

Kateryna Hutchenko

University of Customs and Finance,

LLC "TRADEREVOLUTION DEVELOPMENT", Ukraine

HARMONIZATION OF CUSTOMS LEGISLATION IN THE FIELD OF TRANSIT OPERATIONS

Ukrainian customs legislation is going through many important changes. Nowadays, it is a period of the active implementation of international norms in the current customs legislation and the adoption of new normative legal acts that would meet the requirements of the European customs legislation.

Thus, on the implementation of the Association Agreement between Ukraine and the European Union, on September 12, 2019, a new Law of Ukraine "On the regime of joint transit and introduction of electronic transit system" was adopted, which will come into force on March 25, 2020. This article is dedicated to reviewing the current and future changes, which are going to and will take place in the customs legislation of Ukraine as a result of the adoption of the mentioned Law. The presented article analyzed a new type of customs transit, conceptual categorical apparatus, the procedure of carrying out transit operations under the current Customs Code of Ukraine and the new Law, and their comparison.

Keywords: customs legislation, implementation, transit, transit operation, common transit.

Presentation of the main material. Presentation of the main material. Nowadays, the very important and undiscovered topic is the procedure of common transit, according to new Ukrainian Law "On regime of a common transit and introduction of Electronic Transit System" (hereinafter – the Law), which was adopted on 12.09.2019, but entry into force will take place on 25.03.2020. Because of the novelty of this Law, there are no publications of scholars on this topic, which only confirms the relevance and novelty of this work.

Adoption of this Law is an important step towards the harmonization of customs legislation, since, as stated in the Law itself, its purpose is to implement the provisions of the Convention on the common transit procedure of 20 May 1987 and the Convention on the simplification of formalities in trade in goods of 20 May 1987 in accordance with the commitments of Ukraine enshrined in 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, and the implementation electronic transit system for electronic data exchange between customs authorities of Ukraine under the regime of common transit¹.

It should be noted that, under the Law, the subject of the regime has the right to choose the customs regime in which he wishes to place goods. In case of movement of goods in transit, the subject of the regime shall have the right to place the goods in the customs transit mode in accordance with the Customs Code of Ukraine (hereinafter – CC of Ukraine) or to place the goods in the common transit mode as a type of customs transit procedure in accordance with this Law. Transit movements of goods initiated under this Law shall be completed by this Law.

Before examining the order of transit operations, according to the new Law and the Customs Code 2012, it is necessary to find out what exactly is a "transit operation". This will help us to understand and to operate the term correctly.

In my previous work "Customs transit": the essence and content of the concept", which was published in the scientific journal "Legal position "No. 2 (19), the concept "transit operation" was carried out, during which it was found that the concept of "transit operation" is not in the national legislation of Ukraine, but it was found in the 1999 Kyoto Convention². Thus, under the point E 5. \ F.6 of Special Annex E: "The term "Customs transit operation" means the transportation of goods from an office of

¹¹ Закон про режим спільного транзиту та запровадження електронної транзитної системи 2019 (Верховна Рада України). Офіційний сайт Верховної Ради України. <<https://zakon.rada.gov.ua/laws/show/78-20>> (2019, November, 11).

² Гутченко, К. А. (2017). Митний транзит: сутність і зміст поняття. *Правова позиція*, 2(19), 31-43.

departure to an office of destination under Customs transit"¹. Official translation made by the Ukrainian legislature as: "Customs transit operation – transportation of goods under the regime of customs transit from the customs authority of departure to the customs authority of the destination"². Even there, could be already seen an error in the official translation of the term "customs transit operation", which was made by the legislator due to ignorance or misunderstanding of the essence of the term "regime" since in the original text the term "regime" doesn't mentioned at all.

The correct translation of the original text was made in the aforementioned scientific articles, as: "customs transit operation" – the transfer of goods from a customs office of departure to a customs office of destination under customs transit. In this sense, it is proposed to consider a transit operation within the scope of this work.

