

Chapter 12

Customs

1. General

Based on its internal regulations on imports and exports (customs regulations included), as well as by joining, after 1990, various international treaties and organizations, and especially after signing in Brussels the European Union Association Agreement, in 1993, Romania engaged into a gradual development of its foreign trade relations allowing both the fulfilling of its adhesion criteria to EU and the national economy protection. Moreover, Romania is a member of the World Trade Organization (WTO) since 1995, of the Central European Free Trade Agreement (CEFTA) since 1997 and of the European Free Trade Agreement (EFTA) since 2004.

As of January 1st, 2007, when Romania became a member state of European Union, the main enactment regulating the customs legal framework is the Community Customs Code approved in 1992. The Community Customs Code provisions are applicable to trade between the Community and third countries and to goods covered by the Treaty establishing the European Coal and Steel Community, the Treaty establishing the European Economic Community or the Treaty establishing the European Atomic Energy Community.

2. Main regulations

- Council Regulation no. 2913/1992 establishing the Community Customs Code, as subsequently amended and completed (“the Community Customs Code”); Commission Regulation no. 2454/1993 laying down the provisions for the implementation of the Council Regulation no. 2913/1992 establishing the Community Customs Code (“Regulation no 2454/1993”);
- Regulation of the European Parliament and of the Council no. 450/2008 laying down the Community Customs Code (“Modernized Customs Code”)¹;
- Law no. 86/2006 regarding the Romanian Customs Code, as subsequently amended and supplemented;
- Government Decision no. 707/2006 on approving the Regulation for the application of the Romanian Customs Code (“Government Decision no. 707/2008”)²;

¹ According to the provisions of article 188 of the Modernized Customs Code, this regulation enters into force partially as follows: (i) on June 24, 2008 (the provisions generally related to the set up of various norms aiming to facilitate the application of various articles), (ii) at earliest on June 24, 2009 (the remaining provisions which do not come into force in June, 2008 will enter into force on the moment the application norms will be adopted, but not sooner than June 2009 and at latest on June 24, 2013) (iii) January 1, 2011 (this is the case of a single article related to costs and royalties).

² Government Decision no. 707/2006 was substantially repealed in October 2007, the main provisions still in force being generally related to customs brokers, customs surveillance and procedural aspects before the competent Romanian customs authorities.

- The National Agency for Fiscal Administration's Order no. 5465/2007 for the approval of Norms on the simplified customs clearance procedures, as subsequently amended and supplemented;
- The National Agency for Fiscal Administration Order no. 3000/2009 for the approval of the Norms for the enforcement of the Community/common transit procedure;
- The National Agency for Fiscal Administration Order no. 7789/2007 approving the Norms authorizing the economic customs procedures as subsequently amended and supplemented;
- The National Agency for Fiscal Administration Order 7394/2007 approving the Norms regarding the harmonized application of the customs regulations regarding the free zones and free customs warehousing;
- Law no. 84/1992 on the free zones regime, as subsequently amended and supplemented.

3. Types of customs procedure

In line with the international practice, the Customs Code regulates the following customs regimes:

- (i) release for free circulation;
- (ii) exportation;
- (iii) customs transit;
- (iv) customs warehousing;
- (v) inward processing;
- (vi) outward processing;
- (vii) processing under customs control;
- (viii) temporary admission.

As a matter of principle, all goods intended to be placed under a customs procedure have to be covered by a declaration for that customs procedure.

Customs procedures can be temporary/suspensive arrangements or with economic impact. Community goods declared for an export, outward processing, transit or customs warehousing procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs territory of the Community, are destroyed or the customs declaration is invalidated.

The temporary customs regimes are commercial operations involving the suspension of customs duties for a limited period of time. The beneficiary of the commercial operation must request the application of the temporary customs regime in writing. The competent customs authority approves such request provided that

surveillance and control of the temporary customs regime may be performed at any time during the reference period and only based- on a deposit guarantee ensuring the collection of any import duties that may be owed should the temporary customs regime become permanent by law or upon the request of the applicant.

3.1. Release for free circulation

The release for free circulation confers the non-Community goods the customs status of Community goods and entails the application of commercial policy measures, completion of other formalities laid down in respect of the importation of goods and the charging of any duties legally due.

