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У журналі здійснюється публікація наукових і оглядових праць з основних проблем зовнішньоекономічної діяльності, партнерства митних адміністрацій та бізнес-структур, професійної освіти в галузі митної справи, впровадження та реалізації стандартів Всесвітньої митної організації, оглядові статті про досвід реалізації стратегій інституційного розвитку митних адміністрацій країн-членів Всесвітньої митної організації, публікації молодих науковців у галузі митної справи та зовнішньоекономічної діяльності, реферативні матеріали та анонси.

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ЗМІСТ

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IMPROVING THE INTERACTION OF STATE INSTITUTIONS FOR THE CONTROL OF DISPLACED GOODS ACROSS THE CUSTOMS BORDER OF UKRAINE USING THE "SINGLE WINDOW" MECHANISM

The creation and use of the principle and mechanism of a "single window" for international trade contributes to the optimization of control procedures in the framework of movement of goods units across the customs border of Ukraine and increasing the institutional capacity of state institutions. The implementation of the "single window" mechanism in customs, sanitary-epidemiological, veterinary-sanitary, phytosanitary, environmental, radiological and other types of state control is complicated by the inconsistency of the regulatory framework on the functioning of the "single window" both in the customs sphere and in implementation of other types of state control; the imperfection of the organizational and technical support of the functioning of the "single window"; insufficient use of risk-based methods for the selective selection of control objects. The study found that, thanks to the introduced legislative changes, it was possible to get closer to the basic principles of organizing a "single window" for the implementation of: standardization in providing information and presenting documents required for all types of state control through a single information channel; the coordination of the actions of the control authorities in connection with the election of the chief authority in the system of control authorities (as a rule, this is a customs authority) of the body that coordinates their activities; one-time implementation of control procedures with the inspection of goods.

The article focuses on the need as soon as possible to conduct information and technological coordination of the interaction of state institutions for the control of displaced goods across the customs border of Ukraine to prepare a list of information presented by government authorities as well as the content and format of these data; approving a set of harmonized information for presentation using a single state information web portal "Single Window for International Trade"; the exchange of experience with the Ministry of Environmental and Natural Resources of Ukraine, the State Environment Inspectorate and the organization of training seminars on the control by customs officers of specific foreign economic operations. It has been substantiated that the full functioning of the "single window" mechanism will contribute to the fulfillment of a number of international legal obligations of Ukraine within the framework of the WTO, will improve the conditions for conducting foreign economic activity in Ukraine.

Key words: state service, state institutions, control authorities, customs control, customs procedures, interaction of state institutions, the single window mechanism, reforming of state institutions.
JEL Classification: H11, D73.

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1. Introduction

The objective need to integrate Ukraine into modern institutional structures of the global economy, world trade, which covers not only trade in goods, but also cross-border flows of services and intellectual property real opportunity to use the benefits of participation in the WTO from the point of view of national interests, strengthening national competitiveness, returning lost and gaining new positions in world markets,

necessitated the need to enhance the regulatory role of the state in the development of full-time transformation of the economy, set new requirements to the state administration of foreign economic processes. Large-scale modernization of the national economy is inextricably linked to the reform of the implementation of state control functions at the border of Ukraine, requires a significant deepening of the interaction of various structures involved in regulating foreign economic operations to streamline standards, rules and procedures when moving goods across the customs border of our country.

The lack of coherent and systematic activities of the state and its institutions during the implementation of modern reforms with the gradual evolutionary development of procedures and rules in the sphere of foreign economic activity has created a contradiction between new dynamic market relations oriented to the wide participation of actors in world processes and the current system of governance, which is constantly lagging from the turbulent flow of economic transformations and in fact slows them down. The solution of this contradiction requires the formation of a modern paradigm of public administration in the sphere of foreign economic activity based on the introduction of the "single window" principle in innovative technologies in public management.

The creation and use of the principle and mechanism of a "single window" for international trade is recognized as the best international practice, contributes to international trade, streamlining activities during control procedures within the movement of commodity units across the customs border and, at the same time, enhances the institutional capabilities of state institutions. The need to introduce a "single window" at the customs border is recognized by the World Customs Organization (WTO Framework Standards), the United Nations Economic Commission for Europe (Recommendations 33-35 of the Center for Trade Facilitation and Electronic Business UN / CEFACT), the EU-Ukraine Association Agreement (article 76 on the application of EU guidelines, such as Customs prototypes (Customs blueprints). The draft law No. 7010 "On Amendments to the Customs Code of Ukraine and some other laws of Ukraine on the introduction of a "single window" mechanism and optimizing the implementation of control procedures when goods move across the customs border of Ukraine, September 5, 2018 with amended by the President, as a whole, was adopted by the Verkhovna Rada can be considered as one of the ways to improve the "single window" mechanism.

2. Literature Review

Significant developments in the field of research of theoretical foundations and institutional factors for the formation of an effective system of state regulation in the foreign economic policy, the importance of control authorities in the institutional mechanism for the formation and implementation of customs policy was carried out by such scientists as IG Berezhnyuk, L. Ivashova, I. M.Kveliashvili, V.P.Naumenko, P.V.Pashko, P.Pisnoy, D.V. Priymachenko, G.Yu.Razumei, V.V.Chentsov and many others. Considering the special importance of the effective development of the foreign economic, the organization of control and regulation in this direction and the maintenance of the economic security of the state with the aim of general economic development, many well-known modern scientists pay attention to the study of these issues. Moreover, all theoretical developments in this area are somehow connected with the issues of state regulation of foreign economic activity as the basis of state policy in the sphere of foreign economic relations and the role of state and non-state institutions in its provision. It should be noted that the recent transformations of the current national legislation, changing the

role of state institutions in building a democratic, social and legal state identified a number of problems whose urgent solution is essential.

The introduction of the “single window” technology in the sphere of state regulation is considered in the works of K. Apanasenko, A. Brachuk, N. Bulychev, B. Kormich, Yu. Kuneva, A. Makarenko, V. Naumenko, Yu. Pivovar, G. Pisarenko, V . Platonov, I. Sitko, V. Timoshchuk, I. Fedotova and others. It is advisable to study the process of reforming the activities of state institutions in the context of active reformatting the interaction of state authorities in the direction of optimizing control over displaced goods across the customs border of Ukraine.

It should be noted, paying tribute to the results of scientific research on this issue, that within the framework of the implementation of administrative reform aimed at improving the functioning of all public authorities, the issues of improving the interaction of state institutions for controlling displaced goods across the customs border of Ukraine with using the “single window” mechanism, did not receive information and analytical support and did not find the proper scientific basis of. In particular, there is some uncertainty in the positions of researchers on the distribution of the functions of officials of various state control services, the mechanism of practical coordination of state authorities exercising control functions, which necessitates additional consideration of this issue.

3. Summary of the main provisions

The government made an important step in the implementation of the “single window” in August 2016 with the entry into force of the Resolution of the Cabinet of Ministers of May 25, 2016 No. 364 "Some issues of the implementation of the" single window "principle in the implementation of customs, sanitary-epidemiological, veterinary-sanitary, phytosanitary, environmental, radiological and other types of state control", however, there are a number of problematic aspects arising in the operation and development of this mechanism.

Firstly, there is an inconsistency of the regulatory framework on the functioning of the “single window” both in the customs sphere and in the implementation of other types of state control. Thus, the practice of providing documentation immediately in paper and electronic forms remains common, and explains the existing legislative and regulatory requirements.

Secondly, there is the imperfection of organizational and technical support of the functioning of the “single window”. According to the Analytical Report “Simplification of trade procedures in Ukraine: Estimates and Business Expectations - 2017” prepared by the Institute for Economic Research and Policy Consulting, time spent at customs has not changed for 52% of exporters and 54% of importers polled.

Thirdly, there are insufficient use of risk-oriented methods for selective selection of objects of control.

Thus, although according to the State Fiscal Service data, on average, 89% of cargoes are processed through the “single window” system, still today the main goal of the “single window” mechanism operation, which is to simplify trade and reduce business time, is still not achieved when passing the procedures of registration of commodity units from a single submission by the enterprise of a standardized data set, which will allow all control authorities to use them within the “single window” [9].

On October 4, 2018, the Law of Ukraine on the introduction of a “single window” mechanism and streamlining the implementation of control procedures for the movement of goods across the customs border of Ukraine came into force. This law also amended the package of

35 laws identified as necessary to improve the business climate and economic growth in the country. It's the document, which, in essence, legalized the changes that have already been introduced by the government at the level of bylaws, contains a number of important innovations. In particular, the law for the first time proposed the definition of the term "single window mechanism", as a mechanism for interaction between declarants, their representatives and other interested persons and income authorities and fees, other state authorities, institutions and organizations authorized to perform certain control or authorization functions regarding goods, vehicles across the customs border of Ukraine, that will provide the interested person with the opportunity at one time to submit electronically to the single information web portal a set of harmonized information in order to comply with the requirements for the movement of goods and vehicles across the customs border of Ukraine, provided for by the Customs Code, other laws of Ukraine, international treaties of Ukraine, consent to be bound which provided by the Verkhovna Rada of Ukraine, other regulatory acts [12].

In the previous edition of the Customs Code of Ukraine there was only a mention of the "single window", without any terminology and detail. So, in the fourth part of Article 319 it is indicated that the control over the movement of certain types of goods across the customs border of Ukraine is carried out by other state authorities, carried out according to the "single window" principle, which corresponds to international practice and recommendations of international organizations in the application of a single information and telecommunication system with the income authorities and fees. However, this provision of the Customs Code of Ukraine is almost impossible to implement without amending other laws of Ukraine, which regulate the implementation of relevant types of control and the provision of relevant permits, because today these laws provide for the issuance of relevant documents only on paper. Thus, the changes proposed by the legislators allowed to get closer to the basic principles of the organization of a "single window", formulated by world practice, on the implementation of:

* standardization of information provision, namely: the documents necessary for carrying out all types of state control are submitted once through a single channel;

* coordination of actions of supervisory authorities in connection with the election of the main one in the system of supervisory authorities (usually a customs authority) of the authority that coordinates their activities. If for control requires the inspection of goods, the main authority coordinates other authorities to conduct such an inspection at the same time;

* one-time control procedures, which consists in the implementation, if necessary, sampling of goods and samples, such a selection with the inspection of goods [1, 8, 13, 14].

For interaction between the declarant and the customs authorities, the order has to be settled at the legislative level, which should ensure (fig. 1):

* exchange of documents and information regarding the movement of goods, vehicles through the customs border of Ukraine between interested parties;

* transfer by state authorities, institutions and organizations of the relevant permits documents or information about the introduction (exclusion) of goods into the relevant register in the income authorities and fees in electronic form using electronic digital signature (EDS) means;

* the use by income authorities and fees of information from relevant registers or documents;

* the provision by authorized authorities carrying out sanitary, phytosanitary inspections of goods and vehicles imported into the customs territory of Ukraine (also for the purpose of transit) of information on the results of such activities;

* multiple use of one-time entered information;

* coordination by the income authorities and fees of control measures by the authorized authority implementing sanitary, phytosanitary measures in relation to goods, vehicles, etc. [5].

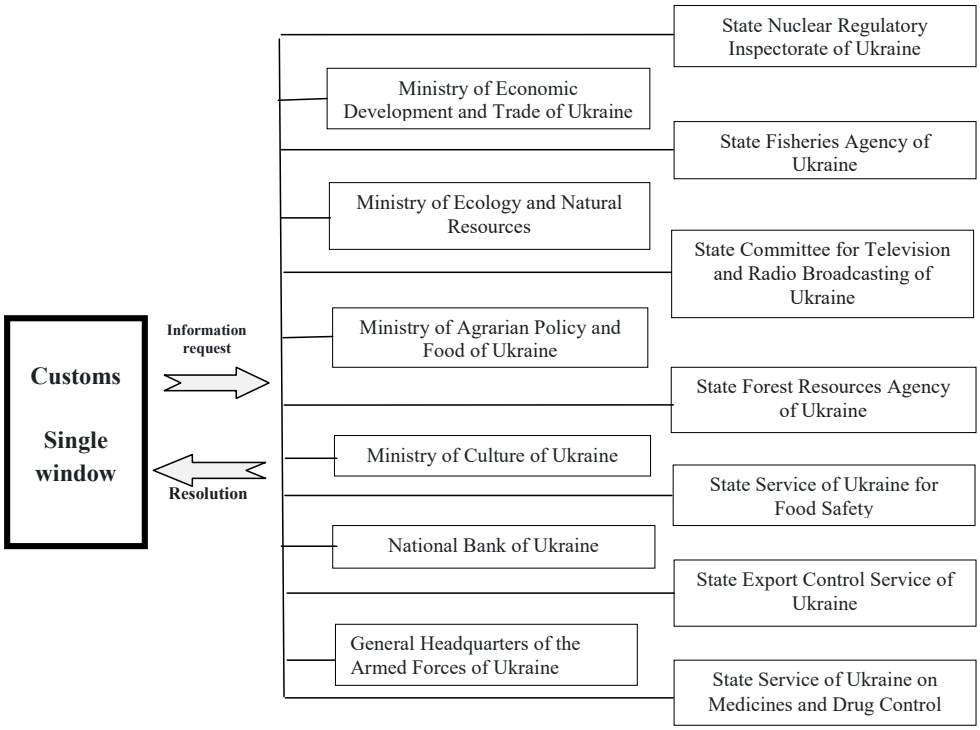

Fig. 1. Information interaction of state institutions in the framework of the use of the single state information web portal "Single Window for International Trade"

Thus, the number of necessary permits used in customs control and customs clearance of goods and the number of control authorities at the border are reduced due to the delegation of authority exercised with:

* the assignment of duties on the verification of permissive documents on customs officials, which today are carried out by officials of the State Environmental Inspectorate;

* the assignment of duties to officials of the State Border Service regarding the verification of the level of radioactive contamination of vehicles and cargo imported into the customs territory of Ukraine, today are carried out by officials of the State Environmental Inspectorate;

* the abolition of the sanitary-epidemiological control of commodity units moved across the customs border of Ukraine [12].

4. Discussion

According to the legislators, sanitary and epidemiological control of goods de facto boils down to obtaining a "conclusion", that is, a certificate, the basis for the publication of which is a statement that in no way indicates a real inspection and safety of a specific consignment of goods, this conclusion actions up to 5 years. With the adoption of the law, the conclusion was eliminated as a permissive document for import, as it was exclusively a bureaucratic obstacle to

international trade. But, with the aim of improving the legislation on ensuring the sanitary and epidemiological welfare of the population and optimizing the procedure for conducting sanitary-epidemiological surveillance with relevant amendments to Article 16 of the Law of Ukraine "On ensuring the sanitary and epidemiological welfare of the population", as well as Article 28 of the Law of Ukraine "On Protection of the Population against Infectious Diseases", it is established that sanitary and epidemiological supervision is carried out by officials of the sanitary and epidemiological service in the customs territory of Ukraine after customs clearance of goods imported into the customs territory of Ukraine. It will be limited the functions of officials of the sanitary-epidemiological service to preventive and anti-epidemic measures by conducting medical examinations of passengers, crews, etc., including people with symptoms of infectious diseases at checkpoints across the state border of Ukraine.

In our opinion, the above changes in the framework of administrative reform will have both positive and negative consequences. For example, the transfer of implementation of sanitary and epidemiological supervision of goods imported into the customs territory of Ukraine from the border into the country has signs of introducing a customs audit, and this method of monitoring complies with international standards. However, the delegation of responsibilities for checking the level of radioactive contamination of vehicles and goods from the border inland may have a negative effect in the context of the security of the state.

Until recently, in accordance with the resolution of the Cabinet of Ministers of 05.10.11 No. 1031 "Some issues of implementation of state control of goods moved across the customs border of Ukraine", the implementation of radiological control of vehicles and goods moved with their help was carried out once when imported to customs the territory of Ukraine - at checkpoints across the state border of Ukraine (points of entry into the customs territory of Ukraine) or at customs authorities of destination (for goods that move (send by postal) in international postal and express shipments) [4]. In the presence and proper functioning at the customs posts of the complex of automated control over the movements of radioactive substances and nuclear materials, such monitoring was carried out only if the natural background radiation was exceeded. Checkpoints across the state border of Ukraine are provided with the functioning of a complex of automated control over the movement of radioactive substances and nuclear materials in accordance with the provisions of Cabinet Decree No. 364, consider radiological monitoring complete, if goods are released from such a customs point across the state border of Ukraine to move them to the destination customs.

An authorized official of the State Ecological Inspectorate in the information system has to form a message about the negative results of radiological monitoring when an excess of natural radiation background is detected using automated control systems for the movement of radioactive substances and nuclear materials. The list of checkpoints across the state border of Ukraine was approved by the Order of the Ministry of Finance of July 25, 2016 No. 657, in which the complexes are in operation for the automated control of the movement of radioactive substances and nuclear materials (now there are 47 of the 196 existing) [10, 11]. In connection with the changes introduced by Law No. 2530-VIII, it is a novelty that representatives of the environmental service should be called in only when mobile devices of border guards show excess radiation levels. If a call was made, the experts should immediately arrive and within two hours decide the fate of the product or vehicle: skip, prohibit a pass or appoint inspections / sampling / additional processing. The order of interaction of the State Border Service of Ukraine and the central executive authorities, which is the implementer of state policy for the implementation

of state control within the protection of the environment, rational use, reproduction and protection of natural resources, in identifying the excess of the allowable level of ionizing radiation of vehicles and goods moved across the state border of Ukraine, established by the Cabinet of Ministers of Ukraine.

The introduction of a state program for the arrangement of checkpoints (primarily international and interstate) with complexes controlling the movement of radioactive substances and nuclear materials will allow automating and targeting (more targeted) radiological monitoring, eliminating the human factor, avoiding unnecessary burden on the State Border Service by imposing new responsibilities. Thus, the optimization of procedures for state control of goods moved across the customs border of Ukraine requires not only the introduction of modern approaches to the implementation of the principle and mechanisms of the "single window", but also the coordination of actions, a clear division of duties and responsibility for quality, timeliness and unification of information necessary for carrying out all types of state control, between all supervisory authorities, to avoid duplication of functions and procedures, unnecessary time expenses, wider use of risk-based methods for selective selection of control objects. Law No. 2530-VIII creates a legislative framework for the application of the "single window" principle, as well as for the functioning of the unified state information web portal "Single Window for International Trade". However, the mechanism of coordinated implementation of information technology, methodological, personnel support of the authorities involved in state control of goods transported across the customs border of Ukraine needs to be developed. All this will contribute to the optimization and simplification of the procedure of state control in the implementation of foreign economic operations; a decrease in the number of regulatory authorities at checkpoints across the state border of Ukraine and in places of customs clearance of goods and vehicles within the country; improving the export potential of Ukraine; reducing the number of permits and administrative pressure for businesses; reducing the risk of corruption due to the introduction of paperless interaction between government officials and business entities.

A lot has been done to introduce a "single window" in Ukraine by this time. The State Fiscal Service has developed and put in place a software and information complex, which has been in operation since September 2016 and should ensure the exchange of information between customs, enterprises and government regulatory authorities. However, for the implementation of innovations the State Fiscal Service in the shortest possible time it is necessary:

* preparing a list of information submitted by state authorities in the "single window" and determining the content and format of this data;

* approving a set of a unified list of information when submitting it through the single state information web portal "Single Window for International Trade";

* exchanging experience with the Ministry of Ecology and Natural Resources, the State Ecological Inspectorate, organizing training seminars on the control by officials of customs posts of pesticides and agrochemicals, waste, GMOs, aquatic biological resources, species of wild fauna and flora, which are subject to the regulation of CITES Convention.

5. Conclusions

The introduction of administrative and legislative reforms is due to the need to improve the conditions for conducting foreign economic activity in Ukraine, reducing the time required for export-import operations and, accordingly, improving Ukraine's investment attractiveness through legislative regulation of the interaction between income authorities and fees other

government authorities and participants in cross-border trade using the "single window" mechanism. The introduction of a "single window" mechanism with the intensification of the process of automation of control procedures is an important step in solving the problem of organizing interaction between state institutions for the control of moved goods across the customs border of Ukraine. This concerns the implementation of information technologies not only in the customs service system, but also other control authorities using software and technology complexes, with the integration of customs databases with databases of government authorities that have functions of monitoring moved goods across the customs border of Ukraine. The functioning of a single information web portal of a set of harmonized information will allow to systematize information about the requirements of customs legislation, rules, regulations and methods for carrying out operations for the movement of goods across the customs border of Ukraine, increase awareness and reduce the time costs of subjects of foreign economic activity. The full functioning of the "single window" mechanism will ensure the implementation of a number of international legal obligations of Ukraine in the framework of the WTO. At the same time, the process of practical implementation of the "single window" mechanism, its organizational and information technology improvement, requires careful study.

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УДОСКОНАЛЕННЯ ВЗАЄМОДІЇ ДЕРЖАВНИХ ІНСТИТУЦІЙ З КОНТРОЛЮ ЗА ПЕРЕМІЩЕНИМИ ТОВАРАМИ ЧЕРЕЗ МИТНИЙ КОРДОН УКРАЇНИ З ЗАСТОСУВАННЯМ МЕХАНІЗМУ «ЄДИНОГО ВІКНА»

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Створення та використання принципу та механізму «єдиного вікна» для міжнародної торгівлі сприяє оптимізації проведення процедур контролю в рамках переміщення товарних одиниць через митний кордон України та підвищення інституційної спроможності державних органів. Реалізація механізму «єдиного вікна» при митному, санітарно-епідеміологічному, ветеринарно-санітарному, фітосанітарному, екологічному, радіологічному та інших видах державного контролю ускладнюється наявністю неузгодженості нормативно-правової бази з питань функціонування «єдиного вікна» як у митній сфері, так і у сфері здійснення інших видів державного контролю; недосконалістю організаційно-технічного забезпечення функціонування «єдиного вікна»; недостатнім використанням ризик-орієнтованих методів для селективного відбору об'єктів контролю. В ході дослідження було встановлено, що завдяки впровадженим законодавчим змінам вдалося наблизитись до базових принципів організації «єдиного вікна» щодо впровадження: стандартизованості надання інформації та подання документів, необхідних для проведення всіх видів державного контролю, через єдиний інформаційний канал; координованості дій контролюючих органів через обрання головного у системі контролюючих органів (як правило, це митний орган) органу, який координує їх діяльність; однократності здійснення контрольних процедур одночасно з проведенням огляду товарів.

У статті акцентовано на необхідності у найкоротші строки провести інформаційно-технологічне злагодження взаємодії державних інституцій з контролю за переміщеними товарами через митний кордон України щодо підготовки переліку відомостей, подання яких до «єдиного вікна» здійснюють органи державної влади, а також визначення змісту та формату цих даних; затвердження набору гармонізованих відомостей для подання їх з використанням єдиного державного інформаційного веб-порталу «Єдине вікно для міжнародної торгівлі»; здійснення обміну досвідом з Міністерством екології та природних ресурсів України, Державною екологічною інспекцією та організації навчальних семінарів щодо контролю митниками специфічних зовнішньоекономічних операцій. Обґрунтовано, що повноцінне функціонування механізму «єдиного вікна» сприятиме виконанню ряду міжнародно-правових зобов'язань України у рамках Світової організації торгівлі, покращить умови ведення зовнішньоекономічної діяльності в Україні.

Ключові слова: державна служба, державні інституції, контролюючі органи, митний контроль, митні процедури, взаємодія державних інститутів, механізм «єдине вікно», реформування державних інституцій.

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PRECONDITIONS OF CRIMINAL LAW PROTECTION OF THE INTERNATIONAL CIRCULATION OF ENDANGERED SPICEMEN OF SPECIES OF WILD FAUNA AND FLORA UNDER CRIMINAL LAW OF LATVIA

In the paper, the necessity of protection of legally correct international circulation of endangered species of wild fauna and flora is founded and the customs role in ensuring legally correct international circulation of them is clarified. Analysing international, regional (European Union) and local (the Criminal Law and the Administrative Violations Code of Latvia) legislation the preconditions of criminal liability of violations of the trading provisions of endangered species of wild fauna and flora are determined: (1) object of the criminal offence is specified, (2) term „trading provisions" is definated, (3) substantial harm as negative consequences caused by the criminal offence is characterised. It is concluded that section 115.1 „Violation of the Trading Provisions of Specimens of Endangered Wild Animal and Plant Species" of the Criminal Law needs doctrinal explanation to increase the effectiveness of this rule of law. The constituent elements of the criminal offence described in the section 115.1 of the Criminal Law is analysed to promote its application in accordance with its sense and purpose taking into account international obligations to raise the protection level of the endangered species of fauna and flora involved in the international trade.
In order to fulfil the demand of the international public for the effective fight against the environmental crime, it is necessary to not only strengthen the understanding of the preconditions to protection of the endangered species under criminal law, but also the states must follow a more unified approach in establishment of the preconditions of criminal liability.

Key words: endangered species of fauna and flora, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), criminal liability, customs, illicit trade, international circulation of goods, international trade.
JEL Classification: K14.

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1. Topicality of Protection of Endangered Species of Wild Fauna and Flora under Criminal Law

Extracurricular attention to necessity, provision and effectivity of protection of endangered species of wild fauna and flora is urged by passing the 45th anniversary of concluding one of the most important multilateral environmental agreementsat this very moment putting aside disputes about its successfulness[1] – "The Convention on International Trade in Endangered Species of Wild Fauna and Flora"[2] or CITES.

