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## Financial Law towards Challenges of the 21st century in the view of the EU and WCO

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Dana Šramková\*

## Financial Law towards Challenges of the 21<sup>st</sup> century in the view of the EU and WCO

### Introduction

Although the main part of the present article offers an international and supranational perspective, the issues of customs<sup>1</sup> and customs law in the Czech Republic need to be outlined at least in brief<sup>2</sup>. In the Czech context, customs law tends to be somewhat overlooked among the other branches of law. However, from the historical point of view, it needs to be mentioned that the Czech legal regulation of this area used to serve as a model for some other countries in the past, mainly with respect to the so-called Martinec law (the Act No. 114/1927 Sb., the Customs Law, in effect from 1 January 1928 to 1 August 1954). Since then, the legal regulation of customs administration has changed quite significantly as a result of having to face new challenges. Major reforms have affected not only the system of customs administration bodies (i.e., the organizational conception of customs administration) but also the functional aspect, i.e., the development of the activities provided by bodies of customs administration<sup>3</sup>. Similar changes, however, have been affecting a number of other countries.

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<sup>1</sup> For the meaning of the concept of 'customs,' cf. Drwiłło, A. *Cło*. In Drwiłło, A. Maśniak, D. et al., *Leksykon prawa finansowego*, Wydawnictwo C. H. Beck, Warszawa 2009, p. 53 and subsequent pages.

<sup>2</sup> This article was written as part of research project No. 407/09/P494, financed by the Czech Science Foundation.

<sup>3</sup> Within the context of the progressing systematization of the organizational conception of customs administration, there are opinions voiced both in the Czech Republic and elsewhere that customs administration should be merged with some other authorities, mainly the tax administration. Although a major change in the activities of customs administration in the Czech Republic occurred in 2004, there does not seem to exist any clear final and unequivocal conception of the future orientation of customs administration and the specific delimitation of customs administration as activities provided by the Customs Administration of Czech Republic. On the other hand, the significant extension of tasks required from customs administration (i.e., administration of excise duties, control of electronic road toll, divided administration) over the past few years is now being balanced out by calls for the reduction in the number of such tasks.

## Challenges for customs law in the EU

The customs union can be considered as one of the cornerstones for the operation of the common market of the EU. The common market can work only if common rules are applied on EU's external borders. Common rules, however, go way beyond the customs union itself and the community customs code<sup>4</sup>. What is then the role of customs administration in the European Union at present? In short, it is to simplify business and protect the interests of the European Union and its citizens. Customs authorities participate in the implementation of EU policies in almost all areas related to international trade.

Taking into account these common rules, all considerations of the role and importance of customs duties and the activities provided by customs administration bodies need to be significantly extended to include all aspects of trade policies. These include, among others, the issues of preferential trade, health and environmental controls, common agricultural and fisheries policies and the possible protection of common economic interests by non-tariff instruments. Without exaggeration, it can be stated customs administration acts, in some respects, at the front line in the fight against fraud, terrorism and organized crime<sup>5</sup>.

When performing the activities of customs administration authorities, there is a need for some balancing. On the one hand, the necessary controls and inspections may not be allowed to disrupt the smooth conduct of business. On the other, citizens' health protection and safety must be simultaneously assured. In order to attain the proper balance between those demands, customs procedures and control methods need to be modernized; such modernization is currently under way in many in many Central and Eastern European countries, to which the present publication caters in the first place. Apart from that, cooperation needs to be extended between not only the individual customs administrations in the various countries but also the individual branches of public administration.

As mentioned above, one of the main goals of customs authorities is the supervision of the EU's international trade, whereby customs administrations contribute towards the free market, the implementation of external aspects of the internal market, the common business policy and other common policies affecting trade, as well as the overall safety of the business supply chain<sup>6</sup>.

In reaction to the calls for modernization, the EU adopted the so-called "Modernised Customs Code"<sup>7</sup>, under which the fundamental tasks of customs administration include:

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<sup>4</sup> For more details, cf. Rozehnalová, N., Týč, V., *Vnější obchodní vztahy*, Masarykova Univerzita, Brno 2006, ISBN 80-210-4073-4, 207 pp.

