



THEORETICAL AND METHODOLOGICAL FOUNDATIONS OF CUSTOMS CONTROL IN THE REPUBLIC OF UZBEKISTAN

I. D. Torakhodzhaeva

Senior Lecturer, Department of Special Sciences Customs Institute,
Doctor of Law (PhD), Lieutenant Colonel of the Customs Service

Abstract

The article analyzes the theoretical aspects of customs control, such as the concept of customs control, objects and subjects of customs control. The author tries to give his definitions on the theoretical aspects of customs control taking into account international law.

Keywords: Customs control, objects of customs control, subjects of customs control, principles of customs control, risk management system.

Introduction

The transition of the Republic of Uzbekistan to a market economic model has entailed the intensification of economic relations, in particular in foreign economic activity. Among the main and promising areas of scientific research in the field of customs law, one can highlight issues related to the customs control procedure. However, in our opinion, the very concept of “customs control” and its legal essence have not been satisfactorily studied, since certain forms are always studied and aspects of customs control.

In the legal literature, the consideration of the concept of “customs control” has changed over time, which is explained by the versatility of the location of this object. The concept of “customs” can be defined as an institution involved in the control of the transport of goods across the State border, while accounting and collecting fees and such transportation.

The word “customs” comes from the Turkic-Mongolian noun “tamga”, which meant a brand, sign, stamp. It was placed to indicate the ownership of an object (wood, vessel, product, animal) to the owner or clan community as a sign of ownership.

Customs officers gathered at the border of states. Customs officers were collecting duties. The customs kept daily records of the results of inspection of transported goods, their assessment, and payment of duties. There were city scales and measures. Customs authorities historically have the functions and characteristics of fiscal, legal and control authorities. Customs control, of course, determines the essence of the system of customs authorities of the Republic of Uzbekistan at all its levels.





Customs control is one of the basic concepts in the field of customs regulation, and it has a narrow and broad interpretation.

Let us define the concept of “customs control” as one of the main institutions of customs affairs and its place in the system of state control.

Customs control as an independent object of study was considered in the works of many scientists. Among them, it is necessary to highlight the works of the authors who argue the provisions on customs control within the framework of the concept of the so-called “service customs”, which has become widespread enye in recent years. Separate forms of customs control are considered in the works of I.L. Vakhterova, N.A. Pogodina¹.

Some works are devoted to customs control of goods containing objects of intellectual property².

Of particular relevance are studies of theoretical and organizational-legal issues of customs control after the release of goods, which is often called post-control (or postaydtom). Among them, the works of O.V. Grachev³, E.V. Trunina⁴, A.A. Artemyev⁵ should be highlighted, S.B. Tolstoy⁶ and others. The methodological foundations of post-customs control during the period of validity of the Customs Code of the Russian Federation of 2003 were considered by A.A. Berzan⁷.

The complexity and diversity of the concept of “customs control” is explained primarily by the wide system of tasks and functions of customs authorities at the modern stage understanding of integration processes, the combination of fiscal, regulatory and control and supervisory areas of activity. In turn, the formation of the theoretical and organizational-legal foundations of customs control as a type of state control is associated with processes for improving the activities of all systems of customs authorities.

This circumstance determines that the role of control in the customs sphere is manifested as a result of the utilitarian application of special functions assigned to authorized organizations Analyzes of state power, which implement them in the

¹ Pogodina N.A. Customs inspection / Ed. O.Yu. Bakaeva. – M., Yurlitin-form, 2011.

² Bek V.A., Shishmakov B.T. Customs control in the field of trade in intellectual property: Federal Agency for Education, Far Eastern Phil. "Russian University of Cooperation", State. educational institution of higher education prof. Education "Pacific State" University", Autonomous non-profit organization of higher education. prof. formation of the Central Union of the Russian Federation. –Khabarovsk: Publishing House of Tomsk State University, 2009; Panova E.N. Goods containing objects of intellectual property: protection and assessment by the customs authorities of the Russian Federation [basics of assessment and protection, relationship between assessment and protection, prospects for improving customs assessment and protection technologies]. M.: Justitsinform, 2011; Andrianova E.E. System of customs control of intellectual property objects on the territory of the Russian Federation: Abstract of dissertation. ...cand. econ. Nauk.M., 2000;

³ Grachev O.V. Problematic issues of customs control after the release of goods // Lawyer, 2008, No. 11.