[1] Wijnstekers W. The Evolution of CITES – 9th Edition. International Council for Game and Wildlife Conservation, 2011, page 25. Accesible: https://cites.org/sites/default/files/common/resources/Evolution_of_CITES_9.pdf (03.11.2018.); Daan P. van Uhm. The Illegal Wildlife Trade: Inside the World of Poachers, Smugglers and Traders. Springer International Publishing Switzwerland, 2016, p. 36, 41

[2] Par starptautisko tirdzniecību ar apdraudētajām savvaļas dzīvnieku un augu sugām: 1973.gada 3.marta starptautisks līgums. Latvijas Vēstnesis, 1997. 7.janvāris, Nr. 3/4

Despite the fact that the international community has been taking care of protection of wildlife for five decades, the environment is still under an intensive threat – it is estimated that today the fourth largest crime in the world has become a sector of environmental crime.[3] First, illegal harvesting, processing and trade in protected nature are an important source of income for organized crime. Secondly, the sustained economic growth has boosted people's disposable income and hence their ability to purchase luxury and desirable wildlife products, without taking into account the consequences of their choices.[4]

The value of goods is significantly affected by their accessibility. Taking into account that constant obtaining and trade of natural resources depletes nature, then value of wildlife only increases, which yet again promotes its illegal circulation and thus creates a hardly severable vicious circle.[5]

In light of the above, protection of the environment is on the agenda of transnational organizations. Looking through the annual illicit trade reports of the World Customs Organization, it can be concluded that merely their structure signals tendency towards unlawful circulation of goods.[6]It is defined that from 2013 to 2015 environment issues are viewed right after evaluation of the work performance of the customs offices in the field of combating the drug trafficking, which demonstrates paying strengthened attention to natural hazard. Though it must be noted that the report of 2016 is introduced with care towards protection of cultural heritage, in this way immediately corresponding with harmful activity of terrorist organizations in the invaluable regions of heritage of the Middle East.

As the European Union (EU), as the focal point[7] for trafficking in endangered species of wild fauna and flora, has developed an EU Action Plan[8] to address this phenomenon in the EU and to strengthen the role of the EU in combating it throughout the world. One of the priorities identified for the planned activities is to increase the effectiveness of the implementation of existing rules and the fight against organized crime.

Although the importance of environmental protection is obvious, it is worth reminding the preamble to CITES that wildlife and flora in their many diverse and beautiful forms are no irreplaceable part of the natural system of the Earth that must be protected for this and future generations, through the growth of the value of wildlife and flora from aesthetic, cultural, scientific, economic and recreational points of view. It must be recognized that climate change, wildlife

[3] World Customs organization. Illicit Trade Report 2016, page 106. Accesible: http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr-2016-en.pdf?db=web (03.11.2018.)

[4] Commission Staff Working Document on the EU Action Plan against Wildlife Trafficking. European Commision. Brussels, SWD/2016/038 final, page 7, 8, 10. Accesible: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:38:FIN (03.11.2018.)

[5] Ignats M., Gulbis A. 1973. gada Vašingtonas konvencijas par starptautisko tirdzniecību ar apdraudētajām dzīvnieku un augu sugām (CITES) noteikumi un to piemērošana. Rīga: RTU Muitas konsultatīvais centrs, 2003, 3.lpp.

[6] Accesible: http://www.wcoomd.org/en/topics/enforcement-and-compliance/resources/publications.aspx(03.11.2018.)

7 The EU is not only one of the transit regions of endangered species of wild fauna and flora, but also the biggest destination of the illegal import. (Commission Staff Working Document on the EU Action Plan against Wildlife Trafficking. European Commision. Brussels, SWD/2016/038 final, page 4, 15, 16. Accesible: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:38:FIN (03.11.2018.)

[8] Action Plan against Wildlife Trafficking, European Commision. Brussels, COM/2016/087 final. Accesible: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0087&from=EN (03.11.2018.)); Action Plan is demonstratively explained in the publication: European Union. EU Action Plan against Wildlife Trafficking, European Commision (COM (2016) 87 final). Luxembourg: Publications Office of the European Union, 2016. doi:10.2779/016138. Accesible: http://ec.europa.eu/environment/cites/pdf/WAP_EN_WEB.PDF (03.11.2018.)

trade, habitat loss, and the spread of invasive species are one of the most serious threats to biodiversity around the world. Together with direct consequences, the loss of wildlife and flora is associated with wildlife trade, which can change the structure of entire ecosystems and thus affect their balance, undermining their functions and services they provide.[9]

By providing criminal liability for illegal movement of the endangered fauna and flora, the influence and authority of CITES is strengthened, since including of species in the appendixes of CITES alone, does not secure achieving the purposes of CITES. To promote comprehension of the endangerment of the respective species, to reduce demand, supply and to provide sustainability of environment, it is crucial to meet the requirements of CITES in practice.[10]Consequently provision of criminal liability is a measure for protection of environment as a whole, specifically the procedures for the trade in endangered species of wild fauna and flora together with the specimens of species of endangered fauna and flora themselves.

2. Customs office's role in the environmental protection

Effective operational activity of the customs office is a guarantee of operational efficiency of CITES and a prerequisite for applying criminal liability for violations of international trade in endangered species of wild fauna and flora, because, when illegal movement cases are identified on the state border, the mover of goods is established along with conditions of the movement, which provides broader possibilities to detect other levels of illegal trade.

The customs office ensures the established order for the trade in endangered species in accordance with laws and regulations of the State. The purpose of this order is to control the goods imported and exported from the state in order to further the achieving of the set objectives of strategical progress along with protecting values that are significant to the state. By controlling the flow of goods over the national border and by precluding free movement of conventionally prohibited or limited availability goods, the customs office indirectly safeguards nature protection. Therefore this service directly works to prevent threats to public accessibility and preservability of the nature and implements the goal of customs activities which is directed to securing the function[11] of protection of environment. Relevantly Latvian legislator has taken into account the specific character of illegal movement of the endangered specimens of wild fauna and flora by providing criminal liability in the Chapter 11 of the Criminal Law "Criminal Offences against the Environment" along with a more severe sanction than for smuggling (Section 190) or for movement of goods and unlawful actions with goods subject to customs control (Section 191).

[9] Commission Staff Working Document on the EU Action Plan against Wildlife Trafficking. European Commision. Brussels, SWD/2016/038 final, page 27. Accesible: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:38:FIN (03.11.2018.); Emphasizing directly the loss of habitats as the main reason for extinction of the endangered species, critical remarks regarding significance of CITES in preserving the biological diversity have been made (A du Plessis Morne. CITES and the Causes of Extinction. Book: Endangered Species, Threatened Convention: The Past, Present and Future of CITES. Edited by Jon Hutton and Barnabus Dickson. London: Earthscan Publications Ltd, 2000, p. 22-23)

[10] Martin R.B. When CITES Works and when it Does Not. Book: Endangered Species, Threatened Convention: The Past, Present and Future of CITES. Edited by Jon Hutton and Barnabus Dickson. London: Earthscan Publications Ltd, 2000, p. 32

[11] Gulbis A., Čevers A. Muitas darbības pamati. Papildināts un pārstrādāts izdevums. Rīga: RTU Izdevniecība, 2010, 27., 28.lpp.

Being aware that there is a comparatively small amount of such endangered species of wild fauna and flora situated in the geographical area of Latvia[12], by controlling the flow of goods and by implementing criminal liability, the customs offices of Latvia maintain protection of interests of the whole international community, which not only confirms intellectual maturity of the modern society, but also enforces the principle that international problems require international solutions, which is again one of the keynotes of CITES.[13]Besides being a country of the EU, which establishes its external border and thus serves as the first obstacle for access to the single market, Latvia has increased responsibility in fulfilment of formalities of the customs, because further in the territory of the EU the internal customs borders are abolished and detection of illegal movement can be only occasional.

3. Procedures for the circulation of the specimens of endangered species of wild fauna and flora

Circulation of the specimens of endangered species of wild fauna and flora is regulated on three levels. Firstly, international circulation procedures are established in the CITES which is legally binding for Latvia since 3 January 1997, with its purpose to prevent the extinction of the already endangered speciesand to prevent also the risk of extinction occurring directly due to the international trade. Secondly, the procedures for circulation of endangered specimens of species regionally, on the EU level are established in the so called European Union Wildlife Trade Regulations, which include several regulations including Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein[14] (hereafter – Basic Regulation) and Commission Regulation (EC) No 865/2006 of 4 May 2006 about the establishment of detailed rules for implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein[15] (hereafter – Implementation Regulation). Thirdly, on a native level circulation of endangered species of wild flora and fauna is regulated in the national legislation – in Latvia, for example, activities with animals and plants of the specially protected species are regulated in Sections 11 and 12 of the Law On the Conservation of Species and Biotopes[16].

Taking into account the nonexistence of systematic border control on the internal borders of member states of the EU due to the single market and confirming its engagement in protection of the environment, the EU has in its regulations, which are directly applicable normative acts, not only fully covered the regulation of CITES, but also made the internationally established

[12] Specimens of endangered species in Latvia are affected the least by international trade, because conservation of species is mainly affected by the decrease of quality and space of the habitats (1973.gada Vašingtonas konvencijas par tirdzniecību ar apdraudētajām savvaļas dzīvnieku un augu sugām (CITES) ieviešana Eiropas Savienībā un Latvijā. Autoru kolektīvs. [B.v.]: Dabas aizsardzības pārvalde, [b.g.], 50.lpp. Accesible: https://www.daba.gov.lv/upload/File/Publikacijas/ROKASGR_CITES_2008.pdf (03.11.2018.))

[13] European Union. Wildlife Trade Regulations in the European Union. Luxembourg: Publications Office of the European Union, 2010, doi:10.2779/21758, page 8. Accesible: http://ec.europa.eu/environment/cites/pdf/trade_regulations/short_ref_guide.pdf (03.11.2018.); Wijnstekers W. The Evolution of CITES – 9th Edition. International Council for Game and Wildlife Conservation, 2011, page 32. Accesible: https://cites.org/sites/default/files/common/resources/Evolution_of_CITES_9.pdf (03.11.2018.)

[14] Padomes Regula (EK) Nr. 338/97 (1996. gada 9. decembris) par savvaļas dzīvnieku un augu sugu aizsardzību, reglamentējot to tirdzniecību. Eiropas Savienības Oficiālais Vēstnesis, L 61, 3.3.1997., 1.-69.lpp.

[15] Komisijas Regula (EK) Nr. 865/2006 (2006. gada 4. maijs), ar ko paredz sīki izstrādātus noteikumus attiecībā uz Padomes Regulas Nr. 338/97 par savvaļas dzīvnieku un augu sugu aizsardzību, reglamentējot to tirdzniecību, ieviešanu. Eiropas Savienības Oficiālais Vēstnesis, L 166, 19.6.2006., 1.-69.lpp.

[16] Sugu un biotopu aizsardzības likums: Latvijas Republikas 2000. gada 16. marta likums. Latvijas Vēstnesis, 2000. 5. aprīlis, Nr. 121/122

obligations significantly stronger. In this way within the EU, by observing the established procedures of circulation of the endangered specimens, the demands of CITES are fully met and violations of the international trade are judged in context of the EU law.Trade in specimens of endangered species of wild fauna and flora is permitted, however not preferable, why it is possible by solely complying with the requirements of the EU and thus also of the CITES, which, when implemented, inevitably delays international circulation of goods.

The acts of legislation of the EU based on the CITES regulations provide a scrupulously developed and depending on the specifics of the movable specimen, at times even a casuistic trade procedure[17], however at the same time principles of trade included in the CITES are preserved. Firstly, the more endangered the species, the bigger the obstacles are established, to permit their trade. Moreover, commercialtrade of the most protected specimens (Article 1 Paragraph 1 of the Basic Regulation) is prohibited. Secondly, permitted trade is based on a permits and certificates system, meaning, in accordance with the chosen activity with the movable specimen (import, export, re-export or introduction from the sea) and the classification of this specimen under the annexes of the Basic Regulation, a permit or certificate shall be issued pursuant to established criteria (Article 4 Paragraph 1-4, Article 5 Paragraph 2-4 of the Basic regulation).Furthermore, each instance of movement requires a separate permit or certificate and the documents necessary must be submitted to the customs offices prior to crossing the border (Article 13 Paragraph 2 of the Implementation Regulation).

Although, considering the existentially fundamental free trade principle of the EU, no obstacles for movement of goods should exist within the EU, still, taking into account the vulnerability of the specimens of endangered wild flora and fauna, as well as to provide protection of the them in accordance with the purpose of international regulations, there are certain procedures for their movement between Member States of the EU. Although movement permits are not required, in case of movement of live specimens listed in Annex A of the Basic Regulation, for example, a prior authorization (a granted certificate) of the governing body of the Member State in which the sample is located (Article 9 of the Basic Regulation). In light of the aforementioned it can be concluded that instances of unlawful movement can be detected not only in trade relations with the third countries, but also within the EU.

4. Liability for trade in endangered wild animals and plant species

In Latvia liability is prescribed for violations of the regulatory enactments regarding the international trade since 17 July 2003, in Section 79 of the Latvian Administrative Violations Code, where the constituent elements of the administrative offense are defined: "Violation of the Regulatory Enactments regarding the International Trade of Rare or Endangered Animals and Specimens of Threatened Plant Species and Their Parts".

Considering that the Criminal Law came into force on 1 April 1999, but a relevant crime, precisely, Section 115.[1] "Violation of the Trading Provisions of Specimens of Endangered Wild Animal and Plant Species" was included only by the amendments of 10 October 2010[18], it can be concluded that Latvia has fulfilled its obligation under CITES Article 8 Paragraph 1 "a" and has penalized offenders for violations of trade regulations worked into the convention by providing administrative liability.

The aforementioned amendments of the Criminal Law were based on the provision of Di-

[17] Trafficking procedure is clearly explained in the EU informative material. Skat.: http://ec.europa.eu/environment/cites/info_permits_en.htm (03.11.2018.)

[18] Grozījumi Krimināllikumā: Latvijas Republikas 2010. gada 21. oktobra likums. Latvijas Vēstnesis, 2010. 10. novembris, Nr. 178

rective 2008/99/EC of the European Parliament and of The Council of 19 November 2008 on the protection of the environment through criminal law[19], which provided penalizing criminal activity towards the environment.

That arises a rhetorical question, have regional obligations been more important to the Latvian legislator than the international? However, as it was previously explained, the protection of environment is a priority of the EU and the directive was adopted with the purpose of strengthening the general prevention and promote social disapproval of violations of legal acts in the field of environmental protection.

In the annotation[20] of the amendments to the Criminal Law, the legislator has expressed, that prior to adding the new crime to the Criminal Law, it did not prescribe criminal liability for such actions. It is not clear though, why Section 190 "Smuggling" of the Criminal Law was not applicable, since the subject of the crime has always been explained as goods or other valuable properties, including all those movable items, for which there are no qualified constituent elements within the article or a special qualification in connection with movement of dangerous items.

5. Preconditions of criminal liability

Disposition of Section 115.[1] of the Criminal Law *expressis verbis* includes three preconditions for criminal liability. Firstly, the object of a criminal offence or an actually existing material item, which is directly affected by a person, when committing a criminal offence. Secondly, the offence or a harmful and unlawful active (activity) or passive (failure to act) conduct. Thirdly, the harmful consequences or measurable public interests harm causedby unlawful behaviour.

A person's activity is criminal only in case if violations are detected regarding such specimens of wild fauna and flora, or their parts or products, which are recognized as endangered. In the particular case, by providing criminal liability, the legislator has decided to protect from harm the item of the criminal offence itself with the strongest protective means available to the state. Lacking an explanation of the item of the criminal offence in the Criminal Law and by systemically interpreting legal provisions, for a purposeful implementation of the Criminal Law, status of the movable specimen should be established in the special legislation acts of the sector, to be precise, in the CITES and the Basic Regulation. It must be noted that disposition of Section 115.[1] of the Criminal Law is a blanket norm regarding the composition of the crime, for what reason the requirements for application of the criminal liability are to be found in the special laws and regulations of the sector.[21] Criminal law is not an end in itself, but on the contrary it protects values recognized by the public and the procedures established in the laws and regulations of the sectors.

Under CITES a specimen is defined as any animal or plant, whether alive or dead, or any readily recognizable part or derivative thereof (Article 1 Section "b"). The Basic Regulation offers a clearly wider definition of a specimen – any animal or plant, whether alive or dead, any part or derivative thereof, as well as any other goods which are themselves or contain parts or derivatives of animals or plants of those species.

[19] Eiropas Parlamenta un Padomes direktīva (EK) Nr. 99/2008 (2008.gada 19.novembris) par vides krimināltiesisko aizsardzību. Eiropas Savienības Oficiālais Vēstnesis, L 328, 6.12.2008., 28.-37.lpp.

[20] 2010. gada 21. oktobra likumprojekta „Grozījumi Krimināllikumā" anotācija. Pieejama: http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/7318F47F694717E9C22576CB00505314?OpenDocument (02.03.2013.)

[21] Regarding blanket norms foreseeing criminal liability and interconnection of the legal acts of the sphere, see: Кузнецова Н.Ф. Проблемы квалификации преступлений: Лекции по спецкурсу «Основы квалификации преступлений». Науч. ред. и предисл. академика В.Н. Кудрявцева. Москва: Издательский Дом «Городец», 2007, с. 107. Accesible: http://www.ivurcol.net/el_resurs/4_kurs/problemy_kvalifikacii_prestupleniy.pdf (04.11.2018.)

Assessing the biological status of the species and effect of the trade on its existence, the endangered species of the CITES are listed in three annexes:

Annex I includes species which are subject to extinction and which are affected by trade (or can be affected);

Annex II includes species, which are currently not subject to extinction, but which can become endangered, and other species, of which control is necessary, in order to effectively control the trade in the potentially endangered species (so called *look-alike species*);

Annex III includes species, which the member states have declared as objects of control in their jurisdiction and control of which requires international cooperation, which can be provided by the CITES.

Whereas the EU has classified the endangered species in four annexes (A, B, C, D), thus not only increasing the total number of the protected species, but also increasing the number of those species, which are declared to have the highest level of protection.[22]

In accordance with Article 2 Section "b" Subsection "ii" of the previously mentioned directive criminal liability is applicable for violations of trade procedures for species listed in Annex A and Annex B of the Basic Regulation. However, taking into account, that the object of criminal offence is not narrowed down in the disposition of Section 115.[1] of the Criminal Law, it can be concluded that criminal liability is prescribed for unlawful activities with any specimen included in the annexes of the Basic Regulation.It shall be noted that the member states of the EU have authority to establish stronger provisions that those, which are meant for achieving the purposes of directives, exactly how it is provided in Paragraph 12 of the preamble, for the purposes of utmost efficient penal protection of the environment.

It shall be indicated additionally, that in this occasion the case cannot be about activities with "specially protected species of animals and plants" on the contrary to what is mentioned in the commentary of the Criminal Law.[23] Under Latvian legislative acts with thenotion "specially protected species of animals and plants" should be understood the species included in the list prescribed by the Cabinet of Ministers[24]. For their protection against illegal acquisition, keeping, destruction and damaging Section 115 of the Criminal Law is provided.

To ensure flexible implementation of the legal framework and to consider the vulnerability of the endangered specimens, criminal liability is provided for violations of **any trade regulations** if substantial harm has been caused, – international, regional or internal.

Even though trade is a notion, interpretation of which at first sight should not be a problem, still the definitions provided in the normative acts of the industry do not provide an unequivocal interpretation. Trade explained popularly is the action of buying, selling and changing of goods[25]. Consequently trade is characterized by transition of goods from one person to other and material character of this activity. Under the Article 1 Section "c" of the CITES, trade means

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[22] European Union. Wildlife Trade Regulations in the European Union. Luxembourg: Publications Office of the European Union, 2010, doi:10.2779/21758, page 11-12. Accesible: http://ec.europa.eu/environment/cites/pdf/trade_regulations/short_ref_guide.pdf (03.11.2018.)

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import and introduction from the sea, export and re-export. In return Article 2 Section "u" of the BasicRegulation prescribes that trade shall mean the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession. Therefore, trade covers the process, in which the endangered specimen is being involved exposing to the risk of injury.

Considering the repressive nature of the criminal law, clarity and unequivocally of the Criminal Law is particularly crucial, however the scope of definition of trade provided in the Basic Regulation might seem too vague. Yet, by systemically interpreting the definition of trade provided in Section 115.[1] of the Criminal Law and by observing the purposes of the regulations, in theory there is grounds for interpreting the definition of trade utmost broadly. Already now in theory of the criminal law there are separate examples, when the definitions used in the dispositions of the norms of the Criminal Law are interpreted over-stepping their traditional meaning. For example, acquisition means not only buying, leasing or changing, but also receiving as a gift and even keeping a finding or rather getting at one's disposal in any way. Whereasrealization includes not only those cases when for hand-over of goods an equivalent is received in return, but for gifting the goods, or rather hand-over to another person in any way.[26]

However, in order to promote reliability to the regulation, which is one of the preconditions for its observation, interpretation of legal norms should be balanced with comprehension of a reasonable individual. It must be noted that the possibilities embodied in the law can be fully utilized only if they reflect the requirements of the public and accordingly correspond to the judicial consciousness of the public.[27]

In the light of previously mentioned trade in context of the Criminal Law should be defined as a process or aggregate of activities, which includes taking the specimen out of its natural environment, displacement, subjecting the specimen to an unforeseen (uncharacteristic) risk and delivery to a new home.[28]

In this way, any deliberate participation in the illegal trade process is criminalized, because it is virtually impossible to severely divide the harmfulness of separate stages of the trade process. The commercial element and the transfer of title are not decisive, in particular given that trade in the most vulnerable specimens for direct commercialpurposes is prohibited. However, there are no grounds to believe that the endangered specimens are constantly on the market and, therefore, not every activity with the endangered specimens is considered a component of the trade. However widespread the interpretation of the notion of trade might be, it remains related to the transfer of the endangered specimen from one point to another.

To cover all possible cases of invasions of endangered specimens, considering that there is no principled significance regarding what activity exactly harms them, the Criminal Law should rather talk about unlawful circulation of the endangered specimens. Circulation or movement is a wider definition than trade, because it covers any unlawful activity with the endangered specimens. Until corresponding amendments are introduced criminal liability, for example, for

[26] See, f.e., commentary of professor Valentija Liholaja to the Section 233 of the Criminal Law regarding unauthorised acquisition and disposal of firearms, to the Section 248 regarding regarding unauthorised acquisition and disposal of powerfully acting substances (Krimināllikuma komentāri. Trešā daļa (XVIII-XXV[1] nodaļa). Krastiņš U., Liholaja V., Hamkova D. Rīga: Tiesu namu aģentūra, 2016, 303., 305., 351.lpp.)

[27] Liholaja V. Tiesību normu efektivitātes jēdziens un kritēriji. Grām.: Vispārīgās tiesību teorijas un valststiesību atziņas. Rīga: Latvijas Universitāte, 1997, 94.-96.lpp.

[28] About the harmful effect of illegal wildlife transportation see: Wyatt T. Wildlife Trafficking. A Deconstruction of the Crime, the Victims and the Offenders. London: Palgrave Macmillan, 2013, p. 67.-70.

a lawfully moved endangered specimen deliberate unlawful or unacceptable use should be provided in a different section of the Criminal Law.

Based on the above, it is cleared that criminal liability is currently foreseen for any violation of the trade regulations, if it causes substantial harm, that is, both for smuggling and other breaches of trade regulations.

Smuggling means the introduction of the specimens into the territory of the state or exporting out of it, by misleading the customs authorities as to the identity, number or the fact of the movement itself. Smuggling manifests itself when the responsible person avoids customs control and moves the endangered specimens without declaring them or declaring them improperly.[29]

Other violations are related to non-compliance with the specific protection requirements of the endangered specimens. In the process of trade of the endangered specimens, their health or life can be endangered in several ways.

For example, improper preparation of the endangered specimen for transportation and unsafe transportation, where the risk of causing damage is not decreased to the minimum (Paragraph 11 of the preamble of the Basic Regulation provides interpretation of its provisions in a way to minimize the adverse effects on live specimens), inadequate care during transportation of the endangered specimens (Basic Regulation provides issuing the permits for import only if the place of destination provides housing for a living specimen that will be adequately equipped for preservation and care (Article 4 Part 1 Section "c", Article 2 Section "b" of the Basic Regulation)). Also where, in the marking of live animals requires to be undertaken with due regard to humane care, well-being and natural behaviour of the specimen concerned, as it is prescribed by Article 67 of the Implementation Regulation.

Violation of regulations in trade of endangered animals and plants is penalized considering the popularly used threshold of criminal liability under the Criminal Law – causing **substantial harm** as a result of criminal offence. This valuation definition is comfortable for legislator, because in theory it provides a possibility the significance of each separate occasion, however often enough in practice it is problematic to fill it with content, when separate applications of the norm are in different views regarding reaching the necessary level of significance of harm for provision of criminal liability.

