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Legal Regulation of Relations in the Field of Customs Regulations on Crime Prevention

В статті аналізується правове регулювання відносин у сфері митних правил щодо запобігання злочинності. Виокремлено дієвий засіб для спрощення митних процедур та формальностей. Звернено увагу на те, що посилення взаємної допомоги суттєво підвищить ефективність органів доходів і зборів України у здійсненні заходів з профілактики, упередження, виявлення, припинення та розслідування правопорушень у митній сфері, зокрема і порушень митних правил.

Ключові слова: *правове регулювання, відносини у сфері митних правил, запобігання злочинності, митний кордон, митна безпека.*

В статье анализируется правовое регулирование отношений в сфере таможенных правил по предотвращению преступности. Выделены действенное средство для упрощения таможенных процедур и формальностей. Обращено внимание на то, что усиление взаимной помощи существенно повысит эффективность органов доходов и сборов Украины в осуществлении мероприятий по профилактике, предупреждению, выявлению, пресечению и расследованию правонарушений в таможенной сфере, в том числе и нарушений таможенных правил.

Ключевые слова: *правовое регулирование, отношения в сфере таможенных правил, предотвращения преступности, таможенную границу, таможенная безопасность.*

The article analyses the legal regulation of relations in the field of customs rules on crime prevention. An effective tool for simplifying customs procedures and formalities – electronic declaration – has been allocated – a set of measures, which include: submission of electronic declaration and documents in electronic form for declaration of goods and vehicles, carrying out customs control and customs registration of these goods and vehicles. It is noted that electronic declaration allowed the declarant or customs broker to remotely implement all necessary measures for customs clearance, without coming with paper documents directly to customs. Attention is drawn to the fact that an important element in the development of customs control is the improvement of customs post-audit and risk assessment. The main principles of customs post-audit are highlighted: comprehensive inspection of the subject of foreign economic activity at any moment, and its application exclusively to bona fide participants of foreign economic activity. Attention is drawn to the fact that parallel improvement of national and international legislation necessarily improves the procedure for carrying out foreign economic operations, optimizes logistics cycles, international routes, changes the structure of trade turnover. With the consistent harmonization of the customs legislation of Ukraine with the legislation of the European Union countries and international conventions, some innovative models and mechanisms are being created, which after a certain period of time are introduced into practical activities through the implementation of organizational and technical measures of a production, administrative and commercial nature. It has been observed that against the background of an increasing increase in the commission of offences in the customs sphere, Ukraine needs to reconsider the question of extending the above-mentioned provisions of the Convention to its territory. Especially since all annexes to the Convention had been acceded to by neighboring States such as Slovakia and Moldova, and Belarus and the Russian Federation had joined in assisting in combating the smuggling of drugs and psychotropic substances. In addition, it is necessary to work on the preparation and conclusion of agreements on customs issues with countries with which Ukraine's international cooperation has not yet been established. The attention that strengthening of mutual aid will significantly increase efficiency of bodies of income and collecting Ukraine in implementation of actions for prevention, prevention, identification, suppression and investigation of offenses in the customs sphere including violations of customs rules is paid.

Keywords: *legal regulation, relations in the field of customs regulations, crime prevention, customs border, customs security.*

Statement of a problem. Despite the reforms and structural changes undertaken, State customs activities in Ukraine are still not fully in line with the Kyoto Convention on the Harmonization of Customs Procedures and, in turn, are significantly lagging behind in the implementation of customs controls compared to the customs systems of the European Union countries.

At the same time, with a view to approaching international standards, the current Customs Code of Ukraine has sufficiently broadly regulated the issue of ensuring the implementation of customs control. In particular, an exhaustive list (which is significantly reduced) of documents and information must be submitted for customs control. Documents required for the sale of goods on the customs territory of Ukraine are not submitted for customs control, but are issued after the completion of customs clearance. This simplifies customs clearance procedures quite significantly, in turn, facilitates the conduct of business by subjects of foreign economic activity.