⁴ Trunina E.V. Customs inspection - a new form of customs control // “Russian Justice”, 2011, No. 1. From the information bank “Legal Press”; Trunina E.V. Customs inspection and customs audit: comparative legal analysis // Taxes, No. 20, 2010. From the information bank “Legal Press”; Trunina E.V. The procedure for carrying out customs control according to the Customs Code of the Customs Union // Law and Economics, 2010.

⁵ Artemyev A.A. Customs checks after the release of goods: problems of procedures // Tax Policy and Practice, 2008, No. 7. ATP “Garant”.

⁶ Tolstaya S.B. Customs control after release and audit of foreign economic activity of an enterprise (customs aspect): comparative analysis // Law and Economics, 2013, No. 1. pp. 59-64.

⁷ Berzan A.A. Development of methodological foundations of post-customs control: Abstract of dissertation. ...cand. econ. science – M., 2007.





interest of increasing the efficiency of using the economic sources of the state. Adequate reflection of the connection of these functions in law, development of control bodies, regulation of their activities constitutes the necessary legal basis for the effective activities of the state special control in the customs sphere.

Thus, customs control is one of the types of state control. The concepts “state control in the customs sphere” and “customs control” are close in meaning, but not identical. One should agree with the position of those researchers who believe that control in the field of customs affairs is a more comprehensive category than customs control⁸. Some representatives of scientific circles accept customs control as a set of regulations, actions, measures and other actions that are carried out by customs authorities to ensure customs legislation, international treaties and other legislative acts, the implementation of which, in turn, is controlled by customs authorities⁹. In this case, in our opinion, it is not entirely correct to combine measures and legal acts into the concept of “actions carried out by customs authorities”.

Among national scientists, the opinions of S. Alimbayev¹⁰, who served in customs authorities for many years, are especially important. In his opinion, given that the problems in the field of customs are dynamic, the need for intensive development and improvement of legislation in this area is considered an urgent need¹¹.

According to Sh. Baymuratov, most of those who study customs activities are accustomed to looking at this area as an economic phenomenon, but the basis of customs activities is determined by laws and the fact that it is of a state-legal nature¹². According to foreign scientists A.V. Safronov and V.V. Markusev, the modern customs system is aimed at implementing the functions of the state to regulate and control foreign economic activity¹³. This system incorporates two different organizational levels of administration. The first of them creates the strategy and economic mechanisms of customs affairs, policy, ideology and goals. The second level is aimed at the formation and functioning of organizational and technological tools for the practical implementation of the results of the first level.

Sometimes customs control is considered not only as an exclusive function of customs authorities, but also “as one of the functions of management in the field of customs affairs, aimed at detecting and eliminating deviations in the functioning of the system from the standards legal requirements, as well as to identify the causes of such

⁸Yanchukov D.A. State control in the customs sphere: administrative and legal aspects: Abstract of dissertation. ...cand. legal science – M., 2011.

⁹Gabrlichidze B.N. Russian customs law. – M.: Publishing house NORMA, 2001. P. 223.

¹⁰ Alimbaev S. Organizational and legal problems of goods exchange in the customs territory of the Republic of Uzbekistan: Abstract of diss.... – Tashkent: 2003.

¹¹ Alimbaev S. Organizational and legal problems of goods exchange in the customs territory of the Republic of Uzbekistan: Abstract of dissertation.... - Tashkent: 2003.

¹² Baymuratov Sh. Organizational and legal forms of public administration in the field of customs affairs: Abstract of dissertation.... - Tashkent: 2006.

¹³ Makrysev V.V., Safronov A.V. State customs services. 2nd ed. – M.: Publishing House of the Russian Customs Academy, 2011. P. 26.





deviations and to improve the most normative regulation, which is the most important guarantee of establishing a regime of legality in the customs business”¹⁴.

Foreign researchers pay somewhat more attention to the legal aspects of simplifying customs procedures. Works of a later period remain relevant and are represented by the studies of S. Genusso, H. Mansukhani, J. Loyou, J.-C. Renou, K. K. Sandrovsky, M. Stankovic, S. Verre, P. Juillard, D. Carro, and A. Tremo, as well as some other foreign experts in the field of customs regulation and customs law¹⁵.

