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У журналі здійснюється публікація наукових і оглядових праць з основних проблем зовнішньоекономічної діяльності, партнерства митних адміністрацій та бізнес-структур, професійної освіти в галузі митної справи, впровадження та реалізації стандартів Всесвітньої митної організації, оглядові статті про досвід реалізації стратегій інституційного розвитку митних адміністрацій країн-членів Всесвітньої митної організації, публікації молодих науковців у галузі митної справи та зовнішньоекономічної діяльності, реферативні матеріали та анонси.

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INTERNATIONAL TRENDS IN THE APPLICATION OF RISK MANAGEMENT SYSTEM IN THE FIELD OF POST-CUSTOMS CONTROL

Objective. The purpose of the article is to study the regulatory framework and international experience in the context of application of the risk management system in the field of post-customs control.

Research methods. To achieve this goal, the following methods were used: induction and deduction, theoretical generalization, abstraction, dialectical cognition – when studying scientific sources and researching the specifics of the application of the risk management system in the field of post-customs control, comparative – for systematization of information on legal acts, structural and functional – for studying foreign experience, and the method of generalization – for forming the conclusions of the study).

Results. The main legal acts that define the standards for post-clearance control at the level of the European Union are identified, namely: The EU Customs Code; WCO Guidelines for Post clearance Audit, 2012; WCO Technical Notes on Customs Post Audit (UNCTAD Technical Note 5 Post clearance audit, 2011); EU Authorized Economic Operators, Guidelines, 2007; EU Customs Standards (Customs Blueprints. Blueprint 14. Post-clearance control and audit).

The experience of the United States of America in applying post-clearance control measures is analyzed. It is determined that customs audit in the United States makes it possible to effectively use the limited resources of customs authorities, to monitor compliance with customs legislation and the correctness of calculation, timeliness and completeness of payment of customs duties, while at the same time being a deterrent to future violators, protects the national industry from unfair trade practices and promotes legitimate trade.

The author has studied the peculiarities of post-clearance audit in China and found that the main purpose of customs audit is to verify the «truthfulness and legality» of import and export activities. In addition, the specifics of the activities of the German customs administration in the field of post-clearance control are studied.

Scientific novelty. The study of international experience in the context of applying the risk management system in the field of post-customs control has been further developed.

Practical significance. The main provisions of this study can be used in the process of developing proposals for the application of a risk management system in the field of post-clearance control.

Key words: risk management system, post-clearance control, international trade facilitation, post-release control.

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Statement of the problem. Customs administrations in most countries of the world (primarily developing countries) face significant difficulties in balancing their responsibilities for administering customs payments, protecting national borders and facilitating international trade. One of the modern tools that allows solving such problems and is widely used in international practice is customs control after the release of goods into free circulation (post-clearance control). Post-clearance control (hereinafter – PCC) is a structured inspection of commercial information, contracts of sale, financial and non-financial records, physical inventory and other assets of the goods owner after the release of goods by the customs authority (Guidelines for Post-Clearance Audit, 2012).

Analysis of recent research and publications. The problem of applying a risk management system in the field of post-clearance audit has been the subject of research by such domestic scholars as: I.G. Berezniuk, S.S. Brekhov, O.M. Vakulchuk, V.A. Turzhanskyi, I.Y. Tymrienko. Despite the availability of scientific research in this area, it is necessary to deepen research and study current trends in the use of risk management systems in the field of post-customs control.

The purpose of the article is to study the regulatory framework and international experience in the context of application of risk management systems in the field of post-customs control.

Summary of the main research material. The first regulatory document that introduced post-clearance control into customs practice the International Convention on the Simplification and Harmonization of Customs Procedures, which was adopted by the Customs Cooperation Council (since 1994 the World Customs Organization) on May 18, 1973 in Kyoto. Thus, the Convention defines “audit-based control” as a set of measures by which the customs service ensures that the goods declarations are completed correctly and that the data specified in them are accurate by checking the relevant account books, documents, accounting records and commercial information available to the persons involved in the declaration.

