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IMPACT OF THE COVID-19 PANDEMIC ON CUSTOMS SYSTEM AND CUSTOMS PROCEDURES IN THE EUROPEAN UNION

Introduction

The COVID-19 pandemic has unprecedented and multidimensional repercussions for economic systems both at a national and a global level. The European Union legislation provides for unique instruments designed, among other things, to extend aid to the victims of natural disasters (but not only), which may be utilised in order to respond to an unprecedented health crisis caused by the coronavirus. Customs administrations must play an important role here. Countries which reduced the time and costs of customs clearance at their borders are gaining advantage over those which failed to do so. The implementation of state-of-the-art customs processes based on risk analysis, which maintain the balance between the need for conformity and trade facilitations, may ensure that basic commodities will reach their destination on time.

The crisis sparked off by the COVID-19 pandemic led to questions about the application of customs regulations, customs procedures and customs formalities. Customs clearance should be assigned a high priority when it comes to "critical" goods relating to the protection of human health or life, whereas some imports should be exempt from the customs duty and (national) VAT, if it

is possible to demonstrate that such commodities have been given free of charge as a donation.

This article aims to describe actions and initiatives associated with customs procedures, which were taken by the EU to combat the pandemic. Measures relating to COVID-19, which concern customs procedures and trade, provide, at the same time, a review of challenges that both Member States and the whole European Union must confront to ensure the availability of goods on the one hand, and to facilitate the movement of goods and guarantee the safety of trade in goods on the other. The article employs an analytical and descriptive method. Empirical (indirect observation and description) and general methods, including deduction and induction, were used to achieve the aim of the study. Due to the topicality of the subject of research, there are no studies in the literature yet devoted to the impact of the pandemic on customs procedures. The article will contribute to filling the research gap in this area, which is also its added value.

Customs system and customs procedures in European Union – general description

A customs system can be considered in a narrow sense and limited to a formal and economic aspect of all those matters which are directly related to customs duties, including also customs procedures. In the above perspective, a customs system encompasses thus a customs tariff and its components, such as, among other things, goods nomenclature, customs rates, calculation elements and normative acts in the form of the customs law.[1] In a broader sense, however, a customs system includes objectives and measures of a trade policy, which fall within the scope of the customs administration's duties. This view includes therefore a customs policy, that is, the entire activities performed by a state or international organisation and their authorities, which are connected with safeguarding national interests in international trade. Hence, a customs system can be perceived merely with respect to actions taken by a specific state, and in the case of the European Union – actions of the EU and individual Member States, which are aimed at governing trade in goods with foreign countries and are taken in accordance with the customs law, with customs administrations being involved.[2] Customs authorities have a broad scope of duties concerning supervision and control with respect to goods brought into the EU customs territory. They not only impose customs duties and VAT on imports and, where applicable, excise duty, but also check these commodities for numerous non-financial purposes, e.g. to ensure that they meet EU requirements for product

[1] S. Waschko, *Systemy celne*, PWN, Warszawa 1971, p. 16.

[2] S. Naruszewicz, M. Laszuk, *Wspólnotowe prawo celne*, LexisNexis, Warszawa 2004, p. 34.

conformity, standards and regulations relating to food, health, the environment and many more.

When one considers the factors and various dimensions of customs and trade relations, it must be noted that contemporary customs systems go beyond collecting customs duties and governing trade in goods with foreign countries. The reason for that is because a customs system can be perceived in terms of a policy (a set of ideas, visions connected with a customs policy, that is to say, customs tariffs and customs administrations), borders and organisations (structures of institutions, networks of public administration authorities, which separate a customs area from its environment and fulfil specific functions), or finally, laws (a set of legal rules that govern the operations of entities involved in a customs policy).[3] From the practical point of view, a customs system may be seen as a set of customs regulations which set out customs control, customs procedures, customs clearance of goods and govern the rights and obligations of persons in customs procedures.

Customs procedures can be understood as rules for and the manner of handling a commodity at the time it is crossing a customs border. The European Union's customs regulations are intended to provide a broad and unlimited formula for covering goods by customs procedures. With such a formula, goods can be covered by customs procedures irrespective of their type, quantity, origin, the place from which they are dispatched or the location where they are to be received. Goods can be covered by customs procedures at any time, under conditions set for them and depending on their customs status.[4]

Pursuant to Article 5(16) and Article 210 of the Union Customs Code (UCC), the following types of customs procedures can be identified[5]:

- release for free circulation;
- special procedures, which include: (external and internal) transit; storage, which includes customs warehousing and free zones; specific use, which includes temporary admission and end-use; processing, which includes inward and outward processing;
- export of goods.

The list of procedures relating to the imports of goods comprises the following[6]:

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[3] G. Mosiej, *System celny w Polsce po wejściu do Unii Europejskiej*, Wydawnictwo Adam Marszałek, Toruń [cop.] 2010, pp. 18–19.

[4] A. Kuś, P. Witkowski, *Procedury celne w prawie celnym Unii Europejskiej*, „Ius Novum" 2019, Vol. 13, No. 1, p. 133, https://doi.org/10.26399/iusnovum.v13.1.2019.08/a.kus/p.witkowski.

[5] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC), OJ L 269, 10.10.2013. However, as of 30 October 2013, only some of the UCC provisions were applied, and the Code became effective in full on 1 May 2016.

[6] B. Korczowska, *Procedury celne*, [in:] *Prawo, procedury i postępowanie celne*, ed. E. Małecka-Ziembińska, CeDeWu, Warszawa 2020, p. 82.

- release for free circulation;
- customs warehousing;
- temporary admission;
- end-use;
- inward processing;
- external transit.

The procedures applicable to exports include:

- export;
- re-export;
- internal transit.

