



INTERNATIONAL MARITIME SHIPPING, THROUGH THE LENS OF CUSTOMS FRAUD AND SMUGGLING

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ABSTRACT

When people and companies import goods, they often have to pay a tax or tariff called a duty or import duty. The customs system relies on importers to accurately report the type, value and country of origin of the goods they import and to pay the correct import duties. However unscrupulous importers find many ways to cheat the customs authorities and gain an advantage over their competitors.

KEYWORDS: Tax, Tariff, Import Duty, Customs Authorities, Maritime Shipping

1. INTRODUCTION

Duties are taxes (also called tariffs) imposed on goods transported into the country of import. The purpose of tariffs is to protect domestic companies from unfair foreign competition. For this reason, most tariffs are designed to prevent foreign companies from selling goods in the importing country at a lower price than the price of domestic producers and thereby harming domestic competition [4].

Such duties are called anti-dumping and countervailing duties and combat two related practices: Dumping : when a company exports a product so cheaply that it sells in the foreign market at a lower price than the price the goods had on the exporter's domestic market. This threatens to drive competitors of the imported product out of business and harm the industry in the importing country.

Unfair foreign subsidies: Foreign governments sometimes provide assistance to their domestic producers and exporters. This can include cash payments, tax credits and very cheap loans. The way these subsidies are countered is by imposing countervailing tariffs.

Duties are determined as a percentage of the value of the imported goods. For almost every item, they are defined by the so-called "Combined Nomenclature" and customs authorities impose duties accordingly [2,3].

2. PROBLEM

The Combined Nomenclature is an annex to Council Regulation (EEC) No. 2658/87 on the Tariff and Statistical Nomenclature and the Common Customs Tariff and is based on the International Convention on the Harmonized Commodity Description and Coding System.

The EU uses the combined nomenclature of the EU, meeting simultaneously the requirements of the EU Common Customs Tariff, the statistics on the external trade of the Union and other policies of the Union on the import and export of goods [5].

Duties are applied according to a very complex procedure for determination and enforcement. Customs authorities collect duties based on importers' declared classification and value of the goods they import and only a small percentage of imports is actually inspected.

Some of the challenges that can hinder customs' efforts to enforce duties and stop customs fraud are:

- the inherent difficulty of verifying concealment carried out by clandestine means;
- limited access to evidence of concealment available in foreign countries;



- the highly specific and sometimes complex nature of the products subject to duty;
Customs fraud is any deliberate fraudulent attempt to reduce the duty (or tariff or tax) imposed on goods when they are imported or exported. It is classified as a crime and is punishable by law.

While there are as many forms of customs fraud as there are inventive criminals, most customs fraud involves four main schemes:

- Transshipment: where the importer sends goods from the country of origin to an intermediate country before they arrive in the importing country. This is legal and normally used in the ordinary course of business. However, since duties are based on the country of origin, shippers use transshipment to hide the true country of origin and thus illegally evade duties.

- Undervaluation: occurs when an importer declares too low a value for the imported product. Tariffs are set as a percentage of the value of imported products. When importers fraudulently claims too low an import value, they wrongfully reduce the import duty due.

- Misclassification: occurs when an importer falsely describes an imported product. Duty rates are determined based on the specific description of a particular item. By falsely describing or classifying a product, an importer can claim a lower or no duty rate.

- Structuring: occurs when the importer splits a consignment into multiple consignments of lower value. Customs legislation includes a de minimus exemption where imports below a certain value are not subject to customs duty. By splitting larger shipments into many parts, the importer can fraudulently claim that the shipments are below the limit in an attempt to avoid duty.

In turn, smuggling is the illegal transportation of goods, currency or people across a state border, in violation of applicable laws or other regulations. It most often takes the form of illegal trade in excise goods (cigarettes, alcohol, coffee) or prohibited goods such as weapons, drugs, works of art, protected animal and plant species. It also qualifies as a criminal act and is punishable by law.