Substantial harm as characterization of harmful consequences directly testifies that as a result of criminal offence, negative changes to the surrounding environment are made, which are subject to assessment. Section 23 of the Law On the Procedures for the Coming into Force and Application of The Criminal Law[30] provides that causing substantial harm shall apply if due to the criminal offence any of the following consequences have set in:

1) property loss has been suffered which has been not less than the total of five minimum monthly wages[31], and also other interests protected by law have been threatened;

2) property loss has been suffered which has been not less than the total of ten minimum monthly wages;

3) other interests protected by law have been significantly threatened.

[29] Čevers T. Kontrabandas krimināltiesiskie aspekti. Rīga: SIA „Pārdaugavas juridiskais birojs", 2015, 4., 89.-91. lpp.

[30] Par Krimināllikuma spēkā stāšanās un piemērošanas kārtību: Latvijas Republikas 1998. gada 15. oktobra likums. Latvijas Vēstnesis, 1998. 4.novembris, Nr.331/332

[31] Minimum wage in 2018 Latvia is established in amount of EUR 430 (Noteikumi par minimālās mēneša darba algas apmēru normālā darba laika ietvaros un minimālās stundas tarifa likmes aprēķināšanu: Latvijas Republikas Ministru kabineta 2015.gada 24.novembra noteikumi Nr. 656. Latvijas Vēstnesis, 2015. 26.11, Nr. 232)

Before application of the aforementioned criteria, their application problems can already be suspected. Firstly, as a surprise the legislator has not restricted the interests in the Section 115.[1] of the Criminal Law, to which as a result of a criminal offence a substantial harm could be caused. Perhaps, in this way in order to maximize the protection of the subject of a criminal offence, it is intended to guarantee the broadest possible application of the section. Theoretically substantial harm could be caused, for example, to the economy or public health, as a result of trade in the endangered specimens, if together with the specimens some causative agents or pests are moved. Secondly, taking into account, that trade in the most vulnerable endangered specimens for commercial purposes is prohibited, it is not clear, how to assess the amount of the caused harm in money. Thirdly, the substantial harm must be caused in coherence with the criminal offence, namely, it must be caused directly by the illegal trade.

Therefore, the question remains, what will testify substantial harm to the interests of protection of environment and particularly in the case, when illegal trade has happened only with dead specimens or their products. In this way a certain doubt exists regarding whether foreseeing criminal liability can be effective enough, which contravenes the purpose of the aforementioned action plan to more effectively fight the illegal trade in endangered specimens. It must be remembered, that by adding the substantial harm element to the disposition, strict separation of administrative violations and criminal offenses is achieved. Any violations of the regulations always cause at least a hypothetical harm. However, in order to establish the basis of criminal liability, not only must the harm be caused, but the harm caused by this offence must be significant – substantial.

Part three of Section 23 of the aforementioned law declares that the criteria for endangering of the interests protected by law resulting from criminal offences may be specified in annexes to this law. Unfortunately, an annex, which includes criteria for establishing threat to the environment in the aspect under consideration, has not been developed so far. The directive according to which the Criminal Law was supplemented with the new criminal offense, does not significantly ease the interpretation of this assessment, but at least contains a reference to the evaluation of the quantitative and qualitative criteria. Section "g" Article 3 of the Directive provides that trading in specimens of protected wild fauna and flora is not considered criminal in cases where the conduct concerns a negligible quantity of such specimens and has negligible impact on the conservation status of the species. By modelling potential substantial harm variants, it is believed that the most realistic cases of substantial harm are likely to be serious injuries or deaths of the endangered specimens due to breaches of trade regulations. Namely, for establishing a caused substantial harm it would be enough with deaths of several less protected endangered specimens or at least one serious injury of a specially protected specimen.

It should be taken into account, that detecting substantial harm reflects the impact of the violation on the survival possibilities of the specific species in the wild. Such approach would also correspond with implementing justice in the fundamental individualization of guilt and punishment.

6. Conclusions

Criminal liability pursuant to Section 115.[1] of the Criminal law is foreseen for deliberate participation in trade of the specimens included in the annexes A, B, C and D of the Basic Regulation thus violating the requirements of the sectoral regulatory enactments, if in this way substantial harm to any interests protected under law is caused.

In order to fulfil the demand of the international public for the effective fight against the environmental crime, it is necessary to not only strengthen the understanding of the preconditions to protection of the endangered species under criminal law, but also the states must follow a more unified approach in establishment of the preconditions of criminal liability.

In order to ensure the judges are timely ready for dealing with cases of illicit movement of endangered wild animals and plants, the cooperation between industry specialists and criminal law researchers, by analysing and clarifying the preconditions for criminal liability and by establishing substantial harm criteria, should be promoted with the purpose of making application of Section 115.[1] of the Criminal Law more effective.

Complicated, contradictory and unclear legal framework is hardly applicable. Not only does it prevent dishonest people from circumventing it, but it also hinders consumer caution, when they unknowingly become the supporters of criminal networks.

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ПЕРЕДУМОВИ КРИМІНАЛЬНО-ПРАВОВОЇ ОХОРОНИ МІЖНАРОДНОГО ОБІГУ ВИДІВ ФАУНИ ТА ФЛОРИ, ЩО ЗНАХОДЯТЬСЯ ПІД ЗАГРОЗОЮ ЗНИКНЕННЯ ЗГІДНО КРИМІНАЛЬНОГО КОДЕКСУ ЛАТВІЇ

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У статті висвітлено необхідність охорони юридично обґрунтованого міжнародного обігу зникаючих видів дикої фауни та флори та з'ясовано митну роль у забезпеченні їх юридично обґрунтованого міжнародного обігу. Аналізуючи міжнародне, регіональне (Європейський Союз) та місцеве (Кримінальний кодекс та Кодекс Латвії про адміністративні правопорушення) законодавство, визначаються передумови кримінальної відповідальності за порушення положень щодо торгівлі зникаючими видами дикої фауни та флори: (1) визначено об'єкт кримінального правопорушення, (2) визначено термін «торговельні положення», (3) охарактеризовано істотну шкоду як негативний наслідок, спричинений кримінальним правопорушенням. Зроблено висновок, що розділ 115[1] «Порушення правил торгівлі видами диких тварин та рослин, що знаходяться під загрозою виникнення» Кримінального кодексу потребує доктринальних пояснень для підвищення ефективності забезпечення верховенства права. Проаналізовано складові елементи кримінального правопорушення, описані у розділі 115[1] Кримінального кодексу, для забезпечення його законності відповідно до сенсу та мети з урахуванням міжнародних зобов'язань з метою підвищення рівня захисту зникаючих видів фауни та флори, пов'язаних з міжнародною торгівлею.

Для того, щоб задовольнити міжнародну спільноту стосовно ефективної боротьби з екологічною злочинністю, необхідно не лише посилити розуміння передумов захисту зникаючих видів, передбачених кримінальним законодавством, але і дотримуватися єдиного підходу до встановлення передумов кримінальної відповідальності.

Ключові слова: вимираючі види фауни та флори, Конвенція про міжнародну торгівлю видами дикої фауни та флори (CITES), кримінальна відповідальність, митниця, незаконна торгівля, міжнародний обіг товарів, міжнародна торгівля.

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DIVERSIFICATION OF STRATEGIC PROGRAMS FOR THE TRANSFORMATION OF CUSTOMS AFFAIRS IN THE UKRAINE: A KEY TO IMPLEMENTATION OR A DESTRUCTIVE PERSPECTIVE

Customs activity is the object of social interest in the Ukraine. Stakeholders and those who are interested in discussing of ratings, the formation of the image of the customs support the level of these interests. In the article the conceptual questions of implementation and fulfilment of andestandings on customs affairsof the Association Agreement with the European Union, the state of their fulfilment, as well as the main emphasis of the presented strategies of reforming the state customs affairsare considered. The conclusions of the monitoring of the fulfilment of the Association Agreement, the expert examinations of public organizations, and data from international trade statistics provided the grounds come to the conclusions that the search for an optimal strategy is not a period of time, but only a professional approach, moderation of goals, synergy of desire and the participation of state institutions in satisfaction of public expectations.

The paper concludes that an in-depth analysis of the causes and consequences of overcoming the accumulated uncertainties and inconsistencies in the development of the state customs affairs, which require immediate intervention, is possible if the persons who have experience and professional competence in customs affairs, professional competence and a high level of social and political culture will be involved in whole chain of stakeholders of national customs affairs. This will solve the problems faced by the world's customs administrations and Ukraine respectively, propose the goals and identify the ways to achieve them in the shortest possible time with minimal resource capacities and costs, and effective means of providing them.

Purposely well-founded presentation of materials in the article, dialectical, systematic, deductive methods of research were used, which gave a more complete understanding of the institutional processes taking place in the customs sphere.

Key words: Strategy, Strategic Goals, State Customs Affairs, Reforms, Transformation, Monitoring, Expertise, Community.

JEL Classification: K23.

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1. Introduction

The long period of institutional transformation of the State Fiscal Service of Ukraine has gained a vision of a steady and endless perspective of the process. Business and society, which are participants in the triad of strategic transformations and reorganization of the format of perception of the Ukraine in the external space, have actually become hostages of strategic innovations without reaching the ultimate goal, which was declared by each of the presented strategies.

Unlike the others, in this state institute was quite frequent in a short period of time the reorganization and restructuring, which did not provide a constructive impetus for its development, and as it has already been recognized, caused significant damage and created the basis for the stagnation of customs processes and transformations in the country.

The process in the cource of which the social goals adapt to the goals of the organization, is not based on a comprehensive analysis or thought. Rather, it affirms to the fact that the postulate, which has not been verified by anyone, but repeatedly prevails over precise thinking. About this it is appropriate to say the classic of institutionalism Douglas North [1].

Determination of the mission of State Fiscal Servicein the presentation of one of the latest development strategies in the period up to 2020 [2] is a confirmation of this process. The philosophy and purpose of the mission is to weighed determine the values and principles of organization, to identify the interests and expectations regarding the interaction of the organization with the surroundings and stakeholders.

The mission of the Ministry of Finance of Ukraine, under the making subordinate of which is the State Fiscal Service, consists in financially security the fulfilment of state functions on the basis of the weighed budget policy, creating the conditions for stable economic development by means of public finances management in accordance with the principles of balance, efficiency, impartiality, integrity, stability and transparency.

With its mission for the period up to 2020, the State Fiscal Service identified and quoted the main tasks assigned by the government to the service – administration of taxes, fees, customs duties and a single contribution to compulsory for everyone insurance, providing quality services to taxpayers, facilitating to international trade and entrepreneurial activity. That is to say, exclusively fiscal goals are declared.

While it is believed that the primary values and principles of State Fiscal Service activity are still a transparent and impartial institutional process that, under primary conditions, ensures the national interests and security of the state in the economic internal and external surroundings.

Formalism, as a state of activity, can be observed on the example of chronology and diversification of strategic goals and initiatives in the presented projects of the customs affairsreformation in the Ukraine in accordance with the conditions stipulated by the Association Agreement with the European Union [3].

Douglas North determined the criteria for evolutionary models, which represent a combination of constancy (inheritance) and change. There must be both immutable and variable elements, and even the changing element itself must be inherited if we are talking about the system as evolutionary [1].

That is, perceiving the postulate of the classics regarding the variability and invariabilityof elements of change through extrapolation to the processes of transformation in the customs sphere, an important condition is the mild convergence of innovations with achievements that support the quality of activity and the stable development of the reform object. In our case – the state customs affairs of the Ukraine.

Literary review. Since the enactment of the Decree of President on the creation of the own customs affairsin the Ukraine, scientists whose sphere of interest was related to the economy, international relations, public administration, management, and others, they conducted research and, in their writings, tried to find ways and methods for the development in the country intellectual and resource–able state institution. The most cited scientists are considered Grebelnyk O.P., Dubinina A.A., Dorin F.L., Kivalov S.V., Kozyrin A.N., Sandrovkyi K.K.

The development of scientific views with the formation and development of customs affairsin theUkraine is connected with the names of such scientists as Berezhniuk I.G., Ivashova L.M., Lypovska N.A., Pashko P.V., Pysmennyi I.V., Pryimachenko D.V., Chentsov V.V. and many others.

The current status of the state customs affairs is in a phase of stagnation and needs

– synergistic efforts of scientists, practitioners to overcoming and worthy transition in the period

– ofconstant development.

The purpose of the study consists of differentiation of content–presented strategic projects and programs for the transformation of the state customs affairs and the conditions under which their effective introduction is possible.

Methods of research.Purposely well–founded presentation of materials in the article, dialectical, systematic, deductive methods of research were used, which gave a more complete understanding of the institutional processes taking place in the customs sphere.

2. Relevance of the strategic goals of the transformation of the customs affairs in the Ukraine to the issues of customs reform as stipulated by the EU–Ukraine Association Agreement

The beginning of the active period of the presentations of customs reforms may be 2015. That is, the next after the creation of the State Fiscal Service, reorganized from the Ministry of Income and Charges of the Ukraine.

Already in 2015, the largest coalition of the leading public organizations and experts from the Ukraine who united for the promotion and implementation of reforms in the Ukraine to the association "Reanimation Package of Reforms", have been conducted an analytical work "Institutional problems of the Ukrainian tax system and ways of their solution" [4].

Problems in the field of customs relations, defined in the analytical work, concern issues that have been relevant for a long time, needed to be highlighted and resolved, search for ways to improve and / or avoid, and consist of:

1. High volume smuggling and "gray" imports.

2. Non–compliance with EU standards for customs clearance of goods (existence of queues, use of a greater amount of time during customs clearance in comparison with EU standards).

3. Groundless adjustment of customs value by the customs authorities and unfounded refusal by the customs authorities in cases of determining the customs value by other methods, which exceeds the corresponding indicator in the EU countries).

4. An automated system of risk management during the customs clearance of goods and vehicles that does not meet the requirements of the Kyoto Convention on Harmonization and Simplification of Customs Procedures. The main thing is that the system should be open.

5. Practical absence of the use of postaudit control methods, which in turn are one of the fundamental components of the customs affairs.

6. Presence of cases of unwarranted detention of goods due to interference with the work of customs authorities of state bodies with law–enforcement functions (Security Service of Ukraine, Ministry of Internal Affairs, etc.).

7. Lack of practice of making personal accountable in case of unlawful decisions making, actions or inactivity of officials of customs authorities of all levels.

8. Fulfilmentof the functions of control by the customs authorities over compliance with state standards, that is not inherent to them.

Customs issues and issues of encouragement of trade are laid down in the priority tasks of execution of the Association Agreement with the EU. According to the agreements about 70% of the norms of the customs legislation of Ukraine should be implemented to the provisions of the EU Customs Code.

In the conclusions of the International Center for Advanced Research, in the analytical collection "Reforms in Ukraine: Expert Examination of the Passed Governmental Decisions", in 2015 [5], the main tasks to be realized during the realization of the customs reform are identified as follows:

• Simplification of customs procedures and automation of customs affairs;

• Reduction of time spent on customs clearance of goods;

• Development of a mechanism for providing public assessment of the officials of the customs authorities by the business community and the public representatives;

• Introduction of an effective system for the exchange of information among customs authorities and companies;

• Creation of customs postaudit units in the structure of customs authorities and strengthening the role of the main direction of the activities of customs authorities;

• Creation of a system of rapid response in cases of violations within the limits of customs work;

• Ensuring of effective conduct of "public control";

• Taking measures as regards to non–admission and preventive measures of the manifestation of corruption among the customs officials.

The questions that need to be improved and resolved, and those to be included during the reform of the customs affairs, are practically identical and differentiate according to the categories of attention: legal, organizational and structural, technological and communication. Proceeding from this, a hierarchy of goals, which is determined by the mission of the state institute, must be formed, and the strategy for development is defined.

Government projects are created specifically to improve customs activities and their adaptation, increase the level of quality to the international, and which were presented to the public since June 2015, had the following emphases.

Draft Institutional Reform of the State Fiscal Service, has been presented on June 24, 2015 in the video conference with the territorial authorities of the State Fiscal Service.

The strategic objectives of Institutional Reform have been established the following: the increase of the level of population confidence concerning the activities of the income and duty bodies and supervisory bodies, one of the ways is the elimination of corruption at all levels of the State Fiscal Service, structural changes, and new personnel policies; modernization of tax and customs control, high–quality and efficient tax administration, which should be achieved through modernization of control mechanisms, increase of productivity and efficiency of State Fiscal Serviceactivities.

The achievement of strategic goals, in the understanding of the authors of the concept, should take place through:

1. Transition of the State Fiscal Serviceof the Ukraine into subordination to the Ministry of Finance of Ukraine.

2. Growth from 2 to 5 positions of deputy heads ofState Fiscal Serviceof the Ukraine.

3. Reduction of the number of departments in the State Fiscal Serviceof the Ukraine in order to optimization of the functions, structure of the central apparatus.

4. Introduction of KPI (key performance indicators) for State Fiscal Serviceand its leaders, optimization of management processes.

5. Increase of the effectiveness of preventing corruption;

6. Increase of the efficiency of tax and customs control;

7. Introduction of high–productive tax administration system. [6]

Strategic goals are also defined by a number of state legal acts that provide the putting into effect of the measuresfor the transformation of customsactivities.

The agreement on the Coalition of deputy factions "European Ukraine" [7] provides for "a significant reduction in the number of the State Fiscal Service", the transformation of the tax control model with a waiver from punitive to service, which includes the establishment of personal financial responsibility of tax and customs officials for their illegal actions or inactivity, which led to losses of subjects of entrepreneurial activity.

Regarding state programs on customs affairsreform, the Strategy for Stable Development "Ukraine–2020" [8] has been identified the implementation of the reforms of the state customs affairs and integration into the customs community of the European Union, as an integral part of the country's development vector.

Plan of measures to fulfilment the program of the Cabinet of Ministers of Ukraine and the Strategy "Ukraine–2020", including items on "a significant reduction in the number of employees of the State Fiscal Service"; establishment of personal financial responsibility of tax and customs officials for losses incurred by business entities through illegal actions or omissions of officials.

In 2016, the idea of depriving customs of the status of legal entities was presented and supported by the International Currency Fund, but the registered bill "On National Customs" was not adopted.

In the continuation of customs reforms, the Minister of Finance announced conditions that, in order to bring the organizational structure of the State Fiscal Service to a functional principle, it was necessary to change it substantially, but it still needs radical improvement [9].

By means of Order of the Cabinet of Ministers of Ukraine dated February 11, 2016 No. 267–p [10] has been approved the Concept of involvement of companies (advisers) in the reformation of State Fiscal Service customs. The purpose of the Concept is to carry out reforms of the State Fiscal Service customs authorities, guided by the Customs prototypes of the EU as the main reference point for customs cooperation between Ukraine and the EU.

For its realization it is envisaged to involve an international company (advisor) with successful experience in the reform of customs authorities in European countries for the consultation of the State Fiscal Service on issues related to the reform of customs authorities. Realization of such Concept will enable: to increase the volume of revenues to the state budget of customs payments, to minimize the possibility of corruption by customs authorities, to strengthen the institutional capacity of customs authorities within the bounds of their main tasks, to simplify customs procedures for enterprises. Its realization and performance is planned for two years.

As part of the customs reform, at the end of March 2017, the Concept for the reformation

of the customs direction of the State Fiscal Service was approved, which was prepared by the Ministry of Finance, taking into account of recommendations of Internal Currency Fund, EU customs standards and recommendations of the US Customs and Customs Border Service [11].

To implement the Concept, the Ministry of Finance has drafted the Project ofPlan of Customs Reform Action for 19 directions of EU customs standards that will implement changes. Each direction clearly describes the list of measures necessary for the implementation of the customs reform, which specifies: specific dates, responsible bodies and clearly identified acts that need to be elaborated or to be amended in order to achievement of the indicated tasks.

An unexpected and unanticipatedit looked like a suggestion to create Interregional Customs and the Main Interregional Department of the State Fiscal Service. Territorial and energy cus-

toms were planned to be attached to the Interregional Customs with the deprivation of the status of an independent legal entity.

In early 2018, all initiated initiatives were canceled by the Cabinet of Ministers of Ukraine.

In the general sense, the tendency of state initiatives regarding the top–priority actuality of the organizational and structural and personnel reforms is traced. Questions about the customs affairs related to the implementation of customs procedures that require transformation are transferred to the out–sourcing area.

Thus, Ukraine's customs reform is still in a state of uncertainty and inconsistency, which in turn does not contribute to the declared goals and postpones their achievements for an indefinite period of time.

Uncertainties are an integral part of the decision–making process within the framework and in the process of public administration, have a significant influence on the processes and results of the adoption of management decisions, is a real and inevitable factor in the projection, programming, adoption and implementation of such decisions in many situations in pursuance of the realization of government administration [12].

Social expectations, as described by the well–known in the field of competitive strategies, Michael E. Porter [13], reflect the impact on the organization of such factors as state policy, social relations, social morality, and much more. These four elements must be taken into account when working out real and easily feasible complex of goals and means.

Porter identified and suggested test accents for the chosen goals and means on their coherence and adequacy of the competitive strategy by the following criteria: internal consistency; compliance with the surroundings; conformity to resources; communication and realization.

The testing of strategies for the development and reformation of the state customs

affairs, presented to the public in recent years, has no opportunity to provide adequate positive statements about the attainability, actuality, timeliness and, in principle, the need for such reforms to be implemented.

So the uncompromising approach to Porter's test questions regarding the coherence and adequacy of strategic goals can provide an answer to the question of the viability of strategic manifestos.

Strategic goals are defined for the long–term period. Bodies of state powerelaborate intermediate and tactical goals, and if necessary, a system of interconnected tactical objectives can be developed, the consistent implementation of which contributes to the achievement of the ultimate strategic goal [14].

As Michael Jordan argues, all stakeholders should know that improvement has a price point of view in expendituresof political and economic resources. But over time, sustainable development can be a compensator for these expenditures by means of expansion of the political and economic opportunities that are available to the public and will spread to public administration leaders [15].

Understanding the ultimate strategic goal is to achieve the planned transformations and reforms. And if we proceed from the conclusion that Ukraine's exit into the external market is, above all, the image and advantages of membership in the World Trade Organization, the World Customs Organization, integration with the EU, execution of the principles and rules of partnership, the same has all the primary emphasis in processes relating to development of customs affairsand customs activities.

The most important three main goals of Ukraine's trade development over the next five years are defined in the export strategy developed by the Ministry of Economic Development and

Trade of the Ukraine with the support of the International Trade Center, which is a joint agency of the World Trade Organization and the United Nations Organization [16]:

No 1 Creation of the conditions for stimulating the sphere of trade and innovation in order to diversification the export of Ukrainian goods and services.

No 2 Development of business and trade support services that can increase the competitiveness of enterprises, in particular small and medium enterprises.

No 3 Increasing of the level of knowledge and skills, required by enterprises for international trade.

The identified goals have the right to be extrapolated and appropriate for a promising "import" strategy. The diversification of the import nomenclature requires the moderation, on the one hand necessary for the introduction of innovative technologies and programs, on the other – the need for comprehensive support for the development of national commodity

producers, legal business and lawful trade.

On this occasion, it should be noted that the current EU Customs Code [30] has defined the mission of customs administrations as overseeing the international trade of the Union, thereby promoting fair and open trade, the implementation of external aspects in the internal market, and so on, with their responsibility for this.

All measures of the EU customs administrations are aimed at protection the financial interests of the Union and its member states, protection the Union from unfair and unlawful trade, supporting legitimate business activities, ensuring the safety and security of the Union and its inhabitants, and protecting the environment, where appropriate, in close cooperation with other authorities; maintaining a proper balance between customs control and promoting legitimate trade.

The protection and security functions, as you can see, are considered as the top priorities, although the presence of them is seen, but not the basic, both fiscal and service functions of customs administrations.

On the basis of these tasks it is important to form measures for the reform of the state structure, which is intended to provide, within the limits of its competence, responsibility for the implementation of customs affairsin the country.

The lack of a single conceptual vision of the reformation of the national customs affairs indicatesthe imperfection and incompleteness of initiatives, the lack and insolvency of an administrative resource for their implementation.

3. Monitoring as an indicator of the stagnation of the state customs affairs at the present stage

The Strategic Indicators for the implementation of the Strategy Ukraine– 2020 provide for the achievement of 25 key indicators by means of which it is possible to assess the progress of the planned reforms and programs. The strategy stipulates that "exercise of normative legal and organizational support for its realization consists in the development and adoption in accordance with the prescribed manner of the necessary normative–legal acts, annual action plans for its conducting and monitoring of their execution state."

That is, monitoring is recognized as one of the instrument of power control, the fulfilment of obligations declared by the Strategy in the area of responsibility of the authorities, business, civil society.

The Government Office for European and Euro–Atlantic Integration, together with the Ministry of Justice of Ukraine, has developed a system for monitoring and evaluating the effective-

ness of the Agreement through the development and operation of unified complex information and analytical system that contains information on tasks for the execution of the Agreement, their state of execution and evaluation of the effectiveness of the implementation of the Agreement [17].

If the report on the status of fulfilment of the obligations of the Agreement in 2016 identified the primary actions and steps for the implementation of the planned measures, then according to the results of work in 2017 on customs matters and trade facilitation, the state of their implementation will be specified.