Since then, post-clearance control has become a widespread customs control tool and is now a leading form of customs control in many countries, primarily in the European Union. Post-clearance control at the level of the European Union is regulated by general regulations that define the standards for its implementation. The main regulatory documents include:

1. EU Customs Code (EU Customs Code, 2013);
2. WCO Guidelines for post-clearance audit (2018);
3. UNCTAD Technical Note 5 Post-clearance audit (2011);
4. EU – Authorized Economic Operators, Guidelines, 2007;
5. EU customs standards (Customs Blueprints. Blueprint 14. Post-clearance control and audit, 2007).

In addition, the specifics of the customs post-audit are defined in more detail in instructions, manuals, codes and other documents of national legislation of the EU member states.

Post-clearance control helps to increase the volume of customs payments, encourages greater responsibility of declarants and prevents fraud. It is worth noting that post-clearance control brings a positive effect not only to the work of customs authorities, but also to representatives of the business community. Thanks to this tool, it is possible to speed up the customs clearance of goods by reducing the number and frequency of delays during customs clearance of goods at the border, seaport, airport or domestic terminal (instead of solving all problems before release (which often leads to costly delays), the customs authority conducts PCC at the declarant’s premises after the release of goods).

The TMC is a modern tool that allows to increase the efficiency of customs control and plays an important role in the implementation of an effective risk management system by customs administrations. The key stage in the course of customs control after the release of goods is the selection of objects of customs control. The identification of objects for customs inspections is carried out using a risk management system (RMS). The use of a risk-based approach to identify entities subject to customs audit enables customs authorities to use their resources more efficiently and to cooperate with the business community to improve compliance and facilitate trade.

According to the Guidelines for post-clearance audit developed by the World Customs Organization, customs administrations can manage risks at the strategic, tactical and operational levels (Guidelines for post-clearance audit, 2018).

Strategic risk management is based on the ability of the customs authority to assess the overall risk level of a particular industry sector or group of importers. By identifying such a group, the Customs administration can designate all or some of the businesses in the industry as high-risk. An industry sector may be classified as high-risk for a variety of reasons, including

- strategic importance of the industry for national interests;
- an industry regulated by international trade agreements;
- an industry that affects public health and safety;
- intellectual property rights;
- significant economic impact on imports.

Tactical risk management is the process of identifying importers whose activities are characterized by a high level of risk. The indicators that allow to identify a high-risk importer are as follows:

- the volume of imported goods;
- types of imported goods;
- the total value of imported goods;
- a previous importer or a compliance issue;
- the first importer/exporter.

Operational risk management is the process of identifying specific transactions of individual importers. The factors to be taken into account when identifying high-risk transactions are:

- Import;
- product;
- previous non-compliances or violations for a particular product;
- high-cost imports;
- country of origin;
- whether any special rules or restrictions (e.g., quotas) apply to this product;
- the declared value of the goods is outside the pre-established range.
- In addition, there are general indicators that indicate a high level of risk, namely:
- information received from other customs authorities;
- the potential to increase government revenues;
- risk of loss of income;
- priorities of government programs or specific intelligence from law enforcement agencies.

Thus, the World Customs Organization guidelines determine that the application of post-clearance control is based on the systematic use of risk management. It should be noted that the World Customs Organization guidelines contain only general provisions on the application of the risk management system in the field of post-clearance control, and the practical implementation of these provisions in different countries has its own characteristics, which necessitates a more detailed study of international experience on this issue.

First and foremost, it is worthwhile to study the experience of the largest importer of goods in the world – the United States of America (USA), where annual imports of goods reach trillions of dollars. The issue of customs control of such a volume of goods and services is extremely complex, and therefore the U.S. Customs and Border Protection (CBP) widely applies post-release control measures (customs audit) in order to effectively use the limited resources of customs authorities, monitor compliance with customs legislation and the correctness of calculation, timeliness and completeness of payment of customs duties. In addition, customs audit protects government revenues, ensures compliance of foreign economic operators with the trading community by assessing importers and determining the level of compliance, while also acting as a deterrent to future violators, protecting domestic industry from unfair trade practices and facilitating legitimate trade (Preparing for (and Surviving) a Customs Audit, 2023).

