and conditions laid down in paragraph 2, be recognised by the customs authorities in all Member States, without prejudice to customs controls. Customs authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements relating to a specific type of simplification provided for in Community customs legislation are fulfilled, authorise the operator to benefit from that simplification.

(2) The criteria for granting the status of authorised economic operator shall include:

- an appropriate record of compliance with customs requirements,*
- a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,*
- where appropriate, proven financial solvency, and - where applicable, appropriate security and safety standards.*

The committee procedure shall be used to determine the rules:

- for granting the status of authorised economic operator,
- for granting authorisations for the use of simplifications,
- for establishing which customs authority is competent to grant such status and authorisations,
- for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management,
- for consultation with, and provision of information to, other customs authorities; and the conditions under which:
 - an authorisation may be limited to one or more Member States,
 - the status of authorised economic operator may be suspended or withdrawn, and - the requirement of being established in the Community may be waived for specific categories of authorised economic operator, taking into account, in particular, international agreements.

From the quoted legal provisions it can be seen that when the authorised economic operator status is granted, the required conditions may be broken down into four large groups.

A. Record of compliance

In the case of this group it has to be examined that in the last three years preceding the issuance of the permit whether any customs rule infringement took place or not, and if yes then what kind it was.

B. Keeping records

In respect of this group the applicant has to certify that its record system is suitable for allowing appropriate customs control even if the authority presence is implemented partially or not at all in the course of the basic procedures. For this end such requirements have to be implemented, which ensures the possibility of checking all the data that are relevant from the aspect of customs.

C. Solvency

Similarly to the contents of Point a), here also the data that refer to the preceding last three years have to be certified. This certificate has to be suitable for proving that in the possession of the permit the customs duties are surely paid, even if they have to be paid only after the releasing of the goods.

D. Security standards

In the case of this group the capability of taking over those customs authority tasks that primarily serve not economic, but security purposes. These include without covering all the aspects the provisions that involve the protection of the consignments, the regulation of the entry and exit of goods, security scanning system, etc.

Reviewing these four core groups it can be concluded that obtaining the authorised economic operator “licence” is preceded by a comprehensive company audit in order to allow nothing to endanger the meeting of the lawful right of the state.

Why did we use in the title of the section the expression “prerequisite”? Only because we consider it to be a prerequisite of applying the fastest customs control that the given economic operator group should have the authorised economic operator status.



VIII. Risk analysis, risk management, as a prerequisite

VIII.1 Customs risk management, risk analysis, in general

A. Risk management – risk management of the basic procedures of the customs professional field (profiles).

In the authority environment of today, when speed became an outstanding aspect and the simplified procedures implemented in electronic forms – which involve a decreasing number of goods and document examination cases – are gaining an increasing foothold, it is indispensable to operate a control system that is based on an efficient risk management, implemented on exact basis, without any discrimination. Since based on an efficient risk management and analysis upon the exploration of the specific risks the protection of the market, of the financial interest and of the citizens are equally implemented. In the area of customs the efficiency of risk analysis is in the interest of the European Union as well, and its role has become increasingly important with the spreading of faster and more simple customs procedures that are implemented electronically and this process by its nature forced out the increasing of the number and of the role of post-clearance control. The successful implementation of these post-clearance controls is significantly influenced by the efficiency of the risk management and analysis activity.

The primary function of risk management integrated into the process is to get the information still during the process of customs clearance to the county directorates executing the customs procedure that are able to use them.

Risk management integrated into the process manages equally both the fiscal and the security risk types. The security and protection type risks does not simply mean the risks that are connected to terrorism, but they do cover all the risks that involve the citizens, thus the risk that is caused by counterfeit or poor quality products or products that are dangerous to health have to be included here as well. The presentation of security and protection type risks is an EU obligation, which requires 24 hour task implementation in view of the fact that – depending on the mode of transportation – it is necessary to continuously ensure a reaction capability even within an hour.

B. Risk analysis

When implementing the risk analysis activity the risk information must be collected, recorded and examined, and therefore the fast and continuous of information and getting them to the risk analysis implementing organisation has to be ensured.

This activity does supports efficiently by handing over the risk information obtained through the exploration and evaluation of assumed law infringements in addition to selection for control, daily professional work as well.

The periodical control plans prepared during the central risk analysis activity (e.g. customs post-clearance control plan) are indispensable means of the efficient and successful implementation of planned and harmonised control activity. Risk information explored as a result of evaluations and analyses that represent the basis of this activity – their weight, dangerousness, possible financial impacts – may demand the immediate implementation of the control activities, to clarify these issues without delay in the course of implementing the basic procedures, and thus for the organisations implementing the basic procedure in addition to planned inspections special purpose inspection proposals beyond the plans are also prepared.

In the course of this activity information that may be obtained through international contact keeping has a great importance (e.g. member state requests, information received from OLAF), and also the risks that are received from the risk management areas that are integrated into the customs process.

Based on bilateral agreements international data exchanging is done on regular basis and the databases sent by the specific countries undergo risk evaluation from customs aspect.

VIII.2 Risk management activity integrated into the customs process

Risk management integrated into the customs process may be defined the best way as an activity done in connection with customs procedures and authorisation procedures concerning goods that are imported or exported in the framework of trade between the countries and their customs law fate, the purpose of which is to observe the national (community) and international measures, to protect the financial interests, security, health, environment and consumers of the community and of the member states.

In practice this means that the authority endeavours in the course of its procedure to prevent the law infringements it has already learnt – that is identified – and to reduce the threat of possible unlawful practices that are assumed on the basis of specific information.

From the above it can be seen that one of the main activities of the Customs Authority is to protect both the domestic and the EU financial interests, to ensure the customs and tax revenues, nevertheless it exerts its market protecting impact over a far wider scope. An efficient means of this is customs risk analysis done on the level of the Community and the member states.

A. Risk management system incorporated into the customs process

In the Hungarian system the specific partial tasks form a unified system with bridging all the levels of the customs authority.

Risk management due to the nature of the activity – due to its integrated into the process character – is implemented through the electronic processing the goods declarations that are connected to the customs procedures with the aid of risk profiles adjusted to the specific IT systems, which profiles provide information for the people implementing processing the already known risks and the risks that are assumed on the basis of other information.

The risk management activity that is connected to the basic procedures of the bottom level customs organisations is united by a specialised, objective central organisation unit, which supports their efficient and successful operation, the filtering out of the unlawful motions and assists unified law application with national and international level information and through operating the IT system (KOCKA module).

Risk analysis involving the area of customs has a direct impact on the processing systems and it involves the procedures that are initiated both on paper and electronically.

The most important prerequisite of efficient and successful risk management is the availability to the organisational units implementing this activity of as much information and as good quality information as possible. For the provision of this information a number of sources and channels have been established both on domestic and on international level.

Generally it may be said that risk related information may be directed at the client – as a specific economic operator or an economic operator group, or to some topic or product group (e.g. issue of origin or the issue of tariff), or even jointly, to the combination of these.

During risk analysis a number of internal and external information sources are available, which due to their nature provide information of different weight and content. Let us see a couple of these, without trying to cover the issue fully.

The first and probably the most important information sources are the territorial and local customs organisations. The territorial customs organisations do send information through regular and ad hoc data services about the risks that came into their vision concerning customs.

Due to their similar properties the goods classification information and conclusions of the Export Institute do also have an outstanding importance, which are based on information it obtains during the sample taking it has done and its Mandatory Tariff Information Providing procedures.

One significant group of information that points beyond financial risks is characteristically based on the activity and indications of the Consumer Protection Authority that may be tied to market supervision measures (e.g. information on dangerous clothing for children, toys, food products, and technical articles).

Due to the Union character of customs activities a wide range of community level information is integrated into the domestic system. This is not only an opportunity, but it is a member state level obligation as well.

One of the most significant channels is the system of risk notifications between the Member States, which contains risk information that are connected to specific consignments, economic players or product groups, which had been revealed in the course of the own procedures of one of the member states (its controls and sample taking procedures).

B. Characteristics of the risk profiles

The risk profile from the aspect of the KOCKA module is practically a data or the relation of data, which in the defined processing systems, based on preset values displays an examination proposal in the course of the processing procedures for identifying practices that endanger the income, or the circumvention of some limitations or prohibitions.

The risk profiles are defined with validity periods, and before the expiry of these periods an impact examination is done. This ensures that unjustified profiles should not burden the system, however keeping the successful profiles in the system should be continued.

Therefore the risk profile is prepared as a result of the process that was described above. The profile developed is present in the system with a specific examination proposal, and it exerts its impact target consciously in the interest of managing the risk relationships that are defined in advance, during its period of validity.

It is important to emphasise that one of the advantages of in process risk management activity is the fact that the explored risks are already displayed in the course of the customs procedures, thus they ensure the lawfulness of the procedures that are to be conducted.

VIII.3. Risk management activity done in the area of customs:

The primary target of risk analysis assisting selection for post-clearance control in the area of customs is to identify through examining the database of customs procedures done in the past the customs procedures that are qualified risky from the aspect of customs law and the operator organisations that are involved in them.

It is important to differentiate it from the previously detailed in process risk analysis, which with the aid of profiles integrated into the customs data processing system manages the risks that incur in the moment when the customs procedures are done. The two areas closely co-operate by exchanging the available information.

The basis of risk analysis is the risk related information that is created in daily practice in the largest numbers in the area of in process risk management. In general we differentiate internal and external (originating from other public administration organisations, market players, press, etc.) risk information.

During risk analysis the first step is to register, process and execute the primary evaluation of information received. This is followed by risk analysis implemented with examining the customs database.

Analysis may be basically either a company or topic oriented examination.

In the case of examining a company the risk information contains a specific economic operator, and the analysis examines the customs procedures within the period of lapse in respect of the risk factors included in the alarm and those that may have been possibly explored in the course of database analysis.

In the case of topic examination the risk information does not refer to a specific economic operator, but to a group of products (e.g.: footwear involved in anti dumping customs), or to a customs procedure type (e.g.: releasing to marketing freely from customs law aspect of procedure code 4200). After identifying the risky customs procedures characteristically several economic operators may be attached to them.

Therefore as a result of risk analyses the customs declarations involved in the indicated risk and the other risk factors that had been explored during analysis and the economic operators that may be connected to them, or in the lack of these the indicated risk information is dismissed.

The main purpose in the case of risk analysis based on the customs database is to exploit the available controller capacity the best way possible, and the examinations should focus on economic operators that execute activities the risk of which is higher than the average, and on their customs procedures.

As a result of customs risk analysis basically there may be three types of control proposals suggested:

- Including the economic operator involved in the customs post-clearance control plan of the next year,
- Proposal for the post-clearance control of the given economic operator beyond the plan
- Proposal for reviewing the customs goods statements involved in the risk of the given economic operator in line with Article 78 of the Community Customs Code.



It is important to say a couple of sentences about the ex post customs control plan that represents the centre of gravity of this activity.

The ex post customs control plan is a document that is prepared annually. It contains in a tabular format broken down by territories the economic operators involved and the risk topics that had been identified in respect of them, the post-clearance control of which will be done in the given year.

IX. Post-clearance control, as a solution

The Community Customs Code contains 2 different such control forms, the common feature of which is that they have to be conducted after customs clearance has been already done:

Article 13

(1) Customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all the controls they deem necessary to ensure that customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status are correctly applied. Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this.

(2) Customs controls, other than spot-checks, shall be based on risk analysis using automated data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community and, where available, international level.

The committee procedure shall be used for determining a common risk management framework, and for establishing common criteria and priority control areas.

Member States, in cooperation with the Commission, shall establish a computer system for the implementation of risk management.

(3) Where controls are performed by authorities other than the customs authorities, such controls shall be performed in close coordination with the customs authorities, wherever possible at the same time and place.

(4) In the context of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, between each other and to the customs authorities of the Member States and to the Commission where this is required for the purposes of minimising risk.

Communication of confidential data to the customs authorities and other bodies (e.g. security agencies) of third countries shall be allowed only in the framework of an international agreement and provided that the data protection provisions in force, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of

individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data are respected.

Article 78

(1) The customs authorities may, on their own initiative or at the request of the declarant, amend the declaration after release of the goods.

(2) The customs authorities may, after releasing the goods and in order to satisfy themselves as to the accuracy of the particulars contained in the declaration, inspect the commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or of any other person in possession of the said document and data for business purposes. Those authorities may also examine the goods where it is still possible for them to be produced.

(3) Where revision of the declaration or post-clearance examination indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authorities shall, in accordance with any provisions laid down, take the measures necessary to regularize the situation, taking account of the new information available to them.