A customs procedure begins with filing a customs declaration. From the formal point of view, this is an application for the initiation of relevant proceedings in relation to goods. The customs declaration may be filed in several ways[7]:

- electronically;
- in paper form;
- in oral form – in another (implied) operation.

A customs declaration in paper form was one of the most commonly used and typical methods of filing such declarations. With the implementation of the e-Customs system, this method of filing customs declarations became obsolete. The e-Customs initiative includes a variety of IT, organisational and legal solutions designed to promote a paperless environment for customs and trade, reduce the time of customs clearance and ensure the proper level of security of commercial transactions. The state-of-the-art customs administration must use in its operations advanced Information and Communication Technologies (ICT) infrastructure. Only then it will be capable of ensuring cheaper and effective customs services. The underlying principle of the UCC is that all customs and commercial transactions are to be carried out electronically, and computer and telecommunications systems utilised for customs operations must offer the same opportunities for economic operators in each Member State.

Apart from the United States and China, the EU is the largest trading bloc all around the world, which accounts for more than 15% of the global trade. In 2019, the value of the EU's trade with third parties totalled EUR 4.09 trillion. On average, more than 2.2 billion commodities are imported to or exported from the EU each year, which generates approx. 313 million customs declarations per year, 857,000 customs declarations daily and 10 per second; (each second, 27 commodities are declared, and their value stated in declarations

[7] K. Cakoci, *New Challenges and Perspectives in Customs Law*, [in:] *Optimization of Organization and Legal Solutions concerning Public Revenues and Expenditures in Public Interest* (Conference Proceedings), eds. E. Lotko, U.K. Zawadzka-Pąk, M. Radvan, Temida 2 – Wydawnictwo Stowarzyszenia Absolwentów Wydziału Prawa Uniwersytetu w Białymstoku, Białystok–Vilnius 2018, p. 625, https://doi.org/10.15290/oolscprepi.2018.45.

amounts to EUR 153,000).[8] The majority of consignments is imported to/exported from the EU by sea (54% for imports; 45% for exports – 2019), whereas transport by air ranks second – 23% and 31% respectively.[9] Hence the scale of customs procedures and formalities is vast, they constitute a formidable challenge in times of crisis.

There are four main categories of measures facilitating trade in goods associated with COVID-19, which are linked to a customs system and customs procedures:

- the optimisation of processes, specifically, facilitation relating to the cross-border movement of goods; to effectively respond to the crisis related to COVID-19, customs procedures, including customs clearance, need to be expedited and streamlined;
- the reduction of costs (reducing the rates of customs duties; ensuring flexibility in payments, interest and guarantees);
- greater transparency and strengthening co-operation (both on the regional and international scale);
- the full utilisation/application of cutting-edge ICT (which not only ensures continuous cross-border trade, but also reduces direct contact among people owing to remote handling).[10]

Facilitation and optimisation of processes in cross-border movement of goods within the EU

The following measures are relevant for the facilitation of cross-border movement of goods within the EU amidst the pandemic:

- expediting and facilitating customs procedures related to imports to the EU customs territory;
- eliminating certain requirements/formalities concerning customs clearance.

On 13 March 2020, the European Commission announced the European coordinated response to counter the economic impact of the Coronavirus – an action plan designed to mitigate the social and economic effects of the COVID-19 pandemic, under which Member States are allowed, among other things, the possibility to provide quick and effective support to their citizens and economic

[8] Eurostat, 2021, http://appsso.eurostat.ec.europa.eu; European Commission, Fact and figures: EU Customs Union – unique in the world, 2021, https://ec.europa.eu/taxation_customs/facts-figures/eu-customs-union-unique-world_en [accessed: 10.10.2021].

[9] *Ibidem.*

[10] A. Ugaz, S. Sun, *How countries can leverage Trade Facilitation to Defeat the COVID-19 Pandemic*, UNCTAD, 22.04.2020, https://unctad.org/system/files/official-document/dtlinf2020d2_en.pdf [accessed: 10.11.2021].

operators. If imports to third countries pose a threat to the EU's ability to respond to the COVID-19 pandemic, then the Commission may take actions and introduce a licensing scheme for the export of certain products as part of the EU's common commercial policy.[11]

In response to the COVID-19 pandemic, the EU Member States adopted also the Guidelines for border management measures, to ensure the smooth movement of goods, in particular, food and medical items, across the borders of the Member States of the European Union.[12] The document emphasised that, as far as the border management measures are concerned, key importance must be attached to coordination on the EU level. What is of particular relevance is ensuring the continuous movement of goods on the internal market, in order to prevent a shortage of food and medical devices. Firstly, the guidelines set out rules for integrated approach to effective border management in order to protect health, while maintaining the integrity of the single market. Individual Member States may, as provided for in the Commission guidelines, implement protective measures against COVID-19. However, all such measures must be transparent, proportional, legitimate, adequate and proper for a given means of transport, and they must be non-discriminatory. Furthermore, the measures should ensure the uninterrupted transport of basic goods, such as food and indispensable medical items. Second, EU Member States should maintain the free circulation of all goods on the internal market, especially basic products, such as medicines, medical devices and foodstuffs. Moreover, there should be no additional certificates for goods legally released for circulation on the single EU market. Third, EU Member States should designate at their borders priority "green lanes" for the carriage of goods. Professional travelling should be facilitated to ensure the transport of goods and services. This concerns the facilitation of the safe movement of employees representing the transport sector, including lorry and train drivers, pilots and aircraft crews, across internal and external borders. All planned limitations on transport must be reported to the Commission and other Member States. Accordingly, on 23 March 2020, the Commission published the Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services.[13]

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[11] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup, Coordinated economic response to the COVID-19 Outbreak, Brussels, 13.03.2020, COM(2020) 112 final, p. 4.

