

**Tactical combinations under investigation evasions of  
customs payments associated with contraband**

**Abstract:** It is suggested tactical combinations on seizure of the goods, exposure of deception about the goods' reloading on the way, on collection of information about crime committed through Internet and others.

Special attention is drawn to tactical combinations under investigation of crimes in sphere of foreign economic activity, committed by organized criminal structures.

**Keywords:** tactical combination; contraband; evasion of customs payments; legalization of the goods; mechanism of criminal activity.

It is not always possible with one investigative action to achieve tactical purposes of investigation of customs payments' evasion that associated to contraband. Consequently, it is recommended to use tactical combinations in course of it. Particularly, it concerns to similar crimes that committed by organized criminal gangs [3, p. 14-16].

So, tactical combination on goods' seizure that made correct and timely determines success of case's investigation. Person carrying out investigation does not have necessary information while the goods for which unpaid customs duties, is not found, seized, and examined. Subjects, which keep those goods, are free used by it and do not wish to explain the circumstances of its purchasing. Organizers of criminal legalization of the goods are continuing their activity on business with goods, which hidden on customs payments, until they are not disclosed. Often, it is impossible to calculate correct sum of unpaid customs duties without direct examination of the goods. Informational background is getting active with confiscation of the goods due to owners of the goods come to the customs offices and give evidence in relating of the goods' receiving. Exact tactical decision on the time

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of the goods' seizure and ways of its production has great significance for successful investigation. This decision should be well-thought-out. The tactical constitute parts of it are: 1) sufficient data to make legal substantiate procedural decision concerning confiscation (through seizure carried out in course of production on a case relating to violation of the customs regulation); 2) decision of an issue about place of storage of the goods to be seized; 3) search and detection; 4) actions' tactics in course of seizure (choice of place, time, way, determination of participants and list of necessary technical means); 5) particularities of procedural formulation.

D.S. Okhtubekov justly notes that the time of confiscation of the goods in relating to other investigative actions is determined by significance of the goods' features for correct calculation of the customs duties. If a sum of the customs payments depends on the goods' features (customs cost, capacity of car's engine etc.), in this case the first task is to seize of it in order to examine and prove a fact of identity of confiscated goods, which was passed through the customs boarder. If a sum of the customs payments depends on a status of a subject who is passing the goods through customs boarder (ex. forced migrant) – priority efforts should be concentrated to establish real status of the person and calculation appropriate customs payments. Establishing the correct sum of unpaid customs payments will be legal ground to confiscate the goods [12, p. 300-301].

From point of view of overcoming to contraction investigation the time and tactics of seizure should be also carefully chosen. Unfortunately, investigators, who have permission to seize the goods, have to choose the time of its conduction so that a chief of customs office could not to disturb them. Sometimes, the goods' owners are communicated to head of the customs office and thereby he begins to contract of investigative actions' conducting.

According to I.S. Ugrumov, time of seizure should be chosen with purpose to receive urgent free approach to the goods and opportunity its quick taking off place of seizure. For example, it is good time to confiscate a car, an owner of which not wishing to present the car hides of it, is early morning when the owner wants to leave [13, p. 100].

An investigator, who confiscated the goods, enters in obvious conflict with their owners. O.Y. Bayev describes two ways investigator's action during conflict settlement: a) without using all his opportunities; b) with active using all his opportunities [1, p. 82]. It is necessary urgently and actively to use all opportunities to examine all features of the goods when the goods has detected and seized and size of the customs payments depends on the goods' features; inspection (customs inspection), receiving of samples, production of expertise, determination of accurate customs name, customs cost and sum of the customs payments. Exhausting examination of the goods will assist of conflict's settlement between an investigator and persons, to which the goods was confiscated. If a fact of evasion from customs payments or contraband is confirmed then seized goods is a status of material evidence, and if no, it should be taken back an owner.

A.R. Gogayev points out that when a sum of the customs payments depends on persons' status, which moved the goods across the customs boarder, it is necessary to use minimum investigative information until the time at which the evidences of the persons' status are not found, because a size of the customs payments depends of their status [5, p. 209-210].

