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## **SELECTIVITY AND MINIMIZATION: CUSTOMS CONTROL PRINCIPLES**

## **ВИБІРКОВІСТЬ ТА МІНІМІЗАЦІЯ: ПРИНЦИПИ МИТНОГО КОНТРОЛЯ**

### **ABSTRACT**

Customs control principles are explored in the article, particularly, minimization and selectivity principles. Customs control is believed to be one of the main operations, its quality procedure influences on the compliance with the customs legislation of Ukraine, ensuring protection of national interests, as well as correct calculation and payment of customs fees, and therefore, replenishment of state budgets. Selectivity and minimization are emphasized to be fundamental principles of customs control. So to speak, it's two sides of the same coin. Selection of successful and efficient customs formalities, focused on an object of customs control (customs clearance of risky goods), and limitation only to those forms of customs control, which are just enough and required to ensure compliance with the customs legislation of Ukraine. Adherence to these principles of customs control seems to guarantee an applied risk-oriented approach to customs affairs in Ukraine. The risk management system is particularly highlighted herein, as the main basic method of customs control principles. This method allows to optimally use resources of the State Customs Service of Ukraine, keeping the customs control effectiveness, and relieving conscientious declarants from an unnecessary

“subjectivism and human factor” in making management decisions in customs control and clearance.

**The key words:** minimization principle, selectivity principle, customs control, risk management, customs control forms, automated risk analysis and management system.

## **Introduction**

Customs control is a very complicated legal determinant being filled with new legal categories. For example, it is an updated strong component of customs control – preliminary documentary control that includes such structural elements as: official control measures, visual inspection and the associated single window legal mechanism, or the introduction of a new form of customs control like post-customs control. Selectivity and minimization are fundamental principles of customs control. So to speak, it’s two sides of the same coin. Selection of successful and efficient customs formalities, focused on an object of customs control (customs clearance of risky goods), and limitation only to those forms of customs control, which are just enough and required to ensure compliance with the customs legislation of Ukraine. Adherence to these principles of customs control seems to guarantee an applied risk-oriented approach to customs in Ukraine, since these principles are associated with such customs control method as risk management in Ukraine’s customs. A customs control object is not only goods and vehicles for commercial purposes moving across the customs border of Ukraine, but also the customs clearance process for risky goods. This is because selectivity and minimization principles refer only to a risk-oriented approach in Ukrainian customs.

## **Methodology**

Certain issues on determination of the place of the customs control principles and tasks in the customs system of Ukraine, relations of customs control authorities with other regulatory bodies with such functional responsibilities as border management of Ukraine, ensuring the customs control legitimacy, the customs control place in the Ukrainian state control system are investigated in papers by S.V. Kivalov, B.A. Kormych, Yu.P. Bytyak, A.S. Vasilyev, B.M. Gabrichidze, V.M. Garashchuk, Yu.M. Demin, P.V. Pashko, O.P. Fedotov, S.N. Semka, A.V. Polishchuk, V.V. Chentsov, R.A. Kalyuzhnyi, V.K. Kolpakov, A.T. Komzyuk, V.Ya. Nastyuk, V.F. Opryshko, Yu.D. Kunev, O.P. Ryabchenko,

K.K. Sandrovskyyo, V.M. Selivanov, V.V. Tsvetkov, V.M. Shevchuk, M.G. Shulga, and other researchers.

However, there are no comprehensive researches on such customs control principles as selectivity and minimization in domestic customs affairs. In view of the above, it should be noted that the research topic seems to be significant and urgent requiring thorough exploration, taking into account the consistent course of Ukraine to execute further specific requirements of the Association Agreement between Ukraine and the European Union (hereinafter – the EU). The goal of the article is to study the basic legal principles of customs control, such as selectivity and minimization through the prism of the system of risk management assessment in the customs affairs of Ukraine. The methodological basis of the article is specific scientific methods, such as formal legal, formal logical, comparative lawful, which allowed to analyze deeper peculiarities of the customs control organization and implementation, based on the selectivity and minimization principles and application of the risk management systems based on the selectivity and minimization assessment.

