

The role of customs brokers in facilitating international trade

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Abstract

This article describes changes to the customs broker profession in the European Union (EU) and particularly in Poland as a result of proposed legal reforms. It suggests that customs brokers should have expertise not only in customs-related matters but also in facilitating international trade, supply chains, financing and financial operations, security matters and compliance. The author indicates that, by now, customs brokers should have realised the potential of the legal reforms enabling Authorised Economic Operator (AEO) status to overcome the barriers to providing customs services in other EU Member States. In this regard, the article addresses the challenges to be faced in relation to mutual recognition of qualifications needed to practise as a customs broker in the EU Member States.

1. Introduction

Customs brokers continue to play a significant role in international trade, especially in small and medium-sized enterprises (SMEs). They provide a means of ensuring trade compliance, thereby helping to protect the financial interests of the European Union (EU) and its individual Member States.

Although the tasks of customs brokers have remained unchanged for years, in recent times their role has been subject to constant changes brought about by the rapidly changing regulatory environment, including challenges presented by the electronic customs environment. This article describes the changes being made to the customs broker profession in the EU and in Poland as a result of such legal reforms.

2. The customs brokers' profession in the EU in light of proposed changes to the Union Customs Code (UCC)

In the proposed changes to the Union Customs Code (UCC),¹ Art. 18 UCC provides that any person (both natural and legal persons, or an organisational entity without a legal personality) may appoint a customs representative. The form of representation and the responsibilities of customs brokers (defined by their legal liabilities) are similar to the provisions of the Community Customs Code (CCC).² It is likely that Art. 5(2) CCC which allows a Member State to determine the acceptable form of representation for its customs brokers and execute customs formalities in their respective territories in accordance with the place of establishment, will finally disappear from the UCC's legal provisions, which is considered to be a change for the better. Differences among the formal and legal requirements that customs brokers are required to meet in particular Member States will be retained and, in keeping with the principle of subsidiarity of the EU legislation, they will be subject to the national jurisdiction of Member States. The retention of this principle reflects cultural and administrative differences between Member States, where customs brokerage may or may not be regarded as a licensed profession.³

In some Member States, the profession of a customs broker is or was (for example, in Poland until recently) a state-regulated profession, with entry into a register of customs brokers (such as the one maintained by the Director of the Customs Chamber in Warsaw) being a prerequisite for practising.

Art. 80(1) of the Polish Customs Act⁴ provides that a natural person may be registered who:

1. is resident within the Community
2. has the necessary capacity to perform legal transactions
3. enjoys full civil rights
4. holds at least a secondary school graduation certificate
5. has not been convicted of an economic or fiscal offence or one involving documents or property
6. properly performs the duties of a customs broker in accordance with the code of professional conduct
7. has passed the customs brokers' professional examination before an examination board appointed by the Ministry of Finance or whose licence to practise as a customs broker has been officially recognised (pursuant to separate regulations)
8. has applied for registration as a customs broker no later than two years from the date of passing the exam.⁵

In other states, such as Germany or Sweden, there are no such restrictions.⁶ In this regard, performing the function of a customs broker within the Community is on the one hand subject to a variety of requirements, while on the other hand, attempts are being made to standardise customs services and promote appropriate levels of competence throughout the profession.

For many years, the European profession has been regulated by a uniform European Customs Brokers Code of Conduct developed by CONFIAD,⁷ yet it has not been adopted by all customs brokers. According to earlier proposals, it was planned to be included in the Modernised Community Customs Code Implementation Regulation, but it is hard to say at this point whether this will, in fact, be the case. The Code of Conduct establishes principles, values and rules of conduct, encouraging customs brokers to adopt high ethical standards and to perform their duties to an appropriate standard, thereby protecting the rights of customers and their own livelihood, as well as the financial interests of individual Member States and the EU as a whole.⁸ The European Customs Brokers Code of Conduct seeks to establish ethical rules governing the conduct of the service providers (customs brokers), while the Quality Charter⁹ defines the manner in which services should be provided in order to achieve an appropriate level of quality.