Having clarified the essence of this concept, we proceed to the consideration of the procedure of transit operation. The transit procedure is common to all transit operations, so it could be conditionally divided into 3 steps. On these stages, different procedures are performed.

The first stage is the preliminary stage, which includes the following actions: submission of documents, requirements to the person charged with compliance with the requirements of the customs regime, actions of the customs authorities. This stage takes place at the office of departure.

The second stage is the actual transfer. This stage is intermediate and continues from the customs office of departure to the customs office of the destination. It stipulates the general terms of transfer and change of circumstances during the moving, in these cases, the actions of the person charged with compliance with the requirements of the customs regime should be legally enshrined. The third stage is the final. This stage involves the presentation by the carrier of the goods at the customs office of the destination. This is where the customs transit operation ends.

For a better understanding of the new, possible, order of transit operations, under the new law, it is proposed to review the procedure currently in place under the CC of Ukraine and compare them.

Stage 1 "Preliminary stage". Procedural action: submission of documents. Article 92, paragraph 1, paragraph 1 of the CC of Ukraine states that for placing goods and/or vehicles for commercial purposes in a customs transit mode, a person charged with compliance with the requirements of the customs regime must:

1) to file a customs declaration, goods and transport document for transportation and invoice (invoice) or other documents that determine the value of the goods;

2) in the cases specified by the law, to provide the revenue and levies authority with a permit for transit through the customs territory of Ukraine, which is issued by the respective competent authority;

3) in the case of placing goods based on the document referred to in part six of Article 94 of this Code, to ensure fulfillment of the requirements and obligations laid down by the legislation which establishes the basic principles of organizing and implementing the regime of joint transit of goods³. It should be noted that this provision was amended on 02.10.2019 and harmonized with the Law. The list of documents that are used for declaring goods, commercial vehicles for customs purposes in customs transit regime is defined by Article 94 of the CC of Ukraine⁴.

Article 3 of the Law, provides for the functioning of the new electronic transit system and electronic guarantee management system to ensure the completion of customs formalities and electronic data exchange when applying the common transit regime. It is envisaged that all customs formalities will be carried out electronically, so according to Article 5, paragraph 5 of the Law, only in the case of temporary failure of the electronic transit system or electronic guarantee management system, or a single automated

¹ *Handbook International Convention of the simplification and harmonization of Customs procedures 1999* (World Customs Organization) <http://www.wcoomd.org/en/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Kyoto_New> (2019, November, 11).

² *Міжнародна конвенція про спрощення і гармонізацію митних процедур (Київська конвенція) 1999* (Всесвітня Митна Організація). *Офіційний сайт Верховної Ради України*. <https://zakon.rada.gov.ua/laws/show/995_643> (2019, November, 11).

³ *Митний кодекс України 2012* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/4495-17#n1195>> (2019, November, 11).

⁴ *Митний кодекс України 2012* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/4495-17#n1195>> (2019, November, 11).

information system of the revenue and collecting authorities, customs formalities may be carried out by using documents in paper form¹.

According to Article 6, paragraph 1 of the Law, for declaring goods under the common transit regime, customs declarations of individual types are used, corresponding to the types of customs declarations introduced by the Convention on the common transit procedure of 20 May 1987. In case of application of the customs declaration for placing the goods in the common transit mode, the requirements of the Customs Code of Ukraine for submission of the preliminary customs declaration shall not apply².

Under Article 1, paragraph 4, of the Convention on the common transit procedure, transit declarations and transit documents for the common transit procedure must comply with and be drawn up per Appendix III.

Section 6 of Annex A2 to the Convention on the common transit procedure, defines the types of customs declarations for common transit: code T2 = Transit declaration of the common transit procedure for Union goods, code T2F = Transit declaration of the common transit procedure for Union goods moving from part of the customs territory or part to a part of the customs territory of the Union which is not covered by Union legislation on value-added tax, code T2L = Single administrative document confirming the customs status of Union goods, code T2LF = Single administrative document confirming the customs status of Union goods when exchanged between parts of Union customs territory which are not subject to Union legislation on value-added tax, and parts of that territory where this legislation does not apply. Code T1 = Transit declaration concerning the common transit procedure for goods from third countries³.

