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PECULIARITIES OF THE CUSTOMS AND LEGAL RELATIONS SUBJECTS INVOLVED IN THE MOVEMENT OF GOODS IN INTERNATIONAL POSTAL ITEMS AND EXPRESS MAIL

Summary

The article is devoted to identifying the specific features of the subjects of customs and legal relations, involved in the movement of goods across the customs border of Ukraine in international postal items and express mail. The customs relations subjects involved in the movement of international parcels across the border can be divided into two main groups: subjects who formulate customs policy in the field of cross-border parcel traffic and subjects who actually implement it through law enforcement activities. In addition, the author notes of the peculiarity of customs and legal relations in the field of international parcel traffic, which is presence of specific participants: postal operators and express carriers, performing their tasks only within mentioned relations. The subjects, implementing customs policy in the area of cross-border movement of goods in international postal items and express mail, form the largest group of participants - public authorities that determine the procedure for declaration, customs control and clearance of relevant goods and also ensure its implementation.

The concept of subjects of customs relations involved in the movement (shipping) of goods across the customs border of Ukraine in international postal items and express mail are defined for the first time: they are all persons authorised to perform customs formalities of such goods in accordance with customs legislation and other by-laws acts. The author notes that legislative definition of the concepts of «subject of customs legal relations» and «subject involved in the movement (shipping) of goods across the customs border of Ukraine in international postal items and express mail» would ensure their regulatory certainty and consolidate the specifics of the legal status of these concepts, which will play a positive role in improving the legal regulation of the relevant customs relations and eliminate difficulties in law enforcement activity. The relevance of the practice of facilitating electronic declaration, digitalisation, automation of customs formalities and informatization of exchange between customs authorities and other parties concerning the movement of goods in international postal and express mail is determined, taking into account the continuous development of e-commerce and increasing role of international shipments of cross-border trade in the world.

Keywords: customs legal relations subjects, customs formalities, international postal items, international express mail, postal operator, express carrier, goods in international postal items, goods in international express mail.

Problem statement. The electronic declaration of goods transported (sent) across the customs border in international postal and express mail is one of the priority goals

of our state. Customs authorities of Ukraine play a primary role in achievement it. Undoubtedly, effective regulation of the activity of mentioned subjects is important for ensuring rapid international postal circulation, as well as for digitalisation of customs operations and interaction informatization between their participants. The study of the peculiarities of the subjects, involved in legal relations of the goods' movement in international postal items and express mail is of both theoretical and practical importance. In particular, the analysis of this issue is important for determining the role and competence of each subject within legal relations. It is worth noting that the range of subjects involved in these relations is quite significant. However, customs regulation which is primarily characterised by a large number of regulations at various levels, does not sufficiently cover the specifics of the subjects of customs relations authorised to carry out customs formalities in respect of goods that are sent or transported in international post items and express mail.

At the same time, the lack of legislative definition of the general concept of «subject of customs legal relations» has repeatedly caused scientific discussions and some difficulties in law enforcement. In view of this, there is a need for a scientific study of the peculiarities of the customs legal relations subjects involved in the movement of goods in international postal items and express mail for further improvement of the relevant legal regulation, automation of customs procedures and electronic declaration of goods when moving international shipments across the customs border of Ukraine.

Analysis of the latest researches and publications. O. Bandurka, V. Chentsov, Ye. Dodin, I. Fedotova, V. Harashchuk, A. Hud, S. Kivalov, O. Komarov, B. Kormych, N. Koval, A. Mazur, V. Nastiuk, I. Panov, D. Pryimachenko, V. Timashov, V. Vasylenko and other scholars studied the essence and peculiarities of the subjects of customs legal relations. Most of these scholars have conducted a general study of the customs legal regulation subjects. However, no scientific attention has been paid yet to specifics of the participants involved in legal relations in the field of movement of goods in international postal items and express mail across the customs border of Ukraine. The essence and peculiarities of their legal regulation have not been researched neither.

