

**В.Ф. Максимова** (Одеський національний економічний університет, Україна)

**Д.О. Сагарьова** (Одеський національний економічний університет, Україна)

## ПОСТМИТНИЙ КОНТРОЛЬ В ІНТЕГРОВАНОМУ УПРАВЛІННІ КОРДОНОМ

*У статті досліджені точки зору сучасних авторів на сутність митних перевірок та проаналізовані існуючі категоріальні визначення даного поняття. За даними результатів дослідження визначена сутність та економічний зміст постмитного контролю, який базується на методах аудиту, та сформульовано його визначення.*

*Ключові слова:* зовнішньоекономічна діяльність, митне законодавство, митний контроль, постмитний контроль.

*Табл. 2. Рис. 1. Літ. 19.*

**В.Ф. Максимова** (Одесский национальный экономический университет, Украина)

**Д.О. Сагарева** (Одесский национальный экономический университет, Украина)

## ПОСТТАМОЖЕННИЙ КОНТРОЛЬ В ІНТЕГРИВАННОМУ УПРАВЛЕННІ ГРАНИЦЕЙ

*В статті досліджені точки зору сучасних авторів на сутність таможенних перевірок та проаналізовані існуючі категоріальні визначення даного поняття. По даним результатам дослідження визначена сутність та економічне значення посттаможеного контролю, оснований на методах аудиту, та сформульовано його визначення.*

*Ключевые слова:* внешнеэкономическая деятельность, таможенное законодательство, таможенный контроль, посттаможенный контроль.

*Табл. 2. Рис. 1. Лит. 19.*

**V.F. Maximova** (Odessa National economic university, Ukraine)

**D.O. Sagareva** (Odessa National economic university, Ukraine)

## POST-CLEARANCE CONTROL IN THE INTEGRATED BORDER MANAGEMENT

In article points of view of modern scientists on entity of customs inspections are researched and available categorial definitions of the given concept are analyzed. According to results of research the essence and the economic maintenance of the post-clearance control based on methods of audit is defined, and its definition is formulated.

*Keywords:* foreign economic activity, customs legislation, customs control, post-clearance control.

*Table 2. Fig. 1. Lit. 19.*

**Determination of the problem.** Objective necessity of Ukraine's integration into the world economic community causes gradual convergence of its customs legislation to international norms and standards. Particularly noteworthy is the process of new forms and instruments of customs control implementation. One of these forms is post-clearance control, which includes examining of operations that have been made by subjects of foreign trade for determining their legitimacy, economic feasibility and completeness fulfillment of all liabilities as a result of such transactions.

**Review of recent researches and publications.** Research of many Ukrainian and foreign scientists dedicated to the organization and improvement of post-

clearance control. Among them should be mentioned the works of such authors as L.M. Pismachenko, O.M. Vakulchik, O.O. Knishek, K.V. Yova, I.V. Spivak, L.O. Kopceva, O.O. Berzan and others. However, most of the studied questions only justify the need to establish an effective system of cost-clearance control in the country and do not pay sufficient attention to the resolution of the most substantial part thereof.

**Target problem for the analysis.** Formation of national post-clearance control systems is not just limited by rationale for its creation, but also requires detailed research of adjustments opportunities and formalization of the conceptual apparatus of post-clearance control and measure of its economic substance.

The purpose of research is the determination of "post-clearance audit", definition of its economic content by creating a holistic understanding of the system of customs control for foreign economic operations. In accordance with the goal, the objectives of the article are:

1. analysis of national legislation and international standards, which refers to the concepts that are identical to essence of post-clearance control;
2. research of leading scientists' opinions concerning the interpretation of customs control of foreign economic operations that have already been made by business entities;
3. determining the essence and economic content of the concept "post-clearance control".

**Main results of research.** XXI century characterized by a considerable strengthening of the role of globalization and integration in the world, because the orientation of many economic systems in building a market economy requires the development of comprehensive international economic relations to realize the economic potential in international markets. As a result of close cooperation between the countries the volume of international trade each year is steadily increasing. Therefore, Customs administrations all over the world are faced with new problems to solve which they should apply completely new and innovative approaches.

In the current context of globalization and integration, expansion of international relations, Ukraine strives for harmonize and standardize customs procedures. The main condition for achieving this goal is the implementation of post-clearance audit.

