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PROSPECTS FOR THE INTRODUCTION OF POST-CUSTOMS CONTROL INSTRUMENTS INTO DOMESTIC CUSTOMS LEGISLATION IN ACCORDANCE WITH EUROPEAN PRACTICE

The approximation of customs legislation to the provisions of international conventions and agreements, as well as in the context of further European integration aspirations is one of the most urgent issues in the field of implementation of the state customs business in Ukraine.

The purpose of the study is to summarize the national practice of implementing post-customs control procedures, as well as substantiate the feasibility of amending the Customs Code of Ukraine regarding the introduction of post-customs control tools into domestic customs legislation. The regulatory documents of the EU, which provide for the use of customs control instruments after issue in the context of amendments to the Customs Code of Ukraine, are analyzed by the authors in this article.

Key words: customs audit, customs control, post-customs control, forms of customs control.

Urgency of research.

Modern trends in the development of national customs legislation are characterized by the acquisition of their signs of supranational nature, as a result of which the customs legislation of most countries becomes “international”, that is, to acquire common features, which involves the use of standard instruments of control over the activities of foreign economic entities. The analysis of customs and tariff regulation of many countries of the world indicates a gradual departure from “sovereign lawmaking” in the customs sphere as a result of the formation of national customs legislation in accordance with the trends and principles of international customs law.

It should be noted that today at the level of the World Customs Organization, World Trade Organization there are uniform standards of customs regulation of international trade, ratified by the governments of many countries of international agreements on increasing the security of the international supply chain and simplifying customs procedures (International Convention on the simplification and harmonization of customs procedures, Framework standards for Securing and Facilitating International Trade in WCO, WTO Agreement on Facilitation of World Trade).

Actual scientific researches and issues analysis.

The issues of the formation of an effective mechanism for the implementation of post-customs control are studied by such scholars and practitioners, such as: O.M. Vakulchyk, I.H. Berezhniuk, I.S. Gubina, M.O. Yedynak, P.V. Pashko, O.A. Fradynskyi, D.O. Sahariova and others. An effective mechanism for the implementation of post-customs control in accordance with international recommendations and requirements, in particular, further discussion of the proposed changes to the Customs Code of Ukraine, which determined the relevance of the study, has not created in Ukraine despite the considerable number of publications of scientists and practitioners.

Definition of uninvestigated parts of general matters.

The purpose of the study is to summarize the national practice of implementing post-customs control procedures, as well as substantiate the feasibility of amending the Customs Code of Ukraine regarding the introduction of post-customs control tools into the domestic customs legislation.

The method of research.

The concept of balancing interests of the state and foreign economic activity entities with regard to ensuring national security and simplifying customs control procedures is entrusted at the core of this research.

Post-release customs control is an integral part of the system of providing simplifications, which ensures minimal interference of customs authorities in the external economic activity of high-confidence business.

The statement of basic materials.

The adaptation of domestic customs legislation to the European one, taking into account the provisions of the said international conventions and agreements is one of the most important reasons for the adoption of the current Customs Code of Ukraine (hereinafter – CCU) in 2012. In particular, the CCU formalized in the domestic customs legislation such concepts as “authorized economic operator”, “risk management system”, “control after customs clearance”, which in the said code was objectified as “documentary verification of compliance with the requirements of the Ukrainian legislation on state customs issues cases” and is the legal basis for carrying out inspections after customs clearance by the customs audit units within the structure of the State fiscal service of Ukraine¹. At the same time, much of the provisions of the CU have not become practical, the other one needs to be improved, which causes the initiation of a significant number of draft laws to amend it.

A draft Law of Ukraine “On Amendments to the CCU (regarding the Authorized Economic Operator and Facilitation of Customs formalities), which is approved at the meeting of the Cabinet of Ministers of Ukraine from 06.04.2016 in order to bring domestic customs legislation closer to the EU standards within the framework of the implementation of the Association Agreement between Ukraine and the EU, the Ministry of Finance of Ukraine and a number of expert and non-governmental organizations have developed and registered with the VRU No. 4777 dated June 3, 2016². In particular, unlike the current CMU, the draft law in question translates the system of simplifications to foreign economic entities, provides for the submission of a short import declaration and expands the forms of customs control, namely the introduction of a special form of customs control, such as post-release control (post-customs control).

However, the Verkhovna Rada Committee on the issues of Taxation and Customs Policy at its meeting of 21.06.2017 (protocol No. 66), having considered draft law No. 4777, returned to its subject the right of legislative initiative for revision, since it has been established that a number of important provisions of the bill are based on the norms of the EU customs legislation, which acted by 31.05.2016. This applies, in particular, to the list of special customs simplifications that can be provided by the Authorized Economic Operator. In addition, it was noted that the draft law does not comply with the norms of the customs legislation of the EU regarding the conditions for the provision of special customs simplifications.

