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## Key articles

### National defense and the development of citizenship

"Defense! This is the first reason of a State's existence. Without defense, the State's existence can be compromised", once observed the General Charles de Gaulle, during his second speech in 1952 at Bayeux.

If this statement is not undermined yet, it has not always been the case. Through the evolution of history, precisions about the strategic notion of defense have evolved. Since the appearance of first human beings, rivalries and self-defense have been an integral part of their destiny. Next to social evolution, those rivalries have been noticeable through vendettas, battles, wars opposing many groups and clans. But progressively, those groups have been organized through different nations and armies.

Today, defense, with its main political function, extends to the national level because it includes not only the military defense and army forces, but also all administrations responsible for big and various functions or crucial resources for the survival of the country.

Thus, this concept of global defense becomes rather a priority of States. Its main goal is to ensure security and integrity of the national territory and the security of people in any time, any situations against all types of attacks and aggression. Defense provides also for the conformity to alliances and international treaties and agreements. Consequently, it is a privileged device of the national sovereignty; and it is also a device for international credibility, basically when it is applied in the multilateral framework.

Because of its strategic position at the borders, the goal of the Customs' administration in the national strategy of defense and in stimulating citizenship is crucial. Contributing to citizenship and the implementation of a policy for national, effective and efficient defense is decisive. Moreover, any strategy of national defense supposes the existence of real citizen spirit in order to be viable. Today, citizenship is the substratum on which the national defense is founded. It is symbolized by the respect of a set of values which unified firmly that community of fellow citizens. Those citizens' values are included in a set of concrete norms, concerning their duties and rights, linked together in a politico-judicial status of citizens. This is guaranteed in the frame of State-Nation.

The mission of the Customs' administration is crucial in the national defense and the development of citizenship because of its strategic situation to borders. In fact, the Customs ensures the policing of international relationships. In so doing, the Customs contributes entirely to the protection against international threats and the ones not clearly related to military aggressions, but also to clash and strengthening of the cult of citizenship. This appears through the pursuit of various missions reflecting a strategic importance.

In a first point, it concerns the fiscal mission which consists of liquidating duties and taxes for the public Treasury. In a second point, the Customs has an economic goal within the logic of this fiscal mission. Thus, the Customs controls trade

flows, on the basis of fixed norms as far as international trade is concerned. In a word, the Customs' main goal is to struggle against fraud and the great international traffic. In this perspective, the Customs has to ensure the protection of economic and financial interests, in the national and community level. In a last point, the customs also contributes to the protection of public and health security, the protection of environment or national patrimony. Definitely, the Customs' administration participates in the national defense (I), and to the development of citizenship (II) too.

## → I - THE CUSTOMS' ADMINISTRATION, A MAINSTAY OF THE NATIONAL DEFENSE OF SENEGAL

Today, forms of threats and ways to respond to have deeply evolved. But they have become particularly diverse and cover all aspects of political, social and economic life of a State. Thus, three types of threats corresponding to the present contours the national defense includes have been identified. The three types are the civil defense, the economic, and the military one.

The contribution of the customs' administration in ensuring the policing of international relationships of the country is important in the application of the global defense. This global defense is particularly composed of the economic (A) and civic (B) defense of the nation.

### ● A- THE CONTRIBUTION OF THE CUSTOMS' ADMINISTRATION TO THE ECONOMIC AND NATIONAL DEFENSE IN SENEGAL

The involvement of the administration of Senegalese customs in the economic defense is noticeable through its contribution to funding the State budget (1), supporting the economic competitiveness of Senegalese companies (2) and the strengthening of the controls' effectiveness and the surveillance of the customs' territory (3).

#### 1- The Customs' contribution in funding the State budget

At any time, Customs' achievements have been rising excepted the slight decrease happened in 2000. This can be compared to 1999 year which explains amply the imperative time limit of maturation necessary for the economic operators' to adapt to the new context, introduced by the given effect of the Common Foreign Tariff concerning the WAEMU community.

Face to new challenges, the Customs' administration has come to bring daring reforms in its mode of functioning, with a spirit of anticipation on the evolution of the regional community. Considerable efforts are made for adaptation and openness to technological innovations within the determinant support of the Department of Economy and Finances. In the same logic, partners to development also have brought an appreciable monitoring.

