

## FROM DORMANT TO VITAL: THE LEGISLATIVE EVOLUTION AND DEVELOPMENT OF CUSTOMS POST-CLEARANCE CONTROL IN UKRAINE

**Purpose.** This article aims to examine the emergence, development, and evolution of post-clearance customs control as a promising mechanism for customs oversight in Ukraine. The study is particularly relevant in the context of current challenges, especially during the ongoing state of war, when the effectiveness of customs authorities plays a crucial role in stabilizing the nation's economy.

**Methods.** A combination of methods was employed in this study to achieve a comprehensive and precise analysis. The primary method used was the historical approach, which allowed for tracing the evolution of customs control in Ukraine from its inception to the present day. This approach facilitated an in-depth analysis of changes in customs legislation and identification of key factors that have shaped the modern system of customs control. Specifically, the provisions of the 2002 and 2012 Customs Codes of Ukraine were meticulously analyzed and compared. This analysis revealed significant shifts in customs control approaches, including the transition from traditional methods to the implementation of post-clearance control.

**Results.** The study found that shifting a portion of customs formalities to the post-clearance stage is an effective tool that significantly enhances the functioning of Ukraine's customs authorities. This shift reduces time costs at the border, increases throughput capacity, and ensures compliance with international standards for goods control. Moreover, the implementation of post-clearance control has proven to be a critical mechanism for securing additional revenue for Ukraine's State Budget, a factor of utmost importance in the context of the ongoing state of war. The research also revealed that the application of post-clearance control allows customs authorities to utilize their resources more efficiently. Furthermore, the introduction of post-clearance control promotes increased transparency and accountability in customs procedures.

**Conclusions.** The implementation of post-clearance control is a strategically important direction for the operations of Ukraine's customs authorities. It not only enhances the efficiency of customs control but also contributes to the financial stability of the country. Drawing on global experience and the recommendations of the WCO, post-clearance control could become a key element in the further development of the customs audit system in Ukraine, which, in turn, would lead to more effective oversight of foreign economic activities and improved conditions for international trade.

**Key words:** post-clearance control, post-clearance audit, post-customs control, customs control, audit, inspection, Ukrainian customs legislation, Ukrainian customs authorities, State Customs Service of Ukraine.

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**Introduction.** The post-clearance customs control gained its legislative foundation for Ukraine, in 2006. This step was initiated by Ukraine's accession to the International Convention on the Simplification and Harmonization of Customs Procedures of 1973 (the Kyoto Convention), which states that customs control systems should be based on audit methods. The Kyoto Convention stipulated that the acceleration and simplification of customs clearance procedures could be achieved, in part, through post-clearance control. The goal was to shift from comprehensive checks of all customs declarations to selective control after customs clearance (The Verkhovna Rada of Ukraine, 2011).

Post-clearance control was a new and highly promising form of customs control for Ukraine's customs legislation, even though it was already a fundamental component of customs legislation in European countries. Its essence lay in reducing the scope of

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customs control at Ukraine's borders and transferring most customs formalities to after the goods have been released into free circulation within the customs territory of Ukraine and/or beyond it. Thus, customs control was effectively shifted into the responsibility sphere of foreign economic activity (FEA) entities.

Another necessity for introducing post-clearance control into the functional toolkit of Ukraine's customs authorities was the increasing number of cases where documents submitted for customs control by FEA entities indicated that certain foreign economic operations were not always conducted on legal grounds. However, formally, FEA entities complied with the requirements of Ukrainian legislative acts and submitted the necessary documents to the Ukrainian customs authority. In practice, this meant, for example, that a taxpayer could submit one set of shipping documents (contracts, invoices, *etc.*) for customs clearance, while the foreign economic operation was carried out with different documents. There were instances where discrepancies in shipping and accompanying documents were not always intentional actions by FEA enterprises aimed at minimizing customs payments; sometimes, they were simply uncoordinated actions of different enterprise departments involved in specific types of FEA. Moreover, crucially, some enterprises did not even anticipate that post-clearance inspections could be conducted after the completion of customs formalities and the release of goods into free circulation. The reasons for this included legal illiteracy, irresponsibility, and negligence on the part of the FEA enterprises (Prokopenko, 2007).

The direct implementation of post-clearance customs control in the practical activities of Ukraine's customs authorities began in 2009. This was initiated by Order No. 1205 (The State Customs Service of Ukraine, 2008), which identified the enhancement of the customs authorities' control and verification function as one of the main tasks for improving the fiscal mechanism of their activities. This included conducting on-site documentary checks (customs post-audit) and desk audits of FEA enterprises.

