

# PREVENTION AND DETECTION OF CUSTOMS FRAUD

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## ABSTRACT

Anything to declare? Working in Customs has long involved far more than just asking this question. In today's Europe, with its open borders the face of Customs has changed. Besides collecting customs and duties on the border, Customs now performs many other important tasks. This include insuring efficient flow of goods, from country to country, safe guarding competition, combating illegal work, product piracy and criminality and working to protect endangered species.

Customs is a modern service provider for the economy. Its goals and its range of tasks today extend far beyond border related activities:

- Though the efficient collection of duties, Customs ensures the state's ability to provide public service;
- Customs uses modern practices and methods to promote trade and the economy and thus Europe as a location for business and investment;
- Customs protects citizens, the economy and the environment;
- Customs combats undeclared work and unlawful employment to stabilize the social systems and labor market;
- Customs fights international organized crime, from the drug trade to product piracy and smuggling all the way to money laundering.

The subject of the study is prevention and detection of the customs fraud. The goal of the study is to analyze number of legal instruments and practical measures that are designed to reinforce the efforts of customs administration to combat smuggling and other types of customs fraud. Statistical data about criminal charges brought to people suspected of committing a customs fraud will be analyzed in the study.

**Keywords:** Customs fraud, prevention and detection of the customs fraud, smuggling, Customs Administration

## **INTRODUCTION**

The traditional role of Customs over the years has always been the enforcement of prohibitions and restrictions and the collection of import and export revenues. The traditional symbol of Customs symbolizes a nation's ports - the gates through which international trade must pass, Customs as the gatekeepers of security of one country.

Customs plays a vital role in the growth of the international trade and the development of the global marketplace. Customs has become the hub around which the wheel of globalization turns, and that hub must be both strong and flexible in order to global trade to operate efficiently while society remains safe.<sup>1</sup>

The role of Customs has now expanded to the international security, in particular the security and facilitation of legitimate trade from the threats posed by terrorism, transnational organized crime, commercial fraud, counterfeiting and piracy. Given this role, customs administration in particularly customs officials can significantly influence in preventing and detecting customs frauds,

The responsibilities of customs administrations vary from country to country, and are often the subject of regular review and modification to ensure their ongoing relevance in a constantly changing world. Traditionally, however, Customs has been responsible for implementing a wide range of government policies, spanning areas as diverse as revenue collection, trade compliance and facilitation, interdiction of prohibited substances, protection of cultural heritage and enforcement of intellectual property laws.

## **LEGAL INSTRUMENTS DESIGNED FOR COMBATING CUSTOMS FRAUD**

Macedonian Customs is a modern, government administration serving the country's economy and operating under the umbrella of the Ministry of Finance. Its range of activities extends from the straightforward provision of services to exercising sovereign jurisdiction "All are equal before the law".<sup>2</sup> The primary work done by the Customs contributes to ensuring that all taxes and duties are duly collected and that everyone pays customs duty. Macedonian Customs collects considerable funds and therefore significantly contribute to the budget revenue increase, and provides support to the economy and assist in strengthening its international competitiveness, ensure security of supply chain, facilitate international trade, prevent import of illicit and restricted goods, counter illegal and illicit trade by enforcing laws and regulations in line with the international standards, and protect the interests of the Republic of Macedonia and the interests and security of its citizens and protects the public from the consequences of the cross-border organized crime.

The Customs Administration of the Republic of Macedonia plays a unique and important role in performing its tasks within the territory of the Republic of Macedonia, as well as in meeting the obligations towards the international community and its future membership within the European Union. The Customs Service faces the environment that changes quickly due to the increase of

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<sup>1</sup> Ramchandra Man Singh, Role of Customs in Trade Facilitation

<sup>2</sup> Constitution of Republic of Macedonia, 1991

the production and consumption, growth of international trade and new global challenges (organized crime, terrorism and climate changes). In this context, the role of the MCA is to maintain a permanent equilibrium between its major tasks: protection of the society, revenue collection and trade facilitation.

