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CUSTOMS LAW: METHODOLOGICAL PROBLEMS

Abstract

The questions of finding a generally accepted definition of customs law and its role in Polish legal system are considered in the article. Methodology for distinguishing various branches of law from customs law is analyzed

Keywords: customs law, customs policy, commodities, international trade, regulations

Introduction

International trade of commodities in economic practice is regulated by various laws. These laws include regulations arising from commercial law, economic law, transport law, foreign currency law as well as bank law and others. A number of these regulations refer to the protection of human life and health, animals and flora which are covered by laws different from the abovementioned. This type of trade is regulated by laws regarding veterinary law, phytosanitary law, ecological law or laws associated with protection of intellectual rights as well as a multitude of other laws of national or international nature. However, the most important group of standards which regulate international trade in a comprehensive manner is Customs law.

Even though Customs law plays both economic and social role, it is very difficult to find a generally accepted definition which would define its role in our legal system. Scientific approaches concerning this issue usually use the category “customs law” together with other categories such as “duty”, “Customs policy”, “Customs legislation” or “Customs system” or even “Customs”.

Problem statement

Only “Customs” has a fairly unified meaning in both economic and legal literature. The remaining categories are rather freely characterized and consequently do not give a clearly defined answer as to what they relate to. So the goal of the article herein is to try to formulate a definition of the category “Customs law” as a specific branch of law based on certain methodological premises. This will allow in further investigation of this issue and also show various points of view regarding formulation of such regulations into doctrines as well as their practical use by commercial entities, customs administrations and courts.

Research results

I. Customs law

The most effective tool in execution of customs policy is Customs law. Even though this statement cannot be argued on either theoretically or practically, it is nonetheless extremely difficult to answer the questions ***“What customs law is?”, ”What constitutes its significance?”, “How is it different from other laws?”, “Is it a separate branch of law?”***. If the answers to these questions are affirmative, then the question ***“What is the key distinguishing element of this branch of law?”*** arises. However, if the answer to this question is negative, then ***“Is customs law a part of***

another law and if so, which law – commercial, administrative, financial, tax, penal, international or maybe some other law?"

The question obviously seems to be an academic one. However the answer to this question is not only academic by nature, but it also includes a number of practical activities that have both economic and legal nature. In addition, the effective answer must take into consideration a methodology for legal analysis which would indicate both the theoretical as well as practical importance of customs law for the safe and efficient functioning of international trade.

II. Methodology for distinguishing various branches of law from customs law

"Customs law", like "Customs policy", is not precisely defined in either customs doctrines or literature regarding this subject. Whenever ***customs law*** is referred to in legal or economic literature, it is very often mentioned as a theoretical category and is usually defined in a very descriptive manner directly related to "customs". However, such an approach does not give an answer to the question "What ***customs law*** is?"

Now we must pay attention to the other approach to this issue that differs considerably from points of view of many theorists as well as from how it is defined or stated in various types of official documents – codes, acts or orders. In various literature resources we can see a number of definitions of customs law defining it very vaguely and very often referring it to various categories. It is very difficult to find an unequivocal, generally accepted or even dominating definition of customs law. In various analyses where this category is defined in a more or less similar way, such terms as "customs system", "customs legislation", "customs law" or even "customs" are used interchangeably. Therefore it is absolutely necessary to use a scientific approach to this issue based on methodology connected with differentiating various branches of law.

Separating various branches of law and assigning certain predefined standards to them helps achieve a more precise manner of proclaiming, interpreting and executing laws. According to J. Jabłońska – Bońcy, separating branches of law is to a certain degree a question of convention and tradition.[1] Taking this into consideration, we can show that a number of divisions and criteria for separating branches of law already exist. The most important division is the division between public law and private law. In the case of customs law, the majority of authors indicates that it is a public law and should be treated as a public law. As it is stressed by Wójtowicz, it arises from

"... the scope of the issue which is standardized in this branch of law , methods of regulation, the types of entities carrying out and executing customs law as well as tasks which are carried out by means of customs law".[2]

There is no discrepancy connected with such an approach. However, including customs law in one of the other branches of law (e.g., financial law or administrative law), or separating it off as an independent branch of law, is not unequivocal. So depending on criteria used, we can single out various branches or types of law.[3]

However, we must be aware of the fact that branches of law are not something which cannot be changed in time and space and that there current shape is based on historical conditions.[4]

Therefore, we must also remember that a statement, that customs law belongs to a given branch of law is not fixed, and that as a result of historical changes,

[1] Jabłonska – Bonca J.: Podstawy prawa dla ekonomistów, Warszawa, PWN, 2000, s. 337 i nast.
[2] Prawo finansowe. Praca zbiorowa pod red. prof. Wójtowicz W., Warszawa, Wyd. C.H. Beck 2000, Rozdz. XVI, § 90, s. 449, Nb.516
[3] Por. Oniszczuk J. Prawo – jego tworzenie i systematyka. Wybrane zagadnienia, Warszawa, Wydawnictwo Wyższej Szkoły Handlu i Prawa, 1999, s. 111 i nast. Patrz także: Redelbach A.: Wstęp do prawoznawstwa, Toruń 1999, wyd. TNOiK, s. 206 i nast.
[4] Por.: Łopatka A.: Prawoznawstwo. Warszawa, Polskie Wydawnictwo Prawnicze „IURIS", 2000, s. 226 i nast.

evolutionary changes in the subject matter may and do occur. Therefore, such a concept is dynamic, not static, in time.

Let us assume the ***subject criterion*** as the criterion for discrimination. When we talk about customs law we have in mind that it regulates international commerce of commodities, or more precisely, international trade in goods. If we have a buy-sell relation in trade, then other types of relations may take place in commerce which are not only related to sales but also, e.g., temporary transport of goods to another customs territory for purposes completely different than transfer of ownership rights. Such situations are associated with certain defined customs procedures, in particular so-called suspension customs procedures or others such as exemption from duty on goods brought into another customs territory in conjunction with scientific, educational, cultural, athletic or other needs. Nonetheless though, even in such cases commodities crossing a customs border must undergo certain customs procedures foreseen for such goods. Therefore, in order to define the precise, i.e., very narrow material and not social aspect, subject of customs law regulations, it is much more appropriate to talk about international commodities trade instead of international commodities commerce[5].

However, the fundamental distinction for identifying a branch of law is defining the ***subject*** – widely understood as the social aspect – that is influenced by the ***regulations*** of a given law. The subject of regulation though of every law is a set of – reasonably – unified social relations.

The subject of customs law regulations are ***social relations associated with international commodities trade***.

[5] Por. Kruczalak K.: Prawo handlowe dla ekonomistów, Warszawa, PWE 2000, s. 32 i nast.

These relations though are very wide in their nature and have a multitude of ties with various areas of economic activity both internally (i.e., in the individual country or single market in case of a customs union) as well as externally and refer solely to laws regarding international trade of commodities. Other trade relations, e.g., services, are outside of their scope of regulation.

