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Evolution of Customs Representation in Poland

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The article discusses the importance and the role of customs representation in the socio-economic life of Poland from the pre-partition times up to nowadays: beginning from the decline of the Polish Nobility's Republic, through times of partitions of Poland, the Second Polish Republic in the interwar period and the post-war Polish People's Republic up to Poland's accession to the European Union, when EU customs legislation was adopted.

Keywords: customs post (office), merchant, customs representation, customs law, customs agent, customs agency

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Introduction

The need to establish an institution of customs representation – as assistance in the form of a service enabling a third party (i.e., a representative) to carry out customs formalities on behalf of a person obliged to carry out customs formalities – has emerged from the daily requirements of business life. This was caused by a number of both socio-economic and legal factors. The most common reason for an entrepreneur – the exporter or importer of goods – to appoint a customs representative was excess of work and the inability to fulfil customs duties in numerous places at the same time as well as the lack of knowledge and skills needed in order to carry out complex customs formalities. The same reasons still apply today. Despite its immense practical economic importance, there is relatively little coverage of this institution in the Polish relevant literature. Essentially, it is difficult to encounter broader studies on the topic apart from two monographs by Gwardzińska (2009, 2018) and her articles or chapters in other books, which discuss this issue solely in the context of customs law and contemporary international trade in goods, and apart from a few articles, for example, by Pochrząszcz (1998), Abdón (2004), Michalski (2007), Polakowski (2016). There is, first and foremost, no analysis of the historical development of the institution of customs representative. In order to understand better the theoretical and practical significance of this institution, its historical evolution should be analysed from the period of the Republic of Nobles to contemporary times.

The concept of representation does not have a uniform legal understanding – compare, for example, the elaborations of Włodyka (1994), Widerski (2018, pp. 39, 48), and Sylwestrzak (2020, pp. 15–30). Without going into a discussion re-

garding doctrines, it should be pointed out that customs regulations introduce a specific form of representation – customs representation – that is appropriate exclusively for customs matters understood in a broad sense. Pursuant to Article 18(1) of the UCC, any person may establish a customs representative. The representation may be direct – where the customs representative acts in the name and on behalf of another person – or indirect – where the customs representative acts in their own name but on behalf of another person.

In this article, the term 'customs representative' will be used with reference to both historical and contemporary understanding of the term and in a broad sense as: any natural or legal person acting on behalf of a person who is being represented for the purpose of carrying out customs formalities. If the term is used in a narrower sense, it will be clearly stated that this is the case.

The institution of customs representation is present in both international and national customs regulations. The general conditions for the use of representation services in relations with the customs authorities are described in the International Convention on the Simplification and Harmonisation of Customs Procedures[1] – which is often referred to as the 'Universal Customs Code' – in Chapter 8 of the Convention, which is entitled 'Relationship between the Customs and Third Parties'. This very chapter (standards 8.1–8.4) indicates that:

- "Persons concerned shall have the choice of transacting business with the Customs either directly or by designating a third party to act on their behalf."
- "National legislation shall set out the conditions under which a person may act for and on behalf of another person in dealing with the Customs and shall lay down the liability of third parties to the Customs for duties and taxes and for any irregularities."
- "The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favourably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party."
- "A person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with the Customs."

However, in many countries, there are different models of detailed regulation of the customs representative acting as a natural person or a legal person. In some states, representatives operate under a license, while in others, it is enough to set up a business in order to operate as a customs representative. Both customs administrations and the business have a different approach to the use of customs representation services – it can be either voluntary or compulsory (cf. WCO Study Report, 2016 and Desiderio, 2007). Solutions concerning the status and level of responsibility of a customs representative as well as the extent to which the principal can be represented in customs procedures or the period of customs representation and the possibility of losing it, etc. also vary and change over time. Depending on the adopted solutions, other names are also used to refer to a customs representative and the most common ones include the 'customs agent,' 'customs agency' or 'customs broker.' These terms may have different meanings, depending on the country, historical period, and the context in which they are used.

In a similar form as we know it today, the institution of a customs representative in Poland appeared well earlier than it is reflected in the current customs regulations, both international and national.

The purpose of this article is to analyse the evolution of the institution of customs representation from the pre-partition to modern times as well as its role in the contemporary international supply chain in the EU and in Poland. The source base for this analysis was mainly legislation, such as Noble Sejms' Instructions; laws and decrees of the

[1] International Convention on the Simplification and Harmonisation of Customs Procedures, including Annex E. 5, concluded in Kyoto on 18 May 1973, Journal of Laws 1980.12.38.

invaders, especially the Russian Empire and the Kingdom of Poland acting within it; and the Polish post-partition legislation – from acts passed during the interwar period, through ones passed by the Polish People's Republic, to the current Polish customs legislation viewed in the context of contemporary international and EU regulations. The relevant literature was also analysed.

1. Customs representation in pre-partition customs regulations

In the pre-partition period, on the Polish land the buyer transporting goods across customs borders was required to make customs declarations in the customs posts (offices) [in Polish: komory celne]. This was regulated by the provisions passed by Sejms, which were called 'Instructions' [in Polish: Instruktarze]. Hand-written or printed Instructions were distributed by subtreasurers [in Polish: podskarbi] at the posts in cities and castles, where customs duties were collected on goods. The Instructions dated 1765 were supposed to be a reprint of the Instructions from 1676, however, they introduced numerous new solutions and regulations.

For the first time, those Instructions introduced compulsory customs declarations: "Goods must be declared and a list or specification of those signed by own hand must be provided to a tax official before examination" (Washko, 1960, p. 141) and compulsory presentation of goods for examination, including: "... all people, vehicles, and carts sent by post ... that carried different packages for their needs and for various under-the-counter merchants and concerned parties, which were given out to them in secret at the posts without paying the royal duties" (Washko, 1960, p. 143).

The attempts to commit customs fraud by avoiding the payment of duties, which are mentioned in these Instructions, were quite common. Moreover, they were linked to customs privileges that were granted to the nobility and clergy as early as in 1661, which finds confirmation in the Instructions from 1765. According to these regulations, 'noble' and 'spiritual' goods imported for own needs and for the needs of the nobility's and clergy's people were, in principle, exempt from duties. This exemption was linked to a declaration – an oath sworn in a customs post by the carrier of goods: "... was he a nobleman carrying his own product, or a foreign product but for own need, or his servant or an employed carrier or merchant, they had to take an oath to prove that they carry goods of their own production or for their own need, if the carrier of goods was a nobleman, or that they carry noble goods, if the carrier was a noble servant or carrier or transporter on commission" (Washko, 1960, p. 143). The customs officer could not require the oath to be repeated at another customs post. As Kuś highlights (2002, p. 174), "such a significant role of the oath in customs proceedings in the pre-partition Poland offered a lot of room for abuse, which indeed very often took place."