The Customs Administration is organized as a professional and competent body, free of political influences, that ensures an efficient flow of goods and passengers and acts within the framework of law and professional ethics for the benefit of all the citizens of the Republic of Macedonia, respecting human rights and freedoms. In terms of the integration processes, new roles and responsibilities, the Customs Administration's vision is to become a professional, developed and modernly equipped administration that protects the society and ensures maximum flow of goods and passengers providing for the cost reduction. The Customs Administration of Macedonia will achieve this by consistently performing its core functions, and by efficiently detecting and preventing customs offences and other threats – terrorism, organized crime, smuggling and corruption.

As one of the largest of the central government's agencies, Customs has always adapted to new political and economic developments in the quick and flexible manner. In this process, Customs work has grown in the scope and importance over the years.

With the new changes of the Law of Criminal Procedure in the Republic of Macedonia, the Customs administration has been given new jurisdictions in the fight with customs crime and the crime complemented to it, struggle and fight with organized crime. Except the authorizations which MOI is having, in the pre-investigative procedure and in the investigation, it is prescribed with the law that the authorized persons from Customs administration of Republic of Macedonia are having the same authorizations in the cases when they work on disclosing of criminal acts and their perpetrators and for gathering evidence necessary for criminal prosecution or the perpetrators of the criminal acts: production and releasing in trade of a harmful medicine products; production and releasing in trade of a harmful alimentary and other products; unauthorized production and releasing in trade of a narcotic drugs, psychotropic substances and precursors ; unauthorized acquiring and disposal of nuclear materials; importing dangerous substances in the country exporting abroad goods which are under temporary protection or the culture heritage or natural rarity; money laundering and other profits from criminal activities; smuggling; custom fraud; concealment of goods subject of smuggling and custom fraud; hidden tax; unauthorized possession of weapon and explosive substances; human trafficking; criminal acts under Articles 59 and 60 of the Criminal Law for excise tax and other criminal acts regarding import, export and transit of goods across the border line.<sup>3</sup>

In main goal defined in the Regional Training Center Strategy of the Macedonian Customs for 2011—2013 is that the permanent learning is a key factor for achievement of improved effectiveness in the Customs Service's work, focused on the objectives to be reached. The learning is the only way of acquiring knowledge and skills required for better performance of the customs officials, which induces their motivation for further progress and promotion. The learning culture is an awareness of the importance of the learning for the execution of the Customs Administration's competences. The learning is a kind of culture that leads to re-

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<sup>3</sup> Code of Criminal Procedure , Official Gazette No. 74, 2004

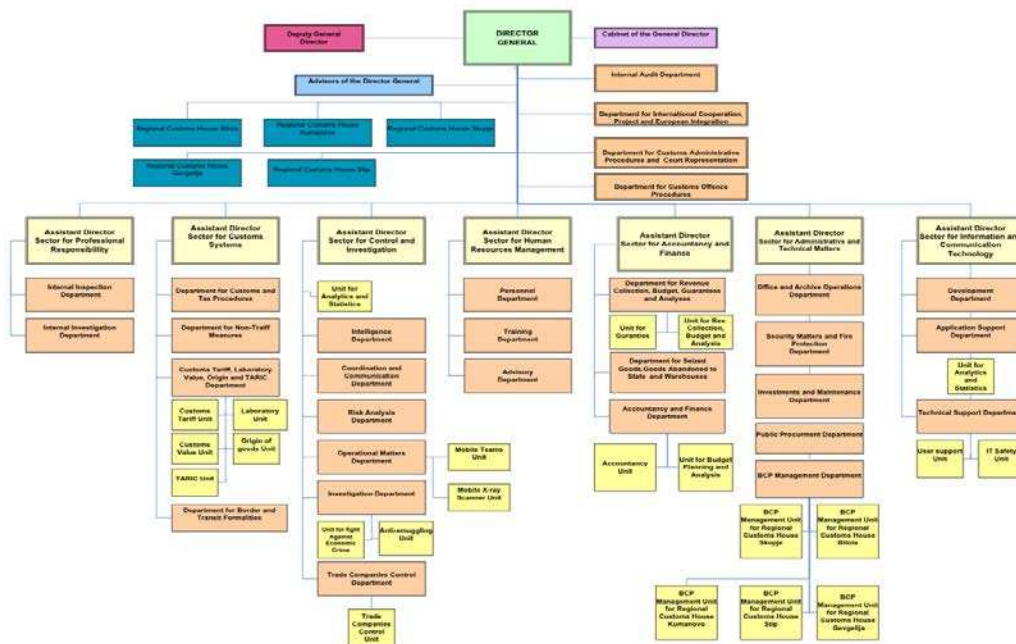
consideration of the working methods, internal procedures and motivation, aiming at development of the overall organization and production of results.