During 2016 the Ukraine was supposed to fulfill two obligations in the customs sphere:

1. To establish a single electronic system for the exchange of data on goodsmoved by transit– provided for by the Convention on a single transit regime dd. May 20, 1987;

2. To introduce a united administrative document that will be used for the procedure of joint transit, import or export – is provided for by the Convention on Facilitation of Trade in Goods of May 20, 1987.

According to expert estimates, as of November 1, 2017, implementation of obligations to simplification of customs formalities almost did not take place.

The Verkhovna Rada of Ukraine was supposed to adopt framework legislation, the norm of which should launch a mechanism for facilitating movement of goods between Ukraine and the EU and establish the conformity of national transit procedures with the European standards stipulated in the provisions of the conventions.

But, as noted in the report, in the past, namely in 2012, by the State Customs Service of Ukraine already were adopted the number of subordinate regulatory acts aimed at regulating detailed procedures in this area. Therefore, the adaptation of the Ukrainian legislation on the conformity of the forms of the uniform administrative document applied in the customs sphere to the norms of conventions began to take place long before the Association Agreement was signed, although it needs to be improved.

According to the revised European Neighborhood Policy in Brussels, on November 7, 2018 the report was published and the state of fulfillment of Ukraine's obligations under the Association Agreement between Ukraine and the EU was exposed [18].

As a whole, as of January 1, 2018, 29% of Ukraine's commitments on approximation of customs legislation in the EU law were fulfilled.

The report states that, despite the stabilization of the economy achieved in recent years, the Ukraine continues to rely on international financial assistance (including the International Monetary Fund (IMF) and the macro–financial assistance program of the EU to maintain its macroeconomic stability.

As for customs matters and trade facilitation, the Ukraine lags behind the timetable for fulfilling its obligations to accede to the Conventions on the common transit procedure and the facilitation of trade in goods. The legislation of the Ukraine aimed at approximating the EU customs legislation, in particular bills on the authorized economic operator, the procedure for joint transit, the observance of intellectual property rights and customs assistance for travelers with the EU, the rules still have to be adopted by the Government.

Thus, there is a systemic dysfunctional feature, which is connected with the implementation of internal strategies in the customs sphere, and with the fulfilment of obligations at the level of international agreements. Robert C. Merton, in relation to the research of systems, noted: "The concept of dysfunction, which implies the notion of deformation, stress and strain at the structural level, provides the necessary analytical approach to the study of the dynamics and content of changes" [19].

Government administration without mistakes is practically impossible. Among the factors contributing to such mistakes should be the lack of proper control in the system of government administration, violation of the requirements of transparency of government administration, and many others. [12]

There are grounds to believe that there are reasons that, along with those are not subject to public discussion, have an origin related to the quality of the execution of current tasks during the performance of customs affairsby income and fee bodies.

An objective assessment of the current condition of the performance of state customs affairscan be considered the conclusions offered in the Report on the results of the audit of the effectiveness of the execution by the bodies of the State Fiscal Service of Ukraine of powers in the field of state customs affairsand fight against offenses during the application of customs legislation, approved by the decision of the Accounting Chamber of May 30, 2017 No 12–3 [20].

The Audit of the Account Chamber among the most urgent issues related to the execution ofobligations in reference to the performance of customs reforms, modernization and innovative development of customs in Ukraine has identified among others and those that converged with the concept of differentiation of customs issues in the relevant categories of attention: legal, organizational –structural, technological, communication.

1. The imperfect customs legislation is recognized. The normative–legal promotion in the field of state customs affairsin the period, that have been checked (from 2015 to the first quarter of 2017) is uncoordinated, does not facilitate the acceleration of customs clearance of goods, improvement of the administration of customs payments and simplification of customs formalities.

2. There is no cooperation between State Fiscal Service territorial bodies and law enforcement authorities, provided by the Customs Code of Ukraine.

3. The activity of State Fiscal Service bodies in the control of compliance with customs rules by foreign economic entities was also ineffective, which did not contribute to minimizing violations within the scope of this sphere.

4. Legislative uncertainty of the procedure of the customs postaudit and, therefore, the formal approach when conducting documentary checks on the implementation of customs legislation by the subjects of foreign economic activity, gave grounds for receiving the state budget only 5.1% of the amount of monetary obligations for customs payments.

As stated in the Report, the structural divisions of internal audit of the bodies of State Fiscal Service prepared recommendations based on improving the normative–legal basis, increasing the level of control, taking measures of organizational nature. However, some recommendations have not been executed;there have also been frequent transposition of terms or formal execution of them, which had a negative influence on their effectiveness.

From this there is a possible assumption that, as regards the inertial regression process, it is “incapable from realistic positions to solve problems, caused by external circumstances and internal conflict” [21], which is the lack of proper vertical management of customs affairsin Ukraine.

To date, the decision has been made and the Ministry of Finance of Ukraine has been authorized to prepare and carry out measures for the reorganization of the fiscal service with the allocation of the customs direction to a separate service.

In this sense, the assumption that “pendulum solutions arise when the real problem behind them is not yet defined or they do not want to solve it. Then they resort to purely structural manipulations (to unite – to separate, to centralize – to decentralize, etc.) “[22], which is quite objectively related to the customs sphere.

In the modern world, the uncertainty of the internal processes of any state is automatically translated into many–sided international ratings that influence on the image of the state in the world. One of the most important is the KOF Globalization Index.

Project managers established in 2002 at the Swiss Economic Institute and the Swiss Federal Institute of Technology identify globalization as a process, that destroys national boundaries, integrates national economies, cultures, technologies and management. The index includes variable indicators that measure the political, economical and social aspects of globalization.

During the period covered in the materials of this article, in accordance with globalization index of the Ukraine in the course of 2015–2018 ranked among the rest countries of the world as follows: [23]

	2015	2016	2017	2018
General Index of Globalization	42	41	45	49
Economic globalization	56	54	63	89

No other goal has found strong support than economic growth [24].

The society as a consumer of the information product that it has to be the mass media and differentstructures and organizations in the format of maintaining a standard view of customs activities as destructive does not receive sufficient, potentially objective conception about customs activities of the country.

As indicators of any processes of modernization and reforming are always the results, indicators of activity at the respective sphere. For customs, the indicators include not only expert international and national ratings, but primarily indicators of activity, which are determined by customs statistics and foreign trade statistics.

The growth trend of fiscal revenues every year is gaining ratesand creates conditions only for finding ways to increase the funds to be paid by the subject of foreign economic activity to the state budget to provide expenditures on the government's social and state programs.

The customs payments in 2017,transferred by the customs amounting to 303.8 milliards UAH made in sum more than 40% of total tax revenues. The aggregated performance indicators of the revenue and expenditure authorities quite clearly show the real state of fiscal achievements, which to a certain extent are ensured by the use of administrative measures and the appropriate management style.

According to data from the statistical information and reports on the activity of State Fiscal Service of the official portal State Fiscal Service [25], the steady growth of the state budget revenues comes from on the backdrop of negative balance of foreign trade over the past four years. At the same time, the weight of the exported product with the status of Ukrainian, more than twice exceed the weight of imported goods in Ukraine.

Estimated value of one ton of export is almost three times lower than the value of one ton of import. Against the background of growth of the transferred amounts of customs payments to the state budget, the tax loading, as a criterion for the efficiency and completeness of payment of customs payments, for four years continuously decreases.

The negative dynamics are economic instability and imbalance of internal processes in the country, the existence of contraband sources and the presence of a corrupt component in the activities of the revenue and expenditure authorities, it is not hard to admit it.

From this, less and less effort is being made to solve the problems connected with the conduct of planned reforms, the execution of strategic tasks, which are updated from time to time but are not being implemented.

The strategy deals not so much with uncertainties as with unknown factors. These events involve so many variables and their various combinations that the prediction of the final result of their interaction is do not force for anyone.

The Logic suggests: it is necessary, with the preservation of flexibility and taking into account the experience gained, to move from general ideas to increasingly specific positions and tasks [26].

At the end of November 2018, by the experts of the Institute for Economic Research and Policy Consulting during the organization of the round table "Customs work by the eyes of the public" was presented the new advisory work "Public Monitoring of the Customs Authorities: Conclusions and Recommendations" [27].

The experts of Institute, taking as the basis such monitoring and a national survey of exporters and importers, formulated recommendations for improving of passage of customs procedures and promoting international trade. Among the main recommendations are interpreted together with past recommendations regarding the improvement of customs procedures, the introduction of modern technologies, the implementation of the institution of the authorized economic operator, reporting and transparent procedures for determining the customs value and classification of goods, improving the image and motivation of the customs officer, the introduction of effective procedures and mechanisms of postcustoms audit.

In the Public recommendations was formed the conception of the state of the fulfilment of the presented projects of customs reforms and issues whose themes remain unchanged for the long time. As noted by A. Prigozhin in the work "Disorganization", the reasons for the persistent failure of achievement of goals are that if an organization for some understandable reasons is not always able to achieve its goals, or this achievement is significantly complicated (at expense, in time, for completeness), that is why in it occurred a pathology that has to be revealed and overcome [22].

Customs affairs in Ukraine went to level of legislative administrationat the full scope of the principle of "Single Window" and the improvement of technical capabilities to simplify customs procedures, which became a definite achievement of the current period of its evolution. Instead, the automation of customs clearance, the application of blockade in the field of international trade and customs control, risk management on the ground of big data, the application of scanners with artificial intelligence systems, long–distance access to enterprise accounting systems, electronic examinations, unmanned drone that can expose the ships, which departed from the course for possible loading of illegal goods, these are institutes that are being introduced and are constantly being improved in the developed countries [28].

4. Conclusions

In view of the credible, competent sources, one may conclude that the balance of interests of the triad – government, business, society – is capable of ensuring the country's main goal – integration and positioning at the level of the developed state.

The reform of the state customs affairs, as one of the planned Strategy of Ukraine – 2020, provides at its level the precondition for implementation through the prism of a social contract between the parties, where power, business and civil society have their own limits of responsibility.

Conducting of the reforms is a top priority task and the authorities are responsible for their carrying out. Moreover, control over the authority isa zone of responsibility of public society.

Public responsibility, information research and public expertise are formed under the influence and based on sources of retransmitting and information and communication institutions, normative–legal support.

The continuum of such influences is placed in the range between the "society of mature citizens" and the civil responsibility and has personal characteristics, since it provides for a high level of economic, social, spiritual, political culture; developed legal relations; the interaction of free citizens with the state for the common good; self–organized society [29].

An in–depth analysis of the causes and consequences of overcoming the accumulated uncertainties and inconsistencies in the development of the state customs affairs, which require immediate intervention, is possible provided that to whole chain stakeholders of national customs affairs, thepersons who have experience and professional competence in customsaffairs, professional competence and a high level of social and political culture.

This will solve the problems faced by the world's customs administrations and, accordingly, the Ukraine, to propose the goals and identify the ways to achieve them in the shortest possible time, with minimal resource capacities and costs, and effective means of providing them.

The contradiction at the certain stage is a peculiarity of the innovative processes. Diversification of the strategies and programs of the transformation of the national customs affairs can be considered at the present stage, as a process of knowledge and learning, and in a synergistic approach involving authority, business and civil society capable for the satisfaction of public expectations and increasing external ratings.

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ДИВЕРСИФІКАЦІЯ СТРАТЕГІЧНИХ ПРОГРАМ ТРАНСФОРМАЦІЇ МИТНОЇ СПРАВИ В УКРАЇНІ: ЗАПОРУКА РЕАЛІЗАЦІЇ ЧИ ДЕСТРУКТИВНА ПЕРСПЕКТИВА

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Митна діяльність є об'єктом суцільного інтересу в Україні. Стейкхолдери та ті, що зацікавлені у обговоренні рейтингів, формуванню іміджу митниці підтримують рівень цих інтересів. У статті розглянуті концептуальні питання імплементації та виконання домовленостей по митних питаннях Угоди про асоціацію України з ЄС, стан їх виконання, а також основні акценти презентованих стратегій реформування державної митної справи. Висновки моніторингу виконання Угоди про асоціацію, експертизи громадських організацій, дані статистики міжнародної торгівлі надали підстав дійти висновків, що шлях пошуку оптимальної стратегії це не період часу, а лише професійний підхід, поміркованість цілей, синергетичність прагнення та участі державних інститутів у задоволенні суспільних очікувань.

Зроблено висновок, що поглиблений аналіз причин та наслідків подолання накопичених невизначеностей та неузгодженостей аспектів розвитку державної митної справи, які потребують негайного втручання, можливий за умови залучення до всього ланцюга стейкхолдерів національної митної справи осіб, що мають досвід та професійну компетентність у митній справі, професійну ерудицію та високий рівень соціальної та політичної культури. Це дозволить вирішувати проблеми, що постають перед митними адміністраціями світу та, відповідно, України, ставити цілі та визначати шляхи їх досягнення у найкоротший термін, з мінімальними ресурсними навантаженнями та витратами, ефективними засобами їх забезпечення.

З метою обгрунтованого викладення матеріалів у статті застосовувались діалектичний, системний, дедуктивний методи дослідження, що надало більш повного розуміння інституційних процесів, що відбуваються в митній сфері.

Ключові слова: стратегія, стратегічні цілі, державна митна справа, реформи, трансформація, моніторинг, експертиза, громадськість.

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COMPONENTS OF PROCEDURE FOR ADOPTION OF PRELIMINARY DECISIONS ON CLASSIFICATION OF GOODS ACCORDING TO UCDACS

The article is devoted to the study of the procedure structure for the adoption of preliminary decisions on the classification of goods according to UCDACS. Implementation of the goods classification according to UCDACS to the actual movement of goods through the customs border by means of the adoption of preliminary decisions is an alternative option provided with the Customs Code of Ukraine.

The purpose of the article is the analysis of the legal regulation and structure of the procedure for the adoption of preliminary decisions on the classification of goods in accordance with UCDACS. Social relations that arise during the adoption of preliminary decisions on the classification of goods according to UCDACS are the object of the article.

The methodological basis of the study is a set of methods of scientific knowledge, in particular, system analysis in the researching of legal regulation of the procedure; formally legal for analysis and identification of problematic issues of law enforcement; methods of modeling, analysis and synthesis provided an opportunity to formulate proposals for amendments and additions to the provisions of the current customs legislation.

According to the results of the research, it was substantiated that the structure of the procedure for preliminary decisions on the classification of goods according to the UCDACS consists of stages and procedural actions. It is suggested that the structure of the procedure for making preliminary decisions regarding the classification of goods in accordance with the UCDACS consists of the following stages: starting of the procedure; consideration of the application and submitted documents; making a preliminary decision. Drawbacks in legal regulation of procedure for previous decisions on the classification of goods according to the UCDACSare founded and the ways for its overcoming are suggested.

Key words: classification of goods according to UCDACS, customs legislation, preliminary decisions, procedure, procedural action, stage, structure of procedure.

JEL Classification: K23.

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1. Introduction

Preliminary decisions in the customs case are well founded as the most effective means of simplifying trade procedures. It is precisely with preliminary decisions both in the current customs legislation and in the special literature the achievements of legal certainty are associated with the movement of goods through the customs border, the establishment of additional safeguards for foreign economic entities and revenue and fees, and, most importantly, ensuring the adaptation of the national customs legislation to international and European norms and standards.

We are sure that certain characteristics of preliminary decisions must necessarily be revealed during their adoption. In

this regard, the study of the procedure for the adoption of preliminary decisions is the scientific interest.

Literature review. Questions of customs and tariff regulation, in particular their classification, were investigated in the works of I.G. Berezhnyuk, SG Voitova, O.P. Grebelnik, N.L. Huber'skaya, Ye.V. Dodin, S.V. Kivalov, T.O. Kolomoets, V.Ya. Nastyuk, D.V. Priyamachenko, V.V. Prokopenko, M.G. Shulga and many others. However, the procedure for the adoption of preliminary decisions on the classification of goods according to UCDACSwas not studied specially.

The purpose of the study is analysisof the legal regulation and structure of the procedure for the adoption of preliminary decisions on the classification of goods in accordance with UCDACS.

Research methods. The basis of the study was systematic analysis, with the help of which the legal regulation of the procedure for the adoption of preliminary decisions on the classification of goods according to UCDACS. Separate methods of scientific knowledge were also used, in particular formal-legal for analysis and identification of problematic issues of law enforcement; modeling and analysis and synthesis provided an opportunity to formulate a proposal for amendments and additions to the provisions of the current customs legislation.

2. Results.

According to i.1, p. 4 art. 23 of the Customs Code of Ukraine (CC of Ukraine) [4] preliminary decisions can be made on the classification of goods according to UCDACS. As it is known, all goods when they are declared are subject to classification (part 1 of art. 69 of the CC of Ukraine), therefore, in practice, a significant share of preliminary decisions is made precisely on the classification of goods according to UCDACS.

The procedure for adopting preliminary decisions on the classification of goods in accordance with UCDACS is based on the provisions of Art. 23 of the Customs Code of Ukraine and the Procedure of the work of the department of customs payments, customs clearance units of the customs authority and customs posts within the framework of the decision of the question of the classification of commodity units that are transported across the customs border of Ukraine, approved by the order of the Ministry of Finance of Ukraine of 30.05.2012 № 650 (hereinafter – Order 650) [5], in which some provisions of Section I and Section II are devoted to the preliminary decision.

It is generally accepted that the structure of the procedure consists of stages, stages and procedural actions. According to N.L. Huberska, these elements determine the structure and sequence of actions in the consideration and resolution of specific administrative cases [1, p. 77]. Mandatory elements in this case are the procedural steps and stages. In turn, the stages are distinguished, usually with more complex and lengthy procedures.

Accepting this and guiding b the provisions of the current legislation, in particular art. 23 of the Customs Code of Ukraine [4] s. II of the Order No. 650 [5], we consider that the procedure for the adoption of preliminary decisions on the classification of goods according to the UCDACS consists of the following stages: 1) violation of the procedure; 2) consideration of appeal and submitted documentation; 3) making a preliminary decision.

Therefore, it is necessary to consider and provide a characteristic for each of these stages.

The stage of the procedurestarting originates from submission of a completed written application in accordance with the form given in Annex 1 to Order No. 650 [5] and the preparation of the necessary documents, including the development and certification of their copies. This is the first procedural action at this stage.

It should be noted that the written application is filled in with a single item (article) of the goods (i. 4 s. II of the Order No. 650 [5]). That is, a separate preliminary decision is made for each item.

The following documents should be attached to the application: foreign economic agreement (contract) or other document used in international practice instead of contract (contract); technological schemes and technical requirements for the manufacture of goods (if any); drawings and photographs of the product (if any); certificates and permissions of authorized state bodies (if available); characteristics, catalogs and passport details of the manufacturer's product (if any); Certificate of origin of goods, marking labels, permits (if available); sample of the goods (if any).

From the list it is seen that the mandatory document is the foreign economic agreement, all others are provided in the case of their availability, and therefore depends on the specific product.

The submission of documents in the form of originals or copies is allowed. However, the provisions of Order No. 650 [5] do not provide for the need to certify copies of these documents, which is not in accordance with the general requirements of case management, in particular, the provisions of the national standard of Ukraine SSTU 4163-2003 (Uniform system of organizational and administrative documentation, requirements for the execution of documents) [3]. There is also no possibility to certify these copies by the body of incomes and fees during their adoption.

We propose to add the first sentence of the p. 2, it. 5, s. II of the Order 650 [5] after the word "copies" with the words "which are certified by the person submitting the application". There is also a requirement to translate into Ukrainian if they are drawn up in a language other than Ukrainian or other official languages of customs unions.

The next and final procedural action at this stage is the submission (sending) of the application and documents to the relevant body of revenues and fees. Allowed as a direct submission to the body of incomes and fees by its location, and posting using postal services, etc. Electronic submission is not currently provided for by current legislation.

Consequently, at this stage, the chosen procedural actions are committed by a person who wishes to obtain a preliminary decision on the classification of the goods in accordance with the UCDACS and are made obligatory.

At the stage of reviewing the application and the documents submitted, the first procedural action is registration of the application. It was established that an application is registered on the day of its actual receipt (p. 2, i. 6, s. IIof the Order 650 [5]). Also, Order N 650 establishes the form for registration of applications for the adoption of preliminary decisions (Annex 2), however electronic registration is also possible [5].

At the same time, the Typical instruction for document management information in electronic form and organization of work with electronic documents in office work, electronic interagency exchange, approved by the Resolution of the Cabinet of Ministers of Ukraine dated January 17, 2018 No. 55 [2] anticipates that the electronic form is the main form of case management (p.1, i.2). Consequently, the provisions of the Order No. 650 [5] do not meet the requirements of this Instruction and need to be brought into conformity.

The timing of the adoption of the preliminary decision on the classification of goods in accordance with the UCDACS is precisely connected with the registration of the appeal by the body of incomes and fees, which according to part 5 of art. 23 of the Customs Code of Ukraine [4] is 30 days, with the possibility to be extended by no more than 15 days, that is reported to the

person who had filed the application. Obviously, a similar provision is contained in i. 9, s. II of the Order No. 650 [5], the analysis of which should emphasize the positivity of sub-legislative regulation, aimed at overcoming the cornerstones of legislative regulation.

Thus, Order No. 650 specifies that it is a question of "calendar" days, which makes it impossible to interpret them as "working days", and also provides that the general term (30 calendar days) can be extended to the ending of the 30-day period with the indication of the reasons.

The next procedural action is consideration of the submitted documents for the adequacy of a preliminary decision, which verifies the actual compliance of the documents submitted to the mandatory submission and their general content.

Considering that according to p. 1 i.5s. II of the Order No. 650 [5] only the foreign economic contract (contract) or other document used in international practice instead of the contract must be provided, at checkingspecial attention is paid to the content of other applications.

In the case of failure to submit all necessary documents and information for the acceptance of the previous decision, the applicant's notification about the need to submit additional documents is made. In this procedural action, the applicant receives a written or electronic notification of the need to provide additional documents. This is an optional procedural action, which is performed in case of establishing the insufficiency of submitted documents for making a preliminary decision, based on the results of the preliminary procedural action.

It should be noted that the deduction of the term for the adoption of a preliminary decision begins with the date of the issuance of all necessary documents,therefore, with the commission of this optional procedural action, the period of the adoption of the preliminary decision is actually stopped.

At the same time, in accordance with i. 10, s. II of the Order No. 650, in the case of filling an application without the necessary part of the necessary documents and information for a preliminary decision to deduct the period of the acceptance of the preliminary decision begins from the date of submission of all the documents that were missing, is not in compliance with provisions of part 5, art. 23 of the Customs Code of Ukraine [4], according to which the period of acceptance of the preliminary decision on classification of goods according to UCDACS consist of 30 days from the day of submission of the corresponding appeal to the body of incomes and fees.

The relationship between the submission of "all necessary documents and information" and the calculation of this period of the Customs Code of Ukraine is not established, in contrast to preliminary decisions on the determination of the country of origin of goods, for which the Customs Code of Ukraine provides that the term of acceptance is no more than 150 days from the date of submission appropriate appeal to the body of incomes and fees, provided all the necessary information about goods [4].

Consequently, the given provision of the Order No. 650 does not find appropriate confirmation in the provisions of the Customs Code of Ukraine, and therefore contains a groundless restriction of the rights of the applicants, regarding the timing of consideration of the application for the adoption of a preliminary decision. In this regard, in order to bring the provisions of Order No. 650 in line with part 5 of art. 23 of the Customs Code of Ukraine, we propose the first sentence of i. 10, s. II of the Order No. 650 to exclude.

The next procedural action, which is necessarily performed, is the verification of the consideration of the application for an identical product by another body of incomes and fees. This action is in the course of verification of the fact that the applicant submitted an application for this product to other bodies of income and fees that were accepted by them for consideration.

Such verification is carried out in accordance with i. 12, s. II of the Order No. 650 [5], with the help of the Unified Automated Information System (hereinafter referred to as the "UAIS").

The procedural action is to prepare the refusal to consider the appeal in the case of failure to provide all necessary documents or to establish the fact that the other body examines the revenues and fees of the applicant's application for an identical product. Therefore, this procedural action may also be carried out after the procedural action-the applicant's communication about the need to submit additional documents, in case if the requested documents will still not be provided.

The refusal to consider an appeal does not prevent a repeated application in case of elimination of the reason, which was the reason for refusal (p. 2, i. 11, s. II of the Order number 650 [5]). It is also an optional procedural act.

Before proceeding to the next procedural steps, it is worthwhile to focus on clarifying the ratio of "refusal to consider the appeal" and "refusal to make a preliminary decision", in connection with their simultaneous use in i. 11, s. II of the Order No. 650 [5].If the "refusal to consider the appeal" does not preclude a repeat referral in case of elimination of the reason for refusal, as indicated above, that is, the adoption of the preliminary decision is possible, but the applicant does not meet all the necessary requirements for this.

Thus, the "refusal to make a preliminary decision" makes it impossible to make a preliminary decision, and the reasons can not be eliminated, that is, it is not allowed to reapply on this issue.

Thus, the content of the a. 1 i. 11 s. II of the Order No. 650 [5], according to which "... the customs authority refuses to consider the application with the justification of the reasons which have become the basis for refusal to make a preliminary decision ...", unjustifiably combines "refusal to consideration of the appeal "and" refusal to make a preliminary decision ".

Therefore, we offera. 1 i. 11 s. II of the Order No. 650 [5] after the words "justification of the reasons" to read as follows: "which became the basis for such a refusal, with the return of samples and samples of the goods (in case of their submission)".

