Administration of the system for prevention and counteraction to customs offenses in Ukraine

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The author's model of the system for prevention and counteraction to customs offenses is presented in the article for the first time. It is shown that this system is a two-element set, the components of which are the legal and regulatory framework in this area, and the state authorities authorized to perform state functions in the customs sphere that interact with each other and the external environment in order to ensure prevention and counteraction to the violation of customs rules. Two types of connections between elements of the system of prevention and counteraction to a customs offense are shown – unilateral and bilateral ties.

The principles of administration of the preventing system and counteracting customs offenses in the Ukrainian state are analyzed by analyzing the content of such an element of the system as the state authorities in the customs sphere. As a result of this analysis, it has been established that in Ukraine, the prevention and counteraction of customs offenses is most urged by SFS.

It was found out that in Ukrainian practice of preventing and counteracting customs offenses, SFS plays a predominantly preventive, prophylactic role rather than punitive role in studying the purpose and functional load of SFS.

The author's vision of interconnectedness and interdependence of ties between the elements of the system of prevention and counteraction to customs offenses is developed: at the normative and legal level, tasks, functions, rights and responsibilities of SFS are fixed, while the latter holds the norm-setting initiative and implements it, thus changing the state and meaningful content of regulatory and legal support.

Keywords: customs offense; system of prevention and counteraction to customs offenses; public authorities; The State Fiscal Service of Ukraine.

Introduction

One of the most acute problems in the implementation of the state customs business of Ukraine during the whole time of existence of an independent state is the high level of violation of customs rules by the subjects of foreign economic activity.

The 23235 violations of customs rules with the value of offenses worth more than 2 billion UAH are detected only during 2016 the Customs Fiscal Service (hereinafter – SFS). The number of completed protocols on violation of customs rules in comparison with the same period of last year is increased by 30%, and the cost – by 13%. In particular, offenses amounting to almost UAH 627 million were removed in 7952 cases of violation of customs regulations temporarily (2016).

However, it should be noted that, despite the efficient work of the SFS customs, there is always a certain risk of non-disclosure of a customs offense. If we take into account the well-known fact that 20% of legal income on the market is revenue from smuggled goods, then it can be assumed that the percentage of unidentified customs offenses is quite significant. It is these goods – the subjects of a customs offense, penetrating the market, adversely affect the domestic economy: create preconditions for unfair competition, destroy domestic production, which naturally leads to job cuts and budget social programs, result in a lack of adequate government budgets, statutory payments, etc.

Obviously, the overcoming of such a negative state of affairs needs an adequate counteraction, first of all, on the part of the state. That is why Ukraine has developed a certain system of prevention and counteraction to customs

offenses (hereinafter – SPCCO) during the years of its statehood.

Goals of article

The aim of the article is to study the administration of SPCCO in Ukraine for outline possible ways to improve the named system.

Materials and Methods

General scientific methods are used in the process of research: analysis and synthesis (in studying the functional load of state authorities designed to prevent and counteract customs offenses); graphic and tabular (for the construction of a model of the system for preventing and counteracting customs offenses, as well as for determining the ratio of strategic goals and strategic initiatives (measures) of SFS aimed at preventing and counteracting customs offenses); systematization and interpretation of the facts (to determine the relevance of the research), etc.

Results

In our opinion, the system of prevention and counteraction to customs offenses in the simplest form can be represented as a two-element set, based on the understanding of the system as a set of any elements, units, parts, united on a common basis, purpose (Kovalova, 2005). The constituent elements of this system are the legal and regulatory framework in this area, and the bodies of state power authorized to carry out the functions of the state in the customs sphere, which interact with each other and the external environment in order to ensure prevention and counteraction to violations of the rules (Fig. 1).

As can be seen from Fig. 1, the SPCCO elements are the legal and regulatory framework and government bodies empowered to perform the functions of preventing and counteracting customs offenses – interact with each other and mutually influence each other.

The essence of such interconnections is that the legal and regulatory framework (laws, subordinate legal and regulatory acts, regulatory acts of a local nature) forms the basis and principles of the functioning of public authorities, defines the procedure for the exercise of their powers to prevent and counteract the violation of customs rules, that is, in fact, acts as the first element of the system.

