

THE CUSTOMS REPRESENTATIVE AND THEIR ROLE IN INTERNATIONAL TRADE

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Abstract

According to researchers, the dedication of a whole spectrum of customs representatives' activity emphasizes the importance of this type of intermediary services in the Republic of Moldova, but also in the states where international trade in goods is practiced. Therefore, in accordance with the legislation, a customs representative is a legal entity, officially registered on the territory of a state, which acts at the request of the client (declarant).

According to researchers, the legal status of the customs representative is different from that of the declarant. Therefore, it is not recommended to state that both have the same legal status. The representative acts as a contractual intermediary and cannot refuse this task.

As a legal entity, the customs representative is subject to general rules on contracts, tax law (tax payment obligations), as well as other laws regulating the interaction between participants in international trade, customs authorities and customs representatives.

Although the legislation contains a large volume of regulations, researchers point out problems related to their correct interpretation and application in practice. The activity of the customs representative must meet both legal norms and modern customer requirements. This directly influences the development of the institution in the current context of the state and society.

Customs regulations are dynamic, and the legislation of countries changes from year to year. The customs representative simplifies the activity of participants in foreign trade, taking responsibility for essential tasks in the customs clearance process, such as classifying goods, carrying out operations with goods subject to prohibitions and/or restrictions, and providing guidance in carrying out banking operations through letters of credit, etc.

In the European Union, the definition of “customs representative” is provided in Article 5, Section 1 of the European Union Customs Code (EU CC), which provides that any person interacting with customs authorities has the right to appoint a representative for such interactions.

The exact wording is as follows: “customs representative – any person appointed by another person to carry out actions and formalities required by customs legislation in his relations with customs authorities”.

Given that keeping a customs operations specialist on a permanent basis is economically inefficient for most economic operators, the institution of customs agents was created in the European Union to represent the interests of interested parties. The customs representative can be both a natural person and a legal entity.

Keywords: customs representative, customs authority, customs procedure, customs operations, foreign trade.

1. Introduction

2. Materials and methods

An important aspect is that the customs representative does not have the right, by law, to refuse to conclude a contract with the client (declarant), except in cases where:

The client requests illegal actions;

The representative should act in areas that are not within his competence.

In this regard, no rules other than those established by law should be applied between the parties involved: customs representative - customs authority.

Although the term “customs broker” is no longer used in modern legal practice with the adoption of the Customs Code of 2024 (2. Customs Code of the Republic of Moldova, 95/29.07.2021), it still frequently appears in the current language of those involved in foreign economic activity.

According to researchers, the legal status of the customs representative is different from that of the declarant. Therefore, it is not recommended to state that both have the same legal status. The representative acts as a contractual intermediary and cannot refuse this task.

As a legal entity, the customs representative falls under the general rules on contracts, tax law (tax payment obligations), as well as other laws regulating the interaction between participants in international trade, customs authorities and customs representatives (3. Luntraru, L. 2022, p. 124).

Although the legislation contains a large volume of regulations (4. H.D. 92/28.02.2023), researchers point out problems related to their correct interpretation and application in practice. The activity of the customs representative must meet both legal norms and modern customer requirements. This directly influences the development of the institution in the current context of the state and society.

According to T.A. Ason, the institution of the customs representative (5. Popondopulo, V.F. 2015, p. 126), is indispensable for declarants, providing them with support in customs procedures. He compares their efficiency with other intermediary services (human resources, customs procedures, outsourcing), which allow saving time and effort. Customs representatives help deliver goods across the customs border in a simplified manner, complying with all legal requirements. Thus, the customs representative plays the role of an assistant in foreign trade activity.

To better understand the concept of "customs representative", it is necessary to analyze the goals, tasks, functions and rights of this type of intermediary in foreign trade relations.

The main goals and tasks of customs representatives are to provide comprehensive support to participants in foreign economic activity in carrying out customs procedures:

1. The representative (legal entity) has signed a contract on insurance of risks of damage or loss of goods in a timely manner;

2. The fulfillment of obligations to the customs authorities is ensured;
3. There are no outstanding debts of the representative towards the payment of customs duties, fines or penalties at the time of filing the application;
4. All requirements expressly established in the regulatory acts of the Member States are complied with.

To register as a customs representative, it is necessary to submit an application to the Customs Service. When submitting the application, the following mandatory elements must be included:

1. Title of the document;
2. Place and date of signing;
3. Text of the application;
4. Legal information about the company (including from the legal sheet);
5. Field of activity;
6. Data on the guarantees of customs procedures;
7. Data on the insurance contract;
8. Signature of the authorized representative.