The important difference between the two types of controls is that controls based on Article 78 are connected to a specific customs clearance, and they target the control of its declaration, while controls done based on Article 13 contain a complex procedure that covers all such facts and particulars that are relevant from the aspect of customs.

In order to be able to implement post-clearance controls at an appropriate level in an appropriate number an appropriately deployed organisation is needed.

Post-clearance control is differentiated from the rest of the controls mentioned above by the fact that implementing the commercial deal and control are separated from each other. Another important feature is the fact that the premises of conducting the control are generally separated from the place where the specific customs procedures are conducted. Due to this it is a disadvantage that in the lack of physical contact in certain cases the goods delivered earlier already cannot be examined and we are not able to check its quantity either in this manner directly, however it is possible to exploit a number of such possibilities that are not possible in the case of physical and document controls done at the customs border on in the course of transportation. In connection with examining the book keeping, the accounting, bank certificates, records, production processes we are able to obtain such information, which we are unable to capture when applying the other two control methods mentioned. If needed we may extend control to other economic operator organisations as well and we may involve into control other authorities, even from other countries. While physical control has an outstanding importance when the goods are classified according to the tariff, post-clearance control may obtain valuable information primarily in connection with the origin and customs value of the goods, although it should not be forgotten that in many cases it becomes possible to examine or to have examinations, studies done in connection with the tariff classification.

In view of the previously phrased specialties it is practical to establish the organisation system of post-clearance control separately. It is practical to define the



territory of competence of the organisation that is to be established in such a manner that it should be the same as the territory of competence of the country. The reason of this that we should not face competence limits when executing the control of organisation that have several premises scattered within the country and the organisations that are connected to it, and in the case of this solution the controls do not have to be prolonged because of having to contact others, since controls taking a longer time done by the other organisations deteriorate not only the success of the control, but it is not favourable for the economic operator undergoing control either, in view of the fact that the non closed control operates as an uncertainty factor. The advantage of the mentioned organisation model is the fact that implementing action like controls is also the simplest in this form, since regrouping the human resource adapted to the current tasks does not have to face any obstacles. Another advantage of this solution is the fact that this is the way it is possible to implement in the easiest way unified control practise and through this unified law application as well.

When establishing the organisation system it should not be forgotten that the officers represent the basic pillar of the organisation. Without an appropriate number of excellently trained staff even with the best technical equipment we cannot achieve results in the area of control. The organisation has to have a human resource strategy, in which it has to be defined what education requirements have to be met by those people, who with to work in this professional area, and the system of further trainings have to be elaborated broken down by task scopes, which will ensure that knowledge acquired earlier is continuously updated.

When establishing the structure of the organisation it has to be also kept in mind that implementing the controls is not an independent, isolated activity, but it is a part of a process. This process is started with collecting information and risk analysis, then it is continued with planning the controls, and this is followed by the implementation of the specific controls, prescribing the subsequent payment of public debts that are prescribed on the finding of the controls and the implementation of the possible required legal remedy procedure. The process ends with the evaluation-analyzing work done on the basis of the evaluation of the results of the controls and legal remedies and the contents of the plans. It is practical to have certain elements of the outline process done with the organisation unit that includes the experts that have the special knowledge, which is separated within the organisation.

It is a general expectation in connection with the legal remedy procedures that the forum systems should be separated from each other from organisational aspects as well, in order to be able to ensure through this the influence free judgement of the appeal applications.

X. Draft of the modernised customs code

Originally the Modernised Customs Code would have been applied when the implementation order came into effect, but at the latest on June 24, 2013, however meanwhile it became obvious that due to the delay of other projects that are needed for full introduction – primarily of the IT developments and the elaboration of the implementation order – the starting date of applying the Modernised Customs Code had to be postponed.

This modification cannot be avoided, since the majority of the IT systems needed for implementing the Modernised Customs Code it would not be possible to commission till the application date of June 24, 2013, and introducing the Modernised Customs Code without IT systems would be contrary to one of the principles of the Modernised Customs Code, according to which customs data exchange and data storage may be done only electronically as a main rule. The member states and the European economic interest representations reached a complete agreement that in this situation the appropriate solution is the postponement of the Modernised Customs Code. This modification at the same time provides an opportunity for harmonising the provisions of the new legal provision with the Treaty of Lisbon, moreover to correct the problems and mistakes that were detected in the Modernised Customs Code meanwhile.

Therefore the modification altogether serves 3 main purposes:

Postponement of the application of the Modernised Customs Code, with realistic, phases based, mandatory introduction deadlines. The Committee will present a proposal later on in respect of the new application deadline.

- Harmonising the provisions of the Modified Customs Law with the contents of the Treaty of Lisbon, and for this end the transferred and the implementation acts have to be separated.
- Correcting, adjusting some of the provisions of the Modernised Customs Code:

However we wish to emphasise that in this chapter we may talk only about such a law draft about which each member state has to express its opinion and which each member state has to accept.

In view of the fact that Ukraine nurtures an excellent partnership relation with the European Union, it would be advantageous for both parties and we recommend for Ukraine to also present its professional standpoint as regards the draft of the modernised customs code.

X. 1. Necessity of the Modernised Customs Code

The Modernised Customs Code replacing the present Customs Code (that is Regulation 450/2008 of the European Parliament and of the Council on the establishment of the Community Customs Code): There were a number of factors in the background of its establishment. From among these factors one of the most important ones is that the paper based data carrier and procedures spread at present in the profession of customs became obsolete, their role is more and more taken over by electronic data carriers and IT systems. Beyond this the Modernised Customs Code will simplify the previous customs rules and administration procedures both for the customs authorities and for the players of the economy.

This means especially the following:

- it will reduce the number of customs procedures and it will facilitate the traceability of the goods;
- it will ensure the computerisation of all the customs formalities, in harmony with the contents of Regulation 70/2008/EC of the European Parliament and of the Council on paper free customs and commercial environment by:

- introducing as a main rule the submission of declarations and their attached documents electronically (contrary to the current situation, when it depends on the given customs procedure whether it has to be requested electronically or not);
- it prescribes electronic information exchange between the customs authorities of the member states and other authorities;
- it facilitates central customs management, in the framework of which the economic players will have a chance to request the customs procedure electronically at that place and to pay the customs debt at that place, where they are settled, independently of the fact to which member state the goods are imported or from which member state the goods are exported, or in which member state its “actual consumption” important from the aspect of VAT is taking place”;
- it establishes the framework for the concepts of Single Window administration and One-Stop-Shop control for those cases, when the data that are to be submitted have to be provided for other authorities (e.g. vet authority), and as a result controls may take place at the same time and venue in the future;
- moreover it harmonises the system of customs authority guarantees (which is harmonised at present only in respect of transit);

The modernised customs code naturally contains the so-called security modification elements of the present customs code, the concept of authorised economic operator and the system of entry/exit collecting declarations.

In view of the challenges the modernised customs code is directed at implementing some strategic targets, as e.g. the enhanced protection of the EU and its citizens, increasing the competitiveness of the European economic players, protection of the financial interests of the Union and its member states, facilitating legal trade, and fighting against unfair and illegal trade.

In the interest of achieving the mentioned strategic objectives the modernised customs Code serves several specific targets:

- simplification, unification and making more transparent the customs legal provisions;
- accelerating customs administration and procedural processes, and making them more efficient and cheaper;
- accelerating the crossing of borders;
- making controls more efficient and more targeted with the aid of computerised risk analysis;
- implementation of e-governance in respect of customs affairs (customs documents and the documents will have to be submitted electronically as a main rule, and the customs IT systems of the members states and of the Commission will be connected with each other);
- restricting national customs law regulation to the possible least scope.

X.2. Novelties included in the modernised customs code draft

From the customs code draft we wish to introduce those legal aspects, which are relevant from the aspect of our topic, our purpose is not to analyse the draft.

A. Mission of the customs authority

The draft defines the mission of the customs authority, according which the authority is primarily responsible for managing the movement of goods crossing the external border of the customs union, and in the course of this it ensures the undisturbed implementation of the movement of goods, it enforces the trade related community policies, and it protects the safety and security of the supply chain.

B. Central customs clearance

Central customs clearance will be introduced, the essence of which is the following: the importer/exporter may submit electronically its declaration and its accompanying documents to the customs office that is located at the place where it settled (where its customs affairs general ledgers are kept), this is the place where the customs debt is created, and this customs office executes the formal tasks that are connected to the checking of the declaration, to the collection of the customs debt, and the releasing of the goods, independently of the fact where, in which member state the products are located within the customs territory of the Community at the time when the declaration is submitted. The customs office, where the goods are brought under customs clearance physically, executes the examination of the goods – if required – based on the information it receives from the customs office of the place where the importer/exporter settled.

It is expected that central customs clearance will significantly reduce the administration burdens of the economic operator participants, who will have the chance to administer within the Community at one given customs authority their customs clearances directed at introducing the goods to free circulation and at other customs procedures, and thus these procedures will be simpler, faster, free of language barriers and cheaper for them.

At the same time from the aspect of reducing the administrative burdens central customs clearance will be really significant, when the customs offices involved are in different member states. The draft allows central customs clearance for the rest of the member states only for economic operator players, who meet the outstanding reliability conditions, who have the so-called authorised economic operator (AEO) status.

In addition to the rules that are included in the draft and its implementation order that will be accepted later on it is worthwhile to keep in mind that central customs clearance will be of full value according to the opinion of the economic players, if statistical data provision and the payment of circulation taxes will be also centralised. An additional problem connected to central customs clearance is the division of the currently still 25 % national part of customs revenues between the centre and the participating member state, and the enforcement of the partially national import/export limitations and prohibitions.

C. Economic operator self evaluation model

According to the so-called economic operator „self-evaluation” model the customs authorities may permit for economic operator participants to implement such customs formalities, which theoretically should be done by the customs authorities, and within this the regulation names the establishment of the export and import customs duties through self evaluation, and the implementation of specific controls under customs surveillance.

Issuing this authorisation assumes a high level of reliability on the side of grantee, for this reason the draft ties its granting to the AEO status.

Self evaluation significantly decreases the administrative burdens of both the economic operator participants and of the customs authorities. The capacities free this way the customs authority may focus in the future on the more strict control of the less reliable economic operator participants.

D. Risk analysis

According to the draft the non spot customs controls have to be based primarily on risk analyses that are based on data processing procedures, based on national, community and in specific cases internationally established criteria for the purpose of identifying and evaluating the risks and for defining the counter-measures required.

Accordingly the member states in co-operation with the Commission will develop, maintain and apply such a common risk management framework system, which is based on exchanging and analysing the risk related information between the customs administrations, and among other defines common risk evaluation criteria, control measures and outstanding control areas.

E. One-stop-shop

Customs authorities have to make efforts to introduce the “one-stop-shop”, which may reduce significantly the time of the customs clearance of the goods and the costs of the economic operator participants. The essence of this concept is the following: the authorities competent as regards the customs clearance of the goods (customs, animal health, plant health, etc.) will implement the inspection of the goods at one place and at the same time.

One-stop-shop service is closely connected to the single window administration, the essence of which is the following: the economic operator participants on the occasion of importing, exporting or transiting the goods do submit simultaneously through a single electronic portal all the standardised data requested by the different control authorities, which are forwarded by the customs authority implementing the co-ordinating task to the appropriate partner authorities.

The examples mentioned in the chapter also reflect well the demand that as far as possible the operation of a cheap, fast, and at the same time efficient customs control system is needed in the 21st century.

Summary and concluding remarks

Based on the arguments and reasons listed in the study it can be unambiguously established that in case the needed prerequisites will be met, the customs control model of the 21st century will be a so-called mixed / universal model, which will merge the based case and the post-clearance customs procedures.

The only question is to what ratio these procedures will be applied compared to each other. According to my opinion it is necessary to accelerate the basic procedures in the widest scope possible, highlighting the fact that naturally on the basis of well founded reasons the different examination cannot be disregarded even in this case. At the same time it has to be emphasised that in general or as a main rule the focus of control should be moved towards the post-clearance procedures.

It has to be emphasised that customs control in the 21st century already cannot be operated efficiently without background IT support established at the appropriate level.

The different IT systems have to take care of ensuring the flow of information with an appropriate speed, of ensuring the storage of information, etc. However analysing these issues may be the subject of a subsequent study.

I firmly believe that operating the above outlined customs control system will ensure an opportunity for the Ukrainian customs service to support the protection and development of the economy of the country as far as possible, not giving up the concept that „ Give to *Caesar* what is *Caesar's*”.