The purpose of such audits is to verify the accuracy and authenticity of declarations and covers the control of traders' commercial data, business systems, records, books. Such an audit can take place at the premises of the trader, and may take into account individual transactions, so-called "transaction-based" audit, or cover imports or exports undertaken over a certain period of time, so called "company based" audit. Post-clearance audits can be conducted by case basis focusing on targeted operators, selected on the grounds of risk analysis of the commodity and the trader, or in a planned, regular way, set out in an annual audit program. Furthermore the audit could also be used as criteria to offer special treatment to certain economic operators.

Adjusting the base issues of customs control implementation and functioning in modern economic and political environment is carried out by International

convention on the simplification and harmonisation of customs procedures (Kyoto Convention) and SAFE framework of standards to secure and facilitate global trade. These international documents determine the importance of customs clearance simplification and speed up customs procedures at the border by further in-depth inspection of foreign economic activity after customs clearance of goods and vehicles. According to Kyoto Convention customs control systems shall include audit-based controls [1]. Chapter 6 of the General Annex of the Revised Kyoto Convention sets out a large number of recommended standards relating to all aspects of Customs control, including the use of audit-based controls including the audit of traders' commercial systems (Standard 6.6. and 6.10).

Also, according to the National indicative programme for Ukraine at the period 2011-2013, the result of integrated border management should be approaching of border control procedures and management systems to the relevant international standards of the European Union, including Customs Blueprints [2].

One of 22 directions of Customs Blueprints is post-clearance audit, which includes the promotion of international trade by establishing a balance between the simplification of trade procedures, on the one hand, and ensuring effective customs control and security on the other.

According to Customs Blueprints there are some objective conditions for the implementation of post-clearance audit:

1. Development of a comprehensive legal basis which gives customs officers the necessary powers to carry out audit/post-clearance controls efficiently and effectively.

2. Development of an organizational structure which enables auditors and their managers to carry out their duties with the maximum efficiency and effectiveness.

3. Development of an audit management system which ensures efficient, quality-controlled audits using appropriate methods and establishes an operational quality assurance program ensuring that standards of an acceptable quality are being applied to audit activity.

4. Development of a training strategy to ensure that auditors and managers have all the necessary knowledge and skills to plan and implement their duties.

5. Development of a national audit planning policy with planned short-term and long-term controls, in accordance with priorities based on risk analysis and risk assessment [2].

Simultaneously documents include maintaining and enhancing the safety features of the products supplying, which includes promotion of international trade. Thus, to the Customs arises the problem of simplifying customs procedures, on the one hand, and ensuring an effective customs control and security on the other. It can be solved by introducing of transparent and similar customs control procedures.

Thereby modern conditions of foreign trade require so-called post-clearance control. To clearly understand the essence of this concept, it is necessary first of all to consider the characteristics of its using in domestic and international legislation. Data obtained from the analysis of existing normative legal acts, which refers to concepts identical to nature of post-clearance controls are shown in Table 1.

**Table 1. The essence of post-clearance control under the laws of Ukraine and international acts**

Information source		The form in which a concept identical to essence of post-clearance control is mentioned
1		2
Legislative acts of Ukraine	Customs Code of Ukraine [3]	Documentary verification - a set of measures by which the customs authorities are convinced in the correctness of filling of the customs declarations, declarations of customs value and the reliability of these data in them, legality import (transfer) of goods into the customs territory of Ukraine or the territory of free customs zone, export (transfer) of goods from the customs territory of Ukraine or outside the territory of free customs zone, as well as timeliness, accuracy, completeness, calculation and payment of customs duties.
	Concept of reforming the activity of customs service of Ukraine for 2011-2015 "Facing the people" [4]	Conducted internal and external analysis of the Customs Service of Ukraine indicates the presence of significant resources for efficiency, stability and reliability of the implementation of customs. They can be used by applying the latest technologies of information customs control on the basis of analysis of the risk situations, centralized customs clearance and extensive implementation of post-audit control.
International documents	Kyoto Convention [1]	"Audit-based control" means measures by which the Customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial data held by persons concerned.
	Community Customs Code [5]	The customs authorities may, after releasing the goods and in order to ascertain the accuracy of the particulars contained in the summary or customs declaration, inspect any documents and data relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods.
	UNCTAD Trust Fund for Trade Facilitation Negotiations Technical Note 5 «Post-clearance audit» [6]	Post-clearance audit means audit-based Customs control performed subsequent to the release of the cargo from Customs' custody. The purpose of such audits is to verify the accuracy and authenticity of declarations and covers the control of traders' commercial data, business systems, records, books.
	Customs Blueprints [2]	The aim is to develop an effective and efficient post-clearance control and audit service which allows the customs administration to implement its tasks (clearance and control of goods, revenue collection) and to facilitate trade by keeping a balance between trade facilitation and efficient customs control.
	Guidelines for post-clearance audit by World customs organization [7]	The post-clearance audit process can be defined as the structured examination of a business' relevant commercial systems, sales contracts, financial and non-financial records, physical stock and other assets as a means to measure and improve compliance.

