



Regional Office for Capacity Building/  
Regional Training Centers for the European Region  
of the World Customs Organization

# Customs Scientific Journal

**C**apacity Building

**H**uman Resources

**S**cientific Research

**T**rade Practice

**P**rofessional Standards

**M**otivation

**Pilot edition  
Number 1**

**S**trategic Planning

**2011**

**Regional Office for Capacity Building/  
Regional Training Centers for the European  
Region of the World Customs Organization**

# **Customs Scientific Journal**

**C U S T O M S**

**Pilot edition  
Number 1**

ROCB & RTCs  
European Region  
2011

## Customs Scientific Journal CUSTOMS

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**EDITORIAL**

We would like to introduce you the first pilot issue of the *Customs Scientific Journal CUSTOMS*. It was launched by the initiative of Regional Office for Capacity Building/Regional Training Centers for the European Region of the World Customs Organization at the Informal EuR Region ROCB & RTCs 's meeting, held in Brussels on October 1, 2010.

Founders of this Journal regard it as a mirror of the implementation of Capacity Building Strategy for the Region Europe, as the communication and the coordination mechanism within region to support the establishment of customs-to-customs partnerships as well as to enhance the identification and exchange of modern technologies and best practices within the region.

The *Customs Scientific Journal CUSTOMS* covers all aspects of the roles and responsibilities of customs with the focus on: Customs & Business Partnership, Professional education in Customs domain, Implementation of the WCO Standards, Best practices, Development of scientific activity. The most prospective are also the following broad sections: Young researchers' page, Guests (papers by representatives of Customs Administrations/Customs Universities from non-EuR Region of WCO), Reference Material.

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### CUSTOMS & BUSINESS PARTNERSHIP

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### CUSTOMS – BUSINESS PARTNERSHIPS

#### **Abstract**

This scientific article discusses the problem regarding to a partnership between customs and trade. Possible ways and different programs and concepts developed for consolidation both of them are shown in this article.

**Key words:** customs, trade, partnerships, partnership programs.

#### **Introduction**

Some years ago, it was difficult to imagine that there CAN be a partnership between customs and business due to the diametric interests of both groups.

And thinking of my tax authority it is hard to get the impression that we are partners. And the customs authorities are tax authorities in deed.

The collection of revenue and customs duties is and has ever been a task of the public administration. How there could be a partnership is difficult to detect from first glance: On the one hand there is the trade, whose intention it is to keep the customs duties as low as possible. On the other hand there are the customs administrations which are obliged to collect and make available the import duties as traditional own

resources to the European Union. So, where are the common interests in this area of governmental activity?

Partnership means in any case to be open for a dialogue on an equal footing. So the question comes up: "What is or has been the driver for such a dialogue and partnership between customs and trade?"

One driver for sure has been the historical events in the past, which led to an immense change of the tasks of the customs administrations: Away from pure tax collection towards securing trade and supply chains.

The attack on the World Trade Centre on 11.09.2001 and other cruel acts of terrorism has massively increased the sensibility of the administrations and the public opinion for the protection against terrorist crimes. Next to that the security of the trade was put into the focus as well. Terrorist attacks on the international logistics of transports can cause immense damage to world trade and are therefore of natural interest to terrorists who want to cause through their attacks as heavy disturbances of the public and governmental structure as possible. The explosion of a so-called "dirty bomb", which would lead to a contamination of the environment with nuclear material by conventional explosives, would have major consequences for the operation of a world-port like Rotterdam, and by that also for the supply of entire countries. Calculations on this point have shown that damages for the economy of several billions of Euro each day would be probable. The transport industry is aware of this threat too.

Based on these considerations, it was to examine how trade and customs administrations can work together to counter such a threat. The common goal of trade and administrations involved into the international movement of goods is to achieve the highest possible level of security on the entire supply chain of the products.

But HOW can this goal be achieved?

The solution has the following different layers:

- Partnership in form of a permanent dialogue between customs administrations and trade



- Partnership concepts like the AEO-concept, the C-TPAT program in the United States and similar partnership programs in other part of the world.

### **Problem statement**

The purpose of this article is to show the possibility of the relationship between Customs and Trade, and if it is possible to show the probable ways and concepts of developing cooperation between them.

### **Research results**

#### **I. Dialogue between customs administrations and trade**

Learning from the experience how important a permanent dialogue between customs administrations and trade really is, the "fathers" of the Modernized Customs Code, which entered into force in 2008, but which will not be applicable before 2013 together with the implementing provisions, have foreseen the obligation for such a permanent dialogue.

Art. 7 (1) MCC states:

"Customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk. That exchange may take place under a written agreement and may include access to the computer systems of economic operators by the customs authorities."

Art. 8 (2) 1<sup>st</sup> sentence reads:

"Customs authorities shall maintain a regular dialogue with economic operators and other authorities involved in international trade in goods."

The only question remains, how these provisions can be filled with life in order to avoid that they are only mere paper tiger?

Concerning the exchange of information a feasible possibility could be to install a database maintaining data concerning suspicious traders and movements that may be

subject to transactions in breach of customs or agricultural law and means of transports used for this purpose.

In terms of a dialogue on a permanent base there are already some positive experienced gained on different levels:

At the level of the national administrations there are meetings in place on a regular base between the customs administrations and trade representatives to discuss hot topics and to inform the trade on latest developments in customs law. These regular meetings are good; they are useful and beneficial for the development of customs law.

However dialogues take place not only at the level of the national administrations but as the European Unions is concerned at a very much higher level too, the level of the European Commission. By establishing the Trade-Contact-Group, in which 34 leading trade associations and organisations are represented, the European Commission has created a platform to have its ear rather close by the trade.

What was the reason to have such a platform?

This group initially was found in 2002 in the area of electronic customs and exportation. Its first major task was the consultation within the process for the security amendments to the Customs Code in 2005, so called the "small Customs-Code-Reformation". In 2008 it was decided, due to the positive results which were achieved in the consultation process and the request from the trade, to install the group as a permanent institution to discuss ALL customs related issues. According to the terms of reference<sup>1</sup> this group shall carry out a structured dialogue on a permanent basis. The Trade-Contact-Group fulfils exactly the requirements made by the Modernized Customs Code concerning the dialogue between customs and trade. By this dialogue it is ensured that the trade is involved in the strategic and operational part of the customs initiatives in a coordinated and well structured manner. Wishes and needs of the trade can be presented to the European Commission which then can use the experiences of the trade made in the field and can profit from the contacts and

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<sup>1</sup> Commissions Working Document TAXUD/1426/2007 Revision

the knowledge on the operational logistic processes. At present one main topic are the consultations of the Implementing provisions for the Modernized Customs Code. Especially in this area the involvement of the trade is important to avoid that new provisions by-pass completely the needs of the trade. The European Commission decided therefore as well to have in different subgroups where the first drafts of the provisions were created not only representatives of the Member States but as well from the trade. And many a provisions have been inserted or have been deleted to and from the draft upon proposals made by the trade representatives. This is a good example of acting as partners, carrying out an open dialogue. This partnership approach is seen as not only beneficial, but absolutely necessary. The kind of consultation and exchange of views is a key to respecting commitments where both government and business have a role in the successful and efficient application of customs policies<sup>2</sup>.

### **II. The AEO-Concept**

The AEO-concept is based on the WCO SAFE-Framework of Standards to Secure and Facilitate Global Trade which was built by the WCO to increase the security standards of the supply chain and to come to trade facilitations in the world trade.

Details of the AEO-concept were developed by a project group of EU- Member States together with the European Commission. Between January and July 2006 this concept was tested in a pilot phase with Member States and economic operators. The legal base was put into the Community Customs Code by amendment through the Regulation Nr. 648/2005 from 13.4.2005 and by amending the Implementing Provisions through the Regulation Nr. 1875/2006 from 18.12.2006. Since 1<sup>st</sup> of January 2008 operators can apply for the status of an AEO. The aim of the concept is to secure the supply chain, from the producer of the products up to the end-user. Therefore all partners in the supply chain can apply to become an AEO, for example the producer, the importer, the forwarder, the operator of a storage facility, customs

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<sup>2</sup> Deffaa, TAXUD talks business

agents, exporters, ports and suppliers. The status of an AEO is valid throughout the whole territory of the European Union. There are three different models which can be applied for:

- AEO C (for customs simplifications)
- AEO S (for a security certificate)
- AEO F ("F" for full; that includes C and S).

For each of these types the conditions are different and therefore the facilitations differ as well.

As it is a concept on a voluntary basis there is no obligation to apply for the status. However there are a lot of simplifications related to the status of an AEO: An AEO is entitled to present simplified customs declarations which means that not the whole set of data is required. This leads certainly to a reduction of the bureaucratically burden and may reduce costs for the operator. Next to that the number and intensity of customs controls are less. And the operator may be treated with priority when he presents his customs declarations. This can lead to faster flow of goods which results as well in a reduction of costs.

If there are some customs inspections and controls the AEO ask that these inspections shall be carried out at a spot where he wants to have them done, if this does not contravene the purpose of the controls.

The applicant has to guarantee a satisfying system of keeping his records and transport documentation to allow customs checks. In terms of physical security there have to security standards in place which are checked by the customs administrations. These aspects cover trading partners, access controls, and security measures concerning the staff, physical security measures to protect from the access by non-authorized persons, logistic processes, and measures to minimize the risks during transport, storage, production and loading of the goods<sup>3</sup>.

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<sup>3</sup> Reinhard/Fischer, Ein Ziel – zwei Wege?

Having been granted the status of an AEO means that the economic operator is regarded as a trustworthy economic partner by the customs administration so that the description as partnership program is justified.

The question is however: Is this concept successful and is it used by the economic operators, giving the fact that the operator has to undertake a lot of security measures and has to fulfil quite a lot of obligations.

This question can be affirmed. Already after 70 days after the implementation of this concept the first AEO-certificates were issued. Already one year after the implementation 499 AEO were included in the AEO-database of which 386 had applied for the AEO F, 103 for the AEO C and 10 for the AEO S.

In 2009 1442 certificates for the AEO F, 335 certificates for AEO C and 56 certificates for AEO S were issued. That means that in particular for the AEO F the number increased for 300 %. The majority of certificates were issued in Germany (27%), followed by the Netherlands (13%), France (10%), Sweden (9%), Italy (8%), UK (7%) and Austria (5%)<sup>4</sup>. In the meantime certificates have issued for small and medium enterprises AND for bigger players.

The increase of the number of certificates shows clearly that the AEO-concept was accepted by all Member States of the European Union. This positive result has led to the consequence that the legislator decided to apply the AEO-criteria for other types of simplifications as well. For being granted to present simplified customs declarations for import and exports the operator has to fulfil some of the criteria to become AEO.

To be competitive in the future more and more companies will apply for an AEO-status. This leads to the cautious prediction that the amount of applications will increase in future constantly.

### **III. The C-TPAT-Initiative**

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<sup>4</sup> Weerth, Zwei Jahre Zugelassener Wirtschaftsbeteiligter (AEO)

The Customs-Trade Partnership against Terrorism (C-TPAT) is a security initiative of the U.S. Customs and Border Protection as a prompt response to the terrorist attacks of 9.11.2001. It was developed in close cooperation with the trade in 2001 to increase the security in the movement of goods, coming into the United States of America.

Up to 2009 in total 10367 companies were certified as a secure trade partner. Next to the security goal a further aim was to grant trade facilitations for trader importing goods to the U.S.A. This initiative bears in his name the most important component, that is the partnership between customs and trade and the authorities recognized that the highest amount of security can only be achieved by a close cooperation between the authorities and the traders.

The legal base for this initiative was given with the "SAFE Port Act from 3.1.2006".

The advantages which come with a certificate depend on the level of benefits:

At the highest level the applicants must exceed the minimal security standards by innovations and own initiatives. Operators with a certificate for this level have the advantage that their consignments are treated with priority (they are at the "Front of the line"). For the level 2 a prior check of the authority is carried out to ensure that the minimum security standards are fulfilled and that the applicant shows further dedication to the aim of the initiative. For the lowest level the applicant has to prove that he has introduced more strictly security measures and his security profile will be checked by the authority.

Each participant in the supply chain can apply to become a C-TPAT-member, for example importers, loading companies, transporters, forwarders, licensed customs agents, producers and all others who are involved in the supply chain.

The security standards cover the following aspects:

- requirements concerning the trading partners,
- security for containers and trailers,
- access controls,
- security concerning the staff,

- security concerning procedures used,
- physical security,
- IT-security.

Like the AEO-concept in Europe this initiative is accepted by the traders widely. It is recognized that the advantages of this concept are greater than the possible costs related to the application, e.g. the companies can determine the door-to-door time in a better way and disturbances in the supply chain can be reduced.

Further advantages are regarded in the reduction of waiting time at the border, getting new clients, reduction of theft and shrinkage and the increase of the security for the staff<sup>5</sup>.

#### IV. Other Partnership Programs

Apart from the above described programs there are others in the world, like in

Canada	Customs Self-Assessment Program (CSA)
Jordan	Golden List Program
New Zealand	Secure Exports Scheme
Singapore	Secure Trade Partnership
China	AEO
Japan	AEO
Malaysia	AEO
South Korea	AEO
Thailand	Gold Card System

The CSA program in Canada is designed for low-risk, pre-approved importers, carriers and registered drivers. To take advantage of the program, CSA-approved importers and carriers must use a registered driver to carry CSA-eligible goods into Canada in the highway mode.

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<sup>5</sup> Reinhard/Fischer, see Nr. 3

The CSA program simplifies many of the import border requirements so that low-risk shipments can be processed more quickly and efficiently at the border, saving businesses time and money.

The Golden List Program in Jordan is for the purpose of evaluating the due diligence of the Jordanian supply chain companies dealing with international trade. The Program is considered as one of the pilot programs using modern methods in customs work, where it depends on the principles of risk management and due diligence with the customs requirements and international security standards. According to this Program Customs Department applies compliance auditing techniques in order to verify the compliance of Jordanian companies which are nominated for the Program, and to evaluate their compliance with customs requirements and approved international security criteria, through performing actual auditing on the work systems and the processes related to customs declarations, import, export and other systems; as well as verifying the applied security systems in the company and whether they are in harmony with the approved criteria and conditions of this Program through continuous coordination and consultation<sup>6</sup>.

By becoming a Secure Exports Scheme partner in New Zealand the operator is providing the administration with increased assurance surrounding the security of his exports. He will also significantly reduce the likelihood of your shipment requiring examination.

The advantages of joining the scheme include:

- Secure supply chain from point of packing to time of loading for export
- Ability to demonstrate compliance with security standards when contracting to supply overseas importers that are committed to supply chain security
- Joining the scheme will enhance your border clearance privileges in the MRA partner countries

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<sup>6</sup>[http://www.customs.gov.jo/customsDynamic/public\\_News/Nws\\_NewsDetails.aspx?Lang=3&site\\_id=0&page\\_id=150&NewsID=42&Type=P&Path=](http://www.customs.gov.jo/customsDynamic/public_News/Nws_NewsDetails.aspx?Lang=3&site_id=0&page_id=150&NewsID=42&Type=P&Path=)



## CUSTOMS & BUSINESS PARTNERSHIP

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- Following trade disruption caused by security alerts, partners' exports are likely to experience minimal disruption as their security can be assured
- The World Customs Organisation's Framework of Standards to Secure and Facilitate Global Trade is being adopted and implemented by a large number of international Customs administrations. By joining this scheme, partners will already have in place security measures that comply with these standards
- Reduced fees for the lodgement of all export entries
- Customs can provide advice and assistance if you strike unexpected issues with your export goods at overseas borders with which Customs has a mutual recognition agreement<sup>7</sup>.

The Singapore Secure Trade Partnership (STP) is a voluntary certification programme administered by Singapore Customs that encourages companies to adopt robust security measures in their trading operations, thereby contributing to the improvement in the security of the global supply chain.

Through the STP programme, Singapore Customs seeks to:

create awareness of the importance of adopting a total supply chain approach to cargo security;

encourage companies to play their part in securing their own processes within supply chains;

enhance the security of global supply chain and prevent disruptions to the smooth flow of goods; and

profile Singapore as a secure trading hub.

The STP programme provides companies with a framework to guide the development, implementation, monitoring and review of their supply chain security measures and practices.

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<sup>7</sup> <http://www.customs.govt.nz/exporters/Secure+Exports+Scheme.htm>

By participating in the STP programme, companies will be demonstrating their commitment to adopting and implementing appropriate security measures and a willingness to assume responsibility for keeping their supply chains secure<sup>8</sup>.

The AEO Program in Japan was developed in close cooperation with the business sector, aiming at ensuring security while facilitating legitimate trade. For that purpose, Japan Customs, as a main entity in the field of international trade, has developed a comprehensive AEO program with combination of programs for importers, exporters, warehouse operators, Customs brokers and logistics operators, such as forwarders and carriers. Under this program, an AEO in Japan can enjoy specific benefits according to its type of AEO, in addition to the benefits such as increased reputation as a more compliant and security-oriented company, favourable consideration in Customs enforcement proceedings and better relations with Customs. Programs for importers/exporters provide Authorized Importers and Authorized Exporters with benefits such as compliance-reflected reduced examination and inspection.

Furthermore, “pre-arrival lodgement of import declaration and permission”, “release of cargoes before duty/tax payment declaration and duty/tax payment” and “periodical lodgement of duty/tax payment declaration” are allowed for Authorized Importers, and the requirement to deposit cargoes into the Customs area before export declaration is waived for Authorized Exporters<sup>9</sup>.

The AEO Program in Malaysia allows the trader who is certified to have a faster clearance of imported goods and enhance competitiveness.

Applicants must demonstrate a high level of compliance with legal requirements, not have committed any customs offences for the past three years and not been blacklisted.

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<sup>8</sup> <http://www.customs.gov.sg/leftNav/trad/Supply+Chain+Security.htm>

<sup>9</sup> <http://www.customs.go.jp/english/aeo/pamphlet.pdf>

## **CUSTOMS & BUSINESS PARTNERSHIP**

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One of the advantages of using this program is that businesses with AEO status are given green lane clearance. This means that the usual customs formalities of registration, inspection and duties collection, which takes up to 13 hours, is cut down to a mere 15 minutes as the process is completely done online.

In addition to this, AEO status holders have the option of deferred duty payments.

Currently, there are 22 companies with AEO status. Among them are IKEA, National Panasonic and Samsung.

Another 17 companies are in the process of approval<sup>10</sup>.

The Authorized Economic Operator (AEO) system of Korea Customs has evolved responding to changes of the times. Since the KCS launched the Customs-business partnership in 1990s by concluding MOUs with the private sectors, it has long built the foundation for adoption of the AEO system, by introducing risk management techniques and developing systems for measuring and assessing compliance level of ex/import and logistics companies. The Commissioner can certify as AEOs trade-related parties that meet the security standards provided by the Presidential Decree, and provide those advantages in the clearance procedure. Korea Customs can also provide advantages in the clearance procedure to AEOs of other countries under the reciprocal condition<sup>11</sup>.

A Gold Card Scheme for importers/exporters in Thailand is another measure to facilitate import and export procedures. In this connection, importers/exporters with good record and reliable background who meet the Customs established criteria are granted gold card status. Various privileges relating to processing Customs procedures are granted to the gold card importers/exporters. The applicant has to fulfil the following obligations:

1. Place a bond and security contract and deposit a bank guarantee or other forms of guarantee with Customs in the amount of not more than 2 million baht.

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<sup>10</sup><http://biz.thestar.com.my/news/story.asp?file=/2008/2/5/business/20080205133751&sec=business>

<sup>11</sup> [www.wcoasiapacific.org/wcoweb/board/download.jsp?...rocb](http://www.wcoasiapacific.org/wcoweb/board/download.jsp?...rocb)

However, an importer or exporter under the Gold Card Scheme who is also a member of the Customs Transparency Partnership Project is allowed to deposit not more than 1 million baht-security.

2. Keep the original Declaration including all relevant documents for at least 5 years
3. Allowed a competent Customs officer to visit their premises or any other relevant places to examine the accounts, documents, evidences, and information in any form

The benefits of being granted a Gold Card Trader are the following:

For Importation

- Processing import procedures via “Green Line”
- A manifest is written off after the clearance of goods
- The goods are exempted from examination unless it is a random examination

For Exportation

- Processing export procedures via “Green Line”
- The goods are exempted from examination unless it is a random examination<sup>12</sup>

### **V. Mutual Recognition**

Worldwide threat through terrorism and international organized crime is increasing. Therefore it is important to have a global response to these threads. It is essential to know that the security of the supply chain can only be increased if as many states as possible implement security measures and envisage a mutual recognition of their concepts and programs<sup>13</sup>. This mutual recognition has to be implemented by international agreements. Only systems which are recognized mutually can help to secure the international supply chain from one end of the world to the other. One positive effect is that controls will be carried out more efficient and the burden on the trade will be decreased as much as possible. As the mutual recognition shows that the

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<sup>12</sup>[http://www.customsclinic.org/index.php?option=com\\_content&view=article&id=157&Itemid=204&lang=en](http://www.customsclinic.org/index.php?option=com_content&view=article&id=157&Itemid=204&lang=en)

<sup>13</sup> Aigner, Gegenseitige Anerkennung des AEO

trader is regarded as a reliable partner, it helps to increase the chances on the Third-Country-Markets.

For the European Union the most important issue in this respect is the recognition of the AEO concept by the U.S. and China, followed by recognition concepts for Japan. In principle there is an agreement that on paper the same conditions to get the status have to be applied. From the very first beginning it became clear that there is a different approach however. Whereas the AEO-concept in the EU has a concept in mind, which is rather "all inclusive", the C-TPAT program aims to enhance the security. Although there was a slight fear on the side of the U.S. that the AEO-concept was not implemented in all European countries in the same way, a common goal from the beginning was to achieve mutual recognition. It would not be acceptable for the trade if a trader was AEO but his consignments would not be treated for customs clearance only due to the fact that there is another standard in another country in place which he does not fulfil. Of course it is possible for a trader to participate in more than one program, which means that he could apply to become AEO PLUS C-TPAT-member.

Another aspect of the partnership between different customs administrations and trade is the trust of the administrations in the trader: If a trader is already AEO the US-Customs and Border Protection would not examine the supply chain again as there is trust that this has been done by European customs offices already<sup>14</sup>. On the other hand has a trader who is already member of the C-TPAT-program to fulfil further criteria to become an AEO. These further criteria are related to non-security issues, given the fact that the security-criteria are already fulfilled by the C-TPAT-certificate. The C-TPAT-certificate is regarded as an ISO-standard<sup>15</sup>. Insofar there would be mutual recognition between the U.S. and the EU in place as well.

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<sup>14</sup> Mullen, in Podiumsdiskussion zur Umsetzung des AEO in Deutschland, den Praxisberichten zum AEO aus den Mitgliedstaaten und dem Status der gegenseitigen Anerkennung des AEO, European Customs Law Conference 2008

<sup>15</sup> Aigner, in Podiumsdiskussion zur Umsetzung des AEO in Deutschland, den Praxisberichten zum AEO aus den Mitgliedstaaten und dem Status der gegenseitigen Anerkennung des AEO, European Customs Law Conference 2008

Concerning China it has to be pointed out that there is a pilot-project running, which aims to test the security of the supply-chain from one end to the other. The Chinese AEO-program developed in 2008 is under comparison with the EU-concept. In case that both systems are equivalent, negotiations on the mutual recognition shall be opened. The same applies to Japan<sup>16</sup>. Already in 2008 the EU-Japan Joint Customs Cooperation Committee expressed its view that a mutual recognition should have priority. Although the legislation in both countries has turned out to be similar, a formal decision for mutual recognition is needed

But what does mutual recognition means in the daily life practice?

It means that the following facilitations for trade should be granted:

- Customs clearance with priority
- Recognition of export data for risk analyse purposes in the country of destination
- Reduced amount of inspections, since the systems have been checked already
- Granting fiscal attractions for providing a guarantee

Only these facilitations will lead to achieve the common goal of a secure harmonized world trade without barriers<sup>17</sup>.

### **Conclusions from the research**

The examples mentioned before have shown that there is a partnership possible between customs and trade. And not only that it is possible, but it is already in place in many different ways and through many different programs and concepts.

In order to further develop the relationship between the customs administrations on the one hand and the trade on the other hand it is necessary to take the trade on board and to listen to their ideas and their input.

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<sup>16</sup> Aigner. See Nr. 13

<sup>17</sup> Böer, Stand der C2B-Partnerschaftsprogramme und gegenseitige Anerkennung

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**THE AUTHORISED ECONOMIC OPERATOR  
IN THE EUROPEAN UNION**

**Abstract**

The European Community recently introduced the legal concept of the “Authorized Economic Operator” (AERO) into its customs law. In accordance with the SAFE Framework of the World Customs Organization the basic aim underlying this concept is to increase security in international trade whilst facilitating legitimate trade. To achieve this, the customs authorities are to carry out a detailed assessment of the reliability of economic participants and where the results are positive, grant them the status of “Authorized Economic Operator”. Holders of the certificate will have benefits in the form of customs simplifications and/or security facilitations. This approach establishes “strategic partnerships” between customs and the economy. Customs controls can be carried out more precisely which will enhance their effectiveness. The provisions relating to the AEO did enter into force on 1 January 2008.



**Key words:** Economical operators, foreign economic activity, European Union, Customs Law, international trade.

### **Introduction**

The “Authorised Economic Operator” (AEO) is an important, if not the most important development in modern European customs law. The AEO is a legal entity which was created by Regulation (EC) 648/2005 [1] (the so-called “security amendment” [2]) in May 2005 and contained in Art. 5a of the European Customs Code. Following long and detailed discussion – Michael Lux the Director of the Customs Procedure Department of the EU Commission observed “never before has a proposal for the implementation provisions been discussed so intensively or given rise to so much controversy” [3] – the representatives of the Member States on the Customs Code Committee (cf. Art. 247, 247 a CC) accepted the implementation provisions proposed by the Commission on 23 October 2006. Thereupon the Commission issued Regulation (EC) 1875/2006 Amending the Implementation Provisions on 18 December 2006 [4]. The new provisions did enter into force on the 1 January 2008 – with some exceptions [5].

### **Problem statement**

The introduction of the AEO will have considerable practical effects on all those involved in customs procedures. Customs authorities and economic participants must prepare themselves for these changes. The purpose of this contribution is to introduce and explain these changes. It provides an overview of the following subjects: the basic concept underlying the AEO (I), legal foundations (II), different classes of AEO authorization (III), substantive (IV) and procedural (V) certification criteria, issuing procedure (VI), advantages of AEO status (VII) and, finally, the revocation of AEO certification (VIII).

### **Research results**

#### **I. Basic Concept**

In accordance with the SAFE Framework [6] of the World Customs Organization the basic aim underlying the AEO is to increase security in international trade and, at the same time, facilitate legitimate trade. In order to achieve this, customs authorities are to carry out a detailed examination of economic participants on the basis of established criteria and, if the results are positive, grant them the status of “Authorised Economic Operator”. Holders of the certificate can claim benefits in the form of customs simplifications and/or security control facilitations.

### **II. Legal Foundations**

The AEO is contained in Article 5a CC, which contains terms of basic importance and authorises the Commission to issue implementation provisions. The latter now include the Amending Regulation contained in Art. 14a – 14x. In addition, the Commission issues Guidelines [7] which ensure a harmonised application of the authorization requirements in all Member States and supersede the regulations issued by national authorities. Finally, the Commission is planning to issue additional “Explanatory Notes” which will aid interpretation by means of practical examples.

The authorization to issue implementing provisions contained in Art. 5 a CC became effective seven days following the publication of the Amending Regulation (i.e. 11 April 2005). The other provisions of Art. 5a CC will enter into force after the accompanying implementing provisions. [8] Art. 14a – 14x CCIP will apply from 1 January 2008 with the exception of the provisions in Art. 14b (2) (3) CCIP which enter into force on 1 July 2009 [9].

### **III. Classes of AEO Certification**

There are three AEO certificates (Art. 14 a (1) CCIP):

The first option is the “AEO-Customs Simplifications” certificate which is designed for economic participants who wish to claim the benefits of customs simplifications.

The second certificate is “AEO-Security and Safety”. This facilitates customs controls when importing and exporting goods in or from the customs territory of the Community.

The final option is a combination of these certificates in the form of the “AEO-Customs Simplifications/Security and Safety” and is intended for economic participants who wish to profit from customs simplifications and facilitation of security controls.

### **IV. Substantive Certification Criteria**

The substantive criteria for obtaining AEO status depend on the certification applied for (cf. Art. 14a (1) CCIP).

The following five criteria are common to all three certificates:

- Economic participants situated in the customs territory of the Community (1.)
- Absence of grounds for refusing certification (2.)
- Appropriate record of compliance with customs requirements (3.)
- A satisfactory system of managing commercial records (4.)
- Proven financial solvency (5.)

This list is exhaustive with regard to “AEO-Customs Simplifications”. However, “AEO-Security and Safety” as well as the combined certificate “AEO-Customs Simplifications/Security and Safety” impose a further requirement: i.e., the economic participant must also maintain appropriate security standards (6.)

#### *Economic Participants Situated in the Customs Territory of the Community*

The applicant must be an “economic participant established in the customs territory of the Community” (Art. 5a (1) (1) CC).

Art. 1 (1) 12 CCIP [10] defines an economic participant as any “person” pursuant Art. 4 (1) CC, who “during the course of his business is involved in activities covered by customs legislation”. Accordingly, natural and legal persons as well as associations engaged in customs-related activities can apply for certification. In effect, this definition encompasses all stakeholders in the supply chain. Unlike the “person responsible for exports” in foreign trade law, an economic participant is the undertaking itself and not an individual employee. This corresponds to the aim of the provision which is to confirm the reliability of undertakings.

The economic participant must also be established the customs territory of the Community, i.e. he must be resident or have its headquarters there. There is a limited

exception to this rule for airline or shipping companies which have a regional office in the community customs territory” in Art. 14g (b) CCIP with regard to applications for the “AEO-Security and Safety” certificate.

### *Grounds for not accepting an application*

Two further criteria of certification result from Art. 14f (2) CCIP which specify cases in which an application may not be accepted.

First, the economic participant may not be convicted of a serious criminal offence linked to its economic activity (Art. 14f (b) CCIP). This also applies to the representative of the economic participant subject to the qualification that only infringements of customs rules are relevant (Art. 14f (c) CCIP). Germany, like other states in the EU, does not recognise criminal liability for legal persons or undertakings according to the principle “*societas delinquere non potest*” and so this provision has little importance for economic participants. Second, the economic participant may not be subject to insolvency proceedings at the time of the submission of the application (Art. 14 f (b) CCIP).

### *Appropriate record of compliance with customs provisions*

The central condition for certification is the “appropriate record of compliance with customs rules” (Art. 5a (2) (1) CC, Art. 14h CCIP). This criterion aims to make a prognosis of the economic participant’s future customs compliance on the basis of its existing record of compliance.

The term “customs requirement” is broadly interpreted and includes all provisions relating to international trade in goods whose compliance is monitored by the customs authorities [11].

The examination of customs compliance according to Art. 14h (1) (a) – (d) CCIP is not limited to the economic applicant making the application. The assessment considers many other aspects including persons in charge of the applicant company (sub-section (b), first alternative) who are members of the board, i.e. the organ authorised to represent the company. Persons who exercise control over the economic participant are also to be considered (sub-section (b) second alternative), i.e.

the members of the supervisory board of a PLC. The assessment also examines persons in the applicant company who are responsible for customs matters (sub-section (d)). Finally, the applicant's legal representative in customs matters must also be examined (sub-section (c)).

Compliance with customs rules is considered "appropriate" provided there have been no serious or repeated infringements (Art. 14h (1) (1) CCIP). The importance is to be determined according to the number and size of customs-related operations (Art. 14h (1) (2) CCIP). The interpretation of all AEO provisions must also consider the "specific characteristics" of the economic participant in question (Art. 14a (2) CCIP). Therefore, if the company carries out multi-faceted and complex activities the economic participant will be treated with greater leniency during the application process than an economic participant which trades in a limited and constant range of goods or goods which affect sensitive interests protected by prohibitions and restrictions. Until the creation of a uniform, pan-European system, the assessment systems of national administrations will be used as sources of information such as DEBBI, the decentralised assessment system for economic participants [12]. However, when considering the undefined legal term "appropriate compliance with customs rules" customs authorities cannot exercise discretion capable of limited judicial review [13].

Reference is made to the record of compliance during the past three years (Art. 14h (1) (1) CCIP). If an economic participant has been established for less than three years, the customs authorities will assess him using available information. In this case, a close monitoring of the relevant economic participant will take place during the first year after issue (Art. 14q (5) (2) CCIP).

### *Satisfactory System of Managing Commercial Records*

A further requirement is a "satisfactory system of managing commercial records and, where appropriate, transport records" (Art. 5a (2), (1), 2<sup>nd</sup> indent CC, Art. 14i CCIP). This aims to enable customs authorities to carry out an *ex post* control of the business operations. A proper management of records also prevents mistakes being made. Persons directly involved in the transportation of goods must carry their

transportation documents with them [14]. They must also be included in the commercial records [15].

The accounting system must be consistent with national legal standards (Art. 14i (1) (a) CCIP). In Germany, traders are required to maintain accounting systems according to §§ 238 ff. HGB. Customs authorities are to be granted physical and electronic access to accounting records (Art. 14i (1) (b) DVO). In addition, an administrative organization is required which reflects the type and size of business, a satisfactory system for the handling of licenses and a logistical system that – with the exception of the “AEO-Security and Safety” – distinguishes between Community and non-Community goods (Art. 14i (1) (c), (d), (b) CCIP). The examination also includes the archiving of the company’s records as well as the security measures in place to protect the applicant’s computer system from unauthorised intrusions and secure documentation (Art. 14i (1), (f), (h) CCIP). Finally, the economic participant must ensure that its employees are made aware of the need to inform the customs authorities whenever compliance difficulties are discovered and establish suitable contacts to inform the customs authorities of such occurrences, e.g. by informing a contact partner (Art. 14i (1) (h) CCIP). On the other hand, the obligation to take anti-corruption measures was not included in the final version of the provisions.

### *Proven Financial Solvency*

The first drafts of the CCIP only required proven financial solvency for “AEO-Customs Simplifications” and therefore for the combined certification “AEO-Customs Simplifications/Security and Safety” as well. However, Art. 14a (1) (1) CCIP now imposes this requirement on applications for all AEO certificates.

Concerning “AEO-Customs Simplifications”, the purpose of this requirement is to ensure that the economic participant has the necessary financial means to meet its customs debts and thereby complete customs procedures. Its relevance with regard to “AEO-Security and Safety” is that financial difficulties make it more likely that customs regulations will be infringed e.g. owing to an inaccurate declaration of goods. In the Regulation laying down criteria for risk analysis as regards agricultural

products [16] one criterion for determining the choice of a person for controlling goods is their “financial situation” due to a high risk of fraud [17].

Substantively, a good financial standard is required which enables the economic participant to satisfy its commitments (Art. 14j (1), (2) CCIP). Like the German Insolvency Regulation (§ 17) solvency is determined on the basis of an appropriate financial statement. Art. 14j (1) (2) CCIP requires the economic participant’s business activity to be taken into account, thereby reflecting Art. 14a (2) CCIP which applies in relation to all certification requirements. This enables particular (indebted) public legal entities as well as airline companies, which are often supported by the state, to obtain AEO certification as well.

If the economic participant has been established for less than three years the customs authorities will also make a judgement on the basis of the available records and information (Art. 14j (2) CCIP), which again results in a close monitoring during the first year after issue (Art. 14q (5) (2) CCIP).

*Appropriate Security Standards: An Additional Requirement for “AEO-Safety and Security” and “AEO-Customs Simplifications/Security and Safety”*

Economic participants who apply for “AEO-Security and Safety” or “AEO-Customs Simplifications/Security and Safety” must satisfy the additional condition of “appropriate security standards” with regard to buildings used in connection with the operations to be covered by the certificate (Art. 5a (2) (1), 4<sup>th</sup> indent CC, Art. 14k, 14n (1) (1) CCIP).

Art. 14k (1) CCIP lists the relevant security requirements. They are also specified in greater detail in Part 5 of the Guidelines where they are divided up according to the function which an economic participant performs outside the supply chain. Accordingly, rules governing the unloading and control of imported goods do not only affect e.g. producers and exporters [18]. Art. 14a (2) CCIP plays an important role with regard to security standards because, as an expression of the proportionality principle, it states that the specific characteristics of the economic participant, (particularly its size), must be taken into consideration when assessing the certification requirements.

The security and safety standards require buildings to be protected by materials which resist unlawful entry by third parties as well as prevent unauthorised access to cargo areas (Art. 14k (1) (a), (b) CCIP). Security measures should be in place for the handling of goods (Art. 14k (1) (c) CCIP). This particularly applies to the handling of import or export licenses and the separate handling of goods subject to such restrictions (Art. 14k (1) (d) CCIP). In addition, the economic participant must be able to clearly identify its business partners (Art. 14k (1) (e) CCIP). Finally, he must carry out periodic background checks on employees working in security sensitive positions, ensures their active participation in security awareness programmes and conduct security screening on prospective employees (Art. 14k (1) (f), (g) CCIP).

In order to avoid duplicating assessments in the interests of increasing administrative efficiency, certain existing security certificates are recognised provided they impose identical or at least comparable requirements. This also applies to security certificates which have been issued on the basis of international conventions, ISO standards or European Standards Organizations as well as on the basis of Community legislation (Art. 14k (4) CCIP). The latter, in particular, affects the planned certification as “Secure Operator” on the basis of the “Regulation on Enhancing Supply Chain Security” [19]. If an undertaking which performs activities such as the security control of goods for an airline company obtains certification as a “Regulated Agent” [20] there is no need for an additional security examination with regard to the relevant premises (Art. 14 k (3) CCIP).

An airline or shipping company not established in the Community which can apply for the “AEO-Security and Safety” certificate on the basis of the exception in Art. 14g (b) CCIP must satisfy the special requirements of Art. 14k (2) CCIP.

### **V. Procedural Certification Requirements**

Concerning procedure, the economic participant must submit an application for an AEO certificate (Art. 14c CCIP). Annex 1 C of the CCIP contains the relevant specimen.