[12] Covid-19 Guidelines for border management measures to protect health and ensure the availability of goods and essential services (2020/C 86 I/01), OJ C 86I, 16.03.2020.

[13] Communication from the Commission the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services (2020/C 96 I/01), OJ C 96I, 24.03.2020.

Member States have been asked to immediately mark all internal border crossings within the Trans-European Transport Networks (TEN-T)[14] as "green corridors" and additional border crossings – green lanes for land transport (by road and rail) and transport by air and sea, to ensure uninterrupted supply chain operations. The border crossing process, including any control and screening, should not take longer than 15 minutes. Moreover, Member States should lift, on a temporary basis, all restrictions on movement applicable to the carriage of goods over their entire territory (a ban on driving on weekends, at night, etc.).[15] Professional travelling should be facilitated to ensure the transport of goods and services. This concerns the facilitation of the safe movement of employees representing the transport sector, including lorry and train drivers, pilots and aircraft crews, across internal and external borders. All planned limitations on transport must be reported to the Commission and other Member States. No additional certificates should be imposed on goods legally released for circulation on the single EU market.

Furthermore, in March 2020, the Commission issued a communication containing guidelines for facilitating the carriage of air cargo during the COVID-19 epidemic. The guidelines aim to ensure essential air transport flows. Member States are asked to facilitate the carriage of air cargo during the COVID-19 epidemic.[16]

As regards modifications introduced to change/simplify customs procedures by reason of the pandemic, in general, almost all customs procedures were simplified to a certain extent.

What we can see now is an exceptional situation that must be considered a "disaster" within the meaning of Article 221 of the Commission Delegated Regulation.[17]

Accordingly, all goods entering the Union customs territory, in order to counter the effects of COVID-19, such as ambulances or some types of medical, surgical, laboratory devices, should be covered by the temporary admission procedure and entirely benefit from import duty relief. Such goods may be declared

[14] TEN-T is a designed network of key European connections. An online platform has been established to collect information on control measures implemented by individual Member States, and each country is to designate a contact person for the Commission on this matter. At the beginning, the big problem was the lack of information.

[15] WCO, *What Customs can do to migrate the effects of the COVID-19 pandemic*, Highlights of WCO Members' practices, 2nd edition, 2020, http://www.wcoomd.org/-media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/natural-disaster/covid_19/covid_19-categorization-of-member-input.pdf?la=en [accessed: 12.10.2021].

[16] Communication from the Commission "European Commission Guidelines: Facilitating Air Cargo Operations during COVID-19 outbreak", OJ C 100, 27.03.2020.

[17] Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 29.12.2015, hereinafter referred to as "UCC-DR".

for the temporary admission procedure also through other activity, e.g. through border crossing or by declaring them orally. In such a case, a supporting document must be filed to supplement an oral customs declaration, however, the filing of such a document may be postponed, with the consent of a customs authority, by not more than 120 days after release of goods (Article 166[2] of UCC and Article 147[2] of UCC-DR). The same rules of procedure may apply to the temporary admission of medical, surgical and laboratory devices. Due to the continuing COVID-19 pandemic, it may happen that those who applied the temporary admission procedure will not be able to re-export on time the goods declared for temporary admission. In such a case, it is expedient to file to the customs authority an application for extending a time limit for re-export of goods. The extension of time limit is possible regardless of the type of declaration used to place goods under the temporary admission procedure.

Many Member States put restrictions on air transport as part of actions aimed at preventing the spread of the COVID-19 epidemic, leading thus to a considerable increase in the import of organs, blood and bone marrow to the EU territory by road. Given that the time of delivery of these goods is of paramount importance, in these extraordinary circumstances, all import formalities applicable to such goods have been limited so as to avoid any delays in their release for free circulation, and consequently, to ensure the goods in question can be supplied and used on time. Under the new provisions (Article 138[h] of UCC-DR), organs and other human or animal tissues (including bone marrow) and human blood suitable for permanent grafting, implantation or transfusion may be declared for release for free circulation in another form, namely, by going through the green or "nothing to declare" channel in customs offices where the two-channel system is in operation or going through a customs office which does not operate the two-channel system without making a customs declaration.[18] This provision applies with retroactive effect as of 15 March 2020.

Non-EU goods which enter the EU customs territory must be presented to customs authorities. However, despite the fact that, in principle, this requirement cannot be waived with respect to medical, surgical and laboratory devices, such goods can be deemed to have been presented when declared orally for temporary admission.

Transit procedures seem to work effectively, despite preventive measures being implemented to prevent the outbreak of COVID-19, namely, reducing physical contact and the use of paper documents. Economic operators can expect that the customs office of departure, when setting the time limit for presenting the goods at the customs office of destination, will take into consideration the

[18] Commission Delegated Regulation (EU) 2020/877 of 3 April 2020 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013, and amending Delegated Regulation (EU) 2016/341 supplementing Regulation (EU) No 952/2013, laying down the Union Customs Code, OJ L 203, 26.06.2020.

possible prolonged period of delivery on account of preventive measures against COVID-19. If the goods are presented at a customs office of destination after the time limit has expired by virtue of specific circumstances resulting from COVID-19, the customs office can decide that the delay was not caused by the carrier.[19] To carry out the transit operation, a temporarily accepted solution may be the submission of scanned documents to be used as a transit declaration (e.g. CIM for railway transport), provided that original documents are available, ex-post verification is ensured and all parties engaged in the procedure are given proper notification.

Under the present extraordinary circumstances, economic operators may find it difficult to observe the time limit for discharging the special procedure and to meet the time limit for submitting the bill of discharge of inward processing and end-use procedure to the supervising customs office. It must be noted that customs legislation allows for the extension of the aforesaid periods.

In such a situation, it is recommended by customs authorities that a relevant application along with justification should be filed. This will make it possible to extend the period to 60 days, also when the said application is filed after the expiry of the original time limit.