The above-mentioned provisions of the Instructions of 1765, which is the last pre-partition act of customs law – apart from resolutions of Sejm Grodzieński of 1793 (Washko, 1960, p. 182 et seq.), paint the picture of the origins of modern customs representation. The owner of customs goods (i.e., goods that had to be declared and offered for customs examination) was not the only party obliged to perform operations, but also their agent – a servant or an employed carrier – was required to perform the same operations as the owner of the goods. On the other hand, the post was a representative of the owner of the goods transported for other people, who was obliged to deliver the goods to the customs office and make a customs declaration (Washko, 1960, p. 142).

2. Customs representation during the partition

With the fall of the Republic of Nobles and the arrival of partition, individual districts of the country (along with their customs regulations) eventually became part of the legal systems of the invaders.

2.1. The Duchy of Warsaw

The Duchy of Warsaw, which emerged in effect of the Napoleonic Wars, was facing serious economic problems throughout the several years of its existence. The small internal market absolutely needed to develop exchanges with other countries. Therefore, the customs policy was an important element of state activity. Contrary to the pre-partition times, it was actively sought to influence international trade with the use of customs instruments as well as administrative bans (cf. Pilarczyk, 2013, p. 77). The Duchy could not pursue a fully independent economic policy, including customs policy, and according to Grochulska (1967, p. 114), "independence in this regard was limited by the interests of France and Saxony." According to the same author (1967, p. 127, p. 150), the actual framework of the protective and prohibitive system of the Duchy was shaped by the orders printed in the Instructions explaining the General Customs Instructions. The Duchy's customs policy was marked by immense chaos and inconsistency, which was impossible not to notice. Customs were imposed mainly based on the Customs Instructions, whose first version was published in 1807. Due to numerous amendments, a new edition was needed, which appeared in 1809. The next and last version of those was released in 1811. The customs regulations applicable in the Duchy of Warsaw stipulated that the merchant was directly obliged to carry out customs formalities. However, the Instructions for customs posts from 1808 specify how consignment of imported goods may take place: "1) Consignment of goods by merchants or their commission agents or carters, (2) consignment of goods that enter the country by post ..." (Grochulska 1967, pp. 154–155). In this provision, the commission agents, carters, and post offices are listed as the representatives of the merchant.

After the Napoleonic Wars, the Congress of Vienna of 1815 put an end to the existence of the Dutchy.

2.2. The Grand Duchy of Poznań and the Republic of Cracow

After Napoleon's fall, the victorious powers and at the same time the partitioning invaders adopted a number of decisions regarding Polish lands by way of resolutions of the Congress of Vienna of 1815. They served as the basis for the establishment of the Kingdom of Poland, the Grand Duchy of Poznań, and the Free, Independent, and Strictly Neutral City of Cracow and its District (the Republic of Cracow).

Throughout the period of the existence of the autonomy of the Grand Duchy of Poznań and the Republic of Cracow, these states did not have their own customs policy or their own tariffs as they were guaranteed freedom of exchange of goods with partners operating within the pre-partition Polish borders from 1772. Transit through these territories was also exempt from customs duties. In practice, however, this commitment was not fulfilled by the invaders.

Cracow was deprived of the right to free trade by the Constitution of 1833 (cf. Washko, 1946, p. 9). Furthermore, Cracow lost its autonomy after the Cracow Uprising. This formally took place through the Convention of Vienna of 15 April 1846 concluded between the invaders (or 'the protectors') when Cracow was incorporated to Austria.

Prussia included the Grand Duchy of Poznań into its customs territory. After the uprisings in the Wielkopolskie District that occurred between 1846 and 1848, the Grand Duchy of Poznań also lost its autonomy. As a political entity, it disappeared when the Prussian Constitution of 5 December 1848 failed to mention its existence.

2.3. The Kingdom of Poland

The situation was different in the Kingdom of Poland, which was established by the decision of the Congress of Vienna in 1815. The Kingdom of Poland formed a personal union with the Russian Empire.[2]

[2] The Constitutional Law of the Kingdom of Poland of 1815.

The Kingdom of Poland had its own customs tariff (although based on the Russian one) that regulated trade in goods with the territories outside the Polish state's pre-partition borders. However, the customs border between the Kingdom of Poland and the Russian Empire was disassembled already in 1819 and a common customs tariff for the Kingdom and Russia was introduced. Soon, in 1822, the customs autonomy of the Kingdom was restored and following diplomatic talks between Russia and the Western partners, especially Prussia, a new tariff for the Kingdom of Poland was adopted (cf. Buczek, 2016, p. 18 et seq.). It survived until 1830, that is, until the November Uprising. After suppression of the November Uprising, the process of unification of Polish legislation with the Russian one began. The customs tariff of 1822 was changed to one that was less favourable for the Polish industry. Eventually, the new customs tariff of the Kingdom of Poland for the trade in goods with the Russian Empire was published in 1834 (Buczek, 2016, p. 63). This situation lasted until 1850 when a new customs tariff was applied and new customs regulations integrated with the customs legislation of the Russian Empire were adopted (Buczek, 2016, p. 100). There were norms governing customs representation within the customs regulations of the Kingdom of Poland just as was the case with those previously applicable on Polish lands as well as within the Russian customs legislation.

The Russian tradition of regulations of the customs representation dates back to the rule of Tsar Piotr I (Lavrik, 2018a, p. 88 et seq.). The regulations survived and evolved until the amendment of the Russian customs law in 1819, that is, until the times when the Kingdom of Poland already existed. This amended document contains a special chapter 'On proxy,' which defines the rights of the representative, the scope, form, and duration of proxy as well as the procedure for its presentation to the customs authorities. This law indicates a special type of proxy to carry out the following customs formalities: making customs declarations and customs clearance and lodging complaints against the decisions of customs authorities (Lavrik, 2018b, p. 505).

Further specification of the merchant-representative relationship in their relations with customs authorities was provided in a decree of the Russian Senate of 1821 on Permission to all States to Accept Proxy to Carry out Customs Formalities from All Merchants Who Have the Right to Foreign Trade Operations. It was important not only to explicitly allow such authorisation but also for it to cover both Russian citizens and foreigners. Eventually, in 1825, by way of decision of the Committee of Ministers of the Russian Empire, the Rulebook on Persons Dealing with Customs was adopted. This act singles out 'proxy for customs procedure' as a special type of proxy. However, it was not possible to grant the representative authorisation to negotiate or trade directly within the framework of this proxy (Lavrik, 2018b, p. 505).

