



Jowita Świerczyńska

Andrzej Frycz Modrzewski Krakow University
Faculty of Law, Administration and International Relations
jswierczynska@afm.edu.pl

CUSTOMS SECURITY AND RISK IN THE LEGAL ENVIRONMENT AND THE COMPETITIVENESS OF EU ENTERPRISES PARTICIPATING IN INTERNATIONAL TRADE

Summary: Legitimate operations of enterprises are subject to particular legal regulations. These rules are often quite complicated and voluminous and their complexity, as well as a lack of uniform interpretation, negatively affect the legal certainty and create conditions for the occurrence of numerous threats and types of risk. A participant in the international trade in goods should pay special attention to customs threats and risk. The aim of the present article is to identify the most important threats and sources of risk to customs as well as to indicate selected instruments enhancing security in the area of the legal environment of an enterprise that could have a direct impact on the competitiveness of EU companies. The carried out considerations allowed drawing a conclusion that favorable customs regulatory environment and minimizing customs threats and risks guarantee a level playing field for economic operators within the internal market as well as contribute to increasing the competitiveness of EU entities in external markets.

Keywords: legal security, customs risk, competitiveness of enterprises, international trade.

JEL Classification: A20, F15, K20.

Introduction

The volume of international trade as well as the existing determinants – on the one hand, new business models such as e-commerce and optimization of supply chains as well as new technologies – digitization, artificial intelligence, blockchain technology, on the other, however, fraudulent activities and security threats, including the cross-border crime, cause that enterprises involved in international trade function in the fast-changing reality – new areas for activity,

new knowledge, further opportunities emerge and, alongside them – new barriers and dangers. Furthermore, every legitimately operating entrepreneur is obligated to comply with the rules in force. It is frequently the case that these rules are quite complicated and voluminous and their complexity in the context of international trade, as well as a lack of uniform interpretation, negatively affect the competitiveness of enterprises and create conditions for the occurrence of numerous threats and types of risk. Among all countries of the European Union, in 2017, the most competitive Member States in terms of the regulatory environment that is conducive to business were¹: Denmark (index 3), Great Britain (index 7), Sweden (index 10) and Estonia (index 12) [Economy Rankings, 2017]. A participant of the international trade in goods ought to pay particular attention to threats and customs risk, which may be encountered at every stage of a transaction and which may be related to, e.g., goods, documents, other partners or IT systems. All these reasons have an impact on competitiveness, which, presently, is not only a basic condition for the existence of an enterprise in a market but is often regarded as a determinant of its development. The aim of the present article is to identify the most important threats and sources of risk to customs as well as to indicate selected instruments enhancing security in the area of the legal environment of an enterprise that could have a direct impact on the competitiveness of EU companies. The methodology employed in the paper consists in a descriptive analysis, preceded by a review of the subject literature and the EU secondary legislation. The subject area of the article is topical and significant. The issue of security and customs risk has been devoted attention only recently, there have also been some scientific papers treating of this area. Nevertheless, the state of research with regard to their relation to the competitiveness of enterprises has not been known to a wider audience. The relevance of the conclusions drawn in the article is, predominantly, of the cognitive nature, thus, constituting an attempt at filling the existing research gap. Due to the limited volume of the present article, more in-depth analyses of the problem in question could not have been performed.

¹ According to the „Ease of Doing Business Index” – a benchmark for competitiveness of doing business in the international arena, where countries are assigned rankings from 1 to 189. A low numerical value of the index indicates a regulatory environment offering favorable conditions for business activity.

1. Legal certainty as an external factor of competitiveness

The concept of competitiveness is ambiguous and understood in different ways both in the subject literature and business practice. For enterprises, it means an ability to produce while being constantly involved in international competition, and it must be understood as an evolutionary phenomenon, continually calling for adapting to the ever-changing environment [Wienert, 1997, p. 22]. Competitiveness of an enterprise is a feature which reflects its potential – resources, skills and capabilities providing a competitive advantage over other entities operating within the same sector. It is an ability and capacity for competing against other companies, which strive to achieve the same or a similar goal. The competitiveness of an enterprise may be affected by various factors, both internal and external. There is a vast amount of literature on the subject Adamkiewicz-Drwiłło, 2002; Skawińska (ed.), 2002; Pierścionek, 2003; [Śliwiński, 2011; Geodecki (ed.), 2016]. An external factor that businesses must adapt to are the legal conditions. So as to enhance the competitiveness of EU enterprises, Member States, as well as the Union, must create a favorable regulatory environment. However, if the regulations in force are to build a secure environment, they should be clear, stable, accessible, coherent, transparent, reliable and practical. Legal certainty of entities is one of factors determining the competitiveness of enterprises, not only in the Union market but also in external markets.