The next procedural action is the checking in the database of the UAIS of the availability of preliminary decisions on identical, or similar products to the information specified by the applicant in the application, the implementation of which is carried out using the software and information complex "Registry of preliminary decisions on the classification and coding of goods in the UCDACS" UAIS.

The last procedural action at this stage is the preparation of a refusal to issue a preliminary decision, which is carried out in case of establishing the fact of acceptance of the product of a preliminary decision, which has not been changed or canceled, or the presence of facts and conditions under which it was accepted remain unchanged, the preliminary decision is not provided (i.13 s. II of the Order No. 650 [5]). In this regard, this procedural action is also optional.

Consequently, at the stage of consideration of the application and the submitted documents, there are both mandatory and optional procedural acts committed by the incomes and fees authorities and those who wish to obtain a preliminary decision on the classification of the goods according to theUCDACS.

The final stage **is the adoption of a preliminary decision**. Structurally, this stage consists of such procedural actions.

The first procedural action, in the case of a positive review of the application and the documents submitted, is the execution of the preliminary decision. The preliminary decision on the form of the income and fee body is drawn up in the form provided in Annex 3 of the Order

No. 650, taking into account the specified order of filling its graph (p. 24 s. II of the Order No. 650)[5]. The preliminary decision may contain annexes, in particular product images, their parameters, particular reference characteristics specified in it (graph 7), and a photograph of the product and / or its packaging is printed on its back side.

Making a preliminary decision to the Register of preliminary decisions on the classification and coding of goods in the UCDACSUAISis the next in the queue (an electronic copy of the preliminary decision together with the available photo product, in accordance with i. 14s. II of the Order No. 650 [5] shall be entered in the register). The term of this procedural action is one working day after the execution of the preliminary decision.

The next procedural action is the publication (referral) of the preliminary decision to the applicant. In accordance with i. 16 s. II of the Order No. 650 [5], the original of the preliminary decision is issued (sent) to the applicant. Taking into account that the choice of the priority option for the applicant to obtain a preliminary decision (extradition or communication) remains unregulated, in practice the applicant indicates this in the application. In case of choosing a variant with a direct issuing of a preliminary decision, after the registration of the last the revenues and fees bodies inform the applicant.

At the same time, there are no requirements for forwarding the applicant's decision to the Order No. 650 [5], in particular, the type of postal item, the need to receive notification of the delivery of the item, etc. Such kind of departure must contain a description and be sent with the notification of delivery to the applicant, that is, a valuable letter.

The last procedural action is the disclosure of information about the preliminary decision. This is done in accordance with p. 12 of art. 23 of the Customs Code of Ukraine [4], according to which preliminary decisions, with the exception of confidential information, are publicly available and can be made public. From the analysis of this provision, we consider it necessary to focus attention on the following. First, in this case, it is not about "publishing a preliminary decision", but about "disclosure of information about a preliminary decision", that is, a text-made prior decision is not made public.

Second, the central body (the State Fiscal Service of Ukraine) ensures such disclosure, it is confirmed on the official portal of the State Fiscal Service of Ukraine [6], which contains information about the preliminary decisions on the classification of goods according to UCDACS since 2015. Third, the period during which such disclosure is made is not specified neither in p. 12 of the art. 23 of the Customs Code of Ukraine [4] nor in the Order No. 650 [5], that allows the State Fiscal Service of Ukraine to solve this issue independently, hence there is a risk of non-compliance with this provision.

Fourthly, there is also no disclosure procedure, in the case of electronic disclosure of information about preliminary decisions or their printing, for example in the official publication of the State fiscal service of Ukraine. However, as it is noted above, information is currently being published on the official portal. In the fifth, the information can be confidential only about the goods and the applicant can inform it in the application for the adoption of a preliminary decision, in accordance with p. 1 i. 6 of s. II of the Order No. 650 [5]. The body of income and fees, taking into account the existence of such a notification by the applicant, performs it without interfering in this matter.

Consequently, at the stage of the adoption of the preliminary decision, each procedural act is carried out by the income and fee bodies and is obligatory.

3. Conclusions

Thus, the structure of the procedure for the adoption of preliminary decisions on classification of goods according to UCDACS can be presented through the following stages:

1. The stage of violation of the procedure consists of the following procedural steps:

1) filling in the written application and preparation of documents;

2) submission (sending) of applications and documents to the relevant body of incomes and fees.

2. The stage of consideration of the application and submitted documents consists of the following procedural steps:

1) registration of application;

2) verification of the adequacy of the submitted documentation for the adoption of a preliminary decision;

3) notification of the applicant about the need to submit additional documents (optional);

4) verification of the consideration of an application for an identical product by another body of income and fees;

5) preparation of the refusal to consider the appeal (is optional);

6) verification in the database of the UAIS of the existence of preliminary decisions on identical, similar or similar goods to the information specified in the applicant in the application;

7) preparation of refusal to issue a preliminary decision (optional).

3. The preliminary decision-making process consists of the following procedural steps:

1) execution of the preliminary decision;

2) making a preliminary decision to the Register of preliminary decisions on the classification and coding of goods in the UCDACSUAIS;

3) publication (referral) of the preliminary decision to the applicant

4) disclosure of information about the preliminary decision.

According to the results of the study, amendments and additions to the Order No. 650 were proposed:

• add the first sentence of p. 2 i. 5 s. II after the word "copies" with the words "which are certified by the person submitting the application";

• p. 1 i. 11s.II after the words "justification of the reasons" read as follows: "which became the basis for such a refusal, with the return of samples and samples of the goods (in case of their submission)";

• in i. 11 s. II to delimit the "refusal to consider the appeal" (in case of establishing the discrepancy between the application and the submitted documents to the established requirements, does not prevent the repeated application on condition of elimination of reasons) and "refusal to make a preliminary decision" (in case of impossibility to eliminate reasons and does not allow to re-apply);

• i. 15 s. II supplement by the period of the publication of information about the preliminary decisions made.

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СКЛАДОВІ ПРОЦЕДУРИ ПРИЙНЯТТЯ ПОПЕРЕДНІХ РІШЕНЬ ПРО КЛАСИФІКАЦІЮ ТОВАРІВ ЗГІДНО З УКТЗЕД

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Статтю присвячено дослідженню структури процедури прийняття попередніх рішень про класифікацію товарів згідно з УКТЗЕД. Здійснення класифікації товарів згідно з УКТЗЕД до фактичного переміщення товарів через митний кордон шляхом прийняття попередніх рішень є альтернативним варіантом, передбаченим Митним кодексом України.

Метою статті є аналіз правового регулювання та структури процедури прийняття попередніх рішень щодо класифікації товарів відповідно до УКТЗЕД.

Об'єктом статті є суспільні відносини, які виникають під час прийняття попередніх рішень про класифікацію товарів згідно з УКТЗЕД.

Методологічну основу дослідження становить сукупність методів наукового пізнання, зокрема системний аналіз при висвітленні правового регулювання процедури; формально-юридичний для аналізу та з'ясування проблемних питань правозастосування; моделювання і аналізу та синтезу надали змогу сформулювати пропозиції щодо внесення змін і доповнень до положень чинного митного законодавства.

За результатами проведеного дослідження обґрунтовано, що структура процедури попередніх рішень про класифікацію товарів згідно з УКТЗЕД складається зі стадій та процедурних дій. Запропоновано, що структура процедури прийняття попередніх рішень щодо класифікації товарів відповідно до УКТЗЕД складається з наступних стадій: порушення процедури; розгляд звернення та поданих документів; прийняття попереднього рішення. Доведено, що процедурні дії є обов'язковими та факультативними, вчиняються і органами доходів і зборів, і заявниками. Виявлено недоліки та прогалини в правовому регулюванні процедури прийняття попередніх рішень щодо класифікації товарів відповідно до УКТЗЕД та запропоновано шляхи їх подолання і усунення.

Ключові слова: класифікація товарів згідно з УКТЗЕД, митне законодавство, попередні рішення, процедура, процедурна дія, стадія, структура процедури.

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A DIVERSITY OF OPINIONS ON THE STANDARDS OF INTERNATIONAL CUSTOMS LAW

A number of multilateral international customs agreements, bilateral treaties of Ukraine, acts of the World Customs Organization, instruments of the European Union, legal acts of Ukraine and scientific literature require careful examination of their structure and content. The authors have studied the standards of international customs law based on the following theory: standards are an independent category of international customs law and differ from its principles and legal norms; standards of international customs law serve as a subsidiary element in legal regulation of customs relations, because in contrast to the principles and norms of international customs law, they are not intended to regulate customs relations independently; standards of international customs law derive from its principles and legal norms.

The concept of "standards of international customs law" is proposed to define technical specifications, templates, samples, models, methodical recommendations for the certain type of activity or achievement of anticipated results. The standards are elaborated in order to promote the realization of principles and norms of international customs law, which implementation into practice of customs administrations is carried out by subjects of international customs law taking into account individual needs and opportunities, on the terms and in accordance with the procedure defined by international legal acts.

Alternatively, from the perspective of the standards of international customs law, an analysis of the Customs Code of Ukraine was carried out and some recommendations for its improvement were proposed. proposed. The research findings carried out within this article may contribute to the implementation of the principles, norms and standards of international customs law by Ukraine, and may be used to amend the Customs Code of Ukraine in power.

Key words: international customs law, standards, principles, legal norms, international treaties, Customs Code of Ukraine.

JEL Classification: K33.

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1. Introduction

Joint activity of states aimed at overcoming existing and preventing new global problems (threats of civilization's self-destruction as a result of a possible nuclear conflict, overcoming economic underdevelopment in the world, ensuring sustainability, developing information and trade exchange, destabilization of international relations and increasing terrorism, etc.), has positive effects in various fields of interstate relations, including the field of international customs law, namely, it changes the concept of absolute customs' sovereignty of states; promotes more intensive international customs cooperation; accelerates the processes of convergence of customs systems of different states, etc.

Achievement of the goals by states, both abovementioned and in other areas of their joint activity in sphere of international customs law, depends on many factors, among which one of the most important is adoption and implementation of various international standards in this area, is precisely coordinated and significant understanding of such standards.

The mentioned issue is relevant for Ukraine, customs affairs of which have been in a state of constant reform since the declaration of independence by our state. Thus, according to Art. 7(2) of the Customs Code of Ukraine: "The state customs affairs are carried out in compliance with internationally accepted forms of entry of goods, methods for determining the customs value of goods, systems for classifying and coding goods and customs statistics, and other generally recognized norms and standards". The gradual approximation of Ukrainian legislation in customs sphere to the customs legislation of the European Union (hereinafter – EU), as defined in EU standards and international standards, is indicated in Art. 84 of Association Agreements between Ukraine, on the one hand, and the EU, the European Atomic Energy Community and their Member States, on the other side of June 27, 2014 (hereinafter – Association Agreement or Agreement). In addition, in accordance with Art. 76(1) the parties to the Agreement have also agreed to ensure the application of a set of international customs documents created by the World Customs Organization used in customs affairs and trade, the list of which begins with the Framework Standards for Security and Facilitation of International Trade Procedures, 2005 etc.

At the same time, despite the fact that the category "standard" is widely used in legal acts of Ukrainian legislation regarding issues of the state customs affairs, particularly in international customs treaties of Ukraine, for the last three decades it has consistently been associated by customs officials with the priority directions of improvement of law enforcement activity in the sphere of state customs affairs of Ukraine and for a long time is discussed by domestic scientists; there are no clear answers to questions "What are the standards of international customs law?" and "What position should be assumed for their correct understanding?" neither on doctrinal nor official levels.

Therefore, the purpose of this article is to establish peculiarities of understanding the standards of international customs law by scientists from Ukraine and foreign states, develop a universal concept of customs affairs for the domestic theorists and practitioners in this sphere and propose to improve Ukrainian legislation on the issues of customs affairs for more effective implementation of the standards of international customs law.

Achieving that goal requires careful examination of a structure and content of a number of multilateral international customs agreements (in particular, the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May, 1973), bilateral treaties of Ukraine (in particular, the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, of 27 June, 2014), acts of World Customs Organization (in particular, Resolutions on the Framework Standards for Security and Facilitation of International Trade Procedures), European Union instruments (in particular, "Customs Blueprints"), legal acts of Ukrainian legislation (in particular, Customs Code of Ukraine), encyclopedias, scientific and educational literature.

2. Literature review

Many researchers have considered the issues of theory and implementation of international customs law's standards in their publications, thus the analysis of existing developments in the sphere of scientific research indicates the diversity of views upon their understanding. The gen-

eralization of published scientific papers allows us to combine the existing diversity of views in understanding the standards of international customs law within the framework of two approaches: scientific and practical.

For the Ukrainian legal doctrine, as well as for the doctrine of most post-Soviet states, a scientific approach is more common. Within its framework published papers have a primarily descriptive, highly specialized academic character. In their content, there is usually no scientific discussion as well as practical indicators of the implementation of international customs law standards, because the authors focus on highlighting their own vision of issue under study, which is not always well-founded and in some cases is internally contradictory. As a result, the doctrine of international customs law has given rise to an uncertain terminological situation in which there is the use of different terms for verbal labelling of the concept of "standards" ("international standards") enshrined at national and international levels; there is no unity in the views on the delimitation of the terms "standards", "principles" and "norms" of international customs law, ambiguity is the vision of their legal force, etc. In addition, this situation has a negative effect on law-making and enforcement activity in the sphere of customs affairs, as the existing national pluralism of approaches to understanding the standards of international customs law (within which it is not clear whether the same meaning employs scientists and legislators in the concept that constitutes the subject of our consideration) is also reproduced in the acts of the legislation of Ukraine on the issues of state customs, which often leads to various misunderstandings when implementing the standards of international customs law both at domestic and international levels of legal regulation of customs relations.

In general, various representatives of Ukrainian legal doctrine pointed out the fact of the existence of international customs law standards, their significant influence on customs policy, customs legislation and customs affairs of Ukraine, and the need for scientific reflection, but no further studies have been carried out yet. Among such authors should be mentioned the following: Mytsyk, 1994; Sandrovskij, 2001; Perepadia, 2007; Filatov 2013; Muzyka, 2015 and others.

Other scholars focused on general description of the structure and content of international legal acts, through which certain international standards were approved, and made theoretical proposals on their implementation at the domestic level, among them: Dodin, 2005; Skomarovskyi, 2005; Havriushenko, 2006; Pryimachenko, 2007; Berezhnik, 2009; Pashko, 2009; Klian, 2011; Chorna, 2013; Shulha, 2014; Denysenko, 2015; Kalinichenko, 2015; Sai, 2016; Kveliashvili, 2016; Dorofeieva, 2017 and others. In the works published under their authorship, it was mainly about the Framework Standards for Security and Facilitation of International Trade in 2005 and the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May, 1973.

Less attention was paid to studying the European Union's customs law standards by Ukrainian scientists, that was manifested in a small number of scientific works compared with the results of the work of previous group of researchers. Kivalov, 2001, Mazur, 2005, Filatov, 2008, Romanenko, 2010, Kistanova, 2014, Bykov, 2017, Kormych, 2017 and others devoted their works to the topic mentioned.

On the contrary, in the writings of the representatives of applied approach the theory of standards of international customs law and the implementation of international legal acts used for their approval is almost neglected, since in their content the authors focus on the analysis of indicators achieved by the results of implementation of international standards by national customs authorities, as well on the development of proposals for further improvement of both their

content and implementation practices. They recognize the importance of international customs law standards for the development of international trade and the implementation of various types of commercial and non-commercial activities, but do not give their exact definition (the "only accurate universal definition"). Thus, what exactly the representatives of this approach refer to the notion "standards of international customs law" often remains uncertain and obvious only to them. The range of their scientific interests is broader than that of domestic scientists, and includes, in addition to the standards of the International Convention on the Simplification and Harmonization of Customs Procedures of May 18, 1973, and the Resolutions of the Customs Cooperation Council on the Framework Standards for Security and Facilitation of International Trade 2005, other standards developed by the results of the activities of the World Customs Organization, the World Trade Organization, the European Union and other intergovernmental organizations. The most prominent representatives of this approach are the following scientists: Hein, Rydsijk, 2006; Matsudaira, 2007; Gordhan, 2007; Lux, 2007; Hossain, 2008; Rovetta, 2008; Ireland, 2009; Weerth, 2009; Kafeero, 2009; Cheng, 2010; Wolffgang and Dallimore, 2012; Lyons, 2018 and others.

3. Research methodology

In the doctrine of international customs law, there is no unity in the approach to understanding the concept of "standards of international customs law". That is due not only to the subjective factor but also to the fact that the terms "standard" and "international standard" in legal encyclopedic literature, legal doctrine and Ukrainian legislation on the issues of state customs are characterized as polysemic.

The Dictionary of foreign languages edited by Pustovit (2000) contains the following interpretation of the word "standard" – a sample, a pattern, a model that becomes a benchmark for other objects.

According to the Dictionary of modern concepts and terms edited by Makarenko (2002) the term "standard" is interpreted as a [typical] sample, pattern, [normative] model taken for the original to be compared with other objects, and the term "international" means connected with relations between states, which is relevant to foreign policy.

In legal encyclopedia edited by Shemshuchenko (2003) the term "standard" (from the English Standard - norm, sample, model) is proposed to be understood as a specific document, which specifies certain list of rules of general and multiple use, universal principles and / or characteristics of a particular activity or its results, the purpose of which is to achieve the optimum level of harmonization of a particular branch. At the same time, the term "international standards" has the following meanings: 1) international legal norms and principles that provide the standards of conduct for subjects of international law in certain spheres of interstate cooperation. Standards set certain minimum requirements that all states must adhere to. They are contained in international treaties and other sources of international law; 2) documents of the International Organization for Standardization (ISO), which establish rules and requirements in the sphere of finished products of mass production, semi-finished products and raw materials.

Many scholars formulate author's definitions of the term "international standard" based on the principles set forth in Art. 1. of Standardization Act of Ukraine of 5 June, 2014 defining the term "standard", namely: "the standard is a normative document based on consensus, adopted by a recognized body, which establishes for a general and repeated use of a rule, instruction or characteristic of activity or its results, and is aimed at achieving the optimum degree of harmonization in a particular area".

As a result, representatives of the legal doctrine often identify international standards with norms of law or with normative documents use the notion of "standard in law" to interpret domestic standards defined by the national legal system, and for international standards – the notion of "legal standard", and they suggest to consider international standards as a new type of sources of international law, etc.

For instance, professor Baimuratov (2006) believes that international standards are certain international law norms that are stipulated by international treaties and developed by States within the framework of international intergovernmental organizations (IGO).

Moroz & Kravchuk (2017) believe that the distinction between the concepts of "legal standard" and "standard in law", and hence domestic and international standards, is due to different approaches to understanding the law. In their view, the notion of "standard in law", developed on the basis of the positivist concept, should be interpreted as the normative-defined limits of admissible behaviour aimed at achieving the optimum degree of harmonization in a certain sphere. Basically, legislative consolidation of the standard as a normative document means formal expression of "standard in law". The notion of "legal standard" is a wider concept that, besides the regulatory boundaries of admissible behaviour, also takes into account general principles of justice and reflects the natural-legal concept of legal consciousness.

Professor Kyivets (2012) speaks on the possibility of considering the category of "legal standard" in the sense of not only individual rules, but as a document that establishes a set of rules, regulations, requirements for standardization facility, which sets object's characteristics aimed at voluntary multiuse. Kyivets (2010) also believes that in the near future may take place of a new major source of international law – the standard, examples of which have long taken within its competence by various international organizations, including the World Health Organization (WHO), World Meteorological Organization (WMO), International Civil Aviation Organization (ICAO), etc.

The terms "standard" and "international standard" are ambiguously determined and are also used in the Ukrainian legislation on state customs affairs. For instance, provisions of Part 2, Art. 7 of the Customs Code of Ukraine contain, on the one hand, the identification of accepted international practice forms ..., methods ... and systems ... (see above) both as norms and standards. On the other hand, the legislator used the approach to the definition of standards, in accordance with which the state customs affairs should be carried out in Ukraine, according to which such standards can be considered as direct international standards of customs affairs, as well as standards of other related to customs affairs of state regulation, the only defining requirement of belonging to which is their universal recognition.

Another act of Ukrainian legislation on issues of state customs affairs – the Ordinance of the Cabinet of Ministers of Ukraine "on approval of the Concept of involvement of companies (advisers) to reform the customs of the State Fiscal Service" of 11 February, 2016, No.267-p (hereinafter – the Concept), did not mention universally recognized in the world norms and standards, because within the framework of the problem addressed by the Concept, main attention is focused on the elimination of differences between customs standards of Ukraine and EU standards. At the same time, it should be emphasized that the category "customs standards of Ukraine" is not used in Ukrainian legislation on issues of state customs, in particular in the Association Agreement. The situation with regard to the category of "EU standards" is uncertain as, in accordance with the objective of the Concept, the reform of customs of State Fiscal Service (hereinafter – SFS) should be based on the "EU Customs Prototypes" – a guideline in the

customs cooperation between Ukraine and the EU, which, as noted by Chentsov (2015), is the standard proposed by the European Commission for the customs administrations of countries that are candidates for accession to the EU. However, on the single web-portal of the executive authorities of Ukraine the "EU Customs Prototypes" indicated in the Concept are mentioned as an international document used in the development of the Concept called "EU Customs Standards" (Customs Blueprints), and on the website of SFS of Ukraine – as the customs standards of the EU Customs Blueprints.

It should be noted that the original English version of "Customs Blueprints", as well as their translation into French ("Schemas directeurs relatifs aux douanes") and Russian ("Свод таможенных стандартов") languages, are available on the official website of the European Commission. However, from the standpoint of Kormych (2017), the shady Russian translation of the "Свод таможенных стандартов" and its Ukrainian "Зведені митні стандарти" are incorrect translations of "Customs Blueprints". After all, any English glossary notes that "blueprints" is a plan (a scheme) or a document that serves as a plan function. This is confirmed by the translation from French "Schemas directeurs relatifs aux douanes", that is, the customs master-plan. However, when international standards specify custom standards, the name is appropriate (for example, SAFE Framework of Standards to secure and facilitate global trade). Incorrect translation of the title causes misunderstandings about how the Customs Blueprints are used. Therefore, Customs Blueprints is not standards in the usual sense, because it is a certain technique and sequence of actions, as concluded by the scientist.

We share the opinion of Kormych (2017) about the inappropriateness of use of "Blueprints" of any of the abovementioned definitions, except the official term, that is, "Customs Blueprints", because the consequence of this, above all, may not be proper understanding of their essence, which leads to further different misunderstandings, in particular about the way of using blueprints. For the confirmation of our own position, we give the following arguments.

In an introductory part to "Blueprints" it is indicated that they should be considered as practical guidance, based on the best practices of the EU. Their development and improvement was caused by the need to assist non-EU countries in bringing their customs administrations in line with EU legislation and standards. Customs Blueprints are not part of either customs or tax legislation of the EU and therefore are not legally valid. Being a technical publication, they represent a valuable standard for the customs administration, the use of which is aimed at assessing the effectiveness of the work carried out and organizing its own path to better customs.

Consequently, the titles "EU Customs Prototypes" and "EU Customs Blueprints" are also unreasonably used by Ukrainian scientists and practitioners to refer to "Customs Blueprints", an instrument, the use of which is recommended by the EU to Ukraine for the gradual approximation of its customs legislation to the EU customs legislation and standards. The elimination of similar misunderstandings related to incorrect translation of the title and content of international legal acts of both universal and regional nature will facilitate the implementation of the official authentic translation of primary sources on the basis of which the Ukrainian state authorities are planning to reform the customs of SFS, that we, Perepolkin (2007&2009), have already been highlighted in other works.

The uncertain terminological situation emerged in legal doctrine and in relation to the notion of "standards of international customs law", where, along with the terms "standards" and "international standards" fixed at the legislative level, scientists commonly use the following phrases: universally recognized in the world customs relations standards; world customs standards;

world standards for customs regulation; international customs standards; international standards of customs affairs; international standards in the sphere of customs; international standards of customs regulation; international standards of customs affairs regulation; international standards in the sphere of customs regulation; international standards in customs sphere; international legal standards in customs sphere; standards in the customs sphere; international standards in the sphere of customs simplification; international standards for simplification and harmonization of customs procedures, etc.

There is lack of consensus among scholars in approaches to understanding the proposed terminological constructs, which they interpret as principles of international customs law, or as norms and provisions of international treaties, or as international treaties (conventions and agreements), or as the main management tools of World Customs Organization, or as a type of common law-making activity of states, etc.

For instance, Denysenko (2015) states in this regard: "The international customs standard is a group of treaty principles that begin to operate between states when they undertake to comply with them. This gives reason to believe that among the principles of international customs law, the majority is precisely the standards of simplification and harmonization of customs procedures within the framework of international trade".

From the standpoint of Sandrovskij (2001), who followed the comprehension of standards in a broad, general-sociological sense, where international standards in the customs sphere are certain models, patterns of behaviour or measure of actors conduct (international communication) embodied, in particular, in general, international treaties on international customs law.

