


PROBLEMS OF EXCISE TAX ON THE EXAMPLE OF IMPORT OF PLASTIC LUBRICANTS

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Abstract: The paper attempts to present the issue of excise taxation of goods - plastic greases. The specificity of the product such as plastic greases and the gap in existing tax regulations will be explained. Excise tax and the method of calculating it will be discussed. The dynamics of the volume of imports of goods to Poland will be presented and problems related to separating the volume of imports of plastic greases will be indicated. The paper will propose an attempt to identify the lubricants in question by CN codes (EU "Combined Nomenclature" - tariff and statistical nomenclature for goods). The volume of import of plastic greases will be assessed against the background of imports of other lubricants and fuel products.

Keywords: excise tax, plastic lubricants, imports, data analysis

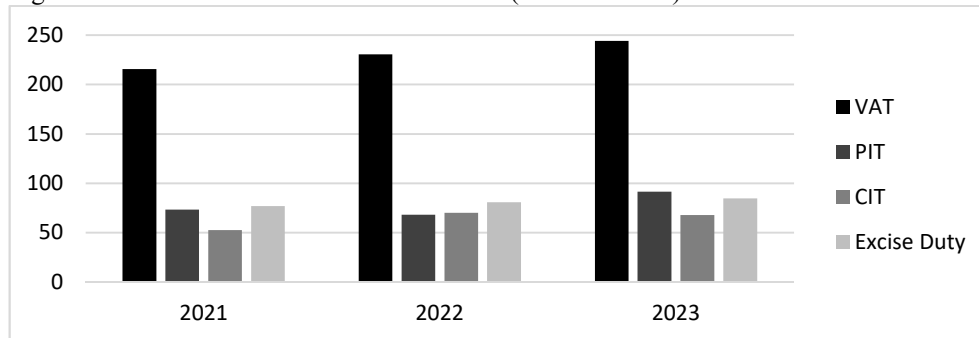
JEL classification: F14, H26, C13

INTRODUCTION

The issue of excise tax is discussed much less frequently in scientific literature than another common indirect tax, which is the value-added tax (VAT). This is due, among other things, to the size of the collection of both taxes. According to available data, VAT has been the largest revenue for the state budget for many years, and excise tax was the second largest revenue, but many times lower (Figure 1).

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Figure 1. Tax revenue in Poland in 2021-2023 (in PLN billion)



Source: own study based on data: www.mf.gov.pl, www.stat.gov.pl

It is worth noting that in the last year, excise tax fell to third place, after personal income tax, in terms of revenue from this source. For years, Polish state authorities have been trying to curb the grey zone, both in the case of VAT and excise tax, especially in the fuel and tobacco industries. The problems with determining the volume of trade in goods from individual product groups in EU countries (for the purpose of calculating VAT) were written about by, for example, Markowicz, Baran [2021], Javorcik, Narciso [2008].

Excise duty is an indirect tax, but it is not applied universally like VAT, but on selected categories of products. It is imposed on selected goods to limit their consumption (such as alcohol or tobacco) and on infrastructure goods (such as the liquid fuel market). It is paid by the final recipient and has different rates, depending on the type of goods [Excise Duty Act]. Excise duty is divided into harmonized and non-harmonized. Harmonization consists in common rules for the production, movement and storage of goods, describes the amount and method of collecting excise duty and provides rates that cannot be lower than those given in EU directives. The group of goods subject to harmonized excise duty are motor fuels, heating oils, tobacco products, alcohol and electricity. The group of non-harmonized products (greater freedom in levying excise duty) includes passenger cars, cosmetics, weapons, leather and fur [Excise Duty Act].