The second procedural action under the conditions of this stage is the performance of duties by a person charged with compliance with the requirements of the customs regime:

- 1) to file all necessary documents according to CC of Ukraine;
- 2) in cases under the CC of Ukraine, ensure that the obligation to pay customs duties is fulfilled;
- 3) to ensure the unchanged condition of the goods, except the natural changes in their qualitative and/or quantitative characteristics under normal conditions of transportation and storage, without the use of the goods for any purpose other than transit;
- 4) to deliver goods and commercial vehicles to the customs authority before the expiration of the period specified in Art. 95 CC of Ukraine⁴.

Instead, Article 5 of the Law defines the obligations of the entity and the carrier of the goods when applying the transit regime:

- 1) to ensure delivery of goods within the time limits determined in accordance with Article 9 of this Law to the customs of destination in the same state in which they were presented and declared by the customs of departure, except for natural changes in their qualitative and/or quantitative characteristics under normal conditions of transportation and storage, while maintaining the integrity of the means of identification (if imposed);

- 2) to provide the customs of dispatch and customs of destination with the documents and authentic information necessary for placing the goods in the common transit mode and completing such procedure under Article 6 (1) and Article 14 (1) of this Law;

- 3) to ensure compliance with the conditions for placing goods in the common transit regime and the requirements for moving goods in the common transit regime provided for and by this Law;

- 4) unless otherwise provided by this Act, to provide a guarantee for the payment of customs debt which may arise in respect of goods placed under the common transit regime⁵.

The third procedural action under the conditions of this stage is the fulfillment duties by the customs authorities. It is important to note that the CCU of Ukraine does not provide any duties of the customs

¹ *Митний кодекс України 2012* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/4495-17#n1195>> (2019, November, 11).

² *Митний кодекс України 2012* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/4495-17#n1195>> (2019, November, 11).

³ *Конвенція про процедуру спільного транзиту 1987* (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

⁴ *Конвенція про процедуру спільного транзиту 1987* (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

⁵ *Конвенція про процедуру спільного транзиту 1987* (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

authorities, thus, in fact, the duties are assigned only to the subject of the regime, which as a consequence creates inequality of the parties. Part 5 and Part 6 of the CC of Ukraine indicate that the means provided for in paragraphs 2 and 3 of Article 326 of this CC of Ukraine may be used to ensure the identification of goods, commercial vehicles of the purpose of the customs of transit. Customs is a customs security that can be applied to goods. Identification facilities are not required for packaging, pallets and other similar products that do not have individual identification features¹.

The law regulates the duties of customs authorities more broadly, which can be explained by the implementation of international customs law into Ukrainian customs legislation, since securing the duties of customs authorities is a mandatory way of ensuring the principle of equality of parties in the administrative sphere. Firstly, upon receipt of the declaration in electronic form concerning the placing of goods under the common transit regime, arise an obligation of the customs authorities to protect the personal data of the subjects of the regime and other persons involved in the operations of the common transit regime (party to a foreign trade agreement under which the goods, the carrier (the freight forwarder), the holder of the customs warehouse, the customs broker), as well as other information contained in the electronic transit system². This duty is noticed in Part 2 Article 4 of the Law. The second duty is to check the declaration and make a decision, on acceptance of the customs declaration in the case of such conditions:

1) the customs declaration contains all the data, necessary for placing the goods in the common transit mode, under the established procedure for completing customs declarations;

2) the customs declaration shall be accompanied by the documents specified in Article 335 of the CC of Ukraine, as well as in cases specified by law, a permit document for transit through the customs territory of Ukraine, which shall be issued by the respective authority;

3) to the Customs of departure are presented goods, unless otherwise provided by this Law.