The Customs Administration plays a significant role in the Government’s policy implementation and in achievement of the objectives defined at national level. This role is played by the Customs Administration by providing the basic presuppositions for the key persons and institutions involved in the process of making decision on the international trade and foreign investments.

A well trained and efficient Customs Service helps the Governments to realize completely the politics concerning the revenue collection, trade facilitation, trade statistics and protection of the environment against the menaces to the national security.

The introduction of new working methods at the Customs Administration, focused on achievement of results, requires higher level of professionalism and motivation at the Customs Administration, which will assure to tackle successfully the challenges and to act in conformity with the European standards and norms. The necessity of having a new and comprehensive approach to building and development of the Customs Service, explicitly states that the investment in human resources is a long-term engagement imposing the need for continuous development of the training system.

The Chart that follows shows the organisational chart of Macedonian Customs



Source: [www.customs.gov.mk](http://www.customs.gov.mk)

The Sector for Customs System and the Control and Investigation Sector are determining the priorities in the fields of essential importance for the working activities of the Customs Administration (new powers, legal provisions, control and investigative measures and cooperation with the EU). The training of this sector is classified in:

- Trainings on execution of the main powers of the Customs Administration;
- Trainings on execution of the administrative and technical competences of the Customs Administration;
- Trainings assuring skills in area of investigation, intelligence and detection activities and
- Trainings on control and security.

## **INTERNATIONAL ORGANIZATIONS AND PROJECTS WHICH ARE IMPORTANT FOR STRENGTHENING THE EFFICIENCY IN FIGHTING AGAINST CUSTOMS CRIME**

Macedonia is a member of the Regional Intelligence Liaison Offices (RILO). Under the patronage of the World Customs Organization is established as a network of offices for the exchange of customs intelligence, aimed through their exchange of regional and global level, to contribute towards strengthening and increasing efficiency in the fight against customs fraud and breach of customs legislation. On the regional division there are 11 offices established for Western Europe, Eastern and Central Europe, Middle East, Asia and Pacific, Africa, Western Africa, Eastern and Southern Africa, South America, Caribbean, Central America and the Commonwealth of Independent States (Russia and 9 republics of former USSR). Macedonia belongs to the Eastern and Central Europe, with its Central office in Warsaw, Poland.

Exchange of data is done through specially prepared informational system-Customs data network for crime prevention (Customs Enforcement Network - CEN), through which, with respect to the highest standards of security and data protection, provides access to multiple databases and direct exchange of messages between members. Exchanged information helps in the fight against illicit trafficking and customs fraud. Databases are important because they contain information about the executed seizures of goods that are violations of customs legislation.

Macedonia is a member of the SECI Regional Center for combating trans-border crime since its inception in 1999. In the Centre there are 13 member states: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Moldova, Macedonia, Romania (center in Bucharest), Serbia, Slovenia, Turkey and Montenegro.

The main objective of the Centre is to provide support and improve the fight against all types of cross-border crime, through cooperation, with immediate and direct exchange of data and documents alongside, from an operational nature, between customs and police services

High volumes of trade, complicated structures of global supply chains, advances in criminal activities, and fear of terrorism, amongst other factors and trends, set challenges for customs administrations worldwide, while aiming for high compliance rates and high degree of trade facilitation in their respective territories. One commonly quoted approach to assist customs to achieve their objectives – often with decreasing resources – is the exploitation of customs risk management principles and practices.

The Instructions for selective controls in customs operations provides selective approach based on risk analysis, application of customs controls by organizational units. Customs Administration of the Republic of Macedonia is using these techniques of risk management. Risk management for efficient and effective selection of customs shipments where there is a higher risk of not being in accordance with legal regulations and streamlining customs resources available to these shipments and trade where the risk should allow free flow with minimum required retention.

