

# GUARANTEES FOR THE PROTECTION OF THE RIGHTS OF LEGAL ENTITIES WHEN DETERMINING THE COUNTRY OF ORIGIN OF GOODS BY CUSTOMS AUTHORITIES

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**Annotation.** The aim of the work is to study theoretical and practical problems of guarantees for the protection of the rights of legal entities when determining the country of origin of goods by customs authorities within the framework of administrative and legal regulation. The methodological basis of the article is a set of methods, such as formal-dogmatic, systemic, semantic, epistemological, and axiological, comparative-legal, systemic-structural, and also includes methodology as a set of both methods and techniques of scientific knowledge. It has been established that one of the legal mechanisms for guaranteeing the protection of the rights of legal entities regarding the determination of the country of origin of goods is the appeal of decisions of the customs authority in administrative courts, and case law is presented. It was established as a result of this study that the customs authority checks documents confirming the country of origin of the goods, namely: certificates of origin of the goods; certified declarations of origin of the goods; declarations of origin of the goods, certificate of regional name of the goods. It is indicated that through customs control, customs authorities check the authenticity of documents to determine the country of origin of the goods, and in case of non-compliance, they may carry out additional verification. It is noted that based on the determined country of origin of the goods, the customs authority applies appropriate non-tariff regulation measures, prohibitions or restrictions on the movement of goods across the customs border of Ukraine. It has been established that determining the country of origin is an important component of customs control for the correct calculation of customs payments when moving goods into the customs territory of Ukraine. It was found that the digitalization of procedures for determining the country of origin of goods by customs authorities is an important stage in the modernization of public administration in the customs sector. It is concluded that the transparency of the procedures for determining the country of origin of goods and uniform rules for all participants in foreign economic activity create equal conditions for competition between legal entities when moving goods across the customs border of Ukraine. It is argued that the application of effective procedures for determining the country of origin of goods by customs authorities is one of the mechanisms for protecting the rights of legal entities in customs law, as it ensures objectivity in the calculation of customs duties and non-tariff restrictions, helps to avoid discrimination and guarantees equal conditions for foreign economic entities when moving goods across the customs border in the context of the implementation of European integration customs standards.

**Key words:** customs procedures, protection of rights, country of origin of goods, subjects of customs law, legal personality, digitization, administrative and legal regulation.

## 1. Introduction.

Compliance with procedures for determining the country of origin of goods is crucial within the framework of approximating Ukrainian customs legislation to EU law, which is undertaken to fulfill Ukraine's obligations under the Association Agreement between Ukraine and the EU [1], in accordance with Annex XV to this Agreement and taking into account the need to ensure compliance with the criteria of a candidate country for accession to the EU. The effectiveness of legal regulation of customs relations depends on the effective use of legal tools for determining and controlling the

country of origin of goods moving across the customs border of Ukraine. It is determined by the influence of some factors and risks [2], in particular, the conditions of martial law in Ukraine.

Determining the country of origin of goods is an important part of the competence of customs authorities as subjects of customs law, since there are several measures that put countries exporting goods to our country in an unequal position, such as quotas, preferential tariffs, anti-dumping and countervailing measures, etc [3]. In addition, the tasks of the National Revenue Strategy until 2030 provide for further steps on the harmonization of Ukrainian customs legislation with EU legislation, support and cooperation with business, development of international customs cooperation; institutional development of customs authorities, development of IT and provision of technical means of customs control [4], some aspects also cover procedures for determining the country of origin of goods.

## 2. Analysis of scientific publications.

Certain issues of the problems of legal regulation of customs procedures and customs control, the legal personality of customs authorities, were studied by scientists such as Yu.P. Bytyak, V.M. Garashchuk, A.D. Voitseshchuk, E.V. Dodin, O.M. Shevchuk [5], M.G. Shulga, and others. Thus, E.P. Bondarenko studied the issues of customs control in the context of determining the country of origin of goods [2], O. Drofich drew attention to individual procedures for making decisions by customs authorities regarding the determination of the country of origin of goods [3], N.A. Koval studied the rules for determining the non-preferential origin of goods in accordance with the Customs Code of the European Union [6], O. M. Shevchuk clarified the customs and legal aspects of determining the country of origin of medicines [7], etc. However, a number of debatable issues regarding guarantees for the protection of the rights of legal entities when determining the country of origin of goods by customs authorities remain unresolved. The above indicates the relevance of the chosen topic.