The government agencies that conduct customs audits are the Headquarters and regional offices of Trade Regulatory Audit (TRA). TRA uses a risk-based approach to assess compliance with trade laws and regulations, while collaborating with other components of U.S. Customs and Border Protection, immigration, and partner government agencies.

Post-release audits are typically targeted and involve data analysis and a risk assessment process to determine the scope of the audit. Depending on the purpose of the audit, it may or may not include an assessment of the importer's internal controls to ensure compliance with CBP customs regulations. The audits also include the Focused Assessment (FA) program, which is a comprehensive audit that evaluates the importer's internal controls over its operations to determine whether the importer is at a certain level of risk in terms of compliance with CBP laws and regulations.

Risk management plays a key role in the process of implementing a targeted assessment program. Risk management in the United States is an integrated process. The key to managing risk is to effectively collect and analyze relevant data and use it to inform resource allocation decisions, as CBP recognizes that the level of noncompliance risk varies across importers and that many importers' activities pre-emptively create risk. Likewise, not all aspects of an importer's business pose the same level of noncompliance risk. Thus, risk management allows for the identification of entities with the highest level of non-compliance risk to focus customs auditors' resources.

The process of targeted assessment begins with the selection of an entity for the FA. Using national selection criteria and data collected during the entry process, the customs authority assesses the volume, value, and nature of the companies' imports. The customs administration considers various factors, including: imports from Primary Focus Industries (PFI), such as electronics, textiles, automotive; use of special trade programs and exemptions, such as GSP, 9801 and 9802; and recommendations from regional customs officials. In addition, it should be noted that today any foreign trade entity that imports more than

USD 100 million is a potential candidate for post-release audit. The FA consists of three phases (Focused Assessment (FA) Program, 2023):

1. Pre-Assessment Survey (PAS). During the PAS, CBP reviews the entity's import program (importer's records, books, and payments to foreign suppliers) to assess controls and possible risks. Customs auditors then verify that the importer meets a certain risk level. If the risk level is deemed non-threatening, the importer is considered to have «passed» the audit. CBP will then waive the ACT and further targeted assessment steps. If the results of the PAS show that the foreign economic operator does not meet the internal control requirements, it is necessary to proceed to the next phase of the targeted assessment.

2. Assessment Compliance Testing (ACT). In addition to testing the PAS, the audit team additionally tests those areas that they believe are subject to a risk of non-compliance.

3. Follow-up audit. It is carried out if no corrective measures have been taken within 6-8 months after the ACT to eliminate the deficiencies identified at the previous stages of the FA.

In addition to the above, it is good practice in the United States to provide other professional services TRA (i.e., non-audit services). This refers to the performance of tasks without the use of audit tools, but which require assistance in accordance with the skills and experience of auditors, namely (Audits/Trade Regulatory Audit, 2023):

1. Risk Analysis and Survey Assessments (RASAs) are a collaborative, multifaceted process that relies on cooperation, information sharing, and joint decision-making between CBP's Office of Trade and other Department of Homeland Security and/or partner government agencies, as appropriate. RASAs are implemented in accordance with 19 U.S.C. §1509(a). RASAs allow CBP to quickly and efficiently assess an entity/entity with respect to a specific area or issue of particular interest to CBP without CBP and the importing community expending the significant time and resources required for an audit. In general terms, risk analysis and review assessments are quick surveys designed to confirm whether an importer poses a potential risk in priority areas such as customs payments, import security, trade agreements, etc