One of objectives of the EU policy on competitiveness is to introduce solutions that could create conditions for the sustainable growth of enterprises. EU businesses participating in international trade operate on the basis of the customs law consisting of the directly implemented Union rules as well as the supplementary national regulations, which comply with them. To be more specific, the Union customs regulations have been codified in the Union Customs Code (UCC) as well as the related supplementing or implementing regulations adopted on the EU or the national level. Furthermore, they include the Common Customs Tariff; regulations laying down the system of reliefs from customs duty; international agreements containing provisions on the customs law, if they are applicable for the EU [Regulation (EU) No 952/2013, Article 5]. Even though the customs laws are passed on the EU level, their implementation and execution, however, is the responsibility of each Member State by means of their national customs administrations. According to the European Commission, the challenge associated with implementing the customs regulations requires equal results

achieved by customs authorities operating in various geographical, budgetary and organizational conditions [European Commission, 2016, s. p]. From 1994 for over twenty years the principal source of customs legislation in the European Union had been the Community Customs Code (CCC) [Council Regulation (EEC) No 2913/92], including the implementing rules correlated with it. The procedures adopted in CCC were based on the paper solutions, however, the use of IT systems in order to carry out the electronic clearance became a rule. The norms contained within the CCC did not impose an obligation to employ them. The legal environment founded on obsolescent solutions was, thus, a barrier to increasing the competitiveness of enterprises. In 2004, steps were taken to reform the Union customs law, which resulted in adopting a new customs code as late as 2013 [Regulation (EU) No 952/2013]. After the publication of the UCC, work on developing supplementary provisions started and resulted in the creation of the so-called 'legal package', which, besides the UCC, includes the implementing regulation (Commission Implementing Regulation (EU) 2015/2447), the delegated regulation (Commission Delegated Regulation (EU) 2015/2446) as well as the supplementing delegated regulation (Commission Delegated Regulation (EU) 2016/341). The UCC with the entire legal packages is currently the foundation of the EU customs system, the most important source of customs law in the Union and the principal regulator of trade relations with third countries. In the European Union, it contributes to ensuring the efficient functioning of the internal market as well as avoiding the distortion of competition rules, which could arise from discrepancies in regulations between individual Member States. Its task is to facilitate the flow of goods transited or transported into or outside the Union borders, which is to enhance the competitiveness of European enterprises [European Commission, 2018a, p. 1]. It needs to be stressed that in accordance with the UCC solutions, the entire information exchange (i.e., declarations, notifications, applications or decisions) between economic operators and customs authorities, as well as storage of the information, is to be carried out via electronic data-processing techniques. Therefore, an important aspect, from the perspective of competitiveness, is that IT and communication systems offer the same solutions for economic operators in all EU countries. Efficient and effective customs procedures, functioning on the basis of the full use of the potential of digital tools, are currently indispensable for functioning in the international market. For this purpose, work has been undertaken to modernize and develop

seventeen systems, in total (including three national and fourteen trans-European²). The vast majority of work in this area will be concluded by 2020, however, in order to ensure a comprehensive and fully integrated structure in all Member States, these efforts will most probably continue until 2025 [European Commission, 2018b, p. 7]. Nevertheless, even if the current progress of work on IT systems is considered, the UCC provides an updated and comprehensive legal framework for customs rules and procedures in the EU customs territory that is tailored for modern trade realities and to global standards so as to facilitate EU enterprises in their international activities [European Commission 2018c, p. 4]. Therefore, if the regulatory aspect of the customs law is to be considered, it must be concluded that the Union Customs Code is an example of a legal instrument that builds a secure environment for the EU entities involved in the international trade in goods.

2. Sources of threats and customs risk in the legal environment of the enterprise and ways of reducing them

Abiding by the law in an obligation of every economic operator. A set of activities, procedures and systems, intended to prevent occurrences of risk of the legal nature, in reference to requirements for customs procedures, is defined as customs compliance. [Czyżowicz & Gafrikova, 2017, p. 308].

