

STATE REGULATION ISSUES OF INTERMEDIARY ACTIVITY OF CUSTOMS BROKERS IN UKRAINE

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ABSTRACT

Regulatory influence in the sphere of service provision of customs affairs' business activity is reviewed in the article; the problem of structural change in customs authority, creation of conditions for foreign-economic activity and transfer of such activity's control function to Ministry of revenues and duties of Ukraine aiming at public interest protection; state regulation of customs intermediary's activity and enhancing control of intermediary activity in the customs affair branch, using effective measures to increase responsibility of intermediary enterprises for compliance with requirements of regulatory acts of Ukraine.

The importance of regulatory influence to customs intermediaries' activity, necessity of its transformation in conditions of general raise of foreign-economic activity effectiveness of market entities and state entities in whole are proved.

Keywords: *intermediary service, customs intermediary, customs affair, regulatory activity, customs broker.*

1. INTRODUCTION

International commerce – is an important factor of economic growth. Customs authorities, which control international flow of goods, are able to tighten security of international commerce and promote economic development of Ukraine by way of increasing revenues to budgets and facilitation of customs formalities. Besides, a necessary condition for foreign-commercial relations' development is creation of effective regulatory mechanism for subjects of foreign-economic activity and intermediary structures – customs brokers, which are connecting link between participants of foreign trade and customs authorities.

Presence of professional organizations – customs brokers – is a necessary condition for provision into customs activity practice of progressive forms of dealing with customs formalities, increasing guaranties of return of duties and fees to state budget revenues.

In conditions of globalization, internationalization and widening international connections, each country seeks to harmonization and standardization of customs procedures (Diop, 2007).

Researching customs brokers' activity mechanism is one of significant tasks, set to modern economic science in the sphere of foreign economic activity.

Separate aspects of intermediary activity in customs sphere were researched by V. Bogatov, I. Bondarenko, N. Goncharova, O. Spitsyn, O.V. Seryh, I.I. Svitlac, I.O. Fedotova and others.

Timely issues of up-to-date are changes in customs authorities' structure, creation of foreign-economic activity development conditions and transfer of such activity's control function to Ministry of Revenues and Duties of Ukraine aiming at public interest protection (Ministry of Revenues of Ukraine). Establishing Ministry of Revenues and Duties of Ukraine, which includes tax and customs services, – is the most important reform, approaching Ukraine to European standards. This way has already been worked up by

leading countries, such as Canada, Italy, Latvia, Great Britain and others.

There is Customs and Tax Department in Great Britain, which deals with collecting duties and excises, controlling export and import operations. In Spain General Tax Direction carries out similar functions, being subordinate to Ministry of Industry, Commerce and Tourism. Department of Foreign Trade in Sweden, possessing wide autonomy within the framework of Ministry of Foreign Affairs of the country and forming foreign trade policy of Sweden, includes a department responsible for duties, controlling origin of goods and compliance with rules of fair competition. In most of the countries, e.g. in the USA, Finland, Japan, etc., customs authorities are included into Ministries of Finances of corresponding countries (Bogatov, 2003, p. 66).

2. MATERIALS AND METHODS

With the account of specifics and object of research the following methods were used: dialectic, comparative legal, systematic and structural, formal dogmatic.

Dialectic method was used to analyze the state and development of customs brokers' intermediate activity, of regulatory influence of state authorities to customs broker affairs. Comparative legal method permitted to analyze native legislation in the mentioned sphere as compared to foreign one. Use of systemic and structural method gave the possibility of identify the place and the role of normative acts, regulating procedure of carrying out customs broker's activity. With the help of formal dogmatic method content of intermediary services, executed by customs brokers, was defined.

3. RESULTS OF THE RESEARCH AND DISCUSSIONS

The notion of state regulatory police in the sphere of business processes, is defined in the legislation of Ukraine as a branch of state policy, aimed at advancing legal regulation of business relations, and also

administrative relations between regulatory authorities or other state government authorities and business entities, at exclusion of drawing up inappropriate and ineffective regulatory acts, reducing state's intervention into business entities' activity and overcoming obstacles for business processes' development, carried out within, in the order of and by means, stipulated by the Constitution and laws of Ukraine.

In professor V.B. Averyanov's judgment, one should put away the expansion of any view of expediency of reducing connected with market transformation of state administrative and regulatory function economics (Averyanov, 1997, p. 3).

