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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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THE INFLUENCE OF TAXATION AND CERTAIN SOCIAL DETERMINANTS ON THE DEVELOPMENT OF BUSINESS STRUCTURE SUBJECTS IN UKRAINE

The article deals with a comprehensive research of the influence of taxation and individual social determinants on the development of business structures subjects (business entities) in Ukraine.
The methodological basis of the study consists of general scientific methods and methods of cognition of objective reality and processes associated with the functioning of business entities (analysis and synthesis; induction and deduction; scientific abstraction, historical and logical; comparative analysis, generalization; modeling; statistical methods, as well as system approach and method of expert assessments).
The information base of the research is the current regulatory and legal acts on taxation of business entities in Ukraine, official analytical and statistical materials of the World Bank, European Business Association, State Committee of Statistics of Ukraine, Ministry of Finance of Ukraine, monographs and periodicals of domestic and foreign scientists.
The essence of the concept of "subjects of business structures" is revealed; identified international institutions that conduct ongoing and annual monitoring of the modern business environment.
The study disclosed the types of economic crimes that contemporary entrepreneurs in Ukraine and in the world often encounter. The positions of Ukraine in the ranking of Doing Business 2006-2019 are presented. The results of monitoring the tax system in Ukraine and in the world are analyzed. The destimulating effect of the current tax system on the activities of business entities is proved, factors of a social nature that slow down the further development of business in Ukraine are mentioned; a critical assessment of the simplified single tax model is given; problematic issues requiring urgent solutions and barriers that impede the development of business entities in Ukraine are identified.
As a result of the study, the authors came to the conclusion that Ukraine's position in international ratings in recent years has remained mediocre, and the progress achieved does not bring it closer to the optimal level. All reform changes in the business taxation system led to its superficial improvement. Namely, it is a decrease for taxes paid by entrepreneurs and the level of tax burden remains burdensome and amounts to 42.24%. It is noted that the new reform measures proposed by the Government of Ukraine (the abolition of the maximum base for calculating the unified social contribution to the wage fund, the introduction of tax on the withdrawn capital) remain highly controversial, are not perceived positively by business entities and are not supported by foreign experts.
The scientific and practical significance of the presented research lies in the possibility of using it in the further practice of improving the legal framework for taxation of business entities in Ukraine.

Key words: business entities, taxes, single tax, optimal taxation system, reform, tax burden, special tax regimes, simplified taxation, social consequences, factors.
JEL Classification: H25, H31, H55

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Introduction. Present an important task in the era of digital transformation of national economies, business and international relations is the creation of a favorable business environment for the development of subjects of business structures (in English – business entities, hereinafter referred to as SBS). This is a basis to relieve social tension and

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ensure the activation of various types of their activities, the development of priority sectors in country, economic growth, the creation of new jobs and thereby improving the standard of living and well-being of the population.

The analysis of SBS taxation in Ukraine over the last two decades shows that the most used is the simplified (unified) system of taxation, accounting and reporting (hereinafter referred to as the STS), which provides for a single tax (hereinafter referred to as the ST), the algorithm of which is calculated according to the Tax Code of Ukraine [1]. Nevertheless, despite this, the question of finding the optimal tax system for SBS is still urgent, because such a system significantly increases the tax burden on their income, as evidenced by our analysis of the calculation procedure of the ST.

At the same time, in Ukraine, the tax legislative framework is constantly in the state of additions and changes. This destabilizes the development of the SBS, worsens the investment and innovation climate. In recent years, the STS has again undergone regular changes (namely the criteria for transition to its application, the rates of single tax rates and the conditions for payment of the unified social contribution (hereinafter – USC). These changes had accordingly affected the business activity of SBS, and led to a significant reduction in their number, the cessation of activities or the expansion of the "shadow" sector.

There are a number of other obstacles to the development of SBS. This adversely affects the realization of their potential. The following obstacles include: corruption; hostilities in the east; unstable political situation; insufficient solvency demand; galloping inflation; instability of the national currency; excessive tax pressure; lack of working capital; low availability of credit; frequent changes to the legal framework; excessive administrative pressure, etc.

Therefore, all of the above has been an incentive to carry out current scientific research into the impact of taxation and certain social determinants on the development of SBS in Ukraine.

Analysis of recent research and publications has shown that the work of many prominent foreign scientists, in particular: D. Keynes, A. Laffer, M. Mescon, P. Samuelson, R. Stiglitz, J. chumpeter and others. Similar researches were carried out also by domestic scientists, namely: L. Babich, T. Bui, O. Volkova, V. Vishnevsky, Y. Ivanov, S. Logvinovskaya, I. Lutsenko, V. Orlov, O. Panasyuk, M. Slatvinskaya, V. Khomutenko and others. However, in spite of the significant scientific achievements available, the topic of our research cannot be fully disclosed, as it acquires new aspects over time under the influence of various factors. This leads to further scientific research in order to find out the problematic issues that need urgent solutions and the barriers that hinder the development of SBS.

The purpose of the article is a comprehensive study of the impact of taxation and certain social determinants on the development of SBS in Ukraine. To achieve this goal, the following tasks are set:

– reveal the essence of the concept of the "subjects of business structures",

– identify international institutions that monitor the current and annual monitoring of the current business environment,

– find out the types of economic crimes faced by modern entrepreneurs in Ukraine and in the world,

– identify the problematic issues that need urgent solutions and the barriers that hinder the development of SBS in Ukraine.

Methodological basis of research is the general scientific methods and techniques of knowledge of objective reality and processes related to the functioning of SBS (analysis and synthesis; induction and deduction; scientific abstraction; historical and logical; comparative analysis, generalization; modeling, statistical, etc.), and also the systematic approach and method of peer review.

1. The essence of the concept of "subjects of business structures".

By its most general definition, SBS is a capable social group of representatives of the national economy who independently carry out officially authorized financial and economic activities in its territory. In a narrower sense, SBS is an independent organization or organizational unit, the operation of which is governed by certain relatively stable rules and regulations.

The SBS should include legal entities and individuals, who are not only economic entities or businesses, but also taxpayers, the owners of the enterprises (micro, small, medium or large). Their financial and economic activities are carried out in various sectors of the national economy (industry, construction, agriculture, transport, trade, services, etc.) at their discretion and risk to achieve economic and social results and profit (Dulik & Aleksandriuk, 2018). [2].

2. International institutions that conduct current and annual monitoring of the current business environment.

Among the well-known expert commissions that conduct the current and annual monitoring of the contemporary business environment, including taxation systems, in the world and in Ukraine, include international institutions such as the World Bank [3], the European Business Association [4] and the audit company Price Water House Coopers (hereinafter – PwC) [5]. For example, PwC studies trends in economic processes and conducts annual surveys of executives from the world's largest companies, helping to identify further benchmarks that entrepreneurs consider taking further business, solutions.

Starting in 2009 the survey is conducted in Ukraine every two years. It allowed to monitor trends in the most common types of economic crimes and fraud and their impact on Ukrainian businesses, and to track changes in measures taken by entrepreneurs to prevent fraud. The results of such a survey of foreign and Ukrainian organizations in the framework of the PwC World economic crime and fraud study 2018 in the countries of the world and in Ukraine, published in the corresponding report, are shown in Figure 1 [6].

3. Types of economic crimes faced by modern entrepreneurs in Ukraine and in the world.

Fig. 1 illustrates the following situation: 48% of Ukrainian organizations have been affected by economic crime and fraud cases in the last two years. Bribery and corruption (73%) is a leader among economic crimes that have been plagued by organizations over the past two years. The top 5 crimes also include property misappropriation (46%), procurement fraud (33%), personnel management fraud (33%) and cybercrime (31%). In addition, Ukrainian respondents expect that bribery and corruption will be the most significant economic crime for their organizations in the next two years [6].

In addition, the World Bank Group of Experts conducts an annual rating in 190 countries around the world on the ease of doing business (Doing Business 2006 – 2019), in which Ukraine occupies more favorable positions each year(1 to 190 points), as evidenced by Fig. 2 [2; 3; 7].

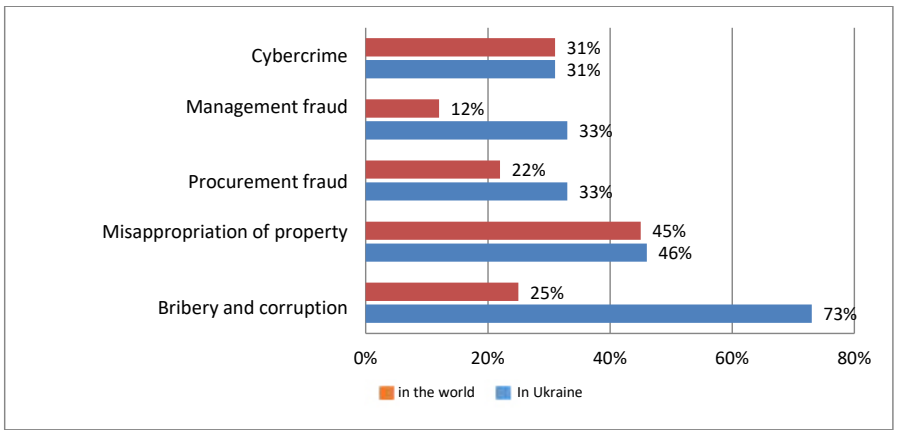

Fig. 1. Types of economic crimes faced by contemporary entrepreneurs in Ukraine and in the world [6]

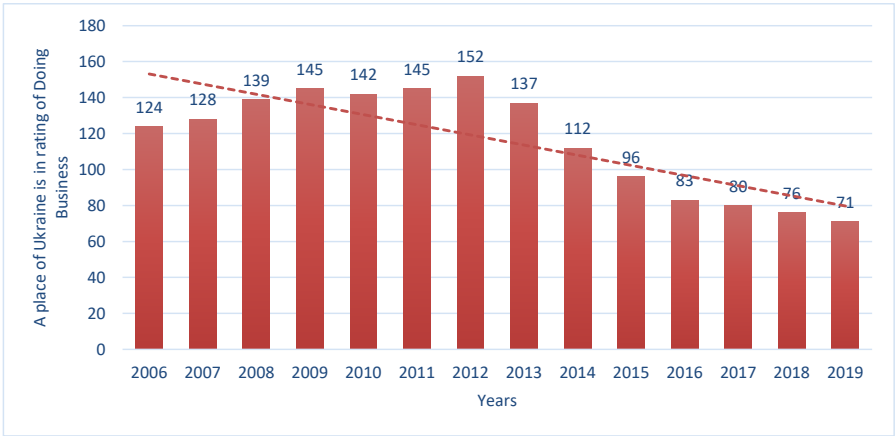

Fig. 2. Ukraine ranking in the ease of doing business among 190 countries (Doing Business 2006 – 2019)

Doing Business 2019: Training and Reform is the 16th issue of the World Bank's Leading Annual Series, which provides an assessment of legal frameworks that are conducive to business expansion and limit it. The following quantitative indicators were used in this study: business creation; obtaining a building permit; connection to the power supply system; property registration; obtaining credits; protection of investors; taxation; international trade; enforcement of contracts; the solution of insolvency. Each specified indicator has certain parameters. At the same time, the data in the Doing Business 2019 report was prepared as of 01.05. 2018. These indicators are used to analyze economic performance and identify successful business regulation reforms, and to identify where and why they have been more effective [7].

4. Problematic issues that need urgent solutions and barriers that hinder the development of SBS in Ukraine.

An important indicator of the state of the national business environment is taxation, which is estimated based on the previous year using certain parameters. It include: the amount of taxes paid by entrepreneurs and the time they spend to pay income tax (% of income) or business income, labor tax and statutory contributions (% of income) paid by businesses, property tax, property transfer tax, dividend tax, capital gains tax, financial transaction tax, waste tax (garbage), vehicle and road taxes, and other taxes and fees, ease of refund I VAT and income tax adjustments, cumulative tax rate (the value of all taxes levied (in% of income)). These parameters make it possible to estimate the administrative pressure associated with the payment of taxes and deductions, as well as the processes after the submission of reports and payment of taxes and fees by entrepreneurs [7].

Therefore, according to the results of the rating among 190 countries of the world, Ukraine (thanks to the reform of the tax system) has achieved higher results every year. Thus, if in 2012 it was ranked 181 in this rating, then in 2016 – 2018, it was moved to 107th, 84th and 43rd places respectively, and one should strive for one [3].

As for Doing Business 2019, the overall picture of the 2017 tax system is presented in Table 1. These data indicate that in Ukraine, in contrast to foreign countries, the best indicator is the amount of payments paid by companies for the year, their 5 varieties: corporate income tax (including dividend tax), ESV, i.e. deductions, undertaken by businesses on payroll, property tax, transfer tax, which combine property tax. The worst indicator is the time spent by entrepreneurs in paying taxes (times per year), up 327.5 hours per year, more than in Europe and Central Asia and OECD member countries by 112.7 hours and 168.1 hours accordingly. The aggregate tax rate is almost identical in Ukraine and in foreign countries and amounted to 41.7%. Moreover, in the rating of tax assessment in 2017, it ranked 54th overall, that is, compared to 2016, its results deteriorated by 11 steps [7].

Table 1

Monitoring of taxation system in Ukraine and in the world, conducted by international experts for 2017 (Doing Business – 2019)

Indicator	Ukraine	Countries in Europe and Central Asia	OECD High-Income Countries	Best Country for the Year
Number of payments to be paid by companies (amount per year)	5	16,6	11,2	3 (Hong Kong, China)
Time spent on taxes (times a year)	327,5	214,8	159,4	49 (Singapore)
Aggregate tax rate (value of all taxes paid by companies (in% of profit))	41,7	32,3	39,8	26,1 (32 economies)
Post-filing and Tax Procedure Index (0-100)	85,95	64,41	84,41	-

Source: [7]

The assessment of countries by the degree to which tax conditions are favorable is determined by sorting the scores by indicator. The overall tax score for the country is the arithmetic mean of all components of the Taxation indicators, which is fixed for Ukraine at: 79.35 points out

of 100. Its closest neighbors to this rating were Moldova (84.55 points); Kazakhstan (79.28 points); European and Central Asian countries (average 75.80 points); Belarus (70.68 points); Kyrgyzstan (56.55 points) [7].

Consequently, in terms of favorable tax conditions, Ukraine has achieved success and is approaching leaders (from 0 to 100 points). The index of procedures after the submission of reports and payment of taxes by entrepreneurs in Ukraine and some foreign countries is shown in Fig. 3.

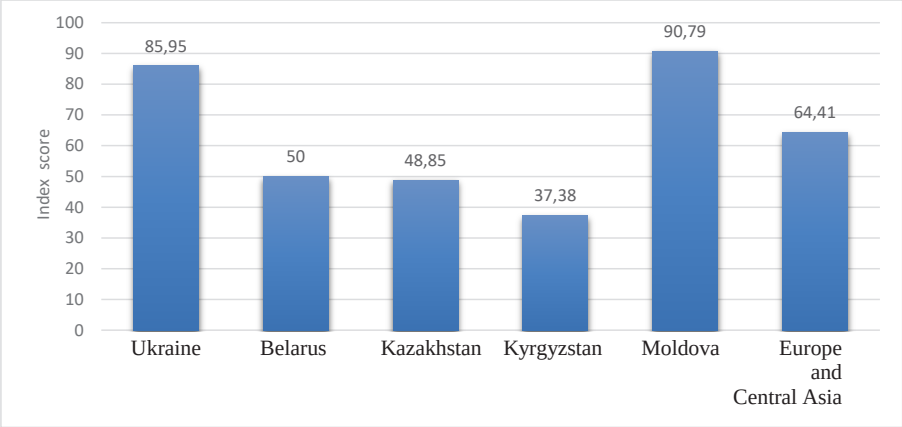

Fig. 3. Index of procedures after reporting and payment of taxes in Ukraine and individual countries for 2017, according to Doing Business 2006 – 2019

In Fig.3 according to Doing Business 2006 – 2019, 3 post-tax reporting and tax procedures in Ukraine and selected foreign countries are calculated as the arithmetic mean of each of the 4 components: time to comply with value added tax (VAT) refund requirements; time to receive VAT refund; time to comply with income tax adjustment requirements; time to adjust income tax. Therefore, according to the index of post-tax reporting procedures, Ukraine is also approaching the leaders (from 0 to 100 points), and reforms carried out in the tax environment, according to World Bank experts, make it easier to do business. At the same time, according to the same experts, the income level in Ukraine is below the average and the GDP per capita is the lowest among European countries and is only US $ 2,388, which is evidence of inefficient SBS activity [7].

Experts of the European Business Association provide no less comforting conclusions about the taxation of SBS. Today the Association is the leading organization of international business in Ukraine. The European Commission established this Association in 1999. It is interested in supporting European business in Ukraine and establishing bilateral relations: EU-Ukraine. According the current priorities of our country for integration into the European Community, the main purpose of the Association's activity is to establish relations of European business with representatives of the authorities in Ukraine in order to cooperate in creating favorable conditions for doing business, including optimal tax environment and attraction of foreign direct investments into the economy of our country [4].

In 2017, within the framework of the inspection of the current state of affairs in Ukraine, the Association conducted a survey among executives of 142 largest international and Ukrainian

companies. The results of this survey showed that the negative sentiment of entrepreneurs has weakened, but not disappeared.

Respondents mentioned positive changes: openness of state data, gradual deregulation, noticeable development of electronic services, simplification of the procedure of obtaining permits for construction, moratorium on tax checks, weakening of currency control, introduction of the institute of private contractors and more

The business has named three problems that need urgent solution: fight against corruption, judicial reform and land reform. Some of the participants in the survey referred to the negative factors: slow pace of reforms, high rates of business lending, military conflict in the East of the country, bureaucratic approach in obtaining permits for business, smuggling, shadow economy, etc. [8].

Therefore, the position of these respondents differs little from other foreign experts. With regard to a factor such as taxation that could adversely affect SBS activities, the Association believes that increasing the burden on honest taxpayers is an extremely unfair way to offset the losses created by the existence of readily available tax avoidance schemes. The state should focus on combating tax evasion and not on simulating such a fight. These judgments were a reaction of the Association to certain provisions approved by the Government of Ukraine of a draft law of the Ministry of Social Policy on the wage deduction, which refers abolishing of the maximum amount of the UST accrual base on the payroll. In particular, it states: "There is no doubt that a significant increase in business expenses will be a guaranteed consequence of the cancellation of the maximum amount of the UST accrual base. For example, the Ministry of Social Policy was expecting to receive an additional 10 billion hryvnias of the UST – accordingly, this amount will increase the business expenses for obligatory payments" [9].

Therefore, the mentioned comments of the Association on the current actions of the Government of Ukraine testify to its unambiguous opinion on taxation, more precisely outright indignation at its proposal to introduce selective additional taxation of honest, non-shadowy, payers.

The experts of the Association did not become supporters of the ideas of some governmental structures regarding the introduction of the exit capital tax (hereinafter – ECT), which is proposed to replace the current corporate income tax. Most entrepreneurs find it difficult to administer, corrupt and in many ways unfair to taxpayers.

According to proponents of its implementation, ECT has advantages over the current system, according to which only those funds that will be deducted from the business, i.e. distributed profits (dividends), will be taxed. In addition, when the profit remains in the turnover of the enterprise, it is not taxed.

According to representatives of the Association, the new tax – ECT is not able to ensure the implementation of the following two basic principles of taxation. The first is the principle of equality of all taxpayers before the law, regardless of ownership and place of origin of capital. The second – the principle of tax neutrality, which is to set taxes in a way that should not affect the increase or decrease in the competitiveness of the taxpayer, which will adversely affect the competitive environment in Ukraine [10].

European Business Association jointly with LIGA: LAW within the project Unlimit Ukraine for the first time in Ukraine conducted a joint project "Small Business Attitudes Index-2018". The purpose of this study was to facilitate the collaboration of large businesses with small and micro businesses through educational activities and consultations, and to analyze growth

points that will stimulate its development. The survey surveyed 278 respondents: owners and directors of small businesses in all areas of activity. About 40% of the companies surveyed were founded in the crisis of 2015 – 2017. Thus, according to A. Derevyanko, the Executive Director of the Association, this study showed the problems that small businesses face daily – credit unavailability (65%), inflation (56.3%), and the tax burden (42.24%)), high level of corruption (41.9%), lack of qualified specialists (39.3%). At the same time, they are the main factors behind the negative assessment of the business climate [11].

Conclusions. Thus, the analysis of problems of taxation of SBS in Ukraine has allowed to identify certain "pain points" in business activities, among which the obstacle to easily and safely develop your business in Ukraine is, first, excessive taxation and a correspondingly unfavorable tax environment. That is why the priority measures of tax reform in Ukraine should be aimed at its optimization in such ways.

The first direction is providing a differentiated approach in setting ST rates for all payers, taking into account their size, scope, types and results of activities in order to stimulate entities engaged in strategically important sectors of the economy.

The second – tax exemption for new SBS for at least three years, if at least half of the net profit is reinvested in its own development or/and the establishment of ST rates differentiated by the existence of the enterprises.

The third – to reduce the additional tax burden due to the inclusion of the USC for STS, and to transfer this contribution of 57% of the amount of the paid ST to the branches of the State Treasury of Ukraine. This should reduce the tax burden, time spent on billing, payment and reporting.

The fourth – tracking of cash payments, transactions through the use of registrars of payment transactions, digital – smartphones, tablets, introduction of online service – e-book of income and expenses of the ST payer.

The fifth – replacement of all tax reporting forms of ST payer's, one universal electronic report form with a filing period not more than once a quarter.

The sixth – introduction of a simplified form, procedure and duration of the tax filing and filing procedure, opening (closing) of branches in another city, and transition to a general system of taxation, termination of activity;

The seventh-introduction of an effective system of incentives, preferences (larger loans and investments, government support in cooperation with foreign partners) for ST payments in the STS, to encourage them to research activities. The implementation of these measures will significantly improve the STS, and accordingly will not interfere with the activities of the SBS, the creation of new and their development. Moreover, this will further promote socialization of taxation.

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ОЦІНКА ВПЛИВУ ОПОДАТКУВАННЯ ТА ОКРЕМИХ СОЦІАЛЬНИХ ДЕТЕРМІНАНТІВ НА РОЗВИТОК СУБ'ЄКТІВ БІЗНЕС-СТРУКТУР В УКРАЇНІ

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У статті проведено комплексне дослідження впливу оподаткування і окремих соціальних детермінант на розвиток суб'єктів бізнес-структур в Україні. Методологічну основу дослідження становлять загальнонаукові методи і способи пізнання об'єктивної реальності і процесів, пов'язаних з функціонуванням суб'єктів бізнес-структур (аналіз і синтез; індукція і дедукція; наукова абстракція, історичний і логічний; компаративний аналіз, узагальнення; моделювання; статистичні методи, а також системний підхід і метод експертних оцінок).

Інформаційною базою дослідження є чинні нормативно-правові та законодавчі акти з питань оподаткування суб'єктів бізнес-структур в Україні, офіційні аналітичні та статистичні матеріали Світового банку, Європейської бізнес-асоціації, Державного комітету статистики України, Міністерства фінансів України, монографічні та періодичні видання вітчизняних та закордонних учених.

Розкрито сутність поняття «суб'єкти бізнес-структур»; визначені міжнародні інститути, які проводять поточний і щорічний моніторинг сучасного бізнес-середовища. В ході дослідження визначено види економічних злочинів, з якими найчастіше стикаються сучасні підприємці в Україні та в світі; проаналізовано позиції України в рейтингу легкості ведення бізнесу (Doing Business 2006-2019), наведено результати моніторингу системи оподаткування в Україні та в світі; доведено дестимулюючий вплив діючої системи оподаткування на діяльність суб'єктів бізнес-структур, названі чинники соціального характеру, які гальмують подальший розвиток бізнесу в Україні; дана критична оцінка спрощеної моделі єдиного податку; позначені проблемні питання, які потребують нагального вирішення та бар'єри, що заважають розвитку суб'єктів бізнес-структур в Україні.

В результаті дослідження автори дійшли висновку, що позиції України в міжнародних рейтингах в останні роки залишаються посередніми, а досягнуті зрушення не наближають її до оптимального рівня. Всі реформаторські перетворення в системі оподаткування бізнесу привели до поверхневого її поліпшення, а саме: до зменшення кількості сплачуваних підприємцями податків; але рівень податкового навантаження залишається обтяжливим і становить 42,24%. Зазначено, що запропоновані урядом України нові реформаторські заходи (скасування максимальної величини бази нарахування єдиного соціального внеску на фонд заробітної плати, впровадження податку на виведений капітал) залишаються досить суперечливими, не сприймаються позитивно суб'єктами бізнес-структур і не підтримуються зарубіжними експертами.

Науково-практична значимість представленого дослідження полягає в можливості використання його в подальшій практиці вдосконалення законодавчої бази з оподаткування суб'єктів бізнес-структур в Україні.

Ключові слова: суб'єкти бізнес-структур, податки, єдиний податок, оптимальна система оподаткування, реформа, податкове навантаження, спеціальні податкові режими, спрощена система оподаткування, соціальні детермінанти.