In principle, declarants are not required to present certificates of origin for imported goods in every case, however, if they request for the preferential tariff treatment, then they must have a relevant proof demonstrating the status of origin of such goods. The declarant states that they have such a proof by providing a code of the relevant document and its identification details (number, date) in a customs declaration. The exception to this rule is the possibility to request for the preferential tariff treatment of goods originating from Japan based on the so-called importer's knowledge. Nevertheless, for instance, in case of doubt about the origin of goods, their physical control or inspection of documents, the customs authority may require the declarant to present (produce) a proof of origin. Certificates of origin must be presented in original.

Commission services were informed that some Member States and trading partners of the EU were not able to provide certificates of origin in the proper form (i.e. signed, stamped and in the adequate paper format) because in many countries contact between customs authorities and economic operators was suspended on account of the COVID-19 crisis. Consequently, it was assumed that the implementation of extraordinary measures in close coordination with the EU's preferential trading partners would be appropriate with a view to ensuring the full enforcement of EU trade arrangements. These exceptional measures are to be employed on a reciprocal basis by Member States and trading partners of the EU, applying relevant provisions contained in rules of origin.[20] Under the

[19] *Ibidem*.

[20] European Commission, Information note No 1: *Submission of proofs of preferential origin during the CoCid19 crisis*, Brussels, 31.03.2020, TAXUD/E4/E5.

present circumstances relating to the threat caused by the COVID-19 pandemic, it might be the case that importers will not have original (paper) certificates or will have only their paper or electronic (e.g. scanned) copies. Therefore the following options are possible[21]:

- During the release of imported goods for free circulation, importers may file a simplified customs declaration and submit an original certificate to the customs authority at a later time. However, for this form of declaration security must be provided.
- The importers which have only a paper copy of a certificate or its electronic version while releasing imported goods for free circulation may request the preferential tariff treatment of such goods, using the certificate they have, even though it is not original, and present it at the request of the customs authority. Nevertheless, such a flexible approach does not apply to the contents of the very certificate, which means that it should be filled in correctly, issued by an authorised body, confirmed by a proper stamp and signed by hand. Upon receipt of the original certificate, the importer is required to attach it to other documents pertaining to the goods imported. The customs authority may then carry out an additional inspection to check it and, where necessary, have it verified in the country of export, should there be any doubts over its authenticity or the correctness of data contained in such a certificate. Furthermore, instead of submitting original paper certificates and official attestations, a temporary alternative solution has been adopted (electronic copies). This alternative solution should not affect the obligation of entities to present original documents, if it is technically feasible.[22] This also applies to A.TR movement certificates that confirm the customs status of goods imported from Turkey.

When it comes to customs clearance, certain formalities have been removed. In this regard two solutions deserve attention:

- simplified, provisional or incomplete goods declaration, on condition that traders provide missing data or documents within a specified time limit;
- the requirement relating to documentation may be relaxed.

On account of the ongoing pandemic, customs authorities agree to the simplified form of customs declaration being used on a regular basis, although there is no permission. Previously such actions could be taken only irregularly or on occasion. Due to the fact that customs law does not define the term "regular application", under present extraordinary circumstances, greater flexibility is allowed.

[21] Information and explanations about activities related to COVID-19 can be found on the government website: https://www.podatki.gov.pl/clo/covid-19-clo/#spis-tresci [accessed: 15.10.2021].

[22] Commission Implementing Regulation (EU) 2020/466 of 30 March 2020 on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States' control systems due to coronavirus disease (COVID-19), OJ L 98, 31.03.2020.

It is still required, however, to file a supplementary customs declaration (this requirement is waived if goods are covered by the customs warehousing procedure). Permission to file simplified customs declarations enables economic operators to place goods under a customs procedure and enjoy the following benefits:

- it is possible to omit certain elements of the declaration and not to provide some documents necessary for the calculation of import or export duties;
- customs duties, VAT and excise duty are paid, as the case may be, on filing a supplementary customs declaration, which results in the settlement of customs debt being deferred by 30 days.[23]

Given staffing shortages faced both by customs authorities and economic operators, there might be problems with granting customs authorisations. Therefore for the period of the COVID-19 epidemic, there is a less rigorous (and more flexible) approach to the rules concerning the use of a summary application form for an authorisation (an application for an authorisation based on a customs declaration). This means that for some time customs authorities will not check the condition that summary authorisations should not be used repeatedly and systematically. Time limits for filing a supplementary customs declaration are set by a reference to the booking date, which does not apply if a force majeure event or unexpected circumstances occur. Consequently, if an economic operator, due to reasons attributable to the COVID-19 pandemic, is not able to observe the time limit for filing a supplementary customs declaration, they should notify the supervising customs office thereof as soon as possible. An application for the extension of time limit must be filed to customs authorities and justified by reasonable, unexpected circumstances. Provisions stipulate that if an application for an authorisation meets the required conditions, customs authorities are obliged to accept it (Article 22[2] of UCC and Article 11 of UCC-DR). Hence customs authorities cannot reject such an application or prolong the period for its acceptance, referring to hindrance or problems caused by COVID-19 (e.g. the absence of many employees). Under present circumstances, it is expedient for economic operators to furnish customs authorities with as much relevant information as possible, which is necessary for the processing of an application for an authorisation by using electronic means of communication (e.g. email); this will enable customs authorities to verify whether the conditions for granting an authorisation required by law are fulfilled.

To ensure the more efficient utilisation of limited human resources, customs authorities should reduce physical checks and administrative verifications which are not relevant or time-consuming, focusing on high-risk consignments instead. In order to maintain social distancing, customs declarations and related documents must be sent electronically.