The UCC regulations define risk 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” [Regulation (EU) No 952/2013, Article 5(7)]. Risk is an inherent feature of any

² The trans-European systems include the following upgraded systems: Binding Tariff Information (BTI), Authorised Economic Operators (AEO), Economic Operators' Registration and Identification system (EORI), Common Customs Tariff and Surveillance (Surveillance), New Computerised Transit System (NCTS), Automated Export System (AES), Import Control System (ICS); and the new ones: Registered Exporter System (REX) – launched in January 2017, Customs Decisions System (CDS) and Uniform User Management & Digital Signature (UUM&DS) – both launched in October 2017), Guarantee Management (GUM), Proof of Union Status (PoUS), Standardised Exchange of Information for Special Procedures (INF), Centralised Clearance for Import (CCI).

business activity – it concerns every type of operation and may occur at every stage of a transaction. Admittedly, it needs to be taken into account that among all entities there are not only economic operators which adapt their methods and are ready to incur necessary costs in order to ensure that their imports and exports are legitimate, but there are others that intentionally violate regulations so as to quickly gain profits or a competitive advantage [Świerczyńska, 2016, p. 212].

Economic operators from member states have equal opportunities only if the customs laws and the common customs tariff are applied in a uniform manner. As a means of support for the uniform implementation of the legislation, in 2016, the Commission launched fifteen e-learning modules providing the necessary information on the code, moreover, an important role is played by the directives explaining practical aspects of the implementation of the regulations. As regards the customs tariff – its uniform application is facilitated by the integrated customs tariff of the European Union (TARIC) [www 1], which is a multi-language database containing all resources pertaining to the common tariff as well as regulations on trade and agriculture.

An area where there is still room for improvement is the attitude towards customs controls. European Court of Auditors concluded that member states do not perform customs controls in a harmonized and standardized manner, which stands in contradiction to ensuring the equal level of those controls throughout the Union as well as to disallowing, at different EU places, occurrences of imports and exports of goods, which are behaviors that are disrupting to the competition [European Court of Auditors, 2017, p. 39]. Building the control activities on common regulations is insufficient, they must be carried out in a harmonized and standardized manner in all Member States. Onerous customs controls may determine the choice of a customs office by entrepreneurs in imports of goods, furthermore, dishonest economic operators may use differences in attitudes to controls to their advantage, which may, in turn, undermine the competitiveness of enterprises for which compliance with the law is not only an obligation but even a priority.

EU economic operators ought to understand the essence and specificity of the product in relation to the regulations in force [Czyżowicz & Gafrikova, 2017, p. 310]. With regard to goods, source of vulnerabilities may include: incomplete or inappropriate control of the flow of goods, a lack of control of the transport of goods or a lack of control of the delivery (unauthorized access to the units of cargo, shipping areas, loading docks, cargo storage areas; insufficient security of the place of storage) [Świerczyńska, 2017, p. 279].

With respect to the risk related to customs regulations and requirements, a frequent threat is non-compliance with the current customs norms and standards, consisting in incorrect or incomplete information in customs declarations or other documents submitted to customs authorities. The provision of only the true and accurate data in a customs declaration is one of the necessary conditions for operating in accordance with the currently applicable customs regulations. One of the threats to the competitiveness of economic operators is incorrect classification of goods according to the goods nomenclature, consisting in assigning a product to a category subject to a lower duty rate. An error in one digit of the code number (CN) may sometimes be costly and, as a consequence, affect the competitiveness of a particular business. An institution that aids in eliminating this threat is the Binding Tariff Information (BTI), which is an official decision issued in paper by a customs administration, warranting the classification of goods. [Regulation (EU) No 952/2013, Articles 33-37]. Another threat to be taken into account is the misdescription of provenance in which an importer declares a false country of origin of the imported goods. This operation results in receiving a reduced or zero rate of duty, avoiding payments of anti-dumping duties or countervailing duties that are levied on the actual country of origin. Actions of this nature may directly undermine the competitiveness of honest economic operators. In order to minimize such cases, the ConTraffic tool, as well as the Container Status Messages, have been introduced. These tools provide customs administrations with information on the routes of containers as well as risk assessment services. The system automatically sends countries signals concerning frauds if a non-compliance between the declared country of origin and the container route is detected [European Court of Auditors, 2017, p. 27]. Moreover, risk may be reduced by taking advantage of the institution of Binding Origin Information (BOI). Similarly to the BTI, a decision is valid throughout the Union for three years [Regulation (EU) No 952/2013, Articles 33-37].

Another frequently encountered threat is understating the customs value of imported goods, i.e. when an importer declares a lower value of imported goods than their actual value (often, also submitting false trade documents). So as to minimize the risk of occurrence of cases of understating the customs value, the European Commission has developed the methodology of estimating the 'fair prices'. Perhaps, it would be advisable to consider introducing into the business practice a decision establishing the customs value, modeled after the BTI and BOI. Such an institution could, in case of a doubt, provide an entrepreneur with

an assessment of the attitude that needs to be adopted in relation to a specific element of the customs value.

