

Principle of Choice of Customs Procedure in EU Customs Traffic

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Abstract: The research topic of the article focuses on the analysis of the principle of choosing a customs procedure in EU customs trade, which is of a normative nature. It is also the basic method of dealing with goods. In addition to the general legal principles constituting this principle, the article discusses the principle of freedom of trade in goods abroad; the principle of equal treatment of entities; the principle of equal treatment of goods; the principle of universality of customs duties and customs fees; the principle of universal access to information on customs law; the principle of non-revokability of the customs declaration. The conditions for export and import customs procedures were also discussed.

Keywords: Rule of choice of customs procedure, customs procedures, special procedures, import, export, importer, exporter, customs declaration.

1. INTRODUCTION

The choice of the customs procedure and the making of a customs declaration for a given procedure is one of the primary ways of dealing with goods in customs, along with the others i.e., destruction of goods and surrender to the State Treasury.

The EU Customs Code [1] is based on a declaration system [2] that aims to minimize customs formalities and controls while preventing fraud or irregularities that could damage the EU budget. It is because of the importance of these prior declarations for the proper functioning of the customs EU that the EU legislator requires declarants to provide the following (under Article 15 of Regulation (EU) No 952/2013):

- correct and complete information in the customs declaration;
- authentic, correct and valid documents accompanying the application;
- fulfilment, where applicable, of all the obligations relating to the placing of the goods under the customs procedure concerned or to the conduct of the authorized operations.

The declarant, under customs law, may act in his name on his behalf (economic operator) or in his name

on someone else's behalf (indirect representative) (Art. 5(15) Regulation (EU) No 952/2013). This person submits not only a customs declaration but also a declaration for temporary storage, an entry summary declaration, an exit summary declaration, a re-export declaration, or a re-export notification.

As a general rule, the declarant must be based (have a registered office) in the customs territory of the EU. However, there are exceptions here as well, which, according to Article 170(2) and (3) of Regulation (EU) No 952/2013), apply to:

- making a customs declaration for the transit or temporary admission procedure;
- the occasional submission of a customs declaration, including a declaration for end-use or inward processing, where the customs authorities consider it justified;
- The declarant is based in a country whose territory adjoins the customs territory of the EU and presents to an EU border customs office bordering on that country the goods to which customs declaration relates, provided that the country in which that person is based grants privileges to persons based in the customs territory of the EU.

According to the legal definition in Article 5(12) of Regulation (EU) No 952/2013), a customs declaration is the deed whereby a person indicates in the

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prescribed form and manner their intention to place goods under a given customs procedure, indicating, where appropriate, any specific arrangements to be applied.

With the customs declaration, all goods to be placed under a customs procedure, except for the free zone procedure, are placed under the following customs procedures: release for free circulation, export, transit, customs warehousing, temporary admission, end-use, and inward and outward processing (see Table 1 below).

1.2. Research Method and Benefits

This article is the result of normative legal research. The study employs an analytical method, which includes an analysis of the provisions of the EU customs law, which is applied uniformly in the customs territory of the EU, and the Polish customs law following the principle of subsidiarity of the EU law. The study aims to analyse the normative principle of the choice of customs procedure, which is the primary way of dealing with goods in EU customs traffic.

1.3. The Paper's Structure

The article discusses the normative principle of the customs procedure choice in the EU customs traffic. The first part discusses the concept of the EU customs traffic, which is not normative but rarely analyzed in the literature. The second part examines the normative principle of the choice of customs procedure, which is constituted by the basic principles of the customs law catalogue, i.e., the principle of the freedom of trade in goods, the principle of equal treatment of operators; the principle of equal treatment of goods; the principle of the universality of customs duties and charges; the principle of universal access to information on customs law; and the principle of irrevocability of the customs declaration. The general normative conditions indicated for customs procedures of an export and import nature are also noted.

2. THE CONCEPT OF THE EU CUSTOMS TURNOVER

Customs turnover, like legal and customs turnover, is not a normative concept; it is not defined in customs legislation. In practice, it is part of economic turnover related to export or import activities.

The concept of customs turnover is coupled with economic turnover, formerly known as trade turnover, which in principle belongs to economic concepts and is often defined as the exchange of goods and services, i.e., the essence of economic activities carried out by traders subject to market laws.

