
МЕХАНІЗМИ ДЕРЖАВНОГО УПРАВЛІННЯ

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A SYSTEM OF RISK MANAGEMENT AS AN EFFECTIVE MECHANISM OF STATE REGULATION OVER UKRAINIAN FOREIGN TRADE

The paper concerns the issues of risk management system adoption at the legislative, administrative and operative levels, which is used by the Ukrainian government as an effective mechanism of state regulation over the country's foreign trade. The author describes certain steps to implement risk management system into the national Customs practice aimed at facilitating trade procedures and, at the same time, securing the international supply chain.

The author also estimates the Ukrainian legislative framework in relation to Customs issues as a compliant one with the Kyoto and Istanbul Conventions, the International Convention on the Harmonization of Frontier Controls of Goods, the modernized Customs Code 2008 of the EU as well as the WCO Framework of Standards to Secure and Facilitate Global Trade, which ensures increased efficiency, stability and reliability of the Customs authorities and maintaining its risk management style. The obvious positive changes within the administrative framework including application of the latest information technologies in Customs control on the basis of risk situations analysis, shifting the emphasis in Customs work towards strengthening the economic-regulatory and informational components, simplification and harmonization of Customs procedures, transparency and predictability of the actions of Customs authorities to participants of foreign economic activity have been identified.

The author emphasizes the deeper implementation of the risk management system by means of designing risk profiles. The importance of e-declaration and other modern information technologies for further development of risk management methods has been pointed out. In conclusion the author gives recommendations as to the improvement of the Customs compliance management in general and creation of some new risk management methods in particular.

Key words: risk management, state regulation, foreign trade, Customs authorities, legislative framework, implementation, risk profiles.

After accession and adoption of certain provisions of the international conventions in the field of Customs affairs, the Ukrainian government took a commitment to provide an increased level of trade security and facilitate the movement of goods. In the light of international tendencies, described by Michel Danet, Secretary General of the World Customs Organization (further – WCO) as “initiatives aimed at securing the trade environment globally while promoting the flow of legitimate goods that should receive maximum support and unconditional endorsement from all quarters” [9], as well as taking into account the concept of reforming the Ukrainian Customs Service called “Face to people” in order to emphasize less on “gateway” controls according to Chapter 6 of the Kyoto Convention General Annex Guidelines (the Revised Kyoto Convention 1999) [6], the regulatory agencies including the Customs authorities set into practice a risk-managed approach to compliance management.

Various types of research have been done to analyze the role of risk management

measures in trade. To begin with, the WCO experts took on the task of developing guidelines for Customs administrations that secured cargo movement in a way that continued to facilitate the movement of trade. An important element recognized by the WCO was the recognition of the need to partner with business. This resulted in the development of twin pillars – Customs to Customs network arrangements and Customs to Business partnerships, within the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework). In particular, Standard 4 of Pillar 1 implies that Customs administrations should establish a risk management system to identify potentially high-risk shipments [7].

The Ukrainian and foreign scientists studied the issues of the risk management nature and methods of risks measurements (I. Babanov, V. Granaturov, N. Tereshchenko), the use of risk management by Customs authorities in the international trading environment (D. Widdowson), risk management as an effective tool of trade security (P. Pashko). However, our research has found out that all these studies don't give a full picture of risk management implementation into the

system of state regulation over foreign trade and ways of its further development.

Taking into account the increasing understanding of a need in risk management system adoption both by the Ukrainian government, regulatory agencies and business, it is reasonable to study the contemporary state of its implementation at the legislative, administrative and operative levels.

The crucial task, which solution is the joint responsibility both of the Ukrainian government and national businesses, is improving conditions for foreign trade and investment in domestic production. In opinion of many domestic and foreign trade experts, usage of risk management is an effective regulation mechanism to facilitate trade procedures and, at the same time, secure the international supply chain. The data collected during our research show the awareness of this necessity by the Ukrainian Customs Service and certain steps to implement risk management system into the national Customs practice.

In particular, Ukrainian economists state that the Ukrainian legislative framework in relation to Customs issues is built to increase the efficiency, stability and reliability of the Customs authorities and maintain its risk management style. Thus, we have cleared out that the new edition of the Customs Code of Ukraine (2012) [3] is designed in accordance with the Kyoto and Istanbul Conventions, the International Convention on the Harmonization of Frontier Controls of Goods and modernized Customs Code 2008 of the EU as well as the WCO Framework of Standards to Secure and Facilitate Global Trade. It provides for flexibility and tailored solutions to enable relevant risk management & administrative strategies to be implemented (The Customs Code of Ukraine 2012. Section II. Customs control). In addition, the document substantially liberalizes the procedures for customs clearance in order to reduce the influence of human factors on the process and outcome of customs clearance. In particular, a comprehensive list of documents lodged to the customs authorities for customs control is identified and the scope of the electronic declaration is expanded. On the other hand, the law provides for the decriminalization of commodity smuggling, that is, transfer it to the administrative offenses. The list of violations of customs rules is decreased; the use of penalties like confiscations of goods and vehicles is minimized. It also strengthens the fight against smuggling by expanded law enforcement powers of customs service, including increased opportunities for violation of customs rules investigations, the implementation of intelligence activities and supervision, the introduction of post-audit control (The Customs Code of Ukraine 2012. Section XVII. Prevention of contraband). Furthermore, according to the Order of the State Customs Service of Ukraine "On approval of the application of automated analysis and risk management during the customs control and customs clearance of goods with the use of cargo Customs declaration" from 13.12.2010, № 1467 the methods of risk analysis have been used effectively and widely by the Ukrainian Customs.