In the area connected with IT systems, there may emerge threats resulting from the incorrect or incomplete registration of transactions in the accounting system or a shortage of supervision of the security of the functioning systems and access to them. As regards trade partners, however, a threat is a lack of clear mechanisms for identification of business partners. Relations between economic operators in international trade may serve as a tool for achieving a competitive advantage, hence, it is crucial to maintain a high quality of these relations. In international trade, such relations are grounded mainly on partnership, and one of the key factors characterizing these relations is trust. Before initiating any cooperation, it is essential to verify the partner's credibility. Insufficient, false or even no knowledge about trade partners may result in serious consequences. The risk in this area is definitely minimized by the institution of the Authorised Economic Operator (AEO)³. AEOs are perceived as reliable, credible, solvent and trustworthy partners. Trust allows unrestricted exchange of information necessary to reduce risk in international trade. The partnership-based cooperation allows achieving such benefits as: a higher level of customer service, lower costs of: storage, transport, stock maintenance; reduction of payment period; more accurate planning; increased cash-flow and financial indicators, thus falling within a competitive supply chain.

Conclusions

As a means to improve competitiveness, in the macroeconomic aspect, it is worth adhering to one of the ten rules developed by the International Institute for Management Development (IMD), i.e., the principle of stable and transparent legislative system [Rymarczyk (ed), 2010, p. 287]. Minimizing threats and customs risk as well as improving security in the legal environment of an enterprise do not, indeed, determine competitiveness, but, on the international scale, they constitute a background for development and act as a catalyst for achieving a higher level of competitiveness. Implementation of the UCC regulations has demonstrated that member states are aware of the fact that only uniform application of customs laws, as well as coherent and compliant customs standards, are

³ The institution 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].

capable of ensuring equal conditions for business activity to economic operators in all EU countries and will positively impact the level of their competitiveness in external markets. It must be stressed that authorities constituting the Union customs law have taken numerous measures aimed at ensuring ease of doing business in international trade as well as create favorable conditions for development, not only by eliminating violations of the fundamental rules of free competition in export and import, but also by securing clear and honest rules of free-market competition. The aim of the present article, which was to identify major threats and sources of risk to customs as well as to point out selected instruments enhancing security in the area of the legal environment of an enterprise that could have a direct impact on the competitiveness of EU companies, has been achieved, nevertheless, the consideration presented in this paper are to be regarded as a starting point for further, in-depth analysis of the indicated problem. A number of significant issues, such as the topic of influence of particular UCC solutions on the competitiveness of enterprises, were not addressed in the article – it is crucial to undertake further, thorough analyses in this area.

References

- Adamkiewicz-Drwiłło H.G. (2002), *Uwarunkowania konkurencyjności przedsiębiorstwa*, Wydawnictwo Naukowe PWN, Warszawa.
- Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 Supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as Regards Transitional Rules for Certain Provisions of the Union Customs Code Where the Relevant Electronic Systems Are Not Yet Operational and Amending Delegated Regulation (EU) 2015/2446 Official Journal of the European Union L 69 of 15.03.2016.
- Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 Laying Down Detailed Rules for Implementing Certain Provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council Laying Down the Union Customs Code, Official Journal of the European Union L 343 of 29.12.2015.
- Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 Supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as Regards Detailed Rules Concerning Certain Provisions of the Union Customs Code, Official Journal of the European Union L 343 of 29.12.2015.
- Commission Regulation (EC) No 1875/2006 of 18 December 2006 Amending Regulation (EEC) No 2454/93 Laying Down Provisions for the Implementation of Council Regulation (EEC) No 2913/92 Establishing the Community Customs Code, Official Journal of the European Union L 360/64, 2006.