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‘CROSS-BORDER ELECTRONIC COMMERCE’[1]: CHALLENGES FOR CUSTOMS ADMINISTRATIONS AND THE WAY FORWARD

The purpose of this article is to analyse the challenges posed by cross-border e-commerce to customs administrations and to propose measures for further improving customs operations in this area.Since the global cross-border e-commerce landscape is expanding exponentially therefore it is creating serious challenges for customs administrations regarding enforcement, compliance and trade facilitation due to limited available resources for managing such trade. This article gauges the volume of cross-border e-commerce and identifies the challenges faced by customs administrations regarding enforcement, compliance and trade facilitation. Itanalyses the genesis and evolution of the international legal framework for cross-border e-commerce and describes how the implementation of this framework empowers customs administrations to deal with this phenomenon of international trade in a more effective and efficient manner. The article underscores the need for reviewing the de minimis values. It highlights the weaknesses of the current revenue collection model for handlingcross-border e-commerceand discusses the pros and cons of alternative revenue collection models proposed by the Organization for Economic Development and Cooperation (OECD). It explains how Australia has implemented vendor collection model for the collection of the General Sales Tax (GST) on e-commerce consignments. The article underlines the need to use the various instruments and tools developed by the World Customs Organization (WCO) and the provisions of the Trade Facilitation Agreement (TFA) of the World Trade Organisation (WTO) for better management ofcross-border e-commerce by customs administrations. The article explains how enforcement can be improved by using blockchain technology, data analytics, Single Window environment, and advance sharing of electronic data. The article stresses the need for deeper engagement with the private partners involved in the supply chain of cross-border e-commerce for improving compliance and reducing the cost of compliance. The article describes how facilitation can be improved for e-commerce trade by taking certain measures as introduced by the Dutch Customs, Belgium Customs, and Finnish Customs. The outcome of this analysis has led to the overall conclusions of this article.

Key words: compliance, cross-border e-commerce, customs administrations,enforcement, Organization for Economic Development and Cooperation (OECD), trade facilitation, World Customs Organization (WCO), World Tarde Organization (WTO)

JEL Classification: L81.

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Introduction

The digital transformation of the economy is one of the key drivers in the global trade environment. According to the World Customs Organization (WCO), “E-commerce has become a game changer in the international trade arena

[1] Cross-border electronic commerce: The use of information and communication technologies and the internet as a means of communication, initiation of transactions, movement across borders from one economy to another, and electronic payment (WCO, 2018d, p. 7, para. 8).

(WCO, n.d.a, para. 1)". It is affecting the international trading environment tremendously due to its fast pace and the changing trade landscape. Customs administrations, who are at the forefront of international trade, are facing enormous challenges regarding enforcement, compliance and trade facilitationdue to the exponential growth in e-commerce. They not only need to keep pace with the changes, which e-commerce is bringing to the trade environment but also to provide innovative solutions to effectively deal with these developments. These challenges are novel and multifarious in nature. In order to efficiently clear and deliver these small and low-value packages, customs administrations need to engage with all relevant stakeholders to develop and adopt an effective approach for better enforcement, compliance and trade facilitation (WCO, n.d.a, para. 1).

In view of the above backdrop, this article has focused on the common issues which customs administrations are facing regarding cross-border e-commerce and suggested measures for further improvement in this area of international trade.

1. Global cross-border e-commerce landscape

Cross-border e-commerce is one of the fastest growing segments of global trade. By the end of 2016, it had grown to an estimated US$1.92 trillion in the two decades from practically zero level. The Asia-Pacific region has witnessed the fastest growth in cross-border e-commerce followed by Western Europe and North America. For instance, in 2016, Business-to-Consumer (B2C) cross-border e-commerce sales reached US$144 billion in the Asia-Pacific region which was 35.9% of the global sales. This volume is estimated to reach US$476 billion and 47.9% of global sales in 2020 (APEC, 2017, p. 2, para. 3).

The global B2C e-commerce is expected to grow by about 25% annually until 2020 which is approximately twice the growth rate of domestic e-commerce. In 2020, it will account for about 22% share of the global e-commerce market (UNCTAD, 2018, para. 3).

2. Challenges faced by customs administrations

2.1. Enforcement challenges

Customs administrations are required to manage huge trade volumes with limited available resources. Not only the traditional trade volume is increasing but there is also an exponential growth in cross-border e-commerce. According to WCO, "A substantial share of trade that was previously captured *via* the traditional trade process is now being diverted through e-commerce (WCO, 2018a, p. 3, para. 2)". The growth in the import of small packages has surpassed the traditional trade and it is creating difficulties for customs administrations to manage these high volumes of small shipments with limited resources. For instance, Figure 1 depicts the trade volumes and personnel available with Japan Customs for the period from 2005 to 2015. During this period all cargo import increased by 43% whereas the import of small packages increased by 89%. On the other hand, the number of personnel increased only by 5% (World Bank Group, 2017, p. 8). Almost all customs administrations are facing a similar situation. This is creating a big challenge for customs administrations to effectively deal with the tsunami of small packages for finding out the risky consignments - a needle in a haystack- with the limited resources.

The enforcement challenges faced by customs administrations are multifarious in nature.The increasing volume of consignments with the deficient advance information containing limited knowledge on importers and supply chain coupled with poor data quality which lacks accuracy and adequacy poses challenges to timely and accurate risk profiling and risk management for small packages. The misuse of *de minimis* values by split and under-invoicing, misdeclaration of value, classification and origin create a challenging environment for the collection of duty

and taxes and negatively impact the domestic retailers. The illicit trade and smuggling, drug trafficking, counterfeited and pirated goods, illicit financial flows and money laundering are posing serious challenges to customs administrations to fulfil their responsibilities regarding enforcement and control (Hinojosa, 2018, p. 5).

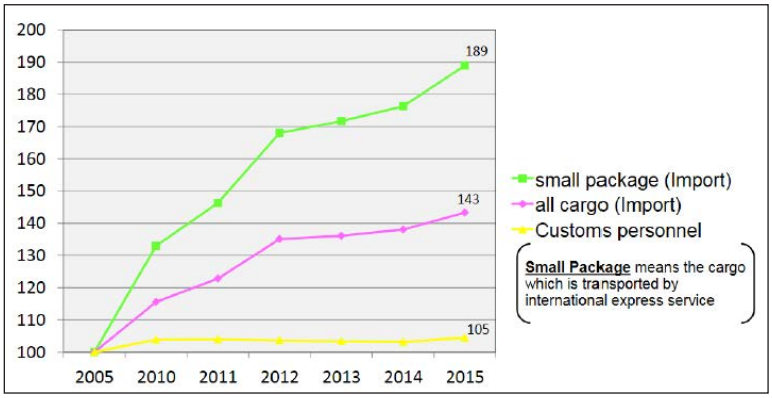

Fig. 1. Japan Customs Workload and its Personnel

Note: Figures for the Year 2005 taken as a baseline (100)
Source: (World Bank Group, 2017, p. 8)

This expansion of cross-border e-commerce has also led to the development of 'dark web' which was used by unscrupulous elements to establish drug marketplaces such as *Silk Road*[2]. Australian Customs and Border Protection seized a significant amount of cocaine and ecstasy drugs which were purchased through *Silk Road* website and imported in Australia through mail parcels (ABF, 2012, para. 3).

Likewise, the US Customs and Border Protection (CBP) conducted a special operation for 'small packages' in early 2017 at the international mail facility in New York and seized more than five pounds of illicit fentanyl, almost 1,300 other non-compliant imports such as counterfeit goods and controlled substances. Moreover, in 2010, CBP disrupted a terrorist plot that involved ink cartridges which were placed in small packages on express cargo planes and were set to detonate over the United States. This indicates how important it is for customs administrations to receive qualitative data about low-value shipments to identify such risks regarding safety and security (CBP, 2018, p. 4, para. 2).

2.2. Compliance challenges

Since customs administrations have limited resources to ensure regulatory compliance[3], therefore, they strive to increase the level of self-compliance and focus on the risky areas for handling the non-compliance. The non-compliance can be unintentional due to the lack of awareness of the law and procedure, or intentional involving criminal intent. Since in cross-border e-commerce anyone can become a trader, therefore, the non-compliance in such situation

[2] *Silk Road* was an illicit e-commerce website which was used by thousands of drug dealers during the period from 2011-2013 to sell narcotics and contrabands worth more than US$200 million to more than 100,000 buyers and to launder hundreds of millions of US dollars derived from these illicit transactions (United States Department of Justice, 2018, para. 1).

[3] In the Customs context, compliance means conforming to customs laws and regulations.

can be the result of the failure to understand the law or unintentional error in compiling and lodging a declaration, or errors caused through reckless disregard to requirements. However, on the other side of the spectrum can be the deliberate fraud or criminal intent giving rise to non-compliance. The sky-rocketing cross-border e-commerce is creating a big challenge for customs administrations as to how to increase the level of self-compliance for this large number of actors involved in this phenomenon of trade.

2.3. Trade facilitation challenges

The rising volumes of low-value shipments are posing several challenges to customs administrations regarding trade facilitation. Firstly, there is a lack of harmonised and standardized procedures to facilitate transactions of e-commerce. Secondly, the information, regarding the rules and regulations relating to import and export, is not readily available in the electronic form to the occasional buyers and sellers who are normally not aware of such legal and procedural requirements. Thirdly, postal/courier companies lack the mechanism to transfer information electronically to customs administrations which results in delays in clearances.

3. The international legal framework for cross-border e-commerce

The WTO in its second Ministerial Conference held in May 1998 recognised the growing volume of global e-commerce and stressed the need to establish a comprehensive work programme to examine the issues related to this type of trade (WTO, 1998).

The delegations to the Council for Trade in Goods agreed that the goods which were marketed or sold by electronic means and delivered physically across borders, would be subject to the existing WTO commitments and provisions related to trade in goods, under the GATT 1994 and the multilateral trade agreements covered under Annex 1A of the WTO Agreement (WTO, 1999, p. 3, paras. 2-3). Moreover, it was stressed that the WTO members should adhere to the basic principles of international trade such as transparency, predictability and non-discrimination for cross-border e-commerce goods.

In June 2001 Baku Declaration, the WCO expressed its intention to develop a comprehensive policy on e-commerce. It urged the members to accept and implement the RKC for creating an e-customs environment and use the websites to make official customs information readily available. It asked the members to further strengthen cooperation with national/international law enforcement agencies and seek cooperation and partnership with the internet community to effectively deal with global e-commerce (WCO, 2001, pp. 1-2).

In December 2017 the Policy Commission of the WCO passed Luxor Resolution outlining the guiding principles for cross border e-commerce. The aim of the resolution was to encourage customs administrations to tap the potential of e-commerce and to find out the solutions for the challenges posed by it, in consultation with the stakeholders by using modern technologies. The resolution also aimed to develop and deliver common standards, guidelines, and tools for customs clearance and data harmonization to address challenges relating to certain high-risk consignments and to facilitate the clearance of legitimate e-commerce consignments (WCO, 2017a, p. 2).

This resolution prescribed eight principles for cross-border e-commerce to establish an e-commerce framework of standards. The first principle requires the use of advance electronic data to facilitate trade, collect revenue and to ensure security and safety. It prescribes to establish a legal and policy framework which should allow electronic exchange of data between all stakeholders involved in the supply chain of cross-border e-commerce with due account for the laws related to privacy, data security and protection, and competition law. It requires customs

administrations to use WCO instruments and tools for timely and accurate advance electronic data for strengthening customs controls through pre-loading security risk assessment and pre-arrival customs clearance of low-risk shipments. It advises to apply non-intrusive inspection techniques and the use of data analytics for risk-based interventions and to facilitate legitimate cross-border e-commerce. It stipulates to unmask the 'unknown players' involved in the cross-border e-commerce by using data validation techniques and globally recognised trusted data sources (WCO, 2017a, pp. 3-4).

The second principle requires customs administrations to further adopt facilitation measures such as the expedited release of shipments with reduced data requirements while maintaining required customs controls. It also demands more simplification of customs clearance procedures to deal with the increasing volume of low-value small shipments. It underscores the need for the establishment of Single Windows for expeditious and coordinated release of shipments by all relevant departments involved in the cross-border e-commerce. It also requires the establishment of an electronic refund system by using data reconciliation between the imported and returned shipments where duty/taxes have been paid. It requires customs administrations to strengthen partnership with e-commerce platforms and vendors by including them in the Authorised Economic Operator (AEO) programmes and extending facilitation through Mutual Recognition Agreements (MRAs) (WCO, 2017a, pp. 4-5). Such arrangements will help to increase self-compliance and reduce the compliance cost for customs administrations.

The third principle requires customs administrations to use risk profiling for identifying those consignments which pose high risk regarding safety and security and share this information with other relevant government agencies, wherever required, to improve their risk analysis process. This enhanced information sharing and cooperation will help to make informed decisions and further improve compliance and facilitation.It also requires customs administrations to further develop their capabilities regarding information technology by using WCO tools for profiling and risk assessment and use it to identify the illicit trade channels and to facilitate legitimate e-commerce consignments (WCO, 2017a, p. 5).

Whereas, the fourth principle sets guidelines for the revenue collection. It requires customs administrations to capture reliable and relevant data as early as possible before the importation of the consignments for efficient and accurate revenue collection. It suggests applying alternative revenue collection models such as purchaser collection model, vendor collection model, or intermediary collection model in an effective and equitable manner. This approach will not only facilitate trade but also help the early realization of government revenue.It also requires customs administrations to make a comprehensive review of the *de minimis* values and adjust them according to the current trading environment (WCO, 2017a, p. 6).

The fifth principle requires customs administrations to establish mechanisms for accurate measurement and analysis of cross-border e-commerce data with the cooperation of international/ national organisations and other stakeholders. It stipulates the use of data analytics for analysing the 'Big Data' relating to cross-border e-commerce to look at the trends and to make evidence-based decision making (WCO, 2017a, p. 6).

The sixth principle recommends enhanced cooperation between all stakeholders involved in the cross-border e-commerce through more formal arrangements such as signing of Memoranda of Understanding and Trusted Trader Programmes. Whereas, the seventh principle requires customs administrations to take measure for public awareness regarding compliance, regulatory requirements, safety and security. It requires to publish all policy, regulatory and procedural

information and share it with the stakeholders by using all possible means such as social media, mass media, and websites. It requires the development of a communication strategy for consistent and regular engagement with all the stakeholders regarding opportunities and challenges posed by e-commerce. It emphasises the need for capacity building, to bridge the gap of the digital divide, through online training and international events. The eighth principle demands customs administrations to harmonise their legislative frameworks by using the existing instruments and tools such as the RKC and the SAFE Framework of the WCO, and TFA of the WTO (WCO, 2017a, p. 7).

Keeping in view the eight principles of the Luxor Resolution, the WCO has developed the 'WCO Cross-Border E-Commerce Framework of Standards' (hereafter referred to as the WCO E-Commerce Framework) (WCO, 2018d). A resolution was passed by the Council of the WCO in June 2018 wherein the Members resolved to adopt the WCO E-Commerce Framework and submit an indicative timetable for its implementation (WCO, 2018c, p. 2). Though the WCO E-Commerce Framework is not binding on its members, the WCO intends to keep it a 'living document' to provide harmonization, standardization, and guidance to customs administrations for effectively dealing with e-commerce consignments. This entails a continual review and update of the WCO E-Commerce Framework, keeping in view the changes in technology, business models and consumer habits, to ensure that it remains relevant, accurate and useful for customs administrations and the stakeholders involved in cross-border e-commerce.

The WCO has also specifically prescribed certain tools and guidelines which can help customs administrations in improving control, compliance and facilitation regarding e-commerce. These tools include 'the revised International Convention on the Simplification and Harmonization of Customs Procedures' namely the Revised Kyoto Convention (RKC)(WCO, 1999, General Annex), 'SAFE Framework of Standards to Secure and Facilitate Global Trade' (known as SAFE Framework) (WCO, 2018e), 'Guidelines for the immediate release of consignments by Customs' (WCO, 2018b), IT Guide for Executives, 'Guidelines on application of Information and Communication Technology' prescribed in Chapter 7 of General Annex to the RKC (WCO, 2014), WCO Customs Risk Management Compendium, Single Window Guidelines and Recommendation on the dematerialization of supporting documents (WCO, n.d.a, para. 19).

4. WCO Cross-Border E-Commerce Framework of Standards

According to the WCO, cross-border e-commerce has certain characteristics as depicted in Figure 2. It involves online communication, ordering, sale, and, if applicable, payment for the goods. Followed by cross-border transaction, in the shape of shipment of physical goods which are destined to the buyer by a commercial or a non-commercial entity (WCO, 2018d, p. 8).

In order to help customs administrations to effectively manage the cross-border e-commerce through better control, compliance and trade facilitation, the WCO has developed the WCO E-Commerce Framework which is built upon the eight principles laid down in the Luxor Resolution. The objective of 15 global standards of the WCO E-Commerce Framework is to assist customs administrations and other relevant government agencies in developing e-commerce strategic and operational frameworks supplemented by action plans and timelines bearing in mind the national specificities and various business models. The overarching principles of these standards are to promote efficiency, transparency, certainty, predictability, security and safety in the global supply chain of e-commerce. As summarized in Figure 3, these standards promote a harmonized approach to risk assessment, clearance/release, revenue collection, and border cooperation in relation to cross-border e-commerce. They establish a standardized framework

for advance electronic data exchange between e-commerce stakeholders and Customs and other relevant government agencies with the aim to facilitate legitimate shipments to provide a more level playing field for various stakeholders. They seek to strengthen co-operation between customs administrations, relevant government agencies and other stakeholders involved in cross-border e-commerce (WCO, 2018d, p. 9).

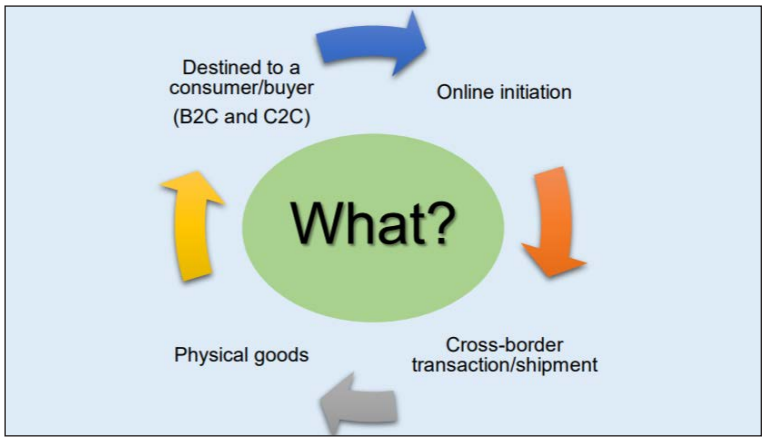

Fig. 2. WCO's perspective on cross-border e-commerce
Source: (Hinojosa, 2018, p. 2)

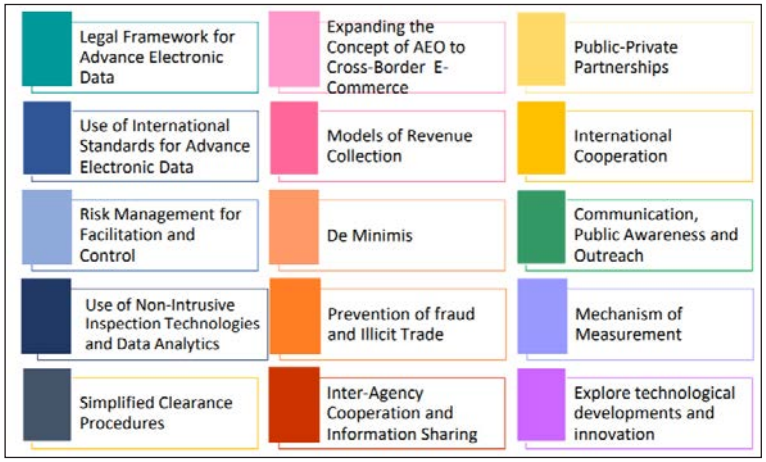

Fig. 3. Summary of Standards
Source: (Hinojosa, 2018, p. 12)

Due to the new actors, new data sources and new partnerships in the cross-border e-commerce, these standards require customs administrations to use a new, dynamic and collaborative approach to risk management by capturing direct and advance data from e-commerce operators relating to the order, payment and shipping. This direct data exchanged by e-platforms and intermediaries should include the information relating to the supplier, buyer, origin, place of

delivery, description, value, and weight of goods, number of pieces, delivery mode and tracking data. If the quality of this data is ensured and transmitted to customs administrations in a timely manner, it will help to have an efficient and effective risk management system in place with enhanced facilitation for legitimate e-commerce shipments through fast clearance and identification of risky consignments (Hinojosa, 2018, pp. 13-15).

5. Reviewing the de minimis values

Most of the customs administrations have set a *de minimis* threshold below which no duty and taxes are collected on the imported goods. The basic concept of setting this threshold is to determine the level below which the administrative cost for collecting the duty and taxes outweighs the collected amount. The WCO has prescribed the *de minimis* regime but it has not set any minimum value. Each customs administration set the *de minimis* value depending upon the national law and economic conditions of the country. There is a wide disparity in the *de minimis* regimes set by different customs administrations. For instance, in Canada, the *de minimis* value is $20 whereas in Australia it is $1,000 (WCO, 2017b, p. 25). Since most of these regimes were set before the advent of cross-border e-commerce, therefore, there is a need to review and adjust them according to the changed trading conditions for securing government revenue and facilitating the trade.

6. Analysis of revenue collection models proposed by the OECD

6.1. The Traditional Revenue Collection Model

As depicted in Figure 4, the traditional revenue collection model is based on the collection of duty and taxes within the border control. In those countries where the systems are established to receive advance cargo information, conduct risk assessment and pre-arrival clearance, the shipments can be cleared immediately at the border without being stopped. However, the postal environment is pre-dominantly paper-based which leads to the absence of electronic data transmission. In such a scenario each parcel is required to be checked manually at the border for the collection of duty and taxes and for ensuring safety and security (OECD, 2015, p. 195). This situation is creating serious problems for customs administrations.

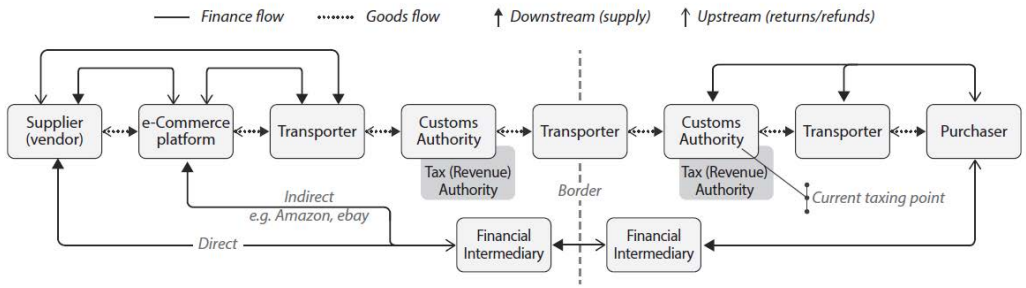

Fig. 4. Traditional Revenue Collection Model

Source: (OECD, 2015, p. 195)

6.2. The Purchaser Collection Model

Figure 5 shows the purchaser collection model which is based on self-assessment by the purchasers to determine and pay their liability regarding taxes. In such a case the purchasers are required to get registered with the administrations. The major disadvantage of this model is its reliance on self-

compliance which is quite difficult in the cross-border e-commerce environment due to the lack of knowledge of customers regarding the relevant laws and procedures. This will result in increased cost for ensuring compliance by customs administrations. Moreover, the implementation of such a model will require a complete overhauling of the administrative and information technology systems of customs administrations which will also raise administrative costs (OECD, 2015, pp. 196-197).

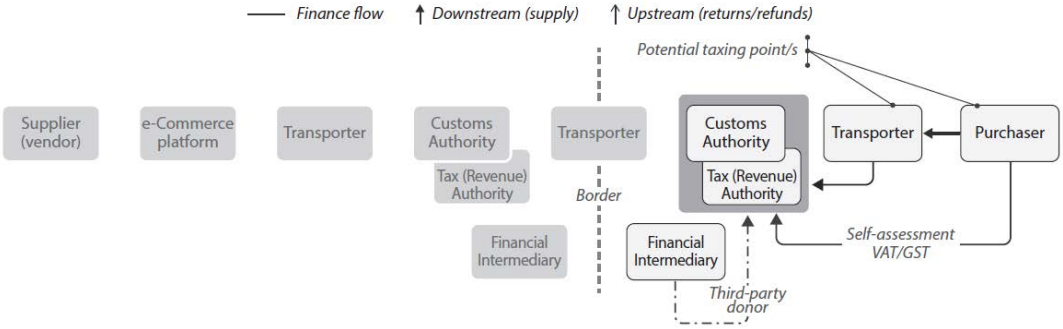

Fig. 5. Purchaser Collection Model

Source: (OECD, 2015, p. 197)

6.3. The Vendor Collection Model

The vendor collection model, as shown in Figure 6, relies on the vendor for the collection of taxes. The vendors are required to get registered in the destination jurisdiction and collect taxes at the point of sale while charging the price of the goods. The taxes can be transmitted to the relevant administration by filing periodic returns. The major advantage of this model is regarding the collection of taxes well before the arrival of the goods and minimizing interventions at the border resulting in fast track clearance. However, the major challenge of this model is to ensure compliance by the vendors located in foreign jurisdictions (OECD, 2015, pp. 197-199).

