

THE VERIFICATION OF THE ECONOMICAL CONDITIONS OF THE ACTIVE PERFECTING CUSTOMS REGIME

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Abstract: *The suspensive and economical customs regimes are temporary operations having as effect the suspension of the payment for the customs taxes while the merchandise is enframed in one of these regimes.*

The verification of the fulfillment of the economical conditions in view of authorizing the economical customs regimes must not affect the essential interests of the communitarian producers of similar merchandise with those existent in the European Union.

Without finishing the subject, given the facilities awarded to the beneficiaries of the economical regimes, we intend to emphasize and to underline the importance and the modalities of verification of the economical conditions, considering the risk criteria afferent to the merchandise placed under the regime, as well as the nature of the operations approved .

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1. Brief considerations regarding the customs regimes

At the introduction or exit from the country of the merchandise presented at the customs office, the customs authority established a customs regime.

The customs regime contains all the norms applied within the customs procedure, function to the purpose of the commercial operation and the destination of the merchandise.

The customs regimes can be classified in:

- i) Definitive customs regimes, consisting in the introduction of the merchandise in the economic circuit, the getting out of the merchandise from the country, the introduction and removal from the country of goods belonging to the passengers or to other natural, non-trader persons;
- ii) Suspensive customs regimes, with temporary character and regarding the foreign merchandise following to receive another destination. These are: customs transit, customs depository, active perfecting – suspension system, transformation under customs control, temporary admission;

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- iii) Economical customs regimes which are also temporary, following to receive another customs destination: customs depository, transformation under customs control, temporary admission, active perfecting.

The suspensive and economical customs regimes are part of the customs destinations that can be given to the merchandise introduced in the country, other than definitive regimes, through which there are created facilities to international trades. The merchandise placed under these regimes are, according to the case, merchandise for which there is not made a definitive customs operation immediately after their introduction in the country, but they remain in the property of the external partner, merchandise introduced for triggering the export when they are processed or transformed.

It is thus created the possibility that some economical agents execute commercial operations without blocking important sums for the payment of the customs taxes that would be due if such merchandise were imported definitively.

2. The economical customs regimes

2.1. Customs depository

The customs depository regime allows the suspension of the application of the commercial policy measures and of other measures provided by special regulations until the awarding of another destination approved by the customs. The procedures regulating the customs depository are established in the Council Regulation (CEE) no. 2913/92 for the establishment of the Communitarian Customs Code to the articles 84-90 and 98-113 and in the Commission Regulation (CEE) no. 2454/1993 regarding the dispositions for the application of the Council Regulation no. 2913/1992 for the establishment of the Communitarian Customs Code to the articles 496-535.

During the depository the merchandise are under customs survey. This contains any action of the customs authority in view of providing the observance of the customs regulation and of other norms applicable to the merchandise under customs survey.

The customs survey is made through:

- i) An operative evidence of the merchandise and goods subject to customs regime by registering them in the registry or of the customs documents;
- ii) The application of customs seals to the merchandise, goods and transport means subject to customs regime, as well as the access to the areas in which they are found;
- iii) Execution of selective verifications etc.

For the utilization of the customs depository regime it is needed an authorization issued by the customs authorities.

The customs depository (as location) allows the access of communitarian merchandise, as well as merchandise under customs survey (temporary warehouse, active perfecting, transformation under customs control etc.).

However the customs depository regime cannot be used for industrial transformation and processing industrial processes. In the customs depository there can only be made simple handlings, if they are auxiliary in report with the essential storage function for foreign merchandise (reconditionings, quality control, conformity with the technical norms etc.).

2.2. Active perfecting

The customs active perfecting regime allows the import of non-communitarian goods on the Communitarian customs territory in order to transform, process or repair them before the export¹.

¹ The procedures regulating the active perfecting are established in the Council Regulation (CEE) no. 2913/92 for the establishment of the Communitarian Customs Code in art. 84-90 and 114-129 and in the Commission Regulation (CEE) no. 2454/1993 regarding the dispositions of application of the Council Regulation no. 2913/1992 for the establishment of the Communitarian Customs Code in art. 496-523 and 536-550

The active perfecting regime can be used either in suspension regime, which supposes the guarantee of the import rights, or in reimbursement system, which supposes the payment for the import rights. At the export of the goods, the import rights are returned.

The choice of one of these two systems lies in the commercial operator's hands, function to his economical needs.

For the utilization of the active perfecting regime it is also necessary obtaining an authorization from the customs authorities.

2.3. Transformation under customs control

The customs regime of transformation under customs control allows the transformation of non-communitarian merchandise from the territory of the Community, without being subject to the import rights or to the commercial measures, and the import of the products thus obtained (transformed products) with the payment of the corresponding rights.

The procedures regulating the transformation under customs control are established in the Council Regulation (CEE) no. 2913/92 for the establishment of the Communitarian Customs Code to the articles 84-90 and 130-136 and in the Commission Regulation (CEE) no. 2454/1993 regarding the dispositions of application of the Council Regulation no. 2913/1992 for the establishment of the Communitarian Customs Code to the articles 496-523 and 551-552.

Thus, the transformation under customs control regime is applied for the non-communitarian merchandise whose transformation results into products subject to certain import rights lower than those applicable to the merchandise placed under regime.

For the utilization of the transformation under customs control regime it is necessary the obtainment of an authorization issued by the customs authorities.

2.4. Temporary admission

The temporary admission regime allows the utilization on the customs territory of the Community customs territory, with total or partial exoneration of the import rights and without being subject to the commercial policy measures for non-communitarian merchandise destined to re-export, without having suffered any modification outside the normal depreciation due to their utilization ².

