

**Bartosz Rakoczy**, Ph. D. at Environmental Law  
Professor of the University of Gdańsk Head  
of the Environmental Law Department UMK in Toruń Assistant  
Professor at the Public Economic  
and Environmental Law Department University  
of Gdańsk Legal Counsel

### DUTIES OF CUSTOMS AUTHORITIES RELATED TO ENVIRONMENTAL PROTECTION

*На перший погляд, не існує ніякої залежності між митними органами та захистом навколишнього середовища. Причина в тому, що митні органи виконують основні обов'язки, які стосуються митної торгівлі, пов'язані з митними зборами. Проте така оцінка митних органів неповна, і можливо, навіть бажано, визначити їх діяльність у рамках охорони навколишнього середовища.*

*Ця стаття висвітлює роль та значення митних органів у захисті навколишнього середовища. Мета дослідження – охарактеризувати обов'язки митних органів, пов'язані із захистом навколишнього середовища, оцінити їх та внести пропозиції на майбутнє.*

*At first glance, there seems to be no relation between customs authorities and environmental protection. Since customs authorities perform basic duties related to customs trading, which are connected mainly with the collection of customs charges. However, such an assessment of customs authorities is not justified and it is possible, and even advisable, to evaluate their activities in terms of environmental protection, as well.*

*This article discusses the role and meaning of customs authorities in environmental protection. Its purpose is to characterise customs authorities' duties related to environmental protection, appraise them and propose solutions for future.*

**Key words.** Environmental protection, control duties, control competence.

**Introduction.** The structure of customs authorities is defined in Art. 69 of the Customs Law of 19 March 2004 [1]. It provides that “1. In customs procedure, competent authorities shall be:

- 1) the head of the customs office – as the first instance authority;
- 2) the head of the customs inspectorate (*Izba Celna*) – as:
  - a) an authority receiving appeals against decisions of the customs office head;
  - b) the first instance authority in cases set forth in customs and separate regulations;
  - c) an authority receiving appeals against decisions made thereby at the first instance, unless special regulations provide otherwise;
- 3) a minister in charge of public finance – as:
  - a) the first instance authority in cases related the *ex officio* pronouncement of the invalidity of a final decision of the customs inspectorate head;
  - b) an authority receiving appeals against decisions made thereby at the first instance and decisions referred to in Art. 70(2)(2).
2. Higher level authorities are courts of appeals.”

Thus the structure of customs authorities comprises organisations referred above. However, such authorities are not considered as environmental protection authorities. Pursuant to Art. 3(15) of the Environmental Protection Law of 27 April 2001 [2], environmental protection authorities

© **Bartosz Rakoczy**, 2009

“shall mean administrative authorities appointed to perform public duties related to environmental protection in accordance with their characteristics defined in Title VII, Chapter I”. Art. 376 of Title VII, Chapter I reads that “Subject to Art. 377, environmental protection authorities shall be:

- 1) leaders of communes (*gmina*), towns and cities [3];
- 2) leaders of counties (*powiat*);
  - 2a) regional councils (*sejmik*) of voivodships;
  - 2b) marshals (*marszałek*) of voivodships;
- 3) governors of voivodships (*wojewoda*);
- 4) a minister in charge of environmental issues”.

While Art. 377 of the Environmental Law states that “Environmental Protection Inspection Authorities acting on the basis of the Environmental Protection Inspection Act shall perform environmental protection duties unless the act provides otherwise”.

The doctrine of the environmental protection law points out that the catalogue of those authorities is closed. Thus, environmental protection authorities are only units named by legislators in Art. 377 of the Environmental Protection Law [4]. While W. Radecki presents a different approach since in his opinion the catalogue is open [5]. Such a position is supported by K. Gruszecki, who considers the catalogue of authorities as open [6].

We may also assume an intermediate solution and allow for the separation of *sensu stricto* environmental protection authorities from *sensu largo* environmental protection authorities. Indeed, the first group includes those authorities that legislators specify in Art. 376 and 377 of the Environmental Protection Law. However, we should also agree with W. Radecki and K. Gruszecki that environmental protection duties are performed by other authorities that are not referred therein, as well.

**Assigning the objective.** The catalogue of environmental protection authorities does not name customs authorities. However, this does not mean that such authorities do not perform any environmental protection tasks and thereby are not environmental protection authorities. They may be considered as environmental protection authorities *sensu largo*.

