Valentyna F. Maksimova¹, Dariya O. Sagaryova² POST-CLEARANCE CONTROL IN INTEGRATED BORDER MANAGEMENT

The article explores the viewpoints of contemporary scientists on the essence of customs inspections; available definitions of the given concept are analyzed. According to the results of the research the essence and economic contents of the post-clearance control based on the audit methods is defined, and its content is formulated.

Keywords: external economic activity; customs legislation; customs control; post-clearance control.

Валентина Ф. Максімова, Дарія О. Сагарьова ПОСТМИТНИЙ КОНТРОЛЬ В ІНТЕГРОВАНОМУ УПРАВЛІННІ КОРДОНОМ

У статті досліджено точки зору сучасних авторів на сутність митних перевірок та проаналізовано існуючі категоріальні визначення даного поняття. За результатами дослідження визначено сутність та економічний зміст постмитного контролю, який базується на методах аудиту, та сформульовано його зміст.

Ключові слова: зовнішньоекономічна діяльність; митне законодавство; митний контроль; постмитний контроль.

Табл. 2. Рис. 1. Літ. 19.

Валентина Ф. Максимова, Дарья О. Сагарева ПОСТТАМОЖЕННЫЙ КОНТРОЛЬ В ИНТЕГРИРОВАННОМ УПРАВЛЕНИИ ГРАНИЦЕЙ

В статье исследованы точки зрения современных авторов на сущность таможенных проверок и проанализированы имеющиеся категориальные определения данного понятия. По результатам исследования определена сущность и экономическое содержание посттаможенного контроля, основанного на методах аудита, и сформулировано его содержание.

Ключевые слова: внешнеэкономическая деятельность; таможенное законодательство; таможенный контроль; посттаможенный контроль.

Introduction. Objective necessity of Ukraine's integration into the world economic community causes gradual convergence of its customs legislation to international norms and standards. Particularly noteworthy is the process of new forms and instruments of customs control implementation. One of these forms is post-clearance control, which includes examining operations of foreign trade subjects for determining their legitimacy, economic feasibility and complete fulfillment of all liabilities as a result of such transactions.

Recent research and publications analysis. A number of Ukrainian and foreign academic studies are dedicated to the organization and improvement of post-clearance control. Among them should be mentioned the works of such authors as P. Pashko (2010), O. Vakulchik and O. Knishek (2009), I. Spivak (2010), L. Koptseva (2010), O. Berzan (2007), L. Ivashova (2011), A. Agapova et al. (2011) and others. However, most of the studied issues only justify the need to establish an effective sys-

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tem of post-clearance control in the country and do not pay sufficient attention to the resolution of the most substantial part thereof.

Target problem for the analysis. Formation of national post-clearance control systems is not just limited by rationale for its creation, but it also requires detailed research of adjustment opportunities and formalization of the conceptual apparatus of post-clearance control and measure of its economic substance.

The research objective is to determine the "post-clearance control" concept, define its economic content by creating a holistic understanding of the system of customs control for foreign economic operations. In accordance with the goal, the following tasks should be accomplished:

1. Analysis of the national legislation and international standards, which refer to the concepts identical to the essence of post-clearance control.

2. Research of leading scientists' opinions on the interpretation of customs control of foreign economic operations that have already been made by business entities.

3. Determining the essence and economic contents of the concept "post-clearance control".

Key research findings. The XXIth century is characterized by a considerable strengthening of the role of globalization because orientation of many economic systems to market economy requires the development of comprehensive international economic relations to realize the economic potential at international markets. As a result of close cooperation between the countries the volume of international trade is steadily increasing each year. Therefore, customs administrations all over the world face new problems to solve which they should apply completely new (innovative) approaches.

In the current context of globalization, integration and expansion of international relations, Ukraine strives to harmonize and standardize customs procedures. The main condition for achieving this goal is the implementation of post-clearance control.

The purpose of such control is to verify accuracy and authenticity of declarations. It covers the control of traders' commercial data, business systems, records and books. Such an audit can take place at the premises of a trader, and may take into account individual transactions, the so-called "transaction-based" audit, or cover imports or exports undertaken over a certain period of time, the so-called "company based" audit. Post-clearance audits can be conducted focusing on targeted operators, selected on the grounds of risk analysis of a commodity and a trader, or in a planned, regular way, set out in an annual audit program. Furthermore, audit could also be used as criteria to offer special treatment to certain economic operators.