For a long time, the Kingdom of Poland had been lacking its own direct regulations regarding representation in customs matters. The legal possibility of using the services of customs brokers appeared in the customs law of the Kingdom of Poland only in 1850[3] in a bilingual Polish-Russian document: Customs Act for the Kingdom of Poland. The chapter devoted to the customs procedure states that "The party arriving with goods may pay customs duty themselves or through a person of their own choice that cannot be dictated by the customs post" (Article 363). Article 365 states that "the customs authority hands out the customs declaration form to the owner of goods or to their representative." However, Article 446 states that in case "... an item has been damaged and is unfit or harmful to use, it will be destroyed without collecting entry duty in cooperation with the local police under close supervision of the customs post when the owners or their authorised proxies who have been informed about the reasons for the need to destroy the item permit that and sign the permission." Similarly, the standard expressed in Article 447 refers to 'owners of goods or their authorized proxies.'

These stipulations clearly indicate the possibility for merchants to use the services of represent-

[3] Customs Act of the Kingdom of Poland of 1850.

atives ('proxies authorised in customs matters') in their relations with customs authorities. The choice of such representatives was a voluntary decision of the principal and could not be imposed by the customs authorities. Furthermore, apart from making customs declarations, the scope of the services provided by the representative could also include payment of customs duties and other operations arising from the customs authorities' decisions.

The above regulations had only remained in force for less than two decades due to the fact that through various changes, such as the development of the processing industry both in the Kingdom of Poland and in Russia as well as the dynamic development of the communication infrastructure, especially the railways, the Kingdom was continually subject to merging with the territory of Russia. As a consequence, consolidation and unification of the customs legislation of the Kingdom of Poland with the Russian one was taking place. Eventually, the process of liquidation of the customs legislation of the Kingdom of Poland was completed in 1868. In that year, pursuant to Article 2 of the Decree of the Legislative Committee in the Kingdom of Poland in Warsaw on the Introduction of the Tsar Customs Legislation in the Kingdom of Poland of 7 (19) June 1868, the order of Aleksander II annulled the customs law issued solely for the Kingdom of Poland in 1850.[4] In accordance with the Decree specified above, "all administrative offices and courts in the Kingdom should follow the regulations provided in the Customs Act of the Empire issued in 1857 when dealing with customs issues."[5] That Decision entered into force in October 1868.

The main institutions within the customs procedure – including the customs representation – in Russian customs law of 1857 were similar to the solutions provided for in the customs law of the Kingdom of Poland; the institution of representation (for customs declaration of goods by their owner or his authorised representative) was included in Article 689. An illiterate person could entrust another person of their choice to fill out the customs declaration (Article 657) and in some cases the customs office fulfilled the customs declaration on their own (Article 658).

The commercial law of 1903[6] and customs law of 1904 and 1910 also contained provisions on customs representation.

In the commercial law of 1903 (Articles 47 to 54), the duties of the customs representative were defined to a quite detailed extent. The customs representative was responsible, among other things, for:

- submitting and signing customs declarations for goods imported from abroad or released abroad;
- customs clearance of imported goods addressed to the principal or goods dispatched on behalf of the principal;
- accepting goods from the customs office;
- making declarations for customs procedures, familiarising themselves with decisions and lodging appeals against them, and submitting petitions;
- writing signatures and offering guarantees required by the customs legislation regarding transit, storage, and transport of foreign goods to a customs warehouse.

According to commercial law of 1903, representation for the purposes of customs had to be prepared in a specific format (Article 51) and legally certified (Article 47). The customs authorities were obliged to verify compliance with the scope of authorisation granted to the representatives (Article 53). Authorisations were submitted to the customs offices and registered in a special book. In accordance with Article 49, any person "irrespective of their status or rank, both Russian citizens and foreigners, can have a representative for customs matters to be carried out in customs offices. Cus-

[4] Order for the approval of the Customs Act of the Empire in the Kingdom of Poland. 7(19) June 1868, Journal of Laws of the Kingdom of Poland, T.68., p. 315, Article 2.

[5] Code of Laws of the Russian Empire, Issue of 1857, Vol. 6. Customs Regulations. Saint Petersburg, 1857, in Russian.

[6] Commercial law of 1903 Vol. 11, Part 2, in Russian.

toms officers, due to the conflict of interest, did not enjoy this right. This prohibition is contained *expressis verbis* in Article 82 of the Customs Act of 1904. On the basis of this provision, transactions with merchants and acceptance of customs representatives or customs commissions were prohibited" (Lavrik, 2018b, pp. 505–506). Persons who had customs representation could have it taken away in situations provided for in customs law. These were situations concerned with abuse committed in certain customs procedures. Article 1097 of the Customs Act of 1904 indicates that shippers, commission agents, and commercial agents may be temporarily deprived of the right to use customs representation for a period of one to six months or permanently for intentional multiple provision of false information regarding the quality or quantity of goods to customs authorities, intentional infringing of customs regulations when submitting intentionally erroneous invoices in connection with customs clearance of the goods, or following instructions arising from the representation in bad faith (Lavrik, 2018b, p. 506).

Notaries played an important role as far as representation is concerned, since in the course of their ordinary notarial activities they served as the main guarantor of protection of the merchants' private interests. Owing to the notaries, the legal mechanism of commercial and customs representation functioned relatively well. In preparation of the authorisation, the notary was obliged to verify the identity of the authorised party and their legal capacity, certify the authenticity of the principal's signature as well as the accuracy of the copies, and verify entrance of the authorisation into a register. The notaries closely followed the procedures for issuing authorisations, which ensured legality of business carried out through the agency of customs representatives.

Further development of the customs legislation of Russia (as well as other invaders) was brought to a halt by World War I. Its outcomes led to the liberation of Poland from the invaders' grip and initiated the establishment of a national and autonomous customs legislation, including customs tariffs, though taking into consideration the achievements of pre-war, mainly Russian, customs legislation.

3. Customs representation in Polish customs legislation in the interwar period

Since Poland regained independence in 1918 after 123 years of partition, the state needed to develop its own national legislation, including customs legislation. The new state that was composed of the Polish constituents of the invaders' states – which varied both in terms of socio-political and economic development and had different legal systems, including customs regulations – had to make an effort to harmonise all of these. Economic protection took priority, especially tariff protection as the most transparent solution easy to use by both business and customs offices.

The emerging state inherited several tariffs from the invaders. As indicated by Krzywicki (1928, p. 6) (one of the co-creators of the Polish customs policy back then as well as of the first Polish autonomous customs tariff), the post-partition tariffs were "simultaneously applied along different sections of the customs border," which "created a situation that was unthinkable in the long term; there were distinct rules applicable on each section of the customs border along with various, often contradictory, bans and customs rates producing reverse effects ...." In such a situation, as the author points out, "it was necessary to strive to unify customs legislation at all costs and postpone adaptation of this legislation to the country's economic needs until later. That was the path that the Polish government followed when on 26 May 1919 the Council of Ministers authorised the Minister of Treasury to adopt the last autonomous Russian tariff applicable before the war (in 1903) throughout the whole customs territory of the Republic of Poland" (Krzywicki, 1928, p. 6). The reason for its adoption was – to further quote Krzywicki (1928, p. 6) – "... that the largest and most industrialised district of Poland had adapted to the Russian tariff. Besides, it was the most protective (as regards

the industry) tariff and it seemed that the industry of reborn Poland, which was rebuilding from ruins left by the war, would find the best protection against foreign competition in this tariff."

