

діяльністю. Безумовно, закріплення цієї норми сприяє реалізації права на підприємницьку діяльність і вільне її здійснення на всій території України.

За вчинення правопорушень, пов'язаних з провадженням митної брокерської діяльності, митний брокер несе відповідальність, встановлену МКУ та іншими законами України.

Ч. 3 статті 416 Митного кодексу України визначає, що митний брокер несе відповідальність за вчинення правопорушень, пов'язаних із провадженням митної брокерської діяльності. Правопорушення, пов'язані з провадженням митної брокерської діяльності, тягнуть за собою кримінальну та адміністративну відповідальність. Митний брокер за умови вчинення порушення митних правил, передбачених Главою 68 Митного кодексу України, притягається до адміністративної відповідальності згідно з Митним кодексом України.

Відповідно до статті 417 МКУ «Правове регулювання взаємовідносин митного брокера з особою, інтереси якої він представляє» взаємовідносини митного брокера з особою, яку він представляє, визначаються відповідним договором.

На практиці між митним брокером та суб'єктом зовнішньоекономічної діяльності (громадянином) договірні відносини виникають на підставі договору доручення (глава 68 Цивільного кодексу України).

За договором доручення одна сторона (повірений) зобов'язується вчинити від імені та за рахунок другої сторони (довірителя) певні юридичні дії. Правочин, вчинений повіреним, створює, змінює, припиняє цивільні права та обов'язки довірителя. Договором доручення може бути встановлено виключне право повіреного на вчинення від імені та за рахунок довірителя всіх або частини юридичних дій, передбачених договором.

У договорі може бути встановлено строк дії такого

доручення та (або) територія, в межах якої є чинним виключне право повіреного (стаття 1000 Цивільного кодексу України).

Договір доручення є різновидом договору про надання послуг. Сторонами в договорі доручення виступають довіритель та повірений. Митний брокер може укласти договір доручення з будь-яким власником (володільцем) вантажу, який до нього звернеться, за винятком випадків, коли є достатні підстави вважати, що дія чи бездіяльність такого власника (володільця) є протиправною і тягне за собою кримінальну відповідальність або відповідальність, передбачену Митним кодексом України.

У договорі доручення визначаються права та обов'язки сторін. Митний брокер виконує обов'язки та несе відповідальність згідно з укладеним договором.

Митний брокер повинен зберігати всю документацію, пов'язану зі своєю діяльністю, протягом терміну, встановленого законодавством України. Спори між митним брокером та власником (володільцем) вантажу вирішуються відповідно до чинного законодавства України.

Висновки. Наявність професійно-орієнтованих ліцензованих організацій – митних брокерів – необхідна умова впровадження в практику митної діяльності прогресивних форм здійснення митного оформлення та контролю, підвищення гарантій надходження податків та зборів до доходної частини державного бюджету, створення підґрунтя для співпраці бізнесу та митних органів. Закріплення правового статусу митного брокера у нормах митного права має важливе значення для реалізації прав митного брокера як суб'єкта господарювання, з одного боку, та важного виконання своєї основної функції – декларування, з іншого. Це сприятиме швидкому проходженню митних формальностей, створить умови для розвитку ЗЕД та забезпечить правопорядок у митній царині.

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GENERAL DESCRIPTION OF LEGAL STATUS OF CUSTOMS BROKER IN MODERN CUSTOMS LEGISLATION

ЗАГАЛЬНА ХАРАКТЕРИСТИКА ПРАВОВОГО СТАТУСУ МИТНОГО БРОКЕРА В СУЧАСНОМУ МИТНОМУ ЗАКОНОДАВСТВІ

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The article deals with the general characteristics of a modern customs law, which defines the legal status and a customs broker. The author analyzes the rules of the Customs Code, defines innovation in the legal support of a customs broker.

Key words: customs broker, customs legal, legal status.

У статті розглядаються питання загальної характеристики сучасного митного законодавства, що визначає правовий статус та діяльність митного брокера. Автор аналізує норми Митного кодексу України, визначає новачки в правовому забезпеченні діяльності митного брокера.

