

CUSTOMS CRIMES IN TURKEY AND UNITED STATES

Türkiye ve Amerika Birleşik Devletleri'nde Gümrük Suçları

Asst. Prof. Dr. Gülşen GEDİK*

ABSTRACT

Custom duties based on goods entering to Turkey and the determination of customs value of goods and rate is important. Custom duties regulated out of Turkish Procedural Tax Law article 2 and customs penalties and crimes regulated in detail in Customs Code. Customs penalties in Turkey divided losses of tax and irregularities. However in the United States Custom Code regulated more penalties than Turkey and regulated systematic rules in context of administrative appeals.

Keywords: Customs, Customs Duty, Customs Penalties

ÖZET

Gümrük Vergisi sadece Türkiye'ye giren ürünler/ ithalat üzerinden alınan bir vergidir ve bu kapsamda malın değerinin belirlenmesi uygulanacak oran açısından önemlidir. Gümrük Vergisi Vergi Usul Kanunu 2.maddesine göre kapsam dışı tutulmuştur ve gümrük cezaları detaylı biçimde Gümrük Kanunu'nda düzenlenmiştir. Gümrük suçları Türkiye'de vergi kaybı ve usulsüzlük olmak üzere ikiye ayrılmaktadır. Bununla birlikte ABD gümrük vergisi ise Türkiye'ye göre daha geniş ve ayrıntılı biçimde gümrük suçları ve cezalarını belirlemiş ve idari çözüm yolları kapsamında sistematik bir düzenleme getirmiştir.

Anahtar Kelimeler: Gümrük, Gümrük Vergisi, Gümrük Suçları.

Introduction

The Customs Code (CC- Gümrük Kanunu)¹ of Turkey applies to on goods imported into Turkey and determines the goods' customs value and tax rate.

Customs duties are taxes levied on imports (and, sometimes exports) by the customs authorities of a country to raise state revenue or to protect domestic industries from more efficient or predatory competitors from abroad.

The tax is generally based on the value of goods or on the weight, dimensions, or some other criteria specific to the item (for example automobile engine size)².

According to CC Article 1; "The scope of this Code is to lay down the customs rules that shall apply to goods and means of transport entering into and exiting from the Customs Territory of the Republic of Turkey".

The CC is a comprehensive document that states the rules for goods and vehicles entering and exiting the Turkish customs region. CC regulations

* Assistant Professor, Uludağ University Law School, Tax Law Department. gulsengedik@gmail.com

¹ Official Gazette: 4.11.1999, 23866.

² www.gtb.gov.tr.(12.07.2017)

lay out taxes, regimes, penalties, appeals, audits and other details through regulations and statutes³.

Customs penalties and crimes are included in the CC. However tax penalties and crimes under Turkish Procedural Tax Law are not linked with the CC⁴.

The first section describes customs penalties in Turkey and the Second section describes United States' Customs penalties and proposes a different provision system for the Turkish Custom Code.

1. Custom Penalties in Turkey

1.1. General Definition

Customs controversies are defined as a conflict between customs administration and taxpayer with on issues covered in the CC⁵.

Because the crimes and fines in CC Article 2 are convenient for Misdemeanor Law (ML) (Kabahatler Kanunu)⁶ Article 2, this code is applied except for enforcement and appeal rules⁷. In other words, in the context of ML Article 2, all crimes are misdemeanors since CC regulates all customs systems. Correspondingly, customs penalties are administrative and the purpose is to compensate for public loss.

This administrative penalties imposed by the customs authority are monetary that less custom tax and/ or irregularities which was identified return to give custom authority⁸.The CC stipulates penalties and corresponding fines. Penalties are criminal penalties for finding misplead and/ or deficit tax detected audits and controls by authorities reason⁹.

The Title of XI is Penalties and articles 231 and 232 give us general rule about penalty.

"Article 231: On condition that the act subject to an administrative sanction is related with an act requiring penalty and that criminal suits have been filed because of this act having a longer period of prescription, the decisions on administrative sanctions shall be applicable within the duration of lawsuits and period of prescription laid down by the Turkish Penal.

³ Selen Ufuk, Gümrük İşlemleri ve Vergilendirilmesi, Ekin Yayınevi, 6.Baskı, 2014, p.13.

⁴ Şenyüz Doğan, **Vergi Ceza Hukuku**, Ekin Yayınevi, 8.Baskı, 2015, p.254.