The application is to be submitted to the customs authorities in the Member State where the applicant's main accounts relating to the customs arrangements involved are held and where at least part of the operations to be covered by the AEO certificate are conducted (Art. 14d (1) (1) (a) DVO). If accounts are maintained electronically, the customs authorities of the Member State are competent in the area where the main accounts are accessible, the general logistical management activities are conducted and at least part of the operations to be covered by the AEO certificate are carried out (Art. 14d (1) (1) (b) CCIP). Physical accounts can therefore be substituted by those available electronically in combination with an administrative centre to prevent interference. If these two provisions do not suffice to establish the competent customs authority and the physical or electronic accounts are held in a different state from the place where business operations are carried out, competence is to be determined on the basis of the place where the accounts are held (Art. 14d (2) CCIP).

Art. 14d CCIP deals with competence at international level, i.e. it determines the competent Member State. The location of the competent customs authority within the Member State as well as the relevant department and instance is determined according national law pursuant to Article 60 CC, as part of the national administration organization.

The application for AEO certification must include all documents which are necessary in order to assess whether the certification requirements have been satisfied (Art. 6 (1) CC). If the relevant documents or premises are found in another Member State this information must provided in the application form (Art. 14d (3) (4) CCIP). In addition, the economic participant is obliged to provide a readily accessible central point or nominate a contact person within the undertaking in order to make available to the customs authorities all further information (Art. 14d (6) CCIP). The date is to be submitted to the customs authorities by electronic means, if possible (Art. 14d (7) CCIP).

### **VI. Procedure for Issuing AEO Certificates**

Once the application for the AEO certification has been submitted the customs authorities shall examine whether or not the conditions for issuing the certificate have been met (Art. 14n (1), sentence 1 CCIP). Regarding the examination of accounts, financial solvency and the maintenance of appropriate security and safety standards pursuant to Art. 14i, 14j, 14k CCIP, the customs authorities may base their decision on the conclusions provided by experts in the relevant fields (Art. 14n (2) CCIP). This refers to private reports and certificates provided by the parties in particular, those by auditors, surveyors and, where applicable, IT service providers concerning the assessment of data processing facilities. Considering that the AEO certificate applies throughout the Community, the customs authorities of all other Member States are to be consulted before it is issued (Art. 14l, 14m CCIP). When examining compliance with security standards it is possible to examine only a representative portion of the premises subject to the requirements of Art. 14n (1) (2) CCIP.

Generally speaking the customs authorities have 90 calendar days to examine whether or not the application requirements have been met (Art. 14o (2) sentence 1 CCIP). This deadline can be extended by a further period of 30 calendar days (Art. 14o (2) sentence 2 CCIP). If the reason for the delay in decision-making is due to the fact that the economic participant is making adjustments in order to satisfy the certification requirements, a further extension of unlimited duration is possible (Art. 14o (3) CCIP). The period for making a decision will be 300 calendar days during the transition period of 24 months following the introduction of the AEO regulations (i.e. until 1. January 2010) [21].

If the economic participant satisfies the requirements of the certificate applied for, the corresponding AEO certificate will be automatically issued - i.e. without any discretion on the part of the customs authorities. It is recognised in the whole Community customs territory (Art. 14q (2) CCIP) and its validity is unlimited (Art. 14q (3) CCIP). In order to ensure continued compliance with the certification requirements, a re-assessment of the economic participant will take place in the case of major changes to the relevant Community legislation and where there is a

reasonable indication of non-compliance (Art. 14q (5) (1) CCIP). Besides the specific grounds for examination, the customs authorities continuously monitor the AEOs (Art. 14q (4) CCIP). During the first year after issue, there will be close monitoring of economic participants which have been established for less than three years (Art. 14q (5) (2) CCIP).

### **VII. Advantages of the AEO Status**

The AEO status grants its holder legal and economic advantages.

*Legal Advantages.* The legal advantages depend on the type of AEO certificate.

#### **a) “AEO-Customs Simplifications”**

The certificate “AEO-Customs Simplifications” – and thereby the combined certificate “AEO-Customs Simplifications / Security and Safety” – grants advantages in two respects: facilitations regarding customs controls as well as simplified procedures.

##### *Facilitation of Customs Controls*

In accordance with the basic concept underlying the AEO – that customs withdraws monitoring in the case of economic participants which have been examined and found to be reliable – the holders of AEO status are granted facilitations with regard to customs controls on the basis of Art. 14b (4) CCIP. In this way, customs controls are reduced (Art. 14 (4) (1) CCIP) since the AEO certificate is regarded as a risk-reducing factor for purposes of the risk analysis of the goods or documents subject to control according to Art. 4f CCIP. For this reason, the AEO will generally not be subject to controls. There are exceptions in the case of indications of an specific risk – these could result from the type or properties of the goods, their origin as well as the participation of non-certified economic participants in the supply chain [22] - or control obligations set out in other Community legislation (Art. 14b (4) (1) sentence 2 CCIP). Spot checks are also made which meets the requirement to include a “random element” when selecting goods to control [23]. Otherwise, the status of AEO could also be used to carry out illegal acts.

If a control of goods covered by customs declaration of an AEO is required, it is to be carried out as a matter of priority before the control of other persons (Art. 14b (4) (2), sentence 1 CCIP).

Finally, at the request of the economic participant, these customs controls can be carried out at a place which is different from the place of the customs office involved (Art. 14b (4) (2) sentence 2 CCIP).

### *Simplified Grant of Simplified Procedures*

In addition, the certificate “AEO-Customs Simplifications” leads to the simplified grant of simplified procedures [24]. AEO certification currently does not grant an automatic right to simplified procedures. However, the AEO status serves to reduce the extent of the examination when applying for the grant of some simplifications. Criteria already examined when granting the AEO certificate will not be re-examined (Art. 14b (1) CCIP). The examination is confined to the other specific certification criteria. Exactly which authorization criteria are dispensed with is specified in the individual elements of authorization [25]. As a rule, examinations of the personal reliability as well as the accounts which allow an effective supervision of the economic participant are dispensed with [26].

The current possibilities of procedural simplification by the application for individual certifications will initially continue. Customs simplification will only be granted exclusively or largely to holders of “AEO-Customs Simplifications” once the Modernised Customs Code has been introduced in 2009 [27]. The present solution represents an “interim provision”.

### **b) “AEO-Security and Safety”**

The “AEO-Security and Safety” certificate as well as the combined status of “AEO-Customs Simplifications / Security and Safety” grant their holders the following advantages: facilitations of customs controls, advance notification of a control of goods as well as a reduction of the data elements to be submitted for summary declarations. The latter two advantages will only apply from 1 July 2009 [28].

### *Facilitations of Customs Controls*

As is the case with “AEO-Customs Simplifications”, the status of “AEO-Security and Safety” also grants facilitations in the form of reduced and priority controls which can take place at a location designated by the AEO (Art. 14b (4) CCIP). Depending on the type of certification these benefits relate to security controls. (cf. Art. 14a (1) (b) CCIP).

### *Advance Notice of the Control of Consignments*

Provided that it does not jeopardize the carrying out of controls – e.g. owing to interference – the economic participant can be informed of an imminent control of goods (Art. 14b (2) (1) CCIP). This predictability allows the economic participant to adapt its plans to the changed situation - i.e. delays owing to the physical control of goods. Art. 14b (2) (2) sentence 1 CCIP makes clear that a control without advance notice is still possible.

### *Reduction of Data Requirements in Summary Declarations*

In addition, the holder of the AEO-Security and Safety is granted the possibility to submit a reduced set of data elements in the case of summary entry and exit declarations pursuant to Art. 36a, 182a CC (Art. 14b (3) (1) CCIP). The grant of this security facilitation remained controversial. Industry representative demanded a total exemption from a summary declaration. However, this would have frustrated the aim of the advance selection of goods to control by means of risk analysis (Art. 13 sec. 2 CC; Art. 4 f – 4 j CCIP) which is based on information submitted with the summary declaration. For a long time, representatives of Member States could not decide which data elements should be dispensed with. The required data is now listed in Table 5 of Annex 30 A CCIP (Section 2.5).

Art. 14b (3) (3) CCIP stresses that the rule does not affect the submission of additional data elements required by international agreements.

### *Economic Advantages*

Besides legal advantages the status of AEO also offers economic advantages.

On the one hand, these result from the legal advantages. Accordingly, they can offer savings on staff and overhead costs e.g. owing to lower and more predictable border wait times as well as the reduced processing time for applications.

Measures taken in order to obtain the AEO certification can lead to economic advantages for the AEO, e.g. through the improvement of internal operations, the avoidance of damage as well as the reduction of insurance premiums.

The most important economic advantage, however, lies in the fact that the AEO status resembles a seal of quality. By granting the status, the customs authorities are confirming that they regard the economic participant in question, following a thorough examination – including the examination of characteristics relevant to private transactions – to be reliable and therefore trustworthy. This elevates the AEO to a preferred trading partner for other persons and thereby grants him a competitive advantage [29].

The certification as an AEO is therefore a worthwhile investment for global players.

### **VIII. Revocation of the AEO Certificate**

The revocation of an AEO certificate is regulated in Art. 14r – 14v CCIP.

Accordingly, the AEO certificate is suspended if the economic participant no longer meets the requirements of its AEO status, the customs authorities have sufficient reason to believe that a criminal offence was committed in connection with the infringement of the customs rules or at the request of the economic operator in accordance with Art. 14 r – 14 u CCIP. First, the AEO is given the opportunity to regularise the situation exception where a criminal act has been committed. The legal consequence of suspension is a temporary cessation of AEO certification [30].

If the measures taken fail to regularise the situation, the economic participant has been subject to legal proceedings owing to a serious infringement of the customs rules or at the request of the economic participant, the AEO certificate will be permanently revoked according to Art. 14v. As a result, the economic operator will

not be permitted to submit a new application for three years – except where the he has requested the revocation (Art. 14 v (4), 14f (d) CCIP).

If the economic participant does not comply with an obligation imposed by an AEO certificate – in particular, the obligation to inform the customs authorities of changes potentially relevant to the continuance of certification in accordance with Art. 14w (1) CCIP – the AEO certificate can be revoked according to Art. 9 (2) CC. The withdrawal and revocation according to Art. 8, 9 CC are blocked by Art. 14r – 14v CCIP as *lex specialis* whose special provisions – opportunity to regularise the situation, initial suspension, imposition of a period of ineligibility – cannot be undermined.

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### UDC 342.951:504.06

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**DUTIES OF CUSTOMS AUTHORITIES RELATED  
TO ENVIRONMENTAL PROTECTION**

**Abstract**

At first glance, there seems to be no relation between customs authorities and environmental protection. Since customs authorities perform basic duties related to customs trading, which are connected mainly with the collection of customs charges. However, such an assessment of customs authorities is not justified and it is possible, and even advisable, to evaluate their activities in terms of environmental protection, as well.

This article discusses the role and meaning of customs authorities in environmental protection. Its purpose is to characterise customs authorities' duties related to environmental protection, appraise them and propose solutions for future.

**Key words:** Environmental protection, control duties, control competence.

**Introduction**

The structure of customs authorities is defined in Art. 69 of the Customs Law of 19 March 2004 [1]. It provides that "1. In customs procedure, competent authorities shall be:

- 1) the head of the customs office – as the first instance authority;
- 2) the head of the customs inspectorate (*Izba Celna*) – as:
  - a) an authority receiving appeals against decisions of the customs office head;
  - b) the first instance authority in cases set forth in customs and separate regulations;
  - c) an authority receiving appeals against decisions made thereby at the first instance, unless special regulations provide otherwise;
- 3) a minister in charge of public finance – as:

a) the first instance authority in cases related the *ex officio* pronouncement of the invalidity of a final decision of the customs inspectorate head;

b) an authority receiving appeals against decisions made thereby at the first instance and decisions referred to in Art. 70(2)(2).

2. Higher level authorities are courts of appeals.”

Thus the structure of customs authorities comprises organisations referred above. However, such authorities are not considered as environmental protection authorities. Pursuant to Art. 3(15) of the Environmental Protection Law of 27 April 2001 [2], environmental protection authorities

“shall mean administrative authorities appointed to perform public duties related to environmental protection in accordance with their characteristics defined in Title VII, Chapter I”. Art. 376 of Title VII, Chapter I reads that “Subject to Art. 377, environmental protection authorities shall be:

- 1) leaders of communes (*gmina*), towns and cities [3];
- 2) leaders of counties (*powiat*);
- 2a) regional councils (*sejmik*) of voivodships;
- 2b) marshals (*marszałek*) of voivodships;
- 3) governors of voivodships (*wojewoda*);
- 4) a minister in charge of environmental issues”.

While Art. 377 of the Environmental Law states that “Environmental Protection Inspection Authorities acting on the basis of the Environmental Protection Inspection Act shall perform environmental protection duties unless the act provides otherwise”.

The doctrine of the environmental protection law points out that the catalogue of those authorities is closed. Thus, environmental protection authorities are only units named by legislators in Art. 377 of the Environmental Protection Law [4]. While W. Radecki presents a different approach since in his opinion the catalogue is open [5]. Such a position is supported by K. Gruszecki, who considers the catalogue of authorities as open [6].

We may also assume an intermediate solution and allow for the separation of *sensu stricto* environmental protection authorities from *sensu largo* environmental

protection authorities. Indeed, the first group includes those authorities that legislators specify in Art. 376 and 377 of the Environmental Protection Law. However, we should also agree with W. Radecki and K. Gruszecki that environmental protection duties are performed by other authorities that are not referred therein, as well.

### **Problem statement**

The catalogue of environmental protection authorities does not name customs authorities. However, this does not mean that such authorities do not perform any environmental protection tasks and thereby are not environmental protection authorities. They may be considered as environmental protection authorities *sensu largo*.

There arises a question which duties customs authorities perform in relation to environmental protection if they may be considered as environmental protection authorities in the wide sense of the word.

### **Research results**

At the beginning, let's note that customs authorities are responsible for environmental issues while performing other of their duties related to customs administration. Polish legislators assume that certain actions relating to environmental protection may be performed while taking up actions accompanying customs administration. These authorities have the best opportunity to take up environmental protection actions related to foreign legal trading because they are institutions which an entity trading with abroad contacts most frequently. Therefore, the consolidation of environmental duties and customs administration duties may be considered as justified. It is also correct to entrust environmental protection duties to customs authorities.

Duties of customs authorities may be broken down into preventive and repressive measures. In the former case, customs authorities carry out only preventive activities that take the form of control. While in the case of repressive duties resulting

from controls conducted, customs authorities may seize a given thing and impose defined sanctions on entities.

Control duties of customs authorities related to environmental protection should be considered as core activities. Since customs authorities carry out control activities mainly in relation to environmental protection.

The example of control authorities taken by customs authorities in relation to environmental protection are regulations adopted in the act on protecting the health of animals and counteracting contagious diseases of animals of 11 March 2004 [7]. Pursuant to Art. 24b thereof, "1. Customs authorities carry out controls referred to in Art. 12(a) of the Regulation 998/2003 at selected border crossings.

4. Should any failure to fulfil requirements related to the transport of domestic animals accompanying travellers from third countries be observed, customs authorities shall notify a county veterinary surgeon having jurisdiction over the location of a given border crossing.

6. Should the requirements referred to in clause 4 not be fulfilled, domestic animals accompanying travellers shall be held in the custody of customs authorities until measures set forth in the Regulation 998/2003 are applied".

The above case refers to control competences ensuring that domestic animals imported to the territory of the European Community from other third country are subject to documentary control and identification in the case of less than five domestic animals or requirements and controls defined in the European law in the case of more than five domestic animals.

Legislators also defined such control activities relating to environmental protection in the animal product act of 16 December 2005 [8]. Pursuant to Art. 9a thereof "1. Animal products exported from the territory of the Republic of Poland to third countries shall be equipped with health certificates or other documents unless required by the third country of such product destination.

2. Health certificates or other documents shall be shipped together with animal products and presented at each requests of customs authorities.

3. Veterinary inspection authorities shall seal means of transport used to export animal products from the territory of the Republic of Poland to third countries immediately after each animal product loading.

4. Veterinarian inspection authorities' right to affix seals shall not infringe customs authorities' rights and obligations related to customs inspection”.

Control activities are also carried out on the basis of the crop plant protection act of 18 December 2003 [9]. “Art. 17a. 1. Plants, vegetable products or objects exported from the territory of the Republic of Poland to third countries shall be equipped with phytosanitary certificates or re-export phytosanitary certificates, if required by the state of destination or transit states.

2. Phytosanitary certificates or re-export phytosanitary certificates referred to in clause 1 above shall be attached to plants, vegetable products or objects which they have been issued to at each stage of transport and presented at each request of customs authorities.”

While, the example of repressive activities that customs authorities may take up on the basis of international agreements comprises solutions provided in the Convention on International Trade in Endangered Species of Wild Fauna and Flora adopted in Washington on 3 March 1973 [10]. Art VIII thereof reads as follows: “1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

(a) to penalize trade in, or possession of, such specimens, or both; and

(b) to provide for the confiscation or return to the State of export of such specimens.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living

specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

(a) the specimen shall be entrusted to a Management Authority of the State of confiscation;

(b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and

(c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.”

While pursuant to Art. IX of the Convention, “1. 1. Each Party shall designate for the purposes of the present Convention:

(a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and

(b) one or more Scientific Authorities.

4. Any Management Authority referred to in paragraph 2 of this Article shall, if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.”

We may also distinguish duties applicable to non-public administration entities and duties accompanying the cooperation with other public administration authorities.

The aforementioned duties apply to non-public administration entities. Such entities bear control and repressive responsibilities of customs authorities. While responsibilities and duties relating to cooperation apply to other public administration authorities, mainly authorities performing environmental protection duties.

An example of such duties is the content of Art. 17 of the Environmental Protection Inspection Act of 20 July 1991 [11]. Art. 17.1 thereof sets forth that “To perform its control activities, the Environmental Protection Inspection shall cooperate with other control authorities, including the National Sanitary Inspection, state and government administration authorities, local governments, civil defence authorities and social organisations.

2. Such a cooperation shall comprise in particular:

4) the exchange of information related to the import of goods whose import is prohibited or limited because of environmental protection with customs authorities and the Border Guards”.

The regulation that refers to cooperation duties is also Art. 23 of the aforementioned plant protection act stating that “1. An entity importing plants, vegetable products or objects subject to phytosanitary control at the border crossing to the Republic of Poland through a defined point of entry shall present them to control to the provincial inspector in charge of such import, and cooperate during such a control.

3. Customs authorities shall cooperate with entities carrying out phytosanitary control at the border crossing with regard to such a control and, in particular, inform the provincial inspector in charge of such a point of entry about the import or an intention to import plants, vegetable products or objects subject to phytosanitary control at the border crossing to the territory of the Republic of Poland.”

Duties of customs authorities are also provided in the European Union law. Art. 4(25) of the Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code defines the term of a risk in customs administration’s activities. “Risk means a probability of an event connected with an entry, exit, transit, transport and final use of goods traded between the customs territory of the Community and third countries and the presence of non-Community goods, which:

– makes an adequate application of Community or domestic measures impossible, or



- causes danger to financial interests of the Community and its Member States, or
- threatens the security of the Community, public health, environment or consumers.”

Thus, actions of the authorities resulting from the risk also comprises issues related to the environment and environmental protection.

### **Conclusions from the research results**

The above examples of customs authorities' responsibilities for environmental protection prove that those authorities play a significant role in environmental protection. Duties of such authorities are connected with their major customs trade competences. Customs authorities perform environmental duties while carrying out their major tasks because it would be difficult for environmental protection duties *sensu stricto* to perform their control activities in relation to customs trade abroad.

Customs authorities perform their tasks mainly through controls. However, the very control is not sufficient since sometimes it is justified to apply repressive measures against entities infringing the law.

Control competences of customs authorities are mainly connected with their preventive function. Since control is to prevent against the import of plants, animals or substances threatening the environment to the customs territory. This is mainly visible in solutions implemented in the aforementioned Community Customs Code.

Duties of customs authorities also refer to their cooperation with other authorities, mainly those that are in charge of environmental protection. Such cooperation covers mainly the Environmental Protection Inspection. The main legal instrument is the exchange of information [12]. Polish legislators apply similar solutions for cooperation in other legal acts, as well.

An important element connected with environmental protection is customs authorities' obligation to take a due care of animals. Even if animals are seized, customs authorities must ensure an adequate place of storage and due care thereto.

To fulfil the duties imposed by legislators, customs authorities need special knowledge on environmental protection, including mainly the knowledge of species of protected flora and fauna. Customs authorities should also be aware of basic aspects of animal maintenance, know animal needs, feeding methods, etc.

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### **PERSONAL INCOME TAX IN THE TAX SYSTEMS OF EU MEMBER STATES (SELECTED ISSUES)**

#### **Abstract**

In the process of furthering EU integration little attention was given to the role of income taxes. Multiple income tax systems exist across the Union and their differentiation negatively impacts the European labour market, investments and savings, inhibiting economic growth. Individual nations have little motivation to harmonise as they can engage in tax rate competition and income taxes are interwoven with social security systems that make any attempts at reform extremely complex and politically unpopular.

**Keywords:** EU integration, tax harmonisation, personal income taxation, tax system differentiation.

#### **Introduction**

Full economic integration requires consideration of taxes as an important factor in the furthering of integration processes, since EU member states are tax nations, e. g.

countries where budgetary incomes come primarily from taxation. EU member state tax systems are strongly diversified, due to individual developmental paths shaped by national history of various lengths, civilizational development, culture, value systems, social and economic policy, that also define the state's current financial needs. Even in a single state, taxes cannot remain neutral towards economic and social processes. Therefore, the challenge faced by EU creators was not the outright neutralization of the impact that taxes had on the integration process, rather they worked towards limiting the negative consequences of overly diversified national tax systems. Gradual, long-term harmonization emerged as a continent-wide process. During the development of the Treaty of Rome it was decided that, to assure a common market, it was enough to harmonize indirect taxes and remove trade barriers as they were the prime inhibitors to the flow of goods and services. The harmonization of direct (income) taxes was not considered as they were seen as not significantly affecting the single internal market. Problems tied to direct taxation<sup>1</sup> became visible as integration proceeded, the EU grew, its citizens began to migrate, multinational enterprises increased in size and scope and their financial flows (capital and profit transfers between headquarters and subsidiaries in different EU countries) became seriously affected.

### **Problem statement**

The harmonisation of the personal income tax is not an easy endeavour due to varied remuneration systems, differing approaches to social issues, shaping and evaluating costs of income generation, tax steps, shaping the progression structure, etc.

A question should be posed: *is harmonisation occurring in accordance with a predefined programme (that can be defined as tax system coordination) or is it*

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<sup>1</sup> This article focuses on personal income taxation, but the Authors see the term "income taxes" as more than just the Personal Income Tax (PIT), since in macroeconomic terms it is important to see the PIT and CIT (Corporate Income Tax) as correlated when considering taxing total incomes, e. g. when taxing company profits first by CIT and then taxing dividends received by individual shareholders with PIT. See more: Wolowiec, 2009. It is also important to see income taxes as compulsory burdens on income that create strong resentment, which in turn impact the scale and breadth of possible harmonisation. See more: Duszynski & Wolowiec, 2008.

*forced upon nations by the market (understood as “quiet” harmonisation of a paralegal nature)?*

### Research results

#### 1. Tax systems of EU member states – structure and common characteristics

Tax systems of EU member states are a result of a long evolutionary process and have many common characteristics. Changes that had taken place came about as a result of J. M. Keynes’ doctrine, which moved away from the notion of natural taxation and placed a lot of non-fiscal functions on taxes. As a result of such an approach, the personal income tax, due to its character, became one of the nation’s most important instruments of income redistribution<sup>2</sup>.

Similarities in the tax systems of EU members are a result of identical or very similar factors that shaped the specific tax policies and of the legal aspects of taxation. The factors include:

- a) level of economic development;
- b) systemic assumptions;
- c) similar social and demographic problems;
- d) integration of the European economy;
- e) globalisation of the world economy;
- f) rules of cooperation with international institutions.

These factors are the result of similar economic and social structures that have been determined by cultural, historical, sociological and political issues. In practice,

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<sup>2</sup> The final aim of the state’s fiscal policy in its redistributive role is the provision to each household (individual) of a minimal income that allows satisfying the basic consumption, material and cultural needs. This approach is criticised by the representatives of various neo-liberal ideologies, who argue that concern about the fulfilment of consumption needs should be the burden solely of individuals, and any attempts by the government to realise its redistributive functions will lead to the reduction of income-related activity by individuals, and as such is dangerous to the social-economic development of society. Such an approach in its extreme form is rarely formulated, but the debate about the state’s redistributive functions and its protective measures is a heated one. It is also debateable as to what is the true or appropriate level of income that assures the fulfilment of the most basic existential and cultural needs of the individual.

the shape of a tax system is the result of considering the interests of multiple and different social groups, complicated by quite often changes in the legal system that come from political battles and tradeoffs.

The EU economic system is one with a high level of interaction and exchange connected to a specific type of taxation system, which is characterised by:

- a) Large tax burden <sup>3</sup>;
- b) similar structure, with the core consisting of personal and corporate income taxes and general consumption taxes and excise;
- c) an important role played by accounting;
- d) a small role of inheritance and donation taxes as well as taxes on assets.

The tax doctrine contains statements about what role should be played by an effective and rational tax policy operated by the state. These statements are differently defined, depending on the criteria set for aims that are to be met through the taxation policy. Therefore, the first question must be about taxation policy functions, and only later can we focus on the forms and methods of its realisation.

The fundamental aims of taxation policy are considered to be:

- a) effectiveness of the income function;
- b) effectiveness of the extra-fiscal functions;
- c) equal spread of the tax burden;
- d) low costs of tax revenue generation (tax collection).

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<sup>3</sup> The burden in the 15 EU member states for 2007 amounted to 40.9 % GDP (an increase of 0.26 % compared to 1997). The levels varied from 31.2 % in Ireland to 54 % GDP in Sweden. More in: Inventory of Taxes in the Member States of the European Union, Luxembourg, 2008. By the state's fiscal role we understand the redistribution of gross value added (including debt). In analysing fiscal operations, we can define three indicators: level of governmental which is the ratio of expenditure to GDP. More detailed measures are: tax levels, i.e. the ratio of taxes to GDP and the fiscal burden level, which is the ration of taxes and other non-tax burdens related to the cost of labour to GDP. More in: F. Grądalski, Kierunki racjonalizacji systemu finansów publicznych Polsce, "Ekonomista". – 2002. – № 2. – P. 223 i d.

**Personal income tax in the tax systems of EU member states**

Participation of Personal Income Tax (PIT)				
budgetary revenues (in %) *				
Old 15	0	5	8	8
European Union (UE-15)				
Participation of Corporate Income Tax (CIT)				
budgetary revenues of EU countries (in %) *				
European Union (UE-15)				
Combined income taxes				
European Union (UE-15)				
Participation of VAT in budgetary revenues of EU countries (in %) *				
European Union (UE-15)				
Participation of Social Security contributions in budgetary revenues of EU countries (in %) *				
European Union (UE-15)				

\* The analysis of tax revenues of the new 8 members (data for Cyprus and Malta is unavailable) has been presented below.

Source: own investigation.

The analysis of data in the table above allows for the conclusion that the primary sources of budgetary incomes in EU member states comes from direct and indirect taxation as well as social security contributions. The analysis of the role of direct and indirect taxes as a percentage of GDP shows that only Belgium, Denmark, Finland, Sweden and the United Kingdom have a higher percentage participation of income taxes in their GDP. The remaining countries have a higher percentage of indirect taxes, yet the difference is not that notable (about 8–10 % in favour of combined indirect taxation). A percentage fall of indirect taxes as a source of budgetary revenues in the old 15 EU member states (1965–2008 by 8.2 %) has most likely been caused by the process of harmonising indirect taxation across the Union. Only Greece and Portugal retain a sizeable dominance of indirect taxation in their DGP (over 60 % in favour of combined indirect taxation), and as such both countries are similar in

nature to the new EU entrants, whose systems are dominated by revenues from indirect taxation (a difference of 50–60 % in favour of indirect taxation). A detailed analysis of budgetary incomes of new EU members is given below.

When analysing only personal and corporate income taxes as well as VAT, it becomes clear that governmental tax revenues are dominated by income taxes (36 %), with VAT bringing in only 31 %<sup>4</sup>. An opposite tendency occurs in eight of the 10 new entrants.

Table 2

**Tax revenues as a percentage of GDP in 15 old EU member states  
and in the new 8 countries (1999–2008) <sup>5</sup>**

Types of taxes	EU-15 (average)	EU-8 (average)	Czech Rep	Esto nia	Lithua nia	Latv ia	Pola nd	Slova kia	Slove nia	Hung ary
Taxes combines as % of GDP	40,7	33,6	36,4	32,5	28,1	29,6	33,6	31,0	39,8	37,6
Personal Income Tax	10,5	5,7	4,8	7,4	7,3	6,0	4,6	3,5	4,2	7,5
Corporate Income Tax	3,8	5,7	3,2	0,8	0,5	2,1	1,8	2,5	1,3	2,4
VAT	7,1	7,9	5,6	9,1	8,0	7,4	7,4	7,4	10,2	8,4
Social Security Contributions	11,4	11,9	15,0	11,0	7,7	9,2	9,6	12,7	15,5	11,3

Source: own investigation.

Eight new EU members are characterised by lower incomes from personal income taxes as a percentage of governmental tax revenues than the old 15 members (with an average of 10.5 % GDP). The highest percentage of personal income tax revenue is present in Hungary (7.5 %), Estonia and Latvia (respectively 7.4 % and 7.3 %). The lowest percentage is present in Slovakia (3.5 %) and Slovenia (3.4 %).

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<sup>4</sup> During the last 30 years fiscal burdens have increased, and the increase in income tax burdens has been greater than of consumption taxes.

<sup>5</sup> No data for Cyprus and Malta.



The new EU members also have a higher percentage of indirect taxes as a source of revenue coupled with higher social security contributions (which will be explained below).

Table 3

**Comparison of tax revenues in the 15 old and 8 new EU member states  
(without Cyprus and Malta), 1999–2008**

es	15 (in %)	8 (in %)
ome taxes		
irect taxes		
er taxes		
ial Security contributions		

Source: IMF and World Bank.

The table above highlights the differences in the structure of tax revenues in the old and new EU member states. The differences are historical in nature.

Income taxes were introduced in most of the new members during the early 1990's, and the tax did not gain popularity and social acceptance in the period of rapid and radical social, economic and political transformation. The smaller income tax revenues can be partially explained by the presence of a sizeable "grey economy" in the new EU member states. The percentage participation of social security contributions in the new members is a result of the deep and painful economic transformation, during which, a sizeable percentage of the working people were sent to compulsory retirement to reduce the pressures on the labour market. With increased numbers of retirees came the growing demands for social security payouts.

Table 4

**Structure of tax revenues in each of the 8 new EU members \* (1999–2008)**

Country	Total Taxes	Income taxes	Indirect taxes	Social Security	Other taxes
8 Countries	100	24,9	36,2	32,6	6,3
Czech Rep.	100	24,1	30,6	40,1	5,2
Estonia	100	27,3	34,8	33,8	4,1
Lithuania	100	30,3	40,8	23,6	5,3
Latvia	100	25,0	36,2	34,3	4,5
Poland	100	24,5	36,3	30,4	8,8
Slovakia	100	23,7	31,5	37,4	7,4
Slovenia	100	18,8	38,9	33,4	8,5
Hungary	100	25,6	40,3	27,7	6,4

\* Data missing for Cyprus and Malta.

Source: own investigation.

The above mentioned data shows a smaller percentage of income taxes in the tax revenues of the new EU members compared to the old fifteen countries (an average of 36 %). One of the primary reasons is a weaker and less-competent (ill-trained) tax administration, which in turn means that basing governmental revenues on indirect taxes allows for easier administration, collection and assures lower tax avoidance and evasion. It also reduces the costs of tax revenue generation (public expenditure on tax collection). Lithuania has the highest percentage of income taxes in total governmental tax revenues (over 30 %), whereas Slovenia has the lowest (18.8 %). It is clear that the two primary sources of governmental revenues among the new EU states are: VAT and social security contributions, whereas in the old 15 countries it is the income tax that plays a more important role than VAT.

**2. EU tax systems – general notions**

An analysis of tax revenues of the EU fifteen, allows for the formulation of several general notions:

a) tax reforms undertaken over the last several years are aimed primarily at the reduction of direct taxation, especially of the personal income tax;

b) the result of such reforms is an increase of the indirect tax burden, social security contributions and of asset-related taxes;

c) EU member states can be divided into those with a “northern” tax mentality, where personal income taxes play a significant role in governmental tax revenues (Belgium, Denmark, Finland, Sweden) and those with a “southern” mentality, where indirect and wealth-related taxation forms the tax revenue backbone (Greece, France, Portugal, Spain and Italy);

d) ongoing economic integration brings with it a slow but visible process of “northern” and “southern” tax systems evolution, towards the emergence of a balance between indirect and direct taxation as a part of tax revenues;

e) the systems are characterised by a relatively low percentage of corporate income taxes, which can be seen as a conscious policy of easing entrepreneurial burdens and assuring that they are not weighted down with excessive fiscal policies;

f) most EU members are witnessing an increase in social security contributions, which is a result of the systematically increasing numbers of the elderly (“ageing population”) that will require increased public expenditures on health care and social security.

a) An analysis of tax revenues of the 10 new EU member states highlights the following differences;

b) the percentage of personal income taxes is much lower than in the countries of the “old” fifteen, and will, in all likelihood, continue to decline, primarily due to the “tax system competitiveness” effect;

c) the result is a need to recover lost governmental revenues via indirect taxation;

d) the tax revenue structure of the new 10 member states appears to bear notable similarities to the “southern” tax system mentality.

### **3. PIT as the crucial area of tax systems harmonisation**

Rules regulating income taxes do not form a crucial area of tax systems harmonisation, unlike indirect taxes. It is assumed that the discrepancies in regulations regarding direct taxation do not pose a threat to the functioning of the internal EU market. Also, such harmonisation is more complicated than that of indirect taxes, both from the political, technical and legal point of view. Harmonisation touches only those tax institutions (mainly personal income taxes) that regulate certain international operations of enterprises, i. e. those areas that can be a source of unequal treatment of local and international producers and that can lead to cases of double taxation.

Direct taxation is characterised by a relatively low level of normative harmonisation – the EU Treaty contains no direct requirements and regulations for their harmonisation, in essence leaving direct taxation solely in the hands of the individual governments. Thus, governments have complete control over shaping of their national solutions, and are only limited by the need for equal treatment of national and international entities.

This situation is a result of several factors.

First, when the Treaty of Rome was created, direct taxation was not seen as exerting a powerful influence on the functioning of the internal market. As a result its harmonisation was not thought of as important. The approach most likely came from under appreciation of the strength and mobility of the European work force as well as of the strength of pan-European entrepreneurship. Thus, EU legislation regarding direct taxation can be based solely on par. 94 of the EU Treaty, which gives the Council the right to pass Directives aimed at harmonising the legal, operational and administrative regulations of EU members, which have direct impact on the functioning of the common EU market.

Second, income taxes, as direct forms of taxation, are an important and valuable tool of fiscal policy of individual states, due to their direct nature and the possibility

of playing a regulatory and stimulatory function. As a result, politicians find it difficult to get rid of this form of tax<sup>6</sup>.

Third, Directives regarding harmonisation of direct taxation have to be passed by an absolute majority, which causes a conformity deficit, primarily due to political conflicts that emerge during EU parliamentary sessions as well as the differing perspectives that political parties across the EU have regarding their country's taxation policies<sup>7</sup>.

Fourth, progress in terms of income tax harmonisation brings out fears about the threat to national tax sovereignty and leads to the entrenchment of governmental positions regarding any harmonisation of direct taxation<sup>8</sup>.

The only Directive regulating personal income taxes is from 3<sup>rd</sup> June 2003 (2003/48/EC) and sets to define the taxation of incomes acquired from savings, in the form of interest. The Directive covers harmonisation of tax structures for private individuals and aims to enable the effective taxation of incomes in the form of interest on savings that are held in one country whereas the savings' owner resides in another country. According to the Directive the host nation (one where the income from savings is generated) is required to refrain from any taxation, allowing for taxation in the home country (where the savings' owner resides). The Directive also outlines a subsystem for effective information sharing on taxing incomes from savings (Art. 9).

Besides the abovementioned Directive, EU member states have been given the freedom to set personal income taxation. As a result, personal income taxation does

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<sup>6</sup> Through the application of income taxes it is easier to realise the non-fiscal functions of taxation. The harmonisation process will not eliminate the stimulatory function, based on the application of different tax structures, as the differentiation of developmental levels of individual states and regions as well as specific tradition in national tax systems will require (temporarily) the application of varied instruments and tools of tax policy.

<sup>7</sup> In: J. de Goede, *Integracja europejska a prawo podatkowe*, "Kwartalnik Prawa Podatkowego". – 2003. – № 1. – P. 130.

<sup>8</sup> It is important to note that in the case of income taxes we are looking at the identities of formal and real taxpayers. More in: W. Wójtowicz (ed), *Zarys finansów publicznych i prawa podatkowego*, Dom Wydawniczy ABC, Warszawa, 2003. – P. 131. Also: W. Nykiel, *Prawo podatkowe w Unii Europejskiej (i jego wpływ na unormowania polskie)* [in:] *Encyklopedia Podatkowa*, PWN, Warszawa 1998, E/33.

not present an accession adjustment area for Poland<sup>9</sup>, as EU members individually decide about the scale and scope, structure, rebates and tax reductions<sup>10</sup>, progression structure<sup>11</sup>, etc.

Despite the sole Directive on personal income taxation, rules are emerging automatically and the levels of taxation are becoming homogeneous. Due to the presence of competitiveness assumptions in the tax law, EU member states are undertaking independent adjustments in the area of accepted tax solutions. Competition between national tax systems forces certain solutions that bring various tax constructions closer to one another, so that favourable conditions emerge for the functioning of the common EU market<sup>12</sup>.

