

THE GENERAL ADMINISTRATION OF CUSTOMS AS AN INSTITUTION

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ABSTRACT

The General Administration of Customs in Mexico has gone through a process of modernization in its organizational structure, in the present work is looking, through the documentary analysis, to address different definitions of Customs and discuss the relevance of studying it from the institutionalism, arguing the existing correlation between institutions and the economic development of nations. Subsequently institutionalism is linked to governance and a comparative analysis is made between the theorized by Bandeira, Caballero, Dixit, North, and others, with some institutional features of the General Administration of Customs. Finally, the main obstacles are analyzed so that the institutional transformation that Customs has suffered in Mexico reaches the optimum institutionalism that generates development, focusing on corruption from the points of view theorized by Lambsdorff and Ramírez y López. It is concluded by urging to transform the customs political system in order to generate long-term policies, of greater technical rigor and focused on combating corruption

KEYWORDS: Corruption, Customs, Development, Governance, Institutions.

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INTRODUCTION

The Regulation of the Customs Law issued through the Journal of the Official Federation (DOF) establishes that Customs is the authorized site for "the entry or exit of merchandise from the national territory", limiting it to a mere geographic space (DOF, 2005). On the other hand, the authors Urrosolo and Martínez (2018, p.4) specify that Customs

is "an institution that manages the entry and exit of goods from the country". Multiple entities, such as the World Customs Organization, coincide in the same way in this last definition because when referring to institutions, as Portes (2007) points out, the multiple elements that make up a culture and its social structure must be addressed.

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This complements the conception of the Customs as a geographical area, with the activities carried out in the interior, by agents or economic actors, through regulations and other socio-cultural aspects. The use of the term institution, as indicated by Hodgson (2011, p.21), "has a long history of use in the social sciences and goes back at least to Giambattista Vico in his *Scienza Nuova* of 1725." However, despite the importance for research in the field of social sciences, institutions, in the words of Caballero (2011, p.15), "did not constitute a relevant research agenda for orthodox economists", being at the end of the 20th century, when a paradigm shift began to take shape in economic studies, where institutions began to gain relevance in some way.

This change of paradigm has been so radical that at present the study of institutions, according to Caballero (2011), allows us to know what determines the success or economic failure of societies. For the aforementioned, it can be agreed with Bandeira (2009) by pointing out that, in this new paradigm, institutions are fundamental key for countries to achieve their development. For Portes (2007, p.476) "institutions exist when something exerts external influence on the behavior of social actors", while for North (1993, p.10), "institutions are the rules of the game in a society". These two definitions complement each other to improve understanding of what institutions represent in daily life and the influence they have on society.

BACKGROUND

In the case of the General Administration of Customs, these rules are included in the legal provisions that regulate what should be (Customs Law, Customs Operation Manual, Fiscal Code of the Federation, Free Trade Agreements, etc.) and their influence is perceived in the existing relationship between

foreign trade actors (Customs Agents, Authorities, Government Entities, Importers, Exporters, etc.) and it is precisely they, the foreign trade actors, who integrate the culture and social structure in the customs field and in turn they constitute a key piece for the national development.

According to Urrosolo and Martínez (2018), the role of Customs is the administration of goods for their departure or entry into national territory. On the other hand, it is clear that for North (1993, p.10) the success turns into concluding that the institutions manage in some way to reduce the uncertainty, becoming a function *per se*.

In view of the importance of the Mexican Customs, it is essential to provide certainty to foreign trade actors through rules, as indicated by Strauss (2006, p.11), "government policies can have an enormous effect on growth". This is confirmed by the studies carried out by Glaeser, La Porta, López de Silanes and Shleifer (2004, p.282) who point out that there is a strong correlation between economic growth during a period and its institutions. The above shows its importance, because as Bandeira points out (2009, p.360) the institutions "are those that encourage or discourage technological innovation, determining the performance of the economy".

Through the signing and subsequent ratification of the North American Free Trade Agreement (NAFTA), the process of institutional transformation begins, which, with legal reforms, as well as social and cultural changes, brought about a change in the national productive matrix. Same in which over the last 25 years made Mexico go from being a practically closed economy to an economy focused on internationalizing goods and services. For this transformation, it has been necessary to make adjustments in the institutional framework so that, in some way all

the actors involved are provided with clarity and certainty in the new rules of the game and, with this, to try to encourage investment and development.

THEORETICAL-CONCEPTUAL REVIEW

The institutional modifications cannot be carried out lightly, any transformation in the institutional framework should be aimed at favoring economic functioning, since the institutional changes, as pointed out by Vargas-Hernández, Guerra, Bojórquez and Bojórquez (2015) "shape the roads of society". That is, when transforming an institution, the social environment that converges in it is also transformed. For Glaeser (2004) good policies develop good institutions and it is through the modernization of the regulatory apparatus in general and the consensus among the agents involved that this goal is achieved.

A sample of the above is the work that was carried out, both unilaterally and jointly by foreign trade agents, through the reformulation of structures, regulatory frameworks and the implementation of systems that modernize and facilitate international trade.