In accordance with the legislation of the Republic of Moldova, a customs broker is a legal entity, registered in accordance with the legislation, which holds a license for customs broker activity issued by the Public Services Agency and which declares goods, presents them for customs clearance, and performs other customs operations.

The Customs Service verifies that the conditions for using the customs information system are met by the employee of the customs broker if his authorization as a user of the customs information system is requested. The conditions for using the customs information system and the procedure for verifying them are established by the Customs Service.

The license for customs broker activity is issued if the person cumulatively meets the following conditions:

- complies with the general conditions for issuing permissive acts, established by Law No. 160/2011 on the regulation of entrepreneurial activity by authorization;
- has a technical and material base that allows carrying out customs broker activity;
- has information and communication equipment necessary for using the customs information system;
- has not committed systematic violations of customs and/or tax legislation that harm the state budget;
- has at least one person employed who will carry out customs formalities.

Compliance with the conditions for issuing a license for customs broker activity is verified by the Public Services Agency.

The need for the institution of a customs representative has arisen since the formation of statehood. With the emergence of the customs system, there were people who provided support to traders in exchange for a fee.

Over time, as foreign trade developed, specialized companies were created. Today, it is impossible to imagine the Russian customs system without this institution, due to the growing demand for customs brokerage services (6. Popondopulo, V.F. 2015, p. 127).

Even though there are problems, the institution is developing, and international cooperation plays an important role in making it more efficient.

In the current conditions of global integration, conducting foreign economic activities (foreign trade) requires a high level of competence in the functioning of the world market. In order to economically efficiently transport a certain cargo from the point

of departure to the point of destination, it is necessary to draw up a correct package of documents. In this context, the issue of developing the institution of a customs representative is becoming more and more relevant.

3. Results and discussions

Customs regulations are dynamic, and the legislation of countries changes from year to year. The customs representative simplifies the work of participants in foreign trade, taking responsibility for essential tasks in the customs clearance process, such as: classifying goods, carrying out operations with goods subject to prohibitions and/or restrictions, guidance in carrying out banking operations by letter of credit, etc.

In order to improve the conditions for integration, states are analyzing the processes related to customs activity and foreign trade in general. Let us analyze the experience of one of the most advanced customs services in the world – the US Customs and Border Protection.

First of all, it should be noted that the USA is a leader in the field of digitalization. The entire customs clearance management system is built on the principle of creating a complete electronic image of the consignment of goods. All data related to transportation are reflected in the information system. The creation of this electronic image is facilitated by transport companies, banks, as well as customs representatives, who are in great demand in the USA.

On the official website of the US Customs Department, a foreign trade participant, being in a certain port, can find and select from the register of registered customs representatives a company for further cooperation.

Thus, a customs representative (called a customs broker in the USA) is a legal entity or individual who has passed certain exams organized by the US Customs Service Secretariat and who, as a result, has obtained a license to carry out customs services activities, such as assessing the value of goods, paying calculated customs duties, obtaining authorization documents from other control authorities and presenting these documents at border crossing points.

Thus, a mandatory condition for the functioning of the institution of customs representatives in the USA is obtaining a state license, which is assigned a serial number. Only US citizens who have reached the age of 18 and are not employees of federal authorities can apply for such a license. According to the official website of the Customs Department within the US Department of Homeland Security (U.S. Customs and Border Protection), the examination takes place in 48 locations throughout the country (7. Turtureanu, A. Galați, 2018, p. 96).

Based on the analysis of the legislation in force in the USA, the activity of the customs representative can be presented in terms of the conditions necessary for obtaining the appropriate status. The status of customs representatives is established by the Tariff Act of 1930, which specifies that they are authorized to carry out customs operations on behalf of other persons. Currently, there are over 14,000 active customs representatives in the USA.

In the European Union (8. Regulation (EU) 952/2013 of the European Parliament and of the Council, on the European Union Customs Code (EUCC)), the definition of “customs representative” is provided in Article 5, Section 1 of the European Union Customs Code (EU CC), which provides that any person interacting with the customs authorities has the right to appoint a representative for such interactions.

The exact wording is as follows: “customs representative – any person appointed by another person to carry out actions and formalities required by customs legislation in his relations with the customs authorities”.