Ключові слова: митний брокер, митні правовідносини, правовий статус.

В статье рассматриваются вопросы общей характеристики современного таможенного законодательства, которое определяет правовой статус и деятельность таможенного брокера. Автор анализирует нормы Таможенного кодекса Украины, определяет новации в правовом обеспечении деятельности таможенного брокера.

Ключевые слова: таможенный брокер, таможенные правоотношения, правовой статус.

Statement of the problem. Entry into force June 1, 2012 a new version of the Customs Code of Ukraine (hereinafter – ISU) introduced new rules for the activities of customs agents. Customs broker, as special participant customs relations that ensures the implementation of customs formalities, has a special interest in the proper legal regulation of relations with his participation. In addition, the introduction of information technology, new standards of customs, fast and convenient customs clearance formalities mainly depends on the customs broker.

Therefore, the legal status of a customs broker, legal support of its activities is relevant and requires further investigation.

Analysis of recent research and publications. The issue of legal support of the customs broker at the time studied in the works of E. Dodin, I.V. Bezkorovayniy, A.V. Mazur, D. Prymachenko, V.V.Prokopenko and other scientists. However, updating the customs legislation, the need for further studies as a customs broker in the field of customs, characteristics of relations with the customs broker requires further research.

The aim of the article is to determine the legal status of a customs broker. For this purpose it is necessary to solve the following problems: 1) analysis of customs legislation in order to determine the legal status of a customs broker, 2) establishment of the legal provision of customs broker, and 3) the definition of innovation and problematic aspects of customs broker under the new customs legislation.

The main material. In the process of customs procedures, customs brokers are intermediaries that help foreign entity of all customs formalities to undergo and successfully to clear the goods.

Customs brokerage – is entrepreneurship mediation, which aims to declare goods and vehicles and providing process of customs formalities on behalf of the owner of goods or persons authorized by it.

Customs broker – a company that provides services for the declaration of goods, commercial vehicles crossing the customs border of Ukraine, operates under a license and entered in the Register of Customs Brokers, which is the central executive body to implement the state policy on State customs.

Article 404 defines the ISU customs brokerage activities as being conducted under permits central authority that provides implementation of state policy in the sphere of civil customs, and is subject to control by the customs authorities.

Rights customs brokerage is in accordance with Chapter 59 «Customs brokerage» ISU (Articles 416–419). General provisions for the implementation of the customs authorities control over the customs broker and licensing and registration activities are defined Chapter 58, «General provisions on the customs authorities control over certain types of companies» ISU.

Legislator in Article 416 ISU defines as a customs broker company that provides services for the declaration of goods, commercial vehicles crossing the customs border of Ukraine. And now under in paragraph 38 of Article 1 of ISU defined any entity and an individual entrepreneur. «That is in the rules of the Customs Code of Ukraine the term «enterprise» applies to business entities – both legal and natural persons. [1]

Describing the customs broker as an entity, it should be noted that it carries on business in the field of customs affairs by providing activities and services for profit. Services for declaration of goods, commercial vehicles crossing the customs border of Ukraine, lies in the implementation of actions on behalf of the owner of the goods or the person authorized by it in respect of customs formalities.

Customs broker may be the company or its separate (branch office).

Customs broker is under license. In accordance with paragraph 35 of Article 9 «Types of economic activities subject to licensing» law of Ukraine «On licensing certain types of activities» on June 1, 2000 № 1775-III Customs brokerage activities are subject to licensing. According to this law entity

that obtained a license to carry out customs brokerage, must meet licensing requirements.

Legal support licensing of customs brokers are the following documents: Cabinet of Ministers of Ukraine of 14.11.2000 № 1698 «On Approval of the List of Licensing.» The Cabinet of Ministers of Ukraine of 04.07.2001 № 756 «On approval of the list of documents attached to the application for license for a particular type of business, «State Committee of Ukraine for Regulatory Policy and Entrepreneurship of 06.03.2001 № 47» On approval of the Regulation on the provision of information in electronic form in the Unified Licensing Register.