Until 2012, there were two contradictory approaches towards the future development of the customs broker profession within the EU.¹⁰ The first advocated regulation and was represented by CONFIAD, which contains principles regulating customs representation (including those stipulated in the European Customs Brokers Code of Conduct¹¹ and the Quality Charter), as a means of creating ethical standards and providing a high quality of customs services. The other approach was liberal in nature and was represented by CLECAT,¹² which stressed the need for more flexible legal frameworks that facilitate solutions in light of the close ties that have developed between customs representation and the provision of logistical services.

Since 2012, the EU market has developed a new program for unifying skills-related standards for customs brokers. This is to be achieved by means of the European Committee for Standardisation (CEN) procedures,¹³ under the auspices of CLECAT. According to the official work schedule, the program will be finalised by 2016.¹⁴ For the time being, it requires close cooperation among the Member States. In October 2013, a vote was held on the adoption of CEN standards for customs brokers.¹⁵ A two-thirds majority was necessary to enable the further development and creation of a body supervising compliance with CEN standards for customs representatives.¹⁶ It is uncertain at this point whether the project will obtain the required approval and be adopted. However, it should be noted that this would be a significant step towards harmonising the customs broker profession in the EU.

The focus of the EU on the professional competence of customs representatives clearly stresses the role they play in international trade. This featured for the first time in the Modernized Customs Code¹⁷ and was then repeated in the UCC. The latter's provisions also introduce a unified principle allowing customs brokers to provide customs services from their headquarters without the need for their qualifications to be recognised in another Member State provided that the broker is certified as an Authorised Economic Operator (AEO) regarding customs simplifications (AEO-C) or Customs Simplifications/Security and Safety (AEO-F). Subject to this requirement, the broker may provide customs services in other EU Member States on a temporary basis only.¹⁸

Undoubtedly, the services provided by customs brokers currently form part of a broader range of logistical services. This does not mean that there is no place for a customs broker profession. The market for their services certainly exists but the evolution to an e-Customs environment means it is likely to be seriously curtailed in the future and will undergo significant metamorphosis. In 2009, revenue from customs duties in the EU reached 19 billion Euros for the first time, thereby exceeding incomes from VAT (15.3 billion Euros).¹⁹ In 2012, revenue reached 19.1 billion Euros (that is, 15% of the EU budget) and in 2013 it was 18.6 billion Euros (which also accounts for 15%).²⁰ Although customs duties only apply to transactions with third countries and are collected mainly at ports and airports, they still account for a significant portion of the EU's income. Although not as significant a source of revenue as in certain countries (for example, Moldova where customs duties amount to 57% of state revenues²¹), customs duties are still important for the EU and its Member States. According to official figures, 75% of the income from customs duties is transferred to the EU and 25% remains in the state where they are collected.

In the near future, it is expected that the customs environment will be fully computerised, and include centralised customs clearance. This is likely to result in a significant reduction in the number of customs brokers operating in the market. Only top quality specialists will be able to compete and the rest are likely to disappear. Slowly but surely, the e-Customs broker is becoming a reality.

3. Changes to existing legal regulations in Poland: deregulating the customs broker profession

In Poland, the Ministry of Finance is currently overseeing a new bill (widely known as the 'Deregulation Act') facilitating access to professions in the financial, construction and transport sectors.²² This includes access to the professions of tax adviser, chartered auditor, architect, construction engineer, insurance and reinsurance broker, investment adviser and customs broker (and others), all of which have traditionally been regulated professions. The bill requires changes to the applicable legal provisions regulating these professions.

In the case of the customs broker profession, the changes mainly concern Art. 80(1) of the Polish Customs Act. Under the new provisions,²³ a natural person can be registered who:

1. holds Polish citizenship or citizenship of a Member State of the EU, the European Free Trade Agreement (EFTA), a party to the agreement on the European Economic Area (EEA), or the Swiss Confederation
2. has the necessary capacity to perform legal transactions
3. has qualifications or experience in providing customs services to business entities
4. has not been convicted of an offence involving documents, property or an economic or fiscal offence
5. has applied for registration as a customs broker.