<sup>5</sup> For more details, cf. European Commission. EU Customs Strategy. [cited on 15.3.2010]; available online at: [http://ec.europa.eu/taxation\\_customs/customs/policy\\_issues/customs\\_strategy/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_strategy/index_en.htm)

<sup>6</sup> Ibid.

<sup>7</sup> Regulation (EC) No. 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code).

- protecting the financial interests of the Community and its member states;
- protecting the Community from unfair and illegal trade while supporting legitimate business activity;
- ensuring the security and safety of the Community and its residents, and the protection of the environment, where appropriate in close cooperation with other relevant authorities;
- maintaining a proper balance between customs controls and facilitation of legitimate trade.

Although the Modernised Customs Code was adopted several months ago, only a few of its provisions are already in effect. With view to the complexity of the matter, no exact date was specified for the Modernised Customs Code to fully replace the existing regulations. The legal effect of this regulation was thus tied to the legal effect of the new implementing regulations which must be adopted in due time. The Modernised Customs Code itself provides only the deadline by which this should occur – no later than 24 June 2013.

However, for the EU to be economically successful in the global context, it is not sufficient to concentrate on EU law only. It is also necessary – in the interests of improving interoperability – for customs information systems to be able to exchange electronic information among themselves, being equipped with interfaces based on commonly used technologies. This issue was the subject of the Decision of the European Parliament and Council No. 70/2008/EC on a paperless environment for customs and trade<sup>8</sup>. The initiative to turn the area of customs administration into the electronic form aims to create secure interoperable customs systems for the exchange of data with relatively clearly defined intention to facilitate import and export procedures, to reduce administrative costs, to make customs processing more efficient, to coordinate a common approach to the control of goods and the application of customs procedures, to help ensure the proper collection of all customs duties, fees and other charges, and to enable seamless flow of data between the participants.

The topics of the development and the strategic orientation of the customs union are, understandably, treated in some other documents, many of which were adopted two years ago in connection with the 40<sup>th</sup> anniversary of the customs union. The strategy of the development of the customs union<sup>9</sup> (hereinafter referred to as “the Commission Strategy”) aims to be a guideline to the conclusion of the reform process started with the adoption of the Modernized Customs Code and the above-mentioned decision on paperless environment for customs

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<sup>8</sup> For more details, see Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade.

<sup>9</sup> Cf. Commission of the European Communities. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: Strategy for the evolution of the Customs Union COM (2008) 169; [cited on 15.3.2010]; available online at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/com\(2008\)169\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/com(2008)169_en.pdf)

and trade, the modernisation of customs working procedures, the development of staff, and the re-allocation of resources in an efficient and effective manner. Under the Commission Strategy, customs administrations should, through their own measures, focus primarily on the following issues, which include:

- Increasing competitiveness of European business by modernising customs working methods and developing EU standards;
- enhancing protection of the society against safety and security risks by developing effective risk management methods and ensuring protection of financial interests of the Community (as a part of the fight against terrorism and crime);
- facilitating legitimate trade by improving customs control systems and reducing administrative burden;
- enhancing co-operation between customs authorities as well as with other governmental agencies and with the business community<sup>10</sup>.

### Challenges for customs law from the global perspective

For decades, customs authorities have been playing a significant role in the process of ensuring economic stability. In this respect, the World Customs Organisation (WCO) itself formed an important platform by adopting norms in order to unify and maximally ensure the sharing of information, standardizing or harmonizing requirements in the area of international trade, strengthening risk assessment and uncovering fraudulent activities<sup>11</sup>.

The WCO's new strategic aim for customs administration in the 21<sup>st</sup> century optimistically assumes that customs authorities should play a new, more dynamic role when seeing to the activities they are entrusted with, while using a relatively unique set of capabilities and tools available to them for the attainment of their relevant programmes.