Economic turnover is civil law turnover, where all issues related to the conduct of business are governed by law, of a private nature, i.e., it protects the interest of the individual. It is commonly accepted that economic turnover is divided into: consumer (non-professional) turnover and professional turnover, which is carried out by entrepreneurs [4]

Customs turnover is regulated by customs law and the legal norms here are of a public nature, i.e., they protect the interest of the state and cover trade in goods of a non-commercial nature as well as trade in goods of a commercial nature, which is related to export-import activities.

Although the EU legislator does not define turnover of goods of a non-commercial or commercial nature, they define the concept of goods of a non-commercial nature in Article 1(21) of Commission Delegated Regulation (EU) No 2015/2446 [5].

In the case of non-commercial turnover, the goods are exported or imported by private individuals on an occasional basis and consist exclusively of goods for the personal use of the travelers or their families or contain goods intended as gifts, and their nature and quantity do not indicate that they are being exported or imported for commercial purposes. In the case of goods placed in dispatched consignments, as in the

Table 1: Customs Procedures Requiring a Customs Declaration

Regular procedures	Special procedures			
	Transit	Warehousing	Special Purpose	Processing
Release for free circulation	External transit	Bonded warehousing	Temporary admission	Inward processing
Export	Internal transit	Free zones	End-use	Outward processing

Source: own elaboration based on Article 5(16) in connection with Article 210 of the UCC.

case of goods placed in personal luggage, they must also be occasional and contain goods that are solely for the personal use of the recipient or his family and, by their nature or quantity, have no commercial purpose, the only difference being that they are dispatched by the sender to the recipient and not transported personally in the personal luggage. Thus, an individual may be an exporter, importer, tourist, or sender or recipient of the consignments sent and use a postal operator.

Suppose goods carried in personal luggage or sent to a consignee in a third country are used in commercial turnover. In that case, it will amount to a failure to fulfil at least one of the above-mentioned prerequisites, so it will relate to a commercial activity, or the trade will be associated with an export-import business.

The EU customs trade also includes trade in goods from third (non-EU) countries, where we are dealing with the export and import of goods, and trade in goods with EU Member States, where we are not dealing with the export and import of goods but with intra-Community acquisition or supply of goods, contrary to the first case.

In EU customs law to date, the EU legislator has only defined the concept of the exporter. Still, there is no legal definition of the importer, but this is helped by the new guidelines on the determination of the customs value of goods published by the European Union on 17 September 2020, which identify the importer but do not define them and refer to the application of the transaction method of goods in the determination of the customs value of goods.[6]

The importer here is the person based in the EU's customs territory and releases the imported goods. It is not necessarily the person who introduced the goods from a third country. Yet, it is an importer-trader. More broadly, the importer can also be a private person based in the customs territory of the EU, importing non-EU goods into the customs territory of the EU and not necessarily releasing them for circulation. Any person based in the customs territory of the EU who is responsible for the importation of goods into the customs territory and not necessarily releasing them for circulation [7]

According to the legal definition in Article 19 of Commission Delegated Regulation (EU) No 2015/2446, an exporter is:

- a person based in the customs territory of the EU who, at the time of acceptance of the declaration, is bound by a contract with a consignee in a third country and who has the power to decide about the sending of the goods to a destination outside the customs territory of the EU;
- a private person carrying goods to be exported, the goods being placed in that personal luggage;
- in other cases, a person based in the customs territory of the EU and having the power to decide about the dispatch of goods to a destination outside the customs territory of the EU;

In the proposed provisions of the Proposal for a Regulation of the European Parliament and of the Council establishing the EU Customs Code and the European Union Customs Authority and repealing Regulation (EU) No 952/2013 [8], the EU legislator has included legal definitions of both exporter and importer. According to the aforementioned provisions, exporter means any person who is entitled to decide and has decided that goods are to be brought out of the customs territory of the EU (Article 4(14)), and importer means any person who is entitled to decide and has decided that goods from a third country are to be brought into the customs territory of the EU or, except where otherwise provided, any person deemed to be an importer (Article 4 point (12), where a person considered to be an importer is any person involved in the distance marketing of goods to be brought from third countries into the customs territory of the EU and who is entitled to use the special scheme provided for in Section 4 of Chapter 6 of Title XII of Directive 2006/112/EC (Article 4(13)).

The proposed definitions are, in principle, not very clear and precise. Still, it must be assumed that the EU legislator has proceeded on the assumption that these definitions are well known to those involved in international customs trade.