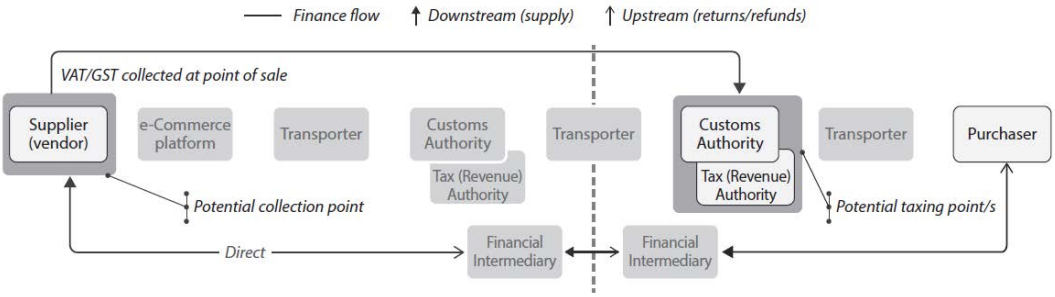

Fig. 6. Vendor Collection Model

Source: (OECD, 2015, p. 198)

6.4. The Intermediary Collection Model

The intermediary collection model is illustrated in Figure 7. It relies on the intermediaries in the supply chain such as postal operators, express carriers and e-commerce platforms to collect and transmit taxes for the cross-border e-commerce consignments. The intermediaries have a

better understanding of the law and procedures as compared to the customers. They can collect the taxes along with transport/processing fee by relying on the information provided by the vendors. However, such a model should ensure that the intermediaries collect and remit taxes prior to the importation of goods(OECD, 2015, pp. 201-204).

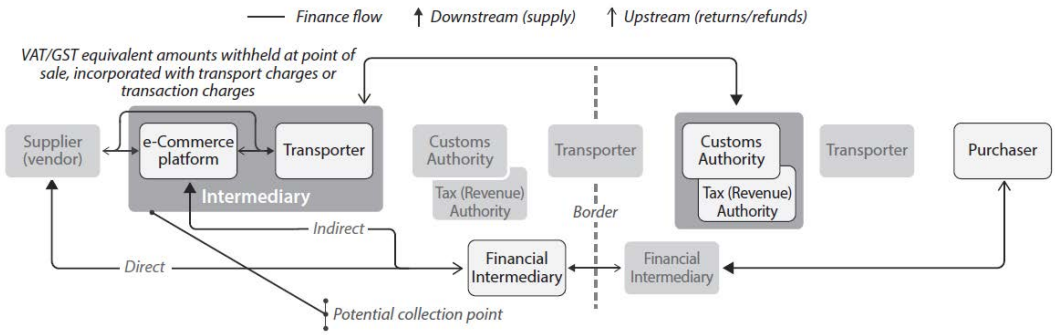

Fig. 7. Intermediary Collection Model

Source: (OECD, 2015, p. 202)

The selection of an appropriate model will depend upon the national policy objectives and circumstances of a country. However, customs administrations can learn from the experience of Australia which has witnessed a significant increase in cross-border e-commerce in the last five years. For instance, during the period from 2013 to 2016, the volume of inbound mail parcels and air cargo increased by 57%. It is expected that the number of international mail parcels will double in the period from 2017 to 2021 (Australian Department of Home Affairs, 2019, p. 30, para. 1).

In order to provide a competitive environment for Australian retailers, and to ensure tax neutrality[4] and collection of revenue, Australia launched a vendor collection model with effect from 1st July 2018. Under this model, when an Australian consumer purchases goods online from an overseas market such as a merchant, re-deliverer or online marketplace, the supplier collects the General Sales Tax (GST) at the 'checkout' for the goods valued equal to or less than $1,000. The supplier sends the goods to the customer, completes a self-assessed clearance declaration and remits GST to the Australian Taxation Office (ATO). ABF may inspect the good at the border for compliance with other import requirements. Under this model, electronic distribution platforms (EDPs), vendors, and re-deliverers are required to register with the ATO and remit GST whose annual taxable sales to Australia is to the tune of $75,000 or more. However, EDPs facilitating annual taxable sales to Australia of more than $75,000 are required to collect GST on all sales of low-value items that occur on their platform, including those sellers whose annual sales is less than $75,000. All major suppliers and platforms have not only registered but they are also collecting and remitting GST to ATO. For monitoring compliance, the ATO is using different techniques such as data matching, using import data, conducting investigations, gathering information from public and industry (Australian Department of Home Affairs, 2019, p. 31).

7. Role of the WCO instruments and tools for managing cross-border e-commerce

Since cross-border e-commerce is one of the priority areas identified by the WCO members, therefore, the use and implementation of the instruments and tools developed by the WCO can

[4] Neutrality: Taxation should seek to be neutral and equitable between forms of business activities. It is one of the basic principles of Ottawa Taxation FrameworkConditions (OECD, 2015, p. 20).

help customs administrations to more effectively deal with this trade. For instance, the Transitional Standard 6.9 of General Annex to the RKC requires customs administrations to use information technology to the optimal level for enhancing customs control. Its Standard 7.1 demands customs administrations to apply information technology to support their operations. Whereas, Standard 7.4 empowers customs administrations to exchange information electronically with legally approved parties (WCO, 1999, General Annex, Transitional Standard 6.9, Standards 7.1 and 7.4). Moreover, in the Baku Declaration, the WCO urged upon the member countries to create a modern e-customs environment (WCO, 2001, p.1, para. 8).

In the 'Guidelines for the immediate release of consignments by Customs', the WCO has advised customs administrations to seek co-operation with the e-commerce operators to access vital data of e-commerce consignments such as the producer, buyer, seller, origin and description of goods, and their price and payment information. Such data should be sought electronically well in advance of the arrival of the consignments to conduct effective risk management and to facilitate the immediate release of huge volumes of cross-border e-commerce shipments (WCO, 2018b, p. 10). Whereas, the purpose of WCO's 'Guidelines on the application of Information and Communication Technology (ICT)' is to enable customs administrations to use ICT for improving their services to the clients and trading partners (WCO, 2014, p. 8, para. 1).

The SAFE Framework demands from customs administrations to apply an additional layer of security risk assessment for postal items and air cargo by requiring the entities in the air cargo supply chain such as carrier, freight forwarder, postal operator or their agent to submit a pre-loading data (WCO, 2018e, p. 9, para. 7). This advance provision of data can help customs administrations to conduct a risk assessment before loading of the consignments at the origin and subsequently clear a large volume of small shipments expeditiously on arrival.

In addition, the use of other tools such as Single Window Compendium, WCO Data Model, Coordinated Border Management Compendium and Customs-Business Partnership Guidance can greatly help customs administrations to effectively deal with traditional as well as e-commerce trade.

8. Role of the WTO Trade Facilitation Agreement (TFA) for managing cross-border e-commerce

Since the main objective of the TFA is to bring transparency, predictability and efficiency in international trade, therefore, the implementation of its provisions will greatly benefit cross-border e-commerce. For instance, Article 1 of the TFA requires customs administrations to make information available through the internet such as law and procedure related to import, export and transit of goods, rates of applicable duty/taxes, rules of classification and valuation, penalties for violations and other regulations relating to trade. Moreover, enquiry points should be established to facilitate trade. Article 7 demands from customs administrations to use expeditious procedures for clearance of goods by using pre-arrival processing mechanisms and providing for electronic payment of duty/taxes. It also requires using a risk management system for maintaining control and facilitating the legitimate trade. It demands further facilitation for AEOs who meet the compliance criteria set by the administration. Whereas, Article 10 requires customs administrations to establish Single Window for managing and facilitating the international trade (WTO, 2017, Articles 1, 7&10).

Simplified documentation makes it easier for people to understand how to ship goods internationally. Combining forms and streamlining the process supports compliance, encourages good behaviour and maintains high levels of security. Installation of electronic systems allows destination country customs administration to assess data and clear packages prior to the shipment arrival. The cost of this technology is outweighed by gains in efficiency and security. Improved data collection and risk

management by data analytics can help customs administrations to perform comprehensive security checks in a way that does not hold up the flow of packages. Moreover, the Single Window system helps clear goods expeditiously. For instance, Singapore Customs processes 99% declarations within 10 minutes by using the Single Window environment (UPU, 2018, April 11).

9. Ways to manage the challenges posed by cross-border e-commerce

9.1. How to improve enforcement?

In the traditional trade, customs administrations use the risk management system to channelize the trade through different channels such as green, yellow and red. The green channel consignments are instantly cleared without any intervention on the part of customs administration. The yellow channel consignments entail documentary check by customs staff. Whereas, the red channel consignments are subjected to both documentary check and physical examination. However, this traditional risk management system operates on the basis of certain risk parameters by analysing the data collected from the supply chain for the relevant consignments and keeping in view the profiles of the concerned traders. As there are well-established systems for the traditional trade therefore not only the capturing of real-time good quality data is possible in a timely manner but some customs administrations receive data before the arrival of the goods. This helps to clear a major portion of the consignments expeditiously without Customs involvement at the border. However, trader profiles are developed over a period of time on the basis of trade history of the trader and they play an important role in the selection of a channel for customs clearance of the consignments imported or exported by the concerned trader.

Whereas, the major issue with e-commerce consignments is related to the lack of timely and complete information relating to the buyers/sellers and the goods. This lack of information coupled with the fragmented poor-quality data from the supply chain creates constraints for using the traditional risk management system for effective customs enforcement.

On the other hand, the volume of e-commerce consignments is increasing at a terrible rate. For instance, Dutch Customs is witnessing on average 15 per cent annual increase in the declarations relating to cross-border e-commerce. The growth is so fast that Customs cannot keep up with the number of physical inspections (Tax and Customs Administration of Netherlands, 2016, September 4). This situation demands innovative solutions by customs administrations to timely receive comprehensive and good quality data of e-commerce consignments for conducting a risk analysis to ensure effective enforcement.

Customs administrations can unveil the potential of blockchain[5] technology in collaboration with the private sector to enhance the ‘connectivity’ and ‘traceability’ of supply chains. Customs would become significantly visible in the supply chain from the early stages. It would provide Customs with a broader and clearer picture of international trade enabling knowledge-based enforcement for strict compliance and faster clearance. This would fully help to distinguish between legitimate and illegitimate trade without relying on conventional risk management (Okazaki, 2018, p. 21, paras. 2-3).

[5] A blockchain is a decentralized, distributed record or ‘ledger’ of transactions in which the transactions are stored in a permanent and near inalterable way using cryptographic techniques. Unlike traditional databases, which are administered by a central entity, blockchains rely on a peer-to-peer network that no single party can control. Authentication of transactions is achieved through cryptographic means and a mathematical ‘consensus protocol’ that determines the rules by which the ledger is updated, which allows participants with no particular trust in each other to collaborate without having to rely on a single trusted third party.Participants in a blockchain can access and check the ledger at any time. Blockchain therefore ensures immediate, across-the-board transparency, and as transactions added to the blockchain are time-stamped and cannot easily be tampered with, blockchain technology allows products and transactions to be traced easily. Because of their decentralized and distributed nature and the use of cryptographic techniques, blockchains are said to be highly resilient to cyber-attacks compared to traditional databases (WTO, 2018, p. vii, paras. 2-3).

The immutable nature of blockchain can make it easier for customs administrations to track any fraudulent activity (WTO, 2018, p. 56).

Korean Customs has conducted a pilot project using the blockchain technology in collaboration with two e-commerce companies for facilitating the clearance procedure and enabling Customs to perform high-quality risk management. The main aim of the project was to test the feasibility of mutually sharing real-time information between e-commerce, transport companies and the Korean Customs (KCS, 2019, p. 34, para. 2).

As shown in Figure 8, the current process of Korean Customs regarding e-commerce relies on manual production and communication of order and transport information. It has disconnected information in each work process. It runs the risk of forgery and can involve human errors while working offline (KCS, 2019, p. 34).

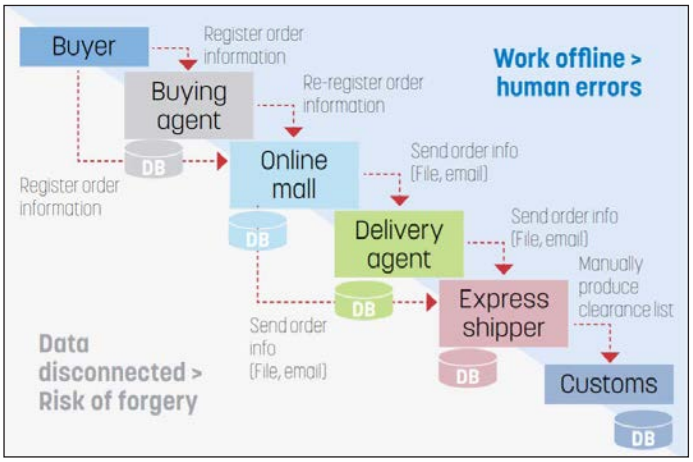

Fig. 8. Current process for e-commerce

Source: (KCS, 2019, p. 34)

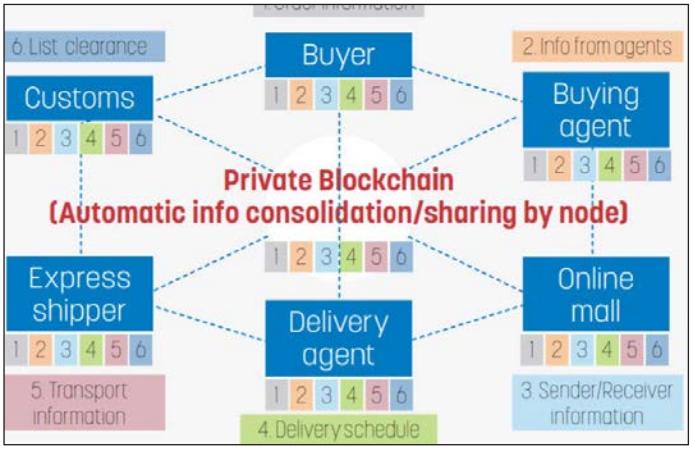

Fig. 9. Future process based on blockchain model for e-commerce

Source: (KCS, 2019, p. 34)

However, the future process which is based on blockchain for e-commerce, as depicted in Figure 9, will enable secured original order and transport information. It will provide simultaneous information sharing to e-commerce actors (KCS, 2019, p. 34).

Blockchain can help to break the various silos which currently exist between different parties involved in cross-border e-commerce and further accelerate its pace. However, the use of this technology requires substantial investment, coordination and cooperation among all the stakeholders involved in the supply chain of international trade. Moreover, it requires significant changes to the existing systems and legal structures (WTO, 2018, pp. 111-112).

The use of data analytics can also help customs administrations to improve enforcement and root out fraud. For instance, Korean Customs conducted a pilot project by using data analytics to find out commercial fraud conducted through express cargo/postal items and to identify potential illicit transactions. The risk analysts formulated the hypothesis that such non-compliant importers, in order to avoid paying duties/taxes, were importing items in a multiple of small shipments to get the benefit of *de minimis* exemption, using a number of different addresses and contact numbers. The analysis revealed startling facts. For example, among the suspicious cases, one importer had reported 123 different phone numbers and 127 different addresses. Moreover, as shown in Figure 10, 83 different people reported the same seven phone numbers on different occasions when importing goods destined for 60 different addresses. Though this project was aimed at testing how data analytics could enhance risk analysis for identifying commercial fraud in express cargo and postal items, but the Korean Customs believes that such methodology can be successfully used to other high-risk areas such as identifying the criminals involved in drug trafficking in cross-border e-commerce (Kang, 2018, p. 67).

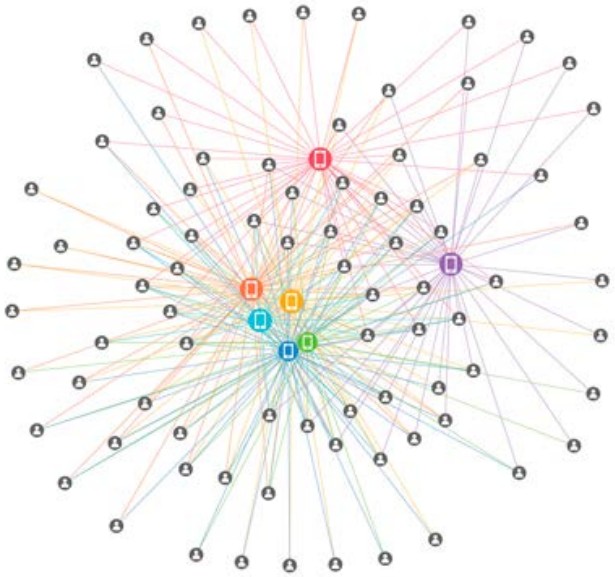

Fig. 10. Geographic coordinates showing different people reporting the same phone numbers on different occasions

Source: (Kang, 2018, p. 66)

The development and use of Single Window environment can also help customs administrations for effective management of e-commerce consignments. For instance, some customs administrations who are using Single Window, with national identification numbers for all citizens/residents and well-developed address infrastructure, implement identity management of individuals. Through this identity management individual's details are validated by using national identification number and address databases, in co-operation with the relevant government agency. This has proved to be very useful in the risk management of low-value e-commerce shipments bought/sold by individuals (WCO, n.d.b, p. 4, para. 4).

The sharing of electronic advance data related to e-commerce consignments can become a game changer for customs administrations. It can help significantly improve screening of mail consignments. In this regard, Australia and New Zealand conducted a successful two-week live 'green lane' trial for international mail in September 2017. The trial was conducted in the backdrop of tremendously increasing mail volume. For instance, during the period from 2015-16 to 2016-17, the mail volume from Australia to New Zealand increased by 74% and from New Zealand to Australia by 25%. This trial was conducted to test the processes for streamlining the movement of low-risk goods being sent through international mail between Australia and New Zealand and to test the usage of pre-arrival data for risk assessment and targeting of mail items (Australian Department of Home Affairs and the New Zealand Customs Service, 2018, p. 27, paras. 1-4).

The data was generated by eSeller and sent to postal operators and on to the border agencies for pre-arrival risk profiling at least six hours prior to the arrival of the parcels. The border agency of the importing country sent back hold/release message for each postal item to postal operators. On the basis of these messages, postal operators segregated 'green lane' mail items at the source for clear identification at the destination mail facility through bar code scanning. The mail parcels which generated a 'hold' status were checked by the border agency officers (Australian Department of Home Affairs and the New Zealand Customs Service, 2018, pp. 28-29).

The trial provided a way for improving trade facilitation, saving of resources by postal authorities, improved targeting of risky consignments and helping customs administrations to reallocate resources to high-risk areas. The pre-arrival information also helped to develop an extra valuable layer for the screening mail shipments (Australian Department of Home Affairs and the New Zealand Customs Service, 2018, p. 29).

9.2. How to improve compliance?

Customs administrations must have a strong legislative base for effective compliance management. According to Widdowson, "All relevant powers that give rise to an agency's rights and responsibilities must be clearly provided for in the relevant legislation (Widdowson, n.d., p. 18)". Whereas, most of the customs administrations are dealing with cross-border e-commerce under the general provisions of traditional trade. Therefore, there is a need to develop a strong legislative base for effectively dealing with cross-border e-commerce.

Since customs administrations deal with a large volume of work by utilizing limited available resources, therefore one of the major components of their compliance management strategy is to increase self-compliance. This helps them to deploy scarce resources to more risky areas for their more efficient and effective use. The AEO programme is based on this core component of self-compliance of compliance management strategy of customs administrations.

Keeping in view the volume of cross-border e-commerce, customs administrations need to engage private partners to ensure compliance. Potential vendors, e-marketplaces and

intermediaries should be identified for granting the AEO status. This deeper engagement with e-commerce supply chain actors will help to ensure safety and security, sharing of advance electronic information and improved compliance (WCO, 2016, p. 7).

Moreover, the possibilities of mutual recognition agreements for such AEOs should be explored. Under such an arrangement, an AEO becomes compliant with the requirements of both the contracting parties. In this way, the compliance extends beyond borders and it is not limited to the geographical boundaries of a country. Customs administrations need to benefit from this entirely a different approach compared to the traditional international customs cooperation in which information sharing was on negative elements whereas positive waves are transmitted under such an AEO programme.

9.3. How to improve trade facilitation?

Since anyone can become buyer or seller in cross-border e-commerce, therefore, customs administrations should introduce simplified declarations for such trade to enhance facilitation. For e-commerce consignments, the Dutch Customs has introduced a special system named VENUE. In this system, the advance incomplete declaration can be filed on a standard format for import or export consignments and the information is communicated to Customs in a special way. However, to use the VENUE, a permit is required from Dutch Customs. In the Netherlands, the *de minimis* value for B2C shipments regarding VAT is €22 whereas for customs duty it is €150. For goods worth more than €22 an additional declaration is required to be lodged within a set period. For VENUE declarations, Dutch Customs has drawn up a leaflet which explains general, technical and data format requirements for the users (Tax and Customs Administration of Netherlands, 2016, September 4).

Likewise, Belgium Customs and Excise Department haslaunched BE-Gate for import and export of e-commerce goods. For imports, BE-Gate allows submission of a large volume of arrival notifications of e-commerce consignments by one simple transaction through a data file approved by Customs. In case the value of a consignment is equal to or less than €22, this file can also be used as a declaration for release of such consignment. However, for consignments having value more than €22 an additional declaration is required to be submitted. The information regarding any package selected by Customs for inspection is automatically sent to the declarant. Whereas, consignments valuing less than €1,000 and weighing less than 1,000 kilograms can be exported by using BE-Gate (Federal Public Service Finance, 2019, paras. 1-3).

This initiative of Belgium Customs offers numerous benefits. It provides for simplified declarations and fast clearance for the consignments not selected for inspection. It is specifically adapted to manage big data. The usage of BE-Gate is free of charge. However, the user is required to meet certain conditions such as to have an office in Belgium, the status of a customs agent, get an authorization for using simplified declarations and have a comprehensive guarantee (Federal Public Service Finance, 2019, paras. 4&6).

Recently, Finnish Customs has launched a facilitation tool for online shoppers in the shape of a customs duty calculator. This online tool helps buyers to determine the likely amount of duty and taxes on the purchases from abroad. The user makes certain selections such as type of goods, origin, currency, and gives price, transportation and processing cost. The system not only calculates potentially payable duty/taxes but also explains the clearance process for the goods. Within six months of the launch of this tool, its users have increased more than ten times (Maunuksela-Malinen, 2019, p. 45).

Summary and concluding remarks

In a nutshell, the tsunami of small packages, in the shape of cross-border e-commerce, is tremendously affecting the international trading environment. It is creating serious challenges for customs administrations regarding enforcement, compliance and trade facilitation due to

limited available resources for managing the situation. Poor quality data and limited information regarding buyers and sellers of e-commerce shipments coupled with the limitations of traditional risk management systems pose serious challenges for ensuring safety and security by customs administrations. The lack of knowledge of buyers/sellers regarding customs laws and procedures is giving rise to unintentional non-compliance. Whereas, criminals are exploiting the situation for drug trafficking, smuggling and money laundering and contributing to deliberate non-compliance. On the other hand, lack of standardized procedures, non-availability of information regarding import/export processes and limitations of postal/courier companies to provide good quality advance electronic data to customs administrations is seriously affecting trade facilitation.

The WTO and the WCO have taken certain measures to establish an international legal framework for cross-border e-commerce. The work for this legal framework started with the second Ministerial Conference of the WTO held in May 1998 and it culminated with the publication of the WCO E-Commerce Framework in June 2018. The principles contained in this legal framework provide comprehensive guidelines to customs administrations such as simplification of procedures, risk management, revenue collection, inter-agency and international co-operation, facilitation, control and compliance measures.

However, in addition to establishing a strong legislative base, customs administrations need to take drastic measures to meet the challenges of cross-border e-commerce. Firstly, they need to review the *de minimis* values which have become outdated due to the upsurge of e-commerce. Secondly, there is a need to adopt a new revenue collection model enabling customs administrations to collect duty/taxes before the arrival of the goods and facilitating the uninterrupted flow of a major portion of e-commerce consignments. In this regard, customs administrations can learn from the experience of Australia which has launched vendor collection model for collecting GST on low-value e-commerce consignments. Thirdly, the application of the provisions of the WCO instruments and tools such as the RKC, SAFE Framework, Single Window Compendium and WCO Data Model, and the WTO TFA can greatly help customs administrations to effectively manage cross-border e-commerce. Fourthly, sharing of electronic advance data, the establishment of Single Window environment, and the use of cutting-edge technologies such as blockchain and data analytics can help customs administrations for effective enforcement by learning from the experience of Korea, Australia and New Zealand. Fifthly, the introduction of the AEO programme for the major actors involved in cross-border e-commerce will help to increase self-compliance and reduce the compliance costs for customs administrations. Lastly, for facilitating e-commerce trade special systems can be launched with simplified procedures such as VENUE of Dutch Customs and BE-Gate of Belgium Customs. Other facilitation measures such as interactive duty calculator launched by Finnish Customs can also help to facilitate cross-border e-commerce and improve compliance.

