

COMMON CUSTOMS TRANSIT PROCEDURE FOR UKRAINE: LEGAL ASPECTS

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Annotation. *The article is devoted to the study of current issues related to the accession of Ukraine to the norms of the Convention on Joint Transit and the peculiarities of their implementation.*

From October 1, 2022, the provisions of the Convention on the Common Transit Procedure and Simplification of Formalities in Trade in Goods entered into force in Ukraine, which means the introduction of the Common Transit Regime (NCTS), or the so-called “customs visa-free”. This means that Ukrainian businesses and carriers have the right to transport goods throughout the territory of Europe according to standardized procedures, i.e. only one declaration and one guarantee are required for one transport.

The process of joining Ukraine to the Convention on the Common Transit Procedure began immediately after the signing of the Association Agreement with the European Union and continued according to a rather intensive schedule, even during the full-scale military invasion of Russia. Currently, the customs legislation of Ukraine and the developed procedures fully comply with the Customs Code of the European Union.

The accession of Ukraine to the provision of the Convention on the common transit procedure gives Ukraine the opportunity to join the international application of the electronic transit system NCTS - new computerized transit system and to implement European practices in the implementation of customs affairs in Ukraine and should have a positive effect on improving logistics and increasing the competitiveness of Ukrainian goods in Europe. maximally simplifies the international movement of goods with 35 countries that are parties to the convention, the cargo can cross the borders of several countries with one transit document, which will save time and money for the preparation of documents and the implementation of other customs procedures, minimizes corruption risks during the preparation of documents and movement of goods.

Keywords: *convention, joint transit procedure, unification of customs procedures, simplification and harmonization of customs procedures, European standards for simplification of customs procedur.*

1. Introduction.

The accession of Ukraine to the Convention on the joint transit procedure of the so-called “customs visa-free” is one of the largest projects in the national customs legislation and provides an opportunity to join the international application of the electronic transit system NCTS - new computerized transit system, to implement European practices in the implementation of customs procedures in Ukraine. But together with the simplification of customs procedures with the EU, problematic issues arise related to the implementation of these norms, because the economic entities of the EU have vast experience in applying the norms of the Convention, while it takes time to adapt the Ukrainian customs system to the new requirements.

2. The aim of the work.

The study of topical issues related to Ukraine’s accession to the norms of the Convention on Joint Transit and the specifics of their implementation.

3. Analysis of scientific publications.

Researches of customs legislation on the simplification and harmonization of customs procedures and certain aspects of the activities of the State Customs Service, a number of works of domestic scientists and public figures, including T. Samchuk, O. Chudnovskyi, T. Tsimbalistiy, A. Mostyskyi, B. Klymenko, V. Averyanov, O. Bandurka, O. Kryevskyi, V. Marchuk, V. Obukh and others. The works of these scientists have both scientific and practical significance, and are the basis for further research in the field of simplification of customs procedures. In the science of administrative law, the issues related to the joint transit procedure are covered insufficiently, without a comprehensive approach, which indicates the relevance of the chosen topic.

4. Review and discussion.

From October 1, 2022, the provisions of the Convention on the Joint Transit Procedure entered into force for Ukraine and the possibility of international movement of goods with 35 other participating countries under one transit document was opened for business. That is, from today the so-called “customs visa-free” has started working in our country [1].

Today, the Convention on the common transit procedure unites 35 contracting parties, which have introduced uniform rules for declaring and controlling transit movements of goods using a common IT product (NCTS) for exchanging information at all stages of customs clearance of goods through real-time electronic messages. One transit declaration (export, import and transit) and one guarantee are sufficient for the movement of goods between signatory countries. Authorized enterprises can send and receive goods without visiting customs terminals [2].

As O. Kryevsky notes, one of the conditions for joining the Convention is the “sub-warranty” of all cargo – as it happens in the EU.

Now in Ukraine, companies must guarantee the payment of payments for the import or transit of only certain goods (for example, excise goods, certain food products, and other specifically defined categories).

At the same time, with the adoption of the Law, the principle changes – all goods imported into the customs territory of Ukraine and transported in transit through the territory of Ukraine will be subject to guarantee. And already from this rule a certain list of exceptions will be established.

Accordingly, in order not to use a cash deposit for each import transaction, businesses will have even more motivation to obtain transit facilitation in the form of a general financial guarantee [3].

These two European conventions will allow you to move goods across the border duty-free, which will speed up the customs procedures themselves, which will take from 5 to 15 minutes.

