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Activities of the Customs Service aimed at Combating Crime in Trade as an Element of Securing the Effective and Efficient Collection of Budget Revenue¹

Abstract: The Customs Service, carrying out a function of a revenue collector, collects not only customs duties but also other charges and taxes comprising budget revenue. They constitute approximately 30% of the total state budget revenue. The aim of the article is to present the significance of the Customs Service operations in combating crime, thus increasing the effectiveness and efficiency of collecting public duties. Due to the volume and complexity of the problem of customs crime, as well as the scope of fiscal duties of customs authorities, the analysis is focused on trade in goods. With this regard, the method of descriptive and comparative analysis has been employed. The performed analysis has led to a conclusion that taxes collected by the Customs Service related to trade in goods, constitute a very solid and reliable source of budget revenue, hence, ensuring the effective and efficient collection of the duties is vital from the perspective of state finances.

Key words: Customs Service, crime, state revenue

Introduction

The international supply chain consists of numerous elements made up by economic operators at different stages of exchange. Each operator in a particular chain can perform more than one role, or can be a part of numerous supply chains at the same time. The key role in the international supply chain has been taken by customs authorities, which, by

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holding full competence within the supervision and control of all goods transited across the border, secure and facilitate the flow of goods. Increasingly more complex supply chains, as well as the current economic and technological conditions, free flow of goods and people, ever-growing disparities between particular economies, constitute an impulse for abuse in the area of customs/tax law. Abuses connected with such unlawful activities as evasions or intended evasions of due customs duties, indirect taxes or other charges on imported goods, are extremely dangerous from the point of view of safeguarding the fiscal interests. Therefore, providing the effective and efficient collection of customs/tax charges is of great importance and requires great responsibility of the collector i.e. the Customs Service. Taking up the fiscal role is one of the oldest functions of customs authorities. The Customs Service, performing the role of a tax collector, collects not only customs duties but also other charges and taxes constituting budget revenue. Customs authorities are responsible for such activities as collecting import taxes, excise in the domestic trade, gambling tax; tax on mining certain minerals. However, it should be stressed that performance of activities from this area is of a multifaceted character. Customs authorities, while carrying out activities aimed at protecting the state budget against a diminution of revenue from taxes, simultaneously protect the market by taking necessary steps to ensure that only 'safe' goods i.e. goods that do not pose a threat to health and life of people, do not harm the environment nor the economic operators, may enter the EU customs territory. The aim of the article is to present the significance of Customs Service operations in combating crime, thus increasing the effectiveness and efficiency of collecting budget revenue. Due to the volume and complexity of the problem of customs crime, as well as the scope of fiscal duties of customs authorities, the analysis is focused on trade in goods. With this regard, the method of descriptive and comparative analysis has been employed.

The scope of operations of the Customs Service

The Customs Service is a uniformed agency that was established to safeguard the area of the European Union customs territory, including lawful transit of goods into and out of the EU customs territory as well as to carry out duties related to the excise and gambling tax. [Customs Service Act 2009, Article 1]. Therefore, in the act delimitating the Service's jurisdiction, there is a clear indication of the scope of customs authorities' operations [Customs Service Act 2009, Article 2]. Within the competence granted to the agency, the Customs Service carries out both fiscal and non-fiscal tasks. In the fiscal area, the catalogue of tasks does not only include estimating and collecting customs duties and other

charges related to import and export of goods but, as a result of expanding customs authorities' competence, also includes: since 1 September 2003 – a Value Added Tax on import of goods and all excise duties i.e. both on imported goods and domestic trade [Voivodeship Tax Boards Act 2003]; since 31 October 2009 – a gambling tax, charges on issuing concessions, permits and professional certificates [Gambling Act 2009]; since 18 April 2012 – a tax on mining certain minerals i.e. copper and silver [Mineral Mining Tax Act 2012, Article 11]. Moreover, since 1 January 2016, pursuant to changes contained in the act of 25 July 2014 on a special hydrocarbon tax, the scope of tasks also includes a tax on extracting petroleum and natural gas; however, this tax will start to apply on 1 January 2020. All the levied customs and tax duties are transferred to the state budget and regularly comprise approximately 30% of the total annual revenue of the country (Table 1).

