

## **CUSTOMS REGULATIONS**

*The presentation hereby has in view the legal provisions in force on the 31<sup>st</sup> of March 2004*

### **Applicable legislation in this field**

- Government Ordinance no. 26/1993 on Customs import tariff, published in the Official Gazette no. 213/31<sup>st</sup> of August 1993, as further amended and completed
- Law no. 608/2003 for the modification of the name and classification of goods from the Romanian Customs import tariff and of the afferent customs duties, published in the Official Gazette no. 928/23<sup>rd</sup> of December 2003
- Government Decision no. 864/1995 on the setting up of the mandatory control of the customs value for certain imported products, republished in the Official Gazette no. 85/26<sup>th</sup> of April 1996
- Law no. 141/1997 on Romanian Customs Code, published in the Official Gazette no. 180/1<sup>st</sup> of August 1997
- Government Decision no. 1114/2001 for the approval of the Regulation for the Enforcement of the Romanian Customs Code, published in the Official Gazette no. 735/19<sup>th</sup> of November 2001
- Decision of the director of the General Customs Department no. 259/2002 for the approval of the Norms regarding the simplified customs clearance procedures, published in the Official Gazette no. 217/1<sup>st</sup> of April 2002
- Order of the minister of public finances no. 687/2001 for the approval of the customs values, published in the Official Gazette no. 207/24<sup>th</sup> of April 2001

## ***I. Regime applicable to legal persons***

### **1. Final customs procedures**

#### ***1.1 Import***

The import operations are those operations consisting of the introduction in the country, through customs houses, of foreign goods as well as their introduction in the economic circuit. This is the moment in which the customs clearance procedure is performed and, at the same time, of cashing the customs duty afferent to the import rights.

The import operations are performed in strict concordance with the object of activity of the respective legal person, with the freedom of imports principle, but also with the compliance with the legal provisions regarding the import and export licenses issued by a specialized body of the Ministry of Foreign Affairs.

#### ***Performance of the customs clearance operation***

In order to perform the customs clearance operation, the economic entities have the obligation of filling in and signing, on standard forms put at the disposal of the customs bodies, a customs declaration corresponding to the customs regime of the goods. The declaration is filed with the customs house together with other documents provided by law for the acceptance of the customs regime. After the conclusion of the customs clearance operations, the customs authority shall give the customs permission. When the accepted customs regime provides for the payment of certain import rights or the filing of a customs bond, the customs permission shall only be granted after the fulfillment of these obligations.

#### ***Customs duties***

The import customs duties are determined on the basis of the Romanian Customs Import Tariff and the customs duty is expressed in percentages and is applied to the customs value of the goods, expressed in lei. The customs duties are paid in national currency and are those provided for at the date of the registration of the import customs declaration. If the customs value of a good (the importer has the obligation of establishing and declaring the customs value of the goods) is expressed in foreign currency, according to the Customs Code, the rate exchange of the National Bank of Romania from every Thursday shall be taken into account, this rate being used during the entire week.

The following goods are exempted from the payment of the import customs duties, according to the Art. 80 from the Customs Code:

- a) sea and ocean fishing products and other products extracted from the territorial sea of a third country by the ships incorporated in Romania, navigating under Romanian flag;
- b) goods obtained from the goods provided for at the letter a) on the board of a factory-ship fulfilling the incorporation conditions in Romania and of navigation under Romanian flag; as well as
- c) goods introduced in the country by the foreign investor as in kind contribution to the registered capital of a Romanian trade company and those brought as in kind contribution within the increase of registered capital.

## ***1.2 Export***

The export customs regime represents the taking out for good of the Romanian goods from the Romanian territory.

There are certain legal limitations regarding the goods admitted for export, at the same time with the establishment of certain interdictions. Thus, regarding the goods admitted for export, these are: (a) those made in the country and (b) those previously imported. Regarding the goods for which interdictions for export are established those are: (a) prohibited goods and (b) goods restricted within the commercial policy; both these interdictions and the limitations are established within the same article of the Customs code (Article 81 paragraph 2). It is very important to be mentioned since the beginning that no customs duties are levied for the export of goods, in order to encourage thus the export, as foreign currency source.

In order to take out definitively the goods from the country, the exporter has the obligation of filling in and filing a export customs declaration with the customs house from the jurisdiction of which the exporter's headquarter is or with the place where the goods are packed or loaded in order to be exported. The export customs declaration may be filed with a border customs house, but only in solidly justified cases.

The essential condition for the granting of the customs permission is that the respective goods to leave Romanian territory in the same state in which they were in the moment of the registration of the export customs declaration. But there is the possibility for Romanian goods and foreign goods brought into country, if they are to be reintroduced in the country without to have been suffered any modification, except their normal wear and tear, to be temporarily exported.

The temporary export operations are ended through:

- a) re-import of the goods sent temporarily or through their definitive export;
- b) issuing, ex officio, of an establishing act by the customs house having the operation in record, when the goods are not returned from economic reasons;
- c) issuing, ex officio, of an establishing act by the customs house having the operation in record, when the established term is not complied with.

