

TECHNICAL NOTE

ON THE FACILITATION OF CUSTOMS PROCEDURES

Tirana, May 2017

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ABBREVIATIONS

AEO – Authorised Economic Operator

NFA – National Food Agency

EU – European Union

CEFTA – Central European Free Trade Agreement

GCD – General Customs Directorate

IC – Investment Council

SAI – Supreme Audit Institution

MF – Ministry of Finance

WTO – World Trade Organisation

OECD – Organisation for Economic Cooperation and Development

RCC – Regional Cooperation Council

IP Relief – Inward Processing Relief

UNECE- United Nation Economic Commission for Europe

I. INTRODUCTION

The facilitation of customs procedures and the need to have them correctly implemented by the customs administration constitute the heart of constant interest from the business community.

The Secretariat has held meetings with circa 400 businesses since April 2015 to date and numerous concerns have been put forth regarding a number of customs procedures that are mainly related to: use of available data for the determination of the customs value (hereinafter referred to as “*reference prices*”); high number of controls; unjustified bureaucracies related to the physical submission of a number of documents (lack of a single window); tariff classification of goods; non-release of customs guarantees within the legal deadline, lack of an efficient mechanism for addressing administrative appeals at the GCD; the scanning fee, etc.

The businesses’ request to modernise customs procedures was often underlined in the pertinent section dedicated to the investment climate in the Secretariat’s Surveys, as a precondition for diminishing business costs, reducing the level of corruption, facilitating trade and, as a result, increasing the competitiveness of Albanian companies in the international market.

In its last meeting of 2016, the Investment Council voted its 6-month agenda for the first half of 2017, approving the topic “On the facilitation of customs procedures” for which the IC asked the Secretariat to prepare this *Technical Note*.

The object of the *Technical Note* is to bring into the attention some of the most sensitive problems businesses face – which are related to import and export customs practices – as well as to offer recommendations resulting from consultations held with stakeholders, in an effort to concretely facilitate procedures.

The *Technical Note* does not exhaust all concerns businesses have raised at the Secretariat during these last two years, but it aims to systematically present findings and recommendations to swiftly and concretely address them. The document presents, among other, an overview of some positive steps taken since 2014 onwards for purposes of harmonising the customs legislation with the EU legislation and simplifying a number of procedures, such as those related to exporters.

In an effort to gather concrete suggestions to address certain problems reported by the business community and the simplification of relevant customs procedures, the Secretariat prepared some open questions and uploaded them online during March-April 2017. Also, in order to confirm the findings and recommendations of this *Technical Note*, the Secretariat has consulted a number of national and international documents and reports and has held individual meetings with a number of businesses and experts of the area. Also, sectorial aspects in agro-processing and construction were taken into consideration beforehand in meetings with stakeholders.

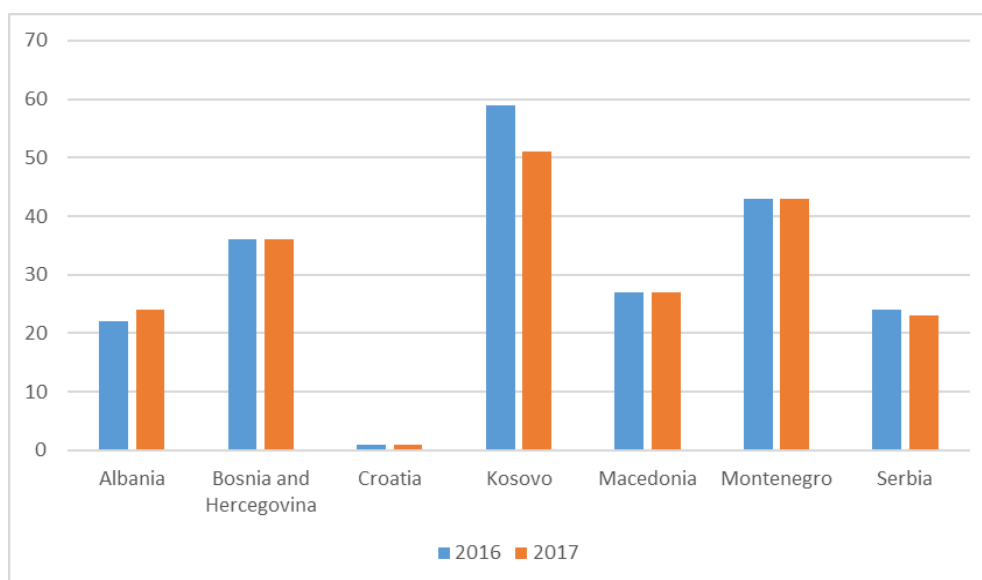
Suggestions and recommendations collected during this wide consultation process are reflected in this *Technical Note* following a discussion held on 20th April 2017 with a group of experts from the customs administration and businesses.

II. CONTEXT

The main responsibility of customs authorities is to oversee international trading in the Republic of Albania, by contributing to open and fair trade, in line with commercial policies and policies of other sectors of the Albanian economy, which affect trade and security of all the trade chain¹.

Albania has made progress regarding further facilitation of trade and customs procedures to reduce the time and cost of the import and export procedures. This fact has also been mentioned in the World Bank *Doing Business* report, where Albania held a very favourable position in the region and not only (see *Chart 1*). Therefore, Albania ranked 24th and 22nd in the *Trading across the Borders* index in 2017 in 2016, respectively.

