

Chapter 12

Customs

1. General

After 1990 Romania engaged in a gradual development of its foreign trade relations, based on internal regulations on imports and exports (customs regulations included), as well as by joining, after 1990, various international treaties and organizations, and especially in 1993 after signing in Brussels the European Union Association Agreement, allowing both the fulfillment of its accession criteria to the EU and the protection of its national economy. Moreover, Romania has been 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 act regulating the customs legal framework is the Community Customs Code approved in 2013. 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 and the Treaty establishing the European Atomic Energy Community.

2. Main regulations

- Regulation of the European Parliament and of the Council No. 952/2013 laying down the Union Customs Code¹;
- Commission Regulation No. 2447/2015 laying down detailed rules for implementing certain provisions of Regulation no. 952/2013 of the European Parliament and Council laying down the Union Customs Code;
- Order no. 1189/2016 approving the technical regulations on the administration of tariff quotas in Romania;
- Order no. 1191/2016 approving the technical norms for permit exporters to issue a simplified evidence of preferential origin and certificates A.TR;
- Order no. 1192/2016 approving the technical norms concerning the request, issuance and implementation of decisions regarding mandatory origin information in Romania;
- Order no. 1193/2016 approving the technical norms of transitional measures concerning the request, issuing and monitoring of use decisions on binding tariff information in Romania.

¹ According to the provisions of article 288 of the Regulation no. 952/2013 laying down the Union Customs Code, this regulation enters into force partially as follows: (i) on October 30, 2013 (the provisions generally related to the set up of various norms aiming to facilitate the application of various articles), (ii) on May 1, 2016 (the remaining provisions which do not come into force in October 30, 2013). Furthermore, pursuant to Art. 278 of this Regulation, there should be performed certain changes in relation to the means and systems for the exchange and storage of information, at latest until 31 December 2020.

- 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. 707/2006**”)², as subsequently amended and supplemented;
- The National Agency for Fiscal Administration Order No. 163/2015 for the approval of Norms on simplified customs clearance procedures;
- The National Agency for Fiscal Administration Order No. 1421/2014 for the approval of Technical norms for the enforcement of the Community/common transit procedure;
- The National Agency for Fiscal Administration Order No. 7789/2007 approving the Norms authorizing economic customs procedures;
- The National Agency for Fiscal Administration Order No. 7394/2007 approving the Norms regarding the harmonized application of customs regulations regarding 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 international practice, the Customs Community Code regulates the following customs regimes:

- (i) release for free circulation;
- (ii) special procedures;
- (iii) export;

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 export, outward processing, transit or customs warehousing procedure are 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.

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 for the application of a temporary customs regime in writing. The competent customs authority approves such a 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

Release for free circulation confers on non-Union goods the customs status of Union goods and entails the following:

- (i) the collection of any import duty due;
- (ii) the collection, as appropriate, of other charges, as provided for under the relevant provisions in force relating to the collection of those charges;
- (iii) the application of commercial policy measures and prohibitions and restrictions insofar as they do not need to be applied at an earlier stage;
- (iv) completion of other formalities laid down in respect of the import of goods.

Release for free circulation may be made subject to surveillance.

Release for free circulation confers non-Union goods the customs status of Union goods. However, union goods become non-Union goods in the following cases:

- where they are taken out of the customs territory of the Union, insofar as the rules on internal transit do not apply;
- where they have been placed under an external transit procedure, a storage procedure or an inward processing procedure, insofar as the customs legislation so allows;
- where they have been placed under an end-use procedure and are either subsequently abandoned to the State, or are destroyed and waste remains;
- where the declaration for release for free circulation is invalidated after release of the goods.

Duties legally owed in case a custom debt is incurred are based on the Customs Tariff of the European Commission.

