

Chapter 44

Dematerialization in Customs Taxation for Transparency in International Trade

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ABSTRACT

Transparency is a quality that transcends many areas of law and is based on a fundamental principle that transcends the entire legal system and whose scope extends to all public and private actions to which legal relevance can be recognized. In the specific field of taxation in international trade, the importance of transparency has become proportional to the growing complexity of the terms in which cross-border trade in goods takes place. In deed, the more complex the exchanges are, the greater the level of control over them and the greater the degree of transparency required, both as regards the form of control and the specific terms in which transactions are performed. In any case, the requirements and effects of transparency are reflected in a digital context of dematerialization, but not, of course, of automation.

INTRODUCTION

Transactions of goods across borders - in particular those between economic operators of the Member States of the European Union and those of third countries or territories - are subject to a wide range of legal obligations, including tax obligations - which its *raison d'être*, and other extremely important purposes which we will have the opportunity to explore - the promotion of the effective functioning of the single market.

In the specific field of taxation in international trade, the importance of transparency has become proportionate to the growing complexity of the terms in which cross-border trade in goods takes place. That is to say, the more complex the exchanges are, the greater the level of control over them, and the greater the degree of transparency required, both as regards the form of control and the specific terms in which transactions are performed. In any case, the requirements and effects of transparency are reflected in a digital context of dematerialization, but not, of course, of automation. There is a growing international-

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ization of national economies, a dizzying advance of technologies and, in particular, of communications, bringing commerce to a new dimension in which the actions of citizens and companies are globalized.

In this sense, transparency in the taxation of international trade in goods takes on a complex of meanings: on the one hand, it constitutes a right to transparency that assists all economic operators and as a duty on them, through the digitization of their procedures, comply with the customs obligations to which they are attached. It also refers to a right of the Customs Authorities to make it easier to carry out their duties through procedural dematerialization and also as a duty to which they are attached and can not adopt a *modus operandi* other than that resulting from customs legislation and which is directed at facilitating legitimate international trade. In a very relevant but not a developmentally appropriate sense, the freedom of conformity of tax systems within the World Trade Organization should also be shaped by the principle of transparency, with the result that States should describe the type of fiscal measure adopted, its function and objectives, its cost or benefit in terms of tax revenue and its economic evaluation in terms of effectiveness in achieving the stated objectives.

Schematically, the consequential chain in this existing domain is as follows:

Dematerialization → Transparency → Fostering international trade

The Construction of the Legal-Tax Discipline of International Trade

The construction of the legal-tax discipline of international trade is based on an evolutionary process that has been consolidated over the years and has been impacted by the constant changes in the paradigms of the terms in which trade in goods develops. For this reason, this discipline is still under construction, due to the lack of stagnation in the field of international trade, which, although difficult to obtain the “stability” we consider as a necessary quality for the coherence of a tax system, presents the advantage of bringing legal reality closer to reality.

In the context of customs duties, from the eighteenth and nineteenth centuries, there were growing concerns in Europe about the multiplicity of taxes and the complexity of the systems then in force, as well as because “the most basic idea of the European Community is fiscal idea” (Terra & Wattel, 2012, p. 9). Consequently, a process of simplification has begun by eliminating or integrating some European customs systems, initially on a bilateral basis, but gradually extending to countries with geographical, commercial and economic affinities. In 1944 the conditions for the emergence of the Customs Convention within the Benelux Economic Union were met. In 1948 customs duties were abolished in the transactions of goods carried out between the Member States of the Union and a common customs tariff was introduced.

Moreover, alongside the introduction of a single currency in the European area, the creation of a Customs Union is one of the most important historical milestones in the process of European integration, in the sense that it emerged as a solution to political and economic concerns that were made to feel. “Projects for customs unions and other special tariff arrangements between states independent of each other politically are today widespread, and many persons look to them as at least a partial solution for the major economic and political problems in the international field” (Viner, 2014, p. 1). In the words of Schuman (1950), the Customs Union represents one of the most ambitious “concrete achievements”, building a genuine solidarity between the Member States of the European Union, which has contributed to preventing the emergence of conflicts and to promoting better quality of life of the peoples of Europe, for the prosperity and security of the Union (Schuman, 1950). The Customs Union, which represents

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