As far as access to the customs broker profession is concerned, the amended regulations involve four significant changes to the following:

- extending the citizenship requirements: under existing regulations, the customs broker profession is open to persons who have a permanent place of residence in the European Community (an EU citizen). However, the planned regulations extend that to include citizens of the EFTA states, parties to the agreement on the EEA not being members of the EU (that is, Iceland, Norway and Liechtenstein) and the Swiss Confederation. The extension results directly from agreements between the EU and these states (that is, the Agreement of the European Economic Area and the agreement on the free movement of persons between Switzerland and the EU) which took effect on 1 June 2002 and on 1 April 2006 for Poland.²⁴
- stipulating the level of professional skills and experience in providing customs services to economic entities
- waiving the requirement for the candidates to pass state exams for customs brokers before a commission appointed by the Minister of Finance
- eliminating the element of arbitrariness regarding the registration of customs brokers caused by existing requirements (that is, ‘properly performs the duties of a customs broker in accordance with the code of professional conduct’).

One of the most important aspects of deregulation is that it completely does away with the state examination requirement in favour of recognition of previous qualifications or professional experience. The wisdom of this is questionable since the verification of professional qualifications is a diploma awarded after completing the first or second level of higher education, or a uniform higher education in the fields of legal, administrative, economic or technological sciences that cover the knowledge and competence relating to the provision of customs services to business entities. Looking at this regulation from a practical point of view, it must be said that the majority of law schools in Poland do not teach customs law. Sometimes this subject is added either to courses in international economic law or international financial law, where (on average) one or two lectures or classes are devoted to the EU customs law (in fact, Polish customs law is not dealt with at all). A few law schools offer customs law as an optional subject to their students but this is not the case with the majority of Polish higher education establishments. A similar situation prevails in relation to the economic, administrative or technological subjects taught at higher education institutions.

The next question is whether the verification of knowledge and skills in providing customs services to economic entities will be reliable. In the author’s opinion, it will not be. Will a candidate for the customs broker profession – who has never come across terms such as customs-approved use, origin of goods, customs rating, customs value, limitations of tariffs, tariff and non-tariff measures – be able to assign goods the correct customs treatment? To do so requires highly specialised (rather than basic) knowledge, without which it would be impossible to properly clear goods for customs purposes. In practice, therefore, the regulation outstrips current capabilities and is not backed up with the required training measures.

Some argue that the regulation is likely to create a profession of pseudo-customs brokers in Poland which will adversely affect certain economic participants. They point to a similar situation concerning the development of the Polish forwarder profession. However, this will depend on how quickly regulations on the electronic customs environment will be implemented. Considering that the computerisation of customs transactions is already at an advanced stage, this fear is unlikely to materialise.

It will hardly be a surprise if a completely electronic environment leads to a significant reduction in the number of customs brokers needed to perform customs transactions. Taking the planned changes to the organisation of customs services into the equation (including the liquidation of inefficient customs offices), we may confidently assume that the customs broker profession in Poland is not going to be dominated by ‘pseudo-customs brokers’.

The other way of verifying customs brokers' knowledge, skills and competence by accrediting their experience (at least three years' experience in customs-related matters) is also controversial since the term 'experience in customs-related matters' covers:

- the period during which duties specified in the customs law are performed in a customs authority, or
- the period of specialist training at colleges of higher education during which aspiring customs brokers acquire the knowledge needed to perform their tasks properly, provided that the training was completed at least five years after the date on which application for entry was made.²⁵

Thus, again we have a dual approach to verification: the period of performing duties specified in the customs law in a customs authority or the period of specialist training at a post-secondary college in relation to customs transactions. One solution would be to replace the conjunction 'or' with 'and' as it would link practical and theoretical knowledge and skills. From a practical point of view, a legal loophole has been created for persons wishing to practise as customs brokers but having only secondary education qualifications.

What remains to be discussed is the issue of decisions made by Polish national authorities on the recognition of formal qualifications to practise the profession of a customs broker that are gained in another EU Member State. Such recognition is regulated by the provisions of the Act on the recognition of professional qualifications gained in another EU Member State, but the provisions are not commonly used nor do they seem likely to gain popularity in the near future because the Polish language poses a barrier for customs brokers coming from other EU Member States.²⁶ Since 2004 and to date, that is, since Poland's entry into the EU, there has not been a single instance of a customs broker from another EU Member State who would be willing to provide his or her services in Poland, based on the Polish legal regulations on recognition of their professional qualifications. As far as the provisions of Poland's customs law are concerned, we have become used to this common pattern which is being repeated over and over again: a regulation exists but is not being applied.