After analyzing the data in the table it can be concluded that in domestic regulations concepts that are identical to essence of post-clearance control is nowhere clearly defined. But they contain provisions for inspections of business entities after customs clearance, which in general corresponds to essence of post-clearance control. Thus, analyses of national regulations indicate the initial level of implementation the practice of post-clearance inspections of business entities in Ukraine.

Categorical definitions of post-clearance control contained in international documents also have some differences. Notwithstanding the foregoing, the essence of all concepts is the fact that post-clearance verification is understood as a significant reduction of customs procedures during the registration and carrying out customs control through the further deepening of economic operators' check after the customs clearance of goods and vehicles. All international acts that have been analyzed are considering post-clearance control as one of the most important form of modern customs control that promotes the development of trade, because, on the one hand, it can cope with the growing amount of goods' movement, on the other – creates favorable conditions for foreign participants of trade.

The need for approximation of the customs legislation of Ukraine to the international standards, including the provisions of the Kyoto Convention regarding the implementation of post-clearance inspections require unification of this concept and its consolidation in legislative level. In the table 2 are analyzed thoughts of domestic and foreign authors on the definition and interpretation of the essence of controls after customs clearance.

**Table 2. Determination and interpretation of the essence of controls after customs clearance by various authors**

№	Author	Determination and essence of control procedures after customs clearance
1	2	3
1	Pashko P.V. [8, c. 8]	Customs post-audit control – a controlling method of economic operators by checking their accounts, records and systems.
2	Spivak I.V. [9, c. 148]	Customs post-audit – audit of the participants of foreign economic activity carried out after the completion of customs clearance.
3	Koptseva L. O. [10, c. 63]	Customs postaudit - control over the accuracy of information that are presented for customs control and customs clearance of goods and vehicles after their release for free circulation.
4	Goncharuk O.A. [11, c. 166]	Customs post audit – a system of mandatory control actions (using the methods of documentary and factual control) to verify the legitimacy, relevance, accuracy of the information provided by economic operators being checked during the customs control, as well as the legality and regularity of representatives' action in foreign economic activity.
5	Vakulchik O.M., Knishek O.O. [12, c. 52]	Post-clearance control – a system of measures, methods and techniques used by customs officials in the organization and conducting, based on audit methods, of the legality, completeness and accuracy reflection of external transactions in the accounting system and reporting, timeliness and correctness of customs duties and charges payment by businesses - subjects of foreign economic activity to the state budget.

## Continuation of the Table 2

6	Gubina I.S. [13, c. 35]	Customs post-audit is a form of customs control, which is held by the customs authorities to verify financial documents, declarations and other documents of foreign trade provided to the customs authority at the time of movement of goods and vehicles across the customs territory at any time in order to detect contraband, violations of customs regulations (eg, underpayment of customs duties by lowering customs duty, etc.), and to faster customs clearance procedures.
7	Lunyova E.P. [14, c. 7]	Customs audit is a set of interrelated activities that are carried out by the customs authorities to conduct audits of participants of foreign trade after customs clearance; businesses that are directly or indirectly related to the goods and vehicles which cross the customs border of the Russian Federation (customs brokers, customs transporters, owners of temporary storage and other legal entities and individuals), and the owners of the documents associated with this movement - to ensure compliance with legislation and international treaties, monitoring of its execution entrusted to the customs authorities.
8	Cudryavcev O.E., Solovev V.V., Soloveva I.V. [15, c. 97]	Customs audit – a form of customs control that represents a systematic process of collecting and evaluating data, which have been declared during customs clearance of the goods, in order to determine degree of compliance of this information with legislation of the Russian Federation
9	Berzan O.O. [16, c. 74]	Customs audit – a set of interrelated activities that are carried out by the customs authorities, to assess the financial activities of organizations that are related to goods crossing the customs border, to ensure compliance with legislation.
10.	Ivashova L.M., Edinak T.S., Edinak V.U. [17, c. 16]	Customs post audit – a kind of external state control exercised by special organs of state power – the customs authorities after the completion of customs control and customs clearance of outstanding items.