Goods destined for export and which have been controlled and cleared inside the country shall no longer be subjected to the border customs control, the customs authority resuming to the verification of the number, series and integrity of the applied seals, on the basis of the export customs document.

## **2. Suspensive customs regimes**

### ***2.1 Customs transit***

Customs transit consists of transportation of foreign goods from one customs house to another, without subjecting them to the import rights or to the commercial policy measures. This is performed under customs supervision and with the guaranteeing of the customs duties. Goods subject to customs in an interior customs house, for export, are in transit as far as the border customs house. The customs transit of the goods, of the means of transportation and of other goods on railways, waterways, river ways, airways and road transport is not subject of customs duties. The goods in a regime of customs transit are an exception, which because of fortuitous causes are valorized on the Romanian territory, so these goods are subject to payment of the customs duties and of other import rights.

The holder of the regime of customs transit is in fact the carrier of the goods. He is forced to submit to the customs bodies a customs declaration of transit, directly or through a representative, which may be accompanied by invoices and other documents from which the value of the transited goods to result. In case of the railway transportation the filing of invoices is not mandatory.

The term of ending for the regime of customs transit is established by the customs house of departure, depending on the means of transportation used, of the distance to be covered, on the atmospheric conditions, but without the maximum duration to exceed 45 days.

### ***2.2 Bonded warehouse***

Bonded warehouse means the place approved by the customs authority, under its control, in which the goods may be stored. In the approval given by the customs authority the term in which the holder of warehouse is obliged to request for the granting of a new customs regime is established.

The petition for authorization of functioning of a bonded warehouse is filed with the customs house in the territorial range the warehousing place is situated. The bonded warehouse authorization enters into force at the date of its issuance or from the date mentioned in authorization. The bonded warehouse authorization may be used for one or many operations of placing under bonded warehouse regime.

### ***2.3 Active improvement***

The active improvement consists of subjection, on the Romanian territory, to one or many operations of transformation or processing of:

- foreign goods destined to be re-exported outside the Romanian customs territory, under the form of compensatory products, but without being the object of the cashing of the import rights or of the commercial policy measures;
- imported goods, introduced in the economic circuit, if they are exported outside the Romanian territory under the form of compensatory products (Article 111 from the Customs Code).

In the regime of active improvement the following operations are allowed:

- a) goods processing, including the assembling and their adjustment to other goods;
- b) goods transformation;
- c) goods repairing, including their re-assembling in their initial form;
- d) use of certain goods which, although they are not between the compensatory products, allow or facilitate the obtaining of such products, even if they disappear partially or totally during their use (Article 112, Customs Code).

The regime of active improvement is authorized by the regional inter-county customs department in the territorial range of which the holder of the commercial operation headquarter is. The active improvement authorization is issued only to the Romanian legal persons, subject to condition of the identification of the imported goods in the compensatory products.

The validity term of the active improvement authorization shall be established by the regional inter-county customs department, the holder's

request being taken into account as well as the economic conditions in which the respective active improvement operation takes place.

#### ***2.4 Transformation under customs control***

The regime of transformation under the customs control allows for the use, on the Romanian territory, without the payment of the import rights and without the enforcement of commercial policy measures, of foreign goods, in order to be subject to certain operations which transform their type or initial state. The products thus resulted, named transformed products, are introduced in the economic circuit, subject to payment of the import rights (Article 114, Customs Code).

Goods to which this regime applies are provided in the annex to the Enforcement Regulation of the Customs Code. Besides, the list of the goods that may be placed under the regime of transformation under customs control is established by Government Decision.

The approval for transformation under customs control is granted by the customs authorities upon request of the person performing the operation. The validity term of the authorization for transformation under customs control is established according to the complexity of the operation, without exceeding 2 years. The respective term, may be extended at the solidly justified request of the holder of the authorization, introduced only before the expiration of the initial term.

#### ***2.5 Temporary admission***

The regime of temporary admission allows for the use on the Romanian territory, with full or partial exemption of import rights and without the enforcement of the commercial policy measures, of the foreign goods, destined to be re-exported in the same state, except their usual wear and tear. The temporary admission regime may be authorized when the conditions for the identification of the nature of the foreign goods are fulfilled.

The authorization is issued by the customs houses upon request of the person who, directly or through the mediation of another person, uses foreign goods. The validity term of the authorization is established by the customs house according the justifications presented in the petition for authorization of the temporary admission regime. There are two ways of granting the temporary admission regime, namely:

- a) temporary admission regime, with full exemption of the payment of customs duties and import rights;

- b) temporary admission regime, with partial exemption of the payment of customs duties and import rights.

The conclusion of the temporary admission regime is performed by the filing of the customs declaration of conclusion at the customs house designated in the authorization.

## ***2.6 Passive improvement***

The regime of passive improvement allows the temporary export of Romanian goods outside the territory of the country, for their subjection to certain transformation or processing operations and, after that, of the import of the products thus resulted, with the total or partial exemption of import rights.