⁵ Selen, p. 197.

⁶ Official Gazette: 31.03.2005, 25772.

⁷ Ercan Tayfun, **Gümrük Uyuşmazlıkları ve Çözüm Yolları**, Adalet Yayınevi, Ankara 2012, p. 114.

⁸ Selen, p.199.

⁹ Selen, p.199.

The period of prescription of the administrative fines arising from customs duty receivables shall be subjected to the period of prescription of the customs duties related with these administrative fines”.

“Article 232: 1.The fines that should be charged together with the customs duties in accordance with the provisions of Chapter 2 of this Title, shall be decided, communicated and paid concurrently with such duties. 2. On condition that the relevant issue and declarant are the same and have a pecuniary or legal interdependence, a single accrual and penalty decision may be applied for the customs duties and fines relating to multiple procedures or declarations. 3. Administrative sanction decisions shall be taken by the heads or deputy heads of customs administrations hereunder”.

Customs penalties are legislated in detail on loss of tax (CC Part 11, Section 2) and irregularities (CC Part 11, Section 3).

The main characteristics of custom penalties are the following:

- While fining, intention is not taken into account. Intention is not a provision of the penalty.
- People who act contrary to the law may face with penalties as in the CC.
- If an act is punishable by multiple penalties, the largest fine is applied¹⁰.

1.2. Loss of Tax Penalties:

Loss of tax not done on time or on time but with deficient amount or incorrect withdraw¹¹.

If any act leads to loss of custom taxes, penalty regulated by articles 234, 236, 237 and 238 of the CC.

According to Article 234;

“As a result of any declaration, examination and control or post release control relating to goods subject to free circulation procedure or temporary importation with partial relief;

(a) Apart from the existing duties, a fine at a rate of threefold of the arising difference, shall be charged in the case that any discrepancy occurs in the elements forming the Customs Tariff referred or in such measurements of goods as number and weight which are subject to taxation; and provided that the difference between the import duties calculated pursuant to declaration, and import the duties to be charged in accordance with the examination results, exceeds 5%.

¹⁰ Ercan, p. 18.

¹¹ Ercan, p. 127.

(b) Apart from the import duties regarding the deficit, a fine at a rate of threefold of the tax difference shall be charged in the case the declared value of the goods subject to import duties is deficient when compared with the value.

(c) In case of a difference in quantity less than 5% and in case of deficient value declarations incurred from a formal account error, the import duties regarding these differences as well as a fine at an amount of half of the tax difference, shall be charged.

In cases where the differences referred to in paragraph (1) are found as a result of any declaration, examination and post-control relating to goods subject to inward processing procedure, procedure for processing under customs control and procedure on temporary importation with total relief; a fine at a rate of half the fines prescribed in the same paragraph, shall be imposed.

Where the above-mentioned discrepancies have been communicated by the declarant before the customs authorities notice them, the fines in question shall be applied at a rate of 15 per cent.

The provisions relating to the above-mentioned fines shall not apply for the public administrations within the scope of general administration.

Where the customs authorities establish, as a result of control, that the import duties payable under the cover of a customs debt have either not been paid or been incompletely paid until the deadline; the payable import duties shall be collected together with the interest mentioned in the said paragraph, and a fine at an amount of one fourth of these duties shall be imposed on the debtor. Such fines shall not apply in case the unpaid or incompletely paid import duties referred herein, are communicated by the debtor to the customs authorities before they notice such duties". Article 235, 236,237 and 238 also regulated amount of penalties in detail".

Tax loss which is not defined in the CC mean is not assessment in time, less assessment in time, give back or cause tax return as a tortuous. The acceptance of customs penalty is not related to defect of taxpayer, tax liable, custom broker or other people defined in the CC. When an acts which lead to tax loss that is identified in the CC shall be considered actualized material element of penalty¹².

Articles 235, 236, 237 and 238 regulated amounts of penalties for each case.

¹² Ercan, p. 142.

1.3. Irregularities

Irregularities are violation of articles of the CC procedure.

Irregularities acts regulated articles 239 and 241 of the CC.

According to article 239 which regulate this penalty; “a fine at the rate of one tenth of CIF in the case that the goods are subject to importation, and a fine at the rate of one tenth of FOB in the case that goods are subject to exportation, shall be charged from; those who have without authorization imported or exported or attempted to import or export the goods subject to relief from export and import duties through other places other than the customs administrations specified in accordance with the provisions; and those who have brought into or out such goods or who have attempted to bring into or out such goods, without going customs formalities, from the customs territory of the country.