Chart 1. Countries of the Western Balkans in the Trade Index across Countries



Source: *Doing Business Data*, <http://www.doingbusiness.org/data>, World Bank,

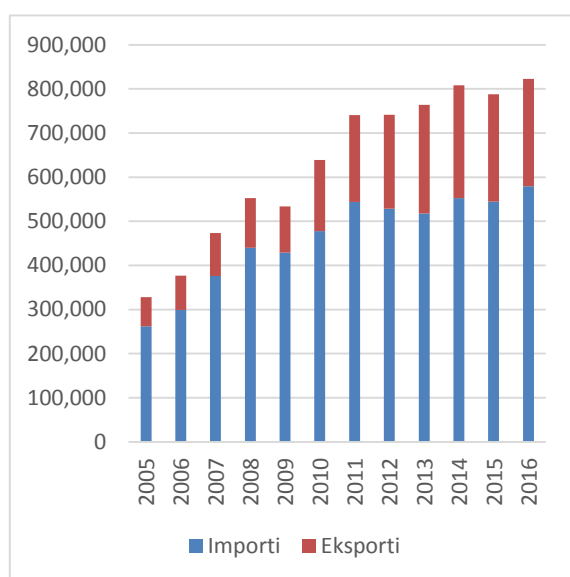
Chapter 29 of the 2016 EU Progress Report assesses the establishment of a joint risk unit between customs and tax administrations, increased use of customs risk and tax risk control systems, 24-hour camera surveillance, better detection of corruption cases, the approximation of legislation (local clearance procedures, trademark and patent legal framework), fight against informality, and the launch of the New Computerised Transit System (*NCTS*).

The country has also experienced an increase in the volume of commercial exchanges both in imports and exports in the last 10 years (see *Chart 2*). The trend of machinery and equipment import, in particular, has obviously increased during the last 2 years (see *Chart 3*), influenced in particular by the import of machineries by TAP Project.

¹ Article 2/1 of the New Customs Code

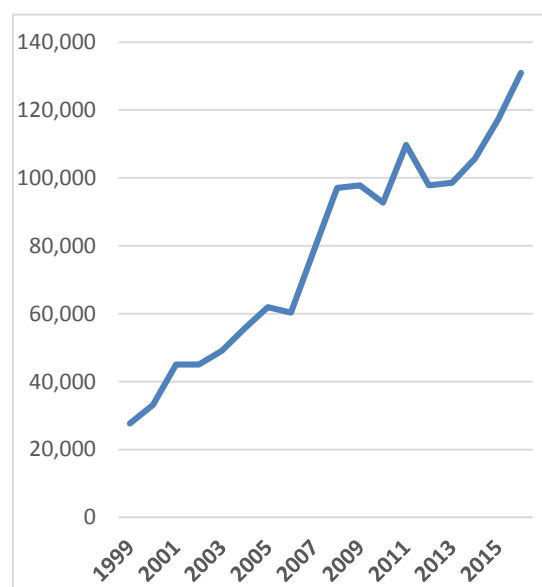
The Albanian economy began its revitalisation during 2016 - 2017 with the expectation to continue the growth in the next four years (2017 - 2020) at an average rate of 4%.² It is believed that commercial exchanges will intensify in the context of further opening up to international markets, CEFTA commitments, EU membership progress and expectations for further economic growth. Therefore, businesses expect from the public administration, especially customs and tax administrations, to respond to opportunities for further growth and to address procedural aspects that further relieve the administrative burden and the related, direct or indirect costs.

Chart 2. Imports and exports (million ALL)



Source: INSTAT

Chart 3. Machinery, equipment and spare parts imports (million ALL)



2.1 Methodology

The steps taken by the Secretariat to identify the business reaction on customs procedures and draft the relevant consolidated recommendations with a group of actors were as below:

- Desk-research of the legislation, strategic documents and reports of international institutions such as the EU, OECD, UNECE, RCC, etc.
- Prepare a list of open questions, upload them online and discuss them during face-to-face interviews with the businesses.
- Hold around 25 meetings (36 people) with importing and exporting companies, consulting firms, customs administration, Ministry of Finance and the Ministry of Economy. Meetings were also held with businesses in the districts³.

² IMF, *World Economic Outlook Data*

³ Durrës, Korça.

- 23 companies answered the questions via the IC website.
- Hold consultations with customs, tax and business administration experts (18 participants) in a roundtable meeting to discuss in advance the most likely and most important recommendations to be submitted to the Investment Council.

Also, aiming at a sector-specific identification of problems businesses face regarding customs procedures, the Secretariat considered both, the agro-industry and construction sector in particular, for the weight they bear at the level of commercial exchanges in either export or import and contribution to the domestic industry. Based on a list, import and export companies in these sectors were notified and asked by e-mail to fill in an online questionnaire on the IC website.

