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## **THE REDUCTION OF BARRIERS IN CUSTOMS AS ONE OF THE MEASURES TAKEN BY THE CUSTOMS SERVICE IN THE PROCESS OF ENSURING SECURITY AND SAFETY OF TRADE**

**Summary:** The Customs Service, often perceived as a revenue collector, is taking up the role of a guardian of security and safety of trade in goods. While performing these functions, the Customs Service operates in such a way as to meet the expectations of economic operators. Operators involved in lawful business activities expect from customs authorities combating the black economy in illegitimate goods trade on one hand, as well as reducing control measures on the other, as they negatively affect the time and costs of doing business. As a result of the strategy implemented by the Customs Service for operators, the catalogue of solutions, which facilitate the customs procedures has been expanded significantly. Some of the implemented solutions not only make the customs process easier, thus facilitating running a business, but also constitute a positive measure taken by customs authorities in the process of providing security and safety of the market. The aim of the present paper is to characterize the most significant solutions as well as to assess their impact on the effectiveness of actions taken by customs authorities in the process of ensuring security and safety of trade.

**Keywords:** security, safety, trade, customs barriers, Customs Service.

### **Introduction**

Guaranteeing security and safety of the market, including lawful transit of goods into and out of the EU customs territory, is one of the most important, just after the collection of customs duties and taxes, tasks of customs administrations. Among all economic operators engaged in international trade, there are traders who adjust their methods and are willing to incur costs which are necessary to lawfully transit goods, but there are others who intentionally disregard

regulations to gain profits or a competitive advantage quickly. The scale of international trade as well as the present economic and technological setting, create favourable conditions for the freedom of economic activity on one hand, but also urge abuse in the customs/tax area on the other. As a consequence, the role of customs authorities in the process of providing security and safety of commodities trading is given top priority.

Customs authorities, as services possessing the full competence within the supervision and control over all goods transited through the customs frontiers, implement solutions, which are modern and cohesive within the whole European customs union. The result of the implementation of these solutions is not only an improvement in the whole customs process and supporting economic activity but also combating the customs/fiscal crime, thus protecting trade effectively. As regards customs procedures, an issue of key importance to operators is how customs authorities carry out their control activities. From the trader's perspective, the customs control is often perceived negatively, it is associated with impediments. Therefore, the Customs Service introduces solutions for modernizing methods and tools employed in control procedures so that a proper flow of movement of goods, as well as a high quality of service are maintained, and at the same time, the maximum level of effectiveness and efficiency is achieved. As a result of the strategy implemented by the Customs Service, which is aimed at operators, the catalogue of solutions which facilitate customs procedures has been expanded significantly and still has an open character. Some of the implemented solutions not only make customs procedures easier, thus facilitating running a business, but also constitute a positive measure taken by customs authorities in the process of providing security and safety of the market.

The aim of the present paper is to characterize the most significant solutions as well as to assess their impact on the effectiveness of actions undertaken by customs authorities in the process of ensuring security and safety of trade. The descriptive method will be employed here as a means of analyzing Polish and foreign literature as well as statistical data.

## **1. Legal conditions for the reduction of customs barriers in the context of trade security**

### **1.1. The legal framework of simplification solutions in the EU customs system for economic operators**

The chief reason for the reduction of barriers is customs procedures within the EU was the World Customs Organization's SAFE Framework of Standards

to Secure and Facilitate Global Trade (WCO SAFE Framework) [www 1]. The document, adopted in June 2005, introduced modern supply chain security standards, increasing the involvement of customs authorities in creating economic security of individual countries, as well as enabled the simplification of the legitimate movement of goods. WCO SAFE Framework contains standards for information exchange between customs administrations of different countries (pillar Customs-to-Customs), as well as those about the partnership between customs authorities and operators – participants of international supply chains (pillar Customs-to-Business).