The participants of this international agreement are 27 EU countries, Great Britain, Turkey, North Macedonia, Serbia and four more EFTA countries. Thus, Ukraine became the 36th member state of the NCTS system, which is used by European countries to control joint transit [4].

From now on, Ukrainian customs officials will exchange data with customs offices of neighboring countries in real time. Ukrainian businesses will fill out a single electronic declaration. Even after the Ukrainian border, entrepreneurs had to pass the customs control of each of the EU countries through whose territory they transported goods, filling out transit declarations again and again.

Now the consignor can cross the border of several countries with one declaration. And it is not necessary to guarantee this cargo every time, to issue this product and to take care of it every time, because it is a single system, and all customs authorities take information about the cargo that moves from it.

According to L. Vygovska, another advantage of the simplified regime is that it is no longer necessary to deposit money into the Ukrainian customs account, as a guarantee that the goods will be delivered to the

customs office of destination and taxes will be paid. All guarantee funds are deposited once by the seller of the goods, who issued the first declaration in the exporting country [4].

In addition to the provisions of the Conventions, simplified customs formalities for enterprises also enter into force. Currently, they are available only to authorized economic operators. With “customs visa-free”, this function becomes available to a wide range of Ukrainian businesses. This will allow exporters, importers, customs brokers or carriers to choose their own optimal set of simplified customs formalities, similar to those used by companies in the European Union”, for this Ukrainian business will need to switch to European standards for disclosure of information about the goods being transported. That is, after proving , that the business meets certain criteria, companies will be able to receive additional simplifications. This also logistically and transport simplifies the import-export of goods. For example, using the NCTS system, a company can start or finish the transit of goods in its warehouse, and not present the goods to customs authorities at the customs point.

Until February 2023, participation in the NCTS system is voluntary. So it will mainly be used by legal businesses. But, with the rest, “customs visa-free” will replace the old system of declaring the transit of goods. What should entail both a reduction in corruption at the customs itself and a reduction in “shadow” business [4].

V. Marchuk notes that ties between Ukraine and the EU have never been as close as they are now,” the customs office is the locomotive that moves our country towards the EU. The customs legislation of the European Union reflects the new economic reality, as well as the new role and mission of the customs service. It has transformed the mission of customs authorities, giving them a role in the supply chain, monitoring and turning them into a catalyst for the competitiveness of countries and companies. Facilitating legitimate trade requires simple, fast and standardized customs procedures and processes. The purpose of the new EU Customs Code is to simplify customs legislation, to allow the use of modern tools and technologies. The common transit procedure and the use of the NCTS are examples of the implementation of this new role for customs. The process of joining the transit conventions of our country is a “small entry” of Ukraine to the EU.

Challenges of the war, which is currently taking place in the center of Europe, united the European Commission and friendly countries to support the European integration processes of Ukraine, in particular, in the customs sphere. In this situation, the use of NCTS by Ukraine expands the exchange of customs information, strengthens the system of risk analysis, and ensures the recognition of forms of customs control by the customs authorities of other countries. All this strengthens the security of customs transportation and promotes the development of international trade in Europe [5].

As for the activities of subjects of foreign economic activity, according to G. Taslitskyi, at the first stage of using NCTS, they will face a higher level of control by customs and greater regularity of transit movements of goods in the mode of export or transit. This is due to a rather liberal procedure for controlling the delivery of goods that operates in Ukraine. However, trying to become part of the European Union prompts overcoming certain complications. The main principle of European monitoring of transit movements is control and trust. That is, an initial high level of customs control has been established, but at the same time it has been significantly reduced for companies that have received certain simplifications and advantages (compliance with the established criteria). However, if the company confirms compliance with the established criteria, the requirements from the customs authority are reduced.

The Convention on the Joint Transit Procedure provides for the following 5 criteria, the compliance of which gives the right to obtain an AEO authorization or the necessary simplification (hereinafter referred to as the AEO criteria):

- 1) compliance with the requirements of the customs and tax legislation of Ukraine, as well as the absence of criminal charges;
- 2) proper system of accounting, commercial and transport documentation;
- 3) stable financial condition;
- 4) ensuring practical standards of competence or professional qualification of the responsible official of the enterprise;

5) compliance with safety and reliability standards.

For each of the specified simplifications, the enterprise must obtain a separate authorization [6].