Customs broker services, according to the planned regulations of the UCC²⁷ may be provided from the service provider's headquarters, only temporarily, based on:

- AEO status (AEO-C or AEO-F)
- implicitly demonstrating that the provider meets all criteria required for AEO (C or F) status, including compliance with customs and taxation requirements, a satisfactory system of managing commercial and, where appropriate, transport records, proven financial solvency and fulfilment of practical standards regarding professional competence or qualifications directly related to their business activities.²⁸

It is clear that AEO-customs brokers must fulfil these conditions before they can provide customs services as envisaged under the new arrangements. However, there will not be a need to apply to central administrative bodies to have their qualifications verified and, where the required qualifications differ in various Member States, they will not need to undertake retraining or sit examinations. Verification is provided by AEO status, which is acknowledged in all EU Member States.

Coming back to the obligatory requirement of registration as a customs broker, the draft regulation of the Minister of Finance provides that the register for customs brokers can be maintained electronically and that registrations should contain the following information:

- the number and date of the entry
- surnames and given names
- date of birth
- place of residence
- the PESEL (Social Security) number (or the reference and date of decision acknowledging qualifications to perform the duties of a customs broker).

Practically no changes have been made to the registration itself: applications for entry in the register of customs brokers must be submitted in writing to the director of the customs authority. It should include evidence (copies) of qualifications, absence of a criminal record and three years' experience in customs matters.²⁹ Deletion from the register is also unchanged under the draft rules and is justified in the event of death or where the customs broker fails to satisfy the conditions for registration or to fulfil the duties of a customs broker.

Currently, the main challenge confronting customs brokers in Poland, and in the EU in general, is how to stay competitive in the national and EU markets for customs services.

Conclusions

The market for customs brokers in the EU is shrinking owing to the introduction of the electronic customs environment. This suggests that only the best customs brokers will be able to stay in business. Ideally, customs brokers should have expertise not only in customs-related matters but also in facilitating international trade, supply chains, financing and financial operations, security matters and compliance. That said, the customs broker profession is unlikely to decline and disappear any time soon. Although it looks likely to shrink and transform, the profession will be sustained by micro enterprises as well as SMEs. By now, customs brokers should have realised the potential of AEO status to break down the barriers to providing customs services in other EU Member States. For now, services can only be provided on a temporary basis but this may change in the future. Therefore, CONFIAD's claim that '... customs representatives are going to get lost, as Alice in Wonderland, in a world which simply does not exist'³⁰ is somewhat wide of the mark.

References

- 'The Act of 18 March 2008 on the rules of acknowledging professional licenses obtained in the European Union Member States', *Journal of Laws of the Republic of Poland*, vol. 63, item 394.
- CEN Technical Board 2013, 'Competency of customs representatives', Proposal for the creation of a CEN Project Committee, CLECAT, CONFIAD, www.standard.no/Global/PDF/Standardisering%20-%20nye%20prosjekter/Competancy%20for%20custom%20representatives.pdf.
- CONFIAD The Story of a Changing trans-European Identity, CONFIAD: The story of the fight against dogmatic dreamland EU Commission objectives, Commemorative 25th Anniversary address by the President, Dr Fernando Carmo, Gent, 25 May 2007 [copied from material available online].
- 'Customs representation: objectives and experience', paper presented at *Customs representation in the EU: legal context seminar*, 16 November 2012, Brussels [copied from material available online].
- Czyżowicz, W & Gwardzińska, E 2012, 'Customs representation in Poland', *Customs Scientific Journal*, no. 1, pp. 8-18, www.wcoomd.org/en/media/newsroom/2012/may/~/_/media/3D278F3397D04A4FA6E74013855B6177.ashx.
- Draft of 27 September 2012 of the Act on facilitated access to the performance of financial, construction-related and transport-related professions, <http://bip.ms.gov.pl/pl/projekty-aktow-prawnych/>.
- European Customs Brokers Code of Conduct, CONFIAD Pan-European Network [copied from material available online].
- Gwardzińska, E 2012, 'Zmiana tożsamości agentów celnych w Unii Europejskiej – wizja czy rzeczywistość?', ['Change of customs brokers' identity in the European Union: a vision or reality?'], *MPCiP*, no. 4, pp. 154-8.