Several important acts of customs law entered into force over the year 1920. The document Regulation of the Ministers of Treasury as well as Industry and Trade of 4 November 1919 on Customs Tariff[7] established a new Polish customs tariff and abolished all the tariffs of the invaders, while maintaining their rules on penalties for breach of customs regulations (cf. section 17). In the implementing rules[8] to that Regulation, paragraph 7 entitled 'declaration of goods' stipulates, among other things, that "the customs declaration is to be submitted by the person entitled to control goods." The person entitled to control is deemed to be "... the holder of the goods or the person who proves they have the right to control the goods by way of presenting a railway consignment note, a waybill, a sea waybill, a warehouse note or a valid assignment." There is, therefore, no reference to customs representation in neither of the documents in question. This matter was covered in the next two acts of law.

In the Regulation of the Minister of Railways of 26 January 1920 on Regulations of Railway Customs Agencies, it was decided (in section 1) that "where needed, the Ministry of Railways establishes railway agencies at customs offices at border and internal stations, which will serve railway offices to communicate with customs offices in all matters regarding carrying out any customs formalities related to import, export, and transit." This document regulated the detailed scope of activity of the railway customs agencies. It stipulates that in listed cases the agencies were obliged – in lieu of the parties – to carry out any customs, excise, policy, or sanitation related formalities as well as consignment operations related to customs examination of goods and luggage during their transport and at their arrival in their destination (section 2).

In relations with customs offices, any matter could only be dealt with by officers of railway customs agencies (as in section 3) and at stations with no railway customs agencies, these operations had to be carried out by railway officers authorised by the State Railway Directorates. Prior to any operations within the framework of relations with a customs office, such persons took the same oath as tax officers (section 14).

The customs agency was managed by a manager and, in his absence, by his deputy (§ 15). According to the stipulations of section 17, the railway customs agency was reporting directly to the Department of Tariff and Transport of the relevant Directorate and only an official that had been performing the duties of a customs agent for some time could be appointed as the manager of a customs agency. Any officer that had completed a customs course or passed an examination before the qualifying board, which was proof of their knowledge on customs and railway regulations as well as on application of customs tariffs to goods and general knowledge of commodities, could be appointed a customs agent. The examination board was composed of the representatives of the tax authorities and the Railway Directorate. However, these requirements did not apply to persons who had been managers or agents in railway agencies in one of the former partitions.

By the end of 1920, the Regulation of the Minister of Treasury on Allowing Dispatch Enterprises to Act as Agents Carrying out Customs Formalities entered into force. The act provided for a number of requirements that had to be met in order to obtain a special permit from the Ministry of Treasury allowing a dispatch enterprise to carry out activity consisting in professional agency in performing customs formalities. Entrepreneurs conducing such an activity both as natural persons and companies could become agents.

The permit could only be issued to Polish citizens of age and good repute based on their applications. The application had to contain, among

[7] Regulation of the Ministers of Treasury as well as Industry and Trade of 4 November 1919 on Customs Tariff, Journal of Laws of 1919, No. 95, item 510.

[8] Implementing provision to the Customs Tariff Regulation of 4 November 1919, Journal of Laws of 1919, No. 95, item 511.

others, "proof of skill acquired through at least five years of practice in cooperation at merchant houses usually dealing with consignment and dispatch" – Article 2(5c).

In dispatch enterprises, customs formalities could only be carried out by their authorised representatives on the basis of a permission issued by a customs office. In accordance with Article 12, a proxy should:

- be a Polish citizen of age and good repute and
- receive at least secondary state education.

The latter condition did not have to be met as long as the person could prove their 'skill acquired through at least five years of experience in consignment-dispatch houses.' Similar criteria could be applied to former state customs officers and former officers of railway customs agencies. The Ministry of Treasury granted authorisation for their activity as customs representatives. However, such authorisation could be obtained no later than within three years following termination of service (Article 12). Such authorisations were valid for three years and could be renewed (Article 13). Authorisations – both for dispatch enterprises and representatives – could be withdrawn in special cases of infringement of the law, regardless of initiating criminal proceedings (Article 14).

Clearly, the requirements described above are similar to some of the requirements for modern customs agents and agencies, especially those provided for in the Customs Law of 1989 and the Customs Code of 1997.

The last in a series of customs acts of law issued in 1920 was the Regulation of the Minister of Treasury of 13 December 1920 on Customs Procedure, which contained extensive provisions on customs procedures for import, export, transit, and transfer of goods as well as movement of travellers, conditional clearance, customs warehouses, etc.

The process of shaping the Polish customs legislation during the interwar period ended with the adoption of the Regulation of the President of the Republic of Poland of 27 October 1933 on Customs Law. Among others, this act defines the basic standards for the institution of customs representation. Issues concerning customs agents, customs agencies, and customs warehouses in the Customs Law of 1933 and in the implementing rules for this Law were discussed by Woźniczko (1999, pp. 139–140).

In accordance with Article 37, a customs declaration could only be submitted by a party entitled to control goods, that is, a person who had the goods in direct control or a person who had documented their right to control the goods, whereas the party entitled to control the goods could authorise the following persons to submit a customs declaration: (a) a customs agent or a customs agency; (b) a permanent employee, if the entitled party conducted a business that the goods were intended for or exported by; (c) another person, if the goods were not intended for trade. The party entitled to control the goods had to obtain a permit from the customs office for their employee to carry out customs formalities on behalf of them. The customs office could withdraw the permit at its discretion.

The rights and obligations of customs agents were described in Article 38(1-7). A person who wished to carry out professionally or gainfully customs formalities related to clearance at customs offices on behalf of persons entitled to control goods had to obtain a separate concession. A person who obtained the concession was a customs agent. The concession was issued for a limited period by the Minister of Treasury at his discretion under the conditions set by him. The Minister of Treasury could suspend or withdraw the concession in the event of discovery of abuse committed by a customs agent or their representatives (or in case of participation in the abuse) or in the event of activity of the customs agent or their representatives that was harmful to the State Treasury. The agent needed a separate concession in order to set up a branch at another customs office.

Customs agents could carry out customs formalities without presenting a written order from the person entitled to control goods. On authorisation of the relevant customs office, they could

also delegate their tasks to their permanent employees. The customs office could withdraw authorisation granted to the employees at its discretion. Customs agents' offices as well as their books, registers, and documents were subject to control by the customs authorities. Customs agents could not charge higher fees for customs formalities and dispatch operations larger than the maximum rates approved by the Minister of Treasury.

