Customs criminalistics (forensic science): A new concept for customs control

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Abstract

The system of Ongoing Forensic Support that provides expert assistance to customs authorities in the Russian Federation was analysed, and the interaction between the law enforcement departments of customs authorities and experts (specialists-on-duty) was studied. Based on the theory and practice of criminal trials and criminalistic equipment used to fight customs crimes, the author investigated the participation of experts in urgent investigations and examinations that are carried out by the law enforcement divisions of customs authorities. The author suggests that *customs criminalistics* (forensic science) should be routinely introduced into these situations.

1. Introduction

The customs authorities of the Russian Federation (RF) play an important role in the integration of customs activities in the Eurasian Economic Community (EEC), particularly in relation to forms and methods of customs control. The sophisticated measures applied by Customs provide a protective barrier against the criminal infringement of economic security. Such measures are often undertaken in collaboration with experts and research areas in the Federal Customs Service (FCS) of the RF. The customs processes used present insights for law enforcement agencies globally.

Customs experts (trained in forensic techniques) and customs officials have cooperated for more than 20 years in the task of examining the quality and safety of freight moved through national borders, and the veracity of the associated declarations. Customs experts often undertake the customs examination and register their conclusion, without which, in many cases, it would be impossible to verify compliance with the relevant customs legislation. This points to the need for improvements to the traditional process of customs examination (Metelkov, 2013).

Due to frequent changes in federal legislation, it isn't always feasible to achieve the objectives set by the state government. As the volume of trade between the states steadily increases, validating the nomenclature and other aspects of internationally traded goods also increases, and so having high-quality administration and customs regulation is crucial as the scientific expert component of customs affairs evolves (Makarenko, 2014).

2. Modern features of customs integration

In 2000, the states of Russia, Belarus, Kazakhstan, Tajikistan and Uzbekistan founded the EEC. This new organisation was required to address all activities associated with the formation of general external customs borders, and to develop uniform external economic policy, tariffs, prices and other components of a functioning common market. The goals were achieved by following a step-by-step process to ensure the readiness of the states and the necessary economic and legal requirements. In October 2007, the contract on creation of the uniform customs territory and formation of the Customs Union (CU) of the states of Russia, Belarus and Kazakhstan was signed, and the CU started functioning

from 1 January 2010 (Chernysh et al., 2013). The Institute of Customs Examination[1] became one of the most important innovations of the CU. Expert examinations of goods that moved through the various borders had previously been carried out, but there were a number of problems. As a result, forensic and criminalistic support of customs activities extended to customs control and law enforcement activities, which is considered in more detail below.

3. A key function of customs authorities

Malyshenko (2013) considers that customs control is the main function of customs administrations, and much attention is paid to evaluating its effectiveness. Indicators of effectiveness include the amount of fines collected, the number of administrative and criminal lawsuits instigated, and the quantity of drugs seized. Although these indicators are important, they are not comprehensive and are not a reflection of effectiveness. As Malyshenko indicates, a decrease in the amount of fines collected or quantity of drugs seized does not mean that the capability of the customs control system to identify customs law violations has deteriorated—it is quite possible that businesses have abided by the law more and violated the law less. We partially agree with this point of view, and consider that the measures of protection applied by customs authorities are no less important than its fiscal function.

4. Law enforcement activity

The law enforcement activities of customs authorities are similar to those of other state bodies in many ways. The first similarity is that legal measures of influence are regulated by laws. Among measures of legal influence, prevention of illegal actions is important and is allowed within set limits. The second is that the legal measures of influence applied during its implementation must correspond strictly to instructions of the law and other legal acts, and only the authorities can form the basis of application of a concrete measure of influence and accurately define its contents. The considered activity must be established by the law and observe certain procedures. Counteracting customs crimes is a function of not only customs authorities, but also other state departments that carry out inquiries, preliminary investigations and operational search activities associated with customs offences. Such law enforcement activities cannot be carried out without expert knowledge. Examples of criminal cases concerning the most serious customs crimes, and examples of criminalistics participation, are provided in this paper.[2]

5. Forensic and criminalistics activity is an ‘ambulance’ for Customs

For many years there was no opportunity for customs authorities to carry out independent and authentic expert search activities concerning goods that were the subject of an offence or a crime. Rather, the expert researchers for Customs were usually appointed from the Ministry of Internal Affairs, or the Expert Center of the Ministry of Justice. However, during 1990 the state customs committee for the system of customs laboratories was formed. Initially, the laboratories were located in regional customs offices, which was inconvenient and didn’t allow for uniform scientific, methodical and technical policies to be carried out. This, in turn, affected the quality of the searches carried out by the experts and the validity of their conclusions (reports). Inadequately skilled personnel in the developing system of expert divisions of customs authorities exacerbated the situation. As there was no program of expert certification, there was no full vocational training, mentoring or continuity of experts. Following the formation of the *Central Forensic Customs Laboratory* (CFCL) in April 2002, the situation changed fundamentally and the *Main Customs Laboratory* was transformed to CFCL.