At that time, post-clearance control was referred to as 'post-audit control' or 'customs post-audit.' The reason for this terminology was that there was no distinction between post-clearance control and checks for compliance with Ukraine's customs legislation. The 2002 Customs Code of Ukraine (2002 Customs Code) did not have a separate article dedicated to what was then called 'post-audit control' or 'customs post-audit.'

In 2022, a moratorium on documentary checks by customs authorities regarding customs matters after the release of goods for free circulation (*i.e.*, those involving the possibility of additional tax assessments for importers – FEA entities) was legislatively introduced in Ukraine. This moratorium was established by Law No. 2142-IX (The Verkhovna Rada of Ukraine, 2022). Consequently, until recently, Ukrainian customs authorities widely practiced post-clearance control – the verification of the accuracy of customs clearance within 30 days after the release of goods – instead of documentary checks concerning customs matters, including the timeliness, accuracy, completeness of customs payments. If discrepancies were found during post-clearance control, the customs authority would notify the importer, who could then, if necessary, amend the customs declaration and the general declaration of arrival and voluntarily pay any additional customs and other payments.

The importance and significance of such forms of customs control, including post-clearance control and documentary checks for compliance with Ukraine's customs legislation, are undeniable. These measures are vital for securing additional revenue for the Ukrainian State Budget, especially as a stabilizing financial factor during martial law. Consequently, the powers of customs authorities to conduct documentary checks for compliance with customs legislation were restored by Law No. 3613-IX. Customs authorities are required to resume, for the unused period, documentary checks and cross-checks that were initiated and not completed before 24 February 2022 (The Verkhovna Rada of Ukraine, 2024). Reports and certificates on the results of documentary checks and cross-checks, objections to audit reports, and tax notifications-decisions, the procedures for the delivery of which were not completed before 24 February 2022, must be sent or delivered by 1 July 2024.

**Purpose.** The purpose of this article is to explore the emergence, establishment, and development of post-clearance customs control within the legislative framework of Ukraine's customs regulations. The study aims to trace the evolution of this control mechanism, highlighting its significance and impact on the efficiency of customs operations in Ukraine. By examining the legislative milestones and practical implementations, the article seeks to provide a comprehensive understanding of how post-clearance control has evolved to meet the current needs of the Ukrainian customs system.

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**Literature review.** The general issues and regional specifics of post-clearance customs control (audit) have been extensively discussed by international researchers, including Samuel Atsibha Gebreyesus (2020), Pham Van Hoang and Vu Thi Nhung (2023), Mohammad Abu Yusuf (2013), Shawkat Alam and Saif Uddin Ahammad (2022), Patricio Diaz Gavier and Davide Rovetta (2010), Mohammad Akbar Hossain (2020). These scholars have contributed significantly to the understanding of how post-clearance control is implemented in different countries and the various challenges and opportunities it presents.

In the Ukrainian context, the emergence and development of post-clearance control have been explored by many customs officials, including Yaroslav Prokopenko (2007), Maryna Bolitsok (2009), Nataliia Yesypchuk (2009), Olena Mochalova-Kolesnyk (2011) and Maksym Razumey (2009). Their works provide a foundational understanding of the legislative and operational evolution of post-clearance control in Ukraine. Additionally, various aspects of post-clearance control in Ukraine have been examined by Ukrainian scholars such as Svitlana Kapitanets and Tetiana Ruda (2024), Iryna Sivak (2022), Alisa Kostenko (2018), Olena Sokolovska (2017), and Borys Kormych and Dmytro Pryimachenko. Overall, the literature reflects a broad and deep engagement with the topic of customs post-clearance control, both internationally and within Ukraine.

**The Post-Clearance Control in the Ukrainian Customs Code of 2002.** The Customs Code of Ukraine, which was in effect from 2002 to 2012, included several relevant articles: 41, 60, and 69. These articles addressed the new form of customs control involving the verification of the reporting and accounting systems for goods and vehicles crossing Ukraine's customs border (The Verkhovna Rada of Ukraine, 2002).

As a result, Ukrainian customs officials gained the ability to work with one of the most important mechanisms for simplifying and harmonizing customs procedures. However, the rights of Ukraine's customs authorities under the 2002 Customs Code were limited when it came to inspecting the financial and economic activities of FEA enterprises.