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[23] Deloitte, *EU overview on COVID-19 Customs and Trade measures*, https://www2.deloitte.com/ro/en/pages/business-continuity/articles/EU-overview-on-COVID-19-customs-and-trade-measures.html [accessed: 15.10.2020].

Reduction of costs relating to cross-border trade in goods

Costs relating to the import of goods can be principally decreased by reduction in customs duties.

In 2019, COVID-19-related products imported by the European Union from third countries amounted to EUR 127 billion, while the intra-Union trade in such goods totalled EUR 231 billion. These figures show a certain level of the EU's self-sufficiency as regards the availability of such goods. Countries which have the greatest share in the EU's imports are the USA, Switzerland and the United Kingdom. In aggregate, these countries represented more than 66% of the EU's external imports of COVID-19-related products. As regards groups of goods, the USA were the largest supplier to the EU for all listed categories, except for personal protective equipment, in which case, China's share was biggest (36%), especially for the import of masks.[24]

Customs duties on certain medical products are still high in some countries all around the world (Table 1).

Table 1. Average applied Most Favoured Nation (MFN) rates in WTO Countries for Medical Products (%)

WTO Country	All Products	Pharmaceuticals (medicines)	Medical Materials	Medical Devices	Personal Protective Equipment (PPE)
All WTO Countries	4.8	2.1	6.2	3.5	11.5
China	4.5	2.1	7.4	2.5	7.2
European Union	**1.5**	**0.0**	**3.2**	**0.2**	**3.9**
India	11.6	10.0	15.0	9.0	12.0
Japan	0.4	0.0	0.8	0.0	1.8
Republic of Korea	5.9	6.9	8.1	1.5	7.1
Switzerland	0.7	0.0	0.8	0.0	5.2
the USA	0.9	0.0	2.0	0.1	2.1

Source: WTO, *Trade in Medical Goods in the Context of Tackling COVID-19*, Information Note, 3.04.2020, pp. 14–16, https://www.wto.org/english/news_e/news20_e/rese_03apr20_e.pdf [accessed: 10.08.2021].

Protective equipment used in combating the COVID-19 pandemic is covered by an average Most Favoured Nation (MFN) tariff rate, namely 11.5%, which in some countries stands at 27%[25] (Table 1). In the European Union, customs duties for this product group are relatively low, an average MFN rate is

[24] Own calculations based on: Eurostat, EU trade since 2015 of COVID-19 medical supplies, https://data.europa.eu/data/datasets/rednxu8wk9icojx3xay4q?locale=en [accessed: 10.12.2021]; Eurostat, DSB-Comext, http://epp.eurostat.ec.europa.eu/newxtweb/submitdimselect.do [accessed: 30.09.2020].

[25] TARIC database, https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en [accessed: 10.09.2021].

equal to 1.5%, significantly below the average value in all WTO (World Trade Organisation) countries; an MFN tariff rate applicable to pharmaceuticals is 0%; disinfectants (HS code: 3808 94) – 6%, but the preferential rate equals 0%; soap (HS code: 3401) – 0%–4%, with the preferential rate standing at 0%; medical equipment (HS code 9018) – 0%. It must be noted that the rates of conventional customs duties apply to imports, for instance, from the USA, however, for other key importers (e.g. Switzerland), preferential rates are usually applied and they often equal 0%. Customs duty on disposable surgical masks imported from China (the main worldwide exporter) stands at 6.3%.[26]

Table 2. List of Tariff Measures Adopted by EU Under Common Customs Policy for Imports in Connection with COVID-19 Pandemic and Notified to WTO (From February 2020 to June 2021)

Type of Measure	**Goods Covered by Measure**	**Measure**	**Countries**	**Measure Introduction Date**	**Measure Expiry Date**
Exemption from import customs duty and VAT	Medical equipment* /active/	03 April 2020: The European Commission approved requests from EU Member States and the UK to grant temporary customs duty and VAT relief with respect to imported medical products and protective equipment to contribute to combating the coronavirus epidemic. The Decision entered into force with retroactive effect as of 30 January and remained in full effect by 31 July 2020.	All non-EEA countries	30/01/2020	31/12/2021
		23 July 2020: its term was extended by three months (by 31 October 2020).			
		29 October 2020: The Commission extended (by 30 April 2021) the temporary exemption from customs duty and VAT on medical products and personal protective equipment imported from third countries (for the UK, the period was extended only by 31 December 2020).			
		19 April 2021: The European Commission extended the customs duty and VAT exemption period by 31 December 2021			
Reduction in customs duties and lower VAT rate	Vaccines, in vitro diagnostic medical devices** /active/	The possibility to apply a reduced VAT rate to COVID-19 vaccine supplies and in vitro diagnostic medical devices	All except for EEA countries	11/12/2020	31/12 /2022

Source: own elaboration based on relevant documents marked respectively with asterisks.

[26] *Ibidem*.

* WTO, *Ottawa Group: Trade Facilitation Measures Taken In Response To Covid-19*, G/TFA/W/24, 29.08.2020; Commission Decision (EU) 2020/491 of 3 April 2020 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020, (notified under document C(2020) 2146), OJ L 103I, 3.04.2020; Commission Decision (EU) 2020/1101 of 23 July 2020 amending Decision (EU) 2020/491 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020 (notified under document number C(2020) 4936), OJ L 241, 27.07.2020; Commission Decision (EU) 2020/1573 of 28 October 2020 amending Decision (EU) 2020/491 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020 (notified under document C(2020) 7511), OJ L 359, 29.10.2020; Commission Decision (EU) 2021/660 of 19 April 2021 amending Decision (EU) 2020/491 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020 (notified under document C(2021) 2693), OJ L 140, 23.04.2021.

** Council Directive (EU) 2020/2020 of 7 December 2020 amending Directive 2006/112/EC as regards temporary measures in relation to value added tax applicable to COVID-19 vaccines and in vitro diagnostic medical devices in response to the COVID-19 pandemic, OJ L 419, 11.12.2020.