On the occasion of the 50<sup>th</sup> anniversary of the World Customs Organisation in 2002, representatives of national customs administrations turned their attention, among others, to the potential major problems that may have an impact on effective and efficient operation of customs in the future. At the beginning of the 21<sup>st</sup> century, customs administration has been faced – as it still does – with some considerable and sometimes contradictory demands arising from the globalization of trade<sup>12</sup>. On the one hand, there is a need for effective security of the international

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<sup>10</sup> Apart from the above-cited Commission Strategy, cf. also the press release Customs beyond 2013: Commission launches a debate on the future evolution of Customs (IP/08/492), [cited on 15.3.2010]; available online at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/492&format=HTML&aged=0&language=en&guiLanguage=en>

<sup>11</sup> For the implementation of WCO's goals, cf. Lyons, T., *EC Customs Law*, 2<sup>nd</sup> ed., Oxford University Press, Oxford 2008, p. 8 and subsequent pages.

<sup>12</sup> For more details, see, for instance: Kałduński, M., Lasiński-Sulecki, K., Morawski, W., Śpiewak, M., *Prawo celne międzynarodowe, wspólnotowe, polskie*, Wolters Kluwer Polska, Warszawa 2007, p. 56.

supply chains, while, on the other, there are the increasing demands for greater facilitation of (legitimate) international trade. The meeting showed consensus over the need to prepare a new strategy for the future of customs administration to form the role of customs authorities in the 21<sup>st</sup> century<sup>13</sup>. The concept for the administration of trade, borders and the role of customs should embody the current ambitious aims and still remain balanced and pragmatic. The number of tasks and, in a certain sense, even challenges which customs administrations at least partially face, are quite numerous: from the globalization of business and trade, development, complex new rules for administration, environment protection to issues of international terrorism. Similarly, one can find numerous occasions for daring, pro-active and innovative solutions: global customs networks, the improvement of border control, the use of new technologies, across-the-border strengthening of partnerships of customs administrations with businesses, law enforcement bodies and other relevant governmental organisations.

It is a traditional role of customs authorities to perform the control of the movement of goods, thereby ensuring the economic, political and security interests of states, as well as their incomes. Although the nature of this activity remains the same even after 2010, the responsibility for international movement of goods has expanded and is likely to increase further, moving from the traditional role of collecting customs duties and indirect taxes that provide income for public budgets to the performance of control and other activities that serve to meet the broader set of government aims, including requirements to ensure product safety. However, it is also the exclusively fiscal area that is undergoing some development in connection with the issue of the potential imposition of certain ecological customs duties.

It is clear that sufficient use of the opportunities offered to customs administrations at present will allow for the protection of tax and financial interests of states or, as the case may be, for the protection of national economies from illegal movement of goods. It is also necessary to encourage the international trade system by creating conditions suitable for business and strengthening the national competitiveness, with the aim of facilitating lawful trade and protecting the society.

There is a whole range of steps that should contribute towards the successful implementation of WCO's visions. To a certain extent, they correspond to the EU's strategic aims analyzed in the previous part of this article. In this place, I would therefore like to limit myself to a brief outline of several major areas, which include the speeding up of communication between individual customs administrations, the electronic (paperless) communication, the improvement of

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<sup>13</sup> For more details, see World Customs Organisation. Customs in the 21st Century - Enhancing Growth and Development through Trade Facilitation and Border Security, June 2008. [cited on 15.3.2010]; available online at: <http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Annex%20II%20-%20Customs%20in%20the%2021st%20Century.pdf>

communication and the development of partnerships between individual customs administrations. This concerns not only communication between customs administration authorities themselves but also with the private sector (entrepreneurs in international business), who have a subservient position in customs proceedings. There should also be stronger coordination of the activities of supervision and control that are necessary to secure the necessary tasks while minimizing time demands. The advantages of flexible customs administration with a clearly delimited strategy are, according to the WCO, significant: they include the reduction of costs expended by authorized economic entities while observing regulations, the more effective and efficient performance of customs administration and, last but not least, also the increased confidence and mutual recognition between individual customs administrations.

As regards the specific aims of the WCO for the upcoming years, one must most crucially mention its Harmonised System Committee that sees to the implementation of the International Convention on the Harmonised Commodity Description and Coding System (Brussels, 1983). The convention was signed by 119 member states and the EU. The tariff nomenclature of the Harmonised System is used by 199 countries, territories and customs or economic unions. Out of this number, only 24 member states of the Convention have not yet adopted the 2002 Harmonised System<sup>14</sup>. The Harmonised System tends to be described as one of the reasons for the existence of the WCO and constitutes one of the key activities of the WCO. A priority for the next term is the preparation of a new revision of the Harmonised System for 2012.