The scope of control was confined to verifying the reporting and accounting systems for transported goods and ensuring the timeliness, accuracy, and completeness of customs payments. Ukrainian customs authorities were not granted the right to verify the actual use of imported goods and vehicles within Ukraine's customs territory against the declared customs regime and intended purpose. It would have been appropriate to direct the verification of the reporting and accounting systems for transported goods, as well as the accuracy and completeness of customs payments, towards ensuring the accuracy of all data declared in the customs declaration. This would include confirming the correct classification of goods according to the Ukrainian Classification of Goods for Foreign Economic Activity (UCG FEA), determining customs value, country of origin, and verifying compliance with any prohibitions or restrictions in line with the declared customs regime for released goods. Nevertheless, these provisions of the 2002 Customs Code could be considered the 'first signs' of integrating post-clearance control into the practical operations of Ukraine's customs authorities.

Subsequently, the Resolution No. 1730 approved the Procedure for Conducting Checks by Customs Authorities at Enterprises of the Reporting and Accounting Systems for Goods and Vehicles Crossing Ukraine's Customs Border (The Cabinet of Ministers of Ukraine, 2004). This Procedure was the first to define the rights of customs officials when inspecting the financial and economic activities of FEA enterprises. During such inspections, customs control was conducted on goods already cleared by customs, specifically verifying the consistency of commercial and other documentation submitted for customs clearance with the business operations of the respective taxpayers. This government resolution was quite revolutionary at the time, although it contained certain legal inconsistencies.

Thus, by the beginning of 2005, according to Resolution No. 1730, customs authorities had the broadest powers among all domestic regulatory bodies regarding control actions during documentary inspections of FEA enterprises (The Cabinet of Ministers of Ukraine, 2004). Customs officials did not need a court decision to conduct an unscheduled inspection and were not restricted in terms of the duration of such inspections. It should also be emphasized that Ukrainian customs authorities had the right to independently conduct inspections of the financial and economic activities of FEA enterprises, including unscheduled inspections, contrary to the belief that such measures were only carried out jointly with representatives of the tax authorities of Ukraine.

However, one of the biggest challenges in conducting planned on-site documentary inspections by Ukrainian customs authorities, following control reconciliations or unscheduled documentary inspections

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of FEA enterprises, was the lack of a necessary mechanism for planning the schedule of control and verification work.

According to the Resolution No. 619, the undisputed prerogative of the tax authorities of Ukraine was the inclusion of a particular FEA enterprise in the joint inspection schedule (The Cabinet of Ministers of Ukraine, 2005).

Despite the significant differences between the planning methodologies for control and audit work in Ukraine's tax authorities and those in the customs authorities, situations often arose where the proposals of the customs authorities were not considered, especially regarding the planning of scheduled inspections (customs post-clearance control) of FEA enterprises. The reason for this was the discrepancies in the criteria used by tax and customs authorities to determine the subjects of inspections. Not all FEA enterprises that fell under the risk criteria defined by the customs authorities were included in the joint inspection plans with the tax authorities. This issue required separate analysis and research (Yesypchuk, 2009).

To address this situation, the State Customs Service initiated changes in 2006 to the Procedure for Interaction between Customs and Tax Authorities in Organizing and Conducting Scheduled and Unscheduled On-Site Inspections of FEA Entities, which was approved by Order No. 439/551 (The State Tax Administration of Ukraine and the State Customs Service of Ukraine, 2004). This procedure stipulated that the responsible structural unit of the central apparatus of the State Customs Service of Ukraine would form a list of enterprises to be prioritized for inclusion in the joint quarterly inspection plans with the tax authorities. This list was compiled considering the proposals of the customs authorities, provided the necessity of the respective inspection was substantiated. Subsequently, this list was submitted by the responsible structural unit of the central apparatus of the State Customs Service of Ukraine to the responsible structural unit of the central apparatus of the State Tax Administration of Ukraine, processed by a joint group, and sent to the structural units of the territorial bodies for further consideration in drafting inspection schedules.

This mechanism allowed for more comprehensive consideration of the customs authorities' proposals and increased the likelihood of inspecting FEA enterprises that, in the opinion of the customs authorities, conducted foreign economic operations in violation of Ukraine's customs legislation. Subsequently, the adoption of the Tax Code of Ukraine (The Verkhovna Rada of Ukraine, 2010) and the new Customs Code of Ukraine (The Verkhovna Rada of Ukraine, 2012), as well as newer Resolutions No. 1234 and No. 805 by the Ukrainian government (The Cabinet of Ministers of Ukraine, 2010, 2013a), which were adopted at various times, significantly altered the legal provisions for forming inspection schedules (annual, quarterly), leading to the repeal of Cabinet of Ministers Resolution No. 619 (2010).