The process of risk management in Customs Administration Division coordinates analysis of risk though:

- Definition of risk areas
- Identification of risk based on data collected;
- Analyzing risk
- Assessing the measuring risk
- Defining the guidelines and treatment of risk, and
- Monitoring and review of risk profiles.

A risk area in terms of powers of the Customs Administration at least is the following:

a) Avoiding payment of taxes by:

- Declaring and accepting improper customs value (code 01)
- Declaring and accepting improper heading (code 02)
- Declaring and accepting improper origin / preferences (code 03),
- Discharging of import for processing (code 56),
- Discharging of outward processing (code 57);
- Unlawful removal of goods from customs supervision (code 09),
- Failure to report imported goods for customs clearance (code 04);

b) Threatening the safety and reliability in terms of public health, environment and consumers, including proper application of measures concerning import and export of goods to and from the Republic of Macedonia by:

- Smuggling of weapons,
- Smuggling of drugs and precursors
- Money laundering and financing terrorism
- Smuggling endangered animal and plant species
- Smuggling of nuclear and radioactive material
- Smuggling of high technology and weapons
- Illicit trade in dual use
- Smuggling of cultural heritage
- Trafficking in counterfeit/ pirated goods
- Environmental crime and
- Trafficking.

Risk areas listed in this section are not permanent but can be modified according to the basic responsibilities of the Customs Administration.

The Strategic Plan of the Customs Administration of the Republic of Macedonia lays down the mission, vision, values, strategic priorities, objectives and the manner of reaching the priorities

by predefining the required activities for the period of 2012 – 2014. According to the Plan Macedonian Customs will take the most essential competences, which are many, but I will emphasize the following which I think is important for protection and detection of customs fraud:

- customs surveillance, customs clearance of goods, customs control, investigation and intelligence measures for prevention, detection and investigation of customs related offences and crimes,
- protection of the safety and security of people, animals and plants, protection of the society and objects of historical, artistic and archaeological value, copy rights and other related rights, as well as other trade policy measures laid down by law,
- post-clearance controls, intelligence and investigation measures for prevention, detection and denouncement of customs related offences and crimes,
- internal controls and audits in all areas of customs work and overall functioning of the Customs Administration, intelligence and investigative measures for prevention detection and denouncement of cases of violation of laws and internal acts, misuse of power by employees,
- conducting offence procedure, imposing offence sanction for committed offences, related to customs, excise and foreign currencies matters, as well as initiation of procedures for criminal prosecution, laid down by law,
- protection of the fiscal interests of the Republic of Macedonia,
- protection of the country from unfair and illegal trade, by at the same time supporting the economic activities,
- contribution to increase the level of competitiveness of the Macedonian economy by applying modern working methods sustained by easy accessible electronic customs environment,
- professional development of the employees through organized training, providing expert assistance in the implementation of customs regulations, through seminars and public events,
- Cooperation with foreign customs services and international organizations.

## **ENHANCING CUSTOMS COLLABORATION WITH INTERNATIONAL COOPERATION**

The establishment and development of international relations in the customs field is one of the key elements in consolidating the process of customs administrations capacity building all over the world, in order to meet the challenges and opportunities of the XXI century.

Taking into account the particular importance of treaties as an international law source and a means for international cooperation, we will review the main international treaties signed by the Republic of Macedonia

**Bilateral agreements:** Agreement between the Government of the Republic of Macedonia and the Federal Government of the Federal Republic of Yugoslavia on Customs Cooperation and Mutual Assistance, Signed: September 4, 1996; Agreement between the Government of the Republic of Macedonia and the Republic of Turkey on mutual cooperation between their customs services, October 1997; Agreement between the Macedonian government and Albanian