2.2 Facilitation of customs procedures

During recent years, the Albanian government and the customs administration have undertaken a number of tangible steps to offer some more simplified customs procedures, but to also improve both, communication with businesses, and communication within the administration itself. Among other things we can mention:

2.2.1 The green channel as the implementation of risk analysis at the customs

After the launch of the project at the Port of Durrës at the beginning of 2015, the functioning of the *Green Channel* is now already consolidated. The Green Channel is a selection model of risk analysis the implementation of which, through risk indicators in the ASYCUDA system, allows clearance of goods without the need to undergo documentary control and physical examination of goods. This procedure is considered not only to offer relief in terms of customs practice and better distribution of human resources by the customs administration, but it is also considered a better control system for businesses that have clear records in dealing with tax and customs administrations. Green Channel means “*selection without customs control*”, where businesses carry out customs clearance procedures with the customs agency, without the need of customs personnel. Selection of the business for the green channel is made based on the documentation, but also automatically, by excluding, thus, chances for human intervention. This measure is translated into speedy procedures, less administrative barriers, reduced time (from 3 hours to 10 minutes) and less expenses for the business. This procedure has proven to be efficient especially for the export of agricultural products.

2.2.2 Joint transit system

The joint transit system between Albania and Kosovo was finalised in December 2016, through the automatic interconnection of electronic systems. This system enables businesses to initiate a transit procedure in the territory of Albania or Kosovo and to conclude it in the other country, by avoiding unnecessary border controls and by considerably reducing the time and costs for entrepreneurs.

2.2.3 Ongoing Projects:

- One of the Government's projects in the framework of the e-government reform, still under construction, is the **Single Window** for customs. The project is thought to simplify procedures through the *online* application through a single window at the customs, which will be interconnected to the systems of other institutions.
- GCD is working on the finalisation of the **e-customs** portal, designed to offer services in real time not only for businesses but for individuals, as well. The idea behind the portal is to allow for economic operators to make verifications and to submit various applications related to the customs administration. Entities may directly verify online the fees, excise documents, fees and other customs duties, etc.
- The Albanian customs, in cooperation with the Kosovo Customs, have started a joint project for the establishment of the **Customs Operations Office of Kosovo at the Customs Branch in Durrës**, a project that is currently being finalised.
- **Integrated Tariff Management System to EU model** – started activity at GCD in the framework of the 2-year IPA 2013 Twinning Project “*Preparation of the Albanian Customs Administration for the EU-Integrated Tariff Management System*”.
- Preparation of the Customs Administration from the legislative and procedural point of view regarding the interoperability of the **Transit system with NCTS of European Union** – in the framework of the twinning project by IPA 2012.
- **Participation in DG TAXUD “Customs 2020” Program** to support the functioning and modernisation of the Customs Union in order to strengthen the domestic market through the collaboration of participating countries and their respective customs authorities and representatives.

2.3 Legal framework

The legal framework regulating the customs procedures has been continuously updated, due to the need to align it with the *acquis communautaire*, the Stabilisation and Association Agreement, the agreements with the 2006 CEFTA member countries, international conventions, etc. The New Customs Code⁴ was approved in 2014 and its provisions will fully enter into force by 1 June 2017. Until the new provisions become fully effective, will be also partially applied the articles of

⁴ Article 291 of Law No. 102/2014 dated 31.07.2014 amended by Law No. 32 dated 02.04.2015, sets forth the entry into force of new provisions in 3 stages: Stage 1- 15 days following publication in the official journal, Stage 2 - from 1 January 2015 and Stage 3- from 1 June, 2017. 01.1999 “Customs Code of the Republic of Albania”. The new Customs Code is aligned with some EU acts, the most important ones being: 1) Regulation 952/2013 “On the Union’s Customs Code”, 2) Regulation of the Council (EC) No. 1186/2009, dated 16 November 2009, “On relief from customs duty”; 3) Directive 2007/74/EC, dated 20 December 2007, “On the exemption from value added tax and excise duty of goods imported by travellers”

the Law No.8449 date 27.01.1999 “Customs Code of the Republic of Albania” and its respective implementing provisions. For purposes of this Technical Note, references are made accordingly to both Codes.

2.3.1 Novelties of the new customs code

The Customs Code addresses ***Authorised Economic Operators (AEO)*** for the first time. The AEO status has the following advantages for an economic operator:

- Access to the centralised clearance procedure (“*Centralized Clearance*”), which enables AEOs to lodge customs declarations and to pay duties from their registered office, in most cases.
- More favourable customs control treatment than other economic operators, in accordance with the type of authorisation issued, including fewer physical examinations and fewer documentary controls.
- Permission to move goods that are still under temporary storage. In addition, the AEOs benefit from the deferral of payments, on the grounds of a reduced guarantee amount (compared to other non-AEO operators, who must provide a full guarantee amount).

Operators who may apply for AEO status must meet rigorous requirements and criteria, including adequate security and safety standards. The latter are considered as met when the applicant ensures proper safety and protection measures for the international trade supply chain, including physical integrity and access control, cargo-specific logistical procedures and treatment, and identification of its business partners. The new Customs Code provisions pertaining to AEOs entered into force on 1 January 2015 and the GCD has not yet granted AEO status to any operators to date, also because no businesses have applied for such status.

The other simplified procedures set forth in the new Customs Code aim to facilitate procedures by reducing both time and financial costs for economic operators, as well as by increasing legal certainty for them. One of the simplified procedures of the new Customs Code, currently being implemented, is the *clearance procedure carried out in the premises of the economic operator, known as “local clearance”*⁵. The GCD has currently issued 7 authorizations for local clearance to economic operators that meet the warehouse physical integrity and security criteria. The use of “*local clearance*” is conditioned by the use of data processing computer systems for the lodging of electronic customs declarations and notifications, in line with the relevant provisions for these techniques or systems.