Another effective means of simplifying customs procedures and formalities was the introduction of electronic declaration, a set of measures that include the submission of electronic declaration and documents in electronic form for the declaration of goods and vehicles, customs control and customs clearance of these goods and vehicles. Electronic declaration allowed the declarant or customs broker to remotely implement all necessary measures for customs clearance, without coming with paper documents directly to customs [1].

Analysis of the last researches and publications. The choice of the topic of the article was facilitated by theoretical works of well-known representatives of the domestic legal science of law, such as V.B. Averyanov, O.M. Bandurka, Yu.P. Bytyak, I.P. Golosnichenko, E.V. Dodin, R.A. Kalyuzhnyi, T.O. Kolomoets, V.K. Kolpakov, V.T. Komzyuk, O.I. Ostapenko, D.V. Prymachenko and others.

Purpose of scientific research is analysis of the legal framework for the regulation of relations in the field of customs regulations on crime prevention and identification of the most important sources.

Statement of the main material. At the same time, the introduction of the latest electronic technologies will be most effective at the

interdepartmental level, because the state authorities work in close cooperation. Consequently, the lack of development in one industry inhibits the use of the latest technologies in other industries, and consequently their dynamic development.

Another important element in the development of customs control is the improvement of customs post-audit and risk assessment.

Due to the increase in trade turnover and to support foreign trade, customs authorities of developed countries increasingly simplify customs control procedures during customs clearance at the customs border, while their optimization is carried out not by reducing control measures, but by increasing the share of post-audit in the activities of the rally. Customs post-audit, as one of the directions of customs audit, is carried out after the completion of customs clearance in order to check the legitimate activity of participants in foreign economic relations, and is one of the effective measures to establish violations of customs rules. Its implementation gives customs the possibility to perform regulatory, security and fiscal functions in a timely manner [2].

Documentary checks of observance of requirements of the legislation of Ukraine concerning the public customs affairs are regulated by the Customs code of Ukraine by which Article 345 it is defined that documentary check is a set of measures by means of which bodies of income and collecting are convinced of correctness of filling of customs declarations, declarations of customs value and of reliability of the data specified in them, legality of import (Transfer) of goods to the customs territory of Ukraine or the territory of the free customs zone, export (Forwarding) goods outside the customs territory of Ukraine or outside the territory of the free customs zone, as well as timeliness, reliability, completeness of calculation and payment of customs payments. It is defined by law that documentary checks are visiting and non-travelling. At the same time, field documentary checks are divided into planned and unscheduled ones, the procedure for their conduct is clearly regulated and sufficiently regulated by the Customs Code of Ukraine, an exhaustive list of rights and obligations when carrying out them to officials of revenue and fees bodies and economic entities is established [3].

In this context, an important and effective means of customs control is the conduct of a post-audit, the main principles of which should be a comprehensive inspection of the subject of foreign economic activity at any moment, and its application exclusively to bona fide participants of foreign economic activity.

In our opinion, customs post-audit should not be applied to unscrupulous entities of foreign economic activity, which have signs of risk (no fixed assets, production facilities, office space, registered one working person), to those economic entities with respect to which the available information in the revenue and fees authorities about their violation of the law, involvement in illegal schemes of minimization of customs payments, as well as with regard to certain types of goods used in risky foreign economic transactions.

Also, at the current stage of development of the state customs business, the system of risk analysis and management plays an important role. The application of a set of software and information complexes, which ensure the operation of the risk management system in customs control and registration of goods and vehicles, allows the revenue and fee authorities to quickly establish the areas of risk transactions, to allocate in them operations with low and high risk level, allows the supervisory authorities to carry out inspections of particularly risk transactions.

With parallel improvement of national and international legislation, the procedure for carrying out foreign economic operations is necessarily improved, logistics cycles, international routes are optimized; the structure of trade turnover is changed. With the consistent harmonization of the customs legislation of Ukraine with the legislation of the European Union countries and international conventions, some innovative models and mechanisms are being created, which after a certain period of time are introduced into practical activities through the implementation of organizational and technical measures of a production, administrative and commercial nature [1].