Analysis of the works of these authors shows that in the scientific community there is no consensus on the definition of control procedures after customs clearance. In the scientific literature used different terms: "customs post-audit control", "customs post-audit", "post-clearance control", "customs audit", etc.

Spivak I.V., Koptseva L.O., Goncharuk O.A. and other authors use the term "post-clearance audit" for defining inspections after customs clearance of goods. According to the Russian scientist Berzan O.O., fundamental difference lies in the fact that the customs audit is not aimed at controlling over movement of goods but to control over the activities of organizations that are related to goods crossing the customs border. The activity of these organizations is seen in the dynamics and assessed the prospect of their functioning in the future [16, p. 17]. In this case post-clearance audit is considered as a part of state control.

However, according to article 3 of the Law of Ukraine "On Auditing Activity" audit is the verification of accounting data and indicators of entity's financial statements to express an independent audit opinion on its reliability in all material respects and compliance with the laws of Ukraine, regulations (standards) or other rules (internal regulations of entities) according to user requirements [18]. Also, this

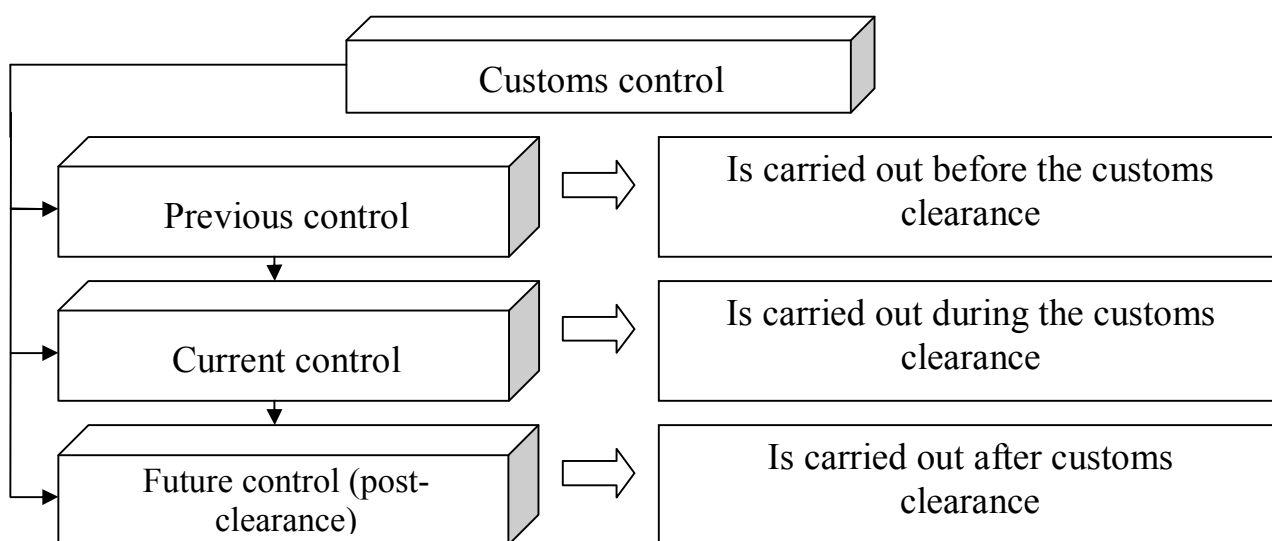
law states that audits are conducted by independent persons (auditors), audit firms, who are authorized to conduct it by economic entities.