The Commission decided to temporarily waive customs duty and VAT on imported personal protective equipment (PPE), COVID-19 test kits and medical devices (Table 2). This decision applies only to imports, but not to intra-Union or national supplies. The exemptions are granted only on goods imported by public authorities and other public-law entities or on their behalf, or by charitable organisations approved by competent public authorities of Member States, where such goods are intended for free-of-charge distribution to people affected by or at risk of the COVID-19 epidemic or engaged in combating it or where such goods are to be provided to such people free of charge (on condition that these goods remain the property of the authorities or organisations mentioned above). On 28 October 2020, the period of availability of the aforesaid customs duty and VAT relief was extended by 30 April 2021. The Commission Decision also provides for the exemption from import duties and VAT on goods required to counteract the effects of the COVID-19 epidemic, if they are imported in order to be released for free circulation by or on behalf of disaster relief agencies (any types of emergency rescue units) in order to address their needs during the time they provide emergency aid to people affected by or at risk of the COVID-19 epidemic or engaged in combating it.

The Notification C(2020) 2146 contains an indicative list of products to be imported "duty – VAT free". The list is comprised of 45 product categories defined at the 8-digit level of CN code.[27] More or less half of these categories is already duty-free (however, in general, it is obviously not VAT free). The goods for which an MFN customs tariff is higher than zero include, for instance:

[27] COVID-19 – Indicative List of Products Eligible to Be Imported Duty – VAT free, Commission Decision (EU) 2020/491 of 3 April 2020 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020 (notified under document C(2020) 2146), OJ L 103I, 3.04.2020.

disinfectants and sterilising agents, i.e. alcoholic solutions, depending, first and foremost, on alcohol content – from EUR 19.20 per hl to EUR 1.00 %vol per hl + EUR 6.40 per hl; monitors – 14%, masks – 6.3% (but some types – 12%), face shields – 6.5%, protective clothing – from 5% to 12%, safety glasses – 2.9%.[28]

Import by Member States pursuant to the Decision (EU) 2020/491 fostered a conducive environment for the provision by competent authorities in Member States of necessary medicines, medical devices and personal protective equipment, to address shortages in these countries. However, the shortages of goods necessary for combating the COVID-19 pandemic were still reported in Member States, hence the period during which exemption from import duties and VAT could be applied was extended by 31 December 2021.[29]

On 28 October 2020, the Commission put forward a proposal to amend the Council Directive 2006/112/EC of 28 November 2006 (the VAT Directive) in order to adapt various exemptions on vaccines and in vitro diagnostic medical devices so that partial or full temporary VAT exemptions could be simplified and facilitated. Following the amendments to the Directive 2006/112/EC concerning temporary measures for value added tax applicable to COVID-19 vaccines and in vitro diagnostic medical devices, which were made in response to the COVID-19 pandemic, Member States may implement one of the following measures:

- to apply a reduced rate to the supplies of in vitro diagnostic medical devices and services related to COVID-19;
- to grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of in vitro diagnostic medical devices and services related to COVID-19.

Member States can also grant an exemption with deductibility of VAT paid at the preceding stage in respect of the supply of COVID-19 vaccines and services closely related to such vaccines. The exemption may be applied exclusively to the COVID-19 vaccines approved by the Commission or Member States.[30]

The legal framework of UCC does not currently provide any legal basis for deferring the time limits for payment of customs duties or suspension of their recovery due to the present crisis, the suspension of time limits for payment by virtue of force majeure or unforeseeable circumstances (Articles 108 to 114 of UCC). Even in the cases in relation to which the concept of force majeure is explicitly provided for, each incident needs to be exactly evaluated on

[28] TARIC Database, *op. cit.*; COVID-19 – Indicative List of Products Eligible to Be Imported Duty – VAT free, *op. cit*.

[29] Commission Decision (EU) 2021/660 of 19 April 2021 amending Decision (EU) 2020/491 on relief from import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020 (notified under document C(2021) 2693), OJ L 140, 23.04.2021, p. 10.

[30] Under current VAT legislation, Member States may apply a reduced (i.e. not less than 5%) rate of VAT to pharmaceutical products used for health protection, disease prevention and medical purposes.

a case-by-case basis. For these reasons, it is not possible to definitely state that every case linked to the COVID-19 pandemic is a force majeure event. Amending UCC in order to introduce additional flexibility would require a time-consuming legislative procedure. Furthermore, such an amendment could not modify Member States' financial liability in respect of the timely provision of traditional own resources for the EU budget.

Article 108 of UCC sets out the time limits for payment of customs duty amounts. In principle, the said period is not longer than 10 days from giving the debtor a notice of customs debt, unless an appeal against the decision setting a customs debt has been lodged. Each case had to be evaluated separately, taking into account special circumstances pertaining to the operator. Furthermore, the third paragraph of Article 108(1) of UCC provides for other circumstances in which the time limit for payment may be extended. If a sum due has been determined during post-release control, customs authorities may, at the request of the debtor, extend that period by 10 days. Moreover, Article 108(3) refers to three various grounds for suspending the time limits for payment, which are connected with specific situations, namely, where an application for remission is filed, the goods are confiscated, destroyed or abandoned and where customs debt has been incurred. No new solutions were introduced in that respect during the pandemic.[31]

The customs legislation ensures payment facilities and enables customs authorities to take into consideration, on a case-by-case basis, serious economic or social difficulties experienced by the debtor. Consequently, economic operators could make a request to refer to these regulations if such a need arises during the COVID-19 pandemic.[32] It must be noted that it is economic operators that are required to prove the economic and social difficulties.