RESEARCH PROBLEM

Plastic greases are "a group of lubricants used in cases where there is a need for good sealing of the friction node against the access of water and mechanical impurities, as well as a requirement for good adhesion to metal surfaces. The plastic nature of greases means that under normal conditions they maintain the shape given to them, without flowing - like oils. Greases begin to flow only after they are subjected to shear stresses exceeding the plastic limit" [Zajeziarska 2016]. Plastic greases are usually a combination of three components: 1) liquid, usually base oil (70-90% content) - determines the properties (mineral oils, synthetic hydrocarbon

oils, polyglycol oils, synthetic esters, silicone oils, vegetable or animal fats, fatty acid esters, ethers), 2) thickener (5-30% content) - soaps, organic and inorganic agents, naphthenic waxes, 3) refining additives (0.5-5% content) - antioxidants, anticorrosives, adhesives and metal deactivators [Skibińska 2021; Krawiec 2011]. The practical division of plastic greases based on their intended use is as follows: antifriction agents, preservatives to prevent corrosion, friction greases increasing the coefficient of friction, sealing greases, greases for special applications. According to the EU regulation, lubricants are "hydrocarbons produced from distillation by-products, mainly used to reduce friction between load-bearing surfaces. This item includes all types of finished lubricating oils, from spindle oil to cylinder oil, and used in greases, engine oils, as well as all types of base oils" [Commission Regulation (EU) 2017/2010]. In European countries, the ISO 6743-9:2003 standard is most commonly used for the classification of plastic lubricants, and in Poland its equivalent is PN-ISO 6743-9:2009. The quality requirements for plastic lubricants are also included in European national standards: German - DIN 51825:2004 and Swedish - SS155470:2003. The international standard combining the classification system of plastic lubricants and specifying their quality requirements is ISO 12924:2010 [Sik 2020]. It should be mentioned here that DIN 51825:2004 is a standard that divides plastic greases according to their consistency and resistance to deformation. It is most often used by manufacturers of goods purchased within the Community to Poland, mainly from Germany. On the other hand, the basis for the classification of greases according to the PN-ISO 6743-9:2009 standard is, among others, the minimum and maximum working temperature, the ability to properly lubricate in the presence of water, the ability to lubricate under pressure [Ptak 2012; Błaszkiwicz, Moskała 2017].

In the excise law, applied to taxation at the effective excise duty rate, no statutory definition of the concept of "plastic greases" was used. The legislator did not provide in the Excise Duty Act any procedures to be applied to the movement of excise goods not listed in Annex No. 2 to the Excise Duty Act subject to a zero excise duty rate (applies to plastic greases). It was necessary to submit an excise duty registration application - AKC-R - by 30.06.2021 (in accordance with Art. 16 sec. 1 of the Act, an entity conducting business activity was obliged, before the date of the first activity subject to excise duty or the first activity using excise goods exempt from excise duty or taxed at a zero rate, to submit a registration application to the relevant head of the tax office). Additionally, taxpayers must be registered in the Central Register of Excise Entities (CRPA). This registration replaced the submission of AKC-R registration forms (from 01.07.2021) [Excise Duty Act]. RPA is a nationwide database of entities that have submitted registration applications for excise duty purposes. It allows you to check whether contractors who participate in the trade of excise goods are registered and thus reduces the risk of cooperation with a dishonest business partner. In addition, from the third quarter of 2021, taxpayers acquiring intra-Community excise goods with a zero rate must submit the AKC-UAKZ declaration (from the first quarter of 2023, the form will change to AKC-