#### 2- The support to the economic competitiveness of Senegalese companies

Today, companies are at the center of the issue on economic and social development. Through their function of creating wealth, they constitute a strong lever of economic increase and the rise of populations' standard living. Now a set of changes characterize the international economic environment, basically concerning openness to the foreign markets. Thus, in such a context companies are in an ongoing situation of competition and rivalries in the global market. From that time, all initiated actions at an international, regional or state level converge on the necessity to redefine a favorable context that encourages emergence and the development of companies, particularly the medium-sized and small companies in our developing countries. Senegalese companies are facing to many difficulties among which the scarcity of financial resources, the limited local market, the multiplicity of controls, the terrible lack of credible economic information (data). From this time, they should overcome all the above-mentioned difficulties to challenge the competitiveness, the openness of foreign markets and the promotion of export activities and investment.

##### a - The reduction of production's costs through an adaptive taxation

The application of the WAEMU Common Foreign Tariff has led to the substantial decreasing of taxation pressure. In fact, the Common Foreign Tariff has considerably simplified the customs' list of tariff leading to a considerable reduction of

domestic taxation.

Since the coming to effect of the Common Foreign Tariff, the Customs' actions which protect local industries are to be hailed. This is partly noticeable through many claims for re-categorization of some inputs that impact directly on the cost of the production.

Besides, the strict application of the Import Cyclical Tax, a complementary device of the WAEMU taxation has allowed ensuring the protection of industrial system and foil smuggling practices. Concerning the intra-community regime, the approval to the regime of Community Preferential Tax in the WAEMU and the scheme of ECOWA's liberation of exchanges has allowed benefiting from some products of the total franchise of duties and head taxes during importation in a State member. With these privileges, many Senegalese companies have come to conquer a substantial part of the sub-regional market in terms of statistic correspond now to the main part of outlets

#### **b - The application of minimum values**

The customs' administration applies minimum values about a limited list of products the General Council of the World Trade Organization allows, accordingly to the Decision G/C/W/488 of 16 April 2004 in order to fight effectively against fraud as far as import goods are concerned and the unfair competition that can cause disastrous threats to the spreading of companies.

In 2006, this measure had been subjected to deferment. This has allowed Customs' authorities keeping minimum values beyond the first time limited. By that time, the World Customs Organization' organs had taken decisions concerning the new claim for deferment the Senegal introduced by the end of June 2007. The implementation of that decision has had some advantages in the sense that it has permitted to fight effectively against smuggled practices related to under evaluations and other forms of prices manipulation.

Nevertheless, the decision has not allowed eliminating all obvious threats which weigh on some activities.

Thus, it is relevant to plan a strategy based on the implementation of other instruments of protection against illicit trade practices (anti-dumping measures, countervailing duties, measures of saving), accordingly to the World Trade Organization norms.

### **3 - The reinforcement of the effectiveness of controls and the surveillance of the Customs' territory**

#### **a - The improvement of controlling systems**

The Senegalese Customs works out for the consolidation of a system of control more matched to the exigencies of companies' development, including the analysis of risk of fraud and the targeting. In fact, the establishment of an attractive economic environment can offer a great celerity in the achievements of trade operations. In that logic, the creation of computerized system to analyze risk ("SIAR") at the same time goes in hand with the constitution of a data based as a tool helping for decision when there is doubt concerning the exactitude and veracity of the declared value.

For that purpose, the Customs' administration has elaborated a new framework instruction about controls in order to avoid any superfluous customs' repetitions. This text is composed of a set of measures and recommendations which aim at establishing a fast, rational, efficient and safe control as well at the trade operations' level as the surveillance of Customs' territory. This new method of control has become imperative with the economic issue to the exigencies of companies' competitiveness. The main goal is to simplify procedures in customs' clearance of goods.

The strengthening of the using of X-rays imaging at the port and the airport participate not only in the goals of facilitation but also that of security. This technology has brought noticeable achievements in reducing the time of goods' immobilization and the prices of annex, relieving thus economic operators and some users by granting more flexibility in

licit trade transactions.