The Customs Tariff of the European Commission comprises:

- (i) the combined nomenclature of goods as laid down in Regulation (EEC) No 2658/87;
- (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 conventional or normal autonomous duty applicable to goods covered by Combined Nomenclature;
- (iv) the preferential tariff measures contained in agreements which the Union has concluded with certain countries or territories outside the customs territory of the Union, or groups of such countries or territories;

- (v) preferential tariff measures adopted unilaterally by the Union in respect of certain countries, group of countries or territories outside the customs territory of the Union, or groups of such countries or territories;
- (vi) autonomous measures providing for a reduction in, or exemption from, customs duty on certain goods;
- (vii) favorable tariff treatment specified for certain goods, by reason of their nature or end-use, in the framework of measures referred to under points (iii) to (vi) or (viii);
- (viii) other tariff measures provided for by agricultural or commercial or other Union legislation.

As a matter of principle, the customs value of goods is 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 Union, adjusted where necessary. In case the customs value may not be determined based on the transaction value of goods, the customs value of the goods shall be determined as follows:

- (i) based on the transaction value of identical goods sold for export to the customs territory of the Union, 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 customs territory of the Union, and exported at or about the same time as the goods being valued;
- (iii) based on the unit price at which the imported goods or identical or similar imported goods are sold within the territory of the Union in the greatest aggregate quantity to persons not related to the sellers;
- (iv) the computed 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 Union and (c) the value or cost 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 Union.

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 customs territory of the Union, using reasonable means consistent with 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, to which Romania is a party, (ii) Article VII of the General Agreement on Tariffs and Trade, and (iii) the above mentioned rules/general criteria.

The customs value is determined and declared by the importer, who has the obligation to file a customs declaration with the custom office, accompanied by invoices or other relevant documents as evidence of the payment of the 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, molds 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 outside the Union 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 the 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 accruing 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 Union.

3.2. Export

Export duty means customs duty payable on the export of goods.

Union goods to be taken out of the customs territory of the Union are placed under the export procedure.

However, the export procedure does not apply to any of the following Union goods:

- (i) goods placed under the outward processing procedure;
- (ii) goods taken out of the customs territory of the Union after having been placed under an end-use procedure;
- (iii) goods delivered, VAT or excise duty exempted, as aircraft or ship supplies, regardless of the destination of the aircraft or ship, for which a proof of such supply is required;
- (iv) goods placed under the internal transit procedure;
- (v) goods moved temporarily out of the customs territory of the Union.

As a matter of principle, an export declaration shall be lodged at one of the following customs offices:

- (i) the customs office responsible for the place where the exporter is established;

- (ii) the customs office competent for the place where goods are packed or loaded for export shipment;
- (iii) a different customs office in the Member State concerned which is competent for administrative reasons for the operation in question;
- (iv) the customs office responsible for the place where the sub-contractor is established;
- (v) where justified by the circumstances of an individual case, another customs office better placed for the presentation of the goods to customs can also be competent for placing the goods under an export procedure.

3.3. Customs Transit

3.3.1. External transit procedure

Under the external transit procedure, non-Union goods may be moved from one point to another within the customs territory of the Union without being subject to any of the following:

- (i) import duty;
- (ii) other charges as provided for under other relevant provisions in force;
- (iii) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

The external Union transit procedure applies to goods passing through a country or a territory outside the customs territory of the Union if one of the following conditions is fulfilled: (i) provision is made to that effect under an international agreement; or (ii) carriage through that country or territory is effected under cover of a single transport document drawn up in the customs territory of the Union; in such cases the operation of the external Union transit procedure is suspended while the goods are outside the customs territory of the Union.

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 a guarantee may be (i) individual in case it covers a single operation or (ii) comprehensive in case it covers several transit operations (a 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"). However, 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.

3.3.2. Internal transit procedures

Internal transit procedures allow the movement of Union goods from one point to another within the customs territory of the Union, passing through a country or territory outside that customs territory, without

any change in their customs status. The movement of goods takes place based on one of the following documents:

- (i) under an internal Union transit procedure, subject to the fact that such a possibility is provided for in an international agreement;
- (ii) in accordance with the TIR Convention;
- (iii) in accordance with the ATA convention/Istanbul Convention, where a transit movement takes place;
- (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) under the postal system in accordance with the acts of the Universal postal Union, when the goods are carried by or for holders of rights and obligations under such acts.