The introduction of high standards with regard to security which would not impede the lawful trade took place in 2005 as a result of changes to the Community Customs Code adopted by the European Commission [Regulation (EC) No. 648/2005]. The European Commission, having introduced the changes, advised [Regulation (EC) No. 648/2005] the establishment of an equal level of protection in customs controls as well as its uniformity by the Member States, based on commonly agreed standards and risk criteria for the selection of goods and economic operators to minimise the risks to the Community and its citizens and to the Community's trading partners, which may be achieved by the introduction of a Community-wide risk management framework.

In article 13 [Regulation (EC) No. 648/2005] it is clearly stated that customs controls, as a rule, are to be based on risk analysis, using automated data processing techniques. Furthermore, legitimate and reliable operators may benefit from facilitations provided for under the customs rules and/or from simplifications with regard to customs controls related to security and safety by being granted the status of “Authorised Economic Operator” (AEO). A key factor contributing to the simplification of customs procedures was the decision of the European Parliament and the Council with regard to the pan-European electronic customs system [Decision No. 70/2008/EC], the implementation of which was made possible thanks to the e-Customs programme.

The e-Customs initiative, being implemented by all Member States since 2009, refers to a paper-free customs environment and its main goal is to create such legislative, organizational and information and communication technologies frameworks within the European customs union territory that will make the customs process streamlined and more business-friendly in the area of the duty collection, commodities trading as well as international trade security.

In response to the changes adopted in Community Customs Code in 2005, a common framework for the supply chain risk management has been prepared. It encompasses [European Commission, 2013, p. 4]: identification and control of

high-risk goods movements using common risk criteria; the contribution of Authorised Economic Operators (AEO) in a customs-trade partnership to securing and facilitating legitimate trade; and pre-arrival/pre-departure security risk analysis based on cargo information submitted electronically by traders before arrival or departure of goods in/from the EU.

The role of customs authorities in terms of guaranteeing security and safety was explained in the mission statement, first, in the Modernised Community Customs Code, and subsequently in regulations of the Union Customs Code [Regulation (EU) No. 952/2013, art. 3]: “Customs authorities shall be primarily responsible for the supervision of the Union’s international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Union policies having a bearing on trade, and to overall supply chain security”. Measures put into place to carry out the above mission statement include, among other things, protecting the EU from unfair and illicit trade while supporting legitimate business activity, as well as maintaining a proper balance between customs controls and facilitation of lawful trade [Regulation (EU) No. 952/2013, art. 3].

## **1.2. Customs simplifications for economic operators in the light of national regulations**

On the national level, the basis for the reduction of customs barriers currently is the Strategy for the Customs Service for years 2014-2020 (*Strategia działania Służby Celnej na lata 2014-2020*) [Ministerstwo Finansów, 2013]. The principal strategic goals to be achieved for years 2014-2020 are to focus on improving the standards of customs procedures as well as supporting economic activity, taking into account the economic, budgetary and technological (predominantly ICT) conditions [Ministerstwo Finansów, 2013, p. 10].

For traders involved in legitimate business activities, it is significant that the expansion of the market is accompanied by combating the black economy in the area of trade in illegitimate customs and excise goods on one hand, as well as reducing control measures on the other, as they negatively affect the time and costs of doing business [Ministerstwo Finansów, 2013, p. 11]. It is clearly laid down in the Strategy that the Customs Service strives for implementing a full-service approach towards the customer, combining the service function dedicated to enhancing the standards of service with control activities.

One of the major directions for the strategic development is increasing the effectiveness of the control while decreasing interference in legitimate economic

processes at the same time [Ministerstwo Finansów, 2013, p. 6]. As specified in the Strategy, the Customs Service activities consisting in monitoring threats, performing risk analysis, segmenting risks as applied to particular operators as well as extensive analysis of acquired data, will contribute to taking control measures in areas where it is necessary.

The Strategy for the Customs Service for years 2014-2020 was based on the 3i development prospects (Internet, Intelligence, Innovation) [www 2] in which black economy counter-measures and e-simplifications are included in the Intelligence priority. The set goals can be completed thanks to initiatives established specifically for this purpose: Customer Relationship Management Programme (recording the contacts and transactions of customers, managing the collected data to build relationships with customers); i-Customs Programme (a collection of undertakings in 11 business and technical areas, the result of which are electronic services and simplifications for traders) as well as i-Frontier Programme (streamlining and increasing the efficiency of service at the frontier by creating an integrated electronic customs system).