As an example of the aforementioned, there are updates to the customs law and its regulations, as well as the issuance of the same customs operation manual that allows all those involved to standardize the processes and procedures. There is also a single window of foreign trade that facilitates communication between all the agents involved, as well as pre-validation systems for requests that allow the exchange of information between foreign trade actors, and finally, in some cases, the programs called undocumented ports, which allow the immediate entry of merchandise to maritime customs. All this has allowed the creation of an institutional framework that favors economic development for the foreign trade sector.

EMPIRICAL REVIEW

Dixit (2009) indicates that Economic Governance refers to the structure and functioning of legal and social institutions that support economic activity and transactions through the protection of property rights, the application of contracts and the adoption of collective measures to provide a physical and organizational infrastructure. Therefore, it is found that there is a relationship between institutions and governance. Caballero (2011) agrees with this when affirming that "institutions and governance are interrelated issues" and adds that "institutions, governance and organizations must be analyzed to understand the functioning of a real economy".

Good governance, according to Dixit (2009), is aimed at ensuring three prerequisites considered essential in a market economy, which Ménard and Shirley (2011) describe as the golden triangle. The first of these prerequisites is the security of property rights, aimed at encouraging investment and achieving an efficient allocation of assets to improve the productive use of these. The programs for the Manufacturing Industry, Maquiladora and Export Services (IMMEX) and the Temporary Importation Program to produce export items (PITEX) are examples of the above, which seeks to encourage national production chains to internationalize their products through incentives and facilities to foreign trade where the entire institutional framework contributes to the achievement of this first objective.

The second prerequisite is the fulfillment of contracts. North (1992) considers that "the most important determinant of economic performance is compliance with the agreements" since the fear of opportunistic practices by other economic agents discourages investment due to the risk of economic losses that this entails.

The work of the Mexican State in this regard has focused on the Federal Court of Fiscal and Administrative Justice, a body created in 2000, which has competence in matters related to administrative disputes between economic agents and the State. Additionally, there are several bodies created with the motivation to give legal certainty to all foreign trade actors.

The third is collective action, in this sense Dixit (2009, p.5) states that a large part of private economic activity depends on an adequate provision of public goods and the control of public ills. This includes not only the physical infrastructure, but also the institutional and organizational infrastructure, the facilitation of the internalization of externalities and the control of public ills. Public wrongs are understood to be all those affectations that economic agents may have, derived from the bad exercises that the State performs when exercising its functions and which raise costs or reduce the benefits of said agents, diminishing their competitiveness. In general, public ills are the result of poorly designed organizational formulas, which affect governance.

According to Caballero (2011, p.16) "when we talk about organizational formulas, we refer to different governance modes that agents put in place to be able to carry out transactions and boost productive activity based on exchange". As an example of collective action, there are regulations and non-tariff restrictions, which are aimed at foreign trade actors internalizing externalities, through mutual monitoring for compliance. This aspect also includes surveillance programs within the General Administration of Customs (VIVA, VISAT, PITA), which seek to reduce the transaction costs that may arise from poor supervision.

Therefore, it can be agreed with Bandeira (2009), stating that "the key factors for development are the political institutions that promote good governance". In the absence of

these institutions that promote good governance, it is necessary to create or modify existing ones. If the resulting option is the change of these, it must be considered what was stated by Dixit (2009) who indicates that institutions constitute a balance and institutional change means to transform me into a new equilibrium.

According to Bandeira (2009), institutions are not only created to promote the development of society, but also serve the purpose of distributing or propping up political and economic power. When an institution is inefficient in its major purpose, which is to reduce uncertainty, make changes in the institutional framework will react against these changes, as the groups that hold political or economic power will see that power diminished.

ANALYSIS OF RESULTS

In the case of the Mexican Customs, the changes made to promote the professionalization of the agents that make up the institution, as well as those that focus on combating corruption, did not wait for such reaction. Some agents pointed to the most diverse media, such as the Mexican weekly called Proceso (2005) that the purge of items made in the country's customs sought to dismantle the institutional structure in order to promote illegal acts. This was done as a pressure to stop the institutional changes that were just gestated that, in some cases, when dealing with changes with short-term vision did not prosper.

Although changes in the institutional framework can be considered a first step to carry out the fact that an institution promotes development, on the other hand it is necessary, as Bandeira (2009, p.366) puts it, "to provide the State with a judicial system and a public administration that guarantee the sufficient

capacity and independence of its officials so that the policies have continuity and technical quality ". Situation that for the moment has not been given, because the Customs Law (DOF, 2002) establishes in Article 143 that the Customs depends on the federal executive power for its existence and operation. All this results in the impediment of the generation of public policies with quality and long-term technical vision, and in many cases, that the groups that distribute or prop up power will not affect their interests.