The obvious positive changes have also been made within the administrative framework. In opinion of many experts [4], the most effective ones include application of the latest information technologies in Customs control on the basis of risk situations analysis; a centralized Customs clearance; administration of international trade; shifting the emphasis in Customs work towards strengthening the economic-regulatory and informational components; simplification and harmonization of Customs procedures; transparency and predictability of the actions of Customs authorities to participants of foreign economic activity; a partnership approach in its relations with participants of foreign economic activity including the establishment of effective procedures for resolving disputes.

The scientists A. Starostina and A. Videnov [5; 8] point out such progressive movements as comprehensive trade facilitation through selective application of customs controls, i. e. selective physical control based on the use of risk analysis, presentation of customs declarations on-line with their respective subsequent processing of the Bureau of Risk Analysis to decide on the appropriate physical Customs inspection of goods; focus on assessing the integrity of trader systems and procedures. It should be noted that according to two orders of the Customs Service of Ukraine from September 18, 2009 regional Customs authorities were given a power to determine conscientious enterprises and apply the simplified Customs procedures to commodities and vehicles of such enterprises. The three-level mechanism of "degree of trust" introduction to enterprises was developed based on the analysis of risks and audit of previous activities of these enterprises. Depending on the "degree of trust" a Customs administration establishes certain kinds and numbers of Customs procedures applying to the commodities and vehicles of an enterprise. The degree of trust divides enterprises into two lists – so called "white list" and "green list". Economic operators from these lists get certain preferences. For all other enterprises which did not join the mentioned lists, the level of trust is not established, thus they will carry out their foreign economic operations in the ordinary mode.

Our research has revealed that the above-mentioned legislative and administrative backup contributed to the deeper implementation of the risk management system focused on high-risk areas with minimal intervention in low risk areas. In order to fulfill this the risk profiles have been designed according to the Procedure for the development of risk profiles, approved by the State Customs Service of Ukraine from 22.12.2010 № 1514 and to the Procedure of interaction between departments of Customs, Customs Department of the analytical work, risk management and audit in the preparation and elaboration of proposals on a risk profiles, approved by the State Customs Service of Ukraine from 14.08.2009 № 754. The scientists [1] researched the distribution of risk profiles in the fields of movement of goods and control areas in Ukraine (see table 1).

The distribution of risk profiles in the fields of control areas

Control areas	Number of available risk profiles
Control of classification	15
Monitoring compliance with non-tariff regulations	4
Control of customs value	5
Control of the right to use exemptions	5
Control of quantity and weight indices	5
Control of classification and/or origin with the observance of anti-dumping/special measures	3
Control of operations using illogical routes	3
Control of the country of origin	1
Control with the aim to identify goods and to prevent concealment of goods from customs control	2
Other frame profiles	12

As it is seen from table 1, the highest percentage of risk analysis and risk management usage covers a classification area where the most violations arise. During the Customs value control as well as control of the right to use exemptions and control of quantity and weight indices risk management methods are applied on irregular basis while the control of the country of origin implies a minimal level of their usage.

We should underline that such an active phase of risk management implementation into Customs practice became possible due to the development of modern information technologies. In particular, the Law of Ukraine "On electronic documents and electronic circulation of documents" from May 31, 2005 № 2599 determines the basic organizational and legal foundations of electronic documents and their usage. During recent years advanced information technologies to improve the existing automated systems and to develop their own information resources have been designed. As a result, a central database of electronic copies of cargo declarations, automated processes of control over cargo delivery and Customs clearance, forming of electronic copies of cargo declarations by foreign economic operators, implementation of departmental e-mail and network of satellite connection, launch of the construction of departmental telecommunications network and integrated system of information security have been implemented [2].

What is more, the most innovative of these procedures is the electronic declaration which includes declaring goods by means of e-declaration and other electronic documents as well as Customs control/clearance of goods and vehicles on the basis of submitted documents (including permits). To make e-declaring possible, the Customs Service of Ukraine revised evaluation criteria to be met by companies striving for submitting electronic documents and issued the decree, which approved the terms of electronic declaration (the Decree from 17.03.2011 № 216). In general, these modernizations contributed to more effective and targeted application of risk management system by the Ukrainian Customs authorities.

In spite of all the positive tendencies, we would recommend some changes to improve the regulatory agency's compliance management in general and create some new risk management methods. First of all, Customs authorities should develop risk profiles that may be used at the regional level. For the

application of regional risk profiles the Department of anti-smuggling, risk analysis and anti-corruption should shift from using boilerplate approach – through the development of so-called "framework" regional risk profiles – to the one based on the results of post-audit of a certain business located in the area of the relevant Customs authority to design the regional risk profiles. Post-audit should become the most effective tool in detection of evasion of Customs duties and other customs payments and their recovery (by a court resolution) to the state budget of Ukraine.