Ensuring transparency, strengthening co-operation and using technology

Furnishing up-to-date and accurate information is one of the most effective ways of responding to the crisis in question. To this end, UNCTAD (The United Nations Conference on Trade and Development) made a special website, compiling available online repositories that contain current trade-related information, including relevant notifications by WTO members. It also contains a dedicated WCO (World Customs Organisation) web page used for publishing a regularly updated list of countries that adopted temporary export restriction measures applicable

[31] Deloitte, *EU overview on…*, *op. cit.*

[32] *Idem*, *Guide for simplification of customs operations and the application of the favorable customs legislation during the COVID-19 pandemic*, 2020, https://www2.deloitte.com/content/dam/Deloitte/ro/Documents/Guide%20for%20the%20simplification%20of%20customs%20operations%20&%20the%20application%20of%20favorable%20customes%20legislation%20during%20COVID-19%20pandemic.pdf [accessed: 16.09.2021].

to medical products in response to COVID-19. WCO offers a very detailed set of information, guidelines and statements, which are available on its website dedicated to COVID-19 matters.[33] Furthermore, WTO has created a regularly updated database containing not only trade facilitations linked to COVID-19, but also trade restrictions and other documents concerning the global COVID-19 situation in the worldwide trade. This database is an important source of information both for trade practitioners and researchers. Measures employed during the pandemic are notified to WTO and available at its website. WTO runs also an additional website devoted to COVID-19 and provides a short list of answers to frequently asked questions.[34]

Co-operation and coordination can be seen also in the Commission's activities performed against protectionist initiatives undertaken by Member States. The Commission implemented measures at the entire EU's level relatively quickly (in March 2020). They were taken in response to the actions of individual EU Member States, which could cause disturbance not only to the operations of the single European market, but also the "common nature" of the Union's commercial and customs policy.

Having considered the fact that customs authorities are not always able to individually examine large volumes of goods which are imported to and exported from the customs territory and, at the same time, address the need for facilitating legal trade, risk management is of crucial importance to customs control. Member States' customs authorities manage risk based on EU-wide framework that covers common risk criteria and standards, measures employed to exchange information on risk and electronic risk analysis. The key principle is focused on two possibilities: (1) risk assessment in advance and (2) control, if necessary, prior to the release of goods or after they have been released to the EU customs territory. However, there are doubts that risk management framework is not implemented in a uniform manner in all Member States. Furthermore, risk assessment systems of Member States might not include essential information because it is neither gathered nor exchanged among Member States or because Member States do not have EU-wide comparative data that would enable them to interpret their own national data. In order to use data coming from all sources, including in the course of international customs co-operation, in a better manner and to a broader extent, and to facilitate interdependencies in risk management, customs control and activities aimed at combating frauds, data analysis is required at the EU level.[35]

[33] WCO, Covid-19 webpage, https://www.wcoomd.org/en/topics/facilitation/activities-and-programm-es/natural-disaster/coronavirus.aspx [accessed: 10.10.2021].

[34] WTO, Frequently asked questions: The WTO and COVID-19, https://www.wto.org/english/tratop_e/-covid19_e/faqcovid19_e.htm [accessed: 10.10.2021].

[35] European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *Taking the Customs Union to the Next Level: a Plan for Action*, Brussels, 28.09.2020, COM(2020) 581 final, p. 4.

On 28 October 2020, the Commission undertook an important initiative designed to strengthen co-operation and the exchange of information on the clearance of goods at EU borders. A so-called single point of contact for customs authorities is aimed at fostering co-operation and improving coordination among various authorities to facilitate the automated verification of completion of formalities other than customs formalities with respect to goods imported to or exported from the EU customs territory. The EU single window environment will be created by one portal enabling companies to furnish information related to their goods which are either imported to or exported from the EU only once. At present, formalities required at external EU borders often engage various authorities which are responsible for various policy areas, such as health and safety, environment, agriculture, fishery, cultural heritage, market surveillance and product conformity. Consequently, companies have to give information to various authorities, of which every has their own portal and procedures. This is problematic and time-consuming for economic operators and hinders authorities' collaboration aimed at preventing risk, including financial fraud.

The single window environment will streamline the goods clearance processes. Companies/traders will be able to send all information about safety and conformity to the national single window portal. Subsequently, relevant data will be furnished to all competent authorities. The single window aims to: facilitate trade by reducing administrative burdens for companies; increase the effectiveness of goods clearance, while ensuring greater conformity with regulations; promote better digital co-operation and coordination among national authorities in all Member States engaged in goods clearance. Enterprises could benefit due to the possibility of completing not only all border and customs formalities, but also those relating to other purposes – such as health, environment, safety of products and foodstuffs and food security – in one electronic step and due to faster border clearance of imported and exported goods. As regards governmental agencies, such a measure would allow common processing, transfer and exchange of information, as well as better risk assessment. The initiative for the EU single window environment is the first tangible outcome of the action plan adopted recently, which is designed to develop the customs union – an ambitious project to modernise border control within the next ten years. In terms of political guidelines, the said action plan fits in with Ursula von der Leyen's, the President of the Commission, announcement that "the customs union is to be brought to a higher level".[36]

[36] *Ibidem.*

Conclusions

The pandemic has unprecedented and multidimensional repercussions for economic systems both at a national and a global level. One of the most affected areas is international trade, hence one can observe growing interest in commercial and customs policy and its importance to fighting the COVID-19 pandemic. The European Union is a trade power, with more than 850,000 customs declarations being filed each day, hence the operation of customs system, customs administrations and customs procedures is of paramount importance in crisis situations arising, in particular, from the coronavirus pandemic.