2. Customs and Trade Partnership Against Terrorism (CTPAT) program. Through this program, CBP works with the trade community to strengthen international supply chains and improve U.S. border security. CTPAT is a voluntary public-private partnership program that recognizes that CBP can only provide the highest level of cargo security by working closely with key stakeholders in the international supply chain, such as importers, carriers, consolidators, licensed customs brokers, and manufacturers. When an organization joins CTPAT, an agreement is made to work with CBP to secure the supply chain, identify security gaps, and implement specific security measures and best practices. Applicants are required to address a wide range of security issues and submit security profiles that include action plans to align security across the supply chain. CTPAT participants are considered to be low-risk, so they are less likely to be screened at a port of entry into the United States (CTPAT: Customs Trade Partnership Against Terrorism, 2023).

The experience of the second largest economy in the world, the People's Republic of China, whose customs service introduced post-clearance audit back in 1994, in fact becoming an innovator in this area, is also interesting. According to the Regulations on Customs Audit of the People's Republic of China, the purpose of customs audit is to verify the «truthfulness and legality» of import and export activities. Therefore, it is legally stipulated that the Chinese customs authorities have the right to conduct post-clearance audits of foreign economic operators – enterprises related to import and export activities, customs representatives and customs warehouses. The post-clearance audit is aimed at controlling the payment of customs duties, controlling goods in customs warehouses and controlling the activities of a customs representative.

At any time within 3 years after the release of goods, China Customs has the right to inspect those goods, as well as all relevant import and export documents, books and records. Through the inspection, China Customs intends to identify discrepancies and refer such discrepancies to the Anti-Smuggling Bureau (ASB) for further administrative or criminal investigation. Business entities engaged in import, export or customs logistics in China should be prepared for the potential application of post-clearance audits.

In China, there are 2 types of post-clearance audit: standard and special. They can be combined during the inspection of a foreign economic operator. During a typical post-audit, the customs authorities check the current activities of a foreign economic operator for compliance with customs legislation. A special post-audit is aimed at detecting violations in the customs area through risk analysis.

There are 4 stages of post-audit.

At the 1st stage, the risk management system identifies enterprises and goods to be inspected. In order to identify high-risk transactions, three Risk Prevention and Control Centers (RPCC) have been established since 2016 under the leadership of the General Administration of Customs of China (China Customs and Automated Clearance Reform, 2020):

1. The Risk Control Center in Shanghai identifies and monitors the risks of air transportation, as well as the logistics companies responsible for such transportation.
2. The Risk Control Center in Huangpu, Guangdong province, performs the same functions for shipments by land.
3. Risk Control Center in Qingdao, Shandong Province, for shipments by water or sea.

The main task of the Risk Control and Prevention Centers is to provide supervision and management of customs risk prevention and control activities carried out at customs clearance points throughout China. Their activities are aimed at ensuring the safe entry of goods imported by air, land and sea (with the exception of small vessels plying between Hong Kong and Macau).

In addition, in the process of reforming the General Administration of Customs in 2016, three industry-specific tax collection centers (Tax Collection and Administration Centers (TCAC)) were established to verify the accuracy of information provided in customs declarations (China Customs and Automated Clearance Reform, 2020):

1. The Center in Shanghai controls import and export declarations for machinery and electronic equipment, covering eight sections of the tariff nomenclature (sections 84–87 and 89–92) and a total of 2,286 Harmonized System codes.
2. The Guangzhou Center monitors declarations for chemicals and chemical substances (chemical raw materials, polymers, energy, minerals and metals) covering 30 sections of the tariff nomenclature (sections 25–29, 31–40, 68–83) and 2800 Harmonized System codes.
3. The center in Beijing and Tianjin monitors declarations for various goods (agriculture and forestry, food, pharmaceuticals, light industry, miscellaneous, textiles, and aircraft), covering 58 sections in the tariff nomenclature (1–24, 30, 41–67, 88, 93–97) and a total of 3461 Harmonized System codes.

The above-mentioned centers screen customs risks and, based on such an assessment, have the ability to initiate post-clearance audit measures in case of tax risks related to customs value assessment, tariff classification or country of origin, or other violations of customs legislation (China Customs and Automated Clearance Reform, 2020).