To further unify the approaches to documenting inspection materials, Order No. 254 approved the Procedure for Documenting the Results of Customs Inspections of the Reporting and Accounting Systems for Goods and Vehicles Crossing Ukraine's Customs Border (The State Customs Service of Ukraine, 2006). Subsequently, Order No. 254 was repealed by Order No. 377 of the Ministry of Finance of Ukraine (2012), which itself was later canceled by another order of the Ministry of Finance of Ukraine (2015).

Thus, the entire block of regulatory acts mentioned above was the first in Ukraine to regulate the conduct of documentary on-site inspections (customs post-clearance control) by customs authorities of FEA enterprises.

From 2007 to 2010, the conduct of documentary on-site inspections as targeted control measures by Ukrainian customs authorities was focused on areas such as the correctness of taxpayers' declarations of royalties and other licensing fees in the customs value of goods for certain previous periods; the correctness of taxpayers' declarations of transport costs included in the customs value of goods imported into Ukraine. Additionally, the activity of documentary on-site inspections was directed at analyzing customs clearances of humanitarian aid regarding its intended use in the free circulation within Ukraine's customs territory. Detailed analysis was also applied to foreign economic operations involving tax preferences.

However, the scope of issues covered by inspections for compliance with Ukraine's customs legislation varied depending on the type of FEA conducted by the taxpayer. For instance, inspections would check the conformity of declared customs values with the actual costs incurred by the enterprise in acquiring goods from non-residents by reviewing bank documents, the declared transportation costs, the validity of obtaining customs benefits if influenced by the subsequent use of the goods, and the correctness of goods classification, as a significant amount of goods imported into Ukraine's customs territory is classified based on its intended use, *etc.* (Prokopenko, 2007).

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Therefore, it can be stated that at that time, the State Customs Service of Ukraine fully equated post-audit control with inspections for compliance with Ukraine's customs legislation. However, the procedures for conducting inspections and reconciliations during customs control and post-audit control during customs audits differ and have different regulatory frameworks. It should be emphasized that although the procedures for compliance inspections, reconciliations, and post-audit controls differ and have different regulatory frameworks, they share one common feature: they are all in-depth analytical and investigative work conducted by customs authorities in the form of documentary inspections.

**The Post-Clearance Control in the 2012 Customs Code of Ukraine.** On 3 November 2011, the Verkhovna Rada of Ukraine approved in full the draft law on amendments to the Customs Code of Ukraine and other legislative acts, which resulted in a new version of the Customs Code of Ukraine (Mochalova-Kolesnyk, 2011). Consequently, Ukraine received a modernized Customs Code, the third in Ukraine's contemporary history.

At the same time, the State Customs Service of Ukraine failed to fully defend the concept of customs post-clearance control in the 2012 Customs Code. The leadership of the State Customs Service of Ukraine advocated for a more European version of the 2012 Customs Code, specifically for the comprehensive implementation of post-clearance control. Unfortunately, this idea did not gain the necessary support. Implementing full-scale post-clearance control at that time would have simplified the customs clearance process for goods. Customs officials would not be seen by FEA entities during the customs clearance of goods but rather, at most, six months to a year later during post-clearance control. Customs officers would expedite the customs clearance process and conduct inspections only when necessary. From 2004 to 2011, the main complaints against the customs authorities were not about delays in customs clearance at Ukraine's borders, whereas post-clearance control, in contrast, would have sped up these processes. Starting in 2007, the State Customs Service of Ukraine introduced electronic declaration of goods, but this was insufficient. The next step – customs post-clearance control – was a continuation of the chain of international standards for customs formalities, but at that time, as previously mentioned, the State Customs Service of Ukraine could not fully defend the idea of post-clearance control.

As noted by Alexander Dorokhovskiy, First Deputy Head of the State Customs Service of Ukraine at the time, '[w]e proposed enshrining in the Customs Code of Ukraine the authority of customs bodies to control the legality of imported goods' presence in Ukraine's customs territory. When a customs officer, for example, visits a retail or wholesale outlet and asks for documentary proof that the goods were legally imported into Ukraine, complying with all customs formalities and full payment of taxes, duties, and budget payments. This is a common European practice that has proven effective. Of course, controlling bodies need to come and check how accurately the business entity has determined its tax obligations. And I don't understand why there is so much outrage about this: 'we don't need customs officers coming and asking for documents' (Dorokhovskiy, 2011).