Today CFCL is the specialised department for regional government and has an extensive network of branches.[3] All expert divisions from the regions are staffed by personnel from regional customs offices and are subordinated to the CFCL in the form of Expert and Criminalistic Services (ECS). Acting under regulations of the FCS of Russia, CFCL ensures that requirements of the customs authorities are implemented through customs control and law enforcement activities, including examining and searching goods, vehicles, documents and other objects moved through the customs border of the CU (now the EEC).

A new form of interdepartmental interaction on the activities of the customs authorities was created in 2011—the system of *Ongoing Forensic Support* (OFS system). However, it is remarkable that the continuous OFS system for customs authorities' activities is considered the responsibility of the duty expert who is on the staff in a regional location of CFCL's structural expert division. The expert must be on call at all times and be prepared to carry out different types of searches and examinations when needed. This situation is not suitable as it can be difficult to transport the expert to a venue of urgent investigative actions by the customs authority. Also, there are a number of problems connected with the quality of criminalistic activity and the processes used to identify customs offences. In our opinion the problem is a question of the competence of the customs control inspectors who apply criminalistic science to identify, investigate and prevent customs offences.

Box 1: Criminal case: *Drug smuggling*

On 19 September 2015, officers of the Moscow Domodedovo Airport, in the course of a customs examination of a Uzbekistan male passenger who was travelling from Uzbekistan to Russia, discovered 705 grams of heroin concealed in 169 swallowed containers. A customs criminalistics (forensic) expert took part at the scene.[4]

6. Global aspects of criminalistic science

Before further discussing the issue of criminalistic experts and customs control, it is necessary to discuss criminalistic techniques in general. Criminalistics developed as the science involved in increasing the efficiency of law enforcement agencies when establishing the truth in criminal legal proceedings. Therefore, criminalistics studies the work of the investigator, the prosecutor, the judge, the forensic expert, and the operative agent on disclosure, and investigates customs crimes and the judicial proceedings of criminal cases (Ishchenko & Toporkov, 2006).

At the beginning of the 20th century, as criminalistics was developing, two complementary directions emerged: (i) criminalistics for investigators, which was championed by Hans Gross, author of *Handbuch fur Untersuchungrichter*, and (ii) criminalistics for experts, promoted by Rudolf Archibald Reiss, author of *Manuel de Police Scientifique*.[5]

Criminalistics, as one of the sciences concerned with criminals and the legal cycle, studies and provides the scientific development of cognitive search activities in criminal trials. This activity is carried out: (a) within a so-called legal form of pre-judicial preparation of materials; (b) at a stage of preliminary check (a stage of initiation of legal proceedings); (c) during preliminary investigation; (d) in cases of a stay of preliminary investigation on criminal cases, when there is a need to search for missing goods, and to establish the identity of the accused; and (e) during judicial examination in criminal cases (Obraztsov, Adamova, Viktorova, & Viktorova, 1992).

7. Technical support of customs control

Firstly, it is important to note that the need for and possibility of applying technical solutions to the tasks assigned to customs authorities, directly or indirectly, follow from a number of articles of the customs code of the CU. The technical means applied by customs authorities can be broadly defined as *customs equipment*. This broadly includes technical devices that help customs control and customs registration combat customs offences, including smuggling.[6]

The provision of technical support of customs controls allows customs authorities to elicit facts about the illicit movement of goods and to counteract socially dangerous crimes. One such crime is smuggling of radioactive materials. It should be noted that the establishment of the fact of smuggling of similar substances is impossible without the application of technical means. One such crime was revealed by Sheremetyevo customs (see Box 2).

