

# Paper or Pixels? The Dual Challenge of Document Management in Ukraine's E-Customs Clearance

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**Keyword:** *electronic customs declaration; e-declaration; paper documents; digital document; customs clearance; customs clearance agent, customs broker.*

In the era of digital technologies, electronic customs clearance of goods has become a standard for many countries across the globe. Ukraine is no exception. However, unfortunately, even in the modern system, problems can arise that can significantly complicate and slow down customs clearance. One such problem is the provision of paper documents during electronic customs clearance in Ukraine. In this context, it is crucial to clarify some issues that regulate the procedure for providing paper documents and the form of customs control during electronic customs clearance of goods in Ukraine. In this article, we present a real case that happened to us at the end of March 2023 in Odesa.

## SITUATION

On March 31, 2023, we (hereinafter referred to as the customs clearance agent) submitted an electronic customs declaration with the number 23UA500020004458U6 to the customs clearance department of the Odesa Port Customs Office of the State Customs Service of Ukraine (hereinafter referred to as the customs clearance department). Along with the electronic customs declaration, we submitted a package of documents necessary for customs formalities:

- the packing list;
- the invoice, and other payment documents that determine the value of the goods;
- the payment documents that determine the transportation value;
- the International Waybill (CMR);
- the certificate of origin of the goods (EUR.1);
- the foreign trade contract (contract);
- the contract for the provision of customs broker services;
- the contract for the provision of transport and forwarding services.

During the customs clearance process, the inspector of the customs clearance department sent a notification to the customs agent requesting the submission of original documents (or their copies). The reason for this request was: *"Due to the activation of the Automated Risk Management System, I ask you to provide original documents specified in the customs declaration or their certified copies"*.

As the result of a phone conversation with the inspector of the customs clearance department who processed customs formalities based on the electronic customs declaration, the agent was informed that the electronic copies of the documents submitted together with the mentioned electronic declaration were insufficient!

The inspector of the customs clearance department demanded that the agent provide a paper (hard) copies of the documents indicated in box 44 of the customs declaration directly to the customs clearance department.

Later, the agent found out that the Automated Risk Management System had established a customs control form "101-1" for electronic customs declaration No. 23UA500020004458U6. According to [Order No. 1011](#), the content of the control form "101-1" means **“Demanding the originals of the documents specified in the customs declaration, or their copies certified in the established manner”**. [1]

After arriving at the customs clearance department, the agent discovered that the electronic customs declaration had already been processed. Following a discussion with the head of the customs clearance department regarding the actions of the inspector in that department, **it was determined that the customs clearance agent was required to provide the original paper documents!**

## **DECODING E-DECLARATION IN UKRAINE: BRIEF ANALYSIS**

The movement of goods across the customs border of Ukraine begins with the declaration procedure, the main type of which is the *electronic declaration*. Electronic declaration involves submitting a customs declaration to the customs authority in electronic form as a single administrative document, followed by its electronic customs clearance.

According to [Clauses 2 & 3 of Article 257](#) of the Customs Code of Ukraine:

“2. Electronic declaration is carried out using an electronic customs declaration, which has an electronic signature attached, and other electronic documents, as well as electronic (scanned) copies of paper documents, which are signed by the Declarant or authorized person.

**3. Customs declaration and other documents issued on paper and in electronic form, have the same legal force”**. [5]

According to [Paragraph 6 of Clause 2.2](#) of Order No. 631:

“6. In case of customs clearance of goods based on an electronic customs declaration, information about the necessity of submitting scanned copies of documents specified in box 44 of the electronic customs declaration is sent to the Declarant via an electronic message, certified with a qualified electronic signature of the customs authority official.” [2]

We can also mention certain provisions of Ukrainian legislation regarding some documents that can be used in international trade in electronic form. For example, the *international trade contract*.

According to [Part 2 of Article 6](#) of the Law of Ukraine No. 959-XII:

«International trade contract shall be concluded by the foreign economic activity entities or their representatives in a simple written or electronic form unless otherwise provided for by international agreement of Ukraine or law.” [3]

According to [Paragraph 1 of Article 207](#) of the Civil Code of Ukraine:

"1. A contract is considered to be concluded in writing if its content is recorded in one or more documents (**including electronic documents**), in letters, or telegrams exchanged by the parties.

Additionally, a contract is considered to be made in writing if the parties is expressed through telegraph, **electronic** or other technical means of communication." [\[4\]](#)

## **INCONVENIENT QUESTIONS OR HOW CLEAR UP CUSTOMS CONFUSION**

Thus, the position of the customs clearance department is unclear. For what reasons did the inspector demand paper originals of documents and the personal presence of the customs clearance agent during the electronic declaration of goods?

The inevitable question arises, can copies of documents transmitted by e-mail not have the same force as the originals of such documents? Especially in light of the fact that in Ukraine it is constantly emphasized that the State Customs Service is digitized. However, unfortunately, the Ukrainian customs legislation has not been fully adapted to the introduction of IT in the customs clearance process.

To avoid unjustified delays in customs clearance of goods in the future, it is advisable to clarify the position of the State Customs Service of Ukraine on the **following issues**:

- Which legal act regulates the procedure for submitting only paper (hard) copies of documents when declaring goods electronically (when the "101-1" customs control form is triggered)?
- In which form (paper or electronic) is the customs agent required to submit documents when receiving an electronic message from the customs authority regarding the electronic customs declaration (when the "101-1" customs control form is triggered)?
- Why was the personal presence of the customs agent required when submitting paper documents (when the "101-1" customs control form is triggered)? Because, this may be unacceptable for businesses, especially during a state of war throughout the territory of Ukraine.

Taking into account all of the above, it is necessary to conduct a detailed analysis of the process of electronic customs clearance in Ukraine and take measures to eliminate problems that can delay and complicate customs control and customs clearance of goods.

Moreover, [Part 4 of Article 3](#) of the Customs Code of Ukraine indicates that if the legislation allows for ambiguous (multiple) interpretations of the rights and obligations of taxpayers, which may result in a decision in favour of either the taxpayers or the officials of the customs authority, the decision must be made in favour of the taxpayers. Also, [Part 1 of Article 30](#) of the Customs Code of Ukraine states that officials of customs authorities who make unlawful decisions in favour of third parties bear criminal, administrative, disciplinary, and other responsibilities in accordance with the Law. [\[5\]](#)

## FINAL THOUGHTS

We conclude that the State Customs Service should regulate and reduce the possibility of subjective interpretation of legislation by officials of customs authorities. We believe that the stability and predictability of legislation, as well as the efficiency of customs authorities, are key factors for attracting foreign investment and increasing the volume of foreign trade. Therefore, to achieve these goals, it is necessary to pay more attention to the issues of reforming the customs system and improving its efficiency.

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