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**TRADE FACILITATION THROUGH CUSTOMS REFORMS  
OVERVIEW OF POST CLEARANCE AUDIT AS A FACILITATION MEASURE**

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## **1. Background**

### *1.1. Challenge*

A characteristic for Moldovan Customs Services is the high volume of transactions and the impossibility of checking all of them. The old methods of control are incapable of measuring the level of compliance and/or detecting instances of significant violations. To become a modern customs administration, the Moldovan Customs Service has to move forward using Risk Management, Compliance Measurement and Post Clearance Audit (PCA) as the primary means for insuring compliance and thwarting willful violators.

A key element within a system of Risk Management is the ability to measure compliance with the Customs Law. The Customs Post Clearance Audit programs have evolved into a very effective tool for measuring compliance and for detecting errors, omissions and outright fraud.

A customs audit is part of the process of verifying the compliance of a business with customs regulations and other areas of national legislation through an examination of accounts and other records of that business. Where a business is not complying fully with customs requirements, Auditors will bring the matter to the attention of the management of the business and seek to have the issues resolved.

All businesses involved in the import and/or export of goods may be subject to customs audits. The function of an audit is to verify compliance. Where there are reasons to suspect fraud (as opposed to minor errors or inadvertent omissions) the matter is to be referred to the investigation unit.

### *1.2. Polish Experience of Customs Reform*

The recent experience of the Central and Eastern European countries, that have reached a higher level of customs reforms, could be used by the Republic of Moldova as an example of both positive and negative practices of customs reforms implementation.

Related to the Poland's European aspirations, accomplished on 1 May 2004 when Poland joined the European Union, the Polish Government developed a Customs Service Development Strategy, aimed at improving the customs management.

The correct and timely implementation of the Polish Customs Service Development Strategy allowed Poland to get the statute of a trustworthy EU member, able to protect efficiently the community customs territory, collect taxes and meet other requirements expected from the customs administrations of member states.

The implementation of the Customs Service Development Strategy during the pre-accession period helped improve the Polish Customs Service (PCS) work, thus bringing Poland closer to the European Union and leading to the interim completion of the negotiations with the UE in March 2001, and later to the definite completion of the accession negotiations.

In fact, the current state of development of the Polish Customs Service is the outcome of the efforts invested by the Polish Government during the pre-accession period. Poland was expected to meet the following goals:

- approximation of the Polish law to the EU one
- improvement of the professional skills of the PCS staff;
- introduction of a computer-based record keeping system at the PCS.

Visible progresses were registered in the three above-mentioned areas thanks to the implementation of specific measures, aimed at implementing the EU standards.

The steps carried out by Poland during the period between 1999 and 2001 are presented here in order to give us an objective overview of the initial pre-accession activities in the area of Customs Service development.

This pre-accession period could serve as a reference point for the Republic of Moldova and, if taken into account during the development of the Moldovan Customs Service Development Strategy, could help Moldova approximate its customs management standards to the UE ones and establish a proper customs service, in line with the EU requirements. Thus:

- A new Customs Code was approved in 2000 to approximate the Polish customs laws to the UE ones. The new Customs Code provided for simplified customs procedures.
- A Customs Ethics Code was approved. On its basis, new positions were created within the customs service, responsible for coordinating the activity of customs staff. During 1999

and 2000 about half of all customs staff attended various training programs. At the same time, a special system for the assessment of the work of the customs staff was developed and implemented and the customs staff selection system was modified.

- The implementation of various investment programs allowed improving the infrastructure and working environment in some customs units, as well the quality of the services they provided. The customs service was equipped with modern equipment for a better customs control. During the same period three customs laboratories were established.
- The customs administration insisted on deepening the cooperation with the business environment and local public authorities. At the local level a number of cooperation agreements were signed with the purpose of maintaining the contacts between customs offices and trade organizations. An informational service on the waiting time in the customs was launched. It could be accessed on the Customs Service web page and via WAP and SMS services.
- A risk analysis system was introduced on the basis of a newly established database, which helped identify the customs-related crimes and offences, on the one hand, and diminished the waiting time for trustworthy importers, on the other hand.
- A number of customs clearance taxes were abolished in order to meet the EU standards.
- The introduction of the objective-based management in the customs service is an unquestionable achievement.