A similar interpretation of the audit is contained in the Law of Ukraine "On Foreign Economic Activity": "audit – is an examination of public financial statements, accounting, source documents and other information on the financial and business entities in order to determine the reliability of their reports, records, its completeness and compliance with current legislation and established standards".

According to current legislation of Ukraine audit is entrepreneurial activity, independent checking of entities' accounting and reporting. Thus, customs audits carried out by the customs auditors – non-governmental agencies, is a substantive audit that occurs on equal basis with other types of audit. In terms of methodology, the customs audit is similar to checking by customs authorities after the release of goods. However, the purpose of customs audit and custom control that is carried out by the customs authorities are different [19, p. 18]. Therefore it is inappropriate to equate customs audit with part of state control exercised by the customs authorities in order to verify activities of economic entities within their jurisdiction.

In order to understand the multitude of definitions it is need to consider the concept of customs control. Customs control is a part of state financial control; it is aimed at verification of compliance with financial legislation and fiscal discipline by participants of foreign economic activity. According to the Kyoto Convention, customs control – a set of measures taken by Customs Service to ensure compliance with customs legislation [1]. In the handbook of customs terms of the World Customs Organization the term "customs control" is defined as activities that are used to secure compliance with laws and other requirements, control over the execution entrusted to the customs authorities.

Customs control can be classified according to different criteria: the nature of the control subjects, the task of control, content of control activity, the nature of controlling powers, the nature of the relationship between subject of control and controlled object. Depending on the stage at which the verification takes place, customs control divided into "previous", "current" and "future" (Fig. 1).



**Fig. 1. Classification of customs control by the stages of customs procedures**

Previous customs control is carried by customs officials through inspection and analysis of the information contained in the documents accompanying the cargo in case of its movement across the customs border of the country. For example, the customs control of operations on imports of foreign goods into the customs territory of Ukraine starts from the date of the previous declaration filing. Previous customs control is essential for the prevention of financial abuses.

At the current stage of customs controls direct customs clearance of foreign economic operations takes place. Other words the customs authorities carried out the procedures associated with fixing the results of customs control of goods and vehicles moved through the customs border of Ukraine and have legal significance for their further usage. In Ukraine, this form of customs control on the currently is dominant.

Recently, developed countries had introduced the practice of checks not only on the stages of previous and current control, but also under further (subsequent) control. This form of customs control carried out after completion of customs clearance in order to verify activities of individuals involved in foreign trade. Thus post-clearance control is a part of the customs control, and therefore it's a part of the state financial control.

However, it should be noted that the introduction of post-clearance inspections of business entities does not negate the use of the two previous forms of customs control. Because a combination of the previous, current and subsequent control allows to provide the highest effectiveness and efficiency of customs inspections. Therefore, the practice of customs should widely use all forms of control without opposing them to each other.

Article 345 of the Customs Code of Ukraine regulates the carrying out documentary checks by customs authorities. In particular, states that the customs authorities may carry out customs control through on-site documentary (scheduled or unscheduled) and off-site supervision of documentary compliance of Ukraine for state customs of:

- the correct definition of the tax base, timeliness, accuracy, completeness, of accrual and payment of customs duties;
- the validity and legitimacy of providing (receiving) benefits and exemptions;
- the accuracy of classification by UCCFEA goods for which Customs held;
- the compliance of the actual use displaced through the customs border of Ukraine goods to the declared aim of the movement and/or compliance with financial and accounting documents, reports, agreements (contracts), calculations and other documents of the company, information specified in the customs declaration, declaration of customs value, which carried out customs clearance of goods in the respective customs regime;
- the legality of movement of the goods across the customs border of Ukraine, including the importation of goods into the territory of free customs zone or export from this territory [3].

But the term "documentary verification", which is used in Article 345 of the Customs Code of Ukraine, is not fully compliant with the essence of post-clearance control. The documentary verification is a method of customs control, but it's not a



form of post-clearance control. Confirmation of this conclusion is contained in the Kyoto Convention, according to which the methods of customs control over goods movements are:

1. Documentary verification – provides information on the movement of goods, which is used for determining conformity of transactions to risk profile. Providing documents before the actual import (export) allows carrying out pre-selection for verification, to determine items that require special attention, as well as helps the employee of the customs authority in decision to release the goods to their actual entry into the country. Monitoring is carried out by checking: documents submitted before the filing of the customs declaration, customs declaration and accompanying documents, records and other documents in accordance with simplified procedures.