Social relations associated with international commodities trade are regulated by a number of laws – from constitutional law through economic, commercial, administrative, financial, banking, civil or penal and even international public and private law. However, all of these legal regulations have one subject common to all of them – international trade of commodities associated with goods crossing the customs border of a given country or customs union. It is exactly this ***common element of all of the aforementioned regulations which allows one to talk about the existence of a special sphere of social relations – customs relations.***

Since these relations are very complicated, regulations associated with them must also be of a special nature and thus must be separated out as an individual branch of law.[6]

[6] Western European and American legal sciences do not pay special attention to the definition of „Customs law". This question was, in practice, out of the study by Western theoreticians. Some aspects related to the definition question of "Customs law" we can find in the second half of nineties of XX century in France and Spain, see, e.g..: Berr C.J., Tréme H.: *Le Droit Douanier. Communautaire et National*, Paris, ed.Economica, 1997, p..68and next. In the end of eighties this question was controversial between theoreticians in Spain, see, e.g.: Gonzalez Grajera F.J.: *Procedimiento de Gestion Aduanera*, Cartagena, wyd, Escuela de la Hacienda Publica, 1988, p.14and next.; Galera Rodrigo.S.: *Derecho Aduanero Español y Comunitario*.Madrid, ed. Editoral Civitas, S.A., 1995, p..97 and next. This problem was study subject for Spanish authors in the next years. See, e.g.: Abajo Anton L.M.:*El Despacho Aduanero*, Madrid, ed. FC Editorial, 2000 or Cabello Perez M.: *Las Aduanas y el Comercio Internacional*, Madrid, ed. ESIC Editorial 2000; *Comercio Exterior Factbook*,ed. Aranzadi, Navarra, 2002, p.179 and next. In others UE MS the definition of „Customs law" question was on margin of the main stream of Customs problems. See, e.g..: Terra B.J.M.: *Community Customs Law. A guide to the Customs Rules on Trade between the (Enlarged) EU and the Third Countries,* The Hague, wyd. Kluwer Law Intl., 1995, sp 44 and next; Inana S., Vermulst E.: *Customs and Trade Laws of the European Community*, The Hague,

What does it mean that customs law regulates issues associated with the international trade of commodities? What particular social relations are subject to customs law regulations?

These are above all trade relations carried out on the international arena and associated with commodities trade conducted by domestic entities or entities having the status of union entities. All goods which move across the customs frontier of a given country or customs union are subject to such regulations.

Customs law within this subject matter regulates the mutual relationships between customs authorities and entities involved in international trade of commodities.

wyd.Kluwer Intl., 1999,p..5and next; Raworth P.: *Foreign Trade Law of the European Union*, New York, wyd. Oceana Publications, Inc., 1995, p..3-4. The German science of Customs law relatively paid more attention to the definition question, e.g.: Witte/Wolffgang: *Lehrbuch des Eurpäischen Zollrechts* ,ed. NWB, Herne/Berlin, 4 Auflage, 2003, p.31 or 51; Lux M.: *Das Zollrecht der EG.Ein Lehr- und Übungsbuch sowie Nachschlagewerk für Praktiker*, Köln, ed. Bundesanzeiger Verlagsges. MbH., 2003, p. 31, 43-44 or L.Gellert: *Zollkodex und Abgabenordnung*.EFA Schriftenreiche, Band 11, Aachen, ed. Mendel Verlag OHG, 2003, p.12-13 The most interesting discussion on the "Customs law" definition took place in Russian law sciences. See: np.:Timoshenko I.W. *Tamozhennoye prawo Rossii*. Moskwa, ed. Feniks, 2002, s. 32 i nast.; Tchalipov S.V. *Tamozhennoje prawo. Uczebno-metodiczeskoje posobie*, Moskva, MGU,Juridicheskij Fakultet, ed. Zercalo, 2001, p.1-4; Khalipow S.V. *Tamozhennoje pravo. Uchebnik dla vuzov,* .Moskwa, MGU, Juridicheskij Fakultet, ed. Zercało-M,2003, p. 30 i nast.; *Tamozhennoye pravo.Kurs lekciy*, ed. Draganov V..G., vol..1 Obshchaya chast', Moskva, ed. Ekonomika 1999, p.93 and next.; *Tamozhennyje Pravo*, ed.. Draganov V.G. & Rassolov M.M., Moskwa ed. Zakon i pravo, 2001, p.8 and next.; Gabrichidze B.N.: *Rossijskoje Tamozhennoye Pravo. Uchebnik dla vuzov*., Moskwa, ed. Norma, 2001, p..53 and next; Gabrichidze B.N., Czerniavskiy A.G.: *Kurs Tamozhennogo Prava Rossijskyj Federacji. Uchebnik dla vuzov*. Moskwa, ed. Dielo i Servis, 2002, p. 62 and next.; Borisow K.G.: *Miezhdunarodnoye Tamozhennyje Pravo*, Moskwa, ed. Rossijskiy Uniwersitet Druzhby Narodov, 2001, p.9 i next.; Tamozhennoje pravo, in: *Juridicheskaya Enciklopedia*, ed.Tikhomirov M. Ju., Moskwa, Jurinformcentr, 2001, p. 847; Tamozhennoje zakonodatielstvo, in: *Juridicheskaya Enciklopedija*, ed.Tichomirov M. Ju., Moskwa, Jurinformcentr, 2001, s. 846 ; Tamozhennoje Pravo, in :Barikhin A.B.: *Ekonomika i prawo.Enciklopedicheskij slowar'*. Moskwa, ed. Knizhnyj Mir, 2000, p.795. Similar discussion took place in Bielarussian and Ukrainian legal sciences. See,e.g.: Ignatiuk A.Z.: *Tamzhennoye Pravo Respubliki Biełarus'*, Minsk, ed. Analfeya, 2002, p.35 and next or *Osnovy Tamozhennogo Diela w Ukrainie*, ed. Kalenskiy N.N. i Pashko P.W., Kiev, ed. Znania, 2003, p.22 and next.; Sandrowskij K.K.: *Miezhdunarodnyje Tamozhennoje Pravo.Uchebnik*.Kiev, ed. Znania, 2001, p.7 and next. The „Customs law" definition as well as „Customs Policy" is still the controversial question between the scientists all over the word.