⁵ Provisions about the local clearance procedure have been added to DCM No.366, Dated 30.04.2015 “On some changes and additions to decision no. 205 of the Council of Ministers, dated 13.4.1999, “On the implementing provisions of the Customs Code” as amended”.

Clear specification of the commissions or omissions that constitute violation of the customs rules (administrative offense) in the Republic of Albania. These violations are differentiated by the behavior of the offender, severity of offence, and some are categorised based on whether there is objective responsibility or negligence. Different from the sanctions provided for in the previous Customs Code, sanctions for administrative offense are more proportionate. Some sanctions in fines have been reduced multiply, being more educative rather punitive. It is determined that when applying sanctions, the customs authorities should consider the nature and circumstances of the offense, including its rate of recurrence and duration, whether there is a “trusted trader” involved, the amount of evasion, etc.

Rules for temporary storage. From a procedural point of view, the new Customs Code also provides for changes to the temporary storage rules, including the extension of the storage period up to 90 days and the possibility to move the goods under temporary storage without transit procedures, comparing it to the short-terms as currently stated by the Customs Code into force⁶.

2.3.2 Secondary legislation

Secondary legislation has been subject to continuous review in order to remove unclear procedures. A number of customs procedures and practices were unified at this end, the most important of which are the following:

1. Instruction No. 5, dated 31.03.2016 “*On the application of provisions concerning customs and excise violations*”, aiming to include all instructions on customs violations with a view to their correct implementation and uniform treatment of customs violations.
2. Manual No. 2, dated 31.03.2016 “*On risk management and the right to examination based on risk analysis*”. The purpose of the manual is to have an efficient risk management process, as a whole, and justified and transparent operational decisions, without compromising quality;
3. Instruction No. 8, dated 27.07.2016 “*On carrying out goods’ weighing procedures at customs offices*” This act facilitates customs control procedures and brings relief for economic operators, because the examination is done based on the risk analysis of the weight, double weighing is not carried out, and the practice of issuing customs clearance certificates for empty vehicles is avoided.
4. Instruction No. 10564, dated 22.04.2016 “*On simplified procedures, customs clearance in the premises of the economic operator*” (*Local Clearance*).

⁶ 10 days from the submission date of the summary declaration in case of goods transported via naval route and 5 days from the submission date of the summary declaration in case of goods transported differently from the naval route.

III. FINDINGS AND RECOMMENDATIONS

The Findings and Recommendations section reflects only the most important aspects discussed with businesses and experts regarding reference prices, customs controls, tariff classification, and so on. The recommendations below can be grouped into: a) recommendations that require the enhancement of secondary legal framework; b) recommendations that do not require legal and sub-legal amendments, but which require that the customs administration rigorously enforces customs provisions in force; c) recommendations the implementation of which requires investment and operational/technical changes.

The following findings and recommendations are not exhaustive and do not undertake to definitively address all business issues, or concerns regarding customs procedures (i.e. concerns related to the role of customs for protection of marks & patents as raised by some businesses). This section does not include the findings and recommendations regarding the administrative appeal in the field of customs, which were addressed by the Secretariat in its meeting of 02.03.2016⁷ and which still continue to remain relevant even today. For ease of reference, findings and recommendations are divided according to topics they address:

3.1 Consolidation of the customs legal framework with the secondary legislation

Finding 1: Albania has a well-defined legal framework that reflects EU directives in the customs field, but not yet consolidated with by-laws

Consequently, this legal framework is expected to be consolidated by secondary legislation (DCMs, Instructions, Orders, etc.), which should break down the basic principles of the Code and effectively enable the proper implementation of its principles for purposes of improving the climate of cooperation between the customs administration and businesses. During the meetings held it was found out that businesses have not been consulted, or informed about whether sub-legal acts will be drafted or not, or as to when they will be finalised for purposes of enabling correct application of the Customs Code.

Recommendation 1: Due adoption of the secondary legislation and consultation with business as a good practice for increasing partnership

As noted in this Technical Note, the GCD should use the transition phase - until the replacement of the customs legal framework and entry into force of the new Customs Code on 1 June 2017 - in meetings and roundtables with businesses, experts, customs agencies, business associations, etc., to hear opinions, to inform all interested parties about the drafting of these by-

⁷ “Improving Dispute Resolution Mechanisms between Business and Public Administration”

laws and to hold consultations with them, with a focus to DCM “On Implementing Provisions of the Customs Code”, as being of particular importance.

Although, consultation on by-laws is not legally binding, this should be seen as a good practice to promote partnership between customs administration and businesses and to find tangible solutions related to the practical aspects of the application of the Code. Apart from drafting a good quality legal and sub-legal framework and enhancing it continuously, both, the administration and businesses, should focus on adequate and standardized implementation of customs procedures and practices, while limiting case-by-case interpretations that create room for arbitrariness and corruption.

3.2 The dynamics of the use of reference prices and the followed practice

The Customs Code⁸ clearly states that the transaction value is the basic method of determining the customs value of goods. However, valuation according to available data, known as reference prices, is a well-known practice used by Albanian customs. The reference price⁹ is the practice by which the customs authorities determine the customs value of goods on the basis of certain standards separate from the import transaction, in particular for the importation of goods from risky destinations (i.e. China), for which the exchange of information between customs administrations is not possible, or for which there are doubts that transaction invoices are fictitious. For example, in the Secretariat questionnaires filled in online, some businesses reported cases when reference prices were applied also to goods imported from the EU, USA or Turkey.