We consider that such regulation should be based upon legal principles and comply with tasks of Ministry of Revenues and Duties at the up-to-date stage.

Regulatory activity in general – is an activity, aimed at preparation of, acceptance of, monitoring effectiveness and reconsideration of regulatory acts, executed by regulatory authorities, individuals and legal entities, their associations, territorial communities within, in the order and by means, stipulated by the Constitution, this law and other normative acts.

So far the regulatory influence in the sphere of service provision business activity in customs affairs' branch is carried out by Ministry of Revenues of Ukraine.

Such activity in the sphere of business in Ukraine is based on the following principles:

expediency – grounded necessity in state regulation of business relations, aiming at solving existing problem;

adequateness – compliance of forms and level of business relations' state regulation with necessity of solving existing problem and with market requirements, taking into account all accepted alternatives;

effectiveness – guarantee of achievement as a result of regulatory act effect of maximal possible positive results on account of minimal possible resource spending by business entities, citizens and state;

balance – provision in regulatory activity of business entities', citizens' and state's interest balance;

predictability – regulatory activity succession, its completion with aims of state policy, and also with preparation plans of regulatory acts' projects, that permits business entities to carry out their operation plans;

transparency and account of public opinion – openness for individuals and legal entities, their associations of regulatory authorities' actions at all stages of regulatory activity; obligatory consideration by regulatory authorities of initiatives, comments and offers, given by individuals, legal entities, their associations in accordance with order, stipulated by law; obligation and timeliness of informing on regulatory acts' of individuals, legal entities, their associations, apprising publicity of regulatory activity execution.

I.O. Bondarenko notices, that administrative and legal regulation in the sphere of customs relations is executed with the help of organizational and legal means of customs affair business activity regulation, which can be defined as stipulated by legislation means of effecting business entities in the sphere of customs affair service provision and effecting other individuals, who enter

customs relations in the process of receiving services on declaration of goods and vehicles and transportation of goods, sent abroad from Ukraine or being under customs inspection and keeping goods under customs inspection, the aim of which is regulation and control of proper exercise of rights and execution of obligations by subjects of these relations (Bondarenko, 2005, p. 26).

Thus, authorities of revenues and duties use legal means of customs broker activity regulation with the help of adoption and application of legal acts aiming at protection of rights, freedom and legal interests of customs relations' subjects. For achievement this objective means of administrative and legal regulation identify customs broker's status during customs formalities, limits of this activity and extent of possible conduct, control of their activity, and also application of security and obligatory measures in case of violation of stipulated obligations and prohibitions. These prohibitions are often connected with setting registration, notification and permission administrative and legal modes; the form of their expression, as a rule, is an individual adoptive act of executive authority, registration acts, etc.

State regulation of operations, connected with customs service provision, should be executed by way of state registration of enterprises and licensing their operations on customs service provision; normative and legal regulation of subjects' activity in provision of customs affair services; controlling enterprises' activity in customs services' provision; application of influence measures, stipulated in legislation and normative acts; conducting other state regulation measures of customs services' market (Bondarenko, 2006, p. 54).

Business activity organization measures in the sphere of customs services include obtaining qualification certificate of customs clearance agent, license for execution of customs broker intermediary activity, i.e. means aiming at legalization of this activity. State influence can be carried out by way of creation and dismissal of business entities.

Legalization of customs intermediation entity can be carried out according to such scheme: 1) acceptance and inspection of documents from candidate; 2) reliability assessment of his finances and business operations; 3) reliability assessment of candidate from the point of view of his completion with special requirements, imposed by customs legislation; 4) generalization of materials and preparation to decision making; 5) drawing up and issuing license (Goncharova, 2002, p. 56).

Permission and registration activity of customs broker allows guaranteeing professionalism and financial trustworthiness of organization and also its abiding requirements of legislative and normative acts. We consider appropriate methodical provision of process of identification of mechanisms and criteria of candidates' selection for customs broker activity to be necessary condition of customs intermediation regulation improvement. One of such criteria is determination of certain level of financial state, insurance fee payment, monitoring enterprise's financial state, which provides for customs broker activity execution (Fedotova, 2008, p. 55).

Control, as one of the functions of customs affair management, is aimed to identification and removal of deviations in customs system functioning from normative requirements, is the most important guarantee of setting (and maintaining) legal conditions in customs affair (Novikov, 1999, p. 4).