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МІЖНАРОДНА ЕЛЕКТРОННА ТОРГІВЛЯ: ЗАВДАННЯ ДЛЯ МИТНОЇ СЛУЖБИ ТА ШЛЯХИ ПОДАЛЬШОГО РОЗВИТКУ

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Метою статті є проведення аналізу завдань, які стоять перед митною службою у результаті провадження міжнародної електронної торгівлі, та визначення заходів для подальшого розвитку митних операцій у цій сфері. У результаті стрімкого збільшення обсягу світової міжнародної електронної торгівлі перед митними службами постають серйозні завдання з правового врегулювання, контролю та сприяння торгівлі у зв'язку з обмеженими ресурсами для керування таким видом торгівлі. У статті оцінюється об'єм міжнародної електронної торгівлі та визначаються завдання з правового регулювання, контролю та сприяння торгівлі, які необхідно вирішити митній службі. Аналізується походження та розвиток міжнародної правової бази ведення такої електронної торгівлі та описуються шляхи впровадження положень для врегулювання явища міжнародної торгівлі митною службою ефективно та економічно вигідно. У статті підкреслено необхідність перегляду мінімальних складових такого типу діяльності. Висвітлені слабкі сторони чинної моделі збору доходів для підтримки ведення електронної торгівлі та описані переваги та недоліки альтернативних моделей, запропонованих Організацією економічного співробітництва та розвитку (ОЕСР). Пояснюється, як Австралія імплементувала торгову модель для збору Загального податку на продаж (ЗПП) електронних товарів. У статті підкреслено необхідність використовувати різноманітні інструменти та засоби, розроблені Всесвітньою митною організацією (ВМО), та положення Угоди про спрощення процедури торгівлі (УСПТ) Світової організації торгівлі (СОТ) для кращого управління міжнародною електронною торгівлею силами митних служб. У статті пояснюється наскільки покращиться регулювання процесами з використанням технологій блокчейн, аналізу даних, середовища «одного вікна», масового розповсюдження електронних даних. Також наголошено на необхідності глибшої взаємодії з приватними партнерами, залученими до ланцюга поставок міжнародної торгівлі, для покращення контролю та зменшення витрат на це. У статті описано як можливо сприяти електронній торгівлі, уживаючи певних заходів, представлених митними службами Данії, Бельгії та Фінляндії. Результати такого аналізу викладені у висновках до статті.

Ключові слова: контроль, міжнародні електронна торгівля, митні служби, правове врегулювання, Організація економічного співробітництва та розвитку (ОЕСР), сприяння торгівлі, Всесвітня митна організація (ВМО), Світова організація торгівлі (СОТ).

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THE ROOT CAUSES AND BASIC INTERESTS FOR ECONOMIC ENTITIES TO ENTER AND MAKING BUSINESS AT THE EXTERNAL MARKETS

Purpose. *The article is devoted to the study of the root causes of the emergence of interests of economic entities in connection with the beginning of activities at the internal and external markets.*
Methods. *In the research the main scientific methods are widely used. Among them the methods of logical search and synthesis, abstraction and concretization, analogies, modeling are mostly used.*
Results. The basics of the personal motivation for work and economic activity are discovered. The common hierarchy of needs is applied to the real economic activity of person and entity.
The general reasons, root motives and needs related to economic activity of entrepreneurs are deeply analyzed.
The features of the system of motivation to the economic activity of subjects in the internal and external economic space are determined.
It has been demonstrated that the desire of the subject to engage in entrepreneurial activity both within the country and in the international economic space is similar from the scientific and practical point of view and in fact leads to several common groups of motives.
Conclusions. *It is proved that among the prime reasons connected with business interests of the enterprises there are motives for satisfying almost all the standard levels of needs with a clear predominance of the needs of the "highest level", that is, the desire for respect, self-expression and self-realization. It is shown that other needs are always present but play secondary role.*

Key words: motivation of economic activity, needs, hierarchy of needs, psychological basis of activity, economic entity's interest, personal economic interest, entrepreneurial activity, work activity.

JEL Classification: D01, D21, D24, D25, D31, D81, D87, D91, F00, F23.

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Introduction. There is no doubt that doing business efficiently requires much more knowledge, skills and efforts than the ordinary work of the hired employee. It can be explained by the relatively high risks and suspense for entrepreneur, because in the case of failure the business owner takes a chance to suffer huge losses and even go bankrupt.

Moreover, when it comes about existence of the entity at external markets where it is advisable to take into account an even much greater variety of factors and conditions of economic activity.

Then what can stimulate, push or compel an economic entity to enter the international market? What are the decisive incentives and motives which have influence on entrepreneur's interests for making business in an economic space that is initially not unusual for him?

Some issues related to the motivation of work and entrepreneurship were covered by many scientists and researchers such as: Yu. Bogatin, R. Dadahanova, V. Yesaulov, O. Leontiev, V. Nagornov, V. Smirnov, I. Solovenko, V. Schwandar and others. However, the complexity, ambiguity and multidimensionality of aspects connected precisely with the root causes of the subjects' interests as for foreign economic activity stipulates the necessity of further researches in this direction. On this basis, the issues raised in this article concerning the aforementioned area of scientific research are really relevant and useful.

The purpose of this study is to identify and analyze the root causes for economic entities' interests in starting their activities at international markets, to determine the peculiarities of the system of motivation for economic activity of entities in the internal and external economic space.

The basics of needs and motives. It is senseless to disagree with the assumption that any activity or omission of a person is closely related to specific reasons. Such reasons, of course, can be explained by certain physical, psychological, spiritual, material or other moments which depend on the situation, level of development, life position of the person and shape its corresponding behavior. One way or another, if you delve deeper into this issue you can understand that the causes of behavior can be considered as a kind of complex interaction of goals, incentives, interests, motives and needs that force somebody to a certain activity or inaction.

Herewith among the many motivational terms related to incentive forces of behavior the most often researchers identify needs and motives [1]. These two meanings are quite similar for understanding, because they both act as internal regulators of behavior, but there is a significant nuance. Need may be a potential or a real motive for behavior, that is to say it can act or cannot act at a particular moment of time, generating the main state of unintentional activity. In turn, motive is always a relevant, acting factor that precisely transforms human activity into relevant purposeful activity.

According to O. Leontiev, motive performs as a materialized need expressed in a person's desire for the specific goal [2]. Motives are subjective, psychological formations that initiate, regulate and support human activities aimed at satisfying their needs. Needs, in turn, are the objectively active root energetic sources of human behavior, that is, what really drives our decisions and actions.

In that way, exploring the root causes of a subject's interests in a particular activity it is necessary to trace the link between the visible component of the wishes and aspirations of the subject and his real stimulating initial needs.

In this area of research the most convenient to use we can surely consider the hierarchy of needs of A. Maslow, which actually defines the hierarchy of personality motives [3] in the direction from the physiological level to the level of self-realization.

That's undoubtedly and normally to apply these logics to economic agents who deliberately or subconsciously demonstrate by their behavior in the economic environment some effect of one or another root causes on them.

Root causes to enter external markets. It is believed that the main reasons for companies to enter the international markets are, as a rule, their desire to reduce costs and the desire to access unique resources [4].

However, it is obvious that the reasons for economic entity to enter at the international level, first of all, should be connected with the specific goals and interests of the respective enterprise, which are pushing to search for new markets, including international scopes.

It should be understood that the objectives of an economic entity's entry into the international market can be short-term, operational and long-term [5]. Mostly, they relate to securing or achieving the performance of the enterprise as a whole (in particular, profits, sales, market share) or specific areas of marketing activity in foreign markets. Furthermore, the goals in the external markets are more dynamic than the goals in the national markets which can be explained by the higher level of uncertainty in the behavior of the international economic, political and other environment. Therefore, the environment of international economic activity should be systematically studied and must be taken into account regardless of where the enterprise is located, whether it is already operating on the foreign market or is about to enter the international level of economic activity.

Some researchers propose that the aforementioned goals should be generally perceived as major aspects of motivation that cause national companies to make international business [6] and interpret as:

- expansion of distribution;
- obtaining of resources;
- diversification of sources for supply and distribution, etc.

Indeed, this position can be explained as follows. As you know, total market demand brings together the aggregate demand of individual buyers operating in a particular market. That is to say the more buyers (carriers of demand) exist the more products could be sold. Therefore, sales scope and sales revenue depend directly on the number of buyers available. That's why, in order to increase its own revenues in a situation of limited growth of the number of customers, the entrepreneur should try to expand sales extent of his own products focusing on new markets including international ones.

Apart from that, the international market may create much easier approach for acquiring the resources needed for the enterprise to operate, since such resources may not be available at the domestic market or may be sold much more expensively there. One way or another, the acquisition of relevant resources in the external market can significantly reduce the overall cost of production.

In order to diversify some sources of supply and distribution, the business entity tries to insure itself from possible losses due to certain fluctuations in economic activity both in the national and foreign markets. It is clear that the more diverse sources of supply of relevant resources or opportunities to sell their products can be found, the more reliable activity of a particular enterprise would be. That's because deterioration of the conditions for cooperation with one of the suppliers will not significantly affect the overall situation, countervailing it by the establishing of business relations with other contractors.

Therefore, based on specific goals, the following considerations may serve as the main motives for the economic entity as to enter the international market [7]:

- growth of the company and expansion of its fields of activity;
- the need to maintain and develop the company's image;
- certain trends at the domestic market that push the subject beyond this market (oversaturation of the market with goods; competition strengthening; amplification of taxation level; increasing of dependence upon intermediaries; complexity of legislation compliance);
- seeking to overcome the dependence on the internal market environment with its specific characteristics (for instance, seasonality and hard-to-predict fluctuations), to reduce risks and enable "resource maneuvers";

– the desire to access relevant technological secrets;

– the possibility of using national and foreign state programs to promote the development of international trade;

– the desire to release some of the resources used in the internal market (capital, labor, financial resources) to solve more complex and perspective tasks;

– the desire to restore lost or broken business connections, etc.

Grouping of the root causes. The researchers suggest that all the reasons that may be the basis for going abroad from national market could be grouped into four conditional cores [8], depending on certain factors and the level of own initiative that affect the appropriate choice for the subject of economic activity.

Accordingly, the group of *active internal causes* of the entity's entry into the international market includes those that are the result of the entrepreneur's own initiative. These are reasons that can be conditionally linked to the internal ambitions and desires of the company itself.

The group of *active external causes* includes those that are opened under certain external circumstances and encourage but do not compel a particular economic entity to act on its own initiative to make an appropriate decision as to enter the international market.

It is advisable to include into the group of *reactionary internal causes* those that are characterized mostly by the reaction (with a great share of initiative) of the company itself concerning the possibility of certain risks in the future caused by the activity of this entity.

Finally, a group of *reactionary external causes* may include such objective premises which are independent of the activities and desires of the company itself and which it can only respond on but don't initiate them. These are all reasons for the deterioration of the overall situation and conjuncture at the domestic market.

One way or another, exploring the reasons for the desire of economic subjects to enter foreign markets, it is logical to conclude that there are a great number of such motives, at least not less than the reasons at all as to conduct the relevant economic activities. Moreover, it is obvious that the level of motivation of a subject actually depends on the ultimate success of his entrepreneurial activity.

Affect of risks on the business. Therefore, as we delve into the direction of our research, it is necessary to find out what exactly pushes an ordinary person to start an independent economic activity as a private entrepreneur or to create its own enterprise as a legal entity. It should also be understood that the motivation of the subject to decide to open and run a business should be really significant since it is known that entrepreneurship is always a much riskier business than, for example, the employment of a hired employee.

At the same time the motivation for business activity and the stimulation of work have similar key goals [9]: entrepreneurs and hired employees are interested in earning as much profit or wages as possible while minimizing the costs of resources and labor.

It is interesting to note that the higher the entrepreneur's motivation for success is, the lower his readiness to take risks appears [10]. For example, an indicator such as the risk of production and sales of products is one of the most significant for the entrepreneur. Indeed, high risk is the constant care of the own business, the constant strain in the field of business management, the significant costs of business insurance. However, if the business is not very risky, the motivation to create and run such an entrepreneurial activity can be much greater.

By the way, to predict your own success and more real awareness of the risks in business there is a good advice: all planned revenues should be divided by ten and costs should be multiplied by two [11].

So, not every entrepreneur will undertake a risky business unless the motives for its business outweigh the real and potential risks.

Reasoning and thinking concerning real causes. In practice there are many views and hot discussions about the real reasons that may cause the interest to a business start-up and business performing. Moreover, the views are diverse, sometimes quite original and contradictory, but there are typical, generally accepted.

For example, in scientific area the motivation for entrepreneurship is explained from the following points. The decisive reasons for an entrepreneur to enter the market are issues of yield, profitability and goal achievement [12]. At the same time, the material interest expressed in income should be taken as the main stimulating motive of entrepreneurial activity. Profit as an indicator of entrepreneurial performance is considered to be a psychological stimulus and an assessment of the success of the entity. That is why the material motive, even if it is not clearly shown from the outside, still occupies the leading position in the hierarchy of the entrepreneur's goals.

However, it should be kept in mind that the desire to make money can be decisive but not the only motive, since the personality of the entrepreneur as a carrier of a unique resource – "entrepreneurial abilities", is distinguished by its diversity of qualities and non-standard thinking.

In particular, researchers agree that achievement of the own goals generates respect for the entrepreneur and significantly increases self-esteem [13]. Entrepreneurial activity allows to reveal its uniqueness and to get independence. Doing things differently than others, influencing the situation, shaping your own world are the strongest incentives that allow entrepreneurs to overcome huge stresses and succeed. Therefore, the highest emotional immersion into the business creates a strong interest of the entrepreneur in the process and results of his own activity. In other words, a strong and, perhaps, the most significant from a moral point of view the motive for entrepreneurial activity can be considered the direct interest in a favorite business, since such commitment to business is gradually becoming not just an activity, but a full life of the entrepreneur.

Ordinary people, in turn, identify the following points among the main motives that encourage entrepreneurial activity [14]. Someone is looking for independence in business, for freedom of the own actions, for opportunity to manage the time and realize the own desires, for realization of a sense of need for personal control of the situation. There are people who explain their impulse to entrepreneurship with certain "desperate situations" in their lives. Others seek self-affirmation, prove to themselves and others what they are capable of, learn to believe in their own strengths and live up to the expectations of loved ones. A large part perceives entrepreneurship as a pleasure, seeking inspiration, embodying their interests and creative ideas.

From the point of view of entrepreneurs who already have considerable experience and significant achievements, it is advisable to distinguish among others the following reasons that encourage a person to engage in entrepreneurial activity [11]. First, there are challenges – the desire to meet many unexpected moments and interesting tasks that will open up your space for development. Second, it is the desire to become an employer for yourself. Third, it is a sense of responsibility for oneself, for the business and for others. Fourth, it is a constant interest and lack of boredom. Fifth, it is a desire to clearly see and feel the results of your own activities.

One way or another, combining all of the abovementioned information, in theory scientists identify three types of motivation for the real activity [15]: direct, indirect and stimulating.

It is believed that the direct motivation correlates with the degree of interest in the activity and its results. Examples of this type of motivation are the essence and creative component of

the activity, awareness of the own achievements, their recognition by the environment, a sense of responsibility and self-realization of the personality embodied in this activity. It can be said that activities mostly based on such motivation should bring satisfaction, at least.

At the same time, indirect motivation is clearly related to the degree of material interest. Effective factors in this case may be the form and level of payment for labor, the tension and standards of activity, the rates of change in cost of living, etc.

Finally, the stimulating motivation is formed by a variety of fears and obligations. Such motivation may be due, in particular, to the possibility and rate of unemployment, the uncertainty of tomorrow, the lack of guarantees for work place, the social tension, and more.

Conclusions. Accordingly, as shown by the study, the reasons that explain the subject's desire to engage in entrepreneurial activity both domestically and at the international economic space are similar from scientific and practical points of view. They are connected with several common groups of motives. In turn, the following conclusions can be done from analyzing the aforementioned variants of motivation for activities in terms of the hierarchy of human needs.

Following the desire to find moral pleasure in entrepreneurship, person actually tries to satisfy the own needs of the "highest level", that is, to achieve respect from others (first of all, close people, relatives and acquaintances) and self-esteem, to be convinced in the own abilities, to realize the own life and creative potential.

The desires to be materially independent, free in financial matters, to achieve wealth or so are explained by the tending, first of all, to satisfying the need for the own safety and protection of the loved ones; as well as the desire to recognize the own achievements, which in practice manifests itself in the form of guaranteeing material stability and confidence in tomorrow days, the opportunity to provide a comfortable standard of living with all the necessary benefits. The similar searching for safety and security applies also to the subject's desire to reduce the risks and fears of economic distress and uncertainty about his or her future, that is, to create safer living conditions.

Referring to physiological needs, it can be asserted that the satisfaction of this "lowest level" of human needs should not be attributed to the reasons for the emergence of interest of the subject to engage in business activities and, moreover, to enter external markets, since such basic needs can be satisfied, in particular, even by the ordinary work activity of a hired employee.

In turn, the entrepreneur's attempt to satisfy social needs is, in our opinion, a derivative from the process and result of satisfying the needs of the "highest level", that is to say, the secondary to the abovementioned ones, since the corresponding interest is not paramount in the outlined motivation system of the entrepreneur.

Suchwise, it can be stated that among the root causes of economic subjects' interests in doing business and entering the international markets there are motives for meeting almost all typical levels of needs with a clear overcoming of the needs of the "highest level" such as the desire for respect, self-expression and self-realization.

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ПЕРШОПРИЧИНИ ТА БАЗОВІ ІНТЕРЕСИ ЕКОНОМІЧНИХ СУБ'ЄКТІВ ЩОДО ВИХОДУ ТА ЗДІЙСНЕННЯ БІЗНЕСУ НА ЗОВНІШНІХ РИНКАХ

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Мета. *Автором даного дослідження за мету поставлено виявити та проаналізувати першопричини виникнення інтересів економічних суб'єктів щодо початку діяльності на внутрішньому та зовнішньому ринках, а також визначити особливості системи мотивації до економічної діяльності суб'єктів у внутрішньому та зовнішньому економічному просторі.*
Методи. *У ході дослідження активно використовувалися загальнонаукові методи, серед яких найбільшу увагу приділено методам логічного аналізу та синтезу, абстрагування і конкретизації, аналогії, моделювання.*
Результати. *У межах досягнення поставленої мети розкрито основи особистої мотивації до праці та підприємницької діяльності. Продемонстровано застосування загальної ієрархії потреб*

в умовах реальної економічної діяльності окремої людини та суб'єкта економічної діяльності.
Глибоко проаналізовані загальні причини, основні мотиви та потреби, пов'язані з різними аспектами економічної діяльності підприємців.
Визначено особливості системи мотивації до господарської діяльності суб'єктів у внутрішньому та зовнішньому економічному просторі.
Було продемонстровано, що бажання суб'єкта займатися підприємницькою діяльністю як всередині країни, так і в міжнародному економічному просторі схоже з наукової та практичної точки зору і насправді призводить до декількох загальних груп мотивів.
***Висновки.** Доведено, що серед основних першопричин, пов'язаних із діловими інтересами підприємств, слід сприймати мотиви задоволення майже всіх стандартних рівнів потреб із чітким переважанням потреб «найвищого рівня», тобто прагнення до поваги, власного вираження та самореалізації. При цьому продемонстровано, що й інші потреби завжди присутні, але вони відіграють, здебільшого, другорядну роль.*

Ключові слова: мотивація господарської діяльності, потреби, ієрархія потреб, психологічна основа діяльності, інтерес суб'єкта господарювання, особистий економічний інтерес, підприємницька діяльність, трудова діяльність.

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LEGAL CAPACITY, INSTITUTIONAL STRUCTURE, PRIVILEGES AND IMMUNITIES OF CUSTOMS COOPERATION COUNCIL

Representatives of the theory and practice of most of the world are interested in activities of The Customs Cooperation Council, also known as the World Customs Organization. Because the Customs Cooperation Council is a universal multilateral international organization in the field of customs affairs, the members of which as of December 2019 there are 183 independent participants in international customs relations. In view of this, the article analyzes the legal capacity, privileges and immunities of the Customs Cooperation Council and investigates its internal institutional structure, based on a thorough elaboration of the text of the Convention on the Establishment of the Customs Cooperation Council of 15 December 1950, of the official sites of the Customs Cooperation Council and the Organization of Customs United Nations, as well as scientific and educational works of Ukrainian and foreign scientists. Based on the results of the study, the following results were obtained. The legal capacity, privileges and immunities of the Customs Cooperation Council are limited, functional in nature, that is, they are granted with the aim of achieving the goals and tasks set for the organization, as well as fulfilling the functions assigned to it. It is appropriate to divide the capacity of the Customs Cooperation Council into international legal and private legal. The privileges and immunities of the Customs Cooperation Council are apppropriate to be classified into three groups: 1) the privileges and immunities conferred on the Council; 2) the privileges and immunities conferred on the officials of the Council; and 3) the privileges and immunities of the representatives of the members of the Council, as well as the advisers and experts who are with them. The internal institutional structure of the Customs Cooperation Council is formed by an extensive system of bodies, which can be classified into three types, namely: representative bodies (Council, General Political Commission and Financial Committee); administrative (General Secretariat); executive (Standing Technical Committee, as well as other committees, subcommittees and various working groups).

Key words: Customs Cooperation Council, World Customs Organization, legal capacity, privileges, immunities, Council, General Political Commission, Finance Committee, Secretariat, Permanent Technical Committee.

JEL Classification: K33.

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Introduction

The Customs Cooperation Council (hereinafter – CCC) is a universal international intergovernmental organization, the members of which are the vast majority of states recognized at the present stage of development of the international customs relations, the governments of individual customs territories, authorized by the states wich are members of the CCC to independently engage in foreign trade and also by the European Union. Formed to promote co-operation between the governments of its members, the CCC effectively engages with each of them and develops international co-operation

relations with other independent actors in international customs relations. In order to maximize progress in such relations, in particular to ensure the highest level of harmonization and uniformity of customs systems of the CCC members and to strengthen the study of problems arising in the course of development and improvement of customs technique and customs legislation, the founding states of the organization have identified in the Convention about the creation of the CCC of December 15, 1950, its legal capacity, privileges and immunities, and provided for the possibility of creating the internal bodies system wich are necessary for achieving the goals of the Convention. It should be noted that, despite more than significant importance for ensuring the effective functioning of the CCC, the detailed characterization of the above provisions in the doctrine of international customs law was hardly paid attention. In view of this, the topic chosen for the study is relevant and needs more thorough scientific discussion.

1. Literature review

Problems related to the activities of the CCC have been studied by scientists from different countries for a long time now. In most cases, it receives little attention in the context of complex research on various aspects of intra-state customs. For the most part, their authors describe the achieved results of the CCC activity or determine the changes expected from such activity in intra-state customs law and related to it branches of law, without taking into account the characteristics of such constituent elements of the status of the CCC as its legal capacity, privileges and immunities. Regarding the institutional structure of an organization, within the framework of the general characteristics of the organization, researchers often mention the existence of its main bodies. However, it is extremely rare for them to reveal the powers available to such bodies, and to indicate the existence of other bodies belonging to the institutional structure of the CCC.

In particular, Kafeero Ed. (2009) mentions the activities of the CCC in terms of the characteristics of the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973, revised under its auspices.

Cheng Ch.-J. (2010) describes the CCC in interaction with the World Trade Organization (hereinafter referred to as the WTO), and emphasizes that the CCC and the WTO not only develop international and national customs law, but also create their material sources, which form an essential part of the new rules of international and national customs law. H.-M. Wolffgang and Ch. Dellimore (2012), characterizing the interaction of CCC and WTO, suggest that within its boundaries WTO will deal with higher-level aspects while leaving implementation for CCC.

Weerth, C. (2009), revealing the structure and functions of the CCC, believes that the best example of a long-lasting interaction between the CCC and the WTO is the successful functioning of two technical committees under the auspices of the CCC, namely: the Technical Committee on Customs Valuation, established to ensure uniformity at the technical level in the interpretation and application of the Agreement on the Application of Article VII of the GATT (Article 18 of the Agreement) and of the Technical Committee on Rules of Origin, established to ensure uniformity at the technical level in the interpretation and application of the WTO Agreement on Rules of Origin (Art. 4 of the Agreement).

Within the general characteristics of the function of the CCC, scientists from the Russian Federation and other states formed in the territory of the USSR also mention in their research about the main bodies of this organization. The most famous of them are: Zhamkoch'jan S. (2006), Zhivenko N. (2007), Rajkova A. (2009), Grebennikov A. (2012), Buvaeva N. (2013)

Repeatedly, CCC and its results of activity have become the subject of research by Ukrainian scientists too. However, for the most part, such studies were descriptive, highly specialized, or unrelated to law. The most meaningful study of these is the scientific work of Muzyka Ja.