Appendix 1

NAME	MEMBER STATES
In South America	
Andean Community	Bolivia, Columbia, Ecuador and Peru
Mercosur	Argentina, Brazil, Paraguay and Uruguay
On other continents	
European Union	27 member states
EU – Andorra	EU and Andorra
EU - San Marino	EU and San Marino
EU – Turkey	EU and Turkey
South African Customs Union (SACU)	Botswana, Lesotho, Namibia, Republic of South Africa and Swaziland
East African Community	Burundi, Kenya, Ruanda, Tanzania and Uganda
Customs Union of Belarus-Kazakhstan-Russia	Belarus, Kazakhstan and Russia
Customs Union of Switzerland-Lichtenstein	Switzerland, Liechtenstein



YOUNG RESEARCHER'S PAGE

JEL Classification: F13, F23, F39, H26, H32, K12, K33, K34, K42, M16

THE NEED FOR GREATER CONVERGENCE AND COORDINATION BETWEEN CUSTOMS AND TAX AUTHORITIES OVER THE ISSUE OF TRANSFER PRICING

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Abstract

The article is devoted to the peculiarities of applying the transfer prices between the dependent enterprises inside the common area of the multinational corporations as well as to the complications and problems of convergence between the Customs and Tax authorities over the issue of controlling and checking the transfer prices. The need for this convergence and coordination between these mentioned state bodies is shown and proven. The main points of contact are analysed in the direction for controlling the transfer prices from the side of the Customs and Tax authorities. The comparison of the existing methods and approaches used by the Customs and Tax authorities in the plane of defining the transfer price and the Customs value is fulfilled. The ways of further cooperation and convergence between the Customs and Tax authorities are defined.

Keywords: Customs authority, Tax authority, multinational corporation, transfer price, customs value, taxation basis, customs taxes and duties, arm's length principle, WTO Agreement on Customs Valuation, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Introduction

As we know Customs and Tax authorities are the main elements of the state mechanism directed to regulation of business activity outside and inside the country in order to establish and guarantee just, equal and safe conditions for all the participants of this sphere. Consequently, the question concerning close convergence and coordination between these two official bodies is not new at all. Indeed, having in its disposal a strong and powerful joint mechanism of distinctly regulated Customs and Tax activities, the state could achieve desired goals more effectively. That is why it's so important to define those planes where the Customs and Tax bodies can interact with each other on the suitable level.

That's not a secret that both Customs and Tax authorities are trying to charge and collect taxes to refill regularly the state budget of each country. Although, of course, other duties of these two authorities are also important, since, in essence, they serve in favour of the common prosperity of the state.

Certainly, in order to provide to the full extend their responsibilities as for charging and collecting taxes, the Customs and Tax authorities need to be sure that the taxable base is defined correctly, and there are no unauthorized deviations between real and potentially possible level of taxation (Petrunya, Oleksienko, 2010, p. 171). Exactly in this respect there could be some complexity and discrepancy in applying approaches as for defining the base of taxation, used by these two state bodies.

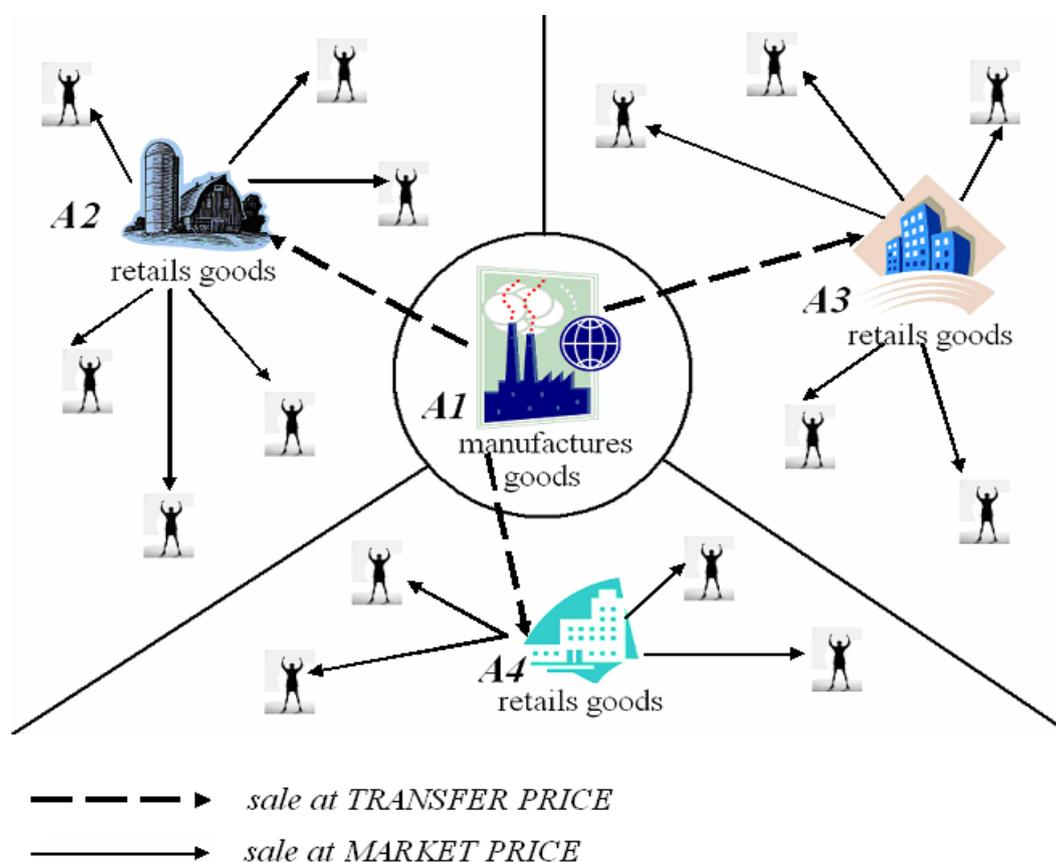
The point is that when the activities areas of two or more authorities overlap and contact with each other, it's necessary to have the similar methods, instruments and approaches for defining the same parameters (for instance, price, weight, quantity etc.), especially the most significant and crucial. I think, in the plane of the Tax and Customs activities such a situation can appear, in particular, when the taxable base is subject to taxation on the internal (inside the country) and external (when crossing the border) levels. Obviously, this peculiarity exists when dealing with international trading or other commercial activities between two or more stakeholders located in the different countries.

On my mind, many people will agree with my statement that it is beyond of any very complicated situations for defining and checking the actual transaction price if all the participants of the foreign economic activity are dealing on the true commercial basis and show their real expenditures and incomes. But it is almost ideal situation because on practice many companies are trying to decrease their income basis or to find some roundabout ways in order to lower their taxes and/or customs duties. And, I think, the multinational corporations (MNC) have reached the most significant success in this direction owing to peculiarities of existing the dependent companies inside the common area of the MNC which can deal efficiently in the direction of taxation avoidance with the help of special inner prices of transactions depending on the concrete aims and situations.

The main results of research

It is known that, dealing with each other in the inner area of the multinational corporation, the separate divisions or the individual entities of a larger multi-entity company can use the special transfer prices (Investopedia), as it is clearly shown at the following picture (figure 1).

Figure 1. Trading cooperation of dependent entities in the inner area of the multinational corporation



In a simplified form I would describe the common scheme of transactions between two dependent entities as parts of the MNC in the following manner.

One related enterprise manufactures some products (goods) in its country. Then it sells them at the special transfer price to another related company. Consequently, the first mentioned company delivers (through some transport company) the products to the country of its partner-company at prices much lower (or higher) than the corresponding market prices in the country of production. Afterwards these products are distributed in that country at the market prices.

Herewith, the transfer pricing provisions primarily suppose some additional income arising from an international transaction between two or more associated enterprises and comparable to similar transactions between unrelated enterprises (Ahuja, 2003). In other words, the main specificity of those transfer prices lies upon the fact that they are usually much different from the corresponding prices in comparison with transactions between independent parties.

Whether or no, but it's considered traditionally that transfer pricing policy, according to example of the majority of MNCs could be generally aimed at the following moments:

(1) evaluating financial performance of different business units (profit centres) of a conglomerate, and/or

(2) to shift earnings from a high tax jurisdiction to a low-tax one (BusinessDictionary.com).

Herewith, today approximately 30-50% of the world exports of goods and services are carrying out on the basis of transfer prices. Moreover, with using this mechanism of transfer pricing, the multinational corporations are reducing the tax burden on average by 10-15% (Gerasimenko, 2009). In that way, it's obviously that the main purpose of using the transfer pricing in practice is to minimize taxation and reduce payments of Customs duties, as well as the accumulation of profits in sales structures, registered in regions with preferential tax legislation.

Summarizing the tax avoidance peculiarities of this process I can say that, in general case, the multinational company is interested to use lowered transfer prices to sell products to the countries in which taxes are lower than taxes in the country of production. In that way, the related company in the importing country will receive the main income from selling these products on its market at the normal market prices. At the same time the exporting company will show the lowered level of profits which, in essence, will consist of margin between the lowered selling price and the prime costs for production of goods. Consequently, the amount of taxes from the corporate income in the importing country will be lower than it could be in the country of production.

And in contrary, in order to decrease the general taxation level the MNC will, obviously, try to use high transfer prices if the taxes in the country of production are lower than in purchasing (importing) country.

Advantages for the multinational corporation from using the transfer pricing mechanism are demonstrated on the figure 2.

It is necessary to accent at once that the *situation III* describes the normal international market relations when one company manufactures goods in its country and then sells them to the independent company located in other country.

Under the *situation I* we will consider the applying of the low transfer price which decreases the taxable basis inside the country of production of goods and, in turn, expands the main taxation burden into the country of further retailing.

At last, the *situation II* refers to the conditions when the high transfer price is applied. In this case the main taxation will be executed in the exporting country, including charging the relevant customs taxes and duties on import of goods. Therefore, in the country of retailing only relatively insignificant part of taxes will be paid.

Figure 2. Peculiarities of defining the taxable basis in result of applying the transfer prices between entities of the multinational corporation

Consequently, it is easy to conclude that the Customs and Tax authorities using arm's length principle as well as other methods and approaches are trying to control the real amount of profits of the multinational corporations and other stakeholders.

Herewith, the international consensus supposes that these profits should be comparable to the profits that would have been realised in comparable transactions between independent enterprises (Centre for Tax Policy and Administration, 2011). Accordingly, the Customs and Tax authorities would charge and collect the relevant duties and taxes from these profits.

In other words, the transfer pricing itself can bring simultaneously the different effect to the Customs and Tax agencies, taking into account the multidirectional influence of the transfer prices level to fulfilling the taxes collection goals of both these bodies. And this is only one of many issues which don't allow Customs and Tax authorities to accept the unfair transfer price. In turn, I think it should make these state bodies to correct the deviated price levels, trying to solve the problems they have on the way for their greater convergence and coordination.

Unfortunately, such problems are not rare at all, taking into consideration the practical situations as to cooperation between particular state authorities, including the Customs and Tax services (Oleksiienko, 2006). In particular, many researchers tend to see the great challenges for convergence between these two state authorities underlining, for instance, the specific conflicts (Jiang Bian, Hao Jiang, 2010), complications (Renaud, 2010) and key differences (Butani, 2011) between transfer pricing and Customs valuation.

In general, the Tax and Customs authorities treating the transfer prices use the international standards, which are contained in the OECD Transfer Pricing Guidelines (2010) and the WTO Customs Valuation Agreement. Of course, there are some differences and similarities between these two sets of rules applied by Tax and Customs agencies to transfer pricing (Mikuriya, 2006).

Transfer pricing is a complex and controversial issue, indeed. Obviously, the proper transfer pricing will benefit the company as a whole and inappropriate pricing may spur managerial effort but may harm the profitability of an organization as a whole (Prithiviraj, 2009). That is why the transfer pricing methods may be chosen depending on the current practical situation. In particular, the world economic practice uses four main methods of transfer pricing (CostInfo.ru):

- method of calculation based on the current market price of the goods;
- method of calculation aimed at marginal costs;
- method of calculation based on costs of production;
- method of calculation aimed at bargain prices.

Herewith about half of the major multinational companies use transfer pricing at cost. However, they don't use the same cost basis (Prithiviraj, 2009). Some companies use full cost plus profit which have the appeal of simplicity and ease of calculation (Carter, Maloney, Van Vranken, 1998). Others may use variable cost, standard costs, actual costs or full cost (Prithiviraj, 2009). So, the correct transfer pricing system depends on the economic and legal environment. At the same time, it's considered that two the most common approaches to setting and revising transfer prices are to apply cost-plus and market-based procedures (Carter, Maloney, Van Vranken, 1998).



In turn, the WCO Customs Valuation Agreement assumes six general methods for defining the Customs value. All these methods should be applied in the strict sequence one by one, according to the provisions of the General Introductory Commentary to this WCO Agreement.