Some progress in this direction has been achieved in connection with the study of regulatory legal acts adopted within the framework of GATT¹⁶, UNECE¹⁷, as well as in the study of European customs legislation¹⁸.

One of the most significant functions of the state and types of state control is the practice of customs, which is carried out by customs authorities and executive authorities.

The main methods of ensuring the legality of administrative and public activities are state control and state supervision. Customs control as a community of measures carried out by customs authorities in order to ensure compliance with customs legislation, the implementation of which is entrusted to them burnt organs became one of the types of state control.

To form a comparative analysis, let's consider the concept of “customs control”, contained in the current customs legislation of the Republic of Uzbekistan and in international acts.

In the International Convention for the Simplification and Harmonization of Customs Procedures - the Kyoto Convention of 1973, there is a similar definition of customs control. So, according to Ch. 2 of the General Appendix, “customs control” means the measures taken by the customs service to ensure compliance with customs legislation¹⁹.

According to section I, ch. 3, art. 21 of the current Customs Code of the Republic of Uzbekistan, customs control is a set of measures carried out by customs authorities, including the use We have risk management systems to ensure compliance with laws and international treaties of the Republic of Uzbekistan.

¹⁴ Kosov A.A. Customs control as a way to ensure legality. Abstract diss....cand. legal science – M., 2005. P. 5.

¹⁵ Salvatore Genusso, *Manuale di diritto doganale*. Roma. 1975; H. Mansurhani. *The Jungle of Customs Law. Procedures*. Delhi. 1974; J. Loyer. *La douane et le commerce extérieur*. Paris. 1977; J.C. Renou. *La douane*. Paris. 1989; C.J. Berr. H. Tremeau. *Le droit douanier*. Paris. 1988; M. Stankovic. *Carinski sistemi i carinske politike*. 1987.

¹⁶ Kenneth Dam. *The GATT: International Law and Economic Organization*. Wash. 1977; Long O. *Law and its Limitations in the GATT Multilateral Trade System*. London. 1987; Lortie P. *Economic Integration and the Law of GATT*. N.Y. 1975.

¹⁷ UNECE (UN/CEFACT) *Trade Facilitation Measures*. UN, New York and Geneva, 2001; UNECE (UNCTAD) *Compendium of Recommendations on Trade Facilitation/UN*, New York and Geneva, 2002; UNECE *Trade Facilitation: Sharing the Benefits of Globalization in a New Security Environment / UN*, 2004.

¹⁸ P. Daillier. *L'harmonisation des législations douanières des Etats membres de la CEE*. Paris. 1972; Jacquemart. *La nouvelle douane, européenne*. Paris. 1971; Nassiet. *La réglementation douanière européenne*. Bruxelles; Luxembourg, 1985.

¹⁹ International Convention on the Simplification and Harmonization of Customs Procedures (signed in Kyoto on 05/18/1973) according to the Protocol of 06/26/1999.





The comparison allows us to supplement the concept of “customs control” in the current national legislation as follows: “customs control - measures taken by customs authorities to ensure compliance with customs legislation and international agreements in the field of customs, including risk management system”²⁰.

Goods and vehicles transported across the state border of the Republic of Uzbekistan are subject to customs control and customs clearance. When implementing customs control and customs clearance, customs authorities and their officials do not have the right to establish prohibitions and restrictions not provided for the legislation.

The goals of customs control in general terms are legal enforcement and fiscal activity, taking into account ensuring compliance by foreign economic activity entities with the norms of international legal acts in and legislation of the Republic of Uzbekistan.

On the territory of the Republic of Uzbekistan, customs control is organized and carried out throughout the entire customs territory of the state. This control applies to the following stages of movement of goods: storage; production; sale; purchase; loading; unloading; insurance; package; transportation and others. This procedure is expressed in the verification of information about the state of origin of the goods, customs value, quality of the goods, correct systematization in accordance with the commodity nomenclature of foreign economic activity (TN FEA), quantity and other properties of goods.

Customs control is carried out in the customs point area. By decision of the customs authority, it can be carried out in other places, if there are goods and vehicles there, as well as documents that contain all the necessary information about them.

Customs control solves a number of tasks, among which the following should be highlighted:

- control of customs value of goods;
- control over the correctness of calculation and timely payment of customs duties, taxes and fees;
- control over the correctness of the declared classification code of the product according to the product nomenclature of foreign economic activity;
- control of the correctness of the declared state of origin of goods;
- control of the movement of goods that contain objects of intellectual property;
- monitoring compliance with restrictions and prohibitions when carrying out foreign economic activities, etc.