Shulha (2014) believes that international standards are the provisions of contracts (agreements) in the sphere of customs regulation, which are subject to special transformation in national legislation. However, in the conclusions of the scientific article, the above-mentioned opinion received the following statement: "Nowadays, the customs legislation in power has transformed the provisions of a number of international treaties (agreements) that act as international standards in the sphere of customs regulation".

Halipov (2011), a representative of the Russian school of international law, also advocates similar view, that proposes to understand the norms and provisions of international treaties (conventions, agreements) that are subject to implementation in the national customs legislation in accordance with international standards in the sphere of customs regulation. At the same time, the scientist argues that international customs standards in the sphere of customs regulation and the obligation to comply with them formally appear for the Russian Federation with its accession to the Kyoto Convention (International Convention on the Simplification and Harmonization of Customs Procedures of 18 May, 1973), which is the only source of international standards for the State. The Framework Safety and Trade Facilitation standards does not include standards for customs law-making and, as they only contain technical recommendations for the implementation of the standards of Kyoto Convention, in particular in the sphere of customs control (preliminary provision of information, application of risk management system, international customs cooperation, interaction with foreign economic operators).

The only international document requiring Ukraine to comply with its national customs legislation with international standards in the customs sphere, is the Kyoto Convention, as recognized by Chorna (2013). However, it is not easy to realize what the representative of the school of administrative law of Ukraine understands by international standards, because in order to explain the concept of "international customs standard", Chorna (2015) uses at the same time four

definitions, namely: 1) … is the only (harmonized) normative model that is used at the administration of foreign economic activity at the interstate and / or national levels of customs systems; 2) … is a unified normative standard form, the consent for the introduction of which is provided by authorized subjects of international law for the implementation of a single regulation of the foreign economic activity at intergovernmental and/or national levels; 3) … is one of the types of implementation of the total law-making activity of States, with the aim of coordinating their interests and achieving common goals in the regulation of customs issues, taking as a basis the generally accepted principles and norms of international customs law; 4) … is a unified standard model, created in accordance with the agreement of subjects of international law in the regulation of customs relations at the interstate, national and/or departmental levels.

As for the relation of Framework standards with provisions of the Kyoto Convention, they, according to Chorna (2013), are also recommendations for the most effective realization by customs authorities of their functions within the existing customs law institutes. Therefore, these standards cannot be considered as samples (models), which are subject to rulemaking in the customs sphere.

According to professor Shulha (2014), it is not necessary for national customs regulations to set requirements for customs administrations and participants in foreign economic activities aimed at the effective and uniform implementation of customs legislation in order to accelerate customs transit and ensure the proper security of international trade (consisting in preliminary declaration, interaction between customs administrations and their cooperation with foreign economic operators), contained in the Framework Safety and Trade Facilitation Standards.

4. Empirical results

In our opinion, the viewpoint on the lack in World Customs Organization's Framework for Safety and Trade in World Trade, as of 23 June 2005, of standards for customs rule-making, as well as the statement that it is not possible to consider such standards as models (samples) subject to taking into account while rule-making in the customs sphere, is false. To confirm our own position, even without referring to the original source, we give the following two arguments. Firstly, the Framework Standards for Security and Facilitation of World Trade are mentioned in many international legal acts in the sphere of customs regulation, in particular in the Customs Blueprints, as an example of international standards, which States required to ensure the application of. Secondly, to ensure the application of the Framework Safety and Trade Facilitation 2005, as one of the international documents developed by the World Customs Organization, our state has undertaken in accordance with Clause (h) Part 1. Art. 76 of the Association Agreements.

We disagree with Chorna (2013) finding that the Kyoto Convention is the only international document that requires Ukraine to comply with its national customs legislation with international customs standards. Such an assertion does not correspond to that used by the legislator in the Customs Code of Ukraine for an expanded approach to the definition of generally accepted norms and standards in the world, in compliance with which the state customs affairs are carried out in Ukraine, and the Kyoto Convention, Standards 3.11 and 7.2 of which refer to the international standards, enshrined in other international legal acts, such as the Recommendations of the Council for Customs Cooperation in the sphere of Information Technology.

In our opinion, the approach to interpreting the term "standard" through the terms "principle" and "norm" is also a point to debate. After all, as principles and norms are not identical

categories, Perepolkin (2017), and standards, in close relations with them, is an independent category of international customs law.

International customs law standards have an auxiliary role in implementing its principles and norms at the international and national levels of legal regulation of customs relations. With the help of standards, specific technical specifications, standard forms, models, samples, methodological recommendations are fixed, minimum requirements for the implementation of the principles and norms of international customs law, the wider implementation of which is considered desirable and is associated with the individual needs and capabilities of each separate customs administration.

The standards of international customs law appear after its principles and norms, or both at the same time. Accordingly, the emergence of new principles and norms of international customs law, their improvement or cancellation, can automatically affect the appearance, improvement or cancellation its standards as well. In other words, they are not once and for all established, unchanged.

Standards of international customs law differ from its principles and norms by legal force. Being predominantly technical recommendations, the standards of international customs law are not legally binding in advance. Their introduction into the practical activities of customs administrations is carried out by subjects of international customs law on a voluntary basis by implementing the positive actions stipulated in the standards. The customs administrations are given the right, in accordance with their interests, the needs and possibilities to decide on the standards themselves or not, to implement them in accordance with the procedure and in the scope of a high standard or to go beyond the minimum requirements established and to provide conditions more favorable than those provided by the standard, to accept decisions on the terms, stages and methods of their implementation. Therefore, for the non-use or improper use of their rights, the subjects of international customs law cannot be subject to legal liability.

The advisory character of most international customs law standards also follows from the nature and content of international legal instruments through which their adoption is carried out. For the most part, such acts are resolutions, recommendations, declarations of international intergovernmental organizations, such as the Customs Cooperation Council. Less commonly to this end, annexes to multilateral international treaties may be used, the expression of consent for binding on them is not a prerequisite for accession to the contract and is carried out voluntarily by a subject of international customs law. Certain exception to this rule is the Kyoto Convention, each of the contracting parties to the latter undertakes to facilitate the simplification and harmonization of customs procedures, observing, in accordance with the provisions of this Convention, standards, transitional standards and recommended practices (hereinafter – the Kyoto Conventions standards) contained in the annexes to this Convention. Therein Art. 13 of the Kyoto Convention provides that each contracting party: must adopt the standards adopted by it for the General Annex, the Special Annexes and their sections not later than 36 months from the date of entry into force of these Special Annexes and their sections for the indicated contracting party; implements its adopted transitional standards of the General Annex for a period of up to 60 months from the date of the effective date of the General Application for the indicated contracting party; implements its recommended practice of the Special Applications or their sections not later than 36 months from the date of entry into force of these Special Applications and their sections for the indicated contracting party, unless there were any reservations regarding one or more of these recommended practices. In response, according to Art. 12 of the Con-

vention, any of its contracting parties, when signing, ratifying or acceding to it, undertakes the obligations specified in the provisions of the General Annex and specifies which of the Special Annexes or their sections if any, the Party accepts. Subsequently, such party has the right to notify the depositary of the acceptance of one or more of its Special Applications or their sections.

Consequently, the obligation of any contracting party under the Kyoto Convention to facilitate the simplification and harmonization of customs procedures is essentially in timely adherence to those standards set forth in the General Annex, as well as one or more Special Annexes or their sections, if such are accepted by the contracting party. It should be noted that observance (compliance) is only one of the forms of direct implementation of the requirements of the law, in which the subject of legal relationships does not commit acts prohibited by these prescriptions. According to such wording, the implementation of the requirements of the Kyoto Convention standards must be carried out by its contracting parties through passive conduct and only in terms of compliance with the legal prohibitions envisaged by them. At the same time, the implementation of a significant number of Kyoto Convention standards should be carried out through the fulfilment of positive actions stipulated by their requirements, that is, due to active behaviour. However, a non-specific and general description of such actions, as the actual and expected outcome of their implementation, even if the Kyoto Convention contracting parties are unilaterally prepared to implement its standards in the form of implementation, does not guarantee the reflection in their national legislation of identical terms and procedure of application of customs rules and procedures. Therefore, it can be argued that the mandatory nature of the Kyoto Convention standards differs from the obligations to implement standards adopted by acts of international intergovernmental organizations, the exact timing of implementation of the standards accepted by the contracting party and a clearly defined direct form of their implementation – compliance, in which the contracting party to the Convention is limited in the right to choose the use as a form of implementation of its standards, but not deprived of the right to realize their implementation in the form of execution, as well as go beyond the minimum requirements they set and provide conditions more favourable than those provided by such standards.

5. Conclusions

Summarizing the all above, we conclude that the study of the concept of "standards of international customs law" lies on the following theoretical positions:

1) Standards are an independent category of international customs law and differ from its principles and norms;

2) In legal regulation of customs relations, the standards of international customs law are given a subsidiary role, since, unlike the principles and norms of international customs law, they are not intended to implement the independent regulation of customs relations;

3) Standards of international customs law derive from its principles and norms. Their adoption is carried out in order to promote the implementation of the principles and norms of international customs law at national and international levels of legal regulation of customs relations;

4) Standards can be improved because they are not once and for all established, unchanged;

5) Standards are an integral part of the content of international customs law, and not merely one of its forms;

6) The majority of international customs law standards are not legally binding a priori. Their recommendation kind stems from the nature and content of international legal acts through which their adoption is carried out;

7) The implementation of standards may be carried out on an individual, bilateral or multilateral basis. The basic direct form of their implementation is the use, and less observance and execution;

8) Standards of international customs law can be classified into different types and contain technical and legal requirements.

The concept of "standards of international customs law" can be defined as designed to promote the implementation of the principles and norms of international customs law technical specifications, templates, samples, patterns, models, methodical recommendations for a certain type of activity or achievement of the anticipated results, the implementation of which in the practical activity of customs administrations is carried out by subjects of international customs law taking into account individual needs and opportunities, on the terms and in accordance with the procedure determined by international legal acts.

Taking into account the above, we also propose to amend the content and structure of Art. 7 of the Customs Code of Ukraine, stating its Parts 1 and Part 2 as follows: "The procedure and conditions for the movement of goods through the customs border of Ukraine, their passage of customs control and customs clearance, introduction of mechanisms of tariff and non-tariff regulation of foreign economic activity, collection of customs payments, keeping statistics of customs cases, exchange of information on customs procedures, conduct of Ukrainian classification of goods of foreign economic activity, conduct in accordance with the law of state control of non-food products during its introduction into the customs territory of Ukraine, assistance in preventing and counteracting smuggling, combating the violations of customs rules, establishing and ensuring the proper functioning of the revenue and expenditure authorities and other measures aimed at implementing state policy within the framework of state customs affairs, constitute a state customs transaction which is carried out with observance, execution and using internationally recognized principles, norms and standards of international law accepted in international practice".

The research findings carried out within this article may contribute to the implementation of the principles, norms and standards of international customs law by Ukraine, and may be used to amend the Customs Code of Ukraine in power.

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ПЛЮРАЛІЗМ РОЗУМІННЯ СТАНДАРТІВ МІЖНАРОДНОГО МИТНОГО ПРАВА

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Ретельного опрацювання структури та змісту потребує низка багатосторонніх міжнародних митних договорів, двосторонніх договорів України, актів Всесвітньої митної організації, інструментів Європейського Союзу, нормативно-правових актів України та наукової літератури. Авторами проведено дослідження стандартів міжнародного митного права, яке ґрунтувалося на таких теоретичних положеннях: стандарти є самостійною категорією міжнародного митного права та відрізняються від його принципів і норм; у правовому регулюванні митних відносин стандартам міжнародного митного права відводиться допоміжна роль, бо на відміну від принципів і норм міжнародного митного права вони не призначені для здійснення самостійного регулювання митних відносин;стандарти міжнародного митного права є похідними від його принципів та норм.

Поняття «стандарти міжнародного митного права» пропонується визначити як розроблені з метою сприяння реалізації принципів та норм міжнародного митного права технічні специфікації, типові форми, зразки, еталони, моделі, методичні рекомендації щодо провадження певного виду діяльності або досягнення очікуваних результатів, втілення приписів яких у практичну діяльність митних адміністрацій здійснюється суб'єктами міжнародного митного права з урахуванням індивідуальних потреб та можливостей,на умовах та у порядку, визначених міжнародно-правовими актами, за допомогою яких їх було прийнято.

Також через призму стандартів міжнародного митного права проведено аналіз Митного кодексу України і запропоновано рекомендації по його удосконаленню. Результати проведеного в межах цієї статті дослідження можуть сприяти здійсненню реалізації Україною принципів, норм і стандартів міжнародного митного права, а також бути використані для внесення змін до чинного Митного кодексу України.

Ключові слова: міжнародне митне право, стандарти, принципи, норми, міжнародні договори, Митний кодекс України.

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MANAGEMENT ANALYSIS OF BUSINESS ENVIRONMENT IN UKRAINE IN THE CONTEXT OF FOREIGN ECONOMIC PROCESSES

The state of business environment in a country plays a major role in the effective functioning of the economy. External economic aspects are of particular importance for Ukraine, given the integration and the need in investment. The aim of the article is to identifythe assessment methods of the state ofthe business environment in Ukraine, determineopportunities and constraints of respective rating andactualindicators, particularly foreign investment. The approaches to estimating the state of the business environment in Ukraine are analyzed. Indicative features of a number of rating indicators developed by various international organizations are determined. Foreign investment indicators are suggested to use as the resultant actual indicators of the state of the business environment in Ukraine. The paper concludes that one of the priorities of the State's foreign economic policy should be to create appropriate conditions for foreign investment in the country's economy. In general, the global investment movement is not a sustainable process, its dynamic is dependent on many factors. It is important to proceed from the assumption that high-quality managerial decisions, as a rule, require high-quality analytical work - primarily about the business environment of the companies (existing and potential). Of particular importance is the quality level of such analysis for the adoption of effective decisions in the field of foreign economic activity. Therefore, the issue of improving the study of the state of the business environment in one or another economy becomes relevant in both the theoretical and practical sense. Rating (index) indicators of business environment assessment in the country occupy a very important place in analytical management work. They are, in particular, guidelines for foreign investors in assessing the investment attractiveness of the environment and making managerial decisions.

Key words: enterprise, businessenvironment, indicators of the state of the businessenvironment, management, foreign investment.

JEL Classification: M1, E66, F21.

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1. Introduction

The businessenvironment of enterprises is a certain system of factors and entities, whose activities influence the conditions, capabilities and results of entrepreneurial activity of enterprises. A prerequisite for effective managerial decisions is a qualitative analysis of the business environment, which ultimately sought to find business chances and identify business risks for enterprises.

The State is one of the key institutions that influences conditions, dynamics and prospects of changes in the environment of enterprises. Such an effect is feltboth by residents and by non-residents. The foreign economic policy of the State is accompanied by a tangible impact of state institutions

on the foreign economic activity of enterprises, on foreign economic aspects of the business environment.

One of the priorities of the State's foreign economic policy should be to create appropriate conditions for foreign investment in the country's economy. In general, the global investment movement is not a sustainable process, its dynamic is dependent on many factors.

Thus, according to the UNCTAD World Investment Report 2018, foreign direct investment (FDI) flows declined by 23% in 2017 to 1.43 trillion USD [1]. The decrease in flows means, in particular, the intensification of competition for attracting foreign investment. In general, each country is constantly looking for chances in the world system of the movement of capital. Ukraine sorely needs efficient searches in this area. The state of the business environment in Ukraine, including its foreign economic aspects and the prospects for its change are key factors that determine the interest of residents and non-residents in investing in the country's economy.

2. Analysis of recent research and publications (theoretical basis)

Regular studies of individual components of the business environment in relation to particular countries are provided by professionals. The latter work within the framework of certain projects devoted to the systematic study of the relevant aspects of the business environment in one or another economy. In particular, we can highlight Doing Business [2], World Economic Forum [3], IMD World Competitiveness Center [4], European Business Association [5] Corruption perceptions index [6]. The recent publications of Ukrainian authors are devoted to the problems of the business environment. Among them one can mention in particular the research by M. Miller (development of classification approaches to the analysis of the business environment [7]), L. Kobilyanska, H. Shvets (assessment of the business environment of small and medium enterprises [8, 9]), I. Beloy and N. Nasikan (features of the business environment in Ukraine [10]), Yu. Vysnyak (corruption component of the environment [11]), G. Buryak (protection of private property rights [12]), S. Terrible (the role of the State in the formation of the environment [13]).

At the same time, it is important to proceed from the assumption that high-quality managerial decisions, as a rule, require high-quality analytical work – primarily about the business environment of the companies (existing and potential). Of particular importance is the quality level of such analysis for the adoption of effective decisions in the field of foreign economic activity. Managers need a benchmarking system, a set of indicators that they could use in their analytical work to assess the current and future status of a business environment. Therefore, the issue of improving the study of the state of the business environment in one or another economy becomes relevant in both the theoretical and practical sense.

The purpose of the article is to determine the approaches to assessing the state of the business environment in Ukraine, to identify opportunities and limitations of relevant rating and factual indicators, in particular foreign investment.

3. Results

In the theory and practice of management one of the basic concepts is the term "environment". Then it is divided into "internal environment" and "external environment". It can be said that management of the internal environment is carried out by the owners and managers of the organization. Nevertheless, the external environment serves a certain given system component. Considering the notion of "business environment", it should be noted that it is close to the concept of "external environment" of the organization. The difference between them, in our opinion, is that the "external environment" is a broader term than the "business environment".

So, firstly, not every organization is a business organization. In such a case, the organization obviously has an appropriate environment for its activities, but it can not be interpreted as a business environment. Secondly, it is important to note the presence of a large number of state and utility companies that act in an environment that is devoid of sufficient amount of attributes for the business environment itself. One example of the foregoing is the lack of competition in some of these enterprises, which does not allow us to determine the environment of their activities as the business environment itself. At the same time, we can assert that most of the enterprises are operating within the business environment.

In accordance with the above-mentioned, there is interest in conducting an assessment of the state of the business environment in a given country through a system of indicators. That is, to find such a set of indicators of the state and dynamics of the environment, which would give managers acceptable precision characteristics of the conditions of entrepreneurship in a particular country or within the framework of some other territorial-administrative or contractual formation. The use of such indicators is an important component of analytical management work.

One of the most well-known in this respect is the World Bank's Doing Business (DB) ranking of ease of doing business in different countries. The country's overall indicator is formed as an average for a number of parameters (indicators) – for example, the possibility of obtaining loans, the conditions for registration of enterprises, the tax burden, the degree of protection of investors, licensing procedures for businesses, etc. Figure 1 shows the position of Ukraine regarding the main indicators of the rating DB-2019 [2].

Entityregistration– реєстрація підприємства
Buildingpermits – отримання дозволу на будівництво
Connectiontoenergysystems – підключення до систем енергозабезпечення
Property registration –реєстрація власності
Obtaining loans – отримання кредиту
The protection of minority investors – захист міноритарних інвесторів
Taxation – оподаткування
International trade – міжнародна торгівля
Enforcement of contracts – забезпечення виконання контрактів
Solution to the insolvency problem – вирішення проблеми неплатоспроможності

Fig. 1. Positions of Ukraine on core components of Doing Business rating 2019
Source: compiled by authors on the basis of [2].

It should be noted that Ukraine has shown positive dynamics in the DB rating over the last years. Thus, Ukraine has risen to 80th position from the 83d in the DB-2017 rating; the 83d position was reached in the DB-2016 rating. For comparison, we state that in 2011, 2013, 2014 Ukraine was at 152, 137, 112 places, respectively. In the DB-2018 rating and DB-2019 rating, Ukraine has again shown some progress – moving to 76 and 71 positions respectively (out of 190 countries). For comparison, we state that positions of Belarus and Moldova in the DB-2019are 37 and 47, respectively. If we take separate components of the rating of Ukraine (Figure 1), then we note that according to DB-2019, the main positive changes occurred on the following indicators: protection of minority investors (from 81 to 72), international trade (from 119 to 78), and enforcement of contracts (from 82 to 57).

It should be pointed out that the DB General Index (rating) is indeed a certain integral indicator. But at the same time, from a strictly scientific point of view, it cannot be accepted as a sufficiently comprehensive indicator to characterize the business environments of individual economies. In our opinion, it can be considered as a certain integral indicator, which characterizes the "rules of the business game", which are set by a certain state. The quality of these "rules" is an extremely important characteristic of the business environment of the country, but they are only part of the image of the state of the business environment. For example, in this Index, we do not see resource-factor characteristics, assessments of the state of infrastructure, macroeconomic conditions, stability of the financial and banking system, traditions of business conducting, etc. This is not to say that these parameters are secondary in terms of assessing the environment of enterprises.

Thus, it can be noted that the DB Index is aimed at assessing the quality of the rules and procedures for regulating business activities in a particular country. In terms of the role of the state in formation of the business environment, we can really agree that this Index is probably one of the best indicators, which also characterizes the state of foreign economic regulation in one or another country.

A larger scale project is the *Global Competitiveness Index* (World Economic Forum) calculations. It should be noted that in the 2017-2018 rating, Ukraine ranked 81st out of 137 countries for this indicator [3]. In our opinion, this Index may qualify for one of the most systematic assessments of the status of business environments in individual countries. First, a fairly large number of measurement indicators are used (113, which are grouped into 12 groups). Secondly, both expert assessments and statistical data are used. The latter circumstance reduces the influence of the subjective factor. Thirdly, accents are made not only on "rules of the game", on state regulation, but also on resource factors, infrastructure, etc. Eventually, the idea of GCI is to assess the country's ability to provide acceptable economic growth in the medium term. The ability to grow is a positive signal (indicator) for a business, because it means that there are prerequisites for a certain increase in demand, to expand the capacity of certain markets. Probably such calculations, such assessments are useful for analytical management work at the company level, especially those who carry out large-scale international activities.

In the GCI 2017-2018 rating, Ukraine scored 4.1 points (81st place). It should be noted that countries occupying rating places from 76 to 86 inclusive have the same score. In preliminary calculations, Ukraine's place was as follows: 2015-2016 – 79, 2016-2017 – 85 (4.0 points). This is to say, in general, the positive rating dynamics of Ukraine is insignificant. At the same time, however, it is important to take into account the fact that the presence in the Index of resources, infrastructures and a number of other objectively "inertial" indicators-components affects the ability of countries and public institutions to relatively quickly change the situation. It should be noted that in the GCI 2017-2018 the best indicator in Ukraine is "Higher Education" (35 rating

place, 5.1 points), the worst are "Macroeconomic Conditions" (121 rating place, 3.5 points) and "Financial Markets Development" (120 rating place, 3.1 points). Among the most significant problems of business conducting in Ukraine are identified, in particular, inflation (16.3 – weight out of 100) and corruption (13.9).

Another index-rating option for assessing the competitiveness of a country as a whole is the *IMD World Competitiveness Ranking.* In 2018, the best components for Ukraine were "Skills" (46th out of 140 countries), "Market Scope" (47th place), "Infrastructure' (57th place), "Innovative Capacity" (58th place). The worst were "Macroeconomic stability" (131st place), "Financial system" (117th place), "Institutions" (110th place). As we can see, the estimated components of this rating are to some extent correlated with the components of the GCI 2017-2018 [4].

Useful analytical material includes calculations of the *Index of Economic Freedom*. To determine this Index, 10 indicators are used, each of which is evaluated by a 100-point system. Under the Index-2017 Ukraine scored 48.1 points. 1.3 points were added to the previous period. Ukraine falls into a group of countries with a "non-free economy" with such amount of points. In the last 10 years, the lowest indicator in Ukraine was in 2011 – 45.80 points, and the highest in 2006 – 54.40 points. According to the Index-2018, Ukraine scored 51.9 points. 3.8 points were added to the index of the previous year, but it is only 150 position from 180 countries [14].

The European Business Association (EBA) calculates the *Investment Attractiveness Index*, which is based on an expert survey of top managers of member companies of the Association. When determining the index, respondent assessments of the business climate in a particular country are taken into account. Index indicators for Ukraine are 2.57 points (according to a five-point scale) at the end of 2015, 2.85 at the end of 2016. At the end of 2017, the index rose to 3.03, it came out of the so-called "negative zone", and went to the "neutral zone" (above 3.0). For the first half of 2018, the index was 3.10 [5]. It should be noted that for the last ten years this indicator for Ukraine was the highest at the end of 2010 – 3.4 points. The main problems of the business environment in Ukraine in 2018 were a high level of corruption (46.1% of respondents), lack of trust in the judicial system (40.6%) and lack of land reform (35.9%).

In our opinion, the Investment Attractiveness Index, on the one hand, is useful for conducting a business climate analysis, but on the other hand, it cannot be a sufficiently convincing instrument (indicator) of the state of the business environment in the country. In particular, its essential disadvantage in this regard is that it is based on subjective assessments. We can predict that expert judgment also influences such factors as the success of one's own business in the analyzed period. Such factors as branch (market) dynamics, dynamics of exchange rates, availability of certain resources in the future, etc., can influence the investment mood. It is rather obvious that we can define this Index as an index of business mood.