Herewith, the first and the main approach consists in applying the transaction value defined in the Article 1 (Customs Valuation Agreement). In this case the Customs value, in essence, is the contract price with the relevant correction, taking into account the provisions of the Article 8 (Customs Valuation Agreement), for instance, regarding some costs carrying out by the contracting parties when providing the foreign economic activity.

As for me, this first method, which uses the transaction value for defining the Customs value, is the most similar to the approach for defining the transfer prices on the basis of costs of production plus profit (cost-plus) and to the method of calculation aimed at bargain (contract) prices.

I think it can be explained according to the fact that the transaction value is the price actually paid or payable for the goods when sold for export to the country of importation (Customs Valuation Agreement, Article 1). In essence, it is the selling price which is indicated in trade contract, that is to say, the bargain price.

At the same time, forming the transaction value, obviously, parties include in it at least the costs used for producing the goods and desired level of profits. I consider these are the main elements of the contract price (transaction value) which corresponds with the transfer price, in general. Of course, it concerns the manufacturer which exports its products, in particular, to the other depending party as the part of the MNC.

Moreover, in the sub-paragraph (2) (a) of the Article 1 (Customs Valuation Agreement) it is underlined that in determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 (Customs Valuation Agreement) shall not in itself be grounds for regarding the transaction value as unacceptable. Therefore, I can insist that the Customs method of transaction value corresponds to the tax approach of costs plus profit for the transfer pricing.

In turn, the second and the third methods for Customs valuation which are based on the transaction value of identical (Customs Valuation Agreement, Article 2) and similar goods (Customs Valuation Agreement, Article 3), respectively, are close, I think, to the method of calculation the transfer price based on the current market price of the goods. On my mind, this relation can be explained in the way that when using these Customs valuation methods the Customs authorities are tending to be orientated on the real commercial level of market prices on the corresponding goods. The same approach the Tax bodies provide. Consequently, enough tight connection between the Customs and Tax authorities already exists in this case.

As we know, if the Customs value can not be defined with help of the above mentioned methods the next possible approaches could be used according to the deductive method (Customs Valuation Agreement, Article 5) or method of computed value (Customs Valuation Agreement, Article 6) in order depending on the request of importer (Customs Valuation Agreement, Article 4). In turn, the deductive value method, in its essence, uses the current market price of the goods as the basis of the further deductions. At the same

time, computed value is defined by the Customs bodies on the basis of the costs of production.

Accordingly, the last sixth method of Customs valuation (Customs Valuation Agreement, Article 7) assumes, on my mind, the use of different methods available for the Customs authorities, including market-based and bargain prices, marginal costs etc.

In addition, I think, it is interesting to study the table 1 given below which (as the author (Butani, 2011) considers) provides an approximate comparison of various methods of arriving at the valuation of goods under Customs and income tax law.

Table 1. The comparable approaches of the Tax and Customs authorities in the plane of defining the transfer price and the Customs value

<i>Transfer pricing methods*</i>	<i>Customs equivalent method</i>	<i>Basis of pricing discussion</i>
Comparable Uncontrolled Price ('CUP') Method	Transaction value of identical/similar goods	Price comparison of products
Resale Price ('RPM') Method	Deductive value Method	Margin and Expense analysis
Cost Plus ('CPLM') Method	Computed Value or Cost construction Method	Margin and Expense analysis
Profit Split ('PSM') Method	Residual Method	Customs – Price or Margin; TP – Margin
Transactional Net Margin ('TNMM') Method	Residual Method	Customs – Price or Margin; TP – Margin
Fall back Method	Residual Method	Price or Margin

- - the table is taken from the source: Butani, 2011.

In that way, I can assume that, theoretically, there are a lot of similar points of contact between the Tax and Customs authorities over the issues of transfer pricing and



Customs valuation, taking into account the similarity of the main approaches concerning this process. At the same time, I think, the most controversial problem in this case is to create the common agreed position of these both authorities according to defining the basis of the price (value) on goods which cross the border. Especially it is topical issue for the related parties of transaction.

As for me, taking into account the current differences and similarities between approaches to defining the transfer pricing, there are real need for the further cooperation and convergence between the Customs and Tax authorities concerning this issue. Moreover, as I've tried to show above, the sufficient conditions for this process already exist. So, in order to reach the substantial level of interaction between these two state bodies there would be desirable to develop the common method of calculation the transfer price which would be appropriate for use by both Tax and Customs agencies.

As a matter of fact the OECD officials insist that the arm's-length principle remains the main international standard (Transfer Pricing Guidelines, 2010). Although, it is considered there are some alternative proposals which, along with the arm's length approach, are destined to obtain a fair and reasonable allocation among taxing jurisdictions of the worldwide income of multinational enterprises (Brown Gianni, 1996), for instance, the formulary apportionment method.

I think it implies the unified approach which can be adapted in different countries to provide greater certainty as to transaction values. Herewith it is considered that this method proposes to use a formula to allocate profits for taxation only in the context of the arm's length standard rather than replacing the standard altogether (Avi-Yonah, 2009). Although, the alternative formulary proposals do not address the issues any more effectively than the arm's length approach does, and a formula system would seriously limit the flexibility allowed by the arm's length approach under the current regulations (Bell, 2009). And there is a condition that a shift from separate accounting to formulary apportionment increases productive efficiency when the weight on the sales factor is sufficiently high and decreases productive efficiency when the weight on the sales factor is sufficiently low (De Waegenaere, Sansing, 2007).

However, according to the fact that the formulary method tends to use the defined formula which allows transfer prices to approach closer to the market basis, this method could be used by the Customs agencies too in order to compare approximately the transfer prices level and the corresponding level of the Customs value proposed.

Taking into account all the characteristics of the above mentioned approaches, I think, the formulary method could be adapted on practice, but should be used in connection with the arm's length principle depending on the current situation in particular countries. On my mind, this would make the Tax and Customs authorities to achieve greater convergence.

At the same time, it is obvious that if some controversial problem exists the corresponding different views and opposing sides exist too. In that way, before declaring surely that there is the huge need for a tight convergence between Customs and Tax authorities in all the countries all over the world concerning the issue of transfer pricing, it's necessary to study deeply current and potential advantages and disadvantages as for this closing-in.

Those who are in favor of convergence point out that a credibility question could arise if two sets of rules on value determination exist within one government (Mikuriya, 2006). They hold that this situation results in greater compliance costs for business and greater enforcement costs for government. The proponents suggest that since the provisions on related party transactions in the WTO Agreement on Customs Valuation is relatively concise, compared to the more precise and comprehensive OECD Guidelines on Transfer Pricing (2010), there might be a room for developing guidelines or explanatory / interpretative notes for their better application. They maintain that this approach does not imply the revision of the WTO Agreement, but is rather intended to facilitate and complement the proper implementation of the existing WTO rules. The approach should provide Customs administrations with a choice, instead of imposing an obligation. They encourage Customs, in particular, to follow the functional analysis epitomized in the OECD Guidelines in determining whether the relationship influenced the price. They also suggest that inputs from the Customs area would be beneficial for the future review of OECD guidelines.

Those who are cautious about convergence point out that the two systems are based on different principles regarding the valuation of imported goods: Customs determines the value of the goods based on information available at the time of importation with respect to individual transactions; transfer pricing determines the value of the goods based on information available at the year(s) end with respect to aggregated transactions (Mikuriya, 2006). They argue that convergence could be more costly than leaving the current difference as they are. In this connection, concern was expressed about the implementation of capacity building on Customs valuation in developing countries. Their advice is to focus more on dispute resolution mechanisms to solve the questions that might arise from divergence in the two systems.

Summary and concluding remarks

Whether or no, both points of view, obviously, would require a more thorough comparison between the Customs and Tax bodies. In turn, it proves that there is a desire to establish system of coordinated activities for these two authorities in the plane of the most topical issues including this one.

At the same time, obviously, on practice there could be many different complications, restrictions and other issues which don't allow these regulatory bodies to interact always on the basis of clearly agreed, efficiently coordinated and legally approved decisions. Nevertheless, I think it's necessary to tend organizing such an approach according to which the activities of one authority will complement the activities of another, but not contradict to each other interfering to accomplish the main common mission.

That is why, taking into account the above mentioned arguments concerning the peculiarities for greater convergence and coordination between these two state authorities, despite the opposing points of view, I think it's highly important to realize and to project on practice the grade of interaction which is necessary and sufficient in each particular country depending on its specific needs and requirements.



Herewith, on my mind, ideally Customs and Tax authorities should contact and cooperate with each other often enough and in various planes of their activities, taking into account their common purpose of charging and collecting taxes, which is one of the most significant among their main functions, especially in connection with ensuring the state income. In other words, I do believe that there is a real practical need for greater convergence and coordination between Customs and Tax authorities over the issue of transfer pricing.

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JEL Classification: C000, M000, M100

THE PROBLEMS OF THE RUSSIAN FEDERATION CUSTOMS ACTIVITY MANAGEMENT NOWADAYS

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Abstract

This article is devoted to the main aspects of the Russian Federation customs management. Methods of the customs system management model optimization, its functions which provide with the increasing of the Russian Federation customs system activity economic effectiveness are described in this article.

Key words: management, customs management system, Russian Federation customs activity economic effectiveness, improvement of customs management system.

Introduction

For 10 last years there have been many works which are devoted to the aspects of management system modernization, improvement of customs activity management, searching for new management technologies, management processes automation, which reflect modern trends of the state service management concepts development.

Analyzing of external factors influence on the Russian customs and in the framework of the Russian Federation integration into the international economic space which both influence on customs tasks and functions, necessary of customs management system improvement, searching for reasonable model of customs organizational structure, optimization of its functions and management methods acquire great meaning. Researching of these questions is the important direction of scientific analyze of management aspects in this sphere. The problem of the effective management is one of the most urgent and practically important problems in the complex of interconnected aspects of customs service development.

Nowadays it's obvious that in the framework of the administrative reform the problem of the Russian Federation customs management system reformation becomes the most important problem. Necessary of reconsideration of its model, organizational reconstruction, human resources renewal is stipulated with more effective realization of the Russian Federation customs functions, providing of their effective functioning, unity and integrity.

From the practical experience we can draw the following conclusion that the aim of the Russian Federation customs reformation was pragmatic changes of the separate procedures. During this process it was given a great attention to the most important problems, but wasn't focused on strategic directions of customs activity. It was required great quality of resources for reformation, and the main purpose of the reformation process was supplementing of the federal budget. But if changes don't deal with all aspects of customs practical work, we can't reach waiting results.³⁸

Such reforms resulted to limitation of permanent increasing possibilities of customs functions fulfilling quality. This is contradiction between required and existing levels of the Russian Federal Customs Service (FCS) activity. Rise of its effectiveness is the urgent administrative task.

Nowadays Russian customs isn't ready to provide its work on the international standards level completely, because many key, system problems aren't solved. Without their solution it's impossible to improve customs activity. It's necessary to find new ways of outdated problems solution and define their realization staging. But before the beginning of consideration of the Russian customs system activity management problems it's necessary to say some words about the conception "management", particularly about the customs management, modern status of customs management activity.

It's necessary to know the main terms, explaining management essence and content to organize the Russian Federation customs tasks and functions optimal fulfilling. There are many definitions of the concept "management", including social-economic systems management. Customs system has attitude to the social-economic systems.

Management is influence on a manageable object to save its quality identity and to reach the aim.

Management is the element, function of different organized systems, which supply conservation of their structure, maintenance of activity regime, realization of their programs and purposes.

Management is the aggregate of person, group of people or automatic device actions, which direct at the defined aim reaching.

Generalizing different formulations taking into account customs management signs one can give the following definition of this concept.

Management is a continuous process of influence on customs system which provides its focused operation under changing external and internal conditions by means of taking and realization management solutions.³⁹

Nowadays Russian customs management system allows reaching a goal of the Russian FCS activity, but it isn't flexible and adaptive enough. Organizational and administrative and also legal management methods dominate as a way of reaching the main goals and tasks in the customs administration. Regulation, rating and methodical instruction are based on compliance with the rules and procedures. Customs divisions'

³⁸ Chernysh A.Ya. "Theoretical aspects of the customs institute development as a form of the customs activity organization" // Messenger of the Russian Customs Academy. M., 2007 № 1.

³⁹ Andreev A. F. "The basis of the administrative theory". Lectures: RIO RCA, 2009.



activity valuation depends on precise complying with the procedures. Such approach doesn't allow to value customs service activity performance that is the degree of goals eaching which are setting by the Russian Federation Government.

A new management model should orientate on strategic goals, value the level of their reaching, monitor costs and results and also focus on customs activity quality.

The modern management model in customs should work in the direction of continuous improvement of the balance between plans and results of activity and should reconcile the direction of moving.

Nowadays customs management problems in the Russian Federation have become the most urgent.