## **b – The enforcement of the control of customs' territory**

Seeing the crucial mission of the customs, public institutions have given efforts for the recruitment of employees, the bettering of technical means and the working conditions. This has been fruitful because it helps for the implementation of a strategy of controlling goods, based mainly on a nearly permanent occupation of the customs' territory, combined with regular dialogues with economic operators. The impact of this strategy on the economic environment of companies can be explained by the seizure of more than 257 ton of sugar in 2006. These operations have allowed to bringing more transparency in the market.

### **● B- THE CONTRIBUTION OF THE SENEGALESE CUSTOMS' ADMINISTRATION IN THE NATIONAL AND CIVIC DEFENSE**

The Customs' administration is helping different services. For that purpose, this administration contributes to the protection and safety of civil people by:

- fighting against any kind of traffics, basically drugs traffic, arms traffic, animal and vegetal species threaten to disappear;
- by controlling the movement of civil or military and strategic products, that of cultural belongings, and preventing people to introduce into Senegal some dangerous products or not respecting national and community norms;
- registering some outlaw act related to the common law when controlling goods

In a word, the Customs contributes to the protection of the consumer, by making sure that regulations related to the quality and security of products are being respected. These products concern the imported industrial one, coming from abroad or the countries of the WAEMU. The Customs proceeds to the physical and documentary controls, in addition to laboratory analysis. Rigorous controls are done on the import and export operations concerning the national cultural patrimony.

In the naval domain, the Customs contributes to the protection of the sea against pollutions and control of fishing activities by ensuring at the same time the naval surveillance

## **→ II THE CONTRIBUTION OF THE CUSTOMS' ADMINISTRATION IN THE DEVELOPPEMENT OF CITIZENSHIP IN SENEGAL**

From a judicial perspective citizenship, is a principle of judicial legitimacy. Generally, a citizen is someone who relieve from the state authority and protection, and then enjoys his civil rights and duties toward the State.

Thus the social link is established between a person and the State what make him or her capable to act freely the set of political rights attached to that quality otherwise she or he does not be private by all or part of the act by penal sanction.

The modern citizen refers to the person's rights and duties: human rights-civil rights-political rights- social rights. This supposes the sensitization, training and merely the communication of citizens. Giving credible and updated information of people evolves in a State in order to consolidate his relations with the entity.

In such a dynamic, the Customs' administration contributes in its domain by giving relevant information to economic actors, generally to citizens. For that purpose, some reforms have been brought for the adaptation of the customs' regulations to the needs of economic actors. Communication in this sense constitutes a mainstay but also for a council and facilitation of transactions operated by the productive sector. The intention of the Customs to inform people is stipulated in the Decree N°8381 of 25 August 2000 fixing the organization chart of the General Customs Direction. This chart organization includes the Office of Public Relations and Communication, and the Office Advisor to Companies and Facilitation.

The first Office is an important part in the communicative chain established the Customs' service. It also links the Customs'

administration to the users, particularly companies. But the major innovation comes from the creation of the Office for Advice to Companies and facilitation. The creation of such an organ derives from the intention of customs' authorities to form confident partnership with the private sector. From this logic, the Office for Advice to Companies and Facilitation has two main missions as far as companies are concerned:

-a mission of advice which consists of monitoring companies in the seeking of effectiveness by giving them necessary information they need, for instance giving the customs' instruments the most adaptive ones to their needs.

-a mission concerning facilitation which in practice is represented by the proposition of measures aiming at bettering procedures and customs' operations.

## **Senegalese Customs, a leading partner of companies**

Media's treatment of some customs' issues may lead people to have some prejudices as far as this institution is concerned. People may characterize Senegalese customs to be too repressive, outdated and even a threat for companies. This negative image does not correspond to reality. On the contrary, customs' administration, as a supplier receipts of national economy and for the safeguard of a perennial State, cannot conciliate its fiscal mission to any loss of incomes.

Therefore, this public service acts also out of duty, by making sure that duties and taxes are perceived within the collaboration of services of the Treasury Department. But this mission is consubstantial to the security one and the promotion of national economy.

In fact, companies constitute the first contributors in the efforts to collect receipts. They are also major actors in all economic development. That is why customs' administration directs all its action toward their strengthening and survival. Customs' administration considers those companies as the privileged and special one and not tax evaders or smuggles. In this logic, the administration of Senegalese customs displays all its efforts for a consolidation of the partnership within a reciprocal confidence.