**3. The purpose of this work** is to identify theoretical and practical problems of compliance with guarantees for the protection of the rights of legal entities when determining the country of origin of goods by customs authorities within the framework of administrative and legal regulation, to characterize the issues of debate among scientists, and propose directions for improving national legislation. The methodological basis of the article is a set of methods, such as formal-dogmatic, systemic, semantic, epistemological, and axiological, comparative-legal, systemic-structural, and also includes methodology as a set of both methods and techniques of scientific knowledge.

## 4. Review and discussion.

In the modern world trade system, there are two types of rules for determining the country of origin of goods, depending on the trade regime that exists between the importing and exporting parties: preferential and non-preferential [5, p. 38]. In accordance with Part Two of Article 43 of the Customs Code of Ukraine, the country of origin of the goods is declared (declared) to the customs authority by indicating its name and information about the documents confirming the origin of the goods in the customs declaration. The country of origin of the goods is considered to be the country in which the goods were completely produced or sufficiently processed (part 2 of Article 36) [8]. The Customs Code of Ukraine does not provide for the term legal entities. This legislative act provides for the term enterprise (clause 38 of part 1 of article 4). An enterprise is any legal entity, as well as an individual entrepreneur [8].

It should be noted that the rules for determining the country of origin of goods establish a consultation procedure between enterprises and customs authorities if the customs authorities identify sufficient grounds for reasonable doubt in the reliability of the information submitted by the enterprise on the country of origin of the goods [3]. Correct determination of the country of origin of goods is necessary for taxation of goods moving across the customs border of Ukraine, application of non-tariff regulation measures of foreign economic activity to them, prohibitions and/or restrictions

on movement across the customs border of Ukraine, as well as to ensure the accounting of these goods in foreign trade statistics (Part 1, Article 36 of the Customs Code of Ukraine) [8]. Documents confirming the country of origin of the goods are a certificate of origin of the goods, a certified declaration of origin of the goods, a declaration of origin of the goods, or a certificate of regional name of the goods (Part 1 of Article 43 of the Civil Code of Ukraine) [8].

On November 10, 2023, the Cabinet of Ministers of Ukraine adopted a resolution aimed at bringing the procedure for determining the country of origin of goods into line with the standards of the European Union Customs Code and free trade agreements [9]. This resolution of the Cabinet of Ministers of Ukraine (1) improves the standardization of the procedure for verifying certificates; (2) defines clear grounds for canceling certificates; (3) improves the procedure for informing the customs authority of the country of import of goods. In the first case, a standardized procedure for verifying certificates and declarations has been introduced at the initiative of customs authorities. This will contribute to more effective control and compliance with requirements regarding the origin of goods. In the second case, clear criteria have been defined regarding the cancellation of certificates containing unreliable data [9]. This will facilitate the detection of violations and increase the level of reliability of certification documents. In the case of improving the procedure for informing customs authorities when determining the country of origin of goods, the resolution of the Cabinet of Ministers of Ukraine provides for a clear procedure for informing about the results of verification by the customs authority of the country of import of goods. This information will be transmitted to the relevant competent authority (organization), the manufacturer and/or exporter of the goods, indicating the violations identified [9].

There is ambiguous case law on the issue of confirming the country of origin of goods. We present the position of the Supreme Court regarding the confirmation of the origin of goods in the materials of the court case No. 260/2805/20. Let us point out that international law defines a clear algorithm of actions for the customs authority in the event of doubts about the validity of documents on the origin of goods or the reliability of information about the country of origin of goods. Thus, in the materials of court case No. 260/2805/20 regarding confirmation of the origin of goods (from the European Union or Ukraine) and establishing the declarant's right to customs clearance of goods imported at a preferential import duty rate [10].