When goods are released for free circulation at a reduced or zero rate of duty on account of their end use, they remain under custom supervision. The custom supervision will end when the conditions laid down for granting such a reduce rate or zero rate of duty cease to apply (i) where the goods are exported or destroyed or (ii) where the use of the goods for purposes other than those laid down for the application of the reduced or zero rate of duty is permitted subject to payment of the duties due.

The goods released for free circulation will lose the status of Community goods in case (i) the declaration for release for free circulation is invalidated after release or (ii) the imported duties payable on those goods are repaid or remitted.

The duties legally owed in case a custom debt is incurred shall be based on the Customs Tariff of the European Commission.

The Customs Tariff of the European Commission comprises:

- (i) the combined nomenclature of goods;
- (ii) any other nomenclature which is wholly or partly based on the combined nomenclature or which provides for further subdivisions to it, and which is established by Community provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;
- (iii) the rates or other items of charge normally applicable to goods covered by the combined nomenclature as regards: (a) customs duties and (b) import charges laid down under the common agricultural policy or under specific arrangements applicable to certain goods resulting from the processing of agricultural products;
- (iv) the preferential tariff measures contained in agreements which the Community has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment;
- (v) preferential tariff measures adopted unilaterally by the Community in respect of certain countries group of countries or territories;
- (vi) autonomous suspensive measures providing for a reduction in or exemption from customs duties on certain goods;

- (vii) other tariff measures provided for by other Community legislation.

As a matter of principle, the customs value of imported goods shall be determined based on the transaction value, *i.e.* the price actually paid or payable for the goods when sold for export to the customs territory of the Community. In case the customs value may not be determined based on the transaction value of goods, the customs value of the imported goods shall be determined as follows:

- (i) based on the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued;
- (ii) based on the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued;
- (iii) based on the unit price at which the imported goods for identical or similar imported goods are sold within the Community in the greatest aggregate quantity to persons not related to the sellers;
- (iv) the compounded value consisting of the sum of: (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods, (b) an amount for profit and general expenses equal to that usually reflected in the sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community and (c) the value of costs of transport and insurance of the imported goods, loading and handling charges associated with the transport of imported goods to the place of introduction in the customs territory of the Community.

In case the customs value may not be determined based on the abovementioned rules, then it shall be determined on the basis of data available in the Community using reasonable means consistent to the principles and general provisions of (i) the Agreement regarding the enforcement of art. VII of the General Agreement for Tariffs and Trade (G.A.T.T.) signed at Geneva on November 1st, 1979, which Romania is a party too, (ii) Article VII of the General Agreement on Tariffs and Trade, and (iii) the abovementioned rules/general criteria.

The customs value is determined and declared by the importer, who has the obligation to file an customs declaration with the custom office, accompanied by invoices or other relevant documents evidencing the payment of commodities price and external expenses related to such commodities.

In determining the customs value the following amounts shall be added to the price paid or payable for the imported goods:

- (i) to the extent that they were incurred by the buyer but are not included in the price actually paid or to be paid by the buyer for the goods: (a) commissions and brokerage, except buying commissions, (b) the costs of containers which are treated as being one for customs purposes with goods in question, (c) the costs of packing, whether for labor or materials;

- (ii) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable: (a) materials, components, parts and similar items incorporated in the imported goods, (b) tools, dies, moulds and similar items used in the production of the imported goods, (c) materials consumed in the production of the imported goods, (d) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods;
- (iii) royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (iv) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (v) the cost of transport and insurance of the imported goods, and loading and handling charges associated with the transport of the imported goods to the place of introduction into the customs territory of the Community.

3.2. Export

The export procedure shall allow Community goods to leave the customs territory of the Community. Exportation shall entail the application of exit formalities including commercial policy measures and, where appropriate, export duties.

Export duties are (i) customs duties payable on the exportation of goods or (ii) export charges introduced under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products.

With exception of goods placed under outward processing procedure or transit procedure, all Community goods intended for the export shall be placed under the export procedure.

As a matter of principle, the export declaration must be lodged at the customs office responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment.

3.3. Customs Transit

3.3.1 External transit procedure

The external transit procedure allows the movement from one point to another within the customs territory of the Community of: (i) non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures or (ii) Community goods, in cases and on conditions determined

in accordance with the committee procedure, in order to prevent products covered by or benefiting from export measures from either evading or benefiting unjustifiably from such measures.

The external Community transit procedure shall apply to goods passing through the territory of a third country only if: (i) provision is made to that effect under an international agreement; or (ii) carriage through that country is effected under cover of a single transport document drawn up in the customs territory of the Community; in such case the operation of that procedure shall be suspended in the territory of the third country.