(2015), who in a descriptive form writes about the legal capacity, privileges and immunities of the CCC to the extent that they are defined by the 1950 Convention on the creation of the CCC. Denysenko S. (2015), reviewed the activities of the CCC and the WTO in the aspect of international legal regulation of simplification and harmonization of customs procedures in the field of international trade. Chencov V. (2012), has characterized the activity of the CCC from the position of the public administration of customs business. Berezhnjuk I. (2009), explored the CCC as an institute of customs regulation in the conditions of economic globalization, and Ghrebeljnyk O. (2005), explored the CCC as one of the main subjects of customs and tariff regulation of foreign economic activity.

2. Research methodology

The research methodology is based on an approach to interpreting the legal personality of international organizations established in the theory of international law, and within which the legal capacity, privileges and immunities are granted to organizations in order to maximally assist them in carrying out their functions, and the institutional structure is created to ensure the functioning of the organization in general. The text of the 1950 Convention on the Establishment of the CCC, its official website and the United Nations website was analyzed, which revealed the incorrectness of the official translation into Ukrainian the name of art. II Annex to the Convention on the establishment of the CCC 1950. Scientific works of foreign and Ukrainian scientists in this field have been studied.

3. Empirical results

According to the text of Art. XIII of Convention on the Establishment of the CCC (1950): «The Council shall enjoy, in the territory of each of its Members, such legal capacity, as defined in the Annex to the present Convention, as may be necessary for the exercise of its functions. The Council, the representatives of Members, the advisers and experts appointed to assist them, and the officials of the Council shall enjoy the privileges and immunities specified in the Annex to the present Convention.». Let us describe in more detail the legal capacity, privileges and immunities that the Customs Cooperation Council (hereinafter – the CCC or the Council) is endowed with.

Legal capacity is an integral part of the legal characterization of an international organization as a subject of international law, and which clearly defines its ability to fulfill its goals, objectives and functions. In view of this, the legal capacity of international organizations is limited, functional in nature. It should be noted that the legal capacity limitatness is one of the main differences that distinguishes the legal capacity of international organizations, as derivative subjects of international law, from the universal legal capacity of states as the main subjects of international law.

There is no uniform approach to understanding the legal capacity of international organizations in the theory of international law.

Moraveckij V. (1976) is one of the representatives of approach according to which the international legal capacity of an international organization is equated with its international legal personality and is considered as a phenomenon that arises from the nature of the functions of this organization and that acts when these functions require autonomous activity of the organization in the field of international law.

Representatives of another approach, in particular the author's collective of a textbook on international law, edited by Butkevych V. (2004), consider that international legal capacity is only one of the structural elements of international legal personality. Its role in the system of elements of the international legal status of an international organization should be considered in terms of ownership of an international organization by some general rights, which means

the ability to have specific rights and obligations stipulated by the rules of international law for participants in this type of international legal relations.

In the case of the legal capacity of the CCC, its member states have granted its Secretary-General the right to act on behalf of the Council in the following areas: to conclude agreements; acquire and dispose of immovable and movable property; to prosecute.

At the same time, if you are acquainted with the abovementioned CCC rights, which are enshrined in the text of the Annex to the Convention on the establishment of the CCC «Legal capacity, privileges and immunities of the Council», on the official site of the Verkhovna Rada of Ukraine «zakon.rada.gov.ua» (1992), you can see that they are listed in the article entitled «Legal personality». At the same time, if we refer to the official text of this Convention, which is presented in French and published on the official site of the CCC, we can see that in its contents the corresponding article is entitled «PERSONNALITE JURIDIQUE» (1950), which will be translated in Ukrainian as «LEGAL PERSON».

In our opinion, the use of the name «Legal personality» does not correspond to the content of the article and is incorrect. Therefore, in order to properly interpret the provisions of Art. II «PERSONNALITE JURIDIQUE» Annex to the Convention on the Establishment of the CCC «Legal capacity, privileges and immunities of the Council», incorrect title of Art. II. «Legal personality» in its translation into the Ukrainian language published on the official site of the Verkhovna Rada of Ukraine in its content shall be corrected to «LEGAL PERSON», which more accurately characterizes the rights of the CCC.

The title of Article II «LEGAL PERSON» of the Annex to the Convention on the Establishment of the CCC «Legal Capacity, Privileges and Immunities of the Council» matches the official translation of the same name and almost identical in meaning to Art. 1 «LEGAL PERSON» of the United Nations Convention on the Privileges and Immunities of 13 February 1946 (1946), which further confirms the relevance of our proposal.

Also it should be noted that the above clarification of the name of Art. II of the Annex to the Convention on the Establishment of the CCC «Legal capacity, privileges and immunities of the Council» will help to differentiate the legal capacity of the CCC as a subject of international law from its legal capacity as a legal entity of the international private law, which is discussed in the text of analized by us article .

As another confirmation of existence of the legal capacity in the CCC in the sphere of private legal relations can be cited the following provisions of Section 24 of the Article IX «Dispute Resolution» of the Annex to the Convention on the Establishment of the CCC «Council's Legal Capacity, Privileges and Immunities»: «The Council shall make provision for appropriate modes of settlement of: a) disputes arising out of contracts or other disputes of a private character to which the Council is a party; b) disputes involving any official of the Council who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of Sections 19 and 21.» (1950)

With respect to the legal capacity of the CCC as a subject of international law, in accordance with the provisions of the Convention on the Creation of the CCC, the organization may enter into relations with other international intergovernmental and non-governmental organizations as well as with another states. The following provisions of the founding act of the CCC can be considered as confirmation of this: «The Council shall establish such relations with the United Nations, its principal organs, subsidiary bodies and specialized agencies, and any other inter-governmental organizations, as may best assure collaboration in the achievement of their respective tasks. The Council may make arrangements necessary to facilitate consultation and cooperation with non-governmental organizations interested in matters within its competence…

The Council may conclude with any Contracting Party or Contracting Parties supplementary agreements adjusting the provisions of the present Annex so far as that Contracting Party or those Contracting Parties are concerned.» (1950)

It should be emphasized that in the case of the Council's right to conclude additional agreements with the Contracting Parties to the Convention on the establishment of the CCC, that is, with the contractual legal capacity of the organization, it does not clearly specify which agreements are in question, nor does it specify which law governs the relations on which such agreements are conclude. Based on the practice of the CCC, it can be said that these may be agreements that fall under the legal regulation of private international law, as well as international treaties concluded and enforced on the basis of public international law.

About the contractual legal capacity of international intergovernmental organizations Professor Syrojid T. (2018), states the following: international intergovernmental organizations conclude treaties regarding their headquarters and their missions with the host countries, cooperation agreements in accordance with their statutory objectives, technical assistance agreements, succession and other. The international legal personality of intergovernmental organizations is also reflected in the fact that, as mentioned above, there are state representations at international organizations; international organizations and their officials enjoy privileges and immunities; they have international legal liability in the case of wrongdoing and the like.

Another, equally important, element of the status of CCC is the privileges and immunities accorded to the organization and its staff in their relations with the host country and the member states.

As with other international organizations, the privileges and immunities of the CCC, its officials and its members are functional in nature. That is, they are provided to fulfill the goals and objectives set for the organization, as well as to eliminate obstacles in the performance of by officials and representatives of its members its functions, which may be created by the authorities of the host State of the international organization headquarters.

The authors of a textbook on international law, edited by Butkevych V. (2004), point out that the need for granting privileges and immunities to an international organization and its staff also stems from the fact that the organization, as a rule, does not have its territory and is located in the territory of a member state and sometimes of a non-member of the organization.

The privileges and immunities of the CCC include: the inviolability of the Council's headquarters, its archives and, in general, all documents belonging to it or in its possession; immunity from jurisdiction over the property and assets of the Council, whoever had them and whenever they are, unless the organization expressly waives it; the property and assets of the Council, whoever had them and whenever they are located, are immune from search, requisition, confiscation, expropriation and from any other form of interference by the executive, administrative, judicial or legislative branches of power; its funds, income and other property are exempt from all direct taxes except taxes, the amount of which does not actually exceed utility bills; printed materials and articles imported or exported by the Council for official purposes are exempt from duty; The Council may not be restricted in the conduct of financial transactions in any currency, both within one country and international transfers; the Council's official correspondence and other official communications are not subject to censorship; the council may count on the exemption from excise duty, duties or taxes included in the price to be paid for the sale of movable property; for the purpose of official communication, the Council shall enjoy in the territory of each of its members a regime no less favorable than that which may be accorded by that member of the Council to any other Government, including its diplomatic mission, with regard to the priority, tariffs and fees of postal items, different kinds of telegrams, radiograms, telex, telephone and other communications, as well as tariffs for information messages in the press and on the radio (1950).

The members of the CCC are accorded the following privileges and immunities: immunity from arrest or detention and search of personal luggage, as well as from words expressed or written and any action made by them in their official capacity, immunity from prosecution; inviolability of personal luggage and all materials and documents; release of themselves and spouse (husband) from immigration restrictions or registration in the country to which or through which they are sent in the exercise of their functions; the right to use ciphers and to receive materials and correspondence by courier or in sealed suitcases; the same regime with respect to currency or exchange restrictions as is accorded to representatives of foreign governments on temporary official missions.

It is important to note that the privileges and immunities of Council officials are not the same for all its staff. Thus, the privileges and immunities conferred on the Council's full-time officials include the duty-free importation of furniture and belongings upon initial entry into the country of destination and the right of duty-free exportation of these furniture upon return to the country of permanent residence upon expiry of their term of office; immunity from prosecution for words uttered or written and for any acts committed by them in their official capacity and within the scope of their authority; exemption from payroll tax and remuneration paid to them by the Council; immunity for them, together with spouses and relatives, from immigration restrictions and registration; privileges for exchange operations; the privilege of using with their spouses and dependents the same opportunity for repatriation in times of international crisis as officials of diplomatic missions of similar rank.

Compared to full-time officials, the General Secretary of the Council and his deputy are more empowered in exercising their own functions. In addition to the above privileges and immunities, the Secretary-General of the Council shall enjoy in respect of himself, his wife and children under 21 the privileges and immunities, benefits and rights conferred on international heads of diplomatic missions of a similar rank.

In the case of experts who carry out the tasks of the Council, they shall, for an appropriate period, be accorded the following privileges and immunities in order to provide them with the necessary conditions for the independent exercise of their functions during the performance of the task, including the period of official travel in connection with those tasks: immunity from arrest or detention and search of personal luggage; not to be held accountable for words spoken or written, or actions made in the course of the performance of their duties and within the scope of their authority; immunity from all kinds of prosecutions; inviolability of all materials and documents (1950).

It should be noted that, as in the case of Council officials, privileges and immunities are conferred on experts not for their own benefit, but for the benefit of the CCC. As in the case of Council officials, the General Secretary may deny the immunity of any expert if, in his opinion, immunity could interfere with the administration of justice and if it would not prejudice the interests of the Council.

The General Secretary constantly cooperates with the relevant authorities of the members of the Council in creating the conditions for the proper administration of justice, ensuring public order and preventing any abuse of privileges, immunities and rights.

If there are grounds for alleging abuse of privileges by Council officials, not in the performance of their duties, they may be required to leave the country. However, at the same time: 1) the representatives of the members of the Council, the Deputy General Secretary or the wife and children of the General Secretary of the Council under the age of 21 may not be required to leave the country other than in accordance with the diplomatic procedure applicable to diplomatic agents in that country; 2) in respect of other officials of the Council, the decision to leave the country may not be taken otherwise than with the approval of the Minister for Foreign Affairs of that country, and such approval must be obtained only after consultation with the General

Secretary of the Council, and in the event that the expulsion procedure applies to the official The General Secretary of the Council shall have the right to enter into such proceedings on behalf of the person against whom he or she was violated.

A final component of this study is the characterization of the institutional structure of CCC, which consists of an extensive system of bodies of various purposes and composition. As we noted earlier in the monograph «International Law of the 21st Century: Current Status and Prospects for Development (to the 60th Anniversary of Prof. Repetsky V.)» (2013), taking into account the scope of competence, their number varied according to the needs of international legal regulation of customs relations, occurring at different stages of the organization, and the composition of the representation depended on an increase in the number of States parties and their interest in solving specific customs issues.

In this regard, it is proposed to consider the current structure and competence of the existing internal organs of the CCC, which, as noted by Wolfgang G.-M. and Dallimore K. (2012), has a complex hierarchy.

Muzyka Ja. (2015), for example, considers that all organs belonging to the internal organizational mechanism of CCC can be divided into two groups: the main and the subsidiary (technical). The first group includes those bodies whose creation and functioning are foreseen by the 1950 Convention on the Establishment of the CCC, namely: the Council, the Secretariat and its departments, the Secretary General of the Permanent Technical Committee. The author also considers it appropriate to include those bodies whose establishment and operation are not expressly provided for in the Convention, but which play a leading role in the activities of the Organization – the Political Commission and the Finance Committee. The second group includes committees, subcommittees and working groups established and operating within the Organization to directly achieve its goals and functions.

We, for our part, consider it appropriate to divide all existing internal organs of CCC into: representative; administrative and executive. The supreme body of the organization, and the most important representative body of the organization, which makes the final decisions concerning its work and to which all other bodies are accountable, is the Council. The Council shall be composed of representatives of the States Parties and shall convene at least twice a year. In practice, the Council meets once a year, usually at the end of June. However, during its convening, the Council reviews the materials of its two sessions. Each state has one vote and can be represented by one delegate, who may have one or more alternates, as well as advisers. Representatives of Governments, who are non-members, may also observe the work of the Council. The Council annually elects from among the delegates of the members of the Council the Chairman and his deputies, the number of which depends on the number of regional offices of the organization. Decisions of the Council shall be taken by a majority of two-thirds of the votes of its members present, who, moreover, shall be entitled to vote.

The members of the Board shall provide it with any information and documents upon request, necessary for the performance of its functions, provided that no member will be required to provide classified information, the disclosure of which would impede the application of its laws or otherwise contravene public interests or affect the legitimate commercial interests of any enterprise, whether public or private. Each participating country bears the costs of sending its delegation to the Council, the Standing Technical Committee or other committees. The Council determines the scale of expenditure of its member countries. The Council has the right to withdraw the voting right of a Member State in the event of non-payment of the contribution within three months after receiving the notification of its size. Each Member State pays its full annual contribution in the financial year during which it becomes a Member of the Council, as well as in the financial year during which notification of its waiver becomes effective.

Global trends in trade, transport, technology have had a significant impact on the definition of the following major areas of activity of the senior CCC representative body at the internal organizational level: consideration and, if necessary, approval of the results of the work of the working bodies of the CCC, including the preparation or amendment of the CCC documents; consideration, on the basis of the Secretary-General's written and oral reports, the progress made over the previous 12 months as a result of the activities of the CCC, the implementation of the 3-year strategic plan; identifying the future directions of the CCC, in particular by reviewing, refining and adopting a strategic plan, which is prepared annually by the Secretariat and submitted to the Council after prior consideration by the General Political Commission; interpretation of the provisions of the Convention establishing the Customs Cooperation Council; providing a forum at the highest level for the exchange of information, opinions and experience on topical issues in the customs field; making budgetary and financial decisions based on recommendations provided by the Finance Committee; election of the Chairman of the Council and the deputies of the Chairman of the Council, members of the General Political Commission, the Chairman, deputy chairmen and members of the Finance Committee; the appointment of the Secretary-General and the Deputy Secretary-General of CCC; adoption of the schedule of meetings of the CCC for the next year.

Along with the characteristics of the Council, its representative bodies such as the General Political Commission and the Finance Committee, whose work as a whole is aimed at ensuring the functioning of the CCC, deserve special attention.

Bouvaeva N. (2013), for its part, believes that these bodies are subsidiary bodies of the Council. There are no references to them in the Convention on the establishment of the CCC, but their formation and activities do not contradict its provisions, the scientist said.

The General Political Commission (hereinafter referred to as the Commission) was established in 1978 and must meet at least twice a year. Its mandates include discussing important issues in the functioning and development of the world customs system, which are further submitted to the Council for consideration: development, implementation and renewal of international conventions and other legal instruments in the field of customs, the implementation of CCC resolutions on security and international trade facilitation, a strategy to enhance the capacity of the customs services, issues of the Harmonized System. The commission approves the functioning and the plans of work of the working bodies of the organization, and also considers the issues of its strategic planning. The Commission may, within the limits of its competence, make recommendations to the Council and, in matters requiring urgent resolution, request the Secretary-General of the Council to take such actions as the Commission considers necessary in the interests of the Council.

Membership of the Commission is limited to 24 representatives, of which 17 are elected on a regional basis by the most active members of a particular region, and the seats of the other 7 are held by the Chairman of the Council and his alternates. The members of the Commission shall be elected by the Board for a two-year term, and the Chairman and alternates for a term of one year. As a rule, the meetings of the Commission are attended by customs officials or their deputies.

Berezhnyuk I. (2009) notes the decisions of the Commission, which need financing, before their consideration at the sessions of the Council, to the Finance Committee, which resolves these issues.

The Finance Committee is an elected body, formed by a universal vote of CCC members at its 17-member sessions. The Committee has the following tasks: to control the correctness of the financial expenditures of the CCC funds by its Secretary-General and the persons to whom

he has the power to delegate the signing of the financial expenditure documents of the CCC Secretariat; prepare financial documents (in revenue and expenditure) for the CCC session on the amount of financial annual contributions to CCC from member countries and on the costs of CCC activities for the following year.

The Finance Committee holds its meetings depending on the needs and decisions of CCC sessions, but at least once a year. At its (annual) meeting, the Finance Committee makes a financial assessment (based on audit materials) of the activities of the CCC Secretariat and draws up a financial annual project (profits and expenses) of the CCC based on political decisions made by the Political Commission.

The election of any country as a member of the CCC Finance Committee, and moreover of its General Political Commission, has always been and remains a sign of great respect for its customs service and customs administration by all CCC members, including its customs region.

The permanent secretariat of the CCC is the General Secretariat. The main function of the General Secretariat is to coordinate the CCC. The Secretariat ensures the fulfillment of the primary mission of assisting and assisting States parties in their cooperation, facilitating the implementation of the Council's decisions. This body prepares documents and reports, organizes meetings, conducts various activities, coordinates the provision of technical assistance and training activities. The General Secretariat has its structure: heads the Secretary General of the CCC, who has an alternate; the management unit includes the communications, administration and financial services of the Secretariat; The Institutional Development Directorate coordinates the implementation of the COLUMBUS program and training; The Directorate of Tariffs and Trade provides assistance in customs valuation, nomenclature maintenance, rules of origin; The Customs Enforcement and simplification directorate assists in the enforcement of law enforcement and customs facilitation and harmonization.

States Parties provide the Secretariat with the necessary staff to carry out the projects. The Secretariat staff are international employees, so their job responsibilities are not confused with national ones, they are purely international. Upon receiving the appointment, the staff of the Secretariat must cease their national functions and commit themselves to work in the interests of the CCC. The Secretariat of the CCC is headed by the Secretary-General, elected by the members of the organization and appointed by the Board for a term of five years, practically embodying and acting on behalf of the CCC.

As Muzyka Ja. (2015) rightly points out, the powers of the Secretariat appear to be secondary, but it is one of the major structural elements of the World Customs Organization. Virtually every organ of the Organization interacts with the Secretariat, and the latter, in turn, performs the functions of organizational support for their activities.

All other CCC bodies, both those directly mentioned in the CCC Convention and those that actually ensure the fulfillment of the goals and objectives of the CCC, in our view, should be considered the executive bodies of that organization. To this end, the Council may establish committees which may, in turn, have subcommittees, and may set up, for their own purposes, pre-session or permanent working groups.

The CCC's executive body is the Permanent Technical Committee, which is made up of representatives from all member countries of the Organization. Each may nominate one delegate and one or more alternates to the Committee. According to Art. X of the Convention on the Creation of the CCC, representatives should be officials with specialist knowledge of customs practice, with experts. The Standing Technical Committee convenes at least four times a year. The Committee shall develop methods for simplifying and harmonizing customs legislation and procedures.

The functions of the Standing Technical Committee include: work on the promotion, development and management of trade facilitation tools and mechanisms in accordance with the CCC Strategic Plan; promoting enhanced cooperation between customs authorities and governmental and non-governmental organizations in the area of trade facilitation; implementation and encouragement of initiatives aimed at improving the efficiency of Customs use of information technology, customs cooperation and the establishment of various legal instruments; the development of various instruments designed to enhance trade efficiency (in particular, the Guidelines for Determining the Time it takes to produce goods), as well as facilitating their use by participating countries; participation in the development of tools and methods to facilitate, simplify and harmonize customs formalities; providing strategic support to CCC capacity-building programs for its members.

The powers of the Standing Technical Committee also include the right: create such working groups as he deems necessary to assist him in the performance of his functions; to determine, in accordance with the guidelines of the CCC Council, and to direct the activities of the working bodies of the CCC, within its competence; cooperate, promote joint projects, share information and experience with international governmental and non-governmental organizations, as well as private sector business associations whose activities are related to customs procedures and trade facilitation.

To date, the International Convention on the Simplification and Harmonization of Customs Procedures, adopted in 1973, remains the most famous result of the Committee's work. In addition, the Committee conducts comparative studies, publishes a glossary of international customs terms, develops drafts of international customs conventions and provides recommendations for simplification and harmonization of customs procedures.

With regard to other technical committees operating in the structure of the CCC at this stage, Buvaeva N. (2013) divides them into a circle of investigated problems into four groups:

1. Issues of nomenclature and classification of goods for customs purposes are dealt with by the Committee on the Harmonized System, the Subcommittee on the Review of the Harmonized System, the Subcommittee on Science;

2. The problem of customs valuation of goods is resolved by the Technical Committee on Customs Valuation of Goods (served by the Agreement on the Application of Article VII of GATT) and by the Technical Committee on Customs Valuation (servicing the Brussels Convention);

3. Customs technical means are the scope of activity of the Standing Technical Committee, the Subcommittee on Automated Data Processing;

4. The issue of determining the country of origin of goods shall be considered by the Technical Committee for the determination of the country of origin of the goods.

It should be noted that in reality, the number of CCC executive bodies represented by different technical committees, subcommittees and working groups is much larger.

Having worked out the official site of the CCC, we can conclude that Having studied the official site of the CCC, it can be concluded that as of December 2019, the following CCC executive committees, subcommittees and working groups belong to the list of CCC executive bodies, which are grouped by activity within four groups, namely:

1) Tariff and trade issues: Committee on the Harmonized System; Harmonized System Review Subcommittee; Scientific Subcommittee; Working Group on Harmonized System; Technical Committee on Rules of Origin; Customs Technical Committee; Transfer Pricing Focus Group;

2) Procedures and facilitation: Permanent Technical Committee; Information Management Subcommittee; the Committee on the Revised Kyoto Convention; Administrative Committee of the Istanbul Convention; Contracting Parties to the ATA Convention;

3) Assurance and Compliance: Executive Committee; Working Group on Commercial Fraud; Group of projects on global information and intelligence strategy; CCC Counterfeit and Piracy Group (CAP); EGovernment Expert Group;

4) Capacity Building: Capacity Building Committee; Integrity Subcommittee (2019).

Unfortunately, even a brief description of the powers of all executive bodies within our work is not possible. Therefore, by summarizing the above, it can be assured that the CCC has a branched and complex internal structure of bodies whose powers and activities generally correspond to the basic functions assigned to it by the founding States. In particular, it concerns the provision of proper conditions for the continued maintenance of the relations of international customs cooperation within the framework of its activity, as well as the normative consolidation of the results of such cooperation through the progressive development and codification of the rules of international customs law.

4. Conclusions

Summarizing the above, we can draw the following conclusions:

1. The legal capacity, privileges and immunities of the CCC are limited, functional in nature, that is, they are granted for the purpose of achieving the goals and tasks set for the organization, as well as fulfilling the functions assigned to it.

It is appropriate to divide the capacity of the Customs Cooperation Council into international legal and private legal. The international legal capacity of the CCC is realized in relations with other subjects of international law on various issues of their international cooperation, in particular concerning the conclusion of international agreements, holding of joint international conferences and other measures (carrying out joint operations aimed at combating international crime, overcoming the consequences of natural disasters, etc.). The private legal capacity of the CCC is realized mainly through the conclusion of various agreements, acquisition and alienation of immovable and movable property, violation of persecution within the national jurisdiction of the states.

2. It is appropriate to classify Privileges and immunities of the CCC into three groups: 1) the privileges and immunities conferred on the Council; 2) the privileges and immunities conferred on the officials of the Council; and 3) the privileges and immunities of the representatives of the members of the Council, as well as the advisers and experts who reside with them. Among the privileges and immunities granted to the CCC are the following: from the national jurisdiction of States; tax (fiscal) immunities; customs immunities; freedom of communication with both the receiving State and the CCC, etc. In the case of abuse of privileges and immunities, the latter may be revoked and those involved in such abuse may be deported or brought to justice.