Purpose statement is to study the essence and peculiarities of the subjects within the customs legal relations, arising as a result of movement (shipping) of goods across the customs border of Ukraine in international postal items and express mail, to systematise them and to form a clear understanding of the role, tasks and powers of mentioned legal relations subjects which will enable future improvement of legal regulation of relations concerning movement of goods in international postal items and express mail; and will increase the efficiency of the mentioned subjects at the stage of declaration, customs control and clearance.

Main part of the research paper. The shipping or movement of goods across the customs border of Ukraine in international postal items and express mail (hereinafter referred to as IPI and IEM) is carried out through the interaction of participants who initiate, organise, ensure and control the cross-border movement of international parcels. There are customs legal relations subjects among these participants which are aimed at forming and observing the procedure for the movement of international parcels in accordance with generally accepted standards and recommendations. At the same time, the current Customs Code of Ukraine does not contain any provision that would enshrine the concept of «subject of customs legal relations» or «subject of cus-

toms legal regulation». At the same time, the range of participants involved in legal relations concerning movement of goods in international parcels is quite wide and extensive.

The lack of legislative attention to defying the legal nature of this concept is actively compensated by scientific research on the essence and characteristics of the customs legal relations subjects. For instance, I. Panov believes that the subjects of customs legal relations are «customs authorities, on one hand, and individuals and legal entities that cross the customs border and move goods, objects and vehicles across it, on the other» [1, p. 13]. A. Hud notes that «the subjects of customs and legal regulation are authorized executive bodies that implement customs policy and other public authorities in accordance with the current legislation» [2, p. 30]. At the same time, A. Khridochkin, studying the range of subjects of customs legal relations that arise during the control exercise when moving across the customs border of Ukraine, included customs authorities, state bodies, institutions and structures, as well as judicial authorities to it [3, p. 178]. However, the most thorough and systematic study of the legal nature of the customs legal relations subjects has been carried out by N. Koval and B. Kormych who divided them into four groups: 1) customs legal relations subjects that have state power in the field of customs; customs officials and other state bodies and their officials with powers in the field of customs relations; 2) subjects of foreign economic activity and individuals who move goods, objects, vehicles across the customs border of Ukraine; 3) subjects working in the field of customs on the basis of permits of the central executive body in the field of state customs [4, p. 14]. The foregoing leads to conclusion that scholars consider subjects of customs legal relations to be all persons involved in the process of moving goods across the customs border. Most often they divide them according to the criteria of presence or absence of state power and/or organisational and legal form of the subject.

The movement of goods across the customs border of Ukraine in international postal items and express mail is a special type of border crossing which involves specific subjects – postal and express transportation companies, in addition to customs authorities and all the other persons involved in the processes of declaration, customs control and clearance as well. Such an expansion of the range of customs legal relations subjects involved in movement of goods across the customs border of Ukraine in IPI and IEM, and/or involved in performance of mentioned above customs operations is based on the regulatory provisions of the Revised Kyoto Convention, the Customs Code of Ukraine, laws and regulations of Ukraine in the field of establishing rules for performance of customs formalities concerning the goods, transported across the border in international postal items and express mail. Thus, Chapter 2 of General Annex J «Postal traffic» stipulates that «Customs formalities in respect of postal items» means all the operations to be carried out by the interested party and the Customs in respect of postal traffic» (E2./ F3) [5]. This definition is logical, although rather generalised and concentrated around two types of subjects of legal relations – customs administrations and persons interested in customs operations. Taking into account the scientific approaches to the legal nature of the subjects and the peculiarities of movement of goods across the customs border of Ukraine in IPI and the IEM, we can assume that the subjects involved in these relations can be conditionally divided into a) authorities that formulate customs policy in the field of movement of goods in international

postal items and express mail across the customs border of Ukraine; b) authorities that implement customs policy on the movement of goods in international postal items and express mail across the customs border of Ukraine; c) business entities – participants of cross-border commerce that initiate movement of goods in international postal items and express mail for commercial purposes; d) legal entities that are not engaged in business activities and initiate movement of goods in international postal items and express mail for non-commercial purposes; e) individuals who initiate movement of goods in international postal items and express mail for non-commercial purposes for their own use; f) postal operators and international express shipping companies that carry out international shipments and transportation of goods in international postal items and express mail.