Means of control activity in customs affair service provide for customs regulation, control of service provision standards, their quality, prices, etc. (Bondarenko, 2006, p. 53).

Limits of state's interference in price formation and application in the sphere of customs services provided by intermediary subjects are not stipulated in normative acts. However, in connection with numerous violations by customs intermediation subjects, often due to ungrounded overpricing, the issue of prices for services in the sphere of customs affair should be circumscribed at normative level.

Among safeguarding means of securing adherence to legislation means of obliging nature are distinguished: means of administrative compulsion (sanctions), applied for violation of legislation, for instance, revoking enterprise license for numerous violations of customs legislation.

Thus, the issue of limits of state regulation of customs intermediaries' activity and tightening control of intermediary operations in the sphere of customs affair, applying effective means for raising responsibility of intermediary enterprises for complying with normative acts' requirements of Ukraine needs to be resolved. Though certain steps have already been made in this direction – a system of constant control of business entities' operations, connected with intermediary services in the sphere of customs affair; a separate register has been introduced for intermediary enterprises, functioning in the area of customs authority activity, with obligatory entry to their registration forms of information about facts of violation of legislation requirements and monthly monitoring of the information connected with violations, which demand revoking license for intermediary activity in the sphere of customs affair, and also presence of repeated, systematic violations by an intermediary enterprise.

We should notice that introduction of additional control measures must comply with policy of «state regulation of business activity».

Before State Tax Service of Ukraine reorganization and establishing by Decree of the President of Ukraine as of December 24, 2012 of Ministry of Revenues of Ukraine the control of intermediary activity was carried out by department of organization and control of intermediary enterprises operations in customs affair of Customs Control Organization Department.

For the present, Customs Affair Department of Ministry of Revenues of Ukraine includes customs intermediaries' activity organization department of Customs Control and Clearance Organization Administration as corresponding structure.

Ministry of Revenues and Duties in Ukraine is the body of customs broker activity licensing. Thus, Ministry of Revenues and Duties of Ukraine should carry out legalization of customs brokers, control their

abidance to customs legislation. And thus, this activity should be based on professionalism.

It is important to emphasize, that all these means are used in order to provide timely decision making concerning cancellation (annulment) of licensing documents for intermediary operations' execution in the sphere of customs affairs, issued by customs authorities, or entry of corresponding offers concerning cancellation (annulment) of these documents.

Control direction of operations of corresponding structural subdivisions' at customs intermediaries' activity organization should provide for holding measures aimed at abiding by these enterprises to normative acts concerning issues of customs affair. This activity should include observation of customs intermediaries, monitoring and other control measures, prevention, elimination of violations by way of controlling abidance to operational conditions, providing measures for determination and registration of law breaking, preparation of materials for withdrawal of customs broker license, i.e. application of enforcement measures.

In accordance with these basic activity directions a task, right and obligation list should be formed for corresponding subdivisions. We offer such list of rights of structural subdivision of customs intermediaries' work organization:

1.To accept, analyze, check, prepare materials and documents, necessary for legalization of enterprises, providing customs services (those of customs brokers, customs carriers, temporary storage areas, customs warehouses, freight customs complexes, vehicle fleets, vehicle terminals).

2.To take measures for preparation, education, advanced training, checking knowledge level on issues of customs affair of employees of customs service enterprises. To hold workshops, roundtable discussions of such enterprises' activity issues. To cooperate on these issues with educational establishments of Ministry of Revenues of Ukraine.

3.To provide legislation on regulation issues of structural subdivision activity concerning control of enterprises, which provide customs services, customs authority and also operations of these enterprises.

4.To coordinate work of enterprises, which provide customs services, on issues of disposition of entry points, introduction of informational technologies, new forms of customs control and clearance, etc.

5.To gather, analyze, record information about enterprises, which provide customs services. To request and receive in the stipulated order from subdivisions of regional customs, customs house, business entities, which provide customs services, information and materials, necessary for execution of tasks, assigned to sector.

6.To control activity of enterprises, which provide customs services (owners of freight customs complexes, customs licensed warehouses, temporary storage areas, customs brokers and customs carriers), by way of application of the following methods: observation, inspection, subjects, vehicles and goods audit concerning issues, in which specific sector is competent.

7.To take measures to avoid and prevent violations of legislation by enterprises, which provide customs services.