Table 1. Income from Customs-Tax duties collected by the Customs Service in comparison with the state budget in years 2004–2014

Year	Types of duties collected in years 2004-2014 (million PLN)						State budget revenue	Share of income collected by Customs Service in budget revenue (%)
	Customs duties	VAT on import	Excise	Other income	Total collected duties	Duties dynamics (previous year 100 %)		
2004	2282.4	30852.68	37970.05	17.07	71122.20	113.02	156290.20	45.51
2005	1270.62	16873.70	39471.90	8.81	57625.03	81.02	179801.60	32.05
2006	1385.86	20616.52	42078.02	45.06	64125.46	111.28	197673.50	32.44
2007	1747.59	23798.25	49025.52	95.26	74666.62	116.43	228952.50	32.61
2008	1728.74	26338.31	50490.11	82.34	78639.50	105.32	254083.80	30.95
2009	1627.5	20324.89	53926.89	391.62	76270.90	96.98	274183.50	27.80
2010	1663.75	23026.58	55684.48	1828.38	82203.19	107.78	250302.78	32.84
2011	1923.84	29074.44	57963.71	1664.11	90626.10	110.25	277557.22	32.65
2012	1974.01	28848.35	60449.85	3040.14	94312.35	104.07	287594.60	32.79
2013	202.09	20739.18	60653.12	3373.79	86788.18	92.02	279151.20	31.09
2014	2440.72	20213.85	61570.44	2792.57	87017.58	100.26	283542.70	30.69

Source: Author's own elaboration based on: Ministerstwo Finansów 2009, 2010, 2015a.

The analysis of the table above allows for drawing a conclusion that taxes collected by the Customs Service may be regarded as a solid and reliable source of budget revenue. Therefore, ensuring the efficient collection of the duties is essential from the

perspective of state finances. The effective completion of tasks from this area, combined with statutory non-fiscal tasks of safeguarding the customs and tax territory, is a part of customs policy. It includes such elements as identifying, detecting, preventing and combating crimes and offences related to violating regulations on the entry of goods subject to trade restrictions or prohibitions for the reasons of state security and public order as well as international security, into the territory of the Republic of Poland [Customs Service Act 2009, Article 2(1), Point 4], as well as crimes and offences against health, cultural heritage, intellectual property rights, nature and environment, restrictions of trade in goods and technologies of strategic importance [Customs Service Act 2009, Article 2(1), Point 6]. Furthermore, a critical task of customs authorities is counteracting any financial loss to the state budget resulting from tax evasion crimes and offences. To this end, the Customs Service is tasked with identifying and detecting crimes and offences of this sort as well as taking necessary steps to deter any potential violation of customs regulations [Customs Service Act 2009, Article 2(1), Point 5]. Criminal Tax Code Act in its seventh chapter indicates the scope of crimes and offences against customs duties and regulations on foreign trade in goods and services and the resulting risk of reducing duties payable. The catalogue includes such unlawful activities as: violation of orders and prohibitions laid down for foreign trade, particularly the evasion of the customs law obligations; exposing the State Treasury to a customs duty diminution (e.g. lack of customs declaration, extortion of customs duty drawback or customs duty remission); violating restrictions on the use of goods, customs crime (e.g. misleading an authority entitled to perform a customs check; failure to comply with obligations by an operator granted the right to the temporary importation procedure; failure to comply with obligations related to using duty exemption or a zero, reduced or preferential rate of duty), smuggling or handling (purchasing goods subject to a criminal act; storing, transporting, aiding the sale or concealing goods subject to a criminal act), as well as non-compliance with other obligations related to the regulations of customs obligations (e.g. removal of goods or means of transport from customs supervision; serious infringement of regulations laying down the conditions for running customs agencies, free zones, customs storehouses and warehouses; obstructing or preventing customs control or customs supervision, lack of documentation relevant to customs control) [Criminal Tax Code Act 1999, Articles 85–96].

Customs control as a principal tool in combating trade crime

The phenomenon of customs crime, connected with evading taxation, prohibitions and restrictions resulting from the rules of law, common as it may be in all fiscal areas of Customs Service activity, it is particularly dangerous for trade in goods since, on the one hand, it affects the state finances negatively and, on the other hand, has an adverse impact on the security of the flow of goods and safety of individual consumers. As regards trade in goods, an important category of customs crime is smuggling. Smuggling may be defined as an unlawful transit, from one customs territory into another, of goods produced legally (by failing to make a customs declaration and not revealing the cargo to customs authorities) with an intent of evading to make due payments (customs duty, VAT, excise tax) to the country into which the goods are transited. The purpose of this activity may be to place goods infringing intellectual or industrial property rights (counterfeit products) on the market; it also concerns goods failing to meet the criteria of a given category of products. The typical examples of contraband are excise goods (cigarettes, alcohol, liquid fuels) and counterfeit products. The principal tool employed to curb trade crime is customs control. The notion of customs control is defined in the Union Customs Code and reads as follows: “specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure” [Union Customs Code 2013, Article 5, Point (3)]. Customs controls may consist of examining goods, taking samples, verifying the accuracy and completeness of the information given in a declaration or notification and the existence, authenticity, accuracy and validity of documents, examining the accounts of economic operators and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts [Union Customs Code 2013, Article 46]. Within the EU customs territory a selective customs control system, based on risk analysis of designated operators, applies. The rationale for using this method is grounded on the assumption that since it is not possible to check all persons, 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 aimed at particular areas. It is currently possible to concentrate customs controls on areas in which the risk of the occurrence of infringements is high thanks to well-qualified customs officers, effective methods and high-tech tools based on IT technologies.