- Council Regulation (EEC) No. 2913/92 Establishing the Community Customs Code of 19.10.1992, Official Journal of the European Union L 302 of 19.10.1992.
- Czyżowicz W., Gafrikova V. (2017), *Bezpieczeństwo ekonomiczne i ryzyko celne w przedsiębiorstwie działającym na międzynarodowym rynku towarowym* [in:] S. Wojciechowska-Filipek, J. Klepacki, A. Jackiewicz (eds.), *Przedsiębiorczość i zarządzanie w rozwoju ekonomicznym*, Wydawnictwo Społecznej Akademii Nauk, Łódź-Warszawa.
- Economy Rankings (2017), *Easy of Doing Business Index*, <http://www.doingbusiness.org/rankings> (accessed: 30.07.2018).
- European Commission (2016), *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Developing the EU Customs Union and Its Governance*, COM(2016) 813 final, Brussels.
- European Commission (2018a), *Report from the Commission to the European Parliament and the Council on the Implementation of the Union Customs Code and on the Exercise of the Power to Adopt Delegated Acts Pursuant to Article 284 thereunder*, COM(2018) 39 final, Brussels.
- European Commission (2018b), *Report from the Commission to the European Parliament and the Council on the IT strategy for Customs*, COM(2018) 178 final, Brussels.
- European Commission (2018c), *Communication from the Commission to the Council and the European Parliament First Biennial Report on Progress in Developing the EU Customs Union and its Governance*, Brussels, COM(2018) 524 final.
- European Court of Auditors (2017), *Special Report Import Procedures: Shortcomings in the Legal Framework and an Ineffective Implementation Impact the financial Interests of the EU (Pursuant to Article 287(4), Second Subparagraph, TFEU)*, No. 19, Luxembourg.
- Geodecki T., ed. (2016), *Polityka wsparcia konkurencyjności gospodarki. Wybrane aspekty*, PWE, Warszawa 2016.
- Pierścionek Z. (2003), *Strategie konkurencji i rozwoju przedsiębiorstwa*, Wydawnictwo Naukowe PWN, Warszawa.
- Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), Official Journal of the European Union L 269/1, 2013.
- Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 Amending Council Regulation (EEC) No 2913/92 Establishing the Community Customs Code, Official Journal of the European Union L 117 of 04.05.2005.
- Rymarczyk J., ed. (2010), *Międzynarodowe stosunki gospodarcze*, PWE, Warszawa.
- Skawińska A., ed. (2002), *Konkurencyjność przedsiębiorstw – nowe podejście*, Wydawnictwo Naukowe PWN, Warszawa-Poznań.
- Śliwiński R. (2011), *Kluczowe czynniki międzynarodowej konkurencyjności przedsiębiorstw*, Wydawnictwo Uniwersytetu Ekonomicznego, Poznań.

- Świerczyńska J. (2016), *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*, „Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach”, nr 266, pp. 212-222.
- Świerczyńska J. (2017), *Ograniczanie zagrożeń i ryzyka celnego w łańcuchach dostaw – wybrane działania na poziomie Unii Europejskiej*, „Studia i Materiały Instytutu Transportu i Handlu Morskiego” nr 14, pp. 274-287.
- Wienert H. (1997), *Regulation and Industrial Competitiveness: A Perspective for Regulatory Reform*, OECD, Paris, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD\(97\)133&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD(97)133&docLanguage=En) (accessed: 30.07.2018).
- [www 1] https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/taric_en (accessed: 7.08.2018).

BEZPIECZEŃSTWO I RYZYKO CELNE W OTOCZENIU PRAWNYM A KONKURENCYJNOŚĆ UNIJNYCH PRZEDSIĘBIORSTW UCZESTNICZĄCYCH W OBROTCIE MIĘDZYNARODOWYM

Streszczenie: Legalna działalność przedsiębiorstw podlega zawsze określonym regulacjom prawnym. Często jednak przepisy są skomplikowane i rozbudowane, a ich złożoność oraz brak jednolitej interpretacji negatywnie wpływają na bezpieczeństwo prawne i są przesłanką do wystąpienia wielu zagrożeń i rodzajów ryzyka. Uczestnik międzynarodowego rynku towarowego szczególną uwagę powinien zwrócić na zagrożenia i ryzyko celne. Identyfikacja zagrożeń i źródeł ryzyka celnego oraz wskazanie na instrumenty zwiększające bezpieczeństwo w obszarze otoczenia prawnego przedsiębiorstwa, które mogą mieć bezpośredni wpływ na konkurencyjność unijnych przedsiębiorstw jest celem artykułu. Przeprowadzone rozważania pozwoliły wysunąć wniosek, że sprzyjające otoczenie prawa celnego, minimalizowanie zagrożeń i ryzyka celnego zapewniają równe szanse przedsiębiorcom na rynku wewnętrznym i wpływają na poprawę konkurencyjności unijnych podmiotów na rynkach zewnętrznych.

Słowa kluczowe: bezpieczeństwo prawne, ryzyko celne, konkurencyjność przedsiębiorstw, handel międzynarodowy.