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THE FISCAL- BUDGETARY IMPLICATIONS OF DETERMINING THE ORIGIN OF PRODUCTS

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Abstract: *The customs tariff for import is the main instrument for regulating the external commercial trade, according to the national economic benefits of the states. This practice in the international trade was ruled in Art. XI of the General Agreement for Tariffs and Trade (GATT) which also establishes that the contract parties in this agreement will not set up and support other restrictions for import exept the customs tariffs. Consequently, the customs fees for import are determined based on the customs tariff for import.*

The common customs tariff in the EU implies, besides applying the customs fees, a preference for third countries, on which the EU agrees.

The wrong determining of the origin of products can affect the state budget, the local budget or even the fiscal features and the budget of the company. As the determining of the origin raises important problems in the practice of the customs authorities, in order to diminish the fiscal-budgetary impact, we would like to suggest to people who are interested in this a model, a possible unitary procedure for interpreting the complex provisions of the rules concerning the origin of products.

Keywords*: preferences; non-preference origin; mandatory information regarding the origin; preferential origin.*

JEL Classification*:* K34; F13

1. GENERALITIES REGARDING THE COMMON EXTERNAL TRADE POLITICS OF THE EUROPEAN UNION

The adoption of the common Customs tariff of the EU implies, besides the passing of customs fees (E.Bălan, 2007:170), based on the clause of the preferential nation, provided by this tariff towards the third countries benefiting of this clause, the granting of a preference to the third countries, agreed by the EU, based on partnership agreements, for free trade, of preferential arrangements and customs systems. (D.D.Şaguna, 2008:249).

Romania, since its integration, has had the obligation to apply the customs preferences that this union applies to the third countries. These preferences refer to the following countries:

(a) Countries belonging to the AELS group – Switzerland, Norway, Iceland and Liechtenstein;

(b) The mediterranean countries, which are going to be up to 2010 a region for free euro-mediterranean trade (the association agreements betweem EU and Israel, Tunis and Maroc have already become effective);

(c) The ACP countries (71 countries from Africa, the Caribbeans and Pacific, parts of the Lomé Convention);

(d) Countries from the Latin America, with which the European Union has concluded or will conclude agreements for free trade (Mexic, Chile, Argentina, Paraguay and Uruguay);

(e) The countries taking part in the Cooperation Council of the Gulf – The Saudi Arabia, the United Arab Emirates, Kuweit, Bahrain, Oman and Qatar;

(f) The countries benefiting the General Preferences System (GPS), at present about 150 countries and territories.

When getting into the EU, Romania withdrew from the customs preferences systems among the developing countries, that is the Global System for Trade Preferences (GSTP) and the Protocol regarding the commercial negociation among the developing countries (Protocol of the 16). At the same time, Romania ceased to be the beneficiary of the General Preferences System (GPS), becoming a granter country in this preferences system, by adopting the GPS of the UE. Mention should be made, on the other hand, that being part of GSTP and of the Protocol of the 16, Romania benefited from better conditions when adhering to the preferencial agreements of the EU, which are more generous for the developing countries.

2. THE ORIGIN OF GOODS

The origin represents the economic „nationality" of the merchandises in the world trade. There are two types of origins, preferencial and non-preferencial.

The non-preferential origin rules are used to determine the origin of the products, under special measures of trade politics, such as anti-dumping and compensation fees, commercial embargo, protection and compensation measures, quantity restrictions, but also for tariff quotes, for commercial statistics, for public aquisitions, for origin marking etc. (M.Şt.Minea, C.F. Costaş, 2008:339). In addition, the export refunding in the EU provided by the Common Agricultural Politics are based usually on the non-preferential origin.

The preferential origin bestows certain benefits on the merchandise traded between different countries, especially low customs fees or even zero.

In both cases, an important element for determining the origin is the products' tariff class. The merchandise traded will be identified within the Community by a number code in the Combined Nomenclature and before determining the origin, it is essential to determine the CN code.

3. THE NON-PREFERENTIAL ORIGIN

Two fundamental criteria are used to determine the origin: „whole" products and „final fundamentally transformed" products.

When only a country is implied, the criterion of „whole" products will be applied. Practically,this is restricted to products obtained naturally and derived from these.

If two or more countries are implied in the manufacturing process of the goods, the origin of these goods will be determined using the criterion of the „final fundamentally transformed" products.

Generally, the latter can be expressed in three ways:

- By the rule of changing the tariff (sub) position in the Conformity System;
- By the list of processing and transforming the goods, which grants or not the origin to the country in which these changes are carried on;
- By the rule of the added value, through which increasing the value due to assembling operations and material incorporation represent a certain level from the factory price of the product.

4. PREFERENTIAL ORIGIN

The preferential origin is granted to merchandise from different countries which comply with certain criteria of origin. In order to obtain the preferential origin, the rules generally admit that the merchandise should be obtained entirely or specifically processed or transformed.

The preferential origin grants certain tariff benefits (low or no taxes) for merchandised traded between countries that have such an agreement between them or when a country unilaterally grants such benefits.

In order to obtain the preferential origin, the merchandise from a country must comply with the specific conditions provided in the protocol of origin of the agreement concluded by the Community with the respective country or the rules for origin in the autonomous agreements which contain the tariff treatment granted unilaterally by the Community.