In the 2012 Customs Code, the form of customs control known as post-clearance control was represented until 2019 by another form of customs control – compliance verification with Ukrainian customs legislation. Most of the provisions regarding the rights of Ukraine's customs authorities to conduct documentary inspections of enterprises, the rights of customs authorities during such inspections (definition of obligations, mechanisms for planning such inspections, *etc.*), control reconciliations, and documentation of inspections, were borrowed by analogy from the 2010 Tax Code of Ukraine. Thus, the provisions of articles 336 and 345–355 of the 2012 Customs Code, regulating the procedures for inspections and control reconciliations as forms of customs control, closely resemble the provisions of articles 73, 75–85, and 102 of the 2010 Tax Code of Ukraine, dedicated to inspections and reconciliations during the implementation of tax control.

According to the 2012 Customs Code, customs authorities have the right to conduct customs control through documentary on-site (planned or unscheduled) and documentary off-site inspections of compliance with Ukrainian customs legislation, as defined in part 3 of article 345 of the 2012 Customs Code.

Since 2012 and continuing to the present, numerous regulatory acts and organizational directives of Ukraine have been successively updated, refined, and based on the practical experiences of Ukraine's controlling bodies (in this case, primarily customs authorities). These have integrated new processes into the organization, conduct, and documentation of results from documentary on-site (planned or unscheduled) and documentary off-site inspections of compliance with Ukrainian customs legislation (The State Fiscal Service of Ukraine, 2015a, 2015b, 2016).

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Compliance verification with Ukrainian customs legislation is a form of customs control carried out by customs officials using targeted control measures to check the legality of goods imported into or exported from Ukraine, the timeliness, accuracy, and completeness of customs and other payments, and the interest for which customs authorities are responsible.

Targeted control measures implemented by customs authorities within this form of customs control include inventory checks of goods and materials, control launches of raw materials into production (during inspections of operations with customer-supplied raw materials placed under the customs processing regime). Preliminary analytical and investigative work is also conducted by Ukraine's customs authorities to determine the necessity of conducting or not conducting an in-depth documentary inspection of compliance with Ukrainian customs legislation, such as control reconciliations.

One of the measures customs officials in Ukraine are authorized to take during compliance inspections with Ukrainian customs legislation is to conduct control reconciliations to ascertain issues of the inspection (The Verkhovna Rada of Ukraine, 2012).

However, it is important to highlight that customs authorities, as controlling bodies within the meaning of the Tax Code of Ukraine (2010), lack the crucial right in their functional toolkit to forcibly collect from taxpayers any customs duties and other payments, as well as penalties for untimely or underpaid amounts, which are under their jurisdiction. The collection of such unpaid amounts by customs authorities from taxpayers' bank accounts is executed based on a court decision. If there are no available funds, the collection is carried out through the sale of taxpayers' property at public auctions.

As previously mentioned, post-clearance control in Ukraine's customs legislation was initiated by the country's accession to the International Convention on the Simplification and Harmonization of Customs Procedures in 2006 (The Verkhovna Rada of Ukraine, 2011). However, for a long time after Ukraine ratified the convention's revised version in 1999, this form of customs control was not integrated into the Customs Code of Ukraine. Following continuous recommendations from the European Union, the 2012 Customs Code of Ukraine was supplemented with Article 337<sup>1</sup> 'Customs Post-Clearance Control' (The Verkhovna Rada of Ukraine, 2019). The European Union Customs Code includes Section 7 'Control of Goods,' which features Article 48 'Post-Release Control' entirely dedicated to customs post-clearance control. However, Article 46 'Risk Management and Customs Control' mentions inspections without specifying what kind of inspections. Whether these inspections align with the norms of Articles 336, 345–355 of the 2012 Customs Code of Ukraine or the provisions of Articles 73, 75-85, 102 of the 2010 Tax Code of Ukraine remains unclear.

It is evident that post-clearance control, regulated by Articles 336 and 337<sup>1</sup> of the 2012 Customs Code, is a regular inspection similar to a documentary audit in customs matters, including the timeliness, accuracy, completeness of customs payments, or reconciliations as provided by Articles 336, 345-355 of the 2012 Customs Code, but with specific functional limitations.

The Customs post-clearance control as a form of customs control involves verifying the data, information, and documents specified in the customs declaration and the general declaration of arrival, according to Part 1 of Article 337<sup>1</sup> of the 2012 Customs Code. From 1 November 2023 to 25 December 2023, with a subsequent extension until 31 December 2024, the State Customs Service of Ukraine launched a recommendation-based pilot project for post-clearance control involving the Kyiv and Lviv customs offices (The State Customs Service of Ukraine, 2023b; 2024). Additionally, a reception commission was established from officials of the State Customs Service of Ukraine to functionally test the software module 'Customs Inspections,' directly related to the automation of post-clearance control processes (The State Customs Service of Ukraine, 2023a).