Firstly, customs management is characterized with the high degree of centralization, which is the necessary basis of customs existing and activity.

Secondly, customs controlled system is very dynamic. Customs should be flexible and improve its organizational structure operatively to meet the changing conditions which the problem of economic security providing and country economic interests protection is solved under.

Thirdly, customs management is characterized with the high degree of socio-political responsibility. Administrative bodies and their heads are responsible for the taken decisions, for the "administrative act".

Mistakes, made in customs management, may result to the serious economic and political consequences.

Fourthly, the feature of customs management is the following fact that the criminal structures influence on customs officers constantly. They have to be very stressful spiritually and physically. That's why it's necessary to build high personnel moral and psychological qualities of the customs officers.

The problem of customs activity management is that using of the methods and instruments in the customs practical activity isn't systematically because of there isn't their integration. That's why it's very difficult to move from a traditional to innovative administrative model. Nowadays these types of models are mixed in the customs service.⁴⁰

The characteristic of the modern customs functioning stage is dynamic changes of the external environment resulted to the changes of the internal environment. There are new administrative problems, which require research and scientific-practical recommendations of their solving. The most important problems are in the figure 1.

It's necessary to have appropriate scientific and methodical base for effective customs activities management. The problem of its creation and development is the subject of many foreign and Russian scientists' researches.

Efficiency increase depends on quality management directly.

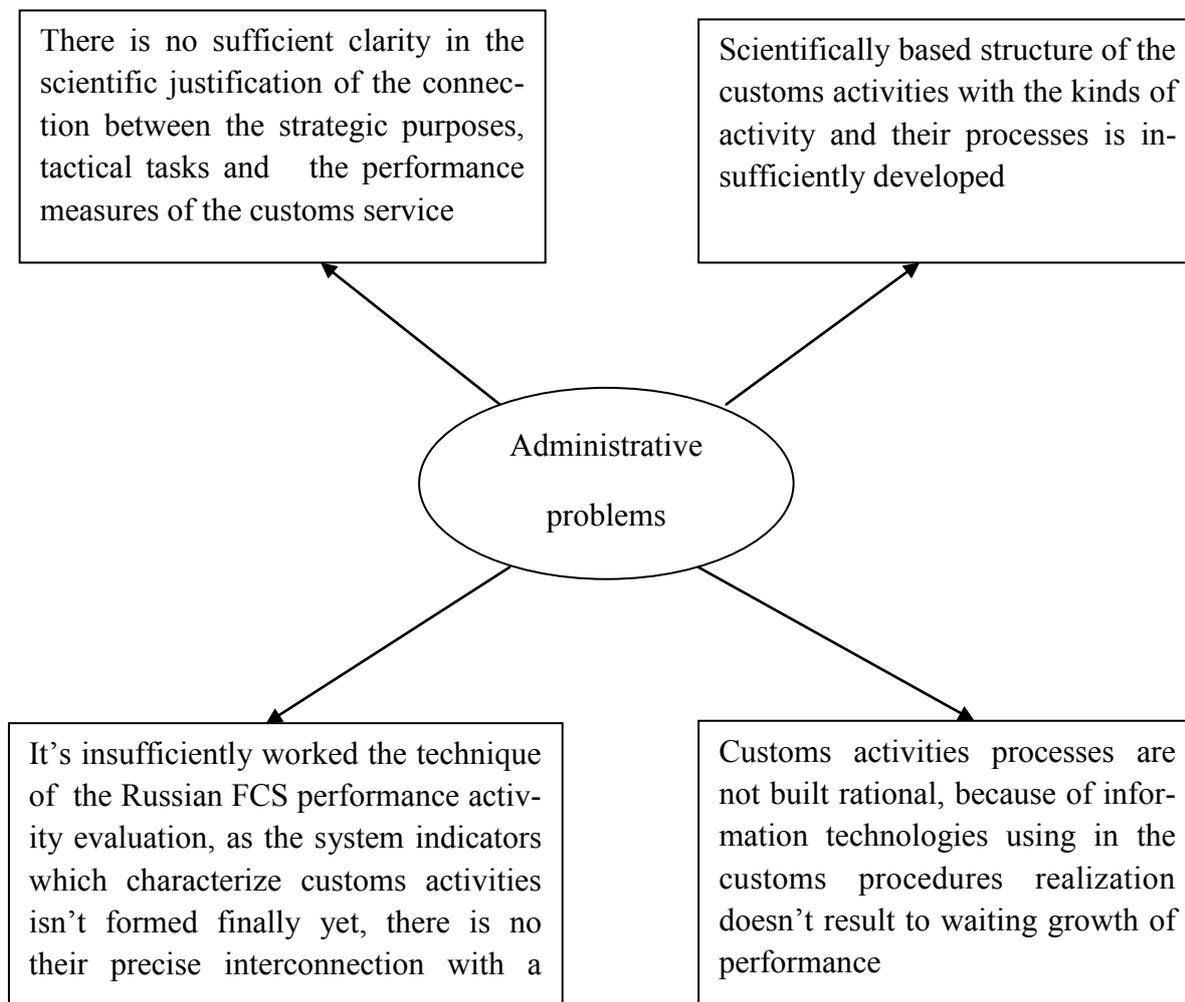
Modern performance theory considers efficiency as property actions to give effect. But efficiency is not only ability to give effect, but also it is effect as performance which relates with all types of resources costs (material, human, time resources etc.)

Management system performance is a complex property which characterizes

⁴⁰ Andreev A. F., Makrusev V. V. "The basis of the administrative theory". Lectures on specialty «Customs business»; RCA. – M.: RCA, 2009.

adaptation of the functioning process to the management system goal achievement.

Figure 1: Problems in the Russian Federation customs activities management



Any dynamic system performance including customs authorities may be described in the following view:

$$\mathbf{W} = \mathbf{f}(\mathbf{x}_1(\mathbf{t}), \dots, \mathbf{x}_m(\mathbf{t}); \mathbf{y}_1(\mathbf{t}), \dots, \mathbf{y}_n(\mathbf{t})), \quad (1)$$

$$\mathbf{G}_k(\mathbf{x}_1(\mathbf{t}), \dots, \mathbf{x}_m(\mathbf{t}), \dots; \mathbf{y}_1(\mathbf{t}), \dots, \mathbf{y}_n(\mathbf{t})) = \mathbf{0}$$

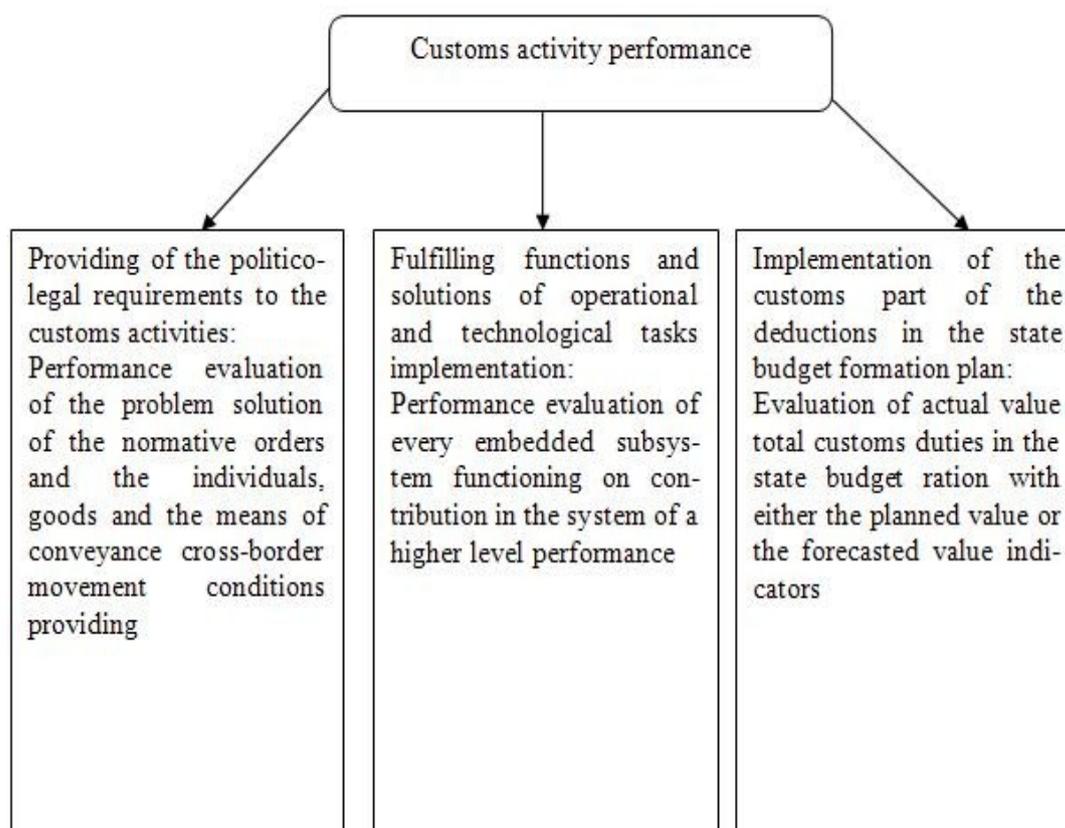
Where \mathbf{W} – evaluation criterion or performance indicators;
 $\mathbf{x}_1, \dots, \mathbf{x}_m$ – adjustable parameters: structure (composition, connection, relations), functions (activities);

y_1, \dots, y_n - unmanaged options;

G_k - functions, which express restrictions (available resources) ⁴¹.

What is customs activity performance? Customs activity performance is complex property which characterizes adaption or suitability of the customs activity to goal achievement which is realized with the single system of customs authorities. Nowadays there is the system of customs activity performance indicators which is presented in the figure 2.

Figure 2. Interconnection of the customs activities performance evaluation main concepts



Coming from the concept of the customs authorities management performance go to the concept “economic efficiency”. In the general case economic efficiency is production efficiency, ratio between economic activity results and the labor costs. Private

⁴¹ Andreev A. F. ”The basis of the administrative theory”. Lectures: RIO RCA, 2009.

indicators of the production economic efficiency are productivity, capital productivity and the material intensity of products. The scale of society economic efficiency is a share of the national income in the produced total social product.⁴²

Economic efficiency is the performance of the economic activity, economic programs and activities, which is characterized by the ratio of the economic effect, result to the costs of factors, resources which caused of getting this result; achievement of the greatest volume of production with the using of defining value resources.

As the total index of the administrative system and the customs administrative system performance is a vector (link) in particular:

$$\mathbf{W}(t) = \{\mathbf{R}(t), \mathbf{T}, \mathbf{Q}(t)\},$$

where $\mathbf{R}(t)$ – performance management;

\mathbf{T} – efficiency (time of the control loop);

$\mathbf{Q}(t)$ – resource consumption.⁴³

In this case we're interested in the index of profitability or customs administrative system contribution in this index, which is characterized by performance and resource consumption, that is:

$$\mathbf{f}(t) = \mathbf{f}(\mathbf{R}(t), \mathbf{Q}(t))$$
⁴⁴

Profitability is also complex index, that's why in our case we'll characterize the change of the customs authorities' activity economic efficiency by the quantity of the customs payments that is:

$$\frac{S_{r.n.}(CY_n) - S_{r.n.}(CY_0)}{\Delta_{\phi.c.y.r.o.} = S_{r.n.}(CY_n)},$$

where $S_{r.n.}(CY_0)$ – customs payments in the previous (usual) administrative system;

$S_{r.n.}(CY_n)$ – customs payments in a new (modernized) administrative system.⁴⁵

So in this case customs payments are one of the customs activity and its administrative system economic efficiency indexes.

If $S_{r.n.}(CY_n) > S_{r.n.}(CY_0)$ - then effect of modernization is positive.

As in the general case customs business is the unity of customs activity and the single customs authorities system that the total result of the customs activity depends on as the single customs authorities' system activity well as their structure that is composition, relations and connections, appointed functions.

⁴² Andreev A.F. "Messenger of the Russian Customs Academy." M., 2008. №2(3).

⁴³ Andreev A. F., Makrusev V. V. "The basis of the administrative theory". Lectures on specialty «Customs business»; RCA. – M.: RCA, 2009.

⁴⁴ Andreev A. F. "The basis of the administrative theory". Lectures: RIO RCA, 2009.

⁴⁵ Andreev A. F. "The basis of the administrative theory". Lectures: RIO RCA, 2009.

Let's consider the operation which consists of m steps (stages). Let the efficiency of operation is characterized by the index W . Let's assume that the efficiency W of all operation consists of efficiencies w on the separate stages

$$W = \sum_{I=1}^m w_i$$

where w_i is efficiency on i -step⁴⁶.