Measures to improve customs control procedures were accompanied by the need to create favorable conditions for increasing trade turnover by subjects of foreign economic activity, and led to the creation in Ukraine of cargo customs complexes, auto ports and auto terminals, in which modern control systems have been introduced. In particular,

it is electronic registration of passes for vehicles moved through the Territory and unimpeded access to it by officials of revenue and fees authorities. Control systems at the entrance and exit are also introduced, which include means of automatic reading of registration license plates of vehicles and electronic scales with the function of automatic entry of information on registration numbers of vehicles, their total weight, to the electronic accounting system. In addition, such a check-and-pass system ensures that unauthorized access of outsiders is not possible [1].

The introduction of a uniform procedure for the operation of the system of electronic registration of goods and vehicles in cargo customs complexes, motor ports, motor vehicles minimizes the attempts of unauthorized movement from the territory of such facilities, goods and vehicles under customs control; The presence in these territories of goods imported in violation of customs regulations; Reduces the impact of the human factor on vehicle skipping decision-making [1].

One of the main tasks of the revenue and fee authorities of Ukraine in the customs direction is to prevent and counter smuggling.

According to the Customs Code of Ukraine, revenue and collection authorities may use the method of controlled supply of these drugs, substances and precursors to identify sources and channels of illicit traffic in narcotic drugs, psychotropic substances and precursors, persons taking part in this, together with other State bodies entitled to carry out operational and search activities. In addition, in order to identify and prosecute persons involved in the commission of smuggling, as well as to seize goods suspected of illegal movement across the customs border of Ukraine, the movement of such goods may be carried out under the tacit control and operational supervision of law enforcement agencies. The Customs Code of Ukraine provides that the procedure for the controlled delivery and placement of goods under tacit control shall be determined by the Customs Code of Ukraine and the relevant normative and legal act of the central executive authority, Which ensures the formation and implementation of the State tax and customs policy of the Ministry of Internal Affairs of Ukraine, The Security Service of Ukraine, the central executive body that ensures the implementation of State policy in the field of protection of the State border, Agreed with the

Prosecutor General's Office of the Republic of Ukraine and registered with the Ministry of Justice of Ukraine [3].

These activities are one of the methods of carrying out operational and search activities, and are used exclusively by legislative entities.

When drafting the new Customs Code of Ukraine (2012), the legislator was faced with the question of granting the anti-smuggling units the authority to carry out operational and search activities, not that time could be solved in two ways:

The first is to grant these units the status of a full-fledged law enforcement agency, taking into account the positive experience of the United States, the United Kingdom and other developed countries, with the authority to carry out operational and search activities and conduct secret records.

The second is to consolidate the functions of combating smuggling and other customs offences to another law enforcement agency of Ukraine.

Given everything behind and against, the legislator implemented the first option. For this purpose during implementation of legislative ensuring law-enforcement activity and in connection with adoption of the Criminal procedural code of Ukraine the Law of Ukraine of 13.04.2012 № 4652-VI made corresponding changes to the Law «On Operational Search Activity» of Ukraine according to which operational divisions, combat smuggling, bodies of the public customs service are given authority to carry out operational search activity [1].

In this respect, it should be noted that although the units that combat smuggling were identified as a subject of investigation as early as April 2012, they have not yet carried out it. Departmental normative and legal acts regulating the conduct of operational and search activities, including the procedure for the controlled supply and placement of goods under tacit control, have not been adopted.

These methods are mainly used by operational units of the Security Service of Ukraine, the investigation of which includes the offences of smuggling provided for in articles 201 and 305 of the Criminal Code of Ukraine. The role of Customs officials in these activities is limited to participation by providing information and assistance to operational officers, including with regard to administrative procedures (joint Customs control, Customs inspection, re-examination, document

verification, preliminary research and rapid analysis of substances, etc.).

Considering that these administrative and legal measures were carried out by the units for combating customs smuggling and before granting them the status of subject of operational and search activities, And their direct lack of long-term implementation, Consider it appropriate to amend the current legislation on the abolition of the status of the subject of operational and search activities to the subdivisions of the revenue and fees bodies, Fight against smuggling, leaving this right to carry out the Security Service of Ukraine not [1].

The criminal situation in the production and circulation of sub-excise goods, closely related to the illegal movement of sub-excise goods across the State border, should be highlighted separately.