A team of customs regulation and customs affairs experts Bulana, Zeldi, Nabok, & Savarets (2024), conducted an analytical review of the results of control measures implemented by Ukraine's customs authorities over the first six months of 2024. In June 2024, the number of post-clearance control measures was notably lower – 147 in total, a 35% decrease compared to May. Concurrently, the number of notifications of detected discrepancies fell nearly threefold compared to May 2024, amounting to 60. Almost half of the inspections and discrepancy notifications concerned the correct determination of customs value – 79 inspections and 29 discrepancies, respectively. There were 46 inspections of classification accuracy according to the UCG FEA, with violations found in 29 cases. Additionally, 11 measures and 4 discrepancy notifications were related to customs payments and their settlement. Supporting and transport documents were inspected 7 times in June, with 5 related violation notifications. Regarding the accuracy

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of country-of-origin determination, there were 4 inspections, resulting in 2 discrepancy notifications. Other types of control measures and notifications were not conducted in June 2024. Given the recent resumption of documentary inspections concerning customs matters, including the timeliness, accuracy, and completeness of customs payments, final results will be observed later.

After the monitoring period, in June 2024, the number of documentary inspections on compliance with Ukraine's customs legislation more than doubled compared to May 2024: 98 new and 86 completed measures versus 40 and 39, respectively. The average amount of additional tax obligations assessed as a result of the inspections in June 2024 decreased to 306,600 UAH compared to 535,700 UAH in May 2024.

**The Areas of Post-Clearance Customs Control.** The customs post-clearance control is a form of customs control conducted by customs officials through verification and inspection of customs declarations, general arrival declarations, and the accuracy of the data provided therein for goods that have already been customs-cleared and released into free circulation within the customs territory of Ukraine.

Referring to Articles 336 and 337<sup>1</sup> of the 2012 Customs Code, the State Customs Service of Ukraine outlines the directions for customs post-clearance control:

- Control over the accuracy of determining the customs value of goods (customs authorities check the correctness of the numerical value of the customs value, ensuring all components of the customs value are included in accordance with Article 58 of the 2012 Customs Code);

- Control over the correct classification of goods according to the UCG FEA (customs authorities verify the correctness of the codes declared by taxpayers in customs declarations according to UCG FEA);

- Control over the determination of the country of origin of goods (customs authorities verify the authenticity of information for obtaining benefits and exemptions from customs duties);

- Control over the provision of tax benefits, completeness, and timeliness of customs payments (customs authorities check cases where customs duty is calculated exclusively based on specific rates, where the calculation base includes, for example, the number of liters, centimeters, meters, *etc.*);

- Control over the accuracy of declaring weight, quantity, and quality indicators, as well as technical and physico-chemical characteristics of goods that affect the level of taxation (customs authorities verify these indicators and characteristics that impact the taxation level of goods with customs duties);

- Control over compliance with the conditions defined by the Customs Code of Ukraine (2012) for customs regimes requiring goods to remain under customs control for the entire duration of the customs regime (customs authorities will check the placement of goods in regimes such as re-import, re-export, processing within the customs territory, processing outside the customs territory, which include exemption from import duties or conditional full or partial exemption);

- Control over the compliance of FEA entities with other legislative requirements monitored by customs authorities regarding the movement of specific goods across the customs border of Ukraine, based on their characteristics and physico-chemical properties, such as:

- cultural values,

- narcotic substances,

- psychotropic substances and precursors,

- radio-electronic means and emitting devices prohibited from import and use in Ukraine,

- military-purpose goods or dual-use goods,

- hazardous waste, agrochemicals, and pesticides subject to state registration,

- objects regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),

- genetically modified organisms or products containing them,

- goods that may contain ozone-depleting substances (The State Customs Service of Ukraine, 2023b).

Regarding the structural units of the State Customs Service of Ukraine responsible for post-clearance control, the central apparatus of the State Customs Service has established the Department of Customs Audit and Accounting, which includes the Customs Audit Organization Directorate, consisting of the Post-Clearance Control Organization Department. Under the Department of Customs Audit and Accounting, structural units operate within the territorial bodies of the State Customs Service – customs offices. In the organizational and staff structures of these customs offices, which are separate territorial bodies of the State Customs Service, there may be: a Customs Audit Directorate or Department, which can include a Department for Auditing Small and Medium Taxpayers.