This implies that the merchandise either:

- is manufactured from raw materials that were produced or obtained in the beneficiary country (see Example 1); or
- Was processed or transformed in the beneficiary country. This type of merchandise is considered „primary".

The declaration of the supplier made in the presence of the customs authorities is very important. In our opinion, this must take into consideration mainly:

- The Council Regulation no. 1207/2001 for establishing norms for facilitating the release of EUR 1, EUR 2 and for drawing declarations on invoice, the release of export authorisations valid in more member states and for applying the administrative cooperation methods among the member states;
- The Council Regulation no. 1617/2006;
- The model for the declaration of the supplier in appendix 1 of Regulation 1617/2006;
- The Declaration of the supplier on long term – can be issued for a period of up to one year from the date of the declaration (model in appendix 2 Reg. 1617/2006);
- To check the accuracy and the authenticity of supplier declaration, the exporter of merchandise can get from the supplier an information certificate INF 4 issued by the customs authorities of the member state in which the supplier is resident, within 3 months from the receiving of application (model INF 4 appendix 5 of the Regulation 1207/2001).

In all the agreements there is a list of processes or transformations that must be applied to the non-primary materials in order to obtain the condition of primary product. These rules are often called „list rules". They establish the minimal process or transformation that must be applied to the non-primary materials, so that the resulting product should obtain the condition of primary product. Processes and transformations beyond those mentioned in the list can be made and do not affect the condition of primary product already granted.

The structure of the list of processes or transformations to be applied to non-primary materials is based on the structure of the Conformity System. Therefore, in order to establish the types of processes or transformations, which are necessary for a certain product, it is recommended to be aware of the tariff class of this product.

5. THE INTEGRATED COMMUNITY CUSTOMS TARIFF (TARIC)

TARIC contains the community legislation included in Part I, Section 1, published in the Official Document of the European Commnuities. The draft of the community legislation, which was not published before TARIC is also worth taking into consideration. (Gh.Caraiani, G.Şt.Diaconu, 2002:59).

TARIC contains the nomenclature in the twelve official languages of the EU for all the 15,000 subdivisions. It brings out level of the customs fees apliable and the measures of trade politics and of the common agriculture politics.

The updating of TARIC is achieved at the level of the European Commission, where all the departments specialised in approving the drafts of normative documents have the obligation to hand in these drafts to be examined and applied by TARIC, after previously being approved by legal specialised bodies.

TARIC is used by the European Commission and the member states as a starting point for applying the community measures concerning imports and exports, as well as for the commercial trades between the member states. TARIC also represents the fundament for establishing the customary tariff and for the tariff archives of the member states.

1. MANDATORY ORIGINAL INFORMATION

Mandatory Original Information (MOI) are decisions taken in Romania by the National Customs Authority, which are obligatory for the customs authority of all the member states, regarding the origin of the imported or exported merchandise after they were issued, provided the merchandise and the circumstances in which they obtained the condition of original product are as those described in MOI. The information are valid 3 years from their date of issue.

The application for the issue of such information will be in written form to the authorities from the Member State, in which this information will be used or to the authorities from the Member State in which the applicant resides. The information are issued within 150 days from the date of accepting the application.

It is important that the presentation of a MOI does not exclude the presentation of an evidence of the origin.

The application for MOI must include such data as: name and address of titular; the legal basis, as defined in Art. 22 and 27 from the Customs Code; the detailed description of the merchandise and the tariff description to which it belongs; the composition of the merchandise and the methods of examination used to establish this composition, as well as its factory price, if necessary; the conditions that assure the identification of the origin, the raw materials used and their origin, the tariff class, the corresponding values and the description of the circumstances (rules for changing the tariff position, the added value, the description of the process or transformation – see Example 2 – or any other specific rule) allowing these conditions; special mention should be made of the exact rule of origin which was applied and the origin of the merchandise; the samples, the photos, the plans, the brochures or other documents available regarding the composition of the merchandise and the materials which can support the description of the manufacturing or transformation of the materials etc.

7. CONCLUSIONS

In order to eliminate the ambiguities and to establish a unitary work practice regarding the origin, having direct consequences in the structure of the state budget, the local budget or of the company, it is recommended, first of all, to get all the merchandise evaluated, classified exactly regarding the tariff by consulting the TARIC database or even by requesting from the European Commission, by its special subsidiaries (DG TAXUD/central structure of the national customs administrations) of a bulletin for mandatory tariff classification, as well as the cooperation with the local customs

authorities by providing full information regarding the raw materials used, the composition and the origin of these materials; the description of the manufacturing process; the added value and any other data that can help taking the best decision and issueing the evidence for the origin and the subsequent control of these.

Appendix

Example 1 – Establishing the origin on the base of the criterion „products obtained fully in a country":

One week old geese, from Serbia, are imported in Romania. After a few weeks, these are butchered and the liver s exported in tins to a luxury restaurant in France. We can talk about the criteria of products obtained fully in Romania – products obtained from live animals raised in Romania.

Example 2 – regarding the issueing of substitute certificates of preferential origin

The titulary of a warehouse of C type from Romania places some metal flanges to the customs warehouse. When placed, the storing person – who is also the owner of the warehouse – attaches a certificate of type A to the memorandum. After that, the storing person resells this merchandise to some commercial societies from Romania and from EU. According to the Art. 87 from the Community Customs Regulation, at the request of the holder of the storehouse for the respective merchandise, the customs can issue substitute certificates of A type.

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