The customs transit may be performed under customs supervision and based on a guarantee created in order to ensure payment of the relevant customs duties or other charges which may be incurred in respect of the goods. Such guarantee may be (i) individual in case it covers a single transport operation or (ii) comprehensive in case it covers several transit operations (the comprehensive guarantee may be used based on the authorization granted hereto by the competent customs authorities of the member state where its titleholder is established). Moreover, persons who satisfy the customs authorities that they meet higher standards of reliability may be authorized to use a comprehensive guarantee for a reduced amount or to have a guarantee waiver.

Transit procedures may be conducted through the Romanian New Computerised Transit System ("NCTS_RO"). Nevertheless, simplified transit procedures, applied to goods carried by rail or large container, by air, by sea or moved by pipeline, are not processed through NCTS_RO. The relevant transit declarations are filled in as per the provisions of the Regulation no. 2454/1993.

3.3.2. Internal transit procedure

The internal transit procedure allows the movement of Community goods from one point to another within the customs territory of the Community passing through the territory of a third country without any change in their customs status. The movement of goods takes place based on one of the following documents:

- (i) under the internal Community transit procedure, subject to the fact that such a possibility is provided for in an international agreement;
- (ii) under cover of a TIR carnet (TIR Convention);
- (iii) under cover of an ATA carnet used as a transit document;
- (iv) under cover of a Rhine Manifest (Article 9 of the Revised Convention for the Navigation of the Rhine);
- (v) under cover of form 302 as provided for in the agreement between the States party to the North Atlantic Treaty on the status of their forces, signed in London on 19 June 1951, or
- (vi) by post (including parcel post).

The abovementioned rules regarding the creation of a guarantee aiming to ensure the payment of customs duties related to the transit operations, as detailed under item 3.3.1 above, will also apply *mutatis mutandis* to the internal transit procedure.

3.4. Custom Warehouses

The customs warehousing procedure shall allow the storage in a customs warehouse of: (i) non-Community goods, without such goods being subject to import duties or commercial policy measures or (ii) Community goods, where Community legislation governing specific fields provides that their being placed in a customs warehouse shall attract the application of measures normally attaching to the export of such goods.

The custom warehouses are public or private specially designated locations, approved by the customs authority and under its control. The public warehouse is a customs warehouse available for use by any person for the warehousing of goods, while the private warehouse is reserved for the warehouses of goods by a person authorized to operate the customs warehouse (*i.e.*, the warehousekeeper). Goods placed under a customs warehouse procedure may be stored for an undetermined period of time. In exceptional cases, however, the customs authority may establish a term until which the warehousekeeper (in Romanian “*antrepozitar*”) must confer another customs destination for such goods. As a matter of principle, performance within the warehouse of industrial processing operation or any operation that is not in direct connection with the storage of goods, is legally prohibited. Such prohibition does not apply to the regular handling of goods or their temporary withdrawal from the customs warehouse.

Nevertheless, by way of exception, goods may be subject to industrial processing operations performed within the premises of the customs warehouse only in case where placed in advance under a customs regime such as processing under customs control or inward processing.

In case the customs warehouse is public, the following classification shall apply:

- (i) A type - public custom warehouses, if the responsibility lies with the warehousekeeper;
- (ii) B type - public custom warehouses, if the responsibility lies with the depositor;
- (iii) F type - public custom warehouses, if the warehouse is operated by the customs authorities;

In case the customs warehouse is a private one and the responsibility lies with the warehousekeeper who might be the same person as the depositor, but who is not the owner of the goods, than the following classification shall apply:

- (iv) D type - private custom warehouses, where release for free circulation is made by way of the local clearance procedure and may be granted on the basis of the nature, the customs value and the quantity of the goods to be taken into account at the time of their placing under the arrangements;
- (v) E type - private custom warehouses, where the arrangements apply although the goods need not be stored in a place approved as customs warehouse;

- (vi) C type - private custom warehouses, in other cases than the situations provided under points iv) and v) above.

3.5. Inward Processing

The inward processing procedure allows the following goods to be used in the customs territory of the Community in one or more processing operations:

- (i) non-Community goods intended for re-export from the customs territory of the Community in the form of compensating products, without such goods being subject to import duties or commercial policy measures;
- (ii) goods released for free circulation with repayment or remission of the import duties chargeable on such goods if they are exported from the customs territory of the Community.