Adjusting the basic issues of customs control implementation and functioning in modern economic and political environment is carried out by the International convention on the simplification and harmonisation of customs procedures (Kyoto Convention) and SAFE framework of standards to secure and facilitate global trade. These international documents determine the importance of customs clearance simplification and speed up customs procedures at the border by further indepth inspection of foreign economic activity after customs clearance of goods and vehicles. According to Kyoto Convention, 1973). Chapter 6 of the General Annex of the Revised

Kyoto Convention sets out a large number of the recommended standards relating to all aspects of customs control, including the use of audit-based control of traders' commercial systems (Standards 6.6. and 6.10).

Also, according to the National indicative programme for Ukraine for the period 2011–2013, the result of integrated border management is the approaching of border control procedures and management systems to relevant international standards of the European Union, including Customs Blueprints (Customs Blueprints, 2007).

One of 22 directions of Customs Blueprints is post-clearance audit, which includes promotion of international trade by establishing a balance between the simplification of trade procedures, on the one hand, and ensuring effective customs control and security on the other.

According to the Customs Blueprints there are some objective conditions for the implementation of post-clearance audit:

1. Development of a comprehensive legal basis which gives to customs officers necessary powers to carry out audit/post-clearance controls efficiently and effective-ly.

2. Development of an organizational structure which enables auditors and their managers carry out their duties with maximum effectiveness and efficiency.

3. Development of an audit management system which ensures efficient, quality-controlled audits by using appropriate methods and establishing operational quality assurance program.

4. Development of a training strategy to ensure auditors and managers have all necessary knowledge and skills to plan and implement their duties.

5. Development of a national audit planning policy with planned short-term and long-term controls, in accordance with the priorities based on risk analysis and risk assessment (Customs Blueprints, 2007).

Simultaneously documents include maintaining and enhancing safety features of the supplied products, which include promotion of international trade. Thus, for customs arise the problem of simplifying customs procedures, on the one hand, and ensuring effective customs control and security on the other. It can be solved by introducing transparent and similar customs control procedures.

Current conditions of foreign trade require the so-called post-clearance control. To clearly understand the essence of this concept, it is necessary to consider the characteristics of its use within domestic and international legislation, first of all. Data that were obtained from the analysis of existing normative legal acts on the nature of post-clearance controls are shown in Table 1.

After analyzing the data in Table 1 we can conclude that in domestic regulations concepts identical to the essence of post-clearance control are nowhere clearly defined. But they contain provisions for inspections of business entities after customs clearance, which in general corresponds to the essence of post-clearance control. Thus, the analyses of national regulations indicate the initial level of implementation of the practice of post-clearance inspections in Ukraine.

Categorical definitions of post-clearance control contained in international documents also have some differences. Notwithstanding the foregoing, the essence of all the concepts contains the fact that post-clearance verification is understood as a significant reduction of customs procedures during the registration and carrying out customs control through further deepening of economic operators' check after the customs clearance of goods and vehicles. All the international acts that have been analyzed consider post-clearance control as one of the most important form of modern customs control that promotes the development of trade, because, on the one hand, it can cope with the growing amount of goods' movement, on the other – creates favorable conditions for foreign trade participants.

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	Information source	The form in which a concept identical to the essence of post- clearance control is mentioned		
Legislative acts of Ukraine	Customs Code of Ukraine	Documentary verification is a set of measures by which customs authorities are convinced in the correctness of filling customs declarations, declarations of customs value and the reliability of these data, legality import (transfer) of goods into the customs territory of Ukraine or the territory of free customs zone, export (transfer) of goods from the customs territory of Ukraine or outside the territory of free customs zone, as well as timeliness, accuracy, completeness, calculation and payment of customs duties.		
	Concept of reforming the activity of custons service of Ukraine for 2011–2015 "Facing the people"	Conducted internal and external analysis of the Customs Service of Ukraine indicates the presence of significant resources for efficiency, stability and reliability of customs implementation. They can be used by applying the latest technologies of information customs control on the basis of analysis of risk situations, centralized customs clearance and extensive implementation of post-audit control.		
International documents	Kyoto Convention	"Audit-based control" means measures by which customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of relevant books, records, business systems and commercial data held by the persons concerned.		
	Community Customs Code	Customs authorities may, after releasing goods and in order to ascertain the accuracy of the particulars contained in the summary or customs declaration, inspect any documents and data relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods.		
	UNCTAD Trust Fund for Trade Facilitation Negotiations Technical Note 5 «Post-clearance audit»	Post-clearance audit means audit-based customs control performed subsequent to the release of cargo from customs' custody. The purpose of such audits is to verify the accuracy and authenticity of declarations and covers the control of traders' commercial data, business systems, records, books.		
	Customs Blueprints	The aim is to develop an effective and efficient post-clearance control and audit service which allows customs administration implement its tasks (clearance and control of goods, revenue collection) and facilitate trade by keeping a balance between trade facilitation and efficient customs control.		
	Guidelines for post- clearance audit by the World customs organization	The post-clearance audit process can be defined as the structured examination of a business' relevant commercial systems, sales contracts, financial and non-financial records, physical stock and other assets as a means to measure and improve compliance.		