The result of “silent harmonisation” is the increasing commonality of tax construction solutions, especially in the areas that do not come under top-down EU harmonisation requirements – especially in the area of personal income taxes. EU member state solutions share the following<sup>13</sup>:

- a) the tax is levied on the combined (global) incomes of the taxpayer;
- b) the tax scale is progressive, with multiple brackets, variable minimal and maximal tax levels;
- c) most countries have sums free from taxation;

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<sup>9</sup> Despite this, there are certain problems visible in the area of personal income taxation, which will have to be dealt with in the near future: the differences between residents (those subject to the unlimited tax responsibilities) and non-residents (subject to restricted tax responsibilities).

<sup>10</sup> If reductions cover the personal and corporate income taxes, then the discounts can take the form of public assistance, and then it ceases to be an area no interest to the EU Commission. The issue, whether a tax discount takes on the form of public assistance, is affected by the rule of accumulation, in accordance with which “the rules are used to offer assistance” whose value surpasses over 3 years a financial limit defined by the rules.

<sup>11</sup> In: J. Gałuszka, Podatek od dochodów osobistych krajach Unii Europejskiej, “Przegląd Podatkowy” – 2002. – № 2. – P. 18–22; T. Wołowicz, An evaluation of the individual income tax system in Poland and some chosen European Union countries, taking into account pro-family tax politics part I, “Produktivita” Slovenske Centrum Produktivity, 2004. – № 1. – P. 23; T. Wołowicz, Podatek dochodowy od osób fizycznych w krajach Unii Europejskiej, “Ekonomika i Organizacja Przedsiębiorstwa”. – 2002. – № 12. – P. 75–87.

<sup>12</sup> See: A. Gomułowicz, J. Małecki, Podatki i prawa podatkowe, LexisNexis, Warszawa, 2004. – P. 625–626.

<sup>13</sup> In: A. Krajewska, Podatki. Unia Europejska, Polska, Kraje Nadbałtyckie, PWE, Warszawa, 2004. – P. 74–75; Z. Ofiarski, Ewolucja funkcji pozafiskalnej podatków w Polsce po roku 1990 [in:] Kierunki reformy polskiego systemu podatkowego, UMCS, Lublin, 2003. – P. 105–106.

d) the tax burden is adjusted for inflation via an automatic or semi-automatic indexation system or through variable tax steps;

e) personal income taxation takes under consideration the ability of the taxpayer to carry the burden, and does so through a system of rebates and deductions;

f) different principles are applied to taxing of family incomes, real estate sales and assets;

g) there is a variable system of income-related cost recognition that is related to the method of income generation;

h) there is no differentiation of the tax burden from the perspective of the sources from which income is generated and its intended use;

i) the income tax system contains preferences that are specific to the way that income is spent.

An important role in the harmonisation process is played by decisions made in the European Court of Justice, which, as the guardian of Treaty freedom, gives out verdicts in specific cases, creating the interpretation of laws of individual EU member states. ECJ verdicts have a sizeable influence on the shaping of EU tax laws and offer guidance to other member states on how to adjust their laws to EU regulations.

### **Conclusion from the research results**

The harmonisation of the personal income tax is not an easy endeavour due to varied remuneration systems, differing approaches to social issues, shaping and evaluating costs of income generation, tax steps, shaping the progression structure, etc. Most experts agree that we can expect an increasing harmonisation of systemic solutions in the area of personal income taxation, which will be the result of equalisation of economic development between EU members and the perfection of the best tax practices and their spread to EU member states<sup>14</sup>.

Harmonisation in general is a difficult challenge, and any debate about harmonising PIT systems brings out major counterarguments:

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<sup>14</sup> See: J. Gałuszka, Harmonizacja podatków pośrednich i bezpośrednich w Unii Europejskiej – implikacje dla Polski, “Przegląd Podatkowy”, 2000. – № 19. – P. 3–5.

1. Further loss of sovereignty in national financial policies, which will inhibit the state's ability to affect economic processes and (especially) social ones. Harmonisation of the rules for calculating the basis for taxation and the acceptance of unified rates would mean the transfer of tax-setting prerogatives to a trans-national institution: the EU. In such a situation, each nation must conduct its own analysis of costs and benefits (of transferring those competencies versus their retention).

2. Different social models and retirement systems, when combined with varied degrees of PIT integration with retirement contributions, determine various financial needs of the state, therefore harmonisation would have to reach far beyond "mere" PIT systems.

3. Historical, cultural, social factors that have shaped national tax systems enforce claims that path-dependent process will be difficult to reverse.

4. Competitive inequality between taxpayers who operate in one market and those that function in multiple EU member states. Depending on their primary country of residence it can be an advantage to pay taxes elsewhere (when the other nation's tax regime is friendlier, e. g. for Poles employed and taxed in the UK) or a disadvantage (when British taxpayers operating in Poland or Poles earning in the UK are subject to Polish taxation<sup>15</sup>).

Notwithstanding abovementioned criticisms, the following predictions can be made regarding income tax (primarily PIT) harmonisation across the European Union:

1. Harmonisation of direct taxes is unavoidable, but it will be a long-term process and will affect CIT before PIT <sup>16</sup> (reducing complexity of trans-border business operations will be a priority compared to easing the life of individual taxpayers). It is likely that the global economic crisis (2008–2009) will negatively impact the speed of any harmonisation as governments focus on surviving the

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<sup>15</sup> Even the UK tax free amount, about 3500 GBP, when converted into Polish zloty, puts the taxpayer into the higher end of the first Polish tax bracket, while Polish National Insurance is double that of the UK.

<sup>16</sup> Kopits G., (ed), 1992, "Tax harmonization in the European Community: policy issues and analysis", IMF Occasional Paper. – 1992. – № 94.



difficult period and, since research suggests that speedy harmonisation negatively affects economic growth, governments will remain weary of such processes, keen to defend any possible economic growth (and thus their own positions).

2. The current process of direct tax harmonisation is in an early stage of progress due to existing extensive national variations. Forces promoting reform are more economic and include the unified market, common currency, need to increase competitiveness. Opposing forces are more ideological and focus on the dangers of sacrificing fiscal competencies, especially that these powers will be handed over to a supranational body. The need for unanimous voting when backed by the complexity of current tax policies are the main causes for a slow harmonisation process (rationality of pure tax-related arguments comes in conflict with local political rationality).

3. At the very least, it is crucial to assure the enforcement and optimisation of regulations covering the avoidance of double taxation, both personal (PIT) and business (CIT). The need for speedy resolutions stems from the growth and expansion of trans-border economic activity and the removal of barriers to the movement of labour which complicates proper income taxation (calculation and collection). It is necessary to employ a holistic approach to this issue and that calls for a review of signed bilateral agreements by their signatories, introducing required corrections and signing of new agreements with EU members<sup>17</sup>.

4. PIT harmonisation should focus on achieving intergovernmental agreement on calculating the tax base, to avoid distortions in the real tax rate (tax brackets). The concept of taxable income is a result of local costs of generating the income, rebates and deductions and the current methods of setting them differ in each country. The same comment relates to the methodology used for defining tax progression and the concepts of minimal and maximum rates and the social aspects of the PIT.

5. When discussing PIT harmonisation it is important to remember about the integration of this tax with social security contributions, as both contribute to the burden

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<sup>17</sup> Bolkstein F., 2002, "Toward an Internal market without tax obstacles", Speech at European Commission on company taxation in the EU, Brussels, 2002. – 29 April.

placed on labour. They are complementary and form the “tax wedge” (the difference between the gross labour costs to the employer and the net income for the employee) and are important for businesses when considering the costs-versus-reward of creating new employment opportunities (positions). When PIT is coordinated with social security contributions, attempts at coordination or harmonisation become extremely difficult as two different deduction systems and multiple ministries in each state become involved.

6. A controversial issue is the competitive lowering of PIT rates, and nation’s intent on lowering (“dumping”) their effective tax rates ought to consider the impact of those actions on the wider Union, especially from the perspective of affecting competitive equilibriums<sup>18</sup>.

7. It is important to approach with caution the concepts regarding the removal of the capital gains tax since this would promote speculative activity (due to resulting high profits), while discriminating against labour incomes and profits from (more laborious, productive and long-term) economic activity. Much more beneficial would be the removal of taxes on savings, as it would stimulate an increase in the rate of savings and make more capital available to fund economic growth.

8. It is difficult to expect that the EU will evolve into a federal state, but only such a structure would give the Union the right to set and collect taxes. The, tax policies would be formulated and implemented in a top-down manner that would allow for the implementation of a uniform (harmonised) tax system. It is unlikely that member states will agree to such a solution, especially due to the political importance and financial role of income taxes. Therefore, we can expect that income taxes will remain decentralised, e. g. under the control of individual nations<sup>19</sup>.

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<sup>18</sup> Tax dumpers should be also aware that a price-reduction war (which tax dumping is) has no clear winner, as there can always emerge a new low-cost (low-tax) competitor and take any gains away for a short period until the next, increasingly determined “dumper” lowers the rates once more, seizing a temporary advantage.

<sup>19</sup> Tanzii, V., Zee, H. H., 1998, “Consequences of the Economic and Monetary Union for the coordination of tax system in the European Union: lessons from the US experience”, IMF Working Paper, 1998. – № 115.

9. A question emerges regarding the future possibilities for the income tax becoming a “European tax”<sup>20</sup> and whether such an idea is realistic. The debate about setting a European tax started with the underlining of the weaknesses of available financial resources and defining the new model of EU budget revenues. The EU Commission proposed the personal income tax as a tax that fulfils eight criteria (in three groups): budgetary (sufficiency and stability), effective (recognition, low operating costs, effective allocation of resources), just (vertical and horizontal, income that assumes that the level of this tax is in balance with economic development). When considering the PIT, the Commission proposed three possible ways of establishing the PIT as a European tax:

- poll tax, set at about 260 Euro;
- percentage of national PIT revenues (visible as a separate position in the annual tax declaration);
- separate EUPIT (two tax declarations: national and EU). Its introduction would increase implementation and collection costs and its very creation would require a Decree by the Council (in key elements) and a Directive (in the administrative section);
- the EU Commission focused on the last concept. Completed analyses indicate that EUPIT set at 10% of current national PIT rates (coupled with a matching reduction in national PIT) would provide appropriate funds to the EU. It is improbable that EU tax will be implemented from 2014, because the decision is purely political and not economical and requires unanimous agreement by all EU member states. Considering the specifics of the PIT presented in this article, it is unlikely that the PIT will become the basic EU tax in the foreseeable future.

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<sup>20</sup> Agra Facts № 05–07, 19.10.2007; “Tax-based EU own resources an assessment”, Taxation papers, working paper 2004. № 1; Financing the EU. Commission report on the operation of the own resources system; Kucharek, W., 2007, “Podatek europejski. Czy może być źródłem dochodów budżetu UE?”, Biuletyn Skarbowy, 2007. – № 2. – P. 11–15.

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## IMPLEMENTATION OF THE WCO STANDARDS

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### **SOCIAL AND LEGAL BASIS FOR CORRUPTION INFRINGEMENT PREVENTION IN THE CUSTOMS SERVICE OF UKRAINE**

#### **Abstract**

In the presented scientific article the basic social and legal problems of the corruption offenses prevention in the Customs Service of Ukraine have been identified and investigated. The propositions of legislation perfection in the area of Customs Service workers' social protection have been made.

**Key words:** Background prevention of corruption infringement, the imperfection of social protection norms, material and housing support to the customs officials, the problem of recruitment in the Customs Service.

#### **Introduction**

The realization tasks of the Customs Service of Ukraine depend on the quality of its personnel integration, the proper discharge of their duties. Important foundation of

effective counteraction and corruption infringement prevention in the Customs Service is fixed in legislative and social guarantees and workers legal protection. However, their real nature, provided with the appropriate mechanism for implementation makes it possible to have stable foundation for corruption infringement prevention.

### **Problem statement**

The purpose of this article is to identify and study major social and legal problems of corruption infringement prevention at the Customs, to make proposals how to improve the Customs legislation about social protection of the Customs Service workers.

### **Research results**

Social protection of Ukrainian Customs Service workers is a system of social guarantees to ensure satisfaction of material and spiritual needs and compensate the limitations imposed by law for this category of people. According to the project of the State Customs Service of Ukraine social development in 2006–2010, the main tasks of the State in this direction are to establish an effective and efficient mechanism for protecting the rights and freedoms of the Customs Service workers and their families, to improve the legal framework on these aspects and to provide the consistent and gradual entry of the Customs Service into the European community. The program is developed in accordance with the Constitution of Ukraine [1], laws of Ukraine, the thesis of the Address of the Ukrainian President “European choice. Strategy of economic and social development of Ukraine for 2002–2011 years” [2], Civil Service Development Program for 2005–2010 [3].

Article (hereinafter – Art) 46 of the Constitution of Ukraine [1] establishes the right of social protection for all citizens. According to Part 1 of Art. 427 of the Customs Code of Ukraine of 11.07.2002 (hereinafter – CC of Ukraine 2002) [4] the state guarantees the officials of the Customs Service of Ukraine, social protection and

material and housing security. It can be argued that the State performs these obligations incompletely. The Cabinet of Ministers of Ukraine of 26.05.2004, № 678 [5] fully implemented only the provisions of Art. 427, 431 CC of Ukraine 2002, and provides additional compensation to employees of customs authorities for the damage caused during the performing of their duties or in the cases when it is connected with this performance.

First of all the problems arise with the realization of the provisions of Art. 428 and 429 CC of Ukraine 2002 [4]. On the one hand, for the realization of Art. 428 CC of Ukraine 2002, the Cabinet of Ministers of Ukraine adopted a Resolution of 31.05.2006, № 767 [6], which clearly regulates the question of the Customs Service workers payment, and the Resolution of 06.02.2008, № 34 [9] which raised salaries of executives, professionals and employees up to 45 percent. On the other – the Law of Ukraine from 28.12.2007 “About State Budget of Ukraine 2008 and The Amendments of Certain Legislative Acts of Ukraine” [7] the action of Part 2 Art. 428 CC of Ukraine was put out of operation. According to the decision of Constitutional Court of Ukraine from 22.05.2008 № 10-rp/2008 [8] this change was recognized to be unconstitutional.

The most “original” decision of the Supreme Council of Ukraine was the exemption under the law number 107-VI of 28.12.2007 [8], from CC of Ukraine 2002 the Art. 429 “Housing provision of the Ukrainian Customs Service workers”. The decision of the Constitutional Court of Ukraine from 22.05.2008 № 10-rp/2008 [9] recognized this change unconstitutional as well.

Logical question arises: what standards were excluded from the Code, and why?

Part 1 Art. 429 CC of Ukraine 2002 indicates that officials of the Customs Service of Ukraine, who need to improve housing conditions, are entitled to the priority for housing. The officials of The Customs Service of Ukraine retain this right after retirement if they have the experience of work in The Customs Service of Ukraine more than 20 years. Part 3 of that article says that in the case of the Customs Service worker death connecting with the execution of his duties the right to acquire



living space under the same conditions and grounds which took place at the time of the officer's death retains for the family.

According to the preamble of the Law of Ukraine "About Social Housing Fund" [10] this law determines legal, organizational and social principles of state policy on ensuring the constitutional rights of socially unprotected population of Ukraine for obtaining housing. Art. 12 of the Act takes into consideration nineteen privileged categories entitled to receive priority for flats or estate (one-family) residential buildings with social housing. There is a visible contradiction between the norms of Art. 429 CC of Ukraine 2002 [4] and the Law of Ukraine "About Social Housing Fund" [10], because the legally defined level of remuneration of Customs officials can hardly be attributed to socially unprotected people.

Based on the above the following problem springs up. According to Part 2 Art. 429 CC of Ukraine 2002, customs authorities may have institutional housing, which is formed in the order determined by the Cabinet of Ministers of Ukraine. Article 5 of the Housing Code of Ukraine [11] expects the presence of departmental housing in the structure of public housing. But the Cabinet of Ministers of Ukraine does not accept the formation of Customs departmental housing until now.

Part 4 Art. 429 CC of Ukraine 2002 gives the officials of the Customs Service of Ukraine the right to obtain residence or work interest-free loans for individual or cooperative housing and getting household for up to 20 years due 50 percent received loans through the budget. There is an operating procedure for implementation (use) the provisions of Section 3 – the establishment and promotion of tangible and socio-cultural development of the State Customs Service of Ukraine, approved by the State Customs Service from 26.06.1997 № 275 and registered in the Ministry of Justice of Ukraine 05.09.1997 № 385/2189, which approved the overall order of the State Customs Service and the Council of the customs authorities Union of Ukraine from 25.04.2001, № 278/8. But it does not provide a mechanism for granting and redemption set in 2002 CC of Ukraine but there is no legal mechanism for implementing certain provisions.

According to the Art. 430 CC of Ukraine 2002 pensions of the officials of the Customs Service of Ukraine are paid in accordance with the terms and procedure established by Art. 37 and 37-1 of the Law of Ukraine “About State Service” [12]. The paradox is that the majority of the State Customs Service workers after the accepting CC of Ukraine 2002 [4] actually lost the right to receive a service pension, and the retirement of public servants. The rejection of retired state employee appointment is motivated with the fact that the position of Customs Service of Ukraine workers, who are the officers and have a special rank, Art. 25 Law of Ukraine “About State Service” is not provided [see. 13, pp. 16].

We suppose, that the Standard No. 1 Art. 430 CC of Ukraine 2002 in this wording contradicts with the Part 3 of Art. 22 of the Constitution of Ukraine [1] and Part 1 of Art. 427 CC of Ukraine 2002, as it narrows the content and scope of the right to social protection. Let us prove it.

1. CC of Ukraine 1991 [14] contained the Standard 4 Art. 154, which stipulated the length of service for the customs authorities employees – women – 20, men – 25 years with early retirement age (50 and 55 years-under). The analysis of Art 9, 13, 154, 156 and 157 CC of Ukraine 1991 standards gives reason to believe that the term “customs workers with the personal status” and “customs officers” were regarded as identical. But the term “the official of the Customs Service of Ukraine”, defined in the Art. 407 CC of Ukraine 2002 in comparison with the Art. 154 CC of Ukraine 1991 is much narrower, than the term “officer”.

2. Despite the fact that the legislation of Ukraine about the work term in The Customs Bodies operates with the category “seniority” rather than “public service experience, CC of Ukraine 2002 established the norm of the Customs officials’ pensions in accordance with Articles 37 and 37-1 of the Law of Ukraine “About State Service”[12] and the Order of calculating public service experience [15].

This formal approach to the interpretation of legal norms, which determines the grounds for granting State employee pension of the Customs Service workers, encourages to look at this problem systematically.

## **IMPLEMENTATION OF THE WCO STANDARDS**

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According to Part 2 Art. 9 of the Law of Ukraine “About State Service” the regulation of the legal status of civil servants working in the customs control office is organized in accordance with this Law, (unless otherwise stipulated by the laws of Ukraine). According to the administrative authorities the employees under the Law of Ukraine “About State Service” [12] are divided into leaders and professionals. In addition, this Law operates with another category of public service – officials. Officials in accordance with Part 2, Art. 2 of the Act are considered to be the heads and deputy heads of public bodies and their staff, other public officials, who are to carry out organizational, administrative, consultative and advisory functions. Art. 407 CC of Ukraine 2002 [4] consider the Customs Service workers, who do customs business and have special status as the category of the officials.

Art. 3 CC of Ukraine 2002 gives the definitions of the Customs Service. Civil servants engaged in the Customs matters, enter into legal customs business as the State representatives and implement a number of important functions in foreign policy and foreign areas: regulatory, economic, supervisory, fiscal, and others. Norms of Art. 407 and 408 CC of Ukraine 2002 as a special legislative act, do not contradict with Part 2, Art. 2 of the Law of Ukraine “About State Service”, and extend the definition of an official.

That is why the classification of state employees is put into the rules of item 3 of public service experience calculation [15], which gives the right to calculate the public service experience time in such public organizations as the State Criminal Executive Service, the Interior Ministry, State Special Relationship and so on.

The next problem is the problem of Customs recruitment through the Academy of Customs of Ukraine (hereinafter – the Academy). According to the rules CC of Ukraine 2002, a cadet is a person who is admitted to the Academy with special studying conditions and acquires a certain educational and qualification level for the further work in the Customs Service of Ukraine.

Unification of legislation aspects on the order of entering the higher education establishments has led to a number of problems and conflicts which arise at the entrants to the Academy.

Art. 412 CC of Ukraine 2002 [4] establishes the requirements and restrictions for a person who applies for a job in the Customs Service, specialized Customs institutions and organizations. However, the Admission to higher educational institutions of Ukraine [16] (hereinafter – Admission) establishes a comprehensive list of documents that applicant is to submit to the examination board. But as the fact the examination board is able to check only the applicant's nationality and educational level. Business and moral qualities, the state of health, absence of conviction for committing an intentional crime, etc. are not the subject to verification.

This situation may lead to the following negative effects:

a) Cadets with disabilities who can not be allowed to treat firearms or undergo special physical training (hand-to-hand fighting, etc) including in the establishment are admitted to the Academy out of competition;

b) Graduates who have a criminal record or whose behavior does not correspond to socially accepted norms as well as those who consider the service as the opportunity for enrichment are sent to the Customs Service.

Section XXI of Admission [16] establishes the characteristics of admission to higher educational establishments of the Armed Forces of Ukraine, the Ministry of Internal Affairs of Ukraine, Ukraine's Security Service and others. The addition of state bodies, where the selection of students has its own characteristics, higher educational institution of Customs will determine the applicant's suitability not only for studying, but also for the further service in the Customs Bodies. In addition, it is necessary to use the positive experience of the Internal Affairs Ministry. The rules of selection and admission to higher educational institutions of the Internal Affairs Ministry of Ukraine [17] comprehensively settle the question of selection of applicants, their checking with the help of the criteria defined by the laws, their taking the entrance examinations and getting the possibility to study.

Another problem is associated with the aspect of Statute 31 about the order and the conditions of the service in the Customs [18]. The period of studying at the Academy is not included in the public service experience. We think the current version of Statute 31 adopted in 1993, does not reflect changes that have been made in the legislation and ignores the peculiarities of the legal status of cadets as a part of the personnel of the Ukrainian Customs Service.

The features of the legal status of cadets are identified in Art. 410, 418 and 420 CC of Ukraine 2002 [4] and the Decree of President of Ukraine dated 23.03.1998, the № 216/98 [19]. According to the Law the students are given the special rank of “cadet”. The Statute of the workers and the cadets’ special status establishes the procedure for their assignment [20]. Students are to wear clothing with appropriate insignia, and keep the rules of wearing uniforms (p. 10 Art. 410 CC of Ukraine 2002, the Cabinet of Ministers of Ukraine dated 26.12.02 № 1988 [21], The Rules of wearing uniforms by the officials of the Customs Service of Ukraine and the cadets are fixed in the Addition to the Order № 602 of the Customs Service of Ukraine (10.09.03).

### **Conclusions from the research**

In order to solve the major social and legal problems for corruption infringement prevention in the Customs Service it is necessary:

1) to adopt the resolution of the Cabinet of Ministers of Ukraine about the formation of the Customs Service departmental housing;

2) to adopt the resolution of the Cabinet of Ministers of Ukraine which provides the mechanism for granting and repayment of free loans under CC of Ukraine for an individual or cooperative housing and acquiring household effects;

3) to amend Art. 430 CC of Ukraine, so as to take into consideration employees of Customs bodies and specialized Customs agencies, having a specific rank;

4) to add paragraph 3 of the computing experience of civil service Order with the addition to calculate the civil service experience in the Customs bodies and

specialized Customs agencies for officials with special ranks as the public service experience;

5) to amend Section XXI of the Admission to higher educational institutions of Ukraine in order to establish the rules of the admission to the Academy of Customs of Ukraine;

6) to approve the rules of selection and admission to the Academy of Customs of Ukraine;

7) to amend the paragraph 31 of the Statute about the order and conditions of work in the Customs Service of Ukraine in order to include the period of studying at the Academy to the public service experience.

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**UDC 339.543 (470+571)**

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### **Developing of performance measurement problems for Russian customs service**

#### **Abstract**

Evaluation of customs performance and various indicators of such a measurement are considered; contradiction and restriction of this system are described in the article. The problems that no uniform sight of results of customs performance exists and that indicators of customs performance do not reflect its essence are discussed. The directions as to the further development of indicators are determined.

**Keywords:** customs activity, results, estimation, performance

### Introduction

Measuring customs performance has great value in determination of role of this state service in Russia. It has significant importance for science and practice from the point of view of national security, usage of limited public resources, developing national economy and supplying foreign trade.

Now the list of indicators of performance for Federal customs service (FCS) of Russia looks as follows [1]:

1. The customs payments transferred into federal budget of Russia.
2. Share of the customs payments actually paid or collected under decisions on updating of customs cost of the goods which have been cancelled subsequently, in a total sum of the customs payments actually paid or collected under decisions on updating customs valuation of goods.
3. Share of the customs payments actually paid or collected as a result of updating of customs cost of goods, in a total sum of customs payments, calculated by results of updating of customs cost of goods.
4. Share of the arisen sum of debts on payment of customs payments and fines in a total sum of the money transferred into federal budget of Russia.
5. Reduction of divergences between quantity indicators of import of deficiency goods to Russia from China and indicators of their export from China to Russia – increase in quantity of the controlled goods.
6. Reduction of divergences between indicators of import of proficiency goods to Russia from China and indicators of their export from China to Russia.
7. Efficiency of activity of customs authorities under the control of customs cost within the limits of a control system of risks.
8. Quantity of the revealed counterfeit goods.
9. Control of compliance with interdictions and restrictions.

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10. Efficiency of the checks of compliance with the currency legislation of the Russian Federation and documents of bodies of currency regulations authorities made by customs concerning participants of foreign trade activities.

11. The revealed infringements of the currency laws of Russian Federation in cost expression.

12. Controlling of an order of transfer of customs declaration' electronic copies in the central database of the Unified automated information system of FCS.

13. Quantity of the customs bodies having sufficient technical equipment for application of the electronic form of declaring.

14. Change of a share of the customs declarations, issued (released) in electronic form.

15. Share of the Customs Declaration released in one day in total number of customs declarations.

16. Time for performance of customs procedures in automobile check points through frontier of the Russian Federation under the customs procedure of internal customs transit.

17. Time for performance of customs procedures in automobile check points through frontier of the Russian Federation for the goods transported under customs procedure of transit.

18. Share of claims (statements) to customs authorities on which courts make decisions not in favor of customs authorities, in the general number of claims (statements) to the customs authorities, considered by courts.

19. Share of actions of proceeding with participation of customs authorities on which courts make decisions not in favor of customs authorities, in the general number of the affairs considered by courts with participation of customs authorities.

20. Share of decisions of customs authorities about bringing to the administrative responsibility, cancelled by courts, in the general number of the decisions of customs authorities considered by courts about attraction to administrative responsibility.

21. Quantity of the repeated justified complaints considered by customs authorities.

22. Average time of primary reaction on the facts of revealing of signs of illegal moving through customs border of the Russian Federation of fissionable and radioactive materials and the goods with the raised level of an ionizing radiation.

23. Efficiency of carrying out by customs authorities of customs inspections of the goods at application of a control system by risks.

24. Efficiency of carrying out by customs authorities of customs inspections of the goods on the basis of separate profiles of risks.

25. Efficiency of application of measures on minimization of the risks containing in urgent profiles of risks, confirmed by independently regional customs offices and customs directly subordinated to FCS of Russia.

26. Efficiency of carrying out of customs inspections of goods by customs authorities on the basis of regional and zone profiles of the risks confirmed by independently regional customs offices and customs, directly subordinated to FSC of Russia.

27. Efficiency of customs inspections for customs control of certain goods.

28. Efficiency of customs check of the exported forest products classified in commodity positions 4403, 4407 according to commodity nomenclature of trade activities of Russia (Russian HS).

29. Share of affairs about administrative offences on which decisions about appointment of punishment are taken out and proceeding is not stopped in connection with the appeal or protest, in the general number of the accepted decisions on affairs about administrative offences.

30. Share of the criminal cases stopped on rehabilitating grounds, in the general number of the ended criminal cases.

31. Efficiency of activities of customs authorities at carrying out of customs checks in the form of customs inspection of goods and vehicles with use of an inspectional examinational complex in check points through frontier of the Russian

Federation.

32. Share of customs registration of excise goods in total number of the released goods.

Among the control indicators established FCS of Russia for customs authorities there are analytical indicators: № 2 «Reduction of divergences between quantity indicators of import to Russia from China and indicators of export from China to Russia of the goods of deficiency – increase in quantity of the controlled goods», № 9.3 "Change of a share of customs declarations, released in electronic form» and some others. Analytical indicators are controlled the same as other indicators and the analysis of their performance is made. But their estimation does not influence total evaluation of efficiency of activity of customs authorities. Absence of the estimations exposed on ball system for analytical indicators is caused by the reason that it is not always possible to estimate them objectively in connection with influence of various uncontrolled factors on them.

### **Problem statement**

The overview of these indicators shows that most of them are connected with the collecting of customs revenue. It is necessary to notice that the indicator itself without belittling value of fiscal incomes does not reflect customs performance but often only shows the external economic conjuncture.

That's why at the present moment carrying out of an adequate estimation of customs performance, in our opinion, is impossible. It is a general problem which, in its turn, is caused by a number of particular problems.

### **Research results**

First problem is that among scientists and experts in the field of customs does not exist the uniform understanding of what customs activity is. It is caused by absence of unity in definition of priorities of the given kind of activity. It is obvious from the point of view of the supporter of liberalization of foreign trade. At the same

time autarchy supporter results of customs performance look different. Reduction of time for carrying out customs formalities, decrease in customs control procedures on the one hand and international trade increase on the other hand are likely to have a positive result that will cause maximum facilitation of foreign trade.

In our opinion it is not so important what is happening to foreign trade, how many customs payments have delivered in the federal budget. The main concern is how effectively customs service promotes economic development of the country. The last is the complex phenomenon covering economic growth, structural shifts in the economy, perfection of conditions and quality of a life of the population.

For example, every year the FSC of Russia prepares the report on results and the basic lines of activity.

In this Report the customs service's strategic targets are determined [2]. Strategic target №1 is to increase the level of compliance with the customs legislation of the Russian Federation, completeness and timeliness of payment of the customs duties, taxes and customs charges. The Report underlines importance of the main purpose that stable execution of a profitable part of the federal budget depends on completeness and timeliness of payment of customs payments in the federal budget with simultaneous increase of level of compliance with the customs legislation of the Russian Federation and customs administration. The increase in profitable part of the federal budget allows to solve problems of macroeconomic stability and integration of the Russian economy in international economic space.

In the Report the given strategic targets are connected with the purposes of social and economic development of the state. So, for example, the strategic target №1 is connected with maintenance of macroeconomic stability, increase of competitiveness of the Russian enterprises, development of the international economic cooperation.

In our opinion, stable execution of a profitable part of the federal budget really depends on the level of compliance with the customs legislation, completeness and timeliness of payment of customs payments, The part of oil and gas incomes in the

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form of the export customs duties is imposed by customs bodies and used for repayment of deficiency of the federal budget and formation of Reserve fund of the Russian Federation. But efforts of customs bodies to guarantee the compliance with the customs legislation are minimal. Export of oil, natural gas and oil products rather is controlled without difficulty: the prices for them are known and cannot be underestimated; the limited circle of the companies is engaged in export.

According to the Report, stable execution of a profitable part of the federal budget will allow the state to create and use financial mechanisms of increase of competitiveness of the Russian enterprises, such as by the means of creation of conditions for their innovative development and use of measures of a protectionist customs-tariff policy. However the mentioned position contains the contradiction. By the means of the protectionist customs-tariff policy it is difficult to form incomes of the federal budget as it assumes the use of protecting rates of the customs duties. Furthermore financial anti-recessionary mechanisms of support of the domestic enterprises currently function, but not for all enterprises. Therefore they are not capable to provide competitiveness.

In our opinion non-compliance with the customs legislation has a number of negative consequences for economy:

1. Efficiency of customs regulation will be lowered. For example, the necessary rate of the customs duties of 10 % has been calculated, and only 5 % from customs value of goods have actually been paid. The main reasons may be both swindle of participants of foreign trade and reduction of price by suppliers if Russia is a so-called large market for them. Consequently more import goods will occur at home market due to their low price.

2. Home producers of the similar competing goods will have losses as after establishing protective tariffs it is supposed that the price of the imported goods will be higher. As a consequence they won't be able to stand competitive struggle and will lose the share in the domestic market.

3. If decrease in the sum of customs payments was evasion from their payment, legal importers will suffer. They pay the full sum of customs payments, and, accordingly, their goods will turn out to be more expensive and less competitive.

Thus, deficiency of the federal budget, reduction of a domestic production and foreign trade activities criminalization will be consequences of incomplete payment of customs payments.

The authors of the report name the strategic target №2 as improvement of quality of granting of services by customs bodies, reduction of costs of participants of foreign trade activities and the state, connected with customs registration and customs control. Optimization and transparency of customs procedures, expansion of practice of informing and consultation of participants of foreign trade activities, development of a customs infrastructure, increase in throughput, technical equipment of check points promote creation of favorable conditions of foreign trade activities, improvement of quality of granting of customs services. According to the Report the population standard of well-being influences rates of increase of economic development, activity in business sphere.

As a whole it would be possible to agree with the given purpose, but foreign trade influence on national economy is not considered. For example, some states limit quantity of check points or resolve declaring of separate categories of the goods on special check points. It creates a natural nontariff barrier on a way of certain categories of the goods.

Strategic target №3 is revealing and suppression of smuggling of weapons, drugs, counterfeit production and other goods forbidden to import to the Russian Federation and also the goods, subjects and the values which export is forbidden by the Russian Federation. According to the Report, importance of the purpose is defined by necessity of maintenance of economic safety of the state. Under the conditions of existing degree of criminalization of foreign trade activities, difficult operative and criminal conditions in frontier regions such phenomenon as contraband represents not only considerable threat to interests of economic safety, but also



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creates preconditions for activity of the international criminality connected with international terrorism and drug business.

The Report has formulated a number of indicators of achievement of strategic targets. So degree of achievement of the first strategic target of FCS of Russia is characterized by following indicators:

1. A share of claims (statements) to customs authorities that are taken into account when courts make decisions not in favor of customs authorities, that happens in the general number of the claims (statements) considered by courts.

2. Execution of the federal law on the federal budget in a part of customs payments.

3. A share of the customs payments transferred by participants of foreign trade activities with infringement of the terms established by standard documents, in a total sum of the listed customs payments in the federal budget.

However the given indicators are not maintained by critics as the strategic target is defined incorrectly. It turns out that the more affairs customs officers win against participants of foreign trade activities in court, the better result is. Also the use of an indicator execution of the law on the federal budget is doubtful. Customs authorities are obliged to execute this indicator otherwise it sanctions concerning their management will be implied. But there is also an underside. Due to errors in planning of budget incomes, officials of customs authorities will be compelled to try to collect them at any cost. Besides, heads of customs authorities usually purposely do not support an essential over fulfillment of the given indicator as in this case the next year the planned target on customs payments could be increased.

Value of an indicator is counted as:

$$I = \frac{P_{\text{fact}}}{P_{\text{plan}}} \times 100$$

Where:  $P_{\text{fact}}$  - sum of the customs and other payments transferred to the federal budget by the accruing result from the beginning of year (it is defined on the basis of the

information on transfer of customs and other payments in the income of federal budget of extracts of the personal accounts, opened for customs authorities in Federal exchequer)

Value of an indicator, according to the Report, should be not below 100 % that is caused by necessity of timely and strict performance of control indicators on collection and transfer of customs payments in a profitable part of the federal budget.

However in parallel to payments indicators of foreign trade which are not direct results of customs activity increase. Moreover, to estimate results of activity only as absolute indicators seems to be short-sighted. The given approach has two serious demerits. First, it is not clear what degree the result will reach from the point of view of realization of potential possibilities on its formation. There is also a question whether there could be a received indicator above. Secondly, the resources directed on achievement of result are ignored. The sum of received customs payments itself does not reflect anything. The main emphasis is placed at an estimation of activity of customs authorities that this sum should be more than for the similar previous period.

But it is the most difficult to develop indicators of law-enforcement activity. For example, as the first indicator of realization of a strategic target №3 is the share of imported goods to which customs authorities apply elimination of infringements of the legislation in total of the imported goods. Value of an indicator is defined under the formula:

$$D = \frac{S_{det\_gds} + S_{upd\_gds} + S_{hs\_IPP\_gds} + S_{curr\_gds}}{S_{dom.cons\_gds}} \times 100$$

Where:  $S_{det\_gds}$  - a total value of detained goods during implementation of law-enforcement activity of customs authorities;

$S_{upd\_gds}$  - value of the goods as a result of their updating;

$S_{hs\_IPP\_gds}$  - the value of the goods established as a result of carrying out of actions under the control over correctness of defining of country of origin of the

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goods, classifications of the goods according to commodities nomenclature of foreign trade activities (HS), over compliance with interdictions and the restrictions established according to the legislation of the Russian Federation and over intellectual property protection;

Scurr\_gds - a total value of the goods imported in Russian Federation with infringements of requirements of the currency legislation of the Russian Federation;

Sdom.cons\_gds - a total value of the goods released under customs regime of domestic consumption.

The increase in value of an indicator should be planned not less than 1.6% at the expense of carrying out of the preventive actions directed on decrease of latent criminality in a customs field of activity.

In our opinion, the given indicator is incorrect. It should be directed on prevention of crimes, instead of on their revealing after commitment. Besides, the given indicator established for customs authority's states that not less than 1.6 % of cost volume of goods should be imported with infringements. If as a result of preventive actions the volume of infringements would be reduced less than that certain value, in our opinion, it doesn't reflect the unsatisfactory work of customs authorities.

In our opinion the most difficult part is to measure the performance of such purpose. The customs service reveals offences in the external economic sphere and subjects participants of foreign trade activities to various sanctions for it. The basic indicator of law-enforcement work of Russian customs is the sum of penalties. Paradoxical situation – the worse the compliance with the customs legislation is, the more criminal cases are revealed and penalties are paid, the better the results of such activities are.

Another particular problem of an estimation of economic results of customs business is absence of well-founded system of indicators for their measurement.