Around the goods, which moved illegally across the customs boarder, are begun stressful psychological, intellectual and legal confrontation, since the main goal of criminals is possession, turnover and legalization of the goods without customs payments. Criminals and their supporters are waiting wrong, insufficiently substantiated, unreasoned decision of investigator. The aim of contracting persons is to lodge an appeal against investigator's decision. In this connection, V.N. Karagodin rightly noted a link of mistakes in investigation with contracting to it. "The goals of contracting subject are acceptance a wrong decision by investigator. Under this the subject of contracting is advised about the true circumstances and participants of investigated event, but investigator is not" [8, p. 31].

Formally, investigator may confiscate any item, which may be a mean of crime detection, assists in establishing of actual circumstances of a case, detection of accused persons, and refutes accusation or mitigation of responsibility. But, in order to avoid the mistakes, leave minimum chances for persons contracting investigation,

under making decision on seizure of the goods one should consider status of confiscated goods, which might be different and to impact on their further fate.

Cases are often when the customs registration of the goods is illegally fulfilled by competent officials, with violation of the rules, without payments or reduction of the customs duties. The reasons of this might be as official crimes so and false misrepresentation of the customs officers. Undoubtedly, such goods are material evidences, but in our opinion, to demand their repeated customs registration is illegal. We may talk only about compensation for damage by accused persons, ex. by officials of the customs office or declarant. In this case violation of the customs regulations or guilt of criminal should be proved. Such goods are material evidence s after inspection and necessary examination might be kept at any person. They should be taken back to owners after making decision on a case. The goods might be confiscated by court if they are recognized as crime's instruments, which belong to accused person or values received by criminal way.

Seizure and arrest of the goods as material evidences are possible and necessary when their owners are brought to responsibility or providing civic plea. But seized goods should not always be placed at temporary storage warehouses. In order to do it, customs office should have legal grounds: evidence of illegal moving the goods across the customs boarder and their identity with detected one, absence of evidential fact of the customs registration of these goods.

Actions' tactics on the goods' seizure is quite variably. The fact of seizure, time and grounds has important tactical significance. Even bona fide owners, i.e. persons, who really did not know that they bought the goods, for which had not been paid customs duties; in addition they do not want to lose these goods. It is more complicated issue with "clients", who had bought cheaper goods and knew that it was not cleared by the customs office, and now trying to hide this fact. Actions of investigator on seizure should be legally, reasonably, and could not be carried out with deception. These actions have to exclude any provocation of the persons, who are trying to contract investigation. Let's see an example with car's seizure.

Some Mr. "R" had got a car, which had been legalized without customs payment. He knew and hid this fact. In course of preliminary investigation stage an investigator

undertook all necessary measures to establish a place, time and person, who imported a car in Azerbaijan. After that he called Mr. "R" and in order to establish original identification number of the car and the customs cost offered him to present his car for inspection and expertise. But, under farfetched grounds Mr. "R" refused to present the car.

Investigator made decision on car's seizure as soon as were collected evidence on place and time of the customs border crossing and non-payment of the customs duties. But, despite deception attempts of car's owner, an investigator could detect the car and took it at warehouse of temporary storage. Seizure was fulfilled. Later, Mr. "R" voluntarily paid the customs duties.

Thus, the main factors of successful seizure can be the following: 1. Creation of visibility inability to active actions in combination with suddenness. 2. Reasonableness and legality of decisions made. 3. Establishment of location of an object sought. 4. Reflective management by situation with using of position of a person whose goods is subjected to seize. 5. Correct choice of seizure time, which provide access to the goods.