Article 39 was devoted to customs agencies. In accordance with section 1 of that Article, public enterprises carrying out transport operations across a customs border were required – at the customs authorities' request – to maintain customs agencies at the customs offices, which were appointed in order to carry out customs and other formalities in lieu of persons authorised to control goods. Pursuant to section 2 of that Article, customs agencies were able to operate and carry out customs formalities either as authorised by the person entitled to control goods or *ex officio* without their authorisation, however, the scope of the agency's activities was determined by separate provisions issued by competent ministers in consultation with the Minister of Treasury. Finally, section 3 of Article 39 states that "in order for transport enterprises to carry out customs formalities not on their own behalf and not by their employees, they need to obtain a permit from the Minister of the Treasury, which is granted in accordance with the provisions of Article 38."

In the first chapter – General Provisions – of the first part – Customs Procedure; in Article 35(2), the carrier was required to make a substitute customs declaration in the absence of the sender's customs declaration, whereas – in accordance with Article 36(5) – the management of a customs warehouse was required to draw up such a document, if it had not been submitted on time by the owner of goods. It follows from these provisions that both the carrier and the management of the customs warehouse were representatives *ex officio*.

Only later did the regulations adopted during the period of systemic transformation refer to the pre-war solutions for customs representation.

4. Customs representation in the regulations of the Polish People's Republic

In the first years after the war, several acts of law concerning customs matters were drawn up, such as the Decree of the Minister of Treasury of 16 May 1949 on Deference of Payment of Customs Duties and Other Charges on Goods Declared for Customs Clearance by Customs Agencies of the Polish State Railways, the Decree of 26 October 1950 on Tax Liabilities – which also covered customs duties – and the Act of 14 February 1952 on the Regime and Scope of Activity of Customs Administration. On entry of the latter Act into force, two Articles of Customs Law of 1933 expired – Article 6 regarding customs duties management and Article 44 on separate payments for some operations. the pre-war Customs Law of 1933 as a whole expired no sooner than on 1 March 1962 when the Act of 14 July 1961 on Customs Law entered into force. In this short – just 5-page long – legal Act, there was a chapter on Declaration of Goods for Customs Clearance, Transfer of Customs Goods which briefly regulated customs representation.

Article 32 of that Act states that "public undertakings that carry goods across the state border and dispatch enterprises are obliged to carry out clearance operations and customs formalities at the request of the customs administration."

Pursuant to Article 33(1), the customs goods could be declared for clearance:

- by a person who owned the goods or a person who had demonstrated documents proving they can control the goods (a party);
- by a public undertaking carrying goods across the state border or a dispatch enterprise authorised by the party and by a shipbroker (or a brokerage firm) authorised by the master of the vessel;
- by a party's representative other than the ones referred to in point 2 – in special cases provided for in the implementing rules.

According to the stipulations of Article 33(2), "customs goods not declared for clearance by the

party or its representative will be declared *ex officio* by the carrier or, if the goods have been placed in a customs warehouse, by the management of the warehouse. The *ex officio* agent is not required to present a permit for import or export of the goods."

The implementing rules, that is, the Regulation of the Minister of Foreign Trade of 17 February 1962 on Customs Control and Customs Procedure, clarifies – cf. section 26(1)(3) – that if goods are declared for customs clearance as authorised by the party, public transport and dispatch enterprises involved in the customs procedure will be required to carry out all the operations that the party is obliged to, in particular to supply documents needed for customs proceedings, pay customs duties, and pick up the goods following customs clearance. Moreover, such enterprises were expected to inform the customs office about the names of the employees delegated to take part in the customs procedure.

In conclusion, the Customs Law of 1961 maintained the possibility of using representation in customs proceedings, however, only public transport and dispatch enterprises were permitted to operate on authorisation of the parties. The carrier and the customs warehouse management were operating *ex officio*.

The Customs Law of 1961 remained in force until 1 July 1975 when the Act of 26 March 1975 on Customs Law entered into force. This Act, which was linked to the period of functioning of a developed system of centrally planned economy, though with more and more elements of a market economy (excluding in crafts and individual agriculture), was the one to clearly confirm state monopoly on international trade in goods. This is reflected in Article 3 that provides for a legal separation between the so-called 'commercial trade in goods with the abroad' and 'non-commercial trade in goods with the abroad.' The meaning of these categories was a denial of their substance because, as defined in section 1 of that Article, "commercial trade in goods with the abroad is the import of goods from abroad and their export abroad performed by entities of socialised economy or by persons who are entities of non-socialised economy – as defined by the Minister for Foreign Trade and Maritime Affairs – in order to pursue national plans for the development of foreign trade." The definition of non-commercial trade was provided in section 2: "Trade in goods with the abroad carried out in other cases or by entities and persons other than the ones specified in section 1 is considered non-commercial trade in goods with the abroad."

Thus, in practice, international trade carried out through the Council for Cooperation and Economic Assistance within the framework of multi-annual trade plans (at first based on clearing settlements and then on the so-called rolling prices) was barter rather than free-market trade. It was the private business (including companies with the foreign capital – the so-called Polish-foreign companies), which was making its first tentative step at that time, and the private trade by natural persons (despite various obstacles – from the ones related to passport to those concerned with foreign currencies) that traded under traditional market conditions.

As far as customs representation is concerned, the stipulations of the Customs Law of 1961 were in principle repeated in the Customs Law of 1975 in Articles 33, 34, and 42. They are specified in the implementing act, that is, the Regulation of the Minister for Foreign Trade and Maritime Affairs of 25 June 1975 on Customs Controls and Customs Procedure.

Public transport and dispatch enterprises carrying out transport operations across the border as well as the management of sea, river, and air ports were required to participate in the customs procedure. Such enterprises were obliged, among others, to declare *ex officio* goods for clearance and perform the obligations that the person entitled to control goods (i.e., holding them or having documented their right to control them) was required to fulfil in the event of goods being declared for customs clearance on authorisation: that is, performance of all operations required from the person declaring goods, especially supply of documents needed for customs proceedings, payment of customs duties, and picking up goods after cus-

toms clearance. Declaration of goods for customs clearance *ex officio* did not deprive the person entitled to control them of the right to take part in any further proceedings. In consultation with the customs office, the enterprises were obliged to appoint employees authorised to declare goods for customs clearance, with the exception of the special state enterprise that had monopoly on postal services at that time: Polska Poczta Telegraf i Telefon (cf. sections 24 to 25 of the Regulation).