Due to the pandemic, the EU has taken actions designed to: facilitate cross-border movement of goods, reduce costs, strengthen co-operation and use cutting-edge technologies. Research conducted so far revealed that actions taken in these four areas did not introduce any major amendments to customs legislation in force, nor did they bring about any substantial changes to the existing instruments of the EU's commercial and customs policy. They were based on the existing customs regulations and solutions provided for exceptional situations, force majeure or other similar events. The actions referred to above can be categorised into the following groups: facilitation to the import of "critical" goods (ambulances or certain types of medical, surgical and laboratory devices, organs and other human or animal tissues); the possibility of extending certain time limits (e.g. the time limit for discharging the special procedure, re-export, temporary storage); the use of paper copies or electronic versions of certain documents; the possibility of filing simplified customs declarations without a prior permit; reducing physical checks to a minimum. Furthermore, in order to reduce the costs of import of personal protective equipment, customs duties and VAT have been abolished. The ultimate beneficiaries of the exemption in question are state organisations, including state authorities, public authorities and other public-law entities, disaster relief agencies (emergency rescue units), as, in fact, they gain access to medical devices and items without paying the costs in the form of import duty and VAT.

As regards facilitating and expediting customs clearance, this can be ensured, among other things, by summary declarations, fast lanes for customs clearance, priority customs clearance for goods which are relevant to fighting the pandemic, preferences for Authorised Economic Operators (AEO). It must be noted that only fast lanes for customs clearance and priority customs clearance of certain goods can be regarded as new solutions, the other instruments were introduced before the outbreak of the pandemic, hence they are not new.

The "single point of contact for customs authorities" was introduced, but it is not an initiative launched in response to the pandemic, it was an element of developing the customs union and bringing it "to a higher level".

Although some measures will be implemented only on a temporary basis during the pandemic, many of them should become a part of day-to-day

operations, whereas risk management should be used as an instrument by every customs administration. Both risk management systems and risk profiling are key factors facilitating trade and ensuring conformity. They also help administrations optimise the use of limited customs resources. The recognition and preferential treatment of AEOs should be a part of the risk profiling process. To become an AEO, a company must undergo a stringent audit process, giving the customs administration a clear picture of its trading activity.

It appears that the pandemic has expedited the digitalisation process. In order to maintain social distancing, customs declarations and related documents had to be sent electronically. What is of relevance is to make sure that the transition to digitalisation in a post-pandemic world does not still rely on obsolete, manual paper-based processes. Striving to ensure full digitalisation should lead to paperless transactions, without the need for printing copies of electronic declarations or putting handwritten signatures instead of digital ones, notifications sent via email, an electronic customs clearance system. If paper documents are still in use, this would not only lead to considerable delays and costs, but also, given the current crisis caused by COVID-19, would pose risk to customs officers and importers/exporters due to the need of unnecessary physical contact.[37]

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[37] S. Pope, *COVID-19 and its impact on Customs and trade*, „WCO News" 2020, No. 92, pp. 40–42.

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Impact of the COVID-19 Pandemic on Customs System and Customs Procedures in the European Union

The COVID-19 pandemic has unprecedented and multidimensional repercussions for economic systems both at a national and a global level. The EU legislation provides for unique instruments designed, among other things, to extend aid to the victims of natural disasters (but not only), which may be utilised in order to respond to an unprecedented health crisis caused by the coronavirus. Customs administrations must play an important role here. Countries which reduced the time and costs of customs clearance at their borders are gaining advantage over those which failed to do so. The crisis sparked off by the COVID-19 pandemic led to questions about the application of customs regulations, customs procedures and customs formalities. Customs clearance should be assigned a high priority when it comes to "critical" goods relating to the protection of human health or life, whereas some imports should be exempt from the customs duty and (national) VAT, if it is possible to demonstrate that such commodities have been given free of charge as a donation. This article aims to describe actions and initiatives associated with customs procedures, which were taken by the EU to combat the pandemic. Measures relating to COVID-19, which concern customs procedures and trade, provide, at the same time, a review of challenges that both Member States and the whole European Union must confront to ensure the availability of goods on the one hand, and to facilitate the movement of goods and guarantee the safety of trade in goods on the other.
Key words: customs system, customs procedures, customs duties, customs clearance

Wpływ pandemii COVID-19 na system celny i procedury celne w Unii Europejskiej

Pandemia COVID-19 wywołała bezprecedensowe i wielowymiarowe reperkusje dla systemów gospodarczych zarówno na poziomie krajowym, jak i globalnym. W prawodawstwie UE dostępne są wyjątkowe narzędzia mające na celu m.in. pomoc ofiarom klęsk żywiołowych (ale nie tylko), które można wykorzystać do stawienia czoła bezprecedensowemu kryzysowi zdrowotnemu spowodowanemu przez koronawirusa. Administracje celne mają tu do odegrania kluczową rolę. Kraje, które zminimalizowały czas i koszty odpraw celnych na granicy, zyskują przewagę nad tymi, które tego nie zrobiły. W wyniku kryzysu wywołanego pandemią COVID-19 pojawiły się pytania dotyczące stosowania przepisów, procedur i formalności celnych. Odprawa celna powinna zostać potraktowana priorytetowo dla towarów „krytycznych" związanych z ochroną zdrowia czy życia ludzi, a niektóre towary importowane powinny być zwolnione z cła i (krajowego) podatku VAT, jeśli udowodni się, że zostały nieodpłatnie przekazane w formie darowizny. Celem artykułu jest charakterystyka działań i inicjatyw związanych z procedurami celnymi podjętych przez UE w ramach walki z pandemią. Środki dotyczące COVID-19, które odnoszą się do procedur celnych i handlu, dają jednocześnie przegląd wyzwań, przed którymi stoją zarówno poszczególne państwa członkowskie UE, jak i cała Unia Europejska, aby zapewnić dostępność towarów przy jednoczesnym ułatwieniu ich przepływu i zapewnieniu bezpieczeństwa obrotu towarowego.
Słowa kluczowe: system celny, procedury celne, cła, odprawa celna