Clearances at the transaction value have been significantly reduced in recent years. According to the GCD¹⁰, in 2015, 89% of import clearance was carried out at the transaction price and only 11% of such clearance was carried out through other alternative methods¹¹, based on the number of custom declarations. While in 2016, the import clearance with transaction price reach 88%, based on the number of custom declarations¹². It is worthy to be mentioned that for a large category of imported goods with a substantive impact, the reference price it is determined based on the sources of information (Reuters Agency, international bouletins and market stock-

⁸ *The applicable Customs Code adopted with Law No. 8449 dated 27.01.1999 (as amended) addresses the value of goods for customs purposes in articles 34-36, whereas the new Customs Code, adopted with Law No. 102/2014 (as amended) addresses the value of goods for customs purposes in articles 65-67. The methods for determining the customs value of goods does not have essential changes in both laws and recognise the transaction value as the main grounds for the determination of the customs value of goods (read: the invoice value).*

⁹ *Reference prices as an alternative method of customs valuation of goods are recognised as such by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, which is also known as the Valuation Agreement. Pursuant to article 7 of the Valuation Agreement, “member states are specifically prohibited from using the minimum customs value and arbitrary or fictitious value as grounds for the customs valuation, which would apparently include the use of such reference prices”.*

¹⁰ <http://www.dogana.gov.al/node/1115>

¹¹ *Reference prices are one of the alternative methods for the determination of the customs value of goods and shall be applied as a last resort only when it is impossible to determine the customs value by other methods.*

¹² *For example, the transaction value is applied for: products of animal origin, not elsewhere specified or included. Live animals, meat and eatable parts of meat, photographic and cinematographic goods, fish and crustaceans, molluscs and other aquatic invertebrates, impregnated textile fabrics, coated, covered or laminated; etc.*

exchange, etc.) as defined under the Session II of Instruction No.25 dated 30.11.2007 of MoF “*On the procedures for the examination of the customs value, sources of information and deadline for the publication of the file with available data and the clearance of vehicles and their spare parts*”.

The revaluation based on reference prices directly affects the customs duty/VAT paid by the entity and creates competitiveness problems in the market.

From one standpoint, the use of reference prices limits open competition and the principles of a free market economy, confines contractual freedom of the parties to negotiate lower prices of goods on the basis of volume of purchases, or because of exclusivity clauses. On the other hand, the use of reference prices by the customs administration is viewed as an opportunity that offers protection from the risk of losing customs revenues, due to the use of fictitious invoices by businesses, or even as a market protection mechanism. However, both viewpoints recognise that the use of reference prices should be considered as an exception to the determination of the customs value of the goods, and not as a rule. *Even when reference prices are applied, the customs administration shall notify in writing the importer of the method applied and the reasons for the use of this method*¹³.

Finding 1: Businesses say that there are still prejudications by the customs administration regarding imported goods’ invoices, therefore the administration applies reference prices. Businesses are not provided in written with arguments for the revaluation on the basis of reference prices.

Reference prices create a deadlock in relations between businesses and Customs and Tax Authorities. The Customs Code foresees the determination of value according to available data, as the last alternative method. However, businesses contacted say that when the customs administration does not recognise the value of the transaction, it immediately uses reference prices without giving reasons and arguments why. The customs authority applies reference prices even when the economic operator is able to submit all the documentation relevant to the price presented to the customs (invoice, contract, SWIFT payment) and the necessary arguments. Some businesses pretend that the Customs administration does not exhaust all procedural means of seeking from businesses information/additional documents, or clarifications about the transaction, thus, it does not investigate the existence of “*reasonable doubt*”, but presumes the fictitious transaction value instead.

Additionally, there are claims that the customs authorities fail to notify in writing the economic operators about the alternative method (*reference price*) used and to provide relevant justification for the customs re-evaluation. This practice deprives economic operators of the real opportunity to respond, in violation of point 81 of the Implementing Provisions of the Customs Code¹⁴ and makes the entire procedure non-transparent. Businesses also claim that even in cases when the use of the reference price is communicated to them, the reasoning provided by the customs authority is superficial, which makes businesses feel more confused on the reasons that lead to non-recognition of the transaction value. Following of the procedural and substantive aspects (related to the reasoning and content of the decision of the Customs Administration) also serves

¹³ Article 7, paragraph 3 of the Agreement for the Implementation of Article VII of the Framework Agreement on Tariffs and Trade 1994.

¹⁴ DCM No.205, dated 13.4.1999 “On the implementing provisions of the Customs Code”, as amended

to the courts to determined and decide on the disputes between economic operators and customs administration.

Finding 2: Different application of reference prices in various customs branches

There is a perception and in some cases also the experience of businesses, according to which customs branches in the districts, except for Tirana and Durrës, apply reference prices more extensively. According to some businesses, uneven practices lead to higher likelihood for subjective and often arbitrary judgment. There are cases when even for goods coming from EU countries, which are considered as no-risk countries of origin, there are, again, reference price applications. In at least 2 cases reported to the Secretariat, different customs valuation practices have been noticed for the same commodity in different customs branches. According to GCD, following the WTO recommendations, since May 2016, a national customs valuation database has been established and is functioning, enabling the implementation of Methods 2 and 3 of the customs valuation¹⁵, which is accessible to each customs branch. However, according to the GCD, the unification of goods valuation is not always possible because their real value is determined by numerous indicators that affect the price of goods.