In case of detection by the customs of the differences between the declared information and the delivered goods, the violation of the delivery time of the goods released under the regime of common transit, the carrier shall be held liable under the law of Ukraine³.

Another obligation that should be pointed – the customs of departure should be singled out to verify the correctness of declaring the amount of customs payments, to be guaranteed during the customs declaration process for placing goods under the common transit regime, availability, validity and sufficiency of the financial guarantee.

If the financial guarantee provided is not sufficient to secure the payment of the customs debt, the subject of regime shall be entitled to provide an additional financial guarantee or to replace the previously provided financial guarantee with a new one.

It should be reminded, that the Customs Code of Ukraine stated the possibility of using customs security, so an innovation of the Law is Article 10, which imposes on the customs authorities another duty to impose means of identification. Means of identification shall not be required in the case of movement of goods in transit mode, except in the following cases:

1) goods are moved by air or rail using identification means by holographic, digital, alphabetic or other markings, other identification marks bearing the number of the accompanying aviation or rail waybill;

2) goods are transported in bulk or berm;

3) transported goods are large or technically complex (machines, technological lines, industrial structures, etc.);

4) packaging, pallets or other packing materials do not have individual identification features⁴.

Issuance of goods in the common transit regime shall be effected after fulfillment of the customs' obligation to print transit accompanying document through the electronic transit system in the paper form and to provide it to the subject of the regime with a list of goods released in the common transit mode. In the case of special transit simplification, an "authorized consignor", the transit accompanying document

¹ Конвенція про процедуру спільного транзиту 1987 (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

² Конвенція про процедуру спільного транзиту 1987 (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

³ Конвенція про процедуру спільного транзиту 1987 (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

⁴ Конвенція про процедуру спільного транзиту 1987 (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

listing the goods released into the common transit mode, prints out the corresponding authorized consignor after placing the goods in the common transit mode.

Therefore, summarizing the analysis of the first stage of the transit operation, according to the CC of Ukraine and the new Law, we can conclude that there is an active implementation of the provisions of the Convention on the common transit procedure. This implementation takes place in the conceptual categorical apparatus (for example: “person charged with compliance with the requirements of the customs regime” is changed to “the subject of the regime”), types of customs declaration, the introduction of a new electronic transit system and electronic guarantee management system. All these innovations are intended to simplify the procedure of transit operations, but it is important not only to implement but also to realize them in practice.

The second stage is “Intermediate”. It presupposes good’s movement, namely the circumstances which may occur from the customs office of departure to the customs office of destination, the actions of the subjects of the customs procedure and the period during which the goods may be moved and generally be in the customs transit procedure.

The CC of Ukrainian does not identify any cases that may occur with goods when moving. Only Part 8 Article 92 of the CC of Ukrainian provides the confiscation of goods, their total loss as a result of an accident or the force majeure. In such cases, the customs transit procedure must be terminated. The terms are common to all types of customs transit and differ only depending on the type of vehicle being moved: 1) for road transport – 10 days (if moving in the area of one customs office – 5 days); 2) for railway transport – 28 days; 3) for air transport – 5 days; 4) for sea and river transport – 20 days; 5) for pipeline transport – 31 days; 6) for pipeline transport (with overload on other modes of transport) – 90 days. These periods do not include the duration of the accident and force majeure during transportation, the time of storage of goods under customs control (subject to the information of the revenue and charges body controlling their movement), the time required for other goods operations, in cases provided for this section (provided that the revenue and dues authority that controls the movement of these goods is informed)¹.

It should be noted that the new Law regulates detail the circumstances that may occur during moving goods in the mode of common transit and calls them "special circumstances". These include:

1) diversion by a carrier from a route determined under Article 8 of this Law due to circumstances independent of it;

2) detection by the carrier of the seals whose integrity is compromised, or violation of other means of ensuring the identification of goods during their transportation;

3) compulsory overloading by the carrier of goods released into the common transit mode from one vehicle to another vehicle due to the lack of technical capacity to continue their transportation in the vehicle from which the overloading vehicle is carried out;

4) the existence of a real threat of destruction, permanent loss or substantial deterioration of goods released into the common transit mode, requiring immediate partial or complete unloading of the sealed commercial vehicle transporting such goods;

5) a special circumstance affecting the ability of the entity or carrier to fulfill its obligation arising from the release of goods in the transit mode;

6) replacement of a single vehicle.