Under Article 10 of the Law of Ukraine «On licensing certain types of activities» of 01.06.2000 № 1775-III entity that intends to conduct a certain type of business, licensed, personally or through an authorized body or person is drawn to the relevant the licensing authority an application form for a license.

The application for a license (copy, duplicate, re-) to conduct mediation customs broker added:

- Notarized copies of documents (for legal entities);
- Duly certified copy of the contract of their own activities in the amount of not less than 2,000 tax-free minimum incomes;
- A copy of the certificate of registration of a business entity or a copy of the certificate of registration in the Unified State Register of Enterprises and Organizations of Ukraine, certified by a notary or the authority which issued the original document;
- Help the Central Statistical Office on the location of the entity, natural person – entrepreneur;
- Information on the availability of bank accounts of the entity and no debt;
- A copy of the payment order to transfer funds to obtain licenses to recognize businesses customs broker in the amount established by the Cabinet of Ministers of Ukraine.

The charter entity that submits documents for a license customs broker must be specified activity «mediation customs broker» or «customs broker» or «customs brokerage».

The license application and the documents attached thereto shall be adopted by description, copy of which is issued to the applicant with a note of the date of receipt of the documents by the licensing body and the signature of the responsible person.

In accordance with Article 14 of the Law of Ukraine «On licensing certain types of activities» on June 1, 2000 № 1775-III for each branch and each separate unit of a customs broker who will adopt mediation activities on the basis of customs broker received his license, the central body of executive power, realize the state policy in the sphere of civil customs, customs broker issues (on the basis of the corresponding application licensee) certified copies of license. A certified copy of the license is a document confirming the right branch or other structural subdivision of the customs broker to carry out customs broker brokerage activities on the basis of the license. [2]

Licensing conditions for mediation customs broker approved by joint Order of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship, and the State Customs Service of Ukraine of 13.05.2009 № 89/445.

Licensing terms are set organizational and qualification requirements for mediation proceedings customs broker. Following these licensing terms is binding in the proceedings entity mediation customs broker.

Customs broker has a staff of agents for customs clearance. According to Article 418 of the Customs Code of Ukraine on customs clearance agent – a natural person – resident being in labor relations with the customs broker and directly performs on behalf of a person who is a customs broker activities associated with the presentation of goods to customs authorities, commercial vehicles and documents required for the customs control and customs clearance.

The main function of a customs broker at the time of customs formalities is the declaration of goods and means of

transport for commercial purpose to the procedure of customs clearance.

Customs clearance of goods, commercial vehicles perform customs authorities on the basis of customs declarations, to which the declarant depending on customs formalities established by ISU for customs regimes, and the declared aim of making moving needs.

Customs broker is entitled to his own name, by and on behalf of the owner (holder) of cargo to fill their own cargo customs declaration (Uniform Administrative Document) for customs clearance of goods, vehicles and other items. In the cargo customs declaration, the customs officer customs broker delivers a complete package of documents required for customs clearance.

The decision to grant a license or denial of a license is sent (issued) to the applicant in writing within three working days of the decision.

The decision to refuse to issue a license shall contain the reasons for such denial. The license fee shall be charged, the amount of which and the procedure for admission to the State Budget of Ukraine by the Cabinet of Ministers of Ukraine.

Consideration of the cancellation of a license under the Act on the finding of failure to submit within the prescribed period of notice of change of data specified in the documents attached to the application for a license and certificate of inaccurate information in the documents filed by the entity to obtain a license, Act on the Establishment of the transfer license to another legal or natural person for business, the act of non-compliance orders to eliminate violations of license conditions carried out with an invitation to the licensee or its representatives. The grounds for revocation of a license may also be a statement about the licensee's license revocation.

In case of cancellation of the license fee is set by the extradition is not refundable. Repeated application for a license may be reviewed after one year from the date of the decision to cancel the license if the causes that have led to the cancellation.

The decision to revoke the license shall take effect ten days after its adoption. This decision may be appealed in court.