Those exporting from the Customs Territory of Turkey the goods exportable by the payment of custom duties, without placing under customs procedures or without the partial or whole payment of customs duties, shall be charged with the customs duties of these goods as well as a fine of two-fold of these duties”.

Article 241: “1. Without prejudice to the circumstances for which a separate penalty has been assigned, an irregularity fine of TL 60 shall be charged on those who have violated the provisions laid down by secondary regulations issued on the basis of this Code and the authorities granted therein.

2. The amount referred to in paragraph 1, shall be increased annually on the revaluation rate. In such a calculation, the amount up to TL 1 shall not be taken into consideration.

3. When compared with the amount referred to in paragraph 1, the irregularity fine shall be doubled where:

- (a) the false presentation by the concerned persons, of the documents and information which form a basis for the decisions taken by the customs administrations;
- (b) Even though it leads to no tax loss, existence of a sales transaction between the persons interrelated; and no declaration of such relationship;
- (c) Failure of the equipper or operator or his agent to inform the relevant customs administration within the duration to be laid down by the regulation for the arrival and departure of the vessels that arrive at Turkey from foreign ports or that depart from Turkey for foreign ports

- (d) Failing to present, within the prescribed time, the summary declaration or the commercial or official document used as summary declaration
- (e) Where the vehicles carrying transit goods by road within the Customs Territory of Turkey exceed, up to 24 hours
- (f) Where a deficiency exists in the technical equipment of the customs warehouse)
- (g) Failing of the warehouse keepers to record the goods subject to customs warehouse procedure on the date when these goods have been placed into the warehouses
- (h) Conclusion, within one month following the expiry of the authorization duration, of the formalities; re-exportation or placing under a customs-approved treatment or use, of the goods brought into the Customs Territory of Turkey under the inward processing procedure and the procedure for processing under customs control;
- (i) Having exceeded the prescribed period, returning of the goods temporarily brought out of the Customs Territory of Turkey
- (j) Without prejudice to the provisions of the Anti-Smuggling Act, a difference over 10% is detected in the amount or kind of the exported goods in accordance with the declaration and the documents enclosed therewith
- (k) Non-compliance of those working in or entering and leaving the free zones, with the rules laid down by this Code.
- (l) re-exportation or placing under a customs-approved treatment or use, within one month following the expiry of the granted time limit, of the goods brought into the Customs Territory of Turkey under the temporary importation procedure.
- (m) Demonstration with reasonable documents, that the goods imported under the temporary importation procedure have been released out of the Customs Territory of Turkey without informing the relevant customs authorities, but within the period prescribed.

And also the irregularity fine shall be quadrupled where:

- (a) even though he is not authorized to represent; where a person proceeds a transaction in the name or on behalf another in the customs administrations;
- (b) road vehicles, without being granted the authorization of the customs administration, carry on their journey by embarking and disembarking passengers or load;

- (c) Unloading goods from vehicles false declaration of the description of the goods registered in the summary declaration or in the commercial and official documents used as summary declaration or non-conformance of the kind of package and the numbers and marks indicated thereon, with the registrations of the summary declarations;
- (d) Vehicles carrying transit goods by road into the Customs Territory of Turkey exceed, up to 48 hours,
- (e) goods, brought into general warehouses and free zones and which are flammable and explosive or which present a danger or are likely to spoil other goods or which require special facilities and equipment for their preservation, are stored in general premises;
- (f) Placing of the goods in warehouses
- (g) re-exportation or placing under a customs-approved treatment or use, within a duration not exceeding 2 months following the expiry of the granted time limit, of the goods brought into the Customs Territory of Turkey under the temporary importation procedure;
- (h) Conclusion, within a duration of no more than 2 months following the expiry of the authorization duration, of the formalities; re-exportation or placing under a customs-approved treatment or use, of the goods brought into the Customs Territory of Turkey under of the inward processing procedure and the procedure for processing under customs control;
- (i) failure of the relevant persons to submit documents and information though they have been requested to submit such documents and information in written form

5. The irregularity fine shall be charged as six fold of the amount if; where

- a) vehicles carrying transit goods by road into the Customs Territory of Turkey exceed, up to 72 hours,
- b) re-exportation or placing under a customs-approved treatment or use, within a duration not exceeding three months following the expiry of the granted time limit, of the vehicles brought into the Customs Territory of Turkey under the temporary importation procedure