### **Conclusions from the research**

Thus, it is difficult to measure customs performance today because:

1. There is no uniform sight of results of customs performance.

2. Applied criteria and indicators of an estimation of customs performance do not reflect its essence.

The characteristic of the problems set forth above gives the chance to plan ways of their decision:

1. It is necessary to define categories of results of customs activity.

3. It is necessary to formulate the purposes of customs service.

3. Creation of indicators which adequately would reflect results of customs activity is required.

Therefore the development of objective and complex system of the indicators reflecting performance of official duties and degree of achievement of objects in view becomes key aspect of increase of customs performance. The indicators of performance should satisfy the basic criteria «4C»: clearness, completeness, complexity, consistency.

Also productivity indicators should correspond to the concept «SMART» and to possess five following properties: specific, measurable, achievable, relevant, time certain [3]. The estimation of customs performance from the point of view of used resources should be developed. We need to focus not only on outputs but on outcomes as well. For example, the weight and cost of the detained drugs doesn't show much but the general tendency on decrease of their import is more important.

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## BEST PRACTICES

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### **TECHNOLOGY FOR SAFE OPERATION OF NON-INTRUSIVE CONTROL EQUIPMENT ADOPTED BY RUSSIAN FEDERAL CUSTOMS SERVICE**

#### **Abstract**

The paper presents the development of legal, organizational, technical and informational methods of safe operation supplies of non-intrusive control equipment adopted by the Russian Federal Customs Service. The innovation educational technologies concerning virtual training workshop of X-Ray Cargo Vision Systems researched in Russian Customs Academy were overviewed.

**Key words:** X-Ray Cargo Vision Systems, customs non-intrusive control, virtual training workshop.

#### **Introduction**

Customs Service of the Russian Federation is provided with more than 51 thousand technical equipments of customs examining of 250 various types. It allows customs services to fulfill their functions including smuggle of narcotics and explosives.

There are 471 stationary X-ray television systems to examine luggage, border crossings (checkpoints) are equipped with 49 mobile X-ray television systems. There are 113 devices to examine narcotics and explosives.

The analysis of efficiency of using customs technical equipments by customs services in 2009 (twenty oh nine) showed that 21551 customs infringements were revealed by means of technical equipment. It makes 42 % from total infringements revealed due to the application of special technical equipment.

Application of X-ray Caro vision systems is a great success in customs examining process and is a key point in revealing contraband goods. For protection of economic interests and safety of the Russian Federation there are 42 mobile and 12 fixed complexes for check of large-sized cargoes and vehicles in customs now. Till the end of 2010 (twenty ten) 6 fixed X-ray Cargo vision systems will be placed in different customs.

From January till August 2010 over 500 thousand customs examinations by means of X-ray Caro vision systems were held in Russian customs. More then 1500 administrative infringements and 21 criminal cases are results of using X-ray Caro vision systems. The sum of the imposed penalties has exceeded 24 million rubles. In 2009 it has been spent 692 thousand surveys (253 thousand in 2008). In 2009 692 thousands customs examinations were held, 121 criminal cases and 2665 administrative infringements were revealed. The Total sum of the penalties imposed in 2009 due to using x-ray television systems - 20.6 million rubles that almost has twice exceeded results of the previous year (11.1 million rubles).

Using X-ray Caro vision systems became a powerful technical instrument against narcotic smuggle. During last two years it has been withdrawn more than 1.5 (one and a half) tons of drugs. (733 and 804 kg accordingly), including 740 kg of confiscated heroin (415 kg in 2008 and 325 kg in 2009).

It should be noticed that X-Ray Cargo Vision System plays an important preventive role seriously complicating the organization of smuggles schemes of moving the goods and vehicles through customs border of the Russian Federation.

Technical equipments of customs examining used in the RF differ according to the field of application and exploiting conditions.

There are certain dangerous factors connected with X-ray Caro vision systems:

- ionizing radiation;
- Electromagnetic (not ionizing) radiations;
- high voltage;
- moving details of mechanisms and units;
- noise and vibration;
- Not authorized attempts of access to the confidential information ;
- the human factor.

To minimize negative influence of specified factors a technology of maintaining safety was developed in Russian Federal Customs Service. This technology includes organizational, technical, technological and legal measures.

### **Problem statement**

The system of application of not intrusive means of customs control represents a vertical of the subordinated documents. The basic levels of this vertical are:

- level of federal laws;
- level of Governmental statements;
- level of Agency standard acts;
- level Legal acts of Russian Customs Service.

Standard legal documents regulate all factors of influence at all stages of life cycle of customs technical equipment – from designing to utilization.

According to the Federal law N 170-FZ of 11 November 1995 “On using nuclear energy” and The Federal Law N 3-FZ of 09 January 1996 “On national radiation safety“(article 10) activities connected with ionizing radiation sources are to be licensed. This process is regulated by The Governmental Order of the Russian Federation N 107 of 25 February 2004 “On statement of licensing activities closely connected with ionizing radiation”

Order of Federal service on customers' rights protection and human well-being surveillance N224 of 19 July 2007 “On statement of organization and making sanitary-and-epidemiologic, examinations, inspections, researches, tests and



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toxicological, hygienic and other kinds of estimations”. According to this order ionizing radiation sources and activities connected with them must have sanitary and epidemiological approval.

There are also other documents regulating radiation safety rules. They are represented on the slide.

- Sanitary Rules and Norms 2.6.1.1.2523-09 “Norms of radiating safety” (“NRB-99/2009”)

Sanitary Rules and Norms 2.6.1.799-99 “Basic sanitary rules of maintenance of radiating safety” (“OSPORB-99”)

- Sanitary Rules and Norms 2.6.1.2369-08 “Hygienic requirements on maintenance of radiating safety connected with X-ray CVS

It’s allowed to use X-Ray Cargo Vision System only after sanitary-and-epidemiologic conclusion because it is a product representing potential danger to the person.

Customs authorities’ activities before exploiting X-ray Cargo vision system:

- Getting licenses for activities closely connected with generating sources of ionizing radiation, getting necessary sanitary and epidemiological documents to confirm that working condition satisfy the requirements of sanitary rules.
- Assignment of personnel admitted to work with X-ray CVS, training courses and instructing for them. All the staff is included in special Group A personnel by order or, if necessary, in Group B personnel.
- Assignment of personnel responsible for radiation safety, for the account and storage of ionizing radiation sources.
- Developing and confirming radiation safety instructions for using X-ray CVS, instructions for personnel actions in emergencies.

Radiation control in zones of CVS consists of:

Control over doze capacity (scan dose) of brake radiation at the distance of 10 cm from external wall surfaces and protective gate of a building where fixed X-ray

CVS accelerator located, or on border of restricted access to mobile X-ray CVS at first exploiting, every time after repairment, but not less then once a year;

Control over dose rate of brake radiation at workplaces of the personnel (at commissioning and each time after carrying out of repair work, but not less often than 1 time a year);

Control over dose capacity in pencil of rays for mobile X-ray CVS (behind detectors), on border of restricted access zone (doing before the beginning of work);

Control of individual doze radiation of group A personnel (constantly).

Radiation Control Equipment should have certain characteristics, which are presented on the slide.

Individual dose control of external radiation for Group A personnel working with X-ray CVS is carried out by means of individual dosimeters, allowing to measure a dose of pulse photon radiation in a power range from 50 keV to 10 MeV. For example, TLD dosimeters on the basis of fluoric lithium.

Requirements to the personnel include the certain items (RF Federal Customs Service Order N 403 of 15 April 2008 “On confirming rules of labour protection in customs and institutions being in charge of Federal Customs Service in the Russian Federation”):

- The list of the personnel admitted to work with ionizing radiation sources should be approved.

- Personnel responsible for the account and storage of radiation sources should be assigned.

- Personnel responsible for the control over radiation safety should be confirmed.

- Customs officers no younger than 18 with no medical contra-indications are admitted to work with X-ray cargo vision systems.

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- Before admitting to work with a radiation source customs officers should be properly educated, trained and tested on rules of safety and current instructions.

- Customs officers are tested on rules of safety before starting to work periodically, no less than once a year, and concerning management staff – no less than once in 3 years. Those who failed the test are not admitted to work with radiation sources.

- The admission to radiation sources is ruled by an order of Customs Authorities, after medical examination of the staff and after professional training courses.

Emergency situation at work with technical equipment:

- Damage of radiating protection system of equipment;
- Over radiation of personnel and others;
- Short circuit and damage of power supplies;
- Circuit of electricity through a human body;
- Mechanical breakage of installation elements;
- An emergency condition of a building damage in communication systems of water supply, water drain, heating and ventilation;
- Fire.

In such situations personnel must deal as it is stated in the Instruction

Information Protection System consists of:

- Technical equipment of protecting state secret information;
- Antivirus systems. Program product made in the Russian Federation – “Kaspersky Antivirus” is applied in Federal Customs Service of Russian Federation.
- Means of information protection against non-authorized access;
- Means of cryptographic information protection;
- System of Network safety;

– Control over information security (including maintenance of radio-electronic security of object). The main education center for training customs officers is the Russian Customs Academy.

Every branch of the Russian Customs Academy has a specialized Department of Technical Equipment of Customs Examining supplied with all necessary equipments.

Professional training of personnel working with X-ray CVS began in 2007. This educational process is a whole system consisting of two levels:

Education according to the program “Primary training for X-ray CVS operators” or “Training operators of fixed and mobile X-ray CVS-s to analyze images”, 72-hour program

Representatives of equipment suppliers spend 80 hours on instructing personnel in customs departments before the first exploiting of X-ray CVS-s.

In above-mentioned educational process special software is used. This software was designed in the Russian Customs Academy together with organization “Rusbiteh”.

It includes a subsystem modeling hardware complex of X-ray CVS and a system that imitates image analyzing station.

Due to modeling hardware complex the trainees are able to practice their skills in extension of mobile X-ray CVS. The trainees use special simulation equipments identical to original ones.

3D graphics and perfect audio effects provide simulation in virtual reality.

Due to imitation of image analyzing station trainees gain knowledge about main capabilities of X-ray CVS, get initial practical skills of working with interface elements, get theoretical information.

Character feature of the system is connected with a wide range of interfaces designed by such producers as Smiths Heiman, Rapiscan, Nuctech.

This system is supplied with practical skills generator capable to create special tasks including various tasks for education at the distance.

The represented system is only a part of up-to-date information technologies used in Russian Customs Academy. In addition to this, it is aimed to imitate customs clearance process and customs devices functioning, paying attention to macroeconomic factors; to manage educational process, including making schedules and electronic library.

### **Research results**

At present the safe operation methods of non-intrusive control equipment adopted by Russian Federal Customs Service are considered as a system. This system is only a part of State system which included legal, organizational, technical and informational methods of safe using complicated dangerous (nuclear) objects. The Russian Customs Academy has developed new innovation informational virtual workshop for training staff of X-Ray Cargo Vision and Television Systems.

### **Conclusions from the research.**

The results of present investigation represent the high level of safe application methods of X-Ray non-intrusive control equipment in Russian Federal Customs Service. The unique innovation educational technology (virtual workshop of X-Ray Cargo Vision Systems) developed in Russian Customs Academy can be used in traditional and distance learning technique for training staff of X-Ray Cargo Vision and Television systems all over the world.

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### CUSTOMS LAW: METHODOLOGICAL PROBLEMS

#### Abstract

The questions of finding a generally accepted definition of customs law and its role in Polish legal system are considered in the article. Methodology for distinguishing various branches of law from customs law is analyzed

**Keywords:** customs law, customs policy, commodities, international trade, regulations

#### Introduction

International trade of commodities in economic practice is regulated by various laws. These laws include regulations arising from commercial law, economic law, transport law, foreign currency law as well as bank law and others. A number of these regulations refer to the protection of human life and health, animals and flora which are covered by laws different from the abovementioned. This type of trade is regulated by laws regarding veterinary law, phytosanitary law, ecological law or laws associated with protection of intellectual rights as well as a multitude of other laws of national or international nature. However, the most important group of standards which regulate international trade in a comprehensive manner is Customs law.

Even though Customs law plays both economic and social role, it is very difficult to find a generally accepted definition which would define its role in our legal system. Scientific approaches concerning this issue usually use the category “customs law” together with other categories such as “duty”, “Customs policy”, “Customs legislation” or “Customs system” or even “Customs”.

### **Problem statement**

Only “Customs” has a fairly unified meaning in both economic and legal literature. The remaining categories are rather freely characterized and consequently do not give a clearly defined answer as to what they relate to. So the goal of the article herein is to try to formulate a definition of the category “Customs law” as a specific branch of law based on certain methodological premises. This will allow in further investigation of this issue and also show various points of view regarding formulation of such regulations into doctrines as well as their practical use by commercial entities, customs administrations and courts.

### **Research results**

#### **I. Customs law**

The most effective tool in execution of customs policy is Customs law. Even though this statement cannot be argued on either theoretically or practically, it is nonetheless extremely difficult to answer the questions “*What customs law is?*”, “*What constitutes its significance?*”, “*How is it different from other laws?*”, “*Is it a separate branch of law?*”. If the answers to these questions are affirmative, then the question “*What is the key distinguishing element of this branch of law?*” arises. However, if the answer to this question is negative, then “*Is customs law a part of*



*another law and if so, which law – commercial, administrative, financial, tax, penal, international or maybe some other law?”*

The question obviously seems to be an academic one. However the answer to this question is not only academic by nature, but it also includes a number of practical activities that have both economic and legal nature. In addition, the effective answer must take into consideration a methodology for legal analysis which would indicate both the theoretical as well as practical importance of customs law for the safe and efficient functioning of international trade.

### **II. Methodology for distinguishing various branches of law from customs law**

“Customs law”, like “Customs policy”, is not precisely defined in either customs doctrines or literature regarding this subject. Whenever *customs law* is referred to in legal or economic literature, it is very often mentioned as a theoretical category and is usually defined in a very descriptive manner directly related to “customs”. However, such an approach does not give an answer to the question “What *customs law* is?”

Now we must pay attention to the other approach to this issue that differs considerably from points of view of many theorists as well as from how it is defined or stated in various types of official documents – codes, acts or orders. In various literature resources we can see a number of definitions of customs law defining it very vaguely and very often referring it to various categories. It is very difficult to find an unequivocal, generally accepted or even dominating definition of customs law. In various analyses where this category is defined in a more or less similar way, such terms as “customs system”, “customs legislation”, “customs law” or even “customs” are used interchangeably. Therefore it is absolutely necessary to use a scientific approach to this issue based on methodology connected with differentiating various branches of law.

Separating various branches of law and assigning certain predefined standards to them helps achieve a more precise manner of proclaiming, interpreting and executing laws. According to J. Jabłońska – Bońcy, separating branches of law is to a certain degree a question of convention and tradition.<sup>1</sup> Taking this into consideration, we can show that a number of divisions and criteria for separating branches of law already exist. The most important division is the division between public law and private law. In the case of customs law, the majority of authors indicates that it is a public law and should be treated as a public law. As it is stressed by Wójtowicz, it arises from

*“... the scope of the issue which is standardized in this branch of law , methods of regulation, the types of entities carrying out and executing customs law as well as tasks which are carried out by means of customs law”.*<sup>2</sup>

There is no discrepancy connected with such an approach. However, including customs law in one of the other branches of law (e.g., financial law or administrative law), or separating it off as an independent branch of law, is not unequivocal. So depending on criteria used, we can single out various branches or types of law.<sup>3</sup>

However, we must be aware of the fact that branches of law are not something which cannot be changed in time and space and that their current shape is based on historical conditions.<sup>4</sup>

Therefore, we must also remember that a statement, that customs law belongs to a given branch of law is not fixed, and that as a result of historical changes,

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<sup>1</sup> Jabłońska – Bonca J.: Podstawy prawa dla ekonomistów, Warszawa, PWN, 2000, s. 337 i nast.

<sup>2</sup> Prawo finansowe. Praca zbiorowa pod red. prof. Wójtowicz W., Warszawa, Wyd. C.H. Beck 2000, Rozdz. XVI, § 90, s. 449, Nb.516

<sup>3</sup> Por. Oniszczyk J. Prawo – jego tworzenie i systematyka. Wybrane zagadnienia, Warszawa, Wydawnictwo Wyższej Szkoły Handlu i Prawa, 1999, s. 111 i nast. Patrz także: Redelbach A.: Wstęp do prawoznawstwa, Toruń 1999, wyd. TNOiK, s. 206 i nast.

<sup>4</sup> Por.: Łopatka A.: Prawoznawstwo. Warszawa, Polskie Wydawnictwo Prawnicze „IURIS”, 2000, s. 226 i nast.

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evolutionary changes in the subject matter may and do occur. Therefore, such a concept is dynamic, not static, in time.

Let us assume the *subject criterion* as the criterion for discrimination. When we talk about customs law we have in mind that it regulates international commerce of commodities, or more precisely, international trade in goods. If we have a buy-sell relation in trade, then other types of relations may take place in commerce which are not only related to sales but also, e.g., temporary transport of goods to another customs territory for purposes completely different than transfer of ownership rights. Such situations are associated with certain defined customs procedures, in particular so-called suspension customs procedures or others such as exemption from duty on goods brought into another customs territory in conjunction with scientific, educational, cultural, athletic or other needs. Nonetheless though, even in such cases commodities crossing a customs border must undergo certain customs procedures foreseen for such goods. Therefore, in order to define the precise, i.e., very narrow material and not social aspect, subject of customs law regulations, it is much more appropriate to talk about international commodities trade instead of international commodities commerce<sup>5</sup>.

However, the fundamental distinction for identifying a branch of law is defining the *subject* – widely understood as the social aspect – that is influenced by the *regulations* of a given law. The subject of regulation though of every law is a set of – reasonably – unified social relations.

The subject of customs law regulations are *social relations associated with international commodities trade*.

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<sup>5</sup> Por. Kruczałak K.: Prawo handlowe dla ekonomistów, Warszawa, PWE 2000, s. 32 i nast.

These relations though are very wide in their nature and have a multitude of ties with various areas of economic activity both internally (i.e., in the individual country or single market in case of a customs union) as well as externally and refer solely to laws regarding international trade of commodities. Other trade relations, e.g., services, are outside of their scope of regulation.

Social relations associated with international commodities trade are regulated by a number of laws – from constitutional law through economic, commercial, administrative, financial, banking, civil or penal and even international public and private law. However, all of these legal regulations have one subject common to all of them – international trade of commodities associated with goods crossing the customs border of a given country or customs union. It is exactly this *common element of all of the aforementioned regulations which allows one to talk about the existence of a special sphere of social relations – customs relations.*

Since these relations are very complicated, regulations associated with them must also be of a special nature and thus must be separated out as an individual branch of law.<sup>6</sup>

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<sup>6</sup> Western European and American legal sciences do not pay special attention to the definition of „Customs law”. This question was, in practice, out of the study by Western theoreticians. Some aspects related to the definition question of “Customs law” we can find in the second half of nineties of XX century in France and Spain, see, e.g.: Berr C.J., Tréme H.: *Le Droit Douanier. Communautaire et National*, Paris, ed.Economica, 1997, p..68and next. In the end of eighties this question was controversial between theoreticians in Spain, see, e.g.: Gonzalez Grajera F.J.: *Procedimiento de Gestion Aduanera*, Cartagena, wyd, Escuela de la Hacienda Publica, 1988, p.14and next.; Galera Rodrigo.S.: *Derecho Aduanero Español y Comunitario*.Madrid, ed. Editorial Civitas, S.A., 1995, p..97 and next. This problem was study subject for Spanish authors in the next years. See, e.g.: Abajo Anton L.M.:*El Despacho Aduanero*, Madrid, ed. FC Editorial, 2000 or Cabello Perez M.: *Las Aduanas y el Comercio Internacional*, Madrid, ed. ESIC Editorial 2000; *Comercio Exterior Factbook*,ed. Aranzadi, Navarra, 2002, p.179 and next. In others UE MS the definition of „Customs law” question was on margin of the main stream of Customs problems. See, e.g.: Terra B.J.M.: *Community Customs Law. A guide to the Customs Rules on Trade between the (Enlarged) EU and the Third Countries*, The Hague, wyd. Kluwer Law Intl., 1995, sp 44 and next; Inana S., Vermulst E.: *Customs and Trade Laws of the European Community*, The Hague,

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What does it mean that customs law regulates issues associated with the international trade of commodities? What particular social relations are subject to customs law regulations?

These are above all trade relations carried out on the international arena and associated with commodities trade conducted by domestic entities or entities having the status of union entities. All goods which move across the customs frontier of a given country or customs union are subject to such regulations.

Customs law within this subject matter regulates the mutual relationships between customs authorities and entities involved in international trade of commodities.

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Customs law regulates, *inter alia*:

- conditions, methods and form of submitting customs declarations in accordance with defined customs procedures,
- conditions for carrying out customs exemptions as well as defining their grounds and necessary documentation,
- level and conditions for customs duties – in accordance with tariffs and non-tariff duties,
- conditions for creation of a customs debt as well as manner in which such a debt is covered or extinguished,
- conditions and means of securing customs liabilities,
- conditions for carrying out customs audits and inspections,
- it establishes set criteria for the creation of customs law institutions such as Duty Free Zones or Bonded Warehouses,
- rights and obligations of entities conducting international commodities trade,
- it defines the structure as well as rights and obligations of customs authorities,
- it defines the conditions for trade of special commodities, e.g., commodities listed in the CITES Convention or trade in armament or commodities having binary use,
- it defines conditions for the transport and control of flora, fauna, monies and other special commodities (e.g., bodies, ashes of deceased, gifts, resettlement estate, etc.) across border of a customs area,
- principles for conducting activities in other areas of social and economic life associated with international commodities trade (e.g., statistics of international commodities trade or control of trade of commodities subsidized within the framework of Common Agricultural Policy, etc.),
- it defines the methods of customs actions in cases of infringement or breach of administrative or penal law take place,

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- enforcement proceedings in administrative actions,
- conditions for submission of appeals to decision made by customs authorities,
- conditions for cooperation of customs authorities with other State authorities or international organizations.

These are some examples, not all, of the social relations regulated partially or in whole by the group of standards constituting customs law associated with international commodities trade.

The above examples of regulations associated with social relations consist of a number of norms also found in a number of regulations not associated with customs law. These include financial law norms as well as administrative, public, private, national or associated with international unions (e.g., derivatives of international agreements or decision issued by authorities of international organizations).

In addition to regulation of defined social relationships, in this case associated with international commodities trade, the definition of *means of regulating* such relationships is also very important in order to distinguish a given branch of law.

*Two fundamental methods* are distinguished in law theory:

- *administrative law* based on authorities and subordination to them, and
- *civil law*, i.e., based on equality of the parties as well as the freedom to express will within a framework defined by law.

When we use this distinction in respect to customs law, we see that in effect we are dealing with both methods of regulating mutual relations. In relations between

customs administration authorities and entities conducting international commodities trade we see a dominant administrative law relationship (application for procedures, necessity to secure customs debt, defined periods for execution of decisions by customs authorities, administrative enforcement proceedings, etc.).

At the same time though, civil law relations also take place in customs law (e.g., representation in customs proceedings).

As can be seen, even here customs law is of a complex nature although clearly differentiated in regards to subject matter and methods used to regulate social relationships.

Professor Drwiłło has defined customs law as being:

*“a set of legal regulations, i.e., legislative and executive provisions /.../ regulating the principles and methods of importing goods into the customs area of a given country as well as export from the given customs territory. The subject of the regulations are also the rights and obligations of people importing and exporting goods abroad as well as the rights and obligations of customs authorities. /.../ However, the context of customs law provisions indicates that these are legal regulations regarding commodities trade with a foreign country.”<sup>7</sup>*

This approach shows that Drwiłło, author of a number of excellent books on customs law and financial law, comes to the conclusion that in effect, what we are dealing with is not so much customs law but rather “the right to commodities trade with a foreign country” as it also includes regulations regarding e.g., limitations or bans

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<sup>7</sup> Drwiłło A.: Prawo celne, Gdańsk, wyd. Arche 2001, p., 11



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regarding such trade as well as other regulations contained in various acts (e.g., veterinary, energy, environmental protection, etc.).

A different approach to defining customs law is presented by F. Prusak in his work entitled “Kodeks Celny. Komentarz [*Customs Code. Commentary*]” dated 2000.<sup>8</sup> The author use the terms “*customs legislation*” and “*customs law*” interchangeably a number of times throughout the text. Although he does not show directly that he is trying to define customs law, he does in fact do this by formulating issues arising from customs law. And so, in regards to these issues, he writes:

*“Customs law provisions mainly regulate the principles and methods of importing goods into the customs area of a given country as well as export from the given customs territory. The subject of customs law provisions is also the rights and obligations of people importing and exporting goods abroad as well as the rights and obligations of customs authorities.”*<sup>9</sup>

As we can easily see, what we have here is a descriptive, albeit precise, definition of customs law based on the subject of its use in a manner similar to that presented in the Polish Customs Code dated 1997 (Dz.U. [*Official Journal*] dated 1997, No 23 item 117 with subsequent changes). This is the approach that was used in Article one of this Act. This article stated:

*“The Act regulates the principles and methods of importing goods into the Polish customs territory as well as export of goods from Poland and associated with this rights and obligations of people as well as rights and obligations of customs authorities”.*

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<sup>8</sup> Prusak F. Kodeks celny. Komentarz. Warszawa, Muza 2000

<sup>9</sup> Ibid., p.9

However, Article two of this Act – an act of fundamental meaning for Polish customs law at the time – took a significantly wider approach to this matter. For it was in this article that attention was brought to the fact that:

*§2. The import of goods into the Polish customs territory or the export of goods from the Polish customs area creates, on the basis of law, rights and obligations foreseen in the provisions of the Customs Code unless stated differently in other legal acts including international agreements.*

*§3. The import or export from the Polish customs territory of items regulated by separate laws regarding protection of copyrights, trade rights or industrial rights shall be regulated accordingly by provisions regarding the import or export of goods to/from the Polish customs territory.*

*§4. Principles for the creation and execution or expiration of tax liabilities associated with the import of goods into the Polish customs area or the export of goods from the Polish customs territory as well as the scope of rights and obligations of customs authorities in this respect shall be regulated by separate provisions.”*

The code approach to customs law provisions was very drawn out. The co-authors of the text commented this in the following way:

*“the concept >>customs law provisions<</.../ is defined in both the Customs Code Act as well as executive acts issued on the basis of the Act.”<sup>10</sup>*

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<sup>10</sup> See. Józków E., Kwaśniak R.: Kodeks celny. Analiza zmian w ustawodawstwie celnym. Warszawa, Wydawnictwo „Fundacja Telonariusz”, 1997. s. 4

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In that case, can we accept the above as an explanation for the definition of “customs law”. Most likely no because the majority of it refers to provisions and not the legal significance of customs regulations. This was rightly brought to attention by Włodzimierz Podstawa who wrote:

*“Even though the Customs Code Act regulates issues associated with customs in a significantly wider aspect than the Customs Law Act that was in effect until the end of 1997 - it is nonetheless only a part of a new legal order regulating the area of law.”<sup>11</sup>*

A different view is presented by authors using the category “customs system” instead of “customs law”. The most classical definition of “*customs system*” is presented by S. Waschko in his works regarding this subject. In accordance with his definition, a customs system is:

*“The whole of customs law forms and tools used to impose and execute duties as well as customs fees constitutes the customs system in effect in a given country.”<sup>12</sup>*

Drwiłło approaches the customs system in a much wider context.<sup>13</sup> Using the theory of systems, he comes to the following conclusion:

*In the context of contemplating the meaning of the word **system**, it is easier to present the idea of a customs system. In accordance with the exact concept of this idea, the essence of it should be associated with all types of customs law forms and tools used to impose and collect duties and customs fees. The customs system of a given country in principle regulates legal norms imposed by State authorities authorized to do so.*

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<sup>11</sup> Podstawa W.: Nowe Prawo celne, Łódź, wyd. „In Plus”, 1998. s. 3

<sup>12</sup> See: Waschko S. Systemy celne, Warszawa 1971, s. 18

<sup>13</sup> Drwiłło A. Postępowanie ochronne w prawie celnym, Gdańsk, wyd. Arche 2003, p. 20 and next.

*Therefore, these are above all domestic legal standards. /.../ however, the customs system is characterized by certain special traits as it is solution used within the customs systems of the individual countries of a trans-state impact. Therefore, **the customs system of a given country not only consists of legal standards accounted in internal laws but also consists of international law**".<sup>14</sup>*

Despite such a comprehensive definition, we are still dealing with a description of a customs system whose part is customs law. However, this approach without a doubt is different than the previous one.

A. Huchla and A. Kuś came even closer to defining the significance of customs law in their definition.

According to Huchla, "Customs law", in its encyclopedia definition has been defined as follows in the "Encyclopedia of Law":

*Customs law, a branch of law differentiating itself from financial and tribute law by the nature of the subject of the law /.../. It includes regulations associated with: principles for foreign trade of commodities, collection of duties and other customs receivables from such activities, customs proceedings, customs control, organization and operation of customs administration".<sup>15</sup>*

And finally, the most specific definition is presented by dr. A Kuś from the Catholic University in Lublin. He states that:

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<sup>14</sup> Ibid,

<sup>15</sup> Huchla A.: „Celne prawo” w: Encyklopedia prawa, Warszawa, wyd. C.H. Beck, 1999, s. 73

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*Customs law can be defined as the set of legal standards regulating international commodities trade, the collection of duties and indirect taxes from such trade, the rights and obligations of entities engaging in such trade as well as the structure, rights and obligations of authorities responsible for controlling and executing the abidance to such standards.*"<sup>16</sup>

This is one of the most comprehensive definitions of customs law. At the same time, the author of this view states that:

*"Customs law is by doctrine treated as a part of financial law or as an integral part of public commercial law."*<sup>17</sup>

Professor K. Sawicka from the University of Wrocław stated that even though the Polish Customs Code which was in effect until the end of April 2004 constituted the foundation for the Polish customs law, customs had a significantly wider meaning. This was due to the fact that specific issues regarding foreign commodity trade were also regulated by

*"the executive acts to this Act, /.../ referring in a number of specific acts to the principles, conditions and methods of using means of trade policies such as quota limitations or bans on the import or export of certain items in order to protect the domestic market and domestic manufacturers from excessive export of commodities as well as from import of goods sold at dumping process or subsidized. /.../ The wider*

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<sup>16</sup> Kuś A.: Podstawy prawa celnego, w: Zarys finansów publicznych i prawa finansowego Praca zbiorowa pod red. prof. Wójtowicz W., Warszawa, Wyd ABC, 2004, s. 307

<sup>17</sup>Ibid,

*understanding of customs law holds the benefit that it allows one to embrace all legal regulations regarding import of goods into the Polish customs area.”<sup>18</sup>*

Further, this author in continuing her thoughts regarding a definition for customs law states that customs law provisions

*... constitute a certain set of legal standards, discrete from others above all due to the specific nature of the criteria used to define them which is foreign commodities trade. This criterion also sets the limits for the set of legal standards belonging to customs law. **The separation of customs law in the legal system is the result of a certain convention arising from practical needs associated with the need to create law in a specific area, with needs to carry out scientific research or educational needs. /.../ Thus customs law should be treated as a part of public law of a complex nature.**”<sup>19</sup>*

An finally, in finishing up this analysis regarding the place and role of customs law in the overall legal system, Sawicka stresses not only the conventionality of the subject of these regulations, but also that:

*The separation of customs law from public law regulations regarding State participation in the area of commercial activities allows one to become better acquainted both with the principles as well as methods of conducting international commodities trade as well as rights and obligations arising from this in regards to*

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<sup>18</sup> Krystyna Sawicka „Prawo celne w zarysie”, Wrocław , Kolonia Limited ,2003, p. 7-8. See also: Fojcik –

Mastalska E., Sawicka K.: Podstawy prawa celnego i dewizowego, Wrocław, wydawnictwo Kolonia Limited,

2001, s.255; Kodeks celny. Wprowadzenie prof. dr hab. Krystyna Sawicka. Opracowanie dr Marek Zdebel.

Stan prawny na 1 czerwca 1999r. Bielsko – Biała, Wydawnictwo Studio STO, 1999, s.160. Drugie wyd., z

2000r. ze stanem prawnym na 1 listopada 2000r.

<sup>19</sup> Sawicka K.: „Prawo celne w zarysie”, op.cit., p. 10-11

*persons participating in such activities as well as the rights and obligations of customs authorities”*<sup>20</sup>

The most unequivocal stand in this matter has been presented by the author of the entry “customs law” found in one of the popular encyclopedias devoted to law and economics in which he states that:

*Customs law is a branch of law separated out from financial law and administrative law and is involved with issues arising from generally defined foreign legal turnover, customs proceedings, methods of collecting duties and the functioning of so-called customs authorities.”*<sup>21</sup>

As can be seen, the presented definitions regarding customs law, although similar, show that:

1/ We are dealing with various views on definitions;

2/ there is a clear difference in opinion regarding the place of this law in the legal system (separating customs law out as a separate branch of law or leaving it as an integral part of financial or public commercial law);

3/ no unified definition of “customs law” exists in both the law as well as literature devoted to this subject.

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<sup>20</sup> Ibid, p.14

<sup>21</sup> „Celne prawo” , w: Bombicki M.R.: Encyklopedia Actus Purus. Prawo i ekonomia. Leksykon prawniczy”, Warszawa, brak roku wydania, p.37

Furthermore, there is no agreement regarding the doctrine, contrary to the position presented by some authors, of whether customs law is an independent branch of law or a part of another branch of law.

### *Customs law as an independent, comprehensive discipline of law*

More and more often statements appear in literature, pointing out that customs law is an independent<sup>22</sup>, self-contained and comprehensive discipline of law<sup>23</sup>. In this case, the most popular argument for in this opinion is the fact, that customs law merges multiple disciplines of law, and in practice regulates many matters regarding social relations that are also regulated by other laws.

Finally, the authors point out most directly, that today we can consider *customs law to be an independent discipline of law*<sup>24</sup>. Although this opinion is not yet quite popular, still it appears in recent legal literature, mostly Russian.

Nevertheless, we can shortly describe customs law as a set of norms and procedures, regulating foreign trade. In the EU as well as in Poland, the main source of the customs law is the EU Customs Code. Also, both in the EU as well as in Poland Executive Regulations to the EC Customs Code are in effect. In Poland, national customs law additionally regulates those particular matters that have not been pointed out in the commonwealth regulations. Many other regulations, regarding foreign commodities trade are contained in the executive legislation to such acts. In addition,

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<sup>22</sup> See. np.: Huchla, op.cit., p.6; Khalipow, op.cit., p.3; Borisov, op.cit., p.12; Ignatiuk, op.cit., p.35; Draganov, op.cit., p.94

<sup>23</sup> See. np.: Drwiłło, op.cit., p.6; Gabridze 2002, op.cit., p.69; Wojtowicz, op.cit., p.7; Ignatiuk, op.cit., p.37-39; Draganov, op.cit., p.97;

<sup>24</sup> See: Sandrovskiy, op.cit., p.15; Khalipov, op.cit., p.43, Ignatiuk, p.35.



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they are also contained in various detailed regulations (commonwealth, national and international), regarding the rules, conditions and procedures for application of trade policies. This relates to regulations regarding, e.g., quota limits and bans on import and export of goods, or other means of protecting national markets and local manufacturers from the excessive import of goods, dumping prices and subsidized goods.

Professor Sawicka points out this way of understanding customs law, including the aforementioned conditions and the subject scope, stating that:

*“An open-minded understanding of customs law has the advantage of allowing for a general view in respect to legal regulations regarding the import of goods to the Polish customs territory.”<sup>25</sup>*

The author points out the economic significance of foreign commodities trade and its customs law regulations – customs procedures, the control and execution of the entities obligations, with particular emphasis on fiscal liabilities arising from customs debt as well as the role and significance of representation in customs matters, carried out by a customs broker or customs agency. In accordance with this view, customs law provisions:

*“... crease a certain set of legal standards, distinguished mostly by the criteria of the subject of regulations, which foreign commodities trade constitutes. This criterion prejudices also the scope of the set of legal standards contained in the customs law.*

*The distinguishment of the customs law in the legal system is the result of a certain convention, based on practical matters, regarding e.g., creation of law in a particular*

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<sup>25</sup> K. Sawicka „Prawo celne w zarysie”, Wrocław , Kolonia Limited ,2003, p.7-8

*discipline, undertaking scientific research or didactical needs. /.../ And so, customs law should be treated as a part of public law having a comprehensive nature.”<sup>26</sup>*

To substantiate this thesis, the author points out, that:

*“...it is created mostly by legal standards, contained in public economic law and financial law, in a scope of their application to the execution of the administrative-legal tools, or the financial legal tools by the state, shaping foreign commodities trade. The unwritten border of distinguishment of the legal standards is set on the subject they regulate, but also on the subjects they regard and the type of legal relations”*

On this background, considering the fact that the subject of a legal relation, based on a norm of customs law is a certain behavior of the indicated parties – their obligations and rights. The author distinguishes two groups:

The first group is the **passive subjects of the customs legal relation** – the ones that foreign trade, whose behavior and the way of dealing with the goods as well as their obligations are set in the norms of the customs law.

The other group is the active subjects of the customs legal relation – the norms of customs law set to grant those rights and obligations are complemented by granting them purposive competences. To this group belong national organs, such as the Director of the Customs Regional Office (Izba Celna) in Poland and the Head of the Local Customs Office (Urząd Celny), the minister responsible for finances as well as the minister responsible for the economy.

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<sup>26</sup> Ibid , p.10-11

Finally, ending the analysis, regarding the position and role of customs law in the legal system, professor Sawicka stresses not only the conventionality of the subject of regulation, but also the necessity of distinguishing this law in the legal system, because:

*“Distinguishing customs law from public law regulations regarding participation of the state in the sphere of economical activity **allows for comprehensive apprehension** of the rules and the procedure for conducting international commodities trade, as well as the rights and obligations arising out of it to the participants and the customs authorities”<sup>27</sup>*

In this case, distinguishing customs law out of the legal system is justified, because it allows for a comprehensive view on the legal regulations regarding foreign commodities trade.