Given that keeping a customs specialist on a permanent basis is economically inefficient for most economic operators, the institution of customs agents was created in the European Union to represent the interests of interested parties. A customs representative can be both a natural person and a legal entity.

Representation before the customs authorities of the European Union can be direct or indirect. When the agent acts in the name and on behalf of the principal, this is called direct representation, and when he acts in his own name, but on behalf of the principal – it is indirect representation.

4. Conclusions

The EU Customs Code does not provide for specific requirements for customs specialists, which means that responsibility for the qualification of personnel lies entirely with the management of the customs agency. Thus, the management is directly interested in improving the quality of the services provided. However, some EU Member States have regulated this issue at the national level, establishing qualification requirements for customs specialists.

The obligation to pay customs duties shall lie with the declarant, regardless of whether the payment is made from his own funds or from other sources.

In the case of direct representation, the responsibility before the customs authorities for the actions of the representative shall lie with the interested party, who may claim compensation from the representative in the event of improper provision of services.

However, the obligation to pay customs duties may also lie with the customs representative if he has also acted as a guarantor of the payment of duties, assuming joint and several liability with the interested party for the performance of the obligations.

In the case of indirect representation, the representative shall be fully liable to the customs authority, both for the declaration of the goods and for the payment of customs duties, including any additional duties established following the post-delivery control. In this case, the interested party shall be jointly and severally liable with the representative for the performance of the payment obligation.

There is no minimum limit imposed in the EU on the guarantees that a customs agency must provide to the authorities in order to obtain the right to guarantee the payment of customs duties. In the context of fierce competition in the customs services market, the value of guarantees is automatically set at national or regional level. It is important to note that customs agencies risk their own assets by providing guarantees on behalf of their clients vis-à-vis the customs authorities. For this reason, they choose their clients based on their creditworthiness and financial soundness, since in the event of non-payment, the EU customs authorities can seize the agency's assets to cover the debt. Therefore, if a client is considered unreliable, the agency may refuse to provide the guarantee, which means that the client cannot, for example, initiate a transit procedure or obtain a deferral of payment of customs duties.

Such a policy stimulates clients to fulfill their obligations to customs agencies and customs authorities in good faith regarding the reimbursement of customs duties paid on their behalf.

Analyzing the European experience of the institution of the customs representative, it is worth paying special attention to the importance of professional intermediary activity, using the example of one of the most important EU countries, namely: the Federal Republic of Germany.

A customs broker in Germany is a person authorized by an importer or exporter (as a rule, an enterprise) to carry out customs operations. A customs agent can be any person who has completed the professional training "Ausbildung", which lasts three years. Subsequently, the specialist obtains the Authorized Economic Operator (AEO) certificate, which recognizes him as an authorized economic operator, or the customs agent certificate.

It is important to note that the holders of these certificates have been verified by the customs authorities and, therefore, benefit from the possibility of simplifying certain audit and registration procedures, which allows them to carry out customs formalities more quickly.

In conclusion, it can be said that the customs representative is an important link in foreign trade. And the unification of the application of the representation system on the international channel can bring benefits to the customs procedure applied with the aim of streamlining the passage of goods across the customs border:

Among the relevant factors can be mentioned:

- participation of customs representatives in the creation of a single electronic system for tracking the delivery of cargo lots;
- approach to the distribution of responsibilities between the business environment and the state;
- evaluation of the activity of customs representative associations.

References:

1. Roșca, N., Baeș, S., *Business Law*, Chișinău: Edit. CE USM, 2021, p. 96.
2. Customs Code of the Republic of Moldova, no. 95 of 29.07.2021, Official Gazette of the Republic of Moldova, no. 164-168/468.
3. Lunțaru, L., B., *Business Law*, Bucharest: Editura Universul Juridic, 2022, p. 124.
4. H.D. 92/28.02.2023, on the implementation of the Customs Code no. 95/2021 Customs Code of the Republic of Moldova.
5. Popondopulo, V.F. *Commercial (entrepreneurial) law*, Sankt Petersburg: Legal Center Press, 2015, p. 126.
6. Popondopulo, V.F. *Commercial (Entrepreneurial) Law*, Sankt Petersburg: Legal Center Press, 2015, p. 127.
7. Turtureanu, A., Customs as an instrument of economic policy, in: International Scientific Symposium "Challenges in the global economy", Galați, 2018, p. 96.
8. Regulation (EU) No. 952/2013 of the European Parliament and of the Council, on the European Union Customs Code (EUCC).