In the UCC regulations, the notion of risk has been specified as the likelihood and the impact of an event occurring, with regard to the entry, exit, transit, movement or end-use of goods moved between the customs territory of the Union and countries or territories outside that territory and to the presence within the customs territory of the Union of non-Union goods, which would prevent the correct application of Union or national measures; compromise the financial interests of the Union and its Member States; or pose a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers [Union Customs Code 2013, Article 5, Point (7)]. At the national level, the obligation of performing controls on the basis of risk analysis intended to recognize and assess the level of risk as well as estimate measures required to limit it, results from the Customs Service Act [Customs Service Act 2009, Article 3 (1)]. However, risk is described as a possibility of violation of the rules of law [Customs Service Act 2009, Article 3 (2)]. It must be stressed that, if control activities are random, they may be carried out regardless of the results of the risk analysis. Combating customs crime in trade mainly involves performing controls of persons, vehicles and cargo by the Customs Service independently as well as in collaboration with other services such as Veterinary Inspectorate (veterinary control of animals and products of animal origin), Sanitary Inspectorate (border sanitary control of food as well as food-contact materials and products), Plant Protection and Seeding Inspectorate (phytosanitary control of plants and plant products), Inspectorate of Trade Quality of Agricultural-Food Products (quality control of agri-food products). In 2015, organizational units of the Customs Service performed over 186 thousand controls, including 174 062 independently (29,54% positive) as well as 6 694 joint controls while collaborating with other services (3,58% positive) [Ministerstwo Finansów 2016, p. 71]. Another important aspect is – carried out in various forms – cooperation with foreign and international institutions and authorities such as World Customs Organization (WCO), European Police Office (Europol), The European Anti Fraud Office (OLAF).

Effects of customs crime on the state budget

According to data provided by the Ministry of Finance, in 2015 the state budget revenue diminution resulting from lost customs duties, excise duties and Value Added Tax amounted to over 653 million PLN, in 2014 and 2013 it was over 500 million PLN (Table 2).

Table 2. Value of impounded goods and legal tenders by the Customs Service in line with the criminal-tax act in years 2010–2015 (in PLN)

Year	Estimated value of impounded goods	Value of impounded goods and registered legal tenders	Number of cases in Criminal Tax Register	Number of cases of issued fines	Value of revenue diminution calculated in the system in the area of:			
					custom duties	excise duties	VAT	total
2010	73415011	73869005	44663	94443	21673357	322906432	85170525	429750314
2011	47260222	40600015	50646	111978	11105838	327867428	70351839	409325105
2012	52543380	47914578	58488	91988	9234225	365556795	63774472	438565492
2013	81280359	80974756	81711	55742	12135085	461747092	69765711	543647887
2014	119790848	79105587	107944	59484	11353995	447069119	67318914	525742028
2015	138200016	145288211	119990	23701	20756309	541335282	91811620	653903211

Source: Author's own elaboration based on: Ministerstwo Finansów: (2016), pp. 42, 43; (2015b), pp. 67,70; (2014), pp.65,68; (2013), pp. 116, 119; (2012), pp.129, 132; (2011), pp.130, 132.

Having analysed the table above we may observe a clear upward trend – from year to year, the state budget losses increase. The excise duty, which has a dominant position among all sources of revenue transferred by the Customs Service (its share in the total revenue collected by the Customs Service was 69% in 2010, 65% in 2011 and 2012, 70% in 2013 and 2014 (Table 1), has the largest share in the estimated budget revenue diminution among all sources of income under customs authorities' jurisdiction (in 2015 – 83%, in 2014 and 2013 approx. 85%). The amount of diminution in 2015 was 21% higher in comparison with 2014. It should also be noted that the estimated diminution in income of the public finances sector for VAT was the lowest in 2014, a year later, however, it was higher by approximately 36%. It is not possible for customs authorities to completely eradicate the phenomenon of crime, however, taking into account the negative effects in the form of budget losses; customs authorities must spare no effort to provide the highest quality of control activities.