Doctor R. Molski came to a similar conclusion, even though his point of relation is different:

*“In the sphere of legal disciplines, the subject of foreign commodities trade appears mostly in the administrative, public-economic and the fiscal punitive law”<sup>28</sup>*

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<sup>27</sup> Ibid, p.14

<sup>28</sup> Molski R.: Administracyjnoprawna regulacja obrotu towarowego z zagranicą, Szczecin, Wydawnictwo Naukowe Uniwersytetu Szczecinskiego, Rozprawy i studia , t.(CDLII) 378, 2001r., p.9

He stresses his position mostly in relation to the fact, that the legal regulation of foreign commodities trade is not only connected to a massive normative matter, but also complexity

*“...the matter, demanding a legal approach, and on the other hand – a material construction of our legislation, arising from the need to regulate distinctive questions with one or several strictly intertwined acts<sup>29</sup>. It's also often connected with the lack of strictly set material scope of regulation, which is distinctive to the administrative law.<sup>30</sup> It has been accurately stressed in administrative law science, that this kind of structure results in particular consequences, such as difficulties in determining the subject's legal situation (e.g., an entity conducting foreign commodities trade). An important issue arising from this situation is also the need to ensure the necessary integrity of legal regulations within the scope of the normative acts constructed in such a way.”<sup>31</sup>*

Still, he pointed out, that in the situation of Poland those days:

*“The act of the 9<sup>th</sup> January of 1997 – the Customs Code, is of fundamental significance to the whole sphere of foreign commodities trade. The Customs Code, together with the implementing provisions, constitutes a group of normative acts, which for methodological purposes can be called customs legislation. Customs legislation constitutes the core of regulations related to the sphere of social and economical relations associate with foreign commodities trade; it regulates the principles and procedures for importing goods to Poland and exporting them abroad,*

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<sup>29</sup> Chelmoński A.: *Typy norm materialnego prawa administracyjnego i ich rola w kształtowaniu sytuacji prawnej jednostki*, w: Acta Universitatis Wratislaviensis, Przegląd Prawa i Administracji, t. II, Wrocław 1972, p. 75.

<sup>30</sup> Leoński Z.: *Z problematyki legislacyjnej administracyjnego prawa materialnego* w: *Legislacja administracyjna*, Materiały ze Zjazdu Katedr i Zakładów Prawa i Postępowania Administracyjnego, Gdańsk 1993, p. 21.

<sup>31</sup> Chelmoński A.: *op.cit.*, p. 75.

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*the related rights and obligations of subjects participating in foreign commodities trade as well as the competencies of customs authorities.*"<sup>32</sup>

This author also points out the distinction of customs law in the system of laws, even though he does it only for methodological purposes.

As we see in accordance with the criteria regarding the main subject of regulation, the customs law is sometimes considered as a part of public or administrative law, mostly the international trade law.

But in the aspect of procedures and the character of the decisions made in the scope of this law, its administrative character is also pointed out.

In the practice of foreign commodities trade there are also some particular regulations, coming out of the customs law and other laws as well, that are applicable to customs procedures, and associated with tax, currency, fiscal, penal and penal fiscal law. As a result of these interdependencies, it is difficult to unequivocally link customs law to any traditional branch of law.

Considering the recent development of customs law, national as well as commonwealth, we can state that:

Customs law constitutes, due to the specificity of the subject of the regulation as well as and proceeding procedures, a separate branch of the Polish and Community legal system.

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<sup>32</sup> Molski R., op.cit., p.43

The Community Customs law, both widely and narrowly understood, constitutes an explicitly discrete field of secondary Community law. It includes all basic features and elements enabling to separate it from the entire legal system of the European Community (*acquis communautaire*).

The idea of customs law and customs regulations in the EU is defined in art. 1 of the Customs Code of the Community. It is specified as follows:

“Provisions of the customs law are composed of the Code herein as well as regulations issued to be applied in the Community or Member States of the Community. Without prejudice to special regulations determined in other fields, the Code shall be applied:

- in the trade between the Community and third parties,
- in reference to products referred to the Treaties on ECSC-EC-EAEC.<sup>33</sup>

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<sup>33</sup> I quote from the text: C. Wernic Publisher by: Monitor Prawa celnego i podatkowego z 2004r., nr 2A, p.32. In the case we have the problem with interpretation in various languages of EU MS. In one case it is “law” in other “legislation». See official text of the CCC:

German: „*Artikel 1 Dieser Kodex und die auf gemeinschaftlicher und einzelstaatlicher Ebene dazu erlassenen Durchführungsvorschriften stellen das Zollrecht dar*”, cyt za: [http://europa.eu.int/smartapi/cgi/sga\\_doc](http://europa.eu.int/smartapi/cgi/sga_doc)

English: *Article 1 Customs rules shall consist of this Code and the provisions adopted at Community level or nationally to implement them*”

French: „*Article premier. La réglementation douanière est constituée par le présent code et par les dispositions prises pour son application au niveau communautaire ou national*”

Spanish: „*Artículo 1. El presente Código, junto con las normas de desarrollo adoptadas tanto en el ámbito comunitario como en el nacional, constituyen la normativa aduanera.*”

Portugal: „*Artigo 1o. A legislação aduaneira compreende o presente código e as disposições adoptadas a nível comunitário ou nacional em sua aplicação*” czy

Italian: „*Articolo 1 La normativa doganale costituita dal presente codice e dalle disposizioni di applicazione adottate a livello comunitario o nazionale.*”

It is possible to accept both categories because they describe the same set of regulations (rules). See similar position in the question presented by German authors, e.g.: Witte/Wolffgang: „*Lehrbuch des Europäischen Zollrechts*”, 4 Auflage, ed. Verlag Neue Wirtschafts-Briefe, Herne, Berlin 2003 or M. Lux: „*Das Zollrecht der EG*”, Köln, ed. Verlag Bundesanzeiger, 2003 (the first edition in English as: „*Guide to Community Customs Legislation*”, Bruxelles, ed. Bruylant 2002.

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Mostly significant is the fact that the subject range is strictly determined. It is international commodities trade with third countries.

There are no regulations concerning procedure details or system details of the customs law. They have in fact been left to the individual countries to resolve.

The Customs Code as such is not a legal EU document constituting the customs law of European Union. It is additionally composed of several documents of secondary law referring to regulation of commercial foreign trade activities. It is especially Regulation of the Council (EEC) No 2454 dated July 2, 1993 Implementing Provisions to the Community Customs Code<sup>34</sup> and such like Regulation of Council (EEC) No 918/83 dated March 28, 1983 on the Community System of Customs Reliefs<sup>35</sup>; Regulation of the Commission (EEC) No 3915/88 dated December 15, 1988 on a System of Tax Duty Collection Exemption within Community and over 320 other customs regulations. In addition, there is a huge number of customs regulations included in international commercial agreements signed by the EU with third countries.<sup>36</sup>

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<sup>34</sup> Just right now it's under the process of changing and adapting to the MCCC.

<sup>35</sup> Modernized by: **Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty** Read more: <http://vlex.com/vid/setting-system-reliefs-customs-duty-72379675#ixzz1K3jxYsL9>.

<sup>36</sup> The current, so called Modernized Community Customs Code (REGULATION (EC) No 450/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 April 2008 laying down the Community Customs Code (Modernized Customs Code) in: EU OJ L 145/2008 indicates: "*Article 1 Subject matter and scope*

*1. This Regulation establishes the Community Customs Code hereinafter referred to as 'the Code', laying down the general rules and procedures applicable to goods brought into or out of the customs territory of the Community. Without prejudice to international law and conventions and Community legislation in other fields, the Code shall apply uniformly throughout the customs territory of the Community.*

*2. Certain provisions of the customs legislation may apply outside the customs territory of the Community within the framework of legislation governing specific fields or of international conventions."* Hereinafter cited as: MCCC.

Generalising the outcome of the indicated theoretical and practical approaches included in the Customs Code and in the implementing provisions as well as in the other legal acts governing international commodities trade, we may define customs law as follows:

*„Customs law constitutes the set of norms and procedures governing international commodities trading , the rights and responsibilities of traders, as well as the regime, rights and responsibilities of the governmental bodies that provide for and enforce the compliance with these standards in order to protect and promote economic and social interests of the State or of the Member States of the international integration organisation.”*

Due to such a wording of the customs law’s definition, we have to indicate its several characteristics:

1/ Aim – the protection of the economic and social interests of the state or of the member states of the international integration organisation;

2/ Essence – the set of legal norms and procedures relating to a particular (international commodities trade) sphere of social and economic life and the governance of this sphere;

3/ The subject of the customs law – international commodities trade, as well as the rights and responsibilities of traders;

4/ Structure, as well as the rights and responsibilities of governmental bodies

a/ setting such norms;

b/ enforcing the compliance with such standards.



The most clearly indicated fact is the strict definition of the subjective and objective scope – international commodities trade and entities involved in this trade – economic entities and government bodies. Finally, the provision and enforcement of this law is clearly indicated so as to achieve the aims of this law which relate to the protection and promotion of interests governed by this law.

The customs law defined in such a way is not limited exclusively to the codification of its norms in the Customs Code (Community or national regulations). It includes the considerably wider scope of sources governing international commodities trade, i.e., a number of other acts and implementing provisions related to international commodities trade (these are above all regulations such as ordinances or acts regarding market protection against unfair competition, acts governing the tasks and functions of the national administrative bodies that are involved in foreign trade, various detailed provisions governing customs proceedings, enforcement or appeal proceedings, etc.)

Due to the volume of the social relations subject to provisions of the customs law – starting from the law concerning foreign trade, through financial law, tax, fiscal, currency, administrative, criminal, fiscal-criminal laws and many others, we may specify customs law as a comprehensive law.

However, due to the ongoing evolution of this law, its codification, and the specificity of regulations as well as special standards regarding customs proceedings, another thesis could be formulated, treating the current customs law as a separate line in the system of law.

In principle, customs law consists of:

- Material customs law
- Procedural customs law
- Structural customs law<sup>37</sup>

Material customs law – *standards governing the content of actions undertaken by customs administration authorities, i.e., fundamental principles of foreign trade, the rights and responsibilities of entities subject to administrative and legal relations due to such trading activity and being subject to customs supervision.*

*Procedural customs law* – standards serving the execution of material customs law. These include methods of executing rights and responsibilities of participants in foreign trade. They govern the principles and the course of proceedings of the customs administration authorities, as well as of persons appearing before such bodies.

*Structural customs law* – norms that involve the regime and the scope of activity of customs administration authorities.

The above distinction applies also to the Community customs law. However, it does not govern in detail the regime of customs authorities, i.e., structural customs law.

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<sup>37</sup> See: Wiesław Czyżowicz (ed.) *Prawo celne*. Warszawa, wyd. C.H. Beck, 2004, sp 16. See also: Naruszewicz S., Laszuk M.: *Prawo celne. Zarys wykładu.*, Warszawa, ed. LexisNexis, 2001, p.9-10

Having at our disposal the above definition of customs law, we may determine its location in the system of law existing in the particular territory – in this case, in the customs territory of a given state or international organisation of economic integration.

### IV. Functions of customs law

The functions of customs law are derived from from both its general and specific goals. It is possible to classify them according to many criteria. We may then distinguish the following functions of customs law, assuming as the basic criterion for example:

- ***Direction of the foreign commodities trade:***

- a) export,
- b) import, and
- c) transit.

- ***Economic goal:***

- a) protective (in respect to developing industries, workplaces, competitiveness of the own commodity, including anti-dumping duty, anti-subsidy, compensatory charges),
- b) promotional
- c) fiscal (budgetary needs, maintaining balance of payment)

- *Social goal:*
  - a) protection of human health, as well as of the health of animals and plants, environmental protection;
  - b) protection of national values;
  - c) protection of morality and social order, etc.

The literature involves the most often the economic, commercial, and in particular fiscal functions of the customs law<sup>38</sup>. That is true as regards the practice dominating in the history and in relation to some existing countries that are poorly developed, where the customs administration constitutes one of the largest suppliers of the national revenue and budget income (e.g. not so long ago, in Poland that was almost 30% of the annual budget income – duties and tax collected by the customs services in total, where the duties constituted only about 3-5% - but for more than 130 years this constituted also the basic source of the budget income in the USA. Federal tax was not applied in the USA by the year 1913, in the European Union at present this is about 11.5%, i.e. about EUR 11.5 billion of the budget income deriving from duties and compensatory charges).

However, as the agreements of the World Trade Organization - General Agreement on Tariffs and Trade (WTO/GATT) are executed, as well as free trade areas and customs unions come into existence, the fiscal function of the customs law radically decreases. However, the social functions are developed, which relate to the social security and the protection against terrorism threat, to the life quality and

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<sup>38</sup> In many handbooks, particularly connected with financial law we meet many classification of „customs law”, e.g.: “battle customs”, “countercharge customs”, “educational customs” etc., etc. See.: Prawo finansowe, pod red. W. Wójtowicz, Warszawa, wyd.C.H.Beck 2000, 3 wydanie,p.461-462; S.Naruszewicz, E.Ruśkowski: Polityka i prawo celne i dewizowe, Siedlce, WSFiZ, 2002, p.13-14, i inne.

environmental protection, as well as to the protection of national values, the promotion of national economies or these of the countries forming the integration groupings.

### Rules of customs law

Customs law, just as other segments of law, features some characteristics – both of general and specific nature – and includes legal norms regarded as principles. The following is generally understood as principles of law – in the case under consideration: customs law:

*“norms of law in force regarded as fundamental. In this interpretation a principle has always been one or another provision of the law in force.”*<sup>39</sup>

Additionally, it is agreed in theory that within a set of specific legal standards,

*„principles of law are understood as standards regarded as fundamental in a specific set of legal norms”*.<sup>40</sup>

In the case of such interpretation of law, including customs law, one of the essential principles of democratic law should come to the forefront, namely – *parity of rights and obligations of businesses and bodies of authority alike*. Whether this principle has been observed in our customs legislation, and if so, than to which degree, this is an issue to further theoretic consideration since in practice it has been applied to only an insignificant degree. There can be no doubt, however, that relationship between

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<sup>39</sup> Drwiłło, op.cit. s.31

<sup>40</sup> Stawecki T., Winczorek P.: Wstęp do prawoznawstwa, Warszawa, 1995, p.65-66

customs authorities and an entrepreneur has been based upon administrative-and-legal, rather than civil-and-legal relation. This is emphasised by Professor Sawicka who states as follows, quoting J. Boć:

*“When a scope of powers is defined for bodies of State authorities, this means at the same time that other bodies become subject to the same power at the same time. As a result, any body thus empowered enjoys a superior position in relation to that subject to such power. A lack of actual equal status of bodies has been typical to any legal relationships defined by standards of public law. **Customs relations belong to the category of administrative-and-legal relations whose content is defined by customs law in force**”.*<sup>41</sup>

This way the principle of parity of parties has no full application in the case of customs law. Of course, this is just one principle we consider, which leaves apart a catalogue of several other principles present in the set of norms regulating commercial dealings with abroad. As an example, the following principles should be added thereto:<sup>42</sup>

- (1) the principle of freedom of commercial dealing with abroad<sup>43</sup>;
- (2) the principle of equal treatment of goods;
- (3) the principle of equal treatment of persons;
- (4) the principle of universality of customs;
- (5) the principle of availability of information regarding customs law.

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<sup>41</sup> Ibid, s.12

<sup>42</sup> Drwiłło, op.cit., s. 31- 34

<sup>43</sup> Prawo działalności gospodarczej z 1989r, w: Dz. U. nr 41, poz. 324 z późn. zm. (Dz.U. z 1999r. Nr 101, poz. 1178 z późn. zm.) and Ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej. Dz. U. z 2004, Nr 173, Poz. 1807

Each of those principles stems from some specific regulations in customs law and from detailed legal provisions related therewith. However, as it is in practice, each of them has only a relative nature at the same time, *i.e.* it has no absolute application with any exceptions at all. In fact, quite the opposite is true. Almost all of them are strictly related to a number of exceptions, also provided for in provisions of both Polish and the EU customs law.

The principles in question are shortly discussed below:

**(1) *The principle of freedom of commercial dealing with abroad*** – it says that each person (individuals enjoying full citizen rights, legal persons and bodies having no legal personality) has the right to undertake commercial activity, including that in the scope of dealing in goods with foreign partners.

***Exceptions*** – licences and permissions (for example for trading in some specific goods)

**(2) *The principle of equal treatment of goods*** – it results from regulations concerning customs law under which any such goods of the same quantity and kind are subject to equal treatment, irrespective of where they come from or for whom they are intended – *i.e.* they should be subject to all necessary procedures and customs proceedings, to custom tariffs and to any other charges at uniform conditions.

***Exceptions:***

*a) regarding persons* – stemming from special regulations such as, for instance, diplomatic or consular conventions, persons in course of resettling and so on;

*b) regarding subject or aim* – goods belonging to resettlement property, goods intended for cultural institutions and other goods covered by exemptions provided for in the Council Regulation No. 918/83 (EEC) on Customs Relieves;

**(3) *The principle of equal treatment of persons*** – undertakings (individuals, partnerships, etc.) irrespective of a legal form of their activity – have the same rights and obligations, are obliged to meet all necessary conditions provided for by law (such as customs notification, subjection to customs supervision and inspection as well as other conditions and procedures) as well as to clear all customs liabilities – in the form of customs duties and taxes.

***Exceptions:*** limited to payment of customs liabilities depending on principles mentioned above as principle (1) and (2);

**(4) *The principle of universality of customs*** – all goods imported from abroad with the aim of involvement in commercial activity are subject to the obligation to calculate custom debt there are charged with.

***Exceptions*** – there is no. However, some customs operations should be included to exemptions ***from payments*** resulting from the calculated amount of customs debt, resulting from legal regulations, rather than to exceptions from the very principle. Such customs operations are, for example, privileged operations, some procedures with economic impact, relieves, etc.).



*5/ The principle of availability of information regarding customs law* – this principle belongs to one of the fundamental principles of the State of law. This basically comes down to the point that any citizen, any individual or any person having no legal personality has the right to generally available and full information on provisions of customs law, and that bodies of administration responsible for implementation of customs policy are obliged to provide such information.

This is stipulated for in provisions of Article 11 of the Community Customs Code accordingly:

*“1. Each person has the right to request customs authorities to get information regarding application of provisions of customs law.*

*However, such request may be dismissed unless it relates to an import or export operation actually to take place”.*

**Exceptions:** However, the way the above article is worded fails to fully reflect the principle of general availability of information on provisions of customs law. In fact, it provides for restriction regarding access to such information,

*“since – are A.Gołoś and A. Wantuch rightly point out – provision of information is dependent on whether given goods are to actually be imported or exported or not. However, sometimes an intent that is regarded an evidence of a planned (probable) event, depends exactly on what is found in the information sought (for example: an amount of customs duty makes import of goods profitable). It is vague to say somebody actually intends something. Besides, does that mean to say that intent has*

*to be proven to customs authorities in order for information to be given? If so, then, how to prove that?”<sup>44</sup>*

The above quoted examples of principles of customs law seem to be consistent with fundamental principles of law in force in a State of law. However, under the European Union circumstances, such principles have to be supplemented by principles of the WU customs law.

### ***Principles of the EU customs law***

The Principles of the EU customs law have been derived from general principles of the EU legislation. They fully apply to the EU customs legislation and its relation to national legislation in the area of customs in the Member States. Although there is no EU document with catalogue of principles of that law being distinctly emphasised, their broadest set can be found in the EU Customs Code.

On the basis of that fundamental document, sometimes referred to as the “Constitution of the Customs Union” – yet without limitation thereto – it is possible to point out just several principles that stem from political assumptions behind that legislation and from the Community Customs Code (certainly, without any attempt to present their complete set)<sup>45</sup>.

These are the following ***principles of the EU customs law***:

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<sup>44</sup> Gołoś A., Wantuch A.: Kodeks celny. Komentarz do ustawy Kodeks celny wraz z przepisami wykonawczymi., Warszawa, wyd. Difin, 1998, s.31

<sup>45</sup> Consolidated text of the CCC sees on: [http://www.europa.eu.int/eur-lex/en/consleg/pdf/1992/en\\_1992R2913\\_do\\_001.pdf](http://www.europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992R2913_do_001.pdf) .

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- balancing of customs procedures simplifications against effectiveness of protection of the Community interests (Preamble to the CCC);
- regulating dealings in commodities with third countries (Article 1);
- rule of law (Article 6)
- expedient decision-making (Article 6);
- public character of decisions for the interested party (Article 6)
- prompt enforcement of a legally made decision (Article 7);
- the right to information on provisions of customs law (Article 11) ;
- protection of entrepreneurs' justified rights (Article 9(4) and Article 244);
- uniformity of construction and application of the EU customs regulations in all Member States (Article 250);
- uniform character of customs documentation (Article 250);
- uniform character of customs procedures (Article 250);
- validity of decisions made by customs authorities of one Member State in the whole EU customs area (Article 250);
- the right of complaint against customs decisions and arrangements through administrative or judicial proceedings (Article 6 and Article 243) ;
- partnership of customs services with business environment.

The above-listed principles are reflected both in provisions of customs law and in their practical implementation in customs procedures applied by customs services in individual Member States. Sometimes, however, in particular as regards proceedings in customs-related matters based upon national regulations, the above-mentioned principles have still been more of political postulates than they have of practical reality.

### **V. Prospects for development of both the EU and national customs legislation**

Additional supplements to the EU customs law are to appear soon. They are not only going to concern technical changes, as it has been at the moment of the European Union recent enlargement by accession of new Member States (for example, supplementation of provisions of Article 3 of the CCC and of provisions of IPCCC respectively, regarding definition of the EU customs area and, mainly, amendments in detailed regulations in national languages of the EU new Member States in various documents, for example related with Transit Convention, EUR 1, etc.).

It is much more important to meet requirements resulting from the necessity to consolidate safety of an international chain of goods supply, reduction and better structuring of individual customs regulations, dissemination of new inspection methodologies (such as *ex ante* inspection), lowering the risk of trafficking and customs crimes or better adaptation of the EU customs law to other EU spectral policies such as tax, agricultural, commercial, health care or consumer policy.

Rapid progress made by electronic business has forced the EU authorities to carry on towards a further radical change of fundamental acts of the EU customs law with the aim of their adaptation to new reality – not only in economic and social terms, but related to the process of globalisation - as well as in purely technical and technological terms related to the Internet evolution.

Further development of the EU customs legislation is going to be implemented in the framework of the E-Customs strategy – which in fact means electronic customs forming a part of the “Customs 2007” strategy which, in turn, belongs to a broader European “Information Society” strategy. At present teams of experts from the Commission (from TAXUD) and from European business organisations related to customs law and procedures, such as Trade Contact Group (TCG), have co-operated in that area. It is their task to prepare a draft of a new EU IP MCCC customs law in

connection with a radical change were made in the MCCC and with simplification of customs procedures and their uniform application in the Member States. At the same time, this reform should result in introduction, to a broader degree, of modern methods of co-operation with business environments, including modern inspection and control methods as well as making use of electronic communication to a maximum extent practicable at customs clearance procedures (in line with solutions adopted in the so-called renewed Kyoto Convention on facilitation and simplification in customs clearances). All these questions have already been under analysis by national experts and representatives of European commercial authorities.

### **Conclusions from the research**

- (1) The customs policy and the superiority of national interests or an integration group has been one of determinants in relation to legal regulation of commercial dealings with third countries both in the European Union and in its individual Member States.
  
- (2) The most efficient tool of that policy is customs law that constitutes – in my opinion – an independent segment of general legal system, separated both with respect to peculiarity of the subject under regulation and to procedures it applies, both on the Community regulation and on national level.
  
- (3) The customs law has been a set of norms and procedures that regulate international dealing in commodities, rights and obligations of persons involved in that activity as well as a system rights and responsibilities of authorities that have both introduced and enforced consistence with these standards in order to protect and promote economic and social interests of any given State or an international integration organisation.

(4) Further evolution of customs law is closely related to development of international political and economic environments, further improvements in the customs mission, rendering procedures more uniform both on the EU and on national levels as well as broader application of facilitated and simplified procedures in international dealing in commodities, proportional to a growing effectiveness of customs inspection.

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### **CHANGE OF STRATEGIC MANAGEMENT PARADIGM IN THE CONTEXT OF KNOWLEDGE ECONOMY**

#### **Abstract**

In the article the questions of evolution of theory and practice of management are examined concerning nature of role of man in an economy.

The basic stages of development of strategic management are analyzed in the context of changes of organizational culture.

The questions of mutual impact of management and economic theory in directions of modern of scientific thought are also revealed.

**Key words:** Human capital, human factor, management of human capitals,

Management of a man.

### Introduction

Modern world is verging towards a new society intellectual one that is based on the concept of «knowledge economy» («knowledge-based economy», «knowledge-intensive economy»). This phenomenon is viewed on both, macro-level and microlevel<sup>1</sup>.

On the turning point between two millennia the issues of «knowledge economy», «learning organization», as the objects of strategic management, became the subjects of study for world renowned researchers as well as post-Soviet management theorists and practitioners: P. Drucker, P. Senge, B. Gates, H. Mintzberg, N. Blinov, S. Popov, Ye. Savelyev, V. Kurylyak, and others.

The term «strategic management»(strategic administration)<sup>2</sup> appeared in the end of 1950s in order to underline the difference between current administration at production level and administration at higher organizational level, as well as changes in the way human is viewed within the economic system. The necessity for such «fixation» was caused by new paradigms in business, and the leading idea of transfer from operative to strategic management consisted in the necessity of shifting the focus of organization's higher authorities to the environment to be able to reach the changes betimes.

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<sup>1</sup> On the macro-level, for example, «new economy\* is defined as «the production and implementation of new knowledge and its transformation into independent factor of production, which plays the leading role in the system of production factors; and the development under the «old» laws which function in a new way under new conditions, as well as under new laws which stipulate accelerated development). On the micro-level the landmark view is the one expressed by I. Nonaka - the forerunner of research in organizational knowledge management: «The only reliable source of competitive advantage is knowledge. When markets change, new technologies appear, number of competitors grow, and goods become obsolete in most a night, only those enterprises succeed that continuously create new knowledge, diffuse it in the whole organization, and transform it into new technology and products. This is called «a knowledge-based company engaged in a single business of systematic innovations (Op. cit.: Савельєв Є., Куриляк В. Наука й освіта у становленні «нової економіки». - 2004. - Том 3. - № 1. - pp. 80-81)

Management is gradually becoming one of the fundamental issues in the development of modern organizational systems. It is known, that under conditions of practically equal access to resources, an organization can be competitive only on

The basis of distribution of these resources (that makes up the essence of management as a competitive advantage of a successful organization). It turns out, that skillful management can help any organization survive in a long term, while management failures cause untimely «death» (of those who were the «stars» in the «sky» of business or public management) of organizational structures.

The problem of the long term survival is the object of study in strategic management, a research trend followed by the world theorists and practitioners from among economists, lawyers, psychologists, mathematicians, managers, and others. The term strategic management appeared long time ago amidst martial leaders.<sup>3</sup> However, in the mid-1960s many successful businesses, first and foremost, the multinational enterprises (transnational corporations) started to become actively interested in strategic aspects of development. This was due to changes that took place on the world geo-political map (world socialism system, struggle of former colonies for independence, formation of three centers of capitalism: the USA, Europe, and Japan), and the focus of management on development and improvement of the mechanism of the production cost reduction by certain firms under conditions of growing competition on both: domestic and international markets. Progressive development of social and economic systems

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<sup>2</sup> The question that often arises is how identical the notions «management» and «administration» are. This dilemma is not only theoretical, but also a practical one. For example, state Ukrainian (as well as other post-USSR) organizations prefer the term «administration», while for commercial companies the term «management» is more common. We consider that the simplest explanation is the following: the term «administration» is mostly used in technical systems, and the term «management» in organizational structures with human resources as their component (Though this aspect is not the object of the given study but it is possible that the basic reason of inefficiency of the state's activities at the modern stage of development consists in this).

<sup>3</sup> In the dictionary of borrowed words we find the following meanings of the word «strategy»: 1) a part of generalship that is its most important branch; it comprises the theoretical and practical issues of armed forces training in warfare measures; closely related with the state policy and directly depending on it; 2) an art of managing social and political struggles; general plan of controlling this struggle, that arises from the dislocation of the basic class and political forces at the given stage of historical development.



enabled to foresee, forecast, and program the activities of organizations. This was further reflected in the ways the strategy was viewed from the standpoint of planning. This was clearly manifested in the works of researchers that represented the classic schools of strategic management (such as «design» and «planning»). [6]

As the environment (internal and external) was changing, the theory and practice of strategic management also felt certain pressure that forced their improvement. That is why even the definition of strategic management in both, academic and business areas, was constantly changing within 1960s - 90s. «Objectives», «plans», and «tasks» were the basic categories in these areas. [1; 7; 11; 14]. It is noteworthy, that the strategic management paradigm had been expressed precisely by N. S. Khrushchev long before the Western scientists came out with their own theoretical findings: «Goals are clear, tasks are set: let's work comrades!» And the idea of strategic planning and division of plans into strategic, tactical, and operative ones, was obviously borrowed by the Western planners from the Soviet five-year construction plans (Nowadays not many people remember the GOELRO plan, five-year industrialization and collectivization plans, though it was the five-year term that turned out to be the best for strategic planning. When N.S.Khrushchov tried to shift to a seven-year plan, the performances of the USSR in the area of social and economic development were «successfully failed»).

With the beginning of the mass sales epoch, the leading position in the sphere of management was taken by marketing. On the other hand, under conditions of resource deficit and more open access to the resources, «human re-sources» («personnel», «human capital», «human factor») become the basic competitive advantage of organizations. Starting from the second half of the 20<sup>th</sup> century, the following new categories were introduced into the sphere of research: «personnel management», «corporate culture», organizational skills», «human resource management». As management science is ramifying (now terms such as operational management», «financial management», «taxation management», «innovation management», «investment management», «eco-logical management»,

etc. appear) some researchers start to identify «management» trend with «personnel management», and «human resources management»<sup>4</sup>.

This is mostly peculiar to management of external economic activities and international business that, in fact, brought the paradigm of modern strategic management into life. At the beginning of 1980s the analysis of a company behavior at the international markets was focused mostly on economic and technical parameters (see, for example: *Burton F.N. Contemporary trade. - (Industrial studies series) - Oxford: Philip Allan, 1984, - 187 p. - PP. 117-184*). In the 1990s more and more heed was paid to cross-cultural aspects of firms' international activities (*Grosse R, Kujava D. International Business: Theory and Managerial Applications. - Boston: Irwin, 1992. - 733 p. PP. 321-347, 459-488*;). In the beginning of the 21<sup>st</sup> century human factor takes the key role in international business strategies (*Cullen J.B. Multinational Management: A Strategic Approach. - Washington State University, 2002. - 664 p.*).

### **Problem statement**

In order not to deep into the evolution of strategic management, we will focus on certain researches that nowadays are considered the «classics» in what concerns the strategic aspect of organization development and view it in the light of organizational knowledge («the Learning School»). [2; 6; 9; 12]. Modernresearchers consider such human resources (skilled personnel, organization knowledge) the source of competitive advantages of successful companies. The

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<sup>4</sup> Maybe the given approach is right even if taking the etymology of the notion «management» into consideration, that is (one way or the other) related to human factor (In modern understanding American term «manage» comes from French «manage» - to train wild horses; in Flemish (Holland) this word transformed into «menage» - household, family; and in German «managen» means «handling»). Even in very close cultures, such as Ukrainian and Russian, the understanding of management is a little bit different: compare Russian word «руководить» (*rukovodit' - guide by the moves of a hand*) with Ukrainian «керувати» (*keruvaty - steer a boat by means of a rudder*).

functioning analysis of both, commercial and public organizations that has been performed by the authors proves this statement. For example, there is a fairly clear interrelation between the level of organizational knowledge (or complexity of organization) [12] and its efficiency. According to the data, the correlation between the achievement of expected strategic indicators, the introduction of new products or technologies and the level of professional education accounts for 0,5-0,6; the correlation between the personnel professional training system and these indicators is 0,7-0,8.

The Learning School was the first one to pay attention to the role of abilities and skills in the firms' functioning. This is, so to say, an axiom. The Learning School has included them into the range of strategy factors: from now learning is both, the factor of strategy formation and the factor of strategy implementation. We will investigate the peculiarities of the Learning School's impact upon strategic management as a management trend, as well as upon the strategy aspects in general. On the basis of the «spiral of management by learning» algorithm, suggested by Russian researchers, [9, 363-367], we will continue the logical chain of strategic management development with regard to modern organizations.

The Learning School (Management by Learning, MBL) challenges us with strategy formulating and forming. What we are used to call «strategy creation» the Learning School calls «strategy formulation», making the formal side of the given issue absolute. This School suggests strategy formation as an alternative process: the strategy that is constantly developing, since its creators (or a single creator) are studying, developing, the same way as the organization and personnel are developing. Thus, we are talking about certain relativistic generalization: the strategy emerges in the process of this activity, sometimes not consciously. That is why we talk about the moment of its formation, its instability and changeability in time. The theoretical views of the Learning School are influenced by the views of the incrementalists: they were discussing the strategy that is formed incrementally, i.e. the strategy is formed up from moments, trifles, or through settling local issues. That

is why certain critics of the Learning School claimed that in this case there is no strategy as such. However, substantial unsteadiness of the strategy under modern conditions does make sense since the company's internal and external environment in question is the one in which nothing is possible to predict. Thus, the strategy needs constant adjustment and the standpoints of the Learning School have practical importance under these conditions.

### Research results

The most known researchers, whose views concern the Learning School, are the following: Quinn, Weike, Norman, Shell, Lampel. Of course, this is not a complete list of researches working in the tideway of the Learning School, since some separate ideas of this School, in one way or the other, concern any management theorist. We will apply the basic principles of the Learning School marked out by Henry Mintzberg:

1. External environment of a company is complicated and unpredictable, and, accompanied with the need for constant renewing of knowledge, necessary for the strategy elaboration, it does not give a chance for efficient control. Thus, the strategy elaboration should take the form of an educational process, at least until the strategy formulation and implementation become inseparable.

2. The organization's leader should be the best student; however, staff education is more common since there are many potential strategists among the staff.

3. The learning procedure develops through behavior that facilitates retrospective thinking that is oriented on realizing the essence of actions that have been previously taken. Only those who have resources and learning abilities can become the subjects of the company's strategic initiative. Scilicet, strategies may appear at the least expected places and in the least expected way. They of ten appear as a result of try-and-error method application; once a while some random idea of an employee working at any level is followed up by the managers,

suggested to the company leaders, and further developed into a strategy, or it becomes the strategy even before it is approved by the company leader.

4. The role of leadership does not consist in imagining the future and formulating the strategy relying on the leader's personal views, but in management of strategic learning process within which new strategies may appear. Thus, strategic management includes the ability to see intangible relations between thoughts and actions, control and learning, stability and changes.

5. Strategies appear, in the first place, as schemes taken from the past, and some of them, once a while, turn into plans for the future. Thus, they can be viewed as general tendency of joint activities.

These basic principles determined the characteristic features that the learning organization should have. According to Joseph Lampel they are the following:

Failure teaches organization more than success. Learning organizations are fighting against the wish to forget the mistakes that have been made as soon as possible. Though failures are too expensive, these organizations realize that a part of expenses connected with these failures is covered in the process of failure causes analysis.

This kind of organization vigorously rejects the principle: «If something is not broken, it should not be fixed». Even the most effective process can be improved. The source of improvement is sometimes hidden in the depth of a usual routine, and the organization periodically inspects its routine activities in order to find out whether everything goes the right way, or a correction in a form of new technology, new practice, or new knowledge is needed.

The organization of this type considers that employees, managers, who work in the areas of design, production, distribution, and sales are more competent in the areas they work in, than their chief. Mobilization of employees' knowledge and team work are the things the organization relies on. The organization welcomes outspokenness of its managers and direct executors by giving them an opportunity to share their problems and suggestions, and, at the same time,

demanding constant interaction between them.

4. The organization of this kind is actively facilitating the spread of experience within itself through meetings, personnel rotation, as well as through establishment of project groups and multi-functional groups.

5. The learning organization makes great efforts to find information in external environment. It learns from suppliers and competitors and also involves its clients into its own development.

As we can see, the organization of this type, in many respects, is an antipode of the old one, bureaucratic organization. It is open and facilitates team work as well as all development-propitious communications. As a result, the organization possessing the skills of organizational learning is prepared to any emergencies, and, at the same time, ready to adjust to any change of the external environment.

The Learning School distinguishes two strategy types, stating that strategies can be either stagnant (foreseen), or self-sufficient, appearing and developing spontaneously. The strategy of the first type is already formulated before its official formulation, and the process of formulation bears exclusively formal character, being limited to a certain extent. The spontaneous strategy is formed out from nothing, instead. It can emerge from an accidental occurrence or from spontaneous development of affairs. And, though to some extent it is a prearranged mission, it depends on this prearrangement much less than in case of stagnant strategy [6, 216-230].

In the frames of the Learning School, as a strategic management trend, there also exist views that are somewhat different from those shortly expressed by Henry Mintzberg. In particular, one of the approaches suggests studying practical experience, so-called implicit knowledge, i.e. intuition, in stead of rational knowledge that can be acquired through reading of books and attending lectures. This kind of knowledge is specifically individual, i.e. based on personal qualities of an employee. However, this view does not underestimate the role of irrational, group

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(organizational) knowledge a bit. Thus, this view does not exceed the limits of the Learning School. Hence, knowledge can be either individual or group, moreover, the first one is both: explicit and implicit.

This also shows certain defects of the learning organization strategy: knowledge acquisition as an end in itself and the burden from the past of this knowledge. The MBL appeared under conditions when scientific and technological progress together with the development of society and economics became unpredictably dynamic. Actually, the external environment of the 1970s became turbulent, i.e. predictions started to lose their sense in many cases. In this kind of environment now and again there appear unpredictable relationships of cause and effect that the organization is able to merely watch and take into account, not being able to affect them. Changes on the market force the organization to direct activities towards a separate consumer more and more. That is the way there appears the philosophy of a product (service) made for small consumer groups, or even for separate persons - from now it is customized - made according to customer's individual requirements. Thus, the market stops to be the mass one, as it used to be, and turns into a segmented one. Within this market new the niches that are quickly filled up with new products appear all the time. This means that while making the next step in its activities, the organization should respond to all changes that are taking place in the most effective way and take every new condition into consideration. This causes the origination of the new terms: «management by learning», and «learning organization\*». Hence, not only an employee should have a creative behavior, but the organization on the whole should. Thus, the leader should be the main student: he should be the first to study, take innovations into consideration and «sense» these innovations. At the same time, since the MBL's views are characterized by the heed to knowledge, involvement of the employees into decision-making process and strategy development is needed. Personnel's interest should be quickened; this is the leader's task, since changes that happen in organizations depend on him and not on somebody else. It is leader who decides

which of the proposals or ideas of which of the employees will be taken into account in the process of strategy development, i.e. it is also a part of leader's learning. After that employees should learn, since these are them who will be implementing this strategy. And it looks obvious that the quality of implementation of the strategy depends directly on whether the personnel manage to understand what the strategy consists in, and what is expected from it - whether the personnel is able to learn and change itself [4, 309].