Customs law regulates, *inter alia*:

- conditions, methods and form of submitting customs declarations in accordance with defined customs procedures,
- conditions for carrying out customs exemptions as well as defining their grounds and necessary documentation,
- level and conditions for customs duties – in accordance with tariffs and non-tariff duties,
- conditions for creation of a customs debt as well as manner in which such a debt is covered or extinguished,
- conditions and means of securing customs liabilities,
- conditions for carrying out customs audits and inspections,
- it establishes set criteria for the creation of customs law institutions such as Duty Free Zones or Bonded Warehouses,
- rights and obligations of entities conducting international commodities trade,
- it defines the structure as well as rights and obligations of customs authorities,
- it defines the conditions for trade of special commodities, e.g., commodities listed in the CITES Convention or trade in armament or commodities having binary use,
- it defines conditions for the transport and control of flora, fauna, monies and other special commodities (e.g., bodies, ashes of deceased, gifts, resettlement estate, etc.) across border of a customs area,
- principles for conducting activities in other areas of social and economic life associated with international commodities trade (e.g., statistics of international commodities trade or control of trade of commodities subsidized within the framework of Common Agricultural Policy, etc.),
- it defines the methods of customs actions in cases of infringement or breach of administrative or penal law take place,

- enforcement proceedings in administrative actions,
- conditions for submission of appeals to decision made by customs authorities,
- conditions for cooperation of customs authorities with other State authorities or international organizations.

These are some examples, not all, of the social relations regulated partially or in whole by the group of standards constituting customs law associated with international commodities trade.

The above examples of regulations associated with social relations consist of a number of norms also found in a number of regulations not associated with customs law. These include financial law norms as well as administrative, public, private, national or associated with international unions (e.g., derivatives of international agreements or decision issued by authorities of international organizations).

In addition to regulation of defined social relationships, in this case associated with international commodities trade, the definition of ***means of regulating*** such relationships is also very important in order to distinguish a given branch of law.

Two fundamental methods are distinguished in law theory:

- ***administrative law*** based on authorities and subordination to them, and
- ***civil law***, i.e., based on equality of the parties as well as the freedom to express will within a framework defined by law.

When we use this distinction in respect to customs law, we see that in effect we are dealing with both methods of regulating mutual relations. In relations between

customs administration authorities and entities conducting international commodities trade we see a dominant administrative law relationship (application for procedures, necessity to secure customs debt, defined periods for execution of decisions by customs authorities, administrative enforcement proceedings, etc.).

At the same time though, civil law relations also take place in customs law (e.g., representation in customs proceedings).

As can be seen, even here customs law is of a complex nature although clearly differentiated in regards to subject matter and methods used to regulate social relationships.

Professor Drwiłło has defined customs law as being:

"a set of legal regulations, i.e., legislative and executive provisions /.../ regulating the principles and methods of importing goods into the customs area of a given country as well as export from the given customs territory. The subject of the regulations are also the rights and obligations of people importing and exporting goods abroad as well as the rights and obligations of customs authorities. /.../ However, the context of customs law provisions indicates that these are legal regulations regarding commodities trade with a foreign country."[7]

This approach shows that Drwiłło, author of a number of excellent books on customs law and financial law, comes to the conclusion that in effect, what we are dealing with is not so much customs law but rather "the right to commodities trade with a foreign country" as it also includes regulations regarding e.g., limitations or bans

[7] Drwiłło A.: Prawo celne , Gdańsk, wyd. Arche 2001, p., 11

regarding such trade as well as other regulations contained in various acts (e.g., veterinary, energy, environmental protection, etc.).

A different approach to defining customs law is presented by F. Prusak in his work entitled "Kodeks Celny. Komentarz [*Customs Code. Commentary*]" dated 2000.[8] The author use the terms "*customs legislation*" and "*customs law*" interchangeably a number of times throughout the text. Although he does not show directly that he is trying to define customs law, he does in fact do this by formulating issues arising from customs law. And so, in regards to these issues, he writes:

"*Customs law provisions mainly regulate the principles and methods of importing goods into the customs area of a given country as well as export from the given customs territory. The subject of customs law provisions is also the rights and obligations of people importing and exporting goods abroad as well as the rights and obligations of customs authorities."*[9]

As we can easily see, what we have here is a descriptive, albeit precise, definition of customs law based on the subject of its use in a manner similar to that presented in the Polish Customs Code dated 1997 (Dz.U. [*Official Journal*] dated 1997, No 23 item 117 with subsequent changes). This is the approach that was used in Article one of this Act. This article stated:

"The Act regulates the principles and methods of importing goods into the Polish customs territory as well as export of goods from Poland and associated with this rights and obligations of people as well as rights and obligations of customs authorities".

[8] Prusak F. Kodeks celny. Komentarz. Warszawa, Muza 2000
[9] Ibid., p.9

However, Article two of this Act – an act of fundamental meaning for Polish customs law at the time – took a significantly wider approach to this matter. For it was in this article that attention was brought to the fact that:

§2. The import of goods into the Polish customs territory or the export of goods from the Polish customs area creates, on the basis of law, rights and obligations foreseen in the provisions of the Customs Code unless stated differently in other legal acts including international agreements.

§3. The import or export from the Polish customs territory of items regulated by separate laws regarding protection of copyrights, trade rights or industrial rights shall be regulated accordingly by provisions regarding the import or export of goods to/from the Polish customs territory.

§4. Principles for the creation and execution or expiration of tax liabilities associated with the import of goods into the Polish customs area or the export of goods from the Polish customs territory as well as the scope of rights and obligations of customs authorities in this respect shall be regulated by separate provisions."

The code approach to customs law provisions was very drawn out. The co-authors of the text commented this in the following way:

*"the concept >>**customs law provisions**<</.../ is defined in both the Customs Code Act as well as executive acts issued on the basis of the Act."*[10]

[10] See. Jóźków E., Kwaśniak R.: Kodeks celny. Analiza zmian w ustawodawstwie celnym. Warszawa,
Wydawnictwo „ Fundacja Telonarius", 1997. s. 4

In that case, can we accept the above as an explanation for the definition of "customs law". Most likely no because the majority of it refers to provisions and not the legal significance of customs regulations. This was rightly brought to attention by Włodzimierz Podstawa who wrote:

"*Even though the Customs Code Act regulates issues associated with customs in a significantly wider aspect than the Customs Law Act that was in effect until the end of 1997 - it is nonetheless only a part of a new legal order regulating the area of law."*[11]

A different view is presented by authors using the category "customs system" instead of "customs law". The most classical definition of "***customs system***" is presented by S.Waschko in his works regarding this subject. In accordance with his definition, a customs system is:

"The whole of customs law forms and tools used to impose and execute duties as well as customs fees constitutes the customs system in effect in a given country."[12]

Drwiłło approaches the customs system in a much wider context.[13] Using the theory of systems, he comes to the following conclusion:

*In the context of contemplating the meaning of the word **system**, it is easier to present the idea of a customs system. In accordance with the exact concept of this idea, the essence of it should be associated with all types of customs law forms and tools used to impose and collect duties and customs fees. The customs system of a given country in principle regulates legal norms imposed by State authorities authorized to do so.*

[11] Podstawa W.: Nowe Prawo celne, Łódź, wyd. „In Plus", 1998. s. 3
[12] See: Waschko S. Systemy celne, Warszawa 1971, s. 18
[13] Drwiłło A. Postępowanie ochronne w prawie celnym, Gdańsk, wyd. Arche 2003, p. 20 and next.