Section 26(1) lists persons entitled to declare goods for customs clearance separately for import and export of goods; in commercial trade in goods with the abroad – section 26(2) – a person entitled to declare goods for clearance was a company dealing with foreign trade or another entity of socialised economy or a person that was a non-socialised economic entity as defined by the Minister for Foreign Trade and Maritime Affairs, if they proved their right to control the goods. For the purpose of declaring goods for customs clearance, the persons referred to in section 26 could authorise:

- a public transport and dispatch enterprise carrying goods across the border or an enterprise either exporting or receiving imported goods – in commercial trade in goods with the abroad;
- any person – in non-commercial trade in goods with the abroad (cf. section 27).

In the above-mentioned regulations closely linked to state monopoly on international trade in goods, it is difficult to discuss the existence of customs representation as it is understood today. The entire international trade in goods, which in fact constituted nearly 100 per cent of international trade in goods of Poland back then (apart from the so-called non-commercial trade), was serviced in terms of customs, transport, dispatch, and financially, etc. by state economic entities, that is, the so-called centres for foreign trade or foreign trade offices such as Animex, Centromor, Ciech, Coopexim, Elektrim, and Navimor.

The situation changed radically but not sooner than in the late 1980s when the system transformation began. Revision of the economic strategy and commencement of a shift from a centrally-planned economy to a market economy (although formally called the 'social market economy' in Article 20 of the Constitution of the Republic of Poland of 1997) had led to the adoption of several important acts of law between 1988 and 1989. The changes were initiated by the government of M.F. Rakowski with the Programme for Consolidation of the National Economy. Within the framework of the Programme, among others, the Act of 23 December 1988 on Economic Activity was passed. It abolished state monopoly on foreign trade in Article 53(13), which allowed for rapid development of international trade in goods by individuals and small businesses.

5. Customs representation in the customs law of the period of systemic transformation

Further liberalization of economic relations, including international trade in goods with the abroad, had already been linked to the so-called Balcerowicz Plan. In 1989, the Sejm adopted another set of laws that were supposed to lead to the establishment of market economic relations in our country and allow free activity in terms of international trade. One of these laws was the Act of 28 December 1989 on Customs Law that introduced uniform rules of customs procedure for all economic operators.

Following the abolition of state monopoly on foreign trade, a large number of export and import companies emerged, which needed assistance with complex customs procedures. Customs agencies served this role. As soon as in Customs Law of 1989, there was a stipulation obliging carriers or dispatch enterprises carrying customs goods to set up and maintain – at the request of customs authorities – customs agencies at specified customs offices, which were delegated to carry out customs formalities as commissioned by entities trading in goods with the abroad – Article 74(1). Several months later, the Customs Law of 1989

was supplemented by, inter alia, Chapter 8a that was completely devoted to customs agencies and included a definition of a customs agency. In accordance with Article 2(17) of the Customs Law of 1989, a customs agency was a natural person, a legal person, or an organisational unit without legal personality that obtained a permit from the President of the General Customs Office (GCO) to act before the director of a customs office on behalf of a party trading in goods with the abroad as commissioned and authorised by that party. The conditions for the operation of a customs agency were set out in Chapter 8a (Articles 116 to 118f). The customs agency was authorised to:

- lodge security on property;
- prepare documents necessary for customs clearance and submit a customs declaration;
- examine and take samples of goods before submission of a customs declaration;
- pay customs duties;
- pick up goods after customs clearance;
- submit other applications provided for in the act.

In order to operate, an agency had to obtain a permit from the President of the GCO who could grant it to a natural person, legal person or an organisational unit without legal personality that had a place of residence on the territory of the Republic of Poland and pursued no other economic activity except for transport or dispatch, and was able to offer appropriate conditions for a customs agency to operate (Judgment of the Supreme Administrative Court of 15 February 1992, VSA 1755/92 after Chromicki, 1997, pp. 98–99). Additionally, it was required to lodge security to cover liability for the agency's operations. Details regarding lodging of security were laid down in the Regulation of the Minister for Foreign Economic Cooperation of 12 December 1991 on the Type and Amount of Security for Liability for a Customs Agency's Operations. In order to establish and run a customs warehouse, it was necessary to obtain approval of the director of a customs office.

A customs agency was obliged to ensure that its operations are performed by persons with no criminal record of an offense committed in order to gain financial benefits and having qualifications confirmed with an exam passed before an examination board. The examination board was appointed and conducted exams for persons interested in carrying out the tasks of a customs agency based on the Regulation of the Minister for Foreign Economic Cooperation of 12 December 1991 on the Method of Appointing of an Examination Board and Conducting a Qualifying Exam for the Right to Perform the Duties of a Customs Agency and Examination Fees. The examination board was appointed by the President of the GCO. Having passed the (paid) qualifying exam, the successful candidate would obtain an appropriate certificate. The records of certificates were kept by the GCO and should the person who passed the exam undertake no work within the scope of activity of a customs agency within three years, they would be required to retake the exam. However, Customs Law of 1989 did not contain the term 'customs agent.'

On 1 July 1997, the Customs Law was replaced by the Customs Code that devoted quite a considerable amount of attention to customs representation (Title VIII 'Customs Representation'). The Customs Code did not define explicitly a customs agency or a customs agent, but the provisions of the Code made clear the characteristics of both the customs agency and the customs agent as their activities and role in customs representation were described in detail.

The Customs Code – Article 253(1) – distinguished between two types of representation: direct, when the representative acted in the name and on behalf of another person and indirect, when the representative acted in their own name but on behalf of another person. More on the topic in Prusak, 2000, pp. 1011–1014.

If the type or quantity of goods subject to customs procedure indicated that the goods were intended for business purposes, the direct representative of the person could only be an employee of that person, a customs agent, or a lawyer. As a result of the amendment of the Customs Code, this list was supplemented by a legal adviser and

a tax adviser,[9] whereas only a customs agency could act as an indirect representative of a person. In other cases, a person's representative could be a customs agency as a direct or an indirect representative or a natural person with full legal capacity as a direct representative – Article 253(2).

Activity of a customs agency could be conducted by a national who did not carry out any other business activity except for transport, dispatch, or running a public customs warehouse (Article 259). To run a customs agency, it was necessary to obtain a concession and to lodge a guarantee deposit – Article 291(1). The scope of activity of a customs agency under the Customs Code – Article 256(1) – remained practically the same as the one provided for in the Customs Law of 1989, with some stipulations made more precise. More about agencies in Hanclich (2000).

An authorised employee of a customs agency or a natural person running a customs agency who was entered on the list of customs agents could make operations before customs authorities on behalf of a customs agency – Article 256(2). Article 257 lists the conditions for entry on the list of customs agents, including the requirement to pass an exam for a customs agent before an examination board appointed by the Minister responsible for public finances.