The rights and obligations of the declarant of the customs broker as defined in Article 266 of the Customs Code of Ukraine. The declarant will:

- 1) make a declaration of goods, vehicles for commercial use in accordance with the procedure established by the Customs Code of Ukraine;
- 2) at the request of the customs authority present goods vehicles commercial for customs control and customs clearance;
- 3) provide the customs authority statutory documents and information necessary for carrying out customs formalities;
- 4) as prescribed by the Customs Code of Ukraine and the Tax Code of Ukraine to pay customs fees or to provide payment in accordance with Section X of the Customs Code of Ukraine;
- 5) as prescribed by the Customs Code of Ukraine and other laws of Ukraine to pay other fees charged under the control of the customs authorities responsible.

Before submitting the customs declaration the declarant has the right to permit of customs authorities to carry out physical inspection of goods in order to verify their compliance with description (information) specified in accompanying documents, take samples and specimens of goods.

In cases and in the manner specified by the Customs Code of Ukraine, the declarant may ask the customs authorities for release of goods, provided that the payment of customs duties in accordance with Section X of the Customs Code of Ukraine. [1]

In addition, the rights and obligations of a customs broker license terms set out in mediation proceedings customs broker.

In making the declaration of goods and vehicles customs authorities the customs broker and customs clearance agent have the same rights with regard to the presentation of the goods and vehicles by the customs authorities as the person who authorizes them to represent their interests in dealings with the customs authorities.

Customs brokers and customs clearance agent may require from a person, who is a customs broker, provide documents, data and other information on persons and / or goods and vehicles which it declared, only to the extent necessary for the declaration of goods accordance with the Customs Code of Ukraine.

Customs broker must have their own insurance policy in the amount of not less than 2000 income tax exemption under Section 34 List of documents attached to the application for a license for a particular type of business, approved by the Cabinet of Ministers of Ukraine of 04.07.2001 number 756.

The customs broker shall ensure that the customs agent the following requirements:

- at the request of the customs office to present goods, vehicles and all necessary documents for customs control and customs clearance and be present during their execution;
- inform in writing the person who gave him the goods and vehicles for the presentation of the customs authority of the detected damage containers and packaging, as well as the inconsistency of these goods, vehicles information about them mentioned in commercial, transportation and other supporting documents .

Customs brokers and customs clearance agent exercising authority in an amount established on behalf of the person they represent, to carry out any operations associated with the presentation of the customs authorities of goods, vehicles and documents to them for customs clearance.

For the declaration of goods and vehicles customs broker must:

- enter into a written agency agreement for the provision of the declaration of goods and means of transport with a person whose interests he represents in dealings with the customs authorities;
- have a staff customs clearance agent or representative to conclude with the relevant contract of employment.

A natural person – entrepreneur can be both a customs broker and agent for customs clearance and to declare the goods and vehicles subject to a written contract of agency to provide services for the declaration of goods and means of transport with a person whose interests it represents in relationships with customs authorities.

When declaring goods and vehicles customs authorities the customs broker and his representative must comply with the Kyoto Convention, the Customs Code of Ukraine, laws and other normative legal acts of the customs legislation.

Customs broker does not allow the licensing authority to participate in customs procedures in the event of the entry into force of the verdict on bringing officials from the customs broker and / or agent of customs clearance of criminal responsibility and the use to which the penalty of deprivation of the right to conduct certain activities.

The specially authorized central body of executive power on customs practices the Register of customs brokers.

Information received customs broker and its employees from the person they are in the process of customs clearance procedures may be used only for the purposes of these procedures. By disclosing information that constitutes trade secret or is confidential, the customs broker is responsible under the legislation of Ukraine.

In particular it should be noted on the innovations of the new version of the Customs Code of Ukraine. So, Part 2. Article 416 stipulates that the customs broker is entitled to exercise its functions with the declaration of goods and vehicles at any Customs office of Ukraine. This rule defines a guarantee to the customs broker customs broker to carry out activities on the territory of Ukraine regardless of registration. The customs broker shall submit to the customs authority in whose area it carries out activities, copies of documents confirming the occupation of such activities. Of course, fixing this rule promotes the right of free entrepreneurship and its implementation throughout Ukraine.