2. Physical examination – conducted to determine actual compliance with the product characteristics, vehicle that are provided in the documentation. Physical examination should be conducted as soon as possible. The level and nature of the physical examination are based on available information obtained in the course of the documentary checks.

3. Identification of products used for the control of goods and vehicles which are declared or staying in a certain custom mode (transit, temporary admission, customs warehouse, processing of goods in the customs territory, etc.) and are exempted from duties and taxes. Identification is carried out by applying seals, stamps, printing of digital labels, detailed description about products, sampling and samples, presentation of goods' plans, drawings or pictures.

4. Customs control of individuals – is verifying of persons, baggage, and if necessary – personal inspection, which is regarded as an exceptional form of customs control [1].

During the conducting of scheduled or unscheduled field inspections customs authorities, in the presence of exceptional circumstances, can conduct also physical examination and identification. Regardless of the control methods that will be used for inspection, measures aimed at the verification of accounting data, reports and other documents after passing the procedure for customs clearance will be called post-clearance control. Thus documenting verification is one of the instruments of forms of customs control based on a post-audit realization.

Considering the above, for displaying the verification process by the customs authorities of foreign economic activity after the passage of clearance at the border, in our opinion, it is appropriate to use the term "post-clearance control". Feature of such control is the application of audit techniques in the verification process, such as the assessment of strengths and weaknesses of traders' commercial activity, the implementation of financial analysis, etc.

Post-clearance control based on audit methodology allows to conduct financial analysis based on accounting and tax reporting, and obtain the most informative indicators that will give objective and accurate picture of the financial situation in the organization, its gains and losses, changes in the assets and liabilities, in settlements with debtors and creditors, based on which can be evaluated the possibility of continuous function and fulfill the obligation to pay customs duties, fines and penalties.

So post-clearance control – is activities of customs authorities to verify the validity and compliance with reflection by business entity in the accounting and reporting of business and financial transactions related to foreign economic activity, using the methods of audit. Therefore, we consider appropriate to add this definition of post-clearance control to the Customs Code of Ukraine.

It can be concluded that in recent years the process of implementing inspection after customs clearance of goods has improved. In particular, enhanced legal framework formed the appropriate verification agencies that already show the proper result of customs revenues from the post-clearance audit. But for introducing a system of effective audit requires not only to make legislative changes, but also to bring this idea to the public for a clear understanding that such arrangements will withdraw from the shadow trade imports and eliminate the possibility of obtaining illegal profits [8, p. 11]. Practical implementation of the above requires:

- development of scientific theory of post-clearance audit, involving experts from the customs affairs, public administration, government regulation and control foreign economic activity, etc;
- implementation of foreign experience in carrying out post-clearance audit in Ukraine;
- standardization of forms and methods of control activities carried out by customs authorities;
- promotion more effective customs control in each customs post without increasing the administrative or enforcement costs through harmonized approach to post-clearance control.

**Conclusions.** Customs administrations, especially those in the developing world, confront significant challenges in balancing their responsibilities for collecting revenue, protecting of national borders and trade facilitation. Consequently, customs administrations increasingly look to post-clearance control as a means of implementing of customs controls and allocating scarce resources more effectively.

The successful implementation of post-clearance audit in Ukraine will help to strengthen enforcement and to provide the necessary support and confidence in the implementation of trade facilitating measures and simplified procedures in cargo processing and valuation specifically.

The process of post-clearance control implementation in Ukraine is at the primary level, as evidenced by imperfection of regulatory framework and the lack of clear methodology for conducting this form of checks. The multiplicity of views on the economic substance of post-clearance inspection leads to distorted determination of this concept. Effective program of design and implementation demand a range of responses – in legislation, in institutional reform, in building the capacity of customs and other relevant agents, and in monitoring of project progress. The program may also face financial and human resource challenges that may dictate the initial scope of the program; developing country customs administrations should scale their efforts appropriately.

Obtained results and conclusions can be used for further research in delineated field, taken into account in the integrated border management and used in the formation of post-clearance control and for the development of specific measures.

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