3.4. Custom Warehouses

Under the customs warehousing procedure, non-Union goods may be stored in premises or any other authorized location by the customs authorities and under customs supervision ('customs warehouses').

Customs warehouses are specially designated public or private locations, approved by the customs authority and under its control. A public warehouse is a customs warehouse available for use by any person for the warehousing of goods, while a private warehouse is reserved for the storage of goods by a person authorized to operate the customs warehouse (*i.e.*, the warehouse keeper). Goods placed under a customs warehouse procedure may be stored for an undetermined period of time. In exceptional cases, however, the customs authority may set a time-limit by which a custom warehouse procedure must be discharged, in particular where the type and nature of goods may, in the case of long-term storage, pose a threat to human, animal or plant health, or to the environment. As a matter of principle, performance within the warehouse of industrial processing operations or any operation that is not in direct connection with the storage of goods, is legally prohibited. Such a prohibition does not apply to the regular handling of goods or their temporary withdrawal from the customs warehouse. However, the customs authorities may, where an economic need exists and customs supervision is not adversely affected, authorize the processing of goods under the inward processing or end-use procedure to take place in a customs warehouse, subject to the conditions provided for by those procedures.

The character identifying the type of warehouse:

- R Public customs warehouse type I;
- S Public customs warehouse type II;
- T Public customs warehouse type III;
- U Private customs warehouse;

- V Storage facilities for the temporary storage of goods;
- Y Non-customs warehouse;
- Z Free zone.

3.5. Inward Processing

Under the inward processing procedure non-Union goods may be used in the customs territory of the Union in one or more processing operations, without such goods being subject to any of the following:

- (a) import duty;
- (b) other charges as provided for under other relevant provisions in force;
- (c) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

An inward processing procedure may be used in cases other than repair and destruction only where, without prejudice to the use of production accessories, the goods placed under the procedure can be identified in the processed products.

An inward processing procedure may also be used for any of the following goods:

- (i) goods intended to undergo operations to ensure their compliance with technical requirements for their release for free circulation;
- (ii) goods which have to undergo usual forms of handling.

The customs authorities specify the period within which the inward processing procedure is to be discharged. That period shall run from the date on which the non-Union goods are placed under the procedure, and takes account of the time required to carry out the processing operations and to discharge the procedure.

3.6. Outward Processing

The outward processing procedure allows Union goods to be exported temporarily from the customs territory of the Union in order to undergo processing operations, and the products resulting from those goods to be released for free circulation, with total or partial relief from import duties upon the application by the holder of the authorization, or any other person established in the customs territory of the Union, provided that person has obtained the consent of the holder of the authorization, and the conditions of the authorization are fulfilled.

The customs authorities specify the period within which goods temporarily exported must be re-imported into the customs territory of the Union in the form of processed products, and released for free circulation, in order to be able to benefit from total or partial relief from import duty. They may grant an extension, of reasonable duration, of that period, upon a justified application by the holder of the authorization.

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

- (iii) goods whose export gives rise to repayment or remission of import duties;

- (iv) goods which, prior to export, were released for free circulation under a duty exemption, or at a reduced rate of duty by virtue of their end-use, for as long as the purposes of such end-use have not been fulfilled, unless those goods need to undergo repair operations;
- (v) goods whose export gives rise to the granting of export refunds;
- (vi) goods in respect of which a financial advantage other than such refunds referred to in point (iii) is granted under the common agricultural policy, by virtue of the export of the said goods.

3.7. Temporary admission

Under a temporary admission procedure, non-Union goods intended for re-export may be subject to specific use in the customs territory of the Union, with total or partial relief from import duty, and without being subject to any of the following:

- (i) other charges as provided for under other relevant provisions in force;
- (ii) commercial policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union. A temporary admission procedure may only be used provided that the following conditions are met:
 - (a) the goods are not intended to undergo any change, except normal depreciation due to use;
 - (b) it is possible to ensure that the goods placed under the procedure can be identified, except where, in view of the nature of the goods or of the intended use, the absence of identification measures is not liable to give rise to any abuse of the procedure or, in specific cases, where compliance with the conditions laid down in respect of equivalent goods can be verified;
 - (c) the holder of the procedure is established outside the customs territory of the Union, except where otherwise provided;
 - (d) the requirements for total or partial duty relief laid down in the customs legislation are met.