Finding 3: Use of reference prices as a tool for the revaluation of the costs of international transport of containerised goods

Some businesses and customs agencies reported that reference prices have also been applied for the revaluation of international transport costs of containerised goods, separating from the valuation of customs value of goods. Specifically, there are cases where an import invoice for purposes of the customs value of the goods is valid (transaction value) even though the imported goods are from China, while reference prices of 2100 USD or 4200 USD are applied in order to determine the value of international transport by container, depending on the size of the container, even though the payment for the transportation is made via bank transaction within the Republic of Albania and the transaction is easily traceable.

Finding 4. Outdated list of available data

The list of available data (*reference prices*) is published on the GCD website though it is not easily noticeable. Meanwhile, the date when the list was last updated is not clear and it is reported that there are products the prices of which have not been updated for over a year, or cases when reference prices for certain products have long been lower than the price of products on the international market (for instance, tires). The use of prices that are not current to market development (such as electronics and technological products, household appliances, container

¹⁵ According to the identical and similar goods

transport, tiles, etc.) creates a chain of inaccuracies when applying customs duties, in domestic market prices and double declarations by businesses, one for customs purposes, and another for fiscal and tax purposes. However, with the further consolidation of the national valuation database is expected to limit the use of data available from customs branches.

Finding 5. Businesses feel the pressure of SAI audits results for customs administration

Various businesses say that one of the reasons the customs administration applies reference prices is its intimidation by the Supreme State Audit. This fact is confirmed by the customs administration itself, according to which the SAI often considers “economic damage” to have been caused as a result of recognition of the transaction value for purposes of the customs value. In such cases the SAI says that there was an inadequate analysis of the indicators provided for in paragraph 2 of the MoF Instruction No.25, dated 30.11.2007, “On the procedures for the examination of the customs value, sources of information and deadline for the publication of available data file and the clearance of vehicles and their spare parts”. The Instruction requires the Customs Administration to analyse the 25 indicators as a whole. Not only is it difficult for businesses to meet these indicators altogether; it is also difficult for the customs administration to analyse them within a short time. Failure to comply with even one of the indicators raises a “suspicion” about the value of the transaction and consequently sets the basis for finding violations in the procedures of the customs administration.

The customs administration feels “compelled” to comply with the subsequent recommendations issued by the State Supreme Audit Institution (SAI), unjustly transferring the burden on businesses through customs revaluation. Even though the customs administration itself may disagree with the SAI's recommendations (*which are not legally binding to be applied a priori by the customs administration*), it still prefers to meet these recommendations even when their implementation illegally undermines legal and economic rights acquired by economic operators. By acting in such a way the administration entities feel protected from “bias”, administrative measures, or criminal charges that may come as a result of SAI's recommendations. It is alleged that when dealing with the control of specific customs cases, or declarations that relate to private entities rather than auditing the activity of the state administration, the SAI acts out of its functional duties set forth by law. Actual cases of administrative measures taken by customs branches against businesses “*for purposes of implementing the SAI recommendation following the SAI's control of the files on the customs warehouses of the entity ...*” were reported to the Secretariat.

Recommendation 1. Clearly record and trace in the GCD internal system how the customs value is calculated

According to the customs legislation, the customs authorities shall give priority to the recognition of the value of the transaction on the basis of documents such as invoices, contracts, SWIFT payments, customs declarations. When there is reasonable doubt about the declared value, customs authorities shall notify in writing their suspicions, in accordance with the customs legislation, by giving economic operators the opportunity to respond and to substantiate their

declaration. Reference prices should serve only as an “indicator risk of price”, which should lead to investigation of the case and not serve as a shortcut for the customs administration in determining the customs value of goods and in disciplining the internal market.

In order to clarify the procedures, for both, the customs administration and businesses is suggested:

1. A more comprehensible manual with the steps to be taken for customs revaluation (reviewing Instruction No. 25, dated 30.11.2007¹⁶), by reducing the indicators that need to be analysed/followed by the customs officials in recognising the value of the transaction.
2. The final inspection act should clearly identify all the steps followed and should be formatted in the system to document alternative ways of valuation.
3. The customs authorities shall make available to the economic operator (either printed or electronically) the act of inspection which keeps records of the customs value and the results of physical control, if any.

Recommendation 2. Update the list of available data on the website

In order to increase transparency and businesses’ trust, it is necessary to refresh the list of available data with also the history of its updates. It is preferable to include information on the consultation process with businesses or other sources as well as the date of the update.

Recommendation 3. The GCD should publish data on the application of reference prices and the most commonly dealt cases related to the origin of goods, their nature, etc.

The GCD should periodically publish monitoring reports or as part of the annual activity report the progress of the application of alternative valuation of customs values, especially reference prices, about the most typical cases, etc.

Recommendation 4. MF and GCD to consider with an order/instruction the removal of reference prices for the costs of transport by container.

Recommendation 5. Interpretation through a Council of Ministers Decision of procedures that must be followed to adequately meet recommendations of SAI reports¹⁷.