## **2. Customs simplifications – their essence and impact on the effectiveness of carrying out the trade security function by customs authorities**

### **2.1. Authorized Economic Operator as a safe economic entity**

Economic operators, at various stages of trade – from the production of goods to delivering them to the consumer living in a different customs territory, become participants of the international supply chain. Each trader in a particular chain can perform more than one role, or can be a part of many supply chains at the same time. The movement of goods in the international supply chain is of fundamental importance for the area of security and safety. A safe supply chain is an important source of benefits and profits for an operator running their business in accordance with the legal regulations. Furthermore, it allows customs authorities to concentrate customs controls on high-risk areas, while expediting the flow of legitimate trade [Świerczyńska, 2014].

Securing and facilitating lawful trade by customs authorities is carried out, among other things, by implementing the Authorized Economic Operator (AEO) Programme. The institution of the Authorized Economic Operator was established in 2005 [Regulation (EC) No. 648/2005], however, it was really implemented in the working procedures as late as 1 January 2008 [Commission Regulation (EC) No. 1875/2006].

To confirm the Authorized Economic Operator status, customs authorities grant the AEO certificate. The regulations introduced three types of certificates, however, only two are significant with regard to supply chains: AEOS – Security and Safety and AEOF – Customs Simplifications/Security and Safety. As regards the above two types of certificates, the general criteria for granting the AEO status include: a record of compliance with customs requirements; an effective system of managing commercial and transport records, which allows proper customs controls; proven financial solvency; proper security and safety standards [Regulation (EC) No. 648/2005]. The security and safety standards refer to: building security (an applicant operator must ensure that the location and materials of the building resist unlawful entry); proper access controls (access control measures ought to prevent unauthorised access of persons and vehicles to shipping areas, loading docks etc); cargo security (an operator should have at their disposal measures for the handling of goods which will guarantee the cargo's integrity); business partner security (identification and appropriate knowledge about business partners); personnel security (clear recruitment procedures and periodic background checks of employees working in security sensitive positions).

A trader holding an AEOS or AEOF certification is considered to be a secure and safe partner in the supply chain. Depending on the granted certification type, an operator is entitled to benefiting from a number of simplifications provided for under the customs rules and/or facilitations with regard to the customs controls on security such as: fewer physical and document-based controls; priority treatment of consignments if selected for control (service out of turn); choice of the place of controls (at the operators request and after a consent from the competent customs authority); reduced data set for entry and exit summary declarations and earlier notification from the competent customs office that the consignment has been selected for further physical control before the arrival/departure of the goods into/from the customs territory of the EU; easier admittance to customs simplifications (does not apply to the AEOS status) [Commission Regulation (EC) No. 1875/2006, art. 14].

Apart from the simplifications resulting from the EU legislation, Polish Customs Service introduced additional privileges of organizational and technical nature, the so-called “good practices”. They include: priority processing of customs declarations and all kinds of requests (priority service); designated places for customs procedures; separate lanes at border crossings; newsletters; no guarantee required (if not obligatory); more optional facilitations for operators which are issued simplified procedures privileges; a chance to participate in the

so-called 'essential prevention' programme; VAT treatment in the tax return [Ministerstwo Finansów, Departament Ceł, 2015].

Possessing an AEO certificate is not an obligation but rather a right of an operator. The AEO initiative is open for all operators within the European customs union and the decision to participate in the initiative lies entirely in the hands of a given operator [Świerczyńska, Budzowski, 2013, p. 341].

The implementation of the Authorized Economic Operator Programme allows for creating the so-called safe supply chains, and that is why customs authorities encourage operators to take part in the Programme, emphasising that the more links in the international supply chain have the AEO status, the bigger the possibility to reap benefits. In the course of seven years after the implementation of the Programme, 13 thousand AEO certificates have been issued – the majority being AEOF certificates (53%). German operators are the leaders of the Programme as they hold 42.5% of all certificates issued so far (41% of which are AEOF certifications). Poland occupies the fifth place – 5.6% of all certificates (32.2% of operators have been granted AEOF status) [www 3].