If the total efficiency of all stages consists of efficiencies of every stage then such index is called "additive index". An operation, as a rule, is a controlled process that is we can choose some parameters which influence on its progress and result, and it is chosen some solution on every step which efficiency on this step and efficiency of all operation depend on. We'll call this solution "step management".

Aggregate of all step management is the control of the whole operation. It is required to find such management x^* , where the efficiency W is maximum that is $W \rightarrow \max$ (min).

Then management x^* - , where this maximum is reached, we'll call optimal management. It consists of the aggregate of optimal step management:

$$x^* = (x_1, x_2, \dots, x_m)$$
⁴⁷

On the basis of this, one of the customs authorities functioning efficiency increase directions is improvement of management during which the level of optimal management is reached.

The problems of the administrative systems functioning efficiency increase are traditionally urgent in the economics and practice. During reorganization of social, juridical, political relations these problems are especially urgent and difficult.

Besides the expression (1), this reflects the total performance of the customs authority including of the customs authorities management system, performance of the customs authorities' management can be described with the help of the following dependence. It reveals the role of the system factors which the total index of customs authorities' administrative system performance depends on:

$$W(t) = F(S_{c.y.}, F_{c.y.}, A_{\phi.c.y.}) \quad (2)$$

Where: $S_{c.y.}$ – structure of the administrative system;

$F_{c.y.}$ – functions of the administrative system;

$A_{\phi.c.y.}$ – algorithm of the administrative system functioning⁴⁸.

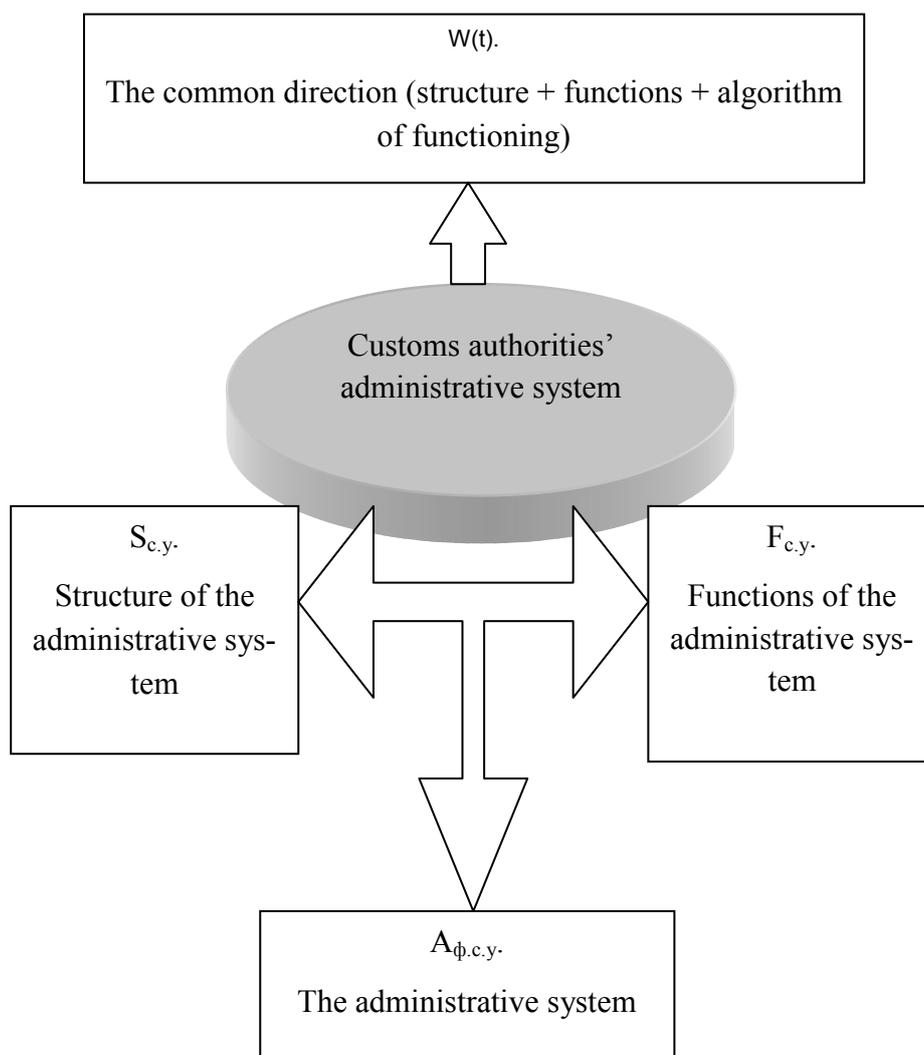
⁴⁶ Andreev A. F., Makrusev V. V. The basis of the administrative theory. Lectures on specialty «Customs business»; RCA. – M.: RCA, 2009.

⁴⁷ Andreev A. F., Makrusev V. V. "The basis of the administrative theory". Lectures on specialty «Customs business»; RCA. – M.: RCA, 2009.

⁴⁸ Andreev A. F. "The basis of the administrative theory". Lectures: RIO RCA, 2009.

From here we can get different combinations of the main improvement directions, which contribute performance of the customs authorities' management

Figure 3. Directions of the Russian Federation customs authorities' management improvement



If we suppose that $S_{c.y.}$, $F_{c.y.}$ – unchangeable parameters, then $W(t) = A_{\phi.c.y.}$. If $F_{c.y.}$, $A_{\phi.c.y.}$ – unchangeable parameters, then $W(t) = S_{c.y.}$, if $S_{c.y.}$, $A_{\phi.c.y.}$ – unchangeable parameters, then $W(t) = F_{c.y.}$



Problem statement

Nowadays analyzing of external factors influence on the Russian customs and in the framework of the Russian Federation integration into the international economic space which both influence on customs tasks and functions the problem of the Russian Federation customs management system reformation becomes the most important problem. Necessary of reconsideration of its model, organizational reconstruction, human resources renewal is stipulated with more effective realization of the Russian Federation customs functions, providing of their effective functioning, unity and integrity.

Summary

After considering the main directions of the Russian Federation customs authorities' management improvement we'll distinguish the following solutions of the Russian Federation customs authorities' management problems:

1. Modernization of the organizational administrative structures:
 - optimization in hierarchical administrative structure;
 - improvement customs system organization and reduction bonds;
 - simplification of the complex administrative structures and increase their flexibility;
 - elimination of duplication in the organizational administrative structures;
 - ensuring of typing maximum degree.
2. Improvement of the administrative methods:
 - relatively uniform load on every customs division;
 - clear distinction of functions, rights and responsibilities between the heads and staff;
 - effective control of decision execution.
3. Increasing of the scientific level in management through the development of scientifically based program-targeted development of the customs system.
4. Development of the informational base:
 - strengthening informational communication between the Russian FCS, regional customs governances, customs and customs points;
 - creation of the international informational programs and exchange of information (for example, «TEDIM» is organization of information links on the basis of the electronic information transfer systems to support traffic flows between EU and RF).
5. Information technology development and computerization in the administrative system:
 - development of the Customs single automated informative system and regional customs automated informative systems, corporative network Internet, local informative networks and automated working places;
 - development of the new organizational and administrative concept in customs business on the information base.⁴⁹

⁴⁹ "Working out of the Russian Federation customs authorities' development theoretical concepts on the basis of institutional approach: thesis". Moscow, 2008.

Summary and concluding remarks

So, on the basis of the material this was described before we may conclude that one can't distinguish the main and the most significant problem among different administrative problems as they are interdependent and flow out from each other. In this connection there isn't also universal way to solve such problems. It's necessary to use these ways in total to improve administrative activity of the customs authorities.

The purpose of the effective autonomic, systematically updated systems management of the organizational activity is goals achievement in particular effective customs activity management is characterized by suitability of the customs activity to the goals achievement which is realized with the single customs authorities system.

After considering the total index of the customs management system performance we may distinguish the main vectors of the Russian Federation customs management improvement which were above as the state economic security depends on the customs authorities' management system performance.

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GUESTS

JEL Classification: B3, O10, O15

THE HISTORY OF THE DEVELOPMENT OF THE US CUSTOMS ADMINISTRATION AND ITS INFLUENCE ON THE DEVELOPMENT OF THE COUNTRY

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Abstract

The article is devoted to regarding some of the significant events in the history of the development of the Customs Administration of the US. The influence of this development on upgrading the economy of the country has been considered.

Keywords: development, customs administration, department, laws, economy.

Introduction

The letter of invitation requesting an article to be published in the next issue of the “CUSTOMS” Journal seemed to give me options on exactly what to address. On one hand, it asked for an article about the development of the Customs Administration in my country, the United States of America (US). On the other hand, it asked about a presentation of best practices. I have chosen the former.

This paper is by no means a scholarly work, nor is it a scientific work. What I have tried to do is capture some of the significant events in the history of Customs development within the US and show how they were necessitated by events critical to the development of the country. I think the finished work will show how important Customs was to this country. It will also show that Customs evolved from its earliest beginnings to the modern day Customs and Border Protection (CBP) because of two things: 1) significant national events requiring a Customs response, and 2) the direction chosen by the Commissioner to pursue his/her legacy.

To do justice to CBP I should have included more information on the histories of the US Immigration Service, the US Border Patrol, and the US Department of Agriculture. All of these organizations also have proud histories, and their Officers contribute greatly to the achievements of CBP. However, being simply a Customs Officer, I felt that I should stick to subject matter that I am familiar with.

Acknowledgement

The timeline presented in the section entitled “The Beginning” was taken primarily from the CBP website (www.cbp.gov), with the exception of the information on the New Orleans Customhouse and the Internal Revenue Service. That information was found on



Wikipedia. Also taken from Wikipedia was the listing of the Commissioners of Customs and the information on the Ressay case. The CBP website also provided access to the CBP 2010 statistical information shown in the last section of this paper. To the factual information taken from these sites, I have tried to interject my perceptions gained from a career that began in February 1967 and ended in January 2001. While I say ended in 2001, I have been fortunate to maintain a certain amount of contact with current CBP personnel since that time, mainly for reasons related to my work as a Customs Advisor in Eastern Europe. I also want to thank Customs and Border Protection Supply Chain Security Specialist Shawn Porter for taking the time to read this and providing useful recommendations for improvement.

The beginning

The United States declared its independence on July 4, 1776, and the country's leaders had to find a way to provide revenue for the future development of the nation. George Washington was inaugurated as the 1st President on April 30, 1789 on the balcony of the First Federal Hall in New York.

On July 4, 1789 the First Congress of the United States passed its 2nd Act. This Act established a system of tariffs on goods and merchandise to be used to fund the new government.

On July 20, 1789 the 3rd Act of the First Congress established a system of tariffs to be collected from arriving ships. These tariffs were based on the tonnage of the ships.

On July 31, 1789 the same Congress passed its 5th Act. This Act established 59 Customs collection districts in the 11 states that had ratified the new Constitution. Ports of Entry, each under the jurisdiction of a Collector of Customs, were also designated by the Act. This basic structure evolved into the US Customs Service. It was the first federal agency created by the new government. President Washington signed this act in the First Federal Hall, where he was inaugurated.

On August 7, 1789 the 9th Act of the First Congress created the Federal Lighthouse Service which was tasked with the design, construction, staffing, and management of light houses. This Service was also placed under the jurisdiction of the Collectors of Customs.

On September 2, 1789, the 11th Act of the First Congress established the Department of the Treasury with its Secretary directly responsible for the management of all matters pertaining to the collection and protection of the revenue. The Customs Service was then placed within the Treasury Department.

It is obvious why the year 1789 was so significant to US Customs Officers. Badges of modern day US Customs Officers were inscribed at the base with the numbers "1789".

In 1790, the federal government moved from New York to Philadelphia and the Federal Hall became the Customhouse for the Customs Collection District of New York.

The country's leaders recognized that the location of the Customhouses within the Ports of Entry lent itself to other actions which the young nation needed taken care of, and they soon began to assign further responsibilities to Customs Collectors. In 1790 the Congress authorized the Treasury Secretary to build 10 Customs Revenue Cutters. The Customs Collectors were tasked with the design, building, selection of crews and captains, and the general management of the US Revenue Marine. In 1791 the Congress authorized

the President to utilize the US Revenue Marine for the defense of the nation (the US Navy was not established until 1798.) In 1796 Collectors of Customs were tasked with enforcement of the Quarantine and Health Laws. In 1798 Congress established the Marine Hospital Service and charged Customs Collectors with collecting hospital duties, and with constructing marine hospitals. In 1809, the Collectors were authorized to fix all rules governing marine hospitals. These responsibilities of Customs later grew into their own separate agencies, respectively, the US Coast Guard, the Public Health Service, and the Department of [military] Veterans Affairs.