Public administration bodies, including the customs administration, should establish working groups to review the tasks and recommendations given by the SAI, avoiding their *a priori* and *automatic* fulfilment, especially where their arbitrary implementation and with retroactive effect

¹⁶ Instruction No. 25 “On the procedures for the examination of the customs value, sources of information and deadline for the publication of the file with available data and the clearance of vehicles and their spare parts”.

¹⁷ This issue has been the object of the IC’s analysis in the context of the topic: “On improving dispute resolution mechanisms between the business and public administration” in March 2016 and part of the matrix of recommendations to this end. Given that this issue emerges cyclically in the relations of institutions among themselves and with businesses, as well, the Secretariat deems that this issue must be given more attention for purposes of finding a solution.

violates legal certainty and legitimate business rights. This would also reduce the costs for the state budget, in cases when the courts would render justice for businesses and the state would be obliged to compensate businesses for damages caused.

3.3 Change of Tariff Classification

The tariff classification of goods is done according to the combined nomenclature of goods depending on the nature of the goods and, in most cases, the customs code is specified in the invoice. The nomenclature of goods is internationally standardized.

Finding 1. Non argued change of the tariff classification of goods

Such a change by the customs administration has a financial impact on businesses, not only because it can shift to the customs tariff or the reference price, but also because it is associated by an administrative measure for erroneous classification of goods. Businesses are concerned about the functioning of the customs lab and the lack of communication by customs branches of the results of lab analysis for tariff classification (for example, the case of importers of raw materials for inward processing in the footwear industry). On the other hand, the Customs Administration argues that businesses themselves, or their customs agencies, do not have the necessary knowledge and expertise and, as a result, do not show carefulness in the tariff classification of goods.

Meanwhile, another issue that needs to be considered is in some cases the failure from the customs agency to provide the necessary detailed information for enabling the customs valuation, which not only occasionally provide incomplete information on the characteristics of the products, thereby conditioning the product analysis by the customs administration.

Finding 2. Limited use of Compulsory Tariff Information - Lack of Awareness from Businesses

It is evidenced that businesses have inadequate knowledge on the right to request compulsory tariff classification by the GCD. Decisions on compulsory tariff information are valid for a period of 6 years¹⁸. The GCD's website provides information on the legal basis, forms of application and authorization as well as its validity. Currently, only two decisions on compulsory tariff classification are published.

Recommendation 1. Customs Branches shall inform the business via written response to the conclusions of the Customs Laboratory when taking a sample for analysis by arguing the reasons for changing the tariff classification of the goods.

Recommendation 2. The Compulsory Tariff Information guidelines should be more visible at the GCD website and publish all decisions taken on such requests by the business for obligatory information. At the same time, cooperation with business associations should be enhanced as their role to encourage the use of this tool.

¹⁸ According to the new Customs Code the timeframe is 3 years

3.4 Physical examination efficiency

The risk management system determines on the basis of risk criteria/indicators (company, tariff classification, origin, procedure, etc.) the channel in which the customs declaration will go through and the nature of the control - whether documentary, physical and/or scanning. Physical examination is carried out when the declaration is selected on the red channel in the system (.) and it implies inspections of the load in its entirety in the presence of a Customs Officer and, in special cases, in the presence of representatives from Anti-smuggling unit. Meanwhile, there has been an essential change in the risk management concept and in the establishment of partnership between the administration and businesses as a result of implementation of the green channel (without physical and documentary inspections). According to the GCD, the use of the risk system has reduced considerably the inspections, at 7.6% of customs declarations for the first quarter of 2017, compared to 13.9% of the same period in 2016. However, this ratio remains relatively high compared to European practices of risk analysis based inspections, ranging from 3% to 5%. Even so, this ratio should be considered within the Albanian context, on one hand there are the challenges of security and protection of borders and on the other hand the commitments on the facilitation of trade.

Finding 1. Physical controls remain frequent and repeated

Businesses complain of numerous physical inspections even after the use of the scanner. There are goods and companies selected repeatedly as risky in the red channel, even though companies have a good record with the customs and continue to import the same item. During consultations with the Secretariat, businesses brought up for discussion the issue of the update of the risk indicators as per the nature of products and history of the company. In some cases, the physical inspections determined in advance by the ASYCUDA system overlap also with the controls from other GCD structures, such as the Anti-smuggling unit, which manually select cargo for physical inspections that are performed immediately after the goods have left the customs point.

However, according to GCD, the number of overlapping controls is very low, while the updating of risk indicators is a dynamic and continuous process. It is acknowledged that information and data provided by customs branches, which work daily with economic operators, is very important for the efficacy of the centralised risk management system.

Finding 2. High costs for businesses during physical inspections and lack of inadequate premises for physical inspections

When companies go for a detailed physical inspection, they should load and unload themselves the goods by bearing respective costs¹⁹. Businesses say that the premises where physical inspections are carried out are inadequate in most of the customs branches, thus increasing the risk of damaging the goods, either due to weather conditions, or because of the character of imported goods (such as food items for instance). According to the GCD, it is preferable that

¹⁹ According to the customs legislation the costs for loading and unloading goods during the physical examination are borne by the economic operators.

physical inspections are performed at the premises of customs branches that are equipped with 24-hour CCTV system. Meanwhile, the conduct of physical inspections in the warehouses of economic operators is authorised only in limited cases for demolishable goods or in need of specific control conditions (eg controlled temperature).