The irregularity fines shall be charged as eightfold, where;

- (a) vessels arriving from the ports out of the Customs Territory of Turkey change their route, wait in the course of the journey, contact with other vessels, do not make their way enough for customs supervision or draw near places where no customs office exists and it is not possible to prove

that the vessel was actually not loaded or its cargo was discharged at another port or was damaged or lost (general average);

- (b) Vehicles travel on the roads other than those
- (c) Vehicles carrying transit goods by road into the Customs Territory of Turkey exceed, up to 72 hours
- (d) Failing to keep the documents for a duration of 5 years”.

Irregularities are violating of form and method provisions of CC and act is not losing a public income but is cause to losing. Articles 239-241 also regulated amounts of penalties for each case.

1.4. Administrative Rules

When taxpayers or custom brokers want to make an administrative appeal of custom penalties, they can follow either article 242 (objection) or article 244 (reconciliation).

If there is any controversy between taxpayer or custom brokers and the custom authority, they should initiate an objection, reconciliation, or claim remission with the administrative committee. This must be done before any case goes to court. Tax courts will not accepted cases that have not done this step first.

According to Article 242 and 243; “Within 15 days from the notification, the debtors may appeal against the customs duties, fines and administrative decisions under a petition addressed to a superior authority or to the same authority if such a superior authority does not exist.

Appeals submitted to the administration shall be decided within 30 days and notified to the relevant person.

Where the appeal petitions are submitted to the wrong authorities within the period prescribed, the appeal shall be deemed to be submitted within the prescribed period and shall be conveyed by the administration to the relevant authorities.

Any person shall have the right to appeal before the administrative judiciary bodies located where the formalities relating to the decisions on the rejection of the appeal are carried out.

Within 15 days as from the notification, any person shall have the right to appeal in writing before the Regional Directorate for Customs and Customs Enforcement against the chemical analysis results taken as a basis in the calculation of the customs duties notified to the relevant persons in accordance with Article 197.

Upon an appeal, second analysis shall be made by two chemists other than the chemist who works in the laboratory where he made the first analysis. Upon request, the customs administrations shall authorize an observer chemist who is not a customs chemist, to be involved in the second analysis. Where an appeal has been lodged against the analysis made in the customs laboratories in which not more than three chemists work, the second analysis shall be made in the laboratory in which at least two chemists work and which is affiliated to the nearest customs administration”.

Article 244 which regulated reconciliation rule is; “Where the declarant or the person to pay the fines may contend against the deficiencies or irregularities detected by the customs administration in the submitted declarations, by arguing that they have emanated from failing to adequately understand the legal provisions or from misinterpretation of the provisions or a difference of opinion exists as to the judicial decisions, the customs administration may reconcile with the declarants or the person to pay the fines within the framework of the provisions hereof. The request for reconciliation shall be submitted within fifteen days as from the date of notification, for the customs duties and fines for which no objection was yet filed. In the event of a request for reconciliation, the term of objection or litigation shall be suspended and the term shall be resumed in failure of reconciliation or ensuring reconciliation. However, the term shall be extended for three days where the deadline is less than three days. In failure of reconciliation or ensuring reconciliation, no new request shall be submitted for reconciliation.

Demands for reconciliation shall be assessed by the customs conciliation commissions. The procedures and principles governing the establishment and functioning of the customs conciliation commissions and submission of applications hereunder shall be laid down by a regulation.

The reconciliation reports issued by the customs conciliation commissions shall be of definitive nature and relevant procedures shall be conducted forthwith. The declarant or the person to pay the fine may not file lawsuits or complaints at any official authority against the reconciled issues incorporated into the report.

In the event of reconciliation, the reconciled customs duties and fines shall be paid within one month as from the notification of the reconciliation report. The late payment fee determined under the Act no. 6183 shall apply to the time interval between the due date of the reconciled duties and the date of signature of the reconciliation report. In failure of reconciliation or assurance of reconciliation, the general provisions shall apply.

If there is any controversy between the taxpayer or customs broker and the customs authority, they should initiate an objection, reconciliation or claim remission with the administrative committee. This must be done before any case goes to court. Tax courts will not accepted cases that have not done this step first. They must go to tax court within thirty days or the case will be considered tax recognized¹³. There is no specific Custom Court therefore they can appeal to Tax Court in the region where custom authorities imposed penalty.