### **1. Content and legal principles of selectivity and minimization: customs control principles**

Selectivity and minimization as integral principles of customs control are envisaged by the International Convention on the Simplification and Harmonization of Customs Procedures. Minimization is standard rule 6.2. and selectivity is standard rules 6.3.-6.5 of chapter 6 of the International Convention on the Simplification and Harmonization of Customs Procedures.

The Customs Code of Ukraine of 1991 did not specify either of the two principles of customs control, neither selectivity nor minimization. In turn, the Customs Code of Ukraine of 2002 in Part 2 of Art. 40 and Art. 42 stipulates the principles of customs control minimization and selectivity. Later, following the accession of Ukraine in 2005 to the International Convention on the Simplification and Harmonization of Customs Procedures, where these principles are specified in Chapter 6 thereof, both principles were also included into the Customs Code of Ukraine in 2012 (Part 3 of Art. 318 and Art. 320).

As for scientific perspectives, here the researchers' opinions differ. Thus, some authors in their studies highlight only particularities of the principle of customs control selectivity (Polishchuk, Pashko, Samsonov, Semka,

Chentsov, 2009, pp. 22-24). Other authors associate with the customs control principles not only legality, systematicity, regularity, efficiency, but also continuity (Pashko, 2013, p. 69). That is, the authors believe that customs control is executed by customs officials on a continuous basis. However, customs control operates clock round (according to work schedules) only by the personnel of the structural units of the State Customs Service of Ukraine (hereinafter – SCSU) at checkpoints across the state border of Ukraine, which counteract customs offenses or perform other operational duties. But most of the SCSU offices (departments/units of customs clearance) involved in the customs control and clearance provides customs control within the working time (40 hours per week) of a 5-day working week.

Thus, selectivity is selection of such customs formalities that can clearly and effectively confirm or refute information on probable violation of the Ukrainian legislation or absence of such violation in the assessment of objects of customs control (customs clearance of risky goods) within a foreign trade operation. Minimization is the selectivity in the selection of certain forms of customs control, which are minimally necessary to ensure compliance with the customs legislation of Ukraine and applied to the objects of customs control (customs clearance of risky goods) within a foreign trade operation.

Selectivity and minimization, as the customs control principles, are aimed at certain measures by customs officials of the State Customs Service of Ukraine to reveal probable violations of the customs legislation of Ukraine. These actions are applied by officials of the SCSU offices in customs control, both under the instructions in the risk profiles, and at the sole decision of the SCSU officers.

## **2. Risk management as the main method of customs control principles – selectivity and minimization**

Such customs control principles as selectivity and minimization directly depend on the risk management in the customs affairs of Ukraine.

Development and implementation of the risk management system was a project that can be compared in scale only to introduction of a cargo customs declaration at the end of the 1980s and an automated cargo delivery system at the early 1990s. It was a systematic, large-scale, complex task that combined methodological, technological, regulatory, information-technical, organizational, and personnel aspects. The risk management system has been functioning for over 13 years at the SCSU.

Risk assessment and management in the customs affairs of Ukraine, ensuring implementation of the selectivity and minimization principles are directly related to technical capabilities of the software and information system of the automated risk management system (hereinafter – ARMS) and its component – targeting.

The provisions of the Customs Code of Ukraine on the direct application of the ARMS comply with the standard rules of the International Convention on the Simplification and Harmonization of Customs Procedures, the WTO Trade Facilitation Agreement, and the provisions of the EU Customs Code.

Targeting is a method of analyzing and assessing risks, according to which previously analyzed, including those by the ARMS, foreign economic transactions are subject to additional assessment for any risks using available for revenue agencies (their structural units) information sources (Order on Approval of the procedure of risk analysis and assessment, development and implementation of risk management measures to determine the customs control forms and scope).

So targeting is aiming at a random sample object (randomized customs clearance of risky goods). Targeting in the customs affairs is the practice of selective customs control of certain risky goods (highly liquid goods, excisable goods, budget-forming products, high-risk goods in determining a numerical value of customs value, etc.) moving across the customs border.