KZ), which is a new excise declaration template that has not yet functioned on the basis of excise duty. The AKC-KZ declaration shows the quantities of excise goods subject to a zero rate. However, suppose the conditions for applying the zero rate are not met, and it is necessary to use the positive rate and pay the tax. In that case, the taxpayer submits a simplified AKC-UA declaration. At this point, the entity will also pay the excise duty due. Unfortunately, the regulation regarding the submission of AKC-KZ declarations for each quarter for products with a zero rate applies only to products included in Annex No. 2. Plastic greases included in CN codes 27101999 and 3403 are not listed in this Annex, and taxpayers registered in the CRPA as purchasing plastic greases from the EU are not obliged to submit an excise duty declaration. In addition, the taxpayer is obliged to keep records of excise goods acquired within the Community. In February 2023, the trade in excise goods with paid excise duty listed in Annex No. 2 was regulated by introducing the obligation to register the e-SAD document. On its basis, goods are moved, within the framework of intra-Community acquisition or delivery, outside the excise duty suspension procedure. In principle, e-SAD concerns products harmonized within the EU with excise duty paid or subject to a zero rate, as well as ethyl alcohol completely denatured with permitted agents (based on Commission Regulation (EC) No. 3199/93 of 22 November 1993), but it concerns the circulation of excise goods listed in Annex No. 2. Again, this means that it does not cover the obligation to register intra-Community movements for plastic greases, which are excluded from effective excise duty taxation.

Thanks to this regulation, in the SENT system, in addition to the EMCS PL 2 and ALINA 4 systems, an IT system was created in which the transport of lubricating oils, lubricating preparations and plastic greases is recorded. However, the limitation in the use of the system of only four-digit CN codes makes it impossible to conduct a practical analysis of the transport of lubricating products (including plastic greases) because it is impossible to determine the exact commodity classification of the transported grease. The data collected in the SENT system is burdened with statistical errors due to the arbitrariness of filling in the fields (lack of system validation). The above systems often use a non-uniform unit of measurement of the transported product (litres, kg) and the use of trade names of products in the descriptions and name of the product (which makes it difficult to check the identity of the goods). In addition, the SENT system does not cover the transport of products classified under CN codes 2710 and 3403 provided that they are transported in small unit packages, which is the norm in the case of plastic greases. The Combined Nomenclature (CN) is a commodity coding system, generally consisting of eight digits, covering the Harmonized System (HS) codes with further subdivisions. It serves the EU's common customs tariff and also provides statistics on trade within the EU and between the EU and the rest of the world. The CN nomenclature groups goods into sections, chapters and subdivisions [Regulation 2018]. Therefore, there is no single definition of plastic lubricants in Polish law or one selected CN code to describe them. They can be included in two CN codes - 27101999 or 3403. Currently,

plastic lubricants with CN code 27101999 are subject to a zero excise duty rate pursuant to Article 89 paragraph 1 item 11 of the Excise Duty Act. The Act was amended in 2019 and introduced similar provisions for plastic greases from item 3403. At the same time, lubricating oils and lubricating preparations taxed with effective excise duty (PLN 1,180/1,000 l) may be subject to the excise duty suspension procedure in domestic trade and when exported from a tax warehouse. Given that plastic greases are excluded from effective excise duty taxation, the excise duty suspension procedure does not apply to them. The difference is also that lubricating oils and lubricating preparations may be exempt from excise duty due to their intended use. Regarding the movement of products using the excise duty suspension procedure, taxpayers rightly apply to the Director of the National Tax Information for issuing Binding Excise Information (WIA) due to the lack of precision in the regulations. In accordance with Art. 7 of the Excise Duty Act WIA is a decision issued for the purposes of taxing an excise product with excise duty, organizing the trade in excise products or marking these products with excise stamps. WIA determines the classification of an excise product in a system corresponding to the Combined Nomenclature (CN) or the type of excise product by describing this product as sufficient to determine the taxation of excise duty, organizing the trade in excise products or marking these products with excise stamps.