According to CC Article 8; “Any person may request information concerning the application of customs legislation from the customs administrations. The information shall be supplied to the applicant free of charge. However, where special costs are incurred by the customs administrations, in particular as a result of chemical analyses or expert reports on goods, or the return of the goods to the applicant, he may be charged the relevant amount”.

2. Custom Penalties in United States

2.1. General Definition

United States Constitution provides in Article I, Section 8 that: “The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States”¹⁴.

In USA Congress has to power to regulate commerce with foreign nations. Also, the founders preempted the states from engaging in trade regulation by stating that “No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports..”. To implement these powers, the First Congress passed the Tariff Act of July 4, 1789 and more detailed law was enacted in 1799 to define the administrative mechanism for the collection of duties¹⁵.

Any person or business bringing goods into the United States is subject to the laws and regulations of U.S. Customs and Border protection (CBP), a component of the Department of Homeland Security¹⁶.

Depending on the nature of the goods, they may also be subject to certain laws and regulations of various other federal agencies that strive to protect U.S. consumers from injurious foreign products by ensuring product safety or

¹³ Şenyüz Doğan, Yüce Mehmet, Gerçek Adnan, **Türk Vergi Sistemi**, Ekin Yayınevi, 13.Baskı, Bursa 2016, p.348-350.

¹⁴ <https://www.law.cornell.edu/constitution/overview> (13.07.2017)

¹⁵ Pike V.Damon, Friedman M.Lawrence, **Customs Law**, Carolina Academic Press, 2012, p.3.

¹⁶ www.cbp.gov (13.07.2017)

adherence to U.S. specifications¹⁷.

CBP is charged with enforcing and importers have the burden to comply with the import and other laws contained in United States Code of Federal Regulations (USC) Title 19, namely Custom Duties¹⁸.

USC Title 19, Chapter 4 (Tariff Act of 1030), Subtitle III (Administrative Provisions), Part V (Enforcement Provisions) regulated custom penalties and other rules¹⁹ that apply to individuals, companies and institutions so one of them fraud which enacted very broadly and other civil penalty provisions are enforced by the Customs Service which are;

- Failure to declare (19 USC, 1497)
- Drawback penalties (19 USC, 1593)
- Customs broker penalties (19 USC, 1641)
- Recordkeeping penalties (19 USC, 1509)
- Falsity or lack of manifest (19 USC, 1584/a/1)
- Unlawful lading and unlading (19 USC 1453)
- Unlicensed unlading of passengers (19 UC 1454)²⁰.

Penalties from CBP are initially stated in accordance with the applicable statute or regulation that dictates what the amount of the penalty should be. This could be a specific dollar amount, a percentage of the entered value, a multiple of the underpaid duties or a multiple of the quantity of goods entered²¹.

2.2. Fraud

USC 19, Chapter 4, Subtitle III, Part V, Provision 1592 is one of the primary provisions used by Customs to restrict unlawful import practices. The section is very broad, making it unlawful for any person to make, or to aid or abet another in making “any false and material statement or omission in connection with the importation of merchandise”. Also a violation may occur regardless of whether there has been actual loss of duties resulting from the practice. Thus 1592 article penalizes both fraudulent and negligent import practices which have a potential impact on the importation of an article, without regard to any actual loss of revenue to the United States and this provision also emphasizes the “reasonable care” standard²².

¹⁷ Reneau Robert, **Global Trade Compliance**, Outskirts Inc., 2011, p.7.

¹⁸ www.law.cornell.edu (13.07.2017)

¹⁹ <https://www.law.cornell.edu/uscode/text/19/chapter-4/subtitle-III/part-V>

²⁰ Serko David, **Import Practice, Customs and International Trade Law**, Practising Law Institute, 1985, p, 302-304.

²¹ Reneau, p. 62.

²² Glick A.Leslie, **Guide to United States Customs and Trade Laws After the Customs**

According to provision 1592; “Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A)”.

1592 (d): “Notwithstanding [section 1514 of this title](#), if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a), the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed”.

Under 1592 (c) (3), “A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed

(A) the lesser of

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise”.