For offenses relating to proceedings before customs brokerage, customs broker is responsible set ISU and other laws of Ukraine.

Part 3 of Article 416 of the Customs Code of Ukraine stipulates that the customs broker is responsible for offenses relating to proceedings before customs brokerage. Offences related to proceedings customs brokerage, entail criminal and administrative liability. Customs broker if committed violation of customs rules under Chapter 68 of the Customs Code of Ukraine, brought to administrative liability pursuant to the Customs Code of Ukraine.

According to Article 417 ISU 'Rights customs broker relationships with the person whose interests he represents «customs broker relationships with the people he represents are determined by the relevant agreement.

In practice, the customs broker and between economic operators (national) contractual relationships arising under a contract assignment (Chapter 68 of the Civil Code of Ukraine).

Under the contract of assignment, one party (attorney) agrees to act on behalf of and at the expense of the other party (the principal) certain legal actions. Competence, committed attorney, creates, modifies, and terminates civil rights and obligations of the principal. Contract assignments may be determined exclusive right attorney to commit on behalf of and at the expense of all or part of the principal legal action under the contract.

The contract can be set up for such an assignment, and (or) the area within which the current exclusive rights attorney (Article 1000 of the Civil Code of Ukraine).

Contract of agency is a kind of contract of service. Parties to the agreement are the principal attorney and attorney. Customs broker may enter into agency agreement with any owner (holder) of cargo that will appeal to him, except in cases where there are reasonable grounds to believe that the act or omission of the owner (holder) is illegal and subject to criminal liability or responsibility provided for in the Customs Code of Ukraine.

The contract assignments defined rights and obligations of the parties. Customs broker performs the duties and responsibility in accordance with the concluded contract.

The customs broker shall retain all documentation related to its activities, within the time prescribed by law in Ukraine. Disputes between the customs broker and owner (holder) of cargo resolved in accordance with the current legislation of Ukraine.

Conclusions. Having professionally oriented licensed organizations – Customs Brokers – a necessary condition for implementation in practice of the customs of progressive forms of customs clearance and control, improve security receipts taxes and fees to the revenues of the state budget, provide a framework for cooperation between business and customs authorities. Fixing the legal status of a customs broker in the norms of customs law is essential to the realization of human customs broker as an entity on the one hand, and validly fulfills its basic function – declaration on the other. This will facilitate the rapid passage of customs formalities and create conditions for economic activity and ensure law and order in the customs area.

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ХАРАКТЕРИСТИКА ВІДМІННИХ ОЗНАК СУБ'ЄКТІВ АДМІНІСТРАТИВНО-ПРОЦЕСУАЛЬНИХ ПРАВОВІДНОСИН

DESCRIPTION OF THE DISTINCTIVE FEATURES OF SUBJECTS OF ADMINISTRATIVE LEGAL PROCEEDINGS

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Досліджено принцип рівності перед законом і судом. Досліджено, чи впливають відмінні ознаки, за якими розрізняються учасники адміністративного процесу, на ефективність дії вказаного принципу.

Ключові слова: принцип адміністративного судочинства, рівність перед законом і судом, суб'єкти адміністративно-процесуальних відносин.

Исследован принцип равенства перед законом и судом. Исследовано влияние отличительных признаков, по которым различаются участники административного процесса, на эффективность действия указанного принципа.

Ключевые слова: принцип административного судопроизводства, равенство перед законом и судом, субъекты административно-процесуальных отношений.

Researched principle equality before the law and court. Investigated, does distinguishing features, which distinguish the members of the administrative process, have an influence on the effectiveness of this principle.

Key words: principle of administrative legal procedure, equality protection of the law, discrimination, actors administrative and procedural relationships.

Актуальність проблеми невисокого рівня довіри до адміністративних судів з боку учасників адміністративного процесу, які характеризуються різноманітними від-

міними ознаками, зокрема політичними поглядами, соціальними і майновими станами, ознаками статі, віку, національностей тощо, спонукає дослідити особливості