Tactical combination of deception exposure about the goods' reloading in the way is also become necessary to successful investigation. Often used trick of criminals is a fib about the fact that stopped (detained) goods had been ostensibly reloaded on the way. In this case, it should be used tactical combination of interrogation (itemization and correction of testimonies) with production of investigative experiment. In course of experiment it should be cleared up a chance to reloading of the goods in certain terms, opportunity storage of the goods at some place with limited volume, ex. garage, attic, shed etc. It is recommended then to interrogate persons, who, ostensibly, kept such goods. As rule, an experiment, which showed impossibility of such storage due to insufficient volume or time to be reloaded and found contradictions in testimonies made the liars say true. Unfortunately, similar combinations are seldom fulfilled in practice.

In opinion of I.H. Vorobyov, proper combination on detention of false consignees may be carried out in the railway; where under receiving of the goods the customs' stamps and seals on the documents are faked up. As result, it is happened evasion of the customs payments. These documents should be seized until criminal

come to warehouse to take the documents. In course of inspection it should be done copies of the documents, which have to be signed by each participant of this inspection. Employees of the warehouse are instructed to give all necessary invoices, take the documents sealed by the customs, and receive payment for transportation and storage. Detention and interrogation of these persons might be done after that. Examined goods are placed in warehouses of temporary storage [4, p. 271-274].

Tactical combination on information collection about crime, way of preparation and commission of which is linked with Internet is becoming much important year by year. The last decade computerization of production, science and life has been made impetuous jump in Azerbaijan. Naturally, modern computer devices are also used by criminals in their criminal activity.

Unfortunately, issues of collection and using of computer information under crimes' investigation is not much developed in science. A.V. Kasatkin studied general regulations of collection and usage of computer information under crimes' investigation. He justly noted: "Computer devices, software programmes, external machinery (firmware), electronic data storage are very often become objects of investigative actions, which are carried out as under investigation of "computer" crime, and so under using of electronic computer in criminal purposes. Computer was became completely new object of investigative actions" [9, p. 6].

Being studied collection and usage of computer information under crimes' investigation, A.V. Kasatkin especially distinguished the tactics of information search in dependence on level of data security and functional state, participation fact of specialist and attesting witnesses in information fixation, kinds of initial and computer research of devices and programmes, evaluation problem of computer information [9, p. 16-23].

Under crimes' investigation in sphere of foreign economic activity, in addition to stipulated common issues, it is very important tactics' particularities of investigative actions in relating to the crimes committed through Internet and especially with e-mail. Since minimum two persons participate in such kind of activity, who are in different countries (sender and receiver), information interaction

of them can be carried out through Internet also. This fact is important under crimes' investigation in the customs area.

Internet, owing its accessibility, has transformed in big virtual field of social activity. Informational exchange (from contract signing to common communication) implements through Internet [6, p. 14-15]. In first sight, innocence computer correspondence about date of arrival, point of meeting might be in reality agreement of way, place and time of preparation or commission of crime.

State did not turn out to be controlling possible crimes with using of this system. Correspondence through Internet is amenable to calculation, but volume, an order and terms of saving of the correspondence and information about it (addresses of sender and receiver, time of sending and receiving etc.) are determined nowadays with technical capabilities of providers but not with laws. The problem of computer information using as evidence is become completed also due to the fact that this information, in actual, is a mail-telegraph message and consequently only court decision may allows limiting the right of privacy of this information.

Resolving of tactical investigational task in order to receive with admissible ways full actual information on availability and content of correspondence between subjects through Internet cannot be achieved by one investigative action. It is necessary tactical combination, which depended on whether carried out operational searching activity before initiation of criminal case or no, can be a few types. It is the following is the main content of it. Under receiving of information about the fact e-mail correspondence an investigator is trying to establish personalities, addresses and telephone numbers of the parties and e-mail address in Azerbaijan. After that, with assistance of specialists, it is determined Internet provider.

Further, an investigator should immediately seize all available data carriers and documents as suspected person can delete all this information if he knows about this investigative action.

Being received all information an investigator will be able to obtain details of his contacts with other accessories to crime. The second stage is an establishment of computer location and receiving court's decision on limitation the right to private correspondence, telephone, mail and other communications in purpose to

investigation of specific criminal case. Being received the court's decision investigative body should begin listening of telephone conversation. After that it should be carried out seizure of Internet service agreement at an office of Internet provider and obtain to access to personal e-mail information of a suspected person. If provider would not have kept the letters' contain, then it should be seized information from registry book relating to the date, time, addresses of persons who carried out e-mail correspondence.