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According to Part 2 of Article 337<sup>1</sup> of the 2012 Customs Code, customs post-clearance control is conducted based on the results of the risk management system and can be initiated during customs clearance or within 30 calendar days from the release of goods. This provision informs the declarant that within 30 days from the release of goods, the customs authority may conduct post-clearance control by requesting the declarant for further verification of the customs declaration and/or the general arrival declaration.

The customs post-clearance control, as per Part 3 of Article 337<sup>1</sup> of the 2012 Customs Code, is carried out exclusively by the customs authority that performed the customs clearance of the goods. This means the customs authority that cleared the goods will conduct the post-clearance control if necessary. The procedure for notifying the declarant electronically with a list of required documents is defined in Parts 4–5 of Article 337<sup>1</sup> of the 2012 Customs Code. The declarant must provide the necessary documents within 15 calendar days from receiving such notification. If additional time is needed, the declarant must inform the customs authority accordingly.

Part 6 of Article 337<sup>1</sup> of the 2012 Customs Code states that post-clearance control is conducted at the premises of the customs authority. If original documents are needed, they must be sent to the customs authority by postal service or delivered personally by the declarant, after prior agreement.

Information about the list of documents required for post-clearance control and the results of the control are entered into the unified automated information system of the customs authorities. The customs authority informs the declarant about the results of post-clearance control in writing or electronically. This notification is not considered a decision of the customs authority in terms of Part 1, paragraph 51<sup>1</sup>, Article 4 of the 2012 Customs Code, which can be appealed in administrative or judicial proceedings. Decisions made by customs officials during control can include classification of goods, adjustment of customs value, refusal to accept the customs declaration, customs clearance, release, or passage of goods and commercial vehicles, *etc.* This notification is not a tax notification-decision, which can only be issued after a compliance audit of customs legislation as per Article 354 of the Customs Code of Ukraine (The Verkhovna Rada of Ukraine, 2012).

Part 9 of Article 337<sup>1</sup> of the 2012 Customs Code stipulates that the results of post-clearance control of an enterprise are considered by the risk management system used by customs authorities during planning and conducting documentary checks. If no errors, discrepancies, or violations requiring additional customs payments are found during post-clearance control, additional forms of customs control may not be applied to the enterprise, and it may not be included in the schedule of documentary (field) audits. However, if errors or discrepancies are found, additional forms of customs control may be applied during customs clearance of the enterprise's goods, and the enterprise may be included in the schedule of documentary (field) checks. Documentary audits of FEA enterprises can be conducted if facts or documents indicating violations of customs legislation are found during customs post-clearance control.

**Conclusions.** The best principles and standards of the European Union in the field of customs are reflected not only in the International Convention on the Simplification and Harmonization of Customs Procedures of 1973 (The Verkhovna Rada of Ukraine, 2011) and the Resolution on the Framework of Standards to Secure and Facilitate Global Trade of 2005 (The World Customs Organization, 2021), but also in the Customs Blueprints (The European Commission, 2008) – a set of practical measures developed by European customs experts. These are specific standards against which the shortcomings of customs administrations can be assessed, and appropriate changes can be made to their operational strategies. One of the 22 directions in the Customs Blueprints is post-clearance audit, which aims to facilitate international trade by balancing the simplification of trade procedures on one hand and ensuring effective customs control and security on the other.

However, it should be noted that the Council Resolution on the Framework of Standards to Secure and Facilitate Global Trade (The World Customs Organization, 2021) is purely advisory, establishing a fundamental agreement among the parties on the forms, directions, and conditions of cooperation.

Ukraine is actively working towards the implementation and practical application of various key components of customs operations. The Ukrainian Government, Parliament, and President continuously strengthen Ukraine's customs security and interests by consistently entering into bilateral and/or multilateral trade agreements for the unimpeded access of Ukrainian goods to global markets, international customs conventions, memoranda of understanding, cooperation and assistance in customs matters, framework standards, customs blueprints, certain resolutions and decisions of the World Customs Organization, and so forth.



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In the past two years, Ukraine has been making significant strides towards developing a new, fourth edition of the Customs Code of Ukraine, which will be based on the principles and similar to the European Union Customs Code.

Given the political and technical nuances in preparing for the adoption of new foreign innovations and amendments exclusively related to Ukraine's customs legislation, it can be indicated that such expectations are entirely unfounded. Consequently, it is entirely understandable that unanimity on this issue cannot be achieved in the future.