Recommendation 1. Publication of data on types inspections (excluding data on risk indicators or findings from controls that serve only for internal use within GCD) as part of the annual performance report of the customs administration to increase transparency and accountability to taxpayers.

Recommendation 2. Consider the possibility of reducing the percentage of physical inspections through the continuous update of risk indicators, investment in Intelligence and IT systems and coordination of inspections with the General Tax Directorate (use of blue channel)²⁰.

Ongoing investments in information technology to enable the updating of indicators and exchange of information among law enforcement agencies will increase the efficiency of the risk management system. These measures will also address the requirements of the new Customs Code regarding the *preliminary risk analysis* on the basis of prior submission of information by economic operators. The functioning of the Blue Channel would make it easier to have efficient audits for fiscal purposes and to follow the whole chain of trading and manufacturing activity. Customs must respond to inspections with the right technology, e.g.: customs scales must always be calibrated, customs cameras must be functional, etc., for everything to be monitored and verifiable in case of need or complaints.

Recommendation 3. Build adequate premises for physical inspections at the customs branches. Being unable to fulfil this recommendation in the short term, the number of physical inspections carried out in the premises of economic operators in the presence of representatives of the customs authority during the unloading of the goods should be increased. The achieving of this objective requires support from the government with budget and human resources available to the GCD.

3.5 Other findings and recommendations

3.5.1 Online communication of the Customs Administration with businesses/authorisations

Finding 1. Businesses say that they spend unreasonable time in the procedures for the issuance of various authorisations, such as in the case of machineries and equipment Inward Processing Relief (IPR) etc.

The necessary documentation for various authorisations or requests must be submitted in writing, it should be filed and, as appropriate, it may take up to two weeks to be processed. It takes about 6 working days to get a temporary relief regime authorisation. In addition, it is required the foreign customs clearance papers, as well as attestation by the customs branch showing that the

²⁰ Examination following clearance of goods.

operator carries no liabilities. The self-declaration, which is part of the documentation required for the VAT exemption procedure for the import of machinery for investment purposes, is required to be notarised, which seems redundant and bureaucratic.

Recommendation 1: Applications for authorizations should be made online.

1. Applications for authorisations or attestations to be submitted online and be acknowledged the scanned documents.
2. The businesses should not be requested to provide to the customs administration the attestation on their financial situation, when the customs administration can verify itself in the system.

3.5.2 Customs working hours for exporters

Finding 1: Exporting businesses, mainly those under IPR, have raised their concerns over the limited customs working hours, especially in the Customs Office of Tirana, in receiving customs export declarations, which are claimed to be accepted until 12:00.

Due to the very nature of the work of these businesses that depend on the maritime transport schedule, it is requested that declarations be received even after 15.00 hrs. The working hours for each Customs point as per nature of work can be found on the GCD website. At the border customs points working hours have been considerably extended until late hours.

Recommendation 1: Businesses need more clarity regarding published and actual working hours at customs points. GCD to monitor the actual implementation of the working hours published on the website.

3.5.3 Inter-institutional cooperation and coordination (e.g. NFA, customs, taxes, etc.)

Finding 1: Reported by businesses lack of prompt communication between public institutions such as the customs administration and tax administration in the case of certain certifications related to fiscal liabilities.

Currently, for the 24-hour import of birds for purposes of obtaining the Authorization for VAT Exemption at the customs, a number of documents, which should normally be accessed *online* among institutions, are requested to economic operators. Thus, an entity performing this procedure must first be provided with a certificate from the Regional Directorate of Agriculture according to which the entity exercises its activity in the field of agribusiness and another by the Regional Tax Directorate proving that the entity has no liabilities. In order for the Regional Tax Directorate to issue the certificate, proof is needed from the Regional Directorate of Road Transport Services, according to which the entity is not a debtor to this institution. There are claimed for not sufficient coordination between customs and NFA in particular on the working

hours at border customs points. Inter-institutional co-operation is very important in the context of finalizing the "Single Window" project.

Recommendation 1: Enhance online exchange of information or access to a certain amount of information, e.g., the case of fiscal liabilities to reduce the burden on businesses and to increase the speed of processing trade exchanges.

Explore the possibility of joint controls and inspections at local customs level with taxes such as in the case of importing machineries and equipment.

3.5.4 Institutionalisation of Information and Consultation with Businesses

Finding 1: There is a need for a better approach of GCD in consulting and informing the businesses. The website should be better structured for users to make the information more accessible.

Recommendation 1: Reconfigure the website; preferably test it with businesses to make it more informative and usable by businesses.

It should be enriched with information and explanatory guidelines in Albanian and English. Consider the possibility of online registration of businesses to get real-time notifications and news. It is suggested that the information be updated and supplemented with clarifications and guidelines for businesses and be provided in English language, also.

Recommendation 2: Consider the publication of a consultation agenda with representatives of business community and maybe sectorial ones. Consult with groups of interest on the implementing provisions of the new Customs Code being drafted by the GCD and the Ministry of Finance is crucial. Number of consulted businesses should be an indicator of GCD performance and part of the annual report.

The Secretariat can serve as a mechanism to provide consultation opportunities with certain groups of interest.

Recommendation 3: Financial support to the GCD for establishing a dedicated structure to provide ongoing assistance and communication with economic operators and business associations.

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