Figure 1. The system of prevention and counteraction to customs offenses
Source: it is developed by authors

On the other hand, public authorities that implement the functions of preventing and counteracting customs offenses, in particular SFS, its territorial bodies and the SFS customs, affect the status and content of the legal and regulatory framework, formulating and submitting to the legislator, within the framework of their authority, proposals for improvement and changes in the regulatory and legal framework.

In addition to mutual influence, SPCCO elements are influenced by the external environment, the most significant objective components of which, in our opinion, are domestic and international social and economic processes. And if inter-state processes and SPCCO elements form a two-way communication, because they interdependent and mutually determine each other, international social and economic processes affect the system unilaterally – indirectly, through influence on internal processes.

Citizens who are not subjects of foreign economic activity (FEA) and cross the customs border in private interests, subjects of FEA, as well as state authorities, authorized to perform functions of the state in other than customs areas, are sub- native components of the external environment.

Citizens are in bilateral communication with the state authorities, who are authorized to perform the functions for preventing and counteracting a customs offense, but at the same time between them and the element of the system “regulatory and legal support” there is formed only one-way communication – citizens are subject to requirements legislation and must obey and comply with them. That regulatory and legal framework governing the lawful order of crossing the customs border of Ukraine citizens and move their goods and vehicles. Deviation from the established legislative norm is considered a violation of customs rules.

The same types of links between subjects of FEA and SPCCO elements are formed by the same logic.

The type of double communication, both with the element “regulatory and legal support” and with the element “state authorities”, arises only in such a subjective component of the external environment as the state authorities with a different than the prevention and counteraction of the customs offense, functional load.

Since the bodies of state power exercising functions in the prevention and counteraction of customs offenses are only part of the system of executive bodies, it is absolutely clear and obvious that they are in constant interaction with other executive authorities, mutually influencing one another's activities.

The nature of the dual link between the bodies of state executive power as an integral part of the external environment and the legal and regulatory framework as an element of the system lies in the fact that the functioning of state executive bodies is determined and regulated by the regulatory framework, while these bodies can become within the limits of its powers, initiators of changes in the regulatory and legal framework.

Thus, the external environment of the functioning of SPCCO, permanently affecting it, transforms the system from a constant phenomenon into a flexible, capable of rapid and timely adaptation to the requirements of the present day of a

dualistic set of interrelated elements, the content of which, in fact, determines the basics and vectors of the functioning of this system. That is why the urgent need for content analysis of SPCCO elements appears.

Discussions

Although the regulatory and legal framework serves as the basic element in the proposed SPCCO model, the analysis of its content would more fully reveal the basics of state regulation in the area of prevention and counteraction to customs offenses.

And since the purpose of our article is to study state administration in the above-mentioned field, we consider it appropriate to focus on the content of another element of the domestic SPCCO (back to Figure 1) – the state authorities, which are assigned functions for the prevention and counteraction of customs offenses.

The domestic practice of preventing and counteracting violations of customs rules implies that border guards and representatives of state authorities authorized to carry out phytosanitary and veterinary, radiological control, etc., are involved in this type of state-owned activity. However, in view of the fact that in our study we focus on a clear delimitation of customs crimes and customs offenses, that is, we distinguish smuggling and customs offenses for which administrative liability arises, as well as public authorities whose efforts are aimed at preventing and counteracting smuggling at the customs border, we consider it appropriate to distinguish from those authorities, whose powers include the prevention and counteraction of customs offenses. That is why the above-mentioned public authorities, operating together with the SFS customs authorities, will not be considered by us in the various kinds of the control of goods and vehicles moving across the customs border within the framework of the analysis of the SPCCO element of the state authorities, due to the fact that the participation these bodies in the implementation of customs control are more aimed at combating smuggling.

The main body of state power, which is called to prevent and counteract customs offenses, is SFS. Among its main tasks in the context of our research, particular attention is paid to the following:

- implementation of state policy in the field of combating offenses during the application of customs legislation;
- making proposals to the Minister of Finance for ensuring the formation of state policy in the field of combating offenses during the application of customs legislation;
- conducting proceedings in cases of violation of customs rules and in cases of administrative violations in cases stipulated by law;
- prevention and counteraction of violation of customs rules in the customs territory of Ukraine;
- identification of causes and conditions that contributed to the commission of offenses in the field of state customs business, taking measures to eliminate them;
- organizing in the media of explanatory work that is related to the practice of applying legislation on matters within the competence of the SFS (2014).