Regulations of the Minister of Finance detailed other matters regarding customs agencies, among others, operating conditions, other permissible activities, guarantee deposits, records of documents subject to customs control, and details concerning the qualifying exam for a customs agent as well as entry on the list of customs agents.[10]

The Customs Code was amended several times. The most important changes that liberalised the activity of customs agencies included: abolition of the requirement to obtain a concession; allowing the Director of a Customs Chamber to grant a customs agency permission to use the simplified procedure; opting out of defining a close catalogue of other activities permissible in case of running an agency. The first two amendments were introduced in 2001[11] and the last one in 2003, when customs agencies were granted permission to run other economic activities – besides the one specified in Article 259 of the Customs Code – excluding, however, activities involving trade in goods with the abroad for commercial purposes.[12] The Customs Code was repealed at Poland's accession to the EU.

6. Customs representation in the period of Poland's membership in the European Union

Since Poland's accession to the EU (on 1 May 2004), Poland has applied the EU and Polish customs law, which is complementary to the EU law. In particular, the EU customs regulations cover the rules governing customs representation. The Community Customs Code[13] (CCC), which was applicable from 1 January 1994 to 30 April 2016, was the basic legal act in the European Union as far as customs regulations are concerned.

In accordance with Article 5(1) of the CCC, any person had the right to act through a representative before the customs authorities in order to carry out all the operations and formalities provided for in the customs legislation. The term 'person'

[9] Cf. Article 1(62) of the Act of 23 April 2003 Amending the Customs Code and the Customs Service Act, Journal of Laws of 2003, No. 120, item 1122.

[10] Regulation of the Minister of Finance of 10 December 1997 on Customs Agencies and Customs Agents, Journal of Laws 1997 No. 154, item 1008 and Regulation of the Minister of Finance of 9 March 2001 on Customs Agencies and Customs Agents, Journal of Laws 2001 No. 19, item 232, section 23.

[11] Cf. Article 1(26b, 72, 75, 78, 84, 85) of the Act of 22 December 2000 Amending the Customs Code and the Act on Value Added Tax and Excise Duty, Journal of Laws of 2001, No. 12, item 92.

[12] Regulation of the Minister of Finance of 11 August 2003 Amending the Regulation on Customs Agencies and Customs Agents, Journal of Laws of 2003, No. 146, item 1417.

[13] Council Regulation (EEC) No. 2913/92 of 12 October 1992 Establishing the Community Customs Code.

means a natural or legal person or an association of persons without legal personality recognised as capable of taking legal action, if the applicable provisions of the law provide for such a possibility – Article 4(1) of the CCC.

Article 5(2) distinguished between two types of representation: direct, when the representative acts in the name and on behalf of another person and indirect, when the representative acts in their own name but on behalf of another person. In addition, Member States could reserve the right to have customs declarations made by a direct or indirect representative on their territory, so that the representative would be a customs agent operating on the territory of that Member State.

In 2008, the Modernised Community Customs Code (MCCC) was adopted,[14] which stipulated that every person still had the right to appoint a representative in their dealings with the customs authorities, but it was no longer possible to limit this right to representation under the law established by one of the Member States. Furthermore, a customs representative having the status of an authorised economic operator has been granted the right to provide their services in a Member State other than the one they were established in. The MCCC entered into force 20 days after its publication in the Official Journal of the European Union, but it could not be applied in practice because no implementing provisions were adopted. It proved to be an unenforceable act of the EU law and so the CCC of 1992 was applied in practice until 1 May 2016.

After Poland's accession to the EU, the Polish Customs Code was replaced by the Customs Law.[15] In accordance with Article 75 (as in the published text), any person, in particular a customs agency, a forwarder, or a carrier, could be a representative. However, pursuant to Article 78(1), a customs declaration could only be submitted by a person referred to in Article 4(1) of the CCC as the direct representative of the party concerned, provided that this person was a customs agent or an authorised employee entered on the list of customs agents carried out operations before the customs authorities on behalf of this person. The possibility of representing a person as a direct representative was taken away from lawyers as well as legal and tax advisers. Instead, they were included in a group of persons who could make Intrastat declarations (within the framework of the EU system of statistics on trading in goods between Member States). The party obliged to submit such a declaration could authorise a third person in writing and that person could be a customs agent or an employee or a proxy of the obliged party or a lawyer or a legal or tax adviser (see Articles 97 to 99).

The definition of the customs agent was included in Article 79: "the customs agent is a person entered on the list of customs agents." The conditions that a natural person had to fulfil in order to be entered on the list of customs agents were specified in Article 80; one of the conditions was the requirement to pass an expert exam. The detailed implementing rules concerning the qualifying exam for a customs agent and the entry on the list of customs agents were provided in a Regulation of the Minister of Finance.[16]

Despite the peculiar nature of the definition of a customs agent set out in Article 79, in combination with other customs legislation (Articles 75, 78, 80) and Article 5(2) of the CCC, it could be concluded that a customs agent is a special representative who represents the party concerned before the customs authorities when carrying out any operations and formalities provided for in customs legislation: it is a natural person who meets a number of additional conditions required by law, is entered on the list of customs agents, and has exclusive competence to make customs declarations as a direct representative.

[14] Regulation of the European Parliament and of the Council (EC) No. 450/2008 of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code).

[15] Act of 19 March 2004 on Customs Law, Journal of Laws of 2004, No. 68, item 622.

[16] Regulation of the Minister of Finance of 17 May 2004 on the Qualifying Exam for a Customs Agent and Entry on the List of Customs Agents, Journal of Laws of 2004, No. 117, item 1223.

However, customs legislation concerning the customs agent was amended in 2014 due to entry into force of the Act of 9 May 2014 on Facilitating Access to Performing Certain Regulated Professions.[17] Based on Article 14 of that Act, Article 80 of the Customs Law was amended – that is the set of requirements to be met in order to be entered on the list of customs agents. Article 81 regarding the qualifying exam for a customs agent was removed. Following these changes,[18] "a natural person is entered on the list of customs agents, if they meet the following conditions:

- has full legal capacity to act;
- has competence or experience in customs servicing of economic operators;
- has not been convicted through a legally valid judgment for an offense against the reliability of documents, against property, economic turnover, and the circulation of money or securities or for a fiscal offense;
- has applied for entry on the list of customs agents."

The obligation to pass the qualifying exam was replaced with the requirement to have higher education in economic, legal, or technical sciences, which included knowledge and skills relevant from the point of view of administrative and customs legislation.

On the one hand, this ceased to be a regulated profession and, on the other hand, Article 78 of the Customs Law remained in force and stipulated that only the customs agent could act as a direct representative for submitting customs declarations.

In 2016, the new EU Union Customs Code (UCC) entered into force. It defines customs representation: according to Article 5(6) of the UCC, a 'customs representative' is any person appointed by another person for the purpose of carrying out operations and formalities required by customs legislation before the customs authorities. Any person may appoint a customs representative and representation may be direct or indirect in character. Member States may lay down (in line with the EU law) the conditions under which a customs representative may provide services in the Member State where it resides (cf. Article 18 of the UCC). It is worth mentioning that the terms 'customs agent' or 'customs agency' appear in no context in the UCC.