Box 2: Criminal case: Smuggling of radioactive materials

In the case of customs control of a passenger flight Moscow–Tehran, a stationary radiation control system 'Amber' was located in the departure hall of the Sheremetyevo Airport. An examination of the luggage of one of the passengers revealed 18 metal products of industrial production that were packed into individual steel cases. In was only by carrying out the technology-assisted examination that it was possible to confirm the suspicions of Customs.[7]

In our opinion, this type of control is of great importance. Modern customs authorities pay great attention to such technologies as a way to prevent smuggling of similar materials. Gubin (2011, p. 98) discusses 51 indicators of customs activity effectiveness and one of these is the average time needed to react to evidence of fissionable and radioactive materials crossing the customs border and to goods exhibiting increased levels of ionising radiation (three indicators each for airport, railway and automobile checkpoints).

The level of development of science and scientific equipment assumes the competent training of those persons who apply such means in the course of customs control. In this regard, we consider that the application of the specified technical means is impossible without knowledge in the field of modern criminalistics.

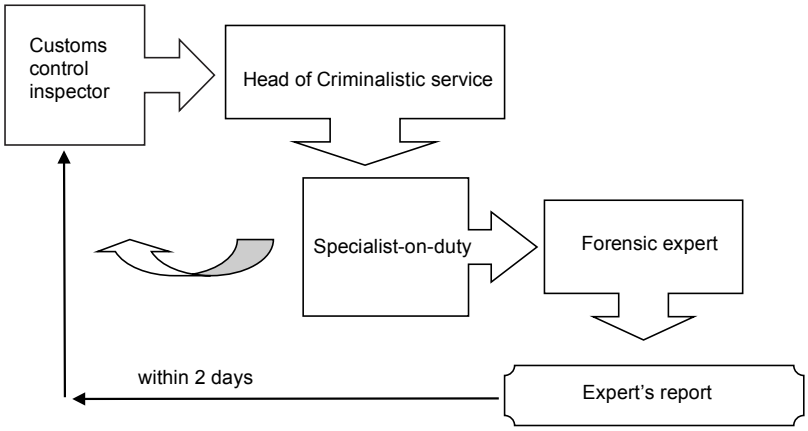
When technical means of customs control are applied, the inspector uses certain techniques which, as a rule, are developed within special scientific disciplines. Those involved in the identification of criminal encroachments should, in our opinion, be trained in criminalistic science. This is because criminalistic science includes knowledge and data from humanitarian and technical fields as well as information on the criminological characteristic of similar crimes. In other words, the methods of criminalistics apply experience of disclosure of similar or identical types of customs offences.

In order to achieve reliable results when implementing procedures of customs control, the methods of criminalistics described above may be applied by experts in this area, and for the expert to participate in customs control activities, the different divisions must interact and cooperate.

We suggest that the interaction of divisions of customs control and experts will be optimised if:

- the customs inspector requests criminalistic services when they are in a situation where specialist knowledge is required
- the head of the specified service sends the specialist-on-duty to the venue of customs control
- once the specialist has completed their investigation, they transfer their results to the forensic expert
- the forensic expert carries out an examination and prepares the expert report and transfers it to the division of customs control within two working days (see Figure 1).

Figure 1. Optimum inter-customs interaction



Source: Author, 2016.

We consider that this system of interaction will provide the full application of modern criminalistic means and methods in customs control, and increase the level of customs crime prevention.

An example follows of how an expert opinion is used in the investigation of crimes. As a result of law enforcement activity in 2015, the customs authority of the Central region of Russia identified that oil products were being smuggled. The expert executed searches at a stage prior to the initiation of legal proceedings. Further, the expert acted as the expert in the judicial proceedings. Fraud was identified using a special technique—the image of the signature (on behalf of the owner of goods of a large consignment of oil products) was subject to handwriting examination. Signatures were located in the transport and customs documents submitted to the Moscow Customs. The analysis included consideration of the degree of clarity of the signature, size, dispersal, rate of execution and pressure, among others.

Morris (2014) notes that determining the significance of features of writing can be difficult when examining original writing. When examining the original, virtually every characteristic, quality, and feature of the writing is visible and can be examined with the aid of magnification, different wavelengths of light, changes in the angle of illumination, etc. If a copy of the original document is examined, that examination is limited to the visible elements, such as toner and ink jet printing, on the copy that may or may not correspond to a counterpart characteristic, quality, or feature on the original (Morris, 2014).

However, it should be noted that there are some types of customs fiscal crimes for which the application of traditional criminalistic means is difficult. In these cases, the development of institutes of customs financial and accounting examinations is recommended.