The complexity of regulations the customs' administration applies can bring some irregular aspects that do not show an intention stopped and dealt for smuggling. In such cases, it is necessary to preserve funds of the Treasure Department without even threatening companies or giving them a negative image.

The work of customs' administration, committing in an active and dynamic partnership with companies, the only source of wealth, finds its interest in such a context.

### **The Public Relationships and Communicative Department**

## **Writing Sections : Basic mechanisms of control in business' operations**

Customs' administration needs a practical and judiciary instrument suitable to the achievement of the different assigned missions... In fact, a constant adaptation of its organizational instrument is vital when trading transactions, a generator of activities, become more and more diverse and sophisticate.

This double requirement justifies the noticeable choice of Senegalese customs to rely on a coherent organization in order to better consider budgetary matters (control services of goods' operation) and the economic protection (monitoring services).

Known as "customs' offices", control services of trading operation are mainly entitled to ensure the settlement of duties and taxes applied to diverse regulations related to international exchange.

Their intervention which used to be fiscal precedes that of security units. "Customs' offices" aim at funding public institutions in order to deal with numerous responsibilities. Nevertheless, next to its first mission comes the economic one, that of protection (monitoring services) through the implementation of a set of measures in order to help and support international trading operation.

Offices are not opened, at the same time, to all customs' clearances since imported goods and place of access varies throughout customs' areas. Nevertheless, the greatest part of the trade traffic is designated to the big customs' offices at the port and airport for the wide scope of activities and the volume of covered operations, are like the fundamental chain of the customs' action through tax system and economics. These services, as the secular arm of the general management of Senegalese customs in fulfilling its public mission service are worth to be considered. Rethinking their organization and running is crucial since it appears like the main core to adapt them constantly in the context of globalization, source of many constraints. Such an approach will allow appreciating the relevancy of the classic specificity of this administration which depends on the functional bipolarization between writing sections and customs' inspection+.

Gradually, in this first analysis as a real "way of access" of a great office and , writing sections deserve an interest and basic mainstay of customs' clearance services for their various involvements to carry out the customs' strategy or policy. The time of such an interest has come if we consider the dominant prejudices which used to confuse the given appreciation as far as roles are concerned and the main services including the device of a great office.

The purpose of this contribution is far from being the claiming of exhaustiveness but to report in a summary way important attributions remitted to the writing sections. It is remarkable that laws stipulate the organization of the customs' services and show that these services are built up around three competences. The regulation of customs' formalities, the control of warehouse management and the monitoring of responsibilities for subscriptions liable for taxes constitute the above-mentioned three main domains.

## → **THE REGULAR CONTROL OF CUSTOMS' PROCEDURES**

Resulted from the administrative devolution, the customs' offices under the overseeing control of central authorities ensure the regulation of goods' traffic. In so doing, this service makes sure that all actors of international transactions are respecting legal prescriptions when goods get into customers' area.

The fulfillment of such an important function is based on a large part on writing sections which play a fundamental role in this context, by carrying out diverse panoply of regulation which its purpose is to ensure the conformity to international law on customs' operations. This mission of control in practice has two directions. On the one hand, we have the one corresponding to the admissible of declarations in details and goods' mattresses stocked as suspensive regimes on the other.

### ● **A. The allowable control against taxes**

Among the first reasons of the creation is these sections have been created consist of writing by checking at the same time de declaration on allowable against taxes. It concerns a control on particularly formal aspect of documents presented for the ends of the outcome. At this time, declarations found not allowable against taxes are returned to customs' agents for the regulation.

At first sight this regulation as the mission of the allowable against taxes section is constituted by two forms: an inspection of declaration and a control of including documents. The inspection is related to information customs' legislation imposes as far as various public regulations are concerned and for its application to the declared goods.

This procedure is meant to check on the presence of important information in order to determine duties and taxes, in addition measures for equivalent effects.

But one must admit that the beginning of automatic declaration resulting from the advent of “GAINDE” (operated management of customs’ information), has largely simplified the allowing against taxes work. Indeed this service of control focuses more and more on the examination of documents which are compulsory. This second stage is crucial because it allows finding out all justificatory documents concerning goods’ situation, from the regulations’ perspective they are submitted.

This importance has been supported by the decree N°91-1221 of November 1991 on establishment of an inspection program on import activities, which, empower writing sections to put up drawing lines leading to the inspection program when there are missing certificated examination concerning goods of “FOB” value is more or equal to three million FCFA and personalized container. Despite that, this kind of control does not cover all writing services which also encompass all an interesting work on suspensive customs’ regulations.

#### ● **B. Inspection of goods under suspensive condition**

According to Pr Berr and TREMEAU , economic regimes refer to those “meant to foster the developpement of economic regimes and reinforce companies’ ability to compete with in the international level, through the issue of changeable mechanism in relation to a given activity. Effects of companies able to compete are definitely obtained only when goods to satisfy according to some obligations changeable depending on economic regimes.”

Three systems corresponding to the three basic functions companies have been settled. In this way, commercial regimes which allow either to always get a stock of goods one can use accordingly to one’s needs (bonded warehouse: code regime S3) or importing goods from abroad for a short time and use them in the customs’ area. In this case, duties and taxes are in suspension for needs of a given activity (temporary and particular admission {S51} and particular temporary admission of use {S52});

-customs’ regulations on alteration which permit importing goods that would be opened in customs’ area, before being led to consumption, or exporting compensatory products. Normal and temporal admission (S53), particular and temporal admission for active improving (S52) and bonded warehouse (S32) constitute the main forms of customs’ regulations.

-Customs’ regulations for the support of activities related to goods’ traffic which include the ordinary transit (S11) and the international transit (S12). Since these procedures bring into play exceptional techniques in relation to devices on common law of customs’ clearance. This happens basically through the suspension of duties and taxes, the administration must make sure that a set of controls on the normal use of customs’ regulations and compel liable which does not apply law to bring them before the courts.

In big offices, sections constitute the master work of the observance device and that of the control suspensive of customs’ regulations. Acting suddenly or for a planning suspended by the head of Sections, they proceed to the examination through certificated papers or physical control preceded by preliminaries which function through documentary collects, operated from an electronic listing of mattresses.

At this level, companies’ visits Performed by the AT sections (temporary admission) and bonded warehouse, are very interesting.

Indeed, they allow making sure that goods set in suspensive regimes are not subjected to fraudulent removal. Compensator products already declared for the audition of accounts correspond to regimes that have been set under the considered regime or result from its application.

The action of those services, stemming from a set of laws, often leads to notice that there are many violation of the law. This set of laws is linked to:

- the law 87-47 on 28 December 1987 of the customs' code,

-the Decree N°7579 MEF/DGD signed on 28 June 1989 determining conditions of application concerning temporary admission regime,

-The Decree n°15238 MEF/DGD on 16 December 1989 dealing with conditions to application related to industrial bonded warehouse

-Decree n°12001 MEF/DGD on 30 September 1989 determining the conditions of agreement and using of the stocking warehouse,

Generally irregularities are related to:

-the non-control in accordance to the extension granted to mattresses,

-the fact that there is no representation of goods placed under suspensive regime,

-the lack of a portion intended for consumption as far as the consumed part of goods in ATS or the non-respect of obligation to re-export

## → II/The management of Customs' warehouse

Since there are some difficulties to grasp the meaning of this concept, referring to the concept of customs' warehouse, it is useful to enlighten people again before considering modes of goods warehouse.

### ● A.The notion of Customs'warehouse

Customs' warehouse used to be that, belonging to the administration where goods are temporarily placed before customs' clearance or retaining for various causes.

Next to this, through a metonymical function, it changes to refer to the judicial situation of goods kept for a moment in a local service. In theory, these goods must be there because of their improper keeping in customs' post. This second conception of has been formally dedicated by the customs' law which conceive the "customs' ware house", as a transitory, before and after the assignment of a definitive customs' regime. In the same logic, goods are placed in customs' posts under the watchful eyes of agents for a precise time. And they should be either alienated or intended to consumption even destined to re-export.