3. The institutional structure of the CCC is proposed to be classified into three types of bodies: representative bodies (Council, General Political Commission, and Finance Committee); administrative (General Secretariat); executive (committees, subcommittees and various working groups, which are divided into four groups depending on the subject of activity: tariff and trade issues: Committee on the Harmonized System; Subcommittee on the Review of the Harmonized System; Scientific Subcommittee; Working Group on Harmonized System; Technical Committees; Customs Evaluation Technical Committee; Transfer Pricing Focus Group; Procedures and Facilitation: Standing Technical Committee; Information Management Subcommittee; Revised Kyoto Convention Committee; Steering Committee of the Istanbul Convention; ATA Contracting Parties; Provision and Compliance: Executive Committee; Commercial Fraud Working Group; Global Information and Intelligence Strategy Project Team; CCC Counterfeiting and Piracy Group (CAP); Electronic Crime Expert Group; Capacity Building: Capacity Building Committee; Integrity Subcommittee).

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ПРАВОЗДАТНІСТЬ, ОРГАНІЗАЦІЙНА СТРУКТУРА, ПРИВІЛЕЇ ТА ПІЛЬГИ РАДИ МИТНОГО СПІВРОБІТНИЦТВА

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Теоретики та практики з усього світу зацікавлені у роботі Ради Митного Співробітництва, також відомої як Світова Митна Організація, через те, що це єдина різностороння міжнародна організація, у якій, станом на грудень 2019 року, налічується 183 незалежних учасники міжнародних митних відносин. З огляду на це, у статті проаналізовано правоздатність, привілеї та пільги Ради Митного Співробітництва та досліджено її внутрішню організаційну структуру на основі детального вивчення Конвенції про створення Ради Митного Співробітництва від 15 грудня 1950 року, офіційного сайту Ради Митного Співробітництва та Організації Об'єднаних Націй, а також науково-освітніх робіт українських та іноземних науковців. По завершенню дослідження були отримані такі результати: правоздатність, привілеї та пільги Ради Митного Співробітництва обмежені, за своїм характером функціональні, тобто такі, що надаються з метою досягнення цілей та вирішення завдань організації, а також виконання її функцій. Доречно розділити сферу діяльності Ради Митного Співробітництва на вплив міжнародного та приватного права. Привілеї та пільги Ради Митного Співробітництва класифікують за трьома групами: 1) привілеї та пільги, надані Раді; 2) привілеї та пільги, надані офіційним представникам Ради; 3) привілеї та пільги, надані представникам членів Ради, також їхнім радникам та експертам. Внутрішня організаційна структура Ради Митного Співробітництва складається з великої кількості органів, які можна розділити на три групи, а саме: представницькі органи (Рада, Комісія з Загальних Політичних Питань та Фінансовий Комітет); адміністративні органи (Генеральний Секретаріат); виконавчі органи (Постійний Технічний Комітет, а також інші комітети, підкомітети та різноманітні робочі групи).

Ключові слова: Рада Митного Співробітництва, Світова Митна Організація, правоздатність, привілеї, пільги, Рада, Комісія з Загальних Політичних Питань, Фінансовий Комітет, Секретаріат, Постійний Технічний Комітет.

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IMPLEMENTATION OF INTEGRATED CUSTOMS RISK MANAGEMENT IN UKRAINE

The article is devoted to the peculiarities of implementation of integrated customs risk management in Ukraine. The authors analyze the basic principles and requirements of international standards for the customs risk management. The stages of customs risk management formation in Ukraine and prospects of its development are determined. Attention is paid to the implementation of international enforcement information systems to ensure compliance with the legislation throughout the supply chain. The role of forming the maturity of risk management is emphasized for the implementation of integrated risk management in the customs authorities. The ways of implementation of integrated customs risk management are offered and an innovative model of integrated risk-management in the activity of customs bodies of Ukraine is developed on base the quality management, change management and knowledge management. The use of different types of benchmarking in the implementation of the proposed model is seen as an effective tool for improving the efficiency of all activities and management of the customs system.

Key words: international standards, integrated risk management, customs risks, automated risk analysis and management system, innovative model, quality management, change management, knowledge management.

JEL Classification: F130, F590.

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Introduction.

Customs administrations operate in a complex environment of constant change. They are required to respond to the promotion of economic development and to comply with regional, national and international obligations. Like any organization Customs faces internal and external uncertainties that affect its ability to achieve its goals. According to the international standard ISO 31000 (2018) «Risk management – Principles and guidelines on implementation» the effect of uncertainty on an organization's objectives is risk. All directions of activity in every organization involve risks, and the State Fiscal Service of Ukraine (hereinafter – SFS) is no exception. Thus, efficient management of customs risks is one of the most strategic tasks of the SFS.

Risk Management was recognized by all customs administrations as a new philosophy of customs control, which helps to be a maximum effectively used resource at the border for fast goods movement, transport and passengers with the providing safety of the society within it.

So implementation of risk management in customs context should based on an experience of private and public sector in developed countries.

The aim of this paper is to analyze the features of implementation the risk management methodology in the customs affairs of Ukraine, taking into account international standards and requirements of the EU legislation, and to develop the proposals for the implementation of the integrated customs risk management model based on quality, knowledge and change management for both compliance and trade facilitation.

Literature Review

The main basis for customs risk management researches is the international agreements, conventions and other legislations in the international trade and customs affairs, the international standards and methodological papers in this field and also case study of different countries to choose the best experience.

The issue of implementation of customs international standards in national legislation and specific mechanisms for its implementation were studied in the works of domestic and foreign customs theorists and practitioners. Some aspects of customs regulation of foreign trade activity in Ukraine and the role of customs in ensuring national security were studied by Berezhnyuk (2009), Borysenko (2012), Chentsov (2012), Czyżowicz (2015), Ivashova (2008), Kveliashvili (2010), Mashiri & Sebele-Mpofu (2016) and others.

Following the renewal of the Kyoto Convention (1999), after the adoption of SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO, 2007) and the introduction of risk management systems in the practice of customs formalities around the world, a separate direction of research was devoted to this topic.

One of the first significant research works in this field was written by Widdowson (2003).

In Ukraine Pashko (2009) formed the customs security concept, the main category of which is customs risk. The papers of Tereshchenko (2012), Berezhnyuk (2014), Gellert (2014), Komarov (2016) and others were devoted to problems of organization and improvement customs risk management in Ukraine, institutional and legal aspects of its implementation and mechanism of automation, analysis of foreign experience in this field. Despite the importance of these studies, they emphasized only on the separated parts of risk management system, leaving without consideration the integrated approach to its implement. Therefore, all this resulted in the choice of theme of this paper.

Methodology

To achieve the object of the research, we used the integrated application of general scientific and special methods, in particular: methods of analysis and synthesis – for considering normative and theoretical sources regarding the risk management application in the customs authorities activity; comparative analysis – to study foreign experience of implementing customs risk management and a systematic approach – during the analysis of risk management as a system in the customs authorities of Ukraine. Structural-functional analysis and abstract-logical methods determined the factors of customs risks. Using the method of modeling we developed the innovative model of integrated risk management in the activity of customs authorities of Ukraine.

Results and Discussion

The functional role of Customs includes the demands of the international community to the customs administrations in the twenty first century and the conventional mission of Customs: «to develop and implement an integrated set of policies and procedures that ensure increased

safety and security, as well as effective trade facilitation and revenue collection» (World customs organization (hereinafter – WCO), 2008, p. 5).

The most powerful techniques used by Customs agencies to deliver their mission are risk management and audits proclaimed the main methods of customs control in the International Convention on the Simplification and Harmonization of Customs Procedures (hereinafter – Kyoto Convention) (WCO, 1999). These techniques allow Customs agencies to assist the vast majority of economic operators who wish to be compliant, and enables them to concentrate their resources on controlling the smaller number who represent the greatest risk to a country. As recognized Jeacocke and Kouwenhoven (2017, p.28), data analytics – for example, automated selectivity rules – has become increasingly important in enabling these techniques.

According to chapter 6 «Customs control» of Kyoto Convention (1999) risk is defined as the potential for non-compliance with Customs laws. So all customs administration must use risk management system in their customs formalities. However, Widdowson (2003) noted that risks to the achievement of organizational goals not only include the potential for non-compliance with customs laws, but also the potential failure to facilitate trade, which is revealed in the process of customs service delivery to trading community.

This statement was confirmed in the SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO, 2007) which provides a model for administrations and governments wishing to develop security measures to facilitate and secure global supply chains. The SAFE Framework bases on four core elements, two of which are directly related to the risk management system:

1. the harmonization of advance electronic cargo information on inbound, outbound and transit shipments;

2. the requirement that each country that joins SAFE commits to employing a consistent risk management approach to address security threats;

3. the requirement that on request of the customs administration in the receiving nation, the customs administration of the sending nation performs an outbound inspection of high-risk containers and cargo using non-intrusive detection equipment;

4. the benefits that Customs authorities will provide to businesses that meet minimal supply chain security standards and best practices, including enhanced trade facilitation for legitimate trade and AEO concept.

The SAFE Framework, based on this core principles, rests on tree pillars ‘Customs to Customs’, ‘Customs to Business’, ‘Customs to other government and inter-government’, each of which involves a set of standards that are consolidated to guarantee ease of understanding and rapid international implementation.

The Risk Management Systems is a key element of the pillar 1 of the SAFE Framework that should include a mechanism for validating threat assessments and targeting decisions and implementing best practices. According to the SAFE Framework (WCO, 2007, p. 13) the Customs administration should establish a risk-management system to identify potentially high-risk cargo and/or transport conveyances and automate that system.

Adherence to the principle of risk-oriented management by the borders much depends on effectiveness of intercommunication between customs administrations, with business communities and other state and intergovernmental agencies, namely realization of the three backbones of Framework security standards and trade facilitation.

The WCO develops more detailed implementing provisions for the risk management: the Risk Management Guide (WCO, 2003); the Global Information and Intelligence Strategy, the

Standard risk assessment methods, A general indicator of high risk (WCO, 2005) and the Risk Management Compendium (WCO, 2011).

The Compendium is comprised of two separate but interlinked volumes. Volume 1 sets out the organizational framework for risk management and outlines the risk management process. Volume 2 deals with risk assessment, profiling and targeting tools that inform selection criteria for identifying high-risk consignments, passengers and conveyances for Customs intervention.

After taking the WCO Risk Management Compendium in 2011 the customs administrations over the world should implement the principles of international standard of integrated risk management ISO 31000 in their own risk management system. That methodology must allow them to achieve the balance between trade facilitation and regulatory control.

Continuing development of main modern principles of customs affairs, the WCO has dedicated last years of customs administration development with annually slogans 'Digital Customs: Progressive Engagement' (2016), 'Data Analysis for Effective Border Management' (2017) and 'SMART borders for seamless Trade, Travel and Transport' (2019). That statements are noted to the implement both information and communications technologies and innovation in customs control procedures, digital solutions and services. Dr Kunio Mikuriya (2017), Secretary General of the WCO, stated that data analysis plays the critical role in modernizing customs administrations to improve border management. During this process, a proper feedback mechanism will be essential so as to enhance the efficiency of risk management engines.

The World Trade Organization (hereinafter – WTO) Trade Facilitation Agreement (hereinafter – TFA) sets out the obligations relating to risk management in Article 7, sub-paragraph 4, which provides that each WTO member shall:

1. to the extent possible, adopt or maintain a risk management system for customs control.

2. design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.

3. concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments. It may also select, on a random basis, consignments for such controls as part of its risk management.

4. base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport (WTO, 2013, pp. 8-9).

In the European Union the using of customs risk management is established in the Union Customs Code and EU Customs Blueprints. Therefore much attention is paid to customs risk management in the Association Agreement between the European Union and its Member States, and Ukraine (2014). Provisions of Association Agreement chapter 5 'Customs and trade facilitation' set that EU and Ukraine respective trade and customs legislation shall be stable and comprehensive. Besides provisions and procedures shall be proportionate, transparent, predictable, non-discriminatory, impartial and applied uniformly and effectively and shall inter alia: apply modern customs techniques, including risk assessment, post clearance controls and company audit methods in order to simplify and facilitate the entry and release of goods.

The Ukraine also has own experience of using risk management principles into its customs control formalities since 2005.

The implementation of the customs risk management system in Ukraine took four stages (Razumiej & Razumiej, 2017, 2018): the initial (preparatory) stage (1999-2005), the stage

of formation (2005-2009), the stage of improvement (2009-2012) and the stage of integrated development (commenced with 2012). Each stage is characterized by certain achievements in the fields of legislative, organizational and information provision.

The key point in introducing the customs risk management methodology in Ukraine was approved Concept of the creation, implementation and development of a system for analysis and risk management in 2005. According to the Concept, the customs authorities of Ukraine during customs control should be guided by the principle of selectivity and, as a rule, be limited to the forms of customs control that are sufficient to ensure compliance with the customs legislation of Ukraine.

In 2005 the the Department of Risk Analysis and Audit was established in the structure of the State Customs Service of Ukraine. In 2006 the creation of an automated risk analysis and management system (hereinafter – ARAMS) began.

Further the risk management system was developed and improved, integrating into the system of general management of the customs authorities.

ARAMS provides automated data comparison within particular transactions, matching them with programmed algorithms (that is, risk profiles). Where potential risks of a breach of customs law are identified, the customs inspector is automatically given the list of customs formalities (forms of customs control) which must be applied in order to further assess the identified risks (Komarov, 2016, p.40).

To adjust the risk evaluation there is an opportunity to take into account the previous positive or negative operation history of foreign economic activity participants. Thus, it is possible to reduce the probability of ineffective ARAMS operations for a particular legal entity, carrier, and so on.

Komarov (2016, p. 39) recognizes, that it is not appropriate to rely solely and exclusively on the application of an automated system of risk management. Such a system is only one of the instruments for risk analysis and evaluation which helps to check relevant electronic documentation. At the same time, the importance of such automated systems should not be underestimated. Thus, we define the risk management system as a set of instruments of automated, manual and combined customs controls, based on the principle of selectivity within the scope of customs control required to ensure compliance with customs law.

At the legislative level the use of risk management systems during the selection of customs control forms was defined in 2012 in chapter 52 'Risk Management System' of the current Customs Code of Ukraine. So, the 2012 edition of the Customs Code of Ukraine is designed in accordance with the Kyoto and Istanbul Conventions, the International Convention on the Harmonization of Frontier Controls of Goods and the Customs Code of the EU as well as the WCO Framework of Standards to Secure and Facilitate Global Trade. It provides for flexibility and tailored solutions to enable relevant risk management and administrative strategies to be implemented.

The biggest problem was the inability to effectively manage risks at the central level, therefore, since 2012, the regional risk management and risk analysis at the border checkpoints began to develop. Considerable attention is also paid to the timely updating of the risk profiles to maintain a balance between regulatory control and trade facilitation.

In order to comply with the provisions of the Customs Code, in 2015 the Order of risk analysis and assessment, development and implementation of risk management measures for determination of forms and scope of customs control was adopted by Ministry of Finance of Ukraine. This Order is developed for the purpose of ensuring selectivity of customs control by application of risk management system with use of information technologies and defines the

peculiarities of application the ARAMS, which has been integrated into the Ukrainian customs database 'Inspector'. Also this Order differentiated the concepts of fiscal risks and not fiscal (security) risks.

To speed up customs formalities at the state border of Ukraine, when analyzing and assessing risks, preference is given to the approach whereby non-fiscal risks, as well as risks of non-delivery of goods to customs of destination or their replacement are mainly analyzed and assessed at the checkpoints across the customs border there. In the customs of destination during the customs control and clearance of goods, fiscal and non-fiscal risks are checked. Fiscal risks are meant risks, the identification of which are aimed at preventing the minimization of the payment of taxes and fees, customs and other payments in the implementation of foreign economic operations. Non-fiscal (security) risks are the risks, the identification of which are aimed at ensuring the protection of national security, life and health of people, animals, plants, the environment, and the interests of consumers.

The Ukrainian customs administration applies such instruments of risk management as risk indicators and profiles, orientation, random selection and methodical recommendations.

Creating a software module 'The risk profile designer' in 2015 allows the customs officers in regional customs to fill their risk profiles independently with the indicators relevant to the regional threats. In addition, after the launch of the Single Window system in 2016, it was possible to integrate the information systems of different controlling authorities, allowing the creation of interagency risk profiles.

In 2017 the Cabinet of Ministers of Ukraine adopted the development the Strategy for the Development of a Risk Management System in the Field of Customs Control for the Period up to 2022 and the action plan for its implementation. According to it the Department of Targeting and Customs Risk Management was created in 2017 to enhance coordination and increase the effectiveness of the risk management system in the regions.

Nowadays the perspective of development Ukrainian ARAMS is the implementing the National Customs Enforcement Network (hereinafter – nCEN) of WCO and the European transit system, the New Computerised Transit System (hereinafter – NCTS) to enhance the effectiveness of national customs risk management.

The nCEN software will enable the SFS to efficiently collect, store, analyze and disseminate law enforcement intelligence at the national level in order to enhance the operational capabilities of the SFS Customs, as well as to improve risk profiling at the strategic, tactical and operational levels. This includes schematising the risks and groups of goods, routes and trading companies that are potentially exposed to the violation of customs rules.

The use of nCEN will facilitate a more active exchange of information between customs authorities at the regional and international levels, enhance cooperation between all sectors of the border.

The nCEN consists of three independent databases. The principal database of national seizures and offences comprises data required for analysis, as well as means of conveyance, routes, and the possibility to view photos depicting exceptional concealment methods. Two supplementary databases contain information on suspect persons, methods of conveyance and business entities of interest to Customs, thereby facilitating a structured investigation process

Since 2009, in the territory of the European Community, all transit operations under the TIR Convention was necessarily carried out using the European Customs Information System NCTS which will process the declaration and control the transit movement.

In our opinion, integrated risk management as an integral part of the customs authorities activity will allow not only to effectively implement the initiated state reforms, but also to create a sound basis for the development of the customs system as a modern innovation-oriented institution.

Therefore, the introduction of integrated risk management in the activities of the Ukrainian customs authorities, should begin, first of all, with the formation of a risk-taking culture, which should increase the managerial competence of customs officials. The main element of the risk management culture is to bring the general attitude to risk and related organizational values and priorities to the attention of the employees involved in the decision-making process at all levels of management. Equally important, the goal is to maintain a sufficient level of competence for managers of all key areas of risk assessment and management.

According to Risk Management Compendium (WCO, 2011) the maturity model of risk management is assessed in relation to the main characteristics (culture, process, infrastructure) and based on five different levels of risk management maturity: naive, conscious, defined, managed, included.

Establishing a risk maturity model is important as it allows a common baseline to be established against which risk management practices could be benchmarked. Administrations should define and design a model that fits their unique context.

We can assess the maturity of risk management in the customs authorities of Ukraine at the level of 'risk defined', because the application of this methodology is already some extent standardized with the high-level management of the policy, processes and degree of risk acceptance. However, despite the transition to the stage of integrated development of the risk management system, officials of the customs authorities of Ukraine will have to make significant efforts in implementing the necessary changes aimed at introducing an integrated risk– management, which will cover all areas of their business activities and should become the basis of the customs authorities management.

Besides, implementing of integrated risk-management according to the standard ISO 31000 should be done on the basis proposed innovative model with such technologies as:

1. Change management. Changes are related to both external and internal conditions of customs and border control, especially trends and methods of violations of legislation in this field.

2. Knowledge management. The rapid growth of information is as a risk and as an ability for customs administrations. The risk is related to the increased complexity of information management in the context of its effective collection and conversion into the accessible form for quality decision-making.

3. Quality management. The quality customs services for business community and citizens, providing quality control of compliance with law with cross-borders, needs an adherence to standards of quality control to ensure both internal support of the customs and border authorities and realization of processes at the border by them.

It should be noted that the use of these technologies should be periodically benchmarked. Benchmarking plays a significant role in the implementation of quality management and risk management systems, provides an opportunity to determine their own advantages and weaknesses, find directions for change and ways of innovation development. In the customs authorities it will be useful to apply the following types of benchmarking:

– international – borrowing of successful foreign experience and best achievements of customs administrations of the world;

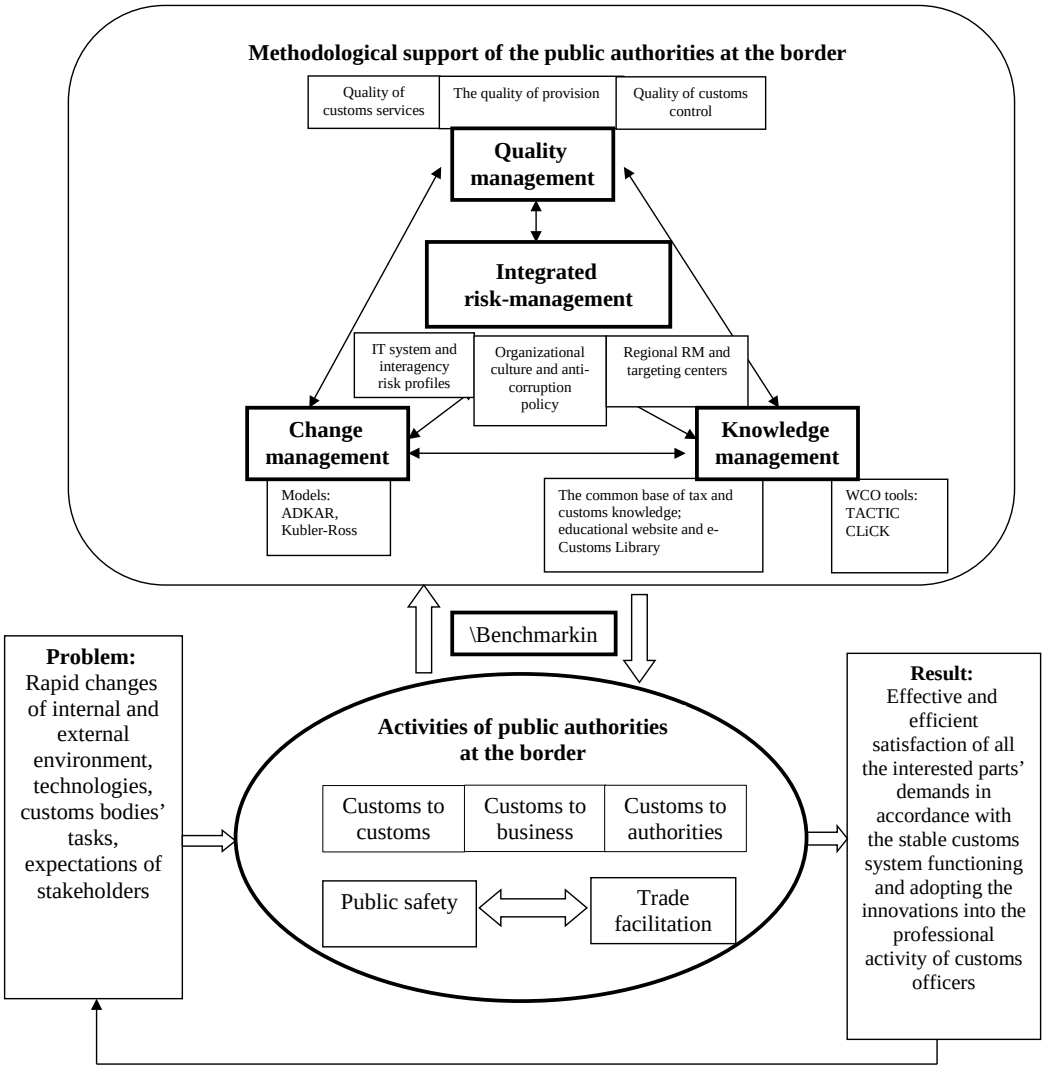

Fig. 1. The innovative model of integrated customs risk management

Source: compiled by the authors

– regional – studying the best practices in customs management in Ukraine, taking into account the specifics of foreign economic activity in the regions – the zones of activity of separate customs authorities;

– process or substantive – analysis and consideration of the best achievements in the implementation of customs formalities and innovations in management processes.

By using different types of benchmarking in relation to an object, subject or method of comparison, customs officials receive an instrument that allows formalizing the transfer and adaptation of advanced managerial experience. In addition, benchmarking is at the same time

an educational tool for an organization that provides a continuous process of research and education, and also provides continuous and steady performance enhancements.

Conclusion

Besides, the implementing of integrated risk management according to the standard ISO 31000 should be done with the technologies of change, knowledge and quality management based on wider using of the European and national IT platform and interagency cooperation for development of regional risk management and establishing of interagency risk profiles. The proposed model will help to solve the permanent problem – rapid changes of internal and external environment, technologies, customs bodies' tasks, expectations of stakeholders – and to achieve of an expected result – effective and efficient satisfaction of all the interested parts' demands in accordance with the stable customs system functioning and adopting the innovations into the professional activity of customs officers.

Taking into account the international experience and domestic practice of applying customs risk management, we propose the following steps that will promote the implementation of integrated risk management in the customs authorities of Ukraine:

1) introduction of risk management in the organizational culture of customs authorities and bringing it to the level of strategic planning;

2) dissemination of risk management awareness among officials of the customs authorities of Ukraine and support of senior management of the process of its implementation;

3) construction of the risk register for the customs system in general and each customs authority separately;

4) determination of respondents for each individual type of risk and their promotion system, formation of risk managers competencies in managers of different levels of management;

5) integration of risk management with the quality management system of the customs authorities of Ukraine in order to effectively achieve its main objectives;

6) introduction of annual reporting on the effectiveness of risk management and review of the risk register of customs authorities in Ukraine.