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The problematic issue of joining the Convention, according to H. Tesletsy, is that, taking into account the almost 25th anniversary of the Convention on the Common Transit Procedure, most business entities of the countries that are part of the Convention already have the necessary simplifications or authorizations, European guarantors have enormous experience, and as well as fairly low commissions for providing a guarantee, which collectively contributes to fairly moderate costs for exporters to meet the requirements of the Convention. However, Ukrainian subjects of foreign economic activity will face more expensive offers from Ukrainian guarantors. Because the guarantee is given in euros, and the payment for the guarantee service and responsibility for its violation will be made in hryvnias. Therefore, inflation, exchange rate changes, and a riskier business environment will be included in the cost of the guarantee.

Despite the fact that it takes time for Ukrainian business to adapt to new realities, this is certainly a progressive step for Ukraine as a future member of the European Community towards a single customs space. International application of NCTS encourages business to detinize trade operations and fair display of profit, creates greater trust in us from European partners. In fact, this is one of the most global examples of the application of European legislation in the Ukrainian legal field [6].

According to V. Kreidenko, this is predicted to improve the fight against fraud with accompanying documents, thanks to which dishonest businesses avoid paying customs duties. Customs revenues make up about 35% of the revenues of the State Budget of Ukraine, so it is important that customs payments are paid honestly. In addition, a single transit document reduces the cost of customs procedures and the time required to complete them - thus reducing queues at the border, which means a faster flow of goods.

A feature of the joint transit regime provided for by the Convention is the mandatory financial guarantee for all types of goods and the sealing of all movements. Seals will be applied to all transport, have a protective function and will be recognized in the EU. This will increase the safety of transportation [7].

Joining the Convention on the common transit procedure and the introduction of "customs visa-free" mechanisms is a really important step towards a single customs space and full membership of Ukraine in the EU.

5. Conclusions.

In general, it should be noted that the accession of Ukraine to the Convention on the common transit procedure and the introduction of new customs procedures is one of the most important steps in the history of our country on the way to European integration. Of course, this is only the beginning, there is a lot of work ahead upon completion of bringing domestic customs legislation into compliance with the EU Customs Code and development of customs IT. Despite modern challenges, primarily caused by a full-scale war, our state confidently moves towards European integration, integrating and synchronizing national legislation with EU requirements, and this course is unchanged for our state until the completion of the processes of full membership in the EU.

References:

1. «Mytnyi bezviz» zapratsiuvav. (2022). *Ekonomika, nahliad i kontrol*. Ministerstvo finansiv Ukrainy. Retrieved from: https://mof.gov.ua/uk/news/mitnij_bezviz_zapratsiuvav_v_ukrainu_i_z_ukraini_vzhe_priamuiut_vantazhi_pid_protseduroiu_spilnogo_tranzitu-3631 [in Ukrainian].
2. Kseniia Alekankina. (2022). Reform Index №187: “customs visa-free regime” and the new law on official statistics. *Vox Ukraine*. Retrieved from: <https://voxukraine.org/en/reform-index-187-customs-visa-free-regime-and-the-new-law-on-official-statistics/> [in English].
3. Oleh Kyryievskiy. (2022). Mytnyi bezviz, pro shcho naspravdi mova. Retrieved from: https://biz.ligazakon.net/analytics/212545_mitnij-bezvz---pro-shcho-naspravd-mova [in Ukrainian].
4. Lesia Vyhovska. (2022). Mytnyi «bezviz» z YeS: shcho zminytsia i yaki perevahy dlia biznesuiu. Retrieved from: <https://suspilne.media/287627-mitnij-bezviz-z-es-so-zminitsa-i-aki-perevagi-dla-biznesu/> [in Ukrainian].
5. Valentyn Marchuk, Vladyslav Obukh. (2022). «Malenkyi vstup do YeS»: pershi rezultaty dii «mytnoho bezvizu» dlia Ukrainy. *Ukrinform*. Retrieved from: <https://www.ukrinform.ua/rubric-economy/3588240-malenkij-vstup-do-es-persi-rezultati-dii-mitnogo-bezvizu-dla-ukraini.html> [in Ukrainian].
6. Herman Taslitskyi. (2022). Mytnyi bezviz: pro shcho naspravdi ydetsia. *Yurydychna hazeta online*. Retrieved from: <https://yur-gazeta.com/dumka-eksperta/mitnij-bezviz-pro-shcho-naspravdi-ydetsia.html> [in Ukrainian].
7. Volodymyr Kreidenko. (2022). “Mytnyi bezviz” – cherhovyi krok do yevrointehratsii. Shcho zminytsia dlia eksporteriv i derzhavy pislia pochatku dii “mytnoho bezvizu”? *Ekonomichna pravda*. Retrieved from: <https://www.epravda.com.ua/columns/2022/09/30/692047/> [in Ukrainian].

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