In the event of the circumstances referred to in paragraph 3, the goods shall be handled under the supervision of the customs authority.

In the event of any of the circumstances above, the carrier is obliged to present the goods under the common transit mode and the transit accompanying document to the customs office closest to the location of the commercial vehicle carrying the goods, as soon as possible after arising such circumstances. The customs authority shall take the necessary measures and decide about the possibility or impossibility of continuing the corresponding operation of the common transit mode, shall make information on the circumstances identified and the measures taken in the electronic transit system in the established order.²

¹ Конвенція про процедуру спільного транзиту 1987 (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

² Конвенція про процедуру спільного транзиту 1987 (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

The third stage is “Final”, which stipulates the conditions under which the customs transit procedure is completed. The procedure includes customs authorities’ actions, the duties of the subject at the customs office of the destination. This stage involves the completion of a customs transit operation.

The completion of the customs transit operation is defined in Article 102 of the CC of Ukraine. Here the customs transit regime is coming to the end:

- or export of goods, vehicles of commercial purpose, placed under this customs regime, outside the customs territory of Ukraine;
- or when the goods are imported into the customs territory of Ukraine for their further placement in the appropriate customs regime, the customs transit procedure shall be completed by the actual delivery of the goods to the revenue and duties determined by the body or agreed with the place of delivery;
- or the placing of goods, commercial vehicles in another customs regime, subject to the requirements set out in this Code;
- or in the case of confiscation of goods, their total loss as a result of an accident or force majeure, subject to confirmation of the accident or force majeure under a procedure established by a central executive body that ensures the formation and implementation of public financial policy.

The obligation of the person responsible for compliance with the requirements of the customs regime – presentation of goods placed under the customs regime of transit before the expiry of the above deadlines and customs declaration or other document replacing it.

The obligation of the customs officer is to check compliance with the requirements laid down by the legislation of Ukraine on customs matters for the movement of goods under the customs transit regime and the completion of customs formalities necessary to complete the customs transit procedure. In case of termination of the customs regime of transit due to force majeure or accident, the export of goods outside the customs territory of Ukraine is not required, and guarantees provided in accordance with paragraph 3 of part four of Article 92 of this Code are subject to return (release).

It should be noted that cases of transit completion are common, but a significant difference is a moment the transit operation is completed. According to the CC of Ukraine, the customs transit regime ends with the export of goods, commercial vehicles, and according to the new law, the common transit mode ends if the goods placed under the common transit mode, together with the transit accompanying document and other documents issued in the process of moving goods in the mode of moving the goods transit are presented to the Customs of destination or to the authorized consignee. In addition the innovation of the introduction of the aforementioned electronic system is that the customs office of departure removes from control the operation of the common transit mode after establishing the fact of the proper completion of the common transit mode, by comparing the data contained in the relevant customs declaration and electronic transit system with the data received from the customs office of destination for the delivery of goods and the results of controls on the goods¹.

The obligation of the subject of regime or carrier on behalf of the entity is to present the goods to the office of destination and to provide the office of destination with the transit accompanying document and other documents processed in the process of moving the goods in the mode of joint transit in accordance with the Law.