The problem is that availability and terms of saving of e-mails' registration book and incoming letters are determined with technical capacities of providers and are not regulated by the law. Typically, information is kept in the registration book not more than 6 months, and texts of the messages are not saved at all.

Investigative body has to arrange unexpected and simultaneous searching of a user's computer location at all places in order to exclude any destroying of information stored in a computer system, diskettes and to compile a seizure record with signatures of all participants of searching action. It should begin a search when they will have a chance to enter at all premises simultaneously. In case suspected person has computers at office and home, it should be arranged two groups in order to commence searching actions; the main goal of the groups is not to allow destroying information [7, p. 40-42].

In addition, with assistance of a specialist it should be reflected in a seizure record the following: whether computer is in order, how much information is contained computer system block, what kinds of software it was designed. It is reasonable to interrogate at once as witnesses of everybody who is on scene of search.

Final stage is computer technical (informational and technical) expertise. The following questions might be put before an expert: what information is contained in the discs seized and assignment of this information, origin, and contents. What information of these discs was sent through Internet, what e-mail addresses of a sender and receiver are? Whether information was sent through Internet is contained of system block of computer? What contents is? Specific range of the questions might be changed in dependence on situation [6, p. 19-24].



As it pointed above, crimes committed by organized criminal groups are the most danger in area of foreign economic activity. Criminal groups involve in international level and form international criminal organizations, which covering few countries or even regions. Mechanism of formation and activity of these criminal groups are especially distinctive for associations, which are involved in auto thefts, contraband importing in Azerbaijan and legalization through forgery of documents with evasion of customs payments, and also under contraband importing of alcohol drinks in Azerbaijan.

In first stage person, who were before liberalization of foreign economic activity involving in documentations' forgery or profiteering, come to conclusion on profitableness of such kind of criminal business receive samples of documents, which are issued by the customs office for car's registration in State Traffic Patrol Department. They begin searching the individuals who for any reasons cannot or do not wish registration their imported cars and offer them their services on customs clearance and registration at department of traffic police. They receive money from clients. Actually, it is forged the customs documentation, sometimes criminals enter in criminal collusion with officers of traffic police and as result – it is carried out illegal registration of cars [10, p. 111-116].

In second stage, an activity is changed. Administration of state traffic police finds the forgeries of the customs documents and consequently illegal car's registration. Police body works with customs documents and determines that this way of criminal activity is faced by detention. It is formed a criminal group of new members, intention is corrected and concluded in the following. First group of criminals are involved in purchasing or hijacking in abroad and delivery them to Azerbaijan. Second criminal group, using lost or stolen previously passports from persons without certain residence, and sometimes entering in collusion with the customs officers, which involve in registration process, prepares set of documents, which allows registering a car, ostensibly, on refugees or forced migrant, without paying the customs duties; and in principle, any person who has customs privileges. As rule, it is forged stamps in passport on registration, certificate of migration service, technical certificate of a car. It is existed a strict division of the functions in

criminal transnational group. Ones of them are delivered cars. It might be done as contraband way so and legal one, but without customs payments through “racers” services, persons of which are hidden with figureheads or forged documents. Other are only forged different documents, and third persons carry out contact on customs registration and after registration this car is sold. Received profit is divided between criminals according to everybody’s contribution. Each of them is born personal responsible in this criminal business.

Criminal activity becomes wider at the third stage. There created a stock of the cars, forms and originals of various documents. Criminal group allocates funds to find new ties in the customs office and law enforcement bodies in order to increase number of illegal operations and returning of confiscated as material evidence on criminal cases cars with procedural way, ex. termination of criminal case, changing of storage place of car seized [2, p. 118-119].