At the same time, social and economic changes that took place on the turning point between the two millennia showed that in order to be successful an organization should not only adjust itself to the environment but also shape the environment in the desired way. This is how modern organizations (and further also researches) come to a new stage of strategic management development that, by analogy, can be called MBT - Management by Teaching (Organization that teaches). There are no absolutely identical goods, even in case there is a great similarity of kinship goods, a consumer will still single out a distinguishing I feature. Thus, modern market is associated with monopolistic competition: every commodity of a certain firm is a unique one, at the same time it is competing with kinship commodities; the difference between them, however, is of high importance. Even difference in trademarks is important, since it also distinguishes I one commodity from another one. In fact, if consumer has a choice between two I matrices (clean CDs), what will he choose «Phillips» or «Samsung» if the characteristics are equal? *{If his «Samsung» monitor has previously exploded, «Phillips» trademark has the evident advantage over «Samsung»}*. This example is provided here in order to show the basic values peculiar to management and marketing nowadays: every product has its values for a consumer. Organizations, in one way or the other, «bring a consumer up» on their products. It is one of the reasons why the given trend is called management by teaching, and that is why the organization that teaches is spoken about: it creates the desired environment, engrafs on its contact audience, and, moreover, on a consumer an idea that this



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organization itself and its product has these peculiar advantages and that these advantages are the ones to be expected in the future. Thus, the idea of management by teaching is the following: organizational culture goes beyond the limits of internal environment; consumer (often subconsciously) is also included into the organizational culture, however this process is perfectly objective and absolute.

Under such conditions the market needs even higher responsiveness of personnel and organization to the changes that take place. Labour becomes even more creative; the dynamics of environment lessens the possibility of interference with work of every employee. This means that the role of the employee's professional or other skills and abilities, that he/she has and applies in his/her work, becomes more important. Thus, it makes role of the leader more important: according to Management by Learning, the leader should not only learn all the time, but also exhort his/her subordinates, and teach them. In such way, the idea of coaching is practically implemented: the leader should not make orders or point on purposes and ways of their achievement but use all means to suggest these ways to his/her employees and to help them in finding these ways independently. This is where the understanding of the best employee as a professional comes from. This very characteristic of the best employee, the one resulting from his/her knowledge, including that acquired in the given organization, or caused by this organization, is the crucial one [5, 143].

Evolution review of the scientific views on the role of a human in public production enables us to conclude that in the process of its development the problem of human as an object of study in strategic management and in theories of organization during the 20<sup>th</sup> century, had gone through several stages: starting from Taylorism up to applying a complex study from the standpoints of all areas of social sciences and humanities in economic practice. Due to this, different categories were formed. By means of these categories some or the other traits of economic behavior of a personality were described: «homo economicus» and «homo sociologicus», «human relationships», «human resources», «human capital», «living standards», «human factor», etc. Eclectic mixture of terms, social and natural phenomena, problems of mankind, and reality of present, past

and future times, often led to the situation when the limits of researches did not provide enough possibilities to understand the quality essence of that social phenomenon or the other (Figure 1).

On the other hand, the vector of attention focusing of the researches who studied the nature of organization and organizational development on human factor of internal environment led to the necessity of studying the role of a human (first and foremost of leaders) in organizational structure, in the first place, and further the organization's vitality. We consider that the evolution of views on human in management should be examined from the standpoint of «alienation of labor», the degree of which depends on the development of scientific and technological progress<sup>5</sup>. Thus, it becomes obvious that the shift from F. Taylor's «homo economicus» to E. Mayo's «homo sociologicus\*», gradual fusion of their approaches into «human re-sources»<sup>6</sup>, and

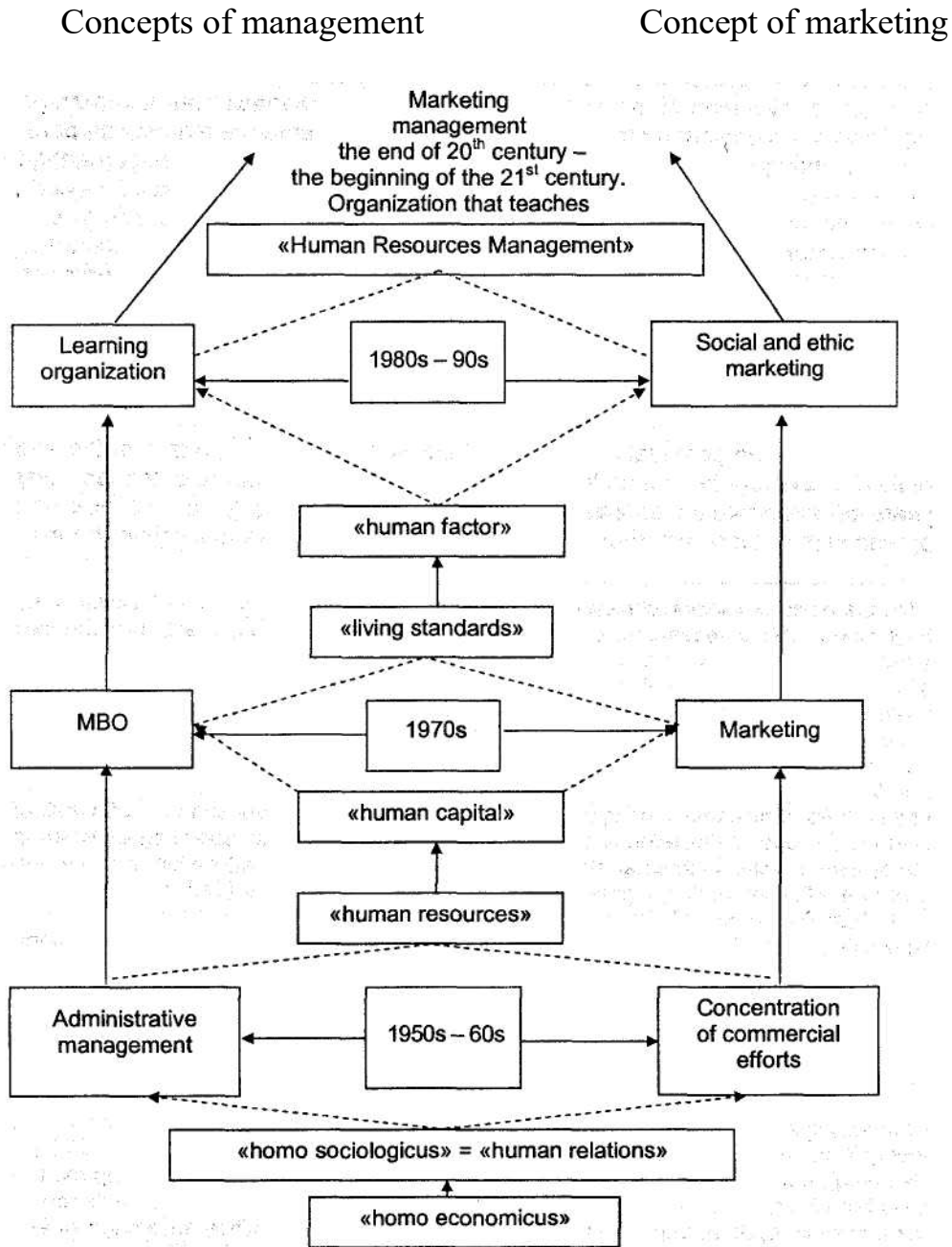
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<sup>5</sup> On the basis of «sociotechnical» approach to management in the end of 1950s - the beginning of 1960s, researches came to general conclusion that labor activity influences a human more than the human influences the labor's character and meaning. The level of «human resources» quality has a U-shape, descending from shop manufacturing to production line and ascending again in the times of automation. Thus, in the end of 1970s there appeared an objective need for complex approach to study of interaction of a human with social and economic environment. However, further development of scientific and technological progress, particularly related to computerization, made theorists and practitioners of business management and ethics, starting from the end of 1980s, talk of sinusoidal shape of alienation and the decay of the «labor ethics» epoch again, when in the system of values labor starts to give way to leisure, family, education, etc., i.e. the shift from «live for working» principle to «work for living» principle (See, e. g.: Lachman *Wirtschaft und Ethik: Masstaebe wirtschaftlichen Handelns.* - Neuhansen. Stuttgart: Haenssler, 1989; Show W.H. *Business Ethics.* - Wadsworth Publishing Co Belmont California, 1991).

<sup>6</sup> This category appears in the mid-1950s, when the «human relations\*» concept proved to be helpless when taking competitive activities between capitalism and socialism into consideration (the theory of Western management could not deeply explain the causal relations of effective USSR performance after the civil war and the WWII). However, investigating the positive changes in economic system of socialism, and further the Japanese economic system, the theory of management enriched itself with the following concepts: theory X and theory Y (McGregor), theory Z (W.Ouchi), and motivation-hygiene theory (F. Herzberg), that enabled the scientific school of management to shift to examining the notions like «human capital\*» and «human factor\*» that became the acme of human's role in the economic system, and made human factor the basic competitive advantage of any organization in the modern conditions of resource deficit at the global market.

Figure 1.

Evolution of concepts of human role in economics in the context of management and marketing development



further into «human capital» and «human factor» is nothing but the result of evolution of theories and practices of the management and marketing. However, considering the development of «management - marketing» paradigm, a change in approaches to human factor in strategic management at modern organizations can be traced. It is noteworthy that the tools of Taylor's «homo economicus» system are used even nowadays in the processes of production organization and management, constantly updating with the account of the scientific and technical progress and strategic management development. For example, the classic of management P. Drucker in the mid-1950s said that «Taylorism is a rock on which we build our discipline» [13, 60]. Ten years later, he starts to assert that it is necessary «to pay less attention to the development of management as a means of individual's adjustment to demands of the organization, but to focus management on the organization's adjustment to the needs, expectations, and potential abilities of the individual» [18], and, again, in the end of the 20<sup>th</sup> century he comes to the mistaken as to its essence and agrees with F. Herzberg that in personnel management the motivation theories work only with their founders, and the only motivation for work is the *KITA (Knock In The Ass) mechanism* [3, 39-40, 264].

In such way, under conditions of the new stage of «alienation of labor», Neotaylorism becomes an inseparable part of management, i.e. «forced» engagement and motivation of personnel for the organization's purposes is a characteristic component in the practical strategic management of modern organizations.

On the other hand, under conditions of modern market even higher responsiveness of personnel and organization to the changes that take place is needed. Labor becomes even more creative, and the dynamics of environment lessens the possibility of interference with work of every employee. This means that the role of his/her professional or other skills and abilities, that he/she has and applies in

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his/her work becomes more important<sup>7</sup>. Thus, classic «manage-ment-leaming» spiral can be extended in the process of strategic management development: MBI - MBO - MBL - MBT (Table 1).

*Table 1.*

### Evolution of modern management culture

<b>Environment characteristics</b>	<b>Administrative management (MBI)</b>	<b>Management by objectives (MBO)</b>	<b>Management by learning (MBL)</b>	<b>Management by teaching (MBT)</b>
<b>External environment</b>	Stable	Changeable	Turbulent	Turbulent, shocking
<b>Product</b>	Simple, standard	Relatively sophisticated, standard	Sophisticated, «for destination consumer»	Complex, «mosaic»
<b>Market</b>	Mass	Mass, segmented	Divided into niches within segments	Atomization of niches within segments
<b>Organization-consumer relationships</b>	All that is on sale is bought	Broad feedback: «you give me, I give you»	Partnership	«We are one big family*»

<sup>7</sup> It can be asserted that there is a change in the word «resources» meaning in management: from «reserves and capacities of any kind» to «the ability to handle any problem» (see:[20])

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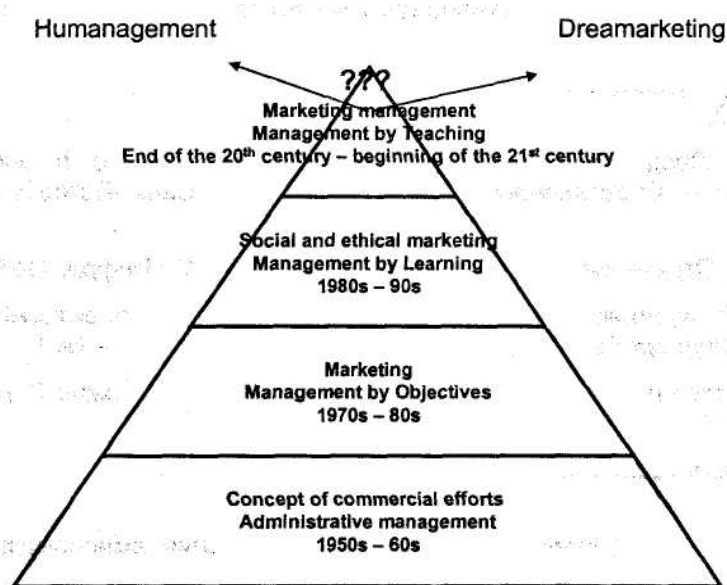
<b>Environment characteristics</b>	<b>Administrative management (MBI)</b>	<b>Management by objectives (MBO)</b>	<b>Management by learning (MBL)</b>	<b>Management by teaching (MBT)</b>
<b>Labor characteristic</b>	Monotonous	Complicated, non-creative	Complicated, creative	Universal, creative
<b>Theory</b>	A. Smith, F. Taylor, M. Weber	R. Ackoff, P. Drucker, G. Odiorne, A.	P. Drucker, T. Peters, P.Sing	P. Drucker, T. Peters, H. Mintzberg,
<b>Authority</b>	Centralized	Decentralized	Distributed (delegated)	Vague, shapeless
<b>Structure</b>	Hierarchy	Multidimensional hierarchy	Heterarchy, project-oriented	Four-dimensional
<b>Symbol</b>	Pyramid	Matrix	Network, web	Trawl, dredge
<b>Attitude towards the future</b>	«I control the future». Future is rather defined and presupposes the extrapolation	Theoretically, future cannot be controlled	Theoretically future is vague and this is the source for development	Future should be created today for one's own benefit
<b>Organization characteristics /Concepts of management</b>	<b>Concept of strategic planning</b>	<b>Concept of strategic management: First stage of development</b>	<b>Concept of strategic management: Second stage of development</b>	<b>Concept of marketing management (management of market)</b>
<b>Ways of quality assurance</b>	Military acceptance	Military acceptance combined with manipulation approach	Technologies, based on engagement of personnel into the process of	Self-control based on high quality of personnel
<b>Efficient mode of behavior</b>	Human-function	Human-manipulator	Human-partner	Human-professional
<b>Efficient type of leader</b>	Authoritarian, technocratic boss	Leader, who is able to see a future shape and express it in the form of clear and concrete objectives	Coach, who is concerned with achievements of his team (colleagues, co-workers)	Instructor, who is able to develop potential of his coworkers – subordinates

## DEVELOPMENT OF SCIENTIFIC ACTIVITY

Environment characteristics	Administrative management (MBI)	Management by objectives (MBO)	Management by learning (MBL)	Management by teaching (MBT)
<b>Corporate culture</b>	Normative-manipulatory, low-adaptive	Normative-procedural, adaptive	Highly adaptive, «game»	Creative, expansive
<b>Terminology</b>	«I have it under my control», «I control the issue», «Situation is under control»	«Let's decide together», «I suggest to revise the situation once again»	Systematic approach, creativity, sources of uncertainty, socio-technical design	Business processes, information technologies, «Suggest your visions»
<b>Basic way of authority realization</b>	Direct instruction fixed in the order	Procedure and/or mechanism fixed by the order	Procedure and/or partnership fixed in the agreement	Procedure and/or rules on the basis of approved methodical instructions (recommendations)

Figure 2

### Development of Modern Management Culture



### Conclusion from the research

Taking into account all the information mentioned above, we conclude that theory and practice of modern management are verging towards the new stage of the areas of study, namely: in strategic management - the «learning organization» and environment management phenomena, and, in the given context -possible shift from «human resources management\* towards «humanagement -human management» (Figure 2). At present, the mentioned trend is only partially defined and it is to become the object of further investigation.

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**YOUNG RESEARCHES' PAGE**

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**DETERMINATION OF ECONOMIC EFFICIENCY  
OF THE SANCTIONS FOR VIOLATION OF THE CUSTOMS RULES**

**Abstract**

This scientific article is dedicated to the problem issue regarding to choice of economically expedient kind of the sanctions for violation of the customs rules by the subjects of the foreign economic activity during the customs control. The appropriate algorithm of actions of customs authorities of Ukraine concerning the expediency determination of application of the final transformation of property relations in behalf of the state is developed.

**Key words:** the customs regulation, transformation of the property relations, violation of the customs rules, the algorithm of actions, the economic efficiency.

**Introduction**

As you know, in consequence of crossing the customs border of Ukraine with all kinds of material objects with violations of the established customs rules the responsibility of participants of the foreign economic activity should be set for this illegal step. And the responsibility, of course, should be adequate to the offence committed.

Today in the plane of implementing of the sanctions against violators of the established customs rules and, in particular, as to concrete property objects, which were the items of the offense, the following measures of influence could be used: the warning, the fine and the confiscation [1].

It is necessary to indicate that the warning and the fine are varieties of the administrative penalty to the offender. At the same time the confiscation applies to the relevant material objects and consists in the enforced removal of the appropriate goods, transport vehicles and other items, and involves their free of charge transfer to the state property. Therefore in this case the final transformation of property relations in favor of the state is presented [2].

### **Problem statement**

It is useful to notice that not always the state receives the real benefit from the final transformation, which may seem undoubted at first. The essence of this issue lies in solving the problems concerning the utility of getting in the state possession of certain product and material items. So the main questions are as follows:

- Firstly, could these property objects cause some damage to the state?
- Secondly, how reasonable economically and beneficial a "full path" of the confiscated material objects from the moment of arrest until their final use by the state would be?
- Thirdly, could the state manage fully in the planned capacity with the obtained property objects? etc.

Consequently, exactly the expediency and effectiveness of application of the final transformation of the property relations in favor of the state as a result of the customs regulation are the main objects within our research.

### **Research results**

Having paid some attention to the annual official statistics (Table 1) which is provided by the State Customs Service of Ukraine, we could find that the amount of violations of the customs rules from year to year is increasing steadily in value measurement. The level of the confiscation applying is also high. Unfortunately, however, as the final result of the sanctions applied, the total economic effectiveness of the final transformation of the property relations in favor of the state owing to applying of the confiscation is negligible.

*Table 1.*

***The main indicators of the Customs Service of Ukraine in the context of the fight against violations of the customs rules \****

<i>Indicators</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Protocols concerning the violations of the customs rules (mln. hrn.)	670,1	932,1	535,5	855,0	6092,8	14626,7
Items really removed on cases of violations of the customs rules (mln. Hrn.)	294,2	321,4	296,5	387,7	1046,5	825,7
Cases submitted to the court (mln. Hrn.)	576,6	618,9	538,7	414,0	5698,4	14156,0
Confiscation applied (mln. Hrn.)	158,0	108,3	89,9	102,3	165,7	318,5
Amount of money received in result of the sale of confiscated items (mln. Hrn.)	6,0	5,7	5,6	5,1	3,7	10,1

\* The table is based on data of the State Customs Service of Ukraine [3-8].

In that way we can assume that the economic resource from application of this type of sanctions for violation of customs rules is not fully used. Therefore the

important question of searching for the most effective and appropriate means of the state reaction for violations of customs rules remains opened.

To solve the issues outlined above we consider necessary to perform some analytical procedures, which are, one way or another, connected with the comparison of some positive and negative moments in the plane of the results of the final transformation of property relations in consequence of the confiscation of the relevant material objects.

Herewith, one of the most important tasks in this area we consider the creation and usage of the algorithm of the customs authorities' actions concerning the determination of the activity effectiveness towards the application of the transformation of property relations.

We think that the first crucial step in the sequence of actions of the customs authorities connected with the appropriate sanctions for violation of customs regulations should be the issue of determination of the safety level relating the cross-border transportation of the certain property objects. It mainly applies to the situations with movement of unauthorized or dangerous objects to which should necessary been applied the final transformation of property relations in consequence of confiscation.

By the way, to determine the safety level of different product and material items, in our opinion, it's necessary to use the accordingly developed referential classification of 'typical objects for transformation of property relations', which can be moved across the customs border of Ukraine. This classification can be created on the example of so-called 'classification of goods and items of ' the risk group'. The usage of the corresponding classification in practice, we think, will allow to eliminate the potential danger caused by the possible crossing the customs border of Ukraine with the relevant property objects.

Thereby, if the product and material objects of property are not covered under the category of 'dangerous', then all the possible sanctions should be examined on the

basis of determining the level of economic efficiency of using the final transformation of property relations in favor of the state [9]. That is to say it's necessary to determine the expediency level of taking the objects of violation of customs rules into the state's ownership.

In this case it is the most important issue and the most difficult problem at the same time as far as it is almost impossible to predict the future result reliably and in a univocal way.

But we have tried to deduce the general formula for determining of the economic effectiveness from applying of the final transformation of property relations in favor of the state. In simplified form it is based on a common formula of determination of the profits that compares the state's expenditures and revenues obtained from the usage of arrest and confiscation of the relevant objects of property of the participants of the foreign economic activity:

$$TP = TI - TE, \quad (1)$$

where:

TP – the total actual profit of the state from application of the chosen method of transformation of property relations relating the appropriate product and material objects, hrn.;

TI – the income of the state from the final transformation of property relations in favor of the state as a result of application of the chosen method of transformation, hrn.;

TE – the expenses of the state in the process of application of the chosen method of transformation of property relations for the final obtaining the relevant objects in possession of the state, hrn.

In the process of calculation for the above-mentioned formula it is necessary to take into account the possible rather than actual profit, incomes and expenditures. Then the formula should be presented as follows:

$$PTP = PTI - PTE, \quad (2)$$

where:

PTP – the total potential profit of the state from application of the chosen method of transformation of property relations in favor of the state relating the appropriate product and material objects, hrn.;

PTI – the potential (the most predictable) incomes of the state from the final transformation of property relations in favor of the state as a result of application of the chosen method of transformation, hrn.;

PTE – the potential (the most predictable) expenses of the state in the process of application of the chosen method of transformation of property relations for the final obtaining the relevant objects in possession of the state, hrn.

On the basis of the above-mentioned formula it will be possible to define the coefficient of the planned profitability from the application of the chosen method of transformation of property relations on the appropriate product and material items, having expressed it through the formula 3:

$$k_{PTP} = (PTI - PTE) / PTI, \quad (3)$$

where:

$k_{PTP}$  – the coefficient of potential profitability of the state from the final transformation of property relations in favor of the state as a result of application of the chosen method of transformation, hrn.

If it will be necessary, this coefficient, of course, can be determined in a percentage ratio having multiplied it by 100%.

Using the aforecited formula it will be necessary to make some addition that the incomes and expenses of the state from the application of the final transformation of property relations in this case have the probabilistic nature. That is to say there is a

part of the assumptions in them, since the results obtained in future may differ from the initial calculation.

If we try to express the potential possible profit of the state from the transformation of property relations, taking into account the level of permissible deviations from the initial calculation, then the formula will look like:

$$PTP = (PTI - PTE) - D, \quad (4)$$

where:

D – the admission of deviation from the planned calculation of the potential profit of the state from the application of the chosen method of transformation of property relations in favor of the state, hrn.

In turn we consider that the calculation of the admission level for the deviation from the initial calculations can be fulfilled using the following formula, based on the estimated potential expenses:

$$D = d * PTE, \quad (5)$$

where:

d – the coefficient of admission of the deviation from the planned calculation of the potential profit of the state from the application of the chosen method of transformation of property relations in favor of the state, hrn.

Furthermore, in our opinion, the calculation of the admission level for the deviation should be conducted, taking into account the relevant practical situations that are possible in the future.

It's obvious that the most undesirable, dangerous and risky situation is that when in the real practical conditions there may be encountered the facts of deviations in the direction of not only the increasing of the final level of costs, but the simultaneous reducing of the obtained revenue from sales in comparison with the



planned level. Consequently in determining of the admission level for the deviation in the process of transformation of property relations we think it is necessary to take into consideration exactly this, the most dangerous situation.

Accordingly in order to be reinsured from unplanned, unwanted final results for the state from the transformation of property relations, we should double the size of allowable deviation. In this case taking into account the permissible deviation level from the initial calculation the formula of calculation of the possible state's profit from the transformation of property relations takes the following form:

$$PTP = (PTI - PTE) - 2D , \quad (6)$$

In turn, on the basis of the formulas deduced above we can form the general formula of coefficient of economic efficiency from the application of the chosen method of the final transformation of property relations on the appropriate product and material objects in favor of the state in the process of customs regulation of the foreign economic activity. This formula will be as follows:

$$k_{EET} = ((PTI - PTE) - 2D) / PTI , \quad (7)$$

where:

$k_{EET}$  – the forecast coefficient of the economic efficiency from application of the chosen method of the final transformation of property relations in favor of the state, hrn.

Using the formula deduced by us we have fulfilled the sequential analysis of the possible variants of dependence of the potential profit of the state and the admission level of deviation in the process of implementation of transformation of property relations as a result of the customs regulation. For the convenience of the calculations fulfillment the obtained results are presented in Table 2.

Table 2.

*Dependence of the admission level of deviation and the level of economic efficiency from the transformation of property relations as a result of customs regulation of foreign economic operations.*

$N\bar{z}$	$k_{PTP}, \%$	$d$	$k_{EET}$	$d$	$k_{EET}$	$d$	$k_{EET}$	$d$	$k_{EET}$	$d$	$k_{EET}$	$d$	$k_{EET}$
1	1	0,1	-0,19	0,2	-0,39	0,3	-0,58	0,4	-0,78	0,5	-0,98	0,6	-1,18
2	5	0,1	-0,14	0,2	-0,33	0,3	-0,52	0,4	-0,71	0,5	-0,90	0,6	-1,09
3	10	0,1	-0,08	0,2	-0,26	0,3	-0,44	0,4	-0,62	0,5	-0,80	0,6	-0,98
4	15	0,1	-0,02	0,2	-0,19	0,3	-0,36	0,4	-0,53	0,5	-0,70	0,6	-0,87
5	20	0,1	0,04	0,2	-0,12	0,3	-0,28	0,4	-0,44	0,5	-0,60	0,6	-0,76
6	25	0,1	0,10	0,2	-0,05	0,3	-0,20	0,4	-0,35	0,5	-0,50	0,6	-0,65
7	30	0,1	0,16	0,2	0,02	0,3	-0,12	0,4	-0,26	0,5	-0,40	0,6	-0,54
8	35	0,1	0,22	0,2	0,09	0,3	-0,04	0,4	-0,17	0,5	-0,30	0,6	-0,43
9	40	0,1	0,28	0,2	0,16	0,3	0,04	0,4	-0,08	0,5	-0,20	0,6	-0,32
10	45	0,1	0,34	0,2	0,23	0,3	0,12	0,4	0,01	0,5	-0,10	0,6	-0,21
11	50	0,1	0,40	0,2	0,30	0,3	0,20	0,4	0,10	0,5	0,00	0,6	-0,10
12	55	0,1	0,46	0,2	0,37	0,3	0,28	0,4	0,19	0,5	0,10	0,6	0,01
13	60	0,1	0,52	0,2	0,44	0,3	0,36	0,4	0,28	0,5	0,20	0,6	0,12
14	65	0,1	0,58	0,2	0,51	0,3	0,44	0,4	0,37	0,5	0,30	0,6	0,23
15	70	0,1	0,64	0,2	0,58	0,3	0,52	0,4	0,46	0,5	0,40	0,6	0,34
16	75	0,1	0,70	0,2	0,65	0,3	0,60	0,4	0,55	0,5	0,50	0,6	0,45
17	80	0,1	0,76	0,2	0,72	0,3	0,68	0,4	0,64	0,5	0,60	0,6	0,56
18	85	0,1	0,82	0,2	0,79	0,3	0,76	0,4	0,73	0,5	0,70	0,6	0,67
19	90	0,1	0,88	0,2	0,86	0,3	0,84	0,4	0,82	0,5	0,80	0,6	0,78
20	95	0,1	0,94	0,2	0,93	0,3	0,92	0,4	0,91	0,5	0,90	0,6	0,89
21	99	0,1	0,99	0,2	0,99	0,3	0,98	0,4	0,98	0,5	0,98	0,6	0,98

Using this table and starting from the obtained data of the economic efficiency from application of the transformation of property relations in favor of the state we can determine the appropriate admissible deviations from the initial calculation.

### **Conclusion from the research**

In consequence of summarizing all the above mentioned moments and conditions we can represent the recommended simplified algorithm of actions of customs authorities regarding to determination of the activity effectiveness towards the transformation of property relations on the product and material objects which could be transported through the customs border of Ukraine with violation of customs rules (Figure 1).

Certainly, if in the result of analytical procedures fulfilled with the help of all the above cited measures provided for the algorithm created by us it is discovered that it is profitable for the state to apply the final transformation of property relations in favor of the state, then with respect to the relevant property objects which were involved in the violation of the customs rules it is necessary indeed to apply the confiscation. However, the quite opposite situation can be met when in the result of calculations it would be found that the final transformation of property relations in consequence of the confiscation of some relevant product and material objects does not lead potentially to the real economic benefit for the state.

In this case there is an obvious need for efficient selection of other sanctions, which are more appropriate and economically effective for the state, and which are connected with the reaction to the concrete fact of violation of the customs rules.

In our opinion, for example, the application of the appropriate administrative penalties, that is to say the imposing of relevant fines which may actually be higher than 'normal' level depending on the 'weight' of the offense would be the most advisable in this case.

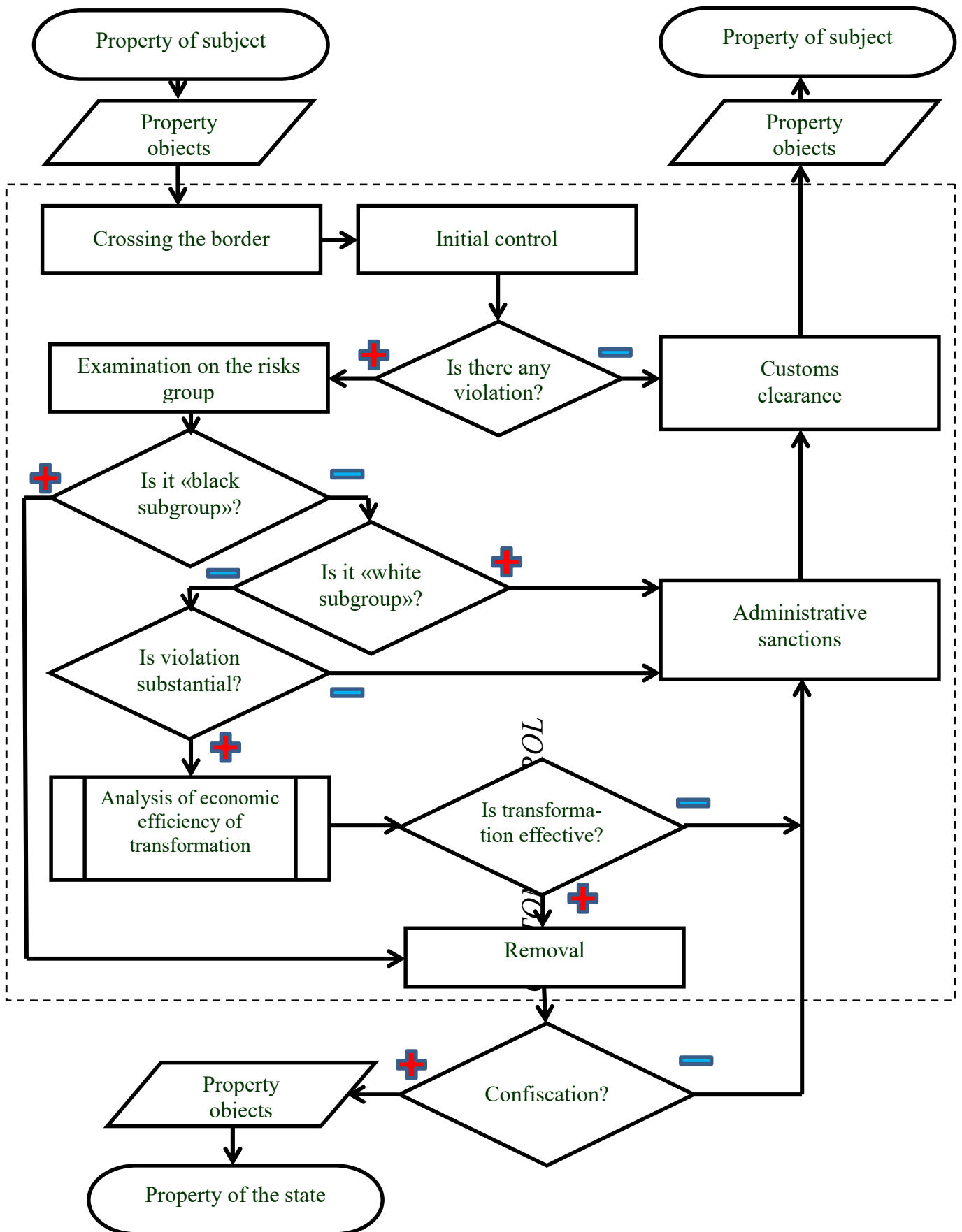


Fig. 1. The algorithm of actions of customs authorities concerning the determination of the effectiveness towards the transformation of property relations.

The important point is that the level of the administrative penalties should be relatively high that the subject of violation except the compulsory taxes and charges will have to pay an additional amount almost equal to the value of the property objects that were moved by him through the customs border with the concrete violation which could cause the confiscation. It can be considered as a payment for the attempt of violations of the customs rules by the participant of the foreign economic activity. Of course, in that way the state will obtain the net income without any related expenses.

Thereby we have demonstrated that the confiscation as a sanction for the violation of the customs rules, in consequence of which the final transformation of property relations in favor of the state occurs, can be effective not always and it is not the only possibility for the state to obtain the real profit.

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**TRADE INTERDEPENDENCE, COMPARATIVE ADVANTAGE  
AND FDI BETWEEN CHINA AND EU****Abstract**

The objective of this paper is to examine the connection between international trade and foreign direct investment (FDI), by assessing some salient features of China and EU's market structures and their current patterns of the revealed comparative advantage, and how their two-way investments are related to the changes in the comparative advantage and trade between China and EU. We postulate that the EU firms venturing in China plays an important role in changing patterns of China's comparative advantage. A increasing similarity of trade structure and decreasing complementarity of the Chinese and EU economies limit the absorptive capacity of each other's products, which further challenges China's entrepreneurs to a high commitment of direct investment into EU.

**Key words:** trade independence, distribution, export categories, import structures.

**Introduction**

The European Union (EU) is the world's biggest economy, consists of twenty-five member states. They are: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. The EU is a customs union and a developing single market, with around 459,5 million people and an official GDP of €

10,5 trillion, per capital GDP 23 400 euro. In 2005, EU's export reached € 1176 billion, its import amounted to € 1061,8 billion, and the main trade partners are USA (18,5 %), China (9,4 %), Russia (7,3 %), Switzerland (6,6%), and Japan (5,2 %).

China (here we only consider the data of China Mainland for the convenience of depiction) is the biggest developing economy in the world, its trade relations with the EU countries have been developing smoothly and have been enhanced continuously. The development of the China – EU bilateral trade relation has been characterized by its “dynamic” nature, manifested in the (dis)similarities of these countries' economic structures and trade patterns. China enjoys strong economic complementarity and the expansion of EU to the East provides huge market potential, and consequently, favorable conditions for the expansion of Chinese products' share in EU market. At the same time, the rapid economic development in China offers broad market space for competitive products from EU.

And yet, EU – China trade relations are marked by a sizeable and widening EU deficit with China (around \$ 133 billion in 2005), and this is the EU's biggest bilateral trade deficit. Whether EU should take the defensive measures to protect European market, fight against Chinese imports, as some are suggesting, or should support European exports to, and investments in China, it has become a topic of hot debate recently.

### **Problem statement**

The purpose of this paper is to assess the overall interdependence of foreign trade and FDI between China and EU after 2001 (the trade between China and EU is very far from being a free trade, it is a trade under high surveillance, and even a trade under suspicion in many cases, only since 2001 China accessed to WTO and it is just starting to export more freely toward EU. In addition, many products, like clothing and textiles, have been opened to China exports only more recently and very gradually), to study the trade pattern resulting from industrial development in these economies, and to examine the connection between international trade and foreign direct investment. The analysis should be especially instructive in light of the macroeconomic model of FDI pioneered by



Kojima (1973, 1978, 1984) on the relationship between a country's comparative advantage and its outward direct investment. We postulate that the changing patterns of EU's comparative advantage and other macro-level factors play an important role in motivating EU firms to venture in China. In turn, EU's investments improve China's comparative advantage, the increasing similarity of trade structure and decreasing complementarity of the Chinese and EU economies limit the absorptive capacity of each other's products, which further challenges the Chinese entrepreneurs to a high commitment of direct investment into EU.

The structure of the paper is as follows. Section 2 studies the trade pattern and the economic interdependence between China and the EU countries, to compare the dynamic features of China – EU trade. In section 3 the structures of the China – EU trade are examined by classifying the commodities into five groups according to their factor-intensive uses, and by assessing the measures of their revealed comparative advantage over recent years. We then turn to section 4 an analysis of the development of China and EU's direct investment: their characteristics, motivations and linkage with the China – EU trade pattern. The final section contains some concluding remarks and implications for the future development of China-EU economic interdependence.

### **Research results**

#### **1. Trade interdependence between China and EU**

##### **(1) EU and China trade patterns by regions**

The EU countries are heavily dependent on intra-EU and the United States markets as an outlet for their total exports, 66,8 % of EU export conducted in intra-EU, followed in US with a share of 11,7 %. China with a share of 4,9 % in 2005. One notable feature is that the intra-EU market is particularly important for Netherlands, France, Germany, Italy and United Kingdom. The shares of their exports to EU countries are 77,2 %, 64,1, 63,3, 60,2 and 54,8 % in 2005, respectively (Table 1). And the market share showed a steady state with a little fluctuation in recent years.