- Gwardzińska, E 2013, 'Zmiany w przedstawicielstwie celnym w projektowanych przepisach Unijnego Kodeksu Celnego', ['Changes in customs representation in the proposed provisions of the Union Customs Code'], *MPCiP*, no. 6.
- Justification of the act drafted on the facilitated access to the performance of financial, construction-related and transport-related professions, <http://bip.ms.gov.pl/pl/projekty-aktow-prawnych/>.
- Parasie, JM 2009, 'Customs policy of UE&E customs agents', 16 October, Athens.
- Parker, S 2013, 'Customs representation in the EU', CLECAT.
- Planning foreseen for the adoption of the CEN Standards for customs representatives [copied from material online].
- Pogorzelski, P 2013, 'Ułatwienia dla przedsiębiorców wprowadzone w okresie 2012-2013, XIV Kongres Spedytorów pod hasłem: Single Window i deregulacja – lekarstwo na bolączki branży TSL?', ['Facilitations for entrepreneurs introduced in the period 2012-2013'], paper presented at the XIV Forwarders Congress, *The Single Window and Deregulations – a Cure for the TFL Industry's Ailments?*, 14 May 2013, Toruń, Poland.
- Rozporządzenie Rady (EWG) nr 2913/92 z dnia 12 października 1992 r. ustanawiające Wspólnotowy Kodeks Celny (Dz.U. L 302 z 19.10.1992) [Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, (OJ EC L 302, 19.10.1992, p. 1)].
- Rozporządzenie Rady i PE ustanawiający Wspólnotowy Kodeks Celny (Zmodernizowany Kodeks Celny), nr 450/2008, Dz.U. UE L 145 z 4 czerwca 2008 r. [Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), (OJ EU, L 145/1, 4.6.2008)].
- The Act of 19 March 2004 r. The Customs Law, as amended, *Journal of Laws*, no. 68.
- Zografos, G 2012, 'Customs brokers as long term, current and future head players in partnership with authorities at national, pan European and global level', 16 November, Brussels.

Notes

- 1 Gwardzińska 2013, pp. 215-18.
- 2 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, p. 1.
- 3 'Customs representation: objectives and experience', 16 November 2012.
- 4 The Act of 19 March 2004, Customs Law, *Journal of Laws*, no. 68, item 622, as amended.
- 5 Czyżowicz & Gwardzińska 2012, pp. 8-18.
- 6 Parker 2013.
- 7 European Customs Brokers Code of Conduct, CONFIAD Pan European Network. The CONFIAD Pan European Network (Confédération des Agents en Douane), International Federation of Customs Brokers and Customs Representatives, was founded in 1982 as an organisation of the European Customs Brokers, with the purpose of defending and coordinating the professional interests of its members, supporting harmonisation of the legislative, professional and customs regulations at the European level.
- 8 The problem is widely discussed by the author in the 2012 article, 'Change of customs brokers' identity in the European Union: a vision or reality?'
- 9 See note 8.
- 10 See note 3.
- 11 European Customs Brokers Code of Conduct.
- 12 CLECAT was established in 1958 in Antwerp as the 'European Liaison Committee of Common Market Forwarders' [Comité de Liaison Européen des Commissionnaires et Auxiliaires de Transport du Marché Commun (CLECAT)].
- 13 The European Committee for Standardization (CEN) [Comite Europeen de Normalisation] was officially created as an international non-profit association based in Brussels on 30 October 1975. See 'Competency of customs representatives', Proposal for the creation of a CEN Project Committee, CLECAT, CONFIAD.
- 14 Planning foreseen for the adoption of the CEN Standards for customs representatives.

- 15 See note 14.
16 See note 14.
17 Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April.
18 See 'Customs representation: objectives and experience', 16 November 2012.
19 Parasie 2009.
20 Zografos 2012.
21 Zografos 2012.
22 See <http://bip.ms.gov.pl/projektyaktowprawnych/.../download,2225,0.html>.
23 See note 22, Article 20.
24 See <http://bip.ms.gov.pl/projekty-aktow-prawnych/>, p. 50.
25 Pogorzelski 2013.
26 See *Journal of Laws of the Republic of Poland*, no. 63, item 394.
27 More broadly, see Gwardzińska 2013.
28 'Customs representation: objectives and experience', 16 November 2012.
29 Pogorzelski 2013.
30 CONFIAD The Story of a changing trans-European identity 2007.

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