Consequently, the Draft Law of Ukraine “On Amendments to the CCU on some Execution of Chapter 5 of Title IV of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand” (hereinafter – the bill number 7473) was registered in 29.12.2017³. This bill is an amended version of the bill number 4777, and its aim is to introduce at the legislative level AEO institution similar to the functioning of the EU, Ukraine and fulfillment of obligations under the Agreement. Note that there are the following forms of customs control in accordance to the Article 336 of the current CCU⁴:

– verification of documents and information are provided to the bodies of income and fees during the movement of goods during the movement of goods, vehicles of commercial purpose through the customs border of Ukraine in accordance with Article 335 of the CCU;

¹ Митний кодекс України (Верховна Рада України). Офіційний сайт Верховної ради України. <<http://zakon2.rada.gov.ua/laws/show/92-15/stru#Stru>> (2019, січень, 15)

² Проект Закону України «Про внесення змін до Митного кодексу України щодо уповноваженого економічного оператора та спрощень митних формальностей» (Верховна Рада України). Офіційний сайт Верховної Ради України. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59320> (2018, вересень, 21).

³ Проект Закону України «Про внесення змін до Митного кодексу України щодо деяких питань виконання Глави 5 Розділу IV Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії та їхніми державами-членами, з іншої сторони» (Верховна Рада України). Офіційний сайт Верховної Ради України. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64322> (2019, січень, 15)

⁴ Митний кодекс України (Верховна Рада України). Офіційний сайт Верховної ради України. <<http://zakon2.rada.gov.ua/laws/show/92-15/stru#Stru>> (2019, січень, 15)

- customs inspection (inspection and re-examination of goods, vehicles of commercial purpose, inspection and re-examination of hand baggage and luggage, personal review of citizens);
- accounting of goods, vehicles of commercial purpose, which are transported through the customs border of Ukraine;
- oral interviews of citizens and officials of enterprises;
- review of territories and premises of warehouses of temporary storage, customs warehouses, free customs zones, duty-free shops and other places, where goods, commercial vehicles are subject to customs control, or activities carried out under the control of which in accordance with the CCU and other laws Ukraine is entrusted to bodies of incomes and charges;
- checking the registration of goods transiting through the customs border of Ukraine and / or being under customs control;
- conducting documentary audits of compliance with the requirements of the Ukrainian legislation on the state customs business, including timeliness, reliability, completeness of charging and payment of customs payments;
- sending requests to other state bodies, institutions and organizations, authorized bodies of foreign states to establish the authenticity of documents submitted to the body of incomes and fees.

Extension of existing forms of customs control is envisaged by the said bills through amendments to the Article 336 and the introduction of a new Article 337¹ “Verification of documents after release of goods (post-customs control)”. These changes provide for the possibility of using officials by revenue and customs control bodies by checking documents after the release of goods (post-customs control) – verification of documents, the details of which are indicated in the customs declaration, on which the revenue of goods was made, or verification of documents on the basis of which the release of goods was made.

Post-customs control is carried out on the results of the application of the risk management system and may be initiated during customs clearance or within 30 calendar days from the date of release of the goods. Thus, it is proposed to introduce a control mechanism after customs clearance, but not in the form of “documentary checks of compliance with the requirements of the Ukrainian legislation on state customs issues”, which is called “customs audit” among the practitioners (implementation of which involves implementation of a number of organizational measures from the side of customs DFS) and in the form of post-customs control.

Thus, post-customs control (verification of documents after release of goods) – verification of documents, the information specified in the customs declaration, on which the issue of goods was made, or verification of documents on the basis of which the issue of goods was made. It is carried out on the results of the application of the risk management system and may be initiated during customs clearance or within 30 calendar days from the date of release of the goods for the purpose:

- establishing the availability of documents, details of which are given in the customs declaration, and their authenticity;
- checking the conformity and completeness of the information specified in the customs declaration and primary records (if the issue of goods was made in accordance with Article 2491 of this Code), the relevant additional declarations and the information contained in the documents specified in such customs declarations.

The documents, which were not provided to the body of revenues and fees during the customs clearance of goods are subject to sole control and is carried out solely by that body of revenue and fees, which carried out the customs clearance of goods. The body of incomes and fees sends for the declarant in written or electronic form with the list of documents that must be provided for the post-customs control, as well as the time period for their submission. The declarant is required to provide the documents specified in the notification to the body of incomes and fees for the implementation of post-customs control within ten working days from the date of receipt of such notice. Post-customs control is carried out in the premises of the body of incomes and fees or the declarant.

Discussion.

Thus, it is envisaged to introduce a new form of customs control, which in its content has all the features of post-audit customs in its classical sense, but has a simplified procedure for initiating and a limited number of documents for verification (carried out by the results of the application of risk

management system and may be initiated during customs clearance or within 30 calendar days from the date of release of goods)¹.