The import pattern of the EU countries matched their export pattern, with the heaviest dependence on intra-EU, Intra-EU trade accounted for over 60 % of EU's total imports, followed by the United States with a share of around 8 %. France depends most heavily on the EU market for its imports, taking on 67 % in recent years. The UK recorded the least among the first-five EU trade partners of China. Only ranging from 47,1 % of its total imports in 2001 to 51,8 % in 2005. The Chinese market has become increasingly important for EU's trade, with the Chinese share of exports and imports rising steadily from 2,7 and 6,9 % in 2001 to 4,9 and 13,5 % in 2005 (Table 1, 2).

As seen in Table 1, 2, China has a market structure of foreign trade different from that of EU, and the export destinations of Chinese goods are diversifying. The US, EU and Japan now form 50 % of China's export market. The US market was China's largest outlet of exports and the Japanese market was the largest supply of imports though with a slightly declining trend. In 2001, 21,7 % of China's exports and 17,6 % of China's imports were conducted with US and Japan respectively. These shares were reduced to 21,4 % and 15,4 % in 2005, correspondingly. In contrast, China's export to EU increased from 15,4 % in 2001 to 19,2 % in 2005, although its import from EU decreased from 14,7 % to 11,9 % correspondingly. The little decline of China's trade dependence has generally been complemented by a stead growth of EU direct investment in China during the period (see section 4).

**EU and China: percentage export distribution by major destination\***

		EU	UK	Germany	France	US	Japan	China
EU	2001	67,7	8,2	13,8	9,4	9,2	1,7	1,2
	2002	67,7	8,3	13,3	9,2	9,2	1,6	1,3
	2003	69,1	7,9	13,7	9,4	8,5	1,5	1,5
	2004	68,5	7,8	13,5	9,3	8,1	1,5	1,7
	2005	66,8	6,8	9,9	4,6	11,7	2,0	4,9
France	2001	60,7	10,5	16,2	–	9,5	1,5	1,1
	2002	61,1	10,4	15,9	–	8,7	1,6	1,1
	2003	65,4	10,1	16,4	–	7,5	1,6	1,5
	2004	64,9	9,8	15,8	–	7,4	1,5	1,6
	2005	64,1	9,0	15,1	–	7,2	1,4	2,0
Germany	2001	55,2	8,3	–	11,1	11,4	2,1	1,9
	2002	54,6	8,3	–	10,6	11,5	1,9	2,2
	2003	64,1	8,2	–	10,4	10,0	1,8	2,7
	2004	63,9	8,3	–	10,2	9,5	1,8	2,9
	2005	63,3	8,1	–	9,8	9,1	1,7	3,2
Italy	2001	53,8	6,6	14,3	12,1	10,7	1,8	1,2
	2002	53,1	6,8	13,5	12,0	10,7	1,7	1,5
	2003	59,6	7,1	14,1	12,5	9,4	1,7	1,5
	2004	59,3	8,1	15,8	14,3	8,8	1,5	1,8
	2005	60,2	8,3	15,4	14,8	8,7	1,4	1,9
Netherlands	2001	78,7	11,7	28,6	11,4	4,6	1,0	0,5
	2002	77,1	11,7	27,6	11,2	4,9	0,9	0,6
	2003	80,1	11,6	28,8	11,7	4,8	0,8	0,7
	2004	79,5	11,3	28,1	11,1	4,6	0,8	0,9
	2005	77,2	11,0	28,0	11,3	4,7	0,9	0,7
UK	2001	54,4	–	11,6	9,6	17,7	2,0	0,9
	2002	55,8	–	11,2	9,3	17,2	2,0	0,8
	2003	56,3	–	10,6	9,5	17,5	2,0	1,0
	2004	55,0	–	10,7	9,2	16,9	2,0	1,3
	2005	54,8	–	10,5	9,4	17,2	2,1	1,5
China	2001	15,4	2,5	3,6	1,4	21,7	16,9	–
	2002	15,2	2,4	3,4	1,2	30,4	13,8	–
	2003	17,9	2,4	4,0	1,6	22,4	13,6	–
	2004	18,2	2,5	4,0	1,7	24,9	12,2	–
	2005	19,2	2,5	4,3	1,5	21,4	11,3	–

Sources: 2006 International Monetary Fund: Direction of Trade Statistics.

\* Of China's trade with the EU countries, the major part of that was China-France, Germany, Italy Netherlands and UK trade, account for 75 % of its exports and 80 % of its imports, So our analysis will pay more attention to these EU countries.

Table 2

**EU and China: percentage import distribution by major source**

		EU	UK	Germany	France	US	Japan	China
EU	2001	63,4	6,3	14,4	7,8	7,8	3,2	2,9
	2002	64,5	6,2	15,0	7,8	7,1	2,9	3,3
	2003	66,0	5,8	15,6	7,9	6,1	2,8	3,8
	2004	65,0	5,5	15,7	7,6	5,7	2,7	4,3
	2005	64,6	3,6	14,7	6,7	7,9	3,6	13,5*
France	2001	65,1	8,4	20,4	–	7,9	2,0	2,4
	2002	65,9	7,7	20,4	–	7,4	1,9	2,6
	2003	69,0	7,4	21,1	–	6,0	1,9	2,9
	2004	68,7	7,3	20,2	–	5,6	1,8	3,2
	2005	67,3	6,9	19,7	–	5,4	1,6	3,4
Germany	2001	52,1	7,0	–	9,5	8,9	4,1	3,6
	2002	52,7	6,5	–	9,5	7,8	3,6	4,1
	2003	61,3	5,9	–	9,1	7,8	3,6	4,6
	2004	61,8	5,9	–	9,0	6,9	3,4	5,6
	2005	63,1	5,3	–	8,7	6,4	3,2	4,3
Italy	2001	56,5	5,0	17,5	11,0	5,5	2,4	2,8
	2002	57,0	4,9	17,5	11,1	5,3	2,1	3,2
	2003	60,6	4,8	18,1	11,4	4,5	2,0	3,6
	2004	60,0	5,0	21,2	12,9	4,0	2,0	4,9
	2005	61,5	5,6	22,9	14,1	3,8	1,9	3,1
Netherlands	2001	50,0	7,7	18,4	5,8	10,4	4,5	4,8
	2002	51,5	7,7	20,2	6,2	9,7	4,0	5,7
	2003	54,5	8,4	20,5	5,7	8,6	3,9	7,2
	2004	53,0	7,2	20,2	5,4	8,5	3,6	8,3
	2005	52,8	7,0	20,1	5,1	8,4	3,1	7,3
UK	2001	47,1	–	11,8	7,8	15,6	4,2	2,7
	2002	49,8	–	12,9	7,8	13,5	3,8	3,1
	2003	54,2	–	16,3	8,2	11,8	3,5	3,6
	2004	52,2	–	13,1	7,4	10,9	3,4	4,3
	2005	51,8	–	13,3	7,1	10,6	3,2	3,8
China	2001	14,7	1,5	5,6	1,7	12,4	17,6	–
	2002	12,9	1,1	5,6	1,5	9,9	16,1	–
	2003	13,2	0,9	5,8	1,4	9,3	18,0	–
	2004	12,2	0,8	5,4	1,3	8,8	15,8	–
	2005	11,9	0,9	4,7	1,4	7,4	15,4	–

Sources: 2006 International Monetary Fund: Direction of Trade Statistics.

\*In 2005, EU has experienced a surge in textiles and clothing import from China for the Agreement on Textiles and Clothing (ATC) signed. The EU textiles imports from China have risen substantially since January 1, 2005. For example, between

January and June, imports of textiles and clothing from China have increased between 83 % and 541 %, with serious average unit price drops – up to 62 % in the case of dresses. The share of imports from China as of total extra-EC imports in this period has increased in certain instances dramatically: 54 % in brassieres – 55% in flax yarn – 36 % for trousers. Thus resulting not only in a increases in the total volume and value of goods imported, but also in the displacement of other developing country suppliers. China and EU representatives decided to meet in order to avoid engaging in a trade dispute. This meeting occurred in Shanghai in June 2005. During this meeting, the European Union and China agreed to curb a surge in imports of Chinese textiles into Europe until the end of 2008 (Source: Website of the directorate of Trade of the EU).

### **(2) EU and China trade patterns by categories**

Table 3 and 4 show the export and import structures of China and EU countries for selected years of 2001 – 2004 at the SITC two-digit level. Table 3 shows that in 2001 EU's export consisted above 40 % of capital-intensive or R&D-intensive commodities, especially Germany have about 50 % export be high-tech products.

In 2004, of the manufactured exports, machinery and transport equipment were the predominant categories, accounting for 49,5 % in Germany, 42,7 in France, 38,0 in Italy, 37,8 in UK, 34,1 % in Netherlands, followed by other manufactures and chemical products. The importance of manufactures has been maintained at around 70 – 90 % while only about 3 – 16 % of food and 0,4 – 3,7 % of agricultural raw materials have been exported. The export share of mineral fuels and metals keep a small share, reflecting its resource-lacked nature. Of the manufactured exports, machinery and transport equipment have a little decrease (e.g., from a level of 44,8 % in 2001 to 42,7 % in 2004 for France). This can be attributed to EU's low economic development and unstable growth of FDI activities overseas.

Table 3

## EU and China: export structures by main categories

SITC	All food items (0+1+2+2++4)	Agriculture			Manufactured goods ((5 to 8) – 68)	Of which		
		raw materials (2 – (22+ +27+28))	Fuels (3)	Ores & metals (27+28+ +68)		Chemical Prod, (5)	Other Manuf, ((6+8) – 68)	Machinery, & equip, (7)
France								
2001	10,6	1,0	2,6	1,9	81,8	14,3	22,8	44,8
2002	11,2	0,9	2,5	1,7	81,4	14,9	22,8	43,6
2003	11,8	1,0	2,7	1,8	82,3	16,7	22,9	42,8
2004	11,2	1,0	3,0	2,2	82,3	16,7	23,0	42,7
Germany								
2001	4,6	0,8	1,5	2,4	86,5	12,8	22,3	51,4
2002	4,2	0,8	1,4	2,2	85,7	11,8	22,0	52,0
2003	4,3	0,8	1,6	2,1	84,4	12,6	21,5	50,2
2004	4,1	0,8	2,0	2,3	83,9	13,1	21,2	49,5
Italy								
2001	2,7	1,0	0,3	1,3	94,6	13,6	46,6	34,4
2002	4,2	1,0	0,4	1,3	93,0	13,1	51,1	28,7
2003	6,8	0,6	2,2	1,3	86,6	10,1	39,2	37,2
2004	6,6	0,6	2,4	1,5	87,5	10,0	39,5	38,0
Netherlands								
2001	15,0	3,2	10,0	2,2	69,3	13,7	19,1	36,6
2002	16,3	3,4	8,0	2,1	70,0	15,9	19,6	34,4
2003	17,6	3,6	7,1	2,2	69,2	17,4	19,6	32,2
2004	16,7	3,7	6,7	2,3	70,3	16,9	19,4	34,1
UK								
2001	4,9	0,4	7,8	2,1	77,7	12,7	21,1	44,0
2002	5,3	0,5	7,8	2,0	79,0	13,6	21,5	43,9
2003	5,7	0,6	8,1	2,2	83,0	16,2	22,4	44,4
2004	5,7	0,6	8,9	2,8	76,4	15,4	23,3	37,8
China								
2001	5,3	0,9	3,2	1,7	88,6	4,9	48,1	35,6
2002	5,0	0,8	2,6	1,6	89,9	4,6	46,3	39,0
2003	4,4	0,7	2,5	1,6	90,6	4,4	43,3	42,8
2004	3,5	0,5	2,4	1,9	91,4	4,4	41,8	45,2

Source: UNCTAD: Handbook of International Trade and Development Statistics, various issues.

## EU and China: import structures by main categories

SITC	All food items (0+1+22+4)	Agri-cultural raw materials (2 – (22+27+28))	Fuels (3)	Ores & metals (27+28+68)	Manu-factured goods ((5 to 8) – 68)	Of which		
						Chemi Prod. (5)	Other Manuf. ((6+8) – 68)	Machi .&equip.(7)
France								
2001	8,2	1,7	9,5	2,7	77,7	12,5	26,7	38,5
2002	8,7	1,7	9,2	2,5	77,8	12,9	27,2	37,7
2003	8,8	1,7	9,7	2,4	77,4	13,4	27,2	36,8
2004	8,2	1,5	10,8	2,6	76,7	13,1	26,9	36,7
Germany								
2001	7,5	1,7	8,8	3,5	74,0	10,4	24,6	39,0
2002	7,3	1,6	8,1	3,2	71,2	10,3	23,2	37,7
2003	7,3	1,6	8,7	3,0	70,4	10,4	23,0	37,1
2004	6,8	1,5	9,2	3,4	69,3	10,8	21,9	36,6
Italy								
2001	8,7	3,5	9,2	4,2	68,5	12,1	23,3	33,1
2002	9,0	3,3	9,1	3,8	69,4	12,7	23,5	33,2
2003	9,3	3,0	9,2	3,5	68,7	12,9	23,3	32,5
2004	9,2	2,8	9,6	4,1	69,6	13,1	24,1	32,4
Netherlands								
2001	9,8	2,0	11,5	2,9	73,7	10,4	22,0	41,4
2002	10,4	1,9	11,6	2,4	73,6	11,1	22,9	39,6
2003	11,6	2,0	11,9	2,7	71,7	12,5	23,2	36,1
2004	11,5	1,9	11,6	2,7	72,3	12,0	21,8	38,4
UK								
2001	7,9	1,5	4,3	2,7	77,3	9,3	26,5	41,6
2002	8,3	1,5	4,1	2,2	79,1	10,2	27,5	41,4
2003	8,9	1,6	4,6	2,2	82,1	11,1	27,5	43,6
2004	9,0	1,5	6,5	2,3	77,2	11,1	28,0	38,2
China								
2001	3,8	4,3	7,2	5,9	78,0	13,0	21,2	43,9
2002	3,3	4,0	6,6	5,3	80,2	13,0	20,9	46,4
2003	3,6	3,7	7,1	5,6	79,6	11,7	21,1	46,8
2004	3,8	3,7	8,6	7,3	76,3	11,5	19,7	45,1

Source: UNCTAD: Handbook of International Trade and Development Statistics, various issues.

China uses the United States, EU and Japan as their most important outlets for exports of its primary products, labor-intensive manufactures and a growing range of capital-intensive manufactures, imports of high-tech machinery and equipment. The EU countries, being relatively (and absolutely) more capital

abundant than China, is exporting capital-intensive goods to China. And at the same time, import labor-intensive goods from China since they are labor absent countries both in the absolute sense and in the relative sense of having an overall labor to capital ratio lower than China. This seems in comply with the traditional trade theory based on comparative advantage as a determinant of trade flows. As we can see, the striking feature of China's trade pattern is its growing trade dependence on importing raw material and resources, and export more labor-intensive products. In 2001, about 20 % of its total imports are raw materials and high value-added products, and 46 % of its exports were low-added value. This could offer rising opportunities to the EU countries and expand the China – EU bilateral trade, EU – China trade has doubled between 2001 and 2005 making Europe China's largest export market, EU exports to China have also increased by more than 100 % between 2001 and 2005, much faster than its exports in the rest of the world.

In order to promote sustained development of the domestic economy, a series of macroeconomic policy adjustments has been adopted to diversify Chinese sole export structure, which included liberalization of foreign direct investment, encouraging high value-added goods such as automobiles, chemicals and mining machinery. As a result of these policy changes, its reliance on exports of traditional resource-based products has gradually shifted toward engineering products requiring greater input of skills and technological sophistication. In 2005, Chinese exports of new and high-tech products increased 32 percent. They accounted for 29 percent of total exports, an increase of 11 percent over 2001. Exports of textile products, white goods, toys and shoes reported moderate export growth. Exports of billets, unforged aluminum and coke dropped by 36 percent, 20 percent and 11 percent year on year, respectively.

Compared with the EU countries' import structures, China possesses a quite similar commodity composition of its imports. As shown in Table 4, China's imports are now dominated by manufactured imports, as a result of its market-oriented



economic policy and efforts toward export-oriented industrialization. In 2004, China's imports consisted of 15,9 % fuels, minerals and metals, and 76,3 % of China's imports was manufactures, of which machinery and transport equipment accounted for 45,1 %, chemical products for 11,5 %, and other manufactures for 19,7 %. The changes in the composition of manufactured imports showed that China's strategic policies to import foreign intellect to speed up its economic construction and social development, and is one important aspect of in the implementation of the opening-up policy.

To compare China and EU's overall trade structures, one notable feature is the high similarities of import and export structures and lack of complementarity in absorbing each other's products except for China's labor-intensive products. This feature helps explain the increasing EU trade deficit.

### **(3) Trade interdependence between China and EU**

The growth of China – EU bilateral trade is very impressive. In 2001, China's total two-way trade with EU was US\$ 96,7 billion. It roses to US\$ 339,3 billion in 2005, 3,5 times the value of 2001. During this period, China's exports to EU countries grew from US\$ 68,9 billion in 2001 to US\$ 255 billion in 2005, while imports from EU grew from US\$ 27,8 billion to US\$ 84,3 billion, respectively. The balance of trade has almost remained in China's favor. The relative trade interdependence between China and EU is illustrated in Table 5.

As indicated in Table 5, China is more important as a source of supply for imports of the EU countries rather than as an outlet for EU's exports. One may note that in 2001 EU as a whole shipped only 11,4 % of its total exports to China, which is smaller than the share (25,9 %) it purchased from the Chinese market in the same year, EU's dependence on the Chinese market as the source of supply increased steadily from 2,5 % in 2001 to 3,7 % in 2005. Consistent with this trend, sales to China grew rapidly from 1,2 % of EU's total exports in 2001 to 1,8 % in 2005. Such rapid growth of trade interdependence between China and EU should attributed to the

liberalization of institutional factors, while the small scale have to be explained by the similarities of trade structures.

Table 5

**Chinese trade interdependence with EU countries (in percentage)**

	Exports to China as % of total Chinese imports					Exports to China as % of the exporting country's total exports				
	2001	2002	2003	2004	2005	2001	2002	2003	2004	2005
EU	11,4	11,2	11,2	10,6	15,2	1,2	1,3	1,5	1,6	1,8
France	1,3	1,8	1,3	1,2	1,4	1,1	1,2	1,5	1,5	1,6
Germany	4,4	4,6	4,9	4,6	4,7	1,9	2,2	2,7	2,8	3,1
Italy	1,2	1,3	1,1	0,9	1,4	1,2	1,5	1,5	1,8	2,1
Netherlands	0,4	0,5	0,4	0,5	0,7	0,5	0,7	0,7	0,9	1,1
UK	1,0	0,7	0,7	0,7	0,9	0,9	0,8	1,0	1,3	1,9
	Imports from China as % of total Chinese export					Imports from China as % of the exporting country's total imports				
	2001	2002	2003	2004	2005	2001	2002	2003	2004	2005
EU	25,9	24,7	26,3	26,4	26,9	2,9	3,3	3,8	4,4	4,6
France	2,8	3,3	2,4	2,4	2,3	2,5	2,6	2,9	3,3	3,7
Germany	6,6	6,1	6,4	6,8	7,0	3,6	4,1	4,6	5,6	6,4
Italy	2,5	2,4	2,4	2,4	2,6	2,8	3,2	3,6	4,9	5,1
Netherlands	3,5	3,4	3,8	3,9	4,1	4,8	5,7	7,2	8,3	8,7
UK	3,2	3,2	3,2	3,3	3,5	2,7	3,1	3,7	4,3	5,2

Source: UNCTAD: Handbook of International Trade and Development Statistics, various issues.

Among the EU member countries, Germany depends most heavily on Chinese market mainly for its imports of light and textile industrial products, minerals metallurgical and human capital-based manufactures, ranging from 6,6 % of its total imports in 2001, to 7,0 % in 2005. The Chinese market also attracted 1,9 % in 2001 and 3,1 % of Germany's total exports in 2005, accounting for 4,4 % and 4,7 % of the Chinese total imports respectively. In value terms, Germany imports from China

grew from US\$ 17,7 billion in 2001 to US\$ 32,5 billion in 2005, while exports to China grew from US\$ 10,8 billion to US\$ 30,7 billion. This made China Germany's seventh largest import partner, and tenth largest export partner. It is interesting to note that the Chinese market has become increasingly important for agricultural resource-rich France as an outlet for its exports. The share grew rapidly from 1,1 % in 2001 to 1,6 % of France's total exports in 2005. This could be attributed to its strong comparative advantage in the agricultural resource-intensive industry relative to China, as shown in the next section.

As mentioned before, Chinese trade dependence on the EU countries is relatively greater than the latter's dependence on China, especially in labor-based and capital-intensive manufactures categories. The share of EU's imports from China accounted for 25,9 % of total Chinese exports in 2001, increasing to 26,9 % in 2005,. Germany remained the most important market among EU countries for China's exports in 2001 – 2005. China's share in the total imports and exports of other EU countries has not increased much. Once again, this suggests a wide scope for the future expansion of the complementary commodity mixes of China and EU's imports and exports. This conclusion is lent further support by the analysis of changes in comparative advantage in the following section.

## **2. Changes in Comparative advantage**

Table 6 illustrates the “revealed” comparative advantage for the economies of China and EU. As would be expected, the technology-rich EU economies have sustained a high level of comparative advantage in technology-based products in the sample period. This advantage has determined the structure of EU's exports to be predominantly of capital-intensive and technology-intensive goods.

China's open-door policy and drive toward market economy have allowed it to gain advantage more rapidly in the labor-intensive, human capital-intensive and gradually high-value goods exports. As for the export of agricultural and mineral

Table 6

**China and its first-five trade EU partners indices  
of revealed comparative advantage**

	Agricultural Resource- intensive	<b>Mineral</b> Resource- intensive	Unskilled Labor- intensive	Human Capital- intensive	Technology- intensive good
Germany					
2001	0,09	0,04	0,02	1,85	2,25
2002	0,08	0,06	0,03	1,88	2,31
2003	0,08	0,05	0,04	1,82	2,31
UK					
2001	0,12	0,95	0,16	1,81	5,56
2002	0,11	1,05	0,17	1,75	4,67
2003	0,12	0,92	0,19	1,85	4,86
Netherlands					
2001	3,08	2,67	0,15	0,41	2,93
2002	3,02	2,73	0,11	0,38	2,99
2003	2,95	2,49	0,09	0,21	2,81
France					
2001	4,69	0,23	0,63	4,98	3,05
2002	4,82	0,34	0,50	4,95	3,12
2003	4,87	0,39	0,48	4,89	3,23
Italy					
2001	0,27	2,94	3,43	3,49	2,60
2002	0,24	2,13	3,36	3,34	2,89
2003	0,20	2,18	3,25	3,30	2,94
China					
2001	0,57	0,28	6,08	1,59	1,53
2002	0,55	0,26	4,91	1,63	1,89
2003	0,48	0,24	4,52	1,92	2,81

Source: Calculated by author from UNCTAD: Handbook of International Trade and Development Statistics, various issues.

resource-intensive goods, China has been losing its comparative advantage over the last decades. This finding is in line with what we observed about the changes in China's export structures during the period, and implies that China's foreign trade has been conducted more closely according to its comparative advantage. It is also interesting to note that the measures of comparative advantage for China have evolved close to or similarly to those of the Asian newly industrial economics in the

1970s, implying that China is likely to follow the general industrialization paradigm in shifting and composing its export structures.

In comparison with the EU economies, China has apparently certain disadvantages in agricultural resource-based goods relative to France and Netherlands, in human capital-intensive commodities relative to France and Italy, in technology-intensive products relative to all selected EU countries, and possesses greater comparative advantage in labor-intensive goods relative to all selected EU countries. The “revealed” comparative advantage suggests a wide scope for the future expansion of China – EU bilateral trade. China will increase its imports of agricultural resource-intensive and technology resource-intensive products from the EU economies, while exporting in turn more labor-intensive. The “revealed” comparative advantage indices show a difference between China and EU countries, China gaining advantage rapidly in human capital-intensive manufactures and technology-intensive exports, which some EU countries are losing advantage in. From this, it should not be surprising to observe a dynamic economic relationship between China and EU, interacting both competitively and complementarily. Intense competition is to be expected in the manufactured goods category, particularly in human capital-intensive goods and increasingly in technology-intensive goods, both in EU and the rest of the world markets. On the other hand, direct investment will be increasingly important in the development of China – EU economic interdependence.

It is apparent that China and EU are at different stages of industrial development and have different production structures. Trade conducted between them is more complementary in nature. In the short and medium run, the present China – EU trade pattern will persist, as China has a high demand for EU’s technology-based exports for which meeting the needs of its rapid economic development. EU has, in turn, a demand for the labor-intensive and some kinds of human capital-intensive goods and services that China can supply with comparative advantage.

But changes in comparative advantage for China and EU indicate that commodity mix complementarity existing in certain goods categories and between individual

countries are gradually decreasing. As both China and EU have been rapidly developing their comparative advantage in the capital-intensive and technology-intensive manufactures, severe competition would be expected, both directly and indirectly, in the EU market and the rest of the world market, reflecting the “dynamic” nature of their trade relationship. To cope with the severe competitive threat, both China and EU started to shift, at least partially, certain technology-intensive and capital-intensive manufactures to each other and heavily promote outward investments in those fields where they do not have/retain comparative advantage relative to the opposing party. This trend has become more obvious since the beginning of 21 century.

### **3. Two-way investments between China and EU**

The trend in FDI flows has been quite dynamic over the past five years, with a substantial increase of two-way investment flows in the period 2001 – 2005. Substantial investment by European companies in the Chinese market – in particular in the telecommunications, car manufacturing, retailing and insurance sectors – have made the EU the largest source of FDI into China in recent years. Conditions on both sides have to be created to take advantage of the positive trade off between China and Europe, on the one hand offering very low labor costs and a large potential market and on the other hand providing management expertise, brands and technology. China and EU enjoy strong economic complementarity. Also, it is clear that China’s rapid economic growth provides large opportunities for EU companies in one of the biggest markets in the world: the rise in wages in China is leading to an increasing domestic demand and thus a growing potential market for imports. An additional asset is China’s convenient geographical position, which allows it to be used as an export platform for third countries markets, in particular in Asia.

EU committing direct investment in China, on one hand, has matched the increasing trend of EU’s export to China, on the other hand, has matched the increasing trend of China’s high value-added exports. Given Skilled labor, being plentiful, is also very cheap, EU multinationals in China are not only processing goods, assembling parts

but, more and more, doing research and conception at the top level of the world innovation frontier, in turn, provide for the acceleration of its climbing of the technological ladder and exports of high-tech goods.

According to Ministry of Commerce of China, the electrical machinery manufactures attracted the bulk of foreign investment, followed by food-processing industry, petroleum and chemicals, textiles and clothing, and heavy industry. These industries are in fact the ones in which some EU countries have been experiencing declining or lack of comparative advantage relative to China. It would be advantageous for those firms to invest accordingly in China instead of organizing production at home. The investment distribution in the five sectors as classified according to its factor-intensive uses shows this trend clearly. Of total FDI in forming Sino-foreign joint ventures, was in 9,2 % agricultural resource-intensive industry, 14,2 % in unskilled labor-intensive manufactures, in 5,6 % mineral resource-intensive sector, and finally 35,2 % and 35,8 % went to the human capital-intensive and technology-intensive industries, respectively. This investment pattern shows a complementarity that corresponds to revealed comparative advantage as described in the previous section. As the technology-intensive and human capital-intensive industries are the ones in which China has a comparative disadvantage relative to EU, China received over 70 % of EU's capital in forming joint ventures. This finding accords with Kojima's macroeconomic theory of foreign direct investment that outward direct investment facilitates structural adjustment in the investing country by transferring abroad the industries in which the country is losing its comparative advantage.

Considering that China appears an increasing similar trade structure to that of EU after 2001, one may think that it is to China's advantage to shift the corresponding production to EU in order to maintain or enlarge its market share and complement its comparative advantage. But actually it is not the case. Table 7 shows the amount of foreign FDI in China by country of origin, as well as the stock of FDI owned by China in each economy. As can be seen from the table, in the 10 new countries of the EU, there is not FDI with China. Those countries have not yet invested in China and,

Table 7

**FDI stock in China by EU countries and FDI stock own by China  
in the corresponding economy (Billions of US dollars) by 2004**

	FDI stock in China	China stock of FDI
Austria	0,35	0
Belgium	0,5	0
Denmark	0,18	0,074
Finland	0,35	0
France	5,5	0
Germany	8	0,08
Greece	0,03	0
Ireland	0,035	0
Italy	2,2	0
Luxembourg	0	0
Netherlands	5,5	0
Portugal	0,07	0
Spain	0,35	0,102
Sweden	0,81	0
United Kingdom	10,7	0,076
Cyprus	0	0
Czech Rep.	0	0
Estonia	0	0
Hungary	0	0
Latvia	0	0
Lithuania	0	0
Malta	0	0
Poland	0	0
Slovakia	0	0
Slovenia	0	0

Source: World Economic Forum interactive Map on China.

correspondingly, China has not yet invested in these economies. For the other 15 economies, the situation is better, but in most cases, unilateral. In other words, most of the countries own a stock of FDI in China, but there is no corresponding FDI from China. There are only four countries where China has a positive stock of FDI: United Kingdom, Germany, Spain and Denmark. But this stock is much lower than the corresponding stock of FDI of the same countries in China.



European FDI in China is massive, whether than China FDI in Europe is close to zero. This FDI disequilibrium gives another explanation for EU's high trade deficit: a good part of Chinese exports of high value (e.g., telecom equipments, office equipments, etc.) to the EU is due to the presence of foreign multinationals in China, they have been largely responsible for the country's dynamic export expansion.

Thanks to its persistent trade surpluses and huge influx of FDI through most of the 1990s, China has achieved a very strong external balance and rising foreign exchange reserves. In fact, due to the positive saving-investment and export-import gaps, the economy has, for years, experienced a net resource outflow. Technically speaking, China's economy can sustain significant capital outflow for investment purposes. China has a few emerging multinationals, but these companies are much less present in world market than their European, American or Japanese counterparts because they are not as strong as foreign counterparts and are unfamiliar with overseas markets. It might be useful to take is the most practical way which would be, for China, to encourage its own firms to invest abroad more aggressively, particularly in the EU.

### **Conclusion from the research**

It has been shown that China trade dependence on EU is relatively greater than the latter's trade dependence on Chinese economy. China is slightly more important as a source of supply for imports for the EU countries than as an outlet for EU's exports. Given the strong complimentary of their market structures and their current patterns of the revealed comparative advantage, it is not surprising that trade between China and EU have a broad market space to develop, but China's dynamic comparative advantage features determine the dynamic nature in the development of China-EU trade interdependence, with both competitive and complementary interaction. EU's direct investments in China show a complementary which corresponds to its comparative advantage. The industries in which EU have been losing or lacking comparative advantage received the bulk of its total FDI in China.

This finding is consistent with the macroeconomic theory of foreign direct investment pioneered by Kojima.

Among the EU countries, Germany is China's largest trade partner and FDI investor. They have a quite complementarity trade structure between China and Germany existing in the labor-intensive and technology-intensive goods trade. In comparison with the rest of EU, it has been shown that China possesses a comparative disadvantage in agricultural resource-intensive goods relative to France and Netherlands, in mineral resource-intensive goods relative to Netherlands and Italy, in human capital-intensive relative to France and Italy, and in technology-intensive goods relative to all EU countries. China has a comparative advantage in labor-intensive products relative to all EU countries, in human capital-intensive products relative to Netherlands. Trade in those sectors can be expected to expand between China and these countries. China has an increasing demand for industrial raw material and agricultural products because of its industrialization drive. The competition is expected to be more intense between them in the human capital-intensive and technology-intensive manufactured goods category with the movement of the comparative advantage of China toward high value-added manufactures.

To complement its comparative advantage, China should commit direct investment in EU primarily in technology-intensive and human capital-intensive manufactures in which it has no comparative advantage relative to EU. The economic interdependence between China and EU is expected to increase given the high commodities mix complementarity between the countries, appreciation of the China RMB, and the promotion of regional trade and investment by China government as a part of its long-term strategy.

The long-run economic interdependence between China and EU will be further strengthened following the implementation of their industrialization programs and the rapid integration of the Chinese economy into the world economy. Although the rapid expansion of the Chinese economy may generate certain negative spillover effects on the EU economies in the short run, the potential economic benefits for EU from an

economically resurgent China far outweigh the costs. Most prominently, China's openness to the outside world and rapid economic expansion will offer rising opportunities to the EU countries for expanded trade and a greater outlet for their direct investment, and contribute to EU's efforts at diversifying the highly concentrated market structures of its foreign trade.

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**ON BUILDING THE PARTNERSHIP BETWEEN THE CHINA CUSTOMS  
AND THE BUSINESS COMMUNITY FROM THE PERSPECTIVE OF THE  
FRAMEWORK OF STANDARDS TO SECURE AND FACILITATE GLOBAL  
TRADE**

**Abstract**

The WCO has developed the Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as “the Framework”). It defined the relationship between the Customs and the business community as partnerships. There are, however, some differences within the China Customs-to-business relationship. On fully understand the connotation of partnership, and with the help of the business associations, the China Customs should realize the changing of its role from the traditional “Customs controller” to the Customs service provider. The information controlled thus should get transparent and the target should thus be transferred from the big enterprises to the small and medium sized enterprises.

**Key words:** Framework of Standards, Customs, Business Community.

**Introduction**

With the development of the international trade, the single relationship of “control” and “be controlled” between the Customs and the business community can no longer suit the demand of the fast growing trade volumes.

On solving this problem, the Revised Kyoto Convention points out that, to improve the cooperation with the trade circles, the Customs shall establish and maintain a formal consultative relationship with the trade community to enhance cooperation and facilitate the trade sectors to participate in determining the most efficient working methods that in line with the domestic regulations and international agreements. But as to the question of how to build this formal consultative relationship, it only suggests the form of using the memo of understanding<sup>1</sup>, without giving the specific plan. Since 2001, the terrorist attacks like 911 compelled the international community to pay great attention to the trade security. All sides had put forward different policies and measures concerning the trade security. With no doubt, it adds to the cost of trade. The question of how to balance the trade facilitation and trade security has been and will be a difficult issue for the international community for a long time. And at the meantime, it injects new connotation and energy to the Customs-Business relationship.

June, 2005, the World Customs Organization (WCO) had developed the Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as “the Framework”) to simplify the Customs procedures and facilitate trade (on the prerequisite that the supply chain is secured) by using tools like data exchange, pre-declaration, risk management, etc. The Framework has defined the Customs-Business relationship as partnership in pillar 2 and the annex<sup>2</sup>. The Framework also discusses in details the co-operation between the two and the content of the Framework of Standards.

As a responsible developing country, China had also signed the letter of intention for implementing the Framework.<sup>3</sup> It fully revealed the willingness of a positive participation and a steady implementation of the framework. As to how to build the

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<sup>1</sup> Translated version of the Kyoto Convention by China Customs Press, 2003, pp5-6.

<sup>2</sup> The definition of *cooperation between Customs and Business* in second pillar of The Framework as *Each Customs administration will establish a partnership with the private sector in order to involve it in ensuring the safety and security of the international trade supply chain.*

<sup>3</sup> Chinese government has presented the statement of implementing the Framework on 105th/106th Annual Sessions of WCO Council on June 24,2005.

Customs-business partnership, China Customs is still on the way of exploration. The author would compare the current situation of the China Customs-business cooperation with the requirements of the framework and discuss the connotation of the word “partnership”, so as to think of a way to build this partnership between China Customs and the business community.

## **Research results**

### **I. Compare the Current Situation in China with the Requirements of the Standard Clauses of the Framework**

#### **(I.) Content of the Framework**

The Framework has regarded the Customs-Business partnership as its second pillar. And

##### **1. Standard 1 – Partnership**

Authorized Economic Operators (AEOs) involved in the international trade supply chain will engage in a self-assessment process measured against pre-determined security standards and best practices to ensure that their internal policies and procedures provide adequate safeguards against the compromise of their shipments and containers until they are released from Customs control at destination.

##### **2. Standard 2 – Security**

Authorized Economic Operators will incorporate pre-determined security best practices into their existing business practices.

##### **3. Standard 3 – Authorization**

The Customs administration, together with representatives from the trade community, will design validation processes or quality accreditation procedures that offer incentives to businesses through their status as Authorized Economic Operators.

##### **4. Standard 4 – Technology**

All parties will maintain cargo and container integrity by facilitating the use of modern technology.

### 5. Standard 5 – Communication

The Customs administration will regularly update Customs-Business partnership programmes to promote minimum security standards and supply chain security best practices.

### 6. Standard 6 – Facilitation

The Customs administration will work co-operatively with AEOs to maximize security and facilitation of the international trade supply chain originating in or moving through its Customs territory.

## **(II.) The Current Situation of China Customs-Business Co-operation**

In recent years, especially after China's accession into the WTO, the Customs had a better understanding that the relationship between the Customs and the enterprises are not only the controller and the be controlled, but also the service provider and the be served. The relationship between the two should be defined as a co-operative partnership.<sup>4</sup> The China Customs had adopted a series of measures to promote—especially with the Customs directly affiliated to the General Administration of Customs—the Customs-business co-operation mode with the local characters.

For instance, since March 9th, 2005, Shenzhen Customs had implemented the “client coordinator system”—the Customs appoints the client coordinator to provide the enterprises which applied for the system with tailored service and mill-based management. It is a Customs control system providing the enterprises with facilitation in clearance process.

According to the statistics provided by the Customs Management Office of Shenzhen Customs, after the implementation of the “client coordinator system”, the enterprises applied for the system had enjoyed a much quicker e-document checking service. And the time taken from applying for the declaration to the Customs feedback is shortened to less than 1 minute from the previous 50 minutes.

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<sup>4</sup> Zeng Qinglong, “Customs-Business : a new defenation of Co-operation parternship”, China Customs, Feb. 2003.