Therefore, these are above all domestic legal standards. /.../ however, the customs system is characterized by certain special traits as it is solution used within the customs systems of the individual countries of a trans-state impact. Therefore, ***the customs system of a given country not only consists of legal standards accounted in internal laws but also consists of international law****".*[14]

Despite such a comprehensive definition, we are still dealing with a description of a customs system whose part is customs law. However, this approach without a doubt is different than the previous one.

A. Huchla and A. Kuś came even closer to defining the significance of customs law in their definition.

According to Huchla, "Customs law", in its encyclopedia definition has been defined as follows in the "Encyclopedia of Law":

Customs law, a branch of law differentiating itself from financial and tribute law by the nature of the subject of the law /.../. It includes regulations associated with: principles for foreign trade of commodities, collection of duties and other customs receivables from such activities, customs proceedings, customs control, organization and operation of customs administration".[15]

And finally, the most specific definition is presented by dr. A Kuś from the Catholic University in Lublin. He states that:

[14] Ibid,
[15] Huchla A.:„Celne prawo" w: Encyklopedia prawa, Warszawa, wyd. C.H. Beck, 1999, s. 73

Customs law can be defined as the set of legal standards regulating international commodities trade, the collection of duties and indirect taxes from such trade, the rights and obligations of entities engaging in such trade as well as the structure, rights and obligations of authorities responsible for controlling and executing the abidance to such standards."[16]

This is one of the most comprehensive definitions of customs law. At the same time, the author of this view states that:

"Customs law is by doctrine treated as a part of financial law or as an integral part of public commercial law."[17]

Professor K. Sawicka from the University of Wrocław stated that even though the Polish Customs Code which was in effect until the end of April 2004 constituted the foundation for the Polish customs law, customs had a significantly wider meaning. This was due to the fact that specific issues regarding foreign commodity trade were also regulated by

"the executive acts to this Act, /.../ referring in a number of specific acts to the principles, conditions and methods of using means of trade policies such as quota limitations or bans on the import or export of certain items in order to protect the domestic market and domestic manufacturers from excessive export of commodities as well as from import of goods sold at dumping process or subsidized. /.../ The wider

[16] Kuś A.: Podstawy prawa celnego, w: Zarys finansów publicznych i prawa finansowego Praca zbiorowa pod red. prof. Wójtowicz W., Warszawa, Wyd ABC, 2004, s. 307
[17] Ibid,

understanding of customs law holds the benefit that it allows one to embrace all legal regulations regarding import of goods into the Polish customs area." [18]

Further, this author in continuing her thoughts regarding a definition for customs law states that customs law provisions

... constitute a certain set of legal standards, discrete from others above all due to the specific nature of the criteria used to define them which is foreign commodities trade. This criterion also sets the limits for the set of legal standards belonging to customs law. ***The separation of customs law in the legal system is the result of a certain convention*** *arising from practical needs associated with the need to create law in a specific area, with needs to carry out scientific research or educational needs. /.../* ***Thus customs law should be treated as a part of public law of a complex nature.*** *"*[19]

An finally, in finishing up this analysis regarding the place and role of customs law in the overall legal system, Sawicka stresses not only the conventionality of the subject of these regulations, but also that:

The separation of customs law from public law regulations regarding State participation in the area of commercial activities allows one to become better acquainted both with the principles as well as methods of conducting international commodities trade as well as rights and obligations arising from this in regards to

[18] Krystyna Sawicka „Prawo celne w zarysie", Wrocław , Kolonia Limited ,2003, p. 7-8. See also: Fojcik –
Mastalska E., Sawicka K.: Podstawy prawa celnego i dewizowego, Wrocław, wydawnictwo Kolonia Limited,
2001, s.255; Kodeks celny. Wprowadzenie prof. dr hab. Krystyna Sawicka. Opracowanie dr Marek Zdebel.
Stan prawny na 1 czerwca 1999r. Bielsko – Biała, Wydawnictwo Studio STO, 1999, s.160. Drugie wyd., z
2000r. ze stanem prawnym na 1 listopada 2000r.

[19] Sawicka K.: „Prawo celne w zarysie", op.cit., p. 10-11

persons participating in such activities as well as the rights and obligations of customs authorities" [20]

The most unequivocal stand in this matter has been presented by the author of the entry "customs law" found in one of the popular encyclopedias devoted to law and economics in which he states that:

Customs law is a branch of law separated out from financial law and administrative law and is involved with issues arising from generally defined foreign legal turnover, customs proceedings, methods of collecting duties and the functioning of so-called customs authorities."[21]

As can be seen, the presented definitions regarding customs law, although similar, show that:

1/ We are dealing with various views on definitions;

2/ there is a clear difference in opinion regarding the place of this law in the legal system (separating customs law out as a separate branch of law or leaving it as an integral part of financial or public commercial law);

3/ no unified definition of "customs law" exists in both the law as well as literature devoted to this subject.

[20] Ibid, p.14
[21] „Celne prawo" , w: Bombicki M.R.: Encyklopedia Actus Purus. Prawo i ekonomia. Leksykon prawniczy", Warszawa, brak roku wydania, p.37

Furthermore, there is no agreement regarding the doctrine, contrary to the position presented by some authors, of whether customs law is an independent branch of law or a part of another branch of law.

Customs law as an independent, comprehensive discipline of law

More and more often statements appear in literature, pointing out that customs law is an independent[22], self-contained and comprehensive discipline of law[23]. In this case, the most popular argument for in this opinion is the fact, that customs law merges multiple disciplines of law, and in practice regulates many matters regarding social relations that are also regulated by other laws.

Finally, the authors point out most directly, that today we can consider c***ustoms law to be an independent discipline of law***[24]. Although this opinion is not yet quite popular, still it appears in recent legal literature, mostly Russian.

Nevertheless, we can shortly describe customs law as a set of norms and procedures, regulating foreign trade. In the EU as well as in Poland, the main source of the customs law is the EU Customs Code. Also, both in the EU as well as in Poland Executive Regulations to the EC Customs Code are in effect. In Poland, national customs law additionally regulates those particular matters that have not been pointed out in the commonwealth regulations. Many other regulations, regarding foreign commodities trade are contained in the executive legislation to such acts. In addition,

[22] See. np.: Huchla, op.cit., p.6; Khalipow, op.cit., p.3; Borisov, op.cit., p.12; Ignatiuk,op.cit., p.35; Draganov,
op.cit., p.94
[23] See. np.: Drwiłło, op.cit., p.6; Gabridze 2002, op.cit.,p.69;Wojtowicz, op.cit., p.7; Ignatiuk, op.cit., p.37-39;
Draganow, op.cit., p.97;
[24] See: Sandrovskiy, op.cit., p.15; Khalipov, op.cit., p.43, Ignatiuk, p.35.

they are also contained in various detailed regulations (commonwealth, national and international), regarding the rules, conditions and procedures for application of trade policies. This relates to regulations regarding, e.g., quota limits and bans on import and export of goods, or other means of protecting national markets and local manufacturers from the excessive import of goods, dumping prices and subsidized goods.