It is necessary to conduct various negotiation tracks regarding each section of the laws and legal norms of the European Union concerning customs regulations and mandatorily compare them with Ukraine's customs legislation to determine which legislative provisions already comply with the European legal framework and which still need adoption, refinement, or integration.

The proposals of certain representatives of the customs-related community (public, business, analytical community) constantly involved in the so-called 'reform' processes of the domestic customs sector, for further integration of foreign customs legislation and security into the Ukrainian legal field, are entirely unfounded, unbalanced, and unrealistic. Ukraine needs to develop new national approaches to customs issues, which will be based on the economic, financial, administrative, security, social, and national realities in the country, but this will require additional efforts and time.

The process of implementing international standards into the legal norms of Ukraine's customs legislation should be carried out gradually, with a detailed analysis of the adequacy of international principles and norms to the norms of Ukraine's national legislation. Identified regulatory-legal inconsistencies should be resolved by making necessary changes to Ukraine's national legislation, considering national (customs) interests in the relevant area.

With all due respect to the international, political, and professional community and their achievements and experience in the key components of customs operations, it is necessary to urge the Ukrainian Government to abandon the mechanical copying of foreign regulatory acts on customs matters. This is a highly counterproductive scenario that Ukraine should avoid to preserve clarity in the execution, adherence, and interpretation of Ukraine's customs legislation, which is one of the most important assets in the domestic legal framework.

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## АНАЛІЗ ЕВОЛЮЦІЇ МИТНОГО ЗАКОНОДАВСТВА ТА РОЗВИТКУ ПОСТ-МИТНОГО КОНТРОЛЮ В УКРАЇНІ

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**Мета.** Стаття ставить на меті дослідження процесу виникнення, становлення та розвитку пост-митного контролю як перспективного механізму здійснення митного контролю в Україні. Вивчення цього питання є особливо актуальним в умовах сучасних викликів, зокрема в умовах воєнного стану, коли ефективність функціонування митних органів відіграє важливу роль у стабілізації економіки країни.

**Методи.** У ході дослідження було застосовано кілька методів для досягнення максимальної глибини та точності аналізу. Основним інструментом став історичний метод, який дозволив простежити еволюцію митного контролю в Україні від початку його становлення до сучасного етапу. Цей підхід дав змогу проаналізувати зміни в митному законодавстві та виявити ключові моменти, що сприяли формуванню сучасної системи митного контролю. Зокрема, були детально проаналізовані та порівняні положення Митних кодексів України 2002 та 2012 років. Такий аналіз дав змогу виявити значні зміни в підходах до митного контролю, включаючи перехід від традиційних методів до впровадження пост-митного контролю. Крім того, в дослідженні було застосовано метод порівняльного аналізу, що передбачав вивчення міжнародних практик та рекомендацій Всесвітньої митної організації.

**Результати.** У результаті дослідження було встановлено, що перенесення частини митних формальностей на етап «після випуску товарів у вільний обіг» є ефективним інструментом, який значно покращує функціонування митних органів України. Це дозволяє зменшити часові витрати на митному кордоні, підвищити пропускну здатність та забезпечити дотримання міжнародних стандартів контролю товарів. Крім того, впровадження пост-митного контролю виявилось важливим механізмом для забезпечення додаткових надходжень до Державного бюджету України, що є критично важливим в умовах воєнного стану. Дослідження також виявило, що застосування пост-митного контролю дозволяє митним органам більш ефективно використовувати свої ресурси. Крім того, впровадження пост-митного контролю сприяє збільшенню прозорості та підвітності митних процедур. Це допомагає мінімізувати корупційні ризики, оскільки митні органи мають можливість проводити детальні перевірки та аналізувати діяльність компаній у більш зручних умовах, що знижує можливість для неправомірних дій.

**Висновки.** Впровадження пост-митного контролю є стратегічно важливим напрямком у роботі митних органів України, що дозволяє не лише підвищити ефективність митного контролю, але й сприяє фінансовій стабільності країни. З огляду на світовий досвід та рекомендації Всесвітньої митної організації, пост-митний контроль може стати ключовим елементом у подальшому розвитку системи митного аудиту в Україні, що, у свою чергу, сприятиме більш ефективному контролю за зовнішньоекономічною діяльністю та покращенню умов для міжнародної торгівлі.

**Ключові слова:** пост-митний контроль, митне законодавство України, Держмитслужба України, Митний кодекс України, митні органи України, перевірка, митний аудит.