3. THE NORMATIVE LEGAL NATURE OF THE PRINCIPLE OF THE CUSTOMS PROCEDURE CHOICE

According to the principle of the customs procedure choice in Article 150 of Regulation (EU) No 952/2013, the declarant may choose the customs procedure under which the goods will be placed, under the

conditions laid down for that procedure, irrespective of the type, quantity, country of origin of the consignment or destination of the goods. The fact that the customs authority accepts the customs declaration gives rise, by operation of law, to placing the goods under a customs procedure and determining the amount of the resulting customs debt.

Although this principle is normative, it is not an absolute freedom, as the choice of procedure is limited by the general legal principles constituting the principle of choice of customs procedure, as well as the general and specific conditions provided for the customs procedures in question and their export or import nature and the customs status of the goods, which defines the goods as EU or non-EU goods (see Table 2)

As shown in Table 2, customs procedures of an export nature include the export procedure and the internal transit and outward processing procedure, where we export goods with a customs status of the EU. In contrast, in the case of customs procedures of an import nature, the goods have the customs status of non-EU goods. Here, we include the following customs procedures: release for free circulation, external transit, customs warehousing, free zones, temporary admission, end-use, and inward processing.

For all these customs procedures, a customs declaration is required (the exception is the free zone procedure, here only a notification is required, in accordance with Article 245 of Regulation (EU) No 952/2013), and an authorization for each customs procedure (the exception is the customs warehousing procedure, but in this case, an authorization for a customs warehouse is required, under Article 211(1)(b) and (3) and (4)(a) of Regulation (EU) No 952/2013).

Furthermore, all these procedures are subject to the general principles of law.

4. GENERAL LEGAL PRINCIPLES CONSTITUTING THE PRINCIPLE OF CHOICE OF CUSTOMS PROCEDURE

The principle of the customs procedure choice is constituted by the following general principles of customs law i.e.: [9]

- the principle of freedom of trade in goods with foreign countries;
- the principle of equal treatment of economic operators;
- the principle of equal treatment of goods;
- the principle of common customs duties and charges;
- the principle of universal access to information on customs law;
- principle of irrevocability of the customs declaration [10]

The principle of freedom of trade in goods is derived from the principle of freedom of establishment. It guarantees to any person based in the customs territory of the EU, i.e., a natural or legal person, or an organizational unit without legal personality, the freedom to export and import and, thus, trade in goods with a foreign country. As is the case with the principle of freedom of economic activity, so too with the principle of freedom of trade in goods - this freedom is not absolute. Exceptions relate to rationing economic activities through concessions, licenses, or permits concerning certain goods during economic activities and temporary quantitative restrictions.

Table 2: Export and Import Customs Procedures

Export procedures	The customs status of the goods placed under the export procedure	Import procedures	The customs status of the goods placed under the import procedure
Export	EU goods	release for free circulation;	non-EU goods
Outward processing	EU goods	External transit	non-EU goods
Internal transit	EU goods	Bonded warehousing	non-EU goods
		Free zones	non-EU goods
		Temporary admission	non-EU goods
		End-use	non-EU goods
		Inward processing	non-EU goods

Source: own study.

The principle of equal treatment of operators is another principle strongly linked to the principle of freedom of trade in goods. All operators, regardless of their legal form, size, or the level of their export and import activities, have the same rights and obligations, which by law are normative and concern the import of goods into or export of goods from the EU customs territory.

Legal liability is defined here in terms of sanctions. The dimension of sanctions for non-compliance with customs legislation in the international arena is under the national jurisdiction of individual states. A similar situation also exists in the EU, with the only condition set by the EU legislator being that customs sanctions must be effective, proportionate, and dissuasive. Currently applicable administrative sanctions according to the provisions of the UCC may take, among other things, one or both of the following forms: (Article 42(1) and (2) Regulation (EU) No 952/2013):

- a financial penalty levied by the customs authorities, including, where applicable, the possibility of a settlement of a sanction in lieu;
- revocation, suspension or modification of licenses held by the person concerned.