At the 2nd stage, the customs authorities notify the organization of the start of the audit 3 days in advance. The notification shall specify the reasons for the audit, the date and place of the audit, and information on the documents to be checked. In addition, the notice specifies the scope of the audit. It may be narrow or broad. Typically, a post-clearance audit focuses on the following areas: classification of goods, declaration of customs value, royalties, country of origin, export control, etc.

Next, the customs authorities check the authenticity of documents, the legality of import/export of goods and control the internal accounting system. The peculiarity of the post-clearance audit in China is the fact that the customs authorities assess the integrity of the foreign economic operator. In other words, the customs authorities determine the financial stability of the company and thus find out whether there is a risk of non-payment of customs duties by the foreign economic operator. If a violation is detected, then at the 3rd stage, evidence is collected and taxes, fines, revocation of foreign trade licenses, etc. are collected. At the final stage, the customs authorities analyze the organization's compliance with customs legislation and update risk profiles to improve the efficiency and quality of the audit. Based on the results of the post-audit, an audit opinion and report are drawn up by the audit team, which must be sent to the foreign economic operator and the customs authorities within 30 days after the audit is completed (Trade Compliance and China Customs Audit, 2019).

Germany, the largest economy in Europe, is another country whose experience is worthy of attention. In Germany, foreign economic operators are selected for post-clearance audit using a risk management system. This system is separate from the risk management system used during customs clearance of goods. Out of 100%, 90% are selected by the risk management system and 10% by random selection. Subsequently, the selected list is adjusted by the customs audit staff, taking into account the relevance of a particular audit. In general, annually, customs auditors of the German customs carry out inspections in respect of 2-3% of foreign economic operators registered with the customs (Kostenko A., 2018).

Thus, most often, the risk management system selects entities for audit based on the triggering of risk profiles in the following areas (Customs Audit in Germany, 2019):

- tariff preferences (benefits);
- application of free trade agreements;
- classification of goods;
- declaration of the customs value of goods;
- use of customs privileges;
- application of anti-dumping or countervailing duties.

Once the risk management system is in place, a post-clearance audit can only be initiated if the customs administration has issued an official order to conduct such an event. The audit order must contain the following information:

- the audit client body;
- legal grounds for the audit;
- the location and exact name of the subject of foreign economic activity to be audited;
- the content of the audit:

a) what types of taxes or tax subsidies are subject to audit;

b) which transactions are to be audited, for example, imports from a specific supplier or a comprehensive audit of import trade or verification of certain indicators, such as customs value or preferential origin of goods.

In certain cases, a post-clearance audit may be conducted without a corresponding order, provided that the tax audit has revealed grounds for conducting a post-clearance audit. The order must be communicated to the person to whom the post-clearance audit measures will be applied in advance of the audit. This is done by sending a written notice indicating the date of the start of the post-clearance audit and the names of the officials authorized to carry out such measures. In addition, the above document shall be accompanied by an information letter specifying the rights and obligations of the foreign economic operator subject to the post-clearance audit.

Post-clearance audits in Germany can be conducted against those who have directly or indirectly participated in export-import operations and, accordingly, have documents and information about these operations (Article 48 of the EU Customs Code). In addition to declarants, importers or exporters, shareholders, customers or transportation companies may be subject to audit.

The post-clearance audit shall be carried out by the officials of the audit service of the customs authority. When carrying out audit activities, employees of the audit service shall have the right to:

- access the property and premises of the subject of the audit (during business hours);
- providing an equipped workplace;
- obtaining all the necessary information for the audit;
- Obtaining the necessary documents (contracts, invoices, warehouse accounting documents such as receipts, arrival/departure records and inventory, account statements, business reports, audit reports, annual financial statements, etc.)