Professor Sawicka points out this way of understanding customs law, including the aforementioned conditions and the subject scope, stating that:

"An open-minded understanding of customs law has the advantage of allowing for a general view in respect to legal regulations regarding the import of goods to the Polish customs territory."[25]

The author points out the economic significance of foreign commodities trade and its customs law regulations – customs procedures, the control and execution of the entities obligations, with particular emphasis on fiscal liabilities arising from customs debt as well as the role and significance of representation in customs matters, carried out by a customs broker or customs agency. In accordance with this view, customs law provisions:

".... crease a certain set of legal standards, distinguished mostly by the criteria of the subject of regulations, which foreign commodities trade constitutes. This criterion prejudges also the scope of the set of legal standards contained in the customs law.

The distinguishment of the customs law in the legal system is the result of a certain convention, based on practical matters, regarding e.g., creation of law in a particular

[25] K. Sawicka „Prawo celne w zarysie", Wrocław , Kolonia Limited ,2003, p.7-8

discipline, undertaking scientific research or didactical needs. /.../ And so, customs law should be treated as a part of public law having a comprehensive nature."[26]

To substantiate this thesis, the author points out, that:

"...it is created mostly by legal standards, contained in public economic law and financial law, in a scope of their application to the execution of the administrative-legal tools, or the financial legal tools by the state, shaping foreign commodities trade. The unwritten border of distinguishment of the legal standards is set on the subject they regulate, but also on the subjects they regard and the type of legal relations"

On this background, considering the fact that the subject of a legal relation, based on a norm of customs law is a certain behavior of the indicated parties – their obligations and rights. The author distinguishes two groups:

The first group is the **passive subjects of the customs legal relation –** the ones that foreign trade, whose behavior and the way of dealing with the goods as well as their obligations are set in the norms of the customs law.

The other group is the active subjects of the customs legal relation – the norms of customs law set to grant those rights and obligations are complemented by granting them purposive competences. To this group belong national organs, such as the Director of the Customs Regional Office (Izba Celna) in Poland and the Head of the Local Customs Office (Urząd Celny), the minister responsible for finances as well as the minister responsible for the economy.

[26] Ibid , p.10-11

Finally, ending the analysis, regarding the position and role of customs law in the legal system, professor Sawicka stresses not only the conventionality of the subject of regulation, but also the necessity of distinguishing this law in the legal system, because:

*"**Distinguishing customs law** from public law regulations regarding participation of the state in the sphere of economical activity **allows for comprehensive apprehension** of the rules and the procedure for conducting international commodities trade, as well as the rights and obligations arising out of it to the participants and the customs authorities"*[27]

In this case, distinguishing customs law out of the legal system is justified, because it allows for a comprehensive view on the legal regulations regarding foreign commodities trade.

Doctor R. Molski came to a similar conclusion, even though his point of relation is different:

"In the sphere of legal disciplines, the subject of foreign commodities trade appears mostly in the administrative, public-economic and the fiscal punitive law"[28]

[27] Ibid, p.14
[28] Molski R.: Administracyjnoprawna regulacja obrotu towarowego z zagranicą, Szczecin, Wydawnictwo Naukowe Uniwersytetu Szczecinskiego, Rozprawy i studia , t.(CDLII) 378, 2001r., p.9

He stresses his position mostly in relation to the fact, that the legal regulation of foreign commodities trade is not only connected to a massive normative matter, but also complexity

"...the matter, demanding a legal approach, and on the other hand – a material construction of our legislation, arising from the need to regulate distinctive questions with one or several strictly intertwined acts[29]*. It's also often connected with the lack of strictly set material scope of regulation, which is distinctive to the administrative law.*[30] *It has been accurately stressed in administrative law science, that this kind of structure results in particular consequences, such as difficulties in determining the subject's legal situation (e.g., an entity conducting foreign commodities trade). An important issue arising from this situation is also the need to ensure the necessary integrity of legal regulations within the scope of the normative acts constructed in such a way*."[31]

Still, he pointed out, that in the situation of Poland those days:

"*The act of the 9th January of 1997 – the Customs Code, is of fundamental significance to the whole sphere of foreign commodities trade. The Customs Code, together with the implementing provisions, constitutes a group of normative acts, which for methodological purposes can be called customs legislation. Customs legislation constitutes the core of regulations related to the sphere of social and economical relations associate with foreign commodities trade; it regulates the principles and procedures for importing goods to Poland and exporting them abroad,*

[29] Chełmoński A.: *Typy norm materialnego prawa administracyjnego i ich rola w kształtowaniu sytuacji prawnej jednostki,* w: Acta Universitatis Wratislaviensis, Przegląd Prawa i Administracji, t. II, Wrocław 1972, p. 75.
[30] Leoński Z.: *Z problematyki legislacyjnej administracyjnego prawa materialnego* w: *Legislacja administracyjna*, Materiały ze Zjazdu Katedr i Zakładów Prawa i Postępowania Administracyjnego, Gdańsk 1993, p. 21.
[31] Chełmoński A.: *op.cit,* p. 75.

the related rights and obligations of subjects participating in foreign commodities trade as well as the competencies of customs authorities."[32]

This author also points out the distinction of customs law in the system of laws, even though he does it only for methodological purposes.

As we see in accordance with the criteria regarding the main subject of regulation, the customs law is sometimes considered as a part of public or administrative law, mostly the international trade law.

But in the aspect of procedures and the character of the decisions made in the scope of this law, its administrative character is also pointed out.

In the practice of foreign commodities trade there are also some particular regulations, coming out of the customs law and other laws as well, that are applicable to customs procedures, and associated with tax, currency, fiscal, penal and penal fiscal law. As a result of thee interdependencies, it is difficult to unequivocally link customs law to any traditional branch of law.

Considering the recent development of customs law, national as well as commonwealth, we can state that:

Customs law constitutes, due to the specificity of the subject of the regulation as well as and proceeding procedures, a separate branch of the Polish and Community legal system.

[32] Molski R., op.cit., p.43

The Community Customs law, both widely and narrowly understood, constitutes an explicitly discrete field of secondary Community law. It includes all basic features and elements enabling to separate it from the entire legal system of the European Community (acquis communautaire).