In 1791 the Treasury Secretary was authorized to employ Special Treasury Agents for the purpose of examining the accounts and the books of Collectors of Customs. In 1799 the Treasury Secretary personally designed the Customs Ensign and Pennant and the Congress declared these were to be flown on all Customs revenue cutters to indicate the authority of the US Government. This was the first flag designed specifically for an agency of the federal government.

In 1837 the Life Saving Service was established in the Treasury Department and in 1840 this rescue service was placed under the direction of the US Revenue Marine, and hence under the management of the Collectors of Customs at the ports of entry.

While the New York Customs Collector District had its Customhouse, other Districts were not as fortunate. Between 1789 and 1853, privately held buildings such as banks and commercial buildings were purchased by the federal government for the express purpose of accommodating the needs of the Customs Service. From 1853 until 1939 the responsibility for the design and construction of Customhouses (and other federal buildings) lay with the office of the Supervising Architect of the Treasury.

One of the buildings constructed during this time was the New Orleans Customhouse, where I was fortunate to be able to work for four years. This Customhouse is a National Historic Landmark, receiving this designation in 1974 and noted for its Egyptian Revival columns. Construction on the building began in 1848 and didn't finish until 1881 due to redesigns and the American Civil War. US Customs offices have been located there since the late 19th century, but are currently located elsewhere while the building undergoes further renovations due to damage caused by Hurricane Katrina in



2005.

In 1853 the Treasury Secretary authorized Collectors of Customs to hire Customs Mounted Inspectors to patrol along the US land borders.

In 1862 the Bureau of Internal Revenue and a personal income tax was established by the Treasury Department in order to fund the costs associated with the Civil War. When the war ended, this Bureau and the income tax were abolished. Even during the time it Internal Revenue Bureau was operational, the Customs Service continued to be the major source of funding for the US Treasury. Purchases using Customs funding include the Louisiana and Oregon territories; Florida and Alaska; funding the National Road and



the Transcontinental Railroad; building many of the nation's lighthouses; the US Military and Naval Academies, and Washington, D.C.

In 1871 the Revenue Marine Division was created within the Treasury Department. The new division combined four Treasury functions, the US Revenue Marine, the Life Saving Service, the Steamboat Inspection Service and the Marine Hospitals Service. Thus, the Collectors of Customs were no longer responsible for these functions. In 1894 the Revenue Marine Division was renamed the Revenue Cutter Service and in 1915 it became the US Coast Guard within the Treasury Department.

In 1879 Congress enabled the creation of the position “Fraud Roll Employee” in the Treasury Department’s Division of Special Agents. The employees were tasked with the detection and prevention of fraud against the Customs revenue. While their credentials titled them as “special Employees of the Treasury”, early documentation and emblems show they were often called Customs Agents or Special Agents.

Congress passed the Chinese Exclusion Act in 1882. The Act was intended to cut off illegal immigration from China and outlawed the granting of citizenship to the Chinese. This law placed tremendous pressure on Collectors of Customs and Customs Agents who were charged with enforcement of this law in a fair and equitable manner. Also in 1882, an Immigration Act was passed which allowed Collectors of Customs to collect 50 cents for each non-citizen arriving by vessel at a US Port of Entry. The money collected was for the discretionary use of the Treasury Secretary to cover expenses incurred while regulating immigration and enforcing US immigration law.

Animal Quarantine Stations operating under the Collectors of Customs in several districts were transferred to the newly created Department of Agriculture in 1883.

In 1890 Congress passed the Customs Administrative Act which established the Board of General Appraisers with the power and authority to settle Customs disputes. In 1926 this group was renamed the United States Customs Court and in 1909 Congress established the Customs Court of Appeals which is today’s Court of Appeals for the Federal Circuit.

Congress revived the income tax and the Bureau of Internal Revenue in 1894, but the Supreme Court ruled it unconstitutional the following year. In 1913, Wyoming ratified the 16th Amendment to the Constitution, providing the three-quarter majority of states necessary to amend the Constitution. The 16th Amendment gave Congress the authority to enact an income tax. Until this point in our nation’s history, the Customs Service provided the majority of the revenue for the government.

Between 1891 and 1928 Congress passed several immigration laws, eventually creating an Immigration Service and removing such responsibilities from the Collectors of Customs.

From January 1920 until December 1933, during the period of prohibition, Customs enforcement along the US borders and seacoast was in a crisis. The US Customs Patrol lost 20 Officers in the line of duty, the Immigration service lost four Inspectors and the Immigration Border Patrol lost 24. In 1922 the Customs Service Patrol began using seized aircraft to enable aerial surveillance and enforcement. Thirty five aircraft were seized in 1932 alone and led to the establishment of an unofficial Customs Patrol air group.

On April 16, 1922 Treasury Decision 42102 created the Bureau of Customs within the Department of Treasury. Ernest Camp was selected as the first Commissioner of Customs. In 1927 the Treasury Agency Service was transferred to the Customs Bureau as the Customs Agency Service. In 1934 all Customs aircraft were placed under the Coast Guard, however, Customs Agents continued to fly seized aircraft without authorization to patrol the borders.

In 1935 the US Customs Service School of Instruction was established within the Port of New York. Training programs were developed and included the preparation of more than 40 lesson plans dealing with diverse subjects, including the history of Customs. In 1936 the Customs Border Patrol was placed under the Customs Agency Service and 4 Customs Patrol Districts were established. A training center for the Customs Border Patrol was established in Havre, Montana. Also in 1936 a Division of Laboratories was established. Nine Laboratories were spread throughout the country, all reporting to the Chief, Division of Laboratories at Customs Headquarters.

After the 1941 attack on Pearl Harbor large numbers of women began joining the federal inspection services at Ports of Entry, as the men went into the military service.

During a flag identification project authorized by President Truman in 1951, it was noted that the eagle on the Customs ensign was not proper. It was changed to display the Great Seal of the United States, having an American Bald Eagle holding an olive branch with 13 olives in his dexter talon and 13 arrows in his sinister talon; his beak carries a scroll inscribed "E Pluribus Unum;" on his breast is a shield of 13 red and white pales with a chief of blue, and above the eagle's head a glory breaking through a cloud with 13 surrounding stars forming a constellation.



The Customs Cooperation Council (CCC), forerunner to the World Customs Organization, was created in 1952 with US Customs participating in the inaugural session. The CCC was charged with ensuring the highest degree of harmony and uniformity in Customs systems worldwide.

At some point, Collectors of Customs assumed the title of either District Director or Port Director. Until 1960, District Directors were appointed by the Secretary of the Treasury. President Kennedy changed this to make them career rather than appointed positions.

In 1966 the Customs Computer Center opened. In 1968 the Customs Air Interdiction Program was established and the US Customs National Training Center opened at Hofstra University in New York.



Prompted by multiple aircraft high-jacking attempts against US flag air carriers, in 1970 a master agreement between the Treasury Department and the Transportation Department initiated a crash Air Security Program led by US Customs. 2,100 Customs Security Officers, also known as Sky Marshals, were rapidly selected and trained. The program was so successful it was closed down in 1974. Many of the Sky Marshals went on to have careers in other areas within Customs.

1970 also saw the establishment of the US Customs Canine Program and the beginning of operation of the Treasury Enforcement Communications Program (TECS). TECS provided instantaneous information to aid in the detection of violations, provided enforcement data to evaluate programs and performance, provided statistics for the allocation of resources, and data for intelligence on violation patterns.

On April 4, 1973 the Bureau of Customs was officially renamed the United States Customs Service and in 1975 the Federal Law Enforcement Training Center (FLETC) moved to a new campus in Glynco, Georgia. In 1977 the US Customs Academy was established at the FLETC.

At midnight on October 1, 1987, TECS II became operational at the New Orleans Airport of Entry. This updated system linked telecommunications terminals and PCs located at user sites around the world to a central computer system and data base. This system continues to serve CBP to this date. 1987 also saw the full implementation of the Automated Commercial System (ACS). This is a comprehensive commercial system able to track and electronically process imports from manifest declaration through liquidation, regardless of the entry type, location of activity or the interface employed.

1988 saw the dedication of the Customs Law Enforcement Data Center in Springfield, Virginia and the acceptance and delivery of the first Lockheed P-3 early warning aircraft, the centerpiece of the US Customs fleet of drug interdiction aircraft.

July 31, 1989 marked the Bicentennial of the United States Customs Service, with "A Day on the Mall with the US Customs Service" staged at the foot of the Washington Monument for Customs employees and the general public.

On December 8, 1993 the North American Free Trade Act was signed. Title VI of this law legislated the Customs Modernization and Informed Compliance Act (Mod Act) affecting carrier manifest requirements, electronic transmission of data, and paperless processing of entries. While this legislation made paperless processing legal, US Customs had been accepting paperless entries since 1992.

Ahmed Ressam attempted to cross the border by taking the *M/V Coho* car ferry from Victoria, British Columbia, Canada to Port Angeles, Washington state on December 14, 1999. He successfully passed through US Immigration and Naturalization Service preclearance checks in Victoria, and boarded the last ferry of the day for the 90-minute crossing to the US. After the ferry docked in Port Angeles at 6 p.m., Ressam saw to it that his car was the last to leave the ferry. Although there had not been any intelligence reports suggesting threats, the US Customs Inspector decided to have a secondary Customs search of Ressam's car performed, saying later that Ressam was acting "hinky", and asked him to get out of the car. The car contained hidden bomb components. As the components were being discovered, Ressam tried to escape on foot. After a brief foot pursuit he was captured by the Customs Inspectors. Ressam was convicted of attempting to bomb the Los

Angeles International Airport (LAX) on New Year's Eve 1999, as part of the foiled 2000 millennium attack plots. He was initially sentenced to 22 years in prison, but in February 2010 an appellate court held his sentence to be too lenient, and ordered that it be extended. This action was significant not only because it prevented a horrible act, but it also led to awareness of the potential threat posed by border crossers from Canada. This led to a significant increase in US Customs and US Immigration resources on the northern border.

On September 11, 2001, America was attacked as commercial aircraft flown by terrorists struck the World Trade Center in New York City and the Pentagon in Washington. A fourth plane crashed in Pennsylvania. The New York Customhouse was located in the World Trade Center and was destroyed. All Customs employees were able to safely exit the building.

The Commissioners

Commissioner	Term	Administration
Ernest W. Camp	1927–1929	Coolidge
Francis Xavier A. Eble	1929–1933	Hoover
James Henry Moyle	1933–1939	Roosevelt
Basil Harris	1939-1940	Roosevelt
William Roy Johnson	1940-1947	Roosevelt, Truman
Frank Dow	Acting, 1947-1949	Truman
Frank Dow	1949-1953	Truman
Ralph Kelly	1954-1961	Eisenhower
Philip Nichols, Jr.	1961-1964	Kennedy, Johnson
Lester D. Johnson	1965–1969	Johnson
Myles Joseph Ambrose	1969–1972	Nixon
Vernon Darrell Acree	1972–1977	Nixon, Ford
Robert E. Chasen	1977–1980	Carter
William Von Raab	1981–1989	Reagan
Carol B. Hallett	1989–1993	G.H.W.Bush
George J. Weise	1993–1997	Clinton
Raymond W. Kelly	1998–2001	Clinton
Robert C. Bonner	2001–2003	G.W.Bush



It should be noted that Mr. Bonner was the Commissioner of Customs on 9/11/2001 and that he probably had the most difficult task of all, that being the forming of a “one face on the border” agency, the United States Customs and Border Protection (CBP). CBP became an official agency of the United States Department of Homeland Security on March 1, 2003, combining employees from the United States Department of Agriculture, the United States Immigration and Naturalization Service (specifically, Immigration Inspectors and the United States Border Patrol), and the United States Customs Service. It is important to note that this Agency was created using the existing management structure of the US Customs Service. This transformation was led by former Customs Commissioner Robert C. Bonner, who continued as the Commissioner of CBP until 2005.



While I served under Commissioners Johnson, Ambrose, and Acree, I really don't remember much about their leadership or direction, although the critical TECS system must have been developed during the time Ambrose was Commissioner. About Commissioner Chasen, my only recollection was that he was very interested in the level of professionalism displayed by Inspectors. During his tenure, each Inspector was required to carry a “courtesy card” in his/her shirt pocket as a reminder to be polite and courteous in each interaction with the public.

William Von Raab was the Commissioner for eight years, from 1981 to 1989, longer than any Commissioner in the history of Customs. He was also the most colorful Commissioner, and in my opinion, the initiatives originating under his tenure probably had the most lasting impact on the US Customs Service.