Since plastic greases have the same CN code as oils and lubricating preparations and due to the lack of clearly defined definitions of plastic grease in Polish regulations, this gives rise to many problems. The basic form of challenging an incorrectly applied excise duty rate in the trade of plastic greases is to verify the correct classification of the grease according to industry standards and the physicochemical composition of the product, i.e. laboratory testing. Only effective negation as a result of sampling and recognition of the incorrect CN classification of the product or verification of the lack of properties of the plastic grease and determination of the properties of the product as a product in another CN code resulting in the creation of a tax liability will result in effective determination of the moment of emergence of the mandatory excise duty. In particular, CN item 3403 is used declaratively by economic entities. The lack of a processed Central Register of Excise Products (CEWA) makes it impossible to distinguish, on the basis of the records of excise goods in entities without physical control in the entity, which products are plastic greases and which are lubricating preparations in entities with excise permits. The names "lubricant preparation" or "plastic grease" used in the trade names of products often cause interpretational discrepancies in the application of excise tax law provisions, especially in the scope of resale of plastic greases after purchase on the domestic market, import or acquisition or intra-Community delivery. Secondly, it is possible to use plastic greases as an admixture or use these products for the production of liquid or heating fuels, which, taking into account the physicochemical properties of plastic greases, should not take place due to, for example, their density and the use of improvers in their production. Mixing, reclassifying, adding other excise goods to the production in the form of oils

classified in the CN 2710 group (mainly liquid and heating fuels, or various types of lubricants subject to excise duty) taxed at an effective rate without declaring the use or consumption for the production of these products, means that the products "produced" in this way do not include the full amount of excise duty due on the products in their sales price and are more competitive in terms of price. Such irregularities are also indicated by industry organizations such as the Polish Organization of Oil Industry and Trade, which postulates the need to establish a definition of plastic greases in the Excise Duty Act or to regulate the issue of entry into the BDO database.

RESEARCH RESULTS

Taking into account the described difficulties in demonstrating which specific product may be a plastic grease, an attempt was made to show the volume of products imported to Poland in the last three years with CN codes: 3403 and 2710 19 99, which contain plastic greases (Tables 1-4).

Table 1. Imports of CN 3403 goods from non-EU countries in 2021-2023 (thousand kg)

Countries	2021	2022	2023
Total non-EU	3 399	3 504	3 012
In it:			
United Kingdom	1 604	1 741	1 346
Switzerland	702	657	659
United States	367	381	329
Japan	421	413	311
China	24	75	175
Countries and territories not specified within the framework of trade with third countries	94	99	68
Turkey	80	78	43
South Korea	32	19	31
India	13	7	18
Ukraine	12	15	16
Canada	10	11	7
Russia	18	1	0

Source: own study based on data: <https://trade.ec.europa.eu/access-to-markets/pl/statistics> [access: 10 May 2024]

Table 2. Intra-Community acquisition of goods CN 3403 in 2021-2023 (thousand kg)

Countries	2021	2022	2023
EU27	50 517	47 965	33 493
In it:			
Germany	19 866	18 368	16 102
Netherlands	6 604	6 785	5 844
France	8 997	10 071	2 713

Table 2. continued

Countries	2021	2022	2023
Italy	3 067	2 985	2 708
Belgium	3 414	3 303	2 665
Spain	1 155	1 352	1 293
Czech Republic	873	1 061	893
Slovakia	361	709	359
Sweden	369	248	234
Austria	452	137	222
Ireland	473	412	216
Slovenia	25	43	52
Hungary	38	25	48
Romania	119	90	33
Lithuania	4 556	2 243	30
Denmark	20	24	30
Greece	23	34	20
Finland	41	56	20
Portugal	50	13	2
Estonia	10	5	2

Source: own study based on data: Eurostat database

Table 3. Imports of CN 2710 19 99 goods from non-EU countries in 2021-2023 (thousand kg)

Countries	2021	2022	2023
Total non-EU	4 039	3 965.1	9 505.6
In it:			
China	1	1 292.5	6 172.9
Japan	283	272.2	1 381.5
South Korea	189	417.5	714.6
United Kingdom	407	567.8	501.1
United States	269	295.3	385.3
Switzerland	46	56.6	117.4
Canada	3	27.7	70.3
Countries and territories not specified within the framework of trade with third countries	83	79.0	55.2
Turkey	97	163.1	45.2
Serbia	29	40.0	14.2
Singapore	20.8	0.5	1.0
Norway	1.2	3.4	0.9
Australia	1.6	1.9	0.8
Russia	2183.0	743.2	0
Belarus	412.2	0	0
Malaysia	13.6	0	0