The merchandise placed under regime must remain in the same condition.

There can be used the temporary admission regime:

- i) With total exoneration of import rights, in the conditions and for the merchandise indicated at art. 555-584 from the Commission Regulation no. 2454/1993, or
- ii) With partial exoneration of import rights, for all the other merchandise

For consumable goods there cannot be benefited from the customs temporary admission regime with partial import rights exoneration.

For the utilization of the temporary admission regime there is needed an authorization issued by the customs authorities at the request of the person using the merchandise or being in charge with their utilization.

The maximum period the merchandise can stay in the temporary admission regime is 24 months.

2.5. Passive perfecting

The procedures regulating the passive perfecting are established in the Council Regulation (CEE) no. 2913/92 for the establishment of the Communitarian Customs Code to the articles 84-90 and 145-160 and in the Commission Regulation (CEE) no. 2454/1993 regarding the dispositions of application of Council Regulation no.2913/1992 for the implementation of the Communitarian Customs Code in articles 496-523 and 585-592.

² See Council Regulation (CEE) no. 2913/92 for the establishment of the Communitarian Customs Code in art. 84-90 and 137-144 and in the Commission Regulation (CEE) no. 2454/1993 regarding the dispositions of application of the Council Regulation no. 2913/1992 for the establishment of the Communitarian Customs Code in art. 496-523 and 553-584.

The passive perfecting regime allows the temporary export of the communitarian merchandise from the customs territory of the Community in order to be submitted to several perfecting operations, and the products resulted can be put in circulation with partial or total import rights exoneration.

For the utilization of the passive perfecting regime there is needed an authorization issued by the customs authorities.

3. The verification of the economical conditions

3.1. The previous verification of the economical conditions

In the case of active perfecting regime, the economical conditions are considered accomplished for the operations:

- i) Regarding the merchandise without commercial character;
- ii) Executed within a processing contracts; by processing contract we mean any merchandise perfecting imported directly or indirectly, put at the disposal of the holder, made according to the guidelines and in the account of a committee established in a third country, in general with the payment for the perfecting expenses;
- iii) Repairing, including reconditioning or reput in function;
- iv) Consisting in usual handlings etc.

The economical conditions are considered accomplished when they have already been verified, for the operations regarding the compensatory products obtained after a perfecting made on the basis of a previous authorization, whose approval has made the object of a verification of the economical conditions.

Also, the economical conditions are considered accomplished in the case of the active perfecting operations with import merchandise whose value per applicant and per calendar year, for each code from the eight number nomenclature, does not exceed 500.000 EUR or 150.000 EUR for fragile merchandise indicated in appendix 73 from the Commission Regulation (CEE) no. 2454/1993.

In what regards the economical conditions on passive perfecting there are considered accomplished and do not make the object of verifications in all situations, except the cases reserved in art.147 alin.(2) from the Council Regulation (CEE) no. 2913/1992. In what regards the economical conditions for the transformation under customs control there are considered accomplished and do not make the object of verifications in all situations when the demand aims at the operations and merchandise from part A of appendix 76 from the communitarian customs regulation.

3.2. Subsequent verification of the economical conditions

After the issue of the authorizations, the customs authority, in collaboration with other competent authorities, can make the regime control, in order to verify the veracity of the economical justification presented upon the deposition of the demand for active perfecting regime or for transformation under customs control. Example³: active perfecting operations, if the economical conditions have been considered accomplished, and:

- i) the economical operator has obtained compensatory products from a previous active perfecting for which the economical conditions have been verified, or
- ii) the value threshold of the merchandise placed in active perfecting has not been exceeded in a calendar year, or
- iii) the holder has not deposited several demands in simplified procedure through several customs offices, or
- iv) the merchandise are not fragile.

At the request of a customs authority from another member State, with objecting with regard to the authorization issued, or at the initiative of the European Commission, the

³ See: Art.80 The Order of the Vice-President of the National Agency for Fiscal Administration no. 7789 as of 30 March 2007

Romanian customs authority can make a subsequent verification of the economical conditions.

4. Conclusions

The awarding of the economical customs regimes must be made by the customs authority after a careful examination of the conditions in which the commercial operation is to take place. There will be evaluated the contracts, statement of the applicant for the authorization, technical conditions for the execution of the operations described in the application, existing commercial agreements. Also, there will be followed whether the merchandise survey can be accomplished or whether there are created all the conditions for the removal of any customs fraud by taking the merchandise and introducing it in the economical circuit without the payment of the customs rights due to the State Budget.

Bibliographic references :

1. Council Regulation (CEE) no. 2913/1992 for the establishment of the Communitarian Customs Code;
2. Commission Regulation (CEE) no. 2454/1993 regarding the dispositions for the application of the Council Regulation no. 2913/1992 for the institution of the Communitarian Customs Code;
3. The Administrative Arrangement no. XXI/1796/93 as of 11 January 1994 resulting from the provisions of art. 288 from the Commission Regulation CEE no. 2454/1993;
4. The modification of the instructions regarding Part II, Title III "Economical customs regimes "from the Commission Regulation (CEE) no. 2454/93 as of 2 July 1993 establishing the rules of application of the Council regulation (CEE) no. 2913/92 establishing the Communitarian Customs Code published in the Official Gazette C 269 as of 24 September 2001;
5. The Order of the Vice-President of the National Agency for Fiscal Administration no. 7789 as of 30 March 2007 for the approval of the authorization norms of the economical customs regimes.