Inward processing may be performed under draw-back system (inward processing relief arrangements as provided under item 3.5 (ii) above), under suspension system (inward processing relief arrangements as provided under item 3.5 (i) above) and by the following processing operations:

- (i) working of goods, including erecting or assembling them or fitting them to other goods;
- (ii) processing of goods;
- (iii) repair of goods, including restoring them and putting them in order;
- (iv) use of certain goods defined in accordance with the committee procedure which are not to be found in the compensating products, but which allow or facilitate the production of those products.

When authorizing the inward procedure, the customs authorities shall specify the period within which the compensating products have to be exported or re-exported or assigned another customs approved treatment of use.

The drawback system may not be used in case at the time when the declaration of release for free circulation is accepted:

- (i) the import goods are subject to quantitative import restrictions;
- (ii) a tariff measure within quotas is applied to the import goods;
- (iii) the import goods are subject to presentation of an import or export license or certificate in the framework of the common agricultural policy, or
- (iv) an export refund or tax has been set for the compensating products.

3.6. Outward Processing

The outward processing procedure allows Community goods to be exported temporarily from the customs territory of the Community in order to undergo processing operations and the products resulting from those operations to be released for free circulation with total or partial relief from import duties. Temporary exportation of Community goods shall entail the application of export duties, commercial policy measures and other formalities for the exit of Community goods from the customs territory of the Community.

When authorizing the outward procedure, the customs authorities shall specify the period within which the compensating products have to be reimported into the customs territory of the Community. They may extend that period on submission of a duly substantiated request by the holder of the authorization.

The outward processing procedure shall not be open to the following Community goods:

- (i) goods whose export gives rise to repayment or remission of import duties;
- (ii) goods which, prior to export, were released for free circulation with total relief from import duties by virtue of end use, for as long as the conditions for granting such relief continue to apply;
- (iii) goods whose export gives rise to the granting of export refunds or in respect of which a financial advantage other than such refunds is granted under common agricultural policy by virtue of the export of the said goods.

3.7. Processing under customs control

The procedure for processing under customs control allows non - Community goods to be used in the customs territory of the Community in operations which alter their nature or state, without their being subject to import duties or commercial policy measures, and allows the products resulting from such operations (*i.e.* the processed products) to be released for free circulation at the rate of import duty appropriate to them.

Placing the goods under the regime of processing under customs control may be performed only by authorized Romanian legal entities.

3.8. Temporary admission

The temporary importation procedure shall allow the use in the customs territory of the Community, with total or partial relief from import duties and without their being subject to commercial policy measures, of non-Community goods intended for re-export without having undergone any change except normal depreciation due to the use made of them.

The customs authorities shall refuse to authorize use of the temporary importation procedure where it is impossible to ensure that the import goods can be identified. However, the customs authorities may authorize use of the temporary importation procedure without ensuring that the goods can be identified

where, in view of the nature of the goods or of the operations to be carried out, the absence of identification measures is not liable to give rise to any abuse of the procedure.

The customs authority establishes a term within which commodities must be re-exported or assigned a new customs approved treatment or use. The approved term shall be long enough for the objective of authorized use to be achieved, but it shall not exceed 24 months.

4. Customs related information

Interested persons may require, in writing, to the customs authority references and information concerning customs regulations. Such request may be refused where it does not relate to an import or export operation actually envisaged.

Moreover, the customs authorities shall also issue, based on the written request of any interested person, binding tariff information and binding origin information. The binding tariff information and the binding origin information shall be binding on the customs authorities only in respect of goods on which customs formalities are completed after the date on which the information was supplied by them. As a matter of principle, the binding information shall be valid six years in the case of tariffs and three years in case of origin form the date of issue.

Upon the introduction in or removal from the country of goods presented to the customs, the customs authority establishes one of the above-mentioned customs procedures. The goods intended to be placed under customs procedure are subject to a customs declaration in accordance with that particular regime. After accepting the customs declaration, the authority proceeds to the control of the accompanying documents, and after the customs clearance, it will grant the customs release. The customs authority may also grant the customs clearance after the payment documents is filed and the customs authority is proven that the customs duties were paid.

5. Complaints and appeals against acts of the customs authorities

Should any damages be caused by acts of customs authorities, the injured party may challenge the fiscal deed issued by such customs authorities, in accordance with the provisions of the Fiscal Procedural Code. The challenge must be submitted to the issuing customs authority within 30 days as of the communication of the challenged deed and is exempted from stamp duty.