## **2.2. Risk analysis as the basis for customs control**

Customs control is a set of measures for ensuring compliance with e.g. customs law regulations and other regulations connected with the transit of goods between the Union and external countries, therefore it is considered a key element in the process of guaranteeing security and safety of trade.

In accordance with the EU standards, in the European Union a system is implemented by which customs control is performed on the basis of risk analysis of selected operators. The rationale for using this method is grounded on the assumption that since it is not possible to check all people, vehicles and goods crossing the border, control measures should be directed at only those suspected of illicit practices. This approach towards customs control means that is not "absolute control of everything" but rather a selective activity for particular areas. The risk level is established on the basis of data and information from customs clearances and controls as well as tax declarations and audits. The information which is considered important concerns e.g. parties taking part in the transaction, the type of goods, the route of transit, the direction of transport.

The risk posed by cargo entering and leaving the EU customs territory is analysed on the basis of cargo information submitted electronically in a single declaration by operators prior to departure (ECS declaration) or arrival (ICS declaration). For exports (Export Control System) this is carried out by customs

at the office of export. For imports (Import Control System) risk analysis is performed by customs at the first point of entry on all goods entering the EU customs territory regardless of their destination [European Commission, 2013, p. 5]. Risks are gauged by electronic application of common risk criteria and standards for security and safety risk analysis. Subsequently the electronic output is assessed.

Customs authorities at the first point of entry decide, based on the gravity of the risk posed, whether checks are needed and, if so, whether they are to be performed at the border or at the place of unloading of the cargo (the results are sent to customs authorities in Member States of unloading by means of an electronic message).

The risk analysis system is supplemented by the segmentation of economic operators, which comprises: categorizing operators into groups in terms of the level of risk of violations (low; medium; high); and excluding from this process those operators who were verified earlier by customs authorities in the course of an audit, i.e. those issued a permit for simplified procedures or those possessing the AEO status. In the case of operators classified as belonging to the low or medium risk segment, activities of customs authorities concentrate on monitoring the risk. However, those belonging to the group designated as the high risk, connected with the intentional violation of regulations, activities are focused on control the purpose of which is to verify whether an operator is carrying out their obligations.

A crucial part of control activities performed by customs authorities is the control of accepted customs declarations. All accepted declarations are assessed by automated risk analysis in operating systems of the Customs Service and some of them are controlled. The practice of submitting customs declarations electronically being much more common (in 2014 the percentage of electronically lodged declarations, in comparison with all customs declarations, amounted to 97.01% [Ministerstwo Finansów, Departament Służby Celnej, 2015a, p. 36]) as well as their electronic processing, directly contributed not only to decreasing the clearance time and costs incurred by traders but also, thanks to the use of risk analysis, to more effective control and consequently, to enhancing trade security. In years 2005-2014 a downward trend could be observed in relation to the number of declarations subjected to control measures as well as the number of carried out controls; simultaneously the effectiveness of those controls increased (the percentage of controlled declarations decreased – in 2014 compared with 2009 – nearly fivefold, and in comparison with 2009 – by a factor of 17). In 2005 33.5% of all lodged customs declarations were verified – the percentage of detected non-compliances came to 0.6%, five years later six times fewer declarations were verified and the effectiveness came to 7%. In 2014 2.5 million customs declarations were lodged, only 1.4% were controlled and the percentage



of detected irregularities is estimated at 21.4 % [Ministerstwo Finansów, Departament Służby Celnej, 2015a].