Bandeira (2009) finds both empirical and historical evidence that coincides with the new theories of development, which indicate that State institutions must intervene to create public policies that promote development and investment. At the same time, it considers it necessary to divide these institutions of the State for their study. This division would be given in public administration on the one hand and political systems on the other, where "public administration studies the management of agencies or public administrations", while political systems analyze the set of mechanisms of state power (Bandeira, 2009, p.363).

As discussed in previous sections, the institutional structure of Mexican Customs has been modified. This transformation has only been on the side of the public administration, because the consensus of all the agents has been sought, trying to reduce the uncertainty of the actors and providing better technological aspects that speed up the internationalization of goods and services. However, there is still a need to transform the political system that allows greater independence from the executive branch and thereby generate long-term policies with greater technical rigor.

The General Administration of Customs and corruption. Bandeira (2009, p.363) states that "in the field of public administration, rather than optimal institutions, what we have is a

series of principles that seek to improve the bureaucratic system." Understanding this last concept to the Weberian bureaucracy, which was raised by the theorist Weber (1978), which summarizes the existence of specific statutes, marked hierarchical levels and where incomes and promotions are by merely meritocratic means. Therefore, when seeking to improve the institutional system, Caballero (2011) states that "public policies should set a second best objective given the informational, transactional, cultural and historical restrictions that prevent achieving the first best solution".

These restrictions will generally be represented by groups that hold political or economic power within organizations, which within an institution, have the ability to raise transaction costs among the various international trade actors and thus dramatically reduce the export capacity of the most vulnerable foreign trade sectors. Caballero (2011, p.22) again theorizes in this regard by stating that "the level of transaction costs will depend on the characteristics of each specific transaction, but also on the peculiarities of the institutional environment in which that transaction is carried out. cape".

The delicate situation is established by López and Juárez (2013, p.107) when relating corruption to institutions."When institutions do not work properly, corruption can replace the lack of institutional functions, on the contrary, if institutions function correctly, corruption acts to the detriment of production, by obstructing the proper functioning of the former." Lambsdorff (1999) argues that corruption is explained by very low levels of competitiveness and that in international trade it has a significant impact. In this way it becomes a vicious circle for corrupt countries, because they tend to have a poor budgetary performance and can subscribe to the point of view that public officials obtain sufficient income from corruption and, as a consequence,

can reduce the salary of the public administration.

The fight against corruption within the customs institution has been a pending issue in Mexico, because although strategies have been designed to eradicate it, the fact that they are not profiled to be implemented in the long term, encourages the groups of power within this institution go unpunished or, that they can exert power of resistance to these strategies.

It is evident that the General Administration of Customs is an institution with the ability to encourage development and investment. There is a need, on the part of the Mexican State, to modify the legislative framework to recognize the Mexican Customs as an institution that contemplates the various cultural aspects and social structure and that regulates the relationship between the actors that comprise it.

Since the signing of the North American Free Trade Agreement, Customs have been technically and technologically transformed and has achieved the consensus of the actors involved in foreign trade for the transformation of the Mexican productive matrix, achieving the improvement of export capabilities and the economic development of industries that internationalize goods and services.

It is undeniable the relationship between the economic growth of the export sectors and the incentives that the Mexican State gives, both through unilateral promotion and by the adoption of government policies by foreign trade actors, an example of this is they have the maquiladora and export service programs and to produce export items, which have exploded exponentially in the sectors for which they were designed.

The adoption of policies aimed at the development of productive capacities of companies has taken almost a quarter of a

century to be implemented and fully adopted by international trade actors in Mexico. These changes have borne fruit in terms of what Ménard and Shirley (2011) define as "the golden triangle" (security of property rights, fulfillment of contracts and collective action). However, institutional changes have only been made from the side of public administration, that is, that it is urgent to transform the political systems that converge within it.

The main obstacle to the full transformation of the customs institution in Mexico is, to a large extent, the power groups that react to attempts to modernize the institutional structure of customs. These power groups, within the customs institution, generate high transaction costs, reducing competitiveness to the export capacity of those involved and, in turn, representing a barrier to entry for new players who wish to join the sectors dedicated to the internationalization of goods and services.

CONCLUSIONS

An example of the above is represented by the need for the subcontracting of Customs Agents who, in the name and representation of importers and exporters, perform the procedures before the General Administration of Customs in order to carry out the clearance of goods for importation or export, hindering the activities of foreign trade actors, increasing transport costs and increasing the length of stay of goods within Customs and leading to lower levels of competitiveness and diminish the export capacity of the sectors more vulnerable, such as SMEs.

The power groups, to which reference is made, not only generate the increase of transaction costs, the decrease of competitiveness and the creation of entry barriers for new agents; they also cause corruption, and with it an institutional malfunction, which causes that the

certainty with respect to the rules is reduced and the influence with respect to the social factors that are part of the institutions deteriorates.

To solve the shortcomings of the customs institutional list with respect to the political systems, it is proposed: a transformation in the regulatory framework, specifically in Article 143 of the Customs Law (DOF, 2005), in order to propose a model of independence with respect to the executive power, which allows generating long-term policies, of greater technical rigor and with a view to combating corruption.

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