Countermeasures by customs authorities and Criminalities according to Bulgarian legislation.

The Customs Act of the Republic of Bulgaria defines the functions and tasks of the Customs Agency related to countering customs fraud and smuggling [6]:

Article. 15. para. 5 carry out customs intelligence to counteract customs and currency violations, violations of excise legislation and crimes in the cases provided for in Art. 194, para. 3 of the Criminal Procedure Code. The latter refers to the distribution of cases in the pre-trial proceedings between investigative bodies, with the investigation being conducted by investigators in cases of crimes committed abroad.

Paragraph 6. organize and carry out activities to prevent and detect the illegal traffic of narcotic substances and precursors;

Paragraph. 7. carry out currency control within the competence granted to them by law;

Paragraph. 9. retain goods and/or cash in all cases provided for by law, with a receipt according to a form approved by the Minister of Finance;

Paragraph. 10. perform activities to establish administrative violations and impose administrative Criminalities;

Paragraph 11. participate in the implementation of operative-search activity together with the authorities of the Ministry of the Interior under the conditions and in accordance with the Law on the Ministry of the Interior and with the authorities of the State Agency "National Security" under the conditions and in accordance with the Law on the State Agency "National Security";

Paragraph 12. implement border control measures to protect intellectual property rights;

Paragraph 13. carry out an investigation or individual actions on the investigation of crimes in the cases, under the conditions and according to the procedure of the Criminal Procedure Code;

Paragraph 14. carry out operative-investigative activities for the prevention, detection and documentation of crimes under Art. 234, 242, 242a and 251 of the Criminal Code and under Art. 255 of the Criminal Code regarding import VAT and excise duties.



Accordingly, customs violations and administrative Criminalties are defined in Art. 233-238. of the Customs Act.

The penalties provided for in the Criminal Code for smuggling excise goods are as follows:

Art. 234 . Whoever distributes or keeps excise goods without a banderol, when such is required by law, in minor cases, shall be punished with imprisonment from one to six years and a fine of up to 10 times the market price of the distributed goods, as well as with deprivation of rights under Art. 37, para. 1, item 7.

Paragraph 2. Whoever produces or possesses for the purpose of distribution alcohol, alcoholic beverages or tobacco products without a proper permit, in minor cases, shall be punished with imprisonment for one to six years and a fine of twenty thousand to one hundred thousand BGN, as well as with deprivation of rights under Art. 37, para. 1, item 7.

Paragraph 5. The object of the crime is confiscated in favor of the state.

Art. 242 of the Criminal Code, from the section on Crimes against the customs regime, states:

Paragraph 1. Whoever transports goods across the country's border without the knowledge and permission of customs, when this was done:

- a) by persons who systematically engage in such activity;
 - b) by using a document with incorrect content, a foreign, false or forged document;
 - c) by an official who is in direct contact with the customs office;
 - d) when highly active or poisonous substances, explosives, weapons or ammunition for firearms, pyrotechnic articles, nuclear material, nuclear facilities or other sources of ionizing radiation or components, or precursors for them, defined by law or by an act of The Council of Ministers
 - e) goods and objects for commercial or production purposes in large quantities;
 - f) by two or more persons who have agreed in advance;
 - g) by a person who acts on behalf of or in fulfillment of a decision of an organized criminal group;
 - h) by transporting a specimen of a protected species of the wild flora or fauna, or a part thereof, or a product.
- shall be punished for qualified smuggling with imprisonment from three to ten years and a fine from twenty thousand to one hundred thousand BGN;

(2) Whoever, without a proper permit, transports narcotic substances and/or their analogues across the border of the country, shall be punished for high-risk narcotic substances with imprisonment of ten to fifteen years and a fine of one hundred thousand to two hundred thousand BGN, and for risky narcotic substances - with imprisonment from three to fifteen years and a fine from ten thousand to one hundred thousand BGN.