8.To prepare materials for disposition of documents, entitling an enterprise, which provides customs services, to conduct customs intermediate activity.

9.In cases, identified by state, to take enforcement measures against enterprises, which provide customs services.

10.To take part in functional inspections and investigations concerning officials of customs house, customs point on issues, in which specific sector is competent.

Thus, the authorities mentioned should be fixed in provision for structural subdivision on customs intermediaries' work organization. Correct legal securing competence of subdivision on customs service enterprise operations' control, customs authority, shall promote execution of tasks, assigned to customs authorities.

According to executed analytic work results of Customs control and customs intermediary affair organization department, insufficient level of customs brokers' and their representatives' intermediary activity control organization is determined.

Requirement, set by License conditions of customs broker intermediary activity in Ukraine, according to which fulfillment of these License conditions is obligatory during business entity's execution of customs broker intermediary activity, is not visible.

Among types of activity, execution of which is controlled by authorities of revenues and duties of Ukraine, are:

- 1) customs broker operations;
- 2) foundation and operation of duty free shop;
- 3) foundation and operation of customs warehouse;
- 4) foundation and operation of customs free zone of commercial or service type;
- 5) foundation and operation of temporary storage area;
- 6) foundation and operation of freight customs complex.

Central body of executive power secures formation and introduces state tax and customs policy, registers enterprises, which carry out such types of operations, and secures their publishing.

Inspections of fulfillment of License conditions by licensee are carried out by licensing authority according to annual inspection plan-schedule, which is approved by licensing authority order and published in the order, stipulated by law.

Period of planned inspection for a legal entity and/or its separate subdivision is no more than fifteen work days, and for an individual - business entity – five work days.

During unscheduled inspections issues, which became ground for such inspections are investigated.

Inspections can be carried out with participation of specialists of central and local executive power authorities (on agreement), and also representatives of regional customs, customs houses, etc. Period of unscheduled inspection for a legal entity and/or its separate subdivision is no more than ten work days, and for an individual - business entity – two work days.

Besides, prolongation of planned and unscheduled inspection is not allowed.

To carry out inspection head and members of license authority commission should show the director or authorized representative of a licensee their inspection certificate and documents, certifying their persons. At the same time licensee is given a copy of such inspection certificate.

The commission inspects: ability of licensee to ensure execution of License conditions, availability of corresponding documents, namely: license; personal activity insurance agreement for the sum not less than 2000 tax-exempt minimum of public income; state registration certificate of legal entity or individual – business entity; documents, regulating labor relations; information about separate subdivisions of legal entity (in case if these are present); provisions about separate subdivisions (in case if these are present); appropriate for licensee freight customs declarations' copies for last three months since these were drawn up or since the date the license became validity.

According to inspection results inspection act on fulfillment of License conditions by licensee is drawn up (further - inspection act) in two copies.

4. CONCLUSIONS

We consider proper systematical provision of identification of mechanisms and criteria of candidate selection for intermediary customs broker activity to be an obligatory condition of improvement of state control of customs broker activity. One of such criteria is determination of certain financial state level, payment of insurance fees, inspection of financial state of an enterprise – customs broker.

Depending on objectives and tasks enterprise's financial state inspection can be carried out according to one or all of these stages: prior testing, audit of financial and business activity of an enterprise, financial state analysis. On each of these stages different indicators of customs broker financial activity are applied.

An important condition of transparent customs service business relations' regulation is securing by Customs Code of Ukraine of authority of Ministry of Revenues of Ukraine, which carries out within its competency regulation of such activity, including customs broker operations, and also limits of this influence aiming at promotion of foreign economic activity. According to the Code's norms, it shall be appropriate to accept orders «On customs brokers' and their representatives' activity», «On control of customs brokers' and their representatives' activity».

Ministry of Revenues and Duties of Ukraine shall legalize customs brokers, control their keeping within customs laws, as activity of customs brokers should be based on professionalism. Development of administrative and legal regulation of customs broker activity is connected with active participation of customs brokers in customs formalities process, their involvement into application of modern information technologies in their operations.

State control of customs brokers' activity is a positive point, and it is aimed at realization of policy of the President of Ukraine and the Cabinet of Ministers of Ukraine, which concerns licensing system and

minimization of types of business activity, subject to licensing, and implementation of international good practices in customs legislation of Ukraine.

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