The Union Customs Code initiated a number of changes in the Polish customs law,[19] including in the provisions on customs representation. Among others, Article 75 was deleted (it contained examples of persons who could be representatives) as well as Article 78 (which only allowed customs agents to act as a direct representative for making customs declarations).[20] In the Polish customs law that has been adapted to the UCC, the term 'customs agency' does not exist. There is, however, both the term 'customs representative' and 'customs agent' with no explanation of their mutual relationship, which has caused the definition of a customs agent as a person entered on the list of customs agents to be ineffective. The customs agent has no specific powers compared to other customs representatives appointed by the principals in the customs procedure and their only special characteristic is the fact that they have been entered on the list of customs agents and, obviously, have met the conditions necessary to be entered on that list.

The deregulation of the profession of a customs agent in 2014 resulted in lowered standards of professional qualification for customs agents. The obligation to pass a rigorous exam was abolished and there were fewer reasons for removal from the list of agents mentioned – there was no more indication of the period of inactivity of an agent. In comparison, between 1998 and 2004, inactivity of a customs agent for a period of at least two years[21]

[17] Act of 9 May 2014 on Facilitating Access to Performing Certain Regulated Professions, Journal of Laws of 2014, item 768.

[18] Cf. Article 80 of the Act of 19 March 2004 on Customs Law, Journal of Laws of 2004, No. 68, item 622.

[19] Act of 22 June 2016 Amending the Customs Law Act and Some Other Acts, Journal of Laws of 2016, item 1228.

[20] Cf. Articles 1(56) and 1(58), ibid.

[21] Article 257(3) of the Act of 9 January 1997 – the Customs Code, op. cit.

resulted in their removal from the list. In the Customs Law of 2004, the period was extended to five years[22] and in 2014 this condition was completely abolished. In practice, therefore, a person who has been entered on the list of customs agents will be listed there regardless of whether they actually perform the activities of a customs agent or not.

The interest in being entered on the list of agents is relatively high despite the fact that customs legislation does not provide for any specific powers for customs agents. Between 2015 and 2021, on average 1013 people were entered on the list per year, which is several times more than in the years before the deregulation of the profession (list of agents by PUESC as of 31 December 2021). The main reason seems to be the fact that the profession of a customs agent is perceived as a prospective one and is fairly well-paid. Additionally, entry on the list raises the profile of the agent as in casual understanding the list of customs agents is (wrongly) seen as a list of persons holding a customs agent license. Some fraction of those who meet the criteria for entry on the list (e.g., graduates of relevant higher education institutions) pursue being entered on the list 'just in case' or because 'it might be useful in the future.'

Only part of the persons on the list of customs agents are professionally active. As of 31 December 2021, there were 16,458 customs agents on the list, of which 9,214 were entered on it before the Act of 9 May 2014 on Facilitating Access to Performing Certain Regulated Professions (10 August 2014) entered into force and 7,244 persons were added later. There were 4,783 active agents, that is, agents who made at least one customs declaration in 2021 on import or export, which represents 29 per cent of all the agents (data obtained from the Warsaw Chamber of Tax Administration within the framework of access to public information from the Extrastat system based on customs declarations, covering trade in goods between Poland and the so-called third countries, i.e., ones that are not Members of the EU).

[22] Article 80(2) of the Act of 19 March 2004 – the Customs Law, the announced text, op.cit.

Conclusion

The article presents the evolution of the institution of customs representation over the centuries. It is a derivative of the development of international trade in goods, its dynamics, and scale of trade as well as of the need to carry out customs clearances in exports, imports, and transit of goods through customs territories; it is also a symptom of the development of many business operators – from traders, through transport companies and banking systems, to insurance organisations. Legal regulations regarding customs representatives mirror the political and economic situation of the times in which they were applicable.

As early as in the 18th century, the so-called Customs Instructions – that is, legal regulations passed by Sejms – contained provisions regarding the conditions for making customs declarations in customs chambers not only by merchants – the owners of the goods – but also by other persons, such as those carrying goods across borders. In times of the partition, legal regulations, including customs regulations, became part of the invaders' systems. Under the existing provisions of the law, merchants could use the services of representatives in their dealings with customs authorities. An example of a legal act that regulated customs representation is the bilingual Russian-Polish Customs Law of the Kingdom of Poland of 1850. It describes the rights and obligations of the representatives (i.e., 'proxies authorised in customs matters') following in the Russian tradition of regulation of customs representation, which dates back to the rule of Tsar Piotr I. Customs legislation that was forming during the interwar period also covered customs representation. The process was coped with the adoption of the Customs Law in 1933, which devoted a great deal of attention to customs agencies and agents. During the period of the Polish People's Republic, it is hardly possible to discuss the existence of the institution of customs representation in today's sense as practically all international trade in goods was operated in terms of customs, transport, and dispatch as well as financially by state economic units. The provi-

sions on customs representation during the period of systemic transformation reflected the process of liberalisation of economic relations after the shift away from the centrally planned economy. Following accession to the European Union, Poland has applied the EU and Polish customs law, which is complementary to the EU law. There has been progressive democratisation of the functioning of customs representation: each person has the right to appoint a representative in their dealings with the customs authorities, and it is not possible to restrict the right to representation under the law laid down by one of the Member States.

Customs representatives have served an important role in foreign trade understood in broad terms. Statistical data from the Warsaw Chamber of Tax Administration for 2021 based on the Intrastat system seem to confirm that. The total number of customs declarations in imports amounted to 2,515,726. All import customs declarations were made by representatives: 56.3 per cent of the declarations were submitted by indirect representatives and 43.7 per cent by direct representatives. In export, there were 4,194,219 customs declarations submitted, 63.8 per cent of which were made by indirect representatives, 24.6 per cent by direct representatives, and 11.6 per cent of all export declarations were made by the declarants themselves.

In their work, customs representatives use the knowledge of customs legislation as well as experience as regards the international supply chain for the benefit not only of the exporters or importers but also of the customs authorities. On behalf of international trade operators, customs representatives deal with customs clearance and collect the necessary documentation as well as cooperate with other actors in the supply chain, such as port/terminal operators, shippers, carriers, or customs warehouses. More and more commonly, they also serve a consultative and advisory role. In some cases, customs representatives extend the scope of their services in the supply chain to others, such as customs duty refunds, transhipment, warehousing, insurance, or participation in dispute settlement. By complying with all regulatory requirements (i.e., maintaining 'customs compliance') and ensuring budget revenue from customs duties, taxes, and other charges related to international trade in goods, customs representatives also serve the public financial interests.

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