Table 1. The essence of post-clearance control under the laws of Ukraine and international acts

Source: Compiled by the authors.

The need for approximation of the customs legislation of Ukraine to international standards, including the provisions of the Kyoto Convention, on the implementation of post-clearance inspections, requires unification of this concept and its consolidation on the legislative level. In Table 2 thoughts of domestic and foreign authors on the definition and interpretation of the essence of controls after customs clearance are analyzed.

Table 2. Interpretation of the essence of controls after customs clearance by various authors, *compiled by the authors*

#	Author	Control procedures after customs clearance
1	P. Pashko	Customs post-audit control is the controlling method of economic operators by checking their accounts, records and systems (Pashko, 2010)
2	I. Spivak	Customs post-audit is the audit of the participants of foreign economic activity carried out after the completion of customs clearance (Spivak, 2010).
3	L. Koptseva	Customs post-audit is the control over the accuracy of information presented for customs control and customs clearance of goods and vehicles after their release for free circulation (Koptseva, 2010).
4	O. Goncharuk	Customs post-audit is the system of mandatory control actions (using the methods of documentary and factual control) to verify the legitimacy, relevance, accuracy of the information provided by economic operators being checked during customs control, as well as the legality and regularity of representatives' action in foreign economic activity (Goncharuk, 2011).
5	O. Vakulchik, O. Knishek	Post-clearance control is the system of measures, methods and techniques used by customs officials in the organization and conducting based on audit methods, of the legality, completeness and accuracy of reflection of external transactions in the accounting system and reporting, timeliness and correctness of customs duties and charges payments by businesses – subjects of foreign economic activity to state budget (Vakulchik and Knishek, 2009).
6	I. Gubina	Customs post-audit is a form of customs control, which is held by customs authorities to verify financial documents, declarations and other documents of foreign trade provided to the customs authority at the time of movement of goods and vehicles across the customs territory at any time in order to detect contraband, violations of customs regulations (e.g., underpayment of customs duties by lowering customs duty etc.), and to faster procedures of customs clearance (Gubina, 2011).
7	E. Lunyova	Customs audit is a set of interrelated activities carried out by customs authorities to conduct audits of participants of foreign trade after customs clearance; businesses that are directly or indirectly related to the goods and vehicles which cross the customs border of the Russian Federation (customs brokers, customs transporters, owners of temporary storage and other legal entities and individuals), and the owners of the documents associated with this movement – to ensure compliance with legislation and international treaties, monitoring its execution entrusted to customs authorities (Lunyova, 2003).
8	O. Cudryavcev, V. Solovev, I Soloveva	Customs audit is a form of customs control that represents a systematic process of collecting and evaluating data, which have been declared during customs clearance of goods, in order to determine degree of compliance of this information with legislation (Cudryavcev et al., 2005).
9	O. Berzan	Customs audit is a set of interrelated activities carried out by customs authorities, to assess financial activities of organizations related to goods crossing border, to ensure compliance with legislation (Berzan, 2007).
10	L. Ivashova, T. Edinak, V. Edinak	Customs post audit is a kind of external state control exercised by special state powers (customs authorities) after the completion of customs control and customs clearance of outstanding entities (Ivashova et al., 2011).

Analysis of the works of these authors shows there is no consensus on the definition of control procedures after customs clearance in the scientific community. The literature offers different terms: "customs post-audit control", "customs post-audit", "post-clearance control", "customs audit" etc.

O. Goncharuk (2011), L. Koptseva (2010), I. Spivak (2010) and other authors use the term "post-clearance audit" for defining inspections after customs clearance of goods. According to the Russian scientist O. Berzan, fundamental difference lies in the fact that customs audit is not aimed at controlling over goods movement but it

controls the activities of organizations that are related to goods that are crossing the border. The activity of these organizations is seen in the dynamics and assessed are the prospects of their functioning in the future (Berzan, 2007). In this case post-clear-ance audit is considered as a part of state control.