(3) Whoever, without proper permission, transports precursors or facilities and materials for the production of narcotic substances across the country's border, shall be punished by imprisonment of two to ten years and a fine of fifty thousand to one hundred thousand BGN.

(4) When the object of contraband under the preceding paragraphs is particularly large and the case is particularly serious or when any of the persons under letter "e" of para. 1 is a customs officer, the penalty is: in the cases under para. 1 - imprisonment from five to fifteen years and a fine from fifty thousand to two hundred thousand BGN, and in the cases under para. 2 and 3 - imprisonment from fifteen to twenty years and a fine from two hundred thousand to three hundred thousand BGN.

(5) In the cases under para. 1, letters "a", "d" and "e", as well as under para. 2, 3 and 4, the court may, instead of a fine, impose the confiscation of part or all of the property of the guilty party.

(6) In minor cases under para. 1, 2 and 3, the penalty is a fine of up to one thousand BGN, imposed by administrative order.

(7) The object of contraband is confiscated in favor of the state, regardless of whose property it is, and if it is missing or expropriated, its equivalent is estimated at relevant state retail prices.

(8) The means of transport or means of transport used for the transportation or transfer of the goods subject to smuggling shall be confiscated for the benefit of the state even if it is not the property of the perpetrator, unless its value clearly does not correspond to the gravity of the crime.

(9) For preparation under para. 2, 3 and 4 the penalty is imprisonment for up to five years. In these cases, para. 7.

Art. 242a. Anyone who transports goods with transit documents across the state border and, in violation of the established order, unloads the goods on the territory of the country, shall be punished by imprisonment for up to six years and a fine of fifty thousand to five hundred thousand BGN. The goods and the vehicle used to transport them are confiscated for the benefit of the state, regardless of whose property they are.



Art. 251. Whoever fails to fulfill the obligation to declare cash, precious metals, precious stones and articles with and from them, transported across the border of the country that is an external border of the European Union, and the value of the object of the crime is particularly large, shall be punished by imprisonment for up to five years or by a fine in the amount of one fifth of the value of the object of the crime.

Art. 255. (1) Whoever avoids establishing or paying tax liabilities in large amounts, such as:

1. fails to submit a declaration;
2. confirms a falsehood or withholds the truth in a submitted declaration;
3. fails to issue an invoice or other accounting document;
4. destroys, hides or does not store accounting documents or accounting registers within the statutory time limits;
5. carries out or permits the carrying out of accounting in violation of the requirements of the accounting legislation;
6. compiles or uses a document with incorrect content, a false or falsified document when carrying out business activities, when keeping accounts or when presenting information to the revenue authorities or public contractors;
7. deducts a tax credit that has not been allowed, shall be punished by imprisonment from one to six years and a fine of up to two thousand BGN.

(2) When the act under para. 1 was committed with the participation of an employee of the border police, customs administration, the National Revenue Agency, or a registered auditor, the penalty is imprisonment from two to six years and a fine of up to five thousand BGN, as well as deprivation of rights under Art. 37, para. 1, items 6 and 7.

(3) When the tax obligations are particularly large, the penalty is imprisonment from three to eight years and confiscation of part or all of the property of the guilty party.

(4) If, until the conclusion of the judicial investigation in the court of first instance, the undeclared or unpaid tax liability is paid to the budget together with the interest, the penalty under para. 1 and 2 is imprisonment for up to two years and a fine of up to five hundred BGN, and under par. 3 - imprisonment for up to three years and a fine of up to one thousand BGN.

Combating customs fraud and smuggling in the EU.

A report of the Estonian Presidency of the Council of the EU from October 2017 states [7]:

Citizens and governments increasingly expect EU customs authorities to secure external borders and protect citizens, markets and the environment from trade in illegal and harmful goods, international crime and terrorist activity linked to trade in goods. Smuggling of excise goods violates EU law, poses significant risks to EU citizens and creates unfair competition for businesses.