8. Independence and economic efficiency of the expert's activity

It is our experience that there are often legal practice situations in which the judiciary or participants of foreign economic activity call into question the legitimacy of carrying out expert searches in customs laboratories. While this problem is now minimised in the Russian Federation, it is present in other countries of the CU, such as Kazakhstan. In Russia, extensive jurisprudence that can prove insolvency of these claims from courts (or respondents in court) was created. As a rule, participants of foreign economic activity, or their lawyers, argue this point to try to evade responsibility for an offence, or to reduce the size of customs payments. On the basis of the legislation, the expert is an independent

person because he/she bears personal criminal and administrative liability that he/she specifies in the *expert's report*. In other words, the expert can draw conclusions following the results of searches and does so only on the basis of their own actions, beliefs, experience, knowledge and qualifications. None of the heads of customs laboratories can influence their research activities, and if the expert displays personal or departmental interest, administrative and criminal responsibilities will also go through the court. It is necessary to understand that there is a possibility of carrying out *repeated* or *additional* examinations, which results can confirm or disprove the *primary* examination. It means that there is a lawful opportunity to check reliability of departmental customs examination and to be convinced about the expert's bias, or lack of bias, in the outcome of the case.

Customs laboratories require specialised equipment and qualified personnel.[8] CFCL in Moscow has modern chromatographs, video spectral comparators, program hardware complexes, electronic and digital microscopes, equipment for complex chemical analysis, and equipment for the solution of expert tasks that involve methods of nuclear magnetic resonance. On average, return on investment of customs laboratory equipment takes two to three years. But here it is necessary to consider that all this is possible only in the presence of authentic expert opinions (*expert's report*) that are subsequently accepted by Customs or the court. At the same time, separate regulations oblige customs authorities to take the results of the examination into account. However, in practice this does not always occur.

As for criminalistic activity, so-called preventative measures are also important. In other words, the customs criminalist work also applies to preventing prohibited and dangerous goods being imported, such as drugs, firearms, explosive and toxic agents, and counterfeit products. In this case, it is not necessary to consider the economic efficiency of such searches, as such work is important for national security.

9. International experience in the area of customs forensics

The provision of experts and criminalistics in customs regulation is a worldwide practice. For example, in the United States of America (USA) there is a criminalistic laboratory which is included in the structure of US Immigration and Customs Enforcement. The *HSI Forensic Laboratory* also solves many problems connected with forensics. Intelligence analysis and the forensic disciplines are utilised by the Law Enforcement Support Section staff to assist HSI and other law enforcement agency investigations of illicit activity in the USA and throughout the world as facilitated by document fraud. Examples of the types of criminal activities include: financial crime; narcotics smuggling; identity theft; human trafficking and smuggling; fraudulent identity document vending; and immigration benefit fraud. In addition to providing law enforcement support for current investigations, leads developed from the on-going analysis of transnational criminal organisations are forwarded to HSI field offices and attachés (US Immigration and Customs Enforcement, n.d.).

In Africa, the Nigeria Customs Service (NCS) includes a Forensic Investigation Unit equipped with a mini forensic laboratory established to give the officers a platform for practical exposure. NCS's Professor Gbenga Ibileye (2012), recommended that:

- In the long term, a Forensic laboratory fully fitted with adequate investigation and analysis equipment should be established by the NCS. This will entail adequate funds and requisite manpower and skill development to ensure maximum utilization.
- That the NCS take proactive steps to prevent and investigate breaches of computer security protocols and illegal access to NCS computer network
- NCS should establish a virtual boarder [*sic*] fully fitted with remote sensory facilities … this will enable the NCS to cope with the porous and extensive boarder [*sic*] network of the nation. Other security agencies of the country can also benefit from this (Slide 29)[9]

It should be noted that not all states have expert divisions in customs authorities. In some countries customs law enforcement divisions ask other departments for the help of experts or criminalists, such as from the law enforcement (internal affairs) bodies of the country. This author believes that the optimum structure is for the customs service to have its own expert division, equipped at the modern level, that will allow greater prevention of customs crimes and more effective collection of customs payments.