The time of checking the paper documents has been greatly shortened. The time of the release of the shipment in the sea port areas has been shortened from 3-4 hours to 4 minutes. In the old days, for enterprises in the processing trade, they needed to go through the formalities of contract filling, written off, and proforma declaration, etc., and should at least go to 3 offices, but now these offices had integrated as one. The approving time of the alternation to the content of the electronic account books of the processing trade had shortened to one day from the previous three days.<sup>5</sup>

For another example, from September 6th, 2006, Nanjing Customs had opened the commissioner hotline as a uniform channel to connect the import and export companies with various circles of the society. It mainly deals with business consulting, complaints, and letters and visits within the Customs regions; timely solving the problems emerged during the entry-exit process of the import and export companies; timely resolve the conflicts or the potential conflicts between the Customs and the enterprises; and try to create a harmonious atmosphere between the two.

Facts prove that commissioner hotline had directly replied to more than 60% of the business consulting issues which should be, and greatly released the pressure of the working site and the functional departments. The humanistic services positively solved the conflicts existed between Customs and enterprises and also prevented in the first place the administrative lawsuit and administrative Reconsideration cases.<sup>6</sup>

In order to further adapt to the development trend of the international Customs, enhance the Customs-business co-operation and promote trade facilitation, China Customs has formally adopted the Customs Enterprise Category Management Approach, which states the corporate governance category according to its credibility and law abiding levels. The five management categories are: AA, A, B, C, D.

According to the principle of facilitation for the law abiding passengers and goods, the Customs take different management measures toward different categories of

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<sup>5</sup> Jin Ying, Li Yizhang, Chen Yanqun, "The Parato Principal of Shenzhen Customs", China Customs, Nov. 2007.

<sup>6</sup> Chen Yinjian, "The good service of commissioner hotline", China Customs, Dec. 2007.



enterprises. After using this approach, the enterprises and society had largely recognized the good effects of the principles and measures like: “facilitation for the law abiding passengers and goods, different management, dynamic adjustment, Customs-business co-operation, trade security, etc. these measures encouraged the enterprises to have good self-discipline and standardized management, so as to promote the healthy development of the enterprises and be a model unit.

### **(III.) Comparison**

#### i. Similarities

In determining the relationship between the two, both sides have described the Customs-business relationship as “partnership”. And both adopted the ideal of facilitation for the law abiding enterprise; classified the law abiding ones and grant them with facilitation. In the post management, both sides have adopted the method of “dynamic management”, i.e., to view the co-operative relationship between Customs and the business community from a developing perspective.

#### ii. Differences

##### (i.) Difference in final purpose.

The final purpose for the implementation of standard clauses of pillar 2 of the Framework is the trade facilitation on the prerequisite of trade security, i.e. trade facilitation after security. Here “security” emphasized the comparative safety against the global trade security threats like terrorist attacks. In China, trade facilitation is first to trade security, i.e. to protect trade security on the prerequisite of trade facilitation.

##### (ii.) Difference in the status.

The Framework indicates the relationship between Customs and the business community is “partnership”, in China, it is the same. However, the Customs officers in China all take a positive attitude in providing Customs services while the enterprises take a passively-accepting-attitude.

##### (iii.) The identification of business community

The Framework identifies the business community as the “Authorized Economic Operators (AEO)” The identification standard is the supply chain. That is, all the operators involved in the supply chain can be included in this community. There is a close connection between these people. But in China, whether the people are in business community or not just largely depend on the activities, whether these activities are directly related to the import and export or not. The relationship between the involved people is weakened in the identifying process.

(iv.) Different coverage.

The standard clauses of pillar 2 of the Framework not only cover the two entities of Customs and the business, but also include the third organization behalped by the business association. In China, the co-operation is just between China Customs and the business community, normally without the participation of the third party.

(v.) The scope of the facilitation.

Although the Framework has not indicated the facilitation means, it points out that the facilitation should be maximized. In China, the facilitation is only in the clearance of commodities, not diversified.

## **II. Analysis of the Connotation of “Customs-Business Partnership”**

Because of the restrictions of the Framework, the Customs-business partnership is the lowest standard the WCO members should achieve. It has not explained in detail the connotation of “partnership”. In fact, the international community has not reached the final agreement on this term. And to put it in another way, that is what the Framework is for.

(I)The focus of the connotation of “partnership”

From the regulations about the co-operation and communication of Customs and business community in Kyoto Convention, we note that though there is no definite wording about partnership, the underlying connotation is still about partnership, with the focus still on trade facilitation, while in the Framework, the focus of the connotation of partnership moves to trade security. The final purpose of trade

facilitation is trade security, with national security lying behind. Although both are about “partnership”, the focus of the connotation is quite different.

### (II.) The main constituents of partnership

The main constituents of the partnership are Customs and the “Authorized Economic Operators (AEO)”. The connotation of AEO is getting bigger from the scope of the main constituents--from the original importer and exporter to the carrier, warehouse owner, brokers, etc. the extension of the concept is in the trend of including the organizations that are not purely business entities into the partnerships. From the size, AEOs are not only from the big enterprises but also from small and medium sized enterprises. From the nationalities, the current practices are mainly focused on the AEOs from inside the country, but still welcome the AEOs from abroad. On the long run, due to the close connection of the supply chain worldwide, AEOs in and abroad may all become the main constituents of the partnership

### (III.) The goal of the partnership

The Framework believes that the goal of the partnership is to ensure the security of the international trade supply chain, so as to safeguard the enterprises which belong to the partnership to have its influence in the supply chain. The goal of the partnership is to realize the maximum benefits between the two—the win-win situation of the trade security and trade facilitation. The security of the supply chain is an important step to the win-win situation. The international trade supply chain is the best linking chain for Customs to extent its power. To AEO, the supply chain management is regarded as one of the key points that would create value and profits.

### (IV.) The core of partnership

The Framework points out that the core of the partnership is the creation of an international system for identifying private businesses. This system should possess a series of qualification standards so as to identify the enterprises applying for the partnership. The other activities of the partnership are all started from this system. Due to the connection of the international supply chain, the system should be flexible,

developable and compatible, and develop to be the best uniform identifying system the Framework has required.

(V.) The link of the Partnership

To Customs and AEO, the link of the partnership is the exchange of the benefits of both sides. The Customs can extend its power into every sector of the supply chain with the participation of the AEOs, so as to greatly increase the level of trade security. And the AEOs not only benefit from the trade facilitations provided by the Customs but also would benefit directly from the safe trading environment.

(VI.) Implementing procedures of the Partnership

Firstly, drafting the security guidelines—the Customs and other organizations would work together to draft a guideline in accordance with the lowest security standard requirement. Secondly, self-assessing period—the AEO applying to join in the partnership would do the self-evaluation according to the security guideline. Thirdly, create an identifying system—Customs and other organization would work together to create an AEO qualification identifying system. And lastly, the benefiting stage—the Customs would grant the AEOs with the said benefits.

(VII.) The features of the Partnership

i. Voluntarily join in the partnership at the early stage.

This is for the enterprises applying for the partnership. The Framework points out with the binding force on the Customs side that all Customs should build partnership with enterprises. Meanwhile the AEOs can choose to join the partnership or not according to their own requirements. the application for the partnership is voluntary.

ii. The binding force of the post management.

Once the enterprises gained the name of AEO, the Customs should grant them with the said facilitations, or they would not only lose this partnership, but also would lose the public trust of the government bodies. AEOs should arrange their business activities according to the security guidelines, or the facilitations they enjoy would come to an end.

iii. Non-barrier operational process

Non-barrier operational process means the operation of the partnership could not be a new kind of an enclosed trade barrier. Theoretically, the partnership could have two effects; the AEO would earn more profits because its cost is decreased due to the facilitations provided by Customs. The other enterprises, however, are discriminated because of this differentiated treatment. In order to avoid this circumstance, the partnership should open to as many enterprises as possible and grant all of the enterprise with the whole benefits of the partnership.

iv. The dynamism of the partnership.

The growing international trade and the instant changing of the international market demand require the according change of the supply chain. To ensure a high level of supply chain security, the partnership between the Customs and the AEO should be regularly adjusted.

### **III. Countermeasures for China to build Customs-business partnership**

China Customs should realize the changing of its role from the traditional “Customs controller” to Customs service provider. And with the help of the business associations, China Customs should build an equal partnership with the business community.

The management thought of China Customs are still the self-centered, and administration led. The controlling mode is still traditional--regard commodity as a unit, port fortify and put prevention in the first place. The management method is still in the extensive way; increase the institutions and the staff to suit the growing demand of the business. The level of information technology is still low and the net users are not wide enough.<sup>7</sup>The traditional role of Customs controllers is not in line with the partnership advocated by the Framework and also it is lagging behind the social needs for the transition of the functions of government organizations.

Currently, the development of the Chinese society requires the transition of government functions – to identify the government organizations as providers of the public goods. And at the meantime activate the third social party to join in the public

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<sup>7</sup> GAO Rongkun *System Innovation and Management Reform of the China Customs*, Economic Management Press, 2002, pp 31.

services. The China Customs, as a government organization should also be in this historical trend, changing its role from the entry-exit supervision and management organization to the providers of the Customs services. The services provided by China Customs in the previous years were in fact the transactions based on a framework of power and authority from superiors to the inferiors.

A series of facilitations provided by Customs to the business community could only be negatively and passively accepted because the business community had not actively participated in the process. The rights and interests of the business community are merely determined by the Customs. The Customs does not really care about whether the facilitations really benefit the community or not. The communication barriers between the two are not eliminated but increased. The conflicts and non-cooperation between the two can not be avoided. Customs as the service provider should communicate and discuss issues with the members from the business community within the Framework of equal partnership.

Considering that China has a large business community with a great many of members and within a wide region, it is not workable to put all the work on Customs. The third party thus should be the bridge connecting the two. Since the business association is an economic association putting the enterprises of the same trade as the main constituents on a voluntary basis<sup>8</sup>, the social status is comparatively independent and objective, thus it should be a good choice. The basic functions of the business associations are raising business plans, providing information, training the staff, providing consultation service, working as a media connecting government and the enterprises and providing services for promoting the sales for the products of the member enterprises, etc<sup>9</sup>. What should be noted is managing well the relationship between the Customs and business community is the prerequisite for trade associations to fully exert their functions.

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<sup>8</sup> QU Hongxiang, *Theories and Practices of the Development of Trade Associations* Economic and Science Press, 2003, pp 3.

<sup>9</sup> QU Hongxiang, *Theories and Practices of the Development of Trade Associations* Economic and Science Press, 2003, pp 8-11.

Normally, the relationship between the government and the trade associations is partnership, not the superiors and inferiors, neither guiding nor being guided, leading nor being led. The government and the trade associations should establish the “authorize---co-operation” relationship. The development of the associations should be promoted by the government, and should also rely on the self-discipline, self-management of the associations together with the efficient allocation of resources<sup>10</sup>. The Customs, while using the trade associations, they should also abide by the principle of “authorize---co-operation”. As a result, Customs should work out a regulation promoting the development of the relationship between the Customs and business associations. It could not only be the legal basis for the interactions of the two, but also could be a safeguard system for the trade associations to extent their functions. This regulation could include the following:

1. Positively foster and support the trade associations to perform their functions. For instance, the Customs can send experts to participate in the training and consulting activities organized by the trade associations, and can also analyze the developing trend and work out the development strategy according to their needs.
2. Take specific measures to guide the trade associations to perform the functions. For instance, Customs can build regular consultation system. In one aspect, the policies and measures set by Customs can soon be reached to the enterprises with the help of the trade associations. In another, the trade associations can express the hope and requirements of the enterprises to the Customs, thus form a fixed mechanism for exchanging the ideas and opinions.
3. Customs can authorize the trade associations to undertake business affairs. For instance, Customs can authorize the trade associations to do some researches of the enterprise of the same trade on supply chain security, or on the trade statistics or working out the business standard and support the trade association by the means of purchasing the research proposals.

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<sup>10</sup> QU Hongxiang, *Theories and Practices of the Development of Trade Associations* Economic and Science Press, 2003, pp 38-39.

4. Organize the development forums of various kinds regularly or irregularly to enhance the communication among the trade associations.

(II.) China Customs should change the situation of controlling the information to share the transparency of information, thus starting a virtuous cycle by building an interactive partnership.

The partnership could only exist among the equal entities and with a happy working mode. It should possess some basic qualities. The partnership between Customs and the business community put special emphasis on sharing the information and direct communication. The trade dealers are those who would probably support the Customs reform. They are the first people to bear interests from the transparent and quick clearance procedures. And they are also the first people to complain about the low efficiency and expensive service. Let them join in the process of designing and implementing the Customs reforms, and know the whole process is of key importance. The trade associations have great political influence, not only could gain more budget but also could put pressure on other government organizations—urge them to cooperate their work with the post-reform work of the Customs. The private entities can also supervise the process of Customs reforms; put their focus on the target of trade facilitation. During the process of the reform, they can also provide the financial support, as they are the first to benefit. From the example of Philippines and Turkey, we learn that as a return to the private entities, we can ask for their opinion on the aspects related to their benefits while making the Customs reform plans<sup>11</sup>

As a result, Customs when making plans and measures, should discuss with the business community, listen to their profit requirements, and work out the plan after listening to the interests of all sides. At the meantime, the measures adopted could meet mistakes due to the personal or objective factors. The Customs who grasp the information resources would know the implementation status and the environment change of the regulations through information feedbacks. The Customs change the situation of controlling the information to share the transparency of the information.

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<sup>11</sup> The translated version of Luc De Wulf, José B.Sokol s'"Customs Modernization Handbook" by China Customs Press 2008 , pp36-37.



In another aspect, the business community can pass its suggestions on the Customs regulations through various channels to Customs. The problems existed in the regulations could be well solved after a new round of profit revealing, interests integration, and plan amendments. The Customs and the business community can thus start a virtuous cycle of an interactive partnership.

(III) The China Customs should adjust the key points of the partnership, and make a shift from the big enterprises to the small and medium sized enterprises (hereinafter shortened as SMEs).

Currently, SMEs either in the developed countries or in the developing countries play an important function that could not be replaced. SMEs could play a positive role in many areas. (1) In the aspect of career. They can absorb the fired workers of the big enterprises because of the downsizing of organizations. (2) In innovation-They have potential professional abilities. (3) During the restructuring period of the globalization process, their mechanism is comparatively more flexible. (4) In the economic growth-they have greater import and export potentials.<sup>12</sup>

For a long time, China had ignored the development of the SMEs, especially when it exists that the SMEs have weak impact on the international trade that Customs focus its work on the big enterprises or the high-tech enterprises. In another aspect, the SMEs in China are growing with great speed, and play a more and more important role in flourishing the economy, increasing employment, promoting innovation and creating new industries. They become a main force to promote the development of national economy and build a harmonious society. Their contributions are: (1) contributes more and more to the economic development. (2) Become the main channel for employment and play an import role in building a harmonious society. (3) Become a main force for technology innovation. (4) promote the economic restructuring and optimizing. (5) Play an important role in the opening up to the outside world.<sup>13</sup> From the above, we can see that the SMEs have played an important

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<sup>12</sup> Aanalysis and Evaluation of German SME Promoting Policies, By German Technology Cooperation Company, pp29-30.

<sup>13</sup> [http://zxqys.ndrc.gov.cn/zsqyjb/t20080131\\_189149.htm](http://zxqys.ndrc.gov.cn/zsqyjb/t20080131_189149.htm).

role in the Chinese economy. And the clause three of article four of the SME Promotion Law requires that: The department under the State Council in charge of work in respect of enterprises shall arrange for the implementation of the State policies and plans concerning the small and medium-sized enterprises, making all-round coordination and providing guidance and services in the work regarding such enterprises throughout the country. This indicates that it is the Customs obligations to further enhance its guidance and services to the SMEs. Besides the Customs facilitation enjoyed by the partners, Customs should provide the SMEs under the partnership the following extra facilitation: (1) properly reduces or exempts the service fee. (2) Properly simplify the clearance procedures. (3) Grant the SMEs with more transitional time. (4) Set a specialized office within the Customs to be in charge of the Customs affairs concerning the SMEs. (5) Regularly organizes the consultation meetings to popularize the knowledge about Customs issues to the SMEs. (6) Regularly organizes the development forum for the SMEs to enhance the communication between the SMEs and the Customs. (7) Positively cooperate with the other government organizations and departments to implement the measures which promote the development of the SMEs.

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**CUSTOMS – BUSINESS PARTNERSHIP IN CHINA – CHALLENGES  
AND POSSIBLE SOLUTIONS**

**Abstract**

Customs-business partnership is a relationship between the customs and business community to maximize the long-term interests by cooperative means. It seeks to reduce trade transaction costs at the interface between customs and business and is an agenda item within many customs related activities. These include WCO SAFE Framework, supply chain security initiatives, as well as many customs modernisation programs. Although China has introduced AEO concept into its national legislation in order to implement a new model of enterprise-based customs control and simplify the customs procedures, the implementation is fraught with challenges and difficulties. These can be associated with the traditional idea of law enforcement, conflicting interests and lack of knowledge. In order to construct a modern and client-oriented customs system, we must realize that only through partnerships can the twin goals of customs control in the collection of government revenue and the supply chain security as well as trade facilitation be adequately achieved. Such mutuality has to be borne in mind when envisioning the future relationship between customs and the business community.

**Key words:** customs, business partnership, obstacle solution

### **Introduction**

The increasing threat of international terrorism and organized cross-border crimes require the enhancement of existing border controls and effective national and international cooperation between customs, other law enforcement agencies and business community. With the advent of economic globalization, Customs administrations and border control authorities of different countries are all faced with the same dilemma-increasing volumes of passengers and cargoes, but no corresponding increase in resources. Moreover, the great expectations for speedy clearance times from traders and travelers have put tremendous pressure on Customs around the world. Meanwhile, governments and society are also expecting these same

authorities to be rigorous in applying the law so as to protect the interests and security of their country.

In recent years, the traders have witnessed a myriad of inspections and controls applied at the border, such as customs inspections, veterinary inspections, phytosanitary inspections and immigration inspections, etc. If these inspections are not properly managed, the result is slow clearance times, delays to travelers, and increased costs to the traders and ultimately to the end consumer. One manner of addressing this problem is to construct a strategic partnership between customs and the business sector so as to effectively combat against illicit trade and to facilitate the legitimate trade.

Customs-business partnership forms a substantial part of modernisation programme in China as well as in many other customs territories. This includes the United State's security initiatives C-TPAT (Customs-Trade Partnership against Terrorism) Program, the European Union's AEO (Authorized Economic Operator) Programme stipulated in EU's Modernised Customs Code, the Association of Southeast Asian Nations' (ASEAN) commitment to interoperable single window systems, etc.

### **Problem statement**

The purpose of this article is to achieve the partnership between the customs and business community through the ability of customs administrations to reduce the regulatory impost on the international trading community, whilst achieving and maintaining appropriate levels of control.

### **Research results**

#### **I. Concept and the main elements of customs-business partnership**

There is no uniform definition of the term "customs-business partnership". To a large degree, customs-business partnership can be viewed as an extension of the efforts of each party to cooperate with each other in pursuing the shared objectives. Many customs administrations have adopted this partnership-based approach,

developing co-operative relationships with the private sector by signing instruments of cooperation and setting up platforms for collaboration, with the aim of expediting and simplifying trade and making it more secure. The benefits of partnership are manifold, and all are linked to the advantages of an environment where good will reigns.

The customs-business partnership contains three distinct but interacting elements-information, consultation and cooperation. It is a basic customs prerogative to demand information from the traders. For centuries there were no similar obligations for customs to inform the traders. Now the Revised Kyoto Convention and many national regulations enjoin regular diffusion of accurate customs information to the traders. Open dialogue involving the customs officers, stakeholders and interested parties helps ensure that customs rules and regulatory proposals keep pace with the reality of rapid change. This dialogue helps to achieve the regulatory efficiency customs need to foster best administrative and legislative practice tailored to meet the needs of the business sector. According to the WCO SAFE Framework, a customs-to-business partnership program should allow for the flexibility and customization of security plans based on the AEO's business model. The Customs administration should be receptive to the concerns of the AEO and its authorized representatives and determine, in consultation with them, a formalized method of communication that ensures that issues are properly received, addressed and resolved. The vital step from consultation to cooperation rests on the confidence and trust between the customs and business community.

## **II. China's obligation on customs-business partnership under the WCO Instruments**

Even though customs interacts constantly with business, the shape of the relations between these two international trade protagonists varies from state to state, depending on the economic situation, national culture, political imperatives and operational resources and requirements, etc. The WCO is an active body with an

interest in the field of construction of customs-business partnership within the customs world. The WCO has drafted numerous instruments and recommendations that contain the construction of customs-business partnership principles. One of the noteworthy examples includes the Kyoto Convention which first came into force in 1974, followed by the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures adopted in 2006. Moreover, relatively recent instrument that makes direct reference to the construction of customs-business partnership principles is the Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as the WCO SAFE Framework) adopted in 2005.

The Revised Kyoto Convention states in its general principles that “Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.” But the Revised Kyoto Convention has not made the concrete standards on how to institute and maintain these formal consultative relationships. Moreover, the Revised Kyoto Convention has not mentioned the terminology of “partnership”. However, the WCO SAFE Framework goes little further. It sets forth the principles and the standards and presents them for adoption as a minimal threshold of what must be done by WCO Members. One of the objectives and principles of the Framework is to strengthen customs-business cooperation. Nowadays, customs throughout the world have recognized that it is an unacceptable and an unnecessary burden to inspect every shipment. In fact, doing so would only bring the global trade to a halt. Consequently, modernised Customs administrations use automated systems to risk manage for a variety of issues. The Framework creates, amongst other things, the conditions for securing international trade, but also facilitates and promotes international trade. This encourages and makes it easier for buyers and sellers to move goods between countries. The Framework has also developed one set of international Customs standards that do not duplicate or contradict other intergovernmental requirements. The so-called customs-to-business pillar constitutes

an important part of the Framework. One of the standards of customs-to-business pillar is called “partnership”. Each Customs administration will establish a partnership with the private sector in order to involve it in ensuring the safety and security of the international trade supply chain. The main focus of this pillar is the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain. These business partners should receive tangible benefits in such partnerships in the form of expedited processing and other measures.

### **III. Objective of Customs-Business Partnership in China**

Although customs plays an important role in ensuring trade facilitation and in enhancing a business-friendly environment, much of this work can only be effectively implemented through a partnership with the business community. The “second-step strategic plan (2004-2010) of modern customs system” (Revised in 2006) in China stated: “compliance and facilitation is a necessity for Chinese customs to improve the level of law enforcement. Market economy is the legal economy as well as the credit economy, so we must act vigorously to regulate the import and export activities of the enterprises, to guide them to obey the laws and regulations with good faith, to safeguard the legitimate rights and interests of the enterprises and to provide maximum convenience to them while punishing the offenders pursuant to the laws and regulations so as to create a healthy and orderly environment of import and export.”

As a member of WCO, China has obligations to fulfill the commitments made in the intention statement for the WCO SAFE Framework. The Chinese government envisions to establish a close relationship with the business community for the mutual benefit of customs control, revenue collection and commercial activities. The long term objectives of Chinese customs are to establish a close relationship of trust and cooperation between customs and the business community, and to mutually reinforce

and integrate customs and business activities both for the better functioning of customs as well as for the benefit of trade and commerce.

#### **IV. Obstacles of Customs-Business Partnership in China**

China has revised the legislation “the Customs Measures of the People's Republic of China for Classified Administration of Enterprises” (CCAEC), which incorporated the concept and standard of AEO system on guaranteeing security and convenience of international supply chain, came into force on April 1st, 2008. Although China has introduced AEO concept into its national legislation in order to implement a new model of enterprise-based customs control and simplify the customs procedures, the implementation is fraught with challenges and difficulties. These can be associated with the traditional idea of law enforcement, conflicting interests and lack of knowledge.

##### **1. The traditional idea of law enforcement**

In the traditional customs control, the Chinese customs officer, acting as a “gatekeeper”, lacks the idea of service. They believe the relationship between Customs and the business community is a kind of management and managed. Legislative base provides for a “one size fits all” approach to compliance management. Onus for achieving regulatory compliance is placed solely on the trading community. The procedures are inflexible and the appeal mechanisms are simply ineffective. Although great changes have taken place from perspective of the idea of law enforcement in recent years, we still face many challenges in the field of establishing the client-oriented surveillance for the import, transit, and export of goods.

##### **2. Conflicting interests**

There are many examples of conflicting interest which hamper successful implementation of customs-business partnership initiatives. Customs, on the one hand need to enforce the law, on the other hand, they may find that is not optimally defined to suit the operational needs of business stakeholders. Conflicting interests in the



form and shape of the trade environment can arise through overlaps between different government departments' activities. For example, the avalanche of recent supply chain security controls can be described as 'security spaghetti' (Grainger 2007a) where different government bodies enforce similar procedures with similar control objectives. In this case, it will not only increase the costs but also cause the undue delay as well.

### 3. Lack of knowledge

Customs-business partnership is interdisciplinary in nature, bringing together the management disciplines (such as strategy, supply chain management, information technology, operations and logistics), the legal fields (the laws of trade, customs, contract and agency, amongst others) and the political and economic sciences (for example, economics, public administration, international relations and political economy). Few organizations or institutes have yet attempted to bring these many different fields together and apply themselves to researching and evaluating the customs-business partnership. However, the practicalities of fostering customs-business partnership and overcoming conflicting interests have been barely researched. Customs-business partnership focuses on the operational interface between government and business. Thus, a bottom-up approach, whereby solutions to operational frustrations are sought, is just as much merited as the top-down approach. Evaluation of operational frustrations and potential for customs-business partnership requires a great deal of skill, rarely found in one place. Policy makers as well as project managers have few organizations to turn to. This deficit can add significantly to what are already formidable obstacles to customs-business partnership.

## **V. Possible Solutions related to Customs-Business Partnership in China**

### 1. Change the idea of law enforcement

Changes in internal and external environment of the Customs of the People's Republic of China have significantly influenced its strategic and tactical activities. Therefore, there is a need to prepare a new strategy for activities of the Customs of

the People's Republic of China. Thus, the "second-step strategic plan (2004-2010) of modern customs system" (Revised in 2006) was prepared in accordance with the documents of the World Customs Organization and taking into account some national documents. It stated: "compliance and facilitation is a necessity for Chinese customs to improve the level of law enforcement." In order to achieve this goal, China has put more effort in changing the idea of law enforcement. One of the noteworthy examples is that China has revised the legislation "the Customs Measures of the People's Republic of China for Classified Administration of Enterprises" (CCAEE), which incorporated the concept and standard of AEO system.

Customs clearance of goods, so-called cargo processing, is one of the core responsibilities of the Customs Administration of the People's Republic of China. Its services in this field must be client-oriented, but the costs involved in offering these services must also be kept as low as possible, without neglecting customs security. As a result of the introduction of customs-business partnership into the Customs field, the Chinese Customs enjoys the following positive features:

- E-Customs is started to be applied widely in Chinese Customs System;
- Direct network between customhouses has been established;
- Most of Customs clearance procedures have been automated;
- Development of risk management software has been operated;
- It is possible to declare goods through on and off line;
- The time required for Customs clearance is reduced by 8-10 times;
- Number of evasion from duties and taxes had decreased sharply;
- Revenue collection has been increasing;
- Single window service is started to be applied widely;
- Non-intrusive inspection has been used widely.

## 2. Implement AEO programme

What does AEO exactly mean? It is a short form for Authorized Economic Operator (hereinafter referred to as AEO). AEO is a party involved in the international movement of goods in whatever function that has been approved by or

on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards. Authorized Economic Operators include inter alia manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors. Authorized Economic Operators (AEOs) will reap benefits, such as faster processing of goods by Customs, e.g. through reduced examination rates. This, in turn, translates into savings in time and costs.

China has already transformed the recommendation of AEO in SAFE to Chinese national regulation, including requirements, facilitating measures and authentication procedures. This regulation also makes clear the contents and requirements of trade security and verification audits. Its name, as the above mentioned, is “the Customs Measures of the People's Republic of China for Classified Administration of Enterprises” (hereinafter referred to as CCAE). CCAE has already clarified the requests of establishing partnership between customs and trade systematically. It specified “customs and companies ought to enhance cooperation, regular information exchange and business contacts”, and proposed that cooperative partnership should be established to provide a legitimate foundation for the future development.

The CCAE has transformed AEO authentication into “verification audits”. The audit department of Chinese customs is now carrying out the research and practice of “verification audits” in some areas. In order to establish AEO system successfully, Chinese customs is now developing a computer system to evaluate enterprises and trying to put it into use to promote trade facilitation and guarantee trade security. In addition, CCAE has expanded the applicable range of classified administration of enterprises. Besides the classes A, B, C, and D, class AA is added as the new top class. Class AA companies are the AEO of Chinese Customs, which must go through the verification of inner control mechanism and trade security checking. Class AA regulation complies with the standard of AEO.

According to the principle of “coherence, criterion and integration”, the CCAE incorporated and merged the regulations of the “List of Companies in Breach”

regarding import and/or export companies and customs clearance facilitative measures for large-scale, high-tech Companies. Through this, the facilitating measures of customs clearance are integrated and the law enforcement is unified and regulated.

The CCAE is the key content for establishing a customs credit management system and is a significant part of the development of a state credit system, too. The measure specified the requirements of class AA and classes A companies, which stated that companies must have no bad records with relevant administrative institutions. The General Administration of Customs is in the process of discussing and announcing “the law-abidance Evaluation System of a Company” .Depending on this system and by summarizing the demand list for the customs credit and external department credit information, all information relating to a company shall be drawn up.

In order to encourage the companies to be law-abiding and self-disciplined, the General Administration of Customs of the People’s Republic of China has formulated corresponding management measures with regard to the different classified administration of companies. Among them, class AA and class A companies shall be subject to relevant facilitative customs clearance measures, class B companies shall be subject to common management measures and class C and D companies shall be subject to strict control and supervision measures.”

In the examination and approval of class AA companies by the customs authority, verification audits are very important for both customs and companies. It is a new measure set for Class AA. It is a measure of using means of audit with contents of testing a company’s integrity, compliance and substance to the company’s implementing customs management requirements, operation management and trade security, and drawing a conclusion whether the company has successfully passed the audit and complied with customs, business operation and trade security management. Besides, the consignee of imported goods and the consignor of exported goods (including declaration agencies) who are applicable for class AA administration should also meet the following requirements:

- Has been applicable for class an administration measures for over one year;
- the import and export value should be more than 30 million US Dollars (or 10

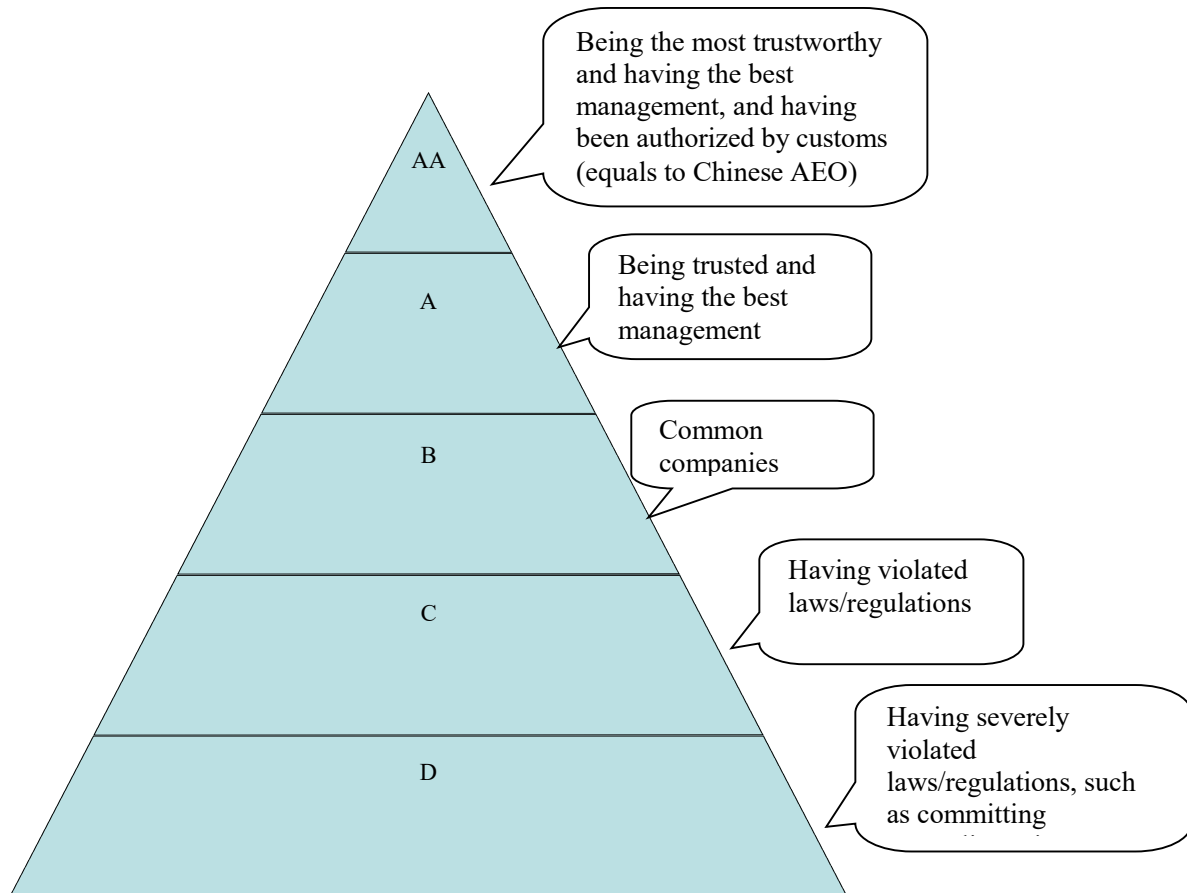


Figure 1.

- Has been applicable for class an administration measures for over one year;
- the import and export value should be more than 30 million US Dollars (or 10 million US Dollars for central and western regions) in the previous year;
- The number of customs declaration formalities performed and reports filed in the previous financial year should come up to total 20,000 transactions (mid-west should be 5,000 transactions) or more;
- Meeting the requirements for customs administration, enterprise business management and trading security upon the verification audits of the Customs;
- Each year should submit a written “Business Operations and Management Report” and an audit report for the previous financial year issued by an accountancy

firm; every six month submits an “Import and Export Business Report” in the form of a list.

### **Conclusions from the research**

Customs-business partnership is receiving unprecedented attention and has become a feature in WCO SAFE Framework ,supply chain security and customs modernisation programs. It seeks to find improvements within the customs and trade environment in reducing transaction costs between customs and the business circle. Both customs and business circle stand to gain from partnership’s cooperation, standardisation and modernisation objectives. However, the international trade environment is complex. Trade operations can involve a variety range of types of business stakeholders. Similarly, Customs is not the only governmental body with an interest in trade related controls. Many other government agencies have a stake in the control of national borders and the movement of goods, too.

Achievement of the partnership between the customs and business community is heavily dependent upon the ability of customs administrations to reduce the regulatory impost on the international trading community, whilst achieving and maintaining appropriate levels of control. Recognizing the different needs and expectations of customs and the business community, the WCO encourages its members to implement a partnership approach between customs and industry by introducing a risk-managed style of regulatory compliance. Such an approach is an effective way in which customs may regulate highly compliant members of the international trading community, provided the theory is properly translated into operational reality.

As a member of WCO, China has obligations to fulfill the commitments made under WCO instruments. The Chinese government envisions to establish a close relationship with the business community for the mutual benefit of customs control, revenue collection and commercial activities. One of noteworthy examples is that China has already introduced AEO concept into its national legislation in order to implement a new model of enterprise-based customs control and simplify the customs

procedures, but the implementation is fraught with challenges and difficulties. Considering the complexity of environment related to customs and trade communities, many different, often conflicting interests are at work. Policy executives tasked with evaluating scope for partnership and implementing partnership programme require a wide range of experience and skills. These are seldom found within one single research. In order to construct a modern and client-oriented customs system, business must play an important role to ensure continued compliance as well as cooperation through the provision of relevant information for customs control. Only through such partnerships can the twin goals of customs control in the collection of government revenue and trade facilitation be adequately achieved. Such mutuality has to be bear in mind when envisioning the future relationship between customs and the business community.

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### INFORMATION FOR AUTHORS

The *Customs Scientific Journal CUSTOMS* invites authors to submit papers that relate to all aspects of customs activity. The Journal has the following broad sections as: Customs & Business Partnership, Professional education in Customs domain, Implementation of the WCO Standards, Best practices, Development of scientific activity, Young scientists' page, Guests, Reference Material.

### EDITORIAL REQUIREMENTS

1. There will be accepted works in English in the volume of 11–22 pages (0.5 – 1 author's sheets).

2. An article should consist of the following of elements:

- full name of the author, academic degree, position;
- article title
- abstract (4 - 5 lines);
- key words (4-5 words);
- main body of an article;
- Bibliography.

3. Main body of an article contains such structural elements:

**Introduction** (Problem statement in general form and its relation to important scientific or practical tasks; analysis of last researches and publications, which contain given problem solving, separation of parts of a general problem, which have not been earlier solved, and which an article is dedicated to).

**Problem statement** (articulation of article objectives)

**Research results** (statement of the main data for study with full substantiation of obtained scientific results).

**Conclusions from the research**

**Bibliography** should follow established standards.

The titles of works in the languages using the Cyrillic alphabet are transliterated and followed by the English translation, usually in square brackets, e.g.:

Vassileva, I. (1992). *Sajuzni Dumi i Izrazi (Konektori) v Angliiski i Balgarski Naucen Tekst* [Conjunctions in English and Bulgarian Scientific Texts]. Unpublished doctoral dissertation. University of Sofia.

Slepovitch, V. (2002). *Biznes-kommunikatsiya: Kak nayti rabotu s angliskim yazykom* [Business Communication: Job Hunting in english]. Minsk: TetraSystems.

4. An article should be typed using Microsoft Word text editor. Margins are - 20 mm. Font is - Times New Roman, size14, line spacing 1.5.

References to the literature are directly made in the text. A serial number of used information source and a comma separated definite page are indicated in square brackets.

5. To the editorial board there should be submitted:

- electronic version of the article;
- information about the author (full name, organization, position, address, academic degree, academic status, contact telephone numbers, e-mail).