Government for mutual assistance and cooperation between their customs April 3, 1998; Agreement on mutual administrative assistance between the Macedonian Government and the French Government for the prevention, investigation, identification and sanctioning of customs offenses, entered into force on 1 June 2000; Agreement between the Government of the Republic of Macedonia and the Russian Federation on cooperation and mutual assistance in customs matters entered into force June 10, 1998; Agreement between the Government of the Republic of Macedonia and the Kingdom of Denmark for mutual cooperation in customs matters, entered into force on 24 August 1998; Agreement on mutual administrative assistance for the prevention, investigation and sanctioning of offenses between the Government of the Republic of Macedonia and the Republic of Italy Entered into force July 23, 1999; Agreement between the Government of the Republic of Macedonia and the Republic of China on mutual cooperation between their customs authorities, entered into force on June 9, 1999; Agreement between the Government of the Republic of Macedonia and the Republic of Bulgaria on cooperation and mutual assistance in customs matters, entered into force on 15 July 2000; Agreement on mutual administrative assistance for proper application of Customs law and for the prevention, investigation and combating customs offenses between the Macedonian Government and the Government of the Netherlands, entered into force on 1 May 2002; Agreement between the Government of the Republic of Macedonia and the Republic of Slovenia on mutual cooperation in customs matters, entered into force on 1 May 2001; Agreement between the Government of the Republic of Macedonia and the Republic of Moldova on mutual cooperation in customs matters, entered into force on 1 April 2006; Agreement between the Government of the Republic of Macedonia and the Republic of Finland on cooperation and mutual cooperation in customs matters, entered into force: 10 September 2007; Agreement between the Government of the Republic of Macedonia and the Slovak Republic on cooperation and mutual assistance in customs matters, entered into force: 26 October 2008; Agreement between the Government of the Republic of Macedonia and the Council of Ministers of Ukraine on cooperation in customs matters, entered into force 2008; Agreement between the Government of the Republic of Macedonia and the Republic of Kosovo for cooperation and mutual assistance in customs matters, signed in Skopje on 11 February 2011; Agreement between the Government of the Republic of Macedonia and the Republic of Azerbaijan on mutual cooperation and assistance in customs matters, text agreed and initialed in Baku on 17.10.2011 year

**Multilateral agreements:** Stabilization and Association Agreement between the Republic of Macedonia, on the one hand, and European Communities and their Member States, on the other side signed in Luxembourg on 9 April 2001, entered into force: 1 April 2004, PROTOCOL 5 - on mutual administrative assistance in customs matters; Agreement on Accession of the Republic of Macedonia to the Central European Free Trade Agreement (CEFTA) Signed in Skopje on 27 February 2001 Entered into force: 24 August 2006; Agreement amending and accession to the Central European Free Trade Agreement (CEFTA NEW 2006) Signed in Bucharest on December 19, 2006 Entered into force: 27 June 2007; Agreement on cooperation in preventing and combating cross border crime, signed on May 26, 1999 in Bucharest (SECI), ratified on February 24, 2000, entered into force on 1 April 2000; Convention Center for law enforcement in Southeast Europe, signed on December 9, 2009 in Bucharest, entered into force on October 7, 2011.



## REPORTED PERPETRATORS BY TYPES OF CRIMINAL OFFENCES

The research that I made this past months about criminal charges brought to people suspected of committing a customs fraud is being analyzed in the table below. The most cases that are discovered are by mutual collaboration with other customs offices.

**Table 1: Reported perpetrators by types of criminal offences**

TYPES OF CRIMINAL OFFENCES	2007	2008	2009	2010
Illegal trade	6	10	4	2
Customs fraud	67	43	37	44
Smuggling	23	94	43	34
Concealment of goods that are the subject of smuggling and customs fraud	20	16	22	9

Source: State Statistical Office, Perpetrators of Criminal Offences, 2011

## CONCLUSION

The role of customs administrations has been rapidly evolving. It is no longer sufficient for customs to perform the traditional roles of revenue collection and border inspection. With globalization, the mandate for customs has expanded due to the dynamics of international trade liberalization, terrorism, environmental concerns and other threats to the well-being of nations.

The resultant shift in government policies and the way in which those policies are administered have brought us to a point where it is no longer possible to clearly define the role of 'Customs'. While the responsibilities of border management continue to be carried out, the nature and mix of relevant government agencies is changing. Consequently, what may represent core business for one administration may fall outside the sphere of responsibility of another. Indeed, while the tusk, trunk and tail of customs regulation remain, the organism known as 'Customs' appears destined for extinction. The World Trade Organization, World Customs Organization and other international bodies are responding through the development of global standards that recognize the changing nature of border management.

Around the world, customs administrations have also recognized the need to collaborate with one another and with the business community to achieve common economic, security and social goals.

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