It should also be pointed out that WCO, when performing its activities and working towards its goals, does not stand isolated from other organisations that focus on similar or related areas. Quite on the contrary: it cooperates with numerous partners and international organisations, including the WTO. This cooperation between the WTO and the WCO has led, for example, to negotiations on trade facilitation. These negotiations, held since 1 April 2004, are intended to explain, improve and simplify the seamlessness of transit, fees, and formalities connected with the importation and exportation of goods and the publication and administration of trade regulations. Other priorities include the issue of the “Single Window”, the future data exchange IT systems, the data model for the unification of the data required in customs proceedings, and the SAFE safety standards. The cooperation has also seen the establishment of the Reform Club, initiated by the French customs administration, and the idea of a mutual interconnection of customs administrations – Globally Networked Customs<sup>15</sup>.

Last but not least, it needs to be mentioned that the current membership of the WCO stands at 176 members, i.e., the majority of customs administrations

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<sup>14</sup> Source: Internal materials of the Customs Administration of the Czech Republic.

<sup>15</sup> Ibid.

representing countries with more than a 95 per cent share in worldwide trade<sup>16</sup>. This fact is particularly important if one realizes that the WCO also has a practical role that is not negligible even in the area of control activities (including “anti-piracy” and anti-forgery measures)<sup>17</sup>.

## Conclusion

Until relatively recently, the role of customs authorities consisted mainly in the collection of import customs duties and indirect taxes. However, it may be stated that the regulation of customs – or, more precisely, the deregulation of customs administration, to use a uniform designation for the activities provided by individual customs administrations – has now been facing new challenges, particularly in connection with the globalised developments in international trade and the related new opportunities and challenges. International trade follows the rules of regional and multi-lateral business systems, preference business agreements, as well as rules set up by the governments of the individual countries. The new trends in development are encouraged by a combination of factors, including the quickly developing information and communication technologies, advances in transportation, and the current liberalization of trade.

In 2000, this fact was reflected in the declaration of the General Assembly of the UN in quite an optimistic way: “the central challenge we face today is to ensure that globalization becomes a positive force for all the world’s people”<sup>18</sup>. According to the UN, globalization redefines rather than reduces the role, needs and responsibility of states on national, regional and international levels. It is not without interest that this UN declaration was acknowledged a few years later by the World Customs Organisation in its written strategy for the 21<sup>st</sup> century<sup>19</sup>. The events of the past few years have, when viewed from this global position, created new demands and perspectives on the role of the modern state.

Global issues transgress national boundaries and require a global reaction. Apart from cooperation on the world-wide level, which the WCO considers to be crucial, it is also cooperation on the regional level that has been increasing,

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<sup>16</sup> For more details, cf. World Customs Organisation. History. Available online at: [http://www.wcoomd.org/home\\_about\\_us\\_auhistory.htm](http://www.wcoomd.org/home_about_us_auhistory.htm) [cited on 20.1. 2010].

<sup>17</sup> Within the WCO, these issues are addressed by special working groups focusing on, among others, fraud in international trade and electronic crime.

<sup>18</sup> See General Assembly. United Nations Millennium Declaration. [cited on 15.3.2010]; available online at: <http://un.org/millennium/declaration/ares552e.pdf>

<sup>19</sup> World Customs Organisation. Customs in the 21st Century - Enhancing Growth and Development through Trade Facilitation and Border Security, June 2008. [cited on 15.3.2010]; available online at <http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Annex%20II%20-%20Customs%20in%20the%2021st%20Century.pdf>



including the emphasis on the development of customs unions, free trade zones and economic partnership treaties<sup>20</sup>.

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## Summary

This article deals with issues related to customs administration, especially customs law and customs administration de lege ferenda. A particular emphasis is laid on goals and visions formulated for the beginning of the 21<sup>st</sup> century on supranational and national levels. This is supplemented with a discussion of the future of customs administration through the perspective of the World Customs Organisation (WCO).

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<sup>20</sup> An example can be provided by the intended free trade zone between the EU and South Korea.