Often enough, researchers are paying attention to the problem of taxation, as a factor in the state of the business environment. As the analysis shows, the issue of taxation is really significant for any investor, it is important for taking appropriate managerial investment decisions on the directions and spheres of investment. But it is not decisive. The key issue with regard to the business environment of Ukraine, if put out of account the factors of the potential of a particular market, its strategic prospects, it is the level of protection of investors' rights, achievement of equality before the law of all business entities, and ensuring conditions for fair competition. Corruption prevents fair competition. Corruption has different manifestations and dimensions. In particular, it manifests itself in the "administrative-power" redistribution of corporate rights, "selectivity" in the conduct of public procurement procedures, "selectivity" in economic justice, and so on. Ukraine

still needs to do a lot in fighting corrupt practices in the economic sphere. Thus, according to the level of perception of corruption, Ukraine ranked 130th out of 167 in the ranking of the International Organization Transparency International [6]. Such situation is, of course, a factor limiting the investment interest of non-residents in relation to the Ukrainian economy.

In our opinion, all the indicators analyzed above (indices) are estimated indicators of business conditions. An assessment of the environment through the evaluation of its conditions is an important analytical work. But no less important is the assessment of the environment through the results of its functioning. If we rely on the indicators of the actual-resultant nature, that is, those that characterize the actual functioning of the environment, the results of activities, including the state as a regulator of economic activity, then, in our opinion, we must pay special attention to *indicators of foreign direct investment.* Perhaps these indicators are the most accurate reflection of the level of business interest in a particular economy in all its aspects. That is, this indicator can be considered as a kind of focal, generalizing the perception of business conditions of entrepreneurship in a particular country.

In 2015, the volume of foreign direct investment (share capital) in the Ukrainian economy amounted to 3.764 billion USD. In 2016, this indicator grew up to 17.1%, reached 4.4 billion USD. It should be noted that investments in financial and insurance activities made up a dominant share, and their total volume in 2016 amounted to 2.825 billion USD [15]. At the beginning of 2017, the total accumulated volume of direct foreign investments in the Ukrainian economy amounted to 37.325 billion USD. In total, in 2017, 1.9 billion USD of direct investmentwas invested (Figure 2). For half of 2018, the volume of attraction of foreign direct investment in the economy of Ukraine amounted to 1.3 billion USD. It is still difficult to assess the business environment in Ukraine as attractiveaccording to such results.

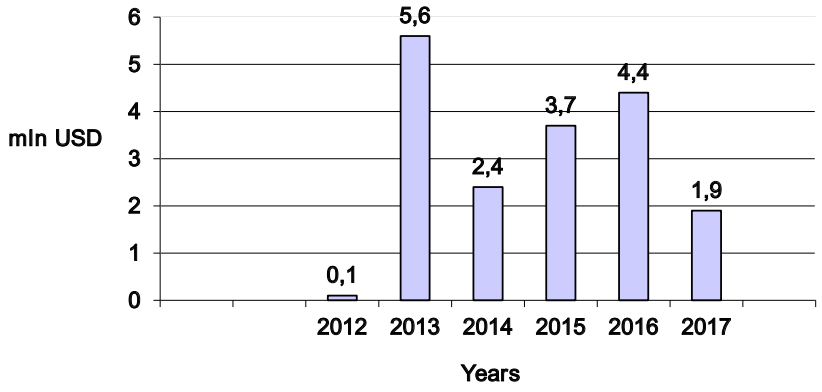

Fig. 2. Annual income of foreigndirect investments (share capital) in the economy of Ukraine for 2012-2017

Source: compiled by authors on the basis of [15].

In our opinion, the indicators of attracting foreign direct investment into the country are one of the most important indicators in assessing the state of the business environment in the country. They give us the opportunity to evaluate the business environment not so much under its terms (legislative and some others), as on the results, on the actual interest and actions on the placement of business in this environment. For the sake of completeness, in our opinion, it is

important to note that foreign investment is also a factor of adjustment, making changes in the business environment of the country.

We will try to compare the dynamics of individual rating indicators and indicators of foreign-direct investment in the economy of Ukraine. The Table 1 shows the comparison of the DB rating for Ukraine and the annual volumes of foreign direct investment in the country. Data analysis does not show us the correlation between indicators; the rating indicators are increasing, but there is no stable growth of foreign investment indicators. Why is this happening? Does it because the growth of the ratings is rather slow and not very significant? Maybe yes. But, it is highly likely that this is also evidenced by the fact that rating indicators, in particular, DB, at best is only a part of a possible overall assessment of the state of the business environment in the country. That is, it can be assumed that the assessment of certain business conditions in the country is not sufficient for a comprehensive overall assessment of the state of the business environment in the country.

Table 1

DB rating indicators and amount of direct investment (share capital) receipts from non-residents to Ukraine

Year	**Place in DB rating** *(at the beginning of the year)*	**Capital receipts** (billion USD *at the end of the year)*
2012	152	0,1
2013	137	5,6
2014	112	2,4
2015	96	3,7
2016	83	4,4
2017	80	1,9
2018	76	1,3 (for 6 months)

Source: compiled by authors on the basis of [2, 15].

An important aspect for analyzing foreign investment in Ukraine is the study of information on countries from which foreign direct capital flows into the country's economy. The fact is thata significant part in the structure of foreign direct investment in Ukraine is traditionally madeby investments of companies registered in offshore areas. Statistics do not provide an opportunity to accurately determine to what extent offshore investment is truly "foreign investment". Researchers do not have sufficient opportunity to determine the real origin of a significant part of foreign investment. This is out of question, complicates the use of the indicator of direct foreign investment to assess the perception and dynamics of the state of the business environment in the country.

It is possible to predict that the dynamics of the statistical indicators of foreign direct investment into the economy of Ukraine is largely determined by the corresponding management decisions of those entrepreneurs who are used to actively put forth offshore zones in their business practice. It is obvious that political, macroeconomic, as well as other factors, correct the business behavior and processes of offshore capital movements.

Foreign investors make a decision on investing on the basis of subjective assessments of the appropriateness of such investment. It is useful to have a simultaneous management assessment of both investment potential (investment benefits) and investment risks. The latter are the risks associated with entering the new marketing environment into a new system of regulatory coor-

dinates. Balance of comparisons of advantages and risks determines one or another managerial decision.

There is no doubt that the most attractive form for the importing countries of capital, including for Ukraine, is the receipts of foreigndirect investment. It is traditionally believed that these investments have a certain positive impact on the economy, contributing to increased production and GDP, the introduction of new forms and tools for management, the creation of new jobs, the recovery of competition, etc. But at the same time it is necessary to pay attention to other important points. It is known that foreign direct investment is aimed at staying in the country for a long time. These investments are not only a certain movement of capital with all its positive consequences in the sense of an additional resource, they are simultaneously the introduction of certain business traditions, business culture, business standards in the management community and management practices, in the system of relations both private and the public sector of the economy [16].

4. Conclusions

Rating (index) indicators of business environment assessment in the country occupy a very important place in analytical management work. They are, in particular, guidelines for foreign investors in assessing the investment attractiveness of the environment and making managerial decisions. For foreign investors, it is very important that the host country grants guarantees concerning the protection and security of the investor's investment, ensures the preservation of foreign ownership, protects the rights and interests of a foreign investor in its territory, etc. Rating indicators are the factor of certain influence on processes of formation and development of the business environment in the country, on the activities of state institutions as organizations responsible for the quality of certain components of the public administration system in the country. At the same time, the attitude to rating indicators should take into account the fact that they: firstly, focus on certain aspects of the business environment; and secondly, the business environment is assessed through the characteristics of its conditions, and not by the resulting indicators of its functioning. Concerning the definition of indicators of the actual and resultant nature, perhaps, one of the key indicators is the attraction of foreign direct investment in the economy.

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УПРАВЛІНСЬКИЙ АНАЛІЗ СТАНУ БІЗНЕС-СЕРЕДОВИЩА В УКРАЇНІ В КОНТЕКСТІ ЗОВНІШНЬОЕКОНОМІЧНИХ ПРОЦЕСІВ

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Стан бізнес-середовища в країні відіграє суттєву роль в ефективності функціонування економіки. Для України зовнішньоекономічні аспекти середовища мають особливе значення, враховуючи інтегрованість та потребу в інвестиціях. Метою статті є визначення підходів щодо проведення оцінки стану українського бізнес-середовища, виявлення можливостей та обмежень відповідних рейтингових та фактичних показників, зокрема іноземного інвестування. Проаналізовано підходи до оцінювання стану бізнес-середовища в Україні. Визначено індикаторні можливості ряду рейтингових показників, які розробляються різними міжнародними

організаціями. Запропоновано використовувати в якості результуючих фактичних показників стану бізнес-середовища в Україні показники іноземного інвестування. Зазначено, що одним із пріоритетів зовнішньоекономічної політики держави має полягати у створенні відповідних умов при надходженні іноземних інвестицій в економіку країни. В цілому, світовий рух інвестицій це не сталий процес, динаміка його є залежною від багатьох факторів. Якісні управлінські рішення, як правило, потребують якісної аналітичної роботи – насамперед щодо бізнес-середовища діяльності компаній (існуючого та потенційного). Особливого значення рівень якості такого аналізу набуває для прийняття ефективних рішень в сфері зовнішньоекономічної діяльності. Тому питання вдосконалення дослідження стану бізнес-середовища в тій чи іншій економіки набуває актуальності як в теоретичному, так і практичному сенсі. Рейтингові (індексні) показники оцінки бізнес-середовища в країні займають своє, досить важливе місце в аналітичній управлінській роботі. Вони є, зокрема, орієнтирами для іноземних інвесторів при оцінці інвестиційної привабливості відповідного середовища та прийнятті управлінських рішень.

Ключові слова: підприємство, бізнес-середовище, показники стану бізнес-середовища, управління, іноземне інвестування.

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CUSTOMS ADMINISTRATION IN UKRAINE: PROBLEMS OF DEVELOPMENT

Modern national customs legislation is improved and develops following global trends and taking into account the fundamental international conventions in the area of customs regulation. The process became primitive after the ratification of Ukraine–European Union Association Agreement in 2014. Moreover, as out international partners say, a large number of issues which should be resolved after the signing the Agreement are still open. For example, in Ukraine, the institute of an authorized economic operator is not introduced, and risk management system doesn't work effectively. The problems are stated, taking into account the generalization of the practice of customs control, the introduction of new technologies and implementation in the national legislation of dictates of international acts. The paper analyses the factors and conditions that negatively affect law enforcement activities of customs authorities of Ukraine and blunt its effectiveness.

In particular, it is proved that the development of international economic activity in Ukraine, its intensity, qualitative and quantitative composition of parties of the international economic activity fully depends on priorities of customs administration which are defined by the executive board of the national customs administration. Improvement of the mechanism of customs administration should envisage the shift of priority of management functions – transition from administrative to economic methods of management activity. National customs administration should use more comprehensively such methods as post-audit, remote monitoring of the subjects of international economic activity, provision of some benefits and preferences to unreliable undertakings etc., and facilitation of the procedure of customs control and registration, and suchlike.

The author believes that the very achievement of an adequate balance between the volume and effectiveness of customs procedures and guarantee of the implementation of economic rights of the actors of international economic activity will contribute to the level increase of market competition in the state and make the integration of the national economy in the world economy possible.

Key words: customs administration, participant of foreign trade activities, violation of rights, business community, risk, efficiency.

JEL Classification: F53.

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1. Introduction

The development and improvement of customs administration in Ukraine is conducted in accordance with the provisions of international law, the fundamental of which are the Kyoto Convention and the WTO Framework standards.

Level and quality of implementation of international customs law in Ukraine significantly affects the development of its international trade. The study and development of modern customs technologies, the use of electronic software products are made to reduce the time of customs control, as well as to improve the efficiency of its results.

After the entry into force of the new edition of the Customs code of Ukraine since mid-2012, progress was achieved thanks to introduction and implementation of modern technologies of customs control, the creation of institutions such as the authorized economic operator (hereinafter-AEO), risk management system (hereinafter – RMS), etc.

The process of transformation of the customs system of Ukraine to the standards of modern customs administration is faced with the influence of negative factors that arose in the previous period of development. They not only slow down the rates of introduction of positive changes, but also conduce to adaptation of the old problems to new working conditions of customs authorities of Ukraine.

2. Theoretical basis and legislation

The sources containing information on problematic issues in the work of the customs authorities of Ukraine include:

– news and specialized sites "Internet" (for example, "www. ord.com.ua");

– materials of meetings, seminars, where the issues of customs regulation are discussed;

– analytical information of the State fiscal service of Ukraine;

– law enforcement and judicial information.

Research of problems of application by customs authorities of the customs legislation, interaction with participants of foreign economic activity (further – participants of foreign economic activity), work of RMS and its efficiency is complicated for the objective reasons. There are legally established restrictions on the dissemination of official customs information, as well as obtaining it by third parties.

The purpose of the study – based on the analysis of problems in the work of the customs authorities of Ukraine to determine the ways to solve them.

To date, customs is an important tool to ensure the public interest, namely:

– protection of the national market;

– security and welfare of the population;

– ensuring revenues to the budget.

An important basis for the development of customs are the principles of its implementation, which reflect the system of fundamental, important provisions and values describing the interaction between entities that carry out foreign economic activity (FEA).

In accordance with the legislation, the state customs affair is carried out on the basis of the following principles:

1) exclusive jurisdiction of Ukraine on its customs territory;

2) exclusive powers of the bodies of income and fees of Ukraine in the framework of the state customs Affairs;

(3) rule of law;

(4) legality;

5) observance of customs relations balance of interests of the state, individuals and legal entities;

6) inadmissibility of double taxation;

7) unity of customs regimes;

8) transparency, publicity [1].

The course taken by Ukraine to integrate the economy to the European community requires further harmonization of national legislation with international standards, consolidation of generally accepted standards in international practice. Modern legislation in the field of foreign

trade of Ukraine is in the process of continuous improvement thanks to the reform processes that has been led in the state. But there are obstacles on the way of reformation caused objective and subjective factors.

The current practice of application of customs legislation allows cases of non-compliance of customs authorities of Ukraine with the rights of traders.

Such actions can justify the necessity of fulfilling the internal tasks set before the customs authorities (for example, achieving indicators for collecting customs payments by increasing the customs value of goods).Customs officials may violate the rights of traders also because of personal or other interest(execution of management instructions, under the influence of third parties,for other reasons).

The stereotype of behavior providing restriction or violation of the rights of participants of foreign economic activity for the purpose of achievement or performance of the tasks set by higher bodies or officials practically never leads to occurrence of negative legal consequences for violators – attraction them to the certain type of responsibility (disciplinary, civil, criminal) by the legislation.

Impunity entails the violation of the rights of participants of foreign trade activities by officials of customs bodies as well as corruptive practices.

Violation of the rights of foreign trade participants, as the practice of customs control, may occur due to the quality of training of customs authorities to solve their tasks. The mechanisms of modern customs administration suggest a change in the functional orientation and level of training of customs officials – today there is a need for specialists inclined to analytical work, who in addition to knowledge of customs legislation are able to study and analyze the processes and changes taking place in international trade, as well as to assess their impact on the technology of customs control [2]. The lack of specialists of appropriate qualification leads to errors in the application of the provisions of customs legislation and the implementation of norm-setting, the functioning of RMS.

For foreign trade participants, the reasons for the restriction (violation) of their rights by customs officials are not of fundamental importance, since in any case they bear negative consequences. Challenging the actions and decisions of officials may entail additional commercial risks associated with further “corporate revenge” on the part of customs authorities. Therefore, many traders perceive illegal actions of customs officials as a negative factor, which can not be influenced.

Interaction of customs authorities with participants of foreign economic activity.

Customs administration at the present stage involves the establishment of interaction of customs authorities with the business community, which is based on mutual interests, variable forms of cooperation, the desire for trusting relationships [3].

Interaction of customs authorities with foreign trade participants can be formalized, as well as be informal.

The formal interaction should include:

– interaction in accordance with the provisions of existing regulations during the implementation of customs control;

– establishment of formal cooperation in various forms.

The WTO Framework of standards States that customs administrations should establish partnerships with representatives of the business community in order to involve them in the work to ensure the safe and secure functioning of the international supply chain.

The basis of the partnership of customs authorities with representatives of the business community are:

1) mutual interests;

2) the degree of trust in each other.

Under mutual interests should be understood, on the one hand, the involvement of the customs authorities of bona fide participants of foreign trade activities to assist in the task of minimization of customs risks, on the other hand, the desire of traders to minimize their commercial risks associated with the carrying out of customs control, sovershennoletnih other operations [4].

Trust in each other is the understanding of foreign trade participants of the legality and validity of the actions of customs authorities and confidence in their impartiality, and from the customs authorities – the establishment of formal cooperation with bona fide foreign trade participants.

The mechanism of partnership is the cooperation of the customs authorities of Ukraine with the AEO. The Institute of AEO in Ukraine is at the stage of formation, so the partnership between the customs authorities and AEO currently do not have the same rezultates as in many other countries where they are long-term and mutually beneficial [5].

Development of the Institute of AEO in Ukraine interferes with the formal cooperation between representatives of individual traders and customs officials.

Lack of formalized coordination between the customs authorities with participants of foreign economic activity flechette an increase in informal contacts. They in turn entail corruption risks, and as their consequence -potential risks of violation of the customs legislation [6]. Foreign trade participants who do not have or have not been able to establish informal contacts with customs authorities, but are aware of their presence in other foreign trade participants, begin to lose confidence in the actions of customs authorities.Such foreign trade participants may attempt to establish informal contacts, or begin to conduct minimization of their commercial risks associated with customs control, using a variety of methods and schemes, including illegal ones.

The lack of a sufficient number of AEO in the structure of foreign trade participants of Ukraine, who are interested in cooperation with the customs authorities in order to promote compliance with customs legislation by all foreign trade participants, is one of the problems of the development of the customs system of Ukraine.

Efficiency of RMS operation.

The customs authorities of Ukraine use one of the best national program complexes “Inspector 2006”in their activities for customs control and customs clearance. Its actual and potential capabilities allow to solve any problems on application of RMS [7].

The main objectives of the use of RMS by customs authorities are:

– ensuring the effectiveness of customs control and the use of customs resources;

– creation of conditions for speeding up and simplifying the movement of goods across the customs border.

The task of the customs system is to maintain a balance in the implementation of these tasks.

If one of the purposes of using RMS is given a clear preference (for example, the effectiveness of customs control), the RMS can be transformed from a risk management tool into a business management tool. Through the use of RMS, it is possible to show the impact on the redistribution of cargo flows, changes in the characteristics of goods (cost, etc.) essential for the results of customs control, etc. SUR allows you to restrict the holding of foreign economic activities of individual traders and/or predstavleniyah, which may not have an objective need and/or justification.

Such application of RMS is typical for the customs system of Ukraine at the present time.

For traders SUR is a non-personalized system of decision-making associated with potential дополнительнымикоммерческимирисками.In the process of using RMS, conflict situations may arise, their solution depends on the level of interaction between customs authorities and foreign trade participants.Lack of proper interaction means for traders that commercial risk factors are not specific cases of application of RMS, and the activity of customs authorities as a whole.

Decisions generated by RMS are challenged by traders in court, which means the lack of business confidence in the customs authorities. Judicial bodies in the process of consideration of complaints of foreign trade participants give a legal assessment of the work of customs authorities, and indirectly assess the effectiveness of the use of RMS.

Currently, the effectiveness of the use of RMS is assessed by the following entities:

– customs administration (departmental assessment);

– foreign trade participants (external evaluation by stakeholders);

– judicial authorities (external evaluation by independent persons, as required).

For the customs authorities of Ukraine performance indicators of RMS is the number of identified risks and the availability of high results achieved from the application of measures to minimize them, as well as an increase in the percentage of bona fide traders and the volume of their foreign economic operations.

These performance indicators of RMS are interdependent and interdependent. Improving the effectiveness of the application of measures to minimize risks objectively should help reduce the number of unscrupulous traders.

But all these indicators are operated by the person interested in their positive dynamics – the State Fiscal Service of Ukraine.

Departmental assessment of the results of the RMS does not allow to objectively determine the status of compliance with customs legislation by traders, to establish what influence of RMS (negative or positive) has on the implementation of foreign trade, as well as to evaluate the activities of customs authorities on the effectiveness of the RMS. The evaluation of the work of the RMS should be carried out with the participation of all stakeholders. In addition to the customs authorities, these include foreign trade participants, as well as other state bodies that exercise departmental control over the state of domestic processes that depend to a greater or lesser extent on foreign economic activity.

Only on the basis of comparison and analysis of indicators of activity of customs bodies on the application of SUR with the results and analysis of the activities of other state bodies and associations, and other associations of participants of foreign trade, the independent expert organizations (including international), which reflect the influence of the state in the sphere of foreign economic activity on the processes under their competence, it is possible to evaluate the efficiency of the SUR and the customs system as a whole.

The index of Ukraine in the doing business rating (international trade) is one of such independent assessments of the effectiveness of the customs administration of Ukraine.

The solution of topical issues of customs administration is associated with the presence of a modern and effective system of customs management. Many problems of the customs system of Ukraine are not solved or are not solved quickly and effectively due to management errors that have arisen as a result of the merger of the customs and tax authorities of Ukraine into a single Agency – the SFS of Ukraine.

3. Conclusions

Based on the above, the main aspects should be highlighted:

– the development of the customs system of Ukraine is aimed at the achievement of international standards of customs administration, the basis of which are the provisions of the Kyoto Convention and the WTO Framework of standards;

– the introduction of the provisions of international regulations in the national customs legislation, as well as the use of modern technologies of customs control is not a guarantee of achieving improvements in the field of foreign trade and improving the efficiency of customs control;

– the presence of unsolved problems in the previous periods of development of the customs system of Ukraine, leads to the fact that the introduction of modern forms and methods of customs control (for example, the use of RMS) has both positive and negative impact on the rule of law and the intensity of foreign trade;

– the modern system of customs administration should be based on the formalized interaction of customs authorities with foreign trade participants;

– variable formalization of interaction between foreign trade participants and customs authorities helps to minimize commercial and customs risks, allows to participate in the assessment of the effectiveness of the work of the representative of the business community, and also helps to establish the process of discussion and resolution of issues of law enforcement of customs legislation;

– the development of foreign economic activity in Ukraine, its intensity, qualitative and quantitative composition of foreign trade participants largely depends on the definition of the leadership of the SFS of Ukraine customs administration priorities that will help to establish and maintain a balance between ensuring the effectiveness of customs control and assistance to foreign trade participants in foreign economic operations.

At the same time, taking into account the "package of reforms" approved by the President of Ukraine, in particular on decentralization Vlast, and the trend of global integration, today Ukraine faces the task of improving its state policy in the field of foreign trade. In fact, it is necessary to change the priorities of management functions – the transition from purely administrative management to balanced regulation. Among the methods of foreign trade regulation (legal, administrative, economic and socio-psychological), the international community provides an obvious priority to legal methods as the basis for the formation and functioning of other mechanisms of public management of such a system of management. Taking this into account, we believe that the state policy of Ukraine in the field of foreign trade should be aimed at improving the system of methods of its implementation by adjusting the domestic legislative framework, expanding Ukraine's participation in international relations, as well as the introduction of remote control in the field of foreign trade and remote customs surveillance.

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МИТНЕ АДМІНІСТРУВАННЯ В УКРАЇНІ: ПРОБЛЕМИ РОЗВИТКУ

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Сучасне національне митне законодавство удосконалюється та розвивається у відповідності до міжнародних тенеденцій та з урахуванням основних міжнародних конвенцій в сфері митного регулювання. Особливо примітним став цей процес після ратифікації Угоди про асоціацію між Україною та ЄС у 2014 р.

Разом з тим, як зазначають наші міжнародні партнери, значна кількість питань, які повинні були бути розв'язані після підписання Угоди залишаються невирішеними. Так, наприклад, в Україні не запроваджено інститут уповноваженого економічного оператора, не ефективно працює система управління ризиками тощо.

У пропонованій статті досліджуються основні проблеми та окреслюються шляхи розвитку та удосконалення механізму митного адміністрування в Україні. Проблеми викладені з урахуванням узагальнення практики здійснення митного контролю, з урахуванням запровадження нових технологій та імплементації в національне законодавство приписів міжнародних актів. Здійснено аналіз факторів та умов, що негативно впливають на правозастосовну діяльність митних органів України, знижують її ефективність.

Зокрема, доведено, що розвиток зовнішньоекономічної діяльності в Україні, її інтенсивність, якісний та кількісний склад суб'єктів зовнішньоекономічної діяльності повною мірою залежить від пріоритетних напрямків митного адміністрування, які будуть визначені керівництвом національної митної адміністрації. Удосконалення механізму митного адміністрування повинно передбачати зміну пріоритету управлінських функцій – перехід від адміністративних до економічних методів управлінської діяльності. Національна митна адміністрація повинна більш широко використовувати такі методи як пост-аудит, дистанційний контроль за суб'єктами зовнішньоекономічної діяльності, надання певних пільг та преференцій сумлінним суб'єктам господарювання тощо, спрощення щодо них процедур митного контролю та оформлення тощо.

Вважаємо, що тільки досягнення розумного балансу між обсягом й ефективністю митних процедур та забезпеченням реалізації економічних прав суб'єктів зовнішньоекономічної діяльності сприятиме підвищенню рівня ринкової конкуренції в державі, дозволить швидше інтегрувати національну економіку в світове господарство.

Ключові слова: митне адміністрування, учасник ЗЕД, порушення прав, бізнес-співтовариство, ризики, ефективність.