There arises a question which duties customs authorities perform in relation to environmental protection if they may be considered as environmental protection authorities in the wide sense of the word.

**Research results.** At the beginning, let's note that customs authorities are responsible for environmental issues while performing other of their duties related to customs administration. Polish legislators assume that certain actions relating to environmental protection may be performed while taking up actions accompanying customs administration. These authorities have the best opportunity to take up environmental protection actions related to foreign legal trading because they are institutions which an entity trading with abroad contacts most frequently. Therefore, the consolidation of environmental duties and customs administration duties may be considered as justified. It is also correct to entrust environmental protection duties to customs authorities.

Duties of customs authorities may be broken down into preventive and repressive measures. In the former case, customs authorities carry out only preventive activities that take the form of control. While in the case of repressive duties resulting from controls conducted, customs authorities may seize a given thing and impose defined sanctions on entities.

Control duties of customs authorities related to environmental protection should be considered as core activities. Since customs authorities carry out control activities mainly in relation to environmental protection.

The example of control authorities taken by customs authorities in relation to environmental protection are regulations adopted in the act on protecting the health of animals and counteracting contagious diseases of animals of 11 March 2004 [7]. Pursuant to Art. 24b thereof, "1. Customs authorities carry out controls referred to in Art. 12(a) of the Regulation 998/2003 at selected border crossings.

4. Should any failure to fulfil requirements related to the transport of domestic animals accompanying travellers from third countries be observed, customs authorities shall notify a county veterinary surgeon having jurisdiction over the location of a given border crossing.

6. Should the requirements referred to in clause 4 not be fulfilled, domestic animals accompanying travellers shall be held in the custody of customs authorities until measures set forth in the Regulation 998/2003 are applied".

The above case refers to control competences ensuring that domestic animals imported to the territory of the European Community from other third country are subject to documentary control and identification in the case of less than five domestic animals or requirements and controls defined in the European law in the case of more than five domestic animals.

Legislators also defined such control activities relating to environmental protection in the animal product act of 16 December 2005 [8]. Pursuant to Art. 9a thereof "1. Animal products exported from the territory of the Republic of Poland to third countries shall be equipped with health certificates or other documents unless required by the third country of such product destination.

2. Health certificates or other documents shall be shipped together with animal products and presented at each requests of customs authorities.

3. Veterinary inspection authorities shall seal means of transport used to export animal products from the territory of the Republic of Poland to third countries immediately after each animal product loading.

4. Veterinarian inspection authorities' right to affix seals shall not infringe customs authorities' rights and obligations related to customs inspection".

Control activities are also carried out on the basis of the crop plant protection act of 18 December 2003 [9]. "Art. 17a. 1. Plants, vegetable products or objects exported from the territory of the Republic of Poland to third countries shall be equipped with phytosanitary certificates or re-export phytosanitary certificates, if required by the state of destination or transit states.

2. Phytosanitary certificates or re-export phytosanitary certificates referred to in clause 1 above shall be attached to plants, vegetable products or objects which they have been issued to at each stage of transport and presented at each request of customs authorities."

While, the example of repressive activities that customs authorities may take up on the basis of international agreements comprises solutions provided in the Convention on International Trade in Endangered Species of Wild Fauna and Flora adopted in Washington on 3 March 1973 [10]. Art VIII thereof reads as follows: "1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

(a) to penalize trade in, or possession of, such specimens, or both; and

(b) to provide for the confiscation or return to the State of export of such specimens.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during

any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

(a) the specimen shall be entrusted to a Management Authority of the State of confiscation;

(b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and

(c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.”

While pursuant to Art. IX of the Convention, “1. 1. Each Party shall designate for the purposes of the present Convention:

(a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and

(b) one or more Scientific Authorities.

4. Any Management Authority referred to in paragraph 2 of this Article shall, if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.”

We may also distinguish duties applicable to non-public administration entities and duties accompanying the cooperation with other public administration authorities.

The aforementioned duties apply to non-public administration entities. Such entities bear control and repressive responsibilities of customs authorities. While responsibilities and duties relating to cooperation apply to other public administration authorities, mainly authorities performing environmental protection duties.

An example of such duties is the content of Art. 17 of the Environmental Protection Inspection Act of 20 July 1991 [11]. Art. 17.1 thereof sets forth that “To perform its control activities, the Environmental Protection Inspection shall cooperate with other control authorities, including the National Sanitary Inspection, state and government administration authorities, local governments, civil defence authorities and social organisations.