In addition, the State Fiscal Service of Ukraine, with the purpose of organizing its activities, among other things, cooperates with civil society institutes, ensures public participation in the implementation of the state policy in the direction of the SFS and informs it about its work, and in order to carry out the tasks assigned to it, has the right to carry out, in particular, in cooperation with other law enforcement agencies, special moves to move goods under secret control (2014).

Special measures for the movement of goods under secret control are carried out in order to identify and withdraw products that are suspected of illegally moving through the customs border of Ukraine (Clause 1, Article 457) (2012). The procedure for carrying out the secret control over the movement of goods is determined by the Customs Code of Ukraine and the corresponding regulatory act of the central executive authority, which ensures the formation and implementation of the state tax and customs policy. That is, SFS in the area of prevention and counteraction to customs offenses, among other things, is endowed with the possibility of normative initiative and rulemaking.

This opportunity was fully realized by SFS in developing the Strategic Plan for the development of SFS of Ukraine for

2015-2018, approved by the Order of SFS of Ukraine dated February 12, 2015, No. 80. This regulatory and legal act of departmental structure is structurally composed of strategic goals and strategic initiatives on their implementation.

In the context of the subject of this study, our attention is drawn to four strategic goals that are directly related to the prevention and counteraction of customs offenses:

- Strategic Goal 2. Formation of an information field on the activities of the SFS of Ukraine;
- Strategic Goal 7. Improving the effectiveness of customs control procedures;
- Strategic Goal 8. Reform of the system of prosecution for violation of customs rules;
- Strategic Goal 14. Fighting crime in the customs sphere (2015).

Strategic initiatives are measures aimed at achieving the appropriate level of prevention and counteraction to customs offenses. The ratio of strategic goals and strategic initiatives can be presented in tabular form. 1

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Table 1
Ratio of strategic goals and strategic initiatives (measures) aimed at preventing and counteracting customs offenses

The number of strategic objectives	The content of the strategic objectives	Strategic Initiatives (Activities)
2	Formation of an information field on the activities of SFS of Ukraine	- Implementation of effective innovative communication tools with citizens and business;
7	Improving the effectiveness of customs control procedures	- Implementation of the system of preliminary informing SFS territorial bodies on carriage of goods by carriers; - Introduction of automated operational information exchange with customs services of foreign states; - Development of customs post-audit in the framework of SFS inspections; - Software upgrades in order to create a single information space for all participants in the process of customs control and customs clearance of goods; - The development of the risk management system in the field of customs control;
8	Reforming the system of prosecution for violation of customs rules	- Reforming the system of prosecution for violation of customs rules;
14	Fighting crime in the customs sphere	- Improving the system of combating smuggling and prevent customs violations.

Source: it is developed by authors based on (2015).

As can be seen from Table 1, the most of the strategic initiatives fall under strategic objective 7 "Improving the efficiency of customs control procedures". It can be assumed that such a "concentration" of strategic initiatives (measures) around this strategic goal is due either to the exceptional significance of customs control for the prevention and counteraction of customs offenses, or to a large number of problematic issues in this sector of customs activity.

In addition, the strategic goal 8 "Reforming the system of prosecution for violation of customs rules" is attracting attention: the strategic initiative, defined for its achievement, is formulated identically to the strategic goal

itself, while, in our opinion, the strategic initiatives behind this strategic point the goals should be detailed, what exactly needs to be changed so that the system of prosecution for the violation of customs rules has been really reformed and that this reform was carried out for the sake of the result, and not for the sake of reform process.

It is also not possible to ignore that most of the strategic initiatives (measures) have a preventive character, which is in full agreement with the general functional load of the State Fiscal Service of Ukraine: the central government body, which ensures the formation and implementation of state tax and customs policies, is not a punitive body.

Conclusions

Thus, the analysis of the element of the Ukrainian SPCCO "bodies of state power" showed that:

- to prevent and counteract a customs offense is the most urged by the State Fiscal Service;
- according to the purpose and functional load most of the tasks and activities performed by the SFS are preventive rather than punitive, that is, SFS in domestic practice of

preventing and counteracting a customs offense is mainly aimed at preventing violations of customs rules, conducting preventive work among FEA subjects;

– the mutual relationships between the SPCCO elements are shown quite clearly in Figure 1: at the regulatory and legal level, the tasks, functions, rights and responsibilities of the SFS are fixed, while the latter holds the norm-building initiative and implements it, thereby changing the state and meaningful content of regulatory and legal support.

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