The idea of customs law and customs regulations in the EU is defined in art. 1 of the Customs Code of the Community. It is specified as follows:

"Provisions of the customs law are composed of the Code herein as well as regulations issued to be applied in the Community or Member States of the Community. Without prejudice to special regulations determined in other fields, the Code shall be applied:

- in the trade between the Community and third parties,
- in reference to products referred to the Treaties on ECSC-EC-EAEC.[33]

[33] I quote from the text: C. Wernic Publisher by: Monitor Prawa celnego i podatkowego z 2004r., nr 2A, p..32. In the case we have the problem with interpretation in various languages of EU MS. In one case it is "law" in other "legislation». See official text of the CCC:
German: *„Artikel 1 Dieser Kodex und die auf gemeinschaftlicher und einzelstaatlicher Ebene dazu erlassenen Durchführungsvorschriften stellen das Zollrecht dar*" , cyt za: http://europa.eu.int/smartapi/cgi/sga_doc
English: *Article1 Customs rules shall consist of this Code and the provisions adopted at Community level or nationally to implement them"*
French: „Article premier. La réglementation douaniere est constituée par le présent code et par les dispositions prises pour son application au niveau communautaire ou national"
Spanish: *„Artículo 1.El presente Código, junto con las normas de desarrollo adotadas tanto en el ámbito comunitario como en el nacional, constituyen la normativa aduanera.*"
Portugal: *„Artigo 1o. A legislação aduaneira compreende o presente código e as disposições adoptadas a nível comunitário ou nacional em sua aplicação"* czy
Italian: *„Articolo 1 La normativa doganale costituita dal presente codice e dalle disposizioni di applicazione adottate a livello comunitario o nazionale."*.
It is possible to accept both categories because they describe the same set of regulations (rules). See similar position in the question presented by German authors, e.g.: Witte/Wolffgang: „*Lehrbuch des Europäischen Zollrechts"*, 4 Auflage, ed. Verlag Neue Wirtschafts-Briefe, Herne, Berlin 2003 or M. Lux: *„Das Zollrecht der EG"*, Köln, ed. Verlag Bundesanzeiger, 2003 (the first edition in English as: „*Guide to Community Customs Legislation*", Bruxelles, ed. Bruylant 2002.

Mostly significant is the fact that the subject range is strictly determined. It is international commodities trade with third countries.

There are no regulations concerning procedure details or system details of the customs law. They have in fact been left to the individual countries to resolve.

The Customs Code as such is not a legal EU document constituting the customs law of European Union. It is additionally composed of several documents of secondary law referring to regulation of commercial foreign trade activities. It is especially Regulation of the Council (EEC) No 2454 dated July 2, 1993 Implementing Provisions to the Community Customs Code[34] and such like Regulation of Council (EEC) No 918/83 dated March 28, 1983 on the Community System of Customs Relieves[35] ; Regulation of the Commission (EEC) No 3915/88 dated December 15, 1988 on a System of Tax Duty Collection Exemption within Community and over 320 other customs regulations. In addition, there is a huge number of customs regulations included in international commercial agreements signed by the EU with third countries.[36]

Definition of customs law

[34] Just right now it's under the process of changing and adapting to the MCCC.

[35] Modernized by: **Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty** Read more: http://vlex.com/vid/setting-system-reliefs-customs-duty-72379675#ixzz1K3jxYsL9.

[36] The current, so called Modernized Community Customs Code (REGULATION (EC) No 450/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 laying down the Community Customs Code (Modernized Customs Code) in: EU OJ L 145/2008 indicates: "*Article 1 Subject matter and scope*
1. This Regulation establishes the Community Customs Code hereinafter referred to as 'the Code', laying down the general rules and procedures applicable to goods brought into or out of the customs territory of the Community. Without prejudice to international law and conventions and Community legislation in other fields, the Code shall apply uniformly throughout the customs territory of the Community.
2. Certain provisions of the customs legislation may apply outside the customs territory of the Community within the framework of legislation governing specific fields or of international conventions." Hereinafter cited as: MCCC.

Generalising the outcome of the indicated theoretical and practical approaches included in the Customs Code and in the implementing provisions as well as in the other legal acts governing international commodities trade, we may define customs law as follows:

„Customs law constitutes the set of norms and procedures governing international commodities trading , the rights and responsibilities of traders, as well as the regime, rights and responsibilities of the governmental bodies that provide for and enforce the compliance with these standards in order to protect and promote economic and social interests of the State or of the Member States of the international integration organisation."

Due to such a wording of the customs law's definition, we have to indicate its several characteristics:

1/ Aim – the protection of the economic and social interests of the state or of the member states of the international integration organisation;

2/ Essence – the set of legal norms and procedures relating to a particular (international commodities trade) sphere of social and economic life and the governance of this sphere;

3/ The subject of the customs law – international commodities trade, as well as the rights and responsibilities of traders;

4/ Structure, as well as the rights and responsibilities of governmental bodies

a/ setting such norms;

b/ enforcing the compliance with such standards.

The most clearly indicated fact is the strict definition of the subjective and objective scope – international commodities trade and entities involved in this trade – economic entities and government bodies. Finally, the provision and enforcement of this law is clearly indicated so as to achieve the aims of this law which relate to the protection and promotion of interests governed by this law.

The customs law defined in such a way is not limited exclusively to the codification of its norms in the Customs Code (Community or national regulations). It includes the considerably wider scope of sources governing international commodities trade, i.e., a number of other acts and implementing provisions related to international commodities trade (these are above all regulations such as ordinances or acts regarding market protection against unfair competition, acts governing the tasks and functions of the national administrative bodies that are involved in foreign trade, various detailed provisions governing customs proceedings , enforcement or appeal proceedings, etc.)

Due to the volume of the social relations subject to provisions of the customs law – starting from the law concerning foreign trade, through financial law, tax, fiscal, currency, administrative, criminal, fiscal-criminal laws and many others, we may specify customs law as a comprehensive law.

However, due to the ongoing evolution of this law, its codification, and the specificity of regulations as well as special standards regarding customs proceedings, another thesis could be formulated, treating the current customs law as a separate line in the system of law.

In principle, customs law consists of:

- Material customs law
- Procedural customs law
- Structural customs law[37]

Material customs law – ***standards governing the content of actions undertaken by customs administration authorities, i.e., fundamental principles of foreign trade, the rights and responsibilities of entities subject to administrative and legal relations due to such trading activity and being subject to customs supervision.***

Procedural customs law – standards serving the execution of material customs law. These include methods of executing rights and responsibilities of participants in foreign trade. They govern the principles and the course of proceedings of the customs administration authorities, as well as of persons appearing before such bodies.

Structural customs law – norms that involve the regime and the scope of activity of customs administration authorities.

The above distinction applies also to the Community customs law. However, it does not govern in detail the regime of customs authorities, i.e., structural customs law.