The obligations of the customs office of the destination:

- after delivery of the goods determine the forms and quantities of controls on goods released to the common transit mode sufficient to ensure compliance with the requirements for the movement of goods in the common transit mode, on the basis of the results of the risk analysis, taking into account the information contained in the relevant customs declaration and electronic transit system;
- when completing customs formalities at the customs office of destination at the request of the person concerned or the carrier, on behalf of the person subject to the procedure, the customs office of the destination shall certify a receipt confirming the presence of the goods and the transit accompanying document of the customs office of the destination;
- to take appropriate measures and inform the office of departure if the common transit procedure has been completed but the customs office of destination has detected a breach of the controls carried out on the goods actually delivered, such customs office of the destination;

¹ Конвенція про процедуру спільного транзиту 1987 (Європейське Економічне Співтовариство). <https://zakon.rada.gov.ua/laws/show/994_001-87> (2019, November, 12).

– to inform the customs of departure of the delivery of goods released for the common transit mode as soon as possible, within four working hours from the moment of the presentation of the goods and the transit accompanying document of the customs office of the destination;

– to inform the customs office of departure of the results of the inspection within four working hours from the date of presentation of the goods and the transit accompanying document of the customs office of destination, if, based on the results of the risk analysis, taking into account the information contained in the relevant customs declaration and electronic transit system, the customs office decides no need to inspect the goods.

Summarizing all expressed above, it should be noted that the implementation of international norms in national customs legislation contributes to its development and, most importantly, speeds up the processes of customs clearance at customs. The new law provides a new type of transit – common transit. In this article were analyzed: 1) the procedure of its implementation; 2) types of common transit; 3) the introduction of a new electronic transit system; 4) the competent of the customs of destination and customs of departure; 5) the procedure of completion of the common customs transit. But it stands unclear whether it is appropriate to allocate this type of transit in a separate law. If the Customs Code distinguishes external transit, internal transit, and cabotage, the common transit also should be set forth here. That is why the norms of the Customs Code of Ukraine require further changes and implementation.

References:

1. *Zakon pro rezhym spilnogo tranzytu ta zaprovadzhennya elektronnoyi tranzynoyi systemy 2019* [Law on the regime of joint transit and introduction of electronic transitive system] (Verkhovna Rada Ukrainy) [Verkhovna Rada of Ukraine] *Ofitsiynny sayt Verkhovnoyi Rady Ukrainy* [Official site of the Verkhovna Rada of Ukraine] <<https://zakon.rada.gov.ua/laws/show/78-20#n80>> (2019, November, 11). [in Ukrainian].
2. Hutchenko, K. A. (2017). Mytnyj tranzyt: sutnist i zmist ponyattya [Customs transit: the essence and content of the concept]. *Pravova pozyciya* [Legal Position], no. 2 (19), 31-43. [in Ukrainian].
3. *Handbook International Convention of the simplification and harmonization of Customs procedures 1999* (World Customs Organization). <http://www.wcoomd.org/en/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Kyoto_New> (2019, November, 11). [in English].
4. *Mizhnarodna konvenciya pro sproshhennya i garmonizaciyu mytnyx procedur (Kiotska konvenciya) 1999* [International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) (Vsesvitnya Mytna Organizaciya) [World Customs Organization]. *Ofitsiynny sayt Verkhovnoyi Rady Ukrainy* [Official site of the Verkhovna Rada of Ukraine]. <https://zakon.rada.gov.ua/laws/show/995_643> [in Ukrainian]. (2019, November, 11).
5. *Mytnyj kodeks Ukrainy 2012* [Customs Code of Ukraine] (Verkhovna Rada Ukrainy) [Verkhovna Rada of Ukraine]. *Ofitsiynny sayt Verkhovnoyi Rady Ukrainy* [Official site of the Verkhovna Rada of Ukraine]. <<https://zakon.rada.gov.ua/laws/show/4495-17#n1195>> (2019, November, 11). [in Ukrainian].
6. *Konvenciya pro proceduru spilnogo tranzytu 1987* [Joint Transit Procedure] (Yevropejske Ekonomichne Spivtovarystvo) [European Economic Community]. *Ofitsiynny sayt Verkhovnoyi Rady Ukrainy* [Official site of the Verkhovna Rada of Ukraine]. <https://zakon.rada.gov.ua/laws/show/994_001-87#n1312> (2019, November, 12). [in Ukrainian].