As you can see, the UCC provisions transfer the enforcement of non-compliance with customs law and the level of sanctions to individual Member States in accordance with their national jurisdiction, based on the principle of subsidiarity of EU law. In a sense, this problem was intended to clarify the proposal for a directive on the EU legal framework concerning infringements of customs provisions and sanctions from 2013, which presented a list of acts that should be treated as infringements of EU customs provisions and which should be subject to sanctions. This directive was intended to be incorporated into the legal order of individual Member States by May 1, 2017 at the latest, but this has not happened and will not happen in the future due to the resistance of the majority of Member States. The proposal to standardize the enforcement of violations of customs law provisions together with the level of sanctions on the EU market had a chance to eliminate national differences in this area, introducing uniform rules in the application of customs law and its enforcement, thus giving all entrepreneurs equal opportunities on the EU market [11]

The principle of equal treatment of goods derives from customs-related provisions and implies that all

goods of the same kind and quantity, irrespective of where they come from or to whom they are destined, are subject to identical treatment, i.e., they should be subject to the necessary customs procedures and proceedings, customs duties and other charges under the same conditions. This principle is not absolute, as there are exceptions of a subjective nature, e.g., arising from diplomatic or consular conventions, or of an objective nature, e.g., goods transported as part of resettlement property and goods of preferential origin.

The principle of equal treatment of operators, like goods in customs law, is not the same as the concept of equality under the law, as it may require different treatment to level the playing field or ensure equal results. Nor is it the same as non-discrimination. While in the colloquial sense, the terms equality and non-discrimination are mostly treated as synonymous, in legal terms, they are not identical in meaning. Equality is distinguished from non-discrimination by the nature of the obligations borne by the public authority. In the first case, they are positive in nature and consist of taking specific action in favor of equality (e.g., favoring a particular social group). In the second, the duties are negative in nature and consist in refraining from specific actions that violate the principle of equal treatment. The principle of non-discrimination, therefore, requires equal treatment. Still, the scope of the principle of equality is broader than the principle of non-discrimination. It includes the duty to treat equally, protect against discrimination, promote equality, and prevent inequality [12].

Related to the above principle of equal treatment of operators is the universality of customs duties and other charges. All goods imported into the customs territory of the EU for economic activity, but not exclusively, as this also applies to goods imported for own consumption, are subject to the determination of import duties and the incurrance of a customs debt on the goods, i.e., a legal obligation to pay the appropriate amount of import duty determined for the goods concerned under the applicable customs legislation, provided that the rate of duty is specified in the customs tariff. Customs duties, unlike customs duties, are not regulated at the EU level but fall under the national jurisdiction of individual Member States.

The Polish customs law [13] distinguishes between fees that constitute revenue for the state budget and fees that correspond to the actual expenditure incurred for examination or analysis. In the first case, under

Article 93(1) of the above-mentioned act, the Polish legislator means fees for storing goods in a depository or temporary storage facility managed by the customs authority, where the total fee for such storage may not be lower than the equivalent of the amount of EUR 10 and higher than the customs value of the goods, and fees for performing, at the request of the interested party, the activities provided for in the customs legislation at a place other than the customs office or outside the working time of the customs office.

In the second case, according to Article 92(1) of the Polish Customs Law, fees are charged for examinations or analyses carried out at the request of a person or for processing an application for binding tariff information or binding origin information, where such an application requires an examination or analysis.

Another principle - universal access to customs information - is one of the fundamental principles of the rule of law. Still, it is subject to a significant limitation, as customs information can only relate to the actual import of goods or their actual export from the EU customs territory. Generally speaking, such information can be obtained through access to information - application or non-application. According to Article 10 of the Act on Access to Public Information in Poland, information that has not been made available in the Public Information Bulletin (BIP) or the central repository is made available upon request. In the non-request mode, information is made available in official ICT publications, such as the Public Information Bulletin (BIP) and the central repository [14].

Public information may also be made available immediately orally or in writing without a written request.

The Customs Information Centre (InfoSC), operating in Poland on its own until 30 April 2017 within the Customs Service, as of 1 March 2017, was incorporated into the National Fiscal Information (NIS), which was created from the merger of the National Tax Information and Customs Information, thus ensuring uniform tax and customs information [15].

The role of the National Tax Information Service is to provide telephone answers to questions relating to tax problems and customs procedures. The aim is to make it easier for operators to do business, understand better, and navigate tax and customs regulations.

The last principle in the catalogue of customs law principles indicated is the principle of non-revocability

of the customs declaration. This principle is the main rule for the movement of goods, both for the importation of goods into the EU customs territory and for the exportation of goods from the EU customs territory. A consequence of this principle is the obligation of each declarant to present a correct declaration. If the declarant could amend his declaration at any time, the customs authorities would have no confidence in the reliability of the information provided with the original declaration, with negative consequences for the speed of customs operations and the efficiency of the controls carried out by the customs authorities.

- This principle is not absolute either, it also contains exceptions which include:
- rectification of the customs declaration at the declarant's request;
- invalidation of the customs declaration at the request of the declarant;
- ex officio invalidation of the customs declaration;
- control of the customs declaration after release of the goods on the initiative of the declarant or the customs authority.