When a violation of Customs laws or laws enforced by Customs is discovered, in addition to, or in lieu of, seizure and/or referral for criminal prosecution, Customs usually has the option of assessing a personal penalty against the alleged violators²³. While the penalty process generally begins with the Fines, Penalties & Forfeiture Officer’s issuance of the Penalty Notice to the alleged violator, some statutes require the issuance of a prepenalty notice and opportunity for response before Customs makes its penalty claim and the alleged violator has thirty days from the date of mailing of the prepenalty notice for response²⁴.

Modernization Act, Second Edition, Kluwer Law International, 1997, p. 88 ; **Pike, Friedman, p. 519** “ The law requires that importers make entry of merchandise to the United States 1 using reasonable care” which was introduced into customs law via the Customs Modernization Act of 1993 but the term is not defined in the statute, is defined in *United States v. Hitachi America*, 1997.

²³ Pike, Friedman, p. 533.

²⁴ Pike, Friedman, p. 534.

2.3. Failure to Declare

USC 19, Chapter 4, Subtitle III, Part III, provision 1497 regulated; “(1)Any article which

(A)is not included in the declaration and entry as made or transmitted; and

(B)is not mentioned before examination of the baggage begins

(i)in writing by such person, if written declaration and entry was required, or

(ii)orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

(2)The amount of the penalty imposed under paragraph (1) with respect to any article is equal to

(A)if the article is a controlled substance, either \$500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

(B)if the article is not a controlled substance, the value of the article”.

2.4. Drawback Penalties

USC 19, Chapter 4, Subtitle III, Part V, Provision 1593 regulated;

“No person, by fraud, or negligence—

(A)may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

(i)any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii)any omission which is material; or

(B)may aid or abet any other person to violate subparagraph (A)”.

Drawback, in pertinent part, is the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax imposed under federal law. A drawback claim represents the drawback entry and related documents required by regulation in order to request drawback payment²⁵.

Drawback, in pertinent part, is the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax (in connection with the

²⁵ Pike, Friedman, p. 537.

importation of merchandise) imposed under Federal law. A drawback claim represents the drawback entry and related documents required by regulation in order to request drawback payment²⁶.

2.5. Broker Penalties

USC 19, Chapter 4, Subtitle III, Part VI Provision 1641 is “customs brokers” and generally Customs will assess penalties against custom brokers up to maximum of \$ 30.000 for the violations included in any one penalty notice.

Provision 1641/d: “The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker

- A. has made or caused to be made in any application for any license or permit under this section, or report filed with U.S. Customs and Border Protection, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;
- B. has been convicted at any time after the filing of an application for license under subsection (b) of any felony or misdemeanor which the Secretary finds
 - i. involved the importation or exportation of merchandise;
 - ii. arose out of the conduct of its customs business; or
 - iii. involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;
- C. has violated any provision of any law enforced by U.S. Customs and Border Protection or the rules or regulations issued under any such provision;
- D. has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by U.S. Customs and Border Protection, or the rules or regulations issued under any such provision;
- E. has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary;
- F. has, in the course of its customs business, with intent to defraud, in any

²⁶ https://www.cbp.gov/sites/default/files/documents/icp052_3.pdf (14.07.2017)

manner willfully and knowingly deceived, misled or threatened any client or prospective client; or

- G. has been convicted of committing or conspiring to commit an act of terrorism described

In cases where the broker allegedly has violated any of the laws, rules or regulations enforced by Customs (i.e., 19 U.S.C. 1641(d)(1)(C)), in a fraudulent manner, it is appropriate for Customs to impose additional penalties under 19 U.S.C. 1592. It is Customs policy, in cases of negligence or gross negligence, to impose additional penalties under 19 U.S.C. 1592, only where the broker shared in the financial benefits to an extent over and above the prevailing brokerage fees²⁷.

Custom brokers may be subjected to primarily liability as well as liability for aiding and abetting the commission of an infraction. Section 1641 authorizes two type of sanctions for violations of the section: monetary penalties, or revocation or suspension of the broker's license or permit²⁸.

2.6. Recordkeeping Penalties

USC 19, Chapter 4, Subtitle III, Part III, Provision 1509: "(a)Authority in any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may

1. examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that—
 - A. if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type,

²⁷ https://www.cbp.gov/sites/default/files/documents/icp052_3.pdf (14.07.2017)

²⁸ Glicke, p. 97.

and age of the item demanded; and

- B. if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g)”.