The customs authority establishes a term within which goods placed under the temporary admission procedure must be re-exported, or placed under a subsequent customs procedure. The approved term should be long enough for the objective of authorized use to be achieved, but must not exceed 24 months.

4. Customs related information

Interested persons may request, in writing, from the customs authority, references and information concerning customs regulations. Such a request may be refused where it does not relate to an activity pertaining to international trade in goods actually envisaged.

Moreover, the competent authorities also issue, based on the written request of any interested person, binding tariff information (BTI decisions) and binding origin information (BOI decisions). The binding tariff information and the binding origin information are binding on the customs authorities, as against the holder of the decision, only in respect of goods on which customs formalities are completed after the date on which

the decision takes effect. As a matter of principle, binding information shall be valid for a period of three years from the date on which the decision takes effect.

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

5. Complaints and appeals against acts of the customs authorities

Should any damages be caused by acts of the customs authorities, the injured party may challenge the fiscal deed issued by such customs authorities, in accordance with the provisions of the New Fiscal Procedural Code. The challenge must be submitted to the issuing customs authority within 45 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 New Fiscal Procedural Code.

The settlement decision of the competent authority is final. Such decisions are issued in written form and must refer also to the procedures available for appeal, the relevant terms for exercise of the appeal and the relevant competent court.

6. Simplified customs declarations

The customs authorities may accept that a person has goods placed under a customs procedure on the basis of a simplified declaration, which may omit certain of the particular elements, respectively:

- (i) the particulars necessary for the application of the provisions governing the customs procedure for which the goods are declared;
- (ii) the supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared, which are in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.

In the case of a simplified declaration, the declarant shall lodge a supplementary declaration containing the particulars necessary for the customs procedure concerned at the competent customs office, within a specific time-limit.

The obligation to lodge a supplementary declaration is waived in the following cases:

- (i) where the goods are placed under a customs warehousing procedure;
- (ii) in other specific cases.

The customs authorities may waive the requirement to lodge a supplementary declaration where the following conditions apply:

- (i) the simplified declaration concerns goods the value and quantity of which is below the statistical threshold;
- (ii) the simplified declaration already contains all the information needed for the customs procedure concerned;
- (iii) the simplified declaration is not made by entry in the declarant's records.

7. Free zones

Member States may designate parts of the customs territory of the Union as free zones. For each free zone the Member State determines the area covered and define the entry and exit points.

Union goods may be entered, stored, moved, used, processed or consumed in a free zone. In such cases the goods are not regarded as being under the free zone procedure.

Upon application by the person concerned, the customs authorities shall establish the customs status as Union goods of any of the following goods:

- (i) Union goods which enter a free zone;
- (ii) Union goods which have undergone processing operations within a free zone;
- (iii) goods released for free circulation within a free zone.

In Romania, the free zones are set up by 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 subject 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, goods 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 ended or discharged when they are placed under a free zone procedure;
- (ii) they have been placed in a free zone procedure in order to benefit from a decision to grant repayment or remission of import duties;
- (iii) they enter a free zone directly from outside the customs territory of the Union;
- (iv) where legislation other than the customs legislation provides for such formalities.

Subject to customs legislation, any industrial, commercial or service activity is permitted in a free zone. The realisation of such activities is notified in advance to the customs authorities. The customs authorities may impose certain prohibitions or restrictions on the activities enacted within such zones with regard to the nature of the goods concerned, or the requirements of customs supervision or security and safety requirements.

The customs authorities may prohibit activity in a free zone to persons who do not provide the necessary assurance of compliance with the customs provisions.

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, must be made using electronic data processing techniques.

In this respect, the following have been implemented 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 assessments 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; economic operators who 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.