However, according to the article 3 of the Law of Ukraine "On Auditing Activity" audit is the verification of accounting data and indicators of entity's financial statements to express an independent opinion of an auditor on its reliability in all material respects and compliance with the laws of Ukraine, regulations (standards) or other rules (internal regulations of entities) according to user requirements (Law of Ukraine "On Auditing Activity", 1993). Also, this law states that audits are conducted by independent persons (auditors), audit firms, authorized to conduct it by economic entities.

A similar interpretation of the audit is contained in the Law of Ukraine "On Foreign Economic Activity": "audit is an examination of public financial statements, accounting, source documents and other information on financial and business entities to determine the reliability of their reports, records, its completeness and compliance with current legislation and established standards".

According to the current legislation of Ukraine audit is entrepreneurial activity, independent check of entities' accounting and reporting. Thus, customs audits are carried out by customs auditors – non-governmental agencies, it is a substantive audit that occurs on the equal basis with other types of audit. In terms of methodology, customs audit is similar to checking authorities by customs after the release of goods. However, the purpose of customs audit and custom control carried out by customs authorities is different (Agapova, 2011). Therefore, it is inappropriate to equate customs audit with the part of state control exercised by customs authorities in order to verify activities of economic entities within their jurisdiction.

In order to understand the multitude of definitions it is necessary to consider the concept of customs control. Customs control is a part of state financial control; it is aimed at the verification of compliance with financial legislation and fiscal discipline by participants of foreign economic activity. According to the Kyoto Convention, customs control is a set of measures taken by customs service to ensure compliance with customs legislation (Kyoto Convention, 1973). In the handbook of customs terms of the World Customs Organization "customs control" is defined as activities used to secure the compliance with laws and other requirements, control over the execution entrusted to customs authorities.

Customs control can be classified by different criteria: the nature of control subjects, the task of control, the contents of control activity, the nature of controlling powers, the nature of the relationship between subject of control and controlled object. Depending on the stage at which verification takes place, customs control is divided into "previous", "current" and "future" (Figure 1).

Previous customs control is carried by customs officials through inspection and analysis of the information contained in the documents for cargo in the case of its movement across the customs border of a country. For example, customs control of foreign goods imports operations into the customs territory of Ukraine starts from the date of the previous declaration filing. Previous customs control is essential for financial abuses prevention.

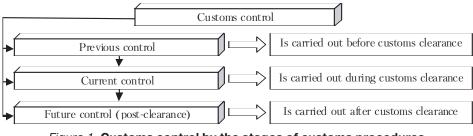


Figure 1. Customs control by the stages of customs procedures, authors' development

At the current stage of customs controls direct customs clearance of foreign economic operations takes place. In other words, customs authorities carry out the procedures that are associated with fixing of the results of customs control of goods and vehicles that were moved through the customs border of Ukraine and have a legal significance for their further usage. In Ukraine, this form of customs control is currently dominant.

Recently, developed countries have introduced the practice of checks not only at the stages of previous and current control, but also further (subsequent) control. This form of customs control is carried out after the completion of customs clearance to verify activities of individuals involved in foreign trade. Post-clearance control is a part of customs control, and therefore it's a part of state financial control.

However, it should be noted that the introduction of post-clearance inspections of business entities does not negate the use of the two previous forms of customs control. A combination of previous, current and subsequent control allows providing the highest effectiveness and efficiency of customs inspections. Therefore, the practice of customs should widely use all forms of control without opposing them to each other.

Article 345 of the Customs Code of Ukraine regulates documentary checks by customs authorities. In particular, it states that customs authorities may carry out customs control through onsite documentary (scheduled or unscheduled) and offsite supervision of documentary compliance. These checks should control:

- the correct definition of the tax base, timeliness, accuracy, completeness, of accrual and payment of customs duties;

- the validity and legitimacy of providing (receiving) benefits and exemptions;
- the accuracy of goods classification by UCCFEA;

- the compliance of the actual use of goods displaced through the customs border of Ukraine to the declared aim of the movement and/or compliance with financial and accounting documents, reports, agreements (contracts), calculations and other documents of the company, information specified in the customs declaration, declaration of customs value etc.;

- the legality of movement of goods across the customs border of Ukraine, including the import of goods into the territory of free customs zone or export from this territory (Customs Code of Ukraine, 2012).