Based on the results of the post-clearance audit, customs officials prepare an audit report (audit report). The main result of the audit report is the conclusion that additional taxes are required or that the audit did not result in a change in the tax base. In addition, the audit report must contain the following information:

- the actual date of the start of the audit;
- factual and legal conclusions related to taxation;
- change in the tax base;
- the actual scope of the audit;
- documents and information analyzed during the audit;
- resolutions, notifications, orders and information of an official in connection with suspicion of criminal or administrative offenses;
- information about the final meeting between the auditor and the audited entity on the results of the audit;
- conclusion on the results of the audit.

If the post-clearance audit reveals that the audited entity is involved in a crime or administrative offense, the audit may continue only after notifying the entity of the initiation of a criminal case or bringing it to

administrative liability in the form of a fine. In the case of minor administrative offenses, the audit may continue after issuing a warning (Zulässigkeit einer Prüfung, 2023).

Conclusions. The study shows that at the present stage of development of customs administrations of the leading countries of the world, there is a shift in emphasis towards the transition from customs control carried out at the border to post-customs control (audit) carried out in a different operating environment based on transaction analysis. The use of a risk management system is the main mechanism used by customs administrations to identify high-risk entities for post-clearance control measures. In addition, foreign experience shows that risk management to determine the forms and scope of post-clearance control is carried out at the strategic, tactical and operational levels.

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МІЖНАРОДНІ ТЕНДЕНЦІЇ ЗАСТОСУВАННЯ СИСТЕМИ УПРАВЛІННЯ РИЗИКАМИ У СФЕРІ ПОСТ-МИТНОГО КОНТРОЛЮ

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Мета. Метою статті є дослідження нормативно-правової бази та міжнародного досвіду в контексті застосування системи управління ризиками у сфері пост-митного контролю.

Методи дослідження. Для досягнення поставленої мети використано такі методи: індукції та дедукції, теоретичного узагальнення, абстрагування, діалектичного пізнання – при вивченні наукових

джерел та дослідженні особливостей застосування системи управління ризиками у сфері пост-митного контролю, порівняльний – для систематизації інформації щодо нормативно-правових актів, структурно-функціональний – для вивчення зарубіжного досвіду, а також метод узагальнення – для формування висновків дослідження).

Результати. Визначено основні нормативно-правові акти, які визначають стандарти пост-митного контролю на рівні Європейського Союзу, а саме: Митний кодекс ЄС; Керівництво ВМО з аудиту після митного оформлення, 2012 (*WCO Guidelines for Post clearance Audit, 2012*); Технічні записки ВМО з митного пост-аудиту, 2011 (*UNCTAD Technical Note 5 Post clearance audit, 2011*); Керівництво ЄС для уповноважених економічних операторів, 2007 (*EU Authorized Economic Operators, Guidelines, 2007*); Митні стандарти ЄС (*Customs Blueprints. Blueprint 14. Post-clearance control and audit*).

Проаналізовано досвід Сполучених Штатів Америки щодо застосування заходів пост-митного контролю. Визначено, що митний аудит у США дозволяє ефективно використовувати обмежені ресурси митних органів, контролювати дотримання митного законодавства та правильність обчислення, своєчасність і повноту сплати митних платежів, водночас є стримуючим фактором для майбутніх порушників, захищає національну промисловість від недобросовісної торгової практики та сприяє розвитку законної торгівлі. Автор дослідив особливості пост-митного аудиту в Китаї та з'ясував, що основною метою митного аудиту є перевірка «правдивості та законності» імпоротно-експортної діяльності. Крім того, досліджено специфіку діяльності митної адміністрації Німеччини у сфері пост-митного контролю.

Наукова новизна. Набуло подальшого розвитку дослідження міжнародного досвіду в контексті застосування системи управління ризиками у сфері пост-митного контролю.

Практична значущість. Основні положення дослідження можуть бути використані в процесі розробки пропозицій щодо застосування системи управління ризиками у сфері пост-митного контролю.

Ключові слова: система управління ризиками, пост-митний контроль, спрощення процедур міжнародної торгівлі, контроль після випуску.

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