The first group - *authorities that implement customs policy on the movement of goods in international postal items and express mail across the customs border of Ukraine* is the Verkhovna Rada which is authorised by the Constitution of Ukraine to formulate the principles of customs policy as a part of the state's system of foreign economic activity; and partially the President of Ukraine who can also influence the formation of the principles of customs policy. It is worth noting that according to the Article 85(5) of the Basic Law, the Verkhovna Rada of Ukraine is empowered to determine «the principles of domestic and foreign policy», while Article 92(9) stipulates that only the laws of Ukraine determine the «principles of foreign relations, foreign economic activity and customs practices» [6]. The Article 9 of the Law of Ukraine “On Foreign Economic Activity” dated 1991 stipulates that the Verkhovna Rada is responsible for «approval of the main directions of foreign economic policy of Ukraine» [7]; and in accordance with the Article 106(3) of the Constitution of Ukraine the President of Ukraine is authorised to «represent the State in international relations..., to conduct negotiations and conclude international treaties of Ukraine». In addition, the President of Ukraine has the right to veto adopted laws and make proposals and amendments to laws, sending them for revision [6]. The Verkhovna Rada of Ukraine establishes general rules for movement (shipping) and declaration of goods across the customs border of Ukraine in IPI and IEM in the system of customs and legal relations. The Parliament also establishes the rules of customs tariff regulation, sets customs taxation rates and benefits for the specified goods, shipped across the customs border of Ukraine, the rules of non-tariff customs regulation, regulatory prohibitions and restrictions on the movement (shipping) of certain types of goods in IPI and IEM, etc.

The authorities that implement customs policy on the movement of goods in international postal items and express mail across the customs border of Ukraine is much larger than the first one as it is represented by state executive bodies and state institutions, ranging from the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, the Antimonopoly Committee, the Interdepartmental Commission on International Trade to the customs bodies of the State Customs Service of Ukraine. However, it is necessary to mention that the implementation of this policy at different levels is not uniform: for example, the Cabinet of Ministers of Ukraine, the Ministry of Economy of Ukraine, the Ministry of Finance of Ukraine, the State Tax Service of Ukraine, the State Customs Service of Ukraine ensure the implementation of the customs policy in the area of international shipments across the customs border of Ukraine by means of rule-making, defining and fixing the procedures for customs control and clearance

of goods in the customs offices and customs bureaus, for example: Procedure and conditions for customs control and customs clearance of goods transported (sent) in international postal items and express mail; Procedure for determining and equipping central (regional) sorting stations; Procedure for filling in the M-16 customs declaration; Procedure for filling in the registers (temporary and additional) of international postal items and express mail and making changes to such registers; Procedure for performing customs formalities during customs clearance of goods using the customs declaration on the form of a single administrative document [8]. The implementation of the customs policy in the field of international shipments across the customs border of Ukraine at the level of customs administration is carried out by the customs authorities – the Central Office of the State Customs Service of Ukraine, customs offices and customs posts in the course of law enforcement activities. For example, the preliminary information analysis unit of the State Customs Service or in the regional customs body analyses, identifies and assesses risks based on preliminary information about goods transported (sent) in mail. For example, the officials of the unit check documents and information on goods; verify the correctness of the calculation of customs duties on goods subject to taxation (under the CN22, CN23 customs declaration, M-16 customs declaration); may select shipments; make decisions on the need for customs inspection; use scanning systems; make decisions about the necessity to carry out appropriate customs formalities when shipments arrive at international exchange offices (central sorting centers) etc [8].

Business entities – participants of cross-border commerce that initiate movement of goods in international postal items and express mail for commercial purposes are foreign economic operators who carry out business activities with foreign counterparties and who choose postal and express transporting companies to be their logistics operators or to carry out business activities on global marketplaces. Such entities acquire a special legal status that obliges them to declare goods in IPI and IEM by entering into relations with the customs authorities, to submit the necessary documents, to pay the relevant taxes and fees and to submit applications for changing the location of the sorting station, etc. The payment of mandatory payments and completion of customs formalities is a prerequisite for release of goods into free circulation and getting further profit through their sale or use by a business entity.