[37] See: Wiesław Czyżowicz (ed.) Prawo celne. Warszawa, wyd. C.H. Beck, 2004, sp 16. See also: Naruszewicz S., Laszuk M.: Prawo celne. Zarys wykładu., Warszawa, ed. LexisNexis, 2001, p.9-10

Having at our disposal the above definition of customs law, we may determine its location in the system of law existing in the particular territory – in this case, in the customs territory of a given state or international organisation of economic integration.

IV. Functions of customs law

The functions of customs law are derived from from both its general and specific goals. It is possible to classify them according to many criterions. We may then distinguish the following functions of customs law, assuming as the basic criterion for example:

- ***Direction of the foreign commodities trade:***

a) export,

b) import, and

c) transit.

- ***Economic goal****:*

a) protective (in respect to developing industries, workplaces, competitiveness of the own commodity, including anti-dumping duty, anti-subsidy, compensatory charges),
b) promotional
c) fiscal (budgetary needs, maintaining balance of payment)

- ***Social goal**:*

a) protection of human health, as well as of the health of animals and plants, environmental protection;

b) protection of national values;

c) protection of morality and social order, etc.

The literature involves the most often the economic, commercial, and in particular fiscal functions of the customs law[38]. That is true as regards the practice dominating in the history and in relation to some existing countries that are poorly developed, where the customs administration constitutes one of the largest suppliers of the national revenue and budget income (e.g. not so long ago, in Poland that was almost 30% of the annual budget income – duties and tax collected by the customs services in total, where the duties constituted only about 3-5% - but for more than 130 years this constituted also the basic source of the budget income in the USA. Federal tax was not applied in the USA by the year 1913, in the European Union at present this is about 11.5%, i.e. about EUR 11.5 billion of the budget income deriving from duties and compensatory charges).

However, as the agreements of the Word Trade Organization - General Agreement on Tariffs and Trade (WTO/GATT) are executed, as well as free trade areas and customs unions come into existence, the fiscal function of the customs law radically decreases. However, the social functions are developed, which relate to the social security and the protection against terrorism threat, to the life quality and

[38] In many handbooks, particularly connected with financial law we meet many classification of „customs law", e.g.: "battle customs", "countercharge customs", "educational customs" etc., etc. See.: Prawo finansowe, pod red. W. Wójtowicz, Warszawa, wyd.C.H.Beck 2000, 3 wydanie,p.461-462; S.Naruszewicz, E.Ruśkowski: Polityka i prawo celne i dewizowe, Siedlce, WSFiZ, 2002, p.13-14, i inne.

environmental protection, as well as to the protection of national values, the promotion of national economies or these of the countries forming the integration groupings.

Rules of customs law

Customs law, just as other segments of law, features some characteristics – both of general and specific nature – and includes legal norms regarded as principles. The following is generally understood as principles of law – in the case under consideration: customs law:

"norms of law in force regarded as fundamental. In this interpretation a principle has always been one or another provision of the law in force."[39]

Additionally, it is agreed in theory that within a set of specific legal standards,

„*principles of law are understood as standards regarded as fundamental in a specific set of legal norms*".[40]

In the case of such interpretation of law, including customs law, one of the essential principles of democratic law should come to the forefront, namely – *parity of rights and obligations of businesses and bodies of authority alike.* Whether this principle has been observed in our customs legislation, and if so, than to which degree, this is an issue to further theoretic consideration since in practice it has been applied to only an insignificant degree. There can be no doubt, however, that relationship between

[39] Drwiłło, op.cit. s.31
[40] Stawecki T., Winczorek P.: Wstęp do prawoznawstwa, Warszawa, 1995, p.65-66

customs authorities and an entrepreneur has been based upon administrative-and-legal, rather than civil-and-legal relation. This is emphasised by Professor Sawicka who states as follows, quoting J. Boć:

"*When a scope of powers is defined for bodies of State authorities, this means at the same time that other bodies become subject to the same power at the same time. As a result, any body thus empowered enjoys a superior position in relation to that subject to such power. A lack of actual equal status of bodies has been typical to any legal relationships defined by standards of public law.* ***Customs relations belong to the category of administrative-and-legal relations whose content is defined by customs law in force***".[41]

This way the principle of parity of parties has no full application in the case of customs law. Of course, this is just one principle we consider, which leaves apart a catalogue of several other principles present in the set of norms regulating commercial dealings with abroad. As an example, the following principles should be added thereto:[42]

(1) the principle of freedom of commercial dealing with abroad[43];

(2) the principle of equal treatment of goods;

(3) the principle of equal treatment of persons;

(4) the principle of universality of customs;

(5) the principle of availability of information regarding customs law.

[41] Ibid, s.12
[42] Drwiłło, op.cit., s. 31- 34
[43] Prawo działalności gospodarczej z 1989r, w: Dz. U. nr 41, poz. 324 z późn. zm. (Dz.U. z 1999r. Nr 101, poz. 1178 z późn. zm.) and Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej. Dz. U. z 2004, Nr 173, Poz. 1807

Each of those principles stems from some specific regulations in customs law and from detailed legal provisions related therewith. However, as it is in practice, each of them has only a relative nature at the same time, *i.e*. it has no absolute application with any exceptions at all. In fact, quite the opposite is true. Almost all of them are strictly related to a number of exceptions, also provided for in provisions of both Polish and the EU customs law.

The principles in question are shortly discussed below:

(1) The principle of freedom of commercial dealing with abroad – it says that each person (individuals enjoying full citizen rights, legal persons and bodies having no legal personality) has the right to undertake commercial activity, including that in the scope of dealing in goods with foreign partners.

Exceptions – licences and permissions (for example for trading in some specific goods)

(2) ***The principle of equal treatment of goods*** – it results from regulations concerning customs law under which any such goods of the same quantity and kind are subject to equal treatment, irrespective of where they come from or for whom they are intended – *i.e*. they should be subject to all necessary procedures and customs proceedings, to custom tariffs and to any other charges at uniform conditions.

Exceptions:

a) regarding persons – stemming from special regulations such as, for instance, diplomatic or consular conventions, persons in course of resettling and so on;

b) regarding subject or aim – goods belonging to resettlement property, goods intended for cultural institutions and other goods covered by exemptions provided for in the Council Regulation No. 918/83 (EEC) on Customs Relieves;

(3) ***The principle of equal treatment of persons*** – undertakings (individuals, partnerships, etc.) irrespective of a legal form of their activity – have the same rights and obligations, are obliged to meet all necessary conditions provided for by law (such as customs notification, subjection to customs supervision and inspection as well as other conditions and procedures) as well as to clear all customs liabilities – in the form of customs duties and taxes.

Exceptions*:* limited to payment of customs liabilities depending on principles mentioned above as principle (1) and (2);

(4) ***The principle of universality of customs*** – all goods imported from abroad with the aim of involvement in commercial activity are subject to the obligation to calculate custom debt there are charged with.

Exceptions – there is no. However, some customs operations should be included to exemptions ***from payments*** resulting from the calculated amount of customs debt, resulting from legal regulations, rather than to exceptions from the very principle. Such customs operations are, for example, privileged operations, some procedures with economic impact, relieves, etc.).