Von Raab was Commissioner at a time when the government was aggressively fighting the war on drugs. Under him, the Customs Service more than doubled its efforts on drug interdiction. Airplanes and speedboats were added to chase smugglers on the main smuggling routes into the country. He was an architect of the "zero tolerance" policy, designed to put pressure on users and retail dealers by seizing their property. The policy was criticized as heavy-handed after the government seized several pleasure boats on which minuscule amounts of drugs were found. Von Raab also once unsuccessfully sought permission to shoot down aircraft that failed to respond to challenges from customs.

Customs under his leadership also initiated several carrier initiative programs which place the responsibility on the carrier to take measures secure their vessels and aircraft and keep them from being used as modes of transportation for illicit drug shipments. This program was the seed that later developed into the Customs-Trade Partnership Against Terrorism (C-TPAT).

Enrique “Kiki” Camarena was a Drug Enforcement Administration Agent working in Mexico. He was abducted, tortured and brutally murdered by drug traffickers. The

Mexican authorities were not willing to cooperate with US authorities in efforts to find the murderers and bring them to justice. The head of DEA went to Von Raab to see if there was anything he could do to put pressure on the Mexican government. Von Raab responded by ordering a 100% inspection of every vehicle, person and cargo shipment crossing the border. Almost immediately, the border was effectively closed; nothing could get across. Within days, the Mexican authorities began to cooperate. Perhaps most interesting, Von Raab had taken this action without obtaining the permission of the Secretary of the Treasury or the President. The events surrounding this incident were described in both a book and a movie entitled "Desperados". Von Raab played himself in the movie.

He also installed a program of unscheduled, unannounced drug tests for Customs Inspectors and Agents. The testing program was challenged by the labor Union representing Customs Inspectors. The challenge went through the courts all the way to the Supreme Court. The Supreme Court ruled the testing was legal and constitutionally in order.

TECS II and ACS were developed under Von Raab's leadership. When ACS first went on line, the data entry requirements placed upon Customs Inspectors and Customs Aides were enormous. Customs' idea was to shift this responsibility to the brokers and importers. Both, however, were reluctant to invest in the necessary computers, software and training of staff. Von Raab addressed a trade group in Chicago with what was called the "automate or die" speech. In it he told the trade that those who provided Customs with the data electronically would have their shipments cleared first. Those that provided paper would have to wait in line.

He also led an effort to more fully research and disseminate information about the proud history of the US Customs Service. As Commissioner during the bi-centennial year, he staged a series of gala events around the country recognizing the accomplishments of the Customs Service. These culminated in "A Day on the Mall with the US Customs Service" in Washington DC on July 31, 1989. During the ceremony he criticized the person he reported to, the Under Secretary of the Treasury, saying that the Under Secretary had done nothing to help him fight the drug war. He was also critical of the Secretary of State, saying his goal in life was to make the world a safe place for a cocktail party. He resigned as Commissioner shortly after this event.

Following the rather turbulent years of Customs under Von Raab, Carol Hallett became Commissioner in 1989 and served until 1993. She was the first female

Commissioner and had a calming effect on the Service, especially with regard to relations with importers and exporters. In an effort to build a more affable relationship with the trade, she staged a series of "trade fairs" around the country, in almost every major city, where Customs and the representatives of the trade could meet to discuss issues.

Commissioner Hallett also took a keen interest in the training of Customs employees and sought improvements in many areas of training. She recognized that 75% of the training budget was used to pay student travel expenses. Under her guidance, several distance learning initiatives were initiated.



Commissioner Hallett also desired that Customs Inspectors present a more professional image to the traveling public, as well as in their interactions with brokers and other traders. This led to a major training program which was required to be attended by all Customs Supervisory Inspectors.

George Weise was Commissioner from 1993 until 1997. His mark on the Customs Service was one of reorganization. The organization structure at the time consisted of Customs Headquarters, 7 Regional Offices, 47 District Offices and 301 Ports of Entry. Many felt the Regions were not mission enhancing and really not necessary. The Districts really controlled the day to day operations of the Ports of Entry, with the Regions acting as an unnecessary impediment to communications between the Districts and Headquarters. Commissioner Weise assembled a team of managers in Customs Headquarters to study the situation and to make recommendations on reorganizing the Customs Service.

After six months, the team produced a report called "People, Processes and Partnership." The recommendations contained in the report included the elimination of the Regions and the Districts. Districts, while considered important, were not consistent in terms of the size of area they controlled or in terms of the volume of work they handled. Ideally, just the smaller ones would have been eliminated, but this was not politically possible. The focus was to be on the Ports of Entry, the locations where the work of Customs was accomplished. To replace the 7 Regions and 47 Districts, 20 Customs Management Centers (CMC) were created. Their role was to provide necessary administrative and logistical support to the Ports. The CMC's in later years became District Field Offices and once again assumed a more operational role.

The report also mandated close examination of the processes of Customs (passenger, cargo, outbound) with the goal of making them more efficient to allow for more freedom in the movement of legitimate trade, while at the same time forming groups to look for those who sought to use legitimate trade for illicit purposes. The final portion of the report encouraged the forming of partnerships between Customs and the trade, and between Customs managers and the labor Union representing employees.

To implement the proposed changes, Commissioner Weise first mandated that all senior Customs managers attend a course designed to fully explain all aspects of the reorganization. Next the New Orleans Region and its Districts were abolished and a CMC was created. After this structure successfully operated for six months, the reorganization was implemented nationwide.

Commissioner Weise was also somewhat unusual in that he had previously worked for Customs as an Import Specialist.

Raymond Kelly was a retired Marine Colonel, had been the Police Commissioner for New York City (an organization with twice as many employees as US Customs), and in 1997 was the Under Secretary of the Treasury for Enforcement. As such, he was the boss of the Commissioner of Customs.

In 1998 he became Commissioner of Customs. One of his first actions was to hire the International Association of Chiefs of Police to conduct Officer Safety training for every Customs Inspector working on our Southwest border with Mexico. During his time as Under Secretary two officers had been shot and severely wounded at the Calexico, California Port of Entry. He wanted to do everything possible to keep that from ever

happening again. The course was later included in the Customs Inspector standard curriculum at the Academy.

Next he established the Office of Training in Customs Headquarters, headed by an Assistant Commissioner for Training. To staff it he hired 41 professional trainers. Prior to this, the Academy Director had always been a Career Customs Officer and always carried the additional title of National Director of Training.

Prior to Kelly's arrival, it had been difficult for a Customs Inspector to become a Customs Agent, for whatever reason I do not know. Commissioner Kelly mandated the Customs Agent vacant positions be filled with persons with Customs Inspector experience. In doing so he stated, "How can you be an investigator if you have never been a street cop?"

The apprehension of Ahmed Ressam also happened on Commissioner Kelly's watch. He responded almost immediately to augment the thinly stretched resources on the northern border.

Commissioner Kelly believed strongly in uniformity. He upgraded and standardized the uniforms of Customs Inspectors, as well as the weapons and the holsters that carried them. All uniformed Officers for the first time were required to wear a name tag. He had all Customs vehicles painted white with a very impressive logo of the Customs Service. He even mandated little things, such as all documents having to be produced using Arial 12 font, and all fax transmission document covers had to be the same and carry the Customs logo. All higher level managers wore white shirts and ties and shaved any facial hair.

Customs Headquarters was in the Ronald Reagan Building in Washington, DC, a building that housed other federal agencies. Commissioner Kelly wanted to put the Customs logo and a sign that said US Customs Headquarters above the Customs entrance. He was told that was not possible due to the other occupants. To overcome this, he parked a Customs Service vehicle, complete with logo, immediately in front of the entrance. Later, as a condition for moving the car, the entrance indicated that it led to US Customs Headquarters.

Commissioner Kelly resigned in 2001 and returned to the position of Police Commissioner in New York City, a position he still holds as of this date.

If I were to criticize any actions or inactions by the Commissioners I was most familiar with, it would sound like this:

Commissioner Von Raab did bring enormous additional resources to Customs. Most, however, were directed to air, marine and investigator activities. I think he could have done more to strengthen resources at the Ports of Entry.

Commissioners Hallett and Weise did not bring enormous resources to US Customs. They were content to try and manage with our existing resources, to do more with less, to work smarter, even though international trade and travel were growing exponentially. While the size of the Customs Service stayed about the same during their tenure, about 18,000 employees, both the Immigration Service Inspectors and the US Border Patrol received great increases in budgetary support.

Commissioner Kelly made many positive changes. He did make some personnel changes at the highest level that were difficult to understand. He seemed to hold the



highest level managers personally accountable for events which occurred at the Port level, in some instances events that they could not have foreseen, corrected or prevented.

The Evolution

Hopefully, after reading this, you will see why in all my toasts, in all my speeches, and all my classes I try to stress the importance of a well functioning Customs Service. And I try to stress that the most important people in a country are in fact the Customs Officers.

It is a story of a new country that creates a Customs Service as its first federal agency. This agency was created for the sole purpose of raising revenue. It fulfills that role very well, and suddenly other responsibilities are added, things like maintaining lighthouses, marine hospitals, a coast guard, immigration responsibilities and many more.

As the nation grows, separate new agencies are created to take these added responsibilities as their own. But there are new, unanticipated events that have to be dealt with, like the sky-jackings in the 1970s. The country looks for an agency that is in a position to thwart the threat, an agency that has the capabilities to thwart the threat, and suddenly once again, the US Customs Service has a new challenge.

The leaders of the organization also cause direction changes, mostly for the good of the country and the Customs Service. I think it is also interesting how each one, at least of the ones I knew, realized the importance of training and took steps to strengthen it.

Events like the apprehension of Rexam led to a redistribution of US Customs Service (and US Immigration Service) resources.

Horrible events like the abduction, torture and murder of DEA Agent Kiki Camarena led to the US Customs Service using its extreme authorities to actually change the position of a foreign government.

Another horrible event, the 9/11 terrorist attack, led the leadership of the US to realize that while the US Customs Service was strong, reliable, and efficient, to really secure its borders, something stronger, a more unified approach was needed. This led to the creation of US Customs and Border Protection, combining Customs Inspectors and Immigration Inspectors into a body of Customs and Border Protection Officers, adding Agriculture Specialists, and bringing the US Border Patrol under the same management umbrella. Now all border control agencies, both at the legal ports of entry and spaces in between, are controlled within a single agency. A National Targeting Center was created near Headquarters, tasked with identifying potential violators and dangerous cargo prior to arrival at the ports of entry, and ensuring more than just the one Officer at the port of entry was involved in reviewing entry documents.

Due to the power of drug cartels to corrupt government institutions, US Customs and CBP have developed and integrated within its core processes many procedures to ensure integrity. Examples include the National Targeting Center, where officers not assigned to specific ports of entries review cargo and passenger manifest data, in addition to targeting teams at the ports of entry reviewing the same data. Finally, a third Officer, or "set of eyes," actually conducts the physical inspection. Approaches such as this aid in reducing individual Officers' exposure to corruption attempts and reveals such violations, if they do occur, much more rapidly than in the past.

CBP arrests thousands of serious violators yearly. For perhaps one of the most significant in 2011, President Barack Obama publicly recognized the prompt and effective work by CBP officers in apprehending a suspect in the recent Times Square attempted bombing in New York City. CBP officers at the National Targeting Center on May 3rd discovered the suspect's intentions to flee the country, and notified Officers at John F. Kennedy, who then responded to the departing aircraft captured him after he had boarded a plane.

The US now has in CBP a border agency that on a typical day in fiscal year 2010,

Processed:

- 965,167 passengers and pedestrians
- 47,293 truck, rail, and sea containers

Executed:

- 1,903 apprehensions at and in between the ports of entry for illegal entry
- 75 arrests of criminals at ports of entry

Seized:

- 11,435 pounds of narcotics
- 539 pest interceptions submitted to US Department of Agriculture at ports of entry

Deployed:

- 25,129 vehicles
- 291 aircraft
- 260 watercraft
- 300 horse patrols
- 1,500 canine enforcement teams

Employed:

- 58,724 employees, including:
 - o 20,687 CBP Officers
 - o 2,366 CBP Agriculture Specialists
 - o 20,558 Border Patrol agents
 - o 1219 Air and Marine agents including:
 - § 51 Air Enforcement officers
 - § 812 Air Interdiction agents
 - § 356 Marine Interdiction agents

Protected More Than:

- 5,000 miles (8,046 kilometers) of border with Canada
- 1,900 miles (3,057 kilometers) of border with Mexico
- 95,000 miles (152,887 kilometers) of shoreline

Managed:

- 329 ports of entry
- 139 Border Patrol stations within 20 sectors, with 37 checkpoints.

Summary and concluding remarks

US Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control and protection of



our nation's borders at and between the official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of US laws. CBP is currently led by Acting Commissioner David Aguilar and Acting Deputy Commissioner Thomas Winkowski.

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