The conditions for derogation from the principle of irrevocability of the customs declaration set out above are, as a rule, strictly subordinated to the institution of the presentation of the goods; this is the case both for the rectification, and the invalidation of the customs declaration and this is the case both for the lodging of the customs declaration after the presentation of the goods and its submission before the presentation of the goods to customs.

5. GENERAL PRESCRIPTIVE CONDITIONS PROVIDED FOR EXPORT PROCEDURES

Among the general conditions provided for export procedures, the basic rule applies here: any EU goods leaving the EU customs territory should be declared for the export procedure. The exceptions here are outward processing and internal transit procedures. In the case of export procedures, the EU customs tariff is also not applicable, which is only valid for imported goods, despite the provisions on customs debt on export. For the time being, EU customs is a dead provision [16]

In addition, there is a mandatory requirement for goods brought out of the EU customs territory to lodge an exit summary declaration prior to the exit of the

goods (Article 5(10) of Regulation (EU) No 952/2013). Goods brought out of the customs territory of the EU are also subject to customs supervision and may be subject to customs controls.

The choice of one of the procedures of an export nature and making a customs declaration is related to the activities that will be performed on the EU goods. If we process EU goods in a third (non-EU) country, we must declare it under the outward processing procedure. Suppose we are going to transport EU goods from one place to another in the customs territory of the EU through a country or region that is not part of that territory without any change in the customs status of the goods. In that case, we must declare it under the internal transit procedure. In the case of the export procedure, the rule is that all EU goods leaving the EU customs territory should be declared for this procedure. Only under the latter procedure is there a change in the customs status of EU goods to that of non-EU goods.

It is worth highlighting here that EU goods brought out of the EU customs territory, in accordance with Article 267 of Regulation (EU) No 952/2013, are subject to customs supervision and may be subject to customs controls. They may also be subject to the repayment or remission of import duties, the payment of export refunds, and prohibitions and restrictions, including controls that target drug precursors, goods infringing certain intellectual property rights, and cash - justified, among other things, on the grounds of reasons of public morality, public order or public security, the protection of health and life of humans, animals or plants, the protection of the environment, the protection of national treasures of artistic, historical or archaeological value and the protection of industrial or commercial property, as well as the implementation of measures for the conservation and management of fisheries resources and trade policy measures.

In the case of export procedures, it is also important to cooperate with the customs authorities of individual Member States in the field of customs compliance, which is integral to the goals of the internal market, including: as an area without internal borders, where the free flow of goods, people, services, capital and labor is ensured without customs barriers. These freedoms are also strongly interconnected, and each of them individually affects the others. Already in the primary Community law, in Art.135 of the Treaty establishing the European Community, the Community legislator

created the legal basis for the application of measures aimed at deepening customs cooperation between the Member States and between the latter and the Commission, except in cases relating to the application of provisions of domestic criminal law and the operation of national justice administrations. Measures against fraud and other unlawful activities affecting the financial interests of the Community could apply by virtue of the application of Article 280 [17]

6. GENERAL CONDITIONS PROVIDED FOR IMPORT PROCEDURES

Among the general conditions provided for import procedures, the basic principle is that any non-EU goods brought into the EU customs territory are subject to import duties under the EU customs tariff. The exceptions include customs warehousing, free zones, and external transit procedures, which belong to the group of procedures that suspend customs duties.

In the case of import procedures, the amount of duty resulting from the customs debt should be paid within ten days from the date of notification. Furthermore, it is mandatory for goods brought into the customs territory of the EU to lodge an entry summary declaration before the goods are brought out (Article 125 Regulation (EU) No 952/2013). And goods, as soon as they enter the customs territory of the EU, are subject to customs supervision and may be subject to customs controls.

Introduced non-EU goods under Article 134 of Regulation (EU) No 952/2013 are also subject to prohibitions and restrictions which are justified on grounds of, among other things, public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of the environment, the protection of national treasures possessing artistic, historic or archaeological value and the protection of industrial or commercial property, including the control of drug precursors, goods infringing certain intellectual property rights and cash, as well as the implementation of measures for the conservation and management of fisheries resources and of commercial policy measures.

The choice of one of the procedures of an import nature and the submission of a customs declaration is linked to the operations that will be performed on the non-EU goods. An exception to this is the free zone procedure, which does not require a customs declaration but only a notification. Thus, if we plan to

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