Certain persons who fail to produce, upon demand, an entry record enumerated in the Customs Regulations pursuant to 1509 (a)(1) (A) commonly known as the “ (a)(1)(A) list” may be subject to penalties and this list refer to records required by law or regulation for the entry of merchandise²⁹.

2.7. Falsity or Lack of Manifest

USC 19, Chapter 4, Subtitle III, Part V, Provision 1584 (a) (1) regulated;

“Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer (whether of the Customs Service or the Coast Guard) demanding the same shall be liable to a penalty of \$1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be liable to a penalty equal to the lesser of \$10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of \$1,000”.

2.8. Lading and unloading of merchandise or baggage; penalties

USC 19, Chapter 4, Subtitle III, Part II, Provision 1453 regulated; “If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefore issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden

²⁹ Pike, Friedman, p. 537.

or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is \$500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture”.

2.9. Unlading of Passengers

USC 19, Chapter 4, Subtitle III, Part II, Provision 1454 regulated; “If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of \$1,000 for the first passenger and \$500 for each additional such passenger so unladen”.

2.10. Administrative Rules

Before any disputes or any import acts Custom Advance Ruling may be requested under Part 177 of the CBP Regulations (19 C.F.R. Part 177) by any person who, as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request, or by the authorized agent of such person. A “person” in this context includes an individual, corporation, partnership, association, or other entity or group³⁰.

The person named in the pre-penalty notice will have 30 days in which to respond to the notice. The response may be either oral or in writing. The importer’s response should contain information identifying it as a response to the pre-penalty notice, answer the allegations set out in the notice and provide reasons why a penalty should not be issued for a lesser amount³¹.

Written notice of any fine or penalty incurred, as well as any liability to forfeiture, must be given to each party known to have an interest or claim in the seized property. Each interested party must also be informed of the right to apply for relief under 19 USC Section 1618³².

According to USC 19, Provision 1592/e; “Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section

1. all issues, including the amount of the penalty, shall be tried de novo;
2. if the monetary penalty is based on fraud, the United States shall have

³⁰ <https://www.cbp.gov/trade/rulings> (14.07.2017)

³¹ Glick, p. 89.

³² Serko, p. 309.

- the burden of proof to establish the alleged violation by clear and convincing evidence;
3. if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and
 4. if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence”.

This grant of exclusive jurisdiction has been upheld by the courts and legal proceedings to enforce section 1592 will be brought by the U.S. Attorney in the Court of International Trade³³ within five years of the date of the violation³⁴.

Conclusion

The customs service’ in the United States has authority over infractions of customs and related laws. They are generally exercised through the assessment of civil penalties and forfeiture of imported merchandise following the terms and conditions provided by the law. When we compare the CCs of and the United States, the US Custom Code has more detailed penalties and fines including forfeiture of imported merchandise. It has a published bulletin that describes all of the rules. Since customs provisions are very complicated US Customs and Border Protection (CBP) also issues binding advance rulings and other legal decisions related to importing merchandise into the United States. Advance rulings provide the international trade community with a transparent and efficient means of understanding how CBP will treat a prospective import or transaction.

Although the CC in Turkey is less complex, it needs to more clearly define provisions and explain the rules, following the example of US. It also recommended to create a customs court, following the example of the US Court of International Trade.

REFERENCES

³³ See more information, www.cit.uscourts.gov

³⁴ Glick, p. 100.

Ercan Tayfun, Gümrük Uyuşmazlıkları ve Çözüm Yolları, Adalet Yayınevi, Ankara 2012.

Glick A.Leslie, Guide to United States Customs and Trade Laws After the Customs Modernization Act, Second Edition, Kluwer Law International, 1997.

Pike V.Damon, Friedman M.Lawrence, Customs Law, Carolina Academic Press, 2012.

Reneau Robert, Global Trade Compliance, Outskirts Inc., 2011

Selen Ufuk, Gümrük İşlemleri ve Vergilendirilmesi, Ekin Yayınevi, 6.Baskı, 2014.

Serko David, Import Practice, Customs and International Trade Law, Practising Law Institute, 1985

Şenyüz Doğan, Yüce Mehmet, Gerçek Adnan, Türk Vergi Sistemi, Ekin Yayınevi, 13.Baskı, Bursa 2016.

Şenyüz Doğan, Vergi Ceza Hukuku, Ekin Yayınevi, 8.Baskı, 2015.

Online References

www.cbp.gov

www.cit.uscourts.gov

www.gtb.gov.tr

www.law.cornell.edu