The regime of passive improvement is authorized by the regional inter-county customs department in the territorial range of which the holder of the commercial operation headquarter is.

The authorization is granted to the Romanian legal persons on the basis of an application sustained by the documents specified by the legal norms in force. The authorization validity term for the regime of passive improvement is established by the regional inter-county customs department according to the specific conditions of the operations, but no longer than 2 years.

The goods cannot be placed under the regime of passive improvement which:

- a) through their export would give rise to reimbursements or restitutions of import rights;
- b) before their exportation, they were imported, in total exemption of import rights, in order to be used for a certain purpose.

## ***2.7 Other customs operations***

### ***Customs trans-shipment***

Goods under customs surveillance may be trans-shipped from one means of transportation to another or may be temporarily deposited on the Romanian territory. The trans-shipment of the goods may only be performed upon the request of their carrier, of a commissionaire in customs or of any other person proving that he or she has the right of disposition on the goods, but after the issuance of a customs permit by the notified customs house, after the studying of the application.

***Introducing or taking out of the country of goods, outside the activity of foreign trade***

Romanian legal persons have the possibility of introducing or taking out of the country of goods, even if they have not stipulated operations of foreign trade in their object of activity, under the following conditions:

- a) at the introduction in country the goods to be exclusively destined to the own use and not to be traded;
- b) at the taking out of the country, the goods to be from their own patrimony and to be transmitted without payment.

***Customs regime of the samples, reference models and advertising materials***

Any goods of part thereof received from foreign partners free of charge, for the acquaintance with, testing, analyzing of the technical characteristics for the import of their manufacturing in the country as well as those sent free of charge to the foreign partner for the purpose of external market prospecting or obtaining orders are considered samples.

***Customs regime of the supplying of the means of transportation in the international traffic***

This customs regime refers to the ships under foreign flag, to the Romanian ships as well as to the Romanian or foreign airplanes. A single export customs declaration may be filed for the entire period of stationing of the ships in each port, or of the airplane in the airport.

***II. Simplified customs clearance procedures***

The declaration of the goods with the customs authority for the granting of a customs regime may be performed through derogation from the declaring the goods under normal procedure, by using certain simplified procedures provided for the Decision no. 259/2002 of the general manager of the customs general department.

***a) Procedure of incomplete declaration-*** is granted to all the goods, except those provided for in the Section I, point 3, letter a, from the Norms approved by the Decision no. 259/2002 and only in the situations in which, from justified reasons, the immediate collection of the goods from customs imposes, and the holder of the import customs declaration does not possess all the data and documents necessary for the filling in of the customs declaration in the customs information technology system.



***b) Procedure of simplified declaration*** – the procedure of simplified declaration allows for the placement of the goods under a requested customs regime on the basis of the presentation of a simplified declaration, subject to further filing of a global simplified declaration. The procedure is performed on the basis of an authorization issued by the General Customs Department, which cannot be issued to the trade companies performing customs clearance operations occasionally.

The procedure of simplified declaration may be applied to all the goods, except to those provided for in the Section II point 22 from the Norms approved by the Decision no. 259/2002.

***c) Procedure of customs clearance at the destination*** – the procedure of customs clearance at the destination allows for the placing of the goods under the requested customs regime in the places designated by the holder of the commercial operations or in other places established by the customs authority. The procedure is performed on the basis of an authorization issued by the General Customs Department. The procedure of customs clearance at destination applies to all the goods, except those provided for in the Section III, letter f, point 45 from the Norms approved by the Decision no. 259/2002.

### ***III. Protests and complaints***

The interested natural or legal persons may challenge, subject to conditions established by Government Ordinance no. 13/2001, the measures taken by the acts of control or taxation by the bodies of the Ministry of Public Finances, regarding the taxes, customs duties, contributions to the special funds, increases of delay, penalties as well as other amounts ordered, within the legal competences.

The complaints are filed, under the sanction of withdrawal, within 15 days from the communication of the challenged act, with the body that has issued it. The issuing customs authority shall forward the dossier of the complaint to the competent body and this one shall solve the complaint by a grounded decision, within 30 days from the registration. It is very important to mention that these complaints are exempted from the payment of the stamp duty. If the persons are not satisfied with the solving of the complaint, they may challenge the decision with the competent court in the territorial range they have their residence of headquarters, as the case may be, subject to conditions of the common law.

### ***IV. Sanctioning regime***

Contraventions and offences to the customs regime of Romania are expressly provided for by the Customs Regulation and by the Customs Code together with the procedure of their establishment and sanctioning. Contraventions performed in the customs premises and in the places in which customs surveillance operations are performed, are sanctioned.

If the contraventions are established by the police authorities or by other authorities with duties of control, in other places than those aforementioned, then, they have the obligation of presenting immediately the establishing acts to the nearest customs authority and also to present the goods which are the object of the contravention.

Contravention sanction of fine may also be applied to legal persons. The quantum of the fine ranges among lei 1 million to lei 75 million.