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УПРОВАДЖЕННЯ ІНТЕГРОВАНОЇ СИСТЕМИ УПРАВЛІННЯ МИТНИМИ РИЗИКАМИ

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Стаття висвітлює особливості впровадження інтегрованої системи управління митними ризиками в Україні. Автори аналізують основні принципи та вимоги міжнародних стандартів до управління митними ризиками. Визначені стадії формування системи управління митними ризиками та перспективи її розвитку. Увага приділяється впровадженню міжнародних інформаційних систем для забезпечення контролю виконання законодавства протягом усього ланцюга поставок. Підкреслюється роль формування повноцінної системи управління ризиками для упровадження інтегрованого управління ризиками у митній службі. Запропоновані шляхи впровадження та розроблена інноваційна модель інтегрованого управління ризиками в органах митної служби України на основі управління якістю, змінами та знаннями. Використання різних типів порівняльного аналізу у впровадженні запропонованої моделі вважається ефективним інструментом покращення продуктивності усіх видів діяльності та управління митними системами.

Ключові слова: міжнародні стандарти, інтегроване управління ризиками, митні ризики система автоматичного аналізу та управління ризиками, інноваційна модель, управління якістю, управління змінами, управління знаннями.

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FACTORS IMPACTING ON THE NEGOTIATION OF MUTUAL RECOGNITION ARRANGEMENTS/ AGREEMENTS OF AUTHORIZED ECONOMIC OPERATOR PROGRAMS: A LITERATURE REVIEW[1]

This paper will review relevant literature with the aim to identify potential factors in the negotiation process of mutual recognition agreements/arrangements (MRA) of authorised economic operator (AEO) programs for future research. AEOs are defined in the the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework)as those companies or individuals who meet specified compliance standards and show a demonstrated commitment to supply chain security. Meanwhile, MRAs are the means through which two Customs administrations recognise each other's validation and authorisations of AEOs and agree to provide mutual trade facilitation benefits to their AEOs.
Negotiationappears to be a common activity in modern society. After the terrorist attacks on 11th September 2001 in the United States (US), the international community has witnessed an emerging type of international negotiation which is the negotiation to reach an AEO MRA. The review of literature concludes thatthere appear to be challenges that exist in AEO MRA negotiations. Those challenges are associated with many factors in negotiations, such as political will, trust (or confidence) in trading partners' regulation environment,etc.Therefore, there is a need for an future empirical research for further understanding of how and to what extent these factors impacting on such negotiation process and outcome.

Key words: mutual recognition agreement, authorized economic operator, supply chain security, trade facilitation, customs cooperation, customs-business partnership.

JEL Classification: F02, F15, F23.

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Introduction

Negotiation is regarded as a common and formal form of communication that takes place between at least two parties to exchange proposals. Negotiation agenda covers a wide range of activities within political, security, trade, culture, education and environment spectrum. Since the 11th September terrorist attacks in the United States, a new form of international negotiations has emerged and significantly increasedwhich is thenegotiations for achieving mutual recognition agreements of AEO programs.

Before the terrorist attacks, various customs administrations across the world had developed customs compliance programs or trade facilitation programs with

[1] Подяка: Я вдячний моїм науковим керівникам професору Девіду Віддовсону та д-р Михайлу Кашубському за підтримку та вказівки щодо підготовки огляду літератури, який став основою для цього документу

the main focus on facilitating international trade.Authorized traders who are compliant with customs regulations would be provided with many benefits such as fast-track clearance of goods or others as recommended in the Revised Kyoto Convention.Then the attacks happened and could be seen as a turning point or game-changing event for governments and the international community to reshape regulatory environments for security reasons at the national, regional and global level (Carter 2014). The US responded to secure global supply chains with the launch of the Customs-Trade Partnership against Terrorism (C-TPAT).

Internationally, the World Customs Organization (WCO) adopted the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) in 2005 consisting of key concepts of Authorised Economic Operator (AEO) and Mutual Recognition Agreement/ Arrangement (MRA) for the aim of promoting end-to-end supply chain security and creating internationally-linked authorised economic operator (AEO) programs as a trade facilitation measure. Many WCO member countries which have signed the Letter of Intent to implement the SAFE Framework, then attempt to develop AEO programs and ensure that all security criteria must be regulated and complied with the SAFE Framework (World Customs Organisation 2014).

AEO MRAs reflect a highlighted aspect of customs to customs network arrangements (U.S. Customs and Border Protection and Directorate-General for Taxation and Customs Union 2013). Further, MRAs have been acknowledged as a key factor for the effectiveness of operational AEO programs (Widdowson 2016) while theyare also regarded as a principal driver for many customs administrations to develop national AEO programs (Ireland 2009).

There are many potential benefits from operational MRAs consisting of the elimination of the need for AEO validation and authorization in countries of importation, the avoidance of duplication of requirements and inspections. The 2017 edition of the compendium of AEO programs recorded a significant increase of signed and negotiated MRAs across the world and stated that this demonstration will contribute to harmonisingthe approach to achieve bilateral and plurilateral recognition agreements (World Customs Organisation 2017).

Although every effort has been made by many WCO members, it would be a lot of challenges to make progress in the mutual recognition of AEO programs(Mikuriya 2007). The WCO calls on its members for having a standardized approach as a “solid platform” to AEO authorization due to its significant role in the development of bilateral, regional and international mutual recognition agreements of AEOs(World Customs Organisation 2015). The organisation also plays a vital role in the development of tools and instruments for promoting and initiating national AEO programs and mutual recognition of AEO programs(World Customs Organisation 2007).

However, it would be also acknowledged about the current circumstances that many countries have many concluded MRAs or ongoing negotiations while others are not ready to get involved or still struggle with their first MRA negotiations. There are obstacles associated with many factors in MRA negotiations, such as compatibility with the SAFE Framework, trust level, and political will. This literature review thus aims to gain a deep insight into the body knowledge of MRA negotiations. In doing so, negotiation literature will be reviewed to provide an overview of negotiations. Further, various factors will be discussed with regard to their impacts on AEO MRA negotiations.

Overview of negotiation studies

It is widely accepted among scholars and practitioners that negotiation is a multi-staged, cooperative process or a sequence of events for discussing proposals and reaching an agreement from different viewpoints of at least two parties (Kissinger 1969, Casse 1981, De Mesquita

2004, Wertheim n.d.) in which they could be individuals, groups or nations. So negotiationhas become commonplace than ever before and presentedin a wide variety of fields, such as political, economic, education(Belshek n.d.), environment(Mace, Mrema et al. 2007) within bothnational and international settings(Mautner-Markhof 1989).

It is widely believed that most negotiations would be confidential which likely lead to insufficient primary source of data for research purpose (Bailer 2009). Negotiation studies often focus on strategies, approaches, processes, tactics, and outcomes(Alfredson and Cungu 2008, Saee 2008, Bailer 2009, Mansbridge and Martin 2013, Katz, Kochan et al. 2015, Brett and Thompson 2016, Weiler 2017). However, scholars in the field would attempt to utilise different methodologies in their studies. From the qualitative side, Sanches Neves, Liboni et al. (2013) obtains a qualitative approach with case studies to explore factors that motivate negotiators and how these factors affect negotiations while

Esther and Olukayode (2018) research cultural influences on negotiations and would like to have more explanations to research questions by using a qualitative approach. In the meantime, Weiler (2017) utilises quantitative research methods to measure relevant actors (power resources, bargaining strategies, etc.) against the outcome of negotiations. A quantitative approach is also used by Wood (2017) to demonstrate the results of negotiations significantly affected by non-economic and economic factors. Nonetheless, there is still negotiation studiesemploying mixed methods, such as Olughor (2014).

Recent research studies and explores factors influencing the negotiation style,tactic, process, outcome(Ocran 1985, Bontadini 1989, Grunert 1989, Lang 1989, Lundstedt 1989, Plantey 1989, Poortinga and Hendriks 1989, Rinehart 1989, Holzinger 2001, Asian Development Bank 2008, Saee 2008, O'Brien and Gowan 2012, Mansbridge and Martin 2013, Sanches Neves, Liboni et al. 2013, Meerts 2015, Ahammad, Tarba et al. 2016, Brett and Thompson 2016, Stelzer 2016, Ko and Kwak 2017, Weiler 2017, Belshek n.d., Wertheim n.d.). A general assumption from these studies is that there are different factors affecting the outcome of specific negotiations although certain overlapping factors are also identified. In many of these negotiation studies, the cultural factor is frequently mentioned as an important factor (Ocran 1985, Mainardes, Nunes et al. 2013, Mansbridge and Martin 2013, Ahammad, Tarba et al. 2016, Belshek n.d.). Other factors are also analysed such as trust (Saee 2008, Mainardes, Nunes et al. 2013, Brett and Thompson 2016), national interest (Khroustalev 1989), social, political, economic setting (Ocran 1985), negotiators' skills (Asian Development Bank 2008), training of international negotiators (Bontadini 1989, Mastenbroek 1989), geography, geopolitics, governmental structures, economic indicators, legal and educational systems (Quinney 2002). Therefore, Mautner-Markhof (1989) emphasises influencing factors subject to its own international negotiation setting that:

It is necessary to consider the processes associated with international negotiations in the context of their cultural and political environments. Negotiationsare dependent not only on the system in which they are embedded but also onthe various perceptions of those involved. Thus, it is important to identify anddeal with the impacts of cultural, political, and psychological factors on international negotiations.

In a globalised world, international negotiations have developed both in number and diversity (Mautner-Markhof 1989). Many authors emphasise their researches on the topic of international negotiations (Mautner-Markhof 1989, Saee 2008, Mainardes, Nunes et al. 2013, Meerts 2015, Drahos 2017, Weiler 2017). Meerts (2015)stipulates that international negotiations could take place between parties from private or public sectors and makes use of the terms "diplomatic

negotiation" for indicating negotiations between nations. Saee (2008) and Lewicki, Saunders et al. (2006) mention the level of complexity and difficulty of international negotiations which are attributed several factors such as different laws, regulations, standards, business practices, and cultural differences Saee (2008) or categorised factors into environmental (such as international economics, instability) and immediate contexts. Meanwhile, Mainardes, Nunes et al. (2013) states that international negotiations have more risks than domestic negotiations due to factors such as laws, norms, cultural differences, personal values, personalities or negotiating styles. Nevertheless, Drahos (2017) emphasises "international negotiations as a means of diffusion of regulatory capitalism".

There has been a growing number of AEO MRA negotiations among countries across the globe in the last decade. In essence, MRAs mean bilateral or plurilateral understandings in the form of agreements or arrangments (Aigner 2010, Karlsson 2017). Such agreements include verification procedures such as implementation, evaluation, and maintaining MRAs (U.S. Customs and Border Protection and Directorate-General for Taxation and Customs Union 2013). This mechanism needs a close collaboration among customs administrations for entering MRAs negotiations and for recognising each other partner's AEO programs in terms of validation and authorization processes.

Factors impact on the AEO MRA negotiations

In recent years, numerous studies have attempted to investigate factors that impact on the AEO MRA negotiations from varying perspectives. Some studies emphesised on economic factors by using empirical methods (Kim 2017) while others presented concepts, such as compatibility of AEO programs with the SAFE Framework on MRA negotiations (Fletcher 2007, Harrison and Holloway 2007, Aigner 2010, National Board of Trade 2010, Polner 2010, Altemöller 2011, Lánská and Vittek 2012, Hintsa 2013, Carter 2014, Karlsson 2017), or national sovereignty (Altemöller 2011). This section aims to identify factors impacting on the negotiation of AEO MRAs from existing literature.

To facilitate the understanding of a broad range of factors, studies on negotiation often categorise factors depending on their similar attributes (Mainardes, Nunes et al. 2013).The review of literature on the AEO MRA negotiations has been conducted and identified a variety of potential factors. Based on the nature of each factor, they are then categorized into a number of groups consisting of political, regulatory, organizational-culture, technical, economic, and psychological characteristics to facilitate the construction of conceptual research framework.

Political characteristics

Political characteristics include areas such as government policy, political structure and stability,political support, trade control, import restrictions and tariffs, regulation or deregulation, and the belief of politicians towards specific countries in their international relations. Many authors examine the influence of political factors on the negotiation of AEO MRAs which involve political will, national sovereignty, trade facilitation and control (non-tariff barriers, import clearance time as indicators), and trust in trading partners' regulatory environment(Donner and Kruk 2009, Aigner 2010, National Board of Trade 2010, Altemöller 2011, Hintsa 2013, Chuah 2014, Ariadna 2016, Chan and Holler 2016, Widdowson 2016, Kim 2017).

The National Board of Trade (2010)focuses on the development of AEO-like programs to date in many key trading nations across the world and noted that a solution for both parties in MRA negotiations could depend on political will and real cooperation of both parties. In a different view, Altemöller (2011) identifies challenges for MRAs negotiations attributing to national sovereignty. National AEO programs often represent nations' priority of security which is consequently

connected to national sovereignty. This thus may well become "political impediments" for MRAs. Similarly, Chuah (2014)in a recent study also mentions the case that one negotiating partner could take advantage of MRAs to influence other partners' regulations.

Besides that, non-tariff barriers (NTBs) such as import licensing, customs and administrative entry procedures, standards, pre-shipment inspections are not mentioned in any AEO programs which may be problematic to the negotiation of MRAs. Questions raised in this situation that once MRAs are on operational but in a later stage, certain NTBs would be required by a party to protect its domestic market (Ariadna 2016). On the other hand, Kim (2012) in Kim (2017) argues that AEO MRAs can be combined with Free Trade Agreements (FTA) to eliminate the effects of NTBs. Additionally, Kim (2017) notes that the likelihood of achieving AEO MRA is higher within countries with a lower level of NTBs.

There are not many empirical studies on the field of AEO MRAs, but Lee and Shao (2014) conducts a compelling study based on empirical data collected from prior and post-AEO MRA and found that import clearance time for AEO companies which is faster than non-AEO companies before MRAs and significantly reduced after MRAs, as well as the number and percentage of goods examination for AEOs being substantially reduced after MRAs. In the meanwhile, Kim (2017)finds the correlation between AEO MRAs and import clearance time (p. 24).

Table 1

Factors with political characteristics are extracted from the existing literature

Factor	Explanation	Author
Political will	In the aspect of this research, ***political will*** refers to the intention, desire or commitment of political actors to work on "all phases of the process of preparation and implementation of a policy", such as government initiative, choice of policy, public commitment and allocation of resource, continuity of effort, monitoring of implementation (Abazović and Mujkić 2015).	(Fletcher 2007, Harrison and Holloway 2007, Aigner 2010, National Board of Trade 2010, Polner 2010, Altemöller 2011, Lánská and Vittek 2012, Hintsa 2013, U.S. Customs and Border Protection and Directorate-General for Taxation and Customs Union 2013, Carter 2014, Karlsson 2017, World Customs Organisation 2018)
National sovereignty	***National sovereignty*** refers to the power or the authority of a nation to control its internal matters without foreign interference (such as making, executing, and applying laws) and protecting its independence, territory and political structure (Steinberg 2013).	(Altemöller 2011, Chuah 2014, Tegneman and Tryggvason 2015)
Non-tariff barriers	There are not only customs but other border agencies at the border. Regulations and procedures which require excessive documentation by these agencies are likely to create ***non-tariff barriers*** to international trade.	(Ariadna 2016, Kim 2017)
Import clearance time	***Import clearance time*** refers to the amount of time that it takes to clear import goods from customs/border agencies.	(Lee and Shao 2014, Kim 2017)

Regulatory characteristics

These factors with regulatory characteristics involve the presence and changes in laws, administrative guidelines for the implementation of AEO programs and the achievement of AEO MRAs. They may well include the compatibility of AEO programs with the SAFE Framework, the focus of AEO programs, the scope of AEO programs, and dispute resolution procedures.

The compatibility of AEO programs with the SAFE Framework means the level of AEO programs to be compatible with the SAFE Framework and its instruments which could affect MRA negotiations. Many studies noted the importance of the compatibility of AEO programs with the SAFE Framework on MRA negotiations (Fletcher 2007, Harrison and Holloway 2007, Polner 2010, Altemöller 2011, Lánská and Vittek 2012, Hintsa 2013). This is because the SAFE Framework sets out global standards and principles for developing AEO programs, and encourages Customs administrations to implement them in a uniform manner. Further, Hintsa (2013) and Polner (2010) regards the SAFE Framework playing the role of a model for harmonized implementation in every contracting party. In the meantime, other researches emphasise that if WCO members develop AEO programs with provisions different from the recommendations of the SAFE Framework which may cause those AEO programs divergent and incompatible with the SAFE Framework(Aigner 2010, National Board of Trade 2010, Lánská and Vittek 2012, Karlsson 2017). Therefore, the updated SAFE Framework (version 2018) emphasises that "If the respective countries are signatories to SAFE, the critical Customs to Business Pillar fundamentals will already be in place to foster a healthy negotiating environment." (World Customs Organisation 2018).

The SAFE Framework foster this process by providing guidelines for WCO members to establish AEO programs (World Customs Organisation 2012). Many studies are in favour of the application of these guidelines to harmonise countries' security initiatives (Fletcher 2007) and to becompatible with the SAFE Framework standards. If so, their AEO programs could be recognized across the world(Altemöller 2011) and this facilitates the acceptance of other parties' initiatives in mutual recognition processes (Lánská and Vittek 2012). Additionally, MRAs will be fostered by common standards and uniform criteria from countries' AEO programs in negotiations (Altemöller 2011, Lánská and Vittek 2012).

Lánská and Vittek (2012) states that the example of EU-US MRA represents a favourable approach to negotiations of different programs based on similar principles such as the data exchange, not their philosophy. This finding seems to be reinforced by a decision signed on May 4, 2012 between the US and the EU for mutually recognizing the C-TPAT program in the U.S. and the AEO program in the EU in a compatible manner and operators holding a membership status of these two programs are equally treated, "to the extent practicable and possible" (U.S. Customs and Border Protection and Directorate-General for Taxation and Customs Union 2013). More especially, Carter (2014) emphasises "the understanding of similarities of security standards in different nations" and notes that several customs compliance programs which are recognised as equivalent to another party's AEO programs in concluded MRAs. It appears that Carter's findings are less convincing and the reason for this will be discussed below.

The scope of AEO programs is regarded as the choice of countries to develop AEO programs with their priority for export only, import only or both export and import. The National Board of Trade (2010) gives a reference from the SAFE Framework that both import

and export flows need to be taken into account in mutual recognition of AEO programs. Apart from the scope, the focus of AEO programs refers to the structure of customs-business partnership programs whereby they are developed and included with a layer of trade compliance provisions or a layer of security provisions, or both layers. This could be because there are different initiatives or concepts for "trusted trader", including the Revised Kyoto Convention, the SAFE Framework, and the Trade Facilitation Agreement. While an AEO and AEO MRAs are defined in the SAFE Framework which create international standards for customs administrations to launch AEO programs and seek AEO MRAs with other customs administrations, other programs with only a compliance layer could be regarded as a customs compliance program or a customs facilitation program with no common specified criteria and standards (World Customs Organisation 2014, World Customs Organisation 2016).

In the National Board of Trade (2010), the EU sets real mutuality (for AEO programs with both export and import) as a goal for MRA negotiations, Karlsson (2017)however emphasises on a challenge to MRA negotiations if AEO programs lack maturity. The reason isgiven byKarlsson (2017) that there will be a situation of unbalanced benefits to exchange in two programs which make it difficult to "provides more benefits that already exist in the national programs". Nonetheless, the maturity of an AEO program could be subtle when taking an example from Australia as this country launched the Trusted Trader program and then obtained their first MRA with New Zealand nearly at the same time. So it appears that the maturity of an AEO program would be simply a synthesis of other factors, such as the scope, the focus, etc.

Widdowson, Blegen et al. (2014) have a different view with a study that reviews 'Accredited Operator' (AO) schemes on operation or being implemented worldwide and stresses on security standards in AEO programs as principal criteria for mutual recognition with evidence from the potential of New Zealand-Australia MRAs. Because the sole scope of New Zealand's Secure Export Scheme (SES) is the security of exported cargo, and MRA between two countries could be achieved with only security standards in Australia' AEO program. Another example of this is the MRAs between New Zealand and the US.

It is recommended by the WCO that countries seeking AEO MRA partners should take into account whether their partners' respective programs are fully operational and consistent with security standards specified in the SAFE Framework. Furthermore, security components in their partners' AEO programs should have a "rigorous validation methodology" (World Customs Organisation 2018).

Chuah (2014) explains that dispute resolution procedures mean a mechanism which allows a partner of MRAs to exercise against irregularities involving AEO companies from other partners' programs. Two examples from Chuah (2014) including the EU-US and EU-Japan agreements show the presence of such procedures thereby customs administrations can suspend the benefits provided to other partners' AEOs. However, reasons must be promptly given and there will be further consultations between two customs administrations. The author argues that these two agreements also present different provisions relating to dispute resolution procedures, but clearly demonstrate "how the suspension of benefits take place" and the possible impact on each other's relationship in MRAs. Although Chuah (2014) mentions the lack of dispute resolution procedures as a challenge of mutual recognition in the EU-China context, it is still unclear how this challenge can affect MRA negotiations.

Table 2

Factors with regulatory characteristics are extracted from the existing literature

Factor	Explanation	Author
Compatibility of AEO programs with the SAFE Framework	***The compatibility with the SAFE Framework*** refers to a status by which national or regional AEO programs should be based on similar principles, uniform criteria or common standards as recommended by the SAFE Framework, such as AEO certification, assessment, approval, monitoring of AEO status, post-authorization mechanism.	(Fletcher 2007, Harrison and Holloway 2007, Aigner 2010, National Board of Trade 2010, Polner 2010, Altemöller 2011, Lánská and Vittek 2012, World Customs Organisation 2012, Hintsa 2013, U.S. Customs and Border Protection and Directorate-General for Taxation and Customs Union 2013, Carter 2014, Karlsson 2017, World Customs Organisation 2018)
The scope of AEO programs	***The scopeof AEO programs*** is regarded as countries choose to develop AEO programs with their priority for export only, import only or both export and import.	(National Board of Trade 2010, Karlsson 2017)
The focus of AEO programs	***The focus of AEO programs*** refers to the structure of Customs-business partnership programs whereby they include a layer of trade compliance provisions or a layer of security provisions, or both layers.	(Widdowson, Blegen et al. 2014, World Customs Organisation 2014, World Customs Organisation 2016, World Customs Organisation 2018)
Dispute resolution procedures	This factor refers to “the procedures to be followed if one MRA partner finds irregularities involving the AEOs of the other partner country's AEO Programme” (Chuah 2014).	(Chuah 2014)

Organisational-culture characteristics

Organisational culture-related factors comprise a set of the shared values and beliefs by a nation, a trading community which provide guidance or lead the ways community members organizing and interacting with each other towards their objectives(Cooke and Szumal 1993). Previous authors identified several factors related to organizational-culture, comprised of high-level internal commitment, resource allocation, MRA training, the awareness of traders of MRA concept, utilisation, and benefits, trader’s satisfaction with MRA benefits (Kim 2017, World Customs Organisation 2018).

High-level internal commitment identified in the WCO Mutual Recognition Strategy Guide (the WCO Strategy Guide) is regarded as an important factor influencing MRA negotiations. This means that when a country identifies potential MRA partners and between them existing larger agreements (e.g. Customs Mutual Assistance Agreement (CMAA), Supply Chain Security Agreement, Letter of Intent), MRA negotiations are likely to be successful due to obtaining high-level interest and political support. The tool also recommends that internal commitments at senior level should be previously achieved to support efficiently an MRA negotiation (World Customs Organisation 2018).

However, resource allocation factor has not been broadly discussed in the literature that could impact MRA negotiations, except the WCO Mutual Recognition Strategy Guide. This guide mentioned that prior to reaching other customs administrations for MRA engagement, one customs administration should consider the proposed timeframe for MRA negotiation process, the availability of human and financial resources (World Customs Organisation 2018). Therefore, when two or more countries decide to initiate into AEO MRA negotiations, it is also important that they have to take into account several other factors such as timeframe, human resources, budget for such MRA negotiations.

A critical finding from Kim (2017)is that there is a significantly low level of the awareness on MRA concept, utilisation and benefits among the private sector, and a lower satisfaction on MRA benefits from AEO companies than expectation. Sharing the same view of the significance of raising the awareness about AEO MRAs with Kim (2017), the WCO Mutual Recognition Strategy Guide indicates that MRA training to the private sector will be the key to such objective. Additionally, training materials (e.g. brochure) should be developed by MRA-engaging administrations (World Customs Organisation 2018).