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CUSTOMS MUTUAL ASSISTANCE AGREEMENTS IN THE LIGHT OF ARTICLE 12 TFA – A GLOBAL PERSPECTIVE

Customs co-operation at international, regional and global levels is aimed at ensuring compliance with applicable laws and regulations and improving trade flow control through the exchange of information on Customs aspects such as transit, export and import declaration data, origin and valuation-related information, trader-related information and in particular information on customs fraud. This exchange of data is currently a key element of the WTO TFA and Article 12 of the TFA considers all the necessary components for such an exchange of information, such as the requesting country's need, verify its request, protect the exchanged data, and ensure the confidentiality of data and the exchange of data based on the principle of reciprocity. Article 12 TFA also refers to bilateral and regional mutual administrative assistance agreements, which remain the main tool for governments and customs administrations to engage in such cooperation. This paper investigates the different approaches and lists the Customs Mutual Assistance Agreements (CMAAs) of mayor stakeholders in Global Trade, of medium trade nations and of small countries. 23 tables are displaying the results of this research. It investigates CMAAs by help of direct publications on their CMAAs and of other nations that are not publishing data on their CMAAs by pooling data published by other nations. The paper concludes that bilateral mutual agreements are favorable for large nations but difficult to negotiate for small nations. Finally it calls for the importance of regional mutual customs cooperation.

Key words: Customs law, Customs classification, Tariff schedule, Harmonized System (HS) Nomenclature, General Rules, Headings, Notes, Subheading notes, Additional notes, Common Customs Tariff (CCT), Combined Nomenclature (CN), European Union (EU).

JEL Classification: F 15, F 53, K 42.

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1. Introduction

Simplification of trade and transport procedures is interpreted in a broad sense, as the simplification and harmonization of procedures and documentation for international trade and transport. It creates a favorable business environment, reduces the overall cost of international trade and transport, applying best international practices in national procedures. The multilateral trade negotiations under the auspices of the World Trade Organization (WTO) have significantly reduced tariff barriers. This paper introduces the different tools for customs cooperation and it investigates for the first time the number of Customs Mutual Assistance Agreements (CMAAs) of major World Trade Nations (EU, US, Australia, Canada, China, Japan, New Zealand, South Africa and South Korea), of medium trade nations (India, Turkey and UAE) also of small countries (Algeria, Mauritius, Morocco, Hong Kong and Taiwan). It investigates CMAAs by help of direct publications on their CMAAs and of other nations that are not publishing data on their CMAAs by pooling data published by other nations.

1.1. Legal Framework for Customs cooperation

The World Customs Organization (WCO) has developed a framework for Customs cooperation which consists of different binding and non-binding instruments.

There are various obligatory and optional legal instruments provided by international organizations - the WCO and other international economic organizations such as the United Nations:[1]

WCO-Recommendations (non-binding)

– 1953 Council Recommendation on Mutual Administrative Assistance

– 1967 Recommendation of the Customs Co-operation Council on the Pooling of Information concerning Customs Fraud

– 1975 Council Recommendation on the Pooling of Information concerning Customs Fraud

WCO-Declarations (non-binding)

– 2000 Cyprus Declaration

WCO: Binding Instruments

– Revised Model Bilateral Agreement - June 2004

– Guides for Regional Mutual Administrative Assistance in Customs matters (2002)

– Convention on mutual assistance and cooperation between customs administrations (Naples II)

– Council Regulation on Mutual Assistance for Application of the Law on Customs (1997)

– Convention on the Use of Information Technology for Customs Purposes (1995)

– International Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences (Nairobi Convention, JC) (1980)

– International Convention on mutual administrative assistance in Customs matters (Johannesburg Convention) (has not entered into force)

– United Nations Instruments (binding)

– Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998 (Vienna Convention)

– Convention Against Transnational Organized Crime, 2000 (Palermo Convention)

– UNCITRAL Model Law on Electronic Commerce with Guide to Enactment, 1996

What one can state after this long list of legal instruments is that mutual customs assistance is done on the basis of the NC but not only and in many cases with other WCO and/or UN instruments. In particular bilateral customs mutual assistance agreements (CMAAs) have been drawn by help of the WCO since its first publication in 1967.

1.2. Article 12 TFA

Article 12 of the Trade Facilitation Agreement (TFA)[2] is concerned with customs cooperation. This topic is of eminent importance for Trade Facilitation because risk analysis and mutual data exchange is part of the global trade picture.

In particular, Art. 12 TFA provides a list of terms and requirements for the Member States concerning the exchange of information. It is intended to monitor confidentiality when exchanging information. This article allows member states of the WTO within the framework of national legal systems to set a timeframe for the provision and receipt of information. Moreover, WTO member states can even conclude or maintain bilateral, multilateral or regional agreements for the exchange of customs information. Sections 1, 3, 6 and 7 of the RKC contain provisions for cooperation between customs administrations. For example, Standard 6.7 provides the following: "Customs should seek cooperation with other customs administrations and conclude agreements on mutual administrative assistance with a view to improving customs control".

As for the use of information technology, the more specific provisions on this are contained in the RKC. Chapter 7 of this Convention provides for the use of information technology by the customs authorities in cases where it is economically profitable and effective for the customs service and participants in trade activities.

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[1] See WCO, Mutual Administrative Assistance (2018b), URL: http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/wco-and-international-instruments-on-mutual-administrative-assistance.aspx, viewed 8 April 2018.

[2] The full text is available in English under URL: https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm.

It should be noted that when implementing information technology, consultations are conducted with all parties that have a direct relation to it (7.3, RKC). Also, in Standard 7.4 of the RKC it is envisaged that new or amended legislation of the states that have ratified the provisions of the RKC should provide for: 1) electronic methods for the exchange of commercial information; 2) the combination of electronic methods and methods for certifying the authenticity and identity of documents on paper; 3) the right of the customs service to keep information for use for customs purposes and, if necessary, exchange such information with other customs administrations, as well as legal entities

2. Examination of the Customs Mutual Assistance Agreements (MCAAs)

2.1. Material and Methods

This examination was conducted by help of an internet research regarding data on CMAAs of major global trade nations and also of medium and minor trade nations which have been published by them. Furthermore data has been obtained about other parties which have not published any data on their CMAAs by help data pooling of other publications.

2.2. Results

The results of direct publications are shown in Tables 1-14.

Table 1

Customs Mutual Assistance Agreements (CMAAs) of the US[3]

Country	WCO	WTO
Algeria	+	-*
Argentina	+	+
Australia	+	+
Austria	+	+
Azerbaijan	+	-*
Bahrain	+	+
Belarus	+	-*
Belgium	+	+
Brazil	+	+
Bulgaria	+	+
Canada	+	+
Chile	+	+
China	+	+
Colombia	+	+
Costa Rica	+	+
Cyprus	+	+
Czech Republic	+	+
Denmark	+	+
Dominican Republic	+	+
Ecuador	+	+
European Community	+	+
Finland	+	+
France	+	+
Gabon	+	+
Germany	+	+

[3] See US Customs and Border Protection Service, 2018.

Greece	+	+
Honduras	+	+
Hong Kong	+	+
Hungary	+	+
India	+	+
Indonesia	+	+
Ireland	+	+
Israel	+	+
Italy	+	+
Japan	+	+
Jordan	+	+
Kasakhstan	+	+
Kenya	+	+
Latvia	+	+
Lithuania	+	+
Malaysia	+	+
Maldives	+	+
Malta	+	+
Mauritius	+	+
Mexico	+	+
Mongolia	+	+
Montenegro	+	+
Morocco	+	+
Netherlands	+	+
New Zealand	+	+
Nigeria	+	+
Norway	+	+
Pakistan	+	+
Panama	+	+
Peru	+	+
Philippines	+	+
Poland	+	+
Portugal	+	+
Romania	+	+
Russian Federation	+	+
Senegal	+	+
Serbia	+	-*
Singapore	+	+
Slovakia	+	+
South Africa	+	+
South Korea	+	+
Spain	+	+
Sweden	+	+

Taiwan	-	+
Trinidad & Tobago	+	+
Turkey	+	+
Ukraine	+	+
United Kingdom	+	+
Uruguay	+	+
Venezuela	+	+
Summary 75 CMAAs	74	71

**WTO Observer*

Table 2

Customs Mutual Assistance Agreements (CMAAs) of Canada[4]

Country	**WCO**	**WTO**
European Community	+	+
France	+	+
Germany	+	+
Mexico	+	+
Netherlands	+	+
South Africa	+	+
South Korea	+	+
USA	+	+
Summary 8 CMAAs	8	8

Table 3

Customs Information Sharing Memorandum of Understandings (MOUs) of Canada[5]

Country	WCO	WTO
Australia	+	+
Caribbean Zone	+	-
Great Britain (UK)	+	+
Mexico	+	+
Hong Kong	+	+
Japan	+	+
New Zealand	+	+
Summary 7 MOUs	7	6

**WTO Observer*

[4] See Canada Border Services Agency, 2012.

[5] See Canada Border Services Agency, 2012.

Table 4

Customs Information Sharing Mutual Legal Assistance Treaties (MLTAs) of Canada[6]

Country	WCO	WTO
Argentina	+	+
Austria	+	+
Australia	+	+
Bahamas	+	-*
Belgium	+	+
Brazil	+	+
China	+	+
Czech Republic	+	+
France	+	+
Germany	+	+
Greece	+	+
Hong Kong	+	+
Hungary	+	+
India	+	+
Israel	+	+
Italy	+	+
Mexico	+	+
Netherlands	+	+
Norway	+	+
Peru	+	+
Poland	+	+
Portugal	+	+
Romania	+	+
Russian Federation	+	+
South Africa	+	+
South Korea	+	+
Spain	+	+
Switzerland	+	+
Sweden	+	+
Thailand	+	+
Trinidad and Tobago	+	+
Ukraine	+	+
United Kingdom	+	+
Uruguay	+	+
USA	+	+
Summary 35 MLTAs	35	34

[6] See Canada Border Services Agency, 2012.

Table 5

Customs Mutual Assistance Agreements (CMAA) of Taiwan[7]

Country	WCO	WTO
Canada	+	+
China	+	+
India	+	+
Israel	+	+
Macedonia	+	-
New Zealand	+	+
Philippines	+	+
United States	+	+
Summary 8 CMAAs	8	7

Table 6

Customs Mutual Assistance Agreements (CMAAs) of Japan[8]

Country	WCO	WTO
China	+	+
European Community	+	+
Germany	+	+
Italy	+	+
Mexico	+	+
Netherlands	+	+
Norway	+	+
Russian Federation	+	+
South Africa	+	+
South Korea	+	+
Spain	+	+
USA	+	+
Summary 12 CMAAs	12	12

**WTO Observer*

Table 7

Customs Mutual Assistance Arrangements of Japan[9]

Country	WCO	WTO
Australia	+	+
Belgium	+	+
Canada	+	+
France	+	+
Hong Kong	+	+
Macao	-	+
New Zealand	+	+
United Kingdom	+	+
Summary 7 CMAAs	7	8

[7] See Republic of China (Taiwan), 2018.

[8] See Japan Customs, 2018.

[9] See Japan Customs, 2018.

Table 8

Customs Mutual Assistance Agreements (CMAA) of the European Union (EU)[10]

Country	WCO	WTO
Albania	+	+
Algeria	+	-*
Andorra	+	-*
Antigua and Barbuda	+	+
Armenia	+	+
Azerbaijan	+	-*
Bahamas	+	-*
Barbados	+	+
Belize	+	+
Bosnia and Herzegovina	+	-*
Botswana	+	+
Cameroon	+	+
Canada	+	+
Chile	+	+
China	+	+
Colombia	+	+
Costa Rica	+	+
Dominica	-	+
Dominican Republic	+	+
Egypt	+	+
Faroe Islands	-	-
Fiji	+	+
Georgia	+	+
Ghana	+	+
Grenada	-	+
Guatemala	+	+
Guyana	+	+
Honduras	+	+
Hong Kong	+	+
Iceland	+	+
Ivory Coast	+	+
India	+	+
Israel	+	+
Jamaica	+	+
Japan	+	+
Jordan	+	+
Kazakhstan	+	+
Kosovo	+	-
Kyrgyzstan	+	+
Lebanon	+	-*
Lesotho	+	+
Liechtenstein	-	+
Macedonia/FYROM	+	-
Madagascar	+	+
Mauritius	+	+
Mexico	+	+

[10] See European Commission, OLAF, Legal Framework, Agreement with third parties, 2017 and European Commission, Press Releases on the EU-New Zealand CMAA, 2017.

Moldova	+	+
Montenegro	+	+
Morocco	+	+
Mozambique	+	+
Namibia	+	+
New Zealand	+	+
Nicaragua	+	+
Norway	+	+
Palestinian Authority	+	-
Panama	+	+
Papua New Guinea	+	+
Peru	+	+
Russian Federation	+	+
Saint Christopher and Nevis	-	+
Saint Lucia	+	+
Saint Vincent and the Grenadines	-	+
El Salvador	+	+
San Marino	-	-
Serbia	+	-
Seychelles	+	+
South Africa	+	+
South Korea	+	+
Suriname	-	+
Swaziland	+	+
Switzerland	+	+
Tajikistan	+	+
Trinidad and Tobago	+	+
Tunisia	+	+
Turkey	+	+
Turkmenistan	+	-
Ukraine	+	+
USA	+	+
Uzbekistan	+	-*
Zimbabwe	+	+
Summary 80 CMAAs	72	66

**WTO Observer*

Table 9

Customs Mutual Assistance Agreements (CMAAs) of India[11]

Country	WCO	WTO
Australia	+	+
Brazil	+	+
China	+	+
Egypt	+	+
European Union	+	+
Hong Kong	+	+
Iran	+	-*
Israel	+	+
Maldives	+	+
Russian Federation	+	+
SAARC	-	-
South Korea	+	+
United Kingdom	+	+
USA	+	+
Uzbekistan	+	-*
Summary 15 CMAAs	14	12

**WTO Observer*

Table 10

Customs Mutual Assistance Agreements (CMAAs) of the United Arab Emirates[12]

Country	WCO	WTO
Algeria	+	-*
Argentina	+	+
Armenia	+	+
Azerbeijan	+	-*
India	+	+
Kazakhstan	+	+
Maldives	+	+
Morocco	+	+
Netherlands	+	+
Pakistan	+	+
South Korea	+	+
Summary 11 CMAAs	11	9

**WTO Observer*

Table 11

Customs Mutual Assistance Agreements (CMAAs) of Mauritius[13]

Country	WCO	WTO
Netherlands	+	+
Pakistan	+	+
USA	+	+
Summary 3 CMAAs	3	3

[11] See Government of India, 2018.

[12] See UAE Customs Service, 2018.

[13] See Mauritian Customs Service, 2018.

Table 12

Customs Mutual Assistance Agreements (CMAAs) of Turkey which have entered into force[14]

Country	WCO	WTO
Afghanistan	+	+
Albania	+	+
Algeria	+	-*
Bahrain	+	+
Belarus	+	-*
Belgium	+	+
Bosnia-Herzegovina	+	-*
Bulgaria	+	+
Chile	+	+
China	+	+
Croatia	+	+
Cuba	+	+
Czech Republic	+	+
D-8	-	+
Egypt	+	+
Estonia	+	+
Georgia	+	+
Greece	+	+
India	+	+
Iran	+	-*
Israel	+	+
Italy	+	+
Jordan	+	+
Kazakhstan	+	+
Kosovo	+	-
Kuwait	+	+
Kyrgyzstan	+	+
Latvia	+	+
Lithuania	+	+
Macedonia	+	-
Mexico	+	+
Moldova	+	+
Mongolia	+	+
Morocco	+	+
Netherlands	+	+
Pakistan	+	+
Palestine	+	-
Poland	+	+
Romania	+	+
Russian Federation	+	+
Saudi Arabia	+	+
Serbia	+	-*
Slovakia	+	+
Slovenia	+	+
South Africa	+	+
South Korea	+	+

[14] See Turkish Customs Service, 2018.

Spain	+	+
Sudan	+	-*
Syria	+	-*
Tajikistan	+	+
Turkmenistan	+	-
Ukraine	+	+
United Kingdom	+	+
USA	+	+
Uzbekistan	+	-*
Summary 55 CMAAs	54	43

**WTO Observer*

Table 13

Customs Mutual Assistance Agreements (CMAAs) of Turkey which have not entered into force[15]

Country	WCO	WTO
Azerbaijan	+	-*
Bangladesh	+	+
Brazil	+	+
Libya	+	-*
Qatar	+	+
Montenegro	+	+
Oman	+	+
Tunisia	+	+
Yemen	+	+
Summary 9 CMAAs	9	7

**WTO Observer*

Table 14

Customs Mutual Assistance Agreements (CMAA) of Argentina[16]

Country	WCO	WTO
Azerbeijan	+	+
Bolivia	+	+
Chile	+	+
France	+	+
Hungary	+	+
India	+	+
Italy**	+	+
Libya	+	-*
MERCOSUR	-	-
Russian Federation	+	+
Spain	+	+
USA	+	+
Summary 12 CMAAs	11	10

**WTO Observer*

***Agreement pending parliamentarian approval*

[15] See Turkish Customs Service, 2018.

[16] See Argentinean Customs Service, 2018.

14 tables of direct publications by countries are showing the different approaches of the countries investigated which have published data on mutual customs assistance agreements. This study is incomplete (since it only covers only about 10 out of 164 WTO and 182 WCO member states) but it gives a deep insight in this secretive topic of customs assistance.

Some data on CMAAs can be obtained by help of data pooling by publications about some other countries such as Algeria, Argentina, China, Hong Kong, Morocco, Russia, Australia, New Zealand, South Africa and South Korea (tables 15-23).

Table 15

Customs Mutual Assistance Agreements (CMAAs) of Algeria which have entered into force[17]

Country
EU
Turkey
UAE
US
4 CMAAs

Table 16

Customs Mutual Assistance Agreements (CMAAs) of China which have entered into force[18]

Country
Canada
EU
India
Japan
Taiwan
Turkey
US
7 CMAAs

Table 17

Customs Mutual Assistance Agreements (CMAAs) of Hong Kong which have entered into force[19]

Country
Canada
EU
India
Japan
US
7 CMAAs

[17] Data pooling by help of other publications.
[18] Data pooling by help of other publications.
[19] Data pooling by help of other publications.

Table 18

Customs Mutual Assistance Agreements (CMAAs) o f Morocco which have entered into force[20]

Country
EU
Turkey
UAE
US
4 CMAAs

Table 19

Customs Mutual Assistance Agreements (CMAAs) of the Russian Federation which have entered into force[21]

Country
Canada
EU
India
Japan
Turkey
US
6 CMAAs

Table 20

Customs Mutual Assistance Agreements (CMAAs) of Australia which have entered into force[22]

Country
Canada
India
Japan
US
4 CMAAs

Table 21

Customs Mutual Assistance Agreements (CMAAs) of New Zealand which have entered into force[23]

Country
Canada
EU
Japan
Taiwan
US
5 CMAAs

[20] Data pooling by help of other publications.

[21] Data pooling by help of other publications.

[22] Data pooling by help of other publications.

[23] Data pooling by help of other publications.

Table 22

Customs Mutual Assistance Agreements (CMAAs) of South Africa which have entered into force[24]

Country
Canada
EU
Japan
Turkey
US
5 CMAAs

Table 23

Customs Mutual Assistance Agreements (CMAAs) of South Korea which have entered into force[25]

Country
Canada
EU
Japan
India
UAE
US
6 CMAAs

Tables 15 to 23 have been derived by help of data pooling of publications by other countries on CMAAs and they are showing that other major trade nations Australia, New Zealand, China, Russian Federation, South Africa and South Korea are also having CMAAs but also the minor trade nations Hong Kong, Algeria and Morocco.

3. Discussion

Data in 23 tables is showing that major global trade nations are able to negotiate CMAAs with many countries (EU: 80 bilateral agreements, US: 75 bilateral agreements, Canada: 50 bilateral agreements). However other major global trade nations have concluded only few bilateral agreements (Japan: 8 bilateral agreements, China: 7 bilateral agreements, Russian Federation: 6 bilateral agreements, South Korea: 6 bilateral agreements[26]). Medium trade nations are also able to negotiate many bilateral agreements, notably Turkey with 55 CMAAs and further nine agreements which have not entered into force.

Canada has three different approaches regarding the agreement types: CMAAs, Customs Information Sharing Memorandum of Understanding (MOU) and Customs Information Sharing Mutual Legal Assistance Treaties (MLTAs)[27] (see tables 2-4).

[24] Data pooling by help of other publications.

[25] Data pooling by help of other publications.

[26] Data on China and the Russian Federation have been obtained by pooling and have not been published openly; the real number of bilateral (disclosed) agreements may be higher.

[27] See Canada Border Services Agency Customs Cooperation Case Study for Canada (2012), URL: https://www.wto.org/english/tratop_e/tradfa_e/case_studies_e/cc_can_e.doc, viewed on 8 April 2018.

Japan has two different approaches for customs assistance agreements: CMAAs and Customs Mutual Assistance Arrangements (see tables 6, 7).

One of the big differences are the way the nations have published the agreements and data on the CMAAs – the countries in tables 1-14 have published the data on the internet whereas the CMAAs of the eight nations covered in tables 15-23 have not published any data publicly on the internet. Data pooling of other published data can give a rough picture about their activities concerning mutual customs assistance however it must be assumed that nations such as China and Russia have many more CMAAs with other countries.

4. Conclusions

Bilateral customs mutual assistance agreements (CMAAs) are currently the most important legal instrument of international customs co-operation since the multilateral Nairobi Convention is outdated and has never been very popular and the new Johannesburg Convention has not entered into force until 2018.[28]

In particular the major global trade nations US and EU have concluded many CMAAs but also medium trade nations such as Canada and Turkey have concludes numerous CMAAs (or similar types of agreements, whereas some major trade nations such as Japan have concluded only 19 CMAAs. Small trade nations have traditionally smaller negotiation power in pursing their interests but have the same obligations as their partners since the agreement are about mutual assistance and information exchange.

Many trade nations are not publishing data on their CMAAs but data pooling on other publications can share a light on their CMAAs, however such datasets stay incomplete (see tables 15-23 on China, Russia, Australia, New Zealand, South Africa, South Korea, Algeria, Morocco and Hong Kong.

The Trade Facilitation Agreement (TFA) has entered into force on 22 February 2017 has been signed by 135 WTO member states until the end of March 2018[29] – these will fully implement the TFA. Many more agreements on mutual customs assistance will be negotiated, sigened and agreed.

Article 12 TFA clarifies the importance of Customs assistance and states that bilateral agreements already in force shall continue to deliver the data requested in order to combat international cross-border crime and prevent harmful attacks.

Many small trade nations should look into this issue by help of the WCO in order to make good agreements and arrangements with their neighbouring countries. The WCO bilateral model customs mutual assistance agreement is available online together with a legal commentary and advice.[30]

The best crime prevention can be obtained not only over long distances but with your next door countries – therefore regional customs mutual assistance is as important as inter-continental customs cooperation.

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УГОДИ ПРО ВЗАЄМНУ ДОПОМОГУ В МИТНИХ СПРАВАХ В КОНТЕКСТІ СТАТТІ 12 УГОДИ ПРО СПРОЩЕННЯ ПРОЦЕДУР ТОРГІВЛІ – СВІТОВА ПЕРСПЕКТИВА

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Митна співпраця на міжнародному, регіональному та світовому рівнях спрямована на забезпечення дотримання чинного законодавства та нормативних актів, а також на поліпшення контролю за торговельним потоком шляхом обміну інформацією про такі митні особливості як транзит, декларація експорту та імпорту, походження, цінність товару та відомості про торговця, зокрема інформація про митне шахрайство. Цей обмін даними в даний час є ключовим елементом Угоди СОТ про спрощення процедур торгівлі, а стаття 12 Угоди розглядає всі необхідні компоненти для обміну інформацією, такі як потреба запитуючої країни, перевірка запиту, захист обмінюваних даних та забезпечення конфіденційність даних та обмін даними на основі принципу взаємності. У Статті 12 Угоди СОТ про спрощення процедур торгівлі також йдеться про двосторонні та регіональні угоди про взаємну адміністративну допомогу, які залишаються основним інструментом урядів та митних адміністрацій для участі в такій співпраці. Автор вивчає різні підходи та представляє список Угод про взаємну митну допомогу в митних справах зацікавлених сторін у міжнародній торгівлі, країн з середнім рівнем розвитку торгівлі та малих країн. 23 таблиці відображають результати цього дослідження. Стаття досліджує Угоди про взаємну митну допомогу, використовуючи публікації, які напряму стосуються питання Угод про взаємну митну допомогу та інших країн, які не публікують дані про свої Угоди ВМД шляхом об'єднання даних, опублікованих іншими країнами. Автор робить висновок, що двосторонні взаємні угоди є сприятливими для великих країн, але викликають труднощі в частині переговорів для малих країн. Як результат, в статті обґрунтовується важливість митного співробітництва на двосторонній регіональній основі.

Ключові слова: митне право, митна класифікація, тарифні ставки, номенклатура Гармонізованої системи (ГС), загальні правила, товарна позиція, примітки, примітки до субпозицій, додаткові примітки, Єдиний митний тариф (ЄМТ), Комбінована номенклатура (КН), Європейський Союз (ЄС).

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