The competent bodies to settle the challenge depend on specific criteria provided by the Fiscal Procedural Code.

The settlement decision of the competent authority is final in the administrative changeling system. Such decision is issued in written form and must refer also to the available appealing procedures, the relevant term to exercise the appeal and the relevant competent court.

6. Simplified customs clearance procedures

The act of declaring the goods before the customs authority in order to place them under a customs procedure may be performed, in certain cases, by using simplified customs clearance procedures, such as:

- (i) *incomplete declaration procedure* – allowing the customs authority to accept, in duly justified cases, a declaration which does not contain all the particulars required, or which is not accompanied by all documents necessary for the customs procedure in question; the subscriber of the incomplete statement is compelled however to subsequently file in a complete statement thereof;
- (ii) *simplified statement procedure* – enables goods to be entered for the customs procedure in question on presentation of a simplified declaration with subsequent presentation of a supplementary declaration which may be of a general, periodic or recapitulative nature, as appropriate;;simplified statement may have the form of an incomplete statement, an administrative deed or a commercial document as agreed with the customs authority;
- (iii) *local customs clearance procedure* – enables the entry of goods for the customs procedure in question to be carried out at the premises of the person concerned or at other places designated or approved by the customs authorities.

The simplified customs procedure may not be applied for: (i) strategic goods, (ii) goods that are subject to the regulations regarding the development in safety conditions of nuclear activities, (iii) goods for which technical and laboratory analysis has to be performed by the customs authority for every operation in order to determine if they are compliant with specific requirements (iv) dual-use products and technologies and (v) goods subject to the common agricultural policy measures. However, the National Customs Authority may approve in grounded cases the use of simplified customs procedure for certain dual-use products.

Simplified customs clearance - procedures may be applied only based on a previous guarantee established by the holder of the authorization at the customs office disposal, ensuring the payment of the customs duties.

7. Free zones

Free zones and free warehouses are parts of the customs territory of the Community or premises situated in that territory and separated from the rest of it in which:

- (i) community goods are considered, for the purpose of import duties and commercial policy import measures, as not being on Community customs territory, provided they are not released for free circulation or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations;
- (ii) community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods.

In Romania the free zones are set up by way of Government decision. The perimeter and the entry and exit points of free zones are subject to the supervision of the customs authorities. Persons and means of transport entering or leaving a free zone or free warehouse may be subjected to a customs check. Access to a free zone or free warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the customs rules.

As a matter of principle, the goods that are entering a free zone or a free warehouse do not need to be presented to the customs authorities and there is no need to lodge a customs declaration, except for the following situations:

- (i) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse; however, where the customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required;
- (ii) they have been placed in a free zone or free warehouse on the basis of a decision to grant repayment or remission of import duties;
- (iii) they enter a free zone or free warehouse directly from outside the customs territory of the Community.

Any industrial, commercial or service activity has to be authorized in a free zone or free warehouse. The carrying on of such activities shall be notified in advance to the customs authorities. The customs authorities may impose certain prohibitions or restrictions on the activities to be carried out within such zones having regard to the nature of the goods concerned or the requirements of customs supervision.

The customs authorities may prohibit persons who do not provide the necessary guarantees from carrying on an activity in a free zone or free warehouse.

8. E-customs

According to the legal provisions in force, the EU member states must implement an integrated electronic customs data system. All exchanges of data, accompanying documents, decisions and notifications between customs authorities and between economic operators and customs authorities required under the customs legislation, and the storage of such data as required under the customs legislation, shall be made using electronic data processing techniques.

In this respect, the following have been implemented in so far on Romanian territory;

- (i) EORI number (Economic Operators Registration and Identification number) which is a number, unique in the European Community, assigned by a Member State customs authority or designated authority or authorities to economic operators and to other persons;
- (ii) ECS (Export Control System) which is a system developed by the European Commission for the electronic exchange of messages and data related to the export procedure;

- (iii) ICS (Import Control System) which is a system aiming at managing the entry summary declarations, at performing a risk assessment of the information comprised therein and of providing the outcomes of such assessment to the involved customs authorities;
- (iv) AEO (Authorized Economic Operator) a status that may be granted, subject to certain specific criteria, to any economic operator established in the customs territory of the Community; the economic operators which are authorized as AEO benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules.