

SUMMARY OF THE

Doctoral Thesis

THE BIRTH OF THE CUSTOMS DEBT IN THE EUROPEAN UNION AND MEXICO.

COMPARATIVE STUDY

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SUMMARY.

The article 5 of the "Economic Partnership Agreement, Political Coordination and cooperation between the United Mexican States and the European Community and its Member States", along with the article 17 of the "Decision 2/2000 of the whole European Community Council - Mexico", which proposes a program to establish the differences and similarities between both systems, to generate proposals for approximation of both customs systems, were the inspiration for this thesis.

In it we made a critical study, descriptive and analytical legal systems of the customs of the European Union and Mexico, with special emphasis on the birth of the obligation to pay the tax to customs at the end of the text make a comparison between both systems and proposals for the approximation.

The doctoral thesis that we present is structured into five chapters, the last of them dedicated to the conclusions, and hooter same of the relevant indices that reflect the previewed literature and jurisprudence used in the preparation and drafting of the work.

The first chapter, under the title "The European Community customs law", is an introduction to the legal system that governs customs in the European Union and the norm that it integrates. The chapter is structured in a deductive logic way, based on the sources and the hierarchy of norms that affect this branch of the law. By splitting it up for your study in three major sections: European primary law (treaties); secondary legislation (Regulations issued by the European Union

"Regulations, directives, etc. "); and the customs law of the member States (domestic legislation in customs matters in the member States).

We began by studying the allocation of powers in customs matters between the European Union and the Member States; in the time of preparation of the thesis enabled us to observe the developments in the fundamental rules and as European were increasingly clear in the delimitation of powers, setting up categories and doing a catalog of materials that are embedded in each of the categories (Articles 2 to 6 of the Treaty on the Functioning of the European Union).

Given the nature of the Community customs law, the Generality and the interrelationship of the powers of the policies of the Community, their regulation has been immersed in several Community policies of different competences between the category that stand out: the customs union (exclusive competence); the common commercial policy (exclusive competence); internal market (shared competence); what made necessary the particular analysis of each one of them, based on the Customs Union.

Article 28.1 TFEU (old Art. 23 Of the EC Treaty) prescribes the following: "The Union shall comprise a customs union, which will cover the totality of the exchanges of goods and that will involve the prohibition, between the Member States, of customs duties on imports and exports and of any charges having equivalent effect, as well as the adoption of a Common Customs Tariff in its relations with third countries" what in general terms is more approximate to a

definition of customs union, which gives the EC Treaty, because it does not contain all the elements that make up the community customs union, more however it is a remarkable deference as the foundation of the community and the basic principles that the integrated.

The Court of Justice of the European Communities in its judgment of 13 December 1973, case "fund of diamond dealers operating", defines the Community Customs Union, while retaining the essence and structure of the article 23 EC, but at the same time, developing those essential characteristics that we thought was omitted from this article, in comparison with the definition of the World Customs Organization. As well the ECJ in the above-mentioned judgment, refers to the customs union in the following way: "Considering that the customs union, the foundation of the Community, involves, on the one hand, the abolition, as between the Member States, of the customs duties and any charges having equivalent effect; that such suppression is intended to make effective the free movement of goods within the Community; therefore, it should be complete, in a way that will overcome any obstacle, economic, administrative or other measures, in order to achieve the unity of the market between the member States; considering that the customs union implies, on the other hand, the establishment of a Common Customs Tariff for the whole of the Community, as planned Articles 18 to 29 of the Treaty; that the tariff community seeks to achieve the equalization of customs charges on products imported from third countries on the borders of the Community, in order to avoid any deviation of the commercial traffic in the relations

with these countries and any distortion in the free internal circulation or in the conditions of competition". From the foregoing, we can consider three essential elements of the Community Customs Union, which we will take as schema:

- The abolition of all customs duties and restrictions between Member States.
- The creation of a Common Customs Tariff (AAC), applicable throughout the European Community to goods from third countries.
- The common commercial policy as external component of the customs union.

The first of the three essential elements of the customs union to which we alluded earlier corresponds entirely with the proposed action by the repealed subparagraph (a) of article 3.1 EC, whose aim is to achieve the unity of the market between the Member States, as the STJCE of December 13 1973 pointed out.

The abolition of customs duties between the Member States does not represent any problem, since the entry into force of the Common Customs Tariff entailed the elimination of national tariffs. Not the same thing happened with the abolition of charges having equivalent effect given its indefiniteness in the Treaty establishing the European Community, as the Court had to intervene for purposes of defining it and mark its limits in the famous judgment of July 01 of 1969, accumulated affairs 2/69 and 3/69, case of diamond dealers operating fund. (Rec. 1969, P. 211 and following).

The Court held that "a pecuniary burden, albeit minimal, imposed unilaterally, whatever its denomination, and his technique, that serious domestic goods or foreign to its step across the border, where it is not a customs duty itself, constitutes a levy of equivalent effect, in the sense of articles 9 and 12 of the Treaty, even though it is not collected for the benefit of the State, nor exercise any discriminatory effect or protectionist and although the product proceeds do not competition to a national production".

We called special attention, another of the amendments made by the Amsterdam Treaty Article 25 EC and that persists in the current article 30 TFEU, consistent to extend the prohibition of establishment of customs duties on "the customs duties of a fiscal nature", according to the article 17 of the EEC Treaty (repealed by the Treaty of Amsterdam). Ban that justifies the jurisprudence of the ECJ in order to predict faults before tax practices or customs that could impede the free movement of goods. The important thing is the deference to the "customs duties of a fiscal nature", and at the same time which did not make a definition of the same.

Before this course and for the purposes of understanding the scope of the ban, led us to consider the legal nature of the customs duties, coming to the conclusion of the infeasibility of attempting to separate taxation and lighten of the customs duties since both purposes are not manifested in independently, in both the customs duty on fiscal nature in most of the times, he will be protecting directly or indirectly a given product. In both that the rights of protective character even when its function is discourage an export or import and/or match prices with respect to domestic

products, they end up reporting income to the Community coffers; by what the distinction between one and another end will be according to the primacy of the purpose and not to the separation between the two.

The elimination of quantitative restrictions is no more problematic doctrinal and given application that, like the customs duties, are understood overtaken with the entry into force of the customs union, being the most remarkable thing in this regard the exceptions set forth in article 36 TFEU (former Article 30 TEC), which are governed by the principles for the protection of public order, morality, health, safety, preservation of the flora and fauna, as well as the protection of the historical and cultural heritage. These exceptions are always accepted and when they are not discriminatory or constitute a disguised restriction on trade between Member States.

The relevance of these prohibitions for our subject, apart from the foregoing, lies in the harmonization of regulations that have been paired, to regulate the substantive content of the rules governing foreign trade by imposing an obligation on member States to eliminate from its legislation of customs duties, charges having equivalent effect and quantitative restrictions on the intra-community trade. This, in conjunction with the establishment of a Common Customs Tariff vis-à-vis the external, is a transfer of competences in the matter in favor of the EC that materializes, as we saw earlier, article 30 of the TFEU.

The second of the essential elements of the Customs Union, "the establishment of the Common Customs Tariff (AAC) ", was without doubt the great detonator of the new legal order of the community in several aspects, as can be seen from its fundamental objectives in terms of the ECJ: to harmonize customs charges, to prevent the diversion of trade and the distortion in the free movement of goods in the conditions of competition; therefore entails the granting of exclusive competence to the Council for the determination of the customs duties, providing implicitly by this means the Council of competition a material to regulate the correct functioning of the customs union, which excludes the participation of member States in The regulation of intra-EU trade and trade with third countries, focusing on the EC competition material to normalize unilaterally these items, as well as all those materials necessary to regulate the correct functioning of the Community Customs Union and ensure strict adherence to and achievement of the principles in article 27 EC (current Article 32 TFEU).

The third of the elements, "The Common Commercial Policy", has its foundation in the former article 133 EC (current Article 207 TFEU), sets out the basis of the Common Commercial Policy basing it on: "uniform principles, particularly with regard to changes in tariff rates, the celebration of tariff and trade agreements, the achievement of uniformity in measures of liberalization, the export policy, as well as the trade protection measures, and, between them, to be taken in case of dumping and subsidies". This attaches with a series of skills that are directly related to the customs matters and more specifically on the Common Customs

Tariff, giving rise to the so-called "external dimension" of the customs union, which is responsible for regulating the trade relations between the Union with third countries and/or international agencies through the signing of agreements or commercial tariff. These powers are inserted, similarly, in the text of the TFEU and recognizes the exclusivity of the Union on them

In what concerns the right derived, as its name indicates the Right derived from customs or community customs legislation, is born of the application and/or exercise of the principles and skills that are endowed to the Community in the Treaties to establish, modify, or suspend the Common Customs Tariff, regulate the powers derived from these powers, and take the trade policy measures necessary to ensure the proper functioning of the customs union.

In this sense we performed a study analytical-descriptive of the most relevant standards in customs matters that influence the birth of the customs debt; that apart from providing the legal framework on which develops great part of our thesis, which enabled us to observe some relevant topics worthy of further study in other research work, but that we played and we develop succinctly. As for example the inadequate rationale of the Customs Code, which is improperly based on article 95 of the Treaty of the European Community, as was demonstrated in chapter I, the customs code refers to tax provisions in accordance with the terms of paragraph 67 of the judgment of the ECJ, dated 29 April 2004, the Commission/Council (C-338/01, ECR. I-4829), so that, as in the case described in the above sentence, the article 95 EC is not an adequate legal basis for the

adoption of the customs codes both in 1992 as the modernised in 2008, it should have been adopted on the basis of articles 93 and 94 EC, by virtue of the nature of the tax tariff, therefore, should be ordered the invalidity of both systems in terms of article 264 of the TFEU.

The customs legislation of the Member States is without doubt the most unknown point of the Community customs law. Because if we start from the exclusivity of the customs matters in favor of the European Union, would rule it out of any legislative involvement of member States. However this is not as sharp, since although it is true that the customs matters is unique to the Union and that article 2.1 of the TFEU, establishes that "when the Treaties attribute to the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts", it is also true that the same numeral in the same paragraph, opens the possibility that member States legislate in matters unique to the Union, ensure permission expresses of the Union or the implementation of acts of union.

The Union has legislated on the substantive part of the customs law, that is to say, the birth of an obligation to the customs, regimes, taxable persons, Tariff, etc. The procedural part has delegated to the Member States under which these persons are responsible for the management and collection of customs duties, focusing especially on the part of organization, statutes of the customs authorities, sanctions and processes for challenging; however we see a little or no development policy in this area, because as we've stated previously, the delimitation of powers is not yet clear to many Member States, which has led to a legislative vacuum or

contradictions regulations in the customs administration, creating important differences of Implementation of the customs regulations between the various Member States, still need to unify the customs regulations of management, because being the composition of the customs law in its most formal rules of nature, it is essential to avoid distortions in your application, requiring its regulation from Brussels, regardless of whether its management remains with the staff of the member States.

The second chapter deals with the birth of the customs debt. Well, we start with the definition, of the concepts that make up the customs debt and on all of the assumptions that give rise to, doing a detailed study of each one of them around to their characteristics and nature-legal tax. The Community customs code comprises eight assumptions that give rise to the debt to the import customs, while the modernized customs code provides for five assumptions grouped into two categories: "Release for free circulation and temporary importation" and "customs debt born by compliance", this classification, however it seems to us partially successful, and should be supplemented with a third category corresponding to the import that is not irregular in all the cases, it is incumbent upon to an omission of processing, but that is born of A different nature as is the "Subtraction of the customs supervision of goods subject to import duties".

In this study we realize that the different assumptions generators of the customs debt have specific particularities in regard to the use, destination, temporality and mode of income; but each and every one of them share a common objective

element that we call "fact generic tax". So we started the study of the figure of the customs debt from an analysis of the "taxable fact generic", to study the cases contained in the customs code in two large groups: "The import control" (in this same chapter) and the customs debt generated by irregularities and failure (scenarios to the dedicated to them that the chapter 3).

In all cases generators, the element common goal is the incorporation of the goods to the economic circuit, as evidenced expressly the Judgment of the Court of Justice of the European Community (Third Chamber) of 29 April 2010, in the case C 230/08, Dansk Transport og Logistik and Skatteministeriet, paragraph 91. Must understanding by "economic circuit" economic activity (transactions of goods and services) that is performed in a particular country or economy. In this sense, even when the case law and the regulations speak of the incorporation of the goods to the economic circuit as taxable, it is clear that such incorporation is not another thing that the feasibility that the goods may be subject to marketing, use, or consumption in the domestic market. Activities which are a form of use of the internal market, as it is worth of the structure and freedoms created in the internal market for their realization, that under this reasoning, the objective element of the charge would be the use or use of the internal market.

Objective element that led me to ask two questions: firstly, the legal nature of the market or economy where develops the economic circuit and, secondly, the nature legal-tax of the economic benefit required by such a concept.

With respect to the first of the approaches we conclude that the market or economy of a country where develops the economic circuit, has the nature of a well in the public domain to fulfill all the requirements for this, to be an intangible good, intended for public use, which represents by itself a part of the State, who exerts on the sovereign power of regulation, management and/or use, governed by public law.

This is due to what is prescribed by article 26.2 of the TFEU refers to the structure of the internal market, alluding to the fact that it is one of the essential elements of the Union, whose structure we can dislodge their demanial nature. The cited article stipulates: "The internal market is an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties".

In the fragmentation of its elements first of all, we find that refers to a territorial physical space, which guarantee the realization of its other elements in the form of freedoms, policies and principles. When speaking of a physical space, we are talking about a particular State, as is the territory. Secondly, the rest of their elements conform goods of immaterial nature that jointly identifies the common market as an inherent part of the Union itself, because you do not need to look any of the founding Treaties or the recent Communication from the Commission (COM 2010 final 608) to verify this. It is clear that the market is an inherent part to the State and in this case to the European Union, so it is pointless to seek the nature of something that is intrinsic to itself.

In relationship the legal nature of the rights we conclude tariff rates is by use of a well in the public domain, to contrast their elements with the other types of taxes and did not find any possibility of framing in another tribute that was not the rate by use of a well in the public domain. Because whatever the meaning of to the market that we are talking about it is obvious that always talk about a finite good, therefore the incorporation of Community goods to the economic circuit in the Community, it will mean a reduction in market shares, decreasing marketing opportunities for the Community goods or even the goods from outside could move fully to the community in the market, which represents an impairment of the common good called market, being therefore a special use of a good general purpose.

Studied the fact generic, we renewed the assumptions set forth in the Customs Code, according to the classification proposed at the beginning of the capitulated, starting by the assumptions we are recording as regular import, i.e. those that are performed in compliance with all formal requirements and materials which sets out the standard, and that the modernized customs code grouped in the article 44 (former Article 201) under the title free circulation and temporary importation. In response to its special features, and comparing them with the fact generic tax and its legal nature.

The special feature of the release for free circulation with regard to the already studied fact generic is taxable on the one hand in the implications or formal obligations and materials referred to in paragraph 2 of article 179 of the Modernized Customs Code, which must be met to ensure that the goods can be

legally introduced in the market or community aimed at private use or consumption within the Community, which is the true fact and not taxable release for free circulation, which is the formalization of that introduction legal, result of the implementation of the various obligations formal and material that is subject to the import.

On the other hand, the effect or status of Community goods which attaches the free circulation of goods not community, in paragraph 3 of the same article, is without doubt another element attachment and distinction, with regard to the fact generic tax, without changing its nature legal tax.

Once analyzed all its elements, we arrived at the conclusion of identity of objective element with the generic course; faced therefore with a rate at which the two budgets exist elementary: the use of a well in the public domain that is the economic circuit and, therefore, the common market; and on the other hand, the provision of a service directly and particularized, which is the certification that the goods are in a position to have access to the economic circuit in equal circumstances as the Community goods, covering as payment the proportion of the economic cost for the circuit of the economic community the incorporation of the goods.

In regards to the temporary importation, the objective element of taxable fact remains the same as in the course and that generic in the release for free circulation, "the incorporation of the goods in the economic circuit of the

Community", which is why the nature legal-tax would be the same, in a principle. But, contrary to what happens with the free circulation in which the goods acquired the character of Community goods with all its rights and obligations, in the case of the temporary importation are restricted to a specific use, without being able to be marketed in the interior of the Union, and therefore its collection of reduced tariff rights as long as they are not fully integrated the economic circuit in the Community. The other big difference that we found, of course, is the temporality, because, as soon as the regime of free circulation is indefinite, under this another regime the goods may be in the territory for a specified period taking the obligation to the importer, after the conclusion of the term, to remove or get the goods of the community territory.

The third chapter, dedicated to the customs debt generated by irregularities and noncompliance, has its *raison d'être* in the particularity of these assumptions, so that the decision was taken to see them in a separate chapter, because although they are forms of birth of the customs debt, assumptions are atypical in the common of the tax law. In this sense, it must be emphasized that the article 79 of the Customs Code of the Union (CAU) (Previous 46 of the Modernized Customs Code "CUM") regulates what called: "customs debt born by compliance". This article brings together the assumptions previously contained in articles 202, 203, 204 and 205 of the Customs Code. For their study we decided to split the cases referred in this article into two groups, a first group which we call "birth of the customs debt by irregular import", and other while respecting the name that gives

the customs code of the Union "birth of the customs debt for failure". The division is due to the first proposed group, this is supposed to mark a direct action of contravention of the rule, by incorporating the goods to the circuit of the economic community evading the customs control and as a consequence, the payment of the corresponding rights, that is why titles are irregular. In both the second group speak of omissions to the norm, because the goods had already been incorporated on a regular basis and the collection it was born out of a breach of the formalities or purposes for which it was fastened incorporation.

The birth of the customs debt by irregular import, we can establish in a general way that breaches referred to in articles identified by the article 202.1 of the Community Customs Code, in correspondence with the modernized customs code and of the Union, are generated by contravening provisions relating to: the track of income of the goods; the transfer of the goods to the appropriate place (customs, free zone or any location indicated by the customs authority), placed at the disposal of the goods to the customs authorities; the presentation of the relevant statements, and similarly with respect to the inclusion of goods of free zones to the territory of the community.

Each of the items covered by the 202.1 of the Customs Code, represent independent assumptions that should be studied separately, in both, the violation of any of them in the individual, represents a introduction of the irregular goods, no matter that some of these budgets are consecutive or derivatives of each other.

In the assumptions that include "the customs debt by irregular import", the objective element of tribute is the incorporation of the goods to the economic circuit and not the way in which this is done; we reinforced our assumptions of fact generic, in virtue of the fact that in all the different jurisprudence referred to in this section, comes to highlight as fact generator of taxation the possibility of incorporation of the goods to the economic circuit in the community, which, as we have already said repeatedly translates into the feasibility of marketing or consumption of the goods from outside in the territory of the community.

The fact that the incorporation of illicitly, does not preclude that comply with all the elements that make up the fact generic tax, i.e. the entry of goods from outside into the customs territory of the community, with the real potential to be marketed or consumed in the same, what would be tantamount to its incorporation into the economic circuit. Be satisfied by what the budgets provided for in the standard, there is no impediment to that is earned by the tribute and born the customs debt, because the punishment and the tribute are independent of each other, which, according to the repeated cited jurisprudence of the ECJ, the principle of tax neutrality is directly opposed to a differentiation between the licit and illicit; in addition to not be as well, would violate the principles of universality and equality tax exempt unduly and unequal treatment of two equal facts, which is the incorporation of the goods to the economic circuit in the community.

The subtraction to the customs supervision of goods, subject to import duties. The article 204 and 205 of the Community Customs Code (now contained in article 79

of the Customs Code of the Union) provide two cases to which we have named generically as the "birth of customs debt by failure or failure", in both cases the goods had already entered on a regular basis to the customs territory of the community, generating debt when the importer fails to fulfill the obligations and requirements linked to the various customs procedures.

The incorporation of the goods in any of the economic regimes, allow these to enter in the customs territory, the margin of the economic circuit, so that in both compliance with the conditions of operation of the schemes, not born the customs debt because the goods do not enter to the economic circuit in the community. On the other hand, if there is a violation of the regime, and this violation has real consequences that would prevent the proper functioning of the customs regime, will be born the customs debt, because such violations would presuppose that the merchandise has been incorporated into the economic circuit in the community and therefore is subject to tax, the absence of the conditions for enjoying the benefits of the scheme. To be, therefore, the objective element of taxation the incorporation of the goods to the economic circuit in the Community, as well as all the assumptions previously studied the repeat is unnecessary.

The fourth chapter is the other part of our thesis, that must be excel, is of comparative law by what the objective is to reveal the Mexican customs law for this we repeat the analysis carried out in the Community customs law, but now from the perspective of Mexican law, in order to be able to perform in the next chapter, the comparison between the two.

We started with a historical study of the Mexican customs law, because it is interesting the historical development that has had in the past 30 years, because of being a closed economy that demonstrates with its belated entry to the General Agreement on Tariffs and Trade in 1986, to be today one of the countries that most commercial treaties has signed, and hence one of the most "harmonized" to the standards of the World Trade Organization customs regulations.

The Mexican normative in customs matters is not unlike any other Federation. In a constitutionalist regime as the Mexican Constitution is the primary source and maximum legal system of the State and thus the Constitution of the United Mexican States (Constitution) in its article 133. The federal system centralized the regulatory powers of foreign trade in the federal powers, banishing repeatedly any possibility to legislate in this area to the States and propping up the exclusivity of the federation to regulate foreign trade.

The fuzzy control of constitutionality, even if it is not a customs subject itself, is something that cannot be passed long given its relevance today in the Mexican legal system. Until before the Constitutional reform in July of 2011, the constitutionality focused exclusively on the Judicial Branch of the Federation by the means outlined in the Constitution itself (amparo proceedings, Trial of constitutional revision, etc).

However after the constitutional reform of June 2011, resulting from the resolution of the Inter-american Court of Human Rights dated November 23, 2009, in the

case Radilla Pacheco VS. United Mexican States, creating a true revolution in the Mexican legal system, because even though we could dislodge article 133 of the Constitution the fuzzy control of constitutionality, and part of the state judges, to establish that: "... the judges of each State must conform to the Constitution, laws and treaties, in spite of the provisions to the contrary in the Constitutions or laws of the State". It is not until the reform and addendum to the article 1 °, in the amending paragraph 1° and 5 °, include current paragraphs 2° and 3 °, in which the control of constitutionality can be effective for all levels of government of the Mexican State, making it obligatory for every authority observe human rights enshrined in the Constitution.

Article 133 of the Constitution from its source text in 1917, located in the Mexican legal system within the tier system, which identifies the unit of the national legal systems and international, by stating that: "This Constitution, the laws of the Congress of the Union, which emanate from it and all treaties which are in agreement with the same, concluded and signed by the President of the Republic, with the approval of the Senate, shall be the supreme law of the Union".

With the amendment to article 1 °, the hierarchy of norms of the international treaties in the Mexican law, is hereby established in the following manner : Constitution and international treaties on Human Rights as supreme rule, secondly the international treaties in other subjects and in third term the federal laws.

In Mexico there is no codification of the customs regulations, but that is it is dispersed in several standards among which are:

- Customs Law.
- Tax Law of the General Import and Export.
- Foreign Trade Act

The decree-law is an atypical figure in the Mexican legal system, that even when there is no explicit reference to it in any legislation or case law of the Supreme Court of Justice of the Nation, has special significance in the field of international trade, in virtue of the attribution expresses conferred by article 131 the Constitutional Executive to perform formal legislative acts in the field of foreign trade.

Today the customs tax in Mexico is not very different to the rest of the world, given the prolific international trade relations of Mexico, by varying some small things between them the terminology as we will see throughout this study.

The study of assumptions generators of the customs debt led me to similar results between the European Union (Chapter 2) and Mexico (Chapter 4.3). The notable differences were not substantive, but on the terminology used, and some other, are owned of the supranational nature of the Union. So for the purposes of not result in

this summary stringed instruments only those points that imported difference or are necessary to make.

Article 52 of the Customs Act establishes the fact generically taxable of the customs taxation in Mexico under the following terms: "Are obliged to pay taxes to foreign trade and the compliance of the regulations and restrictions and other non-tariff regulatory measures to foreign trade, the people who introduce goods to the national territory or the extracted out of the same, including those that are under some program of repayment or deferral of tariffs in the cases provided for in articles 63-A, 108, section III and 110 of this Act".

Again we are talking about a generic fact taxable where specific facts are taxable as the final import and the temporary, exist variants of the latter. Thus, just like we did with European law, we will do so now with the Mexican law, based on an analysis of the fact generic tax.

The construction of the taxable event proposed by article 51 of the Customs Act (THE), coincides with the already exposed import definition given by the glossary of terms of the WTO customs, in what is considered the import as "the act of introducing or to act to enter into a customs territory any goods". While the Customs Act establishes as an object of taxation the entry of goods to the national territory, the systematic study of the customs Act has shown that this is not like that, since not all introductions of goods to the national territory arises the obligation of payment of import tax.

Article 61 of the law states that "not pay taxes to foreign trade by the entrance to the national territory or the output of the same of the following goods", and then gives an extensive list of the 18 types of goods that are exempt from the payment of taxes to foreign trade and that have as a common denominator that by their nature, value, quantity, or purpose are not subjects of trade.

With the above it is shown that is not the simple crossing of borders which causes the birth of the tax debt but that, as in the case of Europe, it is clear that the integration of the goods to the national economy, is the objective element of fact generic taxable and which operates, as we shall see later, in each and every one of the specific assumptions that contemplates the Customs Law.

While in our legal system the tariff duties are called taxes, this does not necessarily mean that its legal nature corresponds to this type of taxes. As you saw above not all import is subject to the imposition, in addition to that the applicable rate, is not determined by the greater or lesser cost of the goods, but by the type, source, and needs of the internal market of the goods, that is to say, the economic impact that produce the goods in the domestic market, which in no way is denotative of contributory capacity that is required of all taxes.

As far as not meet the essential requirements of the tax, a budget of revealing fact of economic capacity and lack of consideration - is impossible to locate the import

levies within the category of taxes, so that, as in the case of Europe, I would say that we are faced with a law (rate) by special usage of a well in the public domain.

Under Mexican Law the economy consists of a series of intangible assets in the public interest, inherent in the political and social structure of the Federation, in accordance with articles 25, 26 and 28 of the Constitution of the United Mexican States, on which it exercises directly and indirectly domain powers in the form of possession, administration and regulation so and as seen is considered a well in the public domain federal intangible nature.

The particular use of the well of public domain called market occurs in the following way: the State in its case, create conditions conducive to the exchange of goods and services that benefit, striving to national development; exerting its leadership activity in order to maintain, balance and facilitate this system of exchanges. To enter a commodity exogenous to the economy, is served from the conditions imposed by the State, which does not exist it would be impossible to be carried out the trade, and that the use of them is by making use of a well in the public domain as it is the economic circuit. While all the goods used the same well called market, the degree of use i.e. the impact of the market is different depending on the type of goods, origin and destination of each one of them. Which accord with the parameters laid down by the jurisprudence of the Supreme Court of Justice of the Nation, to determine its proportionality and fairness.

Positive Mexican law establishes two assumptions for the birth of the tax credit to the import, the definitive import and the temporary importation. Article 96 of the Customs Act defines the final import as "the entry of goods of foreign origin to stay in the national territory for an unlimited period of time", a definition that seems to me little fortunate to center the objective element in the definition of temporality, because it is not a determining factor in granting the firmness.

CARVAJAL, rivers, and PÉREZ GRANDSON WITKER, agree with us that the fact generator of the definitive import cannot consist in the temporality of the permanence of the goods in the national territory, but in the free use and consumption of the goods in the national territory, or what is the same its total integration to the economic circuit, which does not occur until you comply with all formalities to which this subject the import, as in the release for free circulation in the European Union.

In previous paragraphs addressing the issue from the perspective of the fact generic tax and we conclude that it was not feasible to locate the contributions to the import tax within the genre, both did not meet with the three basic requirements of tax: be a compulsory provision of law, which is generated as a result of a situation or movement of wealth, and the lack of consideration.

The incorporation of a commodity to the economic circuit, does not necessarily imply a situation or movement of wealth that demonstrate alone the real potential of the importer to cope with the pecuniary benefit required by the State as a result

of the incorporation of the goods to the customs territory. In addition, the collection will not be done in proportion to the perceived wealth shown, since although it is true in the more the number of times that the customs duties are ad- valorem, it is also true that the applicable rate is not fixed in proportion to the perceived wealth shown, since these will depend on the characteristics and origin of the goods and not on their value, in violation of the constitutional principles of ability to pay tax and proportionality enshrined in article 31 fraction IV of the Constitution, described and exemplified in the map case law of the SCJN 9^a Época, heading: "ABILITY TO PAY. IS THE REAL POTENTIAL TO CONTRIBUTE TO PUBLIC EXPENDITURE".

So that, as in the generic course, it is clear that the final import does not comply with the greater part of the requirements to be considered a tax, much less of a "contribution of improvement" or a "social security contribution" of which does not have any of the elements, so that only subtracts fit it in the genre of rights (rates), in which like that in the generic course, meets all of the elements.

The first section of Chapter 4 of the Customs Act regulates the temporary importation (articles 104 to 112), by grouping this regime in two assumptions:

1. To return to the alien in the same State.
2. For elaboration, transformation or repair in programs of maquila or export.

Although the act does not grant in its general provisions a definition that integrates both assumptions, the specific definition that makes in the article 106 we can say

that "It is understood by temporary importation procedure, the entrance to the country of goods to remain in the limited time and for a specific purpose".

The Customs Act establishes as budgets in common of the temporary importation, the exemption from the payment of taxes to foreign trade (except in the cases provided for in articles 63-A, 105, 108, section III, 110 and 112); in addition dictates domain restrictions on goods, which may not be the subject of transfer or disposal, except among maquiladoras or companies with export programs authorized in which case do not apply the tax exemption. That is to say, that, under this general scheme the goods that enter to the customs territory for a period of time and order determined at the margin of the economic circuit, which is why they are exempt from the payment of tributes. However, when the goods are subject to transfer or disposal enter the economic circuit and therefore is born the tax obligation, therefore, the purpose, is the setting under which we will establish if the goods are incorporated or not the economic circuit, because it is not the same a household, whose intention is not to establish any act of trade, which the temporary importation of a machinery to produce a well determined.

The general rule in the temporary importation is the exemption of taxes, except in two assumptions that give rise to the imposition of temporary importation. Paragraph 2 of section I of the article 104 of the customs Act provides that will not be applicable tax exemption for the cases provided for in articles 63- A, 105, 108, section III, 110 and 112. (Draw back; transfer or disposal between maquiladoras of goods destined for the temporary importation procedure).

At the time of the transaction of the property, these are generally incorporated in a limited way to the economic circuit, because although they perform economic operations, these are restricted to be re-exported, so also will be proportionately lower tariffs, in both the level of use of the economic circuit is less. When the incorporation is complete we will be in the presence of a definitive import, applying therefore corresponding to that regime.

Seeing the set of elements and characteristics that make up the course for temporary importation, it seems to me that it is difficult to refute that the temporary importation is a right (rate) for the provision of services, since in no time the tax exemptions or make reference to acts related to ability to pay or the absence of this. On the contrary, qualitative elements such as the purpose of the import and the source, to determine the birth or not the tax obligation, elements that are irrelevant to determine the ability to contribute from the perspective of the imposition, but if they are measurement parameters of the greater or lesser impact of the goods in the economy. Agreed by both, and as you saw in the fact generic tax, with the systems of determination of the proportionality in the rights for use of property in the public domain: varying degrees of exploitation, benefit, of the valuation of their greater or lesser availability or its repair or rebuilding, if there is a deterioration.

In the Mexican customs law unlawful introduction of goods does not represent an import regime but a criminal offense under article 102 of the Tax Code of the

Federation as "contraband", which involves the failure of formal obligations and/or materials to which this subject all imports into its different regimes.

Finally, chapter five integrates the findings obtained from the study of the topic.

CONCLUSIONS:

Study the birth of the customs debt in Europe made me acquainted with a novel legal system and in the process of consolidation. Although it seems contradictory for the political relevance, economic and legal means, the Community Customs Law is still the great unknown in this process of integration, because the division of powers is not yet clear to many member States, especially when the time comes to exercise legislative powers in the field of management and customs procedures that have led, in many cases, to a legislative vacuum under this heading, thereby creating significant differences in their application between the various Member States. That empty, as we saw in Chapter I, have already had international repercussions; example of this is the dispute settlement procedure dealt with before the World Trade Organization under the dossier DS 315.

The analysis of reality is revealed to us the need to unify the rules for the management and collection of customs duties because, being the composition of the customs law, for the most part, provisions of a formal nature, it is essential to avoid distortions at the time of their application, by what is required is that the European Parliament to legislate the thereon; no matter what its management remains in charge of the staff of the member States.

On the other hand we could observe that the customs code is improperly based on Article 95 EC, because as was demonstrated in chapter I, the customs code refers to tax provisions in the terms of section 67 of the judgment of the ECJ, dated 29

April 2004, the Commission/Council (C-338/01, ECR. I-4829), so that, as in the case described in the above sentence, the article 95 EC is not an adequate legal basis for the adoption of the customs codes both in 1992 as the modernized in 2008, it should have been adopted on the basis of articles 93 and 94 CE, under the tax of the tariff. In consequence, should be ordered the invalidity of both systems in terms of article 264 of the TFEU.

In regard to the Mexican law, we find a dispersion of the customs regulations that makes it very difficult handling, causing confusion in terms of its implementation and enforcement, by what I consider necessary to carry out a coding to facilitate the consultation and implementation, providing certainty to all parties involved in the customs processes.

The study of assumptions generators of the customs debt led me to similar results between the European Union (Chapter 2) and Mexico (Chapter 4.3). The notable differences were not substantive, but on the terminology used, and some other, are owned by the supranational nature of the Union; same that develop below.

1. The fact generator.

Both the law of the European Union, such as the Mexico contain several assumptions that generated customs debt, each one with specific particularities in regard to the use, destination, temporality and mode of income; but each and every one of them share a common objective element that we call "fact generic tax".

In all cases generators, the element common goal is the incorporation of the goods to the economic circuit, as evidenced expressly the Judgment of the Court of Justice of the European Community (Third Chamber) of 29 April 2010, in the case C230/08, Dansk Transport og Logistiky Skatteministeriet, paragraph 91, and must understand by "economic circuit" economic activity (transactions of goods and services) that is performed in a particular country or economy. Therefore, the incorporation of a commodity to the economic circuit is equivalent to the feasibility that the imported merchandise may be subject to marketing or consumption in the physical space of the country or economy.

This phenomenon is found also in the Mexican customs law because, although neither the law nor the case law establishes expressly the incorporation into the economic circuit as fact generator customs of the tribute, the systematic and functional interpretation of the customs law allows us to reach that conclusion. Even when the article 51 of the Customs Act establishes as an object of taxation the entry of goods to the national territory, the article 61 of the act in question, establishes an extensive dictation of goods exempt from payment of taxes to foreign trade, which have as a common denominator that by their nature, value, quantity or purpose are not subject of trade. This shows that it is not the simple crossing of borders which causes the birth of the tax debt but that, as in the case of Europe, the integration of the goods to the national economy is the objective element of the taxable event, what CARVAJAL CONTRERAS called "economic

integration of the goods", which is exactly the same as the integration to the economic circuit.

This fact generator, unexplored by most of the doctrine, led me to consider two major elements: in the first place, the legal nature of the market or economy where develops the economic circuit and, secondly, the nature legal-tax of the economic benefit required by such a concept.

2. Legal nature of the market or economy.

The European Union is forged under a legal-economic in which the greater part of the Treaty on the functioning of the Union and treaties predecessors have a spirit of purely economic regulation, whose primary objective is the achievement of the economic union, as was raised in the first chapter in regard to the powers of the Union.

The internal market is the foundation and essence of the European Community, in the space that the exchange of goods, services and capital between the various players in the circuit (consumers, producers, sellers), under the four fundamental freedoms that enshrines the internal market: free movement of persons, goods, capital and services.

In the fragmentation of the essential elements that comprise it, arising from it two nave concepts: first, his reference to a territorial physical space, which ensures the realization of its other elements in the form of freedoms, policies and principles. When speaking of a physical space, we are talking about a particular State, as is

the territory. Secondly, the rest of their elements conform goods of immaterial nature that jointly identifies the common market as an inherent part of the Union itself, because you do not need to look any of the founding Treaties or the recent Communication from the Commission "COM(2012) 573" to verify this.

It is clear that the market is an inherent part to the State and, in this case, the European Union; it is pointless to seek the nature of something that is intrinsic to itself, because whatever the theory about the nature of the eminent domain property is, all agree that a well in the public domain is something that by its very nature is inherent in the State, by which confirms the well in the public domain that has the internal market.

In the case of Mexican law, the economy includes a series of intangible assets of public interest, inherent in the political and social structure of the Federation, in accordance with articles 25, 26 and 28 of the Constitution of the United Mexican States, in which it exercises directly and indirectly domain powers in the form of possession, management and regulation. For this reason and as seen in the article 4.3 of this thesis, is considered a well in the public domain federal of intangible nature.

3. Legal nature-tax of the tributes to the import.

In Mexico the doctrine consulted does not deal with the subject of the nature of the tax tariff rights, preferring to stay simply with the classification of "tax" that gives you the own Customs Law. In the case of Europe we proceed from the fact that the

Modernized Customs Code and any other rule of the European Union casts the import duties within a specific classification of taxes.

As we stated in the body of this thesis, the doctrinal debate with regard to the nature of the tax levies on imports has been a constant in the past few years, having agreed in the previous points that both in the European Union and in Mexico: a) The fact of the import tax is at the entrance to a foreign importer to the economic circuit or domestic economy (Community or national, as the case may be); (b) the market or economy is considered a well in the public domain.

We began our analysis of the nature legal-tax under these two parameters, contrasting the various stances on its legal nature-tax, both doctrinal, as positive law, coming to the conclusion that in both cases, we are in the presence of a charge or fee for the use of a well in the public domain.

The particular use of the well in the public domain called "market" occurs in the following way: the Union or the State, either case, create the conditions for the exchange of goods and services that benefit, striving to national development, exercising its leadership activity in order to maintain balance and facilitate this system of exchanges. To enter a commodity exogenous to the economy, is served from the conditions imposed by the State, which does not exist it would be impossible to be carried out the trade, and that the use of them is by making use of a well in the public domain as it is the economic circuit. While all the goods used the same well called "market", the degree of utilization, i.e. the impact of the

market is different depending on the type of goods, origin and destination of each one of them.

As we saw in chapter II, the "market" has multiple meanings, but all of them always describe a limited good by its own nature (territorial, sectoral, productive, etc.). Such a limitation of the market itself, makes the access to economic circuit (exchange of goods and services) is preferred for the products that are generated internally and that being able to compete with each other on equal terms and conditions to sustain a balance, because any inequality would cause an imbalance in the market that have an impact to the detriment of the community, so that the entry of foreign goods to this economic circuit can cause injury to the inside of the market, either by bringing a price lower than the national product, or saturate the market and do not leave spaces for domestic products. When there is an overproduction, or some raw material is scarce, it is necessary to relate to other markets in order to compensate for the needs of the market and achieve a balance. When the flow is constant between the markets maintains a balance, but if the flow is different in intensity or only in a sense, the receiver market becomes saturated and it can collapse the economy, similarly the absence of a certain raw material in the internal market can cause the same devastating effect.

Finally, there could be some concrete proposals, which should be taken into account by the legislator timely, in the following sense:

1. It is necessary to create in the European Union a single piece of legislation around the administration and collection of customs duties, in order to avoid differences in implementation, which generate imbalances to foreign trade.
2. It is a good idea to change the foundation of the Modernized Customs Code of the article 95 EC, to articles 93 and 94 EC, given the nature of the tax code and to not affect the validity of the acts based on the code.
3. Coding is required in Mexico of the national customs legislation, now so scattered, for the purpose of providing legal certainty to all involved.
4. The substantial differences between the rules of Mexico and the European Union concerning customs debt are purely conceptual, being the most practical laws to adjust both the concepts established by the World Trade Organization and the World Customs Organization.