### ● B. Methods used for goods warehouse

On the basis of clauses of the article 180, the law 87-47 dealing with the customs' code are constituted first in warehouse:

-imported goods which are not declared in detail accordingly to legal deadline précised in the article 70 stipulated by the customs' code;

- goods declared in details and which the owner is missing or goods that are not pick up after inspection unless an obstacle comes from a claiming property the staff manager of customs is already informed about.

-goods left in customs' posts for any other reasons :

In addition to that limited set of clauses accordingly to the article 180 of CD, the customs' activity has devoted the enlargement of warehouse in two particular situations:



-the case of goods formally prohibited to have an access in the customs' area and which their import is forbidden;

-the case of goods expected to be cleared through customs and coming from border countries of Senegal, brought under escort or transire in offices in practice.

By the ends of these different procedures, the warehouse section uses a process of operations of warehouse by noting goods on a particular register, précising also their nature, marks and parcels' number.

If needed, the warehouse section comes to the conveyance of goods in warehouse and prepares either the alienation of goods which are not taken in legal deadline (four month), or the destruction of out-of-dated products or not well preserved.

### → III/The monitoring of signed engagement

This key action directs at engagements taken by liable for taxes when the procedures to pick it are simplified, received guarantee and documentary tenders.

#### ● A.The management of simplified collection of procedures

The customs' management has begun ambitious projects of reforms including the modernization of procedures to fit with the swiftness of contemporary economy. This reform aims at encouraging, on the one hand, the decrease of the cost of customs' administrative formalities, and to speed up the carriage of goods to the final user on the other. In practice, this is noticeable through the establishment of simplified procedures which, at port take the form of Provisional Permit Carriage in the case of imported goods and the Provisional Permit of loading goods in the case of exported goods. This device for regulation allows companies to ease documentary formalities related to operation in international trade. Thus, the profit-making companies have the chance to give their goods by proceeding to a simplified declaration they submitted to the competent customs' office. This declaration only claims a limited amount of information related to destination, the name of the boat, the value, taxes category, number of parcels, obligatory duties.

Like any other customs' declaration, the simplified one can be even deposited before the coming of goods. Of course, all complementary information must be transmitted later to the customs' services by the means of a declaration based on common customs' law. The coming of writing sections is before instruction and registration of application through the monitoring of regulation of those simplified procedures. At this level, a particular importance is given to the respect of the time limit concerning regulation (fifteen days), and the content of the declaration which must allow customs' services to control operations from the regulation viewpoint.

#### ● B. The monitoring of tenders and bail receipts

Tenders are the bail agreement taken by owners who give the missing documents in a limit time the service fixes. In fact, it is an ability left to the commissioner when there is a missing of a required document to abstract during the achievement of customs' formalities. This concern some necessary papers to the exchange of an agreement to that should be given in a relative short time. The writing services must monitor such written agreements written by considering the regulation.

In accordance with the article 112 of customs' code, transported goods placed under suspensive regime of duties and taxes must be covered by a bail- receipt. The bail-receipt refers to a declaration of goods related to a suspensive customs' regime, including the agreement to satisfy legal prescriptions related to the using of that regime. Otherwise there will be an equal judicial response with the bail-receipt with non regularities noticed by the service.

In the writings sections the monitoring of receipt-bail is mainly materialized by to check out receipt-bail of the returning of receipt-bail in order control regularities of transit operations or re-export accordingly to obligations related to these regimes(respect of prescribed itineraries, the unload of offices' carrying, the visa of office's coming out, etc.)

Consequently, the presence framing of writing services in a bigger office is a solution to double matters. On the one hand, to be able to achieve basic missions of control institutionalized for the preservation the State's interest by not prejudicing legitimate trading in the eyes of many constraint one encounters. On the other hand, it is a way to offer an opportunity to international trade, concerning administrative formalities and support.

This ambivalent action lies directly within the framework of the World Customs Organization new concerns. This is especially related to the SAFE norms which prescribe the conciliation of control imperatives and facilitation in order to secure the international logistic line. In the big office, the writing sections ensure such a dynamic, a mission beyond determinant. Nevertheless, their contribution is decisive if only there is a harmonious articulation between services.

At the same time, it is clear that how perfect it may be, their structure always stays as a theoretical framework. Thus in practice, employees always determine its value and image.

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