The most common means of their illegal movement are:

- crossing the border bypassing customs posts. The violators use the peculiarities of border areas, where the state border is hardly protected, and there are no customs and border crossing points. Illegal movement is carried out by means of off-road trucks equipped with caches, floating vehicles, and even light aircraft (glider, deltaplans). In some cases underground or underwater pipelines are laid;

- concealment of goods from customs control;

- unreliable declaration of cargo under the pretext of goods not belonging to sub-excise;

- Application of a «fictitious» (interrupted) transit scheme to non-existent non-resident firms.

The most criminogenic objects and directions of movement of sub-excise goods across the border are:

1. Alcohol – from the Russian Federation, the Republic of Moldova and Pridnestrovie. It is used in illegal production of liquor and vodka products. Said alcohol is illegally moved outside customs control in hidden containers, frames, canisters and by disguised pipelines.

2. Tobacco products are from the Russian Federation, the Republics of Moldova and Belarus. Illegally enter Ukraine both for the purpose of transit to the countries of the European Union and for sale on the domestic market. Caches are mainly used in vehicles.

3. Elite alcoholic beverages of high value – from European countries, the Republic of Moldova, the Transcaucasian republics. Imported outside

customs control. Accumulation and sale of these products are carried out in large cities (d. Kiev and regional centers).

4. Petrol, oil and lubricants – from the Russian Federation, Republic of Belarus. Illegally moved across the state border of Ukraine outside customs control by means of underground pipelines, vehicles through non-equipped sections of the border.

It should be noted that the current legislation provides for administrative liability for the illegal movement of sub-excise goods across the state border. At the same time, movement across the border of Ukraine outside customs control or with concealment from customs control of sub-excise goods is a super-profitable shadow business, which has recently become common, but responsibility for these illegal acts does not correspond to the degree of their social danger [1].

In this case, the administrative offence of violation of customs rules provided for in article 482 (or article 483) of the Customs Code of Ukraine precedes the commission of the criminal offence provided for in article 204 of the Criminal Code of Ukraine. For example, the offender illegally imported alcohol from the Russian Federation into Ukraine outside customs control and organized the illegal manufacture of alcoholic beverages by opening an underground workshop. At the same time, there is a parallel non-payment of excise tax on sales of alcoholic beverages, that is, the actions of the offender see signs of an offence under article 212 of the Criminal Code of Ukraine.

In this regard, we consider it necessary to introduce legislative changes regarding the criminalization of offences related to the illegal movement of sub-excise goods across the customs border.

It should be noted that since 2015 legislators have already introduced several legislative initiatives on this issue, in particular:

1. Draft Law of Ukraine «On Amendments to the Criminal Code of Ukraine on Criminalization of Smuggling of Alcoholic Beverages, Tobacco Products» (reg. № 3254 of 07.10.2015), introduced by the People's Deputies of Ukraine Patskan V.V., Gorvat R.I., Lunchenko V.V. and others. The draft law proposes to classify the movement of alcoholic beverages and tobacco products across the customs border outside customs control or with concealment from customs control as a criminal offence –

smuggling, the criminal liability for which to predict article 201 of the Criminal Code of Ukraine «Smuggling», and to amend the said article accordingly.

2. Draft Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Strengthening Liability for Offences in the Field of Production and Trafficking of Tobacco Products» (reg. № 4327 of 29.03.2016), Kozachenko L.P. brought by People's Deputies of Ukraine, the King V.M., Palamarchuk M.P., black grouses A.A., Dekhtyarchuk A.V. The bill offers to qualify movements of excise goods through customs border out of customs control or with concealment from customs control as a criminal offense and to provide criminal liability for its commission to the new article of the Criminal code of Ukraine – 201¹ «Movement across the customs border of Ukraine outside customs control or with concealment from customs control of sub-excise goods».

3. Draft Law of Ukraine «On Amendments to the Criminal Code of Ukraine on Criminalization of Smuggling of Excise and Counterfeit Goods (Products) in Large Sizes» (Reg. №. 2840 of 14.05.2015), submitted by People's Deputies of Ukraine Parubiy A.V., Levus A.M., Artyushenko I.A. The bill proposes to recognize as an object of crime under Article 201 of the Criminal Code of Ukraine «Smuggling» large-scale excisable and counterfeit goods (products) (if their value is more than two hundred and fifty times more than the taxable minimum income of citizens).