In particular, the payer appealed to the court the tax notice-decision adopted by the customs based on the results of a documentary on-site inspection with a conclusion on the groundless application of the benefit and exemption from taxation under preference «410» and payment of import duty in accordance with the reduced import duty rate (2.5%) determined for goods imported from the territory of the European Union (which have preferential origin), as well as for calculating the amount of underpayment of tax liabilities for import duty and value added tax [10]. The customs authority was convinced that the imported goods could not be considered as originating in the European Union based on the provisions of Protocol I to the "Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" [1].

The Supreme Court indicated that payers defined by Article 272 of the Customs Code of Ukraine are obliged to pay import duty when importing goods (which are subject to taxation in accordance with Part One of Article 277 of the Customs Code of Ukraine) into the customs territory of Ukraine are required to pay import duty. The amount of value-added tax depends on the amount of duty payable and is included in the price of the goods [10]. According to Article 33 of Protocol I to the "Association Agreement between Ukraine,"... it is the results of the verification of the origin of the goods that are the basis for refusing to grant the payer the right to preferences [1]. The Supreme Court believes that the specified algorithm of actions of the control body, at the request of which documents on the origin of goods are checked, does not establish the possibility of analyzing additional evidence (documents) provided by the declarant to confirm information about the declared country of origin of the goods in accordance with parts eight and nine of Article 43 of the Customs Code of Ukraine.

Therefore, in the opinion of the Supreme Court, the customs authority is not empowered to act at its own discretion in the specified circumstances and conduct an additional verification of documents on the origin of the goods after the competent authority receives the results of such verification regarding the country of origin of the goods declared by the declarant [10].

Guarantees of protection of rights and freedoms of legal entities are determined through the formation of legal norms that regulate them [11, p.155]. One of the directions of improvement of customs legislation is the further implementation of digitalization [12, p.355], [13], [14], including when determining the country of origin of goods by customs authorities. According to the World Customs Organization, the overall share of electronic customs declarations in the European region exceeds 90%. It is worth noting that in EU countries, customs clearance takes no more than five minutes in 63% of cases and exceeds one hour in 9% of cases. Such results cannot be achieved without significant progress in customs digitalization and customs risk management [15, p. 222]. Digitalization of procedures for determining the country of origin of goods by customs authorities involves the use of electronic systems for submitting and processing information, automation of document verification processes (e.g., certificates of origin), and the use of electronic databases to collate information, which simplifies and speeds up customs procedures. This makes the process more transparent and efficient, and also helps avoid corruption risks when carrying out customs procedures.

The digitalization of procedures for determining the country of origin of goods by customs authorities is an important step in the modernization of public administration in the customs sector. However, there are certain challenges and threats that need to be addressed at the legislative level. However, there are certain challenges and threats that need to be addressed at the legislative level. The main problems include insufficient digital literacy, imperfect cybersecurity measures, and institutional problems. It is also necessary to pay attention to the draft of the new Customs Code of Ukraine; among the main innovations is the introduction of unified rules and procedures for the movement of goods across the customs border, which covers customs procedures, control, supervision, and determination of the status of goods. The draft of the new Customs Code of Ukraine obliges the use of electronic systems for data exchange, declarations, and information storage, and the "single window" environment becomes the central tool for interaction between customs authorities, business, and other competent structures. The draft of the new Customs Code of Ukraine, which is based on the EU Customs Code, will create a legislative framework for all customs IT systems that Ukraine will need to have at the time of accession to the EU [16].

## 5. Conclusions.

Guarantees for the protection of the rights of legal entities when determining the country of origin of goods by customs authorities include the right to submit documents confirming the country of origin, the possibility of appealing decisions of customs authorities, as well as the need for customs authorities to comply with procedures established by customs legislation. Guarantees of protection of the rights of legal entities when determining the country of origin of goods by customs authorities are ensured by clearly regulating the procedures for determining, verification, and appeal of decisions in administrative courts, as well as the establishment of legal liability for violation of the rights of participants in foreign economic activity. Digitalization of procedures for determining the country of origin of goods by customs authorities is an important stage in the modernization of public administration in the customs sector.

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