According to conservative estimates, tobacco smuggling damages national and EU budgets for over €10.2 billion in lost public revenue per year. Illicit tobacco trade undermines anti-smoking and public health measures and breaches the strict rules which the EU and its member states have imposed on the production, distribution and sale of tobacco products. Mineral oil tax fraud leads to increasing losses for Member States' national budgets due to lost excise duty, VAT, corporate tax and environmental tax. In most Member States, the percentage of excise duty imposed on mineral oil represents between 51 and 60 % of the total excise duty. Estimates of the total loss of tax revenue from tax fraud/evasion are not available due to the lack of data provided. The overall loss of tax revenue from mineral oil tax fraud is estimated to be high across the EU.

The EU budget is largely financed by three sources of revenue known as 'own resources': duties on imports from outside the EU, VAT, national contributions [8].

As these three sources account for around 98% of the EU budget, protecting them from fraud is vital. OLAF (Office Européen de Lutte Anti-Fraude) plays an important role on behalf of the EU, fighting one of the most common types of customs fraud - companies avoiding duties, including anti-dumping duties [1].

Cooperation between customs authorities.

The cross-border nature of customs fraud requires national authorities to work together to prevent, investigate and prosecute breaches of customs law. In the EU context, this is called "mutual assistance".

The rules on how this cooperation should take place are set out in Regulation 515/97 (currently under evaluation). There is a particular emphasis on information sharing, including suspicious:



- people and their movement;
- places where the goods are stored;
- movement of goods;
- vehicles.

Other forms of cooperation include

- administrative investigations – an authority in one member state may request assistance from its colleagues in another;
- spontaneous sharing of information – authorities share relevant information with each other when they deem it necessary;
- cooperation with the Commission (OLAF) – when the case has a European dimension.

Joint Customs Operations (JCO) - national authorities and OLAF carry out specific checks for a limited period of time to fight fraud in certain high-risk areas.

Инструменти за споделяне на информация

Information sharing tools

To detect and investigate customs fraud at national and European level, national authorities and OLAF investigators use databases and IT tools to collect and quickly share data.

CIS – tracks goods moving in and out of the EU

FIDE – helps authorities find the right foreign partner for a given case

CSM – tracks containers entering and leaving the EU

IET - data on goods entering, leaving and passing through the EU

CIS - Customs Information System. This is a secure central database accessible by national customs authorities and OLAF. It allows them to share data on goods moving in and out of the EU.

It also contains information on suspected or established violations and customs fraud, including customs investigations, as well as requests for specific actions.

Data in the system can relate to:

Goods; vehicles; enterprises; people; fraud trends; availability of expertise; detained, seized or confiscated goods; detained, seized or confiscated cash.

FIDE - File identification database. When investigating individuals and companies, OLAF and national authorities can use FIDE to identify authorities in other EU countries that are investigating or have investigated these same cases.

CSM (Container status messages): contains information on the movement of containers entering or leaving the EU in the form of messages provided by sea carriers. For containers leaving the EU, the data covers only excise goods (tobacco, alcohol, energy products, etc.).

IET - Import, export and transit: IET databases collect data on goods entering, leaving and passing through the EU (for exports, data is collected only on excise goods such as tobacco, alcohol and energy products).

Customs officers and OLAF analysts can cross-check information from the IET with the CSM (and vice versa), to better track suspicious shipments and detect customs fraud.

3. CONCLUSION

In conclusion, dealing effectively with cross-border crime involves close cooperation and rapid exchange of information between border officials, customs, tax authorities and police officers in and between Member States, EU agencies and third countries.

There is a need for improved intelligence on illicit trade (in particular: tobacco smuggling and mineral oil fraud) as well as a high degree of harmonization of EU legislation on excise goods to facilitate appropriate, uniform tax treatment of (new) products within the internal market and to allow Member States to monitor and control to a sufficient extent.



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