Note that there is no single definition of the category of post-customs control in the foreign and domestic literature, but the following terms are used: “post-customs audit”, “post-customs control”, “post-clearance audit”, “post-clearance control”, “post-entry audit”². However, despite the diversity of the categorical definition, the essence of all the concepts is that this form of customs control is a minimization of “throughput” customs procedures and the implementation of customs control by further in-depth documentary verification of the subject of foreign economic activity after the customs clearance of goods and vehicles.

It is necessary to take European experience in the process of reforming the state customs business in Ukraine, which involves optimization of personnel, forms of customs control and interaction of the customs with economic entities. In the EU, the attraction of customs is minimal and usually remote, which allows the use of the principle of declarative consent, to verify the documents after the release of goods, that is, to apply post-customs control, which significantly reduces the need to increase the staff of customs in the face of increased commodity flows.

It should be noted that the category “post-release control” is used in the European customs legislation, namely in Article 48 of the current EU Customs Code³. It provides that the customs authorities can check the accuracy and completeness of the information contained in the customs declaration and other prescribed EU legislation documents the authenticity and accuracy of supporting documents for customs control purposes, which allows checking the declarant’s accounts and other documents relating to the movement of goods. Such control may take place in the premises of the owner of the goods or representative of the owner, any other person who directly or indirectly participate in foreign economic transactions. “Post-release control” procedures are supplemented and expanded by the provisions of Articles 9, 21, 82, 292 of the EU Implementing Regulation 2015/2447⁴.

It should be noted that the careful analysis of the guide “Simplified Procedures Manual / The only permission for Simplified Procedures (TAXUD / 1284/2005)” makes it possible to assert that at the level of normative regulation in the EU on the issues of post-audit customs also separately distinguish two categories: control after release (post-clearance controls) and post-clearance audits⁵.

In particular, Article 2. XI. 2. “Post-clearance controls on the supplementary declaration and supporting documents” of the Guide to “Simplified Procedures / The only permission for Simplified Procedures” TAXUD / 1284/2005, Rev. 5 Final⁶ determines that the correctness, reliability of accompanying documents can also be checked during post-customs control.

Post-customs control provides for the sole verification of customs declarations and accompanying documents of the economic operator in accordance with the norms of the EU Customs Code, and post-customs audit – covers a wider range of issues. Consequently, post-clearance audits involve an audit of the administration, organization and internal procedures and / or internal systems of the entity (checking of accounting and separate foreign and economic operations), at the same time post-clearance controls focus exclusively on consideration of declarations and supporting documents. It has been noted

¹ Проект Закону України «Про внесення змін до Митного кодексу України щодо деяких питань виконання Глави 5 Розділу IV Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії та їхніми державами-членами, з іншої сторони» (Верховна Рада України). Офіційний сайт Верховної Ради України. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64322> (2019, січень, 15)

² Вакульчик, О.М. (2014). *Формування системи митного аудиту в Україні* : монографія. Хмельницький : ПП Мельник А.А.

³ REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 October 2013 laying down the Union Customs Code. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:269:0001:0101:EN:PDF>> (2018, September, 11).

⁴ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2447>> (2018, September, 11).

⁵ Simplified procedures/ single authorisation for simplified procedures. Guidelines. TAXUD/1284/2005, Rev. 5 Final. <https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/policy_issues/conference_events/budapest2008/sasp_guidelines_rev4.pdf> (2018, Septemb[er, 11).

⁶ Ibid.

that post-clearance control and post-clearance audit procedures have much in common, but post-clearance audits are wider.

Updated Guide to “Simplified Procedures / The only permission for Simplified Procedures” TAXUD / 1284/2005, Rev. 6¹ determines that EU legislation provides a legal basis for conducting audits. The Article 78 of the EU Customs Code provides for the verification of customs declarations after release of goods, while Articles 13 to 16 of the EU Customs Code serve as a legal basis for inspections. In addition, national customs or tax laws may provide the customs authorities with the right to audit business entities and third parties.

Conclusions. Consequently, a customs audit is a kind of customs control or assessment carried out by the customs authority to ensure that the actions and events carried out by the business entities are in accordance with national and European legislation and the requirements for the implementation of the customs business. It should be noted that EU customs audit is a systematic and objective process for obtaining, evaluating and providing evidence of the accuracy and completeness of data, actions and events of an economic operator. It is usually necessary to visit the premises of the economic operator to conduct a customs audit.

Types of control that are carried out after the release of the goods to ensure the accuracy of customs declarations can be classified as post-customs control. At the same time, it seeks not only to check economic operators for compliance with their customs legislation, as it may include a check carried out to assess whether an economic operator meets the criteria required for the status of Authorized Economic Operator.

In our opinion, it is expedient to accept these changes to the MCU in the context of introduction of post-customs control, as well as development organizational and regulatory measures on the possibility of its use by officials of the Customs SFS of Ukraine with a view to further approximation of the norms of domestic customs legislation to the European one, ensuring proper control of economic entities in conditions of minimal interference with their foreign economic activity.

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