Table 3

Factors with organisational-culture characteristics are extracted from the existing literature

Factor	Explanation	Author
High-level internal commitment	High-level internal commitments to support MRA negotiations	(World Customs Organisation 2018)
Resource allocation	Allocation of time, human and finance for MRA negotiation process.	(World Customs Organisation 2018).
MRA training	MRA training and materials provided to customs officers and the private sector	(World Customs Organisation 2018).
The awareness of traders of MRA concept, utilisation, and benefits	This factor refers to the knowledge and experience of international traders on MRA concept, utilisation, and benefits.	(Kim 2017, World Customs Organisation 2018)
Satisfaction with MRA benefits	This factor refers to the satisfaction of AEO companies with MRA benefits provided under an AEO MRA.	(Kim 2017)

Technical characteristics

Certain technical factors including relevant data exchange, data protection, and integrity could affect the negotiation of MRAs. Weerth (2011), Weerth (2015) states that due to issues related to data exchange and data protection, the number of MRAs negotiations still stands at a low level. Hintsa (2013) emphasises that data exchange is the critical aspect of any MRAs. If there is an absence of this factor, MRAs would not work. Kim (2017) argues that data exchange and protection are "prerequisite of AEO MRA negotiation" which could affect to trust in partner countries' security and a nation tends to have MRA negotiation with partners which possess secure IT environments (p. 25).

Although many authors discussed about legal aspects of data protection, data integrity and exchange Weerth (2011), Weerth (2015)Hintsa (2013)Kim (2017)(Chuah 2014)Aigner (2010)

Ireland (2011)Chan and Holler (2016)National Board of Trade (2010) , just National Board of Trade (2010) recommends the technical aspect regarding data exchange need to take into account in MRA negotiations. While the legal side considers "how to overcome problems" as some information could be confidential or privacy and data protection, the technical side relates the questions of "where it must be agreed", "what data is required", and "how it is to be transferred" to overcome any struggle in the implementation stage of MRA agreements.

Hintsa (2013) presents another potential bottleneck in MRA negotiations is that how the process from data exchange of customs declarations and validation of AEOs to the stage of applying benefits to eligible AEO companies should be clearly described in MRAs. Further, Hintsa (2013) emphasises "The different methods of identifying or referencing AEOs in different countries can make this very problematic, but not insurmountable."

Aigner (2010) notes that countries intend to achieve MRAs could consider carefully about their equivalent standards in AEO programs, requirements of timely data exchange, and also approach to controls, integrity, data protection as these issues could affect to their negotiating partners' trust or common understandings. Another consideration in this aspect is sensitive information for being exchanged or accessible. A study byIreland (2011) points out several controversial viewpoints in MRA negotiations, such as data exchange, data privacy, and scanners in foreign ports. Chan and Holler (2016)suggests an Automated Electronic Data Exchange System and Compatible Trader Identification Number (TIN) Systems for identifying other partners' AEOs and granting eligible benefits and incentives. These systems will be expected to facilitate MRAs negotiations.

Meanwhile, the guidelines for developing a mutual recognition arrangement/agreement presents little issues related to data exchange and the use of risk management. This could be partly understood that a partner of MRAs will be mandated to have access into other partners' systems and to manage the risk concerning data mishandling, breach of security and non-compliance with customs regulations (Chuah 2014).

Table 4

Factors with technical characteristics are extracted from the existing literature

Factor	Explanation	Author
Privacy and Data protection	***Privacy and data protection*** refer to the individual's privacy, the confidentiality of information/data. Privacy must be protected and individuals have the right to have access to their personal data held to verify its accuracy.	(Aigner 2010, National Board of Trade 2010, Ireland 2011, Weerth 2011, Weerth 2015, Chan and Holler 2016, Kim 2017)
Data exchange	***Data exchange*** refers to the exchange of data such as customs declarations, validation of AEO status among Customs administrations.	(Aigner 2010), Ireland (2011), (Hintsa 2013, Kim 2017)
Data integrity	***Data integrity*** refers to the assurance of the accuracy and consistency of data in any system which stores, processes, or retrieves data.	(Aigner 2010)

Economic characteristics

Economic characteristics include factors with regard to the current international trade, the national economy or level of development among countries that are taking part in AEO MRA negotiations. Although these economic-related factors seem to play a critical role in such negotiations, there are just a

few studies on these factors, such as Kim (2017). Interestingly, Kim (2017)findsa greater probability of AEO MRAs related to economy sizes, export value in bilateral trade (p. 24). The limitation identified in Kim (2017) is only the use of secondary data which could reduce the validation of this research.

Table 5

Factors with economic characteristics are extracted from the existing literature

Factor	Explanation	Author
Economic size	In this research, this factor refers to the gross domestic product (GDP) one country can generate in one fiscal year.	(Kim 2017)
Export volume in a bilateral trade	This factor refers to the export revenue that a country generates from exporting goods into another country.	(Kim 2017)

Psychological characteristics

Psychological elements discussed in the literature as factors impacting all negotiations which include trust, assumptions, decisions, attitudes one party makes about the other (Wertheim n.d.). Trust in trading partners' regulatory environment is likely an important element for mutual recognition of AEO programs (Widdowson 2016). Whilst Donner and Kruk (2009)presents trust level among negotiating partners may well be an obstacle in negotiations of MRAs. Hintsa (2013) stresses further that trust could result from close cooperation between customs administrations in which partners in MRA negotiations must have an equivalent regulatory environment (each other's audits, control, and authorisations) and adequate security level. Conducting an investigation of AEO programs in APEC countries, Chan and Holler (2016) notes that there are a number of impediments for achieving plurilateral mutual recognition agreements such as trust on other partner's control mechanisms, data protection while currently, operational MRAs witnessed a divergence even on their general provisions which could impede international trade.

Similarly, Aigner (2010) states that "mutual recognition is based on the trust" between countries and that negotiation of MRAs only happen if there is confidence in each other's security measures. Many AEO mutual recognition arrangements or agreements have been concluded or are being negotiated among customs administrations that they could have sufficient trust in each other's audit, ongoing control, and authorisation. Also, Aigner (2010) notes that to achieve plurilateral or global mutual recognition, it is difficult to ensure that all parties have a similar trust level on each other's programs, control, and audits. However, the National Board of Trade (2010) claims that customs administrations could not "trust blindly" when they negotiate MRAs. Trust would take time to build up, therefore, suggests the WCO ensure the equivalence of AEO programs among its members. If there is a uniform implementation of standards, trust in each other' authorisations will be rooted.

Table 6

Factors with psychologicalcharacteristics are extracted from the existing literature

Factor	Explanation	Author
Trust (or confidence) in trading partners' regulatory environment	Trust (or confidence) in trading partners' regulation environment refers to a firm belief whereby a nation can have whether confidence (sufficient trust) in the reliability, truth, or ability of other nations' regulatory environment (such as audits, controls mechanisms, andauthorisations) and/or adequate security level (such as data protection).	(Donner and Kruk 2009, Hintsa 2013, Chan and Holler 2016, Widdowson 2016)

Conclusion

From the review of the literature, there appear to be challenges that exist in AEO MRA negotiations. While literature indicates conceptual findings of challenges to achieve AEO MRAs associated with certain factors, no previous empirical research to identify and analyse factors impacting on MRA negotiations. Also, there is no clear evidence as to whether the above mentioned are the actual factors and how all identified factors would impact on MRAs negotiations.

The challenges are associated with many factors in negotiations, such as compatibility with the SAFE Framework, trust level, and political will. Therefore, this literature review will be an important ground for identifying and further analysing if there are any other factors, howand to what extent these factors impacting on such negotiation outcome in any future research. These researches should alsoidentify and recommend ways to overcome such challenges and to facilitate AEO MRA negotiations which ensure international trade facilitation and international supply chain security.

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ФАКТОРИ, ЩО ВПЛИВАЮТЬ НА ПЕРЕГОВОРИ ПРО УКЛАДАННЯ УГОДИ ПРО ВЗАЄМНЕ ВИЗНАННЯ ПРОГРАМ УПОВНОВАЖЕНИХ ЕКОНОМІЧНИХ ОПЕРАТОРІВ: ОГЛЯД ЛІТЕРАТУРИ

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У статті розглядається наукова література з метою визначення потенційних факторів при проведенні переговорного процесу про укладання угоди про взаємне визнання (УВВ) програм уповноважених економічних операторів (УЕО) для майбутніх досліджень. Уповноважені економічні оператори визначаються Рамковими стандартами безпеки та полегшення всесвітньої торгівлі (SAFE Framework) як компанії або особи, які контролюють та демонструють готовність забезпечити безпеку ланцюга поставок. У той же час, УВВ є засобом, за допомогою якого митні служби двох країн визнають законність та повноваження УЕО та погоджуються сприяти розвиткові взаємної торгівлі своїх УЕО.

Переговори стають звичайною діяльністю сучасного суспільства. Після терористичного нападу 11 вересня 2001 року у США, світова спільнота засвідчила становлення міжнародних переговорів з укладання УВВ УЕО. Огляд літератури засвідчує існування проблем під час проведення переговорів про УВВ УЕО. Вони пов’язані з багатьма факторами, такими як політична воля, довіра (або впевненість) у середовище регулювання відносин з торговельними партнерами тощо. Відповідно, існує необхідність проведення емпіричних досліджень у майбутньому для більшого розуміння як та наскільки такі фактори впливають на процес та результат переговорів.

Ключові слова: угода про взаємне визнання, уповноважений економічний оператор, безпека ланцюга поставок, розвиток торгівлі, митна співпраця, партнерство «митниця-бізнес».

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ORGANIZATIONAL AND LEGAL BASES OF CUSTOMS AND TAX CONSULTANCY: A COMPARATIVE ANALYSIS

Customs and tax consultancy is an effective way to prevent crimes, improve communication and establish the partnership between public administration and business community. That is why both of them are important for the state economy, maintaining the authority and enhancing the credibility of the public bodies of Ukraine.
The purpose of the study is to analyze and compare the legal regulation and organization of the customs and tax administrations consulting activities in order to identify certain gaps, collisions and other related problems as well as to offer the ways of solving them.
As a result of the comparative analysis of the customs and tax consulting procedure it has been determined that the legislator approaches to legal regulation of both types of consultation are different. It has also been proved that some similar provisions of the Customs and Tax Codes are implemented quite differently. In fact, the first ones are not implemented at all.
This comparison made it possible to identify an incorrect determination of the subjects entitled to request a customs consultation as well as subjects providing such a consultation. The proposal to increase the range of the subjects requesting a customs consultation was made. The need to establish the standards of the request of a customs consultation, the content of the last one as well as the bases for refusing to provide a consultation were proved.
The absence of legal procedure of the generalized customs consultancy has been detected. It was proposed to adopt related Order by the Ministry of Finance following the example of the tax one.

Key words: customs consultation, tax consultation, consultancy, generalized customs consultation, generalized tax consultation, public administration.

JEL Classification: H20, H87, K34.

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Introduction. Customs and tax systems of any country providing lion's share of the state budget incomes takes a key place in the state mechanism. The two have much in common, for example, the fiscal direction of their activities, the similar methods of administration, the proximity of the legal base and the same focal point. The such similarities confirm the thesis about close association between customs and tax services. In this regard our country progressed significantly in 2013 by uniting them into one department – at first the Ministry of Revenue and Dues that was transformed into the State Fiscal Service of Ukraine soon (Decree № 726/2012).

We recognize the commonality in organization, directions and legal regulation of the activities of both agencies keeping away from the discussions about the feasibility of customs and tax integration. In this case the consultancy provided by

the Customs and Tax Codes of Ukraine is a good example. It is an effective way of preventing crimes, performing educational function, improving communication and establishing the partnership between public administration and business. However, all of these achievements depend on quality of legislative regulation of the consultation process and its consequences. The objectives, format, implications of the customs and tax consultancy are identical proving the idea that legal bases have to be harmonized too. **The purpose of the study** is to analyze and compare the legal regulation of the customs and tax administrations consulting activities in order to identify certain gaps, collisions and other related problems as well as to offer the ways of their solving.

It is possible to achieve this goal by comparing the relevant legal provisions and the practice of its application within certain criteria. They are the subjects of the consultative relationship, the regulation of procedures and terms of consultation, as well as the consequences and evaluation of the consulting activities effectiveness.

The methodology of this study is determined by the comparative method, which makes it possible to compare the relevant norms of customs and tax legislation. The normative-logical analysis method allows us to evaluate the legal regulation of the procedure for providing consultations. The application of modeling, analysis and synthesis methods helps us to formulate proposals for improving existing legislation.

Subjects of appeal. According to the the Customs Code of Ukraine any entities and citizens moving goods and means of transport for commercial use across the customs border of Ukraine or running an activity, which is subject to the supervision of the customs authorities (stakeholders) under the Code can appeal for getting consultation free of charge on the application of certain provisions of the customs legislation of Ukraine(hereinafter – customs consultation) (Article 21, part 1).

Instead, the Tax Code defines that taxpayers may request a tax consultation (Article 52.1). The concept of a taxpayer is clearly defined in the Tax Code of Ukraine – at least it facilitates understanding who is entitled to receive tax consultation.

The same might not be said about the customs consultation's receivers. Following the Customs Code's thesis only those persons (natural or legal) who are currently moving goods and means of transport for commercial use across the customs border of Ukraine or running certain types of activity (supervised by customs authorities) at the moment of consultation request are entitled to receive a consultation.It is unlikely that such consultation is appropriate, since it is associated with spending additional time, and the Customs Code does not establish interruption in the timing of certain customs formalities by seeking consultation. It is obvious that customs consulting is useful at the preliminary stage of a particular foreign trade operation when the person is not moving goods across the customs border. The absence of the subject features outlined in the legislation may formally justify refusal to provide consultations. This could affect the image, confidence in the customs authorities, undermine the newly started partnerships with business structures. In this regard, we propose to simplify the definition of the subjects who can request a customs consultation and to increase their range in the Customs Code of Ukraine to all interested persons (natural or legal). Using the specific terminology of the Customs legislation, Article 21, part 1 of the Customs Code of Ukraine could be amended to read: «Following the requests of stakeholders (legal entities and natural persons), the customs authorities shall provide consultation free of charge on the application of certain provisions of the customs legislation of Ukraine».

Subjects of consultation. The Customs Code of Ukraine establishes customs consultations to be provided by: 1) the customs authorities at the places of location of the requesting entities (at the places of residence or temporary stay of the requesting citizens); 2) the central executive authority responsible for formulating and implementing the state tax and customs policy(it is the newly created State Customs Service of Ukraine) (Article 21, part 2). The legal implementation and application of the territorial principle for the subjects providing customs consultation is not appropriate. It is not clear who is responsible for proving the place of residence (or temporary stay)of the requesting citizens. The legislation imposes no additional requirements on this regard.

We consider entities and citizens should be consulted with the customs office where the consultation will be applied. That's why, in our opinion, the phrase «at the places of location of the requesting entities (at the places of residence or temporary stay of the requesting citizens)» should be deleted from Article 21, part 2 of the Customs Code of Ukraine.

In this context, the authors of the Tax Code of Ukraine followed the rational path without imposing territorial restrictions for obtaining consultations, but instead they differentiated the providers of consulting services depending on the required form of consultation. Individual tax consultation in written form is provided by The State Tax Service (STS) of Ukraine, the Main Department of the STS in regions and Kyiv city, including the Department STS in Kherson region, the Crimea and in Sevastopol city and Major taxpayers' office of the STS. Tax consultations in oral form are provided by all of the above-mentioned authorities as well as by the State Tax inspections(Article 52.4).

In addition to the previously discussed ordinary customs consultations, the Customs and Tax Codes of Ukraine establish the possibility of periodical generalization of consultations and publishing them in the form of orders.

Generalization is provided by the Customs Code of Ukraine for those consultations concerning a significant quantity of persons or significant amount of customs duties.

This obligation is also entrusted to the central executive authority responsible for formulating and implementing the state tax and customs policy. However, in this case, the responsible body is the Ministry of Finance of Ukraine – not The State Tax Service of Ukraine. This conclusion can be drawn only after factor analysis. Thus the Regulations on the State Customs Service includes only its authority to provide ordinary customs consultations (Resolution№ 227, 2019). Instead, the Regulations on the Ministry of Finance of Ukraine includes its powers to generalize the practices of law enforcement within its competence (Resolution № 375, 2014). Finally, comparing with the relevant provisions of the Tax Code of Ukraine will allay doubts about the entity that have to generalize both tax and customs consultations and make them public. Paragraph 52.6. of this Code establishes: «The central executive authority responsible for the formulating and implementing the state financial policy shall periodically summarize individual tax consultations, as well as analyze the circumstances, which indicate the ambiguity of certain tax… legislation…, by providing general tax consultations…, that shall be approved by order of that authority".

Moreover, the order of the Ministry of Finance of Ukraine approved Procedure for providing general tax consultations which establishes a sequence of authorities acts for their preparation and publication (Order № 811, 2017). Currently there is no similar order for the customs consultations generalization as well as there is no any practice for generalizing them. Thus similar provisions of the Customs and Tax Codes are implemented quite differently, – in fact, the first ones are not implemented at all.

Procedure and timing. The procedure for providing customs and tax consultations depends on its form. Customs consultations under the provisions of the Customs Code of Ukraine may be available in oral, written or electronic form upon such person's request. The Tax Code of Ukraine does not provide electronic form of tax consultation. The time limits for consultations are also different. Customs legislation establishes a 30-day term, tax one – 25 days with the possibility of its extension up to 10 additional days.

The procedure for providing oral consultations is not regulated by customs or tax law. It is believed that their way of receiving depends on the format of request – personal audience with officials, telephone mode, etc.

Regarding the written consultations, the authors of the Tax Code of Ukraine have followed the detailed regulation of the consultation process in almost all of its stages. Thus, the Tax Code of Ukraine provides the content of the taxpayer request for individual tax consultation. In addition to personal information and standard requisites, it must contain an explanation of the practical need for tax consultation. The Code also stipulates the consequences of non-compliance with the requirements for such content (in this case, tax consultation is not provided, but the answer is sent according the Law of Ukraine on Citizens Appeals provisions).

Individual tax consultation in written form must include:1) the title, 2) registration number in the unified database of tax consultations, 3) a description of the issues raised by the taxpayer, 4) justification the use of law, 5) a conclusion regarding practical application of such law provisions.

Individual tax consultation in written form have to be registered in the unified database of tax consultations and published on the official website of the State Tax Service of Ukraine guaranteeing confidentiality of taxpayer's personal data. It means that every given consultation is not only accounted, but made public. It ensures transparency and legality of the authority decreasing the quantity of typical requests. Ultimately the publication has an informative and educational effects for all those interested in tax issues (students, scientists, practitioners, etc.). However, for the consultation to be included in the mentioned register, it must pass a two-stage procedure for its adoption and approval by the State Tax Service.

At the same time the procedure for providing customs consultations (in written and electronic forms) is not regulated at all. The content and details of the appeal as well as the consultation were left out of the legislator attention. This problem has practical negative consequences embodied in the actual court decisions. Thus, Zaporizhzhia District Administrative Court has rejected person claim for elimination custom consultation provided by Zaporizhzhia Custom service. Among others it is stated in the judicial decision: "... the claimant did not raise the question of clarification on the practical application of certain provisions of the tax and/or customs law that is defining feature of the request for tax consultation. According to the Court, [claimant's] appeal cannot be considered a request for the tax consultation" (Order in Case No. 808/4075/15). The lack of objective criteria for determining whether a particular request for the tax consultation can provoke abuses by the customs administration. Solution to the issue is left to the discretion of the courts but only in case of an appeal.

By the way the ground for refusal to provide customs consultations is not defined by law. However, in accordance with Article 22 of the Customs Code of Ukraine "The officials of customs authorities shall be held legally liable for the provision of incorrect information, unlawful refusal to provide the requested information…"

Obviously, this provision of the Customs Code is not completely working since it is not possible to understand which refusal is legitimate and which is not.

The detailing of the tax consultation procedure, its multi-stage nature and publicity minimizes problems with their poor quality and avoidance. It rather facilitates a dialogue between taxpayers and tax administration, which is relevant under the conditions of Ukraine becoming a service-oriented state. Instead, the legal regulation deficiency of the customs consultation procedure makes it impossible or minimizes the use of consultations in customs practice which negatively affects the formation of a "new" customs image.

Consequence and effectiveness. One of a few legal regulation similarities of both customs and tax consultations is the consequence of their application. Both Codes provide the immunity for acts based on consultation. It means no person who acted in line with the [customs or tax] consultation as well as summary consultation shall be held liable, in particular if based on the fact that such consultation was subsequently altered or cancelled. This is stated in Article 53 of the Tax Code of Ukraine and in part 5 of Article 21 of the Customs Code of Ukraine.

It should be added that for a person to be relieved out of responsibility counseling must be provided in written (electronic) form and tax consultation have to be entered in the register. The immunity is also provided when the person acted in line with a generalized consultation. Obviously, it is impossible to apply the relevant provisions of the Customs Code due to the lack of generalized customs consultations.

Both codes set out the possibility of appeal for the consultation provided in written form. The Tax Code provides judicial appeal of the consultation as an individual legal act which is a contrary to the rules of content of the relevant tax or fee up to the taxpayer.

The Customs Code of Ukraine establishes both judicial and administrative appeals if, in the opinion of a person, a consultation is a contrary to the law. The result of such an appeal may be the cancellation of the relevant consultation, which is the basis for a new one in the light of the court's findings.

It should be noted that the case law on appealing tax consultations is quite indicative in respect of their importance for taxpayers. The case law on appealing for customs consultations is much less.

The Tax Code of Ukraine additionally provides for the possibility of a judicial appeal against an order approving a generalized tax consultation while the Customs Code does not. The absence of a special rule on appeal does not mean that it is impossible. Everyone can appeal to any decision of the public administration including a generalized customs consultation.

On the one hand customs or tax consultation is an individual act. It means that act (decision) of the authority issued under the procedure of administrative services relating to the rights or interests of a particular person. On the other hand, the consultation itself does not create person rights and obligations, does not oblige them to do so as specified therein, and will have legal consequences only if the person will decide to use it.

At the same time, it should be noted that tax consulting is a very popular type of services provided by tax bodies. This is evidenced by even cursory review of the register of individual tax consultations where dozens of them are published every day. This in turn confirms the importance, relevance and practical value of the tax administrations consultancy activity.

Unfortunately, this cannot be said about customs consultations. The lack of statistics on consultations provided, generalized, and appealed, as well as consultations that were applied in customs practice does not make it possible to conclude on the effectiveness, efficiency and general expediency of customs-consulting activity to date.

Conclusions. The comparative analysis of legal regulation and organization of providing customs and tax consultations showed the differences between the legislator approaches to the

regulation of identical activity of two equivalent entities. In spite of the fact of being managed by one central executive authority for a long time the State Tax Service activity has been regulated significantly better.

The comparison tax and customs consultancy made it possible to more clearly delineate the complex of problems in the legal regulation of customs consultancy. In particular, the main gap in this regard is almost total absence of procedural rules that would establish the actions sequence for the customs authorities: from the acceptance of a request, to the delivery of a consultation or a decision to refuse to the addressee. Moreover, the Customs Code of Ukraine lacks provisions with clear requirements for the form and content of both the request for advice and the consultation itself. The solution of this problem will minimize the number of appeals at least on formal bases. The unsettled generalization of customs consultations calls for immediate intervention by all relevant bodies. Firstly, the subject of such generalization (Ministry of Finance of Ukraine) must be clearly defined in the Customs Code of Ukraine. Secondly, the procedure for the provision and publication of generalized consultations has to be developed and adopted. Thirdly, it's necessary to ensure availability of the subject of the generalization (registry, open data, etc.).

These measures are urgent as they can activate customs consultancy institution and discover its potential. We hope that reforming the customs system as well as final disintegration with the tax service will give impetus to a new round of its development.

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ОРГАНІЗАЦІЙНО-ПРАВОВІ ЗАСАДИ МИТНОГО ТА ПОДАТКОВОГО КОНСУЛЬТУВАННЯ: ПОРІВНЯЛЬНИЙ АНАЛІЗ

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Митне та податкове консультування є ефективним засобом попередження правопорушень, покращення комунікації та встановлення партнерських відносин між відповідною публічною адміністрацією та бізнес спільнотою, саме тому вони обидва мають важливе значення для економіки держави, підтримання авторитету та підвищення довіри до державних органів України. Мета статті полягає в тому, щоб на підставі порівняльного аналізу стану правової регламентації організації та здійснення консультаційної діяльності у митній та податковій галузях виявити проблеми та недоліки правового регулювання, які знижують ефективність цієї діяльності, та запропонувати шляхи їх подолання.

В результаті порівняльного аналізу порядку надання митних та податкових консультацій визначено, що законодавець по-різному підходить до їх правового регулювання. Доведено, що аналогічні норми Митного та Податкового кодексів України реалізуються абсолютно по-різному, точніше, перші не реалізуються взагалі. Дане порівняння дало змогу виявити некоректне визначення суб'єктів, які мають право звертатися за митними консультаціями, а так само суб'єктів, як надають такі консультації. Запропоновано розширити коло можливих запитувачів митних консультацій. Доведено необхідність законодавчого закріплення вимог як формального, так і змістовного характеру, щодо запитів на отримання консультації з питань практичного застосування окремих положень митного законодавства, а також підстав для відмови у їх наданні. В ході дослідження виявлено практично повну відсутність правового регулювання порядку узагальнення митних консультацій та запропоновано Міністерству фінансів України розробити та затвердити своїм наказом відповідну процедуру за прикладом узагальнення податкових консультацій.

Ключові слова: митна консультація, податкова консультація, консультування, узагальнена митна консультація, узагальнена податкова консультація.

NOTES

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