The group of legal entities that are not engaged in business activities and initiate movement of goods in international postal items and express mail for non-commercial purposes may cover non-profit organisations and institutions, including institutes, scientific organisations, foundations, etc., as well as individuals (citizens of Ukraine, foreigners, stateless persons) who may also move goods across the customs border in the IPI and IEM for personal purposes. For example, according to the amendments to the Customs Code of Ukraine introduced in 2022, «a citizen (a person authorised by him/her) has the right to declare such goods independently in accordance with the procedure established for citizens by submitting a customs declaration in the form provided by the Cabinet of Ministers of Ukraine, including using information technology» [9]. This is done by submitting a customs declaration for the written declaration of goods transported across the customs border of Ukraine by citizens for personal, family and other needs which are not related to business activities, approved in 2012 by the Cabinet of Ministers of Ukraine [10]. In addition, citizens have the opportunity to declare

goods in the customs office without the involvement of customs intermediaries by submitting an electronic customs declaration M-16.

Postal operators and international express shipping companies that carry out international shipments and transportation of goods in international postal items and express mail are postal and transportation companies that regularly move their vehicles across the customs border of Ukraine which are used for the movement of international postal and expedited (express) traffic. Legislative updates to the definition of these entities were made in 2022. Thus, a postal operator is a «business entity operating in the territory of Ukraine and providing postal services in accordance with the procedure established by law» (Article 1 of the Law of Ukraine «On Postal Service») [11]. In turn, the amendment to the Customs Code of Ukraine of 2022 provides for the following: «express carrier shall mean a carrier that conducts express transportation of international express goods under cover of a single transport document (AWB – airwaybill, MAWB – master airwaybill), CMR, bill of lading, etc.) by any means of transport as well as arranges for the acceptance, processing, and presentation of such goods to the customs authorities for customs control and customs clearance at the places of their customs clearance, and their delivery to the consignee (return to senders)» [9]. Postal operators and express carriers are authorised to declare goods either by submitting an application in the form established by the Cabinet of Ministers of Ukraine, including using information technology, or by submitting registers (temporary and/or additional) of IPI and IEM when moving goods in IPI and IEM across the customs border of Ukraine. They also pay the amounts of customs duties under the additional registers provided for clearance; present the consignment for customs inspection if necessary; provide all necessary documents and information for customs control and clearance; carry out operations on processing of consignments (unpacking, repacking); provide any relevant documents to speed up customs control and clearance; ensure a sufficient number of persons authorised to declare the goods to the customs authorities, etc. [8]. Thus, postal operators and express carriers are entities who enter into relations with the customs authorities regarding the declaration of goods, their presentation for customs inspection, payment of relevant customs duties and other customs formalities that will ensure the further release of goods into free circulation.

Special mention should be also made of customs intermediaries among the subjects of customs relations involved in the movement of goods in IPI and IEM. They are declarants, representatives, attorneys or authorised persons of business entities, postal operators and express carriers who are entitled to perform actions related to customs formalities in respect of goods in the IPI and IEM on the basis of an agreement or a duly executed power of attorney.

The above analysis of the participants in customs relations shows that the entities involved in the movement of goods across the customs border of Ukraine in IPI and IEM differ significantly from each other in terms of their legal nature, legal status, tasks and even goals. Nevertheless, all of them carry out the activities within the framework of customs legal relations, so, these entities are united by the fact that they all perform customs formalities in accordance with the regulative acts requirements, with the exception of entities that form the state customs policy. The scientist A. Hud rightly notes: «if such persons fall into the orbit of customs legal regulation not sporadically, but for a certain period of time, they acquire a special customs legal

status. The latter combines the obligations of the necessary issuance of permits and accompanying documents, customs control and facilitation, compliance with the rules of customs clearance, etc.» [2, p. 30].