In 1999-2001 the implementation of the Customs Service Development Strategy was not always in line with the timetable. The deadline was postponed for a number of activities, such as for example the computerization plan, the establishment of a risk management system, and the development of a post clearance audit system. The delays were caused by various factors, from financial to organizational, from decision-making to legislative. During the period between 2002 and 2006 these drawbacks were eliminated and the Polish Customs Service attained all strategic objectives according to the adopted timetable.

The implementation of the Polish Customs Service Strategy has yielded the following results:

- Organizational and functional compatibility with the EU customs services, improved working standards for the customs staff and preparedness for the abolition of the internal border checks with the EU neighboring countries.

- Facilitated external trade with lower administrative expenditures and the introduction of an efficient dialogue of the Customs Service with businesses in order to better understand the needs of the latter and encourage legitimate behavior.
- Efficient collection of customs taxes with the use of modern techniques.
- A customs control based on risk management that helps identify efficiently the customs-related crimes and carry out an important function of social protection.

During 1999 the customs service had 14500 employees, motivated by the increasing number of tasks as a result of the growing number of transactions carried out by Polish traders, paralleled with a streamlined work process and better use of resources. Given the systematic implementation of the customs reforms and the trend to “dematerialize” them, the average number of clearance procedures for individuals decreased in 2001 from about 200 million to 185 million. At the same time, the customs clearance of trucks increased from 4,390,000 in 1998 to 5,441,000 in 2001. In spite of the diminution in the clearance fee, during 1998-2001 the budget proceeds increased from PLN 37.3 million up to PLN 43.6 million. During this period the PCS processed about 5 million single administrative documents on an annual basis. When the small customs posts were eliminated the PCS could channel all its resources and efforts towards complex and large-size controls. During two years and a half the number of border locations and inland terminals diminished from 412 to 344, out of which 148 were located at the border and 197 inland.

The Polish example of customs reforms could be relevant for the Republic of Moldova in terms of its European aspirations.

## **2. Directions for the Reform of the Customs Services in the Republic of Moldova**

Based on the Polish example we can identify the following main directions for the customs reform in the Republic of Moldova.

1. The approximation of the Moldovan legislation to the EU one.
2. Strengthening and implementation of an efficient mechanism of post clearance audit.
3. Human Resources management in the Customs Service of the Republic of Moldova.
4. Improvement of internal control of economic operators during PCA process.
5. Public campaign for dissemination of information about PCA.

### *2.1. The approximation of the Moldovan legislation to the EU one.*

As revealed by the Polish experience, the amendment of the applicable law establishes the proper framework for further implementation of modern customs administration mechanisms.

Thus, the analysis of the compliance of the national customs laws with the EU provisions reveals that the adoption of the Customs Code of the Republic of Moldova in 2003 established the proper legal framework, at the level of organic laws, for the implementation of mechanisms applicable in the EU.

On the basis of the newly approved Customs Code, the Government Decision no.547 was passed on 07 June 2005 on the approval of the Structure, Staffing and Regulations of the Customs Service, that will include the "Risk Analysis and Post Clearance Audit Division", consisting of the "Post Clearance Audit and Customs Obligations Section", "Risk Analysis and Management Section" and "Mobile Teams Section".

The biggest hindrance to the efficient implementation of the PCA is the explicit provision of the Customs Code of the Republic of Moldova, according to which the customs procedures shall be based on physical control of the merchandise.

The Custom Code does not differentiate the Post Clearance Audit function from the general rules of other customs procedures. In this respect, the problem is that the essential laws do not provide a specific approach to the PCA.

In order to implement an efficient and functional mechanism, based on the PCA, some minor changes should be introduced in the general legal framework, the Customs Code in particular, especially with regards to the cancellation of the obligation of physical control of the goods subject to customs clearance.

This amendment represents a change of the working principle of the Customs Service. The proposed change will "dematerialize" the work of the customs bodies and will lead to an efficient implementation of the risk management and PCA systems, as indicated by the Polish experience.