2. Such a cooperation shall comprise in particular:

4) the exchange of information related to the import of goods whose import is prohibited or limited because of environmental protection with customs authorities and the Border Guards”.

The regulation that refers to cooperation duties is also Art. 23 of the aforementioned plant protection act stating that “1. An entity importing plants, vegetable products or objects subject to phytosanitary control at the border crossing to the Republic of Poland through a defined point of entry shall present them to control to the provincial inspector in charge of such import, and cooperate during such a control.

3. Customs authorities shall cooperate with entities carrying out phytosanitary control at the border crossing with regard to such a control and, in particular, inform the provincial inspector in charge of such a point of entry about the import or an intention to import plants, vegetable products or objects subject to phytosanitary control at the border crossing to the territory of the Republic of Poland.”

Duties of customs authorities are also provided in the European Union law. Art. 4(25) of the Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code defines the term of a risk in customs administration’s activities. “Risk means a probability of an event connected with an entry, exit, transit, transport and final use of goods traded between the customs territory of the Community and third countries and the presence of non-Community goods, which:

– makes an adequate application of Community or domestic measures impossible, or

– causes danger to financial interests of the Community and its Member States, or

– threatens the security of the Community, public health, environment or consumers.”

Thus, actions of the authorities resulting from the risk also comprises issues related to the environment and environmental protection.

**Conclusions.** The above examples of customs authorities’ responsibilities for environmental protection prove that those authorities play a significant role in environmental protection. Duties of such authorities are connected with their major customs trade competences. Customs authorities perform environmental duties while carrying out their major tasks because it would be difficult for environmental protection duties *sensu stricto* to perform their control activities in relation to customs trade abroad.

Customs authorities perform their tasks mainly through controls. However, the very control is not sufficient since sometimes it is justified to apply repressive measures against entities infringing the law.

Control competences of customs authorities are mainly connected with their preventive function. Since control is to prevent against the import of plants, animals or substances threatening the environment to the customs territory. This is mainly visible in solutions implemented in the aforementioned Community Customs Code.

Duties of customs authorities also refer to their cooperation with other authorities, mainly those that are in charge of environmental protection. Such cooperation covers mainly the Environmental Protection Inspection. The main legal instrument is the exchange of information [12]. Polish legislators apply similar solutions for cooperation in other legal acts, as well.

An important element connected with environmental protection is customs authorities' obligation to take a due care of animals. Even if animals are seized, customs authorities must ensure an adequate place of storage and due care thereto.

To fulfil the duties imposed by legislators, customs authorities need special knowledge on environmental protection, including mainly the knowledge of species of protected flora and fauna. Customs authorities should also be aware of basic aspects of animal maintenance, know animal needs, feeding methods, etc.

#### References

1. Journal of Laws No 68, item 622 as amended, hereinafter referred to as the Customs Law.
2. Journal of Laws No 25, item 150, as amended, hereinafter referred to as the Environmental Protection Law.
3. [translator's note] Wójt, burmistrz, prezydent.
4. See, for example, Z. Bukowski [in:] J. Ciechanowicz – McLean, Z. Bukowski, B. Rakoczy, Prawo ochrony środowiska. Komentarz (Environmental Protection Law. Comments). – Warsaw, 2008. – P. 596.
5. Radecki W. Organy administracji oraz instytucje ochrony środowiska – tytuł VII ustawy Prawo ochrony środowiska. Komentarz. (Environmental Protection Administrative Authorities and Institutions – Title VII of the Environmental Protection Law. Comments). – Wrocław, 2002. – P. 9.
6. Gruszecki K. Prawo ochrony środowiska. Komentarz (Environmental Protection Law. Comments), ed. 2. – Warsaw, 2008. – P. 741.
7. Journal of Laws of 2008, No 213, item 1342.
8. Journal of Laws of 2006, No 17, item 127, as amended.
9. Journal of Laws of 2008, No 133, item 849.
10. Journal of Laws of 1991, No 27, item 112, as amended.
11. Journal of Laws of 2007, No 44, item 287, as amended.
12. Radecki W. Ustawa o Inspekcji Ochrony Środowiska z komentarzem (Environmental Protection Inspection Law with Comments). – Wrocław, 2000.