But the term "documentary verification", used in Article 345 of the Customs Code of Ukraine, is not fully compliant with the essence of post-clearance control. The documentary verification is a method of customs control, but it's not a form of post-clearance control. Confirmation of this conclusion is contained in the Kyoto Convention, according to which the methods of customs control over goods movements are:

1. Documentary verification – provides information on the movement of goods, which is used for determining the conformity of transactions to risk profile. Providing of documents before the actual import (export) allows carrying out pre-selection for verification, to determine items that require special attention, as well as help employees of the customs authority in decision to release goods for the entry into the country. Monitoring is carried out by checking: documents submitted before the filing of customs declaration, customs declaration and accompanying documents, records and other documents in accordance with simplified procedures.

2. Physical examination – conducted to determine actual compliance with the product characteristics provided in the documentation. Physical examination should be conducted as soon as possible. The level and nature of physical examination are based on available information obtained in the course of the documentary checks.

3. Identification of products is used for the control of goods and vehicles which were declared and exempted from duties and taxes. Identification is carried out by applying seals, stamps, printing of digital labels, detailed description of products, sampling and samples, presentation of goods' plans, drawings or pictures.

4. Customs control of individuals is verifying persons, baggage, and if it is necessary – personal inspection, which is regarded an exceptional form of customs control (Kyoto Convention, 1973).

During scheduled or unscheduled inspections by customs authorities, in the presence of exceptional circumstances, can conduct also physical examination and identification. Regardless the control methods used for inspection, measures that are aimed at the verification of accounting data, reports and other documents after passing the procedure for customs clearance will be called post-clearance control. Thus, documenting verification is one of the instruments of customs control based on post-audit realization.

Considering the above, for displaying the verification process of foreign economic activity after the passage of clearance at the border, in our opinion, it is appropriate to use the term "post-clearance control". Feature of such control is the application of audit techniques in the verification process, such as the assessment of strengths and weaknesses of traders' commercial activity, the implementation of financial analysis etc.

Post-clearance control that is based on audit methodology allows conducting financial analysis according to accounting and taxing reports, and obtaining the most informative indicators. These indicators will give objective and accurate picture of the financial situation of a organization, will contain information on its gains and losses, changes in the assets and liabilities, in settlements with debtors and creditors. Based on this information, the possibility for continuous functioning and fulfill of the obligation to pay customs duties, fines and penalties can be evaluated.

So post-clearance control is the activities of customs authorities of verifying the validity and compliance with reflection by business entity in the accounting and reporting of business and financial transactions related to foreign economic activity, by the using of the audit methods. Therefore, we consider that it is appropriate to add this definition of post-clearance control to the Customs Code of Ukraine.

It can be concluded that in recent years the process of implementing of inspection after customs clearance of goods has improved. In particular, enhanced is the legal framework, founded are the appropriate verification agencies that already show the proper result of customs revenues from the post-clearance audit. But introducing an effective audit system requires not only legislative changes, but also to bring this idea to the public for a clear understanding that such arrangements will withdraw from shadow trade imports and eliminate the possibility of obtaining illegal profits (Pashko, 2010). Practical implementation of the above requires:

- the development of scientific theory of post-clearance audit, involving experts in customs affairs, public administration, government regulation and foreign economic activity control etc;

- implementation of foreign experience in carrying out post-clearance control in Ukraine;

- standardization of forms and methods of control activities that are carried out by customs authorities;

- promotion of more effective customs control in each customs post without increasing administrative or enforcement costs through the harmonization of approaches to post-clearance control.

Conclusions. Customs administrations, especially those in the developing countries, confront significant challenges in balancing their responsibilities as for collecting revenues, protecting national borders and trade facilitation. Consequently, customs administrations increasingly look to post-clearance control as a means of implementing customs controls and allocating scarce resources more effectively.

The successful implementation of post-clearance audit in Ukraine will help to strengthen the enforcement and to provide the necessary support and confidence in the implementation of trade facilitating measures and simplified procedures in cargo processing and valuation specifically.

The process of post-clearance control implementation in Ukraine is at the primary level, as evidenced by the imperfection of its regulatory framework and the lack of a clear methodology for conducting this form of checks. The multiplicity of views on the economic essence of post-clearance inspection leads to distorted determination of this concept. Effective program of design and implementation demand a range of responses – in legislation, in institutional reform, in building the capacity of customs and other relevant agents, and in monitoring project progress. The program may also face financial and human resource challenges that may impose the initial scope of the program; customs administrations should scale their efforts appropriately.

The obtained results and conclusions can be used for further research in the field, taken into account in the integrated border management, applied in the formation of post-clearance control and for the development of specific measures.

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