Random selection is a way of selection of objects of customs control for certain forms of customs control or their totality, when each sample can equally be selected (Order on approval of the procedure of risk analysis and assessment, development and implementation of risk management measures to determine the customs control forms and scope).

In turn, we can add that customs control forms are considered as formalities to be executed by customs officials to verify foreign trade operations. These customs formalities are assigned to customs officials for further verification of customs control objects in a formalized manner. Well, not really assigned. It would rather be selected by the ARMS, following by their generation to a customs official during an analysis of a customs control object (specific customs clearance of risky goods). Customs formalities which can be determined by results of the application in the risk management system are listed in a classifier approved by Order No. 1011 of the Ministry of Finance of 20/09/2012. The classifier is also used in development and application of risk profiles.

According to clause 50, part 4 of the Regulation on the SCSU, approved by the resolution of the Cabinet of Ministers of March 06, 2019, the SCSU, in accordance with its tasks, shall analyze and manage risks in order to determine the customs control forms and scope, shall ensure monitoring risky foreign trade operations to manage risks, including through targeting, and to initiate additional customs control measures involving mobile groups with officials of the State Customs Service of Ukraine and its territorial authorities (Regulation on approval of the provisions on the State Tax Service and the State Customs Service of Ukraine).

The SCSU Working Group and Mobile Groups on Combating the Illicit Border Crossing of Goods in Ukraine, as mentioned above, are another functional substantially influenced by the selectivity and minimization principles.

The SCSU Working and Mobile Groups, among other things, analyze and manage risks in order to determine the customs control forms and scope, to ensure monitoring of risky foreign trade operations to manage risks, including through targeting, and to initiate additional customs control measures involving mobile groups, established under an Order by the Head of the SCSU (or a person in charge) (Order on establishment of a Working Group to fight against illicit border crossing of goods in Ukraine, Order on measures in the Customs Service activity areas in 2019; Order on measures in the Customs Service activity areas in 2020).

Fedotov O.P. and Levchenko S.G. studying issues on initiation of additional customs control measures in case of risky foreign trade operations, specified additional measures used in the assessment of customs control objects (customs clearance of risky goods): 105-2: control of the correct determination of the customs value of goods; 107-3: control of the correct classification of goods in accordance with FEA UCC; 202-1: partial customs inspection – opening up to 20 percent of packing places and selective examination of vehicles in order to check the correspondence of the quantity and description of goods and vehicles to the data specified in the customs declaration; 203-1: full customs inspection – opening up to 100 percent of packing places and in-depth examination of a vehicle in order to check the correspondence of the quantity and description of goods and vehicles with the data specified in the customs declaration; 905-3: sampling of goods for research (analysis, examination) in order to establish characteristics that determine the classification of goods according to FEA UCC (Fedotov, Levchenko, 2019, p. 67).

## Conclusions

Despite the customs legislation of Ukraine is almost adapted to the International Convention on the Simplification and Harmonization of Customs Procedures with the main principle to reduce customs formalities in customs control and clearance, and not to interfere by other control and law enforcement agencies in these processes, Ukrainian by-laws contradict the above-mentioned international principles on this issue. As Order No. 467 of the Cabinet of Ministers of Ukraine “On approval of an exhaustive list of grounds for examination (re-examination) of goods and vehicles of commercial purpose by revenue agencies in Ukraine” of May 23, 2012 allows participation of control, law enforcement and pre-trial investigation authorities in implementation of customs formalities and certain forms of customs control. Representatives of supervisory, law enforcement and pre-trial investigation authorities involved into customs formalities and certain forms of customs control by forming and further sending to the SCSU customs officials in electronic form orders for customs examination (re-examination) of goods and vehicles of commercial purpose make it impossible to apply such customs control principles as selectivity and minimization.