10. Theoretical and practical actuality and significance of customs criminalistics

In the EEC, effective interaction between customs authorities (that already exchange significant information and documents related to criminal activity in a timely manner), depends on cooperation between the law enforcement divisions of the customs authorities of member states of the EEC, and on the Customs Information System (CIS) to qualitatively investigate criminal customs cases. Problems of transnational organised crime and increased threats of international terrorism place great demands on law enforcement departments around the world. International criminal organisations are invariably involved in illegal foreign trade operations. In this regard the largest international organisations, such as the World Customs Organization, Council of the states of the Baltic Sea, Interpol and Europol, demand that national customs administrations find new effective law enforcement techniques, improve their interaction, and introduce mechanisms to obtain and share information on criminal foreign economic activity. Cooperation in the sphere of international criminal cases is carried out in accordance with articles 453 and 454 of the Criminal Procedure Code of the Russian Federation (Kozlov, 2015).

11. Conclusion

We believe that the introduction of the institute of customs examination was one of the most important innovations of the Customs code of the CU of 2010.

There is, however, a need for a scientific-theoretical definition of such a specific sphere of knowledge, the analysis of which may give grounds to believe that it is nothing more than the use of criminalistic equipment in the sphere of *customs control*. However, such usage represents only one specific aspect of criminalistics. Proceeding from the above, *Customs criminalistics* may be defined as all specific activities of customs authorities relating to investigation, identification and prevention of customs offences (Makarenko, 2014).

In the existing application of experts' activities in customs authorities of member states, the requirement for the EEC to develop normative legal documents including provisions which regulate activities for an assessment of the conclusions of customs experts when settling disputes in the field of customs regulation in the Court of the Eurasian Economic Union (EEU) seems to be necessary. The systematic and qualified introduction in practice of the results of the expert research of customs laboratories in the EEU directly impacts many aspects of customs regulation, such as classification of goods, determination of customs value, calculation of customs payments, and proving the facts of smuggling and false declaration of goods.

The OFS system for law enforcement activity (in other words, *customs criminalistics*) must become, and indeed has already become an important scientific support for Customs, and neither operational search activities, nor urgent investigative actions that are performed by customs authorities should be undertaken without it.

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Notes

1 Customs examination means the organisation of searches that are carried out by customs experts with the use of special and scientific knowledge for the solution of issues in the field of customs regulation (Chapter XX, Customs Code of the Customs Union).

2 The author presents descriptive parts of a crime without specification of data. Full texts of news presented by law enforcement agencies (including the Federal Customs Service) can be freely accessed on the official sites of state departments, and also on their pages on popular social networks (Facebook, Twitter, VK, etc.). Also, information from the following websites was used: www.gov.uk; www.wcoomd.org; www.ice.gov.

3 Central Forensic Customs Laboratory (CFCL) is one of the strongest scientific research centres equipped with modern analytical equipment and staffed by qualified personnel in the field of customs and forensic examination.

4 Source: http://eng.customs.ru/index.php?option=com_content&view=article&id=1931:law-enforcement-activities-of-the-federal-customs-service-in-2015&catid=32:news-cat&Itemid=1858&Itemid=1857/

5 Source: https://www.veko-online.de/92-archiv/ausgabe-1-16/643-kriminalgeschichte-hans-gross-begruender-der-modernen-kriminalwissenschaften.html

6 Such as technical means of *customs control*; *customs examination; criminalistic search; metrological support; IT support; communications; customs transport;* and other supportive technical means.

7 Source: http://www.tks.ru/crime/2011/12/16/05/

8 Creation of *criminalistic services* at each customs laboratory, which serve regions with large volumes of customs registrations seems necessary. The organisational and regular structure of such services for each customs laboratory varies, the main criteria for determining the number of staff being the area covered and the volume of goods crossing the customs border.

9 'Protecting Nigerian Land and Cyberspace Borders Through Digital Forensics', presentation by Professor Gbenga Ilibeye, Nigeria Customs Service (NCS) Federal Ministry of Finance, Federal Government of Nigeria on 1 December 2012.

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Vladimir Makarenko has more than 13 years' experience in the customs authority of Russia. As head of the expert department in a Central Forensic Customs Laboratory (CFCL), Vladimir developed and deployed 10 protected documentary forms relating to Federal Customs Service (FCS) activities. He also developed technical requirements for three types of customs identification, including a personal number press and customs registration stamps. At the beginning of his career, Vladimir conducted research on more than 5,000 prints of the various seals and stamps on customs documents, from which some 1,700 forgeries were detected. Vladimir has considerable experience in the field of criminalistic and forensic knowledge, applying his skills in the field of customs regulation. His current position as Customs Legal Counsel of the Russian company, *'ZENON'* Inc., involves practical activities related to arbitral procedures in customs legal relationships.