5/ ***The principle of availability of information regarding customs law*** – this principle belongs to one of the fundamental principles of the State of law. This basically comes down to the point that any citizen, any individual or any person having no legal personality has the right to generally available and full information on provisions of customs law, and that bodies of administration responsible for implementation of customs policy are obliged to provide such information.

This is stipulated for in provisions of Article 11 of the Community Customs Code accordingly:

"1. Each person has the right to request customs authorities to get information regarding application of provisions of customs law.

However, such request may be dismissed unless it relates to an import or export operation actually to take place".

Exceptions*:* However, the way the above article is worded fails to fully reflect the principle of general availability of information on provisions of customs law. In fact, it provides for restriction regarding access to such information,

"since – are A.Gołoś and A. Wantuch rightly point out – *provision of information is dependent on whether given goods are to actually be imported or exported or not. However, sometimes an intent that is regarded an evidence of a planned (probable) event, depends exactly on what is found in the information sought (for example: an amount of customs duty makes import of goods profitable). It is vague to say somebody actually intends something. Besides, does that mean to say that intent has*

to be proven to customs authorities in order for information to be given? If so, then, how to prove that?"[44]

The above quoted examples of principles of customs law seem to be consistent with fundamental principles of law in force in a State of law. However, under the European Union circumstances, such principles have to be supplemented by principles of the WU customs law.

Principles of the EU customs law

The Principles of the EU customs law have been derived from general principles of the EU legislation. They fully apply to the EU customs legislation and its relation to national legislation in the area of customs in the Member States. Although there is no EU document with catalogue of principles of that law being distinctly emphasised, their broadest set can be found in the EU Customs Code.

On the basis of that fundamental document, sometimes referred to as the "Constitution of the Customs Union" – yet without limitation thereto – it is possible to point out just several principles that stem from political assumptions behind that legislation and from the Community Customs Code (certainly, without any attempt to present their complete set)[45].

These are the following ***principles of the EU customs law***:

[44] Gołoś A., Wantuch A.: Kodeks celny. Komentarz do ustawy Kodeks celny wraz z przepisami wykonawczymi., Warszawa, wyd. Difin, 1998, s.31
[45] Consolidated tax of the CCC sees on: http://www.europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992R2913_do_001.pdf .

- balancing of customs procedures simplifications against effectiveness of protection of the Community interests (Preamble to the CCC);
- regulating dealings in commodities with third countries (Article 1);
- rule of law (Article 6)
- expedient decision-making (Article 6);
- public character of decisions for the interested party (Article 6)
- prompt enforcement of a legally made decision (Article 7);
- the right to information on provisions of customs law (Article 11) ;
- protection of entrepreneurs' justified rights (Article 9(4) and Article 244);
- uniformity of construction and application of the EU customs regulations in all Member States (Article 250);
- uniform character of customs documentation (Article 250);
- uniform character of customs procedures (Article 250);
- validity of decisions made by customs authorities of one Member State in the whole EU customs area (Article 250);
- the right of complaint against customs decisions and arrangements through administrative or judicial proceedings (Article 6 and Article 243) ;
- partnership of customs services with business environment.

The above-listed principles are reflected both in provisions of customs law and in their practical implementation in customs procedures applied by customs services in individual Member States. Sometimes, however, in particular as regards proceedings in customs-related matters based upon national regulations, the above-mentioned principles have still been more of political postulates than they have of practical reality.

V. Prospects for development of both the EU and national customs legislation

Additional supplements to the EU customs law are to appear soon. They are not only going to concern technical changes, as it has been at the moment of the European Union recent enlargement by accession of new Member States (for example, supplementation of provisions of Article 3 of the CCC and of provisions of IPCCC respectively, regarding definition of the EU customs area and, mainly, amendments in detailed regulations in national languages of the EU new Member States in various documents, for example related with Transit Convention, EUR 1, etc.).

It is much more important to meet requirements resulting from the necessity to consolidate safety of an international chain of goods supply, reduction and better structuring of individual customs regulations, dissemination of new inspection methodologies (such as *ex ante* inspection), lowering the risk of trafficking and customs crimes or better adaptation of the EU customs law to other EU spectral policies such as tax, agricultural, commercial, health care or consumer policy.

Rapid progress made by electronic business has forced the EU authorities to carry on towards a further radical change of fundamental acts of the EU customs law with the aim of their adaptation to new reality – not only in economic and social terms, but related to the process of globalisation - as well as in purely technical and technological terms related to the Internet evolution.

Further development of the EU customs legislation is going to be implemented in the framework of the E-Customs strategy – which in fact means electronic customs forming a part of the "Customs 2007" strategy which, in turn, belongs to a broader European "Information Society" strategy. At present teams of experts from the Commission (from TAXUD) and from European business organisations related to customs law and procedures, such as Trade Contact Group (TCG), have co-operated in that area. It is their task to prepare a draft of a new EU IP MCCC customs law in

connection with a radical change were made in the MCCC and with simplification of customs procedures and their uniform application in the Member States. At the same time, this reform should result in introduction, to a broader degree, of modern methods of co-operation with business environments, including modern inspection and control methods as well as making use of electronic communication to a maximum extent practicable at customs clearance procedures (in line with solutions adopted in the so-called renewed Kyoto Convention on facilitation and simplification in customs clearances). All these questions have already been under analysis by national experts and representatives of European commercial authorities.

Conclusions from the research

(1) The customs policy and the superiority of national interests or an integration group has been one of determinants in relation to legal regulation of commercial dealings with third countries both in the European Union and in its individual Member States.

(2) The most efficient tool of that policy is customs law that constitutes – in my opinion – an independent segment of general legal system, separated both with respect to peculiarity of the subject under regulation and to procedures it applies, both on the Community regulation and on national level.

(3) The customs law has been a set of norms and procedures that regulate international dealing in commodities, rights and obligations of persons involved in that activity as well as a system rights and responsibilities of authorities that have both introduced and enforced consistence with these standards in order to protect and promote economic and social interests of any given State or an international integration organisation.

(4) Further evolution of customs law is closely related to development of international political and economic environments, further improvements in the customs mission, rendering procedures more uniform both on the EU and on national levels as well as broader application of facilitated and simplified procedures in international dealing in commodities, proportional to a growing effectiveness of customs inspection.

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CHANGE OF STRATEGIC MANAGEMENT PARADIGM IN THE CONTEXT OF KNOWLEDGE ECONOMY

Abstract

In the article the questions of evolution of theory and practice of management are examined concerning nature of role of man in an economy.

The basic stages of development of strategic management are analyzed in the context of changes of organizational culture.

The questions of mutual impact of management and economic theory in directions of modern of scientific thought are also revealed.

Key words: Human capital, human factor, management of human capitals,