Source: own study based on data: <https://trade.ec.europa.eu/access-to-markets/pl/statistics> [access: 10 May 2024]

Table 4. Intra-Community acquisition of goods CN 2710 19 99 in 2021-2023 (thousand kg)

Countries	2021	2022	2023
EU27	116 947.0	113 194.5	109 639.2
In it:			
Germany	44 388.6	40 914.2	49 537.0
Belgium	23 135.9	26 644.2	27 119.5
Sweden	9 712.7	8 521.6	7 483.5
France	11 855.5	10 601.1	5 336.1
Hungary	2 987.2	3 515.2	4 502.8
Netherlands	4 141.1	4 732.2	3 550.0
Italy	2 183.1	2 086.7	3 144.1
Spain	615.2	1 761.5	2 211.8
Czech Republic	9 288.4	3 587.5	1 541.9
Denmark	2 346.8	201.2	1 478.1
Lithuania	2 108.4	4 779.3	1 437.5
Finland	647.6	1 651.9	1 206.2
Latvia	2 015.3	3 666.4	552.5
Greece	10.0	16.9	318.1
Austria	58.2	115.3	75.9
Slovakia	914.8	152.5	50.4
Romania	168.7	16.5	36.2
Cyprus	0	178.4	22.4
Luxembourg	12.6	25.5	14.4
Portugal	223.6	13.0	2.3
Bulgaria	127.3	0.1	0

Source: own study based on data: Eurostat database

Data on the CN code 3403 clearly indicate a decreasing trend in the import of this type of goods to Poland in the last three years, both from outside the EU and from EU countries (tables 1 and 2). As for products with the CN code 2710 19 99, we notice a decreasing trend in the scope of intra-Community acquisition of goods and an increasing trend in the case of import from outside the EU. Important in the context of the outbreak of the war in Ukraine is the reduction and then cessation of import of goods from Russia and Belarus, with a simultaneous huge increase in import from China. It can be assumed that some of the goods previously imported from Russia were sold by China due to sanctions, but this is only an attempt to explain this state of affairs.

The Polish Organization of Oil Industry and Trade [2023, 2024] periodically publishes reports on the structure of the industrial oils market in Poland. In recent years (2021-2022), the volume of trade in plastic lubricants in Poland is estimated at approximately 6.5% of this market. Considering that the volume of goods imported in 2023 with CN codes 3403 and 2710 1999 amounted to a total of about 156 million kg, and considering that plastic greases constitute about 6.6% of the industrial oil market, the volume of import of plastic greases to Poland can be estimated. It is about

10.3 million kg. Of course, we do not include production in the territory of the country, which is difficult to determine for the purposes of scientific research. The reasons include: the lack of precise specification in the regulations of what constitutes a plastic grease, the specification of production data of individual enterprises and failure to inform about the production volume of individual goods due to trade secrets.

SUMMARY

This article aimed to introduce the subject of plastic greases in the context of importing goods to Poland and excise duty. The most important conclusion is that in the current legal situation it is almost impossible to determine whether a product imported to the country is actually a plastic grease, because we rely on manufacturers' declarations. Plans to introduce the Central Register of Excise Products may change this state of affairs, but at the moment state authorities, including the National Revenue Administration, have no possibility of distinguishing based on the records of excise products in entities with excise permits, without physical inspection in the entity, which products are plastic greases and which are lubricants. Indicating the differences is possible only after a possible analysis of the product data sheets of the lubricant product. Therefore, an attempt was made to bring the issue closer to determining the volume of goods imported with CN codes 3403 and 2710 19 99 to Poland over 2021-2023. This shows that this volume is significant, which may translate into increased tax revenues in the country. This gives rise to further research in this area. In addition, the excise tax itself is extremely important for a balanced Polish budget and there will undoubtedly be an increasing emphasis on its collection.

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