²⁰ Definition of the author





Some foreign scientists consider “control over the calculation and payment of customs payments” as one of the types of financial control in the field of customs affairs²¹.

One should agree with the opinion of those scientists who believe that customs control is a collective concept that includes the implementation of a set of control measures²².

The object of customs control, as a subsystem that is located outside the system of customs authorities, determines the direction of all activities of the customs department and administration, for example, the control and supervisory direction.

In the scientific literature “Administrative Law”, edited by Yu.M. Kozlov and L.L. Popov, the fact is stated that at first the main attention of administrative law was directed to the apparatus of public administration, but in modern conditions one can trace a clear change in direction. This change can be seen in the formation of social relations that arise between a citizen and the state, an individual and society, one of the main directions of administrative and legal regulation.

N.V. Tereksov believes that customs control is carried out in relation to such objects as goods, vehicles, currency and foreign exchange valuables²³.

The 1973 Kyoto Convention does not indicate or define precisely the objects of customs control, although its main provisions are devoted to customs control, for example, Chapter 6 of this Convention contains rules that conditionally define vehicles, goods and a certain category of persons as objects of customs control. For example, in standard 6.1 you can see the following: “All goods, including vehicles, entering or leaving the customs territory, regardless of whether they are subject to duties and taxes, are subject to customs control.” Something similar and analogous can be seen in standard 6.4: “Customs uses risk analysis to determine the persons and goods, including vehicles, that must be inspected, and the extent to which checks.”

Many specialist practitioners believe that objects and items of customs control after the release of products (goods) are the most tax-intensive commodity items.

The customs legislation of the Republic of Uzbekistan does not answer the question of what is the object of customs control. Taking into account the considered points of view and international customs legislation, we propose to interpret the concept of “object of customs control” as follows in view: «Vehicles moving across customs borders and declared in the appropriate form, as well as goods, the documents themselves, declarations, other information that must be provided in accordance with

²¹ Litvinova Yu.M. The relationship between private and public interests when exercising control over the payment of customs duties // Modern customs regulation in the context of the functioning of a single economic space: Materials of the III International. scientific-practical conferences of students, graduate students, teachers, practitioners. – Saratov: Publishing House “Saratov Source”, 2012. P.

²² Trunina E.V. Control functions of customs authorities: types, legal regulation, implementation practice // Law and Economics, 2009, No. 6. SPS “Garant”.

²³ Terekhov N.V. Customs control as a means of identifying offenses in foreign trade activities. Abstract of dissertation. ...cand. legal science – M., 2003. P. 39.





customs legislation, the activities of state-authorized economic operators and other persons who provide certain services in the field of customs procedures, and other persons who cross the customs border in the manner prescribed by law, as well as places intended for use as customs warehouses, free warehouses, duty-free shops, intended for storage of goods by authorized economic operators, and also intended for use as customs control zones are objects of customs control».

Subjects of customs control can be divided into three groups:

- 1) Controlling (customs authorities and their officials);
- 2) Controlled (participants in foreign trade activities and other persons moving goods, including vehicles; and persons carrying out activities in the field of customs affairs);
- 3) Persons involved in customs control (specialists, witnesses, experts, medical workers).

We can conclude that the subjects of customs control are only and exclusively customs authorities (officials), since they are the ones who make the decision on the release of goods in and vehicles, including conditional release or issuance of a license to carry out business activities in the field of customs affairs.

The implementation of customs control is largely based on principles such as legality, humanity, and cooperation; control of customs activities by customs authorities; preventing persons in the position of customs authorities from causing unlawful harm to goods, means of transport, or citizens; efficiency, analysis of possible risks.

To summarize, in a word, customs control can be considered the main direction of customs law. Correct and clear implementation of customs control ensures the legality of the import and export of goods and vehicles across state borders. It is for this reason that the theoretical foundations of customs control must be carefully developed and fully explain all complex situations and circumstances that may arise in practice.

Taking into account all of the above, when organizing customs control, along with ensuring customs legislation, measures should be implemented aimed at preventing corruption and other official crimes, ensuring state security, public order, life and health of citizens, as well as measures to protect the environment based on ensuring compliance with information security requirements.