However, an exhaustive and detailed check not only of freight or shipping documents, but also of primary documents from a taxpayer-declarant are envisaged, and representatives and investigators of the abovementioned authorities demand the SCSU customs officials to carry out customs clearance without even mandatory ARMS. It should be also noted that the effectiveness of customs examination (re-examination) of goods and vehicles for commercial purposes is quite low, and frankly speaking, even under. But because of all these processes with the involved representatives of control, law enforcement and pre-trial investigation authorities, the application of customs controls measures takes a long time even if they are not needed at all, also human resources of the SCSU waste time and owners of goods – declarants waist more money for loading and unloading of goods, delay in customs clearance, and sometimes, for violation of provisions of foreign trade agreements in conditions and terms of delivery of goods.

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## АНОТАЦІЯ

**Гармаш А. І. Вибірковість та мінімізація: принципи митного контролю. – Стаття.**

У статті досліджуються принципи здійснення митного контролю, особлива увага приділяється розгляду принципів мінімізації та вибірковості. Митний контроль представляє собою одну із основних операцій, від якісного проведення якої залежить дотримання законодавства України з питань митної справи, що забезпечує захист інтересів держави, а також правильність нарахування і справляння митних платежів, та отже, поповнення бюджетів держави. У статті ставиться наголос на тому, що вибірковість та мінімізація являються основоположними принципами митного контролю. Це, так би мовити, дві сторони одного аркушу. Обрання результативних та ефективних митних формальностей, дія яких буде спрямована на об'єкт митного контролю (митне оформлення товарів із ознаками ризикованості), а також обмеження тільки такими формами митного контролю, які є мінімально достатні та необхідні для забезпечення дотримання законодавства України з питань митної справи. Дотримання цих принципів митного контролю є запорукою застосування ризик орієнтованого підходу в митній справі України, оскільки ці принципи пов'язані з таким методом митного контролю як управління ризиками в митній справі України. Особливу увагу у статті присвячено системі управління ризиками, як основному базисному методу принципів митного контролю. Цей метод дозволяє оптимально використовувати ресурси митниць Державної митної служби України, не зменшуючи при цьому ефективність митного контролю, та звільняючи сумлінних декларантів від зайвого "суб'єктивізму та людського фактору" щодо прийняття управлінських рішень при митному контролі та митному оформленні.

**Ключові слова:** принцип мінімізації, принцип вибірковості, митний контроль, управління ризиками, форми митного контролю, автоматизована система аналізу та управління ризиками.

## АННОТАЦИЯ

*Гармаш А. И. Избирательность и минимизация: принципы таможенного контроля. – Статья.*

Таможенный контроль представляет собой одну из основных операций, от качественного проведения которой зависят соблюдение требований законодательства Украины по вопросам таможенного дела, что обеспечивает защиту интересов государства, и правильность исчисления и взимания таможенных платежей и, следовательно, полонения бюджетов страны. В статье ставится ударение на том, что избирательность и минимизация являются основополагающими принципами таможенного контроля. Это, так сказать, две стороны одного листа. Выбор результативных и эффективных таможенных формальностей, действие которых будет направленно на объект таможенного контроля (таможенное оформление товаров с признаками рискованности), а также ограничение только такими формами таможенного контроля, которые являются минимально достаточными и необходимыми для обеспечения соблюдения законодательства Украины по вопросам таможенного дела. Соблюдение этих принципов таможенного контроля является залогом применения риск ориентированного подхода в таможенном деле Украины, поскольку эти принципы связаны с таким методом таможенного контроля как управление рисками в таможенном деле Украины. Особенное внимание в статье уделяется системе управления рисками, как основному базисному методу принципов таможенного контроля. Этот метод позволяет использовать ресурсы Государственной таможенной службы Украины, не уменьшая при этом эффективность таможенного контроля, и освобождая добросовестных декларантов от лишнего “субъективизма и человеческого фактора” относительно принятия управленческих решений при таможенном контроле и таможенном оформлении.

**Ключевые слова:** принцип минимизации, принцип избирательности, таможенный контроль, управления рисками, формы таможенного контроля, автоматизированная система анализа и управления рисками.