Summary

The Customs Service provides about 30% of the total state revenue. Carrying out its fiscal function, it controls the flow of goods and combats violations of law, while performing its protective function. Intended customs duties, excise and VAT evasions are dangerous to the state income and may, consequently, lead to budget losses. In the international trade in goods, there are both categories of economic operators: those acting in compliance with regulations and those explicitly disregarding the rules so as to achieve qu-

ick profits or a competitive advantage. Thus, curbing crime by reducing unlawful trade, brings a multitude of benefits. All activities aimed at sealing borders (particularly the Eastern border), implementing new, streamlined control procedures (e-simplifications), improving cooperation with other agencies (quick information exchange), taking steps to deter potential infringements and, at the same time, to encourage legitimate business and payment of due charges and taxes, should increase the effectiveness of combating customs-tax crime, and consequently bolster the fiscal and protective importance of measures taken by the customs authorities. The current regulations and system of control are of utmost significance with this regard. The planned reform aimed at integrating customs, tax and fiscal administration and establishing, on 1 January 2017, National Fiscal Administration (NFA), motivated by a need for a significant improvement in preventing and investigating crimes, is a right direction. The reform's success will take the form of modern administration, performing its tasks of estimating, controlling and collecting budget revenue effectively. To conclude, it ought to be stressed that there are different expectations of customs authorities: economic operators running legitimate businesses require actions that would effectively limit the black economy in trade of illegal goods; the society necessitates protection against an influx of goods which are detrimental to health and life; the state budget expects the effective and efficient collection of taxes and duties payable by generating the maximum level of revenue from duties, taxes and other charges while, at the same time, minimizing the cost of collection. Therefore, in future activities, the Customs Service should not only combat, but also anticipate and pre-empt criminal operations that strike at the finances of the country and security and safety of the EU market.

References

Ministerstwo Finansów [Ministry of Finance] (2016), *Biuletyn statystyczny Służby Celnej I-IV kwartał 2015* [Customs Service Statistical Bulletin for quarters I-IV of 2015], Warszawa.

Ministerstwo Finansów (2015a), *Kompendium statystyczne Służby Celnej 2010–2014* [Customs Service Statistical Compendium for years 2010–2014], Warszawa.

Ministerstwo Finansów (2015b), *Biuletyn statystyczny Służby Celnej I-IV kwartał 2014*, Warszawa.

Ministerstwo Finansów (2014), *Biuletyn statystyczny Służby Celnej I-IV kwartał 2013*, Warszawa.

Ministerstwo Finansów (2013), *Biuletyn statystyczny Służby Celnej I-IV kwartał 2012*, Warszawa.

Ministerstwo Finansów (2012), *Biuletyn statystyczny Służby Celnej I-IV kwartał 2011*, Warszawa.

Ministerstwo Finansów (2011), *Biuletyn statystyczny Służby Celnej I-IV kwartał 2010*, Warszawa.

Ministerstwo Finansów (2010), *Kompendium statystyczne Służby Celnej 2005-2009*, Warszawa.

Ministerstwo Finansów (2009), *Kompendium statystyczne Służby Celnej 2004-2008*, Warszawa.

Union Customs Code (2013), *Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code*, Official Journal of the European Union L 269.

Mineral Mining Tax Act (2012), *Ustawa z dnia 2 marca 2012 roku o podatku od wydobycia niektórych kopalin*, Dz. U. 2012, poz. 362.

Gambling Act (2009), *Tekst jednolity – Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 8 kwietnia 2015 r. w sprawie ogłoszenia jednolitego tekstu ustawy o grach hazardowych*, Dz. U. 2015 poz. 612.

Customs Service Act (2009), *Tekst jednolity – Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 7 sierpnia 2013 r. w sprawie ogłoszenia jednolitego tekstu ustawy o Służbie Celnej*, Dz. U. 2013, poz. 1404.

Voivodeship Tax Boards Act (2003), *Ustawa z dnia 27 czerwca 2003 r. o utworzeniu Wojewódzkich Kolegiów Skarbowych oraz o zmianie niektórych ustaw regulujących zadania i kompetencje orga-*

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nów oraz organizację jednostek organizacyjnych podległych ministrowi właściwemu do spraw finansów publicznych, Dz. U. Nr 137, poz.1302.

Criminal Tax Code Act (1999), Tekst jednolity – Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 27 listopada 2012 r. w sprawie ogłoszenia jednolitego tekstu ustawy – Kodeks karny skarbowy, Dz. U. 2013 poz. 186.