Secondly, the Ukrainian Customs administration should get access to certain documents of companies that are non-residents by established cooperation between the Ukrainian Customs administration and Customs administrations of other countries. The issue of developing effective methods of prior express Customs audit in cooperation with tax authorities and the Pension Fund, and search for specific indicators which would characterize the risk level of an enterprise is to be considered.

The list of rewards for recognized compliers should be extended. Effective appeal mechanisms should be inserted into legislation and be more transparent and consistent.

Furthermore, the Ukrainian Customs administration should create a full-fledged e-customs with an established system of information exchange among partner states. This will lead to the electronic documents exchange to compare the information contained in the electronic declaration and accompanying documents with the information of the customs authority of the country-contractor. It should also focus more on consultative, cooperative approach. Namely, it should develop more combined business partners-customs authorities working groups to decide legislative and administrative issues, organize meetings, press-conferences with stakeholders to help them to comply, publish favorable lists of compliers and unfavorable lists of non-compliers. It should utilize mostly awareness and preventive activities.

Finally, the Customs administration should change non-transparent mechanism to monitor the customs value of goods to the transparent one. Customs authorities in their work use their own data base of the customs value of goods, which has private access. Under these circumstances, a fundamental review and revision of the customs value section of the Customs Code is required,

since the introduction and practical implementation of transparent procedures for the confirmation of the customs value of goods is possible only if there is a clear prescription of the rights and duties of the declarant and the Customs authorities.

In our opinion, further researches can be aimed at creating mechanisms of previous entry audit and audit carried out on a regular, cyclical and random basis to provide information on the presence or absence of risk probability of a particular enterprise affecting future decisions on granting or not this enterprise with privileges during the Customs clearance.

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Ильченко В. О. Система ризик-менеджменту як ефективний механізм державного регулювання зовнішньої торгівлі України

У статті розглянуто питання впровадження системи ризик-менеджменту, що використовує уряд України як ефективний механізм державного регулювання зовнішньої торгівлі, на законодавчому, адміністративному й оперативному рівнях. Описано певні кроки щодо управління ризиками в національній митній практиці, спрямованій на спрощення торговельних процедур і водночас забезпечення безпеки міжнародного ланцюга постачань.

Оцінено українську законодавчу базу з митних питань як таку, що побудована відповідно до Кіотської та Стамбульської конвенцій, Міжнародної конвенції про узгодження умов проведення контролю вантажів на кордоні, Модернізованого митного кодексу ЄС 2008, а також Рамкових стандартів Всесвітньої митної організації із забезпечення безпеки та полегшення світової торгівлі, що забезпечує підвищену ефективність, стабільність і надійність митних органів і підтримку системи управління ризиками. Акцентовано на очевидних позитивних змінах адміністративної структури.

Відзначено більш глибоке впровадження системи управління ризиками за допомогою проектування профілів ризику. Підкреслено значущість електронної декларації та інших сучасних інформаційних технологій для подальшого розвитку методів управління ризиками. У висновках подано рекомендації щодо поліпшення управління процесом дотримання митних формальностей загалом і розробки нових методів ризик-менеджменту зокрема.

Ключові слова: ризик-менеджмент, державне регулювання, зовнішня торгівля, митні органи, законодавча база, впровадження, профілі ризику.

Ильченко В. А. Система риск-менеджмента как эффективный механизм государственного регулирования внешней торговли Украины

В статье рассмотрены вопросы внедрения системы риск-менеджмента, используемой правительством Украины в качестве эффективного механизма государственного регулирования внешней торговли, на законодательном, административном и оперативном уровнях. Описаны определенные шаги в сфере риск-менеджмента в национальной таможенной практике, направленные на упрощение торговых процедур и в то же время обеспечение безопасности международной цепочки поставок.

Оценивается украинская законодательная база по таможенным вопросам как разработанная в соответствии с Киотской и Стамбульской конвенциями, Международной конвенцией о согласовании условий проведения контроля грузов на границе, Модернизированным таможенным кодексом ЕС 2008, а также Рамочными стандартами Всемирной таможенной организации по обеспечению безопасности и облегчения мировой торговли; она гарантирует высокую эффективность, стабильность и надежность таможенных органов и поддержку системы управле-

ния рисками. Акцентируется на очевидных положительных изменениях административной структуры.

Отмечено более глубокое внедрение системы риск-менеджмента с помощью проектирования профилей риска. Подчеркивается важность электронной декларации и других современных информационных технологий для дальнейшего развития методов управления рисками. В выводах представлены рекомендации по улучшению управления процессом соблюдения таможенных формальностей в целом и разработке новых методов риск-менеджмента в частности.

Ключевые слова: риск-менеджмент, государственное регулирование, внешняя торговля, таможенные органы, законодательная база, внедрение, профили риска.