International cooperation plays a special role in preventing and combating customs offenses.

International cooperation involves the exchange of experience, information and information on organized criminal groups operating in the territory of other countries; forms and methods of conducting cross-border surveillance, controlled deliveries, activities of law enforcement officers undercover, witness protection; illicit movement of excisable goods (first of all fuel and lubricants, alcohol and tobacco); persons who have committed crimes in the customs field are wanted and are being hijacked in another country [1].

The results of the fight against violations of customs regulations show that, despite a set of measures implemented by State authorities (especially revenue and fees authorities), offences committed in the field of State customs are one of the main destabilizing factors in the development of the

State economy, in particular its strategic spheres, increase the level of crime in the sphere of the economy, especially related to taxation.

In our opinion, one of the factors that leads to such consequences is Ukraine's insufficient cooperation with other States in the field of combating violations of customs legislation. In particular, this lack of the appropriate mechanism of mutual aid, assistance in carrying out investigative prompt actions, detentions and extraditions to Ukraine persons for attraction them to criminal liability. This is most evident in the investigation of criminal offences committed by transnational organized criminal groups [1].

Since 1992 Ukraine has been a member of the Customs Cooperation Council and the World Customs Organization, an international intergovernmental organization that has been working on the development of international instruments, conventions on the classification of goods, customs value, rules of origin of goods, customs duties, supply chain security, facilitation of international trade procedures, combating customs offences and illegal movement of counterfeit goods [1].

In cooperation with the World Customs Organization of Ukraine, international instruments on customs issues with other States, the number of which is gradually increasing every year. Such documents are signed with Austria, Azerbaijan, Argentina, Belgium, Belarus, Great Britain, Italy, Georgia, China, Slovakia, USA, Russia, Romania, South Korea, Czech Republic, Hungary, Finland, France.

The purpose of such agreements (treaties) is to exchange information in certain areas, such as consolidated materials, scientific papers, texts of legislative and other legal acts, analytical materials and statistical data; Conducting joint exercises (in the form of internships, meetings, seminars, working sessions, conferences) of customs officers, experts, investigators, operatives, criminologists in order to establish and develop professional contacts and relations between them, to disseminate and exchange experience in various fields of activity.

In addition, the purpose of mutual assistance agreements is to provide research and study on issues

of mutual interest, to publicize and disseminate the results of measures taken; Mutual technical and legal assistance to maximize the impact of criminal investigations on the exchange of materials on transnational crime and those involved; Effective and timely execution of requests for extradition and legal assistance in criminal proceedings.

One of the major international documents in the field of fight against offenses to the customs sphere is the International convention on the mutual administrative aid in prevention, investigation and suppression of violations of the customs legislation adopted in Nairobi (Kenya) of 09.06.1977. Ukraine joined it 23.05.2000 [4]. It is worth noting that our State has not acceded to all annexes to this Convention. In particular, Ukraine has not accepted assistance on request regarding supervision, assistance in combating the smuggling of drugs, psychotropic substances, works of art, antiques and other cultural property, as well as collection and exchange of information on smuggling, customs fraud, persons and vehicles, which constitutes an international interest in combating customs offences.

Conclusions. In our opinion, against the background of an increasing increase in the commission of offences in the customs sphere, Ukraine needs to reconsider the question of extending the above-mentioned provisions of the Convention to its territory. Especially since all annexes to the Convention had been acceded to by neighboring States such as Slovakia and Moldova, and Belarus and the Russian Federation had joined in assisting in combating the smuggling of drugs and psychotropic substances.

In addition, it is necessary to work on the preparation and conclusion of agreements on customs issues with countries with which Ukraine's international cooperation has not yet been established.

Strengthening of mutual aid will significantly increase efficiency of bodies of income and collecting Ukraine in implementation of actions for prevention, prevention, identification, suppression and investigation of offenses in the customs sphere including violations of customs rules.

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