Conclusions and proposals. The study of nature of the customs and legal relations subjects involved in the movement of goods across the customs border of Ukraine in IPI and IEM leads to the conclusion that, despite having different legal relations with each other and forming different tasks, they nevertheless have a common goal – fast, technological, informational and accurate cross-border movement of international postal items and express mails. One of the main current problems in achieving this goal is that legal regulation is too slow, failing to respond in time to relations that are transforming and adapting to the digital age, and they do it much faster than the legislative framework. For a better understanding the specifics of the subjects, involved in the movement of goods across the customs border of Ukraine in IPI and IEM, it is necessary to legislate their concept by supplementing Article 4 of the Customs Code of Ukraine «Determination of basic terms and concepts» with the provision that these entities are all persons who are authorised to perform customs formalities in respect of goods moved (sent) across the customs border of Ukraine in IPI and IEM in accordance with customs legislation and other by-laws acts. The regulatory systematisation of these subjects accordingly to their specific features, rights, duties, goals and objectives would greatly facilitate the implementation of law enforcement activities within the framework of these customs and legal relations. In addition, the legislative definition of the specifics and status of mentioned subjects would play a positive role in improving the legal regulation and automated interaction of customs authorities with postal operators, express carriers, as well as individuals and legal entities while receiving or sending international shipments. These measures are necessary on the way to accelerating the digitalisation of relevant customs relations, simplifying customs formalities, increasing the freedom of cross-border business and developing international e-commerce in Ukraine.

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ОСОБЛИВОСТІ СУБ'ЄКТІВ МИТНО-ПРАВОВИХ ВІДНОСИН, ЯКІ БЕРУТЬ УЧАСТЬ У ПЕРЕМІЩЕННІ ТОВАРІВ У МІЖНАРОДНИХ ПОШТОВИХ ТА ЕКСПРЕС-ВІДПРАВЛЕННЯХ

Резюме

Стаття присвячена визначенню особливостей суб'єктів митно-правових відносин, які беруть участь у переміщенні товарів через митний кордон України у міжнародних поштових та експрес-відправленнях. Проведене дослідження дозволило визначити, що суб'єктів митних відносин, які беруть участь у переміщенні міжнародних відправлень через кордон, умовно можна поділити на дві основні групи: суб'єкти, які формують митну політику у сфері транскордонного руху посилок, та які власне реалізують її шляхом правозастосовної діяльності. Крім того зазначено, що особливістю митно-правових відносин у сфері переміщення міжнародних відправлень є наявність специфічних суб'єктів – операторів поштового зв'язку та експрес-перевізників, які в жодних інших митних відносинах не виконують подібних завдань. Одночасно відмічено, що суб'єкти, які реалізують митну політику у сфері транскордонного переміщення товарів у міжнародних поштових та експрес-відправленнях утворюють найбільш чисельну групу учасників – органів державної влади, які визначають порядок декларування, митного контролю та оформлення відповідних товарів та забезпечують його виконання.

Вперше визначене поняття суб'єктів митних відносин, які беруть участь у переміщенні (пересиланні) товарів через митний кордон України у міжнародних поштових та експрес-відправленнях, а саме те, що це всі особи, які відповідно до митного законодавства та інших підзаконних актів, уповноважені виконувати митні формальності щодо зазначених товарів.

Зауважено, що законодавче закріплення понять «суб'єкт митних правовідносин», «суб'єкт, який бере участь у переміщенні (пересиланні) товарів через митний кордон України у міжнародних поштових та експрес-відправленнях» забезпечить їх нормативну визначеність та закріпить особливості правового статусу даних понять, що в подальшому відіграє позитивну роль в удосконаленні правового регулювання відповідних митно-правових відносин та усуне труднощі у правозастосуванні.

Вказано на доречність практики сприяння електронному декларуванню, діджиталізації, автоматизації митних формальностей, інформатизації обміну між митними органами та іншими суб'єктами відносин щодо переміщення товарів у міжнародних поштових та експрес-відправленнях з огляду на неспинний розвиток електронної комерції та посилення ролі міжнародних відправлень транскордонного товарообігу в світі.

Ключові слова: суб'єкти митно-правових відносин, митні формальності, міжнародні поштові відправлення, міжнародні експрес-відправлення, оператор поштового зв'язку, експрес-перевізнак, товари у міжнародних поштових відправленнях, товари у міжнародних експрес-відправленнях.