The number of excise and gaming proceedings as well as customs and tax proceedings confirms the effectiveness of the use of risk analysis in customs control (in 2014, on the customs offices level, 37 thousand such proceedings were conducted, 78 thousand proceeding were conducted on the Customs Chamber level). While assessing the effectiveness of customs controls it must be mentioned that Polish Customs Service operates on a section of the external border of the EU with the highest trade traffic. It is estimated that since 2008 border traffic has increased by 10-15% each year [Ministerstwo Finansów, 2014, p. 8], therefore, ensuring a proper flow of traffic and trade at borders is of the utmost importance. Over the period 2011-2014 the border traffic of passenger vehicles increased by 35.6%, in the case of heavy goods vehicles it was 9.4% and of persons 30.7%. In 2014 border crossings monitored by Polish Customs Service were crossed by 43 million of persons, 12 million of passenger vehicles, 1.9 million of heavy goods vehicles and 165 thousand coaches [Ministerstwo Finansów, Departament Służby Celnej, 2015b]. At this level of workload controlling every person or consignment crossing a customs border would lead to a complete hold-up and paralysis at border crossings.

By relying on risk analysis combined with modern technical infrastructure (e.g. modern scanning equipment) and knowledge of customs officers, the effectiveness of detection of irregularities is improved and, at the same time, control activities are streamlined. It should be emphasized that despite an increase in traffic, the customs clearance waiting time is decreasing while the number of vehicles cleared per day at border crossings is increasing. According to statistics, a vehicle (passenger or HGV) is cleared every two seconds, every second or just under it – a traveller [Ministerstwo Finansów, 2014, p. 8].

## Conclusions

The Customs Service is actively present in every field related with international trade. The current economic and technological conditions contributed to modifying the tasks of customs authorities. As a guardian of trade security, customs authorities have taken the leading role in the supply chain and have become a catalyst for competition among enterprises. Reaching a compromise between the number of solutions intended to reduce barriers or administrative burden and the necessity for effective customs control, which directly affects trade secu-

rity, is a very difficult task. The selective customs control system, based on risk analysis of designated operators is definitely a right direction and should be continued. The performance of control activities on the basis of risk analysis system brings benefits such as reducing inconveniences connected with checks as well as increasing the effectiveness of detecting non-compliances.

Furthermore, the Authorized Economic Operator Programme is proof that the reduction of barriers and implementation of innovative solutions streamlining customs procedures allow for an increase in supply chain security. It may be concluded that pro-innovative activities performed by customs authorities enable effective combating of customs crime and safeguarding the EU market while facilitating legitimate trade.

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#### **REDUKCJA BARIER W OBSŁUDZE CELNEJ JAKO ELEMENT DZIAŁAŃ PODEJMOWANYCH PRZEZ SŁUŻBĘ CELNĄ W PROCESIE ZAPEWNIANIA BEZPIECZEŃSTWA I OCHRONY OBROTU TOWAROWEGO**

**Streszczenie:** Służba Celna, postrzegana najczęściej jako poborca podatkowy, obecnie pełni także funkcję strażnika bezpieczeństwa i ochrony obrotu towarowego. Wypełniając tę funkcję, Służba Celna stara się działać tak, by odpowiadać oczekiwaniom podmiotów gospodarczych. Przedsiębiorcy prowadzący legalną działalność gospodarczą oczekują od organów celnych z jednej strony skutecznego ograniczenia szarej strefy w zakresie obrotu nielegalnymi towarami, a z drugiej ograniczenia działań kontrolnych, które niekorzystnie wpływają na czas i koszty prowadzenia działalności. W efekcie strategii realizowanej przez Służbę Celną wobec przedsiębiorców katalog ułatwień stosowanych w obsłudze celnej został znacząco rozbudowany. Niektóre z wprowadzonych rozwiązań nie tylko upraszczają obsługę celną, a tym samym prowadzenie działalności przez przedsiębiorców, ale są także pozytywnym elementem działań podejmowanych przez organy celne w obszarze bezpieczeństwa i ochrony rynku. Charakterystyka najważniejszych rozwiązań, a także ocena ich wpływu na skuteczność działań podejmowanych przez organy celne w procesie zapewniania bezpieczeństwa i ochrony obrotu towarowego jest celem niniejszej publikacji.

**Słowa kluczowe:** bezpieczeństwo, ochrona, obrót towarowy, bariery celne, Służba Celna.