Fourth stage is the further expansion of criminal ties. As rule, somebody one governs by all operation. It is increased a scope of criminal operations, improved the means and procedures. Criminals buy cars, deliver and register them on an order, being received earnest money from nothing suspecting buyer, who is showed a sample of purchased car model. It is arranged “barter” between criminal groups of regions in order to exclude cars’ confiscation by the customs office or state traffic police. After legalization cars are struck off the register in one region and “are exchanged” with the same from other region. Non-repeated replacement of technical certificate of a car as result of intentional “loss” in order to hide a place of initial legalization is preceded to it. In present, the same case has been investigating by Main Investigation Department of the MIA of Azerbaijan Republic.

In opinion of P.I. Komlev, mechanism of criminal activity on evasion of customs payment under smuggling of alcohol and alcoholic beverages is such. Criminal register legal entity – a company in one of the offshore zones, ex. in Cyprus and this company concludes a delivery agreement with one monopolist in one of the CIS countries, for example, to “Ukrspirt” Concern. The terms of shipment are prepayment and notification of a buyer with indication of receiver’s address. Using previously stolen passports of some persons, criminals register actually non-existent

legal entity in Azerbaijan. This fictitious legal entity is, ostensibly, a products' receiver. It is prepared a fictitious trading agreement between Cyprus company and Azerbaijani receiver. According to the agreement, stamp of the Ukrainian customs about registration of the goods is time of passing of the ownership's right, after that money is transferred to "Ukrspirt" Concern account and the plant begins shipment of the goods.

Ukrainian plant ships the cisterns with alcohol products by railway to back stations. Criminal receive necessary shipping documents under arrival of the goods. These documents are stamped with forgery seals and stamps about customs registration. Being paid nothing of the customs duties, and criminals pay only transport charges and receive the goods. If the cistern is stopped by the customs then "an owner of Cyprus company" is required the goods' re-export registration, i.e. export back without payment of duties and taxes. The goods is sent to a plant – legal or illegal one, which has a license from foreign company to produce alcohol products under its trade-mark from unmanufactured raw products and a license from the customs office on regime of re-producing at the customs area. These licenses allow to a plant receiving from abroad a raw, packing materials, labels, which are not imposed by any customs payments or imposed with minimal payments. The plant begins producing alcohol beverages, which according to an agreement on products section, is partly shipped abroad with refund of the customs payments that had been made under exporting. Another part is remained in the plant. Reception of non-controlled and non-registered raw (an alcohol) allows producing not assessed with any tax an additional products, which might be sold as imported so and licensed manufactured goods that increases its price. Technological particulars of a big plant practically exclude any control for the real volumes of products manufactured. Thus, all extra profit taken from selling of the products, which avoided customs and tax duties, is left in disposal of criminal group. The last crime of production, which might be committed, is a counterfeit of excise stamps. Cash money or currency received for goods' selling, are passed legally or illegally to abroad in order to reproduce criminal business [11, p. 211-226].

Particularities of investigation of smuggling and evasion of customs payments committed by transnational criminal groups consist on the following:

1. An investigator must be able to detect in initial investigative situation the signs of activity of transnational criminal group, pointing out its high degree of organization and link with corruption. They might be: the details of offshore area of enterprise of foreign counteragent, large volumes of shipments, mass facts of documents' forgeries, the ways of forgeries and tampering, which are impossible without participation of criminal from other country, protection of governmental and law enforcement bodies to illegally set up legal entities, ways of concealment, application of which is impossible without using of special records and systems of law enforcement bodies etc.

2. Detecting these signs, one should think and plan the measures on overcoming of a counteraction to investigation. The counteraction is certainly appeared as soon as activity on investigation will become known or investigative actions will block economic basis of reproduction of criminal action. If tactical operations on overcoming counteraction to investigation are not planned and fulfilled, an investigation would not have actually success.

3. Strategic success of this investigation determines the factors of secretiveness, suddenness, energetic, fast fight for information about crime mechanism. As rule, the bases of unpunished activity of transnational groups are difficultness of receiving criminally significance information by Azerbaijani law enforcement bodies in other country.

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