### *2.2. Strengthening and implementation of an efficient mechanism of post clearance audit.*

To assure an efficient implementation of the PCA-related material legal norms it is necessary to develop the procedural norms that would regulate the activity of the customs administration, aimed at implementing the Post Clearance Audit.

This, it is necessary to:

- Define the activity of audited economic units, regardless of their organizational-legal form and form of ownership.
- Define the general and specific terms of the controls that can be carried out during the audit procedure.
- Define the basis for audits.
- Define the competences of the customs body responsible of audit work.
- Establish the control methods and techniques that will be used during the audit procedures.
- Determine the limits of auditors' liability in case of infringement of the legal norms on audit conduct.

The auditor shall be vested with the right to audit any entity or individual that is in possession of the documents or has any information about them in order to establish the authenticity of the submitted acts and to check the compliance of legal entities of natural persons with the customs regulations.

The customs bodies shall develop a procedure that will set objective criteria of the selection of the entities to be audited. At the same time, the customs bodies shall keep strict records of the ways the controls are carried out.

The customs controls of economic units are planned by the "Post Clearance Audit and Customs Obligations Section" on the basis of the information received from the "Risk Analysis and Management Section", information received from other bodies, and proposals from other divisions of the central and regional customs offices. The economic units to be controlled will be selected on the basis of risk assessment results and information received from other sources.

Thus, the economic units with the highest risk level and lowest credibility level will be controlled first. Before starting the audit the customs bodies will analyze the information, appoint the head of

the audit team, train the audit team on the scope and object of the audit, study thoroughly the subject of the audit and the legal papers.

The post clearance audit procedure consists of a set of control methods and operations after the customs clearance and the collection of the control results.

The post clearance audit can be carried out via the following methods and operations:

- control at the customs office – control of the accuracy of customs declarations and other documents submitted by the customs broker or importer that are used as a basis to calculate the customs value, establish the product code, confirm the origin of goods, calculate and pay the customs duties and other documents requested by the customs body, as well the verification of other circumstances related to the compliance with the customs laws;
- documentary verification – is an audit element consisting of the comparison of the data entered into the customs declaration against the data from the documents on the external economic transactions and the relevant data available to the customs service;
- overall verification – this method is used for on-the-site audits (at the office, warehouse, outlet, etc. of the economic unit), when auditors check all documents and additional acts related to economic and financial external transactions and the confirmations of payment of customs duties;
- thematic verification (thematic audit) – verification of a certain type of economic transactions during a certain period of time or some separate elements of the customs declaration;
- repeated verification (audit) – is admitted only if there are identified some cogent circumstances revealing certain infringements and, after the implementation of the relevant measures, a new control is needed or if the previously identified drawbacks and infringements were not corrected.

As a conclusion we can say that it is necessary to have a systemic approach to the PCA in order to develop and approve some mechanisms on the relevant rights, obligations, functions and techniques for a proper implementation of the PCA strategy.

### *2.3. Human Resources management in the Customs Service of the Republic of Moldova.*

The capacity of the Customs Service of the Republic of Moldova to improve the training of customs staff is a decisive factor for the efficient implementation of the PCA strategy.

In this respect, the Customs Service of the Republic of Moldova could benefit from the recent Polish experience, i.e. during the period when Poland implemented and revised continuously the long term training strategy, aimed at setting encouraging and efficient working conditions for the customs staff.

In Poland the human resource management was enhanced through the development of training policies and programs, based on a thorough and complex analysis of the training needs and priorities of customs employees, as well training programs aimed at providing the customs staff with the proper information, skills and attitudes for an efficient work. During the recruitment process special attention is paid to the previous work experience and the academic background of the person, prior to their entry into the Customs Service.

### *2.4. Improvement of internal control of economic operators during PCA process.*

A better and more efficient cooperation between the customs administration and economic units would foster a better knowledge of the customs legislation among economic units and a more correct application of customs procedures, hence fewer irregularities committed by economic units.

For the economic units to exhibit better and more legitimate behavior, they should make use of the following possibilities that the PCA offers: